



Canada's Anti-Spam Legislation (CASL) – A Basic Introduction

By Mark Blumberg and Maddy Sawyer (October 4, 2024)

Canada's Anti-Spam Legislation¹ ("CASL") is Federal legislation that "protects consumers and businesses from the misuse of digital technology, including spam and other electronic threats." It is a complicated piece of legislation that applies to commercial electronic messages ("CEM") that are either sent from, or accessed on, a computer system in Canada, unless an exemption applies.

It is important to ensure that your organization is familiar with the rules and regulations under CASL. Many non-profit organizations and registered charities think that CASL does not apply to them, but while there are some exemptions for charities, CASL does not have a blanket exemption for non-profit organizations and registered charities. Therefore, CASL does apply to non-profit organizations and registered charities.

What are Commercial Electronic Messages?

A CEM is broadly defined as an electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit. CASL applies to non-profit organizations and registered charities and includes messages sent by any means of telecommunication including text, sound, voice or image.

CEMs Content

CASL regulates the content of CEMs, so even where a CEM does not require consent or implicit or explicit consent has been obtained, each CEM sent to recipients must contain the following information:

¹ 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 (S.C. 2010, c. 23).

- Identity of the sender;
- Contact information of the sender (mailing address and telephone number, email address, or web address); and
- Unsubscribe mechanism that is valid for a minimum of 60 days after the message is sent.

If an organization receives an unsubscribe request, it must act on the request within 10 business days.

We would recommend that organizations ensure that their unsubscribe mechanisms are easily accessible and visible. Some organizations make such mechanisms hard to read (using small fonts, colours similar to the background of the message, etc.). Such practices can negatively impact the reputation and good will of your organization.

Organizations are also responsible for ensuring that any third party sending electronic messages on the organization's behalf are complying with CASL. Contracts between the organization and the third party should include the requirement that the third party be compliant with CASL.

Raising Funds Exemption

CASL will not apply to electronic communications if the message is not a CEM, or if the message is a CEM, but an exemption applies. One such exemption applicable to Canadian registered charities is:

- If the message is sent by or on behalf of a registered charity and has the **primary** purpose of **raising funds**.

This exemption does not apply to non-profits that are not registered charities.

Therefore, Canadian registered charities are permitted to send electronic messages such as emails, where the message has as its **primary** purpose raising funds for the charity. In these cases, the charity does not need to have explicit or implicit consent, provided no other element of the electronic message would cause the message to be considered to be a CEM. However, if the charity is sending a message that includes many different points, only one of which is to raise funds for the charity, this message may not be exempt, and the charity may not be able to rely on the exemption as it is questionable whether the primary purpose of the message is raising funds.

Explicit and Implicit Consent

CASL will permit CEMs to be sent where consent has been obtained and the message contains prescribed information. Consent under CASL can be explicit or implicit. To obtain

explicit consent under CASL the recipient must opt-in, the request must contain information on the purpose for consent, identify the sender (name, address/phone number or email) and notify the member that consent can be withdrawn.

Implicit consent from a non-business relationship may include:

- A donation or gift to a registered charity, a political party or organization or a person who is a candidate for publicly elected office for a two-year period following the donation or gift;
- Volunteer work performed for a registered charity, a political party or organization or a person who is a candidate for publicly elected office for a two-year period following termination; or
- Membership in a club, association or voluntary organization, as defined in the Regulations, for a two-year period following termination.

Even though CASL permits using both implicit and explicit consent to send CEMs, we would note that, as a good practice, organizations should strive to obtain explicit consent as much as possible. Explicit consent is the gold standard of consent and much more valuable in the long term for an organization to have. For some charities one of their most valuable assets are their reputation and their email list.

If you have implicit consent because a donor donated to your charity, that will expire in 2 years. You will then need to be careful to ensure that unless the donor has donated again, they are removed from your list and not sent a CEM. The same applies to members and volunteers that you need to watch the 2-year period and remove them. This is a lot of work. It is easier in the long run to focus on explicit consent.

There is a mistaken belief that having a bigger email list is better than a smaller email list. This is not always the case. If you have a large email list and very few people are opening the emails, some platforms may consider your emails to be spam, and they will not be delivered. Also, some people may be aggravated by being contacted by your charity, even if legal, and it could depreciate your good will.

Final Thoughts

Despite the complexity of CASL, some of the most straightforward and simple parts of legislation are considered to be good practice when sending emails. In particular, the inclusion of proper unsubscribe mechanisms that are available and easy to use in all emails sent to recipients. Organizations should also review their email lists and take a more segmented and directed approach to the use of emails. Making an effort to send emails that relate to the interests of the recipients and also align with the desired

frequency of receiving emails will result in a better relationship between organizations and their supporters.

For more information on CASL, its application and its requirements, please refer to the Government of Canada's website *Canada's Anti-Spam Legislation* at <https://fightspam-combattrelepourriel.ised-isde.canada.ca/site/canada-anti-spam-legislation/en>.

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