

Canada's Anti-Spam Legislation: What You Need to Know and Do

Introduction

[Canada's Anti-Spam Legislation \(CASL\)](#), also known as Bill C-28, comes into effect July 1, 2014, and will impact how charities and non-profit organizations communicate with their donors, volunteers and members.

CASL affects individuals, businesses and organizations, but provides some exemptions for charities.

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

Canada's Anti-Spam Legislation (CASL) is a new law that prohibits the sending of a commercial electronic message (CEM) unless the sender has consent and the CEM contains certain required information. This law affects any individual, business or organization that

- Makes use of commercial electronic messages
- Is involved with the alteration of transmission data (e.g. A user clicks on a link in an email believing it will take them to a certain website, but the link re-directs them to another.)
- Produces or installs computer programs

The MS Society does not engage in altering transmission data nor producing and installing computer programs.

What is a commercial electronic message (CEM)?

A commercial electronic message is "any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit." This includes emails, messaging systems (eg. mass messaging through LinkedIn and Facebook), and SMS/text.

I've heard charities are exempt from CASL. Is this true?

Commercial electronic messages sent by registered charities that have fundraising as the primary purpose are exempt from CASL. Other messages from charities that do not have the primary purpose as fundraising must comply with CASL.

Who does CASL apply to?

Staff and volunteers sending electronic messages on behalf of the MS Society are obligated to comply with CASL. This includes staff and volunteers sending emails on behalf of the MS Society or acting in the capacity of an MS Society staff or volunteer sending messages through their personal email accounts (e.g. Gmail or Yahoo mail or personal home accounts).

In order to comply with CASL, what must I have from my recipients and include in my message when sending a CEM?

- 1) Consent: You must have permission -- expressed or implied consent -- to send a message.
- 2) Identification: You must clearly and simply identify yourself and anyone else on whose behalf the message is sent. E.g. Diana Emerald, MS Walk Coordinator
- 3) Unsubscribe mechanism: In every message you send, you must provide a way for recipients to unsubscribe from receiving messages in the future. Please contact web@mssociety.ca for support if you do not know how to provide an unsubscribe mechanism for your message.

How do I check if I am in compliance with CASL?

Review your recipient lists (email or text) to ensure that you have consent (see below for definition of “consent”). This applies to messages sent to donors, members, volunteers and event participants. If you are sending messages to a list of recipients that have not given you consent, ensure that the primary purpose of your email message is fundraising and that it is clearly reflected in your content. If there are multiple purposes to the email communication (e.g. fundraising AND offering a product/service) then your message would not be exempt from CASL.

What is considered “commercial activity?”

“Commercial activity” means any transaction, act or conduct that is of a commercial nature, whether or not the sender expects profit from their message. A CEM encouraging commercial activity would be a message that promotes a product or service to encourage the recipient to purchase the product or service.

What does “implied consent” mean?

“Implied consent” means there is an existing business or non-business relationship with the receiver of your message. Implied consent also applies to those who have published his/her address and hasn’t indicated he or she doesn’t want to receive spam (eg. Business card).

A business or non-business relationship applies to someone who has interacted with the MS Society in the immediate two-year period the day before the CEM is sent to the receiver. Examples include but are not limited to:

- a donor
- a volunteer
- a member
- an event participant
- someone who registered for a research teleconference
- someone who has contacted the MS Society for services

Note that CASL does not apply to

- electronic messages sent by or on behalf of the MS Society and the message has fundraising as its primary purpose;
- a relationship that is personal or familial -- an example of this is a staff member sending an email to a sibling or friend to join the MS Walk;
- an electronic message that is sent to someone engaged with the MS Society in an activity and the message is solely an inquiry related to that activity (e.g. sending a fundraising reminder to a registered MS Walk participant; sending a reminder to a registered yoga class participant containing dates and times of classes);
- providing notification about a subscription, account or membership; or
- completing or confirming a commercial transaction (e.g. registration confirmation; donation confirmation; email with tax receipt).

How do you obtain consent?

You may send a recipient a message to obtain consent but you must clearly explain the purpose for which the consent is being sought. Consent can be obtained orally or in writing. Oral consent must be verified through an independent third-party or a complete and unedited audio recording. Given the complex requirements for verification of oral consent, it is recommended you obtain written consent. Written consent can be in both paper and electronic forms. You must clearly state

- 1) you are obtaining consent on behalf of the MS Society of Canada;
- 2) contact information; and
- 3) that the person whose consent is sought can withdraw their consent at any time.

