
Comments on Draft Revised SFU Research Ethics Policy R20.01

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Executive Summary

I appreciate the opportunity to comment on draft revised ethics policy R20.01 released on 27 November 2018. I have three major areas of concern:

1. The provisions regarding course-based research in section 3.5.2 of the Draft Procedures appear to create more problems than they solve. More clarification is required to ensure course-based research that is actually “research” according to the definition in the TCPS can still be done, while also ensuring that ORE and the REB do not exceed their jurisdiction and review activities that are not “research.”
2. The statement in Section 5.1.2 of the Draft Policy regarding the ability of university authorities to exceed minimal ethical requirements is based on an obsolete phrase that appeared in the first TCPS (1998) but was subsequently deleted. The section should similarly be deleted from the Draft Policy.
3. Section 5.3.1 of the Draft Policy and Sections 3.3.1.b and 3.5.1 of Draft Procedures as currently worded make ethical research with Indigenous people/s, qualitative research, and other collaborative methods impossible and are inconsistent with the TCPS.

Although the reference to the TCPS articulating a minimal set of standards of review in Section 5.1.2 of the Draft Policy should be deleted for reasons noted above and explained in greater detail below, the university’s apparent desire and commitment to promote standards of governance in excess of those actually articulated in the TCPS is gratifying and to be encouraged. Toward that end, I offer two suggestions of how SFU can go beyond the “minimal” requirements of the TCPS in a way that does not undermine academic freedom and instead would show national leadership on two very important issues.

4. First, it has now been clarified by the Interagency Advisory Panel on Research Ethics (PRE) and Secretariat on Responsible Conduct of Research (the Secretariat) that Article 5.1 of the TCPS requires institutions to provide legal representation for researchers whose pledge of confidentiality is threatened in the context of legal proceedings. It is recommended, but not required, that institutions create a policy by which that representation will be provided and the steps researchers should go through to trigger it. Given SFU’s embarrassing past in this regard, the institution should be eager to make clear its commitment to defending research confidences by creating such a policy. It could be included within the Draft Procedures or at least be alluded to as a general commitment while such a policy is being created.
5. Second, although TCPS-2 included a separate chapter dealing with research involving Indigenous people/s, the Draft Policy does not even ensure that one person on the REB has experience with research with Indigenous issues. For reasons outlined in greater detail below, SFU should consider creating a committee of Indigenous and non-Indigenous scholars whose sole job would

be to review research involving Indigenous people/s and to develop/articulate policies with respect to Indigenous methods that is ground in the range of research by and with Indigenous people/s conducted by members of SFU.

Concerns

1. Course-based Research **(re Section 3.5.2 of Draft Procedures)**

The revised policy's treatment of course-based research is confusing, in large part because it is framed from the outset that,

The intent of course-based research projects is for the student to become more knowledgeable about the research process, rather than to extend knowledge, and the results of the data are not intended for dissemination outside of the classroom. (Section 3.5.2, p.11)

Although this is consistent with the way course-based research is framed in TCPS-2a¹ (see the discussion associated with Article 6.12 on pp.79-80), it is problematic in three respects: (1) it represents "ethics creep" by extending the jurisdiction of the REB to course work that is not "research" as defined by both the TCPS and the Draft SFU policy while simultaneously precluding the possibility of doing "research" in courses; (2) it impinges on faculty academic freedom to teach courses free of doctrine; and (3) it is out of touch with the level of research expertise that graduate students, or at least those we see in criminology, bring to their graduate education.

Both the TCPS and the draft SFU policy seem to want it both ways – to declare that course projects cannot be used to extend knowledge, which therefore makes these exercises something other than "research" as defined by both the TCPS and the SFU draft policy, while at the same time treating them as "research" and requiring ethics review. The justification for this is apparently contained in Section 4.10.2 of the Draft Procedures, which states,

While course-based research projects may not necessarily be designed to "extend knowledge through a disciplined inquiry and/or systematic investigation" (TCPS2, 2014), Research is the intended purpose of these undertakings and the potential for risks to participants requires that these projects be reviewed by the Research Ethics Board. Also, it is important that the ethical standards that respect and protect human participants in Research are learned and practiced as students develop their research skills.

In sum, "it's not research but we'll treat it as research." This seems a classic example of "ethics creep" – institutional ethics policies and boards extending review into areas that are beyond their mandated jurisdiction.² As such, the new policy seems to conjure the worst of all worlds – apparently disallowing

¹ I will use "TCPS" to refer generally to the federal ethics policy. The more specific designations TCPS-1, TCPS-2 and TCPS-2a will be used when I need to refer to specific versions of the TCPS that were published in 1998, 2010 and 2014. Using the 2 and 2a designation for the 2010 and 2014 releases is intended to reflect the huge difference between versions 1 and 2, in contrast to the relatively minor differences between 2 and 2a.

