

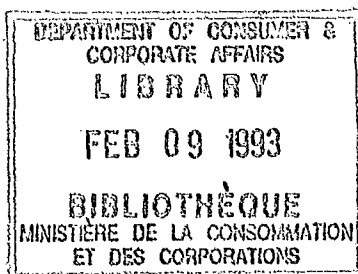
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# ***Telemarketing in Canada:***

- ***A report to ministers responsible  
for consumer and corporate affairs***

**February, 1991**

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## **I. EXECUTIVE SUMMARY**

The Federal/Provincial/Territorial Working Group on Telemarketing was established as a result of the 1989 conference of ministers to examine problems for consumers associated with telemarketing techniques, to review legislative, voluntary and regulatory initiatives existing in other jurisdictions and to propose a coordinated approach to deal with the problems on a national basis.

The Working Group circulated a discussion paper to approximately 90 industry, consumer and governmental interest groups requesting their assistance in identifying problems and suggesting possible solutions that the Group could consider. Submissions were received from 54 organizations.

The Working Group also investigated and researched current legislation across Canada dealing with telemarketing, as well as both regulatory and voluntary measures being undertaken in other jurisdictions.

The Working Group's Report covers any use of the telephone by business to initiate or conclude a sales transaction with consumers, to solicit donations, and to obtain information that may be used for sales purposes, where the consumer does not have an established business relationship with the seller.

The Group categorized the problems faced by consumers with telemarketing into six groups: Annoyance; Collection and Use of Information; Information Disclosure; Scams/Misrepresentation; Federal/Provincial Remedies; and Extraprovincial/International Remedies.

Investigation by the Working Group revealed that the extent and severity of these problems varies with each province.

For that reason, many of the Working Group's options for action consist of minimum standards of behaviour and practice that could be implemented either through legislation, through the CRTC or other appropriate regulatory body, or by industry self-regulation.

The Working Group's options for action are in the following areas:

**I. Standards** - Minimum standards are proposed in three areas:

- (i) prior to the sales pitch,
- (ii) during the sales transaction, and
- (iii) data collection and use.

**II. Harmonization of Legislation** - Proposals are made to strengthen legislative provisions governing consumer rights and remedies and to encourage harmonization as much as possible across Canada.

**III. Cooperative Enforcement Measures** - It is proposed that governments and appropriate law enforcement officials should coordinate their efforts to identify telemarketing scams, share information and discuss on a regular basis how enforcement activities could be coordinated.

**IV. Industry Initiatives** - Proposals are made for initiatives that should be undertaken by the telemarketing industry, telephone companies and credit card issuers. These include development of an effective method for people to have their names removed from calling lists and recommendations for a more proactive approach by credit card issuers to preventing and resolving scams and transborder problems.

**V. Network** - A national network should be established composed of representatives from each government and with links to consumer groups and industry associations. It would maintain regular contact to collect data, and to share and disseminate information on telemarketing problems and scams. The Network would also maintain contacts with U.S. federal and state governments and organizations.

**VI. Marketplace Education** - It is proposed that an ongoing, coordinated and focused effort be made by all those who stand to benefit from telemarketing to educate consumers and businesses. Creative and multi-faceted approaches to marketplace education are required.

The Working Group proposes to the ministers that they release the Report as a discussion document, and that the ministers ask industry and governments to report to the Chair of the Working Group on actions and initiatives directed to them. The Working Group would then report back to the ministers in 1991 on progress made.

## II. INTRODUCTION

The Federal/Provincial/Territorial Working Group on Telemarketing was established by the conference of Ministers of Consumer and Corporate Affairs held in Newfoundland in September 1989. (Working Group Members - Appendix 1)

The Working Group's mandate was to examine problems for consumers associated with telemarketing techniques, to review legislative, voluntary and regulatory initiatives existing in other jurisdictions, and to propose a coordinated approach to deal with the problems. (Terms of Reference - Appendix 2)

The Group was directed to propose options that could be considered by provinces/territories and the federal government, and to table a report outlining the options at the next meeting of consumer ministers.

In January, 1990, the Working Group circulated a discussion paper to approximately 90 industry, consumer and governmental interest groups requesting their assistance in identifying problems and suggesting possible solutions that the Working Group could consider. (List of Organizations Contacted and Submissions Received - Appendix 3)

Submissions were received from 54 organizations. (Summaries of Major Interest Group Positions - Appendix 4)

The Working Group also investigated and researched the current legislation across Canada dealing with telemarketing, as well as both regulatory and voluntary measures being taken in other jurisdictions including the United States, the United Kingdom and France. (List of Canadian Legislation - Appendix 5; Other Jurisdictions - Appendix - 6)

### III. BACKGROUND

#### 1. Definition of Telemarketing and Scope of Report

As with mail order sales, telemarketing is a form of direct response marketing. Telemarketing can include many different types of activities. To the direct marketing industry, it is any use of the telephone to sell and provide service to customers in a systematic, targeted and professional manner. Telemarketing is used by the industry to provide a variety of functions including customer service, order taking, subscription renewals, fund raising, market research and sales support.

Telemarketing can be used for business-to-business and business-to-consumer contact. It can involve unsolicited calling by business to consumers, or calls by consumers to businesses, such as 1-800 numbers. Telemarketing may also be used in conjunction with other kinds of marketing such as direct mail.

For the public, the term has come to mean all unwanted and unsolicited sales calls, including calls made by automatic dialling and announcing devices (ADADS).

For the purpose of this Report, the Working Group focussed on any use of the telephone by business to initiate or conclude a sales transaction with a consumer, to solicit donations from consumers and to obtain information that may be used for sales purposes, where the consumer does not have an established business relationship with the seller.

While the Report deals primarily with seller initiated calling both by live operator and ADADS, it also includes calls by consumers to business in response to a notice received through the mail that does not fully disclose all material terms of the sales transaction. This covers those cases where consumers receive a card in the mail telling them that if they call a 1-800 number within a specified time, they will receive a gift.



Business-to-business telemarketing is estimated to represent about 75% of all telemarketing applications. While the issue of businesses often being the victims of telephone scams, especially in the area of selling office supplies, was raised with the Working Group, it is an issue that is beyond the scope of this Report.

However, problems relating to business-to-business telemarketing as well as unsolicited ("junk") fax may be issues that the ministers may wish to consider in the future.

As the prefix "tele" (meaning "far off") suggests, telemarketing is also related to other kinds of remote selling involving new forms of technology, ie. home shopping by television, interactive cable television, and Bell Canada's new Alex system.

Telemarketing using the telephone differs from these other forms of remote selling, as it can be more intrusive. Very few people can ignore a ringing telephone. With the other media listed above, consumers can generally choose to become involved. The visual nature of the media allows more information to be seen, not just heard. More time may be allowed for reflection and consideration than in a short telephone call. For these reasons, this Report does not examine problems relating to selling involving such new technology, and is limited to sales carried out by means of the telephone.

## 2. Overview and Future of Telemarketing in Canada

The telemarketing industry is an important and rapidly growing segment of the Canadian direct marketing industry. Its size and scope is difficult to accurately estimate due to a lack of agreement on the definition of the industry. In addition, telemarketing is both a technique that is used by many businesses along with other marketing techniques, as well as an industry of its own involving companies whose business consists solely of telemarketing.

The extent of telemarketing and of concerns identified by interest groups varies considerably from province to province. There also appears to be a large variation in the number of calls that consumers report receiving depending on the size of the community and income level of its residents.

In surveys of attitudes toward uninvited sales calls, Bell Canada subscribers in rural communities with a population under 5,000 reported a median number of calls as low as 4 in 1989. However, in areas of Montreal or Toronto with a household income of over \$50,000 the median number of calls jumped to 20 and 30 respectively.

Another indicator of the size of the entire telemarketing industry (business-to-business as well as business-to-consumer) is the fact that the member telephone companies of Telecom Canada earn over \$ 2 billion annually in long distance revenues from telemarketing users.

The Canadian Direct Marketing Association (CDMA) estimates that by the mid-1990's, telemarketing will directly employ 800,000 Canadians, and this figure is expected to grow to 1 million by the year 2000.

The CDMA also predicts, that with the economy and efficiency available to small and medium sized businesses by using the telephone instead of face to face selling, over the next five to ten years, telemarketing will replace face to face contact as the most important marketing tool for companies.

This will be augmented by improved technology, predicted lower long distance rates, use of more sophisticated scripts, and cross-referencing of information databases. The industry indicates that it is moving away from untargeted calling.

The future will see a greater use of 1-800 and 900 numbers whereby consumers can call inbound to companies. This will enable companies to increase customer response, and allow for much better targeting of calls.

### 3. Jurisdiction Over Telemarketing in Canada

Both the federal and provincial/territorial governments currently have jurisdiction over certain aspects of telemarketing.



The federal government has constitutional authority over interconnecting undertakings and exercises this power through the Railway Act.

This legislation regulates interprovincial telephone traffic, and through the CRTC it currently regulates telephone service to the majority of Canadian subscribers. The remaining are presently subscribers of provincially owned telephone companies.

