

# Guidelines 2023-1 - Consent: validity criteria

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These guidelines are available on the Commission d'accès à l'information website at the following address <https://www.cai.gouv.qc.ca/>.

# Summary of guidelines

## Who are these guidelines for?

They are intended for public and private organizations that need to obtain consent from individuals to use or communicate their personal information. For example:

You wish to use or communicate personal information to achieve an objective (purpose).

You determine that you must obtain the consent of the person concerned to use or communicate his or her personal information.

You obtain the consent of the person concerned.  
8 validity criteria



These guidelines will help you respect the 8 criteria

## The objectives of these guidelines

- ✓ Facilitating the understanding of the criteria for obtaining valid consent
- ✓ Clarifying the obligations of organizations in obtaining valid consent
- ✓ Identify best practices that promote respect for people's right to privacy

## What is excluded from these guidelines

- ✗ Consent to the communication of non-personal information, such as technical, financial or trade secret information
- ✗ A detailed explanation of the situations in which organizations must obtain consent
- ✗ Exceptions allowing the use or communication of personal information without consent. In this case, the validity criteria are not relevant.



## What do the guidelines contain?

- A glossary of essential concepts
- An introduction to consent and the obligations of organizations
- A detailed explanation of the 8 criteria for valid consent
- Examples to help you understand the criteria

## Laws and regulations take precedence over these guidelines

In case of doubt or conflict with these guidelines, laws and regulations always take precedence.

## Consent gives individuals control over their personal information

By default, personal information is confidential in order to protect the privacy of individuals. Consent gives individuals control over the use and communication of their personal information. This implies that they agree to what is done with their information.

For their part, organizations must comply with their legal obligations regarding the protection of personal information. This includes the obligation to obtain valid consent from the individuals concerned. Organizations should document this consent and the elements that support its validity.

### The 8 criteria for valid consent

To obtain valid consent, organizations must ensure that it meets 8 criteria listed in the law. The 8 criteria are linked and are all important. If a criterion is not met, the consent is not valid.



**1** Consent must be **clear**. It must be obvious and given in a way that demonstrates the true will of the person concerned. Sometimes consent must be express, i.e. given by a positive statement or gesture that indicates consent alone. Alternatively, it may be implied.

**2** Consent must be **free**. It must involve real choice and control by the person concerned. This person must be able to make a choice without coercion or pressure. Giving consent should be as easy as not giving it. The person concerned must also be able to withdraw consent at any time.

**3** Consent must be **informed**. The person concerned must understand what he or she is consenting to and what this entails. The organization requesting consent must provide precise information. Among other things, it should mention the purpose for which the information is being collected, what information is being collected, and who will have access to it. Finally, the person giving consent must be capable of doing so (e.g., not incapacitated or under 14 years of age).

**4** Consent must be given for **specific** purposes. In other words, the purposes for which personal information is used or communicated must be defined as precisely as possible.

**5** Consent must be **granular**. It must be requested for each of the purposes described. If there are several purposes, consent must be requested separately for each one. This granularity enables the person concerned to express his or her wishes clearly, as he or she can accept or refuse each specific purpose.

**6** The request for consent must be **understandable**. It should be presented in simple, clear terms, both for the information provided and for the question or statement of acceptance or refusal. Statements should be concise, i.e. expressed in as few words as possible. They should use everyday vocabulary, without legal or organizational jargon. They should use the most direct terms possible.

**7** Consent must be **temporary**. It must be valid for a limited period, i.e. only as long as is necessary to achieve the purposes for which the request was made. The duration may be linked to a time limit (e.g. 6 months or 3 years) or an event (e.g. as soon as a payment is completed).

**8** If a request for consent is made in writing, it must be presented **distinctly** from any other information. It must therefore be separate from terms of use, privacy policies, signatures, etc. It must have its own section or interface, easily accessible by the person concerned.

## Warnings

### **Personal information must be necessary**

By law, personal information must be necessary for the fulfillment of an organization's purpose. This is true at every stage of the personal information life cycle: collection, use, communication, retention and destruction. The consent of an individual does not authorize an operation to be carried out with personal information that is not necessary.

### **Personal information must be protected**

After obtaining valid consent, organizations are responsible for protecting the personal information they hold.

# Table of contents

<b>Glossary</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>2</b>
<b>A. These guidelines aim to clarify the criteria for valid consent</b> .....	<b>2</b>
A.1. Purpose of the guidelines. ....	2
A.2. Intent and significance of the guidelines.....	2
A.3. Obligations and good practices .....	2
A.4. Exclusions.....	3
A.5. Examples.....	3
A.6. Other laws .....	3
<b>B. Consent gives individuals control over their personal information</b> .....	<b>4</b>
B.1. Right to privacy and control .....	4
B.2. Control procedures .....	4
B.3. Consent and collection .....	4
B.4. Collection involving technological means.....	5
B.5. Special cases .....	5
B.6. Consent and primary purposes .....	5
B.7. Consent and secondary purposes .....	5
B.8. Consent and necessity.....	6
B.9. Time of consent .....	6
B.10. Exceptions to consent .....	6
B.11. Transparency regarding exceptions.....	6
B.12. Use of exceptions .....	7
B.13. Respecting the choice of individuals .....	7
B.14. When in doubt .....	7
<b>C. It is essential that organizations document their practices</b> .....	<b>7</b>
C.1. Importance of documentation.....	7
C.2. Documentation of the obtention of consent .....	8

C.3. Documentation of the validity of consent.....	8
C.4. Identification of the person concerned.....	8
<b>Criteria for valid consent .....</b>	<b>10</b>
Consent must be clear.....	12
Consent must be free.....	14
Consent must be informed.....	16
Consent must be specific.....	20
Consent must be granular: it must be requested for each purpose sought.....	21
The request for consent must be understandable: it must be presented in clear and simple terms.....	22
Consent must be temporary: it is valid only for as long as necessary .....	24
The request for consent must be distinct: it is presented separately if it is made in writing .....	25
<b>Examples .....</b>	<b>27</b>
Examples related to the Introduction.....	27
Examples related to the clear character of consent .....	29
Examples related to the free character of consent .....	32
Examples related to the informed character of consent .....	36
Examples related to the specific character of consent .....	39
Examples related to the granular character of consent .....	41
Examples related to the understandable character of consent .....	42
Examples related to the temporary character of consent .....	44
Examples related to the distinct character of consent .....	44

# Glossary

In this document, certain simplified terms are used to refer to more complex legal concepts:

**Information** refers to personal information, i.e. information that concerns a natural person and directly or indirectly allows that person to be identified.

- For example, a postal or e-mail address, a unique number, geolocation data, a photograph, a psychological characteristic, etc.

**Sensitive information** refers to personal information that, due to its medical, biometric or otherwise intimate nature, or due to the context in which it is used or communicated, creates a high degree of a reasonable expectation of privacy.

- For example, a fingerprint, a notice of assessment number, a diagnosis, etc.

**Organization** refers to any entity, public or private, to which section 53.1 of the [Act respecting access to documents held by public bodies and the protection of personal information](#) or section 14 of the [Act respecting the protection of personal information in the private sector](#) applies.

- For example, this term includes ministries, educational organizations, Crown corporations, small, medium and large companies of all types, including sole proprietorships, etc.

**Primary purposes** refers to the purposes for which personal information is collected by an organization. They concern the provision of a service or product, or access to a job. They are disclosed at the time of collection.

- For example, to process a customer's payment, a company collects financial information; to process a claim for benefits, a public body collects information about a person's employment.

**Secondary purposes** refers to all other purposes pursued by an organization.

- For example, to carry out market research, a company may want to re-use information it already has; to facilitate administrative procedures with another organization, an organization may want to share information about a citizen's file.



# Introduction

## A. These guidelines aim to clarify the criteria for valid consent

### A.1. Purpose of the guidelines.

These guidelines deal with the **criteria for valid consent** that organizations must obtain from the individual whose personal information is concerned.

These criteria are set out in:

- a. Section [53.1](#) of the [Act respecting access to documents held by public bodies and the protection of personal information](#) (the “**Access Act**”);
- b. In section [14](#) of the [Act respecting the protection of personal information in the private sector](#) (the “**Private Sector Act**”).

The guidelines in this document are designed to apply exclusively to these two sections, unless other sections are explicitly mentioned. In such cases, they are cited at the bottom of the page.

### A.2. Intent and significance of the guidelines

The *Commission d'accès à l'information* (the “**CAI**”) is responsible for developing guidelines to facilitate the application of the Access Act and the Private Sector Act, which fall under its jurisdiction.<sup>1</sup> The purpose of this document is to clarify the obligations of organizations with regard to obtaining valid consent, taking into account the legislation as a whole and case law.

The guidelines do not have the force of law. Laws and regulations take precedence at all times.

### A.3. Obligations and good practices

These guidelines also identify good practices that promote respect for individuals' right to privacy. The CAI distinguishes them from obligations throughout the text:

- a. When referring to **obligations**, it mainly uses **the verb “must” in the present tense** (“must”, “shall”);
- b. When it urges the adoption of **good practices**, it uses **terms related to recommendation or possibility** (“should”, “could”).

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<sup>1</sup> Access Act, [section 123](#).

