



McLeod Lake Indian Band
Custom Election Code, 2013

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Custom Election Code, 2013

Of the
McLeod Lake Indian Band

Contact information:
McLeod Lake Indian Band
General Delivery
McLeod Lake, BC V0J 2G0
Toll Free: 1-888-822-1143
Phone: 1-250-750-4415
Fax: 1-250-750-4420

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Definitions

“Band” means the McLeod Lake Indian Band.

“Band Council” means the body composed of a Chief and Councillors, elected pursuant to this Code.

“Band Member” means a member of the Band as provided in the McLeod Lake Indian Band Membership Code.

“Candidate” means a Band Member who is nominated in accordance with Part 3.

“Code” means this McLeod Lake Indian Band Custom Election Code, 2013.

“Conflict of Interest” means any interest, financial, contractual or otherwise, in a matter that would benefit or appear to benefit a person or a member of that person’s immediate family, but does not include an interest that person holds in common with every other Band Member.

“Deputy Electoral Officer” means a person appointed under section 2.3.

“Election” means an election held pursuant to this Code.

“Election Official” includes the Electoral Officer and Deputy Electoral Officers.

“Elector” means a person who:

- (a) is a Band Member; and
- (b) is at least nineteen years of age on the Voting Day.

“Electoral Officer” means a person appointed under section 2.1.

“Employee of the Band” means a person who is employed within the meaning of the *Canada Labour Code*, R.S.C. 1985, c. L-2 by the Band or an entity controlled by the Band.

“Land Management Committee” means the Land Management Committee established under the McLeod Lake Indian Band Land Code.

“Reserve” means a McLeod Lake Indian Band Indian reserve.

“Scrutineer” means a person appointed by a Candidate to observe the conduct of voting, registration at the time of voting and counting proceedings for an Election on behalf of the Candidate.

“Trustee” means a Trustee as defined in the McLeod Lake Indian Band Trust Agreement or any Band Trust.

“Voting Day” means the day on which an Election or other vote is held pursuant to this Code.

“Voters List” means the list of Electors prepared under section 2.9.

Application

This Code applies to Band Council Elections and with such modifications as may be necessary to:

- (a) Election of Trustees,
- (b) Election of the Land Management Committee, and
- (c) Other Band elections and referenda.

Part 1: Positions and Terms of Office

Band Council Positions

1.1 The Band Council shall be composed of:

- (a) one Chief,
- (b) one Elder Councillor,
- (c) one Youth Councillor,
- (d) two On-Reserve Councillors, and
- (e) two Off-Reserve Councillors.

1.2 The Elder Councillor shall be:

- (a) not less than 60 years of age on the Voting Day, and
- (b) be nominated specifically for the Elder Councillor position.

1.3 The Youth Councillor shall be:

- (a) not less than 19 years of age nor more than 30 years of age on the Voting Day, and
- (b) be nominated specifically for the Youth Councillor position.

Residency

1.4 The Chief shall reside within the Prince George, Bear Lake, McLeod Lake, Mackenzie and Chetwynd area of British Columbia.

- 1.5 For greater certainty, no candidate for Chief shall be disqualified on the basis of residency but a Candidate elected as chief shall forthwith comply with section 1.4.
- 1.6 The Off-Reserve Councillors must not be ordinarily resident on a Reserve.
- 1.7 The On-Reserve Councillors must be ordinarily resident on a Reserve.
- 1.8 Residency is not a factor in the candidacy of an Elder Councillor or a Youth Councillor.
- 1.9 Whether a person is ordinarily resident on a Reserve shall be determined on a case by case basis.
- 1.10 The place where a person normally eats and sleeps is the person's ordinary place of residence.
- 1.11 Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.
- 1.12 Whether an absence from a person's ordinary place of residence is a temporary absence will be determined in consideration of:
 - (a) the address at which the person receives personal mail,
 - (b) the residence of the person's immediate family,
 - (c) the person's place of employment,
 - (d) the reason for the absence, and
 - (e) whether the person intends to return to the place of ordinary residence.
- 1.13 No person shall have more than one place of ordinary residence at any one time.

