

COMMUNITY ELECTION CODE

SPECIFICATIONS GOVERNING ELECTIONS FOR N'QUATQUA

These specifications may be cited as the Community Election Code for N'Quatqua.

1.0 INTERPRETATION

In these specifications,

- "Band" Means the aboriginal community of N'Quatqua or known to Indian and Northern Affairs Canada as the Anderson Lake Band.
- "Band List" Means the list of members of the Band.
- "Candidate" Means a person who:
- (a) is registered on the Band List;
 - (b) is of the full age of 18 years on or before the day on which the Nomination Meeting is held;
 - (c) is ordinarily resident on one of this Band's Reserves and has resided on one of the Band's Reserves for a continuous period of three (3) months immediately preceding the Nomination Meeting;
 - (d) is in good standing with the Band;
 - (e) has not been convicted of an indictable offence;
 - (f) is not the Administrator or a Manager;
 - (g) has not been disqualified to run according to Section 12.2 of this Code; and
 - (h) has been nominated to be a Candidate according to the provisions of this Code.
- "Code" Means the Community Election Code for N'Quatqua.
- "Band Council" or "Council" Means the body composed of those persons elected according to this Code. Band Council shall consist of Chief and three (3) Councilors.
- "Deputy Electoral Officer" or "Deputy" Means any person appointed by the Electoral Officer to assist him or her in the Election process.
- "Election" Means a Band Election held according to the provisions of this Code.
- "Electoral Officer" Means a person appointed by the Council of the Band before each Election who will have the responsibility for conducting the Nomination Meeting and the Election.
- "Good Standing" Means a member who has no financial arrears with the Band, or if arrears exist, has had, for at least three (3) months in advance of the Nomination Meeting, both a signed repayment agreement with the Band and is fulfilling their commitments in the repayment agreement.
- "Ordinary Resident" Means a person who has, for at least the majority of the preceding year, ordinarily resided on the Band's Reserves, which shall be determined by the facts in each case, and without limiting the foregoing, some of the factors that can be considered are:
- (a) the place the person normally eats and sleeps;
 - (b) the place the person receives personal mail;
 - (c) the residence of the person's immediate family;
 - (d) the place of employment of the person, and if the person is absent from the reserve, the reason for being absent;
 - (e) that 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.
- "Polling Station" Means a building, hall or room which is selected to be the site for voting to take place.

- "Voter" Means a person who:
(a) is registered on a Band List; and
(b) is of the full age of 18 years on or before the day on which the Nomination Meeting is held.
- "Voters List" Means the list prepared by the Electoral Officer. The Voters List consists of the names of the Voters in alphabetical order and notes whether the Voters are residing on or off reserve.

2.0 PRE-NOMINATION PROCEDURE

- 2.1 The Electoral Officer shall be appointed not less than thirty (30) days before the date selected by the Band Council as the date on which the Nomination Meeting shall be held.
- 2.2 In the case of a General Election, the date of the Nomination Meeting shall be within the thirty (30) day period before the end of the term of the Band Council.
- 2.3 The Electoral Officer shall be appointed by a Band Council Resolution (hereinafter referred to as 'BCR') which will contain his/her full name, the date and time for the Nomination Meeting, the positions and length of term, as well as any special instructions.
- 2.4 The Electoral Officer shall establish an Election file and place in this file copies of all documentation associated with the Election, and that file shall remain open until such time as the appeal period of fourteen (14) days has expired. The file shall then be closed and kept at the Band Office.
- 2.5 The Electoral Officer shall appoint Deputies and interpreters as he/she deems necessary and shall document the details of this on the Election file.
- 2.6 The Electoral Officer shall determine who is a Voter, who is eligible to be a Candidate, and whether a Candidate is an Ordinary Resident before the Election, subject to Section 7.12. The Notice of Nomination Meeting shall be posted in the Band Office and the other public places as the Electoral Officer deems necessary.
- 2.7 The Notice of Nomination Meeting shall contain and set out:
(a) the Voters list;
(b) which Voters are eligible to be Candidates;
(c) the time, date and place of the Nomination Meeting;
(d) the position or positions open for election; and
(e) a copy of this Code.

