

Hugh Garner Housing Co-operative Incorporated

HUMAN RIGHTS BY-LAW

BY-LAW NO. 40

Approved by the Members on August 14, 2014
(Recommended by the Board of Directors on July 14, 2014)

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About this By-law: This By-law states the commitment of Hugh Garner Housing Co-Operative Incorporated to the human rights of the members of the co-op community and the co-op's rules for fulfilling that commitment.

1. RIGHTS, PRINCIPLES AND OBLIGATIONS

ARTICLE 1.1 Statement of principles and obligations

- (a) The co-op community is made up of all members, other residents and staff.
- (b) Members of the co-op community must respect the human rights of other members of the co-op community and of people who deal with or visit the co-op.
- (c) The co-op expects members of the co-op community to obey the Ontario *Human Rights Code* and not to do anything that would discriminate against or harass others in a way that would breach the *Human Rights Code*.
- (d) The co-op itself must follow the requirements stated in paragraphs (b) and (c)
- (e) The co-op and members of the co-op community should strive for an environment at the co-op that is fair, inclusive and respectful of people's dignity.

1.2 Background information

Background information on these rights, principles and obligations and on the Ontario *Human Rights Code* is in Attachment C to this By-law.

1.3 Other rights

The rights in this By-law are in addition to any other rights that anyone has. Nothing in this By-law prevents anyone from exercising their legal rights in any way. The co-op encourages people to use the procedures in this By-law to deal with human rights issues, since this can help the co-op address any human rights problems at the co-op.

1.4 No reprisals

Any reprisal for making a good faith complaint under this By-law is a breach of this By-law.

2. CO-OP SERVICES

ARTICLE 2.1 Individual assessment

The co-op will consider the needs of each individual member of the co-op community in conducting its operations. The co-op will take all reasonable steps to adjust its services and operations to meet the individual needs of members of the co-op community that are related to a prohibited ground of discrimination under the *Human Rights Code*.

2.2 Members with disabilities

In providing its services the co-op will take all reasonable steps to accommodate the needs of members of the co-op community with disabilities.

2.3 No indirect discrimination

The co-op will take all reasonable steps to adjust any restriction, qualification or factor in the co-op's operations that results in indirect discrimination contrary to the *Human Rights Code*.

2.4 Limits

The co-op will take the steps referred to in sections 2.1, 2.2, and 2.3 if they can be taken without undue hardship. In deciding what steps to take the co-op will follow the definitions and be bound by the obligations under the *Human Rights Code*.

Indirect discrimination under section 2.3 does not include rules and procedures under government or other special programs to relieve hardship or economic disadvantage, to assist in achieving equal opportunity or to eliminate infringement of rights.

2.5 Able to live independently

The co-op's obligations do not include providing any form of care or assistance in the activities of daily living. Members of the co-op community who need this kind of assistance must arrange for it without depending on the co-op.

2.6 Requests for accommodation or adjustment

Requests for accommodation or adjustment should initially be directed to the co-ordinator, and should be in writing, if possible. The request will be dealt with promptly and with full respect for the dignity of the person who made the request.

A request should state what is being requested and why it is needed. The co-ordinator will obtain any necessary backup documentation, such as evidence of medical need, if necessary. The co-ordinator will obtain advice from the co-op's lawyer if necessary. The request and all material related to it will be kept in confidence and only shown to staff or others who have a need to know.

2.7 Authority to arrange for work

If the co-ordinator does not believe any issues are raised that should go to the Board, the co-ordinator will have authority to grant an accommodation or adjustment by arranging for work that is within the co-ordinator's spending authority or would normally be done by co-op staff. In any other case the co-ordinator will report to the Board, which will make the decision unless a budget change is needed. If a by-law or budget change is needed, the Board will make an appropriate proposal to the members. There will be full consultation with the person who made the request to ensure that everyone understands the issues and concerns.

2.8 Relation to *Human Rights Code*

The obligations of the co-op in this By-law are intended to implement its responsibilities under the Ontario *Human Rights Code*. They should not be interpreted in any way that is inconsistent with the *Human Rights Code* or that would give lesser or greater obligations to the co-op.

3. DEALING WITH PROBLEMS

ARTICLE 3.1 Investigate complaints

The co-op will deal with complaints about a breach of this By-law as stated in this By-law. The Board of directors will deal with situations that it becomes aware of whether or not there is a specific complaint, but where there are reasonable grounds to believe there has been a breach of the By-law.