Term of Office

- 1.14 Subject to section 10.4 the term of office for the Band Council shall be three years from the date on which the Band Council was declared elected.
- 1.15 Election of Band Council shall be held every third year beginning in 1999.
- 1.16 Voting Day for Band Council, Trustees and the Land Management Committee in any year shall be the first Friday in June.
- 1.17 For greater certainty, sections 1.15 and 1.16 do not apply to other Band elections and referenda.

Conditions of Office

- 1.18 A member of Band Council shall forfeit three hundred dollars from their honorarium for each Band Council meeting missed when there has been at least forty eight hours' notice of the meeting unless the member has notified the Band Council and the Band Council has determined there is an acceptable reason for the absence.
- 1.19 A member of Band Council shall forfeit their office and the office shall be deemed to be vacant if while in office:
- (a) the member of Band Council is absent from three consecutive regular Council meetings unless the absence is due to illness or with the leave of Council,
 - (b) the member of Band Council is convicted of an indictable offense, including a hybrid offence not prosecuted summarily,
 - (c) the member of Band Council loses an appeal under this Code,
 - (d) the member of Band Council changes their place of ordinary residence so as to no longer meet a residency requirement during the term of office,
 - (e) the member of Band Council dies,
 - (f) the member of Band Council resigns from office, or
 - (g) the member of Band Council is incarcerated in a prison or correctional institution.
- 1.20 Where a member of Band Council is absent from six consecutive regular Band Council meetings due to illness the member of Band Council shall be conclusively deemed to have resigned their office and the office shall be deemed to be vacant.
- 1.21 A member of Band Council may not be an Employee of the Band while in office.
- 1.22 For greater certainty:
- (a) an Employee of the Band may accept nomination as a Candidate, but if elected, must resign as an Employee of the Band, and
 - (b) a member of Band Council may not become an Employee of the Band during their term of office.
- 1.23 If a member of Band Council contravenes the provisions of section 1.21 the member's office shall be deemed to be vacant.
- 1.24 The provisions of this part are enforceable in a court of competent jurisdiction.

Part 2: Election Officials

Appointment of Election Officials

- 2.1 For the purposes of conducting an election, the Band Council shall appoint an Electoral Officer from a list of certified electoral officers provided by Aboriginal Affairs and Northern Development Canada.
- 2.2 The Electoral Officer shall be appointed not less than ninety days before the Voting Day.
- 2.3 The Electoral Officer shall appoint such Deputy Electoral Officers as necessary to oversee the conduct of an Election and to ensure that two Election Officials shall be present at each poll during voting hours.
- 2.4 The Electoral Officer may delegate to a Deputy Electoral Officer any duties the Electoral Officer deems necessary for the conduct of an Election except the totaling of the votes under section 8.9.

Duties and Powers of Election Officials

- 2.5 The Electoral Officer is responsible for overseeing the conduct of an Election and shall have all the powers necessary to carry out that responsibility.
- 2.6 Before assuming their duties an Election Official shall make a solemn declaration that the Election Official:
 - (a) will faithfully and impartially fulfill the duties of the position,
 - (b) has not received and will not accept any improper inducement to perform the duties of the position other than impartially and in accordance with this Code,
 - (c) will preserve the secrecy of the ballots, and
 - (d) is not and will not become a Candidate while holding the position of Election Official.
- 2.7 Where a time of day is prescribed by this Code, the time of day kept by the Electoral Officer shall be conclusively deemed to be the correct time of day.
- 2.8 In addition to any other duties required for the conduct of an Election, the Electoral Officer shall:
 - (a) establish an election file,
 - (b) place in the election file all documents associated with the election,
 - (c) maintain the election file until such time as any appeal period has expired or any appeal has been finally decided, and

- (d) thereafter close the election file and deliver it to the Band Council for storage.

Voters List

- 2.9 The Electoral Officer, in consultation with the Band Council or appropriate Employee of the Band, shall prepare a Voters List containing the full names of all Electors in alphabetical order by surname.
- 2.10 The Electoral Officer shall post the Voters List at the Band Office on Reserve No. 1 at least seventy-two days prior to the Voting Day.

Part 3: Nominations and Declaration of Election

Nomination Period

- 3.1 The period for receiving nominations for the positions of Chief and Councillor shall begin at 9 a.m. on the sixtieth day before the Voting Day and end at 9 p.m. on the thirty-sixth day before the Voting Day.

