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Final Report of the Experts Committee for Human Research Participant Protection in Canada

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Moving Ahead

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It is important to note that the views and recommendations in this report may not necessarily be representative of the official positions of the organizations at the Sponsors' Table.

We dedicate this report to our friend Arthur Kroeger (1932-2008) whose leadership, hard work, and collegial style moved us toward consensus on many complex issues.

Table of Contents

Chair's Foreword

The Experts Committee for Human Research Participant Protection in Canada presents herewith its final report and recommendations concerning the development of a new comprehensive system in Canada.

The final report is the product of some twenty months work. Beginning in September, 2006 and ending February, 2007 the Committee held monthly face-to-face meetings which it supplemented by conference calls and the circulation of draft texts by various members.

During the course of its work, the Committee assessed the concerns that had been raised about the existing Canadian governance arrangements and then examined alternative models that might serve to deal effectively with these concerns. It also arranged to receive briefings from a number of organizations with relevant experience and expertise in its field, including the National Council on Ethics in Human Research (NCEHR), the Interagency Advisory Panel on Research Ethics (PRE), the Association for the Accreditation of Human Research Protection Programs (AAHRPP), and the Canadian Council on Animal Care (CCAC).

The approach used by the Committee was to build on much work (analysis, consultations and consensus-building) that had been done over the preceding decade, particularly by NCEHR and PRE.

Under the auspices of the Sponsors' Table, a four month public consultation process was conducted. This process received 104 submissions totaling over 600 pages of comments. The Committee took seriously these comments as is evident in the changes in the final report.

The Committee's objective in developing its proposals was to achieve, not perfection, but workability. In our view, the most important thing at this stage is to put in place the best set of measures that can be devised and then let them evolve in the light of experience.

The Committee's conclusions and recommendations are set out in this report. The comprehensive system and organization that it proposes would, in the Committee's judgment, provide the most effective way of enhancing the protection of human research participants in Canada.

Arthur Kroeger,
Chair of the Experts Committee

List of Acronyms

AAHRPP	Association for the Accreditation of Human Research Protection Programs
AUCC	Association of Universities and Colleges in Canada
CAREB	Canadian Association of Research Ethics Boards
CCPHRP	Canadian Council for the Protection of Human Research Participants
CCAC	Canadian Council for Animal Care
CIHR	Canadian Institutes of Health Research
CPSRIH	Canadian Policy Statement on Research Involving Humans
ICH GCP	International Conference on Harmonization Good Clinical Practices
NCEHR	National Council on Ethics in Human Research
NSERC	Natural Sciences and Engineering Research Council
PEERH	Programs for Ensuring Ethical Research with Humans
PAS	Public Assurance System
PRE	Interagency Advisory Panel on Research Ethics
SSHRC	Social Sciences and Humanities Research Council
TCPS	Tri-Council Policy Statement
REB	Research Ethics Board

1. Preface

The governance of research involving humans in Canada is an evolving process that requires ongoing review and revision. There have been a number of commissioned reports on the state of affairs in Canada regarding the governance of research involving humans. As early as 1995, the National Council on Bioethics in Human Research (now the National Council on Ethics in Human Research, NCEHR) produced a report documenting the research ethics challenges facing medical schools in Canada.[1] It detailed concerns that resonate to this day. Also in 1995 the Deschamps Report on the governance of health research in Québec was released.[2] This report provided the foundation for the province's plan of action for reform. During this time, the three federal granting agencies were attempting to bring their separate research ethics policies together based on a set of common principles for research involving humans. The publication in 1998 of the *Tri-Council Policy Statement: Ethical Conduct of Research Involving Humans* (TCPS) is a milestone in Canada of forging a unified approach to the research ethics policy.[3] Two subsequent reports, one by the Centre on Governance at the University of Ottawa[4] and the other by Michael McDonald and his colleagues[5], further documented major concerns with the governance of research involving humans in Canada. Other reports and publications on various aspects of the governance of research

[1] National Council on Bioethics in Human Research, "Protecting and Promoting the Human Research Subject: A Review of the Function of Research Ethics Boards in Canadian Faculties of Medicine", *Communiqué*, Winter, 1995, pp. 3-32.
[2] Pierre Deschamps, Patrick Vinay, and Sylvia Cruess, *Comité d'experts sur l'évaluation des mécanismes de contrôle en matière de recherche clinique*, Ministre de la Santé et des Services sociaux du Québec, 1995.
[3] Available online at http://pre.ethics.gc.ca/
[4] Centre on Governance, *Governance of the Ethical for Research Involving Human Subjects*, University of Ottawa, 2000.
[5] Michael McDonald, et al, *The Governance of Research Involving Human Subjects*, Law Commission of Canada, 2000.

involving humans have emerged in recent years; some of which are discussed in more detail in this report.[6]

The policy work outlined above, especially the release of the TCPS, galvanized Canadian research organizations, our universities and teaching hospitals in particular, to develop the infrastructure necessary to oversee the ways in which participants were being protected in the research being conducted under their auspices. Many organizations invested significant sums of money in staff and information technology to create or greatly augment their processes of research review and conduct. Where they were previously absent, new research ethics boards (REBs) were created in conformity with TCPS policies. Importantly, many researchers from the social sciences and humanities were required to submit their proposals for ethical review for the first time. In the course of doing so, many encountered difficulty when the REBs did not apply the concept of proportionality of risk appropriately to their proposals. Researchers from the health sciences also have complained of this problem and it remains one of the outstanding challenges in the participant protection programs.

In the past decade, progress has been substantial. Most organizations that conduct research have moved forward either in the creation of their own research participant protection programs or in developing linkages with programs available through other organizations. We are aware that some institutions have created excellent programs, but

[6] For example, two reports that a Committee member received through an Access to Information Request; Trudo Lemmens, Chantal Beauvais, Loren Falkenberg, and Edith Deleury, "Report to the Three Granting Agencies from the Ethics Review Committee Regarding the Assessment of Institutional Policies with the TCPS" December 20, 2002 and the T. Douglas Kinsella and Edward W. Keyserlink "Review of the Clinical Ethics Research Board The University of British Columbia: Final Report" August 1, 2001.

unfortunately, the number and quality of the programs that have been developed is not known and there is no way currently to know how well they are all working. In addition, Health Canada introduced a new regulatory framework for clinical trials and expanded its Inspectorate's authority to include clinical trials.

It is important to recognize that the research enterprise in Canada has not stood still while many organizations have been busy developing their participant protection programs. The volume of research conducted in Canada has grown significantly over the last decade putting great pressure on all the players involved, perhaps most of all on the people who serve as REB members and on the staff that maintain the infrastructure. The ethics environment that they must navigate has become crowded with new policies and guidelines regarding research ethics emanating from many different sources and supported by different authorities. Too frequently, acknowledgement of each others' requirements has not occurred.

Some institutions have created excellent programs, but unfortunately, the number and quality of the programs is not known and there is no way currently to know how well they are all working.

Despite the broad recognition that the governance of research in Canada must evolve, proposals for remedial measures have often proven controversial. Some stakeholders have objected that strengthened and comprehensive participant protection could constitute a bureaucratic burden that would impede the work of researchers.

Concerns have also been raised about the costs of an enhanced participant protection system, and how such costs might be met. In addition, some members of the social science and humanities communities have objected to having a system of participant protection which draws heavily on a biomedical model applied to their work.[7]

In planning its work, the Committee decided at the outset that it should build upon the extensive analytical work and consultations that have been carried out in the past years . . .

A reasonable conclusion is that the current system has evolved as far as it can in the absence of a national plan and set of standards and it is now time to bring a coordinated and comprehensive system of overall participant protection to bear in order to maximize efficiency and reduce burdens to the extent possible. The Sponsors' Table explicitly recognized this need when it created the Experts Committee.

In planning its work, the Committee decided at the outset that it should build upon the extensive analytical work and consultations that have been carried out in past years, and that it should put forward a plan for action. This is why the Committee chose ***Moving Ahead*** as the title for its report.

The Committee recognized that an effective and comprehensive system of human participant protection must encompass and engage all five major links in the research chain, irrespective of research discipline, i.e., researchers and research institutions,

[7] On this issue in general see the consultation document, Interagency Advisory Panel on Research Ethics, Social Sciences and Humanities Research Ethics Special Working Committee, "Qualitative Research in the Context of the TCPS: A follow-up to the *Giving Voice to the Spectrum* report and a Discussion Paper" Secretariat on Research Ethics: Ottawa, 2007.

research sponsors/funders, government and other regulatory or quasi-regulatory bodies, research ethics boards, and research participants. The Committee, therefore, has developed a proposal that draws upon the main elements of the Social Sciences and Humanities Research Council (SSHRC) public assurance system and NCEHR's proposal for an accreditation system, as well as other proposals that have been advanced in recent years, with a view to both addressing the concerns with and perceived shortcomings of the current arrangements and eliciting broad support from all relevant stakeholders. It has also taken into account participant protection measures that have been put in place by various organizations and jurisdictions in Canada and internationally.

Major Benefits of a Participant Protection Program

-Standards for Programs
-Standards for Education and Educational Attainment
-Access to Educational Material
-REBs better resourced
-REBs better prepared
-More efficient reviews
-More consistent reviews
-Potential to reduce number of reviews in multi-site studies
-Increased confidence in the protection provided to research participants

The major benefits that could be expected from a pan-Canadian participant protection program that is embraced by the research community are a set of standards which organizations can use to enhance or fine tune their own research ethics programs, clear expectations for the education and educational attainment of all players in their research programs (researchers, research staff, students, REB members), knowledge of and access to the range of educational materials available to organizations, REBs that are better resourced, better prepared, and consequently provide more efficient and consistent reviews of research proposals, the potential for cooperation across sites in multi-site studies to reduce the number of reviews, and ultimately and most importantly, increased

confidence in the protection provided to all those individuals who contribute to the development of knowledge by participating in research studies.

The Committee agreed that its work should be guided throughout by the need to protect human participants in research. Accordingly, it defined its principal objective as being:

> *to develop a Canadian system for the protection of human research participants that is effective, efficient, broadly applicable, and one in which safeguards for participants are proportionate to the risks in each case.*

Some people say that that a strengthened system of participant protection, and particularly an accreditation system, could be cumbersome, expensive, time consuming, and an impediment to research. The Committee has taken these concerns seriously. It is true that if the weaknesses and deficiencies in existing arrangements are to be corrected some additional effort on the part of the research community will be required. That being said, institutions that have already established effective participant protection arrangements, e.g. under the TCPS, should be able to adjust to the proposed new system with minimal difficulty. The Committee is also of the view that those implementing the new system should demonstrate sensitivity to the real concerns of the social sciences and humanities communities and to research that employs qualitative methods.

The Committee believes . . . what is primarily required is to put in place the best system that can be devised, phase it in and allow it time to develop, understanding that adjustments will be made over time in the light of experience.

The same comment applies to the fears that have been expressed that "ethics creep" in future years could pose progressively greater impediments to research --- some believe it has already occurred. It would not be practical for the Committee to prescribe detailed measures to preclude such a development. Indeed, it should be the responsibility of those operating the new system to exercise good sense in limiting safeguards to only those measures that are necessary.

It should also be emphasized here that, if implemented as described in this report, the Committee's recommendations could actually improve the quality of the work of all those in the research chain and simultaneously reduce the impediments to research by, for example, clarifying rules, reducing the problem of time-consuming and sometimes conflicting REB decisions in multi-site projects.

The Committee believes that, at the present juncture, what is primarily required is to put in place the best system that can be devised, phase it in and allow it time to develop, understanding that adjustments will be made over time in the light of experience. In developing its proposal, the Committee has sought to attain, not perfection, but workability. The Committee believes that if a system of the character described in this report were put in place, and supported in good faith by stakeholders, it would come to represent a significant advance in protecting human research participants.

This report is very much a collective product. Every member of the Committee contributed to the contents during our frequent meetings. A number of members also

submitted draft text that was then discussed and revised as the Committee considered necessary, before being incorporated into the Report. While individual members of the Committee may well hold views that diverge in some degree from various passages in the report, all endorse the report and its recommendations as a whole.

