

## **CIGI-YORK INITIATIVE/ PROGRAM**

### **REPORT OF CONCERNS RAISED BY OSGOODE FACULTY**

**11 OCTOBER 2011**

A significant number of Osgoode Hall Law School faculty have raised concerns about a major CIGI-York Initiative that was disclosed to Osgoode faculty in late August 2011 and put before Osgoode Faculty Council at meetings in early September and early October 2011. This report provides a summary of these concerns and description of relevant information derived from the following documents, all of which were distributed to Faculty Council on 28 September 2011:

- the Agreement of 8 August 2011 among the Centre for International Governance Innovation (CIGI) and York University (“the Agreement”). This Agreement was signed, for York, by York President Mamdouh Shoukri and Osgoode Dean Lorne Sossin and, for CIGI, by CIGI Chairman Jim Balsillie and CIGI Executive Director Thomas A. Bernes.
- Memorandum of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council;
- Memorandum of 19 September 2011 from Osgoode Dean Sossin to York President Shoukri (cc York VP Academic & Provost Patrick Monahan); and
- Email of 28 September 2011 from York President Shoukri to Dean Sossin (cc York VP Academic & Provost Patrick Monahan).

Regarding this documentation, it is stated in the above Memorandum of 28 September 2011 from Osgoode Dean Sossin: “This proposal remains for internal Faculty Council circulation only and should be treated as confidential”. Dean Sossin subsequently clarified to Faculty Council that the documentation could be shared with other actors, internal to York, so long as they were aware of the confidentiality of the Initiative. It is understood based on recent communications with Dean Sossin that some or all of the Agreement and documentation underlying the Initiative may be subject to renegotiation or revision.

#### **Summary of the CIGI-York Initiative/ Program**

- Contribution of \$30 million by the Ontario government, subject to a matching contribution by Mr. Jim Balsillie, to York University for a collaboration between CIGI (Centre for International Governance and Innovation) and York University to establish “a world-class international law program”.
- All funds to be provided, not via a typical private endowment (or public funding) arrangement, but rather as a stream of quarterly advances from CIGI to York University for operating expenses incurred by York under the Agreement.
- 10 new CIGI-York Chairs to be appointed, including an Executive Director of the new program, who will be tenure-stream or tenured York (and presumably Osgoode) faculty.
- New program to be based at a CIGI facility in Waterloo; new Chairs to be located at least 2/3 in Waterloo and at most 1/3 at York.

- Primary decision-maker under the Agreement is a Steering Committee of five representatives: two from CIGI, two from York, and the Executive Director of the new program. Decisions of the Steering Committee require unanimous approval of the four CIGI and York appointees.
- An Advisory Committee of external experts is established to provide advice and recommendations to the Steering Committee. The structure and membership of the Advisory Committee is decided by the Steering Committee.

### **Summary of concerns raised by Osgoode faculty**

The following is a non-exhaustive descriptive summary of concerns raised by Osgoode faculty. It focuses on issue arising directly from the terms of the Agreement and other documents identified above.

- **Role of external funders in determining academic priorities.** As a condition of funding for the Initiative, York has agreed to provide external donors with a significant role in determining the research and teaching priorities of Osgoode (provision 3(a)(i) and (ii) of the Agreement).
- **Role of external donors in influencing academic appointments.** As a condition of funding, York has agreed to provide external donors with a significant role in the appointment of tenure-stream faculty and the designation of its academic priorities (provision 3(a)(iii) of the Agreement).

New Chairs will presumably be members of the Osgoode Hall Faculty Association or (potentially) the York University Faculty Association. Salary and other terms of employment will be decided by CIGI and York based on the recommendation of the Steering Committee (provision 13 of the Agreement) and not governed by the terms of employment that apply otherwise to OHFA/ YUFA members.

- **Limitations to the Agreement’s safeguards for University authority.** The Agreement includes a carve-out for the University’s “final authority” over appointments and academic programming (provision 6 of the Agreement). However, the Agreement makes this carve-out “subject to the terms of... this Agreement” and thus appears to prioritize specific rights of CIGI under the Agreement over the University’s final authority over appointments and academic programming.
- **CIGI right to participate in York/ Osgoode academic policy and programming.** The Agreement appears to put on York/ Osgoode an obligation to notify and receive recommendations from the Steering Committee and the Advisory Committee before reaching decisions on academic policy and programming (provision 6(c)(i) of the Agreement). Failure of the University to do so may constitute a material breach of the Agreement (see below).
- **Contingent liability to York/ Osgoode.** The salary and benefit costs of the CIGI-York Chairs will be covered primarily by external funding for a period of ten years, subject to any dispute with CIGI that led to withdrawal of funding under the Agreement. After the ten-year period, unless the Agreement is renewed, these costs will shift to York for the remainder of the Chairs’ employment as tenured faculty (provision 17 of the Agreement). Thus, the Agreement creates contingent liabilities for the

University for the salary and benefits costs of the new Chairs, all or most of which appear to fall upon Osgoode (Memo of 19 September 2011; Email of 28 September 2011).

- **Potential implications for academic autonomy and freedom.** There is an acknowledged tension within the Agreement between the mitigation of this contingent liability to the University and the offer of tenure-stream or tenured positions as a means to recruit candidates for Chairs (provision 17 of the Agreement). The resolution of the tension is unclear in the Agreement, making it possible that the tenure status of a Chair could be limited to mitigate the University's liabilities. There is no mention of academic autonomy or academic freedom in the Agreement.

It is also unclear how funds allocated for research activities, including Visiting Fellowships for non-CIGI Osgoode faculty, will be allocated and in particular whether such decision-making will be taken by established processes for collegial governance or by central administrators at CIGI, York, and/ or Osgoode.

- **Limited contribution of CIGI Chairs to the core Osgoode JD program.** New Chairs will receive course release. They will make "contributions" to the JD program (Memo of 28 September 2011, p. 5) but it seems doubtful that this will include significant teaching in high-enrolment JD courses or extensive service responsibilities. Finally, the Agreement also does not provide for any minimum number of faculty to be located at York; thus, at a complement of 10 Chairs, between 7 and 10 would be located in Waterloo.
- **Disbursement of funds to Osgoode.** Much of the funds for the Initiative will pay for salaries and benefits for Chairs and for graduate student scholarships. For remaining funds required to cover related costs to Osgoode, such as library and administrative costs, it is unclear how much of the remaining funds will be allocated directly to Osgoode and by what process.
- **Potential drain on existing resources in the Osgoode JD program.** An unspecified number of Visiting Fellowships will be offered to non-CIGI Osgoode faculty over the duration of the Agreement (Memo of 28 September 2011, p. 2). An implication of the Fellowships will be to draw such faculty away from teaching and administrative roles at Osgoode.
- **CIGI's leverage in the event of a dispute.** Based on the dispute settlement provisions of the Agreement, CIGI may withdraw funding in the event of an arbitrator finding a material breach of the Agreement by the University (provisions 26 and 34 of the Agreement). It is unclear from the Agreement what would constitute a material breach. For example, repeated failure by the University – including entities such as Osgoode Faculty Recruitment Committee or Osgoode Faculty Appointments Committee – to appoint individual candidates recommended by the Steering Committee could be characterized as a material breach of the Agreement.

Upon triggering the Agreement's dispute resolution process, CIGI would introduce the prospect of a withdrawal of funds schedule for future quarterly payments under the Agreement. The negotiations between CIGI and York over the dispute would thus take place in a context where, if a material breach was found, the University would absorb the salary and benefits costs of up to 10 existing Chairs recruited under the Program. Because CIGI funds are committed under the Agreement only after funds provided by the Ontario Government have been exhausted, a significant number of Chairs will likely have been appointed by the time of any dispute that might lead to the withdrawal of CIGI funding.

- **CIGI's leverage at the stage of renewal:** Any renewal of the external funding after the ten-year duration of the Agreement is dependent on the consent of CIGI (provision 13 of the Agreement). The negotiations between CIGI and York over renewal would thus take place in a context where, if the agreement was not renewed, the University would absorb the salary and benefits costs of up to 10 existing Chairs recruited under the Program.
- **Apparent intent to avoid processes of academic governance.** The Agreement does not mention York Senate or Osgoode Faculty Council. The Agreement's description of the Program as not being a "new program" and as not being an Organized Research Unit (ORU) at York suggests that the University is or was of the view that approvals are not required by Senate or Faculty Council (see provision 23 of the Agreement; Memo of 28 September 2011, p. 2).

