

Canadian Anti-Spam Legislation (CASL)

FREQUENTLY ASKED QUESTIONS

1. General Questions

1.1 What is the Canadian Anti-Spam Legislation?

The primary purpose of the Canadian Anti-Spam Legislation (called CASL; pronounced castle) is to control spam (unwanted Commercial Electronic Messages or CEMs). The law prevents the distribution of commercial messages sent through electronic means, such as email and text messages, without the consent of the recipient. It also requires that all electronic messages clearly identify the sender and include an unsubscribe measure.

CASL also prohibits the installation of computer programs without consent (e.g. viruses, spyware); the unauthorized altering of transmission data; and the provision of false or misleading information in a message. CASL is one of the world's most stringent anti-spam laws.

1.2 Who does CASL apply to?

CASL applies to most organizations in Canada, including UFV.

1.3 What impact will CASL have upon UFV?

CASL will have a fairly modest impact on UFV because most electronic messages sent by UFV are not subject to the legislation. Nonetheless, certain steps must be taken to ensure compliance for those messages that are subject to CASL. For more information about the scope of CASL, see the following sections of this FAQ.

1.4 What are the penalties for non-compliance with CASL?

There are strict penalties for non-compliance with CASL, which is why it is important to understand the scope of CASL and its requirements.

2. Scope of CASL

2.1 What kinds of electronic messages are regulated by CASL?

CASL applies to "Commercial Electronic Messages" (CEMs), which are defined as any "electronic messages" that encourage participation in a "commercial activity". These terms are defined below.

An "electronic message" is any message sent to an electronic account, e.g. an email, a text message, or an instant message. Interactive two-way voice communications, fax messages or voice recordings sent to a telephone account are not considered to be electronic messages. If you're calling somebody to offer a product or service, that's not an electronic message. Please keep in mind, however, that promotional phone calls may be regulated by the Do-Not-Call List. See <https://www.lnnte-dncl.gc.ca/index-eng> for more information about the Do-Not-Call List.

A “commercial activity” is broadly defined as “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit”. Examples of commercial activities include purchasing, selling, bartering or leasing products, goods or services, or land; providing a business, investment or gaming opportunity; or advertising or promoting any of these activities.

2.2 How does CASL impact UFV?

CASL does not apply to messages related to the core activities of UFV. UFV, like other public educational institutions, is not a commercial entity; it provides a public service and is primarily dependent on taxpayer funding. Therefore, its core activities -- those activities that are central to its mandate and responsibilities -- are not of a “commercial character” and do not fall under CASL.

Also, certain types of messages are specifically exempted from the scope of CASL. For example, CASL does not apply to messages sent by registered charities for the primary purpose of raising funds. See question 2.4 for a complete list of these exemptions.

Therefore, very few of UFV’s electronic messages are subject to CASL. For example, messages to students providing information about academic matters (e.g. schedules, policies, instructions, examinations, course materials, emergencies) and messages relating to student life (e.g. student meal plans, student residences) are not captured by CASL. Messages about public lectures, exhibitions and performances related to faculty or student initiatives also are not CEMs. Messages related to continuing education, workshops and/or certificate programs support UFV’s mission and as such are not subject to CASL. Newsletters and purely informational items may be exempt if they do not contain any commercial material.

This does not mean, however, that all electronic messages sent on behalf of UFV are exempt from CASL. One of the potential pitfalls for universities is the types of messages, often referred to as “mixed-purpose” messages, that are predominantly connected to an educational mandate but also contain other elements with a commercial purpose (e.g. a sales promotion). These mixed-purposes messages may be considered CEMs because one of the purposes is to encourage a commercial activity. This could be, for example, an email update to students regarding examination schedules, which also includes information about a special offer on purchases related to university-branded apparel. A message can be considered a CEM even if the dominant purpose of the message is educational.

Examples of messages that are subject to CASL are addressed in 2.3 below.

2.3 What are examples of activities that fall under CASL?

Here are examples of messages sent by UFV that would fall under the scope of CASL:

- A message about a sale of sweatshirts at the UFV Bookstore
- A message promoting a UFV-branded credit card
- A message promoting and charging a fee for a summer camp program

- A message promoting and charging admission to third party sporting events or concerts
- A message about special offers, contests or promotions

2.4 What are the exemptions to CASL?

Messages that do not relate to the core activities of UFV may nevertheless be exempted from CASL. The following messages provide a full exemption, meaning that they do not require consent or the content requirements or the unsubscribe mechanism.