2. Background

2.1 Sponsors' Table for Human Research Participant Protection in Canada

On June 21-22, 2005, NCEHR convened a workshop of 54 stakeholders for the purpose of reviewing and responding to the penultimate draft of "Promoting Ethical Research with Humans" – the *Report of the Task Force for the Development of an Accreditation System for Human Research Protection Programs*.[8] In response to the outcome of this workshop, a meeting was organized on September 16, 2005 by the Royal College of Physicians and Surgeons of Canada which involved the College, the Association of Universities and Colleges in Canada (AUCC), Health Canada and the three Canadian federal research granting agencies (CIHR, SSHRC, and NSERC). At this meeting, of what has become known as the 'Sponsors' Table', it was agreed that,

> …it would be useful to establish an expert committee to look into a range of governance models for the oversight of ethics in human research and to explore issues including implementation and funding.[9]

Over the next several months, additional meetings of the Sponsors' Table were held, and its membership increased to include the following organizations:[10]

- Alberta Ministry of Health and Wellness,
- The Association of Canadian Academic Healthcare Organizations,

[8] Available online at www.ncehr-cnerh.org
[9] AUCC Update, October 12, 2005 Number 7
[10] The Sponsors' Table web site is www.hrppc-pphrc.ca

- The Association of Faculties of Medicine of Canada,
- The Association of Universities and Colleges of Canada,
- Canada's Research-Based Pharmaceutical Companies,
- The Canadian Federation for the Humanities and Social Sciences,
- The Canadian Institutes of Health Research,
- Fond de la recherche en santé du Québec,
- Health Canada,
- Health Charities Coalition of Canada,
- Research Canada,
- The Natural Sciences and Engineering Research Council,
- The Social Sciences and Humanities Research Council, and
- The Royal College of Physicians and Surgeons of Canada.

Terms of Reference for this group were adopted which stipulated the main objectives for the Sponsors' Table, namely:

- To establish an Experts Committee;
- To engage other organizations sharing a common interest with the Sponsors' Table;
- To provide terms of reference for, and facilitate the activities of, the Experts Committee;
- To establish a Secretariat and select a Chair for the Experts Committee;
- To develop a common communications strategy for the Sponsors' Table; and
- To utilize individually and collectively the Experts Committee's findings and recommendations to consider next steps.

The initial tenure of the Sponsors' Table was established at 3 years, from its inception in 2005.

2.2 Experts Committee for Human Research Participant Protection in Canada

2.2.1 Composition

In June 2006, the Sponsors' Table issued a call for nominations to the Experts Committee. The key criterion for selection to the Committee was that members were to be selected for their expertise, were not to be representative of any organization, and were to serve as volunteers.

Consideration was also given to the overall balance of perspectives, as well as regional, linguistic, and gender representation. Former federal Deputy Minister Arthur Kroeger was invited by the Sponsors' Table to Chair the Committee.

The Committee consisted of the following members:

Professor John R.G. Challis, at the time of appointment, Vice President (Research) and Associate Provost, University of Toronto (Physiology)

Dr. Karen Cohen, Associate Executive Director, Canadian Psychological Association, Clinical Assistant Professor, University of Ottawa (Psychology & Accreditation)

Mr. Jack Corman, President/Secretary, Institutional Review Board (IRB) Services Inc. (Clinical Trial Regulations & Private REB Administration)

Me. Pierre Deschamps, Avocat, Faculté de droit, L'Université McGill (Law & Theology)

Dr. Jocelyn Downie, Canada Research Chair in Health Law and Policy, Professor of Law and Medicine, Dalhousie University (Law & Philosophy)

Dr. Serge Gauthier, Professor, Faculty of Medicine and Chair, Faculty of Medicine Ethics Institutional Review Board, McGill University (Neurology & Ethics)

Ms. Patricia Lindley, Director, Office of Research Ethics Administration, Dalhousie University (REB Administration)

Dr. Deborah C. Poff, Professor, Department of Philosophy and Political Science, University of Northern British Columbia (Philosophy)

Dr. Dorothy Pringle, Chair, Committee on Human Subjects Research and Professor Emeritus of Nursing, University of Toronto (Nursing)

Dr. Vincent Sacco, Professor, Department of Sociology, Queen's University (Sociology & Criminology)

Dr. Hal Weinberg, Director, Office of Research Ethics, Simon Fraser University (Physiological Psychology)

Mrs. Marianne Vanderwel, at the time of appointment Director, R&D Oversight - GCP and Pharmacovigilance, Pfizer Inc. (Pharmaceutical Quality Management and Accreditation)

Dr. Jonathan C. Yau, Clinical Associate Professor, Faculty of Medicine, University of Calgary and Chief of Medicine, Rockyview General Hospital (Internal Medicine & Hematology)

In addition, Dr. Peter Monette, of Health Canada provided secretariat support.

It should be noted that the Committee members came from a wide range of disciplines with a balance between those from the social sciences and humanities, and the biomedical and health sciences. They brought a range of experiences to the table as researchers, research ethics board members, research ethics administrators and research institution administrators, as well as experience in government and as research participants.

2.2.2 Mandate and Work Plan

In its direction to the Committee, the Sponsors' Table articulated the following mandate:

> To provide expert advice on the development of a system for human research participant protection in Canada, considering accreditation and alternative models, and taking into account different levels and types of risk in research. This process will include an assessment of existing means of ensuring human research participant protection for various types of research and of the gaps that such a system would address.[11]

The following work plan was adopted by the Committee:

- Monthly face-to-face meetings;

[11] Information on the Experts Committee and its terms of reference can be found online at www.hrppc-pphrc.ca

- Invited presentations;[12]
- Discussion and analysis of presented materials;
- Review of relevant literature / documentation;
- Drafting of an Interim Final Report;
- Public consultations on the Interim Final Report;
- Discussion and analysis of submissions; and
- Drafting of the Final Report.

On behalf of the Committee, Health Canada contracted consultants with the Government Consulting Services to conduct the technical work of developing a draft costing model for the proposed recommendations. The consultants worked with a subcommittee in establishing the cost estimates.

The tenure of the Committee was given as 2 years. However, from the outset, the objective of the Committee was to complete its work thoroughly but expeditiously, and to produce a draft final report within 9 months of the first meeting. Ongoing communication between the Committee and the Sponsors' Table was carried out through monthly meetings between the Chairs of each body. In addition, two meetings were held by the Chair and the Secretariat with members of the Sponsors' Table.

[12] Presentations were made to the Committee by the following organizations: National Council for Ethics of Human Research (NCEHR), Interagency Advisory Panel on Research Ethics (PRE), Canadian Council on Animal Care (CCAC), US Office for Human Research Protections (OHRP), Association for the Accreditation of Human Research Protection Programs (AAHRPP), Social Sciences and Humanities Research Council, Canadian Council for Health Services Accreditation (CCHSA), and Dr. Sue Dodds of the University of Wollongong, AUS.

While the Committee was guided by its mandate and initial directives from the Sponsors' Table, its deliberations were independent and were conducted without interference from that body.

On March 23, 2007, an initial draft report was provided to the Sponsors' Table. Among other things, it proposed a new independent Council under the *Canada Corporations Act* designed to enhance the protection of research participants in Canada. The Council would have three functions: policy development, education and accreditation including the development of standards derived from the policy against which the functioning of research participant protection programs in organizations would be assessed.

On the basis of feedback received from the Sponsor's Table the Committee considerably expanded its draft report, providing additional analysis and explanations of its recommendations. This revised draft report was subsequently delivered to the Sponsors' Table and under its auspices a broad consultative process was initiated on August 15, 2007 and ran until November 30, 2007. One hundred and four submissions were received; 52 from organizations and 52 from individuals.

These briefs were read by the members of the Expert Committee and a detailed analysis was conducted. In addition, Health Canada hired an independent contractor to provide a summary analysis of the submissions.[13]

[13] This report is available at the Sponsors' Table's web site.

The Committee discussed and determined how to respond to the thoughtful input that was received. We did not change the fundamental recommendation in the original proposal, that is, that the best way to provide an effective, flexible yet coherent national system to more certainly protect human research participants is to create a Council that would bring the three key elements of education, policy and accreditation together in a single stand alone entity whose singular mission would be to provide national leadership and culminate in tangible improvements to the protection of human research participants. However, we did adjust a number of elements of the Report to reflect comments and concerns derived from the consultations including a plan to implement the development of the Council in stages.

2.3 The 'Non-System' as it Stands Now

Canada would benefit from an enhanced system to protect the participants of research studies. The conduct of such research is governed currently by what is effectively a complex patchwork of regulations and guidelines, developed over time by a variety of agencies and organizations, operating under various jurisdictions and mandates and, by and large, independent of one another. Over the course of the past decade or so, governance measures have been put in place by a number of players, each acting in the best interests of research participants, but resulting in a 'non-system' as illustrated below.

Research organizations – some research organizations establish policies to regulate research conducted under their auspices. Some hospitals, for example, make ethics review a condition of physician privileges.

Funders of research – federal/provincial/territorial governments conduct or directly fund research and, through policies, exercise some control over the ethics of such research. Many different non-governmental organizations also fund research and, through terms of their funding, also exercise some control. The three federal research granting agencies (CIHR, SSHRC, and NSERC) make compliance with the TCPS a condition of funding. Some provincial research funding agencies, e.g., Nova Scotia Health Research Foundation, and some charities that fund research, e.g., the Heart & Stroke Foundation of Canada, also make compliance with the TCPS a condition of funding.

The conduct of research is governed currently by what is effectively a complex patchwork of regulations and guidelines, developed over time by a variety of agencies and organizations, operating under various jurisdictions and mandates and, by and large, independent of one another.

Sponsors of research – sponsors of research take responsibility not only for financing research but also for the initiation and management of research. Typical industry sponsors of research in Canada include members of Canada's Research-Based Pharmaceutical Companies (Rx&D), of the Non-Prescription Drug Manufacturers Association of Canada, and of BIOTECanada, the organization that represents many of Canada's biotechnology companies. Many of these companies make compliance with national or international regulatory requirements a condition of sponsorship and conduct routine monitoring activities and audits of research sites.

Governments – Health Canada regulates research involving drugs, biologics, and medical devices through the *Food and Drugs Act*, its regulations, and guidelines. The *Assisted*

Human Reproductive Act regulates research involving human embryos. Industry Canada regulates research involving personal information through the *Personal Information Protection and Electronics Documents Act.* Some provincial/territorial governments regulate some research through legislation that relates directly to the ethics review of research (e.g., Québec, Newfoundland and Labrador assented to on December 12, 2006 but not yet proclaimed), privacy legislation, and various statutes that relate to the administration of the health care system (e.g., consent legislation). In addition, research in Canada can be subject to oversight through legislation from other countries if, for example, the research is directed toward the approval of a new drug in those other countries or funded by foreign governments (e.g., studies regulated by the US Food And Drug Administration or funded by the US Health and Human Services are subject to US regulatory requirements). Canadian researchers may also be subject to oversight through legislation in other countries if, for example, they are conducting research in those countries.

The principal problem is that the governance of research in Canada today is fragmented and uneven - many players overseeing many other players through the use of many instruments.

Professional organizations – some professional organizations consider compliance with research ethics policies as part of professional regulation. For example, the College of Physicians and Surgeons of Alberta has made ethics review a condition for all Alberta physicians conducting research.

Journal editors – a group of editors of leading medical journals have made compliance with ethical norms and clinical trial registration a condition of publication in their journals, e.g., "Is this clinical trial fully registered? A Statement from the International Committee of Medical Journal Editors", *Canadian Medical Association Journal*, June 21, 2005; 172 (13).

Courts – Canadian courts play an oversight role with respect to research through torts, contracts, and property law. For example, if a researcher failed to obtain free and informed consent to participate in a research study, she could be sued by the research participant. REB members could be sued if an REB failed to adequately review a consent form and a risk materialized that clearly should have been, but was not, mentioned in the consent form.

The principal problem is that the governance of research in Canada today is fragmented and uneven - many players overseeing many other players through the use of many instruments. There are significant gaps in this 'non-system' – e.g., *some* research is subjected to oversight, *some* sponsors are governed by *some* guidelines or regulations. And where conflicts and contradictions occur, no mechanism exists to reconcile these differences, or to provide leadership and guidance in the face of emerging ethical issues.

2.4 Concerns about the Current Arrangements

In recognition of the number of commissioned reports, articles and conference presentations that have explored, analyzed, and described the range of problems and challenges to the existing situation in Canada, the Committee believes it does not need to repeat this work in great detail. Readers not familiar with this body of work are invited to read through some of the literature cited in the footnotes.[14] The Committee would, however, like to identify the following problems as particularly acute and serious enough to warrant the kind of reform we are proposing. In establishing this list, members of the Experts Committee have drawn upon their personal knowledge and experience of the existing situation, their participation in national organizations including PRE, NCEHR, and the Canadian Association of Research Ethics Boards (CAREB), and their knowledge of the research that has been conducted on the current arrangements.

