Important Timelines for CASL

There are a number of significant dates and times to keep in mind when dealing with the requirements of CASL. Shaun Brown, a lawyer with NNovation LLP in Ottawa, Ontario has created an excellent resource to help. As he states: "Understanding the various timelines under CASL is somewhat complicated as CASL contains a transitional provision that extends the time period for obtaining express consent under certain circumstances.

Fortunately, we have come up with a convenient tool that makes it easy to understand the various deadlines under CASL. Use this CASL Database Checklist as a guide to assessing existing databases and determining what subscribers, if any, will require reconfirmation before or after CASL comes into force on July 1, 2014."

Mr. Brown has kindly given us permission to reproduce his Checklist. "Reconfirmation" refers to a request for express consent from existing subscribers. He can be reached at sbrown@nnovation.com or (613) 656.1297.

CANADA'S ANTI-SPAM LEGISLATION - DATABASE CHECKLIST

Use this Checklist as a guide to assessing **existing databases** for compliance with Canada's Anti-Spam Legislation (CASL). This will assist in determining what subscribers, if any, will require reconfirmation[2] before or after CASL comes into force on July 1, 2014. **This document is provided for informational purposes only, and is not intended as legal advice.**

Status of Subscriber	Deadline for Reconfirmation	
1. Express consent Express consent exists if a subscriber has indicated that they would like to receive Commercial Electronic Messages (CEMs) in response to a request made accordance with CASL and related regulations, bearing in mind the following considerations: • The Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada have indicated that they consider express consent obtained in accordance with the *Personal Information Protection and Electronic Documents Act* (PIPEDA) before CASL comes into force to be compliant with CASL. • CASL states that any person claiming to have consent bears the burden of proving it. Thus, even if you have consent, consider whether you would have the ability to prove the existence of consent in response to an enforcement action.	**Reconfirmation not necessary**	☐
2. Implied Consent **(a) Existing business relationship** that arises <u>before</u> CASL comes into force[1]		
(i) the recipient has made a purchase, accepted a business opportunity, or bartered for something from the sender any time in the past;	**July 1, 2017**	☐
(ii) the recipient has been party to a written contract with the sender any time in the past; or	**July 1, 2017**	☐
(iii) the recipient made an inquiry or application in respect of anything referred to in **(i)** any time in the past.	**July 1, 2017**	☐
(b) Existing business relationship that arises <u>after</u> CASL comes into force		
(i) the recipient has made a purchase, accepted a business opportunity, or bartered for something from the sender in the past 24 months;	**Before expiry of 24 month time period**	☐
(ii) the recipient has been party to a written contract with the sender in the past 24 months; or	**Before expiry of 24 month time period**	☐
(iii) the recipient made an inquiry or application in respect of anything referred to in **(i)** in the past 6 months.	**Before expiry of 6 month time period**	☐

Status of Subscriber	Deadline for Reconfirmation	
(c) **Existing non-business relationship** that arises <u>before</u> CASL comes into force[2]		
(i) the recipient has made a gift or donation to, has volunteered for, or has attended a meeting organized by the sender any time in the past, and the sender is a registered charity, political party or organization, or a political candidate for publicly elected office[3]; or	**July 1, 2017**	☐
(ii) the recipient has had a membership[4] any time in the past in the sender organization, where the sender is a club, association or voluntary organization.[5]	**July 1, 2017**	☐
(d) **Existing non-business relationship** that arises <u>after</u> CASL comes into force		
(i) the recipient has made a gift or donation to, has volunteered for, or has attended a meeting organized by the sender in the past 24 months, and the sender is a registered charity, political party or organization, or a political candidate for publicly elected office; or	**Before expiry of 24 month time period**	☐
(ii) the recipient has had a membership in the past 24 months in the sender organization, where the sender is a club, association or voluntary organization.	**Before expiry of 24 month time period**	☐
(e) The recipient has **conspicuously published** their electronic address, which is not accompanied by a statement that the recipient does not wish to receive unsolicited messages, and the message is related to the professional or official capacity of the recipient.	**Reconfirmation not necessary**	☐
(f) The recipient has **disclosed their address** to the sender without indicating a wish not to receive unsolicited messages, and the message is related to the professional or official capacity of the recipient.	**Reconfirmation not necessary**	☐
3. **No consent**	**Before July 1, 2014. Reconfirmation may not be necessary if you are <u>only</u> sending messages that are excluded from CASL.**	☐

---

[1]This is based on the transitional provision in s. 66 of CASL, which establishes that an existing business relationship or existing non-business relationship that arises before CASL comes into force, without regard to the time periods that normally apply under those relationships, is deemed to exist for a period of three years after CASL comes into force (unless the recipient unsubscribes). Note that for the transitional provision to apply, a sender must have sent at least one CEM to the recipient based on this relationship before CASL comes into force.

[2]See note 1.

[3]As defined in federal or provincial legislation.

[4]"Membership" is defined in subsection 7(1) of the *Electronic Commerce Protection Regulations (Industry Canada)*.

[5]"Club, association or voluntary organization" is defined in subsection 7(2) of the *Electronic Commerce Protection Regulations (Industry Canada)*