



Compliance and Enforcement Notice of Consultation CRTC 2014-598

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Ottawa, 17 November 2014

File number: 8665-C12-201411537

Call for comments

Administrative monetary penalties under the Voter Contact Registry

Deadline for submission of interventions: 17 December 2014

[\[Submit an intervention or view related documents\]](#)

The Commission initiates a proceeding to consider the appropriate factors to take into consideration when determining the amount of an administrative monetary penalty for contraventions of the Canada Elections Act that relate to the Voter Contact Registry.

Introduction

1. On 19 June 2014, the *Fair Elections Act* (formerly Bill C-23) received royal assent. The legislation provides for a number of modifications to the *Canada Elections Act* with respect to the way federal elections (including by-elections and referendums) are regulated and operated in Canada, as well as modifications to the *Telecommunications Act* for the regulation of voter contact calling services. “Voter contact calling services” are defined in the *Fair Elections Act* as services involving the making of calls during an election period for any purpose related to an election, including
 - (a) promoting or opposing a registered party, its leader, a candidate, or a nomination contestant, or any position on an issue with which such a party or person is associated;
 - (b) encouraging electors to vote or to refrain from voting;
 - (c) providing information about the election, including information about voting hours and the location of polling stations;
 - (d) gathering information about how electors voted in past elections or will vote in the election or their views on a registered party, its leader, a candidate, or a nomination contestant, or any issue with which such a party or person is associated; and

- (e) raising funds for a registered party, a registered association, a candidate, or a nomination contestant.
2. With the coming into force of this legislation, persons, corporations, or groups that engage in voter contact calls in relation to an election will be required to file registration notices and identifying information with the Commission. The Commission is responsible for establishing and maintaining these registration notices and supporting documentation in a Voter Contact Registry (the Registry).
3. This new legislation also charges the Commission with the enforcement of provisions of the *Canada Elections Act* that relate to the Registry. It extends the Commission's powers to impose administrative monetary penalties (AMPs) under section 72.01 of the *Telecommunications Act* for contraventions of any provision of Part 16.1, Division 1.1, of the *Canada Elections Act*. Specifically, once in force, section 138 of the *Fair Elections Act* will modify existing section 72.01 of the *Telecommunications Act* as follows:¹

Every contravention of a prohibition or requirement of the Commission under section 41 and every contravention of any provision of Division 1.1 of Part 16.1 of the *Canada Elections Act* constitutes a violation and the person who commits the violation is liable

(a) in the case of an individual, to an administrative monetary penalty of up to \$1,500; or

(b) in the case of a corporation, to an administrative monetary penalty of up to \$15,000.

4. These amendments to the *Telecommunications Act* do not stipulate how the amount of an AMP for contraventions of the *Canada Elections Act* should be determined, beyond the maximums set out in these provisions.
5. In Telecom Decision 2007-48, which established a framework for unsolicited telemarketing calls and other unsolicited telecommunications received by consumers, the Commission considered the factors to be taken into account in determining whether a notice of violation should be issued and what the amount of the associated AMP should be. The Commission determined that examples of appropriate factors to be taken into consideration in determining the amount of an AMP would include
 - the nature of the violation (minor, serious, very serious, negligent, or intentional);
 - the number and frequency of complaints and violations;

¹ Bill C-43, entitled *Economic Action Plan 2014 Act, No. 2*, contains proposals to amend several provisions of the *Telecommunications Act* that are relevant to the imposition of AMPs pursuant to section 72.01 of the *Telecommunications Act*, but the text of section 72.01 itself, as modified by section 138 of the *Fair Elections Act*, is not proposed to be amended further.