Comprehensiveness

The current arrangement does not adequately cover all research involving humans across Canada. Consider the following examples of research that would not be covered: a federal government department, which has not adopted the TCPS, conducting a study on

[14] See, for example, Jocelyn Downie, "Contemporary Health Research: A Cautionary Tale" *Health Law Journal*, Special Edition, 2003, pp. 1-20; George F. Tomossy, David N. Weisstub and Serge Gauthier, "Regulating Ethical Research Involving Cognitively Impaired Elderly Subjects" in David Weisstub, S. Thomasma, Serge Gauthier, and George Tomossy, *Aging: Decisions at the End of Life*, Kluwer Academic Press: Dordrecht, 2001, pp. 227-254; Willy Carl Van den Hoonaard, *Walking the Tightrope: Ethical Issues for Qualitative Researchers*, University of Toronto Press: Toronto, 2002; Trudo Lemmens, "Federal Regulations of REB Review of Clinical Trials: A Modest but Easy Step towards an Accountable REB Review Structure in Canada" *Health Law Review*, 2005, 13, pp. 39-50; C. A. Schuppi and D. Fraser, "Factors Influencing the Effectiveness of Research Ethics" *Journal of Medical Ethics*, 33, 2007, pp. 294-301.

illegal drug use and prostitution; staff at a women's shelter doing a detailed survey of domestic violence in homes in Nova Scotia.

There are many gaps in the current arrangements, including much unfunded research, some industry sponsored non-drug studies, some community-based research, and some government and private sector research. Indeed, Canada's definitive policy on the ethical conduct of research involving humans, the TCPS, applies only to research conducted at institutions receiving funds from the three federal research granting agencies, or where adopted by a particular organization (e.g., the Alberta College of Physicians and Surgeons of Canada or the Nova Scotia Health Research Foundation). At the same time, inconsistencies between the TCPS and Health Canada clinical trial regulations may make full compliance with the TCPS problematic for regulated clinical trials.

Lack of Effective Coordination of Research Oversight

Canada would benefit from an enhanced level of coordination of the various research participant protection mechanisms that are in place. The current participant protection arrangement is fragmented, because although this problem has been recognized for some time, lack of leadership and commitment for a national level coordinated effort has resulted in some jurisdictions taking action on their own, but an absence of action in other quarters. Lack of national coordination contributes to further fragmentation, and a potential diminution in participant protection and global competitiveness as well as Canada's reputation as a good place to conduct high quality ethical research. There often appears to be confusion among key players regarding their roles and responsibilities

resulting in an inability to coordinate action to address ongoing problems and meet new challenges.[15] Since its inception, PRE has endeavoured to bring transparency and community engagement to the process of ethics policy development, nevertheless, much remains to be done to achieve coordination of the overall oversight process. For example, a drug trial could be subjected to oversight under at least six different and uncoordinated frameworks: provincial privacy legislation, the TCPS, provincial consent legislation, the International Conference on Harmonization Good Clinical Practice (ICH GCP) standards, regulations under the *Food and Drugs Act*, and tort law.

Lack of Good Governance at the Organizational Level

Many research organizations would benefit from an improvement in their governance systems for the research involving humans conducted under their auspices. Problems include a lack of resources, inefficient REBs, ineffective or absent monitoring, a lack of organizational knowledge of relevant policies governing research involving human activities, and a lack of transparency and accountability. For example, a number of universities and hospitals have no system in place for monitoring research once it has been approved; therefore, if deviations from the protocol are made, the REB would have no way to know of their occurrence. Examples of deviations discovered through monitoring that has taken place include: consent forms not approved by the REB being used and consent forms for paediatric patients signed by individuals other than their guardians.

[15] This is particularly troublesome given that REBs perform a central public function of human research participant protection. Despite the importance of this public function, it is often not fully recognized and supported at higher levels of government.

Competing Interests

Serious competing interests are evident throughout the current arrangements. For example, federal research granting agencies are statutorily mandated to promote research and at the same time they are stewards of one of the most significant research ethics instruments in Canada, the TCPS. While the Councils seek to manage these dual and sometimes competing responsibilities, a transfer of the oversight function to an external body could serve to eliminate the difficulty inherent in the present situation. It is worth noting that the Governing Council of CIHR has explicitly acknowledged this dual mandate is not tenable.

Many REB members promote a culture of ethics to ensure that their organizations conduct research according to high ethical standards, but other REB members have interests in specific research projects or, more commonly, have interests in the promotion of research within their organizations which can compromise their ability to bring independent judgment to the proposals they review. Many organizations have made their REBs largely structurally independent, but others do not have sufficient independence within their local organizational structure to adequately protect research participants. For example, in some institutions the manner in which REB members are appointed can raise serious questions about REB independence. In some cases REB independence can be compromised, or can be seen to be compromised, when employees with explicit mandates to promote research sit on their REB as either voting or non-voting members. Conflicts of interest can also compromise the REB review when researchers who are

superiors or collaborators with the researchers submit a protocol and are permitted to take part in REB deliberations and/or voting.

Lack of Consistency among Research Ethics Policies and Guidelines

The existing research ethics governance policy statements, guidelines, and regulations would benefit from more coherence and consistency. This means that research conducted under one set of guidelines may be subject to very different rules when conducted under another set of guidelines. Indeed, research might be permitted in one context but not in another depending on the source of the funding. For example, a drug trial conducted at a university is subject to the TCPS while a drug trial in a family physician's office is not, but the latter is required to follow ICH GCP. Should the University adhere fully to TCPS, it could find itself in violation of the ICH GCP. In addition, it is important to recognize that Canadian researchers are active in international research and a lack of consistency between Canadian and international requirements can, in some cases, give rise to confusion on the part of researchers and REBs. Consider, for example, the difference between the TCPS and the ICH GCP with respect to clinical trials where there is an established standard of care in respect of the research proposal and only minimal risk to participants. Work is underway by PRE and others to address the inconsistencies across policies. Expectations are high that this will result in a resolution of some of the current problematic issues but additional challenges will continue to require attention.

Consistency and Duplication of Ethics Review

There is concern about an unacceptable level of variability with respect to REB decisions on the same or similar research applications. This is seen in multi-site research where different REBs may give disparate opinions on issues not related in any way to local context. This variability may reflect: a lack of expertise among REB members; the strain REB members face in reviewing too many applications; inconsistent interpretation of existing policy and standards; or the lack of clear guidelines and standards for REBs. An example of this occurred when three REBs reviewed a study: one passed it without revision, one passed it with revisions and one rejected it completely. The antithetical divergence among the REB decisions was not based on any reasonable expectation of difference of ethical views, nor on any local context issue (the non-local context issue was whether the TCPS permitted a certain intervention with healthy children as controls). Duplication of ethics review is a major impediment to the timely conduct of multi-site and collaborative research: a study conducted at 10 universities could require 10 different complete REB reviews potentially with resubmissions from each REB requiring revisions back to all of the other REBs. This situation affects social sciences, and biomedical and health sciences researchers equally. Organizations uncertain about the rigour and competency of other organizations' review processes generally require their own full review; a practice which can result in a series of duplicative reviews taking many months. The result is an inflated workload for REBs and unacceptable, even destructive delays for researchers, with no demonstrated increase in human research participant protection. One of the attractions of creating a comprehensive coordinated system in Canada as recommended in this report is that it could materially

reduce the workload of some REBs, and some of the burdens of duplication currently borne by researchers.

Relevant Expertise of REB Members

Related to consistency, enhancing the competency of some REB members and in other cases, adding members with specific competencies would greatly improve the functioning of the REBs on which they sit. Some members of REBs are not sufficiently informed about the requirements (including regulations, guidelines, and policies) appropriate to the nature of the research being reviewed. Additionally, some REBs do not have any members with appropriate levels of expertise in ethics, law, or specific research methods. For example, some REB members have not heard of the TCPS or the clinical trials regulations, some REBs do not include members knowledgeable of the rules with respect to mature minors or the privacy of health information in their particular jurisdictions, and some do not have members with expertise in qualitative research methodology and yet they are reviewing qualitative research. Chronic high turn-over rates on REBs are common, reflecting the heavy workload borne by REB members, and the general lack of recognition given to this work by organizations. The costs of this turnover include a lack of efficiency when REBs are on continuous learning-curves, lack of consistency in REB reviews, over-reaching of REBs due to uncertainty about the interpretation of guidelines and regulations or lack of understanding of appropriate methodologies, and failing to follow the TCPS and other relevant guidelines and policies thereby failing to adequately protect participants.

Conformity to good participant protection practices

There is a need to improve the degree of conformity to good participant protection practices at many levels in the current arrangements. Some research organizations apparently do not conduct adequate, or indeed any, monitoring of ongoing research after a project has been given initial ethics approval despite the TCPS provisions with respect to monitoring. Some research organizations operate in breach of the TCPS by, for example, approving protocols in the absence of the person knowledgeable in ethics or the one knowledgeable in the relevant law. One major Canadian university was found to have been in substantial breach of the TCPS in regard to the functioning of its REB. It is now believed to be compliant but hundreds of protocols had been approved under a non-compliant regime. There is also a lack of accountability and transparency regarding conformity. Organizations such as Health Canada, the US Federal Drug Administration, and the three federal granting councils conduct various activities related to inspections and reviews on conformity. However, it is often very difficult for the public to know about the specific results of these activities in a systematic and open manner.

2.5 Options Considered

In Sections 3, 4, and 5 of this Report, the Committee presents its recommended option in response to its mandate. In coming to its conclusions, however, the Committee considered a number of options and variations on options. The following section identifies the likely outcome of not responding to the concerns identified in the previous section and summarizes the Committee's views on the various options.

2.5.1 Staying with the Current Situation

The Committee considered at length, but unanimously rejected, the suggestion that the current situation required no reform, or only minor modification. We believe that a fundamental enhancement is needed to ensure that those problems articulated in the previous section can be adequately and responsibly addressed. In addition, we believe that such change is critical if the Canadian research community is to cope with the ethical challenges of a future which promises increasing technological and methodological complexity and controversy.

In addition, the Committee believes that the following will occur if the current arrangement is retained:

- Canadian research organizations with strong links to the United States, especially the National Institutes of Health, will seek US accreditation. Essentially, Canadian taxpayers will be paying for US accreditation of some of their public institutions;

- There will be no effective resolution of the conflict of interest inherent in the federal research granting agencies remaining the stewards of the TCPS;

- There will be little possibility of a pan-Canadian research ethics education strategy (the importance of which has been widely endorsed) without a vehicle to provide the necessary leadership;

- There will continue to be serious challenges to research given the lack of coherence and coordination at a pan-Canadian level. Canadian researchers will

continue to face barriers to research especially for multi-site research resulting in less innovation and fewer benefits for Canadians;

- Given the competitiveness of international research, the continued lack of consistency between Canadian and international requirements will maintain barriers and diminish the attractiveness of Canada as a location for such research;

- There will be an erosion of public trust in research decreasing the willingness of potential research participants to enroll in research, since there will be an impression that Canadian research participants will not have their interests sufficiently well protected; and

The Committee considered at length, but unanimously rejected, the suggestion that the current situation required no reform, or only minor modification.

- The current arrangement will "collapse under its own weight", that is, it will take longer to get reviews done and the confidence in the quality of the reviews will diminish as it will become impossible for many organizations to recruit and retain competent REB members.

2.5.2 Public Assurance System

Among the various approaches to governance and participant protection, the Committee spent considerable time considering the Public Assurance System (PAS) proposed by the SSHRC in 2001.[16]

In its early discussions, SSHRC posited the need for an asymmetric approach to governance, given the diversity of disciplines and variability of risk which every governance model needed to address. However, recognizing the inability to manage such independent processes in other countries, SSHRC ultimately proposed one assurance model for the oversight of all human participant research in Canada. The SSHRC document states that,

> …an assurance system with broad flexibility and scope for all disciplines should provide subjects with better protection, the public with immediate assurance, be applicable to all disciplines and yet allow for more stringent oversight where necessary, and promote remedial or formative development of the review process in early stages of its implementation, and growth and refinement of the TCPS.[17]

As well, the SSHRC proposal noted that such a system, to be successful, had to be accompanied by "a promotion of best practices and educational material and activities that would consolidate and enhance the consistency of application of the TCPS across the country while at the same time respecting the varied research disciplines and their methodologies."[18]

[16] Available online at www.sshrc-crsh.gc.ca/
[17] Ibid, p. 11.
[18] Ibid, p. 11.

The proposed PAS model was to be voluntary and be based upon three documents: the TCPS (understood as a living and evolving document); the institutional policies and procedures implementing the TCPS; and the Memorandum of Understanding on the Roles and Responsibilities between the three federal research granting agencies and research institutions.

The main mechanism of oversight was to be annual reports and site visits that would be monitored and implemented through PRE and its Secretariat on Research Ethics.

In assessing the merits of the proposed PAS system, the Committee noted, in particular, the following:

- One single system for all human participant research;
- The provision for a flexible, discipline sensitive approach;
- A focus on the need to develop an educational plan to imbue the system with a culture of ethics;
- A diagnostic and formative approach rather than a punitive and top down approach;
- The identification of emerging issues and policy problem;
- A respect for the autonomy and governance structures of research organizations;
- Peer review; and
- Sanctions for infractions.

