



# CASL | 2014

Canada's Anti-Spam Law  
Presentation





## CASL: Agenda

- **CASL Overview**
  - Background
  - Phased Implementation
  - What is CEM?
  - Who This Law Affects?
- **Consent**
  - Types of Consent
  - Exemptions
- **Penalties**
- **Examples**
- **Q & A**





## CASL: Overview





## CASL: Background

- **2004:** Task force created
- **2005:** "Stopping Spam" Report
- **2009:** Bill 28 introduced
- **2010:** Re-introduced in current form and receives Royal Assent
- **2012:** Final CRTC Regulations published
- **2013:** IC presents Final Regulations and "RIAS"
- **2014:** Enforcement begins July 1<sup>st</sup>
- **2015:** Installation of computer programs
- **2017:** Private Right of Action and implied consent limitation periods begin





## CASL: Overview

- General **privacy legislation**
- Applies to all **commercial relations** with an individual and **B2B**
- Any **CEM sent** from or to a '**computer system**' in Canada
- **July 1, 2014:** most provisions come into force

### Section 3 "Purpose of Act"

The purpose of this Act is to promote the **efficiency and adaptability of the Canadian economy** by regulating commercial conduct that discourages the use of electronic means to carry out commercial activities, because that conduct:

- a) impairs the availability, reliability, efficiency and optimal use of electronic means to carry out commercial activities;
- b) imposes additional costs on businesses and consumers;
- c) compromises privacy and the security of confidential information; and
- d) undermines the confidence of Canadians in the use of electronic means of communication to carry out their commercial activities in Canada and abroad.





## CASL: Phased Implementation

- **July 1, 2014:** CASL comes into effect
- **January 15, 2015:** Unsolicited installation of computer programs and software
- **July 1, 2017:** Private Right of Action and implied consent limitation periods apply after this date



July 1, 2014  
CASL



January 15, 2015



July 1, 2017  
Private Right of Action and  
implied consent limitation periods



## CASL: What is CEM?

- **Definition** of CEM
- **Types** of Communications
- **Who** it affects
- **Applies** to more than just spam

Broadly defined as an electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit.

Commercial activity includes any transaction, act, conduct or any regular course of conduct of a commercial nature whether or not the person carrying it out does so with the expectation of profit.

### Forms



Email



Text Messaging



Instant Messaging

### Content



Text



Sound



Voice



Images



**B2B and communications with customers**

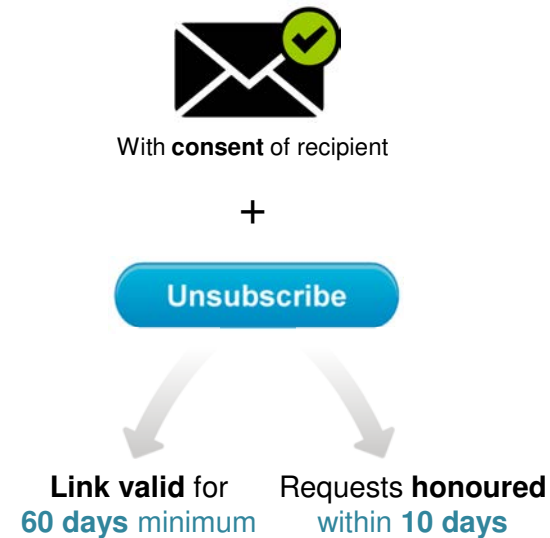


**Does NOT affect (yet)**



## CASL: What it Means?

- Unless exempted, **all commercial electronic messages (CEM)** must only be sent upon **express or implied consent** of the recipient AND must contain **prescribed content**, including an **unsubscribe mechanism**
- **Unsubscribe Requirements:**
  - The electronic address link to unsubscribe must be **valid** for min. 60 days
  - **Requests** must be **honoured** within 10 business days







## CASL: Driving Results

- I have **Live Chat** on my Dealership website – is this service considered a **CEM? Scenario**
- One of my Sales Representatives **texts** a customer from his **personal cell phone**. Would this be classified as a **CEM?**
- One of my customers has **unsubscribed**, can I **market** to them within **10 business** days and attempt to **reconfirm their consent**?



