



30 August 2018

Claude Doucet  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *Report regarding the retail sales practices of Canada's large telecommunications carriers, Telecom & Broadcasting Notice of Consultation CRTC 2018-286 (Ottawa, 30 August 2018),***

- 1 The Forum is a federally incorporated not-for-profit corporation that undertakes research and makes submissions to Parliament and the CRTC about matters involving telephony, as well as the creation and distribution of programming content; we do not request to appear in the public hearing component of this proceeding.
- 2 The Forum has serious concerns about the integrity of the above-noted proceeding, and its submission is as a result limited to a discussion of the context of the proceeding, the serious risks imposed on current and former employees who choose to participate, problems of procedural fairness, and general comments about misleading and/or aggressive sales practices by telecommunications companies.

## I **Context**

- 3 On 19 November 2017 CBC News reported that a Bell call centre employee working in Ontario said she was “forced to sell customers products they don’t need, don’t want, and may not understand, to hit sales targets and keep her job”.<sup>1</sup>
- 4 On 8 January 2018 the Public Interest Advocacy Centre (PIAC) in Ottawa, Ontario wrote the Canadian Radio-television and Telecommunications Commission (CRTC) to ask it to inquire into certain sales practices by Canadian communication service providers, described as “aggressive, inappropriate and potentially misleading.
- 5 The CBC subsequently reported on 14 January 2018 that “dozens” of Rogers employees said they were under “‘extreme pressure’ to hit sales targets or risk termination, and on 18 January that “more than two dozen past and present workers from call centres” dealing with Rogers customers said their work environments were “geared to make a sale with every customer”.

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<sup>1</sup> Erica Johnson, “Bell insider reveals high-pressure sales tactics required on every single call” CBC News (posted 19 November 2017 9:00 PM ET).

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- 6 On 12 February the CRTC's Chairperson answered PIAC's 8 January 2018 letter and, while neither explicitly denying nor granting PIAC's request, said that "Canadians already have a variety of options available to them to seek redress depending on the nature of the issue." More news about misleading or sales practices followed.
- 7 On 6 June 2018 the Governor General in Council ordered the CRTC to submit a report on retail sales practices of Canada's large telecommunications carriers and the actual or possible harm of such practices to consumers, and expressly required the CRTC to consider the views of the carriers' employees. The preamble in Order in Council 2018-0685 states that "... the Governor in Council considers the views of ... the employees of Canada's large telecommunications carriers ... to be among the important sources of information to be considered in evaluating the retail sales practices of those carriers ...."
- 8 The 6 June 2018 Order in Council identifies evidence about misleading or aggressive sales practices undertaken by large telecommunications carriers through their employees and the extent of those practices as being material to the CRTC inquiry. It asks the CRTC to consider whether large telcos – through their own employees or through third parties – engage in misleading or aggressive sales practices. Specifically, the Order in Council says
- ... that it is material to the inquiry that the Commission consider the following:
- (a) whether the large telecommunications carriers offer their telecommunications services for sale by engaging, either through their employees or third parties, in misleading or aggressive sales practices, such as providing consumers with incomplete, unclear or misleading information regarding service terms and conditions or selling them telecommunications services that are unsuitable for them, and, if so, the prevalence of those practices;
- (b) the measures or controls that those carriers have in place to monitor, identify and mitigate the risks that consumers are subject to misleading or aggressive sales practices;
- ...
- (d) the most feasible and effective ways to strengthen or expand the scope of existing consumer protections such as those contained in the Commission's codes of conduct, or to create new consumer protections, including codes of conduct relating to new subjects, in order to further empower consumers to make informed decisions with respect to their telecommunications services and to further promote the fair treatment of consumers in their relationships with telecommunications carriers.
- 9 On 16 July 2018 – five and a half weeks after Order in Council 2018-0685 was issued – the CRTC announced a public proceeding to investigate telecommunications sales practices, which includes a public hearing in Gatineau, Quebec, on 22 October 2018. Telecom and Broadcasting Notice of Consultation 2018-246 (TBNoC 2018-246) invites "... comments from Canadians on their personal experiences with any misleading or

