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**Subject:** Canada's Anti-Spam Legislation

**Effective:** June 2017

**Revised:**

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## 1.0 PURPOSE

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This policy has been developed to ensure compliance with Canada's Anti-Spam Legislation ("CASL").

CASL regulates:

- sending commercial electronic messages;
- installing computer programs;
- misleading advertising and marketing;
- invading someone's privacy by a computer;
- collecting email addresses without consent (email harvesting).

For more information about CASL, visit the federal government website:

[fightspam.gc.ca](http://fightspam.gc.ca).

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## 2.0 APPLICATION

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This policy applies to Electronic Messages sent by the New Brunswick Public Library Service and New Brunswick Public Libraries Foundation staff, volunteers, board members, and any Third Party (e.g. library Friends groups, vendors).

For staff procedures about asking a Person for their Express Consent to receive communications from the Library or the Foundation, please refer to the NBPLS Circulation Services Manual.

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## 3.0 DEFINITIONS

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**CASL** – means Canada's Anti-Spam Legislation (including the Act named in Section 4.0 and the Regulations associated with it.)

**Computer Program** – means instructions executed in a Computer System that cause the Computer System to perform a function.

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Some examples of Computer Programs are:

- software
- applications (apps)
- games
- e-books
- updates or upgrades to an existing Computer Program.

**Computer System** – means a device or group of devices that contain computer programs or other data, and can perform logic and control, and possibly other functions.

Some examples of a Computer System are:

- a computer
- a server
- a hard drive
- a mobile telephone
- a tablet.

**Customer Relationship Management System or CRMS** – means software or a database used to track a Person's consent to receive electronic messages. Within NBPLS, this means Cyberimpact. NBPLS has chosen a single CRMS that all libraries wishing to send Electronic Messages must use.

**Electronic Message (EM)** – means a message sent electronically to an Electronic Address, including:

- emails
- text messages
- instant messages
- messages sent using social media such as Facebook, Twitter etc.

Please note that an Electronic Message does NOT include:

- messages sent by mail or by fax
- two-way voice conversations
- voicemail messages sent to a telephone account, or
- messages posted or published on a website but not sent to an Electronic Address.

**Electronic Address** – means an address used to send an Electronic Message to:

- an email account
- an instant messaging account
- a telephone account
- a social media account or
- any similar account.

**Express Consent** – means the explicit and/or expressed communication by a Person that they wish to receive EMs. This consent may be given in person, by telephone, by print or online form, etc. in most cases followed by an automated Electronic Message asking for consent from the Person. (Note: When using online forms, requests for Express Consent do not include pre-checked boxes. The Person giving consent must check the box themselves to give consent).

**Implied Consent** – According to CASL, implied consent means the Library has consent to send Electronic Messages to Persons who are current, active cardholders. NBPLS is only relying on Implied Consent in very limited circumstances, as explained in section 6.1.3 of this policy.

**Foundation** – means the New Brunswick Public Libraries Foundation board members and members of the Friends of the New Brunswick Public Libraries Foundation.

**Library** – means all New Brunswick Public Library Service staff, volunteers and library board members.

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

**Third Party** – means a person who is not a director, officer or employee of the Library or the Foundation, who sends Electronic Messages to promote or encourage participation in the Library's or Foundation's activities. For example: Friends of the library organizations, vendor.

**Special Functions** – means functions performed by a Computer Program, that the authorized user or owner of the Computer System would not reasonably expect:

- collecting personal information stored on the Computer System;
- interfering with the owner's or authorized user's control of the Computer System;

- changing or interfering with settings, preferences or commands already installed on the Computer System without the knowledge of the owner or an authorized user;
- changing the data stored on the Computer System in a way that 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 device, without the authorization of the owner or 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 authorized user of the Computer System.

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#### 4.0 LEGAL AUTHORITY

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[New Brunswick Public Libraries Act](#). Government of New Brunswick.

CASL Act:

[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 \(S.C. 2010, c. 23\)](#). Government of Canada.

