

# electionCode

October 2005  
**REVIEW**  
NEWSLETTER for Nisichawayasihk Cree Nation Members

**REVIEWED BY NCN  
MEMBERS**

**T**he Nisichawayasihk Cree Nation has completed the review of its Election Code. The purpose of the review is to ensure the Election Code continues to be responsive to the community and NCN's membership.

The review is part of Nisichawayasihk Cree Nation's desire to establish sovereignty and be a self-governing nation with its own customs and laws.

The overall review was facilitated by Interim Chief Executive Officer Theresa Yetman under the direction of NCN Chief and Council. Between April and June 2004 a review of NCN's Election Code was undertaken to improve the clarity of the code in a number of areas. NCN members were asked for their input in a combination of surveys, workshops and through talk radio. The results were compiled by NCN Member Dr. Freeda Hart, in association with Theresa Yetman, Dorothy Hart and Bedla Francois.

Members' responses are highlighted in this newsletter and will form the basis of amendments to the Election Code.

Neither Indian Affairs nor the Minister will be involved in amending the Election Code. It is up to NCN to decide whether to make changes to the code.

Following this review Council will hold a community meeting of NCN members to consider and vote on any proposed amendments to the code. The notice of meeting will be advertised seven days in advance of the meeting.

At least 100 NCN members will have to be present to amend the code by a show of hands at the community meeting. Alternatively, at least 10 voting NCN members may request a secret ballot vote be held on any amendments to the code.

Any changes to the code will take effect at the next regular election following the community meeting or secret ballot vote.

***Please note:** For the purposes of clarity, the following results of the NCN Election Code review is presented in the order in which each subject matter is set out in the NCN Election Code. A copy of the code was distributed to NCN members last year. Additional copies of the code are available at the NCN Band Office or can be downloaded in a pdf format from [www.ncncree.com/gov.html](http://www.ncncree.com/gov.html).*

## ELECTION CODE DEFINITIONS: "Lands Immediately Adjacent to the Reserve"

No definition in the Election Code for "lands immediately adjacent to the reserve"

### NCN MEMBERS' INPUT

Amend the definitions in the Election Code to include lands immediately adjacent to the reserve means Metis Settlement and Thompson.



## PART 1: COMPOSITION OF COUNCIL AND TERM OF OFFICE - Vacancy

3(5) Where the chief or councillor:

- (a) is unable or unwilling to act;
- (b) is convicted of an indictable offence, or a corrupt practice under this code or any other Act of Parliament or legislature of Manitoba;
- (c) dies;
- (d) subject to subsections (6) and (7), resigns for office in writing;
- (e) is absent from three consecutive regular meetings of council without just cause as determined by majority vote at an NCN community meeting called for this purpose;
- (f) is no longer ordinarily resident on reserve;
- (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"; and
- (h) is removed from the NCN Membership Code;

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 months remaining before the expiry of council's term of office, in which case no by-election is required.

### NCN MEMBERS' INPUT

Amend the Election Code to state that council members must vacate their position on council to seek political office outside the community e.g. MLA, MP, MKO/AMC Grand Chief.



## PART 2: ELECTORAL OFFICER - Public Education and Information

No clause in the Election Code.

### NCN MEMBERS' INPUT

Amend the Election Code to include a clause that states the electoral officer may at any time, use media or other means that is appropriate to provide NCN members with information about the electoral process particularly the rules contained in the Election Code such as nominations procedures, qualifications of candidacy, voting and election results.



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### PART 3: ELECTION PROCEDURES - Electors Entitled to Vote

10(1) All electors are entitled to vote in council elections:

- (a) provided they cast their ballot on reserve; and
- (b) any elector living off reserve who wishes to vote, pays for any costs associated with travelling to and from Nelson House to cast a ballot.

#### NCN MEMBERS' INPUT

The Election Code should be amended to state that all NCN members are allowed to vote in council elections regardless of residency and it should specify that the following electors have the right to vote in the NCN election:

- (a) electoral officer,
- (b) deputy electoral officer,
- (c) returning officer, and
- (d) a person who is imprisoned in a correctional institution serving a sentence.



