

February 14, 2017

The Hon. Navdeep Bains
Minister of Innovation, Science and Economic Development
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

Re: Urging delay of Canada's Anti-Spam Law Private Right of Action (PRA) Provisions until after CASL legislative review

Dear Minister Bains,

We are writing regarding concern about the serious and negative impact on the charitable and nonprofit sector if the private right of action (PRA) is proclaimed on July 1, 2017. We urge you to delay the coming into force of the PRA provisions until after you have considered the results and recommendations of the first Parliamentary review of CASL that is due to be completed in 2017. We are currently preparing a submission regarding the impact and implications of CASL legislation on the nonprofit and charitable sector over its first three years based on a pan-Canadian survey of nonprofits and charities. Difficult as CASL has proved to be for the sector currently, the risks and harm will be far higher if PRA is proclaimed.

Nonprofit and charitable organizations worry that proclamation of PRA will expose them to frivolous and vexatious lawsuits and threats of lawsuits. Our concerns cover the following reasons:

1. It remains unclear to many charities and nonprofits whether they are compliant with the legislation and/or how they can satisfactorily comply. This makes them vulnerable to threats of legal action and their inability to afford a defense will make them prone to offer settlements – warranted or not.
2. PRA has no threshold – no need to prove harm, just that the commercial electronic message (CEM) was sent. This means effectively there is no deterrent to filing suit. Charities and nonprofit organizations with their limited staff and use of volunteers are at high risk for inadvertent mailing list errors. Moreover, the substantial charitable and nonprofit assets of the sector and the personal assets of many of their directors provide potentially easy targets for frivolous actions. Charities and nonprofit organizations have substantial charitable and government funded assets in property, buildings and investment funds and are concerned their assets may be unduly and unfairly exposed under this provision.
3. Board members are asked to donate their time to these vibrant community-building organizations, but risking their personal assets will give many pause before volunteering especially when they know that many organizations, despite all efforts and due diligence, will be unable to ensure perfect compliance with the onerous administrative compliance and tracking requirements that are associated with this legislation.

Delaying PRA will not dilute our sector's attention to CASL. Noncompliance with CASL among charities and nonprofits can be dealt with by the CRTC through administrative monetary penalties. Charities and nonprofits are typically very conscientious regarding their legislative and regulatory obligations in so far as they are able. Moreover, their day-to-day work requires they have the confidence of and are respected by their communities. We anticipate little if any egregious noncompliance with the underlying purpose of the legislation.

There is no pressing need to implement the PRA on July 1, 2017; effective enforcement measures already exist. The federal government should assess the lessons from the first three years of CASL being in force, ensuring the law is effective in meeting its objectives and identifying outstanding ambiguities in the law before deciding whether the PRA is needed and what an effective PRA should look like.

The Parliamentary review will provide the federal government with an opportunity to listen to all stakeholders including the charitable and nonprofit sector. We look forward to participating in that review and ask in the interim you not proclaim the private right of action that has the potential to cause serious harm to Canadian public and charitable assets.

Thank you for your serious consideration of our request.

Sincerely,



Bruce MacDonald, President & CEO
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