

Business & Careers

Software makers respond to spam law



Luigi Benetton
Hi-Tech

Earlier this year, in reaction to Canada's anti-spam legislation (CASL), various organizations flooded their contacts' inboxes across the country with requests for permission to continue sending them e-mails. Software developers also responded, marketing packages that help businesses comply with CASL.

Knowing little about CASL or the systems being marketed, I contributed to the "flood" by asking a list of lawyers for permission to request their expertise when researching this technology column for *The Lawyers Weekly*.

Better safe than sorry, I thought, but more than a few lawyers told me I need not worry about CASL. I didn't know that. I'm not a lawyer, which put me in with many owners of small and medium-sized businesses that don't know how to comply effectively with CASL.

The uncertainty may spur interest in those systems that help businesses comply with CASL. The potential market may be huge if Canada's stringent anti-spam stance is adopted elsewhere in the world, although "true" sources of spam (think Nigerian princes, marketers of sexual aids and blog comment spam) aren't likely to invest in

compliance technology.

"Much spam is generated offshore," says David Elder, Ottawa-based Stikeman Elliott communications, competition and privacy law counsel. "We have yet to see any impact on real fraudsters as a result of this law."

Kirsten Thompson notes that CASL applies to any message where a computer system in Canada is used to send or access an electronic message.

"Access means reading an e-mail, and my computer is in Canada, so presumably CASL is triggered," says the Toronto-based McCarthy Tétrault counsel in the firm's national technology group.

What repercussions might the Nigerian prince expect? "I look forward to seeing how the CRTC will handle the jurisdictional issues," she says.

For now, only legitimate businesses take any interest in these compliance tools. "Some are complete solutions while others only address one aspect of CASL compliance," says Elder, noting there's no one-size-fits-all solution.

At the "simple" end of this range, technology support firm Nerds On Site published the Express Consent smartphone app (\$4.99) which enables users to scan business cards and let their owners record their consent to receiving commercial electronic messages (CEM).

Charlie Regan, Nerds on Site CEO, says Express Consent was developed for use at networking events, trade shows and other in-person meetings. "Its purpose is to start an audit trail," he says.

To cover more of CASL's requirements, automated marketing solution provider

Envoke added to its hosted e-mail marketing platform features such as auditing, proof of consent and reporting.

CASL Cure also professes coverage beyond bulk e-mail marketing. It checks every e-mail sent through a company's e-mail server against a consent database. CASL Cure president Tim Graham says the product mitigates the risk of being slapped with the legislation's attention-getting fines.

"If a governing body says to an organization that they sent an e-mail that's offside, the organization can present a full report to regulators of every outbound e-mail a company has sent."

Few people, including the software vendors, believe the technologies will ensure compliance.

"Given the ambiguity in the legislation, I'm not sure how technology solutions would be instructed to comply with the legislation when lawyers themselves are having diffi-

culty figuring out how to apply it," says Thompson, noting that few people know how the CRTC will react to complaints.

Some lawyers are concerned that the ambiguity of CASL doesn't come through in the marketing for products that target compliance. "Don't use the promotional materials from these companies as a replacement for legal advice," Elder advises. (The fine print on vendor websites usually echoes that.)

For instance, CASL "doesn't apply to every commercial message that you send," Elder says. "It's an important distinction that is glossed over in necessarily simplified promotional material."

Compliance technologies must allow for CASL exemptions like those for business-to-business CEMs. For example, Elder notes that the "business card exemption" makes it irrelevant to record consent if the situation is **CEM, Page 22**

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Talk: 'Be more to the point,' prof advises

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and labour law associate in Norton Rose Fulbright's Ottawa office. "It's about getting the other side to be comfortable to deal with you."

The *Should We Chit-Chat?* study, presented at this summer's annual meeting of the Academy of Management in Philadelphia, did consider the impact that a few informal introductory words had on "likability."

