

Frog Lake First Nations Election Code

DRAFT FOR COMMUNITY REVIEW



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1.0 PREAMBLE

Frog Lake First Nations does not intend to utilize this *Election Code* regarding the election of Chief and Councillors in any way to affect, define or erode the **Spirit and Intent of Treaty 6** or to be construed so as to abrogate or derogate from the protection provided for existing Aboriginal and Treaty rights including the Spirit and Intent of Treaty 6, of the Aboriginal peoples of Canada in representation of Her Majesty the Queen, by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*, or to reduce the fiduciary responsibility of the Government of Canada at any level whether municipal, provincial or federal or in representation of in any form including departmental or programming and the delivery of services.

- (a) Frog Lake First Nations has the Inherent Right, Aboriginal Right, Treaty Right and authority to govern relations among its members and between the First Nation and other Governments.
- (b) The Aboriginal Right of the Frog Lake First Nations to self-government was recognized and affirmed in Treaty No. 6 entered into between Her Majesty the Queen in Right of Canada and the Frog Lake First Nations.
- (c) The Customs, traditions and practices of the Frog Lake First Nations in regards to self government have been established with the consent and participation of the members of the Frog Lake First Nations.
- (d) The adoption of the *Frog Lake First Nations Election Code* does not in any way affect, define or erode the Spirit and Intent of Treaty 6 or the traditional values of the community.
- (e) Frog Lake First Nations now desires that its customs and traditions in relation to the Election of the Chief and Councillors be incorporated and recorded in written customary election regulations and procedures. [This Election Code does not affect hereditary or traditional leaders.](#)
- (f) Frog Lake First Nations will approve by referendum of a simple majority of Electors the adoption of this *Election Code*.
- (g) Upon successful ratification of this *Election Code*, Frog Lake First Nations shall pass a Band Council Resolution (BCR) proclaiming this *Election Code* be approved by the community.

Commented [1]: The Preamble intends to communicate the spirit and intent of this document.

It reaffirms FLFNs rights to self government as recognized in Treaty No. 6, respecting FLFN customs and traditions, and determining the methods by which FLFN elected officials are chosen.

Commented [2]: This change expands self government beyond only as it relates to this code (as it was previously defined in the Definitions section).

Commented [3]: This document only concerns how elected officials are chosen. The methods by which Hereditary or traditional leaders are respected.

2.0 CITATIONS

- (a) This document is being co-developed as the *Frog Lake First Nations Election Code* with Elders, Women, Youth, current band members, consultants and Frog Lake First Nations legal team.
- (b) Important elements of this draft *Election Code* were identified through a comprehensive online, and hard copy, survey of the membership in September 2021, and focus groups in October 2021 to March 2022 from Elders, Youth, Women, Membership, and Traditional Headmen. Extensive further consultation will continue in 2022.
- (c) This *Election Code* draft is for community review, discussion and feedback. A final text will be developed from feedback for a referendum seeking community approval.
- (d) This *Election Code* will be reviewed by Frog Lake First Nations' legal counsel to ensure interests of FFLNs and members are protected.

Commented [4]: The Citation section identifies the elements and processes used to inform the creation of this Draft.

3.0 DEFINITIONS

- (a) “**Act**” means the *Indian Act*, R.S.C. 1985, c. I-5, and as amended from time to time, and any successor legislation to the same general intent and effect.
- (b) “**Acclamation**” means an election of a Candidate to Office without ballot.
- (c) “**Appellant**” means an individual who submits an appeal in accordance with this *Election Code* with respect to an Election, or By-Election.
- (d) “**Appeal Committee**” means the committee established under section 9 of this *Election Code*.
- (e) “**Advance Poll**” means a poll held prior to Election Day to permit voters to cast their ballots, pursuant to section 5.8 of this *Election Code*.
- (f) “**By-Election**” means an Election held for the Office of Chief or Councillor pursuant to section 12 of this *Election Code* to replace an individual who has been removed from Office or where a vacancy has been declared.
- (g) “**Campaign**” means to encourage Electors to vote for one or more specific candidates in an Election.
- (h) “**Candidate**” means an individual who has been confirmed by the Electoral Officer as eligible for Office pursuant to the qualifications outlined in this *Election Code*.
- (i) “**Chair**” means the chair of the Appeals Committee pursuant to section 9.1(i) of this *Election Code*.
- (j) “**Chief**” means an individual Elected to the Office of Chief pursuant to this *Election Code*.

- (k) **“Council”** means the Chief and Councillors who are empowered to act on behalf of the Frog Lake First Nations.
- (l) **“Councillor”** means an individual who is Elected to the Office of Councillor under this *Election Code*.
- (m) **“Election Code”** means this *Frog Lake Election Code*.
- (n) **“Directly Related”** means currently related as a: brother, sister, mother, father, son or daughter, husband or wife, stepchild, grandparent, grandchildren, great-grandchildren, cousin, niece, nephew, aunt, uncle, in-law, common-law cohabitant, or any other family member who resides with a member of Council or Candidate, as the case may be.
- (o) **“Elder”** means an individual whose name is entered on the First Nation List of Electors is considered by the general FLFNs members as an Elder by local cultural or traditional ways.
- (p) **“Elected”** means an individual chosen to hold the elected position of Office of Chief or Councillor by Electors, or acclaimed or appointed by the provisions set forth in this *Election Code*.
- (q) **“Election”** means a vote of Electors of Frog Lake First Nations held to choose who will hold the Office(s) of Chief or Councillor.
- (r) **“Election Call”** means the duly enacted Band Council Resolution that declares an election will be held and specifies the Election Day.
- (s) **“Election Period”** means the period of time between the Nomination Meeting and Election Day.
- (t) **“Electronic Poll”** means a device that accesses the voting software chosen by the Electoral Officer for an Election.
- (u) **“Election Day”** means the date set for conducting an Election, or By-Election or Run-Off Election.
- (v) **“Elector”** means an individual who is eligible to vote pursuant to section 5.2 of this *Election Code*.
- (w) **“Electoral Officer”** means an individual appointed by Band Council Resolution to be responsible for conducting Elections, By-Elections, and/or Run-Off Elections.
- (x) **“Frog Lake First Nations”** or **“FLFNs”** means “Frog Lake Indian Band #465” as identified by Indigenous Services Canada (ISC).
- (y) **“FLFNs Entity”** means any corporation, board, council, association, society, or other organization in which FLFNs has a majority ownership interest or that is controlled by FLFNs.
- (z) **“List of Electors”** means the list of Members who are eligible to vote in an Election made pursuant to section 5.4 of this *Election Code*.

