



August 1, 2008

BY MAIL

Privacy Commissioner of Canada
112 Kent Street
Ottawa, Ontario
K1A 1H3

Dear Commissioner Stoddart:

Re: PIPEDA Complaint: Royal Bank of Canada

This is a formal request under section 11 of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) for an investigation of the client account agreements (“CAAs”) used by the Royal Bank of Canada Financial Group (“RBC”) with respect to their compliance with PIPEDA.

This matter has been brought to our attention by Mr. H., who lodged a formal complaint under PIPEDA about one of these CAAs on February 14, 2006. By way of a letter, on April 3, 2007, your office concluded that his complaint was “resolved”. We have since conducted our own PIPEDA analysis of the CAAs and are concerned that some important elements of the RBC policy may have been overlooked in the earlier finding. In particular, we are alleging that the CAAs used by RBC companies Royal Bank of Canada – Dominion Securities (“RBC-DS”) and Royal Bank of Canada (“Royal Bank”) violate Principles 4.3.3, 4.3.2, 4.3.5, and 4.3.6 of PIPEDA.

In brief, we submit that RBC is in violation of PIPEDA by:

- Failing to allow clients to use its service without agreeing to permit RBC’s collection of unnecessary personal information (Principle 4.3.3); and
- Failing to seek express consent from clients to use their sensitive personal information for secondary purposes (Principles 4.3.5 and 4.3.6).

Please note that this issue is not necessarily confined to RBC. We intend to investigate the policies and practices of other major Canadian banks in this regard, and encourage you to do the same.

Statement of Facts

RBC is requiring its clients to sign CAAs in order to obtain investment and banking accounts. These CAAs authorize RBC to collect and use a broad range of information for various purposes.

RBC companies have been updating their CAAs regularly. In addition to examining RBC's current CAAs, we have chosen to examine some of RBC's older CAAs, because many RBC clients are presumably still bound by them. In this submission, we will be examining the following CAAs used by RBC companies RBC-DS and Royal Bank:

- RBC-DS' 2003 CAA for Registered Retirement Income Fund (RRIF) Accounts (Attachment 1)
- RBC-DS' 2006 CAA for Registered Retirement Income Fund (RRIF) Accounts (Attachment 2)
- RBC-DS' 2008 CAA for Registered Retirement Income Fund (RRIF) Accounts (Attachment 3)
- Royal Bank's 2007 CAA for Banking Accounts (Attachment 4)
- Royal Bank's 2008 CAA for Banking Accounts (Attachment 5)

1) RBC-DS' 2003 CAA for RRIF accounts

RBC-DS' 2003 CAA¹ for RRIF accounts states as follows:

A. Collecting your personal information

We may from time to time collect financial and other information ("information") about you. This information includes transaction-related details arising from your relationship with or through us. You authorize us to collect this information when you open an account, and during the course of our relationship. We may obtain this information from a variety of sources, including from your records, from service arrangements (including transactions) you have made through us, from credit reporting agencies and other financial institutions, and from references you have provided to us.

B. Using and Sharing Your Personal Information

We may make this information available to our employees, third party service providers and other financial institutions, but they will not share this information with others. We may also give information to credit reporting agencies, who may share it with other creditors. This information may only be used for the following purposes:

- to verify your identity and perform background verifications;
- to operate your account and provide you with products and services you may request;
- to better understand your financial situation;
- to determine your eligibility for products and services we offer;
- to help us better understand the current and future needs of our clients; and
- to help us better manage our business and our relationship with you

C. Other uses of your personal information:

We may also use this information for the following purposes:

¹ Attachment 1 at para. 28A.

- i. To promote our products and services to you and those of third parties we may select, which may be of interest to you;
- ii. Where not prohibited by law, we may share this Information with other members of RBC Financial Group for the purpose of referring you to them or promoting products and services offered by them, as well as those of their selected third parties, which may be of interest too you. You understand that we and each member of RBC Financial Group are separate affiliated corporations. You acknowledge that if as a result of such sharing they provide products or services to you, they may pay us a referral fee and advise us of those products or service they have provided to you. It is illegal for a member of RBC Financial Group receiving the fee to trade or advise in respect of securities if it is not duly license or registered under applicable securities legislation to provide such trading or advice; and
- iii. If you also deal with other members of RBC Financial group, we may, where not prohibited by law, consolidate your Information with information they have about you to allow us and any of them to manage your relationship with members of RBC Financial Group and our business.

[...]

If you wish, you may choose not to have your Information shared or used for the purposes outlined in one or more of (i), (ii) or (iii) in this section C by contacting your Investment Advisor. You will not be refused services just because you have told use not to share or use your Information for these purposes.

RBC-DS clients subject to this agreement had no choice but to agree to the collection and uses of their information set out in ss. A and B if they wished to obtain and operate a full-service RRIF account with RBC-DS. The type of information that RBC-DS permits itself to collect is unlimited as are the sources from which such information may be collected. The uses to which such information may be put include, most notably, “to determine your eligibility for products and services we offer”.

