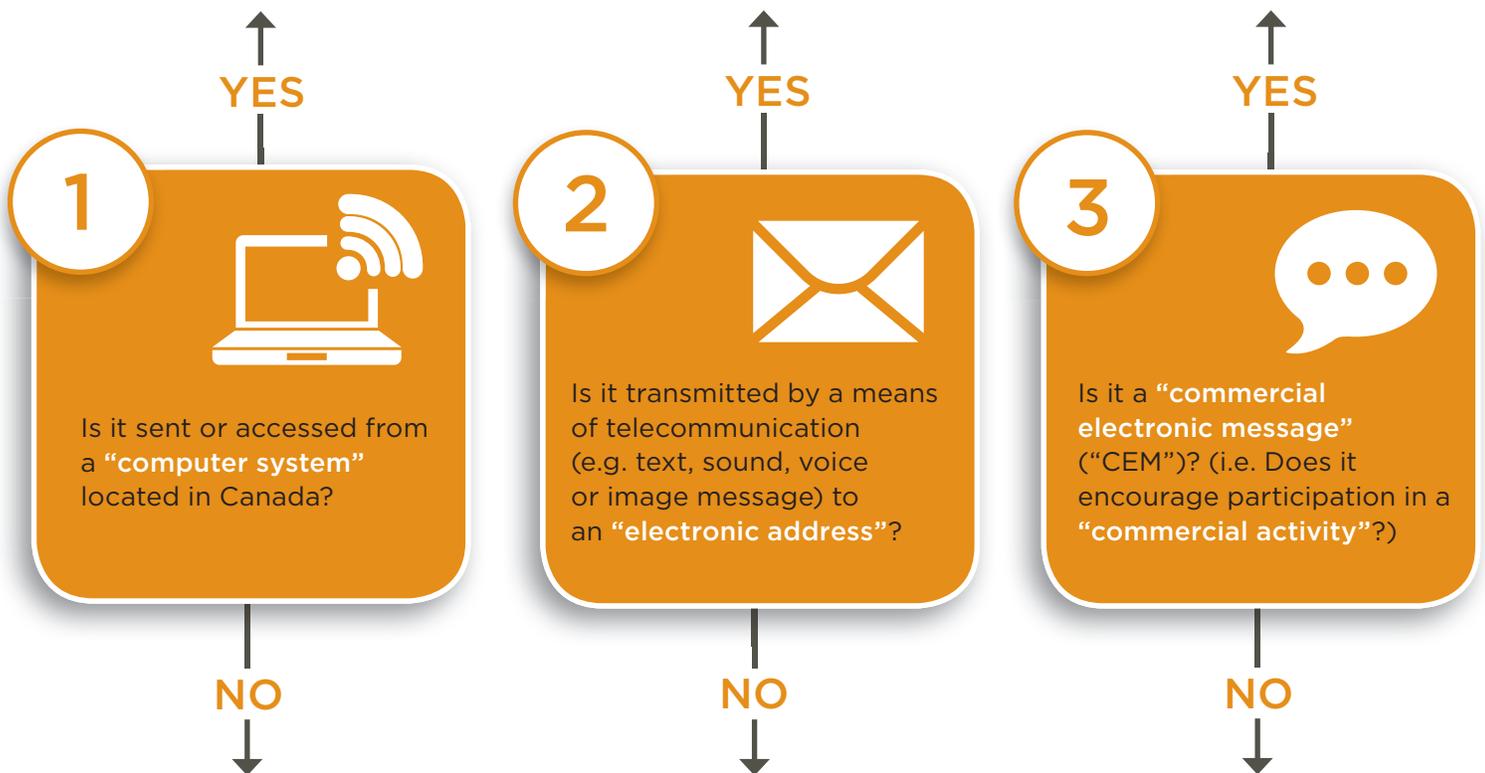


## DOES CANADA'S ANTI-SPAM LEGISLATION ("CASL") APPLY TO YOUR ELECTRONIC MESSAGE?

CASL APPLIES — SEE "DOES A CASL EXEMPTION APPLY TO YOUR MESSAGE?"



