



TL'AZT'EN NATION
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Tl'azt'en Nation Election Code

Hadih Tl'azt'enne Elders, Staff and Members,

To move forward in developing an election code that meets, for the most part, your needs. Your input is vital and important to this process. The updating and modernizing the current election code as legislation and court cases have changed the code to better reflect the process of a Custom Election. With clearly defined roles and responsibilities of Electoral Officer, voters, nominations and candidates will ease the tension and set the stage for a better outcome in the election. This draft will be circulated to everyone by a physical copy: feel free to edit and hand back into Charlene Tom, send your comments to me and/or join me on Zoom Tuesday 1-4pm or Thursday 6-9pm Meeting I.D 7370236106 passcode 833177

I am proposing to be in the community at the boardroom in the Administration office the month of **July** TBA; Zoom is available will send link to those who can email me at clrschweizer@outlook.com
Cancellations, on short notice, if there is a loss in the community.
We are following Covid protocols. Mussi Cheryl Schweizer.

Envisioning

- ♦ Clear understandable election code
- ♦ Understand the election process
 - ♦ Transparency & Accountability
 - ♦ Defined role & responsibilities
- ♦ Finally, the code reflects and meets the members needs

TI' azt'en Nation

Election Code

April 2021

May 2018

Tache – red Ink

Fort St. James –Blue ink

Prince George – Green ink

Via Zoom Cheryl - purple

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Section A

Definitions and Interpretation

1. In this Code,

"All-Candidates Forum" means the All-Candidates Forum as described in Sections E (70 to 76) page 29

"Amendments" means any amendment to the Code, proposed, or affirmed, except for an amendment for grammatical or stylistic errors that do not change the original intent or meaning of the provision to be amended. Section H (180 -202) page 47

"Another Voter" means the definition and function set in Section E (32) page 17 of this code.

"Appellant" means an individual who submits an appeal in accordance with this Code. Section G (175) page 44

"Band" means TI' azt'en Nation #617. Section B (38a) page 14

"Band Council Resolution" means a Band Council Resolution or Chief and Council Resolution passed by majority (Quorum) of the members of Council present at a duly convened meeting of the TI' azt'en NatiOn Band Council. Section C (8) page 10

"Band member" means a person whose name appears on the TI' azt'en Nation Band membership list (#617). Section E (49h) page 21

"Candidate" means a Nominee who has satisfied the requirements for inclusion on a ballot. Section E (35) page 15

"Code" means this TI' azt'en Nation Election Code dated , 2019- 2021 Section B (20a) page 15

"Council" means the governing body of TI' azt'en Nation elected pursuant to this Code and includes the Chief and Councilors. Section B (5) page 11

"Electoral Officer" means the person appointed (or selected) in accordance with the procedures set out in this Custom Election Code to carry out and oversees election processes. Section C (8) page 10

"Election" means an Election of Council held pursuant to this code and includes a By-election or referendum including but not limited to a referendum to implement this Code. Section C (9) page 10

"Extenuating circumstances" means illness, grief, loss or other mental health to name a few. Section D (58) page 16

"Good Financial Standing" means the condition of having no arrears or unauthorized debt owing to the Band or any entity owned, controlled, or managed by the Band. I.e., Housing Rental Arrears Loans. This should include anyone who has sued the Band. **Good Financial Standing and remove all other information (Vincent Joseph)** Section E (49c) page 15

"Gross dereliction of duty" means by definition is a deliberate or accidental failure to do what you should do as a part of your job(formal) He pleaded guilty to willful dereliction of duty. www.collinsdictionary.com Section (52a) page 22

"Immediate Family Member" means a grandparent, parent, sibling, spouse, or child, biological or by traditional or legal membership list. Section F (133) page 26

"Indian Registration Administrator" means the person designated by the Band who is responsible for maintaining the Band membership list. Section D (24) page 12

"Key Holder" means the person responsible for holding the key to ballot boxes (3) Section E (89) page 20

"Nomination Period" means the period during which nominations may be made and received, beginning with posting of the notice of nomination and ending 28 days prior to the day on which the Election is to be held. Section E (35b) page 14

"Nominee" means a Voter who is nominated and seconded in accordance with this Code. Section E (45) page 14

"Oath" includes a solemn affirmation. Section C (20) page 11

"Ordinarily Resident" means the place where a Band member regularly sleeps except for temporary absences for medical, employment or educational reasons. [IA ss 75(1)] page 37

"Poll" means a building, hall, room, or other location where voting in person by ballot takes place and includes an advance poll. Section C (14) page 10

"Registered Tl'azt'en Nation" means a member with registry beginning with 617.... Section B (2) page 7

"Returning Officer" means any other person appointed by council to carry out duties during an election, Section C (10) page 10

"Scrutineers" means the person authorized in writing by a candidate to observe the conduct of voting, registration at the time of voting and counting of the ballots, and to make any complaints, on behalf of the Candidate, in accordance with section 142 to 146 of this Code. Section E (120) page 23

"Term" means the four-year term of office of a member of Council, except as otherwise extended or vacated pursuant to this Code or the TI' azt'en Nation Policy & Procedures Manual. Section B (4) page 7

"TI' azt'en Nation" means the band Section B (1) page 7

"TI' azt'en Nation Reserve" means the Band community or Tache and Dzitl'ainli (*Dakelh spelling of Middle River*) Section D (24 [II]) page 12

"Voter" means a Band member who is at least 18 years of age on the day on which Election is to be held. Section D (23) page 12

Section B

Application

- 1) This Code applies to Elections of Tl'azt'en Nation Chief and Council and Amendments of this code.
- 2) Council shall consist of eight seats:
 - a. One Chief: Should be a Tl'azt'en Nation registered member
 - b. **Five** Councilors Tl'azt'en Nations Registered members for Tache
 - c. one Councilor Tl'azt'en Nation registered member for Dzitl'ainli
 - d. one seat for off-reserve Tl'azt'en registered member

By opting in getting a Ministerial order, FNEA and FNER, have built into the Act and regulation adhere to Charter of Right's and Freedoms, Legislation and Federal Law; will support stronger more stable and effective First Nation governments.

Among the many improvements over Indian Act election system, First Nations Act offer:

- four-year term if office
- provision that allows First Nations to hold their elections on a common day and line up their terms of office
- clear criteria on the eligibility to be a candidate for position of chief
- the possibility for individual First Nation to institute a candidacy fee of no more than \$250
- similar to other election laws, penalties for defined offences such as obstructing the electoral process and engaging in corrupt or fraudulent activities in relation to an election
- no role for the Minister of Aboriginal Affairs and Northern Development in receiving, investigating, and deciding on election appeals

Side note: Tl'azt'en website, have links to organizations that can provide members with off-reserve services.

- 3) Council shall be elected in accordance with this Code.
- 4) An Election of Council shall ordinarily be held every three years from the last date of the last election for that term, i.e., August 2020
- 5) Term of Office
The term of office of a member of Council shall be three years, and these terms shall be staggered with each Election being held up to _____ offices as Follows.