Notice of Nomination

- 3.2 At least sixty-six days but not more than ninety-six days before the Voting Day, the Electoral Officer shall issue a notice of nomination.
- 3.3 The Electoral Officer shall cause the notice of nomination to be:
 - (a) posted in the Band Office at Reserve No. 1,
 - (b) mailed to the last known address of all Electors, and
 - (c) publicized by any other means the Electoral Officer considers appropriate.
- 3.4 The notice of nomination shall include:
 - (a) the offices for which Candidates are to be elected on Band Council, the Land Management Committee or board of Trustees,
 - (b) the dates, times and places at which nominations will be received,
 - (c) the date, time and place at which any nomination meeting will be held,
 - (d) the nomination form with necessary information on the requirements and procedures for making a nomination,
 - (e) the Electoral Officer's contact information, and
 - (f) any other information the Electoral Officer considers appropriate.

Who Can Make A Nomination

- 3.5 An Elector may nominate one or more Candidates.
- 3.6 No person other than an Elector may nominate a Candidate.

Who Can Be Nominated

- 3.7 Any Band Member who:
- (a) is at least 19 years of age on the Voting Day,
 - (b) has been a Band member for not less than 12 months immediately preceding the day of the nomination meeting,
 - (c) has been nominated to be a Candidate pursuant to the provisions of this Code,
 - (d) meets the residency requirements set out for the position to which the member is nominated,
 - (e) is not a Severalty Member as defined in the McLeod Lake Indian Band Membership Code, 2013, and
 - (f) is not incarcerated or detained in a correctional institution on the day of the nomination meeting

may be nominated as a Candidate.

- 3.8 No Candidate may be nominated for more than one office in any one Election.

How to Nominate

- 3.9 A nomination must be made in writing and must include the following:
- (a) the name of the Band Member being nominated,
 - (b) the office for which the Band Member is being nominated,
 - (c) the address, email and phone number of the Band Member being nominated, and
 - (d) the name, address, and where available, email address and phone number of the Elector making the nomination.
- 3.10 An Elector making a nomination must provide to the Electoral Officer a statement signed by the Band Member who is nominated consenting to the nomination and confirming that the Band Member is eligible to be nominated.
- 3.11 If the statement referred to in section 3.10 is not provided to the Electoral Officer prior to the end of the nomination period, the Band Member who is nominated is deemed not to have been nominated and is not a Candidate.

- 3.12 Upon accepting a nomination, a Candidate shall disclose in writing to the Electoral Officer any Conflicts of Interest that may arise from the Candidate's election to office.
- 3.13 All nomination documents must be received by the Electoral Officer before the end of the nomination period.
- 3.14 The nomination documents may be delivered to the Electoral Officer by hand, mail, e-mail, courier service or facsimile transmission.

Nomination Meeting

- 3.15 The Electoral Officer shall hold a nomination meeting at the Band Office on Reserve #1 commencing at 7:00 p.m. on the 45th day before the Voting Day, and may hold such other nomination meetings as the Electoral Officer deems appropriate.

Declaration of Candidates by Electoral Officer

- 3.16 Immediately following the end of the nomination period the Electoral Officer shall declare as Candidates all eligible persons who have been nominated.

Declaration of Election or Acclamation

- 3.17 If the number of Candidates nominated does not exceed the number of positions to be elected, the Electoral Officer shall declare the Candidate or Candidates elected by acclamation on Voting Day.
- 3.18 If the number of Candidates exceeds the number of positions to be elected, the Electoral Officer shall declare that an Election shall be held.

Part 4: Notice of election by voting

Issuing the Notice of Election

- 4.1 The Electoral Officer shall issue a notice of election not later than 42 days prior to the Voting Day.

- 4.2 The notice of election shall include:
- (a) the offices for which Candidates are to be elected,
 - (b) the names of the Candidates for each office,
 - (c) the date of the Voting Day,
 - (d) the location of the polls,
 - (e) the voting hours,
 - (f) the mailing address of the Appeal Board, and
 - (g) any other information the Electoral Officer considers appropriate.

Posting the Notice of Election

- 4.3 At least 42 days prior to the Voting Day, the Electoral Officer shall cause the notice of election and any disclosures provided under section 3.12 to be:
- (a) posted in the Band Office at Reserve No. 1 and such other places as the Electoral Officer considers appropriate,
 - (b) mailed to the last known address of all Electors, and
 - (c) publicized by any other means the Electoral Officer considers appropriate.

