

**Protocol to safeguard academic freedom and integrity
and to clarify other terms of the collaboration between
CIGI and Osgoode Hall Law School of York University**

1. In this protocol:

- a. “academic freedom” means the freedom to examine, question, teach, and learn; to disseminate opinion(s) on any questions related to the individual’s teaching, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal the individual’s research, creative or professional activities, and to freely publish and make public the results thereof; to criticize a donor or the University or society at large; and to be free from institutional censorship. Academic freedom does not require neutrality on the part of the individual nor does it preclude commitment on the part of the individual. Rather, academic freedom makes such commitment possible.
- b. “academic partners” means York University and Osgoode Hall Law School.
- c. “Agreement” means the Agreement signed in August 2011 among the Centre for International Governance Innovation (a non-share capital corporation incorporated under the laws of Canada and hereinafter called “CIGI”) and York University (a university incorporated under the laws of Ontario and hereinafter called the University) (attached);
- d. “CIGI” means the Centre for International Governance Innovation.
- e. “CLA” means a faculty member who has a contractually-limited academic appointment;
- f. “donor” means any private actor, external to the academic partners, that contributes funds to the initiative or otherwise to York University or Osgoode Hall Law School.
- g. “Executive Director” means the executive director referred to in clause 7 of the Agreement and/ or the executive director of any other centre associated with the initiative;
- h. “faculty” means tenure-stream faculty at Osgoode Hall Law School of York University and any CLAs hired pursuant to the Agreement;
- i. “Faculty Council” means Faculty Council of Osgoode Hall Law School of York University;
- j. “faculty recruitment processes” refers to the rules and procedures for faculty recruitment as set by Faculty Council subject to the relevant rules and procedures of York University Senate.
- k. “initiative” means the development, establishment, construction, operation, modification, and/ or termination of any program and/ or centre based on the terms of this Agreement and affiliated with Osgoode Hall Law School;
- l. “OHFA” means the Osgoode Hall Faculty Association as the customary bargaining agent for Osgoode Hall Law School faculty;
- m. “the parties” means the parties to the Agreement, namely CIGI, York University, and Osgoode Hall Law School;

- n. “program or centre” means the Centre for International Law in the Global Economy (CILGE) or any other program or centre that receives funding based on the terms of the Agreement; and
 - o. “Steering Committee” means the Steering Committee referred to in clause 3(a) of the Agreement.
2. This protocol clarifies and elaborates on a collaboration involving CIGI and York University to establish a program and/ or centre affiliated with Osgoode Hall Law School. The purpose of the initiative is to advance research, teaching, and other scholarly activities in the areas of international economic law (including trade, investment and finance), international intellectual property law, and international environmental law. The initiative is based on substantial funding from a private source and from the Government of Ontario.

Principles of academic freedom and integrity

3. The parties recognize and agree that the success of the initiative depends on the protection of the academic freedom and integrity and the institutional autonomy of the academic partners. This includes the protection of the academic freedom of individual researchers and teachers who are engaged with the initiative, including faculty, students, and academic administrators, including the freedom to pursue research that may criticize the parties or a donor. The parties agree to implement rigorous safeguards to ensure that the initiative does not infringe academic freedom or integrity or institutional autonomy.
4. The parties agree that it is inconsistent with the academic partners’ institutional autonomy for a donor to have any decision-making authority over the setting of academic priorities, the recruitment or appointment of faculty, the renewal or termination of faculty, the tenure or promotion of faculty, the setting of research agendas of individual faculty or students, the admission of students, the creation or revision of academic programs, the design of curricula, the issuance of degrees, or any other matters relating to academic freedom and integrity. In the context of the initiative, the sole exception to these principles is the role that has been played by CIGI in setting the subject areas of the initiative as described in Schedule “A” of the Agreement and in clause 2 of this protocol.
5. For greater certainty, any doubt in the interpretation of the Agreement, this protocol, or any other agreement relating to the initiative shall be resolved in favour of safeguarding academic freedom and integrity and the institutional autonomy of the academic partners.

