

## CASL COMPLIANCE INFORMATION SHEET

**NOTE:** This information sheet is intended to help Memorial University of Newfoundland faculty and staff understand certain aspects of CASL. It is a summarized over view of this complex new legislation and is not intended as a substitute for legal advice. If you have specific questions about CASL, please contact the Office of the General Counsel.

### What is CASL?

The new Canadian Anti-Spam Legislation (CASL) is a federal law that seeks to improve and safeguard electronic commerce by prohibiting spam, phishing and the installation of spyware/malware. Sections of CASL pertaining to spam came into force July 1, 2014. Sections of CASL pertaining to the installation of computer programs (phishing, spyware/malware) come into force January 15, 2015.

*This Information Sheet discusses CASL restrictions on the transmission of Commercial Electronic Messages (CEMs).*

### What is a Commercial Electronic Message (CEM)?

A CEM is an electronic message (sent from email accounts, text messaging accounts or any other similar account types) that “encourages participation in a commercial activity” (CASL s. 1(2)).

“Commercial activity” includes any particular transaction, act or conduct that is of a commercial nature, whether or not it is carried out for profit (CASL s. 1(1)).

An unwanted CEM is spam. CASL seeks to eliminate spam. CASL prohibits the transmission of CEMs unless:

- 1) the sender has the express or implied consent of the recipient, and
- 2) the message complies with form and content rules.

### Are there exceptions where CASL does not apply to CEMs?

Yes. If the message you intend to send falls into one of the following categories of exception, it is exempt from the CASL requirements for consent and form/content:

- 1) *Family or Personal Communications:* CEMs may be sent to family members or persons with whom the sender has a personal relationship (CASL s. 6(5)(a) and IC Regs)
- 2) *Commercial Inquiry Communications:* CEMs consisting solely of an inquiry or application related to the business of the recipient (CASL s. 6(5)(b))
- 3) *Internal Business Communications:* CEMs sent within the same organization (among employees, representatives, consultants or franchisees) as long as the messages concern the business of the organization (CASL s. 3(a)(i) and IC Regs)

- 4) *Business to Business communications*: CEMs sent between businesses that have a relationship provided that the message concerns the activities of the recipient organization (CASL s. 3(a)(ii) and IC Regs)
- 5) *Prompted Communications*: CEMs that respond to inquiries, requests or complaints, or that are otherwise solicited by the recipient (CASL s. 3(b) and IC Regs)
- 6) *Legal Communications*: CEMs sent to satisfy a legal obligation or to enforce a legal right (CASL s. 3(c) and IC Regs)
- 7) *Social Network Communications*: CEMs sent and received on electronic messaging services, provided the required information and unsubscribe mechanism are conspicuously published on the user interface, and the recipients have provided implied or express consent (CASL s. 3(d) and IC Regs). This is anticipated to apply to social networking services or to instant messaging services.
- 8) *Secure Account Communications*: CEMs sent to a limited access, secure and confidential account where only the account provider is able to send messages to the account (CASL s. 3(e) and IC Regs)
- 9) *Foreign Destination Communications*: a CEM sent with the reasonable expectation that the message will be accessed in a foreign state having similar anti-spam laws and the message is in compliance with those laws (CASL s. 3(f) and IC Regs).
- 10) *Charity Fundraising Communications*: a CEM sent by or on behalf of a registered charity where the message has the prime purpose of fund raising for that charity (CASL s. 3(g) and IC Regs)
- 11) *Political Solicitation Communications*: a CEM sent by or on behalf of a political party or organization, with the primary purpose of soliciting contributions (CASL s. 3(h) and IC Regs)

**My CEM fits into one of the categories of exception. Can I send it?**

Yes. Your message will not be required to follow the CASL rules.

**My CEM does not fit into one of the categories of exception. Can I send it?**

Only if you have implied or express consent, and follow the form and content rules.