- aggressive retail sales practices of large telecommunications carriers and third parties ..., including comments from consumers who are vulnerable due to their age, a disability, or a language barrier” and from current and former employees of service providers. The Notice includes 22 questions, including four directed specifically at service providers’ employees (past and present). The CRTC wrote twelve telecommunications companies<sup>2</sup> the same day, to ask them to submit certain information.
- 10 On 17 July 2018 the Public Interest Advocacy Centre (PIAC) wrote the CRTC to note that the evidence of “... current or former employees ...may not be protected from potential legal repercussions such as actions for breach of confidence and breach of contract in relation to confidentiality agreements with the TSPs.” To protect employees from legal repercussions and to assure the availability of the best possible evidence for the record of this proceeding, PIAC asked the CRTC to revise TBNOC 2018-246 to clarify “... to such current and former employees, as well as to the TSPs and all other parties and interveners, that such evidence, whether or not given in claimed ‘confidentiality’ under s. 39 of the Act, is considered to be privileged by the Commission.”
- 11 Ten days after it was submitted, the CRTC’s staff denied PIAC’s request, on 27 July 2018.<sup>3</sup>
- 12 PIAC again wrote the CRTC on 30 July 2018, to point out that the CRTC staff’s reply ignored the judicial nature of the TBNOC 2018-246 proceeding, and that the *in camera* sittings of a CRTC hearing panel proposed by the CRTC’s staff letter would “lead only to ‘secret evidence’”, rather than the creation of a record available to all. PIAC added that “current and former employees’ evidence is crucial to an effective inquiry and useful report and that, without a clear statement of legal privilege from the Commission few, if any, such current or former employees will offer evidence to the Commission.” It again asked the Commission (rather than CRTC staff) to revise TBNOC 2018-246 to clarify that evidence from telco employees and others will be considered privileged and inadmissible in any other proceedings against participants in TBNOC 2018-246.”
- 13 The Forum wrote the CRTC on 1 August 2018, to support PIAC’s requests of 17 and 30 July 2018. Its 11-page letter pointed out that the CRTC’s staff had effectively already changed the procedures for TBNOC 2018-246, by assuming to themselves the role

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<sup>2</sup> Bell Canada, Bragg Communications Incorporated, carrying on business as Eastlink, Cogeco Connexion Inc. , Northwestel Inc. , Rogers Communications Canada Inc., Saskatchewan Telecommunications , Shaw Communications Inc. , TBayTel, TekSavvy Solutions Inc., TELUS Communications Inc., Videotron Ltd. And Xplornet Communications Inc.

<sup>3</sup> Scott Shortliffe, Chief Consumer Officer and Executive Director, Consumer Affairs and Strategic Policy, CRTC, Telecom and Broadcasting Commission letter addressed to John Lawford (Public Interest Advocacy Centre), (Ottawa, 27 July 2018), [https://crtc.gc.ca/eng/archive/2018/lt180727.htm?\\_ga=2.206929173.767786201.1535382249-18065054.1505399347](https://crtc.gc.ca/eng/archive/2018/lt180727.htm?_ga=2.206929173.767786201.1535382249-18065054.1505399347)

