Legalistic or Inspirational? Comparing University Conflict of Interest Policies

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Abstract
In response to growing public and policy concern about conflicts of interest (COI) in university research, academic institutions in North America and Europe have introduced policies to manage COI. However, depending on their form and content, COI policies can be more or less helpful in the effective management of COI. In this paper, we examine and compare the design and content of COI policies at two Canadian research universities (the Université de Montréal and the University of Waterloo), which we suggest, exemplify two general categories or poles on a spectrum of policy approaches. We describe 1) a legalistic approach that promotes a concise but rigid structure, and 2) an inspirational approach that encourages principle-based deliberation and wider interpretation. Each of these approaches has its particular strengths and weaknesses. We conclude with some recommendations to help administrators and policy makers improve the quality, utility and effectiveness of university COI policies.

Introduction

Academics and policy makers in North America and Europe are increasingly concerned about the risks associated with conflicts of interest (COI) in the University (Campbell et al., 2007; Coyne, 2005; Sugarman, 2005), and most institutions have responded by introducing COI policies and guidelines. However, as we will show through a comparison of COI policies at two Canadian universities, not all policies are created equal. Depending on their form and content, COI policies can be more or less helpful in the effective management of COI situations.

A COI may be defined as "a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional" (MacDonald et al., 2002, 68). Such conflicts may be characterized as real or potential (i.e., an actual COI or a situation that threatens to evolve into a COI), and/or apparent (i.e., perceived to be a conflict, whether real or potential). Even 'merely apparent' conflicts of interest can do significant damage to individual and institutional reputations and relationships.

In the university research milieu, COI occur primarily but not exclusively when researchers have a financial or personal interest (e.g., in commercializing the results of their research) sufficient to appear to influence the objective exercise of their official duties either as contributors to the shared body of knowledge or as educators. As many scholars have noted, COI pose important ethical and policy challenges for faculty, staff, students and administrators (Lewis et al., 2001; Lipton et al., 2004; Resnik and Shamoo, 2002); if left unaddressed, COI can seriously undermine the public's trust in professors and universities. But it should also be recognised that COI are not inherently unethical, and that sometimes, institutional arrangements make COI acceptable, even inevitable. So, in effect what matters, ethically, is that individuals and institutions deal appropriately with COI when they arise (MacDonald et al., 2002; Perlis et al., 2005).

As with other large organizations (e.g., corporations, non-profit groups, government departments), universities have responded to the challenge by promulgating policies designed to manage or avoid COI. In the United States, the introduction of university COI policies was driven in part by federal government regulations (enacted in 1995) requiring that all research institutions seeking funding from the US Public Health Service, which includes the National Institutes of Health (NIH), to have internal policies and procedures to manage COI; the National Science Foundation (NSF) has a similar policy (Public Health Service, 1995). All university faculty members applying for research funds from the NIH or NSF are required to disclose, to a designated member of their institution, any 'Significant Financial Interests' (e.g., financial relationships exceeding $10,000 in payment or 5 percent ownership in a company) that could cause or appear to cause bias to publicly funded research; however, setting such a formal limit may be somewhat arbitrary, and ignore the differences between individuals with regards to what amount of money is 'interesting' (Tereskerz, 2003). These regulations provide a general structure and minimum set of standards for university COI protocols; more than 70% of US research institutions have subsequently implemented COI policies that go beyond the minimal federal government requirements (Cho et al., 2000). Like their American counterparts, most Canadian universities have COI policies, but they are not uniformly or comprehensively regulated by provincial or federal legislation that set out common minimum requirements (Ogbogu, 2007).[1]

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[1] One exception is COI in research involving human subjects, which is governed by provincial legislation (notably in Quebec, which has specific provisions in its Civil Code) and by national policies such as the *Tri-Council Policy Statement on Ethical Conduct for Research Involving Human Subjects* (Canadian

As with the regulation of other ethically complex problems, policy documents can provide only a partial solution to university COI. Even the most thorough documents will lack specificity and contain gaps in structure and content, and they are subject to being misunderstood, overridden or simply ignored (Krimsky, 2003; Krimsky and Rothenberg, 2001; Lipton et al., 2004). Yet good COI policies remain an obvious important first step in the right direction. The question, then, is what constitutes a good – or even an ideal – university policy?

It is probably unrealistic, and maybe even misguided, to aim for a single one-size-fits-all model or ideal a university COI policy; universities in even one country may be simply too different in structure and function. If one looks, for example, at universities in Canada and the US, it is evident that there is great diversity in institutional mandate and culture: universities may be focused primarily on teaching, research, or professional training (or some combination thereof). They may also operate within very different legal contexts, as in the case of state vs. privately funded institutions where faculty members are employed by the state (also the case in some European universities) or by the institution (common in private institutions in the US, and all Canadian universities). Finally, given a variety of US state and Canadian provincial legislation, faculty may be subject to different requirements with regards to their conduct within and beyond the borders of the university.

Important lessons can, however, be drawn from a close examination of how particular university policies seek to address COI in practice. In this paper, we compare the COI policies of two Canadian universities: the Université de Montréal and the University of Waterloo. These two policies exemplify, we suggest, two general categories or poles along a spectrum of policy approaches used by Canadian research universities (and possibly universities in the United States and Europe). That is, we propose that COI policies can be usefully thought of as being more or less *legalistic* (Université de Montréal) or *inspirational* (University of Waterloo) in style and content. Our comparison pays particular attention to the policy's accessibility and layout, its general philosophy and preamble, and discussion of rules, definitions, examples, and procedures to address COI. We conclude that both the legalistic and inspirational styles have important merits and limitations. Our primary aim, in this paper is to highlight the importance of developing good (i.e., useful, effective, relevant) COI policies, and to provide practical guidance to administrators and faculty involved in the revision of existing or drafting of new COI policies.

A Comparison of Two Policies
The development and implementation of university COI policies reflects the particular legal contexts of universities (e.g., public or privately funded, independent or state regulated), as well as the governance decisions of administrators regarding the management and avoidance of COI situations. A 2006 pilot study of COI policies at 13 leading Canadian research universities uncovered a broad range of documents, from very general statements of principle, to brief consideration or mention of COI in a sub-set of other documents (e.g., in guidelines for research ethics or academic integrity), to focused COI policies for academic and/or non-academic staff, research assistants, and students (Williams-Jones and MacDonald, 2008). Not surprisingly, perhaps, these policies also differed substantially in style and content.

