



## Oversight Panel Policy

### 1. Purpose

The purpose of this policy is to provide guidelines for the creation, composition, process, and mandate of the Oversight Panel.

### 2. Policy Statement

Members of Council have a fiduciary obligation to the people of Six Nations. As such Members of Council owe a duty of obedience to duly passed decisions of Six Nations Elected Council. The Oversight Panel shall ensure that Members of Council adhere to the established rules governing their behaviour and conduct as a Member of Council.

### 3. Definitions

- 3.1 “Administration” – means the senior directors, managers and employees who carry out the activity of government under the direction of Six Nations Elected Council in the exercise of its powers and duties as delegated to its departments and programs
- 3.2 “Code” – means the *Code of Conduct for Members of Council*
- 3.3 “Conflict of Interest” – means a situation in which a Member of Council has an interest in a matter of a nature that is sufficient to influence, or be perceived to influence, the exercise of his or her public duties and responsibilities. This includes situations in which a Member of Council cannot be perceived as acting with integrity and in the community interest because he or she, or a Family Member, may derive a personal benefit from a decision being made by Council. Conflict of Interest does not include an interest in a decision that:
  - (a) is of general application,
  - (b) affects a Member of Council as one of a broad class of persons; or
  - (c) concerns the remuneration or benefits of a Member of Council
- 3.4 “Council” or “Six Nations Elected Council” – means, collectively, the Six Nations Elected Council consisting of the 12 duly elected district Councillors and the elected Chief.
- 3.5 “Family Member” – means:
  - (a) spouse, including but not limited to common-law spouse and same-sex partner;
  - (b) child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew;
  - (c) mother-in-law, father-in-law, sister-in-law and brother-in-law;
  - (d) step-mother, step-father, step-sister, step-brother and step-child; and
  - (e) child, mother or father in a relationship where the role of parent has been assumed, including step-children, foster children, adoption and customary adoption

- 3.6 “Member of Council” – means an individual district Councillor, or the Elected Chief, of the Six Nations Elected Council
- 3.7 “Panel” – means, collectively, the Oversight Panel as constituted by any three (3) Panelists in the fulfillment of its mandate in accordance with this policy.
- 3.8 “Panelist” – means an individual Six Nations Member who is interested and qualified to serve on the Oversight Panel, and whose name appears on the list of Panelists maintained by Human Resources.
- 3.9 “Six Nations Member” – means an individual whose name is registered on the Six Nations Band List

#### **4. Application**

- 4.1 This policy applies to Six Nations Elected Council, Members of Council, and its Administration.
- 4.2 This policy applies to all actions, processes, investigations, reports, findings, and other duly authorized undertakings of the Oversight Panel.

#### **5. Mandate**

The responsibilities and key functions to be carried out by the Oversight Panel include:

- 5.1 Operate Panel undertakings in an objective manner that promotes public confidence;
- 5.2 Investigate formal complaints regarding a Member of Council’s adherence to the Code of Conduct and any other applicable procedures, or policies governing the ethical conduct of Members of Council;
- 5.3 Make binding decisions for the discipline of Members of Council including imposing fair penalties when necessary;
- 5.4 Hear appeals on decisions;
- 5.5 Offer opinions on issues when required by Council and prepare an annual report for Council and the public;
- 5.6 Approve forms and procedures for the conducting of fair and impartial investigations;
- 5.7 Approve materials for the use of Members of Council and the public to better understand the ethical obligations and responsibilities of Members of Council;
- 5.8 Advise Council on amendments to the Code of Conduct and any other policies governing their ethical behaviour;
- 5.9 Determine the validity of complaints received using its best discretion and dismissing complaints that are, frivolous, vexatious, not within or a nuisance;
- 5.10 Encourage use of the Informal Complaint process; and
- 5.11 Refer matters not within its mandate to the proper authorities including referring:
  - (a) criminal or other illegal activities to the police; and
  - (b) Administrative, operational and personnel concerns to the Senior Administrative Officer.

## **6. Panel Structure**

### **6.1. Members**

- 6.1.1. The Human Resources Department shall be responsible to compile and maintain a list of Panelists of at least four (4) interested and qualified Six Nations Members.
- 6.1.2. Three (3) Panelists shall be randomly selected from the list to investigate formal complaints. All Panelists on the list will be eligible to participate in meetings not related to an investigation or appeal.
- 6.1.3. The Senior Administrative Officer shall ensure that appropriate staff members are designated to assist the Oversight Panel with any administrative, secretarial, and advisory functions.
- 6.1.4. The Oversight Panel may utilize the services of other staff through requests to the Senior Administrative Officer. The Senior Administrative Officer may direct staff to work with the Oversight Panel on a case by case basis after receiving a request, or may issue a standing directive to specific staff members to assist the Oversight Panel.

