

## **CPSA Response to December 2009 Draft of the 2<sup>nd</sup> edition of the TCPS**

The Canadian Political Science Association (CPSA) continues to be generally very encouraged by the revisions incorporated in the draft second edition of the TCPS (TCPS II). TCPS II has attempted to address many of our concerns with research ethics rules, especially with its inclusion of a chapter on qualitative methods, its greater sensitivity to the particular circumstances surrounding research on political elites and its more nuanced and open approach to obtaining informed consent. The December 2009 draft of TCPS II includes some further improvements. It is important that the improvements that have been made in TCPS II not be removed or weakened in the final version.

At the same time, despite the significant improvements in TCPS II the CPSA remains concerned that excessive burdens will be imposed on social sciences and humanities researchers as a result of “research ethics creep”. Some further alterations in the text of TCPS II could help alleviate this, but it will also be important to be alert to this problem as the new rules are implemented. There are a number of reasons that research ethics creep is likely to continue to be a problem. As we noted in our response to the previous draft of TCPS II,

Research Ethics Boards (REBs) tend to focus their overriding concern on the risks posed to the research participant. Unfortunately, this usually means that the costs of foregone research to the researcher, the university, and the society, along with the costs for researchers and universities of managing protocols and complying with the decisions and advice of the REBs, tend to be underestimated.

TCPS II presently reinforces this tendency through its almost exclusive emphasis on the protection of research participants. While such protection is its primary purpose, research ethics governance should balance this appropriately against the burdens that rules place on research. Combined with the REBs’ institutional autonomy, relative lack of accountability, power to prohibit research, and tendency to recruit members who are engaged in higher risk research, the almost exclusive emphasis of TCPS II on participant protection will encourage REBs to continue to be too zealous in trying to anticipate and eliminate risks in low risk research.

The CPSA notes that in the most recent draft of TCPS II a reference to academic freedom has been added in the third paragraph of Chapter 1. The placement of this, so close to the beginning, helps emphasize its importance, and this is good, and will help in alerting REBs to this issue. However the qualification of this statement in the last sentence of that paragraph, along with the absence in the larger document of much further discussion of the challenge of balancing this against the need to protect participants, reinforces the document’s implication that the protection of academic freedom is not something that the REBs have any responsibility to promote.

The main way that TCPS II addresses the problem of research ethics creep is through its discussion of proportionate review. The addition of a subhead on proportionate review at line 231 is helpful. However, this subsection could be strengthened to address more

clearly the risk that REBs will be overzealous in implementing the policy, and the costs to research and to society that this can involve. The CPSA acknowledges that discussions of proportionate review appear throughout the document, and these will certainly be useful in restraining the problem of research ethics creep. However there will need to be significant ongoing exercise of judgment and interpretation in applying the proportionality provisions of the TCPS on the part of REBs, and in doing this they will be likely to err too far on the side of controlling risk and burdening research, for the reasons noted above. Strengthening the discussion of this problem in the proportionality section of Chapter 1 will help prevent this. The following two paragraphs are illustrative of the type of discussion that should be added to this section:

REBs are granted a significant degree of institutional autonomy, arrive at key decisions behind closed doors, are subject to an appeal process that is rarely used, and have the power to prohibit research. These powers are important in allowing REBs to act to reduce risk to research participants, free of external pressures that may be motivated by commercial gain or other interests that may not be aligned with the well-being of research participants. They also help provide the REBs with the credibility that is important in inspiring potential research participants to trust that if they agree to participate in REB approved research they will be appropriately informed, and risks will be appropriately mitigated. At the same time these powers may lead REBs to exercise their control too aggressively. For researchers, who have no alternative but to submit their research to their REB, these powers provide the REBs with a daunting ability to change or terminate their research plans or impose costly delays. For society the cost of foregone research is usually invisible, and REBs may underestimate these costs.

There are a number of reasons that REBs may tend not to adequately consider these costs. Their primary purpose is to protect research participants, as is the primary purpose of this policy, which governs their deliberations. Their power and autonomy may insulate them from expressions of concern about these costs. Researchers may not have the expertise or time to challenge REB decisions. In the case of research that is not initiated in anticipation of the difficulty it would experience in getting REB approval, there may be nobody with an interest or ability to make this cost visible. For these costs to be balanced appropriately against the risks involved in research it is important for REBs to be alert to them and to consider them in their deliberations, and to be sensitive to the consequences of power and autonomy that they are granted.

