



UNIVERSITY
OF MANITOBA

Office of Legal Counsel

CANADA'S ANTI-SPAM LEGISLATION A GUIDE TO SENDING EMAILS - Are you compliant?

For More information see CASL FAQ's

What is Canada's Anti-Spam Legislation - CASL?

CASL prohibits organizations from sending commercial electronic messages unless the recipient has given express consent or the message falls into one of the closed categories where consent is implied.

Step 1 - Review your message.

The legislation only applies to commercial electronic messages. Review whether your message fits the definition of a commercial electronic message.

The term "electronic message" includes emails, text messages and specific individual Facebook messages (not social media posts).

A "commercial electronic message" is an electronic message that is sent to an electronic address which has as one of its purposes to encourage participation in commercial activity.

The term "commercial activity" is very broadly defined as "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".

Some Examples of University activities that would be considered commercial activities are:

1. Speaking series, Concerts and Plays (if we are charging entry fees or selling tickets for the event);
2. Promotion and sale of products and services by the University Bookstore unrelated to course requirements;
3. Promotion and sale of publications;

4. Promotions of third party commercial services and co-branded products (e.g. preferential credit card rates for alumni);
5. Promotion of co-sponsored or private sector sponsored conferences, workshops or events;
6. Student recruitment;
7. Promotion of new courses or academic programs or opportunities to prospective students and the general public;
8. Solicitation for sponsorship;
9. Mini U;
10. Promotion of recreational facilities, activities or clubs.

If your message is commercial in character, you may only send the message if you have consent from the recipient (or an exemption). Consent must be obtained as directed under the Act.

Step 2- Do you have an Exemption from the requirements in CASL?

CASL has a total of 11 complete exemptions. For a complete list, contact the Office of Legal Counsel. Important exemptions are listed below

1. **Personal or Family relationship.**

CASL states 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"

2. **Business to Business** -There are two business to business exemptions:

- a. The first is an exemption for messages sent within an organization by an employee/agent of that organization and that concerns the activities of that organization.
- b. The second is an exemption for messages sent by an employee, representative, franchisee or contractor of an organization to another employee, representative, franchisee or contractor from another organization, to the extent that the organizations "have a relationship" at the time the message was sent and the message concerns the activities of the recipient organization.

3. **Registered Charities**

Messages that are primarily fundraising solicitations by registered charities are exempt from CASL. The University is a registered charity.

4. **Third Party Referral**

There is an exception which allows an individual to send **one** commercial electronic email to a third party who has been referred to you by a person, and that person has a relationship with the third party. When sending this type of email you must identify the referring person in the content of your email to the third party.

There is an exemption under CASL if you are sending a commercial electronic message to a foreign jurisdiction and you are compliant with the laws of that jurisdiction. If you do not know whether you are compliant with that specific jurisdiction, then CASL applies.

Step 3- Do you have Consent?

NOTE: An electronic message that requests consent to send a commercial electronic message is deemed to be a commercial electronic message and will be prohibited after July 1, 2014.

CASL recognizes that there are two kinds of consent:

1. Implied Consent
2. Express Consent

Implied Consent

Implied consent means that you have not asked permission to send the CEM, but consent is implied based on the type of relationship the University has with the recipient. The University has implied consent:

1. when there is an 'existing business relationship' or an 'existing non-business relationship'; or
2. when the recipient has "conspicuously published" the electronic address without a statement that the person does not wish to receive unsolicited CEMs AND the message is relevant to the person's business, role, functions or duties in a business or official capacity; or
3. when the recipient has disclosed, to the person who sends the message, the electronic address without indicating a wish not to receive unsolicited CEMs, AND the message is relevant to the person's business, role, functions or duties in a business or official capacity (example: handing out of business card with and email address).

Implied Consent from a Business Relationship:

The following would have a business relationship:

1. students/ prospective students
2. person/ business under contract with the University
3. users paying for goods and services
4. individuals leasing/renting the University's facilities
5. suppliers of goods and services to the University

6. individuals who have inquired about, or applied, to enter into a business relationship with the University (you have consent for 6 months after the enquiry)

Implied Consent from a Non-Business Relationship:

The following would have a non-business relationship:

1. students/ prospective students
2. volunteers
3. alumni members
4. donors to the University
5. active members of clubs or associations (and the CEM relates to that club or association)

Implied consent normally lasts for two years. For example, if somebody donated money to the university, you have a non-business relationship with them, which gives you their implied consent to send them CEMs for the next two years (or until they unsubscribe). After two years, that implied consent expires and no further CEMs may be sent.

If the person unsubscribes before the two year period is up, then we do not have consent to send them any further CEM's unless they provide written consent or enter into another business or non-business relationship with the University that renews our implied consent.

If you have somebody's implied consent, you should send them a message asking for express consent before the two-year period has expired.

Express Consent

Express consent is consent in writing or by a person actively consenting on a website. Individuals may provide their consent in various ways. Such as: by signing a document, sending you an email confirming consent, entering information on a web page, or checking a box indicating they are providing consent or clicking an "I Consent" button on a web page .

Once you have someone's express consent, then you may continue to send them CEMs indefinitely unless the individual "unsubscribes" from further messages.

See info sheet on Obtaining Consent for more information on Obtaining Consent

Step 4- Does the Message comply with the Information and Unsubscribe requirements set out in CASL for all commercial messages?

Even if you have consent to send the commercial electronic messages, it must contain certain specific information and must allow the recipient to "opt-out" or unsubscribe from receiving future messages from the sender.

Prescribed Information in Messages

Under CASL, commercial electronic messages must include prescribed information that identifies the sender.

All CEMs must contain the following contact information:

- the name of the University department or faculty sending the message
- contact information for the unit (or a link to a website containing this information)
- mailing address
- telephone number and/or email address of the person responsible for the CEM

An example of language:

You are receiving this email because we had you on our list as someone who wanted to receive communications from us. For more information about this email communication contact (insert department / unit or faculty name and information). You may unsubscribe at any time (have a click function for unsubscribe or indicate they may reply back with Unsubscribe as the subject of their email) .

Unsubscribe Mechanism

CASL requires every commercial electronic message to include a mechanism which would “enable the person to whom the commercial electronic message is sent to indicate, at no cost to them, to unsubscribe.

Step 5- Send the Email!