

**Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans  
Comment on Chapter Nine: Research Involving Aboriginal Peoples**

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(June 26, 2009)

Thank you for inviting consultation on the second draft of the Tri-Council Statement on Ethical Conduct for Research with Human Participants. Unfortunately I was away when the panel visited the University of Alberta so I am providing my comments in writing. Given the time lines for submission, I have only been able to address the provisions of greatest concern in Chapter Nine “Research Involving Aboriginal Peoples.” However, I am also a Co-Investigator and on the Steering Committee for the MCRI Project: Intellectual Property In Cultural Heritage (discussed below). In that capacity I will be contributing to a broader submission that you will be receiving from that project.

**1. BACKGROUND FOR COMMENTS PROVIDED**

As I think it is important for you to understand the context for these comments, I am taking some time to outline the nature of my experience working with indigenous communities. The key features of the ethics framework in the proposed Tri-Council Policy respond to several fundamental interests and concerns expressed in research projects I have conducted in partnership with Métis and First Nation communities and authorities over the last twenty years.<sup>1</sup> They are also consistent in several ways with the goals and fundamental methodological principles for collaborative legal research I developed in consultation with First Nation communities and an interdisciplinary team of researchers engaged in the 2001 SSHRC and First Nation community funded project “Protection and Repatriation of First Nation Cultural Heritage”(Protection and Repatriation Project).<sup>2</sup> In particular, I am pleased to see that the proposed Tri-Council Policy acknowledges the cultural and scientific contexts within which western codes of ethical conduct are developed and the importance of flexibility in interpreting core principles of “concern for welfare, respect for autonomy, and equal moral status of all humans” in a manner cognizant of the distinctiveness and diversity of Aboriginal communities.

The Protection and Repatriation Project was in part an outgrowth of an earlier project funded by the U’mista Cultural Society (U’mista), First Nations Confederacy of Cultural Education Centres, and the First Peoples’ Cultural Foundation. The U’mista project focused on problems First Nations encounter in preventing export of cultural items, and in particular how the *Cultural Property Import and Export Act* might better serve the needs of First Nations.<sup>3</sup> Through consultation it was expanded to respond to a wider

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<sup>1</sup> See e.g. Catherine Bell and MSAT, *Contemporary Métis Justice: The Settlement Way* (Saskatoon: Native Law Centre, 1999) and *infra* note 2.

<sup>2</sup> See Catherine Bell and Val Napoleon, eds., *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives* (Vancouver B.C.: UBC Press, 2008) and Catherine Bell and Robert Paterson, eds., *Protection of First Nations Cultural Heritage: Laws, Policy and Reform* (Vancouver B.C.: UBC Press, 2008). The methodology is discussed in detail in chapter one of the former book. Details about the project are also available online <http://www.law.ualberta.ca/research/aboriginalculturalheritage>.

<sup>3</sup> R.S.C. 1985, c. 51.

range of concerns raised by First Nation individuals and organizations including international and domestic trade and repatriation of material culture and protection and control of tangible and intangible cultural heritage including cultural sites, archaeological heritage, and cultural knowledge in accordance with the laws, internal structures and priorities of communities of origin. Developed in collaboration with First Nation partners in British Columbia and Alberta and scholars in law, anthropology, and archaeology, the research was informed in part by community case studies.<sup>4</sup> The broad objectives of the research were to:

- (1) provide First Nation participants with the opportunity to identify define and articulate their own concepts of property and law and their experiences relating to protection, repatriation and control of their cultural heritage;
- (2) facilitate greater understanding and respect for diverse First Nations cultures, perspectives, and experiences;
- (3) create reflective case study reports with the potential of diverse uses and means of dissemination;
- (4) assist First Nations partners to collect data and to develop practical resources on cultural heritage issues that are of concern to their communities;
- (5) disseminate information about the operation, impact and limits of the existing Canadian legal regime as it applies to First Nations heritage; and
- (6) critically analyze domestic law within the broad international, social, political, and legal context.

