

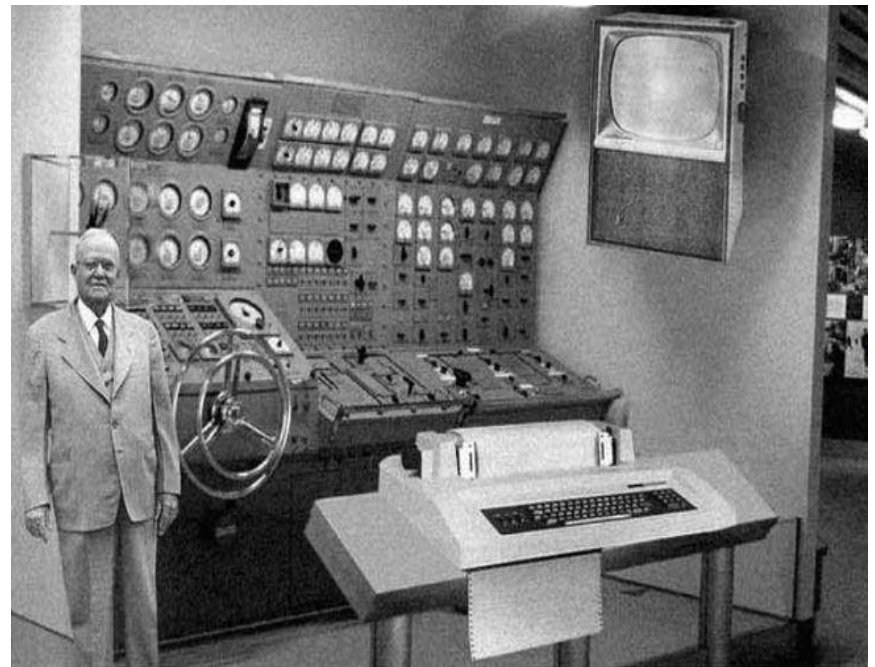
# Big Data and Business Analytics: Legal, Ethical and Consent Considerations

Eloïse Gratton  
Partner and National Co-Leader, Privacy and Data Security  
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# PIPEDA Background : Consent-based Model

- As the growing number of automated data banks and computers represented the biggest concern for policymakers in the early 1970s, the way to address this specific threat has led to conceptualizing privacy as the individuals in “control of their personal information”.



# Consent under PIPEDA is quite flexible

- may vary, depending upon the circumstances and the **sensitivity** of information.
- in obtaining consent, the “**reasonable expectations**” of the individual are also relevant.
- the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, “**except where inappropriate.**”
  - it may be *impossible or impractical* to seek consent (legal, medical or security reasons);
  - obtaining consent *might defeat the purpose* (fraud or law enforcement);
  - seeking consent may be *impossible or inappropriate* (minor or mentally incapacitated);
  - impossible if *do not have a direct relationship with the individual*.
- under article 5 (3), catch-all reasonableness test:
  - “An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.”

# Amendments on Consent: *S-4 Digital Privacy Act*

- **Original wording (4.3.2, schedule 1):**

To make the consent meaningful, the purposes must be stated in such a manner that the **individual can reasonably understand** how the information will be used or disclosed.

- **New wording post S-4 (6.1 PIPEDA)**

The consent of an individual is only valid **if it is reasonable to expect** that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which he or she is consenting



# Next steps in addressing consent challenges ...

- **Amending PIPEDA?**

- Law should be technology neutral + flexible + considering evolving social norms

- **More Policy Guidance?**

- Enhanced transparency + valid consent + consumer expectations

- **Better Interpretation?**

- Considering impact on innovation + ethics

# Consent and Business Analytics



# OPC findings and business analytics

Express consent required

No consent required

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## Findings under the *Personal Information Protection and Electronic Documents Act (PIPEDA)*

PIPEDA Report of Findings #2015-001

### Results of Commissioner Initiated Investigation into Bell's Relevant Ads Program

April 7, 2015

See also: [News release: Bell advertising program raises privacy concerns](#)

**Update**

Following the release of the Report of Findings, Bell advised us that it has

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Frequently Asked Questions

## Findings under the *Personal Information Protection and Electronic Documents Act (PIPEDA)*

PIPEDA Case Summary #2009-004

### No Consent Required for Using Publicly Available Personal Information Matched with Geographically Specific Demographic Statistics

