**Legislative Summary** **LS-501E**

# BILL C-37: AN ACT TO AMEND THE TELECOMMUNICATIONS ACT

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# LEGISLATIVE HISTORY OF BILL C-37

| HOUSE OF COMMONS | | SENATE | |
|---|---|---|---|
| **Bill Stage** | **Date** | **Bill Stage** | **Date** |
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| Referred to Committee: | 7 February 2005 | Second Reading: | 2 November 2005 |
| Committee Report: | 13 June 2005 | Committee Report: | 22 November 2005 |
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Royal Assent: 25 November 2005

Statutes of Canada S.C. 2005, c. 50

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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# TABLE OF CONTENTS

**Page**

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BIBLIOTHÈQUE DU PARLEMENT

# BILL C-37: AN ACT TO AMEND THE TELECOMMUNICATIONS ACT*

## BACKGROUND

Bill C-37, An Act to amend the Telecommunications Act, addresses unsolicited telecommunications, known as telemarketing calls, in Canada. It was introduced in the House of Commons and given first reading on 13 December 2004. It was referred to the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology on 7 February 2005. On 13 June 2005, the bill was reported back to the House of Commons with amendments. Further amendments were made by both the House and the Senate. The bill was given Royal Assent on 25 November 2005 **and came into force on 30 June 2006.**

### A. The Problem

Many Canadians consider telemarketing calls to be irritating and do not wish to receive them. According to a poll cited by Industry Canada, 97% of Canadians claim to have a negative reaction to such calls.(1)

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Industry Canada, "Minister of Industry Tables Legislation for National Do Not Call List," News release, 13 December 2004, http://www.ic.gc.ca/cmb/welcomeic.nsf/af913527c10aeb6a852564820068dc6c/85256a5d006b972085256f690056a4a8!OpenDocument.

## B. The Existing Regulatory Framework

The Canadian Radio-television and Telecommunications Commission (CRTC, or "the Commission") regulates telecommunications and telemarketing, the latter being authorized by section 41 of the *Telecommunications Act*, 1993, c. 38.(2)

The CRTC defines telemarketing as "the use of telecommunications facilities to make unsolicited calls for the purpose of solicitation where 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 solicitation of donations by or on behalf of charitable organizations."(3)

Current CRTC regulations state that telemarketers must remove a customer's name and telephone number from their calling lists upon request and maintain a "do not call" list that must remain active for three years. Each "do not call" list is company-specific, and a customer must therefore make individual requests to be removed from the calling list of each of Company A, Company B, Company C and so on.

Telemarketers who fail to comply with this and other regulations can have their service suspended or disconnected by their telecommunications service provider. As a further enforcement tool, the CRTC can issue an order that service to a telemarketer be suspended or disconnected, and it can also issue an order prohibiting all service providers from reconnecting that telemarketer for a set period of time.

The *Telecommunications Act* also provides for the possibility of a criminal prosecution for the contravention of a CRTC order with respect to telemarketing calls. Upon summary conviction, an individual is liable to a fine not exceeding $10,000 for a first offence or $25,000 for a subsequent offence; corporations are liable to a fine not exceeding $100,000 for a first offence or $250,000 for a subsequent offence.(4) Such prosecutions are rare, and the CRTC itself lacks the power to impose these fines.

Telemarketers appear undeterred by the present regulations.(5)

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(2) This section states:

> The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

(3) CRTC Telecom Decision CRTC 2004-35.

(4) *Telecommunications Act*, section 73(2)(*c*).

(5) CRTC Telecom Decision CRTC 2004-35, paras. 84 and 85.

## C. The Proposed Solutions

### 1. Power to Impose Fines

In its review of telemarketing rules released in May 2004, the CRTC noted that "better enforcement of the existing rules is the major factor in increasing their effectiveness."(6)

The Commission observed that a key to that better enforcement would be the ability of the Commission itself to impose appropriate fines on telemarketers that have breached the rules.

