

# **NISICHAWAYASI NEHETHOWUK LAWS**

**2018**

**LAW 2018-1**

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A Law to amend the Election Law, NCN Laws 1998, c. E-1

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NISICHAWAYASIIHK CREE NATION LAWS  
ELECTION LAW  
1998, c. E-1

**WHEREAS:** The Nisichawayasihk Cree Nation (also known as the *Nisichawayasi Nehethowuk*) believes that the Creator gave us *Kihche’othasowewin* (the Great Law) and from this Great Law, our people developed customary law principles (also known as traditional laws) to define our rights and responsibilities and to govern our relationships so that we may live in harmony with 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 governance of our citizens, the protection of our lands, the use of our resources, and the election of our government.

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

**Title**

**1** This law may be cited as the NCN Election Law, 1998, c. E-1.

**Definitions**

**2** For purposes of this Election Law 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 Chief and Council in the absence of direction in the governing documents, have determined that the directors or trustees are to be elected pursuant to this Election Law.

“Board election” means an election of Board members.

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

“Election Law” means this Election Law including any amendments thereto, or any successor election law adopted by the Nisichawayasihk Cree Nation.

“Council” means the chief and councillors elected in accordance with this Election Law.

“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 council and board elections pursuant to this Election Law and where required includes deputy electoral officers.

“Election” includes a by-election.

“Illegal drugs” means any prohibition about the possession, use, manufacture, sale and transportation of drugs as defined in the laws of Canada.”

“*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 *Nisichawayasi Nehethowuk*.

“NCN Citizen” means a person who on the date a council or board election is held in accordance with this Election Law, 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 Election Law.

"NCN Lands" means those lands set aside as NCN Lands for the use and benefit of the Nisichawayasihk Cree Nation as more fully described in *Nisichawayasi Aski-Pumenikewin*.

“*Onuwosonekew* (Voter) means an NCN Citizen who is at least eighteen (18) years of age on the date a council or board election is held in accordance with this Election Law.

“*Oskatis*” (Youth) means an NCN Citizen who is between the ages of eighteen (18) and thirty (30) years of age on the date a council or board election is held in accordance with this Election Law.

## **PART I COMPOSITION OF COUNCIL AND TERM OF OFFICE**

### **Composition of council**

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

### **Term of office**

**4(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**

**4(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**

**4(3)** Council may call an election at any time prior to the expiry of its term of office.

### **Assumption of office**

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

### **Vacancy**

**4(5)** Where the chief or a councillor:

- (a) is unable or unwilling to act;
- (b) is convicted of an indictable offence or a corrupt practice under this Election Law or is sentenced to serve a jail term for an indictable or hybrid offence under 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) tests positive on a random illegal drug test;
- (g) 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”;
- (h) is no longer an NCN Citizen; or
- (i) 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 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 Election Law 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**

**4(6)** A chief or councillor who seeks election 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 or Grand Chief of Manitoba Keewatinowi Okimakanak, tribal council representative, or a mayor or councillor of a town or city shall be granted no more than one leave of absence without pay from the position of chief or councillor during that person's term of office, which leave shall be from the date official documents required to run for such election are filed up to and including the date of the election.

#### **Procedure for resigning from council**

**4(7)** To be effective, a resignation submitted in accordance with clause 4(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 NCN Citizens shall be notified about the resignation as soon as is reasonably possible.

#### **By-election term of office**

**4(8)** 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 section 22.

#### **Suspension**

**4(9)** If a chief or a councillor is charged with an indictable or hybrid 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**

**4(10)** Subject to subsections (11) and (12), an NCN Citizen convicted of an indictable offence or sentenced to serve a jail term for an indictable or hybrid offence any time after the election order has been issued, shall not be eligible to be a member of council for eight (8) years from the date of the conviction or jail sentence or any appeal arising from such conviction or jail sentence, whichever is later.

### **Major crimes bar to seeking office**

**4(11)** Notwithstanding subsection (12), an NCN Citizen who has been convicted of murder, manslaughter or sexual assault of any nature shall not be eligible to be a member of council.

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### **Peacekeepers tribunal**

**4(12)** After at least eight (8) years from the date of conviction or jail sentence for a crime referenced in subsection (11), an NCN Citizen may apply to the peacekeeping tribunal, to determine whether the NCN Citizen should be allowed to run for chief or council taking into consideration the factors set out in the Peacekeepers Tribunal Law.

## **PART II ELECTORAL OFFICER**

### **Appointment**

**5(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 Election Law.

### **Criminal records check**

**5(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 serve a jail term for any indictable or hybrid offence and the onus shall be on the voter to provide council with a written criminal records check prior to appointment.