CASL DOES NOT APPLY — OKAY TO SEND MESSAGE

### TIPS

Commercial activity refers to:

- Anything that encourages participation in a "commercial activity", regardless of whether or not it is done in expectation of profit
- It is the particular activity, not the type of entity, that is determinative (i.e. no carve out for not-for-profits, charities, and volunteer associations)

## Business to Business Exemptions

Is it exchanged between two employees or representatives of the same organization and concerns the activities of the organization?

Is it exchanged between two employees or representatives of different organizations that have a relationship and it concerns the activities of the recipient organization?

**IF YES TO ANY, YOUR MESSAGE  
IS EXEMPT FROM CASL;  
OKAY TO SEND MESSAGE**

**IF NO TO ALL, EXEMPTIONS DO NOT  
APPLY; PROCEED TO NEXT PAGE**

## Product and Service Exemptions

Is it solely an inquiry or application concerning commercial activities sent to an individual or organization engaged in such commercial activities?

Is it sent and received on a limited-access secure and confidential account which meets CASL's prescribed requirements (i.e. banking portal)?

Is it sent and received on an electronic messaging service with the prescribed information and unsubscribe mechanism (i.e. BBM™)?

Is it in response to a request, inquiry or complaint or is it otherwise solicited?

## Other Exemptions

Is it an interactive two-way voice communication between individuals, a fax, or a telephone voice recording?

Is it sent to satisfy, provide notice of or enforce legal rights or obligations?

Will it be accessed in a foreign state listed in the regulations and does it comply with the laws of that foreign state that are substantially similar to CASL?

## Charity and Political Party Exemptions

Is it sent for the primary purpose of raising funds for a registered Canadian charity?

Is it sent to primarily solicit contributions for a political party or organization or a candidate?

## Personal Messages Exemptions

Is it exchanged between two individuals who have a "personal relationship" or a "family relationship"?

## TIP

Certain messages are exempt from the application of CASL.

## DOES A CONSENT EXEMPTION APPLY TO YOUR MESSAGE?

Is your message solely to:

Provide a quote or estimate in response to a request?

Facilitate, complete or confirm an already agreed to commercial transaction?

Provide information on warranties, product recall or safety or security information for already purchased goods or services?

Provide factual information on a product or service offered under a subscription, membership or similar basis?

Provide information directly related to an employment relationship or related benefit plan?

Deliver products, goods or services (including updates/upgrades) that the recipient is entitled to receive under the terms of an existing transaction?

Is your message a first message sent following a third party referral and does it meet CASL's requirements?

