

# Memorandum

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**TO:** Board of Governors  
**FROM:** Marc Weinstein, Vice Principal (University Advancement)  
**SUBJECT:** Revised Gift-In-Kind Policy (Non-Monetary Donations)  
**DATE:** December 5, 2019  
**DOCUMENT #:** GD19-25

**ACTION REQUIRED:**  INFORMATION  APPROVAL/DECISION

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**ISSUE & EXPECTED OUTCOME** Proposed revisions to the *Gift-In-Kind Policy (Non-Monetary Donations)* are presented to the Board of Governors for consideration. (Draft guidelines that are being transmitted along with the draft Policy are for information only, and are not subject to the formal review and approval process outlined below.)

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**BACKGROUND & RATIONALE** Gifts-in-kind are non-cash gifts that may be accepted by the University under certain conditions.

The University's 2014 *Gift-In-Kind Policy* is out-of-date. The Policy has been revised to provide greater clarity and precision to the practice of accepting gifts-in-kind. The Policy serves to inform the University community, including donors, of the types of gifts-in-kind that may be accepted by the University.

Specifically, revisions to the Policy aim to:

- 1) streamline workflow by establishing clear processes, roles and responsibilities for the review and acceptance of gifts-in-kind (See Section 3 of the Policy);
- 2) provide better guidance on the documentation required in order for the University to recognize and accept gifts-in-kind (See Section 4 of the Policy); and
- 3) clarify the processes for determining fair market value and for obtaining appraisals, so that the proper representations can be made (See Section 5 of the Policy).

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**ALIGNMENT WITH MISSION AND STRATEGIC PRIORITIES** The revised *Gift-In-Kind Policy* aligns with the University's fundraising strategy and complies with all other University policies in effect. Specifically, a guiding principle of the revised Policy is that any gift-in-kind accepted by the University must be consistent with the scope of the University's mission, goals and priorities (See Paragraph 2.1 of the Policy).

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**COMPLIANCE** The revised Policy reflects latest associated policies in effect:

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<b>WITH UNIVERSITY POLICY</b>	<ul style="list-style-type: none"> <li>• <i>Gift Acceptance Policy</i>: Overall framework for gift acceptance, including for gifts-in-kind</li> <li>• <i>Policy on Approval of Contracts and Designation of Signing Authority</i>: Correct signing authorities, special rules for real property</li> <li>• <i>Regulation on Conflicts of Interest</i>: Handling proposed gifts-in-kind from member of staff, governing or advisory body, or active volunteer</li> </ul>
<b>COMPLIANCE WITH LEGISLATION/ EXTERNAL REGULATIONS</b>	The revised Policy aligns with Canada Revenue Agency (CRA) requirements for gift receipting to ensure compliance (See Section 6 of the Policy).
<b>RISK FACTORS</b>	N/A
<b>SUSTAINABILITY CONSIDERATIONS</b>	N/A
<b>IMPACT OF DECISION AND NEXT STEPS</b>	<p>The revised Policy will continue to be a University-wide Policy, applicable to all gifts-in-kind that may be accepted by the University.</p> <p>Once the new Policy is reviewed and approved by members of the Board of Governors, the Policy will be distributed to relevant University Advancement staff members (and a training will be provided), Deans, the Office of the Provost and Vice-Principal (Academic) and the Office of the Secretary-General. It will also be posted on the Secretariat website for the University community and general public.</p>
<b>MOTION OR RESOLUTION FOR APPROVAL</b>	<i>Be it resolved that the Board of Governors, on the recommendation of the Vice-Principal (University Advancement), approve the revised Gift-In-Kind Policy (Non-Monetary Donations), as presented in Appendix A.</i>
<b>APPENDICES</b>	Appendix A: Draft Revised <i>Gift-In-Kind Policy (Non-Monetary Donations)</i>

