



MEMORANDUM 2014 #3
From: Office of the Chair

June 27, 2014

Anti-Spam Legislation

Please review the attached memo and ensure that all email communication sent from your University email address complies with the legislation. Note that the legislation applies only to "Commercial activity", and hence most of our normal business as educators is exempt. We do, however, have some commercial enterprises embedded in Labs, and it is here that we must be careful.

PDAD&C # 77, 2013-2014

To: PDAD&C

From: Cheryl Regehr, Vice-President & Provost

Date: June 26, 2014

Re: Canada's New Anti-Spam Legislation

This memo provides a brief summary of the new Canadian Anti-Spam Legislation ("CASL"), which comes into effect on July 1, 2014.

➤ **What is CASL and when does it apply?**

CASL primarily regulates the sending of "commercial electronic messages", defined as messages (emails) that have as their purpose, or one of their purposes, the encouragement of participation in a commercial activity.

"Commercial activity" is 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 out the activity does so in the expectation of profit."

The University is of the opinion that electronic communications relating to its core educational activities, broadly defined, are **not** "of a commercial character". Thus, CASL does not regulate communications pertaining to our core educational activities.

The University's core activities relate to education in all its many-faceted aspects, and to the maintenance of an educational community. Thus, the new law will not regulate our communications with:

- 1) existing or prospective students, for any kind of educational program, and for any aspect of the educational relationship, including residence space, meal plans, etc.; or
- 2) alumni in relation to educational activities and the maintenance of an educational community relationship (e.g. lectures, reunions, alumni events).

Communications that have a "mixed purpose" require special scrutiny. If one of the purposes of the message is commercial, for example promoting the sale of a product such as a specially discounted cell-phone, or a third party commercial service, it will render the entire communication commercial in purpose.

In addition, there are some exemptions to the law. Emails sent from University accounts that do not relate to core educational activities may be exempt from the law if they are emails that are sent:

- 1) for fundraising purposes;

- 2) to businesses with which the University conducts business, in the normal course of business (eg. to a catering company that provides us with catering services);
- 3) by one University employee to another University employee; and
- 4) by a University employee to her/his friends or family members.

➤ **What needs to be done right away?**

As of July 1, all outgoing electronic communications should be reviewed to determine their nature and purpose, primarily to ascertain if they are related to the University's core activities or fall within one of the 4 exemptions, or may be viewed as commercial, in which case further analysis should be undertaken.

➤ **What if the communication is "of a commercial character"?**

If the communication is commercial, and is not otherwise exempt, you will need express or implied consent to send it. In the case of "an existing business or non-business relationship", the legislation provides a transitional period of three years from July 1, 2014 during which consent to receive emails can be implied, and during which you can seek express consent. Consent can be obtained online.

Express consent requires three things:

1. consent (e.g. evidenced by clicking on a button that states "I consent" to a specified kind of communication);
2. identification of the person on whose behalf the message is sent (in our case this will be the University, and it will be best practice to identify a specific contact within the University relevant to the communication being sent); and
3. an unsubscribe mechanism.

➤ **How would CASL apply to various types of electronic messages sent by the University?**

The following examples give you some general sense of the application of CASL, although much will depend on specific facts.

- Student recruitment: CASL does not regulate messages regarding recruitment for any kind of educational program run by the University. This includes continuing education and certificate programs, summer camps with an educational component, etc. However, if students are recruited for third party activities on University premises (which should be rare), CASL may apply.
- Student services and student academic engagement: CASL does not apply.
- Advancement and alumni relations: CASL does not apply if the purpose of a message is fundraising. Furthermore, CASL does not apply to messages regarding the maintenance

of the alumni relationship, which relates to a core University activity. Special consideration needs to be given to promotion of affinity products and services, where CASL may apply.

- University events: CASL does not apply to messages regarding events relating to core University activities (lectures, colloquia, varsity sporting events, student artistic performances). A message regarding a third party, professional (non-student) sports or theatrical production would likely be covered by CASL.
- Employee relations and recruitment: CASL does not apply to such messages.
- Research issues: CASL does not apply. However, CASL could apply to some messages regarding commercialization.
- Non-core activities: CASL will apply. For example, messages regarding the sale of merchandise and books to the general public, and gym memberships for the general public, will be covered by CASL.

➤ **Further University Guidance**

For specific guidance, you will need to work with the office of your Division Head, who may have designated someone to oversee the task of ensuring that communications comply with CASL. The Division Head may decide to seek further guidance centrally (legal, IT, communications) in more complex situations. The University will release further guidance that focuses on frequently asked questions and practical suggestions in the coming weeks.

➤ **Has the Government issued general guidance regarding CASL?**

Yes. For example, the CRTC has published general guidance on the meaning and application of CASL at: <http://www.crtc.gc.ca/eng/casl-lcap.htm>

Nonetheless, be cautious about applying general guidance to the University context, which is unique because of the non-commercial nature of most of its communications.

➤ **Compliance is important**

In all, we believe that the legislation should have a relatively small impact on the University, since most of our electronic communications pertain to our core activities, which are not of a commercial character. However, we do need to take this new legislation seriously, and there are penalties that can be imposed for violations.

Thank you for your attention to this new set of regulatory requirements.