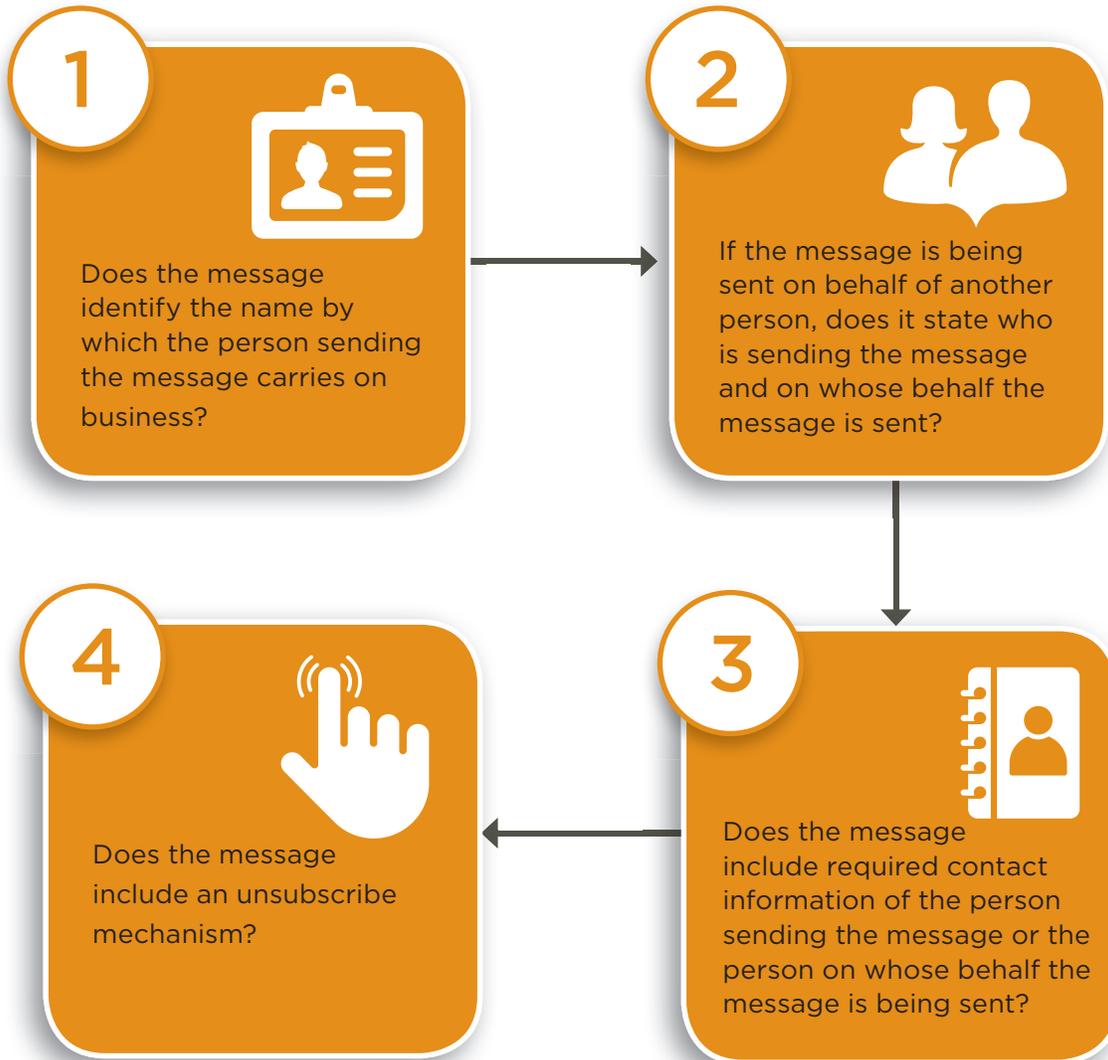
**IF YES TO ANY, CONSENT EXEMPTION APPLIES; OKAY TO SEND MESSAGE IF CASL "INFORMATION" REQUIREMENTS ARE MET; PROCEED TO NEXT PAGE**

**IF NO TO ALL, CONSENT EXEMPTION DOES NOT APPLY**

### TIP

Certain messages are exempt from the consent requirements under CASL, but must still meet information and unsubscribe requirements.

