



Memorandum

Secretariat

James Administration Building, Room 313
845 Sherbrooke Street West
Tel: 514-398-3948 | Fax: 514-398-4758

TO: Senate

FROM: Ms. Edyta Rogowska, Secretary-General

SUBJECT: Proposed Revisions to the Policy on Safe Disclosure (“Whistle Blowing”)

DATE: April 19, 2023

DOCUMENT #: D22-61

ACTION REQUIRED: INFORMATION APPROVAL/DECISION

ISSUE Proposed revisions to the Policy on Safe Disclosure (“Whistle Blowing”) are presented to Senate for information and discussion.

BACKGROUND & RATIONALE

The Policy on Safe Disclosure (the “Policy”) was approved by Senate and the Board of Governors in 2007. It established an impartial channel for the disclosure of improper activities at McGill without fear of reprisal. Since then, the Policy was twice amended, first in 2010 and most recently in 2015. The current review of the Policy focused on further aligning the Policy with the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (the “Act”).

The Policy was reviewed in accordance with the review schedule set out in the University’s Policy Framework, specifically with the aim to ensure that it aligns closely or, as the case may be, continues to align closely, with the Act, in terms of the mandatory minimum policy requirements, the procedure for processing a disclosure and the roles and responsibilities of the persons involved in the policy’s implementation and/or administration.

As part of this review, the University also consulted policies in place at other universities such as University of Montreal, University of Sherbrooke, Laval University, HEC Montreal, ETS, UQAM, Bishop’s University and Concordia University. Notably, the policies in place at other Quebec universities closely resemble one another insofar as they are closely modeled on the Act.

Regarding policy requirements, the Act requires that the Highest Ranking Administrative Official (Principal) appoint a Designated Officer who would be responsible for receiving and treating allegations of wrongdoing. In addition, the Act requires that the policy:

- i. mention that persons have the option of communicating allegations of wrongdoing to the Public Protector or to the Designated Officer within the public body;
- ii. provide for a written notice of receipt of the disclosed information to be sent to the person who made the disclosure, if their identity is known;
- iii. specify the manner(s) in which a disclosure is to be filed;
- iv. determine the time limits for processing a disclosure with mention that the person who made the disclosure, if that person’s identity is known, is notified as soon as the processing of the disclosure has been completed;
- v. include all necessary measures to ensure that the identity of the person who makes a disclosure or cooperates in an investigation conducted on the basis of a disclosure remains confidential;
- vi. include measures to protect the rights of the persons involved in a disclosure, in particular during an investigation; and
- vii. state the protection against reprisals and the time limit for exercising a recourse.

Notably, the current Policy does not mention that persons have the option of making a disclosure directly to the Public Protector without making a disclosure to University’s Designated Officer. Accordingly, the Policy has been revised to include such a provision.

More substantial revisions are required to align the current Policy with the Act’s provisions concerning the procedure for processing a disclosure and the prescribed roles and responsibilities of the persons involved in this procedure. Such revisions are outlined in detail in Appendix A.

| | |
|--|---|
| PRIOR CONSULTATION | Prior to submitting the proposed revisions to Senate for information and discussion, the University community was invited to provide comments on the current Policy. The Audit and Risk Committee of the Board of Governors was consulted on both the current Policy and the proposed revisions, as were the Senior Administration Internal Audit, Legal Services and the Research Integrity Officer. |
| SUSTAINABILITY CONSIDERATIONS | N/A |
| IMPACT OF DECISION AND NEXT STEPS | A revised Policy will be submitted to the Audit and Risk Committee for consideration at its meeting of May 9, 2023, and same to Senate on May 10, 2023, and to the Board of Governors on May 18, 2023. |
| MOTION OR RESOLUTION FOR APPROVAL | The proposed revisions are presented for information and discussion. |
| APPENDICES | Appendix A: Overview of Proposed Changes to the Safe Disclosure Policy Appendix B: Draft Revised Safe Disclosure Policy Appendix C: Current Safe Disclosure Policy (“Whistleblowing”) |

OVERVIEW OF PROPOSED REVISIONS TO THE SAFE DISCLOSURE POLICY

a) Scope of the Policy

The review considered whether the University should limit the scope of the Policy to employees only, as the Act provides that public bodies establish a procedure to facilitate “employee” disclosures.

