

# Canadas Anti-Spam Legislation-Regulatory Guidance

August 03, 2016

The Enforcement Advisory references other CRTC guidance for compliance with **CASL's record keeping requirements, including** Guidance on Implied Consent and Guidelines to help businesses develop corporate compliance programs (CRTC 2014-326).

The Canadian Radio-television and Telecommunications Commission has issued an Enforcement Advisory regarding the requirements under Canada's anti-spam legislation for keeping records of consent to receive commercial electronic messages.

## CASL

Canada's anti-spam legislation (commonly known as "CASL") creates a comprehensive regime of offences, enforcement mechanisms and potentially severe penalties (including personal liability for employers, corporate directors and officers) designed to prohibit unsolicited or misleading commercial electronic messages ("CEMs"), the unauthorized commercial installation and use of computer programs on another person's computer system and other forms of online fraud (such as identity theft and phishing).

For most organizations, the key parts of CASL are the rules for CEMs. Subject to limited exceptions, CASL creates an opt-in regime that prohibits the sending of a CEM unless the recipient has given informed consent (express or implied in limited circumstances) to receive the CEM and the CEM complies with prescribed formalities (including an effective and promptly implemented unsubscribe mechanism) and is not misleading. A person who sends a CEM has the onus of proving that the recipient gave express or implied consent to receive the CEM.

## Enforcement Advisory

CASL gives the Canadian Radio-television and Tele-communications Commission ("CRTC") regulatory and enforcement authority regarding CEMs and other matters. On July 27, 2016, CRTC issued an Enforcement Advisory to provide guidance on CASL's

requirements for keeping records of consent to receive CEMs. Following is a summary of the Enforcement Advisory::

- Onus: The onus of proving consent remains with the person sending, or causing or permitting the sending of, a CEM, even if the person is relying on implied consent arising from an existing business or non-business relationship.
- Benefits of Good Record Keeping: Good record keeping practices can provide various benefits, including helping a CEM sender: (1) investigate and respond to consumer complaints; (2) identify potential non-compliance issues and the need for corrective action, and demonstrate that corrective action was implemented; and (3) establish a due diligence defense in the case of a CASL violation.
- Recommended Records: CEM senders should consider keeping paper or **electronic records of: (1) all evidence of express and implied consents (e.g. audio recordings, copies of signed consent forms and completed electronic forms) to receive CEMs; (2) documented methods through which consent was collected; (3) policies and procedures regarding CASL compliance; and (4) all unsubscribe requests and resulting actions.**

The Enforcement Advisory references other CRTC guidance for compliance with **CASL's record keeping requirements, including** Guidance on Implied Consent and Guidelines to help businesses develop corporate compliance programs (CRTC 2014-326).

By

[Bradley Freedman](#)

Expertise

[Compliance with Privacy & Data Protection](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.