



## Canada's Anti-Spam Legislation

### Purpose:

To support employees' understanding and implementation of *Canada's Anti-Spam Legislation* ("CASL"). Specifically, this Procedure outlines which electronic communications are considered Commercial Electronic Messages ("CEM"s) under the legislation and the format in which to send these electronic messages to ensure all outbound CEMs from St. Clair are compliant with CASL.

It is the responsibility of St. Clair employees to:

- Review their day-to-day electronic communications with students, alumni, prospective students, and other members of the public;
- Identify whether the message is a CEM (i.e. does it have a commercial purpose?);
- Determine whether the CEM is exempt (i.e. can the message be sent without consent and/or an unsubscribe). If an employee is not sure, they should contact an IT manager.

### Definitions:

*Commercial electronic messages (CEMs)*: Electronic messages (e.g. text (SMS/MMS), sound, voice or image) sent to an electronic address (e.g. email, instant messaging, telephone account, or any similar account) that, based on the message content, links, or contact information in the message encourages participation in a "commercial activity". Commercial activity includes anything of a commercial nature (e.g. an activity that promotes a product(s), service(s), or a brand to a person(s) or encourages a person(s) to engage in the purchase of a product(s), or service(s)), whether or not there is an expectation of profit. This includes electronic newsletters, course information, notifications of events, or information regarding college products and services.

*Express consent*: Permission that is specifically given by an individual to receive messages, which has been documented in writing.

*Implied consent*: Consent that can be inferred based on the nature of the service being provided, that the individual is knowingly giving permission.

*Third Party*: A Third Party is an entity or individual that supplies a particular service or commodity to the College. The terms third-party, third-party provider, service provider, affinity partner, vendor and supplier and consultant can be used interchangeably.

## Procedures:

### 1. Sending CASL-compliant CEMs:

Employees must confirm prior consent (implied or express) and that the electronic address has not been unsubscribed from the mailing list before sending a CEM, in addition to including an opt-out/unsubscribe mechanism. In doing so, St. Clair College staff must follow four steps to ensure its outbound communications are CASL-compliant, as follows:

1. Identify whether the message is a CEM (i.e. does it have a commercial purpose);
2. Determine whether the CEM is exempt (i.e. can the message be sent without consent and an unsubscribe);
3. Check whether the electronic address has been unsubscribed; if not, then confirm whether St. Clair has implied or express consent. If there is no evidence of consent, the CEM cannot be sent unless St. Clair asks for and receives express consent. Requests for express consent must be in prescribed form and may not be sent via email; and
4. Confirm that an opt-out/unsubscribe mechanism is included in the CEM.

### 2. CASL Requirements:

CASL regulates CEMs, including emails and SMS/MMS messages which are sent by St. Clair College. Third party email/ SMS/MMS message transmission is no longer permitted under this policy framework. The St. Clair College Information Technology department will be the sole distribution mechanism for CEM messages.

Generally, a CEM must only be sent if:

- St. Clair College has **prior implied or express consent** to send the CEM; and
- The CEM contains the proper **form and content requirements** (i.e. identifies the sender of the message, including relevant contact information, and provides an opt-out/unsubscribe to the recipient from receiving future messages).

The following sample language may be used when sending out CEMs to identify the sender. An unsubscribe footer will be automatically added through our exchange servers to all outgoing emails. All outgoing email messages must have a signature file. Please see <http://www.stclaircollege.ca/casl/signatures/> for a full list of signatures available:

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### 3. Definition of a CEM:

CEMs are electronic messages (e.g. text, sound, voice or image) sent to or from an electronic address within Canada that encourages participation in a “commercial activity”.

Commercial activity includes anything of a commercial nature (e.g. an activity that promotes a product(s), service(s), or a brand to a person(s) or encourages a person(s) to engage in the purchase of a product(s), or service(s)), whether or not there is an expectation of profit.

To illustrate, CEMs include emails, SMS/MMS messages, or instant messages that are sent from either a generic (e.g. [info@stclaircollege.ca](mailto:info@stclaircollege.ca)) or employee-specific electronic address e.g. [joe.smith@stclaircollege.ca](mailto:joe.smith@stclaircollege.ca)) that promote, advertise, market, sell a St. Clair product, service or promote the St. Clair brand.

### 4. What electronic messages are exempt from CASL?:

Certain CEMs are either fully or partially exempted from CASL’s requirements:

- **Fully exempted CEMs:** can be sent without prior consent of the recipient and without the form and content requirements.
- **Partially exempted CEMs:** can be sent without the prior consent of the recipient, but must include the form and content requirements.