### **6.2. Term and Conditions of Panelists**

- 6.2.1. A Panelist shall remain on the list of Panelists indefinitely until that person is removed by a majority decision of the other Panelists, resigns his/her membership, or is otherwise unable to fulfill the obligations of their membership to the Oversight Panel.
- 6.2.2. Alternates are not allowed.
- 6.2.3. Panelists shall participate fully in Panel investigations, discussions, and deliberations.
- 6.2.4. A Panelist may only be removed during an investigation by a Six Nations Council Resolution upon the recommendation of the other two investigating Panelists.
- 6.2.5. A Panelist who is absent from two consecutive scheduled meetings of the Panel without just cause may be asked to resign. A Panelist who is absent from three scheduled meetings of the Panel in one year without just cause will be deemed to have resigned his/her membership on the Oversight Panel.
- 6.2.6. A Panelist must recuse him/herself whenever a real or perceived situation affecting his/her ability to be objective arises. This includes adherence to Conflict of Interest guidelines.
- 6.2.7. The Panel shall be paid an honoraria consistent with the following guidelines:
  - (a) \$50.00 per Panelist for initial classification meetings, workshops, reviews requested by Council, and any other single meetings; and
  - (b) In the event the investigation proceeds beyond the initial classification meeting an additional \$450.00 per Panelist for the performance of all necessary duties required to produce the final report.

## **7. Indemnity and Independence of Panel**

- 7.1 The Oversight Panel shall operate, and be seen to operate, as an independent branch of Council.
- 7.2 No person, including Administration staff, Council, or Members of Council, shall hinder, obstruct, delay, impede, or otherwise prevent the Oversight Panel from performing its mandate.

- 7.3 No person, including Administration staff, Council, or Members of Council, shall unduly influence, cause to be influenced, or attempt to influence the Oversight Panel in the exercise of its duties and powers.
- 7.4 All Members of Council and Administration staff shall fully participate and cooperate with the Panel and any Panel investigations.
- 7.5 Council will indemnify and save harmless the Oversight Panel from and against all losses, claims, damages, actions, causes of action, costs, and expenses or liabilities that may arise directly or indirectly out of any act, omission, or delay on the part of the Panel in the performance of its mandate provided that the Panel and Panelists are not negligent and operate in good faith. Such indemnity shall survive the repeal or revision of this policy for matters that occurred prior to the repeal or revision of this policy.

## **8. Integrity and Objectivity of Panelists**

- 8.1 Panelists must be Six Nations Members of good moral character with preference given to individuals who have experience with investigations, or legal and policy review.
- 8.2 Panelists must recuse themselves in every situation where a real or perceived Conflict of Interest exists.
- 8.3 Panelists shall be unbiased and determine each matter before them in a fair process that will bear public scrutiny.

## **9. Informal Complaints**

- 9.1 When an individual (including Six Nations Members, Council staff, or Members of Council) believes that a Member of Council has contravened the Code of Conduct or another policy governing their ethical behaviour, they are encouraged to attempt to address the issue in an informal manner as follows:
- (i) Advise the Member of Council that the behaviour or activity contravenes the Code of Conduct or another applicable policy;
  - (ii) Encourage the Member of Council to stop the prohibited behaviour or activity;
  - (iii) Keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
  - (iv) Advise an appropriate person (for example, another Member of Council or a senior staff member) about your concern, your comments to the Member of Council and the response of the Member of Council;
  - (v) If applicable, confirm to the Member of Council your satisfaction with the response of the Member of Council or, if applicable, advise the Member of Council of your dissatisfaction with the response: and
  - (vi) If necessary, consider the need to pursue the matter in accordance with the formal complaint procedure.
- 9.2 Individuals are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying prohibited behaviour or activity. However, it is not a precondition or a prerequisite that they pursue the informal complaint procedure prior to pursuing a formal complaint.

