

*THE STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS
EVIDENCE – UNREVISED-NON-RÉVISÉ*

OTTAWA, Tuesday, November 15, 2005

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-37, to amend the Telecommunications Act, met this day at 9:00 a.m. to give consideration to the bill.

[... edited ...]

I will now invite our next witnesses, who are from the Public Interest Advocacy Centre, to come forward.

Welcome. You have five minutes, and then we get to ask questions.

John Lawford, Counsel, Public Interest Advocacy Centre: The Public Interest Advocacy Centre is the first consumer group and I believe the only that has testified before either committee so far, and I wish to underline that.

Consumers do want this legislation. That I will make clear. The most recent survey from the Environics poll makes that clear as well. However, there are certain elements to this bill that we would like to deal with in your committee rather than in the public notice process before the CRTC. Our submissions are highlighting three but now four concerns that have come up in the deliberations so far.

I will add one right off the bat, and that is through all of the committee hearings we have heard this list will be run at no cost to consumers. Our concern is that there is nothing in the legislation to guarantee that. I believe the experience in the United States has been that there was some seed money given from Congress to start up their do-not-call list in the case that there were not enough funds from telemarketers to actually run the list. Our concern is that there may be a facility within the legislation to make charges to consumers or there is nothing in there that actually prohibits it and that is a new addition to our submissions.

The other three concerns we have in representing consumers are, first, the exemptions under the bill are wide and they do not make a proper balancing between consumer privacy interests and business need to contact existing customers.

I would like to deal with the issue which has not been dealt with, and you will hear about I believe with the next panel, and that is charitable solicitation telemarketing. Charities represent 44 per cent of calls. That is what the latest Environics poll has shown us. These calls at the moment are exempted almost completely except the charity has to keep a secondary list under this legislation. Our concern is that charitable organizations may not be able to keep their lists up in the fashion that is necessary and either will run the risk, through lack of resources or negligence, of continuing to call consumers who have expressed a concern about being called and would like to be placed on the secondary list. We propose an amendment to have the do-not-call administrators keep the secondary lists for the charities. Whether that is feasible is something I would like to explore with you in questions.

Second is the business exemption for existing business relationship. The existing business relationship is not exactly parallel to the United States' existing business relationship in at least one aspect, and that is with inquiries and applications. In the United States my understanding is that if you make an inquiry or application that that is three months. You have three months to call after an inquiry or application. In our bill it is six months. I do not see the difference if we are modelling between the two countries if we are trying to keep them parallel why there is the difference.

We feel that the existing business relationship exemption in general is awfully long and that 18 months is not a reasonable amount of time to call customers after they have had a relationship with a

business and that has ended. Eighteen months of tail calling is a long time and we think that most consumers would consider that to be incompatible with the creation of a do-not-call list.

Finally, we are concerned about the consent issue. You have heard about consent in cyclical businesses. Our concern is from a more privacy point of view and that is that often with the business card in the fish bowl example that has been given people do not know that that will lead to telemarketing, that that consent is not clear. If you are to address a consent override in this bill, perhaps you could consider putting in an amendment to clarify how long that consent is good for. We would like it to be very short, actually non-existent, but we realize that there are some practicalities with people who need to call in two years, for example.

Our last two concerns deal with issues that have been touched on only once and that is, first, who will run this database. Our concern is that the administrator of this database should be a truly independent administrator.

At the moment there has been some interest expressed by the Canadian Marketing Association in running this database. We do not think that is a proper administrator for the database. They will not look after the public interest because they will be in a conflict position with their own members who are also telemarketers or heavy users of telemarketing services. In that instance, we ask the committee to consider moving an amendment that will make the independence of the administrator from all telemarketing a requirement so that you cannot be in the business of marketing or representing telemarketers and be the administrator of the list.

Finally, one issue that was briefly touched on by the representative of the CRTC is voice casting or what is called leaving voice mail in people's voice mail boxes without ringing the telephone. At the moment, the CRTC has allowed that to occur outside of the telemarketing rules. We are not pleased with that result. It would surprise people if the do-not-call list covered telephones ringing but not voice mail messages left in their voice mail boxes. We think a technical amendment to specify in the definition of "telecommunications" that these voice mail messages directly to voice mail boxes without ringing the phone would be covered by the do-not-call list.

Those are our submissions and I welcome any questions from the senators.

Senator Tkachuk: The Environics poll indicated that that not only did 44 per cent of calls come from charities, but also 24 per cent of the calls are from companies with which the callers have an ongoing business relationship, which are also exempt. In addition, about 27 per cent of the calls were cold calls from companies they have never heard of before, which could also be newspapers or, perhaps, polling firms. We have a situation where, if you take the charities and the companies that they have, that represents 68 per cent of all the calls that people get that are on telemarketing. The others could be political parties or from the other exempt list. Do you favour all these exemptions?

