



## CONFLICT OF INTEREST CODE

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## **Preamble**

The Nipissing First Nation Chief and Council serve as the elected representatives of the Nipissing First Nation Members and as such are the governing authority for Nipissing First Nation. It is their role, as a whole, to promote the community’s best interest, to set goals and policies, pass regulations, and through the office of the Chief Executive Officer to ensure that all Nipissing First Nation Employees uphold and respect the decisions of the Nipissing First Nation Chief and Council and do not use their position for personal advantage.

This Conflict of Interest Code applies to the Nipissing First Nation Chief and Council, all Employees of Nipissing First Nation, Trustees of trusts for the benefit of Nipissing First Nation, agencies and other entities including committees, boards, commissions and corporations, unless otherwise provided by Chief and Council and recorded in the minutes of meeting of Chief and Council.

This Conflict of Interest Code replaces all conflict of interest provisions in all other Nipissing First Nation by-laws, policies and directives and shall be read in conjunction with the provisions of the Nipissing First Nation Land Code.

This Code establishes standards for Public Officials for personal and public moral conduct and responsibility to protect the integrity of the Nipissing First Nation and decisions made with respect to Nipissing First Nation and its Members.

This Code will be interpreted and applied in a manner that reflects the Nipissing First Nation community standards and expectations using common sense.

## **Definitions**

1. In this Code:

“Chief” means the chief of Nipissing First Nation duly elected under the Nipissing First Nation Custom Election Regulations;

**“Child”** means a child born within or outside marriage and includes an adopted child and an individual whom a parent has demonstrated a settled intention to treat as a child of his or her family;

**“Conflict of Interest”** means an issue that arises when a Public Official 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 of Nipissing First Nation and/or a particular program in order to gain personal Financial Benefits for him or herself, Related Persons or other persons that directly or indirectly creates an advantage in obtaining resources, services and/or access to programs or services from Nipissing First Nation for a Member that is over and above any other Member.

**“Director”** means an individual who is

- (a) a member, commissioner, director or trustee of a Nipissing First Nation Public Institution,
- (b) a director or officer of a Nipissing First Nation Corporation;

**“Chief Executive Officer”** means the individual employed as the executive director by Nipissing First Nation who reports directly to Chief and Council;

**“Employee”** means an individual employed by the Nipissing First Nation;

**“Financial Benefit”** includes, but is not limited to:

- a. employment benefit;
- b. contract benefit;
- c. educational, medical or other social benefit;
- d. compensation;
- e. payment of any consideration; and
- f. allotment, lease or other grant of an interest in Nipissing First Nation property or lands.

**“Meeting”** includes any regular, special, committee or other meeting of Chief and Council, a Nipissing First Nation Public Institution, a Nipissing First Nation Corporation or other entity, as the case may be;

**“Member”** means an individual whose name appears on the membership list for Nipissing First Nation;

**“Nipissing First Nation Corporation”** means a corporation incorporated by the First Nation in which Nipissing First Nation or a Nipissing First Nation Corporation owns more than one quarter of the voting shares or votes;

**“Nipissing First Nation Public Institution”** means a board, commission, tribunal or committee established by Nipissing First Nation under Nipissing First Nation law or policy;

“Panel” means the Dispute Resolution Panel established by Nipissing First Nation under the Nipissing First Nation Land Code ratified by the Nipissing First Nation on May 9, 2003 and any duly ratified amended Code;

“Parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

“Public Official” means the Chief, a Councillor, an Employee of Nipissing First Nation, a Director of a Nipissing First Nation Corporation, an individual selected by Chief and Council to a Public Institution, a member who is a trustee of the Nipissing First Nation 2013 Claim Trust Agreement or committee member of the Finance & Audit Committee, or any person identified as a public official by the Chief and Council by resolution;

“Related Person” includes a person’s Spouse, Child, grandchild, Parent, grandparent, sibling, nephew/niece and includes his or her Spouse’s Parent, Child, grandchild or grandparent, nephew/niece and shall also include any other person permanently residing in the person’s household;

“Spouse” means a person to whom the person is married or has cohabited for a period of at least 3 years or who are in a relationship of some permanence, if they are the Parents of a Child.

