

Anti-Spam-Gesetz in Kanada

„Canadian Anti-Spam Legislation“ (CASL)

<http://laws-lois.justice.gc.ca/eng/acts/E-1.6/page-2.html#docCont>
(Stand vom 13.10.2017)

An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act

S.C. 2010, c. 23

Assented to 2010-12-15

(In Kraft seit 2014)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Interpretation

Marginal note: Definitions

- 1 (1) The following definitions apply in this Act.

commercial activity means any particular **transaction**, act or conduct or any regular course of conduct that is of a commercial character, **whether or not the person who carries it out does so in the expectation of profit**, other than any transaction, act or conduct that is carried out for the purposes of law enforcement, public safety, the protection of Canada, the conduct of international affairs or the defence of Canada. (*activité commerciale*)

Commission means the Canadian Radio-television and Telecommunications Commission. (*Conseil*)

Commissioner of Competition means the Commissioner of Competition appointed under subsection 7(1) of the [Competition Act](#). (*commissaire de la concurrence*)

computer program has the same meaning as in subsection 342.1(2) of the *Criminal Code*. (*programme d'ordinateur*)

computer system has the same meaning as in subsection 342.1(2) of the [Criminal Code](#). (*ordinateur*)

court of competent jurisdiction means the Federal Court or a superior court of a province. (*tribunal compétent*)

data means signs, signals, symbols or concepts that are being prepared or have been prepared in a form suitable for use in a computer system. (*données*)

document has the same meaning as in section 487.011 of the [Criminal Code](#). (*document*)

electronic address means an address used in connection with the transmission of an electronic message to

- (a) an electronic mail account;
- (b) an instant messaging account;
- (c) a telephone account; or
- (d) any similar account. (*adresse électronique*)

electronic message means a message sent by any means of telecommunication, including a text, sound, voice or image message. (*message électronique*)

person means an individual, partnership, corporation, organization, association, trustee, administrator, executor, liquidator of a succession, receiver or legal representative. (*personne*)

Privacy Commissioner means the Privacy Commissioner appointed under section 53 of the [Privacy Act](#). (*Commissaire à la protection de la vie privée*)

telecommunications facility means any facility, apparatus or other thing that is used for telecommunications or for any operation directly connected with telecommunications. (*installation de télécommunication*)

telecommunications service means a service, or a feature of a service, that is provided by means of telecommunications facilities, whether the telecommunications service provider owns, leases or has any other interest in or right respecting the telecommunications facilities and any related equipment used to provide the service. (*service de télécommunication*)

telecommunications service provider means a person who, independently or as part of a group or association, provides telecommunications services. (*télécommunicateur*)

transmission data means data that

- (a) relates to the telecommunications functions of dialling, routing, addressing or signalling;
- (b) either is transmitted to identify, activate or configure an apparatus or device, including a computer program, in order to establish or maintain a communication, or is generated during the creation, transmission or reception of a communication and identifies or purports to identify the type, direction, date, time, duration, size, origin, destination or termination of the communication; and
- (c) does not reveal the substance, meaning or purpose of the communication. (*données de transmission*)

• *Marginal note: Meaning of commercial electronic message*

(2) For the purposes of this Act, a commercial electronic message is an electronic message that, having regard to the content of the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message, it would be reasonable to conclude has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that

- (a) offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- (b) offers to provide a business, investment or gaming opportunity;
- (c) advertises or promotes anything referred to in paragraph (a) or (b); or
- (d) promotes a person, including the public image of a person, as being a person who does anything referred to in any of paragraphs (a) to (c), or who intends to do so.

- *Marginal note:Other commercial electronic message*

(3) An electronic message that contains a request for consent to send a message described in subsection (2) is also considered to be a commercial electronic message.
- *Marginal note:Exclusion*

(4) An electronic message described in subsection (2) or (3) that is sent for the purposes of law enforcement, public safety, the protection of Canada, the conduct of international affairs or the defence of Canada is not considered to be a commercial electronic message.
- *Marginal note:Person to whom a message is sent*

(5) For the purposes of this Act, a reference to the person to whom an electronic message is sent means the holder of the account associated with the electronic address to which the message is sent, as well as any person who it is reasonable to believe is or might be authorized by the account holder to use the electronic address.

Conflict of Provisions

Marginal note:Precedence of this Act

2 In the event of a conflict between a provision of this Act and a provision of Part 1 of the [Personal Information Protection and Electronic Documents Act](#), the provision of this Act operates despite the provision of that Part, to the extent of the conflict.

Purpose

Marginal note:Purpose of Act

3 The purpose of this Act is to promote the efficiency and adaptability of the Canadian economy by regulating commercial conduct that discourages the use of electronic means to carry out commercial activities, because that conduct

- **(a)** impairs the availability, reliability, efficiency and optimal use of electronic means to carry out commercial activities;
- **(b)** imposes additional costs on businesses and consumers;
- **(c)** compromises privacy and the security of confidential information; and
- **(d)** undermines the confidence of Canadians in the use of electronic means of communication to carry out their commercial activities in Canada and abroad.

Her Majesty

Marginal note:Act binding on certain agents

4 This Act is binding on any corporation that is expressly declared by or under any Act of Parliament or of the legislature of a province to be an agent of Her Majesty, when the corporation is acting as such in the course of any commercial activity.

Application

Marginal note:Broadcasting excluded

5 This Act does not apply in respect of broadcasting by a broadcasting undertaking, as those terms are defined in subsection 2(1) of the [Broadcasting Act](#).

Requirements and Prohibitions

Marginal note:Unsolicited electronic messages

- **6 (1)** It is prohibited to send or cause or permit to be sent to an electronic address a commercial electronic message unless
 - **(a)** the person to whom the message is sent has consented to receiving it, whether the consent is express or implied; and
 - **(b)** the message complies with subsection (2).
- *Marginal note:Contents of message*
 - (2)** The message must be in a form that conforms to the prescribed requirements and must
 - **(a)** set out prescribed information that identifies the person who sent the message and the person — if different — on whose behalf it is sent;
 - **(b)** set out information enabling the person to whom the message is sent to readily contact one of the persons referred to in paragraph (a); and
 - **(c)** set out an unsubscribe mechanism in accordance with subsection 11(1).
- *Marginal note:Period of validity of contact information*
 - (3)** The person who sends the commercial electronic message and the person — if different — on whose behalf the commercial electronic message is sent must ensure that the contact information referred to in paragraph (2)(b) is valid for a minimum of 60 days after the message has been sent.
- *Marginal note:Interpretation*
 - (4)** For the purposes of subsection (1)
 - **(a)** an electronic message is considered to have been sent once its transmission has been initiated; and
 - **(b)** it is immaterial whether the electronic address to which an electronic message is sent exists or whether an electronic message reaches its intended destination.
- *Marginal note:Exception*
 - (5)** This section does not apply to a commercial electronic message
 - **(a)** that is sent by or on behalf of an individual to another individual with whom they have a personal or family relationship, as defined in the regulations;
 - **(b)** that is sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity; or
 - **(c)** that is of a class, or is sent in circumstances, specified in the regulations.
- *Marginal note:Exception*
 - (6)** Paragraph (1)(a) does not apply to a commercial electronic message that solely
 - **(a)** provides a quote or estimate for the supply of a product, goods, a service, land or an interest or right in land, if the quote or estimate was requested by the person to whom the message is sent;
 - **(b)** facilitates, completes or confirms a commercial transaction that the person to whom the message is sent previously agreed to enter into with the person who sent the message or the person — if different — on whose behalf it is sent;

- **(c)** provides warranty information, product recall information or safety or security information about a product, goods or a service that the person to whom the message is sent uses, has used or has purchased;
- **(d)** provides notification of factual information about
 - **(i)** the ongoing use or ongoing purchase by the person to whom the message is sent of a product, goods or a service offered under a subscription, membership, account, loan or similar relationship by the person who sent the message or the person — if different — on whose behalf it is sent, or
 - **(ii)** the ongoing subscription, membership, account, loan or similar relationship of the person to whom the message is sent;
- **(e)** provides information directly related to an employment relationship or related benefit plan in which the person to whom the message is sent is currently involved, is currently participating or is currently enrolled;
- **(f)** delivers a product, goods or a service, including product updates or upgrades, that the person to whom the message is sent is entitled to receive under the terms of a transaction that they have previously entered into with the person who sent the message or the person — if different — on whose behalf it is sent; or
- **(g)** communicates for a purpose specified in the regulations.

