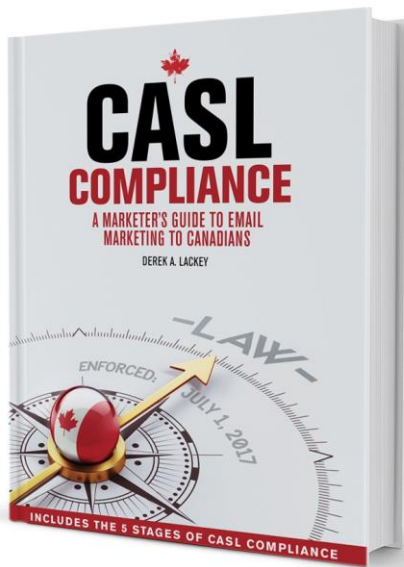




GROW YOUR BUSINESS

WITH EMAIL MARKETING





# Who Is Speaking?

Derek A. Lackey, CIPM,  
President, Direct Marketing  
Association of Canada  
[derek.lackey@directmac.org](mailto:derek.lackey@directmac.org)  
M: 416 524 7844

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A recovering, traditional ad guy with a  
serious online obsession.

Author of the first book about CASL  
NOT written by a lawyer.

# WHAT WE WILL COVER TODAY...

1. WTF? Why The Fines?
2. CANADIAN LAWS & REGULATIONS
3. BUILDING A COMPLIANT PROCESS
4. EMAIL PROGRAM TIPS

## PART ONE

WTF?  
WHY THE FINE?



CORPORATE FINES UP TO  
**\$10 MILLION**  
PER VIOLATION





FINES CAN APPLY TO

# OFFICERS & DIRECTORS

OF THE CORPORATION



# Who Has Been fined - for what?

Plenty of Fish \$48,000 - <http://news.gc.ca/web/article-en.do?nid=954949>

- Faulty unsubscribe mechanism

Porter Airlines \$150,000 - <http://news.gc.ca/web/article-en.do?nid=993469>

- Faulty unsubscribe mechanism, could not prove opt-ins

Rogers Media \$200,000 - <http://www.crtc.gc.ca/eng/archive/2015/ut151120.htm>

- Faulty unsubscribe mechanism, could not prove opt-ins

Compu-Finder - 1.1 million for no consent and an unsubscribed that did not work. [http://www.crtc.gc.ca/eng/DNCL/dnclc\\_2015.htm](http://www.crtc.gc.ca/eng/DNCL/dnclc_2015.htm)

# Who Has Been fined - for what?

Blackstone Learning \$60,000 - <https://crtc.gc.ca/eng/archive/2016/2016-428.htm>.

- Too broad an interpretation implied consent

Kelloggs \$60,000 - <https://crtc.gc.ca/eng/archive/2016/ut160901.htm>

- Could not prove opt-ins

Mr. Halazon \$10,000 - <https://crtc.gc.ca/eng/archive/2017/ut170612.htm>

- Faulty unsubscribe mechanism

William Rapanos - \$15,000 <https://crtc.gc.ca/eng/archive/2017/2017-65.htm>

- for 10 violations including no **consent**, for not including **prescribed language** in the emails, for not providing **partners details**, and **unsubscribe** mechanism that did not work.



# Who Has Been fined - for what?

Ancestry Ireland Official notice to become complaint

<https://crtc.gc.ca/eng/archive/2018/ut180124.htm>

- had to log into your account in order to unsubscribe

9118-9076 QUÉBEC INC. and 9310-6359 QUÉBEC INC. (514-BILLETS)

\$100,000 - <https://crtc.gc.ca/eng/archive/2018/ut180315.htm>

- Could not prove opt-ins

PART TWO

# CANADIAN LAWS & REGULATIONS

What is the  
Canadian  
Anti  
Spam  
Legislation  
(CASL)



Best practices for electronic messaging



# 1. Ask permission (client-centric marketing)



# THE 5 TYPES OF CONSENT

1. Express Consent. no time line
2. Implied Consent: Existing Business Relationship. Customers and “near” customers (individuals you have sent a proposal to) - 2 years
3. Implied Consent: Existing Non-Business Relationship For charities. 2 years
4. Implied Consent: Conspicuously Published. Public display with no restrictions. no time line
5. Personal Relationship. family and friends. no time line.

ALL forms of consent require PROOF.

## A few tips when Collecting EXPRESS Consent:

1. Clearly state your Company's legal name. No games.
2. Summarize what kind of messages you plan to send subscribers. As accurately as possible, make them a promise of the kind of material they can expect.
3. Provide a contact name (a person), the Company's full address and 2 ways to contact them. This can be connected to a link but that link must immediately deliver that information. This data is expected to be valid for a 6 month period.
4. Add ' You can unsubscribe at any time'. It must be stated.