Commented [5]: Members have expressed that family ties are deep, and often closely intertwined throughout FLFN. This definition may be too broad.

- (aa) **“Member”** means a member of Frog Lake First Nations pursuant to the Frog Lake Membership Code, if such a code is in force. In the absence of a Frog Lake Membership Code in force, Member means the individuals on the Band List as defined in the *Act*.
- (bb) **“Nomination Meeting”** means the meeting at which individuals come forward to nominate and second candidates for an Election.
- (cc) **“Office”** means the position of Chief or Councillor elected for a specific term.
- (dd) **“Polling Clerk”** means any individual appointed by the Electoral Officer to assist the work of the Electoral Officer.
- (ee) **“Polling Station”** one or more physical locations designated by the Electoral Officer where Electors may cast their ballots for candidates during an Election.
- (ff) **“Reserve”** means collectively the Puskiakiwenin 122, Unipouheos 121 and Blue Quills First Nation Indian Reserve, being FLFNs’ reserve lands.
- (gg) **“Run-Off Election”** means an Election held in the event of a Tie Vote that would change the outcome of the Election.
- (hh) **“Scrutineer”** means an individual appointed by a Candidate who ensures proper procedures are followed during an Election.
- (ii) **“Tie Vote”** means a situation where after counting ballots, two or more Candidates receive the same number of votes.

4.0 COUNCIL

4.1 Composition of Council

- (a) FLFNs will be governed by a Council consisting of one (1) Chief and six (6) Councillors.

Commented [6]: Members did not want to change the size of council.

4.2 Term of Office

- (a) Except by operation of a vacancy or removal from Office, the term of Office of the Chief and each Councillor will be four (4) years commencing the day each Chief and each Councillor take the oath of office following Election Day.
- (b) An individual elected in a By-Election as a Chief or Councillor will hold that Office for the remainder of the term of that Chief or Councillor they are replacing. By-Elections shall follow all rules and regulations that regular Elections follow.

Commented [7]: Members surveyed overwhelmingly thought 2 years is too short of a term for council.

40% of members want 4-year terms. 30% of members want three-year terms

- (c) A Chief or Councillor must take the oath of office before assuming the roles and responsibilities of their elected Office.

4.3 Role of Council

- (a) The Council are the elected representatives of FLFNs and will, at all times, act in good faith and in a manner which represents the interests of the FLFNs.

5.0 ELECTIONS

5.1 General Election Call

- (a) Chief and Council shall pass a Band Council Resolution declaring the Election Call at least ninety (90) days prior to the expiration of the current term of office.
- (b) The Election Call shall specify the Election Day and the combination of physical and additional methods of voting to be used for the Election.

5.2 Voter Eligibility

- (a) Any Member is entitled to vote if on the Election Day they:
 - (i) are eighteen (18) years of age or older on or before the day of the Election, Run-Off Election, or By-Election; and
 - (ii) are on the List of Electors.

5.3 Notice of Election

- (a) At least eighteen (18) days prior to an Election Day, the Electoral Officer must inform Electors of:
 - (i) each Candidate nominated and the Office for which they are nominated;
 - (ii) the locations of at least one Polling Station on Reserve, at least one Polling Station off Reserve, at least one online Polling Station, and the hours when each Polling Station will be open;
 - (iii) the List of Electors and the process to update the List of Electors; and
 - (iv) locations where a copy of this *Election Code* may be obtained at no cost.

5.4 List of Electors

- (a) At least twenty-nine (29) days before the Election Day, FLFNs band administration shall provide the Electoral Officer with the names, phone numbers, email addresses, mailing addresses and band number of all Members aged eighteen (18) or over.
- (b) Electors' information shall be kept confidential and used by the Electoral Officer only for the purposes of creating the List of Electors and administering an Election, as required by this *Election Code*.
- (c) A Candidate may obtain from the Electoral Officer the List of Electors, containing only the names of Electors, to conduct a Campaign.
- (d) Upon request by a Member, the Electoral Officer will decide whether the name of a person should or should not be on the List of Electors and shall provide written reasons therefor to the requesting Member within forty-eight (48) hours of the request. An Elector may appeal the Electoral Officer's decision made pursuant to this section 5.4(d) with the Appeal Committee.

(e) The Electoral Officer may revise the List of Electors by adding, modifying, or removing one or more names, upon presentation of documentary evidence which demonstrates to the Electoral Officer's satisfaction that:

- (i) the name of an Elector has been omitted from the List of Electors;
- (ii) the name of an Elector is incorrectly set out in the List of Electors; or
- (iii) the name of an individual who is not eligible to vote is included in the List of Electors.

5.5 Duration of Election

(a) The Election Period will consist of the period of time between the Nomination Meeting and the Election Day.

Commented [8]: Members were strongly in favour of a shorter election period than the current 42 days.

The proposed minimum length for an election is 21 days after the Nomination Meeting (7.1)

5.6 Restrictions on Voting

(a) An Elector may only vote for a Candidate whose name appears on the ballot.

5.7 Refusing Votes

(a) An Electoral Officer or Polling Clerk must refuse to allow an individual to vote if:

- (i) the individual's name does not appear on the List of Electors;
- (ii) the individual has previously voted in the current Election;
- (iii) the individual is unable to establish their identity to the satisfaction of the Electoral Officer;
- (iv) the individual represents that they are another individual not themselves; or
- (v) the individual presents identity documents of another individual.

(b) An Electoral Officer or Polling Clerk may remove an individual from a Polling Station if:

- (i) the individual is interfering with another Elector's ability to vote; or
- (ii) the individual is refused the opportunity to vote pursuant to section 5.7 (a).

