



## Telecom Decision CRTC 2009-605

Ottawa, 30 September 2009

### McTavish Logistics Ltd. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-390

*In this decision, the Commission imposes administrative monetary penalties totalling \$5,000 on McTavish Logistics Ltd. for unsolicited telemarketing telecommunications initiated on its behalf to consumers whose telecommunications numbers were registered on the National Do Not Call List, and for the use of an automatic dialing-announcing device to make unsolicited telemarketing calls to consumers on its behalf, in violation of the Unsolicited Telecommunications Rules.*

1. Between 18 October 2008 and 16 March 2009, the Commission received numerous complaints in relation to telemarketing telecommunications made by McTavish Logistics Ltd. (McTavish Logistics). On 13 July 2009, a notice of violation was issued to McTavish Logistics pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice alleged that telemarketing telecommunications were made on behalf of McTavish Logistics in violation of Part II, section 4, and Part IV, section 2 of the Unsolicited Telecommunications Rules (the Rules).<sup>1</sup>
2. McTavish Logistics was given until 14 August 2009 to pay the administrative monetary penalties (AMPs) set out in the notice of violation or to make representations to the Commission with respect to the violations.<sup>2</sup>
3. On 3 September 2009, the Commission received representations by Ilya Nikitine on behalf of McTavish Logistics. These representations were dated 31 August 2009 in accordance with the extension granted subsequent to the notice of violation.
4. In its representations, McTavish Logistics submitted that natural justice permits it to orally examine under oath complainants who have filed affidavits. The Commission considers that in the circumstances McTavish Logistics does not have a right to cross-examine those who have filed affidavits.

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<sup>1</sup> Part II, section 4 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunications number that is on the National Do Not Call List, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer. Part IV, section 2 of the Rules states that a telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication via an automatic dialing-announcing device (ADAD) unless express consent has been provided by the consumer to receive a telemarketing telecommunication via an ADAD from that telemarketer or the client of that telemarketer. For greater certainty and without limiting the generality of the foregoing, this prohibition includes telemarketing telecommunications via an ADAD that are initiated by or on behalf of a charity, for the purpose of requesting a consumer to hold until a telemarketer is available, for activities such as radio station promotions, or for referring consumers to 900 or 976 service numbers.

<sup>2</sup> This deadline was subsequently extended.

5. McTavish Logistics alleged that the National Do Not Call List regime violates its right to freedom of expression as guaranteed by paragraph 2(b) of the *Canadian Charter of Rights and Freedoms* (the Charter). The Commission notes that Charter rights and freedoms are not absolute and considers that the provisions applicable in this case are justified under section 1 of the Charter.
6. McTavish Logistics did not address the findings set out in the 13 July 2009 notice of violation.
7. The Commission finds that telemarketing telecommunications were made on behalf of McTavish Logistics in violation of Part II, section 4, and Part IV, section 2 of the Rules, as detailed in the 13 July 2009 notice of violation.
8. In the circumstances of this case, the Commission considers that a penalty totalling \$5,000 for the violations committed by McTavish Logistics, as verified through affidavits by complainants, to be appropriate. The Commission therefore imposes AMPs totalling \$5,000 on McTavish Logistics.
9. The Commission hereby notifies McTavish Logistics of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to appeal this decision to the Federal Court of Appeal under section 64 of the Act. Any review and vary application under section 62 must be made within 30 days of the date of this decision. An appeal from this decision may be brought in the Federal Court of Appeal with the leave of that Court. Leave to appeal must be applied for within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
10. The amount of \$5,000 is due by **30 October 2009** and is to be paid in accordance with the instructions contained in the notice of violation. For any amount owing that is not paid by **30 October 2009**, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.
11. If payment of the debt has not been received within 30 days of the date of this decision, the Commission intends to certify the unpaid amount and register the certificate with the Federal Court in order to collect the amount owing.

Secretary General

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