Dean Sossin has since clarified to Osgoode Faculty Council that academic policy and programming aspects of the Agreement/ Program will be submitted for review and approval by Faculty Council (Memo of 28 September 2011, p. 2). On this aspect of York's governance process, the Agreement provides: "For greater certainty, in the event that any aspect of the operation of the Program requires approval by governing bodies within the University, the University undertakes to make best efforts to secure such approvals".

Further information and analysis regarding these concerns is attached (Appendix A). The underlying documents are also attached (Appendix B).

**CIGI-YORK INITIATIVE – REPORT OF CONCERNS RAISED BY OSGOODE FACULTY**

**APPENDIX A – DETAILED ANALYSIS**

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
Who entered into the Agreement?	The Agreement is signed, for York, by York President Mamdouh Shoukri and Osgoode Dean Lorne Sossin.		
What are the sources of external funding under the Agreement?	<p>The Agreement is signed, for CIGI, by CIGI Chairman Jim Balsillie and CIGI Executive Director Thomas A. Bernes.</p> <p><b>Preamble:</b> CIGI is “a non-share capital corporation incorporated under the laws of Canada...”</p> <p><b>19:</b> “It is acknowledged that CIGI is seeking funding from the Government of... Ontario in connection with the Chairs and the Program generally.... The University acknowledges that the undertakings of this Agreement... is conditional upon CIGI receiving an agreement from the Province... for Government Funding in the aggregate amount of approximately \$30 million and on terms acceptable to CIGI and upon agreement of a matching grant of \$30 million to CIGI by Mr. Jim Balsillie.”</p>	<p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 3: “The time pressure to conclude the Agreement over the summer came from the Ontario Government... By concluding the Agreement prior to the election campaign, the full commitment of the Government has been locked in.”</p>	<p>CIGI is a Canadian corporation the ownership of which is unclear from the Agreement, although presumably owned and/ or controlled substantially by Mr. Balsillie.</p> <p>It is unclear what terms have been required by CIGI for the \$30 million contribution by the Province. It is unclear what agreement has been reached between CIGI and Mr. Balsillie for the \$30 million matching funds.</p>
What role is CIGI given in determining academic priorities of York/ Osgoode?	<p><b>3(a):</b> The Steering Committee will have “primary responsibility... as follows: (i) The development of research areas for each Chair; (ii) Establishing the specific financial terms and expectations for each of the Chairs, including their research plans and research support”.</p>	<p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 1: “Under the terms of the Agreement, the program areas for the Centre will be international intellectual property, international environmental law, and international economic law including trade and investment law.”</p>	<p>It is unclear how the identified program areas fit within Osgoode’s existing academic program and how they relate to Osgoode’s existing teaching and research priorities.</p>
What role is CIGI given in recruiting CIGI-York Chairs?	<p><b>3(a):</b> The Steering Committee will have “primary responsibility... as follows: ... (iii) Making recommendations to the University regarding the appointment, renewal and termination of Chair candidates;”</p>	<p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 2-3: Additional information about how Osgoode recruitment processes would work under the Agreement are elaborated here.</p>	<p>It is unclear the extent to which further aspects of Osgoode’s recruitment processes could constrain the role of the Steering Committee without constituting a material breach of the Agreement (see below).</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
Who represents Osgoode on the Steering Committee?	<p><b>4(b):</b> “The University initially appoints its Dean of Law and the Chair of the Osgoode Faculty Recruitment Committee as its appointees to the Steering Committee”.</p>		Other than the University’s initial appointment decision, there is no indication of any process to ensure ongoing representation of Osgoode, including Faculty Council or its committees, in the recruitment process.
What is the process for the allocation of external funds?	<p><b>3(a):</b> The Steering Committee will have “primary responsibility... as follows: ... (iv) Approval of an annual budget for the Program (including all associated operational expenses) prepared by the Executive Director;”</p> <p><b>9:</b> “CIGI shall advance to the University, on each calendar quarter during the term of this Agreement an amount equal to one quarter of the budgeted cash requirement of the Program for the particular year....”</p>		<p>Unlike a typical private endowment arrangement, funds are advanced by CIGI on a quarterly basis and CIGI retains the primary responsibility for their operational use.</p> <p>It is unclear how the funds will be allocated and disbursed. How much, if any, will be available directly to Osgoode and what decision-making processes will govern allocation of such funds for distinct research, teaching, and administrative purposes?</p>
What authority does the University retain over academic affairs?	<p><b>3(a):</b> The Steering Committee will have “primary responsibility... as follows: ... (v) Subject to paragraph 6 and 14 hereof, all other aspects of the structure and operation of the Program from time to time other than matters related to academic programming.”</p> <p><b>6:</b> “The parties acknowledge that, <u>subject to the terms of this provision and this Agreement, generally</u>, the University will have the final authority with respect to decisions regarding the appointment or renewal of Chairs and with respect to all matters related to academic programming for the Program” [subject to further conditions outlined below].</p>		<p>It is unclear what it means for the University’s “final authority” over appointments and academic programming to be “subject to the terms of... this Agreement”.</p> <p>It is unclear whether the term “generally” refers to the terms of this Agreement or whether it qualifies the Agreement’s safeguarding of the University’s authority over these matters.</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
<p>What conditions attach to the University's "final authority" over appointments?</p>	<p><b>6:</b> "... the University acknowledges and agrees that: (a) It will only appoint or renew a Chair from amongst candidates that have been recommended to it by the Steering Committee..."</p> <p><b>6:</b> "... the University acknowledges and agrees that: (a) ... the Universities normal collegial processes for the appointment of tenure stream faculty will apply in respect of the appointment of Chairs..."</p> <p><b>6:</b> "... the University acknowledges and agrees that: (b) It is a condition of this agreement and this funding... that the Chairs be new appointments who will bring added strength and depth to the existing Osgoode faculty complement;"</p>		<p>New Chairs can be appointed only on the recommendation of the Steering Committee, are subject to the University's normal appointments process, and are tenure-stream or tenured faculty.</p> <p>Presumably the Chairs will become members of the Osgoode Hall Faculty Association (OHFA) or the York University Faculty Association (YUFA) as applicable, but not be subject to the same terms of employment as other members of the Association.</p>
<p>What conditions attach to the University's "final authority" over academic programming?</p>	<p><b>6:</b> "... the University acknowledges and agrees that: (c) On matters other than the appointment or renewal of Chairs, it will: (i) Consider the recommendations of the Steering Committee and the Advisory Committee <u>before arriving at its decisions</u> with respect to the above-noted matters; and (ii) Endeavour to be guided by the Objectives in arriving at its decisions with respect to the above-noted matters."</p>		<p>The provision appears to place on York/ Osgoode an obligation to notify and receive recommendations from the Steering Committee and the Advisory Committee before reaching decisions on academic policy and programming. Failure to do so may be a material breach of the Agreement (see below).</p>