## **PART 1 – CONFLICT OF INTEREST**

### **Personal and Related Persons’ Conflict of Interest**

2. A Public Official shall not use his or her office or employment for a Financial Benefit for himself or herself or for Related Persons to the detriment of the interests of Nipissing First Nation. A Public Official has a Conflict of Interest if he or she exercises an official power or performs an official function knowing that in so doing there is the opportunity to further his or her private interest or the interests of his or her Related Persons.

### **Conflict of Interest Prohibition**

3. A Public Official must not exercise an official power or perform an official duty or function if he or she has a Conflict of Interest. Each Public Official must arrange their private affairs and conduct themselves in a manner that avoids real or perceived Conflicts of Interest.

### **Acceptance of gifts or personal benefits**

4. Without limiting the generality of section 3, a Public Official is in a Conflict of Interest if he or she accepts a gift or personal benefit that might reasonably be seen to have been given to influence him or her in the exercise of his or her powers or the performance of his or her duties or functions.

5. Despite section 4, a Public Official may accept a gift or benefit if the gift or benefit is or would be considered:
  - a. normal protocol exchanges or social obligations associated with the person's office or duties,
  - b. normal exchanges common to ordinary business relationships, or
  - c. normal exchanges common at public cultural events of Nipissing First Nation or other First Nations,
  - d. of nominal value,
  - e. given by a friend or a relative solely as an element of that relationship and not seen as being given for political favour, or
  - f. of a type that is permitted under the policies or directions issued by Chief and Council.
6. A Public Official is not in a Conflict of Interest if engaged in the conduct of business with another party if the party, by agreement, assumes costs which otherwise would be costs to Nipissing First Nation or a Nipissing First Nation Corporation as a result of the business relationship.
7. If a gift or benefit with a value greater than \$200 is given to a Public Official, he or she is not in a Conflict of Interest provided he or she makes a written disclosure of the gift or benefit to the Chief or his/her designate, who may require that the gift or benefit be made the property of Nipissing First Nation based on the policies or directions issued by Chief and Council.

### **Exception**

8. A Public Official must not be found to be in a Conflict of Interest if the matter with respect to which he or she has an interest is the payment of an account, or the creation or alteration of a benefit generally available to Members, if that benefit is intended or extended at the same time to:
  - a. all Members;
  - b. a group of Members who are identifiable by reference to age, gender, financial circumstances, educational or medical need; or,
  - c. the Nipissing First Nation Chief and Council as a wholeand is authorized by Band Council Resolution.

## **PART 2 – DISCLOSURE DUTIES, CONTRACTS, AND USE OF RESTRICTED INFORMATION**

### **Declaration of Conflict of Interest**

9. All Public Officials, other than the Chief, Councillors and Directors must each file with the Chief Executive Officer a declaration of Conflict of Interest in the prescribed form, setting out the following:

- a. the names of all corporations in which they or their Related Persons have an interest as shareholder, director or officer;
- b. the names of each proprietorship, partnership or other business entity in which they or their Related Persons have an interest and the names of each of the other persons who have a substantial financial interest in that proprietorship, partnership or other business entity.

10. Every individual to whom section 9 applies must:

- a. make a supplemental declaration of Conflict of Interest in the prescribed form and file it with the Chief Executive Officer as soon as is reasonably possible if any of the matters set out in the declaration provided under section 9 are not or are no longer true, accurate and complete, and
- b. provide any additional information about such matters that the Chief Executive Officer may require based on the policies or directions issued by Chief and Council.

### **Affidavits of Conflict of Interest**

11. Before being appointed or assuming their duties, the Chief, all Councillors and all Directors and trustees of the Nipissing First Nation 2013 Claim Trust who are Members, must make an affidavit in the prescribed form disclosing the following:

- a. if they have been convicted of an indictable offence within the preceding 5 years;
- b. the names of all corporations in which they have an interest because they or Related Persons are shareholders, directors or officers;
- c. the names of each partnership in which they have an interest because they or Related Persons are partners, and the names of each of the partners in the partnership;
- d. the names of all proprietorships or other business entities in which they have an interest because they or Related Persons have a substantial financial interest, and, must undertake in that affidavit to inform the Chief Executive Officer in writing as soon as possible if any of the matters set out in it were inaccurate or are no longer true, accurate and complete, and, if so, to provide such additional information concerning those matters as the Chief Executive Officer may require, based on the policies and directions of Chief and Council, and to provide a supplementary affidavit to that effect if requested to do so by the Chief Executive Officer.

