

election Code May 2004 REVIEW

NEWSLETTER for Nisichawayasihk Cree Nation Members



Over the next few months the Nisichawayasihk Cree Nation will be involved in a number of activities as part of the review of the Election Code. The purpose of the review is to ensure the Election Code continues to be responsive to the community and NCN's Membership.

The review is part of Nisichawayasihk Cree Nation's desire to establish sovereignty and be a self-governing nation with its own customs and laws. Neither Indian Affairs nor the Minister will be involved in amending the Election Code. It is up to NCN to decide whether to make changes to the code. The review will focus on addressing areas that were controversial in the previous election.

Our current leadership identified the following strengths and weaknesses of NCN's Election Code. However, we would also like your feedback on what you see as the strengths and weaknesses.

ATTENTION: Nisichawayasihk Cree Nation Members Living Off-Reserve

NCN would like to keep you informed on NCN governance and related matters. Please forward your mailing address and contact information to the Future Development Office by contacting:

Violet Turner
Ph: (204) 484-2414
Fax: (204)484-2980
electioncode@ncncree.com

NCN Band Office
General Delivery
Nelson House, Manitoba
R0B 1A0

We're waiting to
hear from you and
look forward to
seeing you.

ELECTION CODE'S STRENGTHS

- NCN's Election Code is based on a combination of surveys and comments at community workshops held in Nelson House.
- NCN members living in Nelson House, entitled to vote for Chief and Council, approved the law. Council conducted a secret ballot vote by sending a ballot box door-to-door in Nelson House. The results of this vote were sent to the Minister of Indian Affairs along with the final copy of the Election Code. The Minister then issued an order to remove NCN from the Indian Act.
- A "Criminal Record Check" is built into the code.
- It is up to NCN members to decide how and when to make changes to the Election Code using the amending procedures. Neither INAC nor the Minister will be involved.
- The Code works toward NCN's goal of developing its own government.
- The Code works towards NCN's vision:

*"To exercise sovereignty that sustains a prosperous socio-economic future for the Nisichawayasihk Cree Nation.
"Kita pimotatayahk tipithimsiowin kakiki kita mithowayacik mina kitawithotísicik Nisichawayasihk Ithinivak."*

AREAS TO IMPROVE IN THE ELECTION CODE

A number of areas of the Election Code, needing further clarity, were identified in the Appeal Committee review of the previous election. The management and accountability development plan identified a number of areas needing further clarity:

- Definition of "Ordinary Resident"
- Nomination Procedures
- Criminal Record Check
- Voting Procedures
- Appeal Procedures
- Some terms in the Election Code need to be defined such as "immediately adjacent to the reserve".

The following tables compare the former rules under the Indian Act to NCN's current Election Code.

1. COMPOSITION OF COUNCIL AND TERM OF OFFICE

Indian Band Election Regulations

- Consists of one Chief and one Councillor for every 100 band members, but the number of Councillors shall not be less than two, or more than 12, and no band shall have more than one Chief.
- Only an elector who resides on the reserve may be nominated for office of Councillor.
- A person nominated to the office of Chief is not required to be a Band member, is not required to be ordinarily resident on the reserve, and is not required to be of the full age of 18 years.
- Chief and Council hold office for a two-year-term.

Current NCN Election Code

- Council shall consist of one Chief and six councillors.
- Subject to subsections 3 and 5, the Chief and Councillors shall hold office for a four-year-term.

Benefits of NCN Procedures

- It was hoped that Chief and Council will be able to develop policies, which will then be put into action by administrative staff.
- As there is limited funding for governance, it was felt that it would be better to have a smaller Council so that additional administrative staff could be hired to better serve the people of the Nisichawayasihk Cree Nation.

Issues with NCN Procedures

- There is limited funding for governance.

2. DEFINITION OF “ORDINARY RESIDENT”

Please note: NCN Election Code complies with the Supreme Court of Canada decision on the Cobriere case, which allows for participation to off-reserve members in elections or referendums. The words, found in section 77 (1) of the Indian Act, the “ordinarily resident on the reserve”, violated the Charter rights of off-reserve members.