5.8 Advance Poll

(a) The Council may, as part of the Election Call Band Council Resolution, provide an option for holding one or more Advance Polls. If an Advance Poll is provided, then the Band Council Resolution must set the duration, date(s), time(s), place(s), and mechanism(s) of the Advance Poll.

Commented [9]: Conversations revealed members aren't always able to vote on election day due to varying constraints.

It is proposed that council be given the option to arrange Advance Polling (5.8), or electronic voting (8.5.3) should a need arise.

(b) An Advance Poll, if any, must be held at least three (3) days prior to an Election Day.

(c) Voting procedures for the Advance Poll will be the same as those used for Election Day.

- (d) Ballots cast using paper at a physical location in an Advance Poll will remain locked in sealed ballot boxes, and remain in the possession of the Elector Officer until they are counted when Polling Stations close on Election Day.

5.9 Tie Votes

- (a) In the event of a Tie Vote after ballots have been recounted, a Run-Off Election will be held among the Candidates involved in the Tie Vote.

5.10 Council Activities during an Election Period

(a) During an Election Period, Council shall not directly or indirectly:

- (i) enter into any contracts or agreements that are not in the ordinary course of the FLFNs' business;
- (ii) extend any offers of employment or benefit to any person or enter into any contracts of employment for any new or current employee of the FLFNs or an FLFNs Entity;
- (iii) terminate any contracts of employment of any current employee of the FLFNs or a FLFNs Entity;
- (iv) extend any form of financial assistance to a Member save and except that the FLFNs administration may, on its own authority, provide for emergency assistance as it in its sole discretion deems appropriate; or
- (v) access any funds from any sources of the FLFNs or FLFNs Entity whether discretionary or non-discretionary for any purpose relating to the Election, including Campaigning or otherwise supporting or opposing any Candidate.

Commented [10]: Members want to prevent sitting Chief and Council members from using FLFNs resources to win votes.

It is proposed that constraints are placed upon council during the election period to prevent abuse.

6.0 ELECTORAL OFFICER

6.1 Terms of Appointment

- (a) At least sixty (60) days prior to Election Day, an Electoral Officer must be appointed by a Band Council Resolution.
- (b) The Electoral Officer's appointment will commence on the date specified in the Band Council Resolution until fourteen (14) days after Election Day or until any appeals to the Appeals Committee are resolved, whichever is later.
- (c) Unless otherwise determined by a Band Council Resolution, the Electoral Officer will serve as the Electoral Officer for any Run-Off Elections arising from the Election.
- (d) The Electoral Officer shall be responsible for the appointment of any assistant(s), Polling Clerks, security officers, volunteers, or other persons to carry out one or more duties in this *Election Code*, which appointees may not be Directly Related to a member of Council or a Candidate, if known at the time of appointment.
 - (i) if an appointee is already employed by FLFNs or an FLFNs Entity, then that appointee shall not receive any compensation from the Electoral Officer.

6.2 Qualifications

- (a) The Electoral Officer must:
- (i) be at least twenty-one (21) years of age at the time of appointment;
 - (ii) be a person of good character and reputation with experience and has received appropriate training in administering an election;
 - (iii) not be Directly Related to any member of Council;
 - (iv) not be a Member;
 - (v) not be a permanent employee of FLFNs or an FLFNs Entity;
 - (vi) not have an interest in or hold any contract or agreement with FLFNs or FLFNs Entity;
 - (vii) not be indebted to FLFNs or any FLFNs Entity;
 - (viii) be bonded and insured to conduct the work of an Electoral Officer; and
 - ~~(ii)~~(ix) provide to Council their own criminal record check obtained within thirty (30) days prior to the time of appointment.

6.3 Ethics

- (a) The Electoral Officer is expected to conduct the Election in an ethical and fair manner and must:
- (i) uphold and abide by the processes outlined in this *Election Code*;
 - (ii) bind themselves by entering into a contract with FLFNs providing that the best interests of FLFNs will be upheld;
 - (iii) remain neutral and professional in the conduct of their duties;
 - (iv) refrain from providing any preferential treatment or expressing support for or opposition to any Candidate;
 - (v) not accept anything of value, including but not limited to money, offers of employment, gifts, or travel, in exchange for preferential treatment or access to confidential information;
 - (vi) not discriminate against anyone because of race, religion, sex, gender, or age;
 - (vii) not pressure or intimidate other officials or personnel to favour any Candidate;
 - (viii) avoid conflicts of interest, or the appearance of conflicts of interest, by abstaining from decision making where the Electoral Officer has, or may be perceived as having, a personal or private interest in the Election outcome;
 - (ix) disclose potential conflicts of interests to Chief and Council prior to appointment, and after appointment should a conflict arise or be discovered; and

(x) [observe traditional practices and procedures inherent to FLFNs.](#)

Commented [11]: Members desire an Electoral officer to be aware and respectful of Frog Lake First Nation cultural practices.

6.4 Responsibilities

- (a) The Electoral Officer is responsible for managing and executing all pre-electoral, electoral and post-electoral processes and procedures included in this *Election Code* including but not limited to:
- (i) supervising and being responsible for all persons appointed by the Electoral Officer;
 - (ii) documenting expenses incurred to perform duties required from appointment until dismissal in accordance with the FLFNs financial policies;
 - (iii) posting all notices and announcements as required by this *Election Code*;
 - (iv) protecting and maintaining ballots, the List of Electors, and all other documents and information relating to an Election;
 - (v) maintaining confidentiality of any information that is received in execution of their duties unless authorized to be disclosed by this *Election Code*;
 - (vi) assisting Electors, Candidates, and Members with translating, interpreting, understanding, or otherwise accessing procedures or processes relating to this *Election Code*;
 - (vii) performing all duties outlined within this *Election Code*;
 - (viii) complying with and implementing decisions made by the Appeal Committee; and
 - (ix) [ensuring that at least one of the Electoral Officer or a person appointed by the Electoral Officer under section 6.1 \(d\) is fluent in Cree and is made available to Electors for the duration of the Election Period.](#)

Commented [12]: Members said that people who used only Cree had a hard time voting

Mandating the electoral officer to ensure the electoral team can communicate in Cree, will improve accessibility.

