

Notice of Motion

Moved by Dean Lorne Sossin and seconded by Associate Dean Poonam Puri that Faculty Council acknowledges Osgoode Hall Law School's continued willingness to participate in the York-CIGI collaboration, subject to:

- (1) the signed Protocol to Promote and Protect Academic Freedom (February 10, 2012) and Recruitment Protocol (March 9, 2012) (attached) which amend the Collaboration Agreement between York and CIGI (August 11, 2011) (previously distributed);
- (2) the approval by York University's Senate of an oversight mechanism for the academic autonomy of the initiative, substantially in the form attached; and
- (3) the University and the Osgoode Hall Faculty Association entering into a binding "Academic Freedom Enforcement Mechanism" substantially in the form of the draft circulated on March 29th (attached),

and authorize the appropriate committees of Faculty Council to consider the extent of the participation of Osgoode Hall Law School in the York-CIGI collaboration and any additional policies which those committees believe are appropriate.

Rationale for Motion

The issue before Faculty Council is whether Osgoode Hall Law School will participate in the partnership between York University and Centre for International Governance Innovation (CIGI).

Osgoode played a leadership role in developing this initiative through the Fall of 2011 and in November of 2011, our Faculty Council approved the creation of a collaborative Centre to house the Chairs and graduate students, subject to finalizing a protocol to promote and protect academic freedom. Faculty Council set a deadline of January 23, 2012 in which to finalize the process. The Osgoode process was a collegial and constructive one, involving faculty and student members of Faculty Council. While there was substantial agreement on shared principles in relation to academic freedom, there remained outstanding issues at the time the deadline passed, and so the initial approval by Osgoode's Faculty Council lapsed.

At that point, the initiative evolved to become a pan-University endeavour, in which all York Faculties will have the opportunity to participate. A new Protocol on Academic Freedom was signed on February 10, 2012, and a Recruitment Protocol was signed on March 9, 2012. On March 1, 2012, York Senate's Academic Planning, Priorities and Research Committee gave its unanimous concurrence to the pan-University model for the initiative. Senate discussed the initiative and the sufficiency of academic freedom protections at its meeting on March 22, 2012. The Provost indicated that a governance framework would be developed and submitted for Senate approval at its April meeting. Further, as explained below, the University has now agreed to a binding enforcement mechanism in which OHFA would participate as an equal partner, in

order to ensure that any concerns relating to academic freedom can be properly reviewed by an independent panel and binding remedies ordered if appropriate.

There has been some confusion surrounding Osgoode's participation in the pan-University model. Media reports indicated opposition to the initiative at Osgoode caused the change in the model of the initiative. This is inaccurate. Similarly, other reports indicated Osgoode had decided to participate in the pan-University model. This too is inaccurate. In an email communication to the Osgoode community sent on March 16, 2012, I confirmed that the decision of Osgoode's participation in the initiative was a matter for Osgoode's Faculty Council to decide. The earlier confusion highlights the need at this point to send a clear signal as to whether Osgoode will or will not participate in this initiative.

As in our discussion in November of 2011, the key to Osgoode's participation rests on the protection of academic freedom and institutional autonomy. In light of the two signed protocols and the proposed academic governance framework, the key academic freedom and institutional autonomy protections now include:

- A shared, overarching commitment by the parties to the principles of academic freedom, academic integrity and institutional autonomy;
- A confirmation that the University has exclusive jurisdiction over all academic matters, including the recruitment or appointment of faculty, and the renewal, tenure, promotion or termination of faculty;
- A confirmation that there is no role for CIGI in relation to shortlists of candidates; all shortlists will be automatically referred to an independent Expert Panel, to be appointed by the University;
- A confirmation that in case of any doubt as to whether a matter falls within the exclusive jurisdiction of the University, the University's view shall prevail;
- The academic freedom of chairs is expressly guaranteed, and there is a definition of academic freedom that is based on the definition in the Osgoode Protocol;
- The rights of Chairs to determine their own research plans and priorities, to conduct research, and disseminate the results thereof, are expressly protected;
- A confirmation that Chairs will be provided with annual research funding by the University that will continue for so long as they occupy the Chair;
- An academic governance framework, which if approved by Senate, will take priority over any agreements that have been, or might be, entered into with CIGI.

I noted above the fact that the University has now agreed to a binding enforcement mechanism with respect to this initiative. A particular concern of members of Council in our discussions on this issue has centred on the need for a mechanism that will ensure that the rights that are enshrined in these various agreements and protocols are respected in the implementation of the initiative. In order to respond to this concern, the University has agreed to enter into a binding memorandum of agreement with the Osgoode Hall Faculty Association to provide for such a mechanism. As described in the attached memorandum from Vice President Finance and Administration Gary Brewer, an Independent review panel would be created, with an OHFA

appointee, an University appointee, and a chair appointed by the two initial appointees. This review panel would have jurisdiction to review any concerns over academic freedom that may arise, make findings, and issue binding remedial orders, and is in addition to the University's continuing commitment to extend to OHFA all rights relating to academic freedom that are enjoyed by YUFA and its members, including procedural and enforcement rights.

The protections and safeguards highlighted above provide a strong foundation for Osgoode's participation in this initiative. If the motion submitted is approved, it would fall to the relevant committees of Faculty Council to recommend the nature and extent of Osgoode's involvement, and any additional policies which may be relevant.

This initiative continues to offer Osgoode a remarkable opportunity to enhance its leadership in International Law research and teaching, to leverage interdisciplinary opportunities and to attract excellent new faculty and graduate students. In light of the protections elaborated in the various documents attached to this motion, and the ongoing oversight of Faculty Council over the nature and extent of Osgoode's involvement in the initiative, Osgoode's participation will remain contingent on respect for academic freedom and institutional autonomy.


I recognize that this has been a long and difficult debate within the Osgoode community. I also recognize that there are strongly held opinions, and differing perspectives on the initiative, which I understand and respect. For my part, I believe this is a truly extraordinary opportunity for the Law School and the University to assert intellectual leadership in fields that will prove of increasing importance in the years ahead.


**Protocol between Centre for International Governance Innovation and York University to
promote and protect academic freedom
February 10, 2012**

1. This protocol elaborates on the Collaboration Agreement between the Centre for International Governance Innovation ("CIGI") and York University (the "University").
2. The parties recognize and agree that the success of the initiative depends on mutual trust and collaboration and on a shared commitment to ensure academic freedom, academic integrity, and institutional autonomy. This shared commitment includes the promotion and 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 financial contributor.
3. The Steering Committee is accountable to ensure that this shared commitment guides its decision-making in all respects.
4. This commitment builds upon and incorporates the University's policies and protections relating to academic freedom, academic integrity and institutional autonomy, in addition to other applicable University policies relating to the recruitment of faculty, such as affirmative action.
5. The parties further share a commitment to these principles and agree to implement rigorous safeguards to ensure that the initiative does not infringe academic freedom, academic integrity, or the institutional autonomy of the parties. For greater certainty, and in light of this overarching commitment, the parties together undertake to:
 - (a) uphold the academic integrity, academic autonomy and academic freedom of the Chairs recruited through this program;
 - (b) implement a merit-based recruitment process for the Chairs, governed by York University's recruitment policies, procedures and practices, and analogous to the Canada Research Chair program with respect to the research and teaching responsibilities of the Chairs; and
 - (c) implement a merit-based selection process for the graduate scholarships governed by the University's admissions policies, procedures and practices.
6. The parties commit that all programs and initiatives relating to this collaboration will be independent, non-partisan and committed to the highest academic standards of research.

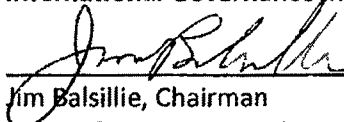
7. The parties commit that the activities undertaken pursuant to their collaboration will advance the public interest, including publicly accessible research, contributions to public debate and public accountability for the expenditures of funds.
8. This Protocol may be augmented from time to time by the mutual agreement of the parties.
9. This Protocol is incorporated into and forms part of the Collaboration Agreement and is binding and enforceable in accordance with its terms.


York University

Per: 
Mamdouh Shoukri, President and
Vice Chancellor, York University

Per: 
Patrick Monahan, Provost and
Vice President Academic, York University

Centre for International Governance Innovation

Per: 
Jim Balsillie, Chairman
Centre for International Governance
Innovation

Per: 
Thomas A. Bernes, Executive Director
Centre for International Governance
Innovation

Protocol Governing York-CIGI Chairs Allocation and Recruitment Process

March 9, 2012

1. The York University-CIGI law collaboration is a joint initiative designed to establish one of the world's leading graduate programs in international law, focusing on international economic law (including trade, investment and finance), international intellectual property law and international environment law. The process set out below has been modeled generally on the process utilized for the allocation and recruitment of Canada Excellence Research Chairs, and it is expected that all Chairs appointed under this program would be eligible, at a minimum, for appointment as either Tier 1 or Tier 2 Canada Research Chairs. The program will also recruit outstanding graduate students within the subject areas that will provide the focus for the Chairs.
2. The Chairs appointed pursuant to the program will hold joint appointments, as full-time faculty members of York University, and as Chairs within the CIGI law Centre in Waterloo, Ontario. The Chair holders will be recruited through a merit-based recruitment process governed by the University's recruitment policies, procedures, practices, and legal agreements, including in respect of affirmative action, and analogous to the Canada Research Chairs program with respect to research and teaching responsibilities of the Chairs. The Chairs will enjoy all of the protections relating to academic freedom and academic integrity held by full-time faculty members at York University, and all programs and initiatives relating to the collaboration will be independent, non-partisan and committed to the highest academic standards of research.
3. The Provost will invite Deans of Faculties of York University to submit proposals for chairs to be appointed to their Faculty (or Faculties in the case of a cross-appointment) ("Proposals"). There is no limit to the number of Proposals that may be submitted by a Dean/Faculty.
4. Each Proposal must include the following:
 - a. The proposed title for the Chair;
 - b. A description of the research area to be pursued by the chair; and
 - c. A description of how the research area relates to one of the three areas of international law or themes that cut across these areas, that provide the focus for the international law program as described in Schedule A, attached.
5. The Provost will convene a pan-University review committee (the "Review Committee"), that includes the Vice President Research and Innovation, the Vice Provost Academic, an Associate Vice President Research, and at least three senior scholars, (including at least one in each of the subject areas to be pursued through the program and including, if deemed appropriate by the Review Committee, scholars holding academic appointments at other Ontario universities) to review the proposals submitted and make recommendations as to which Proposals should be proceeded with for recruitment. It is understood that the two Chairs contemplated by clause 16(a)(i) & (ii) of the August 2011 Agreement between CIGI and York University (the "Collaboration Agreement") will be included in the recommendations of the Review Committee.
6. The Provost will review the Proposals that have been recommended by the Review Committee (the "Recommended Proposals") with the Steering Committee (composed of two York

University representatives and two CIGI representatives, as well as the Executive Director as a non-voting member) and reach consensus on the Recommended Proposals to be proceeded with for recruitment.