3.0 NOMINATION ELIGIBILITY

- 3.1 Only Voters may nominate or second a nomination of a Candidate, and this must be done in person at the meeting.
- 3.2 Only Voters who meet the requirements of a "Candidate" as set out in this Code may be nominated as a Candidate.
- 3.3 No Voter can nominate or second the same nomination, and a person cannot nominate himself/herself or second his/her own nomination.
- 3.4 A Candidate may run for the position of Chief or Councilor, but not both.
- 3.5 A Candidate must be an Ordinary Resident to be eligible for nomination.
- 3.6 To be nominated, a Candidate must be present at the Nomination Meeting.
- 3.7 All nominated Candidates must appear before the Electoral Officer before the close of the Nomination Meeting to accept or decline their nominations.
- 3.8 A deposit of one hundred fifty dollars (\$150.00) must be posted by all Candidates for the position of Chief.
- 3.9 A deposit of seventy-five dollars (\$75.00) must be posted by all Candidates for the position of Councilor.

- 3.10 The deposit shall be in the form of cash, money order or certified cheque, and a receipt for the deposit shall be given to the Candidate by the electoral Officer or a Deputy. The deposit must be posted by the close of the Nomination Meeting or the Candidate's name will not appear on the ballot.
- 3.11 If by certified cheque or money order, the deposit shall be made out to the Band.
- 3.12 All funds received as deposits during the election process, including those funds received according to Section 11.2, shall be placed in a special bank account which contains only those funds. These funds shall be held in trust by the Electoral Officer in this account until the final results of the Election are known, including the outcomes of any appeals, and then paid out according to the provisions of this Code.
- 3.13 After the appeal period has expired, or after any appeals have been decided, the deposit will be forfeited to the Band by all unsuccessful Candidates, and these funds shall be used by the Band to offset election expenses. The deposit will be returned at this time to all successful Candidates.

4.0 NOMINATION MEETING

- 4.1 The Nomination Meeting shall occur on the first Saturday in March every other year.
- 4.2 At the time and place advertised, the Electoral Officer shall declare the Nomination Meeting open for the purpose of receiving the nomination of Candidates for the positions advertised.
- 4.3 The Electoral Officer shall keep the meeting open for a minimum of two hours or until such time as all nominations from Voters then present have been received whichever shall last occur, and thereafter the meeting may be closed at the discretion of the Electoral Officer.
- 4.4 The Electoral Officer shall maintain order at all times during the Nomination Meeting and may remove any person who, in her/her opinion, is disrupting or otherwise interfering with the meeting.
- 4.5 Any Voter may propose or second the nomination of any qualified person to serve as the Chief or Councilor. 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 Councilor of the Band.

5.0 PRE-ELECTION PROCEDURE

- 5.1 The Electoral Officer shall, if the number of Candidates nominated does not exceed the number of positions open at the end of the meeting, declare such Candidates elected by acclamation.
- 5.2 If the number of Candidates nominated exceeds the number of positions open for Election, the Electoral Officer will announce the date of the Election.
- 5.3 The Electoral Officer or his/her Deputy, shall without any unreasonable delay after the Nomination Meeting, cause the notice of the Election date and time, place for voting and the position or positions open for Election. Such notice shall be posted in conspicuous places on or off reserve not less than twenty-one (21) days before the date scheduled before the Election or disseminated by newspaper or other forms of mass media as deemed necessary by the Electoral Officer not less than seven (7) days before the mailing or delivery of a mail-in poll. The notice shall be posted along with the Voters List and a copy of this Code.
- 5.4 There will be established one (1) Polling Station as determined by the Electoral Office.
- 5.5 The Electoral Officer or his/her Deputy shall have ballot papers prepared in the form prescribed and place on the ballot papers the full and complete names, listed in alphabetical order, of all the Candidates for Chief and for Councilors.
- 5.6 The Electoral Officer or his/her Deputy shall obtain sufficient ballot boxes, a sufficient number of ballot papers for the purpose of the Election, instruments for marking, a sufficient number of direction-for-voting as may be required and all other equipment as necessary to establish and equip the voting locations.
- 5.7 The Electoral Officer or his/her Deputy shall construct or erect polling booths at the locations set out in the notice, and the polling booths shall be such that the privacy of the Voter is maintained.

