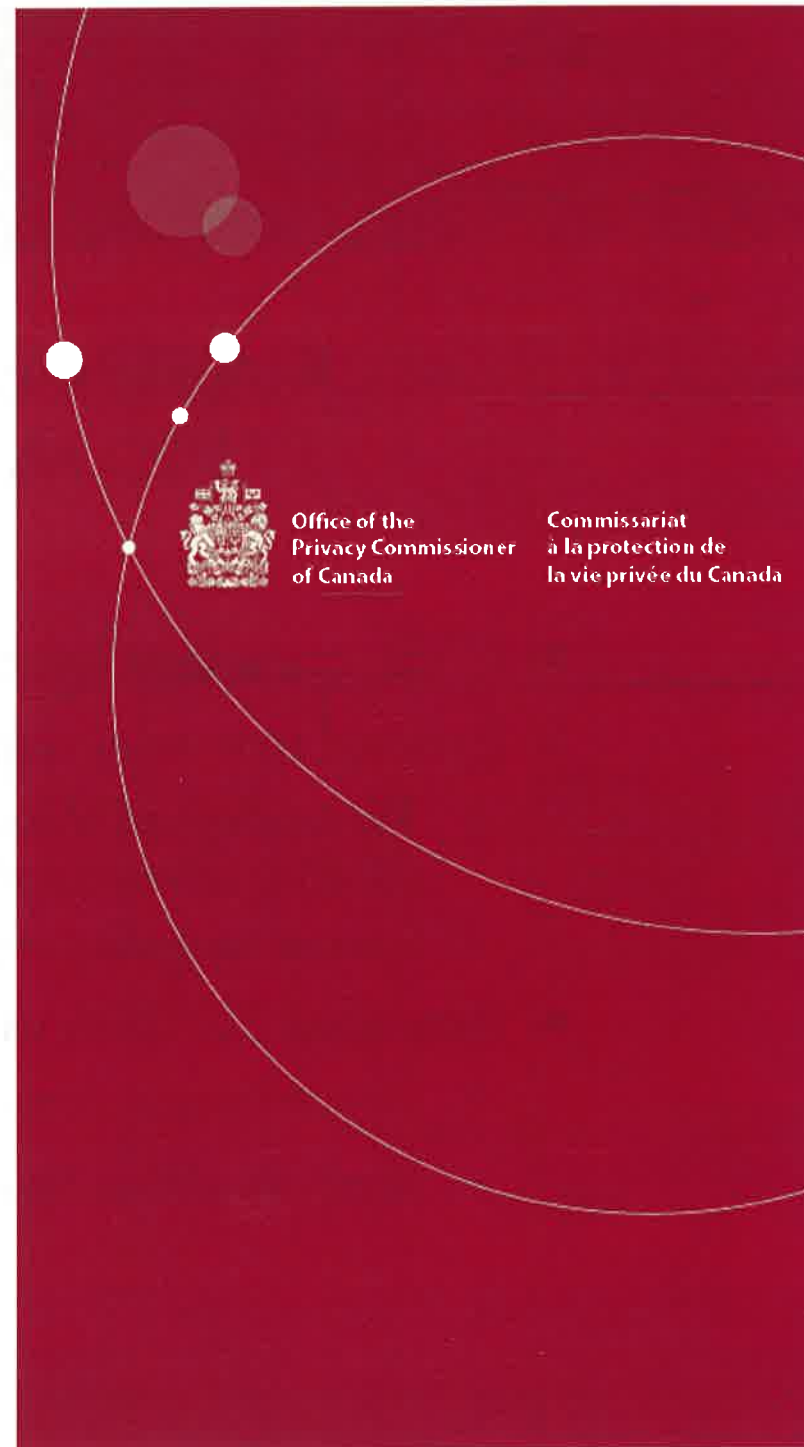


**CASL's amendments to
PIPEDA:
Your obligations under
new address harvesting
provisions**

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Office of the Privacy Commissioner of Canada
(OPC)**

**February 4, 2014
Toronto, ON**





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CASL's coming into force amended PIPEDA

- CASL came into force July 1, 2014
- Enacted new rules regarding:
 - The sending and content of commercial electronic messages (including the ability to unsubscribe) (CRTC); and
 - False or misleading messages or content (Competition Bureau).
- Amended PIPEDA to definitively restrict:
 - the collection of personal information via spyware; and
 - electronic address harvesting.





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What is Address Harvesting?

- ▶ Collecting email addresses through the use of a computer program, such as:
 - scraping websites or
 - generating a list of email addresses.





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Why is this important to organizations who don't collect email addresses and sell lists?

