

**Canadian Federation of Students' submission to the
House of Commons Legislative Committee on Bill C-2**

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The Canadian Federation of Students
86 Member Students' Unions
500,000 University and College Students

British Columbia

University of British Columbia Students' Union-Okanagan
Camosun College Student Society
Capilano Students' Union
Thompson Rivers University Student Union
Douglas College Students' Union
Emily Carr Institute of Art and Design Students' Union
King Edward Students' Union
Kwantlen University-College Student Association
Malaspina University-College Students' Union
College of New Caledonia Students' Association
North Island College Students' Association
Northern Lights College Students' Association
Northwest Community College Students' Association
Okanagan College Students' Union
College of the Rockies Students' Union
Selkirk Students' Association
Simon Fraser Student Society
Vancouver Community College Students' Union
University of Victoria Students' Society
University of Victoria Graduate Students' Society

Prairies

Alberta College of Art and Design Students' Association
Brandon University Students' Union
Graduate Students' Association of the University of Calgary
First Nations University of Canada Students' Association
University of Manitoba Students' Union
University of Manitoba Graduate Students' Association
University of Regina Students' Union
University of Saskatchewan Students' Union
University of Saskatchewan Graduate Students' Association
Association étudiante du Collège universitaire de Saint-Boniface
University of Winnipeg Students' Association

Ontario

Algoma University Students' Union
Atkinson Students' Association
Brock University Graduate Students' Association
Carleton University Students' Association
Carleton University Graduate Students' Association
Association étudiante de la Cité collégiale
Student Association of George Brown College
Glendon College Student Union
University of Guelph Central Student Association
University of Guelph Graduate Students' Association

Continued . . .

Members continued:

Lakehead University Student Union
Laurentian Association of Mature and Part-time Students
Laurentian University Students' General Association
Association des étudiantes et étudiants francophones de l'Université Laurentienne
McMaster Graduate Students' Association
Nipissing University Student Union
Ontario College of Art and Design Student Union
Graduate Students' Association des étudiant(e)s diplômé(e)s de l'Université d'Ottawa
Queen's University Society of Graduate and Professional Students
Continuing Education Students at Ryerson
Ryerson Students' Union
Saint Paul University Students' Association
Scarborough Campus Students' Union
University of Toronto Graduate Students' Union
University of Toronto Students' Administrative Council
Association of Part-Time Undergraduate Students of the University of Toronto
Trent Central Student Association
Trent University Graduate Student Association
University of Western Ontario Society of Graduate Students
Wilfrid Laurier University Graduate Students' Association
University of Windsor Graduate Students' Society
University of Windsor Organisation of Part-time University Students
University of Windsor Students' Alliance
York Federation of Students
York University Graduate Students' Association

Québec

Concordia Students' Union
Concordia University Graduate Students' Association
Post-Graduate Students' Society of McGill University

Maritimes

Acadia Students' Union
Cape Breton University Students' Union
Dalhousie Association of Graduate Students
Holland College Student Union
University of King's College Students' Union
Mount Saint Vincent University Students' Union
University of New Brunswick Graduate Students' Association
Student Union of NSCAD University
University of Prince Edward Island Student Union
University of Prince Edward Island Graduate Student Association
Association générale des étudiants de l'Université Sainte-Anne

Newfoundland & Labrador

Grenfell College Student Union
Marine Institute Students' Union
Memorial University of Newfoundland Students' Union
Graduate Students' Union of the Memorial University of Newfoundland
College of the North Atlantic Students' Union

Introduction

The billions of dollars of cuts to federal post-secondary education funding over the last decade has had a dramatic impact on the quality and accessibility of post-secondary education in Canada. Education is consistently identified as a priority by the Canadian public and it invests significant funds into high-quality research through universities and government research institutions. The public expects, as it should, appropriate return on this investment, through job creation and high-quality artistic, scientific, literary and socio-political innovation. Canada's aspiration to be a world leader in the global knowledge-based society requires that the Canadian post-secondary education system be dedicated to high-quality and ethically sound research.

Previous governments have been somewhat misguided in their approach to research by imposing a dangerously careless agenda to commercialise university research. This agenda has placed significant pressure on federal granting bodies, research institutions, and individual researchers to please private donors. From time to time, this leads to pressure to skew research results for private gain, at the public's expense. Without appropriate safeguards for individuals who speak out in defense of research integrity, Canada will lag in its ability to espouse the highest levels of international research excellence.

