

Canada's Anti-Spam Legislation (CASL) – What it means for Advisors

Distributor Learning & Development



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Learning objectives

By the end of this session, you will be able to:

- Describe CASL and how it impacts financial advisors and their support staff
- Identify commercial electronic messages (CEMs) and available exemptions
- Explain how to request permission to send CEMs to clients and prospects
- Describe how to send CASL compliant CEMs and how to maintain effective records and distribution lists



Agenda



- Introduction to CASL
- Commercial electronic messages (CEMs)
- Exempt CEMs
- Requesting consent
- How to send compliant CEMs
- Record keeping
- Feedback survey, handouts and additional resources



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

- A new legal requirement under Canadian law
- Focuses on the distribution of electronic communications to the public in a commercial context
- In effect on July 1, 2014
- Applies to everyone – including businesses and individuals in Canada



Why is CASL being introduced?

- Aims to protect the privacy of Canadians by limiting spam
- Ensures that commercial electronic messages (CEMs) are not sent without the recipient's prior consent



What is spam?

- Unsolicited or undesired electronic messages
- When customers no longer wish to receive communications from us, it becomes spam
- Includes messages sent via:
 - E-mail
 - Social networking/media accounts (e.g., Facebook, Twitter, LinkedIn)
 - Instant messaging (i.e., texts, BBM, WhatsApp, etc.)
 - Telephone (including VOIP)
 - Any other electronic method



Benefits of reducing spam

Improved privacy

Reduced “information overload”

Reversal of lost productivity

Decrease in costs
(i.e., bandwidth, storage, productivity, etc.)

Lower risk of fraud, phishing, malware and viruses



How CASL impacts financial advisors

- Will impact how and when advisors are permitted to send electronic messages
- Clients will begin paying attention to who is contacting them and how
- Advisors will need to observe certain legal requirements relating to CEMs including:
 - Who they are sent to and when
 - What is included
- Failure to comply may result in complaints and/or fines



Enforcement

- There are three government agencies responsible for enforcing CASL:

The Canadian
Radio-Television and
Telecommunications
Commission (CRTC)

The Competition
Bureau

The Office of the
Privacy Commissioner



Penalties for non-compliance

The CRTC is empowered to impose fines



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Commercial Electronic Messages (CEMs)



What is a commercial electronic message (CEM)?

An electronic message that has as its purpose, or one of its purposes, to encourage participation in a commercial activity. Examples include:

- Offers to sell a product or offer a service
- Offers to provide a business or investment opportunity
- Advertising or promoting one's business
- Self-promotion



CEMs –scope

- E-mail
- Instant messaging (IM)
- Mobile phone or telephone messaging
- Online classified ads
- Internet forums
- Blogs & wikis
- Social networking/media
- Client portals



Commercial Electronic Messages (CEMs)



Example #1

Market updates
or commentary



Example #2

Reminders
about upcoming
tax deadlines
(e.g., RRSP
contribution
deadline)



Example #3

Trade
solicitations or
insurance
recommendation



Example #4

Reaching out to
a prospect as a
result of
a client referral



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CEMs – Bottom line

You cannot send a CEM to a client or prospect unless:

A

- The CEM falls into an exempted category or;

B

- You have obtained the recipient's permission (i.e., via express consent)



Exempt CEMs



What is an exempt CEM?

- Exempt CEMs are those exempted from **one or more** of the following CASL requirements:
 - Obtain express consent (permission)
 - Identify the sender(s)
 - Provide an unsubscribe mechanism



Categories of exemption

A

- Statutory exemptions

B

- Exemptions where consent is not required

C

- Implied consent exemptions



1. Statutory exemptions

CEMs that meet a statutory exemption are exempt from the following CASL requirements:

- ✓ Obtain express consent
- ✓ Identify the sender(s)
- ✓ Provide an unsubscribe mechanism

✓ = exempt
X = not exempt

Includes:

