

His Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to section 41 of the *First Nations Elections Act*, makes the annexed *First Nations Elections Regulations*.

S.C. 2014, c. 5

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COMING INTO FORCE

- 27. S.C. 2014, c. 5 or on registration

FIRST NATIONS ELECTIONS REGULATIONS INTERPRETATION

Definitions

1. (1) The following definitions apply in these Regulations.

“Act”
« *Loi* »

“Act” means the *First Nations Elections Act*.

“quorum”
« *quorum* »

“quorum”, in relation to the council of a First Nation, means a majority of the members of the council, or five members if the council consists of nine or more members.

“Register number”
« *numéro de registre* »

“Register number” means the number assigned to a person registered under section 5 of the *Indian Act*.

Indian Act

(2) Unless the context otherwise requires, other words and expressions used in these Regulations have the same meaning as in the *Indian Act*.

ELECTORAL OFFICER AND DEPUTY ELECTORAL OFFICERS

Appointment of electoral officer

2. (1) The council of the First Nation must, by resolution, appoint an electoral officer or, if it is not possible for the council to form a quorum, the Minister must appoint an electoral officer, who

(a) has not been found guilty of an offence under the Act within the last two years before the appointment; and

(b) is certified in accordance with subsection (2).

Certification

(2) A person is certified if they successfully complete a training program that is approved by the Minister on the responsibilities of the electoral officer under the Act and these Regulations.

Revocation of certification

(3) The certification is revoked if the electoral officer is found guilty of an offence under the Act.

Appointment of deputy electoral officer

(4) The electoral officer may appoint one or more deputy electoral officers.

VOTERS LIST

Provision of information

3. (1) At least 65 days before the day on which an election is to be held

(a) the First Nation must provide the electoral officer with the information set out in subsection (2), if the First Nation holding the election has assumed control of its own membership under section 10 of the *Indian Act*; and

(b) the Registrar must provide the electoral officer with the information set out in subsection (2), if the Band List of the First Nation holding the election is maintained in the Department under section 11 of the *Indian Act*.

Compilation of list

(2) The electoral officer must compile a voters list that contains the following information:

- (a) the names of all electors, in alphabetical order; and
- (b) each elector's band membership or Register number or, if the elector does not have a band membership or Register number, their date of birth.

Revision of list

(3) The electoral officer must revise the voters list if it is demonstrated that

- (a) an elector's name has been omitted from the list;
- (b) an elector's name is incorrectly set out in the list; or
- (c) the name of a person not entitled to vote is included in the list.

Demonstration of omission and inclusion

(4) For the purposes of subsection (3),

- (a) a person may demonstrate that an elector's name has been omitted from, or incorrectly set out in, the voters list by presenting to the electoral officer written evidence from the Registrar or from the First Nation that the elector is in the Band List and will be at least 18 years of age on the day of the election; and
- (b) a person may demonstrate that the name of a person not entitled to vote has been included in the voters list by presenting to the electoral officer written evidence that that person is not in the Band List or will not be at least 18 years of age on the day of the election.

Addresses

4. (1) At least 65 days before the day on which an election is to be held, the First Nation must provide the electoral officer with a list setting out the last known postal address and email address of each elector who does not reside on the reserve.

Provision of electors' names and addresses

(2) On the request of a candidate for election as chief or councillor, the electoral officer must provide the candidate with a list of the names of electors and the address of any elector who has consented to have their address released to the candidates.

NOMINATION MEETING

Notice of nomination meeting

5. (1) At least 25 days before the day on which a nomination meeting is to be held, the electoral officer must

- (a) post a notice of the nomination meeting and a list of the names of electors in one conspicuous place on the reserve; and
- (b) send by mail and email a notice of the nomination meeting, a voter declaration form and a form on which the elector may request a mail-in ballot to the addresses provided under subsection 4(1).

Content of notice

(2) A notice of a nomination meeting must contain the following information:

- (a) the date, time, duration and location of the nomination meeting;
- (b) the number of positions to be filled;
- (c) a description of the manner in which an elector can nominate a candidate or second the nomination of a candidate;
- (d) a statement that an elector must not nominate more than one candidate for each position to be filled in accordance with subsection 9(4) of the Act;
- (e) the date on which the election is to be held and the location and hours of operation of each polling station;
- (f) the date on which any advance poll will be held and the location and hours of operation of each advance polling station;
- (g) the electoral officer's name, phone number, fax number, postal address and email address;
- (h) a statement that the elector may permit the electoral officer to release their address to the candidates;
- (i) a statement that, if the elector wants to receive a mail-in ballot, they must make a written request to the electoral officer;
- (j) if the council of the First Nation has, by resolution, imposed a candidacy fee under section 8, a statement that sets out the fee to be paid by each candidate; and
- (k) a statement that a nominee who wishes to become a candidate must remit to the electoral officer or deputy electoral officer, by 6 p.m. on the third day following the day on which the nomination meeting closes,
 - (i) a signed declaration accepting the nomination and attesting to their eligibility to be a candidate under the Act, and
 - (ii) any applicable candidacy fee, in the form of cash, certified cheque, money order or electronic transfer payable to the electoral officer.

