

# Privacy Law Newsflash

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## Rogers Media Inc. Agrees to Pay \$200,000 for Alleged Violations of Canada's Anti-Spam Law

By Paige Backman

On Friday, November 20, 2015, the Canadian Radio-television and Telecommunications Commission (CRTC) announced that Rogers Media Inc. (Rogers) paid \$200,000 as part of an undertaking to resolve alleged violations of Canada's anti-spam legislation (CASL).

The allegations against Rogers include failure to comply with various requirements of CASL between July 2014 and July 2015, including (i) sending commercial emails containing an unsubscribe mechanism that did not function properly or which could not be readily performed by the recipient; (ii) using an electronic address for unsubscribe purposes that was not valid for the required minimum of 60 days following the date the message was sent; and (iii) failing to honour a request to unsubscribe from receiving future commercial emails within 10 business days of notification of same.

In addition to the \$200,000 fine, Rogers agreed to update and implement a compliance program.

In the 16 months since CASL came into effect, there have been less than a handful of findings by the regulators stemming from complaints under CASL. Two of them involve well-known Canadian businesses, Porter Airlines and Rogers, with these entities agreeing to monetary payments of \$150,000 and \$200,000 respectively. These findings speak to the seriousness with which the regulators take compliance with CASL and a possible pattern of looking to well-known established Canadian businesses to make a point as a warning to others. However, the lack of details of the context surrounding the alleged breaches does not address the challenges businesses have in interpreting CASL's provisions and its application to complex and evolving business relationships and methods of communication.

We encourage the regulators to provide ongoing guidance using specific and contemporary examples to inform businesses of what is expected, what will be adequate, what will be inadequate and what nuances of various relationships will cause that relationship to fall into different categories of the CASL labyrinth. Many businesses have committed significant resources to try to comply with CASL, while maintaining business activities in a competitive commercial environment largely through evolving electronic means. If the intent of the penalties under CASL are truly to encourage compliance and not penalize, ongoing detailed guidance on how to comply with the various overlapping and inconsistent provisions of CASL is the least businesses can hope for.

For more information or direction on this or any matter relating to privacy, data breaches or Canada's Anti-Spam Legislation, please contact the author Paige Backman or any other member of Aird & Berlis LLP's Privacy Team.

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