

LIVING IN A POST-CASL WORLD

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ESPC Annual Meeting

- CASL
- What's happened?
- Myths vs Fact
- CASL in the Wild



CASL

Quick Review

CASL Enforcement schedule:

- July 1, 2014 – Permissions, Form and Prescribed Information
- January 15, 2015 – Installations of Computer programs and Data manipulation (Sections 7 and 8)
- July 1, 2017 – Private Right of Action

Enforcement by:

- Canadian Radio-television and Telecommunications Commission (CRTC)
- Office of the Privacy Commission (OPC)
- Competition Bureau

What's happened so far?

What's happened so far?

- Over 70K reports from Canadians - non-automated submissions ~ mid August
 - Current trend indicate about 10,000 complaints a week are sent to the Spam Freezer by Citizens
- Some companies have already received and settled notifications of violations with the CRTC
 - No names provided at this time
- More cases are in process and more violation notices are being prepared.
- Not all cases will be published as part of their enforcement actions

What's happened so far?

- Enforcement will follow similar process as the Canadian DNC enforcement process.
- Not everything is a \$10 Million dollar violation
 - Recent fines under DNC range from \$4,000 to \$250,000

What's happened so far?



- Largest number of current callers are international business calling to complain the law is too strict
 - Canadians have moved onto Section 8 enforcement
- Review the need for multiple unsubscribes in 3rd party emails.
- Refer a Friend emails are still risky
 - Recommending Forward-to-Social

Separating Fact from Fiction

“Confirmed opt-in emails can contain the prescribed information, so I don’t need to update my subscribe forms... because you are not opted-in until you confirm.”

FALSE

- Your COI email is simply validating and adding additional auditing data to the record of the consumer.

“I need express consent for everything I do going forward.”

FALSE

- There are a lot of exemptions to the legislations. Things like implied consent and inquiries are great reasons to continue messaging without express consent (though express consent should always be preferred).

“I’m outside of Canada so this law won’t affect me/it’s not enforceable in my country.”

FALSE

- If you have Canadian recipients, you must abide by Canadian laws.
- The government will be working with international counterparts for enforcement where possible.

“This law will kill the electronic messaging industry in Canada!”

FALSE

- We are still seeing electronic messaging growth in volumes after CASL. You just have to be *smarter* about what you send and to whom.

“Schools, government agencies, and non-profits are exempt from the law.”

FALSE

- Every sector is expected to comply by the new regulation, not just businesses.
- Exemptions apply for charities sending fundraising messages
- Government doesn't typically send CEMs so mainly exempt

Separating Fact from Fiction

CASL in the Wild



Investment Executive New.	Global economy to improve, CASL, Rookies - Having trouble viewing this e-mail? Read the online version. Da	Jun 30	
Investment Executive Wee.	Reminder - Confirm your subscription to Investment Executive's newsletters. - Important message from Investi	Jun 30	
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Investment Ex	Seneca Resorts & Casinos	It's Not Too Late to Experience The Summer of BuffaLOVE! - Visit Buffalo - Niagara The Summer of BuffaLOV	Sep 1
rox Canada ha	Seneca Niagara Resort & .	Catch Pro Football all season long with Game Days at Stir! - You have received this email at SENECA@EMA	Aug 16
ks forward to c	Seneca Resorts and Casin.	\$1m Megaspin, Summer Sweepstakes and more! - You have received this email at SENECA@EMAILKARMA.I	Aug 6
ouncements,	Seneca Buffalo Creek Cas.	Buffalo Wingfest Presale Tickets Available. Get 'Em While They're Hot! - You have received this email at SEN	Jul 19
mmunications,	Seneca Resorts and Casin.	Cooler Acts. Hotter Nights. July and August Entertainment at Seneca Resorts and Casinos! - You have receiv	Jul 11
at any time you	Seneca Resorts & Casinos	It pays to be a grown up! 35-54 perks through July and August. - Above promotions run on Wednesday and F	Jul 8
nsent by clickin	Seneca Casinos	Things are heating up this July at Seneca Casinos! - You have received this email at SENECA@EMAIL KARM,	Jul 4
ou have questi	Seneca Gaming Corporation	An important message from Seneca Casinos. Don't miss out, Opt-in today! - Canada's anti-spam legislation b	Jun 25
	Seneca Niagara Casino	Have your photo taken with the majestic Budweiser Clydesdales! - You have received this email at SENECA@	May 20

Personal relationship exemption

Sender is an individual and does not send commercial electronic messages (CEMs) on behalf of a company



TWO WAY COMMUNICATIONS



Recipient is an individual

The sender and recipient have had direct, voluntary, two-way communications in the past. These communications reveal a personal relationship.

WHAT YOU NEED TO CONSIDER BEFORE RELYING ON THE PERSONAL RELATIONSHIP EXEMPTION

In past communications, did you share the same:



Interests



Experiences



Opinions



Information

Were these communications frequent?