- assigned by the CRTC's *Rules of Practice and Procedure*, regarding requests for confidentiality. This change raises questions, including the degree to which Commission staff have made themselves responsible for determining which witnesses may be called before the TBNOC 2018-246 hearing, and what evidence will or will not be available to the public: we shared PIAC's view that an important component of this proceeding is to bring information to light – and that hiding information from public view does not serve the interests of justice. The Forum also pointed out that concerns about the legal implications of testimony by “former and current employees in the TBNOC 2018-246 proceeding are likely to have the insidious effect of raising questions about the quality of information submitted to the government with respect to Order in Council 2018-0685” (para. 47).
- 14 On 15 August 2018 PIAC again wrote the CRTC, this time to provide (in the absence of a response from the CRTC to its second request), a copy of a document that PIAC said it would be providing to current and former employees interested in participating in the TBNOC 2018-246 proceeding (“CRTC Telecommunications Sales Practices Review and Report – What Telecommunications Company Employees Need to Know”). PIAC pointed out that
- In encouraging current and former employees to provide such evidence to the CRTC, there is a real risk of exposing these (ex-)employees to potential legal risk based on their legal duties to their (former) employer. Generally, both laws and contractual and other employment obligations (such as “non-disclosure agreements”) limit what employees can say about their former employers or what their work was like or how it was performed.<sup>4</sup>
- 15 The CRTC's reply to PIAC's 30 July 2018 procedural request (and the Forum's 1 August 2018 letter in support) is not posted under the TBNOC 2018-246 proceeding page<sup>5</sup> or its Letters page (online).
- 16 The Forum has, however, been provided with a copy of a letter dated 22 August 2018, sent to PIAC and signed by the CRTC's Secretary General. (The distribution list includes the Minister for Innovation, the Sciences and Economic Development and twelve telecommunications companies, but does not include the Forum.) In this letter the CRTC again denies PIAC's request that former and current employees be granted a form of qualified privilege to protect them from possible legal repercussions.
- 17 Finally, on 27 August 2018 — 82 days after the CRTC received Order in Council 2018-0685, and 42 days after it issued TBNOC 2018-246 - the CRTC “launched an online survey to better understand Canadians' experiences with the sales practices of large

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<sup>4</sup> Page 3.

<sup>5</sup> <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?S=O&PA=T&PT=A&PST=A&Lang=e>.

telecommunications service providers”,<sup>6</sup> inviting responses to be filed by 7 September 2018 – after the 30 August 2018 deadline for written submissions to be filed.

## II The risk to current and former employees

18 The Forum is concerned that the CRTC’s resolute denial of PIAC’s procedural request to grant participants in the TBNoC 2018-246 proceeding a type of qualified privilege if they testify about their experiences or employers’ sales practices ignores the implications of Quebec law, with respect to the issues of reputation and employees’ duty to be loyal.

### A. Companies have the right to protect their reputation

19 Quebec’s *Charter of Human Rights and Freedoms*<sup>7</sup> establishes a right to the safeguarding of dignity, honour and reputation. It states that

4. Toute personne a droit à la sauvegarde de sa dignité, de son honneur et de sa réputation.	4. Every person has a right to the safeguard of his dignity[,] honour and reputation.
Source: <a href="http://legisquebec.gouv.qc.ca/fr/showdoc/cs/C-12">http://legisquebec.gouv.qc.ca/fr/showdoc/cs/C-12</a>	

20 This right is granted to corporations and individuals alike: “... le droit à la réputation est aussi protégé par la Charte québécoise[4] et reconnu tant aux personnes morales[5] qu'aux individus.”<sup>8</sup> Unlawful interference with the rights and freedoms in the *Charter* “entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.”<sup>9</sup>

21 Like its *Charter of Human Rights and Freedoms*, Québec’s *Civil Code*<sup>10</sup> also establishes an inalienable right to the respect of reputation:

3. Toute personne est titulaire de droits de la personnalité, 5eput le droit à la vie, à l’invioabilité et à l’intégrité de sa personne, au respect de son nom, de sa 5eputation et de sa vie privée. Ces droits sont incessibles.	3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable.
35. Toute personne a droit au respect de sa	35. Every person has a right to the respect of his reputation

<sup>6</sup> “Canadians are invited to fill out an online survey on possible misleading or aggressive telecommunications sales practices”, CRTC News Release, <https://www.canada.ca/en/radio-television-telecommunications/news/2018/08/canadians-are-invited-to-fill-out-an-online-survey-on-possible-misleading-or-aggressive-telecommunications-sales-practices.html>.

<sup>7</sup> R.S.Q., c. C-12 (*Charter*).

<sup>8</sup> *Fleury c. Pavillon du Parc Inc.*, 2003 CanLII 5571 (QC CA), at ¶120, citing at footnote 5, *Guignard c. Groupe Commerce (Le)*, 1998 CanLII 12677 (QC CA), J.E. 98-699 (C.A.); *Groupe RCM c. Morin*, J.E. 96-1747 (C.S.) et B.E. 2000BE-266 (C.A.); *Drolet c. Durand*, [1992] R.R.A. 17 (C.S.); *Saars Foundation Canada c. Baruchel*, [1990] R.J.Q. 2325 (C.S.).

