



Compliance and Enforcement Notice of Consultation CRTC 2022-218

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Call for comments – Codification of Commission practices in Compliance and Enforcement Proceedings

Deadline for submission of interventions: 19 September 2022

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Summary

The Commission hereby calls for comments on its proposal to codify various processes followed by the Commission in its proceedings under the Unsolicited Telecommunications Rules, Canada's Anti-Spam Legislation, and the *Canada Elections Act's* Voter Contact Registry.

Introduction

1. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act*, under which it created rules for a National Do Not Call List (DNCL), as well as rules regarding telemarketing and the use of automatic dialing-announcing devices (ADADs) to make calls. The collection of these rules is referred to as the Unsolicited Telecommunications Rules (the UTRs).¹ Provisions relating to the administration and enforcement of these requirements are set out in sections 41.1 to 41.7, 71, and 72.01 to 72.19 of the *Telecommunications Act*.
2. The Commission is also responsible for the administration and enforcement of Division 1.1 of Part 16.1 of the *Canada Elections Act* (the Voter Contact Registry [VCR]), which is intended to protect Canadians from rogue and misleading telecommunications calls during federal elections, and help ensure that those who contact voters during an election do so transparently. Provisions relating to the enforcement of these requirements are set out in sections 71 and 72.01 to 72.2 of the *Telecommunications Act*.

¹ See Telecom Decisions 2007-48, 2008-6, and 2009-200, and Compliance and Enforcement Regulatory Policy 2014-155.

3. Additionally, the Commission is the agency responsible for the administration and enforcement of sections 6 to 46 of Canada's Anti-Spam Legislation (CASL).² Accordingly, the Commission is responsible for ensuring compliance with provisions relating to the sending of commercial electronic messages (section 6), the alteration of transmission data in electronic messages (section 7), and the installation of software without consent (section 8), as well as for enforcing the prohibition on aiding anyone engaging in those activities (section 9).
4. The Commission plays a dual role within the UTRs, the VCR, and CASL, since it is
 - responsible for promoting compliance with these frameworks through investigations into possible contraventions and, in some cases, by issuance of Notices of Violations (NOVs); and
 - responsible for adjudicating the outcomes of some of these investigations, deciding, on a balance of probabilities, whether violations occurred, whether a penalty should be imposed, and if so, determining the amount of the penalty. This task is performed by review panels composed of three Commissioners.
5. In order to promote compliance with these regulatory frameworks, staff who are formally designated by the Commission (known as the designated persons)³ conduct investigations into possible contraventions, under the supervision of the Chief Compliance and Enforcement Officer. Any person who contravenes the UTRs, any provision of the VCR, or sections 6 through 9 of CASL, commits a violation. A person who commits a violation may be subject to receive a NOV, and be held liable for an administrative monetary penalty (AMP).
6. Under CASL and the *Telecommunications Act*, a designated person may make use of the following powers in order to collect documents and data which may be used as evidence of a violation:
 - Preservation Demands (CASL)⁴
 - Notices to Produce (CASL)⁵
 - Requests for Information (UTRs and VCR)

² *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (S.C. 2010, c. 23) (CASL)

³ Persons designated by the Commission pursuant to section 14 of CASL or section 72.04 of the *Telecommunications Act*.

⁴ Preservation Demands permit a designated person to require a telecommunications service provider to preserve transmission data for up to 21 days. These may be renewed by the designated person once for up to an additional 21 days.

⁵ Notices to Produce permit a designated person to require someone to produce a copy of a document in their possession or produce a document based on information in their control.

