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**Policy Title: Whistleblower Protection**

Category: Administration

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## **POLICY STATEMENT**

To guide individuals when issues arise that may require them to raise concerns internally and when responding to any conduct that may pose a risk of harm to residents or staff, or to the operation of the organization and to ensure individuals feel safe in doing so.

## **SCOPE**

This policy applies to all individuals who witness or know of any suspected improprieties in matters relating to but not limited to abuse, neglect, threats, accounting or auditing or other business operational matters, breach of law; including but not limited to fraud, a breach of the CL Code of Conduct & Ethics or other ethical concerns.

## **PURPOSE**

1. To encourage and enable reporting within Copernicus Lodge related to breaches or suspected breaches of policies, procedures, standards, and legislation
2. To ensure that there is no retaliation against those who make reports in good faith under this policy.
3. To ensure compliance with reporting and Whistle-blowing provisions of the Act.

## **DEFINITIONS**

### ***Discriminatory treatment:***

... “ includes any change or discontinuation of any service to or care of a resident or the threat of any such change or discontinuation.”

### ***Employee, or public employee:***

... ” a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied” . . . .

### ***Individual of Person:***

includes but is not limited to: (residents, families, guests, staff, volunteers, students, third party vendors)

**Matter of public concern:**

- a. a violation of a provincial, federal, or municipal law, regulation, or ordinance;
- b. a danger to public health or safety; and/or
- c. gross mismanagement, substantial waste of funds, or a clear abuse of authority.

REF: Fairbanks North Star Borough. FNSB. No. 65.1 Date 09-12-23

**Retaliation:**

(3) . . . the following constitute retaliation for the purposes of subsection (1):

1. Dismissing a staff member.
2. Disciplining or suspending a staff member.
3. Imposing a penalty upon any person.
4. Intimidating, coercing or harassing any person.

**No retaliation against residents:**

(4) A resident shall not be discharged from a long-term care home, threatened with discharge, or in any way be subjected to discriminatory treatment because of anything mentioned in subsection (1), even if the resident or another person acted maliciously or in bad faith, and no family member of a resident, substitute decision-maker of a resident, or person of importance to a resident shall be threatened with the possibility of any of those being done to the resident.

**Reprisal:**

Reprisal action taken against an individual who has made a disclosure of wrongdoing in good faith includes:

- A disciplinary measure such as staff dismissal, discipline, and suspensions.
- Intimidating, coercing, or harassing an individual.
- Demotion of an employee.
- Any measure that adversely affects the employment or working conditions of an employee; or
- A threat to take any of the previously identified measures.

**Whistleblower:**

“any person who reports, to one or more of the parties specified in this policy, an activity that he/she considers to be illegal, dishonest, unethical, or otherwise improper. Whistleblowing is the term used when a worker passes on information concerning wrongdoing.”.

**PROCEDURE – PART 1**

**No Retaliation or Discouragement of Reports**

The organization may not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment.

The Organization will protect individuals who report activities believed to be illegal, dishonest, unethical, or otherwise improper from harassment, coercion, penalty, or discipline in the context of the following:

- Reports in good faith under this policy, and
- Disclosure of issues relating to business operational conduct, or other operational issues to management and
- Disclosure to any relevant law enforcement or regulating agency;

*Note: “Occupational whistleblowing is different to raising a workplace grievance. A grievance is a matter of personal interest and does not impact on the wider public, whereas whistleblower revelations relate to the more serious and widespread concerns as outlined above.”*

**REF:** Moritz Homann Updated: 22/11/2023. What is Whistleblowing in the Workplace? FAQ for Companies With the EU Whistleblowing Directive  
<https://www.integrityline.com/expertise/blog/what-is-whistleblowing/>

The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to disciplinary action.