### **Term of office**

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

### **Term of office**

**5(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 of removal by a majority of council.

### **Appointment of deputy electoral officer**

**6(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 Election Law 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**

**6(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 Election Law.

### **Electoral and deputy electoral officer may vote**

**7** The electoral officer, and any deputy electoral officers appointed pursuant to subsections 5(3) and 6(1) respectively, 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 Election Law.

### **Oath of Confidentiality**

**8** 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 Election Law.

### **Powers and duties of the electoral officer**

**9(1)** The electoral officer shall:

- (a) exercise general direction and supervision over the administrative conduct of council and board elections;

- (b) ensure the voters list is prepared and posted in at least five (5) public locations on NCN Lands at least fourteen (14) days prior to the date of the council or board election;
- (c) enforce fairness, impartiality and compliance with this Election Law on the part of all election officers;
- (d) delegate responsibility to any deputy electoral officers and other officers as may be necessary to ensure the duties in this Election Law are carried out;
- (e) either before or after the nomination meeting, use media, information meetings or other means, to provide NCN Citizens with information about the electoral process, including the provisions of this Election Law, nomination procedures, qualification of candidates, voting information and council or board election results;
- (f) determine the number and location of regular and travelling polling locations, but there must be at least one regular polling location on NCN Lands and if polling locations are to be changed in a subsequent council election from the preceding council 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 council or board election if at least one scrutineer has not been appointed for each poll;
- (h) establish the procedures for the use of mail-in ballots if a decision has been made pursuant to subsection 14 (7) to use such ballots; and
- (i) perform such other duties as are prescribed by this Election Law.

### **Special powers of electoral officer**

**9(2)** In addition to other powers, duties and functions of the electoral officer under this Election Law, the electoral officer may:

- (a) where an emergency arises, extend the time or dates for doing anything under this Election Law;
- (b) increase the number of election officers;

- (c) increase the number of polling stations;
- (d) prescribe forms for the purposes of this Election Law;
- (e) generally adapt the provisions of this Election Law to existing circumstances;
- (f) use electronic balloting procedures; and
- (g) exercise such other powers as are prescribed by or under this Election Law,

but the electoral officer may not change the dates of the nomination meeting, council or board election fixed by council resolution, or extend the hour for the opening or closing of a regular or advance poll or for accepting a nomination paper on the day fixed for the close of nominations in an election unless the council or board election 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**

**10** After each council or board election, the electoral officer shall make a written report within fourteen (14) days, to council on the conduct of the council or board election, and may make recommendations about amendments to this Election Law or the procedures to be followed during council or board elections, 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 III ELECTION PROCEDURES**

### **Who is entitled to vote**

**11(1)** All voters are entitled to vote in council and board elections, unless a board's governing documents impose limitations on which voters are entitled to vote in that board's election.

### **Council resolution commences election**

**11(2)** Subject to subsection (3), every council or board election shall be commenced by a council resolution calling the council or board election, which council resolution shall be provided to the electoral officer forthwith.

### **Council fixed election dates**

**11(3)** Council elections shall be held on the fourth Wednesday and Thursday in August every four (4) years unless

- (a) only one of the days falls within the fourth week, in which case the election shall be held on the third Wednesday and Thursday in August of that year; or
- (b) the electoral officer determines there are extenuating circumstances that could affect the outcome of the vote in which case the election can be postponed until no later than the third Wednesday and Thursday in September.

### **Election order**

**11(4)** Upon receipt of a council resolution under subsection (2), the electoral officer shall immediately issue an order:

- (a) fixing the date for the filing of nomination papers at least fourteen (14) days from the date of the order;
- (b) establishing the fixed election dates in accordance with subsection 11(3) and ensuring those dates are no more than forty-five (45) days after the date of the nomination meeting;
- (c) 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;
- (d) confirming the dates for the receipt of mail-in ballots if they will be used during the election;
- (e) fixing the location of the polling places and the hours during which the polls will be open; and
- (f) post the order in at least five (5) conspicuous places on NCN Lands, 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, and on NCN's website, but the electoral officer shall only fix the location of polling places for board elections on NCN Lands.

### **Voters' list**

**12(1)** The electoral officer shall cause a voters' list to be prepared, which list shall contain the names of all voters in alphabetical order, any relevant available contact information, date of birth

and NCN registration number, which list without identifying personal information other than name shall be posted at least fourteen (14) days prior to the date voting starts in the same locations the election order in subsection 11 (4) is posted but the electoral officer shall provide confirmed candidates with the voters' list containing all contact and related information in accordance with policies established by the electoral officer to balance the privacy interests of NCN Citizens while encouraging participation in NCN's democratic elections.

