

advertising and marketing bulletin

September 2008

Put Down that Phone! Canada's National Do Not Call List Comes into Effect

The Canadian Radio-television and Telecommunications Commission (CRTC) has announced that a single, national do not call list (the National DNCL) comes into force on September 30, 2008. This has important ramifications for businesses that engage in telemarketing and those who hire third parties to conduct telemarketing on their behalf. This bulletin highlights five immediate points of impact among many others that the implementation of the National DNCL will have on businesses that use telemarketing directly or indirectly.

1. Definition of Telemarketing

According to the Unsolicited Telecommunications Rules that provide the details of how the National DNCL will work in practice, telemarketing is defined as: "the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation." A variety of regular business activities that potentially could be classified as telemarketing are therefore not included in this definition.

2. The "Express Consent" Requirement

If a consumer's phone number is on the National DNCL, "express consent" is required to contact the consumer. Express consent must be given explicitly, either orally or in writing, and must be unequivocal - i.e., it does not require any inference on the part of the organization seeking consent. The CRTC has put the onus of demonstrating that express consent was obtained from the recipient of the phone call on the telemarketer or the client of the telemarketer.

3. "Existing Business Relationship" Exemption from the National DNCL

Companies can make an unsolicited telecommunication to an individual if the company can demonstrate an "existing business relationship" with the individual receiving the telecommunication. An existing business relationship" can be proven in three ways: (1) the customer has made a purchase from the organization 18 months before the date of the phone call; (2) the customer has made an inquiry about a product or service offered by the organization six months before the date of the phone call; or (3) a written contract between the customer and the organization is either in effect or

expired 18 months before the date of the phone call.

4. Organizational Exemptions from the National DNCL

There are a number of exemptions to the National DNCL including those available to charities, political parties, public surveys and newspapers. Your organization may be exempt from complying with the National DNCL.

5. The requirement to subscribe to the DNCL

Starting September 30, 2008 all telemarketers and businesses who hire a third party to conduct telemarketing services for them must subscribe to the National DNCL. This can be done at www.LNNTTE-DNCL.gc.ca. There are different options to subscribe, including by the business' primary area code or for the whole country as applicable.

Don't forget to register! Calling someone on the National DNCL in violation of the Telecommunications Act is considered an offence and will carry with it a fine of \$15,000 for a corporation.

At McMillan LLP, we have been following these developments since the introduction of Bill C-37 which paved the way for the Unsolicited Telecommunications Rules and the creation of the National DNCL. For more information, please contact us or see the previous articles posted below:

[August 2005](#), [July 2006](#) and [August 2007](#)

Written by Les Chalet and Sean Clarke, Student-at-Law

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

© Copyright 2008 McMillan LLP

ABOUT McMILLAN LLP

McMillan, a leading Canadian business law firm, is committed to advancing our clients' interests through exemplary client service combined with thoughtful and pragmatic advice. The firm is a values-driven organization that takes a dynamic and sophisticated approach to providing practical and creative solutions to its clients. Our client first, team based approach draws effectively upon our diverse expertise. The firm has a national, cross-border and international practice and has grown to be one of the top 20 largest firms in Canada. The firm is agile and flexible, and committed to always striving for excellence.

Our Advertising and Marketing group includes several members of the firm's Competition Group, which has been recognized internationally as one of Canada's top competition law practices for over 30 years. Our lawyers have diverse backgrounds in areas such as music, business, film and publishing. The Group includes a former senior counsel to the Competition Bureau. Our unique ability to understand advertising and marketing issues from many angles and offer practical, timely and well-informed solutions sets us apart.

For further information please contact your McMillan LLP lawyer or one of the Practice Leaders of our Advertising & Marketing Group listed below:

Sharon Groom	416.865.7152	sharon.groom@mcmillan.ca
Bill Hearn	416.865.7240	bill.hearn@mcmillan.ca

www.mcmillan.ca