



McGill Memorandum

TO:	Senate
FROM:	Professor Anthony C. Masi, Provost
SUBJECT:	Proposed Safe Disclosure (“Whistleblowing”) Policy
DATE:	May 14, 2007
DOCUMENT #:	D06-72
FOR:	DECISION X APPROVAL DISCUSSION
ISSUE:	Adoption of <i>Policy on Safe Disclosure</i>
BACKGROUND:	<p>Further to the discussion of the proposed institutional policy on safe disclosure (otherwise known as “whistleblowing”) at Senate on March 28, 2007, and subsequently in the workgroup, certain amendments have been introduced to the <i>Policy on Safe Disclosure</i>. These amendments, which are signaled in the attached Policy (Appendix A), are designed to address issues raised by Senators while preserving the integrity of the Policy and the purposes which it is to serve – the creation of a confidential, safe and impartial environment for the Good Faith Reporting and investigation of Improper Activity.</p> <p>It should be reiterated that only reports where the identity of the Discloser is known will be received under the Policy – and the protection afforded by the Policy only extends to Disclosers who make Good Faith Reports. This was implicit in the initial version of the Policy, but it has now been made explicit through the deletion of any reference to “anonymity,” and the addition of a new section (section 6) that addresses the issue of reports that may not be Good Faith Reports.</p> <p>More particularly the amendments introduced (in order of their appearance in the Policy) are:</p> <p>Sections 2.3, 2.10 & 2.12: The definitions of those to whom the Policy applies has been clarified. Essentially any Member of the University Community may be a Discloser and, with the exception of students, a Respondent.</p> <p>Section 2.9: As there is now more than one provision in the Policy under which an Investigator may be appointed the definition of “Investigator” has been generalized.</p> <p>Section 2.13(iv): The change to this section addresses the concern that the initial version of the Policy failed to identify who would be the “Responsible Officer” where a report alleged more than one category of misconduct.</p> <p>Section 2.13(v): This amendment addresses another oversight in the initial version of the Policy and identifies the Responsible Officer should a Secretary-General be the subject of a report.</p> <p>Section 3.4: This provision now calls for the disclosure of the identity of the Discloser to a Responsible Officer in two circumstances, namely: where a Responsible Officer (i) believes that a Good Faith Report warrants investigation, or (ii) has reasonable grounds to suspect that</p>

	<p>the report is not a Good Faith Report. The latter basis for disclosure has been added for, in this circumstance, the Policy now directs the Responsible Officer to initiate an investigation into the <i>bona fides</i> of the report and the Discloser (see section 6.2).</p> <p>Section 5.1: The amendment to this provision removes the reference to “anonymity,” a term which has been the focus of most concerns. However, it remains that a Respondent will still not always have access to the identity of a Discloser who makes a Good Faith Report. For example, there will be instances where the identity of a Discloser will be immaterial to the investigation, the disposition of the allegations and the ability of a Respondent to answer any case against him or her. However, a Respondent will be advised of the identity of the Discloser where the report is not a Good Faith Report, or where such disclosure is necessary to ensure that a Respondent has a fair opportunity to respond to the allegations, particularly if the testimony of the Discloser is an important element of the case against the Respondent.</p> <p>Thus, while confidentiality of Disclosers is central to safe disclosure policies, confidentiality will not impinge on Respondents’ rights: to know the author of a report that is not a Good Faith Report; or to a fair hearing which accords with the principles of natural justice. However, it is not possible to specify in advance all of the circumstances in which a Discloser’s identity may be disclosed in the latter instance; therefore, the last sentence of this section which simply states that the former will be advised when his or her identity will be disclosed.</p> <p>Section 5.3: If a report is in fact a Good Faith Report there should be no circumstances in which it would constitute “harassment” as that term is defined in the University’s <i>Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law</i>.</p> <p>Section 6: This new section explicitly addresses the issue of reports that are not Good Faith Reports. The provisions of this section:</p> <ul style="list-style-type: none"> • clearly signal that the making of reports that are not in good faith constitute disciplinary offences; • provide for the investigation and disposition of a report where a Responsible Officer, on the initial assessment of the report, has reasonable grounds to suspect that it is not Good Faith Report; and • provide for the disposition of a report which, on its face appears to be Good Faith Report, but on investigation of the allegations proves to be otherwise. <p>Section 8 (Indemnification of Responsible Officers and Investigators): This provision has been deleted. It is unnecessary given the expectation that all involved in the implementation of the Policy will act in good faith and respect the rights of both Disclosers and Respondents. Moreover, such a provision is found in no other University Policy and its absence from policies has not proved problematic.</p> <p>It is hoped that the foregoing amendments adequately address the issues raised when this Policy was first brought to Senate. It must be kept in mind that the Policy provides for its review at the end of the third year of its operation.</p>
<p>MOTION OR RESOLUTION FOR APPROVAL:</p>	<p>Be it resolved that Senate recommend to the Board of Governors for its approval the following resolution:</p>

