

**Applicability of Canadian Anti-Spam Legislation (CASL) to Queen’s University E-Communications
GENERAL RULES**

PRIVILEGED WORK PRODUCT

Subject to revision when interpretation guidance, including case law, available

APPLICABILITY OF CASL		
	Impact of CASL	References
<ul style="list-style-type: none"> Types of e-messages subject to CASL 	<p>Under CASL, an electronic message is any message, including its attachments and embedded links, sent to an electronic account. This includes emails, text messages, and messages using social media such as Facebook. Facebook wall post would not be captured. However, messages sent to other users using a social media messaging system, for example, Facebook messaging and LinkedIn messaging, would qualify as sending messages to "electronic addresses."</p> <p>It does not include interactive two-way voice communications, fax messages or voice recordings sent to a telephone account.</p> <p>CASL applies not only to Commercial Electronic Messages (CEMs) Queen’s sends, but also to CEMs Queen’s “causes or permits to be sent” by third parties on behalf of Queen’s, such as direct mail services.</p>	
<ul style="list-style-type: none"> What is a “Commercial Electronic Message”? (CEM) 	<ul style="list-style-type: none"> REMEMBER CASL only applies to electronic messages that are “Commercial Electronic Messages” (“CEMs”) commercial activity” is essentially defined as “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit”. Examples provided in CASL include: purchasing, selling, bartering or leasing products, goods or services, or land; providing a business, investment or gaming opportunity; OR advertising or promoting any of these activities. To determine if an e-message is commercial, look at content of the message, the hyperlinks in the message and content they point to on a website or other database, and consider whether it is reasonable to conclude the purpose of your message, or one of its purposes, is to <i>encourage participation in commercial activity</i>. 	<ul style="list-style-type: none"> CASL Section S. 1(2)

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<ul style="list-style-type: none"> • What is required? 	<p>If your message is a CEM and is not otherwise Fully Exempt from CASL (see below for exemptions), the are 4 basic requirements:</p> <ol style="list-style-type: none"> 1. You must have Implied or Express consent from the recipient to send the message – See Below for more detail on Consent 2. Your message must contain Information that identifies the sender of the message 3. Your message must contain Contact information that allows the recipient to contact the sender. This means: <ul style="list-style-type: none"> ○ Mailing address and one of: phone number, email address, OR web address of the sender ○ The Information must be valid for 60 days after message is sent 4. Your message must contain an unsubscribe mechanism – See Below 	<ul style="list-style-type: none"> • CASL Section 6 • CRTC Regulation Section 2 • CASL Section 11(1)(a) <p>The Unsubscribe Mechanism must “enable the person to whom the CEM is sent to indicate, the wish to no longer receive <u>any</u> commercial electronic messages, or any specified class of such messages, from the person who sent the message”</p>

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<ul style="list-style-type: none"> • What is IMPLIED Consent? 	<ul style="list-style-type: none"> • Existing Business Relationship is present if: <ul style="list-style-type: none"> ○ There is a relationship between sender and recipient arising from purchase or lease of: a product, good, service, land or interest in land within previous 2 years¹ before message was sent ○ The recipient made an inquiry or application about any of the above things to the sender within previous 6 months before the message was sent ○ Any written contract between recipient and sender is in existence or expired within previous 2 years* before message was sent <p><i>Implied consent for existing business relationship is reinstated with each new or subsequent transaction of the nature described above – even if the recipient had previously unsubscribed</i></p> • Existing non-Business Relationship is present if: <ul style="list-style-type: none"> ○ There is a relationship arising from a donation or gift from the recipient to the sender ○ The recipient performed volunteer work for the sender or attended a meeting organized by the sender within previous 2 years* before message was sent <i>where the sender is a registered charity</i> (Queen’s University is a registered Charity) ○ The recipient is a member of the sender’s a club, association or voluntary organization within previous 2 years* before message was sent • Recipient’s electronic address is published or Recipient disclosed electronic address (i.e. by giving you a business card or sending you an email) with no indication of a wish not to receive CEMs <u>AND:</u> <ul style="list-style-type: none"> ○ YOUR message to the recipient is relevant to the recipient’s business role, functions, or duties <p>NOTE: Having implied (or express) consent DOES NOT relieve you from having to provide the information required by Section 6 (see above) an unsubscribe mechanism</p> 	<ul style="list-style-type: none"> • CASL Section 10(9)(a) and Section 10(13) • CASL Section 10(9)(b) and (c)

