



## **EMPLOYMENT POLICY AND PROCEDURES**

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### **Topic: Whistleblowing Policy**

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**This Policy's Effective date: August 11, 2020.**

**Approved by Squamish Nation Council: July 30, 2020**

**Previous Policy Dates: None as this is new policy**

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### **POLICY STATEMENT**

It is Council's policy to establish a process for the reporting and investigation of misconduct while protecting the identity of individuals who report misconduct to the extent possible in accordance with legislated privacy acts.

### **PURPOSE**

The purpose of this policy is to facilitate the disclosure of wrongdoing that is contrary to the interest of the Squamish Nation. The policy sets out guidelines for the reporting and investigation of serious misconduct where there are no procedures in place for doing so, and provides protection from retaliation to those who report serious misconduct in good faith. Reporting serious misconduct in good faith is also referred to as whistleblowing.

### **SCOPE**

This policy applies to Councillors, employees, contractors, agents and members of the Squamish Nation.

#### **1 General**

- 1.1 The Squamish Nation (the "Nation") is committed to the principles of integrity, accountability, responsibility, leadership, respect, and openness.
- 1.2 Employees are to act in a way that enhances confidence in the workplace and to fulfill their duty to act honestly and exercise reasonable care and diligence.
- 1.3 Employees have a responsibility to report instances of serious misconduct. Examples of serious misconduct that should be reported pursuant to this policy include but are not limited to:
  - Serious violations of Squamish Nation policies;
  - Manipulation of Squamish Nation resources for any illegal, improper or unethical purpose including fraud, theft, embezzling funds, or accepting kickbacks or bribes;
  - Misappropriating funds, misdirecting or misuse of funds, assets or corporate information;
  - Manipulating Squamish Nation accounting or audit records or destroying any accounting or audit-related records;
  - Actions likely to cause serious harm to persons, public safety, property or the environment;
  - Actions resulting in Squamish Nation being exposed to liability or financial loss;
  - Failure to take reasonable steps to report and/or rectify actions that may impact negatively on Squamish Nation's reputation resulting in the loss of confidence in the organization's ability to deliver services; and



- Deliberately concealing information relating to any of the above.

It should be noted that the above are examples only and are not an exhaustive list of what amounts to serious misconduct.

- 1.4 This policy is intended to supplement existing procedures whereby employees may already raise matters of serious concern. This policy is not intended to override or replace existing reporting processes provided for under Squamish Nation policies or legislation and does not create an independent reporting requirement where other reporting processes exist.
- 1.5 Reports made under this policy may be redirected where other more appropriate procedures are applicable such as:
  - Policy #A-Code of Conduct
  - Policy #M-Grievance/Complaint
  - Procedures for reporting safety concerns (see Workers Compensation Act and Occupational Health & Safety Policy)
  - Financial Administration Bylaw–See Appendix A
- 1.6 Protection for reporting in good faith of alleged serious misconduct (see 5.0 – Whistleblower Protection against Retaliation) applies in all cases regardless of Squamish Nation policy or process under which the report was made.
- 1.7 In the event that there are reports of Breaches and Financial Irregularities, the Financial Administrative Bylaw must be adhered to.

## **2 Roles & Responsibilities**

- 2.1 **Managing Director, Administrative Operations (MDAO):** Is responsible for overseeing this policy. The MDAO is to appoint the Human Resources Director as the Designate responsible for the day-to-day administration and stewardship of the policy. The MDAO will report serious misconduct issues to Council as appropriate. The MDAO will execute the roles and responsibilities of the Designate should alleged serious misconduct involve the Designate.
- 2.2 **Managing Director, Nation Services (MDNS):** Can receive Whistleblowing complaints. The MDNS will report serious misconduct issues to Council as appropriate. The MDNS will execute the roles and responsibilities of the MDAO, should alleged serious misconduct involve the MDAO.
- 2.3 **Designate, Human Resources Director:** Receives in confidence all reports of alleged serious misconduct, unless either Managing Director as Designate is alleged to be involved.

The Designate is responsible for overseeing the investigation of allegations of serious misconduct and/or retaliation for the reporting of serious misconduct. The Designate is responsible for assigning investigations to the most appropriate party, notifying the



appropriate parties of investigations and outcomes, reporting to the MDAO, or if appropriate the MDNS; and ensuring the confidential retention of investigation documentation in accordance with the relevant Squamish Nation Employment Policies and the requirements of any legislation within the Canada Labour Code/other required legislation.

