



# CANADA'S ANTI-SPAM LEGISLATION THIRD PARTY CONTRACTS

- Consider what contracts your organization has which may involve a third party sending Commercial Electronic Messages (CEMs) on your organization's behalf, or which involve lists of contact names/email addresses being provided to your organization for marketing purposes.
  
- Make a list of these contracts!

# EXAMPLES OF CONTRACTS OR ARRANGEMENTS



- Suppliers of referral/contact lists to your organization
- Sales agents/distributors
- Advertising agencies/online marketing services
- Social media management
- Public relations/media management
- Investor relations services
- Proxy solicitation firms

# EXAMPLES OF CONTRACTS OR ARRANGEMENTS



- Publicists/lobbyists
- Mortgage brokers/venture capital services
- Stock promoters
  
- Computer software installation
- Software support service

- Review contracts on the list to determine:
  - Extent to which they may involve third parties sending CEMs on behalf of your organization
  - Extent to which they may involve your organization using email addresses for sending CEMs
- Consider the existing wording of these contracts

- **Referral/contact lists** – contract should provide that supplier of list represents and warrants that the list will be maintained in relation to CASL obligations and list will indicate status of names on list for sending CEMs (e.g. individuals who requested estimate, implied consent to use because published address/didn't say no/relevant to business)

- **Referral/contact lists** – contract should contain agreement that your organization may identify supplier of list as referral source (i.e. for purposes of “first CEM after referral” exception)
- **Referral/contact lists** – may want to have supplier of list agree that your organization will be notified if supplier cited by CRTC for violation of CASL

- **Contracts where CEMs sent by third party on behalf of your organization:**
  - Even if general “compliance with all applicable laws” clause, useful to have agreement to comply with all applicable CASL requirements
  - Service provider should agree that your organization will be notified if supplier cited by CRTC for violation of CASL
  - Your organization indemnified for any costs/damages arising from service provider’s breach of CASL



- Service provider should agree that your organization will be notified on a regular basis of any “unsubscribe” requests (even if it is the service provider who will be processing and implementing the unsubscribe request on your behalf)
- Service provider should agree to maintain records of CASL compliance and that your organization may inspect and audit service provider’s compliance with CASL

- “We may inspect and audit your compliance with CASL from time to time as we see fit. You agree to maintain detailed and up to date records illustrating your compliance with CASL and to cooperate fully and make available to us any records, information or staff assistance required to conduct such audits. You agree to preserve your CASL compliance records for five years following the end of each year. We may utilize our employees, authorized representatives, independent auditors or regulators to the extent reasonably necessary to verify your compliance with CASL and we may take copies of your records where necessary for our audit purposes.”