*Transitional provisions allow for an implied consent period of 3 years if you had an existing business or non-business relationship on July 1, 2014 and the recipient has not withdrawn consent. CASL Section 66 **The 3 year period is intended to permit organizations time to obtain express consent, which then has no time limit, until withdrawn***

*For ongoing relationships (i.e.: membership in an association; ongoing purchase under a subscription, ongoing rental under a lease, etc.) the **2 year period** begins counting **on the day the relationship terminates** CASL Section 10(14)*

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<ul style="list-style-type: none">• What does your UNSUBSCRIBE Mechanism have to include/do?	<ul style="list-style-type: none">• Allow the recipient to indicate a wish to no longer receive any CEMs or any specific class of CEMs from the sender• Mechanism must remain be valid for 60 days, minimum• Request to unsubscribe must be complied with within 10 business days• Information and unsubscribe mechanism must be set out clearly and prominently <p>Unsubscribe mechanism must include option to unsubscribe from ALL CEMs from the sender. The Sender is the person that played a material role in the content of the message or the distribution list to which the message was sent. <i>You can also include a list from which the recipient can choose what to unsubscribe from</i></p> <ul style="list-style-type: none">• Recommendation: The Unsubscribe mechanism should include way for the recipient to unsubscribe from ALL future electronic messages of the nature being sent. <i>For example:</i> <p style="text-align: center; color: red;">If you'd like <Queen's Department/Unit/School/Faculty/etc. of X> to refrain from sending you similar e-mails in the future, please Click Here, <active Link>.</p><p style="text-align: center; color: red;">You may also mail a written request to us at: <Mailing Address of Department/Unit/School/Faculty responsible for the email></p>• This kind of mechanism could then direct the recipient to a pre- filled response email that says “<i>please unsubscribe me</i>” in the subject line and is already set up to be sent BACK to the email address from which the Queen’s originated; OR it could be a simple click-box on a web interface that sends the person’s email address and his/her wish to unsubscribe to a database that is managed by the Unit/Department/Faculty that sent the email.<ul style="list-style-type: none">• You can institute any kind unsubscribe mechanism that suits your particular operations and resources SO LONG AS IT:<ol style="list-style-type: none">a. Allows the recipient to unsubscribe using the same electronic means by which he/she received your message; OR if that is not practical, allows them to do so by any other electronic means ANDb. Specify an electronic address, OR a link to a www page that can be accessed through a web browser, to which the person can send their wish to unsubscribe. <p>NOTE: You Don’t HAVE to include the mail-in option I’ve suggested above but it kills 2 birds with one stone, in that it ensures that your mailing address is always included in the CEMs that you sent out.</p>	
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SUMMARY OF FULL EXEMPTIONS FROM CASL			
Type of Content/Recipient	Within Scope of CASL?	Impact of CASL/COMMENTS	References
Friends or family: CEMs exchanged between family (specific criteria) or friends (specific criteria) as long as the recipient has not indicated that he/she does not wish to receive CEMs or any specified class of such CEMs	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> • CASL Section 6(5)(a)
Inquiry or Application: message to a person engaged in commercial activity to make an inquiry or application related to the commercial activity	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> • CASL Section 6(5)(b)
Response to a request/inquiry/complaint: message sent in response to a request, inquiry or complaint <i>or is otherwise solicited by the person to whom the message is sent</i>	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> • Industry Canada Regulations, Section 3(b)
Internal Business or Business-to-Business: Messages sent by an employee, representative, contractor or franchisee within an organization or between businesses that have an “existing business relationship”, where the messages are relevant to the business, role, function or duties of the recipients	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> • Industry Canada Regulation, Section 3(a) (i) & (ii)

