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What does a Canadian telemarketer have to do?

Canadian National Do Not Call List (National DNCL)

On September 30, 2008, the Canadian Radio-television and Telecommunications Commission (CRTC) introduced the new and revised unsolicited telecommunications rules and the National Do Not Call List.

Contact Center Compliance – Canadian DNCScrub™

As the leader for over 6 years in full-service compliance solutions, Contact Center Compliance offers solutions that seamlessly manage the entire “Do Not Call” compliance management process. Contact Center Compliance offers a DNC solution that reduces the complexity of US and Canadian telemarketing laws concerning Do Not Call, wireless, and exemptions-including Existing Business Relationships with an award winning enterprise level technology solution. Contact Center Compliance customers include contact centers and marketers from around the world with over one billion scrubs per month.

What is the Canadian National Do Not Call List (National DNCL)?

The National Do Not Call List (National DNCL) is a nationwide registry that will assist individuals in preventing unwanted telemarketing calls. Individuals can register a landline, a cell phone or fax machine on the National DNCL. The National DNCL will be administered by Bell Canada, the appointed National DNCL Operator. They also will receive all complaints and make the initial assessment before forwarding them to the CRTC for further investigation. When a number is registered on the National DNCL, a telemarketer is not allowed to call that number for the purposes of telemarketing.

What does a Canadian telemarketer have to do?

Subscription to the Canadian National DNCL is mandatory by law for every organization engaged in telemarketing. Registration and the purchase of a subscription for the area codes they intend to call must occur before a telemarketing campaign is initiated. A telemarketer must maintain records to demonstrate proof of registration to the National DNCL and proof of payment of fees to the National DNCL operator for a period of three years.

Before making any calls, the telemarketer will need to be sure they are using a version of the National DNCL that is not older than 31 days, and that they do not call the home phone, cellular and fax numbers that are on the list. All telemarketers, whether exempt or non-exempt, have to maintain their own internal do not call lists and in Canada, and must also track a name along with the phone number. If a consumer asks not be contacted, his or her name and number must be added to the telemarketer's own internal do not call list within 31 days.

If a client who has registered on the National DNCL list receives a call, that client has 14 days in which to file a complaint. The CRTC will investigate complaints and can penalize telemarketers found to be in violation of the Unsolicited Telecommunications Rules, which include the Telemarketing Rules, National DNCL Rules, Automatic Dialing and Announcing Device Rules and may levy penalties of up to \$1,500 for an individual and up to \$15,000 for a corporation, for each violation.

To subscribe, go to <https://www.innate-dncl.gc.ca/ind/insorg-regorg-eng> and register your information. The subscription models are flexible and fees will depend on the specifics you choose.

Subscription Options – by area code

	Annual	6-Month	3-Month	1-Month
All Area Codes	\$11,280	\$5,640	\$2,970	\$1,125
By Individual Area Code	\$615	\$310	\$155	\$55

Subscription Options – by telephone number

	Per Query
Any Area Code (Maximum 100 queries per session)	\$0.50

To fully understand the obligations under this new law, the National Do Not Call List and the Telecommunications Rules for Canada, please go to www.crtc.gc.ca for a complete copy of the Act and related decisions.

Definitions

Telemarketing refers to the use of telecommunications facilities to make unsolicited telephone calls or to send unsolicited faxes to consumers for the purpose of solicitation. Solicitation is defined as the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another party. This includes calls made for donations by or on behalf of charities.

A **telemarketer** is any person or organization who makes telemarketing calls on their own behalf or who makes telemarketing calls for someone else.

Any person or organization who has engaged a telemarketer to make calls on their behalf is a **client of a telemarketer**.

An **abandoned call** is a telemarketing call placed by a predictive dialing device which when answered by a consumer has no live telemarketer available to speak to the consumer within two second. The percentage of telemarketing calls placed by a predictive dialing device that are abandoned is the **abandonment rate**.

Canadian National Do Not Call List Rules

- Telemarketers shall not call a consumer's telephone number that has been registered on the National DNCL for more than 31 days unless the consumer has given prior **express consent** to be called.
- Clients of a telemarketer shall make all reasonable efforts to ensure a telemarketer calling on the client's behalf shall not call a consumer's telephone number that has been registered on the National DNCL for more than 31 days unless the consumer has given the client prior **express**

consent to be called.