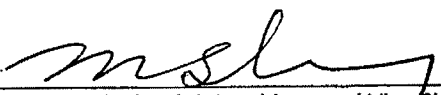
7. In the event that not all the available Chairs are allocated through this initial process, additional allocation processes will be initiated by the Provost from time to time, in accordance with clauses 3 to 6 above, until such time as all the available Chairs have been allocated.
8. Faculties that have been awarded Chairs through the allocation process described above will proceed to advertise for candidates. The Steering Committee may also authorize advertisements for the Chairs, and/or the program generally, and may submit names of potential candidates to be considered by Faculties for Chairs.
9. Each Faculty recruiting a Chair will create a shortlist of candidates to be interviewed for the Chair, in accordance with the Faculty's normal recruitment procedures, and submit that shortlist to the Provost. The file for each shortlisted candidate must include:
 - a. An up-to-date curriculum vitae
 - b. A description of the proposed research program to be undertaken by the Chair, and of the matters referred to in paragraph 4(c), above;
 - c. At least 3 letters of reference written by established authorities in the field, at least one of which must be from an internationally recognized scholar who does not reside in the country in which the candidate is currently working.
10. The Provost will review the shortlists of candidates with the Steering Committee and reach consensus on the shortlisted candidates to be interviewed for each Chair. In the event that the Steering Committee is unable to achieve consensus, the Steering Committee will establish an ad hoc committee of independent scholars all of whom will be:
 - a. internationally recognized scholars and experts in international law in one or more of the relevant subject areas; and
 - b. at arms-length (as that term is defined for purposes of the Canada Research Chairs Program) from York University, its officers and directors; from CIGI, its officers and directors; and from all of the candidates on a proposed shortlist,

to evaluate and comment on shortlists, or to act as ad hoc reviewers, in order to assist in resolving any outstanding issues or questions. The views of the ad hoc committee of independent scholars on any issue relating to a shortlist of candidates will be binding on the Steering Committee.
11. Once the short list is approved under paragraph 10 the recruitment and appointment of the relevant Chair will be governed by the University's faculty recruitment procedures, and will be entirely within the discretion of York University. The candidates selected by the Faculty through this process will be recommended to the President of York University for appointment as faculty members, and to the Executive Director of CIGI for appointment as Chairs within the law centre.
12. This Protocol is incorporated into the August 11, 2011 agreement between the parties hereto, and is binding and enforceable in accordance with its terms. In the event of any conflict or

inconsistency between this Protocol and the provisions of the August 11, 2011 agreement, this Protocol will take precedence.

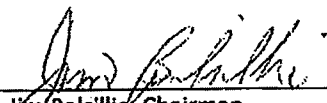
IN WITNESS WHEREOF the parties hereto have executed the within Agreement on the date first mentioned above.


YORK UNIVERSITY

Per: 
Mamdouh Shoukri, President and Vice-Chancellor,
York University

Per: 
Patrick Monahan, Provost, York University

**THE CENTRE FOR INTERNATIONAL GOVERNANCE
INNOVATION**

Per: 
Jim Balsillie, Chairman,
The Centre for International Governance
Innovation

Per: 
Thomas A. Bernes, Executive Director,
The Centre for International Governance
Innovation

SCHEDULE "A"

The Program will specialize in three areas of international law: international economic law (including trade, investment and finance); international intellectual property law; and international environmental law. By providing an opportunity for talented scholars, researchers and innovators to advance their knowledge and understanding through new partnerships and multi-disciplinary teaching a high level of scholarly excellence will be cultivated. Furthermore, this cooperation between CIGI and York University/Osgoode Hall Law School will advance Ontario's capacity to deal with complex innovation and trade rights related to commercialization, investments, and regulations, as well as the impact of environmental law on trade and commerce.

The objective of the program is to build capacity in international law in Ontario, assisting government and business leaders in shaping the discussion regarding global issues and helping to establish a Canadian perspective on such issues. The program will contribute to scholarly work, policy development, and advanced research in the outlined disciplines, beyond the practice of law itself – to commerce and to public policy in a multilateral context.

To tackle the complexity of trade barriers, global competitiveness and the exchange of innovation across borders, the program will be developed towards graduate-level legal, as well as business-minded leaders and experts. The program will have the flexibility to study and teach current international issues like global and economic security, bilateral trade disputes and other areas of interest such as global environmental laws, bio-ethics, intellectual property, digital technology, and information technology laws.

The academic Executive Director position and nine Chairs will be modelled loosely on the Tier 1 CRC model.

It is expected that there will be considerable cross-fertilization among the professors based in Waterloo and those based in Toronto, including existing professors in law and related other disciplines at the University, as well as BSIA located on the CIGI Campus. Regular visits, satellite course and lecture delivery, and terms in residence will be encouraged to ensure an integrated interdisciplinary program that flourishes in both locations.

Academic Governance Framework

For the

York University – Centre for International Governance Innovation (CIGI) Collaboration Initiative

General Principles

1. The York University – CIGI Collaboration Initiative (the “Initiative”) envisages the appointment of ten Chairs in International Law, all of whom will be recognized as amongst the world’s leading scholars in their fields, and funding for 20 graduate students at York University. The Initiative is intended to foster independent, non-partisan research of the highest academic standard that will advance the public interest, including the creation of publicly accessible research, contributions to debate and public accountability for the expenditure of funds.
2. Both the University and CIGI (the “Parties”) have affirmed a shared commitment to academic freedom, academic integrity and institutional autonomy, and recognized that the University has exclusive decision-making authority with respect to the appointment of Chairs and over academic matters generally.
3. The Senate recognizes that the Initiative is aligned with the University’s most recent Academic Plan, particularly the Plan’s emphasis on research intensification, faculty complement and internationalization, and welcomes its contribution to scholarly work, policy development and advanced research.
4. Senate wishes to affirm its expectations and understandings regarding the Initiative and to establish appropriate mechanisms to ensure that it is implemented in a manner so that its full potential to contribute to the University’s mission is realized. Senate also wishes to fulfill its role and responsibility with respect to oversight of all academic policy matters in the University, and to ensure that the Initiative is implemented in a manner that fully respects academic freedom and the University’s institutional autonomy.
5. This Academic Governance Framework (the “Framework”) can only be amended by Senate according to its normal processes and in cases of any conflict or inconsistency between this Framework and any agreements between the University and CIGI, including the August 2011 Agreement, this Framework shall prevail.

University’s Exclusive Jurisdiction

6. For greater certainty, as between the University and CIGI, the University has exclusive jurisdiction over the setting of the University’s academic priorities, the recruitment or appointment of faculty, the renewal, tenure, promotion, or termination of faculty, the admission of students, the creation or revision of academic programs, the design of curricula, the issuance of degrees and all other matters relating to academic freedom and integrity. The Initiative does not, and shall not be construed or implemented in a manner so as to conflict with or derogate from, the University’s exclusive jurisdiction over all such matters, or from academic freedom and integrity.

7. In case of any doubt or dispute between the parties over whether a matter falls within the exclusive jurisdiction of the University, the view of the University shall prevail and no such doubt or dispute shall be submitted to any external body for review or determination.

Academic Freedom of Chairs

8. The Chairs will specialize in three areas of international law, namely, international economic law (including trade, investment and finance), international intellectual property law and international environmental law.
9. In addition to being appointed as a Chair in one of these three areas of international law, each Chairholder will hold a full-time faculty appointment at the University (a "Faculty Appointment"). The terms and conditions associated with such Faculty Appointment will in all respects be governed by applicable University policy, procedures, practices and legal agreements, and CIGI will play no role in relation to such Faculty Appointment, including in respect of tenure and promotion, academic freedom and academic integrity. For certainty, academic freedom includes the freedom to pursue academic research and to disseminate the results thereof without institutional interference or reprisal, including academic research that may criticize the Parties or a financial contributor. Academic freedom does not require neutrality, or preclude commitment, on the part of the individual. Rather, it makes such commitment possible.
10. Within the areas of research identified for each of the Chairs, Chairholders will determine their own research priorities or plans. The planning and design of a research project, collection of data, and analysis and dissemination of results shall be under the control of the Chair. In the conduct of their work, Chairs shall retain the right to share the results of their research with other academic researchers and to publish the product of their research without hindrance or delay. The intellectual property of Chairs, inclusive of their research findings, shall be defined by the normal rules and procedures of the University for the recognition and protection of such intellectual property.
11. The University will provide each of the Chairs with annual research funding to support their work as Chair, comparable to funding provided to Tier 1 CRCs. This annual funding will continue for so long as the individual occupies the Chair and be administered in accordance with the University's normal policies and procedures in this regard.

Establishment of Chairs

12. The Parties will jointly establish Chairs through the two-stage process described in the March 9, 2012 *Protocol Governing York-CIGI Chairs Allocation and Recruitment Process* (the "March 9 Protocol"). The Provost will issue a call for proposals to Deans of Faculties, inviting them to submit proposals for chairs to be appointed to their Faculty (or Faculties in the case of a cross-appointment) ("Proposals") and including the criteria that will be utilized in the assessment of Proposals. Each Proposal must include the following:
 - a. The proposed title for the Chair;

- b. A description of the research area to be pursued by the chair; and
 - c. A description of how the research area relates to one of the three areas of international law or themes that cut across these areas.
13. The Proposals will be reviewed and assessed in accordance with the criteria set out in the call for proposals.
14. The Provost will convene a pan-University review committee (the "University Review Committee"), that includes the Vice President Research and Innovation, the Vice Provost Academic, an Associate Vice President Research, and at least three senior scholars, (including at least one in each of the subject areas to be pursued through the program and including, if deemed appropriate by the University Review Committee, scholars holding academic appointments at other Ontario universities) to review the proposals submitted and make recommendations as to which Proposals should be proceeded with for recruitment.
15. The Provost will review the Proposals that have been recommended by the University Review Committee (the "Recommended Proposals") with the Steering Committee contemplated by the August 2011 Agreement between the University and CIGI and reach consensus on the Recommended Proposals to be proceeded with for recruitment.
16. In the event that not all the available Chairs are allocated through this initial process, additional allocation processes will be initiated by the Provost from time to time until such time as all the available Chairs have been allocated.

Recruitment and Appointment of Chairs

17. Chairs will be recruited and appointed through a merit-based recruitment process, governed by the University's normal collegial processes for the appointment of faculty and CIGI shall not have any decision-making role in the appointment or renewal of Chairs pursuant to this initiative.
18. Faculties that have been awarded Chairs through the allocation process described above will proceed to advertise for candidates. The Steering Committee may also authorize advertisements for the Chairs, and/or the program generally, provided that such advertisements conform to University requirements for such advertisements, and may submit names of potential candidates to be considered by Faculties for Chairs.
19. Each Faculty or department recruiting a Chair will create a shortlist of candidates to be interviewed for the Chair, in accordance with the Faculty's normal recruitment procedures. The file for each shortlisted candidate must include:
- a. An up-to-date curriculum vitae
 - b. A description of the proposed research program to be undertaken by the Chair; how it relates to the Proposal submitted by the Faculty; and how it relates to the areas of international law, or themes that cut across those areas, that provide the focus for the initiative; and

- c. At least 3 letters of reference written by established authorities in the field, at least one of which must be from an internationally recognized scholar who does not reside in the country in which the candidate is currently working.

