

NISICHAWAYASIHK CREE NATION LAWS
ELECTION CODE AND REFERENDUM RULES
1998-E1

WHEREAS: The Nisichawayasihk Cree Nation (also known as the *Nisichawayasi Asiniskaw Nihithowak*) believes that the Creator made the lands and the citizens of the Nisichawayasihk Cree Nation. The Creator gave us principles to live by and from these principles our leaders developed customary laws that define our rights and responsibilities and govern all our relationships so that we may live in harmony with nature and all creation.

WHEREAS: The Nisichawayasihk Cree Nation has maintained its freedom, spiritual beliefs, languages, culture and traditions and has exercised its inherent rights of self-government from the beginning of time, which rights have never been relinquished or abandoned.

WHEREAS: In 1998, the Nisichawayasihk Cree Nation decided to document our electoral processes based on our inherent laws, and to make laws in writing for the continued governance of our citizens, the protection of our lands, the use of our resources, and the election of our 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:

"Board" means any board of an NCN corporation, unincorporated entity or trust whose governing documents, or in the absence of direction in the governing documents, whose directors or trustees or Chief and Council have determined are to be elected pursuant to this Code.

DRAFTING NOTE: The constitutions/bylaws of all NCN corporations/entities need to be reviewed to ensure that they are consistent with this Code. It should be determined which entities require elected directors/trustees.

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

“Code” means this Election Code and Referendum Rules including any amendments thereto, or any successor election code and referendum rules adopted by the 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.

“Electoral Officer” means the person who is appointed by council to conduct elections and referenda pursuant to this Code and where required includes deputy electoral officers.

“Election” includes a by-election.

“*Kehtiyatis* (Elder)” means an NCN citizen who teaches others about Nisichawayasi culture, spirituality and traditions, assists elected leaders by providing respectful guidance, actively participates in community life and has achieved an honoured status in the Nisichawayasihk Cree Nation as a result of wisdom and knowledge the person displays.

“Nisichawayasihk Cree Nation” or “NCN” means the *Nisichawayasihk Nehethowuk* or *Nisichawayasi Asiniskaw Nihithowak*.

“NCN citizen” means a person who on the date an election or referendum is held in accordance with this Code, is a citizen of the Nisichawayasihk Cree Nation pursuant to the Nisichawayasihk Cree Nation Membership Code which has been in force and effect since May 24, 1988, including any amendments thereto, or any successor code or citizenship law adopted by NCN.

“NCN Community Meeting” means a meeting of the voters of the Nisichawayasihk Cree Nation conducted in accordance with this Code.

"Reserve" means those lands set aside as reserves for the use and benefit of the Nisichawayasihk Cree Nation.

"*Opimpahtao* or *Opimpahtastamakiw* (Voter)" means an NCN citizen who is at least eighteen (18) years of age on the date of an election or referendum is held in accordance with this Code. (DRAFTING NOTE: Confirm with Elders that the Cree word is accurate.)

DRAFTING NOTE: Need to confirm which is the best Cree translation as it has been indicated that "*Opimpahtao*" means candidate not voter.

"*Oskatis*" (Youth) means an NCN citizen who is between the ages of eighteen (18) and thirty (30) years of age on the date an election or referendum is held in accordance with this Code.

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 a voter 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, a corrupt practice under this Code, or is sentenced to a jail term for any offence under or any Act of Parliament or the Legislature of Manitoba;
- (c) *Kanukutuskeet* (passes on);
- (d) subject to subsections (6) and (7), resigns from office in writing;
- (e) is absent from three (3) consecutive regular meetings of council without just cause as determined by majority vote at an NCN community meeting called for this purpose;
- (f) is found by council, the Appeal Committee, or a court of competent jurisdiction to have violated the Oath of Allegiance, Oath of Office or Oath of Confidentiality in the form set out in Schedules "A", "B" and "C";
- (g) is no longer an NCN Citizen; or
- (h) is elected as a Member of Parliament, Member of the Legislative Assembly, Grand Chief or Vice-Chief of the Assembly of First Nations, Grand Chief or Vice-Chief of the Assembly of Manitoba Chiefs, Grand Chief of the Manitoba Keewatinowi Okimakanak, tribal council representative or a mayor or councillor of a town or city;

that person's position shall be declared vacant and a by-election shall be held immediately in accordance with this Code unless there are only six (6) months remaining before the expiry of council's term of office, in which case no by-election is required.

Leave of absence.3(5.5) A chief or councillor who seeks election as a member of Parliament, member of the Legislative Assembly, mayor or councillor of a town or city, Grand Chief of the Assembly of First Nations, Grand Chief of the Assembly of Manitoba Chiefs or Grand Chief of Manitoba Keewatinowi Okimakanak, shall take a leave of absence from the position of chief or councillor upon filing official documents required to run for such election and shall be considered on leave of absence without pay from the date papers are filed to the date of the election.

