



Compliance and Enforcement Decision CRTC 2019-318

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Ontario Consumers Home Services Inc. – Violations of the Unsolicited Telecommunications Rules

The Commission imposes a total administrative monetary penalty of \$194,330.74 on Ontario Consumers Home Services Inc. for making telemarketing calls (i) to consumers whose telephone numbers were registered on the National Do Not Call List (DNCL), (ii) while it was not a registered subscriber of the National DNCL, and (iii) outside the permitted hours, in violation of the Unsolicited Telecommunications Rules.

Introduction

1. Between 22 June 2015 and 1 September 2017, the Commission received 74 complaints from consumers about telemarketing calls that appeared to have been made by Ontario Consumers Home Services Inc. (OCHS).
2. As a result of an investigation, on 30 October 2018, a person designated by the Commission¹ issued a notice of violation² to OCHS under the *Telecommunications Act* (the Act). The notice informed OCHS that it had made telemarketing calls between 22 June 2015 and 1 September 2017³ that resulted in
 - 96,536 violations of Part II, section 4 of the Unsolicited Telecommunications Rules (the Rules), which prohibits the making of telemarketing telecommunications to consumers whose numbers are registered on the National Do Not Call List (DNCL), without the consumers' express consent;
 - 1,046,544 violations of Part II, section 6 of the Rules, which prohibits telemarketers that are not registered subscribers of the National DNCL and that have not paid the applicable fees to the National DNCL operator from making telemarketing telecommunications; and

¹ Paragraph 72.04(1)(a) of the *Telecommunications Act* states that the Commission may designate persons, or classes of persons, who are authorized to issue notices of violation.

² Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

³ While the notice of violation correctly stated that these calls took place between 22 June 2015 and 1 September 2017, the violations at issue in this proceeding took place during the shorter time frame of 9 December 2016 to 2 February 2017.

- 42 violations of Part III, section 23 of the Rules, which restricts the making of telemarketing telecommunications 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).⁴
3. The notice of violation set out administrative monetary penalties (the penalty) for 1,143,122 violations at \$0.17 per violation, and a total penalty of \$200,000.
 4. OCHS was given 30 days either to pay the penalty set out in the notice of violation or to make representations to the Commission.

Did OCHS commit the violations set out in the notice of violation?

5. OCHS is deemed to have committed the violations outlined in the notice of violation because it neither paid the penalty nor made representations in accordance with the notice. The Commission may therefore impose the penalty according to subsection 72.08(3) of the Act.

Is the total penalty amount reasonable?

6. The notice of violation referred to the total proposed penalty amount as \$200,000. However, 1,143,122 violations multiplied by \$0.17 is \$194,330.74. Each violation of the Rules is subject to a penalty according to subsection 72.01(b) of the Act. The Commission therefore considers that the corresponding total penalty of \$194,330.74 may be imposed if such a penalty is found to be reasonable.
7. The Commission has previously stated that the appropriate factors to be considered in determining the amount of a penalty for violations of the Rules include the nature of the violations, the number and frequency of complaints and violations, the potential for future violations, the person's ability to pay the penalty, and the relative disincentive of the measure (see Telecom Decision [2007-48](#) and Compliance and Enforcement Regulatory Policy [2015-109](#)).
8. The Commission is of the view that the nature of the violations committed by OCHS is serious. The making of unsolicited telemarketing calls to consumers whose numbers are registered on the National DNCL causes significant inconvenience and nuisance to consumers by violating the expectation that registration of their numbers on the National DNCL will ensure that they do not receive such calls. Additionally, OCHS's failure to purchase a subscription to the National DNCL is a significant breach of the Rules. Engaging in telemarketing without having a subscription increases the probability that unwanted telecommunications will be made to consumers whose numbers are registered on the National DNCL. Furthermore, calls made outside the permissible calling hours may also cause significant nuisance to consumers by violating the expectation that they will not be bothered during hours of rest.

⁴ The hours refer to those of the consumer receiving the telemarketing telecommunication.