Institutes of Health Research et al.). These instruments regulate research in Canadian universities that receive funds from provincial and national granting councils.

This diversity of COI policy styles can, we suggest, be usefully grouped into two rough categories, i.e., those that are *legalistic* or *inspirational* in nature.[2] By 'legalistic' we mean those policies that are written in a relatively rigid, legal language and style and that are organised as a set of rules and procedures to follow. We contrast this with policies that we define as 'inspirational' in nature; that is, they are written in a common and accessible language, and lay out guiding principles and flexible procedures.

To be clear, these are not the only possible categories; there may be other useful ways of grouping or organising the diversity of university policies. Further, if one accepts our two rough categories, it is important to recognise that they are not rigid or precise. Our preliminary study of Canadian university COI policies has shown that policies are spread along a continuum, with 'legalistic' and 'inspirational' at opposite poles. Between these two poles, policies may blend items from both styles, creating hybrid documents that are more or less legalistic or inspirational. Finally, even policies at the poles – such as the two presented in this paper (i.e., those of the Université de Montréal and the University of Waterloo) – will not be uniformly legalistic or inspirational. Nevertheless, as we will show in the following analysis, the two rough categories of legalistic and inspirational provide a useful point of reference or framework with which to examine and compare the strengths and limitations of different approaches to governing COI in the university context.

Policy Style
The COI policies of the Université de Montréal (hereafter Montreal) and the University of Waterloo (hereafter Waterloo) differ substantially in their structure and style (see Appendices 1 & 2 for the complete policies). Montreal's policy is concise, structured and legalistic, while Waterloo's policy is a longer, more readable and inspirational document. Montreal's policy, which was adopted in 1993, consists of only 4 pages and a total of 998 words.[3] It is highly structured, composed of 8 numbered Articles (Application, Rules, Conflict of Interest, Procedure for Disclosure, Treatment of Disclosures, Appeals Committee, Application of Regulations, and Coming into Force), each of which is substantiated through numbered sub-clauses or statements. The language is formal, even rigid, consisting of declarations or affirmations of what constitutes (or does not constitute) appropriate behaviour in relation to COI (e.g., 'do not' or 'personnel shall' language).

By contrast, Waterloo's policy, introduced in 1991 and amended in 2000, is much longer at 1799 words and more loosely structured; it includes only four subcategories (Preamble, General Philosophy and Procedures, Examples, Development of Guidelines and Procedures on Conflict of Interest). The language is much less formal (no numbered articles or clauses) and more readily understandable; also, the Waterloo document consists of longer sentences and paragraphs. The style and vocabulary allow for greater interpretation and require the reader to reflect on, rather than simply comply with, detailed rules and procedures.

Preamble and General Philosophy
Most institutional policies begin with a preamble or introduction that states the purpose and sets the tone or general philosophy of the document. Both the Montreal and Waterloo COI policies state their intention to provide adequate regulations for university staff in order to protect both

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[2] In the pilot study of Canadian universities, the COI policies were evenly split between the legalistic (7/13) or inspirational (6/13) styles.
[3] This policy was, until the summer of 2007, available on the University website (in PDF format) in both French and English although only the French document is legally binding. To facilitate comparison, we have referred to the English-version of the policy, on file with the authors and presented in Appendix 1.

staff and the institution. More explicitly, Montreal's policy applies to "teaching and non-teaching personnel" while Waterloo's policy applies to "faculty and staff members"; other Canadian university COI policies sometimes include students or "all members of the university" within their scope (Williams-Jones and MacDonald, 2008). It is interesting to note that the Waterloo policy also includes a simple definition of COI in its preamble, stating that a COI "exists when a member of the University is or may be in a position to use research, knowledge, authority or influence for personal or family gain or to benefit others to the detriment of the institution" (University of Waterloo, 1991).

It is clear in the preamble of the Montreal and Waterloo policies that the aim is to mitigate the risks of COI, particularly loss of objectivity, which can result in biased research, and the erosion of perceived and actual impartiality of and confidence in staff and the institution. The protection of staff and the institution is to be achieved by safeguarding and respecting a set of values. For example, Montreal's policy states in the Preamble, that "To ensure transparency and integrity while at the same time respecting the autonomy of the university, the Université de Montréal has decided to adopt regulation for avoiding conflict of interest situations and, where necessary, protecting both university staff and the institution itself" (Université de Montréal, 1993). The main values here are autonomy (of the institution), transparency, and integrity of staff.

Waterloo's COI policy similarly highlights the importance of integrity. "Whatever the nature of the external activities or relationships, the University expects each of its members – faculty, staff, student or officer – to act in a manner consistent with a high standard of integrity and ethical behaviour" (University of Waterloo, 1991). In addition, it outlines a greater number of values such as ethical behaviour, the university's reputation, and the importance of "transfer[ing] knowledge, discoveries, and technology to society for its benefit" (University of Waterloo, 1991). In order to promote such values, the Waterloo policy notes that it has chosen regulation to avoid COI that can harm the university's goals; however, it also stipulates that the mere existence of COI does not imply that an activity must be prohibited. Seeking counsel and determining appropriate behaviour in a specific situation allows the university and the individual to properly manage the COI.

While there is much overlap in the values put forth by both universities, Waterloo establishes many more principles in its policy. This principle-based approach sets out the fundamental rationale, the reason *why* it is important for the university to have a COI policy. It also establishes a framework for deliberation and interpretation with respect to various situations. Procedures are found in the section entitled "General Philosophy and Procedures" which encourage reflection and dialogue on campus to foster appropriate understanding and management of COI. This provides greater latitude of decision-making and action than the more rigorous and rigid procedural approach of the Montreal policy.