### **Corrections to voters' list**

**12 (2)** Any voter may apply to the electoral officer up to the time the polls close to have the voter's 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**

**12(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 IV NOMINATION PROCEDURES**

### **Candidate qualifications**

**13(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 a voter;
- (b) is able to communicate in the English or *Nehetho* languages;
- (c) at the time the nomination papers are filed provides the electoral officer with a written criminal records check issued no more than three (3) months prior to the date of the nomination meeting:
  - (i) confirming the person has never been convicted of an indictable offence or sentenced to serve a jail term for an indictable or hybrid offence; or

- (ii) confirming it is at least eight (8) years from the date of the conviction, jail sentence or any appeal arising from the conviction or jail sentence whichever is later;
- (d) provides the electoral officer with written confirmation from the peacekeeping tribunal that the person has participated in restorative justice and the tribunal has decided the person is no longer prohibited from seeking election to council if the person was convicted of murder, manslaughter or sexual assault of any nature;
- (e) provides the electoral officer with written confirmation from a reputable organization qualified to administer drug tests that the person has taken a test for illegal drugs within fourteen (14) days prior to the date of the nomination meeting and it was negative;
- (f) provides the electoral officer with a written acknowledgement that the person agrees to be subject to random drug tests throughout the electoral period and if elected during the four year term of office and consenting to the results being provided to the electoral officer during the election and to the chief executive officer following the election,

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

#### **Statutory declaration in certain circumstances**

**13(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 or sentenced to serve a jail term for an indictable or hybrid 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 (5) permit the person to provide a statutory declaration swearing they have never been convicted of an indictable offence or sentenced to serve a jail term for an indictable or hybrid offence.

#### **Election null and void if statutory declaration inaccurate**

**13(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 or sentenced to serve



a jail term for an indictable or hybrid offence the electoral officer shall immediately declare that person's election to council null and void.

#### **Action to be taken by electoral officer**

**13(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**

**13(5)** The electoral officer shall require every person who provides a statutory declaration pursuant to subsection 13 (2), to sign an acknowledgement confirming the person is aware that if the statutory 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**

**13(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**

**13(7)** A nomination paper is not valid and shall not be acted upon by the electoral officer unless it is accompanied by the information required by clause (1) (c) and

- (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) written consent that the person nominated will run for the office nominated;
- (c) directions about how that person's name is to appear on the ballot; and
- (d) a two inch by two inch black and white photograph of the candidate for use in the preparation of the ballot.

### **Nomination meeting**

**13(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**

**13(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 emergency circumstances which prevent a nominee from complying with this subsection.

### **Permitted absences**

**13(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**

**13(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**

**13(12)** Where only the number of candidates are nominated in a council or board election as there are vacancies for a particular position, the electoral officer shall immediately declare the chief or the councillor or the board candidates elected, as the case may be.

## **PART V POLLING PLACES**

### **Establishment of polling places**

**14(1)** The electoral officer shall:

- (a) make arrangements for polling places which are easily accessible for voting during the council and board elections; and
- (b) establish in-person polling stations in locations in Manitoba if there are at least fifty (50) voters ordinarily resident in that location.

### **Voting arrangements for secret ballot**

**14(2)** Every polling place other than the travelling poll, shall be held 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**

**14(3)** The electoral officer shall arrange for NCN constables or other security to be present at each polling location during the council or board elections.

### **Travelling poll for elders, infirm or disabled**

**14(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**

**14(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**

**14(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 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.

### **Notice mail-in ballots**

**14(7)** The electoral officer may, at least ninety (90) days before a council election decide that mail-in ballots shall be used by notifying NCN Citizens that if they are not ordinarily resident within fifty (50) kilometers of a location where in-person voting will take place, they may contact the electoral officer and register to vote by mail-in ballot. For greater certainty, mail-in ballots shall not be utilized for board elections unless permitted by the board's governing documents.

### **Electoral officer to decide procedures**

**14(8)** Upon deciding that mail-in ballots will 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 final in-person voting day in a council election.

### **Fundamental principles**

**14(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) ensure mail-in ballots are only provided to those voters who are eligible to vote by casting a mail-in ballot and who have properly register in advance to vote;
- (c) prevent NCN Citizens from voting more than once during the same election
- (d) 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;

- (e) ensure that all mail-in ballots cast are placed in an envelope in the same manner and for the same length of time as regular ballots, and then be disposed of with all other ballots cast; and
- (f) ensure that if an *Onuwosonekew* (Voter) casts both in-person and mail-in ballots, the mail-in ballot is rejected.

### **Preparation of election ballots**

**15(1)** Following the nomination meeting held in accordance with subsection 13(8), 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 or, *Tanehethowasteek*, (Cree syllabics) or (*Akathasi*) 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.

### **Withdrawal of candidates**

**15(2)** Where a candidate withdraws after the ballots have been printed, the electoral officer shall reprint the ballots unless it would not be possible to reprint the ballots in time for the election, in which case, the electoral officer shall strike the person's name from the ballot and have notices posted at the polling place clearly indicating that the candidate withdrew from the election.

