



Policy on Commercial Electronic Messages

Category: Marketing and Communications;

Jurisdiction: Vice President, Administration and Finance; General Counsel and University Secretary;

Approval Authority: Executive Team;

Established on: June 27, 2014;

Amendments: None.

I. Purpose:

The purpose of the Policy on Commercial Electronic Messages (the “Policy”) is to provide Lakehead University (“University”) personnel with rules and guidelines for the transmission of electronic messages with commercial content.

II. The Policy:

It is prohibited for anyone, including any University administrative unit, or any University governor, officer, director, faculty member, employee, student, agent, contractor, or volunteer (collectively “Representative”), using any University electronic communication system or purporting in any way, whether expressly or by implication, to represent the University, to send to the holder of an account (the “Recipient”) at an electronic address any **commercial electronic message (“CEM”)** on behalf of the University or any other party, unless the following conditions are all met:

- 1) Before the CEM is sent the Recipient has consented, either expressly or by implication, to receiving it;
- 2) The CEM includes information identifying the sender or the person on whose behalf the message is being sent and providing their contact information; and

- 3) The message includes a means (“Unsubscribe Mechanism”) for the Recipient to indicate as simply as possible and at no cost to the Recipient, the wish no longer to receive a specified class of CEM’s from the Representative or from the person on whose behalf the Representative sent the CEM.

For examples of wording meeting these CEM requirements, see Appendix A to this Policy.

III. Policy Details:

1) *Definitions:*

- a) **"CEM" (“Commercial Electronic Message”)** means an electronic message which has as one of its purposes to encourage the Recipient to participate in a commercial activity;
- b) "Commercial Activity" means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of profit;
- c) “Electronic Address” means an address for an electronic account to which an electronic message is directed, including but not limited to the address of any email account, social networking account, or cell phone.
- d) "Electronic Message" means any message transmitted by electronic media, and includes without limitation emails, texts, Facebook messages, Twitter, Instagram, and other similar social networking messages;

2) Following is a non-exhaustive list of typical kinds of CEM’s:

- a) Electronic messages **any** of whose contents encourage purchase, rental, or lease of, or financial investment in, goods or services where the transaction is not necessary to or supportive of the University’s education, research, and scholarship activities or the University’s operations ancillary to those activities, such as messages promoting:
 - i. goods/services primarily to generate profit/general revenue for the University, not to offset costs or foster investment for carrying out or

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- satisfying the University's education, research, and/or scholarship purposes or needs;
 - ii. concerts, plays and other social events for which entry fees will be charged beyond recouping costs for the University's education, research, scholarship, and/or related ancillary, activities;
 - iii. products and services of the University Bookstores and Campus Tech that are not primarily related to the University's education, research, and scholarship activities;
 - iv. on and off-campus accommodation and related services that are not intended primarily to assist individuals in carrying out work related to the University's education, research, and/or scholarship activities;
 - v. promotions for use of Athletics facilities, for Athletics services, and for attendance at/participation in sporting events when the said use, services, attendance, and participation are not primarily related to the University's education, research, and/or scholarship purposes, and for which fees will be charged;
 - vi. campus food services offered to individuals who are not staying in University residences in connection with University education/research/scholarship programs;
 - vii. commercial products/services offered by Alumni Association affinity partners;
 - viii. University, including graduation, memorabilia;
 - ix. children's camps that do not have a substantial connection to the University's education, research, or scholarship mandates.
- b) An electronic message only part of which actually encourages participation in a commercial activity, such as a commercial advertisement in an otherwise purely informational electronic newsletter or Media Relations bulletin, is nevertheless deemed to be a CEM in toto. Whenever possible, therefore, Representatives should avoid sending messages with both commercial and non-commercial elements.

- c) An electronic message that does not itself encourage participation in commercial activity but nevertheless directs a Recipient to web-sites that do, is itself a CEM and bound by the rules relating to CEM's.