As a result of this experience I have been invited to give talks and reflect on ethical guidelines and procedures for conducting research with indigenous peoples in numerous international contexts including New Zealand, Greenland, South Africa, and the United States of America. The collaborative methodology adopted in this research is outlined in the Introduction to our first volume of published research, *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives*. and is attached to this correspondence for more detailed reference. Also attached is a Preface written by elders concerning compensation and free consent and recent international review of this work in *The Law and Politics Book Review* which comments on our collaborative methodology. Since writing these sections I am also beginning to explore the idea of “human participation” and principle of “respect for difference” the expansion of ethical obligations relating to human participants into the realm of “heritage object” and archaeological research where there are different cultural understandings about what is animate, inanimate, alive or deceased and responsibility for ancestors. However, this work is in progress and beyond the scope of the comments I offer here.

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<sup>4</sup> The First Nation partners in this research were the Ktunaxa/Kinbasket Tribal Council, the Mookakin Cultural Society of the Kainai Nation, the Oldman River Cultural Centre (in consultation with the Knutsum-atak or Brave Dog Society) of the Piikani Nation, the Frog Clan (Gitksan) House of Luuxhon and Gitanyow Hereditary Chiefs, the U'mista Cultural Society and 'Namgis Nation, and the Hul'qumi'num Treaty Group. Also included in our research is information derived from national literature reviews and feedback from First Nations individuals and organizations across Canada generated from the project's website and letter campaign.

The methodologies and core principles for collaborative research adopted in the Protection and Repatriation Project also inform principles for community engagement through case studies in the ongoing international MCRI project “Intellectual Property Issues in Cultural Heritage”(IPinCH)<sup>5</sup> The IPinCH project is a seven-year collaboration between more than 50 international scholars and 25 partners and was developed by George Nicholas (Simon Fraser University), Julie Hollowell (Indiana University) and Kelly Bannister (University of Victoria). Led by Project Director George Nicholas at Simon Fraser University and assisted by a Steering Committee of indigenous and non-indigenous researchers experienced in collaborative research, IPinCH brings together anthropologists, archaeologists, lawyers, experts in intellectual property, indigenous communities and stakeholder groups. As indigenous communities and others work to protect their cultural heritage, IPinCH is investigating how culture, rights, and knowledge are interpreted. One of the important objectives of IPinCH is to contribute to knowledge, document issues and explore best practices including in the area of collaborative research particularly in relation to archaeological practice and products of archaeological and other cultural heritage research. Research findings and recommendations for best practices emerging from the IPinCH experiences, including case studies, will be shared with the Tri-Council and included in the publications and knowledge base created by this project.

**As a consequence of my experience in the above projects I have come to appreciate the importance of approaching ethical guidelines for research with indigenous communities as an organic, deliberative, and contextual process. For this reason I encourage the Tri-Council to revisit and review its guidelines for conducting research with Aboriginal peoples in Canada on a regular basis.**

## **2. CORE AREAS OF CONSISTENCY: CONTEXT AND COMMENT**

I have organized themes in Part A “Interpreting the Ethics Framework in Aboriginal Contexts” and Part B “Ethical Concerns in Research Involving Aboriginal Peoples” of the Tri-Council Policy into three areas of importance that are consistent with the views of researchers and First Nation partners and participants in the Protection and Repatriation project. At the time the methodology was developed for the Protection and Repatriation Project many First Nation communities and research bodies had yet to develop, or were in the process of developing, written Aboriginal specific research ethics policies and community and professional research protocols. However the SSHRC Task Force on Native Peoples had recommended some general principles, there were some helpful academic commentaries on decolonizing research methods, and international, domestic, professional and some community guidelines were being developed and refined.<sup>6</sup>

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<sup>5</sup> See Appendix 3, “Call for Case Study Proposals.” For more information about the IPinCH project see the IPinCH website online: <http://www.sfu.ca/IPinCulturalHeritage>.

<sup>6</sup> As a consequence we included in the published outcomes discussions of First Nation Research Protocols and a chapter on role of ethical codes and community protocols as instruments for protecting cultural heritage. See e.g. the index to Bell and Napoleon, *supra* note 3 and Kelly Bannister, “Non-Legal Instruments for the Protection of Intangible Cultural Heritage: Key Roles for Ethical Codes and Community Protocols” in Bell and Paterson, *supra* note 3 at 278.