The experiment used 202 individuals from an online community in which people are paid a small sum of money in exchange for their input. Participants were asked to read a transcript of a negotiator named JoAnna or Andrew who does or does not engage in small talk. In subsequent ratings, JoAnna was graded as almost equal in terms of communality traits such as co-operativeness and a willingness to compromise, (on a scale of one to five, 3.22 versus 3.02 respectively) and likability (3.43 versus 3.11). Andrew, however, saw his communality rating soar from 3.23 to 4.81, and his likability go from 3.27 to 3.82.

The study then went on to see what impact small talk had on JoAnna or Andrew's ability to secure a greater payment for a parcel of

land. JoAnna inched upwards from \$10,090 to \$10,195 while Andrew saw offers go from an average \$10,243 to \$10,872.

The findings come as no surprise to Caus-ton, from Canadore College, a natural small talker who also said she modified her behaviour throughout her career to match the style used by male mentors.

"I learned to shut up, talk less, be more to the point, be more direct. I think most women do do that," she said. "Negotiating is a male construct, I think. Women would say, here's what I want, give it to me."

The analysis from researchers suggests that since men aren't expected to display communal traits, they see more of a boost from employing them.

Women, on the other hand, are already seen as communal, says Mislin, who also noted that the study was conducted in a controlled environment in which both male and female negotiators were engaging in identical chit-chat.

"It's very possible that women are coming up with alternative ways of chatting that are providing a boost," she says. "Women are wise they will come up with ways to work around it."

CEM: Signature can make e-mail offside

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one of business-to-business marketing. "If somebody directly exposes their electronic address to you and doesn't say they don't want to receive CEMs from you, you have implied consent to send them CEMs that are relevant to their businesses," Elder says.

The opposite scenario may also arise. E-mail that isn't considered a CEM might become one due to something as mundane as an e-mail signature.

"Many companies include in their signature blocks material that might encourage participation in commercial activity," Elder says. Guidance indicates that a company logo is OK, "but if you have an ad saying 'click here to download our 2015 catalogue,' that might make the e-mail into a CEM even if the rest of the content isn't."

No technology ensures compliance on its own without documented ancillary efforts.

"In most businesses, you can't eliminate that human element, so businesses that pursue technology must place equal emphasis on training and processes, expected employee behaviour," Elder says. "You need to back this up with disciplinary action if necessary."

The new technologies mentioned above arrived just after CASL became reality. Meanwhile, CASL received royal assent in 2010 and the CRTC published the final regulation in 2012.

"That's a lot of ramp-up," Thompson says. "These software solutions should have come out two, three, four years ago. Most of my clients have already spent their compliance budget" on training, processes and configuring their existing technology.

It's not enough to "merely slap on a software patch," Thompson adds. Some of her clients have multiple IT systems inherited from acquisitions that often don't "speak" to one another. "I'm not sure layering another IT solution on top will help."

Before buying another system, "understand the scope and limits of existing technology and whether or not it can be repurposed to help you comply" with CASL, Thompson advises.

Even simpler tools can suffice. "It's easy enough to record in the notes field (of a contact application) that you received a business card from somebody on a certain date," Elder adds. "You train your people to be aware of those sorts of things."



JUDICIAL VACANCY ONTARIO COURT OF JUSTICE LONDON

The Judicial Appointments Advisory Committee advises the Attorney General of Ontario on the appointment of Judges to the Ontario Court of Justice, and invites applications for a judicial position in London.

This appointment, while primarily a criminal law position, may also involve presiding over family law matters. This position also involves travel within the region as assigned by the Regional Senior Justice and/or the Chief Justice.

The minimum requirement to apply to be a Judge in the Ontario Court of Justice is **ten years completed** membership as a barrister and solicitor at the Bar of one of the Provinces or Territories of Canada.

