

## Code of Conduct Protected Disclosure Procedure

### Bow Valley College

#### *APPENDIX B*

#### **Parent Policy**

Protected Disclosure Policy # 200-1-6

#### **Purpose**

The purpose of this procedure is to provide clarity to members of the College community regarding the procedure for disclosing and investigating potential cases of Wrongdoing, and to:

- Facilitate the Disclosure and investigation of Wrongdoing as defined by *Public Interest Disclosure (Whistleblower Protection) Act (PIDA)*;
- Protect employees who make those Disclosures from Reprisals;
- Manage, investigate and make recommendations respecting Disclosures of Wrongdoings and Reprisals; and
- Promote public confidence in the administration of Bow Valley College.

#### **Scope**

This procedure applies to all employees, independent contractors, volunteers, and any other individuals associated with Bow Valley College (e.g. vendors, suppliers and campus visitors). When a Case of Wrongdoing is reported by a complainant, Bow Valley College will identify if the respondent(s) status with the College alters or takes precedence over this procedure due to a contract, collective agreement or statute.

#### **Compliance**

All Bow Valley College employees, independent contractors, volunteers, and other individuals who are associated with Bow Valley College are responsible for knowing, understanding, and complying with Bow Valley College policies and procedures to the extent that procedures relate to their position, contract and if applicable Collective Agreement.

#### **Procedure**

This procedure outlines the options available to any member of the College community who would like to report a Wrongdoing.

Bow Valley College encourages the prompt and timely reporting of all cases of Wrongdoing to the Designated Officer, regardless of the offender.

#### **Administration**

## 1. Roles and responsibilities

- 1.1 The Chief Officer for the College under the Act is the President and Chief Executive Officer. The Chief Officer is responsible for communicating all information about the Act and the procedures established in this document to all employees and to designate a Designated Officer for the purposes of managing and investigating Disclosures.
- 1.2 The Designated Officer under the Act for the College is the Vice President, Learner Services and Chief Financial Officer. The Designated Officer will conduct an initial evaluation/assessment:
  - To determine if the matter brought forward is an allegation of Wrongdoing; and
  - If it is an allegation of Wrongdoing, to determine if there are sufficient grounds for further action.
- 1.3 The Public Interest Commissioner is appointed pursuant to the Act and is responsible for providing oversight with respect to the Act, handling certain cases of Wrongdoing and managing cases of Reprisal.

## Reporting phase

### 2. Filing a report of an alleged Wrongdoing

- 2.1 Employees should raise concerns as soon as possible after the alleged Wrongdoing.
- 2.2 Employees who are considering making a Disclosure may request information or advice from the following:
  - Supervisor,
  - Designated Officer,
  - Chief Officer; or
  - Office of the Public Interest Commissioner <https://yourvoiceprotected.ca/for-employees>.
- 2.3 Employees may make a Disclosure of Wrongdoing to the Designated Officer and/or directly to the Commissioner (if the case of Wrongdoing falls under PIDA) <https://yourvoiceprotected.ca/for-employees/Disclosure-form>.
- 2.4 All Employees are encouraged to complete a Protected Disclosure Report (Appendix A) to provide full details, including:
  - A description of the Wrongdoing;
  - The date and time of the Wrongdoing;
  - The name of the individual or individuals alleged to have committed the Wrongdoing or to be about to commit the Wrongdoing;
  - Whether a Disclosure in respect of a Wrongdoing has been made under Section 5 of the Public Interest Disclosure Act and whether a response has been received, and if so, a copy of the response; and

- Any additional information the Designated Officer or Commissioner may reasonably require in order to investigate the matters set out in the Disclosure.
- 2.5 The identity of the Discloser will be kept confidential, if so requested, for as long as is possible, provided that this is compatible with a proper investigation into the alleged Wrongdoing, including the principles of fairness and natural justice.
- 2.6 Anonymous Disclosures by individuals who assert that they are employees of the College will be evaluated by the Designated Officer for potential investigation by considering the seriousness of the allegation raised, the credibility of the complaint, the prospects of being able to investigate the matter properly, and fairness to any individuals mentioned in the Disclosure.