<sup>9</sup> *Charter*, s. 49.

<sup>10</sup> S.Q. 1991, c. 64.

réputation et de sa vie privée. Nulle atteinte ne peut être portée à la vie privée d'une personne sans que celle-ci y consente ou sans que la loi l'autorise.	and privacy. The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law.
Source: <a href="http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991">http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991</a>	

- 22 Individuals and corporations are subject to and benefit from the Civil Code, and parties may pursue those who breach their right to respect of reputation under section 1457 of the *Civil Code*:

1457. Toute personne a le devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposent à elle, de manière à ne pas causer de préjudice à autrui. Elle est, lorsqu'elle est douée de raison et qu'elle manque à ce devoir, responsable du préjudice qu'elle cause par cette faute à autrui et tenue de réparer ce préjudice, qu'il soit corporel, moral ou matériel. Elle est aussi tenue, en certains cas, de réparer le préjudice causé à autrui par le fait ou la faute d'une autre personne ou par le fait des biens qu'elle a sous sa garde.	1457. Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another. Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature. He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.
Source: <a href="http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991">http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991</a>	

- 23 One of the ways in which reputation can be damaged, is through defamation. The Quebec Court of Appeal defined defamation for the purposes of the province's *Civil Code* in 1994, in *Société Radio-Canada c. Radio Sept-îles inc.*<sup>11</sup> Defamation consists of a written, verbal or electronic communication that lowers the estimation or consideration of a party, or that raises unfavourable or disagreeable sentiments towards the party:

Génériquement, la diffamation consiste dans la communication de propos ou d'écrits qui font perdre l'estime ou la considération de quelqu'un ou qui, encore, suscitent à son égard des sentiments défavorables ou désagréables ....

- 24 Human beings and legal entities such as corporations ('personnes morales') are equally entitled to the safeguarding of their reputations, although damages awarded to corporations may be lower than those awarded to people.<sup>12</sup> The leading course on defamation in Québec is *Prud'homme c. Prud'homme*.<sup>13</sup> It clarifies the fact that the common- and civil-law regimes approach defamation very differently. Under the civil law that applies to Quebec – and, presumably, to CRTC proceedings held in Quebec, a

<sup>11</sup> 1994 CanLII 5883 (QC CA).

<sup>12</sup> *Genex Communications inc. c. Association québécoise de l'industrie du disque, du spectacle et de la vidéo*, 2009 QCCA 2201 (CanLII), at ¶139

<sup>13</sup> [2002] 4 SCR 663 [*Prud'homme*].

party must establish that offensive words were spoken and that the speaker “committed a fault in so doing.”<sup>14</sup>

- 25 Even if remarks are defamatory, civil liability may not attach if a plaintiff is unable to or does not demonstrate that the party making the remarks committed a wrongful act<sup>15</sup> because, for example, the party was acting the public interest:

What is called “qualified privilege” is therefore, in the civil law, simply the defence raised by a person who may have performed an objectively wrongful act, but who has not committed a fault, because the act was performed in the normal performance of the duties of public office, that office imposes a duty on him or her to perform that act (or the act may be connected to a duty inherent in the duties of that office) it was therefore in the public interest to perform it, and in performing it, the person who did so acted with all the care that a comparable person would reasonably have exercised in the same circumstances.<sup>16</sup>

- 26 In the 1994 of *Société Radio-Canada c. Radio Sept-îles inc.* then-Québec Court of Appeal Justice LeBel pointed out, however, that the public interest is not easily defined:

... Il varie suivant les lieux et les circonstances. Le concept signifie principalement que la diffusion de cette information ne doit pas répondre à un simple objectif de voyeurisme médiatique. Il faut que l'on retrouve une utilité sociale à la diffusion de cette information.<sup>17</sup>

- 27 In 2009 the Supreme Court again addressed the “public interest”, defining it as subject matter “inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached”.<sup>18</sup>

- 28 Does the CRTC’s TBNoC 2018-246 proceeding meet the threshold of engaging the public interest to the extent that statements made by participants in the proceeding are protected from legal claims that such statements harmed telcos’ reputations? In our view, the answer to this question is unclear.