3) Consent:

An unsolicited electronic message requesting a Recipient's consent to receiving CEM's is itself deemed to be a CEM – and, thus, in most cases, prohibited. The requirement to obtain prior consent referred to in section II. 1) above can, however, be met as follows:

- a) A Representative has the implied consent of the Recipient IF
- i. the Representative has an existing business relationship with the Recipient, that is, a relationship arising from
 1. the Recipient's purchase or lease from the Representative of a product, goods, service, or interest in land, or bartering of the same between the two, no earlier than two (2) years prior to the Representative's proposed transmission of an electronic message to the Recipient, or
 2. the Recipient's acceptance of a business or investment opportunity offered by the Representative no earlier than two (2) years prior to the said proposed transmission, or
 3. a written contract between the Representative and Recipient concerning anything not included in sub-paragraphs 1 and 2 above – provided that the contract did not end earlier than two (2) years prior to the said proposed transaction; or
 4. an inquiry or application from the Recipient concerning a commercial activity, and made no earlier than six (6) months prior to the said proposed transmission;or
 - ii. the Representative has an existing non-business relationship with the Recipient, that is, a relationship arising from
 1. a donation or gift made by the Recipient to the University no earlier than two (2) years prior to the Representative's proposed transmission of an electronic message to the Recipient, or

2. volunteer work performed, or attendance at a meeting, by the Recipient no earlier than two (2) years prior to the said proposed transmission, or
 3. the Recipient's membership in a University organization (e.g. Alumni Association) – provided that the membership did not end earlier than two (2) years prior to the said proposed transmission;
or
- iii. the Recipient has, without qualification or restriction, provided the Representative with, or has conspicuously published, the Recipient's business contact information (for example, by business card) and the CEM sent by the Representative is relevant to the Recipient's business/duties.

In many cases implied consent expires after two years. Accordingly, prior to termination, the Representative must request and the Recipient must grant express consent.

If a Representative has any doubt about whether or not they have a Recipient's implied consent, the Representative should proceed as though they have no Recipient consent at all.

- b) Representative can receive a prospective Recipient's **express consent** to transmission of a CEM **only** if
- i. The following means of communication are used:
 1. in cases where the Representative has the Recipient's implied consent to receive CEM's, the Representative sends the Recipient, in any medium, a request for express consent for CEM transmission and the Recipient favourably replies, again in any medium, either orally or in writing (since oral consent can be difficult to prove, it is always better to obtain the Recipient's consent in writing). The Recipient's clicking on a button or icon in the

- Representative's request, when the button or icon indicates consent, also constitutes express consent;
2. in cases where the Representative does not have the Recipient's implied consent to receive CEM's, the Representative sends a non-electronic, written or oral request, or a request via facsimile or via telephone or voice mail, to the Recipient to which the Recipient responds favourably, again either orally or in writing in any medium;
 3. the Representative receives from the Recipient in any medium a request for, or confirmation of interest in receiving, information that the Representative wishes to convey in CEM's; OR
 4. at a Representative web-site the Recipient enters information into a web-form or otherwise expressly indicates consent to receive information in electronic format from the Representative.

And if

- ii. The communication or information to which the Recipient responds in giving express consent to be contacted by the Representative has all of the following elements:
 1. identification of the Representative's legal authority for collecting personal information from the Recipient (for example, the Lakehead University Act, found at <https://www.lakeheadu.ca/about/sg/secretariat/university-act>);
 2. indication of the specific purpose(s) for which the Recipient's consent is being sought;
 3. the name and contact information – including mailing address and business telephone number, as well as (optionally) email address and/or web address - of the individual/unit seeking the Recipient's consent; and
 4. a statement indicating that the person whose consent is sought can withdraw their consent.

Once express consent has been obtained it remains in force until such time as the Recipient chooses to unsubscribe.

If a Representative has any doubt that they have a Recipient's express consent, they should proceed as though they don't have it.

For examples of wording for requests for express consent to send CEM's, see Appendix A to this Policy.

- c) The CEM consent requirement **is waived for the first, and only the first, CEM** **IF** the Representative has an existing *business, non-business, family, or personal relationship* with a third party (-ies), who also has at least one of these relationships with the Recipient, and IF
- i. the third party (-ies) has given the Representative a referral to the Recipient;
 - ii. in the CEM to the Recipient the Representative discloses the full name of the third party (-ies) who made the referral;
 - iii. in the CEM the Representative states that the message is sent as a result of the referral; and
 - iv. the CEM includes an Unsubscribe Mechanism.

Before sending additional CEM's in such cases the Representative must have either the implied or express consent of the Recipient.