### **3. Receiving a report of an alleged Wrongdoing**

- 3.1 If the Designated Officer is in a conflict of interest, the Disclosure may be made to the Chief Officer, who will appoint another senior officer of the College to assume the role, the rights, and the responsibilities of the Designated Officer, with respect to managing the Disclosure process for that particular Disclosure.
- 3.2 The Designated Officer may refer a Disclosure of Wrongdoing to an alternate authority, including to the Public Interest Commissioner. Factors in considering whether to refer a Disclosure of Wrongdoing include:
- Whether the subject matter of the Disclosure would more appropriately be dealt with by another authority;
  - The complexity of the subject matter of the Disclosure;
  - Whether a perceived conflict of interest may exist;
  - If the act of Wrongdoing falls under PIDA;
  - The resources and expertise required to conduct a fair and effective investigation; or
  - If the subject matter pertains to an individual that supersedes the hierarchal position of the Designated Officer.

### **4. Reviewing a report of an alleged Wrongdoing**

- 4.1 A Disclosure may not proceed to formal investigation under this procedure if:
- The allegations do not constitute Wrongdoing defined under this procedure, therefore, the matter could potentially be resolved through an alternative, informal process with the agreement of all parties involved; or
  - The matter is more appropriately dealt with through another established process (grievances, performance management issues, Respectful Workplace Policy, etc); or
  - The subject matter of the Disclosure is currently before the courts; or
  - More than two (2) years have passed since the date that the Wrongdoing was discovered; or
  - The matter is determined to be trivial or frivolous or vexatious or an abuse of process. For a matter to be considered frivolous or vexatious or an abuse of process, the

allegation must be such that no reasonable person would treat it as bona fide or the matter was determined to be not brought in good faith or on the basis of a reasonable belief.

- 4.2 An employee who does not act in good faith or makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it for the purposes of personal gain, or who makes it maliciously, frivolously or vexatiously, may be subject to disciplinary proceedings, up to and including termination.
- 4.3 The Designated Officer will acknowledge the receipt of a Disclosure to the individual making the Disclosure within five (5) Business Days.
- 4.4 The Designated Officer will also review the following with the Discloser:
  - Confidentiality of information collected in relation to Disclosures and investigations;
  - Protection of the identity of individuals involved in the Disclosure process, including the Discloser, the Respondent and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;
  - The record keeping process; and
  - The commitment of the College to protect the Discloser from Reprisal.
- 4.5 Depending on the nature and severity of the allegation and the risk to others, in consultation with the Chief Officer, the Designated Officer will make the determination if an interim action is required (i.e., if the Respondent should be removed from the workplace).
- 4.6 Within ten (10) Business Days of receiving the report, the Designated Officer, will decide if:
  - The report should be processed as a case of alleged Wrongdoing;
  - The report should be referred to an alternate process;
  - The report should be dismissed for being frivolous or vexatious, or made in bad faith; or
  - The report should be dismissed for any other valid reason.
- 4.7 Within ten (10) Business Days of receiving the report, the Designated Officer, will inform the Discloser of the decision and any next steps. The Respondent will also be informed if an investigation is to proceed.
- 4.8 A maximum of thirty (30) Business Days can be approved by the Chief Officer to extend a time limit for the management of Disclosures. Further extensions may only be granted by the Commissioner.
- 4.9 If the Associate Vice President, HR, or designate, finds it necessary to initiate an investigation, they are to follow the Investigation Guiding Principles and Process outlined in this Procedure.

