

STATEMENT of POLICY and PROCEDURE			
Chapter:	Governance	SPP No.	GOV 1.01.OKIB
Section:	Band Council Policies	Drafted:	July 2022
Subject:	Conflict of Interest	Approved:	Sept. 7, 2022
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A version of this policy dated August 3, 2018, has been posted on the OKIB webpage sometime after 2018. The July 2022 version is based on the 2018 version but redrafted to simplify the language and provide clarity. None of the concepts set out in the 2018 version have been altered. Changes are shown in red font.

1 PURPOSE

- 1.01 This Okanagan Indian Band Conflict of Interest Policy has two purposes:
- a. to assist in the identification of situations that present real and potential 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; and
 - b. to replace the Conflict of Interest Policy 12.0.1 that is set out in the Okanagan Indian Band - Personnel Policy & Procedures Manual.

2 SCOPE

- 2.01 This Statement of Policy and Procedure applies to all Councillors when they are exercising a power, duty or responsibility relating to the OKIB.
- 2.02 This Statement of Policy and Procedures supplements the *Okanagan Indian Band Financial Administration By-law 2018* (By-law). In the event of a conflict between this policy and the By-law, the provisions of the By-law apply to the extent of the conflict.

3 DEFINITIONS

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

Conflict of Interest means a situation where a reasonable person, being aware of the Councillor's Personal Interest, would believe that the interest is sufficiently connected to the Councillor's official duties and responsibilities that it influences the exercise of those official duties and responsibilities;

Contractor means a person under contract with the OKIB or a corporation or society of the OKIB to perform work or a service for a limited term or to complete a defined project;

Council means the elected Chief and Council of the Okanagan Indian Band;

Councillor means a person elected as a Councillor and includes the Chief;

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Council Meeting means a duly convened meeting of the Council;

Family Member means a Councillor's parents, children, grandparents, grandchildren, aunts, uncles, nieces and nephews, Spouse, stepchildren, foster children, adopted children, parents-in-law, siblings-in-law, or any relative who resides permanently with the Councillor or with whom the Councillor permanently resides;

Nominal Value means \$20 or less;

OKIB means the Okanagan Indian Band;

Personal Interest means a real or perceived interest of a Councillor that is inconsistent with the interests of the OKIB, leading to conflicting loyalties or the perception thereof, including but not limited to:

- a business interest, whether as a shareholder, director or officer of a corporation, or an economic interest in any other business;
- any financial interest, whether through commitment, investment, relationship, obligation, involvement or otherwise, directly or indirectly;
- contract opportunity for the Councillor, Family Member, or Related Organization;
- educational, medical or other social benefits for the Councillor or a Family Member;
- payment of any money, or Valuable Consideration to the Councillor, Family Member or Related Organization; or
- an allotment, lease or other grant of an interest in Reserve lands or OKIB-controlled lands to the Councillor, Family Member or Related Organization;

Related Organization means a corporation or other organization in which the Councillor has an interest and includes any association the OKIB is affiliated with that may or may not require membership dues;

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;

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

4 POLICY

Conflict of Interest

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- 4.01 Conflicts of Interest may be economic in nature, or may be related to increased social stature, career advancement or courting future good will from external persons.
- 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 OKIB members;
 - (b) the interests relate to remuneration, leave and benefits owed to all 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 Councillors are prohibited from acting in an official capacity where there is a Conflict of Interest.
- 4.04 All declarations of a Conflict of Interest shall be recorded on the Declaration of Interest Form.

Avoidance of Conflicts of Interest

- 4.05 All Councillors must arrange their private affairs and conduct themselves in a manner to avoid a Conflict of Interest. For example, Councillors:
- (a) 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) must not be involved in any transaction, decision or matter where they are in a Conflict of Interest.

5 RESPONSIBILITIES

- 5.01 Upon this policy being approved, each Councillor must complete a Declaration of Conflict of Interest Form and return it to the Council Secretary as soon as practicable. Each Councillor is also responsible to ensure that their Declaration of Conflict of Interest Form is kept up to date during their term in office.
- 5.02 After this policy is approved, the obligations described in 5.01 shall be effective upon each Councillor after having been elected.
- 5.03 Council is responsible for ensuring all Councillors comply with the obligations under this Statement of Policy and Procedures.

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5.02 The Executive Director is responsible for informing the Councillors of their obligations under this Statement of Policy and Procedure and ensuring a record of Declarations is established and maintained.