<b>Issue</b>	<b>CIGI-York Agreement provisions</b>	<b>Other documents provided by Osgoode Dean Sossin</b>	<b>Notes</b>
<p>What provisions are in place for approval by York's academic governance processes?</p>	<p>There is no specific mention of York Senate or Osgoode Faculty Council in the Agreement.</p> <p><b>21:</b> “The parties acknowledge that in <u>undertaking the Program</u>, it will be <u>necessary or desirable</u> to establish a number of policies, guidelines, procedures, committees related to various aspects of the Program and the relationship of the parties and <u>other constituents involved in the Program</u>. The parties agree to work together to <u>establish the foregoing</u> in a manner that is consistent with the terms of this Agreement....”</p> <p><b>23:</b> “The graduate program and degrees offered by the law school in conjunction with the Program <u>will not be new programs....</u>”</p> <p><b>24:</b> “For greater certainty, in the event that any aspect of the operation of the Program requires approval by governing bodies within the University, the University undertakes to make best efforts to secure such approvals.”</p>	<p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 2: “This Centre will not be an Organized Research Unit (ORU) at York”.</p>	<p>It is unclear whether the “undertaking” of the Program by CIGI and York is intended to require initial approval of the Program by York Senate or Osgoode Faculty Council.</p> <p>It is unclear what the Agreement requires of CIGI and the University, working together “according to the terms of the Agreement”, to address “other constituents” in the Program.</p> <p>The description of the Program as not a new program, and as not an ORU at York, suggests the University is or was of the view that program approval is not required by York Senate or Osgoode Faculty Council. However, the Osgoode Dean has since clarified to Osgoode Faculty Council that academic policy and programming aspects of the Agreement/ Program do require approval of Faculty Council.</p> <p>The Agreement obliges the University to “make best efforts” to secure any required approvals by governing bodies within the University, but does not specify any what this might entail and does not specify any affected process or governing body.</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
<p>What financial cost/liability arises for York from the appointment of CIGI-York Chairs?</p>	<p><b>13:</b> “Each Chair shall be for a term of 10 years subject to renewal upon mutual agreement by the parties [i.e. CIGI and York].”</p> <p><b>16:</b> “The University shall contribute the following amounts to the Chairs: (i) the base faculty salary and related benefits costs associated with the tenure position for one of the Chairs.... (ii) An amount equal to \$1,000,000, in the aggregate, plus such greater amounts as the University is able to raise in respect of a second Chair. In this regard, the University agrees to make reasonable best efforts to raise an additional \$2,000,000 toward the funding of said Chair.”</p> <p><b>17:</b> “For greater certainty, the University shall be solely responsible for all costs associated with the tenure position granted to a holder of a Chair upon the conclusion of the Chair Term.”</p>		<p>The salary and benefit costs of the Chairs will be covered primarily by external funding for a period of 10 years, subject to any dispute with CIGI that leads to withdrawal of funding under the Agreement (see below). The University funds the salary and benefits costs of one Chair and a substantial amount of those costs for a second Chair.</p> <p>After the ten-year term, unless the Agreement is renewed, these costs will be borne by York for the remainder of the Chairs’ employment as tenured faculty.</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
<p>Within York, who bears financial cost/ liability arising from the appointment of CIGI-York Chairs?</p>	<p>No mention in the Agreement, which refers consistently to the University and does not break down the University into any of its constituent entities, such as Osgoode Hall Law School, York Senate etc.</p>	<p>Memo of 19 September 2011 from Osgoode Dean Sossin to York President Shoukri (cc York VP Academic Patrick Monahan): "... In the course of negotiating [the CIGI-York] Agreement, York University and Osgoode were motivated by a set of shared principles, including: .... <b>During the term of the Agreement</b>, the Osgoode-CIGI Initiative will not negatively impact Osgoode's ability to make in-budget academic appointments, and will not prejudice Osgoode's ability to compete for resources made available centrally by the University.... The University will make <b>all reasonable efforts</b> to ensure Osgoode's operations are not impaired by any contingent liability resulting from the Osgoode-CIGI Initiative...."</p> <p>Email of 28 September 2011 from York President Shoukri to Osgoode Dean Sossin (cc York VP Academic Patrick Monahan): "Thank you for your memo setting out our common understandings regarding the principles applicable to the partnership with CIGI...."</p> <p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 6-7: "York and Osgoode have agreed to work together to ensure those additional salaries do not have an unduly disruptive impact on Osgoode's budget. This approach may involve York providing bridge funding so that Ontario may absorb the additional salaries on a gradual basis."</p>	<p>It is unclear what funds, i.e. Osgoode or York funds, will be used to fund the salary and benefits costs for the two Chairs funded by the University.</p> <p>It is unclear the impact on fundraising activities that might be put to other purposes in order to satisfy the University's obligation to make reasonable best efforts to raise an additional \$2,000,000 toward one of these Chairs.</p> <p>The University has not made any clear and specific commitment to cover all or part of these liabilities to the Osgoode budget. At most, the available documents indicate that the York President and Osgoode Dean have "common understandings" that the "shared principles" motivating the negotiation of the Agreement include that York will make "all reasonable efforts" to ensure that Osgoode's operations are not impaired by any contingent liability.</p> <p>Further, the shared principle that the Initiative will not affect in-budget or University-funded appointments is in place only for the ten-year term of the Agreement.</p> <p>The Dean has also reported that the University will work with Osgoode to avoid "unduly disruptive" impact or, possibly, to provide bridge funding to Osgoode. It is unclear what share of the costs arising from the Chairs would be covered by such commitments. The option of bridge funding would appear to have implications for future faculty appointments at Osgoode.</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
<p>What is the potential impact on Osgoode's core JD program?</p>	<p>No mention in the Agreement.</p>	<p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 2: "... it is proposed that the Centre will sponsor a Visiting Fellowship for an Osgoode faculty member to spend a term at the Centre, with access to the same teaching release and research funding and a stipend as the Chairs located at the Centre".</p> <p>Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 5: "once hired, these faculty will also receive an appointment as a Chairholder and receive a separate stipend and course release pursuant to that role and for the duration of the Agreement..... During the term of the Agreement, the Chairholders will engage both in research and teaching. Their teaching will be focused on the graduate program but will include contributions to the J.D. program on the part of each Chair as well."</p>	<p>New Chairs will receive course release, which is understood to mean that they will not be required to teach in the core JD program.</p> <p>Although Chairs will make "contributions" to the JD program, this seems unlikely to include significant teaching in high-enrolment JD courses.</p> <p>It is unclear the number of Visiting Fellowships that will be offered to "non-CIGI" Osgoode faculty members over the term of the Agreement. An implication of Fellowships would be to draw such faculty away from teaching and administrative roles at Osgoode.</p> <p>It is unclear how Fellowships will be awarded and, in particular, whether decisions will be taken by established processes for collegial governance or by central administrators at CIGI, York, and/ or Osgoode.</p>

<b>Issue</b>	<b>CIGI-York Agreement provisions</b>	<b>Other documents provided by Osgoode Dean Sossin</b>	<b>Notes</b>
<p>What happens in the event of a dispute between CIGI and York?</p>	<p><b>26:</b> “ ... Subject to the dispute resolution provisions of paragraph 34, this <u>Agreement</u> may be terminated by CIGI or the University upon the material breach of any <u>representation or obligation under this Agreement</u> on the part of the other... which such Party has failed to remedy within ninety days after delivery of written notice requiring the breach to be remedied. Upon termination of the Agreement, all of the funds advanced by CIGI... that have not been used at the date of such termination shall be returned to CIGI. Each of the parties agrees to notify the other party of any facts that may reasonably give rise to a material breach of this Agreement by the party or may in the fullness of time reasonably give rise to such a breach forthwith upon becoming aware of such facts.”</p> <p><b>34:</b> “If a dispute arises relating to the performance of any part of this Agreement, the parties shall attempt to resolve any dispute first through direct negotiation. If the dispute cannot be resolved within twenty days... the dispute will be resolved by arbitration... by a single arbitrator who shall be appointed pursuant to the provisions of the <i>Ontario Arbitrations Act</i>.... The decision of the arbitrator shall be final and binding and not subject to appeal.... Each party will pay its own costs.”</p>		<p>CIGI may withdraw funding in the event that an arbitrator finds a material breach of the Agreement by the University.</p> <p>It is unclear what would constitute a material breach. For example, it is unclear whether repeated failure of the University – including such entities as Osgoode Faculty Recruitment Committee, Osgoode Faculty Appointments Committee, etc. – to appoint individual candidates recommended by the Steering Committee would give rise to a material breach of the Agreement.</p> <p>The University assumes an obligation to notify CIGI of “any facts” that may give rise to a material breach.</p> <p>Upon triggering the dispute resolution clause, CIGI introduces the prospect of a withdrawal of funds under the Agreement. The negotiations between CIGI and York over a dispute would thus take place in a high-pressure context where, if a material breach was found, the University would absorb immediately the salary and benefits costs of up to 10 existing Chairs associated with the Program.</p> <p>Because CIGI funds are employed under the Agreement only after Ontario Government funding is exhausted, a significant number of Chairs will have been appointed by the time of any dispute that might lead to withdrawal of CIGI funding.</p>

