

NISICHAWAYASIIHK CREE NATION LAWS ELECTION CODE 1998-E1

WHEREAS: The Nisichawayasihk Cree Nation believes that the Creator made the lands and the citizens of the Nisichawayasihk Cree Nation. The Creator gave us laws that define our rights and responsibilities and govern all our relationships so that we may live in harmony with nature and mankind.

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: The Nisichawayasihk Cree Nation wishes to make laws in writing, to replace all previous customary laws or practices, for the governance of its citizens, the protection of its lands, the use of its resources, and the election of its government.

WHEREAS: The leadership of the Nisichawayasihk Cree Nation shall henceforth only be elected in accordance with this duly elected customary law.

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

Definitions.

1 For purposes of this Code only, unless expressly otherwise provided, the following terms shall be defined as follows:

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

“Code” means this Election Code including any amendments thereto, or any successor election code adopted by Nisichawayasihk Cree Nation.

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

“Council Resolution” means a resolution or motion passed by a majority of members of council.

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

“Election” includes a by-election.

“Nisichawayasihk Cree Nation” or “NCN” means the *Nisichawayasihk Nehethowuk* and is a band for purposes of the *Indian Act*, R.S.C. 1985, c.I-5 as amended.

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

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

"Reserve" has the same meaning as in the *Indian Act*, R.S.C. 1985, c. I-5 as amended, but only refers to those reserves set apart for the use and benefit of the Nisichawayasihk Cree Nation.

"Voter" means an NCN Citizen who is at least eighteen (18) years of age on the date of an election is held in accordance with this Code.

PART 1

COMPOSITION OF COUNCIL AND TERM OF OFFICE

Composition of council.

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

Term of office.

3(1) Subject to subsections 3 and 5, the chief and councillors shall hold office for a four (4) year term, which term shall begin on the day that they are sworn into office in accordance with Part 8, and end on the day that a successor chief and councillors are sworn into office.

No limitation on terms of office.

3(2) There shall be no limit on the number of times a voter can be elected to the positions of Chief or Councillor.

Early elections.

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

Assumption of office.

3(4) All candidates elected to council shall assume office within fourteen (14) days after the election.

Vacancy.

3(5) Where the chief or a councillor:

- (a) is unable or unwilling to act;
- (b) is convicted of an indictable offence, 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* (passed 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) is 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 Assembly 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.

Procedure for resigning from Council.

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

- (a) where a councillor resigns, be submitted to the chief; and

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

By-election term of office.

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

Suspension.

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

Prohibition on seeking Office

3(9) An NCN Citizen who is convicted of an indictable offence or a corrupt practice under this Code, or is sentenced to a jail term for any offence, shall not be eligible to be a member of council for eight (8) years from the date of the conviction or any appeal arising from such conviction, or the date on which the jail term ends, whichever is later.

PART 2

ELECTORAL OFFICER

Appointment.

4(1) Subject to subsection (2), at least forty-five (45) days prior to the expiry of its term of office, council shall appoint a voter who communicates in *Nehethowiwini* and English, as the electoral officer for purposes of this Code.

Criminal records check.

4(2) No voter shall be appointed as an electoral officer if that person has been convicted of an indictable offence or has been sentenced to a jail term and the onus shall be on the voter to provide council with a written criminal records check prior to appointment.

Term of office.

4(3) Council shall appoint the electoral officer for a term of five (5) years.

Term of office.

4(4) The electoral officer shall hold office until expiry of the term of office referred to in subsection (3), but can be removed for just cause by a vote in favour of removal by a majority of council.

Appointment of deputy electoral officer.

5(1) Council may appoint deputy electoral officers, returning officers and such other officers and employees as are necessary to enable the electoral officer to carry out the duties assigned under this Code, but none of these persons shall be entitled to be nominated for or run for office during the election they are overseeing

Power of deputy to act in place of electoral officer.

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

and has all the powers, rights, privileges and authority granted to, or vested in, the electoral officer under this Code.

Electoral and deputy electoral officer may vote.

6 The electoral officer, and any deputy electoral officers appointed pursuant to subsection 5(1), shall not engage in, or participate in any political activities in favour of or against, any person running for council, but the electoral officer and any deputy electoral officers and any electoral staff may vote in any election held under this Code.

Oath of Confidentiality

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

Powers and duties of the electoral officer.

8(1) The electoral officer shall:

- (a) exercise general direction and supervision over the administrative conduct of elections;
- (b) ensure the voters' list is prepared and posted in at least five (5) public locations on reserve at least fourteen (14) days prior to the date of the election;
- (c) enforce fairness, impartiality and compliance with this Code on the part of all election officers;
- (d) issue instructions to any deputy electoral officers and other officers appointed by council as may be necessary to ensure the duties in this Code are carried out;
- (e) either before or after the nomination meeting, use media, information 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;

and

- (f) perform such other duties as are prescribed by this Code.