### PART 3: ELECTION PROCEDURES - In the Event of a Tie

No clause in the Election Code.

#### NCN MEMBERS' INPUT

Amend the Election Code to include a clause that states NCN should have a by-election to break the tie between candidates. The electoral officer should not have to cast a ballot to break a tie between candidates running for council.



### PART 4: NOMINATION PROCEDURES - Factors Applied to Determine Ordinarily Resident

12(2) For purposes of this code, in determining whether an elector is ordinarily resident on reserve, or on lands immediately adjacent to the reserve, without limiting the generality of the foregoing, the electoral officer shall consider:

- a) where the person normally eats and sleeps;
- b) where the person receives personal mail;
- c) where the person's immediate family lives;
- d) where the person is employed, or if self-employed, where the person conducts his or her business; and
- e) if the person is living off reserve for reasons related to health or education.

#### NCN MEMBERS' INPUT

The ordinary residents' clause in the Election Code remains the same but should include:

- A person who is "transient" on the reserve or lands immediately adjacent to the reserve is an ordinary resident, and
- A person who has a "place of employment on reserve or lands immediately adjacent to the reserve",
- A person with a "fixed home" on the reserve or lands immediately adjacent to the reserve.

Candidates should provide evidence of their "fixed home" address including the person's last income tax return, driver's license, Manitoba H.S.C. card or any other governmental document that is conclusive.

Amend Election Code to include a clause that states that if after the election, it comes out a candidate is not an "ordinary resident" on reserve and should not have been on the ballot, the election is still valid.

## PART 4: NOMINATION PROCEDURES - Candidate Qualifications

- 12(1) A person is qualified and eligible to be nominated for and elected to the positions of chief or councillor if the person:
- (a) is an elector;
  - (b) is able to communicate in English or Cree languages;
  - (c) is ordinarily resident on reserve, or on lands immediately adjacent to the reserve, as determined by the factors in ss. 12(2) prior to the date of the nominating meeting referred to in ss. 12(5); and
  - (d) at the time nomination papers are filed provides the electoral officer with a written criminal records check confirming the person has never been convicted of an indictable offence;
- 12(4) 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 \$50.00...;
  - (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 photo of the candidate for use ... (on the) ballot.

### NCN MEMBERS' INPUT

Amend Election Code to include a clause that states:

- only NCN members living on reserve should be allowed to run in the election
- candidates shall be disqualified from running in the election if they do not submit their criminal record by the time and date set as the deadline.

There should be a reasonable fee for running for chief and council.



## PART 4: NOMINATION PROCEDURES - Ineligible Candidates

The NCN Election Code does not specify who cannot run in the election.

### NCN MEMBERS' INPUT

The Election Code should be amended to include a clause that specifies who cannot run in the election:

- a) the electoral officer,
- b) deputy electoral officer,
- c) returning officer,
- d) a person who is no longer an ordinary resident on reserve, and
- e) a person who is imprisoned in a correctional institution serving a sentence.



## PART 4: NOMINATION PROCEDURES - Nomination Papers

- 12(3) Any 25 or more electors ordinarily resident on reserve or lands immediately adjacent to the reserve, 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.

### NCN MEMBERS' INPUT

Amend Election Code to state that an elector who is not an ordinary resident can nominate candidates to council.



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#### **PART 4: NOMINATION PROCEDURES - Nomination Meeting**

12(5) 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.

#### **NCN MEMBERS' INPUT**

The current nomination procedure of having 25 electors who are ordinary residents sign nomination forms remains the same but add-in, "an elector who is not ordinary resident can nominate candidates to council".

Have two-to-three meetings with security on-site to ensure equality and respect are practiced and that the Election Code rules are enforced to ensure the nomination meeting is not used for people to express their dissatisfaction. Further, with on-site security, the electoral officer will be guarded against pressure to change his/her decision(s).



#### **PART 5: POLLING PLACES - Mail-in-ballot**

The current Election Code does not have a mail-in-ballot clause, but arrangements for polling places are easily accessible for voting during advance poll and election day. In the 2002 election, polling stations were set up in South Indian Lake, Thompson, Winnipeg and Brandon.