On the other hand, clients are permitted to “opt out” of the uses set out in s. C, which uses include promoting RBC products and services directly to the client. In order to opt out of these secondary uses, clients must contact their Investment Advisor – no 1-800 number, email address, or other simple means of opting out is provided.

2) RBC-DS’ 2006 CAA for RRIF accounts

RBC-DS’ 2006 CAA² for RRIF accounts states as follows:

31. Protecting Your Privacy – Collection and Use of Personal Information: We are required to collect the following personal, financial and other information in order to open and operate your account and provide you with the services you request, and to fulfill our legal, regulatory and self-regulatory obligations in Canada and in some cases, abroad, and if necessary, to protect or enforce our rights under this Agreement. This information includes, without limitation:

- information required to establish your identity (e.g., name, date of birth, citizenship, etc.);
- information required to establish your financial situation (e.g., income, marital status, dependents, etc.) and your personal background;
- information you provide on an application for any of our products and services; and

² Attachment 2 at para. 31.

- information for the provision of products and services.

We may collect and confirm this information during the course of our relationship. We may obtain this information from a variety of sources, including from you, from service arrangements you make with or through us, from credit reporting agencies and other financial institutions, from registries, from references you provide to us, from other investment dealers, from other financial institutions, and from other sources, as is necessary for the provision of our products and services.

Use of Your Personal Information: Your information may be used by us for the purposes of opening and operating your account and to provide you with services you request. We may also use your information in any other manner that is required or permitted by law or under the rules of any self-regulatory authority in which we are a member. For greater certainty, the following are additional examples of the manner in which we may need to use your information.

- to verify your identity and investigate your personal background;
- to better understand your current and future investment needs and your financial situation;
- to determine your eligibility for the products and services we offer;
- to help us better understand the current and future needs of our clients;
- to communicate to you any benefit, feature and other information about products and services that you have with us;
- to help us better manage our business and your relationship with us;
- to maintain the accuracy and integrity of information held by a credit reporting ; and
- to protect or enforce our rights under this Agreement or to comply with applicable law or the rules of any self-regulatory authority in which we are a member
- as required or permitted by law.

Other uses of your personal information

- We may use your information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you.
- We may also, where not prohibited by law, share your information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. You acknowledge that as a result of such sharing they may advise us of those products or services provided
- If you also deal with other companies under RBC Financial Group, we may, where not prohibited by law, consolidate your information with information they have about you to allow us and any of them to manage your relationship with companies under RBC Financial Group and our business.

You may choose not to have your information shared or used for any of these other Uses” by contacting us as set out below, and in this event, you will not be refused credit or other services just for that reason. We will respect your choices, and, as mentioned above, we may share your choices with companies under RBC Financial Group for the sole purpose of honouring your choices regarding “Other Uses of Your Personal Information.”

[...]

Access to Your Personal Information

[...]

To [...] request that your information not be used for any or all of the purposes outlined under the heading “Other Uses of Your Personal Information”, you may do so now or at any time in the future by contacting an RBC Direct Investing Investment service representative at 1-800-769-2560.

RBC-DS clients subject to this agreement had no choice but to agree to the collection and

uses of their information set out in s. 31 if they wished to obtain and operate a RRIF account with RBC-DS. As with the 2003 CAA, the type of information that RBC-DS permits itself to collect under the 2006 CAA is unlimited as are the sources from which such information may be collected. The uses to which such information may be put include “any other manner that is [...] permitted by law or under the rules of any self-regulatory authority in which we are a member.” Examples of the ways in which client information may be used includes, notably, “to determine your eligibility for products and services we offer”.

On the other hand, clients are permitted to “opt out” of the uses set out in the section “Other uses of your personal information,” which uses include promoting RBC products and services directly to the client. RBC-DS have added a 1-800 number that clients may call in order to opt out of these secondary uses.

3) RBC-DS’ 2008 CAA for RRIF accounts

RBC-DS’ 2008 CAA³ for RRIF accounts states as follows:

9.1 Required Consent

Collection of Your Personal Information: We are required to collect the following personal, financial and other information (collectively, “personal information”) in order to open and operate your account and to fulfill our legal, regulatory and self-regulatory obligations in Canada and in some cases, abroad, and if necessary, to protect or enforce our rights under this Agreement. This information includes, without limitation:

- information required to establish your identity (e.g., name, date of birth, citizenship, etc.);
- information required to establish your financial situation (e.g., income, marital status, dependents, etc.) and your personal background; and
- information required to comply with our tax reporting obligations (e.g., your social insurance number).

We may confirm this information at any time during the course of our relationship with you. Most of your personal information will be collected from you directly on our account opening forms. However, we may collect additional personal information from other sources, including, without limitation, credit reporting agencies, other investment dealers, other financial institutions, from registries, and from other sources, as is necessary to open and operate your account. **You acknowledge receipt of notice that from time to time reports about you may be obtained by us from credit reporting agencies.** [emphasis in original]

Use of Your Personal Information: Your information may be used by us for the purposes of opening and operating your account and to provide you with services you request. We may also use your information in any other manner that is required or permitted by law or under the rules of any self-regulatory authority in which we are a member. For greater certainty, the following are examples of the manner in which we may need to use your information.