Several other countries have acted to protect those who speak out against research misconduct, in order to ensure that ethical standards of research are upheld. In so doing, they have implemented policies to protect academic whistleblowers. For example, in response to highly-publicised cases of misconduct by American researchers, the Ryan Commission on

Research Integrity produced in 1995 a *Whistleblower Bill of Rights* observing:¹

The public record demonstrates that good-faith whistleblowers, some publicly vindicated, have experienced harm or ruin to their professional careers through threats, censorship, physical isolation, retaliatory investigations, accusations of racial bias or of the very misconduct they challenged, academic expulsion, denial of access to their data and laboratories, and even threatened deportation or physical injury.

High-profile Canadian case history suggests that whistleblowers in this country are not immune to retaliatory attacks. The interest of the Canadian government in these matters is no different from that of its United States counterpart:

The federal government's interest in research misconduct stems from its funding of research and, in the biomedical sphere, its interest in the collective health of the citizenry.²

Safeguarding the Public Interest

A key component of the government's research strategy has included increased funding to universities and researchers through the federal granting councils and programs such as the Canadian Foundation for Innovation (CFI) and Genome Canada. Between 1999 and 2005, public investments in the CFI totaled \$1.5 billion, \$223 million was invested in Genome Canada, and \$670 million in the Indirect Costs of Research Fund.

In the 2006 federal budget, an additional \$100 million was granted to research and development programs and a modest \$40 million increase was allocated to the federal granting councils for a total of close to \$1.6 billion in annual core funding.

The Federation has consistently supported increased federal funding for public research and recognises the necessary role of the federal government in advancing Canada's role in the global knowledge society. Further, given the significant public interest

and investment in the advancement of research, it is imperative that such research be transparent and accountable. This requires appropriate mechanisms for the federal government to account for funds spent on post-secondary education and research.

There currently exists a near total absence of protections for those who speak out against research misconduct, and students are particularly vulnerable. As witnesses to research misconduct they are afforded little protection or credibility within existing university and granting council guidelines

The Federation has been called by both individual students and their representatives to lend support and advocacy to cases in which students have suffered retaliation for speaking out in good faith.

These whistleblowers have experienced retaliation ranging from threats of defamation suits to the withholding of key research data required for them to complete their studies. This atmosphere threatens Canada's ability to foster a future generation of researchers.

Bill C-2, the *Federal Accountability Act*, provides the structure and the opportunity for the federal government to ensure research integrity in publicly funded research and education. This can be done through simple amendments to the *Public Servants Disclosure Protection Act* and the *Access to Information Act*.

Summary of Recommendations

1. Extend the protections offered by the *Public Servants Disclosure Protection Act* to researchers, including students, in public post-secondary and research affiliated institutions.
2. Rename the revised *Public Servants Disclosure Protection Act* to the *Public Interest Disclosure Protection Act*, with a Commissioner known as the Public Interest Integrity Commissioner.
3. Amend the *Public Servants Disclosure Protection Act* to create the position of Deputy Commissioner of Research Integrity to advocate enhancements to research integrity and ethics.
4. Expand the reprisals and wrongdoings described in the revised *Public Interest Disclosure Protection Act*.
5. Recognise explicitly that the overarching principle of the remedies available to the Tribunal is to make the whistleblower "whole".
6. Expand the specific remedies described to meet whistleblower statutes in other jurisdictions.
7. Amend the *Access to Information Act* to include the Canadian Foundation for Innovation and the Canadian Millennium Scholarship Foundation.

I. Whistleblower Protection for the University Community

If Parliament were to establish adequate protections for those who disclose safety concerns then scientists would no longer face the ugly alternatives of keeping their mouths shut, or losing their reputations and jobs.

Nancy Olivieri and Arthur Schafer, "The perils of whistleblowing," Toronto Star, Aug. 6, 2004, p. A17

The federal Office of Research Integrity in the United States of America provides protection for those individuals who speak out in good faith against research misconduct. In the absence of such protections, Canadian researchers—particularly students—are vulnerable in exposing misconduct.

Although the Canadian federal granting councils outline ethical guidelines for research in public institutions, there exists no provisions for protecting whistleblowers from reprisals.

