



October 23, 2017

Standing Committee on Industry, Science and Technology
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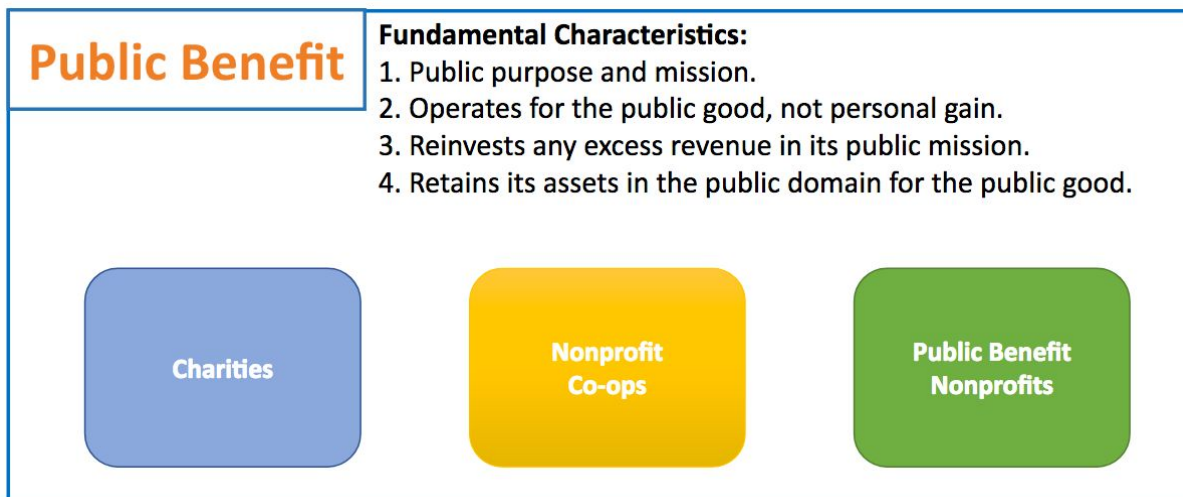
Re: Statutory Review of Canada’s Anti-Spam Law (CASL)

To the Chair and Members of the Committee:

The Ontario Nonprofit Network (ONN) is the independent network for the 55,000 nonprofits and charities in Ontario, focused on policy, advocacy, and services to strengthen Ontario’s nonprofit sector as a key pillar of our society and economy.

Charities and not-for-profit organizations continue to express concern that the legislation is complex and are unsure if they are compliant with CASL and CRTC guidance. They report ongoing costs associated with compliance and worry about about financial penalties they can ill afford, and liability exposure for their voluntary boards. Even charities who are exempt when fundraising find they still have obligations for CEMs, while nonprofit organizations have no exemption and must be fully compliant regardless of how small they are or how few CEMs they send.

When Canada’s Anti-Spam Law (CASL) was developed, there was no way to separate the member-based associations from public benefit nonprofit organizations. It is now possible to differentiate between mutual benefit associations and public benefit not-for-profit organizations ([ONN, The Income Tax Act, 2017](#)).



Canada's public benefit nonprofit sector plays a vital role as an economic driver, generating 8.1% of our GDP, employing two million people and attracting the time and energy of more than 7.8 million volunteers ([Imagine Canada](#)). Many public benefit organizations are small and mid-size organizations operating in every community, building and sustaining the province's civil society, and providing important programs and services. Social services, community development, arts and culture, sports and recreation, newcomer settlement, housing, employment training, mental health, research, environment, and other nonprofit organizations work to build strong, resilient communities.

Our communities rely on and trust these organizations to bring them together to build welcoming, creative, inclusive communities and to ensure that the most vulnerable community members receive the support they need. We are in the business of reaching out to community members to engage them in the life of their communities as civic participants. CASL greatly complicates this work.

From August- September 2016, ONN, in collaboration with Imagine Canada, undertook a [survey of sector organizations' experiences with CASL](#). 449 organizations responded. Key findings are:

- Virtually all charities and nonprofits send electronic messages and most send commercial electronic messages (CEMs).
- Compliance with message requirements is good but compliance is weaker in other areas.
- Many organizations have had difficulties and incurred costs related to CASL, including those not sending CEMs.
- Overall, awareness of coming provisions related to Private Right of Action is low and many organizations are concerned about the possible implications of these provisions.

Based on the survey and from discussions with organizations in the field, we make the following recommendations:

1. Exempt charities and public benefit nonprofit organizations from private right of action. Charities and public benefit nonprofit organizations¹ have voluntary boards of directors (serving without remuneration) who under the private right of action section could be personally liable. Moreover, some charities and nonprofit organizations have substantial charitable and government funded assets in property, buildings and investment funds and feel their assets may

¹ Public benefit organizations - An organization, society, club or association that, is not a charity, is organized and operated primarily to benefit the public good, and is I. Incorporated without share capital.; II. Self-governing: there is a public goal that is advanced by the organization's activities, and none of the members benefit from a distribution of profit or surplus generated.; III. Excess revenues are reinvested: does not distribute profits to members, directors, or manager.; IV. Has a constraint in its bylaws that prohibits distribution of assets to members on dissolution (provides for gifting residual assets to a public benefit organization).; V. Independent or institutionally separate from the formal structures of the federal and provincial government and the profit (corporate) sector.

be unduly exposed under this provision. Many if not most organizations have difficulty understanding and complying with CASL requirements and CRTC guidance. As we wrote to [Minister Bains in February 2017](#), they are at risk from private right of action.

2. Exempt public benefit not-for-profit organizations from CASL requirements relating to CEMs, except for the ID, content and unsubscribe requirements.

The sector is responsive to the wishes of recipients of electronic messages. Identification information, content and unsubscribe requirements on CEMs are important and are sufficient for a sector primarily engaged in community building. Organizations in the sector report difficulties in complying with other sections of CASL, particularly the management of implied consents. While many encourage and seek explicit consent, many in the sector are poorly equipped to update lists or even to maintain master lists. Approximately 80% of the sector have annual revenues of under \$500,000.² Many are very small organizations. In 2003, the most recent Statistics Canada survey of the sector we have, 42% of organizations had annual revenues of less than \$30,000³. The sector, particularly the smaller volunteer led organizations, are not in a position to easily comply with CRTC compliance bulletins requiring that organizations track and document consents. While obtaining explicit consents should be a best practice, making it mandatory and requiring ongoing documentation and record keeping is unduly onerous for the sector.

The unsubscribe function will enable members of the public receiving unwanted emails to stop receiving them. Sector organizations have indicated they have been mostly able to comply with this portion of CASL. Charities are already exempt from CASL for fundraising communications and we are not aware of any spam problems that exemption has caused.

3. Should there be egregious noncompliance by charities and public benefit nonprofits providing identification of the organization, contact information and unsubscribe function on CEMs, it can be dealt with by the CRTC through administrative monetary penalties. Charities and nonprofits are typically very conscientious regarding their legislative and regulatory obligations. Moreover, their day-to-day work requires they have the confidence and respect of their communities. We anticipate little if any egregious noncompliance with the underlying purpose of the CASL legislation.

² <http://www.imaginecanada.ca/resources-and-tools/research-and-facts/key-facts-about-canada%E2%80%99s-charities>

³ National Survey of Voluntary Organizations, 2003 <http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&Id=5827>