

Canada's Anti-Spam Legislation (CASL)

Commercial Electronic Message Requirements

What Is a Commercial Electronic Message (CEM)?

CASL regulates the sending of CEMs, which is defined broadly to include a message sent by any means of telecommunication, including a text, sound, voice or image message, that by virtue of (i) its content, (ii) any hyperlinks to content on a website contained therein, or (iii) contact information contained therein, it would be reasonable to conclude that, among its purposes, it is aimed at encouraging participation in a commercial activity ([CASL, s.1\(2\)](#)).

What Is the Key Prohibition on CEMs?

Can't send a CEM unless (i) the recipient has provided express or implied consent and the message complies with prescribed form and content requirements ([CASL, s.6](#)), or (ii) an exception or exemption exists.

How Do We Get Consent?

- **Express Consent:** CASL generally requires recipients' express consent ([CASL, s.6\(1\)](#)). In making a request to obtain express consent, an organization must set out "clearly and simply" prescribed information orally or in writing ([CASL, s. 10\(1\)](#) ([CRTC Regs, s. 4](#))).
- **Implied Consent:** CASL provides that consent to send a commercial electronic message may be implied only if the sender has an "existing business relationship" or an "existing non-business relationship" with the recipient ([CASL, s.10\(9\)\(a\)](#)), or the recipient has conspicuously posted their address or disclosed it to the sender, without expressing a desire not to receive CEMs, and the CEM is relevant for their business ([CASL, s.10\(9\)\(b\)](#); [CASL, s.10\(9\)\(c\)](#)).

What Is a "Business Relationship"?

An "existing business relationship" is defined as a business relationship between the individual who sent the message and the recipient arising from:

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- the purchase or lease of a product, goods, a service, land or an interest or right in land, within the two-year period immediately before the day on which the message was sent;
- the acceptance by a person to whom the message is sent, within a two-year period, of a business, investment or gaming opportunity offered by the sender;
- the bartering of a product, goods, a service, land or an interest or right in land between the recipient and sender, within a two-year period;
- a written contract entered into between the recipient and sender, if currently in existence or expired within the two-year period; or
- an inquiry or application, within the six month period immediately before the day on which the message was sent, made by the recipient to the sender with respect to anything mentioned above ([CASL, s.10\(10\)](#)).

An “existing non-business relationship” means a non-business relationship between the sender and recipient, and is set out in [CASL, s.10\(13\)](#).

Are There Exceptions & Exemptions to the Consent Requirement?

CASL sets out certain exceptions pursuant to which consent is not required in order to send a commercial electronic message, such as certain transactional messages ([CASL, s.6\(6\)](#)).

However, CEMs sent pursuant to those exceptions must still comply with prescribed form and content requirements (see below).

CASL also sets out some exemptions which exempt certain CEMS from the consent requirements and the form and content requirements, such as certain messages sent (i) between organizations that have a relationship, (ii) within an organization; (iii) in response to a request, inquiry or complaint, (iv) to satisfy a legal obligation, or (v) between individuals where there is a personal or family relationship ([CASL, s.6\(5\)](#); [CRTC Reg. 3](#)).

What Are the Form and Content Requirements?

CASL sets out certain requirements regarding the form and content of commercial electronic messages. Specifically, the CEM must set out certain prescribed information about the sender and the person on whose behalf the message is sent, and an unsubscribe mechanism.

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What Are the Form and Content Requirements?

CASL identifies the Canadian Radio-television and Telecommunications Commission (“CRTC”) as the agency primarily responsible for regulatory enforcement, and permits the Commission to impose administrative monetary penalties of up to **\$1 million per violation** for individuals and **\$10 million per violation** for businesses. CASL outlines a range of factors to be considered, including the nature and scope of the violation, in assessing the penalty amount ([CASL, s.20](#)).

CASL also sets out a private right of action permitting individuals to bring a civil action for alleged violations of CASL, **up to \$200 per violation up to \$1 million for each day** on which the violation occurs ([CASL, s.47](#)).

When Is CASL in Force?

- CEM provisions come into force on July 1, 2014.
 - Transition period begins (see below).
- Computer program provisions come into force on January 15, 2015
- Private right of action comes into force on July 1, 2017

What Is the Transition Period for CEMS?

- If there is an existing EBR as of July 1, 2013, and it includes sending CEMs, consent is implied until the earlier of:
 - The recipient withdraws consent, or
 - July 1, 2017.

Key Compliance Steps

Current and Future Electronic Messages:

- Develop inventory of electronic messages that you currently (or intend to) send, cause or permit to be sent
- Determine whether CASL applies to electronic messages.
- If CASL applies to the messages:
 - Determine whether and what type of consent will be required
 - Determine whether CASL's identity, contact and unsubscribe rules apply
- Develop templates for requesting written consent and scripts for requesting oral consent
- Develop email templates that comply with CASL
- Ensure unsubscribe mechanism meets the requirements under CASL
- Confirm approach to existing databases and determine if "fresh" consent is required

Additional Compliance Steps:

- Develop approach for acquiring and using third party mailing lists (if applicable)
- Develop approach for refer-a-friend marketing programs (if applicable)
- Develop protocol for participating in or running affinity programs (if applicable)
- Develop protocol for complying unnamed third party rules (if applicable)
- Review/update database management practices to demonstrate compliance with CASL (e.g. process for recording express consent, tracking implied consent timelines, etc.).
- Review and update external notices (e.g., privacy policy)
- Review and update relevant internal policies
- Develop and implement training and education plan (e.g. employee, staff, consultant, etc.)