**What are the form and content rules?**

Form and content rules require all CEMS to set out “clearly and simply” the following information (CASL s. 10(1) and CRTC Regs):

- 1) the identity/business name of the person sending the CEM, and (if different) the identity/business name of the person on whose behalf the CEM is sent;
- 2) if the CEM is sent on behalf of another person, a statement is required as to who is sending the CEM and on whose behalf the CEM is sent;
- 3) contact information including mailing address and either a phone number or email/web address for person sending (or, if different, for person on whose behalf message is sent). This information must enable the recipient to readily contact one of such persons (CASL s. 6(2)), and must be valid for 60 days after transmission (CASL s. 6(3));
- 4) an unsubscribe mechanism with an electronic address or web link that may be “readily performed.” The unsubscribe mechanism must be valid for 60 days, and an unsubscribe request must be acted upon as soon as possible, and no longer than 10 business days after receipt of request (CASL s. 11(1)-(3)).

### **What is Implied Consent?**

There are a number of categories of Implied Consent. CASL permits the transmission of CEMs to recipients for whom we have implied consent as long as the CEM meets the form and content rules (see above). The categories of Implied Consent include:

- 1) *Existing Business Relationship*: within the last two years, any purchase or lease of products or services, acceptance of business or investment, bartering; or contract for such things; or within the last six months, an inquiry or application made from the CEM recipient in connection with any such business transaction;
- 2) *Existing Non-business Relationship*: within the last two years, the recipient has made a donation of time or money to a registered charity, political party, organization or candidate, or membership in a club, volunteer organization or association;
- 3) *Conspicuous Publication*: the recipient has published their email address, or has disclosed their address to the sender, without indicating that they do not wish to receive CEMs, and the CEM being sent is relevant to their business or undertaking.

### **What is Express consent?**

Express consent is obtained by asking for it. Express consent, when obtained, will last until it is withdrawn by the recipient. The task is to convert Implied Consent into Express Consent by making a request that follows the CASL requirements for form and content.

A request for Express Consent must “clearly and simply” set out the following information (CASL s. 10(1) and CRTC Regs):

- 1) the purpose for which consent is being sought;
- 2) the identity of the person seeking consent and, if different, the person on whose behalf consent is sought, as well as an indication as to which person is which;

- 3) the mailing address and either a phone number or email/web address for the person requesting (or if different, the person on whose behalf the request is made);
- 4) a statement that consent granted may also be withdrawn;
- 5) an “opt-in” mechanism to express consent (not “opt-out”)
- 6) an unsubscribe mechanism with an electronic address or web link that may be readily performed.

Express consent requests should be made separately for specific acts. They must not be bundled into service agreements, nor may they be made in such a way that the subject matter of the requested consent is unclear.

*Please see Appendix One for examples of acceptable Express Consent Request forms.*

### **What are the Penalties for failure to comply with CASL?**

The legislation provides for Administrative Monetary Penalties of up to \$1 million for an individual, and up to \$10 million for an organization (like MUN) per occurrence. (CASL s. 24)

Directors and officers may be liable for the actions of organizations for which they are responsible, and employers may be liable for the action of their employees. (CASL s. 32)

### **How do we avoid these penalties?**

A Due Diligence defence is available if the sender can demonstrate established policies and practice for compliance. (CASL s. 33)

### **Is there any good news?**

YES. The legislation establishes a transition period of three years (July 1 2014 until July 1 2017) during which time there will be implied consent for sending CEMs to recipients where there is an existing business relationship or an existing non-business relationship without regard to when the relationship may have last been active, as long as the recipient does not withdraw consent and the relationship has included the transmission of CEMs.

### **What to do?**

- 1) Create an implementation team who will review and assess current CEM practices. Determine for whom we have Implied Consent. We need to track and identify sources of consent and when they were received. (In case of a dispute it is our responsibility to show that we have consent.) Establish this data base.
- 2) Review and update CEM templates to be sure they meet CASL form and content requirements.
- 3) Set timeline and priorities to convert Implied Consent into Express Consent.

- 4) Develop policies and guidelines for staff training.

### **Questions?**

The new regime is complex, with many exceptions and qualifications. What I have presented here is a simple overview that is intended to give some initial guidance. Please consider the information supplied here, apply it to your particular situation, and contact this office with any questions you may have.

I may be reached at:

***M. Gerard Quigley***

Associate General Counsel

Office of the General Counsel

AA 1044

Memorial University

St John's, NL

Tel. 709-864-7695

[mgquigley@mun.ca](mailto:mgquigley@mun.ca)

## SCHEDULE A

### Form and Content Rules

Requests for Express Consent must contain the following information:

- (a) The subject matter of the message for which consent is sought;
- (b) The business name of the individual seeking consent (this will often be the Memorial University department/faculty seeking consent);
- (c) The following contact information for the person/department/faculty seeking consent:
  - mailing address
  - telephone number and/or email address and/or web address; and
- (d) the CEM must state that consent granted may be withdrawn at any time.