- *Marginal note:Exception*

(7) This section does not apply to a telecommunications service provider merely because the service provider provides a telecommunications service that enables the transmission of the message.

- *Marginal note:Exception*

(8) This section does not apply to a commercial electronic message

- **(a)** that is, in whole or in part, an interactive two-way voice communication between individuals;
- **(b)** that is sent by means of a facsimile to a telephone account; or
- **(c)** that is a voice recording sent to a telephone account.

Marginal note:Altering transmission data

- **7 (1)** It is prohibited, in the course of a commercial activity, to alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by the sender, unless
 - **(a)** the alteration is made with the express consent of the sender or the person to whom the message is sent, and the person altering or causing to be altered the data complies with subsection 11(4); or
 - **(b)** the alteration is made in accordance with a court order.

- *Marginal note:Exception*

(2) Subsection (1) does not apply if the alteration is made by a telecommunications service provider for the purposes of network management.

Marginal note:Installation of computer program

- **8 (1)** A person must not, in the course of a commercial activity, install or cause to be installed a computer program on any other person's computer system or, having so installed or caused to be installed a computer program, cause an electronic message to be sent from that computer system, unless
 - (a) the person has obtained the express consent of the owner or an authorized user of the computer system and complies with subsection 11(5); or
 - (b) the person is acting in accordance with a court order.
- *Marginal note:Application*

(2) A person contravenes subsection (1) only if the computer system is located in Canada at the relevant time or if the person either is in Canada at the relevant time or is acting under the direction of a person who is in Canada at the time when they give the directions.

Marginal note:Contravention of sections 6 to 8

9 It is prohibited to aid, induce, procure or cause to be procured the doing of any act contrary to any of sections 6 to 8.

Marginal note:Express consent — sections 6 to 8

- **10 (1)** A person who seeks express consent for the doing of an act described in any of sections 6 to 8 must, when requesting consent, set out clearly and simply the following information:
 - (a) the purpose or purposes for which the consent is being sought;
 - (b) prescribed information that identifies the person seeking consent and, if the person is seeking consent on behalf of another person, prescribed information that identifies that other person; and
 - (c) any other prescribed information.
- *Marginal note:Exception*

(2) Despite paragraph (1)(b), for the purposes of section 6, if a person is seeking express consent on behalf of a person whose identity is not known,

 - (a) the only information that is required to be provided under that paragraph is prescribed information that identifies the person seeking consent; and
 - (b) the person seeking consent must comply with the regulations in respect of the use that may be made of the consent and the conditions on which the consent may be used.
- *Marginal note:Additional requirement — section 8*

(3) A person who seeks express consent for the doing of any act described in section 8 must, when requesting consent, also, in addition to setting out any other prescribed information, clearly and simply describe, in general terms, the function and purpose of the computer program that is to be installed if the consent is given.
- *Marginal note:Additional requirements associated with certain functions*

(4) In addition to the requirements set out in subsections (1) and (3), if the computer program that is to be installed performs one or more of the functions described in subsection (5), the person who seeks express consent must, when requesting consent, clearly and prominently, and separately and apart from the licence agreement,

- **(a)** describe the program's material elements that perform the function or functions, including the nature and purpose of those elements and their reasonably foreseeable impact on the operation of the computer system; and
 - **(b)** bring those elements to the attention of the person from whom consent is being sought in the prescribed manner.
- *Marginal note:Description of functions*

(5) A function referred to in subsection (4) is any of the following functions that the person who seeks express consent knows and intends will cause the computer system to operate in a manner that is contrary to the reasonable expectations of the owner or an authorized user of the computer system:

 - **(a)** collecting personal information stored on the computer system;
 - **(b)** interfering with the owner's or an authorized user's control of the computer system;
 - **(c)** changing or interfering with settings, preferences or commands already installed or stored on the computer system without the knowledge of the owner or an authorized user of the computer system;
 - **(d)** changing or interfering with data that is stored on the computer system in a manner that obstructs, interrupts or interferes with lawful access to or use of that data by the owner or an authorized user of the computer system;
 - **(e)** causing the computer system to communicate with another computer system, or other device, without the authorization of the owner or an authorized user of the computer system;
 - **(f)** installing a computer program that may be activated by a third party without the knowledge of the owner or an authorized user of the computer system; and
 - **(g)** performing any other function specified in the regulations.
- *Marginal note:Exception*

(6) Subsection (4) does not apply in respect of a computer program that performs a function described in subsection (5) if that function only collects, uses or communicates transmission data or performs an operation specified in the regulations.
- *Marginal note:Updates and upgrades*

(7) Subsections (1) and (3) do not apply in respect of the installation of an update or upgrade to a computer program the installation or use of which was expressly consented to in accordance with subsections (1) and (3) if the person who gave the consent is entitled to receive the update or upgrade under the terms of the express consent and the update or upgrade is installed in accordance with those terms.
- *Marginal note:Person considered to expressly consent*

(8) A person is considered to expressly consent to the installation of a computer program if

 - **(a)** the program is
 - **(i)** a cookie,
 - **(ii)** HTML code,
 - **(iii)** Java Scripts,

- **(iv)** an operating system,
 - **(v)** any other program that is executable only through the use of another computer program whose installation or use the person has previously expressly consented to, or
 - **(vi)** any other program specified in the regulations; and
 - **(b)** the person's conduct is such that it is reasonable to believe that they consent to the program's installation.
- *Marginal note: Implied consent — section 6*

(9) Consent is implied for the purpose of section 6 only if

- **(a)** the person who sends the message, the person who causes it to be sent or the person who permits it to be sent has an existing business relationship or an existing non-business relationship with the person to whom it is sent;
 - **(b)** the person to whom the message is sent has conspicuously published, or has caused to be conspicuously published, the electronic address to which the message is sent, the publication is not accompanied by a statement that the person does not wish to receive unsolicited commercial electronic messages at the electronic address and the message is relevant to the person's business, role, functions or duties in a business or official capacity;
 - **(c)** the person to whom the message is sent has disclosed, to the person who sends the message, the person who causes it to be sent or the person who permits it to be sent, the electronic address to which the message is sent without indicating a wish not to receive unsolicited commercial electronic messages at the electronic address, and the message is relevant to the person's business, role, functions or duties in a business or official capacity; or
 - **(d)** the message is sent in the circumstances set out in the regulations.
- **Definition of existing business relationship**

(10) In subsection (9), **existing business relationship** means a business relationship between the person to whom the message is sent and any of the other persons referred to in that subsection — that is, any person who sent or caused or permitted to be sent the message — arising from

- **(a)** the purchase or lease of a product, goods, a service, land or an interest or right in land, within the two-year period immediately before the day on which the message was sent, by the person to whom the message is sent from any of those other persons;
- **(b)** the acceptance by the person to whom the message is sent, within the period referred to in paragraph (a), of a business, investment or gaming opportunity offered by any of those other persons;
- **(c)** the bartering of anything mentioned in paragraph (a) between the person to whom the message is sent and any of those other persons within the period referred to in that paragraph;
- **(d)** a written contract entered into between the person to whom the message is sent and any of those other persons in respect of a matter not referred to in any of paragraphs (a) to (c), if the contract is currently in existence or expired within the period referred to in paragraph (a); or

- (e) an inquiry or application, within the six-month period immediately before the day on which the message was sent, made by the person to whom the message is sent to any of those other persons, in respect of anything mentioned in any of paragraphs (a) to (c).

- *Marginal note:Clarification*

(11) For the purposes of subsection (10), the following organizations are considered to be businesses:

- (a) a cooperative as defined in subsection 2(1) of the [Canada Cooperatives Act](#);
- (b) a cooperative corporation as defined in section 2 of the [Cooperative Credit Associations Act](#); and
- (c) any similar organization incorporated under an Act of Parliament or the legislature of a province.

- *Marginal note:Clarification*

(12) If a person has an existing business relationship with another person in accordance with subsection (10), and the business is sold, the person who purchases the business is considered to have, in respect of that business, an existing business relationship with that other person.