- 2.4 **Legal Services/Council:** In the event an allegation of serious misconduct involves either Managing Director, the matter will be dealt with in-camera by Council, who will determine and assign responsibility for the investigation and disposition of the matter in conjunction with external Legal Counsel.
- 2.5 **Council/Councillors:** Will be consulted once all efforts have been exhausted through the investigation process and authority required is beyond the scope of the MDAO or MDNS. The FAC Chair will be consulted as per the Finance Administrative Bylaw, Sections 99-101. See Appendix A.
- 2.6 **Finance and Audit Committee Chair (FAC):** Receives reports from Councillors or officers, employees, contractors or others of the Nation, as indicated in the Finance Administrative Bylaw, Section 99 - Breaches and Financial Irregularities and Section 100 - Inquiry into Report. See Appendix A for Sections 99-101 of the Financial Administrative Bylaw.
- 2.7 **Directors/Managers/Supervisors:** Any level of management receiving a report of alleged serious misconduct from an employee is to promptly forward it in an impartial and strictly confidential manner to the Designate with a copy to the appropriate Managing Director, whose area of responsibility is involved unless the alleged misconduct may involve or have been condoned by that Managing Director, then a copy must go to the other Managing Director. If the alleged misconduct may involve the Designate, a copy should be forwarded directly only to the appropriate Managing Director and not to the Designate.
- 2.8 **Employees:** Are to report alleged instances of serious misconduct in good faith to their Supervisor, Director, either Managing Director or directly to the Designate.
- 2.9 **Other Parties as defined in this policy:** Are to report alleged instances of serious misconduct in good faith to either Managing Director or directly to the Designate. If the alleged misconduct may involve the Designate, report alleged instances to either Managing Director and not to the Designate.

### **3 Reporting of Serious Misconduct**

- 3.1 **Acting in Good Faith:** Reports of serious misconduct are a serious matter. Employees reporting alleged serious misconduct are to act in good faith and have reasonable grounds for believing the report to be true.

Where employees come forward to report their own serious misconduct under this policy, they will not be exempt from discipline appropriate to the serious misconduct; however, such reporting will be given appropriate consideration as a mitigating factor and these



instances will be dealt with on an individual basis in accordance within this policy and any other relevant Squamish Nation policy.

- 3.2 **False or Frivolous Reports:** Knowingly making false allegations or making allegations in a malicious manner will be viewed as serious misconduct.

Reports that are found to be frivolous, false, malicious or in bad faith will be dealt with in accordance within this policy and any other relevant Squamish Nation policy.

- 3.3 **Process for Reporting Serious Misconduct:**

Employees aware of serious misconduct have a responsibility to report it either to their Supervisor, Director, MDAO, MDNS or directly to the Designate.

Should the alleged serious misconduct involve the Designate, employees should report the misconduct to the MDAO. Should the alleged serious misconduct involve the MDAO, employees should report the misconduct to MDNS. Should the alleged serious misconduct involve the MDNS, employees should report the misconduct to MDAO. The FAC chair receives reports from Councillors or officers, employees, contractors or others of the Nation, as indicated in the Finance Administrative Bylaw, Sections 99-101. See Appendix A.

Employees are to report serious misconduct in writing (via "Form for Reporting Serious Misconduct", see Appendix B). Where an employee reports serious misconduct to his or her Supervisor/Director verbally, the Supervisor/Director receiving the report must document the discussion, confirm its accuracy with the employee and promptly forward the report in an impartial and strictly confidential manner to the Designate with a copy to the appropriate Managing Director whose area of responsibility is involved unless the alleged misconduct involves that Managing Director, in which case it should be copied to the other Managing Director.

In the event that there are reports of that fall within the Financial Administrative Bylaw, Breaches and Financial Irregularities, Sections 99-101, those specific sections/process must be adhered to. See Appendix A.

## 4 Confidentiality

- 4.1 The Designate will make every reasonable effort to provide confidentiality to those reporting serious misconduct. Employees may remain anonymous when reporting; however, investigation may not be possible unless the source of the information is identifiable. The Designate may investigate a report made on an anonymous basis and will determine whether to do so in light of all the circumstances, including the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.
- 4.2 Investigations will be carried out in a manner that limits disclosure of the report and allegations on a "need to know" basis. Information about a report of serious misconduct



will only be disclosed to those responsible for investigating and/or addressing the report. Reports will be made to the MDAO as identified under 7.0–Retention and Documentation of Investigations.

