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## CASL Questions and Answers Prepared for Colleges Ontario

Canada's new anti-spam legislation (known as "CASL") will be in effect in large part on July 1, 2014. It will affect the email practices of almost every person in Canada, including Colleges. CASL should cause Colleges to think differently about the emails and other electronic messages sent to students, prospective students, parents of students or prospective students, alumni, donors, governmental bodies, vendors and suppliers, members of the general public, and others. Since CASL is a federal law, it will apply to all Colleges within Canada. (Please refer to the CASL Primer circulated in April for general background and information about CASL. We have also prepared a CASL Checklist and Sample Consent Language.)

In this document we address some of the questions Colleges have been asking about the application of CASL. Many of the questions overlap so there are a few concepts that are repeated throughout the responses. The answers reflect the best information we have at the time of writing and may be subject to change over time. This document will be updated when appropriate.

We are aware that the government has been asked whether there is an exemption under CASL for post-secondary educational institutions' core educational activities. To date the government has consistently replied that there are no industry-specific exemptions under CASL. CASL does have some specific exemptions for specific kinds of messages, and we discuss a number of these below. A good starting point is to remember that CASL regulates commercial electronic messages – electronic messages of a non-commercial nature are not caught.

### A. General Questions Regarding CASL And its Application

#### 1. What is the purpose of CASL?

CASL is intended to increase the efficiency and productivity of Canadians online by reducing the flow of unsolicited email messages. From an organization's perspective, the purpose can be thought of as streamlining databases to ensure there is a list of individuals actually related to the organization and actually wishing to receive electronic communications from the organization.

#### 2. Who will enforce CASL?

The main governmental bodies responsible for the enforcement and implementation of CASL are the CRTC, the Privacy Commissioner of Canada and the Competition Bureau. Industry Canada also is involved with raising public awareness of the new law. The government has published several guidelines to help interpret and understand CASL: *Guidelines on the interpretation of the Electronic Commerce Protection Regulations (CRTC)* and

*Guidelines on the use of toggling as a means of obtaining express consent under Canada's anti-spam legislation* as well as the recent FAQs at <http://www.crtc.gc.ca/eng/casl-lcap.htm>

#### 3. What are the possible consequences for non-compliance?

Failure to comply with CASL could result in significant fines to the College, among other things. CASL has administrative monetary penalties of up to \$1 million per violation (for individuals) and up to \$10 million per violation (for organizations). If a College employee sends an email that contravenes CASL (such as an email without the necessary consent, or an email that does not have the requisite unsubscribe mechanism), the College could be held liable, if the employee was acting within the scope of his or her employment. Board members and officers of the College could also be held personally liable for violations.

4. What is the main requirement under CASL?

As a starting point, it is important to remember that under CASL **the basic rule, subject to a few exceptions, is that commercial electronic messages cannot be sent unless both the consent and content requirements are met.** We elaborate on what this means below.

5. Does CASL apply to Colleges?

Yes. CASL applies to any person who sends commercial electronic messages. Therefore, CASL will apply to Colleges when they send CEMs. There are some exemptions that apply to registered charities (see E3), but that depends on the kind of CEM the charity sends or to whom they send the message. CASL does not have any specific exemption for Colleges or other post-secondary educational institutions.

6. What is a CEM? Does CASL apply to text messages, voicemails and faxes?

A “**commercial electronic message**” or “**CEM**” is an electronic message that, having regard to the content of the message, it would be reasonable to conclude has as its purpose, *or one of its purposes*, to encourage participation in a commercial activity. It includes messages that offer to sell, advertise or promote any product or service. “**Electronic message**” means a message sent by any means of telecommunication, and includes email and text messages. It does not include live two-way phone calls, faxes or “snail mail”. “**Commercial activity**” is broadly defined and means any transaction, act or conduct that is of a commercial character, whether or not there is an expectation of profit.

7. Does CASL apply to mass CEMs or do single CEMs count?

CASL applies to all commercial electronic messages, regardless of whether they are sent to a single recipient or 100 recipients. It applies whether the CEM is sent to an individual at his or her personal email address, a person’s work email address or the email address of a company.

