



Section: Administrative

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CONSENT POLICY

PREAMBLE

The use of the word 'Contact Brant' in this policy and procedures refers to the responsibilities of employees, students and volunteers in fulfilling their work with the agency. Also refer to the Contact Brant Privacy and Confidentiality Policy, HR-03.

The Contact agencies have consulted with Lonny Rosen, LLP, to develop Consent and Privacy policies.

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.

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 the 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 the 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:

- i. The Health Care Consent Act provides a hierarchy (ranked listing) of possible SDMs. The individual highest on this list who meets the requirements to be an 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 another legal guardian)
 - A parent with only a right of access
 - A brother or sister
 - Any other relative
 - Public Guardian or Trustee.
- ii. 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; and (v) Ministry reporting. 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 on community service options.
- To provide a 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 ongoing service coordination.
- To support the development of a Coordinated Service Plan/service plan 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 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.

POLICY

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

PROCEDURES

Consent for Collection, Use and Disclosure

1. **Consent**, either verbal or in writing, is required for the collection, use, and disclosure of personal information. Consent must be given freely and voluntarily and not be obtained through deception or coercion.
 - Implied consent can be inferred based on the action of requesting our help. Best practice is to confirm explicit consent with the individual for collecting personal information.
 - 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. However, indirect collection of personal information without consent may be allowed if required or permitted by law or to assess or reduce the risk of serious harm.
2. Consent is always documented in EMHware in Contacts as a case note, and in the Consent Form in Case Data.
3. 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 Case Data form:
 - Provide the person with the written statement, or
 - Direct the person to locations where it is posted (in the Contact Brant office area, on the website), or
 - Verbally advise the person.

4. 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. Refer to the Privacy and Confidentiality Policy.
5. It is standard practice to receive consent verbally, which must be documented, identifying who gave consent, the date of consent, to whom consent was provided, and the details of consent.
6. Capable individuals, regardless of age, can consent to the 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 reassessed 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.
7. Contact Brant will inform people of their right to challenge decisions of incapacity through the *Consent and Capacity Board*. Contact Brant will also provide information on the *Information and Privacy Commissioner of Ontario* for any complaints about privacy and consent.
8. Consent is given by the capable individual or their Substitute Decision Maker. Contact Brant will always try to secure both the child/youth's and 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.
 - If a person identifies themselves as the Substitute Decision Maker, Contact Brant is entitled to rely on that assertion. This will be documented in EMHware Contacts as a case note.

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.

9. If there is a conflict between the child under age 16 and the SDM, the capable child's decision prevails.
10. 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).
11. Consent must relate to the information collected, used, or disclosed.
 - It is important to differentiate consent for sharing the intake/referral package and consent for ongoing service coordination, which allows communication for working collaboratively with other services.
12. Consent must be knowledgeable.
Consent is knowledgeable if it is reasonable to believe the individual knows:
 - With whom information will be shared (this is usually an agency).
 - What information will be disclosed.
 - The purpose(s).
This must include an explanation that the information will be used in an aggregate, non-identifying form to create service system data for planning service needs and enhancements and Ministry and Board reporting.
 - They may give, withhold, or withdraw consent.
Contact Brant will inform individuals that they can give, withhold, withdraw, or restrict/limit consent and the circumstances under which information can be shared without consent. (See sections on Withdrawal or Restriction of Consent and Release of Information without Consent.)
13. If Contact Brant receives a record purporting to document consent, Contact Brant is entitled to assume the consent is valid unless it is unreasonable to do so.
14. Consent is not required if personal information is used for:
 - Planning or delivering services within Contact Brant.
 - Educating employees to provide Contact Brant services.
 - Risk 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.
15. Consent is not required for the collection of personal information from an incapable person 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 the risk of serious harm to any person or group.

Withdrawal or Restriction of Consent:

16. 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.

17. An individual has a right to withdraw consent at any time; however, 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 the Consent Form in EMHware Case Data must be updated. Documentation must include the name of the person, the date, the Contact Brant staff, and the specifics of the withdrawal. Additionally, documentation about the withdrawal of consent will be completed in a Communication Flag within EMHware.

18. An individual has the right to put a condition/restriction on 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 restrictions of consent must clearly be documented in the EMHware Case Data Consent Form, as well as in the case noted in Contacts. Additionally, documentation will be made in a Communication Flag within EMHware.

Documenting Consent

19. Employees must ensure that consent is documented and kept up to date in the EMHware Case Data Consent Form.

- There are no legal requirements for the period of the consent. Employees will regularly revisit consent with individuals when in contact with the individual and for all new information collected, used or disclosed.

20. **Consent documentation** will include the following:

- Name of Consenter(s)
- Date consent was received
- To whom consent was provided
- Consent was given Verbally or in Writing. (If written, the signed document must be uploaded in EMHware Attachments.)
- 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.

- Employees must ensure clients are aware of the specific purposes for consent, including Referral to Services (i.e., Intake package) and/or Service Coordination (ongoing communication with specified providers). This must be documented.
2. Consent must be specifically requested and documented for:
- Case Resolution reviews with the understanding of ongoing fiscal reviews and updates of the situation to the Case Resolution Team.
 - Kids First Review Committee regarding community funding for respite supports
 - Referral to service includes ongoing service coordination = Sharing the personal information gathered at Intake, with subsequent ongoing coordination of services, including updates on Wait Lists, Admissions to Service, Discharges from Service, and coordination of services.
 - RPAC Team reviews for appropriateness of residential placements, as per the CYSFA.