

FORUM DES DIRECTEURS GÉNÉRAUX ET DES DIRECTRICES GÉNÉRALES

CANADA'S ANTI-SPAM LAW

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CANADA'S ANTI-SPAM LAW



- **Title:**

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
... *the CASL*

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➤ **Vast Scope**

- ✓ “Prohibits sending spam in Canada,” including:
 - Unsolicited commercial messages and
 - Unsolicited installation of a computer program in the course of a commercial activity.

➤ **Applies Particularly to:**

- ✓ Colleges
- ✓ Foundations
- ✓ ...

➤ **Maximum Fines:**

- ✓ \$1,000,000 in the case of individuals.
- ✓ \$10,000,000 in the case of all other parties.

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Related Regulations and Documents:

➤ **Canadian Radio-television and Telecommunications Commission (CRTC)**

- ✓ *Electronic Commerce Protection Act.*
- ✓ Guidelines on the interpretation of the *Electronic Commerce Protection Regulations*.
- ✓ Guidelines on the use of toggling as a means of obtaining express consent under Canada's Anti-Spam Legislation.

➤ **Industry Canada**

- ✓ Regulations (DORS 81000-2-175).
- ✓ Regulatory Impact Analysis Statement.

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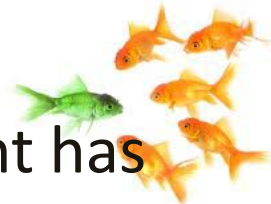
CASL's Implementation:

- July 1, 2014: particularly, provisions pertaining to commercial electronic messages.
- January 15, 2015: provisions concerning unsolicited installation of computer programs.
- July 1, 2017: provisions pertaining to a private right of action.

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Commercial Electronic Messages (CEMs):

- It is **prohibited** to send a commercial electronic message to an electronic address, **unless**:
 - ✓ The person to whom the message is sent has consented to receive it, whether the consent is express or implied; and
 - ✓ The message complies with certain regulatory requirements.



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- **“Electronic message”**: message sent by any means of telecommunication, including a text, sound, voice or image message.
- **“Electronic address”**: an address used in connection with the transmission of an electronic message to an electronic mail account, an instant messaging account, a telephone account or any similar account.
- **“Commercial activity”**: any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit.

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Definition of a CEM:

Message that, it would be reasonable to conclude with respect to its content, its hyperlinks to content on a website or other database, or contact information contained in the message has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that:

- ✓ Offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land.
- ✓ Offers to provide a business, investment or gaming opportunity.
- ✓ Advertises or promotes either of the above.
- ✓ Promotes a person, including the public image of a person, as being a person who does anything mentioned above.

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Prescribed Form and Content:

- Sets out prescribed information that identifies the person who sent the message enabling the recipient to readily contact that person.
- This information must be valid for a minimum of 60 days after the message has been sent.
- Sets out an unsubscribe mechanism.

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Express or Implied Consent:

➤ EXPRESS:

- ✓ Sets out the purpose or purposes for which the consent is being sought.
- ✓ Sets out prescribed information that identifies the person seeking consent.
- ✓ A positive or explicit indication of consent is required.



➤ IMPLIED:

- ✓ Existing business relationship or an existing non-business relationship.
- ✓ The recipient has conspicuously published his/her electronic address, unaccompanied by a statement that the person does not wish to receive unsolicited CEMs.
- ✓ Voluntary communication by recipient of his/her electronic address.
- ✓ Other circumstances set out in the regulations.

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KEY EXCEPTIONS!

- Commercial electronic messages sent by one individual to another with whom s/he has a personal or family relationship.
- CEMs sent by an employee, representative or consultant of an organization to another employee, representative, consultant or franchisee of the organization and the message concerns the organization's activities.
- A CEM only sent in response to a request for information.
- A CEM responding to a request by the recipient to provide a quote or estimate for the supply of a product, goods, a service, etc.

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KEY EXCEPTIONS! *(continued)*

- Facilitates, completes or confirms a previously agreed commercial transaction.
- Provides warranty information, product recall information or safety or security information about a product, goods or a service.
- Provides notification of factual information about the ongoing use or ongoing purchase by the person to whom the message is sent of a product, goods or a service offered under a subscription, membership, etc.
- Other legislative and regulatory exceptions.

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Transitional Period

- If, on July 1, 2014, individuals have existing business or private relations in the course of which they have transmitted commercial electronic messages, they have given implied consent to receiving such messages.
- This consent remains in effect until they withdraw it or, at the latest, July 1, 2017.

Actions by Colleges:

- Review emails sent by the college that could fall under the CASL.
- Create and monitor an unsubscribe mechanism.
- Create a mechanism for obtaining express consent.

Thank You for Your Attention!