



Committee Calls For CASL Clarification

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Following a series of hearings this fall, a [Parliamentary Committee has recommended](#) that the Canadian government revise [Canada's Anti-Spam Legislation \(CASL\)](#) to clarify a number of key provisions, and that the government and its enforcement agencies provide enhanced guidance material to assist organizations in interpreting and applying the law.

The [Standing Committee on Industry, Science and Technology \(INDU\)](#) also recommended that the potential impact of implementing CASL's private right of action, [whose coming into force was suspended earlier this year](#), be further examined once the recommended changes and clarifications have been implemented to the Act and its accompanying regulations, and that such an examination consider whether any available damages should be based on proof of tangible harm (as opposed to the statutory damages contemplated in the not-yet-in-force private right of action provision).

The report follows a mandatory statutory review, which the law required after the first 3 years of CASL's operation.

The Committee observed that while critics of the law claimed that its prescriptive and unclear provisions have a chilling effect on commercial electronic communications, others observed that the Act increases the effectiveness of electronic marketing, protects consumers and reduces the costs associated with unsolicited commercial electronic messages.

Noting that the evidence presented during the statutory review revealed wide differences of opinion about the interpretation of the Act, the Committee recommended that the responsible enforcement agencies provide clear, effective, accessible and regularly updated guidance materials designed to assist stakeholders in applying and implementing the legislation.

The Committee also acknowledged that while important, the recommended improved guidance materials can only achieve so much, and accordingly, the Act and its regulations require clarifications to reduce the cost of compliance and better focus enforcement. Other than recommending that the law be given the official short title of the *Electronic Commerce Protection Act*, INDU stopped short of making specific recommendations as to how CASL's provisions might be amended, but did make general recommendations for clarification of the following key issues and provisions, in order to ensure clarity and avoid unintended costs of compliance:

- The definition of "commercial electronic message", in particular to clarify the status of administrative and transactional messages
- Whether business-to-business messages fall within the definition of "commercial electronic message"
- Whether the list of "excluded" communications listed in s. 6(6) fall under the definition of "commercial electronic message"

- The provisions respecting “implied consent” and “express consent”
- The definition of “electronic address”
- The application of the Act to charities and non-profit organizations

The Committee also made a number of operational recommendations, directed at the government and the Canadian Radio-television and Telecommunications Commission (CRTC), including that:

- The CRTC step up efforts to educate Canadians – and especially small businesses – with respect to the interpretation and application of the Act, as well as the availability of technological tools to assist with compliance
- The government consider how the CRTC can share information relative to the enforcement of the Act with domestic law enforcement agencies and cybersecurity partners
- The government investigate with the CRTC how the latter might be more transparent with respect to its methods, investigations and determinations of penalties, as well as investigating the collection and dissemination of data on consumer complaints and spamming trends

The INDU report included a “supplementary opinion” from the NDP member of the Committee, supporting improved education and training to assist stakeholders in better understanding the law, but opposing any amendments to the law itself.

The ball now moves to the government’s court to respond to the Committee’s recommendations and determine what changes, if any, it might propose to CASL to address the issues identified by the Committee and the stakeholders that appeared before it.

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