



Managing Conflicts of Interest

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First Nations
**FINANCIAL
MANAGEMENT
BOARD**

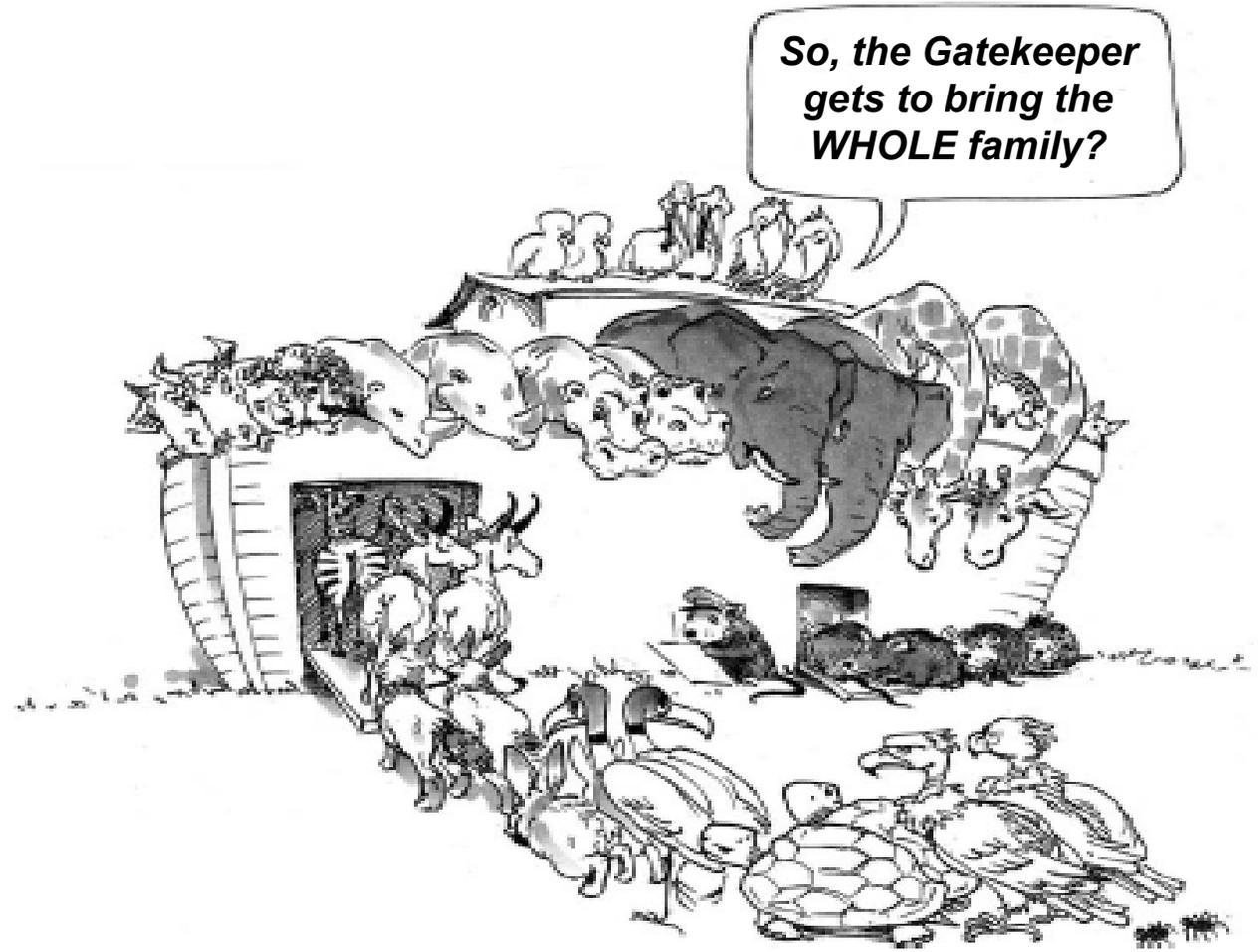
**LE CONSEIL
DE GESTION
FINANCIÈRE** des
Premières Nations

Learning Objectives

- What IS a conflict of interest?
- Who cares? Why do I and my Nation need to know?
- How can we manage conflicts of interest?

What IS a Conflict of Interest?

Personal gain at the expense of others



Why Should a Nation Care About Conflicts of Interest?

- 2008 financial meltdown changed governance expectations
- Need for defining and managing conflicts of interest became urgent – private sector did not manage conflicts of interest well
- Banks and other lenders now require good management of conflicts of interest
- Frameworks like COSO and the FMB's governance and finance standards meet these requirements



Why Do I and my Nation Need to Know About and Manage Conflicts of Interest?