Has it been a long time since you last communicated?



Did you ever meet each other in person?



Proof



You should be able to prove this relationship with your past communications, if necessary.

Real Identity



You should know the real identity of each other (as opposed to only communicating by using an alias or a virtual identity).

Social Media



Using social media or sharing the same network does not necessarily reveal a personal relationship. The mere use of buttons available on social media websites (such as clicking on "like," voting for or against a link or a post, accepting someone as a "friend," or clicking to "follow" someone) will generally be insufficient to constitute a personal relationship.

Express consent versus implied consent

WHAT YOU NEED TO KNOW BEFORE SENDING OUT YOUR COMMERCIAL ELECTRONIC MESSAGE

IMPLIED CONSENT

Existing business relationship

The recipient has made, or enquired about, a purchase or lease of goods, services, land or interest in land, a written contract or the acceptance of a business, investment or gaming opportunity from you.

Existing non-business relationship

You are a registered charity, a political party or a candidate, and the recipient has provided you a gift, a donation or volunteer work.

You are a club, association or voluntary organization and the recipient is one of your members.

Recipient's e-mail address was conspicuously published or sent to you

The address was disclosed without any restrictions and your message relates to the recipient's functions or activities in a business or official capacity.



KEEP RECORDS

Keep records of how you obtained implied or express consent, since in both cases you have the **onus to prove consent**.



Specific conditions apply. Please refer to the Legislation and its Regulations.

EXPRESS CONSENT

Valid consent given in writing or orally

The recipient gave you a positive or explicit indication of consent to receive commercial electronic messages.

Your request for consent set out clearly and simply the prescribed information.



Express consent is not time-limited

Unless the recipient withdraws his or her consent.

Implied consent is generally time-limited

It is typically a period of 2 years after the event that starts the relationship (e.g. purchase of a good). For subscriptions or memberships, the period starts on the day the relationship ends.

— Information to be included in a commercial electronic message (CEM) —

WHAT INFORMATION NEEDS TO BE INCLUDED IN A CEM?



— IDENTIFICATION —

Identify your business name, if different from your name (if not, identify your name) and the name of anyone else on whose behalf or business you are sending the message.



— CONTACT INFORMATION —

You must include your mailing address. You must also include one of: a phone number to access an agent or a voice messaging system, an email address, or a web address for you or the person on whose behalf you are sending the message. Ensure these contact methods are accurate and valid for a minimum of 60 days after sending the message.

— BE CLEAR —

If you are using a link to provide the required information, the link must be clearly and prominently displayed in the message.



Specific conditions apply. Please refer to the Legislation and its Regulations.

What's Happened so far?

Know your responsibility when managing consent

HOW DO I MANAGE CONSENT FOR COMPANIES I WILL WORK WITH IN THE FUTURE?

Company A can obtain valid express consent to send commercial electronic messages (CEMs) for their own use as for yet-to-be determined third parties they will work with in the future.



Company A can share the recipient's electronic address with Companies B and X.



Companies A, B and X can all send CEMs to the recipient using the express consent obtained by Company A. Companies B and X must identify in their CEMs that they received the express consent to send the CEM from Company A.



The recipient must be able to withdraw their express consent from ANY of these companies by unsubscribing from receiving ANY or ALL CEMs.

Company A needs to notify parties of an unsubscribe request that relates to them and Companies B and X have an obligation to notify Company A of any unsubscribe request they receive relating to the express consent acquired by Company A.



All companies are accountable for managing the recipient's consent and unsubscribe requests. All companies must include their identification and unsubscribe mechanism in each CEM.



Specific conditions apply. Please refer to the Legislation and its Regulations.

CASL in the Wild



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Problems:

- 1- Sent w/o permission
- 2- Sent to 3rd party list w/o disclaimer (on behalf of)

CASL in the Wild



To unsubscribe from receiving further commercial electronic messages from The Bank of Nova Scotia in Canada, please click here: <https://unsubscribe.scotiabank.com?entid=BNS&buid=SBNK>

To unsubscribe from receiving further commercial electronic messages from certain other senders set out in the attached list, please click here: <https://www.unsubscribe.gwi.scotiabank.com?page=gwi>

This email may contain confidential information the use of which by an unintended recipient is unauthorized. This email may also contain important disclosure information for the records of the intended recipient(s). For details please click here: http://www.scotiabank.com/email_disclaimer/email_english.html

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de La Banque de Nouvelle-Ecosse, veuillez cliquer ici : <https://desabonnement.banquescotia.com?entid=BNS&buid=SBNK>

Pour vous désabonner et cesser de recevoir des messages électroniques commerciaux de certains autres expéditeurs figurant dans la liste ci-jointe, veuillez cliquer ici : <https://www.unsubscribe.gwi.scotiabank.com?page=gwi>

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What's Happened so far?



ANY
QUESTIONS
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