- Personal or family relationships
- Inquiry, complaint or application related to a person engaged in a commercial activity
- Business-to-business context
- Satisfaction of legal obligations
- Within a limited access secure account
- Messages sent to countries with similar legislation



2. Exemptions where consent is not required

CEMs where consent is not required are exempt from the following CASL requirements:

- ✓ Obtain express consent
- ✗ Identify the sender(s)
- ✗ Provide an unsubscribe mechanism

Includes sending a communication that:

- Provides factual information about the ongoing use or purchase of a product, good or service or;
- Provides information about an employment relationship or related benefit plan or;
- Delivers a product, good or service – including product updates or upgrades that the recipient is entitled to under the terms of a transaction that was previously entered into



2. Exemptions where consent is not required (continued...)

CEMs where consent is not required are exempt from the following CASL requirements:

- ✓ Obtain express consent
- ✗ Identify the sender(s)
- ✗ Provide an unsubscribe mechanism

Includes:

- First CEM following a referral or;
- CEMs sent from an instant messaging platform*
- Sending a communication that:
 - Provides a quote or estimate where it was requested by the recipient or;
 - Facilitates, completes or confirms a commercial transaction or;
 - Provides warranty, product recall or security information about a product, good or service

*Only permitted where identification information and an unsubscribe mechanism are provided on the user interface or;



3. Implied consent exemptions

CEMs that meet the implied consent exemption are exempt from the following CASL requirements:

- X ✓ Obtain express consent
- X Identify the sender(s)
- X Provide an unsubscribe mechanism

Includes:

- Existing business or non-business relationship*
 - Consent applies for as long as the recipient remains your client, plus a further two years after they ceased being your client

**CASL requires that you obtain express consent from existing clients before July 1, 2017*



3. Implied consent exemptions (continued...)

CEMs that meet the implied consent exemption are exempt from the following CASL requirements:

- X ✓ Obtain express consent
- X Identify the sender(s)
- X Provide an unsubscribe mechanism

Consent is also implied where the recipient:

- Has disclosed or published the electronic address and;
- Has not made a statement indicating that they do not wish to receive unsolicited CEMs and;
- Has a business role, function or duty that the CEM is related to



Exempt CEMs – Summary

Category	CASL requirement		
	Express consent	Sender(s)'s identifying information	Unsubscribe mechanism
Statutory exemptions	✓	✓	✓
Exemptions from consent only	✓	X	X
Implied consent exemptions	X ✓ *	X	X

✓ = exempt X = not exempt

*For existing business or non-business relationships, you have until July 1, 2017 to obtain express consent



Requesting consent



CASL requirement to obtain permission



Where no exemptions apply, you must obtain the recipient's express consent (permission) before sending a CEM



What does a CASL compliant request for permission look like?

- Requests must **clearly and simply** provide the following information:
 - The purpose(s) for which consent is being sought
 - The sender's identifying information
 - Instructions on how to withdraw consent in the future



What does a CASL compliant request for permission look like? (continued...)

- Consent must be pro-active
- Requests cannot be bundled with consent to the services being rendered
- For repeating/serial CEMs, consent is not required for each instance as long as proper disclosure has taken place



Consent can be general or specific



Those who distribute different types of CEMs can seek general consent or specific consent



General consent

There must be sufficient detail to allow the recipient to clearly understand what they're signing-up for

Bad

- “We occasionally send communications on pertinent topics. Would you like to receive these communications?”

Good

- “We send monthly newsletters, quarterly market letters, and an annual year in review to those who are interested. Would you like to receive these?”



Specific consent

Example:

“I send regular communications that I feel are interesting and informative. If you would like to receive these communications, please make your selection below to indicate which ones you would like to receive:

- ☐ My monthly newsletter
- ☐ My quarterly market letter
- ☐ My annual year in review



Important note about prospects

- A request for express consent is itself a CEM
- After July 1, 2014, you cannot send a CEM to request consent to send further CEMs unless it falls into an exempt category
 - Consent may be obtained via a paper form



You've received permission, now what?