- **Definition of existing non-business relationship**

(13) In subsection (9), **existing non-business relationship** means a non-business relationship between the person to whom the message is sent and any of the other persons referred to in that subsection — that is, any person who sent or caused or permitted to be sent the message — arising from

- (a) a donation or gift made by the person to whom the message is sent to any of those other persons within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity as defined in subsection 248(1) of the [Income Tax Act](#), a political party or organization, or a person who is a candidate — as defined in an Act of Parliament or of the legislature of a province — for publicly elected office;
- (b) volunteer work performed by the person to whom the message is sent for any of those other persons, or attendance at a meeting organized by that other person, within the two-year period immediately before the day on which the message was sent, where that other person is a registered charity as defined in subsection 248(1) of the [Income Tax Act](#), a political party or organization or a person who is a candidate — as defined in an Act of Parliament or of the legislature of a province — for publicly elected office; or
- (c) membership, as defined in the regulations, by the person to whom the message is sent, in any of those other persons, within the two-year period immediately before the day on which the message was sent, where that other person is a club, association or voluntary organization, as defined in the regulations.

- *Marginal note:Clarification*

(14) Where a period is specified in subsection (10) or (13) in relation to the purchase or lease of a product, goods, a service, land or an interest or right in land, or in relation to a donation, gift or membership,

- **(a)** in the case of a purchase, lease, donation or gift, if it involves an ongoing use or ongoing purchase under a subscription, account, loan or similar relationship, the period is considered to begin on the day that the subscription, account, loan or other relationship terminates; and
- **(b)** in the case of a membership, the period is considered to begin on the day that the membership terminates.

Marginal note: **Unsubscribe mechanism** — section 6

- **11 (1)** The unsubscribe mechanism referred to in paragraph 6(2)(c) must
 - **(a)** enable the person to whom the commercial electronic message is sent to indicate, at no cost to them, the wish to no longer receive any commercial electronic messages, or any specified class of such messages, from the person who sent the message or the person — if different — on whose behalf the message is sent, using
 - **(i)** the same electronic means by which the message was sent, or
 - **(ii)** if using those means is not practicable, any other electronic means that will enable the person to indicate the wish; and
 - **(b)** specify an electronic address, or link to a page on the World Wide Web that can be accessed through a web browser, to which the indication may be sent.
- *Marginal note:* *Period of validity of contact information*

(2) The person who sends the commercial electronic message and the person — if different — on whose behalf it is sent must ensure that the electronic address or World Wide Web page referred to in paragraph (1)(b) is valid for a minimum of 60 days after the message has been sent.
- *Marginal note:* *Additional requirement*

(3) The person who sent the commercial electronic message and the person — if different — on whose behalf the message was sent must ensure that effect is given to an indication sent in accordance with paragraph (1)(b) without delay, and in any event no later than 10 business days after the indication has been sent, without any further action being required on the part of the person who so indicated.
- *Marginal note:* *Withdrawal of consent* — section 7

(4) A person who has the express consent of the sender or the person to whom a message is sent to do any act described in section 7 must
 - **(a)** for the period covered by the consent, ensure that the person who gave their consent is provided with an electronic address to which they may send notice of the withdrawal of their consent; and
 - **(b)** ensure that effect is given to a notice of withdrawal of consent sent in accordance with paragraph (a) without delay, but in any event no later than 10 business days after receiving it.
- *Marginal note:* *Withdrawal of consent* — section 8

(5) A person who has the express consent of an owner or authorized user to do any act described in section 8 must
 - **(a)** for a period of one year after any computer program that performs one or more of the functions described in subsection 10(5) but not referred to in subsection

10(6) is installed under the consent, ensure that the person who gave their consent is provided with an electronic address to which they may, if they believe that the function, purpose or impact of the computer program installed under the consent was not accurately described when consent was requested, send a request to remove or disable that computer program; and

- (b) if the consent was based on an inaccurate description of the material elements of the function or functions described in subsection 10(5), on receipt within that one-year period of a request to remove or disable that computer program, without cost to the person who gave consent, assist that person in removing or disabling the computer program as soon as feasible.

Marginal note: Contravention of section 6

- **12 (1)** A person contravenes section 6 only if a computer system located in Canada is used to send or access the electronic message.
- *Marginal note: Contravention of section 7*
(2) A person contravenes section 7 only if a computer system located in Canada is used to send, route or access the electronic message.

Marginal note: Burden of proof

13 A person who alleges that they have consent to do an act that would otherwise be prohibited under any of sections 6 to 8 has the onus of proving it.

Administrative Monetary Penalties

Designation

Marginal note: Designated persons

14 For the purposes of any of sections 15 to 46, the Commission may designate persons or classes of persons appointed under section 8 of the [Canadian Radio-television and Telecommunications Commission Act](#) to exercise powers in relation to any matter referred to in the designation.

Preservation Demand

Marginal note: Preservation demand

- **15 (1)** A person who is designated for the purpose of this section may cause a demand to be served on a telecommunications service provider requiring it to preserve transmission data that is in, or comes into, its possession or control.
- *Marginal note: Expiry and revocation*
(2) Subject to subsection (5), the demand expires 21 days after the day on which it is served unless, before its expiry, a notice extending the demand for an additional period of 21 days is served on the telecommunications service provider. A demand may not be extended more than once and a notice revoking the demand may be served on the telecommunications service provider at any time.
- *Marginal note: Purpose of demand*
(3) A person who is designated for the purpose of this section may make or extend a demand only for the purpose of one or more of the following:
 - (a) verifying compliance with this Act;
 - (b) determining whether any of sections 6 to 9 has been contravened; and

- **(c)** assisting an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct prohibited under any of sections 6 to 9.
- *Marginal note: Conditions to prevent disclosure*

(4) The designated person causing a demand to be served may impose conditions in the demand to prevent the disclosure of some or all of its contents or its existence if they have reasonable grounds to believe that the disclosure would jeopardize the conduct of

- **(a)** an investigation under this Act; or
 - **(b)** an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct prohibited under any of sections 6 to 9.
- *Marginal note: Expiry and revocation of conditions*

(5) A condition imposed to prevent disclosure expires six months after the day on which the demand is served on the telecommunications service provider unless, before its expiry, a notice extending the condition for an additional period of six months is served on the telecommunications service provider. A condition may not be extended more than once and a notice revoking the condition may be served on the telecommunications service provider at any time.

- *Marginal note: Preservation and destruction of transmission data*

(6) A telecommunications service provider that is served with a demand must

- **(a)** subject to subsections 16(2) and (3), preserve the data until the demand expires or is revoked; and
- **(b)** destroy the data that would not be retained in the normal course of business and any document that is prepared for the purpose of preserving data under this section as soon as the demand expires or is revoked, unless a notice requiring the production of a document based on that data has been served on it under section 17.

Marginal note: Application for review

- **16 (1)** Within five business days after the day on which a demand is served, a telecommunications service provider may apply in writing to the Commission either for a review of the demand on the grounds that preservation of some or all of the data would place an undue burden on it or for a review of the conditions imposed to prevent disclosure.
- *Marginal note: Powers of Commission*

(2) After considering any representations made by the telecommunications service provider and by the person designated for the purposes of section 15, the Commission may

- **(a)** allow the application;
 - **(b)** deny the application; or
 - **(c)** vary, in any manner that the Commission considers reasonable in the circumstances,
 - **(i)** the requirement to preserve transmission data, or
 - **(ii)** any condition imposed in the demand.
- *Marginal note: No obligation to preserve new data*

(3) If a telecommunications service provider applies for review on the grounds that preservation of some or all of the data would place an undue burden on it and the Commission does not make a decision in respect of that matter within five business days after the day on which the application was made, the telecommunications service provider is not required to preserve any data to which the application relates that comes into the telecommunications service provider's possession or control after the expiry of the five days.

- *Marginal note: Notice of decision*

(4) The Commission must cause a copy of its decision to be served on the telecommunications service provider together with a notice of their right to appeal.

