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FREQUENTLY ASKED QUESTIONS (FAQs)

relating to Banff Centre’s *Procedure – Safe Disclosure (Serious Wrongdoing)*

Overview

Banff Centre’s *Policy – Safe Disclosure* was approved in October 2016. It provides guidance regarding the recommended course of action for employees, faculty and consultants to safely disclose all manner of concerns in the workplace, free from reprisal. The policy was developed in the interest of good corporate governance to ensure that Banff Centre continues to be regarded as an institution operating with integrity, accountability and trust.

The policy on *Safe Disclosure* is broken down into two distinct procedures:

- ***Procedure - Safe Disclosure (General Disclosures)*** - this consolidates existing disclosure procedures through reference to existing Banff Centre policies, specifically the *Code of Ethics*, *Unlawful Activity* and *Anti-Harassment* policies. Together, the procedures within these three existing policies set out how all members of Banff Centre Community (staff, artists, faculty, volunteers, Board directors and Foundation directors) can safely raise concerns regarding personal or workplace grievances, including conflicts of interest, unlawful activity, harassment or bullying in the workplace.
- ***Procedure - Safe Disclosure (Serious Wrongdoing)*** is a new procedure and it is this procedure that these *Frequently Asked Questions* refer to. This procedure (referred to as the “Serious Wrongdoing

Procedure” from here on in) is for use by employees only (including our Board and Foundation directors) and encourages them to raise concerns safely about particularly serious wrongdoings in the workplace, such as illegal acts, threats to health, safety or the environment, or gross mismanagement of public funds or assets, without any fear of reprisal.

Banff Centre’s Serious Wrongdoing Procedure was drafted to reflect the spirit of *The Public Interest Disclosure (Whistleblower Protection) Act* which came into effect in 2013. The *Frequently Asked Questions* which guide you through the steps outlined in this Banff Centre procedure.

Reminder: The Serious Wrongdoing Procedure is not intended to deal with disclosures relating to routine operational or human resource matters. Those disclosures should be handled following steps identified in the *Procedure - Safe Disclosure (General Disclosure)*.

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1. Who does the Serious Wrongdoing Procedure apply to?

The Serious Wrongdoing Procedure applies to employees of Banff Centre (which, for the purposes of this particular procedure, include members of the Board of Governors of Banff Centre and Directors of The Banff Centre Foundation). The procedure protects individuals currently employed by Banff Centre, and individuals previously employed by Banff Centre and who have suffered a reprisal and been terminated.

2. What is a “Serious Wrongdoing” under the new Serious Wrongdoing Procedure?

The following are defined as Serious Wrongdoings:

- a. an act or omission that contravenes a federal or provincial Act or Regulation;
- b. an act or omission that creates a substantial and specific danger to the life, health or safety of individuals or the environment, but does not include dangers inherent to the employee’s job;
- c. gross mismanagement of public funds or a public asset; and
- d. knowingly directing or counselling someone to commit any Serious Wrongdoing described above.

3. What is a “disclosure” under the Serious Wrongdoing Procedure?

A disclosure under the Serious Wrongdoing Procedure is the reporting of a “Serious Wrongdoing” made in good faith relating to Banff Centre.

4. What is a “reprisal” under the Serious Wrongdoing Procedure?

The procedure provides protection for employees from “reprisal”. That is, from retaliatory measures being taken against them because they, in good faith, asked for advice about making a disclosure, made a disclosure, cooperated in an investigation or declined to participate in a Serious Wrongdoing.

Examples of a reprisal include a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job or position, change of a job location, reduction in wages, change in hours of work or reprimand, or any measure that adversely affects the employee’s employment or working conditions or education, and includes a threat to take any of the measures mentioned above.

5. What is the process for making a disclosure of Serious Wrongdoing?

- a. Employees may make their disclosure to one of the two Designated Officers who have been specifically appointed by Banff Centre to receive disclosures from employees. The Designated Officers are:
 - i. Vice President, Administration and Chief Financial Officer; and
 - ii. Vice President, Human Resources.

In the absence of a Designated Officer, the President and Chief Executive Officer will also be deemed to take on the role of a Designated Officer.

At the same time as making a disclosure to a Designated Officer, employees have the option to make the disclosure to the Chair of the Audit and Finance Committee as well, to advise them that they have made the disclosure to the Designated Officer. In addition, Banff Centre has appointed the Chair of the Audit and Finance Committee or the Chair of the Board of Governors of Banff Centre to act as Designated Officers, but only in the limited circumstances prescribed in the Serious Wrongdoing Procedure.