8. What is considered “commercial” in the context of the Colleges?

As defined in CASL (see A6), the term “commercial activity” means any activity that is of a

commercial character, whether or not the person who carries out the activity does so in the expectation of profit. While there will be activities that a College conducts which are non-commercial, such as an email notifying students of a classroom change, Colleges will be subject to CASL to the extent they send commercial electronic messages – for example, emails from the bookstore promoting a sale or emails advertising a discount with a sponsor (like VIA Rail). Note that based on the definition, a CEM need only have *one* of its purposes be commercial; a message need not be *solely* commercial to be considered a CEM.

9. Extra-territorial application – does CASL apply to CEMs sent by a College to students or alumni outside of Canada? What about CEMs sent by a College’s foreign campuses or agents?

CASL applies to CEMs sent or accessed by a computer system located in Canada. This means that CEMs sent by the College in Canada are caught, as well as CEMs sent from outside Canada (e.g., by the College’s foreign service provider or foreign campus) to a recipient in Canada. This includes CEMs sent by the College in Canada to recipients outside Canada, such as prospective international students and others outside Canada.

10. Are consents obtained prior to July 1, 2014 valid under CASL?

Although CASL does not specifically address whether consents obtained prior to CASL coming into force can be valid under CASL, the CRTC has stated that express consents, obtained before July 1, 2014, to collect or use email addresses to send commercial electronic messages will be recognized as being compliant with CASL. This means that some consents obtained prior to July 1, 2014 may be valid for CASL purposes. The College would need to have records to verify this if it wants to rely on previously-obtained consents, and because it has the burden of proving that it has obtained consent.

11. Is consent adequate for the purposes of privacy legislation automatically valid under CASL?

As mentioned in A10, the CRTC has said that valid consents obtained prior to July 1, 2014 to use electronic addresses to send CEMs will be recognized under CASL. This suggests that some consents obtained for purposes of complying with the *Personal Information and Protection of Electronic Documents Act* (Canada) and other privacy legislation may be valid under CASL. Note, however, that such consents must have been given to receive commercial electronic messages, meaning it should have been clear that the person was consenting to receive marketing or promotional emails. There are significant differences between what constitutes “consent” for CASL versus privacy purposes, and so it is important to distinguish between the two.

12. What does “express consent” mean? How should I obtain express consent? Are there any best practices that are emerging yet?

The CRTC states that express consent for purposes of CASL means “opt-in” consent – that is, a person actively did something to signify that they consent to receive CEMs. Examples include checking a box (that was unchecked to begin with) or signing a form. Consent cannot be buried in terms and conditions, and a request for consent must be clearly identified to the person from whom the consent is being sought. The request for consent must clearly and simply state the purpose for which consent is being sought (i.e., to receive CEMs). Opt-out consent - for example, having a box pre-checked to indicate that someone consents to receiving CEMs (so that he or she must un-check the box to decline) - is NOT express consent.

One of the best practices to use to obtain express consent is to use an unchecked box and to request someone to check it to indicate consent to receiving CEMs from the sender.

13. Can someone give express consent orally?

Yes. The CRTC has stated that oral consent can suffice as express consent under CASL. For purposes of audit and demonstrating compliance, the College should establish ways to record and

verify consents given orally, if it wants to obtain consent that way.

14. Does express consent ever expire?

No. Express consent is the “gold standard” of consents under CASL because it does not expire unless someone chooses to unsubscribe or withdraw consent.

15. What if the College has been sending a recipient CEMs for years, there has always been an unsubscribe mechanism, and the recipient has not unsubscribed – does that mean there is implied consent?

No. A failure to unsubscribe or indicate that one does not wish to receive CEMs does not mean that consent is implied. Implied consent is limited to certain circumstances under CASL (see below for more details).