Noting that Parliament has granted the power to impose "administrative monetary penalties" on numerous other agencies and departments, the Commission sought this power for itself as a means of enforcing compliance with the legislation. The Commission stated that such a fining power would "provide a flexible, timely and cost-effective response to violations that do not warrant criminal prosecutions or other costly and lengthy procedures."(7) It would also have "a significant deterrent effect"(8) on telemarketers that might be inclined to operate beyond the regulations.

### 2. Ability to Delegate Various Administrative Duties

The Commission was also of the view that it would be advantageous to delegate various powers to an administrator to handle telemarketing complaints, but again noted a lack of statutory authority to do so.(9)

### 3. Creation of a National Do Not Call List

Perhaps most significantly, the Commission acknowledged that separate "do not call" lists for each telemarketer are less effective and more onerous on consumers, who must contact each telemarketer individually in order to remove themselves from that particular telemarketer's call list. In the Commission's view, a national "do not call" list that would enable consumers to register once to stop all unwanted telemarketing calls would be more efficient.

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(6) Ibid., para. 83. See also paras. 86-88.

(7) Ibid., para. 88.

(8) Ibid.

(9) Ibid., para. 90.

However, the CRTC stated that it would be counter-productive to establish a national "do not call" registry without significant enforcement and administrative measures,(10) both of which are lacking in the current legislation.

This bill attempts to address these three proposed solutions.

At the committee stage, the bill was amended to add several new clauses to the *Telecommunications Act*. These amendments require the CRTC to report to the Minister annually on the operation of the national do not call list, and further require a review of the do not call legislation three years after the coming into force of the Act as amended.

Most significantly, perhaps, the bill was amended to provide certain exemptions – notably for charities, "existing business relationships," political parties, newspapers and pollsters – from inclusion on the national do not call list. In other words, calls that fall within these limited groups would not be prohibited under the amended *Telecommunications Act*.

## DESCRIPTION AND ANALYSIS

Bill C-37 contains three clauses.

Clause 1 proposes amending the CRTC's authority to regulate unsolicited telecommunications, under section 41 of the *Telecommunications Act*, by adding proposed sections 41.1 through 41.7 to the Act. The House of Commons Standing Committee on Industry, Natural Resources, Science and Technology amended the bill by adding sections 41.6 and 41.7 to clause 1, and adding clause 2.1.

### A. A National Do Not Call List

The proposed provisions establish the legislative framework necessary for the creation and administration of a national do not call list (section 41.1).

Clause 1 gives the Commission the power to administer databases or information systems for a national do not call service (section 41.2). It also allows the Commission to delegate to a third party the operation of this service (section 41.3).

The clause allows the delegate to charge rates for carrying out its delegated duties (section 41.4), and it grants the Commission powers to regulate the rates the delegate charges for its services and to regulate the manner in which the delegate exercises its powers (section 41.5).

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(10) Ibid., paras. 91-93.

B. Exemptions to the Do Not Call List

New section 41.6 within clause 1 of the bill requires the CRTC to report to the Minister on the operation of the national do not call list for the previous fiscal year. This annual report is to include any costs or expenditures related to the list, the number of telemarketers accessing the list, any inconsistencies in the prohibitions or requirements of the CRTC under section 41 of the *Telecommunications Act* that are applicable to the operation of the list, and an analysis of the list's effectiveness. In its consideration of the bill, the Senate amended this clause to require that the CRTC's annual report on the operation of the national do not call list be tabled before both houses of Parliament (not only before the House of Commons, as was previously the case).

New section 41.7 contains the exemptions that were added by the Standing Committee on Industry, Natural Resources, Science and Technology during its consideration of the bill. The proposed new do not call legislation will not prohibit unsolicited telecommunications made by or on behalf of:

- a registered charity within the meaning of section 248(1) of the *Income Tax Act*;
- a political party that is a registered party as defined in subsection 2(1) of the *Canada Elections Act* or that is registered under provincial law for the purposes of provincial or municipal elections;
- a nomination contestant, leadership contestant or candidate of a political party; or
- an association of members of a political party.