### **Ballot boxes, etc.**

**16(1)** The electoral officer shall arrange for sufficient ballots, ballot boxes and interpreters for the election.

### **Directions for voters**

**16(2)** The electoral officer shall provide each deputy electoral officer or returning officer with the ballot boxes and at the same time deliver a sufficient number of printed directions for the guidance of voters for use during the election.

### **Posting of directions**

**16(3)** The deputy electoral officer or 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**

**17(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**

**17(2)** The electoral officer or deputy electoral officer shall cause each ballot box to be shown to those persons present when the polls open 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**

**17(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.

### **Treatment of travelling poll ballot box**

**17(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**

**17(5)** At the close of an advance poll, the electoral officer or deputy 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 when they shall be opened and counted separately from the ballots cast on the final day of the election.

## **PART VI**

### **POLLING PROCEDURES**

#### **Provision of ballots to voters**

**18(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**

**18(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 then give the ballot to the voter to vote.

#### **Voter assistance**

**18(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**

**18(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**

**18(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 elector's name, that assistance was provided and the reason it was provided.

### **Additional ballots**

**18(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.

### **Voter leaving polling place without voting**

**18(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.

### **Voters can vote if inside poll before closing time**

**18(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**

**18(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 but the electoral officer shall allow NCN Citizens who wish to observe the counting of the ballots to do so as long as they do not interfere in the counting procedures.

### **Camera**

**18(10)** Following the closing of the polls, the electoral officer may authorize the procedures in subsections 20(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 or deputy electoral officer immediately following the vote and only the electoral officer shall have access to the recording unless the election proceedings are the subject of an appeal in which case certified copies of the recording shall be made available to the Appeal Committee and any candidate upon request.



### **Spoiled ballots**

**19(1)** During a council or board election, 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.

### **Counting names in the poll book**

**19(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 so that they can take all reasonable steps to ensure that a person does not cast more than one ballot in the election. For greater certainty, the poll books from advance polls shall not be sealed in the ballot box at the close of the poll but shall be used on the day of the vote and during the count of the ballots.

### **Count number of ballots in ballot box**

**19(3)** Prior to tallying the votes in an election, 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 the 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**

**19(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 for chief and more than six (6) candidates for councillors in a council election and more than the required number of persons in a board 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**

**19(5)** After the number of votes cast for each candidate 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, certify those were the results received, and then announce the results to the public and post a signed statement indicating the results of the council or board election.

### **Disposal of ballots**

**19(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**

**19(7)** Each candidate 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 9 (1) (g) if scrutineers have not been appointed by candidates.

### **Prohibition on certain activities during elections**

**19(8)** Any candidate in a council or board election 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 election day canvasses within the same area identified in clause (a);
- (c), paints signs on the walls of buildings, including houses; and
- (d) engages in cyberbullying by without limitation, posting on social media false, defamatory, or other information designed to promote hatred against a particular candidate,

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

### **Posting of order**

**19(9)** A copy of any order made by the electoral officer ordering removal of a social media post or sign or disqualifying a candidate for refusal to do so shall be posted on NCN Lands, the NCN website and in other locations ordered by the electoral officer.

## **PART VII APPEAL PROCEDURES**

### **Appeal Committee**

**20(1)** By May 15<sup>th</sup> of the last year of its term, Council shall appoint an Appeal Committee for purposes of this Election Law which Appeal Committee shall remain in office until a new Appeal Committee is appointed.

### **Composition of Appeal Committee**

**20(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 provide the names of five (5) persons as alternates to the electoral officer and the electoral officer shall appoint the alternates in the order listed by council in its resolution if a quorum cannot be retained or a vacancy occurs.

### **Not eligible to serve on Appeal Committee**

**20(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, persons employed or retained 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 from the list of alternates provided by council within seven (7) days of the date the person was recused.

### **Recusal**

**20(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**

**20(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**

**20(6)** The Appeal Committee shall hold office until all appeals and any litigation arising from the appeals has been concluded.

### **Election final and binding**

**20(7)** The appointments of council to the Appeal Committee shall be final and binding on all voters.

### **Vacancies**

**20(8)** 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 Election Law or is sentenced to serve a jail term for an indictable or hybrid offence under any Act of Parliament or the Legislature of Manitoba;
- (c) passes on 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 the electoral officer shall appoint an alternate in accordance with subsection (2), unless no alternates remain on the list, in which case, council shall within three days provide the electoral officer with the names of new alternates in accordance with the composition requirements in subsection (2) and the electoral officer shall make a new appointment within fourteen (14) days of the position becoming vacant.

