

# Langara College Board Policy 465: Ethical Conduct and Protected Disclosure

## Guide to Investigating Disclosures of Improper Activity

### Section 1: Overview

The College has established a Board Policy intended to communicate expectations for ethical conduct for members of the College and facilitate the reporting of suspected improper activity. The reporting process is designed to ensure that College members who submit good faith disclosures of improper activity are protected from retaliation as well as protect the rights of individuals against whom allegations have been made.

The Policy obliges members of the College who observe or become aware of conduct that they believe in good faith constitutes improper activity to disclose this knowledge to the Compliance Officer in writing without delay.

This companion document to Policy 465 establishes a set of principles, best practices, and investigation procedures designed to ensure the College and designated Investigators “take appropriate action in a timely manner to fully and fairly investigate disclosures.”

### Section 2: Definitions

In these Investigation Procedures, the following terms are defined as:

Reporter: The member of the College who submitted the report of suspected improper activity

Subject: The member of the College about whom the report is made.

Witness: A person who has direct knowledge of events related to the disclosure.

Compliance Officer: The designated institutional leader responsible for administering the Policy as outlined in the Policy.

Fact-finding: The process of gathering information that will serve as evidence for a finding of fact.

Finding of fact: An analysis of evidence to determine what actions have occurred, and whether those actions constitute improper activity.

Prima facie: Allegations, if presumed to be fact, that may constitute improper activity



### **Section 3: Principles of Investigation**

#### Confidentiality

All information collected as part of an investigation shall be kept confidential. The Investigator should not disclose information or materials gathered from individuals to any other individuals during the investigation, unless required to do so by law or standards of due process.

Reporters, Subjects, and Witnesses must be informed of their confidentiality rights and obligations at the start of each interview, and should be apprised if their identity will be disclosed during the process, including in the report of investigation.

#### Impartiality

Investigators must not have any actual or apparent conflict of interests with respect to the College, the Department, or the parties involved in the disclosure.

#### Objectivity

Investigators must demonstrate objectivity during the investigation process with respect to the fact-finding process and the finding of fact. All information gathered during the process must be reviewed and analyzed in an unbiased manner. The findings should be based on evidence, and not opinions or impressions expressed by parties or formed by an Investigator during the process. An objective Investigator remains alert to the potential of being influenced by biases that they may hold on the matter being investigated or the parties involved, whether conscious or unconscious.

#### Professionalism

The Investigator will, at all times, conduct the investigation with integrity, fairness, and respect toward all parties involved in the process.

#### Competence

The Investigator will have and use the relevant knowledge, attitudes, and skills necessary to conduct a fair, thoughtful, and credible investigation. For example, the Investigator will have the competence to effectively interview involved parties, review documentation, and analyze information in order to form cogent and defensible conclusions.

#### Timeliness

Investigators will conduct the investigation as efficiently as possible, appreciating that improper activity that may have occurred or be occurring, or an unsubstantiated disclosure, needs to be addressed as quickly as possible.



#### Section 4: Best Practices

- Be mindful of language differences. Investigators shall utilize proper terminology during the investigation process. For example, they should refer to the person who disclosed the improper activity as the “Reporter,” and the person alleged to have engaged in improper activity as the “Subject.” As words can have different meanings, Investigators need to ensure the meaning of the words used are mutually understood.
- Avoid pre-judging conclusions. Investigators need to wait until all necessary information and materials have been gathered to complete an analysis of the evidence and form conclusions. Forming early conclusions can unfairly bias the collection of additional information as well as findings of fact, thereby undermining the credibility of the investigation.
- Be sensitive to actual or perceived conflicts of interests. Conflicts of interests of involved parties can limit the credibility of the information they provide during the investigation. A fair investigation stays focused on objective evidence rather than on impressions, conjectures, or opinions.
- Use transparent and fair techniques in conducting interviews and gathering evidence. Investigators must avoid using manipulative tactics to gather information. For example, witnesses should not be misled into giving information and confidentiality of gathered information should always be maintained. Also, all interviewees should be advised that they may bring a support person with them to interviews. However, Investigators should also ensure that support persons do not have any potential conflicts of interest with the involved parties or the matter being investigated and understand that their role is solely to provide support for the interviewee and not act as a representative in responding to questions.
- Limit the scope of the investigation to include only those sources necessary to form credible conclusions. Investigators should focus their gathering of evidence on documentation and witnesses that have direct and relevant information pertaining to the disclosure. Doing so helps protect the confidentiality of all parties involved in the disclosure.
- Conduct interviews in a private, comfortable setting. A private, comfortable setting enables Investigators and Interviewees to avoid contextual factors that can potentially restrain or disrupt the collection of information.



- Be accurate in note taking during interviews. At the conclusion of each interview, Investigators should summarize the key information presented by the interviewee in order to ensure its accuracy and clarity. After each interview, Investigators should immediately prepare an interview summary to clearly document the gathered information. If any possible discrepancies may exist, they should send the interview summary to the interviewee for verification of information.

## Section 5: Investigation Procedures

1. Review written disclosure and determine the specific objective of the investigation as well as an initial plan for fact-finding (i.e., how to sequence the fact-finding process). As part of the plan, identify what roles/persons might have direct witness information about the alleged improper activity and consider implications for maintaining confidentiality and preventing retaliation or disruptions of the work of the College. In addition, determine when and how the Subject will be notified of the disclosure.

