

STATEMENT of POLICY and PROCEDURE			
Chapter:	Governance	SPP No.	GOV 1.01.OKIB
Section:	Band Council Policies	Drafted:	August 3. 2018
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1 PURPOSE

1.01 The purpose of the Okanagan Indian Band Conflict of Interest Policy is to assist in the identification of situations that present real, Potential or Perceived, direct or Indirect conflicts and to provide a procedure to manage conflicts in accordance with legal requirements and the goals of accountability and transparency in all aspects of Band Governance.

2 SCOPE

2.01 This Statement of Policy and Procedure applies to all Band Councillors when they are exercising a power, duty or responsibility relating to the Band.

3 DEFINITIONS

3.01 **Agents** means a person who acts on behalf of the OKIB in an official capacity as appointed by the Band Council or the Executive Director.

3.02 **Band** means the Okanagan Indian Band.

3.03 **Band Council** means the elected Chief and Council of the Okanagan Indian Band.

3.04 **Contractor** means a person under contract with the Band or a corporation or society of the Band to perform work or a service for a limited term or to complete a defined project.

3.05 **Council Meeting** means a duly convened meeting of the Band Council.

3.06 **Band Councillor** means an elected person representing Chief and Council of OKIB.

3.07 **Family Members and Related Persons** mean parents, children, grandparents, grandchildren, aunts, uncles, nieces and nephews and such as are described in the Table of Consanguinity, also included are:

- spouses, common-law spouses;
- step-children, foster children, adopted children and Dependants;
- parents-in-law, siblings-in-law;
- any person of the Band Councillor who resides permanently with the employee or with whom the Band Councillor permanently resides; or
- a corporation or other organization in which the person has an interest.

3.07 **Financial Benefit** includes:

- Employment opportunity;

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- Contract opportunity;
- Educational, medical or other social benefits;
- Honourariums;
- Payment of any money, or Valuable Consideration; or
- Allotment, lease or other grant of an interest in Reserve lands or Band-controlled lands.

3.08 **Indirect Interest** means, without limitation, a benefit to a Family Members and Related Persons, in which the person has an interest, or a future interest that would arise.

3.09 **Nominal Value** means \$20 or less.

3.10 **OKIB** means the Okanagan Indian Band.

3.11 **Potential or Perceived Interest** means there is a reasonable perception, which a reasonably informed person might have, that a person has a private interest that may affect their exercise of an official power.

3.12 **Related Bodies** means any association the OKIB is affiliated with that may or may not require membership dues.

3.13 **Spouse** means either of two persons who have entered into a legal marriage in good faith or have been living in a conjugal relationship for a period of at least **twelve** continuous months

3.14 **Valuable Consideration** means something of economic value, including money, goods and services.

4 **POLICY**

Conflict of Interest

4.01 A "conflict of interest" will arise where a Band Councillor has an interest that is real, Potential or Perceived, direct or Indirect; and is personal or financial, and which competes or appears to compete with:

- (a) The interests of the Band; or
- (b) The objective purpose of the individual's powers, duties, functions or responsibilities.

4.02 Conflicts of interest do not arise where:

- (a) The interests are the same as those of a broad class of people or a broad class of Band members;

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- (b) the interests relate to remuneration, leave and benefits owed to all Band Councillors; and/or
- (c) The interests are so remote or insignificant that they could not reasonably be regarded as likely to influence the individual in the exercise of a power or performance of a duty or function.

4.03 This Statement of Policy and Procedure prohibits acting under a conflict of interest whether real, Potential or Perceived, direct or Indirect and requires early and transparent disclosure of all real, Potential or Perceived, direct or Indirect conflicts. Acting in an official capacity where there is a conflict of interest is prohibited by this Statement of Policy and Procedure.

4.04 All members of Band Council must:

- (a) Uphold the highest standards of conduct;
- (b) Act responsibly, accountably, impartially, honestly and with integrity; and
- (c) Perform their duties and exercise their powers and functions in good faith and in the best interests of the Band.

Avoidance of Conflicts of Interest

4.05 All persons to whom this Statement of Policy and Procedure applies will arrange their private affairs and conduct themselves in a manner to avoid a Conflict of Interest;

- (a) They must avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function of their office or position could be influenced by the interests of any person to whom they owe a private obligation and who may expect to receive a benefit or preferential treatment; and
- (b) They must not be involved in any transaction, decision or matter where they are in a conflict of interest.

5 RESPONSIBILITIES

5.01 The Band Council is responsible for ensuring all Band Councillors comply with the obligations under this Statement of Policy and Procedures.

5.02 The Executive Director is responsible for informing the Band Council of their obligations under this Statement of Policy and Procedure and ensuring a record of Council disclosures is maintained.

5.03 The Council Secretary is responsible for maintaining a register of all information disclosed or determined for Band Council under this Statement of Policy and Procedure.

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6 PROCEDURE

Disclosure of conflicts of interest

- 6.01 If a Band Councillor believes that they are or may be in a real, Potential or Perceived, direct or Indirect conflict of interest, that person must disclose the nature and extent of the conflict to the Band Council as soon as the person learns of the conflict of interest, whether or not the matter in question has already been decided or concluded.
- 6.02 If it is not possible for the Band Councillor to disclose the conflict of interest to the Band Council in a timely manner at a duly convened Council meeting, that person must disclose the conflict of interest to the Executive Director and who will notify the Band Council and Council Secretary by email.
- 6.03 If a Band Councillor is in doubt as to whether they are in a conflict of interest, that person must disclose the issue to the Band Council who will make a decision on whether there is a conflict for the record at a duly convened Council meeting.

