CMA Guide:

Telemarketing Regulations
CMA Guide to Telemarketing Regulation in Canada

Fourth Edition
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CMA Guide to Telemarketing Regulation in Canada

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**Introduction**

This guide provides organizations with essential information relevant to marketing their goods and services by telephone in Canada. It includes information about the laws, government regulations, industry Code and best practices for this channel.

There are a number of laws and regulations that govern telemarketing in Canada. The two main Canadian statutes that govern telemarketing are the *Competition Act* and the *Telecommunications Act* as enforced by the Canadian Radio-Television and Telecommunications Commission (CRTC). The Province of British Columbia, through its *Business Practices and Consumer Protection Act* has instituted the *Telemarketer Licensing Regulation*. In addition, both federal and provincial Privacy Commissioners are touching on telemarketing in some of their findings and advisories. As with all marketing initiatives, those using the telephone for marketing must ensure that their lists have been created in accordance with applicable privacy laws.

**IMPORTANT NOTE:** In order to assist CMA members to operationally prepare for the latest changes to CRTC telemarketing rules, these guidelines have been prepared based on the latest CRTC telemarketing regulation as set out in CRTC Decision 2007-48 (and revised in Policy 2014-155). These decisions outline the Unsolicited Telecommunications Rules framework that went into effect when the National DNCL became operational. In December 2007 the CRTC announced that Bell Canada has been awarded the contract to operate the National DNCL and that the list was launched on September 30, 2008.

Note: Pursuant to Compliance and Enforcement Regulatory Policy CRTC 2014-341 registrations on the National DNCL are permanent, eliminating the need for consumers to renew their registration every five years.

The Unsolicited Telecommunications Rules are included in this document from pages 9-20.

The Canadian Marketing Association (CMA) Code of Ethics and Standards of Practice (the Code) establishes a standard for marketers in Canada and includes important directives related to telephone, fax and wireless marketing. The Code reflects the introduction of new technologies and marketing techniques and attempts to mitigate both increased consumer annoyance and government attention on all forms of marketing by telephone. Self-regulation is effective in helping to prevent unwarranted government intervention in the marketplace and positions CMA members as responsible, ethical marketers.
**The Responsibilities of the CRTC under the Telecommunications Act**

The *Telecommunications Act*, which also falls within the responsibility of Industry Canada, authorizes the Canadian Radio-television and Telecommunications Commission (CRTC) to regulate marketing by telephone and fax in Canada.

The *Telecommunications Act* addresses “Unsolicited telecommunications” in Section 41 which states:

41. The Commission [the CRTC] may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

Sub-sections 41.2 to 41.7 of the *Telecommunications Act* grant the Commission the powers required to establish a National Do Not Call List (the National DNCL).

Sub-sections 72.01 to 72.15 of the Act grants the Commission enforcement powers that allow the imposition of administrative monetary penalties (AMPs) for a contravention of any prohibition or requirement of the Commission under Section 41 of the Act.

**Background on CRTC Telemarketing Regulation**

In response to consumer complaints and pursuant to Section 41 of the Act, the CRTC has established a set of requirements for persons that engage in telemarketing (by either telephone or fax), whether on their own behalf or on behalf of other persons (i.e. telemarketers). In establishing these requirements, the Commission sought to balance the need to fulfil the intent of section 41 of the Act and to achieve the policy objective in paragraph 7(i) of the Act (i.e. the protection of the privacy of persons) with the need to allow the legitimate uses of telemarketing telecommunications. As detailed in footnote 1 of this document, telemarketing regulations have been established through a number of CRTC Decisions and orders. The most comprehensive telemarketing regulation related Decision is Telecom Decision CRTC 2007-48, which was last updated by Regulatory Policy 2014-155. Detailed in Appendix 1 of this Decision, (and reproduced in full in this document below) the Commission established the Unsolicited Telecommunications Rules which is a comprehensive framework for unsolicited telecommunications. The Unsolicited Telecommunications Rules detail the National DNCL Rules as well as the Telemarketing Rules and the ADAD Rules. The Unsolicited Telecommunications Rules supersede previously cited CRTC rules.
As well as defining new CRTC terms such as “National Do Not Call List operator” and “Complaints Investigator delegate”, where appropriate, to ensure consistency of terminology throughout the Unsolicited Telecommunications Rules, the Commission modified the wording of previous rules even when the Commission determined it was appropriate to retain rules that existed previous to Decision 2007-48.

While the various Decisions and Orders detailed in footnote 1 provide summaries and rationale of major CRTC determinations as they relate to telemarketing regulation, the Unsolicited Telecommunications Rules, reproduced in full after “Definitions” below, provide a detailed list of all of the CRTC rules (and relevant exemptions) that apply to unsolicited telecommunications and that govern the behaviour of telemarketers.

Other than the establishment of the National DNCL, perhaps the most significant rule change contained in the new rules is the requirement that all telemarketers and clients of telemarketers, including those exclusively making unsolicited telecommunications that are exempt from the National DNCL Rules, register with, and provide information to, the National DNCL operator and pay applicable fees that may be charged by the Complaints Investigator delegate.

The CMA has been involved in assisting the CRTC since the Commission began developing telemarketing regulation. For example, the CRTC consulted with industry and other stakeholders in the latest round of rule development surrounding the Unsolicited Telecommunications Rules and registration period for the National DNCL, and the CMA participated by contributing written and oral submissions and participating on various advisory committees. CMA is pleased that the new rules reflect many of the provisions of the CMA Code of Ethics.

**Key Exemptions to the National DNCL**

While the CRTC’s Unsolicited Telecommunications Rules and the Automatic Dialing-Announcing Device (ADAD) Rules apply to all telemarketing – whether or not the telemarketing telecommunication is exempt from the National DNCL Rules – there are a number of exemptions to the National DNCL Rules – two of these are key to marketers. They apply to calls to consumers where there is an existing business relationship, or by a registered charity, and both are defined in legislation.
The terminology used by the CRTC in its regulation of telemarketing is defined in several sources. Definitions are detailed in the Unsolicited Telecommunications Rules, contained in the *Telecommunications Act*, and established through relevant CRTC Decisions and Orders. The definitions found in “Part I: Definitions” of the Unsolicited Telecommunications Rules (detailed below) supersede any CRTC definitions previous to Decision 2007-48.

Beyond the definitions found in the Unsolicited Telecommunications Rules, and important to comprehending the Rules (specifically the legislated exemptions to the National DNCL) are the following definitions found in subsection 41.7 (2) of the *Telecommunications Act* and subsections 149.1(1) and 248(1) of the *Income Tax Act* respectively:

“**Existing business relationship**” means a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from

(a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;

(b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or

(c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.

“**Registered charity**” at any time means

(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada; or

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph 248(1) "registered charity" (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf, that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation.
Overview of the CRTC Unsolicited Telecommunications Rules

Following this overview there is a complete excerpted copy of the CRTC’s Unsolicited Telecommunications Rules in full. Again, the CRTC originally detailed these Rules as Appendix 1 to Telecom Decision CRTC 2007-48.

The Unsolicited Telecommunications Rules are divided into seven parts:

Part I: Definitions

This section defines terminology important to understanding the Unsolicited Telecommunications Rules.

Part II: National DNCL Rules

This section details:

- the National DNCL Rules that apply when making a telemarketing telecommunication;
- who must subscribe to the National DNCL and pay applicable fees
  - including the fact that “affiliates” must secure separate subscriptions;
- when the National DNCL Rules do not apply to a telemarketing telecommunication (i.e. exemptions to the National DNCL Rules)
  - including the fact that with a consumer’s express consent (specific to an individual telecommunications number) provided to either a telemarketer or a client of that telemarketer a consumer can be contacted even if their telecommunications number is listed on the National DNCL; and
- the records that must be kept related to the use of the National DNCL and the length of time they must be kept.

Part III: Telemarketing Rules

This section details:

- When the Telemarketing Rules do not apply to telemarketing telecommunications; and
- The rules that must be followed by persons initiating a telemarketing communication on their own behalf or on behalf of a client, including
  - the requirement that all telemarketers and clients of telemarketers register with, and provide information to, the National Do Not Call List operator and pay applicable fees that may be charged by the Complaints Investigator delegate;
the necessity of and rules related to internal do not call lists;
- identification requirements for both live voice and fax calls;
- restricted telemarketing hours;
- restrictions on sequential and random dialing;
- predicative dialing limitations; and
- the records that must be kept related to telemarketing and the length of time they must be kept.

Part IV: Automatic Dialing-Announcing Device (ADAD)

This section details:

- The fact that telemarketing is not permitted by ADAD unless express consent has been provided; and
- The rules that apply to ADAD usage when used to make unsolicited telecommunications where there is no attempt to solicit (e.g. for public service reasons; to accomplish market or survey research; to collect overdue accounts; for scheduling volunteer assignments; and for emergency and administrative purposes by police and fire departments, schools, hospitals or similar organizations).