Draft: 22 November, 2019

<b>POLICY NAME</b>	<b>GIFT-IN-KIND POLICY (NON-MONETARY DONATIONS)</b>
<b>Approving Body</b>	Secretary-General to complete
<b>Initial Approval Date</b>	Date
<b>Date of last review</b>	March 27, 2012 – Board of Governors (Executive Committee) September 4, 2014 – Board of Governors (Executive Committee)
<b>Date of next review</b>	Date
<b>Executive Sponsor</b>	Vice Principal (University Advancement) Vice-Principal (Administration and Finance)
<b>Related Documents</b>	<p>University Policies Available on Secretariat Website:</p> <ul style="list-style-type: none"> <li>- <b>Gift Acceptance Policy:</b> <a href="https://mcgill.ca/secretariat/files/secretariat/gift_acceptance_policy_guidelines_approved_oct_2_2014.pdf">https://mcgill.ca/secretariat/files/secretariat/gift_acceptance_policy_guidelines_approved_oct_2_2014.pdf</a></li> <li>- <b>Policy on the Approval of Contracts and Designation of Signing Authority:</b> <a href="https://mcgill.ca/secretariat/files/secretariat/final_signing_policy_may_2018_with_appendices-dec_2018_1.pdf">https://mcgill.ca/secretariat/files/secretariat/final_signing_policy_may_2018_with_appendices-dec_2018_1.pdf</a></li> <li>- <b>Regulation on Conflicts of Interest:</b> <a href="https://mcgill.ca/secretariat/files/secretariat/conflict-of-interest-regulation-on_0.pdf">https://mcgill.ca/secretariat/files/secretariat/conflict-of-interest-regulation-on_0.pdf</a></li> </ul> <p>Attachments to this Policy:</p> <ul style="list-style-type: none"> <li>- <b>Appendix A:</b> Guidelines: Certificate of Appraiser Template</li> <li>- <b>Appendix B:</b> Guidelines: Form for Donations of Gifts-in-Kind</li> </ul>

**PART I - PURPOSE AND SCOPE****1. Overview**

- 1.1. This policy (i) establishes roles and responsibilities within the University for treating gifts-in-kind to the University; (ii) provides procedures for the acceptance of gifts-in-kind by the University, as a complement to the University's *Gift Acceptance Policy*; (iii) provides rules for documenting such gifts, determining their fair market value, receipting for them and other ancillary matters; and (iv) applies to all gifts-in-kind being considered or having been accepted by the University, whether or not an official donation receipt is requested by the donor.
- 1.2. Gifts-in-kind are non-cash gifts, such as rare books, archival records and artifacts, natural history objects/specimens, artwork, musical instruments, equipment and supplies, or real property. The University may accept such a gift of property as a charitable donation if the property gifted supports the goals of the University and of the receiving unit, respects its academic freedom and preserves its integrity, and respects its principles and values. Gifts-in-kind do not include gifts of services.

- 1.3. This policy governs University employees, volunteers and leaders on matters pertaining to gifts-in-kind and provides them with an efficient review framework.
- 1.4. This policy and its published guidelines provide public information about the University's policies and procedures specific to gifts-in-kind, in order to inform the public about University procedures pertaining to potential gifts-in-kind.

