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CANADA'S ANTI-SPAM LEGISLATION (CASL): Compliance Map of the Consent, Content and Form Requirements for Commercial Electronic Messages[1]

Is the message a "**commercial electronic message**"? (Section 1(2)).

NO → CASL does not apply.

YES

Is the "**commercial electronic message**" being sent to an "**electronic address**"? (Section 6(1)).

NO → CASL does not apply.

YES

Does the "**commercial electronic message**" fall under an **exception** to CASL's consent requirement?

YES → Consent is **not** required and the commercial electronic message does not need to comply with Section 6(2) form/content.

NO → Does the commercial electronic message solely:

(a) provide a quote or estimate for the supply of a product, goods, a service, land or an interest or right in land, if the quote or estimate was requested by the recipient;

(b) facilitate, complete or confirm a commercial transaction that the recipient previously agreed to enter into with the sender;

(c) provide warranty information, product recall information or safety or security information about a product, goods or a service that the recipient uses, has used or has purchased;

(d) provide notification of factual information about: (i) the ongoing use or ongoing purchase by the recipient of a product, goods or a service offered under a subscription, membership, account, loan or similar relationship by the sender, or (ii) the ongoing subscription, membership, account, loan or similar relationship of the recipient;

(e) provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, is currently participating or is currently enrolled;

(f) deliver a product, goods or a service, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that they have previously entered into with the sender; or

(g) communicate for a purpose specified in the regulations? (Section 6(6)).

YES → Consent is **not** required but the commercial electronic message **must comply** with Section 6(2) form/content.

Proceed to Page 3

NO → Is the commercial electronic message the first commercial electronic message that is sent by a person for the purpose of contacting the individual to whom the message is sent following a referral by any individual who has an existing business relationship, an existing non-business relationship, a family relationship or a personal relationship with the person who sends the message as well as any of those relationships with the individual to whom the message is sent and that discloses 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? (IC Regs, s.4(1)).

YES → Consent is **not** required but the commercial electronic message **must comply** with Section 6(2) form/content.

Proceed to Page 3

NO

Proceed to Page 2

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"A **commercial electronic message**" is 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 (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. (Section 1(2)).

An electronic message that contains a request for consent to send a message of the type described above is also considered to be a commercial electronic message. (Section 1(3)).

"**Electronic message**" means a message sent by any means of telecommunication, including a text, sound, voice or image message. (Section 1(1). See also (Section 6(4)).

"**Commercial activity**" means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit, other than any transaction, act or conduct that is carried out for the purposes of law enforcement, public safety, the protection of Canada, the conduct of international affairs or the defence of Canada. (Section 1(1)).

"**Electronic address**" means an address used in connection with the transmission of an electronic message to (a) an electronic mail account; (b) an instant messaging account; (c) a telephone account; or (d) any similar account. (Section 1(1)).

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Is the commercial electronic message:

(a) sent by or on behalf of an individual to another individual with whom they have a personal or family relationship;

(b) sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity;

(c) of a class, or is sent in circumstances, specified in the regulations (Section 6(5));

(d) in whole or in part an interactive two-way voice communication between individuals;

(e) sent by means of a facsimile to a telephone account;

(f) a voice recording sent to a telephone account (Section 6(8));

(g) sent by an employee, representative, consultant or franchisee of an organization (i) to another employee, representative, consultant or franchisee of the organization and the message concerns the activities of the organization, or (ii) to an employee, representative, consultant or franchisee of another organization if the organizations have a relationship and the message concerns the activities of the organization to which the message is sent;

(h) sent in response to a request, inquiry or complaint or is otherwise solicited by the person to whom the message is sent;

(i) sent to a person (i) to satisfy a legal or juridical obligation, (ii) to provide notice of an existing or pending right, legal or juridical obligation, court order, judgment or tariff, (iii) to enforce a right, legal or juridical obligation, court order, judgment or tariff, or (iv) to enforce a right arising under a law of Canada, of a province or municipality of Canada or of a foreign state;

(j) sent and received on an electronic messaging service if the information and unsubscribe mechanism that are required under subsection 6(2) (see Page 3) are conspicuously published and readily available on the user interface through which the message is accessed, and the person to whom the message is sent consents to receive it either expressly or by implication;

(k) sent to a limited-access secure and confidential account to which messages can only be sent by the person who provides the account to the person who receives the message;

(l) sent by or caused or permitted to be sent by a person who reasonably believes the message will be accessed in a foreign state that is listed in the schedule (see Page 3) and the message conforms to the law of the foreign state that addresses conduct that is substantially similar to conduct regarding unsolicited electronic messages prohibited under the Act;

(m) 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; or

(n) 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 the *Canada Elections Act*? (IC Regs, s.3).

