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# Canadian Anti-Spam Legislation Experience of Organizations

Fall 2017  
Survey Results



## Acknowledgments

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## Introduction

The “anti-spam” portion of Canada’s anti-spam/spyware law (CASL) came into on July 1, 2014. The “malware/spyware” computer program provisions came into force on January 15, 2015. Leading up to the coming into force of CASL, the CRTC and Industry Canada published materials to help guide CASL compliance and understand the Act, the CRTC Regulations (the CRTC regulations) and the Industry Canada Regulations (the GIC regulations).

When the Industry Canada regulations were finalized, Industry Canada published a Regulatory Impact Assessment Analysis Statement (RIAS) providing helpful guidance on some points of confusion. The CRTC published a General Compliance Guideline, the Toggling Guidelines and a Guideline on Implied Consents. After publishing them, the CRTC clarified that the guidelines are “best practice” guidelines and do not necessarily have to be followed to be CASL compliant. The CRTC also published and later revised a short FAQ on CASL. It also published some slides and a transcript from public information sessions on CASL, a Compliance and Enforcement Bulletin and guidance on the grandfathering of existing CASL consents.

The CRTC held information sessions to help explain the computer program provisions. It later published an FAQ specifically dealing with the program provisions. It committed to publishing its slides and a transcript of one of those information sessions, but these do not appear to be available on the CRTC’s website. It also publishes information on its enforcement activities on a webpage with links to its guidance on CASL.

The advice offered to date by Industry Canada and the CRTC does not address many confusing CASL compliance issues. Also, because much of the advice, especially from the CRTC, is “best practice,” little guidance is available on what practices short of “best practices” would comply with the law. As a result, many organizations are having difficulty adapting to CASL’s rules.

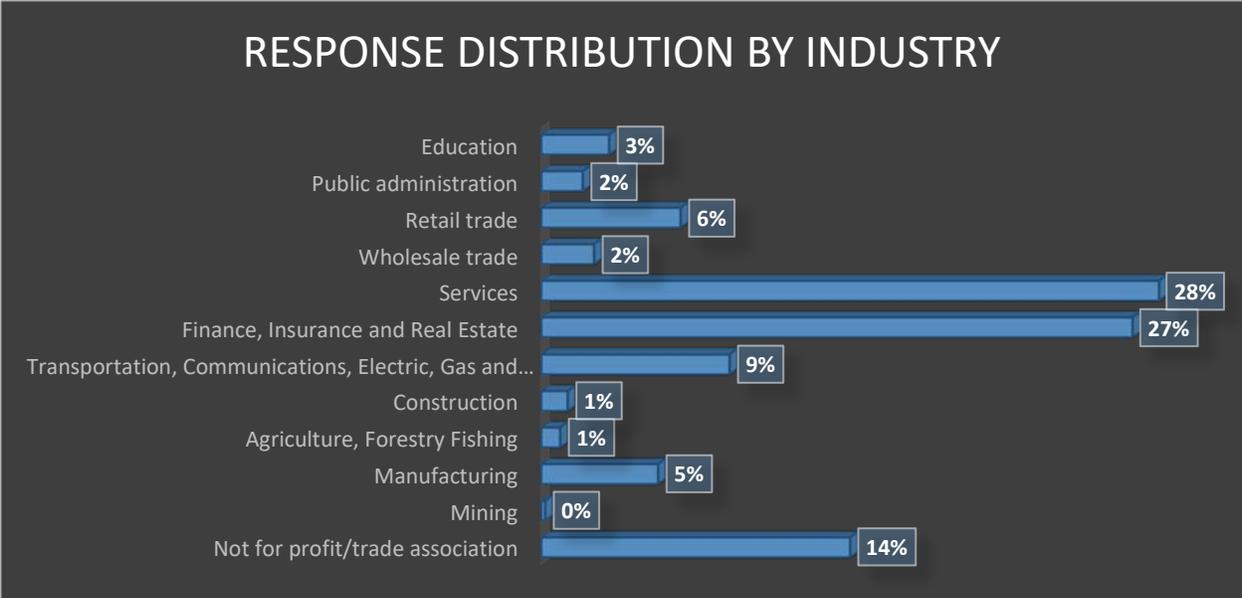
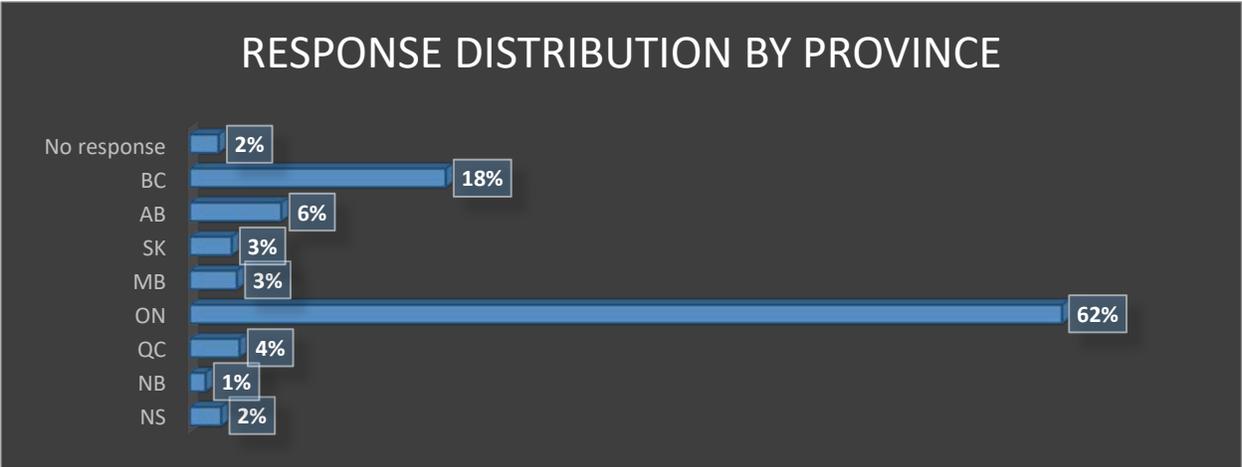
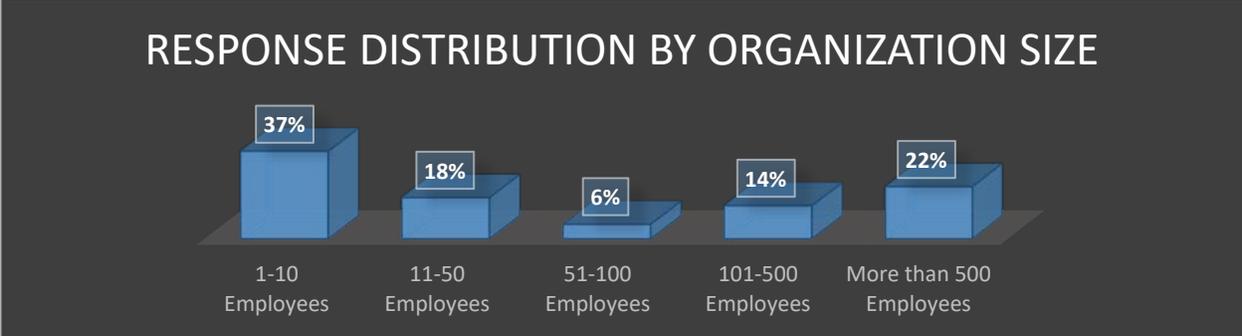
Over the past four years, many industry groups have also invested considerable resources and efforts to raise the awareness and understanding of CASL among their members. Nonetheless, the Canadian Chamber of Commerce (CCC) and other associations continue to receive frequent calls from organizations with CASL compliance questions.

