

***DRAFT***

***Tsawout Leadership***

***Selection Code***

***2005***

**This is the Draft Law developed in 2005/2006. This is provided to Tsawout Members  
for Discussion Purposes Only as part of the 2022-2023 Community Law  
Development Process**

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**NOTE:** The masculine gender is used throughout this document without bias, in the interest of simplicity and ease of reading.

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## **PREAMBLE & TITLE**

1. *This code shall be called the Tsawout First Nation Election Code*

## **COMING INTO FORCE**

2. *This code comes into force upon the passing of an Order in Council proclaiming the removal of the band from the election provisions of the Indian Act.*

## **INTERPRETATION**

3. *In this code*

*Appellant means an individual who submits an appeal in accordance with this code with respect to the election.*

*Band council means the body composed of those persons selected pursuant to this code.*

*By-election means a special election to fill a position that has become vacant.*

*Candidate means a band member whom:*

- a) is at least 18 years of age on or before the day on which the nomination meeting is held;*
- b) is a member of the band; and*
- c) has been nominated to be a candidate pursuant to the provisions of this code.*

*“Code” means this sample leadership selection system.*

*“Code of Ethics” means guidelines, general rules of behavior and standards established in accordance with section 42 of this code, which govern the conduct of candidates running for office and their supporters relating to their participation*

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*in the electoral process.*

FOR COMMUNITY ENGAGEMENT AND DISCUSSION

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*“Complaint and Appeals Board” means the body appointed by a band council resolution in accordance with section 192 of this code to review and make decisions concerning petitions for removal from office and election appeals.*

*“Corrupt practices” means such forms of bribery direct or indirect, or providing a financial or material incentive to an elector in exchange for a vote, as are made illegal and punishable by part of this code.*

*“Deputy Electoral officer” means any person appointed by the electoral officer for the purposes of an election to assist him or her in the election process.*

*“Elder” means a band member who is at least 65 years of age.*

*“Election” means a band general election or by-election held pursuant to the provisions of this code.*

*“Electoral Officer” means a person, appointed by a band council resolution before each election, who will have the responsibility for conducting the nomination meeting, the election and post-election procedures.*

*“Elector” means a person who:*

- a) is a member of the band; and*
- b) is at least 18 years of age on or before the day on which the election is held.*

*“Mail-in ballot” means a ballot mailed or delivered in accordance with section 131 of this code.*

*“Nomination meeting” is the meeting at which persons come forward to nominate and second a nomination of candidates at the election.*

*“Oath” means a solemn affirmation.*

*“Ordinarily resident on the reserve” refers to the residential status of an elector who is considered to have his ordinary residence on the reserve. One's ordinary residence can be described as:*

- a) the place the person normally eats and sleeps;
- b) the place the person receives mail;
- c) the residence of the persons immediate family;
- d) a place in proximity to the place of employment of the person.

A person can only be ordinarily resident in one place at one time, and a person is ordinarily resident in that place until another place of ordinary residence is acquired. One may also be temporary absent from a place of ordinary residence for education, medical or temporary employment reasons.

"Polling station" means a building, hall or room, which is selected to be the site for voting to take place.

"Registrar" means that function responsible for maintaining the band's membership list.

"Rejected ballots" are those ballots that have been improperly marked and/or defaced by an elector which are left out of the tally of valid ballot cast during the counting of the votes.

"Voter declaration" form means a document that sets out, or provides for:

- a) the name of an elector;
- b) the band membership or registry number of the elector or, if the elector does not have a band membership or registry number, the date of birth of the elector; and
- c) the name, addresses and telephone number of a witness to the signature of the elector.

"Voter's list" means the list of band members eligible to vote at an election.

## **THE COUNCIL**

### **Composition and Size**

1. *The council shall consist of one chief and six councillors.*

### **Meetings**

2. *The first meeting of the council shall be held not later than 30 days after its election on a day, hour and place to be stated in a notice given to each member of the council, and meetings shall thereafter be held on such days and at such times as necessary for the business of the council or the affairs of the Tsawout Band.*
3. *No member of a council may be absent from meetings of the council for three consecutive meetings without being authorized to do so by the council of the band.*
4. *The chief of the band or a quorum of council shall summon a special meeting of the council.*
5. *The secretary to the band council shall notify each member of the council of the day, hour and place of the meeting.*

### **Order and Proceedings**

6. *A majority of the whole council shall constitute a quorum.*
7. *If no quorum is present within 30 minutes after the time appointed for the meeting, the secretary shall call the roll and take the names of the members then present and the council shall stand adjourned until the next meeting.*
8. *The chief of the band shall be the presiding officer.*
9. *Upon a quorum being present, the presiding officer shall take the chair and call the meeting to order.*
10. *In the absence of the chief, a chairman shall be appointed until his/her arrival.*
11. *The presiding officer shall maintain order and decide all questions of*



*procedure.*

12. *The order of business at each regular meeting shall be as follows:*
  - (a) *reading (correction, if any) and adoption of the minutes of the previous meeting;*
  - (b) *unfinished business;*
  - (c) *presentation and reading of correspondence and petitions;*
  - (d) *presentation and consideration of reports of committees;*
  - (e) *new business;*
  - (f) *hearing depositions;*
  - (g) *adjournment.*
13. *Each resolution shall be presented or read by the mover, and when duly moved and seconded and placed before the meeting by the presiding officer, shall be open for consideration.*
14. *After the presiding officer has placed a resolution before the meeting, it shall be deemed to be in the possession of the council, but it may be withdrawn by consent of the majority of the council members present.*
15. *When any member desires to speak, he shall address his remarks to the presiding officer and confine himself to the question then before the meeting.*
16. *In the event of more than one member desiring to speak at one time, the presiding officer shall determine who is entitled to speak.*
17. *The presiding officer or any member may call a member to order while speaking, and the debate shall then be suspended and the member shall not speak until the point of order is determined.*
18. *A member may speak only once on a point of order.*
19. *Any member may appeal the decision of the presiding officer to the council and all appeals shall be decided by a majority vote and without debate.*