The Waterloo approach avoids prescriptive directives, such as statements that staff 'must' negotiate or disclose information, as found in the Montreal policy. Rather, the Waterloo policy emphasizes that COI is sufficiently important to manage or avoid, "that members should, of their own volition, take the initiative in disclosing conflicts or potential conflict of interest situations." In this manner the university seeks to promote transparency, responsibility, open negotiation and consensus. This more inspirational style aims to encourage willing participation rather than adherence to rules and it is also an endorsement or expression of trust in the ethical conduct of employees. Conversely, the Montreal document is definitional at the outset. Stating *what* the COI policy is, the Preamble (and the rest of the policy) is succinct and unambiguous and avoids any philosophical questioning about the nature of COI. It specifies intent and limits interpretation

through the use of clear, directive statements such as 'do not', 'personnel shall avoid' or 'personnel shall be obligated to'.

The processes or mechanisms established by these two universities to deal with COI are consistent with and reflect the style of their policies. While they both state that disclosure is necessary, Montreal requires that staff avoid COI and focuses more narrowly on instructions to staff on what to do when confronted with COI; Waterloo requires that staff avoid or manage COI depending on the situation and explains why such a process is important. The latter obviously provides a more flexible, adaptable approach. The consequences of these differences in approach become more evident on closer examination of the general rules of the two policies. But before looking at the rules, it is important to examine more closely the means by which the two policies define and explain COI.

Definitions
Arguably, many individuals in academia think of COI in relation to scandals in medical practice or improper relations with the pharmaceutical industry, for example, in the Jesse Gelsinger case in the United States or the Olivieri and Healey cases in Canada (Koch, 2003; Schafer, 2004). However, many COI occur without any dramatic aftermath or media attention. To properly identify all types of COI, it is obviously important for policies to include a definition of COI, as well as a lexicon of terminology used throughout the document (Owen, 2007).

The Montreal policy does not provide an explicit definition of COI, nor does it define other important concepts such as potential or apparent COI; instead, a list of examples is given in which a "conflict of interest may arise" for members of the personnel. This failure to define key concepts exemplifies how even an apparently very legalistic policy (in terms of language and style) may not be 'uniformly legalistic' or a perfect fit with our proposed categories; it also, however, points to important weaknesses in terms of the structure and content of this policy. Waterloo's policy, on the other hand, provides a short definition of COI at the beginning (in the Preamble) and a longer definition mid-way through the document. As mentioned previously, the first definition reads as follows: "A conflict of interest, or a potential conflict of interest, exists when a member of the University is or may be in a position to use research, knowledge, authority or influence for the personal or family gain or to benefit others to the detriment of the institution." Apart from mention of the institution, such a definition is fairly standard if not comprehensive. For example, the definition omits reference to apparent COI. On the other hand, the second definition in the Waterloo policy is broader and defines, in some detail, individual COI (as well as institutional COI and conflict of commitment).

> *Individual* conflicts of interest often derive directly or indirectly from opportunities to participate in externally funded research and in a subsequent interplay between the results of the research and a faculty member's personal or financial interests. Such situations frequently place faculty and staff members in a position to manage contracts, select equipment and supplies, involve graduate students in sponsored research or play administrative roles which demand the utmost in integrity and honesty. Even the appearance of an apparent conflict can have a negative impact on the University and the individual in the eyes of the community. (University of Waterloo, 1991)

Although this definition is broader than the first, it may not be considered as comprehensive because it concentrates mostly on financial COI. But what, then, is an appropriate definition of COI? There is an extensive literature on what should constitute a precise definition of COI. Yet despite broad philosophical agreement on the key elements of COI, there remains debate over whether the heart of the issue lies in the risk of corrupting individual *judgment* or in the risk to

the *interests* of the client or institution (Norman and MacDonald, 2009, in press). We will leave these debates aside and simply suggest that any definition should be simple to understand yet sufficiently comprehensive and broad to capture key COI situations. The various types of COI – real, potential, and apparent COI – may be best illustrated or described through specific examples.

Prior to examining specific examples mentioned in the two university COI documents (see the following section), the concept of institutional COI and conflict of commitment addressed in the Waterloo policy should be considered. Conflict of commitment is defined in the policy as "any external activity or undertaking which places an individual in a position which: interferes with or prevents the discharge of her-his University responsibilities, as defined by the individual's employment contract." In general terms, conflict of commitment can be thought of as "the umbrella term for issues centering on the allocation of time and energy to fulfill three primary academic roles: teaching, research, and public service" (Campbell, 1997, 360). In effect, a faculty member might be committed to too many research activities and public service and not dedicate sufficient time to their teaching, resulting in a conflict between external interests and primary professional or academic responsibilities and commitments. In the interest of simplicity, conflict of commitment can be illustrated through examples and integrated within a general comprehensive definition of COI.

With regards to institutional COI, the literature generally acknowledges this to be an issue that should be further analysed and included in COI policies (Hasselmo, 2002). The Report of the Association of American Universities provides some insight into this issue, with the following definition of institutional COI:

> An institutional financial conflict of interest may occur when the institution, any of its senior management or trustees, or a department, school, or other sub-unit, or a related organization (such as a university foundation) has an external relationship or financial interest in a company that itself has a financial interest in a faculty research project. Senior managers or trustees may also have conflicts when they serve on the boards of (or otherwise have an official relationship with) organizations that have significant commercial transactions with the university. The existence (or appearance) of such conflicts can lead to actual bias, or suspicion about possible bias, in the review or conduct of research at the university. If they are not evaluated or managed, they may result in choices or actions that are incongruent with the missions, obligations, or the values of the university (AAU, 2001, 10).

However, it must be noted that institutional COI is often intertwined with individual COI and as such is then regulated through the central university COI policy. It is worth questioning, however, whether institutional COI regulations should be included within central COI policies, which are often written to guide the behaviour of individual faculty members, staff or students. Do all university faculty and staff have a responsibility for their institution's interests? The obvious answer to such a question is 'yes'; yet in practice, things are somewhat more complicated.