Record of names

(3) The electoral officer must record the names of electors to whom a notice of the nomination meeting was sent or delivered, the postal address and email address of those electors and the date on which the notice was sent or delivered.

Voter declaration form

(4) A voter declaration form must be signed by the elector and attest to the following information:

- (a) the elector's name;
- (b) the name of the elector's band and the elector's Register or band membership number; and
- (c) the elector's date of birth.

Witness

(5) A voter declaration form must contain the name, address, telephone number and signature of a witness who is at least 18 years of age and who attests to the fact that the person completing and signing the voter declaration form is the person whose name is set out in the form.

Witness

(6) The voter declaration form of the elector who enlisted the assistance of another person under subsection 17(2) must be signed by a witness that attests to the fact that the elector is the

person whose name is set out in the form and that the ballot was marked in the manner directed by the elector.

Nomination of candidates

- 6.** (1) An elector may nominate a candidate and second the nomination of a candidate,
- (a) by delivering or sending by mail, email or fax to the electoral officer a nomination and a voter declaration form; or
 - (b) by orally nominating the candidate or seconding the nomination of the candidate at the nomination meeting.

Witness

(2) The witness to the elector's signature appearing on the voter declaration form is not to be considered a seconder to the nomination.

Mailed nominations

(3) Mailed nominations that are not received by the electoral officer before the beginning of the nomination meeting are void.

Nomination meeting

7. (1) A nomination meeting for an election must be held at least 35 days before the date of the election.

Reading nominations

(2) At the beginning of the nomination meeting, the electoral officer must read aloud the nominations that have been received.

Two nominations

(3) If the same person receives two written nominations for the same position, the second nomination is considered to second the first nomination.

Duration

- (4) A nomination meeting must remain open for at least three hours.

CANDIDATES

Candidacy fee

8. The council of a First Nation may by resolution impose a candidacy fee of up to \$250 on every candidate for election as chief or councillor.

Declaration and fee

9. (1) To become a candidate, a nominee must remit to the electoral officer or deputy electoral officer, by 6 p.m. on the third day following the day on which the nomination meeting closes,

- (a) a signed declaration accepting the nomination for no more than one of the positions for which they have been nominated and attesting to their eligibility to be a candidate under the Act; and
- (b) if the council of a First Nation has passed a resolution referred to in section 8, the candidacy fee, in the form of cash, certified cheque, money order or electronic transfer payable to the electoral officer.

In trust

- (2) The electoral officer must hold the candidacy fees in trust.

Withdrawal of candidacy

10. (1) A candidate may withdraw their candidacy at any time prior to the close of the polls by submitting to the electoral officer a written declaration of withdrawal, signed by the candidate

in the presence of the electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

Death of candidate

(2) A candidate who dies before the close of the polls is considered to have withdrawn their candidacy.

Candidacy fee

(3) A candidate who withdraws forfeits the candidacy fee and is considered to have received no votes.

ELECTIONS

Close of nomination meeting

11. As soon as feasible after the deadline set out in subsection 9(1) expires, the electoral officer must

- (a) if there is only one candidate for chief, declare that person to be elected by acclamation;
- (b) if the number of candidates for councillor does not exceed the number of positions to be filled, declare those persons to be elected by acclamation;
- (c) if there are more candidates than the number of positions to be filled, announce that an election will be held on the date set out in the notice referred to in paragraph 5(2)(e); and
- (d) if, after candidates have been declared elected in accordance with paragraph (a) or (b), the number of positions filled is less than the number of positions that are required to be filled for the council of the First Nation to have quorum, post and send a notice of another nomination meeting in the manner described in subsection 5(1).

Notice of acclamations

12. (1) If, after candidates have been elected by acclamation, the number of positions filled is greater than or equal to the number of positions that are required to be filled for the council of the First Nation to have quorum, the electoral officer must post in at least one conspicuous place on the reserve, and mail to every elector who does not reside on the reserve for whom an address was provided under subsection 4(1), a notice that sets out the names of the persons who have been elected by acclamation and states that an election will not be held.