Mr. Lawford: No. Our position before the committee in the other place is that we do not want any exemptions at all. The exemptions train seems to have left the station and we are taking a more pragmatic approach here before you.

If it were possible to run the lists for the three years with no exemptions, that would be our favoured position. However, given the fact that we are here today and the legislation is as far along as it is, we thought that taking that position would be viewed as being unreasonable. It would be interesting to see the results on the calls because, as you say, that involves the majority of the calls and what are we really cutting out here if we do pass it with exemptions. That would be somewhat addressed by reducing the existing business relationship from the rather lengthy period which is being suggested by the marketing association; that would help somewhat. It would also help somewhat if we were to consider a less wide charitable exemption, but I will stop there.

Senator Tkachuk: Are you concerned about the cloudiness of the law? The law is not very specific. People could get caught up in this. Are you happy with the law the way it exists? Would you like to see some improvements? Do you care, because you are just protecting consumers and not necessarily the people who may be caught in this web?

Mr. Lawford: By "the law," you mean the new sections of the Telecommunications Act?

Senator Tkachuk: Yes.

Mr. Lawford: We would like to have more detail. We look forward to doing some of that in the regulations that are made before the CRTC. For example, someone raised the issue of how many people, once I call a business, how many other related businesses can call me? If it is Bell Canada who calls me and I say, "No," would Bell Mobility be able to call me and then Bell ExpressVu? Right now the legislation talks about any person or organization may call me. What does "organization" mean? We would like it to be simply "that organization." In that way, if Bell Canada calls me and they have my consent to call me or they have an existing business relationship with me, that does not give a separate legal identity like Bell Mobility the right to call me just because they both use the word "Bell" in their names. I believe that is the rule in the United States. There is a test where a reasonable consumer would consider the two entities somewhat related. We would prefer a stricter test where if a legal entity calls me, if you have a related business, but it is a different legal entity, you do not get an existing legal relationship covering both businesses.

Senator Tkachuk: Were you concerned about what the Federation of Independent Business said and some of the problems that they said they might experience? There is even some confusion about the \$15,000, whether it is a \$15,000 fine for the infraction or it is \$15,000 per call, which is a whole different story. If it is per call, which I think it is, three calls is \$45,000. The fine is per call, not \$15,000 for the actual event. That can be a fairly substantial amount of money.

Mr. Lawford: It is a difficult situation to set up. Perhaps it could be refined in creating a middle category. The fine must be high enough to deter hard-core telemarketers who will continue despite the violations. On the other hand, if it is a small business making a genuine error, you do not want to penalize them with that high a fine unless they really are acting like a hard-core telemarketer and avoiding the do-not-call list completely. Perhaps we could consider a middle ground. I do share those concerns to that extent.

The small business owners, however, who cold call people would be caught by the legislation. From a consumer point of view, we feel that that method of first contacting is to be balanced against the intrusiveness of that method of calling.

Senator Tkachuk: If a person puts his or her name in the phone book, why do you put your name in the phone book unless you want people to call you? I do not understand this. I am a consumer, too. Once I put my name in the phone book, I want people to call me. That is why I am in the phone book. I do not put my name in the phone book so people do not phone me. Why should the small business not be able to call to see if he can sell you a car, some insurance or a pizza. You put your name in the phone book; take it out of the phonebook and then you will not get the call.

Mr. Lawford: Consumers are saying that cumulatively those calls are annoying.

Senator Tkachuk: Excuse me.

Mr. Lawford: In the surveys they say they would like to be able to reduce calls. Perhaps those surveys were not refined enough in the sense that perhaps they would like to reduce calls from large organizations who will be exempted by this business relationship even more than from small businesses, but we do not have that information. It is difficult; I can see where you are coming from.

Senator Tkachuk: People do not like advertising on television, either. They do not like anything. They do not like all the flyers in the paper. You have to be more precise than that.

The Chairman: Many people like the flyers.

Senator Tkachuk: I do, too; I like the coupons.

(French follows -- Sen. Chaput -- Votre centre...)

(après anglais)

Le sénateur Chaput : Votre centre est à but non lucratif et votre association existe à l'échelle nationale canadienne. Les consommateurs que vous représentez, quels sont-ils et combien sont-ils? Vous devez sûrement les consulter, alors comment vous y prenez-vous? Quel genre de processus suivez-vous pour témoigner des inquiétudes de vos consommateurs?

M. Lawford : Notre association compte environ mille membres. Nous recevons des plaintes directement des consommateurs par courriel ou par téléphone.