## A.4. Exclusions

These guidelines do not apply to consent to the communication of information that is *not personal* - such as technical, financial or trade secret information.<sup>2</sup>

Nor are they intended to provide specific guidance on *when consent is or is not required*, except for the general information given in [section B](#) that focuses on the criteria that must be met when consent is required by law.

## A.5. Examples

Examples are given in the second part of this document to illustrate the content of these guidelines. The examples are fictitious, but may be inspired by real-life practices. Since they are intended to highlight specific aspects of the text (for example, a single validity criterion), they present deliberately simplified situations. In practice, each context requires its own specific analysis. These examples are therefore tools. When a potentially non-compliant situation is described, the CAI suggests a course of action, but this should not be regarded as the only possible solution.

Although the examples are generally associated with one sector, public or private, they can inspire organizations in the other. The following icons and colors are used to classify them:



Public sector Private sector All sectors

## A.6. Other laws

Organizations are responsible for knowing and complying with their consent obligations under other legislation, whether sector-specific, such as the [Act respecting health and social services](#), or general, such as the [Civil Code of Québec](#). Furthermore, the fact that an organization obtains valid consent does not relieve it of its other legal obligations with regard to the protection of personal information.

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<sup>2</sup> Access Act, [sections 23, 24, 25](#) and [49](#).

## B. Consent gives individuals control over their personal information

### B.1. Right to privacy and control

Individuals have a fundamental right to privacy. By default, personal information is therefore confidential. Everyone has the right to control the collection, use and communication of their personal information.

### B.2. Control procedures

The law stipulates that this control is exercised:

- a. Through rights (access, rectification, etc.) or remedies (complaints to an organization or the CAI, etc.). To ensure that individuals can exercise these rights with full knowledge of the facts, the law lays down **transparency** obligations for organizations;
- b. Through **consent**. Linked to personal autonomy, consent implies that individuals give their assent to certain actions involving their information. To be legally **valid**, consent **must** meet certain criteria (see [page 8](#)).

### B.3. Consent and collection

Unlike other Canadian or international privacy laws, the Access Act and the Private Sector Act do not provide a framework for collecting information through consent, except in specific cases. Instead, to collect information, an organization **must**:

- a. Clearly identify the purposes for which the information is collected and comply with the **necessity** criterion;<sup>3</sup>
  - i. In particular, the objectives pursued must be important, legitimate and real. The collection of personal information must be proportional to these objectives, i.e. rationally linked to them, limited to the maximum, and clearly more useful to the organization than harmful to the individuals concerned;
- b. Respect its **obligation of transparency** by providing accurate and complete information to the individuals concerned when personal information is collected from them.<sup>4</sup>

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<sup>3</sup> Access Act, [section 64](#); Private Sector Act, [section 5](#).

<sup>4</sup> Access Act, [section 65](#) et seq.; Private Sector Act, [section 8](#) et seq.

## B.4. Collection involving technological means

When an organization collects information using technology with functions that identify, locate or profile the person concerned, these functions **must** be disabled by default.<sup>5</sup> The law also imposes an additional obligation of transparency. The organization **must** inform the persons concerned of the following:

- a. The fact that it uses such technology;
- b. The means available to activate identification, localization or profiling functions. The person concerned must therefore take positive action in order to do so.

*See examples*



## B.5. Special cases

In certain special cases, an organization **must** obtain valid consent to allow:

- a. The collection of information from **a minor under the age of 14**;<sup>6</sup>
- b. The collection of information **from a third party** rather than from the individual concerned, with some exceptions in the private sector.<sup>7</sup>

## B.6. Consent and primary purposes

An organization that duly respects its obligation of transparency when collecting personal information from individuals may consider that those who provide their information with full knowledge of the facts consent to the use and communication necessary for the primary purposes announced.<sup>8</sup> This consent may be withdrawn at a later date (see [section 2.3](#) and [section 2.6](#)).

## B.7. Consent and secondary purposes

With a few exceptions, an organization **must** obtain valid consent:

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<sup>5</sup> Access Act, [section 65.0.1](#); Private Sector Act, [section 8.1](#).

<sup>6</sup> Access Act, [section 64.1](#); Private Sector Act, [section 4.1](#).

<sup>7</sup> Private Sector Act, [section 6](#).

<sup>8</sup> Access Act, [section 65.0.2](#); Private Sector Act, [section 8.3](#).

- a. To **use** information for secondary purposes;<sup>9</sup>
- b. To **communicate** information to a third party.<sup>10</sup>

## B.8. Consent and necessity

Consent never overrides the **necessity** criterion (see [section B.3](#)). Thus, at all stages of the information life cycle - collection, use, communication, retention and destruction - the information **must** first and foremost be necessary to achieve the intended purpose. This requirement is well established in the law<sup>11</sup> and in case law.

See example



## B.9. Time of consent

An organization **must** obtain consent **before** carrying out the actions for which the consent was obtained.

## B.10. Exceptions to consent

In certain cases, the Access Act and the Private Sector Act provide for exceptions allowing an organization to use or communicate information without having to obtain consent. Many other statutes also provide for similar exceptions. Where such an exception applies, given that there is no consent requirement, the validity criteria (see [page 8](#)) are irrelevant.

## B.11. Transparency regarding exceptions

An organization **should** demonstrate transparency by describing, in one of the documents it is required to make public concerning the management of information,<sup>12</sup> the exceptions to consent it is most likely to invoke. This practice enables individuals to be informed of these possibilities and to exercise control over their personal information through their rights and recourses (see [paragraph B.1](#)).

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<sup>9</sup> Access Act, [section 65.1](#); Private Sector Act, [section 12](#).

<sup>10</sup> Access Act, [sections 53, 59 and 88](#); Private Sector Act, [sections 13 and 40](#).

<sup>11</sup> For example, Access Act, [section 64, section 65.1, section 67](#); Private Sector Act, [section 5, section 12, section 18](#).

<sup>12</sup> These may include governance policies or rules, or a privacy policy, depending on the circumstances.

## B.12. Use of exceptions

To benefit from an exception to consent, an organization **must** ensure that the relevant conditions are met.

Exceptions are, however, discretionary. The organization **should** use them only if it is not possible or appropriate to obtain consent. In certain cases, an organization **may** therefore choose to rely on consent instead, particularly when obtaining consent poses no practical difficulties (easy to reach individuals, non-urgent situation, etc.).

The following elements may form part of the organization's contextual analysis when determining whether or not it will opt to rely on exceptions to consent for certain activities:

- a. Consent can sometimes be more advantageous for the organization, for example to facilitate the demonstration of its compliance with the law (see [section C](#));
- b. Consent may also be withdrawn at a later date by the individual concerned (see [section 2.6](#)), which gives them additional control over their information;
- c. The organization may wish to improve transparency with regard to the management of personal information.

## B.13. Respecting the choice of individuals

Consent must allow genuine control by the people concerned. An organization that chooses to rely, for a specific purpose, on consent rather than on an applicable exception, **should** therefore respect the choice of the individuals concerned. It **should not**, for that same purpose, go back and choose to rely on the exception only because the individuals concerned refuse or withdraw their consent.

## B.14. When in doubt

If an organization is unsure whether an exception applies in a given situation, it **must** instead obtain the valid consent of the person concerned.

# C. It is essential that organizations document their practices

## C.1. Importance of documentation

The CAI emphasizes the importance of organizations documenting their consent practices. Organizations **should** pay serious attention to this issue. Documentation helps to structure

considerations about the protection of personal information. It enables organizations to better justify their actions in the event of a complaint, an allegation of action taken without consent, or an investigation. When organizations lack adequate documentation of obtaining consent or the validity of consent, there is a risk that the CAI or any court will conclude that consent was not valid or was not obtained in a given situation. This could result in a breach of the law.

## C.2. Documentation of the obtention of consent

Where consent is required, an organization **should** document that it has been obtained (or withdrawn; see [section 2.6](#)). However, it **should not** collect more information than is necessary to ensure this documentation. It **should** develop and implement methods that are appropriate to its context, its activities and the form of consent (see [section 1.2](#) and [section 1.3](#)).

*See example*



## C.3. Documentation of the validity of consent

A consent that does not meet the validity criteria is without effect.<sup>13</sup> In the same vein, an organization **should** document the elements that demonstrate the validity of the consent obtained. Here again, it is up to the organization to determine the best method for doing so. For example, it **could** keep records of the circumstances in which consent was sought, or the way in which it was obtained (wording of information provided to individuals, script used by the organization's agents on the telephone, etc.). This documentation makes it easier to attest, in the future, that a practice was compliant at the time consent was obtained.

*See examples*



## C.4. Identification of the person concerned

Consent is the expression of a personal will. An organization **must** ensure that it obtains consent from the right person, i.e. the individual concerned or their legal representative, if applicable (see [section 3.2](#)). Where there is a legal representative, the organization **must** also verify the capacity of the person giving consent (the holder of parental authority, representative or proxy, etc.). These verifications **could be** carried out by validating certain information, but

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<sup>13</sup> Access Act, [section 53.1](#); Private Sector Act, [section 14](#).

the organization **must not** retain or collect more information than necessary. The organization **should** aim for a level of certainty that is reasonable in the circumstances, taking into account, among other things, the purposes for which the information is to be used, the sensitivity of the information and the nature of its activities.



