
CASL: Protecting Directors and Officers from Personal Liability

Posted by [Derek A. Lackey, Editor](#) / September 15, 2017

CASLs anti-spam sections came into force on July 1, 2014. Every organization that CASL affects should now be complying with it and their directors and officers need to make sure they do. CASL opens directors and officers up to personal liability for violations of it, so every director and officer must think about limiting her personal exposure. Here are five steps to get that process started.



CASL expressly extends legal responsibility to both an organizations directors and its officers. CASL says that an organizations officers, directors and agents can be personally liable if the organization contravenes CASL, regardless of whether the Canadian Radio and Television Commission (the CRTC, the main agency charged with CASLs administration) proceeds against the offending organization itself. To be personally liable, the officer, director, or agent must have:

- directed the violation;
- authorized the violation;
- assented (somehow agreed) to the violation;
- acquiesced in the violation (knew about it and allowed it to happen); or otherwise participated in the violation.

CASL gives the CRTC the teeth to back it up. Individuals and organizations that dont comply with CASL risk significant penalties any of which can be imposed or brought

against an offending organizations directors or officers personally:

- The CRTC has the power to impose monetary penalties of up to \$1M on individuals and \$10M on other entities.
- The CRTC can also bring a criminal charge for obstructing a CASL investigation, failing to comply with a demand to preserve transmission data, or failing to produce documents when required.

Effective July 1, 2017, a person or corporation affected by a CASL contravention can bring a civil lawsuit against the offending person or entity and seek remedies including monetary compensation and expenses. The maximum penalties are \$200 for each commercial electronic message contravention (to a maximum of \$1M/day), and \$1M for each day on which a software contravention occurs (CASLs software sections come into force on January 1, 2015). Editor's Note: This was postponed indefinitely on June 8, 2017.

CASL does, however, provide a due diligence defence. So, when the CRTC seeks to impose personal liability on an organizations directors or officers for a CASL violation, they or the organization itself may be able to raise the defence that they exercised due diligence if:

- the organization took reasonable steps, including at the board and executive levels, to prevent the CASL violation; and
- the organization can prove that it took those reasonable steps with records and/or other tangible evidence that clearly demonstrate the steps taken to avoid violating CASL.

Every organization that CASL affects needs a CASL compliance program. But directors and officers must also ask themselves whether there are sufficient compliance mechanisms at the board and executive levels to avoid running into personal liability issues down the road: have the board and the executive taken all reasonable steps to prevent a CASL violation? Designing and implementing an executive CASL compliance program specific to its directors and officers is a way to for them to exercise and prove due diligence to help protect them from personal liability under CASL. Here are five ideas to start that process...

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