Part 5: Pre-Election Procedure

Polls

- 5.1 The Electoral Officer shall establish one poll at each of:
- (a) Reserve No. 1, and
 - (b) the City of Prince George.
- 5.2 In consultation with the Band Council, the Electoral Officer may establish such additional polls as may be considered necessary.
- 5.3 A poll shall contain one or more polling booths such that an Elector may mark a ballot without the mark being observed.
- 5.4 The Electoral Officer shall cause paper ballots to be prepared in the form prescribed and shall list on the ballot for each position to be elected, the full name of all Candidates for that position alphabetically by surname.

5.5 The Electoral Officer shall:

- (a) prepare sufficient copies of regular ballots and mail-in ballots, which shall be uniform in size, appearance, quality and weight, provided that where the Election is for Band Council, the ballot for the election of Chief shall be of a different colour than the ballot for the election of Councillors,
- (b) prepare sufficient copies of the secrecy envelopes, the identification envelopes, and the return envelopes,
- (c) prepare sufficient copies of the voting instructions,
- (d) obtain a sufficient number of ballot boxes,
- (e) provide for a designated voting area at the polls such that an Elector may mark a ballot without the mark being observed,
- (f) provide a sufficient number of writing instruments for marking the ballot,
- (g) ensure that samples of the ballot question are posted or available for examination at the polls, and
- (h) make such other arrangements as may be necessary to conduct the vote.

Part 6: Election Poll

Who May Vote

6.1 An Elector may vote in an Election.

6.2 No person other than an Elector may vote in an Election.

How to Register as a Voter at a Poll

6.3 A Band Member who is at least nineteen years of age on a Voting Day whose name does not appear on the Voters List, may at any time prior to the closing of a poll on Voting Day, present identification to an Election Official and if the Election Official is satisfied that the person is eligible to be an Elector shall add the Band Member's name to the Voters List and allow the Band member to vote at the poll.

6.4 The Electoral Officer may confer with such Employees of the Band as necessary to determine if a person is eligible to be an Elector under section 6.3.

Duties of Election Officials on Voting Day

6.5 Two Election Officials shall be present at each poll during the voting hours.

6.6 An Election Official who is an Elector may vote by mail-in ballot but may not vote at a

poll.

- 6.7 An Election Official shall immediately before the commencement of each poll:
- (a) open the ballot boxes and call such persons as may be present to witness and execute a statement verifying that the ballot boxes are empty,
 - (b) seal the ballot boxes, and
 - (c) place the ballot boxes in plain view for the reception of the ballots.
- 6.8 A seal on a ballot box shall not be broken during the voting hours.

Voting Hours

- 6.9 The polls shall be open from 8:00 a.m. to 8:00 p.m. local time on Voting Day.

Maintaining Order

- 6.10 An Election Official shall maintain order at all times in the poll and may cause to be removed any person who loiters or who interferes with, disrupts or attempts to influence the orderly conduct of the poll.

Voting Procedures

- 6.11 Persons attending at a poll for the purpose of voting shall:
- (a) present identification to an Election Official verifying that they are an Elector,
 - (b) be verified by an Election Official as an Elector,
 - (c) sign any required voters sign-in document,
 - (d) be given the required ballots by the Election Official.
- 6.12 The Election Official shall initial each ballot prior to giving it to an Elector.
- 6.13 Each Elector, after receiving the ballots, shall proceed directly to the place provided for marking ballots and shall mark the ballots by placing a cross ("X") or other mark that clearly indicates the Elector's intent, in the space provided on each ballot opposite the name of the candidate, and shall then deposit the ballots in the ballot box.
- 6.14 While an Elector is in the place provided for marking ballots, no person other than any persons providing special assistance under section 6.20 shall be in a position to see how the Elector marks the ballots.