20. The University Review Committee will establish an ad hoc committee of independent scholars (the "Expert Panel") all of whom will be:

- a. internationally recognized scholars and experts in international law in one or more of the relevant subject areas; and
- b. at arms-length (as that term is defined for purposes of the Canada Research Chairs Program) from York University, its officers and directors; from CIGI, its officers and directors; and from all of the candidates on a proposed shortlist,

to evaluate and approve the shortlists. The University Review Committee may consult with the Steering Committee regarding the membership of the Expert Panel, but will not be bound by that advice.

21. Once the short list is approved by the Expert Panel the recruitment and appointment of the relevant Chair will be governed by the University's faculty recruitment procedures, and will be entirely within the discretion of York University. For certainty, the University may elect not to proceed with the shortlist as approved by the Expert Panel and may, at any point, elect to undertake a fresh search for the appointment.

Other Matters

22. Graduate students funded under the program will be subject in all relevant respects to the Faculty of Graduate Studies' and the University's requirements, rules and regulations in relation to graduate students, as amended from time to time.

23. Faculties and departments within the University will be encouraged to collaborate on the development of new, interdisciplinary academic initiatives in relevant areas, including the development of new curricula or programs, in order that the full potential benefit of the Initiative for York is realized.

Implementation and Oversight

24. The Initiative shall be implemented and administered in accordance with principles of transparency and accountability.

25. In furtherance of these principles, the Provost will regularly consult with and report to APPRC on all matters relating to the implementation of the Initiative, including, without limitation:

- a. Advance consultation with APPRC with respect to any issue relating directly or indirectly to a matter of academic policy falling within Senate's jurisdiction, prior to any decision or action being taken with respect to such issue;
- b. Advance consultation with APPRC with respect to any proposed amendments to, or the creation of
 - i. the August 2011 Agreement between the Parties;

- ii. the Protocol between Centre for International Governance Innovation and York University to promote and protect academic freedom (February 10, 2012);
- iii. the Protocol Governing York-CIGI Chairs Allocation and Recruitment Process (March 9, 2012);
- iv. any other binding agreements between the parties respecting the Initiative;
- c. Regular and timely tabling with APPRC of all minutes of meetings of the Steering Committee, and responding to questions that may be raised by APPRC arising out of such minutes;
- d. Consultation with APPRC with respect to any concerns or issues of any kind relating to academic freedom or institutional autonomy that may arise in the course of implementation of the Initiative.

26. APPRC shall report to Senate on the implementation of this Initiative at least annually.



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Memo

To: Lorne Sossin, Dean
Osgoode Hall Law School

AND

Professor Neil Brooks, Chair
Osgoode Hall Faculty Association

From: Gary Brewer, Vice-President, Finance and Administration

Date: March 29, 2012

Subject: Re: Binding enforcement mechanism for CIGI initiative

A handwritten signature in black ink, appearing to read "Gary Brewer", written over the "From:" line.

I understand that concerns have been raised over the need for a binding enforcement mechanism in order to ensure that rights of Osgoode Hall faculty members are protected in the implementation of the CIGI collaborative initiative. I am writing to confirm that, in the event the initiative is implemented, the University is prepared to enter into a binding memorandum of agreement with the Faculty Association on the terms set out on the attached.

Please circulate this communication to all members of the Association as well as to any interested members of the law school community.



BINDING ACADEMIC FREEDOM ENFORCEMENT MECHANISM

March 28, 2012

The University and the Osgoode Hall Faculty Association (OHFA) (collectively “the Parties”) will enter into a binding memorandum of agreement to jointly establish a mechanism to resolve and determine any concerns over violations of academic freedom of members of the Association that may arise in the implementation of the York University CIGI collaborative initiative (the Initiative).

A three-person Academic Freedom Review Panel (the Panel) will be established by the Parties as follows:

- One member of the Panel will be appointed by OHFA;
- One member of the Panel will be appointed by the University;
- The chair of the panel will be selected by the two initial appointees from amongst a list of names that has been agreed between the Parties.

The Panel will have jurisdiction to review, assess and determine any complaints that the academic freedom of a member of the Association has been violated in the implementation of the Initiative through the action or inaction of a member of the University administration. The Association or any member thereof may make a complaint to the Panel.

The Panel will establish rules of procedure that allow for a full and fair hearing of any allegations or concerns over academic freedom that may be raised by OHFA or any of its members.

In the event that the Panel finds that the academic freedom of any of the members of OHFA has been violated by the University in the implementation of the Initiative, it will have the power to make remedial orders in relation to the University that it deems appropriate, except that the Panel shall not have the power to change the collective agreement, to alter, modify, or amend any of its provisions, or render a decision that is inconsistent with the terms of the collective agreement.

Such remedial orders will be binding on the University.

Notice of Motion

Moved by Professors Gus Van Harten and Stepan Wood, **seconded** by Professor Jamie Cameron and Mr. Thomas Wilson, that

*Faculty Council **decides** that any potential involvement of Osgoode in the York-CIGI initiative be conditional on all of the Parties agreeing to, and making the initiative subject in all respects to, the floor of protections for academic freedom, academic integrity, and institutional autonomy that is represented by the "Protocol to safeguard academic freedom and integrity and to clarify terms of the collaboration between CIGI and Osgoode Hall Law School of York University" (the Osgoode Protocol), considered, and as amended, by Faculty Council on November 28, 2011.*

*Faculty Council **further reaffirms** that any participation of Osgoode in the York-CIGI initiative is conditional on the approval of Faculty Council.*

Rationale

The York-CIGI initiative lacks Faculty Council approval. This motion makes clear that the floor of protections for faculty, student, staff, and institutional interests, incorporated by Faculty Council as a condition of its time-limited approval of the initiative on November 28, 2011, remains the reference point for any further consideration of the initiative. The motion also reiterates that any participation by Osgoode in the initiative would require the approval of Faculty Council. The motion aims to be open to support both by those who are at this stage opposed to the CIGI initiative and by those who remain open to hearing further proposals so long as they do not fall below the floor of protections previously set by Faculty Council.

From September 2011 to February 2012, Faculty Council members considered at length various proposals for a collaboration with CIGI based on the Agreement signed by Mr. Jim Balsillie, Mr. Thomas Bernes, York President Mamdouh Shoukri, and Osgoode Dean Lorne Sossin in August 2011. Faculty Council did so based on its responsibility for matters of academic policy and programming at Osgoode. A purpose of this role of Faculty Council is to safeguard Osgoode's reputation as a scholarly institution. As an agent of the University, Dean Sossin acknowledged this role of Faculty Council by his statements to Faculty Council in the Fall of 2011 and by his submission of the initiative for approval by Faculty Council in November. Dean Sossin confirmed on March 16, 2012 that Faculty Council would determine ultimately Osgoode's degree of involvement in any York-CIGI collaboration.

Due to the non-endowment structure of the York-CIGI initiative and the influence it would give to CIGI over issues of academic policy, academic programming, faculty recruitment, and research, Faculty Council took steps to ensure that academic freedom, academic integrity, and institutional autonomy would be safeguarded were the initiative to proceed. To this end, a protocol was developed by Osgoode faculty members, many of whom worked directly in areas affected by the York-CIGI initiative. The protocol was intended as a constructive response and it entailed compromise on aspects of the initiative that had raised concerns among Osgoode

faculty and students, such as the setting by an external funder of institutional research priorities, the role in recruitment of an external review panel (see below), the ineligibility of Osgoode faculty to apply for Chairs, the offsite location of Chairs and programmatic activities, and the reduced teaching load of the proposed Chairs.

The Protocol that emerged from this process was adopted by Faculty Council on November 28, 2011 as a condition of its approval of the initiative and as a basis for unifying members of Faculty Council in support of the initiative, subject to: (a) robust safeguards of academic freedom, academic integrity, and institutional autonomy, and (b) assurances of the integrity of reforms to the initiative that were announced previously regarding the graduate program, the library, contingent liability, and other matters arising from documentation tabled by Dean Sossin at meetings of Faculty Council. The Protocol, as considered and amended by Faculty Council on November 28, 2011, is attached.

Discussions of the Protocol ensued from early-December 2011 to late-January 2012 between Dean Sossin, who was understood to be in communication with CIGI and the York Administration, and a panel of representatives of Faculty Council. The panel members, whose service is recognized and applauded, included five faculty members and one student. In early-January 2012, an amended version of the Protocol and associated documentation was recommended by the Faculty Council panel for approval by Faculty Council, subject to the resolution of outstanding issues related to dispute settlement and to the form of a proposed commitment by the University on contingent liability and student tuition. These amendments strengthened aspects of the protocol, incorporated modest alterations to its language, and enhanced commitments to protect student interests. Due to limited time at the Faculty Council meeting on January 9, 2012, this amended version of the Protocol was not put to a vote on its proposed approval by Faculty Council. Had it been adopted, further discussions would have followed about the proposed mechanisms to make CIGI's obligations enforceable in the courts or through binding arbitration, as outlined in reports of the Faculty Council panel. Even so, this version of the Protocol provides a further reference point for assessing the protections that would be required for the initiative to proceed at Osgoode. This version of the Protocol is also attached to this motion.

For reasons that remain unclear to Faculty Council, the initiative was withdrawn from Osgoode by the York Administration in January 2012. Since then, the Administration has issued new protocols and frameworks that were presented to the Senate Academic Policy, Planning, and Research Committee (APPRC). There has been insufficient notice of these documents to allow for a comprehensive analysis. However, the available documents clearly do not achieve the floor of protections contained in the Protocol of November 28, 2011 or address outstanding issues identified in the reports of the Faculty Council panel.

Finally, it should be recorded here that the role of CIGI members on the Steering Committee, as outlined in new protocols and frameworks publicized by the University, goes beyond what was reported to Faculty Council as agreed when Faculty Council passed the Protocol on November 28, 2011. In the Osgoode context, CIGI had expressed the concern that Osgoode might recruit

candidates for Chairs whose expertise did not fit within the broad subject areas of the initiative. In response, CIGI was understood to have agreed, consistent with the Osgoode Protocol, that the only adaptation to the usual Osgoode recruitment process would be as follows:

- the Osgoode faculty recruitment committee would select, in advance of its knowledge of any specific candidates for chairs, an external peer review panel;
- the external peer review panel would review the files of candidates for the sole purpose of confirming that they fit within the three general subject areas of the initiative; and
- this external peer review process would apply to all of the short-listed candidates for Chairs.

As mentioned above, this agreed adjustment to recruitment procedures was one of several compromises embedded within the Osgoode Protocol. However, all other roles of CIGI or the Steering Committee in relation to recruitment or appointment of faculty, as provided for in the York-CIGI Agreement, were precluded expressly under that Protocol.

Attachment No. 1
Osgoode Protocol as considered and amended by Faculty Council on November 28, 2011

**“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, service, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal the individual’s research, extramural, 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. In all respects, academic freedom is a general right of the academic and is not specific to or narrowly defined by a faculty member’s specific area(s) of expertise.
- 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.”