## **5. Protecting Involved Parties**

- 5.1 The Designated Officer may appoint a representative to manage either the Discloser's or the Respondent's welfare. This representative will:
  - Examine the immediate welfare and protection needs of either party;
  - Ensure both the Discloser and Respondent are aware of employee assistance programs and other supports;

- Listen to any concerns of harassment or intimidation, or Reprisal due to the reporting of an alleged breach of the Protected Disclosure Policy; and
  - Act as liaison and guide for the process.
- 5.2 Employees are protected from Reprisals when they have in good faith, sought advice about making a Disclosure, cooperated in an investigation under this Act, declined to participate in a Wrongdoing or done anything in accordance with this Act.
- 5.3 The Public Interest Commissioner has exclusive jurisdiction to receive and investigate complaints of Reprisal. Employees who believe they have been subject of a Reprisal are to submit a “Complaint of Reprisal” form directly to the Commissioner. The Complaint of Reprisal must be submitted in the prescribed format and is available on the Public Interest Commissioner’s website at <https://yourvoiceprotected.ca>.
- 5.4 It is an offence to engage in acts of Reprisal. In addition, where the Public Interest Commissioner finds that Reprisal has taken place, the Labour Relations Board may award the Employees who have suffered reprisal further remedies, such as reinstatement, lost wages, or other damages.

## **The Investigation Phase**

### **Investigation Guiding Principles**

- The process of conducting an investigation must be fair. It must be a diligent search for the facts, conducted with an open mind. It must respect the rights of the alleged offenders through appropriate procedural safeguards.
- Investigations will be conducted in accordance with the principles of procedural fairness and natural justice.
- Investigators are expected to be open-minded, objectively assess the facts, maintain neutrality, and act impartially.
- During the course of an investigation, in the event that other Wrongdoings are identified as having been committed or may be committed, these will included in the investigation process
- Protection of sensitive information is a key priority. To the extent possible, Investigators will endeavour to keep the complaint and investigation confidential, unless there is an imminent risk of a substantial and specific danger to the life, health, or safety of individuals or the environment.
- Investigators will utilize introductory, open-ended, close-ended and follow-up questions as the situation demands.
- Investigators will make notes of all discussions, phone calls, and interviews with witnesses.
- The standard of proof is the Balance of Probabilities.

### **Investigation Process**

In the event an investigation is to be conducted, the following procedure will be followed:

#### **6. Investigating a Report of Alleged Wrongdoing**

- 6.1 The Designated Officer will appoint an Investigator to carry out the investigation. The Investigator may be internal or external to the College.
- 6.2 A single investigation may be conducted in circumstances where multiple Disclosures are made on the same matter.
- 6.3 The Investigator will prepare an investigation plan for approval by the Designated Officer. The plan will list the issues to be substantiated and describe the avenue of inquiry. At this point, the Discloser and Respondent will be:
  - Notified by the Investigator that he or she has been appointed to conduct the investigation;
  - Asked to clarify any matters;
  - Asked to identify witnesses; and
  - Asked to provide any additional relevant details.
- 6.4 In the course of the investigation, the Investigator(s) will:
  - Collect information relating to the allegation, which may involve steps to protect or preserve documents, materials and equipment and to interview witnesses;
  - If Disclosers or Respondents are represented by a union or faculty association, advise them of their right to have a union or faculty association representative present during any investigation meetings or interviews;
  - If Disclosers or Respondents are represented by a student association, advise them of their right to have a student association representative present during any investigation meetings or interviews;
  - Regularly update the Designated Officer on the progress of the investigation;
  - Consider the information collected and to draw conclusions objectively and impartially; and
  - Make recommendations based on the conclusions concerning appropriate action.
- 6.5 The written report from the Investigator must be provided to the Chief Officer no later than 110 Business Days after the Designated Officer receives a report of an alleged Wrongdoing.

