

April 19, 2009

Draft of Whistleblower Protection Policy for York University.

Drafted by modifying the policies from Athabasca University and University of Calgary

York's Code of Whistleblowing Principles incorporates York's mission to:

- pursue, preserve and disseminate knowledge
- promise excellence in research and teaching, in pure, applied and professional fields
- test the boundaries and structures of knowledge
- cultivate critical intellect

York's Code of Whistleblowing Principles incorporates York's values of:

- diversity
- global concerns
- academic freedom
- accessible education
- collegial governance

Principles:

- Facilitate an effective, ethical and honest disclosure and communication of wrongdoing
- Ensure that disclosures are properly assessed and, where necessary, investigated and actioned
- Ensure that a person making a disclosure or raising a genuine concern is protected against detriment and reprisal to themselves or their career
- Give whistleblowers the confidence that they are supported by York University
- Ensure that policies and procedures support whistleblowing
- Concern can be raised in confidence; if a person asks for their identity to be protected, York University will at all times do its best to ensure this

Philosophy and Purpose

York University is committed to maintaining the highest ethical standards in all of its activities and to acting immediately on any reported Wrongdoing. Through this policy, the University aims to protect any member of the University community who acts to expose Wrongdoing within the University from retaliation.

Because of their involvement in the University's day-to-day operations, faculty, staff, employees, students, volunteers and other Stakeholders are often in the best position to observe and report unethical conduct or abuse of the public trust. In keeping with the

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Drafted by modifying the policies from Athabasca University and University of Calgary University's commitment to accountability, ethical conduct and transparency, this policy provides protection for such Whistleblowers by prohibiting reprisals against them.

The purpose of this policy is:

- a. To protect persons who, in good faith, make such disclosures by prohibiting subsequent reprisals against them;
- b. To provide a mechanism through which Stakeholders in the University can confidentially disclose Wrongdoing, unethical conduct, fraud or abuse of public trust that they observe in the context of performing their University duties or activities;
- c. To prescribe procedures for making such disclosures; and
- d. To provide a mechanism for appropriate investigation of and response to such disclosures.

This policy:

- a. Applies to York University and all of its Stakeholders;
- b. Affirms that it is in the public's best interest to maintain and enhance public confidence in the integrity of York University;
- c. Reflects York University's commitment to ensuring the accountability, ethical conduct and transparency of its Senate, Governing Council, and employees;
- d. Provides a mechanism by which anyone can make a Protected Disclosure of any perceived Wrongdoing within York University;
- e. Provides protection for and prohibits reprisals against anyone who, in good faith, takes steps to expose Wrongdoing within York University;
- f. Allows York University to take prompt corrective action in response to reports of Wrongdoing;
- g. Is supported by the procedures documented in Appendix 1, which is below; and
- h. Does not apply to matters relating to employee performance or discipline, or to student academic dishonesty, which are covered in collective agreements or performance management policies and the Senate Policy on Academic Honesty, respectively.

Definitions

In this policy and the procedures outlined below, these terms are to be interpreted as follows:

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Complainant means a person making a disclosure of a Wrongdoing.

Ethical Conduct means conduct that is fair, free from deception and impropriety and consistent with accepted standards, values, and principles as identified in the University's policies and procedures.

Executive Officers include the University President and Vice-Presidents.

Fraud means intentional deception resulting in injury to another.

Gross mismanagement means management action or inaction in reckless disregard of the consequences to Stakeholders; examples include but are not limited to physical violence, theft or fraud, deliberate falsification of records, deliberate damage to York University property and serious incapability through being under the influence of alcohol or drugs at work.

Interference means direct or indirect action or use of authority to obstruct a person's right to make a Protected Disclosure.

Partners refers to but is not limited to:

1. suppliers of goods and services
2. other educational institutions and affiliates
2. industries
4. foundations
5. government bodies
6. communities

President means the president of York University

Protected disclosure means any disclosure, which is not frivolous or made in bad faith, made by a Stakeholder concerning an actual or perceived Wrongdoing.