4) Unsubscribe Mechanism:

- a) A Representative's CEM must include express instruction to the Recipient on the following unsubscribe methods:
- i. In an email:
 1. replying directly to the email, or
 2. clicking on a button or icon which will automatically unsubscribe the Recipient, or

3. clicking on a link that will take the Recipient to a web page where s/he can unsubscribe;
- ii. With respect to all other media through which CEM's can be sent, using the easiest and most natural method for unsubscribing; for example,
 1. in the case of an electronic text message, replying to the message with "STOP";
 2. in the case of Twitter, blocking the Representative;
 3. in the case of Facebook and other social media, leaving the group;

AND, in every one of these **non-email** cases, **also** providing (unless the transmission medium has message size restrictions – see paragraph 5 below)

4. an electronic (e.g. email) address to which the Recipient can send their wish to unsubscribe, **or**
 5. a link to a web page where the Recipient can unsubscribe.
- b) The Unsubscribe Mechanism identified in a CEM must be valid and effective for at least 60 days after the Representative has sent the CEM.
- c) If a Recipient activates the Unsubscribe Mechanism, the Representative who sent the CEM must ensure that the Recipient's choice is given effect no later than 10 business days after the choice was indicated.

Examples of unsubscribe mechanisms are shown in Appendix A to this Policy.

5) **CEM's in Media with Message Size Restrictions:**

Some electronic media (e.g. for SMS text messages) have message size restrictions that make it impracticable to include the required CEM elements in the body of a CEM. In such cases it is permissible to substitute for this extra content a hyperlink to a web-page containing the required information, so long as the web-page is readily accessible

at no cost to the Recipient AND the hyperlink is clearly and prominently set out in the CEM.

6) **CEM Registry:**

Every Representative who sends CEM's shall keep among their permanent records a registry identifying:

- a) all referrals from authorized third parties (see paragraph III(3)(c) above);
- b) all consents (either implied or express), including the basis for the consent and any evidence to support the consent (e.g. copy of business card and date business card received, copy of website containing individual's information and date website accessed, etc.); and
- c) all requests to unsubscribe including the date the request was received.

IV. Exclusions from the Policy:

- 1) University electronic communications which are NOT regulated by this Policy include, but are not limited to:
 - a) Any message that is not a CEM (i.e. that does not have as its purpose, or one of its purposes, to encourage participation in a commercial activity).
 - i. As a general rule, the University's education, research, and scholarship activities, and the University's operations ancillary to those activities, are NOT commercial activities, so messages concerning these activities and operations, even if they refer to prices or fees, may not be CEM's. Special circumstance and purpose may, however, give messages related to these activities and/or operations a commercial character, so each such message should be carefully scrutinized before it is categorized as a non-CEM.
 - ii. One factor to take into account in ascertaining whether a particular message is a CEM or not is the fundamental character of the transaction encouraged in the message. Would an external, impartial observer interpret the transaction as presented in the message, even if it refers to prices or fees, as primarily intended to realize a core University purpose or

as having primarily a commercial character? If the character of the transaction aligns more with the former than the latter, then the message in which it is borne should be deemed prima facie not to be a CEM. If there is doubt about the issue, however, then the default decision should always be that the message is a CEM.

- b) Communications providing necessary or helpful information to individuals about their rights and obligations with respect to all aspects of the University's activities and operations that they have contracted for, including but not limited to
- i. Information on University services, policies, regulations, and fees, relating to programs of students who have applied for admission or been admitted to, or been registered in, those programs;
 - ii. Information provided to students by the Offices of Financial Services and Student Awards and Financial Aid concerning their fees and accounts as well as financial awards and aid available to them in their programs;
 - iii. Information supplied by the University Bookstores and other University retail outlets to students and faculty on the required or recommended textbooks, course packs, and other materials for courses for which the students are registered and which the faculty are scheduled to teach;
 - iv. Information provided by the University Libraries and the Department of Athletics to patrons concerning fees and fines;
 - v. Information on fees, account balances, services available, and fines provided by Residence Services, Conference Services, and the University's food service providers to their clients;
 - vi. Information concerning fees and fines relating to parking and other services supplied by Security Services;
 - vii. Information relating to fees and fines provided to students who have been sanctioned by the University for misconduct or who have entered the University's appeal system;
 - viii. Information relating to payment and/or collection of unpaid fees and fines;
- c) Any message

