



University College of the North

FAQ's about Canadian Anti-Spam Legislation (CASL)

Note: This FAQ was created to provide general guidance and assist UCN staff and faculty members to understand their obligations under CASL. It summarizes the complex requirements of CASL and is not intended to provide you with specific legal advice. If you have specific questions about CASL, please refer to UCN policy *AD-01-02 Canadian Anti-Spam Legislation*, or contact the UCN Access and Privacy Officer who is the designated Compliance Officer for CASL.

1.0 What is CASL?

CASL is anti-spam legislation that came into effect July 1, 2014. CASL establishes rules that apply to all electronic messages considered commercial in nature and prohibits the sending of commercial electronic messages (CEM) without the receiver's prior consent. CASL protects consumers and businesses from the misuse of digital technology, including spam and other electronic threats and aims to help businesses stay competitive in a global, digital marketplace.

2.0 What are CEMs?

CEM is defined as any message to an electronic account (i.e. emails, text messages, messages using social media platforms) that encourages participation in a commercial activity. A commercial activity as defined under CASL is "any particular transaction, act of conduct or any regular courses 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 of commercial activities include purchasing, selling, bartering or leasing products, goods or services, or land; providing a business, investment or gaming opportunity; or advertising or promoting these activities.

3.0 What are the requirements for sending CEM?

There are three general requirements under CASL for sending CEM:

1. **Obtain Consent** – Before sending a message, you must have expressed or implied consent from the recipient to send that type of message.
2. **Content Requirements** – You must identify the sender, detailed contact information and the purpose of the message.
3. **Unsubscribe Requirements** – You must provide a mechanism to give the recipient a way to 'unsubscribe' from receiving further messages.

4.0 When does CASL apply?

CASL applies to all electronic messages sent from UCN staff and faculty members that are commercial in nature. It is important to remember that the onus is on the sender to prove they received consent.

5.0 What impact does CASL have on UCN?

CASL will have a fairly modest impact on UCN as most electronic messages sent by UCN are not subject to the legislation because they are not commercial in nature.

UCN is a public institution, providing public service and is not a commercial entity. Therefore, CASL does not apply to messages that communicate, support or promote UCN's core purposes and powers. UCN's purposes and powers as defined in section 3 and 4(1) of the UCN Act are as follows:

Purposes

3 The purposes of the university college are

- a) to serve the educational needs of Aboriginal and northern Manitobans; and
- b) to enhance the economic and social well-being of northern Manitoba;

by providing a broad range of educational opportunities.

Powers

4(1) For its purposes, the university college may

- a) provide post-secondary instruction and training;
- b) facilitate the creation and sharing of knowledge in an atmosphere of open and critical thought;
- c) grant degrees, honorary degrees, certificates and diplomas;
- d) provide career counselling, basic education upgrading and literacy programs, as well as post-secondary transition and preparation programs for under-prepared students;
- e) develop and deliver joint academic programs in conjunction with a university, another university college, a college or another accredited post-secondary institution; and
- f) generally promote and carry out the work of an educational institution in northern Manitoba.

6.0 CEM which are subject to CASL

Providing electronic information about activities or facilities of UCN will most likely not be considered advertising or promoting a commercial activity. However, it is sometimes difficult to distinguish between the provision of general information and the promotion of commercial activities. If you are unsure of whether an electronic message is subject to CASL, you should request advice from UCN's Access and Privacy Officer.

UCN considers the following to be commercial activities and therefore subject to CASL:

- Promotion and sale of products at the UCN Bookstore that are not connected to educational programming and/or student life;
- Promotion and sale of publications;
- Events where tickets are sold (i.e. speaking series);

- UCN Food Services;
- Student recruitment;
- Recreational services and activities;
- Student housing services;
- Promotion of non UCN or co-sponsored conferences, workshops, events and activities;
- Promotion of UCN sponsored events or services that are not related to UCN's core activities;
- Promotion of new courses, academic programs or opportunities to prospective students and the general public;
- Solicitation for sponsorship.

7.0 Types of Consent

Express consent – must be formally sought from an individual, recorded and stored to verify the person has expressly indicated that they want to receive messages. Individuals may provide their consent in various ways, such as: signing a document, sending you an email saying they want you to email them, entering information on a web form, or by checking a box 'I Consent' on a web page.

Express consent is not time limited. You have someone's express consent until such time as the individual no longer wants to receive CEM and withdraws their consent or 'unsubscribes' from further messages.