- Inspections (UTRs and VCR)
 - Execution of warrants (CASL)⁶
7. A person who, as a result of an investigation, has received a Preservation Demand⁷ or a Notice to Produce,⁸ may apply to the Commission within a designated timeframe, for review of the demand or the notice. These applications are reviewed by the Commission.
 8. Once the investigation is completed, the designated person is given formal powers to issue a NOV (in relation to any alleged violation of CASL, the UTRs or the VCR),⁹ which may include an AMP, or to enter into an undertaking (under CASL only).¹⁰
 9. A NOV is not a Commission decision. Rather, it is an instrument which (i) may begin the review process, resulting in a Commission decision with respect to the alleged violations; or (ii) may result in those violations being deemed to have occurred, depending on the legislation the NOV is issued under, and how the recipient responds (such as paying the AMP, and making representations, or not, before the Commission).
 10. The typical review process of a NOV is as follows:
 - a. A NOV is issued, with an accompanying investigation report and supporting evidence.
 - b. Representations from the party on whom the NOV was served are received.
 - c. The Commission, by way of a review panel, deliberates on those materials.
 - d. The Commission renders a decision.
 11. The Commission does, however, have the discretion to vary its practices when appropriate given the context of a particular file. The Commission could, in some instances, deliberate on not only the materials identified at paragraphs 10(a) and (b) above, but also any other material or information it might have added to the record, for example information obtained by way of interrogatories.

⁶ Under the *Telecommunications Act*, a warrant is also necessary in order to carry out an inspection of a dwelling-house, unless the occupant consents to the inspector's entry, pursuant to subsection 71(5).

⁷ The review application must be submitted within five business days of receipt of the demand on the basis that preservation of some or all of the data would place an undue burden on the person.

⁸ The review application may be submitted at any time prior to the deadline to produce the documents on the basis that the production requirement is unreasonable, or would disclose privileged information. The person may also apply for review of the conditions imposed to prevent disclosure.

⁹ See subsection 22(1) of CASL, and section 72.07 of the *Telecommunications Act*.

¹⁰ Although formal undertakings are not available with respect to the UTRs or VCR, the designated person often negotiates agreements whereby a NOV is paid immediately, ending the proceeding, pursuant to subsection 72.08(1) of the *Telecommunications Act*.

12. Under both CASL and the *Telecommunications Act*, a person who has received a NOV may ask the Commission within 30 days, or any longer period set out in it, to review the NOV by making representations to the Commission. The Commission expects applicants to support their representations with fulsome arguments, and to include the substantive evidence necessary to support their position.
13. If the Commission receives representations, it must decide, on a balance of probabilities, whether the violations in the NOV were committed by that person, and if so, whether the AMP set out in the notice is appropriate or should be varied in some way.¹¹
14. Although the filing of representations is the trigger for this review, the onus to prove the elements of the violation(s) rests with the designated person. As such, when representations are received and the review process is triggered, the Commission reviews the NOV and the supporting evidence as a whole, in addition to the representations filed.
15. In order to ensure fairness to parties who are subject to the exercise of statutory powers by a designated person, the Commission observes an ethical wall. Review panels are assisted during their deliberations by separate staff who are not involved with investigations, and do not perform the work of designated persons. Designated persons and other staff involved with investigations are not involved in the Commission's adjudication of investigation matters, except as narrowly provided for in CASL,¹² or as exceptionally provided for by the Commission.¹³ Communication between these groups, on matters before the Commission, is limited to what is strictly necessary for the administration of the Acts.
16. The above-mentioned proceedings differ from most Commission proceedings, and have generally been excluded from the application of the general *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). Furthermore, in the case of CASL and the VCR, the provisions that the Commission is responsible for administering did not come into force until after the Rules of Procedure were defined. Although the Commission has the power to create formal regulations,¹⁴ rules,¹⁵ or guidelines¹⁶ with respect to the conduct of these types of proceedings, it has not done so to date.

¹¹ The enforcement frameworks under CASL and the *Telecommunications Act* differ slightly with respect to what happens if a person who receives a NOV does not pay the AMP, but also does not make representations to the Commission. Under CASL, the person is deemed to have committed the violations, and the penalty is imposed automatically. However, under the *Telecommunications Act*, the person is deemed to have committed the violations and the Commission "may" impose the penalty. Since a discretionary element is present, even in the absence of representations, the Commission will review the NOV and the investigation report, and determine the appropriateness of imposing the penalty set out in the NOV.