- ✓ Ensures Nation's best interests are behind every decision
- ✓ Minimizes criticism of the Nation's Councillors, staff, contractors
- ✓ Promotes transparency and accountability
- ✓ Builds community trust and support
- ✓ Meets FMS Certification requirements

How Can I and my Nation Manage Conflicts of Interest?

Who decides on whether a conflict of interest exists?

When and how should it be disclosed?

When and how should it be managed?

Consequences?

Conflict of interest policy

Code of conduct

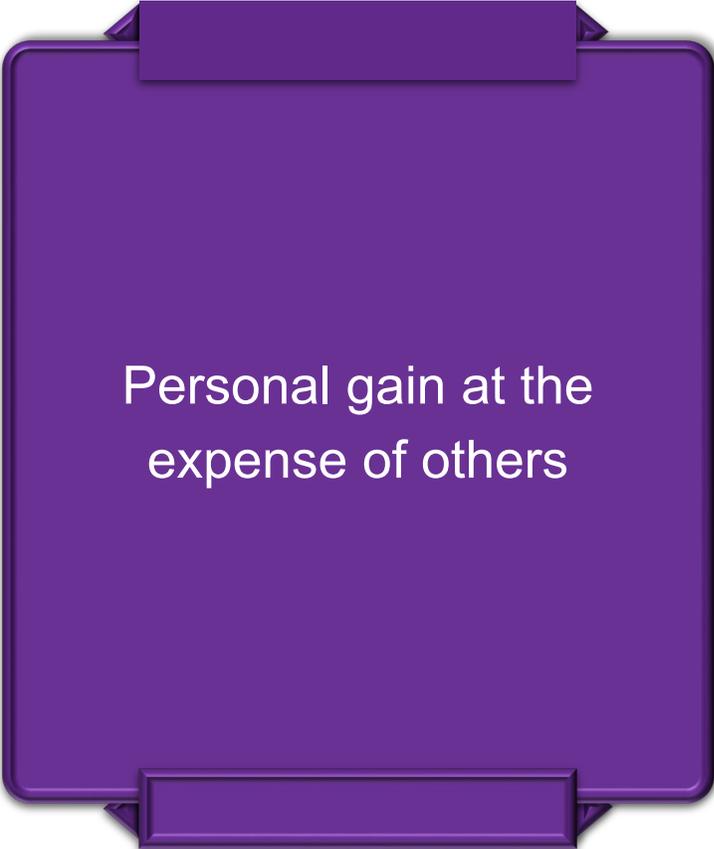
Transparency & accountability mechanisms



What IS a Conflict of Interest?

Defining Conflicts of Interest

- Defining what is a conflict of interest means defining what are 'private interests' i.e. '**conflicting motives**'. This is what creates the 'personal gain' at the expense of others i.e. the Nation.
- 'Personal' can mean immediate family, close friends, other relatives, business interests, other employment. This definition is unique to each Nation and can be specified in a policy or in the Financial Administration Law
- How broad should the definition of 'conflicting motives' (private interests) be?



Personal gain at the
expense of others

Real vs. Perceived vs. Potential – Defining ‘Private Interests’





Real vs. Perceived vs. Potential

Perceived conflict of interest

- Situation where there appears to be a conflict of interest, but this is not in fact the case, or may not be the case.
- Can be as serious as an actual conflict, because of the potential for doubt to arise about a person's integrity, and the integrity of the Nation.

Potential conflict of interest

- Situation where a conflict of interest may exist where a person has private interests which could cause a conflict of interest to arise at some time in the future.

Real vs. Perceived vs. Potential – Testing for ‘Conflicts of Interest’

?

What duties or functions is the person responsible for?

?

Does this person or their relatives/close friends have conflicting motives?

Example # 1 – Real, Perceived, Potential or None?

A Nation's Housing Manager is a 50/50 partner in a project management business and sits on the Board of Directors. This business is bidding for work to assist the Nation manage its housing new builds.

Question 1: What are the Housing Manager's duties and responsibilities?

- the effective administration of the Nation's Housing Policy and resources.

Question 2: Does the Housing Manager have conflicting motives?

- to make money from the project management business. As Housing Manager, would have confidential knowledge of contract requirements that other bidders would not have.

Question 3: Does a real, perceived or potential conflict of interest exist, or none at all?

Example # 2 – Real, Perceived, Potential or None?

The Nation is considering investing in a for-profit mining camp business and one of the Nation's councillors sits on the Board of Directors of this business as an independent Director (not in their capacity as councillor).

Question 1: What are the councillor's duties and responsibilities?

