



Compliance and Enforcement Information Bulletin CRTC 2023-368

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Commission practices in Compliance and Enforcement sector review proceedings

Summary

The Commission sets out [guidelines regarding the proceedings](#) under the *Telecommunications Act* for violations of the Unsolicited Telecommunications Rules and the Voter Contact Registry, and under Canada's Anti-Spam Legislation (CASL) for violations of CASL. The purpose of this information bulletin is to explain how these proceedings generally unfold, and how to participate in them.

Introduction

1. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act*, under which it created rules for a National Do Not Call List, as well as rules regarding telemarketing and the use of automatic dialing-announcing devices to make calls (also known as robocalls). The collection of these rules is referred to as the Unsolicited Telecommunications Rules (the Rules). Provisions relating to the administration and enforcement of these requirements are set out in sections 41.1 to 41.7, 71, and 72.01 to 72.19 of the *Telecommunications Act*.
2. The Commission is also responsible for the administration and enforcement of Division 1.1 of Part 16.1 of the *Canada Elections Act* (the Voter Contact Registry [VCR]), which is intended to protect Canadians from rogue and misleading telecommunications calls during federal elections and help ensure that those who contact voters during an election do so transparently. Provisions relating to the enforcement of these requirements are set out in sections 71 and 72.01 to 72.2 of the *Telecommunications Act*.
3. Additionally, the Commission is responsible for the administration and enforcement of sections 6 to 46 of Canada's Anti-Spam Legislation (CASL).¹ Accordingly, the

¹ "CASL" is the name used informally for *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*, since this Act has no short title.

Commission is responsible for ensuring compliance with provisions relating to the sending of commercial electronic messages (section 6), the alteration of transmission data in electronic messages (section 7), and the installation of software without consent (section 8), as well as for enforcing the prohibition on aiding anyone engaging in those activities (section 9).

4. The Compliance and Enforcement sector of the Commission is responsible for the monitoring and enforcement of compliance related to the Rules, the VCR, and CASL.
5. Any person who contravenes the Rules, any provision of the VCR, or sections 6 through 9 of CASL commits a violation. A person who commits a violation can be liable for an administrative monetary penalty (AMP).
6. This information bulletin has two purposes. First, it provides an overview of various enforcement and compliance processes under the authority of the Commission, including information with respect to certain enforcement-related processes that do not result in proceedings before the Commission.
7. Secondly, it codifies the procedural guidelines related to Compliance and Enforcement review proceedings before the Commission, helping persons subject to proceedings relating to the Rules, the VCR, or CASL understand
 - how those proceedings will generally unfold; and
 - how they can expect to participate in those proceedings.
8. This information bulletin is not binding on the Commission or on parties to proceedings under these frameworks. While certain aspects of these proceedings are prescribed by legislation, the Commission may, at its discretion or at the request of a party, vary the other procedures described in this information bulletin if it is of the opinion that considerations of public interest or fairness permit.
9. This information bulletin is made of the following sections:
 - General information (paragraph 10)
 - Overview of Compliance and Enforcement sector processes (paragraph 13)
 - Investigations (paragraph 13)
 - Information-gathering tools (paragraph 15)
 - Issuance of notices of violation (paragraph 31)
 - Handling of third-party or sensitive information (paragraph 40)
 - Alternative enforcement measures (paragraph 43)

- Adjudications (paragraph 60)
 - Formal powers subject to review by the Commission (paragraph 60)
 - Typical Commission review process (paragraph 64)
 - Commission decisions (paragraph 71)
 - Ethical wall (paragraph 72)
- Procedural guidelines related to Compliance and Enforcement review proceedings before the Commission (paragraph 73)
 - General (paragraph 73)
 - Interpretations and administrative matters (paragraph 73)
 - Start of the review process (paragraph 75)
 - Submission of documents before the start of the review process (paragraph 77)
 - Submission of documents once the review process has begun (paragraph 79)
 - Service of documents by the designated person (paragraph 81)
 - Application to the Commission for a review (paragraph 82)
 - Application for a review of a preservation demand (paragraph 82)
 - Application for a review of a notice to produce (paragraph 101)
 - Application for a review of a notice of violation (paragraph 119)

General information

10. The Commission plays a dual role within the Rules, the VCR, and CASL, since it is
- responsible for promoting compliance with these frameworks through investigations into possible contraventions and, in some cases, through the issuance of notices of violation; and
 - responsible for adjudicating the outcomes of some of these investigations, deciding, on a balance of probabilities, whether violations occurred, whether a penalty should be imposed and, if so, determining the amount of the penalty. Adjudication can also happen during the investigation phase, such as when a request is made to have the Commission review a notice to produce or a preservation demand. This task is performed by review panels composed of Commissioners.

