



4-H Ontario Policy Manual

Section 5.1 - Appendices

Appendix D – Canada’s Anti-Spam Legislation

June 30, 2017

APPENDIX D - CANADA’S ANTI-SPAM LEGISLATION (CASL) INFO & BEST PRACTICES FOR 4-H ONTARIO ASSOCIATIONS

Canada’s anti-spam legislation (CASL) came into effect July 1, 2014. It is in place to protect Canadians while ensuring that businesses can continue to compete in the global marketplace. If you use electronic channels to promote or market your organization, products or services, Canada’s new anti-spam law may affect you.

As volunteers representing 4-H Ontario in your Associations, it is important that all communications across the province are CASL compliant.

CASL BACKGROUND ([From the Globe and Mail Article June 7, 2017](#))

Canada’s anti-spam legislation (CASL) came into effect in July 2014. Since that time, the sending of an unsolicited e-mail, text, instant message, Facebook message or any other commercial electronic message (CEM) has had to comply with CASL. This law is extremely broad and captures all electronic messages sent or received in Canada – and may, in some cases, even capture tweets. You may think that the business e-mail or newsletter you’re sending is not spam in the traditional sense, or that you’re somehow exempt because you’re a non-profit or a charity seeking donations, but CASL applies to you, and you face even more significant penalties for non-compliance after July 1.

As it stands now, for a CEM to be in compliance under CASL, a business or other organization must have the recipient’s express or implied consent to receive the CEM; the sender must clearly identify themselves and their organization in the CEM (including the phone number, e-mail address or Web address), and there must be a way for the recipient to unsubscribe, at no cost, from the receipt of future CEMs.

Since 2014, the administrative penalties imposed by the CRTC have been significant – as much as \$1-million per violation for individuals and \$10-million for corporations. Rogers Communications Inc. and Kellogg Canada Inc. were assessed \$200,000 and \$60,000 fines respectively. And in 2015, corporate training firm Compu-Finder of Quebec was fined \$1.1-million for breaching CASL.

The provisions coming into force on Canada Day will make things even tougher for anyone sending CEMs.

That’s because, when CASL came into force in 2014, it provided a three-year transition period in which senders were permitted to rely on a recipient’s implied consent to receive CEMs. That three-year window ostensibly gave senders time to obtain express consent from those on their mailing lists. It also gave recipients a reasonable period of time to unsubscribe.

But that window closes July 1. With limited exceptions, you shouldn’t be sending that e-letter or unsolicited e-mail, and you should instruct your employees to delete anyone in your customer relationship management system that has not provided their express consent to receive CEMs.

If your electronic newsletter is inadvertently sent to 10,000 e-mail addresses without the express consent of those recipients, you have improperly identified your organization or there is no “unsubscribe” option available, you are risking fines that the CRTC could impose.

CASL Breakdown

What does CASL cover and what is a CEM?

A CEM is an email, text, instant message, tweet, or any other electronic message that has as a part of its purpose to encourage the recipient to engage in “commercial activity.” Even if there is no profit, it can still count as commercial activity. Examples include:

- Emails seeking donations
- Emails seeking volunteers/members
- Emails selling tickets to an event/lottery
- Emails promoting services
- Emails promoting a charitable event/activity
- Electronic newsletters
- Emails promoting the organization / charity

What Does a CEM Need to Include to Be Compliant?

1. The recipient gave consent: this can be express consent (which lasts until someone unsubscribes) or implied consent (which lasts 2 years after the end of their membership/involvement, donation, etc).
2. Identifying info of all the people it is sent on behalf of.
3. A way to contact the sender.
4. An unsubscribe option: this may be a button to click on through an email marketing program, or it could be instructions on who to email. Make sure your method unsubscribes the person within 10 days and is available for 60 days after the email is received.