16. What is the transition period? How does the transition period work in the College context?

CASL has a three-year transition period that applies to recipients with whom the College has an existing business relationship (e.g., students) and an existing non-business relationship (e.g., members of its alumni association, donors to a registered charity). From July 1, 2014 to June 30, 2017 (the “**Transition Period**”), there is implied consent to send these recipients CEMs, provided that as at July 1, 2014: 1) the recipients had that status; and 2) the College has previously sent the recipients CEMs. In essence, the Transition Period gives a College implied consent to continue sending CEMs to the contacts that the College has, as at July 1, 2014, an existing business or non-existing business relationship with, until June 30, 2017. Of course, this is always subject to the recipient unsubscribing.

Since there is implied consent during the Transition Period, the College may use this period to request consent (including via email) from these recipients in order to ensure that the College may continue sending them CEMs.

17. What are the “Content Requirements” of CEMs?

CASL requires every CEM to have certain content, namely (the “**Content Requirements**”): 1) **identification information**, being information about the sender (i.e., name, mailing address, and telephone number, email address or web address). Note that this information needs to be valid for a minimum of 60 days after the message is sent; and 2) an **unsubscribe mechanism** that allows the recipient to indicate, using the same electronic means by which the CEM was sent, that they no longer wish to receive CEMs from the sender. There also needs to be a link or an email address to which the recipient can send the unsubscribe request. The unsubscribe mechanism must be easy to use and free, and implemented without delay and in any event, within 10 business days.

By way of example, the identification information would look something like this:

ABC College of Ontario or “ABC College”  
 123 Main Street, Toronto, Ontario  
 A1B 2C3  
 (416) 555-1234 info@abccollege.ca  
 www.abccollege.ca

By way of example, the unsubscribe mechanism would look something like this:

You may withdraw your consent and unsubscribe from ABC College’s e-communications at any time by clicking [here](#) [with hyperlink.] Please keep in mind that by unsubscribing you may not receive communications of interest and importance to you.

Please refer to the Sample Consent Language document for more details. Some additional questions and answers regarding the unsubscribe mechanism are set out below in section B.

**B. Content Requirements and Unsubscribe Mechanism**

1. Does the unsubscribe mechanism need to be a link in the CEM, or can it be some other means (e.g., reply to “unsubscribe@College.ca”, or reply with “Unsubscribe” in subject line)?

The unsubscribe mechanism must be able to be “readily performed”, meaning that it is not difficult or time-consuming to access. It should be simple, quick, and easy for the recipient to use. For CEMs sent by email, the unsubscribe mechanism can be a link in the CEM to the College’s web page or it can be a reply-to email address that the recipient sends an unsubscribe request to. Colleges should assess their technological and administrative capabilities to determine which mechanism is operational for the College.

2. Which CEMs need to have the content requirements, including the unsubscribe mechanism?

All CEMs sent with express or implied consent must comply with the Content Requirements, including the unsubscribe mechanism. Only CEMs sent relying on a full exemption are exempt from both the consent and Content Requirements (see D6).

3. Should Colleges develop an auto-signature that complies with the Content Requirements and have it automatically attach to all CEMs sent by the College?

Yes. Colleges should develop an auto-signature that complies with the Content Requirements and ensure that it automatically attaches to all CEMs sent by the College which do not qualify for a full exemption. A consistent, regularized process will maximize the likelihood that the College does not violate CASL by sending non-compliant CEMs.

4. If a student clicks “unsubscribe”, does that “unsubscribe” apply to all CEMs from the College or only the category of CEMs the “unsubscribe” was selected for, e.g. payment reminders? If an alumni/donor clicks “unsubscribe”, does that apply to all CEMs from the College?

CASL requires a recipient to be able to unsubscribe from receiving all CEMs from a sender. If a College’s unsubscribe mechanism simply allows a recipient to unsubscribe, that would need to apply to all CEMs sent by the College. However, CASL does not prohibit the College from creating a preference centre whereby the recipient can choose which categories of CEMs it wants to receive or no longer wants to receive. For example, the unsubscribe mechanism can bring the recipient to a webpage where they can choose among a list of CEMs (e.g., alumni events, program info, fundraising) and indicate whether they wish to unsubscribe from all CEMs, or a subset of them.

