



Professional Engineers
Ontario

CANADA'S ANTI-SPAM LEGISLATION (CASL)

Guidelines for Chapters



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1. Introduction

Canada's new anti-spam legislation (CASL) came into force on Canada Day, 2014. It imposes restrictions on how individuals (such as professional engineers) and organizations (such as PEO and its chapters) send "commercial electronic messages". This is a message (such as email or text) where at least part of the purpose is to encourage others to participate in a commercial activity (such as raising funds for a dinner gala). If chapters send such messages, they will generally first need to obtain consent from the recipient, unless they meet one of the legislative exemptions under CASL (such as sending an email as part of an organization's regulatory function).

PEO and its legal counsel have created these guidelines to assist chapters in complying with CASL.

2. What kind of messages does CASL apply to?

CASL applies to "commercial electronic messages".

However, CASL does not apply to:

- telephone calls (including pre-recorded/robo-calls);
- faxes;
- broadcast messaging, such as tweets and social media posts;
- messages responding to a request, inquiry or complaint; or
- messages sent to someone with whom the sender has a personal or family relationship

3. What are commercial electronic messages?

A "commercial electronic message" is an electronic message (such as a text or email) where at least part of the purpose is to encourage the recipient to participate in a commercial activity.

If a chapter is in doubt as to whether a message will be considered a commercial electronic message and be captured by CASL, it should consult with PEO before sending the message.

The test is whether, by sending the message, the chapter is intending the recipient to participate in a commercial activity, *even if there is no expectation of profit.*

4. What does the commercial electronic message need to say?

Chapters must ensure that all of their "commercial electronic messages" contain appropriate identifying and contact information about the chapter (such as mailing address, phone number, email or web address), as well as information about how a person can opt out of receiving further "commercial electronic messages". This information can be within a message's text or be accessed by a link from the message to a webpage that includes instructions on how to opt out. Chapters need to include this information even if they have express or implied consent to send a message.

CASL applies to any "commercial electronic message" sent by a PEO chapter, whether the electronic message originates from the PEO email system or a chapter volunteer's personal email address.

5. Chapters should generally obtain express consent

Chapters generally should seek express consent before sending a "commercial electronic message". Although this can be done either orally or in writing, PEO requires that chapters obtain written consent. This way, if there is ever any dispute, a chapter can show that it has complied with CASL.

When chapters ask for consent, they should provide intended recipients with enough information to ensure the recipient will understand:

- (a) that the local chapter, all other chapters and PEO are, collectively, asking for their consent;
- (b) why they might receive commercial electronic messages (such as getting updates on chapter-organized events);
- (c) that they can withdraw their consent at any time; and
- (d) how they can withdraw consent (such as an "unsubscribe" button).

As with commercial electronic messages, consent requests must contain appropriate identifying and contact information about the chapter (such as a mailing address, which may be the PEO address, phone number, email or web address).

Moreover, chapters cannot bundle their requests for consent to send commercial electronic messages with other requests for consent. For example, a chapter cannot request consent to receive commercial electronic messages at the same time it requests permission to collect private information.

PEO is keeping a master database of express consents. Therefore, it is important that chapters notify and upload a completed consent form to PEO as soon as they receive express consent from anyone.

6. Sometimes chapters do not need to obtain consent

In certain circumstances, chapters do not have to obtain consent before sending commercial electronic messages. For example, chapters do not need to obtain consent if the message:

- facilitates, completes, or confirms a commercial transaction (such as when a chapter sends an email to someone confirming that it has received payment for a chapter-sponsored event); or
- is sent within an organization, or between organizations that have a relationship, and concerns the activities of the recipient organization (such as when chapters send commercial electronic messages amongst themselves (inter-chapter electronic messages) or send messages to PEO).

Chapters can also send a *single* commercial electronic message to someone without consent, following a third party's referral, but there must first be an existing relationship between the person making the referral and the chapter and the person making the referral and the recipient. When the chapter contacts the recipient, it must say that the chapter has received a referral and provide the name of the person who made the referral.