Year	Offices to be Elected
August 2020	(a) two offices for Tache Councilor, and (two councilor seats) (b) two offices For Dzitl'ainli Middle Councilor seat) C) One Tache seat for off reserve <i>That councilors are just Tl'azt'en not have seats for each community</i>
2022	Zero (0)
December 2021	(a). office s(seat) for Chief (b) two offices for Tache Councilor, and (c) one office for off-reserve
2022	Zero (0)

This order will repeat every **three** years.

- 6) Each term of office of a member of council shall commence when **Electoral Officer(EO)** declares the results off the Election and shall expire when the (EO) declares the results of the next Election for that specific office. Seat in office. **Electoral Officer (EO))** should be a non-band member I.e. **One Feather**
- 7) A term of office may be extended for a maximum of thirty days by Band Council Resolution.

Preamble

What is the **communities' values?**

Respect , Humility, love, courage, humility, truth, honesty, wisdom

Traditional governance system potlatch and hereditary clan system

Caribou – spiritual leaders

Wolf/Bear – hunters and fish

Beaver – Know what needs to be done as in work

Frog – stewards of the water

Tl'azt'en reserve and traditional territory locate a map territory boundary

Tl'azt'en is a First Nation located in the Stuart Lake area north of Fort St. James, whose people are spread across its three main communities, Tache (where its administrative offices are), Dzitl'ainli, and K'uzche. Tl'azt'en is governed by a Chief and 7 councillors.

Tl'azt'en, "people by the edge of the bay", is a First Nation community situated in north - central British Columbia, Canada. We know ourselves as Dakelh (We travel by water) but Europeans called us "Carriers". Our language, Dakelh, is part of the Athapaskan language group.

Prior to contact, Tl'azt'en's traditional territory covered a vast area along Stuart Lake running up the Tache River almost to Takla Lake to the north.

Our traditional governance from our hereditary leaders of each of the clans. Each had responsibility: frog/ water; beaver/hard work; caribou/ spirituality; Bear(wolf)/ hunting (fishing). The Keyoh (land) was managed by family clan units and the family head controlled the hunting, fishing, and gathering in his/her Keyoh. It was not until the late 1800's that Tl'azt'enne began to gather in central communities (time of the year when we all came together) in response to the fur trade and the dictates of the Roman Catholic Church. Our people still live off the land and we hunt for moose, deer, bear, caribou, mountain goats, and small fur bearing animals. We set nets for salmon, white fish, trout, kokanee, spring salmon, and lingcod. We still go to our campgrounds in the summertime and gather food for our winter storage. Everyone helped one another with meat. Fish everyone smoke house was filled. Great many hands make for light work. It was vital for survival our To ensure we have a easy winter.

The population of Tl'azt'en Nation today is around 1570. Of these, approximately 459 live in one of the main communities of Tache, Dzitl'ainli, and K'uzche. Tache, the largest of the communities, is situated 65 km north of Fort St. James at the mouth of the Tache River on Stuart Lake. Dzitl'ainli is on Leo Creek road along side Trembleur Lake. K'uzche is on the Tache River.

Our main administrative offices are in Tache as are our Elementary School, daycare, head start, health office and RCMP office.

It is our goal to have our culture and language integrated into all aspects of our education from daycare to high school. Over the years we have trained our people to work in our daycare, head start, and our community based elementary school. We are presently

working to preserve and digitize and promote our language, stories, and cultural practices so that they will form our curriculum. Our elders are helping us in our effort to reinstate and perpetuate our language and culture before it is all lost.

Coming in Force

This Custom Code came into full force and effect on [original date] and was amended on [date].

This Tl'azt'en Nation Election Code repeals and replaces the Tl'azt'en Nation Traditional Leadership Code and any and all previous election codes, including any written document or oral statement regarding the conduct of Tl'azt'en Nations' elections for Chief and Council (C & C).

1. Passing of this code in referendum, and
2. Issuance of an order by the Minister of Indigenous Affairs and Northern Development, which removes Tl'azt'en Nation from the election provisions of the Indian Act

Duties of Electoral Officer EO

- 8) Council shall by band Council Resolution (Motion) appoint a certified Electoral Officer (EO) at the first Council meeting (60 days before the next scheduled election I.E. June 8, 2020, and shall be issued the current ratified (election code)
- 9) The EO shall be responsible for the conduct of an Election under this Code.
- 10) The EO may make such orders and issue such instructions consistent with this Code as they deem necessary for the effective conduct of an Election. All the returning officers should receive a copy of this election code.

- 11) The Band Council Resolution (motion) appointing the **Election Officer** shall set out the **EO's** full name and address, that date of the Election, the type of Election, and any special instructions.
- 12) The **Electoral Officer** must have successfully completed appropriate training and be certified as an **Electoral Officer** by Indigenous Service Canada.
- 13) The **Electoral Officer** shall appoint Returning Officers as deems necessary pursuant to this Code.
- 14) The Returning Officer shall have the powers described in this Code as well as those powers delegated by the **Electoral Officer**.
- 15) In the event that, the **Electoral Officer** cannot fulfill their duties, Then Chief and Council shall appoint a replacement **Electoral Officer** I.e., C&C (**Chief & Council**) motion
- 16) **The Electoral Officer** shall:
 - a) have no vested interest in the outcome of the Election
 - b) Be at least 21 years of age; and
 - c) Have experience and (be ISC (**Indigenous Service Canada**)) in the conduct of Elections.
 - d) **Should not be a band member**
 - e) **Successful background check, education level (be able to use technology, communication, etc.)**
 - f) **Successful Criminal Record check)**
19. No Returning Officers shall be :
 - a) A member of Council;
 - b) A Candidate; or
 - c) An immediate family member of a Candidate on Council.
20. The **Electoral Officer** and every Returning Officer must swear an oath to:
 - a) Uphold and comply with this code.
 - b) Fulfill the duties and responsibilities of the office faithfully, honestly, impartially, and to the best of this abilities.
 - c) Keep confidential, during and after their term of appointment, any confidential information.
 - d) Comply with all TI'azt'en Nation policies, including the Code of Ethics; and
 - e) Act in the best interests of the community.
 - f) Coordinate and attend the All-Candidates Forum

21. The **Electoral Officer** shall establish an Election file and place on that file all documentation associated with the Election (in the Administration building with a secure locking system.)
22. Following completion of Election proceedings, including final determination of any appeal, the **Electoral Officer** shall transfer the Election file to Tl'azt'en Nation (for a period of **seven** (7) years).

Section C -

Preparation of Voter List

23. The membership clerk or Indigenous Service Canada shall prepare a Voter List setting out the names of all known eligible Voters who will be at least 18 years old on the day of voting. In alphabetical order, and submit to the EO
24. For the purpose of preparing the Voters List the Indian Registration Administrator shall provide the Electoral Officer, within three days of the EO's appointment:
 - a) The name, Band membership number, date of birth, and residency of all Band members who will be at least 18 years of age on the day on which the Election is to be held, and
 - b) The last known address of all Voters who do not ordinarily reside on a Tl'azt'en Nation reserve.
 - c) Have a community member present at each poll that potentially knows and can confirm the person is who they say they are,
25. After an election, the Electoral Officer shall provide the Indian Registration Administrator with any updated addresses of Voters who do not ordinarily reside on a Tl'azt'en Nation Reserve that are known to the Returning Officer.
26. Voters are deemed responsible to ensure that the Indian Registration Administrator has their current Addressees.