- 6.15 An Elector who receives a spoiled or improperly printed ballot or who inadvertently deals with a ballot in such a way that it cannot be correctly read so as to determine the Elector's intent, shall return the ballot to the Election Official who shall write the word "spoiled" on the ballot, retain the ballot in the election file, provide the voter with no more than one replacement ballot and make an entry on the Voters List opposite the name of the Elector showing that the Elector received the ballot.
- 6.16 Any Elector who receives a ballot and who leaves the poll without delivering the ballot to the Election Official in the manner provided, or after receiving the ballot, refuses to vote, shall forfeit the right to vote at the election, and the Election Official shall make an entry on the Voters List opposite the name of the Elector showing that the Elector received the ballots and did not vote.
- 6.17 If the ballots referred to in section 6.16 are available the Election Official shall mark on the ballots the word "declined" and all ballots so marked shall be retained in the election file.
- 6.18 Every elector who is physically present in a poll at 8:00 p.m. may vote before the poll is closed.
- 6.19 The Electoral Officer shall establish a process of ongoing communication by telephone or other effective means between polls so as to ensure that the List of Voters located at each poll is current and that no Elector votes more than once or has an opportunity to vote more than once.

Special Assistance

- 6.20 An Election Official shall, on the reasonable request of an Elector who is unable to read or is otherwise unable to vote in the prescribed manner, in the presence of a witness acceptable to the Elector and the Election Official, provide special assistance to the Elector at a poll by marking a ballot in secret as directed by the Elector and immediately folding and depositing the ballot into the ballot box.
- 6.21 An Election Official, after providing special assistance to an Elector, shall make an entry on the Voters List beside the name of the Elector indicating:
- (a) that the ballot was marked by the Election Official at the request of the Elector
 - (b) the reason for the Elector's request, and
 - (c) the name of the witness.

Scrutineers

- 6.22 A Candidate is entitled to one Scrutineer at each poll.

- 6.23 A Candidate shall identify any person acting as a Scrutineer for the Candidate to the Electoral Officer in writing.

Part 7: Mail-in voting

Procedure for Electoral Officer

- 7.1 The Electoral Officer shall send by mail or otherwise provide a mail-in voting package to:
- (a) the last known address of each Elector who does not ordinarily reside in a community in which a poll is to be established under section 5.1, or
 - (b) any Elector on request.
- 7.2 If no current address can reasonably be ascertained for an Elector, the Electoral Officer shall record that fact opposite the Elector's name on the Voters List, and the Electoral Officer shall be conclusively deemed to have no further responsibility to send a mail-in package to that Elector.
- 7.3 The Electoral Officer shall write on the back of each mail-in ballot the Electoral Officer's initials in such a way that the initials are visible when the ballot is folded.
- 7.4 The mail-in package shall include:
- (a) the notice of election,
 - (b) a list of candidates,
 - (c) a list of the contents of the package,
 - (d) a letter of instructions,
 - (e) a numbered declaration envelope,
 - (f) a stamped return envelope addressed to the Electoral Officer,
 - (g) the required ballots, and
 - (h) such other information as the Electoral Officer considers appropriate.
- 7.5 The Electoral Officer shall note on the Voters List the name of every Elector to whom a mail-in package is sent.

Procedure for Electors

- 7.6 Every Elector who votes by mail-in ballot shall:
- (a) mark the ballots by placing a cross (“X”) or other mark that clearly indicates the Elector’s intent in the space provided on each ballot opposite the name of the Candidate,
 - (b) fold the ballots to conceal the marks and to expose the Election Official’s initials on the back of the ballot,
 - (c) place the ballot in the declaration envelope and seal the declaration envelope,
 - (d) complete and sign the declaration envelope before a witness who is at least nineteen years of age on the date the declaration is completed,
 - (e) obtain the signature and address of the witness on the declaration envelope,
 - (f) place the completed declaration envelope containing the ballot in the return envelope, and seal the return envelope, and
 - (g) return the sealed return envelope to the Electoral Officer by mail, courier or hand-delivery.
- 7.7 A mail-in ballot must be received by an Election Official prior to 8:00 p.m. local time on the Voting Day.
- 7.8 A mail-in ballot that is received later than 8:00 p.m. local time shall not be counted and the unopened return envelope shall be marked “Rejected”.
- 7.9 An Elector who has returned a mail-in ballot may vote at a poll, but the mail-in ballot received from that Elector shall be set aside and not counted.