## **7. Investigations Involving Imminent Risk or an Offence**

- 7.1 Notwithstanding any other provision in this procedure, where the subject matter constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, the Designated Officer may, without the consent of the disclosing employee, notify any individual within the College in order to be able to appropriately respond to the danger, and notify any appropriate authority required to respond to the danger, including calling 911.
  - 7.1.1 The Designated Officer must also notify:
    - The appropriate law enforcement agency,
    - In the case of a health-related matter, to the Chief Medical Officer of Health, and

- To the department, public entity, or other entity responsible for managing, controlling or containing the risk, if any exists.
- 7.1.2 The Designated Officer must suspend any investigation into the matter, and may only resume after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.
- 7.2 If during an investigation, the Designated Officer has reason to believe that an offence has been committed under a Provincial or Federal Act or Regulation, the matter must be reported to a law enforcement agency and to the Minister of Justice and Solicitor General as soon as reasonably practicable.
- 7.2.1 The Designated Officer must suspend any investigation into the matter, and may only resume after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.

## **8. Submitting the Final Report**

- At the conclusion of the Investigation, the Investigator will submit a written investigation report to the Designated Officer, which will at minimum include:
  - Details of the allegation;
  - An account of all relevant information received; and
  - The conclusions reached and the basis for them.

8.1 If the Investigator finds evidence of Wrongdoing, the report will also include any 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 misconduct.

8.2 If the investigation has identified any other possible breaches of College policy, the Investigator should also include them in the report. The possible breaches identified in the report will be dealt with by the Designated Officer.

8.3 The report will be accompanied by all records created or received by the Investigator in the course of the investigation.

8.4 When possible, the report will preserve the Discloser's identity if the Discloser has requested anonymity.

## **9. Outcome of the Investigation**

- 9.1 The Designated Officer will advise the Discloser and Respondent of the outcome of the investigation.
- 9.2 The Designated Officer will provide the Chief Officer with the report or a summary of the report's findings and recommendations.

- 9.3 Individuals who are found to have committed a Wrongdoing may be subject to disciplinary actions in accordance with the provisions of any applicable collective agreement, practice, or applicable policy.

## **10. Annual Report**

10.1 The Chief Officer must prepare an annual report on all Disclosures (regarding Wrongdoing under PIDA) made or referred to the Chief Officer or the Designated Officer. Reports must include:

- The number of Disclosures received by or referred to the Chief Officer, the number of Disclosures acted on as well as the number of Disclosures not acted on by the Chief Officer;
- The number of investigations commenced by the Designated Officer;
- In the case of an investigation that results in a finding of Wrongdoing, a description of the Wrongdoing and:
  - Any recommendations made or corrective measures taken in relation to the Wrongdoing.
  - If the department, public entity or office to which the recommendations relate has not taken corrective measures in relation to the Wrongdoing, the reasons provided.
  - These reports are to be included in the College's Annual Report and available to the public upon request.
  - The Chief Officer is restricted from publically identifying, in the annual report, an Employee who sought advice, made a Disclosure, or made a complaint of Reprisal and from disclosing individually identifying health information.

## **11. Access to Information**

The Freedom of Information and Protection of Privacy Act (FOIPP) has been amended and now places restrictions on the right of access to a record that would reveal the identity of a person who has requested advice about making a Disclosure, made a Disclosure, or submitted a complaint of Reprisal, or whose complaints have been referred to the Labour Relations Board, unless that information can reasonably be severed from a record.



## Definitions

**Act:** The Public Interest Disclosure (Whistleblower Protection) Act (Alberta), as amended by the Public Interest Disclosure (Whistleblower Protection) Act, 2017, (Alberta), and thereafter as amended from time to time, and all related regulations;

**Balance of Probabilities:** A legal standard, which requires that a dispute be decided in favour of the party whose claims are more likely to be true.

**Bona Fide:** A term meaning “in good faith.” It stresses the absence of fraud or deception.

**Business Days:** Any day other than a Saturday, Sunday or statutory holiday or day on which the College is closed for business.

**Chief Officer:** The individual prescribed under the Act, who is responsible for establishing and maintaining these procedures and for overall administration and reporting requirements under the Act.