20. *All questions before the council shall be decided by majority vote of the councillors present.*
21. *The presiding officer shall not be entitled to vote unless the votes are equal; in which case the presiding officer shall cast the deciding vote.*
22. *Every member present when a question is put shall vote thereon unless the council excuses him or unless he is personally interested in the question, in which case he shall not be obliged to vote.*
23. *A member who refuses to vote shall be deemed to vote in the affirmative.*
24. *Whenever a division of the council is taken for any purpose, each member present and voting shall announce his vote upon the question openly and individually to the council and, when so requested by any member, the secretary shall record the same.*
25. *Any member may require the question or resolution under discussion to be read for his information at any period of the debate, but not so as to interrupt a member who is speaking.*
26. *The regular meetings shall be open to members of the band, and no member shall be excluded therefrom except for improper conduct.*
27. *The presiding officer may expel or exclude from any meeting any person who causes a disturbance at the meeting.*
28. *The council may, at the first meeting thereof, appoint in lieu of the committee of the whole council the following standing committees:*
  - (a) *for housing; and*
  - (b) *for lands and public works.*
29. *The council may appoint special committees on any matters as the interests of the band may require.*
30. *A majority of the members of a committee shall be a quorum.*
31. *The chief of the band shall ex officio be a member of all committees and be entitled to vote at all meetings thereof, and other members of the council*

*may attend meetings of a committee and may with the consent of the committee take part in the discussion but shall not be entitled to vote.*

32. *The general duties of standing and special committees are:*

- (a) to report to the council from time to time as often as the interests of the band may require, all matters connected with the duties imposed on them respectively and to recommend such action by the council in relation thereto as they may deem necessary and expedient; and*
- (b) to consider and report upon all matters referred to them by the council or by the chief of the band.*

33. *Special meetings of committees shall be called at the request of the chairman or a majority of the committee or, in the absence of the chairman, on request of the chief of the band.*

#### ***Mode of Election for Chief and Councillors***

34. *Chief and councillors shall be elected by a vote held in accordance with this code.*

#### ***Term of Office***

35. *The term of office for the position of chief and councillors shall be 4 years.*

36. *The term of office may, under mitigating circumstance, be continued beyond three years if such continuation is not opposed by the votes of more than 50% of the members of council. This continuation shall not exceed 60 days.*

37. *Council shall, by band council resolution, establish the date on which the election is to be held, which must be no sooner than 100 days prior and no later than 10 following the end of the term of office of the council.*

38. *The term of office for chief and councillors commences when all elected council members swear the oath of office under section 184 of this code, and subject to any vacancy arising under this code, expires five years from this date.*

39. *The successful candidate in a by-election shall hold office for the remainder of the original term of the chief or councillor whom he is elected to replace.*
40. *In the event that successful appeal results in a new general election, the term of the newly elected band council shall commence on the date all elected council members swear the oath of office under section 184 of this code and expires five years from this date.*

### **Vacancy**

41. *A chief or councillor position on the band council may become vacant if, while in office*
- (a) the chief or councillor resigns in writing from office on his own accord;*
  - (b) the chief or councillor has been unable to perform the functions of his office for more than six months due to illness or other incapacity;*
  - (c) the chief or councillor dies;*
  - (d) the chief or councillor is removed from office in accordance with section 45 of this code; or*
  - (e) the chief or councillor is otherwise unable to fulfill the terms of office.*

## **CODE OF ETHICS**

### **42. Candidates must campaign**

- (a) *according to the rules and regulations established in the legal framework;*
- (b) *without coercion or vote buying;*
- (c) *respecting the right and freedom of other parties to organize and campaign, and to reach out to voters with their messages;*
- (d) *respecting the rights of voters to obtain information from a variety of sources and to attend political rallies;*
- (e) *ethically, focusing on political issues and candidate platforms, instead of conducting smear campaigns or ones of rumor and innuendo;*
- (f) *nonviolently, without intimidating opposing party candidates, opposition supporters or the media, and without the use of language inciting their own supporters to violence;*
- (g) *respecting the freedom of the press to cover the campaign and to express opinions on the campaigns;*
- (h) *respecting the electoral officials and not interfering with the performance of their duties; and*
- (i) *accepting and complying with the official election results and the final decision of the Complaints and Appeal Board.*

### **43. Every person is guilty of an offence that, during an election period, directly or indirectly offers a bribe to influence an elector to vote or refrain from voting or to vote or refrain from voting for a particular candidate, or during an election period, accepts or agrees to accept a bribe that is offered.**

### **44. Every person is guilty of an offence who, by intimidation or duress, compels a person to vote or refrain from voting or to vote or refrain from**

*voting for a particular candidate at an election; or by any pretense or contrivance, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate at an election.*

### **REMOVAL OF COUNCIL MEMBERS FROM OFFICE**

45. *The chief or a councillor may be removed from office and be prevented from running for office for six years if he*
- (a) violates this code, his or her oath of office or the code of ethics;*
  - (b) fails to attend three consecutive regular meetings of council without being reasonably excused from attendance by a quorum of the council.*
  - (c) fails to maintain a standard of conduct expected of a member of council;*
  - (d) has been convicted of an indictable offence since his election;*
  - (e) accepts or offers a bribe, forges a council document or otherwise acted dishonestly in his role;*
  - (f) was negligent in failing to ensure the safety and protection of the community's members and property;*
  - (g) abuses his office such that the conduct negatively affected the dignity and integrity of the community or of council;*
  - (h) encourages others to commit any of the above; or*
  - (i) does such other conduct as shall be determined by council to be of such a serious nature that the removal is necessary and appropriate.*

### **Procedure**

46. *Proceeding to declare a person ineligible to continue to hold the office of chief or councillor may be initiated by:*

(a) *any elector submitting to the Complaints and Appeal Board a petition on which shall appear:*

*i) the ground pursuant to section 45 of this code on which removal of a chief or councillor is sought;*

*ii) the evidence in support of the petition;*

*iii) the signature of the petitioner;*

*vi) the signatures of at least 25 % of all eligible electors of the band in support of the petition; and*