- to verify your identity and investigate your personal background;
- to better understand your current and future investment needs and your financial situation;
- to determine your eligibility for the products and services we offer;
- to help us better understand the current and future needs of our clients;

³ Attachment 3 at para. 9.1.

- to communicate to you any benefit, feature and other information about products and services that you have with us;
- to help us better manage our business and your relationship with us;
- to maintain the accuracy and integrity of information held by a credit reporting ; and
- to protect or enforce our rights under this Agreement or to comply with applicable law or the rules of any self-regulatory authority in which we are a member
- as required or permitted by law.

9.2 Optional Consent

Other uses of your personal information: In addition to the uses above, we may also use your personal information for the following if you give us your permission:

- We may use this information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you. We may communicate with you through various channels, including telephone, computer or mail, using the contact information you have provided;
- We may also, where not prohibited by law, share this information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. We and other companies under RBC Financial Group may communicate with you through various channels, including telephone, computer or mail, using the contact information you have provided. You acknowledge that as a result of such sharing they may advise us of those products or services provided; and
- In the event that you also deal with other companies within RBC Financial Group, we may, where not prohibited by law, consolidate this information with the information they have about you to allow us and any of them to manage your relationship with companies under RBC Financial Group and our business.

9.3 Access to Your Personal Information

[...]

To request access to such information, to ask questions about our privacy policies or to request that information not be used for any or all of the purposes outlined under the heading “Optional Consent”, you may do so now or at any time in the future by contacting your Investment Advisor.

RBC-DS clients subject to this agreement have no choice but to agree to the collection and uses of their information set out in s. 9.1 if they wish to obtain and operate a RRIF account with RBC-DS. As with the 2003 and 2006 CAAs, the type of information that RBC-DS permits itself to collect under the 2008 CAA is unlimited as are the sources from which such information may be collected. The uses to which such information may be put include “any other manner that is [...] permitted by law or under the rules of any self-regulatory authority in which we are a member.” Examples of the ways in which client information may be used most notably includes “to determine your eligibility for products and services we offer”.

On the other hand, clients are permitted to “opt out” of the uses set out in s. 9.2, which uses include promoting RBC products and services directly to the client. RBC-DS has removed the 1-800 number for clients to call to opt out of these secondary uses. The 2008 CAA sets out that clients must contact their Investment Advisor in order to opt out of the secondary uses.

4) Royal Bank's 2007 CAA for banking accounts

Royal Bank's 2007 CAA⁴ for banking accounts states as follows:

COLLECTING YOUR PERSONAL INFORMATION

We may from time to time collect financial and other information about you such as:

- Information establishing your identity (for example, name, address, home number, date of birth, etc.) and your personal background;
- Information related to transactions arising from your relationship with and through us, and from other financial institutions;
- Information you provide on an application for any products and services;
- Information for the provision of products and services;
- Information about financial behaviour such as your payment history and credit worthiness.

We may collect and confirm this information during the course of our relationship. We may obtain this information from a variety of sources, including from you, from service arrangements you make with or through us, from credit reporting agencies and other financial institutions, from registries, from references you provide to us and from other sources, as we deem appropriate

USING YOUR PERSONAL INFORMATION

This information may be used from time to time for the following purposes:

- To verify your identity and investigate your personal background;
- To open and operate your account(s) and provide you with products and services you may request;
- To better understand your financial situation;
- To determine your eligibility for products and services we offer;
- To help us better understand the current and future needs of our clients;
- To communicate to you any benefit, feature and other information about products and services that we have with you;
- To help you [sic] better manage our business and our relationship with you;
- To maintain the accuracy and integrity of information held by a credit reporting ; and
- As required or permitted by law.

OTHER USES OF YOUR PERSONAL INFORMATION

- We may use this information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you.
- We may also, where not prohibited by law, share this information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. You acknowledge that as a result of such sharing they may advise use of those products or services provided.
- If you deal also with other companies under RBC Financial Group, we may, where not prohibited by law, consolidate this information they have about you to allow us and any of them to manage our relationship with companies under RBC Financial Group and our business.

[...]

⁴ Attachment 4 at 2.

You may choose not to have this information shared or used for any of these other uses by contacting us as set out below, and in this event, you will not be refused credit or other services just for that reason. We will respect your choices and as mentioned above, your choices will be communicated to companies under RBC Financial Group to ensure that they are respected.

YOUR RIGHT TO ACCESS YOUR PERSONAL INFORMATION

[...]

