



## BRACEBRIDGE PUBLIC LIBRARY POLICIES AND PROCEDURES

CATEGORY: Public Relations #2

SUBJECT: Canada's Anti-Spam Legislation

POLICY REPLACING: New

BOARD APPROVAL DATE: September 12, 2017

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### RATIONALE:

Canada's Anti-Spam Legislation (CASL) came into force on July 1, 2014. Bracebridge Public Library Board (the Library) is committed to complying with CASL and its requirements.

### DEFINITIONS:

**Canada's Anti-Spam Legislation or CASL** - 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"); Electronic Commerce Protection Regulations (CRTC), SOR/2012-36; and Electronic Commerce Protection Regulations (Industry Canada), SOR/2013-221.

**Commercial Electronic Message or CEM** - an Electronic Message that, directly or indirectly, encourages participation in the Library's commercial activities, and/or in the commercial activities of a Person other than the Library, as determined by the content of the message, hyperlinks in the message to content on a website or other database, and the contact information contained in the message. Some examples of electronic messages that are CEMs include messages that offer, advertise or promote the purchase, sale, bartering or leasing of a product, good, service, land, and/or an interest or right in land, as well as messages that offer, advertise or promote a business, investment or gaming opportunity, and messages that promote the individual, business or organization that perform any of the above activities.

**Computer system** - any device or group of interconnected or related devices, one or more of which contains computer programs that perform logic and control, and may perform any other function. Examples include a computer, server, hard drive, mobile telephone, tablet or other electronic device.

**Computer program** - data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function. This includes software, applications (apps), games, and other computer code that meets the above description.

**Electronic message or EM** - a message sent by electronic means to an electronic address, including but not limited to messages sent by email, text message, instant message and via social media accounts. An EM does not include messages sent via posted mail, fax, two-way voice conversation, voicemail to a telephone account and/or posted or published on a website (but not sent to an electronic address).



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**Electronic address** - an address used in connection with the transmission of an electronic message.

**Exemptions** – the exemptions to the requirements of CASL as outlined in sections 6 to 8 of the CASL Act (the Act).

**Express consent** - explicit and/or expressed communication by a person that they wish to receive EMs from the library.

**Implied consent** - the existence of the requirements prescribed in Section 6 of the Act.

**Person** - an individual, partnership, corporation, organization, association, trustee, administrator, executor, liquidator of a succession, receiver or legal representative.

**Third Party** – a Person who is not the Library CEO, employee or trustee of the Library who sends EMs or CEMs that promote, advertise, market or otherwise encourage participation in the Library's activities.

### POLICY STATEMENT:

#### **General**

The Library (Board and/or CEO) requires all of its trustees, employees and volunteers, and any other Person or Third Party who communicates on its behalf, to comply with this policy.

The CEO or designate is responsible for managing the implementation of this policy. 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. 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.

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

#### **Electronic addresses**

No Person or Third Party shall collect an electronic address on behalf of the Library for the purposes of sending electronic messages to the person who owns that electronic address, without having first obtained the consent of that person.

All the electronic addresses collected by or on behalf of the Library shall be entered, stored and managed by the Library in an appropriate database and in accordance with the Library's policies and procedures respecting collection of personal information.



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### **Commercial electronic messages (CEMs)**

No CEM 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 CEM has provided his or her express consent or implied consent to receive CEMs from the Library.

No CEMs will be sent to email addresses belonging to children.

All CEMs sent by or on behalf of the Library must include the Library's name and mailing address, the Library's email address and telephone number, and the Library's unsubscribe mechanism as noted in this policy.

An employee of the Library may not use their staff email address to send a CEM for personal reasons.

### **Express consent**

The Library shall endeavour to obtain express consent from all persons to whom it sends CEMs, at all reasonable opportunities.

The staff member requesting express consent shall disclose to the person from whom the consent is being sought, that the consent is being sought on behalf of the Library, the purpose for which the consent is being sought and that the person may withdraw the consent at any time. The email address provided by the patron, the date the express consent was given, the types of CEMs to which the person has consented and the manner in which the consent was given will be recorded in the Library's database at time of receipt in accordance with the Library's procedures.

All requests for express consent made by or on behalf of the Library in writing (whether electronic or in hard copy format) must include a request that the recipient consent to receive CEMs from the Library, the purpose for which the consent is being sought (e.g., for receiving CEMs), the Library's name and mailing address, the Library's email address and telephone number, and a statement that consent may be withdrawn at any time. Pre-checked boxes must not be used in requests for express consent.

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.

### **Implied consent**

As noted in the CASL Act, consent is implied for the purpose of section 6 of the Act only if:

(a) the person who sends the message, the person who causes it to be sent or the person who permits it to be sent has an existing business relationship or an existing non-business relationship with the person to whom it is sent. As such, the library has implied consent to send CEMs to persons who are current, active cardholders of the library.

(b) the person to whom the message is sent has disclosed or conspicuously published, or has caused to be conspicuously published, the electronic address to which the message is sent, the disclosure or publication is not accompanied by a statement that



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the person does not wish to receive unsolicited commercial electronic messages at the electronic address and the message is relevant to the person's business, role, functions or duties in a business or official capacity.

### **Unsubscribe mechanism**

All CEMs 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 CEMs may unsubscribe, i.e., opt-out from receiving commercial electronic messages from the Library (the "Unsubscribe Mechanism").

The unsubscribe mechanism shall be prominently displayed in the body of all CEMs sent by or on behalf of the library.

All requests to unsubscribe shall be entered into the patron record within 10 business days of being notified of the request, in accordance with the library's procedures.

### **Third-parties**

The Library requires that all third parties comply with this policy.

The Library shall not be held liable for any and all CEMs 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 employees and trustees, from and against any and all complaints, claims, actions or demands resulting from, and/or arising out of, the third parties' breach of this policy.

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 which 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 CEMs sent by third parties. A determination of whether a particular CEM 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 computer program may be installed on a computer system without having first obtained express consent from the person who controls that system.

According to the CASL Act, there is no requirement to obtain express consent to install the following computer program on behalf of the Library: A cookie; HTML code; Java Script; and an operating system.

### **Use of the Library's Computers/Internet connection**

Any person who uses a computer system owned, operated and/or controlled by the library, and/or an Internet connection owned, controlled and/or provided by the library



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(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 employees and trustees, from and against any and all complaints, claims, actions or demands resulting from, and/or arising out of, that person's actions.

### **Training**

Training on this policy for Library employees and trustees will be mandatory.

Attendance will be recorded in the Staff Training binder and Library Board minutes respectively.

Procedures will be reviewed periodically with Library staff for CASL compliance.

Any discrepancies between this policy and the Library's communication procedures shall be addressed by the Library to ensure compliance with the policy.

### RELATED DOCUMENTATION:

Social Media Policy

Acceptable Computer Use Policy

CASL Act

PREVIOUS REVISIONS: None

ADAPTED FROM: Canada's Anti-Spam Legislation, Legal Opinion prepared for the Federation of Ontario Public Libraries and the Canadian Urban Libraries Council, Barrie Public Library, Halton Hills Public Library