² See Kevin D. Haggerty (2004). Ethics creep: Governing social science research in the name of ethics. *Qualitative Sociology*, 27(4), 391-414.

the possibility of doing “research” according to the TCPS definition while simultaneously extending its reach into areas that impinge on faculty’s academic freedom to offer courses free of doctrine.

While it would be easy to continue assailing the Draft Policy and Procedures for their logical inconsistency, I suggest the Draft Policy and Procedures return to a more credible and logically consistent position by first recognizing that its premise – that, “The intent of course-based research projects is for the student to become more knowledgeable about the research process, rather than to extend knowledge, and the results of the data are not intended for dissemination outside of the classroom” (Draft Practices, Section 3.5.2) – is sometimes true and sometimes not. Approaching the situation in that way and allowing for the possibility that actual “research” can be done in courses, allows the Draft Policy and Procedures to leave the possibility for appropriate review of “research” as the TCPS requires, while encouraging ORE and the REB to withdraw from reviewing non-research activities that are beyond its jurisdiction.

While the current wording of Section 3.5.2 may describe most of the types of projects that I would assign in an undergraduate methods course (i.e., practicing research skills and not doing “research” as defined by the TCPS), the draft section is quite out of touch with what education at the graduate level involves, at least in criminology, and I would presume elsewhere. By the time graduate students in our program get to the research methods projects I assign them, most will have completed three undergraduate research methods courses covering qualitative and quantitative methods, will in most cases also have completed an honour’s thesis, will have finished an MA level course in research design that also has an ethics component including a visit from ORE, and will have completed the TCPS tutorial. The emphasis at that point is not to tell students once again what research is about in the abstract, or to get them to interview a grandparent for the sake of experiencing a formal interview situation, but to actually get them involved in designing and doing a manageable project, within a 13-week semester time frame and while under the supervision of individuals who likely are more familiar than members of the REB in recognizing and dealing with the unique design and ethics issues that arise in their discipline.

When graduate students enter our MA program, we explain that graduate school is the place where they move from being primarily consumers of research to actually contributing to knowledge, and urge students to begin thinking about building a publication history. In contrast to the provisions of the draft policy, we encourage that they use course research projects as opportunities to engage in research that will contribute to their theses and are often of sufficient quality to be a conference presentation, and sometimes publishable as well. Instead of joining me in encouraging the professionalization of our grad students, Section 3.5.2 as currently worded tries to slow our students down and create impediments to their professional development. Should I tell students to forget about qualitative research methods I teach and do quantitative projects where they can churn out analyses based on publicly available data sets to establish a publication record? That would be inconsistent with our department’s belief in the equal importance of both qualitative and quantitative approaches and my own academic freedom to teach without constraint by doctrine. Or should I tell them to dumb down their research or do it poorly so it clearly will not be publishable? In addition to being a questionable practice academically, that would be inconsistent with the core ethical concept of beneficence, i.e., that the benefits of the research should outweigh the costs to the participants. If one of the possible benefits of research is to give certain participant groups a voice, to generate data that will help inform and create better law and policy, in what sense is it “ethical” to minimize the benefits that might accrue from a project?

One way out of this conundrum while still remaining consistent with TCPS-2a would be for SFU to reconsider the way it currently categorizes its procedures with course-based research. Although TCPS-2a

allows the delegation of ethics review to course instructors who are not REB members as long as the individual(s) doing the review policy "... have experience, expertise and knowledge comparable to what is expected of an REB member" (p.80), acquiring that "delegation" actually involves project review. Section 19.7 of the current SFU ethics policy requires instructors to outline ahead of time the parameters within which research projects will be conducted. Under "Course review," Section 4.10.3 of the Draft Procedures says the same thing in more general terms:

Rather than require individual students to complete and submit individual applications for ethics review and approval, instructors may be able to complete an application for Ethical Review [sic] of Course-based Research Projects Involving Human Participants for all of the Research projects planned for the course, provided that those projects pose minimal risk to participants.

