



## **Policy #2022-08**

### **Conflict and Complaint Resolution Procedure Policy**

#### **Policy Objective:**

To establish a procedure for Council of the Rural Community of Hanwell (“Council”), for addressing conflicts and complaints between Council members, between staff, between Council members and staff, between the public and either Council members or staff, under By-Law 16-2019, “A By-Law Establishing the Code of Conduct for Council”, adopted and enacted on December 18, 2019.

#### **Policy Statement:**

Under Canadian administrative law, an administrative decision-maker, such as Council, has broad discretion to determine its own procedure for making decisions. Accordingly, the procedure set out below is subject to Council approval and modification as necessary.

The procedure suggested below is intended to be consistent with:

- By-Law 16-2019 (A By-Law Establishing a Code of Conduct for Councillors)
- By-Law 01-2014 (A By-Law Respecting the Proceedings of Council and Administration)
- Local Governance Act, SNB 2017, c. 18
- Other Human Resources requirements; and
- General legal principles of procedural fairness and natural justice.
- All investigations are to be considered confidential

#### **DEFINITIONS**

For the purposes of this policy:

“Chief Administrative Officer (CAO)” means the CAO of the rural community of Hanwell as appointed by the Minister of Local Government and Local Governance Reform in accordance with Section 81 of the Act; from January 1<sup>st</sup>, 2023 and on, changes to the CAO position will be appointed by Council.

“Community” means the Rural Community of Hanwell.

“Complainant” means the party who makes the complaint. (Added May 18, 2022)

“Members of council” means a member of Council and includes the Mayor, Deputy Mayor and Councillors

“Respondent” means the person who has had a complaint made against them. (Added May 18, 2022)

“RTIPPA” means the *Right to Information and Privacy Protection Act*, c.R-10.6 and assorted regulations as amended.

“Social Media” means web-based applications such as Facebook, Twitter, etc. and on-line forums that allow users to interact, share, and publish content such as photographs, text, audio and video.

“Staff” means the CAO and/or an employee or employees who work for the community as a corporate body and are under the direction of the CAO.

## **Procedure:**

### **1. Informal Complaint Process**

Individuals are encouraged to pursue the informal complaint process as the first means of remedying conduct that they believe violates the code of conduct. However, an individual is not required to complete this informal complaint procedure prior to pursuing the formal complaint.

Any person who has identified or witnessed conduct by a member of Council or staff and that person reasonably believes, in good faith, the individual is in contravention of this By-law or other legislated obligations may address the prohibited conduct by:

- a) Advising the individual that the conduct violates this Code and human resources policies and encouraging the individual to stop.
- b) Making a request to the CAO to assist in informal discussion of the alleged complaint with the individual in an attempt to resolve the issue.
- c) Requesting the CAO to facilitate the resolution of the complaint; if the CAO is unable to assist for any reasons, he/she may offer the assistance of a professional mediator.

In the event that the CAO is the subject of, or is implicated in a complaint, the person may request the assistance of the mayor.

If an informal investigation by Council has concluded that sanctions are warranted, sanctions may be applied by Council. A formal complaint is not required prior to sanctions being applied.

### **2. Formal Complaint Process**

- a) Anyone who has identified or witnessed conduct by a member of Council or staff that the person reasonably believes, in good faith, is in contravention of this By-Law or other legislated obligations is encouraged to attempt resolution using the informal complaint process prior to filing a formal complaint. It is not a requirement to have an informal complaint filed prior to the pursuit of a formal complaint.
- b) If informal resolution is not desired, not appropriate or has been attempted without success, a confidential formal complaint may be filed in accordance with the following procedure:
- i. All formal complaints shall be made in writing to the CAO and shall be dated and signed. In the event that the CAO is subject, or is implicated in a complaint, the person shall address their complaint to the mayor.
  - ii. The formal complaint must set out reasonable and probable grounds for the allegation that the individual has contravened this By-Law, other legislative obligations, or relevant policies, including a detailed description of the facts, as they are known which gave rise to the allegation. Formal complaints can be submitted utilizing the form in Schedules "A" and "B" attached.
  - iii. Upon receipt of a formal complaint, the CAO shall consider the following in determining whether the complaint shall be investigated:
    - Whether the complaint falls within the jurisdiction of this By-Law, other legislative obligations or relevant policies;
    - Whether there are sufficient grounds for an investigation; and
    - Whether the complaint is frivolous, vexatious, or not made in good faith.
  - iv. If it is determined that a complaint shall not be investigated, the CAO will advise the complainant in writing outlining the reasons not to proceed and the file will be closed.
  - v. If the Complainant disagrees with the findings from the CAO, the Complainant can file a letter of appeal with the mayor and/or deputy mayor within 30 days of receiving the findings, and the mayor will have the item placed on the agenda at the next meeting of Council under closed session and Council shall determine the validity of the complaint.
    - a. If it is determined that a complaint shall be investigated, Council will determine whether to appoint an external investigator or panel to investigate the formal complaint to determine if the individual has violated the By-Law, and the respondent shall be notified of such complaint.
    - b. If Council does not request the investigation to be done by a third party, the investigation shall be conducted by Council.