Along with its partners at the Canadian Marketing Association, the Email Sender and Provider Coalition and the Retail Council of Canada, the CCC has attempted to gauge the CASL compliance experience of Canadian organizations after three years of the CASL regime.

We launched a 10-question survey in October 2017. The survey was distributed electronically through several channels and remained in the field for five weeks. Results were collected via an online platform. With a total of 580 responses, there was representation from virtually every industry, from eight of 10 provinces and from every size of business.

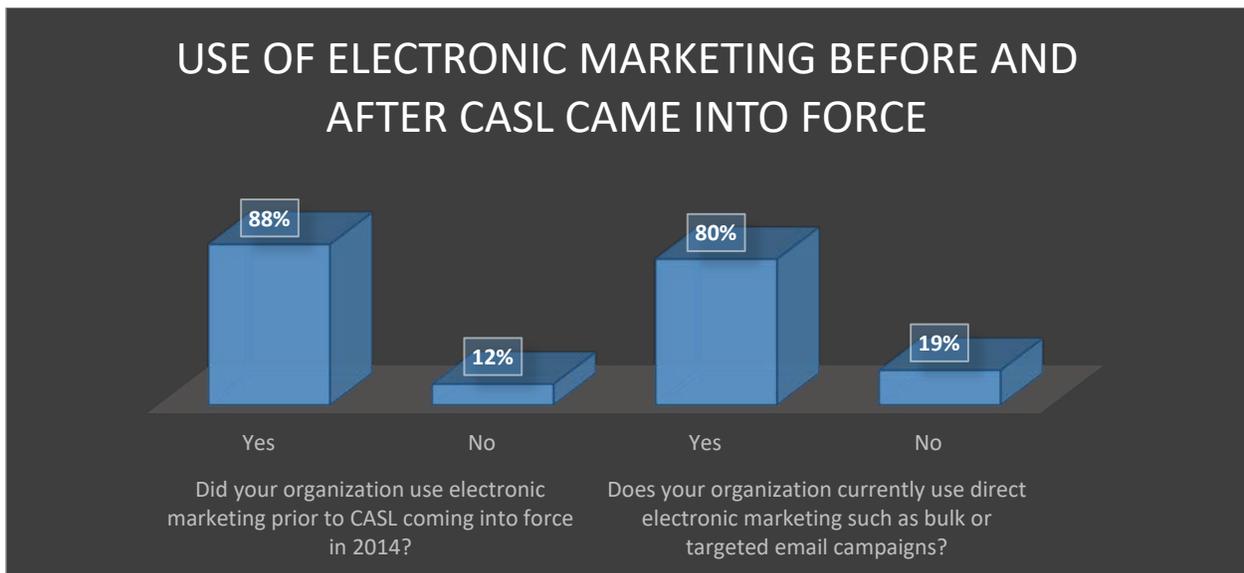
The survey responses signal that a significant majority of organizations find CASL confusing and overly prescriptive. There is notable concern about the potential for high penalties in case of any non-compliant communications, likely driven by a strong view that the law and regulations present a number of very difficult compliance challenges. And while a modest minority of respondents state CASL has “enabled them to streamline their digital marketing practices,” more than twice as many say they “have reduced their reliance on electronic marketing since CASL came into force.”

