

RETAIL COUNCIL OF CANADA
ANTI-SPAM RESOURCE GUIDE



www.retailcouncil.org



Prepared in Conjunction with
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MESSAGE FROM RCC

Canada's new anti-spam law ("CASL") will come into force in stages starting on July 1, 2014.

Retail Council of Canada, in conjunction with Davies Ward Phillips & Vineberg LLP, has prepared this special "CASL Workbook" to help de-mystify CASL for retailers and to provide practical answers to questions you may have about the new legal requirements.

This Workbook focuses on the principal category of conduct covered by CASL – the unsolicited transmission of CEMs – and consists of the following components:

- (i) an [Introduction](#) to CASL;
- (ii) an easy-to-follow "[Decision Tree](#)" with a step-by-step analysis of whether CASL may apply to your business, along with what you will need to do if the law does apply;
- (iii) an [Overview](#) of the legislation and its requirements;
- (iv) a set of "Frequently Asked Questions" (FAQs) that address in more detail specific issues and scenarios that retailers may face;
- (v) a [Checklist](#) of steps you should be taking to make your business CASL-compliant;
- (vi) a list of [Key Terms](#) found in CASL; and
- (vii) various [Templates](#) that you can customize for your business to address CASL's requirements.

Despite its name, CASL is not limited to what we might normally consider to be "spam" or junk email. Rather, the law is broad enough to cover any "electronic message" sent in connection with a "commercial activity" (known for the purposes of CASL as a "commercial electronic message" or CEM).

CASL changes the regulatory environment in important ways for organizations sending CEMs to third parties, including retail businesses. The main obligation that CASL will impose is the requirement to obtain consent from recipients before CEMs are sent out. It also will no longer be possible to instruct recipients to simply "opt out" of CEMs if they do not wish to receive them any further. CASL also dictates specific information that organizations must include in requests for consent and in CEMs.

CASL presents businesses that use CEMs with new compliance challenges. The law (including its associated regulations) is detailed and complex. At the same time, CASL raises questions and creates uncertainties because it has not yet been tested by administrative enforcement or judicial interpretation.

Why is compliance with CASL so important for retailers? Simple. The consequences of violating the law are severe, including up to \$10 million in fines for corporations, personal liability for individual officers and directors, vicarious liability for companies for non-compliant acts of their employees, and after July 1, 2017, possible civil actions. With CASL coming into force very shortly, it is critical that you be aware of the law's requirements and take the necessary steps to ensure that you and your business do not fall off-side.

In recognition of CASL's serious implications, RCC has been working with regulators to try to clarify issues of importance to the retail industry and outline areas of concern. RCC has also conducted several briefing sessions for members, including the participation of regulatory authorities. ([Click here](#) for relevant materials.)

RCC is committed to serve as a knowledge source for its members on important issues for the retail industry in Canada. CASL is one such issue. We hope that you find our CASL Workbook helpful and encourage you to reach out to RCC should you require additional assistance.





**WHAT IS
CANADA'S
NEW ANTI-
SPAM LAW?**

WHAT IS CASL?

CASL is the federal government's legislation aimed at addressing the problem of "spam", which, according to some reports, accounts for approximately 80 percent of worldwide email traffic. CASL targets three broad categories of conduct:

- the transmission of unsolicited "commercial electronic messages" (CEMs);
- unauthorized "message routing", i.e., intercepting and re-directing electronic messages to a destination other than that intended by the sender of the message; and
- the unauthorized installation of "spyware" or "malware" and similar computer programs that extract information from computer systems and use that information to send unsolicited electronic messages to recipients.

CASL also implements important amendments to the Competition Act to prohibit "false and misleading" representations, whether or not material, in the sender information, subject line or locator (e.g. URL) of electronic messages.

This Workbook is focused on the first category of conduct targeted by CASL - the unsolicited transmission of CEMs. In general terms, CASL prohibits persons from sending CEMs, or causing or permitting CEMs to be sent, unless the recipient has provided consent ("implied" or "express") and the CEMs comply with certain form requirements.

The following Decision Tree ([click here](#)) is intended to assist you in determining whether your current communications with customers, prospects and others are affected by CASL and, if so, whether they are CASL-compliant. The subsequent Overview of CASL ([click here](#)) (the various parts of which are hyperlinked in the Decision Tree) and appendices provide more detail on the application of CASL to your business as well as guidance on specific questions you may have about the law.

Key Message

CASL prohibits you from sending commercial electronic messages (CEMs), or causing or permitting CEMs to be sent, unless you have the recipient's implied or express consent and your CEMs comply with certain form requirements.

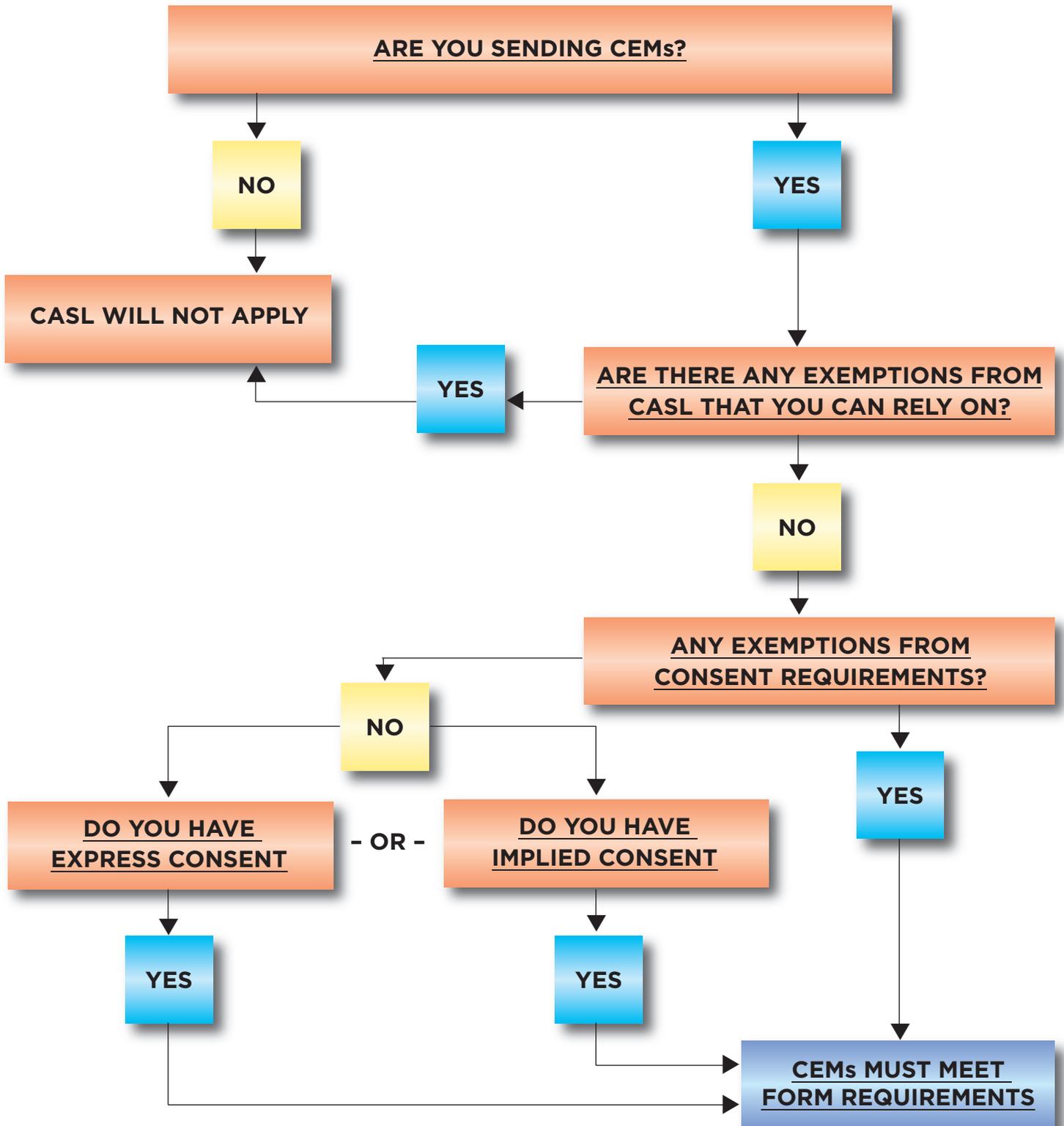




**WHAT DECISIONS
DO I NEED TO
MAKE TO
PROTECT MY
BUSINESS?**

CASL DECISION TREE

* For more information, click the underlined links *





**OVERVIEW OF
CANADA'S
ANTI-SPAM LAW
(CASL)**

DOES CASL APPLY TO MY BUSINESS?