- 5.8 The Electoral Officer shall, where necessary and when requested, appoint an interpreter for Voters who require language assistance to vote in the manner prescribed by Section 7.8, and the interpreter shall assist such Voters in the presence of the agents of the Candidates in the polling place and of no other person, and shall place the marked ballots in the ballot box.
- 5.9 The Electoral Officer or Deputy shall, where necessary and when requested, assist Voters who are unable to read or are unable because of blindness or other physical cause to vote in the manner prescribed by Section 7.8, and the Electoral Officer or Deputy shall assist such Voters in the presence of the agents of the Candidates in the polling place and of no other person, and shall place the marked ballots in the ballot box.
- 5.10 Any Candidate who has been nominated may withdraw at any time his/her nomination, but such withdrawal is invalid if done less than twenty-one (21) days before the opening of the polls. A Candidate may withdraw by filing with the Electoral Officer before the 21-day period a written withdrawal of his/her nomination, signed by himself in the presence of the Electoral Officer or a Justice of the Peace or a Notary Public or a Commissioner of Oaths, and any votes cast for any withdrawn Candidate shall be null and void. The withdrawal is effective only when the Electoral Officer or his/her Deputy is in receipt of the written document, and the written document is received before the 21-day period. Any Candidate who withdraws shall forfeit his/her deposit.
- 5.11 Following the Nomination Meeting, the Electoral Officer shall confirm all candidates are in good standing and have not been convicted of an indictable offence within 5 working days, and shall post a final list of candidates within 7 working days of the Nomination Meeting.

6.0 ADVANCE POLL

- 6.1 An advance poll may, when required, be ordered as part of special instructions given to the Electoral Officer upon his appointment by Council and shall take place as follows:
- (a) the advance poll shall be held no sooner than five days before the poll and shall follow all procedures prescribed for the regular poll;
 - (b) all ballots from the advance poll shall be kept in a sealed box and the sealed box shall only be opened and the ballots therein counted during the ballot count for the regular Election; and,
 - (c) the advance polls shall be open not less than two (2) and not more than three (3) hours.

7.0 ELECTION POLL

- 7.1 The Electoral Officer with such appointed deputies as he/she deems necessary shall be in attendance at the time and place as is set out in the notice of poll. Neither the Electoral Officer nor any of his/her Deputies shall be allowed to vote in the Election.
- 7.2 The Electoral Officer shall immediately before the commencement of the poll open the ballot box(es) and call such persons as may be present to witness that it is empty; he/she shall then lock or seal the box to prevent it from being opened and shall place it in view for the reception of the ballots and the box shall not be unlocked or unsealed during the time appointed for taking the poll.
- 7.3 The Electoral Officer shall hold the Polling Station open from 9:00am to 8:00pm.
- 7.4 The Electoral Officer and his/her Deputies 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.
- 7.5 Persons presenting themselves for the purpose of voting shall, upon being confirmed by the Electoral Officer or one of his/her Deputies as a Voter, be given two (2) ballots, each of a different color, one color for the Election of the Chief and one (1) for the election of Councilors, upon which to register his/her vote.
- 7.6 All Candidates shall be entitled to not more than two (2) against in a polling place at any one time. No Candidate may act as an agent for himself or herself, or for another Candidate.
- 7.7 The Electoral Officer, or a Deputy, shall initial the back of each ballot before giving it to the Voter.
- 7.8 Each Voter, after receiving the ballots, shall proceed directly to the place provided for marking ballots and shall mark his/her ballots by placing an X or other mark that clearly indicates the Voter's choice, in the space provided on each ballot opposite the name of the Candidate, and shall then fold the ballots and return them to the Electoral Officer or a Deputy. The Electoral Officer, or a Deputy, will check the back of the ballots for initials before the ballots are deposited in the ballot box supplied. While any Voter is in the place provided for