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SUMMARY OF FULL EXEMPTIONS FROM CASL (Cont'd)			
Type of Content/Recipient	Within Scope of CASL?	Impact of CASL/COMMENTS	References
Enforcing Legal Rights: Messages sent due to a legal obligation or to enforce a legal right, including a pending legal right (e.g. debt collection, licensing, enforcing contractual obligations, enforcing court orders/foreign legal rights and non-transactional business communications, such as electronic bank statements)	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> Industry Canada Regulation, Section. 3(c)
Electronic messaging services: CEMs sent and received on an electronic messaging service are exempt	No Fully Exempt IF: →	IF: The contact information and unsubscribe mechanism required by CASL are conspicuously published and readily available on the user interface through with the message is accessed, and the person who receives the message consents to receive it either expressly or by implication.	<ul style="list-style-type: none"> Industry Canada Regulation, Section 3(d)
Limited Access Accounts: Messages sent to limited-access secure and confidential accounts to which messages can only be sent by the person who provided the account to the person who receives the message	No Fully Exempt	CASL N/A	<ul style="list-style-type: none"> Industry Canada Regulations, Section 3(e) <p>SOLUS, for example</p>

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SUMMARY OF FULL EXEMPTIONS FROM CASL (Cont’d)			
Type of Content/Recipient	Type of Content/Recipient	Type of Content/Recipient	Type of Content/Recipient
<p>CEMs sent to an address in another country: If the person who sends the message reasonably believes it will be accessed in a foreign country AND the message conforms to the Anti-Spam law of the foreign country</p> <p>Reasonable Belief: The onus will be on the sender to justify the reasonableness of the belief and will require inquiry about the foreign laws, at a minimum.</p>	<p>Full Exemption ONLY if meet the requirements:</p> <p>Also, CASL does not apply if message is simply routed through Canada.</p>	<p>See the Regulation for the List of Foreign Countries: List of countries is set out on the last page of the Regulation at: http://fightspam.gc.ca/eic/site/030.nsf/eng/00273.html</p> <p>If message contains commercial content and you are unsure whether or not it complies with foreign law, treat it as a CEM and comply with CASL:</p> <p>(a) express or implied consent required (b) include required contact information (c) include unsubscribe mechanism</p>	<ul style="list-style-type: none"> Industry Canada Regulation, Section 3(f))
<p>Fundraising by Registered Charity (Queen’s University): CEMs sent by or on behalf of a registered charity if the CEM has as its primary purpose raising funds <i>for the charity</i></p>	Fully Exempt	<p>CASL N/A</p> <p>But only for CEMs that are sent to fundraise for Queen’s</p> <p>Message must have a primary purpose of fundraising for Queen’s</p> <p>Other revenue-generating activities by a charity are not exempt</p>	<ul style="list-style-type: none"> Industry Canada Regulation, Section 3(g)
<p>Banner Advertising on a Website</p>	Fully Exempt	<p>CASL’s definition of “electronic address” does not include IP addresses. IP addresses are not “electronic addresses” for purposes of CASL. Therefore banner advertising on a website is not subject to CASL. So, banner advertising on your website will not render the content of the website as being of a “commercial character” for CASL purposes</p>	<ul style="list-style-type: none"> Industry Canada Regulatory Impact Statement