# Criteria for valid consent

Valid consent is defined in sections [53.1](#) of the Access Act and [14](#) of the Private Sector Act, which contain eight criteria (each text box is a link to a specific section of these guidelines):

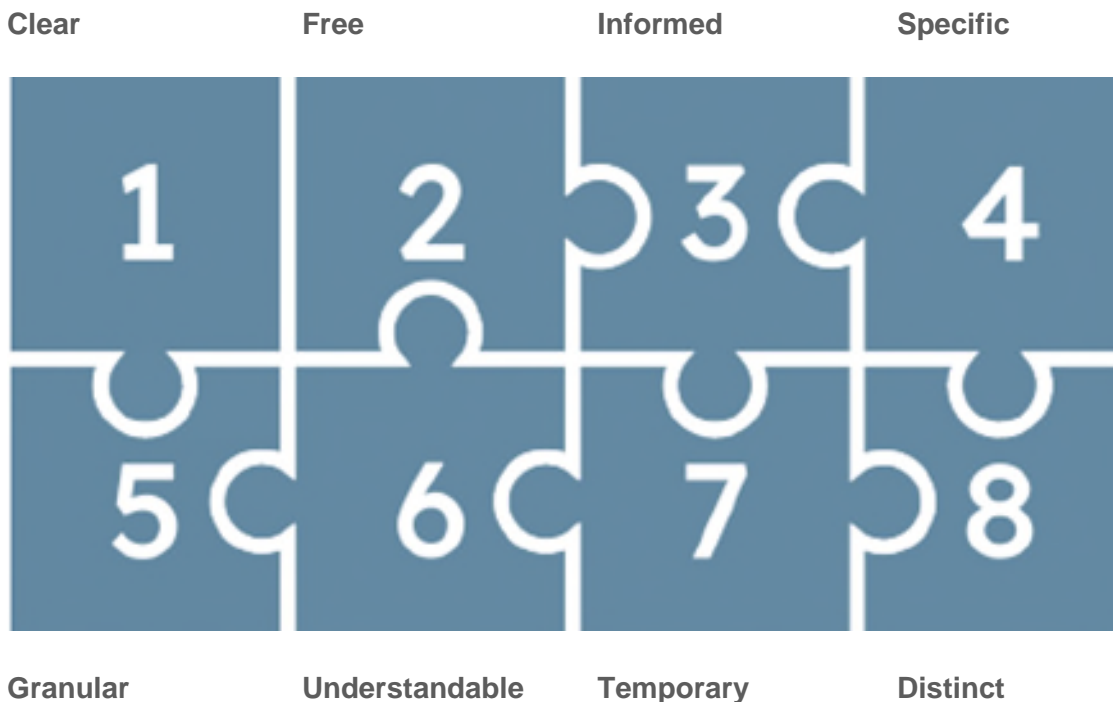
“Consent [under the law] must be [clear](#), [free](#) and [informed](#) and [given for specific purposes](#). It must be [requested for each such purpose, in clear and simple language](#). When the request for consent is made in writing, it must be [presented separately](#) from any other information provided to the person concerned. If the person so requests, assistance is provided to help him understand the scope of the consent requested.

[...]

Consent [is valid only for the time necessary to achieve the purposes](#) for which it was requested.”

“Consent that is not given in accordance with [the law] is without effect.”

The criteria are interconnected. They are all important: if one of them is not met, the consent is invalid and without effect.



The first four criteria (clear, free, informed, specific) are fundamental, while the subsequent four (granular, understandable, temporary, distinct) relate to particular aspects of the first four and help to ensure their full validity. For example, to be informed and specific, consent must be presented in clear, simple terms. **Throughout the text, links between criteria are specified where relevant.**



# 1 Consent must be clear

## 1.1. Clear consent

Consent **must** first be **clear**, i.e. obvious and given in a way that demonstrates the true will of the person concerned. This will may be **express**, but it may also be **implied** in certain circumstances.

## 1.2. Express consent

Consent is **express** when the person makes an active gesture (or statement) that clearly indicates agreement. This gesture or statement serves no other purpose than to provide consent, and is considered to be **positive**: it indicates acceptance, not refusal. There remains no doubt as to the person's true will. The expression **opt-in** also refers to this form of consent.

## 1.3. Implied consent



Consent is **implied** if it is not expressly stated. The organization deduces it from another action taken by the person concerned, or from their silence or inactivity. The person concerned **must** be informed that this action, silence or inactivity will be interpreted as consent (see [section 3](#)). They **should** have a valid opportunity to refuse consent. This form of consent is also referred to as **opt-out**.

## 1.4. Methods of obtaining clear consent

An organization is free to develop its own mechanisms for obtaining consent, provided that these mechanisms are suited to the activities of the organization and that they comply with the law. These mechanisms **should** be adapted to the individuals concerned, the context and the type of interface used. Below are some examples, depending on the form of consent:

### a. Express consent :

- i. Signing a document;
- ii. Ticking a box;
- iii. Answering a question in the affirmative;
- iv. Verbal approval;

### b. Implied consent :

- i. Box already checked but can be unchecked;
- ii. Deduction based on silence or inactivity;
- iii. Deduction linked to another action taken by the person.



## 1.5. Selection of express or implied consent

When an organization determines that it needs consent, the law requires that it be express, in some cases. In other cases, the organization chooses whether express or implied consent is best suited to the context of its activities. The elements presented in the following paragraphs are intended to guide the analysis to be carried out.

## 1.6. General guidelines

Express consent is **required** when the organization wishes to use or communicate **sensitive information**.<sup>14</sup> It is not required, however, if such use or communication is necessary for the primary purpose and is announced at the time of collection (see [section B.6](#)).<sup>15</sup> It should be noted that other Quebec laws require express consent in certain situations.

Since it does not require an active, positive gesture, implied consent **should** be used only when the following additional criteria are met:

- a. Use or communication does not run counter to people's **reasonable expectations** in the given context;
- b. No **risk of serious harm** arises from the intended use or communication.

Consent to the use or communication necessary for the primary purpose (see [section B.6](#)) covers many situations in which implied consent might be considered relevant. Cases where implied consent for a secondary purpose is appropriate are likely to be rarer.



<sup>14</sup> Access Act, [section 59](#) and [section 65.1](#); Private Sector Act, [section 12](#) and [section 13](#).

<sup>15</sup> Access Act, [section 65.0.2](#); Private Sector Act, [section 8.3](#).

### 1.7. Compliance with all criteria and documentation



Whether consent is express or implied, it **must** be clear, i.e. evident from the individual's behavior. The organization **must** also ensure that the other validity criteria are met. Since express consent is formally requested, it facilitates compliance with some of the criteria, such as granularity (see [section 5](#)), understandability (see [section 6](#)) and distinctiveness (see [section 8](#)). It is also easier to document (see [section C](#)) and leaves no doubt as to the true will of the person concerned. For these reasons, organizations **should** give preference to express consent.

### 1.8. Consent fatigue

Even if it opts for express consent, an organization **should** take steps to mitigate consent fatigue. Indeed, every day, we are asked to give our consent in a multitude of contexts. In the digital world, this is often done by ticking a box or clicking a button. Although the repetitive nature of these actions may render them less meaningful, it is still important for the persons concerned to be aware that they are providing consent, particularly to ensure that they understand the information made available to them (informed consent criterion; see [section 3](#)).

### 1.9. When in doubt

If there is any doubt about an individual's true wishes regarding the use or communication of their information, the organization **should** obtain express consent.

## 2 Consent must be free

### 2.1. Free character

Consent **must** be given **freely**, i.e. involve genuine choice and control, and be given without coercion or pressure. The person concerned **must** therefore be able to exercise their will without being unduly influenced or suffering disproportionate harm.

### 2.2. Fair mechanisms

It **should be** as easy to give consent as refusing it. These options **should be** presented fairly. Consent mechanisms that do not guarantee fairness among options, or that influence the individual's choice, could lead to invalid consent, given that it is not truly free. For example:

- a. Emphasizing acceptance over refusal can render consent ineffective, regardless of exactly how it is done: visual emphasis (colors, font size, etc.), effort required of the user in terms of number of clicks or web browsing, deliberately ambiguous wording, misleading texts, etc;
- b. Repeatedly requesting consent within a short period of time, when it has already been refused, may contradict its free nature. Consent **should** generally only be sought once for the same purpose, unless the context justifies it or an appropriate interval of time has elapsed.

*See examples*



### 2.3. Consent as a condition

In principle, consent cannot be free if it is a mandatory condition to accessing a service, product or job. Organizations **must** therefore allow individuals to refuse **secondary purposes** without influencing the initial agreement.

Sometimes, however, the use or communication of information is essential to the provision of a service or good, or access to a job. In such cases, it is linked to the organization's **primary purpose**. If the organization complies with its transparency obligation, individuals consent to the use or communication necessary for this primary purpose by providing their information<sup>16</sup> (see [section B.6](#)). If they do not provide this information, the organization cannot provide them with the service or good, or allow them access to the job, and is therefore within its rights to refuse.<sup>17</sup> An organization **must** ensure that the use or communication is necessary in the circumstances.

*See examples*



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<sup>16</sup> Access Act, [section 65.0.2](#); Private Sector Act, [section 8.3](#).