- the relative disincentive of the measure; and
 - the potential for future violation.
6. The Commission also has the legislative authority to impose AMPs under Canada's Anti-Spam Legislation (CASL).² Unlike the AMP system for the Unsolicited Telecommunications Rules³ and the Registry, the factors to consider in determining an AMP amount under CASL are set out in subsection 20(3) of the legislation:

The following factors must be taken into account when determining the amount of a penalty:

- (a) the purpose of the penalty;
- (b) the nature and scope of the violation;
- (c) the person's history with respect to any previous violation under this Act, any previous conduct that is reviewable under section 74.011 of the *Competition Act* and any previous contravention of section 5 of the *Personal Information Protection and Electronic Documents Act* that relates to a collection or use described in subsection 7.1(2) or (3) of that Act;
- (d) the person's history with respect to any previous undertaking entered into under subsection 21(1) and any previous consent agreement signed under subsection 74.12(1) of the *Competition Act* that relates to acts or omissions that constitute conduct that is reviewable under section 74.011 of that Act;
- (e) any financial benefit that the person obtained from the commission of the violation;
- (f) the person's ability to pay the penalty;
- (g) whether the person has voluntarily paid compensation to a person affected by the violation;
- (h) the factors established by the regulations; and
- (i) any other relevant factor.

² "CASL" refers to *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, and the associated regulations made thereunder.

³ The Commission regulates unsolicited telecommunications pursuant to sections 41 to 41.7 and 72.01 to 72.15 of the *Telecommunications Act*. In Telecom Decision 2007-48, the Commission established the Unsolicited Telecommunications Rules, which were further amended by Telecom Decision 2008-6, Telecom Regulatory Policy 2009-200, and Compliance and Enforcement Regulatory Policy 2014-155.

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7. Having regard to the factors that exist under the Unsolicited Telecommunications Rules and under CASL, the Commission invites interested persons to provide comments, including supporting rationale, with respect to what factors it should take into consideration when determining the appropriate amount of an AMP in respect of a contravention of Part 16.1, Division 1.1, of the *Canada Elections Act*. The Commission considers that any list of possible factors could include
 - The nature of the violation
 - The number and frequency of complaints and violations
 - The relative disincentive of the measure
 - The potential for future violations
 - The person or group's previous history with respect to any previous violations
 - Ability to pay the AMP
8. The Commission is providing the factors set out above to assist parties' proposals. This should not be seen as an indication that the Commission has made a determination on this matter.
9. The Commission considers that parties may wish to include in their submissions discussion with respect to the following questions:
 - Q1.** The requirement to register does not apply until 48 hours after voter contact calls begin. As a result, Canadians who file complaints with respect to voter contact calls may not be in a position to determine whether the call violated any requirements of the Registry. To what extent should the number and frequency of complaints, as distinct from the number and frequency of violations, be considered as a factor?
 - Q2.** If the Commission chooses to adopt the relative disincentive of the measure as a factor, how should that disincentive be assessed in situations where the benefit obtained by the person or group may not have been financial in character?
 - Q3.** Ability to pay is expressly identified as a factor under CASL. To what extent should it apply under the Registry, and what steps can be taken to ensure it is assessed in a manner that is objective and consistent?
 - Q4.** If the Commission chooses to adopt the potential for future violations as a factor, to what extent should a person's efforts toward compliance with the Registry, including implementing training of employees and volunteers, responding in a timely manner to inquiries from the Commission, and self-reporting of potential violations, be taken into consideration?

Procedure

10. *The Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings, where applicable. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website at www.crtc.gc.ca, under "Statutes and Regulations." The *Guidelines on the CRTC Rules of Practice and Procedure*, as set out in Broadcasting and Telecom Information Bulletin 2010-959, provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
11. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **17 December 2014**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
12. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
13. All parties may file replies to interventions with the Commission, serving copies on all other parties, by **12 January 2015**. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
14. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
15. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
16. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

17. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
18. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
19. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.
20. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.

Important notice

21. All information provided as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
22. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
23. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

24. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information provided as part of this public process.

Availability of documents

25. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file number provided at the beginning of this notice or by visiting the "Participate" section of the Commission's website, selecting "Submit Ideas and Comments," then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.

26. Documents are also available from Commission offices, upon request, during normal business hours.

Commission offices

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Secretary General

Related documents

- *Review of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Regulatory Policy CRTC 2014-155, 31 March 2014
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009

- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, as amended by Telecom Decision CRTC 2008-6-1
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007