Special powers of electoral officer.

8(2) In addition to other powers, duties and functions of the electoral officer under this Code, the electoral officer may:

- (a) where an emergency arises, extend the time or dates for doing anything under this Code;
- (b) increase the number of election officers;
- (c) increase the number of polling stations;
- (d) prescribe forms for the purposes of this Code;
- (e) generally adapt the provisions of this Code to existing circumstances; and
- (f) exercise such other powers as are prescribed by or under this Code;

but the electoral officer may not change the dates of the nomination meeting or election or extend the hour for the opening or closing of an ordinary or advance poll or for accepting a nomination paper on the day fixed for the close of nominations in an election unless the election cannot proceed as a result of an emergency which affects NCN, such as a flood, forest fire or death of a member or other person.

Reports on election.

9 After each election, the electoral officer shall make a written report within seven (7) days, to council on the conduct of the election, and may make recommendations about amendments to this Code or the procedures to be followed during elections and council shall make this report available to NCN Citizens immediately upon receiving it.

PART 3

ELECTION PROCEDURES

Who is entitled to vote.

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

Council resolution commences election.

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

Election order.

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

- (a) fixing the date, not more than fourteen (14) days and not fewer than seven (7) days from the date of the order for the filing of nomination papers by the candidates;
- (b) fixing the date of the election no less than twenty-one (21) days and no more than twenty-eight (28) days from the date of the close of nominations;
- (c) fixing the date for a nominating meeting to be held, which date shall be no more than three (3) business days after the date for filing nomination papers;
- (d) fixing the date and time of advance polls; and
- (e) fixing the location of the polling places and the hours during which the polls will be open,

and post the order in at least five (5) conspicuous places on reserve, and in at least one location in other locations in Manitoba where significant numbers of electors reside.

Electoral Officer decides polling locations.

10(4) The electoral officer shall have the absolute discretion to determine the number and location of regular, advance and travelling polling stations, but there must be at least one regular polling location on reserve.

Voters' list.

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

Corrections to voters' list.

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

Electoral officer may revise list.

11(3) If the electoral officer is satisfied that the voters' list is in error, the electoral officer shall correct the list immediately and the decision of the electoral officer to revise or not to revise the voters' list is final and binding on all NCN Citizens.

PART 4

NOMINATION PROCEDURES

Candidate qualifications.

12(1) A person is qualified and eligible to be nominated for, and elected to, the positions of chief or councillor if the person:

- (a) is an NCN Citizen;
- (b) is able to communicate in the English and *Nehethowiwon* 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 Keewatinowin Okimakanak,

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

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 byelection 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.

Nomination meeting.

12(4) The electoral officer shall attend the nomination meeting and announce orally and in written form the names of the persons who have been nominated, whether they qualify and whether they are prepared to allow their names to be placed on the ballot.

Candidates to be present.

12(5) Subject to subsection (6), all voters nominated shall attend the nomination meeting to confirm that they wish to stand for office and to outline their reasons for

seeking office, or the electoral officer shall declare the nomination to be null and void, unless in the sole discretion of the electoral officer it is determined there are special circumstances which prevent a nominee from complying with this subsection

Permitted absences.

12(6) A voter's candidacy will not be declared null and void if that person is unable to attend the nomination meeting due to personal illness or a critical illness or death of an immediate family member and as long as the electoral officer or deputy electoral officer is notified prior to the nomination meeting.

Withdrawal.

12(7) Any voter nominated may withdraw at the nominating meeting or at least seven (7) days before election day, by filing a written notice to that effect signed by the candidate and witnessed by two voters and that candidate's name shall not be placed on the ballot.

Acclamation.

12(8) Where only one (1) candidate is nominated for chief or only six (6) candidates are nominated for the position of councillor, or after any withdrawals of candidates pursuant to subsection (7) only one (1) candidate for chief, or only six (6) candidates for the position of councillor, remain nominated, the electoral officer shall immediately declare the chief or the councillor candidates elected, as the case may be.

Criminal record check within past six 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.

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.

Voting arrangements for secret ballot.

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

NCN constables to be present.

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

Travelling poll for elders, infirm or disabled.

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

Facilities in travelling polls.

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

Change of polling locations.

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

- (a) notify 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.

Preparation of ballots.

14(1) Following the nomination meeting held in accordance with subsection 12(4), 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 *Tunehethowastek*, and by placing a photograph of each candidate appearing on the ballot beside the candidate's name.