If you do not display this information when collecting opt-ins, they are not EXPRESS CONSENT.

## STAY CONNECTED

Sign up for the DMAC Newsletter.

First Name

Last Name

Email

**SIGN UP**

The Direct Marketing Association of Canada is a leading authority on traditional and digital direct response marketing in Canada. Emails are designed to keep you current on events and information that affects direct response marketing.

[Contact us.](#) You can unsubscribe at any time.

Read our [Privacy Policy](#).



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\*By submitting, you agree to receive content from Nulogy in the future. We value your [privacy](#) and trust.



## Express consent versus implied consent

### WHAT YOU NEED TO KNOW BEFORE SENDING OUT YOUR COMMERCIAL ELECTRONIC MESSAGE

#### IMPLIED CONSENT

##### Existing business relationship

The recipient has made, or enquired about, a purchase or lease of goods, services, land or interest in land, a written contract or the acceptance of a business, investment or gaming opportunity from you.

##### Existing non-business relationship

You are a registered charity, a political party or a candidate, and the recipient has provided you a gift, a donation or volunteer work.

You are a club, association or voluntary organization and the recipient is one of your members.

##### Recipient's e-mail address was conspicuously published or sent to you

The address was disclosed without any restrictions and your message relates to the recipient's functions or activities in a business or official capacity.



#### KEEP RECORDS

Keep records of how you obtained implied or express consent, since in both cases you have the **onus to prove consent**.



Specific conditions apply. Please refer to the Legislation and its Regulations.

#### EXPRESS CONSENT

##### Valid consent given in writing or orally

The recipient gave you a positive or explicit indication of consent to receive commercial electronic messages.

Your request for consent set out clearly and simply the prescribed information.




##### Express consent is not time-limited

Unless the recipient withdraws his or her consent.

##### Implied consent is generally time-limited

It is typically a period of 2 years after the event that starts the relationship (e.g. purchase of a good). For subscriptions or memberships, the period starts on the day the relationship ends.



## 2. Clearly identify yourself and any partner you are emailing for

(corporate names, mailing address and a contact name with 2 ways to contact them)





### 3. Never Use Misleading Subject Lines






4. ALWAYS offer a working  
unsubscribe






5. NEVER mask who is sending the email or leave 'reply to' empty





In other words,  
Respect the Recipient





## The 3 sources of information on CASL

1. The Law

2. Guidance Documents

3. WTF? Why The Fines



## PART THREE

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# BUILDING A COMPLIANT LIST

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## Due Diligence

- Adequate written policies;
- Adequate ongoing training;
- Uses and maintains records documenting a process;
- What efforts have been made to address the problem;
- Over what period of time and promptness of response;
- Monitors and enforces compliance with CASL and its written policies; and
- In the case of a person who has retained a third party to engage in sending on its behalf, the person has entered into an agreement between itself and the sender requiring that the latter comply with CASL.

**CRTC**




## Corporate Compliance Programs

- Senior management involvement
- Risk assessment
- Written corporate compliance policy
- Record keeping
- Training program
- Auditing and monitoring
- Complaint-handling system
- Corrective (disciplinary) action



## Record Keeping - NTPs

1. Clear, Thorough and Organized Records
2. Record Complete Information
3. Formats for Disclosure



## Record Keeping – Proof of Consent Examples

| Requested Item  | Common Best Practice   |
|---|--|
| <p><b>Proof of consent</b> for all CEM recipients during a particular time period, including details such as:</p> <ul style="list-style-type: none"><li>• types of consent (e.g. express/implied); or</li><li>• date consent or relationship (for implied) established, or</li><li>• CEM recipient contact info</li></ul> | <p>Included <b>all details, provided in the file format requested</b> (.csv), and according to the column names provided in the example table. Included any legends or explanations that were particular to their system/data tracking to allow better understanding of data.</p> <p><b>Accompanied by internal documentation</b> such as: Customer Database User guide, Privacy Policy, Pre and Post CASL communication policies, Screenshots of subscribe form, etc.</p> |