In the area of telemarketing, the only specific restrictions that exist at the federal level are CRTC regulations relating to the use of ADADS devices.

The Department of Communications maintains that its authority extends only to telecommunications carriers, and not to the users of the technology, e.g. persons making the unsolicited calls.

However, the Department is developing new telecommunications legislation which would empower the CRTC to regulate unsolicited telecommunications for the protection of the public interest and the right to privacy.

Under the general fraud provision of the Criminal Code of Canada, section 380 creates an offence to defraud a person of any property or money by deceit, falsehood or other fraudulent means. Convictions have been obtained using this section in cases of the fraudulent sale by mail and telephone solicitation of gemstones.

As well, the federal government exercises authority under the provisions of the Competition Act which prohibits false or misleading representations to the public. This statute also deems a representation in the course of telephone selling to be a representation to the public.

At the provincial level, provinces have jurisdiction to regulate the users and the content through their property and civil rights power under the Constitution Act, 1867. This is generally exercised through provincial/territorial consumer protection and business practices legislation. (Appendix 5)

#### IV. CONSUMER PROBLEMS AND APPROACHES PROPOSED BY INTEREST GROUPS

One of the obstacles encountered by the Working Group in its research is the paucity of information and statistical evidence of the number and nature of consumer complaints regarding telemarketing.

Because there is no central source for complaints, depending on the nature of the complaint, it is possible for a consumer to complain to any of the following organizations: provincial consumer services departments, Consumer and Corporate Affairs Canada offices, the CRTC, the CDMA, local Better Business Bureaux, telephone companies or consumer columnists.

The CRTC does keep a record of complaints received regarding ADADS and reports that the total number of complaints received by the Ottawa and Western offices was 1,256 for the period from January 1986 to December 1989.

Bell Canada's record of complaints indicates a sharp increase in the number of complaints regarding ADADs, from 3 in 1987 to 45 in 1989 versus 2 complaints regarding other forms of telephone solicitation.

From surveys of consumer attitudes, it appears that a great many consumers express concerns regarding telephone solicitation, yet only a few actually complain to government authorities. This may indicate a lack of sufficient concern, or it may be due to a lack of awareness of whom to contact. For example, when the CDMA operated a hotline for consumers' to have their names deleted from calling lists, the volume of calls received was so great that the Association could not handle the requests.

Bell Canada's surveys of consumer attitudes towards uninvited telephone calls confirm that almost everyone hates getting unsolicited telephone calls. In fact, 98% of customers surveyed in Ontario found unsolicited calls to be very annoying. In addition, when compared to other forms of marketing such as traditional advertising media, or door to door sales, less than 10% of those subscribers surveyed in Ontario and Quebec found ADADS calls acceptable.

Despite these high figures, the actual median number of uninvited calls that Bells' Ontario customers reported receiving in 1989 was only 12. (However, this figure increases substantially in large urban areas such as Toronto.)

This is confirmed by the Working Group members' own investigations which further revealed that the extent and severity of the problems varies with each province. For example, telemarketing is not perceived as a major consumer problem in many Western and Eastern provinces.

In Ontario, an opinion survey of 646 consumers undertaken in 1987 by the Ministry of Consumer and Commercial Relations showed that 48.45% of respondents reported receiving 1 to 3 unsolicited calls per month, while 20% reported receiving 4 to 6 calls per month. Approximately 10% reported 7 to 10 calls, while 11% received over 10 calls per month. Only 7% received no unsolicited calls. (In this survey, the largest percentage of the sample was returned from Toronto.)

None of the research available to the Working Group confirms the figures quoted in the 1989 Public Interest Advocacy Centre report that on average, Canadian households receive three telemarketing calls per week.

The Working Group categorized problems faced by consumers with telemarketing into six basic groups: Annoyance; Collection and Use of Information; Information Disclosure; Scams/Misrepresentation; Federal/Provincial Remedies; and Extraprovincial/International Remedies.

1. Annoyance

As outlined above almost everyone finds unsolicited calls to be very annoying, and many consider them to be an invasion of privacy (Consumers' Association of Canada (CAC Ont.) volunteer network survey).

Several submissions including the CAC (Ont.) and CAC (B.C) suggested that there should be regulations on the times during which consumers can be called. Currently CRTC restrictions exist on hours of calling only through the use of ADADs machines.

There was general recognition in many submissions received by the Working Group that existing rules regarding unsolicited calling are ineffective to solve problems of annoyance.

The CDMA has recommended that telemarketing calls should be restricted to the following hours:  
9:00 am - 9:30 pm weekdays  
9:30 am - 9:30 pm weekends  
No calling on statutory holidays.

Currently, consumers have few options available to deal with unsolicited calling short of hanging up. However, it is interesting to note that in the Bell Canada surveys mentioned above, the majority of those surveyed thought that hanging up offered them adequate protection.

Other mechanisms available to consumers include the use of an answering machine to screen calls, and the use of new telephone services such as call management services which allows a limited number of incoming calls to be blocked. However, this would not be effective to prevent unsolicited calling where the consumer does not know the calling party's number in advance.

Many submissions, including the CDMA, recommended various forms of a do not call list service to enable consumers who do not want to receive calls to have their names removed from telemarketing lists.

## 2. Collection and Use of Information

Consumers appear to be concerned regarding loss of privacy where their names, telephone numbers and information about them is collected, and lists are sold, rented or exchanged without their knowledge.

This was demonstrated in a 1983 study commissioned by the Ontario Ministry of Transportation and Communications in London Ontario. In that study, 90% of respondents indicated that "concern for privacy" was important or very important, and 62% indicated that they were concerned about threats to their personal privacy.

When respondents were asked about the perceived seriousness of certain situations, 58% considered a company selling its subscription list to other companies to be a serious invasion of privacy.

The issue of privacy of information in databanks and use of lists is of increasing concern in Canada, the U.S. and the U.K. Apart from legislation restricting collection and use of information by consumer reporting agencies, at present, there are very few legislative restrictions.

Some industries are developing voluntary privacy codes of practice. An example is the Canadian Cable Television Association whose code will address concerns regarding privacy and the use of information about subscribers and their viewing preferences.

In addition, the federal Department of Justice is chairing a federal/provincial task force on the implementation of the OECD guidelines on the protection of privacy and transborder flows of personal data. The task force's goal is to encourage both government and the private sector to implement the OECD guidelines. Progress has been made in several federally-regulated sectors including the Canadian Bankers' Association which is amending an earlier code of conduct to conform more closely to the guidelines.

In Quebec, the government is examining the issue of protection of personal privacy for databanks in the private sector. One suggestion that was made in a discussion paper produced in 1988 was that government should take action to regulate the private sector through expanded legislation to provide enhanced consumer protection regarding collection of information concerning consumers.

3. Information Disclosure by Telemarketers

Consumers are concerned that information such as who is calling is not sufficiently identified, especially in the case of ADADS calls. In many cases, callers do not adequately identify themselves or the organization on whose behalf they are calling, nor the true purpose of the call. For example, ADADS calls have been made under the guise of market research but turn out to be promotional in nature.

A recent survey of the CAC (Ont.)'s volunteer network, indicated that consumers want some regulation to cover full information disclosure, hours of calling and standards of behaviour by telemarketers.

The CDMA's recommendations also favoured full disclosure of the identity of the caller and reason for the call before making a sales presentation, and asking consumers if they want to hear more.

During the sales presentation itself, consumers can be subjected to high pressure techniques and are often not given sufficient information necessary to fully evaluate the offer/opportunity presented.

4. Scams/Misrepresentation

From submissions received and research by the Working Group, it appears that scams and fraudulent telephone solicitation are a much bigger problem in the U.S. than in Canada. They range from travel scams to water purifiers to vitamin and health care products to gemstone scams.

With the notable exception of calls offering trips as prizes, consumers in Canada do not appear to have been victimized by scams to the same degree as in the U.S.

In a submission to the Working Group, Visa Canada reported that it has limited information concerning the extent of this kind of fraud in Canada, and is in the process of compiling statistics to ascertain the scope.

Statistics made available to the Working Group by Mastercard, show that for the total Mastercard International System, 1/4 of 1% of all transactions are charged back to merchants, and of that portion, 8% involve telephone or mail order chargebacks.

Scams involving telephone solicitation are particularly easy and successful because of consumers' willingness to give their credit card number over the telephone, and the fact that sellers can thus be paid immediately, before delivery of the goods.

Credit card issuers in the U.S. are combatting scams, and credit card fraud including sales draft laundering using a four part approach involving education of both consumers and merchants, identification programs, enforcement and computer merchant analysis systems.

5. Federal/Provincial Remedies

Consumers often have difficulty obtaining redress against telemarketers in cases of non delivery of goods, or where there is a problem regarding the quality of goods received.

In order to deal with some of these difficulties, many submissions suggested remedies such as a cooling off period in which a consumer can cancel a telemarketing transaction, as well as requiring that credit card payments may not be processed for a specific period of time, until goods are shipped or the consumer signs a written authorization.