Notice to Produce

Marginal note: Notice for production

- **17 (1)** A person who is designated for the purpose of this section may cause a notice to be served on a person requiring them to produce a copy of a document that is in their possession or control, or to prepare a document based on data, information or documents that are in their possession or control and to produce that document.

- *Marginal note: Purpose of notice*

(2) The designated person may issue the notice only for the purpose of one or more of the following:

- **(a)** verifying compliance with this Act;
- **(b)** determining whether any of sections 6 to 9 has been contravened; and
- **(c)** assisting an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct prohibited under any of sections 6 to 9.

- *Marginal note: Particulars of notice*

(3) The notice must require the document to be produced to a person named in the notice within the time, at the place and in the form specified in the notice.

- *Marginal note: Conditions*

(4) The designated person may impose conditions in the notice to prevent the disclosure of some or all of its contents or its existence if they have reasonable grounds to believe that the disclosure would jeopardize the conduct of

- **(a)** an investigation under this Act; or
- **(b)** an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct prohibited under any of sections 6 to 9.

- *Marginal note: Expiry and revocation of conditions*

(5) A condition imposed to prevent disclosure expires six months after the day on which the notice is served on the person unless, before its expiry, a notice extending the condition for an additional period of six months is served on them. A condition may not be extended more than once and a notice revoking the condition may be served on the person at any time.

- *Marginal note: Return of documents not required*

(6) Documents and copies of documents that are produced under this section need not be returned to the person who produced them.

Marginal note:Application for review

- **18 (1)** At any time before they are required to produce a document, a person may apply in writing to the Commission either for a review of the notice on the grounds that the requirement to prepare or produce a document is unreasonable in the circumstances or that the production would disclose privileged information or for a review of the conditions imposed to prevent disclosure.
- *Marginal note:No obligation to produce*

(2) If a person applies for review on the grounds that the requirement to prepare or produce a document is unreasonable in the circumstances, they are not required to prepare or produce the document.
- *Marginal note:Powers of Commission*

(3) After considering any representations made by the applicant and by the person designated for the purposes of section 17, the Commission may

 - **(a)** allow the application;
 - **(b)** deny the application; or
 - **(c)** vary, in any manner that the Commission considers reasonable in the circumstances,
 - **(i)** the requirement to produce, or prepare and produce, a document, or
 - **(ii)** any condition imposed in the notice.
- *Marginal note:Particulars*

(4) If the Commission decides to confirm the requirement to produce a document, it must specify in its decision that the document be produced to a person named in the decision within the time, at the place and in the form set out in the decision.
- *Marginal note:Notice of decision*

(5) The Commission must cause a copy of its decision to be served on the person together with a notice of their right to appeal.

Warrants

Marginal note:Warrant

- **19 (1)** On an *ex parte* application, a justice of the peace may issue a warrant authorizing a person who is designated for the purpose of this section and who is named in the warrant to enter a place if the justice is satisfied by information on oath that
 - **(a)** entry to the place is necessary to
 - **(i)** verify compliance with this Act,
 - **(ii)** determine whether any of sections 6 to 9 has been contravened, or
 - **(iii)** assist an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct prohibited under any of sections 6 to 9; and

- **(b)** if the place is a dwelling-house, entry has been refused or there are reasonable grounds to believe that entry will be refused or that consent to entry cannot be obtained from the occupant.
- *Marginal note: Conditions in warrant*

(2) The warrant may contain any conditions that the justice considers appropriate, including conditions to protect privileged information.
- *Marginal note: Powers in execution of warrant*

(3) Subject to the conditions specified in the warrant, in executing the warrant, the designated person may, for any purpose set out in subparagraphs (1)(a)(i) to (iii),

 - **(a)** examine anything that is found in the place;
 - **(b)** use any means of communication found in the place or cause it to be used;
 - **(c)** use any computer system found in the place — or cause it to be used — to examine data contained in, or available to, the system;
 - **(d)** prepare a document — or cause it to be prepared — based on the data;
 - **(e)** use any copying equipment — or cause it to be used — to make copies of documents;
 - **(f)** remove anything found in the place for examination or copying; and
 - **(g)** prohibit or limit access to all or part of the place.
- *Marginal note: Assistance to designated persons*

(4) The owner of the place, the person in charge of the place and every person found in the place must give all assistance that is reasonably required to enable the designated person to execute the warrant and must provide any documents, data and information — including information establishing their identity — that are reasonably required for that purpose.
- *Marginal note: Execution of warrant*

(5) A warrant must be executed between six o'clock in the morning and nine o'clock in the evening unless the justice authorizes its execution at another time.
- *Marginal note: Entry onto private property*

(6) For the purpose of gaining entry to the place referred to in the warrant issued under subsection (1), the designated person may enter private property and pass through it, and is not liable for doing so. For greater certainty, no person has the right to object to that use of the property and no warrant is required for entry onto the property, other than for entry to a dwelling-house.
- *Marginal note: Persons accompanying designated person*

(7) A person may, at the designated person's request, accompany the designated person to assist the designated person to gain entry to the place referred to in the warrant and is not liable for doing so.
- *Marginal note: Use of force*

(8) In executing a warrant, a designated person must not use force unless they are accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Violations

Marginal note:Violations

- **20 (1)** Every person who contravenes any of sections 6 to 9 commits a violation for which they are liable to **an administrative monetary penalty**.
- *Marginal note:Purpose of penalty*

(2) The purpose of a penalty is to promote compliance with this Act and not to punish.
- *Marginal note:Factors for penalty*

(3) The following factors **must be taken into account when determining the amount of a penalty**:

 - **(a)** the purpose of the penalty;
 - **(b)** the nature and scope of the violation;
 - **(c)** the person's history with respect to any previous violation under this Act, any previous conduct that is reviewable under section 74.011 of the *Competition Act* and any previous contravention of section 5 of the *Personal Information Protection and Electronic Documents Act* that relates to a collection or use described in subsection 7.1(2) or (3) of that Act;
 - **(d)** the person's history with respect to any previous undertaking entered into under subsection 21(1) and any previous consent agreement signed under subsection 74.12(1) of the *Competition Act* that relates to acts or omissions that constitute conduct that is reviewable under section 74.011 of that Act;
 - **(e)** any financial benefit that the person obtained from the commission of the violation;
 - **(f)** the person's ability to pay the penalty;
 - **(g)** whether the person has voluntarily paid compensation to a person affected by the violation;
 - **(h)** the factors established by the regulations; and
 - **(i)** any other relevant factor.
- *Marginal note:Maximum penalties*

(4) The maximum penalty for a violation is \$1,000,000 in the case of an individual, and \$10,000,000 in the case of any other person.
- *Marginal note:Regulations*

(5) The Governor in Council may make regulations

 - **(a)** designating provisions whose contravention constitutes a separate violation in respect of each day during which it continues; and
 - **(b)** establishing factors for the purposes of paragraph (3)(h).

Undertakings

Marginal note:Entry into undertaking

- **21 (1)** A person may enter into an undertaking at any time.
- *Marginal note:Contents*

(2) An undertaking

- **(a)** must be accepted by a person who is designated for the purpose of this section;
 - **(b)** must identify every act or omission committed that constitutes a contravention of any of sections 6 to 9 and that is covered by the undertaking;
 - **(c)** must identify every provision at issue;
 - **(d)** may contain any conditions that the designated person considers appropriate; and
 - **(e)** may include a requirement to pay a specified amount.
- *Marginal note: Undertaking before notice of violation*
- (3)** If a person enters into an undertaking, no notice of violation may be served on them in connection with an act or omission referred to in the undertaking.
- *Marginal note: Undertaking after notice of violation*
- (4)** If a person enters into an undertaking after a notice of violation is served on them, the proceeding commenced by the notice of violation is ended in respect of that person in connection with any act or omission referred to in the undertaking.