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- i) that provides additional information and/or clarification about any aspect of a pre-existing commercial relationship or activity, or
 - ii) that completes a transaction involving a commercial activity which is already underway;
- d) Any message that a Representative sends in response to a request, inquiry or complaint or that is otherwise solicited by an individual or entity – provided that the message contents are restricted to the question/concern of that individual or entity;
- e) Any message sent by a Representative to another Representative concerning any aspect of the University's operations;
- f) Any message sent by a Representative to an employee, representative, consultant or franchisee of another organization, with which the University has a relationship, concerning any aspect of that organization's operations;
- g) Any message that a Representative sends to a person who is engaged in a commercial activity and that consists solely of an inquiry or application related to that activity;
- h) Any message that is sent by or on behalf of a Representative to an individual with whom the Representative has a personal or close family relationship;
- i) Any message which has as its primary purpose raising funds for the University or any of its operations, or for any registered charity as defined in subsection 248(1) of the Income Tax Act;
- j) Any message related to University business where that message is posted on the University's myInfo, Desire2Learn, or other University limited-access secure and confidential account;
- k) Any message that is
- i. in whole or in part, an interactive two-way voice communication between individuals;
 - ii. sent by means of a facsimile to a telephone account; or
 - iii. a voice recording sent to a telephone account;

- 2) Web-sites and web-pages promoting the University and/or its products and services are not CEM's – but can provide mechanisms to allow Recipients to give consent for, or to unsubscribe from, CEM's (see Appendix A to this Policy).

V. Questions:

Questions concerning any aspect of this Policy and its application should be directed to the Director of Risk Management and Access to Information.

VI. Review:

The Vice-President (Administration and Finance) will review this policy within two years and recommend any changes deemed necessary to the Priorities and Planning Group.

APPENDIX A

Examples of Model Language for Communications Associated with CEM's

Note: The actual text examples below are shown in quotations within boxes;

In these examples, square brackets [.....] enclose instructions or options not part of the actual text.

1) Required CEM Elements When a Representative Has a Recipient's Consent (Implied or Express):

Every CEM must have the following elements incorporated into it:

- a) information identifying the Representative or the person on whose behalf the message is being sent and providing their contact information; and
- b) a means ("Unsubscribe Mechanism") for the Recipient to indicate the wish no longer to receive a specified class of CEM's from the Representative or from the person on whose behalf the Representative sent the CEM.

Accordingly, if the required identification and contact information is not present elsewhere in the CEM, something like the following formulas should be appended (**NB**: the Recipient's consent, implied or express, must be in hand before transmission of any CEM):

Example 1: in an email CEM, unsubscribe by link to web-page:

"This message is sent by: [name of unit or individual sending the CEM, plus address and telephone number]. If you do not wish to receive further updates or information on [specify, **as narrowly as possible**, the subject of the CEM] please click **here** [with link to unsubscribe web-page] to unsubscribe."

The unsubscribe web-page must have a simple, one-step method for unsubscribing - e.g. by clicking on a labelled button or icon beside a statement like: "I no longer wish to receive communications concerning [CEM subject, as specified in the original CEM]."

Example 2: in an email CEM, unsubscribe by button or icon:

"This message is sent by: [name of unit or individual sending the CEM, plus address and telephone number]. If you do not wish to receive further updates or information on [specify, as narrowly as possible, the subject of the CEM] please click the "unsubscribe" button" [button should be placed right next to text].

This form of unsubscription is immediate, with no need for the Recipient to take additional steps – but the Representative must, of course, have the means to identify the Recipient and record the "click".

Example 3: in an email CEM, unsubscribe by email:

“This message is sent by: [name of unit or individual sending the CEM, plus address and telephone number]. If you do not wish to receive further updates or information on [specify, as narrowly as possible, the subject of the CEM], please forward this email to [specify unsubscribe address]@lakeheadu.ca (no comment is necessary) and, upon receipt of the email, we will cease to send you electronic messages on this subject.”

Example 4: in a text CEM, unsubscribe by link to web-page (ensure that the web-page has all the required CEM elements; see Policy section III. 5) above

“Text STOP or click [web address] to unsubscribe.”