To do so under the current Section 19.7 of the SFU ethics policy I submit a proposal to the REB that describes the parameters within which students must work, along with my agreement that all research will remain "minimal risk." Assuming that my proposal is approved, my job at that point is less one of "reviewing" the proposals my students submit than in simply ensuring that the parameters I proposed to the REB would govern their research, which the REB reviewed and approved, are maintained. There would be many benefits to approaching course-based research in this way beyond that fact that it would no longer be necessary to impose a ceiling of incompetence to ensure the work students do does not contribute to general knowledge:

- While continuing to allow the REB to exert oversight over "research" that is done in courses through the course review process, it also allows the REB to withdraw from reviewing activities that are not "research" and over which it has no jurisdiction. Speaking with people in the community, for example, who may occupy professional roles or have certain experiences that are of interest to the course content, seems no more "research" than when that same person is invited to class as a guest speaker.
- The level of combined review by the REB and course instructor is in keeping with the notion of "proportional approach to review" that supposedly underlies both the TCPS and SFU ethics policy. My students are not doing brain surgery; they are doing "*minimal risk*" research within constraints that are specified in advance (e.g., no children, nothing that could contravene mandatory reporting laws, no approaching an Indigenous community with whom one has no prior relationship).
- The constraints on what students can do are outlined in the course review proposal. Although the REB would not be looking at a specific proposal with specific participants, they could feel assured that the projects that are done will remain "minimal risk." The instructor's job would be to ensure the general parameters are observed and adapted to the individual projects.
- This form of delegation also would allow the REB and ORE to ensure course instructors who want their students to be able to do "research" projects meet the qualification outlined in Section 4.6 of the Draft Procedures, which asserts that delegation requires the instructor to have "experience and knowledge comparable to that of an REB member." The same criteria appear in the discussion under Article 6.12 of TCPS-2a (p.80).
- My understanding is that the new information management system currently being installed for the REB and ORE allows course reviews to be trackable by instructor, which brings new flexibility to the system as well. Ideally I could construct a course proposal that I would then be bound by, and other instructors who were operating under the same constraints could have their names

appended as well. At the same time, another instructor wanting to teach the course differently could prepare their own proposal, by which they would be bound.

- If the course project were being used as an exploratory prelude to thesis research, students could continue the practice of having their course data be treated as “secondary” data when the thesis research is proposed and reviewed. Those presenting their projects and publishing in journals could continue to do so. In instances where a journal wanted some assurance a project had received proper ethics review – not a common practice in criminology journals, but more common in health studies and psychology journals – ORE would provide such a letter as long as the project was done within the parameters the instructor had specified.

If we do not find a resolution to this conundrum to make “research” within the context of our courses possible, we create the ironic outcome that students will have less opportunity for research and be even more naive and inexperienced when they go out to do their “real” research for their theses. It is difficult to understand how that is ethical; the new policy should avoid that unanticipated and undesirable outcome.

2. The Meaning of “Minimal Ethical Standards” **(re Section 5.1.2 of Draft Policy)**

SFU’s draft revised policy R20.01 is playing with fire when it states in Article 5.1.2 that, “The standards for Research Involving Human Participants communicated by the TCPS should, however, be considered minimal. Where the University, regulatory body, sponsoring agency, or discipline, prescribes more restrictive requirements for the protection of human participants involved in research, such requirements shall take precedence.” This idea that the TCPS somehow represents a low bar and that we can be even “more ethical” misunderstands the meaning of that phrase in the TCPS and the danger to academic freedom its misuse represents.

A putative ambition of the original TCPS (1998) was to provide a federal ethics policy that would in effect harmonize ethics principles and ethics review across disciplines across institutions across the country. But, as the original TCPS acknowledged, sensitive and appropriate ethics review requires REBs to also understand disciplinary and epistemological diversity in the way that ethics issues play out in the respective disciplines and epistemological approaches. The belief at the time was that the best way to begin the TCPS era was to produce a set of standards that put forth only those principles that were indeed common to all disciplines in all institutions across the country – and leaving the rest to the sensitive consideration of REBs populated by qualified individuals who would ensure that any additional principles that were applied when reviewing individual proposals were indeed appropriate to the discipline and epistemology guiding any particular proposal. It was in that sense that the 1998 policy included the following sentence:

As a condition of funding, we require, as a minimum, that researchers and their institutions apply the ethical principles and the articles of this policy. (p. i2)

As the TCPS era began, one problem that very quickly became evident was the impact of having built TCPS-1 on a largely biomedical foundation of how ethical research is done. It is problematic because ethical concepts that have one meaning in the biomedical/health studies domain can take on quite a different one in the social sciences. Each has its own cultures and traditions and contexts in which it operates, and simply imposing one set of practices on another kind of research can end up creating

problems where Discipline A's typical approach, if inserted blindly into the contexts typically investigated in Discipline B, can effectively be demanding that the researcher in Discipline B on whom it is imposed do something that the second researcher believes is unethical.

