



McGill

Memorandum

TO:	Senate
FROM:	Professor Anthony Masi, Provost
SUBJECT:	Proposed Safe Disclosure (“Whistleblowing”) Policy
DATE:	February 2, 2007
DOCUMENT #:	D06-39
FOR:	<input type="checkbox"/> DECISION <input checked="" type="checkbox"/> APPROVAL (NEXT MEETING) <input type="checkbox"/> DISCUSSION
ISSUE:	Adoption of <i>Policy on Safe Disclosure</i>
BACKGROUND:	<p>The need for an institutional policy on safe disclosure (otherwise known as “whistleblowing”) has been recognized for some time. The adoption of such a policy has been requested by various sectors of the University community, and it has been strongly recommended by granting, and other, agencies which support, or have oversight of, university activities. All recognize that such disclosures provide a benefit to all sectors of the community and are consistent with the duty of loyalty that members owe the institution.</p> <p>In light of this a workgroup was formed to consider the issue and to prepare a Policy on Safe Disclosure for presentation to Senate and the Board of Governors. This workgroup, chaired by the Associate Provost (Policies and Procedures), was composed of representatives of MAUT, MUNASA, MUNACA, SSMU, PGSS, AGSEM, and the trades and services unions.</p> <p>Annexed to this memorandum, as Appendix A, is the product of the workgroup’s labours. This <i>Policy on Safe Disclosure</i> seeks to establish a safe reporting regime that provides for:</p> <ul style="list-style-type: none"> • an impartial channel for the making of reports; • protection of those who make such reports from reprisals; • protection of those alleged to have engaged in misconduct where the allegation is unfounded; • the investigation and disposition of reports using, where possible, existing mechanisms; • annual reporting to Senate and the Board of Governors on the operation of the Policy. <p>The Policy also provides for its review after the third year of its operation to address any particular issues that may be encountered in its implementation.</p>
MOTION OR RESOLUTION FOR APPROVAL:	<p>This policy is before Senate for information – the policy will be presented for approval at the March 7 2007 meeting.</p> <p>Resolution – March 7 2007:</p> <p>Be it resolved that Senate</p> <p>Approve the “<i>Policy on Safe Disclosure</i>” (Appendix A), and recommended it to the Board of Governors for approval.</p>
RATIONALE:	McGill University’s systems of oversight of the activities of the members of its community is premised on trust – trust that the members of the community will

	<p>voluntarily comply with all relevant internal and external regulatory frameworks applicable to the conduct of the particular activities in which they are engaged or for which they are responsible. The integrity and reputation of the University and the members of its community are dependent upon the integrity and honesty of all its members and the soundness of the academic, research and other activities conducted under the auspices of the University. To this end the University is committed to ethical governance in all its activities and the promotion of a culture of honesty, transparency and accountability throughout the University.</p> <p>While the principles of trust and voluntary compliance must be retained as the corner stones in the conduct of University activities, it must be accepted that some do not adhere to accepted norms of behaviour to the detriment of the University and the members of its community. The good faith reporting of such activities is a necessary and valuable service to all stakeholders and it is consistent with the duty of loyalty that members of the community owe the institution. Consequently, all members of that community must be “encouraged” to report improper activity that has the potential of causing serious harm to the integrity and reputation of the institution and its members. Thus, there is a need to have in place an acceptable regime for the good faith reporting of improper activities (“whistle blowing”) to enable the University to respond in a timely and appropriate manner to such violations.</p> <p>As already noted, the need for such a regime has also been recognized by granting, and other, agencies which support, or have oversight of, certain university activities, and by the recently constituted Canadian Research Integrity Committee. These bodies accept that good faith reporting of inappropriate activities is necessary and provides a valuable service to all stakeholders.</p> <p>Finally, as stated in the Preamble to the <i>Policy on Safe Disclosure</i>, the adoption of the Policy does not relieve those responsible for the administration and management of academic, administrative or service units from the responsibility of addressing situations of improper activity in accordance with established good management practices. Nor does the Policy replace existing channels for the reporting of improper activity – in fact, it is the expectation that members of the University community will continue to use existing channels to report improper activity and will only resort to the <i>Policy on Safe Disclosure</i> where such channels prove ineffective or are inappropriate in the circumstances of a particular situation.</p>
PRIOR CONSULTATION:	Principal and Vice-Principals Group; Provost; Secretary-General; Associate VP (HR); Deans; Representatives of Human Resources Dept., MAUT, MUNASA, MUNACA, SSMU, PGSS, AGSEM and the trades & services unions.
NEXT STEPS:	Approval by Senate and by the Board of Governors
APPENDICES:	Appendix A: Policy On Safe Disclosure