Confidentiality of Voter's Addresses

27. No Voter's address shall be disclosed to anyone other than the Indian Registration Administrator by the Electoral Officer or Returning Officers without consent of the Voter.

Amendment of Voters List

28. The Electoral Officer shall, upon presentation of documentary or other proof satisfactory to the Returning Officer: (and confirmed by the Indian Registry Administrator)
 - a) Add to the Voters List the name of a Voter whose name has been omitted, i.e., Adoption List
 - b) Revise the Voters List to correctly set out the name of anyone Voter that has been incorrectly set out; and
 - c) Remove or omit the name of a person who is not a Voter.

29. Where a person's name has been removed or omitted from the Voters List under Section 36(c) the EO shall as soon as practicable notify that person is writing that: (i.e., transfer in or out of Tl'azt'en Nation, by ISC transfer process usually takes up to six months to complete.
 - a) Their name has been removed or omitted from the Voters List; and
 - b) The reason for removal or omission of their name from the Voters List.
30. Covered under 36
31. After considering all information and representation provided under 29, the Electoral Officer may:
 - a) Restore the person's name to the Voters List; or
 - b) Confirm the removal or omission of the person's name from the Voters List.
32. The decision of the EO under section 30 is final and binding, subject to an appeal to the Appeal Board in accordance with this Code.
33. A person whose name does not appear on the Voters List shall be entitled to vote if that person, prior to the close of polls on the date of the Election, presents documentary proof satisfactory.

Notifications

34. In addition to the method required for posting any notice or other information provided for in the Code, The EO may use or Cause to be used such Electronic, digital, or social media as the EO reasonably believes will enable information to reach a maximum number of Voters. By Mail.

Section D – Nominations

Method of Nomination

35. A Candidate may be nominated only in accordance with this Code.
36. No less than 42 days prior to the date on which the Election is to be held, the Electoral Officer shall issue a notice of nomination which shall include:
 - a) The positions for which nominations may be made;
 - b) The duration of the Nomination Period;
 - c) The procedure by which a Voter may nominate or second the nomination of a Candidate, and the consequences of the failure to do so;
 - d) The date on which the Election is to be held;
 - e) The name and contact information of the **Electoral Officer**; and
 - f) Such other information as the Electoral Officer deems advisable. Diagram posted prior to the entire process of the Election with timelines.
37. Ensure to list events that cause the election to be postponed I.e., death in community, natural disasters
38. The Electoral Officer shall cause the notice of nomination to be:
 - a) Posted in the Band Administration office; and
 - b) Publicized by such other means as the Returning Officer considers necessary. I.e., website, Facebook) s.42
39. A nomination must be made by a Voter and seconded by another Voter to completed and valid.
40. A Voter may nominate or second a Candidate by delivering in person completed, signed, and witnessed Voter declaration form to the Electoral Officer at the address set out in the notice of nomination before the end of the Nomination Period.
41. Nomination may not be made by mail, emailed, or faxed, and will be considered void.
42. A nomination that has not been validly seconded prior to the end of the Nomination period is void.
43. A complete and valid nomination forms that is not physically received by the Electoral Officer before the end of the Nomination Period is void. Or designate

44. (Mail-in nominations forms should not qualify, should be done in person) published daily on TI' azt'en Nation website. -S52 Why can't they be emailed pdf? Appendix 5CE
45. The Electoral Officer shall confirm whether a nominee is eligible to be a candidate for the office to which they have been nominated.
46. If a nominee receives more than one nomination for the same office, only the first nomination will be accepted.
47. A voter may nominate and second no more than:
 - a) One nominee for office of Chief; and
 - b) One nominee for the office of Councilor.

Qualification of Candidates

48. What are the consequences for drug/alcohol use of C&C; but you must be careful about telling what a person says/does out of the work environment . First want a healthy Chief and council so adherence to # 49
49. Any Candidate must: to be reviewed at the final community session.
 - a. Have been nominated in accordance with this code.
 - b. Be at least eighteen years of age on the day the Election is to be held.
 - c. Not have outstanding criminal charges and, if convicted previously, must have completed the sentence, including any probation and/or alternative measures, at least five years prior to the date of the Election, unless the Candidate provides proof of an official pardon.
 - d. Not be a registered on the National Sex Offenders Registry or its equivalent or replacement.
 - e. Be in Good Financial Standing
 - f. Have signed the Candidate Acceptance and Declaration Form and delivered it to the Electoral Officer;
 - g. Have paid the deposit to the Electoral Officer.
 - h. Have been a TI' azt'en Nation member for at least 24 months immediately preceding the Election.
 - i. Have traditional knowledge, including ability to understand TI' azt'en Nation culture and/or speak the Dakelh language.
 - j. Have a minimum of a Grade 12 or adult Dogwood diploma; or equivalent to S(I) traditional knowledge.
 - k. Abstain from drug or alcohol abuse;
 - l. subject to section 74, not be an employee of TI' azt'en Nation; and –eq. Seasonal-casual-part-time-full-time-manager.
 - m. Have not violated this Code.

Responsibility of Nominees

50. Within five days ,the time period designated, of being notified of their nomination, a nominee shall:
 - a) Execute a Candidate Acceptance Form and Declaration Form accepting their nomination and confirming their eligibility to be Candidate;
 - b) File the Candidate Acceptance and Declaration Form with the Electoral Officer by hand in person; and
 - c) Pay the applicable deposit referred to in section 51 & 52.
51. A Candidate for Chief must pay a non-fundable deposit of \$250.00. The money used will go towards the Election, a receipt will be given to payee upon receipt of the money.
52. A Candidate for Council must pay a non-refundable deposit of \$100.00. The money used will go towards the Election. A receipt will be given to payee upon receipt of the money.
53. A deposit shall be in the forms of Cash, money order, or certified check made payable to TI'azt'en Nation.
54. A deposit shall be held in trust by the Electoral Officer.
55. Subject to Section 68 – 76, if a nominee provides an executed Candidate Acceptance and Declaration Form to the Electoral Officer and pays the applicable deposit, the nominee will be a Candidate and their name will be included on the ballot. - biographical profile.
56. A nominee who fails to submit a Candidate Acceptance and Declaration form, biographical profile, or deposit to the Electoral Officer prior to the All-Candidates Forum will be deemed to have declined the nomination and will not be included on the ballot.
57. A Candidate for the office of Chief must have been a resident on a TI'azt'en Nation Reserve for at least twelve months immediately prior to the date on which the Election is to be held.
58. A Chief or Councilor who has resigned during their term of office may not be a Candidate in the next Election following their resignation, - extenuating circumstances such as illness, grief, and/or loss. If we try to exhaust the list of extenuating circumstances, we leave self-open to interpretation and appeals
59. A Chief or Councilor who has been removed during their term of office is prevented from running for office, up to a maximum of six years.