It is recommended not to limit the scope of the Policy to “employee” disclosures. Rather, it is proposed to model the revised Policy on the current Policy which would allow members of the University community to submit disclosures concerning Wrongdoing at the University.

The rationale for the requirement to establish a procedure within public bodies is that the individuals who work for and with such organizations are more likely to become whistleblowers and that the public bodies themselves are often well-positioned to receive and respond to such disclosures.

In the university context, where those in a position to become whistleblowers cut across many groups, a policy with a broader scope of application, which captures more than just “employees”, is more closely aligned with this rationale.

In accordance with the Act and policies in place at other universities, it is proposed that the Policy exclude disclosures made for personal purposes or 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, it is also proposed to exclude disclosures whose purpose is to question the merits of the policies or program objectives of the University, those that are frivolous.

Further to consultations and taking into account the extensive regulatory framework McGill has in place through its policies and regulations that address wide-ranging subject matters, it is also proposed that the revised Policy provide that matters involving wrongdoing which are subject to treatment under another University policy or regulation be treated outside the purview of this Policy. This separation ensures against overlap and contradiction between University policies and regulations and aims to provide clarity in operational processes. The University has established specialized policies and processes, some of which also respond to legislative requirements, that also provide for confidential and safe reporting processes (concerning for example, sexual violence, harassment, discrimination etc).

b) Definition of Improper Activity vs. Wrongdoing

The current Policy refers to the disclosure of “improper activity” which is defined as an act or omission committed that constitutes “Academic Misconduct”, “Research Misconduct” or “Financial Misconduct”.

The current Policy defines these three types of misconduct as follows:

- 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.
- 2.6** “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
- 2.13** “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.

In contrast, the Act refers to the disclosure of “wrongdoing” which is defined more broadly as follows:

- 4.** For the purposes of this Act, any act that constitutes or consists in, as the case may be,
- (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 the standards of ethics and professional conduct,
 - (3) a misuse of funds or property belonging to a public body, including the funds or property it manages or holds for others,
 - (4) gross mismanagement within a public body, 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,
- is considered a wrongdoing.

It was decided to adopt verbatim the Act’s terminology and definition of “wrongdoing” as have other public bodies who are subject to the Act, including other university-level education institutions. The Act’s definition of “wrongdoing” is broad and may capture the above-cited types of misconduct. For this reason, it is also proposed to change the title of the Policy to “Policy on the Disclosure of Wrongdoings”.

Furthermore, this revision would allow the University’s annual report (currently produced in two versions) required under the Policy to match the reporting requirements of the Act:

25. A public body required to establish and disseminate a procedure to facilitate the disclosure of wrongdoings by its employees must include, in its annual report,

- (1) the number of disclosures received by the designated officer;
- (2) the number of disclosures the processing or examination of which was ended under paragraph 3 of section 22;
- (3) the number of well-founded disclosures;
- (4) the number of disclosures broken down according to the categories of wrongdoings set out in section 4; and
- (5) the number of times information was forwarded under the first paragraph of section 23.

In addition to these requirements, the annual report will provide for a brief description of the types of actions taken pursuant to an investigation. The process will provide for the report to be submitted to Senate and to the Board.

c) Role of Public Protector

The current Policy does not inform members of the University community that they may also make disclosures to the Public Protector directly. It is proposed to include such a provision in the Policy. It should be noted that while the current Policy does not mention the Public Protector, the University's webpage describing the process to submit a safe disclosure (allegation of wrongdoing) does mention the option to make disclosures directly to the Public Protector. The Public Protector is an external, independent institution mandated under the Act to handle:

- (i) Disclosures of Wrongdoing within or about a public body; and
- (ii) Reprisal complaints stemming from a Disclosure or cooperation in an investigation.

d) Making a disclosure under the Policy

The current Policy does not specify the manner in which a disclosure must be filed nor the information such a disclosure must contain in detail. In order to facilitate the disclosure of wrongdoings at McGill, it is proposed to include a section providing that a person wishing to make a disclosure may do so either by in person, via telephone or in writing.

