
Protected Disclosure

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POLICY STATEMENT

This policy is in place to ensure compliance with New Brunswick Community College's (NBCC) legal obligations to facilitate disclosure and investigation of alleged Improper Activity. In particular, the *New Brunswick Public Interest Disclosure Act (PIDA)*, the *New Brunswick Employment Standards Act (ESA)* and the federal Criminal Code of Canada (CCC) mandate express protection for good faith disclosures of Improper Activity.

Of note, PIDA requires the facilitation of disclosure and investigation of "... **significant and serious matters in or relating to the public service that are potentially unlawful, dangerous to the public or injurious to the public interest.**" [Section 2]

NBCC always endeavours to ensure compliance with all applicable provincial and federal legislation in its operations; however, when a College Community Member, Appointed Person or Third Party has concerns regarding alleged Improper Activity, this policy provides the mechanism for disclosure and investigation of such matters.

PURPOSE

Not given.

SCOPE AND LIMITATIONS

This policy applies to all Appointed Persons, College Community Members and Third Parties, as defined in the policy, who seek to make a Protected Disclosure in relation to an Improper Activity.

This policy does **NOT** apply to the reporting of personal concerns, appeals, complaints, grievances, or issues associated with matters for which there are separate policies or avenues of complaint (e.g. complaints relating to harassment or discrimination, personal or employment grievances, academic appeals, grievances under collective agreements).

1.0 DEFINITIONS

Appointed Person

- means any person who does not meet this policy's definition of a College Community Member and is appointed to a role within NBCC; including, but not limited to a member of NBCC's Board of Governors or a volunteer.

College Community Member

- means any person who studies, teaches, conducts research, or works at or under the auspices of NBCC, including, but not limited to:

- (a) any person who is an employee of NBCC;
- (b) students of NBCC;
- (c) visiting scholars, and any other persons while they are acting on behalf of or at the request of NBCC; and

- (d) a contractor engaged by NBCC.

Designated Officer

- means the senior official designated by NBCC to receive and process disclosures and investigations, pursuant to this policy.

Improper Activity

means alleged wrongdoing, as defined in applicable legislation and as amended therein from time to time. For example:

1. New Brunswick PIDA Section 3:***“Wrongdoings to which this Act applies***

This Act applies to the following wrongdoings in or relating to the public service:

- (a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;*
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;*
- (c) gross mismanagement, including of public funds or a public asset; and*
- (d) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (c).”*

2. New Brunswick ESA, Section 28:

“Notwithstanding anything in this Act, an employer shall not dismiss, suspend, lay-off, penalize, discipline or discriminate against an employee if the reason therefore is related in any way to . . .

- b) the making of a complaint or the giving of information or evidence by the employee against the employer with respect to any matter covered by this Act;*
- c) the giving of information or evidence by the employee against the employer with respect to the alleged violation of any provincial or federal Act or regulation by the employer while carrying on the employer's business;*

or if the dismissal, suspension, layoff, penalty, discipline or discrimination constitutes in any way an attempt by the employer to evade any responsibility imposed upon him under this Act or any other provincial or federal Act or regulation or to prevent or inhibit an employee from taking advantage of any right or benefit granted to him under this Act.”

3. CCC, Section 425.1:**Threats and retaliation against employees**

“425.1 (1) No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary

measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,

- (a) *with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or*
- (b) *with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.”*

Protected Disclosure

- means a report of alleged or suspected Improper Activity, pursuant to this Policy, which is made in good faith and a reasonable belief that the activity has both occurred and amounts to Improper Activity, including an Urgent Public Disclosure. Certain restrictions to such protection are applicable, including but not limited to New Brunswick *PIDA*, subsections 16(1) & (2):

When disclosure restrictions continue to apply

“16(1) Nothing in this Act authorizes the disclosure of

- (a) *information or documents that would disclose the deliberations of the Executive Council or a committee of the Executive Council, or the proceedings of any of them,*
- (b) *information that is protected by solicitor-client privilege,*
- (c) *information that relates to the deliberations or decisions of a Crown prosecutor, or*
- (d) *in the case of a disclosure to the public under subsection 14(1), information that is subject to any restriction created by or under an Act of the legislature or the Parliament of Canada, or a regulation made under an Act.*

16(2) If the disclosure involves personal information or confidential information, the employee must take reasonable precautions to ensure that no more information is disclosed than necessary to make the disclosure.”

Reprisal

- means an adverse action taken by NBCC against an Appointed Person, Third Party or College Community Member for making or seeking advice in relation to making a Protected Disclosure, or participating in the investigation of a Protected Disclosure.

Third Party

means any person who does not meet this policy’s definition of an Appointed Person or College Community Member; including, but not limited to a member of the public.



Urgent Public Disclosure

means a disclosure that meets the criteria and protocol established pursuant to PIDA, Section 14, as amended from time to time. For example:

Public disclosure if situation is urgent

“14(1) If an employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment, to the extent that there is insufficient time to make a disclosure under this Act, the employee may make a disclosure to the public

(a) if the employee has first made the disclosure to an appropriate law enforcement agency or, in the case of a health-related matter, to the chief medical officer of health, and

(b) subject to any directions that the agency or officer considers necessary in the public interest.

14(2) Immediately after a disclosure is made under subsection (1), the employee shall also make a disclosure about the matter to their supervisor or designated officer.”