Academic policy and programming

6. The academic partners retain exclusive authority over all matters of academic policy and programming relating to the initiative. No decision of Faculty Council on any such matters, identified as such in the sole and absolute discretion of Faculty Council, shall be subjected as a result of the initiative to any dispute resolution process external to the normal governance processes of the academic partners. For greater certainty, the academic

partners are under no obligation to provide notice of any decision of Faculty Council on any matter of academic policy and programming regardless of any provision of the Agreement including but not limited to clause 6(c)(i) of the Agreement. Also for greater certainty, the authority of Faculty Council over such matters is not constrained or otherwise affected by any provision of the Agreement including but not limited to clauses 8, 10, 24, or 25 of the Agreement.

Recruitment and appointment of faculty

7. All decisions related to the recruitment and appointment of faculty shall be taken based on the faculty recruitment processes of the academic partners. No donor, and no party other than the academic partners, shall have any role in the recruitment and appointment of faculty other than to provide suggestions on the identification of candidates for recruitment, regardless of any provision in the Agreement including but not limited to clauses 4, 14, 17, and 25 of the Agreement.

Renewals of faculty appointments

8. All decisions related to the renewal of faculty appointments shall be taken based on processes that are designated and approved for this purpose by Faculty Council. These processes are expected to be based on aspects of the faculty recruitment and appointment process or the tenure and promotion process of Osgoode Hall Law School as determined and approved by Faculty Council. No donor, and no party other than one or both of the academic partners, shall have any role, including any role in making suggestions or in providing advice of any kind, in the renewal of any faculty appointment.

Academic freedom of faculty members

9. A donor shall not have any influence over any matter of academic freedom or integrity relating to the initiative, regardless of any provision of the Agreement including but not limited to clause 25 of the Agreement. Faculty have the right to freedom of teaching and discussion and to freedom in carrying out research and disseminating and publishing the results. The planning and design of a research project, collection of data, and analysis and dissemination of results shall be under the control of the researcher and not a donor or organizational partner. In the conduct of their work, faculty and other researchers shall have access to all data and findings collected in a research project and shall retain the right to share results of their research with other academic researchers and to publish the product of their research without hindrance or delay. York University undertakes to enter into negotiations in good faith with OHFA, upon request by OHFA, to strengthen the provisions on academic freedom in the existing collective agreement between York University and OHFA in order to ensure that Osgoode Hall Law School faculty have equivalent substantive and procedural protections of academic freedom to those enjoyed by other York University faculty.

10. The intellectual property of faculty and other researchers, inclusive of their research findings, shall be defined by the normal rules and procedures of the academic partners for the recognition and protection of such intellectual property.

Terms and conditions of employment of faculty

11. The salary and benefits of faculty appointed pursuant to the initiative shall be set in accordance with the normal policies and practices of the academic partners for faculty members of Osgoode Hall Law School. For greater certainty, no separate stipend shall be provided to any faculty associated with the initiative, other than the Executive Director, as a component of their academic appointment.
12. The terms and conditions of tenure-stream faculty appointed pursuant to the initiative shall be commensurate with those of other Osgoode Hall Law School faculty, except as follows in this clause. The teaching responsibilities of such faculty shall constitute approximately half of the regular teaching load of faculty at Osgoode Hall Law School and shall in general include, based on the normal procedures by which teaching responsibilities are assigned at Osgoode Hall Law School, responsibility for at least one high-enrolment course in the J.D. program. In addition to any administrative responsibilities they may be given in relation to the initiative itself, faculty appointed pursuant to the initiative shall take part fully in the governance and administrative activities (committees, etc.) of the academic partners.
13. Regardless of clauses 14 and 17 of the Agreement, which refer to faculty appointed pursuant to the initiative as tenured or tenure stream faculty, such faculty may be appointed by the academic partners with tenure, on a tenure-stream basis, or as CLAs. The parties expect that approximately half of the faculty appointed pursuant to the initiative will be CLAs, as determined by the academic partners.
14. All faculty who are appointed pursuant to the initiative shall be eligible for membership in OHFA according to its terms and conditions of membership. In this respect, it is expected that tenure-stream faculty associated with the initiative will become members of OHFA and that CLAs associated with the initiative may become OHFA members, in both cases as determined by OHFA.

Academic freedom and integrity of the Executive Director

15. The Executive Director of any program or centre associated with the initiative, once appointed, will be a tenured or tenure-stream faculty member of Osgoode Hall Law School who shall have all the protections of academic freedom of other faculty. The Director will be responsible for the direction and operations of the program or centre free from any actual or apparent pressure from any donor on her or his academic freedom or integrity.