12. The Chief Executive Officer must maintain a permanent record of declarations and affidavits of Conflict of Interest and supplemental declarations and affidavits required and made under this Part.

### **Responsibility to disclose when in conflict of interest**

13. A Public Official must not be found to be in a Conflict of Interest if he or she, at the first available opportunity
  - a. discloses the particulars of a real or perceived Conflict of Interest, and
  - b. abstains from being involved in any discussion regarding the matter and from voting on any question relating to it.
14. Where a Public Official is in doubt as to whether a Conflict of Interest exists, the Public Official shall consult with the Chief for elected officials or Chief Executive Officer for employees to determine if a Conflict of Interest exists.

#### **When present at Meeting at which matter considered**

15. Where a Public Official, either on his or her own behalf or while acting for, by, with or through another, has any Financial Benefit, direct or indirect, in any matter and is present at a Meeting at which the matter is the subject of consideration, that Public Official:
  - a. shall prior to any consideration of the matter at the Meeting, disclose the interest and the general nature of the conflict;
  - b. shall immediately leave the Meeting or the part of the Meeting during which the matter is under consideration;
  - c. shall not take part in the discussion of, or vote on any question in respect of the matter;
  - d. shall not attempt in any way whether before, during or after the Meeting to influence the opinion or voting on any such question;
  - e. shall not, if he or she is the Chief or a Councillor, sign a Band Council Resolution or letter in respect of the matter;
  - f. shall not, if he or she is a trustee of the Nipissing First Nation 2013 Claim Trust sign a trustee resolution or letter in respect of the matter; and,
  - g. shall not in any way influence an Employee or other Public Official in carrying out his or her duties in respect of the matter.

#### **When absent from Meeting at which matter considered**

16. Where the interest of a Public Official has not been disclosed as required by section 15 by reason of the Public Official's absence from the Meeting referred to in that section, the Public Official shall disclose the interest and otherwise comply with section 15 at the first Meeting attended by the Public Official after the Meeting referred to in section 15.
17. Where a Public Official fails to make a declaration of a Conflict of Interest, any other Public Official may make such a declaration on the interested Public Official's behalf. The interested Public Official shall have opportunity to briefly explain the conflict or perceived conflict in question, after which the:
  - a. the Chief and Council by majority vote, for the Chief or Councillor alleged to have a Conflict of Interest;
  - b. the board of directors, trustees or committee members, as appropriate, by majority vote for a Director, trustee or committee member; or,
  - c. the Chief Executive Officer, for an Employee;



will determine whether the Public Official in question is in fact in a Conflict of Interest. A decision on a Conflict of Interest under this section is final.

18. Where a decision has been made under section 17 that a Public Official has a Conflict of Interest, that Public Official:
- a. shall immediately leave the Meeting or the part of the Meeting during which the matter related to the Conflict of Interest is under consideration;
  - b. shall not take part in the discussion of, or vote on any question in respect of the matter related to the Conflict of Interest;
  - c. shall not attempt in any way whether before, during or after the Meeting to influence the opinion or voting on any such question;
  - d. shall not, if he or she is the Chief or a Councillor, sign a Band Council Resolution or letter in respect of the matter; and,
  - e. shall not, if he or she is a trustee of the Nipissing First Nation 2013 Claim Trust sign a trustee resolution or letter in respect of the matter;
  - f. shall not in any way influence an Employee or other Public Official in carrying out his or her duties in respect of the matter.

#### **Disclosure to be recorded in minutes**

19. Every declaration or determination of Conflict of Interest and the general nature of that conflict made under section 15 or section 17 shall, where the Meeting is open to the public, be recorded in the minutes of the Meeting.
20. Every declaration or determination of Conflict of Interest made under section 15 or section 17, but not the general nature of that interest, shall, where the Meeting is not open to the public, be recorded in the minutes of the next Meeting that is open to the public.