Research Misconduct in Universities

Occasionally, cases of research misconduct attract media attention. From Ranjit Kumar Chandra of Memorial University in Newfoundland to South Korean stem-cell researcher Hwang Woo-suk, high-profile cases of research misconduct have garnered public interest.³

Focusing solely on those cases that attract media, the Canadian public might believe that such instances are rare. However, such is not the case.⁴

Most cases are probably not publicized. They are simply not recognized, covered up altogether; or the guilty researcher is urged to retrain, move to another institution, or retire from research.

Surveys and case histories demonstrate that students and faculty are witnessing or knowledgeable on a range of serious ethical violations occurring in university research, many of which occur under pressure from a research sponsor.⁵ With increasing incentives for researchers to engage in the commercialisation of research, pressures to conform to private interests or participate in other forms of conflict of interest, some suggest that research misconduct has become "endemic."⁶

The research system, predicated on trust and honour, has only two defenses against misconduct: "peer

review" and whistleblowers. Through "peer review," academic peers are asked to critically review a study before its publication.

[C]learly peer review is deficient ... Studies so far have shown that it is slow, expensive, ineffective, something of a lottery, prone to bias and abuse, and hopeless at spotting errors and fraud.⁷

The importance of whistleblowers to research integrity is therefore vital:⁸

The complainant is an essential element in the effort to protect the integrity of [government] supported research because researchers do not call attention to their own misconduct.

Retaliation

A study commissioned by the United States federal Office of Research Integrity reveals a disturbing pattern in institutional responses to whistleblowers:⁹

[These findings] confirm that whistleblowers frequently face the prospect of significant hardship for their efforts...

The most serious negative consequences—loss of position, loss of research resources or opportunity, and denial of advancement—simply do not happen without substantial involvement and direction by institutional officials ...

Lesser negative consequences—hassles, pressures and delays—also frequently come from institutional officials.

Institutional officials were found to have been involved in 88% of the cases where the whistleblower experienced the "most serious negative consequences"¹⁰

With formal whistleblower protection in the United States, the study concluded that:¹¹

... to prevent the most serious consequences of whistleblowing, [Office of Research Integrity] regulations and enforcement approaches will need to be targeted primarily at institutional officials.

Without any federal whistleblower protections in place, Canadian institutional officials have engaged in aggressive and vicious attacks against whistleblowers.¹² This behaviour, manifest in documented cases and reported internationally, severely undermines the credibility of Canadian research.¹³

The Federal Accountability Act

With only minimal amendments, the *Public Servants Disclosure Protection Act* is a sound framework under which individuals who are engaged in pub-

licly-funded research can be protected from reprisals. By extending the scope of the *Act* beyond public servants to include researchers receiving federal funding, the Government of Canada will increase the protection of the public interest and enhance domestic and international confidence in the integrity of Canadian university research.

To reflect this expanded scope, we recommend that the title of the *Act* and its commissioner be renamed to the *Public Interest Disclosure Protection Act* and the Public Interest Integrity Commissioner, respectively.

Recommendation 1: Extend the protections offered by the *Public Servants Disclosure Protection Act* to researchers, including students, in public post-secondary and research affiliated institutions, who are frequently important witnesses of misconduct in publicly-funded research.

Recommendation 2: Rename the revised *Public Servants Disclosure Protection Act* to the *Public Interest Disclosure Protection Act*, with a Commissioner known as the Public Interest Integrity Commissioner.

II. A National Advocate is Required

In surveys of the federal civil service in the United States, employers give as the primary reason why they do not report misconduct, the belief that nothing will happen as a result of their disclosures. Fear of retaliation is the second most common reason for failing to disclose.

*Robert Vaughn (2005) "Report on the World Bank's whistleblowing procedures."*¹⁴

Currently, disclosures of misconduct to the federal granting councils are deferred to host institutions for investigation. However, institutions "live in fear of adverse publicity associated with misconduct, and have an inherent and glaring conflict of interest in pursuing an internal inquiry."¹⁵ The reactions of institutions to whistleblowers have thus been largely unsurprising:

In all of the examples discussed above of misconduct in medical research, it was necessary for the whistleblowers to go outside the academic institutions to address the misconduct and punish the guilty parties because their own institutions preferred sweeping their dirt under the rug ... Responses came after action from the outside, after the

fact, after significant delay, after whitewashing, and after punishment of the whistleblower.¹⁶

Complainants must believe that a fair system is in place to address their concerns. It is evident that the Canadian system requires an overhaul.