It is also proposed to develop a disclosure form to the Policy which would ensure that disclosures submitted contain the information necessary for their examination and treatment.

e) Role of the Designated Officer and Investigator

The review examined the role of the Secretary General and Responsible Officers. Under the current Policy, disclosures are filed with the Secretary General who forwards them to Responsible Officers for review and possible investigation. The Act requires that the "highest-ranking administrative" official of a public body designate a single "designated officer" who shall be responsible for receiving and treating

disclosures. It is proposed that, by virtue of the Policy, the Principal, as “highest-ranking administrative official”, designate this role and responsibility to the Secretary-General. This is consistent with practices at other universities, where the Secretary is also responsible for the neutral, impartial administration of key university processes. As such, under the Policy, the Secretary-General is responsible for:

- receiving Reports of possible wrongdoing against the University;
- verifying whether a wrongdoing has been committed or is about to be committed at the University
- assigning Investigators (internal or external) for cases;
- ensuring the application of the procedure for reporting and handling of Wrongdoing established by the University;
- ensuring the confidentiality of the identity of the person making the disclosure, cooperating with an audit or investigation of a disclosure, or who is implicated by a disclosure;
- ensuring the confidentiality of the disclosure files and electronic directories;
- ensuring the dissemination of the University's policy and procedure for facilitating the reporting of wrongdoing the University;
- reporting annually to the Senate, Board and Chair of the Audit and Risk Committee

The revised Policy provides that the Designated Officer will assign the investigation to an investigator, who may be internal (employee) or external to the University. It is by this mechanism that the current responsible officers under the current Policy and other persons, either internal or external to McGill, will be implicated in the new investigation process.

f) Protection against reprisals

In accordance with article 10 (6) of the Act, the Policy must explicitly state the protection provided against reprisals and the time limit for exercising a recourse against a practice prohibited by subparagraph 11 of the first paragraph of section 122 of the Act respecting labour standards. This has been added to the Policy.

g) Annual Report

The current Policy provides that the Secretary-General 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 number of findings of Improper Activity;
- (iv) the types of action taken pursuant to an investigation.

It is proposed to align the annual report with the requirements of s. 25 of the Act as excerpted above but maintain the inclusion of point (iv, relating to the types of actions taken).

h) Review Schedule

In accordance with the *Policy for the Development and Review of Governing Documents*, the Policy will provide for a review every five years, as a good governance practice. It is proposed to add this to the Policy.

Communication and Training

Following the adoption of the revised Policy by Senate and the Board of Governors, a communication to the community will indicate that the Policy has been revised and when it will come-into-force. The coming-into-force date will coincide with the finalization of its procedure. The Secretariat's website will be updated with this information. Training will be provided to ensure effective implementation, as necessary.

Timing

It is anticipated that the proposed revisions will be submitted for approval to:

- Audit and Risk Committee on May 9, 2023
- Senate on May 10, 2023
- Board of Governors on May 18, 2023

| | |
|------------------------------|--|
| POLICY NAME | POLICY ON DISCLOSURE OF WRONGDOING: PRELIMINARY DRAFT |
| Approving Body | Senate Board of Governors |
| Initial Approval Date | |
| Date of last review | |
| Date of next review | |
| Executive Sponsor | Secretary-General |

1. PREAMBLE

McGill University recognizes that Disclosure of Wrongdoings is fundamental to ensuring the integrity of public administration and is a necessary and valuable service to its community.

The purpose of this Policy is to facilitate the Disclosure of Wrongdoings 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 Wrongdoing committed or about to be committed at the University. It also provides protection from Reprisal to Disclosers and Cooperators.

2. SCOPE

Members of the University Community may make a Disclosure under this Policy.

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. Furthermore, this Policy does not apply to Disclosures that are frivolous.

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 alleged wrongdoer, 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.
- 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 “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.
- 3.7 “Highest Ranking Administrative Official”** means the Principal and Vice-Chancellor.
- 3.8 “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.
- 3.9 “Public Protector”** means the Public Protector of Quebec.
- 3.10 “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.

3.11 “Respondent” means a Member of the University Community, other than a student, against whom an allegation of Wrongdoing has been made.

3.12 “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

A Member of the University Community who has reasonable grounds to believe that a Wrongdoing has been committed or is about to be committed may make a Disclosure, anonymously or not, in accordance with section 4.1 or 4.2, below.

4.1 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.

