

# Natural Legacies:

## *Your Educational Guide to Conservation in BC*



### Canada's Anti-Spam Legislation

Canada's Anti-Spam Legislation<sup>1</sup> ('CASL') as it is colloquially known (formally: "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...") is intended to reduce unwanted commercial messages being sent to Canadians. The legislation only applies to messages sent and received within Canada.

Under Canada's Anti-Spam Legislation, organizations must comply with regulations governing the sending of commercial electronic messages. This is intended to minimize unwanted disruptions for the Canadian public. Failure to comply with the legislation may result in administrative monetary penalties. In general, commercial electronic messages must be sent with consent. Organizations must also provide information identifying the sender in addition to providing contact details. Commercial electronic messages should not be false or misleading, and a compliant unsubscribe mechanism must be provided.

### CANADA'S ANTI-SPAM LEGISLATION



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Consent can either be express or implied for the purposes of sending commercial electronic messages. The Act sets out various requirements for both. For express consent, organizations must provide the purposes for obtaining consent, and personal information regarding the sender. Messages sent by registered charities that are for the purposes of fundraising and/or which are non-commercial in nature are exempt under the CASL.

### *General Prohibitions:*

CASL applies to all senders of commercial messages, whether personal or corporate. Under the new legislation, senders cannot send (or cause or permit to be sent) a commercial electronic message to an electronic address unless:

(a) the person to whom the message is sent has consented to receiving it (whether the consent is express or implied); and

(b) the message complies with the requirements for message content for commercial electronic messages under CASL (outlined in the Compliance Basics section of this document, below).<sup>2</sup>

### *Penalties for Non-Compliance:*

Persons who violate Canada's Anti-Spam Legislation can be liable to maximum penalties up to \$1,000,000 per individual and \$10,000,000 per organization.<sup>3</sup>

The amount of the penalty will depend on a variety of factors, such as the nature and scope of the violation, the person's history and finances, and benefits obtained from the violation.<sup>4</sup> The Canadian Radio-television and Telecommunications Commission (CRTC) is the authority responsible for enforcement of CASL. The CRTC has noted that they emphasize education and compliance as opposed to punishment.<sup>5</sup>

### *What It Covers:*

#### *"Commercial Electronic Messages" (CEM)<sup>6</sup>*

Under the Act, commercial electronic messages means messages sent by any means of telecommunication, including text, sound, voice, or image. For clarity, this means phones, texting, emailing, social media (in some circumstances), etc. Further, the CASL requirements do not apply unless a commercial transaction is involved or solicited.

But what is a commercial electronic message? The key is to determine if the action is intended to induce commercial activity. Some things to look for include:

- Message content
- Hyperlinks included in the message
- Contact information in the message<sup>7</sup>

For example, the simple inclusion of a logo, a hyperlink or contact information in an email signature does not necessarily make an email a commercial electronic message.

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<sup>1</sup> Canadian Anti-Spam Legislation SC2010 c 23 <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/FullText.html>

<sup>2</sup> Canadian Anti-Spam Legislation, SC 2010, c 23, s6(1). <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/FullText.html>

<sup>3</sup> Canadian Anti-Spam Legislation, SC 2010, c 23, s20(4).

<sup>4</sup> Canadian Anti-Spam Legislation, SC 2010, c 23, s20(3).

<sup>5</sup> Canadian Radio-television and Telecommunications Commission, "Frequently Asked Questions about Canada's Anti-Spam Legislation". <http://www.crtc.gc.ca/eng/com500/faq500.html>

<sup>6</sup> Canadian Anti-Spam Legislation, SC 2010, c 23, s1(2)

<sup>7</sup> Canadian Radio-television and Communications Commission, "Frequently Asked Questions about Canada's Anti-Spam Legislation" (February 19, 2015), online: <http://www.crtc.gc.ca/eng/com500/faq500.html>