Over 15% of survey respondents provided commentary to open-ended questions. This commentary was remarkably consistent in expressing frustration and discontent with the compliance experience. Examples of this commentary accompany each of the substantive charts in this report.



## Organizational Use of Electronic Marketing

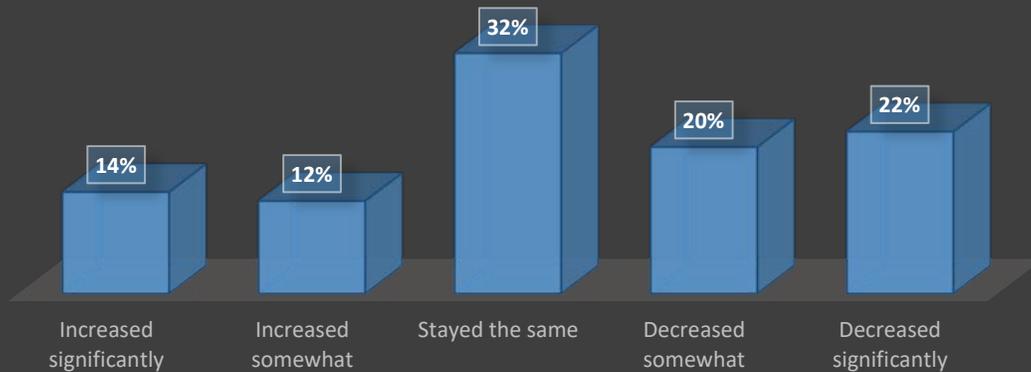
In an attempt to evaluate the stated objective of CASL found in the Regulatory Impact Analysis, which is: *“The general purpose of Canada's Anti-spam Legislation (CASL) is to encourage the growth of electronic commerce by ensuring confidence and trust in the online marketplace,”*<sup>1</sup> we asked organizations about their use of electronic marketing, such as bulk email, and how that may have changed between 2014 and 2017. While other jurisdictions are innovating using electronic platforms and targeted emails and increasing spending on new features, it appears some Canadian organizations are scaling back on their use of electronic marketing. We asked organizations to compare their use of electronic marketing prior to CASL coming into force with their use of electronic marketing now. It appears, contrary to other jurisdictions where investments and innovation in online marketing are on the rise, the story is somewhat different in Canada. When asked about their marketing practices before and since the coming into force of CASL, 42% of respondents have decreased their reliance on electronic marketing, 32% have not made any changes and 7% have stopped using electronic marketing altogether.



*“It’s a waste of our time to keep up, so we just don’t send email anymore, even to targeted audiences.”*

<sup>1</sup> Regulatory Impact Analysis Statement, Objectives: <http://fightspam.gc.ca/eic/site/030.nsf/eng/00271.html>

## RELIANCE ON ELECTRONIC MARKETING SINCE CASL CAME INTO FORCE



*"It is proving extremely difficult to reach out to organizations that we already have a business relationship with. A big part of our outreach to solicit sponsors and participants to our conference has shut down."*

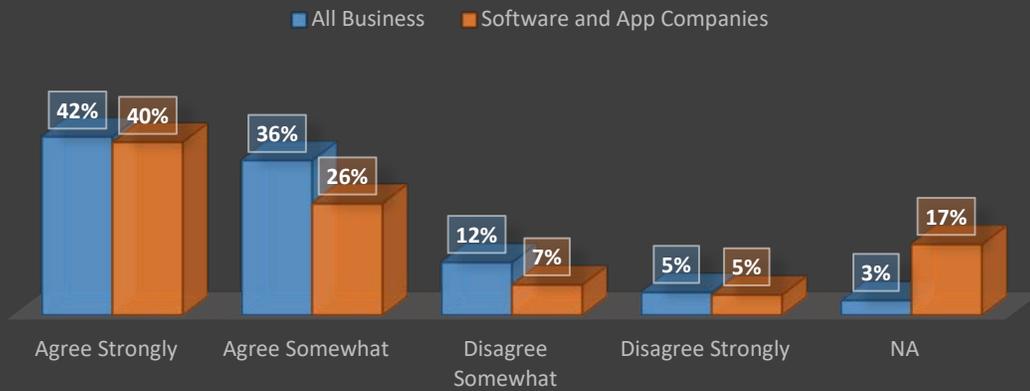
### Concerns with CASL in the Marketplace