Two basic questions need to be answered to determine if CASL's prohibition against the unsolicited sending of CEMs applies to your business:

1. Are you sending CEMs?
2. Are there any exemptions from CASL that you can rely on?

If the answer to question 1 is "yes", and the answer to question 2 is "no", then you must comply with CASL's requirements regarding CEMs (subject to other partial exemptions discussed later on).

Are you sending CEMs?

A CEM is an electronic message that, having regard to its content, is sent for the purpose of encouraging participation in a "commercial activity". This is a very broad definition that will capture any e-mails, texts, instant messages, Facebook or other social media messages sent to the electronic addresses of customers or prospective customers regarding the products/services you sell, and applies even if only one of the purposes of the CEM is to encourage participation in a commercial activity.

For example, does your business use:

- e-mail distribution lists for customer promotions, advertisements, and/or contests?
- "text" alerts to communicate with customers/potential customers?
- Facebook or other social media platforms to market to customers/potential customers via messages sent to their Facebook or other social media accounts?

All of these communications may be CEMs for the purpose of CASL and subject to the law's requirements unless an exemption applies.

Are there any exemptions from CASL that you can rely on?

There are two categories of exemptions under CASL. One category exempts you from complying with CASL entirely. A second category only exempts you from CASL's consent requirements, but not from the requirement to include specific information in your CEMs. This second category of exemption will be discussed later on in this Overview, as will the form and content requirements imposed by CASL.

As for the first category of exemption, CASL does not apply to electronic communications such as:

- family/personal communications;
- internal communications within an organization;
- inquiries related to a recipient's commercial activities (e.g., a request for a quote for services); or
- "business-to-business" communications where there is an existing relationship between the sender and the recipient.

Of particular interest, there are also exemptions for:

- responses to a customer's inquiry or complaint;
- electronic messages sent to satisfy or enforce a legal right or obligation;
- interactive voice communications, faxes or voice replies sent to a telephone account (although other restrictions apart from CASL may apply); and
- CEMs sent and received on electronic messaging services where a sender's information and a conspicuous unsubscribe option are already available.

See the accompanying FAQs ([click here](#)) in this Workbook for a complete list of the applicable exemptions and for more details on when CASL may apply to your business.

Key Messages

A commercial electronic message (CEM) is any electronic message that, having regard to its content, is sent to an electronic address for the purpose of encouraging participation in a "commercial activity". This includes e-mails, texts, instant messages, and social media messages.

Some CEMs may be exempt from CASL entirely or may be exempt from the consent (but not from the form requirements) of CASL.

CONSENT – DO I NEED IT? HOW DO I GET IT?

Exemptions from the “Consent” Requirement

As noted, the basic premise of CASL is that senders of CEMs need to have the prior “consent” of recipients unless a relevant exemption applies. We have already considered the applicable exemptions that could mean that CASL does not apply to your business at all. But there is also a second category of exemptions. If one of these exemptions applies, you will not have to obtain the consent of recipients to send them CEMs, but your CEMs will still have to comply with CASL’s form and content requirements ([click here](#)) (discussed in the next section of this Overview).

For example, you do not need consent to send a CEM to an existing/prospective customer if the CEM only:

- provides a quote or estimate requested by the recipient;
- completes or confirms a commercial transaction between the sender and recipient (for example, a receipt);
- provides warranty, recall, safety or security information about a product or service;
- provides factual information only about an existing account, membership or subscription;
- delivers a product, good or service which the customer is entitled to under a previously agreed transaction (or provides an update);
- provides information related to an existing employment relationship or benefit plan the recipient is involved in; or
- is the first electronic communication you send to a new customer following a third party referral.

“Implied” Consent and “Express” Consent

Where a relevant exemption from consent does not apply, you are required to have the “consent” of recipients to send your CEMs. However, within that framework, there are two different types of consent: “implied” consent and “express” consent. It is only if you cannot rely on “implied” consent that you must seek and obtain the “express” consent of CEM recipients.

“Implied” Consent: The situations in which you can send a CEM in reliance on a recipient’s “implied” consent include:

- When you have an existing business (or non-business) relationship with the recipient. This includes, for example, if the recipient has purchased a product or service from you within the preceding two years, or

has made an inquiry to your business within the preceding six months.

- When the recipient “conspicuously” publicizes her/his electronic address (for example, on a company website or in a directory), or voluntarily gives you her/his electronic address (for example, a business card), provided that:
 - there is no indication that the person does not wish to receive a CEM; and
 - the CEM you send is relevant to that person’s business/position.

“Express” Consent: If you are unable or prefer not to rely on a party’s “implied” consent to receive CEMs, you will need to obtain their “express” consent to do so. Here are some key things to know about obtaining “express” consent under CASL:

- The request for consent must be “clear and simple”.
- You can obtain the consent orally or in writing (including electronically).
- You must maintain records to substantiate that consent was received. If there is any dispute, you will have to prove that consent was obtained.
- You must include specific items in any request you make for “express” consent. This includes the purpose for which consent is sought (i.e., to send CEMs), information identifying the sender and how to contact the sender, and a statement indicating that consent can be withdrawn.
- If you are obtaining consent on behalf of others, you must identify and include contact information for the person(s) on whose behalf consent is sought.
- You cannot use “opt out” or “pre-toggled” mechanisms that assume consent unless the person actively does something to indicate non-consent. Recipients must pro-actively agree to “opt in” to receive your CEMs. ([Click here](#) for an example of an impermissible “opt out” form.)

Different methods you might use to obtain “express” consent include:

- allowing customers to sign-up for e-mails on your website ([click here](#) for some examples);
- in conjunction with a coupon offer or contest (provided that express consent is not a condition of receiving the coupon or entering the contest);
- providing sign-up at the point of sale ([Click here](#) for an example);
- over the phone.

CONSENT – DO I NEED IT? HOW DO I GET IT? (continued)

Here are some important additional considerations regarding CASL's "implied" and "express" consent:

- CASL's "implied" consent is time-limited which means your ability to rely on it may also be limited or difficult to track. For example, the "implied" consent to receive your CEM of a person who made an inquiry with you will expire after six months if the prospect does not become an actual customer within that time. Similarly, the "implied" consent of an existing customer will expire two years after a purchase if the customer does not buy anything new within that time. On the other hand, "express" consent remains valid unless and until it is revoked by the recipient.
- There is a special "transitional" provision in CASL that will give you, under certain circumstances, a three year window to rely on "implied" consent to send CEMs to recipients with which you have an existing business relationship as of July 1, 2014. In other words, you will not have to worry about the possible expiry of your

"implied" consent until July 1, 2017 unless recipients unsubscribe. However, it may be a good idea to use this period to convert all of your "implied" consents into "express" consents to avoid the practical problems with keeping track of "implied" consents after July 1, 2017.

- Under CASL, an email to a customer or a prospective customer seeking express consent to receive your CEMs will itself be considered a CEM. Accordingly, you will not be able to send this type of unsolicited electronic message to recipients after July 1, 2014 (unless you have "implied" consent to do so). In other words, if you want to send out electronic messages asking recipients for their "express" consent to receive your CEMs, you should consider doing so now rather than waiting until CASL comes into force.

See the accompanying FAQs ([click here](#)) in this Workbook for more details on CASL's consent requirements.



Key Messages

Where an exemption does not apply, you will need either "implied" or "express" consent to send a CEM to a person.

Implied consent can exist when you have an existing business or non-business relationship with the recipient, or when the recipient has conspicuously published her/his electronic address. However, this consent is generally valid for only six months to two years after it is obtained.

A request for express consent must be clear and simple, and include the purpose for which consent is sought, information identifying the sender and how to contact the sender and an "unsubscribed" mechanism. You must also keep adequate records evidencing such consent.

DO MY CEMS NEED TO CONTAIN SPECIFIC INFORMATION?

Apart from requiring prior consent for CEMs (unless you are exempt from the consent requirements), CASL also establishes specific form and content requirements for all non-exempt CEMs. ([click here](#) to determine if you are exempt from CASL's form and consent requirements.) In particular, CASL mandates that your CEMs clearly and prominently display current contact information so that the recipient can identify the person who sent the message (or if different, the person on whose behalf the message was sent). This information must include the relevant:

- business name(s);
- mailing address(es); and
- either a telephone number, e-mail address or web address for each person(s).

CEMs also must include an “unsubscribe” mechanism that the recipient can use should she/he no longer wish to receive your CEMs. The “unsubscribe” mechanism must be simple, quick and easy for a customer to use; cannot involve any cost to the recipient; must specify an electronic address or link to a webpage to which the unsubscribe indication may be sent; and the “unsubscribe” request must be given effect without delay (within 10 business days). ([Click here](#) for a sample “unsubscribe” mechanism that you could use.)

The required contact information for the sender(s) and the electronic address or webpage link in the unsubscribe mechanism must be valid for a minimum of 60 days after the CEM is sent.