Processing and Counting a Mail-in Ballot

- 7.10 The Electoral Officer, upon receiving a return envelope within the specified time shall, in the full view of at least two witnesses, place on the Voters List a mark beside the name of the Elector who returned the mail-in envelope.
- 7.11 On the Voting Day the Electoral Officer shall, in the full view of at least two other persons present, open each return envelope and determine if the declaration envelope is enclosed and properly executed.
- 7.12 If the declaration envelope is enclosed and properly executed, the Electoral Officer shall retain the declaration envelopes in a secure manner until the counting of the votes under Part 8.

- 7.13 If no declaration is enclosed or if the declaration is not properly executed, the Electoral Officer shall:
- (a) make an entry on the Voters List opposite the name of the Elector stating that no declaration was enclosed, or that the declaration was not properly executed, as the case may be,
 - (b) mark the declaration envelope as “Improper Mail-in Ballot”,
 - (c) not open the declaration envelope,
 - (d) retain the declaration envelope in the election file, and
 - (e) record the ballot as spoiled.
- 7.14 At the time of counting the votes under Part 8, the Electoral Officer shall, after setting aside any mail-in ballots received from an Elector who has voted at a poll, open the declaration envelope and without unfolding the ballot or disclosing the mark made by the Elector, verify the Electoral Officer’s initials.
- 7.15 If the Electoral Officer’s initials are verified, the Electoral Officer shall deposit the ballot in a ballot box and place a line through the name of the elector on the Voters List.
- 7.16 If the Electoral Officers initials are not verified, the Electoral Officer shall:
- (a) make an entry on the Voters List opposite the name of the Elector that the Electoral Officer’s initials were not verified,
 - (b) mark the declaration envelope as “Improper Mail-in Ballot,”
 - (c) not deposit the ballot into the ballot box, and
 - (d) record the ballot as spoiled.

Part 8: Counting the Vote

When Votes are to be Counted

- 8.1 Counting of the votes shall take place immediately following the close of the polls on Voting Day.

Where Votes are to be Counted

- 8.2 Counting of votes shall take place at the poll where the ballot boxes containing the ballots are located unless the Electoral Officer directs the counting to take place at another location.

Who Is Present At Counting

- 8.3 An Election Official shall count the votes.
- 8.4 The Candidates and one Scrutineer for each Candidate may be present.
- 8.5 Other persons may be present while the votes are being counted unless excluded by the Electoral Officer.

Procedures for Counting the Vote

- 8.6 The Electoral Officer may request and obtain voluntary assistance from such persons as may be necessary or advisable to assist in recording the count of the votes.
- 8.7 Immediately following the close of the poll, an Election Official shall open the ballot boxes and:
- (a) examine the ballots and reject any ballots
 - i. that are not initialed by an Election Official,
 - ii. that in the opinion of the Election Official do not give a clear indication of the Elector's intent,
 - iii. have more votes than there are vacancies for the position, or
 - iv. upon which anything appears that identifies the Elector,
 - (b) note any objections made by a Candidate or a Scrutineer to any of the ballots in the ballot box and decide any question arising out of the objection,
 - (c) number each objection and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed" as the case may be, together with the Election Official's initials, and
 - (d) count the votes given for each Candidate on the ballots not rejected.
- 8.8 After the counting of the ballots at any poll not located at the poll on Reserve No. 1, the Election Official who conducted the count shall communicate the results of the count to the Election Official at Reserve No. 1.
- 8.9 The Electoral Officer shall total the results of all the counts and
- (a) announce the names of the Candidates and the number of votes received by each,
 - (b) declare the Candidates who received the highest number of votes elected, and
 - (c) as soon as practical post in the Band Office on Reserve No. 1 a signed statement showing the number of votes cast for each Candidate and declaring Candidates who received the highest number of votes elected.

Election Report

- 8.10 Within three days of the Voting Day, the Electoral Officer shall complete and sign an election report, in triplicate, which shall contain:
- (a) a list of all the Candidates,
 - (b) the number of ballots cast,
 - (c) the number of votes for each Candidate,
 - (d) the number of specially assisted Electors,
 - (e) the number of spoiled ballots,
 - (f) the number of rejected ballots,
 - (g) a list of Candidates elected,
 - (h) the number of mail-in ballots mailed to Electors and the number returned, and
 - (i) a ballot reconciliation report.