To [...] request the information not be used for any or all of the purposes outlined in Other uses of your personal information you may do so now or any time in the future by:

- **Contacting your branch;** or
- **Calling us toll-free at 1-800 ROYAL9-9 (1-800-769-2599).**

[all emphases in original]

Under this CAA, Royal Bank clients thus have no choice but to agree to the collection and uses of their information as set out above under the first two paragraphs of the excerpt above (on the second page of the 2007 CAA) if they wish to obtain and operate a banking account with Royal Bank. The type of information that Royal Bank permits itself to collect is once again unlimited as are the sources from which such information may be collected. The uses to which such information may be put include, notably, “to determine your eligibility for products and services we offer” and “to communicate to you any benefit, feature and other information about products and services that we have with you.”

On the other hand, clients are permitted to “opt out” of the uses set out in the section “Other uses of your information,” which uses include promoting RBC products and services directly to the client. In order to opt out of these secondary uses, clients must contact their branch or the toll free 1-800 number provided in the following section “Your right to access your personal information.”

5) Royal Bank’s 2008 CAA for banking accounts

Royal Bank’s 2008 CAA⁵ for banking accounts states as follows:

COLLECTING YOUR PERSONAL INFORMATION

We (Royal Bank) may from time to time collect financial and other information about you such as:

- Information establishing your identity (for example, name, address, home number, date of birth, etc.) and your personal background;
- Information related to transactions arising from your relationship with and through us, and from other financial institutions;
- Information you provide on an application for any products and services;
- Information for the provision of products and services;
- Information about financial behaviour such as your payment history and credit worthiness.

⁵ Attachment 5 at 2.

We may collect and confirm this information during the course of our relationship. We may obtain this information from a variety of sources, including from you, from service arrangements you make with or through us, from credit reporting agencies and other financial institutions, from registries, from references you provide to us and from other sources, as is necessary for the provision of our products and services.

You acknowledge receipt of notice that from time to time reports about you may be obtained by us from credit reporting agencies.

USING YOUR PERSONAL INFORMATION

This information may be used from time to time for the following purposes:

- To verify your identity and investigate your personal background;
- To open and operate your account(s) and provide you with products and services you may request;
- To better understand your financial situation;
- To determine your eligibility for products and services we offer;
- To help us better understand the current and future needs of our clients;
- To communicate to you any benefit, feature and other information about products and services that we have with you;
- To help us better manage our business and your relationship with us;
- To maintain the accuracy and integrity of information held by a credit reporting ; and
- As required or permitted by law.

OTHER USES OF YOUR PERSONAL INFORMATION

- We may use this information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you.
- We may also, where not prohibited by law, share this information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. You acknowledge that as a result of such sharing they may advise use of those products or services provided.
- If you deal also with other companies under RBC Financial Group, we may, where not prohibited by law, consolidate this information they have about you to allow us and any of them to manage our relationship with companies under RBC Financial Group and our business.

[...]

You may choose not to have this information shared or used for any of these “Other uses” by contacting us as set out below, and in this event, you will not be refused credit or other services just for that reason. We will respect your choices and as mentioned above, we may share your choices with RBC companies for the sole purpose of honouring your choices regarding “Other uses of your personal information”.

YOUR RIGHT TO ACCESS YOUR PERSONAL INFORMATION

[...]

To [...] request that the information not be used for any or all of the purposes outlined in “*Other uses of your personal information*” you may do so now or any time in the future by:

- **Contacting your branch;** or
- **Calling us toll-free at 1-800 ROYAL1-1 (1-800-769-2511).**

[all emphases in original]

Current Royal Bank clients thus have no choice but to agree to the collection and uses of their information as set out in the first two paragraphs above (on the second page of the

2008 CAA) if they wish to obtain and operate a banking account with Royal Bank. As with the 2007 CAA, the type of information that Royal Bank permits itself to collect is unlimited as are the sources from which such information may be collected. The uses to which such information may be put again include “to determine your eligibility for products and services we offer” and “to communicate to you any benefit, feature and other information about products and services that we have with you.”

On the other hand, clients are permitted to “opt out” of the uses set out in the section “Other uses of your information,” which uses include promoting RBC products and services directly to the client. In order to opt out of these secondary uses, clients must contact their branch or the toll free 1-800 number provided in the following section “Your right to access your personal information.”

Application of PIPEDA to RBC’s current CAAs

An analysis of the application of PIPEDA to the current CAAs used by RBC-DS and by Royal Bank follows.

I. RBC-DS’ 2008 CAA for RRIF accounts

A) Refusal to Deal: Mandatory Uses of Client Information

RBC-DS’ 2008 CAA for RRIF accounts authorizes RBC-DS to use client information for a variety of purposes. In addition to authorizing itself to use client information for the purposes of “opening and operating your account and to provide you with services you request,” RBC-DS authorizes itself to use client information “in any other manner that is [...] permitted by law or under the rules of any self-regulatory authority in which we are a member.” Notably, RBC-DS lists that client information may be used in a number of manners, including to determine client eligibility for products. The relevant section from the CAA is copied below.

Use of Your Personal Information: Your information may be used by us for the purposes of opening and operating your account and to provide you with services you request. We may also use your information in any other manner that is required or **permitted by law** or under the rules of any self-regulatory authority in which we are a member. For greater certainty, the following are examples of the manner in which we may need to use your information.

