



OFFICE OF LEGAL COUNSEL

CASL Updates



Earlier this year, we provided a newsletter identifying some of the key elements of the new Canadian Anti-Spam Legislation (CASL), which was called into force as of July 1, 2014. If you missed that newsletter, it is available on the Office of Legal Counsel website at: <http://www.uoguelph.ca/legalcounsel/Vol4Issue3-SPRING2014.pdf>.

Before proceeding into the details of CASL's effects, perhaps the most significant question to be answered is 'why should we care?' CASL is considered one of the most stringent pieces of anti-spam legislation in the world. Under the legislation, administrative monetary penalties can be up to \$1 million for individuals and up to \$10 million for businesses, charities, and other not-for-profits. Commencing July 1, 2017, individuals or classes of individuals, may bring private actions for loss, damages and expenses.

Given the stakes, universities (and other affected businesses) have been attempting to understand and take steps to comply with CASL's requirements regarding electronic communications. So, as a reminder and subject to specific exceptions, CASL limits the sending of Commercial Electronic Messages (CEMs) unless the recipient has provided consent to receive such message. The legislation also identifies:

- electronic messages as including emails, texts, SMS, electronic alerts and instant messages;
- proscriptive requirements as to form and content for CEMs including an easy-to-use and timely "unsubscribe" mechanism;
- communication as not having to be solely commercial in nature in order to fall within the legislation. CASL applies even if one of the purposes of communication is commercial.

While CASL provides no definition of 'commercial', universities have now (generally) taken the following approach:

1. Electronic messages related to the university's core activities of teaching and research are not commercial in nature and therefore do not fall under CASL (i.e. communicating with researchers about research, communicating with students or applicant students regarding academic programs, departmental newsletters to internal/external groups with updates on the academic or research work of the department).
2. Electronic messages concerning the purchase of products or services related to the university's core activities are not commercial in nature and therefore do not fall under CASL (i.e. communicating with students about the sale of textbooks, the sale of concert tickets by music students, tickets for a lecture series).
3. Electronic messages concerning the purchase of products or services for which the primary purpose is to raise funds for the university, falls under one of the exemptions under CASL (i.e. notice of fundraising event for the University).
4. Electronic messages concerning the purchase of products or services which are not within the University's core activities and are not primarily used for fundraising for the University may be commercial and fall under CASL (i.e. communicating with students regarding the sale of branded merchandise or with the external community regarding a workshop offered by a third party).

What We Do:

- ◆ Contracts & Legal Document reviews
- ◆ Provide advice to Senior Administration on diverse range of issues
- ◆ Central legal contact for external parties including lawyers, paralegals and process servers
- ◆ Workshop facilitation

Contact us:
University of Guelph
Office of Legal Counsel
UC Room 403
Guelph, ON N1G 2W1
P: 519 824-4120, x53082
F: 519 767-5259
W: www.uoguelph.ca/legalcounsel/

Each electronic message needs to be considered based on its content. However, here are some specific things to consider if you are sending communications on behalf of the University of Guelph:

1. Keep University communications about core activities separate from potentially commercial messages. Core activity messages are not commercial and fall outside of CASL. Mixed messages (core + commercial) will fall under CASL even if the commercial pieces are relatively minor.
2. If in doubt as to the nature of your electronic message, **get consent**. CASL permits the use of express or implied consent; implied consent may arise in circumstances where:
 - there is an existing and active relationship between the parties in the last two years;
 - there has been an inquiry/application within the last six months; or
 - the message is sent to an email published in a business context such as on a business' public website (and no public decline of CEMs is apparent).
3. Express consent can be obtained directly from the recipient. However, after July 1, 2014, sending an electronic message to request consent is itself a CEM unless you have implied consent. If there is implied consent under the categories mentioned above, a request for express consent can be made. If there is no implied consent, a request can still be made in person or by telephone, fax or regular mail.
4. Be careful of the '*on behalf of's*'. Don't simply forward electronic messages or links to a website on behalf of 3rd parties to other recipients. Stop and consider whether the electronic message that is being forwarded is actually being sent by the University or by the 3rd party through the University? Is it commercial? Whose 'mailing list' is being used? If the message is in fact a commercial message from a 3rd party, who has the appropriate consent; the University or the 3rd party?
5. Regardless of compliance issues for CASL, the option of providing an effective and timely 'unsubscribe' mechanism is becoming a best practice. An 'unsubscribe' should be available in an easy-to-use format and a dependable record-keeping process for tracking them.
6. Given the nature of the University, there is currently no central mailing centre for electronic messages. Therefore be clear in the 'unsubscribe' message as to what department, unit or college, the recipient is unsubscribing from.

If you have any questions or concerns, please contact the Office of Legal Counsel at ext. 53082.