

## CANADA'S NEW ANTI-SPAM LEGISLATION: A VERY WIDE OBJECTIVE, A VERY WIDE SWATH

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### LEXPERT

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**Early Bird Deadline:** (October 22, 2010)

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# CANADA'S NEW ANTI-SPAM LEGISLATION: A VERY WIDE OBJECTIVE, A VERY WIDE SWATH

Canada's proposed new anti-spam legislation cuts a wider swath than similar legislation anywhere in the world. Some observers argue that it will make online marketing exponentially more difficult. And because so many US companies market into Canada, they may be caught in the complexities too: compliance with US laws will not necessarily amount to compliance with Canadian law.

#### THE COURSE LEADERS

CHARLES MORGAN, PARTNER, MCCARTHY TÉTRAULT LLP  
BARRY SOOKMAN, PARTNER, MCCARTHY TÉTRAULT LLP

#### COURSE HIGHLIGHTS

- SCOPE OF ECPA ANTI-SPAM PROVISIONS
- CONSENT TO RECEPTION OF COMMERCIAL ELECTRONIC MESSAGES
- COMPARISON WITH US ANTI-SPAM LEGISLATION
- ANTI-SPYWARE PROVISIONS
- AMENDMENTS TO THE COMPETITION ACT
- AMENDMENTS TO PIPEDA
- REPEAL OF THE DO-NOT-CALL LIST
- ENFORCEMENT

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MONTRÉAL, UNIVERSITY CLUB OF MONTREAL **November 23, 2010**  
2047 Rue Mansfield, Montréal, Québec H3A 1Y7 Phone: (514) 288-0201

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1055 Canada Place, Vancouver, BC V6C 0C3 Phone: 1 866 785-8232

# CANADA'S NEW ANTI-SPAM LEGISLATION: A VERY WIDE OBJECTIVE, A VERY WIDE SWATH

## program outline

**8:15 – 8:50** | REGISTRATION AND BREAKFAST

**8:50 – 9:00** | INTRODUCTION

Canada is currently the only G-8 country and one of only four members of the OECD without anti-spam legislation. The proposed legislation, introduced as the *Electronic Consumer Protection Act*, aims to change that, in spades.

- » The origins of spam
- » Reach of the *ECPA*
- » Differences between the *ECPA* and the US CAN-SPAM Act of 2009
- » Impact on cross-border business
- » Effect of lobbying efforts on the development of the *ECPA*

**9:00 – 10:00** | SCOPE OF *ECPA* ANTI-SPAM PROVISIONS:

The *ECPA* would be the broadest legislation of its kind in the world.

- » What's covered and what's not covered
- » Consent: how is it defined, and what is the impact?
- » Exceptions to the prohibitions against sending without consent
- » Restriction on commercial speech and the Charter's guarantee of freedom of expression

**10:00 – 11:00** | CONSENT TO RECEPTION OF COMMERCIAL ELECTRONIC MESSAGES

The *ECPA*'s consent provisions are quite rigid and could ban many reasonable business communications.

- » Express versus implied consent
- » Past business and non-business relationships
- » Obtaining consent, and the requirements for gathering valid consent
- » Impact of consent on the US private sector
- » Impact on electronic messaging marketing

**11:00 – 11:15** | BREAK

**11:15 – 12:15** | COMPARISON WITH US ANTI-SPAM LEGISLATION

While the core purposes of Canadian and US legislation are similar, the philosophies behind implementation are fundamentally different.

- » Similarities between the *ECPA* and US anti-spam legislation
- » Differences in reach and applicable media
- » Opt-in versus opt-out consent
- » Consent-gathering requirements

**12:15 – 1:00** | LUNCH

**1:00 – 1:45** | ANTI-SPYWARE PROVISIONS

- » Disclosure requirements for the installation of computer programs
- » Exceptions for software updates, upgrades and patches
- » Exclusions from the consent requirements of the anti-spyware law
- » Maximum damages
- » Transitional provisions for obtaining consent

**1:45 – 2:30** | AMENDMENTS TO THE *COMPETITION ACT*

- » Spam-related amendments
- » Criminalization of false or misleading representations in electronic messages
- » The Competition Bureau's new powers

**2:30 – 2:45** | BREAK

**2:45 – 3:30** | AMENDMENTS TO *PIPEDA*

- » Collecting personal information on the internet
- » Collecting electronic addresses
- » Broad scope of amendments



## CHARLES MORGAN

Charles Morgan is the leader of McCarthy Tétrault's technology group practice in Montréal. Mr. Morgan's practice focuses on the areas of tech M&A, outsourcing, licensing, e-commerce, data protection and telecommunications. He has considerable international experience, particularly in the realm of telecommunications. The 2009 edition of *Chambers Global: The World's Leading Lawyers for Business* ranked McCarthy Tétrault's Technology Law Group highest in Canada. Mr. Morgan is rated in the 2009 *Canadian Legal Lexpert® Directory* as a leading Computer and IT lawyer. He is also included in the 2009 *International Who's Who Legal: Internet & E-Commerce Directory*. He is on the board of directors of the International Technology Law Association. In his international telecom practice, Mr. Morgan has assisted numerous governments and telecommunications regulatory authorities, whether for law reform, regulatory strategy, (fixed and mobile) licensing, interconnection or universal service projects in a variety of countries, including Algeria, Burkina Faso, Kenya, Mali, Morocco, Mozambique, Pakistan and Saudi Arabia.

Mr. Morgan has co-authored the following books: *Cyberlaw: What You Need to Know about Doing Business Online* (Stoddart, 1997); *Cyberlaw: A Guide for South Africans Doing Business Online* (Ampersand, 1999); *Communications Law in Canada* (Butterworths, 2000); *Halsbury's Laws of Canada – Communications* (LexisNexis Canada, 2007); and *Information Technology Law - E-mail* (LexisNexis Canada, 2008). He is a contributor to the book *The Law of Privacy in Canada* (Carswell, 2000).



## BARRY SOOKMAN

Barry Sookman is a partner with McCarthy Tétrault and is the co-chair of its Technology Law Group. He is the former head of its Internet and e-Commerce and Intellectual Property Groups. He is one of Canada's foremost authorities in information technology, Internet, copyright and privacy law and the author of numerous books including the leading five-volume treatise *Computer, Internet and Electronic Commerce Law (2000–2009)*. He has the highest ranking in IT law in *Lexpert*, *Chambers Global* and *the Guide to the Leading 500 Lawyers in Canada*. He is ranked as the number one lawyer in Canada and top 10 worldwide in Technology, Media and Telecommunications law by the Legal Media Group. He acts in connection with complex IT/IP transactions such as outsourcings and in IT/IP litigation and has argued numerous precedent-setting cases at all levels of courts including the Supreme Court of Canada and courts of appeal.

**3:30 – 4:15** | ENFORCEMENT

Penalties are harsh but offences are subject to a due diligence defence, and a private right of action is established. The CRTC will determine whether an offence has occurred.

- » Administrative monetary penalties
- » Due diligence defence and appeals
- » Liability of officers, directors and agents

- » Compensation orders
- » Sharing of information with foreign states
- » Private right of action

**4:15 – 4:45** | Q & A

**4:45** | COURSE CONCLUSION

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