<i>Issue</i>	<i>CIGI-York Agreement provisions</i>	<i>Other documents provided by Osgoode Dean Sossin</i>	<i>Notes</i>
What is the process for renewal of external funding?	<p><b>26:</b> “The terms of this Agreement shall commence on the date hereof and shall terminate on the 10<sup>th</sup> anniversary of this Agreement. The parties may renew this Agreement by mutual agreement. ... the parties agree to make best efforts to determine by no later than the 8<sup>th</sup> anniversary of the date hereof whether they wish to extend the terms of this agreement.”</p> <p><b>13:</b> “The remuneration package and the term of employment for a Chair shall be as agreed to by the parties [i.e. CIGI and York] based on the recommendation of the Steering Committee.”</p>		Any renewal of the external funding after the ten-year term is dependent on the agreement of CIGI. The negotiations over renewal would thus take place in a context where, if the Agreement was not renewed, the University would absorb the salary and benefits costs of up to 10 existing Chairs associated with the Initiative.
How are the terms of employment for CIGI-York Chairs to be determined?		Memo of 28 September 2011 from Osgoode Dean Sossin to Osgoode Faculty Council, p. 5: “once hired, these faculty will also receive an appointment as a Chairholder and receive a separate stipend and course release pursuant to that role and for the duration of the Agreement.”	Salary and other terms of employment will be decided by CIGI and York, based on the recommendation of the Steering Committee. They will not be governed by the terms of employment that apply otherwise to members of OHFA/ YUFA. The employment-related implications of this aspect of the Agreement are not examined closely in this report.
What is the academic status of CIGI-York Chairs?	<p><b>14:</b> “ .. each of the Chairs will be considered for tenure at the University in accordance with the University’s tenure policy as it exists from time to time and... Chairholders will enjoy the customary rights and privileges associated with such an academic appointment.”</p> <p><b>17:</b> “ .. <u>the University may require reasonable provisions as part of Chair terms that are intended to mitigate such tenure obligations for the University without materially impairing the attractiveness of such Chairs to prospective holders of same.</u>”</p>		<p>There is clearly a tension between the mitigation of the above contingent liability to the University and the offer of tenure-stream or tenured positions so as to recruit candidates for the Chairs. The resolution of this tension unclear in the Agreement, making it possible that the tenure status of a Chair could be limited to mitigate the University’s liabilities.</p> <p>There is no mention of academic autonomy or academic freedom in the Agreement.</p>

**CIGI-YORK INITIATIVE/ PROGRAM – REPORT OF CONCERNS RAISED BY OSGOODE FACULTY**

**APPENDIX B – DOCUMENTATION**



To: Jinyan Li, Chair, Faculty Council

From: Lorne Sossin, Dean, Osgoode Hall Law School

Date: **September 28, 2011**

Subject: **Centre on International Law in the Global Economy – a Collaboration between Osgoode Hall Law School and the Centre for International Governance Innovation (CIGI)**

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On August 8, 2011, York University (York) and the Centre for International Governance Innovation (CIGI) entered into a Collaboration Agreement (attached as Appendix "A") to launch an International Economic, Environmental and Intellectual Property Law program through Osgoode Hall Law School (Osgoode). The purpose of this memo is to elaborate on the proposed "Centre on International Law in the Global Economy" (the "Centre")

## **1.0 Background**

The objective of the Centre is to build research and policy capacity in international law, and to bring together a new cluster of globally recognized scholars to Ontario. The Centre for International Governance Innovation (CIGI) is an independent, non-profit, non-partisan think tank on international governance. CIGI is not part of any University but has ongoing partnerships with several schools. CIGI was founded by Jim Balsillie (co-CEO of Research in Motion) in 2001. The mandate of CIGI is to support research, form networks, advance policy debate and generate ideas for multilateral governance improvements in program areas including the Global Economy, Environment and Energy Governance, Global Security and Global Development.

Under the terms of the Agreement, CIGI has agreed to provide funding for the creation of 10 Chairs (one of whom would also serve as Executive Director) for a period of 10 years in order to support the creation of the Centre. York University will also provide partial funding for 2 of the 10 Chairs. The Centre will provide annual funding for up to 20 Osgoode Graduate Scholarships (to include both LL.M. and Ph.D. scholarships for both domestic and international students in proportions to be determined by Osgoode).

Under the Agreement, the program areas for the Centre will be international intellectual property, international environmental law and international economic law including trade and investment law.

## **2.0 Strategic Priorities**

The Centre advances important aspects of Osgoode's strategic priorities, including:

- Advancing Osgoode's capacity to meet its goal of research intensification;
- Enhancing Osgoode's experiential learning offerings;
- Strengthening Osgoode's graduate program, particularly in the context of the recruitment of qualified international students, and developing new and innovative graduate courses and programs;
- Addressing the faculty/student ratio and associated faculty workload issues, which has been identified as a key barrier to Osgoode's success;
- Strengthening Osgoode's commitment to collaboration with partners who share our vision of progressive scholarship and teaching; and
- To be and be recognized as a leading law school with a global reputation.

### **3.0 Activities of the Centre**

The Centre will be an institutional home for the collaboration between Osgoode with CIGI. This Centre will not be an Organized Research Unit (ORU) at York. The Centre will house the Chairs and graduate students as discussed above. It will also put on a range of conferences, symposia, visiting lecturers and project, guided by the participating Osgoode faculty and under the leadership of the Centre's Executive Director (who will also be a Chair).

The Centre will pursue institutional collaboration with other Osgoode clusters of expertise which overlap with its core areas of interest, including the Hennick Centre, the Nathanson Centre, and IP Osgoode. The Centre will also lead research collaborations which draw together various existing Osgoode faculty in addition to the new Chairs. To facilitate this integration, it is proposed that the Centre will sponsor a Visiting Fellowship for an Osgoode faculty member to spend a term at the Centre, with access to the same teaching release and research funding and a stipend as the Chairs located at the Centre.

The Centre will also broaden Osgoode's network through new interdisciplinary linkages, including partners at York such as YCPPL, IRIS, etc, as well as with the Balsillie School of International Affairs (BSIA) and some of CIGI's fellowship holders and partners around the world.

The Centre will develop new experiential learning opportunities (either by expanding existing programs such as ILP or proposing new internships and programs) and curriculum in the areas of its coverage, with a particular focus on graduate education. Any new curricular initiatives from the Centre will be developed through APPC, the Graduate Studies Committee and any other appropriate governance mechanism. Where appropriate, however, the Centre will also expand the capacity and depth of the JD program in these areas, particularly through expanding existing research based learning opportunities and developing new ones, particularly settings which bring together graduate and JD students.

### **4.0 Governance**

The Agreement establishes a five-person Steering Committee for the Centre (two representatives from CIGI, two representatives from Osgoode and the Executive Director of the Centre, also an Osgoode faculty member, who will be a non-voting member on the Steering Committee). Steering Committee decisions must be unanimous among voting members.

The Steering Committee will also appoint an Advisory Committee which will assist both in framing the criteria for the Chairs, and raising the profile of the initiative. Osgoode will have a leading scholar from each of the three core areas of the proposed Centre on the Advisory Committee. While the Advisory Committee is intended to facilitate a flow of information and perspective between internal and external communities in the field, the Advisory Committee has no decision-making role.

The recruitment process for the Chairs will be governed by, and in practice controlled by, FRC. The Steering Committee will feed into a sub-committee of FRC established for recruitment of these Chairs, which will consider candidates who apply for the Chairs, or are identified through a proactive process. As with all sub-committees of FRC, it will be the sub-committee that vets all potential candidates and recommends to plenary FRC which candidates should go to Stage 2 and later, to Stage 3. Again, as with all FRC appointments processes, only those identified by the plenary FRC as meeting FRC's standards, pursuant to FRC's policies, will be advanced to either stage.

Pursuant to the Agreement between Osgoode and CIGI, candidates appointed to these Chairs have to be selected from among those candidates recommended by the Steering Committee. That is the formal source of the final shortlist. However, in practice and because of FRC's powers, the Steering

Committee can only recommend to FRC what FRC is already prepared to approve through its own processes. Through the Chair of FRC's membership on the Steering Committee during the recruitment phase of the Centre, and the unanimous nature of Steering Committee decision-making, in effect, the Steering Committee will only make recommendations that are consistent with FRC's direction including FRC's own preliminary determinations on the desirable shortlist that will have been conveyed to the Steering Committee. Once a short-list is identified (i.e. Stage 3), FRC will conduct its usual scrutiny and process to determine a recommended person for each Chair, who would then be ratified by FAC in the usual fashion prior to any offers being made.

