

# New Consent Requirements

Québec's Act respecting the protection of personal information in the private sector (ARPPIPS)

## Exceptions to Consent

### Collection from third persons (s. 6)

- Authorized by law
- Serious & legitimate reason and either: best interests and timely or necessary to ensure accuracy

### Use (s. 12)

- Consistent purpose (s. 12(1)) (excluding prospecting)
- Benefit person (s. 12(2))
- Necessary to:
  - Prevent/detect fraud
  - Assess/improve protection and security (s.12(3))
- Necessary to provide or deliver product/service requested(s. 12(4))
- Necessary for study, research, statistics and de-identified (s. 12(5))

### Communication (s. 18)

- Outsourcing
- Commercial transactions, emergencies, [...]

Any person who provides Personal Information in accordance with s. 8 consents to its use and communication for the purposes for which it was collected.

\*No assessment of Validity Criteria required.

- Use or communication for primary purposes
- Applies to direct collection only
- Applies to sensitive and non-sensitive personal information; to automated & non-auto collection

## Presumption of Consent (s.8.3)

### Section 8 Disclosures:

- Purpose of collection
- Means of collection
- Rights of access & rectification
- Right to withdraw consent to communication or use at any time
- If applicable:
  - Name of 3rd party for whom personal information is being collected;
  - Name or categories of 3rd parties to whom it is necessary to communicate the personal information for purposes.
  - Communication outside QC

## Validity Criteria

Must use for use or communication for secondary purposes; collection from a 3<sup>rd</sup> party

- Clear
- Free
- Informed
- Specific

## Valid Consent (s. 14)

- In clear and simple language (assist, if required)
- Presented separately (when in writing)
- Restricted in time - only to achieve the purposes for collection
- Requested for each purpose

## Implied Consent (Consent Guidelines, s. 1.3, 1.4 &1.6)

**Definition:** deduced from silence, inactivity, or from separate, unrelated action. Criteria:

- Can't pertain to sensitive PI;
- Other *suggested* criteria:
- Shouldn't conflict with reasonable expectation of individuals in that context;
- Only use where no risk of serious harm from intended use or disclosure.

## Express Consent (ss. 12, 13)

**Definition:** active and positive gesture. Express consent required for:

- Use of sensitive personal information for secondary purposes within organization (ss. 12).
- Communication of sensitive personal information for secondary purposes (unless consent or otherwise authorized by Act) (ss. 13)
- Biometrics for ID (s. 44 IT Act)