Refund of candidacy fee

(2) Candidates who are elected to the position of chief or the position of councillor by acclamation are, for the purposes of section 11 of the Act, considered to have received more than five percent of the total votes cast and are entitled to be refunded the candidacy fee.

Return of candidacy fee

(3) The electoral officer must return the candidacy fee to candidates elected by acclamation as soon as feasible.

Content of ballots

13. (1) As soon as feasible after the deadline set out in subsection 9(1) expires, the electoral officer must prepare ballots setting out

- (a) the names of the candidates for chief in alphabetical order by surname; and
- (b) the names of the candidates for councillor in alphabetical order by surname.

Additional distinguishing information

(2) If two or more candidates have the same name, the electoral officer must add to the ballots any additional information that is necessary to distinguish between those candidates.

Notice of election

14. No later than 30 days before the day on which the election is to be held, the electoral officer must post in at least one conspicuous place on the reserve a notice that sets out

- (a) the date on which the election is to be held and the location and hours of operation of each polling station;
- (b) the date on which any advance poll is to be held and the location and hours of operation of each advance polling station;
- (c) the date on which and the time and place at which the counting of the votes is to take place;
- (d) the number of positions to be filled;
- (e) a statement that, if the elector wants to receive a mail-in ballot, they must make a written request to the electoral officer and provide the electoral officer with proof of identity; and
- (f) the electoral officer's name, phone number, fax number, postal address and email address.

Mail-in ballot

15. An elector who wants to receive a mail-in ballot must make a written request to the electoral officer that includes a copy of their proof of identity.

Mail-in ballot package

16. (1) No later than 30 days before the day on which the election is to be held, the electoral officer must mail to every elector who has made a written request a mail-in ballot package consisting of

- (a) a ballot, initialed on the back by the electoral officer or deputy electoral officer;
- (b) an outer return envelope that is pre-addressed to the electoral officer and, if the elector's address is in Canada, is postage-paid;
- (c) an inner envelope marked "Ballot" for insertion of the completed ballot;
- (d) a voter declaration form;
- (e) instructions regarding voting by mail-in ballot;
- (f) the notice set out in section 14;
- (g) a statement that the elector may vote in person at a polling station on the day of the election, or at an advance polling station if applicable, in lieu of voting by mail-in ballot, if
 - (i) they return the unused mail-in ballot to the electoral officer or deputy electoral officer, or
 - (ii) they provide the electoral officer or deputy electoral officer with a sworn affidavit stating that they have lost their mail-in ballot; and
- (h) a list of the names of any candidates who were elected by acclamation.

Six or more days before election

(2) If an elector makes a written request for a mail-in ballot six or more days before the day on which the election is to be held, the electoral officer must mail, or deliver at an agreed time and place, a mail-in ballot package to the elector as soon as feasible after receipt of the request.

Voters list

(3) The electoral officer must indicate on the voters list, next to the name of each elector to whom a mail-in ballot package was mailed or delivered, that a package has been provided to that elector and keep a record of the date on which, and the address to which, each package was mailed or delivered.

Mail-in ballot

17. (1) An elector may vote by mail-in ballot by

- (a) marking the ballot with a cross, check mark or other mark that clearly indicates the elector's choice, but does not identify the elector, next to the name of the candidates for whom they intend to vote;
- (b) folding the ballot in a manner that conceals the candidates' names and any marks on the ballot without hiding the initials on the back;
- (c) placing the ballot in the inner envelope and sealing that envelope;
- (d) completing and signing the voter declaration form;
- (e) placing the inner envelope and the completed voter declaration form in the outer envelope; and
- (f) delivering or mailing the mail-in ballot package to the electoral officer or deputy electoral officer before the time at which the polls close.

Assistance of another person

(2) If an elector is unable to vote in the manner set out in subsection (1), the elector may enlist the assistance of another person.

Voided mail-in ballot

(3) A mail-in ballot is void if the mail-in ballot package is not received by the electoral officer or deputy electoral officer before the time at which the polls close.

Safekeeping of mail-in ballot

(4) The electoral officer or deputy electoral officer must ensure the safekeeping of the mail-in ballot packages until they are opened in accordance with section 22.

Advance poll

18. (1) The electoral officer may establish an advance polling station at any location that the electoral officer considers suitable and hold an advance poll for the period beginning on the tenth day and ending on the fifth day before the day on which the election is to be held.

