

## KITSUMKALUM FIRST NATION

### **Conflict of Interest Policy**

#### **1.0 PURPOSE**

- 1.1 The purpose of this Policy is to protect the Employees, the Chief, the Councillors and Contractors of the First Nation from putting themselves or the First Nation into a conflict situation. The accompanying transparency and accountability produced as a result of this Policy will help foster greater trust in the Employees, the Chief, the Councillors and Contractors, by the First Nation's members.

#### **1.2 SCOPE**

- 1.3 This Policy will apply to the Chief, the Councillors, and to all Employees and Contractors. All corporations, limited partnerships, trust and other entities in which the First Nation has a significant interest will be expected to include parallel conflict of interest provisions in their respective corporate documents.
- 1.4 The Constitution that will be put in place pursuant to the treaty that the First Nation intends to enter into with Canada and British Columbia will include provisions whereby the Hereditary Chiefs of Kitsumkalum will be required to comply with the conflict of interest provisions contained in this Policy, subject to minor non-substantive changes being made reflecting that it is pursuant to treaty.

#### **2.0 DEFINITIONS**

**“Benefit”** means a direct or indirect financial or non-financial advantage for a Responsible Person and includes the avoidance of a detriment, but does not include participation in activities or programs of the First Nation in which all members of the First Nation have an opportunity to participate.

**“Band Manager”** means the employee who serves as the chief administrative officer of the First Nation's administration and head of the administrative staff. Where the term Band Manager is used it will also be understood to include “or designate”. It is also understood that Council is the authority over the Band Manager.

**“Chief”** means the Chief Councillor of the First Nation.

**“Confidential”** means information that is acquired by a Responsible Person solely by reason of his or her employment or involvement, with the First Nation or through a contract with the First Nation, and which the Chief, members of the Council, Employees and Contractors are under an obligation to keep confidential.

**“Conflict of Interest”** means a Real Conflict of Interest and a Potential Conflict of Interest as defined in section 4.

**“Contractors”** means those persons or entities who enter into, or propose to enter into, contractual arrangements with the First Nation.

**“Council”** means the Chief and Councillors of the First Nation.

**“Councillor(s)”** means member(s) of the Council, but does not include the Chief.

**“Employee”** with respect to the First Nation, means a staff member who is hired by the First Nation for full-time permanent, part-time permanent, term or temporary work.

**“Employer”** means the First Nation.

**“First Nation”** means the Kitsumkalum First Nation, also known as the Kitsumkalum Indian Band or any successor of the Kitsumkalum First Nation.

**“Immediate “Family”** means a person’s spouse, children, natural or adopted, siblings, parents, grandparents, nieces and nephews.

**“Members”** means the members of the First Nation who are on the First Nation’s membership list.

**“Membership Meeting”** means a meeting of the Members called by the Council

**“Policy”** means this Conflict of Interest Policy.

**“Related Person”** means a person who has an Immediate Family connection, business association or relationship with a Responsible Person such that;

- (a) Any Transaction between the First Nation and the person would confer a benefit upon the Responsible Person; or
- (b) The relationship has the potential to affect, or give the appearance of affecting, the Responsible Person’s ability to act impartially on behalf of the First Nation.

**“Resolution”** means a resolution passed by a quorum of Council at a duly convened Council meeting.

**“Responsible Person”** means the Chief, Councillors, Employees and Contractors.

**“Transaction”** means an arrangement, other than a gift, under which:

- (a) The First Nation and another person agree to exchange goods, services, or right of any kind;
- (b) The First Nation confers a benefit on another person; or
- (c) The First Nation receives a benefit from another person.

### 3.0 INTRODUCTION

3.1 Whenever corporations, large or small, limited partnerships, trusts and other corporate-like entities, government, non-profit societies, First Nations or any public body conducts business, conflict of interest laws or policies are necessary. Without clear, explicit guidelines, natural human creativity sometimes works to the disadvantage of the stakeholders, in this case the First Nation's members.

3.2 At the same time, it needs to be recognized that smaller communities and organizations have different needs and challenges than larger corporate structures or government; however the principles underlying conflicts and the avoidance of conflict remain the same.