Note: Despite the definitions (provided in Part I of the Unsolicited Telecommunications Rules, detailed below) there is sometimes confusion surrounding the differentiation between Predictive Dialing Devices (PDDs) or “automatic dialing devices” and ADADs. Based on CRTC writings and decisions on the subject, it is CMA’s understanding that the difference is that ADADs not only use equipment to replace manual dialing of telephone numbers, but also to convey a pre-recorded message to the number called. Whereas PDD usage often provides the called party with a live operator rather than a pre-recorded or synthesized voice message, ADADs are used specifically to convey a pre-recorded message.

Part V: Express Consent

This section details the accepted forms of express consent necessary to establish permission to call someone who is listed on the National DNCL and to transmit a solicitation via ADAD.

Part VI: Record Keeping

This section details certain requirements (in addition to those found in previous sections) regarding any records that are required to be kept pursuant to the Unsolicited Telecommunications Rules and any
other records kept with regard to unsolicited telecommunications activities that are subject to the Unsolicited Telecommunications Rules.

**Part VII: Liability**

This section details, not exhaustively, the instances in which a person will not be held liable for violating the Unsolicited Telecommunications Rules.

In reading the Unsolicited Telecommunications Rules, it is important to note that when referring to “a consumer’s telecommunications number”, where applicable, the rules apply to home or "land" telephone voice line numbers, wireless telephone voice line numbers, and fax numbers. It is possible for consumers to register all three of these types of numbers onto the National DNCL and those who use the telephone to market their products or service must maintain internal DNCL lists for all types of telecommunications numbers.
Canadian Radio-television and Telecommunications Commission
Unsolicited Telecommunications Rules\(^1\)
[As amended in 2014]

Note: The Commission established the initial set of Unsolicited Telecommunications Rules (the Rules) in Telecom Decision 2007-48 and made additions and modifications to the Rules in subsequent decisions. For convenience, this document represents an amalgamation of the Rules established in the Commission’s decisions. Where a change has been made subsequent to Telecom Decision 2007-48, the corresponding rule is identified with a reference to the specific decision. Please refer to the specific decision, as listed at the end of this document, for an explanation of the change.

Part I: Definitions

1. In these Rules,

"Abandoned Call" means a telecommunication placed by a predictive dialing device to a consumer which, when answered by the consumer, has no live telemarketer available to speak to the consumer within two seconds;

"Abandonment Rate" means the percentage of telecommunications placed by a predictive dialing device which are abandoned calls;

"Affiliate" One entity is affiliated with another entity if one of them is controlled by the other or if both are controlled by the same person;

"Automatic Dialing-Announcing Device" or "ADAD" means any automatic equipment incorporating the capability of storing or producing telecommunications numbers used alone or in conjunction with other equipment to convey a pre-recorded or synthesized voice message to a telecommunications number;

"Automatic Dialing-Announcing Device Rules" means the Rules set out in Part IV;

"Client of a telemarketer" means a person that has engaged a telemarketer to conduct telemarketing on its behalf;

"Complaints Investigator delegate" means the person to whom the Commission has delegated its powers to conduct investigations to determine whether there has been a contravention of the Unsolicited Telecommunications Rules;
[Telecom Decision CRTC 2008-6]

"Control" shall have the same meaning as set out in subsection 2(1) of the Telecommunications Act;

"National Do Not Call List" or "National DNCL" means the National Do Not Call List established pursuant to the Telecommunications Act;

\(^1\) [http://www.crtc.gc.ca/eng/trules-reglest.htm]
"National Do Not Call List operator" or "National DNCL operator" means the person to whom the Commission has delegated its powers under subsection 41.2(a) of the Telecommunications Act to administer databases or information, administrative or operational systems; 

Telecom Decision CRTC 2008-6

"National Do Not Call List Rules" means the Rules set out in Part II;

"Newspaper of General Circulation" means a printed publication in sheet form that is intended for general circulation, published regularly at intervals of not longer than seven days, consisting in great part of news of current events of general and local interest, and sold to the public and to subscribers;

"Person" shall have the same meaning as set out in subsection 2(1) of the Telecommunications Act;

"Predictive Dialing Device" or "PDD" means any software, system, or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers;

"Solicitation" means the selling or promoting of a product or service, or the soliciting of money or money’s worth, whether directly or indirectly and whether on behalf of another person. This includes solicitation of donations by or on behalf of charitable organizations;

"Telemarketing Rules" means the Rules set out in Part III;

"Telecommunications Act" means the Telecommunications Act, S.C. 1993, c.38, as amended;

"Telemarketer" means a person that conducts telemarketing either on its own behalf or on behalf of one or more other persons;

"Telemarketing" means the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation;

"Unsolicited Telecommunications Rules" means all the Rules set out in this document;

"Voice mail broadcast" means a telecommunication whereby a recorded message is delivered directly into a person’s voice mailbox without interrupting that person’s activities in real time.

**Part II: National DNCL Rules**

1. For purposes of section 3, the terms "candidate," "existing business relationship," "leadership contestant," and "nomination contestant" shall have the same meaning as set out in subsection 41.7(2) of the Telecommunications Act.

Telecom Regulatory Policy 2009-200

2. The National DNCL Rules do not apply to a telemarketing telecommunication made to a business consumer.

3. As provided for in section 41.7 of the Telecommunications Act, the National DNCL Rules do not apply in respect of a telecommunication

   a) made by or on behalf of a registered charity within the meaning of subsection 248 (1) of the
Income Tax Act;

b) made to a person

(i) with whom the person making the telecommunication, or the person or organization on whose behalf the telecommunication is made, has an existing business relationship, and

(ii) who has not made a do not call request in respect of the person or organization on whose behalf the telecommunication is made;

c) made by or on behalf of a political party that is a registered party as defined in subsection 2(1) of the Canada Elections Act or that is registered under provincial law for the purposes of a provincial or municipal election;

d) made by or on behalf of a nomination contestant, leadership contestant or candidate of a political party described in paragraph (c) or by or on behalf of the official campaign of such contestant or candidate;

e) made by or on behalf of an association of members of a political party described in paragraph (c) for an electoral district;

f) made for the sole purpose of collecting information for a survey of members of the public; or

g) made for the sole purpose of soliciting a subscription for a newspaper of general circulation.

3.1 In addition to the exemption set out in section 3(d), the National DNCL Rules do not apply to a telemarketing telecommunication made by or on behalf of a candidate as defined in subsection 2(1) of the Canada Elections Act or a candidate under provincial law for the purposes of a provincial or municipal election, or by or on behalf of the official campaign of such a candidate.

Telecom Regulatory Policy 2009-200

4. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer’s telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.

5. For the purposes of section 4, express consent shall clearly evidence the consumer’s authorization that a telemarketing telecommunication made by or on behalf of a specific person may be placed to that consumer and shall include the telecommunications number to which the telemarketing telecommunication may be placed.

6. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.

7. A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client’s subscription have been paid.

8. A telemarketer shall keep the following records related to its use of the National DNCL for a period of three (3) years from the date the records are created:
a) when initiating a telemarketing telecommunication on its own behalf, proof of its subscription to the National DNCL and proof of payment of fees to the National DNCL operator; and

b) when initiating a telemarketing telecommunication on behalf of clients, proof of subscription to the National DNCL and proof of payment of fees to the National DNCL operator for each client.

9. A telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall not use the National DNCL for any purpose except compliance with the provisions of the Telecommunications Act, the National DNCL Rules, or any other determinations made pursuant to section 41 of the Telecommunications Act.

10. Subject to section 11, a telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall not sell, rent, lease, publish or otherwise disclose, whether, for consideration or not, the National DNCL or any portion thereof to any person outside of its organization, including any affiliate.

11. A person referred to in section 10 may provide the National DNCL or any portion thereof to another person involved in supplying that person with services to enable it to comply with the Telecommunications Act, the National DNCL Rules, or any other determination made pursuant to section 41 of the Telecommunications Act, provided that

a) the National DNCL or any portion thereof is required for that purpose;

b) the National DNCL or any portion thereof is to be used only for that purpose; and

c) disclosure is made on a confidential basis.

12. A telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall make all reasonable efforts to ensure that the National DNCL or any portion thereof is not disclosed by any person to which it was provided pursuant to section 11 and is not used by that person for any purpose other than that referred to in section 11.

13. A telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date that any telemarketing telecommunication is made.

Part III: Telemarketing Rules

1. The Telemarketing Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules

Telecom Decision CRTC 2008-6

2. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate.

Telecom Decision CRTC 2008-6

3. A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and all applicable fees charged by the Complaints Investigator delegate associated with that client have
been paid.

Telecom Decision CRTC 2008-6

4. The Telemarketing Rules do not apply to a telemarketing telecommunication made via voice mail broadcast.

5. A telemarketer shall keep the following records related to registration and provision of information to the National DNCL operator for a period of three (3) years from the date the records are created:

   a) when initiating a telemarketing telecommunication on its own behalf, proof of its registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate; and,

   b) when initiating a telemarketing telecommunication on behalf of clients, proof of registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate for each client.