All candidates must apply either by submitting 14 copies of the **current (April 2014)** completed Judicial Candidate Information Form in the first instance or by a short letter (14 copies) if the current form has been submitted within the **previous 12 months**. **Should you wish to change any information in your application, you must send in 14 copies of a fully revised Judicial Candidate Information Form.**

If you wish to apply and need a current Judicial Candidate Information Form, or if you would like further information, please contact:

Judicial Appointments Advisory Committee
Tel: (416) 326-4060. Fax: (416) 212-7316
Website: www.ontariocourts.ca/ocj/jaac/

All applications, either sent by courier, mail or hand delivery, **must** be sent to:

Judicial Appointments Advisory Committee
c/o Ministry of Government Services Mail Delivery
77 Wellesley Street West, Room M2B-88
Macdonald Block, Queen's Park
Toronto, Ontario, M7A 1N3

Applications must be on the current prescribed form and must be **TYPEWRITTEN or COMPUTER GENERATED and RECEIVED BY 4:30 p.m. on Friday, January 9, 2015. CANDIDATES ARE REQUIRED TO PROVIDE 14 COPIES OF THEIR APPLICATION FORM OR LETTER.** A Fax copy will be accepted only if 14 copies of the application or letter are sent concurrently by overnight courier. Applications received after this date **WILL NOT** be considered.

The Judiciary of the Ontario Court of Justice should reasonably reflect the diversity of the population it serves. Applications from members of equality-seeking groups are encouraged.



POSTE À POURVOIR AU SEIN DE LA MAGISTRATURE COUR DE JUSTICE DE L'ONTARIO LONDON

Le Comité consultatif sur les nominations à la magistrature conseille la Procureure générale de l'Ontario sur les nominations de juges à la Cour de justice de l'Ontario et invite les personnes intéressées à présenter leur demande au poste de juge à London.

Cette nomination, bien que principalement liée aux dossiers de droit criminel, peut également exiger que la personne qui occupera le poste préside sur le traitement de dossiers relevant du droit de la famille. Le poste exige en outre des déplacements dans la région selon ce que détermine le juge principal régional ou le juge en chef.

Pour pouvoir poser sa candidature à un poste de juge à la Cour de justice de l'Ontario, il faut, comme condition minimale, avoir été inscrit comme avocat-plaidant et procureur au barreau de l'une des provinces ou de l'un des territoires du Canada **pendant au moins dix ans.**

Tous les candidats et candidates doivent poser leur candidature soit, dans le premier cas, en présentant le Formulaire de renseignements sur le candidat/la candidate à la magistrature **courant (avril 2014)**, soit en envoyant une courte lettre (en 14 exemplaires) si le formulaire courant a été présenté au cours des **12 mois précédents. En cas de changements à apporter à un formulaire déjà envoyé, le candidat ou la candidate doit envoyer à nouveau 14 exemplaires du formulaire de renseignements corrigé.**

Si vous voulez poser votre candidature et que vous avez besoin d'un Formulaire de renseignements sur le candidat/la candidate à la magistrature courant, ou encore si vous souhaitez obtenir de plus amples renseignements, veuillez communiquer avec :

Comité consultatif sur les nominations à la magistrature
Téléphone : (416) 326-4060 Télécopieur : (416) 212-7316
Site Web : www.ontariocourts.ca/ocj/fr/jaac/

Toutes les demandes envoyées par service de messagerie, par la poste ou en main propre **doivent** être soumises à l'adresse suivante :

Comité consultatif sur les nominations à la magistrature
a/s Ministère des Services gouvernementaux - Services de distribution du courrier
77, rue Wellesley Ouest, salle M2B-88
Édifice Macdonald, Queen's Park
Toronto (Ontario) M7A 1N3

Les demandes de candidature doivent être déposées par l'entremise du formulaire prescrit courant et DACTYLOGRAPHIÉES ou CRÉÉES PAR ORDINATEUR et **recues au plus tard à 16 h 30 le vendredi 9 janvier 2015. LES CANDIDATS ET CANDIDATES DOIVENT FOURNIR 14 EXEMPLAIRES DE LEUR FORMULAIRE OU DE LEUR LETTRE DE CANDIDATURE.** Une télécopie ne sera acceptée que si 14 exemplaires du formulaire ou de la lettre de candidature sont également envoyés par service de messagerie de 24 heures. On n'accordera **AUCUNE** considération aux candidatures reçues après cette date.

La magistrature provinciale doit refléter raisonnablement la diversité de la population qu'elle sert. Nous encourageons les membres de groupes de promotion de l'égalité à présenter une demande.