*v) a non-refundable filing fee of (\$ 50.00 ).*

(b) *A majority of council members passing a band council resolution and submitting a petition to the Complaints and Appeal Board on which shall appear:*

*i) the ground pursuant to section 45 of this code on which removal of a chief of councillor is sought;*

*ii) the evidence in support of the resolution; and*

*iii) the signature of all council members who voted for the removal.*

47. *On receipt of a petition, the Complaints and Appeal Board shall verify that the petition complies with section 46 of this code. If the petition does not comply, the Complaints and Appeal Board shall so notify the petitioner(s).*

48. *In the case where the petition complies, the Complaints and Appeal Board shall*

(a) *determine that the grounds put forth in the petition are either frivolous in nature or unsubstantiated, and dismiss the petition; or*

(b) *schedule a review hearing, which must take place within 20 days from the date on which the petition was submitted to the board.*



49. *In the case where the petition has been dismissed under subsection 48(a), the Complaints and Appeal Board shall inform the petitioner(s) in writing and provide a rationale.*
50. *In the case where the Complaints and Appeal Board schedules a hearing under subsection 48(b), the board shall send a written notice of the hearing by registered mail to council, the petitioner(s) and the council member who is the subject of the petition for removal.*
51. *The written notice described in section 50 of this code shall set out:*
- (a) the nature of the hearing and all related particulars;*
  - (b) the date, time and location of the hearing; and*
  - (c) a statement that the petitioner, any member of council or the council member who is the subject of the petition for removal may, at the hearing, make a presentation to the board, which may include the presentation of documents and testimonial by witnesses.*
52. *The Complaints and Appeal Board shall conduct a hearing at the time and place set out in the notice provided under section 51 of this code.*
53. *Within five days of the day on which the hearing under section 52 of this code was held, the Complaints and Appeal Board shall rule,*
- (a) that the petition shall be allowed to stand and declare the council position of the member of council who is the subject of the petition to be vacant; or*
  - (b) that the petition shall be dismissed.*
54. *The Complaints and Appeal Board shall send, by registered mail, a written notice of the ruling made under section 53 of this code to council, the petitioner(s) and the council member who is the subject of the petition for removal.*
55. *The decision of the Complaint and Appeal Board made under section 53 of this code is final and binding upon all parties.*



56. *If the council position is declared vacant under subsection 53(a) of this code, the chief or councillor in question will be disqualified from being a candidate for six years commencing on the date on which the ruling was made.*

### **By-election**

57. *Unless otherwise provided in this code, in the event that the office of chief or councillor becomes vacant, a by-election shall be held within 90 days from the date on which the position was declared vacant.*
58. *No by-election shall be held if there are less than three months remaining in the term of the council member whose office has become vacant, except where a by-election is necessary to have sufficient council members to maintain a quorum.*
59. *No sitting council member is eligible to be a candidate in a by-election. If a council member wishes to be a candidate in a by-election, he must resign his council position prior to the nomination meeting for the by-election.*
60. *Except as expressly provided otherwise, the rules and procedures in this code shall apply to by-elections.*

## **PRE-NOMINATION PROCEDURE**

### **Appointment of an Electoral Officer**

61. *The electoral officer shall be appointed by the way of a band council resolution not less than 100 days before the expiration of the councils' term of office.*
62. *The band council resolution for the appointment of the electoral officer shall contain his or her full name, the desired date of election, the type of election, which is to be conducted, as well as any special instructions.*
63. *If an electoral officer has not been appointed within the time set out in section 62 of this code, the electoral officer shall be appointed by the band manager as soon as possible.*
64. *The band council will appoint an individual to the office of electoral officer that:*
  - (a) *has no vested interest in the outcome of the election;*
  - (b) *is at least 21 years of age; and*
  - (c) *has experience in the conduct of elections or has received appropriate certification and or training.*
65. *In the event that the electoral officer cannot fulfill his duties, the chief and council, by the way of a band council resolution, will appoint another electoral officer. In the absence of such an appointment, the deputy electoral officer shall assume the role of electoral officer.*

### **Oath of Office**

66. *The electoral officer must sign an oath to uphold the office in accordance with this code.*

### **Responsibilities and Ethics**

67. *The electoral officer is responsible for managing and executing all pre-electoral, electoral and post-electoral processes and procedures included in this code. The electoral officer must:*

- (a) uphold the code and abide by the legal framework, its rules and regulations;*
- (b) remain neutral and professional in the conduct of the duties of office, which includes not providing any preferential treatment or expressing support or opposition for any candidate;*
- (c) not accept anything of value (money, offers of employment, gifts, travel, etc.) in exchange for preferential treatment or access to a public official or nonpublic information;*
- (d) not discriminate against anyone because of race, religion, sex, age or handicap;*
- (e) use public office facilities to fulfill the terms of office, not for personal or partisan benefit;*
- (f) not pressure or intimidate other officials or personnel to favor a certain candidate;*
- (g) avoid conflict of interests, or the perception of conflict of interests, by abstaining from decision making where there is a personal or private interest in the matter.*

### **Voters List**

68. *At least 79 days before the day on which an election is to be held, the electoral officer shall obtain from the band registrar the names of all band members who will have attained the age of 18 on the date on which the election is to be held, as well as their registry number and their date of birth.*
69. *The registrar shall, no later than 79 days prior to the date on which the election is to be held, provide the electoral officer with the last known addresses, if any, of all electors who do not reside on the reserve.*
70. *Electors will be responsible for providing the registrar with current contact addresses.*
71. *The contact address shall be used only for purposes of providing notices, mail-in ballots or other documents to electors who are entitled to receive them under this code.*
72. *Except for these purposes, the electoral officer shall not disclose the contact address without the consent of the elector.*
73. *A candidate for election as chief or councillor may obtain from the electoral officer a list of the names and the addresses of electors who have consented to have their addresses released to the candidates.*
74. *At least 79 days before the day on which an election is to be held, the electoral officer shall prepare a voters list containing the names of all of the electors in alphabetical order.*
75. *The electoral officer shall post the voters list in a public area of the band administration building and in other conspicuous places on the reserve, as may be determined by the electoral officer, no later than 72 days prior to the date on which the election is to be held.*
76. *On request, the electoral officer or deputy electoral officer shall confirm whether the name of a person is on the voters list.*
77. *The electoral officer shall revise the voters list upon presentation of documentary proof which demonstrates that:*