### **Application for a recount**

**21(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 voters 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 electoral officer to recount the ballots.

### **Factors to consider**

**21(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 hold a by-election for the candidates who are tied in accordance with the procedures in this Election Law.

### **Appeal of electoral officer's decision**

**21(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**

**21(4)** Upon receipt of an appeal, the Appeal Committee shall meet within seven (7) days to conduct a recount.

### **Corrupt practice appeal**

**21(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 Election Law which may affect the results of the election; or
- b) a corrupt practice occurred in connection with the election, which may affect the results of the election, including any attempt to influence voter intentions through the purchase of, or contribution to the purchase of, alcohol, drugs or other gifts for voters, excluding candidate promotional items used during the election.

### **Other appeals**

**21(6)** Within seven (7) days of any decision under this Election Law which adversely affects the rights of any candidate or voter, that person may file an appeal with the Appeal Committee.

### **Notice of appeal**

**21(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.

### **Appeals without merit**

**21(8)** Where, in the opinion of the Appeal Committee, an appeal or complaint is without merit or beyond its jurisdiction, the Appeal Committee may dismiss the appeal or complaint at any time without the necessity of holding a hearing.

### **Investigation**

**21(9)** Subject to subsection (8), upon receipt of an appeal under subsections (5) or (6) the Appeal Committee shall investigate the matter as it considers necessary, and shall provide an opportunity for any candidate or appellant to make oral or written representations.

### **Decisions**

**21(10)** 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, but 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**

**21(11)** 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**

**21(12)** 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 Election Law.

### **Upholding subsection (6) appeals**

**21(13)** 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**

**21(14)** A decision of the Appeal Committee pursuant to subsections (8), (11), (12) and (13) shall be final and binding on all voters.

### **Judicial review**

**21(15)** 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 Election Law.

### **Judicial review costs**

**21(16)** NCN shall bear all reasonable costs incurred by the Appeal Committee and all election staff in respect of a judicial review pursuant to subsection 21(15), 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 VIII**  
**INAUGURATION CEREMONIES**

**Council ceremony**

**22(1)** The electoral officer 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**

**22(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**

**22(3)** The swearing in ceremony conducted by the electoral officer for the chief and individual councillors shall include traditional *Nisichawayasi Nehethowuk* ceremonies and activities.

**Assumption of office**

**22(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.

**Vice Chief**

**2 (5)** The councillor who receives the most votes in the election shall be appointed vice 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 Election Law, unless the councillor who receives the most votes declines the position, in which case council shall appoint a vice chief from among those persons elected as councillors.