- 29 It is true that the Quebec Court wrote, in the 2002 *Amzallag c. Compagnie d’assurance vie Croix Bleue du Canada* that a ‘healthy administration of justice would ensure that witnesses in a judicial matter may speak without fear of being pursued for damages for their words’.<sup>19</sup> It cited the 1939 statement in *Corp. du Village de St-Félicien c. Tessier* that a damaging act would be without fault if it were made in exercising a right, in good

<sup>14</sup> *Prud’homme c. Prud’homme*, [2002] 4 SCR 663, at ¶¶56-57 [*Prud’homme*].

<sup>15</sup> *Prud’homme*, at ¶35.

<sup>16</sup> *Prud’homme*, at ¶59, quoting Gaudreault Desbiens, Jean François. “Le traitement juridique de l’acte individuel fautif de l’ élu municipal, source d’obligations délictuelles ou quasi délictuelles. Un essai de systématisation critique du droit positif québécois” (1993), 24 R.G.D. 469.

<sup>17</sup> *Société Radio-Canada c. Radio Sept-îles inc.*, 1994 CanLII 5883 (QC CA), per LOUIS LeBEL, J.C.A., for the Court.

<sup>18</sup> *Grant v. Torstar*, 2009 SCC 61 (CanLII), at ¶105.

<sup>19</sup> 2002 CanLII 46590 (QC CQ), at ¶121.

faith, and with all the care and wisdom of a good parent (“la défense d’immunité relative est celle: ‘de celui qui fait un acte dommageable, mais qui n’est pas en faute pour l’avoir accompli, parce qu’il était dans l’exercice d’un droit, qu’il a agi de bonne foi, avec tous les soins d’un bon père de famille, et avec une sage discrétion.’”).<sup>20</sup>

30 The problem is that little caselaw since *Prud’homme* exists on this point. The Québec Court commented earlier in 2018 that “[l]a jurisprudence traitant d’un recours en diffamation suite à un témoignage devant une commission d’enquête est peu nombreuse sinon inexistante.”<sup>21</sup>

31 That said, let us suppose that parties making submissions to the CRTC about individual telecommunications companies which have the effect of damaging one or more companies’ reputations, are able to benefit from a kind of privilege due to their desire to respond to the public-interest questions raised by Cabinet in Order in Council 2018-0685 and the CRTC in TBNoC 2018-246. Do other risks exist?

**B. *Current and former employees must act faithfully and not use any confidential information obtained through their work***

32 Even if current and former employees who state the truth about their experiences and their employers’ practices are safeguarded from claims of defamation because they testify in the public interest, could they nevertheless be breaching their legal duty to their employers?

33 Québec’s *Civil Code* prohibits employees from making use of any information of a confidential character obtained through his or her work (s. 2088). This prohibition applies “for a reasonable time” after employment ends, and “permanently where the information concerns the reputation ... of others”:

<p>2088. Le salarié, outre qu’il est tenu d’exécuter son travail avec prudence et diligence, doit agir avec loyauté et honnêteté et ne pas faire usage de l’information à caractère confidentiel qu’il obtient dans l’exécution ou à l’occasion de son travail. Ces obligations survivent pendant un délai raisonnable après cessation du contrat, et survivent en tout temps lorsque l’information réfère à la réputation et à la vie privée d’autrui.</p>	<p>2088. The employee is bound not only to perform his work with prudence and diligence, but also to act faithfully and honestly and not use any confidential information he obtains in the performance or in the course of his work. These obligations continue for a reasonable time after the contract terminates and permanently where the information concerns the reputation and privacy of others.</p>
<p>Source: <a href="http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991">http://legisquebec.gouv.qc.ca/fr/showdoc/cs/CCQ-1991</a></p>	

34 In a 2015 case, Québec’s Commission des Relations du Travail upheld a public-sector employer’s three-day suspension of a public-sector employee who participated in an inquiry under the *Loi concernant la lutte contre la corruption*, because the employee

<sup>20</sup> 1939 B.R. 456.