DRAFTING NOTE: Council policies need to be developed that reflect that the elected position differs from staff as the personnel policy manual for staff does not apply to council.

Procedure for resigning from Council.

3(6) To be effective, a resignation submitted in accordance with clause 3(5) (d) shall:

- (a) where a councillor resigns, be submitted to the chief; and
- (b) where the chief resigns, be submitted to a quorum of council,

upon which the seat shall become vacant immediately without any further action being necessary by the chief or quorum of council, but the other members of council and members shall be notified about the resignation as soon as is reasonably possible.

By-election term of office.

3(7) A person elected in a by-election shall only hold office until the next regular election is held and the new chief and council is sworn into office in accordance with subsection 21 (3).

Suspension.

3(8) If a chief or a councillor is charged with an indictable offence, council may, for the duration of that person's term of office or until such time as the person is found innocent or guilty, whichever is earlier suspend that person from office without compensation. If the person is found innocent, he or she shall be entitled to reimbursement of any salary from the date of the suspension to the date duties are resumed.

Prohibition on seeking Office

3(9) An NCN Citizen who is convicted of an indictable offence or is sentenced to a jail term, shall not be eligible to be a member of council for eight (8) years from the date of the conviction, the conclusion of the period of incarceration, or any appeal arising from such conviction or jail sentence, 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 a voter who communicates in *Nehethowiwini* and English, as the electoral officer for purposes of this Code.

Criminal records check.

4(2) No voter shall be appointed as an electoral officer if that person has been convicted of an indictable offence or has been sentenced to a jail term and the onus shall be on the voter 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) The electoral officer shall appoint deputy electoral officers, returning officers and such other officers and employees as are necessary to enable the electoral officer to carry out the duties assigned under this Code and to the extent possible shall appoint a deputy electoral officer for each polling location.

Power of deputy to act in place of electoral officer.

5(2) Where the office of electoral officer is vacant, or where the electoral officer is, by reason of absence, incapacity or any other cause, unable to act, the deputy electoral officer shall act as the electoral officer until the vacancy is filled, or during the period that the electoral officer is unable to act, and when acting as electoral officer under this subsection, a deputy electoral officer is charged with, and shall perform, the duties of, and has all the powers, rights, privileges and authority granted to, or vested in, the electoral officer under this Code.

Electoral and deputy electoral officer may vote.

6 The electoral officer, and any deputy electoral officers appointed pursuant to subsection 7(1), shall not engage in, or participate in any political activities in favour of or against, any person running for council, but the electoral officer and any deputy electoral officers may vote in any election held under this Code.

Oath of Confidentiality

7 The electoral officer, any deputy electoral officers and other officers shall take an Oath of Confidentiality in the form of Schedule "D" prior to assuming any duties under this Code.

Powers and duties of the electoral officer.

8(1) The electoral officer shall:

- (a) exercise general direction and supervision over the administrative conduct of elections and referenda;
- (b) ensure the voters list is prepared and posted in at least five (5) public locations on reserve at least fourteen (14) days prior to the date of the election or referendum;
- (c) enforce fairness, impartiality and compliance with this Code on the part of all election officers;
- (d) delegate responsibility 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;
- (e) either before or after the nomination meeting, use media, information meeting or other means, to provide NCN Citizens with information about the electoral or referenda processes, including the provisions of this Code, nomination procedures, qualification of candidates, voting information and election or referenda results;
- (f) determine the number and location of regular, advance and travelling polling locations, but there must be at least one regular polling location on reserve and if polling locations are to be changed in a subsequent election from the preceding election, at least six (6) months notice of the proposed change shall be given by the electoral officer to NCN Citizens who shall have the right to file an appeal with the electoral officer within fourteen (14) days of the notice being posted and the electoral officer shall refer the matter to the appeal committee within seven (7) days of receipt of the appeal;

- (g) appoint scrutineers in a referendum or election if at least one scrutineer has not been appointed for each poll;
- (h) establish the procedures for mail-in ballots if council determines there should be mail-in ballots provided to NCN citizens living off-reserve; and
- (i) 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, election or referendum fixed by council resolution, 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 or referendum cannot proceed as a result of an emergency which affects NCN, such as a flood, forest fire or a similar type of emergency or other extenuating circumstances.

Reports on election.

9 After each election or referendum, the electoral officer shall make a written report within fourteen (14) days, to council on the conduct of the election or referendum, and may make recommendations about amendments to this Code or the procedures to be followed during elections and referenda, and council shall make this report available to NCN citizens within thirty (30) days of receiving it by posting a notice on the NCN website and at the NCN government office advising where the report can be obtained.

