



17 December 2014

John Traversy  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Mr. Secretary General,

**Re: *Administrative monetary penalties under the Voter Contact Registry: Call for comments, Compliance and Enforcement Notice of Consultation CRTC 2014-598 (Ottawa, 17 November 2014)***

1. The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system that serves the public interest.
2. We are pleased to participate in the process initiated by Compliance and Enforcement Notice of Consultation CRTC 2014-598, regarding administrative monetary penalties under the Voter Contact Registry. Our comments on the issues raised in the Commission's notice are attached. We have also appended a preliminary report we have completed analyzing the CRTC's use of AMPs.
3. We look forward to the opportunity of reviewing other comments submitted in this proceeding.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

A handwritten signature in blue ink that reads 'Monica Auer'.

Monica L. Auer, M.A., LL.M.  
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## **A fond farewell to Kafka**

***Administrative monetary penalties under the Voter Contact Registry:***

***Call for comments,***

**Compliance and Enforcement Notice of Consultation**

**CRTC 2014-598 (Ottawa, 17 November 2014)**

**Comments of the Forum for Research and Policy in Communications**

**17 December 2014**

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## Executive Summary

### Introduction: a fond farewell to Kafka

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting.
- ES 2 The most important aspects of the CRTC's administration of these new responsibilities are transparency, consistency and fairness. Canadians are entitled to expect that the CRTC's regulatory approach is transparent, consistent and fair – rather than the confusing or complicated, inconsistent or unfair experience of characters in a story by Kafka.

### FRPC's main concerns

- ES 3 Regulations for the new VCR regime must be very clearly written, as the parties expected to comply with these rules are likely to be inexperienced with the CRTC's practices, procedures and precedents.
- ES 4 The CRTC should, in particular, define each term on which its determinations rely, even if Parliament has not defined those terms itself. Clear, published definitions provide opportunities for education, encourage compliance, and enable the courts to understand the CRTC's reasons.
- ES 5 The terms that especially require definitions include "any purpose related to an election". Our concern is that if this term is too broadly applied, it will capture broadcasters, other media and academic institutions that commission surveys about important electoral issues during an election. Canada's historical approach to journalistic and academic independence should not be put into question because definitions reach beyond their appropriate grasp.
- ES 6 The CRTC should clarify its approach to the use of documentation it receives from VCR registrants. For instance, unions rarely publish details of their correspondence with their members – would the *Fair Elections Act's* reporting requirements permit the CRTC to obtain that information and if so, what will the Commission do with it? The CRTC should provide parties subject to the VCR with a reasonable expectation of confidentiality, when this does not conflict with Parliament's objectives for the VCR.
- ES 7 The CRTC should set out the facts surrounding each factor assigned for consideration in administrative enforcement actions. Setting out these facts promotes objectivity, predictability and consistency, all of which serve the public

interest. Setting out the facts for each factor will also establish that the CRTC is acting reasonably, rather than arbitrarily.

- ES 8** In particular, the CRTC should clearly describe how it will calculate the number of violations, whether the breach of one rule is more serious than the breach of another, and the per-violation fine for first, second and subsequent breaches.
- ES 9** Finally, the CRTC’s education and outreach initiatives should be deployed in each federal election, in the same way that the CRTC issues information bulletins about election broadcasts at the beginning of each election. The CRTC should also provide a mechanism for interested parties to register in advance of, or during, election periods to obtain information about the VCR. When the federal writs drop, the CRTC should contact previous violators to remind them about the consequences of repeat violations, and to promote compliance.

**Response to CRTC questions**

<b>CRTC questions</b>	<b>Position of the FRPC</b>
<b>Q.1 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?</b>	<i>De minimus</i> numbers of complaints should not attract penalties for first-time offenders, who should instead receive warnings.  If an offender re-offends, the CRTC should not levy fines when a <i>de minimus</i> number of complaints is involved.
<b>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?</b>	The CRTC’s goal should be to use a range of administrative enforcement actions that promote compliance. Naming and shaming may be as, and possibly more, effective than fines in promoting compliance.
<b>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?</b>	The CRTC should define ‘ability to pay’ and give examples about how the term will be applied.  Fines should, however, be a sanction that is used exceptionally, for the most serious offences – such as huge numbers of complaints, and/or wilful and repeated non-compliance.
<b>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?</b>	Parties’ past and current compliance should be the major consideration in all cases. It should weigh heavily in setting AMPs.  The CRTC and its staff should consider both the compliance steps parties took before breaching the CRTC’s regulations, and those taken after they were notified about a breach or breaches.

CRTC questions	Position of the FRPC
	Self-reporting should be public, and simple. The CRTC should not use self-reported breaches as evidence in subsequent cases, except that parties that repeatedly breach the CRTC's rules should receive warnings that additional non-compliance will be sanctioned.

**Conclusions: the outcome of this proceeding should be regulations that are and can be applied transparently, consistently and fairly**

- ES 10 Respectfully, parties' experience with the CRTC's regulatory process for the VCR should not be Kafkaesque.
- ES 11 The public interest is best served by quasi-judicial enforcement that is transparent, consistent and fair.

**Recommendations**

- ES 12 The Forum therefore recommends that the CRTC
  - 1 Establish transparent reporting procedures
  - 2 Report on all factors, considered or not
  - 3 Set out frequently updated, frequently asked questions
  - 4 Retain documentation online

## I Introduction: registering voter contacts

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting.
- 2 The Forum supports consistent, fair and transparent regulation in the public interest.
- 3 We therefore welcome the CRTC's call for comments about the approach it will adopt towards enforcing requirements for a Voter Contact Registry (VCR) in future federal election periods.
- 4 We respectfully submit that the most important aspects of the CRTC's administration of these new responsibilities are transparency, consistency and fairness.
- 5 Canadians are entitled to expect that the CRTC's regulatory approach is transparent, consistent and fair regulation – rather than the confusing or complicated, inconsistent or unfair experience of characters in a story by Kafka.

## II The *Fair Elections Act*

- 6 The *Fair Elections Act*<sup>1</sup> creates new responsibilities for the CRTC. It (or someone it delegates<sup>2</sup>) must establish and maintain a "Voter Contact Registry" and keep all documents it receives from VCCS, their clients and third-party organizations and groups.<sup>3</sup> The CRTC must also create new identification and reporting requirements for "voter contact calling services".<sup>4</sup> Finally, the legislation requires the CRTC to sanction those who violate the registration requirements.
- 7 The *Fair Elections Act* removes anonymity from VCCS contracts. It defines who can enter into<sup>5</sup> and sign agreements with VCCS: organizations' official representatives, or individuals in their own name.<sup>6</sup> Each must file proof of identification with the CRTC.

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<sup>1</sup> The Act's full title is: *An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts.*

<sup>2</sup> *Canada Elections Act*, s. 348.13(1).

<sup>3</sup> *Ibid.*, s. 348.11.

<sup>4</sup> By adding Division 1.1 to Part 16.1 the *Canada Elections Act* (after s. 348.01 of that legislation).

<sup>5</sup> *Fair Elections Act*, section 76, addition to *Canada Elections Act* of section 348.02.

<sup>6</sup> *Ibid.*, s. 76, by adding s. 348.02 to the *Canada Elections Act*.

8 Those engaging a VCCS must give the service provider their name, address, telephone number, and a copy of a piece of CRTC-authorized identification containing their name when they make the agreement<sup>7</sup> and also before the first call is made.<sup>8</sup> A VCCS must keep all this for a year after the election.<sup>9</sup>

9 The *Fair Elections Act* also promotes explicit discussions about calls intended to contact voters between VCCS and their clients. Parties wanting to engage a VCCS must tell the calling service provider that they want to make a VCCS agreement,<sup>10</sup> and the VCCS must also ask each of these parties whether the calls “constitute voter contact calling services.”<sup>11</sup>

**A What is included within ‘voter contact calling services’?**

10 The *Fair Elections Act* defines voter contact calling services (VCCS) as services or businesses involving the making of live and/or automated calls<sup>12</sup> “during an election period for any purpose related to an election”.<sup>13</sup>

11 ‘Any purpose related to an election’ is very broadly defined to include the promotion/opposition of candidates, parties or positions; getting out the vote initiatives; information gathering; and fund-raising. (Table 1 sets out the *Act’s* categories.)

<p><b>Table 1:</b> ‘Purpose related to an election’ includes</p> <p><u>Support or opposition</u> – the promoting or opposing of</p> <ul style="list-style-type: none"> <li>• a registered party</li> <li>• the leader of a registered party</li> <li>• a candidate or a nomination contestant, or</li> <li>• any position on an issue with which such a party or person is associated</li> </ul> <p><u>Getting out the vote</u> - encouraging electors to vote or not to vote, and “providing information about the election, including information about voting hours and the location of polling stations”</p> <p><u>Information gathering</u> – collecting information about how electors voted in past elections or will vote in the election, electors’ views on</p> <ul style="list-style-type: none"> <li>• a registered party</li> <li>• its leader</li> <li>• a candidate or a nomination contestant or</li> <li>• any issue with which such a party or person is associated”</li> </ul> <p><u>Fund-raising</u> – “for a registered party, a registered association, a candidate or a nomination contestant”.</p> <p>Source - <i>Fair Elections Act</i>, section 75, which adds section 348.01 to the <i>Canada Elections Act</i> – note that the italicized and underlined text are not set out in the legislation</p>
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<sup>7</sup> *Ibid*, section 75, adding section 348.03 to the *Canada Elections Act*.

<sup>8</sup> 348.05(2)

<sup>9</sup> *Canada Elections Act*, adding s. 348.04(1) and (2).

<sup>10</sup> *Fair Elections Act*, s. 348.03.

<sup>11</sup> *Ibid*, s. 348.05(1).

<sup>12</sup> ‘Calls’ are defined by section 75 in the *Fair Elections Act* as “live voice calls”, “calls made by means of an automatic dialing-announcing device”, or a combination of live and automated calls. (Note that section 75 of the *Fair Elections Act* adds these and other definitions to the *Canada Elections Act* by creating and adding section 348.01 to the *Canada Elections Act*).

<sup>13</sup> *Fair Elections Act*, s. 75.



## B CRTC must establish a 'Voter Contact Registry'

- 12 The *Fair Elections Act* requires the CRTC to create a new system with which VCCS and their clients must register almost immediately after they have begun to contact voters. The CRTC or someone it delegates<sup>14</sup> must establish and maintain a "Voter Contact Registry" (VCR) and keep all documents received from VCCS, their clients and third-party organizations and groups.<sup>15</sup> The CRTC may keep these documents for up to seven years.
- 13 VCCS and their clients must register with the VCR within 48 hours of making their first call.<sup>16</sup> They must give the CRTC their name, the client's name, "the type of calls to be made under the agreement"<sup>17</sup> as well as the identification required by the CRTC.<sup>18</sup> If the information provided is incomplete, it is deemed not to have been made,<sup>19</sup> which presumably constitutes a violation. (The *Fair Elections Act* does not define "type of calls", however, this is something the CRTC may have to clarify.)
- 14 Unions will be affected by the new CRTC requirements, because the registration obligation applies to third-party corporations or groups that use their own internal telephone services to make live or automated calls "for any purpose relating to the election".<sup>20</sup> (Except that they need only state that they are making live calls, not the type of calls.<sup>21</sup>)
- 15 The definition of VCCS is very broad. FRPC is concerned that it may encompass organizations that were not originally intended to be covered by the legislation – such as broadcasters and the print media that frequently survey voters during election periods. Some academic institutions also undertake voter survey research during elections.

<sup>14</sup> *Canada Elections Act*, s. 348.13(1).

<sup>15</sup> *Ibid*, s. 348.11.

<sup>16</sup> *Ibid*, s. 348.06(1) for VCCS, and s. 348.07(1) for clients.

<sup>17</sup> *Ibid*, s. 348.06(2) for VCCS and s. 348.07(2) for clients. 'Type of calls' is not defined in the *Fair Elections Act*.

<sup>18</sup> *Ibid*, s. 348.07(3) for clients.

<sup>19</sup> *Fair Elections Act*, s. 76, creating s. 348.07(4) of the *Canada Elections Act*: "... a registration notice is deemed not to have been filed if the information and the copy of the piece of identification are not provided at the time the registration notice is filed."

<sup>20</sup> *Canada Elections Act*, s. 348.08(1) for live calls, and s. 348.09(1) for automated calls.

<sup>21</sup> *Ibid.*, s. 348.08(2)(c) for live calls, and s. 348.09(2)(c) for automated calls.

- 16 Our concern is that a requirement for news-gathering and academic institutions to register within 24 hours of surveying voters during election periods weakens Canada’s long-standing commitment to journalistic and academic independence.
- 17 FRPC therefore respectfully submits that the CRTC clearly state that such organizations will not be required to register with the VCR when they are undertaking surveys on their own behalf.
- 18 Given the breadth of parties potentially affected by the registration process, it is clear to FRPC that the CRTC will have to undertake an enormous educational outreach program before it begins to impose sanctions for breaches. The CRTC should convene an informal meeting of national and provincial organizations to advise the Commission about ways of maximizing the impact of its outreach program. The CRTC should also seek advice from national and provincial
- unions about the best ways of reaching local unions – that are often structurally separate from their national counterparts, and
  - political parties for reaching local riding associations – that may also be structurally separate from national political parties.
- 19 Given the growing importance of Canada’s multicultural population the CRTC should in particular reach out to the many national congresses and associations representing Canadians with a multicultural heritage to ensure that they understand their reporting requirements.
- 20 The CRTC should post all briefing materials provided to these organizations on its website, so that they are readily available for consultation at all times.
- 21 All registrations will be made public, after the election. The CRTC or its delegate<sup>22</sup> must publish all registration notices that it received after the election, as quickly as possible once 30 days have passed since polling day.<sup>23</sup>
- C Record-keeping requirements**
- 22 VCCS<sup>24</sup> and “every person or group” that enters into an agreement with such firms for VCCS,<sup>25</sup> must keep a copy of all “unique” scripts used in live calls and of recordings of all “unique” automated calls, for three years after the election period.

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<sup>22</sup> *Ibid.*, s. 348.13(1).

<sup>23</sup> *Ibid.*, s. 348.12 for VCCS.

<sup>24</sup> *Ibid.*, s. 348.16.

23 Similarly, persons or groups that use their own internal services to make automated calls “for any purpose relating to the election” must keep a recording of each unique message, and the date on which it was sent, but only for one year after the election.<sup>26</sup>

ES 13 As third-party corporations, unions and other groups that use their internal services to make live calls “for any purpose relating to the election” must keep copies of and the dates on which each unique script was used.<sup>27</sup>

#### D CRTC enforcement

24 The *Fair Elections Act* requires the CRTC to administer and enforce these new rules.<sup>28</sup> It gives the CRTC the authority to enter places and inspect documents, information or things relevant to enforcing these requirements.<sup>29</sup>

25 Every breach of the registration prohibitions or requirements will constitute a violation, subject to administrative monetary penalties of up to \$1,500 for an individual, or up to \$15,000 for a corporation.<sup>30</sup>

26 If, on the other hand, a VCCS, person or group that does not keep scripts and/or recordings<sup>31</sup> is prosecuted in the courts and convicted, it will be guilty of an offence for which, if convicted by a court, the maximum penalty for an individual will be \$10,000, and for a corporation, \$100,000.<sup>32</sup>

27 The legislation allows common law principles to be used to justify or excuse breaches of the prohibitions or requirements, “to the extent that the rule or principle is not inconsistent with this Act”.<sup>33</sup>

<sup>25</sup> *Ibid.*, s. 348.17.

<sup>26</sup> *Ibid.*, s. 348.18.

<sup>27</sup> *Ibid.*, s. 348.19.

<sup>28</sup> *Ibid.*, s. 348.1(1).

<sup>29</sup> *Fair Elections Act*, s. 140, amending s. 72.06(1)(a) of the *Telecommunications Act*.

<sup>30</sup> *Ibid.*, s. 138, as amending s. 72.01 of the *Telecommunications Act*.

<sup>31</sup> *Ibid.*, s. 495.1 for VCCS; s. 495.2 for persons or groups.

<sup>32</sup> *Ibid.*, s. 144.(1), amending s. 73(2) of the *Telecommunications Act*.

<sup>33</sup> *Ibid.*, s. 141, as amending s. 72.1(2) of the *Telecommunications Act*.

### III Concerns

28 FRPC's central concerns with the CRTC's enforcement of its new responsibilities under the *Fair Elections Act* have to do with transparency, consistency and fairness.

#### A Clear? Crystal.

In the 1992 film, *A Few Good Men*, the character of Lieutenant Daniel Kaffee (played by Tom Cruise), cross-examines Colonel Nathan Jessop (played by Jack Nicholson):

...

Kaffee: ... Kendrick was clear on what you wanted?

Jessop: Crystal.

...

29 The CRTC uses regulations to enforce its legislative mandate, and we assume the Commission will issue regulations for the new VCR.

30 Any regulations that the CRTC enacts to implement the VCR must be clear so that parties who are unfamiliar with the CRTC's regulatory approach are nevertheless able to understand and follow the rules. Parties need 'crystal clarity' to understand their responsibilities for compliance.

31 FRPC addresses this point in a recent report on the CRTC's use of AMPs in the context of its unsolicited telecommunications regime. A copy of the report is attached, for the reader's convenience.

32 Clarity about the language used in the VCR regulations is essential because the CRTC's current *Unsolicited Telecommunications Rules* are not clear. To give one example, the regulations for "Record Keeping" do not deal with the records to be kept by those subject to the *Rules* (which can be everyone, including those exempted by Parliament from the unsolicited telecommunications regime). To give another example, the CRTC's rules for ADADs now require contact information to be provided:

4. A person using an ADAD to make unsolicited telecommunications where there is no attempt to solicit, shall comply with the following conditions:

...

d) such telecommunications shall begin with a clear message identifying the person on whose behalf the telecommunication is made and a brief description of the purpose of the telecommunication. This identification

message shall include an electronic mail address or postal mailing address and a local or toll-free telecommunications number at which a representative of the originator of the message can be reached. In the event that the actual message relayed exceeds sixty (60) seconds, the identification message shall be repeated at the end of the telecommunication

- 33 Does this regulation permit any of the content in the message to be delivered through a 'click-through' system?
- 34 Does the regulation require the message content to be delivered in the order stated? – namely, identification, brief purpose, e-mail or postal address, telephone number.
- 35 Suppose an IVR message is being delivered to communities where many people speak more than one language: does the regulation require IVR messages delivered in a specific language first?
- 36 We do not know the answers to these questions – but fear that without clarity, those subjected to these rules may find their enforcement by the CRTC to be arbitrary and inconsistent.
- 37 The CRTC should therefore define each term on which its determinations rely, even if Parliament has not defined those terms itself. Clear, published definitions provide opportunities for education, empower those subject to the regulations by encouraging compliance, and will enable the courts to understand the CRTC's reasons.
- 38 FRPC therefore urges the Commission to draft its regulations so that someone unfamiliar with the complexities of statutory drafting will be able to understand and comply with their requirements.
- 39 FRPC is especially concerned that unless it is carefully and clearly defined, the very broad term, "any purpose related to an election", will over time be applied to parties that Parliament did not intend the CRTC to regulate. For example – will the commissioning of surveys by broadcasters or publications about the issues that matter to the electorate during a federal election fall within a "purpose" of the election, so that broadcasters and newspapers must register on the VCR? The Commission should state its position on this point, to avoid imposing unwelcome and unexpected surprises either in the near or longer term.

**B Use of non-identification information collected from registrants**

- 40 The *Fair Elections Act* does not state whether the CRTC would be able to publish or otherwise disseminate any of the scripted or recorded content that registrants must retain, and may have to provide to the CRTC.
- 41 Such content may reveal the internal strategies of political parties and other organizations. Considering that commercial strategies are typically granted confidentiality, it would be reasonable to expect that strategies for political campaigns merit even more protection.
- 42 Would the CRTC be able to ask unions for the content of communications to their membership – content that is usually confidential? What about political parties' communications to their members?
- 43 The CRTC should publish its commitment not to disclose this information unless the information is demonstrably relevant to a determination that the Commission is required to make about an alleged violation.
- C Caesar's wife: calculating penalties**
- 44 Julius Caesar is said to have divorced his wife because she was suspected of wrongdoing - and the significance of his position in Roman society meant that his wife had to be above suspicion.
- 45 Quasi-judicial decision-makers face the same standards when it comes to democratic elections. The CRTC must give clear and explicit reasons when it defines and applies penalties for breaches of the VCR regulations, to avoid the slightest hint of suspicion about the motives underlying its decisions.
- 46 Reviewing the decisions issued by the Commission about breaches of the *Unsolicited Telecommunications Rules* shows that clarity and explicit reasons are generally absent: the CRTC generally does not state the actual numbers of complaints it receives, the actual numbers of calls made, or explain the choice of a specific penalty per call/complaint to calculate a violator's total penalty.
- 47 Instead the CRTC chooses a figure to use as the number of violating calls, multiplies this by the number of regulations breached, and multiplies that result by a penalty that ranges from \$250 (Bionet Nettoyage) to \$6,667 (Xentel). Factors related to the size of the caller, and the gravity of offence somehow factor into this equation.
- 48 The CRTC mentioned this briefly in a July 2013 unsolicited telecommunications enforcement decision. It noted that the violator's calling records showed that it had made

3,828 of these telecommunications were made to consumers whose telecommunications numbers were registered on the National DNCL;

1,618 of those 3,828 telecommunications were made from 5 June to 10 July 2012, when OEG was registered with the National DNCL operator but had let its subscription lapse;

from 11 to 16 July 2012, 41 telemarketing telecommunications were made to consumers residing in area codes 705 or 905, while OEG's National DNCL subscription was for the 416 area code only; and

although OEG subscribed to the National DNCL for the 416 area code on 11 July 2012, it failed to download the list in a timely manner and made 47 telemarketing telecommunications from 11 to 13 July 2012 to consumers in that area code whose telecommunications numbers were registered on the National DNCL.<sup>34</sup>

49 From these violations - 47 to 3,828 telecommunications in breach of the *Unsolicited Telecommunications Rules* – the CRTC chose 17.<sup>35</sup>

50 The CRTC then explained that the number of violations is only considered when setting the total AMP:

The Commission notes that the amount of the AMP per violation is not determined based on the number of violations committed but rather on the following factors:

Is the business incorporated or not?

If it is incorporated, what is the size of the company?

Is it a first-time violation?

In contrast, the number of violations is taken into consideration when the total amount of the AMP is determined. In addition, the company's behaviour after being informed that complaints have been received and instructed on how to bring itself into compliance is also considered.<sup>36</sup>

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<sup>34</sup> *MDG Newmarket Inc., operating as Ontario Energy Group – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2013-356, <http://www.crtc.gc.ca/eng/archive/2013/2013-356.htm>, (Ottawa, 31 July 2013), at para. 7.

<sup>35</sup> *Ibid.*, at para. 8.

<sup>36</sup> *Ibid.*, at paras. 19-20.

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- 51 Meanwhile, the *Telecommunications Act* states that each “contravention ... under section 41 constitutes a violation” and that “the person who commits the violation is liable ... to an administrative monetary penalty of up to \$15,000”.
- 52 The CRTC’s decisions provide insufficient information to know how it selects the number of violations that it will count, or the per-penalty fine. They generally do not list each of the factors that the Commission has said it would consider in setting penalties, and when factors are mentioned, do not state clear evidence about the factors’ application to the violator.
- 53 The result is that final penalties cannot be predicted, and their application seems arbitrary: the absence of a review of the evidence, the failure to consistently apply the factors developed for the *Unsolicited Telecommunications Rules* regime, unsolicited telecommunications rule factors clear exposition of reasons leaves the impression that the fines imposed are simply the maximum the CRTC thought it could extract.
- 54 Calls made during federal elections for the purposes of the election which breach the law should be subject to a predictable, transparent and fair process. Decisions should be based on published facts and clearly stated penalties – not on private contacts between CRTC staff and violators (see paragraph 61) or on negotiations conducted behind closed doors.<sup>37</sup>
- 55 The CRTC should therefore clearly describe
- 1 how it will calculate the number of violations
  - 2 (a) whether each breach is equal in gravity to the next, or
  - (b) if one breach is more serious than another, how the breaches compare to each other in terms of gravity (twice as serious, for instance), and

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<sup>37</sup> CRTC, *Report on the Operation of the National Do Not Call List for the period April 1, 2010 to March 31, 2011*, (Ottawa, September 30, 2011), <http://www.crtc.gc.ca/eng/dncl/rpt110930.htm>: During the reporting period, the CRTC negotiated five high-profile settlements with three major telecommunications service providers and one of the largest telemarketing companies in Canada. These settlements resulted in \$1.8 million being paid to the Receiver General for Canada and \$741,000 to educational institutions.