	Be it resolved that the <i>“Policy on Safe Disclosure”</i> as amended, appended hereto as Appendix A, be adopted.
RATIONALE:	See Senate document D06-47 (Appendix B)
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 B: Senate Document D06-47

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 a Member of the University Community so identified who has agreed to accompany the Discloser or the Respondent and act in an advisory capacity. The Advisor is not paid for his or her services.
- 2.3 “Discloser” means a person a Member of the University Community 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 employee or 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) 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) anyone holding office on the board of an institution affiliated with McGill University or who serves on a committee established by such board;
 - ~~iii) an appointee (including a volunteer) or employee of the University; or~~
 - iiiv) 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 a Member of the University Community, other than a student as defined in Section 1(a) of the Code of Student Conduct and Disciplinary Procedures, 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 purpose of reporting Inappropriate Activity that involves more than one form of misconduct, the Provost;
 - (v) 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
 - (vi) for the purposes of reporting Inappropriate Activity by the Secretary-General or 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 against another Member of the University Community that adversely affects the status or well-being of the latter and
~~(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:~~
~~(i) the Responsible Officer concludes under section 4.1 that further action is warranted under section 4.1; or~~
~~(ii) the Responsible Officer has reasonable grounds for suspecting that the report is not a Good Faith Report.~~

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 3.24, 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 or, where appropriate, the Principal, in writing with reasons and the Secretary-General or the Principal shall, in turn, notify the Discloser.
- 4.3.1** 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 4.3(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 or, where appropriate, the Principal, 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 or, where appropriate, the Principal, 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, ~~and~~ privacy and confidentiality.

- ~~when so requested, the anonymity~~ of the Discloser who has made a Good Faith Report of Improper Activity. The Discloser shall be advised by the Responsible Officer when ~~anonymity confidentiality~~ 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 - Reports that are Not Good Faith Reports

- 6.1 A Discloser who makes a report that is not a Good Faith Report commits a disciplinary offence.
- 6.2 Where a Responsible Officer, on his or her preliminary review of the allegations, has reasonable grounds for suspecting that a report is not a Good Faith Report, the Responsible Officer shall assign an Investigator to conduct an investigation into the matter and may, where appropriate, institute disciplinary proceedings against the Discloser in accordance with the relevant regulations, policies, or collective agreements. The Responsible Officer is not required to hold a hearing.
- 6.2.1 The Investigator, in conducting an investigation under section 6.2, shall conduct himself or herself in accordance with sections 4.5 through 4.11.
- 6.3 Where a Responsible Officer, on the basis of an Investigator's report filed in accordance with section 4.10, determines that a report is not a Good Faith Report, the Responsible Officer may, where appropriate, institute disciplinary proceedings against the Discloser in accordance with the relevant regulations, policies, or collective agreements. The Responsible Officer is not required to hold a hearing.

Section 67 - Protection of Innocent Respondents

- 67.1 An innocent Respondent or a Respondent who commits an Innocent Violation shall not be subject to Retaliation or discipline.
- 67.2 An innocent Respondent or a Respondent who commits an Innocent Violation, who believes that he or she has been the subject of Retaliation by 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 78 - Annual Report of Improper Activities

- 7.8.1** 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.
- 7.8.2** 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 The operation and effectiveness of the 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). The working group may make recommendations for modification of the Policy.