The definition of research as "an undertaking designed to extend knowledge through a disciplined inquiry or systematic investigation" (lines 61-2) is too broad, and it would be useful to add "and disseminate" after "extend" to reinforce the boundaries of the policy. For instance, the policy should not apply to quality assurance and improvement, or other knowledge producing activities that are not intended to lead to the dissemination of results, even if such knowledge producing activities involve systematic investigation.

The new language in lines 363-368 which exempts discussions with authorized spokespeople or personnel tasked with public communications from REB review is very welcome and should be retained. Some REBs likely will reduce the positive effect of this by treating questions that solicit the views of professionals or officials as involving personal risks that REBs have a responsibility to mitigate, even if those professionals or officials are providing these views in the ordinary course of their employment. Often the terms of their employment or appointment may include offering controversial opinions

on behalf of the profession or organization that they represent, and thus these too should not lead to them being considered research participants. It would be helpful to make this clearer in the application notes.

The placing of the onus on the researcher to explain why any of the 12 elements of informed consent that appear at lines 821-62 should not be included may lead to unnecessary time spent discussing these in the submission of protocols to REBs, and may lead REBs to be overly cautious in judging which of these must be included. The following phrase, at lines 817-18, should therefore be deleted: “It is up to the researcher to explain to the REB why, in a particular project, some of the listed disclosure requirements do not apply”.

The disclosure of material incidental findings that is discussed in Article 3.4, lines 950-70, should not apply to critical research that is focused on organizations or powerful officials.

The paragraph “Respect for Communities and Minimizing Social Disruption” (lines 1599-1608), which instructs REBs to require researchers to “demonstrate respect for communities they engage in research by exercising due diligence to anticipate and minimize any risk and social disruption that might be created by research” is unacceptable and must be deleted. Much political science research, as in many other fields, may very legitimately contribute to social disruption, for instance where it challenges structures of inequality. Aside from the ethically problematic character of this paragraph it will create practical problems for REBs that are called upon to enforce it.

The discussion in lines 2049-2074 appears to extend the authority of the REBs to include all research involving human participants done by faculty members or students in other organizations. For instance, the current wording states:

Members of an institution, that is its faculty, staff and students, may be affiliated with other institutions or may be engaged in consulting or other professional activities in a separate enterprise. To enable the consistent application of this Policy, members of the institution should obtain REB approval of the ethical responsibility of their research if they engage in research involving humans related to one of their other organizational affiliations or their supplemental professional activities.

This would appear to apply, for instance, to a political scientist who carries out polling for a political party, or who is hired by a government to conduct a research project requiring the solicitation of views from officials. This extends the reach of the REBS too far. If applied as written it could seriously restrict the ability of faculty and students to become involved with activities outside the university (including internships), at a time when such involvement is rightly viewed as increasingly important by the granting councils and others. The wording of this article should be changed to make clear that only activities that are closely related to the REB’s institution should be included.

The CPSA notes that the revised appeal process, lines 2586-2625, is significantly improved and should be retained. Even if this is only rarely used it will provide a mechanism of accountability that did not previously exist.

Chapter 8 on multi-jurisdictional research, continues to impose excessive burdens on low risk social sciences and humanities research in multiple jurisdictions. The inclusion of categories d-f at lines 3120-3128, even with the qualifier “may” at line 3111, is likely to lead REBs to err too far in the direction of requiring researchers to involve REBs in other jurisdictions or to explain why they are not. Category (f), for instance, refers to research conducted in another country by a researcher at a Canadian university. If the researcher is interviewing government officials in ten European countries the policy appears to require the approval of an REB in each country. Additionally, the chapter appears to require the Canadian REB to enforce foreign rules that may not be consistent with the TCPS. For instance, if Canadian REBs require US Institutional Review Board approval of all research done in the US then this chapter also appears to put the Canadian REBs in the position of enforcing US research ethics rules on Canadian researchers for that portion of their research. In some cases this may be reasonable, but in others it will undermine the advances that the TCPS II has made in developing greater sensitivity to social sciences and humanities research, where the US rules have not. The wording of this chapter should be changed to exempt all low risk research from foreign REB review.