Telecom Decision CRTC 2008-6

6. The Telemarketing Rules do not apply in respect of an unsolicited telecommunication made for purposes other than solicitation, including telecommunications made solely for the purpose of emergencies, account collection, collecting information for a survey of members of the public, and market research.

7. A reseller of Centrex service shall make all reasonable efforts to ensure that subscribers and end-users of Centrex service do not employ the Centrex call transfer feature to transmit telemarketing telecommunications.

8. A telemarketer initiating a telemarketing telecommunication on its own behalf shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and fourteen (14) days from the date of the consumer's do not call request.

Compliance and Enforcement Regulatory Policy 2014-155

9. A client of a telemarketer shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and fourteen (14) days from the date of the consumer's do not call request.

Compliance and Enforcement Regulatory Policy 2014-155

10. A telemarketer initiating a voice telemarketing telecommunication shall process a do not call request from a consumer at the time of the telemarketing telecommunication.

11. A telemarketer initiating a telemarketing telecommunication on its own behalf shall add a consumer's name and telecommunications number to its do not call list within fourteen (14) days of the consumer's do not call request.

Compliance and Enforcement Regulatory Policy 2014-155

12. A telemarketer initiating a telemarketing telecommunication on behalf of a client shall make all reasonable efforts to ensure that the client adds a consumer's name and telecommunications number to the client's do not call list within fourteen (14) days of the consumer's do not call request.

Compliance and Enforcement Regulatory Policy 2014-155
13. A client of a telemarketer shall add a consumer’s name and telecommunications number to the client’s do not call list within fourteen (14) days of the consumer’s do not call request. 

Compliance and Enforcement Regulatory Policy 2014-155

14. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf to a consumer who is or should be on its do not call list.

15. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication on behalf of the client to a consumer who is or should be on the client's do not call list.

16. A telemarketer initiating a voice telemarketing telecommunication shall provide the following information in a clear manner upon reaching the intended party:

   a) the name or fictitious name of the individual making the telecommunication;

   b) the name of the telemarketer, whether the telemarketing telecommunication is made on its own behalf or on behalf of a client of the telemarketer; and

   c) the name of the client, when the telemarketing telecommunication is being made on behalf of a client of the telemarketer.

17. A telemarketer initiating a voice telemarketing telecommunication shall provide the following information in a clear manner upon request:

   a) a voice telecommunications number that allows access to an employee or other representative of the telemarketer for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request; and

   b) the name and electronic mail address or postal mailing address of an employee or other representative of the telemarketer to whom the consumer can write for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request.

Compliance and Enforcement Regulatory Policy 2014-155

18. The information referred to in section 17 shall be provided for both the telemarketer and, where applicable, the client of the telemarketer, whether or not the consumer has requested that both be provided.

19. A telemarketer sending a fax telemarketing telecommunication shall clearly provide the following information at the top of the first page in font size 12 or larger:

   a) the name of the telemarketer sending the fax, whether the telemarketing telecommunication is made on its own behalf or on behalf of a client of the telemarketer;

   b) the name of the client when the telemarketing telecommunication is being made on behalf of a client of the telemarketer;

   c) the originating date and time of the fax;

   d) a voice and a fax telecommunications number that allows access to an employee or other representative of the telemarketer and, where applicable, the client of the telemarketer, for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request; and
e) the name and electronic mail address or postal mailing address of an employee or other representative of the telemarketer and, where applicable, the client of the telemarketer, to whom the consumer can write for the purpose of asking questions, making comments about the fax, or making or verifying a do not call request.

Compliance and Enforcement Regulatory Policy 2014-155

20. The telecommunications numbers to be provided pursuant to sections 17, 18, and 19

a) shall be local or toll-free; and

b) in the case of a voice telecommunications number, shall be answered either by a live operator or with a voice mail system that is always capable of taking messages from the consumer.

21. The voice mail system referred to in section 20 shall provide a message informing the consumer that his or her call will be returned within three (3) business days.

22. The telemarketer or, where applicable, the client of the telemarketer shall return the consumer's call referred to in section 21 within three (3) business days.

23. Subject to section 24, a telemarketing telecommunication is restricted to the following hours:

9:00 a.m. to 9:30 p.m. on weekdays (Monday to Friday); and 10:00 a.m. to 6:00 p.m. on weekends (Saturday and Sunday). The hours refer to those of the consumer receiving the telemarketing telecommunication.

24. A telemarketing telecommunication is restricted to the hours set out in or pursuant to provincial legislation that governs an activity where the hours set out in the provincial legislation are more restrictive that those set out in section 23, provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the consumer receiving the telecommunication.

25. A telemarketer initiating a telemarketing telecommunication shall display the originating telecommunications number or an alternate telecommunications number where the telemarketer can be reached (except where the number display is unavailable for technical reasons).

26. Sequential dialing for the purpose of initiating a telemarketing telecommunication is prohibited.

27. Random dialing for the purpose of initiating a telemarketing telecommunication, including to a non-published or a non-listed telecommunications number, is permitted except to telecommunications numbers that

a) are registered on the National DNCL;

b) are emergency lines;

c) are associated with healthcare facilities;

d) in the case where a telemarketer initiates a telemarketing telecommunication on its own behalf, are on the telemarketer's do not call list; and

e) in the case where the telemarketer initiates a telemarketing telecommunication on behalf of a client of the telemarketer, are on the client's list.
28. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to any emergency line or healthcare facility.

29. A telemarketer using a predictive dialing device to initiate telemarketing telecommunications shall not exceed, in any calendar month, a five (5) percent abandonment rate.

30. A telemarketer and a client of a telemarketer shall maintain records, on a calendar month basis, with respect to the actual telemarketing telecommunication abandonment rates for a period of three (3) years from the date each monthly record is created.

31. A telemarketer who initiates a telemarketing telecommunication and a client of a telemarketer— if different— shall ensure that the electronic mail addresses, postal mailing addresses and local or toll-free telecommunications numbers referred to in sections 17, 19, 20, 21, and 25 are valid for a minimum of sixty (60) days after the telecommunication has been initiated.

Compliance and Enforcement Regulatory Policy 2014-155

Part IV: Automatic Dialing-Announcing Device (ADAD) Rules

1. The ADAD Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules.

Telecom Decision CRTC 2008-6

2. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication via an ADAD unless express consent has been provided by the consumer to receive a telemarketing telecommunication via an ADAD from that telemarketer or the client of that telemarketer. For greater certainty and without limiting the generality of the foregoing, this prohibition includes telemarketing telecommunications via an ADAD that are initiated by or on behalf of a charity, for the purpose of requesting a consumer to hold until a telemarketer is available, for activities such as radio station promotions, or for referring consumers to 900 or 976 service numbers.

3. For the purposes of section 2, express consent shall clearly evidence the consumer’s authorization that a telemarketing telecommunication via an ADAD made by or on behalf of a specific person may be placed to that consumer and shall include the specific telecommunications number to which the telemarketing telecommunication may be made.

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

   a) such telecommunications shall not be made to emergency lines and healthcare facilities, whether such telecommunications are made by random dialing or otherwise;

   b) subject to paragraph (c), such telecommunications are restricted to 9:00 a.m. to 9:30 p.m. on weekdays (Monday to Friday) and 10:00 a.m. to 6:00 p.m. on weekends (Saturday and Sunday); the hours refer to those of the person receiving the telecommunication;

   c) such telecommunications are restricted to the hours set out in or pursuant to provincial legislation that governs an activity, provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the person receiving the telecommunication;

Telecom Regulatory Policy 2009-200

   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.

Compliance and Enforcement Regulatory Policy 2014-155

e) such telecommunications shall display the originating telecommunications number or an alternate telecommunications number where the telecommunication originator can be reached (except where the number display is unavailable for technical reasons);

f) sequential dialing is prohibited;

g) random dialing can be used to make such telecommunications, including telecommunications to non-published telecommunications numbers, except to emergency lines and healthcare facilities;

h) persons initiating such telecommunications shall make all reasonable efforts to ensure that their equipment disconnects within ten (10) seconds of the person receiving the telecommunication hanging up;

i) the conditions in paragraphs (a) through (h) do not apply to unsolicited telecommunications made via an ADAD for public service reasons, including telecommunications made for emergency and administration purposes by police and fire departments, schools, hospitals, or similar organizations; and

j) the person making the telecommunication and the person – if different – on whose behalf the telecommunication is made shall ensure that the electronic mail address, postal mailing address, and local or toll-free telecommunications number referred to in paragraphs (d) and (e) are valid for a minimum of sixty (60) days after the telecommunication has been made.

Compliance and Enforcement Regulatory Policy 2014-155

Part V: Express Consent

1. For the purposes of the requirements set out in Part II, sections 4 and 5, and Part IV, sections 2 and 3, accepted forms of express consent are

   a) written consent, including a completed application form signed by the consumer giving consent to be contacted by way of telecommunications;

   b) oral consent, including

      (i) oral consent verified by an independent third party;

      (ii) oral consent, where an audio recording of the consent is retained by the telemarketer or client of the telemarketer;

   c) electronic consent through the use of a toll-free number;

   d) electronic consent via the Internet; or
e) consent through other methods as long as a documented record of consumer consent is created by the consumer or by an independent third party.