Notices of Violation

Marginal note: Notice of violation

- **22 (1)** A person who is designated for the purpose of this section may issue a notice of violation and cause it to be served on a person if they believe on reasonable grounds that the person has committed a violation.
- *Marginal note: Contents of notice*

(2) The notice of violation must

- **(a)** name the person believed to have committed the violation;
- **(b)** identify every act or omission for which the notice is served and every provision at issue;
- **(c)** set out the administrative monetary penalty that the person is liable to pay and the time and manner of payment;
- **(d)** inform the person that they may make representations to the Commission within 30 days after the day on which the notice is served or any longer period set out in the notice, and set out the manner for making the representations;
- **(e)** inform the person that, if they do not pay the penalty or make representations in accordance with the notice, they will be deemed to have committed the violation and that the penalty set out in the notice will be imposed; and
- **(f)** inform the person that if they are found or are deemed to have committed a violation they may be made the subject of an order requiring them to do what this Act requires them to do, or forbidding them to do what this Act prohibits them from doing, and that the order can be enforced as an order of a court of competent jurisdiction.

Marginal note:Limitation period

- **23 (1)** No proceeding in respect of a violation may be commenced later than three years after the day on which the subject matter of the proceeding became known to a person designated under section 14.

- *Marginal note:Certificate*

(2) A document that appears to have been issued by the secretary to the Commission, certifying the day on which the subject matter of any proceeding became known to a person designated under section 14, is admissible in evidence without proof of the signature or official character of the person who appears to have signed the document and is proof of the matter asserted in it in the absence of evidence to the contrary.

Determination of Responsibility

Marginal note:Options

- **24 (1)** A person who is served with a notice of violation must, in accordance with the notice, pay the penalty set out in the notice or make representations with respect to the amount of the penalty or the acts or omissions that constitute the alleged violation.

- *Marginal note:Deemed violation*

(2) A person is deemed to have committed the violation if they either pay the penalty in accordance with the notice of violation or do not pay the penalty and do not make representations, in accordance with the notice of violation.

Marginal note:Representations

- **25 (1)** If a person makes representations in accordance with the notice, the Commission must decide, on a balance of probabilities, whether the person committed the violation and, if so, may impose the penalty set out in the notice of violation, may reduce or waive the penalty, or may suspend payment of the penalty subject to any conditions that the Commission considers necessary to ensure compliance with this Act.

- *Marginal note:Notice of decision*

(2) The Commission must cause a copy of its decision to be served on the person together with a notice of their right to appeal.

Marginal note:Restraining orders

- **26 (1)** If a person is deemed under subsection 24(2) to have committed a violation or has been found under subsection 25(1) to have committed a violation, the Commission may make an order directing the person to cease contravening the provision to which the violation relates.

- *Marginal note:Notice of decision*

(2) The Commission must cause a copy of its order to be served on the person together with a notice of their right to appeal.

Appeal to Federal Court of Appeal

Marginal note:Appeal to Federal Court of Appeal

- **27 (1)** Subject to subsection (2), an appeal may be brought in the Federal Court of Appeal from a decision made under section 16, 18 or 25 or an order made under section 26 within 30 days after the day on which the decision or order, as the case may be, is made.

- *Marginal note:Appeal on question of fact*

(2) An appeal on a question of fact from a decision made under section 16, 18 or 25 or an order made under section 26 may be brought only with the leave of the Federal Court of Appeal, an application for which must be made within 30 days after the day on which the decision or order, as the case may be, is made. The appeal may not be brought later than 30 days after the day on which leave to appeal is granted.

Recovery of Penalties and Other Amounts

Marginal note: Debts due to Her Majesty

- **28 (1)** The following amounts are debts due to Her Majesty in right of Canada that may be recovered in the Federal Court:
 - **(a)** the amount payable under an undertaking entered into under subsection 21(1) beginning on the day specified in the undertaking or, if no day is specified, beginning on the day on which the undertaking is entered into;
 - **(b)** the amount of the penalty set out in a notice of violation, beginning on the day on which it is required to be paid in accordance with the notice, unless representations are made in accordance with the notice;
 - **(c)** if representations are made, either the amount of the penalty that is imposed by the Commission or on appeal, as the case may be, beginning on the day specified by the Commission or the court or, if no day is specified, beginning on the day on which the decision is made; and
 - **(d)** the amount of any reasonable expenses incurred in attempting to recover an amount referred to in any of paragraphs (a) to (c).

- *Marginal note: Limitation period — prescription*

(2) A proceeding to recover such a debt may not be commenced later than five years after the day on which the debt becomes payable.

- *Marginal note: Receiver General*

(3) The debt is payable to the Receiver General.

Marginal note: Certificate of default

- **29 (1)** The Commission may issue a certificate certifying the unpaid amount of any debt referred to in subsection 28(1).

- *Marginal note: Effect of registration*

(2) Registration of a certificate in the Federal Court has the same effect as a judgment of that Court for a debt of the amount set out in the certificate and all related registration costs.

Rules about Violations

Marginal note: For greater certainty

30 For greater certainty, a violation is not an offence and, accordingly, section 126 of the [Criminal Code](#) does not apply.

Marginal note: Directors, officers, etc., of corporations

31 An officer, director, agent or mandatary of a corporation that commits a violation is liable for the violation if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation, whether or not the corporation is proceeded against.

Marginal note:Vicarious liability

32 A person is liable for a violation that is committed by their employee acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary is identified or proceeded against.

Marginal note:Defence

- **33 (1)** A person must not be found to be liable for a violation if they establish that they exercised due diligence to prevent the commission of the violation.
- *Marginal note:Common law principles*

(2) Every rule and principle of the common law that makes any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

General Provisions

Marginal note:Questions of law and fact

- **34 (1)** The Commission may decide any question of law or of fact in a proceeding under this Act.
- *Marginal note:Factual findings of court*

(2) In deciding a question of fact, the Commission is not bound by the finding or judgment of a court. However, the finding or judgment of a court is admissible in proceedings of the Commission.
- *Marginal note:Pending proceedings*

(3) The power of the Commission to decide a question of fact is not affected by proceedings pending before a court in which the question is in issue.

Marginal note:Judicial powers

35 In a proceeding under this Act, the Commission has the powers of a superior court with respect to the attendance and examination of witnesses and the production and examination of documents or things.

Marginal note:Panels of Commission

- **36 (1)** The Chairperson of the Commission may establish panels to decide any matter on behalf of the Commission in a proceeding under this Act.
- *Marginal note:Presiding member*

(2) If a panel consists of more than one member, the Chairperson must designate one of the members to preside over the panel.
- *Marginal note:Decision*

(3) A decision of a majority of the members of a panel is a decision of the panel.
- *Marginal note:Acting after expiry of appointment*

(4) A member whose appointment expires may, with the approval of the Chairperson, conclude any proceeding that the member has begun.
- *Marginal note:Powers of panel*

(5) A panel may exercise the powers and perform the duties and functions of the Commission under this Act in relation to any matter before the panel.

Marginal note: Rules of procedure

- **37 (1)** The Commission may make rules respecting the making of applications and representations to the Commission, and the conduct of proceedings held by it, under this Act.

- *Marginal note: Form and content of demands and notices*

(2) The Commission may establish the form and content of demands under section 15, notices to prepare or produce documents under section 17 and notices of violation under section 22.

Marginal note: Evidence

38 A demand under section 15, a notice to prepare or produce documents under section 17, a notice of violation under section 22, a copy of a decision under section 16, 18 or 25 or an order of the Commission under section 26, that appears to have been served is admissible in evidence in a proceeding without proof of the signature or official character of the person who appears to have signed it.

Marginal note: Information may be made public

39 The Commission may make public

- **(a)** the name of a person who enters into an undertaking, the nature of the undertaking including the acts or omissions and provisions at issue, the conditions included in the undertaking and the amount payable under it, if any; or
- **(b)** the name of a person who is deemed, or is found by the Commission or on appeal, to have committed a violation, the acts or omissions and provisions at issue and the amount payable as a result, if any.

Marginal note: Enforcement

- **40 (1)** A demand served under section 15, a notice served under section 17, an undertaking entered into under section 21 and an order of the Commission made under section 26 may be made an order of a court of competent jurisdiction and may be enforced in the same manner as an order of that court as if it had been an order of that court on the date it was served, in the case of a demand, notice or order, or entered into, in the case of an undertaking.

- *Marginal note: Procedure*

(2) The demand, notice, undertaking or order may be made an order of a court of competent jurisdiction by the filing with the registrar of the court of

- **(a)** a copy of the demand certified by a person designated for the purpose of section 15;
- **(b)** a copy of the notice certified by a person designated for the purpose of section 17;
- **(c)** a copy of the undertaking certified by a person designated for the purpose of section 21; or
- **(d)** a copy of the order certified by the secretary to the Commission.