¹² See subsections 16(2) and 18(3) of CASL, pertaining to the designated person's participation in applications for review of Preservation Demands and Notices to Produce, respectively.

¹³ See paragraphs 10 to 13 of Compliance and Enforcement Decision CRTC 2022-132.

¹⁴ See paragraph 67(1)(b) of the *Telecommunications Act* and paragraph 64(2)(c) of CASL.

¹⁵ See section 57 of the *Telecommunications Act* and subsection 37(1) of CASL.

Background

Matters relating to the determination of deadlines

17. Under the Rules of Procedure, the Commission has clarified the manner in which it calculates the deadlines for submissions, such that in addition to the provisions of sections 26 through 29 of the *Interpretation Act*, Saturday is considered a holiday, the Commission's close of business is established as 5:00 p.m., Pacific Time, and the Commission observes a holiday period during the winter holidays at the end of each year. However, as noted above, the Commission's Rules of Procedure do not apply to the type of proceeding described in this notice.
18. Similarly, with respect to the calculation of time, certain procedural deadlines under CASL must be met within a number of business days, as opposed to calendar days. However, this term is not defined in CASL, nor is it defined in the *Interpretation Act*.

Handling of third-party or sensitive information

19. During the course of an investigation, the designated person may uncover information that may not be relevant or necessary to support the NOV. In some instances, this information may raise privacy concerns or present a risk of harm or other sensitivities. In such instances where the information is not necessary to support a NOV, or is not relevant to a potential defence to an alleged violation, the information may be redacted or omitted from the materials supporting the NOV.

Administrative matters

20. The Commission has identified a number of areas where administrative change or clarification may be considered.
21. Under both CASL and the *Telecommunications Act*, certain documents issued by the designated person and decisions issued by the Commission must be served. The Commission has not established any formal methods of service, but typically relies on registered mail through a courier service or a bailiff service. In some circumstances, the Commission also looks to the Federal Court Rules for further guidance.
22. Currently, the Commission allows representations filed as part of an application for review to be submitted electronically by using the secured My CRTC Account service available on the Commission's website, as well as by mail or fax.
23. When a NOV is issued under CASL or the *Telecommunications Act*, the review process is not immediately initiated. Rather, the review process is initiated once representations are received. For a NOV issued under the *Telecommunications Act*, if no representations are received and the penalty set out in the NOV is not paid, the

¹⁶ See section 58 of the *Telecommunications Act*.

AMP review process is initiated once the deadline to file representations set out in the NOV has expired.

24. Any issues regarding the NOV (including the deadline for filing representations) that come to light prior to the review process being initiated must be addressed by the designated person who issued the NOV. Once the review process has been initiated, any request regarding a procedural issue (including permission to add to the representations initially filed) must be addressed to the Commission.
25. Currently, the method for parties to make procedural requests to the designated person prior to the initiation of the review process includes submitting such requests by email, mail, fax, or electronically by using the secured My CRTC Account service available on the Commission's website.
26. Currently, the method for parties to make procedural requests to the Commission once the review process has been initiated, includes submitting such requests by mail, fax, or electronically by using the secured My CRTC Account service available on the Commission's website.
27. Currently, most NOVs grant parties 30 days to either pay the AMP or file representations before the Commission.
28. Pursuant to subsections 16(2) and 18(3) of CASL, the designated person may make representations in response to an application for review of a Preservation Demand or Notice to Produce. However, under CASL, there is a time limit for the person in receipt of one of these notices to bring an application for review. CASL does not provide a similar deadline for the designated person to make representations.
29. Although formal decisions are ultimately published on the Commission's website, unlike other proceedings before the Commission, the record that the Commission considered in making a review decision under CASL or the *Telecommunications Act* is not made public.
30. The Commission has public-facing service standards that apply to certain types of proceedings, but not to enforcement-related proceedings with respect to CASL, the UTRs or the VCR.

Call for comments

31. The objective of this notice of consultation is for the Commission to seek stakeholder and public input on how to improve the transparency surrounding review proceedings for enforcement actions and the appropriateness of practices and procedures, as well as to address issues that have arisen in past reviews of enforcement actions.