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.

Withdrawal of candidates.

14(7) 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

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from the ballot and have notices posted at the polling place clearly indicating that the candidate withdrew from the election.

Ballot boxes, etc.

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

Directions for voters.

15(2) The electoral officer shall provide each returning officer with the ballot boxes and at the same time deliver a sufficient number of printed directions for the guidance of voters for use during the election.

Posting of directions.

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

Opening polling location.

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

Handling of ballot box when poll opens.

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

Placement of ballot box during election.

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

Treatment of travelling poll ballot box.

16(4) The returning officer responsible for the travelling poll established pursuant to subsection 13(4) shall comply with subsection (2).

Sealing the advance poll ballot box at closing.

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

PART 6

POLLING PROCEDURES

Provision of ballots to electors.

17(1) Each person requesting a ballot for the purpose of voting shall be given one if the electoral officer, deputy electoral officer or the returning officer is satisfied that the person's name is on the voters' list, or if it does not appear on the voters' list, the electoral officer or deputy electoral officer is satisfied that the person is a voter entitled to vote or has obtained from the person, an oath or affirmation in the prescribed form, that the person is a voter. .

Recording poll book.

17(2) Upon establishing that a person is a voter , the electoral officer, the deputy electoral officer or the returning officer shall initial the 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.

Voter assistance.

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

Disabled voters.

17(4) The electoral officer or the deputy electoral officer may upon request mark the ballot of a voter who is blind, unable to read or otherwise unable to vote without assistance, as long as the mark on the ballot occurs in the presence of the candidates' scrutineers, who shall observe the proceedings, but make no attempt to interfere or interrupt.

Special records.

17(5) Where assistance is provided pursuant to subsection (4), the electoral officer or the deputy electoral officer shall mark in the poll book opposite the voter's name, that assistance was provided and the reason it was provided.

Additional ballots.

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

Electoral leaving polling place without voting.

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

Electors can vote if inside poll before closing time.

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

Closing polls.

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

Camera.

17(10) Following the closing of the polls, the electoral officer may authorize the procedures in subsections 18(1) and (5) to be recorded by camera or other video recording device as long as voter secrecy is maintained and all recordings are provided to the electoral officer immediately following the vote and only the electoral officer shall have access to the recording unless the election 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.

18(1) Immediately after the closing of the poll, the electoral officer shall, in the presence of those present at the polling location, place all spoiled ballot papers in an envelope and mark it "Spoiled Ballots", seal it, and the spoiled ballots shall not be counted in the election.

Counting names in the poll book.

18(2) After closing the poll the names of the persons who voted at each poll shall be counted and recorded in the poll book, and the electoral officer or deputy electoral

officer shall sign the poll book to verify its accuracy, along with those candidates or scrutineers who also wish to sign.

Count number of ballots in ballot box.

18(3) Prior to tallying the votes for each candidate, the ballots in the ballot box shall be counted and if the number is more than the number recorded in the poll book, any ballots which do not have the initials of a electoral officer, a deputy returning officer or a returning officer on the front or 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 or a deputy electoral officer.

Ballots to be rejected in count.

18(4) In counting the ballots for each candidate, the electoral officer, a deputy electoral officer and returning officers shall reject a ballot that:

- (a) was not supplied by them;
- (b) has marks beside more than one (1) candidate in the case of chief and more than six (6) candidates in the case of councillors;
- (c) has a mark or writing on it which identifies the voter;
- (d) indicates a vote for a candidate who has withdrawn; or
- (e) prevents voter intention from being determined.

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.

Disposal of ballots.

18(6) The electoral officer shall place all unused, spoiled, discarded and rejected ballots 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 NCN constable, 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.

Scrutineers.

18(7) Each candidate may appoint a voter as the candidate's 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.

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.

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.

PART 7

APPEAL PROCEDURES

Appeal Committee.

19(1) Within fourteen (14) days of the coming into force of this Code, Council shall appoint an Appeal Committee for purposes of this Code and they shall immediately review their responsibilities under this Code.

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.

New Appointment.

19(5) The members of the Appeal Committee shall remain in office until new members are appointed by a new council no earlier than sixty (60) days after the council is sworn into office or after any appeals and any litigation arising therefrom, have been concluded, but the Appeal Committee shall complete all matters before it, prior to the new appointments taking effect.

Terms of Appeal Committee members.

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

Election final and binding.

19(7) The appointments of council to the Appeal Committee shall be final and binding on all voters .

Vacancies.

19(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 Code, or is sentenced to serve a jail term under any Act of Parliament or the Legislature of Manitoba;

- (c) *Tunehethowastek* (passed 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) other than the chairperson, is no longer an NCN Citizen,

that person's position shall be declared vacant and council shall appoint a new voter to the Appeal Committee within fourteen (14) days of the position becoming vacant.