NOTE: Contact information and unsubscribe mechanism must be valid for 60 days following transmission.

Request for Express Consent, example #1

Do you want to keep up to date with *[subject matter of CEM]* offered by Memorial University of Newfoundland *[insert faculty or unit]*? By signing up to receive our messages, you will never get left behind. Just fill in your name and email address below and click "Submit." You may withdraw your consent at any time. Refer to our privacy policy or contact us *[provide Hyperlinks]* for more details.

Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

SUBMIT

If you no longer wish to hear from us, click [here](#) to be removed from our mailing list.

Request for Express Consent, example #2\*

Yes! Keep me in the loop! I want to receive messages about *[subject matter of CEM]* offered by Memorial University of Newfoundland *[insert faculty or department]*

NOTE: You may withdraw your consent at any time.

For information about our privacy policy go to *[provide hyperlinks]*

To contact us, go to *[provide hyperlinks]*

If you no longer wish to hear from us, click [here](#) to be removed from our mailing list.

**\*IMPORTANT:** Note that the “Yes!” box has not been pre-checked. Express consent must be “opt-in.”

**ALL OTHER CEMs** must contain the following information:

- (a) the identity/business name of the person sending the message, and (if different) the identity/business name of the person on whose behalf consent is sought, with a statement indicating which person is which;
- (b) Contact information including a mailing address and either a phone number or an email /web address of the person sending the CEM, or (if different) for the person on whose behalf the CEM is sent; and
- (c) An unsubscribe mechanism with an email address or a web link that may be “readily performed.”

**NOTE:** Contact information and unsubscribe mechanism must be valid for 60 days following transmission. An unsubscribe request must be effected within ten business days of its receipt.

Unsubscribe mechanism, example #1 (email message – unsubscribe by email)

We are attaching the latest “That’s Deep!!!” newsletter about research at Memorial University of Newfoundland. We hope you will enjoy it!

If you no longer wish to receive this newsletter, you may unsubscribe by forwarding this email to [unsubscribe email address] with a message asking us to remove you from our mailing list.

Unsubscribe mechanism, example #2 (email message - unsubscribe using a link to web page)

We are attaching the latest “That’s Deep!!!” newsletter about research at Memorial University of Newfoundland. We hope you will enjoy it!

If you no longer wish to receive this newsletter, click [here](#) to be removed from our mailing list.

Unsubscribe mechanism, example #3 (text message)

See the latest “That’s Deep!!!” newsletter from Memorial University of Newfoundland at [www.provehit.in.altum.ca](http://www.provehit.in.altum.ca).

Text STOP or click [here](#) to unsubscribe.

Unsubscribe mechanism, example #4 (unsubscribe from a webpage)

Unsubscribe request

I wish to be removed from the mailing list for the monthly newsletter "That's Deep!!!" published by Memorial University of Newfoundland.

**UNSUBSCRIBE**



## SCHEDULE B

### CASL: WHAT TO DO....

- 1) Review existing mailing lists to determine where we have implied consent. Ask yourself:
  - Is there an existing business relationship? (and have we sent them CEMs in the past?)
  - Is there an existing non-business relationship? (and have we sent them CEMs in the past?)

If the answer to one of the questions above is yes, we have implied consent for that recipient. Identify and record instances of Implied Consent established before July 1 2014: it will be effective until July 1, 2017.

Implied Consent received after July 1 2014 is good for only two years, because it will not have the benefit of the transition period.

- 2) Ensure that CEMs meet CASL form and content requirements. CEMs that meet these requirements may be sent to recipients for whom we have Implied Consent.
- 3) Establish a plan to convert Implied Consent into Express Consent during the currency of existing Implied Consent.
- 4) Contact this office with any questions you have along the way, and for review of your plan as you devise it. My contact information follows:

***M. Gerard Quigley***  
Associate General Counsel  
Office of the General Counsel  
AA 1044  
Memorial University  
St John's, NL  
Tel. 709-864-7695  
[mgquigley@mun.ca](mailto:mgquigley@mun.ca)