- to verify your identity and investigate your personal background;
- to better understand your current and future investment needs and your financial situation;
- **to determine your eligibility for the products and services we offer;**
- to help us better understand the current and future needs of our clients;
- to communicate to you any benefit, feature and other information about products and services that you have with us;
- to help us better manage our business and your relationship with us;
- to maintain the accuracy and integrity of information held by a credit reporting ; and

- to protect or enforce our rights under this Agreement or to comply with applicable law or the rules of any self-regulatory authority in which we are a member
- as required or **permitted by law**.
[emphasis added]

RBC-DS conditions RRIF accounts on use of client information for unnecessary and vague purposes

Principle 4.3.3 of PIPEDA requires that “an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified and legitimate purposes.”

We submit that it is a breach of Principle 4.3.3 for RBC-DS to condition its services on use of client information for purposes that are not necessary to the provision of the services requested. Instead, all such uses of client information should be optional.

RBC-DS, however, conditions its provision of RRIF accounts on consent to uses of client information for purposes that are not necessary for opening or operating client accounts or for providing clients with services requested. These unnecessary uses include:

- i) To determine client eligibility for products and services; and
- ii) [for any purpose] permitted by law.

i) To determine client eligibility for products and services

It is not necessary for RBC-DS to use its clients’ information to determine their eligibility for products and services in order to operate RRIF accounts. Unless a client requests that RBC-DS determine his or her eligibility for products or services, this activity is part and parcel of unsolicited marketing. We submit that by conditioning RRIF accounts on the use of client information to determine eligibility for products and services (an unnecessary use), RBC-DS is in breach of Principle 4.3.3 of PIPEDA.

ii) [for any purpose] permitted by law

We do not dispute that RBC-DS must use client information in the above ways in order to operate RRIF accounts. However, RBC-DS should limit these uses of client information to those necessary to provide the services requested by the client. As currently worded, these purposes permit RBC-DS to investigate a client’s personal background, financial situation, potential future investment needs, etc. *as long as such uses are permitted by law*. But data protection legislation is intended to protect consumers from unnecessary and inappropriate uses of their personal information, even where such uses are legally permissible. RBC-DS should therefore explicitly limit these uses to those necessary for the provision of services requested by the client.

By conditioning RRIF accounts on the use of personal client information for any purpose “permitted by law”, we submit that RBC-DS is in breach of Principle 4.3.3.

B) Opt-out consent: Optional Uses of Client Information

RBC-DS’ 2008 CAA authorizes RBC-DS to use client information for secondary purposes, such as direct marketing. The CAA states that clients may opt-out of these secondary uses of their information by contacting their Investment Advisor. If clients do not opt out, RBC-DS assumes that they have consented to these secondary uses. The relevant section of the CAA is copied below:

9.2 Optional Consent

Other uses of your personal information: In addition to the uses above, we may also use your personal information for the following if you give us your permission:

- We may use this information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you. We may communicate with you through various channels, including telephone, computer or mail, using the contact information you have provided;
- We may also, where not prohibited by law, share this information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. We and other companies under RBC Financial Group may communicate with you through various channels, including telephone, computer or mail, using the contact information you have provided. You acknowledge that as a result of such sharing they may advise us of those products or services provided; and
- In the event that you also deal with other companies within RBC Financial Group, we may, where not prohibited by law, consolidate this information with the information they have about you to allow us and any of them to manage your relationship with companies under RBC Financial Group and our business.

9.3 Access to Your Personal Information

[...]

To request access to such information, to ask questions about our privacy policies or to request that information not be used for any or all of the purposes outlined under the heading “Optional Consent”, you may do so now or at any time in the future by contacting your Investment Advisor.

RBC-DS does not obtain express consent to use sensitive information for secondary purposes

Principle 4.3.6 states that “an organization should generally seek express consent when the information is likely to be considered sensitive.” RBC-DS collects financial and identity-related information. This information is clearly sensitive (e.g., vulnerable to fraudulent use), and is particularly sensitive when coupled together. RBC-DS should therefore be obtaining express consent to use this information for secondary purposes.

Furthermore, Principle 4.3.5 sets out that “the reasonable expectations of the individual are also relevant.” Reasonable people expect that banks operate with a high standard of privacy protection, especially with the growing public concern about identity theft. Banks

are trusted with their clients' life savings. Clients will reasonably expect that their personal information will be used only to operate their accounts – not for marketing purposes. Furthermore, many Canadians disapprove of these uses of personal information. A 2001 Ekos study has demonstrated that:

- 48% of Canadians are uncomfortable with their information being shared within a corporate family for marketing purposes.⁶
- Most Canadians view unsolicited marketing material as at least a moderate concern.⁷
- A large majority of Canadians would prefer to stop receiving telemarketing.⁸

RBC-DS should therefore be obtaining express consent to use client information for marketing purposes, whether its own, its affiliates, or third parties. This is especially so where such use involves the sharing of client personal information or other act that increases client exposure to unauthorized access or misuse of their personal data.