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SUMMARY OF FULL EXEMPTIONS FROM CASL: INTERNAL E-COMMUNICATIONS RE. “ACTIVITIES” OF QUEEN’S			
Type of Content/Recipient	Commercial Activity?	Impact of CASL	References
<p>“Internal” Commercial Electronic Message (CEM): CEM sent within Queen’s by an employee, representative, contractor or franchisor to another employee, representative, contractor or franchisee, that concerns the “activities” of Queen’s</p>	<p>Maybe, but Fully Exempt</p>	<p>CASL N/A</p> <p>Messages need not be related to “core business” to be exempt. EXAMPLE: Queen’s (or a Department/Unit/Faculty) is hosting an employee pancake breakfast and sends message to all employees to sell tickets for the event. The message is a CEM (has “commercial character”; “encourages participation in a commercial activity”), but is exempt from CASL because the message relates to an activity of Queen’s (or a Department/Unit/Faculty/<i>etc.</i> of Queen’s)</p>	<p>Internal Business exemption</p> <p>Industry Canada Regulations, Section 3(a)(i)</p> <ul style="list-style-type: none"> • Example from the Industry Canada <i>Regulatory Impact Analysis Statement</i>
SUMMARY OF FULL EXEMPTIONS FROM CASL: E-COMMUNICATIONS BETWEEN UNIVERSITY STAFF & EXTERNAL ORGANIZATIONS, WHERE THERE IS RELATIONSHIP			
Type of Content/Recipient	Commercial Activity?	Impact of CASL	References
<p>“External” Commercial Electronic Messages (CEMs): CEM sent from employee/representative/consultant of one org. to employee/representative/consultant of another org. <i>if</i></p> <p>(i) the organizations have a business relationship when the message is sent, and (ii) the message concerns the activities of the recipient organization</p> <p>FOR EXAMPLE: message from Queen’s employee to Hospital employee; message from Queen’s administrator to government official; message from Queen’s researcher to funding agency manager; GWL message to Queen’s employee in benefit plan</p>	<p>Maybe, but Fully Exempt</p>	<p>CASL N/A</p> <p>MAY not have to be related to “core business” of the recipient business because the exemption refers to “activities” of the recipient. BUT if sending a message under this exemption, to be safe vis-à-vis CASL:</p> <ul style="list-style-type: none"> • ensure the message is directed to an appropriate recipient, given their role, • ensure you don’t sent messages randomly to persons within an organization even if there is an existing business relationship <p>Other limited exceptions may apply – see Implied Consent (Section “D” above).</p> <p>But if relying on implied consent, still need to comply with the Information/identification and unsubscribe requirements.</p>	<p>Business-to-Business exemption</p> <ul style="list-style-type: none"> • Industry Canada Regulations, Section 3(a)(ii)

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SUMMARY OF OUT-OF SCOPE E-COMMUNICATIONS			
Type of Content/Recipient	Within Scope of CASL?	Impact of CASL	References
Two-way Interactive voice communications	No	CASL N/A However, other requirements outside of CASL may apply in situations like these, such as the Unsolicited Telecommunications Rules .	CASL Section 6(8)(a)
Faxes sent to telephone accounts	No	CASL N/A	CASL Section 6(8)(b)
Voice recordings sent to telephone accounts	No	CASL N/A	CASL Section 6(8)(c)

SUMMARY OF SPECIAL RULES RE. COMMERCIAL ELECTRONIC COMMUNICATIONS (CEMs)			
Type of Content/Recipient	Within Scope of CASL?	Impact of CASL	References
CEMs sent by third-parties on behalf of Queen’s University	Yes (unless applicable exemption)	<p>Unit must monitor any third parties that send messages on its behalf – CASL rules will apply.</p> <p>CASL applies not only to CEMs sent directly by Queen’s but to CEMs the University “causes or permits to be sent” by third parties such as direct mail services</p> <p>Need to review contracts to ensure that Third Parties are agreeing to abide by CASL when sending messages on behalf of Queen’s, AND indemnify Queen’s if they fail to do so.</p> <p>All CEMs by Third Parties <u>MUST</u> clearly indicate they are being sent ON BEHALF OF QUEEN’S UNIVERSITY and SHOULD identify the Department/Unit/Faculty/etc. if applicable.</p>	CASL applies to all CEMs sent by or on behalf of a person or organization

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SUMMARY OF SPECIAL RULES RE. COMMERCIAL ELECTRONIC COMMUNICATIONS (CEMs)			
Type of Content/Recipient	Within Scope of CASL?	Impact of CASL	References
CEMs sent by computer system outside of Canada to a recipient outside of Canada	No	The requirement for consent, contact information and an unsubscribe mechanism is only contravened “if a computer system located in Canada is used to send or access the electronic message.”	<ul style="list-style-type: none"> CASL Section 12
CEMs sent by computer system outside of Canada to a recipient outside of Canada	Yes	The requirement for consent, contact information and an unsubscribe mechanism is contravened “if a computer system located in Canada is used to send or access the electronic message.”	<ul style="list-style-type: none"> CASL Section 12 Receipt of electronic message from outside of Canada in Canada is “access” by a computer system located in Canada
Referrals: The FIRST CEM sent to a recipient who was referred to you by a person with whom the sender has an existing business relationship or existing non-business	Yes: CONSENT is not required IF 	<p>Your message discloses the full name(s) of the person(s) who made the referral and clearly states that the message is being sent as a result of a referral</p> <p>You must still include required information (see above under “APPLICABILITY OF CASL – (C) What is Required?” <u>AND</u> an unsubscribe mechanism</p> <p>This first email should request express consent from the recipient to add the recipient to your mailing list to receive future CEMs from you.</p>	<ul style="list-style-type: none"> Industry Canada Regulation, Section 4(1)