Deputy Commissioner

To advise and oversee institutional procedures for responding to complaints regarding reprisals, the Federation proposes the establishment of a Deputy Commissioner on Research Integrity. The Deputy Commissioner would work closely with public research and affiliated institutions and the federal granting agencies and foundations to ensure that the highest standards of research integrity are promoted.

To develop comprehensive guidelines for the scope of the Deputy Commissioner's duties, a review should be initiated along the lines of the current commission in Australia.

Recommendation 3: Amend the *Public Servants Disclosure Protection Act* to create the position of Deputy Commissioner of Research Integrity to advocate enhancements to research integrity and ethics.

III. Reprisals

Sometimes, whistleblowers who have called attention to misconduct have suffered severe reprisals. Negative consequences were categorised in a report commissioned for the United States Office of Research Integrity as:¹⁷

- Loss of position (fired, not renewed);
- Denial of advancement (denial of salary increase, denial of promotion, denial of tenure);
- Loss of research resources/opportunity (reduction in research support, reduction in travel funds, loss of desirable work assignment, reduction in staff support);
- Hassle/pressure/delay (pressure to drop allegations, counter allegation, ostracism, lawsuit threatened, delays in reviewing manuscripts, delays in processing grant applications).

Students are particularly vulnerable to retaliation, and may be subject to legal threats, denial of graduation, delayed theses reviews, withholding of data, refusal to provide reference letters, threats to VISA status, and the withholding of funding and awards. Students are rarely in a position to afford their own legal counsel in their own defense. According to the American Office of Research Integrity, “One-in-seven complainants reported being threatened with or actually facing a lawsuit” (RTI study for the ORI, p. 53).

Reprisals and wrongdoings in the *Act* would need to be expanded to respond to misconduct and reprisals in academic settings.

Recommendation 4: Expand the reprisals and wrongdoings described in the revised Public Interest Disclosure Protection Act.

IV. Making the Whistleblower “Whole”

Many whistleblower statutes, such as the whistleblower provision of the Sarbanes-Oxley Act, have the remedial principle that the whistleblower should be made whole.

*Robert Vaughn (2005) “Report on the World Bank’s whistleblowing procedures.”*¹⁸

The Federation applauds the depth of remedies proposed in the Accountability Act. The underlying principle of such remedies should be stated more explicitly: that of making the whistleblower “whole.”

To achieve this principle, the remedies proposed by the *Act* should be expanded to meet those recommended in a World Bank commissioned report:¹⁹

Such remedies should include the following:

- 1) reinstatement to the same or comparable position in salary, responsibility, opportunity for advancement and job security;
- 2) back benefits and pay, considering the likely advancement and salary increases that a staff member would have received;
- 3) compensatory damages, including all financial losses linked to the retaliatory action by the Bank and significant emotional distress, including any physical ailments [sic] suffered as a result of that distress and related medical costs;

4) adjudication expenses, including representation fees, costs of expert witnesses, travel and other costs associated with the claim of retaliation (These costs should be automatically paid to a prevailing whistleblower);

5) transfer upon request of the prevailing whistleblower to another part of the Bank;

6) intangible benefits, including public recognition of the vindication of the whistleblower, and in appropriate circumstances public recognition of the contributions of the whistleblower to the Bank.

The remedies offered in the *Act* achieve or come close to several of these recommendations. Minimal revisions to the Act, such as provisions for payment of “special damages,” would demonstrate the Government’s abhorrence of retaliation and resolve to fully support whistleblowers.

Recommendation 5: Recognise explicitly that the overarching principle of the remedies available to the Tribunal is to make the whistleblower “whole,”

Recommendation 6: Expand the specific remedies described to meet whistleblower statutes in other jurisdictions.

V. Public Accountability Requires Transparency

The *Sarbanes-Oxley Act* in the United States recognises two classes of safeguards for reported financial data: preventive and detective.²⁰ Formal whistleblower protection in the *Act* bolsters both classes.

Additionally, a powerful preventive safeguard is transparency, recognised implicitly in the *Federal Accountability Act* through proposed amendments to the Access to Information Act.

In 1998, the Millennium Scholarship Foundation was endowed with \$2.5 billion of public funds, under the legislative mandate to work with the provinces to finance needs-based student financial aid. The Foundation has strayed from its original mandate, to become one of the most vocal apologists for the previous government’s post-secondary education policy failings, even launching its own public relations effort using \$10 million in scholarship funds. Also of particular concern are the un-

tendered contracts that have flown to former employees of the Foundation.