Copernicus Lodge shall protect a resident (and his or her family members, SDM, and persons of importance) against any threats or discrimination in connection with the resident’s disclosure of anything to an inspector or the MOLTC Director, or giving his or her evidence in a proceeding under the LTCHA or during a coroner’s inquest. Employees are mandatory reporters of the following as defined by statute:

**Duty to Report:**

*(Fixing Long Term Care Act, 2021, s.28 – Reporting Certain Matters to the Director)*

Reporting certain matters to Director

**28**

(1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Director:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
2. Abuse of a resident by anyone or neglect of a resident by the licensee or staff that resulted in harm or a risk of harm to the resident.
3. Unlawful conduct that resulted in harm or a risk of harm to a resident.
4. Misuse or misappropriation of a resident's money.
5. Misuse or misappropriation of funding provided to a licensee under this Act, the *Local Health System Integration Act, 2006* or the *Connecting Care Act, 2019*.

**REF:** Fixing Long-Term Care Act, 2021, S.O. 2021, c. 39, Sched. 1 <https://www.ontario.ca/laws/statute/21f39#BK39>

### **Other Reportable Acts:**

Other acts may also be reported, including but not limited to violations of federal, provincial or municipal laws; billing for services not performed or for goods not delivered or other fraudulent financial reporting.

- Verbal complaints concerning any aspect of the operation of the organizations, its staff, residents, visitors or other CL representatives.
- Breach of the Organization's policies, standards, procedures, or by-laws.
- Inappropriate business operational conduct such as fraud, accounting or auditing issues, embezzlement, waste, abuse of authority, mismanagement, or other wrongdoing
- All other areas where there is real, or potential harm, exposure to the organization, residents or other individuals, and ongoing operations.

Staff members, and other individuals must not do anything to discourage any of the following:

1. Reports under this policy,
2. Mandatory/immediate reports under the LTCHA, and
3. Disclosures to an inspector or the MLTC Director, ministry of labour or any other oversight or enforcement agency, the giving of evidence in a proceeding under the LTCHA or during a coroner's inquest.
4. Any investigative processes or procedures.

Employees or others may elect to report to body/bodies outside of CL, e.g. Ministry of Health. This does not cause them to forfeit their rights under whistleblowing law. (See Appendix 1, Section 30(2))

The provisions of this policy does not:

- a. require the organization to compensate an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;
- b. prohibit the organization from compensating an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;
- c. authorize the disclosure of information that is legally required to be kept confidential; or

- d. diminish or impair the rights of an employee under a collective bargaining agreement.

## The Whistleblower: Rights & Obligations

To be covered by whistleblowing law, a worker who makes a disclosure must reasonably believe two things.

1. That they are acting in the public interest. *This means in particular that personal grievances and complaints are not usually covered by whistleblowing law.*
2. that the disclosure tends to show past, present or likely future wrongdoing

Individuals protected include:

- a. the employee, or a person acting on behalf of the employee, who reports to a public body or is about to report to a public body a matter of public concern; or
- b. the employee who participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern.

Clarification that the whistleblower does not need to provide evidence for the employer to look into the concerns raised.

### **Limitation To Protections:**

1. A person is not entitled to the protections under this policy unless he or she reasonably believes that the information reported is, or is about to become, a matter of public concern; and reports the information in good faith.

#### *Protection from legal action*

(8) No action or other proceeding shall be commenced against any person for doing anything mentioned in clauses (1) (a) to (d) unless the person acted ***maliciously or in bad faith.*** **Section 30(8)**

2. A person is entitled to the protections under this policy only if the matter of public concern is not the result of conduct by the individual seeking protection, unless it is the result of conduct by the person that was required by his or her employer.

The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

## The Employer

Whistleblower protections are provided in two important areas:

- Confidentiality; and
- retaliation.

Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense.

The organization may not disqualify an employee or other person who brings a matter of public concern, or participates in a proceeding connected with a matter of public concern, before a public body or court, because of the report or participation, from eligibility to bid on contracts with the organization; receive land under a district ordinance; or receive another right, privilege, or benefit.

The organization will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as:

- termination,
- compensation decreases, or
- poor work assignments and
- threats of physical harm

Any whistleblower who believes he/she is being retaliated against, must contact the Mgr. Human Resources or CEO immediately.

