

NCN Election Code Amendments

May/June 2010



In 2004, Nisichawayasihk Cree Nation began an Election Code amendment process to ensure NCN's electoral system remained fair and was responsive to NCN Citizens. Periodically reviewing and revising laws, is part of NCN's responsibility as a self-governing Nation with its own customs and laws.

Chief Executive Officer Theresa Yetman facilitated the overall review under the direction of NCN Chief and Council. The process gathered input from NCN Citizens between April and June 2004 through surveys, workshops and talk radio. Dr. Freeda Hart, Theresa Yetman, Dorothy Hart and Bedla Francois, compiled the results and Ms. Yetman then worked with legal counsel to prepare draft amendments based on the input received.

For a variety of reasons the amendments were not passed before the 2006 election. Since that time, the proposed changes have again been reviewed in light of experience in the 2006 election.

In the six years since the amendment process began, important Federal Court decisions related to the Gull Bay First Nation in northern Ontario were made. These decisions struck down Section 75(1) of the Indian Act that required Chief and Councillors to be Members living on reserve since it violated the Canadian Charter of Right and Freedoms.

Even though NCN does not hold elections under the Indian Act, it was decided that, to avoid future court challenges, NCN's own Election Code should reflect the Gull Bay decision. Therefore, parts of the NCN Election Code that contained residency requirements have been removed from the current proposed amendments.

The proposed Election Code amendments were considered at NCN Chief and Council's regular meetings on May 3, 17 and 25 and the required notice for a community meeting was issued for a May 31, 2010 membership meeting to consider proposed amendments to the Code. To amend the Code, at least 100 NCN Citizens must be present at the meeting in Nelson House and vote by a show of hands (or by secret ballot if 10 or more Citizens request it).

This newsletter highlights amendments to the Election Code. It does not mention changes such as renumbering of sections. To see exactly what the Code would look like with all of the proposed changes, NCN Citizens may obtain a complete copy from the NCN Government Office or the Trust Office in Nelson House.

If approved, changes to the Code will take effect for the 2010 regular election.

Please note: For 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. Copies of the current Code are available at the NCN Government Office or can be downloaded in a pdf format from www.ncncree.com/gov.html.

ELECTION CODE DEFINITIONS

Existing Wording

Definitions: “Elector”

The Code now refers to “electors” and “members”

Proposed Wording

Definitions: “Elector”

Throughout the Code, the terms “Citizen” and “voter” will be used instead of elector or Member.

COMPOSITION OF COUNCIL AND TERM OF OFFICE

Existing Wording

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 from 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.

Proposed Wording

Vacancy: 3(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 Code, or is sentenced to a jail term for any offence under any Act of Parliament or the Legislature of Manitoba;
- (c) *Kanukutusket* (passes on);
- (d) subject to subsections (6) 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 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) elected 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 Association of Manitoba Chiefs, or Grand Chief of the Manitoba Keewatinowi Okimakanak,

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.

Comment: *Throughout the Code, it is proposed to use Cree words (such as “Kanukutusket”) where appropriate.*

The existing Code refers to those who have been convicted of an indictable offence. Under the Criminal Code, indictable offences are the more serious offences. However, it is also possible to be sentenced to a jail term for summary conviction (less serious) offences. The proposed changes in this section and throughout the Code, would prohibit both those who have been convicted of indictable offences and those who have been sentenced to any jail term within 8 years of the date of the election order, from running for election, from being electoral officers, or from serving on the Appeal Committee. But, if a person spends time in a remand centre waiting for trial, and is later found not guilty, that person has not been sentenced to jail. This change appears in proposed sections 3(9), 4(2), 12(1), 19(3) and 19(8) of the Code.

ELECTORAL OFFICER

Existing Wording

Powers and Duties of the Electoral Officer

No clause in Election Code related to voter education.

Proposed Wording

Powers and Duties of the Electoral Officer: 8(1)

The electoral officer shall:

- (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 Code, nomination procedures, qualification of candidates, voting information and election results;

Comment: This makes it clear that the electoral officer shall provide advance election information to NCN Citizens.

ELECTION PROCEDURES

Existing Wording

Electors Entitled to Vote: 10(1)

All electors are entitled to vote in council elections.

Proposed Wording

Who is Entitled to Vote: 10(1)

All voters, including those who are in a correctional facility or who live outside the Province of Manitoba, are, subject to this Code, entitled to vote.

Comment: This proposed change makes it clear that Citizens currently in a correctional facility (jail) are not disqualified from voting.

NOMINATION PROCEDURES

Existing Wording

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.