2. The onus is on the telemarketer and, where applicable, the client of the telemarketer to demonstrate that valid express consent was given by the consumer.

3. A consumer may withdraw his or her express consent at any time.

Part VI: Record Keeping

1. With regard to any records that are required to be kept pursuant to the Unsolicited Telecommunications Rules and any other records kept with regard to unsolicited telecommunications activities that are subject to the Unsolicited Telecommunications Rules:

   a) a telemarketer and a client of a telemarketer may keep the records in any form, and shall do so in the same manner and format as they keep records in the ordinary course of business;

   b) such records shall be maintained in the regular place of business in a manner such that they are readily accessible in order to facilitate the activities authorized under section 72.06 of the Telecommunications Act;

   c) such records shall be provided to the Commission within thirty (30) days of a request from the Commission; and

   d) in the event of any termination of the business of a telemarketer or a client of a telemarketer, a principal of that person shall maintain the records and shall comply with paragraphs (a), (b), and (c). In the event of any sale, assignment, or other change in ownership of the business of a telemarketer or a client of a telemarketer, the successor business shall maintain the records and shall comply with paragraphs (a), (b), and (c).

Part VII: Liability

1. A person will not be held liable for violating the Unsolicited Telecommunications Rules if

   a) the person demonstrates, as part of its due diligence defence, that the telecommunication resulted from an error and that as part of its routine business practices:

      (i) the person has established and implemented adequate written policies and procedures to comply with the Unsolicited Telecommunications Rules and to honour consumers’ requests that they not be contacted by way of a telemarketing telecommunication;

      (ii) the person provides adequate ongoing training to employees and makes all reasonable efforts to ensure that adequate ongoing training is provided to any person assisting in its compliance with the Unsolicited Telecommunications Rules and any written policies and procedures established under paragraph (i);

      (iii) the person uses the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;

      (iv) the person uses the telemarketer’s or, where applicable, the client of the telemarketer’s do not call list that was updated no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;
(v) the person uses and maintains records documenting a process to prevent the initiation of a telemarketing telecommunication to any telecommunications number that has been registered for more than thirty-one (31) days on the National DNCL, the telemarketer's do not call list or, where applicable, the client of the telemarketer's do not call list;

(vi) the person monitors and enforces compliance with the Unsolicited Telecommunications Rules and its written policies and procedures, referred to in paragraph (i); and

(vii) in the case of a person that has retained a telemarketer to engage in telemarketing on its behalf, the person has entered into an agreement between itself and the telemarketer requiring that the latter comply with the Unsolicited Telecommunications Rules.

b) In the case when a telemarketing telecommunication is made to a consumer's telecommunications number registered on the National DNCL, the person demonstrates that at the time of the telecommunication:

(i) the consumer had an existing business relationship, within the meaning of subsection 41.7(2) of the Telecommunications Act, with the telemarketer or, as applicable, the client of the telemarketer;

(ii) the telemarketing telecommunication qualified under one of the other exemptions specified in subsection 41.7(1) of the Telecommunications Act;

(iii) the consumer was a business;

(iv) the person had a personal relationship with the recipient consumer of the telemarketing telecommunication; or

(v) there was valid prior express consent from the consumer to be contacted via a telemarketing telecommunication by the telemarketer or, as applicable, the client of the telemarketer.

c) The circumstances described in paragraphs (a) and (b) are not exhaustive.

Related Documents

- Modifications to some Unsolicited Telecommunications Rules, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009
- Amendment to the Unsolicited Telecommunications Rules regarding fees paid to the Complaints Investigator delegate, Commission Letter, 22 May 2008
- Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints, Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints, Telecom Decision CRTC 2008-6, 28 January 2008, as amended by Telecom Decision CRTC 2008-6-1, 20 October 2008
Subsection 41.7(2) of the *Telecommunications Act* provides:

(2) The following definitions apply in subsection (1).

"candidate" means a candidate as defined in subsection 2(1) of the *Canada Elections Act* or a candidate whose nomination has been confirmed, for the purposes of a provincial or municipal election, by a political party that is registered under provincial law.

"existing business relationship" means a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from

a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;

b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or

c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.

"leadership contestant" means a leadership contestant as defined in subsection 2(1) of the *Canada Elections Act* or a contestant for the leadership of a political party that is registered under provincial law.

"nomination contestant" means a nomination contestant as defined in subsection 2(1) of the *Canada Elections Act* or a contestant for nomination by a political party that is registered under provincial law as its candidate in a provincial or municipal election.
CRTC Regulation Related to Voicemail Broadcasting

Voicemail broadcast\(^2\) is a type of telecommunication whereby a recorded message is delivered directly into a voice mailbox without interrupting the voice mailbox subscriber’s activities in real time. That is to say that the message is deposited into a consumer’s voice mailbox without causing the telephone handset to ring. No action (such as answering the telephone) is required on behalf of customers to have a voicemail broadcast message placed in their voice mailbox. Voicemail broadcast for the purposes of solicitation is permitted under CRTC rules. Voicemail broadcast is differentiated from traditional ADAD calling in that while ADADs sometimes do leave message in consumer voice mailboxes, when an ADAD is used, the consumer’s telephone will ring first. Using ADADs for the purposes of solicitation is not permitted under CRTC rules, except where the consumer has given express consent as it is outlined in Section 44 of the new Unsolicited Telecommunications Rules.

In September 2004, the CRTC held a hearing on whether to ban voicemail broadcasting. In October 2004 in Telecom Decision CRTC 2004-65 the CRTC determined that the practice should be allowed to continue. In December 2005, Rogers Wireless applied to the CRTC requesting that the Commission prohibit the practice of voicemail broadcasting to wireless subscribers.

The CRTC considered Rogers Wireless’ application and other suggestions regarding regulating voicemail broadcasting as part of Telecom Decision CRTC 2007-48. Incorporated into the Unsolicited Telecommunications Rules are the following regulations surrounding voicemail broadcasting:

- The National DNCL Rules (Part II of the Unsolicited Telecommunications Rules) will apply to telemarketing telecommunications via voicemail broadcast. That is to say that before conducting a voicemail broadcast telemarketing campaign telemarketers will have to use the National DNCL to scrub lists that are not otherwise exempt from the National DNCL.

- The Telemarketing Rules (Part III of the Unsolicited Telecommunications Rules) will not apply to telemarketing telecommunications made via voicemail broadcast.

In Decision 2007-48 the Commission also considered the proposal that telemarketing telecommunications via voicemail broadcast be prohibited to wireless subscribers. It ruled that as wireless telecommunications numbers may be registered on the National DNCL, the application of the

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\(^2\) Voicemail broadcast is also known as Voicecasting, which is a commercial name for a voicemail broadcast marketing service provided by Infolink.
National DNCL Rules to telemarketing telecommunications via voicemail broadcast will ensure that consumers who use wireless telecommunications services will be able to effectively prevent such telecommunications. This is to say that there is no regulation prohibiting voicemail broadcast telemarketing to wireless telecommunications numbers.

In summary: while the CRTC restricts the use of ADADs (where the telephone rings) for the purpose of solicitation, it permits the use of voicemail broadcasting (where a message is deposited directly into a voice mail box) for delivering marketing messages, including to wireless numbers. Further, while it is required that telephone numbers to be used in a voicemail broadcast campaign be scrubbed to the National DNCL, CRTC’s Telemarketing Rules (Part II of the Unsolicited Telecommunications Rules) do not apply to voicemail broadcasting.

It is essential for marketers to be aware that while the CRTC’s Telemarketing Rules do not apply to the telemarketing telecommunications via voicemail broadcast, the telemarketing and wireless requirements of CMA’s Code (Sections N3 and N4 detailed below) do apply to voicemail broadcasting. This includes the Section N3.4 prohibition on marketers from knowingly sending unsolicited voice messages to wireless devices (unless they have consent or there is an existing business relationship). The Association believes that applying CMA Code requirements to voicemail broadcasting will reduce the possibility of the CRTC applying more restrictive regulation in this area.

Marketers should note that in the CRTC’s decision not to apply The Telemarketing Rules to voicemail broadcasting it stated, in paragraph 491:

“Although the Commission considers that telemarketing telecommunications via voicemail broadcast is a form of telemarketing, it does not consider it appropriate to apply The Telemarketing Rules to voicemail broadcasting at this time as there is minimal evidence to support such an imposition. The Commission notes that evidence of complaints was an important factor for the Commission to establish that ADADs caused undue inconvenience or nuisance. The Commission will monitor complaints with regard to telemarketing telecommunications via voicemail broadcast, and should it receive significant evidence of undue inconvenience or nuisance, the Commission will revisit this issue.”

Marketers who are evaluating whether or not to use voicemail broadcast technology to deploy their communications should be cognizant of the fact that some consumers consider it “a nuisance and source of undue inconvenience to spend time listening to and managing telemarketing telecommunications messages dropped into their voice mail”3. It is worth noting that some consumers consider voicemail broadcasting a form of spam. Further, there can actually be a cost to consumers to

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retrieve telemarketing telecommunications messages from their voicemails (such as wireless phone airtime costs). Whether or not telemarketing by voicemail broadcast remains permitted by regulation will depend on how marketers use the technology and consumer response to it.

