

Navigating Canada's Anti-Spam Legislation: Key Guidelines for Sending Commercial Electronic Messages



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Businesses frequently rely on electronic communication to engage with customers and clients. However, it's crucial to navigate these waters carefully, especially in Canada, where Canada's Anti-Spam Legislation ("**CASL**") sets strict guidelines for sending commercial electronic messages. This article provides an overview of what you need to know to stay compliant.

What is a CEM?

CASL governs commercial electronic messages ("**CEMs**") sent to an electronic address, such as an email or text, to encourage participation in a commercial activity. A commercial activity includes any transaction, act or conduct, or any regular course of conduct, of a commercial character, regardless of whether it is carried out with an expectation of profit. An electronic message that contains a request to send a commercial message is also considered a CEM under CASL.

What are the requirements for sending CEMs?

Organizations that send CEMs must (1) obtain consent, (2) provide identification information and (3) include an unsubscribe mechanism.

1. Obtain consent

Organizations must obtain consent before sending a CEM unless an exemption applies. Consent can be either express or implied, and knowing the difference is important. If the implied consent scenarios below do not apply to your organization, express consent is required.

a) Implied consent may be relied upon where:

- there is an existing business or non-business relationship with the recipient; or
- the recipient has provided their electronic address to the sender or conspicuously disclosed their electronic address without indicating that they do not want to receive communications, and the CEM is relevant to the individual's business role.

b) Express consent requires the sender to:

- describe the purposes for requesting consent;
- identify the person seeking consent and provide contact information; and
- indicate that the recipient can withdraw their consent.

2. Identification information

The identification information in each CEM must include the sender's information, or the information of the person on whose behalf the message is sent, as well as the sender's contact

information. The contact information must be valid for a minimum of 60 days after the CEM has been sent.

3. Unsubscribe mechanism

The CEM must include an unsubscribe mechanism, such as a return email or a link, and the request must be processed within 10 days.

Penalties for violating CASL

Penalties for failing to comply with CASL requirements are serious and may include civil and criminal charges, administrative penalties of up to \$10 million, and personal liability for directors and officers.

Next steps

We're here to assist your organization with CASL-related information and compliance, including:

- Auditing and understanding your current practices related to CEMs.
- Identifying any exemptions or situations where implied consent may apply to your organization.
- Establishing consent and unsubscribe mechanisms.
- Developing written CASL policies.
- Implementing employee training plans.

Have more questions about expanding into Canada? Please [click here](#) or scan the following QR code to access Aird & Berlis LLP's Market Expansion Dashboard, your one-stop-shop for market expansion resources:



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including [this video](#) and [this one-page guide](#), all of which can be found on the [Market Expansion Resources Dashboard](#).



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Cathy is a member of the firm's Privacy & Data Security, Technology and Corporate/Commercial Groups. Her practice spans a wide range of corporate and commercial matters, including business formations, mergers and acquisitions, financing transactions and day-to-day advice on corporate governance matters. Cathy has in-depth experience working with clients in the technology sector, including startups and venture-backed companies. She assists them with raising capital and negotiating commercial arrangements, such as intellectual property licensing and development, procurement, consulting, and reseller and distribution agreements. Cathy also has expertise in the areas of data protection and privacy and frequently advises clients in various sectors on Canadian privacy law compliance and policy development.