

Brandon University Research Ethics Committee (BUREC)
Standard Operating Procedure

Seeking Consent from Minor Participants

As per the Panel on Research Ethics' interpretation of the TCPS2:

TCPS 2 does not specify an age of consent for children. Seeking consent from children is not based on their age, but on whether they have the capacity to understand the significance of the research and the implications of the risk and benefits to themselves – as defined in TCPS 2 Section 3.C. Factors to consider in making the decision to seek consent from children as participants include, but are not limited to, the nature of the research, the research setting, the level of risk the research may pose to participants, provincial legislation and other applicable legal and regulatory requirements related to legal age of consent, and the characteristics of the intended research participants - who may differ in many aspects including their capacity to make their own decisions. As no two research studies or research participants are identical, the decision to seek consent from children instead of an authorized third party should be considered on a case-by-case basis. In practice, the researcher plays a key role, sometimes in association with the parents, in determining whether the child is able to consent.

Children who lack capacity to consent may still be able to express their wishes in a meaningful way (assent or dissent), even if such expression may not be sufficient to fulfill the requirements for consent. Researchers must respect the decision of children who are capable of verbally or physically assenting to, or dissenting from, participation in research, even if the authorized third party has consented on their behalf (see Article 3.10).

In the case of post-secondary students recruited as research participants, the relevant criterion is not their age, but rather whether these students have the capacity to consent on their own behalf in the context of the particular study (see Article 3.10). In their application for BUREC review and approval, researchers should point out the issue of consent, the age group of the prospective participants, and their plans to address the issue in light of the capacity of students to understand the particular research project. Do they understand the consequences of their participation in research i.e. their ability to assess the risks and potential research benefits of research. This will guide the BUREC's decision on the consent process necessary for this research. Researchers and BUREC must also be guided by applicable legal and regulatory requirements with respect to consent and capacity within their jurisdiction as well as institutional policy.

The legal age of majority in Manitoba is 18. However, depending on the nature of the research, a participant may have the capacity to consent before the age of majority. If a minor has reached a level of intellectual and emotional maturity such that he or she is capable of understanding and appreciating the nature and consequence of a particular treatment/decision, together with its alternatives, they can be considered capable of consenting. In other words, if it can be determined that a minor in fact understands the proposed interventions, can effectively weigh the risks and benefits of the various procedures, understands other courses of action and their implications, and it is not prohibited from consenting by legislation, a minor may give a legally valid consent.

If the participant pool is to include participants who are not of legal age of majority, and if consent will not be obtained by an authorized third-party (e.g. parent or legal guardian), the onus is on the researcher to adequately address, in their application to BUREC, how capacity will be determined.

Approved: August 31, 2020