Nous avons également une certaine expérience comme représentant des consommateurs lors des audiences du CRTC. Nous avons fait des consultations auprès de différents groupes de consommateurs tels l'Union des consommateurs du Québec, Option Consommateurs et le BCPIAC en Colombie-Britannique. Tout récemment, nous avons mis de l'avant une initiative visant à former un collectif des différents groupes.

Nous ne sommes donc pas tout à fait au bas de l'échelle. Notre centre est là pour parler de ces sujets.

Le sénateur Chaput : Vous avez mentionné certains groupes et associations.

M. Lawford : Option Consommateurs et aussi l'Union des consommateurs du Québec.

Le sénateur Chaput : Est-ce qu'on retrouve ces groupes dans chaque province ou à travers le Canada?

M. Lawford : Non, malheureusement. L'Association des consommateurs du Canada a des sections régionales dans quelques provinces. On retrouve de ces groupes surtout au Québec, en Colombie-Britannique et en Ontario.

Le sénateur Chaput : Comment procédez-vous pour consulter les consommateurs qui demeurent dans ces quelques provinces où on ne retrouve pas de regroupement de consommateurs?

M. Lawford : Les effectifs du Centre pour la défense de l'intérêt public est plutôt minime. Nous n'avons que trois personnes qui y travaillent. Par le biais de notre conseil d'administration, nous recevons des nominations pour diverses régions. Nous acceptons les plaintes directement des consommateurs de ces régions. Toutefois, nous n'avons pas de processus formel.

(Sen. Munson: Do you think that we are moving too fast...)

(anglais suit)

(Following French- de processus formel.)

Senator Munson: Do you think we are moving too fast and that we should sit back and reflect and have amendments to send back to the House on this whole issue? If so, what should they be? We have heard so many diverse voices. At the beginning of the day it was almost a slam dunk. It does not seem to be any more.

Mr. Lawford: That is an interesting set of tactics.

When we started this process the CRTC, I believe, initially testified before the Commons and expected the first draft of the bill would go through and it was just give us monetary penalties and let us set up of list and trust us to do the rest in a public notice. Then the Commons committee heard from charitable groups and business organizations that there should be exemptions and for some reason did not hear from us. Now you are hearing from us and from other groups that seem to have had some difficulty in getting their concerns heard.

Yes, I believe it is moving very fast. We were prepared to live with the process in front of the CRTC in a public notice situation because the CRTC has dealt with it for 12 or 15 years. However, we were expecting it to come back without amendments. Coming back with a few amendments that we do not like is not our preferred option, and having it go through so quickly is doubly bad. At this point we are asking for amendments that would be favourable to consumer groups before it is sent back, or a plain vanilla version of the bill as it was and let the CRTC go through all of these questions.

We would prefer if you were just able to make the amendments that we felt were of importance and get the list done now because time is ticking.

Senator Munson: Could you walk us briefly through that again? I would like to know.

Mr. Lawford: Sure. The first concern we have is that there is a secondary list requirement for both businesses and charities. That secondary list requirement we are concerned will not be effective because the charities and businesses themselves are responsible for keeping those lists. They then

face enforcement if they do not keep them up to date. We have heard from the independent business people that it would be difficult to keep their lists up to date. I suspect it would be the same for charities, small or large, whatever. Why not consider an amendment that lets the do-not-call list keep individual names associated with individual charities? You would have to be careful about keeping that information private, but perhaps they could run it. In that way, the secondary lists would also be administered by the national do-not-call registry. That is the first concern.

Our second concern is questioning, in the existing business-customer relationship amendment, an amendment to that section. First, for inquiries and applications, at the very least, it should reduce from a six-month window after an inquiry application to three months. We would prefer it did not exist at all. However, if you want to line it up with the United States, it is three months.

We would also like you to consider a shorter exemption than the 18 months at the moment after the contract ends, which seems a long time to be taking calls from a business with which you may or may not have severed ties voluntarily or otherwise.

As a side note on that, it seems that the issue of waivers or consent -- in other words a business can ask for an exemption from the list -- is not dealt with in the act. It seems that parties have a lot of different opinions on that. We would like it so that it must be a clear exemption if at all, and the consumers know and they opt in rather than opting out. Perhaps that should be dealt with here.

We do want to keep the do-not-call list out of the hands of marketers just because they are the other side, and we need an independent administrator. We would like that to be someone who does not have a marketing relationship.

The final one is if voice mail is to be the new way of marketing, it is a good way to avoid this list if it is not covered and we would like to be darn sure that that loophole, if you will, is closed.

Those are our four suggestions for the bill at the moment. Otherwise, we do want the lists to go ahead.

The Chairman: Thank you for a very interesting presentation. We are grateful to you. I am sorry not to be able to keep you longer, but we are running out of time.

Mr. Lawford: I appreciate that.