#### 4.0 DEFINITION OF CONFLICT

4.1 Generally speaking, a conflict of interest arises when an individual in a position of authority or influence places his or her private interests ahead of the public interests that individual represents. More specifically, a conflict of interest arises in any situation where an individual uses his or her position, authority or influence in such a way as to interfere or alter, or appear to interfere or alter, the policies, procedures, standards, protocols and services in order to gain personal or financial benefits for themselves, family, friends or other persons.

4.2 A real conflict of interest: occurs when a Responsible Person exercises an official power, makes an official decision or performs an official duty or function and at the same time knows or ought to have known that in the performance of this duty or function or in the exercise of such power there is a furtherance of a private, personal or financial interest for themselves, their Immediate Family or friends (a "Real Conflict of Interest").

4.3 A potential conflict of interest occurs when there exist some private, personal or financial interest that could influence the performance of a Responsible Person's duties, functions or the exercise of power (a "Potential Conflict of Interest").

4.4 No Conflict of Interest arises where:

- (a) the only benefit derived by an Immediate Family member is as an employee of a person or business entering into a Transaction with, or having a matter determined by, Council;
- (b) the Council member or his or her Immediate Family member is a beneficiary or shareholder of a corporation, society or other entity owned or controlled by the First Nation entering into a transaction with Council or having a matter determined by Council;
- (c) the Council member or his or her Immediate Family holds an interest in the same manner and under the same conditions as other First Nation members;

- (i) a Council member guarantees repayment of or otherwise assumes liability to repay a loan made to Council or the First Nation;
  - (ii) Council enacts a First Nation law or policy setting reasonable remuneration, holidays, sick leave and benefits for services of Council members as elected officials of the First Nation;
  - (iii) Council agrees to indemnify or reimburse the Council member for expenses or liabilities reasonably incurred in their duties or arranges for insurance against risks undertaken in the carrying out of their duties; or
  - (iv) a member of Council is also an Employee or Contractor.
- (d) A Transaction which may give rise to a Conflict of Interest may be approved by Resolution provided that it is in the best interests of the First Nation.

## **5.0 CONFLICT OF INTEREST GUIDELINES FOR THE COUNCIL AND EMPLOYEES**

5.1 A Responsible Person must arrange his/her private affairs and conduct him/herself so that they are not in a Conflict of Interest situation when acting for, or dealing with, the First Nation. Responsible Persons are expected to act with integrity and impartiality by placing the interests of the First Nation and its members ahead of any self or private interests and in so doing must adhere to the following guidelines and rules:

- (a) Avoid circumstances which may result in a Conflict of Interest.
- (b) Act in a manner which promotes and enhances the confidence of the First Nation and its members which ensures that the members are being treated equally and fairly.
- (c) Act honestly and in the best interests of the First Nation and its members.
- (d) With respect to services provided by various programs, a Responsible Person is prohibited from intervening or advocating on behalf of a person who is the subject of the respective service, where there is a process or procedure in place to adequately allow for the access to that service. A Responsible Person may contact such service provider and ask for an update of the status of such service on behalf of the individual in need of the service.
- (e) A Responsible Person will not use his or her authority or influence to gain an advantage in favour of an individual First Nation member receiving services versus another First Nation member.
- (f) A Responsible Person will not interfere, directly or indirectly, to attempt to prevent the reporting of a criminal offence or other illegal act.



- (g) A Responsible Person must not participate in discussions or decisions respecting financial management that may affect them or their Immediate Family. They must at all times be seen to be impartial.
- (h) A Responsible Person will not place himself or herself under obligation to any person or individual who might benefit from special considerations by the Responsible Person.
- (i) A Responsible Person will avoid participation in official matters where such Responsible Person or their Immediate Family has a personal or financial interest or appears to have such an interest.
- (j) A Responsible Person shall not accept any money, property, position or favour of any kind that could be construed as a Conflict of Interest or monetary gain or other benefit, except where such a gift or favour is authorized by the Council or where such gifts or favours are received as an incident of the protocol, or cultural obligation that accompany the duties and responsibilities of the Responsible Person.
- (k) The Chief, a Councillor and an Employee is not permitted to directly or indirectly assist or benefit from any corporation or firm which carries on business in competition with the First Nation.
- (l) The Chief, a Councillor or an Employee is not permitted to participate in any outside employment that will damage the relationship between the Council and its members, or otherwise interfere with the Responsible Person's official duties.
- (m) The Chief and Councillors, for one full calendar year after no longer being a member of Council, must not lobby the First Nation, either directly or indirectly, on behalf of any business he/she is involved in.
- (n) Councillors, while acting in their official capacity, shall not give direction to Employees, other than the Band Manager, except by way of communication through the Band Manager, unless authorized to do so by Council.
- (o) A Councillor will remove himself or herself from their official duties and responsibilities associated with the First Nation if charged with an offence under the Criminal Code or any other quasi-criminal statute, until the matter is formally resolved. If convicted, the Councillor will resign from Council.
- (p) Examples of Conflicts of Interest are set out in Appendix "A" to this Policy.