Live Chat



Text



Reconfirm



**CASL:**  
Consent





## CASL: Express Consent (The Gold Standard)

- **Oral**

- Call centre
- Point of Sale



Call Centre



Point of Sale

- **Written**

- Web form / Preference Centre
- Subscription form
- Point of Sale
- Business Card



Web Form



Point of Sale



Subscription Form



Business Card

- **Most important** - does not expire, unless withdrawn by the recipient



## CASL: Express Consent

- The purpose must be **clearly explained** without resort to euphemisms
- **Request** for consent must follow **content rules** set out in the IC Regulations
- CEMs can be sent only for the **purposes explained** to the consenting recipient
- **Organizations bear the burden of demonstrating** consent
- When consent is **obtained orally**, this must be proven, including:
  - Verified by an independent third party, or
  - Retaining a complete and unedited audio recording of the consent



**Purpose** clearly explained



Sent for **purposes** explained



**Organizations** must demonstrate consent



Verified by **third party**



Unedited **audio recording**



## CASL: Driving Results

- If I previously had a pre-checked **opt-in** on my **webforms** in accordance with **PIPEDA**, is that **considered express consent**?
- If I **acquire express consent via paper** (i.e. walk-in traffic), how do I need to **track** this?
- If I **acquire a prospects email** address during a visit, is that **considered express consent**?



PIPEDA



Express Consent



Email Address



## CASL: Implied Consent

- Implied Consent **expires** after 24 months (or 6 months in the case of a response to an inquiry or application), unless withdrawn
- Typically **attained** through ongoing relationship as defined by CASL
- Under many, but not all, circumstances implied consent will likely **reset with new transaction**
- Renewed implied consent may cancel previous unsubscribe, but best to obtain **express consent** to confirm the withdrawal of an unsubscribe request



**Expires** after  
**24 months**



Expiry **resets**  
**after every transaction**



**Attained** through  
**ongoing relationship**



**May cancel** previous  
**unsubscribe**



## CASL: Implied Consent

### Existing Business Relationship

- **Before July 1, 2017**, consent is implied if there was, on July 1, 2014, an "existing business relationship" that included the exchange of CEMs
- If not, then consent is implied if there is an "existing business relationship" in the two years prior to the date the message is sent
- Responding to an **inquiry** or **application** (6 month period after 2017)
- **Conspicuously published** information without restrictions on use
- **Note July 1 deadline** to tidy lists



**Before 2017**

With **existing relationship** and **previous CEMs** or if **no previous CEMs**, within **2 years**



**After 2017**

With **existing relationship** within **2 years**



**Responding to an inquiry or application**



**Conspicuously Published** information without restrictions



## CASL: Driving Results

- A **customer purchased** a used vehicle **18 months ago** and came in **yesterday** for an **oil change** – do I now have 24 months to communicate electronically?
- A **customer** that purchased a vehicle 6 months ago **withdrew consent** last week. He **returned** to my dealership for a **repair** – is his implied consent renewed?
- I compiled a **list of online leads** from the **last 8 months** that **haven't purchased** yet, can I send them an incentive email?



**Purchased**  
6 months ago



**Service**  
yesterday



**Communicate**  
24 months?



**Purchased**  
6 months ago



**Withdrew Consent**  
Last week



**Service**  
today



**Lead List**  
Not purchased – 8 mo.



**Incentive Email?**





## CASL:

### Exemptions to Consent but CEM Form Needed

- Response to a request for a quote or estimate
- Messages that facilitate, complete or confirm transactions
- Messages providing warranties, recalls, safety or security information about a product, good or service that the recipient has used or purchased
- Messages delivering a product, good or services, including upgrades or updates



**Response**  
Request for quote  
Estimate



**Messages**  
Facilitate  
Complete  
Confirm  
transactions



**Messages**  
Provide warranty/recall  
Safety/security  
Products/goods/services  
used or purchased



**Messages**  
Delivering Products/  
Goods/Services  
Upgrades/updates



## CASL:

### Exemptions to Consent but CEM Form Needed

- Messages concerning the employment relationship or benefit plans in which an employee is enrolled
- Messages providing factual information about:
  - Ongoing use or ongoing purchases under a subscription, membership, accounts, loans or similar relationship
  - The actual subscription, membership, accounts, loans or similar relationship



#### Messages

Employment relationship  
Benefit plans



#### Messages

Factual information:  
Ongoing use  
Ongoing purchases  
Under  
subscription/membership/  
accounts/loans



## CASL:

### Exemptions to Consent and Form of CEM

- Message is sent between employees, consultants or representatives of the same organization or to counterparts in another organization, where there is an ongoing relationship and the message concerns the activities of the other organization.
- There is a personal or family relationship between the sender and recipient, as defined.
- The message is sent to a person engaged in a commercial activity and consists solely of an inquiry or application related to that activity.



