

# OLG CORPORATE POLICY

**TITLE:** Anti-Spam (CASL)

**POLICY # :** CP-01-03-001

**OWNER:** Legal

**STATUS:** Final

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## OVERVIEW

In 2014, the federal government passed legislation intended to deter spam, regulate commercial electronic messages (CEMs), and prevent electronic threats such as phishing or alteration of transmission data in messages.

The legislation – *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* – also known as Canada's Anti-Spam Legislation (CASL) came into effect on July 1, 2014. Certain provisions came into force in January 2015, and others will come into force in July 2017.

Consequences of non-compliance are serious and can include monetary penalties of up to \$1 million for individuals and up to \$10 million for corporations, per contravention, as well as have serious consequences on OLG's reputation. Ontario Lottery and Gaming Corporation (OLG) may also be liable for breaches of the law by Third Parties, as defined in this policy. Therefore, it is crucial that OLG employees adhere to this policy and take reasonable steps to ensure Third Parties comply with CASL in keeping with OLG's responsibility to conduct and manage lottery and gaming operations in Ontario.

## PURPOSE

This policy provides direction on compliance with CASL. Key aspects of CASL applicable to OLG are:

- Prohibition on sending CEMs unless the recipient has given express 'opt-in' consent or, in the limited situations in which CASL deems implied consent to exist.
- Requests for consent must adhere to prescribed form and content
- CEMs must adhere to prescribed form requirements and provide an unsubscribe mechanism
- Prohibitions on making false or misleading representation in messages or webpages
- Prohibition on installing computer programs without the consent of the user/owner
- Prohibition on 'harvesting' electronic addresses using computer software

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## APPLICATION AND SCOPE

This policy applies to all OLG employees and Board of Directors.

## POLICY STATEMENT

OLG supports the intent of CASL and will promote compliance with the law by employees and Third Parties through this policy, education, contractual requirements, and database management.

## DEFINITIONS

**Commercial Electronic Message (CEM):** a message sent by any electronic means (voice, text, e-mail, social media direct message, instant messaging, video, etc.) to an electronic address, with one of its purposes to encourage participation in a commercial activity, including:

- a) offers to purchase, sell, barter or lease a product, service, land, etc.
- b) offers to provide a business, investment or gaming opportunity
- c) promotion of anything referred to in (a) or (b)
- d) promotion of a person who does or intends to do anything referred to in (a) to (c)
- e) request for consent to send a message described in (a) to (d)

**Computer Program:** data representing instructions or statements that cause a computer system to perform a function.

**Existing Business Relationship:** a business relationship arising from:

- i. an inquiry or application by the recipient of a CEM, within six (6) months preceding the date the CEM was sent
- ii. the purchase, lease or bartering of goods or services, acceptance of a business or gaming opportunity, or a written contract within two (2) years preceding the date the CEM was sent

**Express Opt-in Consent:** when OLG explicitly asks recipients for permission to send them CEMs and they agree through affirmative action (eg: checking a box, rather than unchecking a pre-checked box) and this agreement is dated and documented.

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**Harvesting:** use of computer programs known as ‘address harvesters’ that generate or search for e-mail and other electronic addresses in order to create mailing lists or potential contacts.

**Spam:** unsolicited bulk mail or junk mail sent through electronic means.

**Third Party:** any vendor, supplier, service provider, contractor, agent, consultant, or partner retained by OLG to manage its customer lists and/or send CEMs on behalf of OLG.

## REQUIREMENTS

### 1. Database/Consent Management

- 1.1. OLG will establish and maintain reliable mechanisms to track, record and update information on the status of consents and facilitate unsubscribe requests and will take reasonable steps to require Third Parties to do the same.

### 2. CEM Form and Content

- 2.1. CEMs will contain prescribed information as indicated on the CEM Content and Consent Request Templates (Appendix A), including the name of the sender or person on whose behalf the message is being sent, mailing address, contact information, etc.
- 2.2. All CEMs will contain an ‘unsubscribe’ mechanism that is free, can be accessed without delay or difficulty, is simple quick and easy to use, contains an address (eg: e-mail or URL) that is valid for at least 60 days, and takes effect within 10 business days.
- 2.3. Content (text, images, sound, etc.) of CEMs must clearly reflect the purpose of the message so that the recipient is not confused or misled.
- 2.4. An electronic message requesting permission to send CEMs is also considered a CEM; consent must be obtained via other methods (such as an online sign up form).

### 3. Express ‘Opt-In’ Consent

- 3.1. Express consent can be electronic (eg: online form), written, or oral as long as it can be verified. Consent must be ‘opt-in’ per the definition of express consent in this policy. Records need to be kept of the date, time, purpose and reason for the consent.

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- 3.2. If a Third Party is seeking an individual's consent on behalf of OLG, the consent form must include their identity (eg: company name) and the fact that they are seeking consent on behalf of OLG. See templates in Appendix A.
- 3.3. A request for consent to receive CEMs cannot be bundled with other terms and conditions – it must be an 'opt-in' option where a person explicitly agrees to receive CEMs by taking affirmative action (such as checking a box).
- 3.4. Even where consent is received, the content of a CEM must be relevant to what the recipient has consented to receiving.
- 3.5. The person providing consent must also be made aware that they can withdraw it at any time (eg: 'unsubscribe' mechanism).