The CIGI representatives on the Steering Committee do not have any "veto" over Osgoode's recruitment. Osgoode would be free to pursue recruitment of any candidate not recommended by CIGI's representatives on the Steering Committee, using other funding for appointments and the longstanding "special distinction" category within Osgoode's recruitment. By contrast, FRC does possess a "veto" with respect to these Chair appointments, as no Chair may be appointed at Osgoode whom FRC does not recommend, and whom FAC does not approve.

With respect to Osgoode's representatives on the Steering Committee, one member will be the Dean and it is proposed the other member be appointed through Faculty Council, although for the first three years, in light of the focus on recruiting the 10 Chairs, that representative should be the Chair of the Faculty Recruitment Committee. In this way, a member of the Steering Committee will act under the direction of and be accountable to the FRC during the recruitment phase of the Centre. Since, as noted above, all Steering Committee decisions must be unanimous, FRC will exercise oversight over the recruitment activities of the Steering Committee.

## **5.0 Timing**

The Agreement was signed on August 8, 2011. The time pressure to conclude the Agreement over the summer came from the Ontario Government. As a lead funder, the Government indicated if the Agreement could not be put in place by the end of August, the Government could not move on it prior to the election scheduled for October 6, 2011. By concluding the Agreement prior to the election campaign, the full commitment of the Government has been locked in.

The Agreement puts in place a framework for the development of the partnership and allows funding to flow in support of the Centre and its programs. The core elements of the Centre (the recruitment of Chairs and graduate students, the design of research and educational initiatives) all remain to be developed and will separately be subject to academic oversight.

While this agreement came together in a matter of weeks in August, 2011, Osgoode colleagues have had contact with CIGI for some time, and in fact some of those colleagues raised the potential for collaboration with CIGI on its international law proposal in the past. Those overtures helped lay the groundwork for this initiative.

## **6.0 Funding**

CIGI will receive \$30 million from the Government of Ontario and \$30 million from Mr. Jim Balsillie, co-CEO of Research in Motion, over the 10 year period, to support the proposed Centre.

The Centre will be fully funded, including related administrative and incidental costs. Funds will be transferred from CIGI to Osgoode to cover the full cost of the salary and benefits for the Chairs (subject to York's contributions), full scholarships for the participating graduate students, relevant staffing, research related costs including RA, IT and library resources, all of the overhead at the

new Waterloo facility, and program funding (for internships, conferences, research collaborations, visiting fellowships, etc).

In particular, concerns over the library resources have been raised. While it is premature to determine the full needs of the library in relation to the proposed Centre, the commitment to have the Centre's activities fully funded from CIGI funds includes a commitment that there will be no negative impact on the resources of the Library, and that new services, licenses, collections, staffing needs, etc, will all be funded from the resources of the proposed Centre.

While the precise level of annual funding will depend on some contingencies such as the level of Chair stipends, level of research activity in a given year, a full costing of the resource requirements of the new Centre both in its start-up and steady state stages, etc, it is estimated that the funding will be between \$5-6 million annually when the initiative is at steady state.

Pursuant to the Agreement, York has made the following financial commitments in the Agreement:

- York will provide the base faculty salary and related benefits costs associated with the tenure position for one of the Chairs as designated by the parties.
- York will provide an amount equal to \$1,000,000, in the aggregate, plus such greater amounts as the University is able to raise in respect of a second Chair as designated by the parties. York agrees to make reasonable best efforts to raise an additional \$2,000,000 toward the funding of said Chair.
- York will provide a reasonable contribution to operating costs and overhead of the Program. This refers to the provision of office space for those Chairs located on Osgoode's campus and related kinds of expenditures (computer, etc). It does not refer to additional staffing costs. Faculty assistants, for example, will be funded from the Centre's resources, as would additional resources needed to administer additional graduate programs or library resources, and so forth.

## **7.0 The 10 Chairs**

The Chairs would all be hired as tenured or tenure stream Osgoode faculty members, through the normal collegial process. Additionally, once hired, these faculty will also receive an appointment as a Chairholder and receive a separate stipend and course release pursuant to that role and for the duration of the Agreement. At the end of the 10 year period, if the Agreement were not renewed, the terms of the Chairs would end, although the Chairholders would continue to be members of Osgoode's faculty.

The subject area of the Chairs within the three pillars (international environmental law, international intellectual property law and international economic law) will be developed in a collaborative fashion with input from the Osgoode community as well as the Steering Committee and the Advisory Committee (each of which has Osgoode representation). Chair descriptions must be approved by Faculty Council upon proposal by the Faculty Recruitment Committee. This process is an opportunity to highlight the clusters of existing expertise which can be expanded and enhanced through this initiative – for example, a Chair in "Dispute Resolution in the Global Economy" would reflect a historic strength at Osgoode and enrich the proposed Centre's depth and breadth.

During the term of the Agreement, the Chairholders will engage both in research and teaching. Their teaching will be focused on the graduate program but will include contributions to the J.D. program on the part of each Chair as well.

Chairholders will also participate fully in Osgoode's governance (serving on Faculty Council committees, etc) and may also undertake other initiatives and leadership roles at Osgoode outside the Centre.

The Chairs, including the Executive Director, will be governed by Osgoode and York's academic oversight (Tenure and Promotions, etc) and will be subject to Osgoode and York's policies (from the equity provisions of our recruitment policy to protections relating to academic freedom).

The academic Executive Director position and nine other Chairs will be modeled loosely on the Tier 1 CRC model and this analogy may provide a useful guide for the development of the Chairs.

## **8.0 Location of the Centre**

The Osgoode-CIGI Centre on International Law in the Global Economy will be located at Osgoode and in a new facility adjacent to CIGI's campus in Waterloo, Ontario (approximately a 75 minute drive from Osgoode). That facility was opened in September, 2011, and also will house the Balsillie School of International Affairs, a collaboration between CIGI, the University of Waterloo and Wilfred Laurier University. Approximately 2/3 of the Chairs and 2/3 of the graduate students will have their primary office at the Waterloo facility.

The goal of the proposed Centre would be to create a seamless community of students, staff and scholars. This goal can be achieved through a mix of commuting (a handful of Osgoode faculty already live within a short distance of the Waterloo facility), technology (e.g. global classrooms bringing together people in the CIGI and Osgoode facilities), rotating faculty (e.g. Chairs spending time at each location rather than only one, etc) and collaborative initiatives (e.g. the Visiting Fellowship to be designated for an existing member of Osgoode's faculty).

## **9.0 Graduate Students**

Further to the input of the Graduate Studies Committee, a set of guiding principles will apply to the activities of the Centre and Chairs relating to graduate legal education. These principles are set out in Appendix "C" and address the following areas:

1. That the establishment of the 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.
2. Osgoode Graduate Program's commitment to offer opportunities to obtain research based LLM's and PhD's in a wide range of specializations.
3. Osgoode's commitment, in light of the external funding support for students associated with the Centre, to balance out opportunities for higher levels of financial support among all students entering the program. This may include, among other initiatives, giving priority consideration for internal scholarship funds that are not tied to subject areas in the CILGE priority areas.
4. Osgoode's commitment that the additional graduate spaces funded by CILGE will not reduce the number of spaces available to domestic or international students applying to the program in other fields.

5. That Osgoode students who receive CILGE scholarships, including those students who are to be based in Waterloo, will be subject to all currently existing program requirements, including participation in required coursework, and study groups, at Osgoode.
6. That all Osgoode graduate faculty will be eligible to supervise all students, regardless of their funding source.
7. That notwithstanding the location of their offices, CILGE Chairs will be expected to participate in person in the teaching and supervision of graduate students at Osgoode.
8. That Osgoode will budget for anticipated additional expenses relating to additional costs of overhead and administration of the Graduate Program at Osgoode resulting from the Centre, including the need to provide services to students who may be primarily located in Waterloo.

## **10.0 Review & Oversight**

To ensure the benefits of the Centre are being realized and to ensure contingent liabilities are addressed, it is proposed that the following Osgoode governance measures be instituted:

- 1) FRC will include in its annual report to Faculty Council a review of the recruitment of the Chairs;
- 2) A Report from the Graduate Studies Committee on the recruitment of graduate students funded through the scholarships made available through the Centre;
- 3) Once hired, the Executive Director will submit an annual report on the activities of the Centre to the Steering Committee. The Dean will table that report with Faculty Council; and
- 4) An ad hoc committee be appointed jointly by the Dean and Chair of Faculty Council to conduct a review of the Centre and the activities relating to this initiative after the completion of the 5<sup>th</sup> year of the Agreement (in the Spring of 2016) and to report to Faculty Council. A further review would take place after the 10<sup>th</sup> year of the Agreement (in the Spring of 2021) and if renewed, further reviews will take place at the end of each 5 year period.

