



Compliance and Enforcement Decision CRTC 2020-67

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9250-5114 Québec Inc., operating as Rénovation Domicili-air – Violations of the Unsolicited Telecommunications Rules

The Commission imposes a total administrative monetary penalty of \$60,000 on 9250-5114 Québec Inc., operating as Rénovation Domicili-air, for telemarketing calls to consumers made on its behalf (i) while it was not registered with the National Do Not Call List (DNCL) operator, and (ii) while it was not a registered subscriber of the National DNCL, in violation of the Unsolicited Telecommunications Rules.

Introduction

1. On 7 March 2017, the Commission received a complaint about several telemarketing calls that appeared to have been made to a consumer by or on behalf of 9250-5114 Québec Inc., operating as Rénovation Domicili-air (Rénovation Domicili-air).
2. As a result of an investigation, on 17 May 2019 a person designated by the Commission¹ issued a notice of violation² to Rénovation Domicili-air under the *Telecommunications Act* (the Act). The notice informed Rénovation Domicili-air that telemarketing calls made on its behalf between 1 June 2015 and 1 June 2017 resulted in
 - 6,000 violations of Part II, section 7 of the Unsolicited Telecommunications Rules (the Rules), which prohibits telemarketers from making telemarketing telecommunications on behalf of a client unless that client is a registered subscriber of the National Do Not Call List (DNCL) and has paid the applicable fees to the National DNCL operator; and
 - 6,000 violations of Part III, section 3 of the Rules, which prohibits telemarketers from making telemarketing telecommunications on behalf of a client that is not registered with the National DNCL operator.

¹ Paragraph 72.04(1)(a) of the *Telecommunications Act* (the 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. The notice of violation set out administrative monetary penalties (the penalty) for 12,000 violations at \$5 per violation, for a total penalty of \$60,000.
4. The notice of violation conformed with the content requirement of the Act³ and was issued within the prescribed time limit.⁴
5. Rénovation Domicili-air was granted an extension to the deadline date set out in the notice of violation to either pay the penalty or make representations to the Commission. With the extension, Rénovation Domicili-air was given a total of 48 days to pay the penalty or to make representations to the Commission.

Did Rénovation Domicili-air commit the violations of the Rules set out in the notice of violation?

6. Rénovation Domicili-air neither paid the penalty nor made representations in accordance with the notice of violation. Rénovation Domicili-air is thus deemed to have committed the violations outlined in the notice. The Commission may therefore impose the penalty according to subsection 72.08(3) of the Act.

Is a total penalty of \$60,000 reasonable?

7. The Commission finds that a penalty of \$5 per violation, for a total penalty of \$60,000, is reasonable in the circumstances of this case for the reasons that follow.
8. 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 person's ability to pay the penalty, the potential for future violations, and the relative disincentive of the measure (see Telecom Decision [2007-48](#) and Compliance and Enforcement Regulatory Policy [2015-109](#)).
9. The Commission considers that the violations committed by Rénovation Domicili-air are of a serious nature. Rénovation Domicili-air's failure to register with the National DNCL operator and to purchase a subscription to the National DNCL for the area codes that telemarketers contacted on its behalf are significant breaches of the Rules. By authorizing telemarketers to make telemarketing calls

³ According to subsection 72.07(2) of the Act, a notice of violation must name the person believed to have committed a violation, identify the violation, and set out (a) the penalty for the violation as set out in section 72.01; (b) 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 (c) 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.

⁴ Subsection 72.12(1) of 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.

on its behalf without first filtering out numbers registered on the National DNCL, Rénovation Domicili-air increased the probability that unwanted calls would be made to consumers whose numbers are registered on the National DNCL.

10. In the Commission's view, the number and the frequency of violations are high because Rénovation Domicili-air is deemed to have committed 12,000 violations over a two-year period.
11. According to the record of the proceeding, no financial statements indicative of Rénovation Domicili-air's ability to pay the penalty were filed during the investigation. Furthermore, following the issuance of the notice of violation, the company did not file representations, in which it could have addressed this factor. However, the Commission has noted in the past that its analysis of the ability to pay is not limited to direct financial information; it can also be 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](#)).
12. According to the record of the proceeding, the Office de la protection du consommateur of Quebec published a notice on 12 March 2019 indicating that Rénovation Domicili-air had recently shut its doors. However, Rénovation Domicili-air's corporate profile report dated 21 March 2019 indicated that the corporation, which was registered in 2011, was still in existence. The record also shows that Rénovation Domicili-air was conducting business activities in a large geographical area and fulfilled a high number of large contracts during the period of the violations. Based on the information available, the Commission considers that a total penalty amount of \$60,000 is appropriate in light of Rénovation Domicili-air's ability to pay.
13. The Commission finds that Rénovation Domicili-air's potential for future violations is high and justifies the total amount of the penalty. While no previous enforcement action has been taken against Rénovation Domicili-air under the Rules, the company continued to demonstrate non-compliance with the Rules after Commission enforcement staff brought its obligations under the Rules to its attention. Also, there is no evidence on the record indicating that Rénovation Domicili-air has taken any steps to develop telemarketing policies and procedures to prevent the re-occurrence of violations.
14. 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 ensure that a penalty,

having regard to its magnitude, purpose, and effect, does not result in a true penal consequence.⁵

15. The Commission considers that *Rénovation Domicili-air* 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 authorizing telemarketers to make telemarketing calls on its behalf. The Commission infers from the evidence on the record that telemarketers initiated telemarketing calls on behalf of *Rénovation Domicili-air* to at least four area codes during the period of the violations.
16. In light of the above, the Commission finds, on a balance of probabilities, that a penalty of \$5 per violation, for a total penalty amount of \$60,000, is reasonable and necessary to promote compliance with the 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

17. As noted above, *Rénovation Domicili-air* is deemed to have committed the 12,000 violations of the Rules set out in the notice of violation because it neither paid the penalty nor made representations.
18. In the circumstances of this case, a penalty of \$5 per violation for the 12,000 violations of the Rules set out in the notice of violation is appropriate. The Commission therefore imposes a total penalty of \$60,000 on *Rénovation Domicili-air*.
19. The Commission hereby notifies *Rénovation Domicili-air* 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).
20. *Rénovation Domicili-air* 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).
21. The Commission reminds *Rénovation Domicili-air* that it is required to comply with the Rules should it make telemarketing telecommunications or authorize telemarketers to do so on its behalf in the future. Examples of measures that

⁵ *Guindon v. Canada*, 2015 SCC 41

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.

Rénovation Domicili-air 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 prior to 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 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.
22. The Commission advises Rénovation Domicili-air that to ensure compliance with the Rules, the Commission may impose larger penalties for subsequent violations.
23. The amount of \$60,000 is due by **23 March 2020**. It must be paid in accordance with the instructions contained in the notice of violation. Any amount owing that is not paid by **23 March 2020** will accrue interest until the amount is paid in full.⁷
24. 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

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.