

THE ELECTION CODE

TABLE OF CONTENTS

Section

1 Definitions

COMPOSITION OF COUNCIL AND TERM OF OFFICE

2 Composition of Council
 3(1) Term of office
 3(2) No limitation on terms of office
 3(3) Early elections
 3(4) Assumption of office
 3(5) Vacancy
 3(6) Procedure for resigning from Council
 3(7) By-election term of office
 3(8) Suspension
 3(9) Prohibition on seeking office

ELECTORAL OFFICER

4(1) Appointment
 4(2) Criminal records check
 4(3) Term of office
 4(4) Term of office
 5(1) Appointment of deputy electoral officer
 5(2) Power of deputy to act in place of electoral officer
 6 Electoral and deputy electoral officer may vote
 7 Oath of Confidentiality
 8(1) Powers and duties of the electoral officer
 8(2) Special powers of electoral officer
 9 Reports on election

ELECTION PROCEDURES

10(1) Electors entitled to vote
 10(2) Council resolution commences election
 10(3) Election order
 11(1) Voters' list
 11(2) Corrections to voters' list
 11(3) Electoral officer may revise list

- 18(4) Ballots to be rejected in count
- 18(5) Announcing results
- 18(6) Disposal of ballots
- 18(7) Scrutineers
- 18(8) Prohibition on signs and campaigning

APPEAL PROCEDURES

- 19(1) Appeal Committee
- 19(2) Composition of Appeal Committee
- 19(3) New appointment
- 19(4) Terms of Appeal Committee members
- 19(5) Election final and binding
- 19(6) Vacancies
- 20(1) Application for a recount
- 20(2) Factors to consider
- 20(3) Appeal of electoral officer's decision
- 20(4) Recount by Appeal Committee
- 20(5) Corrupt practice appeal
- 20(6) Other appeals
- 20(7) Notice of appeal
- 20(8) Investigation
- 20(9) Dismissal of appeal
- 20(10) Upholding subsection (5) appeals
- 20(11) Upholding subsection (6) appeals
- 20(12) Final decision
- 20(13) Judicial review

INAUGURATION CEREMONIES

- 21(1) Council ceremony
- 21(2) Consequences of failure to comply
- 21(3) Traditional swearing in
- 21(4) Assumption of office

AMENDING PROCEDURES

- 22(1) Amendment possible
- 22(2) Amendment proposals
- 22(3) Meeting for amendments
- 22(4) Notice
- 22(5) Vote to amend by secret ballot
- 22(6) Approval required to amend
- 22(7) Effective date of amendments
- 22(8) Effective date of Code

NISICHAWAYASIHK CREE NATION LAWS ELECTION CODE 1998-E1

WHEREAS: The Nisichawayasihk Cree Nation believes that the Creator made the lands and the citizens of the Nisichawayasihk Cree Nation. The Creator gave us laws that define our rights and responsibilities and govern all our relationships so that we may live in harmony with nature and mankind.

WHEREAS: The Nisichawayasihk Cree Nation has maintained its freedom, spiritual beliefs, languages, culture and traditions and has exercised powers of self-government from the beginning of time.

WHEREAS: The Nisichawayasihk Cree Nation wishes to make laws in writing for the governance of its citizens, the protection of its lands, the use of its resources, and the election of its government.

THEREFORE THIS LAW by and with the advice of the citizens of the Nisichawayasihk Cree Nation, is enacted as follows:

Definitions.

1 For purposes of this Code only, unless expressly otherwise provided, the following terms shall be defined as follows:

"Chief" means the Chief of the Nisichawayasihk Cree Nation elected and in office according to this Code.

"Code" means this Election Code including any amendments thereto, or any successor election code adopted by Nisichawayasihk Cree Nation.

"Council" means the chief and councillors elected in accordance with this Code.

"Council Resolution" means a resolution or motion passed by a majority of members of council.

August 9, 2002

PART 1

COMPOSITION OF COUNCIL AND TERM OF OFFICE

Composition of council.

2 Subject to section 3, council shall consist of one (1) chief and six (6) councillors.

Term of office.

3(1) Subject to subsections 3 and 5, the chief and councillors shall hold office for a four (4) year term.

No limitation on terms of office.

3(2) There shall be no limit on the number of times an elector can be elected to the positions of Chief or Councillor.

Early elections.

3(3) Council may call an election at any time prior to the expiry of its term of office.

Assumption of office.

3(4) All candidates elected to council shall assume office within fourteen (14) days after the election.

Vacancy.