Attachment No. 2

Osgoode Protocol as reported to, but not voted on by, Faculty Council on January 9, 2012

**"Protocol to promote and protect academic freedom and academic integrity in the
collaboration between the CIGI and Osgoode Hall Law School of York University
January 5, 2012**

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, service, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal the individual's research, extramural, creative, or professional activities, and to freely publish and make public the results thereof; to criticize a contributor 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. In all respects, academic freedom is a general right of the academic and is not specific to or narrowly defined by a faculty member's specific area(s) of expertise.
- 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. "contributor" means any private or public actor, external to the academic partners, that contributes funds or other support 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;
 - o. "Steering Committee" means the Steering Committee referred to in clause 3(a) of the Agreement; and
 - p. "Terms of Reference" means the Terms of Reference for the program or centre (attached).
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 (including contributions to public debate and policy 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 the Government of Ontario and Mr. Jim Balsillie.

Principles of academic freedom and integrity

3. The parties recognize and agree that the success of the initiative depends on mutual trust and collaboration and on a shared commitment to ensure academic freedom, academic integrity, and the institutional autonomy of the academic partners. This includes the promotion and 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 contributor. CIGI, York University and Osgoode Hall Law School share a commitment to these principles and agree to implement rigorous safeguards to ensure that the initiative does not infringe academic freedom, academic integrity, or the institutional autonomy of the academic partners.
4. The parties agree that the academic partners shall have exclusive 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, and all other matters relating to academic freedom and integrity. The sole exception to this principle is the role that has been played by the parties and/ or contributors in setting the subject areas for the initiative as described in Schedule "A" to the Agreement.

5. The parties agree that the Steering Committee will play an advisory role in the development of the initiative, consistent with and limited by the terms of this protocol.
6. For greater certainty, any doubt in the interpretation of the Agreement, this protocol, or any other agreement or instrument relating to the initiative shall be resolved in favour of promoting and protecting academic freedom, academic integrity, and the institutional autonomy of the academic partners.

Academic policy and programming

7. The academic partners retain exclusive authority over all matters of academic policy and programming, determined as such in the sole and absolute discretion of Faculty Council, relating to the initiative. While it is expected that the Steering Committee will receive relevant information about decisions of Faculty Council, 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, notwithstanding 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 6, 8, 10, 24, or 25 of the Agreement.

Recruitment and appointment of faculty

8. All decisions related to the recruitment and appointment of faculty shall be taken based on the faculty recruitment processes of the academic partners. No contributor, and no party other than the academic partners, shall have any decision-making role in the recruitment and appointment of faculty. The role of a contributor or such party shall be limited to providing suggestions on the identification of candidates for recruitment, notwithstanding any provision in the Agreement including but not limited to clauses 4, 14, 17, and 25 of the Agreement.

Renewals of faculty appointments

9. 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. To ensure the promotion and protection of academic freedom, a contributor shall not 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

10. 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 contributor 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. A contributor shall not have any influence over any matter of academic freedom or integrity relating to the initiative, notwithstanding any provision of the Agreement including but not limited to clause 25 of the Agreement.
11. 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

12. 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.
13. 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.
14. Notwithstanding 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.
15. 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

16. 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 contributor on her or his academic freedom or integrity.

Collegial academic governance of the initiative

17. The process outlined in clauses 18 to 22 of this protocol is intended to ensure that: (a) the Executive Director is protected from any reasonable perception of improper influence by any contributor 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 this initiative, such as the Osgoode Intellectual Property Law & Technology Program (IP Osgoode), that are integral to the success of the initiative. A range of funding commitments in this respect are set out in the Terms of Reference. Decisions on the allocation of funding will be made by the Executive Director, consistent with the terms of this protocol and subject to the involvement and oversight of Faculty Council in the manner set out in the Terms of Reference.
18. 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.

19. The Executive Director shall provide an annual report to the Steering Committee on financial and administrative matters that are not matters of academic policy and programming. Pursuant to clause 3(a)(iv) of the Agreement, the Steering Committee shall

approve the annual budget for the program or centre as provided by the Executive Director. For greater certainty, any decision by the Steering Committee not to approve the annual budget shall require the unanimous approval of the members of the Steering Committee described in subparagraphs (b) and (c) of clause 4 of the Agreement. Such a decision shall be accompanied by written reasons and shall not be based on any grounds relating, directly or indirectly, to matters of academic policy or programming.

20. The Executive Director shall provide an annual report to the body referred to in clause 18 of this protocol on matters of academic policy and programming, including on research, teaching, and other scholarly activities relevant to the initiative, according to relevant rules and procedures approved by Faculty Council. Where there is an apparent overlap between the reporting mandates outlined in clauses 19 and 20 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 18 of this protocol.
21. 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 18 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.
22. 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 clause 5 of the Agreement, shall be comprised of globally recognized leaders in each of the three designated subject areas. The members of the Advisory Committee shall include no fewer than three faculty members of Osgoode Hall Law School, one in each of the three designated subject areas or analogous/ cross-cutting areas, to be selected by Osgoode Hall Law School.

Publication of this protocol and the initiative

23. 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

24. 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

25. 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, notwithstanding any provision to the contrary in the Agreement including but not limited to clause 21 of the Agreement.
26. In light of the shared goals of the parties to promote and protect academic freedom, academic integrity, and the institutional autonomy of the academic partners, and for greater certainty, the terms of this protocol shall prevail over any terms of the Agreement that are inconsistent with or otherwise limit, directly or indirectly, any provision of this protocol, including but not limited to clauses 3(a)(i) and 3(a)(ii) [concerning research agendas of individual faculty], clauses 3(a)(iii), 6(a), 6(c), and 22 [concerning appointment, renewal, and termination of faculty], and clause 3(a)(v).

Other provisions

27. 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.
28. 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.
29. [Dispute resolution mechanism to be determined].

30. This protocol incorporates the Terms of Reference, the terms of which are integral to and not inconsistent with the initiative and shall prevail according to clauses 25 and 26 of this protocol, subject in all respects to the terms of this protocol.

**Attachment 1 [to Attachment No. 2 of this motion]
Terms of Reference**

1. These Terms of Reference elaborate on aspects of the initiative outlined in the Protocol to promote and protect academic freedom and academic integrity in the collaboration between the CIGI and Osgoode Hall Law School of York University ("the protocol") and in the Agreement signed in August 2011 among the CIGI and York University (the Agreement). The Terms of Reference apply to the Centre for International Law in the Global Economy and to any other program or centre (the program or centre) that receives funding based on the terms of the Agreement. The Terms of Reference are subject in all respects to the terms of the protocol and the Agreement.

Collegial governance of Osgoode-allocated funds

2. 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.
3. 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 at Osgoode Hall Law School in the areas of the program or centre's activities.
4. The process for disbursement of funds referred to in clauses 2 and 3 of these Terms of Reference shall be approved by the body referred to in clause 18 of the 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, a process for 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

5. It is understood that any other funds, beyond those referred to in clauses 2 and 3 of these Terms of Reference and otherwise associated with the initiative, that flow to Osgoode will be used for the benefit of students and faculty at Osgoode Hall Law School for research and teaching purposes consistent with the subject areas and objectives of the program or centre, and that the disbursement of such funds will be at the discretion of the Executive Director, subject to the terms of the protocol and the Agreement. An important principle of the initiative is to enhance access to learning and educational opportunities for Osgoode students without increasing the tuition costs of students.

6. 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.
7. 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 18 of the protocol when making decisions about disbursement of such funds and shall provide an annual report to that body on the outcomes of such disbursement. 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 IP Osgoode, that are integral to the success of the initiative and that, pursuant to the mechanism referred to in clause 7 of these Terms of Reference, will receive substantial funding as well as other forms of recognition and support from the initiative.
8. 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 program or centre.

Other reforms to the initiative

9. The parties agree that the components of the initiative relating to Osgoode Hall Law School's graduate program, J.D. program, and library as set out below are compatible with the Agreement and are integral to the initiative, subject in all respects to the terms of the protocol.
10. 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.
11. The commitment to have the program or centre's activities fully funded from CIGI funds includes a commitment that there will be no negative impact on the resources of Osgoode Hall Law School's library, and that new services, licenses, collections, staffing needs, etc. will all be funded from the resources of the proposed program or centre, as needed.
12. Further to the input of the Osgoode Hall Law School Graduate Studies Committee, the following set of guiding principles will apply to the activities of the program or centre, and of faculty appointed pursuant to the initiative, relating to graduate legal education.
 - a. The establishment of the program or centre does not affect or diminish the Graduate Program Director and Graduate Studies Committee's ongoing

responsibility for all aspects of the Graduate Program currently under their jurisdiction.

- b. The establishment of the program or centre does not affect or diminish Osgoode Graduate Program's commitment to offer opportunities to obtain research based LLMs and PhDs in a wide range of specializations.
- c. The establishment of the program or centre does not affect or diminish Osgoode's commitment, in light of the external funding support for students associated with the program or centre, to balance out opportunities for higher levels of financial support among all students entering Osgoode's Graduate Program. This may include, among other initiatives, giving priority consideration for internal scholarship funds that are not tied to subject areas and objectives of the program or centre.
- d. The establishment of the program or centre does not affect or diminish Osgoode's commitment that the additional graduate spaces related to the initiative will not reduce the number of spaces available to domestic or international students applying to the program in other fields.
- e. Osgoode students who receive scholarships related to the initiative, including those students who are to be based in Waterloo, will be subject to all currently existing Osgoode Graduate Program requirements, including participation in required coursework, and study groups, at Osgoode.
- f. All Osgoode graduate faculty will be eligible to supervise all students, regardless of their funding source.
- g. Notwithstanding the location of their offices, faculty appointed pursuant to the initiative will be expected to participate in person in the teaching and supervision of graduate students at Osgoode.
- h. Osgoode will budget for anticipated additional expenses relating to additional costs of overhead and administration of the Graduate Program at Osgoode resulting from the program or centre, including the need to provide services to students who may be located primarily in Waterloo.

Attachment 2 [to Attachment No. 2 of this motion]

Agreement of August 2011

[see Faculty Council motion of November 28, 2011]"

Processes, Protocols, and the Ongoing Problem with the CIGI Agreement

I am on sabbatical and keen to leave the CIGI initiative behind. However, I am concerned by recent developments, especially the Dean's suggestion at Faculty Council on March 5 that Osgoode may yet proceed with the initiative at an institutional level and, secondarily, by Associate Dean Puri's report of her presentation to the Senate APPRC on behalf of Faculty Council.¹

I should make clear that I have no personal objection to colleagues taking part as individuals in the CIGI initiative. My concern lies at the institutional level. Here, I think the situation remains grave, especially if any steps are taken by the Dean that could trigger Osgoode's obligations as a whole under the Agreement with CIGI (the August Agreement).

1. A re-cap of the process

It may be helpful to recount, indeed celebrate, the Faculty Council process that preceded the protocol (see attached for relevant versions).

