



POLICY NO. 18

SAFE DISCLOSURE (WHISTLEBLOWER) POLICY

This policy was adopted for the first time by Resolution Number 366-11 on April 7, 2015 and subsequently amended by Resolution:

- 385-10 February 6, 2018

POLICY NO. 18 – SAFE DISCLOSURE (WHISTLEBLOWER) POLICY

ARTICLE 1 - SCOPE

- 1.1 This policy applies to all employees of John Abbott College (the “**College**”) and establishes a procedure pursuant to which its employees can safely raise a Wrongdoing without fearing Reprisal (as defined below). For purposes of clarity, this policy does not apply to former or retired employees.
- 1.2 This policy does not apply to a disclosure made for personal purposes rather than in the public interest, such as when the subject-matter pertains solely to a condition of employment of the person making the disclosure, nor does it apply to a disclosure whose purpose is to question the merits of the policies and program objectives of the College.
- 1.3 This policy is in line with the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (CQLR, c. D-11.1) (the “**Act**”).
- 1.4 Non-employees who wish to safely raise a Wrongdoing without fearing Reprisal are directed to contact the Public Protector, as per Section 3.14 hereof.

ARTICLE 2 - DEFINITIONS

As used herein, the following words and expressions shall mean:

- 2.1 “**Designated Officers**” mean the designated officers responsible for dealing with disclosures hereunder and implementing this policy, as required by the Act. In such respect, the Secretary General, the Director General and the Chair of the Board of Governors are the Designated Officers and are therefore afforded the powers and immunities set forth in the Act;
- 2.2 “**HRAO**” means the highest ranking administrative official of the College; pursuant to the Act, the HRAO is the Board of Governors unless it has delegated all or part of the functions conferred on the HRAO to the Director General, in which case the HRAO is the Director General; by the adoption of this policy, the Board of Governors hereby delegates all of the functions conferred to it to the Director General of the College;
- 2.3 “**Reprisal**” means any punitive measure or action taken, or threatened to be taken, for having, in good faith, made a disclosure under this policy or for having cooperated in an audit or investigation regarding such disclosure. Are presumed to be a Reprisal for the purposes hereof: demotion, suspension, dismissal or transfer of a person or any other disciplinary measure or measure that adversely affects such person’s employment or conditions of employment;
- 2.4 “**Working day**” means a day where the College is operating normally (typically excludes Saturdays, Sundays and legal holidays where the College is closed);

2.5 “**Wrongdoing**” means any act that constitutes or consists in, as the case may be,

- (i) a contravention of a Québec law, of a federal law applicable in Québec or of a regulation made under such a law,
- (ii) a serious breach of the standards of ethics and professional conduct,
- (iii) a misuse of funds or property belonging to the College, including the funds or property it manages or holds for others,
- (iv) gross mismanagement within the College, including an abuse of authority,
- (v) any act or omission that seriously compromises or may seriously compromise a person’s health or safety or the environment, or
- (vi) directing or counselling a person to commit an act described in any of paragraphs (i) to (v) above.

ARTICLE 3 - PROCEDURE

Disclosure of Wrongdoing

3.1 Subject to Section 3.14 hereof, any employee who becomes aware of information that could show that a Wrongdoing has been committed or is about to be committed in relation to the College may, at any time, disclose the matter to the Secretary General as provided for herein. Wrongdoings include, in particular, those committed by an employee of the College in the exercise of his or her functions or by any person, partnership, group or other entity in the preparation or performance of a contract, including a grant of financial assistance, that has been entered into or is about to be entered into with the College. A disclosure may be made anonymously or not. The information contained in an anonymous disclosure must be sufficient in content to reasonably establish that such disclosure is made by an employee of the College.

3.2 A disclosure shall be communicated in writing via secure electronic system or by sealed envelope at a current work address with the mention “*Strictly Confidential – To be opened by addressee only*”; it shall contain as much information as possible, including, without limitation, a description of the conduct, dates, places, persons involved/witnesses, relevant documentation, etc., so that a reasonable investigation may be conducted.