## **11.0 The Future**

Assuming the Centre is successful, there is a very real likelihood that funding for the Centre will be renewed. In the event that the funding is not renewed after 10 years, or at whatever point subsequent to renewal in the future that the funding is discontinued, York University may have to assume the faculty salary portion of up to 8 Chairs (beyond the two Chairs York already will be supporting), should those individuals continue their appointments as Osgoode faculty members. This risk of contingent liability may be mitigated by a number of factors.

As a practical matter, some of those holding Chair appointments will choose not to stay at Osgoode once the Chairs are no longer available. Other senior scholars may be recruited as Chairs as a bridge to retirement. For the remaining Chairholders who do seek to remain on Osgoode's faculty after the funding for the Chairs is discontinued, York and Osgoode have agreed to work together to ensure those additional salaries do not have an unduly disruptive impact on Osgoode's budget. This approach may involve York providing bridge funding so that Osgoode may absorb the

additional salaries on a gradual basis.

The principles on which York and Osgoode will approach the University's obligations under the Agreement are set out in a memorandum from the Dean of Osgoode to the President of York attached as Appendix "B". The President has indicated his concurrence with the content of the memorandum. These principles represent a point of departure, not a full recitation of all the ways in which the University will help maximize the benefits and mitigate the risk associated with the proposed Centre.

Risk factors associated with graduate scholarships provided under the Agreement may be mitigated as well. For example, toward the end of the life of the Agreement, it will make sense to provide more Masters scholarships and fewer Doctoral scholarships so that funding obligations for those students will not continue past the life of the Agreement.

## **12.0 Conclusion**

This proposal represents an extraordinary opportunity for Osgoode to advance its strategic priorities. This proposal also comes with risks. With the structure and governance proposed, the benefits of this initiative can be maximized and the risks associated with it can be minimized.

As a public announcement of the funding collaboration is planned for later in October, it is hoped that Faculty Council will approve the establishment of the Centre as the institutional home for this new initiative. This proposal remains for internal Faculty Council circulation only and should be treated as confidential.

THIS AGREEMENT made this            day of 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")

WHEREAS CIGI and the University have agreed to collaborate with respect to the  
undertaking of a world-class international law program as more particularly described in  
Schedule "A" attached (hereinafter called the "Program"); and


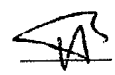

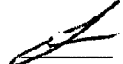
WHEREAS the parties have agreed to establish ten (10) chairs at the University  
(including a Chair granted to the Executive Director as hereinafter described) the holders of  
which will form part of the Program faculty (each such chair hereinafter called a "Chair" or  
collectively the "Chairs"); and

WHEREAS CIGI has agreed, subject to the terms and conditions of this Agreement, to  
make advances to the University, as more particularly described herein in support of the Chairs  
(hereinafter collectively called the "CIGI Advances");

NOW WITNESSETH that the parties hereby agree as follows:

**The Program**

1. The parties agree to collaborate with respect to the construction and operation of the  
Program in accordance with the terms of this Agreement. The parties agree that in their  
decision making they will be guided by the objectives for the Program as set out in  
Schedule "A" (hereinafter called the "Program Objectives").
2. The parties acknowledge that the Program shall be operated from two physical locations  
namely: (i) the new CIGI Campus building recently constructed by CIGI at its premises  
in Waterloo, Ontario ("CIGI Campus"); and (ii) at the premises of York University's  
Osgoode Hall Law School in Toronto, Ontario. The parties agree that they shall  
endeavour to ensure that at least 2/3 of the Chairs, any other faculty funded through the  
Program and students will be situated in Waterloo and that the balance will be situated in  
Toronto.
3. The parties agree to establish the following committees in connection with the  
establishment of the Chairs:

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- (a) A "Steering Committee". The primary responsibility of the Steering Committee will be as follows:
- (i) The development of research areas for each Chair;
  - (ii) Establishing the specific financial terms and expectations for each of the Chairs, including their research plans and research support;
  - (iii) Making recommendations to the University regarding the appointment, renewal and termination of Chair candidates;
  - (iv) Approval of an annual budget for the Program (including all associated operational expenses) prepared by the Executive Director; and
  - (v) Subject to paragraph 6 and 14 hereof, all other aspects of the structure and operation of the Program from time to time other than matters related to academic programming.
- (b) An "Advisory Committee". The Advisory Committee will act as an external expert advisory committee that will provide expert advice and recommendations to the Steering Committee and the parties hereto with respect to all matters related to the Chairs and the Program generally.

4. The "Steering Committee" shall consist of five members selected as follows:

- (a) The Executive Director of the Program as a nonvoting member of the committee;
- (b) Two members appointed by the University. The University initially appoints its Dean of Law and the Chair of the Osgoode Faculty Recruitment Committee as its appointees to the Steering Committee; and
- (c) Two members appointed by CIGI. CIGI initially appoints its Executive Director and its Vice-President Programs.

Decisions of the Steering Committee shall require the unanimous approval of the members described in subparagraphs (b) and (c) above.





5. The "Advisory Committee" The Advisory Committee will be composed of internationally recognized scholars and experts in the international law areas identified in Schedule A. The structure and initial membership of the Advisory Committee shall be as determined by the Steering Committee. In the event that a member of the Advisory Committee is unable to act in such capacity for whatever reason or if it becomes desirable to increase the size of the Advisory Committee, then the Steering Committee shall select a replacement for such member or additions to the Committee, as the case may be, in consultation with the remaining members of the Advisory Committee.
6. The parties acknowledge that, subject to the terms of this provision and this Agreement, generally, the University will have the final authority with respect to decisions regarding the appointment or renewal of Chairs and with respect to all matters related to academic

programming for the Program. Notwithstanding the foregoing, the University acknowledges and agrees that:

- (a) It will only appoint or renew a Chair from amongst candidates that have been recommended to it by the Steering Committee, guided by the Program Objectives, and recognizing that the University's normal collegial processes for the appointment of tenure stream faculty will apply in respect of the appointment of Chairs associated with the Program;
  - (b) It is a condition of this agreement and of the funding to be provided by the Government of the Province of Ontario and CIGI that the Chairs be new appointments who will bring added strength and depth to the existing Osgoode faculty complement; and
  - (c) On matters other than the appointment or renewal of Chairs, it will:
    - (i) Consider the recommendations of the Steering Committee and the Advisory Committee before arriving at its decision with respect to the above-noted matters; and
    - (ii) Endeavour to be guided by the Objectives in arriving at its decisions with respect to the above-noted matters.
7. The parties agree to recruit and appoint an Executive Director, consistent with the Objectives, to lead the Program and to undertake an annual assessment of his/her performance. The parties acknowledge and agree that the Executive Director's employment arrangement, including their remuneration and tenure entitlement, will be structured as one of the Chairs and that, therefore, the Executive Director's appointment must be approved by the University in accordance with the normal collegial processes governing the appointment of tenure stream faculty.
8. Subject to the terms and conditions of this Agreement and subject to the guidelines and policies established by the Steering Committee or the parties, from time to time, the Executive Director shall manage the Program generally. The Executive Director shall report to the Steering Committee with respect to the Program. The Executive Director shall also be obliged to prepare and provide to the Steering Committee quarterly financial reports that detail spending against the pre-approved annual budget consistent with the terms of this Agreement and the direction of the Steering Committee from time to time.

### **The CIGI Advances**

9. CIGI shall advance to the University, on each calendar quarter during the term of this Agreement an amount equal to one quarter of the budgeted cash requirement of the Program for the particular year (as set out in the Program annual budget approved by the Steering Committee for the particular year) less any balance in the Segregated Account and less any amounts designated by the parties as available for use in connection with the Program costs including the contributions of the University as set out in this Agreement. (for the purposes of this Agreement each such advance shall hereinafter be called a "CIGI Advance" or collectively the "CIGI Advances").

