

Introduction

Michael McDonald, Guest Editor

This special issue of the *Health Law Review* is a product of the Canadian Network for the Governance of Ethical Health Research Involving Humans. The Network held a four-day retreat in July 2008 at the University of Victoria's Dunsmuir Lodge Conference Centre. Twenty-two participants met in plenary sessions to identify major issues and develop themes for network discussion, investigation and action. As the meeting progressed, writing groups coalesced around important topics. Many of the resulting papers appear in this issue. Still other papers are in process for later publication. One topic – the summer 2008 U.S. Government withdrawal from the Declaration of Helsinki and the significant implications this has for human subject safety in other countries including Canada – was identified as so urgent that it was sent to *The Lancet* where it appeared as an invited comment in January of this year.¹

In this introduction, I describe the context, origins and objectives of the Governance Network. Next I outline ideas and concerns identified at our first meeting. Finally, I offer an overview of the contents of this issue as well as the process used in producing it.

The Governance Network

The Network is supported by a three-year Ethics Network Grant from the Canadian Institutes of Health Research (CIHR). The grant's title is the "Canadian Network for the Governance of Ethical Health Research Involving Humans: Evidence, Accountability and Practice."

The Network's origins come from a group that we dubbed the "Whistler Summit." The Summit was supported by my CIHR Operating Grant. That group produced the special double issue of the *Health Law Review* in 2005.² Several participants in the Whistler Summit along with others put forward the Network application. The

applicants include a wide range of individuals from across Canada involved in the practice and study of research ethics as well as collaborating organizations and international scholars.

In our Network proposal, we described an important shift in scholarship on research ethics:

...since the late 1960s... research in this area was cast primarily in *regulatory* terms involving critical scrutiny of (mainly) biomedical research practices and the development of prophylactic professional, national and international standards. In recent years, a small group of researchers including the applicants have shifted from this mainly regulatory orientation to one that is more *performance-oriented*, e.g., what actually does REB review accomplish, what is the extent of individual and institutional conflict of interest in drug approval testing, and what do research subjects actually experience and want?³

We linked these developments to increasing concerns about governance "in particular (for) the structural and systemic requirements for ensuring unbiased high quality research along with effective and reliable human research protection."⁴ We also noted "a national concern and desire to develop an effective evidence-based best-practice approach to human research protection, addressing our uniquely Canadian circumstances and challenges while benchmarking these circumstances and challenges against international experiences."⁵ We argued that these factors have fuelled the emergence of evidence-based approaches to research ethics. Of course, this does not mean that the study of regulations and norms is unimportant. It is rather that there is a need for complementary empirical enquiries.



For the Network we identified six objectives:

1. Bring together established and new researchers working on evidence-based approaches to human research protection;
2. Link potential producers and users of such research to find collaborative ways of moving from research to practice/policy and back;
3. Establish appropriate engagement of clinical research participants/subjects as stakeholders;
4. Develop Canadian capacity in research ethics and governance;
5. Inform and influence policy relevant to the Canadian situation; and
6. Create a permanent national network in this area

In our 2008 meeting at Dunsmuir we took significant steps towards reaching these objectives.

Dunsmuir Retreat

The 2008 retreat included most of the Network applicants along with other academics interested in this area. Participants represented a wide range of disciplines including medicine, nursing, law, social sciences and the humanities.⁶ Both well-established and new practitioners and scholars in research ethics and governance participated. Most retreat participants (and Network applicants) have served on domestic, foreign or international policy advisory groups on research ethics.⁷ Many are or have been members of institutional, professional, national and international research ethics boards (REBs) – many as chairs or founding members. As well, most are extensively involved in research ethics education across a wide range of academic and clinical contexts.