If the Wrongdoing involves the Secretary General or if the Secretary General is absent, the matter may be reported in writing to the Director General, except if the Wrongdoing involves the Director General or if the Director General is absent, in which case, the matter may be reported in writing to the Chair of the Board of Governors.

3.3 An employee making a disclosure or a person cooperating in an audit or investigation conducted on the basis of a disclosure may communicate, in accordance with the Act, any information that could show that a Wrongdoing has been, or is about to be, committed; such communication may be made despite:

- the provisions on the communication of information provided for in the *Act respecting the protection of personal information in the private sector* (CQLR, c. P-39.1) and the *Act*

respecting Access to documents held by public bodies and the Protection of personal information (CQLR, c. A-2.1), except at its section 33;

- any other communication restrictions under a law and any duty of confidentiality or loyalty that may be binding on the person, including toward an employer or, if applicable, a client. This implies the lifting of professional secrecy, except for the lifting of professional secrecy between a lawyer or a notary and a client.

Admissibility of Disclosure

3.4 On receipt of a disclosure by an employee, the Secretary General, the Director General or the Chair of the Board of Governors, as applicable (the “**Investigator**”):

- (i) verifies whether a Wrongdoing has been committed or is about to be committed;
- (ii) forwards the disclosure to the Public Protector if, in the Investigator’s opinion, the Public Protector, given the circumstances, is better suited to deal with it and notifies the employee accordingly; or
- (iii) puts an end to the processing or examination of the disclosure in any of the cases set out in Section 1.2, if the alleged Wrongdoing is the subject of court proceedings or relates to a decision rendered by a court, if the subject-matter of the disclosure does not fall within the Investigator’s mandate, if the disclosure is frivolous, or if too much time has elapsed between the disclosure and the alleged Wrongdoing (normally, disclosures should occur within one year of the alleged Wrongdoing); when putting an end to the processing or examination of a disclosure, the Investigator sends a notice with reasons, to the employee who made the disclosure, if the employee’s identity is known.

3.5 If the Investigator considers that information disclosed to him or her may be disclosed under section 26 of the *Anti-Corruption Act* (CQLR, c. L-6.1), he or she forwards the information, as soon as possible, to the Anti-Corruption Commissioner. The Investigator also forwards the information necessary to prosecute an offence under any act to a body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

The Investigator puts an end to the examination or processing of the disclosure, or continues it, according to the terms agreed to with the body to which he or she has forwarded the information.

If the Investigator considers it appropriate, he or she notifies the employee who made the disclosure that the information has been forwarded.

Investigation

3.6 On receipt of a disclosure as per Section 3.2 above, a written notice of receipt of the disclosed information shall be sent to the employee who made the disclosure, if the employee’s identity is known, in the delay indicated in Section 3.8 hereof.

3.7 Subject to the first paragraph of Section 3.5 hereof, the investigation shall be conducted with due regard to the sensitivity of the complaint and the Investigator is bound to confidentiality in exercising the functions of office and must, among other things, take the measures necessary to ensure that any information communicated to him or her, including the identity of the person who made the disclosure or cooperates in an audit or investigation on the basis of a disclosure, remains confidential. These measures may include:

- Files held in a locked filing cabinet, not accessible to other employees;
- Computer files protected by limited access rights;
- Physical spaces protecting the identity of persons met and the confidentiality of exchanges.

Despite sections 9, 83 and 89 of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (CQLR, c. A-2.1), no one may have access to or rectify information communicated to an Investigator.

For purposes of clarity, and without limitation, the foregoing confidential obligations shall apply in any and all reporting and exchanges with the person who is the object of the disclosure, the HRAO and anyone involved in an audit or investigation.

