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Name:	Guideline and Proposed Policy on Age of Consent
Origin:	Research Ethics Board
Approved:	June 5, 2009
Issuing Authority:	Research Ethics Board
Responsibility:	Research Ethics Board
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Background

One of the most basic requirements under the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, 2014* is for potential participants in research to give their informed consent for participation. Informed consent imposes an obligation on the researcher to provide participants with details about their study (i.e., through the informed consent form etc.) but also implies that the individual participant must have the capacity to consent (i.e., to understand the materials presented, to appreciate the voluntary nature of participation).

The *TCPS, 2014* directs researchers to provide an extra-level of protection to vulnerable groups - members of which may not be able to provide informed consent. One of these groups is children. Researchers who do research with child participants are required to obtain the informed consent of a parent or guardian. Unfortunately the *TCPS, 2014* is silent as to the definition of “children” and there are few if any guidelines for determining at what age an individual develops the capacity to consent to participate in research.

In law, the “age of consent” is defined by Federal Statute to be 16 years of age. However, in this context, the age of consent refers to the ability to consent to participate in sexual activity and it is not at all clear that this is the standard of consent that should be used for research. Provincial law defines an adult as someone who has achieved the age of majority (in Nova Scotia the age of majority is 19 years of age) but, again, it is not clear that this has a direct application for research purposes.

In articulating standards for the right to consent to psychological treatment, the Nova Scotia Board of Examiners invoked the legal doctrine of the mature minor – pointing out that this common law doctrine is the only legal recognition of the decision making ability of a minor. The notion of a mature minor “supports the position that a minor who can

understand and appreciate the nature and consequences of his/her decision and its alternatives is able to give a valid consent regardless of age.” Although they do not advocate setting an age for consent they note that children aged 14 have developed abstract reasoning skills.

Finally, a scan of web pages from other ethics boards (education and health care) suggests that many boards are using age 16 as a minimum age for consent.

Proposed Policy

1. In the case of research deemed to be of minimal risk, and in the absence of other restrictive considerations, the REB deems that individuals who have attained the age of 16 years are capable of giving informed consent.
2. The REB recognizes the concept of the mature minor. If the research is likely to engage individuals under the age of 16 it is incumbent on the researcher to demonstrate that the research is of minimal risk and is within the normal range of activities and capacity of the individual participants. An anonymous questionnaire about work experiences administered to young workers some of whom may be younger than 16 may be an example of a mature minor. It is the researchers’ responsibility to assess capacity and to explain to the REB how potential subjects demonstrate that they are mature minors at the time of application for REB review.
3. Notwithstanding the foregoing, under normal circumstances parental consent is required for research participants under the age of 14 years.
4. In cases where third party (e.g., parental) is required, individual participants retain the right to “assent” or “opt out” of the research.