- b. When filing a disclosure of Serious Wrongdoing, the employee must demonstrate that he or she had a reasonable belief that a Serious Wrongdoing has been committed or is about to be committed. In addition, the disclosure:
 - i. must be made in good faith;
 - ii. must follow the requirements of the Serious Wrongdoing Procedure; and
 - iii. must be made in writing and include the following information, if known:
 - 1. detailed description of the Serious Wrongdoing;
 - 2. date of the Serious Wrongdoing;
 - 3. name of the individual(s) alleged to have committed or be about to commit the Serious Wrongdoing;
 - 4. a copy of any response received in respect of disclosure of a Serious Wrongdoing already made under the Serious Wrongdoing Procedure; and
 - 5. any additional information that the Designated Officer requires.
- c. Employees who make public disclosures or disclosures that otherwise do not meet the requirements of the Serious Wrongdoing Procedure will not necessarily be protected under the Serious Wrongdoing Procedure.

6. How do I know if it's a Serious Wrongdoing under the Serious Wrongdoing Procedure?

An employee who is considering making a disclosure may seek advice, in confidence, from the Designated Officer, President and Chief Executive Officer, or the Chair of the Audit and Finance Committee. Such requests may be required to be made in writing.

7. Am I protected against reprisals if I make a disclosure and no Serious Wrongdoing is found?

Yes, provided the disclosure was made in good faith, an employee is still protected under the Serious Wrongdoing Procedure.

8. What is the process for making a complaint of reprisal?

Banff Centre has appointed the Chair of the Audit and Finance Committee to address reprisals. An employee (or former employee) may make a written complaint to the Chair of the Audit and Finance Committee if the employee alleges that a reprisal has been taken or directed against the employee.

The complaint of reprisal must be made in good faith and in writing and include a description of the disclosure that the employee participated in, including all relevant dates, locations etc.; a description of the reprisal(s) or threat(s) that occurred or are occurring, including all relevant

dates, locations, etc.; and any other additional information reasonably requested by the Chair of the Audit and Finance Committee.

9. What are my obligations and responsibilities?

Disclosing employees have a number of responsibilities, including acting in good faith and following the procedures set out in the Serious Wrongdoing Procedure.

10. Are there consequences under the Serious Wrongdoing Procedure?

Ultimately, an employee who commits a Serious Wrongdoing may be disciplined up to and including termination of employment or other relationship with Banff Centre, in addition to and separate from any penalty determined in accordance with federal or provincial law.

Consequences include:

- a. Committing a Reprisal: Discussed in the answer to question 4 above: “What is a reprisal under the Serious Wrongdoing Procedure?”
- b. False Statements: No person shall knowingly withhold information or make a false statement (at any stage in the process), or counsel or direct a person to provide a false statement.
- c. Obstruction: No person shall willfully obstruct, counsel or direct another person to willfully obstruct, any individual involved with the disclosure of Serious Wrongdoing from performing a duty or function under the Serious Wrongdoing Procedure.
- d. Destruction, Falsification, or Concealment: No person shall destroy, falsify, alter, mutilate or conceal any document or thing that they know is likely to be relevant to an investigation under the Serious Wrongdoing Procedure, or counsel another person to do so.

11. Can my disclosure contain confidential information?

There are a few situations in which an employee may not make a disclosure under the Serious Wrongdoing Procedure because another law or regulation prohibits disclosure of the information.

For example, the Serious Wrongdoing Procedure does not authorize an employee to disclose:

- a. information that is protected by solicitor-client privilege;
- b. information that is subject to any restrictions created by or under an Act of the Legislature or the Parliament of Canada; or
- c. any personal information, or individually identifying health information.

Employees may contact the Designated Officer for advice or information when considering making a disclosure.

12. What happens after I make the disclosure to the Designated Officer?

- a. Banff Centre’s Serious Wrongdoing Procedure has established procedures to receive and manage disclosures of Serious Wrongdoing. These procedures outline what takes place

once a disclosure is received by the Designated Officer. The procedures also include strict timelines that the Designated Officer must follow.