9. A portion of the 74 complaints received raised issues that were unrelated to the violations set out in the notice. However, both the number and the frequency of actual violations committed by OCHS are very high. OCHS is deemed to have committed over a million violations of the Rules in less than two months, based on the designated person's analysis of the calling records that OCHS provided during the investigation.
10. With regard to OCHS's potential for future violations, the Commission finds that the low penalty per violation set out in the notice of violation is justified. This is the first time a notice of violation has been issued to OCHS, and no previous enforcement action has been taken against the company under the Rules. Furthermore, there is no evidence on the record indicating that OCHS is still engaging in telemarketing to Canadians.
11. The record of the proceeding included limited evidence with respect to OCHS's ability to pay, and OCHS did not file representations that could have addressed this factor. However, the Commission has noted in the past that analysis of the ability to pay is not limited to direct financial information. It can also proceed based on other characteristics of a company's capacity to generate revenue, including its size, the scope of its operations, and the number of people it employs (see Compliance and Enforcement Regulatory Policy [2015-109](#)). According to information gathered during an inspection by Commission enforcement staff at OCHS's corporate office in January 2017, the company had over 60,000 customers, was mainly targeting the Greater Toronto Area but had also placed calls in the Ottawa area, and was employing 20 to 30 people. Based on these considerations and the limited information available, the Commission considers that a total penalty amount of \$194,330.74 would not exceed OCHS's ability to pay.
12. Regarding the relative disincentive of the measure, the purpose of a penalty is to promote compliance, not to punish. The amount of the penalty must therefore reflect the nature of the non-compliance, and must serve both as a deterrent to future non-compliance and as an incentive to comply with the Rules. For this reason, penalties must not be set so low as to make it financially advantageous for a telemarketer or a client of a telemarketer to pay the penalty as a cost of doing business. At the same time, the Commission must also ensure that a penalty, having regard to its magnitude, purpose, and effect, does not result in a true penal consequence.⁵
13. The Commission considers that OCHS gained a financial benefit from its non-compliance with the Rules by avoiding the costs associated with the subscriptions it was required to purchase prior to making telemarketing calls. The evidence shows that OCHS made telemarketing calls to 16 area codes between 9 December 2016 and 9 January 2017, and to seven area codes between 10 January and 2 February 2017. During that period, OCHS was not a registered subscriber to the National DNCL.
14. In light of the above, the Commission finds, on a balance of probabilities, that the total penalty amount of \$194,330.74 is reasonable and necessary to promote compliance with the

⁵ *Guindon v. Canada*, 2015 SCC 41

Rules; it represents more than simply the cost of doing business and it does not, having regard to its magnitude, purpose, and effect, represent a true penal consequence.

Conclusions

15. As noted above, OCHS is deemed to have committed the 1,143,122 violations of the Rules set out in the notice of violation because it neither paid the penalty nor made representations.
16. In the circumstances of this case, the penalty of \$0.17 per violation for the 1,143,122 violations of the Rules set out in the notice of violation is appropriate. The Commission therefore imposes a total penalty of \$194,330.74 on OCHS.
17. The Commission hereby notifies OCHS of its right to apply to the Commission to review and rescind or vary this decision. Any review and vary application must be made within 90 days of the date of this decision, and the Commission will place all related documentation on its website⁶ (see section 62 of the Act).
18. OCHS can also seek leave of the Federal Court of Appeal to appeal this decision before that court. An application for leave to appeal must be made to the Federal Court of Appeal within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances (see section 64 of the Act).
19. The Commission reminds OCHS that it is required to comply with the Rules should it make telemarketing telecommunications in the future. Examples of measures that OCHS should adopt to ensure compliance with the Rules include the following:
 - registering with the National DNCL operator;
 - subscribing to the National DNCL;
 - downloading the National DNCL at least once every 31 days before the date of a telemarketing telecommunication;
 - ensuring that it is using a version of the National DNCL obtained from the National DNCL operator no more than 31 days before the date of a telemarketing telecommunication; and
 - establishing and implementing adequate written policies and procedures to comply with the Rules, which include documenting a process to (i) prevent the initiation of telemarketing telecommunications on its behalf to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (ii) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.

⁶ In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

20. The Commission advises OCHS that to ensure compliance with the Rules, the Commission may impose larger penalties for subsequent violations.
21. The amount of \$194,330.74 is due by **9 October 2019**. It must be paid in accordance with the instructions contained in the notice of violation. Any amount owing that is not paid by **9 October 2019** will accrue interest until the amount is paid in full.⁷
22. If payment has not been received within **30 days** of the date of this decision, the Commission intends to take collection measures. These measures may include certifying the unpaid amount and registering the certificate with the Federal Court.

Secretary General

Related documents

- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007; as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007

⁷ Interest is calculated and compounded monthly at the average bank rate plus 3% on the amount. Interest will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.