Calls made for the sole purpose of soliciting a subscription for a newspaper of general circulation would also not be prohibited under the amended *Telecommunications Act*. This new addition to the list of those exempt from the national do not call list was added by the House of Commons at third reading of this bill.

Also not prohibited are unsolicited telecommunications made to a person with whom the caller has an existing business relationship and who has not made a do not call request to that caller, and unsolicited telecommunications made for the sole purpose of collecting information for a survey of members of the public.

The terms “candidate,” “leadership contestant” and “nomination contestant” are defined in new amendment 41.7(2), as is “existing business relationship.” This latter term is defined as:

> a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from
>
> > (*a*) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;
> >
> > (*b*) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or
> >
> > (*c*) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.

Section 41.7, on exemptions, is rounded out by two further amendments that were made at the committee stage. One requires exempted callers to identify the purpose of their call and to state the person or organization on whose behalf the call is being made (section 41.7(3)). Section 41.7(4) requires all exempt persons and organizations to maintain their own do not call list and to ensure that no call is made to a person who has asked to be placed on that list.

Under these amendments, therefore, it will be permissible for those people or organizations as set out in section 41.7(1) to make unsolicited telecommunication calls; however, if the recipient of those calls asks to be placed on that person’s or organization’s do not call list, further calls to that recipient are prohibited.

Several amendments were made by the House of Commons at the report stage and second reading of the bill. All but one of these amendments were of a minor nature and ensure concordance with changes made to the bill at the committee stage. For example, one change simply altered a section number from 41.5 to 41.7, reflecting the fact that the bill, as amended, proposed to add two additional subsections to the Act.

Other amendments made by the House reflect a change in the French name of the national do not call list from “liste de numéros exclus” to “liste d’exclusion nationale.”

The House made one substantive change to the bill at report stage and second reading. New subsection 41.7(5) was added to the Act to ensure that subsections (3) and (4) of section 41.7 do not apply to survey calls. This means that those making calls for the sole purpose of collecting information for a survey of members of the public are not obliged to identify the purpose of their call and the person or organization on whose behalf the call is made, and do not have to maintain and abide by a distinct do not call list.

### C. Administrative Monetary Penalties

Clause 2 proposes numerous amendments to Part V of the *Telecommunications Act*, dealing with investigation and enforcement matters.

After section 72 of the *Telecommunications Act*, a section entitled “Administrative Monetary Penalties” is added. This section gives the Commission the power it seeks to levy administrative monetary penalties as an enforcement measure. It also gives the Commission the power to delegate various administrative, investigative, inspection and enforcement powers to a third party.

New section 72.01 states that every contravention of a prohibition or requirement of the Commission under section 41 of the *Telecommunications Act* constitutes a violation. Thus, each telemarketing call to a number registered on the do not call list is a violation.

Individuals who commit such a violation are subject to an administrative monetary penalty of up to $1,500 per infraction (i.e., per offending call). The penalty for corporations committing violations is a maximum of $15,000 per infraction. This clause of the bill was amended by the Senate to allow flexibility in the dollar amounts imposed for infractions of a do not call list. Prior to this Senate amendment, the penalties were fixed amounts of $1,500 and $15,000 per infraction for individuals and corporations, respectively.

The Commission is given the power to designate persons for the administration of telemarketing regulations under section 41 of the Act. These authorized persons will be able to request from telemarketers periodic reports or other forms of information necessary for the administration of the Act (section 72.06).

Where they believe, upon reasonable grounds, that there is information relevant to the enforcement of section 41, authorized persons may enter and inspect any place

(section 72.06(1)). If that place is a dwelling-house, however, an *ex parte* warrant obtained from a justice by information on oath is needed before entry (section 72.06(2)).

Proposed section 72.07 details the contents of the notice of violation, which must include: the name of the person believed to have committed the violation; the penalty; and the right to either pay the penalty or make representations to the Commission with respect to the violation. The proposed legislation thus gives the person the option of disputing the notice of violation. The notice must also include a statement that if a person fails to pay the penalty or make representations to the Commission, he or she will be deemed to have committed the violation and the Commission may impose the penalty (section 72.07(2)(*c*)).