5.03 The Council Secretary is responsible for establishing and maintaining a register of all information disclosed in a Declaration of Conflict of Interest For or as determined by Council under 6.05.

6 PROCEDURE

Becoming aware of a Conflict of Interest

6.01 If a Councillor realizes that they might be in a Conflict of Interest situation, that Councillor must disclose the nature and extent of the conflict to the Council as soon as the Councillor first suspects they may have a real or potential 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 Councillor to disclose the Conflict of Interest described in 6.01 to the Council in a timely manner at a duly convened Council meeting, that Councillor must disclose the Conflict of Interest to the Executive Director as soon as practicable who will then notify the Council and Council Secretary by email.

6.03 If a Councillor is in doubt as to whether they are in a Conflict of Interest, that Councillor must disclose the issue to the Council who will make a decision on whether there is a Conflict of Interest for the record at a duly convened Council meeting.

Undisclosed conflicts of interest

6.04 If a Councillor has reason to believe another Councillor 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, the affected Councillor is alleged to have a Conflict of Interest, and that Councillor does not acknowledge the Conflict of Interest and take actions required under this Statement of Policy and Procedure, the Council must determine whether the Councillor has a conflict of interest before the Council considers the matter referred to in relation to the Conflict of Interest.

6.06 The minutes of the duly convened 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 Council determines under paragraph 6.05 that a person has a real or potential Conflict of Interest, the Councillor must comply with paragraphs 6.08-6.10.

Conduct in the event of a Conflict of Interest

6.08 After a Councillor declares a Conflict of Interest, or after a Conflict of Interest is declared by the

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Council, the affected Councillor must leave any part of a Council or public meeting, as the case may be, where the circumstances in which that Councillor has a Conflict of Interest are being discussed or voted on.

- 6.09 If a Councillor subject to paragraph 6.08 has a right to be heard on a matter, or if there is an interest that should be heard, then, the affected Councillor should appoint another person to speak on the subject.
- 6.10 In particular, a 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 Council on any question in respect of the matter;
 - (e) not influence or attempt to influence in any way before, during or after a 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 Council meeting must record
- a. a Councillor's disclosure of a real, or potential Conflict of Interest;
 - b. note the affected Councillor's absence from the meeting,
 - c. when the matter at issue was discussed or voted on; and
 - d. when the affected Councillor returned to the meeting.
- 6.12 Where, as a result of a Conflict of Interest, a quorum of Council cannot be established in relation to a decision, the matter should be voted on by Council absent quorum and brought before Council at the next duly scheduled meeting for ratification; the Council meeting minutes shall record the event as a motion absent quorum due to Conflict of Interest.

Resolution Despite Conflict

- 6.14 Council may, by Band Council Resolution, approve a transaction, decision or matter that is the subject of a Conflict of Interest where:

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- (a) the affected Councillor has complied with the Procedures set out in this Statement of Policy and Procedure; and
- (b) Council has determined that the transaction, decision or matter is fair and reasonable.

Gifts and Benefits

- 6.15 A Councillor must not solicit, receive or accept a gift or benefit where such action could reasonably be inferred as influencing that Councillor in the exercise of their powers or in the discharge of that Councillor's duties or functions.
- 6.16 Notwithstanding paragraph 6.15, where a gift or benefit is given to a Councillor in their capacity as Councillor, they must advise the Council and the gift must become the property of the OKIB.
- 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 Council have determined would be acceptable if offered by the OKIB to another person.
- 6.18 If a 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 OKIB by offering gifts or benefits that a Councillor is prohibited from accepting under this policy.

Specific Provisions related to financial benefits of Band Councillors

- 6.20 Prior to approving an employment opportunity; contract; educational; medical or other social benefits; honorarium; Valuable Consideration; an allotment, lease or other grant of an interest in Reserve lands or OKIB controlled lands; to a Councillor, the Council must determine whether doing so is consistent with this Statement of Policy and Procedure and with standards of other federal governing Boards.
- 6.21 All Council discussions and resolutions concerning the benefits described in 6.20 payable to Councillors must be made at a duly convened Council meeting.

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

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

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

7 ATTACHMENTS

Declaration of Conflict of Interest Form

8 REPEALS

Conflict of Interest: Okanagan Indian Band - Personnel Policies and Procedures #12.0.1

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