Proposed Wording

None.

Comment: Because of the Gull Bay decision, Section 12(2) will be removed from the Election Code since there will now be no restrictions on Citizen residency.

Existing Wording

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;

Nomination Papers:12(3)

Any twenty-five (25) or more electors ordinarily resident on reserve or the 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.

Requirements for Validity: 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.

Proposed Wording

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 nomination papers are filed provides the electoral officer with a written criminal records check or documentation from the RCMP or another recognized police force, confirming the person has not been convicted of an indictable offence or sentenced to jail within the eight (8) years prior to the date the election order is posted;
- (d) provides written confirmation that the person has not been convicted of a corrupt practice under this Code within the eight (8) years prior to the date the election order is posted; and
- (e) is not a Member of Parliament, Member of the Legislative Assembly, Mayor or Councillor of a city or town, Grand Chief of the Assembly of First Nations, Grand Chief of the Assembly of Manitoba Chiefs, or Grand Chief of the Manitoba Keewatinowi Okimakanak.

Statutory Declaration in Certain Circumstances: 12(1.1)

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 (1.4) permit the person to provide a statutory declaration swearing they have never been convicted of an indictable offence or sentenced to a jail within eight (8) years prior to the date of the election order.

Election Null and Void if Statutory Declaration Inaccurate: 12(1.2)

If it is subsequently determined that a person who swore a statutory declaration in accordance with subsection (1.1) has been convicted of an indictable offence or has been sentenced to jail, the electoral officer shall immediately declare that person's election to council null and void.

Action to be Taken by Electoral Officer: 12(1.3)

After declaring an election null and void, in accordance with subsection (1.2), the electoral officer shall:

- (a) hold a by-election if more than six (6) months has elapsed since the date of the election; or
- (b) if less than six (6) months has 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(1.4)

The electoral officer shall require every person who provides a statutory declaration pursuant to s. 12 (1.1), 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: 12(2)

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(3)

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 one hundred dollars (\$100.00), which fee shall be returned to the candidate after the election if the candidate removes all signs posted by the candidate's election team within seven (7) days after the date of the election, after which the fee shall be used by the electoral officer to help fund the election expenses, including sign removal;
- (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.

Criminal Record Check Within Past 6 Months: 12(9)

In order to be valid, the criminal record check or documentation referred to in clause 12(1)(c) must have been issued no more than six months before the date of the nomination meeting, and must be accompanied by a written statement that the candidate has not been convicted of an indictable offence or sentenced to serve a jail term since the documentation was issued.

Comment: The proposed changes incorporate Nehethowiwini (Cree) language; include the new jail-sentence provision; add new rules that sitting Members of Parliament etc. cannot run in NCN elections; and add a new \$100 refundable fee (designed to ensure that election signs are cleaned up after the election).

In the past, there have been problems with the RCMP criminal record check system. Although some people have been able to quickly get a document saying they have no criminal record, other people (such as those with the same name as a criminal) have not been able to get this document fast enough to be ready for an NCN election. Others are not sure if they were convicted of an indictable or summary conviction offence.

The proposed solution is to allow such persons to swear a written declaration that they have not been convicted of an indictable offence or been sentenced to jail within the last eight (8) years if they have applied for a criminal record check but the RCMP or other police force has not been able to provide a definitive response prior to the date the nomination papers must be filed.

If it later turns out that this declaration is incorrect and the person was elected, that person's election will be overturned by the electoral officer. The person may have committed a crime by swearing a false declaration and if so they could be prosecuted for this crime whether they are elected or not. If the person did not get elected, the overall election results will still be valid even if it is determined this person's declaration was incorrect.

If the electoral officer overturns the election of a person who provided a false declaration within six (6) months of the election, then the person who had the next most votes for the position of Chief or Councillor will instead be declared elected. If more than six (6) months has gone by since the election, the electoral officer will call a by-election for that one position.

Also, as it is possible that a person might be convicted or jailed after the criminal record check has been obtained, it is proposed that the record check must be within six months of the nominating meeting, and candidates must also confirm that they have not been convicted or jailed since the record check was done. If a person is convicted of an indictable offence or sentenced to jail after they are elected, there will be an immediate vacancy created.

POLLING PLACES

Existing Wording

Mail-in Ballots

No clause in Election Code

Comment: The current Election Code does not have a mail-in-ballot clause, but there have been arrangements for polling places that 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.

Proposed Wording

Mail-in Ballots: 14(2)

The electoral officer shall provide a mail-in ballot to any NCN Citizen who is incarcerated or ordinarily lives outside of the Province of Manitoba, if the electoral officer receives a written request from the NCN Citizen at least fourteen (14) days prior to the date of the election.