60. An employee of Tl'azt'en Nation may be a candidate but must resign their employment if declared elected.
61. A member of Council who is an employee of Tl'azt'en Nation prior to this Code coming into effect may complete their term of office while employee but must comply with section 73 if elected to a term of office under this code.
62. A nominee may be a Candidate for only one office in any one Election.
63. If at any time prior to the Election, the **Electoral Officer** determines that a Candidate does not meet the qualifications set in section 76 –80, the **Electoral Officer** shall disqualify the Candidate.

Withdrawal of Candidate

64. A Candidate may withdraw from candidacy by submitting a written notice of withdrawal to the **Electoral Officer**.
65. Every notice of withdrawal shall be posted at the polls, - also posted on Tl'azt'en Nation website.
66. Nonrefundable s-61.
67. Withdrawal of one or more candidates results in an office being uncontested, the **Electoral Officer** shall declare the remaining Candidate or Candidates, as the case may be, elected by acclamation.
68. In the event that all offices are filled by acclamation the **Electoral Officer** shall post in the Band Administration office and mail every voter who does not ordinarily reside on a Tl'azt'en Nation reserve, a notice that sets out the names of the persons/s who have been acclaimed and states that an Election will not be held. - also posted on Tl'azt'en website.
69. A Candidate who is deceased before the close of the Polls shall deemed to have withdrawn.

All-Candidates Forum

70. An All-Candidates Forum must be held no later than seven days before the date of the Election. - refer to timeline ?
71. Subject to section 86, a Candidate and **Electoral Officer** must attend the All-Candidates Forum in person.

72. A Candidate who does not attend All-Candidates Forum shall be disqualified and not included on a ballot.
73. Notwithstanding section 85, a Candidate who experience the death of an immediate family member within seven days prior to the All-Candidates Forum or who is unable to participate by reason of illness or other significant circumstances e.g. Natural disaster may attend and participate by remote technology or by video presentation.
74. Prior to the All-Candidates Forum, a Candidate shall provide to the **Electoral Officer**:
 - a) A one- page biographical profile confirming their education, experience, and other qualifications; and –as stated in S-63
 - b) A summary of their campaign platform.
75. During the All-Candidates Forum, each Candidate shall have an opportunity to address the Voters, following which the Voters, including other Candidates, may put relevant questions to the Candidates. In a respectful and safe manner
76. The All-Candidates Forum shall be chaired by an independent person appointed by the **Electoral Officer**, who is not a Band member, Returning Officer, or immediate family member of any Candidate or Returning Officer.

Campaigns

77. A Candidate who campaigns must do so:
 - a) In accordance with this Code
 - b) Respecting the right of other Candidates to organize and campaign
 - c) Respecting the rights of voters to obtain information from a variety of sources and to attend political events
 - d) Ethically, focusing on political issues and Candidate's platforms without coercion, vote buying, smear campaigns or rumor and innuendo; all forms of communications including social media
 - e) Non-violently, without intimidating other Candidates, their supporters, or the media, and without the use of language inciting to violence
 - f) Respecting the Freedom of the media to cover the campaign and to express opinions on the campaign
 - g) Respecting the Returning Officers and not interfering with the performance of their duties; and
 - h) Accepting and complying with the declared Election results and any final decision of the Appeal Board

78. No Candidate shall campaign at a poll – including TI' azt'en Nation office's and buildings
79. Every person is in breach of this Code who:
- a) Directly or indirectly offers a bribe to influence a voter to vote or refrain from voting
 - b) Directly or indirectly offers a bribe to influences voter to vote or refrain from voting for a particular Candidate/s
 - c) Accepts or agrees to accept a bribe – financial promises
 - d) By Intimidation or duress, compels a person to vote or refrain from voting
 - e) By intimidation or duress, compels a person to vote or refrain from voting for a particular Candidate
 - f) In any other way induces a person to vote or refrain from voting for a particular Candidate
80. If, at any time during an Election, the **Electoral Officer** reasonably concludes that a Candidate.
- a) Does not meet the qualifications of a Candidate,
 - b) Is in breach of Section 77 or 79, or
 - c) Fails to comply with section 77 of this code.
 - d) The Electoral Officer shall disqualify the Candidate and any votes Candidate shall not be counted.

Preparing of Ballots

81. The **Electoral Officer** shall prepare ballot papers listing in alphabetical order by Surname:
- a) On one ballot paper, the Candidates nominated for Chief; and
 - b) On a second ballot paper, the Candidates nominated for Councilor separated according to the TI' azt'en Nation Reserve for which are a Candidate
82. Where two or more Candidates have the same name, the Electoral Officer(**Chief Electoral Officer**) shall add to the ballot such additional information as may be necessary to distinguish between those Candidates, which may, without limiting the generality of the foregoing include a Candidate's middle name, initial or nickname.

Legal Proceeding by a Candidate *this should be reflected in section 35 page 14*

83. If a candidate who is or was a party to legal proceedings against the Band is declared elected, the candidate will be deemed to be in a Conflict of Interest with respect to that matter while a member of Council, Against Tl'azt'en Nation and/or officiated entity.

Section E

Voting

Advance voting -online, phone, or ballots

84. The **Electoral Officer** will establish a Poll in Tache and in such other locations as the **Electoral Officer** deems necessary. Tache -Middle River- fort St. James – Prince George.
85. The **Electoral Officer** may establish such advance polls as is established in S-110 the **Electoral Officer** deems necessary and advisable, and voting at such polls shall be conducted with such variations as are necessary in accordance with this code, provided that the ballots cast at an advance poll:
 - a) Will be returned in the secure custody of the **Electoral Officer**, and
 - b) Will not be counted until after the close Polls on the day of Election.
86. Any poll not presided over the **Electoral Officer** shall be presided with the Returning Officer appointed by an **Electoral Officer**. And as noted the EO's notice in S-96.
87. The **Electoral Officer** shall, before a poll is open, supply each poll with:
 - a) One ballot box for the ballots cast for the office of Chief; ballot boxes with lock and key will be provided.
 - b) One ballot box for the ballots cast for the offices of **Councilor**
 - c) A sufficient number of ballots; sufficient number of instruments for marking the ballots
 - d) Any other materials the **Electoral Officer**
 - e) The final votes list; and
 - f) Any other materials the **Electoral Officer** deems necessary.
 - g) **Appoint a key holder**
88. At each poll, the Returning Officer shall provide a voting compartment where voters can mark their ballots without being observed
89. Each poll shall be open from 8am to 8pm local time on the day of an Election.
90. The **Key holder** shall, immediately before the opening of a poll:
 - a) Open each ballot box and call such persons as may be present to witness that it is empty
 - b) Complete a witness statement verified by a witness that each ballot box is empty
 - c) Lock and properly seal each ballot box in a manner that prevents it from being opened with breaking the seal; and