The electoral officer may make arrangements for travelling polls on reserve for elders and any electors who are ill or disabled, if the electoral officer decides such as poll is required.

#### **NCN MEMBERS' INPUT**

The Election Code should be amended to include a mail-in-ballot system.



#### **PART 5: POLLING PLACES - Form of Ballots**

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

#### **NCN MEMBERS' INPUT**

The current rules under the Election Code remain the same.

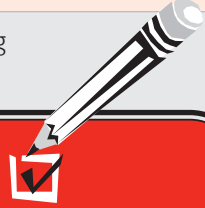


## PART 5: POLLING PLACES - Establishment of Polling Places

13(1) The electoral officer shall make arrangements for polling places which are easily accessible for voting during the advance poll and on election day.

### NCN MEMBERS' INPUT

The current rules under the Election Code remain the same.



## PART 6: POLLING PROCEDURES - Recording Poll Book

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

### NCN MEMBERS' INPUT

The current rules under the Election Code should be amended to state that the electoral officer, deputy electoral officer or returning officer shall initial the back of every page if the ballot has more than one page even if the pages are stapled together.

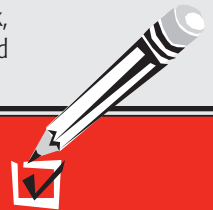


## PART 6: POLLING PROCEDURES - Announcing Results

18(5) After the number of votes cast for each candidate has been determined, recorded in the poll book, and signed by the electoral officer, the electoral officer shall announce the results to the public and post a signed statement indicating the results of the election.

### NCN MEMBERS' INPUT

Amend the "announcing results" in the Election Code to state that the media or other means considered appropriate can be used to provide NCN with information on the election results.



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## **PART 7: APPEAL PROCEDURES - Appeal Committee**

Council appoints an appeal committee for purposes of this code. The appeal committee is comprised of:

- Two elders, one of whom shall have served on council previously;
- One elector who served as an electoral officer or a deputy electoral officer in previous elections under this code or the Indian Act;
- One elector who is between the ages of 18 and 25 years of age;
- One member who is a magistrate or Commissioner of Oaths; and
- One elector who is ordinarily resident on reserve or on lands immediately adjacent to reserve.

## **PART 7: APPEAL PROCEDURES - Application for Recount**

Within seven days after the election, any candidate may request a recount by submitting their request to the electoral officer, in which case the electoral officer shall give all candidates and electors three days notice that a recount has been requested. Following that, the electoral officer shall immediately convene a meeting of the candidates and the deputy returning officer to recount the ballots.

## **PART 7: APPEAL PROCEDURES - Corrupt Practice Appeal**

Within seven days after the election any candidate or elector who voted may file an appeal with the appeal committee, if that person has reasonable grounds to believe there was:

- A violation of this code which may affect the results of the election, or
- a corrupt practice in connection with the election, which may affect the results of the election.

## **PART 7: APPEAL PROCEDURES - Other Appeals**

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

### **NCN MEMBERS' INPUT**

Amend the composition of the appeal committee as follows:

- (a) any NCN member regardless of residency and qualifications; and
- (b) any elector who is a resident on the reserve or lands immediately adjacent to the reserve.

The appeal committee receives appropriate training.

The current rule "within seven days" for appeals remains the same.



## **PART 7: APPEAL PROCEDURES - Costs Associated With an Appeal**

The Election Code does not have rules that govern the costs associated with an appeal. Costs of appeals need to be limited so every person cannot file an appeal against an election result and have NCN bear all the costs. This would be too expensive.

### **NCN MEMBERS' INPUT**

The Election Code should be amended to include a clause on costs associated with an appeal of the election in court. The chief and council and appellants shall not have their legal costs paid by NCN. NCN should cover the costs of the appeal committee, electoral officer and staff associated with an appeal.



## **PART 7: APPEAL PROCEDURES - Who Will Govern While the Election is Under Appeal?**

Pending the results of the appeal on the election, does the previous council remain in power or does the newly elected council assume the power and authority as a government?

### **NCN MEMBERS' INPUT**

The Election Code should be amended to include a clause that the previous council remains in government while the election is under appeal.

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