CASL Regulations:

[Electronic Commerce Protection Regulations \(SOR/2013-221\)](#)

[Electronic Commerce Protection Regulations \(CRTC\) \(SOR/2012-36\)](#)

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#### 5.0 GOALS / PRINCIPLES

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The Library and the Foundation will comply with the requirements of CASL when sending Electronic Messages, in order to ensure an electronic market place that respects the privacy and communication preferences of recipients.

A Person has the right to stop receiving Electronic Messages from the Library or the Foundation at any time.

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## 6.0 REQUIREMENTS / STANDARDS

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### 6.1 Express Consent and Unsubscribe

6.1.1 The Library and the Foundation will obtain Express Consent from a Person before sending any Electronic Message that promotes Library or Foundation activities. Electronic Addresses collected for these purposes will only be stored in the CRMS.

6.1.2 All requests for Express Consent must clearly state:

- that the request for consent is being made on behalf of the Library or the Foundation;
- the purpose for seeking the consent (for example, to send Electronic Messages or to install a Computer Program);
- the Library's or the Foundation's name **and** mailing address;
- the Library's or the Foundation's email address, telephone number **or** website; and
- that the Person may withdraw their consent at any time.

6.1.3 The Library or the Foundation will not seek Express Consent by sending (or having a Third Party send) an Electronic Message to an Electronic Address. The only exception will be the initial import of active library members from the integrated library system (Symphony) into the CRMS, offered only to libraries, and used only to send a one-time invitation to the library's subscribe form to continue receiving emails about the library's activities. This is permitted under CASL as Implied Consent.

6.1.4 Consent and library account courtesy notices:

Within NBPLS, the library will always obtain Express Consent from a Person before sending Electronic Messages generated from the integrated library system relating to their library account (i.e. courtesy reminder notices of items coming due, overdue notices, holds pick up notices, PIN notices, and checkout slips, etc). The Electronic Addresses collected for this purpose will be stored in the integrated library system.

6.1.5 Within NBPLS, Electronic Messages that require Express Consent include messages that:

- promote Library or Foundation activities (e.g. programs, services, raising funds, volunteer opportunities, sponsorships, partnerships)

that are sent to such groups as the general public, the media, community partners, businesses or organizations;

- confirm or complete a Person's transaction;
- provide warranty information, product recall information or safety or security information;
- provide factual information relating to a Person's library membership (e.g. courtesy notices related to their library account).

All Electronic Messages must include the following information:

- the sending organization's name and mailing address;
- the sending organization's email address, telephone number or website; and
- an easy way for the recipient to unsubscribe from messages.

6.1.6 Electronic Messages that do **not** require Express Consent nor the unsubscribe mechanism include messages that:

- concern the existing working relationship between the library and a business or organization;
- concern library activities with colleagues at work or with colleagues in other library systems;
- concern the activities of the Library or Foundation and are sent between employees and library board members;
- follow up or respond to an application or inquiry from a Person;
- enforce or satisfy legal rights.

6.1.7 Any Electronic Message sent by the Library or the Foundation inside or outside the organization must comply with the standards for acceptable use of government email in [AD-7109 – E-Mail Policy](#).

6.1.8 All Electronic Messages sent to promote the Library's or Foundation's activities must include an easy way for a Person to unsubscribe or opt-out from receiving Electronic Messages.

6.1.9 All requests to unsubscribe will be processed within two business days of receipt and Electronic Messages will stop within 10 days of the request:

- In the case of Electronic Addresses stored in the integrated library system, the Library will manually remove the Electronic Address.

- In the case of Electronic Addresses stored in the CRMS, the Electronic Message will be automatically removed if a Person clicks on an unsubscribe link in an email. If the request to unsubscribe is made by another mechanism (i.e. in person, telephone, other form of communication), the Library or Foundation will manually remove the Electronic Address.