6.5 Informing Electors

- (a) Whenever the Electoral Officer is required by this *Election Code* to provide information to Electors about a Nomination Meeting, Candidate list, Election result, Election, By-Election, Run-Off Election, or other reason, the Electoral Officer must:
- (i) post the information at the Band Office, where public notices are placed; and
 - (ii) communicate the information through a minimum of three (3) of the following methods:
 - (I) [FLFNs website](#);
 - (II) [FLFNs app](#);
 - (III) [social media](#);
 - (IV) [postal mail](#);

- ~~(V)~~ radio, television, newspapers and other broadcast or digital media;
- ~~(VI)~~ mobile applications that the nation has produced;
- ~~(VII)~~ in the public places on Reserve; and
- ~~(VIII)~~ any additional public locations accessible by Members with the consent of property owners, if any.

6.6 Security of Polling Stations

- (a) The Electoral Officer is empowered to ensure the security of each Polling Station by:
 - (i) removing any individual from a Polling Station who:
 - (I) interferes with an Elector's ability to vote;
 - (II) interferes with the ability of the Electoral Officer to administer an Election; or
 - (III) Campaigns for a Candidate at the Polling Station.
 - (ii) removing any individual from a Polling Station who violates this *Election Code*;
 - (iii) preventing any individual who is not authorized to be at a Polling Station from entering or remaining at that Polling Station; and
 - (iv) requesting assistance from law enforcement, security, or other appointed persons to ensure the integrity of a Polling Station, Electors, Candidates, staff, and other persons during the conduct of an Election.

6.7 Decisions of the Electoral Officer

- (a) Decisions of the Electoral Officer shall be enforceable by individuals appointed by the Electoral Officer and by FLFNs band administration.
- (b) A person who has been subject to a decision of the Electoral Officer before Election Day may, within twenty-four (24) hours of the decision, request written reasons for the decision from the Electoral Officer, who shall provide such reasons within twenty-four (24) hours of such request.

7.0 NOMINATIONS

7.1 Notice of Nomination Meeting

- (a) A Nomination Meeting shall be held at least twenty-one (21) days prior to Election Day.

- (b) At least fourteen (14) days prior to the date set for the Nomination Meeting, the Electoral Officer must inform Members of: the specific date, time, and place for the Nomination Meeting; the Offices which are open for nomination; and the current members of the Appeal Committee.
- (c) The Electoral Officer shall conduct the Nomination Meeting.

7.2 Requirements for Nomination

- (a) A Member may only be nominated as a Candidate for the Office of Chief or the Office of Councillor, but not both, if that Member:
 - (i) appears on the List of Electors;
 - (ii) is at least eighteen (18) years of age on Election Day;
 - (iii) provides to the Electoral Officer, within two (2) full business days after the Nomination Meeting date, all of the following documents, dated within the fourteen (14) days before or three (3) days after the Nomination Meeting:
 - (I) a criminal record check of their own records;
 - (II) a child welfare or vulnerable sector check of their own records;
 - (III) an agreement to have the results of the items in a. and b. published;
 - (iv) signs and agrees to follow the *Candidate Campaign Code of Conduct* in Schedule A;
 - (v) pays to the Electoral Officer a non-refundable candidacy fee of:
 - (I) five hundred dollars (\$500) to seek the Office of Chief, or
 - (II) two hundred fifty (\$250) to seek the Office of Councillor;
 - (vi) ~~has been nominated by an Elector who has paid a twenty five dollar (\$25) non-refundable nomination fee to the Electoral Officer;~~
 - (vii) ~~has been seconded by a different Elector than their nominator and who has paid a twenty five dollar (\$25) non-refundable seconding fee to the Electoral Officer;~~

Commented [13]: Members are overwhelmingly unhappy with elected individuals holding seats in both Chief and Council.

Proposed: Candidates must seek election for either council or chief.

Commented [14]: This timing may still be too tight. If candidates do not provide the required info until the end of the third day, that leaves almost no time for the Electoral Officer to prepare / confirm the Notice of Election (5.3) and posting of candidates (7.6), which also must go out on the same day.

Consider one or two days for Candidates to provide information or, alternatively, move the deadlines in 5.3 and 7.6 back by one day.

Commented [15]: Members said there were too many candidates. A nomination fee would weed out non-serious nominations and candidates. Fees would go to running the election

It is proposed that requiring a fee for nomination, will limit the field to those who are serious about running for office.

Fees would be used to offset the costs of running an election.

Commented [16]: members did not like the idea of paying \$25 to nominating or seconding someone

~~(viii)~~(vii) is physically or virtually (by video conference) present at the Nomination Meeting to accept the nomination or, in absence, provides a signed letter or email by no later than two (2) days after the Nomination Meeting to the Electoral Officer accepting their nomination; and

~~(ix)~~(viii) has paid, in full, all fines, fees, or debts owing arising from previous Elections.

7.3 Accepting Nominations

- (a) The Electoral Officer shall:
 - (i) verify that a nominee meets all requirements before declaring them a Candidate; and
 - (ii) disclose in writing to each nominee who is not declared a Candidate the requirements(s) that the nominee did not meet.
- (b) If a nominee disagrees with the Electoral Officer's decision made pursuant to section 7.3(a), that nominee may within 24 hours of the Electoral Officer's decision, request the Electoral Officer to review his decision. Upon receiving a request to review a decision, the Electoral Officer shall have 24 hours to reaffirm or change his decision made pursuant to section 7.3(a) and issue written reasons therefor to the requesting nominee. A nominee may appeal the Electoral Officer's decision made pursuant to this section 7.3(b) with the Appeal Committee.
- (c) Nomination fees and seconding fees paid under this *Election Code* may only be used towards costs of conducting Elections under this *Election Code*.

Commented [17]: The election calendar (final candidate list) should consider the round trip time for an appeal and decision.