To obtain express consent, your message must include:

- A statement of purpose for seeking consent;
- The name of the UCN department, faculty, department, etc. seeking consent;
- Contact information for the specific area seeking consent (mailing address, telephone number, email address);
- A statement that the recipient can unsubscribe or withdraw their consent at any time;
- A privacy statement explaining why you are collecting personal information from the individual.

Implied consent – means you have not asked permission, but consent is implied if it is done under certain situations based on the type of relationship UCN has with the recipient. Implied consent is generally valid for 2 years.

UCN has implied consent in the following situations:

1. When there is an 'existing business relationship' or an 'existing non-business relationship' with the person to whom it is sent;
2. Where a person has conspicuously published the electronic address to which the message is sent, the publication is not accompanied by a statement indicating they do not want to receive CEMs at that address and the message is relevant to the recipient's business role, functions or duties in an official or business capacity;
3. Where the person to whom the message is sent has disclosed, to the person who sends the message, the electronic address to which the message is sent without indicating a wish not to receive unsolicited commercial electronic messages at the electronic

address, and the message is relevant to the person's business, role, functions or duties in a business or official capacity.

UCN has implied consent to send CEM to individuals in the following groups:

1. Alumni – based on an existing non-business relationship which is based on membership in UCN Alumni. "Membership" means the status of having been accepted as a member of a club, association or voluntary organization in accordance with its membership requirements (consent is ongoing until they unsubscribe);
2. Students – based on an existing business relationship (consent is valid for 2 years after they cease to be students);
3. Members of the public who have attended UCN sponsored courses, conferences or events, based on an existing business relationship (consent valid for 2 years);
4. Members of the public who inquire about UCN services (consent is valid for 6 months);
5. Sponsors or persons who have donated, based on an existing non-business relationship (consent is valid for 2 years);
6. Members of the public/industries who have provided business cards with an email address and the email being sent is relevant to their business (consent is valid for 2 years from receipt).

8.0 Can UCN get a 'blanket consent' that covers multiple areas/departments?

There are difficulties with obtaining blanket consents. The first is that express consent must identify the purpose for which you will contact the individual. With blanket consents, it may be difficult to identify and define all of the purposes of the consent in a clear and concise fashion. The second, is that all CEMs must contain an unsubscribe method which could be challenging to track. When an unsubscribe request is received in relation to a 'blanket consent' it would have to be communicated to all of the areas/departments that rely on the consent.

9.0 Do I have to keep a record of the consents obtained?

Yes, it is essential to keep record to prove that the recipient has consented to receive CEMs. There are penalties for violation of CASL and improper record keeping could place UCN at risk of a substantial fine.

10.0 What are the requirements for unsubscribe mechanisms?

All CEMs must give individuals the opportunity to unsubscribe or withdraw their consent from receiving future CEMs. Under CASL requirements, if you receive a request to unsubscribe, you must comply within 10 business days. It is essential to track unsubscribe requests to ensure they are removed from receiving future CEMs.

When sending CEM by email or text, you may offer one or both of the following unsubscribe methods:

- Reply to Email or text with the words 'STOP' or 'UNSUBSCRIBE' and/or;
- Clicking on a link that will take the user to a webpage where they can unsubscribe.

11.0 Does CASL apply to 'mixed purpose' messages?

Yes, CASL applies to a message if it contains, even in a small part, a commercial element not exempt from the scope of legislation. Mixed purpose messages can only be sent to recipients from whom UCN has implied or express consent.

Examples of mixed purpose messages include:

- Newsletters about UCN educational programs that include advertisements for non UCN programs;
- Newsletters that contain promotion of third-party events, conferences, program, etc.

12.0 Other CASL requirements

In addition to the requirements related to CEMs, CASL also regulates the following, in the course of a commercial activity:

- **The installation of computer programs without consent:** In order to prevent the installation of viruses, spyware and other unwanted programs;
- **Altering of transmission data:** CASL prohibits the alteration or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by the sender without express consent of the sender or the person to whom the message is sent and compliance requirements are met;
- **Providing false or misleading information:** CASL prohibits false or misleading information in CEMs, including:
 - Any representation in the message that is false or misleading in material respect;
 - Any false or misleading representation made in a 'locator' (i.e. a name, URL, or other information used to identify the source of data in a computer system; and
 - Any false or misleading representation in the "From" or "Subject" line of a message;
- **Harvesting of addresses:** CASL prohibits the use of programs that 'harvest' email addresses to create mailing lists;
- **Unauthorized collection of personal information:** CASL prohibits the use of computer systems to collect personal information without authority.