Much to the chagrin of many in the social sciences, this indeed came to pass, with the impact felt most strongly by the social sciences and humanities, particularly among those incorporating more qualitative approaches to research. By around 2005, PRE and the Secretariat were ready to begin a complete reconsideration of the policy. Toward that end, numerous committees were created to address subsets of issues, with an eye toward creating a completely revamped TCPS-2. I was one of five researchers from across the country appointed by the Presidents of the granting agencies to the Social Science and Humanities Working Committee (SSHWC) to advise the Interagency Advisory Panel on Research Ethics (PRE) about how the then-envisioned TCPS-2 could do a better job of reflecting research in the social sciences and humanities than had been done in TCPS-1. We began what became a series of national consultations by simply asking researchers in the social scientists and humanities to tell us what problems they had encountered with TCPS-1 and, after compiling and categorizing their responses, to use those as a guide to what ended up being an iterative process of consultation and policy development.

We and others quickly realized that a major source of frustration about and hostility toward TCPS-1 arose from that one sentence I quoted above, and especially from that one little phrase – “as a minimum.” What was happening in REBs across the country, including at SFU, was that over-zealous reviewers were using the self-righteous justification that, “we want to be even MORE ethical than the policy suggests” to impose their view of ethics on researchers they had no business imposing it on.

For example, in the health sciences, great emphasis is placed on informed consent for the very legitimate reason that there may be experimental and potentially dangerous treatments that prospective participants might nonetheless wish to participate in. They are clearly entitled to do so; our job is to ensure that they understand what they are potentially getting into. Such research also operates in a very institutional (e.g., hospital) and legalistic (e.g., with respect to clinical trial accountability) environment. Accordingly, health science researchers doing that sort of research believe one is being ethical by obtaining signed informed consent statements; the statement outlines precisely what the researcher said and the list of prospective benefits and risks that might unfold, and the signature confirms that the participant saw it and agreed to take part notwithstanding those risks.

Consent is also important in the social sciences,³ but an often greater consideration is confidentiality. This is because, in the process of trying to research some of society's important, controversial and pressing social problems and processes, we often acquire very personal information about people that could affect their employability, insurability, reputation and/or freedom if it were to be disclosed. Consequently, and especially for qualitative researchers who often build long term relationships with individuals, groups or communities, one wants to avoid paper trails as much as possible, i.e., signed informed consent statements *create* risk in that context rather than minimizing it.

When the social scientist demands that the health scientist forego getting signed informed consent statements because it is “more ethical” to operate such relationships on the basis of mutual trust, the health researcher's academic freedom is being violated and is effectively being asked to do something

³ But this is not always so. Observation in public settings is one example, information that is publicly available is another. Even then, however, one is normally expected to refrain from naming people.

s/he believes is unethical, and in that context it is. Similarly, when the health scientist demands that the social scientist use signed consent statements because it is “more ethical” to do so, the social science researcher’s academic freedom is being violated and is effectively being asked to do something s/he believes is unethical, and in that context it is. For reasons related to institutional power and perhaps differential interest in serving on REBs, the latter scenario was far more common than the former, and it was the “minimal standard” phrase and “we want to be even more ethical” justification that was the vehicle through which those violations of academic freedom occurred.

Accordingly, one thing (among many) done differently in TCPS-2 (2010) and 2-a (2014) was to delete the reference to “at minimum.” That same sentence I quoted above from 1998 became the following in the 2010 and 2014 versions of the TCPS:

As a condition of funding, the Agencies require that researchers and their institutions apply the ethical principles and the articles of this Policy and be guided by the application sections of the articles. (2014, p.3)

The replacement is essentially the same statement, but with “as a minimum” deleted. The same should be done with SFU’s draft revised policy. This could best be accomplished by simply deleting Section 5.1.2 as it contributes nothing to the policy beyond an obsolete phrase that can and has been used as a weapon against academic freedom.

3. When Does the “Research” Begin? **(re Section 5.3.1 of Draft Policy; Sections 3.3.1.b and 3.5.1 of Draft Procedures)**

In addition to deleting the “at minimum” phrase, and perhaps in part because of it, TCPS-2 further differed from TCPS-1 in that TCPS-2 sought to further articulate the way that ethics principles play out in a broader array of research contexts. The 93-page TCPS-1 (1998) grew to 216 pages in TCPS-2 (2010) and 220 pages in TCPS-2a (2014). One addition, produced by SSHWC, was Chapter 10 on Qualitative Research. I was also SSHWC’s liaison to another committee that was responsible for developing Chapter 9 on research involving Indigenous people/s.

