



Section: Administrative

Policy: AD 02

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CONSENT POLICY

PREAMBLE

The use of the word 'Contact Brant' in this policy and procedure refers to the responsibilities of employees, students and volunteers in fulfilling their work with the agency.

Appropriate sharing of information to plan and provide services is essential for creating successful outcomes for children and families. Our Consent Policy as well as our Privacy and Confidentiality Policy ensure that informed consent is received, the personal information of clients is safeguarded, and service participants are made fully aware of our information sharing practices. Contact Brant follows applicable legislation including, but not limited to, the Child Youth and Family Services Act (CYFSA) and the Personal Health Information Protection Act (PHIPA). The CYFSA models PHIPA.

Part X of the CYFSA regarding Consent outlines:

- Presumption of capacity for children and youth
- Individuals' rights of access to their Personal Information
- Mandatory privacy breach reporting to the Information Privacy Commission (IPC)
- Consistent practices in the child and youth sector.

Note: Contact Brant services include the Community Information website records, www.info-bhn.ca, which does not fall under CYFSA legislation.

Personal information (PI) is recorded information about an identifiable individual - even without a name, information may be PI if the individual can be identified. PI does not include information associated with an individual in a professional capacity, or a person deceased for over 30 years.

Record means a record of information in any form, including electronic records, video footage, audio recordings, paper records, etc. When collecting information, the definition of PI also includes information that is not recorded (e.g., from the intake interview).

Explicit consent is either verbal or in writing and must be obtained for use and disclosure of personal information.

Implied consent is consent that is not given specifically, but can be inferred based on the individual's actions and the facts of a particular situation, such as someone calling to request our help.

Note: Best practice is to confirm explicit consent with individual for collecting PI.

Capacity (capable individual) is the ability to understand the information that is relevant to deciding whether to consent to the collection, use, or disclosure, and the ability to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing consent.

Assessing capacity requires some probing, i.e. asking questions to gauge an individual's understanding of the information relevant to a decision.

- The assessment of the individual's capacity must be made without regard for what may be deemed to be in their best interest.
- Assessment is made as to whether the child/individual is able to understand the information and to appreciate the consequences of the decision.
- Lack of understanding is not sufficient to establish incapacity - the basis for the lack of understanding must be probed. If there is no good reason for the lack of understanding, the information should be provided in a different way.
- If there is a reason, for example lack of development or cognitive capacity, it must be documented in EMHware Contacts that an incapacity assessment was made.
- Assessment of capacity has nothing to do with Wardship.
- The provincial *Consent and Capacity Board* is available to individuals for settling complaints about capacity decisions – Contact Brant will provide this information.

Substitute Decision Maker (SDM) is the term used in Ontario law for the person who would make health and personal care decisions on your behalf when you are unable to do so.

There are two ways to identify an individual's SDM:

- 1) The Health Care Consent Act provides a hierarchy (ranked listing) of possible SDMs. The individual(s) highest on this list who meets the requirements to be a SDM in Ontario is the automatic SDM:

- A statutory or court appointed guardian;
- Attorney for the personal care;
- A representative appointed by the *Consent and Capacity Board*;
- The individual's spouse or partner;
- The individual's parent or child (i.e., child's custodial parent, Children's Aid Society, or other legal guardian);
- A parent with only a right of access;
- A brother or sister;
- Any other relative;
- Public Guardian or Trustee.

- 2) An individual can choose and name a person, or more than one person, to act as their SDM by preparing a document called a Power of Attorney for Personal Care (POAPC).

Contact Brant's purposes for collecting, using and/or sharing information involves a range of services and reasons including: (i) Intake; (ii) Referral to child and youth services; (iii) Service coordination with stakeholders; (iv) system data for planning purposes; (v) Ministry reporting; and (vi) child and youth mental health reporting through Woodview Mental Health and Autism Services Business Intelligence processes. Specifically, Contact's Brant's purposes include:

- To provide information/consultation about community services
- To assess individual service and support needs as well as prioritization, and advise of community service options
- To provide referral to services, which includes the intake package/family story
- To communicate with other providers involved in an individual's care about planning and coordinating services