At the retreat our concern was with the governance of ethical health research involving humans. This includes research across the four pillars of health research.⁸ That is, our concerns extend to biomedical and social science research (including ELSI type research) as well as to basic health-directed scientific research.⁹ In our view “research ethics governance” means more than regulations (e.g., Division 5 of the *Food and Drugs Act*, various privacy statutes and the *Tri-Council Policy Statement on the Ethical Conduct of Research Involving*

Humans [TCPS]), regulators (research ethics boards, the Sponsors Table, Health Canada, or the Tri-Council) and the ethics review process.¹⁰ It involves “an organization’s second-order activities for controlling, guiding, organizing and in general overseeing its own first-order activities – whether these are directed internally to the organization’s own members or externally to outside institutions and individuals.”¹¹ As Burgess and Brunger note in their 2005 HLR article:

All uses of power in relation to research constitute the field of governance of research ethics. All parties who influence research through their various forms of power (legal, bureaucratic, financial, rhetorical, etc.) will have inevitable influence on the standards and practices of research and research ethics. Explicitly powerful forces such as industry can be negative or positive in terms of how they promote, or are antithetical to, the goals of research ethics. Research ethics itself – its definition, its purpose, its process – is also shaped by cultural, political and economic forces.¹²

Hence, governance includes so-called soft factors (culture, education, economics, etc.) as well as hard factors (regulations and enforcement). Governance for ethical health research is then holistically aimed at creating or fostering the conditions that ensure research is conducted ethically.

I turn now to central themes discussed at the retreat. Though my comments are based on notes circulated to all present, I take responsibility for this formulation of these points.

Our first concern pervaded discussions throughout. From our perspective there is far too much opacity in the Canadian system of governance for ethical research. There is a lack of information about the formation and functioning of basic policy mechanisms. This goes from what one participant described as “the black box of REB decision making” through to the formation of policy at the national level. We say this as individuals with extensive practical and scholarly work in Canadian research ethics governance. Several of us have had the experience of seeing various national policy initiatives stymied or substantially altered without any coherent justification.¹³ The recent report of the Experts’ Panel to



the Sponsors' Table is a current case in point. If we as relative "insiders" find Canadian governance for research ethics opaque, imagine how all this looks to "outsiders" – including the larger health research community, subjects, and the general public. This is not a healthy situation. It invites suspicion and even cynicism. It stifles the open and vigorous debate that would contribute to good policy formation; it also undermines the legitimacy of policy actions and frustrates meaningful accountability to stakeholders.

At the 2004 Whistler Summit we argued for a new era of openness in Canadian research ethics:

In all human research protection processes, transparency should be the prevailing norm. That is, there should be the rebuttable presumption of transparency. Thus, we envision web-posted reports of REB decisions with systemic institutional effects. This would include the interpretation of clauses or key concepts (e.g., minimal risk, expedited review requirements) in *TCPS* or other relevant documents.¹⁴

Thus, there would be basic data collection and dissemination (e.g., numbers of research protocols submitted, results of reviews, number and nature of complaints) on the part of relevant institutions and authorities. The Whistler Summit also suggested that the three federal research councils require the research institutions it funds to publish annual public reporting of key measures undertaken to protect human subjects in research.¹⁵ A simple registry of important REB decisions across the country would increase clarity and certainty considerably. Yet none of these relatively simple and economical trust-building recommendations have been taken up. Unfortunately all this speaks in support of our continuing concerns about the opacity of Canadian governance of research involving humans.

Knowledge translation in research ethics education and research also received considerable attention at our 2008 meeting. Performance assessment was a focal concern. For example, how would we be able to judge whether a research ethics education endeavour was successful? What sort of metrics would be required, and would these be distinct for the Canadian context? Performance assessment questions also arise with respect to other key features of human research protection. These include the

consent process, the protection of subjects from undue harm, and the effects of ethics review on the quality of research. All these challenges are part of building an evidence-based approach to research ethics.¹⁶

Further, participants noted the lack of effective Canadian provisions for research ethics education. While other countries including France, the UK and New Zealand have mechanisms for this, Canada (with the exception of Québec) does not.¹⁷ (Interestingly, through the Canadian Council on Animal Care, Canada provides ethics education for those conducting research involving animals.¹⁸) One step being undertaken by the Network is the assembly of materials on Canadian research ethics

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education. Our aim is to create a repository of useful tools for education and training that can be used by Network members and shared with others. We especially noted the lack of Canadian focused materials in research ethics, particularly historical studies and case studies. All too often in our teaching we have to resort to using foreign, usually American, materials that are often not applicable to the situation in Canada.