"**Family relationship**" means the relationship between an individual who sends a message and the individual to whom the message is sent if those individuals are related to one another through a marriage, common-law partnership or any legal parent-child relationship and those individuals have had direct, voluntary, two-way communication. (IC Regs, s.2(a)).

"**Personal relationship**" means the relationship between an individual who sends a message and the individual to whom the message is sent, if those individuals have had direct, voluntary, two-way communications and it would be reasonable to conclude that they have a personal relationship, taking into consideration any relevant factors such as the sharing of interests, experiences, opinions and information evidenced in the communications, the frequency of communication, the length of time since the parties communicated or whether the parties have met in person. (IC Regs, s.2(a)).

1 Bill C-28 received Royal Assent on December 15, 2010 and the Canadian Radio-television and Telecommunications Commission regulations ("CRTC Regs") were finalized in March 2012. Industry Canada draft regulations ("IC Regs") were finalized in December 2013. Not intended to be legal advice. Excerpt from Anti-Spam Legislation Content Hub in AccessPrivacy.com private sector source subscription-based website.

CANADA'S ANTI-SPAM LEGISLATION (CASL): Compliance Map of the Consent, Content and Form Requirements for Commercial Electronic Messages[1]

Is there **implied consent** to send the commercial electronic message? (Section 10(9)).

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Is there an "**existing business relationship**"? (Section 10(9)(a)). — YES → Consent is implied and the commercial electronic message must comply with Section 6(2) form/content. See page 3.

↓ NO

Is there an "**existing non-business relationship**"? (Section 10(9)(a)). — YES → Consent is implied and the commercial electronic message must comply with Section 6(2) form/content. See page 3.

↓ NO

Has the recipient conspicuously published, or has caused to be conspicuously published, the electronic address to which the message is sent, the publication is not accompanied by a statement that the person does not wish to receive unsolicited commercial electronic messages at the electronic address and the message is relevant to the person's business, role, functions or duties in a business or official capacity? (Section 10(9)(b)). — YES → Consent is implied and the commercial electronic message must comply with Section 6(2) form/content. See page 3.

↓ NO

Has the recipient disclosed, to the person who sends the message, the person who causes it to be sent or the person who permits it to be sent, the electronic address to which the message is sent without indicating a wish not to receive unsolicited commercial electronic messages at the electronic address, and the message is relevant to the person's business, role, functions or duties in a business or official capacity? (Section 10(9)(c)). — YES → Consent is implied **and** the commercial electronic message must comply with Section 6(2) form/content. See page 3.

↓ NO

Is the commercial electronic message sent in the circumstances set out in the regulations? (Section 10(9)(d)). — YES → Consent is implied **and** the commercial electronic message must comply with Section 6(2) form/content. See page 3.

↓ NO

Express consent is required to send a commercial electronic message. (Section 6(1)(a)). → The commercial electronic message must comply with Section 6(2) form/content. See page 3.

? "**Existing business relationship**" means a business relationship between the person to whom the message is sent and any person who sent or caused or permitted to be sent the message — arising from:

(a) the purchase or lease of a product, goods, a service, land or an interest or right in land, within the two-year period immediately before the day on which the message was sent, by the person to whom the message is sent from any of those other persons;

(b) the acceptance by the person to whom the message is sent, within the two-year period immediately before the day on which the message was sent, of a business, investment or gaming opportunity offered by any of those other persons;

(c) the bartering of product, goods, a service, land or an interest or right in land between the person to whom the message is sent and any of those other persons within the two-year period immediately before the day on which the message was sent;

(d) a written contract entered into between the person to whom the message is sent and any of those other persons in respect of a matter not referred to in any of paragraphs (a) to (c), if the contract is currently in existence or expired within the two-year period immediately before the day on which the message was sent; or

(e) an inquiry or application, within the six-month period immediately before the day on which the message was sent, made by the person to whom the message is sent to any of those other persons, in respect of anything mentioned in any of paragraphs (a) to (c). (Section 10(10). See also Section 10(11)).