See the accompanying FAQs ([click here](#)) in this Workbook for more details on CASL's form and content requirements.

Key Messages

CEM must clearly display the business name, mailing address and telephone number, e-mail address or web address of the person who sent the CEM and, if different, the person on whose behalf the CEM was sent.

CEMs must also include an unsubscribe mechanism that is quick and easy for a recipient to use and that gives effect to an unsubscribe request within 10 business days.



WHY DO I NEED TO BE CONCERNED ABOUT CASL?

Compliance with CASL is critical because of the very serious implications for you and your business if the law is breached. CASL applies broadly and has extra-territorial application, such that CEMs emanating from outside Canada will still be caught if a computer system in Canada is used to receive or access them.

These implications include:

- fines of up to \$10 million per occurrence for corporations;
- fines of up to \$1 million per occurrence for individuals;
- “voluntary” undertakings limiting the conduct of your business; and
- private actions with the potential for penalties of up to \$1 million per day per contravention in addition to actual damages (after July 1, 2017).

You and your business may also be the subject of an intrusive investigation to determine if a violation of CASL has occurred. For example, the [CRTC](#) (which is the primary responsible enforcement authority) has broad powers to require the preservation and/or production of documents and to apply for warrants to search your premises and seize your records.

CASL also creates personal liability for directors, officers and agents of companies if they directed, authorized, assented to, or acquiesced in or participated in the commission of a violation by the company, whether or not proceedings are brought against the company. Companies/employers are also vicariously liable for the non-compliant actions of their employees or agents acting within the scope of their employment. In all cases,

the onus is on senders to prove that they have exercised due diligence in complying with the requirements of CASL, making it particularly important that you maintain adequate records and evidence of the steps and processes taken by your organization to comply with CASL.

Finally, the potential risks are not limited to those under CASL. Both the federal Competition Bureau and the federal Privacy Commissioner can become involved if your conduct relating to CEMs also involves misleading representations (an issue for the Competition Bureau) or the collection of personal information (an issue for the Privacy Commissioner). For example, CASL implements important amendments to the Competition Act to prohibit “false and misleading” representations (whether or not material) in the sender information, subject line or locator (e.g. URL) of electronic messages. The Competition Act also prohibits a person from sending representations in the body of a message that are false or misleading and that are likely to influence a person to purchase the product advertised.

The CRTC, Competition Bureau and the Privacy Commissioner have entered into an arrangement to foster information sharing among them in recognition of their potential overlapping mandates. We expect that information sharing may also extend to foreign counterparts for businesses based outside of Canada that contravene Canadian laws.

See the accompanying FAQs ([click here](#)) in this Workbook for more details on the consequences of failing to comply with CASL.

Key Messages

Breaches of CASL potentially carry very serious implications, including significant fines for businesses and individuals and, as of July 2017, private rights of action for damages.



WHAT SHOULD I DO NOW?

CASL's CEM requirements will come into force shortly. You should be using the time available to assess your business's current practices and determine whether they need to be modified to become CASL-compliant.

The first step is to do an "inventory" of your current CEM practices. Here are some questions you should be asking:

- Does your business use e-mail distribution lists, texts and/or social media messages to communicate with customers and prospective customers?
- Do you currently seek the consent of recipients when you send electronic communications?
- If so, does the information you provide when seeking consent comply with CASL's requirements?
- Do you use "opt-out" or "pre-toggled" mechanisms to obtain consent (these will no longer be valid under CASL)?
- Do your CEMs comply with CASL's form and content requirements?
- What is the state of your "unsubscribe" mechanisms? Are they CASL-compliant?
- Do you share customer lists with affiliates, partners or cross-marketers? If so, are you getting appropriate consents to do so and are the necessary arrangements in place to ensure unsubscribe requests are adhered to by all?

Key Messages

Prior to CASL coming into force on July 1, 2014, you should assess your business's current practices and determine how they need to be modified to become CASL-compliant. See our [CASL Checklist](#) for further information.

Once you have assessed your current status, consider what needs to be done to get ready for CASL. One issue to review in particular is whether you should be sending out notices now to your existing customer data base to obtain "express" consent to receive your CEMs (if you don't want to rely on "implied consent" only). As noted above, once CASL comes into force, you may need to get a person's consent just to ask for her/his consent to receive your CEMs!

Finally, depending upon the size of your business, you should also consider developing policies and a training program for employees and procedures to monitor ongoing compliance and ensure appropriate record-keeping processes are in place to evidence your compliance with CASL if you are confronted with a complaint or investigation. In the end, this is the best way to avoid problems and to be able to defend yourself should issues arise.

See the accompanying Checklist ([click here](#)) in this Workbook for a convenient summary of steps you should consider taking to become CASL-compliant.





**APPENDIX A:
FAQs RELATED
TO CANADA'S
NEW ANTI-SPAM
LAW**

WHAT IS CASL?

Do I need to be familiar with anything apart from the statute?

Yes. In addition to CASL itself, the relevant regulatory regime includes associated regulations and compliance and enforcement bulletins. Together, these materials set out the scope for what organizations must understand about their new obligations.

Where can I get a copy of the relevant materials?

The government's fightspam.gc.ca website sets out the relevant legislation, regulations and various bulletins/guidelines.

Does the whole law come into force on July 1, 2014?

No. CASL's provisions regarding commercial electronic messages (CEMs) and misleading advertising come into force on July 1, 2014. Certain provisions relating to computer programs and spyware come into force on January 1, 2015. The provisions providing for a private right of action for non-compliance will come into force on July 1, 2017. There is also a special three year transition period for relying on "implied" consents, as discussed later on ([Click here](#)).

Do I only need to worry about CASL?

No. Provisions of the Competition Act, as well as the federal Personal Information Protection and Electronic Documents Act ("PIPEDA") and similar provincial privacy legislation also apply to your CEMs.

What provisions of the Competition Act do I need to worry about?

As a result of amendments contained in CASL, the Competition Act could apply if your CEM contains "false and misleading" representations (whether or not material) in the sender information, subject line or locator (e.g. URL) of an electronic message. In addition, the Competition Act also prohibits a person from sending representations in the body of the message that are false or misleading and that are likely to influence a person to purchase the product advertised. The penalties for violating these provisions can be substantial, especially if it can be proven that the false or misleading representations were made "knowingly" or "recklessly". Potential penalties may include jail time, significant monetary penalties and orders prohibiting similar conduct in the future.

What do I need to know about privacy legislation?

You should be aware of the requirements of PIPEDA and similar provincial legislation (where it exists). These laws govern the collection, use and disclosure of personal information in the course of commercial activities, including promotional activities (whether electronic or not). Among other things, PIPEDA and the equivalent provincial laws require that the knowledge and consent of individuals are required for the collection, use and disclosure of their personal information, and require that organizations establish an appropriate administrative structure to ensure that the principles of the legislation are implemented.



DOES CASL APPLY TO MY BUSINESS?

1. General

To whom does CASL apply?

CASL applies to any “person” that sends a CEM. A “person” includes individuals, corporations and many other types of entities.

CASL also applies to persons that aid, induce, procure or cause to be procured any act in violation of CASL.

Does CASL apply to foreign companies?

Yes. CASL applies where a computer system in Canada is used to send or access a CEM. Thus, CASL applies to foreign companies that send CEMs to individuals located in Canada. You cannot use foreign affiliates or subsidiaries to try to avoid CASL’s application.

What is a CEM?

The definition of CEM is very broad and includes any electronic message that encourages participation in a commercial activity. Generally speaking, any electronic message sent in order to induce the recipient to buy something is a CEM. Similarly, any electronic message sent asking someone for permission to send them a CEM is also a CEM.

What is an electronic message?

An electronic message is any type of message sent electronically, including a text, sound, voice or image. Emails, SMS texts, instant messages and messages sent over social media (e.g. Facebook, Instagram, Twitter, Pinterest) are all electronic messages.

What if my message doesn’t promote anything, but it contains a link to a webpage that does?

Your message could be considered a CEM. In addition to the text of the message, the content of any website links contained in the CEM will be considered when determining whether the message is commercial in nature.

What if my CEM is meant to serve various purposes, only one of which is to encourage participation in a commercial activity? Am I caught by CASL?

Yes. CASL applies even if only one of the reasons you send a CEM is to promote a commercial activity.

Is an electronic receipt a CEM?

A receipt is not a CEM if it is sent by the person/company with whom the recipient has conducted a transaction. That is because messages intended to complete a transaction that is already underway (rather than intended to promote other commercial activity) are not CEMs. However, if a receipt is sent by a third party on behalf of the entity with which the recipient completed the transaction, that third party receipt may be a CEM. Accordingly, depending on your business processes, you might want to secure a customer’s consent to receiving third party receipts at the time a transaction is completed. Additionally, a receipt could be a CEM if it contains advertisements for other products and not just information relating to a transaction.