Indian Band Election Regulations

- A person is, or was, ordinarily resident at . . . any time shall be determined by reference to all facts of the case.
- The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereto, when away therefrom, he intends to return and, specifically, where a person usually sleeps in one place and has his meals or is employed in another place, the place of ordinary residence is where that person sleeps.
- A person can have one place of residence only, and he shall retain such place of ordinary residence until another is acquired.
- Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

Current NCN Election Code

- Determining whether an elector is ordinarily resident on reserve, or on lands immediately adjacent to the reserve, without limiting the generality of the foregoing, the electoral officer shall consider:
 - Where the person normally eats and sleeps
 - Where the person receives personal mail
 - Where the person’s immediate family lives
 - Where the person is employed, or if self-employed, where the person conducts his or her business, and
 - If the person is living off reserve for reasons related to health or education.

Benefits of NCN Procedures

- The key benefit is there is an ongoing residential connection with Nelson House and that a person is not permanently living somewhere else.

Issues with NCN Procedures

- In conducting its investigation of the 2002 election, the Appeal Committee determined there were clear violations of this section of the Election Code. They determined that two individuals were not ordinarily residents on reserve or lands immediately adjacent to the reserve, as they owned or rented a residence in an urban center. However, these residents work full time on the reserve and have a residential connection to Nelson House.
- The Election Code does not define lands immediately adjacent to the reserve.
- The Electoral Officer now has to consider various factors to determine whether or not candidates are ordinarily resident on reserve. Unfortunately, the Electoral Officer has very little time to make this determination and often has to simply rely on the candidate’s word. What happens if the candidate is allowed to run, but after the election it is determined that they were not ordinarily resident on reserve. Does this invalidate the whole election?

3. NOMINATION PROCEDURES

Indian Band Election Regulations

- At least 30 days before the day the nomination meeting is held, the Electoral Officer shall
 - Mail a notice of the nomination meeting and a voter declaration form to every elector who does not reside on the reserve.
- An elector may nominate a candidate, or second the nomination of a candidate.
 - By delivering or by mailing a written nomination and a completed, signed and witnessed voter declaration form to the Electoral Officer before the time set for the nomination meeting; or
 - Orally, at the nomination meeting
- Mailed nominations that are not received by the Electoral Officer before the time set for the nomination meeting are void.

Current NCN Election Code

- Any 25 or more electors ordinarily resident on reserve or lands adjacent to the reserve, may nominate a candidate for Chief or Council by signing and filing a nomination paper in a form prescribed by the Electoral Officer.
- Nomination meeting is held three days after the date of filing nomination papers. Nomination papers are due 7-14 days from the date of the election order. The election order starts when Council issues the order.
- A nomination paper is not valid and shall not be acted upon by the Electoral Officer unless it is accompanied by:
 - A non-refundable fee of \$50, which shall be placed by the Electoral Officer in a separate election account to be used to help fund election costs
 - Written consent that the person nominated will run for the office nominated
 - Directions about how that person's name is to appear on the ballot; and
 - A two by two inch black and white photograph of the candidate for use in the preparation of the ballot.
- At the time nomination papers are filed, candidates are to provide the Electoral Officer with a written criminal records check confirming the person has never been convicted of an indictable offence.
- The Electoral Officer shall attend the nomination meeting and announce orally and in written form the names of the persons who have been nominated, whether they qualify and whether they are prepared to allow their names to be placed on the ballot.

Benefits of NCN Procedures

- The NCN Code addresses having just anyone nominated to Council.
- Eliminates having just anyone running for Council without any sincere commitment.
- Provides structure.
- Allows people to solicit support to run for Council and demonstrates their commitment to run for office.
- One person cannot nominate or second a greater number of candidates than seat(s) available.
- Nomination form with 25 signatures demonstrates that more than two people support that person.
- The \$50 fee is used to pay for the costs of the election.