– Responsible for acting in the Nation's best interests and leading the Nation to achieving its strategic goals.

Question 2: Does the councillor have conflicting motives?

– As Director of the mining camp business, must represent the best interests of the business' shareholders.

Question 3: Does a real, perceived or potential conflict of interest exist, or none at all?

Example # 3 – Real, Perceived, Potential or None?

The band manager, completely separate from his duties and responsibilities for the Nation, owns a snow removal business. The Nation currently has an agreement with the neighboring municipality for snow removal but is not happy with the quality of service. The Nation is thinking of going to tender for a new snow removal service.

Question 1: What are the band manager's duties and responsibilities?

- Responsible for managing the day-to-day operations of the Nation's administration.

Question 2: Does the band manager have conflicting motives?

- Not right now, but could if the Nation goes to tender for a new snow removal supplier.

Question 3: Does a real, perceived or potential conflict of interest exist?

Case Study # 1 – Real, Perceived, Potential or None?

The Capital Works department has presented to Council its recommendation for procuring a supplier for renovating 25 of its houses.

- A competitive process was followed and 3 bids were submitted. The Director of Capital Works was on the Selection Committee which has recommended awarding the contract to supplier # 2. The evaluation was based on cost, qualifications of staff, and previous experience.
- The Director of Capital Works' cousin is a 50/50 owner of supplier # 2.
- The Director of Capital Works is not close with this cousin and has lost ties with this family. He did not disclose/declare a conflict of interest.

At your table, discuss if there a real, perceived, potential or no conflict of interest?

After 5 minutes, name a spokesperson to share your discussion with the group.

Case Study # 1 – Tools for Managing Conflicts of Interest

How can this Nation manage the **perceived** conflict of interest?

Have a policy on conflicts of interest that includes:

- Definition of the extent of ‘conflicting motives’ – do ‘non-immediate’ family members fall under the definition? It may vary with each situation. The test to be applied is whether or not the Director of Capital Works will benefit personally (either himself or a ‘family’ member or close friend) at the expense of the Nation. In this case study, is the cousin a ‘family’ member or close friend? Only **Council** or **direct supervisor** can decide given existing facts however one could argue not.

What are other tools for managing real, perceived and potential conflicts of interest?

Managing Conflicts of Interest



How Can I and my Nation Manage Conflicts of Interest?

Who decides on whether a conflict of interest exists?

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Consequences?

Conflict of interest policy

Code of conduct

Transparency & accountability mechanisms

Conflict of Interest Policy

An effective policy includes:

- a clear definition of 'conflict of interest' that includes the definition of 'conflicting motives' will provide clear direction to Council, staff, contractors and members on what the Nation considers **fair**, **equitable** and **transparent** treatment;
- requirement for Councillors to annually disclose their private interests that could result in a conflict of interest;
- requirement for officers, committee members, employees, contractors and agents to disclose as soon as possible any situations that could result in a conflict of interest;
- restrictions on the acceptance of gifts and benefits that may influence the decision making of a person with regards to their duties and responsibilities for the Nation;
- direction on who ultimately decides if a conflict of interest exists (real, perceived, potential) – Council for councillors, committee members, officers, and major contractors; direct supervisors and department managers for staff and contractors;
- procedures on how to manage and document conflicts of interest will provide clear direction to Council, staff, contractors, agents on how conflicts of interest can be **avoided** or **managed**; and
- consequences for not complying with the conflict of interest policy.

Conflict of Interest Policy

Effective procedures include:

Avoiding a conflict of interest: Example: A person can sell their interest in the entity that is causing the conflict of interest or have the interest be managed by an independent party **at arms length**. Have to assess how *realistic* this is...

A newly elected Chief is made aware that his ownership in a business that the Nation uses as a major supplier creates a conflict of interest. The Chief agrees to 'sell' his ownership in the business and 'sells' it to his 90 year old mother. Does this really remove the conflict? Has the Chief really created a distance between himself and the business?

Conflict of Interest Policy

Effective procedures include:

Managing a conflict of interest: A person with conflict of interest must not be involved or receive any information related to the area that is creating a conflict of interest. In the example of a councillor, the councillor would not receive the meeting material that relates to the conflict of interest area. They would also recuse (remove) themselves physically and practically from any discussions and decisions related to the conflict of interest. This would all be documented in the Council's meeting minutes. The councillor with the conflict of interest would not receive the minutes related to the conflict.

Food for thought – even if the person is out of the room and does not vote, are they still able to influence the decision-makers around the table.

Example – a councillor with significant ties and support (votes) amongst membership may recuse/remove themselves but Council may still want to 'keep the councillor happy' in order to boost and/or maintain membership's support for Council.