**Relief and Penalties**

A person who alleges a violation of this policy may seek remedy as outlined in Section 31

*Complaint to Ontario Labour Relations Board*

**31 (1)** Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 30 (1), the staff member may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

**PROCEDURE – PART 2**

If an employee has knowledge of or a concern of illegal or dishonest/fraudulent activity, the employee is to contact his/her immediate supervisor or the Mgr. Human Resources.

- a. All reports or concerns of illegal and dishonest activities will be promptly submitted by the receiving supervisor to the Mgr, Human Resources who is responsible for investigating and coordinating any necessary corrective action.
- b. Any concerns involving the Mgr. Human Resource should be reported to the Chief Executive Officer.

**How to Whistle-blow:**

Steps	
1. Identify the Issue	What is occurring and how do you know it?

<p>2. Document the Facts</p> <p><b>The 5W's</b></p>	<p>Prepare a summary of the facts describing what you witnessed, leaving opinions and speculation out. Consider the following to help guide you in clearly and succinctly articulating your disclosure:</p> <ul style="list-style-type: none"> <li>▪ <i>What</i> are the facts?</li> <li>▪ <i>Who</i> is involved?</li> <li>▪ <i>When</i> did it occur?</li> <li>▪ <i>Where</i> did it happen?</li> <li>▪ <i>What</i>, based on the above, is the violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety?</li> </ul>
<p>3. Who needs to know</p>	<p>The nature of the IC is such that you may not have authorization or access to all the relevant information or facts. You should still report a concern if you have a reasonable belief of wrongdoing, but you should not conduct your own investigation to gather the facts. Instead, report to an appropriate authorized recipient, your chain of command or external body so that they may fully investigate your concern(s).</p> <p>All reports under this policy should be to a staff member's immediate supervisor or manager. Where an immediate supervisor is implicated, or where a staff member is uncomfortable reporting to their supervisor, the report should go to the next level of leadership or a member of senior management.</p>
<p>4. Make a Decision about Confidentiality</p>	<p>Do you want to maintain confidentiality in reporting the wrongdoing? Certain authorized recipients are better able to maintain your confidentiality. Confidentiality is established by law and IGs are prohibited from disclosing the identity of those who report an allegation or provide information, without their consent, unless the IG determines that disclosure is unavoidable during the course of the investigation or in a referral to the Department of Justice. In some circumstances an authorized recipient may be required to identify you in order to investigate or take action on your lawful disclosure.</p>

5. Make the Call or Submit Your Disclosure	End your summary with contact information for potential witnesses and the location of any relevant hard and soft copy data that may support your allegations.
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REF: <https://www.dni.gov/ICIG-Whistleblower/process-how.html>  
office of the director of national intelligence

- The whistleblower is not responsible for investigating the alleged illegal or dishonest activity, or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.

### BEST PRACTICE FOR THE EMPLOYER

When dealing with disclosures, it is good practice for managers to:

- Have a facility for anonymous reporting
- Treat all disclosures made seriously and consistently
- Provide support to the worker during what can be a difficult or anxious time with access to mentoring, advice and counselling
- Reassure the whistleblower that their disclosure will not affect their position at work
- Manage the expectations of the whistleblower in terms of what action and/or feedback they can expect as well clear timescales for providing updates
- Produce a summary of the meeting for record keeping purposes and provide a copy to the whistleblower
- Allow the worker to be accompanied by a trade union representative or colleague at any meeting about the disclosure, if they wish to do so
- Provide support services after a disclosure has been made such as mediation and dispute resolution, to help rebuild trust and relationships in the workplace It will be useful to document any decisions or action taken following the making of a disclosure by a worker.