If a person chooses to make representations to the Commission with respect to a notice of violation, the Commission must decide, on a balance of probabilities, whether he or she committed the violation (section 72.08(2)). Where the Commission decides, on that balance, that a violation has occurred, it may impose the penalty outlined in section 72.01.

Where a violation has been found, the Commission must provide the person with a copy of the decision, together with a notice of a right of review or appeal of that decision, as set out in sections 62 and 64 of the Act.

An administrative monetary penalty is a debt owed, and may be recovered as such. However, there is a five-year time limitation on the right to commence a recovery action (section 72.09(2)).

### D. Defences

A person may establish that he or she exercised due diligence to prevent the violation (section 72.1(1)). This means that a person may give evidence that he or she took all reasonable efforts to ensure that the actions taken were within the law. If that evidence is accepted, it constitutes a defence.

All common-law rules and principles available as justification or excuse in relation to a violation of the telemarketing regulations apply (section 72.1(2)). This means that unless they are specifically excluded by the *Telecommunications Act* or are inconsistent with the Act, all excuses and justifications available in common law may be used to justify or excuse a violation of these telemarketing regulations.

E. Time Limitations

An action in relation to a violation must be commenced within two years after the day on which the subject-matter of the proceedings became known to the Commission (section 72.12(1)).

In addition, there is a five-year time limitation on the right to commence a recovery action for an administrative monetary penalty (section 72.09(2)).

F. Review

New clause 2.1 requires that a parliamentary committee undertake a review of the administration and operation of the provisions enacted by the bill three years after the bill comes into force.

G. Coming Into Force

**This Act came into force on 30 June 2006.**

COMMENTARY

Bill C-32 sets up the framework for certain changes to the way in which telemarketing calls are regulated.

In its original form, the bill was silent as to exemptions from the proposed national do not call list. The expectation was that, if the legislation was passed, the CRTC would embark on a series of consultations with industry and consumers to determine how best to implement it. It was thought that these consultations would address questions such as how the national do not call list would operate, how much it would cost, whether companies would be allowed to contact existing customers regardless of whether they were on the do not call list, and whether certain organizations such as those with existing business relationships, or charities or political parties, would be exempt from the do not call list.

The amendments to the bill introduced at the committee stage and added by the House, however, set out exemptions to the list. Notably, the amendments require that those people or organizations that are to be exempt from the national do not call list maintain their own do not call lists so that people who do not wish to be contacted by charities or politicians, for example, may ask not to be contacted again.

The effect of this is to create more than one do not call list with which Canadians must register in order to prevent unwanted unsolicited telecommunications: one list to block all calls from persons and organizations that are *not* exempt from the national list, and other lists to stop calls from persons and organizations that *are* exempt from the national list.

It is anticipated that once a national do not call list is operational, Canadians who do not wish to receive telemarketing calls from non-exempt callers can make a single call to a centralized registry at a 1-800 number, or perhaps fill out an online form, to add their telephone number to the do not call list. Telemarketers would be required to regularly download and respect this list.

The registry is expected to be funded on a cost-recovery basis by the telemarketers themselves.

There appears to be considerable support for a national do not call list. Industry Canada background information on this legislation cites a 2004 Environics survey indicating that 79% of respondents queried on telemarketing supported a national do not call list and 66% of respondents stated that they would be likely to sign up for this service.(11) The same survey further indicated that 97% of Canadians reported a negative reaction toward unsolicited calls.

A similar do not call registry in the United States has proven to be very popular. Created in late 2003, it now has 65 million registrants, or slightly more than half of all households. In addition to being popular, it appears to be effective: "More than half the people on the list say they don't get any calls at all, and others say the number of calls has dropped from 30 a month to less than 5."(12) Fines for offending calls can reach US$11,000 for each complaint.

## A. Comments From Marketers

Unsurprisingly, some telemarketers do not support the proposed legislation.