Tie-Vote

- 8.11 In the event of a tie in the vote the Electoral Officer shall within twenty-four hours of the Voting Day conduct a recount of the ballots in the presence of the tied Candidates or the Candidate's Scrutineer.
- 8.12 If a tie remains after the recount under section 8.11 the Electoral Officer shall:
- (a) declare that no Candidate has been elected to that office, and
 - (b) declare that an Election shall be held between the tied Candidates.
- 8.13 An Election under section 8.12(b) will be held as soon as reasonably possible by mail-in ballot conducted in accordance with this Code.
- 8.14 Subject to any appeal under Part 9, the results of a recount under section 8.11 shall be final.

Preservation of Ballots

- 8.15 The Electoral Officer shall retain all ballots until:
- (a) the appeal period has elapsed and no appeal has been taken, or
 - (b) in the event an appeal has been commenced, until the appeal has been finally determined,
- and the ballots shall thereafter be destroyed.

Part 9: Election Appeals

Appeal Board

9.1 Not less than ninety days prior to the Voting Day, Council shall appoint an Appeal Board.

Composition of the Appeal Board

9.2 The Appeal Board shall be composed of:

- (a) one Elector who has no conflict of interest in the outcome of the appeal, and
- (b) two persons who are:
 - i. not Band Members,
 - ii. are at least 19 years of age, and
 - iii. have no conflict of interest in the outcome of the appeal.

9.3 No member of the Appeal Board shall be an Employee of the Band, a member of Council or a Candidate.

Alternate Appeal Board Members

9.4 Council shall appoint one alternate member of the Appeal Board for the Elector appointed under section 9.2(a) and one alternate member of the Appeal Board for the members appointed under section 9.2(b) who shall become a member of the Appeal Board in the event that an applicable Appeal Board member becomes unable to serve.

Term of Office

9.5 A member of the Appeal Board shall hold office until all appeals have been determined.

Duties

9.6 The Appeal Board shall supervise and administer all election appeals in accordance with the provisions of this Code.

9.7 A Candidate declared elected under sections 8.9 or after a recount under section 8.11 shall remain in office during an appeal.

Appeal Procedure

- 9.8 Any Candidate or any Elector may, within seven days of the Voting Day, appeal the results of the Election if they have reasonable grounds for believing that there was an error or violation of this Code that might have affected the outcome of the Election.
- 9.9 An appeal under section 9.8 shall be commenced in the following manner:
- (a) an appellant shall provide a notice of appeal in writing containing details of the alleged error or violation of this Code together with a nonrefundable fee by money order or certified cheque in the amount of five hundred dollars payable to the Band,
 - (b) the contents of the notice of appeal shall be supported by affidavit, and
 - (c) the notice of appeal shall be sent by a method of mail that can be tracked and that requires signature proof of sending and receiving, or by hand delivery to the Appeal Board.
- 9.10 Within seven days of receiving a notice of appeal the Appeal Board shall forward a copy of the notice of appeal and any supporting documents by a method of mail that can be tracked and that requires signature proof of sending and receiving, or by hand delivery to each affected Candidate and to the Electoral Officer.
- 9.11 A Candidate or the Electoral Officer may within fourteen days of receiving the notice of appeal forward to the Appeal Board by a method of mail that can be tracked and that requires signature proof of sending and receiving, or by hand delivery, e-mail or fax a written response to the allegations in the appeal, together with any supporting documentation.
- 9.12 Subject to section 9.13 an appeal under this Part is an appeal on the record.
- 9.13 Where an appeal alleges that an Electoral Official has acted unreasonably or has failed to perform a required function, the Appeal Board may conduct or authorize such investigation into the appeal allegations as the Board deems appropriate and necessary.
- 9.14 After a review of the record, the Appeal Board shall:
- (a) deny the appeal on the grounds that the evidence presented did not confirm an error or violation of this Code, or
 - (b) deny the appeal on the grounds that an error or violation of this Code was confirmed but the error or violation did not affect the result of the election, or
 - (c) uphold the appeal, and direct that a new election be held or that an Appellant be declared elected as the case may be, and
 - (d) where appropriate, make recommendations to the Band and to the Electoral Officer as to how any problem identified in the appeal can be prevented in future elections.