The list of interviewees may include:

- The Reporter (if known)
  - The Subject
  - Anyone who observed a relevant action/incident
  - Other witnesses who may have **relevant** information regarding the alleged improper activity
  - Authors of relevant documentation
  - The Supervisor of the Subject
2. Determine what ethical, professional, or legal standards may be relevant to the reported improper activity in order to guide the forming of conclusions regarding a potential breach of those standards.
  3. Determine if there may be documentary or other non-person related evidence (e.g., email records, video, phone records) that may be available to inform the investigation.
  4. Review initial plan and standards with Compliance Officer for authorization to proceed.
  5. Begin data collection by interviewing the Reporter in order to review the information presented in the disclosure and gather further evidence in greater detail than was likely included in the disclosure. In addition, obtain a list of potential witnesses from the Reporter, if relevant. If the disclosure was anonymous, using the list of potential



witnesses identified in the plan, rank order the sources based on who, by position or context, would most likely have direct information regarding the alleged improper activity.

6. If available, gather documentary and non-person evidence.
7. **Review evidence at this point to determine if there is a prima facie basis to continue with further investigation. If there is a basis, continue the investigation. If a basis on the facts is not found, halt the investigation and prepare the final report of investigation (see final step). Compliance Officer determines how to notify the Subject of the disclosure and its dismissal.**
8. Notify Subject of the disclosure and advise them of the investigation process.
  - i) Compliance Officer notifies the Subject of the disclosure and the investigation process. Advises the Subject that the details of the disclosure will be provided to the Subject by the Investigator. Subjects are notified that they are welcome to have a support person attend interviews, and informed that the support person cannot have any form of conflict of interest related to the matter being investigated. In addition, the support person does not play an active role during the interview and cannot respond to investigatory questions on behalf of the Subject.
  - ii) Investigator prepares outline for interview, which includes a detailed summary of the alleged improper conduct to present to the Subject and a list of interview questions.
  - iii) Begin interview by reviewing the investigation process and principles of due process, including the nature of confidentiality of the process.
  - iv) Present the specific details of the alleged improper conduct as well as what ethical/professional/policy/legal standards may be relevant to the conduct. Reveal the identity of the Reporter only if authorized and required to do so in order to ensure due process.
  - v) Invite the Subject to provide an open-ended response to the allegation.
  - vi) Ask follow-up questions to ensure all investigatory questions are answered.
  - vii) Ask the Subject to provide a list of witnesses who would have direct knowledge related to the alleged improper conduct.
  - viii) Summarize information provided by the Subject to ensure clarity and completeness.



- ix) Advise the Subject not to discuss the investigation with any person, other than legal or union representative.

9. Interview relevant witnesses

If deemed necessary to make a credible finding of fact, proceed to gather evidence from relevant witnesses. Before interviewing a witness, Investigator should have a clear objective in mind for the interview and what the witness can contribute to the finding of fact. Witnesses should not be told details of the complaint. However, they must be provided sufficient information to understand why they are being interviewed and to place their evidence in context.

10. Re-interview Reporter or Subject if needed.

This step is conducted if it is deemed necessary to clarify evidence after interviewing all parties and obtaining documentary evidence.

11. Analyze evidence to make a finding of fact and a determination of improper activity.

When making a finding of fact, Investigator applies the standard of 'balance of probabilities.' This standard means that the allegations will be considered to be proven if, given all the evidence, it is more likely than not that the action(s) as alleged by the Reporter or witnesses occurred. In forming the finding of fact, the Investigator may be required to resolve conflicting versions of events. These discrepancies may be resolved by assessing the credibility of information provided by the parties. This determination is informed by carefully considering the evidence in the context of all the other evidence available. Credibility is determined by which version of events is more consistent with all of the evidence, and not simply on the basis of which party presents a better appearance of sincerity or seems more believable. Whatever findings are made must be based on conclusions that can reasonably be drawn from the relevant evidence.

Once a finding a fact is made, the Investigator then determines whether the activity constitutes a breach of the relevant ethical standard(s) that apply to the context.

## Section 6: Report of Investigation

A Report of Investigation is prepared at the conclusion of the investigation and includes the following information:

- A complete review of the initial disclosure.



- A summary of the investigation process.
- Review of the relevant policies or standards.
- A summary of the evidence gathered through the investigation (i.e., information from the Reporter, Subject, Witnesses and other evidence from documentation and non-person sources).
- An analysis of the evidence and a finding of fact. If evidentiary discrepancies were found, a summary of any credibility assessments reached. An identification of any issues that could not be resolved from the investigation.
- A determination of ethical/policy breach linked to the language in the relevant policy/standard
- In the case of a breach, a summary of impacts that have arisen from the breach. This information will be helpful in deciding on the need for remedial outcomes to address the harms.
- Observations related to possible contextual factors that may be taken into account by the College in deciding on outcomes.

The Report of Investigation offers no recommendations regarding how a College member should be disciplined as a result of the investigation or other similar post-investigation activity. Those steps are outside the scope of the investigation.

*Adopted by the Langara College Board: January 23, 2020*

