

# **CONSUMERS COUNCIL OF CANADA**

Before the Canadian Radio-television and  
Telecommunications Commission

Broadcasting and Telecom Notice of Consultation  
CRTC 2018-246, 2018-246-1

Report regarding the retail sales practices of  
Canadas large telecommunications carriers (LTCs)

## **Final Submission**

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## I Introduction & Recommendations

7 This is the Final Submission of the Consumers Council of Canada (the “Council”) regarding the Broadcast and Telecom Notice of Consultation CRTC 2018-246, 2018-246-1 Report regarding the retail sales practices of Canada’s large telecommunication carriers. The Council is a not-for-profit organization that supports an improved marketplace, focusing its advocacy on the rights and responsibilities of consumers.

8 The Council highlights five recommendations, summarized here, and detailed further below:

- *The LTCs, rather than just identifying what they believe is wrong with the Ipsos POR, should focus on what is right in it. Use that as a baseline going forward for measured and identified improvement.*
- *The Commission should give a clear accounting of types of complaints it heard in the proceedings that are within its mandate to control or regulate, and the types that are outside its mandate, and more appropriately handled by other consumer protection agencies.*
- *All LTCs should make eminently clear to customers, and potential customers, that they have the option of requesting a recording or transcription of any sales or customer service call. The CCTS should have access to all such recordings/transcripts in investigating a complaint.*
- *Should the CCTS take on responsibility for complaints on misleading and aggressive sales practices, ensure that strict procedures, including monitoring and enforcement, are in place to ensure that the LTCs direct all, or most, customers with unresolved complaints to the CCTS.*

## II Continuing Denial in the Face of Mounting Evidence - The Usual Story

9 In the face of mounting evidence to the contrary, the LTCs continue to hold their position during these proceedings, softening it only slightly, that their misleading and aggressive sales practices are neither systemic in the industry, nor significant. Some argue that perhaps some other carriers (not us they say, except Bell) may have such issues, or that where existing they are only nominal, misunderstandings or misclassifications, and those few that arise are rectified immediately. Furthermore, they argue, almost in unison, it

can't be systemic because we post our values on our websites, we train our people thoroughly and properly, and we consistently apply high grade monitoring, end-to-end surveying (and corrections), and proper procedures.

- 10 The LTCs may believe it, and they may have in place the training and processes to prevent its systemic appearance. Nevertheless, a significant portion of Canadians don't share the belief that instances of misleading or aggressive practices amongst the LTCs are nominal.
- 11 The LTCs, rather than just identifying what they think is wrong with the Ipsos POR, should focus on what is right in it. Use that as a baseline going forward for measured and identified improvement; or they should arrange for a statistically and methodologically sound survey, conducted by an independent national professional organization to support their claims and criticisms. The Council would strongly recommend that they broadly consult on the questions they select to ensure they are not subject to the same criticism they directed at the Commission's Ipsos POR. In essence, they perform an objective reconciliation of the starkly contrasting views.
- 12 Where true gaps exist, a clear implementation plan for improvement should be put forward, with stated timing and metrics, and specific remedies or efforts to be made should those metrics not be met on time. The Commission should consider independent and significant monitoring and enforcement of such plans.
- 13 The Council admits that there may be a undetermined amount of survey bias, or debatable questions, in the Ipsos POR, that some consumers may have views that are misinformed, and that there are some badly behaving consumers. However, there is no widely agreed cogent and comprehensive deconstruction of the Ipsos POR that would cause a reasonable person to believe that only a nominal number of Canadians have been the recipients of misleading or aggressive sales practices. To be frank, the Council is not prepared to take the word of the LTCs that their various criticisms are adequate to whittle away the views of the majority of the 24% of Canadians who indicate that they have had a misleading or aggressive sales practice from an LTC in the past year.
- 14 The Council recommends that the Commission one year hence, and every second year thereafter, conduct a similar (corrected/improved) survey to track whether the LTCs are indeed providing the benefits of their training and processes etc. to the Canadian populace. A sample size adequate to quell any arguments from the largest of the larger LTCs that their individual customer base is not statistically represented, should be achieved.

- 15 The Council realizes that surveys, conducted properly, are not inexpensive. But neither are CRTC hearings.

### III Consumer Protection

- 16 There was little push by the LTCs to broadly change regulations or the consumer protection regime. It's all there, consumers just need to be told, they largely say. For example, Telus notes:

*"...misleading sales practices are already prohibited under a number of legal instruments, including CRTC frameworks, the deceptive marketing provisions of the Competition Act and other laws or general application." (Telus Testimony, p4839)*

*"the record of this proceeding has not disclosed a lack of substantive rules on sales practices; rather, what the record does disclose is an access to justice problem, which can be addressed by directing CISC to develop a code of conduct covering misleading and aggressive sales practice." (Telus Testimony, p4810)*

- 17 The Council asks that in the Commission's final report of the hearings that they give a clear accounting of types of complaints it heard with regard to sales practices that are within its purview to control or regulate, and the types of complaints that are outside its mandate to address, and more appropriately handled by consumer protection agencies such as the Competition Bureau, provincial consumer ministries, or other federal and provincial departments and agencies. It believes that a summary of this nature will give the public valuable insight into the complex regulatory landscape affecting the business practices of LTCs.
- 18 The Competition Bureau in its intervention laid out its responsibilities regarding misleading and aggressive sales practices, but also made it clear that much of what would be considered aggressive sales practices falls outside its purview.
- 19 The Council notes also that the witnesses were routinely questioned by CRTC Commissioners on their personal definition of what constitutes misrepresentation and aggressive and unfair sales practices. Misleading representations and aggressive sales practices on vulnerable consumers (unconscionable conduct) are offences under provincial and federal laws administered by the agencies mentioned above. Many agencies chose not to weigh in on the hearings and it appears as if they were not strongly compelled by the CRTC to do so. Only Ministère de la Culture et des Communications et l'Office de la protection du consommateur supplied an intervention.