**Collective Agreement:** A commercial agreement negotiated “collectively” between management (on behalf of Bow Valley College) and specific labour unions or associations (on behalf of employees). The collective agreement regulates the terms and conditions of certain employees in their workplace, their duties and the duties of the employer.

**Designated Officer:** The individual responsible for managing and investigating a Disclosure.

**Discloser:** Any member of the College community who has reason to believe that another College community member has committed a Wrongdoing and who initiates a procedure under this Policy.

**Disclosure of Wrongdoing** is to report a Wrongdoing or a risk that a Wrongdoing will occur. In a Disclosure of Wrongdoing, the employee is a witness.

**Employee:** Individual who is engaged to perform a service at Bow Valley College, in accordance with existing terms and conditions of employment, employment contracts or collective agreements, and includes the President and Chief Executive Officer.

**Fraud:** Legally defined as the “intentional deception resulting in injury to another. Elements of fraud are a false and material misrepresentation made by one who either knows it is false or is, ignorant of its truth.... Fraud usually consists of a misrepresentation, concealment, or nondisclosure of a material fact, or at least misleading conduct, devices or contrivance.”

Fraud includes, but is not limited to:

- Misappropriation, misapplication, destruction, removal, or concealment of College property
- Alteration or falsification of paper or electronic documents (cheques, invoices, contracts, etc.), including the inappropriate destruction of paper or electronic documents
- Authorizing or receiving payments for goods not received or services not performed
- Altering or deliberately reporting incorrect financial or personal information for either a personal or College advantage

- Unauthorized use of College property and resources for personal advantage or gain
- Any claim for reimbursement of expenses that are not incurred for the benefit of the College
- Graft, bribery, kickbacks, or rebates
- Identity theft
- Misrepresentation of professional or academic credentials,
- Misrepresentation of position or status with the College or misstatement of the right to commit the College to contracts or transactions

**Independent Contractor:** Businesses, either sole proprietorships or multi-person companies, which provide goods and/or services to Bow Valley College through a business transaction, are independent contractors. Worker payments, transactions, taxes and benefits are the responsibility of the independent contractor.

**Investigator:** An individual or team of individuals having experience and relevant skills to conduct an investigation on behalf of Bow Valley College. This resource is identified by the Designated Officer. An investigator is responsible for conducting a formal investigation of the complaint by collecting information from the Discloser, Respondent, Witnesses and other relevant sources; consulting with the Designated Officer, as appropriate, for advice and guidance; and, preparing an investigation report and communicating the findings to the Designated Officer.

**Learner:** A person who is currently registered as a learner at the College whether or not for credit. For the purposes of this document, “learner” shall be used synonymously for applicants, prospective learners and learners unless specifically noted otherwise.

**Respondent:** The person against whom a complaint of Wrongdoing has been alleged. It is expected that the respondent will participate and cooperate with the investigative process. The respondent may ask to bring a support person from within the College community to any interviews.

**Reprisal:** Any adverse employment action taken against an employee who seeks advice on making a Disclosure, makes a Disclosure, participates in an investigation of a Disclosure, or refuses to participate in a Wrongdoing. Reprisals are specifically defined in PIDA as:

- A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- Any other measure that adversely affects the employee’s employment or working conditions; and
- A threat to take any of the measures mentioned in the points above.

**Safety:** The state of being reasonably certain that one will not be emotionally, physically, or mentally hurt by other persons or situations.

**Volunteer:** A person at Bow Valley College who voluntarily offers himself or herself for a service or undertaking willingly and without pay.

**Witnesses:** Any member of the College community identified as a witness during the investigation is expected to participate and cooperate with the investigative process. Witnesses may also be from outside

the College community.

**Wrongdoing** is defined in PIDA as:

- A contravention of a piece of legislation, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- An act or omission that creates
  - A substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
  - A substantial and specific danger to the environment;
- Gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of
  - public funds or a public asset,
  - the delivery of a public service, including the management or performance of
    - a) a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
    - b) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment,
  - employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation.
- Knowingly directing or counselling an individual to commit a Wrongdoing mentioned above

In addition, for the purposes of this procedure, Wrongdoing is also defined as:

- An act of fraud; and
- A breach of the Code of Conduct Policy of Bow Valley College #xxxxx.