? "**Existing non-business relationship**" means a non-business relationship between the person to whom the message is sent and any person who sent or caused or permitted to be sent the message — arising from:

(a) a donation or gift made by the person to whom the message is sent to any of those other persons within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity, a political party or organization, or a person who is a candidate for publicly elected office;

(b) volunteer work performed by the person to whom the message is sent for any of those other persons, or attendance at a meeting organized by that other person, within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity, a political party or organization or a person who is a candidate for publicly elected office; or

(c) membership by the person to whom the message is sent, in any of those other persons, within the two-year period immediately before the day on which the message was sent, where that other person is a club, association or voluntary organization. (Section 10(13)).

"Membership" is the status of having been accepted as a member of a club, association or voluntary organization in accordance with its membership requirements. (IC Regs, s.7(1)).

"Club, association or voluntary organization" is a non-profit organization that is organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any purpose other than personal profit, if no part of its income is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of that organization unless the proprietor, member or shareholder is an organization whose primary purpose is the promotion of amateur athletics in Canada. (IC Regs, s.7(2)).

Where a **period** is specified in relation to the purchase or lease of a product, goods, a service, land or an interest or right in land, or in relation to a donation, gift or membership,

(a) in the case of a purchase, lease, donation or gift, if it involves an ongoing use or ongoing purchase under a subscription, account, loan or similar relationship, the period is considered to begin on the day that the subscription, account, loan or other relationship terminates; and

(b) in the case of a membership, the period is considered to begin on the day that the membership terminates. (Section 10(14)).

A person who seeks express consent must, when requesting consent, set out clearly and simply, orally or in writing, the following information:

(a) the purpose or purposes for which the consent is being sought;

(b) prescribed information that identifies the person seeking consent and, if the person is seeking consent on behalf of another person, prescribed information that identifies that other person:

- the name by which the person seeking consent carries on business, if different from their name, if not, the name of the person seeking consent; (CRTC Regs, s.4(a)).
- if the consent is sought on behalf of another person, the name by which the person on whose behalf consent is sought carries on business, if different from their name, if not, the name of the person on whose behalf consent is sought; (CRTC Regs, s.4(b)).
- if consent is sought on behalf of another person, a statement indicating which person is seeking consent and which person on whose behalf consent is sought; (CRTC Regs, s.4(c)).
- the mailing address, and either a telephone number providing access to an agent or a voice messaging system, an email address or a web address of the person seeking consent or, if different, the person on whose behalf consent is sought; (CRTC Regs, s.4(d)).
- a statement indicating that the person whose consent is sought can withdraw their consent. (CRTC Regs, s.4(e)).

(c) any other prescribed information (Section 10(1)).

A person who obtained express consent on behalf of a person whose identity was unknown may authorize any person to use the consent on the condition that the person who obtained it ensures that, in any commercial electronic message sent to the person from whom consent was obtained:

(a) the person who obtained consent is identified; and

(b) the authorized person provides an unsubscribe mechanism that, in addition to meeting the requirements set out herein (Section 11), allows the person from whom consent was obtained to withdraw their consent from the person who obtained consent or any other person who is authorized to use it. (IC Regs, s.5(1)).

The person who obtained consent must ensure that, on receipt of an indication of withdrawal of consent by the authorized person who sent the commercial electronic message, the authorized person notifies the person who obtained consent that consent has been withdrawn from, as the case may be:

(a) the person who obtained consent;

(b) the authorized person who sent the commercial electronic message; or

(c) any other person who is authorized to use the consent. (IC Regs, s.5(2)).

The person who obtained consent must without delay inform any other person authorized to use the consent of the withdrawal of consent on receipt of a notification of the withdrawal of consent. (IC Regs, s.5(3)).