<sup>21</sup> 2018 QCCQ 34 (CanLII), at ¶41.



shared certain information with his union before sending it to the anti-corruption inquiry,<sup>22</sup> and failed to exhaust all corrective actions available to employees internally.<sup>23</sup>

35 Are current and former *private*-sector telco employees similarly bound by the *Civil Code* to raise their concerns about their current and former employers' sales practices with their employers, before raising them with the CRTC? We do not know – and absent an express statement from the CRTC (rather than its staff), we share PIAC's concerns for telco employees.

### III Problems with procedures

36 The Forum also has several questions about procedures used by the CRTC with respect to Order in Council 2018-0685. These are noted below in point form:

- Why did it take the CRTC more than a month (from 6 June 2018 to 16 July) to invite Canadians to submit comments about Order in Council 2018-0685?
- Why did the CRTC take 10 and 23 days, respectively, to respond to reasonable procedural requests from PIAC?
- How does the CRTC intend to 'hear' from telcos' call-centre employees, many of whom are not located in Canada?
- How will the CRTC ensure the transparency of the TBNoC 2018-246 proceeding, if it decides to grant confidentiality to certain participants' submissions?
- Will the CRTC or its staff contact participants whose submissions are being granted confidentiality, to advise them of this fact, and if so, will the CRTC be standing in lieu of counsel for those participants?
- How will other parties be made aware of the CRTC's decisions to grant confidentiality, in the event that they wish to challenge the CRTC's decisions?
- Why did it take the CRTC 82 days, from 6 June 2018 to 27 August 2018, to develop a self-selecting online questionnaire related to aggressive and misleading sales practices?

<sup>22</sup> The employee had found that certain telecommunications companies were not meeting their contractual obligations to the Quebec government, which could have resulted in financial penalties being levied on the companies. After contacting his supervisor and his supervisor's supervisor, the employee eventually shared certain information with his union, and later filed a complaint with the Unité permanente anticorruption (UPAC). Although it did not do so, the union could have made this information public. *Beaulieu c Centre de services partagés du Québec*, 2015 QCCRT 432 (<http://canlii.ca/t/gkwld>).

<sup>23</sup> *Ibid.* at ¶168 citing *Société canadienne des postes c. Syndicat des travailleurs et travailleuses des postes*, [2005] AZ-50324230 (T.A.), at ¶¶195.1-195.4. The tribunal concluded in *Beaulieu* at ¶175 that "en écartant ces mécanismes internes, le plaignant n'a pas respecté la « filière hiérarchique » pour l'ensemble des divulgations faites à son syndicat." See also *Marcotte c. Trois-Rivières (Ville)*, 2004 QCCRT 332, paras. 71-73.

- Why has the CRTC limited the questionnaire response period to 11 days, in a period that includes not just the Labour Day holiday, but also most families' back-to-school preparation period?
- When will the CRTC publish the results of its questionnaire?
- As the self-selected-respondent character of online questionnaires means that responses cannot be used to derive accurate statistical estimates of larger populations' views (even when the self-selected respondents are weighted by different demographic variables<sup>24</sup>), will the CRTC be undertaking a professional survey whose answers will permit the calculation of statistical estimates of Canadians' views, and if so, when will those results be published?

37 The Forum respectfully submits that the process to answer the questions set out by Cabinet in Order in Council 2018-0685 does not serve the public interest. The CRTC has not provided interested parties with sufficient time to respond fully to the important issues it raises. It has not protected current and former employees from the legal risks they may incur if they breach faith with their employers or disclose confidential information. It has not explained whether it will be able to hear from off-shore call centres tasked with Canadian telcos' sales operations. The CRTC's online 'survey' cannot provide results that may be generalized to Canada, and unless the CRTC discloses the questionnaire's limitations, may mislead the public and the Commission more than it informs.

38 Without wishing to disparage the TBNOC 2018-246 process, it is difficult to imagine what other steps could have been taken to further impair the integrity and utility of this proceeding.