Retreat participants also thought that they should start to create a Canadian agenda for research on human research protection. This agenda would include the development of materials on Canadian experience in this area. As well we advocate research on Canadian private sector health research involving humans (particularly on contract research organizations which are now conducting an increasingly large share of health research). A third item is longitudinal research on research relationships over time – focusing on both researcher practice and subject experience. Also on our agenda is the development and deployment of mechanisms for monitoring long term projects and consent processes – particularly gathering evidence and developing criteria of success. We believe that it is essential to close the gap between critical scholarship and practice. Provocatively put, we see the



need to develop a kind of Cochrane review for health researchers who work with human subjects.

Research in these and related areas would have significant implications for training, education and overall competence of researchers. It should ultimately lead to the development of tool kits to help researchers ensure they are conducting their work ethically and provide valuable information to research subjects.

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A number of participants also suggested that a sound research agenda for governance will access literature outside the usual research ethics area. For example, it would draw upon literature in management, business and safety as well as the body of literature on governance in other areas such as the environment. Systems design issues are also important for governance studies. Network writing teams are in the process of developing papers in this area. These are some of the main items that will inform the future work of the Network.

This issue

Most of the papers for this special issue of the *Health Law Review* were created by writing teams that formed around self-identified topics at the retreat. Each writing team presented its ideas for papers to the retreat as a whole and received input. In a broad sense, the papers represent many of the themes discussed during the Dunsmuir retreat. There was an open and highly collegial reviewing process for each paper involving two or more independent reviewers from within the Network. As guest editor I also reviewed all the papers (except my own).

The first section is “Historical Perspectives.” As the author of the section’s first paper, I note that “While the history of U.S. and international research ethics is well

documented, little has been written on the formation of Canadian policy and practice.”¹⁹ This history is important for both practical and scholarly reasons. It contributes to good policy formation and also to the growing study of research ethics. My paper reports on the process leading to the *TCPS*. While *TCPS* is now more or less taken for granted as part of the Canadian research ethics landscape, it marked a major change in Canada (and internationally) from discipline specific norms (biomedical versus behavioural) to a more unified and coherent set of standards. The second paper by Heather Sampson and co-authors is on the Placebo Initiative. The Initiative was a joint CIHR and Health Canada effort to reconcile conflicting norms on the ethical use of placebo in *TCPS* and the International Conference on Harmonization’s *Guideline on Good Clinical Practice* (ICH *GCP*).²⁰ In both papers, the authors argue that successful documents were produced but there were also significant failures in governance. Indeed, in the case of the Placebo Initiative the policy conflict remains unresolved.

The idea of an evidence-based approach to research provides the context for the next section, “Research on Research Ethics.” In this section, two teams of authors present and address important methodological, policy and ethical issues involved in conducting empirical research in the area of health research ethics. In “Ethical Challenges and Evolving Practices in Research on Research Ethics,” Susan Cox and co-authors identify “the ethical challenges that both researchers and reviewers face when conducting or reviewing human subject health research.”²¹ They then offer suggestions for carrying out research on the ethical aspects of health research. In the following paper, “Informing Governance Through Evidence-Based Research on REBs: Challenges and Opportunities,” Michael Owen and co-authors discuss the challenges facing researchers (and REBs) when the object of the research is the REB. Both these papers break new ground and help move the discussion of evidence-based research ethics to a new level of sophistication.

In the third section, “New Approaches to Ethical Review,” three papers offer timely examinations of three important issues in ethical review. In “Challenges to Ethics Review in Health Research,” Bartha Knoppers compares Canadian and international approaches to ethical review especially with respect to the long term use of health data. She calls for a much more proportionate approach to Canadian ethics review that is



