



Government
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What You Should Know About Telemarketing

<http://competition.ic.gc.ca>

Canada ¹¹⁻¹



COMPETITION
BUREAU

What Is the Competition Bureau?

The Competition Bureau (the Bureau) is part of Industry Canada and is headed by the Commissioner of Competition. The Commissioner is responsible for the administration and enforcement of the *Competition Act*, as well as three statutes concerning the accuracy and adequacy of information provided to consumers: the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

What Is the Competition Act?

The *Competition Act* is a federal law governing business conduct in Canada. It aims to promote competition in the marketplace by stopping anti-competitive practices. Most businesses, both small and large, are governed by this Act, which contains both criminal and civil provisions.

Telemarketing Under the Competition Act

In general usage, *telemarketing* refers to the selling of goods or services — everything from magazines to chimney and carpet cleaning services, photocopier toner, and even the solicitation of charitable donations — over the telephone.

Over the past decade, the vast majority of Canadians have become aware that telephone lines are frequently used by businesses to contact potential customers, including other businesses, either person-to-person, by pre-recorded messages, by fax or through Internet junk mail (commonly called “spam”).

Although most telephone sales calls come from legitimate businesses or charities, the telephone can also be used to trick unsuspecting consumers and businesses out of their money — money that can seldom be recovered.

As a consequence of the activities of the unscrupulous minority of telemarketers, the *Competition Act* was amended in 1999 to include a criminal section, section 52.1, that pertains specifically to all telemarketing activities.

In an effort to better inform potential targets of the problems that some deceptive telemarketing operations cause and to help them identify possible telemarketing scams and avoid personal financial losses, the Bureau, in conjunction with other agencies and the private sector, has co-authored a pamphlet entitled *Stop Phone Fraud — It's a Trap!* The pamphlet is intended to aid consumers and businesses by outlining the kinds of information they should demand from telemarketers in order to “check out” their offer.

This pamphlet is designed to assist businesses in complying with the provisions of the *Competition Act*. It approaches the law from the telemarketer's point of view by describing the disclosure requirements and penalties outlined in the Act, and by briefly explaining the Bureau's interpretation of this section of law.

Telemarketers' Requirements Under the Competition Act

Telemarketing Defined

Section 52.1 of the *Competition Act* defines telemarketing as:

The practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

The Bureau's Telemarketing Information Bulletin defines an interactive telephone communication as a live-voice telephone conversation between two or more persons, which excludes pre-recorded telephone messages, Internet or fax communications.

It should be noted, however, that any misrepresentations made via these three forms of communication are covered under either section 52 or 74 — the criminal and civil general prohibitions regarding the making of false or misleading representations — of the *Competition Act*.

Telemarketers' Disclosure Requirements

With telemarketing, consumers often do not know with whom they are dealing, and offers are not made in print where they can be carefully considered, or on television or radio where they are repeated often, but are made instead during a telephone conversation. Therefore, the law requires that all of the following facts must be disclosed by the telemarketer to each called person or business at appropriate times during each telephone call.

At the beginning of each call the telemarketer must disclose:

- the name of the company or person the caller is working for;
- the type of product or business interest he or she is promoting; and
- the purpose of the call.

At some other time during each call they must also disclose:

- the price of any product or service being promoted; and
- any restrictions or conditions that must be met before the product is delivered.

In addition, the law forbids telemarketers to:

- make any representation that is false or misleading in a material respect;

- conduct a contest, lottery or other game where delivery of the prize is conditional on payment in advance, or where the approximate value of the prizes and other facts that affect the chances of winning are not fairly disclosed;
- offer a free gift or a product at minimal cost as an inducement to buy a second product (this is acceptable if they disclose the approximate value of the gift or premium); and
- require payment in advance where the price of the product upon delivery is found to be grossly in excess of the fair market value of that product.

Responsibility and Liability of Corporations, Corporate Officers and Directors

Section 52.1 specifically makes corporations legally liable for the illegal telemarketing activities of their employees and agents, even if those activities cannot be ascribed to a particular individual, unless the corporation establishes that it exercised due diligence in trying to prevent the commission of the offence.

In addition, when a corporation, or any of its employees or agents, is shown to have committed an offence under this section, any officer or director of the company who is in a position to direct or influence the policies of the company in regards to the activities covered by this section, is considered to be a party to, and guilty of, the crime and is liable to the penalties provided for by this section, unless the officer or director can establish that he or she exercised due diligence in trying to prevent the commission of the offence.

Penalties Under the Competition Act

Any person convicted on indictment under this criminal section can face fines at the discretion of the court and/or can be imprisoned for up to five years.

Any person found guilty under this section on summary conviction can be fined up to \$200 000 per count and/or can be imprisoned for up to one year.

How Do I Report Deceptive Telemarketing?

Deceptive telemarketing is a criminal offence. If you or someone you know has been a victim of this crime, contact the Competition Bureau.

The Bureau conducts its investigations in private and keeps confidential the identity of the source and the information provided. However, if someone has important evidence about an offence under the *Competition Act*, that person may be asked to testify in court.

Advisory Opinions

The Competition Bureau facilitates compliance with the law by providing various types of advisory opinions subject to fees. Company officials, lawyers and others are encouraged to request an opinion on whether the implementation of a proposed business plan or practice would raise an issue under the *Competition Act*. A specific opinion will be based on information provided by the requestor and will take into account previous case law, prior opinions and the stated policies of the Bureau.

The Bureau produces videos and publications on various aspects of the Competition Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act and the Precious Metals Marking Act. To find out more about our videos and publications, contact the Information Centre:

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Competition Bureau
Industry Canada
50 Victoria Street
Hull QC K1A 0C9

Toll-free: 1-800-348-5358

National Capital Region: (819) 997-4282

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This publication is only a guide. It provides basic information about the Competition Bureau and the Competition Act. For further information, you should refer to the full text of the Competition Act or contact the Competition Bureau at one of the numbers listed above.

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