**CRTC Enforcement of Telemarketing Regulation**

Sub-sections 72.01 to 72.15 of the *Telecommunications Act* grants the CRTC enforcement powers that allow the imposition of administrative monetary penalties (AMPs) for a contravention of any prohibition or requirement of the Commission under Section 41 of the Act. This is to say that any contravention of the Unsolicited Telecommunications Rules is subject to the imposition of AMPs.

The following subsection details potential AMP amounts:

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.

It is important for marketers that use the telephone to market their products or services and telemarketing organizations to be aware of the vicarious liabilities detailed in the following subsection:

72.02 A person is liable for a violation that is committed by an employee, or an agent or mandatary, of the person acting in the course of the employee’s employment or the scope of the agent’s or mandatary’s authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against in accordance with this Act.

It is also important for telemarketers and their clients to realize, as detailed in subsection 72.03, that a violation that is continued on more than one day constitutes a separate violation in respect to each day during which it is continued. This is to say for example, if a telemarketing campaign takes place over a number of days and is in contravention of the Unsolicited Telecommunication Rules (for example calling non-exempt numbers on the National DNCL, or calling beyond permitted telemarketing hours) on more than one day, there is the potential to be fined for each day of telemarketing.

Later subsections of the *Telecommunications Act* give the CRTC the right to delegate their enforcement power, including investigations and issuing of notices of violation. The Act also gives the CRTC or any designate inspection authority, including the ability (with a warrant) to enter and inspect any place in
which it is believed, on reasonable grounds, there is any document, information, data processing system or thing relevant to the enforcement of section 41, and the authority to examine the relevant materials, documents and systems.

If the Commission or authorized authority believes that a violation has occurred, a notice of violation may be served. Notices of violation will name the person believed to have committed the violation, identify the violation and set out: the penalty for the violation; the right of the person, within 30 days after the notice is served, or within any longer period that the Commission specifies, to pay the penalty or to make representations to the Commission with respect to the violation, and the manner for doing so; and the fact that, if the person does not pay the penalty or make representations in accordance with the notice, the person will be deemed to have committed the violation and the Commission may impose the penalty.

If the person pays the penalty set out in the notice of violation, the person is deemed to have committed the violation and the proceeding in respect of it will be ended. If the person makes representations in accordance with the notice, the Commission must decide, on a balance of probabilities, whether the person committed the violation and, if it so decides, it may impose the penalty. A person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Commission may impose the penalty. AMPs constitute a debt due to Her Majesty in right of Canada (payable to the Receiver General) that may be recovered as such in the Federal Court.

**The Act permits the Commission to make public the nature of any violation, the name of the person who committed it and the amount of the administrative monetary penalty.**

Finally, as it relates to time limits for enforcement, the Act states that “no proceedings in respect of a violation may be commenced later than two years after the day on which the subject-matter of the proceedings became known to the Commission.”
Defences

Subsection 72.1(1) of the Act provides that “it is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation”. Further, subsection 72.1 (2) allows that “every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence in relation to a contravention of a prohibition or requirement of the Commission under section 41 applies in respect of a violation to the extent that the rule or principle is not inconsistent with this Act”.
The Competition Act

The Competition Act is a federal law which is intended to, among other things, “maintain and encourage competition in Canada” and “provide consumers with competitive prices and product choices.”

In 1999, section 52.1 was added to the Act making deceptive telemarketing a criminal offence.

With the aim of improving the quality and accuracy of marketplace information and discouraging deceptive telemarketing practices, section 52.1 prohibits:

- the making, or the permitting of the making, of materially false or misleading representations in promoting the supply of a product or a business interest during person-to-person telephone calls;
- telemarketers from engaging in certain practices including:
  - requiring payment in advance as a condition for receiving a prize that has been, or supposedly has been, won in a contest or game;
  - failing to provide adequate and fair disclosure of the number and value of the "prizes", the area or areas to which they relate, and any fact that materially affects the chances of winning;
  - offering a "gift" as an inducement to buy another product, without fairly disclosing the value of the gift and any restrictions, terms or conditions applicable to its supply to the purchaser; and
  - offering a product for sale at a price grossly in excess of its fair market value and requiring payment in advance.

The Act applies to most businesses in Canada, regardless of size.

No regulations have been issued related to section 52.1 of the Competition Act.

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4 Source: the Competition Bureau's Telemarketing Information Bulletin
Definitions and interpretation

Section 52.1(1) of the Competition Act defines telemarketing as “…the practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.” It is important to note that the Competition Bureau’s Telemarketing Information Bulletin indicates that telemarketing will be interpreted as live voice communications between two or more persons and that the Bureau will not consider "interactive telephone communications" to have occurred with regard to fax communications, Internet communications or a customer’s interaction with automated pre-recorded messages. (It is important to note though that fax, Internet and pre-recorded messages are still subject to the general provisions of the Act concerning misleading representations).

Further, regarding “customer relations lines” (inbound call centre) and “secondary communications”, the Bulletin states:

(a) A customer initiated a call to a customer relations line will not generally be considered as telemarketing, when that call is incidental and insignificant in relation to the primary marketing drive.

(b) Responses to unprompted customer questions in a customer initiated call will not generally be considered telemarketing unless there is a pattern of representations made to numerous customers.

Disclosure requirements

This section of the Competition Act – in subsection 52.1(2) – sets out disclosure requirements for telemarketers. At the beginning of each telephone communication, telemarketers must disclose, in a “fair and reasonable manner”: the name of the company or person they are working for; the type of product or business interest they are promoting; and the purpose of the call.

Further, in a “fair, reasonable and timely manner”, telemarketers must also disclose: the price of any product being sold; any restrictions or conditions that must be met before the product will be delivered; and other information in relation to the product as may be prescribed by the regulations.

(For other disclosure requirements, see also the CMA Code Section I14 Disclosures)
Telemarketing contests, lotteries or games of chance

Subsection 52.1(3)(b) of the *Competition Act* outlines specific requirements for telemarketers if they conduct or purport to conduct a contest, lottery or game of chance. The requirements are similar to the regular *Competition Act* contest requirements, the difference being that contests run by telemarketers are subject exclusively to criminal sanctions, with no option of being treated as reviewable matters under the civil penalty provisions of the Act.

Responsibility and enforcement

The *Competition Act* falls within the responsibility of Industry Canada and is administered by the Competition Bureau. The Bureau is headed by the Commissioner of Competition who has wide powers to investigate alleged offences as well as develop policy under the Act. In criminal matters, the Bureau conducts the investigation and then refers the matter to the Attorney General for possible prosecution. If a case proceeds, it is prosecuted in regular criminal court.

Again, section 52.1 of the *Competition Act* is a criminal provision.

It is important to note that directors and officers of a corporation may be held liable for offences committed by the corporation under this section. Subsection 52.1(4) directs that the general impression conveyed by a representation, as well as its literal meaning, be taken into account when determining whether or not the representation is false or misleading in a material respect.

Contraveners are liable to a fine of up to $200,000 and/or imprisonment up to one year on summary conviction, or to fines in the discretion of the court and/or on indictment, imprisonment up to five years.

For more information about section 52.1 of the *Competition Act*, see the Competition Bureau’s *Telemarketing Publication*, which was revised in 2009.
British Columbia’s Telemarketing Licensing Regulation

Introduction

On March 18, 2005, the Government of British Columbia announced amendments to the B.C. Business Practices and Consumer Protection Act to include new Telemarketer Licensing Regulation, that became effective October 1, 2005 and the administration of which would be overseen by Consumer Protection BC. Amendments to the Regulation were introduced in 2008\(^5\).

While recognizing that there are many legitimate businesses which use telemarketing as a vehicle for sales and fundraising, the B.C. government decided to regulate telemarketing to combat the serious problem it saw in fraudulent telemarketing in North America. The government felt that legitimate operations were increasingly becoming tainted by the proliferation of bogus schemes and not only finding their reputations adversely affected, but also finding it difficult to compete with fraudulent schemes for the limited dollars available in the marketplace. In addition, consumers were expressing increasing frustration with the number of calls that they were receiving from telemarketers.

The regulation addresses the issue of fraudulent telemarketing and nuisance calls by allowing the BPCPA to request Criminal Record Checks and other information from applicants for telemarketer licences to ensure their legitimacy. The regulation also restricts telemarketers to specific calling times and requires them to keep records relating to each distance sales contract. Consumer Protection BC receives consumer complaints about telemarketers and the regulation allows Consumer Protection BC to monitor telemarketers and take appropriate enforcement action for violations.