For example:

The Algonquin Chapter had a golf tournament last year. A company donated prizes. The Upper Canada Chapter wants to hold a similar event this year. If the Algonquin Chapter were to suggest to the Upper Canada Chapter that it contact the company for prizes, the Upper Canada Chapter could send an email to the company seeking donations. When it does so, it would have to say in the email that it had been referred by the Algonquin Chapter.

7. Sometimes chapters can rely on implied consent

Occasionally, chapters can assume they already have implied consent to send these kinds of messages. They may do this:

- if there is an existing business relationship between the sender and the recipient (for example, in a situation where, within two years of the message being sent, the recipient had entered into a contract with the chapter); or
- if the recipient had made an inquiry or application in the past six months in relation to certain commercial activities, such as asking about sponsoring chapter golf tournaments, for example.

However, chapters have only until Canada Day 2017 to convert implied consents (based on business relationships in existence as of Canada Day 2014) into express consents.

By July 2, 2017, chapters will not be able to rely on any implied consent. All consents must be express by that date.

PEO wants chapters to obtain express consent whenever reasonably possible. This is safer because, with express consent, a chapter need not worry about whether a last commercial electronic message was sent within the past two years, or if a person has communicated with the chapter within the past six months.

If a chapter is in doubt as to whether it has express or implied consent from an intended recipient, the chapter should consult with PEO prior to sending the message.

This means that for a chapter to rely on implied consent, it must keep the records tracking the date on which it last engaged in “commercial activity” up-to-date.

8. How can people withdraw consent?

A person can withdraw consent at any time. They can do so by email, telephone, through regular mail or through an unsubscribe mechanism. If a person withdraws consent, chapters must stop sending any further “commercial electronic messages” within *10 business days*

Chapters must include an unsubscribe mechanism in all commercial electronic messages (including newsletters) and must notify PEO immediately of any consent withdrawals.

9. Maintaining electronic mailing lists

PEO is maintaining an electronic mailing list. Chapters should communicate to PEO any updates or changes to their consents (including both the obtaining of express consent and the withdrawal of consent) as soon as is reasonably possible, so PEO can make changes to the mailing list from time to time.

The mailing list kept by PEO is the only mailing list chapters should use. Chapters must not maintain their own separate mailing lists.

Appendix 1—Frequently Asked Questions and Answers: Putting Theory into Practice

1. Can chapters send emails or texts to their chapter members without express consent?

Yes. Chapters can rely on their existing relationships with their members as evidence they have implied consent to send “commercial electronic messages”. This would include messages relating to such things as sending invitations to Members’ meetings, Town Hall sessions during elections and education seminars. However, chapters have only until Canada Day 2017 to convert these implied consents into express consents. Importantly, regardless of any implied consent, chapters must still provide members the ability to opt out of receiving some or all of these kinds of messages. However, chapter members may not be able to opt out of messages that relate directly to PEO’s regulatory mandate. If a chapter is unsure, it should contact PEO.

2. Can chapters send emails or texts to non-members about such chapter events as golf tournaments, wine tours and speaking engagements without consent?

It will depend on who is receiving the message and the type of message being sent:

- (a) If a chapter is sending communications to potential participants (who are not chapter members), sponsors or donors, these messages are likely “commercial in nature”, because the chapter is asking for participation in or a donation to the event. In this case, the chapter will first need consent from the recipient.
- (b) If a chapter has had communications with the participant, sponsor or donor in the past two years, the chapter can rely on implied consent. However, the ability to rely on implied consent based on previous communications will end on Canada Day 2017. Chapters should take advantage of the time between now and then to request express consent.

If there has been no previous electronic communication, a chapter should reach out to individuals only by non-electronic means that are not captured by CASL (such as regular mail, telephone calls and faxes).

In all cases, a chapter should seek consent from all non-chapter members attending an event to receive commercial messages (emails) in the future.