3.2 Procedure

The procedure for complaints and investigations is stated in Attachment A.

3.3 Complaints about co-op

If a complaint is established about the conduct of the co-op itself, or directors, officers, committees or others acting on behalf of the co-op, the Board will take appropriate action to correct the situation and avoid any repetition.

- The action could include such things as one or more of
 - a letter of apology;
 - a performance agreement;
 - mediation or conflict resolution between the parties;
 - a warning or reprimand;
 - removal from a committee;
 - proceedings to remove someone from the Board as stated in the Organizational By-law;
 - development and introduction of policy statements and educational initiatives to avoid anything similar in the future;
 - other actions referred to in this By-law.

If the individual involved is a staff member, the Board will consider requirements under any collective bargaining agreement, employment or property management contract, and other employment and

contractual obligations. This could affect the method of investigation and the action taken. The Board will obtain legal and/or other professional advice in all appropriate circumstances. The action taken could include such things as one or more of the items stated in the previous section and/or

- staff education and training;
- oral reprimand;
- written reprimand;
- suspension;
- termination of employment.

3.4 Complaints about members of the co-op community

If a complaint is established about the conduct of a member of the co-op community who is not acting on behalf of the co-op, the Board will decide what action to take. The Board's basic intent will be to resolve the situation amicably if possible. The action taken could involve one or more of the items stated in the preceding sections.

3.5 Eviction

Breach of this By-law can be grounds for eviction under the Occupancy By-law. In determining whether to consider eviction or whether to evict, the Board will consider such things as:

- the evidence available as to what happened;
- the appropriateness of eviction as a response, considering the seriousness of the breach and other possible solutions to the underlying situation;
- the appropriateness of a performance agreement or other alternative to address the situation;
- the likely success or failure of legal action to evict;
- the costs involved in evicting someone.

4. RELATION TO OTHER BY-LAWS

ARTICLE 4.1 Applying co-op by-laws

The co-op must comply with the *Human Rights Code* when applying co-op by-laws and other co-op rules and decisions. If any by-law, rule or practice conflicts with the *Human Rights Code*, then it has to be changed. If the co-ordinator becomes aware of any need for changes, the co-ordinator will report it to the Board. The Board will make all changes that are needed and are within the Board's authority. If a by-law or budget change is needed, the Board will make an appropriate proposal to the members.

If any change to comply with the *Human Rights Code* is needed urgently and cannot wait for a members' decision, the Board will make any decisions that are needed even if they conflict with the by-laws. The Board will only do this after seeking legal advice. The issue will be reported at a members' meeting, either specifically or as part of a proposal for a by-law change.

4.2 Procedures under other laws or by-laws

Someone may have a right of appeal or review under another law or by-law, such as if the Board decides to evict someone or if a membership application is refused. If the member or applicant feels that the original decision was in breach of the *Human Rights Code*, the member or applicant may file a complaint under this By-law. However, the member or applicant should also file an appeal or request for review (as applicable). The Board can decide to deal with the complaint and the appeal or review at the same time or to hold action on one until the other is decided.

4.3 Repeal

Section 6.4 (Able to Live Independently) of the Occupancy By-law is repealed when this By-law is confirmed by the members.

ATTACHMENT A

Complaint and Investigation Procedure

1. Object: The objective of this procedure is to
 - have a fair, prompt and effective investigation and resolution of complaints;
 - avoid unnecessary cost, inconvenience or hardship on any party;
 - have due regard to the dignity and the rights of persons who may have a complaint or may be complained about.
2. **Employment matters:** Some or all of the procedures in this Attachment may not be appropriate for some employment-related complaints. The Board will decide on the procedure for employment-related complaints. The Board will consult the co-op's lawyer and/or obtain other professional advice. The Board will consider any procedure stated in a staff contract or collective bargaining agreement.
3. Provisions in this Attachment and the Human Rights By-law relating to staff will apply to co-op staff employed by a management company with any adjustments that may be necessary.
4. **Complaints officer:** The complaints officer is the person who is dealing with a specific complaint on behalf of the co-op. The complaints officer will be designated by the Board after a complaint is reported to it. The complaints officer may or may not be a director, staff member or one of the pool of complaints officers mentioned in section five, but should be someone respected within the co-op community who does not have any conflict of interest relating to the complaint.
5. The Board of Directors will select three candidates to comprise a pool of complaints officers for the co-op. These candidates will be confirmed by the membership at a future General Members' Meeting. The Board of Directors will provide annual training for complaints officers.
6. The complaints officer will take the lead role in dealing with the complaint and making sure that the procedures in this Attachment are followed in a timely way. In some cases the complaints officer will handle the investigation of the complaint. In other situations an outside investigator will be appointed to work with the complaints officer as stated in this Attachment. The role of the complaints officer may be limited to assisting the outside investigator as requested. In those cases the Board may decide it is best to have a staff member act as complaints officer.