See also CRTC, *Report on Plans and Priorities, 2012-13*, <http://www.tbs-sct.gc.ca/rpp/2012-2013/inst/rtc-rtc-eng.pdf>, at 12:

To implement major telecommunications policies, the CRTC relies on market forces and negotiation among involved parties. Accordingly, the efficient and timely implementation of new policies and functioning of telecommunications markets in general depends on the good faith of affected parties.



3 the per-violation fine for first offences, for second offences and so on

56 Quasi-judicial determinations about democratic processes must be fair, and must be seen to be fair.

**D Complaints – from one to many**

57 Complaints matter, and tend to signal the existence of problems. Not every problem is a breach of the law, however, and not every breach warrants prosecution. One complaint might warrant a reminder letter to the party involved; hundreds of complaints might warrant a fine. The CRTC should therefore publish the range of administrative actions it will use, and the circumstances that will generally elicit their use.

58 Adopting a consistent approach to reporting the total number of complaints received about alleged breaches of the VCR rules will enable the CRTC to demonstrate a fair approach to their enforcement: a single complaint should not, in our view, trigger the same penalty as thousands of complaints.

59 The CRTC should publish the range of administrative actions it may use, and describe when these actions will be used. CRTC officials have previously told members of the House of Commons that the CRTC's

... methods for ensuring compliance with the rules—such as issuing citations and notices of violations, imposing administrative monetary penalties, and working with violators to correct improper practices—can be adjusted to suit new purposes.

...<sup>38</sup>

60 We support the Commission's use of a range of administrative actions. We do not believe the CRTC should issue AMPs for a first infraction, except in truly exceptional cases – when clear, incontrovertible evidence exists to show that the infraction raised widespread complaints and was intentional. Rather, the CRTC should develop and publish the graduated scale of actions it will take – ranging from warning letters, citations and notices. These actions should be published on the CRTC's website, to ensure transparent, consistent and fair decision-making.

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<sup>38</sup> CRTC, Chief Compliance and Enforcement Officer, CRTC, [translation into English], *Evidence*, House of Commons Committees, Sess. 41, 2 No. 024.

- 61 FRPC does not support the use of undocumented or informal communications between the CRTC and those who breach its rules. These types of contacts are already used by the Commission in its enforcement of the *Unsolicited Telecommunications Rules* and in our view are entirely inappropriate:

I am writing further to our meeting of September 5, 2012 to express our concerns regarding the policies and practices of the Conservative Party of Canada (CPC) with respect to its obligations regarding unsolicited telecommunications under the Telecommunications Act (the Act) and the Unsolicited Telecommunications Rules, which include the National Do Not Call List (NDNCL) Rules. ...<sup>39</sup>

- 62 While the CRTC has charged other political parties with breaching the *Unsolicited Telecommunications Rules*, letters about meetings with those parties are not posted on the CRTC's website. What leads the Commission to meet with some violators of its regulations, and not others?
- 63 We do not know, but in our view the use of private telephone calls and meetings is inconsistent with transparent, consistent and fair decision-making.

#### **E Education and information**

- 64 The CRTC has for many years issued bulletins to broadcasters about the Commission's policies for election broadcasts. See, for example, <http://www.crtc.gc.ca/eng/archive/2011/2011-218.htm>. This outreach approach ensures that new entrants in the sector are able to benefit from this advice to the same degree as experienced broadcasters.
- 65 The CRTC has clearly already considered outreach initiatives for the VCR. Its officials told Members of the House of Commons earlier this year that the CRTC
- ... would also need to ensure candidates and telephone service providers were aware of their new responsibilities, and provide timely information to the public.<sup>40</sup>

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<sup>39</sup> Chief Compliance and Enforcement Officer, CRTC, *Re: CRTC Investigation into Internal do not call list policies and practices of the Conservative Party of Canada – Compliance measures*, Letter to Executive Director, Conservative Party of Canada (Ottawa, 6 September 2012), <http://www.crtc.gc.ca/eng/archive/2012/lt120906.htm>.

<sup>40</sup> CRTC, Chief Compliance and Enforcement Officer, CRTC, [translation into English], *Evidence*, House of Commons Committees, Sess. 41, 2 No. 024.

- 66 When each election is announced, therefore, the CRTC should issue and distribute information bulletins about the VCR requirements to every political party, and to the organizations of which it has become aware. This educational initiative will promote compliance, and reduce enforcement costs.
- 67 The CRTC should also consider establishing a page on which those interested in receiving such notifications could, in non-election periods, register to receive such bulletins. Enabling parties to self-register will promote understanding of the rules, and reduce enforcement costs.
- 68 Finally, when elections are announced the CRTC should send reminders to those who have already breached its VCR regulations that their next infraction is likely to result in a penalty with potentially more serious consequences. Taking this step could educate organizations whose staff changes over time, reduce the incidence of repeated non-compliance, and reduce the CRTC's costs of enforcement.

#### **IV Response to CRTC questions**

- 69 The Commission has asked for comments about the factors it should consider when determining the appropriate AMP for a breach of the new VCR requirements. It has said that CRTC has asked this:
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
    - o The nature of the violation
    - o The number and frequency of complaints and violations
    - o The relative disincentive of the measure
    - o The potential for future violations
    - o The person or group's previous history with respect to any previous violations

- o Ability to pay the AMP<sup>41</sup>

## A Q1: Complaints vs violations

**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?**

- 70 The number and frequency of complaints should be considered as a factor in the CRTC's choice of administrative enforcement action, and the calculation of a penalty.
- 71 In fact, FRPC suggests that if a violation attracts a *de minimus* number of complaints, no monetary penalties should be imposed whatsoever.
- 72 What would be a *de minimus* number of complaints? The CRTC has published too little information in its determinations about the *Unsolicited Telecommunications Rules* to enable us to provide an informed comment – but surely it is fair to say that a single complaint should not suffice to impose penalties in the thousands of dollars.

## B Q2: Relative disincentives

**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?**

- 73 The CRTC has not defined 'relative disincentive', but in any event appears to be suggesting that the regulations be enforced for punitive, rather than educational purposes. The CRTC's goal should be to use a range of administrative enforcement actions that will move violators to compliance. Fines are not the only useful penalty in administrative enforcement – naming and shaming may be equally effective to deter future non-compliance.

## C Q3: Ability to pay

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<sup>41</sup> *Administrative monetary penalties under the Voter Contact Registry: Call for comments*, Compliance and Enforcement Notice of Consultation CRTC 2014-598 (Ottawa, 17 November 2014), at para. 7 (CE NoC CRTC 2010-598) at ¶17.

**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?**

**74** *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,*<sup>42</sup> or CASL, not only sets a per-day maximum fine for violations of the legislation, but also requires courts to consider nine factors when they do set penalties:

51. (1) If, after hearing the application, the court is satisfied that one or more persons have contravened any of the provisions referred to in the application or engaged in conduct referred to in it that is reviewable under section 74.011 of the Competition Act, the court may order the person or persons, as the case may be, to pay the applicant

(a) compensation in an amount equal to the actual loss or damage suffered or expenses incurred by the applicant; and

(b) a maximum of

(i) in the case of a contravention of section 6, \$200 for each contravention of that provision, not exceeding \$1,000,000 for each day on which a contravention occurred,

(ii) in the case of a contravention of section 7 or 8, \$1,000,000 for each day on which a contravention occurred,

(iii) subject to subparagraphs (iv) and (v), in the case of a contravention of section 9, \$1,000,000 for each contravention of that provision,

(iv) in the case of a contravention of section 9 resulting from aiding, inducing or procuring, or causing to be procured, the doing of an act contrary to section 6, and if a contravention of section 6 has resulted, \$200 for each such contravention of section 6, not exceeding \$1,000,000 for each day on which a contravention of section 6 occurred,

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<sup>42</sup>

S.C. 2010, c. 23.

(v) in the case of a contravention of section 9 resulting from aiding, inducing or procuring, or causing to be procured, the doing of an act contrary to section 7 or 8, and if a contravention of either of those sections has resulted, \$1,000,000 for each day on which a contravention of section 7 or 8, as the case may be, occurred,

(vi) in the case of a 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, \$1,000,000 for each day on which a contravention occurred, and

(vii) in the case of conduct that is reviewable under section 74.011 of the Competition Act, \$200 for each occurrence of the conduct, not exceeding \$1,000,000 for each day on which the conduct occurred.

Marginal note: Purpose of order

(2) The purpose of an order under paragraph (1)(b) is to promote compliance with this Act, the Personal Information Protection and Electronic Documents Act or the Competition Act, as the case may be, and not to punish.

Marginal note: Factors to be considered

(3) The court must consider the following factors when it determines the amount payable under paragraph (1)(b) for each contravention or each occurrence of the reviewable conduct:

(a) the purpose of the order;

(b) the nature and scope of the contravention or reviewable conduct;

(c) the person's history, or each person's history, as the case may be, with respect to any previous contravention of this Act and 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 and with respect to any previous conduct that is reviewable under section 74.011 of the Competition Act;

(d) the person's history, or each person's history, as the case may be, 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 or persons obtained from the commission of the contravention or from engaging in the reviewable conduct;

(f) the person's or persons' ability to pay the total amount payable;

(g) whether the applicant has received compensation in connection with the contravention or the reviewable conduct;

(h) the factors established by the regulations; and

(i) any other relevant factor.

- 75 We note that *CASL* specifically states that the purpose of penalties imposed by the courts for violations of this legislation “is to promote compliance” with the law and its related statutes, and not to punish violators.
- 76 In our view, the CRTC should adopt the same approach for violations of the VCR regulations. Ability to pay should only have to be considered rarely – since AMPs should only be imposed in the most exceptional circumstances where the Commission has (for instance) received many complaints, or a violator has wilfully repeated the same infractions despite repeated and published warnings. The CRTC should also define ‘ability to pay’, and set out examples of how it will apply this term.
- 77 A decision to use non-financial penalties for the majority or most common breaches (failure to provide exact identification required, although identification of another type was provided), should be used for the first several election periods to enable the CRTC to determine whether these penalties have the desired deterrent effect. After that determination, the CRTC may choose to impose penalties on repeat violators, on a growing scale, with very low initial penalties. The CRTC should exercise its discretion even in very serious cases, if parties are (for instance) unable to pay total penalties of \$500 without financial distress – except in the case of wilful disregard for repeated prior warnings.
- 78 Even in the most egregious cases the temptation to maximize financial penalties should be avoided, since maximizing penalties indicates a propensity towards punishment, rather than education, deterrence and reform. It is noteworthy that the *Telecommunications Act* currently sets maximum penalties for certain violations –in the order of \$100,000 to \$500,000 for corporations’ first offences (sections 73(2), and 73(1)(b)). Short of deliberate fraud, what type of non-compliance with the VCR would ever attract penalties of this magnitude? If fraud were being committed, moreover, the appropriate approach would be prosecution under Canada’s election laws.

79 As for the questions related to objectivity and consistency, FRPC respectfully notes that the best way to achieve each of these goals is complete transparency. All contacts between the CRTC and/or its staff and alleged violators should be in writing, and the Commission's determinations should set out complete reasons and the facts relevant to those reasons. Parties' submissions should also be made available, through a link in the determination.

**D Q4: Impact of compliance**

**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?**

80 Parties' efforts to be compliant should be the major consideration in all cases, not just cases in which the CRTC purports to assess "the potential for future violations".

81 The CRTC should consider the efforts that parties make before being contacted about possible violations, as well as the changes they make after being contacted. These efforts should be given significant credit when AMPs are set (lower penalties for those who have made efforts, before or after CRTC contact).

82 The proposal to reduce penalties because of self-reporting appears attractive – but is likely to work only if parties can be sure that the CRTC will not use self-reported information against them in future proceedings, in any way. Self-reporting should be public, and the CRTC should establish an easy-to-use, and easy-to-find, website and toll-free telephone number, for this purpose. This information should be provided in all outreach initiatives. Parties that repeatedly self-report the same or very similar breaches should, upon the third occasion, be warned that additional instances of non-compliance will be sanctioned.

83 Parties that agree to make changes to ensure compliance should not be sanctioned for their first violation. Parties that agreed to undertake changes but re-offend should face additional sanctions, except that in the case AMPs, they should be provided with an opportunity to clarify their commitment to implement the new measures by sending in notarized reports on their progress in implementing the new measures.

84 Repeated non-compliance can be addressed through a published continuum of sanctions based on the number of prior offences, and their gravity.



## **V Conclusions and recommendations: fair and effective enforcement serves the public interest**

85 The Forum has appreciated this opportunity to respond to the Commission's questions about its approach to enforcing the VCR framework.

### **A Conclusions: fondly bidding farewell to Kafka**

86 Applying the CRTC's current approach to enforcing unsolicited telecommunications requirements, to a voter contact registry, will not serve the public interest as that approach is not transparent. Contacts between the Commission, its staff and violators are sometimes undocumented, citations and negotiated settlements are not published, and determinations generally lack reasons. That system is Kafkaesque, not quasi-judicial.

87 Even if the CRTC's current approach to implementing the *Unsolicited Telecommunications Rules* were transparent, it should not be used for the VCR regime, because determinations issued about unsolicited telecommunications breaches appear far more focussed on punishment than education.

### **B Recommendations: only transparency will serve the public interest**

#### **1 Complete and transparent reporting**

88 When the CRTC issues determinations about violations of the VCCS, it should state all relevant facts in the determination. Relevant facts must include the number of times a breach happened, the penalties assessed in total and per breach and the number of times the violator was advised about these potential breaches. The CRTC should include facts about the violator's attempts to enter into compliance.

89 Each determination of the CRTC's staff and Commission members should be signed, in the interests of transparency. Determinations should be signed by staff and Commissioners (at the level of CRTC decisions) because the public is entitled to know who is exercising discretion on their behalf, and whether this discretion is being exercised properly:

... there is discretion in the officer's judgment with regard to what constitutes a significant violation, for instance. But the factors are listed

in the decision without removing the flexibility and the judgment of the officer, given the circumstances of the case.<sup>43</sup>

90 Dissents should also be signed.

91 If the CRTC sets out specific factors for evaluating penalties levied about violations of the VCCS requirements, it should set out each of these factors in its determinations and the evidence it has accepted about the factors whether or not it relies on those factors. Publishing this information will enable the public to understand how the facts of each case are considered.

## **2 *Frequently updated, frequently asked questions***

92 The CRTC should maintain a webpage on which it presents the questions it is receiving about the VCCS, and its answers to those questions.

93 The CRTC should also prepare a consolidated information bulletin, for the different industry groups – i.e., survey research companies – that explain not just the VCR regime, but also other rules, such as the *Unsolicited Telecommunications Rules*. Circulating a complete document will enable those affected to be educated, and may reduce overall CRTC enforcement costs over time.

## **3 *Retain documentation online***

94 CRTC determinations issued regarding the *Unsolicited Telecommunications Rules* appear to be removed when these are reviewed or reconsidered by the CRTC.

95 All determinations made by the CRTC or its staff about the VCCS should be retained on the CRTC's website.

## **4 *Review in 2016***

96 The CRTC should prepare to review its approach to the VCR immediately after the next election, and to that end, develop a framework for collecting data that will be relevant to that review.

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<sup>43</sup> Standing Committee on Procedure and House Affairs, House of Commons, *Evidence*, 40th Parl., 2d sess., No. 024 (1 April 2014).



**The CRTC's use of Administrative Monetary Penalties:  
2008 - 2014**

*A report by the Forum for Research and Policy in Communications (FRPC)*

**16 December 2014**

**Ottawa, Ontario**

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This report describes, and provides statistics, about the CRTC's use of administrative monetary penalties (AMPs) in relation to breaches of the *Telecommunications Act's* do-not-call regime, and the CRTC's *Unsolicited Telecommunications Rules*, from 2008 to 2014.

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan public-interest organization, that engages in research and policy analysis about communications, including broadcasting and telecommunications.

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## Executive Summary

- ES 1 Since 2005 Parliament has given the CRTC the authority to issue fines, or administrative monetary penalties (AMPs) for telemarketing and other unsolicited telephone calls, for spam and for unregistered calls made to voters during elections. In February 2014 the federal government announced plans to expand the CRTC's power to issue AMPs for other breaches of its telecommunications requirements.
- ES 2 Except for the CRTC's discussions about their use in the five annual reports on telemarketing which it has published since 2009, the CRTC's procedures and practices with respect to AMPs have received little attention.
- ES 3 This report summarizes the legislation that enables the CRTC to levy fines for unsolicited telecommunications. It describes the CRTC's procedures and practices for AMPs and provides statistics about AMPs using information published by the CRTC. The report provides recommendations based on current federal government guidelines for regulation.
- ES 4 The report is timely because the federal government has announced its intention to expand the CRTC's use of AMPs to other breaches of the *Telecommunications Act*.

## Legislative and regulatory framework

- ES 5 Parliament gave the CRTC the power to issue AMPs in 2005, for breaches of the CRTC's requirements for unsolicited telecommunications.
- ES 6 The CRTC established *Unsolicited Telecommunications Rules* in 2007. The *Rules* consist of seven separate regulations. They overlap each other to some degree, and do not always reflect the content suggested by their titles. ('Record keeping', for instance, does not set requirements for specific types of records to be kept.) The Commission amended the *Rules* in 2014, to permit email addresses to be included for contact purposes, and to require automated calls to state their purpose.
- ES 7 While Parliament made seven types of calls or organizations exempt from the CRTC's regulation of unsolicited telecommunications, they remain subject to the rules for interactive voice technology (IVR) or automated calls.
- ES 8 The CRTC can levy a fine for each individual breach, or violation, of the CRTC's regulations. A single call can breach more than one set of the *Rules*, and more than one section within a single set of the *Rules*. The fine for a single violation is up to \$1,500 for an individual, and up to \$15,000 for a corporation. A breach that continues to a second day, is a second violation.
- ES 9 The CRTC began to report on its administration of the unsolicited telecommunications regime in 2010. The indicators used in the reports change from

time to time without warning, making it difficult to evaluate or identify historical trends.

### **CRTC's procedures for AMPs**

- ES 10** The CRTC established a regulatory framework after it issued proposals for and sought public comment on the elements of this framework.
- ES 11** The current process for evaluating breaches of the *Rules* is this:
- CRTC receives complaints
  - CRTC staff decides whether to investigate
  - CRTC staff gathers information from violator and others
  - CRTC staff ends matter, issues warning letter, citation, notice of violation or negotiate a settlement
  - If AMPs are paid, or violator does not challenge result, matter ends; otherwise, CRTC Commissioners review and confirm or vary staff determination
  - Violators may appeal CRTC's final decision to the Federal Court of Appeal

### **Enforcement actions**

- ES 12** The CRTC does not publish results from its on-site inspections of telemarketers, its requests for information from alleged violators, its warning letters, its compliance letters, its citations, alternative case resolutions, or the settlements it negotiates with those who agree to pay a fine.
- ES 13** Notices of violations are published by the Commission unless they are in turn appealed, when they become unavailable to the public.
- ES 14** The CRTC's annual reports state that it engaged in 636 enforcement actions between 2009 and 2014, and do not refer to its use of alternative case resolutions in 2010 and 2011. The information cannot be verified from the source documents available from the CRTC's website. The website includes references to 337 enforcement actions.
- ES 15** The CRTC's enforcement operations cost between \$3 and \$7 million per year, and engage 53 of the CRTC's 434 full-time (or equivalent) staff. Costs are now recovered from the DNCL registration fees paid by telemarketers.
- ES 16** The CRTC issued \$5.5 million worth of AMPs from 2009 to 2014 in final determinations (i.e., staff determinations that were not challenged, or CRTC decisions about staff determinations that were challenged). More than half (57, or 62%) of the violators received AMPs of under \$15,000; 18 violators (20%) received AMPs of \$51,000 or more.



**ES 17** The CRTC has said that it uses four factors to decide on the AMPs to be paid: seriousness and intentionality of the breach; number and frequency of complaints and violations; the potential for future violations, and the relative disincentive of the AMP.

**ES 18** Too little information is published in the final determinations about AMPs to evaluate AMPs' link to the CRTC's four factors. Only three determinations listed the total number of calls breaching the *Rules*, and only one listed the total complaints received about the violator. The CRTC has not ranked the more than fifty sections of the *Rules* in terms of the seriousness of their breach. While AMPs imposed on re-offenders, are higher than those imposed on first-time offenders, only twenty final determinations imposing AMPs mention the violators' size, and of these only eight mention scale (sole proprietor, small company and medium-sized company).

### Conclusions

**ES 19** The 2012 *Cabinet Directive on Regulatory Management* says that consistency, fairness and transparency characterize robust and effective regulatory systems.

**ES 20** The CRTC's process for enforcing Parliament's regime for unsolicited telecommunications lacks transparency. Many determinations are never made available for public review, and staff determinations that are challenged become unavailable on the CRTC's website. The CRTC's web pages about unsolicited telecommunications are difficult to locate. Determinations lack information about the factors purportedly considered by the CRTC in setting AMPs.

**ES 21** The absence of a clear link between the factors that the CRTC says it uses to impose AMPs, and the AMPs themselves, raises concerns about arbitrary decision-making.

### Recommendations

**ES 22** The CRTC should

1. clarify the *Unsolicited Telecommunications Rules*, to remove overlap, to ensure that their content reflects their titles, and to ensure that the exemptions granted by Parliament are fully reflected in the *Rules*; and it should publish more information bulletins to explain how its *Rules* work
2. make all enforcement determinations available for public review, and report on its enforcement activities using consistent criteria from one year to the next
3. ensure that all determinations about violations of the *Unsolicited Telecommunications Rules* include a clear description of the factors considered when deciding on an enforcement action.

**ES 23** Parliament should

1. clarify how the CRTC should regulate organizations exempted from the unsolicited telecommunications regime
2. clarify whether there is any maximum threshold for AMPs
3. require the CRTC to provide reasons in its determinations to enable violators and the public to understand the outcomes.

## I Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian broadcasting system that serves the public interests.
- 2 In early 2014 Parliament passed new legislation requiring the CRTC to establish a Voter Contact Registry to monitor the use of the telecommunications systems by political parties and other organizations to contact voters during federal election periods. When the relevant sections of the *Fair Elections Act* come into force in 2015 they will require parties that make or commission telephone calls to voters in Canada to register with the CRTC. The CRTC will have the power to impose administrative monetary penalties (AMPs) for the breach of regulations related to this registration process.
- 3 No independent research about the CRTC's use of its current powers to issue fines, in the context of unsolicited telecommunications, has been published. This report provides describes and provides statistics about the CRTC's current process for administering AMPs in the context of the telemarketing regime created in 2005 to protect Canadians from unsolicited telecommunications.
- 4 This report uses information and data collected from the CRTC website to describe the CRTC's approach to levying penalties for breaches of its regulations for unsolicited telecommunications. After briefly describing the CRTC and its authority to levy AMPs, the report reviews the legislative and regulatory framework for AMPs in unsolicited telecommunications. It then describes the CRTC's use of AMPs in telemarketing. The report's conclusions and recommendations follow.

## A The CRTC

- 5 The CRTC is a federal agency that is responsible for implementing Canada's broadcasting and telecommunications policies. Established in 1968 to regulate broadcasting, the CRTC's duties were expanded in 1976 to include telecommunications.
- 6 The CRTC's structure, mandate and authority are currently set out by Parliament in different statutes: the 1976 *Canadian Radio-television and Telecommunications Act*, the 1991 *Broadcasting Act*, the 1993 *Telecommunications Act*, the *Bell Canada Act* and Canada's anti-spam legislation.<sup>1</sup> These statutes have been amended from time to time.
- 7 The CRTC itself consists of up to thirteen full-time members.<sup>2</sup> Six CRTC positions are vacant.

