

Lobbying

Do-Not-Call registry could be law as early as next year

■ *Some industry stakeholders have 'mixed feelings' about Bill C-37 and are pushing government for more amendments, such as exempting all non-profit organizations.*

By KADY O'MALLEY

Nearly four years after the United States declared war on unwanted telemarketing calls, a Canadian version of the Do-Not-Call registry may become reality as early as next year. Just before the House rose for the summer break, the Industry Committee reported back to the House on Bill C-37, the bill that would establish the registry.

After months of hearings and intense debate, in its report, the committee made some significant amendments to the original bill, most notably an exemption for charitable organizations, as well as for businesses and organizations contacting an individual with whom there was an existing relationship. Survey calls and calls from political parties would also be exempted from the legislation.

That change was welcomed by the **Association of Fundraising Professionals**, one of several organizations that had expressed concerns over how the original bill could affect charities that depend on telemarketing to attract supporters and raise funds.

"As originally drafted, the bill provided no exemptions for charities," recalls AFP government relations committee chair **Tad Brown**.

"Our submission was that charities should be treated differently, since there is a big difference between a charitable and a commercial transaction."

Mr. Brown points out that individuals have always had the ability to request that any particular charity remove them from the calling list, which is included in the association's code of ethics.

"What this exemption does is allow charities the opportunity for first contact, to be able to call and educate an individual about what their charity does, and have that first opportunity to solicit support, whether financial, or as a volunteer."

Without the exemption, he says, someone who adds their name to the Do-Not-Call list might not realize that it would also preclude contact from their university, the local hospital, or a Boy Scout club.

Although he says he's pleased with the amended bill, Mr. Brown would like to see the government go one step further, and include all non-profit organizations under the exemption.

"There are another 80,000 not-for-profit organizations that the exemption doesn't currently cover, which is everything from sports organizations to local community groups, and the exemption would be better if it was extended to all these groups."

That's a concern shared by **Peter Broder**, director of regulatory affairs for **Imagine Canada**, the organization created from the merger of the **Canadian Centre for Philanthropy** and the **Coalition of National Voluntary Organizations**.

"We recognize that it is a bit of a challenge, in terms of recognizing charities that exist in common law, but aren't recognized by the Canada Revenue Agency, and there are non profit organizations that do telemarketing as well. If a way could be

found to address the needs of those organizations, it would be helpful."

Many of these organizations are small, and rely heavily on volunteers, he points out.

"Whenever there is uncertainty around regulations, it's a challenge in terms of communicating it to the relevant people, and oftentimes, there aren't sufficient in-house resources to do a lot of interpretation."

He hopes that where there is a regulatory obligation, there will be "a lot of certainty" in terms of what will be required, and adequate efforts made to educate organizations.

"That is hugely important, because when you're relying heavily on volunteers, making sure they understand is a huge issue."

Pollster **Nik Nanos**, president elect of the **Marketing Research and Intelligence Association**, says that the organization has "mixed feelings" about the bill.

"We were pretty happy that the committee chose to exempt survey calls from the registry, but there's a bit of an unexpected glitch with one of the last minute amendments, which proposes that the client be identified."

That would present a major statistical problem for pollsters, he says.

"If someone is conducting a survey for a political party, and has to identify the client, it could skew the results. We see this as an unintended outcome of an attempt to nip in the bud aggressive telemarketers, so that people would know on whose behalf they were calling."

He says he expects to see the provision corrected at the Senate level.

"With that exception, we're very supportive of the bill, because it exempts survey calls, and focuses on telemarketing, and our feeling is that it will pass quickly in the fall, because there is broad party support."

The legislation represents a political win for everyone, he says.

"It's good news for all stakeholders, including those in the market research industry."

Over at the **Canadian Marketing Association**, association president **John Gustavson** is "essentially pleased" by the amended bill, particularly the exemption for previously existing business relationships.

"We support the exemption for the ability to call current customers, even those who are on the Do-Not-Call list, because people who have chosen to do business with you don't mind hearing from you, and often find it useful."

The amended bill would also define what a current customer is, he notes.