6. Extraprovincial/International Remedies

A consistent problem raised in almost all submissions to the Working Group, and one that is of greatest concern across the country, is the extraprovinciality problem experienced by consumers where a telemarketer is operating out of another province or from the U.S. As above, complaints usually relate to situations where consumers enter into sales transactions by giving their credit card numbers over the telephone. In many cases, it is difficult if not impossible, for consumers to cancel these transactions or to find the telemarketer if the goods are either not delivered or are unsatisfactory.



Furthermore, any rights or remedies that consumers do have under their own provincial legislation usually cannot be exercised nor enforced against sellers operating out of the province or country. For the most part, it is too difficult for consumers to pursue their rights in another jurisdiction.

In order to effectively deal with some of these problems, federal and state enforcement officials in the United States are increasingly engaging in joint cooperative measures.

## V. OTHER JURISDICTIONS

Because telemarketing is used more in the United States and there is a much larger problem with fraudulent telephone solicitation and scams, state and federal governments in the U.S. have instituted a broader range of initiatives to deal with the problems.

### Legislation:

A variety of different legislative measures to deal with the problems outlined above are utilized in other jurisdictions. (Appendix 6)

They include the following:

- . registration of telemarketers doing business in the state,
- . banning unsolicited calling unless a prior business relation exists with a consumer,
- . requiring that ADADs calls must be preceded by a live operator,
- . requiring do not call listings in the telephone directories,
- . requiring a signed written contract for telemarketing sales to be legally binding,
- . legislation establishing cooling off periods for telephone solicitation sales,
- . legislation allowing consumers to look to credit card issuers to resolve disputes regarding charges for unsatisfactory goods where the merchant will not.

Voluntary Measures:

- . Other jurisdictions, such as the U.K., rely on voluntary guidelines and standards of conduct for the telemarketing industry to follow.
- . In the United States, the Alliance against Fraud in Telemarketing has been very active in raising awareness concerning the problem of telefraud.
- . The Alliance, coordinated by the National Consumers League, is a coalition of seventy organizations to promote consumer education. The coalition developed out of a consensus among consumer groups, trade associations, labour unions, media groups, state and federal agencies that cooperative educational efforts are the key to ending some of the telefraud in the U.S. Alliance members meet on a quarterly basis to exchange information.

Current initiatives of the Alliance include:

- . distributing a quarterly newsletter that features current trends in telefraud, provides information on educational strategies to prevent fraud, and reports on legislative/regulatory activities. The newsletter is distributed to Alliance members, state and local consumer protection offices, securities administrators, Better Business Bureaux, journalists and others,
- . developing publications for consumers to educate them about how to protect themselves; a notebook for consumer information handlers to provide complaint handlers with a quick reference tool for advising consumers,
- . providing advice to consumers through radio and television appearances and interviews in print media,
- . sharing complaint information with state and federal enforcement agencies and

working with the telemarketing industry to encourage adherence to ethical guidelines.

Because concerns regarding privacy are rapidly increasing in the U.S., a Presidential telecommunications privacy working group is seeking to produce voluntary guidelines to protect "telephone transaction generated information".

## VI. CONCLUSIONS AND OPTIONS FOR ACTION

- . The Working Group proposes a number of options for action that can be undertaken both by government and by industry participants.

### i. STANDARDS

- . To address many of the problems described above concerning annoyance and harassment, difficulties consumers face knowing who is calling them and why, and how to obtain remedies, the Working Group recommends that there should be minimum standards of disclosure and behaviour for all those utilizing telemarketing techniques to solicit sales or funds from consumers.
- . The options below represent minimum standards which could form a code of practice and be implemented either through legislation, through the CRTC or other appropriate regulatory body, or by industry self-regulatory guidelines.
- . Because the Working Group's investigation found that the degree and severity of problems associated with telemarketing vary across the country, the Working Group believes that a decision on how best to implement the standards, whether through legislation, regulatory measures or industry guidelines, should be left to the discretion of each government.
- . In addition, the Working Group agreed that further controls may be needed in Canada relating to the collection of information regarding consumers and the use of that information for commercial purposes. However, the issue of privacy is much broader than telemarketing and should be addressed directly by another forum with that mandate.

The options for action relating to standards fall into three basic categories:

- (i) those dealing with the beginning of the call before the sales pitch is made;
- (ii) those dealing with the sales transaction; and
- (iii) standards relating to the collection and sale of information about consumers.

## **OPTIONS FOR ACTION:**

### **Prior to Sales Pitch:**

1. The Working Group proposes that at the outset of any telemarketing call (including ADADS calls) the following information be disclosed: the identity of the caller, the organization represented, whether the call is for sales, promotional or market research purposes, a telephone number where a responsible party can be reached, and a street address for further information. In addition, consumers must be given the opportunity/ ability to promptly terminate the call.

### **During Sales Transaction:**

2. The Working Group proposes that the following information be disclosed during the sales transaction portion of a telemarketing call: the total cost of the goods or services including any extra charges such as shipping/handling, an authorization number for credit card transactions, delivery date, that consumers have a cooling off period of seven days in which to change their minds and cancellation rights for failure of the seller to deliver on time.
3. The Working Group proposes a standard cooling off period of seven days (minimum) for telemarketing transactions.
4. The Working Group proposes that consumers be given the right to cancel a contract where goods are not delivered or services not performed within three weeks of the date promised in the telephone transaction. If no date was specified, then consumers would have the right to cancel the contract if the goods have not been delivered or services performed after four weeks from the date of the telephone transaction.

5. The Working Group proposes that if the time promised for delivery of goods or performance of services is beyond six weeks from the date of the telephone transaction, written notice of the promised delivery date be sent to consumers.
6. The Working Group proposes that sellers in telemarketing transactions be prohibited from cashing cheques or processing credit card charges until goods have been shipped to the consumer or services have been performed, unless a mechanism already exists to ensure that consumers' payments are effectively protected, such as bonding requirements for remote party contracts in Quebec's consumer protection legislation.
7. The Working Group proposes that credit card issuers develop and issue an authorization code number for merchants to give to consumers during the course of a telephone transaction where payment is to be made by credit card number or a refund is to be credited.

A consumer who changes his/her mind during the cooling off period would receive this authorization number from the telephone seller, thus having proof that he/she exercised his/her right.

In addition, should the consumer not receive the goods, or have a problem with the quality of the goods, and be unable to locate the telephone seller, this authorization code number could be used as proof to enable the credit card issuer to reverse any charge made to the consumer's card.

#### Data Collection and Use

8. The Working Group proposes that all organizations/businesses which maintain lists of consumers' names and telephone numbers such as: financial institutions, charitable organizations, telephone companies, associations, clubs, newspaper and magazine publishers, be required to disclose in their promotional material and membership applications

that information is collected, that membership lists may be sold, rented or exchanged, and should require consumers' consent in order to do so. Refusal by a consumer to consent should not result in discriminatory treatment against that consumer.

9. The Working Group proposes that such organizations/businesses be required to advise consumers on request, upon proof of identity, of the contents of any databases that exist concerning them.
10. The Working Group proposes that such organizations/businesses collect only the information necessary to complete the transaction that is the subject of the telemarketing call. Specific consumer consent should be required to collect any additional information.
11. The Working Group proposes that provincial/territorial governments consider whether there are some organizations/businesses that should be prohibited from disclosing and selling information regarding a consumer in certain circumstances without specific notification or consent e.g. credit bureaux.
12. The Working Group proposes that privacy concerns regarding the collection of information from consumers and its use for commercial purposes by industry and governments should be considered by a Federal/Provincial/Territorial Working Group on Privacy.

## ii. HARMONIZATION OF LEGISLATION

In order to help address problems for consumers in obtaining adequate redress and exercising remedies against telemarketers where they have suffered some loss in a telephone sales transaction, all provinces and the federal government should consider reviewing their respective legislation to harmonize disclosure requirements, consumer rights and remedies as much as possible.

The Working Group also discussed the option of requiring registration of telemarketers as a means of dealing with scams and fraudulent telephone solicitation, but decided that this was premature and should only be considered by federal and provincial/territorial governments, if other proposals made in this Report prove ineffective to adequately solve the problems.

### OPTIONS FOR ACTION:

13. The Working Group proposes that provincial/territorial governments consider legislation making it an offence or an unfair business practice to call a consumer who has indicated that he/she does not want to receive unsolicited telemarketing calls.
14. The Working Group proposes that provincial/territorial governments consider providing in their business practices/consumer protection legislation that a contract made through telemarketing is deemed to be made in the jurisdiction where the consumer resides.
15. The Working Group proposes that the federal government review the provisions of the Competition Act, and the recommendations of the Standing Committee on Consumer and Corporate Affairs on the Subject of Misleading Advertising to ensure that amendments are made to address concerns regarding scams involving telemarketing.
16. (i) The Working Group proposes that provincial/territorial governments review their business practices/consumer protection legislation to ensure that scams are prohibited and effective disclosure requirements and fines are provided for.  
  
