



Telecom Decision CRTC 2011-391

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Ottawa, 23 June 2011

2160983 Ontario Inc., carrying on business as Ontario Choice Window and Door – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-930

In this decision, the Commission imposes an administrative monetary penalty of \$16,000 on Ontario Choice Window and Door for initiating four telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL) and for initiating these telecommunications without being a registered subscriber or having paid all applicable subscription fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 5 November 2008 and 11 February 2009, the Commission received numerous complaints in relation to telemarketing telecommunications made by Ontario Choice Window and Door (Ontario Choice).¹
2. Upon being contacted, Ontario Choice confirmed that it was conducting telemarketing activities and indicated that it would comply with the Unsolicited Telecommunications Rules (the Rules).
3. Between 7 June and 16 October 2010, the Commission received further complaints in relation to telemarketing telecommunications made by Ontario Choice.
4. On 31 January 2011, a notice of violation was issued to Ontario Choice pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Ontario Choice that it had initiated
 - four telemarketing telecommunications to consumers whose numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4² of the Rules; and

¹ 2160983 Ontario Inc., carrying on business as Ontario Choice Window and Door, North York, Ontario, Tel.: 647-827-1065.

² Part II, section 4 of the Rules states that 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.

- four telemarketing telecommunications without being a registered subscriber or having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6 of the Rules.³
5. Ontario Choice was given until 3 March 2011 to pay the administrative monetary penalty (AMP) set out in the notice of violation or to make representations to the Commission regarding the violations.
 6. The Commission notes that Ontario Choice neither paid the AMP specified in the notice of violation nor made representations in accordance with the notice. Accordingly, pursuant to subsection 72.08(3) of the Act, Ontario Choice is deemed to have committed the violations outlined in the notice of violation dated 31 January 2011.
 7. In the circumstances of this case, the Commission considers that a penalty of \$2,000 for each of the violations of Part II, sections 4 and 6 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$16,000 on Ontario Choice.
 8. The Commission hereby notifies Ontario Choice of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to appeal this decision to the Federal Court of Appeal under section 64 of the Act. Any review and vary application under section 62 of the Act must be made within 30 days of the date of this decision, and the Commission will place all related documentation on its website. An appeal from this decision may be brought in the Federal Court of Appeal with the leave of that Court. Leave to appeal must be applied for within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
 9. The Commission reminds Ontario Choice that should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Ontario Choice should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - subscribing to the National DNCL;
 - downloading the National DNCL at least once every 31 days prior to the date of the telemarketing telecommunication; and
 - establishing and implementing adequate written policies and procedures to comply with the Rules, which include documenting a process to (a) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.

³ Part II, section 6 of the Rules states that 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.

10. The Commission advises Ontario Choice that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
11. The amount of \$16,000 is due by 25 July 2011 and is to be paid in accordance with the instructions contained in the notice of violation. For any amount owing that is not paid by 25 July 2011, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.
12. If payment has not been received within 30 days of the date of this decision, the Commission intends to take measures to collect the amount owing, which may include certifying the unpaid amount and registering the certificate with the Federal Court.

Secretary General