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10. The University shall use the CIGI Advances exclusively in the manner set out in this Agreement.
11. The University shall account for the unused portion of the CIGI Advances (and attribute all income earned thereon from time to time) separate and apart from its other property until it disburses same in accordance with the provisions of this Agreement (hereinafter called the "**Segregated Account**"). To the extent that it is reasonable to do so (having regard to the quantum in the account and the anticipated timing for the use of same), the University shall invest and thereafter reinvest all of the funds in the Segregated Account prudently and wisely. In making its investment decisions, the University shall not be required to comply with the provisions of the Trustee Act (Ontario) applicable to the investment decisions of trustees. The University agrees to provide CIGI with a periodic detailed accounting of all activity in the Segregated Account no less than once per calendar quarter.
12. The University covenants and agrees that no portion of the CIGI Advances or any amount earned thereon will be subject to any overhead charge, administrative fees or other charges by the University or any other person or entity.





#### The Chairs

13. Each Chair shall be for a term of 10 years subject to renewal upon mutual agreement by the parties (the "Chair Term"). The remuneration package and the term of employment for a Chair shall be as agreed to by the parties based on the recommendation of the Steering Committee.
14. The University acknowledges that each of the Chairs will be considered for tenure at the University in accordance with the University's tenure policy as it exists from time to time and that Chairholders will enjoy the customary rights and privileges associated with such an academic appointment.
15. While the holder of a Chair is situated at Waterloo, Ontario, CIGI shall make available to such Chair holder, at CIGI Campus, reasonably furnished and equipped office as well as secretarial and other administrative support that are reasonably appropriate having regard to the nature of the Chair and the seniority of the Chair holder. While the holder of a Chair is situated at Toronto, Ontario, the University shall make available to such Chair holder, at the University's premises, reasonably furnished and equipped office at its premises as well as secretarial and other administrative support that are reasonably appropriate having regard to the nature of the Chair and the seniority of the Chair holder. The cost to each of the parties for the foregoing will be considered as part of the Program operating cost.

**Funding for the Chairs and the Program**

16. The funding for each of the Chairs and the Program shall be derived from the following sources (and in the order set out below):
- (a) The University shall contribute the following amounts to the Chairs:
    - (i) the base faculty salary and related benefits costs associated with the tenure position for one of the Chairs as designated by the parties.
    - (ii) An amount equal to \$1,000,000, in the aggregate, plus such greater amounts as the University is able to raise in respect of a second Chair as designated by the parties. In this regard, the University agrees to make reasonable best efforts to raise an additional \$2,000,000 toward the funding of said Chair.
    - (iii) All tuition received by the University from students enrolled in the Program from time to time.
    - (iv) Any amounts received by the University from the Province of Ontario's Basic Operating Grant Program in respect of the Program.
    - (v) Reasonable contribution to operating costs and overhead of the Program, as contemplated by Paragraphs 15 and 18 or as otherwise agreed by the parties.





To the extent that the amounts described in paragraphs (iii) and (iv) that are received by the University exceed eligible costs of the Chairs for a particular period, then such excess shall be deposited into the Segregated Account and treated in the same manner as all other funds in such account.
  - (b) The balance of the funding for the Chairs and the Program shall be satisfied by funds in the Segregated Account. In the event that there is a shortfall, then CIGI agrees to make additional advances to the University to fund such shortfall as soon as reasonably possible after notice of a shortfall has been provided to CIGI (for the purpose of this Agreement any such advances will be treated as CIGI Advances).
17. For greater certainty, the University shall be solely responsible for all costs associated with the tenure position granted to a holder of a Chair upon the conclusion of the Chair Term. The parties acknowledge that the University may require reasonable provisions as part of Chair terms that are intended to mitigate such tenure obligations for the University without materially impairing the attractiveness of such Chairs to prospective holders of same.
18. The parties acknowledge that in order to attract outstanding students to the Program that, particularly in the early stages of the Program, it will likely be necessary or desirable to provide scholarships to students. The detailed strategy for such scholarships shall be as determined by the parties from time to time and the costs associated with such scholarships will be considered as part of the operating costs of the Program.

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



19. It is acknowledged that CIGI is seeking funding from the Government of the Province of Ontario in connection with the Chairs and the Program generally (for the purposes of this Agreement such funding including any renewal of such funding or replacement or similar funding provided by the Government of the Province of Ontario or the Government of Canada hereinafter called the "Government Funding"). The University acknowledges that the undertaking of this Agreement by CIGI is conditional upon CIGI receiving an agreement from the Province of Ontario for Government Funding in the aggregate amount of approximately \$30 million and on terms acceptable to CIGI and upon agreement of a matching grant of \$30 million to CIGI by Mr. Jim Balsillie.
20. The parties acknowledge and agree that, subject to the terms of the Government Funding arrangement, the following principles shall govern their relationship in respect of such funding:
- (a) The Government Funding shall be used in priority to the other sources of funding, as contemplated by this Agreement, to cover the costs of the Chairs and the Program generally;
  - (b) To the extent that the Government Funding has been exhausted, then the funding arrangements contemplated by this Agreement, and particularly paragraph 16 shall apply to the funding of the Chairs and the Program.

#### Miscellaneous

21. The parties acknowledge that in undertaking the Program, it will be necessary or desirable to establish a number of policies, guidelines, procedures, committees related to various aspects of the Program and the relationship of the parties and other constituents involved in the Program. The parties agree to work together to establish the foregoing in a manner that is consistent with the terms of this Agreement, the Program Objectives, and the underlying theme of consensus that is the basis for the within relationship.
22. Subject to the University's naming policies, the parties agree that the name for the Program, the Chairs and any scholarships created as part of the Program shall be as agreed to by the parties from time to time. The parties acknowledge that it may be desirable to refer to the Program as a "Centre" and agree in principle to such a reference provided that (i) such reference does not in any way alter the arrangements contemplated by this Agreement including, but not limited to the arrangements related to the structure, control and operation of the Chairs and the Program and (ii) any University policies regarding the use of the term "Centre" are complied with. It is further contemplated that the Chairs and the Program will collaborate and partner with existing Centres and Programs at Osgoode in areas of mutual interest.
23. The graduate program and degrees offered by the law school in conjunction with the Program will not be new programs. They will be Osgoode's existing graduate program leading to the University's LL.M., and Ph.D., in law.
24. For greater certainty, in the event that any aspect of the operation of the Program requires approval by governing bodies within the University, the University undertakes to make best efforts to secure such approvals.

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25. Each of the parties agrees to consult with and report to the other party, on regular basis (which for greater certainty shall be no less than quarterly) on all aspects of the Chairs, including potential hires, curriculum and other programming issues, scholarships, financial matters including fundraising, matters related to facilities or technology and all other matters related to the Program. The parties may, upon mutual agreement, agree to undertake such consultation and reporting through the Steering Committee.
26. The terms of this Agreement shall commence on the date hereof and shall terminate on the 10<sup>th</sup> anniversary of this Agreement. The parties may renew this Agreement by mutual agreement. In order to allow sufficient time for appropriate planning to take place, the parties agree to make best efforts to determine by no later than the 8<sup>th</sup> anniversary of the date hereof whether they wish to extend the term of this agreement. Subject to the dispute resolution provisions of paragraph 34, this Agreement may be terminated by CIGI or the University upon the material breach of any representation or obligation under this Agreement on the part of the other of CIGI or the University which such party has failed to remedy within ninety days after delivery of written notice requiring the breach to be remedied. Upon the termination of the Agreement, all of the funds advanced by CIGI to the University pursuant to the terms of this Agreement that have not been used at the date of such termination shall be returned to CIGI. Each of the parties agrees to notify the other party of any facts that may reasonably give rise to a material breach of this Agreement by the party or may in the fullness of time reasonably give rise to such a material breach forthwith upon becoming aware of such facts.
27. Notwithstanding any provision contained herein, the parties acknowledge that any party shall be entitled to seek such injunctive or other non-monetary equitable relief as may be appropriate with respect to a breach of any covenant contained herein.
28. In the event that any provision of this Agreement is invalid, unenforceable, or illegal, then such provision shall be severed from this Agreement and the Agreement shall be read as if the provision were not part of the Agreement.
29. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.
30. Except as otherwise required by law, the terms of all press releases or other public announcements or disclosure regarding the terms of this Agreement and the matters contemplated herein, including without limitation, all matters related to the operation of the Program, the Chairs or any scholarships created as part of the Program will be as agreed to by the parties from time to time acting reasonably.
31. Each party to this Agreement undertakes to act with reasonable diligence to carry out the transactions contemplated in this Agreement and will provide such further documents as may be reasonably necessary to effect the purpose of this Agreement and to carry out its provisions.
32. This Agreement shall enure to the benefit and shall be binding upon the parties hereto and their respective heirs, executors, administrators and successors.

