

POLICY NAME	POLICY ON THE DISCLOSURE OF WRONGDOING
Approving Body	Senate Board of Governors
Initial Approval Date	Senate (May 10, 2023) Board of Governors (May 18, 2023)
Date of last review	n/a (Replaced Safe Disclosure Policy)
Date of next review	May 2028
Executive Sponsor	Secretary-General

1. PREAMBLE

- 1.1 McGill University recognizes that Disclosure of Wrongdoing is fundamental to ensuring the integrity of public administration and is a necessary and valuable service to its community.
- 1.2 The purpose of this Policy is to facilitate the Disclosure of alleged Wrongdoing at McGill University, as required by the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (CQLR, c. D-11.1) (“the Act”). To this end, the Policy creates a framework for Members of the University Community, acting in Good Faith, to disclose alleged Wrongdoing committed or about to be committed at the University. It also provides protection from Reprisal to persons who, in Good Faith, make a Disclosure or participate in an investigation conducted pursuant to a Disclosure.

2. SCOPE

- 2.1 Members of the University Community, acting in Good Faith, may make a Disclosure under this Policy.
- 2.2 This Policy does not apply to Disclosures made for personal purposes and not in the public interest. A Disclosure is deemed to be made for personal purposes when the subject of the Disclosure concerns a personal situation or the interests of one person only, for example, when the subject-matter of a Disclosure pertains solely to a condition of employment of the Discloser. Similarly, this Policy does not apply to Disclosures whose purpose is to question the merits of the policies or program objectives of the University.
- 2.3 Without otherwise limiting the scope of the definition of “Wrongdoing” in section 3.12, this Policy does not apply to matters involving Wrongdoing that are subject to treatment under another University policy or regulation. Matters pertaining to the conduct of research, harassment and discrimination, sexual violence, academic integrity, grievances, to name a

few examples, will be referred for consideration under the applicable policy, regulation or other university mechanism established for that purpose.

3. Definitions

For the purposes of this Policy:

- 3.1 **“Advisor”**: means an active Member of the University Community, who has agreed to act in an advisory capacity to the Respondent, without financial compensation or any other remuneration. Such individuals will act in accordance with this Policy.
- 3.2 **“Cooperator”** means a person who participates as a witness or otherwise contributes information in an investigation conducted on the basis of a Disclosure made under this Policy.
- 3.3 **“Designated Officer”** means the Secretary-General as the person responsible for receiving and treating Disclosures of Wrongdoings at the University, in accordance with this Policy.
- 3.4 **“Discloser”** means a Member of the University Community who makes a Disclosure under this Policy. It also means a person who was a Member of the University Community during the 24 months prior to making a Disclosure under this Policy.
- 3.5 **“Disclosure”** means a communication of information made under this Policy alleging that a Wrongdoing has been committed or is about to be committed at the University.
- 3.6 **“Good Faith”** means action undertaken with honesty, sincerity and genuine intention based on a reasonable belief that a Wrongdoing has been committed or is about to be committed at the University. It is an action that is not malicious, frivolous or vexatious in nature.
- 3.7 **“Member of the University Community”** means:
 - i) an employee or appointee (including a volunteer) of the University;
 - ii) anyone holding office under the University Charter and Statutes or who serves on any body or committee of the University;
 - iii) a student, as defined in Section 1 of the Code of Student Conduct and Disciplinary Procedures.
- 3.8 **“Highest Ranking Administrative Official”** means the President and Vice-Chancellor.
- 3.9 **“Investigator”** means a unit or employee of the University, or an external party mandated by the Designated Officer to carry out an investigation under this Policy.
- 3.10 **“Public Protector”** means the *Protecteur du citoyen du Québec*.

3.11 **“Reprisal”** means any harmful measure taken against a person for the reason that this person has, in Good Faith, made a Disclosure or participated in an investigation conducted pursuant to a Disclosure. Reprisal also constitutes the act of threatening a person so that this person will abstain from making a Disclosure or from collaborating in a related investigation.

In matters of employment, dismissal, demotion, suspension or transfer, as well as any disciplinary measure or measure deleterious to employment or to work conditions, are considered Reprisals and may constitute a prohibited practice within the meaning of subparagraph 11 of section 122 of *the Act respecting labour standards*, CQLR, chapter N-1.1.