What is an electronic address?

An electronic address includes any type of address used in connection with the sending of an electronic message, such as an email account, an instant messaging account, a telephone account or any similar type of account.

Does telemarketing involve sending a CEM?

CASL does not currently apply to telemarketing (although the CRTC’s Do-Not-Call List rules still apply). However, the government may change this at some point in the future.



If someone is a member of our Facebook, Twitter or similar social media pages, do we have consent to send them CEMs, either through those social media or by other means?

Facebook, Twitter and similar social media posts that are not sent directly to someone (e.g., a post on your organization's Facebook wall or a tweet that is not a direct message) are not subject to CASL. However, messages sent to specific social media accounts must comply with CASL, including the requirement to have valid "implied" or "express" consent to send those persons CEMs.

Is a banner advertisement subject to CASL?

No. A banner advertisement would not be subject to CASL because it is not sent to an "electronic address".

Are blog posts subject to CASL?

No. Blogging or micro-blogging on a webpage or other medium are not subject to CASL provided the blog posts are not directed to an "electronic address".

What does it mean to "send" a CEM?

A CEM is "sent" once transmission has been initiated. Note also that the only requirement is that the CEM be "sent" - the CEM does not need to be actually received by anybody.

2. Exemptions

Are there any exemptions from CASL?

Yes. There are two types of exemptions. The first type exempts you from both the consent and form requirements in CASL. ([Click here](#) for more information.) The second type only exempts you from the consent requirement, not the form requirement. ([Click here](#) for more information.)

When would I be exempt entirely from complying with CASL?

The following types of CEMs are not subject to CASL at all (no consent required and no content/form requirements):

- CEMs sent by a person who has a "personal relationship" or "family relationship" with the recipient;
- inquiries or applications related to commercial activities and responses to the same;
- internal organization and business-to-business communications concerning the affairs of the recipient organization;
- CEMs sent for the enforcement of legal rights;
- CEMs sent and received on electronic messaging services where the sender's information and the ability to unsubscribe from future messages is already available;
- CEMs sent to a limited-access, secure account, such as CEMs sent to a user on a bank website;
- CEMs sent to foreign recipients in compliance with local anti-spam laws; and
- CEMs sent by registered charities or political organizations for fundraising purposes.

When does a "personal or family relationship" exist?

A "personal relationship" exists when the sender and recipient of a CEM have had direct, voluntary, two-way communications and it would be reasonable to conclude that those persons have a personal relationship.

A "family relationship" exists between a sender and recipient of a CEM who are related to each other through a marriage, common-law partnership or parent-child relationship if those individuals have direct, voluntary, two-way communications.

What is an inquiry or application related to commercial activities?

A good example is an email sent by a potential customer to a business seeking a quote or requesting services. Another example would be a complaint by a customer to a business about a product she/he purchased. Similarly, a response by that business to the customer would also be exempt. The responding business can include other information in its response to an inquiry or application that was not specifically requested by the customer, like a pricing list or a link to its website, as long as it would be reasonable for the customer to expect to receive that information as a result of their inquiry.

What constitutes an internal or business-to-business communication?

The internal communications exemption applies to CEMs sent between employees or other representatives of the same organization where the message concerns the activities of the organization.

The business-to-business exemption applies to CEMs sent from employees or other representatives of one organization to employees or other representatives of another organization if those organizations have an existing relationship and the message concerns the activities of the recipient organization.

The concept of “existing relationship” was intentionally left undefined – presumably to allow for a flexible recognition of a variety of relationships (that are not simply “business” relationships).

What is the “electronic messaging service” exemption?

CEMs sent and received on an electronic messaging service, such as a mobile application are also exempt from CASL if the sending party is identified and the platform already provides a readily accessible unsubscribe mechanism.

For example, if a consumer uses a messaging service such as BBM to communicate, such messages will be exempt as long as the platform provides the sender’s profile and an unsubscribe option.

Am I free to send CEMs to people located outside of Canada without worrying about CASL?

Yes, provided that you reasonably believe that the CEM will be accessed in one of the countries in the attached list, and the CEM is sent in compliance with the law of the country it is to be accessed in.

Practically speaking, this exemption may be of little value because of the resources required to research the laws of foreign countries. Additionally, because CASL is generally viewed as more onerous than the anti-spam laws of most other countries, it may be easier to simply comply with CASL for all CEMs, regardless of where you send them.

I think that someone is unlawfully using my company’s name/trademark. Can I send them an email demanding that they stop without complying with CASL?

Yes. This would fall within the “enforcement of legal rights” exemption from both the consent and form requirements of CASL.

If I validly send a CEM to someone, can I encourage that person to forward the message to family or friends?

You should be careful in such circumstances. Unless the person who forwards the CEM can rely on the personal or family relationship exemption ([Click here](#) for more information), or has valid consent to forward the CEM (which you will likely not be able to validate), you could be held liable for having “aided, induced or procured” a violation of CASL. The CRTC has said that businesses can help to reduce potential liability in such circumstances by informing individuals who may forward their CEMs of the limitations of the personal and family relationships and asking them to acknowledge that they are not forwarding such CEMs to people who fall outside these exemptions. Doing so, however, does not entirely eliminate the risk to your business if such “refer-a-friend” programs ultimately fall outside of CASL.

My business runs a secure access website that allows us to send messages to customers that they access by logging into their account on our website. Are these messages subject to CASL?

No. You could rely on the exemption for CEMs sent to a limited-access, secure account.

My company has many subsidiaries. What considerations apply concerning what consents to obtain and who should obtain them?

CASL requires that consent be obtained for each sender and does not extend consent to related companies or affiliates. You should examine closely whether there are any exemptions from CASL based on business-to-business relationships. If not, CASL requires that you disclose and obtain consent on behalf of each sender.

My company has many affiliates and partners, with which we share our customer lists. What consents have to be obtained and who should obtain them?

For known parties with whom you are sharing customer lists, like affiliates of your company, the CRTC recognizes that in those cases, it may be difficult for a business to identify all such known parties in a single CEM or when seeking consent. To address this, only known parties that play a material role in the content of the message are required to be identified as “senders” or “affiliates” in consents and CEMs.

If a CEM is being sent by your company on behalf of multiple persons, all of those parties should be identified in a CEM. If it is not practicable to do so, a hyperlink in the CEM to a web page containing the names and contact information for each affiliate that is readily accessible at no cost to the recipient may be included instead.

My company may share customer/prospect lists with third parties that are currently unknown. Can I share my database with unknown third parties?

Yes. Your company may seek consent from customers to allow unknown and unnamed third parties to send their own CEMs to your customers. In that case, your original request for consent should specifically seek the consent of the recipient to receive information from third parties, and the third parties relying on your consent to send CEMs must identify you in the CEMs they send and provide a mechanism for recipients to unsubscribe from all third party CEMs.

You should have arrangements in place for all third parties to immediately notify you of an unsubscribe, and you must then in turn notify all third parties that relied on your consent that the recipient has unsubscribed from third party CEMs. You will bear responsibility for ensuring mechanisms are in place, and that unsubscribes, if requested, are given effect to across all third parties within the mandatory 10 business days.



1. Exemptions From Consent Requirements

When would I be exempt from CASL's consent requirements?

The following types of CEMs are exempted from CASL's consent requirement (but not the form requirement, discussed below):

- The first CEM sent following any referral by a person who has an existing business relationship, non-business relationship, personal relationship or family relationship with both the sender and recipient.
- CEMs that provide a quote for a product or service, if that quote was requested by the recipient.
- CEMs that facilitate, complete or confirm a commercial transaction that the recipient previously agreed to with the sender (e.g. the sending of a receipt).
- CEMs that provide warranty, product recall, safety or security information about a product or service that the recipient uses, has used or has purchased.
- CEMs that provide factual information about an on-going subscription or membership of the recipient or about a product or service offered under a subscription or membership.
- CEMs that provide information directly related to an employment relationship or related benefit plan in which the employee is currently involved or enrolled.
- CEMs that deliver a product or service, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction.

If I send a CEM following a referral, are there any form requirements in addition to the general ones?

Yes. CEMs relying on this exemption must also disclose the full name of the person who made the referral and must include a statement that the message was sent as a result of the referral.

Are "refer-a-friend" and similar marketing campaigns exempt under the above "third party referral" exemption?

Not typically. A business will often ask a person to refer a friend or contact, to whom the business will then send CEMs, without their express or implied consent. Where such "refer-a-friend" campaigns do not list the full name of the referrer or do not state that the CEM is being sent as a result of the referral, the "refer-a-friend" campaign would not fall within the "third party referral" exemption.

