

# Private right of action under CASL is coming into force

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## Update: CASL private right of action has been suspended

On July 1, 2017, subject to any legislated postponement, the private right of action provisions (PRA) under Canada's Anti-Spam Legislation (CASL) will come into force. This will expose organizations, including franchisors, to certain risks – chief among them is the risk of PRA-based class actions.

Under the PRA remedy, individuals or organizations may claim that they have been "affected" by a contravention of CASL, including under the statute's commercial electronic messaging and computer program installation provisions, and may bring a claim for damages against the individual or organization alleged to have engaged in the contravention.

An applicant may claim for *either or both* of two types of damages under the PRA remedy: (1) damages for the applicant's actual loss or damages (i.e., compensatory damages); and (2) statutory damages for each contravention. Notably, entitlement to statutory damages does not require the applicant to establish proof of loss – only a contravention of CASL is required. A due diligence defence is available to the respondent if the respondent can show that it took all reasonable steps to avoid the contravention that occurred. To this end, evidence of implementation and adherence to a comprehensive CASL policy can support a finding by the court that the respondent exercised the required due diligence.

The statute prescribes the amount of statutory damages that may be claimed. In the case of contraventions of the commercial electronic messaging provisions, up to \$200 may be claimed for each contravention, not exceeding \$1,000,000 for each day on which a contravention occurred. In the case of contraventions of the computer program installation provisions, statutory damages not exceeding \$1,000,000 for each day on which a contravention occurred may be claimed. Due to the relatively small amount of damages that each applicant may claim with respect to commercial electronic messages under the PRA remedy, we expect the chief risk to organizations relating to the PRA provisions coming into force to be class proceedings.

Franchisors should both assess their exposure to the risks created by the PRA provisions coming into force and adjust their compliance strategies to mitigate such risks ahead of July 1, 2017.

If you have any questions, please contact a member of Osler's [Privacy and Data Management Group](#) or Osler's [Franchise Group](#).

View more information on the [legislative history of CASL and other background information](#) as well as the [impact of CASL on franchisors specifically](#).

View more information about class actions in relation to contraventions of the CASL computer program installation provisions.

For more information on the Canadian Radio-Television and Telecommunications Commission regulatory proceedings against respondents for breach of the CASL commercial electronic messaging provisions, see our AccessPrivacy articles "CRTC issues \$1.1 million penalty under CASL" and "First CASL compliance and enforcement decision released."