#### **4. Consent Exclusions**

- 4.1. CASL allows for 'implied consent' in the following circumstances:
  - An existing business relationship or non-business relationship, as defined in this policy
  - The recipient has conspicuously published their electronic address, has not indicated they do not wish to receive unsolicited communications/electronic messages, and the CEM is relevant to their business role, functions or duties
  - The recipient has disclosed their electronic address to OLG and the CEM is relevant to the person's business role, functions or duties
- 4.2. Even in the above circumstances, OLG will attempt to gain express 'opt-in' consent wherever possible.
- 4.3. If a CEM is being sent to a recipient who provided valid express consent prior to July 1, 2014, it must still meet CASL's form and content requirements.
- 4.4. If a CEM is sent solely for the following reasons, it is excluded from consent requirements, but must still comply with the form and content requirements outlined in this policy:
  - quote or estimate requested by the recipient
  - completion or confirmation of a commercial transaction between parties

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- warranty, product recall, safety or security information about a product, or service the recipient uses, has used, or has purchased
- provides factual information about an ongoing subscription, membership, account or loan or the purchase or use of a related product or service
- information directly related to an employment relationship or benefit plan in which the recipient is currently involved
- delivers a product or service, including updates or upgrades, further to a previous transaction
- first CEM sent to an individual following a referral, provided the referral is from an individual who has an existing business, non-business, personal or family relationship with both the recipient and the sender. The CEM must disclose the full name of the referring party and state that the CEM is sent as a result of the referral

Note: Consult Legal if necessary to clarify the above exclusions.

## 5. CEM Exclusions

Certain types of CEMs are excluded from CASL requirements:

- Business-related messages between OLG employees or representatives
- CEMs between OLG and employees or representatives of an organization that has a business relationship with OLG and the messages are related to those business activities
- CEMs between individuals with a personal or family relationship
- CEMs containing an inquiry or application to someone engaged in a commercial activity and related to that activity
- CEMs in response to an inquiry or complaint
- CEMs required for legal reasons
- Social media posts – to a general audience and not a specific recipient.
- CEMs sent to secure two-way accounts (eg: bank account sites)
- CEMs from a charity or political party soliciting funds

## 6. Computer Programs

6.1. Transmission data in electronic messages must not be altered.

6.2. OLG will not collect individual electronic addresses with a computer program designed primarily for generating, searching, or collecting electronic addresses and will not use individual electronic addresses that have been collected by such a program.

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- 6.3. No program will be installed on a computer outside of OLG's corporate firewall unless:
- a) express consent has been obtained by the owner or an authorized user of the computer system  
or
  - b) in accordance with a court order  
or
  - c) the person's conduct is such that it is reasonable to believe that they consent to the program's installation

## **7. Third Party Compliance**

Where applicable, OLG's service agreements, contracts, etc. with third parties will require that they:

- a) Comply with CASL and maintain relevant records, which OLG may inspect or audit
- b) Provide consent status and related information with any list of electronic addresses
- c) Notify OLG immediately of any withdrawal of consent where applicable
- d) Notify OLG immediately if cited for CASL violation by the Canadian Radio-television and Telecommunications Commission

## **8. Monitoring**

Each business unit or department that sends out CEMs and/or seeks to install a computer program on an individual's computer located outside OLG's corporate firewall – directly or through Third Parties – is required to have processes in place to monitor its compliance with CASL on an ongoing basis and to promptly address incidents of non-compliance. The business unit or department shall consult with Legal on the adequacy of its processes as necessary.

Each business unit or department that has been identified as sending out CEMs and/or seeks to install a computer program on an individual's computer outside OLG's corporate firewall must confirm its continued compliance with this policy to the Senior Manager, Information Access and Privacy Services.

## **9. Training/education**

OLG will provide CASL compliance training to employees and contracted staff.

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#### **10. Non-Compliance**

All employees and contracted staff are required to abide by this policy and complete any related training that may be required by OLG.

Non-compliance with this policy may result in financial penalties of up to \$1 million for individuals and \$10 million for OLG per contravention as prescribed by CASL. Non-compliance may also result in discipline, up to and including discharge from employment.

### **ROLES AND RESPONSIBILITIES**

**Employees** are responsible for:

- Completing all required CASL training
- Checking with managers or Legal before sending CEMs if unsure whether the CEMs meet CASL requirements

**Managers, Directors and Vice-Presidents** are responsible for:

- Ensuring their staff are familiar with this policy and complete all required training
- Escalating any concerns about possible contravention of the law to Legal
- Where applicable, confirming ongoing compliance with CASL's requirements on a quarterly basis to the Senior Manager, Information Access and Privacy Services

**Legal Services** is responsible for:

- Providing guidance on implementation of this policy, monitoring developments in CASL, and updating policies, standards and training as needed

**Business Units** are responsible for:

- Maintaining appropriate records of consents as outlined in this policy
- Implementing processes to monitor compliance with CASL on an ongoing basis

**Human Resources** is responsible for:

- Providing any necessary training to employees

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## **POLICY OWNER**

Legal – Questions about CASL or this policy may be directed to the Vice-President, Legal Services and Litigation.