Reprisal means retaliatory actions or measures that could be taken against a Stakeholder reporting a Wrongdoing, including but not being limited to:

1. dismissal,
2. disciplinary action,
3. demotion or withholding of due promotion,
4. termination of employment,
5. intimidation or coercion,
6. suspension,
7. imposition of any penalty,
8. harassment,
9. discrimination,

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10. any act that adversely affects the employment or learning conditions of the person,

11. threatening to do any of the above.

Senior Officers include any Associate Vice-President, Executive Director, Director, Dean, Centre or Departmental Chair, Registrar, or University Secretary, Senators, Board of Governors

Service provider means any independent external organization contracted to provide a confidential communication program which allows Stakeholders to report Wrongdoings.

Stakeholders includes the York University Senate, Governing Council, all faculty, staff, employees, contractors, students, prospective students, alumni, volunteers, partners and concerned external parties.

University means York University.

Vice-President means a Vice-President of the University, and if accompanied by additional descriptive words, means the Vice-President identified by those descriptive words.

Whistleblower means any person making a Protected Disclosure.

Wrongdoing refers to but is not limited to:

1. the serious contravention of University policies or regulations,
2. acts which are in contravention of relevant local, provincial or federal laws,
3. acts of fraud or misappropriation,
4. misuse of funds, assets or resources,
5. gross mismanagement,
6. an act or omission that creates a substantial or specific danger to the life, health or safety of persons or to the environment,
7. a serious breach of ethics or code of conduct,
8. interference
9. reprisals for reporting a Wrongdoing
10. serious misrepresentation.

Policy

1. Disclosure

It is vital to the University that all employees and other Stakeholders disclose their knowledge or suspicion of Wrongdoing in the context of University activities in a timely manner. The University's ability to take prompt corrective action in these situations depends on such reporting.

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Disclosures may be made through any of the channels identified in this policy and its related procedures.

2. Protection of Complainants

This policy will ensure that any complainant, who in good faith makes a disclosure pursuant to this policy and who has acted in accordance with the requirements of this policy and the related procedure, is protected against reprisal.

3. Investigations

All disclosures made under this policy will be investigated in accordance with this policy and the related procedure. The Chair of the Audit Committee (or his or her designate) will identify the lead investigator for all disclosures, with due concern for protection of individual rights, and will be guided by the principles of fairness, confidentiality and expeditiousness.

Disclosures which are determined by the Chair of the Audit Committee (or his or her designate) to be outside the scope of this policy will be resolved with reference to the University policies or guidelines which appropriately address them (e.g., those on harassment, or academic dishonesty).

4. Fair Treatment and Confidentiality

All persons involved in allegations of Wrongdoing are to be treated fairly and impartially regardless of their position or the length of their involvement with the University.

All disclosures made under this policy and all investigations will be handled in a confidential and sensitive manner. The details of individual disclosures and the results of investigations will be disclosed, discussed or reported only to those parties who have a legitimate need to know.

5. Reporting

To maintain confidentiality, the results of individual investigations will be reported only to those parties with a need to know as determined by the Chair of the Audit Committee (or his or her designate) or the President (or his or her designate).

6. Awareness of Policy

This policy and the procedures for disclosing Wrongdoing will be identified on the University website. University employees and students should be made aware of this policy and the related procedures.

7. Precedent

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Drafted by modifying the policies from Athabasca University and University of Calgary. The protection offered by this policy is in addition to, but does not replace or modify the individual rights guaranteed by law, contract or codes of professional ethics. Nothing in this policy limits or amends the provisions of collective agreements entered into by the University and its employee groups.

Whistleblower Procedures

Contents of Disclosure

In making a disclosure, complainants are encouraged to identify themselves, as anonymous disclosures may limit the ability of an investigator to determine the exact nature of the alleged wrongdoing. Anonymous disclosures will be investigated at the discretion of the Chair of the Audit Committee (or his or her designate).

All disclosures must be put in writing either by the complainant (Whistleblower), the University official, or the service provider who receives the disclosure. This disclosure will include as much of the following information as possible:

- a. Identification of the alleged or suspected wrongdoing;
- b. A description of the activity or activities involved in the alleged or suspected wrongdoing;
- c. An explanation of the perceived risk(s) to the University;
- d. Identification of and a description (as required) of all parties involved in the alleged or suspected wrongdoing;
- e. An explanation of any perceived financial interests or rewards;
- f. An explanation of any perceived or suspected violations of local, provincial or federal statutes or regulations;
- g. The name and contact information of the complainant;
- h. Any other information necessary to evaluate the disclosure.

