

## Disclosure of Wrongdoing and Reprisal Protection

*Human Resources*

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### **BACKGROUND**

In June 2014, City Council approved the Toronto Public Service By-law<sup>1</sup> (TPS By-law) which is an important piece of foundation legislation that strengthens the separation between the administrative and political components of Toronto's government, and advances Toronto's public service as professional, impartial and ethical.

The Toronto Public Service By-law requires Agencies to adopt and implement Disclosure of Wrongdoing and Reprisal Protection policies that meet minimum policy requirements.

### **POLICY STATEMENT**

The purpose of the Disclosure of Wrongdoing and Reprisal Protection Policy is to facilitate the disclosure of wrongdoing that is contrary to the public interest, ensure through its application, that all disclosures are investigated, and to protect from reprisal to the fullest extent possible, those employees who in good faith report wrongdoing.

The 519 will not tolerate wrongdoing or reprisals against employees who report wrongdoing and all employees have a duty to report suspected wrongdoing. Disclosures of wrongdoing will be investigated in accordance with this Policy in order to maintain public confidence in our services and use of our resources.

This Policy addresses only those matters that are in the public interest and for which there are no established mechanisms for consideration and investigation. For example, it is not intended to address matters that can be dealt with through existing procedures, established through Collective Agreements or The 519 policies such as Health and Safety or Human Rights and Anti-Harassment.

### **DEFINITIONS**

#### **Wrongdoing**

Wrongdoing refers to serious actions that are contrary to the public interest (affects other) including but not limited to:

- Fraud;
- Theft of City or The 519 assets;
- Waste: mismanagement of the City or The 519 resources or assets in a wilful, intentional or negligent manner that contravenes The 519 policy or direction by City Council;
- Serious violations of TPS By-law including Conflict of Interest provisions; and or

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<sup>1</sup> the Toronto Public Service By-law, Chapter 192 of the Toronto Municipal Code can be found at <http://www.toronto.ca/legdocs/municode/toronto-code-192.pdf>

The Toronto Public Service By-law webpage can be found at [www.toronto.ca/tpsbylaw](http://www.toronto.ca/tpsbylaw)

- Breach of public trust.

**Wrong Doing additional definition explanation**

- A contravention of a Federal or Provincial law *that may give rise to a prosecution.*
- Misuse of public funds or a public asset.
- Acts or omissions that create a grave and unreasonable danger to life, health, safety of persons or to the environment other than a danger that is inherent in the performance of the duties or functions of a public servant
- Gross mismanagement in the public sector (e.g. gross waste or money, abuse of authority / public assets, etc.)
- Directing or counselling someone to commit a wrongdoing listed above

**Reprisal**

Reprisal against an employee is any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or co-operating in an investigation into an alleged wrongdoing.

Reprisal includes but is not limited to:

- Disciplinary measures;
- Demotion of the employee;
- Suspension of the employee;
- Termination of the employee;
- Intimidation or harassment of the employee;
- Any punitive measure that adversely affects the employment or working conditions of the employee; and
- Directing or counselling someone to commit a reprisal.

**What wrongdoing is not?**

- The definition of wrongdoing refers to serious actions that are contrary to the public interest (i.e. affects others).
- Wrongdoing does not include issues that can be handled through other established processes or existing procedures, for example:
  - personal grievances
  - harassment, and discrimination
  - work related grievances, including issues related to staffing decisions.
  - conflict of Interest not related to public interest
  - issues related to occupational health and safety

In these cases the allegations / matter will be referred to the appropriate forum for review, investigation and resolution.

**APPLICATION**

This policy applies to all 519 employees.

**DISCLOSURE OF WRONG DOING**

All 519 employees who are aware that a wrongdoing (as defined above) has occurred will immediately notify their manager, director, the Executive Director (Agency Head) or through the anonymous reporting line.

Allegations received by Management/Human Resources

Allegations of wrongdoing received by management / human resources must be

immediately reported to the Executive Director (Agency Head).

Reported allegations that constitute wrongdoing as defined in the Disclosure of Wrongdoing and Reprisal Protection Policy will be referred to the Executive Director (Agency Head) or the appropriate Division, City official including the Human Rights Office, or Accountability Officer for investigation and appropriate action.

Employees who report wrongdoing in good faith will be protected from reprisal.

#### Anonymous Reporting

Employees may remain anonymous when reporting suspected wrongdoing. The 519 has contracted with an external third party to receive anonymous complaints. Complaints received through this method will be investigated in accordance with this policy.

## **INVESTIGATING ALLEGED WRONGDOING**

All disclosures of alleged wrongdoing as defined in this Disclosure of Wrongdoing and Reprisal Protection Policy will be investigated in a timely manner. The 519 Executive Director (or designate) will manage the investigation depending on the nature and scope of the wrongdoing.

The 519 Executive Director will notify the City's Executive Director of Human Resources who may provide advice to assist in ensuring that the investigation of alleged wrongdoing is conducted appropriately.

The 519 Executive Director will periodically report on the status of any ongoing investigation of alleged wrongdoing to the City's Executive Director of Human Resources and including the final outcome of the investigation.

Decisions to prosecute or refer the investigation results to the Toronto Police Service or other regulatory agencies for independent investigation will be made through a consultative process between the City Manager, City Solicitor and the City's Executive Director of Human Resources.