7. **Mediation:** If the parties to the complaint are prepared to mediate their differences, the co-op will arrange for mediation. This can happen at any time during the investigation process and the process will be suspended until the mediation is complete. The complaints officer can suggest mediation to the parties. The cost of the mediator will be paid by the co-op.

MAKING COMPLAINTS

8. **Making a complaint:** Members, residents, staff of the co-op, applicants for membership and persons who visit the co-op property can make a complaint about a violation of the Human Rights By-law.
9. A complaint can be about something that happened to the complainant or another person or that calls the co-op's attention to a situation or problem.
10. **In writing:** A complaint must be in writing, and signed by the person making the complaint. It should be delivered to the co-op co-ordinator. If the complaint is about the co-ordinator, it can be delivered to the President. If it is about both the co-ordinator and the President, it can be delivered to any director.
11. If someone has difficulty putting their complaint in writing, the person who receives the complaint should help them to do this. In doing this they should make sure to write out the person's complaint and not to change the complaint or put words in the person's mouth.
12. **Complaint Form:** Attachment B is a Form that can be used for complaints.
13. **Confidentiality and disclosure:** The person who receives the complaint will explain the confidentiality and disclosure provisions in Attachment B to the person who submits it.
14. A complaint will be accepted if not on Attachment B, but the person who submits it will be asked to sign a document stating they understand the confidentiality and disclosure rules. The document may use the relevant wording from Attachment B.
15. **Time Limit:** Unless there are special circumstances, a complaint should be filed within six months from the time when the violation took place, or if it took place over a period of time, six months from the last incident.

DEALING WITH COMPLAINTS

16. **Informal resolution:** Depending on the nature of the complaint, the person who receives it may try to resolve the situation informally, such as by consulting with the parties involved and assisting them to come to agreement on the issue.

17. **Initial report to Board:** Whoever receives a complaint will report the complaint to the Board. In sensitive situations the initial report to the Board may leave out the names and identifying features of one or more of the parties involved, unless the Board decides that it needs to know that information. If the complaint is about a director, the director will be told only that there has been a complaint and told not to be present at the Board meeting when it is discussed. This rule will not apply if it would prevent the Board from having a quorum. The director will be given more information about the complaint later, as part of the investigation process.
18. **Board action:** When a complaint is reported to the Board, the Board will decide what steps to take. In some cases the Board will appoint a complaints officer or decide that the co-ordinator should be the complaints officer.
19. Depending on the nature and urgency of the complaint the Board may also do such things as:
 - seek legal advice;
 - ask the local co-operative housing federation or another sector body to advise the Board on how to deal with the situation;
 - take emergency steps to protect members, residents or staff;
 - take action under an employment or other contract if appropriate.
20. **Outside investigator:** In some cases, such as specialized or exceedingly serious complaints, the Board may decide to appoint an investigator from outside the co-op with expertise in that type of investigation. The investigator will work with the complaints officer to try to establish what happened and evaluate the situation and report to the Board.
21. **Lawyer:** The complaints officer may be authorized to consult the co-op lawyer or the lawyer may be instructed to be the outside investigator or be present at interviews conducted by the complaints officer or outside investigator. Where there is a possible legal liability on the part of the co-op, the co-op lawyer will be consulted before proceeding further.
22. **Insurance company:** The Board may refer any complaint to the co-op's insurance company before or at the same time as the investigation of the complaint.
23. **No admission of liability:** The complaints officer and outside investigator are not authorized to make any admission of liability on the part of the co-op. The co-op lawyer and the insurance company will be consulted in advance in cases where an admission of liability by the co-op may result from the investigation.
24. **Other procedures:** The Board can decide to follow a procedure other than the one stated in this Attachment.