4.1.1. 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*”.

4.1.2. 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.

4.1.3. 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.

4.2 Disclosure to the Public Protector

Any person may make a Disclosure to the Public Protector 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:

- a. whether the Disclosure falls within the scope and definitions of this Policy.
- b. Whether the Disclosure contains sufficient information to warrant an examination pursuant to this Policy.
- c. 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 treatment 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 Where necessary, the Designated Officer may consult, in strict confidence, another Member of the University Community for the purpose of obtaining information and seeking guidance in discharging the duties described above.

5.1.6 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

If the Disclosure is admissible, the Designated Officer shall assign an Investigator and refer the matter for an investigation.

The Investigator shall be bound by confidentiality requirements equivalent to those applying to the Designated Officer under this Policy and the Act.

The Investigator shall report to the Designated Officer on progress and outcome of the mandate.

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.

5.2.1 Obligation to Cooperate

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.

5.3 Confidentiality

The Designated Officer shall take all necessary measures to preserve the confidentiality of the Disclosure and the identity of the Discloser and Cooperator.

If the Designated Officer 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 may continue in the circumstances and, if not, the Designated Officer may put an end to the treatment of the Disclosure.

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.

5.4 Rights of the Respondent

The Designated Officer shall take measures to protect, to the extent possible, the privacy and rights of a Respondent.

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.

The Respondent shall have an opportunity to provide an account of events, either during a meeting with the Investigator in person or by other means.

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.

5.5 Decision

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.

The report shall include a description of the allegation of Wrongdoing, a summary of the facts and evidence uncovered during the investigation; and analysis of such facts and evidence and how they are relevant or not; and a conclusion as to whether or not there was Wrongdoing.

5.5.1 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 of the University 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 of law enforcement preventing the provision of the report to the Respondent.
- (v) will when applicable, transfer relevant information to appropriate external bodies, such as the police force or to the Anti-Corruption Commissioner.

5.5.2 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 of the University and
send notice, with reasons, to the Discloser and;
- (iii) send the Investigator's report to the Respondent.

6. DELAYS

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 |

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

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

A Member of the University Community who believes a Reprisal has been taken against them may also file a complaint with the Designated Officer.

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 N-1.1, 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.

Where appropriate, any person who believes that they have been the victim of a Reprisal may exercise the recourses available to them under a collective agreement, contract or other document establishing the working conditions of University employees.

Any person who believes a Reprisal has been taken against them may file a complaint with the Public Protector in order to have the Public Protector examine whether the complaint is well-founded and submit any recommendations that the Public Protector considers appropriate to the Highest-Ranking Administrative Official of the University.

9. SANCTIONS

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 collective agreements, contracts or other documents in effect from time to time which establish the working conditions of University staff.

Any person who takes a Reprisal against a Discloser or Cooperator engages their personal liability.

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

The Designated Officer shall prepare and submit an annual 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 or s. 5.2 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 number of times information was forwarded under s. 5.2 of this Policy
- vi. the types of action taken pursuant to an investigation.

11. FINAL PROVISIONS

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

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

13. EFFECTIVE DATE, TRANSITIONAL PROVISION, & REVIEW

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.

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”).

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



POLICY ON SAFE DISCLOSURE (“WHISTLE BLOWING”)

| | | |
|--|-------------------|-------------|
| <i>Amended:</i> | | |
| Senate | November 18, 2015 | Minute IIB3 |
| Board of Governors | November 26, 2015 | Minute 15 |
| <i>Full history appears at the end of this Policy.</i> | | |

STATEMENT OF PRINCIPLES

The University recognizes that the good faith reporting of Improper Activities (“whistle blowing”) is a necessary and valuable service to all its stakeholders. This Policy provides for an impartial channel for disclosure of Improper Activities and for protection from reprisal of those who make such disclosures.

Where a member of the University community feels that Improper Activity has occurred or is occurring, a confidential Disclosure may be filed with the Secretary General.

The Disclosure shall provide information as to the specific activity thought to be improper; dates on which the activity occurred, if known; the person(s) alleged to be involved; and any other information that would be useful to an investigation.

All reasonable steps shall be taken to protect the position, reputation, privacy and confidentiality of the Discloser. Investigations shall be conducted in a manner that ensures fair treatment for and, to the extent possible, the privacy of the Discloser and the Respondent.