11. The procedural guidelines set out in this information bulletin apply to Commission proceedings arising as the result of
 - an application pursuant to section 16 of CASL for a review of a preservation demand issued under section 15 of CASL;
 - an application pursuant to section 18 of CASL for a review of a notice to produce issued under section 17 of CASL;
 - a notice of violation issued pursuant to section 22 of CASL for a violation of sections 6 to 9 of CASL; and
 - a notice of violation issued pursuant to section 72.07 of the *Telecommunications Act* for a violation of the Rules or the provisions of the VCR.
12. These procedural guidelines do not apply to proceedings before the Commission under other sections of the *Telecommunications Act* or under any other Acts. These guidelines do not replace or supersede the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* or the Commission's guidelines under the general AMPs regime for the *Telecommunications Act* set out in Compliance and Enforcement Information Bulletin 2015-111, which also do not apply to the proceedings discussed here.

Overview of Compliance and Enforcement sector processes

Investigations

13. In order to promote compliance with the relevant regulatory frameworks, persons designated by the Commission and authorized to issue notices of violations (designated persons) conduct investigations into possible contraventions. Designated persons are members of Commission staff, and they operate under the supervision of the Chief Compliance and Enforcement Officer, a member of the Commission's senior management team. Designated persons are issued certificates of designation by the Commission's Secretary General, which they can provide upon request in circumstances where it is necessary to provide proof of their legal authority.²
14. In order to maintain the neutrality of the Commission in Compliance and Enforcement review proceedings, Commissioners do not carry out investigative functions, nor do they exercise oversight over the conduct of investigations.

Information-gathering tools

15. Investigations involve the collection and analysis of documents, information, and data that may be used as evidence of a violation. Designated persons gather information from a variety of sources to identify and further investigate possible contraventions of the Rules, the VCR, or CASL. These include complaints submitted

² These certificates are a requirement under subsection 71(3) of the *Telecommunications Act*, and the Commission follows the same practice in respect of CASL for consistency.

by Canadians to the Spam Reporting Centre or the National Do Not Call List Operator, information provided by other government agencies or industry stakeholders, and other open-source information-gathering techniques. Under CASL and the *Telecommunications Act*, a designated person may make use of the following information-gathering tools:

- preservation demands (CASL);
- notices to produce (CASL);
- requests for information (the Rules);
- inspections (the Rules); and
- execution of warrants (the Rules and CASL).

16. Of the five information-gathering tools mentioned above, only preservation demands and notices to produce may be challenged before the Commission while investigations are still underway, but within a designated time frame.

Preservation demands

17. A preservation demand, as set out in section 15 of CASL, permits a designated person to require a telecommunications service provider (TSP) to preserve transmission data that is in its control, or that comes into its control, for up to 21 days after the date on which the demand is served. The designated person may renew the demand once for up to an additional 21 days, by written notice prior to the expiration of the original demand.
18. A preservation demand does not require the production or provision of any data or information to the designated person; it only requires that the data be preserved until the demand expires or is revoked. A designated person seeking to acquire that data must issue, separately, a notice to produce to the TSP, under section 17 of CASL.
19. A preservation demand may be issued only for the purposes of verifying compliance with CASL, determining whether any of sections 6 to 9 of CASL have been contravened, or assisting a foreign state with an investigation into substantially similar conduct to what is regulated by sections 6 to 9 of CASL.
20. The designated person may impose conditions that prohibit the disclosure of some or all the contents of the demand, or its existence. To do so, the designated person must have reasonable grounds to believe that disclosure of the demand or its content would jeopardize an investigation under CASL or a foreign state's investigation into substantially similar conduct to what is regulated by CASL. These conditions are subject to a six-month time limit and the designated person may renew them once, for an additional six months, by written notice prior to their expiration.
21. If there are issues or concerns with a preservation demand, it may be possible to resolve them through informal discussions with the designated person who issued the demand, who may agree to amend or reissue the demand to address non-contentious

requests, or who may otherwise be positioned to answer questions about the demand generally. The Commission encourages this practice, but parties are not required to attempt an informal resolution of issues with a demand prior to applying to the Commission for a review.