Although we knew our research would engage information gathered from human participants, we did not enter into the Protection and Repatriation project with a set methodology prior to consultation with appropriate community authorities. Rather our approach was guided largely by core values inherent in participatory action research and academic works critical of past research methods. The core values adopted were collaboration through meaningful participation, respect (for individuals, community, and difference), equality (including different ways of knowing), empowerment of participants and inclusiveness with a view to social change concerning protection and control over First Nation cultural heritage. These values were reflected in the following principles which were influenced by, but also extended beyond, the general guidelines of the SSHRC Task Force on Native Peoples in place at the time. They were:

- (1) active and meaningful community participation in all stages of the research program including development of broad research questions and design and case study development, reporting, publication, research and activity;
- (2) dual validation of work by the academic team intended for publication drawing on community information through input by appropriate community authorities and participants by means acceptable to those affected, including authors, researchers and publishers;
- (3) production of tangible benefits for First Nation partners (e.g. training, employment, use of research data and products, communicating issues to a broader public);
- (5) compliance with First Nation laws and protocols; and
- (6) regular communication throughout. As elaborated below, understandings and applications of these values and principles were discussed, elaborated, and negotiated on a community specific basis at preliminary meetings conducted with First Nation participants and appropriate community authorities.

The following features of the proposed Tri-Council Policy are consistent with our approach and experience. I strongly urge you to maintain these features of your policy but also to interpret and add to their articulation and application in light of the concerns given in part 3 below:

- (1) The importance of interpreting ethical guidelines within the broader movement of transforming the relationship between Aboriginal peoples and Canadian society; the Aboriginal and treaty rights of the Aboriginal peoples of Canada; the desire and importance of maintaining collective identity and continuity of cultures; the balance between the individual well being of participants and broader concerns for the collective welfare of the community; and the potential imbalance of power between affected individuals, researchers, academic institutions, funding agencies and communities.

- (2) The importance of community engagement in addressing concerns relating to protection and control of cultural heritage as understood by affected communities through respect for their laws and protocols and distinctiveness and diversity including their understandings of cultural heritage, research and protection priorities and through meaningful engagement of appropriate community authorities (which may or may not be officially recognized governing bodies) including through culturally informed advice, meetings with researchers prior to the actual research, activities and participation at all levels of the research program including input on interpretation of outcomes and equitable distribution of benefits
- (3) The importance of an intercultural understanding of voluntary informed consent that respects the need to protect and balance the welfare and autonomy of individual participants with the autonomy and welfare of the collective as understood by the parties involved including through compliance with community research protocols.

### **3. SPECIFIC APPLICATIONS AND LESSONS LEARNED: APPLYING THE PRINCIPLES OF THE TRI-COUNCIL POLICY**

In the Protection and Repatriation Project, applications of the above values and principles were discussed, elaborated, and negotiated on a community specific basis at preliminary meetings conducted with First Nation participants and appropriate community authorities. Aware that our procedures had to be consistent with existing Tri-Council Policy on Research Involving Humans we carefully documented rationale for offering different interpretations of requirements such as “free and informed consent” arising from First Nation protocols, laws (often referred to as “customary laws”), and collective interest and responsibility. These were included in detailed REB applications and required in some instances subsequent applications and elaborations.

Our experience is that this **flexibility of application is extremely important** because of the diversity among Aboriginal communities concerning understandings of cultural heritage, laws and protocols for sharing and control over information, and the desire and interest to engage at various stages of the research program. Concerns for protection and control of research and products of research varied among communities with some having protocols similar to those adopted by academic institutions for research involving human participants and others requiring greater consideration of collective interests and control over use, sharing and communication of information (e.g. by elder panels, ceremonial societies). Preliminary meetings concerning a wide range of issues from use and control of research data to processes for maintaining academic integrity and the integrity of indigenous knowledge took approximately one and a half years prior to the submission of our SSHRC application and were largely funded by the University of Alberta. All researchers that received funds from the project were bound by the broad ethical principles governing the project as well as those specific to the community with which they worked.

**The importance of obtaining culturally informed consent and engaging with the community prior to the actual research activities through community events (e.g. feasts, celebrations, informal meetings) and planning meetings can not be overstated** in terms of relationship building; clarity of the research program including goals, outcomes, and conduct of the research; and conflict resolution and avoidance. Some of the costs associated with this process were avoided in our research by drawing on existing relationships between researchers and communities of interest or by having communities seeking to work with whom they had a prior relationship and that met the levels of expertise necessary to, or were willing to work with experts, able to carry out our mutual goals.