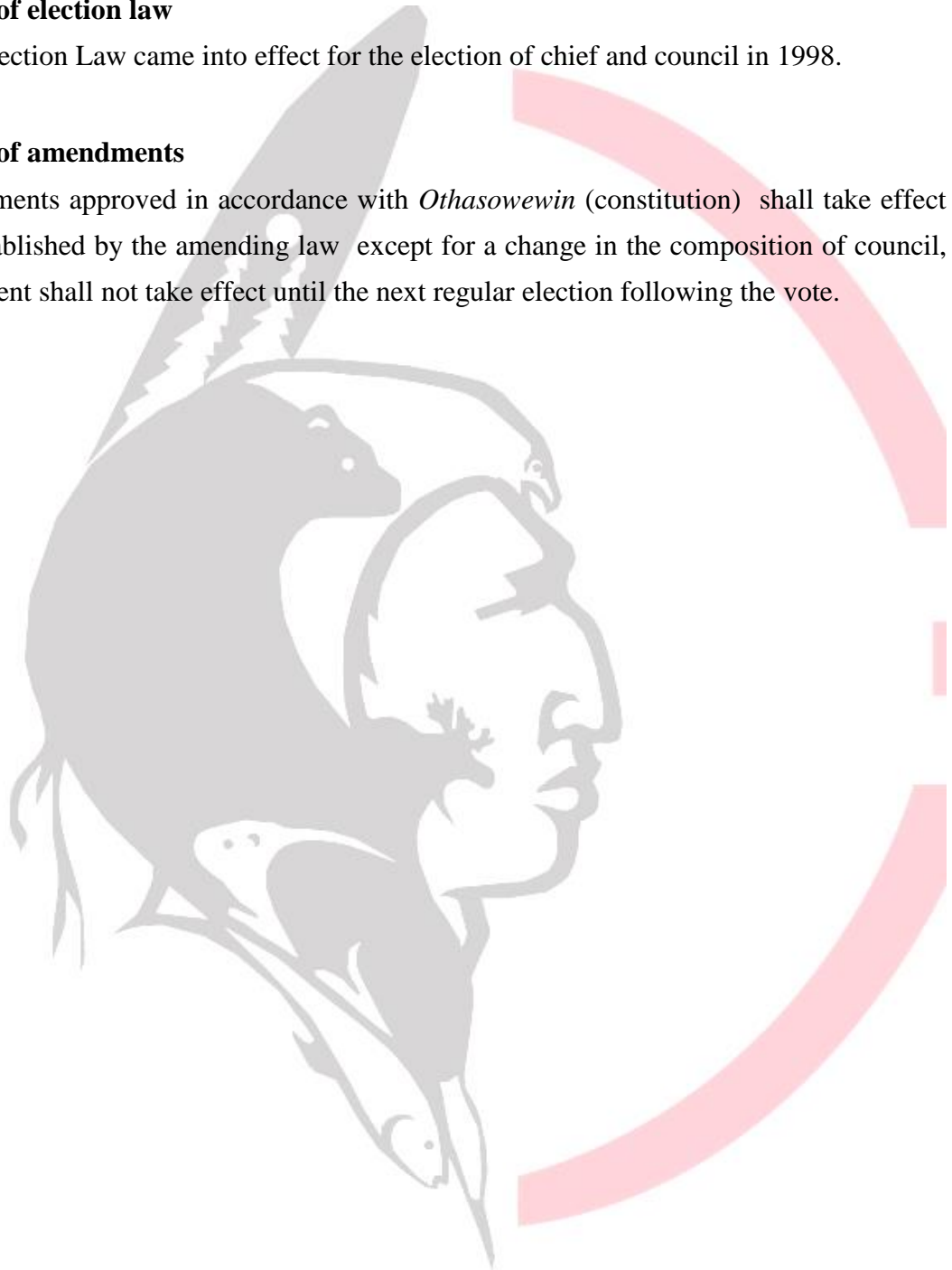
**PART IX**  
**EFFECTIVE DATES**

**Effective date of election law**

**23(1)** This Election Law came into effect for the election of chief and council in 1998.

**Effective date of amendments**

**23(2)** Amendments approved in accordance with *Othasowewin* (constitution) shall take effect on the date established by the amending law except for a change in the composition of council, which amendment shall not take effect until the next regular election following the vote.