Notices to produce

22. A notice to produce, as set out in section 17 of CASL, permits a designated person to require a person to produce a copy of a document in their possession or control, or to prepare and produce a document based on data, information, or documents in their control.
23. A notice to produce may be issued only for the purposes of verifying compliance with CASL, determining whether any of sections 6 to 9 of CASL have been contravened, or assisting a foreign state with an investigation into substantially similar conduct to what is regulated by sections 6 to 9 of CASL. The notice will specify the documents to be produced, the person to whom the documents must be provided, and the form and manner of submitting the documents.
24. CASL does not limit to whom a notice to produce can be issued, provided they are issued for one of these permitted purposes. The notice may be used to gather information directly from a known subject of an investigation but may also be used to gather information from other persons or organizations (e.g., TSPs), including to determine the identity of the subject of an investigation, or to gather more information about their activities from secondary sources.
25. A designated person may impose conditions that prohibit the disclosure of all or part of the contents of the notice, or of its existence. To do so, the designated person must have reasonable grounds to believe that disclosure of the notice or its contents would jeopardize an investigation under CASL or a foreign state's investigation into substantially similar conduct to what is regulated by CASL. These conditions are subject to a six-month time limit and the designated person may renew them once, for an additional six months, by written notice prior to their expiration.
26. As with a preservation demand, if there are issues or concerns with a notice to produce, it may be possible to resolve them through informal discussions with the designated person who issued the notice. They may agree to amend or reissue the notice to vary the timeline for production or the specific data or documents sought or may be positioned to answer questions about the notice generally. The Commission encourages this practice, but parties are not required to attempt an informal resolution of issues with a notice prior to applying to the Commission for review.
27. The *Telecommunications Act* and CASL set out other investigative powers that are discussed further below. However, unlike provisions that exist for preservation demands and notices to produce, there are no provisions for their review by the Commission.

Requests for information

28. Under the *Telecommunications Act*, designated persons investigating potential violations of the Rules or the VCR can issue a written request for information pursuant to subsection 71(9) of the Act. There is no distinct mechanism under the *Telecommunications Act* for the Commission to review these requests.

Inspections

29. Under the *Telecommunications Act*, designated persons have a power of entry to conduct inspections. An inspection under the *Telecommunications Act* may also require a warrant if it is carried out at a private dwelling place.

Execution of warrants

30. Under CASL, designated persons can apply for a warrant, which is a legal document that allows them to enter certain places and exercise the powers set out in subsection 19(3) of CASL, subject to any conditions specified in the warrant. Warrants are also required for inspections under the *Telecommunications Act* if the place to be inspected is a private home. Warrant applications are made on an *ex-parte* basis before the courts and are not issued by the Commission.

Issuance of notices of violation

31. Once the investigation is completed, the designated person has formal powers to issue a notice of violation when they have reasonable grounds to believe that someone has committed a violation of the Rules or the VCR, pursuant to section 72.07 of the *Telecommunications Act*, or of sections 6 to 9 of CASL, pursuant to section 22 of CASL.
32. A notice of violation includes a description of each of the alleged violations and identifies the person believed to have committed them. The notice is typically accompanied by an investigation report written by a designated person, setting out in full the basis for the conclusions reached, including the evidence that supports those conclusions. The notice also sets out the AMP that the designated person considers appropriate for the violations committed and a rationale supporting that penalty based on the factors set out in subsection 20(3) of CASL, or, for violations of the Rules or VCR, established by the Commission in past decisions.³
33. Both the *Telecommunications Act* and CASL set out time limits for issuing a notice of violation. Under the *Telecommunications Act*, a notice may not be issued more than two years after the day on which the subject matter of the proceedings became known to the Commission. Under CASL, the time limit is three years after the day

³ The Commission established factors it considered appropriate to consider when determining the amount of an AMP with respect to the Rules in paragraph 521 of Telecom Decision 2007-48. In Compliance and Enforcement Regulatory Policy 2015-109, the Commission established similar factors for the VCR in paragraph 32 and updated the list of factors for the Rules in paragraph 28.

on which the subject matter of the proceedings became known to a designated person.

34. A notice of violation is not a Commission decision and does not mean that a penalty has already been imposed, nor that the review process has been initiated. Once a notice has been issued, the recipient can pay the penalty set out therein, in which case the person is deemed to have committed the violations and the proceeding started by the notice comes to an end.
35. The recipient of the notice of violation may contest the alleged violations or the proposed penalty by filing written representations with the Commission. The filing of those representations will trigger adjudication before the Commission, and the review process will then be considered initiated. In those cases, there will be a Commission decision on the alleged violations and/or proposed penalty.
36. Under CASL, if the recipient of the notice of violation does not challenge it, the violations are deemed to have occurred and the AMP is confirmed.
37. Under the Rules and VCR, the *Telecommunications Act* provides that if the recipient of the notice of violation does not challenge it and does not pay the AMP, they are deemed to have committed the violations. However, a Commission review process will still occur because the Commission must decide whether to impose the penalty. This review process is considered initiated once the deadline established in the notice to pay the AMP has expired. The Commission may either confirm the amount of the penalty or reduce it as it sees fit.
38. Any issues regarding the notice of violation (including the deadline for filing representations or any request regarding a procedural issue) that come to light prior to the review process being initiated must be addressed by the designated person who issued the notice.
39. As discussed further below, once the review process has begun, any request regarding a procedural issue (including permission to add to the initial representations) must be addressed to the Commission.