The comments that follow arise from challenges we encountered in applying the core values and principles discussed above. They also arise from a concern for both certainty in knowing when the policies in this chapter are to be invoked, and flexibility of application of core principles in a manner that is both cognizant of the diversity of Aboriginal communities and opinions of the academic community on matters such as universality of knowledge, control over research outcomes, and “ownership” of research. They also take into consideration issues we encountered in the REB process and raised by elders and other knowledge keepers who participated in the Protection and Repatriation Project. I expect some of the issues I raise have already been the subject of debate.

**In order for researchers to meet the highest ethical standards and not to create disincentives for research through the imposition of ethical standards, it is crucial that appropriate support be provided to researchers within academic institutions and through funding agencies. This is an area where the ethical standards of the Tri-Council and funding programs need coordination as I address this issue in my final comments below.**

#### Article 9.1 Application

Reference is made in this article to demonstrating respect for “Aboriginal rights and cultural heritage.” Although some Aboriginal communities ground research concerns and initiatives affecting their cultural heritage in the assertion of inherent Aboriginal rights or treaty jurisdictions, and the writer and others have developed legal arguments in support of this approach, the scope of constitutionally protected Aboriginal and treaty rights is not clearly defined in law. To date we do not have legislation or case law that clearly recognizes Aboriginal or treaty rights to protection and control of cultural heritage. Given the challenges and controversy associated with increased Aboriginal participation in research and control over products of research originating in their communities there is a potential danger that the language of “rights” will be narrowly construed by researchers and REBs to refer only to existing, recognized rights in Canadian law. Therefore both in the discussion of the policy preceding these articles and in all articles I suggest referring to Aboriginal rights and “interests” in cultural heritage to avoid narrow rights based approaches to the interpretation of ethical obligations.

It is not clear what is meant by “research conducted on a defined...territory.” My question is defined by whom? Traditional territories as defined by Aboriginal peoples extend beyond boundaries recognized in Canadian law (e.g. reserves) and overlap. A suggestion is to link the definition of territory to that adopted by the participants’ community. This will include traditional territories that are not necessarily given formal recognition in Canadian law and policy and extend ethical obligations accordingly. See also my discussion of Article 9.3 below.

Reference is made to research involving “cultural property.” Again this invites a narrow legalistic interpretation as cultural property is defined in domestic legislation concerning international movement of cultural objects and international treaties concerned with trade and recovery. Our research and that of others has demonstrated that the concept of property is not necessarily understood or consistently applied between western and indigenous legal systems and among Aboriginal communities. In the discussion of ethical concerns (lines 3199 – 3215) you define the broader concept of cultural heritage, including cultural property, with reference to the United Nations Declaration on the Rights of Indigenous Peoples. Use of the broader concept of “cultural heritage” is important because “cultural property” to varying degrees is incomprehensible, inappropriate, and inadequate when understood as a western legal, social or economic concept and applied to some forms of aboriginal cultural heritage. For consistency with your general discussion of ethical concerns and clarity in the adoption of your definition of cultural heritage, I suggest any time the phrase “cultural property” is used it be replaced by “cultural heritage.” Comments on defining cultural heritage will be elaborated in the submissions from IPinCH and are also contained in the Introduction attached.

It is not clear what is meant by a “significant number of Aboriginal individuals.” The significance of the number may vary with the nature of the research being conducted. For example there may be few people, who have the authority within a community to discuss matters being investigated, but the information shared and how it is used could impact on a larger population. To suggest numbers are significant is, I respectfully suggest, adopting a Eurocentric approach to the issue of impact. The reference to a “significant number” should be removed and that **REBs should be required to consider these articles in chapter 9 any time research involves Aboriginal participants.** It may be decided that community engagement is not necessary or need not be as extensive, but in order to fulfill the goals of the policy the rebuttable presumption should community engagement is always appropriate when there are Aboriginal participants in a study unless established otherwise by the researcher.