Much of the anxiety in the marketplace about Canada's anti-spam law revolves around the consent model and the penalties for non-compliance. In the commentary from this survey, many respondents noted the difficulties related to obtaining consent to send messages. More specifically, we heard concerns related to consumer apathy about consent, where even those who are open to receiving commercial electronic messages find it too onerous to complete online consent forms.

On consumer electronic messages, 78% of the businesses surveyed agree obtaining consent is too difficult. The number is very similar for companies in the software business, where 66% agree obtaining consent is too difficult.

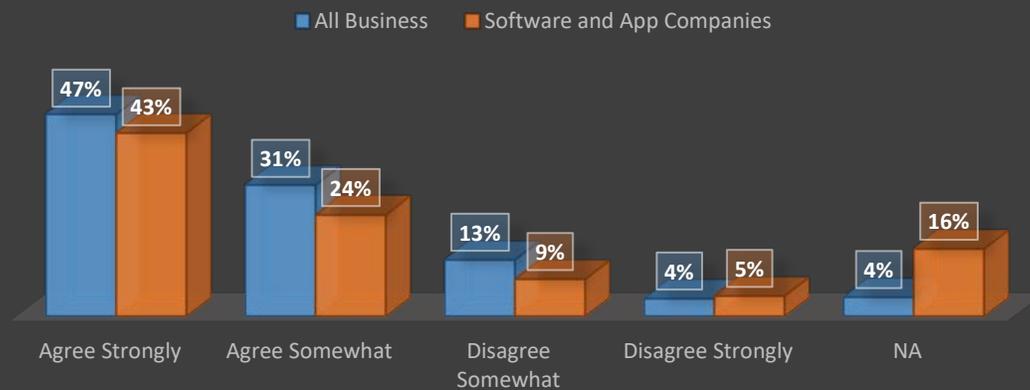
The challenges with the consent model are exacerbated by the complexity and ambiguity of the law (84% agree) combined with a perceived lack of guidance (or unrealistic approaches) from the enforcement agency for expectations of providing evidence of consent (78% agree). The result is anxiety in the marketplace, where 86% of respondents agree they are concerned about the high penalties associated with CASL. Interestingly, these numbers actually increase when the results were filtered to reflect the opinions of large businesses with greater than 500 employees, where it might be expected that larger businesses have more resources to devote to compliance efforts.

## OBTAINING CASL COMPLIANT CONSENT IS TOO DIFFICULT



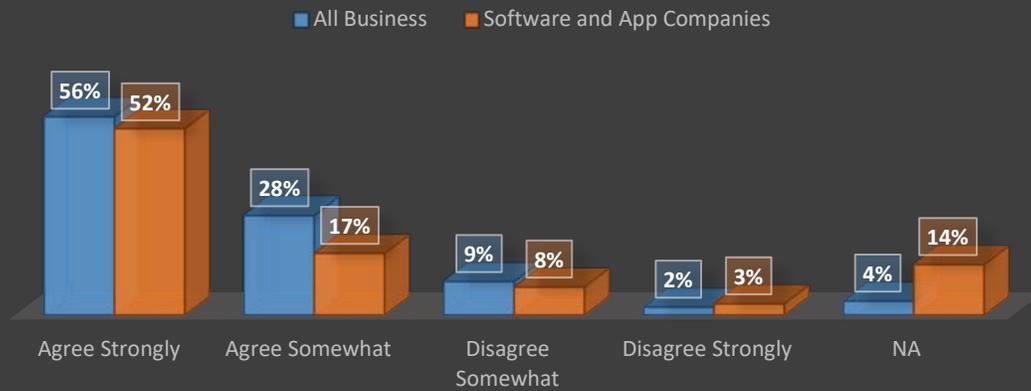
*“Getting people to take action is extremely difficult—so when everyone sends emails asking people to confirm their membership on your distribution list, CASL resulted in people being culled from email lists they wanted to be on.”*