- d) Place each ballot box in plain view for the deposit of ballots.
91. No voter may vote by proxy or otherwise authorize another person to vote on their behalf.
92. The **Electoral Officer** and/or Returning Officer shall **always maintain order** at the poll and may remove or cause to be removed any person who interferes with or disrupts the orderly conduct of the poll.
93. The **Electoral Officer** may appoint security officials to maintain order in the poll.
94. No person shall, on the day the Election is held, at a poll
 - a) Distribute any Election related materials except such materials as may be distributed by a Returning Officer for the purpose of conducting the election
 - b) Attempt to interfere with or influence any voter in marking their ballot; or
 - c) Attempt to obtain information as to how a voter is about to vote or has voted.
95. Each person, on presenting themselves to vote at a poll, shall state their name to the Returning Officer.
96. The Returning Officer shall, if the person's name is on the voters list, Initial the ballot for chief and the ballot for Councilors and provide the ballots to the voter.
97. The Returning Officer shall cause to be placed on the Voter List a mark opposite the name of every voter receiving the ballots to show that the voter has voted.
98. It shall be within the discretion of the Returning Officer to request identification from the voter for the purpose of confirming their identity.
99. A Returning Officer shall on request explain the procedure for voting to a voter.
100. After receiving the ballots, a voter shall:
 - a) Immediately proceed to the compartment provided for marking ballots
 - b) Mark each ballot by placing an "x" or other mark that clearly indicates the voter's choice does not identify the voter opposite the name of each Candidates for whom the voter intends to vote
 - c) Fold each ballot in a manner that conceals the names of the Candidates and any mark, but exposes the Returning Officer's Initials on the back **each ballot**
101. On receipt of a completed ballot, the Returning Officer shall, without unfolding the ballot verify the initials placed on the ballot and return the ballot to the voter, who immediately deposit the ballot in the ballot box for the office voted upon with the ballot.

102. While a voter is in the compartment for the purpose of marking a ballot, no other person shall, except where provided for in the Code S-32 be in the same compartment or be in any position from which they **can** see the manner in which the voter marks the ballot. If a voter cannot read that ballot the Returning Officer shall assist the voter.

Special Assistance at a poll

103. At the request of a voter who by reason of physical or educational disadvantage is unable to vote in the manner set out in section 126, the Returning Officer shall assist that voter by marking their ballot in the manner directed by the Voter in the presence of another voter selected by the voter as a witness and shall place the ballot in the ballot box
- a) Returning Officer will identify and provide an interpreter at each poll prior to the advance polls. (change all "Electoral Officer" to "Returning Officer".
104. For the purpose of Section 132, another voter shall not be:
- a) A Candidate; or
 - b) Immediate family of a Candidate.
105. At the request of a voter who makes known to a Returning Officer that they require the services of an interpreter in order to vote at a poll, the Returning Officer will arrange for a competent interpreter to explain the voting procedure to the voter.
106. No interpreter may be:
- a) A Candidate; or
 - b) An immediate family member of a Candidate.
107. The Returning Officer shall note on the Voter List opposite the name of a voter receiving assistance under section 132 or 134 that the voter had received assistance to vote and the details of the assistance provided, including that name of the **other** voter or interpreter, where applicable.

Ballot Damaged or Declined

108. A voter has inadvertently dealt with a ballot in such a manner that the ballot is damaged or does not reflect the voter's intention may, on one occasion only, return the ballot to the Returning Officer and cast another Ballot.
109. The Returning Officer shall write the word "cancelled" upon the ballot return under section 137 and retain the ballot.
110. Any voter who receives a ballot and leaves a poll with delivering the ballot to the Returning Officer shall make an entry on the Voters List opposite the name of a voter showing that the voter received a ballot and declined to vote.

111. If the Returning Officer receives a ballot referred to in section 139 the Returning Officer shall mark upon the face of the ballot the word "declined" and any ballot so marked shall be retained in the election file,

Close a Poll

112. Every voter who is inside the poll at the time fixed for closing the Poll shall be entitled to vote before the poll is closed.
113. Electronic Voting:
- a) Is electronic/ online voting safe and secure
 - b) Website is available i.e. One Feather

Scrutineers

114. A candidate shall be entitled to have one Scrutineer at a poll at any one time.
- a) The Candidates Scrutineer shall be identified prior to the advanced polls.
115. A Scrutineer may observe the conduct of voting, registration at the time of voting, and counting of the ballots, and make any complaints on behalf of the Candidate but may not otherwise take part in the conduct of the Election or the poll.
116. Notwithstanding section 143, a scrutineer who is a voter may vote in the election.
117. A scrutineer must present a letter authorization to the Electoral Office or a Returning Officer at the poll, signed by the Candidate, in order to be permitted to remain at the poll.
118. A scrutineer shall not be a Candidate or a member of Council.

Section F

Counting of Ballots

119. As soon reasonably possible following the close of the polls, the **Electoral Officer** shall count the ballots.
120. The procedure for counting of ballots at any poll other than the poll attended by the **Electoral Officer** shall be as set out herein provided that the Returning Officer counting the ballots at such other poll shall transmit the results of the count to the Electoral Officer immediately following counting of the ballots at that poll.
121. Any person, including any Candidates and Scrutineers, may attend and observe that counting of the ballots.
122. The Electoral Officer must reject any ballot that:
 - a) Does not have the initials of the Electoral Officer or designate.
 - b) Does not clearly show the voter's intention.
 - c) Shows more votes than there are Candidates to be elected.
 - d) Shows more than one vote for Chief or Councilor.
 - e) Shows any mark by which the voter can be identified.
 - f) Shows a mark other than the required mark or an "x".
123. The **Electoral Officer** shall attach a note on each rejected ballot that states the reason the ballot was rejected.
124. The **Electoral Officer** shall call out the name of the Candidate for whom each vote was cast on each valid ballot.
125. One or more assigned Returning Officers shall mark on a tally sheet each vote for each Candidate.
126. The **Electoral Officer** shall supply any other person present who so requests with a tally sheet to keep tally of the votes.
127. The **Electoral Officer** shall note in writing any objection made by a Candidate or their Scrutineer to any ballot and decide any question arising out of the objection.
128. The **Electoral Officer** shall number objections to ballots raised pursuant to section 157 and place a corresponding number on the back of the ballot with the word "allowed" or "disallowed", as the case may be, with their initials.

Declaration of Elected Candidates

129. After counting all votes, the **Electoral Officer** shall declare to be elected each Candidate having the highest number of votes,
130. Following the declaration of the elected Candidates, the **Electoral Officer** shall complete and sign an Election Report which shall set out:
 - a) The names of all Candidates.
 - b) The number of ballots cast for each candidate
 - c) The number of rejected ballots
 - d) The number of spoiled ballots
 - e) The number of cancelled ballots; and
 - f) The total number of printed ballots.
131. On the day immediately following the counting of votes, the **Electoral Officer** shall:
 - a) Sign and post, in the band administration office, the election Report prepared in accordance with section 160; and
 - b) Forward a copy of the Election Report to the band Administrator/ Indigenous Services Canada for disclosure to the community, including posting on Tl'azt'en Nation's website and/or otherwise publicizing it using electronic Communication.

