

Understanding Canada's Anti-Spam Legislation

Canada's new Anti-Spam Legislation (CASL) came into effect on July 1, 2014. This new law assists in protecting Canadians and reducing the effects of spam, while also ensuring that organizations can still communicate effectively via electronic means.

There is much confusion about how this legislation affects non-profits, specifically churches. While it may seem like the rules are daunting, there are some simple steps to ensure you and your electronic communication protocols are in compliance.

Commercial Electronic Messages

The new anti-spam legislation governs the sending of Commercial Electronic Messages (CEMs) to or from an electronic address in Canada.

As per the legislation, a CEM is defined as:

An electronic message that, having regard to its content, or its links, or the contact information provided, would reasonably be determined to have as a purpose encouraging participation in a commercial activity.

If you're advertising, promoting, marketing or offering a product, good or service, the message would be considered a CEM and must adhere to the anti-spam legislation.

Exemptions

CASL pertains to electronic communication that has a commercial element. Electronic communication about upcoming church activities (e.g., Bible studies, committee meetings, church picnics, children's programming, outreach programs, etc.), or informational messages and newsletters that do not contain any commercial content, will not be subject to CASL. Emails containing sermons, devotionals or church updates would also be considered exempt.

However, any kind of invitation distributed electronically to participate in a commercial activity would require adhering to CASL requirements. For congregations, this means activities such as sales of tickets, hall rentals, etc... would be considered commercial under this new legislation.

While messages may not be primarily for the purpose of commercial activity, if one of the purposes falls under the commercial activity criteria, it must comply with CASL requirements.

Fundraising and CASL Legislation

If your email is primarily about fundraising, it is exempt from the legislation.

The ELCIC and all its churches are registered charities under the Income Tax Act. CASL contains a full exemption for fundraising appeals sent by or on behalf of a registered charity.

Also exempt are messages that do not directly solicit donations but whose primary purpose is raising funds for a congregation (e.g., an email about a church bazaar, bake sale, etc.). Note the word primary. If your electronic messages is mostly about other matters but contains some commercial activity, it does require adherence to the legislation.



Legislation Requirements

A majority of congregational messages will be exempt from the legislation.

CEMs sent to members of your congregation are generally allowed under a provision of the CASL legislation called implied consent.

As well, messages that otherwise would be considered CEMs but are excluded, include messages such as those which:

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- Are sent within family or personal relationships.
- Make an inquiry or application related to an ongoing commercial activity with the recipient.
- Are organization-to-organization in nature where there is a relationship (i.e. between congregations and synods).
- Respond to inquiries or complaints.
- Primarily fundraising in nature.
- Have specific requirements (legal obligation).
- Provide a commercial confirmation, quote or estimate (such as for a hall rental).

A message is not exempt if:

- It contains third-party advertising, such as promoting a local business.
- Endorses a commercial activity or entity.

Complying with CEM Legislation

If the message going out is not exempt from CASL, there are three items you need to ensure you comply with:

- Consent
- Confirm identity and contact information of the sender
- Unsubscribe options

Obtaining Consent

According to CASL specifications, consent must be obtained from the recipient prior to a CEM being sent out. If you have not obtained consent and do not fit under an exemption, you cannot send out a CEM.

There are two forms of consent: express and implied.

Express consent is where the receiver has indicated positivity they wish to receive information from you. Express consent lasts indefinitely unless consent is withdrawn.

Implied consent is based on the nature of your relationship with the sender (i.e. a congregational member, donor or volunteer). Implied consent lasts as long as an individual is a member or volunteer, or two years after they stopped being a member/volunteer. The two-year term is important

if you are considering contacting previous donors for a fundraising appeal. The two-year time period applies to all those who give consent on or after July 1, 2014. Where a recipient donated or volunteered with an individual church any time prior to July 1, 2014, a three-year transitional period is available.

Considerations of Express and Implied Consent

If you operate under the implied consent guidelines to send emails, you have to remember to remove emails from those who have left your congregation or are no longer volunteers, within two years of them leaving or no longer volunteering.

If you work to gain expressed consent, you would not have to worry about removing people from your lists unless they request that they be unsubscribed.

When in Doubt, Comply

All messages, whether exempt from the legislation or not, will adhere to CASL requirements by following three steps:

1. Obtain consent, either express or implied, based on your relationship with the recipient. You can confirm someone's consent by providing an option to subscribe to your communication and third-party services are available to support this process.
2. Confirm identity and clearly identify yourself or the person/group the message is being sent on behalf of. Phone numbers and email, web and mailing addresses should all be easy to find.
3. Allow unsubscribes by providing an easy way for recipients to unsubscribe from receiving future messages. This may take the form of a button that automatically generates a response, allowing someone to confirm their request on a website, or it could simply be an email address to someone who manages the distribution list. The request must be processed within 10 business days.

Further Information

To discuss any concerns you may have about your church's electronic communication and CASL, contact:

Trina Gallop Blank, Director of Communications
email: tgallop@elcic.ca, phone: 1.888.786.6708 (ext. 172)

You can also find additional information at:
<http://www.crtc.gc.ca/eng/casl-lcap.htm>