- (a) *the name of an elector has been omitted from the list;*
- (b) *the name of an elector is incorrectly set out in the list; or*
- (c) *the name of a person not qualified to vote is included in the list.*

78. *A person, or an elector acting on his behalf, may, no later than two days prior to the date on which the election is to be held, demonstrate that the name of an elector has been omitted from or incorrectly set out in the voters list by presenting in writing to the electoral officer evidence from the band registrar that the elector:*

- (a) *is entitled to have his name entered on the band list;*
- (b) *will be at least 18 years of age on the date on which the election is to be held; and*
- (c) *is qualified to vote at band elections.*

79. *A person may demonstrate that the name of a person not qualified to vote has been included in the voters list by presenting in writing to the electoral officer, no later than 10 days prior to the date on which the election is to be held, evidence that the person:*

- (a) *is neither on the band list nor entitled to have his or her name entered on the band list;*
- (b) *will not be at least 18 years of age on the date on which the election is to be held; or*
- (c) *is not qualified to vote at band elections.*

80. *Where the electoral officer believes or has information that a person whose name is on the voters list is not an elector, or where an elector demonstrates to the electoral officer that the name of a person not qualified to vote appears on the voters list in accordance with section 79, the electoral officer shall give written notice to the person whose eligibility is challenged at least 10 days prior to the date on which the election is to be*

held.

81. *The notice given under section 80 shall include the reasons for seeking removal of a name from the voters list and any supporting documents, and shall provide notice that a written reply may be sent to the electoral officer, which must be received no later than four days prior to the date on which the election is to be held.*
82. *After consideration of all information and representations relating to amendments to the voters list, the electoral officer shall add or delete names to the voters list based on whether persons qualify as electors.*
83. *The decision of the electoral officer under section 82 is final and is not subject to appeal.*
84. *Any person whose name does not appear on the voters list shall be entitled to vote on Election Day, provided that he or she presents documentary proof to the electoral officer demonstrating his or her qualifications as an elector.*

#### ***Appointment of Deputies and Interpreters***

85. *The electoral officer shall appoint deputies and interpreters, as he deems necessary, which will work under his direction.*
86. *The deputy electoral officers shall have such powers as described in this code as well as those powers of the electoral officer as are delegated to them by the electoral officer.*
87. *A deputy electoral officer shall not be a member of council or a candidate in the election.*
88. *Every deputy electoral officer shall swear an oath of office to:*
  - (a) *uphold and comply with this code and all the laws of the community;*
  - (b) *fulfill the duties and responsibilities of their office under this code;*

- (c) *carry out their duties faithfully, honestly, impartially and to the best of their abilities;*
  - (d) *keep confidential, both during and after their term of office, any matter or information which, under this code, community law or policy, is considered confidential; and*
  - (e) *always act in the best interests of the community in carrying out their duties.*
89. *The electoral officer may make such order and issue such instructions consistent with the provisions of this code, as he may deem necessary for the effective administration of the election.*

### **THE NOMINATION PROCESS**

#### **Notice of Nomination Meeting and Mail-in Procedures**

90. *The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, post a notice of nomination meeting in at least one conspicuous place on the reserve.*
91. *The electoral officer shall, at least 30 days before the date on which the nomination meeting is to be held, mail a notice of the nomination meeting and a voter declaration form to every elector who does not reside on the reserve.*
92. *A notice of a nomination meeting shall include:*
- (a) *the date, time, duration and location of the nomination meeting;*
  - (b) *the date on which the election is to be held and the location of the polling station;*
  - (c) *the name and phone number of the electoral officer;*
  - (d) *the statement that any voter may vote by mail-in ballot;*

- (e) *a description of the manner in which an elector can nominate a candidate, or second the nomination of a candidate;*
  - (f) *the statement that, if the elector wants to receive information from candidates, the elector can agree to have his or her address released to the candidates.*
93. *The electoral officer shall record the names of electors to whom a notice of the nomination meeting was mailed, the addresses of those electors and the date on which the notices were mailed.*

### ***Eligibility to Nominate***

94. *In order to be entitled to nominate a candidate at an election, an elector must be, on the day of the nomination meeting:*
- (a) *at least 18 years of age;*
  - (b) *entitled to be on the voters list.*
95. *Any elector may propose or second the nomination of any qualified person to serve as the chief or councillor, subject to section 94,*
- (a) *by delivering or by mailing a written nomination and a completed, signed and witnessed voter declaration form to the electoral officer before the time set for the nomination meeting; or*
  - (b) *orally, at the nomination meeting.*

### ***Nomination Meeting***

96. *The nomination meeting shall be held at least 42 days prior to the date on which the election is to be held.*
97. *At the time and place set for the nomination meeting, the electoral officer shall declare the nomination meeting open for the purpose of receiving the nomination of candidates for the available council positions.*
98. *The electoral officer is responsible for managing and conducting the nomination meeting.*
99. *Immediately following the opening of the nomination meeting, the electoral*



*officer shall read aloud all written nominations and secondments that have been received by mail or delivered in accordance with subsection 95 (a).*

***Duration***

*100. The nomination meeting shall remain open for at least three hours.*

### **Maintaining Order and Security**

101. *The electoral officer shall maintain order at all times during the nomination meeting and may cause to be removed any person who, in his opinion, is disrupting or otherwise interfering with the proceedings.*

### **Nomination Procedure**

102. *Mailed nominations that are not received by the electoral officer before the time set for the nomination meeting are void.*
103. *The electoral officer shall record the name of the candidate, the nominator and the seconder and confirm to the meeting that the proposed candidate is eligible to be elected to the position of chief or councillor of the band.*
104. *A person present at a nomination meeting who is eligible to do so may second the nomination of any person nominated in writing.*
105. *Where the same person receives two written nominations for the same office, the second nomination shall constitute a secondment of the first nomination.*
106. *Any elector may nominate or second no more than*
- (a) one eligible person for the office of chief; and*
  - (b) the number of eligible persons equivalent to the vacancies for the office of councillor.*
107. *At the end of the nomination meeting, the electoral officer shall*
- (a) if only one person has been nominated for election as chief, declare that person to be elected;*
  - (b) if the number of persons nominated for election as councillors does not exceed the number to be elected, declare those persons to be elected; and*
  - (c) where more than the required number of persons are nominated for election as chief or councillors, announce that*