<sup>17</sup> Private Sector Act, [section 9](#).

## 2.4. Change of purpose

When an organization pursues a new purpose that requires consent (see [section 4.5](#)), consent may not be free if the organization indicates that it will cease to provide a service, good or job to those who refuse to give it. In such a case, the organization **would have to be** able to demonstrate once again that this new purpose is necessary for the continuation of the activity (see [section B.3](#) and [section 2.3](#)).

## 2.5. Situations of imbalance

Situations where there is an imbalance of power between an organization and the individual concerned can threaten the free nature of consent. This is particularly the case in employer/employee relationships. The CAI recognizes that, in such circumstances, the law does not offer a ready-made solution. An organization **should** adopt measures appropriate to its context to mitigate this problem if it must rely on consent. It may, for example, offer alternative ways of achieving the purpose so that an individual still has control over their information. In all cases, particular attention **should be paid to** transparency, to ensure that the the individual concerned is as well informed as possible, and that their other rights (complaint, access, rectification, etc.) are preserved (see [section B.2](#)).

*See examples*



## 2.6. Withdrawal of consent

Consent can be withdrawn at any time by the person concerned.<sup>18</sup> An organization **should** provide a simple and accessible mechanism for withdrawing consent, and **should** notify the persons concerned. The fact that a person has to make disproportionate efforts to exercise this right can undermine the free nature of consent.

*See examples*



# 3 Consent must be informed

## 3.1. Informed character

<sup>18</sup> Access Act, [section 65](#); Private Sector Act, [section 8](#).

Consent **must** be **informed**, i.e. precise and based on appropriate knowledge. An organization **must** ensure that the individual concerned knows and understands what they are consenting to and what this entails. If the organization does not provide the necessary information to do so, the control exercised by the individual is illusory and the consent is invalid.

### 3.2. Capacity of the person concerned

To be enlightened, consent **must** first be given by a person capable of binding themselves at the time when they give it.<sup>19</sup> For example, consent given by an incapacitated person or a person under the age of 14<sup>20</sup> is not valid. In these circumstances, however, consent may be given by a representative, such as the person with parental authority or a mandatary.

### 3.3. Parallels between transparency at the time of collection and informed consent

An analogy can be drawn between the information that an organization **must** provide to the individuals concerned when collecting<sup>21</sup> their personal information (see [section B.3](#)) and the information **required** for consent to be informed. Indeed, the law stipulates that people who provide their information after receiving the information required by law at the time of collection consent to the use and communication necessary for the primary purposes stated<sup>22</sup> (see [section B.6](#)). The legislator therefore believes that this information enables the person concerned to make an informed decision regarding their personal information.

Therefore, to ensure informed consent, an organization **should** provide the information presented below, which is inspired by sections 65 of the Access Act and 8 of the Private Sector Act, with the necessary adjustments, depending on the context. **Sections 3.4 and 3.5 are not intended as guidelines for the application of these articles in the context of collecting personal information.**

### 3.4. Information to be provided

To allow for the individual concerned to make an informed decision, an organization **should** generally provide the following information when obtaining consent:

- a. **Who?** The organization on whose behalf consent is requested;
- b. **Why?** The purpose for which consent is sought;
- c. **What?** The relevant information, or at least categories of information, serving as a reminder if a certain amount of time has elapsed since the information was collected;
- d. **From whom?** If applicable, name of third parties or category of third parties, outside the organization, from whom or on whose behalf the organization will collect the information;

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<sup>19</sup> Civil Code of Québec, [section 1398](#).

<sup>20</sup> Access Act, [section 53.1](#) and [section 64.1](#); Private Sector Act, [section 4.1](#) and [section 14](#).

<sup>21</sup> Access Act, [section 65](#) and [section 65.0.1](#); Private Sector Act, [section 8](#) and [section 8.1](#).

<sup>22</sup> Access Act, [section 65.0.2](#); Private Sector Act, [section 8.3](#).



- e. **How?** Means of using or communicating the information (postal communication, use of a fully automated decision, etc.);
- f. **To whom?** If applicable, name of third parties or category of third parties outside the organization to whom the organization will communicate the information;
- g. **Outside Québec?** If applicable, possibility that information may be communicated outside Québec;
- h. **Which rights?** Right to withdraw consent, right of access and right of rectification, with details of how to exercise them;
- i. **Accessible to whom?** Categories of people within the organization who will have access to the information in order to achieve the intended purpose;
- j. **For how long?** Duration of validity of consent (see [section 7](#));
- k. **Who to contact for assistance?** Contact information for the Privacy Officer, from whom individuals can obtain further information or exercise their rights.

*See examples*



### 3.5. Information accessibility - levels

There is a lot of information to be provided. An organization **could** divide it up into several levels to make it easier for those concerned to understand. To establish the number of levels and their content, it **should** then take into account various elements: the context of its activities, the expectations of the individuals concerned, the sensitivity of the information in question, changes that have occurred since the information was collected that may affect the way it is handled, the fact that the information should be accessible on request, and so on.

For example, it is often possible to prioritize information into two levels:

- a. The **first level** (e.g. the request for consent itself) could include:
  - i. **Purpose** (why);
  - ii. **Information or categories of information concerned** (what);
  - iii. **Third parties**, if any (to whom/from whom);
- b. The **second level** could include other information. This second level could consist, among other things, of:
  - i. A privacy policy, such as that required by law when a technological means is used to collect information;<sup>23</sup>

<sup>23</sup> Access Act, [section 63.4](#); Private Sector Act, [section 8.2](#).

- ii. An appendix to a form;
- iii. A question mark icon or “Learn more” button next to the consent request;
- iv. For verbal modalities, a statement indicating that further information is available upon request.

*See examples*



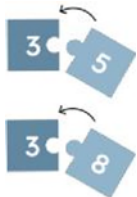
### 3.6. Precision and clarity of terms used



The elements presented above **must** allow for specific consent (see [section 4](#)) through the use of simple, clear terms (see [section 6](#)). An organization **must** therefore avoid vague, imprecise or overly complex terms, as well as texts that are long or rich in legal jargon. These factors prevent individuals from fully understanding what they are agreeing to.

### 3.7. Separate information for each purpose

When a request for consent to secondary use or to communication is made at the time of collection, an organization **must** ensure that it provides:



- a. All information required to comply with its transparency obligations relating to collection, including the primary purposes for which it collects information;<sup>24</sup>
- b. Information relating to other purposes for which consent is requested. However, this **must** be done **separately** the information provided for primary purposes (see [section 5](#) and [section 8](#) for written requests). There is thus a link between the informed nature of consent and the amount of information given simultaneously to the person concerned: presenting information separately, particularly as it concerns consent, reduces the risk of confusion.

*See example*



<sup>24</sup> Access Act, [section 65](#) and [section 65.0.1](#); Private Sector Act, [section 8](#) and [section 8.1](#).

### 3.8. Subsequent availability of information



Since free consent can be withdrawn, the organization **should** again provide the relevant information to the person concerned, on request. In this way, the individual can re-evaluate their decision after consenting, if necessary (see [section 2.6](#)). An organization **could** deploy means to make information available by default for future reference, for example on a website.

### 3.9. Duty to assist

An organization **must** provide assistance to individuals seeking help in understanding the scope of the consent requested. It is responsible for developing mechanisms to this end, depending on the context of its activities. For example, it **could** provide a toll-free telephone number or a live online chat service to reach a person in charge, or set up a dedicated e-mail address to receive questions.

*See example*



## 4 Consent must be specific

### 4.1. Specific character

Consent must be **given for a specific purpose**, i.e. a precise and limited purpose.

### 4.2. Link to informed character



This criterion is closely linked to that of informed consent: a person can only consent if they are able to understand exactly what is being asked of them.

### 4.3. Specificity of terms



An organization **must** use terms that adequately specify the purposes for which it is seeking consent. Vague, broad or imprecise terms threaten the specific nature of consent, and therefore its validity (see [section 6](#)).

*See examples*



#### 4.4. Restrictions on use

In order to respect the precise wishes of the persons concerned, an organization **must** rely on consent only for what it authorizes. The consent given by an individual is restrictive: it applies only to the purposes or third parties that were specified.

*See example*



#### 4.5. New purpose, new consent

When an organization wishes to use or communicate information for a new purpose, it **must** obtain new consent from the individual concerned, unless a legal exception applies (see [section B.10](#) and following).

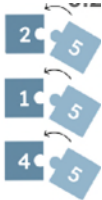
## 5

### Consent must be granular: it must be requested for each purpose sought

#### 5.1. Granularity

Consent **must** be **granular**, i.e. **requested for each of the purposes for which it is sought**. Granularity refers to an object whose parts can be distinguished from one another.

## 5.2. Link with free, clear and specific character



Granularity ensures that consent is truly free. This is not the case if the individual is required to authorize several purposes or third parties to whom the organization communicates their information at the same time, as the only choice is then to refuse or accept as a whole. Similarly, granularity ensures that the individual concerned clearly expresses their wishes for each specific purpose.