(ii) The Working Group proposes that federal and provincial/territorial governments review available remedies and access to remedies to provide greater consumer redress through measures such as: restitution powers, class actions, minimum damages, assurances of voluntary compliance, corrective orders, monetary jurisdiction of courts, and alternative dispute resolution mechanisms.

### iii. COOPERATIVE ENFORCEMENT MEASURES

In order to effectively address extraprovincial and international enforcement problems, governments should consider harmonizing as much as possible, not only their legislative, but also enforcement measures.



The Working Group believes that governments and appropriate law enforcement officials should coordinate their efforts to identify telemarketing scams, share information, and discuss on a regular basis how enforcement activities could be coordinated.

In addition, on an as needed basis, particular types of scams could be focused on in each province and territory, e.g. recent focus on diet pill scams in Quebec.

Furthermore, to assist with preventing scams originating in the United States, all governments should take steps to establish linkages with U.S. counterparts such as the National Association of Attorneys-General, the National Association of Consumer Protection Investigators, and the North American Securities Administrators Association.

#### OPTIONS FOR ACTION:

17. The Working Group proposes that in cooperation with Consumer and Corporate Affairs Canada, provincial/territorial consumer ministries coordinate with appropriate enforcement agencies, such as, securities commissions, RCMP, credit card security departments and industry self-regulating bodies to identify telemarketing scams as a general concern and discuss ways in which enforcement activities could be co-ordinated in future.
18. The Working Group proposes that governments consider formal membership or informal links with appropriate U.S. organizations regarding U.S./Canada enforcement problems.
19. The Working Group proposes that provincial enforcement officials explore the development of reciprocal enforcement agreements nationally. Federal officials should take lead in exploring Canadian/U.S. reciprocal enforcement agreements.

iv. INDUSTRY INITIATIVES

- . As noted in many of the submissions received by the Working Group, industries such as the telemarketing, telephone, banking and credit card issuing industries already engage in a number of significant initiatives to deal with a variety of problems for consumers relating to telemarketing.
- . In its discussions, the Working Group identified several additional areas where industry could take a more active role, and makes proposals which are directed at these industries.

Do Not Call Lists

- . Currently, there is no effective mechanism to ensure that consumers who object to receiving unsolicited calls are not called.
- . The CDMA operated a hotline for several months, for consumers to call to get their names removed from CDMA members' calling lists; however, the volume of calls received was beyond their capacity to handle, and now only requests in writing are acted upon.
- . The Working Group considered requiring a notation in telephone directories to identify those individuals who do not want to be called. This is required by legislation in several U.S. states.
- . The Working Group also considered requiring telemarketers to subscribe to a do not call listing service.
- . The Working Group recognized that selling by telephone is a legitimate marketing technique, and to a certain extent, unsolicited calling may be a fact of modern life that consumers, especially those in large urban centres, can not entirely avoid.
- . However, the Working Group agrees that there should be an effective method established by which people who do not want to receive unsolicited calls can have their names removed from as many calling lists as possible, and proposes that the mechanics of how to do so be determined by the telephone companies and the telemarketing industry.

## OPTIONS FOR ACTION:

### Telemarketing Industry/Telephone Company Initiatives

20. (1) The Working Group proposes that the telemarketing industry and telephone companies jointly develop and propose to the Consumer Ministers a mechanism for implementing a do not call listing service, which includes an effective method of enforcement. The Working Group further proposes that the telemarketing industry and telephone companies report on their progress through the Chair of the Working Group.
- (2) The Working Group proposes that if necessary, the CRTC and other appropriate regulatory bodies should be empowered with the ability to issue guidelines/directions to require such a service to be provided to the public.

### Credit Card Problems

- . As discussed earlier in the report, soliciting by telephone is particularly susceptible to scams and fraudulent activity because of the fact that payments by credit card numbers can be quickly processed, even before merchandise is shipped, and consumers have no proof that a sales transaction has taken place.
- . The Working Group discussed the issue of responsibilities of credit card issuers where consumers have had problems with goods or services ordered in the course of a telephone transaction, and the telemarketer can not be found.
- . While it is not well known by consumers, according to the Canadian Bankers Association, Canadian banks currently do have policies that allow for reimbursement of consumers for non-delivery of goods charged over the telephone, even where the seller is calling from the United States. Banks will then "chargeback" to the merchant the amount that has been credited to the merchant's account in the credit card transaction.

- . The Working Group further considered the suggestion of requiring receipt of a written verification of the terms of a sales transaction to be signed by a consumer prior to processing payment of the sales draft as is the required in some U.S. states.
- . However, at this time, the Group considered it more appropriate to propose to credit card issuers that they consider actions that they could initiate to prevent problems with telemarketing scams and transborder problems.
- . For example, Mastercard International has recently approved several new chargeback rules for services not rendered and not as described goods which would apply where:
  - . services charged to a cardholders' account were not rendered due to the merchant's unwillingness or incapacity (such as bankruptcy) and
  - . cardholders have received merchandise or services far inferior than what was suggested in a telephone or mail solicitation, (such as water purifiers, travel club benefits). In this case, a chargeback will be effected where there was no written characterization available to the cardholder at or prior to making the purchase.

## OPTIONS FOR ACTION:

### Credit Card Issuer Initiatives

21. The Working Group proposes that credit card issuers take a proactive approach to preventing telemarketing scams in Canada, and report to the Consumer Ministers through the Chair of the Working Group on actions that could be taken by card issuers to prevent problems with telemarketing transactions in Canada and transborder problems such as, but not limited to:
  - a) strengthen merchant contracts to prevent factoring such as requiring a merchant to initial a paragraph regarding factoring in the merchant agreement to prove that he/she has read and understood the consequences;

- b) a merchant analysis program to analyze the source of scams such as Visa Net computer network, and monitor merchant deposits;
- c) a verification service to enable the direct marketing industry to verify the address of someone ordering goods by mail or phone;
- d) providing a specialized merchant authorization code number for consumers to use when exercising cooling off rights to cancel transaction; (Reference Option # 7)
- e) better screening of merchants and penalties for those who have been a prior source of problems for consumers such as revocation of merchant numbers;
- f) consider imposing excessive chargeback fees;
- g) enhanced disclosure of existing policies for reimbursement of consumers in cases of non-delivery of goods or services charged over the telephone;
- h) adoption by all credit card issuers of chargeback policy for goods or services charged over the telephone that do not accord with written descriptions.

#### Telephone System Issues

Telemarketers who engage in scams have been facilitated by decreasing long distance rates and the greater ease in using long distance to reach consumers. In fact, U.S. authorities have noted that many scam and fraudulent operations are now moving to offshore countries thus making them even more difficult to reach. There should be cooperation between domestic telephone companies and those in other jurisdictions in examining problems to see what can be done.

Problems are also inherent in present technology. For example, telephone companies often do not know that some ADADs users are connected to the system, and once the telephone company does find out they have moved and are using another number. Technological and other means should also be considered in addressing problems.

## OPTIONS FOR ACTION:

### Telephone Company Initiatives

22. The Working Group proposes that telephone companies take a proactive approach and report to the Consumer Ministers through the Chair of the Working Group on actions that could be taken across Canada, and with U.S. and other telephone companies to address domestic and transborder problems regarding telemarketing.

### v. NETWORK

- . As discussed above, a major obstacle to effectively dealing with extraprovincial problems relating to telemarketing, is the fact that there is no centralized or coordinated source of information for consumers and governments.
- . To help solve this particular problem, the Working Group proposes the establishment of a national network of individuals in each government to be coordinated by CCAC, that would maintain regular contact with each other, collect data, and share and disseminate information on the latest telemarketing problems and scams occurring in their jurisdictions.
- . This "Network" should also include representatives from groups such as provincial attorneys-general, consumer groups, the CDMA, the CBA, and telephone companies.
- . The Network would also be responsible for determining and publishing a list of the appropriate contacts in each government, including the U.S., along with their respective areas of responsibility e.g. education, data collection, warning of new scams, communication.
- . The Network would also maintain contacts in the U.S. federal and state governments, NAAG and the Alliance Against Fraud in Telemarketing and thus could function as an early warning system for problems and scams originating in the U.S. before they migrate to Canada.

## OPTIONS FOR ACTION:

23. The Working Group proposes that Consumer and Corporate Affairs Canada develop a proposal for a national/international network to share information regarding telemarketing and telemarketing scams. Contacts should include representatives from provincial/territorial governments, other federal departments, the CDMA, consumer groups, CBA, telephone companies, credit card issuers, and U.S. Attorneys General. The Network would coordinate data collection and distribution of information to contacts.
24. The Working Group proposes the publication of a government contact list which identifies participants in the Network. The locus of responsibility should be those Ministries responsible for consumer/business relations. This Network should also identify appropriate contacts in the United States who should be included in the contact list along with their respective areas of responsibilities and action.
25. The Working Group proposes that Consumer and Corporate Affairs Canada discuss with telephone companies the possibility of providing a 1-800 complaint line for a limited time that is well publicized, in order to obtain more data and information regarding consumer complaints to provinces and industry.
26. The Working Group proposes that a common data retrieval system for information on consumer complaints be developed and monitored through provincial/territorial governments. The system should be coordinated with existing industry complaint monitoring systems.