7.4 Limitations on Nominating

- (a) An Elector may nominate and/or second nominations in any combination of one or more of the following:
 - (i) nominate up to one (1) individual for the Office of Chief;
 - (ii) nominate up to six (6) individuals for the Office of Councillor;
 - (iii) second the nomination of up to one (1) individual for the Office of Chief, and
 - (iv) second the nominations of up to six (6) individuals for the Office of Councillor.
- (b) The Electoral Officer must reject nominations or seconds beyond the limits specified in section 7.4 (a).
- (c) If a nominee nominated or seconded by an Elector declines their nomination for Office, that Elector may not nominate or second a different individual for the same Office.
- (d) A nominee may only accept a nomination for either the Office of Chief or the Office of Councillor, but not both, during one Election.

7.5 Election by Acclamation

- (a) If the total number of Candidates nominated for an Office is equal to or less than the number of Office holders to be elected for that Office, the Electoral Officer shall declare the nominated individuals to be Elected by Acclamation to the Office for which they are nominated.

7.6 Posting of Candidates

- (a) Within seventy-two (72) hours following the Nomination Meeting, the Electoral Officer must inform Members of the names of nominees who become Candidates, nominees who have declined nomination, and nominees who did not meet nomination requirements.

7.7 Withdrawal of Candidate

- (a) A Candidate may withdraw their candidacy at any time by giving written notice to the Electoral Officer. The notice must be witnessed and signed by another Elector.
- (b) A Candidate who is charged or convicted of an indictable criminal offense after being nominated shall be disqualified by the Electoral Officer.

(c) Any Candidate who returns to the Creator before the close of polls on Election Day shall be disqualified by the Electoral Officer.

~~(e)~~(d) All candidacy fees, nomination fees, and seconding fees paid are non-refundable when a Candidate withdraws or is disqualified for any reason.

~~(d)~~(e) A Candidate who withdraws or is disqualified prior to Election Day shall have their name removed from unmarked ballots that are reasonably accessible by the Electoral Officer.

8.0 ELECTION DAY

8.1 Candidates' Scrutineers

- (a) A Candidate may appoint a maximum of ten individuals as Scrutineers.
- (b) A letter naming and confirming the appointment of each Scrutineer, signed by the Candidate, must be provided to the Electoral Officer prior to Election Day.
- (c) A Candidate can revoke the appointment of one or more of their Scrutineers at any time by providing written notice to the Electoral Officer.
- (d) A Candidate shall be entitled to assign a maximum of two Scrutineers at each Polling Station at any given time.
- (e) A Scrutineer may submit objections to the Electoral Officer or designate for compliance regarding:
 - (i) the handling or counting of ballots;

- (ii) eligibility of Electors to vote; and
 - (iii) any other conduct which violates this *Election Code*.
- (f) The Electoral Officer shall record the time, substance, and evidence of all objections raised by Scrutineers or other individuals.
 - (g) The Electoral Officer shall render a decision and take any corrective action on each objection in a timely manner, and record each decision and action(s) taken.
 - (h) Once the Electoral Officer makes a decision, a Scrutineer may only challenge the decision of the Electoral Officer in accordance with the Elections Appeals process described in this *Election Code*.
 - (i) Scrutineers may communicate with their Candidate, or Candidates' Campaign team while present at any Polling Station.
 - (j) Scrutineers shall not interfere with the operation of any Polling Station.
 - (k) The Electoral Officer may direct or remove a Scrutineer who, at the sole discretion of the Electoral Officer, interferes with the operation of the Polling Station.

8.2 Polling Hours

- (a) Each Polling Station shall be open from 8 a.m. to 8 p.m. according to the time observed at the FLFNs band office on Election Day.
- (b) If electronic voting is used, electronic votes may only be cast between 8 a.m. to 8 p.m. according to the time observed at the FLFNs band office on Election Day.
- (c) In the event of a natural disaster, extreme weather, or circumstance which prevents the majority of Electors from being able to access available Polling Stations, the Electoral Officer may change Polling Station locations to accommodate circumstances.
- (d) In the event of one or more funerals or protocols which closes the FLFNs band office on Election Day, the Electoral Officer may, in consultation with Band Administration, change Polling Station locations to accommodate circumstances.

Commented [18]: Polling hours have been kept consistent with historical FLFN elections.

Commented [19]: "Allowing the polling station location to change will allow funerals and ceremonies to happen on the same day as an election if needed, or if there is extreme weather.

Electronic voting will allow more members to vote

8.3 Secrecy

- (a) All ballots cast in Elections shall be by secret ballot.
- (b) No Elector may vote by proxy or authorize another Elector to vote on their behalf.
- (c) Notwithstanding the above, an Elector who is unable to mark their own ballot, cast an electronic vote, or attend a Polling Station due to incapacity to travel, disability or illness shall be entitled to reasonable accommodation by the Electoral Officer to vote in the Election. Accommodations may include, but are not limited to, the following before or on Election Day:
 - (i) delivery of a ballot or electronic voting device to an Elector's residence;

(ii) marking of a ballot or casting of an electronic vote on behalf of an Elector using an accommodation by a person authorized by the Electoral Officer; and

(iii) any other accommodation provided at the discretion of the Electoral Officer.

~~(e)~~(d) An Elector who votes pursuant to section 8.3(c) must verify their eligibility to vote under the same criteria specified under section 8.5.2(a).

~~(d)~~(e) A Scrutineer may observe, but not interfere with, the casting of a vote by an Elector whose ballot is marked through an accommodation. However, a Scrutineer is not entitled to observe an Elector's choice(s) of Candidate(s).

8.4 Campaigning at Polling Stations

(a) No Elector or Candidate shall, on Election Day, within 100 meters of a Polling Station entrance:

- (i) distribute materials related to the promotion of Candidates;
- (ii) display signage related to the promotion of Candidates;
- (iii) attempt to influence or interfere with any Elector marking their ballot; or
- (iv) attempt to obtain information on how an Elector has voted or intends to vote.

Commented [20]: Members have mentioned that campaign activities at or near polling stations are unwelcome, intimidating and overall counterproductive.

This section attempts to improve the voters election experience by prohibiting campaign activities near/at polling stations.