#### Messages

Sent between employees, consultants, representatives in the same organization



#### Messages

Sent to counterparts in another organization



#### Messages

Personal or family relationship between sender and recipient



#### Messages

Sent to a person engaged in a commercial activity  
Consists of an inquiry/application



## CASL:

### Exemptions to Consent and Form of CEM

- Message is sent in response to a request, inquiry or complaint.
- Message sent to enforce a legal right or obligation.
- Message is sent and received on an electronic message service platform that includes proper CEM content and the receiver has consented to the use of the service platform.
- Message is sent to a secure account where the Message can only be sent by the person who provides the account to the person who receives the Message.



**Messages**  
Sent in response to a  
request, inquiry or  
complaint



**Messages**  
Sent to enforce legal right  
or obligation



**Messages**  
Sent and received on  
electronic message  
service platform with  
proper CEM content



**Messages**  
Sent to secure account



## CASL:

### Exemptions to Consent and Form of CEM

- Message is to be received in a defined foreign jurisdiction and it conforms with the spam law in that jurisdiction, if substantially similar.
- Message sent by registered charities raising funds.
- Message sent by political candidates or organizations, soliciting political contributions.



#### Messages

Received in a defined foreign jurisdiction and conforms with spam law in that jurisdiction



#### Messages

Sent by registered charities



#### Messages

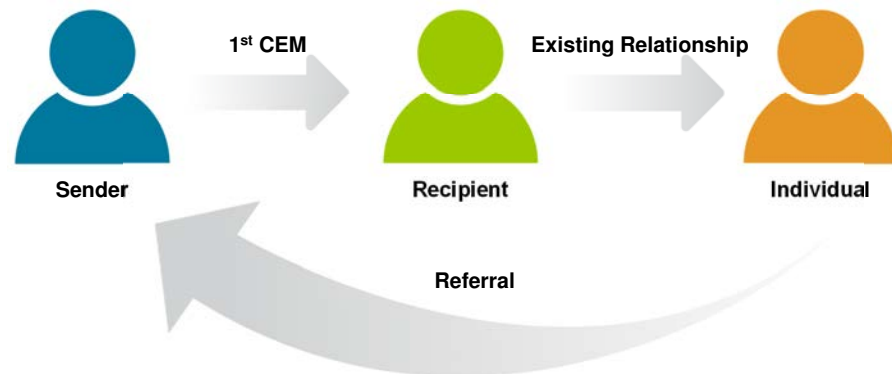
Sent by political candidates/organizations soliciting contributions



## CASL:

### Exemptions to Consent but CEM Form Needed

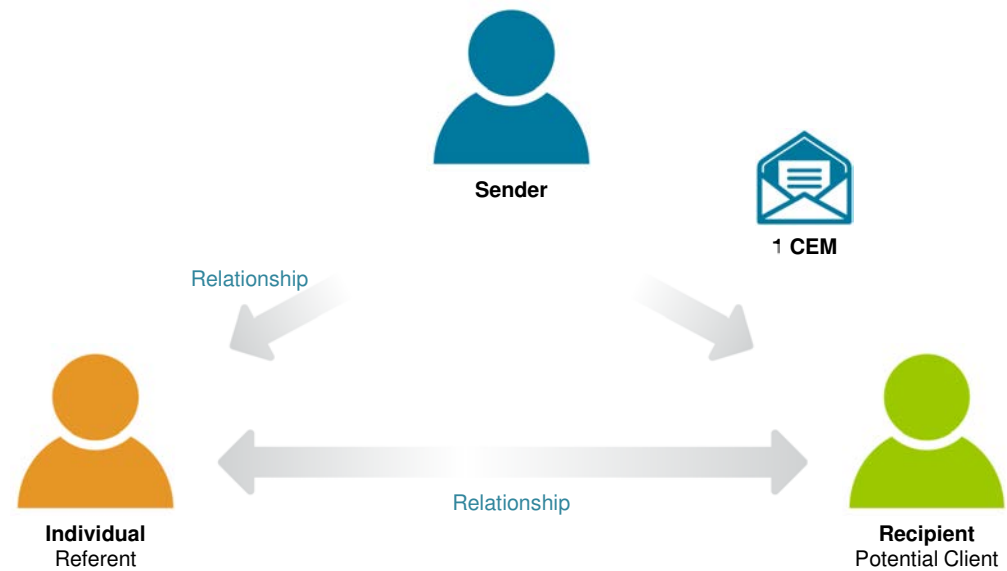
- The first CEM sent by a person for the purposes of contacting the recipient following a referral by an individual who has an **existing business relationship, family relationship or personal relationship** with **both the sender and the recipient**, and the CEM discloses the full name of the individual who has made the referral and states that the CEM is sent as a result of the referral (the "**referral exception**")