- 4.3 Confidentiality extends to all records relating to reports, including but not limited to meetings, interviews and investigation results. Personal information, including the identity of the person reporting the alleged serious misconduct, will be protected in accordance with the Personal Information Protection and Electronic Documents *Act (PIPEDA)* and all applicable legislation. Individuals making a report, investigators, witnesses and individuals against whom a report has been made are expected to maintain confidentiality. Breaches of confidentiality may be regarded as serious misconduct and will be treated accordingly.
- 4.4 Although the Designate will take all reasonable steps to protect the identity of the individual reporting the serious misconduct, information collected and retained may be required to be released by law including release required in court proceedings, arbitration or other legal proceedings.
- 4.5 Please see Appendix A for Financial Administration Bylaw for Section 101(1) regarding *Protection of Parties*.

## 5 Whistleblower Protection against Retaliation

**Forms of Retaliation:** Any form of retaliation, discrimination or reprisal against an employee because that person reported serious misconduct in good faith or because that person acted as a witness or otherwise participated in an investigation in good faith will be considered a serious violation of this policy. Such retaliatory actions are themselves serious misconduct and may result in discipline up to and including dismissal with cause and be dealt with in accordance within this policy and any other relevant Squamish Nation policy.

- 5.1 **Reporting Retaliation:** If an employee believes that they have been subjected to retaliation as set out above, that person may submit a written report to the Designate or either Managing Director who will ensure the allegation is appropriately investigated.
- 5.2 Please see Appendix A for Financial Administration Bylaw for Section 101(2) & (3) regarding *Protection of Parties*.

## 6 Investigations

- 6.1 **Investigation Process:** The Designate has primary responsibility for investigating allegations of serious misconduct. The Designate will review and assess the seriousness of all reports promptly and determine the manner in which the report will be investigated. This determination will not be influenced by the position or length of service of the employee(s) accused of serious misconduct. At the Designate's discretion, an investigation may be carried out by the Designate directly, assigned to management in the area affected, assigned to an investigative team, assigned to an independent third-party or re-directed to



a more appropriate existing process.

Where either Managing Director (in conjunction with Council) or Cochairs with external legal counsel is executing the roles and responsibilities of the Designate, they will determine, based on the circumstances, the appropriate party to investigate the allegation of serious misconduct which may include external Legal Counsel and/or Ethics Advisors, an independent third-party or other appropriate party.

- 6.2 ***Material Financial Concerns:*** If upon initial assessment it appears that the concern raised could materially affect the financial position of the Squamish Nation or the integrity of Squamish Nations system of internal controls, the Designate must immediately advise the MDAO, the Director of Finance and FAC Chair. The Squamish Nation will make every reasonable effort to pursue the recovery of Squamish Nation losses from the offender or other appropriate sources, based on advice from external legal counsel.
- 6.3 ***Criminal Activity and Other Illegal Conduct:*** In circumstances where it appears that a criminal act may have occurred, the MDAO should report the matter to the appropriate police agency. In circumstances where it appears that there may have been violations of other laws, the MDAO, may advise the appropriate enforcement agency.
- 6.4 ***Acknowledging Reports:*** Within ten working days of a report being received, the Designate (or either Managing Director assuming the role of the Designate per sections 2.1 & 2.3) will respond in writing to the employee/party making the report acknowledging that the allegation of serious misconduct has been received. Subject to legal constraints, the Designate will also inform the employee/party making the report at the conclusion of any investigation, with a summary update. The Designate may not be able to disclose the precise action being taken where doing so would be contrary to the Squamish Nation Policies or other legislative requirements.
- 6.5 ***Opportunity to Respond to Allegations:*** In all but exceptional circumstances, individuals accused of serious misconduct will be given an opportunity to know and respond to the allegations made.

***Consequences of Serious Misconduct:*** Consequences for employees found guilty of serious misconduct may include discipline up to and including dismissal with cause, and in accordance with any other relevant Squamish Nation policy.

It is understood that employees may grieve any disciplinary action under the Squamish Nation Policy #M–Grievance/Complaint.

## **7 Retention and Documentation of Investigations**

The Designate will document the results of each investigation in a confidential report. If an investigation determines that serious misconduct has occurred, the Designate will immediately report the details and any action taken to the MDAO. A summary of reports made under this policy and outcomes of subsequent investigations will be submitted



annually to both Managing Directors and Council. If either Managing Director is alleged to be involved in the report/investigation, they will be excluded from the results/investigation as well as any meetings related to that specific report/investigation.

## **8 Mitigation of Further Risk**

The MDAO will conduct a review of each completed investigation report where serious misconduct was found to have occurred and will assign responsibility to ensure steps are taken to address underlying causes and to then take appropriate actions to mitigate the risk of further occurrences.

## **9 Media**

Concerns regarding serious misconduct may have a significant impact on Squamish Nation's legitimate interests. Employees have a responsibility to use the internal whistleblowing reporting process when they have such concerns. Matters covered by this policy are considered confidential and breaches of that confidentiality, including making public statements or disclosing information to the media, will be dealt with in accordance within this policy and any other relevant Squamish Nation policy.