8.5 Voting

8.5.1 Voting Procedure

(a) Each Elector is entitled to vote for no more than one (1) Candidate for Chief.

(b) Each Elector is entitled to vote for no more than six (6) Candidates for Councillor.

(c) An Elector may not vote at more than one of a physical Polling Station, an Advance Poll, or Electronic Poll.

(d) After an Elector has voted, they must depart from the Polling Station premises in a timely way.

~~(e)~~(e)

Commented [21]: Members has indicated desire for better polling station rules. Proposed attempts to prevent unwanted loitering around polling stations.

8.5.2 Physical Voting Procedure

(a) Before allowing an Elector to vote, the Electoral Officer or Polling Clerk must:

- (i) verify the identity of the Elector using:
 - (I) at least one document bearing the name and other identifying information of the Elector; or
 - (II) the sworn attestation of two individuals whose names appear on the List of Electors who present identification specified in section 8.5.2 (a)(i)(II).
- (ii) verify that the Elector's name appears on the List of Electors; and

Commented [22]: This will ensure members who are known community members, are able to register themselves to vote

- (iii) mark the Elector’s name on the List of Electors as having voted.
- (b) An Elector whose eligibility has been verified may proceed to the Polling Station and vote.
- (c) Upon entering a Polling Station, an Elector will receive a ballot containing the names of Candidates for Office of Councillor and a ballot containing the names of Candidates for the Office of Chief.
- (d) An Elector who unintentionally spoils their ballot may request a new ballot from the Electoral Officer or Polling Clerk. The Electoral Officer or Polling clerk must write the word “Spoiled” and initial on the returned ballot. An Elector may request a new ballot a maximum of one time when voting for the Office of Chief and a maximum of one time when voting for the Office of Councillor.
- (e) An Elector who enters the line of Electors at a Polling Station prior to the close of polls shall be entitled to vote and shall vote expeditiously.
- (f) No person shall photograph or remove a ballot from the Polling Station unless explicitly authorized to do so by the Electoral Officer.
- (g) The Electoral Officer may, from time to time and at their discretion, make available to Scrutineers a list of names of Electors who have voted.

8.5.3 Electronic Voting

- (a) The procedure which Electors follow for electronic voting will be determined by the process defined by the chosen vendor of the electronic voting system.
- (b) The Electoral Officer must ensure that instructions for electronic voting are provided to Electors at least fourteen (14) days before the earliest date on which a vote may be cast on the electronic voting system.
- (c) The electronic voting platform chosen by FLFNs must:
 - (i) ensure electronic ballots are confidential and by secret ballot;
 - (ii) be accessible for voting by a majority of Electors with respect to technology, telecommunications, language, software, and other requirements;
 - (iii) be accessible for voting at only the times specified by this *Election Code*;
 - (iv) verify each Elector against the List of Electors;
 - (v) allow each Elector to vote only once;
 - (vi) require an Elector to verify their identity to the satisfaction of the Electoral Officer;
 - (vii) at the request of the Electoral Officer, produce a list of Electors who have voted;
 - (viii) be accessible to Scrutineers in a manner determined at the sole discretion of the Electoral Officer; and

Commented [23]: Most members said they could consider voting electronically, including members who live off reserve. This section enables FLFNs to use electronic voting.

This section grants the option of FLFNs using electronic voting in elections.

(ix) be auditable by FLFNs' chosen auditor(s) for the Election.

8.6 Counting of Votes

- (a) Immediately upon the close of each Polling Station, the Electoral Officer and/or Polling Clerks will count the ballots, including the ballots from all Advance Poll and electronic polls, in the presence of at least one Elector, and any Candidates and appointed Scrutineers who wish to attend and are physically present.
- (b) In the instance of physical votes, each ballot box will be opened, each ballot will be counted and the number of votes for each Candidate recorded.
- (c) A ballot on which the Elector's intent is not evident to the Electoral Officer will be deemed spoiled. The Electoral Officer will write the words "spoiled" on such a ballot and not count it towards the tally.
- (d) The Electoral Officer shall reject any ballot which:
 - (i) has more than one (1) vote for Chief or more than six (6) votes for Councilor. For clarity, a ballot that selects fewer than six (6) votes for Councilor shall not be rejected if it is proper in all other respects in accordance with this *Election Code*; or
 - (ii) identifies, in any manner, the Elector who cast that ballot.
- (e) Rejected ballots shall not be counted toward any Candidate's votes and all rejected ballots shall be preserved by the Electoral Officer.
- (f) If a ballot contains votes for a disqualified or withdrawn Candidate, then:
 - (i) the ballot shall not be rejected or considered spoiled for that reason alone;
 - (ii) votes on the ballot for a disqualified or withdrawn Candidate shall not be counted; and
 - (iii) remaining votes on the ballot shall be counted.
- (g) The Electoral Officer shall take note of any objection(s) made by any Candidate or Scrutineer to any of the ballots and decide any questions arising out of the objection.
- (h) Ballots cast in an electronic manner will be tallied in the manner used by the digital system chosen by FLFNs.
- (i) The sum of all electronically and physically cast ballots for a Candidate at all Polling Stations and Advance Polls will constitute the total number of votes received for that Candidate. The Electoral Officer shall make a written statement of the number of votes given to each Candidate and the number of ballots either spoiled or rejected and not counted by the Electoral Officer. The statement shall be signed by the Electoral Officer.

(j) Any Candidate whose margin of loss is one (1) vote or less than one percent (1%) of the total number of votes cast (whichever is greater) shall be entitled to an administrative recount which shall, if requested by the Candidate, be carried out immediately after the tallying of votes.

Commented [24]: Automatic recounts for close elections will help ensure the integrity of the process.

(k) Physical ballots shall remain in the custody of the Electoral Officer until 24 hours after the period for filing post-election appeals has elapsed, or until all appeals have been resolved, whichever is later. Electronic ballots, if any, shall remain accessible by the Electoral Officer on the electronic voting platform until 24 hours after the period for filing post-election appeals has elapsed, or until all appeals have been resolved, whichever is later.