#### Expectations of Employees

It is expected that The 519 employees will fully co-operate with the investigation and law enforcement agencies during the course of an investigation and will make all reasonable efforts to be available to assist the above noted persons with the investigation.

519 employees contacted by the media with respect to a wrongdoing investigation shall not comment and will refer the media to the Executive Director.

## **REPRISAL PROTECTION**

No person shall take a reprisal against a 519 employee because the employee:

- has sought information or advice about making a disclosure about wrongdoing;
- has made a disclosure about wrongdoing in good faith;
- has acted in compliance with the Disclosure of Wrongdoing and Reprisal

Protection Policy;

- has initiated or co-operated in an investigation or other process related to a disclosure of wrongdoing;
- has appeared as a witness, given evidence or participated in any proceeding relating to the wrongdoing, or is required to do so;
- has alleged or reported a reprisal; or
- is suspected of any of the above actions.

Reprisal protection may not be able to be extended to employees whose identity cannot be confirmed.

## **INVESTIGATING REPRISAL**

A 519 employee who believes that they are the subject of a reprisal following a disclosure of wrongdoing shall notify The 519 Executive Director immediately. If the reprisal involves a Member of City Council or a Member of a Local Board, the employee shall notify the Integrity Commissioner immediately.

A 519 employee informed of, or who becomes aware of a reprisal against an employee, has a duty to notify The 519 Executive Director or in the case of a Member of a Local Board, the Integrity Commissioner. Where The 519 Executive Director receives such disclosures, they will immediately notify the City's Executive Director of Human Resources or Integrity Commissioner, and will undertake to ensure that the employee is protected from any further reprisal.

Allegations of reprisal will be the subject of investigation. The 519 Executive Director will lead the investigation of alleged reprisals involving staff in consultation with the City's Executive Director of Human Resources. The Integrity Commissioner will lead the investigations of alleged reprisals involving Members of City Council or Members of Local Boards.

Where the investigation substantiates the allegations of reprisals, The 519 Executive Director will inform the City's Executive Director of Human Resources and the employee(s) involved will be subject to disciplinary action up to and including dismissal as determined by The 519 Executive Director in consultation with the City Solicitor and Executive Director of Human Resources.

The 519 Executive Director will consult with the City's Executive Director of Human Resources and Solicitor to determine and take appropriate actions to stop, reverse or remedy a reprisal against an employee.

## **ALLEGATIONS AGAINST AGENCY HEAD**

Where it is alleged that The 519 Executive Director (Agency Head) has committed wrongdoing, improperly breached confidentiality under the policy or committed a reprisal, the Board Chair will be notified of the allegation. The Board Chair will notify the City Manager's Office of the allegation.

The Board Chair will consult with the City Manager's Office for advice on how to manage the investigation. The investigation may include retaining a third party investigator to conduct an investigation. The results of the investigation will be shared with the Board of Management and the City Manager's Office.

**ALLEGATIONS  
AGAINST A  
BOARD MEMBER**

Where it is alleged that a Member of the Agency Board has committed wrongdoing, improperly breached confidentiality under this Policy or committed a reprisal, the City's Integrity Commissioner is responsible for receiving, reviewing, investigating and reporting pursuant to the *City of Toronto Act, 2006* and *Code of Conduct for Members of Local Boards*.

Board Members and the Agency Head will cooperate with the Integrity Commissioner during investigations of wrongdoing and provide the Integrity Commissioner with access to information.

**REPORTING**

The 519 Executive Director will track and report annually (or as required otherwise) to The 519 Board of Management through the Human Resources Policy Committee on the disclosure, investigation and resolution of allegations of wrongdoing in accordance with The 519 Human Resources Reporting Framework, The 519 Annual Planning / Reporting Cycle and other relevant City obligations.

**IMPLEMENTATION**

All 519 employees will receive a copy of this policy at the time of orientation. All existing employees will receive a copy of the policy as well and it will be circulated.

The 519 mandatory training requirements will be amended to ensure all new employees receive Ethics training (TPS Values, Conflict of Interest, Political Activity and Wrong-Doing and Reprisal Protection) within 30 days of start of employment.

**COMPLIANCE**

- Post relevant policy on The 519 policy sharing site
- Distribute policy on an annual basis to all staff

**APPROVED BY**

The 519 Board of Management

**DATE APPROVED**

November 30, 2015

**REVISED**

NA

**RELATED  
INFORMATION**

- Toronto Public Service By-law, Chapter 192, Toronto Municipal Code
- Code of Conduct for Members of Local Boards, City of Toronto
- Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards
- Code of Conduct Complaint Protocol
- Conflict of Interest Policy
- The 519 Human Rights and Anti-Discrimination Policy
- The 519 Complaints and Appeals Policy

**RELATED LINKS  
(EXTERNAL)**

[Toronto Public Service By-law:](http://www.toronto.ca/legdocs/municode/toronto-code-192.pdf)  
<http://www.toronto.ca/legdocs/municode/toronto-code-192.pdf>  
Toronto Public Service By-law Webpage:

[www.toronto.ca/tpsbylaw](http://www.toronto.ca/tpsbylaw)

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX42.3>

[http://www1.toronto.ca/city\\_of\\_toronto/lobbyist\\_registrar/files/pdf/code-conduct-local-boards.pdf](http://www1.toronto.ca/city_of_toronto/lobbyist_registrar/files/pdf/code-conduct-local-boards.pdf)