*an election will be held.*

108. *On the day following the nomination meeting, the electoral officer shall post in at least one conspicuous place on the reserve a list of nominees, their nominators and seconders and the offices for which they are nominated.*

### **CANDIDACY**

109. *Only electors who meet the requirements of a candidate as set out in this code may be nominated as a candidate.*
110. *A person may only be a candidate for one of the offices of chief or councillor in any election.*
111. *If the nominee is present at the nomination meeting, he or she shall sign the following documents:*
- (a) a notice of acceptance of nomination; and*
  - (b) a sworn declaration confirming their eligibility as a candidate.*
112. *A nominee not present at the nomination meeting shall file the documents required under section 111 with the electoral officer by mail, facsimile transmission or in person.*
113. *A person nominated as a candidate for both the office of chief and the office of councillor must declare which office he intends to seek (if any).*
114. *No person shall accept candidacy in an election if that person is not eligible to be a candidate in accordance with this code.*

### **Deposit**

115. *All candidates for the position of chief must post a deposit of \$100.*
116. *All candidates for the position of councillor must post a deposit of \$100.*
117. *The deposit shall be in the form of cash, money order, or certified cheque.*
118. *If the deposit takes the form of a certified cheque or money order, the*

*instrument shall be made payable to the band.*

- 119. All funds received as deposits during the election process, including those funds received pursuant to section 115 and 116 of this code, shall be placed in a special bank account, which contains only those funds. The funds shall be held in trust by the electoral officer in this account and then paid out according to the provisions of this code.*
- 120. After the appeal period has expired, in the case where no election appeal has been filed in accordance with this code, or after all appeals have been decided, the electoral officer will issue a cheque in the amount of the deposit under section 115 or 116 of this code, as the case may be, to each candidate who has received 15% of the total votes cast at the election. The remaining funds will be remitted to the band.*
- 121. A nominee, who fails to submit the documents required under section 111 and the deposit required under sections 115 or 116 of this code to the electoral officer within five days of the nomination meeting, shall be removed as a nominee and his name will not be included on the ballot.*

### **Withdrawal**

- 122. A candidate may withdraw within five days of the date on which submitting a written withdrawal of nomination to the electoral officer held the nomination meeting.*
- 123. A candidate who withdraws shall forfeit his deposit.*
- 124. A candidate who dies before the close of the polls shall be considered to have withdrawn his candidacy.*

### **PRE-ELECTION PROCEDURE**

#### **Acclamation**

- 125. Where the office of chief and all offices of councillor are filled by acclamation,*
  - (a) the electoral officer shall post in at least one conspicuous place on the reserve and mail to every elector who does not reside on the reserve a notice that sets out the names of the persons who have been acclaimed and states that an election*

*will not be held; and*

- (b) sections 126 through of this code do not apply.*

### **Ballots**

*126. The electoral officer shall prepare ballot papers setting out:*

- (a) the names of the candidates nominated for election as chief, in alphabetical order by surname; and*
- (b) the names of the candidates nominated for election as councillors, in alphabetical order by surname.*

*127. Where two or more candidates have the same name, the electoral officer shall add to the ballots such additional information as is necessary to distinguish between those candidates. The ballot may, at the request of the candidate, include a candidate=s commonly used nickname.*

### **Notice of the Election**

*128. The election shall be held at least 42 days from the day on which the nomination meeting was held.*

*129. The electoral officer shall, within three days from the day on which the nomination meeting was held, post the polling notice in at least one conspicuous place on the reserve.*

*130. The polling notice shall include:*

- (a) the date of the election;*
- (b) the times at which the polling stations will open and close;*
- (c) the location of the polling station(s);*
- (d) the time and location of the counting of the votes; and*
- (e) a statement that the voters list is posted for public viewing and its location.*

### **Mail-in Ballots**

131. *The electoral officer shall, at least 35 days prior to the date on which the election is to be held, mail to every elector who is not ordinarily resident on the reserve and to every elector whose application to vote by mail-in ballot has been received, a mail-in ballot package consisting of:*

- (a) a ballot initialed on the back by the electoral officer;*
- (b) an inner postage-paid return envelope pre-addressed to the electoral officer;*
- (c) a second inner envelope marked Aballot@ for insertion of the completed ballot;*
- (d) an voter declaration form which shall set out:*
  - i) the name of the elector;*
  - ii) the membership number and date of birth of the elector;*  
*and*
  - iii) the name, addresses and telephone number of the witness to the signature of the elector;*
- (e) the notice of election set out in section 133 of this code; and*
- (f) a letter of instruction regarding voting by mail-in ballot which shall also include:*
  - i) a statement advising electors that they may vote in person at any polling station on the day of the election if they return their mail-in ballot to the electoral officer at the polling station or swear a written declaration before the electoral officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot; and*
  - ii) a list of the names of any candidates who were acclaimed.*

132. *An elector who is ordinarily resident on the reserve and who is unable to vote in person on election day may, at least 10 days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.*
133. *An elector not residing on the reserve who has not received a mail-in ballot package may, not later than 10 days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.*
134. *Upon receipt of a request for a mail-in ballot package under sections 132 or 133, the electoral officer shall mail or deliver a mail-in ballot package described in section 131 of this code to the elector whose name appears on the application.*
135. *The electoral officer shall indicate on the voters list that a ballot has been provided to each elector to whom a mail-in ballot was mailed or otherwise provided and keep a record of the date on which and the addresses to which each mail-in ballot was mailed or otherwise provided.*
136. *An elector shall vote by mail-in ballot by:*
- (a) placing an X or other mark that clearly indicates the elector's choice but does not identify the elector opposite the name of the candidate or candidates for whom he or she desires to vote;*
  - (b) folding the ballot in a manner so as to conceal the names of the candidates or any marks, but exposes the electoral officer's initials on the back;*
  - (c) placing the ballot in the inner envelope and sealing the envelope;*
  - (d) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age;*
  - (e) placing the inner envelope and the completed signed and witnessed voter declaration form in the postage-paid envelope;*
  - (f) delivering, mailing or otherwise ensuring receipt by the*