(i) The Electoral Officer shall cause physical and electronic ballots to be destroyed at the conclusion of the time specified in this subsection .

8.7 Declaration of Outcome

- (a) After all ballots have been counted, the Electoral Officer shall declare and inform Members of:
- (i) the number of votes received by each Candidate for Council and the names of the successfully elected Councillors;
 - (ii) the number of votes received by each Candidate for Chief and the name of the successfully elected Chief;
 - (iii) the total numbers of ballots issued for each Office, the total number of votes cast for each Office, and the total number of spoiled and rejected ballots for each Office;
 - (iv) whether or not one or more Run-Off Elections are necessary to resolve any Tie Votes; and
 - (v) the declaration of outcome should be made within 24 hours of the polling station closing.
- (b) The declaration shall be signed and dated by the Electoral Officer and posted in accordance with section 6.5. The Electoral Officer shall not delegate declaration of the outcome.

8.8 Recount

- (a) A recount will be held only if:
- (i) any Candidate or Elector who voted requests a recount of the ballots cast for Chief or the ballots cast for Councillor in writing not later than twenty-four (24) hours after the electoral outcome has been declared,
 - (ii) such Candidate or Elector encloses a non-refundable recount fee of \$100.00 for each set of ballots to be recounted, paid by money order made payable to "Frog Lake First Nations", and

- (iii) the number of votes separating a Candidate who was not declared elected and another candidate for the same position who was declared elected is fewer than the number of spoiled ballots.
- (b) Only one recount will be conducted with respect to the ballots cast for Chief.
- (c) Only one recount will be conducted with respect to the ballots cast for Councillors.
- (d) The Electoral Officer will personally notify and make a record of the notification of all candidates who could be affected by such a recount of the time and place of the recount which shall be no later than twenty-four (24) hours after the request has been received.
- (e) The Electoral Officer will perform the recount in the same manner as specified in section 8.6.
- (f) The Electoral Officer may appoint assistants to help at a recount.
- (g) Each Candidate who could be affected by the recount may:
 - (i) attend in person or designate one (1) Scrutineer in writing to represent them at the recount, or
 - (ii) choose not to attend the recount proceedings at all.
- (h) The Candidate or Elector who requested a recount must have full view of the ballots as they are counted.
- (i) Electors who voted in the Election may attend and witness the recount.
- (j) Upon completion of the recount, the Electoral Officer shall announce the results to those present in the proceedings and the results will be final.
- (k) Notwithstanding this section the Appeal Committee may order recounts as it considers appropriate following a declaration of contravention of this *Code* or the regulations.
- (l) The Electoral Officer shall prepare and sign a formal written report certifying the results of the recount, provide a copy of the report to the Candidate(s) concerned, provide a copy of the report to the First Nation for filing, and cause a copy of the report to be published in the manner specified in section 6.5.

9.0 ELECTIONS APPEALS

9.1 Establishment of Appeal Committee

- (a) The Appeal Committee shall be a standing committee appointed every four (4) years by way of Band Council Resolution no later than 90 days prior to an Election Day. The term of the Appeal Committee shall end upon the appointment of a successor Appeal Committee.

Commented [25]: Members suggested resolving disputes through an appeal committee with Elders, youth, women, cultural knowledge, and formal knowledge, and access to legal advice

- (b) The Appeal Committee shall be entitled to a reasonable honorarium paid by FLFNs for any days the Appeal Committee performs services under this *Election Code*. Expenses reasonably and necessarily incurred by the Appeal Committee in the course of performing services under this *Election Code* shall be paid by FLFNs.
- (c) Council shall communicate the names of the Appeal Committee members to Members by way of a notice within fourteen (14) days after appointing the Appeal Committee.
- (d) Other than establishing the Appeal Committee pursuant to section 9.1(a) and making appointments pursuant to section 9.1(k), Council has no authority to interfere with or influence the Appeal Committee in the performance of its duties and decision making.
- (e) The Appeal Committee shall be comprised of five (5) Electors who among them meet all of the following criteria:
 - (i) at least one woman;
 - (ii) at least ~~two~~ ~~one~~ Electors over the age of sixty-five (60);
 - (iii) at least one Elector under the age of thirty (30);
 - (iv) at least one Elector who possesses a grade twelve (12) or equivalent education; and
 - (v) at least one Elector who possesses extensive historical cultural knowledge.
- (f) Each Appeal Committee member must meet at least one of the criteria in section 9.1(e).
- (g) An Elector who has a Directly Related to any member of Council may not be appointed to the Appeal Committee. Appeal Committee members shall recuse themselves from deliberations or decisions about any appeals brought by a Directly Related Elector or in relation to a Directly Related Candidate.
- (h) Members of the Appeal Committee may not participate in an Election as a Candidate, nominator or seconder, or at all, except to vote.
- (i) One member of the Appeal Committee will be appointed by Council as the Chair. The Chair shall receive petitions for appeal, call meetings, and preside over meetings of the Appeal Committee. In the incapacity or absence of the Chair for a period of time, the remaining Appeal Committee members may appoint another Appeal Committee member to act as Chair during that period.
- (j) The Chair is entitled to vote on all matters. In the instance a tie vote occurs within the Appeal Committee, the Chair shall cast an additional deciding vote.
- (k) If there is a vacancy on the Appeal Committee, then Council shall appoint an Elector to the Appeal Committee to fill such vacancy within 60 days of such vacancy occurring. Such appointments shall be for the remainder of the term of the Appeal Committee and such appointees shall fulfill the eligibility criteria in section 9.1(e) that the vacated Appeal Committee member fulfilled.

Commented [26]: Members expressed they would like to see more elders on the appeals committee.

Commented [27]: These duties may be more properly performed by the clerk appointed in subsection (m).

- (l) Council shall designate one or more persons from FLFNs band administration to serve as a clerk to the Appeal Committee. The clerk shall be responsible for receiving records on behalf of the Appeal Committee, keeping minutes of Appeal Committee meetings, receiving and keeping all documentary evidence filed as part of an appeal, assisting with scheduling and correspondence, and such other administrative tasks as the Appeal Committee may delegate from time to time.
- (m) The Appeal Committee may retain legal counsel to provide independent legal advice to the Appeal Committee as may be reasonably necessary from time to time.

