



CANADA'S ANTI-SPAM LEGISLATION EXCEPTIONS TO ANTI-SPAM RULES

EXCEPTIONS TO CONSENT REQUIREMENT – EXAMPLES



- CEM solely provides a requested quote or estimate for the supply of goods/services
- CEM solely facilitates/confirms a previously agreed-to commercial transaction
- CEM solely provides warranty, product recall or safety info about a purchased product/service

EXCEPTIONS TO CONSENT REQUIREMENT – EXAMPLES



- CEM solely provides factual info about a subscription, membership, account or similar relationship
- CEM solely provides info directly related to an employment relationship or related benefit plan
- CEM solely delivers a product, including updates or upgrades pursuant to a transaction

- CEM sent to an individual with whom the sender has a “personal or family relationship”
- CEM sent to a person engaged in a commercial activity and consists solely of an inquiry or application related to that activity

(above exceptions are set out in the legislation itself)

ADDITIONAL EXCEPTIONS (IN IC REGULATIONS)



- The Industry Canada regulations contain several additional exceptions to the Key Prohibitions:
- Any CEM sent in response to a request, inquiry, complaint or otherwise solicited by the recipient
- CEMs sent between employees, representatives, etc. of an organization concerning that organization's affairs

- CEMs sent by an employee (representative etc.) of one organization to an employee (representative etc.) of *another* organization in circumstances where the organizations have a business relationship and the message concerns the affairs of the organization to which the message is sent

- Any CEM sent to satisfy a legal obligation or enforce a legal right, court order, etc.

EXCEPTION TO CONSENT REQUIREMENT – 3RD PARTY REFERRALS



- A single CEM sent to someone without consent, based on a 3rd party's referral, so long as the sender discloses the name of the person making the referral and so long as there is an existing business, non-business, personal or family relationship between the person making the referral and each of the sender and the recipient

Example:

- Susan, a friend of Joe, could suggest to her accountant that the accountant send an e-mail to Joe offering the accountant's services
- So long as the accountant sends on unsolicited e-mail only to Joe and states in the e-mail that Susan referred the accountant to Joe, the accountant will not have violated CASL

NEWLY ADDED EXCEPTIONS TO THE PROHIBITIONS



- A CEM sent/received on an EM service if the disclosure/unsubscribe mechanism are conspicuously published and readily available on the user interface, and the person receiving the message has given express/implied consent to receive it (e.g. BB Messenger, WhatsApp)
- A CEM sent to a limited-access and confidential account to which messages can only be sent by the account provider to the receiver (e.g. messages sent by a financial institution to a customer through an online banking account)

NEWLY ADDED EXCEPTIONS TO THE PROHIBITIONS



- A CEM sent by a person who reasonably believes the CEM will be accessed in a foreign state (listed in schedule to Regs) and the message conforms to the anti-spam law of the foreign state
- A CEM sent by or on behalf of a registered charity where primary purpose is to raise funds for the charity
- A CEM sent by or on behalf of a political party/candidate and primary purpose is soliciting a contribution

IC REGULATIONS RE: “PERSONAL RELATIONSHIP”



- Persons who have had a “direct, voluntary, two-way communication” will qualify as having a personal relationship where it is reasonable to conclude that the relationship is personal based on all relevant factors, including the sharing of interests, experiences and opinions, the frequency of communications, the length of time since the parties communicated and whether the parties have met in person

IC REGULATIONS RE: “PERSONAL RELATIONSHIP”



- The proposed definition of “personal relationship” would allow relationships formed solely on electronic communications (e.g. Facebook) to potentially qualify for an exception to the Key Prohibitions