APPENDIX A

POLICY ON SAFE DISCLOSURE

Preamble

In all its activities McGill seeks to promote a culture based on honest, transparent and accountable behaviour. It is the expectation that all members of the University community will comply with all applicable regulatory frameworks. In the event that situations arise where the expected standards are not met, the University recognizes that the good faith reporting of improper activities (“whistle blowing”) is a necessary and valuable service to all its stakeholders, is consistent with members’ duty of loyalty to the institution, and must not be cause for reprisals. This Policy provides for an impartial channel for the making of such good-faith reports, protection of those who make such reports from reprisals, and for the investigation and disposition of reports using, where possible, existing mechanisms.

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 improper activity in accordance with good management practices and existing policies, guidelines and procedures. Moreover, it is also the expectation that members of the University community will continue to use existing channels to report Improper Activity and only resort to this Policy if such existing channels prove ineffective or are inappropriate in the circumstances.

Section 1 – Scope

1.1 This policy applies to every Member of the University Community.

Section 2 – Definitions

- 2.1 “Academic Misconduct” includes failure to perform academic duties, improper use of confidential academic material, and misrepresentation of material facts for personal advantage or for the advantage or disadvantage of another.
- 2.2 “Advisor” means the advisor to, or representative of, a Discloser or Respondent to whose assistance each is entitled according to the regulations, policies or collective agreements applicable to the Discloser or Respondent.
- 2.3 “Discloser” means a person who makes a written report alleging Improper Activity under this Policy or pursuant to a law and who:
- i) holds office under the University Charter and Statutes or who serves on any body or committee of the University; or
 - ii) holds office on the board of an institution affiliated with McGill University or who serves on a committee established by such board; or
 - iii) is an appointee (including a volunteer) or employee of the University; or
 - iv) is a student as defined in Section 1(a) of the *Code of Student Conduct and Disciplinary Procedures*.
- 2.4 “Financial Misconduct” includes misappropriation or misuse of funds or property that belong to the University or for which the University is directly or indirectly responsible, and the failure to follow accepted University or Granting Agency policies or practices applicable to the use and administration of funds or property.
- 2.5 “Good Faith Report” means a report that is not malicious or frivolous made by a Discloser who has reasonable grounds to believe that he or she has knowledge of the alleged Improper Activity.

- 2.6 “Granting Agency” includes a funding agency, foundation or other entity supporting in whole or in part research or other academic activities conducted in whole or in part under the auspices of the University.
- 2.7 “Improper Activity” is an act or omission committed by a Respondent that constitutes “Academic Misconduct”, “Research Misconduct” or “Financial Misconduct”.
- 2.8 “Innocent Violation” means an Improper Activity committed by a Respondent who did not know and who could not reasonably be expected to know of its impropriety, except where the law explicitly provides otherwise.
- 2.9 “Investigator” means any person or persons charged by a Responsible Officer to conduct an investigation under section 4.2(ii) of this Policy.
- 2.10 “Member of the University Community” means
- i) anyone holding office under the University Charter and Statutes;
 - ii) an appointee (including a volunteer) or employee of the University; or
 - iii) a student as defined in Section 1(a) of the *Code of Student Conduct and Disciplinary Procedures*.
- 2.11 “Research Misconduct” includes fabrication, falsification, plagiarism, or any other conduct related to research that constitutes a significant departure from granting agency or other relevant regulatory body requirements, or from the ethical and other standards that are commonly accepted within the relevant research community for proposing, performing, reporting or reviewing research or treating human and other sentient research subjects.
- 2.12 “Respondent” means a person against whom an allegation of Improper Activity has been made and who
- i) holds office under the University Charter and Statutes or who serves on any body or committee of the University; or
 - ii) holds office on the board of an institution affiliated with McGill University or who serves on a committee established by such board; or
 - iii) is an appointee (including a volunteer) or employee of the University.
- 2.13 “Responsible Officer” means
- (i) for the purposes of reporting Academic Misconduct, the Provost;
 - (ii) for the purposes of reporting Research Misconduct, the Vice-Principal (Research & International Relations);
 - (iii) for the purposes of reporting Financial Misconduct, the Vice-Principal (Administration & Finance);
 - (iv) for the purposes of reporting Inappropriate Activity by the Provost, the Vice-Principal (Research & International Relations) or the Vice-Principal (Administration & Finance), the Principal; or
 - (v) for the purposes of reporting Inappropriate Activity by the Principal, the chair of the Board of Governors.
- 2.14 “Retaliation” means any action taken by the University or a Member of the University Community that adversely affects the status or well-being of
- (i) a Discloser who has made a Good Faith Report of Improper Activity, or
 - (ii) any other Member of the University Community who has cooperated in good faith with an investigation of such allegation, and
- includes discharging, threatening, discriminating, or retaliating in any manner that affects employment or academic standing, compensation, job location, promotion, grades, enrolment status, or any other rights, immunities, or privileges of such Discloser or person.