5. If a student “unsubscribes”, can the College still send any electronic messages to the student?

In certain circumstances, a College may be able to send electronic messages even if the recipient has unsubscribed or withdrawn consent. For example, some of the messages a College sends to students may not be CEMs because they are not commercial in nature, such as emails about class schedules and safety incidents. The College may want to specify in the unsubscribe mechanism that choosing unsubscribe does not mean that the student will not receive any electronic messages from the College.

### C. Potential Students/Applicants

1. If a potential student asks for information about the College, can it be sent via email or text?

CASL has an exemption for CEMs sent in response to a request or inquiry. If a potential student asks for information about the College, the College may send a CEM containing the requested information. However, if the recipient does not respond or make further requests, the College should not continue sending CEMs to that person unless the person falls within the “existing

business relationship” exemption (see D1.) That would permit the College to send CEMs to an individual for six months after the inquiry or application was made, so long as the communication arose from that inquiry or application. Colleges should ensure that these kinds of contacts are not added onto general distribution lists without obtaining the recipient’s consent.

2. Can a College send CEMs to potential students who provide their contact information (including email addresses) at an open house or college fair?

If it was clear from the circumstances that the potential student provided their email address to the College for the purpose of receiving CEMs from the College, this may suffice as express consent. Colleges should add appropriate language in the sign-up forms or other materials used to collect email addresses at those types of events. If the email address was being provided for a different purpose, for example to enter a draw for a prize, that may not a blanket consent to receive CEMs. In addition, once CASL comes into force, requests for consent will need to include the identification information set out in the Content Requirements and a statement that the person can withdraw from his or her consent.

Please refer to the Sample Consent Language document for more details.

3. If a College employee sends CEMs to a potential student, but the potential student does not apply to or enrol in the College, does the College have to stop sending that individual CEMs?

It depends on whether the College obtained express consent from the potential student. If it did, then the College may continue sending CEMs to the recipient, even if he or she does not enrol at the College, provided the individual does not unsubscribe or withdraw consent.

4. Is consent obtained through a centralized application service, such as OCAS, sufficient for the College to continue to send CEMs?

There has been some discussion with the Ontario Colleges Application Services (OCAS) about adding a request for consent in the OCAS application forms that would permit the Colleges to which the student applies to send CEMs to that student. This consent would permit Colleges to send CEMs to applicants before they formally enrol at the College or otherwise communicate with the College. If a student applies to a College but does not end up attending the College, that College may continue sending CEMs to that person (see C3). Keep in mind that not all students apply through a centralized application service, and therefore Colleges should consider adding requests for consent in their own application forms.

**D. Students**

1. What does the “existing business relationship” exemption mean?

- a. Is it all students who have enrolled in or attended the College? Does it apply to applicants?

The existing business relationship applies to persons who have purchased a product or service from the College within the two-year period immediately before the day the CEM is sent to that person. Since the College’s services are provided on an ongoing basis, the two-year period can be considered to begin on the day that the relationship ends – that is, when the student ceases to attend the College. Students who are enrolled in the College and who pay fees fall under this category because they purchased a service from the College. Under CASL, there is implied consent to send CEMs to current students and students who ceased to attend the College within the past 2 years. In these circumstances, the College would still need to comply with the Content Requirements (see A17).

The existing business relationship also applies to persons who made an inquiry or application to the College within the six-month period immediately before the CEM is sent to the person. This means that the College has implied consent to send CEMs to applicants for six months after they apply

to the College. In light of the six month limit, Colleges may wish to get express consent from prospective students with whom they are communicating so that they can continue the dialogue. In either case, the College would need to comply with the Content Requirements (see A17).

- b. Do these exemptions apply to students who have accepted an offer to the College but have not yet paid tuition? What about students who defer?

The existing business relationship may not apply to these students because they have not yet purchased a product or service from the College. Other exemptions could apply, for example if they applied to the College within the past six months or if the College enters into a contract with the individual – for example, to set out the terms of the deferral.