Since institutional COI usually arise for and are the responsibility of the administrative staff (mainly senior administrators, such as Deans or Vice-Principals), the management of these COI are commonly out of the hands of most members of the university community. As such, these conflicts should most probably be addressed in a separate policy aimed specifically at administrative staff. This would allow policy makers – as well as the broader university community – to acknowledge and distinguish between institutional and individual COI; it might

also enable the formulation and communication of simpler and more effective COI policies to the relevant stakeholders. McMaster University is one example of an institution that has a separate policy intended for non-teaching personnel and administrative staff, and that focuses to a large extent on institutional COI (McMaster University, 2002).

Examples

An individual COI – whether it be real, apparent or potential – is still a somewhat abstract concept, and so examples are important in order give a practical understanding of the nature and scope of COI. The examples in COI policies are naturally selective and representative rather than comprehensive. Further, although many COI policies may have a legalistic tone and structure, the management of COI remains an ethical challenge that cannot be captured entirely in legal wording or examples.

The examples in the Waterloo policy cover a number of situations and are broken down into the following categories: Favouring of Outside Interests for Personal Gain; Inappropriate Use of University Personnel, Resources or Assets; Inappropriate Use of Information; Conflict of Commitment; and Inappropriate Involvement in Appointment Process. These examples are comparable to those found in the Montreal policy in terms of content, although they differ in style and form. For instance, in the Montreal policy, Articles 3.1a) to 3.1d) provide examples of possible COI that can arise through interactions with external enterprises. Article 3.1a) notes that a "conflict of interest may arise in cases where a member of the personnel: Directly or indirectly has monetary or other interest in an external enterprise that deals or is likely to deal with the University". In this example, enterprises are most likely interpreted as being for-profit businesses such as pharmaceutical or other technology companies. However, it is unclear whether non-governmental or charitable organisations would be included, and so the word 'enterprise' may unduly limit the scope of the policy. The vocabulary used in a policy must be precise but not overly limiting, or worse yet, misleading.

An important difference between the Waterloo and Montreal policies is that the examples provided in the former are described in far more detail and include a broader range of typical COI. The drafters of the Waterloo policy selected examples which demonstrate conduct that is clearly irresponsible, i.e., 'headline conflicts'. That is, they chose examples that are most often found in the media, such as "Directing the faculty member's government sponsored research program to serve the research or development needs of a private firm in which the faculty member has a financial or other interest" (University of Waterloo, 1991).

It should be noted that most of the examples in both policies have to do with financial COI, especially those that arise through researcher collaboration with the private sector. While an important issue, many COI in the university setting are not financial (Williams-Jones and MacDonald, 2008). For example, a student can be in a COI if, when working as a teaching assistant, he or she is asked to evaluate a friend's exam, as has been reported at the Université de Montréal (Gerbet, 2007). We may also find a non-financial COI if a member of staff uses confidential information acquired in the course of university activities to advance their personal interest, e.g., with regards to their or a family members' political activities.

Furthermore, while university-industry relationships that raise concern about COI may be more common in the applied sciences (such as pharmacology, medicine or engineering), this does not mean that COI do not occur in other faculties or departments. If an example in a general COI policy is to be useful and relevant for all staff, it should be adapted to the general university context. It is obvious that the university community is not homogeneous and that examples of

COI in law schools may differ from those arising in medical schools or in the social sciences and humanities.

A judicious blend of the precise language of the Waterloo policy with the more comprehensive scope of the cases in the Montreal policy might be a useful approach. (The precise language of Waterloo, which is in a sense legalistic, and the comprehensive scope of Montreal, which is in a sense inspirational, further exemplifies the fluidity of these two categories.) This is the case with the Dalhousie University COI policy, where examples take the form of, for instance: "Cases in which a university member conducts or participates in a research project which may affect his or her financial interests or those of a related business" (Dalhousie University, 2002). This example does not restrict its explanation to an enterprise or limit the scope of the definition; it leaves room for interpretation without being too vague; and it is relevant to many university contexts, as much so in the humanities and social sciences as in the basic or applied sciences.

Rules
The rules outlined in the Montreal COI policy oblige university personnel to "avoid any situation which may entail choosing between personal interests, monetary or other, and those of the University" (Université de Montréal, 1993, Article 2.1). In cases where COI cannot be avoided, any real, potential or perceived COI must be disclosed to a responsible committee when teaching personnel are involved, or to a head of unit in cases involving non-teaching personnel (Articles 2.2 & 2.3). In those cases where the person who wants to disclose is in a COI with their head of unit or a member of the committee, they may refer their disclosure form to an appeals committee. In contrast, the Waterloo policy asks the individual to disclose all real or potential COI to their immediate supervisors and to seek counsel from these individuals. Both parties must come to an agreement to monitor, avoid or manage the situation.

The rigid and formal 'rules-based' regime of Montreal seems likely to be more problematic or difficult in its practical application. The strict requirement that staff avoid any COI (prior even to disclosure) seems simpler than the Waterloo process. Avoidance and prevention is prioritised over discussion and evaluation, a resolution that may be particularly appropriate in the context of 'significant financial interests', assuming that a clear definition can be given of such interests. Yet, a policy that requires personnel to first avoid all COI may be unrealistic, or worse yet, incoherent. Strictly speaking, if personnel are to avoid all COI, there seems little point in further discussing disclosure. Article 2.1 of the Montreal policy would have been better phrased as "All university personnel shall, *to the extent feasible*, avoid any situation…."

In a small department, for example, it may be difficult or even impossible to find completely impartial evaluators, thus COI in committee processes is inevitable. Further, by stating the necessity to avoid all COI situations, individuals may be dissuaded from disclosing issues that they are unable to avoid, thereby finding themselves alone to manage COI without support or counsel. Finally, a COI – especially one that is potential or apparent – can often be managed, assuming that there is a system in place that encourages disclosure, evaluation and dialogue. The Montreal policy seems to leave no room for such nuance.