The Committee considered and adapted a number of these points in its recommended option. However, the PAS model was not recommended in its entirety because of the limitations noted below:

- Its lack of standards and its highly flexible approach could result in inequity and inconsistency in the direction given to institutions and REBs through the assessment process;
- The system would not be comprehensive in that it would continue to be under the purview of the three federal research granting agencies and so not extend to all research in Canada; and
- It would not provide a vehicle for the coordination of policies across the various sectors conducting research, e.g., in research organizations not covered by an MOU with the federal research granting agencies.

In brief, the Committee concluded that the PAS would not provide for reform sufficient to address the existing gaps, inconsistencies, and conflicts of interest outlined earlier.

2.5.3 Accreditation Models

The Committee considered a number of accreditation models including NCEHR, CCAC, AAHRPP, and the Canadian Council for Health Services Accreditation. The following discusses the two models most applicable to human research (the CCAC model is discussed separately below as this model includes more than accreditation).

2.5.3.1 The AAHRPP Model

AAHRPP was incorporated as a non-profit organization in the United States in 2001 to accredit Human Research Protection Programs in organizations that conduct or review research with humans. Responding to increased public concern for protecting research participants, AAHRPP accreditation seeks not only to ensure compliance with US federal regulations, but also to help organizations reach higher performance standards. As of September 2007, AAHRPP had accredited 81 organizations, representing a total of 307 entities including contract research organizations, hospitals, independent IRBs, research institutions and universities. About one-third of the US medical schools and one-third of research intensive US universities have been accredited.

The Committee met with the Executive Director of AAHRPP and was briefed about its creation, acceptance by the research community and the challenges it has faced. In addition, the Committee membership included an AAHRPP Board member.

Some have suggested that Canada does not need to develop its own accreditation system since it can easily rely upon the current system developed in the USA. AAHRPP offers its accreditation services worldwide and takes local laws, regulations and guidance into consideration in evaluating organizations outside the United States. Due to the interest expressed by Canadian organizations, AAHRPP developed evaluation instruments that take the TCPS and ICH GCP into account. In addition, AAHRPP has sought out Canadians to serve on the AAHRPP Board of Directors and as site visitors. In

responding to this Committee's draft report, the AAHRPP Board of Directors offered some general comments and suggestions on meeting Canadian needs for accreditation.

The Committee recognizes AAHRPP's collaborative approach, willingness to partner with the Sponsors' Table and sensitivity to the concerns raised in the draft report. However, while the Committee acknowledges that some Canadian research organizations may seek AAHRPP accreditation during the time period that will be required to develop a Canadian system, it rejects the suggestion that Canadian research organizations rely on AAHRPP as the sole accreditor in Canada because of the following considerations:

- US accreditation would ultimately hold Canadian research organizations accountable to standards developed from different social, political, educational and healthcare contexts. Canadian research organizations operate within different contexts of culture and social policy than US research organizations and need to be held to standards appropriate to our contexts;[19]

- Relying upon the US or other international accreditation processes is the easy way out of a complex situation. It does not show the type of leadership that Canadians expect from those responsible for its public institutions or for the protection of Canadians;

[19] Although accreditation is important to international mobility and partnerships in research and practice, this can best be achieved through the mutual recognition of national accreditation systems. As a recent example, as of February 2007, the American Psychological Association, supported by over 75% of accredited doctoral and internship programs in professional psychology in Canada, voted to stop its accreditation activities in Canada. Canadian programs are now accredited by the Canadian Psychological Association which has been accrediting in Canada for 22 years.

- Relying solely upon the US accreditation system raises a serious issue of sovereignty. Canadian research organizations and governments have developed a uniquely Canadian research environment that meets international expectations. Further developing and enhancing participant protection in Canadian research is the responsibility of all Canadian research organizations and stakeholders;

- Relying only on an accreditation function leaves many concerns in the area of policy and education unaddressed. Separating the accreditation function from the policy and education functions will limit the potential opportunities for accreditation findings to be utilized for the clarification and continuous improvement of policy and education;

- The costs of participating in and sustaining the US system are considerable as will likely be the costs for a Canadian system. However, in the latter case, Canadian funds remain in Canada and contribute to building the expertise, knowledge base and the system for human research participant protection;

- There is considerable concern that utilizing the US accreditation system will leave Canadian organizations, their employees and researchers subject to the US Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law Pub.L.

107-56)).[20] This controversial Act has expanded the authority of US law enforcement agencies for the purpose of fighting terrorism and permits agencies to search telephone, email communications, medical, financial and other records;

- In addition, the Patriot Act amended the Foreign Intelligence Surveillance Act to enable US law enforcement entities to apply to the Foreign Intelligence Surveillance Court to issue a warrant requiring companies or organizations to turn over information to US officials.[21] Information is broadly construed to include records and other tangible things. Companies who receive an order must comply and, further, are forbidden by law to divulge that they have been served with such an order. It is important to note that information held by Canadian subsidiaries to US based companies are likely subject to these laws even though the records sought are located in Canada.

For these reasons, the Committee believes that the AAHRPP model is not the right one for Canada.

2.5.3.2 The NCEHR Model

In 1999, NCEHR established a Task Force to Study Models of Accreditation for Human Research Protection Programs in Canada which reported on its deliberations in 2002.

[20] On the potential significance of the Patriot Act for Canada see the report *Privacy and the USA Patriot Act Implications for British Columbia Public Sector Outsourcing* by David Loukidelis, British Columbia. Office of the Information and Privacy Commissioner, 2004.

[21] According to David Loukidelis, the purpose of the information request "…need only be 'a significant purpose', rather than the only purpose, of FISA [Foreign Intelligence Surveillance Agency] searches or surveillance in the US, leading some critics to suggest it could be used as a backdoor tool for enforcement of ordinary criminal and regulatory laws" see, ibid, page 15.

The Task Force report addressed many of the advantages of accreditation and recommended a system for Canada. Subsequently, a second Task Force was established to examine the development of an accreditation system for human research protection programs. This second Task Force recommended that NCEHR take on the role of the Canadian accreditor for human research.[22] The Committee considered both reports from NCEHR and arranged for the co-chairs of the second taskforce to present their model to Committee.

The Committee membership also included two members of the second NCEHR taskforce and two members who had participated in the taskforce sub-committee on accreditation standards.

The Committee was impressed with the NCEHR model of accreditation, however, as discussed in detail in Section 3.0 of this report, the Committee does not believe that accreditation alone is sufficient to deal with many of the challenges that confront Canadian research participant protection programs currently. Consequently, it is proposing that the Canadian Council for the Protection of Human Research Participants be established with three functions: accreditation, policy and education. Essentially, the Committee imported the NCEHR model for the accreditation component of its proposed Council. The Committee is also recommending that voluntary accreditation be the first component to be implemented. The reasons for recommending the NCEHR accreditation model include the following:

[22] Both reports are available online at www.ncehr-cnerh.org

- It was developed on the basis of wide consultation with Canadian research ethics programs;
- It is based throughout on peer participation;
- It is voluntary;
- It involves accreditation of what is described as the Program for Ensuring Ethical Research with Humans (PEERH) of an organization not just the REB component. A PEERH includes all the functions and structures involved in an organization's research participant protection activities; and
- It is consistent with what members of the Committee believe should be incorporated into an accreditation program for research participant protection.

The accreditation program itself is further described in detail in section 4.5 of this report.

2.5.4 The CCAC Model

The Committee received a presentation by the CCAC. While human research is arguably more ethically and legally complex, the Committee considered the option of recommending an organization with a structure similar to the CCAC.[23] The CCAC model has a number of advantages including:

- Promotes partnership with research organizations and a community of practice in Canada;
- Successfully promotes a culture of good animal practice and care;

[23] For a detailed comparison of the governance structure for animal research and human research, see Catherine Schuppi and Michael McDonald, "Contrasting Modes of Governance for the Protection of Humans and Animals in Canada: Lessons for Reform" *Health Law Review*, 13, 2005, pp. 97-106.

- Provides effective leadership in Canada;
- Provides national education workshops and supports local educational activities;
- Has been a driver in promoting behavioural change amongst investigators;
- Facilitates development among policy, education and certification processes while reducing conflict of interests;
- Has broad stakeholder and volunteer base;
- Has developed an effective compliance mechanism through its capacity to remove the certificate of good animal practice;
- Promotes continuous quality improvement within its organization through appropriate feedback loops between policy generation, education, and compliance activities; and
- Is nationally and internationally recognized and respected.

However, while adopting many elements of the CCAC model, the Committee did not accept in total, the CCAC model for human research for the following reasons:

- Financial support for the organization should not be linked to the federal research granting agencies (although it may be linked to the federal government);
- Stronger links would need to be developed between the organization and provincial and national regulatory bodies in the human research context;
- Greater consistency would be needed among site visitors to promote equitable application of the evaluation process;

- More effective compliance mechanisms would be needed (e.g., alternatives to the MOU used by the Tri-Councils); and
- Broader reach, going beyond Tri-Council funded research, would be needed.

In summary, the Committee is of the view that the CCAC model has many attractive features that should be incorporated into a participant protection program for human research but cannot be simply transferred as is to the human research context. The Committee's recommended model, however, incorporates many elements of the CCAC model.

2.5.5 Replacing Institutional REBs by Regional and National REBs

Another option the Committee reviewed was that REBs should be removed from the research organizations and should instead function within a pan-Canadian system of regional and national REBs.[24] This model is grounded in the belief that independent REBs operating through such a system would address many of the concerns outlined above in respect of the current system. The advantages of removing the REBs from the research organizations include the following:

- Greater efficiency for multi-site studies because, with the centralization of administration, researchers in such studies will not have to respond to multiple conflicting REB reviews;

[24] This option is proposed, for example, in Jocelyn Downie, "The Canadian Agency for the Oversight of Research Involving Humans: A Reform Proposal" *Accountability in Research*, 13, 2005, pp. 75-100.

- Greater consistency because, again with the centralization of administration, there will be consistent operating procedures across regional REBs and better communication between REBs; and

- Fewer problems of conflicting interests within REBs since members would not face a potential conflict of obligations to research participants and to their host institution. The regional REB would not report to any specific research organization thus resolving a potential existing structural conflict of interest when institutional REBs report to their office of Vice President of Research.

The Committee rejected this option in part because of the following limitations:

- The logistical challenges in developing a system that would need to draw upon the methodological expertise that exists within institutions without having the financial resources to do so. Currently, the costs are borne by the institutions that provide the administration and the review expertise;
- The continuing requirement for ethical review of student research that would still need to be provided by universities and colleges;
- The loss of the 'virtuous learning loop' that can exist when the research community is engaged in the ethical review of the research it conducts;
- Potential for greater bureaucratization of the ethics review function in Canada;
- Institutional liability for the review and conduct of research remains an outstanding issue; and

- Loss of local knowledge about both the researchers and the context of the research including other organizational policies and procedures that would apply to the conduct of research.

2.5.6 Regulation through Federal Statute

The Committee also considered the argument that all research involving humans should be regulated in Canada by way of a federal statute. This argument is grounded in the belief that federal legislation would address many of the concerns outlined above in respect of the current challenges. The advantages of federal legislation include the following:

- The force of law would increase compliance with the rules governing research involving humans;
- Depending on how the statute was written, the comprehensiveness of coverage of the rules could be increased as all research could be captured through the legislation;
- There would be greater consistency across the country as it would not be left to provincial/territorial governments to fill the current oversight gaps;
- The situation would be avoided where some jurisdictions would have lower standards than others and thus provide lesser protection for research participants. Such a situation may create an additional problem of some research funders, sponsors, or researchers only wishing to support or conduct research in jurisdictions with weaker standards;

- Savings would be realized as researchers conducting research in multiple jurisdictions would not need to spend resources to comply with a series of different rules established by the various provinces and territories; and
- Accountability would be increased as the system would be made accountable directly to Parliament.

Notwithstanding these benefits, the Committee rejected this option as being unrealistic at this time, given the political obstacles and the lengthy time-frame that pursuing a statutory solution might require. The Committee is of the opinion that strong support from members of an expanded Sponsors' Table, and the endorsement by all of its member organizations, can be an effective lever for effective implementation of the comprehensive reform proposed by the Committee. However, the Committee also realizes that should this endorsement not be achieved, a federal statute may be the only alternative to address the current lack of systemic protection for human research participants in Canada.

2.5.7 Other International Developments

It is important to point out that other countries have developed participant protection systems. New Zealand has a national Health Research Council Ethics Committee established by statute. It also has an accreditation system for its research ethics committees and a system of institutional as well as regional ethics committees and a multi-region ethics committee. The United Kingdom has a National Research Ethics Service (a directorate within the National Patient Safety Agency), and a system of

regional research ethics committees and multi-centre research ethics committees, and an accreditation program. Nigeria has a system through which REBs are registered and audited by the National Health Research Ethics Committee.