Disposition of Ballots

132. The **Electoral Officer** shall retain all ballots papers in sealed envelopes, including those rejected, spoiled, cancelled and unused, and shall retain these ballots in a secure place until they are destroyed in accordance with section 165.
133. All ballots retained in accordance with Section 162 shall be retained in a secure location for a period of 7 years for 45 days from the date on which the Election was held or until a final decision on any appeal is delivered, whichever is later, may destroy the ballots in the presence of two witnesses who shall sign a declaration that they witnessed the destruction of the ballots.
134. For the purposes of section 164, the witness shall not be Candidate or immediate family member of any Candidate.

Tie Vote

135. If an equal number of votes has been recorded for two or more Candidates for an office, the **Electoral Officer** shall immediately recount the ballots in the presence of the persons present at the poll.

136. If the recount fails to determine an elected Candidate, the **Electoral Officer** shall inform the Candidates and shall determine the elected Candidate by lot in accordance with the procedure set out in section 138.

137. The **Electoral Office** shall: **FNEA Tied vote is complete by the provision below.**

(Refer to legal counsel recommendation for a by-election for tie vote)

- a) ~~Record the names of the Candidates having the same number of votes on separate but equal size paper.~~
- b) ~~Place the pieces of paper in an opaque receptacle.~~
- c) ~~Without looking in the receptacle, draw one piece of paper from the receptacle; and~~
- d) ~~Declare that the Candidate whose name appears on the paper is elected.~~

Council Vacancies

138. A Chief or Councillor office is vacant if, while in office:

- a) A Chief or Councillor resigns
- b) Chief or Councillor is deceased
- c) A Chief or Councillor is removed from office.
- d) A Chief or Councillor is unable to perform their duties for three or more consecutive months due to illness or other incapacity, including the failure to attend three consecutive Council meeting without the authorization of Council; or
- e) A Chief or Councillor is convicted and or charged of an indictable criminal offense.

139. Where the office of Chief or a Councillor becomes vacant more than 12 months before the end of the Chief's or Councillor's Term of Office, Council shall:

- a) By unanimous Band Council Resolution, leave an office vacant for the remainder of the Term in order to manage budgetary limitation, or to honor a Chief or Council who has become deceased or resigned for emergency or health reasons; or
- b) Where Council is unable to pass a unanimous Band Council Resolution, call a By-Election which shall be held no later than 60 days from the date on which the office became vacant.

140. Where the office of Chief or Councillor becomes vacant less than 12 months before the end of the Chief's or Councillor's Term of Office, and subject to section 175 Council shall:

- a) Leave an office vacant for the remainder of the Term

141. Where the Chief's office becomes vacant prior to the end of the Term, the Deputy Chief shall serve as Acting Chief until the earlier of
- a). A Candidate is declared elected as Chief in an Election, or
 - b) The end of the Term of the Chief's office which became vacant, or
 - c) Call a By-Election which shall be held not later than 60 days from the date on which the office became vacant.
142. The Candidate elected in a By-Election shall hold office for the remainder of the vacant term.
143. A Councillor who becomes a Candidate in a By-Election for the office of Chief must resign from Council.
144. Except where necessary for Council to maintain quorum, no by-election for the office of Chief or Councillor whose office has become vacant.

Section G - Appeals

Appeals

145. At the first Council meeting in a year in which an Election is to be held, Council shall by Band Council Resolution
 - a) Prepare a list of at least eight persons who meet the criteria set in section 146, and could potentially be members of an Appeal Board (the "List"); and
 - b) Appoint the three members of the Appeal Board.

Those persons from the List not appointed to the Appeal Board shall remain as alternates for an Appeal Board.
146. The Appeal Board shall (**comprise**) composed of three persons who: an elders and one youth one person outside the community third party not a band member
 - a) Are at least 18 years of age.
 - b) Are not a **candidate** or immediate family members of **candidates**;
 - c) Are not the **Electoral Officer** or Immediate family members of the **Electoral Officer**
 - d) Have knowledge of, or the ability to understand, that Tl'azt'en Nation culture; and
 - e) Have experience or training in the conduct of dispute resolution or administrative appeals.
147. The term of office of the Appeal Board shall be from the date of appointment until the date on which all appeals before that Appeal Board are final declared.
148. In the event of a By-election, Council shall by Band Council Resolution appoint the members of an Appeal Board from the List, as set out at section 174 (A).
149. Council may establish honoraria for members of the Appeal Board.
150. In Addition to any honoraria established under section 178, Appeal Board members will be reimbursed for travel and meal expenses reasonably incurred in carrying out their duties in accordance with Tl'azt'en Nation Travel Policy (appendix on travel)
151. Each member of the Appeal Board shall accept their appointment by letter to Council.
152. The Appeal Board shall decide, in accordance with this Code, all appeals against:
 - a) An Election; and
 - b) A decision of an Electoral Official.

153. A person may, within five days of the date the Returning official gives written confirmation of the removal or omission of the person's name from the Voters List under section 36 of this Code but at least 14 days before an Election, submit an appeal to the Appeal Board alleging that his or her name was erroneously removed from the Voters List, in accordance with Section 184 of the Code.
154. A Candidate or a Voter may, within five days after the date which an Election was held, submit an appeal alleging that:
 - a) A Candidate declared elected was not qualified to be a Candidate.
 - b) There was a violation of this Code in the conduct of the Election the might affected the result of the Election; or
 - c) There was a corrupt or fraudulent practice in relation to the election that might have affected the result of the Election.

In accordance with Section 184 of this Code.
156. Appeal submitted to the Appeal Board must:
 - a. Must be in writing.
 - b. Be set out in written Affidavit sworn before a Notary Public, Commissioner for Taking Affidavits or Commissioner of Oath.
 - c. Set out the grounds for the appeal and the alleged facts supporting the grounds for appeal.
 - d. Include any and all supporting documentation.
 - e. Be accompanied by a non-refundable deposit in the amount of \$250.00, in cash or cheque and payable to TI' azt'en Nation.
 - f. Confirm understanding of the TI' azt'en Nation Appeals process in the Code and acceptance of any decision by the Appeal Board as final and binding and except for Judicial Review under the Federal Courts Act, is not subject to appeal or review by any court.
 - g. Be delivered in person or by registered mail to the Band Administrator, who will forthwith forward the appeal to the Appeal Board; and
 - h. Be received within the time enumerated at sections 182 and 183, respectively.
157. Appeals that do not comply with section 184 of this Code will deemed invalid and dismissed by the Appeal Board.
158. Upon receipt of an appeal. Any Appeal Board member who:
 - a. Is an Appellant or an immediate family member or an Appellant named in the appeal.
 - b. Is a Candidate or an immediate family member of a Candidate name in the appeal?