I mention the above here because the current wording of Section 5.3.1 of the Draft Policy and Sections 3.3.1.b and 3.5.1 of the Draft Procedures do not reflect the way that qualitative research and research with Indigenous people/s normally would proceed, and in many cases *must* proceed, in order to be ethical in the context of maintaining their typical commitment to a more collaborative approach.

The current wording being proposed in these sections reads in part as follows:

Section 5.3.1 of Draft Policy (re: Ethics Approval)

A researcher must not initiate Research Involving Human Participants, including through contact with or recruitment of potential participants, until Ethics Approval has been granted.

Section 3.3.1 of Draft Procedures (re: Responsibilities of Researchers)

b. All researchers who plan to conduct Research Involving Human Participants must: prior to recruiting human participants, accessing data, or collecting human biological materials, submit an ethics application accompanied by any supplementary materials necessary for ethics review and approval.

Section 3.5.1 of Draft Procedures (re: Responsibilities of Student Researchers)

As stipulated in the Policy, graduate and undergraduate students conducting Research Involving Human Participants, where the data are collected prior to writing a research paper, master's thesis or doctoral dissertation, must obtain the appropriate ethics review and approval before the Research may begin.

These sections misrepresent TCPS-2 by leaving out crucial information. If left as is, the end effect would be to make ethical qualitative research and research with Indigenous people/s impossible.

The sections quoted above seem to take their wording from Article 6.1 of TCPS-2 (2014), which begins as follows:

Article 6.1 Researchers shall submit their research proposals, including proposals for pilot studies, for REB review and approval of its ethical acceptability prior to the start of recruitment of participants, access to data, or collection of human biological materials. (p.78)

However, that is only the first half of Article 6.1. The Article actually continues thus:

REB review is not required for the initial exploratory phase, which may involve contact with individuals or communities intended to establish research partnerships or to inform the design of a research proposal.

This latter principle is further embellished in the "Application" section under Article 6.1, which states,

Some types of research using quantitative, qualitative research, or a combination of these methods, as well as collaborative or community-based research (see Chapters 9 and 10) may entail prior contact and dialogue with individuals or communities as a normal and integral component to establish research collaborations or partnerships prior to the actual design of the research. Other research may, at their initial stages, not involve humans, but require engaging the research team, setting up equipment and other preparatory stages. These activities may precede REB review. (pp.78-79)

And indeed, when we follow through to **Chapter 9**, on research involving Indigenous people/s, we see various aspirational statements with respect to researcher-community relations. The chapter begins by specifically defining community engagement:

Community engagement – is a process that establishes interaction between a researcher or research team, and the Aboriginal community relevant to the research project. It signifies a collaborative relationship between researchers and communities, although the degree of collaboration may vary depending on the community context and the nature of the research. The engagement may take many forms including review and approval from formal leadership to conduct research in the community, joint planning with a responsible agency, commitment to a partnership formalized in a research agreement, or dialogue with an advisory group expert in the customs governing the knowledge being sought. The engagement may range from information sharing to active participation and collaboration, to empowerment and shared leadership of the research project. Communities may also choose not to engage actively in a research project, but simply to acknowledge it and register no objection to it. (p.112)

Later in the chapter in Article 9.1 of TCPS-2a we are told there is a “Requirement” of community engagement:

Requirement of Community Engagement in Aboriginal Research

Article 9.1 Where the research is likely to affect the welfare of an Aboriginal community, or communities, to which prospective participants belong, researchers shall seek engagement with the relevant community. (p.114)

Following the current draft revised policy sections quoted above would preclude the very engagement that is a requirement under Article 9.1.

Article 9.2 of TCPS-2a further explains that

“The nature and extent of community engagement in a project shall be determined jointly by the researcher and the relevant community, and shall be appropriate to community characteristics and the nature of the research.” (p.115)

Another impasse. How is it possible to meet the requirements of Article 9.2 if one must first seek approval of the REB? In its final *coup de grâce*, the Draft Policy and Draft Procedures create the perfect Catch-22 when viewed in conjunction with **Article 9.10** of TCPS-2a, which is entitled “**Requirement to Advise the REB on a Plan for Community Engagement:**”

Article 9.10 When proposing research expected to involve First Nations, Inuit or Métis participants, researchers shall advise their REB how they have engaged, or intend to engage, the relevant community. Alternatively, researchers may seek REB approval for an exception to the requirement for community engagement, on the basis of an acceptable rationale. (p.125)

In sum, the Draft Policy and Draft Procedures require us to avoid contact with the community until one has received REB approval, but Article 9.10 of TCPS-2a requires that we engage with the community in order to generate the collaboratively-designed proposal that would receive that REB approval. The draft policy’s wording thereby makes ethical research with Indigenous people/s impossible.