- vi. If the Respondent disagrees with the findings from the CAO, the Respondent can file a letter of appeal with the mayor and/or deputy mayor within 30 days of receiving the findings, and the mayor or deputy mayor will have the item placed on the agenda at the next meeting of Council under closed session and Council shall determine the validity of the complaint.
- a. At this meeting, Council will determine whether to appoint an external investigator or panel to investigate the formal complaint to determine if the individual has violated the By-Law.
  - b. If Council does not request the investigation to be done by a third party, the investigation shall be conducted by Council.
- vii. If an external investigation is determined by Council to be warranted:
- The investigator must report back to the CAO on appropriate censure, sanctions, or corrective action (if applicable) within 30 days of receiving the complaint. The CAO shall be given discretion to extend this timeline, if requested by the investigator or by Council.
  - If the facts, as reported, include the names of one or more individuals who are alleged to have breached the By-Law or other legislated obligations, the individual (s) concerned shall receive a copy of the complaint submitted to the investigator, subject to RTIPPA.
  - An investigator appointed by the CAO shall review the complaint and shall take such steps as he/she may consider appropriate, including conducting interviews of Council members, staff or members of the public that are relevant to the complaint and may seek legal advice in appropriate circumstances. Information received during interviews may be in person or in writing. An investigator shall make all reasonable efforts to conduct their investigation on a confidential basis. The investigator will submit any supporting material to the individual whose conduct is in question with a request that a written response to the allegation, be received within 10 business days. A copy of the response shall be provided to the complainant with a request for a written reply within 10 business days.
  - While, ultimately, the CAO adjudicates the validity of any complaint and/or imposes the resulting sanction, if any, the investigator shall, upon conclusion of the investigation, provide the CAO including the individual who is the subject of the complaint, with a written report outlining the conduct of the investigator's investigation, including any conclusion reached by the investigator on the validity of the complaint and their recommendation of an appropriate sanction, if any. This report shall be provided to the CAO within 30 days of receipt of the complaint. The CAO shall be given discretion to extend this timeline, if requested by the investigator or by Council.
  - A summary of the findings of the investigator shall be given to the respondent. The full report shall not be made available to the respondent until it is received or accepted in an open session of Council.

- An individual who is the subject of an investigation shall be afforded procedural fairness, including an opportunity to respond to the allegations before the CAO deliberates and makes any decision on the validity of the complaint and/or any sanction is imposed. The response must be received within 10 business days of receipt of the investigator's conclusions.
- An individual who is the subject of a complaint is entitled to be represented by legal counsel, at the individual's sole expense.

### **3. Sanctions and Consequences (Council)**

- a) Should a breach have been deemed to have occurred, whether through an informal or formal complaint, consequences for said breach may include action deemed necessary by Council through a majority vote, and may include, but not limited to, the following:
- i. Removal from membership and/or as chair of committees either permanently or for an interim period;
  - ii. Barring the member of council from attending at closed session meetings either permanently or for an interim period;
  - iii. Barring the member of council from being circulated/informed of confidential matters/materials;
  - iv. Demand of a public apology, either written or verbal;
  - v. A verbal or written retraction of what was said/written;
  - vi. Expulsion from the meeting room for the remainder of the meeting;
  - vii. A letter of reprimand addressed to the member;
  - viii. Public reprimand through a motion of censure;
  - ix. A requirement to attend training;
  - x. Required return of municipal property or reimbursement of its value;
  - xi. Restricted access to municipal facilities, property, equipment, services and supplies;
  - xii. Restrictions on contact with staff;
  - xiii. Restriction on travel and representation on behalf of Council;
  - xiv. Restrictions on how documents are provided to the member (i.e., no electronic copies, only watermarked paper copies for tracking purposes); and/or

