

# Canada's Anti-Spam Law Simplified Live Presentation Version\*

**The scariest anti-spam law in the world. Fines are big. Are You Ready?**

In collaboration with AcceleratorU and The School for Social Entrepreneurs Ontario

\*Full version will be sent to  
participants after the call.

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May 14, 2014

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## CASL in a Nutshell

### 1. Prohibits

1. sending Commercial Electronic Messages (“**CEMs**”) without express consent (some exceptions)
2. installation of **computer programs** without express consent (some exceptions)
3. alteration of **transmission data or rerouting of messages** without express consent

### 2. Covers:

- Email
- Text messages
- Social media where subscribers receive email updates
- Instant messaging

## CASL - Enforcement

- Administrative Monetary Penalties for violations
  - Up to **\$1M individual, \$10M all other entities**
- Public shaming
- Registration with court – enforced as contempt
- Injunctions, Restraining Orders
- Private right of action
- Search warrant
- And other actions



## Core Anti-Spam Provision

It is prohibited to send or cause to be sent a **commercial electronic message** unless:

1. One of the exceptions applies, or
2. The sender has the express or implied consent of the recipient

...and the message is in the **prescribed form**

## What is a “commercial electronic message”?

- An electronic message that, having regard to the content of the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message, it would be reasonable to conclude has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that
  - a) offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
  - b) offers to provide a business, investment or gaming opportunity;
  - c) advertises or promotes anything referred to in paragraph (a) or (b); or
  - d) promotes a person, including the public image of a person, as being a person who does anything referred to in any of paragraphs (a) to (c), or who intends to do so.

## When is a CEM not a CEM?

- Message sent to person with whom sender has a **personal or family relationship**
- Message sent to a person who is engaged in a commercial activity and consists solely of an **inquiry or application** related to that activity
- Other **exceptions** specified in regulations

## Exclusion: Personal or Family Relationship

- **"family relationship"**: by marriage, common-law partnership or any legal parent-child relationship and those individuals have had direct, voluntary, two-way communication;
- **"personal relationship"**: direct, voluntary, two-way communications and it would be reasonable to conclude that they have a personal relationship, taking into consideration:
  - Shared interests, experiences, opinions and information evidenced in communications, frequency of communication, the length of time since the parties communicated or whether the parties have met in person.

## Examples of Regulatory exclusions:

- Inter-office correspondence (between employees, reps, consultants, or franchisees)
- Responding to requests, inquiries or complaints
- Messages that satisfy legal obligations, or to enforce legal rights
- Messages to foreign states, if comply with laws of the foreign state
- Messages that are sent **by or on behalf of a registered charity** as defined in subsection 248(1) of the Income Tax Act **and the message has as its primary purpose raising funds for the charity**
- Messages that are sent by or on behalf of a political party or organization, or a person who is a candidate—as defined in an Act of Parliament or the legislature of a province—for publicly elected office and the message has as its primary purpose soliciting a contribution as defined in subsection 2(1) of the Canada Elections



## Consent not required (1 of 2)

- Providing a quote or estimate if the **quote or estimate** was requested;
- Facilitating, completing or confirming a **commercial transaction**;
- Providing **warranty information, product recall information or safety or security information** about a product, goods or a service that the person to whom the message is sent uses, has used or has purchased;
- provides notification of factual information about:
  - i. the ongoing use or **ongoing purchase** of a product, goods or a service offered; or
  - ii. the **ongoing subscription, membership, account, loan** or similar relationship of the person to whom the message is sent;
- Information directly related to an **ongoing employment relationship** or related **benefit plan**;

## Consent not required (2 of 2)

- Delivering a product, goods or a service, including product **updates or upgrades**, that the person to whom the message is sent is entitled to receive under the terms of a transaction that they have previously entered into

## Special Case – Referrals

- Prior consent is not required for the sending of the **first CEM from a referral**, if:
  - The individual that referred you has an existing business relationship, an existing non-business relationship, a family relationship or a personal relationship with the person who sends the message **and** the person who receives the message.
  - You must include the full name of the individual or individuals who made the referral and states that the message is sent as a result of the referral

## Implied Consent

1. **Existing business or non-business relationship** existed within the **two-year period** immediately before the day on which the message was sent
2. Conspicuous **publication of someone's email address** (e.g. on their website or in an online directory), that is not accompanied by a statement that the person does not wish to receive unsolicited CEMs and the message is relevant to the person's business role, functions or duties in a business or official capacity.
3. Direct **sharing of an email address** (e.g. handing you their business card), without indicating a wish not to receive unsolicited CEMs, and the message is relevant to the person's business role, functions or duties in a business or official capacity.