At this time, it is difficult to assess how many more national governments will develop accreditation programs and other types of reform. The recommendations included in this report offer an opportunity for Canada to take a global leadership role in developing its own comprehensive system that could be a model for other nations interested in promoting high ethical standards in research involving humans.

3. An Overview of the Proposed New Comprehensive Canadian System of Participant Protection for Research Involving Humans

The Committee is strongly of the view that research involving humans in Canada should be governed by a single system. This system should apply to research in all disciplines, should bring all participant protection functions together into one organization, and should apply to as much research as possible. The system should however be flexible and accommodate diverse approaches, provided that in each case the measures taken meet the test of providing effective protection to human participants.

One Participant Protection System – The Committee appreciates and accepts the concerns expressed by many in the social science and humanities communities that, in practice, the current Canadian policy framework of the TCPS was not designed (and has not operated) with a great enough understanding of, or sensitivity to, social sciences and humanities research. However, the Committee believes that it is possible to design a

system with an understanding of, and sensitivity to, all kinds of research and that there is not, in principle, any reason for having different systems of participant protection apply to different kinds of research classified according to discipline. Not only is there high risk biomedical research and low risk social science and humanities research, there is also low risk biomedical research and high risk social science and humanities research. Therefore, while it is reasonable to argue that the level of scrutiny applied to research should vary by level of risk, it is not reasonable to argue that it should vary by discipline. It is also important to acknowledge the increasingly collaborative and multidisciplinary nature of contemporary research. Research projects frequently cross disciplinary divides and frequently cannot be simply designated biomedical or social science research. As the silos of research are being broken down, the Canadian participant protection program should reflect this newer direction in research design.

The Committee takes the view that all research involving humans is about discovery and enhancing understanding. Risk to human participants in each research study must be calibrated by both the researchers who design and conduct it and by members of REBs who review and approve it. A single participant protection system would contribute to consistent calibration by setting standards that address how risk should be assessed and how the type and level of protection based on the level of risk should be determined to protect participants for all types of research.

Functions – the Committee believes that the three participant protection functions of accreditation, policy and education should be brought together into one organization.

While concerns might be raised about conflicts of interest in relation to accreditation and education being in the same organization, the Committee believes that the potential conflicts are manageable and that the potential benefits of bringing the three functions together outweigh the potential risks. The arguments in support of this position are found later in this Report in the discussion of the education function.

Scope – while it might be argued that having a single system apply to all research involving humans conducted in Canada is the ideal, the Committee is of the view that the federal legislation that would be required to realize this ideal is not a viable option at present. That said, the Committee believes that the closest approximation of the ideal should be sought and, therefore, the system should reach as much research as possible.

> It is important to acknowledge the increasingly collaborative and multidisciplinary nature of contemporary research. . . . As the silos of research are being broken down, the Canadian participant protection program should reflect this new direction in research design.

It should be emphasized that, while the Committee recommends a unified approach, this approach can and should be flexible and the system should ensure that the oversight is proportionate to the volume and nature of research, as well as the level of risk for participants.

3.1 Goals

Following from its mission to provide protection for human participants in research, the Committee defined the following goals for the protection system:

- Ensure that the rights of research participants are respected;
- Ensure the safety of research participants;
- Promote the well being of Canadians;
- Build and maintain trust among research funders, researchers, research organizations, research participants, and the Canadian public;
- Equitably balance the harms and benefits of research;
- Recognize the importance of, and facilitate, the conduct of research;
- Reduce or avoid duplication and inconsistencies with existing rules and procedures governing human research; and
- Promote the development of a culture of ethics in research, rather than mere conformity to a body of rules.

3.2 Attributes

The Committee agreed that a system with these goals should have the following attributes:

- Be comprehensive and broadly applicable to all types of human research regardless of funding source;
- Be respectful of the division of powers among federal, provincial, and territorial governments;
- Be flexible and permit safeguards for participants to be tailored to the character of the proposed research;
- Be peer-participatory in all functions;
- Be inclusive of all stakeholders;

- Be publicly accountable; and
- Be administratively and financially efficient

3.3 Functions

The Committee concluded that the Canadian oversight system should be responsible for three functions that follow from these goals and attributes:

- Accreditation;
- Policy; and
- Education.

The Committee also concluded that these functions should be exercised together in such a way as to produce continuous improvements in the system. Below are the benefits that would accrue to the various players in the research enterprise:

For researchers:

- The potential for fewer duplicate reviews for multi-site research;
- Improved stability and competence in the organizational REB system;
- Enhanced efficiency in the administrative aspects of ethics review so researchers receive timely decisions;
- Improved access to tools for education in research ethics for themselves and for trainees; and
- Greater transparency in the process of reaching decisions and greater consistency across REBs.

For organizations:

- A stronger culture of responsible conduct of research within the organization at all levels;
- Reduction of risks to research participants;
- Increased effectiveness of processes that are proportionate to the volume and nature of research conducted by the organization;
- Increased confidence that all applicable ethical and regulatory requirements are being met; and
- A basis for mutual recognition of ethics reviews at other organizations involved in multi-site research.

For sponsors of research:

- Greater assurance that funded research meets high ethical standards for the protection of research participants;
- Increased awareness on the part of researchers of the applicable ethical; legal, and regulatory requirements for research;
- Improved consistency of ethics review across sites; and
- Reduction in delays attributed to multiple review requirements.

For governments:

- Assistance in discharging their duty of care for health and safety of the public; and
- Improvement in regulatory compliance for clinical trials with drugs and devices.

For the public:

- Greater assurance that adequate safeguards are in place to protect the well-being of the public when they choose to participate in research;
- Improved trust with researchers, research organizations, funders, and the research results;
- Greater transparency and accountability regarding the conduct of human research; and
- Increased opportunities to participate in the process of research participant protection.

To meet these goals, embody these attributes, and carry out these functions, and in so doing ensure proper protection of human participants, the Committee recommends the establishment of a Canadian human research participant protection system along the lines described in detail in the following section.

4. The Canadian Council for the Protection of Human Research Participants (CCPHRP)

The Committee recommends that a Council be established as a corporation without share capital under the *Canada Corporations Act* operating collaboratively with, but independent of, those involved in the conduct or review of research. In keeping with this type of corporation, it should have the following organizational structure: a group of Members who appoint a Board of Directors who, in turn, appoint the Executive Director. Additionally, a Panel on Accreditation reporting to the Board of Directors should be

appointed. The new organization should be called the *Canadian Council for the Protection of Human Research Participants.*

The Committee considers it important, in the interests of achieving maximum success, that the functions of policy development, education, and standard setting and accreditation all be vested in the same organization, thus structures to support these functions need to be developed.

4.1 Members

Under the *Canada Corporations Act*, the type of organization being proposed requires a body of Members who take responsibility for initiating the organization and remain as the titular group responsible for its continuing existence and performance. This governance model is used by most of the 160,000 non-profit organizations in Canada. Some of these organizations exercise substantial powers even though they do not have a statutory base. For example, the CCAC has the capacity to confer or withdraw certificates of good animal practices from organizations engaged in research. In the case of the proposed CCPHRP (henceforth referred to as the Council in this report), the Sponsors' Table may be the appropriate group to determine the composition and number of Members whose function under the *Canada Corporations Act,* would be analogous to those of shareholders. However, given the limited number of organizations that sit at the Sponsors' Table, either the Sponsors' Table should be expanded to include a broader range of organizations or a vigorous public consultation should be undertaken about the composition and number of Members and should extend well beyond the organizations

currently comprising the Sponsors' Table. In order for the new Council to have credibility there must be a greater involvement of organizations representing Aboriginals and organizations representing the social sciences and humanities to balance the strong representation from the health science and biomedical communities. The Sponsors' Table must communicate to the research communities and to the public the process it intends to follow in appointing the Members. Transparency of process and inclusively of all elements of the research enterprise in this country is critical to build trust in this new organization. See section 6.1 for a recommended process for appointment of members (once the consultation on composition and numbers has been completed).

As a contribution to the consultation, the Committee offers the following reflections on the members. The Members should be drawn from organizations committed to fostering human research participant protection in Canada such as CAREB and NCEHR, from those individuals who have experience as participants in research and from the general public. Members of these latter two groups are critical because they bring to the Council views and experiences of those who have participated or may participate as subjects in research studies. Organizations that conduct research have the opportunity and should take the responsibility of bringing to the attention of participants in their research studies, ways in which they may participate in the governance and management of the Council. Similarly, members of the public should be given the opportunity to be nominated or to indicate their interest in participating as Members or on the Board of the Council. Importantly, the community members of REBs across the country provide a ready and knowledgeable source of potential Members. The Members who come from research

organizations, i.e., the researchers or retired researchers themselves, must reflect the full range of research traditions and methodological approaches. Members should also include individuals with expertise in research ethics, law, and policy. It is critical that those who are appointed as Members understand that they are selected for their individual expertise and experience and as such, do not sit as representatives of organizations and should not behave as such. Although initially appointed by the Sponsors' Table for the effective operation of the Council, the Members are not accountable to the Sponsors' Table. Rather, as a public corporation, members are accountable to the Canadian public and to its research communities. As such, the Council should avoid issues of conflict of interest between it and any of the funding organizations or governments. Furthermore, the Members should promote the interests of the Council through collaboration with research communities and the Canadian public.

The Members should appoint the Board of Directors, the auditor of the Council, and periodically receive reports and financial statements of the Council.

The Council would be accountable to the public in a variety of ways. First, it would be directly accountable to those who provide it with funds and many of these organizations will themselves be directly or indirectly accountable to the public (e.g., federal and provincial/territorial governments). Second, it would be accountable to those who choose to use their levers to require compliance with the Council's work (the national policy statement, the accreditation program). Again, many of these organizations will themselves be directly or indirectly accountable to the public. Third, it would be

accountable to the public through its Letters Patent. In its application for incorporation, the purposes of the Council would state its purposes. These could explicitly include the protection of human research participants. In addition, through the by-laws filed with the application, the Council could be committed to a process of an annual meeting open to the public at which, for example, the Council would be required to present a report on the preceding year as well as an agenda for the upcoming year.

4.2 Board of Directors

The Board of Directors should be composed of individuals appointed for their expertise relevant to the conduct and oversight of research involving humans, or their experience in serving as research subjects, or their interest and commitment to research participant protection as members of the public. Similar to the recruitment and appointment of Members, the latter two groups must be actively and transparently sought from a number of sources. All should serve as individuals and not as representatives of specific organizations. The members of the Board who are researchers must be representative of the diverse elements of the research communities, including but not limited to, the: humanities and social sciences from a range of disciplines (e.g., sociology, anthropology, philosophy, law, political science, history); psychology; basic science; engineering; and applied health and biomedical sciences (including public health, health services, and health professions). Diversity in knowledge of research methodology must be assured in the membership. The size of the Board should be determined by the Members; it should be large enough to include the diversity that is inherent in the research communities and concerned public, but not so large to be unable to function effectively.

The process that the Members should use to select and appoint the Board of Directors must be transparent and communicated widely to the research communities and to the public. Including opportunities for the research communities and public to nominate potential Directors would be wise.

The Board of Directors should be responsible for providing organizational policy direction to the Council and for approving its budgets. It should select the Executive Director, provide guidance to him/her on major issues, and do annual performance reviews. The names of the Directors and their terms should be public.

4.3 Office of the Executive Director

The Board of Directors should select the Executive Director. The process through which this occurs (e.g., through a public call for nominations) should be clearly articulated and transparent.

The Office of the Executive Director should include the normal leadership and operational duties of such a position including quality assurance for the Council. The Committee is of the view that the Council should adopt quality assurance principles which will allow it to evolve and quickly adapt to the needs and concerns of all of the relevant stakeholders.

Another key role for the Executive Director should be the establishment of communications from the outset with all of those involved with research. It is critical that the Council transmit early and often what it plans to do and how it will do it. It will also be important that the communications be multidirectional; organizations and individuals in all research communities, as well as research participants and the public, should be given an opportunity to feed into the evolution of the Council.

Sound fiscal management of the Council should be a third major responsibility.

4.4 Accreditation Panel

An Accreditation Panel should also be established that is organizationally separate from the performance of the accreditation team that undertakes the review of documents and conducts the site visit, and produces a report for the Panel. The Panel should be comprised of knowledgeable individuals including researchers, individuals knowledgeable about research ethics, and members of the public, and should be responsible for making decisions about granting, maintaining, or withholding accreditation status on the basis of information provided to it by the site visit teams. In this way, the Accreditation Panel provides a higher level independent review of an organization's accreditation status. In addition, it offers the advantage of managing a potential conflict of interest for site visitors since these individuals would not be responsible for the actual accreditation decision itself. The Accreditation Panel should report directly to the Board of Directors of the Council.