#### **Quorum where disclosure occurs**

21. The absence of a Public Official from a Meeting because of the requirements of section 15 or section 17 must not be taken into account in determining whether a quorum is present for that Meeting. In other words, the remaining number of voting individuals at the Meeting shall be deemed to constitute a quorum, provided such number is not less than three.
22. If, because of the operation of section 21 there are fewer than 3 voting individuals able to discuss and vote on a particular matter or any question relating to that matter, then a committee composed of the remaining voting individuals, the Chief Executive Officer and an individual designated by Chief and Council must be convened and empowered to discuss the particular matter and vote on any question relating to it in the place of the decision-makers who are in Conflict of Interest; provided in the case of the Nipissing First Nation 2013 Claim Trust Agreement, the determination of the Corporate Trustee, as such term is defined therein, shall be final and binding on all interested parties.

## **Contracts**

23. A Public Official may not directly or indirectly enter into a contract with Nipissing First Nation while he or she is acting in an official capacity or for 2 months following the date on which that individual ceases to act in that capacity, unless
- a. the contract is awarded in accordance with the procurement policies of Nipissing First Nation,
  - b. the interest is disclosed, and
  - c. the work to be performed under the contract is reasonably necessary to Nipissing First Nation and the fees payable for performing the work stipulated in the contract are fair and reasonable in relation to the fees that would be paid to or charged by an independent person for the same work.

## **Unauthorized use of restricted Information**

24. A Public Official may not use information that is
- a. supplied in confidence to Nipissing First Nation,
  - b. not generally available to all Members, and
  - c. obtained while that individual serves in an official position or at any time after he or she ceases to serve in that position, if the information at issue could result in, or could appear to have resulted in, a Financial Benefit to him or her.

## **Implications for agreements in which restricted information used**

25. Any Financial Benefit received in contravention of section 25 may be recovered by Nipissing First Nation from the individual who received the financial benefit, unless it involved doing something required to be done because of the existence of an emergency, if it could be reasonably concluded that compliance with the requirements of section 25 would have been impracticable.

# **PART 3 – ENFORCEMENT**

## **Reporting to the Chief Executive Officer**

26. Any Member who believes, on reasonable grounds, that information contained in a declaration or an affidavit of conflict of interest of Public Official sworn in compliance with this Code is untrue, incomplete or inaccurate, may report in writing that belief and the reasons for it to the Chief Executive Officer.
27. If a Public Official becomes aware that he or she is or may be in contravention of this Code, he or she must report the matter to the Chief Executive Officer immediately upon becoming aware of the possible contravention.

28. If it is the Chief Executive Officer who reasonably believes that there is a contravention of this Code by a Public Official, the process set out in section 30 must be followed.

### **Conflict of Interest of the Chief Executive Officer**

29. If a Public Official or Member reasonably believes that the Chief Executive Officer is in contravention of this Code, he or she must immediately report the belief and the reasons for it, in writing, to the Chief who must determine what action, if any, is to be taken.

### **Breach of terms of employment**

30. An Employee is in breach of his or her terms of employment, and subject to disciplinary action including dismissal, if he or she acts in contravention of any provision of this Code.

### **Reporting to Panel**

31. On receiving a report under sections 27 or 28, the Chief Executive Officer must expeditiously review the matter and make such enquiries as he or she considers necessary into the matter and if he or she is of the opinion that a Public Official is in contravention of this Code, he or she must make an application to Panel.
32. The application to the Panel must identify a Public Official alleged to be in conflict but not name the Public Official in order to ensure the fairness in the Committee's decision, the name of the individual alleging the Conflict of Interest will not be disclosed in order to ensure the fairness of the decision of the Committee, the nature of the alleged Conflict of Interest, the reasons cited by the individual who reported the alleged Conflict of Interest, and the nature and results of the Chief Executive Officer's enquiries. The application may be supported by an affidavit of the Chief Executive Officer setting out the details of his or her enquiries and any other evidence the Chief Executive Officer deems necessary for the Panel to make a decision.