Issues with NCN Procedures

- Elders have reported the new nomination procedures are not the traditional way of nominating candidates for Council. It seems to them like Council members are selecting themselves for Council and people are not selecting them.
- If nominations are not submitted by the date and time set by the Electoral Officer, candidates cannot run in the election.
- The nomination meeting is not used to receive nominations of candidates for Council as it was done under the Indian Act. It is used to announce who qualifies and does not qualify to run in the Council elections.
- The fee of \$50 for Chief and Councillors is too low.
- The time span between the nomination meeting and the election day is too short. The Electoral Officer has little time to prepare for the election.
- According to the findings of the Appeal Committee's review of the 2002 election, the Electoral Officer disqualified candidates based on violations of the Election Code, but were later permitted to run in the election:
 - Five candidates for not filing their criminal records check with their nomination papers confirming they had never been convicted of an indictable offense, but later permitted to run in the election.
 - Four candidates for filing nomination papers after the deadline, but later permitted to run in the election.
 - Twelve candidates for Councillors and two candidates for Chief indicating they "may or may not" have a criminal record but did not confirm that they have never been convicted of an indictable offense.
- The nomination meeting has been used for community members to express their dissatisfaction on the Electoral Officer's decision on who qualifies and does not qualify. This has created a lot of pressure on the Electoral Officer to amend her decision.

4. CRIMINAL RECORD CHECK

Indian Band Election Regulations

- Does not have a criminal record check clause.

Current NCN Election Code

- A person is qualified and eligible to be nominated for, and elected to, the positions of Chief or Councillor, if the person 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.

Benefits of NCN Procedures

- The NCN Election Code criminal record check clause is a procedure to confirm that people who run for Council are not convicted of an indictable offence.
- If the Chief or a Councillor is convicted of an indictable offence, their position on Council becomes vacant immediately and there will be a by-election.
- The person will also not be able to be a member of Council for eight years from the date of the conviction or the date of any appeal from the conviction, whichever date is later.

Issues with the NCN Procedures

- The RCMP currently has two procedures for checking to see if a person has a criminal record. Within a few days, they can do a computer search. The search may indicate that no record of criminal convictions (for either indictable or summary offences) were found.
- However, the search may indicate that such a record “may or may not” exist. In some cases, this may mean that the candidate has been convicted of summary offences only. In some cases, it may mean the candidate is innocent, but has the same name as someone who has a criminal record.
- In order for the police to conclusively establish that a candidate actually has or does not have convictions for indictable offences, it is necessary for the candidate to provide a fingerprint sample. Unfortunately, the process takes roughly six weeks, while NCN’s elections take less than six weeks from start to finish.

5. MAIL-IN BALLOTS

Indian Band Election Regulations

- At least 35 days before the date of the election, the Electoral Officer shall mail, to every off-reserve voter, a package consisting of:
 - a ballot
 - a postage paid return envelope marked “ballot”
 - a voter declaration form
 - instructions about how to vote in by mail
 - locations of all polling stations, and
 - Notice that a person may vote in person rather than to vote by mail.

Current NCN Election Code

- Does not have a mail-in ballot clause but arrangements for polling places are to be easily accessible for voting during the advance poll on election day. In the 2002 election, polling stations were set up in South Indian Lake, Thompson, Winnipeg and Brandon.
- The Electoral Officer may make arrangements for traveling polls on reserve for elders and any electors who are ill or disable, if the Electoral Officer decides such a poll is required.

Benefits of NCN Procedures

- Polling places are easily accessible for band members living off reserve to vote in the election.
- Complies with the Supreme Court decision on the Cobriere case.

Issues with NCN Procedures

- Financial costs.
- This system does not accommodate all Band members especially those living outside the province.

6. APPEAL PROCEDURES

Indian Band Election Regulations

- Within 45 days after an election, a candidate or elector who believes that:
 - There was corrupt practice in connection with the election
 - There was a violation of the act or these regulations that might have affected the result of the election, or
 - A person nominated to be a candidate in the election was ineligible to be a candidate, may lodge an appeal by forwarding by registered mail to the Assistant Deputy Minister particulars thereof duly verified by affidavit.
- The Minister may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further investigation into the matter as he deems necessary, in such a manner as he deems expedient.