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SUMMARY OF SPECIAL RULES RE. COMMERCIAL ELECTRONIC COMMUNICATIONS (CEMs): E-COMMUNICATIONS INVOLVING VOLUNTEERS & MEMBERS OF CLUBS, ASSOCIATIONS AND VOLUNTARY ORGANIZATIONS (SPECIAL RULES RE. IMPLIED CONSENT)			
Type of Content/Recipient	Commercial Activity?	Impact of CASL	References
<p>Electronic message sent by a club or association (as defined in the regulations) to a member of that club, association or voluntary organization</p> <p>(Alumni Association, for example)</p>	<p>Maybe, Depending on Content BUT: →</p> <p>Note: The organization may also have non-commercial types of communications, in which case they are not subject to CASL requirements</p>	<p>1) Implied Consent is present 2) Identification & Unsubscribe Requirements apply</p> <p>Implied Consent is present where there is an “existing non-business relationship”. Here this arises from the recipient’s membership in the club, association or voluntary organization.</p> <p>Note: This allows student associations to communicate among members, for example.</p>	<ul style="list-style-type: none"> CASL [Section 10(13)] <p>RECOGNIZE THAT MANY CLUBS, ASSOCIATIONS OR VOLUNTARY ORGANIZATIONS MIGHT BE SEPARATE ENTITIES FROM QUEEN’S, SO, SOME GUIDANCE MAY BE REQUIRED VIA QUEEN’S STAFF</p>
Burden of proving consent		<p>Anyone who claims to have had consent for CASL purposes has the onus of proving consent (implied or express) existed.</p> <p>This means that detailed databases, lists and logs of all communications that are being relied on for express or implied consent must be kept diligently and must be up to date</p> <p>Same applies for evidence when relying on full exemption from CASL, (e.g. “response to inquiry” exemption – need record of the inquiry)</p> <p>Must be available for evidence in event of a proceeding or regulatory inquiry/investigation</p>	<ul style="list-style-type: none"> CASL Section 13

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SUMMARY OF SPECIAL CONSIDERATION RE: ELECTRONIC COMMUNICATIONS WITH PROSPECTIVE OR CURRENT STUDENTS			
Type of Content/Recipient	Commercial Activity?	Impact of CASL	References
Recruitment of prospective students Including regular degree programs and continuing education i.e. includes QSB Executive Education, and other continuing and executive education	No	CASL N/A	<ul style="list-style-type: none"> • Lacks commercial character. • It is strongly recommended that unsubscribe mechanisms be offered
Promotion of academic programs or courses	No	CASL N/A	<ul style="list-style-type: none"> • Lacks commercial character • It is strongly recommended that unsubscribe mechanisms be offered
Application Process	No	CASL N/A	<ul style="list-style-type: none"> • Lacks commercial character
Provision of information (e.g. re. registration, schedules, policies, exams, emergencies, billing, intramural sports)	No	CASL N/A	<ul style="list-style-type: none"> • Lacks commercial character
Faculty to Student Electronic Message concerning academic matters	No	CASL N/A	<ul style="list-style-type: none"> • Lacks commercial character

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Electronic Message sent in response: to request, inquiry or complaint from prospective or current students (or any member of general public regarding student-related or any other matter)	Maybe, but Fully Exempt	CASL N/A	<ul style="list-style-type: none">• “Reply to Request” Exemption • Industry Canada Regulations, Section 3(b)
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NOTE: The commentary regarding “Lack Commercial Character” in connection with communications to Prospective or Current Students **IS NOT based on any particular exemption in CASL**

This commentary is based on legal **argument/opinion** concerning the essential nature and character of Universities and their activities within the umbrella of EDUCATION as opposed the Trade and Commerce. It is an opinion/argument with which University Counsel is comfortable, absent any future determinations, guidelines or decisions to the contrary.