- b. Once a disclosure has been made to the Designated Officer, the following takes place:
 - i. the Designated Officer may opt to consult with others (President and Chief Executive Officer, another Designated Officer, the Chair of the Audit and Finance Committee, and/or the Chair of the Board of Governors, as appropriate) with respect to the management and investigation of the alleged disclosure;
 - ii. the Designated Officer reviews the disclosure to determine whether it pertains to a matter of Serious Wrongdoing as defined in the Serious Wrongdoing Procedure;
 - iii. if it is determined to be a Serious Wrongdoing, the officer will review and handle as appropriate, including conducting an investigation;
 - iv. if it is not determined to be a Serious Wrongdoing, the officer may refer the disclosure to an alternative process for investigation, dismiss the disclosure if it was not determined to have been made in good faith, or dismiss the disclosure for another valid reason;
 - v. if it would be inappropriate for the Designated Officer to review the disclosure, either because of the nature of the alleged Serious Wrongdoing or because of the persons involved in the disclosure, the Designated Officer may refer the disclosure to the Chair of the Audit and Finance Committee for review and handling (and if the Chair of the Audit and Finance Committee is deemed inappropriate, then the disclosure may be referred to the Chair of the Board of Governors);
 - vi. the Designated Officer may appoint an advocate for the individual making the disclosure to help manage the individual's welfare;
 - vii. the Designated Officer may act as the investigator, or appoint a separate investigator (internal or external) to help carry out the investigation;
 - viii. the disclosing employee will be advised of the outcome of the review or investigation of the disclosure.
- c. The timelines for reviewing a disclosure by the Designated Officer, or a complaint of reprisal by the Chair of the Audit and Finance Committee include:
 - i. acknowledging the receipt of the disclosure or complaint of reprisal within 5 business days of receipt;
 - ii. determining if an investigation is required and notifying the employee of this decision within 10 business days of receipt; and
 - iii. an investigation, if required, must be concluded within 110 business days from the date on which the disclosure of Serious Wrongdoing or complaint of reprisal is received.

13. What happens after I make the disclosure to the Chair of the Audit and Finance Committee?

- a. An employee may make a disclosure directly to the Chair of the Audit and Finance Committee in certain circumstances including:
 - i. where the employee is unsatisfied with the outcome of the investigation by the Designated Officer.

- ii. When an employee makes a disclosure to the Chair of the Audit and Finance Committee, the Chair of the Audit and Finance Committee may take any steps the Chair of the Audit and Finance Committee considers appropriate to help resolve the matter within the relevant Banff Centre department in which the alleged activity took place.
- b. The purposes of an investigation by the Chair of the Audit and Finance Committee into a disclosure or a complaint of reprisal are:
 - i. to bring the Serious Wrongdoing or reprisal to the attention of the affected department;
 - ii. to recommend corrective measures that should be taken; and
 - iii. to promote confidence in the administration of Banff Centre.

14. Can I make an anonymous disclosure?

Yes, but the individual should be aware that this may limit the ability of Banff Centre to respond and investigate.

15. Will the individual(s) against whom the disclosure has been made be entitled to know the allegations made against them?

Yes, and they will be given a right to respond, in both cases, within a reasonable period of time, and without undue delay. The individual will also be given the right to respond in writing.

16. May I bring someone with me when I make my disclosure or when I meet with the Designated Officer or an investigator?

Yes, an employee is able to bring someone with them for support (for example, a bargaining unit employee may bring a union representative).

17. What if the Designated Officer(s) is/are away on vacation when I wish to make a disclosure?

An employee may choose to wait until the Designated Officers return from vacation or alternatively, contact the President and Chief Executive Officer (who is deemed to take on the role of "Designated Officer" in such a situation). However, if there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, then the employee may disclose to the Chair of the Audit and Finance Committee (and notify the Designated Officer as soon as practicable thereafter).

18. Will my identity be protected?

- a. The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, will be protected to the fullest extent possible.
- b. Any investigation of a disclosure of Serious Wrongdoing under the Serious Wrongdoing Procedure must also ensure that the principles of procedural fairness and natural justice are observed. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required and be given an opportunity to reply to the disclosure.

- c. The Designated Officer and employees, and those participating in the investigation, are responsible for maintaining confidentiality.
- d. Disclosures of Serious Wrongdoing must be made to the Designated Officer or to the Chair of the Audit and Finance Committee (or Chair of the Board of Governors, if appropriate). Protections under the Serious Wrongdoing Procedure do not apply to disclosures made to any other source.

19. How are disclosures of Serious Wrongdoing reported?

- a. The Serious Wrongdoing Procedures require that the Chief Officer must arrange preparation of a report on an annual basis to the Audit and Finance Committee with the following information:
 - i. the number of disclosures received involving Serious Wrongdoing (and the number acted on and not acted on);
 - ii. the number of investigations involving Serious Wrongdoing commenced; and
 - iii. the number that resulted in a finding of Serious Wrongdoing. Of those, a description of the Serious Wrongdoing, the recommendations made, and the actions taken (or the reason no actions were taken).

FURTHER INFORMATION

Further information about making a disclosure, including a copy of the Serious Wrongdoing Procedure and related policy and procedures, is available on Sharepoint.

The contact information for the Designated Officers is:

- Bruce Byford, Vice President, Administration and Chief Financial Officer
Phone ext. 6635 and email bruce_byford@banffcentre.ca
- Valerie Kapay, Vice President, Human Resources
Phone ext. 6175 and email valerie_kapay@banffcentre.ca

The Chair of the Board of Governors of Banff Centre and the Chair of the Audit and Finance Committee can be contacted in confidence by first contacting:

- Hannah Ordway, Board Administrator and Policy Analyst
Phone ext. 6240 and email hannah_ordway@banffcentre.ca