#### 4.1. Full Exemptions

Electronic communications which are fully exempted under CASL include those that are:

- Exchanged between family or friends (e.g. engaged in direct, voluntary, virtual or in person two-way communications and relationship is personal based on shared interests, experiences);
- Sent to staff at other companies with whom St. Clair has an existing relationship, provided that the message is about the activities of that company (e.g. sending an email to set up an alumni event for the college, where the company is currently providing services to the college such as catering or marketing);
- Exchanged between St. Clair employees using their St. Clair employee email address (e.g. Program Director from one Department sends email to other staff to attend departmental event);
- Sent in response to a complaint, request or inquiry, provided that the reply does not include any promotional or marketing material the recipient would not expect an email (e.g. responding to a person's inquiry about a particular program at the college);
- Sent to satisfy or enforce a legal obligation (e.g. legal notices of missed tuition, plagiarism notifications); and
- Sent over a closed network, such as Facebook, LinkedIn, or Twitter, where the required identification and unsubscribe mechanisms are clearly published on the user interface.
- Sent to students by faculty requesting a meeting to discuss an assignment or academic matter.

#### 4.2. Partial Exemptions

The following list provides examples of CEMs that are partially exempted under CASL:

- Provide factual information (e.g. job fair on campus)
- Provide safety or security information (e.g. campus safety tips or events)
- Provided in response to or as part of a service requested/signed-up for/opted into by the CEM recipient (e.g. e-newsletters);
- Facilitate, complete or confirm an existing commercial transaction between the parties (e.g. confirmation of tuition payment);
- Provide notification of factual information about the ongoing use or purchase of a product(s), good(s), or service(s) offered under a subscription, membership, account or loan (e.g. emails sent to members of St. Clair's alumni community regarding services provided to members); and
- Provide information directly related to an employment relationship or benefit plan.

#### 4.3. Referral Marketing Exemption

St. Clair employees may send an initial message without prior consent of the recipient, following a third-party referral, and provided that the employee sending the message:

1. Discloses in the message the full name of the person who made the referral;
2. Has an existing business relationship with the person who made the referral;
3. States in the email that the message is sent as a result of a referral;
4. Identifies St Clair and includes relevant contact information; and
5. Provides an opt-out/unsubscribe mechanism.

The employee must verify that the person who made the referral has an existing personal, business or family relationship with the person whom he/she referred.

### 5. Consent:

St. Clair College staff sending emails or other electronic messages using St. Clair generated templates must have prior consent from recipients before sending CEMs, unless the message is exempt.

Templates:

- Obtaining express consent in writing – see section 5.3.1
- Obtaining express consent electronically – see section 5.3.2

Two types of consent are permitted under CASL: 1) **implied consent** and 2) **express consent**. St. Clair may rely on implied consent in prescribed circumstances and, in some cases, on a time-limited basis. Express consent is valid until it is revoked by the recipient.

### 5.1. Relying on Implied Consent

St. Clair may rely on implied consent to send CEMs in the following situations:

1. St. Clair has an **existing business relationship** with the recipient (e.g. students who graduated within the 2-year period immediately preceding the day the message is sent).
2. St. Clair has an **existing non-business relationship** with its members who are the recipients of the CEM given that the recipient is a member of the organization (e.g. current members of the college's Alumni community and people who have donated to the college in the 2-year period immediately preceding the day the message is sent.)
3. The prospect has **conspicuously published** (e.g. online, in a directory, email signature) his/her electronic address without a "do not solicit" request, and provided the message relates to the prospect's business/function/role.
4. The prospect has given St. Clair their **business card** (or equivalent contact information in person, orally or electronically) without any "do not solicit request", provided the email relates to that person's business/role/function.

Otherwise, if St. Clair cannot rely on implied consent, St. Clair must obtain express consent when sending CEMs

### 5.2. Transitional Provisions

St. Clair may continue to rely on implied consent for a period of three years after CASL comes into force (i.e. until July 1, 2017) with individuals where a relationship exists, provided there was at least one electronic communication with the recipient (referred to as the Transition Period). This means that implied consent may apply to all current and former students of the college, all current and former students who are members of the alumni community, and all current and former donors and volunteers of a registered charity associated with St. Clair. St. Clair may continue sending CEMs to these recipients during the Transition Period, provided that:

1. The form and content requirements are complied with;
2. As of July 1, 2014, St. Clair has already been communicating with the recipient via CEMs; and

3. The recipient has not unsubscribed from receiving CEMs (i.e. if the recipient unsubscribes during the Transition Period, St. Clair can no longer rely on the Transition Period exemption to send further CEMs).

St. Clair may use the Transition Period as an opportunity to convert implied consents to express consents, until July 1, 2017.

### 5.3. Obtaining Express Consent

Express consents obtained by St. Clair specifically for email communications prior to July 1st, 2014, may be “grandfathered” (i.e. continue to be relied upon) once CASL comes into effect.