Mail-in Ballot Procedures: 14(3)

The electoral officer shall arrange for a ballot to be provided to the NCN Citizen, along with two envelopes, one that is unmarked, with instructions that the ballot shall be placed in that envelope and sealed, and the envelope then inserted in the second pre-addressed envelope, with instructions that the envelope is to be mailed back to the electoral officer.

Ballots to be Mailed to Nelson House: 14(4)

To be counted in the election, the ballots shall be returned by members to a designated post office box number in Nelson House or Thompson by not later than 6:00 pm on the day before the date fixed for the election.

Restriction on Removal of Ballots from Post-office: 14(5)

The electoral officer or a deputy electoral officer shall not remove the ballots from the post office box before 9:00 am on the day of the election.

Counting Mail-in Ballots: 14(6)

Upon removal of the mail-in ballots from the post office box, they shall be placed in a sealed ballot box and taken to the place where ballots are being counted in Nelson House, at which time, they shall be counted and tallied separately from the other ballots.

***Comment:** NCN Citizens living outside Manitoba, or currently in jail, are eligible to vote. However, it may be difficult or impossible for them to get to a polling location.*

So, it is proposed that such persons can ask the electoral officer to send them a mail-in ballot. The ballot must be returned by a set time and date or it will not be counted.

Other voters will have to go to a polling location although there will continue to be special arrangements made for Elders and disabled persons to vote at a travelling polling station.

POLLING PROCEDURES

Existing Wording

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.

Prohibition on Signs and Campaigning: 18(8)

Any candidate who:

- (a) posts signs inside the polling station or within one hundred and fifty (150) feet of the polling station; (b) canvasses within the same area identified in clause (a);
- (c) authorizes media announcements or advertisements within the twenty-four (24) hours prior to the opening of the polls, shall be disqualified as a candidate, and subject to subsection 21, any votes cast for this candidate shall not be counted by the Electoral Officer.

Proposed Wording

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 front or 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. In the event that a ballot for Chief and/or a ballot for Council has more than one page, the electoral officer or the returning officer shall initial the front or back of each page of the ballot.

***Comment:** In the past, the back of the ballot had to be initialled. The proposal allows either the front or back to be initialed – this is just a small, practical change. Also, in the past, there have been some multi-page ballots. The proposal makes it clear that each page of a multi-page ballot must be initialled.*

Prohibition on Signs and Campaigning: 18(8)

Any candidate who :

- (a) posts signs inside the polling station or within one hundred and fifty (150) feet of the polling station;
- (b) canvasses within the same area identified in clause (a);
- (c) authorizes media announcements or

advertisements within the twenty-four (24) hours prior to the opening of the polls,
(d) paints signs on the walls of buildings, including houses,

shall be disqualified as a candidate, and any votes cast for this candidate shall not be counted by the electoral officer, except that in the case of clause (d), 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 is not removed, the candidate shall be disqualified. If a violation of this section is not determined until after ballots are counted, and if this candidate was unsuccessful, the election results shall stand. If this candidate was successful, this candidate shall be eliminated, and the candidate with the next highest vote total shall be declared elected.

Comment: In the past, there have been problems with candidates painting election signs on the sides of buildings which some have argued encourages other graffiti in the community. The proposed new rule would prohibit this practice.

Existing Wording

Tie vote

No clause in Election Code

Proposed Wording

Tie Vote for Chief: 18(9)

In the event that there is a tie vote for the position of Chief, a new election for Chief shall be held without undue delay, on a date to be set by the electoral officer. The only names on the ballot shall be the two (or more) names of candidates who were tied for this position. Meanwhile, the newly elected Councillors shall choose from amongst themselves an individual to serve as Acting Chief, until a new Chief is elected.

Tie Vote for Councillor: 18(10)

In the event that there is a tie vote for the final (sixth) position of Councillor, a new election for this one council position shall be held without undue delay, on a date to be set by the electoral officer. The only names on the ballot shall be the names of candidates who were tied for this position. Meanwhile, the duly elected Chief and the other five duly elected Councillors shall be sworn into office and shall begin to serve.

Comment: This makes it clear what will happen if there is a tie vote for Chief, for Council, or both.

APPEAL PROCEDURES

Existing Wording

Composition of Appeal Committee: 19(2)

Council appoints an appeal committee for purposes of this Code. The appeal committee shall be comprised of:

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

Proposed Wording

Composition of Appeal Committee: 19(2)

The Appeal Committee shall be composed of four voters and a lawyer who is an experienced Manitoba arbitrator all of whom are prepared to carry out the responsibilities of this Part in a fair and impartial manner. The lawyer shall be the Chairperson of the Appeal Committee.