Similarly, in **Chapter 10** (on Qualitative Research), we see first of all a recognition that many forms of qualitative research treat the creation of collaborative relationships as fundamental. As explained in sub-section (h) of the section entitled **General Approach and Methodological Requirements and Practices:**

(h) Research Partnerships: Access to particular settings and populations is sometimes developed over time, and the relationships that are formed may well exist outside the research setting per se, which sometimes makes it difficult to determine exactly where the “research” relationship begins and ends. In many cases, despite in-depth, advance preparation, a researcher may not know until the actual data collecting starts just where the search will lead. Indeed, the emergent nature of many qualitative studies makes the achievement of rapport with participants and feelings of interpersonal trust crucial to the generation of questions considered important or interesting by both parties, and to the collection of dependable data. Research often becomes a collaborative process negotiated between the participant(s) and the researcher, requiring considerable time spent initially simply figuring out the focus of the research. (p.142)

The **Application** discussion under **Article 10.1** gives further details of that process:

Researchers need to have the opportunity to engage in preliminary visits and dialogue to explore possible research relationships, and to define research collaborations with particular settings or communities. Activities may include, but are not limited to, determining research questions, methods, targeted sample and sample size, and addressing community-based concerns in the project design and data collection. REBs should be aware that dialogue between researchers and communities at the outset, and prior to formal REB review, is an integral component of the research design. (p. 143)

The same message is delivered in **Article 10.2** (on p.144) regarding consent, in relation to which the Draft Policy and Draft Procedures create yet another Catch-22. The article requires that, in their proposals to the REB, researchers should outline how they plan to seek consent, and the Application section under that article explains that, “The consent process should be based on mutual understanding of the project goals and objectives between the participants and the researcher.” So we need to collaborate with prospective participants in order to determine what form of consent would be most appropriate, but again the Draft Policy and Draft Procedures preclude that from happening because we should not talk to prospective participants until we have received REB approval.

The same general issues appear in several other places in Chapter 10, but hopefully the examples I have cited from Chapters 9 and 10 of TCPS-2a will by now suffice. In searching for alternative wording for Section 5.3.1 of the Draft Policy and Sections 3.3.1.b and Section 3.5.1 of the Draft Procedures, SFU might consider something parallel to the wording in Article 10.1 of TCPS-2a (p.143), along the lines of this:

Researchers shall submit their research proposals, including proposals for pilot studies, for REB review and approval of its ethical acceptability prior to the start of recruitment of participants, or access to data. However, REB review is not required for the initial exploratory phase (often involving contact with individuals or communities) intended to discuss the feasibility of the research, establish research partnerships, or the design of a research proposal.

Similar wording is also used in Article 6.11 (on p.78) of TCPS-2a:

Researchers shall submit their research proposals, including proposals for pilot studies, for REB review and approval of its ethical acceptability prior to the start of recruitment of participants, access to data, or collection of human biological materials. REB review is not required for the initial exploratory phase, which may involve contact with individuals or communities intended to establish research partnerships or to inform the design of a research proposal.

Either would suffice to get beyond the impasse the current Draft policy and procedures create.

4. Absence of a Confidentiality Protection Policy

Although the reference in the Draft Policy to the TCPS as outlining “minimal standards” should be deleted (see my section 2 above), it is gratifying to see the institution’s willingness to exceed the basic requirements of TCPS-2a with respect to ethics governance. One way for the university to do so is to create a policy that outlines how the university will deliver on the requirement to provide independent

legal representation that is contained in Article 5.1 of TCPS-2. Although PRE and the Secretariat say that institutions “should” develop such policies, and the literature on threats to research confidentiality in the United States reveals this to be a wise strategy (see paper by Palys and Ivers in Appendix A on this issue), the federal policy stops short of requiring it.

Experience in the United States has shown that the best likelihood of success and of minimizing researcher error in responding to legal authorities is (a) to anticipate such eventualities by creating an archival institutional record via the REB process that cements the commitment to confidentiality and its justifications for each project in which confidentiality is essential; and (b) to activate a legal response as quickly as possible once any subpoena, court order or search warrant is received. This occasion of revising the university’s research ethics policy provides the perfect opportunity for the institution to live up to its responsibility to “... provide the necessary administrative oversight and resources to both SFU Research Ethics (ORE) and the REB to ensure that the practices and procedures designed to protect the dignity and well-being of human research participants are in compliance with institutional Policy [and] the current version of the ... TCPS” (SFU draft policy article 3.2.2) by articulating to researchers the procedures they should follow if and when challenged.