**Table 1: Current members of the CRTC**

Jean-Pierre Blais, Chair	Alberta/NWT – Vacant
Anasthasios (Tom) Pentefountas, Vice-Chair, Broadcasting	Atlantic/Nunavut – Vacant
Peter Menzies, Vice-Chair, Telecommunications	Vacant
Stephen Simpson, BC/Yukon	Vacant
Candice Molnar, Manitoba/Saskatchewan	Vacant
Raj Shoan, Ontario	
Yves Dupras, Quebec	

8 The officers and staff needed to conduct the Commission’s business are appointed under the *Public Service Employment Act*.<sup>3</sup> In 2013-14 the CRTC had 434 full-time or equivalent staff,<sup>4</sup> 53 of whom (12%) enforced the unsolicited commercial communications rules.<sup>5</sup> Approximately \$7.3 million (12.6%) of the CRTC’s \$58 million expenditures in 2014-15 were allocated to unsolicited telecommunications enforcement.<sup>6</sup>

**B Administrative monetary penalties (AMPs)**

9 In 2005 Parliament gave the CRTC the authority, for the first time, to levy fines for breaches of the CRTC’s rules for unsolicited telecommunications. Until then the main penalty for failing to comply with CRTC requirements was prosecution through the courts.

10 Since 2005 the CRTC has been able to charge individual violators of its unsolicited telecommunications rules up to \$1,500, and corporate violators up to \$15,000, for each breach of the rules.<sup>7</sup> Parliament has also authorized the CRTC to issue AMPs for breaches of its requirements for commercial electronic messages (i.e., spam),<sup>8</sup> and for a soon-to-be-created Voter Contact Registry.<sup>9</sup> In February 2014 the Federal government proposed to expand the CRTC’s authority to issue AMPs for violations of other telecommunications requirements.<sup>10</sup> On December 17, 2014, the CRTC’s Chair noted that the legislation necessary to do this had received Royal Assent.<sup>11</sup>

**II Canada’s law on unsolicited telecommunications**

11 Almost forty years ago advances in telephone technology began to lower the costs of telephoning people to sell goods and services, leading to the growth of a new sales practice known as telemarketing.

12 The CRTC began to receive complaints about telemarketing in the early 1980s, and in 1985 took the first of many steps to restrict the use of Canada’s telecommunications system by telemarketers (Appendix 1 offers a chronology of CRTC dealings with telemarketing).

13 Despite the CRTC’s early efforts, the public’s annoyance with telemarketing telephone calls continued to grow. Complaints about automated dialing-and-announcing devices (ADADs) made up just under 3% of all telecommunications complaints in 1987, but made up 25% of all complaints to the Commission in 1992.<sup>12</sup> When Parliament re-enacted Canada’s telecommunications legislation in 1993, it enabled the CRTC to regulate or prohibit any person’s use of the telephone system to make unsolicited telecommunications, “to prevent undue inconvenience or nuisance”, and “giving due regard to freedom of expression”.<sup>13</sup> In 1994 the CRTC prohibited the use of ADADs to promote or sell goods or services,<sup>14</sup> but relied on individual telephone companies to establish their own policies to control telemarketing.

14 By 2001 the CRTC concluded that inconsistent application of its rules for telemarketing had caused consumer confusion, and made it difficult for telephone companies and the CRTC to resolve complaints from consumers.<sup>15</sup>

**A Legislation to permit AMPs to be levied**

15 Complaints about telemarketing grew after 2001. In 2004 the CRTC concluded that it would be more effective to operate a single national Do Not Call List (nDNCL), than to require each telemarketer to establish its own internal Do Not Call List.<sup>16</sup> The CRTC also said that it would be unable to enforce a telemarketing regime unless it had the legislative authority to issue monetary penalties in a flexible and timely manner.<sup>17</sup>

16 Parliament therefore amended the *Telecommunications Act* in 2005 to create a legislative framework for an nDNCL, and to give the CRTC the authority to fine calls that violate rules made for this list.<sup>18</sup> Parliament’s new telemarketing provisions came into effect on 30 June 2006.<sup>19</sup>

**B Authority to create a National Do Not Call List**

17 The 2005 amendments added to the CRTC’s existing authority under section 41 of the *Telecommunications Act*, to regulate or forbid any person’s use of Canadian telecommunications facilities to provide unsolicited telecommunications.<sup>20</sup> The amendments begin by announcing the creation of a legislative framework for a national Do Not Call List.<sup>21</sup>

18 The next amendment gives the CRTC the authority to regulate unsolicited telecommunications by

- administering “databases or information, administrative or operational systems”<sup>22</sup>
- determining “any matter” and making “any order, with respect to the databases or the information, administrative or operational systems”,<sup>23</sup> and

- conducting “investigations to determine whether there has been a contravention of any order made” under section 41.<sup>24</sup>

19 The amendments then allowed the CRTC to authorize “persons, or classes of persons” to issue notices of violation.<sup>25</sup> Those authorized to issue notices of violation may set out the penalty for each contravention of a CRTC prohibition or requirement regarding unsolicited telecommunications.<sup>26</sup>

### C Unsolicited telecommunications - exemptions

20 The 2005 amendments also created seven exemptions from CRTC prohibitions or requirements for unsolicited telecommunications (see Table 2). Exempted calls are not subject to

[a]n order made by the Commission that imposes a prohibition or requirement under section 41 that relates to information contained in any database or any information, administrative or operational system administered under section 41.2 for the purpose of a national Do Not Call List ....<sup>27</sup>

**Table 2: Exceptions to the DNCL regime**

<p>CRTC requirements or prohibitions do not apply to telecommunications</p> <ol style="list-style-type: none"> <li>1. Made by or on behalf of registered charities</li> <li>2. Made to a person with whom a business has an existing business relationship and who has not asked not to be called</li> <li>3. Made by or on behalf of political parties</li> <li>4. Made by or on behalf of nomination/leadership contestants, political party candidates, or contestant/candidate official campaigns</li> <li>5. Made by or on behalf of an association of a political party for an electoral district</li> <li>6. Made for the sole purpose of collecting information for a survey of members of the public</li> <li>7. Made for the sole purpose of soliciting a subscription for a newspaper of general circulation</li> </ol> <p><i>Telecommunications Act, s. 41.7(1)</i></p>
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21 Almost all of those exempted from the DNCL requirements must still identify themselves, state the purpose of their calls when they make telecommunications<sup>28</sup> and keep their own, internal Do Not Call Lists.<sup>29</sup> The exception set out in the *Telecommunications Act* is a call made for the sole purpose of surveying members of the public: such callers do not have to identify themselves, and need not state their calls’ purpose or keep international DNCLs.<sup>30</sup>

The CRTC’s *Unsolicited Telecommunications Rules* for automated dialling systems apply to all calls, however, including those made by survey companies (see Part III A, below). The CRTC has imposed penalties of \$394,500 on seven companies or political parties for conducting IVR or ADAD surveys that not provide contact information in a CRTC-approved format:

Date	Party	# of Complaints and/or telecommunications	AMP
25 Sept 2013	Union Calling	Unknown	\$65,000
13 July 2013	Paul Dewar Leadership Campaign		\$7,000
29 May 2013	Progressive Conservative Party of Canada		\$85,000
24 May 2013	Progressive Conservative Party of Ontario		\$85,000
24 May 2013	Wildrose Alliance Political Association		\$90,000
21 May 2013	Marc Garneau Leadership Campaign		\$2,500
18 May 2013	Racknine Inc.		\$60,000
Total AMPs for not using CRTC contact information formula:			\$394,500

**D Administrative monetary penalties**

22 When AMPs were first being considered they were set at a flat rate of \$1,500 for individuals and \$15,000 for corporations, for each offence. The Assistant Deputy Minister of Information Technologies and Telecommunications explained to the House of Commons Industry Committee in April 2005 that the CRTC needed “effective fining powers”.<sup>31</sup> While providing no evidence about the number of calls that telemarketing campaigns typically involve, or the number of offences that telemarketers might commit on average, he commented that a fine of \$15,000 per call, per offence, every day is “harsh, but not too harsh.”<sup>32</sup>

23 After discussion by the House, the proposed legislation was studied by the Senate. In November 2005 the CRTC’s Vice-Chairperson told the Senate Transport Committee that the CRTC’s attention would be attracted by complaints, and a “pattern of abuse that would indicate to us that a commercial telemarketing firm was involved in systematically avoiding using the database and therefore calling people on the do-not-call list.”<sup>33</sup> The CRTC’s General Counsel, Telecommunications, also said that “every contravention ... in the case of a corporation, is subject to an administrative monetary penalty of \$15,000.”

24 The Standing Senate Committee on Transport and Communications decided to change the proposed legislation to permit fines of up to \$1,500 and \$15,000, respectively, for individuals and corporations. A member of the Committee suggested this had been intended from the beginning:<sup>34</sup>

Senator Tkachuk: When we go to clause by clause, they are right at the beginning; clause 1 and 2 are the amendments. One is on the \$15,000 penalty. If you will remember, we were not clear and it was not made clear, but when you look at the bill it is clear that it is per call. It was not the intent of the drafters or the government to do that, but that is what they did.

We have an amendment here to change it to an administrative monetary penalty of up to \$1,500 in the case of an individual and up to \$15,000 in the case of a

corporation. We drew this up last night and we have the French version as well. We have copies for everyone.<sup>35</sup>

- 25 The proposed legislation, as amended by the Senate, returned to the House of Commons two weeks later.
- 26 Comments from Members of the House leave the impression that they thought they were setting maximums for the total penalties to be levied, rather than for the total to be levied per violation. The Member for Rivière-Du-Loup—Montmagny thought the Senate’s amendment weakened the legislation, by allowing fines lower than the maximum penalties of \$1,500 for individuals and \$15,000 for corporations:

In my opinion, the second amendment weakens the bill somewhat, even though this will not make us vote against it. We had established the need to prohibit unsolicited calls and to impose a penalty on those who did not comply with these provisions. We had set the amount of the fine at \$1,500 for individuals and \$15,000 for corporations. I think that a \$1,500 fine is a significant amount. Therefore, imposing a stiff enough penalty would dissuade people from breaking the law.

The Senate thought that these penalties may have been too stiff. **Now it proposes maximum amounts of \$1,500 for individuals and \$15,000 for corporations**, which could lead to some debate.<sup>36</sup>

- 27 The Member for Bourassa thought not only that the legislation set maximum penalties, but also that that the CRTC would take the financial position of individuals or corporations into account:

Whenever a fine is imposed, if the basis for imposing that fine is challenged, the amount of the fine could be challenged as well, which could create some problems.

At the same time, **the size of the corporations or the financial situation of the individuals involved will be taken into account.**

In this sense, I think it is worth giving this a try, especially since a review of the act will take place after three years. We will then be able to determine if these and other provisions are appropriate.

You will not be surprised to learn today that, unless I am mistaken, all the political parties were in favour of these two amendments. They are two simple amendments regarding protection that will impose harsher penalties on certain people who might abuse the public. Some might say it is more flexible in terms of dollar amounts, but **we now have a maximum fine. In that vein, it is important to mention that the fines for offending companies can be between \$5,000 and \$15,000.**<sup>37</sup>



- 28 Similarly, the Member for Ottawa South described the Senate’s amendment as capping AMPs:

With respect to **the amendment of the Senate that effectively caps to a total of \$1,500, for example, for individual offences**, far be it from the House to question the wisdom of the Senate with respect to that amendment.<sup>38</sup>

- 29 The changes proposed by the Senate were adopted by the House, and the *Telecommunications Act* now defines any contravention of a CRTC DNCL requirement or prohibition as a violation. Individuals who commit a violation are liable to an AMP of up to \$1,500, while corporations that commit a violation are liable to an AMP of up to \$15,000.<sup>39</sup> A contravention that happens over more than one day is a separate violation.

**Commission of violation**

**72.01** Every contravention of a prohibition or requirement of the Commission under section 41 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.

...

**Marginal note: Continuing violation**

**72.03** A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

- 30 It is an offence under the *Telecommunications Act* to contravene certain requirements, including the conditions under which Canadian carriers may offer service, as well as provisions for just and reasonable rates.<sup>40</sup> If convicted, a corporation could face fines ranging from \$50,000 to \$500,000 for a first offence.<sup>41</sup>

**E CRTC’s development of regulations for unsolicited telecommunications**

- 31 The CRTC developed and invited public comment on new regulations for unsolicited telecommunications in early 2006, four months before Parliament’s amendments came into force.<sup>42</sup>

- 32 It issued the *Unsolicited Telecommunications Rules* in 2007,<sup>43</sup> and amended them in 2014<sup>44</sup> following a 2011 application from the Canadian Marketing Association.<sup>45</sup> The CRTC added a requirement that ADAD calls state their purpose, and permitted ADAD call contact information to include e-mail addresses.

**III CRTC regulation of unsolicited telecommunications**

- 33 When it created a new framework to regulate telemarketing, Parliament established reporting requirements. The CRTC must report to Parliament on its operation of the national Do Not Call List<sup>46</sup> every year, setting out

- any costs or expenditures related to the DNCL,
- the number of Canadians using the list,
- the number of telemarketers accessing the list,
- any inconsistencies in the CRTC prohibitions or requirements that are applicable to the operation of the list, and
- an analysis of the effectiveness of the list.<sup>47</sup>

34 The CRTC has issued five reports since 2010 (Table 3).

**Table 3: CRTC reports on the national do-not-call list**

Reports issued since inception of the DNCL program		Website location (as of 5 December 2014)
1st	Report on the Operation of the National Do Not Call List for the period of April 1, 2009 to March 31, 2010	<a href="http://www.crtc.gc.ca/eng/DNCL/rpt100930.htm">http://www.crtc.gc.ca/eng/DNCL/rpt100930.htm</a>
2nd	Report on the Operation of the National Do Not Call List for the period April 1, 2010 to March 31, 2011	<a href="http://www.crtc.gc.ca/eng/dncl/rpt110930.htm">http://www.crtc.gc.ca/eng/dncl/rpt110930.htm</a>
3rd	Report on the Operation of the National Do Not Call List for the period April 1, 2011 to March 31, 2012	<a href="http://www.crtc.gc.ca/eng/DNCL/rpt120930.htm">http://www.crtc.gc.ca/eng/DNCL/rpt120930.htm</a>
4th	Report on the Operation of the National Do Not Call List for the period April 1, 2012 to March 31, 2013	<a href="http://www.crtc.gc.ca/eng/DNCL/rpt130930.htm">http://www.crtc.gc.ca/eng/DNCL/rpt130930.htm</a>
5th	Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31, 2014	<a href="http://www.crtc.gc.ca/eng/dncl/rpt140930.htm">http://www.crtc.gc.ca/eng/dncl/rpt140930.htm</a>

**A Regulations for unsolicited telecommunications**

35 The CRTC's *Unsolicited Telecommunications Rules (Rules)* now have seven parts:

- Part I Definitions
- Part II National Do Not Call List
- Part III Telemarketing rules
- Part IV Automatic dialing-announcing device (ADAD) rules
- Part V Express consent
- Part VI Record keeping
- Part VII Liability.

36 Each of the seven sets of rules applies to different types of callers or different types of telephone technology. To avoid being fined, parties subject to AMPs must comply with the relevant Part of the *Unsolicited Telecommunications Rules*: for example, a telemarketer using interactive voice technology (IVR) – described by the CRTC's

*Rules* as ‘automated dialing-announcing devices’ (ADADs) – must comply with Parts II, III, IV, V and VI. An IVR survey must meet the Part IV rules, while a survey undertaken with live agents need not meet any of the *Rules* if its sole purpose is to collect survey information.

- 37 The CRTCC’s regulations state that the exemptions granted by Parliament in 2005 do not apply in Parts III, IV and VII:

**Table 4: Unsolicited Telecommunications Rules – subjects, targets and technology**

Part	General subject	Target of the Rule	Telephone technology
Part I	Terms used in the <i>Rules</i>	Anyone subject to the <i>Rules</i>	Live / automated / fax
Part II	Using the DNCL	Telemarketers	Live / automated / fax
Part III	Telemarketing	Anyone, “whether or not the telemarketing telecommunications is exempt” from the Part II rules, and for live, automated calls and faxes	Live / automated / fax
Part IV	Using automated calling systems	Anyone, “whether or not the telemarketing telecommunications is exempt” from the Part II rules	Automated
Part V	Proving express consent	Telemarketers	Live / automated / fax
Part VI	Location of records	Telemarketers	Live / automated / fax
Part VII	Proving due diligence	Anyone subject to the <i>Rules</i>	Live / automated / fax

- 38 The *Rules* overlap. For instance, express consent requirements are set out in the rules for express consent (Part V), and also in Parts II, IV and VII of the *Rules* (Table 5).

**Table 5: Overlap within the Unsolicited Telecommunications Rules**

Content	Part II: National DNCL Rules	Part III: Telemarketing Rules	Part IV: ADAD rules	Part V: Express consent	Part VII: Liability
Exemptions	2, 3, 3.1	1, 4,6	1, 2 (removes exemption), 4(i)		
Requirement to register on DNCL	6, 7	2, 3			
Calling curfews		23, 24	4(b),(c)		
Information to be provided		16, 17, 18, 19, 20	4(d),(e)		
Express consent	4, 5		2, 3	1	1(b)(v)
Records	8	5, 8, 30		1(a)	1(a)(v), (b)
Dialing prohibitions (in sequence, randomly, to emergency lines)		26, 27, 28	4(a),(f),(g)		

- 39 The titles of the *Rules* do not necessarily reflect their content. For instance, the records to be kept by those subject to the *Rules* are not listed in Part VI (Records) – but in Part II (section 8) and Part III (section 5), and only for telemarketers. No record-content requirements are set out for non-telemarketers who are still subject to the Part IV ADAD *Rules*.<sup>48</sup> Meanwhile Part VII (*Liability*) addresses the evidence that a violator could use to show its due diligence, but also includes examples of the records that would have to be retained for that purpose.
- 40 The CRTC has issued three information bulletins to explain how the *Rules* apply to investment dealers and advisors<sup>49</sup> and the real estate industry.<sup>50</sup> It plans to issue an information bulleting about political parties’ use of IVR or ADAD technology, in 2014-15.<sup>51</sup>
- 41 The CRTC has not explained why organizations such as survey research companies – exempted by Parliament from the DNCL regime and from the requirement to state the purpose of their calls – are nevertheless subject to the ADAD rules, including the requirement to state the purpose of their calls. The following organizations have all been sanctioned by the CRTC for breaching one or more sections of the *Rules*:

Type of organization	Organization	Year	Type of enforcement action
Newspapers?	Sun Media Corporation	2010	Citation
Survey research	Union Calling	2013	Notice of Violation & settlement
Political party	Wildrose Alliance Political Party	2013	Notice of Violation
	New Democratic Party of Canada	2013	Notice of Violation
	Marc Garneau Leadership Campaign	2013	Notice of Violation
	Paul Dewar Leadership Campaign	2013	Notice of Violation
	Conservative Party of Canada	2013	Notice of Violation
	Progressive Conservative Party of Ontario	2013	Notice of Violation

**B Enforcement process**

- 42 The *Telecommunications Act* gives the CRTC several specific powers for enforcement purposes. It is empowered to
- Appoint any person to inquire into and report to the CRTC on any matter pending or before the Commission<sup>52</sup>
  - Designate inspectors to verify compliance with the Act<sup>53</sup> who may (with the occupant’s consent or with a warrant<sup>54</sup>) enter and inspect any place to examine documents, make copies of the documents<sup>55</sup> or use its data-processing equipment<sup>56</sup>
  - Conduct investigations to determine whether orders prohibiting or regulating the use of telecommunications systems to make un solicited telecommunications are being contravened<sup>57</sup>
  - Designate persons to issue notices of violation<sup>58</sup>

- Establish a short-form description of violations to be used in Notices of Violation<sup>59</sup>
- Decide whether a prosecution under the Act may proceed<sup>60</sup>
- Delegate responsibilities for administering databases or information, administrative or operational systems established to regulate unsolicited telecommunications,<sup>61</sup> allow the delegate to set rates for exercising those delegated powers<sup>62</sup> and regulate those rates,<sup>63</sup> and
- Set fees for those who use the databases or information, administrative or operational systems established to regulate unsolicited telecommunications, to recover the CRTC's costs for its responsibilities in administering those systems<sup>64</sup>

43 Based on the CRTC's annual reports,<sup>65</sup> its website and CRTC decisions, the CRTC's enforcement process for unsolicited telecommunications is as follows:

1. The National DNCL operator – Bell Canada – forwards complaints it receives regarding the DNCL to the CRTC; the CRTC also receives complaints from members of the public alleging a breach of the *Unsolicited Telecommunications Rules*.
2. The CRTC's staff decides whether a complaint should be investigated.
3. If an investigation is required, the CRTC's staff collects information from the complainant, the alleged violator, and/or third parties such as telecommunications service providers. In 2013/14 the staff began 146 investigations, and completed 101.<sup>66</sup>
4. The CRTC also makes on-site inspections based on trends in the complaints it receives. The CRTC's staff undertook its first on-site inspections in 2012/13, when they visited sixteen telemarketing companies in Toronto, Montreal and Edmonton.<sup>67</sup>
5. After the CRTC's staff requests and receives information from an alleged violator, it ends the matter, issues a warning letter, citation or Notice of Violation, or negotiates a settlement. The CRTC has also issued alternative case resolutions, as well as compliance letters that include allegations of violations and that require corrective steps by the alleged violators.
6. If a required AMP is paid, or a settlement is reached, the matter ends.
7. If the AMP is not paid, or the violator makes representations, a panel of CRTC Commissioners considers the matter.
8. Where AMPs are not paid, the panel confirms the staff's Notices of Violation in a decision issued by the Commission.

9. Where representations are made, the panel reviews the representations and decides, on a balance of probabilities, whether the violation was committed, and whether to impose the AMP proposed by staff.<sup>68</sup> The panel then issues a decision confirming or varying the staff's Notice of Violation and the CRTC pursues payment.<sup>69</sup>(Violators have been permitted to pay AMPs in monthly instalments.<sup>70</sup>
  10. If the violator asks the CRTC to review and vary its decision, the CRTC issues a decision that confirms or varies its first decision.
  11. A violator may appeal the CRTC decision about the review-and-vary application to the Federal Court of Appeal (but no appeals have been made to date).
- 44 The CRTC's 2013-14 report also explained that it is employing unused telephone numbers to identify abusive callers. The CRTC collects information about the calls received by these numbers, nicknamed 'honeypots' by the CRTC.<sup>71</sup>
- 45 Estimates of the number of Canadians who reported receiving fewer telemarketing calls in 2013-2014 were unavailable, because the external source who collects this information independently did not conduct the survey in 2013-2014.<sup>72</sup>
- C Enforcement actions**
- 46 AMPs are one of the tools used by the CRTC to enforce the *Unsolicited Telecommunications Rules*. In 2007 it said that the *Telecommunications Act* gave the CRTC the flexibility to decide whether AMPs should be used at all.<sup>73</sup>
- 47 Other administrative actions range from visits to telemarketers about which the CRTC is receiving complaints, to formal decisions from the CRTC Commissioners affirming or varying previous decisions of the Commission or its staff (see Table 6). CRTC the flexibility to decide whether AMPs should be used at all.<sup>74</sup>

**Table 6: CRTC enforcement actions regarding unsolicited telecommunications**

Action	Description	Examples	Available online?
On-site inspections	<ul style="list-style-type: none"> <li>• CRTC visits telemarketers' sites when they notice trends in complaints they receive</li> </ul>	None available	No
Request for information	<ul style="list-style-type: none"> <li>• CRTC staff requests information from alleged violators</li> </ul>	Not published	No
Warning letter	<ul style="list-style-type: none"> <li>• Initiates procedural administrative action</li> <li>• brings to the attention of the violator a minor violation, in order for corrective action to be taken.</li> </ul>	Failure by a telemarketer to identify their name and phone number on a fax message or keep records related to their use of the National DNCL	No
Compliance letter	<ul style="list-style-type: none"> <li>• Compliance letters identify the alleged violation and require the telemarketer to take specific</li> </ul>	None available	No

	corrective measures to prevent future violations <sup>75</sup>		
Citation	<ul style="list-style-type: none"> <li>• Initiates procedural administrative action</li> <li>• alleges serious violations</li> <li>• provides telemarketer with opportunity to claim defence or exemption within 14 days of being issued, and if a valid claim is made the citation is revoked</li> <li>• identifies the alleged violation(s) and notes the specific corrective action to be taken within a certain time frame</li> <li>• is published on the CRTC's website</li> </ul>	<p>Telemarketing contacts to healthcare and/or emergency line</p> <p>Telemarketer not processing an internal do not call request at the time of the call.</p>	List of citations is published, but not individual citations
Alternative case resolution	Not described on the CRTC's website	Rogers - \$175,000 charitable donations on 24 March 2011 Telus: \$200,000 charitable donation on 28 October 2010	List of cases is published, but not resolution documents
Negotiated settlement	<ul style="list-style-type: none"> <li>• Telemarketers can discuss with the CRTC potential corrective actions they can take to bring themselves into compliance with the <i>Rules</i></li> <li>• "The CRTC may enter into an agreement that would include a payment in lieu of a Notice of Violation setting out AMPs." (2)</li> </ul>	None available	Description is published, but not settlement documents
Notice of Violation	<ul style="list-style-type: none"> <li>• S. 72.07 enforcement tool</li> <li>• issued for more serious violations, or if a party receiving a citation has re-offended (2)</li> <li>• may carry AMP based on nature of the violation, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violation</li> </ul>	Issued to telemarketers who engage in telemarketing without a valid registration or subscription to the National DNCL operator, or who call consumers whose telephone numbers are registered on the National DNCL	Yes, if not reconsidered by CRTC (when they are removed from the list)
CRTC decision	<ul style="list-style-type: none"> <li>• Issued if telemarketer send written representations in defence to CRTC</li> </ul>		Yes, if not reviewed/varied by CRTC (when they are removed from the list)
CRTC review/vary decision	<ul style="list-style-type: none"> <li>• If CRTC decision issued, telemarketer may ask CRTC to review and vary the decision</li> </ul>		Yes
Sources: CRTC, Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31, 2014, <a href="http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm#a5">http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm#a5</a>			
(2) "How the CRTC enforces rules?"			
(3) "Alternative Case Resolutions (ACR)", <a href="http://www.crtc.gc.ca/eng/DNCL/dnclb.htm">http://www.crtc.gc.ca/eng/DNCL/dnclb.htm</a>			

and has issued five annual reports to date.