*electoral officer of the envelope before the close of polls on the day of the election.*

137. *Where an elector is unable to vote in the manner set out in section 136 of this code, the elector may enlist the assistance of another person to mark the ballot and complete and sign the voter declaration form in accordance with that section.*
138. *A witness referred to in section 137 of this code shall attest to*
- (a) the fact that the person completing and signing the voter declaration form is the person whose name is set out in the form; or*
  - (b) the fact that the elector is the person whose name is set out in the form and that the ballot was marked according to the directions of the elector.*
139. *Mail-in ballots that are not received by the electoral officer before the close of polls on the day of the election shall not be counted.*

#### ***Equipment for the Election***

140. *The electoral officer shall, before the polling station is open, supply the polling station with:*
- (a) sufficient ballot boxes;*
  - (b) a sufficient number of ballots;*
  - (c) a sufficient number of voting compartments enabling electors to mark their ballots free from observation;*
  - (d) instruments for marking;*
  - (e) a sufficient number of voting instructions as may be required;*
  - (f) all other equipment as necessary to establish and equip the polling stations; and*
  - (g) the final voters list.*



### **Polling Stations**

141. *The electoral officer will establish at least one polling station on the reserve.*
142. *The electoral officer shall provide a voting compartment in the polling station where electors can mark their ballots free from observation and the electoral officer may appoint security to maintain order in the polling station.*

### **ELECTION DAY**

#### **Electoral Officer and Deputies**

143. *The electoral officer shall not be allowed to vote in the election.*

#### **Candidates Agent**

144. *A candidate shall be entitled to not more than two agents in the polling station at any one time.*
145. *A candidate's agent must present a letter of authorization to the electoral officer or the deputy electoral officer, signed by the candidate, in order to be permitted to remain in the polling station.*

#### **Polling Hours**

146. *The polling station shall be open from 9am until 8pm local time on the day of the election.*

#### **Verification of the Ballots Box**

147. *The electoral officer or deputy electoral officer shall, immediately before the commencement of the poll,*
- (a) open the ballot box and call such persons as may be present to witness that it is empty and complete a written statement to that effect, verified by a witness;*
  - (b) lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and*

- (c) *place the ballot box in public view for the reception of the ballots.*

### **Secrecy and Security**

- 148. *Voting shall be by secret ballot.*
- 149. *No elector may vote by proxy or authorize another person to vote on his or her behalf.*
- 150. *The electoral officer or deputy electoral officer shall maintain order at all times in the polling station and may cause to be removed any person who in anyway interferes, disrupts or attempts to influence the orderly conduct of the poll.*
- 151. *No person shall, on the day the election is held, on the premises of the polling station:*
  - (a) *distribute any election related printed materials except such materials as may be distributed by the electoral officer or deputy electoral officer for the purpose of conducting the election;*
  - (b) *attempt to interfere with or influence any elector in marking his or her ballot; or*
  - (c) *attempt to obtain information as to how an elector is about to vote or has voted.*

### **Voting Procedure**

- 152. *Each person, on arriving at the polling station, shall give his or her name to the electoral officer or deputy electoral officer.*
- 153. *The electoral officer or deputy electoral officer shall, if the person's name is set out in the voters list and it is not indicated that this person has already voted, place his or her initials on both the ballot for chief and the ballot for councillor and provide them to the elector.*
- 154. *The electoral officer or deputy electoral officer shall cause to be placed in the proper column of the voters list a mark opposite the name of every*

*person receiving a ballot paper.*

*155. An elector to whom a mail-in ballot was mailed or provided under section 131, 132 or 133 of this code may obtain a ballot and vote in person at a polling place if,*

- a) the elector returns the mail-in ballot to the electoral officer or deputy electoral officer; or*
- b) where the elector has lost the mail-in ballot, the elector provides the electoral officer or deputy electoral officer with a written affirmation that the elector has lost the mail-in ballot, signed by the elector in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.*

*156. The electoral officer or deputy electoral officer shall, when requested to do so, explain the method of voting to the elector.*

*157. After receiving a ballot, an elector shall,*

- (a) immediately proceed to the compartment provided for marking ballots;*
- (b) mark the ballot by placing an X or other mark that clearly indicates the elector's choice but does not identify the elector opposite the name of the candidate or candidates for whom he or she desires to vote;*
- (c) fold the ballot in a manner that conceals the names of the candidates and any marks, but exposes the initials on the back; and*
- (d) deliver the ballot to the electoral officer or deputy electoral officer.*

*158. On receipt of a completed ballot, the electoral officer or deputy electoral officer shall, without unfolding the ballot, verify the initials placed on it and deposit it in the ballot box in the presence of the elector and any other persons entitled to be present at the polling station.*

159. *While an elector is in the compartment for the purpose of marking his ballot, no other person shall, except as provided in section 160 of this code, be allowed in the same compartment or be in any position from which he can see the manner in which the elector marks his ballot paper.*

### **Voting Irregularities**

160. *At the request of any elector who is unable to vote in the manner set out in section 157 of this code, the electoral officer or deputy shall assist that elector by marking his ballot in the manner directed by the elector in the presence of another elector selected by the elector as a witness and place the ballot in the ballot box.*
161. *The electoral officer or deputy electoral officer shall note on the voters list opposite the name of such elector the fact that he marked the ballot paper at the request of the elector and the reasons therefor.*
162. *An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used shall, on one occasion only, upon returning it to the electoral officer or deputy electoral officer, be entitled to obtain another ballot paper. The electoral officer or deputy electoral officer shall write the word "cancelled" upon the spoiled ballot paper and preserve it.*
163. *Any person who has received ballots and who leaves the polling place without delivering them to the electoral officer or deputy electoral officer in the manner provided, or after receiving the ballots, refuses to vote, shall forfeit his right to vote at the election. The electoral officer or deputy electoral officer shall make a remark opposite the name of such person to show that such person received the ballots and declined to vote. The electoral officer or deputy shall mark upon the face of the ballots the word declined and all ballot so marked shall be preserved.*