## 5.3. Nuances of consent



To enable individuals to make a granular choice as to what they accept or reject, an organization **must** inform them of each purpose and, in the case of communication, list the third parties or categories of third parties who will receive the information. It **must** then allow individuals to express their agreement or disagreement separately, for each of the purposes and each of the third parties or categories of third parties concerned. It is not a question of duplicating all the elements relating to consent (e.g., multiplying the number of forms, giving the same information several times, etc.): the organization **must** only adapt its method of obtaining consent (see [section 1.4](#)) for granularity purposes.

*See examples*



## 5.4. Granularity and implied consent



Since implied consent does not comprise an active, positive gesture (see [section 1.3](#)), it is more difficult for this type of consent to be granular (see [section 1.7](#)). To avoid this problem, an organization that relies on implied consent **should** generally ensure that it concerns only one purpose.

# 6

## The request for consent must be understandable: it must be presented in clear and simple terms

### 6.1. Understandability

The request for consent **must** be **understandable**, i.e. presented in **simple, clear terms**, both for the information and for the statement allowing acceptance or refusal.

## 6.2. Link to informed and specific nature of consent



This criterion is designed to ensure that consent is informed, but also to prevent the organization from subsequently interpreting consent too broadly (specific nature of consent). Various elements can simplify and clarify the statements for the persons concerned, including those presented in the following paragraphs.<sup>25</sup>

## 6.3. Concision

Statements should be concise, i.e. expressed in as few words as possible, while remaining clear. An organization **should** avoid superfluous words, complex structures and circumlocution. Overly long sentences or texts are detrimental to the understanding of the individuals concerned.

*See example*



## 6.4. Simple vocabulary

An organization **should** use simple terms, i.e. terms that are accessible to the persons concerned. It **should** use everyday vocabulary, without legal or organizational jargon.

*See example*



## 6.5. Clear intent

An organization **should** use the most direct terms possible in its request for consent, both in the way it is presented and in the formulation of the options available to the person. Precise wording avoids any confusion as to what the person is being asked to do, and preserves the legal implications at play. Similarly, the organization **should** avoid terms expressing uncertainty or assumption (e.g., verbs conjugated in the conditional tense), unless it can demonstrate why it is unavoidable to use them.

*See example*



<sup>25</sup> The plain-language principles of Web copywriting from [Québec.ca's government design system](#) can be a useful resource.

## 6.6. Adapting to target audience

An organization **should** tailor its information to its target audience. To do so, it **should take into** account the perspective and profile of the individuals concerned. They may not always be familiar with their privacy rights, or with the organization's activities. The organization **should** therefore adapt the terms used so that the information is reasonably understandable to a majority of individuals concerned.

See examples  

# 7 Consent must be temporary: it is valid only for as long as necessary

## 7.1. Temporary nature

Consent **must** be **temporary**, i.e. **valid for a limited period of time**. It is valid only for as long as is necessary for the purposes for which it was requested. It is no longer valid once these purposes have been fulfilled.

## 7.2. Limitation of duration

The duration limit varies in relation to the intended purpose. This is achieved according to one of two factors:

- a. **A deadline:** after a period of 30 days, one year, six years, etc.
- b. **An event:** when an event occurs (as soon as a payment is completed, as soon as a person leaves their job, as soon as a contract ends, etc.).



An organization **must** define in advance the period of time required to achieve the purpose. It **should** inform the individual concerned of this period (see [section 3.4](#)). The time limit contributes to making consent specific (see [section 4](#)).

See example 

## 7.3. Distinction between validity period of consent and retention period

The validity period of consent is a different concept from the information retention period. Thus, the end of the validity of a consent does not always coincide with the destruction of the information.

The length of time an organization can retain information thus depends not only on the purposes for which it is intended, but also on the laws applicable in its context.<sup>26</sup> For example, many public bodies must comply with the [Archives Act](#),<sup>27</sup> financial institutions have retention obligations under sector-specific laws, and professionals must keep their files in accordance with regulations specific to their field.

#### 7.4. Transparency regarding long-term consent

When an organization asks for consent for a very long time, it **should** pay particular attention to transparency on an ongoing basis. It **could** remind the individuals concerned, at appropriate intervals, that it uses or communicates their information on the basis of consent. It **could** refer to up-to-date information on this situation (see [section 3.8](#)) and remind people that they can withdraw their consent at any time. The organization **could** also disseminate this information by an easily accessible means (e.g. a website).



## 8

### The request for consent must be distinct: it is presented separately if it is made in writing

#### 8.1. Distinct character

If the request for consent is made in writing, it **must** be **presented separately from any other information**. It **should** therefore be separate from terms of use, privacy policies, requests to confirm the validity of information provided, commitments, signatures, etc. It could be featured in its own section or interface (section of the form, overlay window in an application, etc.). It **could** be featured in its own section or interface (form section, overlay window in an application, etc.), so it's easily accessible to the person concerned.

See examples  

#### 8.2. Link to other validity criteria

The distinctiveness of the request for consent is interrelated with other criteria for valid consent, including the following:

<sup>26</sup> Access Act, [section 73](#); Private Sector Act, [section 23](#).

<sup>27</sup> The CAI is not responsible for overseeing the application of this law.





- a. **Clear and free:** consent is not clear if it is expressed by a gesture that may also attest to something else, such as the receipt of information or the validity of the information provided, since the intentions behind the gesture are then inseparable (see [section 2.3](#)). Consent given in this manner is not free either, as it is difficult to express a refusal in these circumstances;
- b. **Informed:** separate requests for consent help to limit the amount of information provided at the same time, making it easier for the person concerned to understand.

See examples  

# Examples



As mentioned in [section A.5](#) the following examples are intended to illustrate the guidelines. They are fictitious, but may be inspired by real-life practices. Since they aim to highlight specific aspects of the text - for example, a single validity criterion - they present deliberately simplified situations. In reality, each context requires its own specific analysis.

As such, these examples are tools. When a potentially non-compliant situation is described, the CAI suggests a course of action, but this should not be considered the only possible solution.

Even if the examples are generally associated with one sector, public or private, they can inspire organizations in the other sector.

Each example contains one or more clickable links to the relevant section(s) in the guidelines.

## Examples related to the Introduction

	Example	Relevant section
 Private sector	<b>Example B-a</b>  A dating application allows users to filter potential partners according to their proximity by setting a radius around their location. Upon registration, the application presents the various information required by law when collecting information. A notice informs users that it includes a location feature. This is disabled by default. <b>To access it, users must enable geolocation on their mobile device and allow the application to access it. The application informs them how to do so.</b>	<a href="#">Section B.4</a>
 Private sector	<b>Example B-b</b>  A magazine's website offers personalized article recommendations based on readers' interests, inferred by an artificial intelligence algorithm. The information used for inference (pages viewed, clicks, browser language, time spent on each page, etc.) is collected using <i>cookies</i> placed on the reader's device. Since this technology enables profiling, <b>the magazine displays an overlay window on the first visit to the site, providing the individuals concerned with the information required by law. It then tells them how to activate the use of cookies.</b>	<a href="#">Section B.4</a>

Example	Relevant section
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### Example B-c

At its general meeting, a condominium association passed a unanimous resolution to install surveillance cameras as a preventative measure against vandalism. The cameras are positioned at an angle so as to film the front door of each unit.



Private sector

Despite the agreement of the co-owners, which indicates their consent, capturing images throughout the building may not be proportional to the security objective pursued. The invasion of privacy of co-owners and their guests is significant: the angle of the cameras means that everyone's comings and goings can be filmed. In these circumstances, the installation of surveillance cameras by the condominium association may not meet the necessity criterion. **Consent would not be sufficient to comply with the law. To ensure compliance, the condominium corporation could reassess the necessity of the video surveillance, for example, by conducting a privacy impact assessment. It could consider modifying the camera angles to capture only the main entrance and exit doors of the building, so as to limit the invasion of privacy.**

[Section B.8](#)

### Example C-a

An organization has a policy and procedures relating to customer consent to the communication of their information. **In order to document the process of obtaining consent, while collecting only the information required for this purpose, the organization stipulates that any verbal consent obtained over the telephone must be noted in the file of the person concerned. The agent collecting the consent must also note the name, date and time of the call.**



All sectors

In recent years, the organization has also updated its telephone call scripts on three occasions. Each time, it has kept a copy of the previous versions. **Should the need arise, this would make it easier to demonstrate that consent obtained during the period when a previous version of the scripts was in use was indeed informed.**

[Section C.2](#)

[Section C.3](#)

Example	Relevant section
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### Example C-b



Public sector

A Crown corporation offering digital services frequently updates its online consent forms. Each time, it saves the previous version in its archives. Each version of the form saved in this way is accompanied by an indication of the period during which it was in use. **This practice enables the Crown corporation to keep a record of the elements used to assess the validity of a consent obtained at an earlier period. Archived forms could thus be used in the event of an inspection, for example.**

[Section C.3](#)

## Examples related to the clear character of consent

Example	Relevant section(s)
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### Example 1-a



Public sector

An employee of a public organization provides services to people with motor difficulties, the majority of whom cannot write or use touch screens. To validate financial assistance, this employee must communicate information contained in their file to a government department. The organization's rules of governance preclude the use of exceptions to consent when it is, in practice, easy to obtain (e.g. when a small number of people are involved). The employee thus relies on the express consent of the persons concerned for the communication of information. **In order to take into account the particularities of the clientele to whom the services are provided, the employee asks for consent orally, at the next meeting with the persons concerned. The date, time and details of consent are recorded in the file.**