## TOO HARD TO MEET CRTC'S EXPECTATION FOR PROVIDING EVIDENCE OF CONSENT



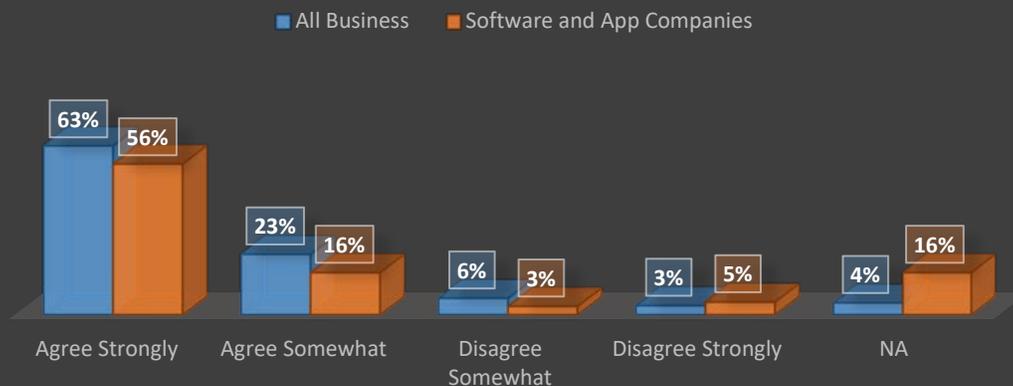
*“How do you prove a business relationship for something like a salesperson who meets someone at an event? Very few organizations have systems in place to track that, let alone sales people with the time to track it.”*

## THE LEGISLATION IS TOO COMPLICATED AND CONFUSING



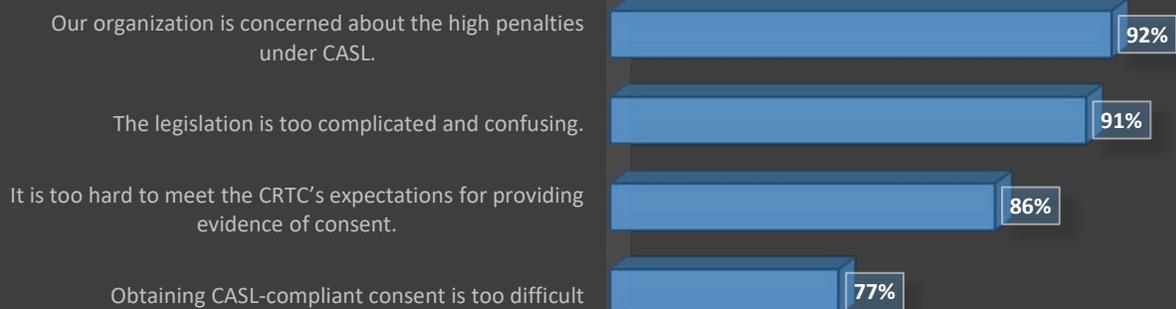
*"We are going to have to implement a new CRM to try to keep track of our consent and at huge expense. I don't know how smaller businesses can cope. We are trying to be compliant and recently hired a new staff member to try to track consent. The legislation goes too far and hurts small businesses."*

## ORGANIZATION IS CONCERNED ABOUT HIGH PENALTIES UNDER CASL



*"The law is full of grey areas and far too open to interpretation, with no one accountable to provide clear interpretation of a law that could cause a business to go under if fined."*

## LARGE BUSINESSES THAT AGREE WITH STATEMENTS ABOUT COMPLIANCE CHALLENGES



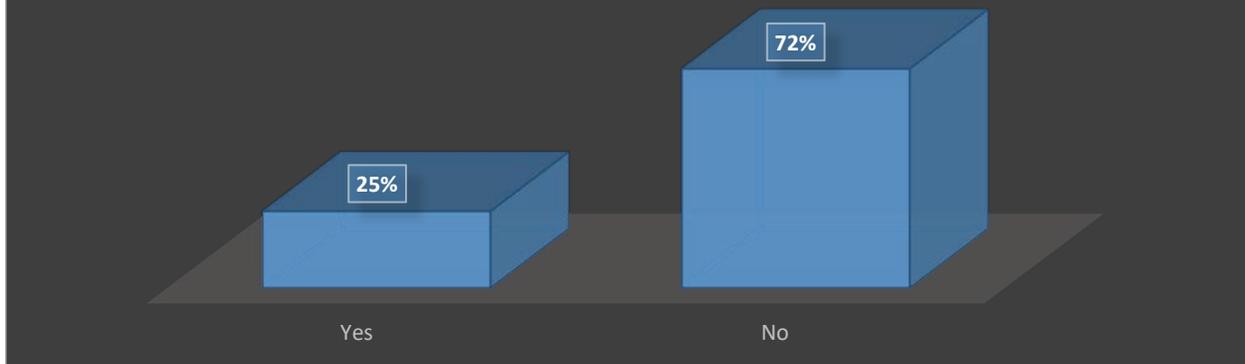
*"There seem to be some grey areas in CASL on this, and so I believe most companies just don't know exactly what they are supposed to do."*

### Compliance Obstacles

CASL is very broad in scope and prescriptive in nature. During the regulatory review period immediately prior to CASL coming into force, the government of the day recognized some of the potential negative impacts of the law on business and attempted to create exceptions that would permit certain types of activities to be exempt. In the survey, we asked specifically about the business-to-business (B2B) exemptions as well as other compliance issues. Seventy-two per cent of respondents do not believe the B2B rules for communications are clear, which is a roadblock to the conduct of regular business communications activity. The opinion is consistent across all business sizes responding to the survey.