## **REFERENCES AND FORMS**

- Appendix A – CEM Content & Consent Request Templates

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REVISION / REVIEW HISTORY			
Version/Revision Date	Requested By	Updated By	Summary of Revision
December 17, 2015	Senior Mgr. Information Access & Privacy	Senior Mgr. Information Access & Privacy	Updated to note that installations to computers outside of OLG's firewall must comply with this policy.
July 23, 2015	Senior Mgr. Information Access & Privacy	Policy Services	Updated to reflect that certain provisions scheduled to come into force in 2015 are in effect

APPROVALS		
Approver	Authorization	Date
Tony Wong, VP Legal Services	Approved	December 17, 2015

EC / VP / BOARD OF DIRECTORS APPROVAL	
Approved By	Authorization Date
Original policy approved by Walter Fioravanti SVP, Legal, Regulatory & Compliance	June 2, 2014

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## **APPENDIX A – CEM CONTENT & CONSENT REQUEST TEMPLATES**

## CEM CONTENT TEMPLATE

This message was sent to [e-mail address] by  
Ontario Lottery and Gaming Corporation.

To unsubscribe, please send an e-mail to [address]  
with “unsubscribe” in the subject line or click on  
“unsubscribe” below.

Ontario Lottery and Gaming Corporation  
4120 Yonge Street, Suite 500 Toronto, ON M2P 2B8

UNSUBSCRIBE – CONTACT US

Note: An unsubscribe mechanism must:

- be free to use
- be simple, quick and easy to use
- be accessed without difficulty or delay
- feature an address (e.g., e-mail or URL) valid for 60 days
- take effect 'without delay' and at least within 10 business days

Identify our proper business name.

An individual should ordinarily be allowed to  
use the same communication means to  
unsubscribe as we used to send the CEM.

Set out a (1) mailing address, (2) an  
appropriate OLG telephone number, e-mail  
address or a web address and (3) an  
unsubscribe mechanism that functions as  
prescribed.

## CEM CONTENT TEMPLATE (VENDOR)

This message was sent to [e-mail address] by [Vendor Name] on behalf of Ontario Lottery and Gaming Corporation.

To unsubscribe, please send an e-mail to [address] with “unsubscribe” in the subject line or click on “unsubscribe” below.

Ontario Lottery and Gaming Corporation  
4120 Yonge Street, Suite 500 Toronto, ON M2P 2B8

UNSUBSCRIBE – CONTACT US

Note: An unsubscribe mechanism must:

- be free to use
- be simple, quick and easy to use
- be accessed without difficulty or delay
- feature an address (e.g., e-mail or URL) valid for 60 days
- take effect ‘without delay’ and at least within 10 business days

Identify (1) vendor’s proper business name (2) our proper business name and (3) that vendor is sent the message on our behalf.

An individual should ordinarily be allowed to use the same communication means to unsubscribe as we used to send the CEM.

Set out a (1) mailing address, (2) an appropriate OLG telephone number, e-mail address or a web address and (3) an unsubscribe mechanism that functions as prescribed.

## CONSENT REQUEST TEMPLATE

We would periodically like to send you electronic messages that include [describe messages – *e.g.*, invitations to participate in special promotions, notifications about new products...]. If you would like to receive such communications, please click “subscribe” below.

SUBSCRIBE

You may withdraw your consent at any time using the unsubscribe link below.

Ontario Lottery and Gaming Corporation  
4120 Yonge Street, Suite 500 Toronto, ON M2P 2B8

UNSUBSCRIBE – CONTACT US

Clearly and simply identify the purpose or purposes for which we are seeking consent.

The individual must take affirmative action.  
Toggle boxes are okay, but must not be pre-checked.

Clearly and simply set out a statement indicating that the person whose consent is sought can withdraw his or her consent.

Clearly and simply set out (1) a mailing address and (2) an appropriate OLG telephone number, e-mail address or web address.

## CONSENT REQUEST TEMPLATE (VENDOR)

OLG would periodically like to send you electronic messages that include [describe messages – *e.g.*, invitations to participate in special promotions, notifications about new products...]. If you would like to receive such communications, please click “subscribe” below.

SUBSCRIBE

You may withdraw your consent at any time using the unsubscribe link below.

[Vendor Name] is seeking your consent on behalf of  
Ontario Lottery and Gaming Corporation  
4120 Yonge Street, Suite 500 Toronto, ON M2P 2B8

UNSUBSCRIBE – CONTACT US

Clearly and simply identify the purpose or purposes for which we are seeking consent.

The individual must take affirmative action.  
Toggle boxes are okay, but must not be pre-checked.

Clearly and simply set out a statement indicating that the person whose consent is sought can withdraw his or her consent.

Clearly and simply set out (1) the business name of the vendor seeking consent on OLG's behalf, (2) a mailing address and (3) an appropriate OLG telephone number, e-mail address or web address.