## PART II – POLICY PROVISIONS

### 2. Principles

- 2.1. To be accepted by the University, a proposed gift-in-kind must conform with the following principles:
  - a. The gift-in-kind must be consistent with the scope of the University's mission, goals, priorities and strategic plans;
  - b. The gift-in-kind must have been obtained by the donor in a matter conforming with national and international heritage and cultural property legislation, and with any other relevant regulations (e.g. pertaining to permitted export, protected artifacts or species, ownership of artwork, environmental conditions for real property) and agreements;
  - c. The gift-in-kind and any receipting for it must be compliant with this policy and other applicable University policies and procedures, including notably the University's Gift Acceptance Policy in effect from time to time; Canada Revenue Agency guidelines and applicable legislation, including the *Cultural Property Import Export Act* as it pertains to receipting of gifts;
  - d. The gift-in-kind must be on terms which allow the University to uphold the principles of academic freedom, freedom of expression and institutional autonomy;
  - e. The gift-in-kind must be easily convertible into cash unless it is intended for retention or a collecting unit. If retained, the gift-in-kind must:
    - (i) Support one or more of the following purposes:
      - support the training of the mind;
      - advance the knowledge or abilities of the receiving unit;
      - advance the educational and/or research mission of the University
      - pertain to the heritage of the University institution and community; and/or
      - contribute to the appreciation of art in the community; and
    - (ii) Be financially neutral to the University operation, including with respect to indirect and infrastructure costs. However, costs related to the acceptance and maintenance of a gift-in-kind may be allowable, if they have been assessed, and a source of funds to sustain these costs has been identified and secured.
  - f. The donor must agree that the gift-in-kind may be managed by the University at the University's discretion once title transfers to the University (e.g. may be retained, disposed of, or redirected), subject to relevant exceptions under (i) applicable legislation pertaining to certified cultural property and heritage objects; and (ii) any other applicable University policy in effect from time to time.
  - g. The University is committed to avoiding actual or perceived conflicts of interest in its acceptance of gifts; and

- h. The University shall not accept a gift-in-kind that would require a purchase of goods or services in contravention of the University's *Procurement Policy* or practices in effect from time to time, in order for the University to maintain or use the proposed gift-in-kind.

- 2.2. The types of gifts-in-kind listed below will not be recognized as charitable donations by the University:
- a. professional or personal services from an individual or corporation;
  - b. items of personal clothes or accessories, except where of special historical or cultural significance to the University or connected with a purpose outlined in paragraph 2.1(e) above;
  - c. human organs and tissues;
  - d. items from University staff gained from the normal conduct of University business (e.g. specimens, materials purchased with research funds, course books); and
  - e. items that may have come from or did come from illegal or unethical activity (such as protected artifacts or species, or stolen artwork).

### 3. Gift Acceptance for Gifts-in-Kind

- 3.1. If approached for a potential gift-in-kind, the University must first determine whether to accept such proposed gift-in-kind, pursuant to the University's *Gift Acceptance Policy* in effect from time to time. All proposed gifts-in-kind shall be directed to the designated contact for the receiving unit, in accordance with Table 1 below. Such designated contact shall in turn refer the matter to University Advancement to guide the matter through the applicable gift-in-kind acceptance and approval steps in accordance with University policies and procedures.

Table 1 – Contacts for Proposed Gifts-in-Kind	
Type of Proposed Gift-in-Kind	Contact
Books, manuscripts, documents, prints, recordings and similar material in print and multimedia formats (slides, videos, films...)	Head of Rare Books and Special Collections, Libraries
Archival records in all media and related ephemera and artifacts	Director and University Archivist
Works of art	Director, Curatorial Affairs, Visual Arts, Libraries
Collections and specimens in the fields of paleontology, zoology, mineralogy and world cultures (ethnology), such as cultural artifacts and natural history specimens	Director, Redpath Museum
Real Property	Executive Director, Campus Planning and Development Office
Musical instruments	Dean of Music
Other gifts-in-kind (e.g. equipment or supplies to support a specific unit) excluding items falling under Libraries and its units	Head of receiving unit

Proposed gifts-in-kind (i) with a fair market value of \$250,000 or (ii) which would put the donor at the cumulative giving level of \$250,000 or more for gifts-in-kind, must be submitted to the Approval

Committee on Gifts (“ACOG”) for either an acceptance decision or guidance, as follows: (a) Acceptance Decision: ACOG may accept or decline additional gifts-in-kind from such donor on a case-by-case basis; or (b) Guidance: ACOG may review whether potential gifts-in-kind of a specific type from such donor would be in compliance with this policy, in order to provide guidance to University units, and in some cases to the potential donor, prior to any additional proposed gift(s)-in-kind being submitted for an acceptance decision.