There shall be no Retaliation against a Discloser who makes a Good Faith Report.

There shall be no Retaliation or discipline against an innocent Respondent.

STATEMENT OF RESPONSIBILITY

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. 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 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. Advisors are not paid for their services.

2.3 “Discloser” means a Member of the University Community who makes a written report alleging Improper Activity under this Policy or pursuant to a law.

2.4 “Disciplinary Officer” for the purpose of this Policy means the person with the authority to impose discipline or trigger the disciplinary process in regard to the Respondent.

2.5 “Disclosure” means a confidential, written report alleging Improper Activity

2.6 “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.

2.7 “Good Faith Report” means a Disclosure that is not malicious or frivolous made by a Discloser who has reasonable grounds to believe that they have knowledge of the alleged Improper Activity.

2.8 “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.

2.9 “Improper Activity” is an act or omission committed by a Respondent that constitutes “Academic Misconduct”, “Research Misconduct” or “Financial Misconduct”.

2.10 “Innocent Respondent” means a Respondent who is the subject of an allegation of Improper Activity that was found to be unsubstantiated, or a Respondent who did not know or could not have known of the impropriety of the activity in question.

2.11 “Investigator” means any person or persons charged by a Responsible Officer to conduct an investigation under this Policy.

2.12 “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; or
- iv) a student as defined in Section 1 of the Code of Student Conduct and Disciplinary Procedures.

2.13 “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.

2.14 “Respondent” means a Member of the University Community, other than a student, against whom an allegation of Improper Activity has been made.

2.15 “Responsible Officer” means

- (i) for the purposes of reporting Academic Misconduct, the Provost;
- (ii) for the purposes of reporting Research Misconduct, the Research Integrity Officer;
- (iii) for the purposes of reporting Financial Misconduct, the Director of Internal Audit;

(iv) for the purpose of reporting Improper Activity that involves more than one form of misconduct, the Provost.

In the event that a Disclosure relates to one of the Responsible Officers, the Secretary General shall designate one of the other Responsible Officers to serve.

2.16 "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 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 person.

PROCEDURES

Section 3 - Reporting of Improper Activities

3.1 A Discloser may file with the Secretary-General a confidential Disclosure alleging Improper Activity.

In the event that a Discloser has reasonable grounds to believe that the Secretary-General is engaged in Improper Activity, the Disclosure shall be filed with the Principal.

3.2 The Disclosure shall provide as clearly as possible information as to: the specific activity thought to be improper; dates on which the activity occurred, if known; the person(s) alleged to be involved and any other information that would be useful to an investigation of the allegation(s).

3.3 On receipt of the Disclosure, the Secretary-General or, where appropriate, the Principal, shall transmit a copy, with nominative information concerning the Discloser removed, to the appropriate Responsible Officer.

3.3.1 Nominative information concerning the Discloser shall be released to the Responsible Officer, where:

- (i) the Responsible Officer concludes 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 Disclosure meets the requirements of section 3.2, 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, the Secretary-General or, where appropriate, the Principal, shall be so notified in writing by the Responsible Officer, with reasons. The Secretary-General or the Principal shall, in turn, notify the Discloser.

4.3 Where the Responsible Officer concludes that further action is warranted, the Responsible Officer shall so notify the Discloser in writing. The Responsible Officer shall direct the Disclosure 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.

4.3.1 In the event that there is no established University procedure for the investigation of the Improper Activity in question, the Responsible Officer shall conduct an investigation, or shall assign an Investigator to conduct an investigation, in accordance with this Policy. Investigators shall

use such investigative procedures as they deem appropriate to the nature of the allegation(s).

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 Responsible Officer shall ensure that the Investigator is provided with the support necessary to conduct a thorough investigation.

4.6 The Investigator shall conduct a thorough investigation in a manner that shall ensure fair treatment for and, to the extent possible, the privacy of the Discloser and the Respondent.

4.7 Before reaching a final conclusion regarding the substance of the Disclosure, the Investigator shall notify the Respondent in writing of the allegation(s). The Investigator shall inform the Respondent of the right to an Advisor and shall ensure that the Respondent has access to and can locate this Policy.