- 49 The reports' presentation has not been consistent over time. For instance, the Commission reported that it issued warning letters in 2009 and 2010, warning or compliance letters in 2011, compliance letters in 2011 to 2013, and warning letters in 2014. It is not clear what distinguishes these types of letters.
- 50 According to the CRTC's reports, it has undertaken just over 630 administrative enforcement actions since 2009:

**Table 7: Enforcement actions reported by CRTC in its annual reports, 2008 to 2014**

Administrative actions	2007/08	Sep 2008-Mar 2009	2009/10	2010/11	2011/12	2012/13	2013/14	Total	
Warning letters	No data	70	117		79		50	345	
Compliance letters				8		21			
Citations				51	89		8	148	
Notice of Violation			25	10		15	30	80	
Issued with an AMP						23	8		31
Paid upon receipt of Notice								4	4
Paid through negotiated settlement								15	15
Confirmed by CRTC decision							4	9	13
Total			70	142	69	191	48	116	636

- 51 The CRTC's website has a page for 'Telemarketing Citations, Penalties and Violations' ([www.crtc.gc.ca/eng/DNCL/dnclce.htm](http://www.crtc.gc.ca/eng/DNCL/dnclce.htm)), but it does not reflect the information in its annual reports. It does not refer to warning or compliance letters, for example, and provides a link to 'alternative case resolutions', a type of administrative action not discussed in its annual reports. The site does not include the 70 warning letters issued before April 2009 (Table 7). The single procedural letter posted on the site is not mentioned in the annual reports, while a September 2012 letter to the Conservative Party of Canada which expressed the CRTC's concerns about the Party's compliance with the *Unsolicited Telecommunications Rules* is not available on the compliance and enforcement page at all – it is posted in the CRTC's general site for decisions, notices and orders: <http://www.crtc.gc.ca/eng/archive/2012/lt120906.htm>.

**Table 8: CRTC website pages for administrative enforcement actions**

Type of action	Period covered	Format of description	Location
Citations	2010-2014	List, showing violator's name and <i>Rules</i> breached	<a href="http://www.crtc.gc.ca/eng/DNCL/dnclce.htm">http://www.crtc.gc.ca/eng/DNCL/dnclce.htm</a>
Alternative case resolutions	2010-2011	List and brief description	<a href="http://www.crtc.gc.ca/eng/DNCL/dnclb.htm">http://www.crtc.gc.ca/eng/DNCL/dnclb.htm</a>
Notices of Violation	Dec 2010 to	List, brief description and link to	<a href="http://www.crtc.gc.ca/eng/DNCL/dnclc.htm">http://www.crtc.gc.ca/eng/DNCL/dnclc.htm</a>



Type of action	Period covered	Format of description	Location
	Aug 2014	notices	
Decisions related to AMPs	2009-2012	List, violators' names and link to decision	<a href="http://www.crtc.gc.ca/eng/8045/dno11.htm">http://www.crtc.gc.ca/eng/8045/dno11.htm</a>
"Commission Letter"	2014	Link to procedural letter explaining the revised process to be followed in a matter	<a href="http://www.crtc.gc.ca/eng/8045/dno11.htm">http://www.crtc.gc.ca/eng/8045/dno11.htm</a>

52 The number of enforcement actions reported by the CRTC in its annual reports cannot be replicated using the information on the CRTC website. The CRTC's reports refer to more than 300 warning or compliance letters, for example, but none of these are posted. Only 109 citations are mentioned on the website, compared to the 148 mentioned in the annual reports (Table 9). Altogether, the website's documents refer to 337 enforcement actions, not the 636 mentioned in the annual reports.

**Table 9: Enforcement actions identified in CRTC's online materials**

Action	2009	2010	2011	2012	2013	2014	Total
Compliance letter		1					1
Warning letter		2					2
Conference call		1					1
CRTC contact	1		1				2
Letter-investigation	1	1					2
Request for information		1		1	1		3
Alt'v Case Resolution		1	1				2
Citation		48	11	81	12	1	153
Letter		1	2	1			4
Notice of Violation	13	17	9	16	29	13	97
CRTC decision	10	18	4	14	5	7	58
CRTC decision - de novo				1			1
R/V appl'n	1	7		3			11
Total	26	98	28	117	47	21	337

53 One reason for the discrepancy between the results reported by the CRTC annually and its website documentation, is that citations and notices of violation are apparently removed from its site when they are confirmed or varied by the Commission. The website therefore includes only final determinations.

54 Removing determinations issued by the CRTC's staff if they are confirmed or challenged makes it impossible to replicate the results reported by the CRTC's annual reports or to compare the facts and outcomes of interim and final

enforcement determinations.

**D Costs of enforcing the CRTC's Rules**

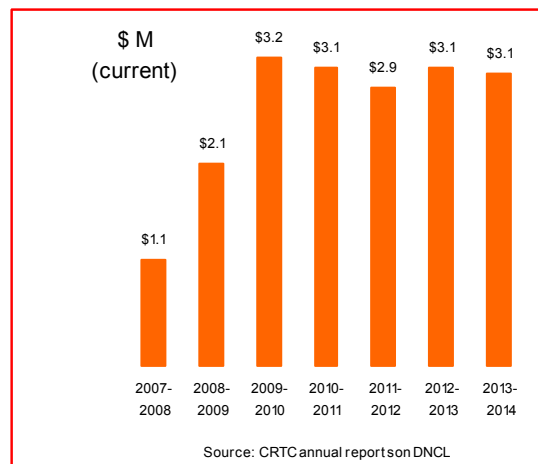
55 Until April 2013 the CRTC's funding to enforce the *Unsolicited Telecommunications Rules* was temporary. In 2013 the CRTC advised the Minister of Canadian Heritage that the absence of long-term funding for the National DNCL was "a challenge for workforce stability and staff retention", and that the lack of "additional funding will put the continued operation of this activity at risk."<sup>76</sup>

56 Parliament subsequently amended the *Telecommunications Act* to permit the CRTC to introduce a cost-recovery regime for its enforcement activities.<sup>77</sup>

57 Costs for the CRTC to enforce the unsolicited telecommunications regime are now recovered from telemarketers, through fees they pay when they subscribe to and download the national DNCL.<sup>78</sup>

58 Where the CRTC's reports to Parliament on its plans and priorities state annual costs in the order of \$7 million, the CRTC's annual reports on the operation of the national DNCL<sup>79</sup> state that the CRTC's enforcement costs are in the order of \$3 million (Figure 1).

**Figure 1: CRTC costs for enforcing Unsolicited Telecommunications Rules**



**IV CRTC's use of administrative monetary penalties**

**E AMPs = violations x penalties**

59 Under the *Telecommunications Act* a violation exists for each call that breaks the *Rules*, and an AMP may be levied for each violation.

60 In theory, a corporate telemarketer that did not subscribe to the DNCL but called 1000 people registered on the DNCL, potentially faces a maximum fine of \$30,000,000:

$$(1000 \text{ calls} * \$15,000 \text{ penalty/call}) \times 2 \text{ violations of the } \textit{Unsolicited Telecommunications Rules}$$

61 The CRTC has to date not imposed AMPs for each call that breaches the *Rules*.

62 The Commission instead calculates the AMP by multiplying the number of violations it has picked, by the penalty it has picked each violation. The consistency of the CRTC’s use of this formula is difficult because the CRTC’s determinations to date have not consistently stated the number of violations committed by a violator, the per-violation penalty or the final AMP levied. We found 100 determinations on the CRTC’s website which listed the AMP:

**Table 10: Administrative monetary penalties, levied by year and by type of CRTC determination**

Final determination (actual numbers)	2009	2010	2011	2012	2013	2014	Total
Alternative case resolution		1	1				2
CRTC decision	5	17	3	10	5	6	46
CRTC decision - de novo				1			1
Notice of Violation		2	1	6	19	12	40
Review/vary application	1	7		3			11
Total	6	27	5	20	24	18	100

63 Decisions that address either or both the violations and the per-violation AMP establish that the CRTC raises the AMPs for what it views as repeat violations. In 2012 the CRTC commented in a decision that “a penalty of \$1,000 per violation for a first violation by a small company is in line with its current practices.”<sup>80</sup> In the same decision it confirmed the doubling of the penalty per violation to \$2,000, because the violator had received three notifications to follow the *Rules* (a request for information, a warning letter and an official citation).

64 The existence of an appeal process means that AMPs that are initially set by the CRTC’s staff or confirmed by a CRTC decision may change.

65 Based on the information in the CRTC’s website, violators challenged 79 of the final staff determinations or CRTC decisions from 2009 to 2014, and were successful in reducing the initial AMP in 6, or 2%, of cases (Table 11: Successful challenges of final *Unsolicited Telecommunications Rules* determinations).

**Table 11: Successful challenges of final *Unsolicited Telecommunications Rules* determinations**

Year	Total final determinations issued in the year	# of violators’ challenges of ‘lower’ or interim decisions upheld or denied by CRTC			Successful challenges as % of final determinations
		Upheld	Denied	Total	
2009	6		5	5	
2010	75	2	15	17	3%
2011	17		5	5	
2012	103	3	17	20	3%
2013	36	1	15	16	3%
2014	19		16	16	

Total	256	6	73	79	2%
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- 66 Taking successful appeals into account, the CRTC has issued \$5.5 million in AMPs since 2009 (Table 12).

**Table 12: Final AMP determinations, 2009-2014**

Final determination	2009	2010	2011	2012	2013	2014	Total
Alt'v Case Resolution		\$200.0	\$275.0				\$475.0
Notice of Violation		\$ 1,800.0	\$300.0	\$521.9	\$816.9	\$ 1,094.0	\$ 4,532.8
CRTC decision	\$36.5	\$123.0	\$38.0	\$83.0	\$101.0	\$70.0	\$451.5
CRTC decision - de novo				\$4.0			\$4.0
R/V application	\$4.0	\$43.5		\$20.0			\$67.5
Total	\$40.5	\$ 2,166.5	\$613.0	\$628.9	\$917.9	\$ 1,164.0	\$ 5,530.8

A list of violators and the final AMPs assessed against them is provided in Appendix 6.

#### F Factors considered when determining AMPs

- 67 As noted above, the CRTC's current approach to setting AMPs means that it has the theoretical power to impose substantial penalties. The example given above is of a corporate telemarketer that did not subscribe to the DNCL but called 1000 people registered on the DNCL, potentially faces a maximum fine of \$30,000,000: (1000 calls \* \$15,000 penalty/call) x 2 violations of the *Unsolicited Telecommunications Rules*.
- 68 The highest AMP to date is \$1.3 million, imposed against Bell in 2010 for an unknown number of violations, involving an unknown number of complaints.<sup>81</sup> Between 2010 and 2014 the CRTC imposed penalties higher than \$50,000 on nineteen companies or organizations. As most of the determinations do not state the number of violations with which the CRTC charged the organizations, they cannot be fully compared on the basis of AMP per violation (see Table 13: AMPs exceeding \$50,000, levied from 2008 to 2014).

**Table 13: AMPs exceeding \$50,000, levied from 2008 to 2014**

Year	Subject	Dec type	# of violations	AMP (\$K)	AMP /violation
2010	Bell Canada	Notice of Violation	Not stated	\$1300	Unknown
2010	Xentel DM Inc.	Notice of violation	75	500	\$6.7
2012	Pecon Software Limited (India)	Notice of violation	165	495	\$3.0
2011	Goodlife Fitness Centres Inc.	Notice of Violation	60	300	\$5.0
2011	Rogers	Alt'v Case Resoln	Not stated	275	Unknown

Year	Subject	Dec type	# of violations	AMP (\$K)	AMP /violation
2014	Thrift Magic LP	Notice of Violation	Not stated	250	Unknown
2014	iQor Canada	Notice of Violation	Not stated	237.5	Unknown
2014	Québec Loisirs	Notice of Violation	Not stated	200	Unknown
2014	1051080 Ontario Inc. (Turf Operations Group)	Notice of Violation	Not stated	200	Unknown
2010	Telus	Altv Case Resoln	Not stated	200	Unknown
2013	Comwave Telenetworks Inc.	Notice of Violation	33	100	\$3.0
2013	Wildrose Alliance Political Association	Notice of Violation	Not stated	90	Unknown
2013	Progressive Conservative Party of Ontario	Notice of Violation	Not stated	85	Unknown
2013	Conservative Party of Canada	Notice of Violation	Not stated	78	Unknown
2013	1486647 Ontario Inc. (dba Ontario Consumer Credit Assistance)	Notice of Violation	23	69	\$3.0
2013	Green Shield Windows and Doors Ltd.	Notice of Violation	Not stated	65	Unknown
2013	Union Calling	Notice of Violation	Not stated	65	Unknown
2013	RackNine Inc.	Notice of Violation	Not stated	60	Unknown
2013	MDG Newmarket Inc. (op'g as Ontario Energy Group)	CRTC decision	9	54	\$6.0

69 As noted previously, the *Telecommunications Act* enables parties that breach different provisions of the legislation, the CRTC's orders or approved tariffs to be prosecuted before the courts, where fines range from a maximum of \$50,000 to \$500,000. The 18 violators fined in excess of \$50,000 represented 20% (9% + 11%) of the total violators fined from 2008 to 2014:

Range of fines	Number of violators	% of violators
\$1 to 15	57	62%
\$16 to 50	17	18%
\$51 to 100	8	9%
\$100 plus	10	11%
Total	97	100%

70 The CRTC exercises discretion over the size of AMPs in two ways. It decides how many violations it will use to calculate the AMP, and then sets a penalty per violation.

71 The CRTC has not explained how it calculates the number of violations committed by a violator for the purposes of an AMP, but has changed the numbers set by its staff. In 2013, for example, it reduced the total violations counted from 17 to 9, although it said the offender had committed the violations.<sup>82</sup>

72 The CRTC has described its approach to setting the penalty to be paid per violation. It asked for public comment on the factors it should consider in setting an AMP in

2007. While parties to this proceeding set out nine factors, the CRTC ultimately listed four, non-exclusive, “examples of appropriate factors”:<sup>83</sup>

**Table 14: Factors for determining the size of an AMP**

Factors for determining the size of an AMP raised in 2007-48	
Parties’ suggestions	CRTC factors for determining size of AMPs
1. degree of harm	1. the nature of the violation (minor, serious, very serious, negligent or intentional)
2. negligence or intentional abuse	2. the number and frequency of complaints and violations;
3. history of compliance	3. the potential for future violation, and
4. frequency of violations	4. the relative disincentive of the measure
5. duration of violation(s)	
6. potential for future violation	
7. offending party's reaction to complaint (i.e. remedial action)	
8. ability to pay (i.e. company size); and	
9. evidence of due diligence	

73 The CRTC’s non-exclusive list of four factors means that it may from time to time apply other factors when it assesses an AMP. In 2012 one CRTC decision implied that the size of AMPs could be related to unpaid DNCL registration fees.<sup>84</sup> In 2013 the CRTC imposed AMPs because the violator breached the *Rules* after being informed about its obligations and the existence of complaints.<sup>85</sup>

**1 Nature of violation**

**a Minor, serious, very serious**

74 The CRTC has not explained how it evaluates the importance of the 49 separate regulations that make up the *Unsolicited Telecommunications Rules*, or which breach of these regulations is minor, serious or very serious.

75 It has said, however, that a telemarketer’s failure to identify its name and telephone number on a fax message, or to keep records about their use of the national DNCL, would be minor violations.<sup>86</sup> It held in 2013 that “...making unsolicited telemarketing telecommunications to consumers whose numbers are registered on the National DNCL, and doing so while not being subscribed to the National DNCL, are serious violations since they go to the heart of the Rules.”<sup>87</sup> It explained in a 2014 decision that such violations

... cause significant inconvenience and nuisance to consumers. These telecommunications, by their nature, violate the expectation of consumers expressed through registration of their numbers on the National DNCL not to receive them.<sup>88</sup>

76 The CRTC does appear to believe that the breach of certain regulations is more serious than the breach of others. In 2012 it fined a telemarketer’s calls to people on its internal DNCL twice as much as its telemarketer’s failure to subscribe to the DNCL (\$2,000, compared with \$1,000.<sup>89</sup>

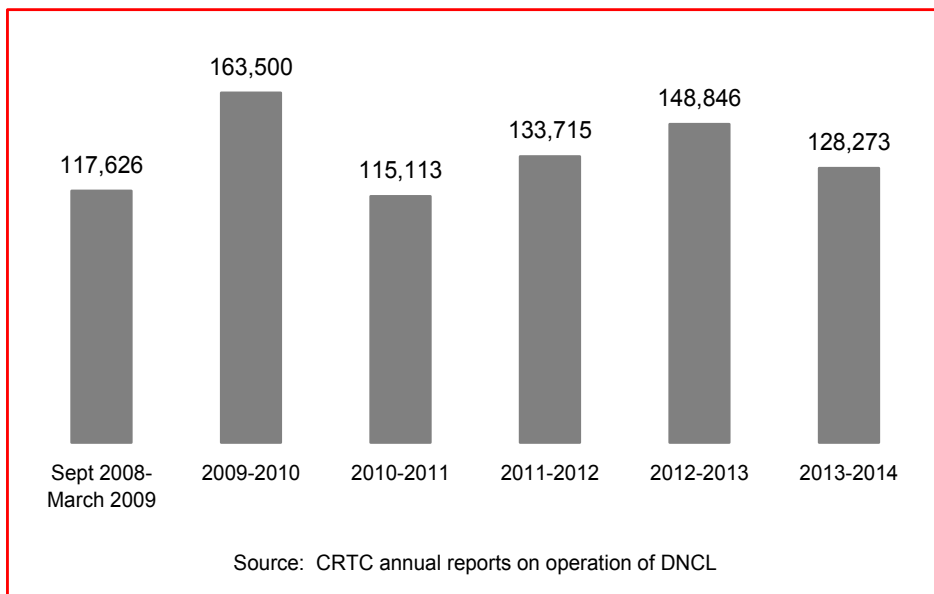
**b Negligent vs intentional abuse**

77 The CRTC has said that intentional breaches are more serious than unintentional breaches. In releasing the *Unsolicited Telecommunications Rules* in 2007, it said that “the maximum AMP should only be imposed for each violation in more serious cases (e.g. where there is intentional abuse or the telemarketer or the client of a telemarketer is a repeat violator).”<sup>90</sup>

**2 Number and frequency of complaints and violations**

78 In 2007 the CRTC said that “the number and frequency of complaints and violations” were “examples of appropriate factors to be taken into consideration in determining whether to issue a notice of violation.”<sup>91</sup> The CRTC has received just over 800,000 complaints about unsolicited telecommunications since 2008-2009 (Figure 2), and reported in 2013-14 that 6 million calls breached its national DNCL rules, and that 5 million breached its ADAD rules.<sup>92</sup>

**Figure 2: Complaints received by CRTC about unsolicited telecommunications, 2008/09 to 2013/14**



79 The relationship between levels of complaints, numbers of calls made, regulatory breaches and penalties is unknown because the CRTC staff’s determinations and its own decisions rarely describe the number of complaints that it receives about a specific violator. Of the several hundred determinations issued by the CRTC, only one lists the number of complaints received about the violator: Green Shield

Windows and Doors attracted 185 complaints.<sup>93</sup> Forty-one final determinations merely state that there were “numerous” complaints. Telecom Decision CRTC 2010-370 refers in its introductory paragraphs to “numerous” complaints, but then speaks of “the complainant”,<sup>94</sup> implying either that there was only one complainant rather than many, or that even among ‘numerous’ complainants only one was prepared to be identified.

- 80 The CRTC has in any event not described the relationship between different numbers of complaints and the size of AMPs that it sets. In 2007 it said that it “would be difficult to assign a monetary value to the degree of harm to a consumer ....”.<sup>95</sup> In the 2011 Green Shield Windows case the CRTC noted that its mention of a specific number of complaints – namely, 185 – was “an indication of the potential seriousness of the situation that needs to be addressed by measures of regulatory compliance.”<sup>96</sup> (In challenging the initial fine imposed, however, Green Shield disclosed the number of complaints when it argued that they should be struck from the record. See Telecom Decision CRTC 2011-628 <http://www.crtc.gc.ca/eng/archive/2011/2011-628.htm>. If Green Shield had not made this argument, would the complaints have been disclosed?)
- 81 It is unclear whether the opposite conclusion can also be drawn – that the absence of a number of complaints in a determination indicates that the violator’s situation is less serious.
- 82 In fact, in 2014 the CRTC said that the total number of complaints about a violator “does not directly influence the amount of the AMPs. Rather, it provides relevant context to the nature of the violations, and underscores that they are reflective of a significant and noteworthy problem ....”<sup>97</sup>
- 83 As for the number of calls made that violate the unsolicited telecommunications, only three determinations list the total number of calls that breached the rules, and only one also lists the number of telecommunications that the CRTC considered as violations when it set the AMP of \$54,000:

Violator	Decision #	Date of notice	Calls	Violations noted
Conservative Party of Canada	Notice of Violation	2013-05-29	190,693	Not stated
Blake Richards (Wild Rose)	Notice of Violation	2013-05-29	147,259	Not stated
MDG Newmarket Inc. (op'g as Ontario Energy Group)	Telecom Decision CRTC 2013-356	2013-07-31	49,093	9

- 84 In the 2013 case of MDG Newmarket Inc, the CRTC noted that the company’s calling records showed that it had made almost 50,000 calls. The CRTC said that “[f]rom the telecommunications made, 17 were chosen for the purpose of the Notice of Violation”,<sup>98</sup> but did not explain how it selected those calls.



85 Notices of violation do not consistently state the number of violations at issue. In 2014, for instance, the CRTC’s staff issued an AMP of \$50,000 against the Alberta Federation of Labour, but did not state the number of violations it had committed:

Between 17 and 18 April 2012, unsolicited telecommunications were made by the AFL to conduct a poll. These telecommunications were made using an Automatic Dialing-Announcing Device (ADAD) resulting in violations of Part IV, subsection 4d) of the Rules, for not providing a telephone number and mailing address where the telecommunication originator could be reached.