2.0 IMPLEMENTATION

2.1 No Reprisal

2.1.1 Appointed Persons, College Community Members or Third Parties who report their own misconduct are not exempted from any consequences under this policy.

2.1.2 Appointed Persons, College Community Members or Third Parties who seek advice about making a Protected Disclosure, have made a Protected Disclosure or participate in an investigation of a Protected Disclosure under this policy shall not be subject to reprisal.

2.1.3 Any Appointed Person, College Community Member or Third Party who imposes reprisals against any individual for making a Protected Disclosure may be subject to consequences, including but not limited to: removal from appointment, expulsion, cessation of relationship with NBCC and/or discipline, up to and including termination of employment, as applicable.

2.2 Frivolous, Vexatious or Bad Faith Disclosures

2.2.1 Disclosures regarding alleged Improper Activity which are found, upon investigation, to be frivolous, vexatious or in bad faith shall be subject to appropriate sanction or consequence, including but not limited to removal from appointment, expulsion, cessation of relationship with NBCC and/or discipline, up to and including termination of employment, as applicable. Such sanctions shall be in addition to and apart from any other sanction provided for by law.

2.2.2 Protected Disclosures made in good faith, but which are ultimately proven, upon investigation, to be unsubstantiated shall not be deemed to be frivolous, vexatious or in bad faith.

2.3 Procedure for Making Protected Disclosures

- 2.3.1 An Appointed Person or Third Party may make a Protected Disclosure in relation to NBCC to the *New Brunswick Office of the Ombud*, pursuant to Section 23 of PIDA.
- 2.3.2 A College Community Member may make a Protected Disclosure in relation to NBCC to NBCC's Designated Officer, a supervisor or to the New Brunswick Office of the Ombud.
- 2.3.3 Protected Disclosures by a College Community Member who is an employee of NBCC must comply with PIDA, Section 12, as amended from time to time. For example:

Content of disclosure

"A disclosure made under section 11 shall be in writing and signed by the employee and shall include the following information, if known:

- (a) a description of the wrongdoing;*
- (b) the name of the person or persons alleged to
 - (i) have committed the wrongdoing, or*
 - (ii) be about to commit the wrongdoing;**
- (c) the date of the wrongdoing; and*
- (d) whether the wrongdoing has already been disclosed and a response received."*

2.4 INVESTIGATION PROCEDURE

- 2.4.1 Investigations related to disclosures by an Appointed Person or Third Party shall be completed at the direction of the New Brunswick Office of the Ombud, pursuant to the Ombud's authority, as stipulated in PIDA.
- 2.4.2 Following receipt of a disclosure from a College Community Member, NBCC's Designated Officer will review the disclosure and conduct an assessment to determine whether, in the discretion of the Designated Officer, there are sufficient grounds to commence a formal investigation. The decision as to whether an investigation will be commenced shall be communicated, in writing, to the College Community Member making the disclosure within seven (7) working days following receipt of the disclosure.
- 2.4.3 A supervisor who receives a disclosure from a College Community Member, who is an employee of NBCC, shall immediately forward the disclosure to NBCC's Designated Officer.
- 2.4.4 Where a formal investigation of a disclosure by a College Community Member is deemed warranted by NBCC's Designated Officer, such investigation shall be conducted in accordance with the principles of procedural fairness and natural justice and shall respect the confidentiality of information collected, to the extent possible, as required by law. Where applicable, such investigations shall be commenced within fourteen (14) days following receipt of the disclosure from a College Community Member and be completed as soon as practicable, given the complexity of the matter, with a goal for investigations to be completed within three (3) months from receipt of the disclosure.

- 2.4.5** If more than one disclosure from a College Community Member is received by the NBCC's Designated Officer regarding the same or similar Improper Activity, at the discretion of the Designated Officer, a single investigation may be conducted.
- 2.4.6** An external third party may be engaged, at the discretion of NBCC's Designated Officer, to conduct the investigation on behalf of NBCC.
- 2.4.7** Upon completion of the investigation, a report confirming the outcomes of the investigation shall be prepared.
- 2.4.8** Within seven (7) working days of its completion, the investigation report will be provided to NBCC's Chief Executive Officer, NBCC's Board of Governors and the applicable Minister of Government.
- 2.4.9** Within fourteen (14) working days of its completion, the Chief Executive Officer will provide the College Community Member who made the disclosure with a written summary of the investigation outcomes and a determination by the Chief Executive Officer as to whether: i) an Improper Activity has been deemed to have occurred; and ii) any actions required to be taken as a result of the investigation.
- 2.4.10** Each year, the Chief Executive Officer will prepare a report to NBCC's Board of Governors, which shall include: i) the number of any disclosures received by NBCC's Designated Officer; ii) the number of disclosures for which an investigation was not deemed to be required; iii) the number of investigations conducted; iv) the number of disclosures referred from the Ombud for review and/or investigation; and v) a description of any Improper Activity identified by an investigator and the resulting outcomes and any actions taken and/or reasons why it was deemed to be unnecessary to impose any action.

2.5 CONFIDENTIALITY

Confidentiality will be maintained to the extent possible, consistent with the procedural requirements of this policy and applicable legislation. However, confidentiality may not be maintained where identification is required by law.

3.0 OTHER RELATED DOCUMENTS

Public Interest Disclosure Act (8000.5010)
Employment Standards Act (8000.4670)
Criminal Code of Canada
New Brunswick Office of the Ombud