

**MEMORANDUM**

<b>ATTENTION</b>	Senate	<b>DATE</b>	February 23, 2023
<b>FROM</b>	Stephen Spector Vice-Chair, Senate		
<b>RE:</b>	Research Ethics Board and Policy R20.01		

At its February 6, 2023 meeting, Senate referred issues associated with the Research Ethics Board (REB) and Board Policy R20.01 to SCAR for review and recommendations.

**Background**

Article 37 of the University Act sets out the responsibilities of the Senate. Specifically, Article 37(1) states that “The academic governance of the university is vested in the senate ...” Article 37(1)(c) states that the Senate has the power “to establish committees it considers necessary ...” Given these two statements, it is not surprising that the REB was historically treated as a Committee of Senate. It can be argued that since it involves actions of academics, then it is part of the “academic governance of the university”. Note that when Policy R20.01 came into force in 1992, it was NOT sent to Senate for approval. There is no mention of that policy in any of the Senate agendas on file for all of 1991, 1992 and 1993.

Subsequent changes to R20.01 all maintained that view. In 2001, S01-55, which dealt with revisions to the terms of reference for the REB, contained clause 3.1 which stated explicitly “The Research Ethics Board is a committee of Senate.” That clause was maintained in the 2006 revisions (S06-87). It was not removed until the 2019 revisions (S19-54) which were intended to conform SFU’s policies with those of the Tri-Council TCPS2 (2018 version).

On the other hand, there are reasons that the REB should not be a Committee of Senate. It can be maintained that the REB is not an aspect of “the academic governance of the university”. Rather, it is an aspect of the governance *of academics at the university*. Further, research ethics is externally regulated in a way that prevents the REB from following the normal rules of a committee of Senate – the external regulations take precedence. If such is the case, then it falls under the purview Board of Governors as it becomes an *administrative* matter. That is the way the REB is treated at UBC and UVic. SFU’s situation is very peculiar. Historically it is understandable how we ended up here, but we have diverged from everyone else over time by continuing to treat the REB as a committee of Senate, even after this was removed from our own policies in 2019.

Overall SFU policies have to be responsive to key external regulatory and funding bodies. As noted above, the last revision to R20.01 in 2019 was due to a change in the Tri-Council policies. However, the Tri-Council has once again updated TCPS2 dealing with Ethical Conduct for Research Involving Humans and there now is a conflict between Tri-Council and SFU policies.

Finally, from a pragmatic perspective, numerous reports to Senate over the period 2000 to 2022 reiterate the same point: an inability of the REB to meet quorum. In 2006, clause 3.7 stated that the REB was to consist of at least 12 voting members. Quorum, according to clause 3.11 was to be 7 members. Revisions made in 2019 made it more challenging to meet quorum as clause 5.2 set quorum at 50% of the REB voting membership plus one (1) including at a minimum, the core membership representation set out in Schedule A.

### **Key Issues**

At the February 6, 2023 Senate meeting, concerns were expressed that the University was not following its own established procedures. The current R20.01 was approved by Senate in April 2019 (Senate S19-54) and it would appear that no one picked up on the fact that the manner in which members were chosen for the REB was inconsistent with the 2018 version of TCPS2. An external review of the Office of Research Ethics was undertaken in 2021. That review pointed to some issues with how we do things at SFU. In 2022, significant changes within the Office of the VPRI took place, including transition to a new Director of Research Ethics. The new Director read the external review and began to implement the recommendations. One of those recommendations was to consider the Canadian Association of Research Ethics Boards (CAREB) Standard Operating Procedures (SOPs).

The overarching consideration is that SFU must have an effective and compliant research ethics review process. Absent action at this meeting, it is possible that, in the coming months, SFU will not meet the minimum requirements set out in TCPS2 paragraph 6.4 where it states that “The REB shall consist of at least five members, including both men and women ...” Failure to meet that minimum requirement means that no decisions can be made with respect to research and ethical matters. Further, failure to meet the minimum requirements calls into question the likelihood that SFU will be reaccredited by US funding authorities when the 5-year cycle ends in April 2023.