Consider the following example: a professor decides to include in the required course readings, a book which he/she has authored, because of the financial gain that will accrue from royalties, instead of recommending or requiring an alternative or more appropriate text. This situation is an actual COI, because the professor's financial interests unduly influence the objective exercise of his/her duty, i.e., to provide the most appropriate text for the students. If on the other hand, the professor's book is the best material available for students and would be chosen regardless of whether the professor received royalties, the situation becomes more apparent

than actual. Concerned about the apparent or potential COI, the university might choose to take strong or even coercive measures and forbid the use of this book. On the other hand, the university (or the professor) might choose to manage the conflict by donating the royalties to a student fund or a charitable organisation.[4]

A policy that strictly forbids professors from using their own books in their courses might prevent actual and apparent COI, but it would also be a significant infringement on academic liberty (e.g., the liberty to choose appropriate course materials) and may well disadvantage students who would then forego reading what might be a very appropriate text. Moreover, such a strict policy leaves little or no place for the consideration of potentially creative alternatives to managing COI, such as discussing the issue with students in order to arrive at a shared solution (e.g., donation of royalties to a charity); a potentially valuable teaching opportunity is thus lost.

In the previous example, the management of COI on a case-by-case basis would allow for a more customized solution that could be to the advantage of both the professor and the students. The case-by-case COI management approach is best suited to evolving conditions and available resources; also, it can foster greater consensus about the management of COI among university staff. In such a situation, it may be more realistic and practical to choose to disclose in order to manage COI. Nonetheless, such a case-by-case approach also likely requires far more up-front discussion about COI and appropriate management strategies, and thus may be more complicated and costly (in terms of time) than a requirement to follow more rigid university regulations that require individuals to avoid all COI. Finally, as in the case of significant financial interests, there may be some types of COI that simply have to be prohibited.

In decisions about the choice of required course readings, COI may also arise for reasons other than financial interest; for example, the advancement of a professor's academic reputation from the use of their book instead of an alternative or more appropriate text. Interest in one's reputation is perfectly normal and acceptable; the challenge is ensuring that it not unduly influence one's professional duties. Yet, it is extremely difficult to measure the influence that reputation may have on professional behaviour (as compared with financial interests), and thus arrive at a straightforward solution. Instead, discussions about academic integrity are likely to be a more productive means of sensitising faculty to the diverse interests that may engender COI.

Disclosure is a standard part of the process for dealing with COI, and a means by which universities can promote integrity and transparency. Indeed, both the Waterloo and Montreal COI policies state this at the outset. However, recent psychological research raises important questions about an over-reliance on disclosure mechanisms. First, there is evidence that individuals in a COI are often unable to foresee the extent to which a COI may influence their professional judgement (Elliott, 2008); important COI may not be taken seriously, and thus go unreported. Second, disclosure may well be insufficient, and even lead to further biasing of decisions. Instead of providing the information needed to fairly evaluate an interest, other individuals involved in decision-making and the management of COI may underestimate the extent to which a conflict remains (Cain et al., 2005).

As often acknowledged in the literature, being in a COI is not in itself unethical if properly managed. It is important to promote a "balancing of valid interests" (Moore, 2007). Such a balance must, however, start with transparency through policy rules that encourage disclosure to enable adequate consensus building and achieve plausible compromise among staff, faculty, students and the university administration. It is not sufficient, as in the case of the Montreal

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[4] We thank Chris MacDonald for sharing this helpful example.

policy, to require disclosure without providing the tools necessary to manage COI when disclosure proves insufficient. Instead, we argue that – as encouraged in the Waterloo policy – more inclusive and transparent discussion, consultation and exploration of suitable arrangements should be promoted to help faculty identify and manage COI.

Procedures

Both the Montreal and Waterloo policies describe the manner in which university staff should proceed to manage or resolve COI. Waterloo's policy states that "any member of the University community with a conflict or potential conflict should seek the counsel and advice of her-his immediate supervisor and disclose the details to that individual" (University of Waterloo, 1991). The supervisor will then analyse the situation to determine whether there may be an actual, real or potential COI. The supervisor and the member of the university staff will agree on the alternatives or options to deal with the COI and ultimately determine a course of action. The agreed upon approach or decision will then be documented. If negotiation does not result in a consensus, the case will be referred upwards through the line of management.

Waterloo does not use a committee process or structure to evaluate COI cases. Rather, the process involves negotiation with the supervisor or director of the unit. This may be criticized as too permissive. Conceivably, supervisors might be in COI with their staff. Also, although supervisors might be well qualified academically and have management experience, they might not have the negotiation skills, training, expertise or familiarity with various cases of COI in order to evaluate the situation and provide appropriate recommendations. The process at Montreal appears to be more direct: more than one person considers the matter and there is a formal appeals committee that reviews all COI that are particularly problematic. Such an institutional process might be even more objective if the committee were completely external to the unit in which a COI has arisen. But as already noted in the case of Waterloo, Montreal COI committees might also suffer from inadequate training or knowledge of how to fairly and effectively assess cases of COI found in their departments. Thus committees may appear to provide effective oversight while in fact falling far short of this goal. To be effective, a committee must not only have knowledge of their particular department to understand the importance of specific external influences in their field of study; they must also have an understanding of the relevant ethical approaches to managing COI.

Availability

To be effective in guiding or regulating faculty, staff or student behaviour, university COI policies must be easily accessible; a policy cannot work if the individuals concerned are unaware of its existence. Common means of disseminating university policies involve: the inclusion of policy information in staff and student handbooks; individual mailing of specific documents; and posting of policies on institutional websites. The obvious limitation of these approaches is their passive nature; there is no incentive for faculty, staff and students – people who are often already very busy with a range of other activities – to *read* the documentation they receive, or to search for such information online. Accessibility of COI policies alone is insufficient for their effective implementation. It is critical to also raise awareness about the importance of COI and the need to follow or adopt practices consistent with the relevant institutional guidelines.

The COI policies of Montreal and Waterloo are both available online at their respective university websites. Montreal's COI policy can be found on the Human Resources webpage (Université de Montréal, 1993) and on a page listing all Official University Documents. Waterloo's policy is located on the web pages of the University Secretariat (Policies section) and the Office of Research Ethics (Guidelines & Policies) (University of Waterloo, 1991). While both the Montreal and Waterloo documents are easily available (i.e., they are not buried on

obscure sub-pages, unlikely to be visited by members of the university community), many other Canadian COI policies are not so readily accessible (Williams-Jones and MacDonald, 2008).