### **Closing of the Polling Station**

164. *Every elector who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.*

## **COUNTING OF THE VOTES**

### **Opening Mail-in Ballots**

165. *At the time published in the notice prepared under section 129 of this code for the counting of the votes, the electoral officer or deputy shall, in the presence of any candidates or their agents, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,*

(a) *reject the ballot if:*

i) *it was not accompanied by a voter declaration form, or the voter declaration form is not signed or witnessed,*

ii) *the voter declaration form does not contain a date of birth or a band number that matches the information contained for that elector on the voters list;*

iii) *the name of the elector set out in the voter declaration form is not on the voters list, or*

iv) *the voters list shows that the elector has already voted; or*

(b) *in any other case, place a mark on the voters list opposite the name of the elector set out in the voter declaration form, and deposit the ballot in a ballot box.*

### **Counting the Ballots**

166. *The electoral officer or deputy shall supply other deputy electoral officers and all agents of the candidates with a tally sheet to keep their own tally of the votes.*

167. *Immediately after the mail-in ballots have been deposited in the ballot box under subsection 165(b) of this code, the electoral officer or deputy electoral officer shall, in the presence of any candidates or their agents who are present, open all ballot boxes and examine each ballot.*

168. *The electoral officer or deputy electoral officer shall call out the names of the candidates for whom the votes were cast on all valid ballots.*

169. *A deputy electoral officer shall mark a tally sheet in accordance with the names being called out under section 168 of this code, for the purpose of*

arriving at the total number of votes cast for each candidate.

### **Ballots not counted**

170. *In examining the ballots, the electoral officer or deputy electoral officer must reject any ballots that:*
- (a) do not contain the initials of the electoral officer or deputy electoral officer;*
  - (b) do not give a clear indication of the electors' intention;*
  - (c) contain more votes than there are candidates to be elected; or*
  - (d) contain a mark by which the voter can be identified.*
171. *The electoral officer or deputy electoral officer shall attach a note to each ballot rejected, which outlines the reason for rejection.*
172. *Subject to review on recount or on an election appeal, the electoral officer or deputy electoral officer shall take a note of any objections made by any candidate or his agent to any of the ballots found in the ballot box and decide any questions arising out of the objection.*
173. *The electoral officer or deputy electoral officer shall number objections to ballots raised pursuant to section 172 of this code and place a corresponding number on the back of the ballot paper with the word allowed or disallowed, as the case may be, with his initials.*

### **Other Polling Stations**

174. *Immediately upon completion of the counting of the ballots pursuant to sections 166 through 173 of this code at a polling station other than that considered the principal polling station managed by the electoral officer, the deputy electoral officer shall transmit the results to the electoral officer.*

### **Tie**

175. *If it is not possible to determine the successful candidate(s) for either a chief or councillor position due to an equal number of votes being cast (i.e.,*

*tie vote), the electoral officer shall establish a time for the conduct of a recount and publicly announce this time in the presence of all those present in the polling station.*

- 176. A recount conducted pursuant to section 175 must take place within 24 hours of the announcement by the electoral officer, in the presence of the candidates and their agents who wish to attend.*
- 177. At the time established pursuant to section 175, the electoral officer will conduct a recount of the valid ballots.*
- 178. If the recount fails to determine a successful candidate, the electoral officer shall cast ballots in order to break the tie. The electoral officer shall place the names of the candidates having the same number of votes on a paper and place each in a receptacle. Without looking, he shall draw as many papers as there are positions available. The candidate whose name appears on the pieces of paper the electoral officer has drawn from the receptacle shall constitute the candidates for whom the electoral officer shall cast a vote.*

## **POST-ELECTION PROCEDURES**

### **Announcement**

- 179. After completing the counting of the votes, the electoral officer shall declare to be elected the candidates having the highest number of votes.*
- 180. Following the declaration of elected candidates made pursuant to section 179, the electoral officer shall complete and sign an election report which shall contain:*
  - (a) the names of all candidates;*
  - (b) the number of ballots cast for each; and*
  - (c) the number of rejected ballots.*
- 181. Within four days after completion of the counting of the votes, the electoral officer shall*



- (a) *sign and post, in at least one conspicuous place on the reserve, the election report prepared in accordance with section 180;*
- (b) *mail a copy of the election report to every elector of the band who does not reside on the reserve; and*
- (c) *forward a copy of the election report to the band administrator.*

### ***Retention of Ballots and Other Election Material***

182. *The electoral officer shall deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and shall retain these ballots and all materials in connection with the election.*
183. *All ballots and materials retained in accordance with section 182 of this code shall be retained for 45 days from the date on which the election was held or until a decision on an appeal is rendered, whichever date is later, after which time the electoral officer may, unless directed otherwise by the council, destroy them in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those papers.*

### ***Chief and Councillor Oath of Office***

184. *A candidate who has been elected chief or councillor shall, within ten days of the electoral officer's declaration under section 179 of this code, swear an oath of office before either the electoral officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths, swearing to:*
- (a) *uphold and comply with this code, the code of ethics and all laws of the community;*
  - (b) *fulfill the duties and responsibilities of his office under this code, the code of ethics and all laws of the community;*
  - (c) *carry out his duties faithfully, honestly, impartially and to the best of his abilities;*



- (d) *keep confidential, both during and after his term of office, any matter or information which, under this code, the laws of the community or policy, is considered confidential; and*
- (e) *always act in the best interests of the community in carrying out his duties.*