Including the Canadian Foundation for Innovation under the *Access to Information Act* is important for a number of reasons. As a government foundation entrusted with approximately \$4 billion dollars of public money, it is a public agency charged with the purpose of distributing funds to research institutions, including hospitals and universities. There is a distinct public quality to the creation and mandate of this organisation and consequently its operations and decisions should be open and accountable to the public.

Including the Canadian Foundation for Innovation under the *Access to Information Act* also ensures that possible conflict of interest situations can be properly investigated. As the CFI requires private involvement in the distribution of public funds, cases of conflicts of interest could arise where officials within the organisation personally benefit from the distribution of public dollars.

Subjecting the Millennium Scholarship Foundation to access to information legislation would be an important step in uncovering previously hidden information about Foundation contract tendering and other suspicious activities.

Therefore, the Federation supports Bill C-2's amendments to expand the agencies covered under the Access to Information Act.

Recommendation 7: Amend the *Access to Information Act* to include the Canadian Millennium Scholarship Foundation, the Canadian Foundation for Innovation, and the other federal bodies entrusted with allocating public funds for research.

Conclusion

Simple amendments to the *Federal Accountability Act* would provide necessary safeguards for public research, serving to protect the public interest while enhancing domestic and international confidence in the integrity of Canadian research. Currently, countries that have federal bodies to oversee research integrity include the United States of America, Denmark, Finland and Norway, with both the United Kingdom and Australia poised to follow.

Acceptance of the recommended amendments to the *Federal Accountability Act* to address research misconduct would be a landmark move by the Government of Canada towards ensuring excellence, integrity, and public trust in Canadian research.

Endnotes

1. Ryan, KJ (Chair) et al. (1995) "Integrity and Misconduct in Research: Report of the Commission on Research Integrity." Final report, p. 28. Submitted to the U.S. Secretary of Health and Human Services, the U.S. House Committee on Commerce, and the U.S. Senate Committee on Labor and Human Resources, Nov. 3, 1995. References in original text omitted. [http://ori.dhhs.gov/documents/report_commission.pdf] Accessed May 10, 2006.
2. Ibid., p. 6.
3. Couzin, J and K Unger (2006) Cleaning up the paper trail. *Science* 312: 38-43.
4. Smith, R (2006b) Research misconduct: the poisoning of the well. *J R Soc Med* 99: 232-237.
5. See Langlais, PJ (2006) Ethics for the Next Generation. *The Chronicle of Higher Education* 52: B11 · Martinson et al. (2005) Scientists Behaving Badly, *Nature*, June 2005. · Swazey, JP, MS Anderson and KS Louis (1993) Ethical problems in academic research. *American Scientist* 81: 542-553.
6. Van Der Weyden, MB [editorial] (2006) Preventing and processing research misconduct: a new Australian code for responsible research. *MJA* 184: 430-431.
7. Smith, R (2006a) op. cit. Emphasis added.
8. United States Office of Research Integrity, Department of Health & Human Services. [http://ori.dhhs.gov/documents/report_commission.pdf] Accessed May 16, 2006.
9. Research Triangle Institute (RTI) (1995) Consequences of Whistleblowing for the Whistleblower in Misconduct in Science Cases. Final report, p. 17 & 54. Submitted to the United States Office of Research Integrity, Oct. 30, 1995. [<http://ori.hhs.gov/documents/consequences.pdf>] Accessed May 10, 2006. Emphasis in original.
10. Ibid., p. 23.
11. Ibid., p. 23.
12. Such as Nancy Olivieri, David Healy, Stephane Mclachlan and Ian Mauro. For information on all these cases, see www.caut.ca/academicfreedom
13. Olivieri, N and A Schafer (2004) The perils of whistle-blowing. *Toronto Star*, Aug 6, 2004, p. A17.
14. Vaughn, R (2005), p. 18 op. cit.
15. Van Der Weyden, MB [editorial] (2006), op. cit.
16. Ibid.
17. Research Triangle Institute (RTI) (1995), Table 4, pp. 15-16 op. cit.
18. Vaughn, R (2005), p. 35 op. cit.
19. Vaughn, R (2005), pp. 34-35 op. cit.
20. Wagner, S and L Dittmar (2006) The unexpected benefits of Sarbanes-Oxley. *Harv Bus Rev* 84: 133-140, 150.