

# **Council of Chiefs – Disciplinary Process for Complaints Internal to the MCK**

## **Enacted by MCED #28 / 2021-2022**

### **Background**

The *Disciplinary Measures Regulations* [R.R.L. c. E-1 r.t], is the current policy that applies to the Mohawk Council of Kahnawà:ke (“MCK”) Council of Chiefs, with respect to the conduct of Council Chiefs. However, the *Disciplinary Measures Regulations* limits the availability of measures solely to community members, and specifically exempts complaints from fellow Chiefs and employees of the MCK.

To address gaps in governance policy and ensure there is comprehensive policy governing the processes and procedures of the MCK Council of Chiefs, the Council has directed for an MCK Governance Project. The MCK Governance Project will undertake to develop and implement operational and governance policy for the Council of Chiefs.

While this work is underway, and to ensure transparency, objectivity and good governance, the Council of Chiefs has further directed for the development of measures that should apply to situations where complaints or concerns of individual Council Chiefs’ conduct may arise from fellow Council Chiefs and/or employees of the MCK. At this time, the Council of Chiefs have directed that this policy be limited to complaints from employees.

#### **1. Conduct Subject to Disciplinary Action**

- 1.1 Council Chiefs may be subject to disciplinary actions for conduct which is inconsistent with the roles, responsibilities and expectations set out in official documents that pertain to the Council of Chiefs, including, but not limited to:
  - a. *Regulations for the operations of the Council of Chiefs*
  - b. *Administration guidelines for the Council of Chiefs*
  - c. *Oath of office*
  - d. *Terms of reference for Council Chiefs*
  - e. *Code of conduct*

#### **2. Independent Committee**

- 2.1 An independent committee (the “Committee”) comprised of three human resources specialists from Executive Directors Committee organizations (“EDC”), excluding MCK human resources specialists, will be formed in order to receive and address all complaints against Chiefs from employees of the MCK.
- 2.2 The Executive Director will be mandated to secure three human resources specialists from the EDC, as well as identifying two alternates in the case of conflicts or vacancies.
- 2.3 The Executive Director will ensure that this Committee will be renewed each electoral term.

### **3. Complaints**

- 3.1 A review of a Council Chief's conduct may be prompted by a complaint formally filed by an employee of the MCK, to the attention of the Committee.
- 3.2 Complaints received by the Committee, must clearly identify the alleged misconduct, and include all relevant facts, circumstances and information pertaining to the complaint.
- 3.3 The Committee may receive complaints for matters that have taken place within 6 months, or whereby the complainant can demonstrate they have only learned of relevant circumstances leading to the complaint within 6 months of formally filing the complaint.
- 3.4 In exceptional circumstances, the Committee can choose to hear complaints that are filed after the 6 month delay if the complainant can prove that there were extenuating circumstances for the delay.

### **4. Review of Complaint & Investigation**

- 4.1 Where the Committee receives a complaint concerning a Council Chief from an employee of the MCK, it must first determine the admissibility of the complaint.
- 4.2 If the complaint is frivolous, vexatious or clearly without merit, it shall be deemed as invalid and the Committee will inform the Complainant.
- 4.3 If it is deemed to be valid, the Committee must inform the Council Chief of the complaint of all the relevant facts, circumstances, information and evidence pertaining to the complaint.
- 4.4 If it is deemed to be valid, the Committee must also immediately inform the Grand Chief of the complaint.
- 4.5 The Grand Chief will be responsible for managing any conflicts as they may arise.
- 4.6 In the event the complaint is against the Grand Chief, the Chairperson of the Finance, Administration and Operations ("FAO") committee will be informed in place of the Grand Chief. The FAO Chairperson will then be responsible for managing any conflicts as they may arise.
- 4.7 The Council Chief will have ten days following the disclosure in 4.3 to review the information and prepare written or oral submissions pertaining to the complaint.
- 4.8 The Committee will further inquire into the nature and scope of the alleged misconduct and seek out the feasibility of mediation as a remedy.
- 4.9 In the event that mediation is not feasible or does not remedy the complaint, the Committee must review the complaint and decide, if necessary, on any disciplinary actions.