Table 1 Participants in the Governance Network and the Dunsmuir Retreat

Name	Co-Investigator, Collaborator or Invited Participant	Institutional Affiliation
1. Avard, Denise	Co-Investigator	Université de Montréal
2. Brunger, Fern	Invited Participant	Memorial University of Newfoundland
3. Burgess, Michael	Co-Investigator	University of British Columbia
4. Caulfield, Timothy	Co-Investigator	University of Alberta
5. Cox, Susan	Co-Investigator	University of British Columbia
6. Deschamps, Pierre	Co-Investigator	McGill University
7. Emerson, Claudia	Co-Investigator	University of Toronto
8. Kaufert, Joseph	Co-Investigator	University of Manitoba
9. Kimmelman, Jonathan	Invited Participant	McGill University
10. Knoppers, Bartha M*	Co-Investigator	Université de Montréal
11. Kolopack, Pam	Invited Participant	University of Toronto
12. Lavery, James	Co-Investigator	St. Michael's Hospital & University of Toronto
13. Meslin, Eric	Collaborator	Indiana University
14. McDonald, Michael	Principal Investigator	University of British Columbia
15. Owen, Michael	Co-Investigator	Ontario College of Art and Design
16. Preto, Nina	Co-Investigator	University of British Columbia
17. Pullman, Daryl	Co-Investigator	Memorial University of Newfoundland
18. Saginur, Raphael	Co-Investigator	Ottawa Hospital and University of Ottawa
19. Sampson, Heather	Co-Investigator	St. Michael's Hospital & University of Toronto
20. Sheramata, Lorraine*	Co-Investigator	University of Alberta
21. Sugarman, Jeremy*	Collaborator	Johns Hopkins University
22. Townsend, Anne	Invited Participant	University of British Columbia
23. Upshur, Ross*	Co-Investigator	University of Toronto
24. Weijer, Charles	Co-Investigator	University of Western Ontario
25. Willison, Donald	Co-Investigator	McMaster University
26. Woodgate, Roberta	Co-Investigator	University of Manitoba

* indicates: unable to attend the July 2008 Network Retreat

centred less on autonomy and more on social solidarity. In their paper, "What Lens? Defining Minimal Risk in an Era of Large Scale Biobank and Cohort Research," Timothy Caulfield and Charles Weijer take up a closely linked issue. They argue that minimal risk needs to be interpreted differently in the case of large scale data repositories such as biobanks than it is for standard clinical research studies. In the final paper for this section "Ethics Review of Multi-Centre Trials: Where Do

We Stand?," Raphael Saginur and co-authors take up an issue that was discussed in the 2005 special issue of the *Health Law Review* by the late Michael Enzle and Rodney Schmalz.²² They argue that despite the increasing recognition of the critical importance of good multi-centre ethics review to Canadian health research only modest progress has been made. They offer a number of recommendations for making effective multi-centre ethics review a reality in Canada.



In the final section, “Systemic Reform”, there are two papers on highly important but often neglected topics in research ethics. These are public engagement in research oversight and education for members of REBs. In “Research Ethics Boards and Challenges for Public Participation,” Denise Avard and co-authors discuss one aspect of public engagement. They note general agreement on the importance of involving the public as lay or community members in REBs but highlight a troubling lack of clarity about the policy objectives for their inclusion. They make a strong case for clarifying standards in this area so that more precise goals are set for public participation in REBs. In the final paper, Heather Sampson and co-authors argue in favour of a standardized approach to ethics education for Canadian REB members. They point out the formidable challenges faced by REBs in terms of knowledge of research ethics standards, the research being assessed and the implications of that research for human subjects. They note that at present in Canada we lack effective and assessable means for educating REB members in regard to their responsibilities.

Conclusion

This issue presents some of the main results of the Canadian Governance Network’s first year of work. Over the next two years, the Network plans to push forward in the areas identified above. One key area will be engagement with more stakeholders in Canadian human research protection. Another will be further articulation of our agenda for Canadian research ethics. There will be further work on the history of Canadian research ethics, particularly on the formation of policy for research involving collectivities. The topic of governance will also receive further attention particularly in terms of what constitutes good governance and how we would know if we are making progress in that direction.

Finally, I wish to acknowledge the CIHR for its support for the Governance Network. My thanks go to all those who participated in the Network application and the Dunsmuir Retreat. I also wish to express my deep appreciation for Nina Preto’s outstanding work in managing the retreat and in producing this special issue.