3.12 **“Respondent”** means a Member of the University Community, other than a student as defined in section 3.7 (iii) against whom an allegation of Wrongdoing has been made.

3.13 **“Wrongdoing”** means any act committed or about to be committed at the University by a Member of the University Community in the exercise of their functions, or by any person, partnership, group or other entity in the context of drafting or carrying out of a contract, including the awarding of financial assistance, entered into or about to be entered into with the University, and that constitutes:

- (1) a contravention of a Québec law, of a federal law applicable in Québec or of a regulation made under such a law;
- (2) a serious breach of standards of ethics and professional conduct;
- (3) a misuse of funds or property of the University, including the funds or property it manages or holds for others;
- (4) gross mismanagement within the University including an abuse of authority;
- (5) any act or omission that seriously compromises or may seriously compromise a person’s health or safety or the environment; or
- (6) directing or counselling a person to commit a Wrongdoing described in any of paragraphs 1 to 5.

4. MAKING A DISCLOSURE

4.1 A Member of the University Community acting in Good Faith may make a Disclosure under this Policy, anonymously or not, in accordance with section 4.2 or 4.3, below.

4.2 Disclosure to the Designated Officer

The Disclosure may be made to the Designated Officer in the manners described below. However, if the Disclosure is likely to implicate the Designated Officer, it is made to the Highest-Ranking Administrative Official, who will then assume the role of the Designated Officer. If it is likely to implicate both the Designated Officer and Highest-Ranking Administrative Official, it is made to the Chair of the Board of Governors.

4.2.1 In writing

A Disclosure may be made in writing by completing the Disclosure Form included in the Procedure and submitting it to the Designated Officer at the designated email link or in a sealed envelope with mention “*Strictly confidential – to be opened by addressee only*”.

4.2.2 In Person

A Disclosure may be made in person by speaking with the Designated Officer directly for purposes of completing the Disclosure Form included in the Procedure.

4.2.3 By Telephone

A Disclosure may be initiated by speaking with the Designated Officer directly or by leaving a confidential message on the voicemail box designated for that purpose, with information about the Wrongdoing, for the purposes of getting help to complete the Disclosure Form included in the Procedure.

4.3 Disclosure to the Public Protector

Any person may make a Disclosure to the Public Protector (*Protecteur du citoyen du Québec*) directly.

5. TREATMENT OF A DISCLOSURE

5.1 Examination of Admissibility

- 5.1.1 Upon receipt of a Disclosure, the Designated Officer will examine the Disclosure to determine the nature of the alleged Wrongdoing and its admissibility under this Policy. To that end, the Designated Officer will assess:
- i. whether the Disclosure falls within the scope and definitions of this Policy.
 - ii. whether the Disclosure contains sufficient information to warrant an investigation pursuant to this Policy.
 - iii. whether too much time has elapsed since the event(s) leading to the Disclosure.
- 5.1.2 If the Disclosure does not fall within the scope and definitions of this Policy, the Designated Officer will put an end to the examination and inform the Discloser, if known.
- 5.1.3 If the subject matter of the Disclosure is subject to treatment under another University policy or procedure, the Designated Officer will inform the Discloser, if known, of this option and will put an end to the examination of the Disclosure pursuant to this Policy.
- 5.1.4 At any time, and in any case, the Designated Officer will put an end to the examination and/or investigation of a Disclosure pursuant to this Policy if the alleged Wrongdoing is, or becomes, as the case may be, the subject of legal proceedings, before a court, including labour arbitrators, CNESST, Human Rights Commission, Access to Information Commissions and the like, if it relates to a decision rendered by such a court. In such an instance, the Designated Officer will inform the Discloser, if known, of the closure of the file.
- 5.1.5 In any case where the Designated Officer puts an end to the examination and/or treatment of a Disclosure, the Designated Officer shall inform the Discloser, if known, of this decision.