For example, messages sent within UFV, between employees, that concern the activities of UFV, are exempt. Also exempt are messages sent between organizations if the organizations have a relationship and the message concerns the activities of the organizations (known as the “business to business” exemption).

The exemptions are as follows:

- (a) Messages sent by or on behalf of an individual to another individual with whom they have a personal or family relationship;
- (b) Messages sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity;
- (c) Messages sent within an organization that concern the activities of that organization;
- (d) Messages sent between organizations with a relationship that concern the activities of the receiving organization;
- (e) Messages sent in response to requests, inquiries or complaints, or otherwise solicited by the recipient;
- (f) Messages sent to satisfy, provide notice of, or enforce a right, legal or juridical obligation;
- (g) Messages sent on an electronic messaging service if the required information and unsubscribe mechanism are readily available on the user interface, and the recipient has consented to receive the message;
- (h) Messages sent to a limited-access secure and confidential account to which messages can only be sent by the person who provides the account;
- (i) Messages that a sender reasonably believes will be accessed in a listed foreign state, and conform to the anti-spam laws of such foreign state;
- (j) Messages sent by or on behalf of a registered charity as defined in s.248(1) of the *Income Tax Act*, and have as their primary purpose raising funds; and
- (k) Messages sent by or on behalf of a political party or organization or a candidate for publicly elected office that has as its primary purpose soliciting a contribution.

3. Requirements for Commercial Electronic Messages

3.1 What information do CEMs have to contain?

As stated previously, very few of the messages sent by UFV are subject to CASL. However all CEMs that are subject to CASL must contain the following information:

- (a) the name of the UFV unit sending the message;

- (b) the mailing address, and a telephone number, email address or web address, for the UFV unit seeking consent (or a link to a website containing this information); and
- (c) information about how to unsubscribe from future Commercial Electronic Messages.

If it is not practicable to include all of the above information in the CEM, then it must contain a clear and prominent link to a webpage that contains the information.

4. Consent Requirements

4.1 Is consent necessary to send a CEM?

As a rule, before sending a CEM, you must have the recipient's implied or express consent. However, consent is not required for a CEM that meets any of the following requirements:

- (a) provides a quote or estimate that was previously requested by the recipient;
- (b) facilitates, completes or confirms a commercial transaction that the recipient previously agreed to enter into;
- (c) provides warranty information, product recall information or safety or security information about a product, goods or a service that the recipient has used or has purchased;
- (d) provides factual information related to the recipient's subscription, membership, account, loan or similar relationship with the sender;
- (e) 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; or
- (f) delivers a product, good or a service, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction they previously entered into.

Even though you may not need to have a recipient's implied or express consent, please keep in mind that these messages still require the content requirements and the unsubscribe mechanism more fully described in 3.1 above.

4.2 What is "implied consent"?

Implied consent may arise in three situations:

- **Where there is an existing business relationship:** Such relationships arise from:
 - (a) the purchase or lease of a product, goods, a service, land or an interest or right in land, within the last two years, by the message recipient from UFV;
 - (b) the acceptance by the message recipient, within the last two years, of a business, investment or gaming opportunity offered by UFV;
 - (c) the bartering of anything mentioned in paragraph (a) between the message recipient and UFV within the last two years;
 - (d) a written contract entered into between the message recipient and UFV in respect of a matter not referred to in any of paragraphs (a) to (c), if the contract is currently in existence or expired within the last two years; or

- (e) an inquiry or application, within the last six months, made by the message recipient, in respect of anything mentioned in any of paragraphs (a) to (c).
- **Where there is an existing non-business relationship:** UFV has non-business relationships with two groups of individuals:
 - (a) donors; and
 - (b) volunteers.
- **Where the recipient has given or has conspicuously published their business contact information:** This only applies where:
 - (a) the recipient has not indicated a wish not to receive unsolicited CEMs; and
 - (b) the message is relevant to the recipient’s business, role, functions or duties in a business or official capacity.

Implied consent lasts for two years. For example, UFV has a non-business relationship with its donors, which gives us their implied consent to send them CEMs for two years after their last donation. We would require their express consent in order to continuing sending them CEMs beyond 2 years.

4.3 What is “express consent”?

Express consent is consent that has been provided orally or in writing. Express consent for the purposes of CASL means “opt-in” consent, which means that the person actively did something to signify that they consent to receive CEMs. This would include checking a box on an email or signing a form. Once a recipient provides express consent, CEMs can be sent to them indefinitely unless they “unsubscribe” from further messages.