## vi. MARKETPLACE EDUCATION

A continuing theme running through the submissions received by the Working Group as a solution common to all problems regarding telemarketing is the need for greater education of all marketplace participants.



- . Individual initiatives are already being done in this regard, such as CCAC and the CDMA's "Shopping By Phone" brochure, and the awareness messages that periodically appear on credit card statements warning against giving a credit card number over the telephone.
- . However, the Working Group believes that an ongoing, coordinated and focused effort by all those who stand to benefit from telemarketing is essential to educate consumers.
- . Each government should meet with consumer, industry and business groups drawing on their marketing expertise to develop creative, multi-faceted approaches to marketplace education.
- . Such awareness measures should focus on making consumers and telemarketers aware of their responsibilities, how to handle problems, the new disclosure requirements, information regarding privacy, availability of a do not call list service, the standards recommended herein such as cancellation and cooling off rights, and remedies available to consumers.
- . The Network of telemarketing contacts described above should be utilized for education with a national focus.
- . In addition, the telemarketing industry should develop professional training programs and material to educate all those selling by telephone of the standards required.
- . Similarly, the credit card issuers should develop greater merchant awareness programs regarding telemarketing scams and factoring.

#### OPTIONS FOR ACTION:

27. (i) The Working Group proposes that industry, telephone companies and governments determine and coordinate information regarding privacy and disclosure that could be provided to consumers through telephone directories, bill inserts, national Consumer Week, and other awareness measures.

- (ii) The Working Group proposes that industry, telephone companies, and governments develop and provide consumer education material regarding the inadvisability of giving medical, financial, legal, or insurance information through telephone solicitation.
  - (iii) The Working Group proposes that consumer education material be developed which includes specific information regarding disclosure, standards, cooling off and cancellation rights and available remedies through bill inserts, phone books, Consumer Week, and other awareness measures.
28. The Working Group proposes that the Network should explore joint government/industry efforts for consumer education such as:
- . Federal/Provincial/Territorial Working Group on Consumer Education should consider telemarketing awareness and encourage developing educational material during national Consumer Week e.g. Consumer Tips on Shopping By Phone:
    - calling back to verify identity of telemarketer;
    - requesting confirmation in writing;
    - distribution of credit card issuers consumer education material;
    - charitable solicitation tips (CCAC).
29. The Working Group proposes that credit card issuers engage in greater merchant education and awareness programs regarding telemarketing scams and factoring.
30. The Working Group proposes that the CDMA and telemarketing industry develop greater professional training programs and material to educate telemarketers of disclosure requirements, standards, and privacy issues.
31. The Working Group proposes that CCAC develop a proposal for a national conference/seminar on telemarketing problems, scams and enforcement to heighten consumer and media awareness.

## VII. NEXT STEPS

- . Because consumers are becoming increasingly concerned with problems related to telemarketing and telephone solicitation, the Working Group believes that there is more work that should be done in future, including establishing the Network and working with industry to explore the development of initiatives that are proposed in this Report.
- . Accordingly, the Working Group proposes to the federal/provincial/territorial ministers that this Report be released as a discussion document, and that the ministers ask industry and governments to report on actions and initiatives directed to them, to the Chair of the Working Group. The Working Group would then report back to the ministers in 1991 on progress made.

## **APPENDIX 1**

### **LIST OF TELEMARKETING WORKING GROUP MEMBERS**

#### **ONTARIO**

Dr. Joyce S. Feinberg - Chair

Director  
Policy & Planning Branch  
Ministry of Consumer & Commercial Relations

#### **CANADA**

Sept./89 - May/90:

Mr. Michael Barnes

Marketplace Analyst  
Consumer Policy & Services Branch  
Consumer & Corporate Affairs Canada

May/90 - Sept./90:

Mr. Peter Ferguson

Chief, Private Sector Division  
Consumer Policy & Services Branch  
Consumer & Corporate Affairs Canada

#### **BRITISH COLUMBIA**

Ms. Jan Rossley

Regional Manager  
Residential Tenancy Branch  
Consumer Services Branch  
Ministry of Labour & Consumer Services

**QUEBEC**

Mr. Jean Leblond

Chef de Service  
Service de l'éducation et de la recherche  
Office de la protection des consommateurs

**NEW BRUNSWICK**

Ms. Line Pinet  
Consumer Officer  
Consumer Affairs Branch  
Department of Justice

## APPENDIX 2

December 8, 1989

### TERMS OF REFERENCE

#### FEDERAL/PROVINCIAL/TERRITORIAL WORKING GROUP ON TELEMARKETING

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**PURPOSE:** To investigate, analyze and propose solutions to potential problems created by the telemarketing industry for consumers in Canada.

**BACKGROUND:** Problems presently encountered by consumers with current telemarketing techniques led to agreement at the September 11 - 12, 1989 meeting of Consumer Ministers in Newfoundland to establish a Federal/Provincial/Territorial Working Group to investigate these problems.

**GOALS:**

- . To establish the extent of problems and future trends in the field of telemarketing.
- . To develop a coordinated approach to deal with the major problems for consumers created by telemarketing techniques, including those originating domestically, extraprovincially, and internationally.
- . To make recommendations for possible legislative, regulatory, educational and other initiatives.

- OUTCOME:**
- . To prepare a report including indicators of problems and outlining effective options that could be considered by each province and the federal government.
  - . The Group will prepare a report to be tabled at the next meeting of Consumer Ministers in September, 1990.

- TASKS:**
- . Identify current and potential future consumer issues arising from telemarketing, e.g., privacy, extraprovinciality.
  - . Examine legislative and regulatory measures in the U.S. and other jurisdictions to regulate telemarketing.
  - . Identify remedies currently available to consumers to counteract problems caused by telemarketing techniques.
  - . Examine opportunities for cooperation with Canadian Direct Marketing Association and other industry associations in voluntary compliance re; disclosure, standards of behaviour and enforcement.
  - . Investigate opportunities for consumer education and awareness programs, and cooperation of telecommunications and telemarketing industries in consumer education, and programs to prevent or resolve complaints.
  - . Investigate the use of existing federal and provincial regulatory agencies to regulate the use of telemarketing as a sales technique.
  - . Examine opportunities for interprovincial and international cooperation in dissemination of information on unfair practices, reciprocal enforcement agreements and assistance to consumers outside the jurisdiction.



- . Examine opportunities for resolving problems involving the use of credit cards in telemarketing with credit card and merchant number issuers.
- . Consider linking Canadian initiatives with inter-governmental agencies in the U.S. including National Association of Consumer Agency Administrators, National Association of Attorneys General and Alliance Against Fraud in Telemarketing.

**TIMEFRAME:** September 1990 - Report for Consumer Ministers' Conference

APPENDIX 3

LIST OF ORGANIZATIONS CONTACTED  
AND SUBMISSIONS RECEIVED

NATIONAL AND FEDERAL  
GROUPS

SUBMISSIONS INTEREST  
RECEIVED

AMERICAN EXPRESS CANADA INC.	X
CANADA POST CORPORATION	X
CANADIAN ASSOCIATION OF CHIEFS OF POLICE	
CANADIAN ASSOCIATION OF MARKETING RESEARCH ORGANIZATIONS	X
CANADIAN BANKERS' ASSOCIATION	X
CANADIAN CABLE TELEVISION ASSOCIATION	X
CANADIAN CHAMBER OF COMMERCE	X
CANADIAN FEDERATION OF INDEPENDENT BUSINESS	
CANADIAN DAILY NEWSPAPER PUBLISHERS ASSOCIATION	X
CANADIAN DIRECT MARKETING ASSOCIATION	X
CANADIAN COUNCIL OF BETTER BUSINESS BUREAUX	
CANADIAN HOME SHOPPING NETWORK	X
CANADIAN OFFICE MACHINE DEALERS' ASSOCIATION	X

CANADIAN REAL ESTATE ASSOCIATION	X
COMMUNICATIONS CANADA	X
CONSUMERS' ASSOCIATION OF CANADA	
DEPARTMENT OF JUSTICE (YUKON)	X
DEPARTMENT OF SAFETY AND PUBLIC SERVICES (N.W.T.)	
EXTERNAL AFFAIRS CANADA	
FINANCE CANADA	
INVESTMENT DEALERS ASSOCIATION	
PUBLIC INTEREST ADVOCACY CENTRE	X
RETAIL COUNCIL OF CANADA	
SOLICITOR GENERAL OF CANADA	
TELECOM CANADA	X
THE OFFICE OF THE PRIVACY COMMISSIONER	X
THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION	X
THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS	
TRUST COMPANIES ASSOCIATION OF CANADA	X