According to one such marketer, telemarketing calls work: "The latest statistics show 18% of calls result in a sale – more effective than any other form of advertising."

(11) Industry Canada (2004).

(12) J. Fitzpatrick, "Legislation will offer relief from telemarketers," *The Chronicle Herald* [Halifax], 27 December 2004, p. C1.

Telemarketing "allows firms to sell millions of dollars worth of products [and gives] thousands of people the chance to earn a living."(13)

This commentator suggested that the current rules for telemarketing are sufficient to regulate marketers through "voluntary or company-specific do not call lists that have been the industry standard for years among legitimate firms."(14) It was further argued that being on a do not call list removes a consumer's "chance to learn about new products and services that could improve their lives in some way. It removes a business's opportunity to reach the consumer directly."(15)

Moreover, some commentators have pointed out that there is an alternative to adding more regulation and more bureaucracy: when called by a telemarketer, an individual may request to be put on that company's do not call list and then hang up.

On the other hand, the Canadian Marketing Association (CMA) supports this legislation; indeed, it has been urging the creation of a national do not call registry since 2001.

The CMA is the largest marketing association in Canada. It has 800 corporate members across a wide range of marketing disciplines, including major financial institutions, insurance companies, publishers, retailers, charitable organizations, agencies, relationship marketers and those involved in e-business and Internet marketing.

The CMA has maintained its own version of a do not contact registry on behalf of its members since 1988, but can do little beyond revoking the membership of marketers who do not respect its list. Moreover, the organization cannot police other marketers who are not members of the association.

John Gustavson, president and chief executive officer of the CMA, stated:

> We believe a compulsory do-not-call service for all companies that use the telephone to market their goods and services to potential customers is the most effective means to curtail consumer annoyance with telemarketers. At the same time, such a service will help protect the viability of a marketing medium that employs over 270,000 Canadians and generates more than $16 billion in sales each year.(16)

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(13) Stan Body, "Don't call us, we'll call you," Letters, *Edmonton Journal*, 19 December 2004, p. A17.

(14) Ibid.

(15) Ibid.

(16) Canadian Marketing Association, News release, "Canadian Marketing Association welcomes legislation to create national do-not-call service," 13 December 2004, http://www.the-cma.org/newsroom/newsrelease131204.cfm.

The CMA further argues that a do not call registry would make marketers more efficient by making them target only those customers who were open to their product pitches.

B. Media Coverage

The proposed legislative notion of a national do not call list has attracted some media attention. Coverage has been mostly favourable, citing the Environics poll that suggests the majority of Canadians support this legislation and would probably sign up on a national do not call list, as well as the recent and apparently popular US legislation on the same subject.(17)

Noted as a cause for possible concern in relation to the operation of the do not call list is the federal government's "astonishing incompetence as displayed in the national gun registry, the cost of which has now soared past $1 billion."(18) On this topic, one commentator stated: "A Canadian registry could be effective and popular, too. However, as the federal gun registry shows, Ottawa has an uncanny way of turning a modest project into a billion-dollar fiasco. This project will only be worthwhile if bureaucrats can keep it simple and inexpensive."(19)

Another commentator suggested as an alternative that consumers request that their names be added to a "do call" list rather than to a "do not call" list. In other words, why must call recipients be the ones to remove themselves from call lists? "Why shouldn't everybody be assumed to be off the list, except for those who sign on?"(20)

Other comments expressed concerns about the need to divulge more personal information (name, telephone number) to another database, and the security of that information.(21)

Comments in opposition to the bill question the necessity of regulation in the first place, wondering instead why Canadians simply don't hang up in the face of unwanted

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(17) See, for example, Fitzpatrick in *The Chronicle-Herald*, 27 December 2004; Forum, "'Don't call' list the perfect gift," *The StarPhoenix* [Saskatoon], 17 December 2004; p. A14; Opinion, "Putting a hold on telemarketers," *The Edmonton Journal*, 14 December 2004, p. A14; J. Ibbitson, "Not coming to a phone near you," *The Globe and Mail* [Toronto], 14 December 2004, p. A4; and Editorial, "Don't-call-us legislation is most welcome, with one reservation," *The Vancouver Sun*, 14 December 2004, p. A14.