PART 3
ELECTION AND REFERENDUM PROCEDURES

Who is entitled to vote.

10(1) All voters are entitled to vote in council elections, board elections and referenda.

Council resolution commences election.

10(2) Every election or referenda shall be commenced by a council resolution calling an election or referenda, which council resolution shall be provided to the electoral officer forthwith.

Election/Referendum order.

10(3) Upon receipt of a resolution under subsection (2), the electoral officer shall immediately issue an order:

- (a) in the case of an election,
 - (i) fixing the date for the filing of nomination papers by candidates, which date shall be, not more than fourteen (14) days and not fewer than seven (7) days from the date of the order;
 - (ii) fixing the date of the election no less than twenty-one (21) days and no more than twenty-eight days from the date of the close of nominations;
 - (iii) fixing the date for a nominating meeting to be held, which date shall be no more than five (5) days after the date for filing nomination papers;
 - (iv) fixing the date of the advance poll as required by clause (b) (i), no less than fourteen (14) days after the nominating meeting is held; and
 - (b) in the case of either a council election or a referendum:
 - (i) fixing the date and time of advance polls;
 - (ii) fixing the location of the polling places and the hours during which the polls will be open, and
 - (iii) post the order in at least five (5) conspicuous places on reserve, in at least one location in Thompson, Winnipeg and other locations in Manitoba where significant numbers of voters reside, as determined in the sole discretion of the electoral officer, as well as on NCN's website;
 - (c) in the case of a board election
- Consolidated NCN Election Code (including 2002 and 2010 amendments)

- (i) fix the date for the election;
- (ii) fix the location of a polling place on reserve only and the hours during which the polls will be open; and
- (iii) post the election order on reserve and on the NCN website.

Voters' list.

11(1) The electoral officer shall cause a voters' list to be prepared, which list shall contain the names of all voter's in alphabetical order, which list shall be posted in at least five (5) public places on reserve and in the same locations the electoral or referendum order is posted, at least fourteen (14) days prior to the date of the election or referendum.

Corrections to voters' list.

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

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 NCN citizens.

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 NCN citizen;
- (b) is able to communicate in the English or *Nehethowiwini* languages;
- (c) at the time nominations papers are filed provides the electoral officer with a written criminal records check that has been issued no more than three (3) months prior to the date of the nomination

Consolidated NCN Election Code (including 2002 and 2010 amendments)

meeting, confirming the person has never been convicted of an indictable offence, or sentenced to jail within the eight (8) years prior to the date the election order is posted or the documentation permitted in accordance with subsections 12 (2) and 12 (5),
but a person shall not run for the positions of chief and councillor during the same election.

Statutory declaration in certain circumstances.

12 (2) If the documentation a potential candidate provides pursuant to clause (1) (c) indicates the person may or may not have been convicted of an indictable offence, and the person provides written proof that clarification has been sought from the RCMP or other agency responsible for providing such information, but no response has yet been received, the electoral officer shall, subject to subsection (4) permit the person to provide a statutory declaration swearing they have never been convicted of an indictable offence.

Election null and void if statutory declaration inaccurate.

12 (3) If it is subsequently determined that a person who swore a statutory declaration in accordance with subsection (2) has been convicted of an indictable offence, the electoral officer shall immediately declare that person's election to council null and void.

Action to be taken by electoral officer.

12 (4) After declaring an election null and void, in accordance with subsection (3), the electoral officer shall:

- (a) hold a by-election if more than six (6) months have elapsed since the date of the election; or
- (b) if less than six (6) months have elapsed, declare the candidate who received the next most votes elected as either Chief or Councillor until the next regular election is held,

but if the person was not elected, take no further action.

Consequences false statutory declaration.

12 (5) The electoral officer shall require every person who provides a statutory declaration pursuant to s. 12 (2), to sign an acknowledgement confirming the person is aware that if the statutory Consolidated NCN Election Code (including 2002 and 2010 amendments)

declaration is found to be false, the person may be charged under the *Criminal Code (Canada)* and further that the electoral officer will declare the person's election null and void if the information provided is subsequently proven to be inaccurate.

Nomination papers.

12(6) Any twenty-five (25) or more voters may nominate a candidate by signing and filing with the electoral officer, at any time after the date of the order calling the election and before 1:00 in the afternoon of the day fixed for the close of nominations, a nomination paper in a form prescribed by the electoral officer.

Requirements for validity.