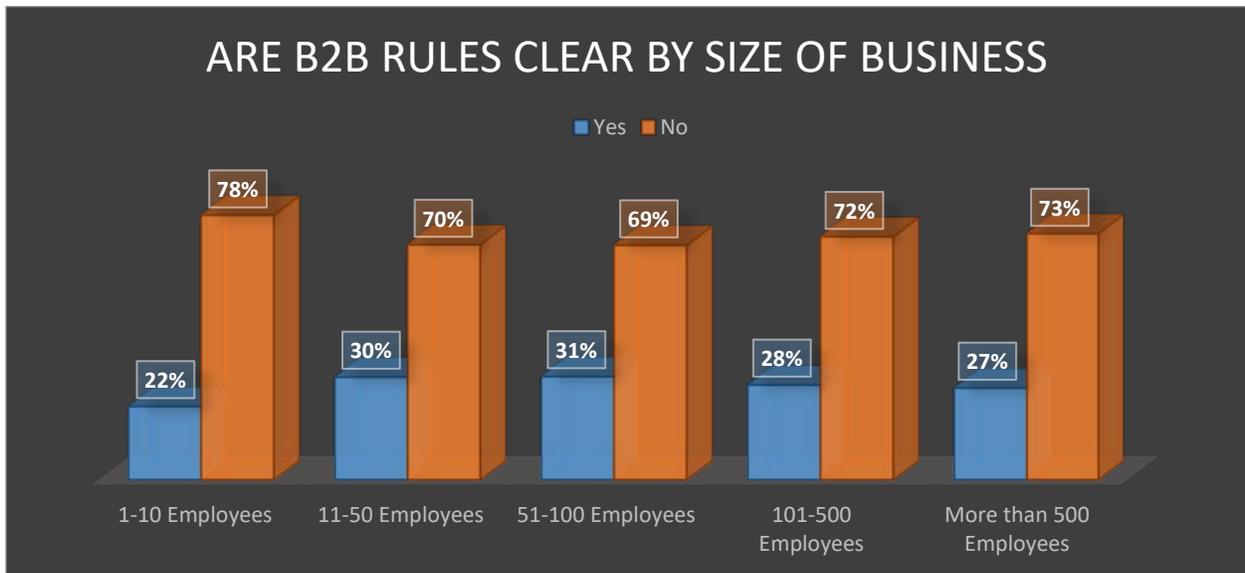
When asked about other requirements under the Act, such as records management, prospecting and training, over three quarters of respondents agreed these were continuing compliance obstacles. While only 5% of respondents indicated they were not currently in compliance with CASL, the anxiety expressed in other questions may indicate less certainty on this question.

## ARE THE RULES FOR B2B COMMUNICATIONS CLEAR?



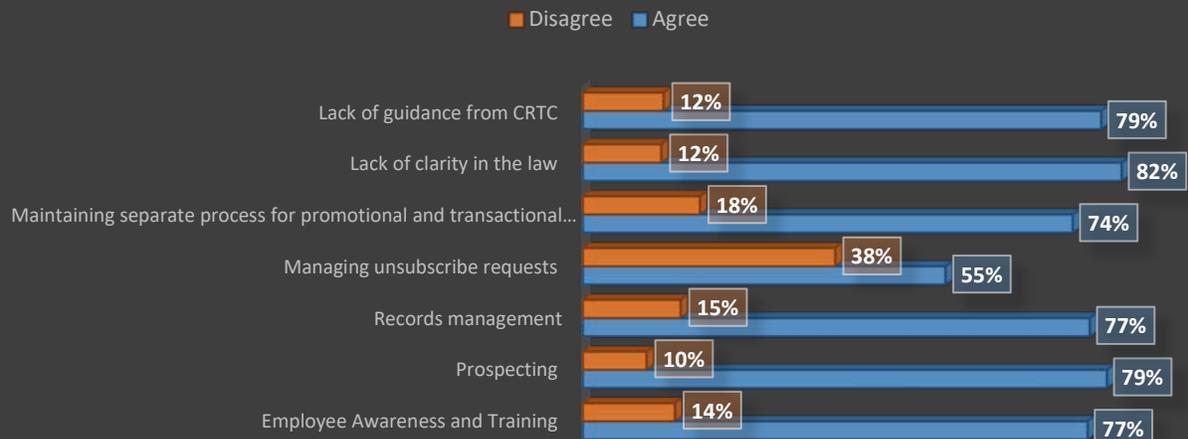
*“Our company deals mostly in B2B. The rules are SO unclear and SO confusing. It is stifling the growth of our small business that can't afford PwC to come in and do everything.”*

## ARE B2B RULES CLEAR BY SIZE OF BUSINESS



*“Very complicated and not realistic plus it does not prevent spam as non-Canadian web-based services can still send messages with no consequences, putting Canadian businesses at a disadvantage.”*

## ORGANIZATIONS CHALLENGED BY CASL COMPLIANCE



*"It is impossible to track exactly when the last contact with a business was when your company has 900+ employees."*

## DO YOU BELIEVE YOUR ORGANIZATION IS CASL COMPLIANT



*"It is difficult to determine which rules apply when working with marketing partners."*

## Impacts of CASL

When we asked respondents about how CASL has affected their organization, 67% agreed CASL has put their business at risk and 53% agreed they have suffered a loss of business due to CASL.