- c. Does it apply to students who attend the College on scholarship (and do not pay any tuition fees) or who receive student assistance (e.g., OSAP)?

The existing business relationship applies to persons who have purchased a product or service from the College. The source of the funds used to purchase the services or product is not a factor. Students who receive OSAP or scholarships may not have used their own funds to pay their tuition fees, but they did purchase a service from the College using funds obtained from these sources. Similarly, while in many cases the student’s parents are the ones who actually pay tuition, the existing business relationship would apply to the student because they are, from the College’s perspective, the person purchasing and receiving the services.

2. Issues relating to the email addresses that the College supplies to students:

- a. Is the College responsible for CEMs sent by students or other users of these email addresses?

CASL applies to persons who send, or cause to be sent, CEMs. The College does not control the emails that students send from their @college email addresses, and generally would not be causing those emails to be sent (despite the fact that it is the College’s servers/IT systems that

cause the email to be sent) in a way that causes it to be liable under CASL. However, we consider that the relationship between Colleges and students is somewhat unique, and schools have a special responsibility towards students that other businesses or organizations do not have. It may be that if a student uses his or her @college email address to send CEMs that contravene CASL, the College may be implicated in some way. We recommend that Colleges put policies and protocols in place (including procedures to deal with violations of CASL) in order to mitigate the risk of students committing violations of CASL using their @college email addresses, and making these protocols visible and agreed to by students. The policies should also disclaim the College's liability for messages sent from @college email addresses.

- b. Is there an exemption for the College to send emails to students at these email addresses?

While there is an exemption that applies to internal communications (see F1), that exemption as worded only applies to CEMs sent by an employee, representative or consultant of the College to another employee, representative or consultant of the College, provided the CEMs concern the activities of the College. The exemption does not seem to apply to the College's communications to students.

We have asked the government to consider whether the exemption would include students and hope that over time, interpretation bulletins and guidelines will address some of these issues to bring greater certainty to the industry.

- 3. Does CASL apply to CEMs sent in the offer/acceptance process – e.g., offers, registration information, enrollment/payment due dates?

CASL contains a partial exemption for CEMs that solely facilitate, confirm or complete a transaction that a person already agreed to enter into. In the College context, if a student has enrolled in the College, messages solely regarding registration dates, enrollment information, and confirmation that payment has been, will fall under this category and be exempt from the consent requirement unless some commercial information is included.

However, the Content Requirements will apply to these CEMs.

- 4. Does CASL apply to CEMs sent in the program delivery process – e.g., course start/end dates, course and exam schedules, program information, change of classroom?

CASL contains a partial exemption for CEMs that solely provide notification of factual information about the ongoing use or purchase of a product or service offered by the sender. Examples include emails about important dates and schedules. These CEMs are exempt from the consent requirement but the Content Requirements still apply.

- 5. Does CASL apply to CEMs that contain information about health & safety or emergency issues?

CASL contains a partial exemption for CEMs that solely provide safety or security information about a service that the recipient uses or purchased. Examples include emails from the College about security incidents on campus or emergency safety messages (e.g., school closures due to weather). These CEMs are exempt from the consent requirement but must comply with the Content Requirements.

**In addition to the partial exemptions cited for the kinds of messages that are described in D3, D4 and D5, some of these messages may not be CEMs at all. For example, emails about class cancellations or safety incidents are administrative in nature and may not encourage participation in any commercial activity. If that is the case, then these messages are not CEMs and are not subject to CASL, and neither the consent nor Content Requirements would apply.**

- 6. Do CEMs sent to students under the existing business relationship need to have the content requirements (including the unsubscribe mechanism)? Are there any CEMs that do not need to have the unsubscribe mechanism?

The existing business relationship is a category of implied consent. The College may send CEMs to students who fall under this category without obtaining their express consent, but as mentioned above the Content Requirements, which include

the unsubscribe mechanism, still apply. This means that generally speaking, the CEMs that a College sends to its student population need to have an unsubscribe mechanism in the message.