12(7) A nomination paper is not valid and shall not be acted upon by the electoral officer unless it is accompanied by:

- (a) a non-refundable fee of fifty dollars (\$50.00), which fee shall be placed by the electoral officer in a separate election account to be used to help fund election costs;
- (b) a refundable fee of fifty dollars (\$50.00), which fee the electoral officer shall refund within twenty-one (21) days following the election if the candidate has removed all signs or other materials by that date;
- (c) written consent that the person nominated will run for the office nominated;
- (d) directions about how that person's name is to appear on the ballot; and
- (e) a two inch by two inch black and white photograph of the candidate for use in the preparation of the ballot.

Nomination meeting.

12(8) 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.

Candidates to be present.

12(9) Subject to subsection (10), all voters 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(10) A voter'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(11) Any voter 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 voters and that candidate's name shall not be placed on the ballot.

Acclamation.

12(12) 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.

**PART 5
POLLING PLACES**

Establishment of polling places.

13(1) The electoral officer shall make arrangements for polling places on and off reserve which are easily accessible for voting during the advance poll and on the dates established for the council election or referendum, and in the case of board elections shall ensure an accessible location on reserve is available for voting.

Voting arrangements for secret ballot.

Consolidated NCN Election Code (including 2002 and 2010 amendments)

13(2) Every polling place other than the travelling poll, be arranged in a well lit area so that each voter is screened from observation and can without interference or interruption mark ballots.

Security to be present at each polling location.

13(3) The electoral officer shall arrange for NCN constables or other security to be present at each polling location during the election or referendum.

Travelling poll for elders, infirm or disabled.

13(4) The electoral officer may make arrangements for travelling polls for elders, and any voters who are ill or disabled, if the electoral officer decides such a poll is required.

Facilities in travelling polls.

13(5) Every travelling poll established under subsection (4) shall allow each voter to mark ballots without interference or interruption and to the extent possible, without observation by other people.

Change of polling locations.

13(6) Where it is impossible to hold a poll in a place designated as a polling place, the electoral officer may establish another polling place as close as possible to the original polling place and in that event shall:

- (a) notify the voters and, in the case of an election, 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.

Mail-in ballots.

13 (7) Council may, at least one hundred and twenty (120) days before a council election, by-election or referendum, decide that mail-in ballots shall be used in addition to voting in person for by notifying the electoral officer in writing, which notice shall direct the electoral officer to send ballots to all eligible NCN citizens who live at least one hundred kilometers from a polling station or only to those who request a mail-in ballot. For greater certainty, mail-in ballots shall not be utilized for board elections unless permitted by the board's governing documents.

Consolidated NCN Election Code (including 2002 and 2010 amendments)

Electoral officer to decide procedures.

13(8) Upon being notified that mail-in ballots are to be used, the electoral officer shall establish the procedures which will apply to the mail-in ballots and shall publicize the procedures at least sixty (60) days prior to the election, by-election or referendum.

Fundamental principles.

13(9) The procedures established by the electoral officer for the use of mail-in ballots must:

- (a) ensure the secrecy of the voting process is not impaired;
- (b) prevent NCN citizens from voting more than once during the same election, by-election or referendum;
- (c) ensure that only mail-in ballots received by the date and time set for them to be received by the electoral officer are counted at the same time as ballots cast by voting in person; and
- (d) ensure that all mail-in ballots cast are preserved in the same manner and for the same length of time as regular ballots, and then shall be disposed of with all other ballots cast.

Preparation of election 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, or board positions with the names of the candidates running for each position listed in alphabetical order in English, *Tanehethowasteek*, *Taithinewasteek* or *Tunehethouwasteek* (Cree syllabics), or Roman orthography and by placing a photograph of each candidate appearing on the ballot beside his or her name, but if there is a discrepancy between the picture, syllabics or roman orthography, the picture of the candidate shall prevail. (DRAFTING NOTE: The best Cree word needs to be confirmed.)

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.

Preparation of referenda ballots.

14(3) The electoral officer shall attach a copy of the ballot which sets out the question or questions to be answered during the referenda vote to the referendum order posted in accordance with section 10 (3).

Ballot boxes, etc.

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

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 or referendum.

Posting of directions.

15(3) The returning officer shall cause the printed directions for the guidance of voters to be posted in visible locations at the polling place and they shall remain in place while the polls are open.

Opening polling location.

16(1) The electoral officer, the deputy electoral officer, returning officers and other officers shall arrive at the polling location at least thirty (30) minutes before the hour fixed for the opening of the polls.

Handling of ballot box when poll opens.

16(2) The electoral officer shall cause each ballot box to be shown to those persons present so that they may see that it is empty and then it shall be locked or sealed until the polls close.

Placement of ballot box during election.

16(3) All ballot boxes shall be kept on a table or otherwise be raised above the floor so that they are in full view of all present at the polling location throughout the election or referendum.