Pursuant to section 72.01 of the Act, the undersigned has determined that the total penalty for the violations identified above is \$50,000.

...<sup>99</sup>

86 Approximately 60 final determinations do mention the total number of violations that the CRTC says a violator committed. The CRTC calculates the number of violations by multiplying the number of calls it has selected, by the number of *Rules* breached: a single call that breaches two rules counts as two violations.

87 Half the violators committed 8 or fewer violations, with the overall average across the final determinations being 13 (reflecting the predominance of the 165 violations attributed to Pecon Software in India). When the number of violations is roughly grouped by size, the average AMP imposed increases in proportion to the number of violations:

**Table 15: Average AMP, by number of violations**

# of telecommunications made that violate rules	# of violators	Average AMP (\$K)
1-2	9	\$2.9
3-5	11	\$4.5
6-10	22	\$12.2
11-20	10	\$11.7
21-50	4	\$52.3
51-100	2	\$400.0
100+	1	\$495.0

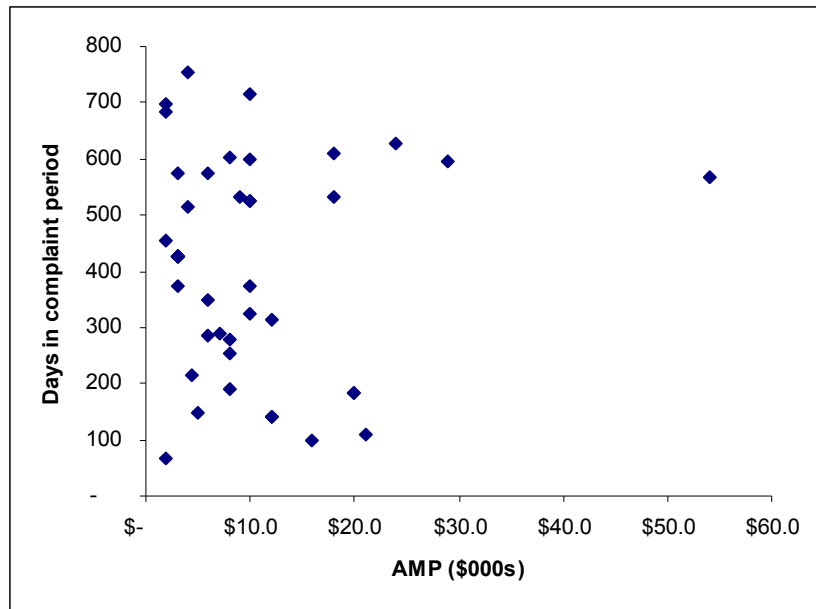
88 We also identified 54 final determinations involving first-time violators for which the CRTC’s determinations did not mention previous violations. No clear pattern emerges over time about the size of the AMP levied per violation: the average AMP per violation for first-time offenders ranges from \$250 to \$6,500 ()

89 As for the frequency of complaints, forty-one determinations included the dates on which the CRTC began to receive and stopped receiving complaints about a

violator’s calls. This information allows the duration of the complaint period to be calculated – although no information is available to determine whether any complaints were received in the middle of this period.

- 90 No clear relationship exists between the size of the AMPs imposed on violators and the duration of the complaint period (Figure 3).

**Figure 3: Size of AMP vs days in the total complaint period**



**3 Potential for future violations**

- 91 The CRTC has not explained how it evaluates the potential for future violations and how this affects the AMP it imposes. Is this potential evaluated on the basis of undertakings submitted by violators to introduce or strengthen compliance programs?

- 92 In 2014, however, the CRTC noted in a decision that the size of AMP per violation could be based on whether a violator had or had not previously offended.<sup>100</sup> The CRTC is less likely to lower an AMP when an offender does not change its behaviour after being contacted by the CRTC’s staff about unsolicited telecommunications concerns.<sup>101</sup>

- 93 In 2010 the CRTC referred to a violator’s previous behaviour to explain the AMP being imposed:

The Commission notes that this is the second decision that it has issued in relation to violations of the Rules committed by Roofing by Peerless Mason and that the company continues to disregard the Rules.[3] Accordingly, the Commission

considers that a total penalty of \$20,000 is appropriate. The Commission therefore imposes AMPs totalling \$20,000 on Roofing by Peerless Mason. This amount is in addition to any previously imposed AMPs that remain outstanding.<sup>102</sup>

- 94 Based on the information published in the CRTC’s determinations it appears that nine violators broke the *Rules* more than once. In four of the five cases for which AMP and violation data were available, the average AMP charged per violation doubled:

**Table 16: Average AMP/violation for re-offending violators**

Subject	Year						% change from 1 <sup>st</sup> to 2 <sup>nd</sup> breach
	2009	2010	2011	2012	2013	2014	
Action Windows and Doors Ltd.		\$3.00				\$4.00	33%
Alopast Duke Windows & Doors Inc.		\$1.00			\$2.00		100%
Lev Olevson (carrying on business under different names)				\$0.50		\$1.00	100%
Roofing by Peerless Mason Ltd.	\$1.00	\$2.00					100%
Waterproofing by Peerless Mason Inc.	\$1.00	\$2.00					100%

**4 Relative disincentive of the measure – and company size**

- 95 While the CRTC has not explained its approach to deciding whether an AMP will deter future non-compliance, its decisions suggest that it wants to ensure that AMPs represent a significant penalty. The CRTC noted in 2007 that an accused’s ability to pay can affect the size of fines imposed by the courts for criminal activities.<sup>103</sup> The CRTC said that it thought it would be difficult to “determine the ability of a telemarketer to pay the AMP”,<sup>104</sup> but that “AMPs should not be so low as to be financially advantageous for telemarketers to pay the amount and continue to violate the Unsolicited Telecommunications Rules.”<sup>105</sup>

- 96 In 2012 the CRTC said that “the financial health of a corporation is not a factor in determining whether ... to impose or reduce a penalty contained in a notice of violation.”<sup>106</sup> The CRTC has declined to reconsider the amount of an AMP when the violator claimed it would cause “severe financial distress”.<sup>107</sup> It may have taken this position because “the way in which a business is managed, including its other financial obligations, should not have an impact on the amount of the AMP.”<sup>108</sup>

- 97 ON the other hand, the CRTC has also said that a telemarketer’s size is relevant to the AMP:

... the size of the telemarketer is a relevant factor, but is of the view that net income is not, as a general rule, the appropriate indicator of the revenue-generating

capability of the telemarketer. In this regard, the Commission notes that net income can be affected by many unrelated factors.<sup>109</sup>

- 98 In 2012 the Commission considered a company's size before denying its application for a reduced AMP in two decisions.<sup>110</sup> Similarly, in 2013 it wrote that a company's unincorporated or incorporated status and its size, could determine the amount of the AMP charged per violation.<sup>111</sup> In another 2013 decision the CRTC also reduced the AMP charged per violation because of the violator's size and its first-time offender status.<sup>112</sup>
- 99 As for measuring a company's size, the CRTC explained in 2013 that "the appropriate way to measure the size of one offender's operations was gross earnings, not net revenue,<sup>113</sup> and that this approach was "[c]onsistent with the Commission's practice and with Telecom Decision 2007-48, and [fair] to other telemarketers that have been issued AMPs."<sup>114</sup> It also said that even if a business is classified as small using Industry Canada measures, that classification is "mainly a function of the underlying objectives of the entity establishing the classification", and may not be appropriate "for the purpose of promoting regulatory compliance."<sup>115</sup>
- 100 Twenty final determinations that include AMPs referred to the violator's size, and of these, eight indicated the scale of the company: sole proprietor (2 determinations); small company (5) and medium-sized company (1).
- V Conclusions and recommendations: fair, transparent and effective enforcement serves the public interest**
- A Cabinet encourages fair, transparent and effective regulation**
- 101 Federal departments and agencies generally demonstrate their accountability to Parliament by reporting on the resources they use and the results they achieve.<sup>116</sup>
- 102 The federal government's 2012 *Cabinet Directive on Regulatory Management*<sup>117</sup> notes, however, that regulatory systems are "robust and effective" when they provide "consistency, fairness, and transparency, and [support] innovation, productivity, and competition."<sup>118</sup>
- 103 It says that even entities that are "not under the general authority of Cabinet and over which Cabinet does not have a specific authority should, as a matter of good regulatory practice, follow the *Directive* and apply its requirements as appropriate to their context."<sup>119</sup> In other words, one should expect that the CRTC regulates in a manner that is consistent, fair and transparent.
- 104 What do 'consistency', 'fairness' and 'transparency' mean? (The *Directive* does not define them).<sup>120</sup> Like the courts, we rely on dictionary definitions to clarify meaning:

**Consistency**<sup>121</sup> – from consistent: “Acting or done in the same way over time, especially so as to be fair or accurate”; “Unchanging in nature, standard, or effect over time”;<sup>122</sup> “harmony of conduct ... <followed her own advice with consistency>”;<sup>123</sup> “agreement or accordance with facts, form, or characteristics previously shown or stated .... conformity with previous attitudes, behaviour, practice, etc”<sup>124</sup>

**Fairness:** “Treatment of people equally, without favouritism or discrimination”; “The fact of being just or appropriate in the circumstances”<sup>125</sup>

**Transparency** – from the condition of being transparent: <sup>126</sup> “Easy to perceive or detect”, “(Of an organization or its activities) open to public scrutiny”;<sup>127</sup> “characterized by visibility or accessibility of information especially concerning business practices”<sup>128</sup>

## **B Conclusions: CRTC enforcement process is not transparent and lacks consistency**

105 In our view the CRTC’s process for enforcing the unsolicited telecommunications regime, and for reporting about its enforcement practices, lacks transparency. As a result, it cannot be concluded that the CRTC deals with violators consistently.

106 Take the case of Green Shield. It argued that it had been denied the opportunity to meet CRTC decision-makers in person. The CRTC wrote that a written record was sufficient:

10. The Commission notes that an oral hearing with the right to cross-examine witnesses is only necessary in certain situations, such as those where the Commission has insufficient information to make a decision on the basis of a written record and considers that an oral component is needed to obtain that information. The Commission considers that a written record is satisfactory in the circumstances of the present case and that it has sufficient information on the written record to make a decision.

107 Meanwhile the CRTC met with the Executive Director of the Conservative Party of Canada:

I am writing further to our meeting of September 5, 2012 to express our concerns regarding the policies and practices of the Conservative Party of Canada (CPC) with respect to its obligations regarding unsolicited telecommunications under the Telecommunications Act (the Act) and the Unsolicited Telecommunications Rules, which include the National Do Not Call List (NDNCL) Rules. In particular, given the exemption available to registered political parties allowing them to call Canadians whose phone numbers are on the NDNCL, I consider that the CPC has fallen short of meeting its obligations as an exempt party to, nonetheless, properly maintain an Internal Do Not Call List (IDNCL).<sup>129</sup>

108 What leads the CRTC to meet with some offenders, but not others?: we do not know, any more than we know why the CRTC began to use ‘alternative case resolutions’ in 2010 and 2011, and then stopped, without discussion:

Date	Person subject to the agreement	Resolution
March 24, 2011	Rogers Communications (Rogers) Industry: Telecommunications	<p>Rogers immediately volunteered to cease using automated calling devices to notify its prepaid mobile customers of an actual or imminent service interruption and how to purchase more minutes to avoid such an interruption without obtaining their prior express consent</p> <p>Rogers has made charitable donations of \$175,000 to the École Polytechnique de Montréal and \$100,000 to the British Columbia Institute of Technology, and</p> <p>Rogers will review its compliance policies to ensure ongoing adherence with the CRTC’s rules relating to automated calling devices.</p>
October 28, 2010	TELUS Communications Inc. (Telus) Industry: Telecommunications	<p>TELUS immediately volunteered to cease using automated calling devices to notify its prepaid mobile customers of an actual or imminent service interruption and how to purchase more minutes to avoid such an interruption without obtaining their prior express consent</p> <p>TELUS has made a charitable donation of \$200,000 to establish a TELUS scholarship fund at the School of Public Policy and Administration at Carleton University to support graduate studies in the areas of policy and regulation, and</p> <p>TELUS will review its compliance policies to ensure ongoing adherence with the CRTC’s rules relating to automated calling devices.</p>

109 Transparency is reduced not just because the CRTC appears to apply different standards to different parties, but also because it does not post a clear historical record of its enforcement activities.

110 When determinations are challenged, the first-level or interim determinations vanish from the CRTC’s website. These interim decisions matter, however, because they often provide useful information about violators’ potential for re-offending. For example, the CRTC found in Telecom Decision CRTC 2012-173 that Les Aliments S.R.C. had re-offended, and its decision refers to the first violations for which a citation was issued on 18 June 2010: that citation is no longer available on the CRTC’s website. (Of course, even if were available, the citations listed by the CRTC do not currently describe the corrective actions that violators undertake to make.)

111 In one case the CRTC failed to acknowledge a violator’s submissions, and therefore reheard the matter. Decisions 2014-89 and 2014-424 are both available online and deal with the same appeal of a notice of violation. The first (2014-89) incorrectly stated that the subject had made no representations – but the second (2014-424) which correctly considered the violator’s representations does not explain that is the second decision, or that the previous decision even exists.

112 The CRTC’s website provides little assistance for locating information about breaches of the *Unsolicited Telecommunications Rules*. Its “A to Z index” does not include terms such as “telemarketing reports”, “administrative monetary penalties”

or “compliance and enforcement decisions”, even when the search engine on the CRTC’s website finds that information when the terms are searched:

Possible topic	Listed in A to Z index?	Search engine results using this term
Administrative monetary penalties	No	118 results
Compliance with the DNCL	No	151 results
Compliance and enforcement decisions	No	267 results: Decisions – 87 Notices of Violation - 33 Commission letters – 32 Regulatory policies - 22 Notices of consultation - 17
Do Not Call List	No	3,146 results
Unsolicited telecommunications enforcement decisions	No	131 results
Letters concerning possible or actual violations of the DNCL rules	No	Searching for “letters violations unsolicited telecommunications rules”: 37 results

**C Three recommendations to the CRTC**

**1 The CRTC should clarify the Unsolicited Telecommunications Rules**

- 113 As noted in Part III A, above, the titles of the CRTC’s *Rules* do not reflect their content, and the content of the different parts is repeated from one Part to the next. It is not clear why some of the *Rules* apply to sectors that Parliament specifically exempted from the DNCL regime. Having just considered proposals for revising the *Rules* in 2013, the CRTC should plan to review the *Rules* again in the near future – by 2016, for instance.
- 114 The CRTC should issue information bulletins to all major sectors, rather than just real estate and investment advisors. It should in particular explain the records that non-telemarketers should keep so that, if necessary, they can establish a defence of due diligence.
- 115 Finally, it should offer guidance about how it decides which regulatory breaches are more serious than others. It should offer information bulletins when it becomes clear that violators are misunderstanding the *Rules*.

**2 The CRTC should report on its enforcement activities transparently and consistently**

- 116 The CRTC's report on its DNCL enforcement activities is insufficient for providing transparency, primarily because it changes details about of the information it reports from one year to the next.
- 117 The CRTC's website is equally, if not more, confusing: none of the pages listing compliance and notice of violations decisions state that the information is restricted to determinations that have not been challenged.
- 3 *The CRTC's enforcement determinations should reflect the factors established in its decisions about the Rules***
- 118 Finally, and most significantly, each CRTC determination should provide information about each of the factors that the CRTC has said it considers in the enforcement process.
- 119 The absence of these details from the current record leaves the regrettable impression that decisions are made arbitrarily, without clear regard to the CRTC's enforcement policy.



**D Three recommendations to Parliament**

**1 Clarify exemptions from the unsolicited telecommunications regime**

120 The CRTC has decided to regulate organizations that fit within the seven exemptions granted by Parliament with respect to the unsolicited telecommunications regime. Parliament should clarify whether these exemptions are full or partial exemptions.

**2 Clarify approach to AMPs**

121 The current legislation does not restrain the CRTC's ability to penalize offenders. Parliament should decide whether the AMPs set for violators should or should not be capped to a maximum that is the same as or less than the maximum penalty that a court could impose.

122 Parliament should consider whether violators who are not the subject of many complaints, should be penalized at the same rate as violators who receive many complaints.

123 Finally, Parliament should consider whether the current approach used to set AMPs is a reasonable one: should the CRTC be free to set the number of violations for which a violator is charged an AMP, without concern for the number of calls and complaints that have been received?

**3 Clarify importance of deterrence**

124 The lack of transparency in CRTC reporting means that parties with little or no experience in making unsolicited telecommunications cannot learn better practices. Parliament should require the CRTC to provide reasons in its determinations to enable violators and the public to understand them.

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## Appendix 1: Chronology of events related to AMPs and the CRTC

- 1985 *Use of Automatic Dialing-Announcing Devices*, Telecom Decision CRTC 85-2 (Ottawa, 4 February 1985), <http://www.crtc.gc.ca/eng/archive/1985/DT85-2.HTM>
- Use of Automatic Dialing-Announcing Devices*, Telecom Decision CRTC 85-2, 4 February 1985, issued following on Telecom Public Notice CRTC 1984-17 (Ottawa, 22 March 1984), and Telecom Public Notice 1983-56 (Ottawa, 8 September 1983), reviewing the general regulations for federally regulated telecommunications companies.
- 1985 *Use of Automatic Dialing-Announcing Devices - Follow-Up Item to Telecom Decision CRTC 85-2*, Telecom Public Notice CRTC 1985-39 (Ottawa, 18 June 1985)
- Bell Canada – Administration Charge for Connection of Restricted ADADs to the Public Switched Telephone Network*, Telecom Public Notice CRTC 1985-41 (Ottawa, 17 July 1985)
- 1990 *Bell Canada – Provision of Telephone Directory Data Base Information in Machine-Readable Form*, Telecom Decision CRTC 90-12 (Ottawa, 14 June 1990)<sup>130</sup>
- 1993 *Bell Canada - Proposed Tariff Revisions Related to Commercial Solicitation, Telemarketers and the Use of Automatic Dialing Devices*, Telecom Public Notice CRTC 93-59 (Ottawa, 27 September 1993)
- 1994 *Use of Telephone Company Facilities for the Provision of Unsolicited Telecommunications* Telecom Decision CRTC 94-10 (Ottawa, 13 June 1994) following on *Use of Automatic Dialing-Announcing Devices*, Telecom Public Notice CRTC 93-58 (Ottawa, 21 September 1993)
- 1995 *Provision of Directory Database Information and Real-Time Access to Directory Assistance Databases*, Telecommunications Decision CRTC 95-3 (Ottawa, 8 March 1995),<sup>131</sup> subsequently varied by Order in Council P.C. 1996-1001 (25 June 1996)
- 1996 *IN THE MATTER OF applications received from Bell Canada (Bell) under Tariff Notices 5685 dated 29 January 1996 and 5685A dated 7 February 1996, proposing revisions to General Tariff Item 1800, and from BC TEL under Tariff Notice 3444 dated 14 February 1996, proposing revisions to General Tariff Item 13*, Telecom Order 96-1229 (Ottawa, 7 November 1996), following on *Bell Canada and BC Tel - Introduction of Revised Conditions for Unsolicited Live Voice and Facsimile Calls for the Purpose of Solicitation*, Telecom Public Notice CRTC 96-10 (Ottawa, 4 April 1996)
- 1996 *Report to the Governor in Council on Directory Subscriber Listings and on Unlisted Number Service* (Ottawa, 23 December 1996)
- 1997 *Local competition*, Telecom Decision CRTC 97-8, dated 1 May 1997 (this decision extends the rules and conditions applying to incumbent local exchange carriers, to competitive local exchange carriers operating in their territories)
- 2000 CRTC, *Letter Decision* (Ottawa, 1 February 2000) directs all local exchange carriers to include a provision in their contracts with resellers to adhere to the consumer safeguards in a CISC Customer Transfer Group report
- 2001 *Telemarketing restrictions extended to all telecom service providers*, Telecom Order 2001-193 (Ottawa, 5 March 2001), following on *Soliciting comments to extend telemarketing restrictions across Canada*, Public Notice CRTC 2000-91 (Ottawa, 30 June 2000)
- Telecom Order (Ottawa, 5 March 2001)
- 2001 *CRTC seeks public input on telemarketing rules*, Public Notice CRTC 2001-34 (Ottawa, 5 March 2001)

- 2004 *Review of telemarketing rules*, Telecom Decision CRTC 2004-35, 21 May 2004
- 2004 *Application by the Canadian Marketing Association to stay Decision 2004-35*, Telecom Decision CRTC 2004-63 (Ottawa, 28 September 2004)
- 2006 *Proceeding to establish a national Do Not Call List framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, (Ottawa, 20 February 2006), as amended by Telecom Public Notice CRTC 2006-4-1 (Ottawa, 13 March 2006)
- Amendment to the statement of consumer rights*, Telecom Decision CRTC 2006-78 (Ottawa, 21 December 2006) – includes provisions regarding unsolicited telecommunications
- 2007 *CRTC Interconnection Steering Committee Do Not Call List Operations Working Group reports*, Telecom Decision CRTC 2007-47 (Ottawa, 3 July 2007)
- Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48 (Ottawa, 3 July 2007), as; amended by *Erratum*, Telecom Decision CRTC 2007-48-1 (Ottawa, 19 July 2007)
- 2008 *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to investment dealers, mutual fund dealers, and investment and financial advisors*, Telecom Circular 2008-3 (Ottawa, 16 December 2008)
- 2009 *Revised regulatory requirements to provide information to customers*, Telecom Regulatory Policy 2009-156 (Ottawa, 24 March 2009)
- Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200 (Ottawa, 20 April 2009), following on *Call for comments on potential modifications to some Unsolicited Telecommunications Rules*, Telecom Public Notice CRTC 2008-14 (Ottawa, 20 October 2008)
- Telecom Information Bulletin 2009-282
- Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the real estate industry*, Telecom Information Bulletin CRTC 2009-283 (Ottawa, 15 May 2009)
- Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the insurance industry*, Telecom Information Bulletin CRTC 2009-282 (Ottawa, 15 May 2009)
- 2010 *Unsolicited Telecommunications Rules - Financial and insurance products and services offered to existing clients*, Telecom Regulatory Policy CRTC 2010-599 (Ottawa, 19 August 2010), following on Telecom Notice of Consultation 2010-130
- Amendment and re-issuance of Telecom Circular 2008-3 regarding the interpretation of the Unsolicited Telecommunications Rules as they apply to investment dealers, mutual fund dealers, and investment and financial advisors*, Telecom Information Bulletin CRTC 2010-600 (Ottawa, 19 August 2010)
- 2012 *Electronic Commerce Protection Regulations (CRTC)*, Telecom Regulatory Policy CRTC 2012-183 (Ottawa, 28 October 2012)
- Guidelines on the interpretation of the Electronic Commerce Protection Regulations (CRTC)*, Bulletin 2012-548 (Ottawa, 10 October 2012)
- Guidelines on the use of toggling as a means of obtaining express consent under Canada's anti-spam legislation*, Telecom Regulatory Policy CRTC 2012-549 (Ottawa, 10 October 2012)

- 2013 *Review of the Unsolicited Telecommunications Rules: Call for comments, Compliance and Enforcement Notice of Consultation CRTC 2013-140, (Ottawa, 20 March 2013), <http://www.crtc.gc.ca/eng/archive/2013/2013-140.htm>*
- 2014 *Review of the Unsolicited Telecommunications Rules, Compliance and Enforcement Regulatory Policy CRTC 2014-155 (Ottawa, 31 March 2014)*

## Appendix 2: Parliamentary discussions about AMPs and the CRTC

38th PARLIAMENT, 1st SESSION

Standing Committee on Industry, Natural Resources, Science and Technology

EVIDENCE

Wednesday, April 13, 2005

...

Mr. Michael Binder (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): Thank you, Mr. Chairman.

...

Slide 4 offers some answers to the question, so what's wrong with the current system? Well, the problem has been the total confusion of the consumers because every telemarketing company had to keep its own list. And as you can imagine, there are quite a few in this particular business, and with everybody keeping lists there was total confusion. Consumers didn't understand the rules. Even the industry itself, the telemarketing industry, was not satisfied with the system. There was inadequate enforcement.