The CEMs that do not need to comply with the consent or the Content Requirements (including the unsubscribe mechanism) are those that fall under a full exemption. These include:

- CEMs sent between persons with a family or personal relationship;
- Where the CEM would fit within the internal communication exemption (see F1);
- Where the CEM would fit within the business to business exemption (see G1);
- CEMs sent to satisfy a legal or juridical obligation, to provide notice of an existing or pending right, or to enforce a right, legal or juridical obligation;
- CEMs sent and received on an electronic messaging service, if the information and unsubscribe mechanism that are required by CASL are conspicuously published and readily available on the user interface where the message is accessed, and the recipient has consented to receive it, either expressly or by implication;
- CEMs sent on a limited-access secure and confidential account to which messages can only be sent by the person who provides the account to the person who receives the message (see D7); and
- CEMs sent by or on behalf of a registered charity as defined in subsection 248(1) of the *Income Tax Act* (Canada) where the message has as its primary purpose raising funds for the charity.

Certain of these exemptions will be available to Colleges and others may be worth exploring.

7. How would the “limited-access secure and confidential account” exemption work?

The regulations to CASL state that neither the consent nor the Content Requirements apply to a CEM “that is sent to a limited-access secure and confidential account to which messages can only be sent by the person who provides the account to the person who receives the message.” This is sometimes referred to as the “bank” exemption because it can apply to the messages that a bank

sends to its customers via its online banking site. It is meant to apply to situations where the message being sent can only be sent by the person who provides the account to the recipient.

If a College puts in place a system whereby students have access to a secure and confidential account (e.g., a portal) where the College provides information to that student, and where messages can only be sent by the College, this would not be caught by CASL. We understand that some of the Colleges have moved or are moving to this system for providing ongoing information to students. That information would include both commercial and non-commercial messages. The terms of use of this system should refer to CASL in order to maximize compliance.

8. When does the two-year period start to run for purposes of the existing business relationship definition – when the student graduates, or when the student last makes a payment to the College?

Since the nature of the College’s educational services to students are services that are provided on an ongoing basis, the two-year period referenced in the definition of “existing business relationship” can be considered to begin on the day that the College’s existing business relationship with the student terminates. This will be when the student ceases to be a student at the College, for example when they graduate or withdraw from the College. Keep in mind that a different exemption may apply to a former student (see, for example, E1).

9. Can a College send a CEM to a former student if the student left the College more than two years ago and still owes the College money?

We think the best argument is that these CEMs may be subject to a full exemption because they provide notice of the College’s intention to exercise an existing or pending legal right, namely the right to enforce payment of a debt. In that case, the CEM would not need to comply with consent or Content Requirements. Whether the message falls under this or one of the other exemptions will depend on the circumstances and the content of the message.



## E. Alumni/Donors

1. Can the College continue sending CEMs to members of its Alumni Association? Is there any issue with alumni who are considered to be “members for life” of the Alumni Association?

The existing non-business relationship applies to persons who 1) are current members of a club, association or voluntary organization, and those who ceased to be a member in the two-year period immediately before the day the message is sent, and 2) donors or volunteers of a registered charity (as defined in subsection 248(1) of the *Income Tax Act* (Canada)) who last donated or volunteered within the two-year period immediately before the day the message is sent. Members of a College’s alumni association and donors to the College, if the College is a registered charity, fall under this category. The College or registered charity, as applicable, has implied consent to send CEMs to these recipients. The Content Requirements still need to be included in these CEMs.

It may be important to consider how students become members of the alumni association. The exemption for members seems to be predicated on members knowingly joining an organization (and therefore impliedly consenting to CEMs). It thus may be useful for the College to obtain express consent from students as they shift to alumni.

