



CASL FAQ FOR EMPLOYEES

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About the Law

What is CASL?

“CASL” is the acronym for Canada’s Anti-Spam Legislation. CASL governs the sending of “commercial electronic messages” and the installation of “computer programs.” The law applies to “business-to-business” (“B2B”) communications as well as “business-to-consumer” communications.

The purpose of CASL is to assist individuals in controlling the types of e-mail, text messages and other electronic messages that they get by requiring that: (i) the sender of the message has advance consent (or an exception to consent); that (ii) the sender is identified; and (iii) the recipient is able to withdraw consent and unsubscribe.

What is a CEM?

A commercial electronic message (“CEM”) is any electronic message (text, sound, voice or image messages — but not telemarketing calls or faxes).

Essentially, it applies if you are trying to solicit someone through e-mail, text message or other electronic message to an electronic address in order to encourage the recipient to participate in a commercial activity. It is not just about pure marketing messages; it covers all kinds of commercial communications including, B2B communications and referrals.

Some examples of CEMs are e-mail, text message and social media direct message. The communication is considered a CEM if *one* of the purposes is to encourage participation in a commercial activity (*e.g.*, solicitations to buy or promote a product or service, promotional event invitations, newsletters with promotional content, pitches, promoting news of a new hire).

When Does CASL Come into Effect?

Most of CASL's provisions relating to CEMs, will come into force on July 1, 2014. CASL's provisions for a private right of action were scheduled to come into force on July 1, 2017, but have now been suspended indefinitely.

What are the penalties for non-compliance?

The penalties for non-compliance are severe. For organizations: \$10,000,000 penalties per offence. For individuals: \$1,000,000 penalties per offence.

Exceptions

What are the exceptions to CASL?

Some of the exceptions to CASL include: (i) messages sent internally within our business about our business; (ii) messages which are solely an inquiry about the recipient's business and a response to an inquiry; (iii) messages sent between organizations that have a relationship and relate to the recipient organization's activities (for example, between our joint venture partners or our affiliated companies); and (iv) messages sent to satisfy a legal obligation.

In other cases, CASL may apply but there is no requirement for consent. We don't need consent to:

- provide a quote or estimate, if the quote or estimate was requested by the person to whom the message is sent;
- provide information directly related to your employment or past employment or a benefit plan that you are currently enrolled in;
- send paperwork, invoices and other messages that facilitate, complete or confirm a transaction that the person has already agreed to enter into; or
- provide warranty information, product recall information or safety or security information about our products that the person receiving the message uses, has used or purchased.

Even though we don't need consent, we do need to include identification information and an unsubscribe mechanism.

What is “express consent”?

Express consent is the default for sending “commercial electronic messages”. Express consent does not expire. When obtaining express consent we must set out clearly and simply the following information:

- the purpose or purposes for which the consent is being sought;
- our company’s legal name and any trade names that are applicable;
- a statement that that we are seeking the individual’s consent to send commercial electronic messages;
- our company’s mailing address;
- either a telephone number providing access to an agent or a voice messaging system, an e-mail address or a web address for an online form that they can contact us; and
- notice that the person can withdraw consent at any time.

If we are seeking consent on behalf of other companies additional rules apply. Contact [*name or position*] for more information.

What is “implied consent”?

Sometimes, we can rely on implied consent. The categories of implied consent are specific. These are the most important ones for our business:

- *Existing Business Relationship* — If we have sold products or services to the recipient or have a contract with the recipient, we can send CEMs to that recipient for up to 2 years after the end of that relationship. Note that while we have an existing business relationship with another company, we can send CEMs to other people at that company as long as they are relevant to the recipient’s companies’ activities.

- *Personal or Family Relationship*
 - You have a “personal relationship” if you and the recipient have had direct, voluntary, two-way communications and it would be reasonable to conclude that you have a personal relationship, taking into consideration any relevant factors such as the sharing of interests, experiences, opinions and information evidenced in the communications, the frequency of communication, the length of time since you communicated or whether the you have met in person.
 - You have a “family relationship” if you and the recipient are “related to one another through a marriage, common-law partnership or any legal parent-child relationship” and you have had direct, voluntary, two-way communication.
- *Online Company Directories* – If a person is listed in their company’s directory online or otherwise listed as a contact person on their company’s website, you can send that person a CEM but only if: (a) they haven’t said they don’t want to receive CEMs; and (b) the message is actually relevant to the recipient’s business, role, functions or duties in a business or official capacity. This exception does not apply if you are only “guessing” the person’s e-mail address. This exception may not apply if you found the e-mail on some other website other than the person’s or their company’s website. It is better to phone the person first in those cases.
- *Gave You Their E-Mail* – If a person gives you their e-mail address, for example, on a business card, you can send that person a CEM but only if: (a) they haven’t said they don’t want to receive CEMs; and (b) the message is actually relevant to the recipient’s business, role, functions or duties in a business or official capacity.

