



## **New anti-spam law will change the way you do business**

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Unlike the “Do Not Call” legislation intended to stem the flood of faxes in the late 1990s, the Canadian Anti-Spamming Legislation (CASL) that comes into law on July 1, 2014 has teeth and it could bite many unwary or unconcerned real estate professionals and brokerages.

The CASL legislation is very broad and deals with commercial electronic messages (CEM) of all kinds, including text messages, email, social media messages and voicemail that are sent to encourage participation in a commercial activity. This can include self-promotion, lease/sale of products/services and even requests for permission to send a CEM. It’s not just prohibiting a person from sending a CEM without permission, but targets anyone causing or permitting a CEM to be sent. This could include brokerages, franchisors, marketing/advertising agencies contracted to send your CEMs and Internet Service Providers (ISPs) that provide you with your online services.



The CRTC will enforce CASL, with related amendments to the Competition Act and PIPEDA enforced by the Competition Bureau and the Office of the Privacy Commissioner of Canada, respectively. CRTC can impose administrative monetary penalties for CASL violations as high as \$1 million for individuals and up to \$10 million for companies. Penalties can be charged per violation and violations may be separately assessed for each day of noncompliance. For example, it could be \$200 per message sent without prior permission or sent without required disclosures or an easy-to-find unsubscribe mechanism or for each day a contact is not removed from a list after the grace period.

On July 1, 2017, the final phase of CASL becomes effective. Any person or company affected by a CASL violation or related amendments to PIPEDA and the Competition Act can sue for actual and/or statutory damages under Private Right of Action.

As a result of being reported as a spammer, your website and/or an email address could be instantly and unceremoniously disconnected and it might take weeks or months to get back online with your original addresses. Worse, you and your organization could be publicly identified as a “spammer” under anti-spam law, which could hurt your reputation and brand, and reduce the trust and loyalty of your clients and the public.

Many sales reps are independent contractors so your brokerages won't be taking responsibility for your infractions. Conversely, brokerages should be taking steps to ensure that they aren't liable for the CASL infractions their contractors make, although they will remain liable for the actions of their employees.

CASL is intended to attack and destroy virus and hacker activities as well as the flood of phishing emails sent from certain "high-risk" countries. Ever receive an email from an Africa-based businessperson whose spouse recently died and they need your help to move the inheritance money to a North American bank?

Nevertheless, an accompanying aim is to eliminate the enormous amount of CEMs that are currently sent unsolicited each day. You must obtain explicit or implicit permission to send a CEM. What each of these constitutes and what exceptions are provided is too lengthy for this article. However, "implied consent" requires you to track the source and date when you obtained the permission; and it's only good for two years. Best practices and the work involved suggest you forget about implied consent and only process explicit consent contacts.

An explicit-consent CEM requires the purpose(s) for obtaining your consent, the name of the person seeking consent and on whose behalf consent is sought (if different), the sender's contact info, a statement that consent can be withdrawn and a no-cost unsubscribe address or link that removes the address within 10 days. Follow-on opted-in CEMs require the sender's name, on whose behalf the message is sent (if different), contact information for either of those persons and a no-cost unsubscribe mechanism.

CASL also requires that opt-in checkboxes on Canadian-based online sign-up forms can't be pre-checked. This is the opposite of the USA's CAN-SPAM Act, so if you do cross-border marketing, you must have two different opt-in sign-up sections for U.S. and Canadian subscribers. You also can't bundle permission requests such as "You accept the terms and conditions and you consent to us sending you announcements."

You can find some excellent CASL summary slides and charts here, including a CASL-implementation project timeline: [www.davis.ca/en/publication/anti-spam/](http://www.davis.ca/en/publication/anti-spam/).

There will be a lot of fallout as this legislation comes into force and is tested in the courts. Don't become one of those statistics, or worse, a case study. Find out what you need to do to be CASL-compliant.

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