- *Marginal note: Rescission or variation*

(3) On application by a person designated for the purpose of section 21 and a person who has entered into an undertaking that has been filed in a court of competent jurisdiction, that court must rescind or vary the undertaking if it finds that another undertaking in relation to the same acts or omissions has been entered into by the person.

Injunction

Marginal note: Injunction

- **41 (1)** If, on the application of a person designated for the purpose of this section, a court of competent jurisdiction is satisfied that a person is about to do or is likely to do anything that constitutes or is directed toward the contravention of any of sections 6 to 9, the court may issue an injunction ordering any person named in the application
 - **(a)** to refrain from doing anything that, in the opinion of the court, constitutes or is directed toward the contravention of that section; or
 - **(b)** to do anything that, in the opinion of the court, may prevent the contravention of that section.
- *Marginal note: Notice*

(2) No injunction may be issued unless 48 hours' notice is given to every person named in the application or the urgency of the situation is such that service of the notice would not be in the public interest.

Offences

Marginal note: Non-compliance

42 Every person who refuses or fails to comply with a demand made under section 15 or a notice issued under section 17 or who contravenes subsection 19(4) commits an offence.

Marginal note: Obstruction and false information

43 Every person who obstructs or hinders, or knowingly makes a false or misleading statement or provides false or misleading information to, a designated person who is carrying out their duties and functions under this Act commits an offence.

Marginal note: Directors and officers of corporations

44 An officer, director, agent or mandatary of a corporation that commits an offence is a party to and liable for the offence if they directed, authorized, assented to, acquiesced in or participated in the commission of the offence, whether or not the corporation is proceeded against.

Marginal note: Vicarious liability

45 A person is liable for an offence that is committed by their employee acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary is identified or proceeded against.

Marginal note: Offence

- **46 (1)** Every person who commits an offence under section 42 or 43 is guilty of an offence punishable on summary conviction and is liable
 - **(a)** to a fine of not more than \$10,000 for a first offence or \$25,000 for a subsequent offence, in the case of an individual; or
 - **(b)** to a fine of not more than \$100,000 for a first offence or \$250,000 for a subsequent offence, in the case of any other person.
- *Marginal note: Defence*

(2) A person must not be convicted of an offence under section 42 if they establish that they exercised due diligence to prevent the commission of the offence.

Private Right of Action

Application

The following provision is not in force.

Marginal note:Application

- **47 (1)** A person who alleges that they are affected by an act or omission that constitutes a contravention of any of sections 6 to 9 of this Act or of section 5 of the [Personal Information Protection and Electronic Documents Act](#) that relates to a collection or use described in subsection 7.1(2) or (3) of that Act — or that constitutes conduct that is reviewable under section 74.011 of the [Competition Act](#) — may apply to a court of competent jurisdiction for an order under section 51 against one or more persons who they allege have committed the act or omission or who they allege are liable for the contravention or reviewable conduct by reason of section 52 or 53.

- *Marginal note:Limitation period*

(2) Unless the court decides otherwise, no application may be brought later than three years after the day on which the subject matter of the proceeding became known to the applicant.

- *Marginal note:Affidavit to accompany application*

(3) The application must be accompanied by an affidavit that identifies the alleged contravention or reviewable conduct, sets out every provision, act or omission at issue and any other facts in support of the application and, if the applicant claims that they have suffered an actual loss or damage, or have incurred expenses, as a result of the alleged contravention or reviewable conduct, states the nature and amount of the loss, damage or expenses.

- *Marginal note:Notice*

(4) The applicant must, without delay, serve a copy of the application on every person against whom an order is sought, on the Commission if the application identifies a contravention of this Act, on the Commissioner of Competition if the application identifies conduct that is reviewable under section 74.011 of the [Competition Act](#) and on the Privacy Commissioner if the application identifies a contravention of the [Personal Information Protection and Electronic Documents Act](#).

The following provision is not in force.

Marginal note:Limitation

- **48 (1)** The court may not consider an application for an order against a person under paragraph 51(1)(b) that alleges a contravention of any of sections 6 to 9
 - **(a)** if the person has entered into an undertaking under subsection 21(1), or has been served with a notice of violation under subsection 22(1), in connection with the act or omission referred to in the application; or
 - **(b)** if the person is liable for the contravention by virtue of section 52 or 53 and the corporation, employee, agent or mandatary, as the case may be, who committed the contravention has entered into an undertaking under subsection 21(1), or has been served with a notice of violation under subsection 22(1), in connection with the act or omission referred to in the application.

- *Marginal note:Certification by Commission*

(2) At the written request of a person against whom an order under paragraph 51(1)(b) is sought, the Commission must, within 10 business days after the day on which the request is made, if it is so satisfied, certify in writing to the court that the person is liable for the contravention by virtue of section 52 or 53 and that an undertaking has been entered into, or a

notice of violation has been served, in connection with the act or omission referred to in the application for the order. If such a certification is given, the court may not consider the application.

• *Marginal note:Effect of application*

(3) If the court determines that it may consider an application for an order against a person under paragraph 51(1)(b), then, unless the application is discontinued in respect of that person,

- **(a)** no undertaking by the person may be entered into under subsection 21(1), and no notice of violation may be issued to them under subsection 22(1), in connection with an act or omission referred to in an application; and
- **(b)** no undertaking by the corporation, employee, agent or mandatary who committed the contravention may be entered into under subsection 21(1), and no notice of violation may be issued to that corporation, employee, agent or mandatary under subsection 22(1), in connection with an act or omission referred to in an application.

The following provision is not in force.

Marginal note:Notice of discontinuance

49 If an application for an order under paragraph 51(1)(b) is discontinued in respect of a person, the applicant must, without delay, notify everyone who was served with a copy of the application under subsection 47(4) of the discontinuance.

Hearing

The following provision is not in force.

Marginal note:Right to intervene

50 The following may intervene in any proceedings in connection with an application under subsection 47(1) for an order under paragraph 51(1)(b) and in any related proceedings:

- **(a)** the Commission, if the application identifies a contravention of this Act;
- **(b)** the Commissioner of Competition, if the application identifies conduct that is reviewable under the [Competition Act](#); and
- **(c)** the Privacy Commissioner, if the application identifies a contravention of the [Personal Information Protection and Electronic Documents Act](#).

The following provision is not in force.

Marginal note:Order

- **51 (1)** If, after hearing the application, the court is satisfied that one or more persons have contravened any of the provisions referred to in the application or engaged in conduct referred to in it that is reviewable under section 74.011 of the [Competition Act](#), the court may order the person or persons, as the case may be, to pay the applicant
 - **(a)** compensation in an amount equal to the actual loss or damage suffered or expenses incurred by the applicant; and
 - **(b)** a maximum of
 - **(i)** in the case of a contravention of section 6, \$200 for each contravention of that provision, not exceeding \$1,000,000 for each day on which a contravention occurred,

- **(ii)** in the case of a contravention of section 7 or 8, \$1,000,000 for each day on which a contravention occurred,
- **(iii)** subject to subparagraphs (iv) and (v), in the case of a contravention of section 9, \$1,000,000 for each contravention of that provision,
- **(iv)** in the case of a contravention of section 9 resulting from aiding, inducing or procuring, or causing to be procured, the doing of an act contrary to section 6, and if a contravention of section 6 has resulted, \$200 for each such contravention of section 6, not exceeding \$1,000,000 for each day on which a contravention of section 6 occurred,
- **(v)** in the case of a contravention of section 9 resulting from aiding, inducing or procuring, or causing to be procured, the doing of an act contrary to section 7 or 8, and if a contravention of either of those sections has resulted, \$1,000,000 for each day on which a contravention of section 7 or 8, as the case may be, occurred,
- **(vi)** in the case of a contravention of section 5 of the *Personal Information Protection and Electronic Documents Act* that relates to a collection or use described in subsection 7.1(2) or (3) of that Act, \$1,000,000 for each day on which a contravention occurred, and
- **(vii)** in the case of conduct that is reviewable under section 74.011 of the *Competition Act*, \$200 for each occurrence of the conduct, not exceeding \$1,000,000 for each day on which the conduct occurred.