- To maintain contact for the purposes of establishing appointments, follow-up, referrals, and on-going service coordination
- To support the development of a Coordinated Service Plan/single agreement for service with each individual/family and with the services involved
- To facilitate case conferences, Case Resolution and RPAC
- To track the progress of each child/youth from Access through to discharge from referred services, identifying the status of waiting, in-service or discharged
- To provide data through the use of non-identifying statistics to inform community service system planning for improvements, as well as to provide reports to Contact Brant's Board of Directors, Ministry and other funders.
- To provide some personal demographic information as well as data about Contact Brant's service to each child/youth seeking mental health services to Woodview Mental Health and Autism Services through the Business Intelligence (BI) process which enables Woodview to report to the Ministry on behalf of Brant core services
- To comply with legal, regulatory, as well as Ministry requirements
- To ensure continuous high quality service through addressing feedback as to how effective and helpful services have been.

The Contact agencies have consulted with Lonny Rosen, LLP, to develop Consent and Privacy policies. Refer to the Contact Brant Privacy and Confidentiality Policy, HR-03.

POLICY

Contact Brant will ensure explicit consent is secured for use and disclosure of personal information, and only used or disclosed to those for the purposes it is intended as documented in the consent provided by the individual.

PROCEDURES

Consent – Collection, Use and Disclosure

1. **Consent**, either verbal or in writing, is required for the collection, use, and disclosure of personal information.
 - **Implied consent** can be inferred based on the action of requesting our help.
 - The individual must be informed that we are collecting the personal information they relay. Best practice is to confirm explicit consent with the individual for collecting this personal information, which is documented as a case note in EMHware Contacts.
 - **Explicit Consent** is required for the use and disclosure of personal information.
 - Explicit Consent is required for **indirect collection** of personal information, for example from another service provider or specialist. Indirect collection of personal information without consent may be allowed if required or permitted by law, or to assess or reduce risk of serious harm.
2. When **collecting** personal information from any person, Contact Brant will **provide the required notice of purposes** to ensure clients are aware of the purposes of gathering, using and sharing information. Using the *Contact Brant Privacy and Consent* statement, there are various ways to give this notice, which must be documented in the EMHware Consent tab:

- Provide the person with the written statement, or
 - Direct the person to locations where it is posted (at entrance to Contact Brant office area, on the website), or
 - Verbally advise the person.
3. Personal information will not be used or disclosed other than with the explicit consent of the individual.
- Contact Brant will only disclose information with consent unless legally obligated to without consent.
 - Individuals will be informed of our professional obligation to disclose information where a child/youth is considered at risk, including disclosure to Children’s Aid Societies. Information shared will be limited to the facts and circumstances surrounding the worker’s observations and informant’s statements.
 - Disclosure to Police only occurs when a clear duty to report exists due to risk; a warrant allows disclosure specific to the warrant’s information requested.
 - Disclosure to a parole officer can only occur with explicit consent or pursuant to a court order.
4. It is standard practice to receive consent verbally, which must be fully documented identifying who gave consent, who consent was provided to, and the details of consent.
5. Capable individuals, regardless of age, can consent to collection, use, or disclosure of their own personal information.
- Contact Brant is responsible for determining individual capacity; this is not a one-time determination, and must be re-assessed every year that consent is requested. Contact Brant may assume a child/individual is capable unless there is reason to believe otherwise.
 - Any determination of incapacity must be case noted in EMHware Contacts.
 - For a child/youth deemed incapable, based on an assessment completed not more than one year before, that person’s nearest relative is deemed the SDM and may give or withdraw consent on the person’s behalf:
 - ‘Nearest relative’ for a child under age 16 is defined as the person with lawful custody of the child (e.g., a custodial parent, Children’s Aid Society, or a person lawfully entitled to stand in the place of a parent).
 - ‘Nearest relative’ for a youth who is 16 or older is the person who would be authorized to give or refuse consent to a treatment on the person’s behalf under the *Health Care Consent Act, 1996* if the person were incapable with respect to the treatment under that Act.
6. Consent is given by the individual if capable or their Substitute Decision Maker. Contact Brant will always try to secure both the child/youth’s consent as well as the Substitute Decision Maker’s (SDM) consent.
- For a youth 16 years of age or older, Contact Brant **must** have the youth provide consent; the youth may authorize another person over age 16 to provide the consent, provided that consent is given in writing.
 - An individual’s Substitute Decision Maker makes decisions for:
 - (i) Children under age 16, whether capable or not.
Contact Brant will always try to secure a capable child’s consent.