The person who obtained consent must give effect to a withdrawal of consent without delay and in any event no longer than 10 business days after the indication has been sent, without any further action being required on the part of the requester, and if applicable, ensure that any other person authorized to use the consent also gives effect to the withdrawal in the same manner. (IC Regs, s.5(4)).

Not intended to be legal advice. Excerpt from Anti-Spam Legislation Content Hub in AccessPrivacy.com private sector source subscription-based website.

CANADA'S ANTI-SPAM LEGISLATION (CASL): Compliance Map of the Consent, Content and Form Requirements for Commercial Electronic Messages[1]

Section 6(2) provides that the commercial electronic message must be in the prescribed form and must set out clearly and prominently:

(a) prescribed information that identifies the person who sent the message and the person – if different – on whose behalf it is sent:

- the name by which the person sending the message carries on business, if different from their name, if not, the name of the person; (CRTC Regs, s.2(1)(a)).
- if the message is sent on behalf of another person, the name by which the person on whose behalf the message is sent carries on business, if different from their name, if not, the name of the person on whose behalf the message is sent; (CRTC Regs, s.2(1)(b)).
- if the message is sent on behalf of another person, a statement indicating which person is sending the message and which person on whose behalf the message is sent; and (CRTC Regs, s.2(1)(c)).
- the mailing address, and either a telephone number providing access to an agent or a voice messaging system, an email address or a web address of the person sending the message or, if different, the person on whose behalf the message is sent. (CRTC Regs, s.2(1)(d)).

(b) information enabling the person to whom the message is sent to readily contact the sender; and

(c) an unsubscribe mechanism as described below. (Section 6(2)).

The person who sends the commercial electronic message and the person – if different – on whose behalf the commercial electronic message is sent must ensure that the contact information is valid for a minimum of 60 days after the commercial electronic message has been sent. (Section 6(3)).

If it is not practicable to include the information and the unsubscribe mechanism referred to above in a commercial electronic message, that information may be posted on a page on the World Wide Web that is readily accessible by the person to whom the message is sent at no cost to them by means of a link that is clearly and prominently set out in the message. (CRTC Regs, s.2(2)).

The unsubscribe mechanism must be set out clearly and prominently and must:

(a) be able to be readily performed. (CRTC Regs, s.3(2)).

(b) enable the person to whom the commercial electronic message is sent to indicate, at no cost to them, the wish to no longer receive any commercial electronic messages, or any specified class of such messages, from the person who sent the message or the person — if different — on whose behalf the message is sent, using (i) the same electronic means by which the message was sent, or (ii) if using those means is not practicable, any other electronic means that will enable the person to indicate the wish; and

(c) specify an electronic address, or link to a page on the World Wide Web that can be accessed through a web browser, to which the indication may be sent. (Section 11(1)). The person who sends the commercial electronic message and the person — if different — on whose behalf it is sent must ensure that the electronic address or World Wide Web page is valid for a minimum of 60 days after the message has been sent. (Section 11(2)). The person who sent the commercial electronic message and the person — if different — on whose behalf the message was sent must ensure that effect is given to an indication sent without delay, and in any event no later than 10 business days after the indication has been sent, without any further action being required on the part of the person who so indicated. (Section 11(3)).

Schedule: List of Foreign States

Albania
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Bhutan
Bosnia
Botswana
Brazil
British Virgin Islands
Bulgaria
Burkina Faso
Burma (Myanmar)
Cambodia
Cameroon
Cayman Islands
Central African Republic
Chile
China
Colombia
Costa Rica
Croatia
Cyprus
Czech Republic
Denmark
Dominica
Dominican Republic
Ecuador
Estonia
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Moldova
Montenegro
Morocco
Mozambique
Namibia
Nepal
Netherlands
New Zealand
Norway
Pakistan
Peru
Philippines
Poland
Portugal
Puerto Rico
Qatar
Romania
Russia
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Serbia
Sierra Leone
Singapore
Slovakia
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Sweden
Switzerland
Tanzania
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turks and Caicos
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States of America
United States Virgin Islands
Venezuela
Vietnam
Zambia (IC Regs, Schedule)

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