- Send a confirmation of consent (i.e., by e-mail)
- Meet the onus of proof by maintaining records of consent



How to send compliant CEMs



Identify the sender

- CEMs must clearly and prominently identify the sender including their:
 - Mailing address
 - Phone number or e-mail or web address

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Identify the sender: MGA or National Account



Observe the rules established by your firm



Important note for assistants

- Only persons who play a material role in the content of the message or the list to whom the message is sent are required to be identified as senders
- When sending on behalf of multiple advisors, they must all be identified in the CEM



Unsubscribe mechanism

- Are mandatory for all CEMs
- Allows the recipient to withdraw their consent
- Must be clear and prominent
- Must be provided in the same electronic means as the message was sent in, or another more practical method
- You must act within 10 business days



Record keeping



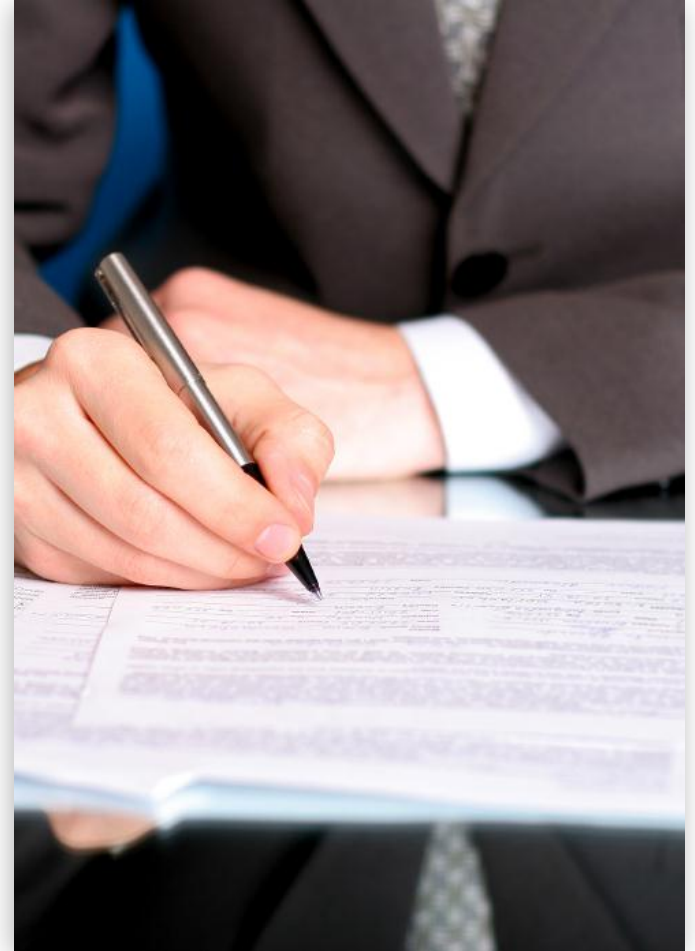
Record keeping

- Advisors must maintain a detailed record of all individual consents obtained including:
 - Date and time
 - How consent was obtained (paper, electronic, etc.)
 - Purpose
- Records must be readily available



Documenting consent

- Although the law states consent can be oral or written, we recommend obtaining written consent
 - Written consent includes both paper and electronic forms



Distribution lists

Your distribution lists must be updated on an ongoing basis to reflect new consents obtained, or any consents withdrawn



Review of learning objectives

Having attended this session, you should be able to:

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Additional Information

- Government of Canada's Anti-Spam Legislation Site
 - <http://fightspam.gc.ca>
- The Canadian Radio-Television and Telecommunications Commission
 - <http://www.crtc.gc.ca>



Feedback Survey



Please complete a
brief survey to provide feedback
on our session.



Handouts

- Copy of slide deck
- Consent template
- Instructions for unsubscribe mechanism



Q&A



Thank you



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