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## Academic Freedom and the Ethics of Research

*Stephen Maitzen*  
*Chair, Acadia University Research Ethics Board*

I thank the editors for inviting me to discuss the role of the Research Ethics Board (REB) and the relationship between academic freedom and the new ethical guidelines governing research on human subjects. My opinions reflect my experience in overseeing the operations of the REB and trying to ensure that the Acadia community complies with the new guidelines; in offering them, however, I don't claim to speak for every member of the REB.

In 1998, after much nationwide consultation, and in order to implement a single, consistent set of ethical research guidelines, Canada's three granting Councils—CIHR, NSERC, and SSHRC—adopted the Tri-Council Policy Statement *Ethical Conduct for Research Involving Humans* ("TCPS," for short). The TCPS guidelines apply to any institution, such as Acadia, which receives funding from any of the three Councils. They require each such institution to establish an independent REB which reviews the ethics of all "research involving human subjects which is conducted within, or by members of, the institution." Acadia's REB, established by the University Senate in 1999, draws its membership from among faculty, students, and members of the local community. I encourage researchers and other interested parties to visit the REB's website <<http://ace.acadiau.ca/gradstud/reb>> and to consult the searchable electronic version of the guidelines available there.

The TCPS emerged principally to govern biomedical and pharmaceutical research, in which the risk of serious harm to human subjects is at its most substantial; thus, the guidelines are not tailor-made for an institution such as Acadia, where most of the research falls into neither of those categories. Acadia's REB must therefore take guidelines designed largely for other kinds of research and adapt them to review projects most of which come from the social and behavioral sciences, professional studies, and humanities. In doing so, our foremost goal has been to ensure ethical conduct in research while minimizing the intrusiveness and bureaucracy of our procedures and requirements. Recently, the Humanities and Social Sciences Federation lobbied the Councils to produce a version of the TCPS which better reflects the nature of research in the social sciences, humanities, and journalism. I hope that HSSFC gets what it requested.

The goal of the TCPS was not to codify the sundry research practices and local norms that existed in 1998; the goal, instead, was to replace them with a uniform, nationwide set of guidelines. Because it would have no point if it did not at least potentially constrain the conduct of research, the TCPS inevitably comes up against the essential effort to preserve academic freedom.

Recognizing this potential conflict, CAUT has proposed a Model Clause, “Application of Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans,” which it recommends for inclusion in faculty Collective Agreements. Nothing illustrates the tensions between academic freedom and the new ethical guidelines better than a comparison of the TCPS and the CAUT Model Clause. I will mention just four of many sources of actual or potential conflict.

First, Model Clause 1.2 would forbid using the TCPS “to circumscribe the academic freedom of researchers as specified [elsewhere in the Collective Agreement].” Article 5.20 of AUFA’s Tenth Collective Agreement guarantees the freedom to “carry out research...in a reasonable manner without interference,” while the TCPS is largely *designed* to interfere with research (even if otherwise reasonable) that the REB sees as unethical. Depending on the interpretation of Article 5.20, the potential conflict here is serious and fundamental, even without the additional language of the CAUT Model Clause. I don’t pretend to know how to resolve it.

Second, Model Clause 1.3 would deny to the REB “the power to recommend discipline, to impose sanctions or discipline or to cause discipline to be imposed on members of the bargaining unit.” As I interpret this clause, it conflicts with the REB’s obligation under TCPS Article 2.1 to “terminate” ongoing research that is found to be unethical, an obligation the REB cannot satisfy if it cannot recommend discipline or impose sanctions. Indeed, the Councils have advised REBs that when they discover ongoing unethical research they should direct the institution to freeze the researcher’s funds. It’s hard to see how doing so would not count as a form of discipline or sanction.

Third, Model Clause 2.1 would deny to the REB the power “to reject any proposal on the grounds of...its scholarly merit,” while TCPS Article 1.5 requires the REB to “satisfy itself” regarding the research design of all projects which pose more than minimal risk of harm and allows the REB to “assume complete responsibility for the scholarly merit” of a proposal. The TCPS, therefore, can require rejecting a proposal for poor research design and allows rejecting a proposal for other deficiencies in scholarly merit. Model Clause 2.1 reflects a strong and sensible commitment to academic freedom, but its inconsistency with the TCPS still needs resolving.

Finally, Model Clause 3.4 would allow an Appeals Board to hear appeals of REB decisions on both procedural and substantive grounds. The Councils, on the other hand, have publicly stated that appeals should be considered on procedural grounds only, and it’s easy to see why. Allowing substantive appeals essentially sets up *two* REBs and undermines the first of them: try the first REB; if for any reason you don’t like the result, try the second.

Again, Acadia’s REB consists of faculty members, students, and community representatives who share the values of the University; like CAUT, we emphatically support academic freedom and the effort to preserve it. As members of the REB, however, we share an obligation with the University, imposed by TCPS Articles 1.2, 1.3, and 4.1, to protect the REB’s independence from outside pressure. The resulting conflict

is one that all of us on the REB confront from time to time. The national Secretariat on Research Ethics, the agency chiefly responsible for monitoring nationwide compliance with the TCPS, warned CAUT some time ago that the Model Clause would “incapacitate REBs” and “seriously compromise” the independent ethical review of research. In my opinion, this conflict must be resolved at the national level in consultations between CAUT and the Councils. Meanwhile, it’s fortunate that our Collective Agreement does not expose Acadia to the charge of non-compliance, and the severe penalties that might result, by containing the language of the Model Clause.

The TCPS is hardly a flawless document. It is philosophically somewhat suspect, only dubiously coherent, inadequately specific, and clumsily written. One might also question the legitimacy of having to apply the TCPS to all research, whether or not funded by the Councils: in theory, a persistently non-compliant researcher at Acadia could cause the University to lose all of its Council funding, even if the researcher herself receives no funding at all from the Councils or from the University. As I understand it, the Councils use a “dirty hands” argument to justify this blanket enforcement mechanism: a single unethical researcher allegedly taints the whole institution. I have heard one administrator defend the blanket policy by insisting that “the Councils can put whatever restrictions they like on the use of their money.” That’s an unfortunately common mistake. It’s not the Councils’ money; it’s your money and mine as taxpayers, and not everything goes in the use of taxpayers’ money. Be that as it may, the current TCPS governs all human-subjects research in Canada. While the internal flaws of the TCPS are being corrected and its implications for academic freedom are being confronted, Acadia’s REB will continue trying to achieve compliance as unobtrusively as we can.