2. Can the College continue sending CEMs to people who have donated to the College in the past?

The existing non-business relationship applies to donors of a registered charity (as defined in subsection 248(1) of the *Income Tax Act* (Canada)) who last donated or volunteered within the two-year period immediately before the day the message is sent. This means that generally speaking, a registered charity has implied consent to send CEMs to anyone who donated to it in the last two years. If the last donation from an individual was more than two years ago, the College may no longer rely on this implied consent to send further CEMs. Note that under the Transition Period (see A16), the registered charity has three years from July 1, 2014, to continue sending CEMs to all current and past donors, provided they comply with the Content

Requirements (and subject to the donor unsubscribing) and the registered charity has previously sent the individual CEMs by July 1, 2014.

3. Are charities exempt under CASL? Does this mean Colleges, as registered charities, are exempt?

No. Charities are not exempt under CASL. There is a full exemption for CEMs sent by or on behalf of a registered charity (as defined in subsection 248(1) of the *Income Tax Act* (Canada)) where the message has fundraising as its primary purpose. This exemption would apply to Colleges and their foundations that have been registered as charities. This exemption is not a blanket exemption for charities or for fundraising, but only for those CEMs that have fundraising as a primary purpose. While this may seem to apply to many CEMs that a registered charity sends, we note that the CRA Guidelines for charities restrict fundraising activities for charities and those restrictions should be kept in mind when the College is considering its approach to fundraising messages. (To see the CRA guidance on charities and fundraising go to: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/fndrsng-eng.html>)

4. How can the College contact new, potential donors? Does CASL prohibit us from sending CEMs to potential donors?

The basic rule of CASL is not to send unsolicited commercial electronic messages. If the College wants to reach out to a new potential donor, with which it has no prior relationship, then it is likely that the College does not have consent to send the donor a CEM. In these circumstances, the College may phone, fax or mail the potential donor (as CASL does not apply to phone calls, faxes or “snail mail”) or may seek express consent to contact the potential donor. It may also be able to have someone who knows the donor put the donor and the College in contact with each other. (Note that there are some interesting rules around CEMs and referrals, however.)

5. Is there any distinction between CEMs for events that are free of charge and those that charge a fee to attend?

The definition of “commercial activity” includes activities that do not have an expectation of profit. Thus, messages that promote the College but do not have any cost or fee component may be CEMs. Generally speaking, all electronic messages that have a commercial purpose will be considered CEMs.

6. Can consents be "transferred" from the College to an affiliate, like the College's Foundation or alumni association?

CASL requires each sender to obtain consent from the recipients to whom it sends CEMs. Part of the reason for the consent requirement is so that recipients know from whom they are consenting to receive CEMs. Generally speaking, consents obtained by the College are not transferable to another legal entity, such as the College's Foundation, unless the consent was worded in a way that included the other entity. The affiliate should obtain express consent on its own, or may rely on implied consent or another exemption to send CEMs. (There may be additional privacy law concerns regarding the transfer of identifiable personal information.)

## F. Internal College Communications

1. What is the scope of the internal communication exemption? Can it include internal fundraising CEMs? Can it include CEMs inviting staff to an event or workshop?

The internal communication exemption applies to CEMs sent by an employee, representative or consultant of the College to another employee, representative or consultant of the College, provided that the CEM concerns the activities of the College. This is a full exemption, meaning that such CEMs do not require consent or need to comply with the Content Requirements. CEMs that sell or promote something, including internal fundraising events such as a bake sale for the United Way, would be caught, assuming that the event is endorsed by the College. The CRTC has said that under this exemption, the “activities” of an organization have a broad meaning and can include activities that are not the business activities of the organization. In order to fall under

this exemption, the College must be careful to ensure these messages are sent exclusively to employees, representatives or consultants of the College.

2. Do the Content Requirements (including the unsubscribe mechanism) apply to CEMs sent internally within a College?

No. The internal communication is a full exemption, meaning the Content Requirements do not apply to CEMs sent internally between employees, representatives or consultants of the College, provided the message concerns the activities of the College. Nevertheless, Colleges may want to consider whether it would be feasible and reasonable to have a standard signature that includes the Content Requirements to apply to these messages to maximize the likelihood of compliance with CASL.