3.8 The steps and time limits for processing a disclosure shall be as follows:

Step	Time limit
Written notice of receipt of the disclosed information to be sent to the employee who made the disclosure, if identity is known	Five (5) working days of receipt of the disclosed information
Decision on the admissibility of the disclosure	Fifteen (15) working days of receipt of the disclosed information
Conduct and conclude the investigation	Six (6) months of receipt of the disclosed information

The time limits indicated above are approximate and depend on many factors, such as, the details contained in the written disclosure, the possible scheduling delays in meeting with those involved, including the employee who made the disclosure (if his or her identity is known) to obtain further information or clarifications on the disclosure, the complexity of the disclosure and investigation, etc.

3.9 On receipt of a disclosure hereunder, the Investigator keeps the HRAO informed of the steps taken, unless, in the Investigator’s opinion, the disclosure is likely to implicate the HRAO.

On ascertaining that a Wrongdoing has been committed or is about to be committed, the Investigator reports as much to the HRAO. If necessary, the HRAO takes the corrective measures it deems appropriate.

If the Investigator considers it appropriate, he or she may inform the person who made the disclosure of any follow-up given to the disclosure. When the handling of the disclosure has ended, the person who made the disclosure as well as the person who is the object of the disclosure will be informed.

- 3.10 The person who is the object of the disclosure may be accompanied by a representative of his/her choice during any meeting or interview with the Investigator, provided such representative does not interfere with the meeting or interview. While the investigation is in progress, the Investigator will take the measures necessary to protect the confidentiality of the identity of the person who is the object of the disclosure.

No Reprisal

- 3.11 It is forbidden to take a Reprisal against an employee on the ground that the employee has, in good faith, raised a Wrongdoing in accordance with the terms hereof or against a person on the ground that the person has cooperated in an audit or investigation conducted on the basis of a disclosure hereunder. It is also forbidden to threaten to take a Reprisal against an employee so that the employee will abstain from making a disclosure, or against a person so that the person will abstain from cooperating in an audit or investigation conducted on the basis of a disclosure.
- 3.12 Any person who believes a Reprisal has been taken against him or her may file a complaint with the Public Protector, except if an employee believes that the Reprisal taken against him or her constitutes a practice prohibited under section 122(1)(11) of the *Act respecting labour standards* (CQLR, c. N-1.1), in which case the employee will be referred to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST). In the later case, the employee must file a complaint with the CNESST within **45 days** of the occurrence of the practice complained of. A unionized employee may also contact his or her union.

Reporting

- 3.13 The College shall include, in its annual report, the following information:
- (i) the number of disclosures received by the Designated Officers hereunder;
 - (ii) the number of disclosures the processing or examination of which was ended under paragraph (iii) of Section 3.4;
 - (iii) the number of well-founded disclosures;
 - (iv) the number of disclosures broken down according to the categories of Wrongdoings set out in Section 2.5; and
 - (v) the number of times information was forwarded under the first paragraph of Section 3.5.

Other Recourses

- 3.14 Instead of reporting a Wrongdoing with the Designated Officer as per above, any person may, at any time, contact the Public Protector, as follows:

Direction des enquêtes sur les divulgations en matière d'intégrité publique
Protecteur du citoyen
800, place D'Youville

18^e étage
Québec (Québec) G1R 3P4

Phone: 1-844-580-7993 (toll-free within Québec) or 418-692-1578 (in Québec City area)
Fax: 1-844-375-5758 (toll-free within Québec) or 418-692-5758 (in Québec City area)

Secured forms available at: www.divulgation.protecteurducitoyen.qc.ca

- 3.15 Nothing in this policy shall preclude an employee from using any complaint, grievance or appeal procedure set out in any other policy of the College or any collective or employment agreement, as applicable, or from using the usual method of reporting concerns to an employee's immediate superior. If applicable, the Designated Officer may inform the employee of same.

ARTICLE 4 - RESPONSIBILITY FOR APPLYING THIS POLICY

The Designated Officers are responsible for the application of this policy in accordance with the terms hereof.

ARTICLE 5 - EFFECTIVE DATE

This policy will come into force upon its adoption by the Board of Governors.