In early August 2011, we should recall, Dean Sossin signed the Agreement with CIGI and York without any prior consultation with Faculty Council. In this Agreement, Osgoode's name and degree-granting powers, among other things, were exchanged for the promise of money from CIGI. The money was non-endowment and the Agreement purported to give CIGI an unprecedented role, as an external funder, in academic matters at Osgoode.

A few weeks later, the Dean briefed faculty about the initiative. He spoke of it in laudatory terms but did not share the text of the August Agreement. Speaking personally, my reaction at the time was positive but, as I can now see, poorly informed of the details.

At our next Faculty Council meeting on September 12, Dean Sossin provided an overview of the initiative but again did not provide a copy of the Agreement. He reported that a public announcement of the initiative had been delayed because the election writ had been dropped.

On September 28, the August Agreement was distributed to Faculty Council. This was shortly before the minimum 2-working day deadline for notice of motions preceding our meeting on October 3. At that meeting, not before, the Dean announced to a packed house that a motion he had proposed to approve the initiative, based on the August Agreement, would be tabled for informational purposes only. It would be voted on, he said, at the next Faculty Council meeting. The initiative evinced a negative reaction from many colleagues, to put it mildly. The Dean indicated that it would be discussed further and would succeed only with broad and deep support.

On October 28, further documentation was offered by the Dean to Faculty Council. However, the project remained based on the original August Agreement, supplemented by assurances from the Dean and a short email from President Shoukri. There was no documentation directly from CIGI.

On October 30 (a Sunday), following a poll of faculty to assess support for the initiative, the Dean informed Faculty Council members that his motion to approve the initiative would not be put to a vote at Faculty Council on October 31. The next day, President Shoukri addressed Faculty Council and told us, among other things, that we needed to take risks by seizing the opportunity, but that he could not impose anything on a faculty. He answered questions. There was little time for subsequent discussion.

At this point, discussion of the initiative at Osgoode shifted to a discussion of the protocol, as I elaborate below. I have recounted this brief history in order to highlight aspects of the process by which the initiative was brought to Faculty Council prior to November 28. Those aspects include the following:

- Nearly two months passed between the signature of the August Agreement (let alone its negotiation) and the provision of the Agreement to Faculty Council.
- The process saw two false starts at Faculty Council, in that notice was given of a motion to approve the initiative but the motion was postponed by the Dean prior to a vote.
- The process involved the giving of various assurances by Dean Sossin in response to concerns of Faculty Council members, although none were made on paper by CIGI.

In summary, Dean Sossin signed the August Agreement without any prior consultation with Faculty Council, acknowledged after that he required Faculty Council approval for the initiative, and did not obtain such approval except on the terms laid out by Faculty Council on November 28.

With this in mind I turn to the much-ballyhooed protocol.

2. Background to the protocol

As many of you know, I was closely involved in developing the protocol that formed the basis for Faculty Council's conditional approval of the initiative on November 28. From an early stage, I had indicated my personal support for the initiative but became concerned after I read the August Agreement and reviewed various iterations of the associated documentation put forward by the Dean.

The protocol itself was drafted after a November faculty meeting about the initiative, at which Dean Sossin said that he now intended to seek Faculty Council's approval of the initiative in principle, based on the promise of an as-yet unresolved protocol. It is an open secret that I wrote the first draft of the subsequent protocol, after speaking with some colleagues, and that this draft was then revised in discussions among a group of faculty, most of whom worked in areas directly affected by the initiative. The protocol was intended overtly to bring us all together in support of the initiative, based on a process that had integrity, and it was pursued in response to

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Dean Sossin's assurances – as I and others understood them – that CIGI would support a strong protocol and that the initiative would not proceed at Osgoode without adequate protections.

This background and role of the protocol as a unifying vehicle is important to understanding the decision by Faculty Council on November 28. As those of us who attended the meeting on November 28 are aware, the protocol was lauded and applauded in what I would describe only half-jokingly as a “Kumbaya moment”. My understanding of the vote at the meeting was that it endorsed the protocol as a way to bring us together in support of the initiative, based on robust safeguards. I say this among other things because, in outlining the protocol to Faculty Council, I indicated that those who thought the protocol went too far (as well as those who opposed the initiative in principle) should not support the motion to approve the initiative based on the protocol. The point is not whether this statement affected anyone's vote but simply that broad support for the conditional approval of the initiative on November 28 was premised clearly on the approved protocol and on the process behind the protocol.

As such, contrary to what I understood to have been suggested by Associate Dean Puri at our Faculty Council meeting on March 5, the protocol was not associated with any division among Osgoode faculty or in the Osgoode community. Rather, it was the instrument that unified Faculty Council in support of an initiative that had caused widespread, enduring, and legitimate concern among a large number of colleagues. This point about the role of the protocol was emphasized to me on several occasions after the meeting. Much to my embarrassment, the protocol was even referred to as the “Van Harten protocol” and Professor Puri proposed good-heartedly at a later faculty meeting that she wanted to give me an informal award for “best protocol of the year”. I declined partly out of shyness, but also because I was worried that it was premature to celebrate an unsigned protocol. Even so, the clear impression we both shared was that the protocol would soon be signed and that the initiative could proceed on that basis.

As we all know, the protocol was not signed, in spite of the Faculty Council panel's efforts to tweak it in order to suit CIGI and York's preferences. Now York has withdrawn various benefits of the initiative from Osgoode and is proceeding with the initiative at the University level. This is its prerogative (and presumably that of Senate) and I recognize that it is not my role to judge the pros and cons for the University or other faculties. I also recognize that some aspects of the University-level initiative are as yet unclear.

However, the initiative could still have important impacts on Osgoode, including in matters of academic policy and programming, while the August Agreement remains in place and this issue is not addressed by recasting the initiative at the University level. Indeed, the fact of such impacts would be difficult to undo if Osgoode takes any steps to implement the August Agreement, including by disbursing CIGI funds, at the institutional level. The initiative remains based on the Agreement that the Dean signed (on behalf of Osgoode, or at least purportedly so to the extent that the initiative affects academic matters) which continues to refer to the use of Osgoode premises, admission of students into Osgoode programs, and the allocation

of Chairs to Osgoode. All of Osgoode's obligations under the Agreement thus remain potentially in play, as I assume the Dean Sossin is aware.

For these reasons, the Dean's casual and imprudent suggestion on March 5 of continued participation by Osgoode in the University-level initiative raises serious issues for Osgoode as an institution.

3. My concerns about any future Osgoode involvement based on York's version of the protocol

My immediate concern in light of this is that the University-level initiative is based on a version of the protocol that pales in comparison to the Osgoode protocol. For example, it falls well short of what the Faculty Council panel understood to have been agreed by CIGI and York, in the Osgoode context, as of early-January 2012. **More importantly, York's version of the protocol is clearly not the version that was approved by Faculty Council on November 28.**

Therefore, there appears to be no basis, moral or legal, for Osgoode to proceed with the initiative at an institutional level, where York's version of the protocol so clearly does not provide adequate safeguards that have been approved by Faculty Council. This is a major flaw in Dean Sossin's suggestion that Osgoode can continue its institutional involvement.

I assure you that I have no interest in participating in further processes to evaluate the new protocol or the implications of the University-level initiative. I and others have by now given hundreds of hours of voluntary time to this. Because I feel that I am in a somewhat unique position to do so, though, I feel that I should offer a few comments about the version of the protocol now relied on by York. My comments focus on a comparison of York's version to that developed at Osgoode (in its version both as approved by Faculty Council and as understood by the Faculty Council panel to have been agreed by CIGI and York in early-January).

In making these comments, I reply with respect to two perspectives on the University-level initiative that have been shared in public forums.

The first perspective is reflected by Associate Dean Puri's report to Faculty Council on March 5. In her report, Professor Puri indicated that, while acting as Faculty Council's representative to the Senate APPRC (which as I understood was asked to review, but not to approve in a formal sense, the University-level initiative¹), she expressed support for the initiative on the basis that she had concluded that York's protocol was sufficient to protect academic freedom, academic integrity, and institutional autonomy. This conclusion was reported to Faculty Council on March 5, after Professor Puri had conveyed her conclusions to the APPRC. Thus, the conclusion was not discussed or endorsed by Faculty Council before it was communicated to the APPRC by Faculty Council's representative on that committee.

¹ Incidentally, I also understand that the York Administration has said that the initiative is not subject to approval by York Senate or to the York Acceptance of Gifts Policy.

I respect Professor Puri as a colleague but feel obliged to say that I was surprised and disappointed by what I heard in her report. In my view, her report did not capture the role of the protocol in the deliberations at Osgoode or the extent to which York's version of the protocol falls short of the Osgoode standard. In her defence, I should stress that Professor Puri made her report to Faculty Council on short notice and did not have much opportunity to substantiate her comments about the protocol at Faculty Council.

The second perspective to which I reply has been attributed to York officials in recent media reports. The York Provost & VPA and the York Senate Chair have reportedly said that the University has negotiated a "new" and "binding" protocol to protect academic freedom and to address concerns raised by some Osgoode faculty.

With respect, I disagree with core aspects of both of the perspectives noted above. I say this recognizing that the University-level initiative may offer a somewhat different context from an Osgoode-centred initiative, although the underlying role of an external funder has not changed appreciably if the August Agreement remains in place and has not been superseded by a detailed and rigorous protocol. **Focusing on a comparison of the different versions of the protocol, it is abundantly clear that the protections relied on at the University-level fall well short of those contemplated by the Faculty Council panel, apparently agreed by CIGI and York in early-January, and approved by Faculty Council on November 28. It is not credible for us to pretend otherwise, as I shall elaborate briefly.**

4. Some elements of the York protocol that fall short of the Osgoode standard

There can be little doubt that York's protocol is derived from the protocol developed at Osgoode. It uses the same title and title-font and draws word-for-word on clauses contained in one or more versions of the Osgoode protocol. I am in a good position to know this, having been perhaps the only person who followed the process at Osgoode on the protocol from beginning to end, and having served for much of the Faculty Council panel's lifespan as its informal coordinator and spokesperson in the discussions with Dean Sossin, which were understood to be engaging positions of CIGI and York. To clarify, I speak here from a personal perspective and not for the panel, which is defunct.

It is clear that York's version is much-diminished from the Osgoode protocol (York's version has divided the protocol into two, but for simplicity I will speak of it in the singular). York's version omits a wide range of protections. These omitted provisions – of which CIGI and York presumably were aware when they signed York's version, having as the panel understood been party to weeks of discussions about the Osgoode protocol – dealing with all sorts of issues and protections. As a sampler, they include:

- *Omission of language recognizing Osgoode's and York's exclusive authority in all academic matters and Faculty Council's discretion to determine academic policy and programming.*

“The academic partners retain exclusive authority over all matters of academic policy and programming, determined as such in the sole and absolute discretion of Faculty Council” (Osgoode protocol, clause 7).

“The parties agree that the academic partners shall have exclusive 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, and all other matters relating to academic freedom and integrity” (Osgoode protocol, clause 7).