- 3.2. The relevant contact identified in Table 1, the head of the receiving unit or relevant University Advancement staff may request that ACOG make an acceptance decision on proposed gifts-in-kind which are below the \$250,000 threshold, where there are identified risks or special considerations associated with the proposed gift-in-kind.
- 3.3. The standing members of the ACOG are as follows:
  - a. the Vice-Principal (Administration and Finance) (or delegate)
  - b. the Provost (or delegate);
  - c. the Vice-Principal (University Advancement) (or delegate);
  - d. the General Counsel and Director Legal Services (or delegate); and
  - e. the head of the potential receiving unit (or delegate).

The Vice-Principal (Administration and Finance) shall serve as the Chair of the ACOG (or the Provost, in such Vice-Principal’s absence).

- 3.4. The University cannot guarantee to a donor that any gift-in-kind will be placed on display permanently, or that a collection shall remain together as a group storage. Items offered with restrictions on their use will require special consideration before acceptance.
- 3.5. Gifts-in-kind will not be accepted under any arrangements other than as an absolute and irrevocable gift. Permanent loans of material will not be accepted by the University.
- 3.6. Specific acceptance appraisal or receipting criteria, and any other gift-type or unit-specific requirements for certain types of gifts-in-kind or pertaining to various University units shall be set out in Guidelines.
- 3.7. In order to avoid any actual or perceived conflict of interest in connection with a gift-in-kind, those responsible for accepting a gift-in-kind shall take special care when reviewing potential gifts-in-kind from donors with close involvement in University activities (e.g. staff; members of University governing or advisory bodies or affiliated organizations; active volunteers), particularly where the potential donor wishes to receive an official donation receipt and/or the proposed gift-in-kind may result in an actual or perceived benefit to the potential donor or a person designated by the potential donor. Such special care shall include consultation with the head of the proposed receiving unit (or head of unit’s supervisor if the head of the unit wishes to make the donation) for (i) review under the *Regulation on Conflicts of Interest*; and (ii) referral to ACOG where needed; prior to any acceptance.

## 4. Documentation for Gifts-in-Kind

- 4.1. The University requires a signed Deed of Gift between the donor and the University for all University-recognized gifts-in-kind. In addition, for (i) gifts of real property or (ii) gifts-in-kind with a fair market value of \$1,000,000 or more or (iii) other situations involving gifts-in-kind as may be identified by Legal Services, the University requires a notarial Deed of Gift in Québec, or equivalent document for other jurisdictions, to be signed by the donor and the University.
- 4.2. Deeds of Gift for gifts-in-kind must be approved by the University Advancement unit and signed in accordance with the *Policy on the Approval of Contracts and Designation of Signing Authority* in effect from time to time.
- 4.3. When considering and/or documenting a gift-in-kind which is subject to regulation (e.g. permitted export, protected artifacts or species, ownership of artwork, environmental conditions for real property) or presents potential risks, the University will require representations and relevant documentation (e.g. permit, license or certificate) from the donor concerning compliance with applicable laws and ethical practices.
- 4.4. For proposed donations of real property, the University requires the following documentation in order to determine acceptance: (i) an updated certificate of location and survey plan from a land surveyor; (ii) a legal opinion confirming valid title and that the property is free and clear of all material encumbrances such as mortgages, servitudes etc.; and (iii) an environmental study provided by an environmental firm.