Otherwise, when seeking express consent, St. Clair may do so in real-time (e.g. during school fairs, in person, application form) or by using other ad hoc, documented processes used to collect electronic contact information.

In obtaining express consent, St. Clair must:

1. Outline the purpose for which the consent is being sought (i.e. to send CEMs);
2. Specify the name which the person seeking the consent carries on business (i.e. identify the person who is requesting consent);
3. Specify the name of the person seeking the express consent if the person seeking the express consent is doing so on behalf of another person (i.e. where a third party is seeking consent on behalf of St. Clair);
4. Provide the contact information of the person who is requesting express consent; and
5. Provide a statement indicating that the person whose express consent is sought can withdraw their consent at any time.

Requests for express consent must be made separately from any request for consent to any terms and conditions associated with St. Clair’s service(s). Furthermore, the contact information provided as part of a request for express consent must remain valid (i.e. active and useable by the person whose consent is being sought) for no less than 60 days from the date that the contact information is provided.

St. Clair must not send an email to request the express consent of an intended recipient of CEMs as the request email is itself a CEM, unless St. Clair already has the recipient’s implied consent, and the time limit (in applicable instances) for reliance on implied consent has not already expired.

#### 5.3.1 How to Obtain Express Consent in Writing

Express consent should be obtained in writing, where possible (e.g. at school events).

The following provides a sample template language for obtaining express consent when a prospect or non-student wants to sign up to receive CEMs:

E-mail address: \_\_\_\_\_

I consent to St. Clair College sending me [*program info, bulletins, newsletters, events, promotions*] and other electronic messages (E-Communications)".

**I acknowledge that I may withdraw my consent at any time** by contacting St. Clair College at [communications@stclaircollege.ca](mailto:communications@stclaircollege.ca) or 519-972-2727 [fill in by School/Department] by mail at 2000 Talbot Road West, Windsor, Ontario, N9A 6S4

By entering my electronic contact information above and signing below, I consent to the collection, use and disclosure of the personal information provided as described in the St. Clair Privacy Policy, and I agree that St. Clair may contact me at the electronic contact information provided about its products and services or for other promotional purposes. Furthermore, I confirm that I own and/or am authorized to use the electronic contact information I have provided.

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (DD/MM/YY)

### 5.3.2 Obtaining Express Consent Electronically

All email messages sent externally will have a consent footer attached. See example below:

**Email from St. Clair College is the best way to find out about the latest news! You wouldn't want to miss any communications regarding class cancellations, class changes, newsletters, College events, messages from your professors, College marketing information and more!**

[Click here](#) to update your preferences.

St. Clair College | 2000 Talbot Road West | Windsor, ON, Canada N9A 6S4

If you no longer want to receive email and other commercial electronic messages from St. Clair College, please [unsubscribe](#).

### 5.3.3 Documenting Express Consent

St. Clair must be able to demonstrate that consent was obtained prior to sending a CEM, and as such, must capture, document and store consent in order to retrieve it and produce it when required (e.g. in the context of a CASL investigation, private right of action, or complaint).

Employees must ensure that third party vendors who send CEMs that include St.Clair content send CEMs that meet the requirements set out in CASL and this procedure.

#### 5.4. Consent – Summary

1. St. Clair can rely on implied consent for CEMs sent to existing students and alumni from the last two years; expiring July 1, 2017.
2. If St. Clair cannot rely on implied consent (e.g. existing business relationship with students), St. Clair must ensure it has express consent to send CEMs to prospects/non-students;
3. St. Clair must obtain express consent from prospects and non-students in written form either in writing, or by using electronic opt-in means on their subscribe page.

#### 5.5. Opt-Out/Unsubscribe Mechanism

Employees must include an opt-out/unsubscribe mechanism which allows the CEM recipient to indicate, at no cost to them, that they no longer wish to receive future messages from St. Clair on all non- or partially exempt CEMs.

The opt-out/unsubscribe mechanism must be set out clearly and prominently and must:

1. Be consumer friendly and simple, quick and easy for consumer to use (e.g. a link in an email that takes the student to a web page where he/she can unsubscribe from receiving optional messages);
2. Enable the recipient to opt out of communications using the **same electronic means** by which the message was sent; and
3. Provide the choice to opt out of **all or certain types** of communications.

St. Clair must honour opt-out/unsubscribe requests within ten (10) business days.

For sample unsubscribe language, please see the link below:

<http://www.stclaircollege.ca/casl/form/>

St. Clair must ensure that third party vendors include an opt-out/unsubscribe mechanism in their electronic communications

Acknowledgements: St. Clair College would like to thank Humber College whose policy statement has been used for the base of this document.

References: BLG CASL Toolkit for Colleges Ontario