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April 27, 2000

Drs. John Lowman and Ted Palys
School of Criminology
2630 Diamond Building, West Mall Centre
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Burnaby BC V5A 1S6

Dear Drs. Lowman and Palys,

Thank you for your e-mail of 7 February 2000 regarding the issue of confidentiality of research information in relation to the Tri-Council Policy Statement *Ethical Conduct for Research Involving Humans*. Please accept our apologies for not replying earlier.

First, let me stress that the Councils, as agents of the Canadian government, expect all Council-funded research to conform both to the ethical principles set out in the Tri-Council Policy Statement (TCPS) and the relevant laws. At the same time we also recognise that, in rare instances, ethical and legal approaches can conflict. The TCPS addresses this:

Norms for the ethics of research involving human subjects are developed and refined within an ever-evolving societal context, elements of which include the need for research and the research community, moral imperatives and ethical principles, and the law. (TCPS, page i.4)

(...) Further, though ethical approaches cannot pre-empt the application of the law, they may well affect its future development or deal with situations beyond the scope of the law. (TCPS, page i.8)

If there is a conflict, the researcher must decide on the most acceptable course of action. The principle of maintaining the confidentiality of research information is an important element of the TCPS. The onus is on the researcher to know the legal context of the research before starting his/her research activities, and to anticipate his/her options in the unlikely event of a court-ordered disclosure. It is also the researcher's responsibility, in consultation with the REB, to develop a free and informed consent process for recruiting research subjects, which takes into account that knowledge.

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In reviewing the research protocol, the REB will take a subject-centred perspective to determine whether the consent process represents the risks accurately. In certain cases, it may be appropriate for the REB to request that the researcher inform participants of the risk of court-ordered disclosure, thus giving participants a *qualified* guarantee of confidentiality. The REB could also suggest a methodological solution to the problem by recommending that the research be conducted anonymously.

A subject-centred approach should, however, also recognise that researcher and research subjects may not always see the harms and benefits of a research project in the same way. (TCPS, page i.7)

In light of 2.4 (b) and 2.4 (c), REBs may require the researcher to provide additional information, including: (...) An indication as to who will have access to information collected on the identity of subjects, and descriptions of how confidentiality will be protected, and anticipated uses of data. (TCPS, Table 1, page 2.7)

With respect to your comments on the study of street gangs, from an ethical perspective, we would continue to advocate a methodological approach that would guarantee the anonymity of the participants. Failing this, the researcher should be prepared to face a court order to disclose confidential research information and decide on his/her options, including the consequences of challenging this court order.

Please note for the presentation of your article that there is no organisation called the "Tri-Council". We suggest that your article *Ethical and Legal Strategies for Protecting Confidential Research Information* refer to the "three Councils" instead.

Sincerely,



Anne-Marie Monteith
Research Ethics Officer

c.c. MRC / Francis Rolleston
c.c. SSHRC / Thérèse De Groot