Handling of third-party or sensitive information

40. Over the course of an investigation, the designated person may uncover information that is determined not to be relevant or necessary to support the notice of violation. Sometimes this information is simply extraneous and of little consequence.
41. In other situations, the information may raise privacy concerns or reveal evidence of other potential violations. This could include the names or telephone numbers of third parties other than those used by a telemarketer in a Rules-related case, or a harmful piece of software found on a server or at a web address during a CASL investigation. In some cases, this information may be unrelated to the alleged violations, or it might reveal the designated person's approach to investigations.

42. Where the information is not necessary to support the notice of violation and is not relevant to a potential defence to the alleged violation, the designated person can redact or omit certain information at issue from the materials advanced to support the notice. However, it should be noted that the redacted information is removed from the record of the proceeding as a whole; the Commission's procedures are intended to ensure that the person making representations is afforded the opportunity to see and comment on all evidence the Commission will consider. The Commission may set aside and decline to consider violations where the evidence supporting them is not appropriately disclosed to the person making representations (see, for example, paragraphs 22 to 31 of Compliance and Enforcement Decision 2017-368).

Alternative enforcement measures

43. Both the *Telecommunications Act* and CASL provide a formal enforcement mechanism for violations, through the issuance of notices of violation. However, based on the circumstances of each case, a designated person may instead, at their discretion, select other enforcement tools to address contraventions, including undertakings (under CASL), negotiated settlements (under the *Telecommunications Act*), citations, and warning letters. Whether to use an alternative enforcement measure, and which measure to use, is ultimately at the discretion of the designated person, but is typically informed by the nature and seriousness of the violations, the circumstances of the person believed to have committed them, and the person's history with respect to the investigative process.

Undertakings

44. An undertaking can be entered into between a person who has contravened CASL and a designated person. An undertaking is an agreement defining the compliance obligations to be put in place following a contravention and may include a requirement to pay a specified amount. If an undertaking is entered into, no notice of violation can be issued to the same person for the same violations, and any proceeding to review the notice is automatically ended if one had already been issued.
45. CASL provides that an undertaking can be entered into at any time. When negotiations start after the review process has been initiated, the designated person will notify the Commission staff involved in the review, and that review process will typically be suspended to allow an opportunity for an undertaking to be reached.
46. The review process remains suspended until the designated person advises the Commission staff involved in the review that the review should resume or that a review is no longer required since an undertaking is now in place.
47. Summaries of undertakings are typically published on the Commission's [website](#).
48. The option to enter into an undertaking is not set out in the *Telecommunications Act* with respect to violations of the Rules or the VCR, but designated persons still routinely negotiate settlement agreements in these cases.

Settlements

49. A settlement can be reached between a person and a designated person in order to resolve any issues regarding alleged violations of the Rules or the VCR. A settlement generally entails a recognition of the acts or omissions leading to non-compliance, which may then be reflected in a notice of violation and may include the payment of an AMP.
50. A settlement can be entered into at any time. When negotiations start after the review process has been initiated, the designated person will notify the Commission staff involved in the review, and the review process will typically be suspended to allow an opportunity for a settlement to be reached.
51. The review process remains suspended until the designated person advises the Commission staff involved in the review that the review should resume or that a review is no longer required since a settlement has been reached.
52. Summaries of agreed settlements are typically published on the Commission's [website](#).

Citations

53. A designated person may choose to issue a citation letter to a person believed to have committed violations. These letters will typically provide a description of the problems identified under the Rules, the VCR, or CASL, and provide the person they are issued to the opportunity to submit to the designated person evidence that they were acting pursuant to an applicable exemption, such as an existing business relationship.
54. To make representations regarding a citation (e.g., by claiming any defences or exemptions), the onus is on the recipient to respond in writing within 14 days of receipt of the letter, providing sufficient details for Commission staff involved in the review to assess the validity of the claim. Staff will publish details of a citation 30 days after issuance unless a valid defence is made.
55. If the recipient does not respond, or is unable to sufficiently demonstrate an exemption, a citation is published on the Commission's [website](#), which identifies the provisions at issue and the person involved. However, no penalty is imposed, and no further enforcement measures are taken.
56. Citation letters do not reflect formal findings by the Commission.

