



# LAURENTIAN

Office of the General Counsel / Bureau de la conseillère juridique générale

# LAURENTIENNE



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## Compliance with Canada's Anti-Spam Legislation

The arrival of Canada's Anti-Spam Legislation (CASL) has compelled Laurentian University of Sudbury to proactively engage itself in order to conform to the statute.

The main objective of this legislation is to control the sending of unsolicited commercial electronic messages (CEMs). Since the primary activities of the university are educational in nature, rather than commercial, the legislation is of limited application to Laurentian University. As such, sending commercial electronic messages related to the University's core educational mandate are excluded from the application of CASL.

However, there are some activities undertaken at the University that could be deemed commercial in nature and consequently will be governed by CASL and its requirements when sending CEMs.

In order to better understand the CASL requirements that each department must comply with in the event that their activities could be deemed commercial in nature, the Office of the University Secretary and General Counsel has prepared the following documents to provide guidance to members of Laurentian University:

- **Canada's Anti-Spam Legislation Overview;**
- **Canada's Anti-Spam Legislation General Exclusion Guide at Laurentian University;**
- **CEM Process Chart; and**
- **Frequently Asked Questions.**



# Canada's Anti-Spam Legislation Overview

## 1. GENERAL INFORMATION

### 1.1 Important Dates

CASL came into effect on July 1, 2014, with the exception of provisions relating to the installation of computer programs without consent, which came into effect on January 15, 2015. The Federal government recently issued an Order in Council postponing indefinitely provisions relating to the private right of action.

### 1.2 Penalties for Non-Compliance

Violations of CASL provisions may lead to a monetary penalty being imposed against the University. A fine of up to \$10 million dollars per email could be assessed against the University. Additionally, when the private rights of action provisions come into effect, a violation of CASL provisions may lead to a monetary penalty of \$200 dollars for each contravention, not exceeding \$1 million dollars per day.

### 1.3 Definition of a Person

For the purposes of CASL, a person means an individual, partnership, corporation, organization, association, trustee, administrator, executor, liquidator of a succession, receiver, or legal representative.



## 1.4 Governing bodies responsible for the enforcement for CASL

There are three (3) federal agencies that are responsible for the enforcement of CASL:

- the Canadian Radio-television and Telecommunications Commission (CRTC);
- the Competition Bureau; and
- the Office of the Privacy Commissioner of Canada.

## 2. COMMERCIAL ELECTRONIC MESSAGES

### 2.1 Definitions

#### i. Commercial Electronic Message

A CEM is defined as any **electronic message** by way of an **electronic address** where the content of the message or the inclusion of hyperlinks in the message or the inclusion of databases or the contact information in the message serve a purpose where it would be reasonable to conclude that the message's objective is to encourage the participation in a **commercial activity**. Furthermore, electronic messages requesting consent to send CEMs are considered CEMs unless the sender has implied consent to send CEMs.

In brief, for a message to be considered a CEM, it must be sent by means of telecommunications to an electronic address and pertain to a commercial activity.

#### ii. Electronic Message

An electronic message includes any message sent by means of telecommunications, including a text, sound, voice, or image message.



### iii. **Electronic Address**

An electronic address is defined as an address used in connection with the transmission of an electronic message to:

- an electronic mail account;
- an instant messaging account;
- a telephone account; and
- any similar account.

The term “any similar account” captures direct messaging to individuals, such as a private direct message via Facebook, Twitter or LinkedIn.

This definition does not extend to interactive two-way communications between individuals, faxes, or voice recordings sent to a telephone.

### iv. **Commercial Activity**

A commercial activity includes any particular transaction, act or conduct, or any course of conduct of a commercial nature, whether or not the person who carries it out does so in the expectation of profit.

## 3. **CASL REQUIREMENTS WHEN SENDING CEMs**

CASL does not permit the sending of CEMs unless all of the following conditions are met:

- the University has consent;
- identification and contact information is included in the CEM; and
- an unsubscribe mechanism is included in the CEM.



You must be able to demonstrate consent by using a database that is regularly updated that holds the following information:

- the method through which the email address was obtained;
- the kind of consent, whether implied or express; and
- the date on which the consent was obtained.

It is important to keep in mind that written consent is always preferred as it is easier to demonstrate. When you obtain a written consent, you must always store it in electronic or written form.

### **3.1 Consent Requirement**

CASL provides two (2) types of consent:

- express consent; and
- implied consent.

#### **i. Express Consent**

Express consent must be obtained orally or in writing and does not expire until the recipient withdraws the consent. Departments that have implied consent can send an electronic request for express consent. It is important to note that the onus remains on the department sending the CEM to demonstrate that the recipient of the email has expressly consented to receiving CEMs. Accordingly, it is a best practice to follow up on an oral express consent by seeking an express consent in writing. Furthermore, records indicating express consent must be maintained as long as the communications continue with the person and for a further three (3) years once the communications have ceased.