Other exemptions may be available, but in most cases, businesses will need to be careful about conducting "refer-a-friend" campaigns, and, at minimum, should provide details to the person from whom the referral is being requested as to what "personal relationships" and "family relationships" they can use to provide a referral in order to rely on implied consent, or will need to modify their practices to fit within the third party referral exemption or another exemption under CASL.

2. "Implied" Consent

When do I have implied consent to send a CEM?

Consent to send a CEM can be "implied" if:

- There is an "existing business relationship" between the sender (or the person who permits it to be sent) and the recipient.
- There is an "existing non-business relationship" between the sender (or the person who causes it to be sent) and the recipient.
- The person to whom the CEM is sent has "conspicuously published" the electronic address to which the CEM is sent, the publication is not accompanied by a statement that the person does not wish to receive unsolicited CEMs, and the message is relevant to that person's business or role in a business. This is referred to as the "website" or a "conspicuous publication" exemption.

- The person to whom the CEM is sent has disclosed to the person who sends the message (or the person who permits it to be sent) the electronic address to which the CEM is sent, the disclosure is not accompanied by a statement that the person does not wish to receive unsolicited CEMs, and the CEM is relevant to that person's business or role in a business. This is referred to as the "business card" exemption .

If I have "implied" consent from a person, but ask them for "express" consent which they fail to give (e.g., they do not check the box), can I still assume that their "implied" consent applies?

Prior to July 1, 2014, the best practice is to include an unsubscribe mechanism in any request for "express" consent. After July 1, 2014, the unsubscribe mechanism must be included in any CEM. In any case, if the recipient has not unsubscribed, you could continue to rely on the "implied" consent for the relevant period.

(i) Implied Consent for Existing Business Relationships

What is an "existing business relationship"?

- Generally speaking, there is an "existing business relationship" where the sender and recipient conducted business with each other (e.g. the recipient purchased a product from the sender or entered into a contract with the sender) within the two-year period immediately prior to sending the CEM.
- There is also an "existing business relationship" during the six month period following an inquiry by the recipient to the sender (e.g. an inquiry about a product sold by the sender).
- In each case, the relevant time period refreshes and is renewed when there is a subsequent purchase or inquiry by the recipient.

What if a person purchases a product or service under a subscription or similar on-going relationship? When does the two year period begin?

In this circumstance, the two year period starts from the day that the subscription or similar on-going relationship ends. Consent is also implied during the period of the subscription or ongoing contract.

What about existing business relationships that my company has on the day CASL comes into effect (July 1, 2014)?

CASL contains special "transition" provisions such that if you have an existing business relationship with a person as of July 1, 2014, and that existing relationship included the sending of CEMs, then the existing business relationship will be deemed to continue for three years until July 1, 2017, unless the recipient withdraws his or her consent prior to that date.

My company is a manufacturer that sells through a distributor. Can we rely on there being an existing business relationship in order to send CEMs to the end customer?

If the end customer is an individual, then no, you do not have an existing business relationship with that person. If the end customer is another business, you may be able to rely on the exemption for business-to-business communications provided that you can demonstrate that you have a direct and existing relationship with that customer.

(ii) Implied Consent for Existing Non-Business Relationships

What is an “existing non-business relationship”?

- An existing non-business relationship can arise in a number of circumstances, including:
 - A donation or gift made by the recipient to the sender within the two-year period immediately before the day on which the message was sent, where the sender is a registered charity or political organization.
 - Volunteer work performed by the recipient for the sender, or attendance at a meeting organized by the sender, within the same two-year period, where the sender is a registered charity or political organization.
 - Membership by the recipient in the sender, where the sender is a not-for-profit club, association or voluntary organization. This consent terminates two years following the day the membership terminates.

What if the donation involves a subscription or similar on-going relationship?

In this circumstance, the two year period starts from the day that the subscription or similar on-going relationship ends. Consent is also implied during the period of the subscription.

What about existing non-business relationships that my company has on the day CASL comes into effect (July 1, 2014)?

If you have an existing non-business relationship with a person as of July 1, 2014, and that existing relationship included the sending of CEMs, then the existing non-business relationship will be deemed to continue until July 1, 2017, unless the recipient withdraws his or her consent prior to that date.

(iii) Implied Consent for “Conspicuous Publication”

If prospective clients post their email addresses on their websites, do I have consent to email them?

Yes, provided that there is no statement accompanying the published email address stating that the person does not wish to receive unsolicited CEMs and the email you send the person is relevant to the person’s business or role in a business – e.g. seeking for that person to retain your services.

If a person publishes one electronic address, do I have consent to send CEMs to another electronic address used by that person if not similarly published?

No. You should only send a CEM to that person at the published electronic address (assuming the other criteria are met) unless you separately have obtained consent to send CEMs to other addresses used by that person.

(iv) Implied Consent for Business Cards/Info

If a person hands me a business card containing her/his electronic address, can I send a CEM to any co-worker of that person?

No. The “implied” consent applies only to the person who gave you the business card.

3. “Express” Consent?

When do I need “express” consent?

You need “express” consent when you cannot rely on: (1) an exemption from CASL’s form and consent requirements; (2) an exemption from CASL’s consent requirements; or (3) “implied” consent.

How can I obtain “express” consent?

To obtain “express” consent to send CEMs to a recipient, you must clearly and simply set out the following information:

- the purpose for which the consent is being sought;
- the name of the person seeking consent and the person, if different, on whose behalf consent is sought;
- if the consent is sought on behalf of another person, a statement indicating which person is seeking consent and which person on whose behalf consent is sought;
- if the person seeking consent and the person, if different, on whose behalf consent is sought carry on business by different names, the name by which those persons carry on business;
- the mailing address, and either a telephone number, e-mail address or a web address of the person seeking consent or, if different, the person on whose behalf consent is sought; and
- a statement indicating that the person whose consent is sought can withdraw their consent.

Does “express” consent have to be obtained in writing?

No. “Express” consent can be obtained orally or in writing (including electronically) but you must be able to demonstrate that you have obtained the consent, which may practically be more difficult with oral consents.

Do I have to keep records showing that I have “express” consent?

Yes. The sender of a CEM has the onus of proving that “express” consent exists, which means that adequate records must be kept.

To demonstrate oral consent, this means that either an independent third party can verify that consent was obtained or that there is a recording evidencing the consent.

Can my request for consent to send a person CEMs be part of the same request for other consents (or acknowledgements of other terms and conditions)?

No. A request for consent to send CEMs must be separately and clearly identified. A person should, for example, be able to grant consent to general terms and conditions of sale while refusing to grant consent to receive CEMs.

If I obtain a general “express” consent to send marketing materials to a person, is that sufficient to send CEMs?

No. In order to satisfy the “clearly and simply” requirement, you should ensure that it is clear that the recipient may receive CEMs if they provide their “express” consent to receiving marketing materials.

Can I use an opt-out mechanism (e.g. pre-checked boxes on a webpage) to obtain express consent?

No. The use of pre-checked boxes or other opt-out mechanisms is not allowed. A person must be able to opt-in to receive CEMs in order to qualify as valid “express” consent, such as by actively checking a box or filling in their email address for the purpose of receiving CEMs. ([Click here](#) for an example of a permissible “opt-in” consent.)

Can I continue to use third party mailing lists that I obtained previously?

Yes, as long as you have a record of consent having initially been provided and your CEMs after July 1, 2014 meet the form requirements.

What if I want to sell email lists to third parties? Can I obtain consent on their behalf without knowing/disclosing who those third parties are?

Yes. However, you must ensure that any CEM sent by the third party to a person who provided consent contains the sender's name and your company's name. The recipient also has to be given the ability to unsubscribe from the third party's CEMs (and the CEMs of all third parties). If that person subsequently withdraws consent from your company, you must notify all third parties using that consent and ensure that CEMs cease to be sent to that person within 10 business days. ([Click here](#) for more information.)

If my company holds a contest, can we condition entry on obtaining “express” consent to receive CEMs?

No. The contest entry cannot be conditioned on consenting to receive CEMs.

If my business sells multiple products and markets them separately, can I bundle the obtaining of consent or do I need to obtain consent separately for each product?

You can bundle consent for all your products and services in one “express” consent if you so choose. However, if the consent is grouped, and someone unsubscribes, they would be unsubscribing for all CEMs relating to all of the products that were grouped. As a practical matter, your business may decide to establish “preference centres” for recipients to pick and choose which categories of CEMs they are consenting to receive (i.e., “yes” to sales and discount promotions on your clothing line but “no” to any other marketing materials). This will help maximize the chances of maintaining at least one point of contact with existing and prospective customers in respect of certain types of CEMs.

Do I have to get new consents for all the email addresses on my mailing list?

If you have a record of how these consents were obtained (whether CASL-compliant or not), you do not need to re-acquire consent. If the consent is “implied”, it will be effective until July 1, 2017 due to CASL's special transition provisions. If the consent is “express”, even if the form of express consent obtained prior to July 1, 2014 was not CASL-compliant, it will remain valid unless and until revoked.