- The express consent provided by a consumer must clearly indicate the consumer's consent to be called and the telephone number at which the consumer is consenting to be called.
- Consumers may withdraw their consent at any time.
- Telemarketers and clients of telemarketers must subscribe to the National DNCL and pay any applicable subscription fees before any telemarketing calls are made.
- Telemarketers must keep proof of their National DNCL subscription and payment of fees, and if they are calling on behalf of a client, proof of their client's National DNCL subscription and payment of fees for a period of (3) three years.
- The National DNCL must not be used for any purpose other than compliance with the Rules.
- The National DNCL must not be sold, rented, leased, published or disclosed to any person outside of the telemarketer's or client of the telemarketer's organization.
- The National DNCL may be shared with a person providing services that enable the telemarketer or client of a telemarketer to comply with the National DNCL Rules provided the National DNCL is required and used by that person only to enable compliance and the disclosure is done on a confidential basis.

Organizations who are making telemarketing calls that are exempt from the National DNCL Rules must maintain an internal do not call list and respect the consumer's specific request not to be called; Tell the consumer the purpose of the telemarketing call at the beginning of the call; and, Identify on whose behalf the call is being made.

Exemptions

There are exemptions to the Rules, for entities such as registered charities, political parties for elections and campaigns, surveyors or solicitations for subscriptions to newspapers. Calling a business in order to telemarket to that business is also exempt.

There is also an exemption for existing business relationships (EBR). This is defined as a business relationship that has been formed by a voluntary two-way communication between the person calling and the person to whom the call is made in certain circumstances. These circumstances are:

- the client has purchased products or services within 18 months of the call;
- the client has made an inquiry or application within 6 months of the call;
- the client has an existing written contract with the caller; or
- the client had a contract with the caller that expired within 18 months of the call.

Internal DNCL

If a client has specifically requested that you do not call them, you must record their name and number on your own Internal DNCL and refrain from calling them. Express consent is required in order to contact them in the future. This applies even for calls that would otherwise be exempt from the Rules. Personal referrals are not exempt. Before calling a potential client with a telemarketing call, it is necessary to obtain express consent from that potential client if they are on the National DNCL.

Express Consent

Express consent is required prior to calling a client who is registered on the National DNCL list. It must include a statement confirming the client consents to being called by telephone and, if possible, the number to which the telemarketing call can be placed. The onus is on the telemarketer, and where applicable, the client of the telemarketer to prove the consumer provided valid express consent.

Examples of acceptable forms of express consent are:

- Written consent including a completed application form signed by the consumer giving consent to be contacted by telephone;
- Oral consent including oral consent verified by a third party or where an audio recording of the consented is retained by the telemarketer or client of the telemarketer;
- Electronic consent through the use of a toll-free number or via the Internet; or
- Consent through other methods as long as a record of the consent is created by the consumer or an independent third party.

Telemarketing Rules

Telemarketing Rules that apply to both voice and fax telemarketing calls:

- Calling hours are restricted to weekdays (Monday to Friday) between 9:00 AM and 9:30 PM and weekends (Saturday and Sunday) between 10:00 AM and 6:00 PM. Restrictions on calling hours refer to the time zone of the customer receiving the telephone calls.

- For any telephone numbers provided to a consumer, the telephone call shall be answered either by a live operator or a voicemail system to take messages for the consumer. The voicemail must inform consumers that their call will be returned within three (3) business days. The telemarketer or the client of the telemarketer must return consumer's call within three (3) business days.

- Telemarketers must display the originating calling number or an alternate number where the call originator can be reached (except where the number display is unavailable for technical reasons).

- Sequential dialing is prohibited.

- Random dialing and calls to non-published numbers are permitted, except to numbers that are registered on the National DNCL; are emergency lines; and are associated with healthcare facilities.

- Internal do not call lists are to be maintained by the telemarketer on its own behalf or by a client of a telemarketer.

- A telemarketer is required to put a consumer's name and telephone number on their own do not call list within 31 days of the consumer's request.

- A telemarketer calling on behalf of another organization, or a client, is required to ensure the consumer's name and number is added to that organization's or clients own do not call list within 31 days.

- A consumer's request not to be called must remain active for three (3) years effective within thirty-one (31) days from the date of the consumer's do not call request.

- A telemarketer using a predictive dialing device to initiate a call shall not exceed, in any calendar month, a five (5) percent abandonment rate. The telemarketer and/or its client shall maintain records of actual abandonment rates for a period of three (3) years from the date each monthly record is created.