1.4

### Example 1-b



Private sector

A manufacturer markets an educational toy aimed at children between the ages of 5 and 8. The toy can record the child's first name and measure week by week the progress of the child's answers to questions related to letters and numbers (correct or incorrect answers, response time, etc.). These results are then made available to parents via a secure web portal. The manufacturer must obtain parental consent to collect this information from children. During setup, the toy provides auditory instructions to parents. **To consent to this collection from their child, they are asked to log on to the web portal and tick an acceptance or refusal box.**

1.4

Example	Relevant section(s)
<p>This mechanism enables the manufacturer to obtain the parents' express consent.</p>	
<p><b>Example 1-c</b></p> <p>In order to respond more effectively to requests from citizens, an organization wants to design an artificial intelligence system (AIS) to prioritize files. It plans to develop the AIS using data on the usage of its services over the past three years. Its Access to Information and Privacy Committee, having completed a Privacy Impact Assessment, determined that express consent was required to use the information for this new purpose. Despite this, the organization decided to send an e-mail to the individuals concerned informing them of this new use, mentioning that they could contact the organization's Privacy Officer to withdraw their consent to this use of their information. <b>This deduction of consent, based on the silence or inactivity of individuals who do not contact the organization to withdraw their consent, does not offer the possibility of a positive gesture of acceptance. It does not, therefore, allow us to obtain <u>express</u> consent, but rather <u>implied consent</u>. To comply with its committee's purpose, the organization could, for example, have asked citizens to give their consent via a personalized Web link linked to their file.</b></p>	<p>1.4</p>
<p><b>Example 1-d</b></p> <p>An organization that pays benefits to disabled people holds sensitive information on their health and financial situation. As part of the organizing of a provincial conference on the integration of people with disabilities, the agency wanted to produce case studies of its beneficiaries to present to the participants at the conference. However, at the time of collecting the information to pay the benefits, the organization made no mention of this secondary use. <b>In order to use the information of the beneficiaries in question, the organization must therefore obtain their express consent, since the information is sensitive. To ensure that this consent is expressed unequivocally, the organization could draw up a standalone form and send it to the beneficiaries for their signature.</b></p>	<p>1.6</p>



Public sector



Public sector

Example	Relevant section(s)
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### Example 1-e



Private sector

A massage therapy clinic is organizing a series of health and wellness conferences in collaboration with other health care providers. The owner wants to send personalized invitations to her customers. She plans to use the health and medical history information collected when opening their files to target certain clients and offer them the opportunity to participate in conferences. **Sensitive information cannot be used for this secondary purpose without express consent. If it is too difficult to obtain express consent from each customer, the owner may instead choose to announce conferences in the clinic newsletter already sent to customers who have agreed to receive news about events.**

1.6

### Example 1-f



Private sector

After a series of break-in attempts, an explosives manufacturing company is looking to tighten access control to its storage site housing reactive materials, limiting it to authorized personnel only. The company is considering the purchase of a biometric hand recognition system. Following a Privacy Impact Assessment that takes into account the context of its activities, the company concludes that the use of this technology meets the test of necessity in this situation. Since the system relies on biometric characteristics, **the company recognizes that it needs express consent, and has drawn up a consent form.<sup>28</sup> Employees who wish to do so can sign it, and those who refuse can opt for an electronic access card system.**

1.6

### Example 1-g



Public sector

An elementary school offers an extracurricular introductory photography workshop for 5th and 6th graders. Parents validate their children's enrolment by paying the associated fees. In November, registered students take part in a portrait workshop and take photos of each other. Proud of the results, the teacher in charge of the activity selects five children's photos and forwards them to the school management for publication on the school's "parent portal", highlighting the activities offered by the school and the children's progress. Both the teacher and the school management felt that the parents had agreed to this publication, since they

1.6

<sup>28</sup> Section 44 of the [Act respecting the legal framework for information technology](#) requires express consent to verify or confirm a person's identity by means of a process that captures biometric characteristics or measurements.

Example	Relevant section(s)
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had been informed of the portrait workshop and since the “parent portal” was secure and accessible only to parents.

**This implied consent may not be valid in these circumstances. Parents would probably not reasonably expect portraits of their child to be made available in digital format to hundreds of parents without express consent. In the context of such wide distribution, children’s photos could be considered sensitive, and the risks of serious harm arising from their distribution would have to be assessed. For these reasons, the school would have been benefitted from obtaining express consent. It could have sent an electronic consent form to the parents concerned via the portal.**

**Example 1-h**

An appliance leasing company receives a request to lease a refrigerator for 48 months. The automatic acknowledgement sent to the applicant indicates that the company will grant financing at a favorable rate for this period after a credit investigation by a personal information agent, whose name is mentioned in the e-mail. In a separate section, the e-mail states that, in the absence of any notice to the contrary from the applicant, the company will communicate the necessary personal information to the agent three days later. Since the applicant has not responded, the company proceeds with the credit investigation for financing, affecting the applicant’s credit rating. The applicant then complains to the company, indicating that they intended to pay for the lease without obtaining financing. **In this situation, the company could not rely on implied consent for the credit inquiry: it went against the reasonable expectations of the applicant, who had not applied for financing, and caused him significant harm by lowering his credit rating. The company should have opted for a method of obtaining express consent to request a credit check.**




**Private sector**

1.6

**Examples related to the free character of consent**

Example	Relevant section(s)
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**Example 2-a**

	Example	Relevant section(s)
	<p>One municipality offers an application where users can report various problems related to the maintenance of public spaces (snow removal, waste collection, etc.). To create an account, users must provide an e-mail address, which serves as an identifier, and a postal code to initialize the zone displayed by default in the maps available in the application. They can then access all services via the application itself, and view the progress of their reports.</p> <p>The application also allows them to use their e-mail address to receive updates on the status of roadworks in their area. The municipality provides an overlay window to collect this consent. <b>Users are presented with two buttons, “I accept” and “I refuse”. This makes it as easy for them to give their consent as it is for them to withhold it. What’s more, these buttons are exactly the same height, color and font size. By ensuring equity in the visual presentation of choices, the municipality further promotes the free character of the consent obtained.</b></p>	
<p>Public sector</p>	<p><b>Example 2-b</b></p> <p>A clothing boutique’s website allows customers to create an account to facilitate their online purchases. Each time they log on, an alert is displayed, inviting them to receive the boutique’s weekly newsletter, which includes discounts that may be of interest to them. It’s just as easy to accept this secondary use of your e-mail address as it is to refuse it. However, if a customer refuses, the window appears each time they log on to their account. <b>These repeated, closely spaced requests for consent, regardless of the customer’s previously expressed wishes, could compromise the customer’s freedom of choice. To avoid this problem, the store could ensure that a reasonable time interval (e.g. a few months) has passed between each request.</b></p>	
	<p><b>Example 2-c</b></p> <p>In the application form that prospective students fill out, a public university explains that the information collected will be used to evaluate the application and communicate student status to the appropriate ministry, in the case of foreign students (primary purposes).</p>	
<p>Public sector</p>	<p>In a separate section entitled “Foundation”, however, the university requests consent for a secondary purpose:</p>	



Example	Relevant section(s)
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“I agree that my name, telephone number, e-mail address, date of admission and field of study may be shared with the University Foundation for the purpose of philanthropic solicitation. This consent is valid for up to 5 years after the completion of my studies.

Yes  No”

**The university presents this secondary purpose, which is not essential to admission, in an appropriate manner. It leaves the applicant free to refuse the communication, without any consequences for the rest of the application. In so doing, it ensures that consent is freely given.**

### Example 2-d

When selling a new car, a dealer uses a form to obtain the information needed to grant the customer financing. In the consent section, he adds the following statement:

“By signing this contract, I agree that my email address and name may be used to send me promotional offers for the duration of the financing.”

When questioned by a puzzled customer, the company’s owner points out that this modality is mandatory in order to receive financing. **This does not allow him to refuse the secondary purpose of sending promotional offers. As a result, the dealer does not obtain valid consent, since the customer is not doing so freely. The owner should revise this practice to offer the customer the real possibility of refusing to receive promotional offers.**







Private sector

### Example 2-e

An inspection team from a monitoring agency is working at a food company. On this occasion, the team’s superior takes a photo of his employees at work so that the image can be included in the inspection report. A newspaper is interested in the inspection and asks if it can use the photo to accompany its article. The team manager considers sending an e-mail to the employees concerned to ask them if they agree to the photo of them contained in the inspection report being forwarded to the newspaper to accompany an article in the next day’s edition. **Given the power relationship with employees, the manager must ensure that the wording of the request for consent does not imply any negative consequences for refusing consent. If employees feel obliged to**



Public sector

	Example	Relevant section(s)
	<p>accept, consent cannot be free. He should therefore be as neutral as possible in his request. He would also do well to invite each employee to reply separately, to avoid any pressure from the group.</p>	
 <p>Private sector</p>	<p><b>Example 2-f</b></p> <p>A private laboratory decides to equip itself with a biometric access control system to restrict access to a room housing a machine that uses a highly radioactive material. Nuclear safety agency standards require particularly strong security to limit the risk of theft or sabotage of this type of material. In the consent form provided to employees, the company explains the purpose of the system and indicates that employees who do not wish to have their biometric information collected<sup>29</sup> will be able to authenticate themselves by other means. They will need to present an access card, then validate their identity with a security guard. Both biometric and traditional access cards remain under the control of the individuals concerned. <b>In these circumstances, the company makes reasonable efforts to preserve the freedom of consent, despite the employment context: employees can refuse collection and opt for a different authentication solution.</b></p>	 <p>2.5</p>
 <p>Public sector</p>	<p><b>Example 2-g</b></p> <p>A team from a university research laboratory is conducting a study on voice recognition. To this end, they recruit participants who will be recorded reciting a text. The participants sign a consent form providing all the required information and allowing the researchers to re-use their voice in studies on other specific subjects, specified in the form, for a period of five years. <b>Participants who, at some point, no longer wish to have their voice used by the laboratory can withdraw their consent by sending a simple e-mail to the laboratory’s common address. This withdrawal mechanism is simple and accessible. It is not an obstacle to obtaining free consent.</b></p>	 <p>2.6</p>
	<p><b>Example 2-h</b></p>	

<sup>29</sup> Section 44 of the [Act to establish a legal framework for information technology](#) requires express consent to verify or confirm a person's identity by means of a process that captures biometric characteristics or measurements.