- xv. Reduction or suspension of the individual's remuneration as council may deem appropriate.
- xvi. Any combination of any of the above.
- b) All breaches under this By-Law will be treated fair and in keeping with the severity of the infraction. The individual's past conduct will be taken into consideration.
- c) In deciding which consequence(s) to impose, Council shall consider the potential consequences listed above, but shall not be limited to those consequences.
- d) Once this has been determined, Council shall call in the complainant and respondent to inform them of their decision, including the reasons for reaching that decision. Reasons shall be provided by a delegate from among the majority of Council.
- e) Minutes of this Closed Session meeting, including a summary of all evidence provided, all submissions made to Council, and a summary of Council's reasons for the decision, shall be kept, but shall not be made public and shall be retained by the Rural Community for a period of 7 years, in accordance with the Municipal Records Authority, following the end of the Closed Session meeting.
- f) The breach shall be validated in open session of Council.
- g) Council shall endeavor to impose consequence(s) that are fair and in keeping with the nature and severity of the breach(es) of the Code of Conduct. Prior breaches of the Code of Conduct by the individual may be considered as aggravating factors which may justify more serious consequences for a subsequent breach.
- h) If a finding of a breach of the Code of Conduct has been made by Council, the matter shall be placed on the agenda of the next Open Session of a Council Meeting, to have the following information recorded in publicly available meeting minutes:
- That Council has found the member to be in breach of the Code of Conduct;
  - The section of the Code of Conduct that was breached; and
  - The consequences imposed on the member.
- i) This by law is self-enforcing. However, should a member of Council not comply with the imposed consequences or penalties to the breach of the Code of Conduct, the following further actions may be taken:
- suspension of remuneration paid to the member of Council; prorated until such time as the member of Council complies;
  - removal from membership and/or as chair of all committees either permanently or for an interim period;

- dismissal from Council, with the seat being declared vacant at the next regular session of Council

**4. Sanctions and Consequences (Staff)**

- a) Should a breach have been deemed to have occurred consequences for said breach will be actioned by the CAO following the Rural Community of Hanwell Human Resources Policy, when approved.

**5. Mutual Resolution of Complaints**

- At any time after a complaint is submitted, and before a dedicated meeting is held to hear evidence regarding the complaint, the complainant and respondent may mutually agree to resolve the complaint.
- Should either party wish to propose a resolution to the complaint, they may discuss potential resolution amongst themselves and/or their respective legal counsel, or they may submit a proposal to the CAO, who shall send the proposal to the other party.
- In the event that the parties agree on a proposed resolution, the terms of the resolution shall be documented in writing and provided to the CAO, at which time the CAO shall remove the complaint from the agenda of the next Meeting of Council, or, if a dedicated meeting has been scheduled to hear evidence regarding the complaint, cancel the meeting.
- If the terms of the resolution are not followed, a party may so inform the CAO, who may return the complaint matter to the agenda of the next scheduled Meeting of Council.

Original Date of Adoption by Council: \_\_\_\_\_

Date of Revision Approved by Council: \_\_\_\_\_

Mayor's Signature: \_\_\_\_\_

Clerk's Signature: \_\_\_\_\_

**SCHEDULE "A"**

**Formal Complaint Form - Member of Council**

Complainant Information:

Name: \_\_\_\_\_

Residence: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Please Note:** This form may be sent to the member (s) of Council; supporting documentation relevant to this complaint may be sent to the member (s) of Council; this form and supporting documents may be sent to an external investigator.

Member(s) of Council in Question:

\_\_\_\_\_

Rule(s) of the Code of Conduct believed to have been contravened:

\_\_\_\_\_

Outline the details of your Complaint. Include names of any witnesses.

Use additional pages, as necessary.

Provide clear and specific information. If you refer to any documents, please attach copies of these documents to this Complaint Form:

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\_\_\_\_\_

\_\_\_\_\_

**Complainant's Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