### **Actions required at Senate March 6, 2023**

Motion 1 acknowledges the complex nature of the REB and membership thereof. Further, the overlap between administrative responsibilities and academic impact makes it essential that all parties are comfortable with the way forward. The creation of an ad-hoc Special Joint Committee (SJC) of the Board of Governors (BOG) and Senate will ensure that this overlap is addressed in a manner that considers both BOG and Senate responsibilities. The mandate of SJC will be focused on the composition of the REB, the appointment and removal process for REB members and how the REB chair is selected.

Motions 2 to 3 will permit SFU to meet the minimum requirements of TCPS 2 paragraph 6.4 through the end of September 2023. This will create a buffer while any recommendations that might come from the SJC are debated and acted upon.

Motion 2 ratifies the membership of the following individuals to the REB:

- Wayne Marigold (reappointed community member and non-scientific member)
- Angela McIntire (reappointed scientific member, Indigenous specialist)
- Helene Love (appointed legal member – served previously on the REB)
- Wendy Thornton (reappointed scientific member and as REB Chair until May 31, 2023)
- Victoria Claydon (reappointed scientific member and as REB Vice-Chair until May 31, 2023)
- David Whitehurst (reappointed scientific member)
- Theresa Cheung (reappointed scientific member)

Motion 3 ratifies the appointment of Professor Jeannie Kerr as a scientific member from the Faculty of Education. Professor Kerr served for 6 years on the REB at the University of Winnipeg before coming to SFU in 2022. This service included 2 years as REB vice-chair and 2 years as chair. During her time on the REB in Winnipeg, the institution reorganized to align with the CAREB standards. She established a voting member Indigenous Advisory Council, and fore-fronted Indigenous partnerships to enhance REB capacity for Indigenous research ethics review. She would bring valuable experience to the REB and has indicated a willingness to serve a 6-month term.

With respect to Motion 4, please note that for N2/CAREB national standards procedures 201 and 202, which address membership and appointment processes of the REB, a set of interim procedures have been proposed. Please see below.

<https://www.sfu.ca/research/operating-procedures-scar-review>

**MOTION 1:**

“That an ad-hoc Special Joint Committee (SJC) of the Board of Governors (BOG) and the Senate be formed to review and if appropriate, recommend changes to R20.01 policy and procedures.

- The SJC will be comprised of 2 members of the BOG chosen by the BOG and 2 members of the Senate selected by the Senate.
- The scope of work for the SJC will be focused on the composition of the REB, the appointment and removal process for REB members and how the REB chair is selected. It will address the role of the BOG and the Senate in these processes.
- The committee will report back no later than 30 June 2023 to both the BOG and the Senate on any recommended changes to R20.01 policy or procedures.”

**MOTION 2:**

That Senate ratifies the renewal of Wayne Marigold, Angela McIntire, Helene Love, Wendy Thornton, Victoria Claydon, David Whitehurst, and Theresa Cheung as members of the REB for the period ending September 30, 2023, and Wendy Thornton as Chair until May 31, 2023.

**MOTION 3:**

That Senate ratifies the appointment of Professor Jeannie Kerr as a member of the REB for the period ending September 30, 2023.

**MOTION 4:**

That while the Special Joint Committee is carrying out its work, Senate recommends that the procedures of Policy R20.01 as set out in Schedule A be suspended, and that they be replaced by the original N2/CAREB SOPs 201 and 202 and a SFU-specific interim Terms of Reference, allowing REB work to resume immediately. Senate further recommends that the Director Research Ethics put in place a process to work with the REB and external experts as required to ensure that all remaining N2/CAREB SOPs are implemented in a way that enables an effective, compliant, and continuous operation of the research ethics review process at SFU.



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the Tri-Council has once again updated TCPS2 dealing with Ethical Conduct for Research Involving Humans and there now is a conflict between Tri-Council and SFU policies.

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### **Key Issues**

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The overarching consideration is that SFU must have an effective and compliant research ethics review process. Absent action at this meeting, it is possible that, in the coming months, SFU will not meet the minimum requirements set out in TCPS2 paragraph 6.4 where it states that “The REB shall consist of at least five members, including both men and women ...” Failure to meet that minimum requirement means that no decisions can be made with respect to research and ethical matters. Further, failure to meet the minimum requirements calls into question the likelihood that SFU will be reaccredited by US funding authorities when the 5-year cycle ends in April 2023.

