

DÉLĪNĚ GOT'ĪNĚ GOVERNMENT

CONFLICT OF INTEREST ACT

SEPTEMBER 1, 2016

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The Délı̄ne Got'ı̄ne Government enacts as follows:

Citation

1. This *Act* may be cited as the *DGG Conflict of Interest Act*.

Application

2. This *Act* applies to all Public Officials.

Definitions

3. In this *Act*:

“Chief Executive Officer” ("CEO") means the person appointed to that position under Part 2 of the *DGG Government Organization Act*;

“Dene Gha Gok'ə Réhkw'i” (“DGGR”) means the body comprised of DFN Citizens who are Beneficiaries established in accordance with section 3.2.9 of the DFSGA and Part 1, Division 5 of the *DGG Government Organization Act*;

“Dene K'ə Dats'eredı Kə” (“DKDK”) means the body described in Chapter 17 of the DFSGA and Part 1, Division 4 of the *DGG Government Organization Act*;

“Délı̄ne Corporation” means a Délı̄ne corporation established under section 3.6.1(c) of the DFSGA or a corporation in which the DGG or a Délı̄ne Corporation owns more than one-quarter of the common voting shares;

“Délı̄ne Final Self-Government Agreement” ("DFSGA") means the Délı̄ne Final Self-Government Agreement negotiated between the Délı̄ne First Nation Band and the Délı̄ne Land Corporation, the Government of the Northwest Territories and the Government of Canada;

“Délı̄ne Got'ı̄ne Government” ("DGG") means the Délı̄ne Got'ı̄ne Government and its Institutions as outlined in the DFSGA and Part 1 of the *DGG Government Organization Act*;

“Délı̄ne K'aowədó Kə” (“DKK”) means the body described in section 3.4.1(b) of the DFSGA and established by Part 1, Division 2 of the *DGG Government Organization Act*;

“DFN Citizen” means a person who is a citizen pursuant to Chapter 5 of the DFSGA or pursuant to the *DGG Citizenship Act*;

“DGG Law” means laws of the DGG made pursuant to the Jurisdictions of the DGG set out in the DFSGA and regulations made pursuant to those laws;

“Institutions” means institutions created by the DGG pursuant to section 3.6.1(b) of the DFSGA; and

“Public Official” means any elected or appointed member of the DGG, including the DKK, the **DGGR**, the **DAKK** and the **DKDK**.

PART 1 – CONFLICT OF INTEREST

Conflict of Interest

4. 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.

Conflict of Interest Prohibition

5. Subject to this *Act*, a Public Official must not exercise an official power or perform an official duty or function if he or she is in a conflict of interest.

Acceptance of Gifts or Personal Benefits

6. (1) Without limiting the generality of section 5, 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.

(2) Despite subsection (1), a Public Official may accept a gift or benefit if the gift or benefit:
 - (a) would be considered within:
 - (i) normal protocol exchanges or social obligations associated with the person's office or duties;
 - (ii) normal exchanges common to ordinary business relationships; or
 - (iii) normal exchanges common at public cultural events of the DGG or other First Nations;
 - (b) is of nominal value;
 - (c) is given by a friend or a relative solely as an element of that relationship;
or
 - (d) is of a type that is permitted under the policies or directions issued by the DKK.

- (3) If a gift or benefit 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 DKK, who may require that the gift or benefit be made the property of the DGG.

(4) For the purposes of subsection (3), gifts or benefits from a single source in any period of 12 months are to be treated as though they were a single gift or benefit.

Influence

7. A Public Official must not use his or her position as a Public Official to influence or seek to influence a decision of another person so as to further the Public Official's private interest.

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

Disclosure Statement

8. (1) Before assuming their duties, each Public Official must file with the CEO an affidavit in the prescribed form, setting out the following:
- (a) the names of all corporations in which he or she has an interest because he or she or a member of his or her family member is a shareholder, director or officer of the corporation or has a substantial financial interest in the corporation; and
 - (b) the names of each proprietorship, partnership or other business entity in which he or she has an interest because he or she or a member of his or her family is a partner in the business or has a substantial financial interest in that proprietorship, partnership or other business entity;
- (2) Every person to whom this section applies must:
- (a) make a supplemental affidavit in the form set out by the CEO and file it with him or her as soon as is reasonably possible if any of the matters set out in the affidavit provided under subsection (1) are not or are no longer true, accurate and complete; and
 - (b) provide any additional information about which such matters that the CEO may require.
- (3) The CEO or his or her designate must maintain a permanent record of affidavits and supplemental affidavits required and made under this section.
- (4) If a Public Official knowingly provides false information in an affidavit, he or she is in breach of this *Act*.

Responsibility to Disclose When in Conflict of Interest

9. A Public Official will not be found to be in conflict of interest if he or she, at the first available opportunity:

- (a) discloses the particulars of a real or apparent conflict of interest; and
- (b) abstains from being involved in any discussion regarding the matter and from voting on any question relating to it.

Quorum Where Disclosure Occurs

10. (1) The absence of a member of DKK from a meeting because of the requirements of section 9 must not be taken into account in determining whether quorum is present for that meeting and for this purpose the member must be counted as being present, even though he or she is absent from part or all of the meeting.
- (2) If, because of the operation of section 9, less than fifty percent (50%) of the members of the DKK are able to be involved in any discussion on a particular matter or to vote on any question relating to that matter, then a committee composed of the remaining members of the DKK, the CEO and a person designated by the chair of the DKDK must be convened and empowered to discuss the particular matter and vote on any question relating to it in the place of the DKK.