4.5 Accreditation

The Committee recommends a participant protection system which includes the accreditation of programs within organizations that conduct or review research with humans. As noted earlier, the Committee found that the accreditation structure and processes as proposed by NCEHR met its criteria and essentially have adopted them for this component of the Council's functions.

The Council should accredit programs within the following types of organizations:

- Public and private organizations with their own institutional REBs;
- Public and private organizations that conduct human research but do not have their own REB; and
- Public and private organizations that offer non-institutional REB services to others.

4.5.1 What Gets Accredited? Programs for Ensuring Ethical Research with Humans (PEERH)

The accreditation process seeks to examine all elements of an organization's program related to the protection of research subjects including their REBs. But REBs do not function as isolated entities; they are embedded in a network of policies, practices, administrative structures, formal and informal educational offerings, and reporting functions. NCHER, in its 2006 Task Force Report, recommended that the primary focus of an accreditation process should be Programs for Ensuring Ethical Research with Humans (PEERH) situated within various kinds of organizations that are involved in any aspect of the conduct of human research. We concur that PEERHs are the appropriate

target for accreditation. As described, PEERHs consist of a set of integrated functions and structures:

- Policy and Administration;
- Education;
- Review;
- Monitoring; and
- Reporting.[25]

The policy and administration function would normally be met through an organization's policy or governance framework that clearly defines the roles and responsibilities at each level of the PEERH within the research organization. In addition it would encompass the administrative structures (e.g., Ethics Review Office) and procedural guidelines that provide support and direction for the education, review, monitoring and reporting functions. A fundamental responsibility of the organization would be to ensure the adequate resourcing of this aspect of its PEERH.

The educational function of the PEERH would be met through those activities and resources which were directed towards educating researchers, research ethics board members, institutional officials, administrators, and research participants in the fundamentals of ethical research and the ethics review process. These could consist of internally generated, or externally available, educational opportunities and materials such as workshops, retreats, handbooks and manuals.

[25] See Appendix "Example of a PEERH within a Hospital" and "Example of a PEERH within a University Structure" for two schematic diagrams of typical PEERH structures.

The review function of the PEERH would be met through all those structures and activities related to the scholarly and ethical review process. Conventionally, it would consist of the policies and procedures related to the operation of REBs (internal or external to the organization) which review the organization's human research, as well as other relevant bodies (e.g. Departmental Review Committees, Scientific Review Committees, and Appeal Boards).

The monitoring function would be met through those activities and procedures which relate to the ongoing review of research, such as audit procedures or annual reports on individual research projects. In clinical trial research, it would also involve the review of serious adverse events reports, or reports from Data Safety Monitoring Boards.

The reporting function would be met through all those activities which relate to the internal and external accountability of the PEERH. This could consist of, for example, annual reports of the Research Ethics Office to the senior administrative official in the organization with overall responsibility for the PEERH, reports to Government (e.g. Health Canada) or other internal or external reporting arrangements.

4.5.2 Accreditation Functions

In exercising its accreditation function, the Council should ensure the performance of the following functions:

- Standards, procedures, and guidance;
- Assessment and monitoring; and

- Complaints.

Standards for accreditation will need to be developed to be used in assessing conformity with the national policy statement (see below for an example) and other relevant instruments.

Two illustrations of how an accreditation standard can be met in different ways:

Example 1.One of the policies of the TCPS is Respect for Free and Informed Consent which is operationalized in Section 2 and its constituent criteria (articles). Section 2 and its articles detail some things you may do, others you must do and some you may not do but they do not prescribe a particular process or infrastructure which must always be used to do (or not do) it. For example, 2.1 of the TCPS requires that you must provide for the inclusion of participants whose language is other than the language of the researcher. However, it does not articulate how to do that. A PEERH could develop any number of procedures, mechanisms, or personnel with which to accommodate the inclusion of participants who speak other than the language used by the researchers. Similarly, 2.2 requires that consent is given voluntarily and without undue influence or coercion. However, its does not articulate how or by whom the voluntariness must be ensured. The processes, mechanisms and safeguards put in place to ensure voluntary consent will vary depending on the project and on the nature of the institution in which the project is being carried out. The imperative of any program of accreditation is that its standards are met not that its standards are met in a single or particular way.

Example 2. Section 1 of the TCPS speaks to the institutional context of the REB. It is often the case that a set of accreditation standards includes one governing the institution in which the accredited program resides and spells out some criteria to which the institution is accountable. It is within a standard on institutional accountability that one could include a criterion that speaks to the institution's obligation to support and reward the participation of its staff and faculty on the REB. This is a common and important criterion within an institutional standard since the REB (or any accredited program for that matter) only works as long as it has institutional support. That said, the way in which an institution supports the participation of its researchers on an REB may vary from one institution to another. In some it may be through teaching credit, in others it may be a stipend and in others it may be relief of some other duty.

The standards development process could take as its starting point the important work done by NCEHR in developing standards and build on these. Standards against which the research participant protection programs of organizations are assessed are the basis

for insuring that research participants are receiving the protection they require. Standards also serve to assist the researchers. The lack of standards in assessing risk to participants has led to many researchers believing that the assessment of their proposals has been flawed in terms of the level of risk judged to be present and the changes they have been required to make. This has been a particular problem for social scientists and humanists.

The types of common everyday problems described by ethics researchers and by research program administrators and echoed by Committee members based on their own experiences, several of which have been noted earlier in this document, include:

- The difficulty in recruiting and retaining REB members and chairs so that they develop expertise and hone their judgment leading to more consistent and reasonable assessments;
- The lack of consistency in how REB members' contributions are acknowledged which compounds the problem of recruitment and retention, for example, many REB members receive no reward or acknowledgement for their work in terms of a stipend, course load reduction, recognition at the time of review for tenure and promotion or annual salary determinations, or even a letter of thanks;
- The lack of consistency in the education of REB members, researchers, and graduate students on the conduct of research that conforms to established policies on research ethics. This results in REB members being inconsistent in their reviews, researchers failing to understand or incorporate the basic tenets of the TCPS policies in their proposals, and graduate students submitting incomplete

proposals so that REB members feel, at times, that they are forced to function as supervisors;

- The lack of standards that specify how research should be monitored while it is in the field resulting in proposals being reviewed but the actual conduct of research receiving no scrutiny. The view of research ethics administrators is that most researchers do adhere to the proposal as approved but there are some in whom they have little confidence. The true extent of either conformity or its converse is not known;

Everyday problems experienced by researchers & research administrators

-Difficulty recruiting & retaining REB members
-Lack of recognition of REB members' contributions
-Lack of consistency in the education of REB members, researchers & grad students
-Lack of standards for monitoring research that is in the field
-Lack of standards re what research can receive expedited reviews
-Multi-site studies required to seek reviews in each site

- The lack of standards that provide clear direction about what research can receive expedited versus full reviews resulting in some proposals being expedited when they should receive a review by the entire REB and others forced into a full review when they could be expedited. Again, the extent of this misallocation of proposals is not known; and
- Multi-site studies forced to seek reviews in each site even when the sites are part of the same academic health science centre. At best they receive the same or similar responses by each REB, but sometimes they get different responses from

> some or all REBS. This may hold up researchers for months and even years with no discernable enhancement of the protection accorded the research participants.

Standards make it much clearer than policies as to how the REB should review proposals, what qualifies for expedited review, what continued surveillance should be in place for studies once they are in the field, and what the consequences should be for researchers who do not adhere to what has been approved by the REB. Policies regarding recognition of the contributions of REB members and chairs and standards developed to reflect them can lead to organizations putting in place meaningful ways of acknowledging these individuals. This, in turn, may make serving on REBs more tangibly rewarding than is the case in too many organizations now and thereby making it easier to recruit and retain members. Additionally, standards also allow the PEERH to set the requirements for education of all those involved in the process: REB members, researchers, and students. Having standards for what is ethically acceptable in the way of research involvement should lead to more consistent decisions on the part of REBs and more trust in the decisions reached by REBs of organizations in which the researcher is seeking to conduct the research. This, in turn, should encourage organizations to develop policies that allow them to accept the decisions of other organizations whose PEERH is accredited, thus reducing the multiple reviews that are required for multi-site studies.

It is important to acknowledge that accreditation in and of itself, will not lead automatically to organizations accepting the reviews of other organizations in multi-site research. However, as Dr. G. Koski, the former Director of the US Office of Human

Research Protections and currently Chair of the Advisory Board of World Health Organization's Strategic Initiative for Developing Capacity for Ethical Review has stated,

> "Institutions and their REBs will relinquish autonomy only to the extent that they can trust others. Independent, private accreditation of Human Research Protection Programs and certification of individuals, especially investigators, are essential mechanisms for enabling collaboration and efficiency."[26]

Accreditation is a means for organizations to demonstrate to other organizations that they meet recognized standards, that is, they operate their participant protection programs to the highest standards. On this basis of mutual recognition, agreements can be developed that make it possible for organizations to cede authority to others to review research proposals and make decisions about the extent to which they meet criteria for the protection of the participants.

Ad hoc working groups should be struck to advise on specific issues, and should consult representatives of the research community before giving formal status to new standards.

We strongly recommend that the accreditation process include site visits by teams of peers to provide an educational function and to ensure that standards are being met. The site visit team will review the materials prepared by the organization being reviewed, visit the organization, meet with administrators, REB members including community members, and researchers from across the disciplines, attend REB review meetings, review the minutes of REB meetings and the decisions taken, review educational materials and requirements for education on participant protection, and examine and

[26] Greg Koski, *Enhancing Quality and Efficiency through Collaborative Approaches to Ethical Review* Presentation at the British Columbia Ethics Harmonization Initiative Introductory Workshop, November 19, 2007, slide #31. Available online at http://www.msfhr.org/sub-strategic-ethics.htm#workshop

attend a monitoring session among other activities. At the end of the site visit, the peer reviewers would meet with as many of the PEERH members as necessary in order to provide feedback and advice, to identify the real strengths in the protection program and areas where improvements are needed, and to answer questions.

The report of the site visit team should be submitted to the Accreditation Panel for a decision.

Procedures should be developed for accreditation. These should include such things as:

- The steps an organization must complete in applying for and maintaining accreditation (e.g., complete an application or self-study, participate in a site visit, complete and submit annual reports);
- What constitutes the components of each step (e.g., what is included in the application forms or self studies; who makes up the site visit team and how they are trained; what has to occur during a site visit; how the site visit teams report on their findings; how the applicant organization provides feedback in response to that report; how accreditation decisions should be made; and how compliance with the accreditation standards should be monitored); and
- How applicants can appeal an adverse accreditation decision.

Finally, a guidance function should be performed. The Council should serve as a resource to organizations interested in becoming accredited, or as a preparatory step to

the accreditation process. This will be particularly important during the initial years in which an accreditation system is being established in Canada.

Guidance should also be provided to applicants for accreditation about such areas as the interpretation of accreditation standards and about the policies and procedures of accreditation. Operational flexibility combined with guidance about what to do will be essential to accommodating the different contexts within which successful programs operate. The guidance function should be responsive to researchers, research administrators, REB members, research institutions, research sponsors, government, research participants, and the general public.

> The Council should serve as a resource to organizations interested in becoming accredited, or as a preparatory step to the accreditation process.

While the primary objective of accreditation is continual quality improvement, it will be necessary at times to deal with situations of non-compliance. In responding to allegations of non-compliance, the Council should function under the principles of procedural fairness.

4.6 Policy

Accreditation is based on standards which, in turn, are derived from policies. PRE was created by the three national funding Councils to take responsibility for evolving the TCPS. This arrangement created an inherent conflict of interest by locating policy

development in an organization that reports to the funders of research. CIHR has signaled that this arrangement is no longer tenable.

The view of the Committee is that policy development should be an important function of the Council and with appropriate funding, policy modifications can be put in place in a timely fashion. PRE has had the responsibility for extending, modifying and clarifying the TCPS since its inception in 2001. The work that has been accomplished to date is valuable but for a number of reasons the revisions have been slow in coming. As well, policy development and integration of relevant policies outside the TCPS are required and these functions are beyond the mandate of PRE. Consequently, the Committee recommends that policy should become one of the responsibilities of the Council.

Once the Council is in a position to take on responsibility for policy development, it should adopt as its initial policy base the revised TCPS, which it should re-name the Canadian Policy Statement on Research Involving Humans (CPSRIH).