Collegial academic governance of the initiative

16. The process outlined in clauses 17 to 21 of this protocol is intended to ensure that: (a) the Executive Director is protected from any reasonable perception of improper influence by any donor on her or his academic freedom or integrity or on that of the initiative as a scholarly endeavour and (b) the academic community of Osgoode Hall Law School has an ongoing and meaningful role in the governance of research, teaching, and other scholarly matters relating to the initiative. In this respect, the parties recognize that there are existing programs and activities at Osgoode Hall Law School relating to the subject areas of the initiative, such as the Osgoode Intellectual Property Law & Technology Program operating under the aegis of IP Osgoode, that are integral to the success of the initiative and that shall receive substantial funding as well as other forms of recognition and support from the initiative.
17. A body will be designated and approved by Faculty Council for the collegial academic governance of the initiative. It is expected that:
- a. this body will be a new or existing committee of Faculty Council;
 - b. the mandate of this body will include the provision of advice and support to the Executive Director and the receipt and consideration of periodic reports from the Executive Director;
 - c. the make-up of this body will include both faculty whose research activities fall within and faculty whose research activities fall outside the subject areas of the initiative; and
 - d. one or more, but not a majority of, members of this body may be faculty who are members of the Advisory Committee referred to in clause 5 of the Agreement.

In all respects, the designation, establishment, mandate, make-up, rules, procedures, and all other aspects of this body shall be determined and approved by Faculty Council.

18. The Executive Director shall report to the Steering Committee on financial and administrative matters that are not matters of academic policy and programming. Pursuant to Article 3(a)(iv) of the Agreement, the Steering Committee shall approve the budget for the program or centre as developed by the Executive Director. Any non-approval of the budget by the Steering Committee shall be based on financial or administrative grounds, with written reasons, and not on grounds relating to matters of academic policy or programming.
19. The Executive Director shall report to the body referred to in clause 17 of this protocol on matters of academic policy and programming, including on research, teaching, and other scholarly activities, according to rules and procedures approved by Faculty Council. Where there is an apparent overlap between the reporting mandates outlined in clauses 18 and 19 of this protocol, then the relevant matters shall be assumed to be matters of academic policy and programming for the purposes of this Agreement, except that the Executive Director shall report on the relevant matters both to the Steering Committee and to the body referred to in clause 17 of this protocol.

20. Any reports or other documentation exchanged between the Steering Committee and the Executive Director shall be provided at or around the same time to the body referred to in clause 17 of this protocol. Any reports or other documentation exchanged between that body and the Executive Director shall be provided at or around the same time to the Steering Committee.
21. York University's representatives to the Steering Committee shall include the Dean of Osgoode Hall Law School and a faculty member at Osgoode Hall Law School selected annually by Faculty Council. The Advisory Committee, to be appointed by the Steering Committee pursuant to Article 5 of the Agreement, shall be comprised of globally recognized leaders in each of the three designated subject areas, including no fewer than three faculty members of Osgoode Hall Law School, one in each of the three designated subject areas.

Collegial governance of Osgoode-allocated funds

22. The budget for the initiative shall include an annual minimum of \$100,000 in funding (disbursed based on actual expenditures) for internship, external placements, and other experiential educational opportunities in the areas of the program or centre's activities.
23. The budget for the initiative will include an annual minimum of \$200,000 in funding (disbursed based on actual expenditures) for research and research collaborations in the areas of the program or centre's activities.
24. The disbursement of funds referred to in clauses 22 and 23 of this protocol shall be approved by the body referred to in clause 17 of this protocol according to procedures approved by Faculty Council. It is understood that the model for approval of disbursement of these funds may include, in the discretion of the aforementioned body, general disbursement of funds to all faculty, project-specific approvals, and/ or approval of specific projects as recommended by the Executive Director based on general criteria set by the aforementioned body.

Disbursement of other funds

25. It is understood that other funds beyond those referred to in clauses 22 and 23 of this protocol and otherwise associated with the initiative will flow to the benefit of students and faculty at Osgoode Hall Law School for research and teaching purposes and that the disbursement of such funds will be at the discretion of the Executive Director, subject to the terms of this protocol and the Agreement. The Executive Director shall develop and implement transparent, fair, and objective procedures specifying how faculty, post-doctoral appointees, students, and others can apply for funding pursuant to the initiative and what evaluation and selection criteria will be used. The procedures shall include clear conflict of interest provisions. To encourage collaboration and integration of the initiative in the

general activities of Osgoode Hall Law School, the Executive Director shall consider the advice of the body referred to in clause 17 of this protocol when making decisions about disbursement of such funds and shall report to that body on such disbursement.