For children younger than 16, Contact Brant may rely on the consent of the child's parent/guardian, or a child welfare society when in care.

(ii) Capable individuals over 16 with their written authorization.

(iii) Incapable individuals of any age.

- An individual has a right to withhold consent. Contact Brant will inform the individual as to the nature and consequences of withholding consent (such as no service) and of alternatives (such as suggesting limiting information to be shared, or providing a reasonable opportunity to obtain independent advice).
 - If a person identifies them self as the Substitute Decision Maker, Contact Brant is entitled to rely on that assertion. This will be documented in EMHware Contacts.
7. If there is a conflict between the child under age 16 and the SDM, the capable child's decision prevails.
8. In the case of joint custody, it is ideal to have both parents involved in services at the referred agencies; Contact Brant thus attempts to get consent from both parents prior to sending the referral package. If both consents have not been secured, this will be noted in the Intake Report in the *Special Considerations* section.
9. Consent must be given freely and voluntarily and not be obtained through deception or coercion.
10. Consent must relate to the information that is collected, to be used, or to be disclosed.
- It is thus important to differentiate consent for sharing the intake/referral package (which includes the family's story), and on-going service coordination (which would not include sharing the intake package, and instead allows communication for working collaboratively with services to provide integrated supports and collectively address service needs or to identify the wait list/receiving service/discharge from service status).
11. Consent must be knowledgeable.
Consent is knowledgeable if it is reasonable to believe the individual knows:
- Who information will be shared with (this is usually an agency);
 - What information will be disclosed; and
 - The purpose(s).
This must include that information will be used in aggregate, non-identifying form to create service system data for planning for service needs and enhancements, and Ministry and Board reporting.
 - They may give, withhold, or withdraw consent.
Contact Brant will inform that individuals can give, withhold, withdraw, restrict/limit consent, as well as the circumstances under which information can be shared without consent. (See sections on Withdrawal or Restriction of Consent, and Release of Information without Consent).
12. Collection, use or disclosure of information is limited to only as much personal information as necessary for providing the service, even with consent.
For example, "helpful information" that is not necessary to assess harm or service needs, or "excessive information" (e.g., political affiliation).
- Contact Brant must ensure that some specific information collected is protected and only released for the purpose for which it has been provided.
For example, some service providers request Ontario Health Insurance Plan

(OHIP) numbers; it is appropriate to collect this information but can ONLY be shared with that service provider.

13. If Contact Brant has received a record that purports to document consent to the collection, use or disclosure of personal information, Contact Brant is entitled to assume the consent is valid, unless it is not reasonable to assume so.
14. Contact Brant will inform people of the right to challenge decisions of incapacity through the *Consent and Capacity Board*, as well as information on the *Information and Privacy Commissioner of Ontario* for any complaints about privacy and consent.
15. Collection, use and disclosure of personal information is NOT permitted in the following situations, which are disciplinary offences:
 - Snooping, which includes reading a record out of curiosity or genuine concern, or reviewing more information than necessary, e.g., reading a whole file when you only need a phone number.
 - Disclosure to former service providers/staff wondering how the client is doing.

Withdrawal or Restriction of Consent:

1. Contact Brant is responsible for complying with the individual's request to withdraw or restrict consent. Withdrawal or restriction of consent must be clearly documented.
2. An individual has a right to withdraw consent at any time. Withdrawal of consent cannot be retroactive.
 - Contact Brant will accept withdrawal of consent verbally or in writing.
 - Contact Brant will inform the individual as to the nature and consequences of the consent withdrawal (such as no service) and of alternatives (such as limiting information to be shared, or obtaining independent advice).
 - Withdrawal does not apply where consent is not required.
 - The request to withdraw consent will be documented in the EMHware Contacts, and consent status updated in the EMHware Consent tab. Documentation must include the name of the person, date, the Contact Brant staff, and the specifics of the withdrawal. Additionally, documentation about withdrawal of consent will be completed in a Communication Flag within EMHware.
3. An individual has the right to put a condition/restrict consent:
 - Individuals may restrict the use of certain pieces of personal information, and who can see or use part or all of the personal information that has been collected. This includes providing consent for a single point-in-time, but not for any other purpose.
 - Contact Brant will inform the individual as to the nature and consequences of the conditions/restrictions on consent and provide alternatives.
 - Contact Brant will ensure the restricted information is secured. A 'lock box' for the information could be used in EMHware or through information sealed in an envelope within the person's file and labelled with the details of the restriction.
 - Conditions or restriction of consent must clearly be documented in the Consent tab of EMHware, as well as case noted in Contacts. Additionally, documentation will be made in a Communication Flag within EMHware.

Collection or Release of Information without Consent:

1. Use or disclosure of information, even if an individual has explicitly instructed otherwise, can occur if reasonably necessary to assess, reduce or eliminate a risk of serious harm to any person.
 - Where Contact Brant suspects or has reasonable grounds to suspect a child/youth is at risk of serious harm and in need of protection, call the Brant Family and Children’s Services, or Ogwadeni:Deo, to report concerns. Wherever possible, the person providing the information should be informed that Contact Brant has a duty to report (reference Duty to Report legislation in the Child, Youth and Family Services Act).
 - To obey a court order or another legal requirement. (Note: An agency is not required to produce records if not named in the order)
 - Where the information is requested by the Public Guardian and Trustee or the Children’s Lawyer, so that they may carry out their statutory functions.
 - To reduce significant risk of harm to self or others. **Relevant** personal information can be disclosed if it is believed, on reasonable grounds, that the disclosure is necessary to eliminate or reduce significant risk of serious bodily harm to a person or group of persons.
 - Consult with an appropriate service provider and/or a member of a Threat Assessment Team using non-identifying information to help assess whether the child is actually posing a threat (e.g., with the child’s school Principal as outlined in the GEDSB/BHNCDSB Threat Assessment Protocol)
 - Obtain more information from the child/family to further inform whether the child is posing a plausible or immediate threat (e.g., is there a plan for violent action that possible, has the child taken any preparatory steps, has the child the capacity to act on the threat, etc.).
 - Request consent to talk to other service providers/the child’s school to gather and share information.
 - Contract with the child to communicate to a person close to them, or allow the employee to communicate about the imminent risks.
 - In the case of immediate threats and high risk behaviours, the Threat Assessment Protocol should be considered, as outlined in the following table taken from the Community Threat/Risk Assessment Protocol:

| Worrisome Behaviours | High Risk Behaviours | Immediate Threat: Call 911 |
|---|--|--|
| Include but are not limited to: Violent Content: <ul style="list-style-type: none"> • Drawing Pictures • Writing stories/journals • Vague threatening statements • Unusual interest in fire • Significant change in anti-social behaviour | Include but are not limited to: <ul style="list-style-type: none"> • Possession of weapon/replica • Bomb threat plan • Verbal/written plan to kill/injure • Internet website threats to kill or injure self/others • Fire setting • Threatens violence | Include but are not limited to: <ul style="list-style-type: none"> • Weapon in possession that poses serious threat to others • Plan for a serious assault • Homicidal/suicidal behaviour that threatens safety • Fire setting |

2. Consent is not required if personal information is used for:
 - Planning or delivering services
 - Educating employees to provide Contact Brant services
 - Risk or error management in order to improve or maintain the quality of services
 - Research where a research ethics board has approved; the research must not identify the client in any way, or use or communicate information from the record for any purpose except research, academic pursuits or the compilation of statistical data.
 - A proceeding in which Contact Brant may be a party or witness
 - The purposes of obtaining payment, processing, monitoring, verifying or reimbursing claims for payment.
3. Contact Brant must disclose personal information or a record to a Ministry Program Supervisor or Director who requests its disclosure as the funder of Contact Brant's services and as outlined in service contracts and legislation.
4. The Chief Executive Officer must ensure that any potential research meets the requirements of an ethics board approval.
5. Employees will consult with the Chief Executive Officer, or designate, prior to releasing any information without consent. The CEO may wish to consult with the corporation's lawyer.
6. All release of information without consent will be documented in EMHware Contacts and include why or how the disclosure could eliminate or reduce risk of harm
7. Collect of personal information from an incapable person without consent if it is **reasonably necessary** either to:
 - Provide a service, where it is not possible to obtain consent in a timely manner from a substitute decision-maker
 - Assess, reduce or eliminate a risk of serious harm to any person or group
8. Indirect collection of information without consent can occur:
 - When permitted or required by law.
 - The information is reasonably necessary to provide a service or to assess, reduce or eliminate a risk of serious harm to a person or group
 - It is not possible to collect personal information directly that can reasonably be relied on as accurate and complete, or in a timely manner.