- marking ballots, not other person, except as provided in Sections 5.8 and 5.9, shall be allowed in the same compartment or be in any position from where they can see how the Voter is voting.
- 7.9 The Electoral Officer, or a Deputy, shall note upon the Voters List any irregularity in connection with voting and shall specifically note on the Voters List any ballots marked by the Electoral Officer or the Deputy at the request of a Voter according to Sections 5.8 and 5.9, but shall not note the Candidate for whom the ballot was cast.
- 7.10 A Voter who has inadvertently dealt with his/her ballot papers(s) in such a manner that it cannot be conveniently used, shall return it to the Electoral Officer or a Deputy who shall write the word "cancelled" upon the ballot paper(s) and preserve it.
- 7.11 Any person who has received ballots, and who leaves the polling place without delivering the same to the Electoral Officer or a Deputy in the manner provided, or after receiving the ballots, refuses to vote, shall forfeit his/her right to vote at the Election, and the Electoral Officer Deputy shall make an entry in the Voters List in the column for remarks opposite the name of such person to show that such person received the ballots and declined to vote; in which case the Electoral Officer or the Deputy shall mark upon the face of the ballots the word "declined" and all ballots so marked shall be preserved.
- 7.12 Any person who is a Band member over the age of 18 years, but whose name does not appear on the Voters List, may present identification and evidence of Membership to be verified by the Electoral Officer or a Deputy, and if the Electoral Officer or the Deputy is satisfied that person is eligible to vote according to this Code, the person shall be added to the Voters List and allowed to vote at the Polling Station.
- 7.13 Every Voter who is inside the polling place at 8:00pm shall be entitled to vote before the poll is closed.

8.0 MAIL-IN POLL

- 8.1 The Electoral Officer shall no later than thirty-five (35) days before the date scheduled for the Election, mail or cause to be delivered to each Voter who resides off-reserve a mail-in ballot consisting of:
- (a) a ballot paper in the prescribed form which has been initialed by the Electoral Officer;
 - (b) a certificate envelope in the prescribed form, for the marked ballot paper, to be executed by the voter on the seal;
 - (c) an outer envelope in the prescribed form for transmission to the Electoral Officer;
 - (d) instructions for marking the mail-in ballot paper.
- 8.2 The Electoral Officer shall record on the Voters List the name of each Voter he/she has mailed or delivered a mail-in ballot paper.
- 8.3 A Voter to whom a ballot paper has been mailed or delivered shall, in order to vote:
- (a) mark the ballot paper;
 - (b) place the ballot paper in the certificate envelope;
 - (c) seal the certificate envelope;
 - (d) sign on the seal of the certificate envelope; place the sealed/signed certificate envelope in the outer envelope;
 - (e) place a photocopy of a piece of picture identification, preferably the Status Card, in the outer envelope;
 - (f) seal the outer envelope; and
 - (g) mail or cause to be delivered the outer envelope containing the ballot paper and the signed certificate envelope to the Electoral Officer.
- 8.4 A ballot paper under this section not received by the Electoral Officer by the close of polls on polling day shall not be counted.
- 8.5 Upon receipt of a mail-in ballot paper, the Electoral Officer, in the presence of two witnesses, shall remove the certified envelope from the outer envelope and:
- (a) if fully satisfied as to the identity of the Voter whose ballot is enclosed, he/she shall:
 - (i) ensuring that the Voter's identity shall not be recognized, open the certificate envelope, remove the ballot box and place the certificate envelope in a special envelope provided for that purpose;
 - (ii) make note on the Voters List opposite the name the Voter that the mail-in ballot paper has been returned;

- (iii) count the ballots according to Section 9; or
- (b) if the Electoral Officer is not satisfied as to the identity of the voter, he/she shall retain the certificate envelope unopened, mark it "NOT IDENTIFIED" and count it as a spoiled ballot.

