# Key Provisions: CAN-SPAM vs. CASL

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<th>KEY PROVISIONS</th>
<th>CAN-SPAM</th>
<th>CASL (CANADA’S ANTI-SPAM LAW)</th>
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| **Application** | • Applies to any electronic mail message that's primary purpose is the commercial advertisement or promotion of a commercial product or service.  
  • Does not apply to B2B email. | • Applies to any commercial electronic messages (CEMs), including text, sound, voice, image, or email.  
  • Applies to CEMs sent from or received by computer systems in Canada. |
| **Consent** | • IF the electronic message is both commercial AND is not labeled as advertising, THEN consent is needed.  
  • However, a message need not say “advertisement” in subject line.  
  • Message must be identified as an ad in a way that is “clear and conspicuous.” | • Organizations need express consent, either orally or in writing.  
  • Implied consent applies under limited circumstances and will expire after a certain amount of time.  
  • Consent must be explicit. This may include checking a box or typing in an email address (consent cannot be pre-checked).  
  • Consent cannot be bundled into general terms and conditions. |
| **Unsubscribe Mechanism** | • Provide an opt-out mechanism/message in all marketing emails (do not make it too broad).  
  • Keep the mechanism functional for at least 30 days.  
  • Do not make the mechanism difficult (e.g., the mechanism requires a login). | • All messages must include an opt-out mechanism.  
  • The mechanism must take effect within 10 days maximum and provide two opt-out methods, such as by email or hyperlink. |
| **Liability/Penalties** | • Each separate email in violation of the law is subject to penalties of up to $40,654.  
  • Email that makes false or misleading claims may also be subject to Unfair, Deceptive or Abusive Acts and Practices (UDAP) enforcement.  
  • Both the company whose product/service is promoted and the sender of a message may be legally responsible. | • Up to $10 million per violation for corporations.  
  • Criminal charges for organizations that make false or misleading representations about the sender or subject of a CEM.  
  • Personal liability for company officers or directors who knowingly violate the law. |
| **Other Considerations** | • When acquiring a company, due diligence is critical. Acquired email address list should be scrubbed to account for people who may have already opted out of receiving email from your company.  
  • Even with affirmative consent, the electronic message still needs an accurate header, company address, and opt-out mechanism. | • Right to private cause of action, which was set to take effect on July 1, 2017, has been suspended indefinitely.  
  • There are some limited exemptions including, but not limited to: CEMs sent within or between organizations with an existing relationship (B2B); CEMs solicited or sent in response to complaints, inquiries, or requests; CEMs sent due to a legal obligation or to enforce a right; or CEMs sent by political parties seeking contributions. |