5.2 Investigation

- 5.2.1 If the Disclosure is admissible, the Designated Officer shall assign an Investigator and refer the matter for an investigation.
- 5.2.2 The Investigator shall be bound by confidentiality requirements equivalent to those applying to the Designated Officer under this Policy and the Act.
- 5.2.3 The Investigator shall report to the Designated Officer on progress and outcome of the mandate.
- 5.2.4 The Designated Officer shall keep the Highest-Ranking Administrative Official informed of the steps taken, unless, in the Designated Officer's opinion, this reporting would be inappropriate in the circumstances, such as if the Disclosure were to implicate the Highest-Ranking Administrative Official. In such instances, the Designated Officer shall keep the Chair of the Board of Governors informed.

5.3 Obligation to Cooperate

- 5.3.1 By virtue of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, all persons are required to cooperate and respond to an investigation duly initiated by the Designated Officer or the Public Protector, as the case may be.

5.4 Confidentiality

- 5.4.1 The Designated Officer and the Investigator shall take all necessary measures to preserve the confidentiality of the Disclosure and, as much as is reasonably possible, the identity of the Discloser and Cooperator.
- 5.4.2 If the Designated Officer or the Investigator deems it necessary to divulge the identity of the Discloser, as the case may be in the course of an investigation, the Designated Officer must first obtain the Discloser's consent. If the Discloser does not consent, the Designated Officer shall determine whether the investigation pursuant to this Policy may continue in the circumstances and, if not, the Designated Officer may put an end to the treatment of the Disclosure.
- 5.4.3 In the case of an anonymous Disclosure, the Investigator shall carry out the investigation to the extent possible in light of the information made available.

5.5 Rights of the Respondent

- 5.5.1 The Designated Officer shall take measures to protect, to the extent possible, the privacy and rights of a Respondent.
- 5.5.2 In the course of an investigation, the Investigator shall share with the Respondent any information necessary to allow that person to understand the nature of and respond to the allegations, taking due regard to protect, as much as is reasonably possible, the identity of the Discloser and Collaborator.
- 5.5.3 The Respondent shall have an opportunity to provide an account of events, facts, and documentation, during a meeting with the Investigator in person or by other means.
- 5.5.4 The Respondent may be accompanied by an Advisor at any meeting or discussion with the Investigator. This Advisor must not interfere with the conduct of an investigation and shall keep confidential any information obtained in the course of the investigation.

5.6 Decision

- 5.6.1 Once the investigation has been concluded, the Investigator shall determine whether a Wrongdoing has been or is about to be committed. The Investigator will submit a report on the Investigation to the Designated Officer or, where the Designated Officer is the Respondent, to the Highest-Ranking Administrative Official. Where the Highest-Ranking Administrative Official is the Respondent, the Designated Officer will submit the report to the Chair of the Board of Governors.
- 5.6.2 The report shall include a description of the allegation of Wrongdoing, a summary of the facts and evidence uncovered during the investigation; and an analysis of such facts and evidence and how they are relevant or not; and a conclusion as to whether or not Wrongdoing has been or is about to be committed.

5.7 If a Wrongdoing has been or is about to be committed

The Designated Officer:

- (i) will promptly provide the Investigator's report to the Highest-Ranking Administrative Official so that the necessary corrective measures or sanctions may be taken, in accordance with University policies, regulations, collective agreements and the law, as the case may be.

- (ii) will inform the Discloser that the investigation is completed and, if appropriate, may inform Discloser of any follow-up given to the Disclosure.
- (iii) will inform the Respondent that the investigation is completed and that the matter is in the hands of the Highest-Ranking Administrative Official.
- (iv) will provide the Investigator’s report to the Respondent, except in exceptional circumstances, such as those involving an order from a Court or recommendation of law enforcement agency.
- (v) will, when applicable, transfer relevant information to appropriate external bodies, such as the police force or to the Anti-Corruption Commissioner.

5.8 If no Wrongdoing has been or if no Wrongdoing is about to be committed

The Designated Officer will:

- (i) put an end to the processing of the Disclosure;
- (ii) promptly transfer the Investigator’s report to the Highest-Ranking Administrative Official;
- (iii) send notice, with reasons, to the Discloser, if known and;
- (iv) send the Investigator’s report to the Respondent.

