

**DATE:** October 19, 2017  
**TO:** Brantford Public Library Board  
**FROM:** James Clark, Manager – Marketing

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**1.0 TYPE OF REPORT** **FOR BOARD DIRECTION**

**2.0 TOPIC** **Canada's Anti-Spam Legislation Policy**

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**3.0 PURPOSE**

To seek Board approval for a policy that ensures Brantford Public Library is in compliance with Canada's Anti-Spam Legislation S.C. 2010, c.23 (CASL).

**4.0 BACKGROUND**

CASL came into effect July 1, 2014. According to the Government of Canada's website, the "law generally prohibits individuals and businesses from sending commercial emails to Canadians without their consent."

The Brantford Public Library does not currently have a policy that addresses CASL, but does participate in activities that are covered under the legislation. Activities include using helping customers install apps and programs on their smart device and subscribing to a customer relationship management (CRM) tool to send emails to people who have subscribed to an email list.

**5.0 INPUT FROM OTHER SOURCES**

CASL policies from other libraries were reviewed along with supporting documents from the Federation of Ontario Public Libraries created to inform libraries of CASL. These FOPL documents included a legal opinion and draft policy that were supplied by a law firm hired by FOPL. Both the Government of Canada and Competition Bureau's websites were also a major source of information.

## 6.0 ANALYSIS

Many public libraries have adopted CASL policies to ensure their organization complies with the legislation that covers the sending of electronic messages and the installation of computer software on devices.

Currently, the Brantford Public Library subscribes to a CRM, which has an electronic newsletter function, to send book recommendations to members who have subscribed to specific email lists. This means, they have provided express consent to receive emails from the Library. The number of emails sent will increase in 2018, as the Library begins to expand the use of electronic communication to new members and regular program updates.

The Brantford Public Library also sends renewal and book loan information to members through email. These emails are able to be sent to customers because of an established relationship that implies consent.

In addition to sending emails, Brantford Public Library staff are frequently asked by customers to install apps on their mobile devices. These requests come to staff working on service desks and during programs.

Finally, customers using wireless internet connections and terminals connected to the internet may be sending electronic messages.

Adopting a CASL policy that is reviewed annually will ensure the Brantford Public Library complies with legislation and that staff, volunteers and Board Members receive proper training.

## 7.0 FINANCIAL IMPLICATIONS

There are significant financial penalties for organizations and individuals that do not comply with CASL.

The Canadian Radio-Television and Telecommunications Commission (CRTC) investigates all complaints regarding CASL and can impose a maximum penalty of \$1-million for individuals and \$10-million for businesses.

## 8.0 CONCLUSION

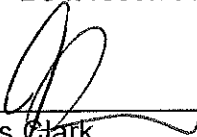
To ensure the Brantford Public Library fully complies with CASL while continuing to increase electronic communication with the public and aid them with the installation of computer software, it is recommended that the Board adopt a CASL policy that clearly articulates duties when sending electronic messages through social media, text messages and email software and installing software on customer devices. As with other policies, there will be procedures developed.

## 9.0 RECOMMENDATION

Whereas the Canadian Anti-Spam Legislation imposes certain requirements on the Brantford Public Library;

And, whereas a review of CASL policies from other libraries has been undertaken;

Be it resolved THAT the CASL policy contained in Appendix A be approved.



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James Clark  
Manager – Marketing



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Kathryn Goodhue  
CEO/Chief Librarian

<b>Policy Title:</b> Canadian Anti-Spam Legislation	<b>Policy Number:</b>
<b>Policy Type:</b> Operational	<b>Policy Heading: (Circulation/Human Resources/Collections/Security)</b>
<b>Date Created:</b> October 10, 2017	<b>Date Approved:</b>
<b>Chair/CEO Signature:</b>	
<b>Supersedes:</b>	<b>Date Revised/Amended:</b>
<b>Background documents, related policies:</b> Privacy Policy [GOV 20], Confidentiality of Records Policy [GOV 11]	
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Policy Purpose:

The Canadian Anti-Spam Legislation Policy has been created:

- To ensure Brantford Public Library complies with Canada’s Anti-Spam Legislation and its requirements.
- To ensure Library Board Members, Employees and Volunteers understand what is expected of them when using library communications channels, platforms, connectivity and equipment for sending electronic messages.

