

## Canada's Anti Spam Legislation *\*as of June 2020*

The information below is intended as basic guidance only and should not be taken as legal advice for determining your compliance with CASL. For further information, use the links at the end of this document.

### **What is it?**

CASL was created in 2014 to reinforce best practices in email marketing and combat spam and related issues. These issues include identity theft, phishing and the spread of malicious software, such as viruses, worms and trojans (malware).

Meanwhile, for businesses:

CASL has caused companies to be more disciplined in managing their electronic marketing programs. As a result, open and click-through rates of marketing emails have risen, and bounce rates have dropped. Between 2014 and 2017, the proportion of commercial electronic messages reaching their designated recipients rose to 90% from 79% in Canada (compared with 80% worldwide). The proportion of commercial emails opened and read also increased to 32% from 26% (compared with 21% in the United States). The legislation has also enabled Canada to actively share information and cooperate in global enforcement actions. Canada now has international agreements with 4 countries and memorandums of understanding with 12 agencies in 8 countries.

### **What does this mean?**

The legislation is lengthy but focuses mainly on establishing criteria for *consent* and *content* for all messages.

*Consent:* the sender must have either explicit or implied consent from the recipient before sending the message.

*Content:* all messages will need to include information that clearly identifies who the sender is, provide the sender's contact information (mailing address, and either website, email address or phone number), and allow the recipient to withdraw consent with an unsubscribe function that takes effect as soon as possible and is free.

In short, everyone on your mailing list (who is not exempt) must have consented to receive messages from you. Business will need to have a way of recording when/where/how they received consent from each person they contact, or why your message is exempt.

### **What is exempt?**

There are several instances where your message will be excluded from CASL, including when responding to someone making an inquiry or complaint, delivering a quote, completing a sale, or communicating information on warranties and recalls.

Most B2B messages are exempt as well, provided they are sent between individuals at organizations which have an existing relationship and the message is regarding that relationship or its activities. Unfortunately, this can be interpreted as meaning that if you do not already have a pre-existing relationship then the messages with that business are not exempt. This would impact prospecting or sales messages to prospective clients.

Messages are also exempt if they are sent between individuals who have a personal/family relationship as defined by the regulations.

Messages sent by registered charities which are meant to fundraise for the charity are also exempt.

### **What about referrals? Can I contact them?**

Referrals and introductions are an important part of business and something the BBOT network does a lot. The first electronic message sent to a referral is exempt, provided the person who gave you the referral has a relationship with the contact. You must mention in the message that it is a result of a referral and you must provide the full name of the person who gave you the referral.

### ***What is consent?***

You must have either explicit or implied consent to send an electronic message to someone.

#### ***Explicit Consent:***

The recipient has given you permission to send them messages and you have a record of where/when/how you obtained that permission. Explicit consent can be obtained several ways, including:

The recipient has completed a web form or sign-up form and has opted-in to receiving your message. But remember:

- you must explicitly state what they will receive
- you must be clear who is seeking their consent
- you must indicate that the contact can unsubscribe at any time
- you must allow the contact to opt-in manually (you can't pre-check the box!)

The recipient verbally (or through other means) gave you permission to contact them and you can record when/where/how that occurred.

#### ***Implied Consent:***

The recipient can be sent messages because you have an existing business or non-business relationship with that person/business, or because they have publicly disclosed their email address. Implied consent can be assumed in several instances, including:

1. An “existing business relationship” exists when you are doing business with someone or have done business with them in the past 24 months. This could mean either the recipient purchased a product or service from you or you have entered into a contract with them. For 24 months following the end date of your commercial/contractual activity together, you have implied consent to contact that person. After 24 months you will not have permission to send to this contact unless they make another purchase or make an inquiry (and the expiration resets) or you get them to opt-in and provide express consent.
2. Another form of “existing business relationship” exists when someone makes an inquiry of your business. For 6 months following that inquiry, you are able to communicate with them under implied consent. After 6 months you will not have permission to send to this contact unless they make another inquiry or make a purchase (and the expiration resets) or you get them to opt-in and provide express consent.
3. An “existing non-business relationship” arises when a contact provides a gift/donation to a registered charity, volunteer for or attends a meeting of a registered charity, or is a member in a club, association or voluntary organization. In each of these instances, the sender has 24 months during which they have implied consent to send messages to the contact. After 24 months you will not have permission to send to this contact unless they make another donation/volunteer/renew membership (and the expiration resets) or you get them to opt-in and provide express consent.
- 4.. The recipient has disclosed their email address to you without indicating that they do not want to receive unsolicited messages. This can be thought of as the “business card” consent. (this also applies if the person posts their email address on a public website without an explicit disclaimer indicating they do not wish to receive unsolicited messages). The message must, however, be relevant to them/their position/their business.

#### ***Where can I find more resources?***

**[The official CASL government website](http://www.fightspam.gc.ca)** [www.fightspam.gc.ca](http://www.fightspam.gc.ca)

**CRTC's Guidance on Implied Consent** [www.crtc.gc.ca/eng/com500/guide.htm](http://www.crtc.gc.ca/eng/com500/guide.htm)

**[The full anti-spam legislation](http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2010_23/FullText.html)** [http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2010\\_23/FullText.html](http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2010_23/FullText.html)

**PIPEDA: Personal Information Protection and Electronic Documents Act**

<https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/>