#### Article 9.2 General Requirement for Community Engagement

Concerns relating to reference of “defined communities” and “significant numbers” also arise in the articulation and application of this article. The importance of flexibility is reflected in the notion that the “nature and extent of community engagement should be appropriate to the type of community.” However, I am not sure what is meant by “type”

of community. Consistency with the policy articulated suggests an appropriate amendment would be “the protocols of the participants’ community.”

Again I have concern about reference to a “significant number of Aboriginal participants” and for the reasons stated above suggest this qualifier should be removed. It should simply refer to “Aboriginal participants.” However, if this is done I suggest that this article include a requirement that researchers inform the REB how they will engage the community or why such engagement is inappropriate given the number of participants and community affected. Helpful examples would be those that demonstrate where such engagement may not be appropriate (e.g. research that incidentally affects a small proportion of Aboriginal participants but is not intended to single out or describe Aboriginal people in the study such as the effectiveness of therapies to control blood pressure).

### Article 9.3 Research On First Nation, Inuit or Métis Territory

Although the principle of consultation with Aboriginal governments with authority over defined territories is an important general principle, it is necessary to define “government” and “designated territory.” For example, one could refer to governments recognized in Canadian law and policy with respect to reserve lands, Métis settlement lands, and land claim settlement areas or areas subject to land claims. However, this would exclude traditional forms of government over traditional lands which extend beyond legally recognized boundaries to which ethical obligations arguably continue to flow if we are to take the idea of collaboration seriously.

A second concern is that in matters of cultural heritage authority may be delegated to a different body, or it may be necessary to have permission of the government (otherwise research on the land could be trespass) and the culturally appropriate authority which may or may not be officially designated by band council resolution or some other means. Again here your principle of being culturally informed of appropriate community authorities and structures is crucial (such as Mi’kmaq Ethics Watch and Mookakin Cultural Foundation of the Kainai Nation).

### 9.4 Free and Informed Consent

I agree it is important to maintain the principle that “community or organizational agreement” can not replace “free and informed” consent of individuals. I have not had the opportunity to review Chapter 3 in detail but suggest “informed consent” is more complex in this context and offer the following suggestions.

- (1) Oblige researchers to inform individual participants about the mechanism for community authority review and/or approval as part of the principle of informed consent;
- (2) Respect for different knowledge systems and appropriate payment for elder knowledge should be taken into account by REBs in assessing issues of payment for participation and voluntariness.

- (3) Given increased concern about appropriation of cultural knowledge, misrepresentation, and use of data concerning human participants and matters of cultural heritage, researchers should be obliged to (a) discuss ownership of data, use of data (including possible secondary uses), and copyright with appropriate community authorities; and (b) if requested and where possible and appropriate given the nature of the research, to find alternatives to sole institutional and author ownership that are more inclusive of community collaboration and control of outcomes of research.
- (4) Although written or recorded consents are preferred, there should be flexibility for REBs to approve mechanisms for evidencing consent that are more culturally appropriate to the communities and individuals engaged in the research.
- (5) In matters of cultural heritage researchers should be obliged to take reasonable steps to inform themselves of individuals with the capacity to speak to the issues being researched in accordance with the laws and protocols of the community

Each of these issues is discussed in further detail in the Introduction and Preface to *First Nations Cultural Heritage and Law* attached to this submission. Of particular concern is the fact that elder knowledge is not well understood by academic institutions and the implied hierarchy of knowledge associate with treaty elders as “human subjects” and “informants” rather than individuals that bring knowledge that is different, but equally important, as that offered by academic researchers. The dilemma of compensation raised by western ethical frameworks is the delicate balance between coercion and consent. However, honoraria approved for this kind of research is based on a scientific health/psychology model and is woefully inadequate recognition of the expertise being shared. Similar problematic assumptions about the value of knowledge and participation result in a legal regime that places control over research outcomes in researchers, their employers and their funders. Meaningful respect for difference and interpretation of principles of “concern for welfare, respect for autonomy, and equal moral status of all humans” in a manner cognizant of the distinctiveness and diversity of Aboriginal communities calls for increased control by Aboriginal participants in use of data and research outcomes. There should be an ethical obligation at least to discuss these issues as part of informed consent and the limits within which researchers work. As a result of such discussions in our research we often co-authored with indigenous organizations, obtained cooperation of publishers in releasing copyright on certain works, and decided together about proper storage and use of research data. I refer you to the Preface and Introduction attached for further detail. See also my comments on Article 9.9 below.