Although such challenges were rare for quite some time – an SFU case was the only one in Canada for more than a decade – there now have been eight cases in total in the country involving researchers in different disciplines (including Criminology, Health Studies, and Communications in Canada to date) in different institutions in different legal forums (criminal trial, civil trial, coroner’s inquest). With researchers playing an ever-greater role in public fora – e.g., serving as expert witnesses, providing evidence to parliamentary and senate committees, “engaging the world” – we should not be surprised if such incidents continue to increase. One exemplary policy is the one at McGill.⁴ Doing so would be particularly appropriate for the SFU administration to provide, given the folly that occurred when SFU became the first university in the country to have a researcher subpoenaed and told to reveal information gathered under a pledge of confidentiality.⁵ Although the university eventually sought redemption for its abandonment by apologizing to the researcher, acknowledging that the researcher acted ethically while the university did not, reimbursing the researcher for his legal costs and lost wages, and promising the same would never happen again, somehow these promises (as well as similar undertakings to faculty) seem to have faded over time. Developing a confidentiality protection policy that meets the criteria PRE and the Secretariat outline in relation to Article 5.1 would make clear that SFU has learned from its past mistakes and left its sordid past behind.

5. Developing an REB for Research with Indigenous People/s

A second productive way that the university could show its commitment to going beyond the minimal requirements of the TCPS for ethics governance is in the area of research involving Indigenous people/s. As it stands, in the current TCPS there is a requirement that researchers doing research with Indigenous people/s pay heed to Chapter 9 by showing in their proposals how they have addressed the concepts it articulates. There is nothing I can find in the TCPS that actually requires someone with expertise in such

⁴ McGill’s “Statement concerning institutional support to researchers in maintaining promises of confidentiality” can be found at https://www.mcgill.ca/medresearch/files/medresearch/institutional_support_to_researchers_in_maintaining_promises_of_confidentiality.pdf

⁵ For a detailed discussion of that case and its ramifications locally and nationally that extended over two decades, see Palys and Lowman’s (2014) *Protecting Research Confidentiality: What Happens When Law and Ethics Collide* (Toronto: Lorimer Publishing)

research to be on the REB, other than for the general requirement that the REB should have at least two members who have experience with the range of research that is proposed to the REB.

To its credit, Section 5.1.3 the Draft Policy declares its respect for the United Nations *Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission's *Calls to Action*, and the *Final Report* of the SFU Aboriginal Reconciliation Council, which encouraged, "use (of) Indigenous methodologies and respect (for) Indigenous protocols and ethics in conducting research." Also, one of the "action items" in the "research" section of the Office of Aboriginal Peoples' *Aboriginal Strategic Plan* for 2013 to 2018 was to "Work to develop and promote Indigenous research protocol templates," which an Indigenous REB would surely be appropriate to include in that process. It thus strikes me as something of a disappointment when the Draft Procedures do not even include an Indigenous person as one of the Core Members of the REB (see Section 1.1 of the Draft Procedures), indicating instead only that someone with expertise in Indigenous research (note that Section 1.3.2 does not even require the person to be Indigenous) *can* be included as an Additional Member.

As someone who served as SSHWC's liaison to the committee that wrote Chapter 9 of TCPS-2, I am familiar with the chapter and know that its treatment of many issues is shallow and in some instances wanting. I recall the committee that wrote Chapter 9 seemed to have a particular set of research scenarios in mind that the Chapter then addressed, but the Chapter is now a decade old, and the variety of scenarios in which Indigenous and non-Indigenous researchers have become involved in research by/for/with Indigenous people/s has expanded considerably. Colleagues in First Nations Studies – a department with which I am an Associate Member – on various occasions have found themselves at loggerheads over understandings about community-engaged research that are simply not shared by ORE and/or the REB. The situation is reminiscent of what a Maori colleague, Juan Tauri, wrote in a recent article in *Research Ethics*.⁶ The article describes his experience at an Australian university when he submitted his proposed dissertation research to its REB. He had spent more than a year holding meetings in the community in which he was to be doing his dissertation research, and one of the topics of discussion involved appropriate ways of ensuring informed consent. The community wanted to do a collective consent, through which the community would decide on a consensus basis whether and how to proceed. When he proposed this to his REB, however, they would have none of it. The Australian equivalent of the TCPS called for an individualized consent and that is what his REB required. Although the ethics policy required Tauri to consult with the community and heed their perspective, when he did so, it seems the community did not come up with the "right" answers according to the REB's understanding of consent.