#### IV Comments

39 The Forum's members have also experienced misleading telecommunications sales practices. They have been signed up for long-distance telephone packages without prior consent. They have been referred from one department to another to correct unasked-for changes, waiting half an hour or more to be connected. They have been misled as to the meaning of the term "balance" (as in 'balance owing' – learning after charges are imposed that the word 'balance' on an invoice means something entirely different from the word 'balance' on an online statement of account).

40 These and other contemporary telecommunications sales practices contradict all claims that the 'competitive market' will somehow, sometime, meet consumers' needs and

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<sup>24</sup> See e.g., Jelke Bethehem, "The perils of non-probability sampling", from "Inference from Non Probability Samples", Joint Conference of Survey Research Methods (SRM), European Survey Research Association (ESRA) & Étude Longitudinal par Internet Pour les Sciences Sociales (ELIPSS) (16-17 March 2017, Paris), <https://www.europeansurveyresearch.org/conference/non-probability>.

wants, that industry self-regulation will serve consumers' interests, or that gentle prodding by the Commissioner of Complaints for Telecommunications Services – funded by telcos – will rein in the worst behaviours of the companies that pay its bills.

- 41 The evidence from news reports alone since last November provides credible grounds for believing that some or many telecommunications companies are taking advantage of telecommunications customers either by deliberately misleading them and by using aggressive sales tactics to sell customers services and products they neither want nor need.
- 42 What is noteworthy is that this evidence of fraud and deception is arising ***five years*** after the CRTC established a code of conduct designed to stop bad business practices by wireless telephone service providers. The CRTC established the *Wireless Code* in Telecom Regulatory Policy CRTC 2013-271 (Ottawa, 3 June 2013), <https://crtc.gc.ca/eng/archive/2013/2013-271.htm>, requiring retail mobile voice and data services to adhere to the new rules set out in the *Code*. The CRTC explained that the *Code* would “ensure that consumers are empowered to make informed decisions about wireless services; and ... contribute to a more dynamic marketplace by making it easier for consumers to take advantage of competitive offers.”<sup>25</sup>
- 43 What the CRTC either failed to take into account or decided to ignore is that the oligopolistic power of large telcos places consumers at a complete and irremedial disadvantage. How do consumers benefit from being given information – so that they are informed, and therefore purportedly able to bargain effectively with Bell, Rogers, and Quebecor – when companies are simultaneously or subsequently misleading or overselling them?
- 44 While the CRTC acknowledged some problems with the *Code* in June 2017,<sup>26</sup> it failed to take concrete regulatory steps to serve the public interest. Rather than ensuring that Canada's telecommunications system responds “to the economic and social requirements of users of telecommunications services” (section 7(h) of the *Telecommunications Act*), the CRTC chose to ignore reports in November 2017 in which a telecommunications company employee said she was forced to sell customers products they did not need or want to keep her job. The CRTC chose to deny PIAC's request for a review of telco sales practices, on the grounds that consumers have other

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<sup>25</sup> Paragraph 2.

<sup>26</sup> *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200 (Ottawa, 15 June 2017), <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>, at para. 30:

... data overage and roaming charges continue to be a problem for one-in-five Canadians and half of Canadians still find it difficult to manage roaming fees while travelling abroad. Locked phones and unlocking fees were also key consumer concerns expressed by individual Canadians on the record of this proceeding, and were viewed by many as barriers to the advancement of the *Code's* objectives.

- ways of seeking redress – even though it is unclear what other agency or body has the CRTC’s power and its experience with telecommunications companies.
- 45 Unfortunately, the Forum is unconvinced at this point that the CRTC – being the members of the Commission – are able to do more than make superficial changes to the *Code*. The fact that the Commission has already declined to provide current and former employees with a qualified privilege to protect their interests and to ensure an open and transparent process is a telling indicator of the degree to which it is serious about the matters raised by Order in Council 2018-0685. While the CRTC’s report in this matter may offer short-term suggestions – a strengthened or new complaints system or more authority for the CCTS – only legislative change will ensure governance of Canada’s communications systems in the public interest.

Sincerely yours,



Monica. L. Auer, M.A., LL.M.  
Executive Director  
Forum for Research and Policy in Communications (FRPC)  
Ottawa, Ontario