WHAT INFORMATION DO MY CEMS NEED TO CONTAIN?

1 General Form Requirements

Are CEMs required to contain specific content?

Yes. Unless an exemption from CASL applies, all CEMs must clearly and prominently contain the following information:

- The name of the person sending the message and the person, if different, on whose behalf the message is sent.
- If the message is sent on behalf of another person, a statement indicating which person is sending the message and which person on whose behalf the message is sent.
- If the person who sends the message and the person, if different, on behalf of whom it is sent carry on business by different names, the name by which those persons carry on business.
- The mailing address and either a telephone number, an e-mail address or a web address of the person sending the message or, if different, the person on whose behalf the message is sent.
- A mechanism allowing the recipient to unsubscribe from receiving future CEMs.

Our offices are moving soon – which address should I use?

Contact information must be valid for 60 days. You should either include both addresses or ensure that you can be contacted at the address provided for the entirety of the 60 day period. If the mailing address and contact information for the sender(s) is kept current on your website, you can instead include a direct link to the web page containing that contact information, rather than including it directly in the CEM.

That's a lot of information! How can I disclose all of it if I send an SMS message (or other length-limited CEM) to someone?

If it is not practicable to include your contact information and an unsubscribe mechanism directly in the message, the information may be provided by a link to a webpage that is readily accessible and clearly and prominently sets out the required information.

2. The Unsubscribe Mechanism

I understand that I have to allow recipients of my CEMs to unsubscribe. But are there any requirements for how the unsubscribe mechanism operates?

Yes. An unsubscribe mechanism:

- Must be costless to the recipient of the CEMs and easy for that person to use.
- Should use the same electronic means by which the CEM was sent. If that is not practical, then another electronic means is sufficient.
- Should include an electronic address or link to a webpage to complete the unsubscribe request which is valid for at least 60 days after the sending of the CEM.
- Must be offered to the recipient in every CEM.
- Must allow any recipient that unsubscribes to stop receiving CEMs within 10 business days.

Can you provide an example of how this could be done in an email?

A valid unsubscribe mechanism in an email could, for example, include text in the body of the email stating that if a person wishes to unsubscribe they may do so by clicking on a hyperlink to a webpage that then allows the user, with one click, to confirm that they wish to unsubscribe from receiving all or some types of messages from the sender. ([Click here](#) for an example of a valid unsubscribe mechanism.)

For example: "If you do not wish to receive electronic messages from XYZ Inc. in the future, please [click here](#). Please be advised that this may restrict our ability to send messages to you in the future."

Can you provide an example of how this could be done in an SMS message?

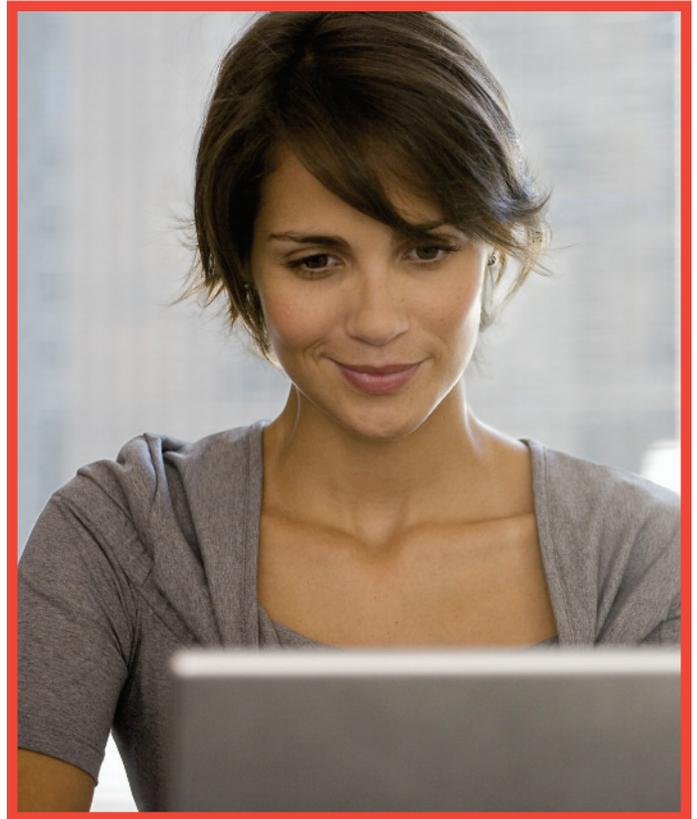
In the case of an SMS message, a user could be given the option to reply with the word "STOP" in order to unsubscribe, or could be allowed to click on a hyperlink that takes the person to a webpage where they can confirm that they wish to unsubscribe.

How soon must I stop sending CEMs after a person unsubscribes?

If a person unsubscribes, you must stop sending them CEMs within 10 business days and with no further action required on the part of the recipient that is unsubscribing.

My CEMs are exempt from CASL's consent requirements. Do I still need to include an unsubscribe mechanism even though the recipient does not need to consent to my sending the CEM?

Yes. Even though no consent is required, CASL still requires in these circumstances that all form requirements be met, including the requirement to include a valid unsubscribe mechanism. ([click here](#)) for details on CASL's form requirements.)



Who enforces CASL?

The Canadian Radio-television and Telecommunications Commission (CRTC) is the key regulatory authority responsible for enforcing CASL's anti-spam provisions.

How are violations of CASL brought to the CRTC's attention?

Consumer complaints will likely be an important source of information for the CRTC. The CRTC has also been granted broad investigatory powers, such as the right to obtain search warrants or to compel the production of information.

What are the penalties for violating CASL?

The maximum financial penalty the CRTC can seek for a violation of CASL's form or consent requirements is \$1 million for individuals and \$10 million for all other persons per occurrence. Alleged violators can also voluntarily enter into undertakings with the CRTC, which may provide for the payment of a fine and impose other conditions.

Can directors and officers be liable for violations by a company?

Yes. Directors, officers or agents of a company that commit a violation of CASL may be held personally liable if they directed, authorized, assented to, acquiesced to or participated in the commission of the violation unless they can show that they exercised "due diligence" to prevent the commission of the violation.

How can a director or officer show that they exercised "due diligence" to prevent the commission of the violation?

Due diligence may be demonstrated by, for example, developing internal compliance policies, implementing internal compliance reviews or audits, and conducting regular compliance training. It will also be important to maintain records of these processes and procedures to evidence due diligence.

Can employers be liable for the actions of their employees?

Yes. An employer is vicariously liable for violations of CASL committed by employees acting within the scope of their employment.

Can I avoid the various penalties under CASL by entering into voluntary undertakings with the CRTC?

In part. CASL contemplates that businesses faced with a complaint or investigation for non-compliance can enter into voluntary undertakings with the CRTC. Importantly, entering into a voluntary undertaking with the CRTC for non-compliant acts may be beneficial as it precludes private rights of action by complainants under CASL (but not under other legislation such as the Competition Act) and also precludes, for the same conduct in question, notices of violation being issued against you and cancels previously issued notices of violation. However, voluntary undertakings may still impose burdensome conditions on your business practices and/or substantial fines for non-compliance. Also, those undertakings will be made public and, accordingly, for some businesses, the reputational damage that could be caused by a voluntary undertaking may be a reason not to pursue that route.

Do I need to be concerned about other regulatory enforcement possibilities?

Yes. The Commissioner of Competition can bring proceedings under the Competition Act if any aspect of a CEM is misleading. For example, a false or misleading subject line could lead to enforcement proceedings even if the content of the CEM is accurate and even if the false or misleading aspect of the subject line is not "material".

Proceedings can also be brought under PIPEDA and similar provincial privacy legislation if you do not satisfy the requirements under those laws concerning proper collection, use and disclosure of personal information in the course of your commercial activities.

Apart from regulatory enforcement, can I be sued by private parties if I don't comply with CASL?

Yes. After July 1, 2017, private parties will be able to sue for breaches of CASL by senders of CEMs. You could be liable to a penalty of up to \$1 million per day per occurrence in addition to actual damages.



**APPENDIX B;
ANTI-SPAM
CHECKLIST**

CHECKLIST OF STEPS TO BECOME CASL COMPLIANT

1. Review Your Current Electronic Communications with Customers and Prospects

- Do you currently communicate electronically with customers, prospects, family, friends or other businesses?
- What form do your communications take (emails, social media messages, etc.)?
- Do you use third parties to engage in electronic communications on your behalf?
- Are your electronic communications in compliance with requirements not to contain misleading subject lines, sender information, URLs, metadata or content?