#### Article 9.5 Community Ethics Codes and Protocols

I agree with much of what is said in this section but caution that often such protocols do not present themselves in a manner with which western academics are most familiar. They are not always written down and may be evidenced through action and ceremony. Again the principle of being culturally informed is imperative and it is essential to

acknowledge compliance with law and protocol may still be required absent formal written codes and protocols. There should be an obligation on the researcher to take all reasonable steps to be informed of oral and performance based protocols as well.

#### Article 9.6 Research Agreements

I have not had time to consider this in depth. The only issues that comes to mind are those which are associated with all contracts such as the expense of engaging proper legal advice incurred by Aboriginal communities and ensuring the necessary authorities sign (e.g. it may be necessary for the researcher's employer to sign).

#### Article 9.7 Community Engagement At Variance With Protocols

I have only had time to consider this article briefly. I am not sure what is meant by "Operative protocol" and if this is referring to the community protocol. If so I stress the importance of making it clear protocols will not necessarily be in the formats with which we are most familiar. Some of the information you include here actually speaks to compliance with, not variance from, protocol. The problem may be an assumption that protocols in writing might conflict with laws and leadership structures recognized within and indigenous legal order. In that event the word "variance" is problematic as the latter may be the "correct" protocol.

#### Article 9.8 Critical Inquiry

Here I only caution that we need to consider more fully what is meant by "academic integrity" and "rigour" in the context of collaborative research that seeks to respect different ways of knowing. Credibility in academia has commonly been understood as deriving conclusions free of influence by "participants" but this idea of critical inquiry and credibility may be at odds with the objectives of collaborative work. Critical inquiry should be understood as engaging not just academic tools but those within the communities with whom we partner (e.g. mechanisms for validating veracity of elder knowledge). I think it would be helpful to point this out to researchers.

#### Article 9.9 Privacy and Confidentiality

I have already addressed issues of data control in my discussion of "free and informed" consent. I agree that there should be an obligation to inform all participants about decisions with respect to use and disclosure negotiated with appropriate community authorities. Unfortunately I have not had time to go over Chapter 5 in detail. Although this may be addressed elsewhere, it is important for me to note that anonymity is the norm in medical and psychological research. However, in collaborative research with Aboriginal communities it also often the case that participants wish to be attributed and indeed, to respect the verification process for their knowledge, must also identify the persons from whom the knowledge is derived. There needs to be sufficient flexibility to

address this in provisions concerning anonymity and confidentiality. I think you cover this in Article 9.11 Secondary Use of Data, but it applies in other contexts as well.

#### 9.10 Protecting Indigenous Knowledge

I am not sure why you say “indigenous and cultural knowledge” as cultural knowledge is caught within the phrase “indigenous knowledge.”

I have already addressed some of these issues in my comments on free and informed consent and argue for stronger language of obligation (“must” not “should”) with respect to matters that need to be discussed (e.g. your first paragraph of application at p. 103 and my comments on free and informed consent) to obtain SSHRC funds. These matters go to the core of informed consent and address concerns about exploitation by the academic community.

Again I raise concerns about the use of legal language such as “cultural property” and ownership and suggest avoiding this language where possible. If we are trying to be respectful and inclusive we should be speaking about relationships to each other, of belonging, and of responsibility. I strongly suggest you avoid language of ownership and property in this policy, except to the extent researchers should be obliged to discuss as part of meaningful engagement issues of ownership as they pertain to intellectual property, data and products of research.

Researchers should also be obliged to provide the community an opportunity to react and respond to research findings as desired and where community engagement is invoked and anonymity, privacy, confidentiality, or other issues of accessibility are not in issue. The process you suggest is similar to that which we adopted outlined in the Introduction attached. Meaningful and equal participation means from the stage of design through to comment on outcomes. I also suggest that there should be an obligation of ongoing communication with appropriate community authorities or designates throughout the term of the research program to avoid potential misunderstandings and situations where research is abandoned without knowledge of the community.

