

KEY PROVISIONS	CAN-SPAM	CASL (CANADA'S ANTI-SPAM LAW)
<p>Application</p> 	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> ▪ 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.
<p>Consent</p> 	<ul style="list-style-type: none"> ▪ IF the electronic message is both commercial <u>AND</u> is <i>not</i> 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." 	<ul style="list-style-type: none"> ▪ 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.
<p>Unsubscribe Mechanism</p> 	<ul style="list-style-type: none"> ▪ 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). 	<ul style="list-style-type: none"> ▪ 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.
<p>Liability/Penalties</p> 	<ul style="list-style-type: none"> ▪ 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. 	<ul style="list-style-type: none"> ▪ 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.
<p>Other Considerations</p> 	<ul style="list-style-type: none"> ▪ 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. 	<ul style="list-style-type: none"> ▪ 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.

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