



## Cornerstones of CASL Compliance – Part 1

A Two-Part Guidebook for Communications Alignment

July 1, 2014 marked a milestone date that fundamentally changed your communications world and business practices. The catalyst for this shift was a new law generally referred to as CASL – Canada’s Anti-Spam Legislation. When the first phase of CASL went into effect in July, the new requirements and penalties for non-compliance were sufficient reasons for most firms and companies in Canada or doing business with Canadians to make a determined effort to be ready.

This Guidebook has been divided into two parts to acknowledge that some firms prepared well in advance while others pushed hard to meet the July deadline and still wonder if they’ve done enough. Use whichever parts of the guide add the most value to your activities:

- **Part 1 offers an overview of important CASL parameters**, readiness suggestions, and a top-10 list of recommended activities.
- **Part 2 addresses the role of technology in satisfying some of the new CASL requirements**, and highlights the advantages and unique capabilities of two solutions being deployed by large firms.



### Cornerstone #1: Understanding CASL

Much of the rationale supporting the passage of CASL legislation came from a technology foundation. Electronic communications are easy to do, increasingly intrusive, far reaching and relatively low cost. Those attributes unfortunately support abusive practices like spam, and even more malicious intentions. CASL requirements are designed to change and regulate that model for the better.

The actual legislation ([S.C. 2010, c. 23](#)) runs more than 14,000 words and is closely tied to other laws governing telecommunications, electronic documents and protecting personal information. Your firm should spend sufficient time exploring all the legal details. However, as a starting point overview, these seven critical elements highlight key aspects you need to understand.

- 1. Control** – By design, CASL shifts the balance of power from senders back into the hands of recipients, and provides the means of making permission-based communications more of a reality than has been the practice of late.
- 2. CEMs** – Commercial Electronic Messages (CEMs) are a CASL term that broadly covers electronic transmissions of text, sound or image used in: emails, instant messages, phone texts, social networks and web sites. The “commercial” part of the term applies to promotional offers and message content encouraging the purchase, lease or selling of goods and services. If only a small part of the overall message is “commercial,” it still qualifies as a CEM.
- 3. Consent** – Perhaps the most controversial and confusing aspect of CASL is the requirement to gain consent – either express or implied – from recipients before sending CEMs. Express consent involves a written or verbal “opt-in” obtained in advance. Implied consents can come from existing business relationships over the past two years, or similar conditions. The burden of proof for establishing consent rests with senders. To minimize risks, firms

## Detailing the CASL Consent Considerations

There’s little confusion about “express consent.” Either you have the recipient’s permission in written or verbal form to send CEMs, or not. “Implied consent” is another story with exceptions and duration timelines. As well, there are CEMs that are largely exempt from CASL consent considerations. Here are some examples of both. Pay careful attention to the legislation details and interpretations offered. Remember, too, that business-related activities should still follow the form and content requirements for CASL concerning identification of and how to contact senders, and how to opt-out.

### Implied Consent

- Existing business relationship
- Existing non-business relationship, often involving volunteer work or being part of an organization
- Recipient conspicuously publishes electronic address (CEM must relate to recipient’s professional activities)
- Recipient discloses electronic address to sender (CEM must relate to recipient’s professional activities)

### CEMs Exempt from CASL

- Family and personal relationships
- People within an organization, or between organizations if message concerns recipient activities
- Delivering a legal notice, or providing warranty or recall information
- Responding to quote, estimate or complaint
- Sender is charity receiving past donations
- Sender is club/association where recipient was a member
- Third-party referrals ... with conditions

need to document and track permission approvals and relationship dates.

4. **Clarity** – CASL also restricts practices that can mislead or deceive recipients. CEMs must clearly identify senders and/or those on whose behalf messages were sent, how to opt-out from receiving further communications, and if seeking consent, the real purpose behind the request. (See the “Look at your CEMs” topic discussed in the next Cornerstone #2 section.)
5. **Consequences** – Sizeable financial penalties are meant to encourage compliance with CASL, as is a specialized office of the Canadian Radio-television and Telecommunications Commission (CRTC) established to fight spam and enforce the law. Government agencies can invoke administrative fines reaching a maximum of CDN\$1 million per violation for individuals, and up to CDN\$10 million per violation for business entities. Plus, in the CASL legislation, liabilities track back to those responsible for CEM originations regardless of other parties involved in message creation and distributions; the potential liability risk can even extend to officers and directors.
6. **Comprehensive** – The requirements for CEMs and consent represent just the first phase of CASL. The entire legislation has provisions affecting other activities destined to be consent-controlled, including: altering transmission data and message destinations, harvesting electronic addresses, and collecting personal information via computer access. Many of those aspects are tied to the second phase of CASL, which is focused on the installation of computer programs and software.
7. **Calendar** – Dates and time durations are specified in the CASL rules; here are the critical ones:
  - a. **July 1, 2014** – start of CASL requirements for sending CEMs
  - b. **January 15, 2015** – start of CASL requirements for installing computer programs and software