Disclosure

It is important to the University that all employees and other Stakeholders disclose their knowledge or suspicion of Wrongdoing in the context of University activities in a timely manner. The University's ability to take prompt corrective action in these situations depends on such reporting.

Disclosures may be made to:

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a. The authorized external service provider, available by telephone at [REDACTED] or online at [REDACTED], who will:

- i. report directly to the Chair of the Audit Committee (or his or her designate) and the President (or his or her designate) on any protected disclosure.
- ii. communicate issues reported only to the designated contacts within the University for investigation; and
- iii. facilitate communications with the whistleblower until the issue is resolved.

b. The direct supervisor, manager, Dean, Director, or Executive Officer of:

- i. the individual making the disclosure; or
- ii. the individual against whom the disclosure is made;

c. The Chair of the Audit Committee (or his or her designate).

d. The President (or his or her designate).

e. The York University Ombudsperson.

All disclosures shall be immediately reported to the Chair of the Audit Committee (or his or her designate) or the President (or his or her designate) by the person to whom the disclosure is made.

Protection of Persons Making Disclosures

a. Any complainant who experiences or believes that he or she has experienced a reprisal as a result of making a disclosure pursuant to this policy and these procedures should document the details and immediately inform any of the five individuals listed under "Disclosures," and that person shall immediately inform the Chair of the Audit Committee (or his or her designate), or the President (or his or her designate). They will ensure that the allegation of reprisal is investigated and if they are justified that the appropriate corrective steps are taken. Any person engaging in acts of reprisal shall be subject to disciplinary action as provided in the effective collective agreement or personal services agreement.

b. The Chair of the Audit Committee (or his or her designate) may appoint a person to act as advocate for the individual who made the Protected Disclosure and to manage his/her welfare. The advocate will:

- i. Examine the immediate welfare and protection needs of the individual and, if the individual is an employee, seek to foster a supportive work environment;
- ii. Listen and respond to any concerns of harassment or intimidation in reprisal for making a Protected Disclosure;

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- iii. Act as liaison and guide pertaining to the process; and
- iv. Keep a record of all aspects of the case management of the individual.

Obligations of Persons Receiving Protected Disclosures

Any person or contracted service provider who receives a protected disclosure must make a record of having received it and immediately convey the protected disclosure to the Chair of the Audit Committee (or his or her designate).

Other than reporting the Protected Disclosure in accordance with the policy and procedure persons who receive a protected disclosure must keep confidential the fact that they have received the disclosure. Unless information is released by the Chair of the Audit Committee (or his or her designate), or the President (or his or her designate), the name of the complainant, the contents of the disclosure and the context of the investigation into the alleged wrongdoing will remain confidential.

Investigations

The Chair of the Audit Committee (or his or her designate) shall carry out or cause to be carried out a preliminary review of the facts presented to determine whether there are reasonable and probable grounds to warrant an investigation.

In determining whether an investigation is warranted or at any point during an investigation, the Chair of the Audit Committee (or his or her designate) may decline to investigate or to continue to investigate if he or she draws any of the following conclusions:

- a. The complainant has failed to exhaust other reasonably available procedures.
- b. The alleged wrongdoing is one that would be more appropriately dealt with under another policy.
- c. The alleged wrongdoing is frivolous, vexatious, or made in bad faith.
- d. The allegations do not have sufficient information to undertake an investigation.
- e. Another valid reason exists for not proceeding with an investigation.

When exercising his or her discretion not to investigate or not to continue an investigation, particularly when the complainant has declined to provide his or her name, the Chair of the Audit Committee (or his or her designate) may take into account the following factors:

- a. The seriousness of the issues raised.
- b. The likelihood of confirming the allegation from alternative credible sources.
- c. The credibility of relying on an anonymous complainant.

