

HAP-99 Elements of consent.

Halsbury's Laws of Canada - Access to Information and Privacy (2020 Reissue)

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Elements of consent.

The provision of consent by an individual requires the individual to be notified of the collection of personal information.¹ The manner in which consent can be provided varies by jurisdiction.²

Personal Information Protection and Electronic Documents Act. The form of consent may vary depending on the circumstances and the type and sensitivity of information involved.³ Obtaining consent requires the organization to consider the reasonable expectations of the individual in having his or her personal information collected, used and disclosed.⁴ Individuals may provide consent in numerous ways. For example:

1. An application form may be used to seek consent, collect information and inform the individual of the use that will be made of the information. By completing and signing the form, the individual is giving consent to the collection and the specified uses;
2. A check-off box may be used to allow individuals to request that their names and addresses not be given to other organizations. Individuals who do not check the box are assumed to consent to the transfer of this information to third parties;
3. Oral consent may be given when information is collected over the telephone; or
4. Implied consent may be given at the time that individuals use a product or service.⁵

Alberta. The statute provides considerable detail as to what constitutes express consent. Consent may be provided in writing or orally for the collection, use or disclosure of personal information.⁶ Consent in writing can be given by electronic means if the organization receiving the transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.⁷

Footnote(s)

- 1 For the notification requirements, see Section III.6 ("Collection of Personal Information").
- 2 The British Columbia statute does not outline what constitutes express consent, but does define implicit consent: see **HAP-100** ("Implied consent"). In Québec, the manner in which consent may be given is not outlined in the statute; however, any form of consent must be manifest, free, enlightened and given for specific purposes: (QC) *An Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1, s. 14.
- 3 (CAN) *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, Sch. 1, Clause 4.3.4.

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- 4 (CAN) *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, Sch. 1, Clause 4.3.5.
- 5 (CAN) *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, Sch. 1, Clause 4.3.7.
- 6 (AB) *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 8(1).
- 7 (AB) *Personal Information Protection Act*, S.A. 2003, c. P-6.5, s. 8(5).

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