



# How Canada's new ANTI-SPAM LAW *will* **IMPACT** **YOUR PRACTICE**

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Bill C28, Canada's Anti-Spam Law (CASL), is back in the headlines with the news that July 1, 2014 is the date that the law will come into force. Lawyers, marketing gurus, technicians and other experts are publishing articles to give their readers information about CASL and offer advice. Should the dental profession be paying attention? Absolutely.

Dental practices are included in the broad range of individuals, small businesses and large corporations that are governed by CASL. In fact, anyone that uses electronic communications to support a commercial activity must comply with this law — regardless of the type or number of messages they send.

This article discusses why it is important for dental practice owners and team members to be aware of the law and its implications for their practices. It also provides tips on how you can reach and maintain compliance.

Many practices now use email and SMS (text messaging) for appointment reminders, confirmation or other types of communication with their patients. Patients appreciate this type of communication and, despite the new law, its use will continue to increase. Some practices also use electronic forms of communication to market beyond their current active patients. Many practices are already in compliance, or working toward compliance, with CASL. Practices that aren't would be wise to begin as soon as possible. Here's why.

Despite the name of the law, CASL reaches beyond what many of us consider spam. Although the Government of Canada's website states<sup>1</sup> that, "The intent of the new law is to deter the most damaging and deceptive forms of spam from occurring in Canada", visitors to the site will discover that CASL is complex legislation that enforces new regulations on all commercial electronic marketing. At a basic level, the law prohibits sending any electronic message — email, text or instant message — that encourages participation in a commercial activity unless the recipient has consented to receiving the message.

The cost of non-compliance with CASL could be devastating for a dental practice. The three Federal regulators, the Canadian Radio-television and Telecommunications Commission, the Competition Bureau and the Office of the Privacy Commissioner, will impose fines of up to \$1 million for an individual and up to \$10 million for an organization. Fines will be imposed per violation and certain cases may be classified as separate violations for each day that they continue. There is also the risk of class action lawsuits.<sup>2</sup> Dental practices can protect themselves by becoming compliant with the law by July 1st and remaining compliant thereafter.

How can you safely continue to use electronic communications? Simply put, set up a process that meets the requirements set by CASL and follow that process strictly. These steps provide a general guideline for ongoing compliance:

- Identify a compliance team within your practice
- Determine which CASL requirements apply to your practice
- Develop a CASL compliance plan
- Implement your compliance plan
- Monitor and update your compliance plan on an ongoing basis to ensure that it continues to meet CASL requirements.

With a team and a plan in place, your practice can get a head start on compliance by obtaining consent, where required, from your patients before the July 1, 2014 enforcement date. For the purposes of CASL, there are two categories of consent – express consent (also referred to as explicit or direct consent) and implied consent. Clause 10 of Bill C-28 defines consent as it relates to this law, “... Express consent is what is known as “opt in” consent — commercial communication may not take place unless the person or corporation in question first consents to be contacted. Implied consent is what is known as “opt out” consent — commercial communication may take place with persons or corporations under circumstances where it can be deemed that they might be interested, but the recipients of the communication must be able to “opt out” of such communication. In the case of Bill C-28, implied consent can be assumed in cases where there is an “existing business relationship” or an “existing non-business relationship” between the sender and recipient — clauses 10(10) and 10(13) provide a detailed definition of what constitutes each type of relationship. In the absence of either of these relationships, express consent must be sought for sending any unsolicited commercial electronic messages.”<sup>3</sup>

The good news is that with your active patients, you have implied consent. CASL provides for an implied consent for persons that have conducted business with you during the past two years. For most general practices, this will include most active patients and your existing paper and/or electronic records are sufficient proof of consent. Implied consent also applies to a reply to anyone that has inquired about your services within the past two months and provided you with their electronic contact information.

Express consent can provide you a great-

er measure of protection. As your practice acquires new patients, presenting a communication consent form or adding a consent check box to your new patient form is a good way to ensure consent from the beginning of your practice/patient relationship. As you collect or update email addresses and phone numbers from your active patients you can present a communication consent form to ensure that consent is recorded.

- To maintain accurate records that show proof of compliance, you may want to check with patients at each appointment and update their records, recording your exchange or having them sign off with a date. Asking the right questions will help keep your patient contact information current. For example:
  - Do we have your current email address?
  - Is this the email address you want us to use to send you appointment reminders?
  - Do you wish to receive appointment reminders by SMS? If so, at which phone number?