2) Obtaining Consent When No Prior Consent Exists:

When **no** Recipient’s consent is in place, attempts to obtain consent may be made only (with one narrow exception; see section III. 3) c) of the Policy) by non-electronic, written or oral request, or a request via facsimile or via telephone or voice mail, and must have something like the following forms:

Example 1: Where a Representative contacts a Recipient whose consent is to be given by telephone, text, and/or email:

“We [or I], [identify unit or individual(s)], have information [and/or updates] concerning [specify as narrowly as possible the subject matter that you wish to communicate to the Recipient] which we [or I] think would be of interest and advantage to you. If you would like to receive this information, please contact us or me] at: [give telephone number and/or text and/or email address, plus postal address] and we [or I] will directly reply. Personal information you provide us [or me] will be collected under the authority of the Lakehead University Act and will be kept confidential. You may unsubscribe at any time.”

Example 2: Where a Recipient's consent is to be given on a web-site or in completion of a web form:

"We [or I], [identify unit or individual(s)], have information [and/or updates] concerning [indicate as specifically as possible the subject matter that you wish to communicate to the Recipient] which we [or I] think would be of interest and advantage to you. If you would like to receive this information, please indicate your interest at [give web address] and we [or I] will directly reply. Personal information you provide us [or me] will be collected under the authority of the Lakehead University Act and will be kept confidential. You may unsubscribe at any time."

Provision should then be made at the web-site or web form for the Recipient to give consent.

3) **Obtaining Express Consent When Implied Consent Is in Place:**

Example 1: Where a Representative contacts a Recipient whose express consent is to be given by telephone, text, and/or email:

"[Identify unit or individual(s)] is [or am] pleased, and would like to continue, to send you information [and/or updates] concerning [specify as narrowly as possible the subject matter that you wish to communicate to the Recipient]. To ensure that this service to you remains uninterrupted, we [or I] request [or Name requests] that you give your express consent for us [or me/him/her/them] to continue to send you electronic communications on this subject by so informing us [or me/him/her/them] at [give telephone number and/or text and/or email address, plus postal address]. Personal information you provide us [or me/him/her/them] will be collected under the authority of the Lakehead University Act and will be kept confidential. You may withdraw your consent at any time by unsubscribing."

Example 2: Where a Recipient's express consent is to be given on a web-site or in completion of a web form:

"[Identify unit or individual(s)] is [or am] pleased, and would like to continue, to send you information [and/or updates] concerning [specify as narrowly as possible the subject matter that you wish to communicate to the Recipient]. To ensure that this service to you remains uninterrupted, we [or I] request [or Name requests] that you give your express consent at [give web address] for us [or me/him/her/them] to continue to send you electronic communications on this subject. Personal information you provide us [or me/him/her/them] will be collected under the authority of the Lakehead University Act and will be kept confidential. You may withdraw your consent at any time by unsubscribing."

Example 3: Where a Recipient's express consent is to be given by clicking on a button or icon in the Representative's request to the Recipient:

"[Identify unit or individual(s)] is [or am] pleased, and would like to continue, to send you information [and/or updates] concerning [specify as narrowly as possible the subject matter that you wish to communicate to the Recipient]. To ensure that this service to you remains uninterrupted, we [or I] request [or Name requests] that, by clicking "I Agree" [or "I Consent"] below, you give your express consent for us [or me/him/her/them] to continue to send you electronic communications on this subject.

[Button/Icon: I AGREE (or I CONSENT)]

Personal information you provide us [or me/him/her/them] will be collected under the authority of the *Lakehead University Act* and will be kept confidential. You may withdraw your consent at any time by unsubscribing."

Review Period: 7 years;

Date for Next Review: 2020-2021;

Related Policies and Procedures: To be determined;

Policy Superseded by this Policy: None.

The University Secretariat manages the development of policies through an impartial, fair governance process, and in accordance with the Policy Governance Framework. Please contact the University Secretariat for additional information on University policies and procedures and/or if you require this information in another format:

Open: Monday through Friday from 8:30am to 4:30pm;

Location: University Centre, Thunder Bay Campus, Room UC2002;

Phone: 807-346-7929 or Email: univsec@lakeheadu.ca.