## 6.2 Third Parties

- 6.2.1 All Third Parties sending Electronic Messages to promote or encourage participation in the Library's or Foundation's activities must have Express Consent from the proposed recipients before sending the Electronic Messages.
- 6.2.2 The Library or the Foundation shall not be held liable for any and all Electronic Messages sent by Third Parties that are not sent in compliance with this policy.
- 6.2.3 All Third Parties agree to defend, indemnify and hold harmless the Library or the Foundation 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, 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.
- 6.2.4 At their discretion, the Library or the Foundation may enter into agreements with Third Parties that may not comply with this policy, but that comply with CASL.
- 6.2.5 At their discretion, the Library or the Foundation may rely on one or more of CASL's exemptions for Electronic Messages sent by Third Parties. The decision whether an exemption applies will be made by the Executive Director of NBPLS on a case-by-case basis.

## 6.3 Computer Programs

- 6.3.1 The Library or the Foundation must obtain Express Consent from the Person who owns or is an authorized user of a Computer System before installing a Computer Program that is required for the Library's or the Foundation's activities.

6.3.2 The Library or the Foundation do not require Express Consent to install or to have installed on their behalf the following Computer Programs:

- a cookie
- HTML code
- Java Scripts
- an operating system.

6.3.3 When seeking Express Consent before installing a Computer Program, the Library, the Foundation or a Person acting on their behalf must give a clear and simple explanation of the function of the Computer Program.

6.3.4 If the Computer Program being installed on behalf of the Library or the Foundation is intended to perform any Special Functions (see section 3.0 of this policy for definition), the Person seeking consent on behalf of the Library must provide a simple, distinct explanation of their nature, purpose and impact on the Computer System.

#### **6.4 Use of the Library's Computers or Internet Connection**

6.4.1 Any Person who uses:

- a Computer System owned, operated or controlled by the Library or by its public or public-school library funding partners (municipalities and school districts) or
- an Internet connection (including a wireless connection) owned, controlled or provided by the Library and its public or public-school library funding partners (municipalities and school districts),

must comply with CASL.

6.4.2 Any Person who contravenes section 6.4.1 of this policy must defend, indemnify and hold harmless the Library or the Foundation 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.



## 6.5 Implementation

- 6.5.1 Library Managers and Directors are responsible for holding meetings with their staff, volunteers, library boards, and Friends of the library groups to review and update their practices for sending Electronic Messages in accordance with this policy.
- 6.5.2 **New hire training:** Library Managers and Directors are responsible for holding meetings with all new staff, volunteers and library board members to discuss and read this policy.

## 6.6 Audit

- 6.6.1 The Library or the Foundation may from time to time conduct an audit of their electronic communication practices to ensure compliance with this policy.
- 6.6.2 If there are discrepancies between this policy and the Library's or Foundation's communication practices, they must be addressed to ensure compliance as soon as is reasonably possible.

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## 7.0 GUIDELINES / RECOMMENDATIONS

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None.

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## 8.0 REGIONAL GUIDELINES AND PROCEDURES

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In consultation with the Provincial Office, Regional Directors may develop additional guidelines and procedures consistent with and necessary to support this policy.

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## 9.0 REFERENCES

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[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 \(S.C. 2010, c. 23\)](#). Government of Canada.

[Electronic Commerce Protection Regulations \(SOR/2013-221\)](#). Government of Canada.

[Electronic Commerce Protection Regulations \(CRTC\) \(SOR/2012-36\)](#). Government of Canada.

[New Brunswick Public Libraries Act](#). Government of New Brunswick.

Administration Manual. [AD-7109 – E-Mail Policy](#). Government of New Brunswick.

**Related Legislation:**

[Right to Information and Protection of Privacy Act](#). Government of New Brunswick.

**Related Policies:**

[Policy 1060 – Confidentiality of Personal Information about Patrons](#). New Brunswick Public Library Service.

[Policy 1073 – Internet Access](#). New Brunswick Public Library Service.

[Policy 1093 – Computers in Libraries](#). New Brunswick Public Library Service.

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**10.0 CONTACTS FOR MORE INFORMATION**

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New Brunswick Public Library Service Provincial Office, (506) 453-2354

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