## **10 Federal or Provincial Legislation**

In the event that any portion of this policy is inconsistent with a binding federal or provincial legislation, that portion and only that portion of the policy will have no application to the extent of that inconsistency. All other portions of the policy will continue in full force and effect.

## **11 Other Squamish Nation Employment Policies / Forms**

- Policy #A–Code of Conduct
- Policy #I–Discipline
- Policy #M–Grievance/Complaint
- Policy #O–Harassment
- Financial Administration Bylaw–see Appendix A
- Form for Reporting Serious Misconduct-see Appendix B



## **Appendix A - Financial Administrative Bylaw**

### **Reports of Breaches and Financial Irregularities, etc.**

99.(1) Subject to subsections (2) and (3), if any person has reason to believe that

- a) an expenditure, liability or other transaction of Squamish Nation is not authorized by or under this by-law or another Squamish Nation law,
- b) there has been a theft, misappropriation or other misuse or irregularity in the funds, accounts, assets, liabilities and financial obligations of Squamish Nation,
- c) a provision of this by-law has been contravened, or
- d) a person has failed to comply with the paragraph 22(1)(d) or 23(2)(c),  
the person may disclose the circumstances to the chair of the Finance and Audit Committee.

(2) If a councillor becomes aware of any circumstances described under subsection (1), the councillor must report them to the chair of the Finance and Audit Committee in accordance with any policies established by Council.

(3) If an officer, employee, contractor or agent of Squamish Nation becomes aware of any circumstances described under subsection (1), the officer, employee, contractor or agent, as the case may be, must report them to the senior administrator or the chair of the Finance and Audit Committee in accordance with any policies established by Council.

### **Inquiry into Report 100.**

(1) If a report is made to the senior administrator under subsection 99(3), the senior administrator must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(2) If a report is made to the chair of the Finance and Audit Committee under section 99, the chair must inquire into the circumstances reported and report the findings to the Finance and Audit Committee as soon as practicable.

(3) The Finance and Audit Committee may make a further inquiry into any findings reported to it under this section but, in any event, must make a report to the Council respecting any circumstances reported to the Finance and Audit Committee under this section, including the Committee's recommendations, if any.

### **Protection of Parties**

101.(1) All reasonable steps must be taken by the senior administrator, the members of the Finance and Audit Committee and the councillors to ensure that the identity of the person who makes a report under section 99 is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section 99 must not be subjected to any



form of reprisal by Squamish Nation or by a councillor, officer, employee, contractor or agent of Squamish Nation as a result of making that report.

(3) The senior administrator and the chair of the Finance and Audit Committee must take all necessary steps to ensure that subsection (2) is not contravened and must report any contravention or suspected contravention to the Council.

(4) The Council must establish policies for the recording and safeguarding of reports made under section 99 and any records prepared during the inquiry or investigation into those reports; for the inquiry or investigation into reports made under section 99; and concerning the fair treatment of a person against whom a report has been made under section 99.



## **Appendix B-Form for Reporting Serious Misconduct**

**Reporting Serious Misconduct.** This form should be completed by anyone aware of serious misconduct under the Whistleblowing Policy and should be forwarded to the appropriate individual as outlined in Section 3.3 of the Whistleblowing Policy.

### ***TO BE COMPLETED BY INDIVIDUAL RAISING CONCERN***

SUMMARY OF INCIDENT (include dates, times, individuals involved):

*Please note if any attachments are supplementary to this form.*

I hereby declare that I am raising this concern in good faith and have reasonable grounds to believe the information above is accurate and true.

Name (optional): \_\_\_\_\_

E-mail/Phone # (optional): \_\_\_\_\_

Signature (optional): \_\_\_\_\_ Date: \_\_\_\_\_

(Staff and "others" making a report under this policy are encouraged to provide their name in confidence, which permits for follow-up questions and clarification if necessary. Investigation may not be possible unless the source of the information is identifiable. The Designate may investigate a report made on an anonymous basis and will determine whether to do so in light of all of the circumstances, including the seriousness of the issue raised, the credibility of the concern and the likelihood of confirming the allegation from other sources).

Date Submitted to Supervisor/Manager/Director (if applicable): \_\_\_\_\_

Date Submitted to Designate: \_\_\_\_\_

### **TO BE COMPLETED BY DESIGNATE**

ACTION TAKEN:

Designate Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The above information is collect in accordance with the Personal Information Protection & Electronic Document Act. It is collected for purposes set out in the Whistleblowing policy