Application and Jurisdiction

The regulation only applies to businesses who contact consumers for the purpose of selling them goods or services, including third-party fundraisers. Telemarketer Licensing Regulation does not apply to a company that calls customers who are businesses rather than consumers. All telemarketers operating in British Columbia or who contact consumers in British Columbia for the purpose of entering into a distance sales contract are subject to the Telemarketer Licensing Regulation. The regulation includes telemarketers located in BC who phone consumers in BC, telemarketers located in BC who phone consumers outside of BC, and telemarketers located outside of BC who phone consumers in BC. While the regulation includes third-party fundraisers, charities that call or fax

consumers directly\(^6\), firms conducting surveys and calls for the purposes of account inquiries are exempt. Also exempt are organizations regulated under other provincial or federal statutes, for example insurance or deposit taking institutions.

It is important for marketers to recognize that the legislation does not address existing relationships between the supplier and consumer, so this is not a factor in identifying who would fall under the regulation. Again, all telemarketers, conducting business in BC or contacting BC consumers, who are contacting consumers for the purpose of conducting consumer transactions under distance sales contracts or as third party fundraisers would require licences – regardless of whether they are only calling those with whom they have an existing business relationship. Even those organizations that only use the telephone or fax to market to existing customers need to be licensed.

British Columbia legislation may not apply to organizations that have no residency in the province, and telemarketers may wish to consult their legal counsel regarding the various jurisdictional aspects of the law.

**Licensing Requirements**

The regulation requires both telemarketing businesses and employees to be licensed. At any time a consumer may ask telemarketers for their licence number, and all licensees are listed on Consumer Protection BC’s website.

Organizations that only handle inbound calls do not require a licence. Licences are only required if telemarketers are initiating contact for the purpose of entering into a distance sales contract.

In developing the regulations surrounding the new Telemarketer Licensing regime Consumer Protection BC worked closely with consumer and industry stakeholders by establishing a Telemarketing Industry Advisory Group. Both the CMA and a number of Association members are members of this group. The group identified consumer and industry related issues and potential solutions for consideration by the Authority and provided feedback on any matters put forward by Consumer Protection BC for consideration.

The Telemarketer Licensing Regulation regulates the acts or practices of telemarketers. Telemarketers will be required to:

\(^6\) This may include educational institutions and/or political organizations.
- Report to the Authority any changes in its employees (hiring, transfer, termination), and changes in senior officers or beneficial ownership of corporation shares;

- Collect and maintain records of consumer transactions for two years;

- Comply with conditions of communication:
  - restricted hours of communication
  - must not “call block” the originating call number
  - may not contact a consumer more than once in a 30 day period for the same proposed consumer transaction;

- Disclose identifying information about the call (and supplier, if different from the caller); and

- Disclose descriptive information about the solicited good or service, or the purpose of a contribution.

**Definition of Telemarketer**

The regulation defines a telemarketer as someone who sells goods or services over the phone or by fax, and may include someone who solicits donations for charities. The *Business Practices and Consumer Protection Act* provides a specific definition of “telemarketer” as a supplier who engages in the business or occupation of initiating contact with a consumer by telephone or facsimile for the purpose of conduction a consumer transaction. A consumer transaction involves the supply of goods or services by a supplier to a consumer for primarily personal, family or household purposes.

**Restrictions on Calling Hours**

The regulation restricts the times that licences can communicate with consumers to weekdays between 9 a.m. and 9:30 p.m. and weekends between 10 a.m. and 6 p.m. with no calls will be permitted on statutory holidays. The time refers to the local time of the person being contacted. In addition, a telemarketer may not contact a consumer more than once in every 30 day period for the same good or service without the consumer’s permission. These requirements mirror those of CMA’s Code of Ethics and the weekday and weekend calling hours are those found in the CRTC’s Unsolicited Telecommunications Rules.
Process for a Telemarketing Company to be Licensed

A telemarketing company must contact Consumer Protection BC to licence its business and employees. Application packages and a sample licence application form are available on the Telemarketing Forms page of the Authority’s website. The package consists of licence application forms, criminal record check consent forms and sample statutory declarations for any applicants who declare criminal records. Applicants are required to authorize a Criminal Record Check and must disclose any criminal record. As Consumer Protection BC operates on a cost-recovery basis, telemarketers are required to pay a licensing fee. A list of licensees is posted on Consumer Protection BC’s website, allowing consumers to search for licensees. Consumer Protection BC recognizes that determining if you need a licence can be complex and has therefore prepared a questionnaire to assist potential licensees.

In addition, Consumer Protection BC has prepared Telemarketers Definitions Chart that summarizes the linkages between the definitions in the Business Practices and Consumer Protection Act and the Telemarketer Licensing Regulation. The chart includes the definitions of telemarketer, consumer, supplier, consumer transaction and distance sales contract, and it identifies exemptions to the Telemarketer Licensing Regulation.

Enforcement

First, Consumer Protection BC encourages licensing through education, communication, and voluntary compliance. However, a telemarketer who operates without a licence is committing an offence and is liable to a fine (not more than $10,000 for an individual and not more than $100,000 for a corporation). For non-compliance with the regulation, Consumer Protection BC will take progressive enforcement action as follows:

- Accept undertakings in writing;
- Issue compliance orders;
- Impose administrative monetary penalties; and
- File undertakings or orders in Supreme Court.

More information for marketers on B.C.’s Telemarketing Licensing Regulation can be found:

- On Consumer Protection BC’s professional page for telemarketers; and
**Canadian Marketing Association Code of Ethics and Standards of Practice**

The CMA Code requirements are intended to compliment existing Canadian laws and regulations. In many instances the existence of CMA’s Code has dissuaded governments from regulating telemarketing or served as a model for new government regulations. While CMA members strive to conduct telemarketing campaigns in compliance with all laws and the Association’s ethical standards, a number of unscrupulous telemarketers who do not follow the Association’s rules have prompted governments to create regulation governing almost every aspect of telemarketing telecommunications. While this type of marketing is strictly regulated, to a large extent regulation has been closely based on the CMA Code, and as a result CMA members have been well equipped to respond to changing government rules. However, there are some areas where regulation goes further than, or differs slightly from the CMA Code. Organizations should make themselves aware of all relevant laws and regulations and should govern their activities accordingly.

**CMA Code**

**N3 Telephone and Fax**

These standards of practice apply to all forms of commercial solicitation relating to the purchase of products or services, or requests for charitable donation conveyed by telephone (also known as telemarketing), including the presentation of offers by means of telephone facsimile (also known as fax).

**Commentary**

Unless specified expressly in the subsections of N3, the Code requirements in this section govern both marketing by fax and marketing by telephone. Regarding marketing by telephone, the requirements apply equally to telemarketing both to hard or land “wired” lines and to wireless telephone numbers, and apply whether the telemarketing telecommunication is delivered by a live voice calling or by voicemail broadcast. That is to say that the word “call” should be interpreted to mean either a live voice telephone call, a voicemail broadcast transmission, or a “call” by a fax machine.
CMA Code

N3.1 Calling and Faxing Hours: Marketers must limit the hours of outbound telemarketing or faxing to the hours of 9:00 a.m. to 9:30 p.m. weekdays and 10:00 a.m. to 6:00 p.m. Saturdays and Sundays. Restrictions refer to the time zone of the called party. Calling or faxing must not be undertaken on statutory holidays.

Commentary

Excluding the CMA restriction on telemarketing calls or faxes on statutory holidays, these restrictions are reflected in the CRTC’s Unsolicited Telecommunications Rules and in British Columbia’s telemarketing regulations. Members should make themselves aware of the statutory holiday designations in the jurisdictions into which they are calling.

CMA Code

N3.2 Use of National Do Not Call List: Marketers must use the National Do Not Call List when conducting a consumer telemarketing or fax campaign.

Commentary

CMA had been providing its DNC Service free of charge to consumers since 1989. There were over half a million unique names registered on the list with approximately 15,000 additions each month. This was replaced by the rules and requirements of the National Do Not Call List in 2008.

With the National DNCL successfully in effect, CMA’s DNC Service has ceased accepting telephone and fax numbers registrations (CMA continues to maintain the Do Not Mail portion of the Service). Consumer confusion and frustration was mitigated by requiring members to continue using CMA’s Do Not Call and Do Not Fax lists for 6 months after the national DNCL went into effect. These requirements and subscription details were communicated to members as the National service went into effect.
CMA Code

**N3.3 Internal Do Not Contact List:** At the request of either a current customer or a consumer or business, marketers must promptly add telephone or fax numbers to an internal do not contact list and cease marketing to the current customer, consumer or business at that telephone or fax number. Telephone and fax numbers must be retained on the internal do not contact list for three years.

**Commentary**

The CMA Code requires that marketers maintain internal do not contact (or “opt-out”) lists for consumer and/or business contact information for every channel by which they market. The Code’s *Glossary of Terms* defines internal do not contact list as follows:

**Internal do not contact list:** A list of current customer, consumer or business contact information of those persons or businesses who have requested that they not be contacted by the marketer’s organization. It is used to cross-reference and purge that information from any list to be used for any marketing campaign by that organization. Often referred to as an “internal deletion list”, this Code requires that internal do not contact lists must be maintained by every organization that markets for every channel by which they market and that the information must be retained on the list for three years.