Undisclosed conflicts of interest

- 6.04 If a Band Councillor has reason to believe another person is or may be in a conflict of interest, they shall request clarification of the circumstances at a duly convened Council Meeting.
- 6.05 If, as a result of a clarification discussion under paragraph 6.04, if a Band Councillor is alleged to have a conflict of interest, and the person does not acknowledge the conflict of interest and take actions required under this Statement of Policy and Procedure, the Band Council must determine whether the person has a conflict of interest before the Council considers the matter referred to in relation to the conflict.
- 6.06 The minutes of the duly convened Band Council meeting must record any determination made under paragraph 6.05 and be added to the register held by the Council Secretary.
- 6.07 If the Band Council determines under paragraph 6.05 that a person has a real, Potential or Perceived, direct or Indirect conflict of interest or a direct or Indirect conflict of interest, the person must comply with paragraphs 6.08-6.10.

Conduct in the event of a conflict

- 6.08 After a Band Councillor declares a conflict of interest, or after a conflict is declared by the Band Council the Band Councillor who is in conflict must leave any part of a Council or public meeting, as the case may be, where the circumstances in which that Band Councillor has a conflict of interest are being discussed or voted on.
- 6.09 If a Band Councillor subject to paragraph 6.08 of this Statement of Policy and Procedure has a

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right to be heard on a matter, or if there is an interest that should be heard then, the Band Councillor in conflict should appoint another person to speak on the subject who will not be in conflict under this Statement of Policy and Procedure. A family whose interests should be represented in a matter should appoint a person who is not a Band Councillor and not employed the Band to speak on their behalf.

6.10 In particular, a Band Councillor with a Conflict of Interest will not exercise their official powers and will:

- (a) Not take part in the discussion of or vote on any question in respect of the matter;
- (b) Immediately leave a meeting or part of a meeting during which the matter is under consideration;
- (c) Not sign a Band Council Resolution, letter or any official document in respect of the matter;
- (d) Not attempt in any way, whether before, during or after the meeting, to influence the opinion or vote of the Band Council on any question in respect of the matter;
- (e) Not influence or attempt to influence in any way before, during or after a Band Council meeting any discussion or vote on any decision respecting the circumstances in which the person has a conflict of interest; and
- (f) Will refrain from engaging on social media forums in respect to the matter under consideration.

6.11 The minutes of a Band Council must record the Band Councillors disclosure of a real, Potential or Perceived, direct or Indirect conflict of interest and note the Band Councillors absence from the meeting, when the circumstances in which the person has a conflict of interest were being discussed or voted on and when they returned to the meeting.

6.12 Where, as a result of a conflict of interest, a quorum of Band Council can never be established in relation to a decision, the matter should be voted on by Band Council absent quorum and brought before Band Council following the vote for ratification.

6.13 The Band Council meeting minutes shall be reflected as motion absent quorum due to conflict of interest.

Resolution Despite Conflict

6.14 The Band Council may, by Band Council Resolution, approve a transaction, decision or matter that is the subject of a conflict of interest where:

- (a) The Band Councillor, has complied with the Procedures set out in this Statement of

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Policy and Procedure; and

- (b) The Band Council has determined that the transaction, decision or matter is fair and reasonable.

Gifts and Benefits

- 6.15 A Band Councillor to whom this Statement of Policy and Procedure applies must not solicit, receive or accept a gift or benefit where such action could reasonably be inferred to influence that Band Councillor in the exercise of that Band Councillor's powers or in the discharge of that person's duties or functions.
- 6.16 Notwithstanding paragraph 6.15, where a gift or benefit is given:
- (a) To a Band Councillor in their capacity as Band Councillor, they must advise the Band Council and the gift must become the property of the Band.
- 6.17 Despite the foregoing, a gift or benefit may be accepted if the gift or benefit would be considered within:
- (a) Normal protocol exchanges or social obligations associated with that person's position;
- (b) Normal exchanges common to business relationships, as the case may be; or
- (c) Normal exchanges common at public events of the Nation or of related bodies; and/or
- (d) Is of Nominal Value or is of a type that policies and directions of the Band Council have determined would be acceptable if offered by the Band to another person.
- 6.18 If a Band Councillor is unsure of their obligations under this Statement of Policy and Procedure, they should take timely steps to determine their obligations, and seek clarification from the Executive Director if in doubt.
- 6.19 A Contractor or Agent must not attempt to obtain preferential treatment from the Band by offering gifts or benefits that a Band Councillor is prohibited from accepting under this policy.

Specific Provisions related to financial benefits of Band Councillors

- 6.20 Prior to approving a Financial Benefit to a Band Councillor, the Band Council will determine whether the Financial Benefit is consistent with this Statement of Policy and Procedure and with standards of other federal governing Boards.
- 6.21 All Band Council discussions and resolutions concerning Financial Benefits payable to Band Councillors will be made at a duly convened Council meeting.

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Consequences of failing to comply with this Statement of Policy and Procedure

6.22 Any Band Councillor who fails to make or makes an incomplete disclosure of a Conflict of Interest will pay to the Band a sum of money equal to the value of any and all Financial Benefits the Councillor or Family Members and Related Persons received and benefited from the undisclosed Conflict of Interest notwithstanding any other disciplinary action the Band Council may take.

6.23 If a decision is made in contravention of this Statement of Policy and Procedure, Band Council may void the decision at a duly convened meeting of Band Council.

6.24 All declarations of a Conflict of Interest shall be recorded on the Declaration of Interest Form.

7 ATTACHMENTS

Declaration of Conflict of Interest Form
Table of Consanguinity

8 REPEALS

Conflict of Interest – Personnel Policies and Procedures approved 2010
Financial Administration Bylaw – Conflict of Interest approved 2012