6. DELAYS

6.1 The Designated Officer processes the Disclosure in accordance with the following delays:

STAGE	TARGET WAIT TIME
Written acknowledgement of receipt of a Disclosure	Within 7 working days from receipt
Determination on the admissibility of a Disclosure by the Designated Officer	Within 15 working days from the receipt
Conduct and conclude the investigation, including the drafting of a report	Within 6 months from the receipt

6.2 Investigations which are unusually complex in the opinion of the Designated Officer and Investigator may require extensions. The Investigator shall request any extensions to the

Designated Officer, who shall, decide on the appropriate extension and notify the Discloser in writing.

7. PROTECTION FROM REPRISALS

- 7.1 It is forbidden to take a Reprisal against a person. It is also forbidden to threaten to take a Reprisal against a person in an attempt to prevent such person from making a Disclosure or cooperating in an investigation.

8. RECOURSE AGAINST REPRISALS

- 8.1 A Member of the University Community who believes a Reprisal has been taken against them may also file a complaint with the Designated Officer.
- 8.2 However, if the alleged Reprisal constitutes a “prohibited practice” within the meaning of subparagraph 11 of section 122 of *the Act respecting labour standards*, CQLR, chapter N1.1, one may file a complaint with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* within 45 days of the event that is the subject of his complaint.
- 8.3 Where appropriate, any person who believes that they have been the victim of a Reprisal may exercise the recourses available to them in University policies and regulations, collective agreements, or the law, as the case may be.
- 8.4 Any person who believes a Reprisal has been taken against them may file a complaint with the Public Protector (*Protecteur du citoyen du Québec*) in order to have the Public Protector (*Protecteur du citoyen du Québec*) examine whether the complaint is well-founded and submit any recommendations that the Public Protector (*Protecteur du citoyen du Québec*) considers appropriate to the Highest-Ranking Administrative Official of the University.

9. SANCTIONS

- 9.1 Any person who commits a Wrongdoing or contravenes this Policy, including the protection regime against Reprisals is subject to sanctions under the Act or other applicable law, or to disciplinary measures that may be imposed in accordance with relevant University regulations, policies, or collective agreements, as the case may be.
- 9.2 Any person who takes a Reprisal against a Discloser or Cooperator engages their personal liability.
- 9.3 A person who makes a Disclosure that is not in Good Faith engages their personal liability and is subject to disciplinary proceedings in accordance with relevant regulations, policies, collective agreements, and the law, as the case may be.

- 9.4 Similarly, any contravention of this Policy or the Act by a supplier, partner, guest, consultant or outside agency will subject it to the sanctions provided in the contract binding it to the University or in the provisions of the legislation applicable in the matter.

10. REPORTING

- 10.1 The Designated Officer shall prepare and submit, on at least an annual basis, a report to the Chair of the Board of Governors, the Chair of the Audit and Risk Committee, to Senate and to the Board of Governors, which, in accordance with the Act shall include the following:
- i. the number of Disclosures received by the Designated Officer;
 - ii. the number of Disclosures ended under s. 5.1 of this Policy;
 - iii. the number of well-founded Disclosures;
 - iv. the number of Disclosures broken down according to the categories of Wrongdoings;
 - v. the types of action taken pursuant to an investigation;
 - vi. the number of Disclosures transferred under s. 5.7 v of this Policy.

11. FINAL PROVISIONS

- 11.1 Nothing in this Policy relieves those responsible for the administration and management of academic, administrative, or service units from the responsibility of addressing situations of misconduct in accordance with good management practices and existing policies, guidelines, and procedures.

12. PROCEDURES

- 12.1 The Secretary-General will develop a procedure to implement and give effect to this Policy.

13. EFFECTIVE DATE, TRANSITIONAL PROVISION, & REVIEW

- 13.1 This Policy shall come into effect the later of the date of the publication of the procedure referred to in section 12 or 6 months after the Policy is adopted by the Board of Governors.
- 13.2 This Policy shall not apply to any Disclosures made before its coming into force. Consequently, any Disclosure made prior to the publication of the procedures shall continue to be governed by the Policy on Safe Disclosure (“Whistle Blowing”).

13.3 This Policy shall be reviewed at least once every five years.

Legislative History:		
<u>Approved:</u>		
Senate	May 10, 2023	Minute IIB3
Board of Governors	May 18, 2023	Minute 15.1.3
<u>Repealed:</u> Policy on Safe Disclosure ("Whistle Blowing") (2015)		
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