Definitions:

The following definitions shall apply for the purposes of this policy

- Canada’s Anti-Spam Legislation (CASL) means the following Act and Regulations
  - An act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-Television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23 (the “Act”)
- Commercial Electronic Message (CEM)
  - An electronic message that encourages participation in a commercial activity. There does not need to be any expectation of profit.
- Electronic Address
  - An address used in connection with the transmission of an Electronic Message to
    - An email account;
    - An instant messaging account;
    - A telephone account;
    - A social media account; or any similar account
- Electronic Message (EM)

- A message sent by electronic means to an electronic address including, but not limited to, messages sent by:
    - Electronic mail (i.e. email);
    - Text message;
    - Instant message; or
    - Direct message sent through social media messaging systems

An EM does not include messages sent via posted mail or fax, a two way voice conversation, voicemail to a telephone account or posts published on a website.
- Exemptions
  - The exemptions to the requirements of subsections 6(1) and/or 6(2) of the Act, as prescribed in CASL
- Express consent
  - The explicit and/or expressed communication by a person (orally or in writing) that the person wishes to receive CEMs/EMs from the Brantford Public Library.
- Implied consent
  - There is an existing relationship with Brantford Public Library in which a person is a member/cardholder; has made a transaction, inquiry or application; has a written contract for the provision of goods and services; has provided volunteer work; or has made a donation to the library.
- Person
  - An individual, partnership, corporation, organization, association, trustee, administrator, executor, liquidator of a succession, receiver or legal representative.
- Special Functions
  - Means a computer program that is intended to cause the following functions, contrary to the reasonable expectations of the user/owner of the computer system
    - Collecting personal information stored on the computer system;
    - Interfering with the owner's or an authorized user's control of the computer system;
    - Changing or interfering with settings, preferences or commands already installed or stored on the computer system without the knowledge of the owner or an authorized user of the computer system;
    - Changing or interfering with data that is stored on the computer system in a manner that obstructs, interrupts or interferes with lawful access to or use of that data by the owner or an authorized user of the computer system;
    - Causing the computer system to communicate with another computer system, or other device, without the authorization of the owner or an authorized user of the computer system;
    - Installing a computer program that may be activated by a third party without the knowledge of the owner or an authorized user of the computer system.
- Third Party
  - A person who is not a Board member or employee of the Library, who sends EMs that promote, advertise, market or otherwise encourage participation in the Library's activities.
- Volunteer

- A person who voluntarily extends his or her services to actively support the Brantford Public Library, and does so without remuneration.
- Library Board Members, while volunteers, will be referred to as Board Members because of roles and responsibilities that are different from those of other volunteers.

#### Principles:

The Brantford Public Library requires all of its Board Members, employees and volunteers, and any other person who communicates on its behalf, to comply with this Policy.

The Library will appoint staff members who are responsible for managing the implementation of this Policy and whose titles are: Chief Executive Officer (CEO)/, Chief Librarian, Manager – Marketing, Manager – Programming and Outreach, Manager – Customer Engagement, Manager – Support Services and Manager – Business Services.

At its sole and absolute discretion, the Library may at any time revise this Policy to ensure the library remains in compliance with CASL.

Notwithstanding anything in this Policy, at the Library's sole and absolute discretion, the Library may rely on any one or more of the Exemptions outlined in CASL. A determination as to when a situation would be subject to any one of the Exemptions shall be made by the Library on a case-by-case basis.

#### Electronic Addresses

No person shall collect an Electronic Address for the purposes of sending Electronic Messages or CEMs to the Person who owns that Electronic Address on behalf of the Library, without having first obtained the consent of that person.

All Electronic Addresses collected by or on behalf of the Library must be entered into the library's customer relationship management tool (CRM), in accordance with the Library's Confidentiality of Records and Privacy policies and procedures respecting collection of personal information.

#### Electronic Messages

No EM shall be sent by or on behalf of the Library, in the course of carrying on the Library's activities, unless the recipient of the EM has provided his or her Express Consent or Implied Consent to receive EMs from the Library (as prescribed in this policy.)

EMs sent by or on behalf of the Library in the course of carrying on the Library's activities may only be sent to Electronic Addresses that have been entered into the CRM.

All EMs sent by or on behalf of the Library in the course of carrying on the Library's activities must include the following information:

- A. The Library's name and mailing address;
- B. The Library's email address/telephone number/website; and
- C. The Library's unsubscribe mechanism.

### Express Consent

The Library shall endeavor to obtain Express Consent from all persons to whom it sends EMs, at all reasonable opportunities.

Express Consents provided to the Library shall be entered into the Library's CRM in accordance with the Library's procedures, and shall specify:

- A. The types of EMs the person has consented to.

All requests for Express Consent made by or on behalf of the Library in writing (whether electronic or in hard copy format), must include the following:

- A. A request that the recipient consent to receive EMs from the Library;
- B. The purpose for which the consent is being sought (e.g. for receiving EMs, for receiving e-newsletters);
- C. The Library's name and mailing address;
- D. The Library's email address/telephone number and/or website; and
- E. A statement that consent may be withdrawn at any time.

Express Consent shall not be sought by or on behalf of the Library by sending an Electronic Message to an Electronic Address, unless the Library has Implied Consent from the person to whom the Electronic Message is being sent.

All requests for Express Consent made in writing or online shall not include pre-checked boxes.