## CASL: Referrals

- One CEM only... use it wisely!
- Sender must identify the referent in the message
- Pick up the phone!



Source: Government of Canada, Canada's Anti-Spam Legislation and Regulations presentation ([fightspam.gc.ca](http://fightspam.gc.ca))



## CASL: Unknown Third Parties

- A person can get consent on behalf of yet to be determined third parties
  - All parties relying on consent obtained by others are accountable for managing that consent.
  - Message content and unsubscribe requirements still apply
  - Consent must be specific and describe the categories of third parties precisely







## CASL: Avoid Bundling

### Rationale:

- [CRTC] ... in order to meet the requirement of seeking consent separately, the person seeking consent must identify and obtain specific and separate consent for each act contemplated...

**Unsubscribe:** **HOMETOWN MOTORS**

I would like to unsubscribe from Hometown Motors electronic messaging containing content about:

- ☐ Sales Promotions, Discounts and Marketing
- ☐ Product Updates and New Model Information
- ☐ Service Promotions, Discounts and Marketing
- ☐ Service Recalls, Warranty Information and Maintenance
- ☐ News, Events and Contest
- ☐ General Inquiries and Follow-Up

**Submit**

Source: <http://www.crtc.gc.ca/eng/archive/2012/2012-548.pdf>



## CASL: Avoid Bundling


- Separate acts and issues

**Request a Quote:** HOMETOWN MOTORS

I give Hometown Motors consent to communicate with me through any form of electronic message containing content about:

- ☐ Sales Promotions, Discounts and Marketing
- ☐ Product Updates and New Model Information
- ☐ Service Promotions, Discounts and Marketing
- ☐ Service Recalls, Warranty Information and Maintenance
- ☐ News, Events and Contest
- ☐ General Inquiries and Follow-Up

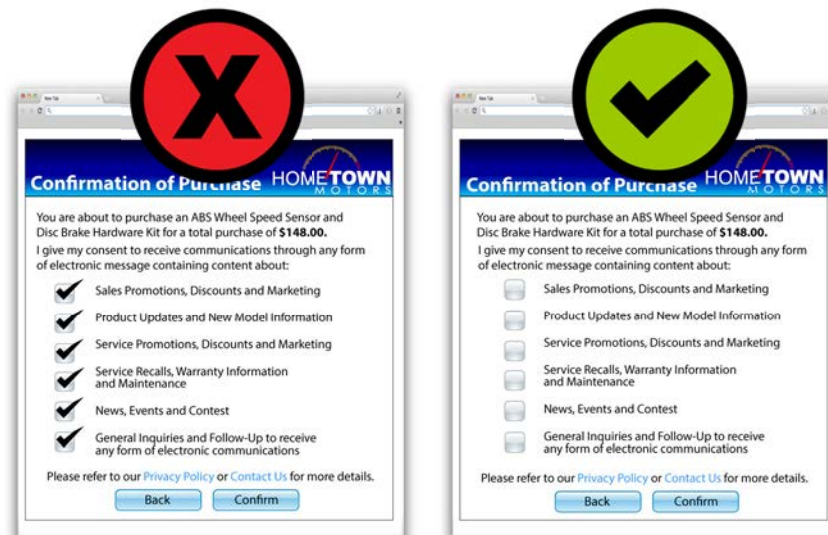
Name:   
Email:   
Number:   
Model:





## CASL: Acceptable Opt-In

- "Opt-out" is unacceptable
- "Opt-in" is acceptable







## CASL: Penalties

- **Two types of remedies**
- Did you **breach** the law?
- How much are **administrative monetary penalties**?
- **Director and Officer liability**  
This is really important
- **Due diligence** is a defense
- Employers are responsible for the actions of their employees



**Administrative Sanctions**  
Emails do not comply



**Private Right of Action**  
Emails do not comply (not enforceable until July 1, 2017)



Voluntarily **negotiate**  
with **CRTC**



**\$1 million**  
Violation for an **individual**



**\$10 million**  
Violation for **corporations**



## CASL: Regulatory Powers

- **Notices** to produce documents to **verify compliance**
- **Search warrants**
- **Injunctions**
- **Restraining orders**
- **Offenses**



Notices



Warrants



Injunctions



## CASL: Driving Results

- My Sales Representatives are **sending emails** through Microsoft **Outlook**, how do you **recommend** I ensure they are **CASL compliant**?
- What happens if I **fire** a **Sales Representative** and they **purposely send** a non-compliant **message** before leaving? **Am I liable**?











## CASL: Preparedness Tips

1. Schedule an **Awareness Meeting**
2. Identify **Leaders** for each Department
3. Perform **Initial Assessment**

Select your "CASL Compliance Officer" and understand the law

Present **high-level overview**

**Communicate** to all levels of Dealership, including directors and officers

Communicate consequences of violations

Sales

Service/Parts

F&I

Pre-owned

Online/Website Data Capture

Offline/Form Data Capture

Data base (CRM or DMS)

Current email process (triggered, campaign, manual)



## CASL: Preparedness Tips

### 4. Data-base Deep dive (CRM/DMS support) – Express Consent

Contact CRM/DMS to assist in this process

Identify customers who've given you express consent. Those:

- You've captured manually on a paper form and that form is CASL compliant and stored in customer file
- You've captured via a web form and that web form is CASL compliant
  - The form clearly identifies that people are signing up to receive electronic communications and that your dealership will be the sender
  - No sneaking pre-checked boxes
  - Upon submission, a welcome/confirmation email is sent to subscriber
  - Welcome email has confirmation link for double opt-in that subscriber must click
  - The email opt-in is capturing the date/time along with the subscriber's IP address

*NOTE:* PIPEDA expressed consent is compliant with CASL but interpretation of this is a bit nebulous. Best practice is to treat your current database as non-expressed consent.



## CASL: Preparedness Tips

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5. **Data-base Deep dive**  
(CRM/DMS support) –  
**Implied Consent**

Identify

Email your current active/Implied Consent database prior to July 1, 2014 that have not withdrawn consent

6. Understand and **take advantage** of the **Transitional Rule**

Gives you implied consent until July 1, 2017 (instead of the standard two years)

Only valid if you have an existing business relationship and they have not withdrawn their consent



## CASL: Preparedness Tips

### 7. Initiate **Express Consent Confirmation Campaigns**

A marketing campaign where the primary focus is acquiring express consent from current implied consent customers

#### Campaign should:

- Be clean and simple – no distracting content
- Contain a clear call-to-action of clicking a confirmation link that will drive customers to a opt-in landing page

### 8. **Remove Non-Compliant Subscribers** from Your Database

Purge those that don't meet the criteria of Implied Consent

Purge those that have unsubscribed

### 9. Implement **Technology** Controls

Leverage software tools and processes to assist

### 10. **Communications Policy**

Develop and implement CASL compliance policy as part of the overall technology use policy portfolio



## CASL: Preparedness Tips

### 11. **Document** All You've Done

Due diligence is a factor in your defense

Consider implementing a CASL Compliance Project, like any other project undertaken by the ongoing organization to ensure it is up to date and meets the necessary requirements

Use this guide as a tool to keep track of tasks

### 12. Keep a **Watchful Eye** on the **Process**

Remind your team there is a not optional method for sending out electronic messages

