GLOBAL PACIFIC
FINANCIAL SERVICES LTD.

CASL Anti-Spam Tips from IFB

Submitted by Josh on June 10, 2014 - 4:52pm

IMPORTANT INFORMATION REGARDING NEW ANTI-SPAM LEGISTALATION ENFORECED AS OF JULY 1, 2014

IFB CISF

Ready or not! Canada's Anti-Spam Law: Effective July 1, 2014

The *Do Not Call List* has impacted how you contact potential clients by telephone. Now, as of July 1, new restrictions affect how you communicate with potential clients electronically – including email, social media and text messages.

Don't be fooled by the name! **Canada's Anti-Spam Legislation (CASL)** applies to *any* commercial electronic message which means it will affect nearly all businesses and organizations. In addition, non-compliance could result in hefty fines! We've broken down the basics to get you started.

DON'T DELAY! Obtain the consent of anyone you contact electronically about your business now! The new law requires that – except under specific circumstances – after July 1st, a **Commercial Electronic Message (CEM)** cannot be sent without the prior consent of the recipient. Consent can be *Express* or *Implied*.

TIP: Get consent now! After July 1st, asking for this consent electronically will be a CEM and sending a CEM to prospects and business contacts will be prohibited.

Express Consent – The preferred approach. Why?

1. It remains in effect indefinitely, unless the recipient revokes it; 2. Can be obtained orally or in writing – but...

CAUTION

Under the new rules, if there's a complaint it is up to you to prove you had consent of the recipient!

Express Consent cannot be contained in the terms and conditions attached to a product or service, or be a condition of a sale.

The process must be clear, simple and sought out as a separate transaction.

Consent under **CASL** is required to be ***opt-in***, not ***opt-out***: a person giving their *Express Consent* must take some positive action to do so, like checking a box.

Right ▶ ❑ an unchecked box with wording *'Check here to unsubscribe'*

Wrong ▶ ☑ a checked box with wording *'uncheck this box to unsubscribe'*

Implied Consent –

Implied consent is **time-limited.** Consent may be implied if you have an "existing business relationship". Consent can also be implied in existing non-business relationships, however, since those fall outside the scope of this publication we're not dealing with those here.

Under the *Implied Consent* rule you can send a **CEM** ***up to 2 years*** from the date you conduct a business transaction with the person, ***or up to 6 months if someone contacts you for information about your services.*** After that, if you have no further contact/transactions, you must obtain the individual's *Express Consent* to send any further electronic messages.

Example 1: Allan emails you on July 14, 2014 with a request for information on the services you provide. Under the *Implied Consent* rules, you can send him **CEM**s until January 14, 2015, at which time his implied consent expires. **6 Months**

Example 2: Allan (above), who emailed you on July 14, 2014 to request information, subsequently buys a life insurance policy from you on September 12, 2014. Now you can send him **CEM**s until September 12, 2016 **2 Years**

Example 3: Elaine buys a life insurance policy from you on March 1, 2014, and then makes another purchase through you the following year on January 19, 2015. Now you can send her **CEM**s until January 19, 2017. **2 Years**

TIP: *Implied Consent* also exists where a recipient has "conspicuously published" their electronic address, and their address does not include a statement that they do not wish to receive unsolicited CEMs. This includes electronic addresses provided on business cards, for example. However, even if the address does not have a non-solicit statement, your CEM must relate <u>only</u> to the recipient's business or role in the company/ organization.

CAUTION

While at first blush relying on *Implied Consent* could seem like the simplest approach, you will have to develop a means to track the deadlines for each of these relationships, and be able to **'scrub'** your contact list as the expiry dates arise to avoid complaints and possible fines.

Referrals –

IFB successfully argued that the **CEM** rules should permit you to follow-up on a referral. However, only the first **CEM** follow up will be exempt from the consent requirement, and certain restrictions apply:

1. You must have an existing business or non-business relationship, family or personal relationship with the person providing the referral and that person would have to have a similar relationship with the person s/he is referring you to.

2. Your **CEM** must disclose the name of the person who made the referral and state that the message is sent as a follow-up to that referral.

Attachment	Size	Type
CASL Tips Anti-Spam from IFB (PDF)	285.11 KB	application/pdf