4.4 How do you obtain express consent?

Consent must always be “opt-in”, not “opt-out”. This means that if you are using a check-box for consent, the box cannot be “pre-checked”. Oral consent should be avoided unless you have a way to verify the consent, such as an unedited audio recording. It is preferable to obtain express consent in writing, as this makes it easier to verify that the consent was provided. Written consent can come in various ways, e.g. by signing a document, sending you an email, entering information into a webform, or clicking on a checkbox or an “I Accept” button on a web page.

Electronic messages requesting consent are deemed to be CEMs. Therefore, an electronic message requesting somebody’s express consent can only be sent if you already have their implied consent. Essentially, this is “converting” implied consent into express consent. For example, when somebody volunteers for UFV, we have their implied consent to send them CEMs for the next two years. We can “convert” this from implied to express consent by emailing them a consent request.

4.5 What information do requests for express consent have to contain?

Requests for express consent must contain the following information:

- (a) the specific purpose for which you’re seeking their consent;
- (b) the name of the UFV unit seeking consent;

- (c) the mailing address, and a telephone number, email address or web address, for the UFV unit seeking consent (or a link to a website containing this information); and
- (d) a statement indicating that the person whose consent is sought can withdraw their consent.

In addition to requesting the individual's express consent, it is also necessary to provide a privacy statement explaining your legal authority to collect personal information from the individual. Consent must always be "opt-in", not "opt-out". This means a check-box for consent cannot be "pre-checked".

4.6 Can UFV get a "blanket consent" that covers multiple units/purposes?

It is preferable for each unit to secure its own consent, which is restricted to the particular needs of that unit, rather than seeking a "blanket consent" that covers multiple units and purposes. There are at least two practical difficulties with "blanket consents". The first is that a valid consent must identify the purpose for contacting the individual. With "blanket consents", it may be difficult to identify and define all of the purposes of the consent in an intelligible and concise fashion. The second difficulty is that CEMs must contain information about how to unsubscribe from future CEMs. When an unsubscribe request is received in relation to a "blanket consent", it will have to be communicated to all of the units that were relying on the consent, the tracking of which would be challenging.

4.7 Is it necessary to keep records of the consents obtained?

Yes. This is absolutely essential. Any CEM sent, without proof the recipient has consented to receive it, places UFV at risk of a substantial fine under CASL. In some cases, sloppy record-keeping may invalidate an entire mailing list.

5. Unsubscribe Mechanisms

5.1 What are the requirements for unsubscribe mechanisms?

All CEMs must give subscribers the opportunity to unsubscribe from future CEMs, without cost to them. Your unsubscribe mechanism must be easy to access and use. An unsubscribe mechanism must be valid for at least 60 days after you send the CEM. If you receive a request to unsubscribe, you must comply within 10 business days.

When you send CEMs by email, you may offer **one or both** of the following unsubscribe methods:

- (a) sending an email; and/or
- (b) clicking on a link that will take the user to a web page where he or she can unsubscribe

When you send CEMs by text message, then you must offer **both** of the following unsubscribe methods:

- (a) replying to the text message with the word "STOP"; and
- (b) clicking on a link that will take the individual to a web page where he or she can unsubscribe

5.2 Do I have to keep track of unsubscribe requests?

Yes. It is essential to track which electronic addresses have submitted unsubscribe requests to ensure that CEMs are not sent to them against the recipient's wishes.

6. Other CASL Requirements

6.1 What are the other CASL requirements?

In addition to the requirements related to CEMs, CASL also contains the following prohibitions:

Installing unwanted computer programs: In order to prevent the installation of viruses, spyware, and other unwanted programs, CASL prohibits the installation of any program without the consent of the computer owner.

Altering transmission data: CASL prohibits the alteration of transmission data in an electronic message so that the message is delivered to a destination other than that specified by the sender.

Providing false or misleading information: CASL prohibits false or misleading information in CEMs, including:

- (a) any representation in the body of the message that is false or misleading in a material respect;
- (b) any false or misleading representation made in a “locator”, i.e. a name, URL, or other information used to identify the source of data in a computer system; and
- (c) any false or misleading representation in the “From” or “Subject” line of a message.

Harvesting addresses: CASL prohibits the use of programs that “harvest” email addresses to create mailing lists.

Collecting personal information: CASL prohibits the use of computer systems to collect personal information without authority.

7. More Information

7.1 How do I ensure I am compliant with CASL?

To determine whether you are compliant with CASL requirements related to CEMs, refer to the [CASL Checklist](#) and the document [Applying CASL to UFV Activities](#).

Questions about CASL or the application of CASL may be directed to Legal Counsel in the Office of the CFO and VP Administration.