32. To this end, parties to this proceeding are invited to comment on the general processes followed by the Commission described above, as well as with respect to the more focused list of issues or areas for prospective minor or administrative changes identified above.
33. The Commission notes that the expected output of this process has not yet been determined, but may result in either publishing guidelines via an information bulletin or beginning the process to propose formal regulations to address these proceedings. Accordingly, this notice of consultation also seeks comments from stakeholders as to the most appropriate approach.

Matters relating to the determination of deadlines

- Q1. Should the Commission extend the rules pertaining to the computation of time and the winter holiday period under the Commission's Rules of Procedure to UTR, VCR, and CASL proceedings?
- Q2. Should the Commission define "business days" in the context of CASL proceedings as excluding weekends, federal holidays, and provincial holidays in the province where the person subject to the requirement is located?

Handling of third-party or sensitive information

- Q3. Provide input on the conditions that would make it appropriate for the designated person to redact or omit information from the materials provided in support of a NOV.
- Q4. Provide any alternative methods which consider the sensitivity of this type of information against the Commission's ability to make fully informed decisions, and the obligation to ensure procedural fairness to the person making a representation.

Administrative matters

- Q5. With respect to certain documents issued by the designated person and decisions issued by the Commission that must be served, provide input on whether the current methods are appropriate, and why. If they are not, identify which of the methods are not appropriate, explain why, and suggest other methods.
- Q6. With respect to the filing of representations as part of an application for review, provide input on whether the current methods are appropriate. If they are not, identify which of the methods are not appropriate, explain why, and suggest other methods.
- Q7. With respect to procedural requests to the designated person prior to the initiation of the review process, provide input on whether the current methods are appropriate when procedural requests are made to the designated person, and why. If they are not, identify which of the methods are not appropriate, explain why, and suggest other methods.

- Q8. With respect to the procedural requests to the Commission once the review process has been initiated, provide input on whether the current methods are appropriate when procedural requests are made and why. If they are not, identify which of the methods are not appropriate, explain why, and suggest other methods.
- Q9. Should the minimum deadlines for parties to respond to NOV's be more than the 30 days currently provided under the *Telecommunications Act*? If so, should the minimum deadlines be a general proposition or apply under specific circumstances and considerations?
- Q10. Provide input on whether the Commission should establish a standard timeframe for the designated person's representations in the case of an application for review, a Preservation Demand and a Notice to Produce, and how much time should be provided to the designated person to submit representations.
- Q11. Provide input on whether the record of a review proceeding, including the representations made by a party requesting a review, should be made public on the Commission's website once the Commission has issued and published its decision. If so, should persons filing information as part of a review have the option of designating information filed with the Commission as confidential, similar to what is currently provided under sections 30 to 34 of the Rules of Procedure?
- Q12. Provide input on whether the Commission should establish service standards for these types of proceedings, and if so, what amount of time would be appropriate for these proceedings.

Procedure

34. The Rules of Procedure are deemed to apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
35. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **19 September 2022**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
36. All parties may file replies to interventions with the Commission by **27 September 2022**.

37. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
38. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
39. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
40. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
41. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

42. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

43. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
44. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

45. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
46. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
47. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
48. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

49. Links to interventions, replies, and answers filed for this proceeding, as well as other documents referred to in this notice, are available on the Commission's "[All Public Proceedings Open for Comment](#)" page.
50. Documents are available upon request, during normal business hours by contacting:

Documentation Centre
Examinationroom@crtc.gc.ca
Tel.: 819-997-4389
Fax: 819-994-0218

Client Services
Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *1882914 Ontario Inc., operating as Datablocks Inc. and 2348149 Ontario Inc., operating as Sunlight Media Networks Inc. – Alleged violations of Canada’s Anti-Spam Legislation*, Compliance and Enforcement Decision CRTC 2022-132, 19 May 2022
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Review of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Regulatory Policy CRTC 2014-155, 31 March 2014
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009
- *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
- *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