(18) Editorial in *The Vancouver Sun*, 14 December 2004, p. A14.

(19) Editorial, "Can Ottawa run a registry?" *The Calgary Herald*, 14 December 2004, p. A12.

(20) C. Gordon, "Timely government whacking," *The Guardian* [Charlottetown], 21 December 2004, p. A6.

(21) Opinion in *The Edmonton Journal*, 14 December 2004.

telemarketing calls.[22] It is suggested that "this is not something that needs government intervention in order to solve the problem."[23] Some cite this legislation as an example of over-regulation and "over-kill"[24] that threatens to "stifle the industry and kill jobs."[25]

After the bill was republished with the amendments made by the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology, *Toronto Star* business journalist Tyler Hamilton observed that the amendments "could actually increase the number of unsolicited phone calls we receive in the evening."[26] Since charities constitute a large number of unsolicited calls, exempting them would give such organizations "a get out of jail free card."[27] According to the Environics "Survey Results on Telemarketing" that is included with Industry Canada's background information on this bill, "among those who would likely sign up for the Do Not Call List, 66% would not want to receive calls from charities calling to raise money."[28] Noting this, the commentator reflected, "If the do-not-call registry is indeed a consumer-protection tool, shouldn't the wishes of consumers be reflected in the product?"[29]

Further difficulties may arise from the new amendments' attempt to exempt from the national do not call list marketers who have an "existing business relationship" with consumers. The amendment defines such a relationship so as to capture commercial transactions within the past 18 months. Because of this exemption from the proposed national do not call list, consumers may still be contacted by businesses up to 18 months after they cancel whatever service they had with those companies. Consumers could request to be put on that business's individual do not call list, but the onus is on the consumer to make the request. Since many businesses already have their own internal do not call lists and honour consumers' requests not to

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(22) Editorial, "Has it come to this?" *The Winnipeg Sun*, 21 December 2004, p. 10; Editorial, "Hang up on this law!" *The Edmonton Sun*, 19 December 2004, p. 15.

(23) Editorial in *The Winnipeg Sun*, 21 December 2004.

(24) Stan Body, in *The Edmonton Journal*, 19 December 2004.

(25) Stan Body, "I'm a telemarketer and I resent the labelling," Letters, *The Whitehorse Star*, 20 December 2004, p. 8.

(26) T. Hamilton, "Hang up on phone marketers' lobbying," *The Toronto Star*, 30 May 2005, p. D01.

(27) Ibid., quoting legal counsel for the Public Interest Advocacy Centre in Ottawa.

(28) Industry Canada, News release, "Minister of Industry Tables Legislation for National Do Not Call List," 13 December 2004, http://www.ic.gc.ca/cmb/welcomeic.nsf/af913527c10aeb6a852564820068dc6c/85256a5d006b972085256f690056a4a8!OpenDocument.

(29) Hamilton (2005).

receive further calls, it could be said that this amendment would not substantially change the present situation.

Moreover, given the multifaceted nature of many businesses, it is unclear how an existing business relationship with one aspect of a company may affect that company's other branches. For example, will having local telephone service with Bell mean that a consumer may be vulnerable to unsolicited telecommunications from Bell Mobility, Bell ExpressVu, *The Globe and Mail* or any other enterprise under the BCE Inc. banner? These considerations led journalist Hamilton to say, "So the end result, when you consider the charity and 'existing relationship' exemptions in the amendments, is that Canadians will be getting a do-not-call list that doesn't stop a vast majority of the unsolicited calls we already receive."(30)

Another commentator deplored the "laundry list of exceptions" to the do not call list and suggested that the bill as amended and passed is of "only marginal value" in stemming the tide of unwanted telephone solicitations.(31) This commentator earlier remarked that the bill, as amended, was "an embarrassing shell of its original self, rendered practically useless under the onslaught of lobby groups determined to thwart any attempt to limit their ability to call consumers at all hours of the day."(32)

On the other hand, one journalist deemed Bill C-37 "that rarest of legislative entities: an act of Parliament that could actually improve the quality of your life."(33) This observer said that, despite the exemptions in the bill, the do not call list "should immeasurably reduce harassing phone calls."