The Respondent shall respond to the allegations within 10 working days. Should the Respondent require additional time, the Respondent may request an additional five working days to respond to the allegations and the Investigator may grant this request if it is deemed to be warranted.

4.8 All persons interviewed by the Investigator shall be advised 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 any request for information or meetings.

4.10 Findings, conclusions and recommendations shall be filed by the Investigator 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 In the event of a finding of Improper Activity, the Responsible Officer shall transmit the Investigator's Report to the relevant Disciplinary Officer for consideration. Where the Research Integrity Officer is the Responsible Officer, the reporting of misconduct must follow procedures established in the *Regulations Concerning the Investigation of Research Misconduct*.

4.11.1 In the event that disciplinary action is justified, proceedings shall be instituted by the Disciplinary Officer in accordance with the relevant regulations, policies, or collective agreements.

4.11.2 In the event that disciplinary action is not warranted, the Respondent, the Responsible Officer and the Secretary General shall be so notified by the Disciplinary Officer.

4.12 Except as required by law or the regulations or policies of a Granting Agency 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 know, 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 the Investigator's Report and all original files and documents with the Secretary-General or, where appropriate, the Principal.

The Secretary-General shall be the official custodian of all files and documents pertaining to a Disclosure and any investigation thereof. The Secretary-General is charged with preserving confidentiality. All files and documents shall be retained 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 confidentiality of the Discloser who has made a Good Faith Report of Improper Activity. The Discloser shall be advised by the Responsible Officer when 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 a Disciplinary Officer.

5.3 The filing of a Good Faith Report of Improper Activity shall not constitute harassment within the terms of the Policy on Harassment, Sexual Harassment and Discrimination Prohibited by Law.

5.4 Disclosers who believe that the University or a Member of the University Community has acted or intends to act adversely towards them because of the allegations may exercise the recourses available under relevant University regulations, policies, or collective agreement or report the matter to the Secretary General for consideration.

5.5 Members of the University Community who learn of an allegation of Improper Activity shall treat the Discloser in accordance with this Policy.

5.6 Members of the University Community shall immediately report any alleged or apparent Retaliation against a Discloser to the Secretary General.

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 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 and make a recommendation as to whether or not the Disclosure was in Good Faith. The Responsible Officer may, where appropriate, recommend 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 shall proceed in accordance with this Policy.

6.3 Where a Responsible Officer, on the basis of an Investigator's report, determines that a Disclosure is not a Good Faith Report, the Responsible Officer may, where appropriate, recommend 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 7 - Protection of Innocent Respondents

7.1 An Innocent Respondent shall not be subject to Retaliation or discipline.

7.2 An Innocent Respondent who believes that they have been the subject of Retaliation by the

University or a Member of the University Community may utilize the procedures available under the applicable University regulations, or policies, or collective agreement or report the matter to the Secretary General for consideration.

7.3 All reasonable steps shall be taken by the University to protect the position, reputation, privacy and confidentiality of an Innocent Respondent.

Section 8 - Annual Report of Improper Activities

8.1 Once per academic year, the Secretary-General 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 number of findings of Improper Activity;
- (iv) the types of action taken pursuant to an investigation.

8.2 The annual report of Improper Activities shall respect the privacy of Disclosers and Respondents.

Section 9 - General Provisions

9 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 After a further three years of its operation, this Policy shall be reviewed by a working group, comprised of:

- i) the Provost or delegate (as Chair).
- ii) one representative each of MAUT, MUNASA, MUNACA, AGSEM, AMUSE, AMURE, SEU, SSMU, PGSS, MACES, MCSS;
- iii) the Vice-Principal (Research and International Relations) or delegate;
- iv) the Vice-Principal (Administration and Finance) or delegate.

The working group may make recommendations for modification of the Policy.

| | | |
|--------------------|-------------------|---------------|
| History: | | |
| Approved: | | |
| Senate | May 23, 2007 | Minute 6 |
| Board of Governors | October 30, 2007 | Minute 7 |
| Amended: | | |
| Senate | January 20, 2010 | Minute IIB3.3 |
| Board of Governors | February 15, 2010 | Minute 13 |
| Amended: | | |
| Senate | November 18, 2015 | Minute IIB3 |
| Board of Governors | November 26, 2015 | Minute 15 |