Treatment of travelling poll ballot box.

16(4) The returning officer responsible for the travelling poll established pursuant to subsection 14(4) shall comply with subsection (2).

Sealing the advance poll ballot box at closing.

16(5) At the close of an advance poll, the electoral officer shall take possession of the ballot boxes used and shall keep them, without the seals broken, in a safe location until the final day of the election or referendum day, when they shall be opened and counted separately from the ballots cast on the final day of the election or referendum.

**PART 6
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, deputy electoral officer or returning officer is satisfied that the person is a voter entitled to vote or has obtained from the person, an oath or affirmation in the prescribed form, that the person is a voter.

Recording poll book.

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

Voter assistance.

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

Disabled voters.

17(4) The electoral officer, the deputy electoral officer or a returning officer may upon request mark the ballot of a voter 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, the deputy electoral officer or the returning officer shall mark in the poll book opposite the voter's name, that assistance was provided and the reason it was provided.

Additional ballots.

17(6) Where a voter spoils a ballot so that it cannot be used, another ballot shall be provided to the voter and the spoiled ballot shall be marked "Spoiled" and be retained in a separate envelope for that purpose.

Elector leaving polling place without voting.

17(7) If a voter receives a ballot and then leaves the polling place without voting or returning the ballot to the electoral officer, deputy electoral officer or returning officer, the details shall be recorded in the poll book opposite the name of that voter and no further ballot shall be provided to that person.

Electors can vote if inside poll before closing time.

17(8) Every voter who is inside the polling location before the poll is closed pursuant to subsection (9) shall be entitled to vote notwithstanding that the vote occurs after the time fixed for closing the poll.

Closing polls.

17(9) At the time established for closing the polls, the electoral officer, deputy electoral officer or returning officer shall cause the entrance to the polling place to be closed and no other person shall be allowed to enter the polling location to vote after that time.

Camera.

17(10) Following the closing of the polls, the electoral officer may authorize the procedures in subsections 19(1) and (5) to be recorded by camera or other video recording device as long as voter secrecy is maintained and all recordings are provided to the electoral officer immediately following the vote and only the electoral officer shall have access to the recording unless the election or referendum proceedings are the subject of an appeal in which case certified copies of the recording shall, in the case of an election, be made available to the Appeal Committee and any candidate upon request and in the case of a referendum to Council.

Spoiled ballots.

18(1) During an advance poll, election or referendum, the electoral officer, deputy electoral officer or returning officer shall initial each spoiled ballot, in the presence of those present at the polling location, and then place such spoiled ballot papers in an envelope marked "Spoiled Ballots", and immediately after the closing of the poll, seal it, and the spoiled ballots shall not be counted in the election or referendum.

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, deputy electoral officer or returning officer shall sign the poll book to verify its accuracy, along with those candidates or scrutineers who also wish to sign and if the poll book was used to record the people who voted in an advance poll, the poll book shall be retained by the electoral officer, or deputy electoral officer or returning officer who will be present on the day of the election or referendum so that they can take all reasonable steps to ensure that a person does not cast more than one ballot in the election or referendum. For greater certainty, the poll books from advance polls shall not be sealed in the ballot box but shall be used during the vote as permitted by this section and then shall be used on the day of the vote during the count of the advance poll ballots.

Count number of ballots in ballot box.

18(3) Prior to tallying the votes in an election or referendum, 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 electoral 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, a deputy electoral officer or returning officer.

Ballots to be rejected in count.

18(4) In counting the ballots, 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 in an election;
- (c) has a mark or writing on it which identifies the voter;
- (d) indicates a vote for a candidate who was disallowed, has withdrawn from an election or who passed on during the election; or
- (e) prevents voter intention from being determined.

Announcing results.

18(5) After the number of votes cast for each candidate or in relation to referenda questions, has been determined, recorded in the poll book, and copies sent to the electoral officer, the electoral officer shall tally the totals received from each poll, enter the results into his or her master poll book, and certify those were the results received, the electoral officer shall announce the results to the public and post a signed statement indicating the results of the election or referenda.

Disposal of ballots.

18(6) The electoral officer shall place all unused, spoiled, discarded and rejected ballots received from each polling location in a sealed envelope and shall retain that envelope for thirty (30) days after which arrangements shall be made for the ballots to be destroyed in the presence of a deputy electoral officer, at least one returning officer, and one police or security officer, unless there has been a request for a recount or an appeal has been filed, in which case the ballots shall not be disposed of until the conclusion of any appeal proceedings or upon the expiry of the time for filing an appeal, whichever is later.

Election Scrutineers.