From this initial policy base, the Council should then identify and move to put in place such modifications as it may judge necessary for the purpose of making the CPSRIH more broadly applicable to all types of research involving humans in Canada. Particular attention should be paid to ensuring that the CPSRIH reflects an understanding and appreciation of the significant differences among various types of research and that it moves beyond the real or apparent biomedical slant of previous policy statements and guidelines. The Council should also pay particular attention to issues that have in the past

given rise to difficulties in the implementation of the TCPS, particularly in relation to the social sciences and humanities research communities. Specifically, the definition of human research requiring ethics review, the concept of minimal risk, the different kinds of ethics review (e.g., expedited vs. full review), and ways of giving practical expression to the concept of proportionality present continuing challenges to REBs. PRE is putting forth a major effort to clarify these issues and the Council should strive to build on the substantial amount of research, writing, and consultation done by the PRE as well as other organizations involved in research ethics.

The Council should also ensure that its work intersects with and supports that of federal, provincial, and territorial governments as well as other relevant bodies such as those that accredit hospitals and professional educational programs. Specifically, the Council should examine areas where the CPSRIH could be in conflict with other research governance instruments. Where there is determined to be conflict, the Council should seek to resolve it, where possible and appropriate, through harmonization initiatives with the relevant authorities and/or through revisions to the CPSRIH. For example, Health Canada is leading an initiative to develop standards for REBs that review clinical trials. It is important that standards developed under the auspices of the Council not conflict with the Health Canada standards. Interpretive notices should be released as this work develops.

Relations with governments and other regulatory systems (e.g., the *Food and Drugs Act* and Regulations) will require particular attention. The Committee hopes that through

dialogue the Council and governments would, in many cases, arrive at ways to harmonize their respective policies.

The Council should also ensure that, where appropriate, there is consistency with international regulatory requirements that have an impact on some research activities in Canada. For example, over 500 organizations hold a US Federal-Wide Assurance in Canada (www.hhs.gov/ohrp/assurances_index.html). This means that these organizations have agreed to adhere to US regulations of the Department of Health and Human Services. For research involving drugs and medical devices, there are international efforts to harmonize the regulatory requirements by the International Conference on Harmonization (www.ich.org) and the Global Harmonization Task Force (www.ghtf.org), respectively. While European regulations are not directly applicable in Canada, certain aspects of European clinical trial and privacy directives have had an impact on those who sponsor or conduct international research. Therefore, it is important that, where appropriate, the Council establish policies that are consistent with the international regulatory environment, so that Canada will continue to attract and retain international research.

The Council should also undertake revisions to the CPSRIH on an ongoing basis in areas where it finds that the CPSRIH needs development either because specific provisions require reform or necessary provisions are missing. Such revisions must be done through regular consultations with the research community affected by the changes and with the Canadian public.

Especially during the initial years, the Council should make particular effort to build on the substantial amount of research, writing, consultation, and actions that have been undertaken by PRE as well as other organizations involved in research ethics.

4.7 Education

There are many opportunities available in Canada for education on research ethics and the role of the Council should be to provide leadership and coordination of these resources, to identify gaps and means of filling these gaps and, when appropriate, to undertake the work necessary to fill the gaps. A national educational strategy for research ethics based on the needs of the Canadian research community and the Canadian public is needed and the Council should spearhead this initiative.

The educational programs on research ethics that the Council develops should not duplicate efforts of those institutions that currently provide educational opportunities. The Council's education services could relieve part of the burden that currently rests on under-resourced REBs to develop and provide educational programs for their members, and for researchers, research services staff, and others. Importantly, public education about research ethics principles, the rights of research participants, and the nature of the comprehensive system should become a central component of the educational endeavour and should help to build the public's trust in the human research

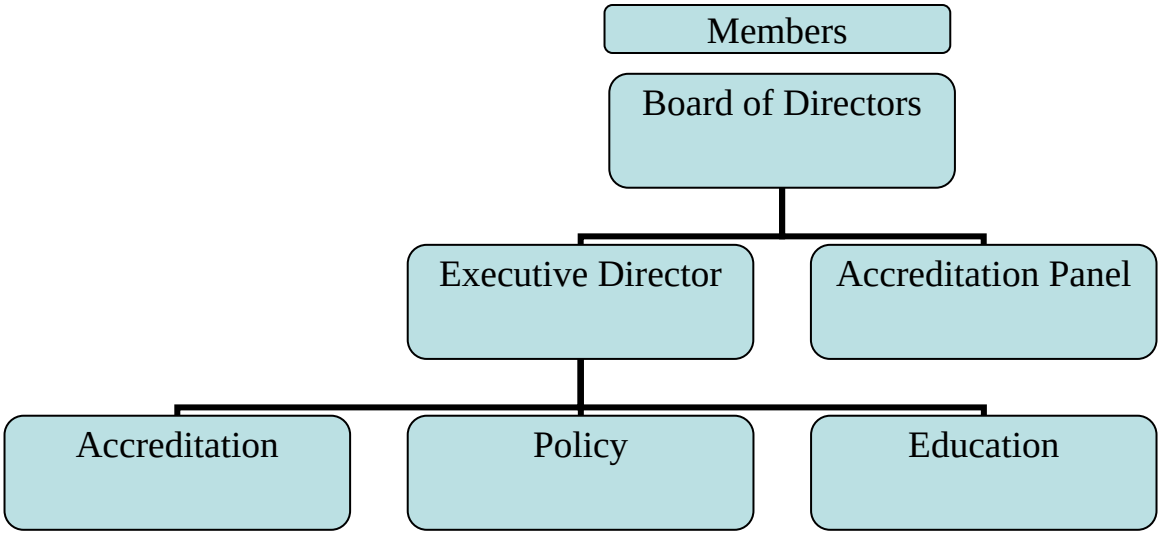
A national educational strategy for research ethics based on the needs of the Canadian research community and the Canadian public is needed and the Council should spearhead this initiative.

enterprise. The work of the Council should build upon the substantial work already done by NCEHR and many other organizations.

It is important to emphasize that the Council should serve as much as a clearinghouse for education as a source of education and educational materials; organizations should be free to obtain educational services from any source they chose. In addition, in order to manage the potential conflict of interest, any accreditation standards regarding education should not be limited to educational programs that the Council offers.

While the Council and the accreditation system proposed by the Committee would have overall responsibility for providing oversight, leadership and policy direction for issues related to human participants in research, the ultimate responsibility for ensuring such protection must continue to rest with individuals and organizations engaged in research. The protection of research participants is everyone's business.

4.8 The CCPHRP's Organizational Chart



The Committee does not intend that the Council should grow into a large bureaucracy. In particular, the Committee believes that the Council should make the fullest possible use of peers (both volunteer and compensated) in carrying out its functions. We do see, however, a robust infrastructure designed to support the volunteers from the research community and the public. The intention is to relieve much of the burden that to date has fallen almost entirely on these volunteers in PRE and NCEHR as well as members of REBs and researchers.

5. Implementation: Staged

Once the basic structure of the Council has been put in place, including the appointment of the Executive Director and a small initial staff, the Council should pursue an incremental approach to the implementation of its mandate, i.e., the implementation should be staged. This approach would serve to limit costs during the start-up period and

permit the Council to make pragmatic adjustments in the light of experience as work proceeded.

Implementation should be staged:

Stage 1: Accreditation
Stage 2: Policy
Stage 3: Education

Of the three principal functions of policy, education, and accreditation, the Council should give priority to establishing a system of accreditation, including the development of standards to be met by organizations seeking accreditation. The rationale for this approach is that the system would have to be built from the ground up, since there is at present no system in Canada for the accreditation of research participant protection programs. The work of the Council in this field could be expected to take several years.

With regard to the policy function, the Committee recommends that it be left with PRE for a limited time and for a specific purpose. During the latter part of 2008, PRE has indicated that it will come forward with a major set of policy recommendations that will be the culmination of the work it has been engaged in during recent years. Therefore, it seems reasonable to wait until the promised new version of the TCPS has been released. Should this not happen for any number of reasons, the Committee believes it would be in the best interest of further policy development to set a date for the transfer of the policy function from PRE to the Council. The need to transfer the policy function to the Council at a defined point is driven by the fact that PRE's work on the TCPS applies only to research funded by CIHR, NSERC and SSHRC and as indicated earlier in this document,

much policy harmonization is required between the TCPS and other policy sources. This policy development will influence the standards that are developed.

The third function of the Council is education and while the Committee regards it as equal in importance to accreditation and policy, in terms of a staged implementation plan, it is proposed that the responsibility for education be phased-in following accreditation and policy. This decision is based largely on the fact that NCEHR has for some years being doing valuable work in this field although it has long been, and continues to be, constrained by limited financial resources. During the initial period of its operations, the Council could enter into collaborative arrangements with NCEHR to continue to develop and provide educational programs on various topics related to participant protection. As well, as the Council builds its capacity, it may wish to enter into contracts with other organizations to deliver educational programs.

The Committee recognizes that its recommendations could have significant implications for PRE and NCEHR over the longer term. A few comments are, therefore, in order. PRE was created in 2001 by the three federal research granting agencies to carry forward the development of the TCPS. It has done valuable work in implementation, interpretation, education and evolution related to the TCPS. The three federal research granting agencies are members of the Sponsors' Table and so will be participating in discussions about the recommendations in this report. Accordingly, they will be in a position to decide what the future of PRE should be if, as the Committee is proposing, the

TCPS and its future development are to become the responsibility of the Council described in this report.

In the case of NCEHR, it is an independent organization and not a member of the Sponsors' Table. Its future is, therefore, not a matter about which the Experts Committee could appropriately make recommendations. Nevertheless, the Committee wishes to record in this Report its high regard for the work that NCEHR has done in past years, as evidenced by the proposals first developed by NCEHR that have influenced the Committee. Subject to the views of NCEHR and its supporters, the Committee believes that the eventual incorporation of the expertise and knowledge represented by individual members of NCEHR into the proposed Council could be a major contribution to making the Council a functioning reality at an early date. More generally, the Committee wishes to record its view that, one way or another, the valuable work done by NCEHR and its network of dedicated volunteers must not be lost in the transition to the new system.

6. Giving Effect to the System

6.1 Creating the CCPHRP

The Committee recommends that the organizations of the Sponsors' Table, along with other appropriate organizations, appoint a Selection Panel to produce a slate of inaugural Members of the Council. The Selection Panel should consist of individuals with relevant experience and expertise from across the spectrum of involvement in research (researchers, research participants, research ethics administrators, experts in research ethics, law, and policy). The Panel should issue an open call for applications for

Members with the goal of maximizing expertise and managing competing interests and obligations. From these applications, the Selection Panel should then provide the Sponsors' Table with the names of a set of individuals who should be asked to apply for a Charter for the Corporation and serve as the first Members. The list presented by the Selection Panel should be made public and the Sponsors' Table should accept the list as presented by the Selection Panel.

6.2 Financing the CCPHRP

The Council should initially be funded by the federal government through a single transfer covering the costs of operating during a period of three years. The objective would be to ensure that during the start-up period the Council would be able to focus entirely on substantive issues without being continuously concerned about fund-raising.

Towards the end of the three-year period, an assessment of the Council's progress should be conducted. Participants of this assessment, in addition to the Council, should be the federal/provincial/territorial governments and non-governmental stakeholders. Part of the assessment should be creating means of funding the Council in the long term including considerations of potential revenue streams. It is possible, for example, that the accreditation function could become self-funding. However, the Committee would caution against a result whereby the policy and education functions are expected to be self-funding and we return to a system that relies too heavily on volunteerism from the peer community – peer engagement will be critical to the success and legitimacy of the

new system but the new system must not add to (or even keep constant) the already overwhelming volunteerism burden.

6.3 Establishing the Reach of the System

Given the constitutional division of powers among governments in Canada and the current political realities, the Committee has developed its proposal on the assumption that the new participant protection system would not have a statutory base that would make its adoption compulsory. It follows that the system would be voluntary. If accreditation is to become a reality, it will need the active support of the major stakeholders. The Council will need to demonstrate to these same stakeholders its capacity to develop a credible accreditation system based on standards that reflect the TCPS and other national research participant protection policies.

The organizations of the Sponsors' Table (and others as well) will, therefore, have the principal responsibility for determining whether Canada is to have a coherent, comprehensive, and effective system for the protection of human research participants. Collectively, they should exercise their respective responsibilities for research that is:

- Conducted at institutions receiving federal funds;
- Funded by all federal departments or agencies;
- Conducted by governments;
- Subject to regulation by provincial governments;

It follows that the system would be voluntary. If accreditation is to become a reality, it will need the active support of the major stakeholders.

- Conducted at institutions receiving funding from any of the bodies represented at the Sponsors' Table;
- Funded, or conducted by any of the bodies represented at the Sponsors' Table;
- Regulated through statutes such as the *Food and Drugs Act*, and by federal, provincial, and territorial legislation; and
- Conducted by individuals who are licensed, regulated or accredited by professional organizations.