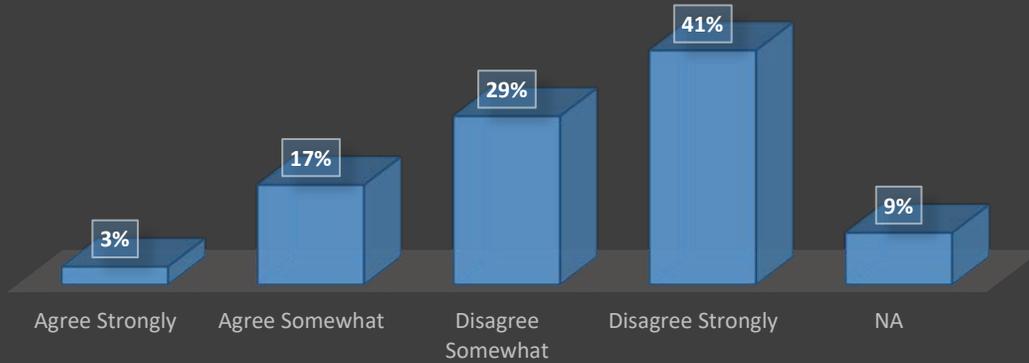
When asked about potential positive impacts of CASL, such as streamlining digital marketing practices or improving the quality of an organization's distribution list by culling unwilling recipients, respondents disagreed this has been the case (70% and 58% respectively).

Finally, we asked about the compliance cost burden, relative to the scale of the business and the degree of anxiety of being prosecuted for non-compliance. Sixty-three per cent of the organizations surveyed indicated that compliance costs were a significant burden and that 78% had an increased fear of prosecution due to uncertainties in CASL.



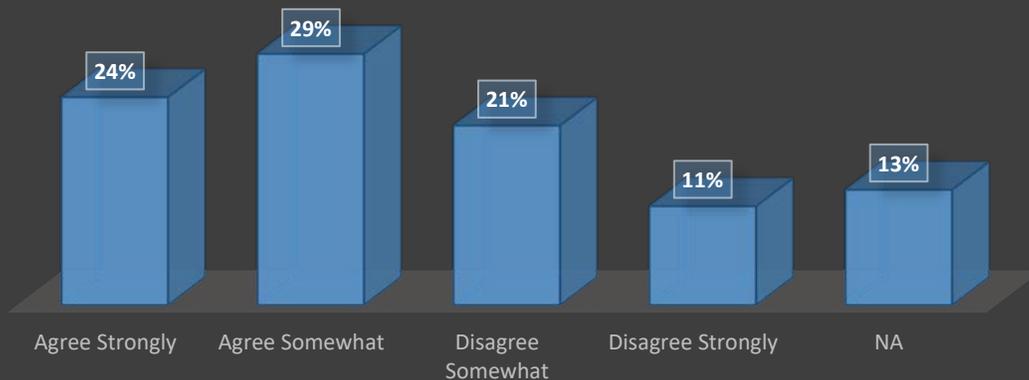
*“For those of us who follow the rules, we are up against a major competitive disadvantage from American and off-shore competitors as well as Canadian competitors who ignore or don't understand the rules.”*

## CASL HAS ENABLED MY ORGANIZATION TO STREAMLINE DIGITAL MARKETING PRACTICES



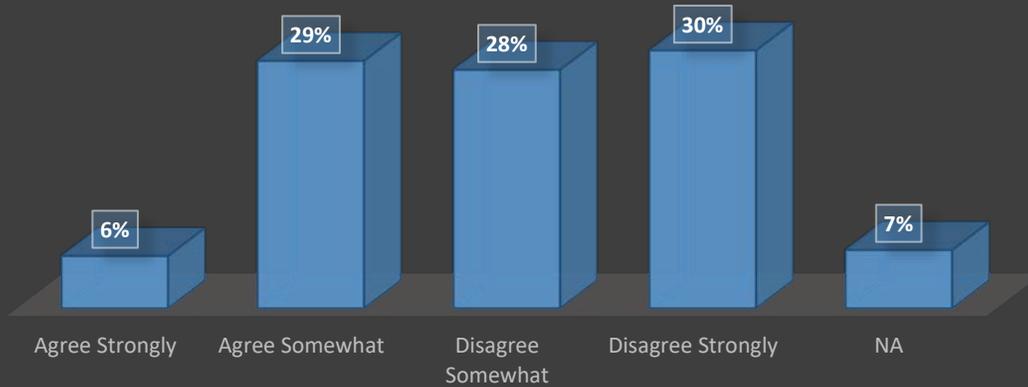
*“CASL doesn't differentiate between bulk marketing emails (what most consider spam) and a salesperson sending an email to one person as an introduction. This is ridiculous. I've heard of companies including unsubscribe links on all emails, such as to a supplier or the people they send invoices to. Controlling spam is a worthwhile endeavor. Making it difficult to do legitimate business makes CASL a very poor piece of legislation that takes resources away from other activities and impedes the competitiveness of Canadian businesses.”*

