

# Canada's Anti-Spam Law (CASL) Hospitality Newfoundland & Labrador

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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

# CASL

- Why?
- When?
- Who?

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**“Oh, the usual stuff. Spam from the Joker,  
another e-mail virus from the Penguin,  
an illegal chain letter from Cat Woman....”**

Every business that:

- operates in Canada; or
- sends commercial electronic messages to Canadians

will change the way they communicate electronically with:

- customers/potential customers
- other businesses

CASL

CAN-SPAM

Email, text, IM, SM

Email

Express consent with few exemptions

Opt-out

Any commercial content

Primary purpose is commercial

# CEM

- Electronic
- Encourages participation in commercial activity
- Sent from or received by a computer in Canada
- Even if third party sends on your behalf

# Consent

- Sending a CEM? Need express consent  
(unless you don't)

# How?

- If existing relationship - can send electronic request for consent
- If no existing relationship - physical form (requires signature)



# Consent

- Provide:
  - who wants the consent
  - mailing address and phone number, email or website where more info provided
  - statement identifying person
  - identity & contact info of any 3rd party used
  - unsubscribe (electronic)

# Consent

- Implied if:
  - existing business or non-business relationship
  - conspicuously published contact info *or* voluntarily disclosed it without saying they don't want CEMs

# Shared Consent

- Related/affiliated businesses - still need

# Exemptions

- Within a business
- Between businesses in ongoing business relationship
- Responding to consumers who requested info
- To enforce a legal right
- Sent from outside Canada without reasonably knowing message would be received in Canada
- Third-party referrals

## Express consent versus implied consent

### WHAT YOU NEED TO KNOW BEFORE SENDING OUT YOUR COMMERCIAL ELECTRONIC MESSAGE

#### IMPLIED CONSENT

##### Existing business relationship

The recipient has made, or enquired about, a purchase or lease of goods, services, land or interest in land, a written contract or the acceptance of a business, investment or gaming opportunity from you.

##### Existing non-business relationship

You are a registered charity, a political party or a candidate, and the recipient has provided you a gift, a donation or volunteer work.

You are a club, association or voluntary organization and the recipient is one of your members.

##### Recipient's e-mail address was conspicuously published or sent to you

The address was disclosed without any restrictions and your message relates to the recipient's functions or activities in a business or official capacity.



#### KEEP RECORDS

Keep records of how you obtained implied or express consent, since in both cases you have the **onus to prove consent**.



Specific conditions apply. Please refer to the Legislation and its Regulations.

#### EXPRESS CONSENT

##### Valid consent given in writing or orally

The recipient gave you a positive or explicit indication of consent to receive commercial electronic messages.

Your request for consent set out clearly and simply the prescribed information.



##### Express consent is not time-limited

Unless the recipient withdraws his or her consent.

##### Implied consent is generally time-limited

It is typically a period of 2 years after the event that starts the relationship (e.g. purchase of a good). For subscriptions or memberships, the period starts on the day the relationship ends.

# Personal & Family

- Personal:
  - 2-way voluntary communications at any point in past
  - Sharing of interests & experiences
- Family:
  - descending from common grandparents

# Social Media

- Posting on SM = maybe ok

Not covered by CASL where “not sent to electronic addresses”

# SMS

- Too short to fit info - must include hyperlink to required info



# Non-Profits & Charities

- CASL applies
- *If sent by or for registered charity and primarily to raise funds for that charity = exemption*

# Political messages

- CEM sent by or on behalf of political party or candidate, if soliciting contribution = exemption

# CEM Form

- Name + Business
- Address
- Telephone #
- Web address
- Other electronic address
- + 2 methods for opt-out

# ID

- ID all persons who CEM is being sent on behalf of
- Hyperlink with the info ok
- Address is any valid mailing address you can be contacted at

# Collecting consent

- Retail
  - Info at cash
- Call centre collection
  - verbal collection allowed

# Compliance

- No altering transmission data
- No address harvesting
- No personal info harvesting
- No botnets

# What Next?

- January 15, 2015
- July 1, 2017

# Phase 2

A person must not, in the course of a commercial activity, install or cause to be installed a computer program on another person's computer system or having so installed or caused to be installed on a computer system, cause an electronic message to be sent from the computer system, unless

(a) the person has obtained the express consent of the owner or an authorized user of the computer system and complies with [the disclosure requirements]; or

(b) the person is acting in accordance with a court order.



# Compliance

- Software consents - if you make and install software/computer programs

# The Bad Stuff

- Monetary penalty: \$10M max for businesses
- Criminal charges
- Civil charges
- Personal liability for officers and directors

# Do

- Assess and track consent (including expiry of implied consents!)
- Plan to obtain consents
- Proper CEM form

# Do

- Implement unsubscribes
- Revise policies/processes/systems
- Train staff
- Audit trail to demonstrate due diligence

# Do

- Request consents to encourage a quick and easy yes

# Since coming into force...

July 2014: >50,000 complaints to CRTC

# Let's Talk!



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