[Subsections 2(1) and 5(3), paragraph 7(1)(d), sub-paragraphs 7(2)(c.1) and 7(3)(h.1), and Principles 4.3 and 4.8]

**Lessons Learned**

- In general, the Act does not prevent organizations from using telephone directory information, which is publicly available, for commercial marketing purposes.
- An organization does not need to obtain consent in order to use



# Business analytics and data flow scenarios

Scenarios	Collection	Process	Use	Consent required?
1	From individual	Analyzed (individual or aggregate basis)	Re-applied and used on same individual	Probably
2	From individual	Analyzed <b>in aggregate</b>	Knowledge and trend shared with third parties – No use <i>per se</i>	No
3	In aggregate, knowledge, trends	[maybe analyzed, maybe not]	Re-applied and used on individual basis	Maybe



# Scenario 1

Scenarios	Collection	Process	Use	Consent required?
1	From individual	Analyzed (individual or aggregate basis)	Re-applied and used on same individual	<b>Probably</b>

- circumstances and the **sensitivity** of information
- “**reasonable expectations**” of the individual are also relevant

# Marketing initiatives and personalization

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## How Target Figured Out A Teen Girl Was Pregnant Before Her Father Did

324 comments, 169 called-out + Comment Now + Follow

Every time you go shopping, you share intimate details about your consumption patterns with retailers. And many of those retailers are studying those details to figure out what you like, what you need, and which coupons are most likely to make you happy. Target, for example, has figured out how to data-mine its way into your womb, to figure out whether you have a baby on the way long before you



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Findings under the *Personal Information Protection and Electronic Documents Act (PIPEDA)*

PIPEDA Report of Findings #2015-001

### Results of Commissioner Initiated Investigation into Bell's Relevant Ads Program

April 7, 2015

See also: [News release: Bell](#)

Forbes / Tech

The Little Black Book of Bill

JUL 9, 2012 @ 05:20 PM 582 VIEWS

## British Airways Won't Be Google Image Stalking You Unless You're A V.I.P.



**Kashmir Hill**, FORBES STAFF  
Welcome to *The Not-So Private Parts* where technology & privacy collide.  
[FOLLOW ON FORBES \(2086\)](#) f t r e

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British Airways knows everyone on this flight a little bit better thanks to big data.

Thanks to a story in the London Evening Standard, it was widely reported last week that British Airways had plans to start Google image stalking its fliers so that its representatives could recognize people as they arrived at the airport and boarded planes. For those



# Scenario 2

Scenarios	Collection	Process	Use	Consent required?
1	From individual	Analyzed (individual or aggregate basis)	Re-applied and used on same individual	Probably
2	From individual	Analyzed <b>in aggregate</b>	Knowledge and trend shared with third parties – No use <i>per se</i>	No

- De-identification process or level of **aggregation**
- No collection over what is **necessary**