## Record Keeping – Unsubscribe Examples

| Requested Item   | Common Best Practice   |
|--|--|
| <b>Unsubscribe mechanism</b><br>implementation and procedure/system<br>for maintenance of <b>updated CEM</b><br><b>recipient lists</b> | Provided <b>existing documents</b> on<br>these procedures and a <b>detailed</b><br><b>description of how it is</b><br><b>implemented and maintained</b> ,<br>including whether the system is<br>handled by a third party, <b>explanation</b><br><b>of the roles and responsibilities of</b><br><b>the NTP recipient and any third</b><br><b>parties involved, contracts</b> with the<br>third parties, communication practices<br>between the NTP recipient and the<br>third parties to ensure the unsubscribe<br>system is working. |



## Record Keeping - Third Parties Examples

### Items Requested – NTP

**Third Parties** that may have provided services on your behalf related to the sending of CEMs, management of consent obtained, or management of unsubscribe requests, including contracts, agreements, and payment info

### Common Best Practice

**A description of every arrangement with other persons** for the relevant period, including details about the needs behind these contracts **and the service rendered with timelines**, along with **copies of the original contracts and statement of work.**

## PART FOUR

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# BEST PRACTICES

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# A few tips when Building an Email Marketing

## Program:

1. Create a written plan.
2. Define your objectives for the program and know how it fits with the overall plan.
3. Assess your resources objectively. Do not bite off more than you can chew.
4. Decide how to measure success. What are your key performance indicators (KPIs)?



# A few tips when Building an Email Marketing Program:

5. All copy must focus on relevance, WIIFM? (what's in it for me?), save time or money.
6. Be consistent. Design. Tonality. Delivery times and frequency.
7. Use images to support the message rather than being the message itself.
8. Copy: Use web-safe fonts (Arial, Verdana). Use bold copy and bullets. Don't use italics (hard to read)

# MORE is NOT Better

Engaged is what counts in email marketing

# Subject Line

Keep it under 40 characters

Put key information at beginning

No non-ASCII characters

Be unique, compelling, engaging, actionable

# FROM Name

Make sure it's easily recognizable

Use your company/brand name (unless  
you have a brand personality that  
everyone knows)

# FROM Email

Use a real corporate address

Do not use “donotreply” addresses

Avoid changing it

Authenticate your URL

Use DMARC

# Content

Set a single objective

Stay focused

Be relevant

Nurture the relationship

Focus on the long-term



# A few tips when Building an Email Marketing

## Program:

9. Emails are not web pages.

Do not use: Flash, CSS, Audio or Video, Javascript, Forms or Surveys. (But you can link to this content on your site)

10. Test. Test. Test.

Subject Lines: Offers, Time of Delivery, Creative, Calls to Action and anything else that can impact your success.

11. Pay Attention to Content:

a) Set a single objective, b) Stay focused, c) Be relevant, d) Nurture the relationship, e) Focus on the long-term relationship rather than short term hits

Over 20% of social media users have shared something from an email campaign to their social accounts via a share option.

Source: Merkle "View from the Social Inbox 2010"



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## PART FOUR

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# SUMMARY & Q&A

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# Summary

Decide how you wish to use email marketing.

If it is a customer acquisition tool, EXPRESS CONSENT is best. All types of consent must be tracked and proven.

Track the data.

The burden of proof is squarely on your shoulders. Implied consent is generous - CRTC wants clear proof.

No 'tricks'.

Be clear and fully transparent when collecting opt-ins.

Respond to CRTC.

If they come knocking, respond quickly and professionally. Simply answer their questions as best you can. Due diligence is a legitimate defence.

Have a clear, documented process in place.

If you appear to be taking CASL seriously and have simply made an error or two, your documented process will likely result in warnings rather than fines.

# Convenient Links

Frequently Asked Questions.

[https://www.newportthomson.com/index.cfm?pagepath=Canada/CASL\\_Electronic\\_Messaging/FAQs&id=83522](https://www.newportthomson.com/index.cfm?pagepath=Canada/CASL_Electronic_Messaging/FAQs&id=83522)

Guidelines to Develop Corporate Compliant Programs.

<http://www.crtc.gc.ca/eng/archive/2014/2014-326.htm>

FTC and CRTC Working Together to fight spam

<http://news.gc.ca/web/article-en.do?mthd=tp&crtr.page=2&nid=1042219&crtr.tp1D=1>

CASL Compliance: A Marketer's Guide To Email marketing To Canadians.

[https://www.newportthomson.com/index.cfm?pagepath=Canada/CASL\\_Electronic\\_Messaging/5\\_Stages\\_of\\_Compliance&id=83436](https://www.newportthomson.com/index.cfm?pagepath=Canada/CASL_Electronic_Messaging/5_Stages_of_Compliance&id=83436)



[dlackey@newportthomson.com](mailto:dlackey@newportthomson.com)

416 524 7844

<https://www.linkedin.com/in/dereklackey/>