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33. All notices, consents, requests, demands and other communications hereunder are to be in writing, and are deemed to have been duly given or made:

- (i) when delivered in person;
- (ii) three days after deposit in the Canada mail, first class postage prepaid certified mail, return receipt requested;
- (iii) overnight courier services, upon delivery by the overnight courier service with payment provided for; or
- (iv) in the case of telex, telecopy, fax or email, when sent, verification received; in each case addressed as follows:

To the University:





**Lorne Sossin, Dean  
Osgoode Hall Law School,  
York University,  
4700 Keele Street,  
Toronto, Ontario M3J1P3**

To CIGI:

**Thomas A. Bernes, Executive Director  
The Centre for International Governance Innovation  
57 Erb Street West,  
Waterloo, Ontario N2L 6C2**

A party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice must be sent to the party at its changed address.

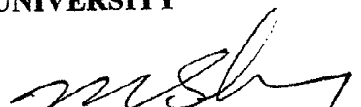
34. If a dispute arises relating to the performance of any part of this Agreement, the parties shall attempt to resolve any dispute first through direct negotiation. If the dispute cannot be resolved within twenty days of commencing such negotiation, the dispute will be resolved by arbitration conducted at the City of Toronto, Ontario by a single arbitrator, who shall be appointed pursuant to the provisions of the *Ontario Arbitrations Act, 1991*. The arbitrator shall be agreed upon by the parties within ten days of one party notifying the other parties that arbitration is desired. If the parties are unable to agree on a single arbitrator within this ten-day period, then the arbitrator will be selected upon application of any party to a judge of the Superior Court of Ontario sitting at Toronto, Ontario. The decision of the arbitrator shall be final and binding and not subject to appeal. The arbitrator shall be empowered to determine all questions of law and fact and may grant injunctive relief. Each party will pay its own costs.

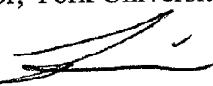
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35. Each of the parties hereby agrees to execute all such further documents and agreements as may be reasonably necessary or desirable to the terms of this Agreement and every part hereof.

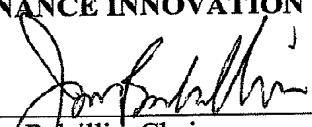
**IN WITNESS WHEREOF** the parties hereto have executed the within Agreement on the date first mentioned above.


**YORK UNIVERSITY**

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

Per:   
Lorne Sossin, Dean, Osgoode Hall Law  
School of 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.



**Lorne Sossin**  
Dean  
Osgoode Hall  
Law School  
Ignat Kaneff  
Building  
Room 2026  
York University

To: President Mamdouh Shoukri  
From: Lorne Sossin, Dean, Osgoode Hall Law School  
CC: Patrick Monahan, Vice President, Academic & Provost  
Date: September 19, 2011  
Subject: Agreement between York University and the Centre for International Governance Innovation (CIGI)

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On August 8, 2011, York University (York) and the Centre for International Governance Innovation (CIGI) entered into a Collaboration Agreement to launch an International Law program through Osgoode Hall Law School (Osgoode). The purpose of this memo is to clarify the relationship between the University and Osgoode in relation to this collaboration.

Under the terms of the Agreement, CIGI has agreed to provide funding for the creation of 10 Chairs (one of whom would also serve as Executive Director) for a period of 10 years in order to support the creation of a Centre on International Law in the Global Economy. The Chairs would all be hired as tenured or tenure stream York/Osgoode faculty members, through the normal collegial process, and these faculty members would also then receive an appointment as a Chair holder and receive a separate stipend and course release pursuant to their role as Chairholder. At the end of the 10 year period, if the Agreement were not renewed, the terms of the Chairs would end, although the Chairholders would continue to be members of Osgoode's faculty and appropriate planning for this possibility (ie. through planned retirements, or securing other sources of funding) would be required in advance. The academic Executive Director position and nine other Chairs will be modeled loosely on the Tier 1 CRC model.

The Centre on International Law in the Global Economy will be located in a new facility located adjacent to CIGI's premises in Waterloo, Ontario, where approximately 2/3 of the Chairs will be located.

The Agreement also envisions funds provided to York to support 20 graduate scholarships annually (for both Masters and Doctoral students, 2/3 of whom would be located in Waterloo), who would be either LL.M. or Ph.D. students in Osgoode's Graduate Program, and a range of conferences, symposia, visiting lecturers and projects (together, the "Osgoode-CIGI Initiative").

The funds flowing to York will come from CIGI pursuant to the Agreement. CIGI, in turn, will receive \$30 million from the Government of Ontario and \$30 million in matching funds from Mr. Jim Balsillie, co-CEO of Research in Motion, over the 10 year period to support this initiative.

Pursuant to this Agreement and the Osgoode-CIGI initiative, York has made the following commitments:

- York will provide the base faculty salary and related benefits costs associated with the tenure position for one of the Chairs as designated by the parties.

- York will provide an amount equal to \$1,000,000, in the aggregate, plus such greater amounts as the University is able to raise in respect of a second Chair as designated by the parties. York agrees to make reasonable best efforts to raise an additional \$2,000,000 toward the funding of said Chair.
- York will provide all tuition received by the University from students enrolled in the Program, and any amounts received by the University from the Province of Ontario's Basic Operating Grant Program in respect of the Program.
- York will provide reasonable contribution to operating costs and overhead of the Program.

In the event that the funding is not renewed after 10 years, or at whatever point subsequent to renewal in the future that the funding is discontinued, York University may have to assume the faculty salary portion of up to 10 Chairs, if those individuals continued their appointments as Osgoode faculty members.

The Chairs will receive an academic base salary, along with a stipend that will cease in the event that the Agreement is terminated or not renewed after the initial 10 year term. Therefore, it is likely, in the event of the termination of the Osgoode-CIGI Initiative, that a significant number of the 8 Chairholders whose salary York is not otherwise responsible for, will choose not to remain at York. That said, it is important to reiterate the principles by which York and Osgoode will deal with any financial consequences arising from the Initiative if one or more of those Chairholders chooses to continue their faculty appointment.

In the course of negotiating this Agreement, York University and Osgoode were motivated by a set of shared principles, including:

- The University and Osgoode will make all reasonable efforts to ensure the Initiative thrives and is renewed.
- Funds provided by CIGI to York pursuant to the Osgoode-CIGI Initiative will be provided to Osgoode to administer for the benefit of the Initiative.
- During the term of the Agreement, the Osgoode-CIGI Initiative will not negatively impact Osgoode's ability to make in-budget academic appointments, and will not prejudice Osgoode's ability to compete for resources made available centrally by the University (such as the Strategic Appointments allocated in 2010 and 2011).
- The University will make all reasonable efforts to ensure Osgoode's operations are not impaired by any contingent liability resulting from the Osgoode-CIGI Initiative.

The success of the Initiative will require the University and Osgoode to work together, consult and collaborate on the financial arrangements. The principles outlined above are not exhaustive but simply illustrative the commitment of the University and Osgoode to ensure those arrangements enhance the benefits and mitigate the risks and any contingent liability associated with this Initiative.

Should any of the above not accord with your understanding of the University's commitments, please advise.

From: Mamdouh Shoukri <mamshou@yorku.ca>  
To: Lorne Sossin/osgoode <L.Sossin@osgoode.yorku.ca>  
Cc: pjmon@yorku.ca  
Date: 09/28/2011 01:52 PM  
Subject: CIGI memo  
Sent by: Irene Fezza <ifezza@yorku.ca>

Dear Lorne,

Thank you for your memo setting out our common understandings regarding the principles applicable to the partnership with CIGI. I look forward to working with you and your colleagues to make this extraordinary opportunity a reality for Osgoode and York.

Mamdouh

Mamdouh Shoukri  
President and Vice-Chancellor  
York University  
Tel. 416-736-5200 Fax 416-736-5641  
mshoukri@yorku.ca  
[www.yorku.ca/president](http://www.yorku.ca/president)