#### Article 9.11 Secondary Use of Data

Unfortunately I have not been able to consider this in detail. However, it strikes me that secondary use of data is appropriately dealt with as a matter of increased control over indigenous knowledge by source communities and thus should be governed by principles concerned with appropriation, misrepresentation and protection of indigenous knowledge. These are areas which the IPinCH MCRI seeks to explore in further detail as part of the research program.

#### Article 9.12 Benefits of Research

The statement in earlier policy was stronger and suggests that there must be some benefit to the community but that this benefit can take a variety of forms including those you

articulate here. As part of the consent process there should be an obligation on the researcher to discuss benefits of the research to the community. This is a matter that should be negotiated as part of informed consent.

#### 4. RESOLUTION OF DISPUTES

Notably absent from this section is a provision to address appropriate intercultural dispute resolution. A theme that runs through your recommendations is that meaningful engagement with appropriate authorities and participants seeks to find a common ground, anticipate differences, and agreement on process. However, your policy does not address procedures that can be taken in the event of conflict. The Tri-Council should explore the creation of a dispute resolution mechanism that seeks to resolve conflict in a manner that gives equal weight and respect to Aboriginal and academic ways of knowing and ethical norms. When research relationships break down, Aboriginal participants are most often disadvantaged in that the only recourse they have is against geographically distant institutions that have vested interests in supporting the researcher and tend to rely on legal rather than ethical arguments in face of conflict. To engage in dispute resolution in a meaningful way is costly and may involve legal intervention. These and different cultural norms create significant imbalance of power.

The matter of independent, cost effective, and interculturally legitimate dispute resolution in this context requires significant research, consultation, and planning. However, I suggest it is a necessary next step for the Tri-Council.

#### 5. OVERLAP OF REB REQUIREMENTS AND TRI-COUNCIL FUNDING

It is important that the recommendations of the Tri-Council Policy are taken into consideration in developing criteria for funding research engaging Aboriginal participants and communities. **Inability to acquire sufficient funds or time to comply with the highest standards for community engagement may result in reluctance to engage in important research, narrow construction of ethical obligations, unintentional harm, and unequal relationships – many of the dangers the Policy is intended to avoid.** For this reason I raise below areas I feel are implicated by the Tri-Council Policy and that must be taken into consideration beyond the realm of research ethics.

The importance of engaging with the community prior to the actual research activities through community events (e.g. feasts, celebrations, informal meetings) and planning meetings can not be overstated in terms of relationship building; clarity of the research program including goals, outcomes, and conduct of the research; and conflict resolution and avoidance. As this process is integral to the research it is crucial that this be taken into consideration in setting amounts for funding, eligible expenses, and duration of grants. Not all institutions are able to fund the pre-application phases necessary to support truly collaborative research.

Ongoing communication is fundamental for the successful community engagement in collaborative research. Such communication is rarely effective using only electronic means, such as the internet, or the telephone. Follow up letters, calls, and visits are required throughout the research program as collaborative research is time consuming and the end product often issues many years after the research is initiated. Such communication is necessary for the meaningful engagement called for by the Tri-Council Policy. This needs to be taken into consideration in allocation of funds, eligible expenses (e.g. administration costs for aboriginal organizations engaged in research) and time lines. Of particular concern is the proposed elimination of research stipends and the impact this could have on effective engagement.

Research ethics that give meaningful interpretation to respecting the integrity of indigenous knowledge systems and protection of cultural heritage extends beyond procedure to communication of ideas and application of standards for academic rigor. Meaningful community engagement means providing a mechanism for community input at all stages including interpretation of results. This raises complicated and lengthy process of review and challenges both academic institutions and researchers to re-examine what we mean by academic rigor and negotiating space for difference of opinion.

There is a danger that the policies here will be applied outside the context of research involving human participants and result in the denial of funding. For example, it is possible an assessor will consider these criteria any time issues of Aboriginal identity or community are invoked, despite the absence of human participation in the research. Not all research concerning Aboriginal peoples involves human participants nor, in the writer's view, should this be required. In the writer's opinion, encouraging a diversity of approaches to research and opinions is fundamental for the benefit and advancement of knowledge within and outside of Aboriginal communities. It is important to acknowledge that there are also power imbalances within communities and the ability to conduct research independent of internal mechanisms of authority remains important.

Thank you for considering these comments