## **10. Formal Complaints**

- 10.1 When an individual (including Six Nations members, Administration staff, or Members of Council) has reasonable and probable grounds to believe that a Member of Council has contravened the Code of Conduct, or another policy governing the ethical behaviour of Members of Council, he/she may pursue a formal complaint. In order to be considered complete a complaint must:
- (a) be in writing;
  - (b) be signed by the complainant(s);
  - (c) set out the grounds for the belief and the alleged contravention;
  - (d) include facts that set out the evidence in support of the complaint (For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses);
  - (e) include contact information respecting the complainant during normal business hours;
  - (f) include a \$150.00 refundable deposit payable to Six Nations Council; and
  - (g) be submitted in a sealed envelope, marked 'Oversight Panel' to the Council Administration building.
- 10.2 Notwithstanding section 10.1(f), Council may, by Six Nations Council Resolution, refer a matter or submit a formal complaint to the Oversight Panel at no cost to Council.
- 10.3 All deposits will be refunded to the complainant, unless the Oversight Panel finds the complaint to be frivolous, vexatious, not made in good faith, or lacking sufficient grounds for an inquiry under section 11.7.
- 10.4 Formal complaints shall be filed by the staff member appointed by the Senior Administrative Officer to work with the Oversight Panel, who shall convene the Oversight Panel for an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct, or another policy governing the ethical behaviour of Members of Council, and not covered by other applicable legislation including but not limited to the Criminal Code, Six Nations laws and by-laws.
- 10.5 If the complaint is missing any of the required elements noted in 10.1 the complainant shall be advised in writing that the Oversight Panel shall not consider the complaint until such time as the required elements are provided. If the required elements are not received within 30 days the Oversight Panel shall dismiss the complaint
- 10.6 If the complaint is not, on its face, a complaint with respect to non-compliance with the Code of Conduct, or is not within the jurisdiction of the Oversight Panel, the complainant shall be advised in writing that the matter, or part of the matter, is not within the jurisdiction of the Oversight Panel, and shall include any additional reasons and referrals as the Oversight Panel considers appropriate.
- 10.7 If the complaint is, on its face, within the jurisdiction of the Oversight Panel the complainant shall be advised that the matter will be investigated.

## **11. Investigations**

- 11.1 Investigations shall be conducted by an Oversight Panel consisting of three (3) Panelists randomly selected from the list. The staff responsible for working with the Panel shall randomly select the Panelists for an investigation and convene the Panel when a formal complaint is submitted.
- 11.2 Complaints deemed by the Oversight Panel to be within their jurisdiction shall be investigated as follows:
- (a) The complaint and supporting material shall be provided to the Member of Council whose conduct is in question with a request that a written response to the allegation be filed within ten days.
  - (b) Upon receipt of a response from the Member of Council, provide a copy of the response to the complainant with a request for a written reply within ten days.
  - (c) After reviewing the written materials, the Oversight Panel may speak to anyone relevant to the complaint and examine any other documents relevant to the complaint for the purposes of investigation and settlement.
- 11.3 The Oversight Panel may make interim reports to Council as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- 11.4 The Oversight Panel shall submit a final report on the complaint to Council, no later than 90 days after the making of the complaint, outlining the findings, and if applicable a penalty decision.
- 11.5 The Oversight Panel may decide one or more of the following penalties:
- (a) a formal reprimand from Council;
  - (b) a written apology to anyone, including Council, that is satisfactory to Council; and
  - (c) up to a 90 day suspension of pay.
- 11.6 Notwithstanding 11.5, if the Oversight Panel finds that a Member of Council violated a policy that contains another specific penalty, the Oversight Panel may issue the penalty provided in that policy.
- 11.7 If at any point during the investigation, including the initial classification meeting, the Oversight Panel concludes that the complaint is frivolous, vexatious, not made in good faith, or that there are insufficient grounds for an inquiry, the Oversight Panel shall cease the investigation and shall state the reasons for doing so in a report to Council.
- 11.8 If at any point during the investigation the Oversight Panel, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code, the Oversight Panel shall immediately refer the matter to the appropriate authorities and suspend the investigation until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to Council.
- 11.9 If the Oversight Panel determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the Member of Council took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Oversight Panel shall so state in the report to

Council and shall impose no penalty.

11.10 Upon completion of the report the Oversight Panel shall present the report to the next In-Camera meeting of Council. The findings of the report including the penalty issued, as well as any resolutions passed in relation to the report, shall be released to the public upon adjournment of the meeting.

11.11 Council shall enforce all penalty decisions of the Oversight Panel.

## **12. Meetings**

The following rules will apply whenever the Oversight Panel holds a meeting for any purpose including voting on a final report, meeting with anyone involved with a formal investigation, or reviewing Oversight Panel procedures.