All requests for Express Consent made by or on behalf of the Library verbally shall follow the following procedure:

- a) The individual requesting the consent shall disclose to the person from whom the consent is being sought:
  - a. That the consent is being sought on behalf of the Library;
  - b. The purpose for which the consent is being sought (e.g. for receiving EMs; for receiving e-newsletters);
  - c. The Library's mailing address
  - d. The Library's email address/telephone number and/or website; and
  - e. That the person may withdraw consent at any time.
- b) Only email addresses authorized verbally or in writing by a person shall be entered into the CRM.
- c) Details of the Express Consent will be noted in the CRM

### Implied Consent:

The Library has Implied Consent to send EMs to the following:

- A. Persons who are current, active cardholders of the library;
- B. Persons who were cardholders of the Library but who ceased to be cardholders in the 24 months preceding the date of the sending of the EM;
- C. Persons who entered into a financial transaction with the Library in the 24 months preceding the date of the sending of the EM;

- D. Persons who donated to the Library in the 24 months preceding the sending of the EM;
- E. Persons who volunteered for the Library in the 24 months preceding the date of the sending of the EM.

Unsubscribe Mechanism:

All EMs sent by or on behalf of the Library in the course of carrying out Library activities shall include a mechanism by which the Person receiving the EMs may unsubscribe (i.e., opt-out) from receiving EMs from the Library.

The Unsubscribe Mechanism shall be prominently displayed in EMs sent by or on behalf of the Library.

All requests to unsubscribe shall be acted upon by the Library's marketing department within five business days of the receipt of the unsubscribe request.

No EMs shall be sent by or on behalf of the Library to any person who made a request to unsubscribe 10 days after the request was made and thereafter, unless the Person provides his/her Express Consent to receive EMs from the Library, or unless the EM meets one of the Exemptions. These Exemptions will be determined on a case by case basis.

Third Parties:

The Library requires that all Third Parties have provided Express Consent or Implied Consent to receive EMs from the Library, from the Persons to whom the EMs are sent, prior to the Library sending the EMs.

The Library shall not be held liable for any and all EMs sent by Third Parties that are not sent in compliance with this Policy.

All Third Parties agree to defend, indemnify and hold harmless the Library and its Board Members, employees, agents and trustees, from and against any and all complaints, claims, action or demands result from, and/or arising out of, the Third Parties' breach of this Policy, including, but not limited to, for any and all regulatory proceedings, warrants, preservation demands, disclosure requests, compliance notices, administrative monetary penalties, fines, damages, injunctive relief, class actions, legal fees, expert fees and disbursements.

At its sole and absolute discretion, the Library may, from time to time, enter into agreements and/or arrangements with Third Parties that may not necessarily be in compliance with this Policy, but ensure the Library's compliance with CASL.

Notwithstanding anything in this Policy, at its sole and absolute discretion, the Library may rely on one or more of the Exemptions for EMs sent by Third Parties. A determination of whether a particular EM sent by a Third Party is subject to an Exemption will be made by the Library on a case-by-case basis.

Computer Programs:

In the course of conducting Library activities, no person shall cause a computer program to be installed on a computer system, unless that person first obtains the Express Consent of the owner or authorized user of the computer system to install the computer program, on behalf of the Library.

There is no requirement to obtain Express Consent to install the following computer program on behalf of the Library:



- A. A cookie;
- B. HTML code;
- C. Java Script; and
- D. An operating system

When seeking Express consent to install a Computer Program on behalf of the Library, the person seeking the consent shall disclose to the person from whom consent is being sought, clearly and simply, the function and purpose of the computer program being installed.

If the computer program being installed on behalf of the Library is intended to perform a Special Function(s), the person seeking consent on behalf of the Library must prominently, clearly, simply and separate and apart from any other requests for consent, describe the Special Function(s), including their nature and purpose and their impact on the operation of the computer system.

Use of the Library's Computers/Internet Connection:

Any person who uses:

- A. A computer system owned, operated and/or controlled by the Library; and/or
- B. An internet connection owned, controlled and/or provided by the Library (including any wireless connection),

must carry out his or her activities in a manner that is compliant with CASL.

Any person who contravenes this Part shall defend, indemnify and hold harmless the Library and its Board Members, employees, agents and trustees from and against any and all complaints, claims, actions or demands resulting from and/or arising out of that person's actions, including, but not limited to, for any and all regulatory proceedings, warrants, preservation demands, disclosure requests, compliance notices, administrative monetary penalties, fines, damages, injunctive relief, class actions, legal fees, expert fees and disbursements.

Training:

With the implementation of this Policy, the Library's Board Members, employees and volunteers are required to complete mandatory training on this Policy and CASL in general.

The training shall be selected and/or prepared, conducted and tracked by management.

New hire training: all new Board Members, employees and volunteers of the Library shall be required to complete the Training, within six months of joining the Library and/or becoming a volunteer for the Library.

Refresher training will be available every 48 months for Board Members and staff will receive refresher training at Staff Development Days.

Audit:

Once every 12 months, the Library will conduct an audit of its electronic communication practices, to ensure compliance with this Policy. The audit shall be conducted by marketing and support services staff.

The Library may also conduct a random audit of its electronic communication practices to ensure compliance.

In the event an audit discloses discrepancies between this Policy and the Library's communication practices, such discrepancies shall be addressed by the Library to ensure compliance with the Policy, as soon as is reasonably possible.