- c. Is a Returning Officer or an immediate family member of a Returning Officer named in the appeal; or
 - d. May be reasonably apprehended to have bias or conflict of interest in connection with the appeal.
- 159. Upon receipt of an appeal, the Appeal Board shall forward a copy of the appeal documents together with any supporting documents by registered mail, a written response to the appeal allegations, together with any supporting documentation.
- 160. Any Candidate or Returning Officer named in the appeal may, within ten days of the receipt of the appeal, provide to the Appeal Board in person or by registered mail, written response to allegations, together with any supporting documentation.
- 161. After a review of the record and any response received the Appeal Board may rule:
 - a. That the evidence presented was not sufficient to prove on a balance of probabilities that:
 - 1. The person's name was erroneously removed or omitted from the Voter List.
 - 2. A Candidate declared elected was not qualified to be a Candidate.
 - 3. There was a violation of this Code that might have affected the result of the Election; or
 - 4. There was a corrupt or fraudulent practice in relation to the Election that might have affected the result of the Election,
 - And dismiss the appeal. or
 - b. That the evidence presented was sufficient to conclude on a balance or probabilities that:
 - 1. The person's name should not have been removed or omitted from the Voter's List.
 - 2. A candidate declared elected was not qualified to be a Candidate.
 - 3. There was a violation to this Code that might have affected that result of the Election; or
 - 4. There was a corrupt or fraudulent practice in relation to eh Election that might have affected the result of the Election,
 - And allow the appeal.
- 162. Where the Appeal Board allows an appeal:
 - a. Under section 160(b)(i), the Appeal Board may direct that the person be entitled to vote at the upcoming election and that the person's name be added to the Voter's List:

- b. Under section 160 (b) (ii), (iii) or (iv), the Appeal Board may
 1. Where the Candidate declared elected was not qualified to be a Candidate, set aside the election of that Candidate, and declare that the Candidate with the next highest number of votes is elected or where there is no other Candidate, that a By-Election be held; or
 2. Direct that another Election be held.
163. Where appropriate, the Appeal Board may make recommendations to the Band and to the **Electoral Officer** as to how any problem identified in the appeal can be prevented in future elections.
164. The decision of the Appeal Board shall be:
 - i. Provided to the Appellant, the **Electoral Officer**
 - ii. Posted in the Band Administration office, website and by other means of communications.
165. The Appeal Board may in its discretion order by who, to whom, and in what manner costs of the appeal may be paid. (needs Clarification)
166. The decision of the Appeal Board is final and binding on the parties and, except for judicial review under the Federal Courts Act, is not subject to appeal or review by any court. (What constitutes a judicial review and what happens to the election while the judicial review is underway?) It is suspended til resolved FNEA and IBER
167. In the event that an appeal results in an Election and shall expire when the **Electoral Officer**
168. Posted I the Band Administration Office, website, and other means to communications.
169. In the event of the appeal results in a new Election or a By-election, the Term of a Candidate elected in the Election or by-election shall commence when the **Electoral Officer** declares the results of the Election or By-Election and shall expire when the **Electoral Officer** declares the results of the next Election for that office or is otherwise removed from office pursuant to this Code or TI'azt'en Nation Policy & Procedures Manual.
170. Nothing in this Code is intended to confer jurisdiction on the Appeal Board to:
 - i. Consider or determination any matter involving allegation of criminal conduct; or
 - ii. Conduct any investigation beyond what is provided.

171. For greater Certainty, an appeal under this code is an appeal on the record.

Section H - Amendment

Process for amendment

170. An amendment for a grammatical or stylistic error may be approved at the discretion of Council alone by Band Council Resolution, must comply with section 171 - 178 of this Code. (An "Amendment" such e.g.)
171. An amendment of this code may be proposed by a Motion'/Discussion that took place on the Annual General Assembly held annually.
 - a. A petition to Council, signed by 50% plus one of all Voters listed on the most recent voter list describing the purpose for amendment; or
 - b. A band Council Resolution
172. Upon proposal of an Amendment, Council shall issue a notice that set:
 - a. A summary of the proposed amendment
 - b. A Statement that a copy of the proposed Amendment can be obtained at the Band Administration Office/TN Website
 - c. A description of the Amendment process.
 - d. The date, time, and place of a vote on the Amendment.
173. The notice issued under section 172 shall be:
 - a. posted in the Band Administration Office; and posted on the Website.
 - b. mailed to the last known address of every voter who does ordinarily reside on a TI' azt'en Nation Reserve.
174. A voter may, within 14 days of publication of the notice under section 201, provide TI' azt'en Nation written comments regarding a proposed A duly convened C&C meeting for the record/minutes. Amendments, also to be reviewed and discussed at the next duly con convened C&C meeting for the Record and Minutes.
175. Comments provided under section 172 include the name of the Voter.
176. Council shall give full and fair consideration to any comments in drafting a final amendment proposal or withdrawing a proposal made by Council.
177. Council shall submit the proposed Amendment to a vote conducted in accordance with this Code.

178. If the majority of the voters cast are in favor of the proposed Amendment, Council shall a Council Resolution adopting by band Council Resolution within reason amount of the time within 60 days of the Annual General Assembly.
179. An Amendment shall take effect at a time set out in the Band Council Resolution adopting the Amendments.

Deemed amendment of Separation

180. In the event a Reserve Community separates from TI' azt'en Nation, this Code shall be deemed to have been emended effective the date of separation to provide:
- a) that this Code no longer applies to that community and its bands members, and
 - b) the number of Councillors shall be reduced by a number of Councillors provided for that community under section 4.

181. For greater certainty, no vote is required for an amendment under section 209

Postponement of Election

182. If the death occurs in TI' azt'en Nation which in the opinion of the Electoral Officer may, with the advice of Council postpone the date on which the Election is to be held, provided that such postponement shall no exceed seven days.
183. Where the Election is postponed, notice of the Postponement shall be provided to Band members as early by such means as is reasonably possibility possible.

Calculation of Time

(2) Where there is a reference to a number of days, not expressed 184. Time in code shall be calculated according to the Interpretation Act, R.S.C. 1985, C-1-21, s 26, 1999, c31, s 147(F).

Explanation of the Act is Required.

Computation of Time

26. Where the time is limited for doing a thing expires or falls on a holiday, the election may be completed on the next day following that is not holiday.

Clear days

27 (1) Where there is a reference to a number of days or "at least" a number of days between two events, in calculating that number of days the days on which the election.

Not clear Days

to be clear days, between two events in calculating that number of days the day on which the first event happens is excluded and the day one which the second event happens is included. R.S, C 1-23, s 25

It is a good idea to develop a timeline or a calendar containing all the important dates. The Regulations requires you to perform certain duties on specified days. Appendix 3 -A contains a sample timeline. You should insert the important dates as indicated. Also, Appendix #-C contains a checklist of your principal duties and when they must be carried out.

Use the website calculator at:

<http://www.timelinedate.com/datdateadd/html>

&

All days are considered clear calendar days

(including weekends and holidays)

As per the First Nations Elections Act the date of the first election under the First Nations Elections Act is fixed by the Minister's order that adds the name of the First Nation to the Schedule to the Act. It is important you know this date as most other events during the Election period depends on it. A minimum of 65 calendar days includes weekends and holidays is required to conduct an election. This process is different as Indian Act elections has an election period of 79 day for Section 10 if your community is under INAC Election process.