They should demonstrate their commitment to participant protection by requiring that all research that falls within their jurisdictions be approved by an REB in an accredited PEERH. This approach would capture almost all human research conducted in Canada or by Canadian researchers – without legislation. In addition, as the participant protection system takes root and its standards become widely accepted, peer pressure will likely become an important factor in inducing all other organizations to participate within the system as a means of placing themselves on an equal footing with their peer organizations. Furthermore, it would strengthen the argument that participation within the system constitutes the standard of care for the purposes of negligence law and would thereby expand the reach of the system even beyond these levels to all research in Canada. In summary, then, the willingness of major stakeholders, such as those at the Sponsors' Table, to use the substantial levers at their disposal is essential for the success of the proposed Council. It must also be reiterated here that, if they do not use their levers, the next reform response will have to be legislation.

6.4 Costs

To put in place a comprehensive system to address the problems identified earlier in this report would clearly require additional resources, as well as additional effort on the part of system participants. In order to develop a sense of the resources that could be required, Health Canada retained the services of the Government Consulting Services to develop a costing model. A sub-group of the Committee worked with the consultants on specific aspects of the cost estimates. The full report is available on the Sponsors' Table's web site, www.hrppc-pphrc.ca.

The model developed by the consultants found that a Council with all the responsibilities proposed in this report could require, when fully operational, an annual budget of $9-10 million and a staff of 51. This size of organization and budget would not be reached until well into the future when the acceptance of accreditation is well established.

The consultant's model provides an important reference point for future discussions about the establishment and functions of the Council. However, several comments are called for.

First, a useful point of comparison is the CCAC. The CCAC has a strong image as a highly effective and respected organization that serves Canada well. If we look at the proposed outline budget for the Council, it is about five times as large as the CCAC budget ($9-10 million vs. $2 million). If we look at the diversity, complexity, size and

scope of all manner of human participant research compared with research involving animals, it seems clear that a factor of five is not at all out of line.

Second, not all the resources in the consultants' model would be incremental. For example, expenditures by PRE and NCEHR combined come to about $2 million per year at present. If the functions of these organizations are transferred to the Council at some point in the future as recommended in this Report, their resource needs would be met within the overall levels identified by the consultants.

Third, in the process of establishing the Council, the Board of Directors and the Executive Director would need to make judgments about the number of staff and contract personnel required, at what stage, and at what levels of remuneration. It is possible that opportunities for economies could be found in this process. In addition, the phasing in of some functions could mitigate the requirement for some resources in the initial years. For reasons set out earlier, the Committee is of the view that the three functions of accreditation, policy and education should all be assigned to the Council. But, decisions could be made during the implementation process as to the pace at which each of these functions should be implemented.

It is also possible that savings could be found in other areas of the research ethics enterprise if the Council were created. For example, there is much existing expertise and programming around research ethics education. The Council could provide an educational program at low cost or assist in coordinating access to educational programs

created by various universities and others so organizations needing to initiate or improve their education on ethics would not have to start from scratch and absorb the developmental costs involved. Among other possibilities could be the achievement of efficiencies through the establishment of reciprocity arrangements among REBs in accredited organizations so that multi-site studies do not have to be reviewed by all the participating REBs. The latter would save time and effort of the REBs and reduce frustration and time of researchers.

All of this having been said, the Committee wishes to underline the importance of the new Council being provided with resources sufficient to enable it to discharge its responsibilities. An over-zealous pursuit of economies could defeat the purpose of creating the Council in the first place.

The consultants were not asked to consider the expenses that research organizations might have to incur to meet the accreditation standards, as this would be impossible to estimate without first establishing the standards themselves.

6.5 Timetable

A realistic assessment of the initial period required to create the Council and to put in place the accreditation system could be three years. Steps that have to be taken include nominating the Selection Panel, selecting Members, incorporating the Council under the *Canada Corporations Act,* establishing the Board of Directors, obtaining bridge financing from the federal government, recruiting staff, completing standards, and establishing the

accreditation system. Subsequently transfer of the policy development function and the educational planning function would occur when the Council determined it was organizationally and fiscally able to undertake them.

There are no evident shortcuts to this process, and the likely time required to get the new arrangements into place constitutes a compelling reason for making as early a start as possible.

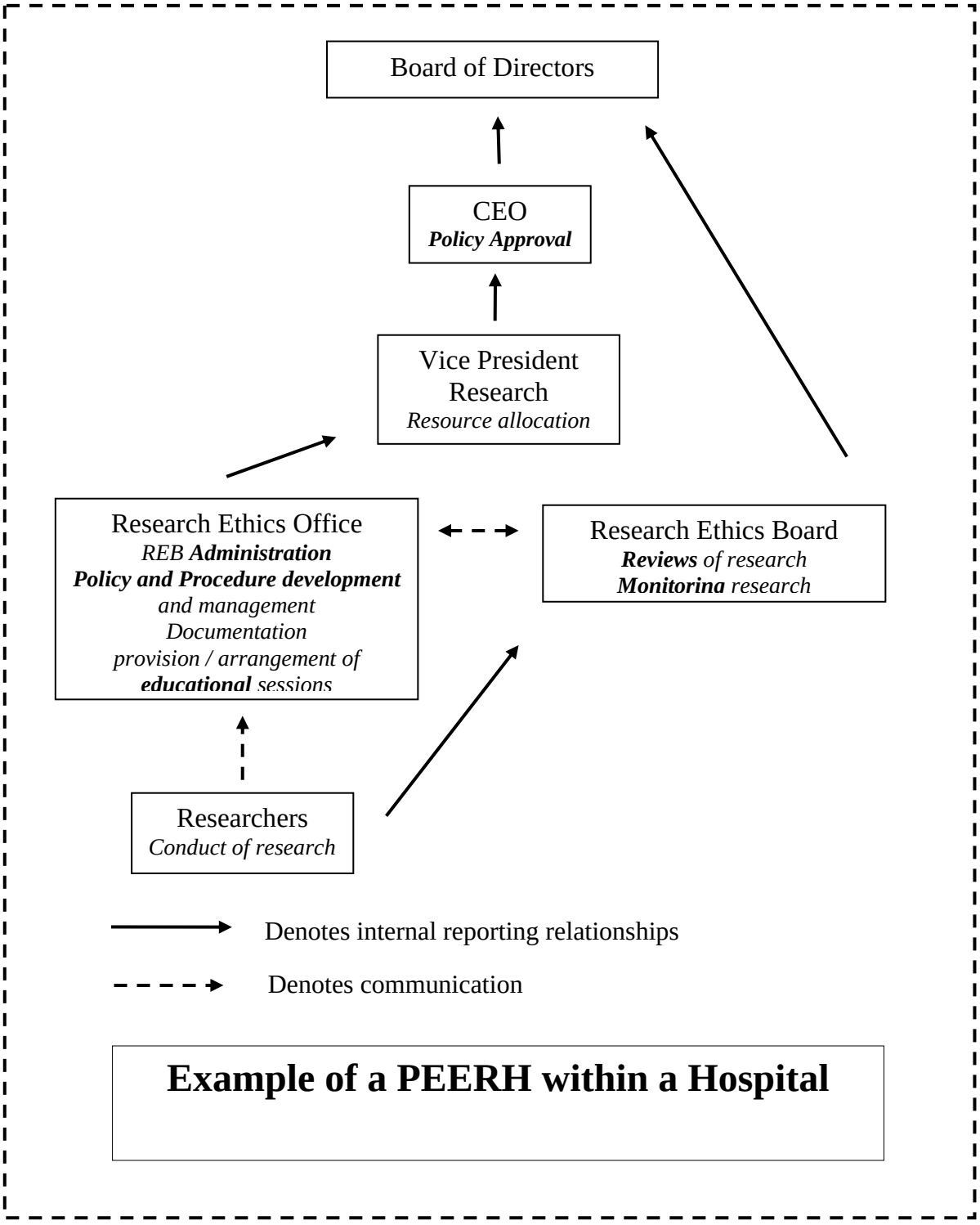
A realistic assessment of the initial period required to create the Council and to put in place the accreditation system could be three years.

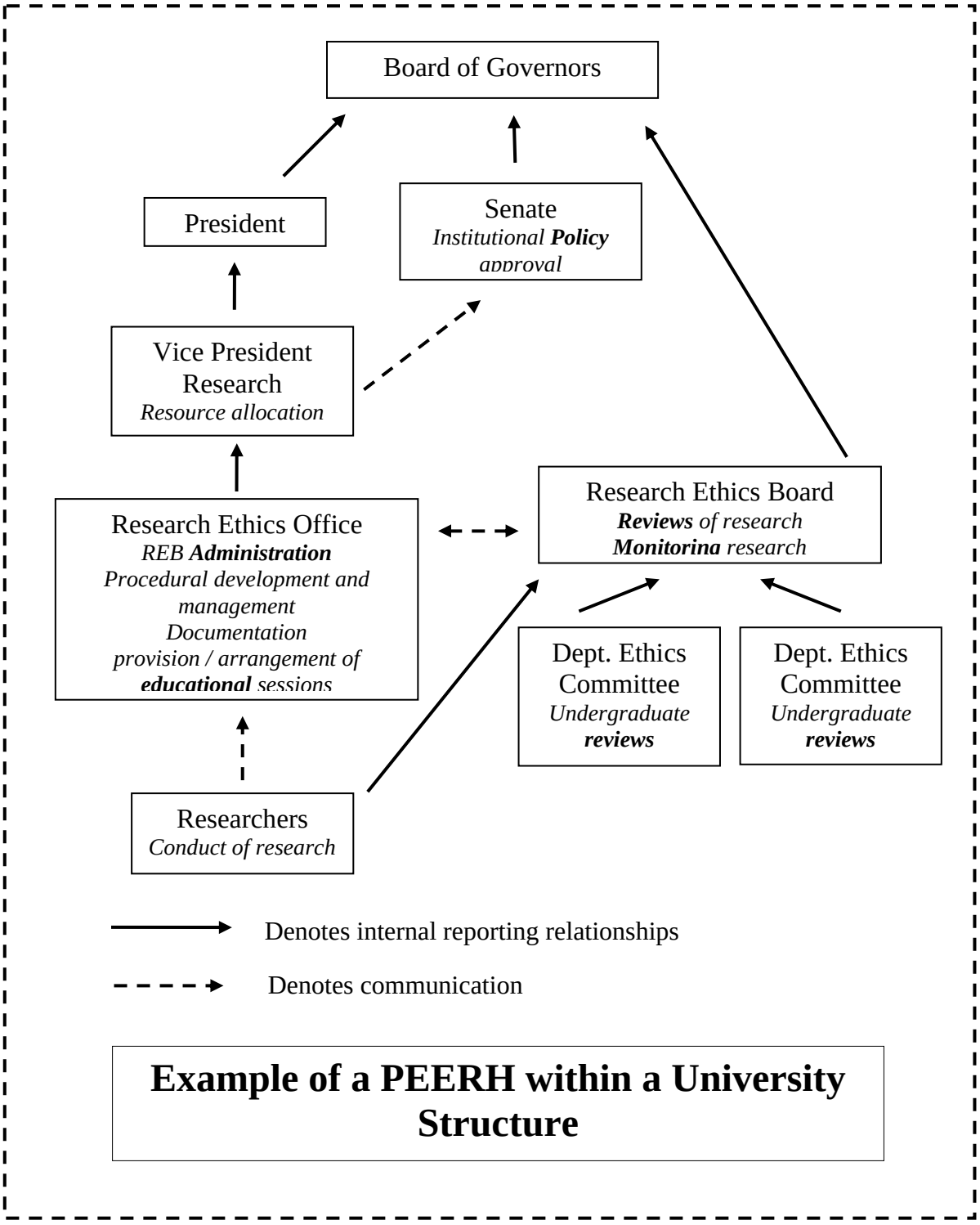
7. Recommendations

1. That the Sponsors' Table, together with a broader representation of organizations and members of the public, establish a process for the implementation of the Committee's proposals for the establishment of a comprehensive system of research participant protection in Canada, together with the creation of a Canadian Council for the Protection of Human Research Participants.
2. That the Council be given responsibility for the inter-related functions of accreditation, policy, and education.
3. That the federal government provide the necessary bridge financing for the period in which the Council is being established, and that members of the Sponsors' Table, together with other interested stakeholders, establish permanent funding arrangements for the longer term.
4. That the members of the Sponsors' Table commit to require that all research that falls under their respective jurisdiction be approved by an REB in an accredited PEERH once the accreditation system is operating.

5. That particular efforts are made to ensure that ethical oversight of research projects is in each case kept proportional to the degree of risk in the project.
6. That all organizations that undertake research ensure that their REBs and PEERHs are given adequate support, in the form of human and financial resources, training in ethics, and recognition of and compensation for service on REBs.

Appendix PEERH Schematics





Example of a PEERH within a University Structure