"That's a bit unusual, since those issues are often left to the regulators, but even the CRTC witness said to the committee that traditionally, it hasn't exempted charities or calls to current customers. The phrase he used was, 'If you leave it to us, this is our starting point, so if Parliament wants something else, give us some guidance.' That's why we wanted to see some direction from Parliament in developing a decent definition of what a current customer is."

As a result, he says, the committee followed the American lead.

"If you've made an inquiry about a product or service, [the American definition] gives three months to contact you, even if you're on the Do-Not-Call list."

In Canada, a company would have six months to contact a customer whose name appears on the list—but if that customer tells that company not to contact them by

phone, the company would comply.

"One of the main reasons we've supported this, and called for this since 2001, is that no marketer wants to contact a customer who would prefer to be reached by other means," explains Mr. Gustavson.

"There is television, mail, newspaper advertising—there are lots of other ways to reach them."

Ottawa lobby firm **Temple Scott** is monitoring developments on the bill on behalf of several clients, including **Mastercard**. According to senior associate **Don Moors**, one of the key concerns about the original bill was that it was a framework.

"Much of the detail of the policy, particularly the exemptions, would be left to the CRTC. The main area with which we were concerned was whether there would be an exception for existing customers, and our position was that this was a major policy decision that should be made by Parliament, not the CRTC."

His clients are satisfied with the amendments, he says. "The committee spent a lot of time studying the bill, and we're satisfied that they tried to dig into the corners, and understand the issues, and come up with a good policy on existing customers, and how to define them, based on the U.S. example."

Most internal companies already have an internal Do-Not-Call list, he notes, and there is already privacy legislation that covers how existing clients can be contacted.

"Instead of putting in a framework bill, and letting it work out over two years, this is much better," he said.

Not everyone is happy with the proposed amendments, however. **Privacy Commissioner Jennifer Stoddart** appeared before the committee last spring to argue against changing the bill to allow for more exemptions.

"We preferred the bill as it was," explains Privacy Commissioner spokesperson **Anne Marie Hayden**.

"Ultimately, we support the legislation, which we believe will enhance privacy, but those amendments will make it a little less effective."

The **Canadian Newspaper Association** has also voiced concern over how the legislation could affect their industry, and has updated its lobby registration to include C-37 as a specific area of interest.

"We have some concerns about the impact of the changes to telemarketing rules," explains association director **David Gollob**.

"Newspapers have been incredibly vigilant in maintaining their own Do-Not-Call lists. These are businesses that have been around for years—the *Ottawa Citizen* is celebrating its 150th anniversary. We never would have survived and prospered had we not the highest possible respect for our customers and readers, so we don't feel that the problem is with us," he said.

He feels that the bill has been "hurried" through Parliament without sufficient study.

"It's clear that there was a feeling that this was a popular measure, and that something should be done, and we don't dispute the objectives of the bill. But when they brought in similar legislation in the United States, there were more than 60,000 submissions from people concerned over the impact, so our question is whether there has really been enough discussion in Canada."

At the moment, he said, the association is talking with Parliamentarians to get a



Photograph by Jake Wright, The Hill Times

Talk to me: Industry Minister David Emerson's Do-Not-Call legislation, C-37, is expected to sail through Parliament this fall, but some interest groups have 'mixed feelings' about amendments made at the committee level last spring.

better understanding on where they stand.

"Virtually everyone who has heard what newspapers have to say, when we talk about the role that we play in society, and in terms of providing a forum for public debate and information, and maintaining an informed citizenry, will pause to reflect on that. They're supportive of what we're all about."

He wouldn't say whether the association will recommend that the Senate make further amendments to the bill, however.

"We're still formulating what it is that we want to see, and trying to understand what can work, so that the public interest continues to be served."

Despite those concerns, it's likely that the bill will be up for report and third reading debates soon after the House reconvenes in September. Given the all-party support that the amendments garnered at the committee table, it could make its way to the Senate in time for Royal Assent before the anticipated mid-winter election call, and most of the groups that have been active in lobbying on the issue to date expect that it will pass easily.

"This is a popular bill," noted Mr. Gustavson.

"If I was about to run an election, I'd like to say I voted to get rid of annoying telephone calls. It has business support, public support and political support — it might be the most popular piece of legislation they can pass this fall."

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