- 185. *Where a candidate elected as chief or councillor cannot, due to illness or other valid reason, swear the oath of office within the time prescribed in section 184 of this code, he or she or an elector acting on his or her behalf may file a petition with the electoral officer for an extension of the time to swear the oath of office.*
- 186. *The electoral officer receiving a petition under section 185 of this code shall determine whether the circumstances justify an extension and shall provide the candidate making the request written notice of the decision, and where applicable, the extension period.*
- 187. *No person elected as chief or councillor shall be permitted to assume their office until they have sworn and filed with the electoral officer the oath of office required under section 184 of this code.*
- 188. *Subject to section 186 of this code, if a person elected as chief or councillor fails to file the sworn oath of office with the electoral officer on or before the specified time period, the electoral officer shall declare the office vacant.*
- 189. *The electoral officer shall give notice in writing to the elected candidate whose office is declared vacant under section 188 of this code and to the elected chief and council.*
- 190. *Unless the vacancy occurring under section 189 results in a situation where the band council can no longer form a quorum, the position shall remain vacant until such time as a by-election is called by council.*

## **COMPLAINT AND APPEAL BOARD**

### **Composition**

191. *The Complaint and Appeal Board shall be composed of three members as follows:*

- (a) an elder;*
- (b) a person, at least 18 years of age, who is not a member of the band and who does not have a vested interest in the outcome of an election appeal or a petition for the removal of a council member from office; and*
- (c) a band member, at least 18 years of age, who is familiar with the traditions, values and language of the band.*

*All 3 members shall possess an understanding of the principles of natural justice.*

192. *At least 100 days before the date on which the election is to be held, the band council shall*

- (a) select the members of the Complaint and Appeal Board in accordance with section 191, and*
- (b) draw a list of 10 additional potential members.*

193. *The term of office of the Complaint and Appeal Board shall be from its appointment under section 192 until the day on which the council selects another Complaints and Appeal Board in accordance with this code.*

194. *Upon receipt of an election appeal, any Complaint and Appeal Board member who is immediate family of any appellant or candidate, or who may be reasonably apprehended to have a bias or conflict in connection with the appeal, shall excuse himself from the board.*

195. *The remaining members of the Complaint and Appeal Board will select additional members as required to attain a list of potential members drawn by the band council in accordance with subsection 192(b).*

196. *The members of the Complaint and Appeal Board shall take an oath of office and accept their appointment by forwarding a letter of acceptance to*

*the council.*

### **Functions**

197. *The Complaint and Appeal Board shall supervise and administer, in accordance with the provisions of this code,*

- (a) all election appeals; and*
- (b) petitions for the removal of a council member from office.*

### **APPEAL MECHANISM**

#### **Timing**

198. *A candidate or an elector may, within 30 days from the date on which the election was held, submit an appeal to the Complaint and Appeal Board.*

#### **Grounds for Appeals**

199. *The appeal submitted pursuant to section 198 of this code must sufficiently outline one or more of the following occurrences:*

- (a) the person declared elected was not qualified to be a candidate;*
- (b) there was a violation of this code in the conduct of the election that might have affected the result of the election; or*
- (c) there was corrupt or fraudulent practice in relation to the election.*

#### **Submission**

200. *An appeal submitted to the Complaints and Appeal Board must:*

- (a) be in writing and set out in an affidavit sworn before a notary*

*public or duly appointed commissioner for taking oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation; and*

- (b) be accompanied by a deposit in the amount of \$ 200.*

#### **Procedure**

201. *Upon receipt of an election appeal, the Complaint and Appeal Board shall*

- (a) in the case where the appeal is submitted in accordance with section 200, forward a copy together with supporting documents by registered mail to the electoral officer and to each candidate at the election; or*
- (b) in the case where the appeal is not submitted in accordance with section 200, inform the appellant(s) in writing that the appeal will not receive further consideration.*

#### **Response to the Allegations**

202. *Any candidate or the electoral officer may, within 14 days of the receipt of the appeal(s), forward to the Complaint and Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation.*

#### **Investigation**

203. *The Complaint and Appeal Board may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further investigation into the matter as deemed necessary.*

### **Decision**

204. *After a review of all of the evidence that it has received, the Complaint and Appeal Board shall rule*

- (a) that the evidence presented was not sufficiently substantive to determine that*
  - i) a violation of this code has taken place that might have affected the result of the election;*
  - ii) the person declared elected was not qualified to be a candidate; or*
  - iii) there was a corrupt or fraudulent practice in relation to the election that might have affected its results, and dismiss the appeal; or*
- (b) that all evidence and information gathered allows for the reasonable conclusion that*
  - i) a violation of this code has taken place that might have affected the result of the election;*
  - ii) the person declared elected was not qualified to be a candidate; or*
  - iii) there was a corrupt or fraudulent practice in relation to the election that might have affected its results, and uphold the appeal by setting aside the election of one or more council members.*

205. *The decision of the Complaint and Appeal Board made pursuant to section 204 of this code shall be:*

- (a) published in the community newsletter, and mailed to band*

*members, or in a separate written notice delivered or mailed to all band members; and*

*(b) posted in at least one conspicuous place on the reserve.*

206. *The decision of the Complaint and Appeal Board is final and not subject to appeal.*

### **AMENDMENTS**

207. *The process for development and passage of amendments to this code may be initiated by:*

*(a) a petition presented to council, signed by at least 50% of all eligible electors and setting out the specific area in this code proposed for amendment; or*

*(b) a band council resolution.*

208. *Upon receipt of an amendment proposal in accordance with section 207 of this code, council shall prepare a notice that sets out:*

*(a) a summary of the proposed amendments to this code;*

*(b) a statement that the full copy of the proposed amendments can be obtained at the band administration office; and*

*(c) a description of the amendment process.*

209. *The notice provided for in section 208 of this code shall be:*

*(a) published in the communities newsletter, delivered or mailed to band members, or by separate notice delivered or mailed to all band electors; and*

*(b) post in at least one conspicuous place on the reserve.*

210. *Band electors may, within 14 days of publication of the notice outlined in section 208 of this code, provide comments concerning the proposed amendments in writing to council.*

211. *Following receipt of comments concerning the proposed amendments pursuant to section 210 of this code, council shall review comments and make changes to the proposed amendments, as they deem necessary in order to arrive at a final amendment proposal.*

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FOR COMMUNITY ENGAGEMENT AND DISCUSSION