	Relevant section(s)
<div data-bbox="115 598 212 695" data-label="Image"> </div> <div data-bbox="115 705 212 777" data-label="Text"> <p>Private sector</p> </div> <div data-bbox="245 394 1203 972" data-label="Text"> <p>Example</p> <p>A music distribution company offers an application that allows users to access the albums they have purchased. An overlay window appears when they first log in, allowing them to activate personalized recommendations for discovering new music. An algorithm then draws up their profile based on, among other things, the songs they listen to, the length of time they listen and the time of day they listen. A user decides to withdraw consent to the use of this information for personalized recommendation purposes. The user has to make eight clicks in the application’s various settings screens before finding the option to deactivate the function. <b>While it only takes one click to activate personalized recommendations, it takes many more to withdraw consent. In this context, these efforts are disproportionate and undermine the free character of the consent on which the company relies. The number of clicks to consent or refuse should be equivalent.</b></p> </div>	<div data-bbox="1279 630 1406 730" data-label="Image"> </div>

## Examples related to the informed character of consent

	Relevant section(s)
<div data-bbox="110 1453 228 1570" data-label="Image"> </div> <div data-bbox="115 1619 212 1690" data-label="Text"> <p>Public sector</p> </div> <div data-bbox="235 1249 457 1291" data-label="Section-Header"> <h3>Example 3-a</h3> </div> <div data-bbox="235 1320 1183 1432" data-label="Text"> <p>A Ministry employee asks a person to sign a generic consent form before completing all the fields in it. The text presented to her reads as follows, with no information on the blank lines:</p> </div> <div data-bbox="264 1451 1170 1566" data-label="Text"> <p>“I authorize the Ministry to communicate the following information: _____ to the following persons : _____ and for the following purposes: _____.”</p> </div> <div data-bbox="235 1583 1206 1810" data-label="Text"> <p><b>This is not the way to obtain informed consent. The person cannot understand the scope of what they are consenting to if they have no information about what is being consented to. When consent is sought, it must be given with full knowledge of the facts. The Ministry could instruct employees to always fill in the blanks before having the persons concerned sign the forms.</b></p> </div>	<div data-bbox="1284 1501 1393 1623" data-label="Image"> </div>

Example	Relevant section(s)
<div data-bbox="115 695 212 789" data-label="Image"> </div> <div data-bbox="115 800 212 869" data-label="Text"> <p>Private sector</p> </div> <p><b>Example 3-b</b></p> <p>Two online shopping platforms collect buyers’ consent to communicate their contact information to other companies so that they can send them promotional offers. They use different texts:</p> <p>Platform A: “I agree that [the Company] may transmit my contact information to partners.”</p> <p>Platform B: “I authorize [the Company] to transmit my name and e-mail address to its affiliated e-commerce companies so that they can send me promotional offers.”</p> <p><b>Platform B’s more complete text is more likely to lead to informed consent than that of Platform A, which does not disclose the purpose of the communication and gives no indication of the identity of its partners.</b></p>	<div data-bbox="1289 716 1398 835" data-label="Image"> </div>

**Example 3-c**

A school service center (SSC) wants to fill a position that involves working with vulnerable people. In this case, it is necessary to undergo a criminal record check. The SSC requires the consent of the candidates for this purpose. The hiring form contains a section dedicated to consenting to the communication of information to the police department and to the communication to the SSC, by the police department, of the certificate of absence of criminal record that will be created.



Public sector

**To ensure informed consent, the SSC includes essential information in the consent form:**

“SSC X [who?] needs your consent to communicate your personal information [what?] to Police Department Y [with whom?] to conduct a background check to certify that you can work with vulnerable people [why?]. This consent also covers the communication of the certificate of absence of criminal record [what?] to SSC X by Police Department Y. Additional information is available in Appendix A.

I accept  I refuse”

**Appendix A provides the rest of the information (rights, period of validity of consent, contact details for the Privacy Officer, etc.). The**



Example	Relevant section(s)
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SSC’s method avoids overloading the consent application with too much information.

**Example 3-d**

An accounting firm uses some of its clients’ information for secondary purposes with their consent, which it obtains through the electronic file accessible on its Web site (collection by technological means). When consent is requested, the accounting firm states the purpose and specifies the categories of information covered by the request (identity information, financial information, etc.). It specifies that consent is valid for the duration of the next fiscal year. It also includes a link to a privacy policy. By clicking on this link, the user accesses additional information (technical means for processing the information, explanation of the right to withdraw consent, etc.). **By placing this information at a second level, in an easily accessible privacy policy, the accounting firm ensures that an interested party can read it before consenting, while avoiding overloading the consent request. The consent obtained is therefore informed.**

3.5



Private sector

**Example 3-e**

To deal with reports of harassment, incivility or sexual misconduct, a university collects information from complainants using a digital form. It provides an initial general text that explains the purpose of the collection, the persons to whom the complaint must be communicated to ensure that it is handled in accordance with their policy, and the mandatory nature of the information required to process the complaint (with the exception of the first and last name, requested on an optional basis). Rights of access and rectification are also indicated. At the end of the form, once the person making the report has pressed “Next”, a separate page appears. There, the university asks for consent to allow the Complaints Office to discuss the complaint with the management of the department concerned. Specific information about this consent is provided. **By providing the new information separately from that concerning the collection of information needed to process the complaint, the university**

3.7



Public sector

Example	Relevant section(s)
<p>promotes informed consent to the communication of personal information.</p>	

### Example 3-f

To access the online services of an organization that uses a third-party authentication service, an individual must consent to the communication of certain personal information by the third party to the organization in question. In its privacy policy, easily accessible via a link on the consent page, **this organization points out that it is possible to chat with an agent who can explain the consent requested. A toll-free number is also provided to enable customers to speak with an agent over the phone during business hours. These mechanisms are part of the tools deployed by the organization to provide assistance to those in need.**



Private sector

## Examples related to the specific character of consent

Example	Relevant section(s)
<p><b>Example 4-a</b></p> <p>A school obtains parental consent for a multidisciplinary team to share a child's information with a health care facility where the child has recently been receiving complementary services. They are asked to consent to "any information" being "eventually" shared with "any other person who needs it". <b>The use of such imprecise terms compromises the informed character of parental consent, as well as its specific character. The school could specify:</b></p>	

### Example 4-a

A school obtains parental consent for a multidisciplinary team to share a child's information with a health care facility where the child has recently been receiving complementary services. They are asked to consent to "any information" being "eventually" shared with "any other person who needs it". **The use of such imprecise terms compromises the informed character of parental consent, as well as its specific character. The school could specify:**



Public sector

- Purpose(s) (e.g. “continuously adjust the child’s care plan to their needs”);
- The categories of information concerned (e.g. “information on the child’s psychomotor development”);
- Anticipated frequency of communication (e.g. “twice a month”);
- Intended categories of recipients (e.g. “professionals assigned to the child’s care at health facility X”).

### Example 4-b

A union seeks the express consent of some of its members to use some of the information contained in active grievances to “improve its processes”.

**This term is imprecise and detracts from the specific character of the consent, as it does not allow for a real understanding of the intended purpose. This purpose should be stated more clearly, depending on the context** (e.g. “to improve training for grievance staff”, “to train artificial intelligence to automate certain steps in grievance processing”, etc.).