**SCHEDULE “A”**

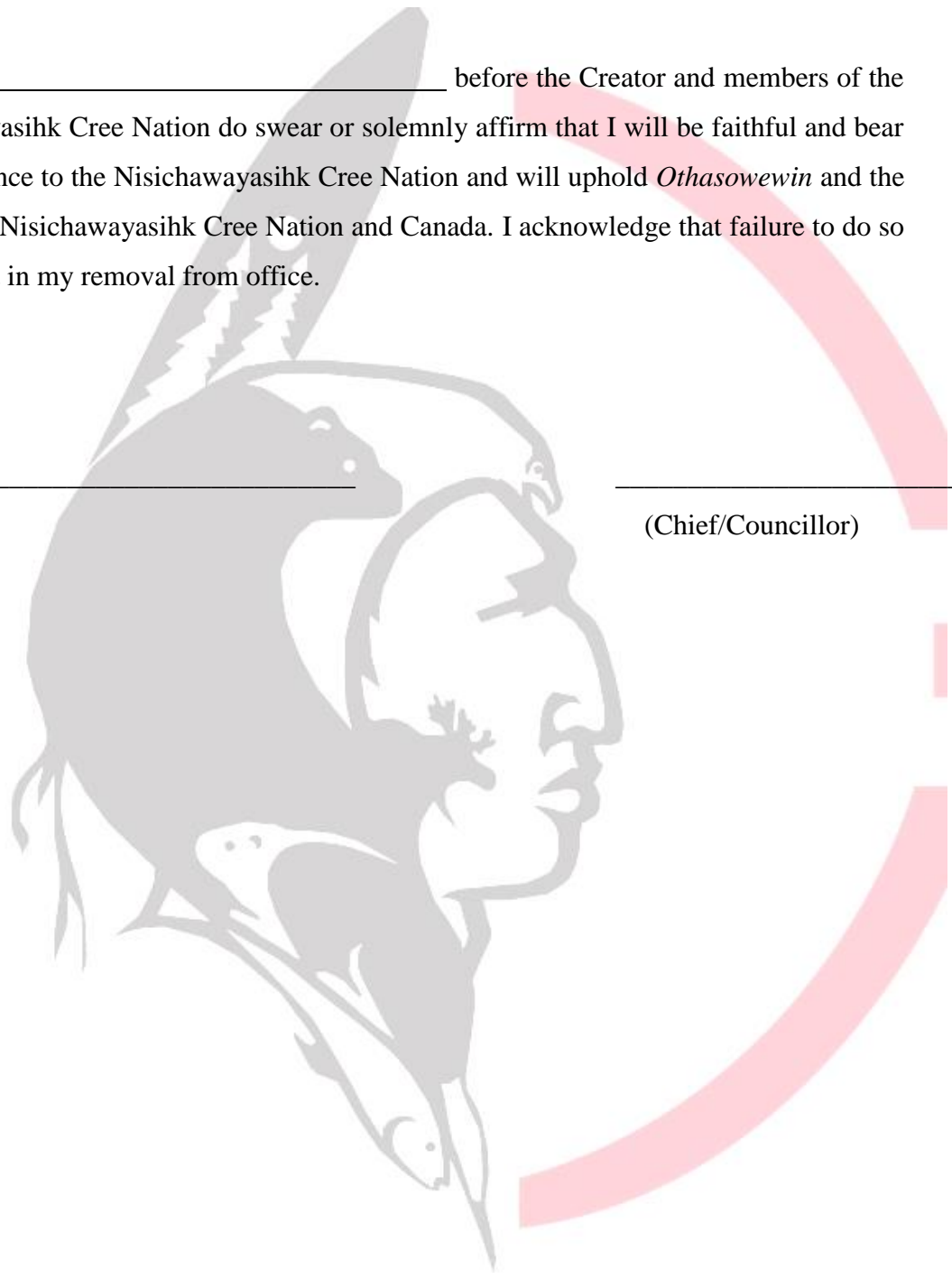
**OATH OF ALLEGIANCE**

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 Nisichawayasihk Cree Nation and will uphold *Othasowewin* and 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”**

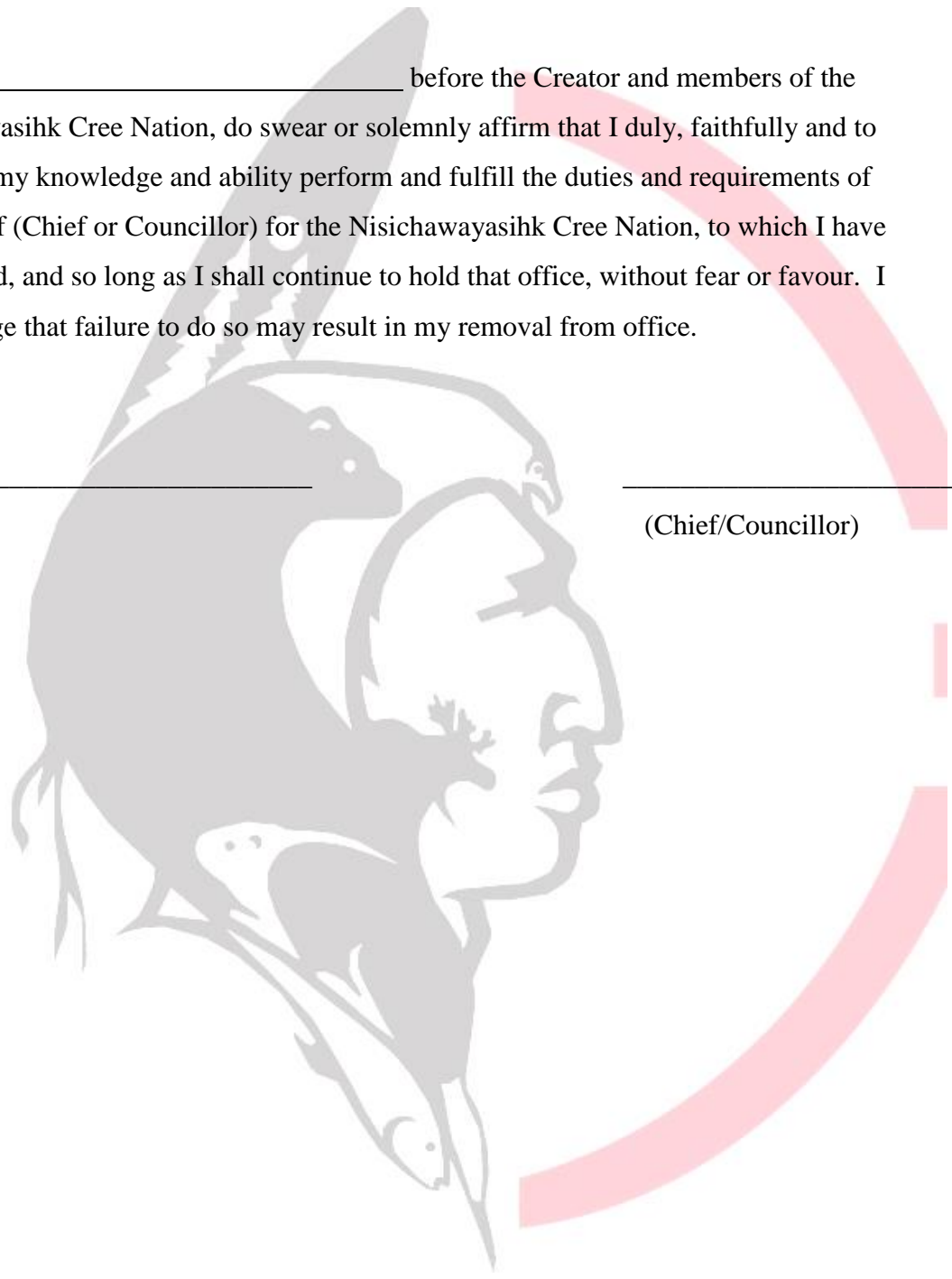
**OATH OF OFFICE**

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:



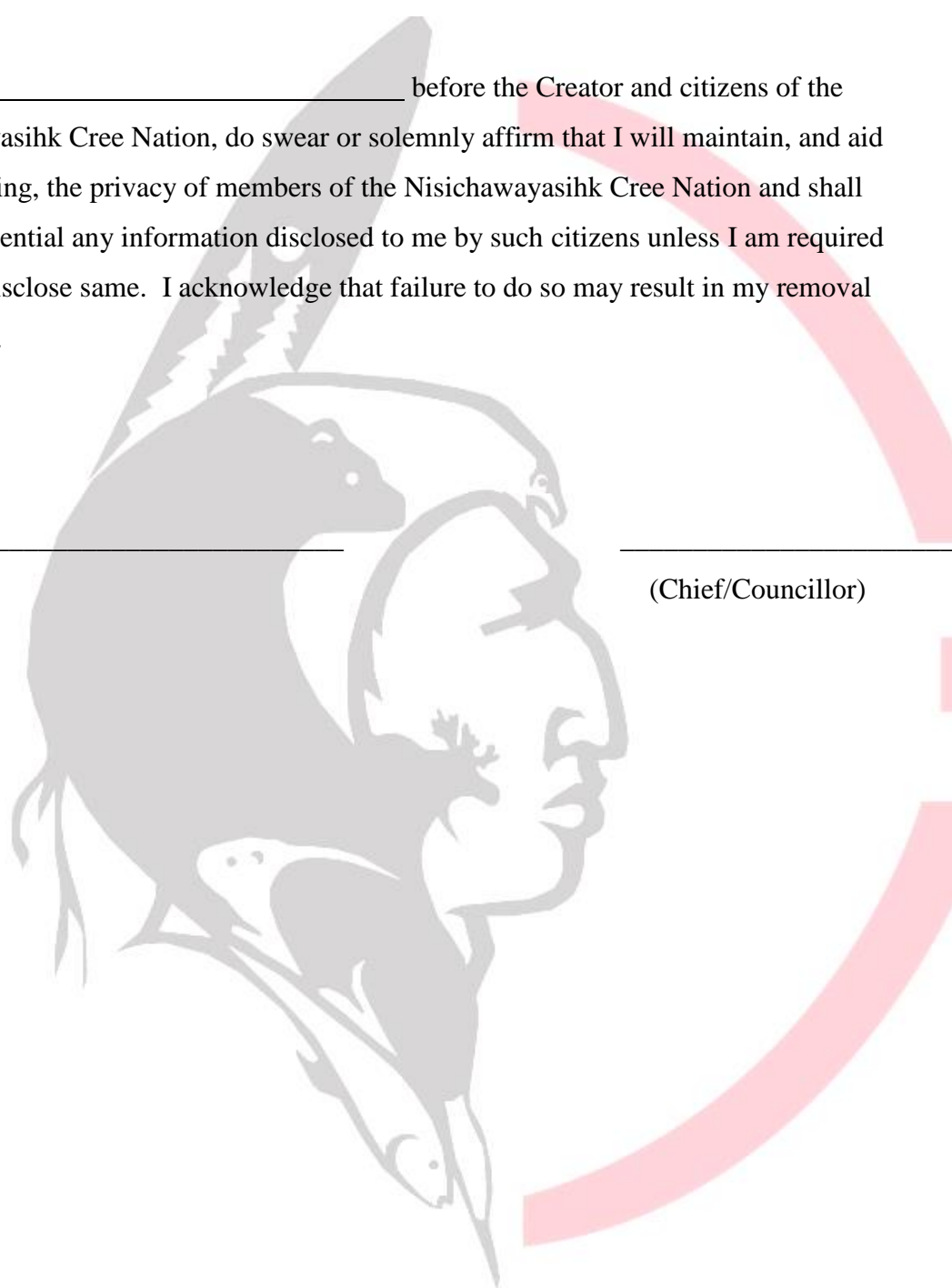
**SCHEDULE “C”  
OATH OF CONFIDENTIALITY**

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 Law 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 Election Law.

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 \_\_\_\_\_