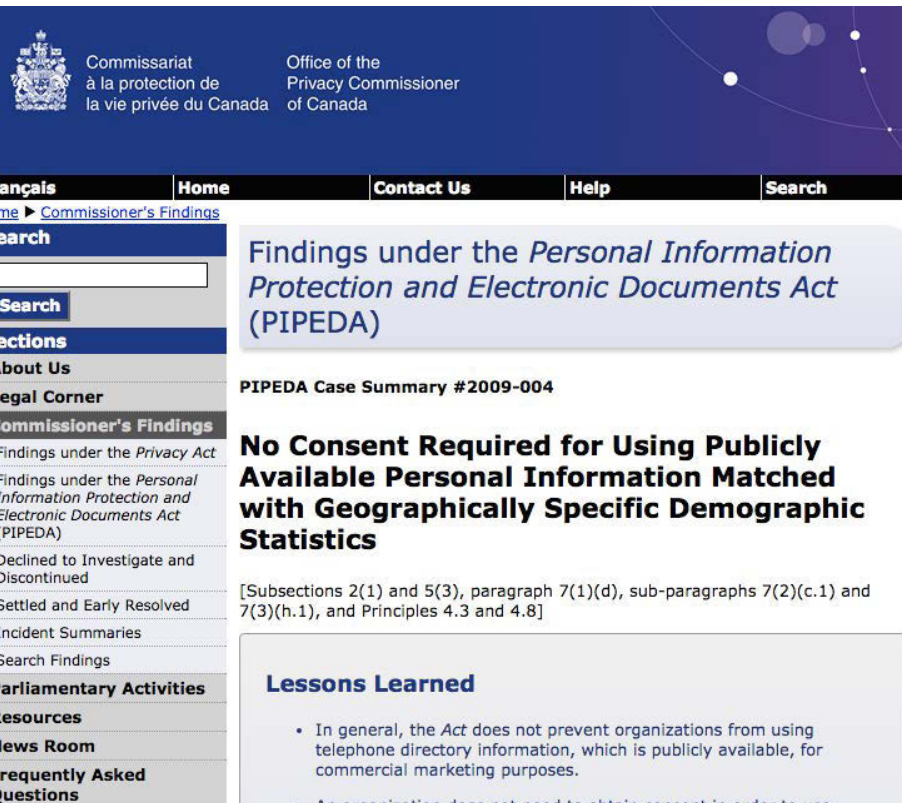
# Scenario 3

Scenarios	Collection	Process	Use	Consent required?
1	From individual	Analyzed (individual or aggregate basis)	Re-applied and used on same individual	Probably
2 ↓	From individual	Analyzed <b>in aggregate</b>	Knowledge and trend shared with third parties – No use <i>per se</i>	No
3	In aggregate, knowledge, trends	[maybe analyzed, maybe not]	Re-applied and used on individual basis	Maybe

- Marketing vs. **eligibility** decision (discrimination)
- **Ethical** considerations

# Marketing initiatives and personalization

## Neighbourhood trends (+ use + location)



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## Knowledge about consumer bias



**Marketers Should Take Note of When Women Feel Least Attractive**

www.adweek.com

Identifying the right audience is critical for marketers, but pinpointing the right day and time to talk to that audience can be just as important, especially when



# Dynamic pricing

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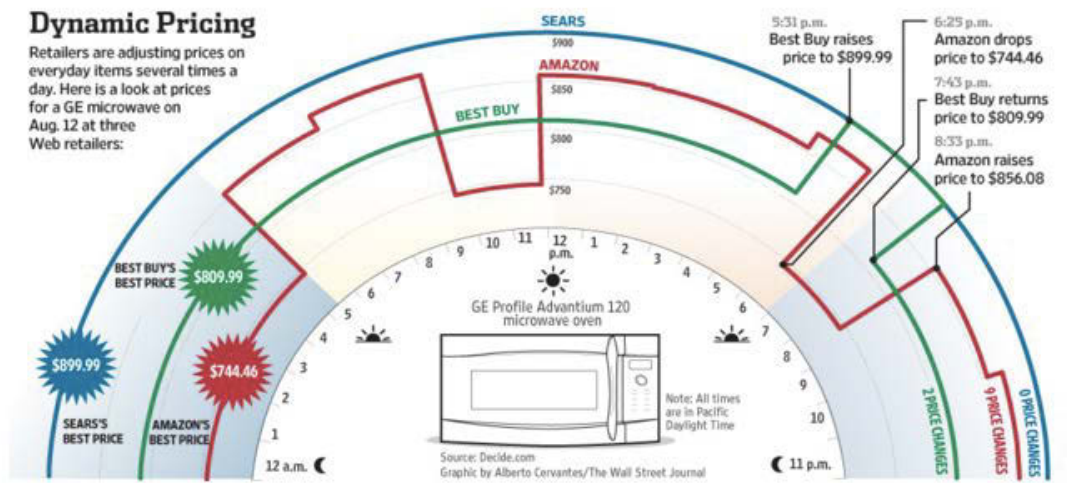
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## Dynamic Pricing

Retailers are adjusting prices on everyday items several times a day. Here is a look at prices for a GE microwave on Aug. 12 at three Web retailers:



### Related Interactives

Rikuzentakata's Struggle

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# Dynamic Pricing : Scenario 1 vs. 3

Scenarios	Collection	Process	Use	Consent required?
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# Discussion and Q&A



Eloïse Gratton  
+514.954.3106  
[egratton@blg.com](mailto:egratton@blg.com)