18(7) Each candidate in an election may appoint a voter as his or her scrutineer for each poll, which scrutineer shall be entitled to be present at the polling station to observe proceedings throughout the election and counting of the ballots but the electoral officer shall take the necessary steps to ensure there are scrutineers appointed in accordance with clause 8 (1) (g) if scrutineers have not been appointed by candidates.

Referenda Scrutineers.

18 (7.1) Council may appoint voters or independent observers as scrutineers for each poll during a referendum, and the scrutineer shall have the same rights as a scrutineer appointed under section 18 (7).

Prohibition on certain activities during elections and referenda.

18(8) Any person who is a candidate in an election or who is participating in a referendum and who:

- (a) posts signs inside the polling station or within one hundred and fifty (150) feet of the polling station or wears any campaign materials within this area;
- (b) on voting day in an election or referendum, canvasses within the same area identified in clause (a);
- (c) paints signs on the walls of buildings, including houses;
- (d) buys or contributes to the purchase of alcohol, drugs or other gifts as an inducement for voters to vote during an election or referendum, at any time after the electoral officer posts the order calling the election or referendum and the time the polls have closed on the day of an election or referendum,

whether by engaging in such activities himself or herself or by directly or indirectly encouraging others to engage in such activities, shall be disqualified as a candidate by the electoral officer, and subject to subsection 21, any votes cast for this candidate shall not be counted by the electoral officer, except in the case of clause (c), the electoral officer shall first give the candidate notice that the signs painted on the buildings must be removed within twenty-four hours of notice being given, and if the sign painted on the building is not removed, the candidate shall be disqualified.

PART 7 APPEAL PROCEDURES

Appeal Committee.

19(1) By May 15th of the last year of its term, Council Council shall appoint an Appeal Committee for purposes of this Code which Appeal Committee shall remain in office until a new Appeal Committee is appointed.

Composition of Appeal Committee.

19(2) Five (5) persons, including one (1) Elder one (1) youth, and an experienced Manitoba adjudicator all of whom are prepared to carry out the responsibilities of this Part in a fair and impartial manner shall be appointed by council to serve as the Appeal Committee and at the same time,, council shall also name five (5) persons as alternates whom the electoral officer may appoint if a quorum cannot be retained.

DRAFTING NOTE: This needs to be confirmed.

Not Eligible to serve on Appeal Committee.

19 (3) The electoral officer, deputy electoral officers, returning officers, election staff, members of chief and council, candidates, persons who have been convicted of an indictable offence or have been sentenced to serve a jail term within the past eight (8) years, persons employed by NCN, and immediate family or business partners of candidates shall not serve on the Appeal Committee. For purposes of this Part, immediate family shall consist of spouses, common-law partners, siblings, parents, children, grandparents, grand-children, great-grandparents, aunts, uncles or first cousins. If an appeal is filed, and a Committee member must be recused from hearing an appeal, an alternate Appeal Committee member shall be appointed by the electoral officer within seven (7) days of the date the person recused himself or herself.

Recusal.

19(4) Committee members shall recuse themselves at any time if an issue arises that would result in a conflict of interest or a perception of bias if the person continued to serve on the Appeal Committee and if a quorum cannot be retained due to the recusal of appeal committee members, the electoral officer shall appoint replacement members from the list of alternates within five (5) days of being notified that a quorum cannot be retained.

New Appointment.

19(5) 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(6) The Appeal Committee shall hold office until all appeals and any litigation arising from the appeals has been concluded.

Consolidated NCN Election Code (including 2002 and 2010 amendments)

Election final and binding.

19(5) The appointments of council to the Appeal Committee shall be final and binding on all voters.

Vacancies.

19(6) Where a member of the Appeal Committee:

- (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 or is sentenced to serve a jail term;
- (c) dies or resigns in writing, which resignation shall take effect as soon as it is submitted to a quorum of council;
- (d) is absent from three (3) consecutive regular meetings of the Appeal Committee without just cause as determined by an NCN community meeting called for this purpose; or
- (e) is no longer an NCN citizen,

that person's position shall be declared vacant and council in accordance with the composition requirements in subsection (2) shall make a new appointment within fourteen (14) days of the position becoming vacant.

Application for a recount.

20(1) Within seven (7) days after the election any candidate may request a recount by submitting such request to the electoral officer, in which case the electoral officer shall give all candidates and electors three (3) 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.

Factors to consider.

20(2) During the recount the electoral officer shall:

- (a) carefully examine all ballots used in the election and decide whether ballots were properly considered spoiled, discarded or rejected, and if not, include such ballots in the count of votes for each candidate; and
- (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 meet within seven (7) days to conduct a recount in accordance with subsection (4).

Corrupt practice appeal.