The conclusion, bottom line, is that everybody agreed a change was required, including the CRTC. It held a hearing and recognized that changes are required. Just recently, in the Telecom Decision CRTC 2004-35, it expressed support for a national do-not-call list but needed some additional powers to implement it. The CRTC needs effective fining powers, the ability to set fees, and the ability to delegate this responsibility to an administrator.

...

Slide 8 shows what we are proposing. We are proposing to provide the CRTC with three additional powers to be able to establish a national do-not-call list and to actually administer such a list. To do this, it needs administrative monetary penalties, the ability to actually penalize somebody who is breaking the rules, it needs some delegation authority to allow it to subcontract to an administrator, and it needs to be able to set fees for cost recovery of the administrative costs associated with actually managing such a list.

...

Mr. Michael Binder: The CRTC has eleven years of experience with managing the telemarketing industry. Finally, it's being granted the authority to address this problem.

Mr. Paul Crête: Provision is made in the act for fining a company \$15,000. Is that the equivalent of US\$11,000? You mention fines of \$US 11,000...

Mr. Michael Binder: I see what you're saying, but I think the Justice Department felt that this was an appropriate amount.

Mr. Paul Crête: It's a large enough amount.

Ms. Denise Walter: Yes, but not so large as to constitute a criminal fine.

Mr. Paul Crête: If my understanding is correct, an automobile salesman who harassed persons who are listed as not wanting to receive any calls...

Ms. Denise Walter: That person would be fined \$15,000 for each call made.

Mr. Paul Crête: For each call?

Ms. Denise Walter: Yes, for each call.

Mr. Paul Crête: For each offence, every single day.

Ms. Denise Walter: Yes. The call per se is the offence. The fines can add up very quickly.

Mr. Michael Binder: It's harsh, but not too harsh.

+-

Mr. Paul Crête: Then a person would do well not to violate the provisions of the act.

Thank you.

Debates of Oct. 20th, 2005

House of Commons Hansard #138 of the 38th Parliament, 1st Session.

Louise Thibault Rimouski—Témiscouata, QC

Madam Speaker, I have two questions for the hon. member who just spoke, regarding fines and penalties.

I want to know if he is satisfied with the provisions of the bill on this. It would be better, for our edification, if he could elaborate on this and tell us whether telemarketers who do not respect the provisions of the legislation should have their privileges and permits revoked.

The fines are a good enforcement measure. However, if it is worth it, if there are enough profits, if the situation is favourable enough to make the fines affordable, then telemarketers could easily disobey these provisions. Fines are not the right tool to encourage compliance. That is why I want the hon. member to explain whether this will go further or whether it is limited to fines.

[Dean Allison](#) Niagara West—Glanbrook, ON

Madam Speaker, in terms of whether fines will do what is needed, I guess that would certainly be one of our concerns. As we said before, one of the issues of the original gun registry was to register guns, which has proven to be a huge failure.

The challenge as we look at this, although a do not call registry is good in principle, is the implementation and once again the devil is in the details. How are we going to dissuade people? Quite frankly, fines may not be enough. The next point is whether there are going to be teeth. Are they going to be able to collect the fines? That is a question that I guess we will have to see. We will want to hear more from the committee in terms of recommendations to get it implemented.

Standing Senate Committee on Transport and Communications, Proceedings – Evidence (Issue 23, 15 November 2005)

...

[Translation]

**Senator Chaput:** The bill explains the procedure to follow starting with the development of the list through to exemptions and penalties. Is there a clear and complete enough definition of what penalties mean and what may happen if both parties do not agree? If, for example, you say that I have not respected the procedure and I say that I did, who will decide then? How long might that take?

[English]

**Mr. Pickard:** I will turn this over to our legal counsel or Mr. Binder to answer. The CRTC will appoint an administrator to set up the program and operate it. However, I believe that public hearings will be in place to look at the nuances of the type of administration that is required. Beyond that, I would like our answers to come from the officials.

**Mr. Binder:** If an individual is deemed not to be compliant, there is a process of appeal, either to the CRTC or the court. It is described as a procedure in the bill.

...

Senator Tkachuk: You used the example of the hockey team being exempt from the letter of the law. You then went on to explain that the letter of the law must be a pattern of abuse. Please help me focus here on what is the pattern of abuse. How many phone calls do you have to get? Is there a number? Can I phone people five times before I hit the pattern of abuse? How does that work?

Mr. French: I did not say that the mothers of the peewee hockey team of Corner Brook were exempt. They are not a charitable organization. They engage in a series of calls to other parents and to other people, and technically, they are not exempt. However, the issue as a matter of public policy would be, for us at least: Do the parents of Corner Brook who have been called rise as one and complain to the CRTC or to the national enforcement agency that there have been abusive calls in Corner Brook with sending the peewee hockey team to St. John? The answer, to me, is, highly unlikely, and therefore it is not something that would attract the attention of the enforcement agency or the commission.

Senator Tkachuk: What would?

Mr. French: A pattern of abuse that would indicate to us that a commercial telemarketing firm was involved in systematically avoiding using the database and therefore calling people on the do-not-call list.

Senator Tkachuk: It is fairly subjective, is it not?

Mr. French: It is as subjective as a policeman deciding whether or not to apply a jaywalking law or the Competition Commission deciding whether or not it is —

Senator Tkachuk: No; a person is either jaywalking or not. If he is jaywalking and there is an anti-jaywalking law, he gets a ticket; it is pretty clear.

It is important that I know as a consumer — or as a business or charity. I am a citizen. I have the right to know when you will come down on me if I do break the law. In other words, I know that if I jaywalk and I get a ticket, I can either take it to court or pay the fine; I know it is against the law.

However, you are saying "a pattern of abuse." Tell me what it is. How does that person who is making the phone calls know? Can he get away with it once or twice? How many times does he get away with it before there is a pattern? Do you have to get 1 telephone call, or 10 or 15? How many complaints?

Mr. French: It is complaints, not phone calls, senator, is it not? If they are phone calls, we will not know about them; if they are complaints, we will. The elements that would guide us — and we will discuss in a public hearing what will be applied and what will not, what kinds of behaviours ought to be subject to coercive or enforcement action and what kinds of behaviour are passed to the side — are, first, it would have to be a series of complaints, probably 10, 15, 20, which would indicate to us —

Senator Tkachuk: How many?

Mr. French: As I said, we will have public hearings.

Senator Tkachuk: So that has not been decided?

Mr. French: It is not in the legislation, senator. Second, we would be interested in the kind of behaviour that seemed to us to involve a commercial telemarketing company whose purposes were to avoid or ignore the do-not-call list. If those two elements could be taken together, then probably we would have a situation that we would want to pursue. However, I repeat, this would be subject to the views of consumer groups, direct marketing organizations, telecom companies and others who will participate in the public hearings.

Senator Tkachuk: All right. I will pass and come back to it, maybe. I am quite confused now.

...

Mr. Lylyk: One of the things that we have looked at in the context of the experiences of other jurisdictions is a public awareness campaign. In fact, we had our independent consultant budget for this. For example, a public



awareness campaign was pulled together for the U.S. do-not-call list. We would see the list operator doing that; but again, there would be oversight by this consortium and we would have a role to play as well.

The specifics of this public awareness campaign have not been addressed. However, it is clear that the rules and such that will be coming out of this public notice proceeding that Mr. French has talked about will have to be clearly communicated; people will have to know what is at stake and what penalties apply. That is a key aspect of what our independent consultant was asked to look at, but the details of that have not been addressed yet.

Senator Munson: Speaking of penalties, we are walking around the issue, unless I am missing something in the bill. What kind of penalties are we talking about? What kind of serious money are we getting into to penalize people who abuse this list?

Allan Rosenzweig, General Counsel, Telecommunications, Canadian Radio-television and Telecommunications Commission: In every contravention, the party, in the case of a corporation, is subject to an administrative monetary penalty of \$15,000. This is modeled on the U.S. legislation, where it is U.S. \$11,000. It is considered a sufficient deterrent and is not a punitive amount.

...

The Chairman: A single advertising campaign will not be sufficient for the consumer to know that it is possible to file a complaint and to find out how to do so. Have we given any thought to communicating with the public more regularly, without this costing outrageous sums?

[English]

Mr. French: The experience in the United States has been favourable in this regard. Close to 100 million registrations are on the U.S. list. That is a huge proportion of all households.

If we have the impression that Canadians do not know, we will certainly expend the resources necessary to inform them. Word of mouth will move this matter very quickly. I must say I do not believe we will have a major problem after the first 18 months.

Senator Eyton: As I understand it, there are now what I think you referred to as company-specific lists. That is monitored by the CRTC and there is an entire set of rules that apply. You take action depending on —

Mr. French: I am sorry to interrupt, senator. We cannot take action because we do not have the means. This bill will give us that.

Senator Eyton: You cannot do anything with these company-specific lists.

Mr. Rosenzweig: We can, but there are problems. It is sometimes a question of proof as to whether people actually asked to be taken off the list and to not be called. With a national do-not-call list centrally administered, it is clear whether they should have been called or not.

As well, the sanction available is criminal prosecution with maximum fines that are not very high. The administrative monitoring penalty system power, or AMPS, which is used by many other departments and agencies in the federal government, will provide an efficient and effective deterrent. We do not have that power right now to deter people from violations. That is why the commission thought a national do-not-call list would be not as effective without an AMPS power. This bill would provide that power to the commission.

Senator Eyton: It makes more significant exemptions than are in the national list. There is no meaningful penalty when you are on a company-specific list. I am not sure, how, for example, you would monitor charities.

Mr. Rosenzweig: The bill provides that if you are exempt from the national do-not-call list you are required to have a company-specific or a charity-specific list. The bill also requires people who are exempt to state at the beginning of each call on whose behalf the call is made, whether it is the Kidney Foundation or whoever. The bill provides for a company-specific do-not-call list. The penalty is the same. For any violation of the

telemarketing rules, it is a \$15,000 penalty for each call. The bill provides for the same penalty whether you are exempt or not.

...

Mr. Rosenzweig: For the first time, this bill will provide a more effective enforcement mechanism for the commission — not just with regard to a national do-not-call list, but our existing telemarketing rules. If an ADAD call is made that is prohibited by our rules, we will have an AMPS power to provide a fine of \$15,000. This is an important tool to safeguard against invasions of privacy contrary to the rules.

Mr. French: It is not the source of the number, but whether the number is on the list. If automatic dialing devices dial numbers on the list and that occasions complaints, they will be detected and pursued.

[Translation]

The Chairman: We have a few minutes left. We will therefore go on to the second round of questions, with Senator Chaput and Senator Tardif.

Senator Chaput: In the case of administrative penalties, you have the \$1,500 penalty per person and \$15,000 per corporation. There is also a provision in the bill that states that an employer is responsible for any violation committed by his employee. Therefore, if I work for a given company, if I make the call and I am violating the law, the company will have to pay the \$15,000 fine because I am its employee.

In the case of an individual, what definition are you referring to? Can it be just anyone?

[English]

Mr. Rosenzweig: "Personne physique" is the legal term. In English, it is "an individual." If I were to telemarket, as opposed to setting up a corporation, then I would be responsible for my actions as an individual, as a person.

[Translation]

Senator Chaput: Does there have to be a link with a business?

[English]

Do you have to be the owner?

Mr. Rosenzweig: No. It is any individual. If I am acting on behalf of someone else, clearly, the person we would look to for responsibility is the principal, not the agent. Generally speaking, you look to the person who is responsible for the behaviour.

The Chairman: Which is to say employees dialing the numbers they have been told to dial, if they are using old-fashioned technology, are not the ones you will go after.

Mr. Rosenzweig: We will be looking at the corporation for whom they are working.

Mr. French: We will be looking for the telemarketing corporation, the commercial enterprise of telemarketing for whom they are working, and not necessarily the sponsoring corporation on whose behalf they are operating.

[Translation]

Senator Tardif: I only had one point of clarification to raise regarding the distinction between the \$1,500 fine for an individual and the \$15,000 fine for a corporation.

Mr. French: Senator, it should be pointed out that the fine is \$15,000 or \$1,500 per incident. Therefore, that sum can accumulate.

[English]

...

Senator Tkachuk: Earlier, I raised the subject of the brief submitted to us by the optometrists. I also had trouble with the definition of the law as the CRTC was interpreting it, which is "a pattern of abuse." That means nothing to me. I do not know if that means one call or five calls. It is in the definition of the beholder, I would think, and the one receiving the phone call, as to whether it fits. Mr. Futerman, is your main concern that the law is not clear? Is that what causes you the problem? Or is it the fact that there are exemptions for some but not for you?

Mr. Futerman: We have two concerns. First, we feel that the time limitation of 18 months excludes businesses like ours from protection. Second, as mentioned, we are asked to operate in this grey zone. We have no idea what number of complaints will trigger a prosecution. With a \$15,000 fine floating over our heads — or an accumulation of \$15,000 fines — we feel that that should be defined in the proposed legislation.

Senator Tkachuk: In other words, if there is a complaint you would like to know right away?

Mr. Futerman: Yes.

Senator Tkachuk: Rather than waiting for an accumulation of complaints that would lead to a pattern of abuse?

Mr. Futerman: I do not think there is any legislation that can apply to small businesses, especially if this is a strict liability offence, which means that you are guilty until proven innocent, under the letter of the law. Once a complaint is made under the letter of the law, the onus is on small-business people to prove on a balance of probabilities that they did not commit that act and/or they had a good reason to commit the act.

There is a huge burden being put on regular small-business people, with a \$15,000 fine at the end, which is clearly not designed for us. One fine would blow us out of the water. This is meant to apply to huge corporations. This is a regulatory offence being applied to mom-and-pop small businesses. It is clearly not designed for small businesses. It would be one thing if we were to receive a \$100 fine and then a warning. Even if the \$100 fines were cumulative, we could maybe absorb that kind of cost and readjust our behaviour. However, this means a \$15,000 fines that accumulate over our heads with each complaint under the letter of the law. Once that prosecution is triggered, we could have \$50,000 in fines applied against us. It will destroy livelihoods instantaneously.

...

Senator Merchant: I am likely one who will not register my number with the do-not-call list because most of the calls I receive now will continue unless I register a complaint or an objection with the callers.

Mr. Gustavson, you represent large companies and you think this bill would level the playing field. How would that work for the smaller businesses? I was raised in a household that was supported by a small business. My parents are Greek immigrants and ran a small restaurant, where they had one employee. I am sensitive to how small businesses can survive. Mr. Futerman said that these penalties would be onerous for small businesses, although larger businesses could absorb such a cost more readily. I do not understand how this bill would level the playing yield for businesses.

Mr. Gustavson: We represent a combination of large businesses but we also include small businesses within our 800 members. The majority of our members would be considered small or mid-sized businesses. All of our members must comply with our do-not-call service and the 500,000 members are on that list. However, many others do not have to comply and so are free to call whomever they wish, while our members are trying to act responsibly. Our members are ethical marketers and those that do not comply cause the problem. Having legislation that requires all businesses to comply with the national do-not-call list would ensure that everyone plays by the same rules. I do not think it is unfair to expect small, mid-sized and large businesses to comply with the law. I do not think the cost to small businesses would be as onerous as Mr. Futerman has put forward. First, the cost to access the list would not be high, and it could be done through a databank, list broker or anywhere else. A business would not be forced to pay the national fee to download everyone on

that list. Second, with respect to penalties, yes, they would need to be fairly high, not only to combat violations so that it is not simply a licence to ignore the national do-not-call service, but also so that there is responsible administration of the penalties. There is still a standard of proof to be made and the intents. As far as I know, it is not a matter of strict liability and there must be some evidence that this was a deliberate violation of the requirements of the do-not-call service. Warnings of misconduct could be issued rather than moving directly to prosecution. In our society we sometimes have to rely on the reasonable administration of the law, but if problems arise, the proposed legislation would come before Parliament in three years for a review.

...

Senator Tkachuk: Were you concerned about what the Federation of Independent Business said about some of the problems they might experience? There is even some confusion about the \$15,000, whether it is a \$15,000 fine for the infraction or \$15,000 per call, which is an entirely different story. If it is per call, which I think it is, three calls is \$45,000. The fine is per call, not \$15,000 for the actual event. That can be a substantial amount of money.

Mr. Lawford: It is a difficult situation to set up. Perhaps it could be refined by creating a middle category. The fine must be high enough to deter hard-core telemarketers who will continue despite the prohibitions. On the other hand, if it is a small business making a genuine error, you do not want to penalize them with such a high fine. Perhaps we could consider a middle ground. I do share those concerns to that extent.

However, small-business owners who cold call people would be caught by the proposed legislation. From a consumer point of view, we feel that that method of first contact is to be balanced against its intrusiveness.

....

Proceedings of the Standing Senate Committee on Transport and Communications

Issue 23 - Evidence - November 22, 2005

[http://www.parl.gc.ca/Content/SEN/Committee/381/tran/23evb-e.htm?Language=E&Parl=38&Ses=1&comm\\_id=19](http://www.parl.gc.ca/Content/SEN/Committee/381/tran/23evb-e.htm?Language=E&Parl=38&Ses=1&comm_id=19)

...

The Chairman: Perhaps you could give us a brief indication of what you plan to do. When we get to clause-by-clause consideration of the bill, then you will propose your specific amendments, I assume.

Senator Tkachuk: When we go to clause by clause, they are right at the beginning; clause 1 and 2 are the amendments. One is on the \$15,000 penalty. If you will remember, we were not clear and it was not made clear, but when you look at the bill it is clear that it is per call. It was not the intent of the drafters or the government to do that, but that is what they did.

We have an amendment here to change it to an administrative monetary penalty of up to \$1,500 in the case of an individual and up to \$15,000 in the case of a corporation. We drew this up last night and we have the French version as well. We have copies for everyone.

...

Senator Tkachuk: I have an amendment, which you have before you, in clause 2, on page 5, replacing lines 13 to 17. Right now it reads:

commits the violation is liable

- (a) in the case of an individual, to an administrative monetary penalty of \$1,500; or
- (b) in the case of a corporation, to an administrative monetary penalty of \$15,000.

I would change it to:

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.

It would clarify it.

The Chairman: Questions or comments?

Senator Tardif: This is a good amendment and I would support it.

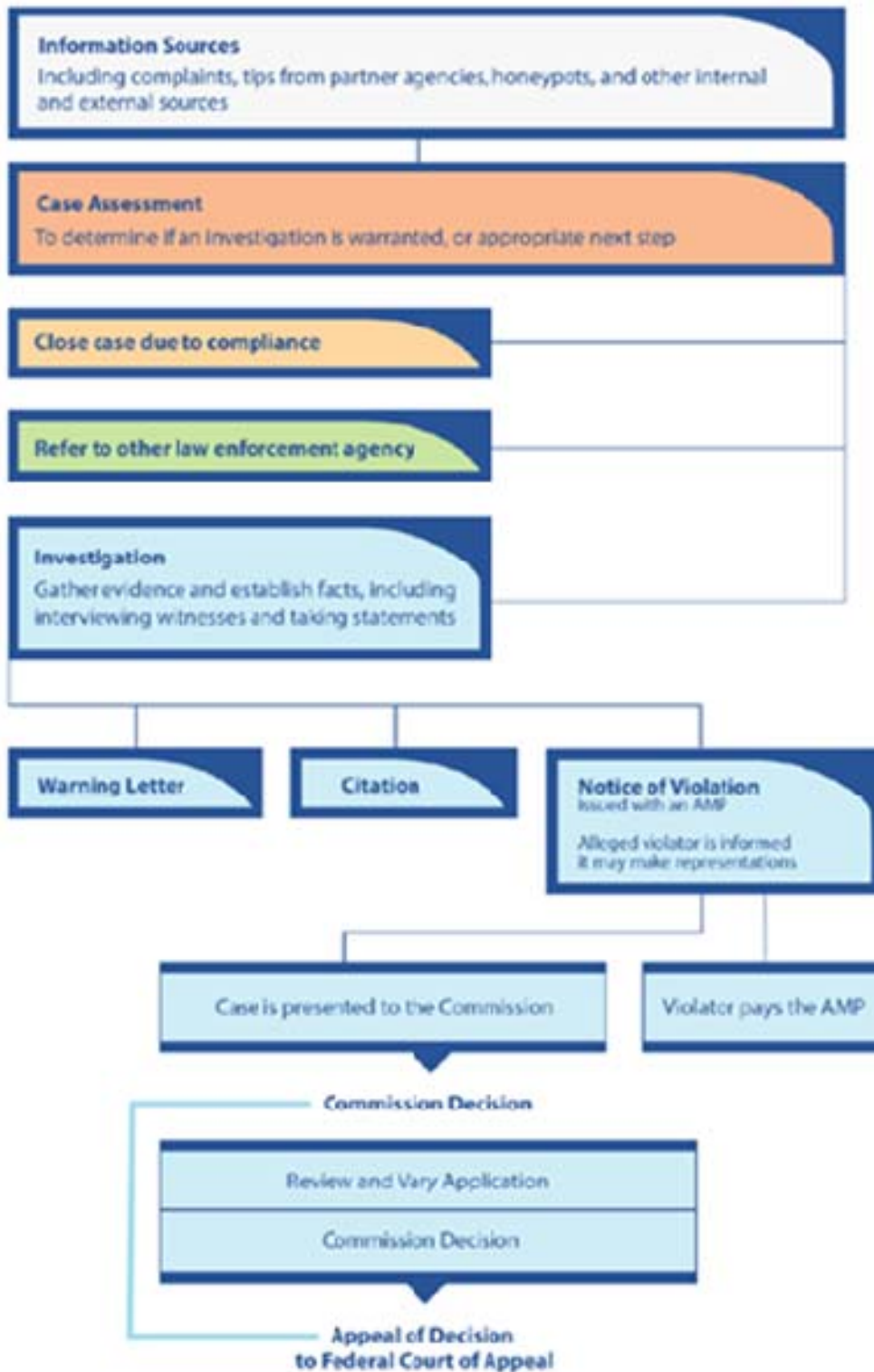
Senator Tkachuk: Thank you, senator.

The Chairman: All in favour of the amendment? In this case I am voting, Senator Tkachuk.

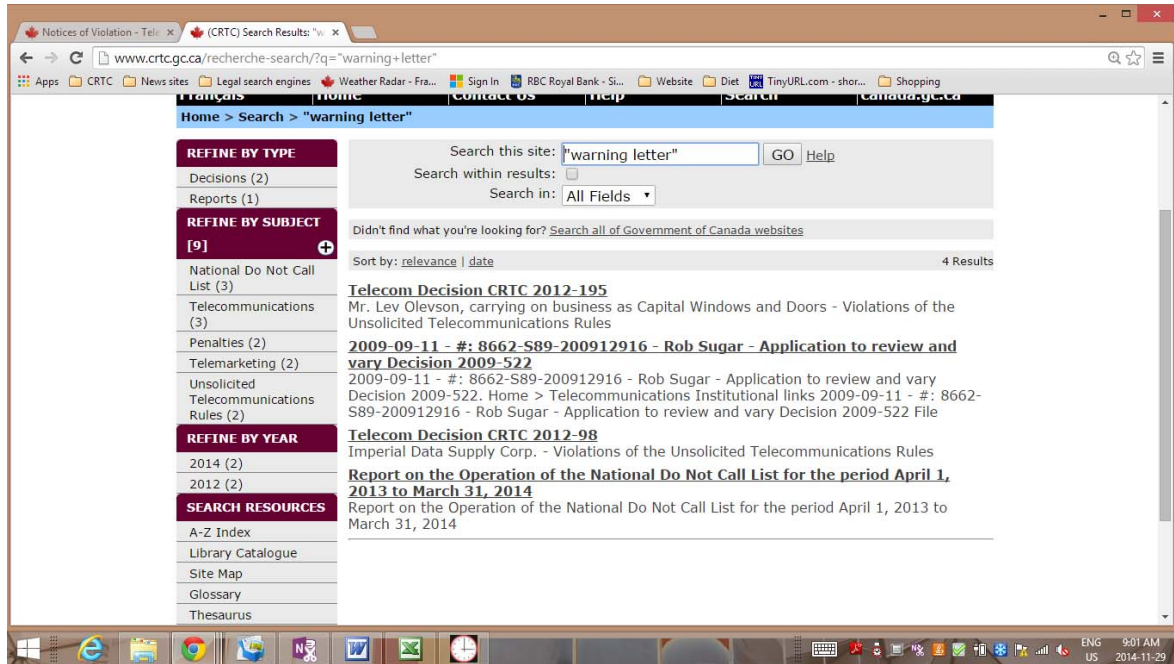
All opposed?