12.1 A Secretary shall be appointed by the Senior Administrative Officer to take the minutes of Panel meetings.

12.2 A quorum of three (3) Panelists shall be in attendance at any meeting of the Panel in order for the meeting to proceed for the purposes of conducting the affairs of the Oversight Panel.

12.3 No one may send a representative on their behalf to a Panel meeting.

12.4 If quorum is not reached within thirty (30) minutes of the scheduled starting time of the meeting, the Panelists in attendance shall cancel the meeting and shall set a new date for the meeting occurring as soon as possible.

12.5 If anyone who has been asked to meet with the Panel is not present within thirty (30) minutes of the scheduled starting time, the meeting may proceed in their absence.

12.6 Any individual attending a meeting of the Panel may bring an advisor. However, the advisor shall not be permitted to address or make submissions to the Panel.

## **13. Decisions**

13.1 The Panel shall try to achieve consensus on a decision prior to taking a final vote.

13.2 Decisions shall be made by consensus whenever possible.

13.3 If Consensus is not achieved, or not possible in a situation, the decision shall be made by majority vote.

## **14. Appeals**

14.1 If the Member of Council who was the subject of the complaint believes that the Panel erred in the interpretation or application of a policy or procedure they may submit a request for an appeal.

14.2 A complete request for an appeal must be submitted at the Council Administration building within 14 days of the Panel issuing its decision.

14.3 In order to be considered complete a request for an appeal must: In order to be considered complete a complaint must:

(a) be in writing;

(b) be signed by the Member of Council;

(c) clearly detail where the Member of Council believes the Oversight Panel erred in interpreting or applying one or more applicable policies and procedures and why this error affected the outcome of the original decision;

- (d) include contact information respecting the Member of Council during normal business hours;
  - (e) include a \$150.00 refundable deposit payable to Six Nations Council; and
  - (f) be submitted in a sealed envelope, marked 'Oversight Panel' to the Council Administration building.
- 14.4 Appeals will be heard by the Panelists that were not involved in the original decision.
- 14.5 The Panelists hearing the appeal may only consider whether the original Panelists correctly interpreted and applied applicable policies and procedures. They may not consider whether the penalty issued was appropriate.
- 14.6 When an appeal is submitted Council and individual who submitted the original complaint shall be provided notification that an appeal has been made and on what grounds that appeal is being made.
- 14.7 If the individual who submitted the original complaint wishes, they may submit a written response to the appeal within 7 days of the above notification being issued.
- 14.8 The Panelists hearing the appeal shall review the written submissions and issue a decision to the Member of Council, the individual who submitted the original complaint, and Council within 30 days of the submission of the appeal.
- 14.9 The Panelists hearing the appeal shall dismiss the appeal, and not return the appeal deposit, if they believe that the appeal was frivolous or vexatious.
- 14.10 The Panelists hearing the appeal shall dismiss the appeal, and return the appeal deposit, if they believe that the:
- (a) applicable policies and procedures were interpreted and applied correctly; or
  - (b) applicable policies and procedures that were not interpreted and applied correctly are not substantial enough to result in a change to the original decision.
- 14.11 If the Panelists hearing the appeal believe that applicable policies and procedures were interpreted and applied incorrectly they shall direct the original Panelists to reconsider their original decision using the proper interpretation of the applicable policies and procedures, and return the appeal deposit.

## **15. Communications**

- 15.1 The Oversight Panel will present Panel reports to Council for information.
- 15.2 The Oversight Panel shall attend meetings of Council when requested to do so.
- 15.3 The Oversight Panel, as a collective, may make public statements to the media in conjunction with Council policy when required and when appropriate to do so.
- 15.4 Before the end of the first quarter, the Panel shall prepare and present an annual report at an open meeting of Council detailing the activities of the Panel over the year.



## **16. Authorization**

- 16.1 This policy was approved by Six Nations Elected Council at the General Council meeting held on November 2, 2010 by SNCR No. GC#746/11/02/2010 to come into effect on the first day of the 55<sup>th</sup> General Council.
- 16.2 Amendments to this policy must be approved by a Council Resolution supported by two-thirds of the Members of Council in attendance.
- 16.3 The Panellists are delegated the authority to develop and approve administrative and operational procedures for the Oversight Panel consistent with this Policy and other applicable Council policies.