Application for a recount.

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

Factors to consider.

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

- (a) carefully examine all ballots used in the election and decide whether ballots were properly considered spoiled, discarded or rejected, and if not, include such ballots in the count of votes for each candidate; and
- (b) following the recount either:
 - (i) declare the candidates with the most votes elected, or
 - (ii) if there is a tie, declare the candidates tied and request council to call a by-election for the candidates who are tied, in accordance with section 18.

Appeal of electoral officer's decision.

20(3) Any candidate who requested a recount pursuant to subsection (1) may appeal the decision of the electoral officer to the Appeal Committee within seven (7) days of the decision.

Recount by Appeal Committee.

20(4) Upon receipt of an appeal, the Appeal Committee shall meet within seven (7) days to conduct a recount in accordance with this section.

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.

Other Appeals.

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

Notice of appeal.

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

Investigation.

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

Decisions.

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

Dismissal of appeal.

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

Upholding subsection (5) appeals.

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

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

Upholding subsection (6) appeals.

20(12) For appeals filed under subsection (6), the Appeal Committee may uphold the decision, or where it finds the grounds of appeal have been established, it may substitute its decision for that originally made.

Final decision.

20(13) A decision of the Appeal Committee pursuant to subsections (10), (11) and (12) shall be final and binding on all voters.

Judicial review.

20(14) A decision of the Appeal Committee may be reviewed by a Court of competent jurisdiction solely by reason that the Appeal Committee failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction under this Code.

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.

PART 8**INAUGURATION CEREMONIES****Council ceremony.**

21(1) The newly elected council shall hold a public swearing in ceremony where the chief designate and each councillor shall swear or affirm an Oath of Allegiance, an Oath of Office and an Oath of Confidentiality in the form set out in Schedules "A", "B" and "C".

Consequences of failure to comply.

21(2) The electoral officer shall declare the position of a chief or councillor who fails to comply with subsection (1) vacant, following the swearing in of the rest of council, a by-election shall be called immediately by council.

Traditional swearing in.

21(3) The swearing in ceremony for the chief and individual councillors shall include traditional *Nisichawayasihk Nehethowuk* ceremonies and activities 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).

PART 9

AMENDING PROCEDURES

Amendment possible.

22(1) This Code may be amended in accordance with this section.

Amendment proposals.

22(2) Any voter may propose amendments to this Code by presenting such proposals to chief and council or the electoral officer who shall review the proposals.

Meeting for amendments.

22(3) Following the review in subsection (2) council shall hold an NCN community meeting to consider and vote on any proposed amendments to the Code.

Notice.

22(4) Notice for the meeting under subsection (3) shall:

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

Vote to amend by secret ballot.

22(5) If requested by at least ten (10) voters, the vote to amend shall be by secret ballot vote.

Approval required to amend.

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

Effective date of amendments.

22(7) Amendments approved in accordance with this section shall take effect seven (7) days from the date of approval at the NCN community meeting, except for a change in the composition of council, which amendment shall not take effect

until the next regular election following the decision made at the NCN community meeting.

Effective date of Code.

22(8) This Code shall come into effect for the election of chief and council in 1998 and the reference to eight (8) years in subsection 3 (9) shall mean convictions from 1990 onward.

PART 10

TRANSITION ALLOWANCE

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

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.

Coming into force

23(5) This Part shall come into force following the 2010 election.

SCHEDULE "A"

OATH OF ALLEGIANCE

I _____ before the **Creator** and members of the Nisichawayasihk Cree Nation, do swear or solemnly affirm that I will be faithful and bear true allegiance to the laws of the Nisichawayasihk Cree Nation and Canada.

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.

Witness

(Chief/Councillor)

Date:

SCHEDULE "C"

I _____ before the **Creator** and members of the Nisichawayasihk Cree Nation, do swear or solemnly affirm that I will maintain, and aid in maintaining, the privacy of citizens 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.

Witness

(Chief/Councillor)

Date:

SCHEDULE “D”

OATH

I _____ swear or solemnly affirm that:

- I am legally qualified to act as electoral officer, deputy electoral officer or other officer;
- I will act faithfully in my appointed capacity and perform all the duties required under the Election Code of the Nisichawayasihk Cree nation, without partiality, fear, or favour or affection;
- I will maintain and aid in maintaining the secrecy of voting pursuant to this Code.

SWORN before me at Nelson House)
 in the Province of Manitoba)
 this day of , 200.)
)
)
 _____)

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

My Commission expires _____

[drafted April 2006]