Organizations should not send telephone, fax or voicemail broadcasting marketing messages to consumers or businesses who have indicated they do not wish to receive marketing from the organization to their telecommunications number. Marketers should ensure that they have the means to honour opt-out requests on a timely basis and to scrub their lists accordingly. While marketers may contact consumers with whom they have an existing business relationship, they must honour an individual’s request to be removed from telemarketing lists at any time. The most likely sources of such requests are at the time of a live voice call, or through the opt-out opportunity CMA requires be provided in every fax marketing message sent (see N3.9 below).

Paragraphs 8-16 of the CRTC’s Unsolicited Telecommunications Rules address internal Do Not Call lists. While closely modeled after CMA’s Code, the CRTC’s rules differ in some respects.

While the CMA only requires that telecommunications numbers (telephone or fax) are added to internal do not contact lists, the CRTC requires that telemarketers add a consumer’s telecommunications number *and* name to internal do not call lists. This appears to be designed to aid in the investigation of any telemarketing complaints, where one member of a household may be listed on an internal do not call list, when another is not.
While the CMA requires that upon request numbers are “promptly” added to internal do not contact lists, the CRTC specifically requires that a telemarketer initiating a voice telemarketing telecommunication shall process a do not call request at the time of the telemarketing telecommunication, and, when initiating a telemarketing telecommunication on its own behalf, that telemarketers shall add a consumers name and telecommunications number to its internal do not call list within fourteen (14) days of the consumer’s do not call request.

In a manner that reflects the intent of CMA’s Code, the CRTC addresses internal do not call list requirements for telemarketing organizations initiating a telemarketing communication on behalf of a client. When this is the case, the CRTC requires that the telemarketer “make all reasonable effort” to ensure that the client adds a consumer's name and telecommunications number to the client’s internal do not call list within fourteen (14) days of the consumer’s do not call request. This is certainly best practice and will help to avoid consumer confusion and complaints.

It is important to note that when making calls on behalf of a client, both the CMA and CRTC obligate telemarketing companies to add names to the client’s internal do not call list, not to a master internal do not call list of the telemarketing organization. That is to say that when telemarketing companies are scrubbing clients’ lists, it is only their client’s internal do not call list (and the National DNCL as applicable) that need be used. (Of course their own internal do not call list requests would need to be honoured when a telemarketing company is making calls on their own behalf).

Finally, while the CMA requires that numbers are kept on internal do not contact lists for three (3) years, the CRTC requires that numbers are kept on internal do not call lists for three (3) years and fourteen (14) days.

**CMA Code**

**N3.4 Consent For Text Messages:** Marketers must not knowingly call or send voice messages to wireless devices of either consumers or businesses without prior consent.

**Commentary**

Recognizing that there is currently no way to scrub Canadian telecommunications lists to identify wireless numbers, and due to the fact that wireless consumers often incur a charge to receive voice messages to their wireless devices, the CMA prohibits, to the best of a telemarketer’s ability, the distribution of unsolicited voice messages to wireless devices. Text messages sent to mobile devices
may only be done in compliance with Canada’s Anti-Spam Law (See CMA Guide to Canada’s Anti-Spam Law).

Further, while not a Code requirement, it is industry best practice to avoid telemarketing to wireless devices except where the consumer or business is a current customer or has consented to receive such communications.

Marketers should be cognizant of the generally negative consumer response to receiving telemarketing calls on wireless devices and develop appropriate out-bound calling policies (such as having the marketer terminate the call if it is discovered that a wireless telephone has been reached).

CMA Code

N3.5 Unlisted Numbers: Marketers must not knowingly call any consumer or business who has an unlisted or unpublished telephone number, except where the telephone number was furnished by the consumer or business to that marketer, or by a third-party with the consumer’s consent.

Commentary

This requirement reflects the fact that if a consumer has gone to the effort (and expense) of having de-listed their number, it is probable that they would be unreceptive to receiving telemarketing.

CMA Code

N3.6 Sequential Dialing: Marketers must not engage in sequential dialing.

N3.7 Random Dialing: Marketers must not engage in random dialing other than to a list or public directory where it is possible to remove telephone and/or fax numbers that are on the CMA Do Not Contact list (in the absence of a government mandated, national Do Not Call List) and/or on a marketer’s internal do not contact list.

Commentary

These two requirements reflect the fact that dialing numbers sequentially (dialing (123) 456-7890 then (123) 456-7891 then (123) 456-7892, etc.) or randomly makes it very difficult to adhere to other
telemarketing rules including avoiding unlisted and emergency numbers and scrubbing to internal, CMA or National DNCLs.

CRTC regulations also prohibit sequential dialing (paragraph 26 of the Unsolicited Telecommunications Rules), and reflect CMA rules regarding random dialing (paragraph 27 of the Unsolicited Telecommunications Rules).

**CMA Code**

**N3.8 Unsolicited Fax Marketing:** Marketers must not knowingly send unsolicited marketing communications by fax to consumers or businesses, except where the consumer or business is a current customer or has consented to receive such communications.

**Commentary**

Recognizing that consumers are sensitive to receiving fax marketing, particularly as such marketing often represents a cost to the consumer (of paper, ink etc. from the receiving fax machine), the CRTC and CMA each sought different ways to mitigate consumer concerns.

Paragraph 19 of the CRTC’s Unsolicited Telecommunications Rules detail strict requirements for fax marketing identification and the ability of a consumer to contact fax marketers.

In recognition of the fact that many consumers view fax marketing as being similar to spam, the CMA requires that marketers have the consent of the recipient to send fax marketing.

The internal process used to obtain consent should be clear and transparent. Internal processes should be in place that records proof of consent, including the date, time, and how consent was obtained, for example from an online form (in which case originating Internet Protocol (IP) address and location including URL should be recorded), a business card, contest form, telephone, verbal communication, or through a paying subscription to a list. Organizations should be able to provide this information to a recipient or regulator upon request. If the consent collected is express and to be used to comply with CRTC requirements (such as proving permission to contact a consumer whose number is on the National DNCL) recall that “Part V: Express Consent” of the CRTC’s Unsolicited Telecommunications Rules detail requirements for accepted forms of express consent.
Where there is an existing business relationship and the consumer has provided his or her fax number to a marketer, the marketer has implied consent to e-mail that consumer marketing offers related to the original purchase or transaction. However, as per section N3.3, marketers must honour an individual's request to be removed from fax marketing lists, including requests of existing consumer or business customers.

**Important Note:** The definition of an existing business/consumer relationship (or current customer relationship) found in the CMA Code is slightly different than the definition found in the *Telecommunications Act* and used by the CRTC (detailed on page 4 above).

The *Glossary of Terms* of the CMA Code states that an existing business/consumer relationship or current customer relationship exists where a consumer has made a purchase or donation, has rented, leased or contracted for, or has otherwise participated in a organization’s provision of products or services within the past 18 months, or a period consistent with that organization’s normal buying cycle. An existing business/consumer relationship is also defined as continuing for six months from the date of an inquiry or application from a consumer.

**It is important that marketers adhere to the CRTC’s slightly more restrictive definition of existing business relationship when conducting unsolicited telecommunications campaigns (including, for example, when taking advantage of the existing customer exemption to the National DNCL).**

Under Canadian privacy laws, where an individual has entered a contest, made a donation or registered for a product, newsletter etc., has provided their fax number as part of the transaction, has been provided with the opportunity to opt-out of receiving further fax marketing messages, and has not done so, the organization has the implied consent to fax the individual. When using this form of consent, marketers should explain to the intended recipient why they are receiving the fax.

It is important to remember that any *new use* of a fax number – for example to market a product or service unrelated to the original transaction – requires that marketers obtain new consent. This can generally be achieved through opt-out language detailing the new use in the initial fax marketing piece or in another type of communication related to the new use.

There is an exception for sending fax messages outside of an existing business relationship, or to an inactive customer who no longer meets the “existing customer” qualifications. If an organization has service, warranty or product-upgrade information, or if there are health and safety issues related to a product purchase, the organization may send fax messages to its customers. However marketers
should use discretion in doing so as customers may view the communication as “junk faxing” if the organization uses it as an opportunity to up or cross-sell products.

Finally, marketers, list brokers and list owners should take reasonable steps to ensure that the addresses on their fax marketing lists were obtained with proper consent. Where a marketer, list broker or list owner knew or should have known that the proper consent was not obtained, they could be accountable. Some examples of reasonable steps that an organization can take to ensure compliant lists include: reviewing the privacy policy of the broker/owner of the list; reviewing the opt-in procedures used to obtain the fax numbers; and as per CMA Code section J6 List Rental Practices having the broker or owner sign a contract warranting that they have complied with the requirements of applicable Canadian privacy laws and with Section J3 Protection of Personal Privacy of the CMA Code.

CMA Code

N3.9 Fax Marketing Identification and Contact Information: Marketers must identify the marketer on behalf of whom the fax is being sent, including the telephone number, fax number and name and address of a responsible person to whom the faxed party can write. Marketers must display the originating faxing number or an alternate number where the sender can be reached, except where number display is unavailable for technical reasons.

