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Canada’s Anti-Spam Legislation

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Objectives

• What is Canada’s Anti-Spam Legislation, or “CASL”?
• What are the key requirements?
• When does it take effect?
• What does it mean for school boards, school councils and foundations?
• How can our Board be CASL compliant?
What is CASL?

• “An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act (S.C. 2010, c. 23)”.
Spam, Spam, Spam, Bacon and Spam
Scope of CASL

- Regulates a broad range of activities including:
  i) Unsolicited electronic messages (emails, texts, etc.);
  ii) Hacking, malware and spyware;
  iii) Phishing, fraudulent or misleading practices;
  iv) Privacy invasion via your computer;
  v) Collecting email addresses without consent (email harvesting).
Regulation and Enforcement

• CRTC and Industry Canada have regulation making authority.

• CRTC, Competition Bureau and Privacy Commissioner of Canada have enforcement and investigation powers.

• CRTC will operate the Spam Reporting Centre.
Scope

• CASL applies to all Commercial Electronic Messages ("C.E.M.’s").

• Commercial: if one or more of its purposes is to encourage participation in commercial activity, whether or not there is an expectation of profit:
  – An offer to purchase, sell or lease goods or services;
  – An offer to provide a business, sell or lease an investment or gaming opportunity;
  – Advertise or promote any of these activities, or a person carrying out or intending to carry out these activities.
Scope cont.

• **Electronic**: sent by any means of telecommunication, including email, text, sound, voice, image, to an electronic address.

• *Not the type of entity, but the type of message that is determinative.*
School Board CEM’s

• If sent electronically:
• School Newsletters, if one of purposes is to “encourage participation in commercial activity”: product sales (chocolate, magazine subscriptions), school fairs, student photos, milk and pizza sales;
• Emails about fundraisers if not simply a request for funds, but includes an invitation to purchase goods or services (eg. invitation to golf tournament or dinner);
• Travel opportunities (eg. grade 8 trip);
• Communications regarding cashless schools;
• Communications between staff regarding non-board business (eg. invitation to sponsor colleague at a fund-raising event, or attend a home sales party);
• Invitations to respond to RFP’s;
• Any fundraising by non-registered charities eg. school councils or student groups.
What Does CASL Prohibit?

• Sending a CEM after July 1, 2014:

• without express or implied consent; and

• that does not also have the prescribed content:
  – An unsubscribe or ‘opt out’ mechanism (see regulatory requirements).
  – The sender’s name and contact information (effective for at least 60 days).

*subject to certain limited exemptions.
Consent Requirements

• Express or Implied.
• Onus rests on sender to prove consent.
• develop a mechanism to track express and implied consents.
Express Consent

• Once obtained, it is valid until such time as it is revoked.

• Request for consent must set out:
  – purpose for which it is sought (will need specific consents for separate acts);
  – identity of person seeking consent (or person on whose behalf consent is sought), and contact information;
  – Statement that consent can be withdrawn.

• Request for consent must be distinct (cannot be bundled with other types of consent).
Express Consent cont.

• Can be oral or written.

• An ‘opt out’ mechanism is not sufficient.

• After July 1, 2014, CASL prohibits sending a CEM to obtain express consent to send CEM’s, unless the sender has implied consent to send the message.
Implied Consent

- Consent can be implied where message is relevant to recipient’s business role, and:
  - Recipient has “conspicuously published” their email address (e.g. on a website);
  - Recipient has disclosed email to sender (e.g. business card);
  - There is an existing business or non-business relationship;
Implied Consent cont.

• **Existing business relationship**: an activity specified in the Act has occurred within last two years.

• **Existing non-business relationship**:
  - includes charities, political parties, not-for-profit and volunteer association communications with donors and members who have contributed within last two years.

• During **three year transition** period (to July 1, 2017), consent can be implied for parties who are in existing business and non-business relationships.
Exclusions

• Some types of CEM’s are excluded from the statute’s application.

• Some CEM’s are excluded from the consent requirements described (but must still have required content).
Messages Excluded from CASL Application

• Where there is a personal or family relationship;
• Response to an inquiry/complaint of a person engaged in a commercial activity, if about that activity;
• Sent between organizations, if concerning their organizational activities;
• Sent between employees within an organization, if about the activities of that organization;
Messages Excluded from CASL Application

• Third party referral;
• Sent from a registered charity, where the primary purpose is raising funds;
• Political parties or candidates soliciting contributions;
• Two-way voice communications, and fax or voice messages to telephone accounts.
Messages Excluded from Consent (but not content) Requirements

• Provision of employment and benefit plan information;

• Product updates and warranty information, if pursuant to contractual terms;

• In response to a third party referral (one exempt message);

• In response to an inquiry or request for estimate.
In Force Dates

- July 1, 2014 - majority of CASL comes into force.
- January 15, 2015 – in force date for provisions related to computer programs.
- July 1, 2017 – end of transition period for implied consent, and in force date for private right of action.
Penalties

• Administrative Monetary Penalties:
  – Fines of up to $1 million/violation for individuals, and up to $10 million/violation for organizations.

• Private Right of Action:
  – Including statutory damages, to a maximum of $1 million per day ($200.00 per message sent).

• Officer and Director (Trustee) liability for wrongful acts of corporation, and vicariously liable for employees.

• Class actions.

• Prosecution of offences (Anti-Spam Reporting Centre).

• Costs can be awarded.
Defenses

• Due diligence. Be able to demonstrate:
  – Undertook a CASL audit;
  – Revised policies, procedures and processes to address CASL compliance;
  – Ensured implementation and training;
  – Implemented monitoring and enforcement tools.
Readiness

• Do a CASL Audit – where in your Board are your CEM’s coming from, and where are they going?

• * Put someone in charge.

• Turn implied consents into express consents – from employees, students, and suppliers.

• Develop means of obtaining express consents for all new relationships, using existing or paper means eg. Registration forms.

• Undertake a policy and procedure review.

• Develop employee training tools.

• Require CASL compliance of third party providers (RFP’s, service agreements, indemnity clauses).
Readiness cont.

- IT-Reliant Strategies:
  - track and prompt where relationships which are more than two years old;
  - Ensure that “unsubscribe” requests are enabled within 10 days;
  - Can employees access records of implied and express consents;
  - Revise outgoing message protocol to comply with content requirements (sender information, unsubscribe mechanism).
Conclusion

• According to the Industry Canada website, CASL

• “will help to protect Canadians while ensuring that businesses can continue to compete in the global marketplace”.

• CRTC Website: www.fightsspam.gc.ca