How is consent defined in CASL? Express Vs. Implied Consent

Express consent means that a person has clearly agreed to receive a CEM, either in writing or orally. The recipient must take a proactive action to indicate their express consent (in other words, express consent must be obtained through an opt-in mechanism, e.g. signing up at your website). Remember that an electronic message that contains a request for express consent is also considered to be a CEM under CASL and therefore is not a method through which express consent can be obtained. Express consent is not time-limited: once express consent is obtained you are able to send CEMs until the recipient notifies you that they no longer want to receive them. For more information on requirements for obtaining express consent, please see [Compliance and Enforcement Information Bulletin CRTC 2012-549](#).

You may rely on implied consent for sending CEMs if it is done under certain conditions, as set out in [section 10\(9\)](#) of CASL. This may include having an existing business relationship (EBR) based on a previous commercial transaction with the recipient; or having an existing non-business relationship based on, for example, membership in your club, or if the recipient participated as a volunteer for your charitable organization; or where a person makes their email address publicly available by publishing it on a website. In the latter case, this conspicuous publication of their email address must not be accompanied by a statement indicating they do not want to receive CEMs at that address. If the statement is not present, in order to send a CEM, the message must relate to the recipient’s business role, functions or duties in an official or business capacity. There is a time-limitation attached to the life of the implied consent (more on this below).

If your situation does not meet the categories of implied consent set out in CASL, then you cannot rely on implied consent to send CEMs. The only way to obtain express consent via e-mail is if you have implied consent to send the message.



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What are our obligations as non-profits and charities under CASL?

Non-profits will need written or oral consent before sending any commercial messages, or before adding people to their permanent mailing lists. As well, any commercial emails will need to include the organization’s address, telephone or email to identify the organization, and an unsubscribe option.

A great way to manage an unsubscribe feature is to use an external email marketing service, such as [MailChimp](#), [Constant Contact](#) or [Vertical Response](#), to name a few.

The 4-H Ontario head office uses MailChimp. For smaller mailing lists MailChimp does offer a free package [“Forever Free”](#) which includes up to 2,000 subscribers and 12,000 emails per month.

Additional Information for creating sign up forms from your lists in MailChimp

<http://kb.mailchimp.com/lists/signup-forms/how-the-form-builder-works>

Statutory Exceptions

CASL provides for several exemptions to the consent and form of message requirements.

Exceptions include messages:

- Sent by an individual to an individual with whom they have a **personal or family** relationship
“Personal relationship” means direct, voluntary two-way communications, where it is reasonable to conclude the relationship is personal, and there is no indication that recipients don’t want to receive CEMs. “Family relationship” means marriage, common law and parent child
- CEMs **sent to businesses**, namely CEMs:
 - Sent to a business, where the message consists solely of a related inquiry/application or that business’ response
 - Internal CEMs concerning affairs of that organization
 - External business-to-business CEMs, where (1) there is a “relationship”, and (2) the message concerns the affairs of organization or recipient employee, representative, consultant or franchisee’s role, duties or functions
- Sent by or on behalf of a registered charity, where the primary purpose is fundraising

What Does This Mean For You?

As a best practice it is highly recommended to conduct your communications through the use of one of the email marketing solutions mentioned previously. These services will not only track your campaigns’ success (open rate, reads, etc), but will provide you a simple way for recipients to unsubscribe should they wish to.

FAQs

1. What does CASL require me to do?

- a. Basically CASL requires you to obtain consent (either implied or express) from anyone you are contacting electronically.

2. Can I still contact our active Participants in our Association?

- a. Yes. Active Participants fall under the “implied consent” category. Since they are part of our organization you essentially have a safe assumption they would like to receive communications from you. However. They do still have the right to *not* receive



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communications electronically from you as well. While this may be an unlikely scenario, if the request is made, it must be granted. See the following questions for more.

3. What happens once a Participant graduates or completes their volunteer term?

- a. Implied consent only lasts for 2 years from this time. So if a member graduates on December 31, 2017, you may still contact them for two years unless they request otherwise. However, as of January 1, 2020, you **may not** contact this person anymore. The period of implied consent will now have passed and you can only contact them if you have received “express consent”. However if this person does some volunteer work for you or makes a donation to 4-H, this two-year period of implied consent starts over from the end of this date. Express consent can be obtained either electronically (preferred), by a paper sign up form, or even verbally. However by paper or verbally will require a bit more work and would be harder to prove if needed. This scenario would be the same for a graduating volunteer. Once express consent is received, it is indefinite unless someone unsubscribes.