3(5) Where the chief or a councillor:

- (a) is unable or unwilling to act;
- (b) is convicted of an indictable offence, or a corrupt practice under this Code or any other Act of Parliament or the Legislature of Manitoba;
- (c) dies;
- (d) subject to subsections (6) and (7), resigns from office in writing;

the date of the suspension to the date duties are resumed.

Prohibition on seeking Office

3(9) A chief or councillor convicted of an indictable offence shall not be eligible to be a member of council for eight (8) years from the date of the conviction or any appeal arising from such conviction, whichever is later.

PART 2

ELECTORAL OFFICER

Appointment.

4(1) Subject to subsection (2), at least forty-five (45) days prior to the expiry of its term of office, council shall appoint an elector who communicates in Cree and English, as the electoral officer for purposes of this Code.

Criminal records check.

4(2) No elector shall be appointed as an electoral officer if that person has been convicted of an indictable offence and the onus shall be on the elector to provide council with a written criminal records check prior to appointment.

Term of office.

4(3) Council shall appoint the electoral officer for a term of five (5) years.

Term of office.

4(4) The electoral officer shall hold office until expiry of the term of office referred to in subsection (3), but can be removed for just cause by a vote in favour or removal by a majority of council.

Appointment of deputy electoral officer.

5(1) Council may appoint deputy electoral officers, returning officers and such other

- (d) issue to instructions to any deputy electoral officers and other officers appointed by council as may be necessary to ensure the duties in this Code are carried out; and
- (e) perform such other duties as are prescribed by this Code.

Special powers of electoral officer.

8(2) In addition to other powers, duties and functions of the electoral officer under this Code, the electoral officer may:

- (a) where an emergency arises, extend the time or dates for doing anything under this Code;
- (b) increase the number of election officers;
- (c) increase the number of polling stations;
- (d) prescribe forms for the purposes of this Code;
- (e) generally adapt the provisions of this Code to existing circumstances; and
- (f) exercise such other powers as are prescribed by or under this Code;

but the electoral officer may not change the dates of the nomination meeting or election or extend the hour for the opening or closing of an ordinary or advance poll or for accepting a nomination paper on the day fixed for the close of nominations in an election unless the election cannot proceed as a result of an emergency which affects NCN, such as a flood, forest fire or death of a member or other person.

Reports on election.

9 After each election, the electoral officer shall make a written report within seven (7) days, to council on the conduct of the election, and may make recommendations about amendments to this Code or the procedures to be followed during elections and council shall make this report available to members immediately upon receiving it.

the names of all electors in alphabetical order, which list shall be posted in at least five (5) public places on reserve at least fourteen (14) days prior to the date of the election.

Corrections to voters' list.

11(2) Any elector may apply to the electoral officer up to the time the polls close to have the voters' list revised on the basis that the elector's name is missing from the list, the name of the elector is incorrect or that the list contains names of persons who are not qualified electors.

Electoral officer may revise list.

11(3) If the electoral officer is satisfied that the voters' list is in error, the electoral officer shall correct the list immediately and the decision of the electoral officer to revise or not to revise the voter's list is final and binding on all members.

PART 4

NOMINATION PROCEDURES

Candidate qualifications.

12(1) A person is qualified and eligible to be nominated for, and elected to, the positions of chief or councillor if the person:

- (a) is an elector;
- (b) is able to communicate in the English or Cree languages;
- (c) is ordinarily resident on reserve on the lands immediately adjacent to the reserve as determined by the factors in ss.12(2) prior to the date of the nominating meeting referred to in ss.12(5); and
- (d) at the time nomination papers are filed provides the electoral officer with a written criminal records check confirming the person has never been convicted of an indictable offence,

but a person shall not run for the positions of chief and councillor during the same election.

and whether they are prepared to allow their names to be placed on the ballot.

Candidates to be present.

12(6) Subject to subsection (7), all electors nominated shall attend the nomination meeting to confirm that they wish to stand for office and to outline their reasons for seeking office, or the electoral officer shall declare the nomination to be null and void, unless in the sole discretion of the electoral officer it is determined there are special circumstances which prevent a nominee from complying with this subsection

Permitted absences.

12(7) An elector's candidacy will not be declared null and void if that person is unable to attend the nomination meeting due to personal illness or a critical illness or death of an immediate family member and as long as the electoral officer or deputy electoral officer is notified prior to the nomination meeting.

Withdrawal.

12(8) Any elector nominated may withdraw at the nominating meeting or at least seven (7) days before election day, by filing a written notice to that effect signed by the candidate and witnessed by two electors and that candidate's name shall not be placed on the ballot.

Acclamation.