## Existing Business Relationship

Within the **two-year period** immediately before the day on which the message was sent, if the message receiver engaged in the following with the sender:

- the **purchase or lease** of a product, goods, a service, land or an interest or right in land;
- a **business, investment or gaming opportunity**;
- **bartering** between the recipient and the sender;
- a **written contract** related to any matter;

Within a **six-month period** immediately before the day on which the message was sent, if the message receiver engaged in the following with the sender:

- an **inquiry or application** related to anything mentioned above.

## Existing Non-Business Relationship

If the sender is a **registered charity, a political party or organization, or a person who is a candidate for publicly elected office**, and the receiver within the last two years:

- Made a **donation or gift**;
- Engaged in **volunteer work**, or **attendance at a meeting**; or
- Had **membership** in a club, association or voluntary organization.

If no applicable exception or  
implied consent, sender  
must have  
**EXPRESS CONSENT**

## Requests for Express Consent must set out “clearly and simply”:

- The **purpose** or purposes for which consent sought
- **Identification** of the sender/person on whose behalf sent, including:
  - Name by which sender (or person on whose behalf message sent) carries on business
  - If sent on behalf of another, identification of sender and on whose behalf sent
  - Mailing address and one of: telephone number, email address or web address of sender/person on whose behalf sent
- **Statement** indicating that consent can be withdrawn

***Note: Express consent may be obtained orally or in writing***



## Sharing Consent

- CASL allows one to obtain consent on behalf of a **third party** – even one whose identity is unknown at the time that consent is obtained
- If you send an CEM on the basis of consent obtained from a third party, in your CEM you must provide, in addition to the standard unsubscribe mechanism, the opportunity for the recipient to **unsubscribe from all third parties**.
- If you rely on third-party consent, you must **alert the original requester** of all unsubscribes.
- The original requestor must **notify each third party** to whom the consent was provided that the consent has been withdrawn.

## Even with consent, CEMs must be in a prescribed form that:

- **Identifies the sender** on whose behalf sent
  - Include the name by which sender (or person on whose behalf message sent) carries on business
  - If sent on behalf of another, identification of who sent, and on whose behalf
- Includes **contact info** for sender/person on whose behalf sent
  - Mailing address and one of telephone number, email address or web address of sender/person on whose behalf sent
- Includes a no-cost, **easy unsubscribe** mechanism:
  - Same means as message sent, or other electronic means
  - Gives Electronic address/web link for unsubscribe
  - Set out clearly, must be able to be readily performed
  - Effective “without delay”, no later than 10 business days

## Transition Period

- Transitional “Grandfathered” existing business and non-business relationships
- Implied consent for existing business and non-business relationships **over any time period** (i.e. not constrained by usual 2 year period) where that relationship included sending commercial email messages
- Applies for 3 years after coming into force (i.e. July 1, 2017), or until recipient unsubscribes

## Preparing for CASL

- Refer to the **webinar companion guide** which gives detailed information to help you prepare.
- Examples of things you'll need to do:
  - Conduct an audit of your current consent mechanisms.
  - Ensure CEM database is up to date.
  - Ensure you have system in place to enable unsubscribe requests within 10 days of receipt.
  - Review and update website privacy policies and website terms of use.
  - Conduct tests to ensure it actually works!
  - Enable "opt-in" mechanisms in all e-commerce documents.
  - Train staff and monitor compliance.
  - Consider CASL insurance.

## DISCLAIMER

The information provided in this presentation is intended to serve as a general overview of Canada's anti-spam laws, and should not be construed as legal advice.

The details of your specific obligations and the processes you should implement within your organization to comply with the laws will be situation-specific and should be discussed directly with your legal counsel.

## References

- [www.fightspam.ca](http://www.fightspam.ca) (Industry Canada)
- [http://fightspam.gc.ca/eic/site/030.nsf/eng/h\\_00017.html](http://fightspam.gc.ca/eic/site/030.nsf/eng/h_00017.html) (spam reporting centre)
- <http://www.carters.ca/pub/bulletin/charity/2014/chylb328.htm>
- <http://theonnn.ca/what-we-do/stateofthesector/canadas-anti-spam-legislation-nonprofit/>
- <http://www.marsdd.com/mars-library/compliance-canadas-new-anti-spam-legislation-and-how-it-affects-your-startup-mars-best-practices/>

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THANK YOU!

## **CORY A. SCHNEIDER, B.Eng., M.A.Sc., P.Eng., LL.B.**

Cory Schneider is a lawyer and registered trademark agent. Cory practices almost exclusively in the area of intellectual property law, with an emphasis on trademark prosecution, trademark portfolio and brand management, licensing, acquisition, management and enforcement of trademark and other IP rights. Cory has advised entities ranging from small and medium-sized enterprises to large multi-national corporations. Prior to his years of practice as an intellectual property lawyer, Cory worked as an engineer and consultant in the water treatment industry.

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