- *Omission of a comprehensive definition of academic freedom, laying out in detail the associated protected activities.*

The definition contained in the Osgoode protocol was based on language from the statement of principle in Article 10 of the YUFA-York Collective Agreement and was enhanced based on comments from Professor Cameron. See clause 1(a) of the Osgoode protocol.

- *Omission of language precluding a role for CIGI of other outside contributors in the recruitment of faculty or in the renewal of faculty appointments.*

“No contributor, and no party other than the academic partners, shall have any decision-making role in the recruitment and appointment of faculty. The role of a contributor of such party shall be limited to providing suggestions on the identification of candidates for recruitment...” (Osgoode protocol, clause 8).

“To ensure the promotion and protection of academic freedom, a contributor shall not have any role (including any role in making suggestions or in providing advice of any kind) in the renewal of any faculty appointment” (Osgoode protocol, clause 9).

- *Omission of language precluding influence by CIGI and other outside contributors over any matter of academic freedom or integrity.*

“A contributor shall not have any influence over any matter of academic freedom or integrity relating to the initiative, notwithstanding any provision of the [August] Agreement...” (clause 10, Osgoode protocol).

- *Omission of language requiring that the protocol be approved by Faculty Council and that any alterations of the approval protocol be approved by a super-majority at Faculty Council.*

See Osgoode protocol, clause 28.

- *Omission of a clause designed to prevent CIGI and York from entering into a confidential agreement to alter the protocol, unless such agreement was approved by a super-majority of Faculty Council.*

See Osgoode protocol, clause 23.

- *Omission of language adopting an interpretive presumption, in the event of a dispute relating to the initiative, in favour of academic freedom, academic integrity, and institutional autonomy.*

“For greater certainty, any doubt in the interpretation of the Agreement, this protocol, or any other commitments or instrument relating to the initiative shall be resolved in favour of promoting and protecting academic freedom, academic integrity, and the institutional autonomy of the academic partners” (Osgoode protocol, clause 6).

- *Omission of a clause requiring CIGI to continue to fund the initiative for a set period after notice of a dispute has been given by CIGI or York.*

See Osgoode protocol, clause 24.

- *Omission of provisions making clear that the protocol takes precedence over the August Agreement on which the initiative remains based.*

See Osgoode protocol, clauses 2 and 25-26. Among other concerns, the August Agreement continues to allow CIGI and other contributors to play a direct role in the “development of research areas” for faculty, in establishing “research plans and research support” for faculty, in making recommendations on the “appointment, renewal, and termination” of faculty, and in approving the budget of an academic centre or program associated with the initiative (August Agreement, clauses 3(a) and 9).

- *Omission of various provisions to ensure the integrity of other commitments made in the Osgoode context, such as financial supports for the library, graduate program, and undergraduate program.*

See Osgoode protocol, clause 8; Terms of Reference for Osgoode protocol.

I stress that this is a non-exhaustive outline of the many provisions that were contained in the Osgoode protocol but that do not appear in York’s version.

Perhaps not surprisingly, York’s version also does not address concerns expressed – shortly before benefits of the initiative were withdrawn from Osgoode – by the Faculty Council panel

that was tasked with discussing the protocol with CIGI and York. These concerns related mainly to changes proposed by CIGI or York. They included among others:

- Proposed changes that would have omitted language to make clear that York could enforce CIGI's obligations under the protocol "in the courts" or otherwise by binding adjudication. York's version now appears to rely on vague and circular language on this point, reiterating concerns about whether the protocol is binding and enforceable in any meaningful way.
- Proposed changes that would have omitted language to make binding a commitment by York to accept a supplementary enforcement mechanism, based on which a party independent of CIGI and York (such as the relevant Faculty Association or Faculty Council) could seek enforcement of CIGI's obligations in the event that York failed to do so. Even if York's version of the protocol is binding and enforceable, therefore, it appears to depend on the good faith of CIGI and York alone in this respect.
- Proposed changes that would have omitted language to preclude CIGI from blocking approval of the budget of the centre/ program established under the initiative (with the further implication under the August Agreement that CIGI could, by blocking the budget, cut off funding for the initiative as a whole; see clause 9 of the August Agreement). York's version of the protocol does not restrict CIGI's blocking power in this respect.

It falls to the Osgoode Administration to explain how the removal of these provisions can maintain an acceptable level of protections and assurances for the Osgoode community, let alone one that meets the threshold set by Faculty Council as a condition of its approval on November 28.

5. Conclusion

Based on this brief analysis, I suggest that York's version of the protocol falls well short of what was required by Faculty Council on November 28. The omission of a wide range of provisions weakens seriously the substantive and procedural protections in the Osgoode protocol. It worth recalling, with pride, that we developed the protocol to maintain our reputation in the scholarly community, to ensure the integrity of the assurances given to the Osgoode community during the Fall 2011, and to bring together the Osgoode community in support of the initiative so long as it incorporated robust safeguards.

In light of this, it is firstly the responsibility of the Osgoode Administration to explain how the initiative can proceed at an institutional level in the absence of each of the provisions omitted from York's version. For Dean Sossin to propose that Osgoode could go forward without such protections is difficult to understand. The history at Faculty Council must also at this stage raise doubts about the credibility of future assurances given to Faculty Council in relation to the initiative.

Secondly, it is the responsibility of the Osgoode Administration to demonstrate that it has Faculty Council approval before it proceeds with any implementation of the initiative. This is important because any implementation at the institutional level, including any disbursement of CIGI-originating funds, would presumably trigger Osgoode's obligations as a whole under the August Agreement.

This brings us back to where it began: the Dean's decision in August to sign the Agreement without prior consultation with Faculty Council. Because the Dean acted at that time without Faculty Council authority, because he has acknowledged since then that the Agreement raised matters requiring Faculty Council approval, and because he lacks Faculty Council authority, his proposal to continue with implementation would encroach on Faculty Council's role and authority over academic policy and programming and would exacerbate the institutional risks for Osgoode.

The only real difference between where this began and where we are now, as best I can tell, is that most of the promised benefits to Osgoode have been redistributed to other faculties or reverted to CIGI and we are presented with a hollowed-out protocol to make us feel cynical about the process.

The appropriate course of action, in my view, is for the Dean to make clear to CIGI and York that the initiative has not obtained the requisite approval by Faculty Council, that in the absence of such approval Osgoode can have no institutional association with academic matters arising from the August Agreement, and that references to Osgoode in the August Agreement or associated documentation should be removed.

**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.

ATTACHMENT A:

VERSION OF THE PROTOCOL AS ADOPTED BY OSGOODE FACULTY COUNCIL ON 28 NOVEMBER 2012

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.

ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012

Protocol to promote and protect academic freedom and academic integrity in the
collaboration between the CIGI and Osgoode Hall Law School of York University
January 5, 2012

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, service, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal the individual's research, extramural, creative, or professional activities, and to freely publish and make public the results thereof; to criticize a contributor 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. In all respects, academic freedom is a general right of the academic and is not specific to or narrowly defined by a faculty member's specific area(s) of expertise.
- 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. "contributor" means any private or public actor, external to the academic partners, that contributes funds or other support 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;

ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012

- 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;
 - o. "Steering Committee" means the Steering Committee referred to in clause 3(a) of the Agreement; and
 - p. "Terms of Reference" means the Terms of Reference for the program or centre (attached).
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 (including contributions to public debate and policy 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 the Government of Ontario and Mr. Jim Balsillie.

Principles of academic freedom and integrity

3. The parties recognize and agree that the success of the initiative depends on mutual trust and collaboration and on a shared commitment to ensure academic freedom, academic integrity, and the institutional autonomy of the academic partners. This includes the promotion and 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 contributor. CIGI, York University and Osgoode Hall Law School share a commitment to these principles and agree to implement rigorous safeguards to ensure that the initiative does not infringe academic freedom, academic integrity, or the institutional autonomy of the academic partners.
4. The parties agree that the academic partners shall have exclusive 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, and all other matters relating to academic freedom and integrity. The sole exception to this principle is the role that has been played by the parties and/ or contributors in setting the subject areas for the initiative as described in Schedule "A" to the Agreement.

ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012

5. The parties agree that the Steering Committee will play an advisory role in the development of the initiative, consistent with and limited by the terms of this protocol.
6. For greater certainty, any doubt in the interpretation of the Agreement, this protocol, or any other agreement or instrument relating to the initiative shall be resolved in favour of promoting and protecting academic freedom, academic integrity, and the institutional autonomy of the academic partners.

Academic policy and programming

7. The academic partners retain exclusive authority over all matters of academic policy and programming, determined as such in the sole and absolute discretion of Faculty Council, relating to the initiative. While it is expected that the Steering Committee will receive relevant information about decisions of Faculty Council, 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, notwithstanding 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 6, 8, 10, 24, or 25 of the Agreement.

Recruitment and appointment of faculty

8. All decisions related to the recruitment and appointment of faculty shall be taken based on the faculty recruitment processes of the academic partners. No contributor, and no party other than the academic partners, shall have any decision-making role in the recruitment and appointment of faculty. The role of a contributor or such party shall be limited to providing suggestions on the identification of candidates for recruitment, notwithstanding any provision in the Agreement including but not limited to clauses 4, 14, 17, and 25 of the Agreement.

Renewals of faculty appointments

9. 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. To ensure the promotion and protection of academic freedom, a contributor shall not 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

**ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012**

10. 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 contributor 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. A contributor shall not have any influence over any matter of academic freedom or integrity relating to the initiative, notwithstanding any provision of the Agreement including but not limited to clause 25 of the Agreement.
11. 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

12. 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.
13. 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.
14. Notwithstanding 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.
15. 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

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VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
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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

16. 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 contributor on her or his academic freedom or integrity.

Collegial academic governance of the initiative

17. The process outlined in clauses 18 to 22 of this protocol is intended to ensure that: (a) the Executive Director is protected from any reasonable perception of improper influence by any contributor 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 this initiative, such as the Osgoode Intellectual Property Law & Technology Program (IP Osgoode), that are integral to the success of the initiative. A range of funding commitments in this respect are set out in the Terms of Reference. Decisions on the allocation of funding will be made by the Executive Director, consistent with the terms of this protocol and subject to the involvement and oversight of Faculty Council in the manner set out in the Terms of Reference.
18. 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.

ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012

19. The Executive Director shall provide an annual report to the Steering Committee on financial and administrative matters that are not matters of academic policy and programming. Pursuant to clause 3(a)(iv) of the Agreement, the Steering Committee shall approve the annual budget for the program or centre as provided by the Executive Director. For greater certainty, any decision by the Steering Committee not to approve the annual budget shall require the unanimous approval of the members of the Steering Committee described in subparagraphs (b) and (c) of clause 4 of the Agreement. Such a decision shall be accompanied by written reasons and shall not be based on any grounds relating, directly or indirectly, to matters of academic policy or programming.
20. The Executive Director shall provide an annual report to the body referred to in clause 18 of this protocol on matters of academic policy and programming, including on research, teaching, and other scholarly activities relevant to the initiative, according to relevant rules and procedures approved by Faculty Council. Where there is an apparent overlap between the reporting mandates outlined in clauses 19 and 20 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 18 of this protocol.
21. 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 18 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.
22. 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 clause 5 of the Agreement, shall be comprised of globally recognized leaders in each of the three designated subject areas. The members of the Advisory Committee shall include no fewer than three faculty members of Osgoode Hall Law School, one in each of the three designated subject areas or analogous/ cross-cutting areas, to be selected by Osgoode Hall Law School.