When a decision has been made not to investigate or to discontinue an investigation, the complainant (provided he or she has provided his or her name and contact information) will be advised of the decision and the reasons for it. When an allegation is dismissed as

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- a. Based on the nature of the allegations, the Chair of the Audit Committee (or his or her designate) will assemble the resources and representatives needed to investigate the allegation.
- b. The investigation will be conducted informally, as expeditiously and as confidentially as possible.
- c. All parties to the investigation will be treated fairly and impartially.
- d. All persons affected by the allegations will be informed of the facts alleged and given a full opportunity to respond.
- e. A summary of the findings of the investigation will be conveyed to all persons affected (including the complainant if their name and contact information were provided).
- f. If a wrongdoing is confirmed, the appropriate remedial actions shall be recommended.
- g. In the event that disciplinary action is also recommended, it shall be provided in accordance with the effective collective or personal services agreement or the penalties provided by law.

Where practical, all issues reported will be managed within the University. If, for any reason, an allegation cannot be satisfactorily investigated and resolved through the Protected Disclosure (Whistleblower) Policy and Procedures, the Chair of the Audit Committee (or his or her designate) has final responsibility for determining an alternative approach which preserves the spirit of this policy. Alternatives may, for example, involve convening an *ad hoc* committee or seeking advice from external experts.

Confidentiality

To the extent that is possible, information contained in all disclosures made and investigations conducted under this policy, including the identities of complainants and of persons who are the subject of allegations, will be kept confidential. All parties and information will be treated with sensitivity and neither the details of disclosures nor the results of investigations will be revealed to or discussed with anyone other than those who have a legitimate need to know. Concerns for individual rights and the potential for impeding an objective investigation require that premature public information release be avoided.

The mechanisms for and conditions under which information is released will be determined by the Chair of the Audit Committee (or his or her designate) based on recommendations from the President (or his or her designate).

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If an alleged wrongdoing appears to involve criminal behaviour, the appropriate authorities will be notified (e.g., the Ontario Provincial Police or the Toronto Police Service) and they will coordinate and conduct criminal investigations as they judge appropriate.

The outcome of the investigation will be made available to the original complainant and the person(s) against whom allegations have been made.

Bad Faith Disclosures

Any person found to have made a disclosure in bad faith or in breach of the Protected Disclosures (Whistleblower) Policy shall be subject to disciplinary action as provided in the collective or personal services agreement.

Reporting

Final Report of the Investigator

- a. When the Investigation is complete, the Chair of the Audit Committee (or his or her designate) will prepare a report. The Report will include:
 - i. The allegation;
 - ii. An account of all relevant information received and, if the Investigator has rejected evidence as being unreliable, the reasons for this conclusion;
 - iii. The conclusions reached and the basis for them; and
 - iv. Any recommendations arising from the conclusions.
- b. The Report will be accompanied by all records created or received by the Chair of the Audit Committee (or his or her designate) in the course of the investigation.
- c. The Report will not include information that leads or could lead to the identification of the individual who submitted the Protected Disclosure if that individual has requested anonymity.

Outcome of the Investigation

- a. If the Chair of the Audit Committee (or his or her designate) is satisfied that the Report brings the Investigation to an end, he or she will provide the President with a copy of the Report. If there is evidence of wrongdoing, the Report will include recommendations for action that should be taken to prevent the conduct from continuing or occurring in the future as well as action that should be taken to remedy any harm or loss arising from the conduct.

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b. The Chair of the Audit Committee shall provide the President with an annual report of:

- i. the number of disclosures reported;
- ii. the number of disclosure investigations undertaken;
- iii. the number of disclosures not investigated;
- iv. the results of the investigations, as appropriate; and
- v. any outstanding actions required of the University as a result of those investigations.

Related Policies and Procedures

[Insert relevant York University policies and procedures here]

Links:

Athabasca: <http://www.athabascau.ca/policy/administration/whistleblower.htm>

University of Calgary (Click on “Browse by Title,” then select “Disclosure Protection Policy”): https://pr1web.ucalgary.ca/UofC_PPS_Public/PublicViewPPDocument.aspx?docType=0&version=31&view=true

University of Lethbridge: <http://www.uleth.ca/policymanual/policyview?id=428>

Royal Roads: <http://myrru.royalroads.ca/files-myrru/File/RRU%20Whistleblowing%20Policy.pdf>