**ONTARIO INTEREST GROUPS**

BELL CANADA	X
CONSUMERS ASSOCIATION OF CANADA (ONTARIO)	X
ONTARIO MINISTRY OF CULTURE AND COMMUNICATIONS	X
ONTARIO MINISTRY OF FINANCIAL INSTITUTIONS	X
ONTARIO MINISTRY OF THE ATTORNEY GENERAL	X
ONTARIO MINISTRY OF INTERGOVERNMENTAL AFFAIRS	X

**QUEBEC INTEREST GROUPS**

ASSOCIATION DES DETAILLANTS EN ALIMENTATION	
BELL CANADA	
COMMISSION DES VALEURS MOBILIERES	X
COSSETTE COMMUNICATIONS MARKETING	
TELE-DIRECT	
VIDEOTRON	

WESTERN PROVINCES INTEREST GROUPS

B.C. TEL	X
BETTER BUSINESS BUREAU (SASK.)	X
BETTER BUSINESS BUREAU (ALBERTA)	X
BETTER BUSINESS BUREAU (B.C.)	X
CONSUMER ASSOCIATION OF CANADA, (B.C.)	X
CONSUMERS ASSOCIATION OF CANADA (CALGARY)	X
CONSUMER & CORPORATE AFFAIRS CANADA (MAN.)	X
DEPARTMENT OF CO-OPERATIVE CONSUMER AND CORPORATE AFFAIRS (MANITOBA)	X
INTERNATIONAL TELEMARKETING CONSULTANTS LTD.	X
MINISTRY OF CONSUMER & CORPORATE AFFAIRS (ALBERTA)	X
TELEMARKETING COUNCIL OF B.C.	X

EASTERN PROVINCES INTEREST GROUPS

BETTER BUSINESS BUREAU OF NEWFOUNDLAND AND LABRADOR	
BETTER BUSINESS BUREAU (NOVA SCOTIA) (NEW BRUNSWICK)	X
CONSUMER SERVICES DIVISION (P.E.I.)	X
CONSUMERS ASSOCIATION OF CANADA (NFLD.)	X
CONSUMERS' ASSOCIATION OF CANADA	

(NOVA SCOTIA)

DEPARTMENT OF CONSUMER AFFAIRS AND COMMUNICATIONS (NFLD.)	X
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DEPARTMENT OF CONSUMER AFFAIRS (NOVA SCOTIA)	X
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MARITIME TEL & TEL

NEW BRUNSWICK ASSOCIATION OF  
CHIEFS OF POLICE

NEW BRUNSWICK CHAMBER OF COMMERCE

NEW BRUNSWICK - OFFICE OF SENIORS HEALTH AND COMMUNITY SERVICES	X
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NEW BRUNSWICK TELEPHONE COMPANY

NEWFOUNDLAND TELEPHONE  
BUSINESS SERVICES GROUP

SENIOR CITIZENS ASSOCIATION

UNITED STATES INTEREST GROUPS

ALLIANCE AGAINST FRAUD IN TELEMARKETING	X
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AMERICAN TELEMARKETING ASSOCIATION

DIRECT MARKETING ASSOCIATION

FEDERAL TRADE COMMISSION	X
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INTERNATIONAL ASSOCIATION OF  
CREDIT CARD INVESTIGATORS

MASTERCARD INTERNATIONAL	X
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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL	X
NATIONAL ASSOCIATION OF CONSUMER PROTECTION INVESTIGATORS	
NATIONAL CONSUMERS LEAGUE	X
NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION	X
NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS	X
VISA INTERNATIONAL	X

EUROPEAN INTEREST GROUPS

ASSOCIATION OF FRENCH TELEPHONE, TELEGRAPH AND RELATED TELEMATIC INDUSTRIES (S13T)	
BRITISH TELECOMMUNICATIONS PLC (BT)	
COMMISSION DES COMMUNAUTES EUROPEENNES	X
INTERNATIONAL ORGANIZATION OF CONSUMER UNIONS (IOCU)	
MINISTERE DES POSTES ET TELECOMMUNICATIONS (FRANCE)	
MINISTRY OF JUSTICE (THE NETHERLANDS)	
OFFICE OF FAIR TRADING (UNITED KINGDOM)	X

## APPENDIX 4

### SUMMARIES OF MAJOR INTEREST GROUP POSITIONS

#### 1. Canadian Consumers' Associations:

Canadian consumer groups suggest a proactive approach be taken with respect to telemarketing fraud through consumer education.

Canadian consumer groups across Canada cited promises of free prizes as a primary tool used by telemarketing scams.

Consumers' Association of Canada (Ont.) took an informal survey of its volunteer network that showed the majority of respondents felt telemarketing was a major nuisance and an invasion of privacy.

The CAC (Ont.) survey showed that its members want regulation but do not want consumers to pay the cost of regulation.

The CAC (Alta) would like to see more sharing of information and complaint referral between provinces.

The CAC (B.C.) advocates interprovincial reciprocal enforcement and Canada/U.S. reciprocal enforcement.

CAC (B.C.) advocates education and awareness programs as an adjunct to, but not as a substitute for legislation.

CAC (B.C.) wants regulations to cover; full information disclosure, hours, behavior, business practices, delivery, refunds and billing errors.

CAC (B.C.) will support voluntary compliance and industry self-policing if accompanied by enforceable laws.

CAC (B.C.) believes that credit card issuers should be required to assist consumers who have used their credit card for purchases from a seller who fails to fulfil the contract or has used fraudulent or unfair practices.

The Public Interest Advocacy Centre (PIAC) recommends a Federal Telemarketing Act in its 1989 research report, "Telephone Solicitation: Blessing or Curse?" All telemarketers operating inter-provincially should be required by the new Act to register with the Federal Government and to obtain a permit.



Telemarketers should be required to obtain approval of scripts used. Scripts should include: the caller's true identity, federal registration number, company on whose behalf the call is made, place of origin of the call, and a statement that the purchase may be cancelled within five days by calling a specific toll-free number.

The Telemarketing Act should regulate calling times. Calls should not be allowed between 5:00 and 7:00pm, before 10:00am and after 8:00pm Mon.-Sat., and all day on Sun.

Telemarketing calls from outside of a subscriber's province should be prohibited unless he/she indicates a desire to receive such calls.

Telephone companies should also be required to place a symbol beside a subscriber's name in the telephone directory to indicate that he/she does or does not wish to receive unsolicited calls.

PIAC also recommends the new Act should include consumer protection provisions including a reasonable cooling-off period.

Inter-provincial telemarketers receiving payment by credit card should be required to hold the credit voucher for five days before submitting it for payment. Solicitation of donations should be prohibited.

## **2. Better Business Bureaus (BBBs):**

Alberta, Manitoba and Saskatchewan Better Business Bureaus (BBBs) report that most problems are cross-jurisdictional due to telemarketing solicitations from Ontario and Quebec. Telemarketing does not appear to be a major problem in Manitoba.

Prairie BBBs suggest consumer education as an important part of the fight against telefraud.

Alberta BBB cites difficulty in obtaining remedies and suggests that credit card issuers assist with a cooling off period. Also, some regulation might be warranted regarding the selling of lists.

B.C. BBB suggests that having credit card issuers take responsibility for protecting consumers might be expensive for consumers.

B.C. BBB also stated that consumers in remote areas enjoy telemarketing. Legislation requiring payment by cheque or money order and legislation regarding the selling of lists might be useful.

The Nova Scotia BBB suggests co-operation between business, private and government agencies such as an information exchange. They also suggest an information exchange between provinces and the requirement of a bond if the telemarketing company operates out-of-province.

### 3. Banks and Credit Card Companies

All banks and credit card issuers support increased consumer education and some are actively doing so.

The Canadian Bankers' Association (CBA) believes that through self-regulation telemarketers can achieve high standards of consumer protection.

Banks support privacy and do not sell or give customer lists to anyone, although they do contract outside companies to do telemarketing on their behalf.

The CBA does not support a cooling-off period or measures that legislate credit card issuer liability. In their view, because the card is only the payment mechanism, credit card issuers need not share liability.

The CBA believes that if their share in the liability is legislated, there will be little incentive for consumers to purchase with responsibility. The banks would likely pass these increased costs of operation back to the consumer in the form of higher user costs.

Banks presently have a commitment to protect unwitting victims of fraud. With proper documentation, banks will reimburse customers for the non-delivery of merchandise and services if these were charged over the phone (even if it was a U.S. call).

The customer informs their card-issuing bank within a reasonable amount of time, the cardholder's bank charges the amount of the undelivered goods back to the merchant's bank which then passes the chargeback to the merchant in question. The merchant's bank must sustain the loss if a fraudulent merchant has disappeared. If the merchandise is delivered but found to be unsatisfactory, some recourse is available to the consumer on a case by case basis.

Banks can and do rescind merchant credit card privileges if merchants conduct improper credit card transactions. In particular, the chargeback penalty aids in improving telemarketing practices by merchants.

Banks monitor chargeback volumes as well as unusual merchant transaction volumes.

Bank-merchant contracts explicitly set out details of credit card use such as how to properly complete a sales draft, and banks update the contracts to reflect changing credit card practices.