Publication of this protocol and the initiative

23. 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.

**ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012**

Notice of any dispute and resulting termination of funding

24. 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

25. 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, notwithstanding any provision to the contrary in the Agreement including but not limited to clause 21 of the Agreement.
26. In light of the shared goals of the parties to promote and protect academic freedom, academic integrity, and the institutional autonomy of the academic partners, and for greater certainty, the terms of this protocol shall prevail over any terms of the Agreement that are inconsistent with or otherwise limit, directly or indirectly, any provision of this protocol, including but not limited to clauses 3(a)(i) and 3(a)(ii) [concerning research agendas of individual faculty], clauses 3(a)(iii), 6(a), 6(c), and 22 [concerning appointment, renewal, and termination of faculty], and clause 3(a)(v).

Other provisions

27. 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.
28. 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.

**ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOOD FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012**

29. [Dispute resolution mechanism to be determined].
30. This protocol incorporates the Terms of Reference, the terms of which are integral to and not inconsistent with the initiative and shall prevail according to clauses 25 and 26 of this protocol, subject in all respects to the terms of this protocol.

**ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012**

**Attachment 1
Terms of Reference**

1. These Terms of Reference elaborate on aspects of the initiative outlined in the Protocol to promote and protect academic freedom and academic integrity in the collaboration between the CIGI and Osgoode Hall Law School of York University ("the protocol") and in the Agreement signed in August 2011 among the CIGI and York University (the Agreement). The Terms of Reference apply to the Centre for International Law in the Global Economy and to any other program or centre (the program or centre) that receives funding based on the terms of the Agreement. The Terms of Reference are subject in all respects to the terms of the protocol and the Agreement.

Collegial governance of Osgoode-allocated funds

2. 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.
3. 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 at Osgoode Hall Law School in the areas of the program or centre's activities.
4. The process for disbursement of funds referred to in clauses 2 and 3 of these Terms of Reference shall be approved by the body referred to in clause 18 of the 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, a process for 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

5. It is understood that any other funds, beyond those referred to in clauses 2 and 3 of these Terms of Reference and otherwise associated with the initiative, that flow to Osgoode will be used for the benefit of students and faculty at Osgoode Hall Law School for research and teaching purposes consistent with the subject areas and objectives of the program or centre, and that the disbursement of such funds will be at the discretion of the Executive Director, subject to the terms of the protocol and the Agreement. An important principle of the initiative is to enhance access to learning and educational opportunities for Osgoode students without increasing the tuition costs of students.
6. The Executive Director shall develop and implement transparent, fair, and objective procedures specifying how faculty, post-doctoral appointees, students, and others can

**ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012**

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.

7. 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 18 of the protocol when making decisions about disbursement of such funds and shall provide an annual report to that body on the outcomes of such disbursement. 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 IP Osgoode, that are integral to the success of the initiative and that, pursuant to the mechanism referred to in clause 7 of these Terms of Reference, will receive substantial funding as well as other forms of recognition and support from the initiative.
8. 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 program or centre.

Other reforms to the initiative

9. The parties agree that the components of the initiative relating to Osgoode Hall Law School's graduate program, J.D. program, and library as set out below are compatible with the Agreement and are integral to the initiative, subject in all respects to the terms of the protocol.
10. 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.
11. The commitment to have the program or centre's activities fully funded from CIGI funds includes a commitment that there will be no negative impact on the resources of Osgoode Hall Law School's library, and that new services, licenses, collections, staffing needs, etc. will all be funded from the resources of the proposed program or centre, as needed.
12. Further to the input of the Osgoode Hall Law School Graduate Studies Committee, the following set of guiding principles will apply to the activities of the program or centre, and of faculty appointed pursuant to the initiative, relating to graduate legal education.
 - a. The establishment of the program or centre does not affect or diminish the Graduate Program Director and Graduate Studies Committee's ongoing responsibility for all aspects of the Graduate Program currently under their jurisdiction.

ATTACHMENT B:
VERSION OF THE PROTOCOL UNDERSTOOD BY THE OSGOODE FACULTY COUNCIL PANEL
TO HAVE BEEN AGREED BY CIGI AND YORK AS OF 5 JANUARY 2012

- b. The establishment of the program or centre does not affect or diminish Osgoode Graduate Program's commitment to offer opportunities to obtain research based LLMS and PhDs in a wide range of specializations.
- c. The establishment of the program or centre does not affect or diminish Osgoode's commitment, in light of the external funding support for students associated with the program or centre, to balance out opportunities for higher levels of financial support among all students entering Osgoode's Graduate Program. This may include, among other initiatives, giving priority consideration for internal scholarship funds that are not tied to subject areas and objectives of the program or centre.
- d. The establishment of the program or centre does not affect or diminish Osgoode's commitment that the additional graduate spaces related to the initiative will not reduce the number of spaces available to domestic or international students applying to the program in other fields.
- e. Osgoode students who receive scholarships related to the initiative, including those students who are to be based in Waterloo, will be subject to all currently existing Osgoode Graduate Program requirements, including participation in required coursework, and study groups, at Osgoode.
- f. All Osgoode graduate faculty will be eligible to supervise all students, regardless of their funding source.
- g. Notwithstanding the location of their offices, faculty appointed pursuant to the initiative will be expected to participate in person in the teaching and supervision of graduate students at Osgoode.
- h. Osgoode will budget for anticipated additional expenses relating to additional costs of overhead and administration of the Graduate Program at Osgoode resulting from the program or centre, including the need to provide services to students who may be located primarily in Waterloo.

ATTACHMENT C:

**YORK'S VERSION OF THE PROTOCOL AS PROVIDED TO
OSGOODE FACULTY COUNCIL MEMBERS ON 5 MARCH 2012**


Note: Another document, which deals with allocation and recruitment of Chairs, was provided to Osgoode Faculty Council members on 5 March 2012. It appears to form part of York's version of the protocol but has not been attached because it was marked confidential.

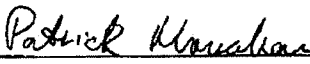
**Protocol between Centre for International Governance Innovation and York University to
promote and protect academic freedom
February 10, 2012**

1. This protocol elaborates on the Collaboration Agreement between the Centre for International Governance Innovation ("CIGI") and York University (the "University").
2. The parties recognize and agree that the success of the Initiative depends on mutual trust and collaboration and on a shared commitment to ensure academic freedom, academic integrity, and institutional autonomy. This shared commitment includes the promotion and 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 financial contributor.
3. The Steering Committee is accountable to ensure that this shared commitment guides its decision-making in all respects.
4. This commitment builds upon and incorporates the University's policies and protections relating to academic freedom, academic integrity and institutional autonomy, in addition to other applicable University policies relating to the recruitment of faculty, such as affirmative action.
5. The parties further share a commitment to these principles and agree to implement rigorous safeguards to ensure that the initiative does not infringe academic freedom, academic integrity, or the institutional autonomy of the parties. For greater certainty, and in light of this overarching commitment, the parties together undertake to:
 - (a) uphold the academic integrity, academic autonomy and academic freedom of the Chairs recruited through this program;
 - (b) implement a merit-based recruitment process for the Chairs, governed by York University's recruitment policies, procedures and practices, and analogous to the Canada Research Chair program with respect to the research and teaching responsibilities of the Chairs; and
 - (c) implement a merit-based selection process for the graduate scholarships governed by the University's admissions policies, procedures and practices.
6. The parties commit that all programs and initiatives relating to this collaboration will be independent, non-partisan and committed to the highest academic standards of research.

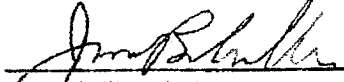
7. The parties commit that the activities undertaken pursuant to their collaboration will advance the public interest, including publicly accessible research, contributions to public debate and public accountability for the expenditures of funds.
8. This Protocol may be augmented from time to time by the mutual agreement of the parties.
9. This Protocol is incorporated into and forms part of the Collaboration Agreement and is binding and enforceable in accordance with its terms.


York University

Per: 
Mamdouh Shoukri, President and
Vice Chancellor, York University

Per: 
Patrick Monahan, Provost and
Vice President Academic, York University

Centre for International Governance Innovation

Per: 
Jim Balsillie, Chairman
Centre for International Governance
Innovation

Per: 
Thomas A. Bernes, Executive Director
Centre for International Governance
Innovation

York-CIGI Collaborative Initiative: Academic Governance Framework Consultations

Robert Everett

to:

Jinyan Li/osgoode, Michelle Berman/osgoode

03/29/2012 03:15 PM

Cc:

lawdean

Show Details

TO: Chair and Secretary, Osgoode Hall Law School Faculty Council
FROM: Robert Everett, Secretary, Academic Policy, Planning and Research Committee
DATE: March 29, 2012
RE: **York-CIGI Collaborative Initiative: Academic Governance Framework Consultation**
cc Dean, Osgoode Hall Law School

The communication that follows has been sent to all Senators and is in wider distribution. Aware of Osgoode's special interest, the Academic Policy, Planning and Research Committee asked that I make a point of drawing your attention to the draft academic governance framework, and inviting Council to comment.

Please feel free to contact me should you have any questions.

Attached to this note is a communication to Senators and other members of the University community from the Chair of Senate's Academic Policy, Planning and Research Committee inviting comments on a draft Academic Governance Framework for a York-CIGI collaborative initiative. A draft framework issued for the purpose of consultations is also attached. Please see the memorandum for further information on the initiative and time lines for the consultation.

Responses are invited by the end of the day on **Wednesday, April 4** and should be sent to APPRC's Secretary, Robert Everett (beverett@yorku.ca).

Memo

To: Senators and Members of the University Community

From: Alison Macpherson, Chair, Academic Policy, Planning and Research
Committee of Senate

Date: March 29, 2012

Re: **York-CIGI Collaborative Initiatives: Consultations on a Draft
Academic Governance Framework**

I am writing on behalf of the Academic Policy, Planning and Research Committee of Senate to invite comments regarding an academic governance framework for a collaborative initiative between York University and the Centre for International Governance Innovation in Waterloo. The initiative involves the funding of appointments at York in three areas of international law (economic, intellectual property, and environment), the appointees holding Chairs at CIGI, together with funding for twenty graduate students studying in these fields.

Senators were advised at the Senate meeting of March 22, 2012 that the Academic Policy, Planning and Research Committee had agreed to work with the Provost on an academic governance framework for the initiative. APPRC has now agreed to issue a draft academic governance framework for the purpose of consultation. It is attached to the e-mail conveying this memorandum.

It is intended that a framework be submitted by the Committee for Senate's endorsement at its meeting of April 26. In order to provide time to reflect on community input and prepare a recommendation for review by the Executive Committee of Senate, responses to this invitation must be received by the end of the day on **Wednesday, April 4**.