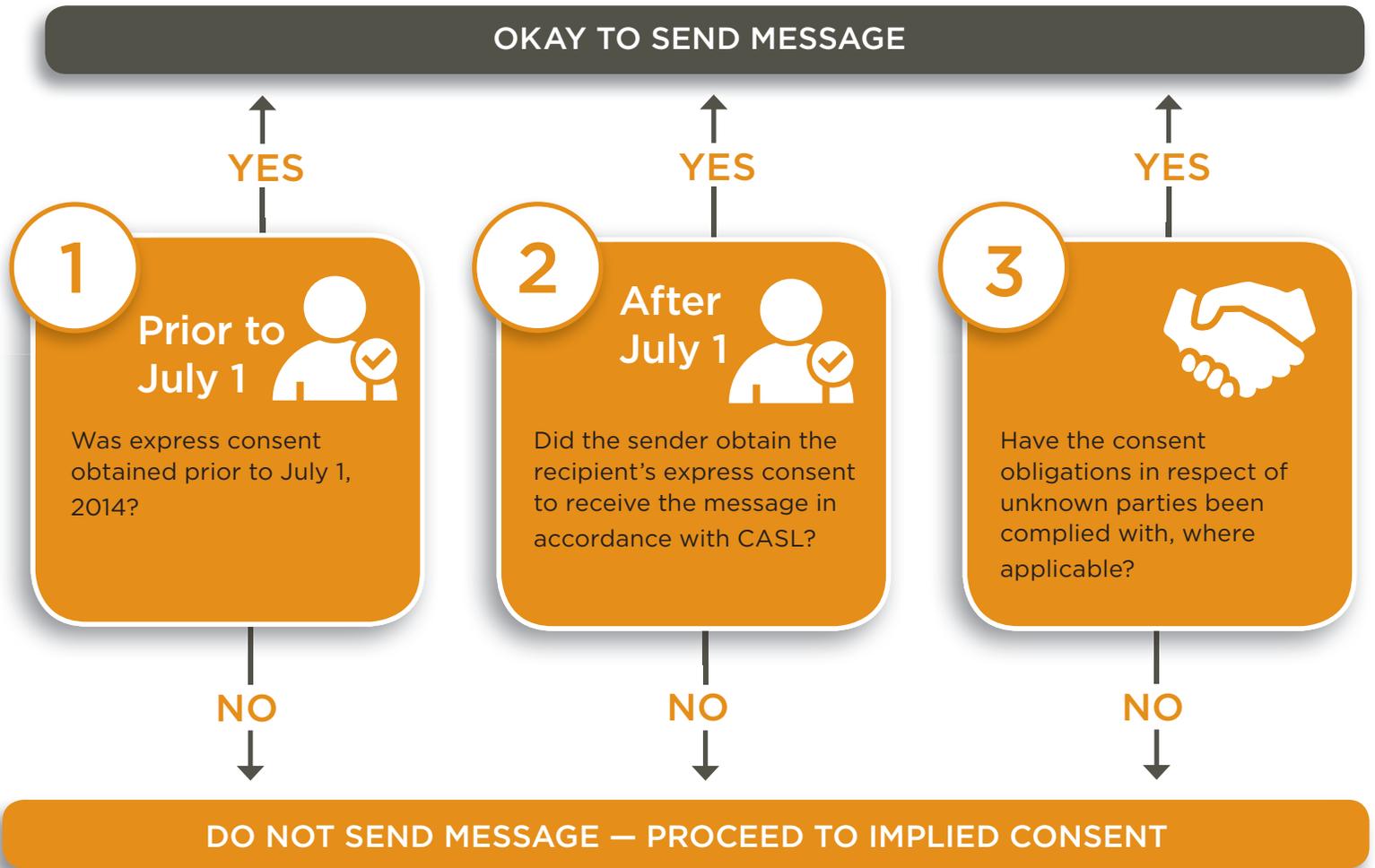
## WHAT ARE CASL “INFORMATION” REQUIREMENTS?



IF YES TO ALL, CASL “INFORMATION” REQUIREMENTS MET — PROCEED TO EXPRESS CONSENT

IF NO TO ANY, CASL “INFORMATION” REQUIREMENTS NOT MET

## EXPRESS CONSENT



### TIPS

Request for express consent must set out:

- Purpose(s) for which consent is sought
- Statement that consent can be withdrawn

**CASL requires opt-in consent.**

## IMPLIED CONSENT

1



Did the recipient publish an electronic address conspicuously, without a restriction on receiving messages, and does the message relate to the recipient's business role or duties?

2



Did the recipient disclose an electronic address (i.e. business card), without a restriction on receiving messages, and does the message relate to the recipient's business role or duties?

3



Is there an "existing business relationship"?

4



Is there an "existing non-business relationship"?