Telemarketing Rules that apply to only to voice telemarketing calls:

- A consumer's request not to be called which is made during the telemarketing call shall be processed at that time. The consumer shall not be asked to call elsewhere to make their request.
- At the beginning of a call, a telemarketer must identify the name or fictitious name of the individual placing the call. Must identify the name of the telemarketer whether calling on its own behalf or on behalf of a client of the telemarketer. The telemarketer must provide the purpose of the call (if the call is exempt from the National DNCL Rules).
- Upon request a telemarketer must provide a local or toll-free number allowing the customer access to speak to an employee or other representative of the telemarketer and where applicable, its client; provide the name and address of an employee or other representative of the telemarketer and where applicable, its client, to whom the consumer can write.

Telemarketing Rules that apply only to fax telemarketing calls:

- The following information must be provided at the top of the first page in 12-point font or larger.
 1. The name of the telemarketer, whether it is sending the fax on its own behalf or on behalf of a client of the telemarketer.
 2. The name of the telemarketer's client where applicable.
 3. The originating date and time of the fax.
 4. A local or toll-free number voice and fax number allowing the customer access to an employee or other representative of the telemarketer, and where applicable, the client of the telemarketer, for the purpose of asking questions or making a do not call request.
 5. The name and address of an employee or other representative of the telemarketer, or client where applicable, to whom the consumer can write.

Automatic Dialing – Announcing Device (ADAD)

The Telemarketing Rules and Automatic Dialing-Announcing Device (ADAD) Rules apply to all telemarketers and clients of telemarketers including those making calls exempt from the National DNCL Rules, with the exception of telemarketers using voice mail broadcast (where a solicitation message is left directly in your voice mailbox).

The National DNCL Rules, Telemarketing Rules and ADAD Rules do not apply to calls made for the purposes of marketing research, surveys, or public opinion polls, or calls to collect overdue accounts, since these types of calls are not telemarketing calls.

ADADs are equipment that store and dial telephone numbers automatically. They may be used alone or with other devices to deliver a pre-recorded or synthesized voice message to the telephone number called.

ADADs may not be used for telemarketing unless the consumer has given **express consent** to accept an ADAD telemarketing call. This includes telemarketing via an ADAD that is initiated by or on behalf of a Canadian registered charity, for the purpose of requesting a consumer to hold until a telemarketer is available, for activities such as radio station promotions, or for referring consumers to 900- or 976- service numbers.

ADADs are permitted for calls when there is no attempt to sell, such as calls made for public service reasons, including calls made for emergency and administration purposes by police and fire departments, schools, hospitals, or for calls to schedule appointments.

A person using an ADAD to make permitted calls shall comply with the following conditions:

- Calling hours are restricted to weekdays (Monday to Friday) from 9:00 AM to 9.30 PM and 10:00 AM to 6:00 PM on weekends (Saturday and Sunday); the hours refer to those of the person receiving the telecommunications. These hours do not apply to emergency situation announcements.
- The ADAD call shall begin with a clear message identifying the person on whose behalf the call is made. This identification message shall include a mailing address and a local or toll-free telecommunications number at which a representative of the originator of the message can be reached. In the event that the actual message relayed exceeds sixty (60) seconds, the identification message shall be repeated at the end of the telecommunications.
- ADAD calls shall display the originating telecommunications number or an alternate telecommunications number where the call originator can be reached (except where the number display is unavailable for technical reasons).
- Sequential dialing is prohibited.
- Random dialing can be used to non-published telecommunications numbers, except to emergency lines and healthcare facilities.
- Persons initiating ADAD calls shall make all reasonable efforts to ensure that their equipment disconnects within ten (10) seconds of the person receiving the call hanging up.

Record Keeping

Any records required to be kept by the National DNCL Rules, the Telemarketing Rules, or any other Rules and any other records kept with regard to telemarketing activities subject to the rules:

- May be kept in any form and in the same format as a telemarketer or a client of a telemarketer would keep in the ordinary course of business;
- Are required to be maintained in such a manner that the records are readily accessible in order to facilitate investigations of complaints; and
- Are required to be provided to the CRTC within 30 days of a request made by the CRTC.

Canadian Radio-television and Telecommunications Commission (CRTC)

To fully understand the obligations under this new law, the National Do Not Call List and the Telecommunications Rules for Canada, please go to www.crtc.gc.ca for a complete copy of the Act and related decisions.



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