Documenting Consent

1. Employees must ensure that consent is documented, and is up-to-date, in the EMHware Consent tab. Up-to-date consent means the most recent entry in the Consent tab will list all current consents.
 - There are no legal requirements for the period of the consent. Employees will regularly revisit consent with individuals when in contact with the individual again and for all new information collected, used or disclosed.
2. **EMHware Consent tab documentation** will include the following:
 - *Program* = Appropriate Contact Brant program from the pick list, related to the active Program History record for Contact Brant's service

- **Circle of Care Section – for EACH entry:**
 - Add the **agency/individual** from the Client Address Book
 - **Start Date** = the date consent was provided
 - End Date – Do not use unless closing this Consent to enter a new one for this agency/individual, or if consent withdrawn
 - Method Scope – This self populates
 - **Reason** = Pick appropriately from the pick list (See below for description of these picks)
 - Comment = Any key comments
 - **Active** Ensure this is checked for active consent and unchecked if becomes inactive consent
- Enter into the *Consent to Share Information form* that follows the above section. Add additional Consenters by picking the “+” beside the section title ‘Consenter’ (for example if the child plus the parent provide consent, complete section for each)
 - **Name of Consenter** = child’s name or SDM’s name
 - **Relationship** = child, mother, etc.
 - **Date** = date consent received
 - **Consent provided to** = Contact Brant staff
 - **How notified individual of the purposes for collection, use or disclosure** – Check appropriately whether:
 - (i) Verbally communicated
 - (ii) Directed person to posted notice
 - (iii) Provided written information to person.
 - **Check appropriate box -**
 - (i) Consent Given Verbally
 - (ii) Consent in Writing. In this case, the signature of the Consenter must follow.
 - **Save**
 - PDF for Attachments if being sent out.
- In the “*Comments/Other Information*” box identify if there. is only specific information that can be disclosed; if the Consenter has identified themselves as the substitute decision maker; if the individual has been deemed incapable; etc.
- For some referrals, other consents are required, e.g. when a referral is being made to CPRI it is necessary to have the individual sign the *CPRI Consent to the Disclosure, Transmittal or Examination of a Clinical Record* for any sharing of information between CPRI and Contact Brant.
- Reason:
Contact Brant employees must ensure clients are aware of the specific purposes for consent and record this in the Consent tab for each *Circle of Care* entry under the *pick list ‘Reason’*:
 - *Case Resolution review* = Specific explicit consent is required for Case Resolution review with the understanding on-going fiscal reviews/updates of the situation to the Case Resolution Team

- *Kids First review* = Specific explicit consent is required for Kids First reviews regarding community funding for respite supports
- *Referral to service and service coordination* = Sharing the personal information gathered at Intake, with subsequent on-going coordination of services including Wait List, Admission to Service, Discharge from Service, coordination of services
- *RPAC* = Reviews by the RPAC team for appropriateness of residential placements, as per the CYSFA
- *Service Coordination* = The intake and referral package is not being shared. Information sharing is limited to on-going integrated service supports and the related communication on behalf of a child/youth and family; includes sharing information of services waiting for/dates, current service providers, and completed services/dates.
- *Sharing Coordinated Service Plan* = Specific explicit consent to share the CSP with involved stakeholders.
- *Woodview for BI Consent* = Business Intelligence is specific data in EMHware shared to enable Woodview as the mental health lead agency to share Brant information with the provincial Ministry.