- c. **July 1, 2017** – end of transition period for implied consents in place before CASL began
- d. **July 1, 2017** – start of private right-of-action allowing individuals and organizations to pursue legal remedies in addition to government agency actions
- e. **10 days** – time span to implement any opt-out requests you receive
- f. **3 years** – transition period to rely on implied consents based on business relationships you had before CASL began, unless revoked by recipient opt-out
- g. **2 years** – duration of implied consents for business relationships established after CASL began, unless revoked by opt-out

Put all these elements together, and it’s easy to create a “heavy-handed” approximation of the immediate impacts of CASL on standard business practices:

*You cannot send commercial electronic messages without permissions, which you need to document. Even with consent, your messages must clearly identify real senders, how to contact them, and how to easily opt-out. Violate the regulations, and you may be subject to million-dollar fines.*



### Cornerstone #2: Assessing Your CASL Compliance Status

A thorough communications audit is a reasonable and essential first step in assessing your firm’s CASL status. You can use an ad hoc internal project team, or rely on outside resources and a more formal process. Either way, the goal is to understand your current situation, identify likely levels of risk and exposure for your firm, and determine necessary next steps.

**Look at the parties and process.** Start with an honest, big-picture examination of your communications status and workflow. If your firm has multiple contact lists,

uses numerous outside agencies to create and distribute messages, and allows a high degree of autonomy where different partners and offices handle outreach and promotional communications at will, your scenario is likely more complicated than others. Your audit will require the support and direct involvement of all those contributors to compile a complete and accurate picture of the current state.

**Look at your policies and procedures:** Don't forget to review your official policies posted for outsiders to view on the firm's website and social network points of presence. If you already have a privacy policy in place, that will not be sufficient for CASL considerations. Organizations should have both; create a CASL-specific policy and reinforce your firm's intention to comply with the new legislation. The same review and update encouragement applies to any CASL-affected procedures and policy guidelines that govern internal operations and communication practices.

**Look at your CEMs.** The commercial messages you're already sending may be suitable for continued use, assuming they match CASL content requirements. Under CASL, your CEMs should:

- identify who the sender is, or clarify on whose behalf the CEM is being sent;
- provide a way to contact the sender via email, phone or similar means; and,
- offer a simple, no-cost way to opt out of receiving further CEMs, such as a link to an "unsubscribe" page or comparable site that is clear and easy to use. Once an opt-out request is made, you have 10 days to act on it.

Given these requirements, it helps when firms use standardized templates that govern the format and structure of messages so that necessary changes can be made quickly and consistently. While reviewing CEMs, remember to look beyond emails to assess similar commercial offers being conveyed through your social networking sites, in cellphone texts, or other electronic means.

**Look at your lists.** Examine all the distribution and contact lists used by your firm and outside agency partners. Several variables affect your CASL situation, including: list source and ownership, maintenance and management practices, frequency of updates, information accuracy, and whether multiple databases are regularly used to source and compile distribution lists.

**Look at your permissions:** Understanding current procedures for managing consents is a close parallel to list and database considerations. Is your firm practicing real permission-based communications, or is the absence of a "stop request" interpreted as the go-ahead for sending information? As you explore how contacts are currently arranged and distribution lists compiled, determine whether recipient preferences factor into those compilations and what provisions are in place for tracking the opt-in /opt-out status of individuals. With the CASL burden of proof on senders, your assessment should also evaluate system capabilities to document express and implied consents, and associated start/stop dates for business relationships.

**Look for support:** While reaching out to different functional teams and outside partners during your audit and fact-finding activities, you also create an educational and training opportunity. Take advantage of that potential to share what you know about CASL, and borrow good ideas others might have. As more people understand the new requirements and the necessary changes, you'll have more participants making contributions to the process.