3. What are examples of CEMs that would NOT fall under the internal exemption?

The internal communication exemption does not apply to CEMs that are sent internally within the College, but do not relate to the College's activities. For example, a CEM sent by a College employee advertising the sale of his car would not fall under this exemption.

4. What should Colleges be doing to train and educate its staff in order to comply with CASL?

Colleges should establish an internal email communication policy that complies with CASL and disseminate it within the College. Colleges should also deliver training to educate staff on the requirements of CASL, and in particular those staff members who are regularly engaged in sending CEMs (e.g., alumni association, admissions, and departments that regularly engage in marketing activities). The College should establish guidelines on how new email addresses are added to distribution lists and the procedures for recording consents and unsubscribe requests. Colleges should also consider identifying an officer or other individual within the College to be a CASL officer, who will deal with complaints or other incidents about electronic messages. The College should establish ways to audit, verify and monitor compliance with CASL going forward and should ensure the most current database is used.

5. What are the penalties under CASL and who could be held responsible for violations if an employee violates the legislation?

As noted above (see A3), the penalties under CASL are potentially quite severe: up to \$1 million for individuals per violation and up to \$10 million for organizations per violation. Business and organizations may be liable for violations of CASL committed by employees, if the employee acted within the scope of his or her employment. Directors and officers may also be liable for violations of CASL in the organization, if they directed, authorized, or acquiesced in the commission of the violation. It is possible that both the individual who sends the email and the College could be held liable for a violation of CASL.

**G. External College Communications (vendors, suppliers, employers)**

1. What is the scope of the “business to business” exemption? To whom does it apply?

The “business to business” exemption permits organizations to send CEMs to other organizations without having to comply with CASL requirements. Employees, representatives or consultants of a College can send CEMs to employees, representatives or consultants of another organization if: 1) the College and the recipient organization have a relationship, and 2) the message relates to the activities of the recipient organization. As an example, CEMs sent by Colleges Ontario to a College about the College’s activities would fit within this exemption. This is a full exemption, meaning these CEMs do not need to comply with the consent or Content Requirements.

2. Can the College send CEMs to employers or potential employers encouraging them to hire students from the College, including for a co-op program?

The general rule is that Colleges cannot send CEMs to employers or potential employers encouraging them to hire students from the College without complying with CASL. However, if the College has a relationship with the employer or potential employer such that it falls under the business to business exemption described above,

then it may send CEMs without complying with the consent or Content Requirements. If the College has no relationship with the employer or potential employer, but has located the electronic address of someone in human resources of an employer or potential employer by way of the electronic address being conspicuously published, and that person has not made a statement prohibiting the mailing of unsolicited commercial electronic messages, the College may send an electronic request to such person provided that the Content Requirements are met. Keep in mind that CASL does not prevent the College employee from initially contacting the potential employer by phone or fax or mail.

3. If a College employee sees a job posting by an employer on a public website, can the employee contact that employer about placing a student? Does this fall under the “conspicuously published” exemption?

This scenario may fall under the “conspicuously published” exemption (see G2) because the employer posted its electronic address without a statement requesting CEMs not be sent to it. If this statement is not included with the posting, then a College can contact the employer about placing a student. For example, if the College wanted to reach out to prospective respondents based on information found on the respondents’ websites, the CEM would fit within this exemption. The College needs to comply with the Content Requirements in these circumstances.

4. Can a College send CEMs to invite companies to participate in applied research? What about sending CEMs to professors or faculty at another College?

A College cannot send CEMs to invite companies to participate in applied research without complying with CASL. An exemption to the requirements under CASL may exist where the College has a relationship with the company and the business to business exemption applies or if the “conspicuously published” exemption applies. A College can send CEMs to professors and faculty at another College if the CEM relates to the activities of the other College (i.e. it cannot promote an activity that does not relate to the activities of the College).

**AUTHORS**

**Adrian Liu**  
416.367.6585  
aliu@blg.com

**Victoria Prince**  
416.367.6648  
vprince@blg.com

40 King Street West, 44<sup>th</sup> Floor  
Toronto, Ontario M5H 3Y4

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