Procedures

(2) The procedures set out in sections 20 and 21 apply to advance polling stations.

On close of advance polling station

(3) As soon as the advance polling station closes, the electoral officer must seal the ballot box in a manner that prevents it from being opened without breaking the seal, place their initials on the seal, invite two witnesses to initial the seal, and ensure the safekeeping of the ballot box until the counting of the votes following the close of the polling stations on the day of the election.

Polling stations

19. The electoral officer must establish at least one polling station on the reserve on the day of the election unless the electoral officer is unable to do so, in which case the electoral officer must establish a polling station as close to the reserve as possible.

Polling station materials

20. (1) The electoral officer must, before the poll is open, ensure that each polling station is equipped with ballot boxes, ballots, materials for marking the ballots and any other necessary materials for the conduct of the vote.

Compartments

(2) The electoral officer or deputy electoral officer must provide a compartment at each polling station where the electors can mark their ballots without being observed by any other person.

Security

(3) The electoral officer or deputy electoral officer may designate a person to maintain order at a polling station.

Hours

(4) Polling stations must be open from 9:00 a.m. to 8:00 p.m. on the day of the election.

Candidate's representatives

(5) A candidate is entitled to two representatives in a polling station.

Sealed ballot box

(6) The electoral officer or deputy electoral officer must, before the polling station is opened, open the ballot box, call all persons present to witness that it is empty, seal the box in a manner that prevents it from being opened without breaking the seal and place it in a location that is visible to the voters.

Seal

(7) The seal of a ballot box must not be broken and the ballot box must not be opened during the time that the polling station is open.

Repeat of procedure

(8) If another ballot box is required during the time that the polling station is open, the electoral officer or deputy electoral officer must repeat the procedure set out in subsection (6).

Ballot

21. (1) Subject to subsection (3), the electoral officer or deputy electoral officer must provide a ballot on which their initials have been placed to any person who has not voted at an advance poll, who attends at a polling station and whose name is set out in the voters list.

Marked voters list

(2) The electoral officer or deputy electoral officer must place a mark on the voters list next to the name of each elector who was given a ballot.

Mail-in ballot

(3) An elector who received a mail-in ballot package under section 16 may obtain a ballot and vote in person at a polling station if the elector

(a) returns the unused mail-in ballot to the electoral officer or deputy electoral officer; or

(b) provides the electoral officer or deputy electoral officer with a sworn affidavit stating that they have lost their mail-in ballot.

Procedure

(4) After receiving a ballot, an elector must

(a) immediately proceed to the compartment provided for marking ballots;

(b) mark the ballot with a cross, check mark or other mark that clearly indicates the elector's choice, but does not identify the elector, next to the name of the candidates for whom they intend to vote;

(c) fold the ballot in a manner that conceals the candidates' names and any marks on the ballot without hiding the initials on the back; and

(d) give the ballot to the electoral officer or deputy electoral officer.

Ballot box

(5) The electoral officer or deputy electoral officer must, without unfolding the ballot, verify the initials placed on it and return the ballot to the elector to deposit in the ballot box or, at the elector's request, deposit it in the ballot box.

Privacy

(6) Subject to subsection (7), while an elector is in the compartment provided for marking ballots, no other person is allowed to be in the compartment or be in a position to see the manner in which the elector marks their ballot.

Assistance

(7) At the request of any elector who is unable to vote in the manner set out in subsection (4), the electoral officer or deputy electoral officer must, in the presence of a witness that the elector has selected, assist that elector by marking their ballot in the manner directed by the elector and return the ballot to the elector to deposit in the ballot box or, at the elector's request, deposit it in the ballot box.

Note on voters list

(8) The electoral officer or deputy electoral officer must make a note on the voters list next to the elector's name to indicate that the ballot was marked by the electoral officer or deputy electoral officer at the elector's request.

Spoiled ballot

(9) An elector who has inadvertently made their ballot unusable may return it to the electoral officer or deputy electoral officer and is, on one occasion, entitled to obtain another ballot, and the electoral officer or deputy electoral officer must write the word "cancelled" on the spoiled ballot and preserve it.

Forfeiture

(10) Any person who has received a ballot and who declines to vote or who leaves the polling station without voting forfeits their right to vote at the election.

Voters list

(11) In the case of a person who forfeits their right to vote, the electoral officer or deputy electoral officer must make a note on the voters list next to that person's name to indicate that the person received a ballot and declined to vote and, if possible, write the word "declined" on the back of the ballot and preserve it.

