

**Practice Guideline on Consent for Children and Youth**  
**(February 2022)**

1. The *Canadian Code of Ethics for Psychologists* (4th Ed.) addresses matters of consent in psychological practice, especially in the Values Statement for Principle 1, Respect for the Dignity of Persons and Peoples, and in standards I.16 through I.36 (Informed consent, Freedom of consent, Protections for vulnerable individuals and groups).
2. Psychologists' ethical principles, consistent with legislation and common law, require informed consent from recipients of psychological services such as assessment and treatment when those recipients are capable of giving consent, and informed consent from the person or persons mandated to make decisions on behalf of persons who are not capable of giving consent.
3. Psychologists give careful consideration to whether a person is capable of providing consent to assessment and treatment. Even though the *Consent to Treatment and Health Care Directives Act* may not apply to all psychological services, its description of how consent may be assessed (Section 7) is pertinent, and indicates that a person has capacity to consent if the person is, in the health practitioner's opinion, able (a) to understand the information that is relevant to making a decision concerning the treatment; (b) to understand that the information applies to his or her particular situation; (c) to understand that the person has the right to make a decision; and (d) to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.
4. Unless there is evidence of significant disorder or disability that would impair the capacities identified in (3) above, adults age 18 years or over are assumed capable with respect to consent for assessment and treatment. Psychologists normally should also apply this assumption to persons age 16 and 17 years, age 16 being referenced in some pieces of legislation (e.g., *Consent to Treatment Act, Mental Health Act, Child Protection Act*) in a manner suggesting its acceptance as a benchmark for most people to have the maturity to make important decisions. In any particular case, individual circumstances might mean that the assumption should not be relied on, in which case care should be taken to consider the criteria noted in paragraph 3.
5. The question of whether a person has sufficient maturity to be capable of giving consent is not answered by age alone. Common law in Canada recognizes the possibility of some minors under the age of 16 years being capable of making, and thus having the right to make, their own decisions regarding consent to some interventions. As such,

Psychologists need to make a professional judgment about the capacity of a child under the age of 16 to provide informed consent, consistent with the criteria identified in paragraph 3 above. In cases where the psychologist determines that a child under age 16 is capable of giving consent, the psychologist will document her or his decision-making process, including consultation with colleagues, and consideration of the benefits and costs of proceeding or not proceeding with the services requested. Generally, the younger the child, the heavier the burden on the psychologist to justify proceeding without consent of the adult who normally carries decision-making responsibility for the child.

6. If a child capable of giving consent does give consent, it is desirable, even though not legally required, for the parents or others with custodial responsibility to collaborate in decision-making regarding assessment and treatment.
7. If a child is capable of providing consent and does not provide consent, the psychologist should refrain from providing services.
8. When a minor is not capable of providing consent, then the psychologist must turn to the person(s) with such authority. In considering how to proceed, the psychologist will take into consideration the *Children's Law Act*. In situations where there is disagreement among those responsible for giving consent, the psychologist should endeavor to develop agreement, if possible, among all parties consistent with the best interests of the child. The following are guidelines regarding situations with which the psychologist might be presented:
  - a. Where the child lives with both parents together, then either parent may provide consent on behalf of the child. This presumption is created by section 34 of the *Children's Law Act* and is consistent with the idea that parents living together are working together in raising the child. In a case where both parents live together, and one consents but the other disagrees, the *Children's Law Act* enables the psychologist to provide assessment or treatment to the child with the consent of one parent only.
  - b. Not only does the *Children's Law Act* enable a psychologist to provide treatment to a child with the consent of one parent only, it prohibits refusal of service based on the sole fact that consent has not been obtained from the other parent:
    - 34(c) Subject to an order of the court, no person shall refuse to provide services in respect of a child solely on the basis that only one person with decision-making responsibility in respect of the child has provided consent for the

provision of the service.

This section is expressly made subject to an order of the court, so it is essential to determine whether a court order exists and to follow the terms of that order if so. Similarly, any agreement between the parents that pertains to decision-making responsibilities for the child, which is referred to later in section 34, should also be considered.

- c. Where the parents are separated and the child primarily lives with one of the parents with the “consent, implied consent or acquiescence” of the other, only the parent with whom the child primarily lives may provide consent. The *Children’s Law Act* suspends the decision-making rights of the parent who does not live with the child. It is important for the psychologist to gather sufficient facts about the living arrangements to determine who may give consent in this situation.
- d. Where the parents are separated and the child lives primarily with one parent but that living arrangement is not with the “consent, implied consent or acquiescence” of the other, both parents are entitled to make decisions for the child, and either parent can make decisions about the need for psychological services for the child according to subsection 34(2) of the *Children’s Law Act*. A psychologist should still make reasonable efforts to obtain consent from both parents, where feasible.
- e. Similarly, it is good practice to attempt to obtain consent from both parents where the parents are separated but the child continues to live with both parents, splitting time with them on a relatively equal basis. The *Children’s Law Act* states that both parents have equal decision-making responsibility for the child, but either parent can provide consent to psychological treatment for the child, and a psychologist may not refuse to provide services for the child solely because only one of the parents has provided consent.
- f. As noted earlier, where the parents are separated and an agreement or court order pertaining to decision-making responsibility for a child is in place, that agreement or court order must be reviewed in determining who may make consent decisions on behalf of the child.
- g. If a court order is in place and assigns decision-making responsibility for the child to some person other than a parent (such as the Director of Child Protection, another relative, or any other person), that court order must be reviewed in determining who may make consent decisions.
- h. In any situation where the child does not live with the parents together, i.e., any of (c), (d) and (f) above, the psychologist will seek clarity regarding which living circumstance, or agreement or court order, is in place, taking into account the

report of the person presenting with the child and whether that appears to be presented in good faith, in some cases contact with the parent who is not presenting with the child, and review of such agreements or court orders as may be available. There will most likely be an agreement in the situation described in (e) above, and it should be reviewed. In a situation where any person is acting in the place of a parent, it is that person's responsibility to establish the right to give consent on behalf of the child. In all cases the psychologist will document the basis on which authority to provide consent was recognized.