Importantly, CASL sets tough rules on when written consents “count” for the purposes of the statute. In every case, a written consent request must have the following attributes:



- It must be “opt in”. This means that persons consenting must affirmatively express their intention to receive CEMs, either by checking a previously unchecked box, by inserting their e-mail address into a blank field, or by replying to an email request with the subject header “Subscribe”.
- It must clearly describe what is being consented to **and** must contain a mandatory statement explaining that consent may be withdrawn.
  - Accordingly, next to the unchecked box or blank field, there should be a phrase like “Sign me up for electronic messages containing news, information, offers, and other items of interest from Laurentian University. I recognize that I may unsubscribe at any time.”
- It must include the name and contact information of the University, which includes the phone number, mailing address and email.

## ii. Implied Consent

Implied consent is obtained in the following circumstances:

- Where the sender of the email and the recipient are in an existing business or have been in an existing non-business relationship within the last two (2) years;
  - If a person’s only point of contact with the University was the making of an inquiry or application to the University, the implied consent period lasts for only six (6) months;
  - Do not send out messages to recipients who have unsubscribed from University CEMs;
- Where an individual has conspicuously published an electronic address to which the message is sent and has not expressed a wish to not receive unsolicited CEMs and the CEM is relevant to his or her business; and
- Where an individual has disclosed his or her electronic address to the sender of the CEM without expressing a wish not to



receive unsolicited CEMs and the CEM is relevant to his or her business.

Importantly, the last two (2) categories of implied consent apply **only** to messages relevant to the person’s business. For example, a CEM could be sent about continuing education programs in the person’s field of business, but could not be sent to sell tickets to an entertainment event taking place on campus.

By contrast, the “existing business relationship” and “existing non-business relationship” categories permit the general sending of CEMs as long as the requirements set out in sections 3.2 and 3.3 are met.

### **3.2 Identification Requirement**

To satisfy the Identification component when sending a CEM, the message must include the name and contact information, which includes the phone number, mailing address and email of the department that is sending the CEM so that the recipient of the message can readily contact the department. The contact information must remain valid for sixty (60) days after the CEM was sent.

### **3.3 Unsubscribe Mechanism**

The unsubscribe mechanism must be included in the CEM and indicate to the recipient that he or she may request to no longer receive any CEMs or any class of such messages. The CEM must allow for the recipient to respond by the same electronic method the CEM was sent, or if using those means is not practicable, by any other electronic means that allows the person to indicate the wish. Finally, the CEM must specify an electronic address, or link to a page that allows the person to indicate their desire to be removed from the recipient list.





The unsubscribe mechanism needs to be made available for sixty (60) days after the message has been sent. The request to unsubscribe must be complied with within ten (10) business days following receipt of a person's indication to be removed from a distribution list.

The Information and Technology Department manages the creation of and monitors unsubscribe mechanisms.

## **4. EXEMPTIONS**

### **4.1 Full Exemption**

CASL provides a full exemption to its requirements when sending a CEM in the following circumstances:

- CEMs relating to core educational activities of the University. These would include messages about enrollment, exams, scheduling, and campus activities. They would also include messages about student recruitment and informational sessions, and public lectures, exhibitions, and performances relating to faculty or student initiatives. They would not likely involve messages that contain commercial offers or requests for donations;
- CEM sent by an employee to another employee and the message concerns the core activities of Laurentian University;
- CEM that is sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity, such as a request for a price quotation to a potential service provider to Laurentian University;
- CEM sent by or on behalf of an individual to another individual with whom they have a personal or family relationship;



- CEM sent to an employee of another organization if Laurentian University and the other organization have a relationship and the message concerns the activities of the other organization;
- CEM that is sent in response to a request, inquiry, or complaint, or is otherwise solicited by the person to whom the message is sent (such CEMs should be focused on a response to the request, inquiry or complaint, and should not focus on other questions);
- CEM that is sent to satisfy a legal obligation or enforce a legal right; and
- CEM sent by or behalf of a registered charity as defined in subsection 241 (1) of the *Income Tax Act* and the message has as its primary purpose raising funds for the charity.

#### 4.2 Partial Exemptions subject to Identification Requirement

CASL provides partial-exemptions where consent is not required but still requires the identification and the unsubscribe mechanism set out in sections 3.2 and 3.3 in the following circumstances:

- CEM that provides a quote or estimate for the supply of a product, goods, services, land or an interest or right in land, if the quote or estimate was requested by the person to whom the message is sent;
- CEM that facilitates, completes, or confirms a commercial transaction that the person to whom the message is sent previously agreed to enter into with the person who sent the message;
- CEM that provides warranty information, product recall information, or safety or security information about a product, goods, or a service that the person to whom the message is sent uses, has used, or has purchased; and
- CEM that provides notification or factual information about:
  - the ongoing use or purchase by the person to whom the message is sent of a product, goods or a service offered under a subscription, membership, account, loan or similar relationship by the person;



- the ongoing subscription, membership, account, loan or similar relationship of the person to whom the message is sent;
- provides information directly related to an employment relationship or related benefit plan in which the person to whom the message is sent is currently involved, is currently participating, or is currently enrolled; and
- delivers a product, goods or a service, including product updates or upgrades, that the person to whom the message is sent is entitled to receive under the terms of a transaction that have previously entered into with the sender of the message.