- 4.10 On a case by case basis, the Committee must assess the procedural fairness required and ensure that the Council Chief and the employee have both been provided with a fair process. This includes, but is not limited to:
  - a. no undue delays,
  - b. fair and impartial decision-making,
  - c. the right to be heard, and
  - d. the right to reasons for the decision.
- 4.11 If necessary, and in consultation with the Grand Chief, the Committee may impose any temporary measures required prior to a decision on the merits of the complaint.
- 4.12 In exceptional circumstances, where the Committee feels it is necessary to proceed to an investigation, it may appoint an investigator to conduct a review of the complaint, investigate, and form a report to the Committee with key findings and recommendations pursuant to the findings.
- 4.12 Depending on the nature of the complaint, the Committee may inform the Council of Chiefs of the complaint proceeding to investigation.
- 4.13 The investigator must be external to the MCK.
- 4.14 The Committee will secure and manage the investigator and shall direct the OCC on any matters related to the administration of the investigator.
- 4.15 The investigator shall present their findings to the Committee who will then make a decision on the complaint.
- 4.16 The Committee may decide to either dismiss the complaint, institute disciplinary actions or defer the decision to the Council of Chiefs pursuant to sections 5.4 to 5.6.

## **5. Disciplinary Actions**

- 5.1 The Committee shall make all efforts to ensure that any disciplinary actions are commensurate to the nature and degree of the misconduct.
- 5.2 Disciplinary actions may include, but are not limited to:
  - a. temporary measures prior to final decision
  - b. letter of reprimand
  - c. suspension with or without pay
  - d. loss of privileges related to position
  - e. fine or monetary restitution
  - f. public disclosure of misconduct
  - g. act of censure
  - h. decision that the Chief is not in good standing
  - i. removal from office

- 5.3 The Committee must present the findings and outcome to the Council of Chiefs.
- 5.4 When the Committee finds there has been serious misconduct or when it finds that the appropriate resolution would be that of 5.2 (f), 5.2 (g), 5.2 (h) or 5.2 (i), it must present the findings to the Council of Chiefs.
- 5.5 If the recommended resolution is that of 5.2 (f), 5.2 (g), 5.2 (h) or 5.2 (i), the Committee will defer the decision to the Council of Chiefs who will also be responsible for implementing the decision.
- 5.6 Where the recommended action is 5.2(i), removal from office, there must be unanimity by all the Council of Chiefs who are not directly implicated in, or in a conflict of interest with parties pertinent to, the complaint.
- 5.7 The Council of Chiefs may inform the community of the complaint, after the decision on the merits of the complaint by either the Committee or the Council of Chiefs, taking into consideration the severity and nature of the complaint.
- 5.8 In making the decision to inform the community, the Council of Chiefs must inform the complainant of the publication.
- 5.9 A copy of any report, disciplinary action or decision that results from the complaint will be added to the Council Chief's Personnel File pursuant to section 17.1 of the Administration guidelines for the Council of Chiefs.

## **6. Review of Decision & Appeal**

- 6.1 Within 30 days of receiving the decision of the Committee on the admissibility of the complaint under section 4.2, the employee may request a review of the decision that the complaint is invalid.
- 6.2 Within 30 days of the decision on the merits of the complaint, an employee may request a review of the decision of the Committee or of the Council of Chiefs.
- 6.3. The Chief who is the subject of any decision resulting in disciplinary action other than removal from office, may request a review within 30 days of the decision by the Committee or the Council of Chiefs...
- 6.4 The Chief who is the subject of the complaint may request an appeal within 30 days of a decision of the Council of Chiefs for removal of office under section 5.2(i).
- 6.5 All reviews and appeals shall be resolved by arbitration.
- 6.6 The Kahnawà:ke Communal Arbitration Procedure, which may be amended from time to time, will be the applicable arbitration procedure between the parties, a copy of which can be obtained from the Court of Kahnawà:ke.
- 6.7 If no arbitrators are available through the Court of Kahnawà:ke, the parties will mutually select a qualified and accredited arbitrator to issue a binding arbitration judgement.

## **7. Coming Into Force**

7.1 This Policy comes into force via Mohawk Council Executive Directive (“MCED”). Any amendments to this Policy must be validated by an MCED.