Approved Employment

11. Despite anything contained in this Part, Public Officials, with the approval of the CEO, may be employed by Délıne Institutions or Délıne Corporations or may act as consultants or advisors to them, provided that the CEO:
- (a) is satisfied that a full and accurate job description relating to the employment or personal services contract in question has been published before such engagement and that an open and fair competition for the employment or contract has first been carried out;
 - (b) reviews and approves the salaries, benefits or fees payable and is satisfied that they are in accordance with DGG Law and are reasonable, having regard to the salaries, benefits or fees paid to other employees doing similar work and having similar qualifications or to individuals engaged under personal services contracts by Institutions or other governments in Canada; and
 - (c) is satisfied that those individuals are at least as well qualified to satisfactorily perform the work required as are any of the other applicants for the position.

Contracts

12. A Public Official may not directly or indirectly enter into a contract with the DGG while he or she is acting in an official capacity or for six months following the date on which that person ceases to act in that capacity, unless:

- (a) the contract is awarded in accordance with the procurement policies of the DGG;
- (b) the interest is disclosed; and
- (c) the work to be performed under the contract is reasonably necessary to the DGG 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 or charged by an independent person for the same work.

Unauthorized Use of Restricted Information

13. A Public Official may not make use of information other than for DGG purposes that is:
- (a) supplied in confidence to the DGG;
 - (b) not generally available to all DFN Citizens; and
 - (c) obtained while that person 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

14. Any financial benefit received in contravention of section 13 may be recovered by the DGG from the person 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 13 would have been impracticable.

PART 3 – ENFORCEMENT

Reporting to the Chief Executive Officer

15. Any DFN Citizen who believes, on reasonable grounds, that information contained in an affidavit required under this *Act* is untrue, incomplete or inaccurate, may report that belief in writing and the reasons for it to the CEO.

Breach of Terms of Employment

16. A Public Official is in breach and may be subject to disciplinary action, including dismissal, if he or she acts in contravention of any provision of this *Act*.

Self-reporting of Conflict of Interest

17. (1) If a Public Official becomes aware that he or she is or may be in contravention of this *Act*, he or she must report the matter to the CEO immediately upon becoming aware of the possible contravention.

(2) On receiving a report under subsection (1), the CEO must comply with section 19.

Third Party Reporting of Conflict of Interest

18. (1) If a DFN Citizen reasonably believes that a Public Official is in contravention of this *Act*, he or she may report the matter to the CEO.

(2) On receiving a report under subsection (1), the CEO must comply with section 19.

Application to Dene K'ə Dats'eredı Kə

19. The CEO must make such enquiries as he or she considers necessary into any matter arising under this Part, and if he or she is of the opinion that the Public Official is in contravention of this *Act*, he or she shall make an application to the DKDK.

20. If the CEO reasonably believes that there is a contravention by a Public Official, the process set out in section 19 must be followed.

21. If a DFN Citizen believes that the CEO is in contravention of this *Act*, he or she shall immediately report the matter to the DKK, who must determine what action, if any, is to be taken.

22. The DKDK shall determine its own procedure for hearing and deciding applications under this *Act*.

Continuing to Act

23. A Public Official who is alleged to be disqualified may continue to act in his or her official capacity, unless the DKDK makes a declaration under section 26.

Timing of Application

24. (1) An application under this Part must be made within one (1) year from the date the disqualification is alleged to have occurred.

(2) An application under this Part 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.

Whistleblower Protection

25. (1) A person who moves a complaint in good faith under sections 18 or 21 must not be subjected to any form of reprisal by the DGG, a Public Official or contractor of the DGG as a result of making that complaint.

(2) The CEO and the DKK must take necessary steps to ensure subsection (1) is not contravened and must report the contravention or suspected contravention to the DKDK.

PART 4 – DECISIONS OF DENE K’Ə DATS’EREDİ KƏ

Powers of Dene K’ə Dats’eredi Kə

26. After hearing an application, DKDK may declare that a Public Official:
- (a) acted when in a conflict of interest;
 - (b) is in a conflict of interest and is disqualified from acting on a particular matter;
 - (c) must make restitution in an amount determined by DKDK;
 - (d) may remain in the position, subject to such conditions as DKDK may determine;
 - (e) may be dismissed from the position;
 - (f) is not in contravention of this *Act*, in which case the application must be dismissed; or
 - (g) may be subject to such order as is deemed appropriate by the DKDK.

Reimbursement of Costs and Expenses

27. The DKDK, if it makes a declaration under section 26(f), may order that any costs and expenses incurred by the respondent be reimbursed.

PART 5 – MISCELLANEOUS

Policies

28. The DKK shall establish policies consistent with this *Act*, including a conflict of interest policy for employees.

Amendment

29. This *Act* may be amended in accordance with DGG Law.

Commencement

30. This *Act* comes into force on the date of its enactment.

Conflict

31. In the event that the provisions of this *Act* conflict with the provisions of the DFSGA, the provisions of the DFSGA prevail.

32. In the event that the provisions of this *Act* conflict with the provisions of the *Déline Got'ine ?ezadó*, the provisions of the *Déline Got'ine ?ezadó* prevail.
33. In the event that the provisions of the *DFSGA* conflict with the provisions of the *Déline Got'ine ?ezadó*, the provisions of the *DFSGA* prevail.
34. In the event that the provisions of the *DFSGA* conflict with the provisions of the *SDMCLCA*, the provisions of the *SDMCLCA* prevail.