Banks make an effort to visit telemarketing operations to ensure that the business is legitimate.

Banks have established a formalized, structured program for the interbank exchange of information on the detection of merchant fraud, telemarketing fraud and factoring.

Banks work closely with law enforcement agencies.

Banks are working closely with the credit card companies (VISA and MasterCard) to develop programs for early identification and prevention of fraud schemes.

In 1983, the CBA published a pamphlet, Ten Ways to Protect Your Credit Card, and has co-operated with Consumer and Corporate Affairs Canada in the publication of another pamphlet, Protect Your Credit Card. Individual banks have published statement stuffers and brochures to educate their cardholders.

Major card-issuing institutions have committed to publishing a common message on their credit card statements urging consumers to protect themselves against fraud. The message will appear as a variation of "Fraud prevention means never giving your (MasterCard or VISA) number over the phone unless dealing with well known reputable firms."

American Express agrees with the CDMA Submission and recommends that all telemarketers register with CDMA and abide by the code.

American Express suggests that all telemarketers should offer a 30 day money-back guarantee, not a cooling-off period so that consumers do not have to wait for goods. Amex can assist consumers to recoup losses but should not be held financially accountable.

Amex recommends the prohibition of the random selection of numbers and the mandating of identification of seller and reason for call. Recommends that for ADAD calls, the consumer must be given the option of speaking to a live operator.

#### 4. Telephone Companies

- . Bell Canada's records of complaints show that most telemarketing problems can be attributed to ADAD telemarketers.
- . Currently, there is no way to ensure that ADAD users register with Bell. Bell recommends an extension of provincial direct sellers legislation to cover telemarketers using ADADs.
- . Bell recommends that ADAD users be required to register with provincial consumer ministries and use Consumer and Corporate Affairs Canada as a clearing house and single point of inquiry for information regarding ADADs.
- . Bell supports increased publicizing of the CDMA code of ethics.
- . Bell would agree to participate in a multi-sector alliance to address extra-provincial fraud.
- . Bell's customer surveys show that hanging up is adequate protection and its customers would prefer self-regulation by industry or other over government regulation.
- . Telecom Canada attributes the majority of problems relating to fraud and disclosure to ADADs.
- . Telecom Canada proposes industry self-regulation and a national body to which all practitioners should join.
- . Telecom Canada argues that an effective mechanism is needed to allow consumers to have names removed from calling lists but it does not want the ethical sale of lists prohibited.
- . Telecom Canada recommends the establishment of a national mechanism for the reporting of complaints and the recommending of appropriate action for complainants.

#### 5. Canadian Direct Marketing Association:

- . CDMA recommends both legislation and self-regulation in the following points.
- . Creation of lists through random or sequential dialling must be prohibited.
- . All telemarketing to the public must follow CDMA's Code of Ethics.

Require all telemarketers to identify company and reason for call before making presentation, and ask consumer if they wish to hear more.

Restrict telemarketing to:

9:00 a.m. - 9:30 p.m. weekdays

9:30 a.m. - 9:30 p.m. weekends

no calling on holidays.

All telemarketers should be required to subscribe to a do not call service. Telephone companies should collect this information and make their data files available to telemarketers on a cost recovery basis.

Supports consumer education programs.

Information such as medical, financial, insurance or court data should not be collected by telephone and not sold, transferred or rented to others.

All telemarketers should be required to belong to the CDMA or other organization with a code of ethics.

Provincial and federal bodies for controlling telemarketing must be co-ordinated.

#### 6. Market Research Associations:

The Canadian Association of Marketing Research Organizations (CAMRO) and the Professional Marketing Research Society (PMRS) support full disclosure and increased consumer awareness through education.

CAMRO & PMRS believe that some telemarketers use the misleading practice of selling under the guise of market research.

Market research companies do not want unsolicited random calling prohibited because it is a major tool of market research.

CAMRO and PMRS believe that all telemarketing calls should state whether the call is for the purpose of a sale, and the caller's name and telephone number should be provided

CAMRO stresses the need for strict enforcement of ADADs by CRTC.

## 7. Other Industry:

The Canadian Chamber of Commerce does not support additional legislation, believing that educating the public about potential problems and the industry about proper conduct (CDMA code) is the most effective method.

## 8. Organizations in the United States:

Alliance Against Fraud in Telemarketing (AAFT) advocates that a co-operative education and enforcement effort is the key to ending telefraud.

North American Securities Administrators Association Inc. (NASAA) reports that Americans lose more than \$1 million per hour to investment fraud over the telephone, and that the elderly are becoming prime targets.

NASAA supports the need for tougher federal legislation in the U.S. to fight telemarketing fraud.

NASAA has cooperated with U.S. federal and state enforcement agencies to shut down many boiler room investment fraud operations.

U.S. Visa has been very active in working with the Federal Trade Commission, direct marketers, law enforcement authorities and the AAFT to both educate the consumer and bring judicial and civil action against fraudulent telemarketers.

U.S. Visa utilizes a four fold approach - education, identification programs, cooperative enforcement and computer systems.

U.S. MasterCard formed a telemarketing taskforce in 1989 to examine and approach the telemarketing issue from a national perspective. Currently, they are in the process of establishing a centralized data base to track any fraudulent telemarketing merchant who may have operated in one district and is attempting to start over in another.

Both U.S. Visa and MasterCard have jointly funded numerous sting operations which have led to the arrest of many people involved in telemarketing fraud in Florida, Texas, Nevada and California.

Both U.S. Visa and MasterCard are pursuing legislation in the U.S. to make laundering of credit card drafts a federal offence.

APPENDIX 5: CANADIAN LEGISLATION

JURISDICTION	REGULATORY MEASURES (i.e. Registration/Licencing-Bonding)	STANDARDS	MISLEADING/DECEPTIVE REPRESENTATION/UNFAIR TRADE PRACTICES	REMEDIES
4. SASK	DIRECT SELLERS ACT  o requires anyone selling goods or services for future delivery by telephone to be registered & bonded	o direct sale contract must set out name & address of vendor  o cancellation rights within 10 days of signing contract  o vendor can't enforce contract unless licenced at time of contract		
5. MANITOBA	CONSUMER PROTECTION ACT - PART VII  o applies to sales resulting from telephone solicitations not requested by buyer  o must be licenced and bonded to act as direct seller	o vendor must give buyer written notice of cancellation rights  o 4 day period within which to cancel	TRADE PRACTICE INQUIRY ACT	
6. ONTARIO		CONSUMER PROTECTION ACT  o executory contracts not binding on buyer unless it is signed by both parties and duplicate original is in possession of each party	BUSINESS PRACTICES ACT  o includes false, misleading, deceptive representations	o voluntary compliance agreements  o rescission  o damages  o offences and fines
7. QUEBEC	CONSUMER PROTECTION ACT  o a merchant in a remote party sales contract cannot demand total or partial payment from consumer before performing principal obligation, unless he posts bond in prescribed form	o contract deemed entered into at the address of consumer	o provisions re false misleading representation to consumer	o voluntary compliance undertakings  o rescission o restitution o damages o offences and fines
8. NEW BRUNSWICK	DIRECT SELLERS ACT  o does not apply where seller and buyer and not in person			

# APPENDIX 5: CANADIAN LEGISLATION

JURISDICTION	REGULATORY MEASURES (i.e. Registration/Licencing-Bonding)	STANDARDS	MISLEADING/DECEPTIVE REPRESENTATION/UNFAIR TRADE PRACTICES	REMEDIES
1. CANADA	<p>RAILWAY ACT</p> <ul style="list-style-type: none"> <li>o power to CRTC to make orders re traffic, tolls and tariffs over telephone companies under federal jurisdiction</li> </ul> <p>TELECOM DECISION CRTC 85-2</p> <ul style="list-style-type: none"> <li>o ADADS users to register with telephone companies</li> </ul>	<ul style="list-style-type: none"> <li>o ADADS restrictions: <ul style="list-style-type: none"> <li>- 9:30am to 8pm weekdays</li> <li>- 10:30am to 5pm Sat</li> <li>- 12pm to 5pm Sunday</li> <li>- no sequential dialing</li> <li>- must disconnect within ten seconds</li> <li>- must disclose identity of caller, nature of call, give a telephone number of responsible party</li> </ul> </li> </ul>	<p>CRIMINAL CODE S.380:</p> <ul style="list-style-type: none"> <li>o offence to defraud the public of money or property by deceit or fraud</li> </ul> <p>COMPETITION ACT</p> <ul style="list-style-type: none"> <li>o deems representation in course of telephone selling to be a representation to the public</li> <li>o prohibits false, misleading representation</li> </ul>	<ul style="list-style-type: none"> <li>o action to recover damages for loss</li> <li>o prohibition order</li> <li>o offences and fines</li> </ul>
2. BRITISH COLUMBIA	<p>CONSUMER PROTECTION ACT</p> <ul style="list-style-type: none"> <li>o provisions of Consumer Protection Act do not apply to telephone solicitations if sale is solicited, negotiated or concluded at seller's permanent place of business</li> </ul>		<p>TRADE PRACTICES ACT</p> <ul style="list-style-type: none"> <li>o includes oral representations</li> </ul>	<ul style="list-style-type: none"> <li>o supplies undertakings</li> <li>o may reimburse consumer</li> <li>o civil action by consumer</li> <li>o restitution</li> <li>o rescission</li> <li>o damages</li> <li>o class action</li> <li>o substitute action by Director</li> <li>o offences and fines</li> </ul>
3. ALBERTA	<p>DIRECT SALES CANCELLATION</p> <ul style="list-style-type: none"> <li>o Act does not apply to telephone solicitations originating from seller's place of business</li> </ul>		<p>UNFAIR TRADE PRACTICES ACT</p> <ul style="list-style-type: none"> <li>o includes representation that could deceive or mislead consumers</li> </ul>	<ul style="list-style-type: none"> <li>o suppliers undertakings</li> <li>o civil action by consumer</li> <li>o restitution</li> <li>o rescission</li> <li>o damages</li> <li>o substitute actions for Director</li> <li>o offences and fines</li> </ul>