3. Can chapters send emails to politicians or government agencies?

Yes. It is unlikely CASL would apply to most of these types of messages, because they are primarily intended to provide information about things like the profession of engineering, public safety, etc. Such messages probably do not try to encourage people to enter into a commercial activity. If one of the purposes of an email is to encourage participation in a commercial activity, a chapter cannot send the email unless it first has implied or express consent. If a chapter is unsure whether its message includes a commercial message, the chapter should contact PEO for guidance.

4. Can chapters send an electronic message that installs a computer program?

Yes. Chapters can send electronic messages that install a cookie or HTML code. If messages from a chapter will include installing computer programs on others’ computers (other than a program that is simply a cookie or HTML code), the chapter must seek express consent from recipients.

5. Can chapters send emails to schools to arrange student competitions?

Yes. This is because the electronic message's purpose is to encourage students to become interested in science, technology, engineering and math, not to encourage anyone to participate in a commercial activity. Accordingly, CASL should not apply.

6. Can chapters send emails to assist in raising funds for registered charities of their choice?

Yes. A commercial electronic message sent by or on behalf of a *registered charity* (as defined in the *Income Tax Act*) to raise funds for the charity is exempt from CASL. This means chapters can send emails to their members (and others) to encourage donations to the registered charities of their choice.

7. Can chapters send emails to businesses or individuals asking for nominations for engineering awards?

Yes. As long as there is no commercial element to the award program (for example, businesses can participate in the program for free), chapters can send these kinds of emails without first obtaining consent. In other cases, chapters must either obtain consent, or contact businesses or individuals by phone or regular mail.

8. If an email is sent from an individual's personal or business email account instead of a chapter's email account, does this change any of the answers?

No. Regardless of the email address, the email is still being sent on behalf of the chapter. This means CASL still applies and the chapter (and PEO) are still accountable.

9. What are the consequences of not complying with CASL?

CASL imposes several layers of enforcement mechanisms, including administrative monetary penalties. Specifically, fines of up to \$1 million for individuals and \$10 million for organizations can be imposed. CASL also provides a private right of action (which will come into force in 2017), in which a person may seek a court order for financial compensation for each breach (with certain restrictions) of the legislation. In addition, any officer, director or agent of a corporation that commits a breach is personally liable for the corporation's breach if they directed, authorized, acquiesced in, or participated in the breach.

Appendix 2–CASL Glossary of Terms

CASL: is a short form for Canada’s Anti-Spam Legislation. CASL is made up of a Federal Act and two regulations:

- a) The Federal Act is called, *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, SC 2010, c 23; and
- b) The two Regulations are called the Electronic Commerce Protection Regulations.

Commercial electronic messages: a commercial electronic message is defined in CASL as: an electronic message that, having regard to the content of the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message, it would be reasonable to conclude has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that:

- (a) offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- (b) offers to provide a business, investment or gaming opportunity;
- (c) advertises or promotes anything referred to in paragraph (a) or (b); or
- (d) promotes a person, including the public image of a person, as being a person who does anything referred to in any of paragraphs (a) to (c), or who intends to do so.

Computer program: data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function.

Consent: “consent”, “express consent” and “implied consent” are not defined by CASL. Generally, *consent* means someone has voluntarily agreed to, or provided their approval or permission; *express consent* means consent that is clearly stated (either orally or in writing); *implied consent* means consent that can be inferred from the circumstances or someone’s conduct.

It is important to note that CASL sets out a regime for (i) when you need to obtain express consent, (ii) when an organization can rely on implied consent, and (iii) what circumstances will constitute implied consent.

Appendix 3–Express Consent Template

The _____ would like to send you electronic messages
[Insert Chapter Name]

(emails) notifying you of upcoming events, fundraisers, and chapter and PEO news. Please check the box below if you would like to receive these types of messages from us. You may withdraw this consent at any time by contacting us at the address or the phone number below or clicking “unsubscribe” on any electronic message sent by us.

I consent to receive electronic messages from the _____ Chapter of Professional Engineers Ontario.

Signature: _____

Date: _____

Print name: _____

Email: _____

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