#### Research Involving Aboriginal Peoples

The December 2009 draft of Chapter 9, regarding Aboriginal peoples, is an improvement over the 2008 draft. It pays greater attention to ethical issues arising in social science research, with more nuance, and it offers greater clarity on certain questions. However, after consulting some of our members with expertise in this area – Aboriginal and non-Aboriginal – we believe that serious problems remain, in terms of both conceptual approach and operational details.

These comments should be read in the context of our observations above about the overall improvements in the most recent draft regarding research involving or about political elites and other potential subjects of political science research. As noted, however, we still have important concerns in this regard.

While we strongly support the chapter’s emphasis on respect for Aboriginal peoples, their communities and their knowledge systems, we have four significant conceptual concerns.

First, in several places (lines 3388, 3407-11, 3515-7, 4039-41) the draft appears to equate ethical research with politically engaged research that supports the political aspirations and agendas of Aboriginal peoples. This is an important issue of academic freedom: while many political scientists are supportive of the objectives of Aboriginal peoples, such a political stance should not be made a requirement for ethical approval.

Second, while we recognize the importance of community in Aboriginal societies, the overwhelming emphasis in the draft is upon securing authorization from communities

(the definition of which, as discussed below, is problematic). In our opinion, insufficient allowance is made for the possibility of individuals agreeing to take part in a research project that may not be acceptable to the community or the community leaders.

Third, given the key role assigned to ‘the community’ in the ethical approval process, we find the definition of community at once too vague and too limiting. The draft stipulates that a community is “a collectivity with shared identity or interests that has the capacity to act or express itself as a group” (lines 3451-2). Among the unanswered questions this definition poses are: who decides that there is a shared identity or interest, those in the community or an outside observer? What does it mean to have “the capacity to act or express itself” and who decides whether this capacity exists? Lines 3453-61, which elaborate on the definition, do refer to “informal communities” but emphasize formal institutions. Would the single mothers on a First Nations reserve who rarely if ever come together in any formal way but who have an extensive informal network qualify as a community? What happens if they are prepared to endorse a research project but the formal reserve leadership is not?

Fourth, although sections 9.5, 9.6 and 9.7 go some way to addressing the problem, we remain of the view that too much leeway exists for those in positions of authority within the community to block research that may prove critical of them or of the status quo.

In terms of the practicalities, we are concerned that the many complex and potentially contentious issues arising from the draft will cause difficulty for REBs in evaluating specific projects. Some REBs may have only limited expertise in these areas but even those with call on substantive expertise will encounter interpretive uncertainties. In turn, this could encourage the sort of ‘ethics creep’ discussed earlier, and a consequent reduction in the willingness of researchers to undertake work relating to Aboriginal people.

Some of these uncertainties could be resolved by minor wording amendments; a few are listed below. Others, however, arising from the conceptual issues discussed above – for example, precisely who should be recognized as having authority to approve a project on behalf of ‘the community’? – require further reflection and refinement.

§ at lines 3606-8, the draft observes “In some situations, the determination may be that the welfare of relevant communities is not affected, and consent of individuals is sufficient.” The phrase “welfare of relevant communities” is extremely amorphous; moreover, there is the question of who is to decide what constitutes “welfare” and how it might be affected.

§ the hypothetical example at lines 3624-3632 indicates that “permission of the land claims organization that carries authority to approve research in Nunavut is required”. No land claim organization in Nunavut has authority to approve research involving human subjects.

§ Article 9.3 requires researchers to seek formal engagement of community leaders

“on lands subject to a claim as defined by the community”. This provision needs to be revisited as it is far too broad. Much of the land on which the City of Toronto sits on land that is subject to an unresolved claim; the present wording implies that *all* research in that part of Toronto requires engagement of the leaders of the First Nation pursuing the claim?

The emphasis in this memo on the shortcomings of the most recent draft of the second edition of the TCPS is not intended to suggest that there are not also a great many positive changes that have been made, relative to the first edition. As noted at the beginning of this memo, the CPSA strongly supports the retention of these positive changes and appreciates the efforts that have been made to address the concerns of political scientists and other social science researchers.