By not obtaining express consent to use its clients' sensitive information for secondary purposes, RBC-DS is, in our view, violating Principles 4.3.5 and 4.3.6 of PIPEDA. We submit that RBC-DS should obtain express consent to use its clients' sensitive information for secondary purposes.

RBC-DS' opt-out procedure from secondary uses of client information is not valid

Without prejudice to our argument that RBC-DS should obtain express consent to use sensitive client information for secondary purposes, we submit in the alternative that RBC-DS' procedure for opt-out consent is not valid. RBC-DS' 2008 CAA does not meet the following conditions that your office has declared "must be met in order for an organization to justify relying on the opt-out form of consent":⁹

- a) The personal information must be demonstrably non-sensitive in nature and context.
- b) The information-sharing situation must be limited and well defined as to the nature of the personal information to be used or disclosed and the extent of the intended use or disclosure.
- c) The organization's purposes must be limited and well-defined, stated in a reasonably clear and understandable manner, and brought to the individual's attention at the time the personal information is collected.
- d) The organization must establish a convenient procedure for easily, inexpensively, and immediately opting out of, or withdrawing consent to, secondary purposes

⁶ Ekos Research Associates Inc., Prepared on Behalf of The Public Interest Advocacy Centre, "Business Usage of Consumer Information for Direct Marketing: What the Public Thinks," August 2001, online: <<http://www.piac.ca/privacy/reports/>> at 10 ["What the public thinks"].

⁷ *Ibid.* at 12.

⁸ *Ibid.* at 13.

⁹ Commissioner Findings, 192, July 23, 2003, online: <http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030723_01_e.asp>.

and must notify the individual of the procedure at the time the personal information is collected.

The personal information is not demonstrably non-sensitive

As demonstrated above, the client information (financial and identity-related) that is used by RBC-DS is sensitive. Therefore, the first condition is not met.

The information-sharing is not limited and well-defined as to the nature of the personal information to be used or disclosed and the extent of the intended use or disclosure

The 2008 CAA authorizes RBC-DS to share client information with other RBC companies as well as “selected third parties” for secondary marketing purposes. The RBC Financial Group is large: it is comprised of thirteen companies.¹⁰ The list of “selected third parties” is not defined at all. RBC-DS’ 2008 CAA provide no indication of their number, how they are selected, and so forth. Furthermore, there is no limit on the extent of the client information that RBC-DS can share. For all these reasons, RBC-DS’ information-sharing practices are not sufficiently limited or defined to merit opt-out consent. Therefore, the second condition is not met.

The organization’s purposes are not brought to the individual’s attention at the time of collection

We understand that RBC-DS is not bringing these clauses to the attention of its clients. For example, Mr. H. never had these terms directly brought to his attention. Principle 4.3.2 sets out that “organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. 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.” The CAAs are lengthy documents written in small print. Many clients probably do not read them and many clients probably do not appreciate their significance. Without bringing these terms to the attention of its clients, RBC-DS is not meeting the third condition for valid opt-out consent.

In summary, RBC-DS’ 2008 CAA does not meet the test for valid opt-out consent, because it authorizes RBC-DS to:

- a) use personal information that is sensitive;
- b) share an ill-defined range of client information to an unlimited group of third parties; and
- c) use client information for secondary purposes without bringing this to the attention of individuals.

By using an opt-out consent mechanism for secondary uses of information, RBC-DS is violating Principles 4.3.5 and 4.3.6.

¹⁰ “RBC Companies,” RBC Financial Group website, online: <<http://www.rbcbankusa.com/company/cid-96910.html>>.

II. Royal Bank's 2008 CAA for Banking accounts

A) Refusal to Deal: Mandatory Uses of Client Information

Similar to RBC-DS, Royal Bank's 2008 CAA for banking accounts authorizes Royal Bank to use client information for a variety of purposes, including to determine client eligibility for products. The relevant section from the CAA is copied below.

USING YOUR PERSONAL INFORMATION

This information may be used from time to time for the following purposes:

- To verify your identity and investigate your personal background;
- To open and operate your account(s) and provide you with products and services you **may** request;
- To better understand your financial situation;
- **To determine your eligibility for products and services we offer;**
- To help us better understand the current and future needs of our clients;
- To communicate to you any benefit, feature and other information about products and services that we have with you;
- To help us better manage our business and your relationship with us;
- To maintain the accuracy and integrity of information held by a credit reporting ; and
- As required or **permitted by law**.

[emphasis added]

Royal Bank conditions banking accounts on use of client information for unnecessary and vague purposes

Principle 4.3.3 of PIPEDA requires that “an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified and legitimate purposes.”

Royal Bank conditions banking accounts on consent to uses of client information for purposes that are not necessary for opening and operating client accounts or for providing clients with services requested. These unnecessary uses include:

- i) To determine client eligibility for products and services
- ii) To provide clients with products and services that they may request; and
- iii) As permitted by law.

Our analysis of the unnecessary purposes in RBC-DS' 2008 CAA, set out above, applies to Royal Bank's 2008 CAA as well.

