

# **NISICHAWAYASI NEHETHOWUK LAWS**

**2018**

**LAW 2018-1**

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A Law to amend the Election Law, 1998-E1

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Proposal Date: February 6-8, 2018

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Posted: March 23, 2018

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Second Reading: May 8, 2018

Adoption: May 10, 2018

## **SUMMARY**

This law amends the Election Law to prohibit all NCN Citizens convicted of indictable offences from running for office for a period of 8 years unless they have been convicted of murder, manslaughter or sexual assault offences of any kind unless written confirmation is provided by a new peacekeepers tribunal that they have participated in restorative justice, add testing for illegal drugs as part of candidate and council qualification requirements, procedures for mail-in voting in areas where there are no in-person polling places more than 50 kilometers away, prohibition on cyberbullying, to provide protection for privacy of voter contact information and more flexibility in the dates for the vote as well as various technical amendments.

## **NCN Election Law Amendment Law, 2018-01**

This Law in accordance with *Othasowewin* 2017, c. O-1, by and with the advice of the citizens of the Nisichawayasihk Cree Nation, is enacted as follows:

### **1 Table of Contents**

A Table of Contents shall be added based on the headings in the law.

### **2 Title**

Section 1 is added as follows and all subsequent sections are renumbered sequentially thereafter:

#### **Title**

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

### **3 Definitions (Illegal drugs)**

Subsection 2 is amended by adding “illegal drugs” means any prohibition of the possession, use, manufacture, sale and transportation of drugs as defined in the laws of Canada.

### **4 Definitions (NCN Lands)**

Subsection 2 is further amended by replacing “reserve” with the following definition “NCN Lands” means those lands set aside for the use and benefit of the Nisichawayasihk Cree Nation as more fully described in *Nisichawayasi Aski Pumenikewin*.

### **5 Vacancy**

Subsection 4(5) is amended by adding a new clause (f) as follows: “tests positive on a random illegal drug test” and renumbering the remaining clauses as (g) to (i).

### **6 Procedure for Resigning from Council.**

Subsection 4 (7) is amended by replacing the word “members” in the second last line with “NCN Citizens”.

**7 Prohibition on seeking office**

Subsection 4 (10) is amended by replacing the phrase “A chief or councillor” with “Subject to subsections (11) and (12), an NCN Citizen” in the first line.

**8 Major crimes bar to seeking office**

Subsection 4(11) is added as follows:

**Major crimes bar to seeking office**

**4(11)** Subject to 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.

**9 Peacekeepers tribunal**

Subsection 4 (12) is added as follows:

**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.

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

Subsection 7 is amended by adding the word “respectively” in the second line after “6(1)”.

**11 Electoral Officer Powers**

Subsection 9(1) is amended by replacing the word “reserve” with “NCN Lands” in paragraphs (b) and (f), deleting “advance” in paragraph (f) and by adding a new paragraph (h) as follows and re-numbering existing (h) as paragraph (g):

(h) establish the procedures for the use of mail-in ballots if a decision has been made pursuant to subsection 13 (7) to use such ballots; and

## **12 Council resolution commences election**

Subsection 11(2) is amended by adding “Subject to subsection (3)” at the beginning of the first line.

## **13 Fixed election dates**

Subsection 11 (3) is added as follows:

### **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 and chief and council shall continue to hold office until a new chief and council is sworn in.

## **14 Election Order**

Paragraphs 11 (4) (a), (b) and (d) are replaced by the following:

(a) fixing the date for the filing of nomination papers at least fourteen (14) days from the date of the order;

(b) fixing the date of the election no more than forty-five (45) days after the date of the nomination meeting;

(d) confirming the dates for receipt of mail-in ballots if they will be used during the election;

and by replacing the word “reserve” with “NCN Lands” throughout the subsection and the phrase “as well as” with “and” in the second line after paragraph (e).

## **15 Voters' List**

Subsection 12 (1) is replaced by the following:

### **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.

## **16 Candidate qualifications**

Paragraph 13 (1) is amended by replacing paragraph (c) and adding new paragraphs (d), (e) and (f) as follows:

(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.

## **17 Polling Locations**

Subsection 14(1) is repealed and replaced as follows:

### **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.

## **18 Mail-in Ballots**

Subsections 14(7), 14(8) and 14(9) are added as follows:

### **Notice Mail-in ballots**

**14(7)** The electoral officer may, at least ninety (90) days before the last of the fixed election dates decide that mail-in ballots shall be used by notifying NCN Citizens that if they are not ordinarily resident in 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 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; and
- (e) 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 be disposed of with all other ballots cast.

**19 Closing Polls**

Subsection 18(9) is amended by adding “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” at the end of the third line.

**20 Prohibition on certain activities during elections**

Subsection 19(8) is amended by adding paragraph (d) as follows:

- (d) engages in cyberbullying by without limitation, posting on social media false, defamatory or other information designed to promote hatred against a particular candidate,

and by adding “and (d)” after “clause (d)” in the fourth line and “social media post or” after “that the” at the beginning of the fifth line and after “if the” in the sixth line.



**21 Posting of order**

Subsection 19(9) is added as follows:

**Posting of order**

**19(9)** A copy of any order made by the electoral officer ordering the 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.

**22 Appeals without merit**

Subsection 21(8) is added as follows:

**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.

**23 Investigation**

Subsection 21(9) is amended by adding “Subject to subsection (8)” at the beginning of the first sentence.

**24 Decisions**

Subsection 21(10) is amended by adding the words “but an” at the end of the second sentence before the word “application”.

**25 Deputy chief**

Subsection 22(4) is amended by replacing the word “deputy” in the heading and in the first and last lines with the word “vice”.

**26 Part IX Amendments**

This Part is repealed.

**27 Effective date of amendments.**

Subsection 23 (2) is replaced as follows:

**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.

**28 Oath of Allegiance**

The Oath of Allegiance in Schedule “A” is replaced as follows:

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.

**29 Words same meaning**

Words and expressions used in this law have the same meaning as in *Othasowewin* and the NCN Election Law.

**30 Coming in Force**

This law comes into force on the day it is approved by Chief and Council with the exception of subsection 4(12) and paragraph 13 (1) (d) which shall come into effect on the date determined by NCN order-in-council.