12(9) Where only one (1) candidate is nominated for chief or only six (6) candidates are nominated for the position of councillor, or after any withdrawals of candidates pursuant to subsection (6) and (8) only one (1) candidate for chief, or only six (6) candidates for the position of councillor, remain nominated, the electoral officer shall immediately declare the chief or the councillor candidates elected, as the case may be.

- (a) notify the electors and the candidates of the change in polling place and the reasons for the change;
- (b) post, at the original polling location or as close as possible to it, a notice which clearly sets out where the poll has been moved;
- (c) if time permits broadcast the change in location over local radio or television or by other means as the electoral officer considers appropriate.

Preparation of ballots.

14(1) Following the nomination meeting held in accordance with subsection 13(5), the electoral officer shall prepare separate ballots for the positions of chief and councillors, with the names of the candidates running for each position listed in alphabetical order in English and Cree syllabics and by placing a photograph of each candidate appearing on the ballot beside his or her name.

Withdrawal of candidates.

14(2) Where a candidate withdraws after the ballots have been printed, the electoral officer shall reprint the ballots unless it would not be possible to reprint the ballots in time for the election, in which case, the electoral officer shall strike the person's name from the ballot and have notices posted at the polling place clearly indicating that the candidate withdrew from the election.

Ballot boxes, etc.

15(1) The electoral officer shall arrange for sufficient ballots, ballot boxes and interpreters for the election.

Directions for voters.

15(2) The electoral officer shall provide each returning officer with the ballot boxes and at the same time deliver a sufficient number of printed directions for the guidance of voters for use during the election.

Posting of directions.

15(3) The returning officer shall cause the printed directions for the guidance of voters to

POLLING PROCEDURES

Provision of ballots to electors.

17(1) Each person requesting a ballot for the purpose of voting shall be given one if the electoral officer, deputy electoral officer or the returning officer is satisfied that the person's name is on the voters' list, or if it does not appear on the voters' list, the electoral officer or deputy electoral officer is satisfied that the person is an elector entitled to vote or has obtained from the person, an oath or affirmation in the prescribed form, that the person is an elector.

Recording poll book.

17(2) Upon establishing that a person is an elector, the electoral officer, the deputy electoral officer or the returning officer shall initial the back of the ballot, mark off the elector's name in the poll book or add the elector's name to the poll book, and give the ballot to the elector to vote.

Voter assistance.

17(3) When requested, the electoral officer or the deputy electoral officer shall explain the voting procedures to an elector or arrange for an interpreter who has taken an oath or affirmation in the prescribed form to assist the elector.

Disabled voters.

17(4) The electoral officer or the deputy electoral officer may upon request mark the ballot of an elector who is blind, unable to read or otherwise unable to vote without assistance, as long as the mark on the ballot occurs in the presence of the candidates' scrutineers, who shall observe the proceedings, but make no attempt to interfere or interrupt.

Special records.

17(5) Where assistance is provided pursuant to subsection (4), the electoral officer or the deputy electoral officer shall mark in the poll book opposite the elector's name, that assistance was provided and the reason it was provided.

of those present at the polling location, place all spoiled ballot papers in an envelope and mark it "Spoiled Ballots", seal it, and the spoiled ballots shall not be counted in the election.

Counting names in the poll book.

18(2) After closing the poll the names of the persons who voted at each poll shall be counted and recorded in the poll book, and the electoral officer or deputy electoral officer shall sign the poll book to verify its accuracy, along with those candidates or scrutineers who also wish to sign.

Count number of ballots in ballot box.

18(3) Prior to tallying the votes for each candidate, the ballots in the ballot box shall be counted and if the number is more than the number recorded in the poll book, any ballots which do not have the initials of a electoral officer, a deputy returning officer or a returning officer on the back shall be discarded, by placing the ballot in an envelope marked "Discarded Ballots", which envelope shall be sealed at the close of the polls and signed by the electoral officer or a deputy electoral officer.

Ballots to be rejected in count.

18(4) In counting the ballots for each candidate, the electoral officer, a deputy electoral officer and returning officers shall reject a ballot that:

- (a) was not supplied by them;
- (b) has marks beside more than one (1) candidate in the case of chief and more than six (6) candidates in the case of councillors;
- (c) has a mark or writing on it which identifies the voter;
- (d) indicates a vote for a candidate who has withdrawn; or
- (e) prevents voter intention from being determined.

PART 7

APPEAL PROCEDURES

Appeal Committee

19(1) Within fourteen (14) days of the coming into force of this Code, Council shall appoint an Appeal Committee for purposes of this Code:

Composition of Appeal Committee

19(2) The Appeal Committee shall be composed of:

- a) two (2) elders, one (1) of whom shall have served on council previously;
- b) one (1) elector who served as an electoral officer or a deputy electoral officer in previous elections under this Code or the Indian Act;
- c) one (1) elector who is between the ages of eighteen (18) and twenty-five (25) years of age;
- d) one (1) member who is a magistrate or Commissioner of Oaths; and
- e) one (1) elector who is ordinarily resident on reserve or on lands immediately adjacent to reserve.