Moreover, the RBC banking CAA includes an additional use, to “provide you with products and services you **may** request.” The wording of this clause is ambiguous: “may” could mean “do” or “may in the future”. Although it is necessary for RBC-DS to

use its clients' information for the products that they do request, it is not necessary to use their information for providing products and services that they may request in the future. We submit that by conditioning RRIF accounts on use of information for the purpose of providing clients with products and services that they "may" request, RBC-DS is in breach of Principle 4.3.3. This breach can be easily remedied simply by removing the word "may" from the clause in question.

We submit that by conditioning banking accounts on the use of client information for the above purposes, Royal Bank is in breach of Principle 4.3.3 of PIPEDA. Instead, all non-essential uses of client information, including those identified above, should be optional.

B) Opt-out consent: Optional Uses of Client Information

Royal Bank's 2008 CAA authorizes Royal Bank to use client information for secondary purposes, such as direct marketing. Clients are notified by that they may opt-out of these secondary uses of their information by contacting their bank branch or calling a toll-free 1-800 number. If clients do not opt out, Royal Bank assumes that they have consented to these secondary uses. The relevant section of the CAA is copied below:

OTHER USES OF YOUR PERSONAL INFORMATION

- We may use this information to promote our products and services, and promote products and services of third parties we select, which may be of interest to you.
- We may also, where not prohibited by law, share this information with other companies under RBC Financial Group for the purpose of referring you to them or promoting to you products and services which may be of interest to you. You acknowledge that as a result of such sharing they may advise use of those products or services provided.
- If you deal also with other companies under RBC Financial Group, we may, where not prohibited by law, consolidate this information they have about you to allow us and any of them to manage our relationship with companies under RBC Financial Group and our business.

[...]

You may choose not to have this information shared or used for any of these "Other uses" by contacting us as set out below, and in this event, you will not be refused credit or other services just for that reason. We will respect your choices and as mentioned above, we may share your choices with RBC companies for the sole purpose of honouring your choices regarding "Other uses of your personal information".

YOUR RIGHT TO ACCESS YOUR PERSONAL INFORMATION

[...]

To [...] request that the information not be used for any or all of the purposes outlined in "Other uses of your personal information" you may do so now or any time in the future by:

- **Contacting your branch;** or
- **Calling us toll-free at 1-800 ROYAL1-1 (1-800-769-2511).**

[emphasis in original]

Royal Bank does not obtain express consent to use sensitive information for secondary purposes

Principle 4.3.6 sets out that “an organization should generally seek express consent when the information is likely to be considered sensitive.” Our analysis of RBC-DS’ opt-out consent for use of sensitive information (see above) applies to Royal Bank’s 2008 CAA as well. Furthermore, Principle 4.3.5 sets out that “the reasonable expectations of the individual are also relevant.” As mentioned above, clients will reasonably expect that their personal information will be used only to operate their accounts – not for marketing purposes. By not obtaining express consent to use its clients’ sensitive information for secondary purposes, Royal Bank is in violation of Principles 4.3.5 and 4.3.6. We submit that Royal Bank should obtain express consent to use its clients’ sensitive information for secondary purposes.

Royal Bank’s opt-out procedure from secondary uses of client information is not valid

Without prejudice to our argument that Royal Bank should obtain express consent to use sensitive client information for secondary purposes, we submit in the alternative that Royal Bank’s opt-out procedure is not valid. Like the RBC-DS CAA, Royal Bank’s 2008 CAA does not meet the conditions established by your office for valid opt-out consent.¹¹

The analysis above for RBC-DS’ 2008 CAA applies equally to Royal Bank’s 2008 CAA: the banking CAA does not meet the test for valid opt-out consent, because it authorizes Royal Bank to:

- a) use personal information that is sensitive;
- b) share an ill-defined range of client information to an unlimited group of third parties; and
- c) use client information for secondary purposes without bringing this to the attention of individuals.

By using an opt-out consent mechanism for secondary uses of information, Royal Bank is violating Principles 4.3.5 and 4.3.6.

Application of PIPEDA to RBC’s Previous CAAs for Banking and RRIF Accounts

As noted above, many RBC clients are presumably still bound by previous versions of RBC-DS’ CAAs for RRIF accounts and Royal Bank’s CAAs for banking accounts. Accordingly, we have analyzed these previous CAAs to determine whether they violate PIPEDA. A brief description of each CAA’s alleged violations of PIPEDA follows.

¹¹ Commissioner Findings, 192, July 23, 2003, online: <http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030723_01_e.asp>.

III. RBC-DS' 2003 CAA for RRIF accounts

A) Refusal to Deal: Mandatory Uses of Client Information

RBC-DS conditions RRIF accounts on use of client information for unnecessary and vague purposes

We submit that RBC-DS' 2003 CAA is in breach of Principle 4.3.3 by conditioning the provision of RRIF accounts on consent to the following unnecessary and vague uses of client information:

- i) To determine client eligibility for products and services;
- ii) To [...] provide you [...] with services you may request; and
- iii) [for any purpose] permitted by law.