Current NCN Election Code

APPEAL COMMITTEE

- Council appoints an Appeal Committee for purposes of this Code. The Appeal Committee is composed of:
 - Two elders, one of whom shall have served on Council previously
 - One elector who served as an Electoral Officer or a Deputy Electoral Officer in previous elections under this Code or the Indian Act
 - One elector who is between the ages of 18 and 25 years of age
 - One member who is a magistrate or Commissioner of Oaths and
 - One elector who is ordinarily resident on reserve or on lands immediately adjacent to reserve.

APPLICATION FOR A RECOUNT

- Within seven days after the election, any candidate may request a recount by submitting their request to the Electoral Officer, in which case the Electoral Officer shall give all candidates and electors three days notice that a recount has been requested, following which the Electoral Officer shall immediately convene a meeting of the candidates and the Deputy Returning Officer to recount the ballots.

CORRUPT PRACTICE APPEAL

- Within seven 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 violation of this Code which may affect the results of the election or
 - A corrupt practice in connection with the election, which may affect the results of the election.

OTHER APPEALS

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

Benefits of NCN Procedures

- Appeals of decisions of the Electoral Officer may be made to the Appeal Committee:
 - on recounts
 - alleged violations of the code
 - a corrupt practice and
 - any other decisions under the NCN election code which may affect the rights of individuals and the outcome of the elections.
- If the Appeal Committee wishes to retain legal counsel, it may not retain the same law firm that provides legal advice to the Electoral Officer.
- The Appeal Committee's decisions can be appealed in court if it can be established that the Appeal Committee failed to observe a principle of natural justice or acted beyond its jurisdiction or refused to exercise its jurisdiction.

Issues with NCN Procedures

- NCN has come to rely on a third party referee, such as the Minister under the Indian Act or the Canadian judicial system, used during the 2002 election. These third party referees are neutral to the issues under appeal. The appeal procedure is most likely unacceptable to all NCN members.
- NCN candidates and electors are not clearly informed during the election year on the timelines and procedures for appeals of any election practices.
- The Election Code does not have rules that govern the costs associated with an appeal. Costs of appeals need to be built in the code but they need to be limited so every person dissatisfied with the election can not file an appeal and have NCN bear all the costs. This would be too expensive.
- Who would be government while the election is under appeal? Pending the results of the appeal on the election, does the previous Council remain in power, or does the newly elected Council assume the power and authority as a government?

GET INVOLVED

NCN has organized radio talk shows, community surveys and workshops to talk about the Election Code.

Talk shows

- April 29, 2004 at 6:00 p.m. on NCI during AMC's 1/2 hour Talk Show
- May 3, 2004 at 6:00 p.m. on NCI during MKO's 1/2 hour Talk Show
- May 10, 2004 at 6:00 p.m. – 7:00 p.m. on NCI
- May 13 and 18, 2004 at 1:00 p.m. – 3:00 p.m. on the local radio station

Community workshops served with dinner

- May 25 and June 10, 2004, 1:00 p.m. – 6:00 p.m. at the Duncan Wood Memorial Hall, Nelson House
- June 1, 2004, 6:00 p.m. – 9:00 p.m. at the Juniper Center, 108 Nelson Rd., Thompson
- June 3, 2004, 6:00 p.m. – 9:00 p.m. at the Radisson Hotel on 288 Portage Ave., Winnipeg
- June 8, 2004, 1:00 p.m. – 6:00 p.m. at the Murdo Clee Hall, South Indian Lake

Community surveys

Community surveys will be carried out in May and June 2004. If you haven't already received a survey please contact Theresa Yetman at the numbers listed below.

Theresa Yetman
Ph: (204) 484-2332 or direct line (204) 484-3003
email: electioncode@ncncree.com
www.ncncree.com



NCN Band Office
General Delivery
Nelson House, Manitoba
R0B 1A0
Phone: (204) 484-2332
Fax: (204) 484-2392