2. Review Your Consents and Tracking

- Do you have express consent or implied consent for everyone on your current email marketing lists? If not – do you need to obtain any express consents before July 1, 2014?
- Ensure that you will not be using “opt-out” consents or pre-checked boxes to obtain consent after July 1, 2014.
- Ensure that as of July 1, 2014, your requests for express consent meet the express consent requirements of CASL.
- How do you currently obtain, track and update consents? Do these tracking mechanisms meet with CASL’s record-keeping requirements? If not – develop the appropriate tracking mechanisms and record-keeping for consents going forward. Note that implied consents will need to be “refreshed” and updated because of their time-limited nature.

3. Review Your Unsubscribe Mechanisms

- Do your current unsubscribe mechanisms meet incoming CASL requirements?
- Are procedures in place to give effect to unsubscribe requests with affiliates/partners?
- Ensure that your mechanisms will allow recipients to be removed from your mailing lists (as well as your affiliates’/partners’ mailing lists) within 10 business days.

4. Review Your Form Requirements

- Do your current CEMs meet CASL form requirements?

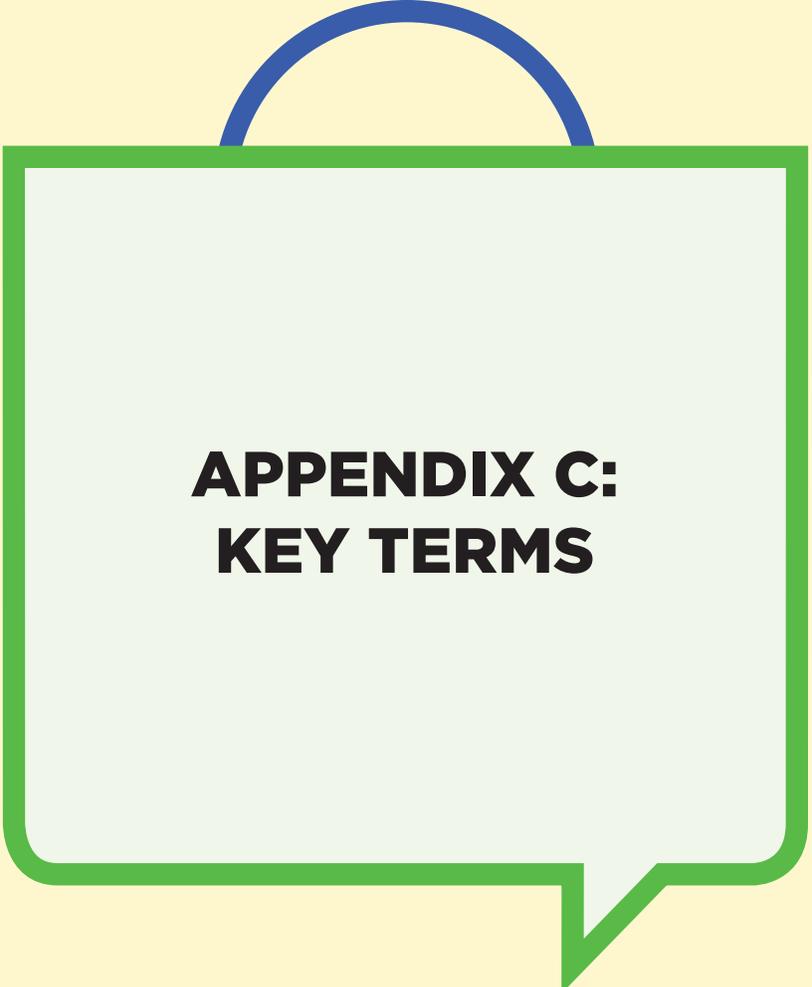
5. Review Your Contracts with Third Party Affiliates/Partners

- Consider whether you need to add any specific requirements regarding the CASL compliance of these parties.
- Consider whether you need to add any indemnity provisions regarding CASL.

6. Compliance Policies and Training

- Consider what policies and training you will require to ensure consistency of adherence to CASL throughout your organization.
- Consider how you will ensure that these policies are kept up to date.





**APPENDIX C:
KEY TERMS**

CASL:

- CASL is the federal government's legislation aimed at addressing the problem of "spam". *CASL's full name is: An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.*

Commercial Electronic Message (CEM):

- A CEM includes any electronic message that encourages participation in a commercial activity. Generally speaking, any electronic message sent in order to induce the recipient to buy something is a CEM. Similarly, any electronic message sent asking someone for permission to send them a CEM is also a CEM.

CRTC:

- The Canadian Radio-television and Telecommunications Commission, the regulatory agency responsible for enforcing CASL.

Electronic Address:

- An electronic address includes any type of address used in connection with the sending of an electronic message, such as an email account, an instant messaging account, a telephone account or any similar type of account.

Electronic Message:

- An electronic message is any type of message sent electronically, including a text, sound, voice or image. Emails, SMS texts, instant messages and messages sent to an individual's electronic address over social media (e.g. Facebook, Instagram, Twitter, Pinterest) are all electronic messages.

Existing Business Relationship:

- Generally, there is an existing business relationship where the sender and recipient conducted business with each other (e.g. the recipient purchased a product from the sender or entered into a contract with the sender) within the two-year period immediately prior to sending the CEM.
- There is also an "existing business relationship" during the six month period following an inquiry by the recipient to the sender (e.g. an inquiry about a product sold by the sender).
- In each case, the relevant time period refreshes and is renewed whenever there is a subsequent purchase or inquiry by the recipient.

Existing Non-Business Relationship:

- An existing non-business relationship can arise in a number of circumstances, including:
- A donation or gift made by the recipient to the sender within the two-year period immediately before the day on which the message was sent, where the sender is a registered charity or political organization.
- Volunteer work performed by the recipient for the sender, or attendance at a meeting organized by the sender, within the same two-year period, where the sender is a registered charity or political organization.
- Membership by the recipient in the sender, where the sender is a not-for-profit club, association or voluntary organization. This consent terminates two years following the day the membership terminates.

Express Consent:

- Express consent to send a CEM exists when a person has clearly stated that he/she is willing to receive CEMs from you in a CASL-compliant form of consent.

Family Relationship:

- A “family relationship” exists between a sender and recipient of a CEM who are related to each other through marriage, common-law partnership or parent-child relationship if those individuals have direct, voluntary, two-way communications.

Implied Consent:

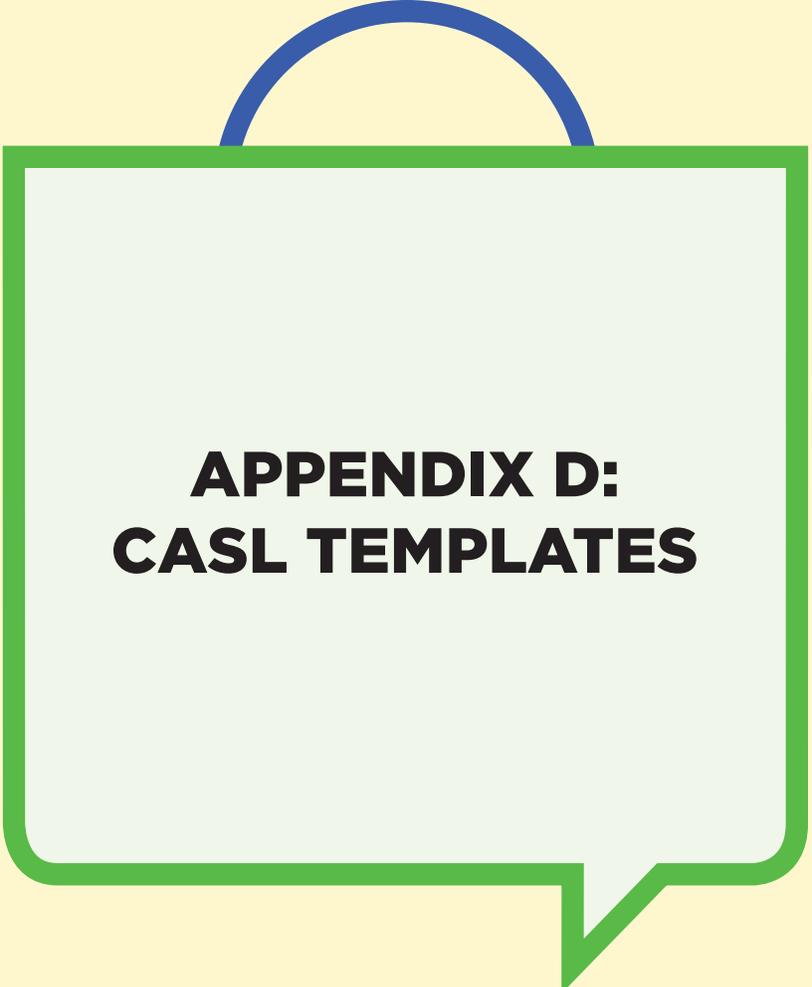
- CASL deems a person to have implied consent to send a CEM in certain circumstances. [Click here](#) for circumstances where implied consent applies.