Not eligible to serve on Appeal Committee: 19(3)

The electoral officer, deputy electoral officers, election staff, members of Chief and Council, candidates, persons who have been convicted of an indictable offence or a corrupt election practice under this Code, or have been sentenced to serve a jail term, within the eight years prior to the day the Appeal Committee is appointed 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, or children. If an appeal is filed, and a Committee member must recuse himself/herself from hearing such appeal, an alternate Appeal Committee member shall be appointed by the electoral officer.

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.

Comment: In the past, the Appeal Committee has had to hire a lawyer on short notice to provide legal advice. It has sometimes been difficult to find a qualified lawyer on short notice.

The proposed change would ensure that a lawyer who is an experienced Manitoba arbitrator (who would have the right skills for dealing with NCN election issues) would be part of the Committee from the start. The new proposals are less rigid about the qualifications of NCN Citizens. Chief and Council must appoint to the Appeal Committee.

The new proposals would also make sure that appeal decisions are not made by persons in a conflict of interest.

Existing Wording

Application for a Recount: 20(1)

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.

Proposed Wording

Application for 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) business 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.

Comment: The proposal would make it clear that the three days notice are three "business days". In other words, if the request comes on a Friday, then Saturday and Sunday are not counted as part of the three days.

Existing Wording

Corrupt Practice Appeal: 20(5)

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) 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.

Proposed Wording

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 or drugs for voters.

Comment: The proposed change is to make it clear that trying to bribe voters by buying them alcohol or drugs is a "corrupt practice".

Existing Wording

Appeal Decisions

None

Proposed Wording

Appeal Decisions -Time Limits etc.(: 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.

Comment: In the past, Appeal Committee decisions have been appealed to court. The proposed changes makes it clear that the Committee will complete its work even if a court appeal starts. Of course, if a court orders the Committee to stop its work, it must

obey the court. The intent is to reinforce the limited role of the court and to make the Appeal Committee decisions final and binding unless they committed some serious error.

Existing Wording

Judicial Review Costs

None

Proposed Wording

Judicial Review Costs: 20(15)

NCN shall bear all reasonable costs incurred by the Appeal Committee and all election staff in respect of a judicial review pursuant to section 20(14), 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.

Comment: In the past, court appeals of Appeal Committee decisions have been expensive. The proposed change makes it clear that NCN will pay any court costs or expenses of the Appeal Committee and elections staff, but all candidates must pay all their own costs (unless the court orders otherwise).

INAUGURATION CEREMONIES

Existing Wording

Traditional Swearing in: 21(3)

The swearing in ceremony for the Chief and individual Councillors shall include traditional Cree 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.

Proposed Wording

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 within sixty (60) days of the election.

NCN Vice-Chief: 21(4)

At the first regular council meeting held after the traditional swearing in referred to in subsection 21(3), Council will hold a secret ballot vote to elect a Vice-Chief from among the members of the newly sworn in Council, which person shall have the full powers of the Chief if the Chief becomes incapacitated or is unable to perform the duties of Chief, until a by-election is held if required by this Code.

Pending Appeal: 21(5)

If an appeal is filed in respect of the election for Chief or a member of Council, the current Chief and Council shall remain in office until the decision of the Appeal Committee is rendered in accordance with subsection 20 (9).

Comment: Again, appropriate Cree language is used. A new rule about a Vice-Chief is added. In the past, there was debate about who would govern while the Appeal Committee considered an appeal.

The proposal makes it clear that the old Chief and Council will remain in office during this appeal period, but in addition, the Appeal Committee must now make its decision within 30 days of receiving the appeal.

TRANSITION ALLOWANCE

Existing Wording

None

Proposed Wording

Definitions: 23(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: 23(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.

Amount and Period of Allowance 2010

Amendments: 23(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: 23(4)

The transition allowance shall be funded entirely by the Nisichawayasihk Cree Nation.

Comment: Many politicians receive some transition pay if they are defeated to help them transition to new jobs. The proposal is for a fairly modest transition allowance for outgoing members of Chief and Council.

This proposal would replace the current system that is in place where members of Council defer a portion of their salary that is matched by NCN and is paid if the council member is defeated.

There is currently no limit on the amount of matching that can take place. Under the proposal, the amount of the transition allowance paid by NCN would be a set maximum amount which makes it easier for NCN to budget for this allowance over time. It also helps to ensure candidates will continue to run for office.



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