

FEDERAL LEGISLATION AWARENESS/COMPLIANCE

All brokers should be aware of the following federal legislation:

1. Anti-Terrorism Provisions

The Criminal Code of Canada provides that:

“No person in Canada and no Canadians outside Canada shall knowingly:

- (a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;
- (b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or
- (c) provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of, a terrorist group.”

The purpose of this legislation is to prevent and suppress the financing, preparation, facilitation and commission of acts of terrorism.

“Terrorist group” is defined as including those persons or associations of persons on the “list” as established by the Governor in Council. This consolidated list, as update from time to time, can be found on OSFI’s website at www.osfi-bsif.gc.ca under the heading Suppression of Terrorism.

“Financial or other related services” is not specifically defined, therefore by reference to its common or ordinary meaning, this legislation appears to prohibit insurance brokers from knowingly arranging insurance policies on property owned or controlled by, or on behalf of, any person or entity on the list, or any other “terrorist group”.

Insurers are similarly prohibited from knowingly entering into or renewing contracts of insurance with anyone on the list, or other “terrorist groups”.

2. The Proceeds of Crime (Anti-Money Laundering) and Terrorist Financing Act

While not generally applicable to property and casualty insurance brokerages, regarding a direct reporting requirement as a “reporting entity”, under the Act, Principal Brokers should nonetheless be aware of the general requirement by the financial services industry to report cash transactions in excess of \$10,000 to the Agency responsible for collecting this information:

The Financial Transactions and Report Analysis Centre of Canada
(FINTRAC)
www.fintrac-canafe.gc.ca
1-866-346-8722

This would include a series of cash payments, all under the \$10,000 threshold that, when taken together, would trigger a reporting requirement.

In the ordinary course, it would be a very rare circumstance for any client to pay his or her premium (assuming it was over the threshold of \$10,000) in cash. On the whole, this is a low risk issue for most general insurance brokers.

However, brokers should be aware that there have been instances reported globally where a policy has been purchased, with cash and subsequently cancelled, resulting in a return of premium, that has been washed so to speak.

As a matter of policy, brokers should take sufficient steps to know their clients and possibly take steps to verify their identity if circumstances warrant, or appear suspicious. This may include a review of licences or other documents evidencing identity, as the case may be.

Brokers are encouraged to consult their own legal counsel for issues regarding compliance with the Criminal Code provisions or the Anti-Money Laundering and Terrorist Financing legislation.

3. Canada's Anti-Spam Law (CASL)

This legislation took effect on July 1st, 2014.

RIBO members, like most businesses, are relying increasingly upon electronic communication to market their services. The federal government has introduced legislation (Canada's Anti-Spam Law", or "CASL") aimed at regulation electronic communications with a view of reducing the amount of unwanted communication, or "spam", received by consumers.

The new law applies to anyone who:

- makes use of commercial electronic messages ("CEM"),
- is involved with the alteration of transmission data, or
- produces or installs computer programs.

A CEM is any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit. It is the regulation of this activity that will likely have a major impact on many member brokerages.

At a high level, the sender of a CEM will need to:

- obtain consent from the recipient before sending the message,
- include information that identifies the sender, and;
- enable the recipient to withdraw consent.

Members should be aware that there is a 3-year transitional period during which consent to send commercial electronic messages is implied so long as you have a pre-existing business relationship. Please note, however, that this period will end if the recipient of the commercial electronic messages says that they don't want to receive any more commercial messages from you.

There are other exemptions from the legislation, including certain "business to business" electronic communications.

In the short term, all CEM used by you should provide for all of the following:

- clearly indicate who sent the message, and on whose behalf it was sent, if different,
- provide clear information on how to contact the sender,
- provide a no-cost and easy "unsubscribe" function and promptly honour all removal requests.

The legislation provides for a fine of \$1 million for an individual found to be in non-compliance, and \$10 million for entities, such as a corporation.

For more specific information about how this law impacts your brokerage, you are encouraged to contact your legal counsel.

The Government of Canada's CASL website is an excellent source of information about the new law:

<http://fightspam.gc.ca/eic/site/030.nsf/eng/home>.