## 6.0 DISCLOSURE

- 6.1 A Responsible Person must, immediately upon becoming aware of a Conflict of Interest situation, disclose the potential conflict in writing to the Chief and Band Manager or to a specific person who has been designated by Council for this purpose.

6.2 If a Responsible Person is in doubt as to whether a situation involves a Conflict of Interest, the Responsible Person must immediately seek the advice of the person designated by the Council to give such advice.

6.3 A Responsible Person must immediately take steps to resolve a Conflict of Interest or remove suspicion that it exists.

## 7.0 REPORTED CONFLICT

7.1 If a person raises a concern that a Responsible Person is in a Conflict of Interest, that person must immediately bring the concern to the other Responsible Person's attention and request that the conflict be declared. If the other Responsible Person refuses to declare the conflict, then the person raising the concern must bring this concern to the attention of the Chief, the Council, the Band Manager or the person who is designated by the Council to deal with these issues.

7.2 In the event a Responsible Person is reported to have a Conflict of Interest, the matter is to be reported immediately, orally or in writing, to the Band Manager or the Chief, whichever is appropriate, who shall, as soon as practicable, submit such report to the Council for review at the next scheduled meeting. At that meeting, the Council shall consider such report, taking into account:

- (a) The responsibilities of the Responsible Person who may be in conflict;
- (b) The seriousness or sensitivity of the Conflict of Interest; and
- (c) The value and types of assets involved (if applicable).

7.3 Upon a disclosure of a Conflict of Interest or report respecting a Conflict of Interest, the individual who is the subject of the alleged Conflict of Interest must remove himself or herself voluntarily from all further discussions and activities pertaining to the matter in question.

7.4 If the Responsible Person who is the subject of the alleged Conflict of Interest does not voluntarily remove himself or herself from all further discussions and activities pertaining to the matter in question, Council shall investigate the Conflict of Interest in the absence of the Responsible Person alleged to be in a Conflict of Interest to determine whether the facts substantiate a Conflict of Interest and formally advise the Responsible Person of their findings.

7.5 If a Responsible Person is found to be in a Conflict of Interest, the Council may agree to establish rules of conduct or procedures which avoid the Conflict of Interest and ensure that they are adhered to by the Responsible Person in the Conflict of Interest.

7.6 If a Responsible Person is found to be in a Conflict of Interest, the Council must ensure that the Responsible Person in a Conflict of Interest does not participate in meetings or matters and any related matters which give rise to a Conflict of Interest.

7.7 The minutes of the applicable Council meeting shall record the disclosure or report of the Conflict of Interest and the action taken in this regard.

**8.0 PROCEDURE WHERE THERE IS A CONFLICT OF INTEREST BY A MEMBER OF COUNCIL**

8.1 A Council member who has, or believes that he or she has, a Conflict of Interest, shall disclose the nature and extent of the Conflict of Interest at the first Council meeting after the Conflict of Interest becomes known to the Council member. The disclosure must be made when the Conflict of Interest first becomes known to the individual, whether or not the Transaction or matter in question has already been concluded.

8.2 Where the Conflict of Interest of a Council member has not been disclosed as required in s. 8.1 by reason of his or her absence from the meeting at which the matter was first raised, the Council member shall disclose the Conflict of Interest and comply with this section at the next meeting of Council.

8.3 If a Council member is in doubt whether he or she is in a Conflict of Interest, he or she may request a decision of Council on whether there is a Conflict of Interest.