- ▶ Not assumed that **YOUR** organization would be harvesting addresses ... but use of addresses collected in this way is prohibited.
- ▶ **ALL** organizations are responsible to ensure that all individuals have provided appropriate consent for the collection of their electronic address for marketing and other purposes.





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What are the potential pitfalls?

► Need for:

- Due diligence to avoid inadvertently harvesting, or using harvested email addresses.
- Taking appropriate precautions when:
 - working with a third party to do email marketing on your behalf;
 - buying a list from a vendor in order to do email marketing in-house.





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How to avoid potential pitfalls? Ask list vendors questions.

- ▶ If sending messages yourself using a list obtained from a vendor, ask the company:
 - How were the addresses collected?
 - How was consent for their use obtained?
- ▶ It is your responsibility to confirm if the company is aware of PIPEDA and abiding by its provisions.





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How to avoid potential pitfalls? Ask marketers questions.

- ▶ If you're working with a marketing firm, ask:
 - where do they get the e-mail addresses?
 - how were the addresses originally gathered?
 - how was consent obtained?
 - how are the lists kept up to date?
 - how are organizations purchasing and using lists kept informed of changes?



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How to avoid potential pitfalls? Put it in writing.

- ▶ Keep a written record of the questions you asked and answers provided.
- ▶ Make it a clear obligation up front that you don't want to have your messages sent to people who have not:
 - consented to providing their email addresses; or
 - receiving marketing messages.





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How to avoid potential pitfalls? Just because an email address is posted, it's not fair game.

- ▶ Some get confused by PIPEDA provisions around “publicly available” information.
- ▶ “Publicly available information” is defined in regulations and quite limited in scope.
- ▶ You can take a look at our Interpretation Bulletin on this issue posted on our website at https://www.priv.gc.ca/leg_c/interpretations_06_pai_e.asp
- ▶ Don't mistake public accessible (as commonly understood) with “publicly available” under PIPEDA.



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How to avoid potential pitfalls? Know that PIPEDA's exceptions don't apply.

- ▶ While there are certain exceptions under PIPEDA where personal information can be collected without consent, these exceptions by and large do not apply to address harvesting.
- ▶ Section 7.1(2) of PIPEDA states that certain exceptions for the collection and use of personal information without consent do not apply with respect to:
 - a) the collection of an individual's electronic address, if the address is collected by the use of a computer program that is designed or marketed primarily for use in generating or searching for, and collecting, electronic addresses; or
 - b) the use of an individual's electronic address, if the address is collected by the use of a computer program described in paragraph (a).



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What are the consequences for contraventions? Legal...

- Following an investigation, an organization found to have contravened PIPEDA may be:
 - named publicly; and
 - subject to a compliance order or damages imposed by the Federal Court.



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What are the consequences for contraventions? Reputational...

- ▶ In a 2012 public opinion survey, 73% of Canadians who used the Internet were concerned about companies using their information to send them spam.
- ▶ In other words, no organization wants to be known as a spammer.
- ▶ And one of the best ways to avoid this is by ensuring that email addresses used for reaching-out are collected with consent.



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Potential case – Getting the word out to thousands in a click...but the addresses were scraped

- ▶ A small business selling customized smartphone cases was seeking an affordable way to get word of its product out to thousands of individuals.
 - So, it purchased a list of email addresses from a vendor and sent out email messages on its own.
- ▶ The vendor however generated the list by using “web crawler” software to mine the Internet for posted email addresses.



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Potential case – Address lists not scraped, but still without consent

- ▶ A tech-savvy entrepreneur sells email address lists generated by software matching common names with email service provider domains
 - IE. jimjones1@GEE-MAIL.com, jimjones2@GEE-MAIL.com, jimjones3@GEE-MAIL.com ...
- ▶ His overhead is little, and many are enticed by the lists he offers at very low prices.
 - And people are impressed given his assurance that the addresses weren't 'scraped' from the web.

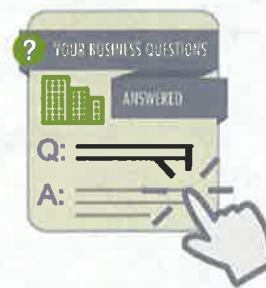


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Where can I go for more information?

- ▶ About CASL, overall: www.fightspam.gc.a
- ▶ About consent and penalties related to sending commercial electronic messages:
www.crtc.gc.ca/antispam
- ▶ About OPC responsibilities and tips (more to be added in coming weeks): www.priv.gc.ca/casl
- ▶ Follow us: @privacyprivee
- ▶ Want us to come and talk to your organization or association? speaking.request@priv.gc.ca





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