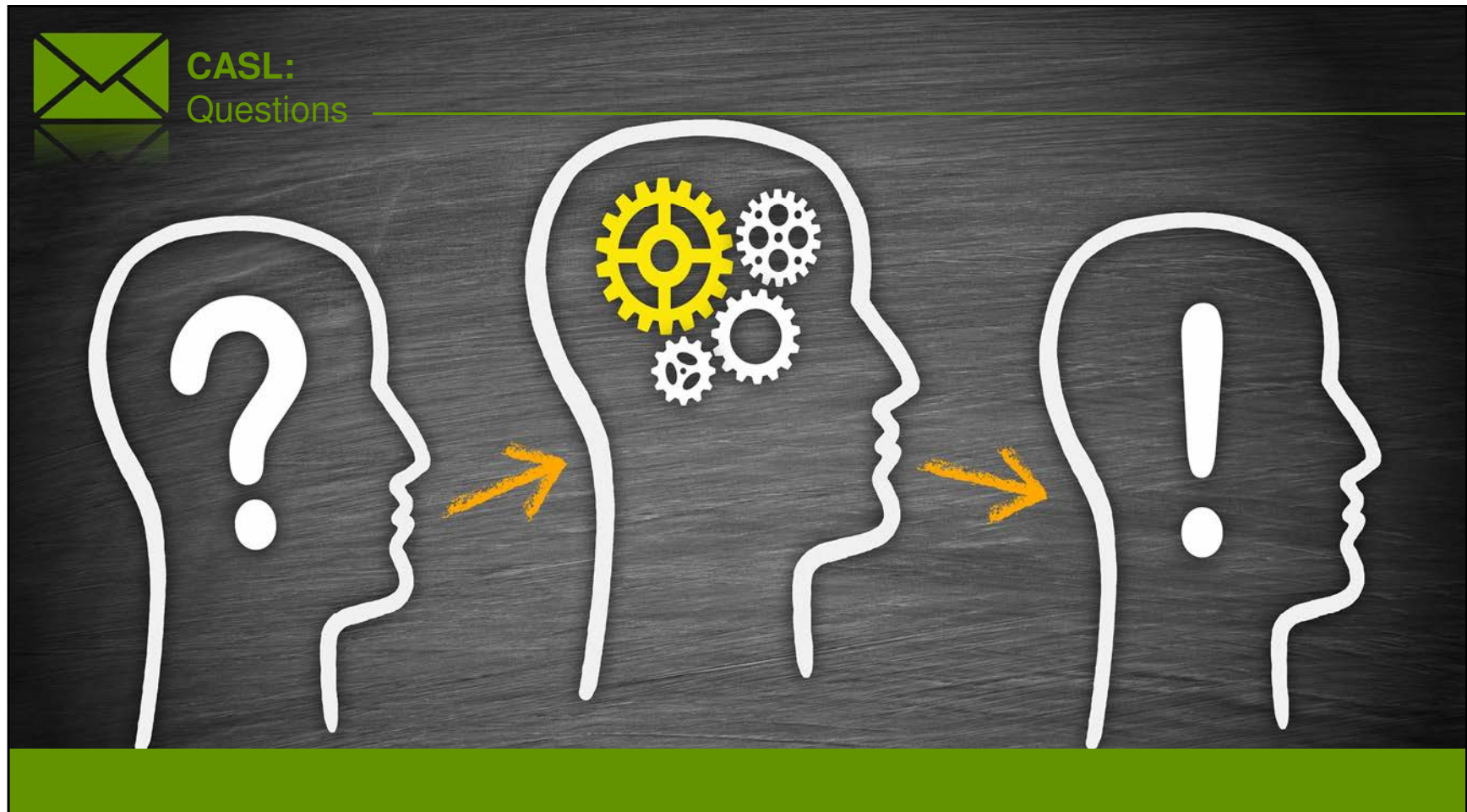
Spot check your teams email campaigns and outbound messages

Schedule regular meetings to ensure your team stays on point

Remind everyone of the penalties

### 13. **Get help** when you need it!

Refer to Norton Rose Fulbright and SCI MarketView for additional assistance





## CASL: Thank You!

- Download your **CASL Compliance Toolkit** on [scimarketview.ca](http://scimarketview.ca)
- Refer to the CASL Chart posted on [nortonrosefulbright.com/ca](http://nortonrosefulbright.com/ca)
- Look for upcoming webcast sessions on:
  - eLead Management Process
  - Digital Marketing Management
  - Social Media Management
  - Website Optimization/Conversion