Section 3 – Reporting of Improper Activities

- 3.1 A Discloser may file with the Secretary-General a confidential, written report alleging Improper Activity.
In the event that a Discloser has reasonable grounds to believe that the Secretary-General is engaged in Improper Activity, the written report shall be filed with the Principal.
- 3.2 The written report shall provide as clearly as possible information as to the specific activity thought to be improper, dates, if known, on which the activity occurred, the person(s) known to be involved, and any other information that would be useful to an investigation of the allegation(s).
- 3.3 Subject to section 3.4, on receipt of the written report the Secretary-General or, where appropriate, the Principal, shall transmit a copy of the report, with nominative information concerning the Discloser removed, to the appropriate Responsible Officer.
- 3.4 Nominative information concerning the Discloser shall be released to the Responsible Officer by the Secretary-General or, where appropriate, the Principal, only where the Responsible Officer concludes under section 4.1 that further action is warranted.

Section 4 - Investigation of Improper Activities

- 4.1 After reviewing the allegation(s), the Responsible Officer shall decide within fifteen (15) working days whether further action is warranted. In making this determination the Responsible Officer shall consider such factors as whether the report meets the requirements of a report of Improper Activity in section 3.1, whether it contains sufficient information to allow for an adequate investigation, and whether it appears to be a Good Faith Report.
- 4.2 Where the Responsible Officer concludes that no further action is warranted he or she shall so notify the Secretary-General in writing with reasons and the Secretary-General shall, in turn, notify the Discloser, if known.
- 4.3 Where the Responsible Officer concludes that further action is warranted he or she shall so notify the Discloser in writing and if:
- (i) there exists an established University process for the investigation of the Improper Activity in question, the Responsible Officer shall direct the report to the appropriate officer or body to be dealt with as required by the relevant University regulation, policy or collective agreement as they may exist from time to time; or
 - (ii) there is no established University process for the investigation of the Improper Activity in question, the Responsible Officer shall assign an Investigator to conduct an investigation in accordance with sections 4.4 to 4.15 of this Policy.
- 4.4 In exceptional cases the Responsible Officer may initiate interim measures, as appropriate, to protect Members of the University Community or the public, or to protect or secure funds or property that belong to the University or for which the University is directly or indirectly responsible. The institution of such measures shall be without prejudice to the rights of the Respondent.
- 4.5 The Investigator appointed under section 4.2(ii) shall use such investigative procedures as he or she deems appropriate to the nature of the allegation(s).
- 4.6 The Responsible Officer shall ensure that the Investigator is provided with the support necessary to conduct a thorough investigation.