Conclusions & Recommendations

In this paper, we examined the different governance approaches, philosophical underpinnings, and styles of two university COI policies: one at the Université de Montreal that is legalistic in form, and the other at the University of Waterloo that is more inspirational. (Table 1 summarizes the key differences and similarities between these two policies.)

Table 1 : Comparing Policies

	Université de Montréal	**University of Waterloo**
Style	Highly structured, formal vocabulary	Long sentences & paragraphs, simple vocabulary
Preamble & General Philosophy	Staff must avoid COI	Staff must avoid or manage COI
Definitions	No definition	Multiple definitions
Examples	Multiple, simple	Detailed, classic cases
Rules	Simple, formal and rigid: if COI cannot be avoided, then disclose	Complex, disclose COI to head of unit then evaluate if should manage or avoid
Resolution Procedures	Bureaucratic committee	Negotiation with unit supervisor
Availability	Easily available through website	Easily available through website

We have not here sought to develop an ideal university COI policy. As mentioned at the outset, the diversity of university institutional cultures and histories will likely undermine the utility of a single, one-size-fits-all, approach to policy development. Some universities may legitimately opt for COI policies that are more or less inspirational or legalistic in style; or they may seek to combine elements of both approaches in a hybrid document that reflects their particular institutional culture. What our comparison offers, we suggest, is a clear description of the strengths and weaknesses of each approach. The following recommendations, some of which may appear to be simple common sense, are our informed opinions following a detailed analysis of 2 COI policies (Montreal and Waterloo), and a more general analysis of policies at 13 Canadian universities (Williams-Jones and MacDonald, 2008). These recommendations are intended to inform and guide faculty and administrators involved in the process of drafting or updating university COI policies.

The policy should be concise, as is often the advantage with more legalistic policies such as that of Montreal; a long document is likely to be ignored by busy staff and students. However, to facilitate understanding and uptake, *the policy should be readable* and avoid stilted legalistic vocabulary that is often opaque to even an educated audience. Instead, simple and clear language, such as that found in the Waterloo policy, would facilitate understanding of the key issues and procedures. *The preamble is an important starting point* in building such an understanding, as it underlines the main values and goals of the policy. It is essential to state clearly, as does the Waterloo policy, why it is important to abide by such a policy. This approach

can contribute to further dialogue and consensus building with regards to the appropriate management of COI.

A clear definition of COI is essential. It must be relevant and current; clear and comprehensive enough to apply and encompass potential, apparent, and actual COI; and able to distinguish conflicts of commitment. *Examples are also important* as they add a more practical or grounded understanding of the various types of COI that may arise within the diversity that is the university setting. *Rules about how to manage COI must be clear and concise*. It is important to remember that more rigid and formal rules-based regimes can present real problems in their practical application; as in the case of the Montreal policy, a focus on prohibiting or avoiding COI may entail that unavoidable or manageable COI end up being hidden, thus defeating the purpose of the policy. The management of COI on a case-by-case basis may offer a better way of raising issues and fostering greater consensus among the staff and the university. Nevertheless, certain types of COI, i.e., significant financial interests or institutional COI, may be best dealt with though formal or legalistic guidelines that provide little room for interpretation; it is an open question, though, whether these issues should be treated through separate specific policies, or as part of general university COI policies.

The procedures for resolving COI must ensure impartiality. The individual or committee who evaluates all disclosures must not be involved with the COI. If the resources are available, an external review committee would be optimal. However, there is an important caveat: the review committee must also have the necessary negotiation skills, training, expertise and familiarity with various cases of COI in order to properly assess the situation. In our (Williams-Jones') experience with various committees, such expertise is invariably lacking, and the process is essentially bureaucratic. Finally, *the policy should be accessible to all members of the university community* through, at a minimum, posting on a prominent page of the main university website (e.g., on Human Resources and Research web pages). Furthermore, when new faculty or staff are hired, they should receive information about COI (including the university policy) as part of their orientation packages. Without such accessibility, policies cannot be expected to guide behaviour or have any useful impact on the management of COI.

A COI policy is a necessary component to promoting ethical behaviour, but it is far from sufficient (Elliott, 2008). It is therefore essential that members of institutions not only be educated about the content of various policies, but that administrators help foster an ethical culture within which COI policies are acknowledged, debated, understood and ultimately respected. As in the business environment, compliance with a policy can be promoted by a culture of ethics (Arjoon, 2005). We thus suggest that 'good' COI policies are a fundamental element to promoting transparency and integrity, and enabling the development of a culture of ethics that is sufficiently robust to manage the growing number of COI situations occurring in the university environment.

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Appendix 1: Université de Montréal
Université de Montréal – Official Guidelines, Policies and Procedures

Number : 10.23 CONFLICT OF INTEREST
Adoption (French version) 1993-06-01 CU-361-9

The document hereinafter does not confer any right to any person in any manner and does not constitute a legal interpretation.

Only the French version of the said document is legally binding.

PREAMBLE
Members of the University personnel are likely to be placed in conflict-of-interest situations in the performance of their duties or in the pursuit of extramural activities.
To ensure transparency and integrity while at the same time respecting the autonomy of the University, the Université de Montréal has decided to adopt regulations for avoiding conflict of interest situations and, where necessary, protecting both university staff and the institution itself. These regulations require all members to disclose activities from which real, potential or perceived conflict-of-interest situations may arise. The regulations also stipulate procedures for dealing with these disclosures.

Article 1 APPLICATION
1.1 The present regulations shall apply to all teaching and non-teaching personnel.

Article 2 RULES
2.1 All university personnel shall avoid any situation which may entail choosing between personal interests, monetary or other, and those of the University.
2.2 All teaching personnel shall be obligated to disclose to the committee created for this purpose, any real, potential or perceived conflict-of-interest situation so that appropriate measures may be taken to safeguard the interests of the University.
2.3 All non-teaching personnel shall be obligated to disclose to the Head of their unit, any real, potential or perceived conflict-of-interest situation so that appropriate measures may be taken to safeguard the interests of the University.
2.4 All members of personnel who consider themselves to be in conflict of interest with a member of the Unit Committee or the Head of Unit, as the case may be, may disclose directly to the Appeals Committee any real, potential or perceived conflict of interest so that appropriate measures may be taken to safeguard the interest of the University.