Warning letters

57. A designated person may choose to respond to alleged violations by issuing a warning letter to a person believed to be in possible violation of the *Telecommunications Act* or CASL. The letter will typically provide an overview of the problem identified under the Rules, the VCR, or CASL, and propose corrective

measures that should be implemented to resolve the problem and prevent further violations. The letter may also ask for an acknowledgement that those corrective measures have or will be addressed.

58. Warning letters are not published, but the fact that they have been issued may be referenced in other Commission reports or communications.
59. Warning letters do not reflect formal findings by the Commission. They also do not preclude the designated person from pursuing other enforcement measures if the corrective measures proposed are not implemented.

Adjudications

Formal powers subject to review by the Commission

60. The following demands and notices issued by a designated person pursuant to their powers under *Telecommunications Act* and CASL may be subject to review by the Commission:
 - Preservation demands
 - Notices to produce
 - Notices of violation

Preservation demands

61. A TSP may apply to the Commission for review of a preservation demand within five business days of its receipt on the basis that preservation of some or all of the data would place an undue burden on the TSP. The TSP may also apply for a review of the conditions imposed to prevent disclosure of the demand's content or existence.

Notices to produce

62. A person who receives a notice to produce may apply to the Commission for its review at any time prior to the deadline to produce documents. Grounds for review include that the production requirement is unreasonable in the circumstances or would disclose privileged information. The person may also apply for a review of the conditions imposed to prevent disclosure of the demand's content or existence. Under either of these review scenarios, CASL provides the designated person with the ability to make representations to the Commission in response to an application.

Notices of violation

63. For notices of violation, the *Telecommunications Act* and CASL both provide that a person to whom a notice of violation is issued may, within 30 days or any longer period set out in the notice, ask the Commission to review the notice by making representations to the Commission. The notice sets out how the person may make representation. Once it receives representations, the Commission must decide

whether the person committed the violations and, if so, whether the proposed penalty is appropriate or should be varied in some way.⁴

Typical Commission review process

64. For applications to review preservation demands and notices to produce, the procedure that the Commission follows is set out in sections 16 and 18 of CASL.
65. For applications to review notices of violation, both the *Telecommunications Act* and CASL are less prescriptive in terms of how the Commission will arrive at a decision. Although the Commission has the discretion to vary its procedures as it considers appropriate in the context of a particular file, the typical process is as follows:
 - the designated person issues a notice of violation with an accompanying investigation report and supporting evidence;
 - the party on whom the notice was served files representations;
 - the Commission deliberates on those materials; and
 - the Commission renders a decision.⁵
66. In arriving at a decision, the Commission's role is to determine, on a balance of probabilities, whether the party to whom the notice was issued committed the violations set out in the notice.
67. Under the *Telecommunications Act*, when no representations are made, the violations are deemed to have been committed, and the Commission must determine whether to impose the proposed penalty. Under CASL, when no representations are made, the violations are deemed to have been committed, and the proposed penalty is imposed.
68. The onus to prove the violations occurred rests with the designated person who issued the notice of violation. However, that burden shifts to the party making representations when certain arguments are made. For example, section 13 of CASL provides that anyone arguing they had consent to do something that would otherwise be prohibited under sections 6 to 8 has the burden of proving that argument. The Commission has also stated that a party arguing that an AMP should be lowered or waived on the basis of a limited ability to pay should provide documentation or detailed information supporting that position.⁶ While this does not remove the burden on the designated person to justify the AMP amount sought, it does create an

⁴ The *Telecommunications Act* and CASL differ with respect to what happens if representations are not made in response to a notice of violation. See paragraphs 36 and 37 of this information bulletin.

⁵ The Commission has varied this process on occasion. For example, the Commission has sought submissions from the designated person and the recipient of the notice, which necessitated a corresponding adjustment to established deadlines.

⁶ See paragraph 27 of Compliance and Enforcement Regulatory Policy 2015-109. While that document is principally about the VCR, the Commission has applied this principle with respect to the Rules and CASL – see, for example, paragraph 14 of Compliance and Enforcement Decision 2015-361.

expectation that a party's submissions will be supported by more than simply an assertion that an AMP is unaffordable.