- 4.7 An Investigator shall conduct a thorough investigation in a manner that shall ensure fair treatment for and, to the extent possible, the privacy of the Respondent and the Discloser.
- 4.8 An Investigator shall advise all persons interviewed by him or her to treat all information, evidence and proceedings as confidential.
- 4.9 All Members of the University Community, including Disclosers, Respondents, and their advisors, shall cooperate with the Investigator and respond in a timely fashion to his or her request for information or meetings.
- 4.10 The Investigator shall file his or her findings, conclusions and recommendations with the Responsible Officer as soon as possible and no later than thirty (30) working days from the date of the Investigator's appointment.
This time limit may be extended by a maximum of an additional thirty (30) working days by express authorization of the Responsible Officer upon written request by the Investigator.
- 4.11 If, on the basis of the Investigator's report, the Responsible Officer determines that disciplinary action is justified, he or she shall ensure proceedings are instituted in accordance with the relevant regulations, policies, or collective agreements. The Responsible Officer is not required to hold a hearing.
- 4.12 Except as required by law or the regulations or policies of a funding agency or foundation or entity which has oversight of the activity to which the Improper Activity relates, the Investigator's report shall not be disclosed to or discussed with any persons other than:
(i) the Respondent;
(ii) the Responsible Officer; and
(iii) such other persons, including the Discloser, if they have a legitimate need to know of the results of the investigation or in order to perform their duties.
- 4.13 Where the Discloser does not have a legitimate need to have access to an Investigator's report, the Responsible Officer shall notify the Discloser in writing of the termination of the investigation without elaboration or reasons.
- 4.14 On completion of the investigation, the Responsible Officer shall deposit all original files and documents with the Secretary-General who shall be the official custodian of such files and documents charged with preserving their confidentiality.
- 4.15 All files and documents pertaining to a Discloser's report and the Investigator's report shall be retained by the Secretary-General for a minimum of five years.

Section 5 – Protection from Retaliation for Reporting Improper Activities

- 5.1 All reasonable steps consistent with the law and the rights of the Respondent shall be taken by the Responsible Officer, Investigator, or other officer or body, charged with investigating a report of Improper Activity, to protect the position, reputation, privacy and, when so requested, the anonymity of the Discloser who has made a Good Faith Report of Improper Activity. The Discloser shall be advised when anonymity may no longer be maintained.
- 5.2 No Discloser who makes a Good Faith Report shall be subject to Retaliation regardless of the results of any investigation and/or the decision of the Responsible Officer.
- 5.3 The filing of a Good Faith Report of Improper Activity shall not normally constitute harassment within the terms of the *Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law*.

- 5.4 A Discloser who believes that the University or a Member of the University Community whether or not acting on the University's behalf, has acted or intends to act adversely towards him or her because of the allegations may exercise the recourses available under relevant University regulations, policies, or collective agreement.
- 5.5 Members of the University Community who learn of an allegation of Improper Activity shall treat the Discloser in accordance with section 5.1 and 5.2 of this Policy.
- 5.6 Members of the University Community shall immediately report any alleged or apparent Retaliation against a Discloser to the Responsible Officer.

Section 6 – Protection of Innocent Respondents

- 6.1 An innocent Respondent or a Respondent who commits an Innocent Violation shall not be subject to discipline.
- 6.2 An innocent Respondent who believes that the University or a Member of the University Community whether or not acting on the University's behalf has retaliated against him or her may utilize the procedures available under the applicable University regulations or policies, or collective agreement.

Section 7 – Annual Report of Improper Activities

- 7.1 Once per academic year, the Provost following consultation with the Vice-Principal (Research & International Relations) and the Vice-Principal (Administration & Finance) shall make a report to Senate and the Board of Governors, which report shall include:
- (i) the number of reports filed by Disclosers;
 - (ii) the number of reports investigated;
 - (iii) the findings of investigations conducted pursuant to a report;
 - (iv) any action taken pursuant to an investigation.
- 7.2 The annual report of Improper Activities shall respect the privacy of Disclosers and Respondents.

Section 8 – Indemnification of Responsible Officers and Investigators

- 8.1 The University shall indemnify and hold harmless a Responsible Officer and Investigator from and against all costs, charges, and expenses incurred by the Responsible Officer or Investigator in respect of any action, lawsuit, legal proceeding or claim of a civil or administrative nature instituted by a Respondent against the Responsible Officer or Investigator, in relation to any act, deed or matter performed, done or authorized by the Responsible Officer or Investigator in good faith and in the exercise of his or her functions under this Policy.

Section 9 – General Provisions

- 9.1 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 Improper Activity in accordance with good management practices and existing policies, guidelines and procedures.
- 9.2 Nothing in the present Policy shall in any way preclude anybody from exercising at any time any internal or external recourse available.

Section 10 – Review of Policy

10. This Policy shall be reviewed at the end of its third year of operation by a working group comprised of one representative of the Trades and Services Unions, MAUT, MUNASA, MUNACA, AGSEM, SSMU, PGSS, MACES MCSS, the Office of the Provost, the Office of the Vice-Principal Research and International Relations) and the Office of the Vice-Principal Administration and Finance).