### REFERENCES:

WHISTLEBLOWING Guidance for Employers and Code of Practice MARCH 2015. Available online: <https://assets.publishing.service.gov.uk/media/5a819ef5e5274a2e87dbe9e3/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf>

### Statutory Requirement



Government of Ontario. Fixing Long-Term Care Act, 2021, S.O. 2021, c. 39, Sched. 1. Reporting and Complaints. Section 30. See Appendix 1 for detailed whistleblower protections. Available on-line: <https://www.ontario.ca/laws/statute/21f39#BK39>

## Appendix 1. Whistleblower Protection

### *Whistle-blowing protection*

#### **Fixing Long Term Care Act, 2021, s. 30**

**30 (1)** No person shall retaliate against another person, whether by action or omission, or threaten to do so because,

- (a) anything has been disclosed to an inspector;
- (b) anything has been disclosed to the Director including, without limiting the generality of the foregoing,
  - (i) a report has been made under section 28, or the Director has otherwise been advised of anything mentioned in paragraphs 1 to 5 of subsection 28 (1),
  - (ii) the Director has been advised of a breach of a requirement under this Act, or
  - (iii) the Director has been advised of any other matter concerning the care of a resident or the operation of a long-term care home that the person advising believes ought to be reported to the Director;
- (c) anything has been disclosed to any other personnel of the Ministry, or to any other individual or entity that may be provided for in the regulations; or
- (d) evidence has been or may be given in a proceeding, including a proceeding in respect of the enforcement of this Act or the regulations, or in an inquest under the *Coroners Act*.

### *Manner of disclosure, etc.*

(2) For the purposes of subsection (1), disclosure may be by any method, such as by making a complaint to the Ministry or by calling an action line where one has been established, subject to any exceptions provided for in the regulations.

### *Interpretation, discriminatory treatment*

(5) Without in any way restricting the meaning of the term “discriminatory treatment”, for the purposes of subsection (4) discriminatory treatment includes any change or discontinuation of any service to or care of a resident or the threat of any such change or discontinuation.

### *May not discourage reporting*

(6) None of the following persons shall do anything that discourages, is aimed at discouraging or that has the effect of discouraging a person from doing anything mentioned in clauses (1) (a) to (d):

1. The licensee of a long-term care home or a person who manages a long-term care home pursuant to a contract described in section 113.
2. If the licensee or the person who manages the home is a corporation, an officer or director of the corporation.
3. In the case of a home approved under Part IX a member of the committee of management for the home under section 135 or of the board of management for the home under section 128 or 132.
4. A staff member.

*May not encourage failure to report*

(7) No person mentioned in paragraphs 1 to 4 of subsection (6) shall do anything to encourage a person to fail to do anything mentioned in clauses (1) (a) to (d).

*Protection from legal action*

(8) No action or other proceeding shall be commenced against any person for doing anything mentioned in clauses (1) (a) to (d) unless the person acted maliciously or in bad faith.

*Offence*

(9) Every person is guilty of an offence who does anything prohibited by subsection (1), (4), (6) or (7).

*Complaint to Ontario Labour Relations Board*

**31** (1) Where a staff member complains that an employer or person acting on behalf of an employer has contravened subsection 30 (1), the staff member may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

*Inquiry by Board*

(2) The Board may inquire into any complaint filed under subsection (1) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with all necessary modifications as if that section, except subsection (5), is enacted in and forms part of this Act.

*Same*

(3) On an inquiry by the Board into a complaint filed under subsection (1), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with all necessary modifications.

*Onus of proof*

(4) On an inquiry by the Board into a complaint filed under subsection (1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 30 (1) lies upon the employer or the person acting on behalf of the employer.

*Board may substitute penalty*

(5) Where, on an inquiry by the Board into a complaint filed under subsection (1), the Board determines that a staff member has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

*Interpretation*

(6) In this section,

“Board” means the Ontario Labour Relations Board; (“Commission”)

“employer”, in relation to a staff member, means,

- (a) where the staff member is an employee of a licensee or a person who works at a long-term care home pursuant to a contract or agreement with a licensee, the licensee, or
- (b) where the staff member works at a long-term care home pursuant to a contract or agreement between the licensee and an employment agency or other third party, the employment agency or third party. (“employeur”)

*Obstruction — information to inspectors, Director*

**32** Every person is guilty of an offence who attempts, by any means, to prevent another person from providing information to an inspector or the Director where the provision of the information is required or permitted by this Act or the regulations.