8.4 After declaring the Conflict of Interest, the Council member shall leave the meeting where the matter is being considered, not be counted in the quorum, nor participate in the discussion or vote on the matter in question.

8.5 A Council member who has a Conflict of Interest shall not attempt in any way, whether before or after the Council meeting, to influence the discussion or vote on the matter in question.

8.6 Every declaration of a Conflict of Interest and the general nature thereof shall be recorded in the minutes of the Council meeting.

8.7 Notwithstanding sections 4, 5 and the foregoing provisions of this section 8, Council may approve a Transaction by Resolution where:

- (a) the Council member has complied with 8.1 through 8.5 of this section; and
- (b) Council determines the Transaction is fair and reasonable and in the best interests of the First Nation.

8.8 The failure of a Council member to provide Council with sufficient information to assess the nature of an interest involved in the Transaction invalidates any authorization given under this section.

8.9 Any Resolution authorizing a Transaction may make the authorization conditional upon the affected Council member taking steps or following procedures that may be necessary to protect the interests of Council or the First Nation or to safeguard the community's trust in the conduct of Council's activities.

## 9.0 PROCEDURAL FAIRNESS

9.1 To ensure procedural and administrative fairness, a member of Council, an Employee or a Contractor who is accused of violating any provision of this Policy, shall have a minimum of one week and no longer than three weeks to prepare his or her case to respond to these allegations. Before considering a sanction, Council must ensure that the member of Council, an Employee or a Contractor has:

- (a) Received a written copy of the case against him or her;
- (b) Been given a minimum of one week and no longer than three weeks to prepare a defense against any allegations; and
- (c) Been given an opportunity to be heard through a mutually agreed upon process (mediation format, meeting format, circle process), and failing agreement, through a process as determined by the Chief or the Band Manager, as appropriate.

## 10.0 DISCIPLINARY ACTION

10.1 In the event a Responsible Person in conflict persists in involving himself or herself in the matter or related matters which gave rise to the Conflict of Interest, the Responsible Person is regarded as having acted contrary to the interests of the First Nation and may be subject to appropriate disciplinary action up to, and including, removal from Council or termination of the Employee or Contractor.

10.2 The foregoing is subject to compliance with section 9.0.

## 11.0 AMENDMENTS


11.1 This Policy may only be amended by way of

- (a) a majority of Council passing a Resolution agreeing to the amendments; and
- (b) a majority of Members who attend a Membership Meeting called by Council to discuss and vote on the proposed amendments voting in favour of the amendments by a show of hands.

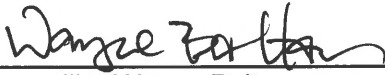
This Policy has been approved by a majority of Council at a duly convened meeting of Council held on the 2<sup>ND</sup> day of APRIL, 2015.

  
Chief Don Roberts





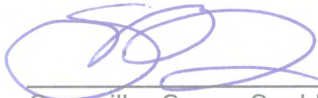
Councillor Cynthia Bohn



Councillor Wayne Bolton



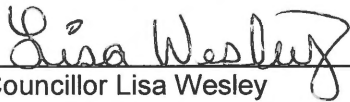
Councillor Troy Sam



Councillor Susan Spalding



Councillor Katherine Wesley



Councillor Lisa Wesley



Councillor James Webb

## APPENDIX “A”

Specific examples of the Conflicts of Interest could include:

1. Being a member of Council and voting on an item before the Council which is directly family related.
2. Being an Employee or Contractor and a Councillor at the same time and making decisions with respect to that employment or contract.
3. Voting on something which directly affects the employer of the Chief or a Councillor or a person with whom the Chief or Councillor has a business relationship (for example, if the Councillor works for a construction company and votes on a contract for that company).
4. Lobbying by the Chief or a Councillor to gain employment by the First Nation for family members.
5. The Chief or a Councillor accepting gifts from parties who have an item on the Council table.
6. Discussing proceedings of “in-camera” meetings with persons not entitled to the information or with anyone not entitled to be at an in-camera session.
7. Voting or making a decision on an item with which the Chief, Councillor or Employee or their Immediate Family is directly involved.
8. Voting by the Chief or a Councillor on any item which may result in the Chief or a Councillor or their Immediate Family making a financial gain
9. Participating in a decision to hire an Immediate Family member.