## 5. Determining the Fair Market Value of Gifts-in-Kind; Appraisals

- 5.1. Determining the fair market value of a gift-in-kind is necessary, in order to permit the University to administer the gift, and issue an official donation receipt if requested; all in compliance with applicable accounting and legal requirements for registered charities.
- 5.2. Determination of the fair market value of any gift-in-kind must be conducted according to professional standards and principles and in accordance with applicable laws and applicable Canada Revenue Agency guidelines, including any applicable “deemed fair market value” rules. Donors and their advisors are responsible for being informed of the applicable guidelines, and if they wish to receive an official donation receipt, for providing requested purchase/acquisition information and other requested backup information to the University, to allow the University to establish the fair market value; and issue charitable tax receipts in conformance with applicable laws and Canada Revenue Agency guidelines, as the case may be.
- 5.3. For gifts-in-kind valued under \$1,000, an external professional appraisal may not be required if recent invoices, receipts or other supporting documents are available from the donor, or if an internal appraisal is conducted by qualified professional staff.
- 5.4. For gifts-in-kind with a fair market value between \$1,000 and \$49,999, one independent appraisal is required from a qualified and knowledgeable expert as defined by the Canada Revenue Agency guidelines.

- 5.5. Subject to (i) Section 5.6 in the case of real property, and (ii) any express exceptions to this Section 5.5 for a given unit as may be set out in the Guidelines for other (i.e. not real property) types of gifts-in-kind with a fair market value of \$50,000 and more for an individual item, two (2) independent appraisals are required from a duly qualified and knowledgeable expert. The Associate Vice-Principal, Financial Services has authority to permit exceptions under Guidelines or case-by-case exceptions to this requirement for two (2) appraisals, in which case a single qualified appraisal shall apply. The receiving unit concerned shall raise any such proposed exceptions to the usual appraisal requirements at an early stage in the gift acceptance process, so that the donor may be appropriately informed.
- 5.6. For proposed donations of real property, the University requires the following documentation in order to determine fair market value (i) two (2) independent appraisals by licensed real estate appraisers or evaluators; and (ii) one (1) written inspection report from a building inspector (or other relevant expert) approved by the Campus Planning and Development Office.
- 5.7. The appraiser(s) shall provide the University with a signed certificate confirming that the appraiser is: (i) accredited or otherwise qualified in the field of the evaluation; (ii) knowledgeable about valuation procedures; (iii) arm's length from the donor; and (iv) independent from the University. A sample certificate of appraiser form is set out in the Guidelines, a current copy of which is attached hereto as Appendix A. Appraisers may adapt such sample form, provided their certification is signed and includes each substantive element from the sample form.
- 5.8. The cost of independent appraisal(s) is to be borne by the potential donor or another identified source as if such source is agreed to in writing between (i) the Associate Vice-Principal, Financial Services and (ii) the receiving unit concerned. Such appraisal cost borne by the donor is not eligible for an official donation receipt pursuant to Canada Revenue Agency guidelines.
- 5.9. All appraisals must be current at the time of the donation, pursuant to Canada Revenue Agency guidelines.

## **6. Receipting and Compliance for Gifts-in-Kind**

- 6.1. University Advancement is the only University unit authorized to issue official donation receipts or other receipts related to philanthropic gifts, including gifts-in-kind.
- 6.2. Where the donor of a gift-in-kind has not requested an official donation receipt, the University may still require certain documents or representations from the donor in order to assure compliance with this policy and applicable legislation.

## **PART III – AUTHORITY TO APPROVE PROCEDURES**

### **7. Authority**



- 7.1. The University Advancement unit, under the direction of the Vice-Principal (University Advancement), has the authority and responsibility to develop operational guidelines and procedures, to support the University's management of gifts-in-kind, in compliance with this policy, except with respect to gifts of real property which are under the purview of the Administration and Finance unit, under the direction Vice-Principal (Administration and Finance).
- 7.2. The Administration and Finance unit, under the direction Vice-Principal (Administration and Finance), has the authority and responsibility to develop operational guidelines and procedures, to support the University's management of gifts of real property.

## **PART IV – REVIEW**

This Policy shall be reviewed at least every five (5) years and prior to a major fundraising campaign being undertaken by the University.