5



Does the message fall within CASL's initial transition provision?

IF YES TO ANY, OKAY TO SEND MESSAGE (IF CASL "INFORMATION" REQUIREMENTS ARE MET)

IF NO TO ALL, DO NOT SEND MESSAGE

# DEFINITIONS (From CASL and Regulations)

**Commercial activity** means “any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit, other than any transaction, act or conduct that is carried out for the purposes of law enforcement, public safety, the protection of Canada, the conduct of international affairs or the defence of Canada.”

**Commercial electronic message** means “an electronic message that, having regard to the content of the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message, it would be reasonable to conclude has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that:

- a) offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- b) offers to provide a business, investment or gaming opportunity;
- c) advertises or promotes anything referred to in paragraph (a) or (b); or
- d) promotes a person, including the public image of a person, as being a person who does anything referred to in any of paragraphs (a) to (c), or who intends to do so.”

**Computer program** means “data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function.”

**Computer system** means “a device that, or a group of interconnected or related devices one or more of which,

- a) contains computer programs or other data, and
- b) pursuant to computer programs,
  - i. performs logic and control, and
  - ii. may perform any other function.”

**Electronic address** means “an address used in connection with the transmission of an electronic message to (a) an electronic mail account; (b) an instant messaging account; (c) a telephone account; or (d) any similar account.”

**Existing business relationship** means “a business relationship between the person to whom the message is sent and any of the other persons referred to in 10(9) of the Act — that is, any person who sent or caused or permitted to be sent the message — arising from:

- a) the purchase or lease of a product, goods, a service, land or an interest or right in land, within the two-year period immediately before the day on which the message was sent, by the person to whom the message is sent from any of those other persons;
- b) the acceptance by the person to whom the message is sent, within the period referred to in paragraph (a), of a business, investment or gaming opportunity offered by any of those other persons;
- c) the bartering of anything mentioned in paragraph (a) between the person to whom the message is sent and any of those other persons within the period referred to in that paragraph;
- d) a written contract entered into between the person to whom the message is sent and any of those other persons in respect of a matter not referred to in any of paragraphs (a) to (c), if the contract is currently in existence or expired within the period referred to in paragraph (a); or
- e) an inquiry or application, within the six-month period immediately before the day on which the message was sent, made by the person to whom the message is sent to any of those other persons, in respect of anything mentioned in any of paragraphs (a) to (c).”

**Existing non-business relationship** means “a non-business relationship between the person to whom the message is sent and any of the other persons referred to in 10(9) of the Act — that is, any person who sent or caused or permitted to be sent the message — arising from:

- a) a donation or gift made by the person to whom the message is sent to any of those other persons within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity as defined in subsection 248(1) of the Income Tax Act, a political party or organization, or a person who is a candidate — as defined in an Act of Parliament or of the legislature of a province — for publicly elected office;
- b) volunteer work performed by the person to whom the message is sent for any of those other persons, or attendance at a meeting organized by that other person, within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity as defined in subsection 248(1) of the Income Tax Act, a political party or organization or a person who is a candidate — as defined in an Act of Parliament or of the legislature of a province — for publicly elected office; or
- c) membership, as defined in the regulations, by the person to whom the message is sent, in any of those other persons, within the two-year period immediately before the day on which the message was sent, where that other person is a club, association or voluntary organization, as defined in the regulations.”

**Family relationship** means “the relationship between an individual who sends a message and the individual to whom the message is sent if those individuals are related to one another through a marriage, common-law partnership or any legal parent-child relationship and those individuals have had direct, voluntary, two-way communication.”

**Personal relationship** means “the relationship between an individual who sends a message and the individual to whom the message is sent, if those individuals have had direct, voluntary, two-way communications and it would be reasonable to conclude that they have a personal relationship, taking into consideration any relevant factors such as the sharing of interests, experiences, opinions and information evidenced in the communications, the frequency of communication, the length of time since the parties communicated or whether the parties have met in person.”