20 It would seem that these agencies would have had much to say regarding legal definitions of misrepresentation and unconscionable conduct and the quality of the hearing would have been better with their input. The Council would therefore ask that the Commission solicit the provincial consumer protection agencies to opine, and the Competition Bureau to further comment, on the nature of the types of complaints heard at the hearing and which ones potentially raise issues under their respective statutes, and then provide a summary of their opinions in its final report.

21 The Council reiterates a response made to a question from the Commission at testimony regarding the definition of aggressive. It believes aggressiveness in this context is broader than some would otherwise define it:

*"...people don't have to be intimidated for it to be aggressive, but there has to be some fear of intimidation or some fear of having to act in a way they don't want to have to act, don't want to be rude. That's aggressive." (Consumers Council of Canada testimony, p2237)*

#### **IV Call recordings be made available to consumers**

22 The Council recommended in its testimony that customer service and sales calls recordings be made available to consumers. It includes customer service calls in this recommendation, as evidence indicates that much unwanted selling is conducted on such calls. When later queried by the Commissioners several LTCs testified that they do indeed provide this service, but only "upon request". Some noted that they also provide transcriptions.

23 Notably, most indicated that the cost of such provision was nominal, thereby suggesting that cost will not be a barrier in making this option more readily, appropriately and widely available.

24 Admittedly, the Council was unaware of this unpublished option for consumers. However, it does beg the question as to why its availability is relatively unknown.

25 One LTC mentioned that they hadn't had many requests for such recordings. The Council suggests that this may be because its availability was not publicized.

26 The Council recommends that the LTCs provide a link to each customer service or sales call on the portal page of the relevant customer. It believes that this will help rebuild some of the trust that Canadians have indicated, through the Ipsos POR and otherwise, that they have lost with the LTCs.

- 27 Furthermore, the Council recommends that the CCTS be given access to such recordings and transcripts for any complaint that is submitted to them for as long as a relevant complaint may be eligible for submission to the CCTS.
- 28 The Council believes this procedure would protect the customer, potential customer and the LTCs themselves, who want to manage the few aberrant employees they admit to, as well as protect themselves against false claims that may be made against them by consumers.

## V The CCTS Solution

- 29 Many of the LTCs suggest that with appropriate new code(s) the CCTS should take on responsibility for complaints around misleading and aggressive sales practices. It is a logical conclusion, albeit with a significant concern.
- 30 However, Telus and SaskTel add the proviso that in each case, with which, prima facie, the Council agrees: the LTCs take responsibility for directing customers to such an option with the CCTS, only after having a fair chance to remedy the situation themselves.

*"... at what point are we making them aware in the escalation process of the existence of the CCTS. You don't want to do that too early, frankly, because it shunts the problem off to Ottawa to be solved, and it's our problem. We should be solving it. We're best placed institutionally to solve these customer problems, and we think that the status quo in that respect where they are expressly made aware of the option after Stage 2 that makes sense. The problem should be on our shoulders for a while." (Telus testimony, p4976)*

*"our experience with the CCTS is that our customers become aware of it at the appropriate time, which is when we reach an impasse. We have grave concerns that if there's more advertising that the CCTS exists that people will go to the CCTS rather than come to the corporation." (SaskTel testimony, p4427)*

- 31 More important than general awareness of the CCTS, is that consumers know what their options for complaint resolution/escalation are when they have need, and the LTCs are in the best position to provide that knowledge. However, the Council has a significant concern that this is a process that may not be given the necessary rigorous oversight and enforcement by the LTCs.
- 32 The Council cites one statistic in support of our concern that a majority of customer complaints don't reach the CCTS. The CCTS Chair in his testimony in this hearing stated:

*"We deal with the complaints that come to us, so we know, for example, that in the wireless world we have at least 31 million customer connections in Canada, just wireless alone. And we got, in our last fiscal year, about 14,000 complaints." (CCTS testimony, p73)*

- 33 The LTCs have taken the primary responsibility for referring complaining customers to the CCTS. Does any reasonable person believe that only 14,000 complaints result from 31 million wireless contracts? The logical conclusion is that the LTCs are not fulfilling their commitment to refer all appropriate complaining customers to the CCTS. Notably these 14,000 complaints also include complaints regarding Internet phone contracts and Internet service.
- 34 As more and more of the complaints processes are entrusted to the CCTS, witness the recent increase in responsibilities to include broadcasting complaints, the Council believes that stronger oversight and enforcement of the process of capture and collection of complaints should be conducted by the Commission, directly or indirectly. Until such time as the Commission is convinced that compliance regarding referral to the CCTS is adequate, LTCs should be required within a reasonable defined period to follow up with consumers they referred to CCTS by providing a direct message reiterating their option and ability to go to the CCTS with an easy to use, secure way to do so.
- 35 Concerns continue that the industry may exercise undue influence over the CCTS. Should those concerns continue, or increase, consideration should be given to looking to entrench such responsibilities in an authority structured less like a self regulatory body, perhaps with enabling legislation containing stronger enforcement provisions, and more neutral oversight.

## **VI If you boast it, support it**

- 36 As a final note, , the Council recommends that the Commission review carefully the values and mission statements that the LTCs place prominently and proudly on their websites as it puts together its final report, and ask the question:

*Do the extensive and representative views of Canadians evidenced in these hearings suggest that Canadians believe the LTCs claims of their missions, values and the ways in which they conduct business with consumers?*



37 The Council's reading of the statistically valid evidence placed before the Commission in these proceedings finds that a significant proportion of Canadians unfortunately do not.

38 \*\*\* End of document \*\*\*