RFPs, Conferences and Client Requests

How does CASL affect pitches and proposals?

If we receive a request for proposal (“RFP”) and we are responding to that specific request to an e-mail address provided for that purpose, we have implied consent to respond. We are responding to a request. The key here is they have requested information from you. However, a pitch is a proactive initiative; you will have to determine whether we can send an unsolicited pitch or proposal to that recipient.

What if a prospect calls us and asks for information?

If we are responding to that specific request, we can send a CEM. The key here is the prospect requested information from you.

Can I send CEMs to someone who gave me their business card at a conference?

Yes, but only if the business card has the person's e-mail address, the person hasn't said they didn't want to receive CEMs and your e-mail is relevant to the person's role, functions or duties in the business. You can always call the person and ask. If you want to add the person to a newsletter or event, you should ask first.

Can we use e-mail addresses from a third-party directory?

Our policy right now is that we will not do that. If you would like to use a third-party directory or list of e-mail addresses to send CEMs to the recipients in the directory or on the list, contact [name] to see if an exception might apply.

Can I send a CEM to names listed at a conference I attended?

Our policy right now is that we will not do that unless another exception applies. For example, you may look to see whether we have an existing business relationship with certain attendees and send CEMs the recipient under the existing business relationship exception. If there is a particular person who is of interest, you could see whether they are listed in their company's online directory.

Can I send a CEM by LinkedIn InMail to persons that I am connected to on LinkedIn?

Although the law is not clear, we think that you can ask a person to join your network. However, you should be cautious about sending CEMs through LinkedIn. We recommend that you check the person's profile to determine whether the person wants to receive messages about new opportunities.

We send out marketing e-mail through a third-party provider, is it our responsibility to ensure that they are CASL compliant?

Yes. We must work with our third-party suppliers to ensure that they are following the law.

Can I forward one of our event invitations to a contact that did not receive it?

Yes you can. However, you must follow the same rules. You must determine whether you have express consent or whether there is an exception to consent that applies.

Am I allowed to contact a referral I received from a client/friend?

Make sure your client or friend confirms that they have an existing business relationship, personal relationship or family relationship with the person being referred. When you write to a person referred to you, you must:

- confirm that the person making the referral has an existing business relationship or personal relationship or family relationship with the referral;
- disclose who made the referral to you; and
- follow the procedures for e-mail (“Can I send CEMs to contacts from my own e-mail?”).

Note: You may not send more than one CEM to a referral. If you do not receive a response you will have to follow-up by phone or mail.

Consent Requests

Can I send a request for consent by e-mail?

A request for express consent through an electronic message is also a CEM. This means that you need an exception to apply before you send your consent request.

How do I ask for express consent?

If you want to ask for express consent orally or in writing, you must include the following items in your request:

- why you are asking for consent (e.g., to send newsletters);
- who is going to send the messages (e.g., our company’s legal name and any applicable trade names);

- a statement that you are seeking consent;
- if in writing, identify our company's mailing address; if orally, offer to provide that;
- if in writing, identify either a telephone number providing access to an agent or a voice messaging system, an e-mail address or a web address for an online form that they can contact us; or if orally, offer to provide that; and
- tell the person that they can withdraw consent at any time.

Note: It is very important that you follow these procedures or the consent will not be valid.

What do I do if I get express consent?

It is our obligation to prove that we have express consent. If you obtain express consent in writing, ensure you keep a copy. If you obtain express consent over the phone, you should record that information and keep it. You should also confirm your conversation in writing.

Unsubscribe Requests

What do I do if I receive an unsubscribe request?

You should make sure that you update our contact manager to ensure that the person is removed from marketing mailing lists. You may still be able to send the person CEMs for which consent is not required.

How long do we have to take people off our e-mail lists after we receive an unsubscribe request?

We have 10 business days to give effect to a person's request to be removed from our e-mail lists. We will try to process those requests as quickly as possible.

CASL Contacts

Who should I speak to if I have additional questions about CASL?

Contact: [company contact].

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