69. The Commission's review process does not presume that the designated person's conclusions are correct unless proven otherwise, because doing so would inappropriately shift the onus to the person making representations to disprove the alleged violations. In other words, once representations are filed and the review process is triggered, the Commission will review the notice of violation and the supporting evidence as a whole.
70. The *Telecommunications Act* and CASL do not prescribe the procedural steps the Commission should take to arrive at its decision; rather, they empower the Commission to establish its own procedural rules. Furthermore, they do not contemplate that the designated person or the investigation team members would participate in the review of a notice of violation or respond to the representations that may be filed before the Commission. Similarly, they do not contemplate further participation by the party that has made representations. The notice and its supporting materials, along with the representations, will generally form the entirety of the record that the Commission considers.

Commission decisions

71. When the Commission makes a decision, it will serve a copy on the person who made representations. Commission decisions are typically served by registered mail, a courier service, or a bailiff service. In some circumstances, the Commission also looks to the *Federal Court Rules* for further guidance. Commission decisions with respect to notices of violation are always made public and are typically published at the same time the decision is sent to be served on the party. However, the record of the review proceeding, including the representations made by a party requesting a review, is not available on the Commission's website. Commission decisions with respect to notices of violation can be found on the [CRTC Enforcement Actions](#) webpage.

Ethical wall

72. To maintain the Commission's neutrality in its processes for reviewing preservation demands, notices to produce, and notices of violation, the Commission is supported by staff who are not involved in investigations. In addition, designated persons and other members of the investigation teams are not involved in or privy to the Commission's deliberations in relation to these reviews. In this way the Commission's processes have created an "ethical wall" which ensures that the Commission's decision is based solely on the record of the proceeding (i.e., the written materials prepared by the designated person and the person who is contesting the preservation demand, notice to produce or notice of violation). The ethical wall ensures that there is no opportunity for the designated person to supplement the record or otherwise influence the Commission regarding the matter under review.

Procedural guidelines related to Compliance and Enforcement review proceedings before the Commission

General

Interpretations and administrative matters

73. When calculating deadlines, sections 26 to 29 of the *Interpretation Act* apply, with the following additions:
- Saturday is also considered to be a holiday;
 - a time period for the filing of any document with the Commission ends at 5:00 p.m. Vancouver time on the relevant day; and
 - the period beginning on December 21 in one year and ending on January 7 in the following year is not included in the computation of a time period set in calendar days.
74. Any reference to something that must be done by or before the Commission in relation to these proceedings within a set number of days means calendar days, unless otherwise indicated. Where deadlines for these proceedings are set in business days, the Commission interprets this term to exclude Saturdays, Sundays, federal statutory holidays, provincial holidays in which the person subject to the deadline is located, and the period beginning on December 21 in one year and ending on January 7 in the following year.

Start of the review process

75. When a notice of violation is issued under the *Telecommunications Act* or CASL, the review process does not begin immediately. Rather, it begins when representations are received.
76. For a notice of violation issued under the *Telecommunications Act*, if no representations are received and the penalty set out in the notice is not paid, the process to review the amount of the AMP begins once the deadline to file representations has expired.

Submission of documents before the start of the review process

77. Prior to the start of the review process, requests concerning procedural issues must be made in writing to the designated person using any of the following methods:
- delivering them by hand;
 - sending them by mail or courier service;
 - sending them by email; or
 - sending them by fax.

78. The contact information to send the requests is indicated in the documents issued by the designated person.

Submission of documents once the review process has begun

79. Representations in response to notices of violation, applications to review preservation demands or notices to produce under CASL, and procedural requests to the Commission once any of those processes has begun can be filed with the Commission using any of the following methods:

- delivering them by hand to the Office of the Secretary General of the Commission;
- sending them to the Office of the Secretary General by mail or courier service;
- sending them to the Office of the Secretary General by fax; or
- sending them via GCKey through the “My CRTC Account” service on the Commission’s website.

80. The contact information is indicated in the documents issued by the designated person.

Service of documents by the designated person

81. Documents issued by the designated person are typically served by registered mail, a courier service, or a bailiff service. In some circumstances, the designated person also looks to the Federal Court Rules for further guidance.

Application to the Commission for a review

Application for a review of a preservation demand

82. A mechanism to challenge a preservation demand is provided in section 16 of CASL.

83. Within five business days of the day on which the demand is served, a TSP may apply in writing for a review of the demand on the basis that preservation of some or all of the data would place an undue burden on it.

84. The TSP may also apply for a review of the conditions imposed to prevent disclosure of the demand’s content or existence.

85. Decisions on these applications are made by the Commission, not by the designated person conducting the investigation. As discussed above, the Commission observes an internal ethical wall for these decisions.

86. These proceedings are conducted only in writing; there is no oral hearing, and neither the party nor the designated person who issued the demand is required to physically appear before the Commission.