Many members of the University community are familiar with the agreement and protocols that relate to the York-CIGI collaborative initiative. The draft academic governance framework contains a significant substantive change in the procedures for the recruitment of Chairs (see clauses 20 and 21 of the consultation draft). Under the terms of a March 9 Protocol with CIGI, shortlists of candidates would be reviewed by CIGI and, in case of any dispute, the shortlist would be forwarded to an independent panel of experts. This aspect of the Protocol has attracted the greatest share of attention and concern in discussions about the initiative. In the draft framework, the procedures have been amended such that:

- there is no role for CIGI in relation to shortlists of candidates
- all shortlists will be automatically referred to an independent Expert Panel of scholars
- Expert Panels will be appointed by the University

The Provost has also called attention to other features of the draft framework:

- there is explicit recognition that the University has exclusive jurisdiction over all academic matters, including the recruitment or appointment of faculty, and the renewal, tenure, promotion or termination of faculty (clause 6)
- in case of any doubt as to whether a matter falls within the exclusive jurisdiction of the University, the University's view shall prevail and no such issue shall be submitted to any external body for review (clause 7)
- the academic freedom of chairs is expressly guaranteed, and there is a definition of academic freedom that is based on the definition in the Osgoode Protocol (clause 9)
- the right of Chairs to determine their own research plans and priorities, to conduct research, and disseminate the results thereof, are expressly protected (clause 10)
- chairs will be provided with annual research funding by the University that will continue for so long as they occupy the Chair (clause 11)
- this Framework takes priority over any agreements that have been entered into with CIGI (clause 5)
- the Provost must inform APPRC in advance of any proposal to amend, or enter into, an agreement with CIGI (clause 25(b))
- APPRC will have a significant oversight role with respect to the implementation of the agreement, with an annual reporting by APPRC to full Senate (clause 23).

APPRC is aware that Senate Executive will consider jurisdictional questions about the initiative. These matters will be taken up separately from consultations on the draft academic governance framework. The Committee welcomes your thoughts on the substance of the framework only.

All written submissions will be reviewed by APPRC. Please send your comments by April 4 to APPRC's Secretary, Robert Everett (e-mail address beverett@yorku.ca).

Academic Governance Framework

For the

York University – Centre for International Governance Innovation (CIGI) Collaboration Initiative

General Principles

1. The York University – CIGI Collaboration Initiative (the “Initiative”) envisages the appointment of ten Chairs in International Law, all of whom will be recognized as amongst the world’s leading scholars in their fields, and funding for 20 graduate students at York University. The Initiative is intended to foster independent, non-partisan research of the highest academic standard that will advance the public interest, including the creation of publicly accessible research, contributions to debate and public accountability for the expenditure of funds.
2. Both the University and CIGI (the “Parties”) have affirmed a shared commitment to academic freedom, academic integrity and institutional autonomy, and recognized that the University has exclusive decision-making authority with respect to the appointment of Chairs and over academic matters generally.
3. The Senate recognizes that the Initiative is aligned with the University’s most recent Academic Plan, particularly the Plan’s emphasis on research intensification, faculty complement and internationalization, and welcomes its contribution to scholarly work, policy development and advanced research.
4. Senate wishes to affirm its expectations and understandings regarding the Initiative and to establish appropriate mechanisms to ensure that it is implemented in a manner so that its full potential to contribute to the University’s mission is realized. Senate also wishes to fulfill its role and responsibility with respect to oversight of all academic policy matters in the University, and to ensure that the Initiative is implemented in a manner that fully respects academic freedom and the University’s institutional autonomy.
5. This Academic Governance Framework (the “Framework”) can only be amended by Senate according to its normal processes and in cases of any conflict or inconsistency between this Framework and any agreements between the University and CIGI, including the August 2011 Agreement, this Framework shall prevail.

University’s Exclusive Jurisdiction

6. For greater certainty, as between the University and CIGI, the University has exclusive jurisdiction over the setting of the University’s academic priorities, the recruitment or appointment of faculty, the renewal, tenure, promotion, or termination of faculty, the admission of students, the creation or revision of academic programs, the design of curricula, the issuance of degrees and all other matters relating to academic freedom and integrity. The Initiative does not, and shall not be construed or implemented in a manner so as to conflict with or derogate from, the University’s exclusive jurisdiction over all such matters, or from academic freedom and integrity.

7. In case of any doubt or dispute between the parties over whether a matter falls within the exclusive jurisdiction of the University, the view of the University shall prevail and no such doubt or dispute shall be submitted to any external body for review or determination.

Academic Freedom of Chairs

8. The Chairs will specialize in three areas of international law, namely, international economic law (including trade, investment and finance), international intellectual property law and international environmental law.
9. In addition to being appointed as a Chair in one of these three areas of international law, each Chairholder will hold a full-time faculty appointment at the University (a "Faculty Appointment"). The terms and conditions associated with such Faculty Appointment will in all respects be governed by applicable University policy, procedures, practices and legal agreements, and CIGI will play no role in relation to such Faculty Appointment, including in respect of tenure and promotion, academic freedom and academic integrity. For certainty, academic freedom includes the freedom to pursue academic research and to disseminate the results thereof without institutional interference or reprisal, including academic research that may criticize the Parties or a financial contributor. Academic freedom does not require neutrality, or preclude commitment, on the part of the individual. Rather, it makes such commitment possible.
10. Within the areas of research identified for each of the Chairs, Chairholders will determine their own research priorities or plans. The planning and design of a research project, collection of data, and analysis and dissemination of results shall be under the control of the Chair. In the conduct of their work, Chairs shall retain the right to share the results of their research with other academic researchers and to publish the product of their research without hindrance or delay. The intellectual property of Chairs, inclusive of their research findings, shall be defined by the normal rules and procedures of the University for the recognition and protection of such intellectual property.
11. The University will provide each of the Chairs with annual research funding to support their work as Chair, comparable to funding provided to Tier 1 CRCs. This annual funding will continue for so long as the individual occupies the Chair and be administered in accordance with the University's normal policies and procedures in this regard.

Establishment of Chairs

12. The Parties will jointly establish Chairs through the two-stage process described in the March 9, 2012 *Protocol Governing York-CIGI Chairs Allocation and Recruitment Process* (the "March 9 Protocol"). The Provost will issue a call for proposals to Deans of Faculties, inviting them to submit proposals for chairs to be appointed to their Faculty (or Faculties in the case of a cross-appointment) ("Proposals") and including the criteria that will be utilized in the assessment of Proposals. Each Proposal must include the following:
 - a. The proposed title for the Chair;

- b. A description of the research area to be pursued by the chair; and
 - c. A description of how the research area relates to one of the three areas of international law or themes that cut across these areas.
13. The Proposals will be reviewed and assessed in accordance with the criteria set out in the call for proposals.
14. The Provost will convene a pan-University review committee (the "University Review Committee"), that includes the Vice President Research and Innovation, the Vice Provost Academic, an Associate Vice President Research, and at least three senior scholars, (including at least one in each of the subject areas to be pursued through the program and including, if deemed appropriate by the University Review Committee, scholars holding academic appointments at other Ontario universities) to review the proposals submitted and make recommendations as to which Proposals should be proceeded with for recruitment.
15. The Provost will review the Proposals that have been recommended by the University Review Committee (the "Recommended Proposals") with the Steering Committee contemplated by the August 2011 Agreement between the University and CIGI and reach consensus on the Recommended Proposals to be proceeded with for recruitment.
16. In the event that not all the available Chairs are allocated through this initial process, additional allocation processes will be initiated by the Provost from time to time until such time as all the available Chairs have been allocated.

Recruitment and Appointment of Chairs

17. Chairs will be recruited and appointed through a merit-based recruitment process, governed by the University's normal collegial processes for the appointment of faculty and CIGI shall not have any decision-making role in the appointment or renewal of Chairs pursuant to this initiative.
18. Faculties that have been awarded Chairs through the allocation process described above will proceed to advertise for candidates. The Steering Committee may also authorize advertisements for the Chairs, and/or the program generally, provided that such advertisements conform to University requirements for such advertisements, and may submit names of potential candidates to be considered by Faculties for Chairs.
19. Each Faculty or department recruiting a Chair will create a shortlist of candidates to be interviewed for the Chair, in accordance with the Faculty's normal recruitment procedures. The file for each shortlisted candidate must include:
- a. An up-to-date curriculum vitae
 - b. A description of the proposed research program to be undertaken by the Chair; how it relates to the Proposal submitted by the Faculty; and how it relates to the areas of international law, or themes that cut across those areas, that provide the focus for the initiative; and

- c. At least 3 letters of reference written by established authorities in the field, at least one of which must be from an internationally recognized scholar who does not reside in the country in which the candidate is currently working.

20. The University Review Committee will establish an ad hoc committee of independent scholars (the "Expert Panel") all of whom will be:

- a. internationally recognized scholars and experts in international law in one or more of the relevant subject areas; and
- b. at arms-length (as that term is defined for purposes of the Canada Research Chairs Program) from York University, its officers and directors; from CIGI, its officers and directors; and from all of the candidates on a proposed shortlist,

to evaluate and approve the shortlists. The University Review Committee may consult with the Steering Committee regarding the membership of the Expert Panel, but will not be bound by that advice.

21. Once the short list is approved by the Expert Panel the recruitment and appointment of the relevant Chair will be governed by the University's faculty recruitment procedures, and will be entirely within the discretion of York University. For certainty, the University may elect not to proceed with the shortlist as approved by the Expert Panel and may, at any point, elect to undertake a fresh search for the appointment.

Other Matters

22. Graduate students funded under the program will be subject in all relevant respects to the Faculty of Graduate Studies' and the University's requirements, rules and regulations in relation to graduate students, as amended from time to time.

23. Faculties and departments within the University will be encouraged to collaborate on the development of new, interdisciplinary academic initiatives in relevant areas, including the development of new curricula or programs, in order that the full potential benefit of the Initiative for York is realized.

Implementation and Oversight

24. The Initiative shall be implemented and administered in accordance with principles of transparency and accountability.

25. In furtherance of these principles, the Provost will regularly consult with and report to APPRC on all matters relating to the implementation of the Initiative, including, without limitation:

- a. Advance consultation with APPRC with respect to any issue relating directly or indirectly to a matter of academic policy falling within Senate's jurisdiction, prior to any decision or action being taken with respect to such issue;
- b. Advance consultation with APPRC with respect to any proposed amendments to, or the creation of
 - i. the August 2011 Agreement between the Parties;

- ii. the Protocol between Centre for International Governance Innovation and York University to promote and protect academic freedom (February 10, 2012);
- iii. the Protocol Governing York-CIGI Chairs Allocation and Recruitment Process (March 9, 2012);
- iv. any other binding agreements between the parties respecting the Initiative;
- c. Regular and timely tabling with APPRC of all minutes of meetings of the Steering Committee, and responding to questions that may be raised by APPRC arising out of such minutes;
- d. Consultation with APPRC with respect to any concerns or issues of any kind relating to academic freedom or institutional autonomy that may arise in the course of implementation of the Initiative.

26. APPRC shall report to Senate on the implementation of this Initiative at least annually.