New Appointment.

19(3) The members of the Appeal Committee shall remain in office until new members are appointed by a new council no earlier than sixty (60) days after the council is sworn into office, but the Appeal Committee shall complete all matters before it, prior to the new appointments taking effect.

Terms of Appeal Committee members.

19(4) The members referred to in clauses 2(a), (b) and (c) shall be appointed for a term of four (4) years and the members referred to in clauses 2(d) and (e) shall be a term of five (5) years.

- (b) following the recount either:
 - (i) declare the candidates with the most votes elected, or
 - (ii) if there is a tie between the candidates with the most votes, declare the candidates tied and request council to call a by-election for the candidates who are tied, in accordance with section 11.

Appeal of electoral officer's decision.

20(3) Any candidate who requested a recount pursuant to subsection (1) may appeal the decision of the electoral officer to the Appeal Committee within seven (7) days of the decision.

Recount by Appeal Committee.

20(4) Upon receipt of an appeal, the Appeal Committee shall within seven (7) days convene a panel of at least three (3) members to conduct a recount in accordance with subsection (4).

Corrupt practice appeal.

20(5) Within seven (7) days after the election any candidate or elector who voted may file an appeal with the Appeal Committee if that person has reasonable grounds to believe there was:

- a) a violation of this Code which may affect the results of the election; or
- b) a corrupt practice in connection with the election, which may affect the results of the election.

Other Appeals.

20(6) Within seven (7) days of any decision under this Code which adversely affects the rights of any candidate or elector, that person may file an appeal with the Appeal Committee.

Final decision.

20(12) A decision of the Appeal Committee pursuant to subsections (9), (10) and (11) shall be final and binding on all electors.

Judicial review.

20(13) A decision of the Appeal Committee may be reviewed by a Court of competent jurisdiction solely by reason that the Appeal Committee failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction under this Code.

PART 8

INAUGURATION CEREMONIES

Council ceremony.


21(1) The newly elected council shall hold a public swearing in ceremony where the chief designate and each councillor shall swear or affirm an Oath of Allegiance, an Oath of Office and an Oath of Confidentiality in the form set out in Schedules "A", "B" and "C".

Consequences of failure to comply.

21(2) The electoral officer shall declare the position of a chief or councillor who fails to comply with subsection (1) vacant, following the swearing in of the rest of council, a by-election shall be called immediately by council.

Traditional swearing in.

21(3) The swearing in ceremony for the chief and individual councillors shall include traditional Cree ceremonies and activities.



Vote to amend by secret ballot.

22(5) If requested by at least ten (10) electors, the vote to amend shall be by secret ballot vote.

Approval required to amend.

22(6) No proposed amendment shall be effective unless approved by a majority of electors present at the NCN community meeting referred to in s-s.22(3) where at least one hundred (100) electors are in attendance.

Effective date of amendments.

22(7) Amendments approved in accordance with this section shall take effect seven (7) days from the date of approval at the NCN community meeting, except for a change in the composition of council, which amendment shall not take effect until the next regular election following the decision made at the NCN community meeting.



Effective date of Code.

22(8) This Code shall come into effect for the election of chief and council in 1998 and the reference to eight (8) years in subsection 3(9) shall mean any convictions from 1990 onward.

SCHEDULE "B"

OATH OF OFFICE

I _____ before the **Creator** and members of the Nisichawayasihk Cree Nation, do swear or solemnly affirm that I duly, faithfully and to the best of my knowledge and ability perform and fulfill the duties and requirements of the office of (Chief or Councillor) for the Nisichawayasihk Cree Nation, to which I have been elected, and so long as I shall continue to hold that office, without fear or favour.

Witness

(Chief/Councillor)

Date: _____

SCHEDULE "D"

OATH

I _____ swear or solemnly affirm that:

- I am legally qualified to act as electoral officer, deputy electoral officer or other officer;
- I will act faithfully in my appointed capacity and perform all the duties required under the Election Code of the Nisichawayasihk Cree nation, without partiality, fear, or favour or affection;
- I will maintain and aid in maintaining the secrecy of voting pursuant to this Code.

SWORN before me at Nelson House)
in the Province of Manitoba)
this day of , 2002.)
)
)
_____)

A Commissioner for Oaths in and for the
Province of Manitoba.

My Commission expires _____