20(5) Within seven (7) days after the election any candidate or voter 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, including any attempt to influence voting intentions through the purchase of, or contribution to the purchase of, alcohol, drugs or other gifts for voters.

Other Appeals.

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

Notice of appeal.

20(7) An appeal filed under subsections (5) or (6) shall outline the grounds of appeal and the facts upon which the appeal is based, supported by a statutory declaration of the person filing the appeal.

Investigation.

20(8) Upon receipt of an appeal under subsections (5) or (6) the Appeal Committee shall investigate the matter as it considers necessary, but shall provide an opportunity for any candidate or appellant to make oral or written representations.

Decisions.

20(9) The Appeal Committee shall make a decision within thirty (30) days of receipt of an appeal unless there are extenuating circumstances that make it impossible to do so. An application to court for a stay of proceedings shall not be considered extenuating circumstances, unless a court orders the Appeal Committee to suspend its hearing of the appeal until such time as the court has rendered a decision.

Dismissal of appeal.

20(10) Where the Appeal Committee finds the grounds of appeal are not established or do not affect the outcome of the election, it shall dismiss the appeal.

Upholding subsection (5) appeals.

20(11) For appeals filed under subsection (5), if the Appeal Committee finds the grounds of appeal have been established and that the outcome of the election has been affected, it shall immediately notify the electoral officer and council, and council shall within twenty-one (21) days call:

- (a) a new election if the outcome of the entire election was affected; or
- (b) a by-election for only those seats affected where the outcome of only part of the election was affected,

in accordance with this Code.

Upholding subsection (6) appeals.

20(11) For appeals filed under subsection (6), the Appeal Committee may uphold the decision, or where it finds the grounds of appeal have been established, it may substitute its decision for that originally made.

Final decision.

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

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.

Consolidated NCN Election Code (including 2002 and 2010 amendments)

Judicial Review costs.

20(14) NCN shall bear all reasonable costs incurred by the Appeal Committee and all election staff in respect of a judicial review pursuant to subsection 20(13), but all other parties to such judicial review shall bear all of their own direct and indirect costs, unless the court expressly orders NCN to pay a portion of the costs of any other party.

**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 *Nisichawayasihk Nehethowuk* ceremonies and activities.

Assumption of office.

21(4) A person whose election is contested shall be sworn in and assume office until any appeal is decided after which any other candidates will be sworn in if necessary.

Deputy Chief.

21 (5) The councillor who receives the most votes in the election shall be appointed deputy chief at the first regular council meeting following the traditional swearing in, and shall have the full powers of the chief in the absence of the chief or if the chief becomes incapacitated or is unable or unwilling to perform the duties of chief until a by-election is held if required by this Code, unless the councillor who receives the most votes declines the position, in which case council shall appoint a deputy chief from among those persons elected as councillors.

PART 9

TRANSITION ALLOWANCE

Definitions

22(1) The following definitions apply in this Part:

“basic honoraria” means the regular council honorarium a former member of Council received as of the day of the election, but does not include any additional honoraria or payments, if any, made to a member of Chief and Council in addition to the person's regular honorarium for serving on council.

“former member” means a member of Council who was defeated in an election held pursuant to this Code.

“transition allowance” means a payment made in accordance with this Part to a former member who is defeated in an election.

Eligibility

22(2) A former member is eligible for a transition allowance under this Part if he or she was defeated in an election under this Code unless that person is on a leave of absence from employment and has decided to return to that position.

Amount and period of allowance

22(3) The transition allowance payable to a former member shall consist of a series of biweekly payments, at a rate of pay equal to the former member's basic honorarium, for the period from the date of the election to:

- (a) the end of the third month after the date on which the former member was defeated, in the case of a former member who has served on council for up to two consecutive terms of office; or
- (b) the end of the sixth month after the date on which the former member was defeated, in the case of a former member who has served on council for more than two consecutive terms of office.

Funding of allowance

22(4) The transition allowance for council members shall be funded entirely by the Nisichawayasihk Cree Nation.

Coming into force

22(5) This Part shall come into force following the 2014 council elections and shall only apply to members of council and not to any other person elected pursuant to this Code.

PART 10

Referenda.

23 (1) This Code shall apply to all referenda NCN is required by law to conduct or which council determines is in the best interest of NCN citizens to conduct.

Majority Vote.

23(2) A majority of NCN citizens who vote in a referendum shall determine the issue unless a different rule is required by law or contract, in which case, council shall notify the electoral officer of the applicable rules in the council resolution referred to in subsection 10 (2).

Second Referendum.

23(3) If a minimum voter turnout is required for a referendum and the threshold is not met, council may within thirty (30) days of being advised of the outcome of the referendum by the electoral officer, request that a second referendum be held in accordance with the procedures in this Code and a majority of those voters who vote in the second referendum shall determine the issue.

