Ready or not! Canada's Anti-Spam Law: Effective July 1, 2014

The ***Do Not Call List*** has impacted how you contact potential clients by telephone. Now, as of July 1, new restrictions affect how you communicate with potential clients electronically – including email, social media and text messages.

Don't be fooled by the name! **Canada's Anti-Spam Legislation (CASL)** applies to *any* commercial electronic message which means it will affect nearly all businesses and organizations. In addition, non-compliance could result in hefty fines! We've broken down the basics to get you started.

DON'T DELAY! Obtain the consent of anyone you contact electronically about your business now! The new law requires that – except under specific circumstances – after July 1st, a **Commercial Electronic Message (CEM)** cannot be sent without the prior consent of the recipient. Consent can be ***Express*** or ***Implied***.

> **TIP: Get consent now!** After July 1st, asking for this consent electronically will be a **CEM** and sending a **CEM** to prospects and business contacts will be prohibited.

Express Consent – The preferred approach. Why?

1. It remains in effect indefinitely, unless the recipient revokes it; **2.** Can be obtained orally or in writing – but...

> **CAUTION**
>
> Under the new rules, if there's a complaint it is up to you to prove you had consent of the recipient!
>
> **Express Consent** cannot be contained in the terms and conditions attached to a product or service, or be a condition of a sale.
>
> The process must be clear, simple and sought out as a separate transaction.

Consent under **CASL** is required to be ***opt-in***, not ***opt-out***: a person giving their ***Express Consent*** must take some positive action to do so, like checking a box.

Right ▶ ❑ an unchecked box with wording *'Check here to unsubscribe'*

Wrong ▶ ☑ a checked box with wording *'uncheck this box to unsubscribe'*

Implied Consent – Implied consent is **time-limited**.

Consent may be implied if you have an "existing business relationship". Consent can also be implied in existing non-business relationships, however, since those fall outside the scope of this publication we're not dealing with those here.

Under the ***Implied Consent*** rule you can send a **CEM** ***up to 2 years*** from the date you conduct a business transaction with the person, ***or up to 6 months if someone contacts you for information about your services***. After that, if you have no further contact/transactions, you must obtain the individual's ***Express Consent*** to send any further electronic messages.

Example 1: Allan emails you on July 14, 2014 with a request for information on the services you provide. Under the ***Implied Consent*** rules, you can send him **CEM**s until January 14, 2015, at which time his implied consent expires. **6 Months**

Example 2: Allan (above), who emailed you on July 14, 2014 to request information, subsequently buys a life insurance policy from you on September 12, 2014. Now you can send him **CEM**s until September 12, 2016 **2 Years**

Example 3: Elaine buys a life insurance policy from you on March 1, 2014, and then makes another purchase through you the following year on January 19, 2015. Now you can send her **CEM**s until January 19, 2017. **2 Years**

> **TIP:** ***Implied Consent*** also exists where a recipient has "conspicuously published" their electronic address, and their address does not include a statement that they do not wish to receive unsolicited **CEM**s. This includes electronic addresses provided on business cards, for example. However, even if the address does not have a non-solicit statement, your **CEM** must relate *only* to the recipient's business or role in the company/organization.

> **CAUTION**
>
> While at first blush relying on ***Implied Consent*** could seem like the simplest approach, you will have to develop a means to track the deadlines for each of these relationships, and be able to **'scrub'** your contact list as the expiry dates arise to avoid complaints and possible fines.

Referrals – IFB successfully argued that the **CEM** rules should permit you to follow-up on a referral. However, only the first **CEM** follow up will be exempt from the consent requirement, and certain restrictions apply:

1. You must have an existing business or non-business relationship, family or personal relationship with the person providing the referral and that person would have to have a similar relationship with the person s/he is referring you to.

2. Your **CEM** must disclose the name of the person who made the referral and state that the message is sent as a follow-up to that referral.

Example: Your client, George, suggests you contact his brother about your services. You can send his brother one **CEM** as a follow up to that referral. In your initial email, you would have to state who you are, that George suggested you contact him, and you should ask his permission to contact him again (i.e. ***Express Consent***). If George's brother contacts you, no consent is required.

TIP: Since you can only contact a referral once, you should be sure to ask for their ***Express Consent*** in that first **CEM**.

Transitional rules – For contacts with whom you have an "existing business relationship", and have already been sending **CEM**s, you can rely on their ***Implied Consent*** until you receive notification they no longer consent to receiving such messages, or, until July 1, 2017, whichever is earlier. Note: the exemption only applies to contact – you still have to meet the ***Identifying Information*** rule (below) after July 1st.

Grandfathering of Privacy Consent (PIPEDA) – If you have a signed privacy consent form between you and your client, (**IFB** provides a template for members), you may be able to rely on this as qualifying as ***Express Consent***.

Identifying Information – Whether consent is ***Express***, ***Implied*** or the result of an existing business relationship, the **Act** requires that all your electronic communications contain:

- Your name and business name
- Your business mailing address (i.e. a valid street address, PO box, rural route or general delivery address)
- One of: your phone number, email address or web address
- An 'unsubscribe' feature.

Some Qs & As –

Q Are any **CEM**s exempt from **CASL**? **A YES**, including **CEM**s that are:

• sent to family or friends • responding to an inquiry, request or complaint • from registered charities/political parties for fundraising • from organizations/businesses with an existing relationship and the message relates to the activities of the recipient • legal notices.

Q Are any **CEM**s exempt from the consent requirement? **A YES**, but they are limited to **CEM**s whose only purpose falls under one of these categories:

- to provide a quote or estimate that was requested
- that facilitate, confirm or complete a commercial transaction previously agreed to
- warranty, product recalls or safety information
- factual information about a loan, subscription, account or membership
- employment-related or benefit plan information
- delivery of services or products as part of a pre-existing, agreed upon transaction.

Q I email clients and prospective clients a newsletter. Will **CASL** apply to these emails? **A YES**, as it is likely such emails would be considered to have a commercial message intended to promote you or your services. Also, if the email or newsletter contains hyperlinks to another business or product, that would make it a **CEM**. So, to send your newsletter after June 30th, you will need consent, to include your (or the sender's) contact information and an unsubscribe option. If you only send it to clients, you can continue to do so under the ***Implied Consent*** rule.

Q I am thinking of selling my practice and I have consents in place for my clients. Does the new owner need to get every client's consent again?

A Previously obtained consents can be passed to the new owner, provided they have met the current standard. Of course, when contacted by the new owner, clients will have the opportunity to withdraw their consent, as they would with any **CEM**.

For more information go to: **http://fightspam.gc.ca/eic/site/030.nsf/eng/home**

Note: CASL contains other provisions which are not covered in this Tip Sheet. This Tip Sheet is intended to summarize issues of relevance for financial advisors in the context of their business. IFB members can access more detailed information in the 'Member Only' section of the IFB website.

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