Endnotes

- 1 Jonathan Kimmelman, Charles Weijer, and Eric Meslin, “The Helsinki Discords: FDA, Ethics, and International Drug Trials” (2009) 373:9657 *Lancet* 13.
- 2 (2005) 13: 2 & 3 *Health L. Rev.*
- 3 Michael McDonald *et al.*, “CIHR Network Grant Proposal” (2007) [unpublished, archived with author].
- 4 *Ibid.*
- 5 *Ibid.*
- 6 Network and retreat participants are listed in Table 1.
- 7 For example, these include the Experts Committee for Human Research Participant Protection in Canada, the working group that drafted the CIHR Guidelines for Research Involving Aboriginals, the National Placebo Initiative, the Panel on Research Ethics, the National Council on Ethics and Human Research, the US National Bioethics Advisory Commission, International Ethics Committee of the Human Genome Organization (HUGO), the CIHR Standing Committee on Ethics, the Board of Genome Canada, the research group that prepared the Law Commission of Canada report, the Tri-Council Working Group that drafted the document that led to the Tri-Council Policy Statement.
- 8 The term “four pillars” has been used by CIHR to describe research in (1) biomedicine, (2) clinical sciences, (3) health systems and services, and (4) social, cultural and other factors that affect the health of populations. See for example, CIHR, *Strategies for Knowledge Transition in Health: Request for Applications*, online: CIHR <<http://www.cihr-irsc.gc.ca/e/4143.html>>.
- 9 This is not to say that at the retreat we were only concerned with health research involving humans. However, this was the main focus of our concerns.
- 10 *Food and Drugs Act*, R.S.C. 1985, c. F-27; Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, Social Sciences and Humanities Research Council of Canada, *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (Ottawa: Public Works and Government Services Canada, 1999 with 2000, 2002, 2005 amendments) [TCPS], online: Interagency Advisory Panel on Research Ethics (PRE) <<http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>>.



- 11 See “Ethics and Governance” in Michael McDonald et. al. *The Governance of Health Research Involving Humans* (Ottawa: Law Commission of Canada, 2000) at 23.
- 12 Fern Brunger & Mike Burgess, “A Cultural Understanding of Research Ethics Governance”, (2005) 13: 2 & 3 Health L. Rev. 69.
- 13 See for example Michael McDonald, “From *Code* to *Policy Statement*: Creating Canadian Policy for Ethical Research Involving Humans” (2009) 17:2 Health L. Rev. (page No.) [McDonald, “From *Code* to *Policy Statement*”]; Heather Sampson, Charles Weijer & Daryl Pullman, “Research Governance Lessons from the National Placebo Initiative” (2009) 17:2 Health L. Rev. (Need Page No.)
- 14 Michael McDonald, “Introduction & Dedication” (2005) 13: 2 & 3 Health L. Rev. 1 at 10.
- 15 *Ibid.*
- 16 Brenda Beagan and Michael McDonald, “Evidence-Based Practice of Ethics Review,” Health L. Rev. 62.
- 17 For Québec see *Tutorial in Research Ethics*, online: Santé et Services Sociaux Quebec <<http://ethique.msss.gouv.qc.ca/didacticiel/>> for the French website and <<http://ethique.msss.gouv.qc.ca/didacticiel/index.php?lang=en>> for the English website.
- 18 Catherine A. Schuppli & Michael McDonald, “Contrasting Modes of Governance for Humans and Animals in Canada” (2005) 13: 2 & 3 Health L. Rev. 97. See also the Canadian Council on Animal Care (CCAC) website, online at: CCAC <http://www.ccac.ca/en/CCAC_Programs/ETCC/Intro-coretopics-Web11.htm>.
- 19 McDonald, “From *Code* to *Policy Statement*”, *supra* note 13
- 20 International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH), *ICH Harmonised Tripartite Guideline: Guideline for Good Clinical Practice: E-6 (R1)*, online: ICH <<http://www.ich.org/LOB/media/MEDIA482.pdf>>.
- 21 Susan Cox *et al.*, “Ethical Challenges and Evolving Practices in Research on Ethics in Human Research” (2005) 17:2 Health L. Rev. PAGE NO. at PAGE NO.
- 22 Michael Enzle and Rodney Schmaltz, “Ethics Review of Multi-Centre Clinical Trials in Canada” (2005) 13: 2 & 3 Health L. Rev. 51. Michael Enzle’s outstanding contributions to Canadian research ethics are recalled in Timothy Caulfield, “Introduction” (2008) 16:2 Health L. Rev. 3.