B) Opt-out consent: Optional Uses of Client Information

RBC-DS does not obtain express consent to use sensitive information for secondary purposes

We submit that RBC-DS' 2003 CAA is in violation of Principles 4.3.5 and 4.3.6 by failing to obtain express consent to use clients' sensitive information for secondary marketing purposes.

RBC-DS' opt-out procedure from secondary uses of client information is not valid

Without prejudice to our argument that RBC-DS should obtain express consent to use sensitive client information for secondary purposes, we submit in the alternative that RBC-DS' procedure for opt-out consent is not valid. In brief, RBC-DS' 2003 CAA does not meet the test for valid opt-out consent, because it authorizes RBC-DS to:

- a) use personal information that is sensitive;
- b) share an ill-defined range of client information to an unlimited group of third parties; and
- c) use client information for secondary purposes without bringing this to the attention of individuals.

By using an opt-out consent mechanism for secondary uses of information, RBC-DS' 2003 CAA is violating Principles 4.3.5 and 4.3.6.

con'd...

IV. RBC-DS' 2006 CAA for RRIF accounts

A) Refusal to Deal: Mandatory Uses of Client Information

RBC-DS conditions RRIF accounts on use of client information for unnecessary and vague purposes

We submit that RBC-DS' 2006 CAA is in breach of Principle 4.3.3 by conditioning the provision of RRIF accounts on consent to the following unnecessary and vague uses of client information:

- i) To determine client eligibility for products and services; and
- ii) [for any purpose] permitted by law.

B) Opt-out consent: Optional Uses of Client Information

RBC-DS does not obtain express consent to use sensitive information for secondary purposes

We submit that RBC-DS' 2006 CAA is in violation of Principles 4.3.5 and 4.3.6 by failing to obtain express consent to use clients' sensitive information for secondary marketing purposes.

RBC-DS' opt-out procedure from secondary uses of client information is not valid

Without prejudice to our argument that RBC-DS should obtain express consent to use sensitive client information for secondary purposes, we submit in the alternative that RBC-DS' procedure for opt-out consent is not valid.

In brief, RBC-DS' 2006 CAA does not meet the test for valid opt-out consent, because it authorizes RBC-DS to:

- a) use personal information that is sensitive;
- b) share an ill-defined range of client information to an unlimited group of third parties; and
- c) use client information for secondary purposes without bringing this to the attention of individuals.

By using an opt-out consent mechanism for secondary uses of information, RBC-DS's 2006 CAA is violating Principles 4.3.5 and 4.3.6.

con'd...

V. Royal Bank's 2007 CAA for banking accounts

A) Refusal to Deal: Mandatory Uses of Client Information

Royal Bank conditions banking accounts on use of client information for unnecessary and vague purposes

We submit that Royal Bank's 2007 CAA is in breach of Principle 4.3.3 by conditioning the provision of banking accounts on consent to the following unnecessary and vague uses of client information:

- i) To determine client eligibility for products and services;
- ii) To [...] provide you [...] with services you may request; and
- iii) [for any purpose] permitted by law.

B) Opt-out consent: Optional Uses of Client Information

Royal Bank does not obtain express consent to use sensitive information for secondary purposes

We submit that Royal Bank's 2007 CAA is in violation of Principles 4.3.5 and 4.3.6 by failing to obtain express consent to use clients' sensitive information for secondary marketing purposes.

Royal Bank's opt-out procedure from secondary uses of client information is not valid

Without prejudice to our argument that Royal Bank should obtain express consent to use sensitive client information for secondary purposes, we submit in the alternative that Royal Bank's procedure for opt-out consent is not valid.

In brief, Royal Bank's 2007 CAA does not meet the test for valid opt-out consent, because it authorizes Royal Bank to:

- a) use personal information that is sensitive;
- b) share an ill-defined range of client information to an unlimited group of third parties; and
- c) use client information for secondary purposes without bringing this to the attention of individuals.

By using an opt-out consent mechanism for secondary uses of information, Royal Bank's 2007 CAA is violating Principles 4.3.5 and 4.3.6.

con'd...

Summary of PIPEDA Complaint

To summarize, we submit that both RBC-DS' 2003, 2006, and 2008 CAAs for RRIF accounts and Royal Bank's 2007 and 2008 CAAs for banking accounts violate Principles 4.3.3, 4.3.5 and 4.3.6 of PIPEDA by:

- (a) requiring that clients agree to unnecessary and overly vague uses of their personal information; and
- (b) relying upon opt-out consent for secondary uses when express, opt-in consent is required; or, in the alternative, failing to obtain valid consent via its opt-out process.

We request that you investigate the RBC Financial Group's practices as set out above, with a view to its compliance with PIPEDA. We await your findings. Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

original signed

Philippa Lawson
Barrister & Solicitor
Director, CIPPIC

original signed

Lisa Feinberg
LL.B. Candidate
University of Ottawa

cc:

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