• *Marginal note: Purpose of order*

(2) The purpose of an order under paragraph (1)(b) is to promote compliance with this Act, the *Personal Information Protection and Electronic Documents Act* or the *Competition Act*, as the case may be, and not to punish.

• *Marginal note: Factors to be considered*

(3) The court must consider the following factors when it determines the amount payable under paragraph (1)(b) for each contravention or each occurrence of the reviewable conduct:

- **(a)** the purpose of the order;
- **(b)** the nature and scope of the contravention or reviewable conduct;
- **(c)** the person's history, or each person's history, as the case may be, with respect to any previous contravention of this Act and of section 5 of the *Personal Information Protection and Electronic Documents Act* that relates to a collection or use described in subsection 7.1(2) or (3) of that Act and with respect to any previous conduct that is reviewable under section 74.011 of the *Competition Act*;
- **(d)** the person's history, or each person's history, as the case may be, with respect to any previous undertaking entered into under subsection 21(1) and any previous consent agreement signed under subsection 74.12(1) of the *Competition Act* that relates to acts or omissions that constitute conduct that is reviewable under section 74.011 of that Act;
- **(e)** any financial benefit that the person or persons obtained from the commission of the contravention or from engaging in the reviewable conduct;
- **(f)** the person's or persons' ability to pay the total amount payable;

- (g) whether the applicant has received compensation in connection with the contravention or the reviewable conduct;
- (h) the factors established by the regulations; and
- (i) any other relevant factor.

Rules about Contraventions and Reviewable Conduct

Marginal note:Directors and officers of corporations

52 An officer, director, agent or mandatary of a corporation that commits a contravention of any of sections 6 to 9 of this Act or of section 5 of the [Personal Information Protection and Electronic Documents Act](#) that relates to a collection or use described in subsection 7.1(2) or (3) of that Act, or that engages in conduct that is reviewable under section 74.011 of the [Competition Act](#), is liable for the contravention or reviewable conduct, as the case may be, if they directed, authorized, assented to, acquiesced in or participated in the commission of that contravention, or engaged in that conduct, whether or not the corporation is proceeded against.

Marginal note:Vicarious liability

53 A person is liable for a contravention of any of sections 6 to 9 of this Act or of section 5 of the [Personal Information Protection and Electronic Documents Act](#) that relates to a collection or use described in subsection 7.1(2) or (3) of that Act, or for conduct that is reviewable under section 74.011 of the [Competition Act](#), that is committed or engaged in, as the case may be, by their employee acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary is identified or proceeded against.

Marginal note:Defence

- **54 (1)** A person must not be found to have committed a contravention of any of sections 6 to 9 of this Act or of section 5 of the [Personal Information Protection and Electronic Documents Act](#) that relates to a collection or use described in subsection 7.1(2) or (3) of that Act, or to have engaged in conduct that is reviewable under section 74.011 of the [Competition Act](#), if they establish that they exercised due diligence to prevent the contravention or conduct, as the case may be.
- *Marginal note:Common law principles*

(2) Every rule and principle of the common law that makes any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a contravention of any of sections 6 to 9 of this Act or of section 5 of the [Personal Information Protection and Electronic Documents Act](#) that relates to a collection or use described in subsection 7.1(2) or (3) of that Act, or in respect of conduct that is reviewable under section 74.011 of the [Competition Act](#), to the extent that it is not inconsistent with this Act or the [Personal Information Protection and Electronic Documents Act](#) or the [Competition Act](#), as the case may be.

The following provision is not in force.

Marginal note:Liability

55 If more than one person is determined by the court under subsection 51(1) to have contravened any of the provisions referred to in an application under subsection 47(1) or to have engaged in conduct referred to in an application under subsection 47(1) that is reviewable under section 74.011 of the [Competition Act](#), those persons are jointly and severally, or solidarily, liable for the payment of the amounts ordered to be paid under subsection 51(1) in respect of the contravention or reviewable conduct.

Consultation and Disclosure of Information

Marginal note:Disclosure by an organization

56 Despite subsection 7(3) of the *Personal Information Protection and Electronic Documents Act*, any organization to which Part 1 of that Act applies may on its own initiative disclose to the Commission, the Commissioner of Competition or the Privacy Commissioner any information in its possession that it believes relates to

- **(a)** a contravention of
 - **(i)** any of sections 6 to 9,
 - **(ii)** section 52.01 of the *Competition Act* or, in respect of conduct carried out by electronic means, section 52, 52.1, 53, 55 or 55.1 of that Act,
 - **(iii)** section 5 of the *Personal Information Protection and Electronic Documents Act*, which contravention relates to a collection or use described in subsection 7.1(2) or (3) of that Act, or
 - **(iv)** any prohibition or requirement of the Commission, in respect of conduct carried out by electronic means, under section 41 of the *Telecommunications Act*; or
- **(b)** conduct that is reviewable under section 74.011 of the *Competition Act* or, in respect of conduct carried out by electronic means, under section 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act.

Marginal note:Consultation

57 The Commission, the Commissioner of Competition and the Privacy Commissioner must consult with each other to the extent that they consider appropriate to ensure the effective regulation, under this Act, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* and the *Telecommunications Act*, of commercial conduct that discourages the use of electronic means to carry out commercial activities, and to coordinate their activities under those Acts as they relate to the regulation of that type of conduct.

Marginal note:Disclosure by Commission

- **58 (1)** The Commission may disclose information obtained by it in the performance or exercise of its duties or powers related to any of sections 6 to 9 of this Act and, in respect of conduct carried out by electronic means, to section 41 of the *Telecommunications Act*,
 - **(a)** to the Privacy Commissioner, if the Commission believes that the information relates to the performance or exercise of the Privacy Commissioner's duties or powers under Part 1 of the *Personal Information Protection and Electronic Documents Act* in respect of a collection or use described in subsection 7.1(2) or (3) of that Act; and
 - **(b)** to the Commissioner of Competition, if the Commission believes that the information relates to the performance or exercise of the Commissioner of Competition's duties or powers related to section 52.01 or 74.011 of the *Competition Act* or, in respect of conduct carried out by electronic means, to section 52, 52.1, 53, 55, 55.1, 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act.
- *Marginal note:Disclosure by Commissioner of Competition*

(2) Despite section 29 of the *Competition Act*, the Commissioner of Competition may disclose information obtained by him or her in the performance or exercise of his or her duties or powers related to section 52.01 or 74.011 of that Act or, in respect of conduct carried out by electronic means, to section 52, 52.1, 53, 55, 55.1, 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act,

- **(a)** to the Privacy Commissioner, if the Commissioner of Competition believes that the information relates to the performance or exercise of the Privacy Commissioner's duties or powers under Part 1 of the [Personal Information Protection and Electronic Documents Act](#) in respect of a collection or use described in subsection 7.1(2) or (3) of that Act; and
- **(b)** to the Commission, if the Commissioner of Competition believes that the information relates to the administration of any of sections 6 to 9 of this Act or, in respect of conduct carried out by electronic means, of section 41 of the [Telecommunications Act](#).
- *Marginal note: Disclosure by Privacy Commissioner*

(3) The Privacy Commissioner may disclose information obtained by him or her in the performance or exercise of his or her duties or powers under Part 1 of the [Personal Information Protection and Electronic Documents Act](#) if the information relates to a collection or use described in subsection 7.1(2) or (3) of that Act or to an act alleged in a complaint in respect of which the Privacy Commissioner decides, under subsection 12(2) or 12.2(2) of that Act, to not conduct an investigation or to discontinue an investigation,

 - **(a)** to the Commissioner of Competition, if the Privacy Commissioner believes that the information relates to the performance or exercise of the Commissioner of Competition's duties or powers related to section 52.01 or 74.011 of the [Competition Act](#) or, in respect of conduct carried out by electronic means, to section 52, 52.1, 53, 55, 55.1, 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act; and
 - **(b)** to the Commission, if the Privacy Commissioner believes that the information relates to the administration of any of sections 6 to 9 of this Act or, in respect of conduct carried out by electronic means, of section 41 of the [Telecommunications Act](#).