APPENDIX 5: CANADIAN LEGISLATION

JURISDICTION	REGULATORY MEASURES (i.e. Registration/Licencing-Bonding)	STANDARDS	MISLEADING/DECEPTIVE REPRESENTATION/UNFAIR TRADE PRACTICES	REMEDIES
9. NOVA SCOTIA	DIRECT SELLERS LICENSING AND REG. ACT o applies to soliciting orders for delivery of goods or services by telephone o requires seller to be licensed and bonded	o direct sales contract must set out name, description of goods, price, any warranty o cancellation rights within 10 days of signing contract o no action by seller to enforce contract unless licenced		
10. PRINCE EDWARD ISLAND	DIRECT SELLERS ACT o does not apply to sales not concluded in person between seller and buyer			
11. NFLD	DIRECT SELLERS ACT o applies to contact by telephone to solicit orders for future delivery o requires sellers to be licenced and bonded	o can recind contract within 10 days of entering into contract	TRADE PRACTICES ACT o misleading representations	o assurances of voluntary compliance o civil action o restitution o rescission o damages o substitute actions o offences and fines
12. N.W.T.	CONSUMER PROTECTION ORDINANCE o applies to telephone solicitations at buyer's home and not at buyer's request o requires direct sellers to be licenced			
13. YUKON	CONSUMER PROTECTION ORDINANCE o applies	o contract must include right to cancel within 7 days		

JURISDICTION	LEGISLATIVE MEASURES	VOLUNTARY MEASURES
U.S. FEDERAL	<p>WIRE FRAUD STATUTE:</p> <ul style="list-style-type: none"> <li>o prohibits transmission by wire for fraudulent purposes</li> </ul> <p>FEDERAL COMMUNICATIONS COMMISSION:</p> <ul style="list-style-type: none"> <li>o regulates telephone companies tariffs. i.e.: A.T.T. tariff that service is furnished subject to condition that it will not be used for unlawful purpose</li> </ul> <p>FEDERAL TRADE COMMISSION ACT:</p> <p>(i) - broad authority to FTC to prosecute unfair or deceptive acts or practices in or affecting interstate trade and commerce</p> <ul style="list-style-type: none"> <li>- Act allows FTC authority to apply ex parte in a Federal or District court for a temporary restraining order and to freeze assets where there is a reasonable belief that an unfair or deceptive practice has been committed</li> </ul> <p>(ii) U.S. FAIR CREDIT BILLING ACT:</p> <ul style="list-style-type: none"> <li>- for disputes re goods not received or quality of goods, Act allows consumer to take the same legal action against a credit card issuer as a consumer can take under his/her respective state law against the seller</li> <li>- allows consumer the right to dispute errors in credit card statement by contacting the issuing bank within 60 days to contest the charge. Bank is obligated to investigate the consumer's claim and if it is upheld, will charge back the amount to the merchants bank</li> <li>- consumer can also dispute a charge on a statement re unsatisfactory goods or service. Must first try to resolve dispute with the merchant; purchase must be over \$50; and made within 100 miles of consumer's residence. Consumer can withhold the amount in dispute from payment and must advise card issuer that he is relying on his statutory rights</li> </ul>	

JURISDICTION	LEGISLATIVE MEASURES	VOLUNTARY MEASURES
CALIFORNIA HAWAII INDIANA OREGON RHODE ISLAND WASHINGTON	<b>REGISTRATION:</b>  o Registration or licencing required for telephone solicitation using certain marketing techniques	
SOUTH DAKOTA MAINE	o Bonding is required in addition to registration	
NEBRASKA NEW HAMPSHIRE TEXAS	o Registration required only for telephone solicitation using ADADS	
CALIFORNIA NORTH CAROLINA	<b>ADADS:</b>  o ADADS laws generally regulate operating days and hours, disclosure statements, random and sequential dialing, prompt disconnection  o ADAD calls must be preceded by identification and disclosure made by a live operator who must also ascertain whether the called party wishes to hear the recorded message	
ALASKA CALIFORNIA COLORADO FLORIDA MISSISSIPPI NEVADA OREGON WISCONSIN	o Prohibition on use of ADADS to solicit goods or services where there is no pre-existing business relationship or prior consent	

JURISDICTION	LEGISLATIVE MEASURES	VOLUNTARY MEASURES
	<p>ASTERISK/DD NOT CALL LEGISLATION:</p> <ul style="list-style-type: none"> <li>o Legislation that allows consumers to indicate in a prescribed manner that they do not want to receive unsolicited sales calls</li> <li>o Several methods may be used including: <ul style="list-style-type: none"> <li>o requiring telephone companies to provide a do not call listing service in the telephone directory for which subscribers pay a fee</li> </ul> </li> </ul>	
FLORIDA OREGON		
MASSACHUSETTS	<ul style="list-style-type: none"> <li>o public utilities commission required to compile list of persons who do not want to be called and make list available for a fee to telemarketers</li> </ul>	
SOUTH CAROLINA WASHINGTON	<ul style="list-style-type: none"> <li>o telmarketers required to delete from their lists the name and telephone number of anyone who asks a telmarketer to do so during the course of a solicitation call, and to refrain from calling that person for a year</li> </ul>	

JURISDICTION	LEGISLATIVE MEASURES	VOLUNTARY MEASURES
	HOME SOLICITATION/TRADE PRACTICES LEGISLATION:	
ALABAMA	o Legislation generally applies when the solicitation call is initiated by or on behalf of the seller	
ARIZONA		
ARKANSAS	o Generally includes identification/disclosure requirements;	
CALIFORNIA		
COLORADO	o Mandatory cooling off period within which buyer may cancel transaction;	
DELAWARE		
FLORIDA	o Requirements regarding the form of the agreement and notification to the buyer of his/her cancellation rights;	
IDAHO		
MAINE	o Provision regarding restoration of any down payment made by consumers.	
MARYLAND		
MICHIGAN		
MINNESOTA		
MONTANA		
NEVADA		
NEW HAMPSHIRE		
NEW MEXICO		
NORTH DAKOTA		
OHIO		
OKLAHOMA		
OREGON		
PENNSYLVANIA		
SOUTH CAROLINA		
UTAH		
VIRGINIA		
WASHINGTON		
WISCONSIN		
WYOMING		
FLORIDA	o A contract made during a telephone solicitation call is not valid and enforceable against a consumer unless it is in writing and signed by the consumer	
OREGON		
	OTHER LEGISLATIVE MEASURES:	
FLORIDA	o ACT RELATING TO CREDIT CARD CRIMES:	
	- makes factoring of credit card transactions an offence, and a basis for civil action by state	
	o COMMUNICATIONS FRAUD ACT:	
	- prohibits use of communications technology to further schemes to defraud	

JURISDICTION	LEGISLATIVE MEASURES	VOLUNTARY MEASURES
FRANCE	<ul style="list-style-type: none"> <li>o Legislation requiring telemarketers to send a written confirmation of the offer to a consumer which is binding when the consumer signs the offer</li> <li>o Cooling off period of 7 days from delivery of goods, without penalty for returning goods</li> <li>o Must inform consumer of full price, description of goods, full cost of delivery</li> </ul>	<ul style="list-style-type: none"> <li>o Voluntary code of the Syndicat du marketing telephonique prohibits telephone solicitation where there is no existing relationship, or where not requested by the consumer</li> </ul>
UNITED KINGDOM		<ul style="list-style-type: none"> <li>o British Direct Marketing Association and the Office of Telecommunications are working to establish a do not call service</li> <li>o Voluntary guidelines established by government and endorsed by the BDMA have now been incorporated into British telephone directories</li> <li>- Disclosure required: ask if timing is convenient, name, identity, purpose, at start of call</li> <li>- Consumer should be sent copies of contract once they place an order</li> <li>- cooling off period or 7 days from receipt of contract</li> <li>- organizations should not sell customer lists without consent</li> </ul>