N3.10 Fax Marketing Opt-Out: Marketers must provide an easy-to-see, easy-to-understand and easy-to-execute opt-out opportunity within each fax advertisement.

Commentary

The requirements in these sections were developed in response to consumer sensitivity to receiving marketing messages by fax.

Paragraph 19 of the CRTC’s Unsolicited Telecommunications Rules provide specific detail as to the regulatory requirements of fax marketing identification, contact information and how opt-outs must be provided, and some new provisions exceed the requirements of the CMA.

The CMA requires that every fax marketing message must contain an easy-to-see, easy-to-understand and easy-to-execute opt-out opportunity. In effect, with every fax marketing message, marketers re-establish consent to use the fax number for marketing purposes. It is important for marketers to actively monitor consent and do-not-fax requests from all consumers and businesses, including their
existing customers. As per CMA Code section N3.3, when a consumer or business opts-out, marketers must promptly add fax numbers to their internal do not contact list and cease marketing to that fax number.

It is important for marketers to note that while the CMA requires fax marketing identification for the marketer on whose behalf the fax is being sent, the CRTC requires identification for both the marketer presenting the offer (the client) and the telemarketing company transmitting the fax blast on the marketers behalf (if applicable).

Beyond the provisions of CMA Code, the CRTC’s Unsolicited Telecommunications Rules detail how the opt-out opportunity must be operationalized, including the necessity to communicate both a toll-free voice and a toll-free fax number (with strict voicemail and call-back requirements) that allow access to an employee both of the transmitting company and of the client.

CMA Code

N3.11 Telephone Identification and Contact Information: Marketers must identify themselves, the business or organization represented and the purposes of the call promptly at the beginning of each outbound telemarketing call.

Upon request, the marketer must provide the marketer’s telephone number and the name and address of a responsible party to whom the called party can write.

Marketers must not block Caller ID information, unless there is a significant technological impediment to providing this information to the consumer.

Commentary

Again the new CRTC requirements for the information that must be provided upon reaching the intended party, and upon request of a consumer are more specific than the CMA requirements, including a requirement that the contact information must be valid for 60 days. The CRTC requirements are detailed in paragraphs 16-18 of the Unsolicited Telecommunications Rules.

Beyond the CRTC requirements, and consistent with the disclosure requirements of the Competition Act, the CMA requires that telemarketers identify the purposes of the call promptly at the beginning of
each outbound telemarketing call (upon reaching the intended party). This is to help mitigate consumers confusing telemarketing calls with calls for other purposes such as harassment or fraud.

Beyond CMA’s requirement to identify the business or organization represented, the CRTC requires that both the marketer and the telemarketing company making the call (if applicable) be identified at the beginning of a call. Further, as per paragraph 28 of the Unsolicited Telecommunications Rules, the information the CRTC requires be shared upon request must be provided for both the marketer and where applicable the telemarketing company making the call.

Regarding Caller ID information, while CMA does not permit members to block the information, it is common and accepted practice to change the number from the outbound line’s number to an alternate number where the marketer can be reached (such as an inbound call centre). The CRTC details the same Caller ID requirements in paragraph 35 of the Unsolicited Telecommunications Rules. The CRTC Caller ID requirements apply to both telephone and fax telecommunications.

**CMA Code**

N3.12 **Voice Recording:** Marketers must obey the laws concerning voice recording and they must advise consumers when recording a goods or services transaction.

**Commentary**

This requirement was designed to reflect requirements of Canada’s Privacy Laws. In Canada’s *Personal Information and Protection of Electronic Documents Act* (PIPEDA), Principle 4.3, Schedule 1, states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information (except where inappropriate). Principle 4.3.5 states that in obtaining consent, the reasonable expectations of the individual are also relevant.

The Privacy Commissioner of Canada has rendered various findings that relate to recording telephone conversations, most notably in PIPEDA Case Summaries 86 and 176.

In these findings the Commissioner outlined his view that taping involves collecting personal information and should therefore meet fair information principles. Conversations should not be taped unless it is for purposes that a reasonable person would consider appropriate in the circumstances. Such purposes might include, for example, confirmation of a consumer’s consent to an application or the terms and conditions of the product or service (equivalent of having a customer sign an application form); to
collect transaction details; or for quality assurance or training purposes. The Commissioner noted that tape recording captures more than just the specifics of a transaction: it records other comments that may be of a personal nature but are not relevant to the material required. The Commissioner found – under Principle 4.3 – that it was necessary to make a consumer aware of the fact that a telephone conversation was being recorded and to give an opportunity to consent or to choose alternative means of providing personal information.

There is generally recognition amongst industry and governments of a need to notify consumers about the recording of a voice call. There is more varied opinion as to what point in a call the caller should advise that the call may or is being recorded. Privacy Commissioner findings suggest a preference for such notification at the beginning of a call, but there are no firm legal precedents in this regard.

The CMA Code requires that consumers are advised of call recording when a goods or services transaction is being recorded, as during such a transaction personal information is being collected and/or verified.

When notifying a consumer that a call is being recorded, the calling party should:

- inform the consumer that the call is or may be recorded near the outset of the conversation and at minimum before the call moves to collection of any personal information;
- identify the purposes for which the call is being recorded in a clear and consistent manner (at a minimum you must be prepared to do so upon request); and
- should the consumer not wish to proceed with the call, offer alternative means of communicating information.

It is recommended that organizations who record calls ensure that they have consistent, consolidated policy and procedures regarding the tape-recording of consumer calls (that are consistent with PIPEDA findings and CMA Code). Further, formal training should be conducted to ensure that all telephone agents – be they inbound or outbound agents – are knowledgeable and proficient in the consistent application of policy and procedures.

Marketers should note that the requirement to advise when recording applies equally to business-to-consumer and business-to-business telemarketing telecommunications, whether they have been initiated by the marketer (outbound telemarketing), or by the consumer (inbound telemarketing).
CMA Code

N3.13 Frequency: Marketers must not knowingly contact a consumer who is not already a current customer more frequently than once per month for the same product or service unless they have received consent to do so. Business-to-business marketing is exempt from this requirement, as prospect development often requires more frequent contact, calling a business office is less intrusive than calling a consumer at home, and B2B marketing often involves contacting multiple individuals within the same company.

Commentary

This requirement is designed to decrease consumer annoyance with repeated telemarketing solicitations. Ideally decreased consumer annoyance will diminish the number of consumers who register for national or internal do not call lists, and increase response rates.

CMA Code

N3.14 Use of Predictive Dialler Technology: Marketers using predictive dialler technology should ensure that abandoned or “hang up” calls be kept as close to 0% as possible, and must in no case exceed 5% of dialled calls for any given outbound telemarketing campaign.

Commentary

As per the CRTC definition, a predictive dialing device, or PDD, means any software, system, or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers.

The CRTC defines an “abandoned call” as a telecommunication placed by a PDD to a consumer which, when answered by the consumer, has no live telemarketer available to speak to the consumer within two (2) seconds.

This section of CMA’s Code should be read to mean that the 5% maximum abandonment rate refers to dialled calls that are answered by the consumer (as opposed to all dialled calls, whether they connect or not), without regard to the two second requirement. That is to say that is not permissible to “hang up” within the two second window. “Hang up” calls will be included in the 5% calculation.
The CRTC rules regarding the use of PDDs are detailed in paragraph 39 of the Unsolicited Telecommunications Rules and are more specific those of the CMA. The CRTC requires that a telemarketer using a predictive dialing device to initiate telemarketing telecommunications shall not exceed, \textit{in any calendar month}, a five (5) percent abandonment rate.

\textbf{CMA Code}

\textbf{N4 Mobile and Web}

\textbf{CMA Code}

\textbf{N4.5 Internal Do Not Contact List:} At the request of a consumer or business, including a current customer, marketers must promptly add email addresses and mobile numbers to an internal do not contact list and cease marketing to that email address or mobile number, and in any event in no longer than ten business days.

\textbf{Commentary}

See commentary to Code Section N3.3 above and note that the CRTC Unsolicited Telecommunications Rules regarding internal do not call lists apply to wireless telephone numbers in the same way they apply to other telephone and fax numbers.
Related Resources

- The Canadian Radio-television Telecommunications Commission (CRTC)’s information page on Telemarketing and Unwanted Calls
- The Competition Bureau’s Telemarketing Information Bulletin
- Consumer Protection BC’s professional page for marketers.
- The Office of the Privacy Commissioner of Canada’s publication: Best Practices for Recording of Customer Telephone Calls
- The Office of the Privacy Commissioner of Canada’s PIPEDA Case Summaries touching on call recording:
  - PIPEDA Case Summary #86: Bank failed to inform customer of taped telephone call
  - PIPEDA Case Summary #176: Bank records customer call without consent; refuses to erase tape

The CMA Code of Ethics and related guidelines do not purport to replace legal advice or to provide legal guidance. Marketers should inform themselves about relevant laws that apply in their jurisdiction including, but not limited to, the federal Competition Act and consumer, privacy and language laws in Canada.

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