4. When should I get Express Consent?

- a. For Participants, as soon as they complete their tenures in the program and become alumni. Once you receive express consent you will not have to worry about the implied consent period ending. You could even send this message now to obtain express consent to your existing members and volunteers asking for their express consent to continue to receive electronic messages from you. You just run the risk of them choosing to opt out. It is important to note that someone can’t automatically be added to a new general list without their consent (i.e. graduating member automatically added to an alumni list). It is also important to note that if someone does not reply to your request for express consent, that does not count as not consenting. (Not saying “No”, does not mean “Yes”).
- b. For anyone else in your contact list, you should receive express consent as soon as possible. Maybe this is new alumni members, potential donors or local businesses you do work with in the community regularly. Many of these people you may already have implied consent from if you’re regularly communicating with them. However receiving their express consent will allow you not to worry about the implied consent period ending.

5. Why use an Email Marketing Service?

- a. This will allow recipients to easily unsubscribe should they choose and will save you time in manually removing and tracking who has requested to no longer be contacted. You can create a form to accept and track who has provided consent.

6. Can I still send traditional emails to large numbers of recipients?

- a. Yes. However this is not viewed as best practice. Oftentimes when sending large mass emails your message may be auto marked as spam. You will need to include in these messages the following: Who the message is from, a way to contact the sender(s), and provide a simple method of unsubscribing should they choose. Should they choose to unsubscribe by contacting you and making this request, you must remove them from the list within 10 days.

7. What about my monthly newsletters?

- a. Do continue to send these. Just ensure the people receiving them have a way to opt-out of unsubscribe and that it is done within 10 days. Also ensure you clean up your list and remove anyone who has passed the two year implied consent period and who you have not since received express consent from.



8. What about the Not-For-Profit/Charity exemption?

- a. CEMs sent by or on behalf of registered charities are exempt from CASL IF the message is for the primary purpose of raising funds for the charity.

9. Are there some examples of this?

- a. Where the primary purpose is raising funds:

Example 1: A CEM, sent by or on behalf of a charity, which promotes an event and/or the sale of tickets for an event – such as a dinner, golf tournament, theatrical production or concert or other fundraising event – where the proceeds from ticket sales flow to the registered charity.

Example 2: A registered charity sends, by e-mail, a newsletter, which provides information about the charity's activities or an upcoming campaign, and does not contain any material that seeks to encourage the recipient to participate in a commercial activity, then the message would not be a CEM for the purpose of CASL.

Example 3: A registered charity sends, by e-mail, a newsletter which provides information about the charity's activities or an upcoming campaign, but which also contains a section which solicits donations and may also mention corporate sponsors who supported the charity (but does not encourage the recipient to participate in a commercial activity with that sponsor). While this message may be considered a CEM under CASL, the primary purpose of the message may be viewed as raising funds; therefore, the exemption in the GiC Regulations would apply.

- b. Where the primary purpose is **not** raising funds:

Example: A registered charity sends, by e-mail, a newsletter, which provides information about the charity's activities or about a particular social issue. If this e-mail also advertises the corporate sponsors of a charity's event and encourages the recipient to participate in a commercial activity with that sponsor, then section 6 of the CASL may apply without any exemption. The primary purpose of the message may not be to raise funds for the charity.

Additional Resources

[Fight Spam – fightspam.gc.ca](http://fightspam.gc.ca)

[CASL Express Consent Paper Form](#)

[Sample text/form for use on a website or in an email – harrisonpensa.com/casl](http://harrisonpensa.com/casl)

[CASL Power Point Presentation – Zemel van Kampen. Provided by TechSoup Canada](#)

[CASL Power Point Presentation – David Young. Provided by Canadahelps](#)