What must be included in my CEM?

- 1) Clear identification of the name of the staff person or volunteer representing the MS Society of Canada, and the MS Society of Canada as the organization sending the communication.
- 2) Address of your office, and either a telephone number, email or web address (mssociety.ca).
- 3) If using a third party or vendor to send the message (eg. Thindata, Blackbaud), provide a statement indicating the message is being sent on behalf of the MS Society of Canada, and again provide the address and either a telephone number, email or web address in the content of the message.
- 4) An unsubscribe mechanism. The recipient of the message must be able to unsubscribe easily and at no cost, and the unsubscribe mechanism must be “readily performed” (e.g. Unsubscribe link that a recipient can click on, or email reply requesting to be unsubscribed). The recipient must be officially unsubscribed within 10 days of the request being received – specifically, the name of the unsubcriber must be flagged in our databases and email lists as “do not email” (or similar flag).

What is the proper way to obtain consent via web forms?

Should you be collecting email addresses for the purpose of communications outside of fundraising (eg. Newsletter subscription), you may provide a tick-box with a clear consent statement, but the checkbox cannot already be checked. The user must proactively check the box. You may also provide a field in which the user must type in his/her email address to indicate consent. A sample statement can be:

“I agree to receive the MS Society’s MS Updates containing news and information about the latest research developments. (Please refer to our [Privacy Policy](#) or [Contact Us](#) for more information).”

Or

“I agree to receive further communication on Chapter events and services the MS Society. (Please refer to our [Privacy Policy](#) or [Contact Us](#) for more information).”

I collected my list of email addresses under the Personal Information Protection and Electronics Document Act (PIPEDA). Does this mean I am in compliance with CASL?

In most cases, consent obtained under PIPEDA will not be sufficient. Under PIPEDA, consent could be obtained by having individuals agree to receive communication from the MS Society unless they opted out of doing so. In the case of CASL, you must obtain express consent as explained in this FAQ.

For an easy to understand guide on definitions and CASL, please go to:

http://www.blg.com/en/NewsAndPublications/Documents/Publication_3724_1033.pdf

Where do I track my email lists?

In order for the MS Society to efficiently and accurately track those who wish to receive communication from us, it is highly recommended that you maintain your data in Opal or eCRM, as these two databases, along with the direct marketing database managed by an external vendor, are updated daily and are the primary sources for e-mail and contact lists. If you are using a separately managed list, it is mandatory for you to perform a duplicate check and “kill file” against the above three named databases. Please allow for two weeks in order to perform this function across all of our databases. The usual processes apply: requesting a data extract for Opal or contacting direct marketing for a file from the direct mail database.

I want to conduct a mass email or e-marketing initiative. What tools should I use to make my task easier while at the same time ensuring the delivery of my message complies with CASL?

It is preferred that you use our eCRM. For government relations mass emailing, Advocacy Online is preferred. If you require an alternative solution, please contact web@mssociety.ca. Your department or office will be responsible for the cost of using these alternative services. **Please do not mass email through your Outlook account as this will increase the MS Society’s likelihood of being blacklisted as a spam sender.**

I have been contacted by someone who wishes to unsubscribe from our email communications. What do I do?

Ideally, you will use eCRM or one of the other recommended e-marketing tools to auto-manage unsubscribes in our database. This is the most efficient solution. However, if you need to manually manage unsubscribes, you must contact your division’s Opal specialist to have the contact flagged in Opal and contact the direct marketing department (donorservice@mssociety.ca) to ensure the direct marketing database is updated.

For more information about CASL, please review the following references.

[Canada’s Anti-Spam Legislation](#) or [La Loi canadienne anti-pourriel](#) (Government of Canada)

[Overwhelmed by Canada’s Anti-Spam Law? Start Here with the Basics](#) – English only - (Borden Ladner Gervais)

[Canada's Anti-Spam Law – Additional Regulatory Guidance](#) – English only - (Borden Ladner Gervais)

[Navigating Canada's New Anti-Spam Laws for Charities and Non-Profit Organizations](#) – English only -
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Please refer to Mercury for updates to this CASL FAQ.

You may also contact the following members of the marketing and communications department:

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