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Motions 2 to ~~4~~3 will permit SFU to meet the minimum requirements of TCPS 2 paragraph 6.4 through the end of September 2023. This will create a buffer while any recommendations that might come from the SJC are debated and acted upon.

### **Motion 2 ratifies the membership of the following individuals to the REB:**

- Wayne Marigold (reappointed community member and non-scientific member)
- Angela McIntire (reappointed scientific member, Indigenous specialist)
- Helene Love (appointed legal member – served previously on the REB)
- Wendy Thornton (reappointed scientific member and as REB Chair until May 31, 2023)
- Victoria Claydon (reappointed scientific member and as REB Vice-Chair until May 31, 2023)
- David Whitehurst (reappointed scientific member)

- Theresa Cheung (reappointed scientific member)

Motion 3 ratifies the appointment of Professor Jeannie Kerr as a scientific member from the Faculty of Education. Professor Kerr served for 6 years on the REB at the University of Winnipeg before coming to SFU in 2022. This service included 2 years as REB vice-chair and 2 years as chair. During her time on the REB in Winnipeg, the institution reorganized to align with the CAREB standards. She established a voting member Indigenous Advisory Council, and fore-fronted Indigenous partnerships to enhance REB capacity for Indigenous research ethics review. She would bring valuable experience to the REB and has indicated a willingness to serve a 6-month term.

With respect to Motion ~~54~~, please note that for N2/CAREB national standards ~~procedure~~procedures 201 and 202, which ~~addresses membership of the REB, the VPRI will take any changes to REB~~address membership to the SJC for approval during the review period. Doing so will ensure that oversight is in place while the SJC considers what would be appropriate in the long-term. These SOPs are available here: and appointment processes of the REB, as set of interim procedures have been proposed. Please see below.

<https://www.sfu.ca/research/operating-procedures-scar-review>

### **MOTION 1:**

“That an ad-hoc Special Joint Committee (SJC) of the Board of Governors (BOG) and the Senate be formed to review and if appropriate, recommend changes to R20.01 policy and procedures.

- The SJC will be comprised of 2 members of the BOG chosen by the BOG and 2 members of the Senate selected by the Senate.
- The scope of work for the SJC will be focused on the composition of the REB, the appointment and removal process for REB members and how the REB chair is selected. It will address the role of the BOG and the Senate in these processes.
- The committee will report back no later than 30 June 2023 to both the BOG and the Senate on any recommended changes to R20.01 policy or procedures.”

### **MOTION 2:**

That Senate ratifies the renewal of Wayne Marigold ~~(community member) and~~ Angela McIntire ~~(Scientific Member), Helene Love, Wendy Thornton, Victoria Claydon, David Whitehurst, and Theresa Cheung~~ as members of the REB for the period ending September 30, 2023, ~~and Wendy Thornton as Chair until May 31, 2023.~~

### **MOTION 3:**

That Senate ratifies the appointment of Professor Jeannie Kerr as a member of the REB for the period ending September 30, 2023.

### **MOTION 4:**

~~That Senate ratifies the appointment of Brittney Schichter as a member of the REB (and legal expert) for the period ending September 30, 2023.~~

### **MOTION 5:**

“That while the Special Joint Committee is carrying out its work, Senate recommends that the procedures of Policy R20.01 as set out in Schedule A be suspended, ~~and that they be replaced by the original N2/CAREB SOPs 201 and 202 and a SFU-specific interim Terms of Reference, allowing REB work to resume immediately.~~ Senate further recommends that the ~~Vice President, Director Research & International (VPRI) Ethics~~ put in place ~~Standard Operating Procedures based on the N2/CAREB national standards, amended where appropriate for SFU, and a process to work with the REB and external experts as required to~~ ensure that ~~the REB is constituted and supported~~ all remaining N2/CAREB SOPs are implemented in a way that enables an effective, compliant, and continuous operation of the research ethics review process at SFU.” ~~While the SJC conducts its work, the VPRI would not be responsible for appointing and removing members, as this would be done via a committee comprised of the Director of ORE, a member of the REB, and one other independent faculty member appointed by the President. Further, in the interim the Chair of the REB would be appointed by the president, in consultation with this same committee.~~