Article 3 CONFLICT OF INTEREST
3.1 Without limiting the general scope of these Regulations, conflict of interest may arise in cases where a member of the personnel:
a) Directly or indirectly has monetary or other interests in an external enterprise that deals or is likely to deal with the University;
b) enters into an agreement with an external enterprise in which the member directly or indirectly has monetary or other interests;
c) Gears his or her research activities at the University so as to cater to the needs of an external enterprise in which the member, directly or indirectly, has monetary or other interests;
d) conducts teaching or research activities for an external enterprise without regard for the rights of the University;

e) Conducts activities, professional or other, which, because of their time commitment, are likely to interfere with or prevent the performance and the member's duties at the University or compete with University activities;

f) Accepts a gift or favour in any form from an external enterprise that deals with the University;

g) Uses for personal purposes, or for the benefit of a third party, University resources or time, which, according to the member's definition of duties, should be devoted to the University;

h) Uses the name, emblem or insignia of the University, as well as the name of its associations or organizations to serve personal interests;

i) Participates in the employment or promotion, at the University, of members of his or her family or other persons with whom the member is associated;

j) Uses for personal for personal purposes or for the benefit of a third party confidential information acquired as a result of the member's duties at the University.

Article 4 PROCEDURES FOR DISCLOSURE

4.1 Every year, on the date determined by the person responsible for the application of these Regulations, members shall complete the prescribed form to disclose, if necessary, any real, potential or perceived conflict-of-interest situation in which they may be involved.

4.2 During the year, members shall complete a new disclosure form if a conflict of-interest situation arises that had not been foreseen at the time of the annual disclosure.

4.3 The forms shall be submitted, within the prescribed time limits, as the case may be, to the immediate superior or to the Appeals Committee.

Article 5 TREATMENT OF DISCLOSURES

5.1 Teaching Personnel

Unit Committee

Each non-departmentalized faculty, department, school, institute and research centre shall create a committee composed of the Head as chair and two professors appointed by for a Unit assembly a three-year term.

This committee shall deal with the disclosures made by the teaching staff of the unit.

5.2 Non-teaching Personnel

Each head of unit shall deal with the disclosures made by staff members under his or her supervision and shall inform the person responsible for the application of these Regulations of the measures taken to resolve conflicts of interest.

Article 6 APPEALS COMMITTEE

6.1 The Appeals Committee shall be composed of five members including at least one member of the non-teaching personnel. The University Council and the University Assembly shall each appoint two members to said committee for a three-year term. These members shall appoint a fifth member who shall chair the committee.

6.2 This Committee shall rule on cases submitted to it in writing, within 30 days of the decision rendered by the Unit Committee or the Unit Head, as the case may be.

6.3 This Committee shall also receive, in the first instance, the statements from any member who considers himself or herself to be in conflict of interest with a member of the Unit Committee or the Unit Head, as the case may be.

6.4 This Committee may also, of its own initiative, suggest methods of resolving the conflicts of interest and, to this end, may obtain any information relating to the measures taken to resolve these conflicts or any relevant information.

Article 7 APPLICATION OF REGULATIONS

7.1 The Rector, or the Vice-Rector designated by the Rector, shall be responsible for the application of these Regulations. He or she, in concertation with the Appeals Committee shall report to the University Assembly and the University Council three years after the implementation hereof and shall suggest, where necessary, amendments hereto.

Article 8 COMING INTO FORCE

8.1 These Regulations shall come into force on the day following their adoption by the University Assembly and the University Council.

Appendix 2: University of Waterloo
Policy 69 – Conflict of Interest
Established: April 2, 1991

I. PREAMBLE
A conflict of interest [1], or a potential conflict of interest, exists when a member of the University is or may be in a position to use research, knowledge, authority or influence for personal or family gain or to benefit others to the detriment of the institution.

II. GENERAL PHILOSOPHY AND PROCEDURES
The University acknowledges a commitment, as part of its overall mandate, to transfer knowledge, discoveries and technology to society for its benefit. Interaction of members of the University with external entities is desirable and encouraged when the activity is beneficial to the professional standing of the individual, the reputation of the University or provides a community or professional service. Whatever the nature of the external activities or relationships, the University expects each of its members – faculty, staff, student or officer – to act in a manner consistent with a high standard of integrity and ethical behavior. Accordingly, the University of Waterloo obligates its members and officers acting on its behalf to avoid ethical, legal, financial or other conflicts of interest which may impede or compromise their University responsibilities or the mission of the institution.

This policy is meant to protect both the individual and the institution. Its fundamental tenet is that members should, of their own volition, take the initiative in disclosing conflicts or potential conflict of interest situations. The mere existence of a conflict or a potential conflict does not necessarily imply that the activity concerned should cease. Indeed, conflicts may cover a broad spectrum from those that are minor and easily controlled to those whose consequences could be very serious. There are situations sufficiently complex that judgments may differ as to whether a conflict exists. Accordingly, any member of the University community with a conflict or potential conflict should seek the counsel and advice of her/his immediate supervisor and disclose the details to that individual. A disclosure form (see next page) is available for this purpose.

The immediate supervisor (in consultation with her/his supervisor, when appropriate) will determine whether a conflict, real or potential, exists. In the event that a conflict exists or will exist, the immediate supervisor and the member will agree on a course of action to monitor or avoid the conflict, after which written documentation of the agreement will be held by both the member and her/his immediate supervisor. In the event that agreement cannot be reached, the case will be referred through the appropriate line management channels for resolution, up to and including the Vice-President, Academic & Provost, if necessary.

It is assumed that those with academic or employment supervisory authority who detect what they believe to be violations of this policy will act promptly to provide or initiate the appropriate remedial or disciplinary measures as set out in other University policies, procedures and agreements (including 18, 33, 36, 62, 71 and the Memorandum of Agreement).