### **Responding to an application**

33. An application under this Part must be heard within 30 days of the date on which the application was filed and a decision must be rendered within the 14 days following the day on which the hearing ends.

### **Continuing to act**

34. A Public Official who is alleged to be in a Conflict of Interest may continue to act in his or her official capacity, until the Panel makes a declaration under section 41 (a) to (c).

### **Timing of application**

35. An application under this Part may only be made within one year from the date the Conflict of Interest is alleged to have occurred.

36. In the case of the Chief or a Councillor, an application under this section may be brought or continued whether or not an election has been held between the time the disqualification is alleged to have occurred and the time the application is or was commenced and whether or not the individual in respect of whom the application is being brought was re-elected in an election.

### **Principles of Natural Justice**

37. After receiving a report on alleged Conflict of Interest, the Chief Executive Officer or the Chief, as the case may be, must review the information provided and make a decision in accordance with the rules of natural justice, including:
- a. providing an opportunity for the person with the alleged Conflict of Interest to know the allegation and provide an answer before a final decision is made; and
  - b. the person or persons making the decision on the Conflict of Interest allegations shall make that decision without any influence or bias.
38. After receiving an application on alleged Conflict of Interest, the Panel must review the information provided and make a decision in accordance with the rules of natural justice, including:
- a. providing an opportunity for the person with the alleged Conflict of Interest to know the allegation and provide an answer before a final decision is made; and
  - b. the person or persons making the decision on the Conflict of Interest allegations shall make that decision without any influence or bias.

### **Effect of Conflict of Interest on Contracts**

39. Any contract involving the receipt or expenditure of Nipissing First Nation funds is void where the person or persons approving the contract or Related Persons have a financial interest in the contract, unless the contract is confirmed by the Chief and Council notwithstanding the existence of Conflict of Interest.

## **PART 4 – DECISIONS OF PANEL**

### **Powers of Panel**

40. After hearing an application, the Panel may declare that the Public Official, depending on the seriousness of the matter,
- a. may be disqualified and/or order that their position be vacated,
  - b. must make restitution to Nipissing First Nation in an amount determined by the Panel,
  - c. must pay a fine to Nipissing First Nation in an appropriate amount as determined by the Panel,
  - d. may remain in the position, subject to such conditions as the Panel may determine, or
  - e. is not in contravention of this Code, in which case the matter must be dismissed.

### **Award of damages**

41. If Panel declares an individual to be in Conflict of Interest because information obtained in contravention of section 24 was used to gain a monetary benefit, the Panel may order that individual to pay an appropriate amount of money in damages to Nipissing First Nation.

### **Reimbursement of costs and expenses**

42. The Panel, if it makes a declaration under subsection 41 (e), may order that any costs and expenses incurred by the defendant are reimbursed.

### **Final Decision**

43. All decisions of the Panel are final. There is no appeal to any court of any decision of the Panel, unless the Panel has acted beyond its authority or outside of the scope of this Code.

## **PART 4 – MISCELLANEOUS**

### **Regulations**

44. The Chief and Council may make policies, procedures or regulations considered necessary and advisable, ancillary to this Code and not inconsistent with it, and to provide for administrative and procedural matters for which no express, or only partial, provision has been made in this Code.
45. Without limiting the generality of section 43, the Chief and Council may make policies, procedures or regulations as follows:
- a. to define a word or expression used but not defined in this Code;
  - b. to specify the content and form of affidavits required by this Code;
  - c. to designate any Nipissing First Nation Corporations or other entities that it may wish to subject to all or part of this Code.

### **Commencement**

46. This Code comes into force on the date of its approval by Chief and Council.
47. When this Code comes into force, it replaces the Conflict of Interest provisions in all Nipissing First Nation by-laws, policies and procedures and directives.

### **Amendment**

48. This Code may be amended by the Chief and Council on recommendation of the Policy Review Committee.

*This Conflict of Interest Code approved this 22<sup>nd</sup> day of January, 2013.*

*Amended and approved this 6<sup>th</sup> day of March, 2018.*

*Amended and approved this 6<sup>th</sup> day of October, 2020.*