Date Stamp

Received

**APPENDIX A**

*This form is to assist you in providing information about a Disclosure of Wrongdoing. Please send this form directly to the Designated Officer.*

*Information that you provide in this Disclosure form will be protected and kept confidential to the fullest extent possible subject only to the provisions of the Public Interest Disclosure (Whistleblower Protection) Act, and principles of fairness and natural justice.*

**General Contact Information**

Name  Title (Optional)

Mailing Address   
City   
Postal Code

Telephone   
Work   
Home   
Cell/Other

E-mail (Optional)

Best Time to Contact Day  Evening  Weekend

How do you wish to receive communication in regards to the Disclosure?

I don't  E-mail  Telephone  Mail

Name of Employer

Branch or Unit

Current Organization if other than Employer

Name of Designated Officer

**Information about the Disclosure of Wrongdoing**

**TYPE OF WRONGDOING**

Which of the below applies to the Wrongdoing you are reporting?

**PIDA**

- Contraventions of an Act or a Regulation of Alberta or Canada.
- An act or omission that creates a substantial and specific danger to the life, health or safety of individuals.
- An act or omission that creates a substantial and specific danger to the environment.
- Gross mismanagement of public funds or a public asset.
- Gross mismanagement of the delivery of a public service, including the management or performance of:
  - A contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement; and
  - The duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment.
- Gross mismanagement of employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation.
- Knowingly directing or counselling an individual to commit a Wrongdoing mentioned above.

**Breach of Code of Conduct**

- An act of fraud.
- A breach of the Code of Conduct Policy of Bow Valley College.

Please provide a description of the Wrongdoing, including any applicable Acts or regulations. If necessary, please attach any available supporting documentation.

Please state the location where the Wrongdoing took place or is about to take place

Please identify the date(s) on which the Wrongdoing occurred, and if it is ongoing.

***Have you reported this alleged Wrongdoing to your supervisor or to any other person at your place of employment?***

Yes  No

If yes, please identify who you reported to. Please include relevant dates and describe any actions or decisions taken as a result. If necessary, attach any supporting documentation.

***To the best of your knowledge, has a Disclosure already been made in respect of this Wrongdoing?***

Yes  No

If yes, has a response been received? By whom? Be sure to include supporting documentation as necessary.

*Please identify the person(s) alleged to have committed the Wrongdoing or about to commit the Wrongdoing.*

Name  Title (Optional)

Employer

Work Address   
City   
Postal Code

Telephone Work

E-mail (Optional)

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Name  Title (Optional)

Employer

Work Address   
City   
Postal Code

Telephone Work

E-mail (Optional)

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Name  Title (Optional)

Employer

Work Address   
City   
Postal Code

Telephone Work

E-mail (Optional)

***Do you wish to also make this Disclosure to the Commissioner?(If you are reporting a case of Wrongdoing under PIDA.)***

Yes  No

If yes, do you consent to the Designated Officer forwarding this Disclosure to the Commissioner on your behalf?

Yes  No

***Is there any additional information pertaining to the alleged Wrongdoing you wish to provide? Please attach any supporting documentation as necessary.***

***Declaration***

I believe that all the information provided is true and accurate to the best of my knowledge.\*

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Signature

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Current Date

\* Knowingly making a false or misleading statement is an offence pursuant to the Act.

If you wish to make this Disclosure to the Commissioner, please email this form to [Whistleblower@gov.ab.ca](mailto:Whistleblower@gov.ab.ca) or you can mail directly to:

Public Interest Disclosure Office  
6<sup>th</sup> Floor, Peace Hills Trust Tower  
10011 – 109 Street  
Edmonton, Alberta  
T5J 3S8