Conflict of Interest Policy

So, what can a Nation do about that? Build the trust of members by having integrity in the administrative procedures that conflicts of interest are and will continue to be effectively managed so all members, councillors, officers, staff, committee members, contractors and agents are treated in a **fair, equitable** and **transparent** way and the Nation's best interests are always behind all decisions.

This is the heart of having good governance and finance practices (fair, equitable and transparent policies on housing, procurement, hiring, letting go, etc.)

Mock Council Meeting – Managing Conflicts of Interest

See handout

Conflict of Interest Policy –Gifts and Benefits

G – is this gift GENUINE, meaning that it is related to something I have done as part of my responsibilities for the Nation (and not something I asked for, encouraged, or hinted at);

I – if I accept this gift, can I still think and act INDEPENDENTLY in doing my job/role, without being influenced to do something I would not otherwise do;

F – if I accept this gift, am I still FREE and clear of any obligation of doing something in return for the person/business who gave me the gift;

T – if I accept this gift, am I willing to declare it and be TRANSPARENT to my supervisor, Council, Nation, family and anyone else, about where I got it and why.

Managing Conflicts of Interest – Key Takeaways

Other important mechanisms for managing conflicts of interest:

1. Having a **code of conduct** in place that guides the actions, decisions and behaviour of councillors, officers, committee members, staff, contractors, agents;
2. **Training, training, training**, on a regular basis, on the conflicts of interest policy and the code of conduct for all councillors, officers, committee members, staff, contractors, agents;
3. **Communication, communication, communication** to members on the Nation's conflicts of interest policy and code of conduct;
4. Having and using **good governance and finance policies** around roles, responsibilities, procurement, hiring, letting go, segregation of duties, whistleblower, to name a few, removes confusion and builds process, accountability and transparency.

Managing Conflicts of Interest – In Practice

In *practice*, how will the Conflict of Interest Policy work?

Recurring conflicts
of interest

Council's ability to
have quorum

Annually vs.
ongoing

Case Study # 2 – I Heard It In the Wind...

The Social Assistance Manager's cousin has been receiving social assistance for a number of years. The Social Assistance Manager was walking with the receptionist. They overheard the manager's mother speaking with her aunt that this cousin recently began working as a builder in a neighboring town. The Social Assistance Manager is aware that the cousin has not declared this to the Social Assistance department. The Nation's Social Assistance Policy states that changes to a person's income or employment status must be declared as soon as they arise.

At your table, discuss:

1. Is the Social Assistance Manager under obligation to declare this fact about her cousin's employment to her Director? (Is there a real, perceived, potential or no conflict of interest?) Explain your answer.
2. How do you recommend that this situation be managed, if at all?
3. What if the receptionist had not been there and only the manager heard the discussion? Are there any ethical concerns?

After 5 minutes, name a spokesperson to share your table's discussion.

Case Study # 3 – It's For the Greater Good...

The persons at your table represent the Council of Eagle Nation. It has come to your attention that a staff member is saying that the Nation's contracting and procurement processes are corrupt.

The Nation has a contract for building maintenance. The Nation has a Procurement Policy that requires the Nation to go to a competitive process for contracts over \$5,000. Expenses under \$5,000 can be approved by managers without a competitive process.

Upon questioning the staff member, you learn that the manager responsible for contracting building maintenance has an uncle who has just bought a small building maintenance company. Further questioning shows that for the last 4 months, the manager stopped using the Nation's regular supplier and used her uncle's building maintenance company for one-off maintenance requirements. The value of the services was under \$5,000 and the manager explained that the cost of her uncle's company's services are the same as the Nation's regular supplier. She further explains that she feels her uncle's company is more reliable than the other supplier. The manager did not advise anyone of this change in supplier.

Case Study # 3 – It's For the Greater Good...(cont'd)

As Council, assess if there is a real, perceived or potential conflict of interest, or none at all (using the 3-step approach).

As Council, decide on any further action with regards to the real, perceived, potential or no conflict of interest situation and the possible non-compliance of the manager with the Nation's code of conduct.

Have one person take minutes to the meeting.

After 10 minutes, have one person be spokesperson to share with the group your Council's assessment and approach to managing the situation.

Key Points



Managing conflicts of interest is a fluid, **ongoing** process



Clear conflict of interest **policies** and **procedures** are essential



Council ultimately decides if conflict of interest exists and needs to be managed, if there is a 'grey' area



Regular **training** and **communication** for all builds trust and transparency



Treat everyone **equally** regardless of family, age, political ties, business ownership

Questions? Let's talk...

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