25. **When Board can refuse to consider a complaint:** The Board can decide not to consider a complaint or take any action on a complaint. This could be because it is clear that the complaint is without merit, trivial, frivolous, made in bad faith or it could be for other reasons. The decision must be made by motion appearing in the confidential minutes of a Board meeting.
26. **Interim Action:** While a complaint is being considered, the Board can decide to take immediate action until the investigation is complete. Depending on the circumstances this could include such things as:
 - try to limit contact between the complainant and the person complained of;
 - provide extra security, if appropriate;
 - arrange for counselling or other help, if appropriate;
 - consider giving staff a leave of absence;
 - removal of someone from the On-call or other committees.

INVESTIGATION PROCESS

27. **Investigation and report:** After the initial report to the Board, the Board may decide that the complaint will be investigated and a report prepared for the Board. The investigation will be conducted by the complaints officer or an outside investigator. This part of the Attachment refers to the complaints officer, but some or all of the duties and activities could be performed by an outside investigator.
28. **Disclosure of Complaint:** The complaints officer will show the complaint to the party complained about. The complaints officer may decide to give that person a copy. This is subject to the next paragraph.
29. **Reprisals:** Where reprisals are an issue, the Board may decide to withhold the name or identifying details of the person who complained. The other party may only be provided with a summary of the complaint in order to prevent identification. This should only be done in the most extreme circumstances.
30. **Representation:** The party who complained and the party complained about can have a lawyer or other representative present at any interview or to represent that party generally. Any party who retains a lawyer will do so at his or her own expense.
31. **Interviews and review of files:** The complaints officer will be entitled to interview persons and review co-op files and inspect parts of the co-op property, as necessary for the investigation. This will be subject to applicable laws.

32. **Comments in response to complaint:** The complaints officer will ask the party complained about for comments. These should be in writing, but the complaints officer may accept oral comments.
33. **Written record of interviews:** The complaints officer may prepare a written statement based on interviews and ask the person interviewed to sign the statement, with or without changes, to verify the contents.
34. **Information on investigation progress:** The complaints officer will keep the party who complained and the party complained about informed of the status of the investigation.
35. **Failure to co-operate:** The party complained about may refuse to co-operate with the complaints officer and may refuse to answer questions, whether oral or in writing. Failure to co-operate or answer questions may result in an adverse inference by the complaints officer.
36. **Right of response to go to Board:** The party complained about will have the right to respond to any complaint in writing and to have the written response form part of the report to the Board.
37. **Complaints officer's report:** The complaints officer, investigator or co-op lawyer will give a written report to the Board. This will be confidential and will not be shown to either the party who complained or the party complained about unless the Board passes a motion to show it to them. The report should summarize the position of the party who complained and the party complained about, the steps in the investigation process and the conclusions of the investigation. If there are any recommendations, they will be given to the Board separately at a meeting or by a separate letter or report.
38. **Timing:** The investigation will be completed as quickly as possible. It should not normally take more than 21 days. The delivery of the report should be timed in relation to a Board meeting so that the Board can take action as soon as reasonably possible.

BOARD DECISION

39. The Board will evaluate the complaint and the report. If the Board determines that the complaint has merit, the Board can take action as it considers appropriate, including the actions stated in the Human Rights By-law.

RECORDS OF COMPLAINTS

40. **Complaints file:** A separate confidential file dealing with complaints will be maintained. Materials in that file will not be used for ordinary matters, such as letters of reference. All complaints and materials relating to a complaint will be kept in that file unless something else is stated in this By-law or the Board decides something else.
41. **Member's file:** If the Board determines that a complaint against a member has merit, the complaint, any report and a record of the Board's

decision on it, and the supporting papers, will be placed in the member's file, unless the Board decides not to do this. ***This record will be removed from the file by the co-ordinator two years after insertion, if no further meritorious complaints have been made within the two-year period.***

42. **Staff file:** If the Board determines that a complaint against staff has merit, the complaint, any report and a record of the Board's decision on it and the supporting papers will be placed in the individual staff member's file, unless the Board decides not to do this. This record will be removed from the file by the President two years after insertion, if no further meritorious complaints have been made within the two-year period. If the Board decided that progressive discipline at the level of written reprimand and/or warning or greater was not warranted, the two-year period will be reduced to one year.
43. **When no action on complaint:** If the Board refuses to consider a complaint or determines that a complaint does not have merit or decides not to take action on a complaint, the complaint, any report and other papers relating to it will not be placed in the staff's or member's file, unless the Board decides to place them in the file. They will be retained in the separate complaints file.
44. **After removal:** After a complaint, report and any other papers relating to the complaint have been removed from the staff's or member's file, or if they are not placed in one of these files, they will be retained in the separate complaints file.