26. The parties expect that the Executive Director, pursuant to her or his responsibilities under clauses 7 and 3(a)(iv) of the Agreement, in developing the mechanisms for allocating the program or centre's budget will establish a transparent, equitable, and collegial approach to ensure the full participation of faculty in the activities of the Centre.

Other reforms to the initiative

27. In addition to the other needs of the program or centre, as identified by the Executive Director, the budget for the program or centre shall include sufficient funding to address program-related needs of Osgoode Hall Law School, such as in areas of the library and graduate administration.
28. The parties agree that the components of the initiative relating to Osgoode Hall Law School's graduate program, J.D. program, and library and put before Faculty Council on 28 October 2011 in:
- a. the memorandum of 28 September 2011 from the Dean of Osgoode Hall Law School to the Chair of Faculty Council;
 - b. the memorandum of 27 September 2011 from the Chair of Graduate Studies Committee to the Chair of Faculty Council; and
 - c. the memorandum to the Dean on Principles of Implementation in relation to the Law Library forwarded on behalf of the Library Committee

are compatible with the Agreement and are integral to the initiative.

Publication of this protocol and the initiative

29. The Agreement and this protocol shall be made public at the time that this protocol takes effect and shall be posted without unreasonable delay on the website of the program or centre. No agreement relating to the initiative that is not public has any legal effect unless that agreement has been provided to Faculty Council and Faculty Council has approved, by a two-thirds majority of its voting members, a motion to keep confidential the agreement or any portion of it.

Notice of any dispute and resulting termination of funding

30. In the event of a dispute under the Agreement or otherwise relating to the initiative, the salary and benefit costs of any personnel at the program or centre, in circumstances where those salary and benefit costs are otherwise paid through funds owed under the Agreement, shall continue to be paid through such funds for a period of six months after

notice of the dispute has been given by a party to the Agreement to another party to the Agreement. Upon receipt of notice of a dispute under the Agreement or otherwise relating to the Initiative, any party to the Agreement shall provide promptly a copy of such notice to the Dean of Osgoode Hall Law School who shall in turn provide a copy to Faculty Council at the earliest opportunity.

Pre-eminence of this protocol

31. The parties agree that this protocol amends and elaborates on, and in all respects takes precedence over, the Agreement and any other agreement(s) relating to the initiative and entered into by any one or more of the parties, to the extent of that party's or those parties' obligations. For greater certainty, this protocol is not subject to the terms of the Agreement regardless of any provision to the contrary in the Agreement including but not limited to clause 21 of the Agreement.
32. To avoid any perception that a donor could exercise improper influence over matters of academic freedom and integrity, the following clauses of the Agreement are of no force and effect to the extent that they conflict with or otherwise limit any provision of this protocol: clauses 3(a)(i) and 3(a)(ii) [concerning research agendas of individual faculty] and clauses 3(a)(iii) and 6(a) [concerning appointment, renewal, and termination of faculty].

Other provisions

33. The recruitment and appointment of faculty, hiring or appointment of staff and administrative personnel, and allocation of funds for research or other related expenses of the program or centre shall be consistent with the academic partners' policies on conflicts of interest. Related decisions shall be made in an objective manner and on objective grounds and must be seen to be so.
34. This protocol takes effect upon the signature of the protocol by all of the parties to the Agreement and approval of the initiative by Faculty Council. Any other agreement relating to this protocol, including any subsequent agreement, by any one or more the parties to the Agreement that purports to alter in any way this protocol shall take effect upon approval of the relevant alteration(s) by a two-thirds majority of the voting members of Faculty Council. This protocol incorporates the provisions of clauses 28, 29, 32, 33, 34, and 35 of the Agreement, subject to the terms of this protocol. Faculty Council and faculty are recognized as parties with rights or interests related to the initiative that are protected by this protocol and the Agreement. Where Osgoode Hall Law School is of the view that this protocol has been breached by a party to the Agreement, Osgoode Hall Law School may initiate the dispute resolution process that is laid out primarily in clause 34 of the Agreement in order to resolve the dispute.