Consultation Prior to Referendum Vote.

23(4) At least thirty (30) days prior to a referendum vote, council shall hold at least one information meeting on reserve, in Thompson and Winnipeg to provide information about the issue under consideration, and the electoral officer shall maintain a record of all printed information provided or presentations made.

Decision by council.

23(5) Within ten (10) business days of receiving the results of a referendum from the electoral officer, council shall formally adopt the results in a council resolution and make any required decisions.

Judicial Review.

23(6) A decision of council made in accordance with subsection 22 (5) may be reviewed by a court of competent jurisdiction solely on the basis that members of council engaged in corrupt practices or the electoral officer acted beyond or refused to exercise his or her jurisdiction under this Code, either of which affected the outcome of the referendum.

**PART 11
AMENDING PROCEDURES**

Amendment possible.

24(1) This Code may be amended in accordance with this section.

Amendment proposals.

24(2) Any voter or member of council may propose amendments to this Code by presenting such proposals to the electoral officer or council who shall review the proposals.

Meeting for amendments.

24(3) Following the review in subsection (2) council shall hold an NCN community meeting to consider and vote on any proposed amendments to the Code.

Notice.

Consolidated NCN Election Code (including 2002 and 2010 amendments)

24(4) Notice for the meeting under subsection (3) shall:

- (a) specify the time, place and purpose of the meeting;
- (b) be publicized at least seven (7) days before the meeting by posting notices in conspicuous places on reserve and by publicizing on local radio and television, if possible; and
- (c) indicate where the proposed amendments and other relevant documents can be obtained prior to the meeting.

Vote to amend by secret ballot.

24(5) Traditional voting methods shall be used to amend the Code, unless there is a request by at least twenty (20) voters to hold a secret ballot vote.

Approval required to amend.

24(6) No proposed amendment shall be effective unless approved by a majority of voters present at the NCN community meeting referred to in subsection 22(3) where at least one hundred (100) voters are in attendance.

**PART 12
EFFECTIVE DATES**

Effective date of Code.

25 (1) This Code came into effect for the election of chief and council in 1998 following a receipt of a ministerial order pursuant to section 74 of the Indian Act (Canada) and NCN's exercise of its inherent right to govern itself.

Effective date of amendments.

25 (2) 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.

2002 Amendments.

Section 10 (b) was amended to provide the electoral officer with the discretion to establish the number and location of polls and came into force for the 2002 council elections.

2010 Amendments.

Sections 12 and 20 were amended and came into force for the 2010 council election, more particularly:

- Section 12 (1) (c) – ordinary residency requirements for candidates was deleted;
- Section 12 (1) (d) – was then renumbered to 12 (1) (c);
- Section (1.1) – codified the electoral officer’s practice of accepting a statutory declaration in certain circumstances related to criminal record checks;
- Section 12 (1.2) – candidates election will be null and void if the statutory declaration is inaccurate;
- Section 12 (1.3) – the electoral officer will hold a by-election or declare a candidate elected depending upon the circumstances;
- Section 12 (1.4) – outlines the consequences of making a false statutory declaration;
- Section 12 (2) – factors to determine ordinary residency was deleted;
- Section 20 (1)) – requires the appeal committee to make its decision within 30 days unless there are extenuating circumstances.

2012 Amendments

Sections _____ were amended on _____ 2012 and will come into effect for the 2014 council election and for any referenda or board election held after November 14, 2012, more particularly _____
(TO BE LISTED ONCE APPROVED).

SCHEDULE "A"

OATH OF ALLEGIANCE

I _____ before the **Creator** and members of the Nisichawayasihk Cree Nation do swear or solemnly affirm that I will be faithful and bear true allegiance to the laws of the Nisichawayasihk Cree Nation and Canada. I acknowledge that failure to do so could result in my removal from office.

Witness

(Chief/Councillor)

Date:

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. I acknowledge that failure to do so may result in my removal from office.

Witness

(Chief/Councillor)

Date:

SCHEDULE "C"
OATH OF CONFIDENTIALITY

I _____ before the **Creator** and citizens of the Nisichawayasihk Cree Nation, do swear or solemnly affirm that I will maintain, and aid in maintaining, the privacy of members of the Nisichawayasihk Cree Nation and shall keep confidential any information disclosed to me by such citizens unless I am required by law to disclose same. I acknowledge that failure to do so may result in my removal from office.

Witness

(Chief/Councillor)

Date:

SCHEDULE "D"

OATH OF ELECTION OFFICIALS

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 and Referendum Rules 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 , 20__ .)
)
)
)
)
)
)

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

My Commission expires _____

DRAFT