III. EXAMPLES
The following list of examples, while not comprehensive, is illustrative of situations which may lead to an indirect or direct conflict of interest:

Favoring of Outside Interests for Personal Gain:

- Entering into a research contract with a company in which the faculty or staff member, or a member of her/his immediate family, has a financial or other interest.
- Directing the faculty member's government sponsored research program to serve the research or development needs of a private firm in which the faculty member has a financial or other interest.
- Influencing the purchase of equipment or materials for the University from a company in which the faculty or staff member has a financial or other interest.
- Accepting significant gifts or special favors for personal gain from private organizations with which the University does business.
- Entering into a licensing agreement for the development of intellectual property, generated as a result of University research, with a company in which the faculty or staff member has a financial or other interest.

Inappropriate Use of University Personnel, Resources or Assets:
- When a supervising faculty or staff member uses University students or staff on University time to carry out work on her/his own behalf for a company in which he/she has a financial or other interest.
- Unauthorized and non-reimbursed use of University resources or facilities to benefit a private concern in which the faculty or staff member has a financial or other interest.

Inappropriate Use of Information:
- Using for personal gain, or other unauthorized purposes, privileged information acquired as a result of the faculty or staff member's University-supported activities; such information might include knowledge of forthcoming developments requiring contractor or sub-contractor selection, bulk purchases, etc.
- Unreasonably delaying publication of research results (e.g., thesis research) or premature announcement of research results to secure personal gain.

Conflict of Commitment:
- Undertaking external consulting, professional or other activities which, by virtue of their time commitment, prevent the faculty or staff member from fulfilling her/his obligations to the University.
- Involvement in external organizations which bring a faculty or staff member into a position of divided loyalty between the mission of the University and the interests of the external organization.

Inappropriate Involvement in Appointment Processes:
- Participating in the appointment, promotion or hiring of a person with whom the faculty or staff member has a marital, familial or sexual relationship.

DISCLOSURE FORMS
[Disclosure forms are available on the web and/or from the Secretariat.]

BACKGROUND RE: DEVELOPMENT OF GUIDELINES AND PROCEDURES ON CONFLICT OF INTEREST
Preamble
The potential for conflict of interest has always existed in university communities because of the diverse interactions of faculty, staff and graduate students with external organizations. However, the increasing complexity of society and the changing role of universities in that society, the multiplicity of interuniversity, university-industry and university-community relations have created a new awareness of the need for guidelines concerning conflict of interest. Few will argue that

while the basic mandate of universities – education, research and scholarship, and public service – remains, each institution is struggling to define its own distinctive role and to cope with the reality of a new financial environment. Rapid developments in science and technology over the past two decades, and the realization that transfer of technology from universities to the private sector can contribute significantly to international competitiveness, have generated pressures and financial incentives to engage in cooperative research ventures, consulting or external business relationships. More than ever before, faculty, staff, graduate students and administrators are being asked to engage in a diverse range of economic development activities which carry the potential for conflict of interest. Unless such conflicts are identified and monitored, the very essence of the university mission may be compromised.

Defining Conflict of Interest
Conflicts of interest may be individual or institutional. An individual conflict can be defined as any external activity or undertaking which places an individual in a position which:
A. influences University research, education or business for personal gain, or
B. interferes with or prevents the discharge of her/his University responsibilities, as defined by the individual's employment contract; this is, in reality, a conflict of commitment.

The overall thrust of this definition is that the best interests of the University may be compromised to the personal benefit of the individual employee.

Individual conflicts of interest often derive directly or indirectly from opportunities to participate in externally funded research and in a subsequent interplay between the results of the research and a faculty member's personal or financial interests. Such situations frequently place faculty and staff members in a position to manage contracts, select equipment and supplies, involve graduate students in sponsored research or play administrative roles which demand the utmost in integrity and honesty. Even the appearance of an apparent conflict can have a negative impact on the University and the individual in the eyes of the community.

Institutional conflicts of interest may occur when the University enters into contractual relationships with external bodies, usually private corporations but sometimes government agencies, which bring it into potential conflict with its mandate, with the personal activities of its Board of Governors or even its status as an educational institution. These potential institutional conflicts must be monitored by its governing bodies.

Ethical Principles
In drafting a conflict of interest policy for the University, the Committee was cognizant of both the positive and negative aspects of that part of the University's mission which can be described as "service to society". On the one hand, the University has an implicit obligation to transmit knowledge and the results of research to society for its benefit. On the other hand, the financial incentives and pressures to contribute to economic and societal well-being have, in the minds of some, distorted University priorities and led to an erosion of autonomy and independence. In this changing environment, it is of paramount importance that the institution have in place a code of ethics which obligates its faculty, staff, students and officers acting on its behalf to avoid ethical, financial or legal conflicts which prejudice the best interests of the University. Thus, a policy on conflict of interest should be an integral component of an entire matrix of policies on ethical behavior in general at the University of Waterloo.

Policy Type
Clearly, defining the entire spectrum of potential conflict of interest situations, both individual and institutional, would be a daunting task. Furthermore, the generation of an exhaustive list of

restrictions designed to eradicate conflicts would most certainly compromise the ability of the University to create an environment conducive to the discovery and dissemination of knowledge, the search for truth and understanding, the quality of life and the needs of society. The Committee became convinced that the best interests of the institution would not be served by a restrictive "do not" policy. Such a rigid approach would run counter to the freedom to innovate and the spirit of entrepreneurship which have characterized the University of Waterloo throughout its brief history. Accordingly, the Committee opted for the disclosure route in defining a conflict of interest policy.

Identifying Potential Conflict Situations
One of the keys to any conflict of interest policy relying on disclosure is the ability of individual employees in the institution to recognize possible conflict of interest situations so that they can, in good faith, be recorded and managed. The Committee felt that it would be very useful to provide a list of situations which may be of concern in order to alert employees to potential problem areas. This list can be found in the "Examples" section of the policy on Conflict of Interest.

[1] Statements pertaining to conflict of interest situations are contained in other UW policies, including: 33 (Ethical Behaviour); 40, 44, 45, 48, 50 and 68 (re Academic Administrators); 41 (Contract Research); 49 (Extra-University Activity); 52 (Private Corporations); 62 (Conflict of Interest in Employment & Supervision of Personnel); 66 (Use of University Resources and Affiliation); 77 (Tenure and Promotion).