Entitlement to vote before closure

(12) Every elector who is inside the polling station at the time fixed for closing the poll is entitled to vote before the poll is to be closed.

Rejection or acceptance of mail-in ballot

22. At the time and on the date set for the counting of the votes in the notice referred to in section 14, the electoral officer or deputy electoral officer must, in the presence of everyone present, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,

(a) reject the ballot if

(i) it is not accompanied by a voter declaration form or the voter declaration form is not signed or witnessed,

(ii) the name of the elector set out in the voter declaration form is not on the voters list, or

(iii) the voters list shows that the elector has already voted; or

(b) place a mark on the voters list next to the elector's name that is set out in the voter declaration form and deposit the ballot in a ballot box.

Ballots

23. After all mail-in ballots have been deposited in a ballot box, the electoral officer or deputy electoral officer must, in the presence of everyone present, open all ballot boxes and

- (a) examine the ballots and reject any ballots
 - (i) that do not contain the electoral officer's or deputy electoral officer's initials, or
 - (ii) on which any marks appear that would identify the voter;
- (b) declare any portion of a ballot on which votes have been given for more candidates than are to be elected to an office as void with respect to the candidates for that office;
- (c) take note of any objection made by any candidate or their representative to any ballot found in the ballot box and decide any question arising out of the objection;
- (d) number any objection and place a corresponding number on the back of the ballot with their initials and the word "allowed" or "disallowed", as the case may be;
- (e) from the ballots that are not rejected and from the portions of ballots that are not void, count the votes given for each candidate who has not withdrawn before the close of the polls; and
- (f) prepare and sign a statement of the number of votes for each candidate, the number of ballots that are rejected and the number of ballots that have a portion declared void.

Declaration

24. (1) Subject to subsection (2), after the completion of the counting of the votes, the electoral officer must, in the presence of everyone present, declare to be elected the candidates having the highest number of votes.

Five or fewer votes

(2) If the difference between the number of votes of a candidate with the highest number of votes — who would otherwise be declared elected — and another candidate for the same position is five or fewer, the electoral officer must establish a date, time and place for a recount of the votes cast for those candidates and announce that date, time and place in the presence of everyone present.

Time of recount

(3) A recount must commence within 24 hours after the announcement by the electoral officer that a recount is necessary.

Handling of ballots

(4) If the recount is not to be conducted immediately after the counting of the votes, the electoral officer must

- (a) deposit all ballots in envelopes and seal them in a manner that prevents them from being opened without breaking the seal;
- (b) place their initials on the seal and have any two people present do the same;
- (c) deposit the sealed envelopes into a ballot box and seal that box in a manner that prevents it from being opened without breaking the seal; and
- (d) ensure the safekeeping of the sealed ballot box until the time established for a recount.

Recount

(5) On the date and at the time and place established for a recount, the electoral officer must open the sealed ballot box and the sealed envelopes in the presence of everyone present and conduct a recount.

Declaration

(6) After the completion of the recount, the electoral officer must, in the presence of everyone present, declare to be elected the candidates having the highest number of votes and, in the case where a draw has been held in accordance with section 24 of the Act, any candidate who has won the draw.

Statement

(7) Within four days after completion of the counting of the votes or, if there has been a recount, within four days after the recount, the electoral officer must

- (a) sign and post, in a conspicuous place on the reserve, a statement indicating the number of votes cast for each candidate and the names of the elected candidates; and
- (b) send a copy of the statement to the Department.

DISPOSAL OF BALLOTS AND ELECTION DOCUMENTS

Retention of documents

25. (1) The electoral officer must deposit all ballots in envelopes, seal them and ensure their safekeeping along with other election documents, for a period of 120 days following the election.

Destruction of documents

(2) At the end of the period set out in subsection (1), the electoral officer must destroy the ballots and election documents, unless they are served, in accordance with section 34 of the Act, with an application to contest the election.

CANDIDACY FEE

Return of candidacy fee

26. Within 30 days of the day on which the electoral officer declared the results of the election, the electoral officer must

- (a) refund the candidacy fee to every candidate who received more than five percent of the total votes cast; and
- (b) remit to the First Nation the candidacy fees of all candidates who received five percent or less of the total votes cast.

COMING INTO FORCE

S.C. 2014, c. 5 or on registration

27. These Regulations come into force on the day on which the *First Nations Elections Act*, chapter 5 of the Statutes of Canada, 2014 comes into force but if they are registered after that day, they come into force on the day on which they are registered.