Carried.

**Appendix 3: CRTC process for enforcing compliance with the *Unsolicited Telecommunications Rules***



Appendix 4: Warning letters not published by the CRTC



**Appendix 5: Violators sanctioned for violations of the *Unsolicited Telecommunications Rules***

Person or corporation	Interim decision	Final decision	Total decisions
1051080 Ontario Inc. (Turf Operations Group)		1	1
1109178 Alberta Ltd. (dba Dynamic Furnace Cleaning)		1	1
1238053 Ontario Inc. (dba Dr. Green Services Lawn Care)		1	1
1486647 Ontario Inc. (dba Ontario Consumer Credit Assistance)		1	1
1686496 Ontario Ltd. (cob as 2 The Point Global Marketing)	1	1	2
1716878 Ontario Inc. (cob as Direct to Home Groceries)	1	1	2
1740396 Ontario Inc. (cob The Grocery Group)	1	1	2
2019824 Ontario Ltd (dba Remtech)		1	1
2094051 Ontario Inc.	1	1	2
2158519 Ontario Inc. (cob as Lifetime Best Buy Windows and Doors)	1	1	2
2160983 Ontario Inc. (cob as Ontario Choice Window and Door)	2	1	3
2168807 Ontario Ltd. (dba Northview Windows & Doors Inc)		1	1
2170958 Ontario Inc. (dba Aire One Heating & Cooling)		1	1
2260948 Ontario Inc. (cob as Vinyl Window Pro)	1	1	2
411 Local Search Corp		1	1
475736 Alberta Ltd. (dba Castle Maintenance Services)		1	1
777911 Alberta Ltd.		1	1
9039-0188 Québec Inc.		1	1
9095-6103 Québec Inc. (dba Paysagement Communautaire)		1	1
9121-1920 Quebec Inc (cob as Groupe CC)	2	1	3
9184-8630 Quebec Inc. (cob Ramonage Plus)	2	1	3
9215-9169 Québec inc., Groupe Galilée		1	1
Action Windows and Doors Ltd.	2	2	4
ActiveCast Global Ltd.	1	1	2
Advanced Air Supply Inc.		1	1
Advantage Pro Portes et Fenetres	2	1	3
Alberta Drywall & Stucco Supply Inc.		1	1
Alberta Federation of Labour		1	1
All Points Solutions Inc.	1	2	3
Allstate Carpet & Upholstery Cleaning Ltd.		1	1
Alopast Duke Windows & Doors Inc.	3	2	5
Attention Business Systems Ltd. (cob as Maple Printing & Business Forms)		1	1
Aurora Custom Furnishings		1	1
Aurora Windows and Doors Ltd.		1	1
Avaneesh Software Private Limited (India)		1	1



Person or corporation	Interim decision	Final decision	Total decisions
Axxess Payments Inc.		1	1
Bee So Clean Ltd.	1	1	2
Beefeaters Inc. (cob as Shopco Food Provisioners)	1	1	2
Bell Canada		1	1
Best Heating Inc.		1	1
Best Price Movers Ltd.	2	1	3
Better Opinion Mortgage		1	1
Bijouterie Création Marco – Victoriaville (Quebec)		1	1
Blackstone Public Affairs Group		1	1
Blake Richards (Wild Rose)		1	1
Blue Dream HT Ltd.		1	1
Bourassa Chevrolet		1	1
Breathe E-Z Homes Ltd.	1	1	2
Brian Jones		1	1
Bryan Bishop		1	1
Busy Boys Carpet Cleaners Ltd.		1	1
Byo-Steem		1	1
C.A.P.O.R. Windows and Doors Inc.		1	1
Cambridge Mercantile Corp.		1	1
Canadian Choice Home Improvements Inc.	1	1	2
Canadian Fine Foods		1	1
Canadian Union of Postal Workers		1	1
Cancun Unlimited s.a. de c.v. (Mexico)		1	1
Casement Limited	1	1	2
CDS Global Inc.		1	1
Cedar Springs Water		1	1
Central Organization Inc.		1	1
Centum Home Lenders Ltd.		1	1
Century 21 Leading Edge Realty Inc.		1	1
Century Close out Inc.		1	1
Coastal Steel Structures		1	1
Comwave Telenetworks Inc.		1	1
Concord Cleaning and Renovating Inc.		1	1
Connect 1 Corp.		1	1
Conservative Party of Canada		2	2
Construction J.P. Bouchard Inc.		1	1
CR Group Marketing Inc.		2	2
CTRI Crisis & Trauma Institute		1	1
Cummins Restoration Inc.		1	1
Deluxe Pro Windows and Doors Inc.	1	1	2
Diamond Choice Duct Cleaning		1	1
Distribution Fidecis Inc.		1	1

Person or corporation	Interim decision	Final decision	Total decisions
Dominion Carpet Cleaners (Manitoba Ltd.)		1	1
Dr. Honda Specialists		1	1
Dynique Restoration		1	1
EasyHome Ltd.		1	1
Eatons Commercial & Residential Services Ltd	1	1	2
Echo Marketing Solutions		1	1
Ecosmart Home Services Inc.		1	1
Ed Barna (cob as Byo Steem)	3	1	4
Ekko Exteriors		1	1
Euro-Seal Window Industries Ltd.	1	1	2
EVO Merchant Services Corp. Canada, QC		1	1
Evrica Enterprises Inc.	1	1	2
Express Pardons		1	1
FAX Target Communications Inc.		1	1
Faxnet		1	1
Federated Payments Canada		1	1
Fibre Tech Carpet Care		1	1
First Choice WS Ltd.		1	1
Fresh Clean Air Filtration Systems Inc.		1	1
Frigoviande Inc.		1	1
G3 Telecom		1	1
Gemini Group Electrical Systems Inc.		1	1
Georgetown Kia		1	1
Giglio and Sons Paving and Concrete Ltd.		1	1
Gloria Link Inc.		1	1
Goodlife Fitness Centres Inc.		1	1
Grants Canada		1	1
Great Lakes Lawn Care		1	1
Green Shield Windows and Doors Ltd.	2	2	4
Green Sword Inc.		1	1
Groupe Vertdure Inc.		1	1
Guelph Federal Liberal Association on behalf of Mr. Frank Valeriotte		1	1
Haare Kosmetik		1	1
High Efficiency Homes Inc		1	1
Home Comfort Group Inc.		1	1
Home Window Inc.		1	1
Hometech Windows and Doors Inc.		1	1
HP Climatisation & Chauffage Inc.		1	1
Hugo Charron (cob as Bionet Nettoyage)	1	1	2
Hunter Window Industries Ltd.		1	1
IBX Services Inc.		1	1

Person or corporation	Interim decision	Final decision	Total decisions
Imperial Data Supply Corp.	6	1	7
Infatigable Consultants Holdings Inc.		1	1
Infax Service d'Information sur Demandes par Fax Inc.	2	1	3
Invisible Windows		1	1
iQor Canada		1	1
Jim Carr		1	1
Kawartha Carpet Care		2	2
Kentwood Ford		1	1
L.D. Ducharme Systems Inc.		1	1
LawnSavers Plant Health Care Inc.		1	1
Les Aliments S.R.C. Inc.	4	3	7
Les Distributions Triple A Inc.	2	1	3
Les Fenêtres et Portes Deluxe de Montréal Inc.	1	1	2
Les Systèmes Techno-Pompes Inc.		1	1
Lev Olevson (cob under different names)	4	3	7
LOCA Financial Services Inc.		1	1
Loewen Enterprises Ltd.		1	1
Loyal Seal Windows and Doors Inc.		2	2
MacDonald Home Pro's		1	1
Management Performance Centre Inc.		1	1
Maple Printing		1	1
Marco Polo Tours		1	1
Marketing Maniacs		1	1
Martin Chateauneuf Victoriaville - (Quebec)		1	1
Mass Media		1	1
McTavish Logistics Ltd.	1	2	3
MDG Newmarket Inc. (op'g as Ontario Energy Group)	1	1	2
Michel Levesque (cob as Nettoyage Mirage Inc.)	2	1	3
Mouldaway Canada Inc.	1	1	2
National Foods Ltd.		1	1
Nature Carpet Cleaning Inc.	1	1	2
Natures Carpet Cleaning (2012) Ltd.	1	2	3
NECC Telecom		1	1
News link Canada		1	1
Niagara Duct Cleaning		1	1
Nortech Ottawa Windows and Doors		1	1
Northland Dodge Chrysler Jeep		1	1
Northshield Windows and Doors Inc.		2	2
Northview Windows and Doors Inc		1	1
Northwood Mortgage Ltd.		1	1
Oxbo Technologies Inc.		1	1
Paradise Canyon Management Ltd.		1	1

Person or corporation	Interim decision	Final decision	Total decisions
Parkway Motors Hamilton Ltd.		1	1
Patricia Halloran (dba Paramount Cleaning)		1	1
Paul Dewar Leadership Campaign		1	1
Payprinter Systems Inc.		1	1
Peak Windows Ltd.		1	1
Pecon Software Limited (India)		1	1
Perfection Carpet Cleaning Ltd.		1	1
PF Expert Montréal inc.		1	1
Pioneer Windows and Doors		1	1
Platinum Reproductions		1	1
Poêles et foyers de la Capitale		1	1
Power Brush Furnace and Duct Cleaning		1	1
Premier Bathrooms, Inc.		1	1
Premier Fitness		1	1
Pride Windows and Doors Inc.	1	1	2
Primary Seal Windows and Doors		1	1
Pristine Solutions		1	1
Progressive Conservative Party of Ontario		1	1
Proseal Concrete Floor Care Systems Inc.		1	1
Prospectus Direct		1	1
PSV Powersteam & Vac Ltd.		1	1
Puretone Hearing Group		1	1
Quantum Merchant Services		2	2
Québec Loisirs		2	2
Quick Connect Solutions		1	1
R.H. Genova Corp.		1	1
R.J. Wiley Heating & Air Conditioning		1	1
RackNine Inc.		1	1
Rafih Auto Group		1	1
Rainbow Aluminum & Vinyl Products Ltd.		1	1
Rejean Beauchamp (cob as Nettoyage Beauchamp)	1	1	2
Rob Sugar	2	1	3
Rogers		1	1
Roofing by Peerless Mason Ltd.	2	2	4
Royal Carpet and Furnace Cleaning		1	1
Royal Deluxe Windows and Doors Industries Inc.	1	1	2
Royal Lepage		1	1
Royal Style Windows and Doors Inc.	2	1	3
Saintlix Inc.		1	1
Sandy Beach Travels		1	1
Sayed Hyder (op'g as Hydro Power Saver)	1	1	2
Scholar's Choice		1	1

Person or corporation	Interim decision	Final decision	Total decisions
Sécurité Châteaufort Inc.		1	1
Select Media		1	1
Services de courtage financier M.F. Inc.		1	1
SimplyH2O		1	1
Solus VB Inc.		1	1
Starford International Inc.		1	1
Startec Global Communication		1	1
Strategic Communications Inc.		1	1
Suitelife Vacations Club		1	1
Sun Media Corporation		1	1
Sunnyside Window Cleaning Ltd.		1	1
Super Value Carpet Cleaning		1	1
Superior Windows and Doors Inc.		1	1
Tele market4u Inc.	1	1	2
Telus		1	1
The Marc Garneau Leadership Campaign		1	1
The New Democratic Party of Canada (NDP)		1	1
Thrift Magic LP		1	1
Times Colonist		1	1
TopClass Air Duct Cleaning Inc.	1	1	2
TopClass Home Services Inc.	1	1	2
Tri Dell Clean Air Systems Inc.		2	2
Ultra Air Inc.		1	1
UniMarketing		1	1
Union Calling		1	1
Visage Windows and Doors		1	1
Vitraux Multi Service		1	1
Voysus Group Inc.		1	1
Waterproofing by Peerless Mason Inc.	2	2	4
Wildrose Alliance Political Association		1	1
Wilospir Holdings Inc.		1	1
Window Butler		1	1
Worldwide Global Logistics		1	1
Xentel DM Inc.		1	1
YYZ Logistics Ltd.	2	1	3
<b>Total violators - 238</b>	<b>52</b>	<b>237</b>	<b>238</b>

**Appendix 6: Fines issued, by violator and year**

Subject	Fines issued, in \$000s						Total
	2009	2010	2011	2012	2013	2014	
Hugo Charron (cob as Bionet Nettoyage)				1			1
1740396 Ontario Inc. (cob The Grocery Group)				2			2
Rejean Beauchamp (cob as Nettoyage Beauchamp)				2			2
Breathe E-Z Homes Ltd.		2					2
Bryan Bishop				2			2
Best Price Movers Ltd.		2.5					2.5
The Marc Garneau Leadership Campaign					2.5		2.5
Casement Limited		3					3
Pride Windows and Doors Inc.		3					3
Deluxe Pro Windows and Doors Inc.		3					3
Royal Deluxe Windows and Doors Industries Inc.		3					3
2158519 Ontario Inc. (cob as Lifetime Best Buy Windows and Doors)		3					3
TopClass Home Services Inc.		3					3
Tri Dell Clean Air Systems Inc.		3					3
Evrica Enterprises Inc.		3					3
Attention Business Systems Ltd. (cob as Maple Printing & Business Forms)				4			4
Michel Levesque (cob as Nettoyage Mirage Inc.)				4			4
Bee So Clean Ltd.				4			4
Rob Sugar	4						4
Royal Style Windows and Doors Inc.				4			4
9095-6103 Québec Inc. (dba Paysagement Communautaire)				4			4
9184-8630 Quebec Inc. (cob Ramonage Plus)				4			4
Brian Jones						4	4
Mouldaway Canada Inc.	4.5						4.5
Guelph Federal Liberal Association on behalf of Mr. Frank Valeriotte				4.9			4.9
Solus VB Inc.					5		5
YYZ Logistics Ltd.		5					5
Les Distributions Triple A Inc.				6			6
TopClass Air Duct Cleaning Inc.		6					6
Advantage Pro Portes et Fenetres						6	6
Paul Dewar Leadership Campaign					7		7
All Points Solutions Inc.		7					7
Sayed Hyder (op'g as Hydro Power Saver)		7					7
Natures Carpet Cleaning (2012) Ltd.						8	8
Eatons Commercial & Residential Services Ltd				8			8
Ed Barna (cob as Byo Steem)				8			8



Fines issued, in \$000s

Subject	2009	2010	2011	2012	2013	2014	Total
Canadian Union of Postal Workers					50		50
MDG Newmarket Inc. (op'g as Ontario Energy Group)					54		54
RackNine Inc.					60		60
Union Calling					65		65
1486647 Ontario Inc. (dba Ontario Consumer Credit Assistance)					69		69
Green Shield Windows and Doors Ltd.			12		65		77
Conservative Party of Canada					78		78
Progressive Conservative Party of Ontario					85		85
Wildrose Alliance Political Association					90		90
Comwave Telenetworks Inc.					100		100
Telus		200					200
1051080 Ontario Inc. (Turf Operations Group)						200	200
Québec Loisirs						200	200
iQor Canada						237.5	237.5
Thrift Magic LP						250	250
Rogers			275				275
Goodlife Fitness Centres Inc.			300				300
Pecon Software Limited (India)				495			495
Xentel DM Inc.		500					500
Bell Canada		1300					1300
Total	33.5	2166.5	613	632.9	917.9	1164	5527.8



**Appendix 7: Final determinations, showing total fine and average fine per violation selected by CRTC**

Year	Subject	Dec type	Date of notice	First or repeat offence?	# of complaints	Rules breached	# of calls	# of telecns	# rules/ sections breached	# viol'ns counted by CRTC	Final decision AMP (\$K)	AMP / violation (\$K)
2009	Tri Dell Clean Air Systems Inc.	NoV	2009-12-14	First offence	Unknown		Not stated	3	1	3		\$-
2012	Hugo Charron (cob as Bionet Nettoyage)	Dec'n	2012-03-30	First offence	35	II, III	Not stated	2	2	4	1	\$ 0.3
2009	Mouldaway Canada Inc.	Dec'n	2009-09-30	First offence	"numerous"		Not stated		2	9	4.5	\$ 0.5
2010	Sayed Hyder (op'g as Hydro Power Saver)	Dec'n	2010-02-12	First offence	"numerous"	II, III	Not stated	5	3	14	7	\$ 0.5
2012	Bryan Bishop	NoV	2012-02-15	First offence	Unknown	II	Not stated		2	4	2	\$ 0.5
2012	Michel Levesque (cob as Nettoyage Mirage Inc.)	Dec'n	2012-03-30	First offence			Not stated			8	4	\$ 0.5
2012	Rejean Beauchamp (cob as Nettoyage Beauchamp)	Dec'n	2012-03-30	First offence	"numerous"	II, III	Not stated	2	2	4	2	\$ 0.5
2012	Lev Olevson (cob under different names)	Dec'n	2012-03-30	Repeat	"numerous"	II, III	Not stated	2	2	4	2	\$ 0.5
2013	Quick Connect Solutions	NoV	2013-03-26	First offence	Unknown	IV	Not stated		1	22	11	\$ 0.5
2013	Kawartha Carpet Care	NoV	2013-03-28	First offence	Unknown	II	Not stated		2	12	9	\$ 0.8
2009	Roofing by Peerless Mason Ltd.	Dec'n	2009-08-26	First offence	Unknown	II	Not stated	5	2	10	10	\$ 1.0
2009	Waterproofing by Peerless Mason Inc.	Dec'n	2009-08-26	First offence	Unknown	II	Not stated	5	2	10	10	\$ 1.0
2010	9121-1920 Quebec Inc (cob as Groupe CC)	R/V appl'n	2010-03-05	First offence	Unknown	II, III	Not stated	3	3	9	9	\$ 1.0
2010	All Points Solutions Inc.	R/V appl'n	2010-03-05	First offence		II	Not stated			7	7	\$ 1.0
2010	InfaxService d'Information sur Demandes par Fax Inc.	R/V appl'n	2010-05-14	First offence	Unknown		Not stated			9	9	\$ 1.0
2010	Tri Dell Clean Air Systems Inc.	Dec'n	2010-06-04	Repeat	"numerous"	II	Not stated	3	1	3	3	\$ 1.0
2010	Breathe E-Z Homes Ltd.	Dec'n	2010-08-12	First offence	"numerous"	II	Not stated	2	1	2	2	\$ 1.0
2010	Alopast Duke Windows & Doors Inc.	R/V appl'n	2010-08-18	First offence		II, III	Not stated	2	3	6	6	\$ 1.0
2010	ActiveCast Global Ltd.	Dec'n	2010-08-27	First offence	"numerous"	II, III	Not stated	4	3	10	10	\$ 1.0
2010	TopClass Air Duct Cleaning Inc.	Dec'n	2010-11-04	First offence	"numerous"	II	Not stated	3	2	6	6	\$ 1.0
2010	TopClass Home Services Inc.	Dec'n	2010-11-04	First offence	"numerous"	II, III	Not stated	1	3	3	3	\$ 1.0
2010	Beefeaters Inc. (cob as Shopco Food Provisioners)	Dec'n	2010-11-09	First offence	"numerous"	II	Not stated	10	2	10	10	\$ 1.0
2011	1716878 Ontario Inc. (cob as Direct to Home Groceries)	Dec'n	2011-05-10	First offence	"numerous"	II	Not stated	5	2	10	10	\$ 1.0
2011	Green Shield Windows and Doors Ltd.	Dec'n	2011-09-28	First offence	185	II	Not stated	12	2	12	12	\$ 1.0
2012	Ed Barna (cob as Byo Steem)	Dec'n	2012-02-07	First offence	"numerous"	II	Not stated	4	2	8	8	\$ 1.0
2012	Les Distributions Triple A Inc.	R/V appl'n	2012-02-13	First offence			Not stated	3	2	6	6	\$ 1.0

Year	Subject	Dec type	Date of notice	First or repeat offence?	# of complaints	Rules breached	# of calls	# of telecns	# rules/ sections breached	# viol'ns counted by CRTC	Final decision AMP (\$K)	AMP / violation (\$K)
2012	9095-6103 Québec Inc. (dba Paysagement Communautaire)	NoV	2012-02-15	First offence	Unknown	II	Not stated		2	4	4	\$ 1.0
2012	Bee So Clean Ltd.	Dec'n	2012-03-30	First offence	"numerous"	II, III	Not stated	2	2	4	4	\$ 1.0
2012	Nature Carpet Cleaning Inc.	Dec'n	2012-03-30	First offence	"numerous"	II, III	Not stated	3	3	9	9	\$ 1.0
2012	9184-8630 Quebec Inc. (cob Ramonage Plus)	Dec'n - de novo	2012-06-12	First offence	"numerous"	II, III	Not stated	2	2	4	4	\$ 1.0
2012	Euro-Seal Window Industries Ltd.	Dec'n	2012-06-12	First offence	"numerous"	II	Not stated	14	5	29	29	\$ 1.0
2012	Eatons Commercial & Residential Services Ltd	Dec'n	2012-09-07	First offence	8	II, III	Not stated	8	3	8	8	\$ 1.0
2012	Avaneesh Software Private Limited (India)	NoV	2012-10-02	First offence	Unknown	II	Not stated	4	3	12	12	\$ 1.0
2012	Royal Style Windows and Doors Inc.	R/V appl'n	2012-11-23	First offence		II, III	Not stated	2	2	4	4	\$ 1.0
2013	2094051 Ontario Inc.	Dec'n	2013-10-08	First offence	"numerous"		Not stated	3	3	9	9	\$ 1.0
2013	Canadian Choice Home Improvements Inc.	Dec'n	2013-10-08	First offence	"numerous"	II	Not stated	10		10	10	\$ 1.0
2013	Les Fenêtres et Portes Deluxe de Montréal Inc.	Dec'n	2013-10-08	First offence	"numerous"	II	Not stated	5	2	10	10	\$ 1.0
2014	Avantage Pro Portes et Fenetres	Dec'n	2014-02-28	First offence	"numerous"	II, III	Not stated	2	3	6	6	\$ 1.0
2014	Tele market4u Inc.	Dec'n	2014-02-28	First offence	"numerous"	II, III	Not stated	4	3	12	12	\$ 1.0
2014	Lev Olevson (cob under different names)	Dec'n	2014-08-12	Repeat	"numerous"	II	Not stated	4	2	8	8	\$ 1.0
2012	Imperial Data Supply Corp.	Dec'n	2012-02-15	First offence	"numerous"	III	Not stated			12	18	\$ 1.5
2010	Roofing by Peerless Mason Ltd.	Dec'n	2010-07-21	Repeat	"numerous"	II	Not stated	5	2	10	20	\$ 2.0
2010	Waterproofing by Peerless Mason Inc.	Dec'n	2010-07-21	Repeat	"numerous"	II	Not stated	5	2	10	20	\$ 2.0
2011	2160983 Ontario Inc. (cob as Ontario Choice Window and Door)	Dec'n	2011-06-23	First offence	"numerous"	II, III	Not stated	4	2	8	16	\$ 2.0
2012	Attention Business Systems Ltd. (cob as Maple Printing & Business Forms)	NoV	2012-02-15	First offence	Unknown	II	Not stated		2	2	4	\$ 2.0
2012	1740396 Ontario Inc. (cob The Grocery Group)	Dec'n	2012-06-12	First offence	"numerous"	II	Not stated	2	1	1	2	\$ 2.0
2013	Alopast Duke Windows & Doors Inc.	Dec'n	2013-10-08	Repeat	"numerous"	II, III	Not stated	3	3	9	18	\$ 2.0
2014	Natures Carpet Cleaning (2012) Ltd.	Dec'n	2014-10-23	Repeat	"numerous"	II	Not stated			4	8	\$ 2.0
2012	Les Aliments S.R.C. Inc.	R/V appl'n	2012-12-06	Repeat		II	Not stated	10	2	4	10	\$ 2.5
2010	1686496 Ontario Ltd. (cob as 2 The Point Global Marketing)	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	7	1	7	21	\$ 3.0