The idea that a non-Indigenous REB could over-rule the clear preferences of an Indigenous community, grounded in that community's culture, is nothing short of institutionalized colonialism. Does our TCPS contain similar clunkers? The frustration of some FNS colleagues who at times feel a cultural divide with the REB on some projects is palpable, and surely something we want to avoid. The time finally appears to have arrived in Canada when Indigenous sensibilities are to be shown some respect and SFU has professed its desire to show leadership in that regard; we are supposed to be listening to Indigenous people/s, not telling them what to think and how to behave. That applies in the area of ethics as well.

The TCPS already provides authorization to institutions to establish multiple committees. With growing interest in doing research with Indigenous communities, growing sensitivities about the ways that

⁶ Juan M. Tauri (2017). Research ethics, informed consent and the disempowerment of First Nations peoples. *Research Ethics*, 14(3), 1-14.

Indigenous people/s have been ill-served and even exploited by the academic research community in the past, and the growing number of Indigenous researchers at SFU, is one person (maybe) on the REB with experience with Indigenous issues enough? What issues arise that are unique to Indigenous methods that have not been considered by the TCPS? Are there course-based activities currently being treated as “research” and reviewed when they should not be? Is the current REB or the one envisioned in the Draft Policy up to the task of answering those questions? This is not intended in any way as an insult to the current REB or ORE, who do their best given the personnel resources that the current policy allows them. Rather, it is a question of creating the right kind of forum with people who are more directly qualified to be posing the sorts of questions about research involving Indigenous people/s that need to be addressed at this historical moment in academe.

The biggest problem with TCPS-1 was that a group of individuals dominated by persons from the health sciences put together a document that made sense to them, without fully considering what the implications would be when the principles that made so much sense to them were applied to others in areas of research about which they had limited knowledge and understanding. “Consent,” according to the TCPS and the draft SFU ethics policy, is a “core” ethical concept. It is also a core concept in documents such as the UN *Declaration on the Rights of Indigenous Peoples* that the draft policy cites approvingly. Isn’t “consent” best accomplished when those who are most affected by a policy are involved in the process, not only of creating the policy, but of being involved as well in its implementation and evaluation?

More and more people at SFU are incorporating a sign-off tag to their email that declares something along the lines of, “At Simon Fraser University, we live and work on the traditional and unceded territories of the Coast Salish peoples of the Səlilwətał (Tsleil-Waututh), Skwxwú7mesh (Squamish), x̣ṃəθkwəỵəm (Musqueam) and Kwikwetlem Nations.” Good for us that we acknowledge that fact and take the opportunity to get the local peoples’ names right. But is it placating window dressing that masks the fact that it is still business as usual with respect to Indigenous peoples?

I value the views of my FNS colleague annie ross, who has worked with Indigenous people and communities for decades, and wish to express my support for her submission, a draft of which I have seen. One thing that is clear from her submission is that the very notion of how to define “research” and the appropriate role of an institutional non-Indigenous REB in relation to work in the community needs to be discussed, and neither you nor me nor the REB are the appropriate body to do that. I have been working with Indigenous people and communities for approximately 25 years at this point, and I still learn something new every time I read something of annie’s. Her work raises important questions of interpretation and jurisdiction, and I for one would feel very uncomfortable if I were in ORE or on the REB and was placed in the position of telling her how to manage those relationships. I would much prefer to defer to an Indigenous REB from whom I could learn. The same is true of me as a non-Indigenous researcher; I would much prefer to learn from an Indigenous REB how to show appropriate respect than to be told by an REB who may or may not have an Indigenous member and cite Chapter and verse from the TCPS because that is all they know.

The TCPS was from the outset envisioned as a living and evolving document; what better way for SFU to show leadership and respect for Indigenous communities than by forming an Indigenous REB to interpret the TCPS, identify its shortcomings given the broad range of research by/with/for Indigenous people/s that comes out of SFU, and be in a position to make recommendations to PRE and the Secretariat whenever the time comes for a TCPS-3, and to you when it again comes time to revise R20.01. I would imagine the committee to have an Indigenous Chair and Indigenous majority, perhaps

with room for non-Indigenous researchers who have a positive history of working with Indigenous communities, but clearly this is a matter on which the administration should be deciding in collaboration with the Indigenous community of researchers at SFU.