Personal Relationship:

- A “personal relationship” exists when the sender and recipient of a CEM have had direct, voluntary, two-way communications and it would be reasonable to conclude that those persons have a personal relationship.

PIPEDA:

- PIPEDA, or the Personal Information Protection and Electronic Documents Act, is a federal law that sets out rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities.



**APPENDIX D:
CASL TEMPLATES**

1. **Sample CEM**
2. **Sample Express Consent Form**
3. **Sample Point of Sale Consent Request**
4. **Overview of CASL**
5. **Sample Unsubscribe Mechanism**

SAMPLE COMMERCIAL ELECTRONIC MESSAGE

This e-mail was sent to yourname@email.com by ACME Parent Company and its affiliates because your notification preferences indicate that you wish to receive certain of our electronic promotional material.

If you received this e-mail in error or if you do not wish to receive further communication from us, you can unsubscribe or change your notification preferences by clicking [here](#).

ACME Parent Company
123 Welcome Street
Any Town, ON A1B 2C3
(555) 555-5555
www.acme.com

[Note: After clicking the link above, the recipient would be re-directed to the ACME website which would contain the information below.]

Manage your e-mail subscriptions from ACME Parent Company: yourname@email.com

I no longer wish to receive the following communications:

- ACME monthly newsletter
- Information about exclusive sales and promotions for e-ACME members
- Information from partners of ACME and other third parties
- All of the above



Update

[Note: After clicking the “update” button, the following message would appear:]

Thank you. Your new preferences have been saved. Please allow up to 10 business days for them to take effect.

SAMPLE EXPRESS CONSENT FORM

ACME Parent Company
123 Welcome Street
Any Town, ON A1B 2C3
(555) 555-5555
www.acme.com

The ACME Parent Company and its affiliates **[and partners]** (“we”) are seeking your express consent to send you our monthly newsletter and special promotional offers regarding our products and services **[and other products and services that may be of interest to you]**. **[Note: If your CEMs contain information about your affiliates or if you have affiliates that also send CEMs, you should name them all here or link to a website where they are all named.]** A complete list of our affiliates [and partners] is available on our website at www.acme.com. You may choose to receive these materials by e-mail and/or by text message to your mobile phone.

If you are interested in receiving our electronic communications, please fill in the information below. Your consent will remain valid unless withdrawn and may be shared with third parties. You may withdraw your consent at any time.

First Name: _____
Last Name: _____
Mailing Address: _____
E-mail Address: _____
Mobile Phone No.: _____

- Yes, I would like to receive your monthly newsletter and special promotional offers by e-mail.
- Yes, I would like to receive mobile text messages containing promotional offers. I acknowledge that standard messaging and data fees may apply.
- Yes, I would like to receive promotional offers from partners of ACME and third parties.

Date

Signature

SAMPLE POINT OF SALE CONSENT REQUEST

By way of example, a retailer might implement a process for obtaining consent and electronic addresses at the point of sale or elsewhere in its store similar to the following (which process may vary from company to company):

- Employees would be provided with, and receive training on, the requirements of CASL as they relate to seeking consent for sending CEMs.
- The retailer could have a notice/card posted in the store or have a pamphlet or similar handout available that outlines what the consent is being sought for, state that consent can be withdrawn at any time, contain the retailer's contact information (and information of any others on whose behalf consent is being obtained), and otherwise comply with the form and consent requirements of CASL (including sender contact information).
- The employee would verbally request express consent, and could refer the customer to the posted notice/card or handout, along the lines of the following:

*"Would you like to register for ACME Company's electronic mailing list so that ACME and its affiliates and partners can send you a **[monthly newsletter and special promotional offers]** regarding our products and services? You may withdraw your consent at any time. Additional details about what we use electronic addresses for and how to contact us is contained **[on this/that notice/in this/that pamphlet]**."*

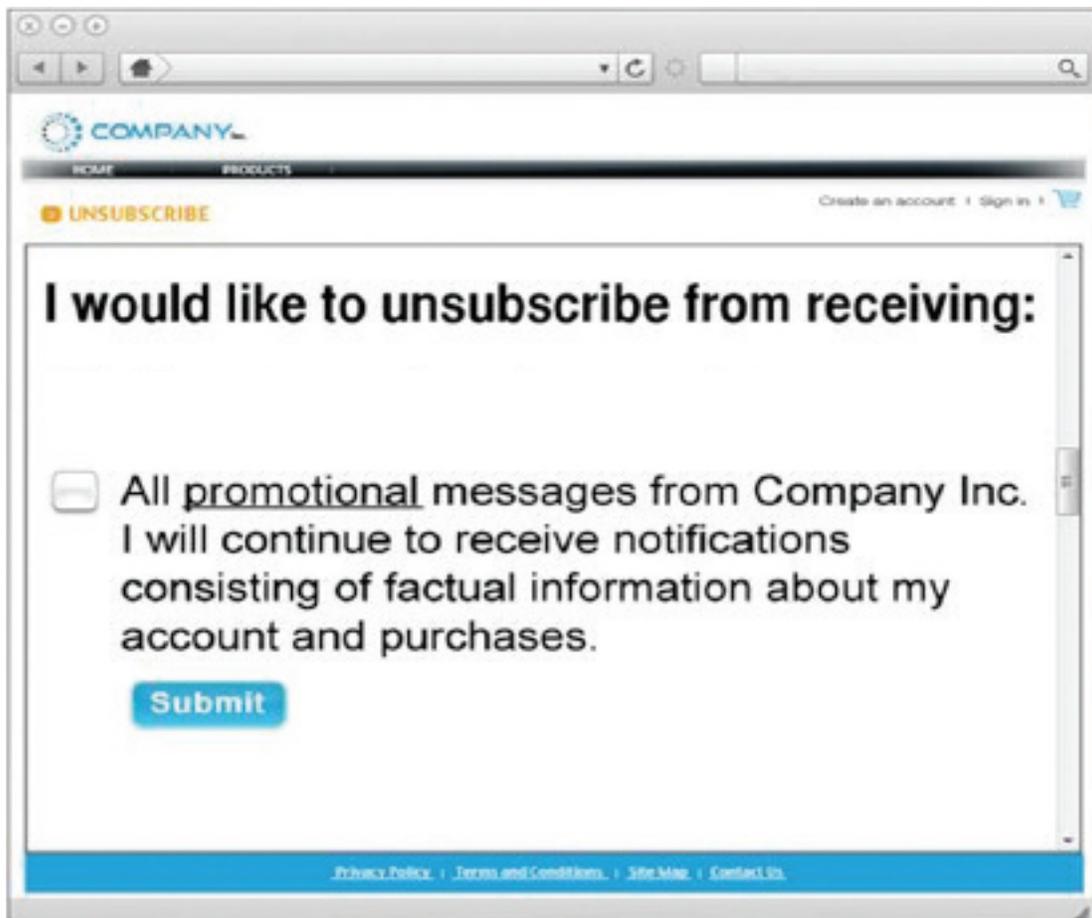
If so, can I please have your name and email address so that you can be registered?"

- If the customer grants her/his consent, the employee would then manually or electronically record in some form that consent was verbally obtained along with the customer's electronic address.

[Note: A consenting individual's contact information should be recorded immediately. A record of the information entered must be kept and should include the date of entry.]

The retailer would retain paper or electronic copies of the records indicating consent was obtained, along with copies of their company policies and/or employee training materials (as applicable), as well as copies of any notices or pamphlets posted or made available at the time consent is sought, and those materials could in turn serve as evidence that express oral consent was validly obtained.

SAMPLE UNSUBSCRIBE MECHANISM



The image shows a screenshot of a web browser window displaying an unsubscribe form. The browser's address bar is empty. The website header includes the 'COMPANY INC.' logo, navigation links for 'HOME' and 'PRODUCTS', and user options for 'Create an account', 'Sign in', and a shopping cart icon. The main heading of the form is 'UNSUBSCRIBE'. The form content is as follows:

I would like to unsubscribe from receiving:

All promotional messages from Company Inc. I will continue to receive notifications consisting of factual information about my account and purchases.

Submit

At the bottom of the form, there are links for 'Privacy Policy', 'Terms and Conditions', 'Site Map', and 'Contact Us'.

**For more information about Canada's new anti-spam law contact
Retail Council of Canada's membership team
1-888-373-8245
customerservice@retailcouncil.org**



DISCLAIMER

THESE MATERIALS ARE GENERAL IN NATURE ONLY AND DO NOT CONSTITUTE LEGAL ADVICE. PLEASE CONTACT LEGAL COUNSEL SHOULD YOU WISH TO OBTAIN LEGAL ADVICE ABOUT THE APPLICATION OF CASL OR OTHER RELEVANT LEGISLATION TO YOUR PARTICULAR SITUATION.