- 9.15 An Election under section 9.14(c) shall be held as soon as reasonably possible and shall be conducted under this Code with such changes as may be reasonably necessary and appropriate in the circumstances.
- 9.16 Nothing in this Code is intended to confer jurisdiction on the Appeal Board to consider or determine any matter involving allegation of criminal conduct.
- 9.17 Where the Appeal Board determines that an appeal under this Part is frivolous and vexatious, the Appeal Board may order the costs of the appeal to be paid by the appellant.

Part 10: vacancy On council

Vacancy

- 10.1 A vacancy in the office of Chief shall be filled by an Election under this Code.
- 10.2 A vacancy in the office of Councillor shall be filled by the Candidate having the highest number of votes in the last Election for that office without having been declared elected, provided that Candidate is willing to serve, and where not willing to serve, by the applicable Candidate having the next highest number of votes, until the office is filled or until there are no further eligible Candidates.
- 10.3 Where there are no eligible Candidates for the office of Councillor, a vacancy shall be filled by an Election under this Code.
- 10.4 Where a vacancy is filled by an Election under this Part, the term of office of the Candidate declared elected shall end at the next regular Election.
- 10.5 Notwithstanding any other provision of this Part, if a vacancy in the office of Chief or Councillor occurs within six months of the next scheduled Election, the vacancy shall not be filled.
- 10.6 An Election under this Part will be held by mail-in ballot, provided that a vacancy of a Trustee or a member of the Land Management Committee will be held according to the requirements of that office.

Part 11: Amendment

- 11.1 This Part applies to:
- (a) this Code,
 - (b) the McLeod Lake Indian Band Membership Code, 2013 and
 - (c) subject to their terms, such other codes as may be prescribed in that code.
- 11.2 This Code may be amended by a simple majority of the Electors who vote and who vote in favour of the amendments in a ratification vote conducted according to this Code.
- 11.3 The procedure for voting shall follow the procedure for an Election under this Code with such variations as may be reasonably necessary and appropriate in the circumstances.
- 11.4 Sections 1.15 and 1.16 do not apply to a ratification vote under this Part.
- 11.5 Information meetings to consult with Band members about the proposed amendments shall be held at least thirty days prior to the ratification vote in McLeod Lake, Prince George, Vancouver and such other locations as the Electoral Officer considers appropriate, provided that nothing in this Code precludes further information meetings being held at any time prior to the ratification vote.
- 11.6 The notice of ratification vote shall include:
- (a) information about the proposed amendments,
 - (b) the date, time, and place of the information meetings under section 11.5,
 - (c) the date of the ratification vote, and
 - (d) Such other information as the Electoral Officer considers appropriate.
- 11.7 The mail-in package shall include:
- (a) the notice of ratification vote,
 - (b) a summary of the proposed amendments,
 - (c) a list of the contents of the package,
 - (d) a letter of instructions,
 - (e) a numbered declaration envelope,
 - (f) a stamped return envelope addressed to the Electoral Officer,
 - (g) the required ballots, and
 - (h) such other information as the Electoral Officer considers appropriate.

Part 12: General Provisions

Adjournment or Temporary Delay

- 12.1 The Electoral Officer may adjourn Election proceedings to another date, time or place if the Electoral Officer reasonably concludes that the health or safety of one or more individuals is at risk, or that the integrity of the proceedings is at risk, or if a poll becomes unavoidably inaccessible.
- 12.2 The Electoral Officer shall provide as much notice as is reasonable possible to any person affected by an adjournment or relocation of Election proceedings under section 12.1.
- 12.3 The time prescribed for the doing of any action that is interrupted by an adjournment under this part shall be extended by the period of time involved in the adjournment such that the total time actually available for the proceedings is the same as that provided in this Code.

Legal Proceedings by Member of Band Council

- 12.4 If a member of Band Council commences or continues legal proceedings against the Band in respect of a purely personal matter, while in office, the member of Band Council shall be deemed to be in a Conflict of Interest with respect to that matter.
- 12.5 If a member of Band Council commences or continues legal proceedings against the Band in respect of a matter of the Band's collective or communal interests, the member shall forfeit their office and the office shall be deemed to be vacant.

Computation of Time

- 12.6 Periods of time specified in this Code will be computed in accordance with the *Interpretation Act*, R.S.C., 1985, c. I-21.