Marginal note: Use of information by Commission

- **59 (1)** The Commission may use the information that is disclosed to it under paragraph 58(2)(b) or (3)(b) only for the purpose of the administration of any of sections 6 to 9 of this Act or, in respect of conduct carried out by electronic means, of section 41 of the [Telecommunications Act](#).
- *Marginal note: Use of information by Commissioner of Competition*

(2) The Commissioner of Competition may use the information that is disclosed to him or her under paragraph 58(1)(b) or (3)(a) only for the purpose of the performance or exercise of the Commissioner's duties or powers related to section 52.01 or 74.011 of the [Competition Act](#) or, in respect of conduct carried out by electronic means, to section 52, 52.1, 53, 55, 55.1, 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act.
- *Marginal note: Use of information by Privacy Commissioner*

(3) The Privacy Commissioner may use the information that is disclosed to him or her under paragraph 58(1)(a) or (2)(a) only for the purpose of performing or exercising his or her duties or powers under Part 1 of the [Personal Information Protection and Electronic Documents Act](#) in respect of a collection or use described in subsection 7.1(2) or (3) of that Act.

Marginal note: Information shared with the government of a foreign state, etc.

- **60 (1)** Information may be disclosed under an agreement or arrangement in writing between the Government of Canada, the Commission, the Commissioner of Competition or the Privacy Commissioner and the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any

such government or organization, if the person responsible for disclosing the information believes that

- **(a)** the information may be relevant to an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to
 - **(i)** conduct prohibited
 - **(A)** under any of sections 6 to 9, or
 - **(B)** under section 52.01 of the *Competition Act* or, in respect of conduct carried out by electronic means, under section 52, 52.1, 53, 55 or 55.1 of that Act,
 - **(ii)** conduct that contravenes section 5 of the *Personal Information Protection and Electronic Documents Act* and that relates to a collection or use described in subsection 7.1(2) or (3) of that Act,
 - **(iii)** conduct that is reviewable under section 74.011 of the *Competition Act* or, in respect of conduct carried out by electronic means, under section 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act, or
 - **(iv)** conduct that contravenes any prohibition or requirement of the Commission, in respect of conduct carried out by electronic means, under section 41 of the *Telecommunications Act*; or
 - **(b)** the disclosure is necessary in order to obtain from that foreign state, organization or institution information that may be relevant for any of the following purposes and no more information will be disclosed than is required for that purpose:
 - **(i)** the administration of any of sections 6 to 9,
 - **(ii)** the performance or exercise by the Commissioner of Competition of his or her duties or powers related to section 52.01 or 74.011 of the *Competition Act* or, in respect of conduct carried out by electronic means, to section 52, 52.1, 53, 55, 55.1, 74.01, 74.02, 74.04, 74.05 or 74.06 of that Act,
 - **(iii)** the performance or exercise by the Privacy Commissioner of his or her duties or powers under Part 1 of the *Personal Information Protection and Electronic Documents Act* in respect of a collection or use described in subsection 7.1(2) or (3) of that Act, or
 - **(iv)** the administration, in respect of conduct carried out by electronic means, of section 41 of the *Telecommunications Act*.
- *Marginal note: Restriction on use*
 - (2)** An agreement or arrangement referred to in subsection (1) must
 - **(a)** restrict the use of the information to purposes relevant to an investigation or proceeding in respect of a contravention of the laws of the foreign state that address conduct referred to in any of subparagraphs (1)(a)(i) to (iv); and
 - **(b)** stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the person responsible for disclosing the information.

- *Marginal note:Restriction — arrangements*

(3) An arrangement referred to in subsection (1) entered into by the Commission or the Privacy Commissioner may be in respect only of contraventions of the laws of a foreign state that have consequences that would not be considered penal under Canadian law.

- *Marginal note:Limitation*

(4) The only information that may be disclosed under subsection (1) is information

- **(a)** obtained in the course of assisting an investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct referred to in any of subparagraphs (1)(a)(i) to (iv); or
- **(b)** obtained in the course of the activities described in any of subparagraphs (1)(b)(i) to (iv).

- *Marginal note:Clarification*

(5) For the purposes of this section, an arrangement may be created by the acceptance, by the Government of Canada, the Commission, the Commissioner of Competition or the Privacy Commissioner, of a written request for assistance from the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, if the request is accompanied by a declaration that the party making the request will provide assistance to the party to whom the request is made on a reciprocal basis.

Marginal note:Reports to Minister of Industry

61 The Commission, the Commissioner of Competition and the Privacy Commissioner must provide the Minister of Industry with any reports that he or she requests for the purpose of coordinating the implementation of sections 6 to 9 of this Act, sections 52.01 and 74.011 of the [Competition Act](#) and section 7.1 of the [Personal Information Protection and Electronic Documents Act](#).

General

Marginal note:Mandate

62 The Commission is responsible for the administration of sections 6 to 46.

Marginal note:Appointment of experts, etc.

- **63 (1)** The Commission may, with the approval of the Governor in Council, engage experts or other persons to assist the Commission in any matter.

- *Marginal note:Remuneration*

(2) The experts and other persons engaged by the Commission must be paid the remuneration, and are entitled to be paid the travel and living expenses incurred in providing assistance to the Commission, as may be fixed by the Governor in Council.

- *Marginal note:Remuneration and expenses payable out of appropriations*

(3) The remuneration and expenses of the experts and other persons engaged by the Commission must be paid out of money appropriated by Parliament to defray the cost of administering this Act.

Marginal note:Regulations — Governor in Council

- **64 (1)** The Governor in Council may make regulations

- **(a)** specifying the circumstances in which consent is deemed to have been withdrawn for the purposes of section 6;
 - **(b)** defining “personal relationship” and “family relationship” for the purposes of paragraph 6(5)(a);
 - **(c)** specifying classes of commercial electronic messages, or circumstances in which such messages are sent, for the purposes of paragraph 6(5)(c);
 - **(d)** specifying purposes of electronic messages for the purposes of paragraph 6(6)(g);
 - **(e)** specifying the use that may be made of a consent and the conditions on which a consent may be used for the purposes of paragraph 10(2)(b);
 - **(f)** specifying functions for the purposes of paragraph 10(5)(g);
 - **(g)** specifying operations for the purposes of subsection 10(6);
 - **(h)** specifying programs for the purposes of subparagraph 10(8)(a)(vi);
 - **(i)** specifying the circumstances mentioned in subsection 10(9) in which consent may be implied;
 - **(j)** defining “membership”, “club”, “association” and “voluntary organization” for the purposes of subsection 10(13);
 - **(k)** designating provisions whose contravention constitutes a separate contravention in respect of each day during which it continues;
 - **(l)** establishing additional factors to be taken into account in determining the amount payable under paragraph 51(1)(b); and
 - **(m)** generally, for carrying out the purposes and provisions of this Act.
- *Marginal note:Regulations — Commission*
 - (2)** The Commission may make regulations
 - **(a)** respecting the form of a request for consent for the purposes of subsections 10(1) and (3);
 - **(b)** respecting undertakings under subsection 21(1);
 - **(c)** respecting the service of documents required or authorized to be served under this Act including the manner and proof of service and the circumstances under which documents are to be considered to be served; and
 - **(d)** prescribing anything that is to be prescribed under this Act.

Marginal note:Review of Act by Parliamentary committee

65 Three years after the day on which this section comes into force, a review of the provisions and operation of this Act must be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established for that purpose.

Transitional Provisions

Marginal note:Existing business or non-business relationships

66 A person’s consent to receiving commercial electronic messages from another person is implied until the person gives notification that they no longer consent to receiving such

messages from that other person or until three years after the day on which section 6 comes into force, whichever is earlier, if, when that section comes into force,

- (a) those persons have an existing business relationship or an existing non-business relationship, as defined in subsection 10(10) or (13), respectively, without regard to the period mentioned in that subsection; and
- (b) the relationship includes the communication between them of commercial electronic messages.

Marginal note: Software updates and upgrades

67 If a computer program was installed on a person's computer system before section 8 comes into force, the person's consent to the installation of an update or upgrade to the program is implied until the person gives notification that they no longer consent to receiving such an installation or until three years after the day on which section 8 comes into force, whichever is earlier.