87. Applications for a review of a preservation demand should clearly set out who the party is and the file or case number for the investigation in question. Where possible, they should include a copy of the demand that the application pertains to.
88. The application should also include a written explanation of how and why preservation of the data would impose an undue burden, or what issue exists with the conditions imposed to prevent disclosure of the demand's content or existence.
89. The Commission's typical practice for handling this type of application does not provide parties with an opportunity to make further submissions, so the arguments in the application should be complete and any documentary evidence necessary to support them should be included with the application.
90. If a party's issue with, or objection to, a preservation demand is with respect to only some elements of the demand, the application for review should indicate this clearly and propose what changes the Commission might make (e.g., revising or limiting what specific data must be preserved).
91. Applications for a review of a preservation demand should not concern whether production of the preserved data would ultimately be reasonable. Any arguments of this nature should be raised in an application to review the notice to produce used by the designated person to collect the preserved data, when one is issued.
92. Under CASL, the designated person can make representations in response to applications to review a preservation demand before the Commission makes its decision. The designated person is given one business day after the day on which the application to review a preservation demand is received to submit representations to the Commission.
93. A copy of these representations by the designated person will be sent to the party making the application for their information, but there is no right under CASL for the party to reply to them or make further submissions.
94. Once the Commission receives the application and any representations from the designated person, it will consider the arguments made and may allow the application, deny the application, or vary the requirements or conditions in the preservation demand in any manner it considers reasonable in the circumstances.
95. The requirement to preserve data set out in a preservation demand is not suspended while an application for review is pending before the Commission.
96. However, if the Commission does not make its decision on the application within five business days of the date on which the application is made, the party is not required to preserve any new data that comes into its possession after the fifth business day (but it must still keep the data from the initial five-day period until the Commission renders its decision).

97. Once the Commission makes its decision, it will serve a copy of its decision on the party that made the application.
98. Commission decisions with respect to preservation demands are made public, but their publication may be delayed based on a balancing of the importance of the issues raised in the decision against the importance of keeping the details of a particular investigation confidential while it progresses.
99. CASL does not provide a mechanism for the Commission to review or reconsider these decisions.
100. An appeal of a Commission decision with respect to a preservation demand lies with the Federal Court of Appeal and may require leave to appeal from that Court.

Application for a review of a notice to produce

101. A mechanism to challenge a notice to produce is provided in section 18 of CASL.
102. Prior to the expiration of the deadline to produce the documents, a party may apply in writing for a review of the notice on the basis that the production requirement is unreasonable in the circumstances or would disclose privileged information.
103. The party may also apply for a review of the conditions imposed to prevent disclosure of the demand's content or existence.
104. Decisions on these applications are made by the Commission, not by the designated person conducting the investigation. As discussed above, the Commission observes an internal ethical wall for these decisions.
105. These proceedings are typically conducted only in writing; there is no oral hearing, and neither the party nor the designated person who issued the notice to produce is required to physically appear before the Commission.
106. Applications for a review of a notice to produce should clearly set out who the party is and the file or case number for the investigation in question. Where possible, it should include a copy of the notice that the application pertains to.
107. The application should include a written explanation of why the party considers it unreasonable to produce the documents, what privilege is being asserted, or what issue exists with the conditions imposed to prevent disclosure.
108. The Commission's typical practice for handling this type of application does not provide parties with an opportunity to make further submissions, so the arguments in the application should be complete and any documentary evidence necessary to support them should be included with the application.

109. If a party's issue with or objection to a notice to produce is with respect to only some elements of the notice, the application for review should indicate this clearly and propose what changes the Commission might make to the notice (e.g., extending a deadline for production or excluding certain documents or information from the production requirement).
110. Under CASL, the designated person can make representations in response to applications to review a notice to produce before the Commission makes its decision.
111. The designated person is given 30 days after the day on which the application to review a notice to produce is received to submit representations to the Commission. In cases where the party making the application for review had a shorter deadline, the designated person is given the same number of days the party was given.
112. A copy of these representations will be sent to the party making the application for their information. However, there is no right under CASL for a party to reply to them or to make further submissions.
113. Once the application and any representations from the designated person are received, the Commission will consider the arguments made and may allow the application, deny the application, or vary the requirements or conditions in the notice to produce in any manner it considers reasonable in the circumstances.
114. The requirement to produce documents is suspended while an application for review is pending before the Commission.
115. Once the Commission makes its decision, it will serve a copy of its decision on the party that made the application. If the Commission affirms any of the requirements in the notice to produce, it will set a new deadline for that production.
116. Commission decisions with respect to notices to produce are made public, but their publication may be delayed based on a balancing of the importance of the issues raised in the decision against the importance of keeping the details of a particular investigation confidential while it progresses.
117. CASL does not provide a mechanism for the Commission to review or reconsider these decisions.
118. An appeal of a Commission decision with respect to a notice to produce lies with the Federal Court of Appeal and may require leave to appeal from that Court.