Year	Subject	Dec type	Date of notice	First or repeat offence?	# of complaints	Rules breached	# of calls	# of telecns	# rules/ sections breached	# viol'ns counted by CRTC	Final decision AMP (\$K)	AMP / violation (\$K)
2010	2158519 Ontario Inc. (cob as Lifetime Best Buy Windows and Doors)	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Action Windows and Doors Ltd.	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Casement Limited	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Deluxe Pro Windows and Doors Inc.	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Evrica Enterprises Inc.	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Pride Windows and Doors Inc.	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2010	Royal Deluxe Windows and Doors Industries Inc.	Dec'n	2010-06-10	First offence	"numerous"	II	Not stated	1	1	1	3	\$ 3.0
2012	Pecon Software Limited (India)	NoV	2012-10-02	First offence	Unknown		Not stated		3	165	495	\$ 3.0
2013	1486647 Ontario Inc. (dba Ontario Consumer Credit Assistance)	NoV	2013-03-26	First offence	Unknown	IV	Not stated	23	1	23	69	\$ 3.0
2014	2260948 Ontario Inc. (cob as Vinyl Window Pro)	Dec'n	2014-02-28	First offence	"numerous"	II, III	Not stated	4	3	4	12	\$ 3.0
2013	Comwave Telenetworks Inc.	NoV	2013-03-28	First offence	Unknown	II	Not stated		3	33	100	\$ 3.0
2014	Action Windows and Doors Ltd.	Dec'n	2014-07-23	Repeat	"numerous"	II	Not stated		3	6	24	\$ 4.0
2011	Goodlife Fitness Centres Inc.	NoV	2011-08-22	First offence	Unknown	IV	Not stated		1	60	300	\$ 5.0
2013	MDG Newmarket Inc. (op'g as Ontario Energy Group)	Dec'n	2013-07-31	First offence	"numerous"	II	49,093	3,828	2	9	54	\$ 6.0
2010	Xentel DM Inc.	NoV	2010-12-16	First offence	Unknown	II	Not stated	26	3	75	500	\$ 6.7
2009	McTavish Logistics Ltd.	Dec'n	2009-09-30	First offence	"numerous"	II, IV(2)	Not stated		2	Unknown	5	Unknown
2009	Rob Sugar	R/V appl'n	2009-11-20	First offence		II	Not stated	unknown	unknown	Unknown	4	Unknown
2010	Best Price Movers Ltd.	R/V appl'n	2010-02-02	First offence		II	Not stated	Unknow n	Unknown	Not stated	2.5	Unknown
2010	McTavish Logistics Ltd.	R/V appl'n	2010-02-02	First offence	Unknown	II	Not stated		2	Not stated	5	Unknown
2010	YYZ Logistics Ltd.	R/V appl'n	2010-02-02	First offence	Unknown	II	Not stated	unknown	1	Not stated	5	Unknown

## Endnotes

- <sup>1</sup> *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.*
- <sup>2</sup> *Canadian Radio-television and Telecommunications Commission Act*, s. 3(1).
- <sup>3</sup> *Ibid.*, s. 8.
- <sup>4</sup> CRTC, *Departmental Performance Report 2013-2014*, <http://www.crtc.gc.ca/eng/backgrnd/dpr2014/dpr2014.htm>.
- <sup>5</sup> Sub-Program 1.3.2: Unsolicited commercial communications, “Human Resources (FTEs), <http://www.crtc.gc.ca/eng/publications/reports/rpps/rpp2014/rpp2014.htm#s2-10>.
- <sup>6</sup> *Ibid.*, “Planned Expenditures: Budgetary Financial Resources (Planned Spending – Dollars), 2014-15 *Main Estimates*.”
- <sup>7</sup> S. 72.01(a) and (b), respectively.
- <sup>8</sup> The authority was introduced in 2010, in *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*, often referred to as Canada’s Anti-Spam Legislation (CASL). This legislation received Royal Assent on 15 December 2010.
- <sup>9</sup> *An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts*, S.C.2014, c. 23. The statute’s short title is the *Fair Elections Act*.
- <sup>10</sup> Minister of Finance, Government of Canada, *The Road To Balance: Creating Jobs and Opportunities*, Budget 2014, (Ottawa, 11 February 2014), chapter 3.4 (“Supporting Families and Communities”):  
The Government will also propose amendments to the Telecommunications Act and the Radiocommunication Act to provide the CRTC and Industry Canada with the power to impose administrative monetary penalties on companies that violate established rules such as the Wireless Code and rules related to the deployment of spectrum, services to rural areas and tower sharing.
- <sup>11</sup> CRTC, *Statement from Jean-Pierre Blais, Chairman of the CRTC, on monetary penalties and paper bill fees* (undated, but distributed 17 December 2014), <http://news.gc.ca/web/article-en.do?nid=915129>.
- <sup>12</sup> *Use of Automatic Dialing-Announcing Devices*, Telecom Public Notice CRTC 93-58 (Ottawa, 21 September 1993) at Part I (Background)  
In 1987, complaints made to the Commission respecting ADADs represented less than 3% of all complaints received with respect to telecommunications. In recent years, the Commission has experienced a dramatic increase (more than doubling each year) in the number of complaints from subscribers related to the use of ADADs. By 1992, complaints on this topic had grown to represent over 25% of all complaints made to the Commission. Further, between 1 January and 30 June 1993, the Commission has received almost 5,000 complaints respecting ADADs. This represents over 40% of all complaints relating to telecommunications received by the Commission during this period.
- <sup>13</sup> *Telecommunications Act*, s. 41(1).
- <sup>14</sup> *Use of Telephone Company Facilities for the Provision of Unsolicited Telecommunications* Telecom Decision CRTC 94-10 (Ottawa, 13 June 1994).
- <sup>15</sup> Telecom Order 2001-193, at para. 19.
- <sup>16</sup> Telecommunications Decision CRTC 2004-35, at para. 91:  
The Commission notes that, under the current regulation, all telemarketers must maintain a Do Not Call List of consumers who have requested that they are not called again. The Commission recognizes that separate Do Not Call Lists for each telemarketer are less effective and more onerous on the consumers who have to contact each telemarketer separately. The Commission recognizes the efficiency of a national Do Not Call List where a consumer could register just once and effectively stop all unwanted telemarketing calls.
- <sup>17</sup> *Ibid.*, at para. 88.

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- <sup>18</sup> *Ibid.*, ss. 72.01 to 72.15.
- <sup>19</sup> PC 2006-0249 (28 April 2006), SI/2006-0070.
- <sup>20</sup> *Telecommunications Act*, s. 41(1).
- <sup>21</sup> S. 41.1.
- <sup>22</sup> S. 41.2(a).
- <sup>23</sup> S. 41.2(b).
- <sup>24</sup> S. 41.2(c).
- <sup>25</sup> S. 72.04(1).
- <sup>26</sup> S. 72.07(2)(a).
- <sup>27</sup> S. 41.7(1).
- <sup>28</sup> S. 41.7(3).
- <sup>29</sup> S. 41.7(4).
- <sup>30</sup> S. 41.7(5).
- <sup>31</sup> Appendix 2, April 13, 2005.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> See Appendix 2, 15 November 2014 (Richard French, CRTC).
- <sup>34</sup> See Appendix 2, 22 November 2014.
- <sup>35</sup> *Proceedings of the Standing Senate Committee on Transport and Communications*, Issue 23 - Evidence - November 22, 2005, [http://www.parl.gc.ca/Content/SEN/Committee/381/tran/23evb-e.htm?Language=E&Parl=38&Ses=1&comm\\_id=19](http://www.parl.gc.ca/Content/SEN/Committee/381/tran/23evb-e.htm?Language=E&Parl=38&Ses=1&comm_id=19).
- <sup>36</sup> Paul Crête Rivière-Du-Loup—Montmagny, QC, House of Commons, *Debates*, 25 November 2005.
- <sup>37</sup> Denis Coderre, Bourassa, QC, House of Commons, *Debates* (25 November 2005) <http://openparliament.ca/debates/2005/11/25/>.
- <sup>38</sup> David McGuinty, Ottawa South, ON, House of Commons, *Debates* (25 November 2005) <http://openparliament.ca/debates/2005/11/25/>.
- <sup>39</sup> *Telecommunications Act*, s. 72.01(a) and (b), respectively.
- <sup>40</sup> S. 73(2)(a) makes it an offence to contravene s. 27(1) (requirement for just and reasonable rates); s. 73(2)(b) makes it an offence to contravene s. 24 (conditions of service).
- <sup>41</sup> See ss. 73(1)(2) and (3), *Telecommunications Act*.
- <sup>42</sup> *Proceeding to establish a national Do Not Call List framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, (Ottawa, 20 February 2006), as amended by Telecom Public Notice CRTC 2006-4-1 (Ottawa, 13 March 2006).
- <sup>43</sup> *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48 (Ottawa, 3 July 2007), as amended by *Erratum*, Telecom Decision CRTC 2007-48-1 (Ottawa, 19 July 2007) [Telecom Decision CRTC 2007-48].
- <sup>44</sup> *Review of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Regulatory Policy CRTC 2014-155, (Ottawa, 31 March 2014), <http://www.crtc.gc.ca/eng/archive/2014/2014-155.htm>.
- <sup>45</sup> CMA, *Application to Request a Modification of the Unsolicited Telecommunications Rules, Part IV – ADAD Rules*, (Toronto, 6 December 2011).
- <sup>46</sup> *Telecommunications Act*, s. 41.6 (1).
- <sup>47</sup> *Ibid.*, s. 41.6(2).
- <sup>48</sup> S. 72.08(2).
- <sup>49</sup> *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to investment dealers, mutual fund dealers, and investment and financial advisors*, Telecom Circular 2008-3 (Ottawa, 16 December 2008); *Unsolicited Telecommunications Rules - Financial and insurance products and services offered to existing clients*, Telecom Regulatory Policy CRTC 2010-599 (Ottawa, 19 August 2010); *Amendment and re-issuance of Telecom Circular 2008-3 regarding the interpretation of the Unsolicited Telecommunications Rules as they apply to investment dealers, mutual fund dealers, and investment and financial advisors*, Telecom Information Bulletin CRTC 2010-600 (Ottawa, 19 August 2010).

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50 *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the real estate industry*, Telecom Information Bulletin CRTCC 2009-283 (Ottawa, 15 May 2009).

51 *Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31, 2014*, (Ottawa, 30 September 2014), <http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm>.

52 S. 70(1).

53 S. 71(1).

54 S. 72.06(2).

55 S. 72.06(1)(c) and (d).

56 S. 72.06(1)(b)

57 S. 41.2(c).

58 S. 72.04(1)(a).

59 S. 72.04(2).

60 S. 73(5): "A prosecution may not be commenced in respect of any [offence not related to Parts I and IV.I, or sections 17, or regulations made under ss. 22(2) or 69.4]"

61 S. 41.3(1).

62 S. 41.4(1).

63 S. 41.5

64 S. 41.21(1).

65 Appendix 3 includes a graphic from the CRTCC's 2013-2014 annual report describing the process.

66 2013-14 report.

67 *Report on the Operation of the National Do Not Call List for the period April 1, 2012 to March 31,*

2013, (Ottawa, 30 September 2013), <http://www.crtc.gc.ca/eng/dncl/rpt130930.htm>: the CRTCC's staff

... completed its first round of on-site inspections of 16 telemarketing companies located in Toronto, Montréal, and Edmonton. These inspections were conducted to ensure telemarketers were in compliance with the Rules. These initial inspections focused on telemarketers in a number of industries, which were chosen based on trends in complaints submitted by Canadians

68 *Ibid.*

69 *Report on the Operation of the National Do Not Call List for the period April 1, 2010 to March 31,*

2011, (Ottawa, 30 September 2013), <http://www.crtc.gc.ca/eng/DNCL/rpt110930.htm>

Where the CRTCC has imposed an AMP and the telemarketer has not paid the penalty, the CRTCC pursues collection action. The CRTCC uses various methods to collect outstanding accounts. These include, but are not limited to, actions such as referral of outstanding accounts to (a) collection agencies, or (b) the Canada Revenue Agency (CRA), for refund offset of funds otherwise payable by the CRA.

70 Telecom Decision CRTCC 2012-667, at para 18:

... The Commission notes that, on 15 May 2012, following the issuance of Telecom Decision 2012-173, Les Aliments S.R.C. established a payment plan with the Commission and has been paying the AMP of \$24,000 in monthly instalments.

71 *Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31,*

2014, (Ottawa, 30 September 2014), <http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm>.

...[A] honeypot phone number appears to the caller to be just a normal phone number and target for their schemes. It is in fact an unused phone number provided to a regulator by a telecommunications company. The call may be answered by a computer or a human, and it may be recorded. Information about the call is logged automatically, and can then be used in conjunction with data from many other calls, as well as consumer complaints, to discern patterns that can help to identify the real source of the spoofed calls.

Honeypots are already a proven technology for detecting and understanding threats in online communications, and the CRTCC, working with its national and international partners, is evaluating their possible usefulness in helping to protect Canadians against telephony abuse.

72 CRTCC, *Departmental Performance Report 2013-2014*, Sub-Sub-Program 1.2.4: Unsolicited commercial communications, "Performance Analysis and Lessons Learned",

<http://www.crtc.gc.ca/eng/backgrnd/dpr2014/dpr2014.htm>,

73 Telecom Decision CRTCC 2007-48, *supra* note 43, at para. 520.

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74

*Ibid.*

75

2010-2011 report, <http://www.crtc.gc.ca/eng/dncl/rpt110930.htm>, s. 7.3.

76

Canadian Radio-television and Telecommunications Commission, *2012-13 Report on Plans and*

*Priorities*, <http://www.tbs-sct.gc.ca/rpp/2012-2013/inst/rtc/rtc-eng.pdf>, at 12.

77

CRTC, National Do Not Call List, *Frequently Asked Questions*, “Why were the subscription fees split in two commencing 1 April 2013?”, <https://www.lnnte-dncl.gc.ca/ind/faqs-eng>.

78

*Ibid.*

79

*Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31, 2014*, (Ottawa, 30 September 2014), <http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm>.

80

Telecom Decision CRTC 2012-98, at para. 13.

81

CRTC, Notice of Violation, File No. PDR 9174-890 (Ottawa, 20 December 2010), <http://www.crtc.gc.ca/eng/archive/2010/vt101220.htm>. The notice states simply that “telemarketing telecommunications were made on behalf of Bell Canada”, but does not state how many telecommunications were made.

In the case of Xentel, however, the number of violations selected by the CRTC was 75, and the total penalty was \$500,000: CRTC, Notice of Violation, File Nos. PDR 9174-773 & 825, (Ottawa, 16 December 2010), <http://www.crtc.gc.ca/eng/archive/2010/vt101216.htm>.

82

Compliance and Enforcement Notice of Consultation CRTC 2013-356, <http://www.crtc.gc.ca/eng/archive/2013/2013-356.htm>, at para. 35:

35. While the Commission, as discussed above, finds that an AMP amount of \$3,000 per violation is reasonable, it is of the view that the total AMP amount of \$102,000 established in the Notice of Violation is unduly high in light of the company’s size and conduct. In the Commission’s view, a total AMP amount of \$54,000 would be more reasonable. Accordingly, the Commission reduces the number of telemarketing telecommunications for which an AMP of \$3,000 is imposed on OEG from 17 to 9. The Commission further notes that the fact that it is not imposing an AMP with respect to 8 of the 17 telemarketing telecommunications does not mean that the Commission is of the view that OEG did not commit the violations stemming from those telecommunications. Rather, the Commission finds that, in light of the record, it is not appropriate to apply AMP amounts for those particular violations because this would result in a total amount that, as discussed above, would be unduly high.

83

Telecom Decision CRTC 2007-48, *supra* note 43, at para. 521.

84

In Telecom Decision CRTC 2012-196, <http://www.crtc.gc.ca/eng/archive/2012/2012-196.htm> the crtc rejects a violator’s argument that the AMP charged was unreasonable, based in part on the violator’s failure to pay required DNCL subscription fees:

12. Nature Carpet stated that it cannot afford to pay an AMP of \$9,000, particularly when it is imposed with only one month to pay.

13. The Commission notes that Nature Carpet has not registered with the National DNCL operator before receiving the RFI letter and/or subscribed to the National DNCL and therefore has avoided paying the required subscription fee since at least 6 January 2010.

14. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$1,000 per violation for the nine violations cited in the Notice of Violation is appropriate.

85

Compliance and Enforcement Decision CRTC 2013-356, at para. 14.

86

*Report on the Operation of the National Do Not Call List for the period April 1, 2013 to March 31, 2014*, (Ottawa, 30 September 2014), <http://www.crtc.gc.ca/eng/DNCL/rpt140930.htm>.

87

Compliance and Enforcement Decision CRTC 2013-356.

88

Compliance and Enforcement Decision CRTC 2014-92, at para. 16.

89

Telecom Decision CRTC 2012-98, at para. 17.

90

Telecom Decision CRTC 2007-48, *supra* note 43, at para. 518.

91

*Ibid.*, at ¶521.

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2013-14 report.

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Telecom Decision CRTC 2011-628.

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Numerous at ¶1, para 2 refers to “a person”, and paras 6 and 7 “the complaint”

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95

*ibid.*, para 519.

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Telecom Decision CRTC 2011-628, <http://www.crtc.gc.ca/eng/archive/2011/2011-628.htm>, at para.

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97

Compliance and Enforcement Decision 2014-424 (Ottawa, 12 August 2014):

98

*MDG Newmarket Inc., operating as Ontario Energy Group – Violations of the Unsolicited*

*Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2013-356,

<http://www.crtc.gc.ca/eng/archive/2013/2013-356.htm>, (Ottawa, 31 July 2013), at para. 8.

99

<http://www.crtc.gc.ca/eng/archive/2014/vt140813.htm>.

100

Telecom Decision CRTC 2013-356.

101

CRTC, Chief Compliance Officer, File No. PDR 9174-1533 (Ottawa, 13 August 2014),

<http://www.crtc.gc.ca/eng/archive/2011/2011-628.htm>

38. Green Shield submitted that its violations of the Rules were the result of negligence, not intent. It added that there were a small number of violations, that it is a small company, and that it has engaged professionals to assist with compliance with the Rules. It also submitted that telemarketers who participate in proceedings should not be penalized as harshly as those who do not, and that a reduced AMP for those who participate responsibly would provide an incentive for engagement.

39. The Commission notes that the notice of violation set out an AMP for 12 violations at \$1,000 per violation, for a total of \$12,000, which is in line with situations of a similar nature.

40. The Commission also notes that negligence is not a sufficient defence to lower an AMP, especially when the telemarketer was provided with sufficient opportunity to engage Commission staff prior to the issuance of the notice of violation. For example, prior to the issuance of the notice of violation, Commission staff had communicated with Green Shield to identify its concerns. The company was given an opportunity to address these concerns but failed to take corrective measures.

41. In light of the above, the Commission finds that the AMP is appropriate and should not be reduced or removed.

102

Telecom Decision CRTC 2010-492, [http://www.crtc.gc.ca/eng/archive/2010/2010-492.htm#\\_ftnref3](http://www.crtc.gc.ca/eng/archive/2010/2010-492.htm#_ftnref3),

at para. 5.

103

Telecom Decision CRTC 2007-48, *supra* note 43, at footnote 56.

104

*ibid.*, at para. 519.

105

*ibid.*, at para. 518:

The Commission considers that information included in the notice of violation about the total number of complaints received does not directly influence the amount of the AMPs. Rather, it provides relevant context to the nature of the violations, and underscores that they are reflective of a significant and noteworthy problem with Mr. Olevson's telemarketing operations.

106

Telecom Decision CRTC 2012-98, at para. 12.

107

Telecom Decision CRTC 2011-305, at para. 14-15.

108

Compliance and Enforcement Decision CRTC 2014-92, <http://www.crtc.gc.ca/eng/archive/2014/2014-92.htm>, at para. 14.

109

*Advantage Pro Portes et Fenêtres – Violations of the Unsolicited Telecommunications Rules*,

Compliance and Enforcement Decision CRTC 2014-90 (Ottawa, 28 February 2014),

<http://www.crtc.gc.ca/eng/archive/2014/2014-90.htm>.

110

In Telecom Decision CRTC 2012-196, <http://www.crtc.gc.ca/eng/archive/2012/2012-196.htm> the CRTC rejects a violator's argument that the AMP charged was unreasonable, based in part on the size of the violator's company:

12. Nature Carpet stated that it cannot afford to pay an AMP of \$9,000, particularly when it is imposed with only one month to pay.

...

14. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$1,000 per violation for the nine violations cited in the Notice of Violation is appropriate.

Telecom Decision CRTC 2012-667:



15. As noted above, the Commission has discretion when determining the AMP amount. Further, and contrary to Les Aliments S.R.C.'s submission, the Commission is not bound by its previous decisions but is obliged to consider the specific circumstances of each case. With respect to the case of Les Aliments S.R.C., the Commission took into account, among other things, the size of the company's operations and the fact that, contrary to the assurances given, the company chose to disregard its regulatory obligations and, in doing so, failed to comply with the Rules.

111 Telecom Decision CRTC 2013-356.

112 Compliance and Enforcement Notice of Consultation CRTC 2013-542  
(<http://www.crtc.gc.ca/eng/archive/2013/2013-542.htm>), at para. 16.

113 Compliance and Enforcement Decision CRTC 2013-356, at para 26.

114 *Ibid.*

115 *Ibid.*, at para 27.

116 Treasury Board of Canada, *Policy on Evaluation*, ("3. Context"), <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15024&section=text>.

117 Treasury Board of Canada, Secretariat, *Cabinet Directive on Regulatory Management*, <http://www.tbs-sct.gc.ca/rtrap-parfa/cdrm-dcgr/cdrm-dcgr01-eng.asp#cha2>. It took effect on January 1, 2012, and replaced the 2007 *Cabinet Directive on Streamlining Regulation* and the 1999 *Government of Canada Regulatory Policy*. *Ibid.*, at para. 10.

118 *Ibid.*, at para. 5:

Regulation is a necessary foundation of market economies. A robust and effective regulatory system provides consistency, fairness, and transparency, and supports innovation, productivity, and competition.

119 *Ibid.*

120 See para. 4, *supra*.

121 Oxford Dictionaries: <http://www.oxforddictionaries.com/definition/english/consistency> and <http://www.oxforddictionaries.com/definition/english/consistent>.

122 *Ibid.*: <http://www.oxforddictionaries.com/definition/english/consistent>.

123 <http://www.merriam-webster.com/dictionary/consistency>.

124 <http://www.collinsdictionary.com/dictionary/english/consistency?showCookiePolicy=true>.

125 *Ibid.*: <http://www.oxforddictionaries.com/definition/english/fairness>.

126 *Ibid.*: <http://www.oxforddictionaries.com/definition/english/transparency>.

127 *Ibid.*: <http://www.oxforddictionaries.com/definition/english/transparent>.

128 <http://www.merriam-webster.com/dictionary/transparent>.

129 Chief Compliance and Enforcement Officer, CRTC, *Re: CRTC Investigation into Internal do not call list policies and practices of the Conservative Party of Canada – Compliance measures*, Letter to Executive Director, Conservative Party of Canada (Ottawa, 6 September 2012), <http://www.crtc.gc.ca/eng/archive/2012/lt120906.htm>.

130 Part IV (Conclusions), Section B (Undue Preference or Advantage):

... On balance, the Commission is not persuaded that the provision of residential directory data-base information in machine-readable form pursuant to a general tariff would be of benefit to residential subscribers. In the Commission's view, such a tariff would primarily benefit telemarketers, pollsters and the like, who aim their activities at this market. It is unlikely that most residential subscribers would regard increased exposure to those activities as a benefit.

131 "During this proceeding, concerns were expressed that telephone subscribers would be more exposed to unsolicited calls and that their privacy would be eroded if machine-readable, non-confidential, residential directory listings, unbundled by geographic region, were available from the telephone companies."

**\* \* \* End of document \* \* \***