

## Fredericton Chamber Blog – Anti-Spam Legislation – Morgan Peters

By now hopefully you have made yourself familiar with the federal government's anti-spam legislation (Canada's Anti-Spam Legislation, or 'CASL'), coming into force on 1 July 2014 and consequently have taken a long, hard look at your emailing practices. Over the past year we have provided information in Insight Magazine, through our bi-weekly newsletter, at a lunch and learn session and via social media. If your organization has not yet become familiar with the new legislation and regulations, I refer you to the helpful resources available on the Canadian Chamber of Commerce website:

<http://www.chamber.ca/resources/casl/>. Please also contact the Fredericton chamber office with specific questions/scenarios – we'll do our best to point you in the right direction.

To get you started, I'll review a few of the most critical points here.

### 1. Do you send emails that are at all commercial in nature?

The parts of the legislation that come into force on 1 July 2014 deal with 'commercial electronic messages' (CEMs). It is our understanding that this term will be interpreted quite broadly. For example – if you are a not-for-profit organization that sends out a newsletter that is purely informational, but contains an ad – it will be caught by the regulations. If you are a business that sends out an informational email, but its end goal is to create interest and make a sale – it may also be included. So, if you send out any CEMs, you will have to comply with the legislation.

### 2. Do you have consent from each recipient to receive your CEMs?

#### Express Consent

Ultimately, you will want to have express consent from each recipient of your emails. This means having a record that the holder of the email address has actively indicated they want to receive messages from you – i.e. they have 'opted in'. There are very specific rules regarding how this opting in will comply with the legislation. For example, you cannot have an 'opt-in box' that has been 'pre-marked' – in the eyes of the regulations, this is an opt-out system.

#### Implied Consent

There are also a number of ways that you will be able to imply consent for a two-three year period (two years generally, but can be up to three at first). This transition period will allow you extra time to convert those to the express consent category. A couple of the major ways to imply consent are:

1. If the recipient and sender have an 'existing business relationship' or 'existing non-business relationship'. An existing business relationship generally means that someone has purchased goods/services, entering in a contract, etc., within the past two years (the interaction begins the clock). An existing non-business relationship covers a much narrower scope, such as a donor or volunteer for a charity, political party/candidate, member of a club, association or voluntary organization.

2. If the recipient has 'conspicuously published' their email address (i.e. on a website) and there is no statement that they do not want unsolicited emails *and* the message is relevant to the person's business, role, functions, or duties.
3. If the recipient has disclosed their email address without indicating that they do not want to receive unsolicited messages and the message is relevant to the person's business, role, functions, or duties (The 'business card' consent).

Once you determine who on your list fits into implied or express consent, you should (a) remove everyone else; and (b) work towards getting all expresses consents.

### **3. Content of messages**

CASL requires that all CEMs contain certain information to be compliant:

1. The name of the person sending the message (and the name by which those persons carry on business) and (if different) on whose behalf it is sent;
2. The physical and mailing address of those persons;
3. Another piece of contact information for those persons (email address, website, telephone number);
4. An unsubscribe mechanism.

Again, these requirements are more fully detailed in the legislation or in the materials provided by the Canadian Chamber of Commerce.

### **4. Penalties for non-compliance**

After the transition period expires, the consequences of non-compliance are severe – fines of up to \$1 million for individuals or up to \$10 million for companies. It is, of course, unclear at this point how the amount of a fine will be determined/interpreted and likely will only be realized after a few fines are levied and some amount of precedents can be examined.

As indicated above, CASL is an intricate and technical piece of legislation that should be examined closely to see how it affects your organization. The summary provided in this article is meant to be a primer to highlight the broadest aspects of the changes.

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