An editorial published just after the law was passed called the new legislation "a gift to Canadians who can't stand receiving sales pitches over the phone," and further characterized the do not call list as striking "a small blow for the average harried Canadian, [that] may permit a few undisturbed minutes more in the bath."(34)

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(30) Ibid.

(31) M. Geist, "Mixed achievements from a minority government; When tech-law policies are tallied, federal Liberals have a spotty record," *Ottawa Citizen*, 8 December 2005, p. E7.

(32) M. Geist, "Letting telemarketers ring: Government caves in to lobbyists on do-not-call law," *Ottawa Citizen*, 27 October 2005, p. F8.

(33) J. Ibbitson, "Bored of the rings? Stop telemarketers," *The Globe and Mail*, 11 November 2005, p. A6.

(34) Editorial, "Don't call us. Really," *The Globe and Mail*, 30 November 2005.

C. Next Steps

**On 20 February 2006 the CRTC issued a public notice stating its intention to delegate its authority in establishing, administering, investigating offences of, and financing for the national do-not-call list pursuant to section 41 of the Act.(35) This decision to delegate its authority corresponds with the CRTC's general policy to refrain from directly involving itself in what it considers "economic regulation," thus showing a preference for industry self-regulation.(36) The administration of the eventual do-not-call list will be delegated to a non-governmental operator (the "Operator") that is to be responsible for creating, implementing and managing the do-not-call list database.(37) Originally, the selection of an operator was to be carried out by a consortium of interested parties (the "Consortium") created for the sole purpose of conducting the selection process.(38) However, long delays in the establishment of the Consortium resulted in the CRTC deciding that it would seek the Operator itself.(39) Thus, qualified respondents will be asked to submit final proposals that include financial, technical, operational and administrative details.(40) Currently, the CRTC is in the process of choosing the Operator.**

**In July 2007 the CRTC determined that the investigation of violations of the do-not-call list regime would not be delegated to the Operator(41) and it has issued a request for comments regarding its decision.(42) The CRTC has identified a possible non-governmental entity to act as investigator of violations: on 23 July 2007 several telecommunications service providers created an independent consumer agency pursuant to Order in Council PC 2007-0533.(43) The agency, known as the Commissioner for Complaints for Telecommunications Services, is to resolve complaints from consumers**

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**(35) CRTC Telecom Public Notice CRTC 2006-4.**

**(36) CRTC Telecom Decision CRTC 2006-15, preamble and paras 370 - 373.**

**(37) CRTC Telecom Public Notice CRTC 2006-4, para. 19.**

**(38) Ibid. at para. 21.**

**(39) CRTC News Release, *CRTC moves a step closer to establishing a National Do Not Call List*, 3 July 2007.**

**(40) CRTC Telecom Public Notice CRTC 2006-4, para 29.**

**(41) CRTC Telecom Decision CRTC 2007-47.**

**(42) CRTC Telecom Public Notice CRTC 2007-15.**

**(43) Order in Council PC 2007-0533, 4 April 2007.**

**regarding their retail telecommunications services provided by the agency's members if given the final consent by the CRTC. In a notice that was issued the same day as its decision to delegate investigatory authority over violations of the do not call list, the CRTC also issued a public notice seeking comments from the public on whether the Commissioner for Complaints for Telecommunications Services would be an appropriate third party to which investigative powers could be delegated.(44) The CRTC expects to make a final decision on the matter by 29 February 2008.**

**Funding for the entire program is envisioned to come from the telemarketers themselves. Thus, the costs involved in managing the do not call list by the Operator and investigations of violations made by the Commissioner will not be directly charged to consumers.**

**(44) CRTC Telecom Public Notice CRTC 2007-16.**