9.0 ELECTION COUNTING

- 9.1 Immediately following the close of the poll, the Electoral Officer shall, in the presence of such Candidates or their agents, and any Voters as may be present, open the ballot box or boxes and:
- (a) examine the ballots and reject any that are not initialed by the Electoral Officer or Deputy, or any other ballots that, in the Electoral Officer's opinion, do not give a clear indication of the Voter's preference. If any of the ballots (the ballots for the Chief or the ballots for Councilors) have more votes than there are vacancies for that position, that ballot shall be rejected. All rejected ballot papers shall be preserved;
 - (b) reject any ballot papers upon which anything appears by which the Voter can be identified;
 - (c) subject to review on recount or on an Election Appeal, take a note of any objections made by any Candidate or his/her agent to any of the ballots found in the ballot box and decide any questions arising out of the objection;
 - (d) number such objections 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/her initials; and
 - (e) count the votes given for each Candidate from the ballots not rejected and make a written statement of the number of votes given to each Candidate and of the number of ballots rejected and not counted by him/her, which statement shall be then signed by him/her and other persons authorized to be present as may desire to sign the same.
- 9.2 The winning candidate for the office of Chief shall have a clear majority of at least 50% plus one (1) of the votes.
- 9.3 The winning candidates for the office of Councilor shall be those with the highest number of votes.
- 9.4 After counting the votes, the Electoral Officer shall announce the names of the elected Candidates.
- 9.5 Following the announcement, the Electoral Officer shall post in some conspicuous place a statement signed by him showing the number of votes cast for each Candidate.
- 9.6 Following the election announcement, the Electoral Officer shall complete and sign an election report, in triplicate, which shall contain:
- (a) a list of all Candidates;
 - (b) the number of eligible voters;
 - (c) the number of ballots cast;
 - (d) the number of votes for each Candidate;
 - (e) the number of cancelled ballots;
 - (f) the number of declined ballots;
 - (g) the number of spoiled ballots;
 - (h) the number of rejected ballots; and
 - (i) the number of unused ballots.
- 9.5 The Electoral Officer shall forward
- (a) one copy to the Region, Department of Indian Affairs; and,
 - (b) one copy to Band Manager/Administrator.
- 9.6 In the event of a tie vote for Chief, or for the successful Councilor position receiving the fewest votes, the Candidates that are tied shall take part in a by-election to determine a winner conducted according to the procedures in this Code.
- 9.7 In the event of a lack of a clear majority for the office of Chief, a run-off election shall be conducted, with the two Candidates having the highest number of votes, according to the procedures in this Code.

10.0 APPEAL BOARD

- 10.1 An Appeal Board shall be appointed by the outgoing Chief and Council at the same time the Electoral Officer is appointed. The Appeal Board shall be composed of three people who are not members of the Band, who are of good character and reputation, and who do not have a vested interest in the outcome of the Election of the Band.
- 10.2 The Appeal Board shall supervise and administer all election appeals, in accordance with the provisions of this Code.
- 10.3 The members of the Appeal Board shall hold office until all appeals have been determined. No member of the Appeal Board shall be a member of the outgoing Council, a Candidate for Council in the upcoming Election, or the Electoral Officer or a Deputy for this Election.

11.0 APPEAL PROCEDURE

- 11.1 Any Candidate, or any Voter who tendered a vote at the Election, may within fourteen (14) days of the poll, appeal the Election if he/she or she has grounds for believing that there was an error or violation of this Code during the Election process or a corrupt practice in connection with the Election which might have affected the outcome of the Election.
- 11.2 An appeal of an Election may be launched in the following manner:
A Notice of Appeal in writing, containing details verified by affidavit, shall be sent by registered mail to the Appeal Board, c/o the Band office, along with a deposit in the form of a money order or certified cheque for one hundred dollars (\$100) in favour of the Band. This Notice of Appeal and the deposit must be received at the Band Office within fourteen (14) days of the Election. If the appeal is upheld, the deposit will be returned, and if the appeal is denied, the deposit is forfeited to the Band, and it shall be used to offset Election Appeal expenses.
- 11.3 Where appeals are received by the Appeal Board according to this Code:
 - (a) The Appeal Board shall, within seven days of the end of the fourteen (14) – day period described in Section 11.2, forward a copy of all appeals received together with supporting documents by registered mail to each Candidate in the Election, to the Electoral Officer and any Deputies.
 - (b) Any Candidate or the Electoral Officer may within 14 days of the receipt of the appeal(s), forward to the Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation.
 - (c) The Appeal Board may conduct or authorize such further investigation into the appeal allegations as it deems appropriate and necessary.
- 11.4 After a review of all the evidence that it has received the Appeal Board shall:
 - (a) deny the appeal on the grounds that the evidence presented did not reveal an infraction of this Code, or on the grounds that an infraction of this Code was revealed but the infraction did not affect the result of the Election; or,
 - (b) uphold the appeal, and call for a new Election for the positions affected. This new Election shall take place as soon as possible and shall be conducted according to the provisions of this Code. The Appeal Board shall, if necessary, give instructions to the Electoral Officer on how the problems identified in the appeal can be corrected.