Application for a review of a notice of violation

119. The *Telecommunications Act* and CASL both provide that a person to whom a notice of violation is issued may, within 30 days or any longer period set out in the notice, make written representations to the Commission concerning the notice. If they do so, the Commission must then render a decision with respect to whether the violations

set out in the notice were committed by that person, and if so, whether the proposed penalty set out in the notice of violation is appropriate.

120. It should be noted that depending on the circumstances, a party may request an extension from the designated person to respond to the notice of violation. The methods to request an extension are set out in paragraph 77 above and in the notice. The designated person has the discretion to accept or deny the extension request.
121. Representations should clearly set out who the party is and the file or case number for the notice of violation in question.
122. There are no specific requirements for the format or content of the submission, but parties should address, with relevant documentation supporting their arguments, the questions that the Commission must answer during the review, namely
- whether the person making the representations committed the violations; and
 - whether the proposed penalty is appropriate.
123. The factors the Commission must consider with respect to notices of violation under CASL are set out in subsection 20(3) of CASL.
124. The *Telecommunications Act* does not set specific factors the Commission must consider, but the Commission has previously stated that the appropriate factors to be considered in determining the amount of a penalty for violations of the Rules include the following:
- the nature of the violations (minor, serious, very serious, negligent or intentional);
 - the number and frequency of complaints and violations;
 - the relative disincentive of the measure;
 - the potential for future violations; and
 - the person's ability to pay.⁷
125. Parties do not typically have the opportunity to make further submissions after filing their representations. Because of this, any arguments made in representations should be as complete as possible and the representations should include copies of any evidence necessary to support those arguments.
126. A party that makes representations in response to a notice of violation is not required to pay the penalty set out therein until the Commission makes its decision on the

⁷ See paragraph 521 of Telecom Decision [2007-48](#) and paragraph 28 of Compliance and Enforcement Regulatory Policy [2015-109](#).

matter. Once the Commission makes its decision, it will serve a copy of its decision on the party who made the application.

127. If the Commission finds that the party committed any of the violations set out in the notice of violation, and if it chooses to impose an AMP for those violations, the decision will set a new time period for payment of the AMP and instructions on making the payment will be sent to the party along with the decision.
128. Unlike the review processes for notices to produce and preservation demands, neither the *Telecommunications Act* nor CASL contemplates that the designated person would make representations in response to the representations received from the party contesting the notice of violation.
129. The Commission's typical practice is that the designated person does not participate further in these proceedings and is not permitted to file any additional arguments or evidence. The notice of violation and supporting materials reviewed by the Commission will be identical to the ones issued and served on the party.
130. The Commission may, in some instances, issue requests for information to the person to whom a notice of violation is issued, or to the designated person, to obtain clarifications regarding arguments or evidence that are part of the record that the Commission will review. The requests will indicate the deadline to submit responses. The recipient of a notice will be provided an opportunity to comment on the response to any request sent to the designated person. The Commission may, depending on the circumstances, provide such an opportunity to the designated person for requests sent to the notice recipient.
131. Once the Commission has rendered its decision on the review of a notice of violation, it will serve a copy on the person who made representations.
132. With respect to notices of violation, the Commission decision is made public and is typically published at the same time the decision is sent to be served on the party.
133. Under section 62 of the *Telecommunications Act*, it is possible to apply to the Commission to review or vary a decision made with respect to a notice of violation regarding the Rules or the VCR. These proceedings are conducted under the framework of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* and are not covered by these guidelines.
134. A decision under the *Telecommunications Act* can also be appealed before the Federal Court of Appeal pursuant to section 64 of that Act with leave from that Court.
135. CASL does not provide a mechanism for the Commission to review or vary its decisions with respect to notices of violation.

136. An appeal of a Commission decision made with respect to a notice of violation regarding CASL lies with the Federal Court of Appeal and may also require leave to appeal from the Court.

Related documents

- *Call for comments – Codification of Commission practices in Compliance and Enforcement Proceedings*, Compliance and Enforcement Notice of Consultation CRTC 2022-218, 8 August 2022
- *3510395 Canada Inc., operating as Compu.Finder – Violations of Canada’s Anti-Spam Legislation*, Compliance and Enforcement Decision CRTC 2017-368, 19 October 2017
- *Goodlife Home Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2015-361, 7 August 2015
- *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act*, Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111, 27 March 2015
- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2008; as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007