## Appendix A

### Guidelines: Certificate of Appraiser Template

Certificate date: [insert date]

Re: [Short-form identification of property appraised]

I [name] located at [address of appraiser] hereby certify that:

1. I appraised the fair market value of the subject property [as referenced above OR as listed in an attachment hereto\*] on [date].
2. I am accredited or have specialized professional qualifications in the field of the evaluation of [description of property appraised], as follows:  
[insert or attach list of relevant accreditations or other professional qualifications\*\*]
3. I am knowledgeable about the elements of a properly-prepared and credible valuation report.
4. I was dealing with [name of owner of property appraised] on an arm's length basis at the time of the appraisal.
5. I am independent from McGill University.

Signed at [city, province or state, country] on this \_\_\_ day of \_\_\_\_\_, [year]

Appraiser Signature: \_\_\_\_\_

\*Please also transmit an electronic list in Word or Excel if (five (5) or more items listed, by email to: [insert email address].

\*\*With respect to gifts-in-kind for the benefit of the McGill University Visual Arts Collection, appraisers must be a member of the Professional Art Dealers Association of Canada (PADAC) or a member of an equivalent national or international association identified by the Director, Curatorial Affairs, Visual Arts, and Libraries.

## Appendix B

### Guidelines: Form for Donations of Gifts-in-Kind [Form to be completed and signed by the Donor]

McGill University is a registered charity in Canada, with business number 119128981RR0001

As a registered charity, McGill University may issue an official donation receipt for gifts-in-kind that comply with Canada Revenue Agency (CRA) requirements, for use by taxpayers in Canada. Such official donation receipts are for the fair market value of the material retained, subject to applicable CRA limitations (e.g. the “deemed fair market value” rule). For US taxpayers, McGill University may issue a substantiation letter for gifts-in-kind, in conformance with applicable US requirements.

With regard to eligibility for any income tax deduction using an official donation receipt, as usual, donors should review the latest CRA (or other tax authority, as applicable) guidance available and seek independent tax and financial counsel concerning their own tax situation. See for example:

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuing-receipts/determining-fair-market-value-gifts-kind-non-cash-gifts.html>

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuing-receipts/deemed-fair-market-value-rule.html>

The “deemed fair market value” rule (CRA) may come into play for gifts acquired by donor less than 10 years before the date of donation. Gifts initially acquired as part of a tax shelter cannot be accepted. Material purchased by research funds or received through participation on an adjudication body are not eligible for an official donation receipt.

(1) Name of Donor(s): [Name(s)]

(2) Description of Gift-in-Kind: [Short description or attached list\*]

(3) Please check one box below:

- No official receipt issued for income tax purposes is requested by the Donor
- An official receipt issued for income tax purposes is requested by the Donor

(4) If an official receipt is requested, please proceed as follows:

- (i) fill in the acquisition date in the space provided below;
- (ii) check off the item below which most fully describes the Donor’s acquisition of the property being donated; and
- (iii) provide McGill University the purchase receipt, if applicable per the Donor’s selection below; and

The Donor hereby confirms that the property being donated to McGill University was acquired by the Donor on [dd/mmm/yyyy OR on the dates set out in an attachment for multiple items using McGill University’s standard format], and the Donor acquired this property (Please check all boxes that apply):

- A. less than 3 years before the date of donation (**purchase receipt required**)
- B. less than 10 years before the date of donation with a main purpose being to make a gift of it (**purchase receipt required**)
- C. more than 3 years before the date of donation (where no intention to make a gift of it, at the time of acquisition)
- D. more than 10 years before the date of donation
- E. through a bequest
- F. per Box A or B above, but Donor does not have the required purchase receipt (**representation in form prescribed by University Advancement required**)
- G. by the Donor being the artist/author of the material to be donated

Donor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*Please also transmit an electronic list in Word or Excel if (five (5) or more items listed, by email to: [insert email address].