

CANADA'S ANTI-SPAM LEGISLATION - DATABASE CHECKLIST

Use this Checklist as a guide to assessing **existing databases** for compliance with Canada's Anti-Spam Legislation (CASL).¹ This will assist in determining what subscribers, if any, will require reconfirmation² before or after CASL comes into force on July 1, 2014. **This document is provided for informational purposes only, and is not intended as legal advice.**

Status of Subscriber	Deadline for Reconfirmation
<p>1. Express consent</p> <p>Express consent exists if a subscriber has indicated that they would like to receive Commercial Electronic Messages (CEMs) in response to a request made accordance with CASL and related regulations, bearing in mind the following considerations:</p> <ul style="list-style-type: none"> • The Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada have indicated that they consider express consent obtained in accordance with the <i>Personal Information Protection and Electronic Documents Act</i> (PIPEDA) before CASL comes into force to be compliant with CASL. • CASL states that any person claiming to have consent bears the burden of proving it. Thus, even if you have consent, consider whether you would have the ability to prove the existence of consent in response to an enforcement action. 	<p>Reconfirmation not necessary <input type="checkbox"/></p>
<p>2. Implied Consent</p> <p>(a) Existing business relationship that arises <u>before</u> CASL comes into force³</p> <p>(i) the recipient has made a purchase, accepted a business opportunity, or bartered for something from the sender any time in the past;</p> <p>(ii) the recipient has been party to a written contract with the sender any time in the past; or</p> <p>(iii) the recipient made an inquiry or application in respect of anything referred to in (i) any time in the past.</p> <p>(b) Existing business relationship that arises <u>after</u> CASL comes into force</p> <p>(i) the recipient has made a purchase, accepted a business opportunity, or bartered for something from the sender in the past 24 months;</p>	<p>July 1, 2017 <input type="checkbox"/></p> <p>July 1, 2017 <input type="checkbox"/></p> <p>July 1, 2017 <input type="checkbox"/></p> <p>Before expiry of 24 month time period <input type="checkbox"/></p>

¹ [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.

² "Reconfirmation" refers to a request for express consent from existing subscribers.

³ This is based on the transitional provision in s. 66 of CASL, which establishes that an existing business relationship or existing non-business relationship that arises before CASL comes into force, without regard to the time periods that normally apply under those relationships, is deemed to exist for a period of three years after CASL comes into force (unless the recipient unsubscribes). Note that for the transitional provision to apply, a sender must have sent at least one CEM to the recipient based on this relationship before CASL comes into force.

Status of Subscriber	Deadline for Reconfirmation
(ii) the recipient has been party to a written contract with the sender in the past 24 months; or	Before expiry of 24 month time period <input type="checkbox"/>
(iii) the recipient made an inquiry or application in respect of anything referred to in (i) in the past 6 months.	Before expiry of 6 month time period <input type="checkbox"/>
(c) Existing non-business relationship that arises <u>before</u> CASL comes into force ⁴	
(i) the recipient has made a gift or donation to, has volunteered for, or has attended a meeting organized by the sender any time in the past, and the sender is a registered charity, political party or organization, or a political candidate for publicly elected office ⁵ ; or	July 1, 2017 <input type="checkbox"/>
(ii) the recipient has had a membership ⁶ any time in the past in the sender organization, where the sender is a club, association or voluntary organization. ⁷	July 1, 2017 <input type="checkbox"/>
(d) Existing non-business relationship that arises <u>after</u> CASL comes into force	
(i) the recipient has made a gift or donation to, has volunteered for, or has attended a meeting organized by the sender in the past 24 months, and the sender is a registered charity, political party or organization, or a political candidate for publicly elected office; or	Before expiry of 24 month time period <input type="checkbox"/>
(ii) the recipient has had a membership in the past 24 months in the sender organization, where the sender is a club, association or voluntary organization.	Before expiry of 24 month time period <input type="checkbox"/>
(e) The recipient has conspicuously published their electronic address, which is not accompanied by a statement that the recipient does not wish to receive unsolicited messages, and the message is related to the professional or official capacity of the recipient.	Reconfirmation not necessary <input type="checkbox"/>
(f) The recipient has disclosed their address to the sender without indicating a wish not to receive unsolicited messages, and the message is related to the professional or official capacity of the recipient.	Reconfirmation not necessary <input type="checkbox"/>
3. No consent	Before July 1, 2014. <input type="checkbox"/> Reconfirmation may not be necessary if you are <u>only</u> sending messages that are excluded from CASL.

For more information about CASL contact [Shaun Brown](#) at sbrown@novation.com, or 613.656.1297

⁴ See note 3.

⁵ As defined in federal or provincial legislation.

⁶ "Membership" is defined in subsection 7(1) of the [Electronic Commerce Protection Regulations \(Industry Canada\)](#).

⁷ "Club, association or voluntary organization" is defined in subsection 7(2) of the [Electronic Commerce Protection Regulations \(Industry Canada\)](#).