## MY ORGANIZATION HAS SUFFERED A LOSS OF BUSINESS DUE TO CASL



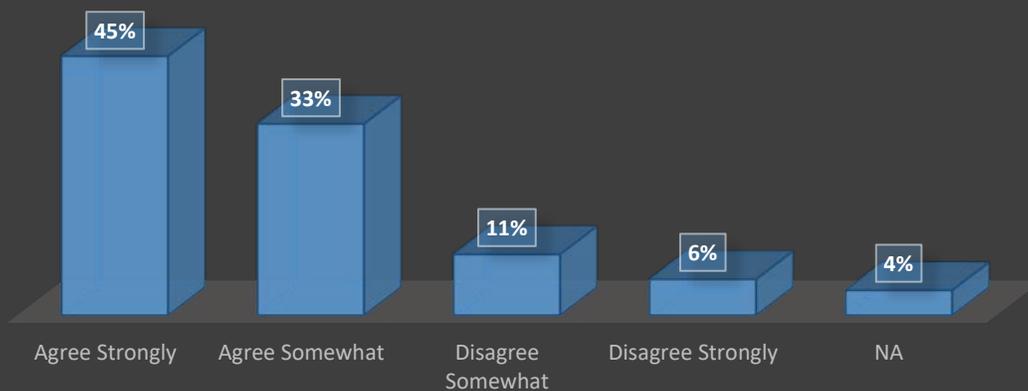
*“CASL wiped out a database it took 20 years to build, caused clients to pull back on their work with us and resulted in direct loss of income. Sales have been almost impossible over the past three years as fear has prevented people from taking action. And the mountains of misinformation that abound only make things worse.”*

## CASL HAS IMPROVED THE QUALITY OF MY ORGANIZATION'S DISTRIBUTION LIST



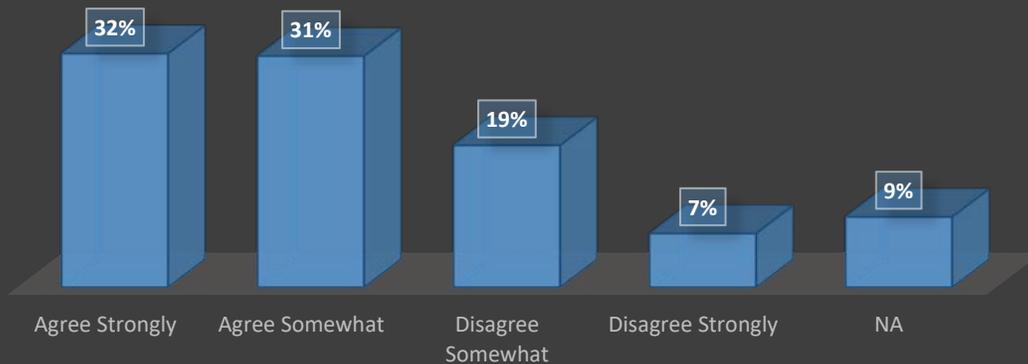
*"The amount of time and energy spent on CASL compliance could be better spent on improving our digital marketing efforts in general (to ensure better quality materials and lists). Personally, I have seen no benefit or improvement in the amount of spam (email and text) I receive to work and personal devices. I would say spam (and malicious spam in particular) has increased since CASL came into force."*

## MY ORGANIZATION HAS AN INCREASED FEAR OF PROSECUTION DUE TO UNCERTAINTIES IN CASL



*"The legislation penalizes legitimate businesses and does nothing to reduce the amount of spam I am receiving on a daily basis. My assistants plow through hundreds of spam messages a day. Somehow, the real spammers are not concerned with CASL. Only legitimate businesses that want to stay compliant are targeted."*

## CASL COMPLIANCE COSTS ARE A SIGNIFICANT BURDEN ON MY ORGANIZATION



*“They are overly complicated and put Canadian businesses at a global competitive disadvantage. They unnecessarily increase the cost of sales for businesses and are a barrier to prospecting that can make it impossible for a new business to get off the ground. Even our lawyers can't agree on the level of risk—put six lawyers in a room and you'll get six different opinions, all of which can be solidly supported by quoting the legislation.”*

### Conclusion

Most organizations would agree some form of regulatory intervention is necessary to manage true spam and malicious code. What is clear from the results of this survey is that a more balanced and clear approach to public policy in managing electronic commerce is necessary. Respondents to this survey consistently expressed frustration and anxiety in their compliance experience and pointed to specific areas of concern that need redress.