Legislation and Regulation

On April 2, 2015, the First Nations Act and the First Nations Election Regulations came into force. Together, they offer a new and modern electoral system for First Nations. The Act and the Regulations are optional, meaning that each First Nation decides for itself whether they wish to move to holding their election under the new system. A First Nation who makes such a decision will adopt a band council resolution and provide it to the Minister of Indigenous and Northern Affairs Canada who will, by order, add the First Nation to the schedule to the Act.

Report of the Royal Commission on Aboriginal Peoples, October 1996, http://www.aic-inac.gc.ca/ch/rcap/sg/segmm_e.html

The inherent right of all aboriginal peoples in Canada to govern themselves, and to do so under structures of their own choosing.

A custom election codes having to “include practices generally acceptable to members of the band and upon which there is a broad consensus. From INAC website “...removal from the Indian Act election provision requires the issuing of the ministerial order in accordance with subsection 74 (1) of the Act which must then be registered in accordance with Statutory Instruments Act.

Background – Legislation and Relevant Court Cases

1.1 Goodswimmer Decision – 1995

This court case arose as a result of an election held pursuant to the Indian Act involving the Sturgeon Lake Indian Band in the province of Alberta.

At the 1992 general band election, an individual was elected as chief although the candidate was not a member of the Band not a registered Indian in accordance with the Indian Act. However, the elected individual was married to a band member as resided on the reserve.

Issue before the Courts

- b) Subsection 75 (1) of Indian Act requires a candidate for a councillor position be a band member, at least 18 years of age and ordinarily resident on the reserve. However, the

Indian Act does not specify any eligibility requirements to be a candidate for office of Chief.

- c) Subsection 75(2) of the Indian Act requires the Candidate's nomination be moved and seconded by individuals who are themselves eligible to be candidates at the election. In the case of councillor positions, this means that both the nominator and seconder of a candidate for councillor must be a band member, at least 18 years of age and ordinarily resident on the reserve.

Court Decision found that a candidate for chief need not be a band member not ordinarily resident on the reserve, despite that fact that these are eligibility requirements for candidates for councillor positions, Therefore, those moving and seconding the nominations of candidates for chief need not be band members nor ordinarily residents on the reserve but should however be at least 18 years of age.

1.2 Corbiere Decision – 1999

On May 20, 1999, the Supreme Court of Canada ruled that the following seven words contained in Section 77(1) of the Indian Act “and is ordinarily resident on the reserve” was against the Charter of Rights and Freedom in that it denied the right to vote to band members not residing on the reserve. This decision meant that all First Nation band members, at least 18 years of age, regardless of the residency, were not permitted to vote in band elections held in accordance with the Indian Act.

The **Indian Band Election Regulations (IBER)** was revised as a result of the Corbiere Decision in order to allow off-reserve members to nominate and to vote. The revised Regulation came into effect **October 19, 2000**.

As of August 19, 2008, band members not residing on the reserve are now eligible to be candidates for positions of councillor in band elections. (Overview of the Gull Bay Decision follows)

In accordance with Regulations, the electoral Officer must commence his duties related to the election at least 79 days prior to the day of the election.

In situations where a band council has lost quorum, an accelerated election is required. In this case, the election process is 30 days.

The Supreme court decision does not apply to those First Nations who hold their elections according to the custom of the band. However, it is suggested that First Nations with election rules restricting voting based on residency review and amend their election codes to comply.

1.3 Gull Bay – 2007

Historical background

Gull Bay First Nation is located on the shores of Lake Nipigon north of Thunder Bay. According to estimates provided by the electoral officer in 2004, more than 300 band members lived on-reserve while over 500 band members resided off-reserve, mostly in the city of Thunder Bay,

Following a Gull Bay Band Council election in November 2004, three band members appealed the election on the grounds that some elected councillors did not qualify to be candidates under subsection 75 (1) of the Indian Act as they did not reside on the reserve. In June 2005, the election results were set aside by an Order in Council after an investigation determined that three of the nine elected councillors did not reside on-reserve.

On July 28, 2005, eight of the nine councillors commenced an application for judicial review of the Order in Council setting aside the election and furthermore also challenged the constitutional validity of subsection 75(1) of the Indian Act.

On August 20, 2007, the Federal Court of Canada issued its judgement-

- The Court's decision invalidated subsection 75 (1) of the Indian Act in its entirety, thereby not only removing the residency requirements, but also the requirement for councillor candidates to be band members at least 18 years of age.
- As a result, minors, and persons not members of the band would therefore have been eligible to run for the office of band councillor.

On September 28, 2007, Canada filed a notice of Appeal on the grounds that the remedy was overly broad when it should have limited remedial measures to deal solely with the issue of residency.

On May 15, 2008, the Federal Court of Appeal issued its judgment.

- The Federal Court of Appeal granted Canada's request to restrict the invalidity of subsection 75(1) of the Indian Act to the residency requirement.
- The residency requirement in the Indian Act – which required candidates for the position of band councillors to reside on-reserve – was confirmed to be unconstitutional.

In order to provide the Department of Affairs and Northern Development Canada (AANDC) and First Nations time to adjust to this decision, the court suspended the coming into effect of the decision until August 19, 2008.

- As a result, August 19, 2008, off-reserve band members, who were at least 18 years of age, became eligible for band councillor positions at elections held under the Indian Act.

1.4 McIvor Decision – 2009

Background

The McIvor Decisions concern whether or not the registration provisions of section 6 of the current Indian Act discriminate against women. Before 1985, an Aboriginal woman would lose her status if she married a non-aboriginal man, however, an Indian man would not lose his status if he married a non-aboriginal woman. Following political and legal pressure, the Indian Act sections relating to registration were amended in 1985. These amendments were known as "Bill C-31."

The amendments under Bill C-31 modified the entitlement provisions and are now found in Section 6 of the Indian Act as follows: section 6 (1a) confirmed status for those already registered; section 6 (1f) gives status to individuals if both parents are registered; section 6(2) gives status to individuals if one parent is registered under 6(1); and section 6(1c) provides that the following people, previously removed or omitted from registrations, are now entitled to status:

- Those mothers and paternal grandmothers are not Aboriginal.
- Women who married non-Aboriginal and
- Illegitimate children of Aboriginal women

Judicial Review

www.justice.gc.ca > Proposed Legislation

May 25, 2021 - . The judge would have an opportunity to appeal the hearing panel's decision to an appeal panel composed of three CJC members and two judges. A final appeal could be launched to the Supreme Court of Canada, but only if that Court agrees to hear the appeal. This is different from the current process, which allows for **judicial review** through the federal courts.

Statutory Instruments Act

A community election code is not subject to the Statutory Instruments Act.

Meaning in this section "community election code" means a written code that sets out rules regarding the election of the Chief and Councillors of the First Nations