4.3



Private  
sector

### Example 4-c

An intermunicipal board is asked by a company to provide the last year’s attendance record of one of its employees, who wishes to obtain a position there. The intermunicipal board’s Director of Human Resources (DHR) contacts the employee in question to obtain her consent to share the file with the future employer, which the employee accepts. However, the DHR forwarded the employee’s *complete* attendance record, covering four years of service. **In so doing, it failed to respect the specific consent obtained, which related exclusively to the communication of the last year’s attendance record. The DHR should have paid particular attention to the period in question. The intermunicipal board could adjust its procedures for managing personal information in human resources accordingly.**

4.4



Public  
sector

## Examples related to the granular character of consent

Example	Relevant section(s)
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### Example 5-a



Public sector

An organization that subsidizes projects collects applications by means of a form. It wishes to request the consent of the persons concerned for two purposes: a) communication of the applicant’s contact information to a broadcaster for the purpose of promoting selected projects; b) use of the e-mail address for the purpose of sending a survey. It provides a “consent” section, where these two requests are formulated successively, and then adds a single “I accept” box and a single “I refuse” box. **In doing so, the organization compromises the granular nature of consent, as it asks for a single authorization for two purposes. It should be possible for an individual to consent to the communication of their contact information for promotional purposes, without consenting to the use of their e-mail address for survey purposes, or vice versa.**



### Example 5-b



Private sector

A not-for-profit organization (NPO) organizes a gala to present awards recognizing the work of certain practitioners in its field. It collects the e-mail addresses of nominees to inform them of their nomination and details of the ceremony. It also asks nominees to consent to actions for three secondary purposes: a) to use their e-mail address to contact them in order to assess their satisfaction after the event; b) to use their e-mail address to send them the organization’s general newsletter; c) to allow the company appointed by the organization to take the official photos of the winners to retain their e-mail address in order to offer the nominees discounts on other photography services. **In order to respect the granular character of consent, the NPO sets out these three purposes in a table that includes a “Yes” column and a “No” column. Candidates can accept or refuse each of these three purposes separately:**



“Do you consent to your address being:	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> <li>Used to contact you to evaluate your satisfaction after the event?</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<ul style="list-style-type: none"> <li>Used to send you our general newsletter?</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<ul style="list-style-type: none"> <li>Kept by the company hired to take the official photos to offer you discounts on other services?</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Examples related to the understandable character of consent

Example	Relevant section(s)
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### Example 6-a

In a consent form related to the payment of financial assistance, a government Ministry uses the following formula:



“I hereby authorize the Minister to forward to the rehabilitation service provider, as soon as possible, all information related to the holding of an account with a financial institution in order to proceed, if applicable, with the payment of my financial assistance.”



Public sector

After reviewing the entire form, the Ministry changed it to the following:

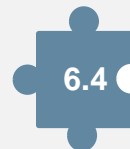
“I authorize the Minister to transmit my bank account information to the rehabilitation center for the purpose of paying my financial assistance.”

**This improves the concision and clarity of the message, without leaving out crucial information, thus making consent more understandable.**

### Example 6-b

A company requests consent using the following text:

“The Customer consents to the automated analysis by the Company, including, but not limited to, historical transactional data for the purpose of determining a profile through machine learning; said profile will be used by the Company to issue, without however formally committing to it and subject to its policies and procedures in force, personalized discount offers on the purchase price of certain products, provided that the Customer complies with the terms of use.”



Private sector

**This highly legal and technical text contains many words that are not part of everyday vocabulary, as well as a number of complex turns of phrase (long sentences, multiple commas, etc.). It can confuse the person concerned, compromising their informed consent. The following text would be simpler, and therefore more understandable:**

“**Receive personalized offers** - I authorize the company to use my purchase history to determine my buyer profile using an artificial intelligence system. The company may choose to send me personalized discount offers tailored to my profile if I comply with the application’s terms of use.”

Example	Relevant section(s)
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**Example 6-c**

An organization reviews its procedures for obtaining consent, according to a schedule defined in its governance documents. The committee formed for the occasion notes that requests for consent are generally introduced by vocabulary referring to knowledge rather than authorization: “I am *aware* that information X will be used [...]” or “I *understand* that information Y will be communicated to [...]”.



All sectors

**To clarify them, the committee modifies them so that the verbs clearly evoke consent: “I *consent* to [...]”, “I *accept* that [...]” or “I *authorize* the use of [...]”.**



The committee also notes that, on Web interfaces, express consent options do not reflect clear acceptance or refusal: “Next”, “Ignore”, etc. **On the recommendation of its committee, the organization is standardizing the options to present a choice between “Yes” and “No” as often as possible**, or, alternatively, “I accept/I consent/I agree” and “I refuse/I do not consent/I do not agree”.

**With these changes, the organization is moving towards clearer, simpler language and promoting the understandable, informed and free characters of consent.**

**Example 6-d**

At the request of an Indigenous nation that is increasing its efforts to revitalize its language, a team of researchers is carrying out an in-depth linguistic study of the nation’s elders, in partnership with an Indigenous cultural institute. To enable data analysis, the words of these elders are recorded in various situations (outings on the land, family discussions, craft sessions, etc.). In particular, participants are invited to tell a traditional story. The cultural institute would like to ask participants to agree that recordings of these stories can also be broadcast on a section of its website dedicated to the nation’s language and the preservation of its intangible cultural heritage. To do this, the institute uses French. However, some of the older participants speak very little French. **In the particular context of this research, to ensure that the consent form is adapted to them and that it is understandable to them, the cultural institute mandates a bilingual agent to collect the oral consent of these participants and to answer their questions, if necessary.**



Public sector



	Relevant section(s)
<div data-bbox="115 451 212 548" data-label="Image"> </div> <p data-bbox="115 558 212 625"><b>Private sector</b></p> <p data-bbox="237 394 440 428"><b>Example 6-e</b></p> <p data-bbox="237 464 1203 690">A company offers a photo-sharing application to a very diverse population, including 14 to 17 year-olds. To ensure that its consent procedures are clear to them, it conducts comprehension tests with a representative group of young people and makes the necessary changes. <b>By adapting the texts to the literacy level of the teenagers, it increases the likelihood that the texts will be understandable to the majority of those concerned, whatever their age.</b></p>	<div data-bbox="1279 459 1414 604" data-label="Image"> </div>

## Examples related to the temporary character of consent

	Relevant section(s)
<div data-bbox="125 1056 198 1129" data-label="Image"> </div> <p data-bbox="115 1152 212 1220"><b>All sectors</b></p> <p data-bbox="237 978 440 1012"><b>Example 7-a</b></p> <p data-bbox="237 1047 1203 1312">As part of its process for hiring professionals, an organization is asking candidates to provide two references that can be consulted to assess the candidate’s work in previous positions, in addition to information on the evaluations in the candidate’s file. An electronic form is provided for submitting references. <b>Wishing to be transparent about the period of validity of consent, the organization informs candidates that it is valid only until a decision is made regarding the application. This consent is then delimited by an event.</b></p>	<div data-bbox="1279 1083 1414 1182" data-label="Image"> </div>

## Examples related to the distinct character of consent

	Relevant section(s)
<div data-bbox="115 1604 212 1701" data-label="Image"> </div> <p data-bbox="115 1711 212 1778"><b>Private sector</b></p> <p data-bbox="237 1549 440 1583"><b>Example 8-a</b></p> <p data-bbox="237 1619 1195 1680">At the end of a change of status form for a professional order, the persons concerned must sign after four statements:</p> <ol data-bbox="237 1711 1149 1869" style="list-style-type: none"> <li data-bbox="237 1711 688 1745">1. “I have read the instructions [...].</li> <li data-bbox="237 1776 1149 1810">2. I declare that the information provided is complete and accurate [...].</li> <li data-bbox="237 1841 1078 1875">3. I agree that the Order may <u>share</u> my information with ABC [...].</li> </ol>	<div data-bbox="1295 1614 1393 1713" data-label="Image"> </div> <div data-bbox="1295 1724 1393 1822" data-label="Image"> </div>

Example	Relevant section(s)
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4. I undertake to notify the Order of [...].

Signature: \_\_\_\_\_”

**The request for consent (third statement) is not presented separately from any other information, since it appears among three other statements that are not consents. This situation also compromises the clear and free characters of consent. To correct this, the professional order could move the consent request to the beginning of the section, add “Yes” and “No” boxes and indicate that the signature is valid only for the other three statements:**

**“Consent.** I agree that the order may release my information to the ABC [...] survey firm.  Yes  No

By signing this form :

1. I have read the instructions [...].
2. I declare that the information provided is complete and accurate [...].
3. I undertake to notify the order of [...].

Signature: \_\_\_\_\_”

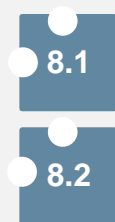
**Example 8-b**

When creating an account for an online game, players are asked to tick a box stating that they accept the terms of use, which hypertext link leading to the terms of use. However, no reference to consent is included in the form. By clicking on the link, a player can discover that the conditions of use contain, among other things, the publisher’s privacy policy. It is mentioned in the text that by accepting the terms of use, the player consents to the use of his friends list, the metadata on his device, his interactions with the game (clicks, hours, etc.) and his conversations on the public server for the purposes of targeted advertising, improving the game experience and preventing cheating, among others. The player also consents to the publication of their gaming score on a public platform, along with their pseudonym and the history of their games, in order to stimulate competition in the game.

**On the specific question of consent, the fact that this information is integrated into a privacy policy that is itself included within terms of use that concern a variety of other subjects compromises the distinct character of consent. Further, this situation threatens the clear character of consent (the act of giving consent is inseparable from the act of accepting the terms of use), its freedom (granular refusal is**



Private sector



Example	Relevant section(s)
impossible) and its informed nature (information is difficult to access).	

**Quebec CAI - Consent Guidelines**  
Dentons Unofficial Translation



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