12.0 CHIEF OR COUNCILOR'S POSITION BECOMING VACANT

- 12.1 A Chief or Councilor's position on the Band Council may become vacant if, while in office:
 - (a) the Chief or Councilor in question misses three (3) consecutive regular Council meetings without authorization from quorum of Council;
 - (b) the Chief and Councilor in question is convicted of an indictable offence and has been sentenced for that offence;
 - (c) the Chief or Councilor in question changes his/her residence so that he/she is no longer an Ordinary Resident during the term of office ;
 - (d) the Chief or Councilor accepts a position as Administrator/Band Manager for a period of more than thirty (30) days;
 - (e) the Chief or Councilor in question resigns; or
 - (f) the Chief or Councilor in question dies.

- 12.2 If a situation described in Section 12 occurs, a motion must be presented at a duly convened regular Council meeting, calling for the position of the Chief or Councilor in question to become vacant. Thereafter, a Band Council Resolution outlining the situation and calling the position to become vacant, may be signed by a quorum of the Council. In the event that there is no quorum of Council, then a Band Council Resolution signed by the remaining council members shall be sufficient. If the position is declared vacant according to Sections 12.1 (a), (b), (c) or (d), the Chief or Councilor in question will be disqualified from being a Candidate at the next by Election.

13.0 OATH OF OFFICE

- 13.1 An Oath of Office shall be taken by each newly elected Chief or Councilor.

14.0 TERM OF OFFICE

- 14.1 The Band Council shall be composed of one (1) Chief and three (3) Councilors. The term of office for Council members shall be staggered four-year terms, with Elections held for two of the four positions every two years. For first Election held under this Code, the Chief's position will be for a term of four years, the Councilor receiving the highest number of votes shall also hold office for four years, and the remaining two Councilors shall hold office for two years.
- 14.2 If a vacancy occurs, and there are more than three (3) months remaining in the Council member's term of office, there may be a by-election held in accordance with the provisions of this Code for the vacant position. A person filling such a vacancy shall, subject to the provisions of this Code, serve until the term of the position expires.
- 14.3 If because of an appeal there is new Election, term shall commence on the day following the Election and will serve until the term of the position expires.

15.0 QUORUM

- 15.1 The majority of the whole Council shall constitute a quorum. Quorum shall be three (3) for this Band.

16.0 PENALTIES

- 16.1 A person violating the specifications of the Code is liable on summary conviction to a fine not exceeding \$5,000.00 or to imprisonment for a term not exceeding three (3) months, or to both.

17.0 CHANGES TO THIS CODE

- 17.1 Any proposed changes to this Code must be presented to the Band Council which shall mail the proposed changes to all the Band Members and give them at least one month to consider the proposed changes.
- 17.2 Any Band member who wants to challenge those changes must do so in writing to the Band Council within the one month period. If a challenge is received, then for the proposed changes to take effect, a meeting of the Voters must be held. A vote by secret ballot must then be taken where a majority of those who are eligible to vote, and have taken part in the vote, must agree to the proposed changes. Notice of this meeting must be posted in the Band Office and at other prominent places on the Reserve at least one week before the meeting.
- 17.3 If no challenge is received, then to take effect, the proposed changes must be approved by the Council after the end of the one month period.

18.0 REGULATIONS

- 18.1 The Chief and Council may approve, by Band Council Resolution, any procedures (including the Oath of Office and procedural rules for meetings of Band Council), forms, and other administrative rules or regulation for the better administration of this Code.
- 18.2 This Code and any amendments, and any procedures, rules or Regulations made according to Section 18.1 must be made available to Band members upon request.