CONFIDENTIALITY

45. **General:** All persons involved should at all times be conscious of the sensitivity of complaints and their subject matter and should only collect information that is relevant to the complaint and should maintain strict confidentiality about that information and avoid disclosure except to persons who have a need to know. This includes information about the fact that there was a complaint and about the investigation.
46. **Information to representatives:** The party who filed the complaint and the party complained about are not authorized to provide their lawyer (or anyone else) with confidential or personal information about the co-op or any staff, member or occupant. The complaints officer will provide the lawyer or other representative with all necessary information, but only if the complaints officer is satisfied that there are adequate safeguards in place. These safeguards could include such things as deleting the names of persons, deleting irrelevant information and obtaining a confidentiality agreement from the lawyer or other representative. The confidentiality agreement could include such things as keeping the information confidential, limiting copying of the information and returning the information when the matter is completed.
47. **Report of investigation:** The report of the complaints officer and any outside investigator should not reveal more than is necessary to report on the investigation. It should include a record of all relevant information.

48. Unless the Board decides something else, all other information gathered in connection with an investigation that is not in the report should be retained in a confidential location in the co-op office for thirty months after the Board has concluded the complaint and then destroyed.
49. **Board action:** The Board should limit what is disclosed about the report and the Board's action for the protection of both the complainant and the party complained about. This is true even when a complaint has been substantiated.
50. Part of the Board's decision will be what information about the action taken by the Board will be given to the party who complained. That party should be given a reasonable explanation of what the Board has done. However, it may not be possible to give that person all the information, such as if it involves personal health information about the other party.
51. **Confidentiality of records of complaints:** The materials placed in a member's or staff's file under this Attachment will be in a confidential part of the file and will not be available to the member or staff unless the Board decides something else. The separate file dealing with complaints referred to in this Attachment will be confidential and will not be available except to staff and directors with a need to know.
52. **Retention of records in complaints file:** Any report, papers or other materials relating to a complaint that is in the complaints file will be retained while the individual involved (or any of them if more than one) remains a member or resident, or a staff, of the co-op and for thirty months after that or for the period designated by the co-op's retention policy whichever is longer and will then be destroyed.

ATTACHMENT B

HUGH GARNER HOUSING CO-OPERATIVE INC.

Humans Rights By-Law Complaint Form

Please print or type. Add additional pages if needed.

Name of member or person making complaint: _____

Address: _____

The undersigned is making a complaint to the co-op about a violation of the co-op's Human Rights By-law.

1. Person or persons complained about _____
2. Date or approximate date of incidents _____
3. What was done that broke the Human Rights By-law?
4. I am enclosing the following documents or papers, if any:

5. The following are people who know something about this. I understand the co-op may wish to contact them:

6. I understand that this complaint may be shown to the person complained about and that person may be given a copy.

7. I understand that where reprisals are an issue, the Board of directors may decide to withhold my name or identifying details and only give the other party a summary of the complaint in order to prevent identification. I understand that the Board does this only in the most extreme circumstances.

This form is continued on the next page. Add additional pages if needed.

8. I request the Board to withhold my name or identifying details and only give the person complained about a summary of the complaint as stated above.

Note: Complainant must initial here if making this request: Initials _____

Note: The Board will only consider a request if the complainant's initials are above. The Board may decide not to agree to the request.

9. The reasons for this request are:

10. I understand that the Human Rights By-law contains other rules about confidentiality of information, including that

- My file may be reviewed as part of the investigation.
- I must not provide any confidential information about the co-op or other members, residents or staff. This includes my lawyer or other representative. This information will be given by a complaints officer chosen by the Board of Directors as stated in the Human Rights By-law.
- The report of the investigation will be confidential and the Board may decide that it will not be shown to me.
- The action taken by the Board may be confidential and I may be given only limited information about it.

I acknowledge that I have received a copy of the Human Rights By-law and I have had an opportunity to read it before signing this complaint. I consent to the confidentiality and other rules in the Human Rights By-law. I understand that my consent does not prevent me from speaking to and obtaining advice from a lawyer or other representative so long as I do not pass along confidential information.

The information in this complaint is accurate and complete to the best of my knowledge.

Date: _____ Signature: _____

Print name: _____