### Cornerstone #3: Taking Action to Improve Your Situation

Based on what you know about CASL and what you discover during an audit, some of the required next steps become self-evident. Since the first phase of CASL is already in effect, you should move quickly and address key requirements. To guide your efforts, here's a top-10 checklist of recommended actions:

- 1. Designate a CASL official.** Pick someone to lead your change initiatives. It can be the CMO, a data steward tracking contacts in the firm's Customer Relationship Management (CRM) system, a business development representative or another choice involved with CEMs. Grant the CASL leader sufficient executive backing and support to push issues toward rapid resolution.
- 2. Fill in the obvious gaps.** Begin fixing any CASL-related issues uncovered in your audit. If there's no formal policy in place, write one. If the opt-out process is cumbersome, streamline it or build a new one from scratch. Some of your corrective measures will be relatively easy to do and can serve as good indicators of the firm's due diligence efforts to be CASL compliant.
- 3. Get tighter control of activities.** The more individuals, sources and resources involved in your CEM outreach programs, the greater the potential for violating CASL requirements. With fewer "moving parts" you can minimize risks and make the situation more manageable. Consider centralizing CEM program operations at one location, or instituting a centralized review and approval process. The next two items also reinforce the control issue.
- 4. Establish one master database.** Consolidate all your contact sources – from spreadsheets, email programs, other applications and different locations – into a single database that serves as the source of all lists. Your firm cannot afford loose ends and missteps from trying to figure out whether or not a CEM list has been purged of the latest opt-out requests.
- 5. Reevaluate outside supporting agencies.** Perhaps your team of outside partners has grown over the years, along with the potential for risk if all are not equally capable of operating in a CASL-compliant environment. You might get stronger commitments, more focused efforts and better results from fewer strategic resources handling your CEM-related activities.
- 6. Reclassify your contacts.** This critical step is necessary regardless of how many contacts you have. It isn't possible to run CEM programs unless you can classify and sort contacts based on permissions granted, the start/stop dates for implied consents, and other parameters. You need to retain and maintain this information along with other details to validate your claims.
- 7. Encourage express consents.** Permissions based on express consents have no expiration date, so it's worthwhile to obtain those whenever you can. With CASL in effect, you'll need to rely on implied consent to even ask existing contacts for express consent using a CEM.
- 8. Test your opt-out mechanism.** Put yourself in the position of a contact or customer and personally test your opt-out process. Ensure that it's easy to understand and do, and that it effectively works to remove contact names from distribution lists.
- 9. Consider insurance coverage.** Based on the complexity of your situation, the firm's CASL status, and a risk assessment, you may want to consider insurance. Despite the cost, it could be a reasonable way to minimize worry about potential administrative monetary penalties.
- 10. Apply the right technology tools.** If your CEM outreach activities are high – in numbers of programs, contacts, list pulls and data churn – spreadsheets and scratchpads are insufficient. To effectively operate under CASL requirements, you need sophisticated automation tools working for you. More than a coping mechanism, the right systems can give you the control and the confidence to know your firm is doing all it can to be compliant.

The fourth Cornerstone adds more detail to this important part of the discussion. Consult Part 2 of the Guidebook for more information about leveraging technology to satisfy CASL requirements. Within that document, you'll also find a real-world solution based on a CRM/email combination of LexisNexis® InterAction® and Vuture's Email Campaign Module.

### Take Action Now

If your firm got behind in its CASL preparations, recover and get on track right away. The penalties for violating CASL requirements can be severe. Familiarize your firm with all the details by consulting these legislative resources: [Canada's Anti-Spam Legislation web site](#) and text of the [CASL Law](#).

You may want to explore some of the ways technology can work to your advantage using current systems or solutions covered in the second half of this Guidebook. Also, as helpful as technology may be, don't overlook the human element. CASL is an ongoing process with multiple phases versus a quick-fix scenario. Your firm could benefit from naming a single individual who has management oversight covering all CASL-related activities, changes and implementation steps.

To learn more about CASL transitions, or to discuss the advantages found in different technologies, contact your LexisNexis representative. There are professional services teams with the right experience and solution resources necessary to get your firm up and running quickly. ■

### About the Author

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As an Enterprise Client Engagement Manager for LexisNexis InterAction, Dave serves as a consultant, technical advisor and project manager to guide firms in selecting and deploying the right portfolio solutions for their business needs. Prior to his eight-year association with LexisNexis, he spent several years as a senior consultant and team leader with Arbour Group

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