Whether claiming express or implied consent, the burden of proof for consent lies with the person or establishment that is conducting business so it is important for your practice to maintain records that prove you met the criteria for consent in advance of communicating with a patient electronically.

Practices that use electronic communications to contact prospective patients or patients that have been inactive for more than two years will require express consent (written or verbal) to comply with the law. The time between now and that date can be used to plan and execute campaigns designed to obtain express consent.

When seeking explicit consent you should indicate, at least in general terms, how your practice intends to use the contact information provided. The person providing the information should be able to opt in or opt out of having their electronic contact information used for the stated purpose. Recording how and when the information was obtained will help you to prove compliance should the need arise.

Practices that use email contact lists obtained from a third-party organization to market to prospective patients will require express consent for each contact in order to continue using the list. Third-party market-

ing lists are not considered compliant under CASL, even if they comply with the Personal Information Protection and Electronic Documents Act (“PIPEDA”). In fact, Bill C28 overrides PIPEDA in all areas of conflict between the two and there is a proposed Bill C-29 that will deal specifically with these areas.<sup>4</sup> You should also be aware that if you use a marketing service/agency to send electronic communications on your behalf, you will be wise to ensure that what they are doing is compliant — you are responsible, or at least share responsibility, for actions taken on your behalf.

Now that we’ve covered CASL requirements related to proof of consent, let’s consider the requirements related to the actual electronic messages being sent. Here, CASL requirements fall into three main areas.

First, all aspects of the electronic messages must be non-deceptive. You must avoid using false or misleading header information, subject lines and URLs. The content of your message must be related to the subject line. It is also necessary to identify the message as an ad where appropriate.

Second, the sender (in this case the dental practice) must be identifiable and easily contactable. This includes providing a valid physical postal address, phone number and preferably an email where you can be reached. Also, the contact information provided in your electronic communication must be valid for 60 days after you send the message.

Third, every commercial communication must provide a clear method (e.g. a link) for the recipient to opt out of receiving further communication. Any “unsubscribe” mechanism that you provide as a part of your message must remain operative for 60 days from the date of the message and an unsubscribe request must be acted on within 10 days of it being made by a recipient.

In order to be able to prove compliance with CASL you should maintain a complete and accurate record of the emails that you send and any “unsubscribe” messages that you receive. Some dental management or patient communication software that sends email and SMS will

help you to manage this information. An integrated solution can also help you to manage your patient’s communication preferences and consent. Whether you use a dental-specific system or other tools for sending electronic messages, you should evaluate how well it complies with CASL and plan to make any necessary adjustments in your tools and/or processes in the weeks leading up to July 1, 2014.

In summary, CASL will be in force on July 1st of this year. Any person or organization using electronic communications to support commercial activity must comply with this law. If you use electronic communications, CASL may require you to make changes in the way you communicate and/or the records you keep. Appointing a compliance team to evaluate your needs will help you to ensure that your practice is prepared before the deadline.

### References

1. “FAQ#2: What is the Intent of the new law?” Government of Canada. Web. 5 February 2014. (<https://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00521.html#q2>)
2. “Anti-Spam Legislation Receives Royal Assent.” Government of Canada. Web. 6 February 2014. (<http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00572.html>)
3. “Legislative Summary of Bill C-29: An Act to amend the Personal Information Protection and Electronic Documents Act.” Parliament of Canada. Web. 20 February 2014. ([http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?Language=E&ls=c28&Parl=40&Ses=3&source=library\\_prb#a6](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c28&Parl=40&Ses=3&source=library_prb#a6))
4. “Legislative Summary of Bill C-29: An Act to amend the Personal Information Protection and Electronic Documents Act.” Parliament of Canada. Web. 21 February 2014. ([http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?Language=E&ls=c29&Parl=40&Ses=3&source=library\\_prb](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c29&Parl=40&Ses=3&source=library_prb))

For more information on Canada’s Anti-Spam legislation, visit [www.fightspam.gc.ca](http://www.fightspam.gc.ca)

The views expressed in this editorial do not necessarily reflect the needs of every dental practice and do not constitute legal advice or reflect a decision, policy or interpretation of CASL and/or its accompanying regulations, by the Commission, Office of the Privacy Commissioner, the Competition Bureau or, Industry Canada.



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