9.2 Pre-Election Appeals

- (a) **Grounds of Appeal:** Before Election Day, an Elector may appeal a decision of the Electoral Officer if the person believes on reasonable and probable grounds that:
 - (i) a person’s name has been improperly included on or left off of the List of Electors after a Member’s request to the Electoral Officer is made pursuant to section 5.4(d) of this *Election Code*;
 - (ii) a nominee did not meet all nomination requirements in section 7.2 before the Electoral Officer declared such nominee a Candidate, notwithstanding a request for review made to the Electoral Officer pursuant to section 7.3(b);
 - (iii) a nominee met all nomination requirements in section 7.2 but was not declared a Candidate by the Electoral Officer, notwithstanding a request for review made to the Electoral Officer pursuant to section 7.3(b); or
 - (iv) an ineligible person nominated or seconded the nomination of a nominee pursuant to section 7.4 of this *Election Code*.

- (b) **Filing an Appeal:**

- (i) An Elector may commence an appeal pursuant to this section 9.2 by filing an appeal in the form of an affidavit sworn by the person, in the presence of a notary public or commissioner for oaths which:
 - A. states the ground(s) on which the appeal is made,
 - B. makes reference to relevant clauses of this *Election Code*, and
 - C. includes evidence to support each ground on which the appeal is made.
- (ii) An appeal filed pursuant to this section 9.2 must:
 - A. be filed in writing to the Chair and must enclose a non-refundable filing fee of \$100.00, paid by money order made payable to “Frog Lake First Nations”; and
 - B. be filed within 24 hours of:

Commented [28]: Optional: Will these grounds be available to appellants after Election Day? If not, further drafting is required.

By requiring these types of appeals to be made only before the Election, you cut down on the types of appeals available after the Election.

Commented [29]: Is this going to be practical? It may not be possible to find the chair within 24 hours of the EO’s decision, whether via registered mail or otherwise. This is one good reason to have the appeals filed with the clerk, who would be a band employee at the band office. Alternatively, there has to be a clear mechanism for the contact info for the Chair to be made public and I would suggest service via email as a possibility. This should be clarified as these initial processes are often the source of legal challenge.

Further changes may be required throughout the appeals section, depending on who is chosen to receive appeals.

1. issuance of the Electoral Officer's written reasons made pursuant to sections 5.4(d), in the case of an appeal brought pursuant to section 9.2(a)(i);
 2. issuance of the Electoral Officer's written reasons made pursuant to section 7.3(b), in the case of an appeal brought pursuant to sections 9.2(a)(ii) or (iii); or
 3. the Nomination Meeting, in the case of appeal made by the Appellant receiving the Electoral Officer's written reasons pursuant to section 5.4(d), in the case of an appeal brought pursuant to section 9.2(a)(iv).
- (iii) Within 24 hours of receiving an appeal, the Chair shall:
- A. issue a receipt to the Appellant as proof of filing; and
 - B. determine whether the requirements of section 9.2(b) have been met. If not, the Chair shall inform the Appellant in writing that the appeal is dismissed for failing to meet the requirements of section 9.2(b) and will not receive further consideration.
- (c) **Appeal Process:** If an appeal is not dismissed pursuant to section 9.2(b)(iii)(B), then the Chair, within 24 hours of receiving the appeal, shall:
- (i) prepare a Notice of Appeal, to include the following information:
 - A. date, time and location of the appeal hearing;
 - B. the manner in which the appeal will be heard;
 - C. a copy of the appeal being considered;
 - D. the manner in which appeal hearing participants can provide information and evidence; and
 - E. any other information that the Appeal Committee deems advisable.
 - (ii) issue the Notice of Appeal:
 - A. by email to the Appellant, the Electoral Officer, Council, nominees who are affected by the appeal, and any other persons that the Appeal Committee may determine; and
 - B. to the Electors in the manner specified in section 6.5 of this *Election Code*.
- (d) **Appeal Hearing:** The Appeal Committee shall convene within seventy-two (72) hours after the Notice of Appeal is issued to hear an appeal made pursuant to this section 9.2.
- (e) **Decision and Remedies:**

- (i) Upon hearing an appeal made pursuant to this section 9.2, the Appeal Committee may:
 - A. Dismiss the appeal;
 - B. Give directions to the Electoral Officer concerning the eligibility of a person to appear on the List of Electors;
 - C. Give directions to the Electoral Officer concerning the eligibility of a nominee to be a Candidate; and/or
 - D. Give directions to the Electoral Officer concerning the eligibility of an Elector to nominate or second the nomination of a nominee.
- (ii) Within twenty-four (24) hours after the appeal hearing, the Appeal Committee shall communicate its decision and any directions to the Electoral Officer, the Appellant, Council, nominees who are affected by the appeal, any other person that received a Notice of Appeal pursuant to section 9.2(c)(ii), and to the Electors in the manner specified in section 6.5 of this *Election Code*.

Commented [30]: Ensure all timelines in s. 9.2 leave enough time for ballots to be sent to the off reserve polling station.

9.3 Post-Election and Other Appeals

(a) Grounds of Appeal:

- (i) After Election Day, an Elector may appeal the results of the Election if the Elector believes on reasonable and probable grounds that:
 - A. an error was made in the application of the *Election Code* that would have directly affected the outcome of the Election;
 - B. there was a violation of this *Election Code* or the *Candidate Campaign Code of Conduct* that would have directly affected the outcome of the Election;
 - C. a sufficient number of ineligible individuals voted so as to affect the outcome of the Election; or
 - D. a sufficient number of rejected or spoiled ballots were cast to affect the outcome of the Election.
- (ii) If a decision is made to remove the Chief or a Councillor from Office pursuant to section 11 of this *Election Code* (the “**Removal Decision**”), the affected Chief or Councillor may appeal the Removal Decision if the affected Chief or Councillor believes on reasonable and probable grounds that the Removal Decision violated section 11 of this *Election Code*.

Commented [31]: This is likely not a credible ground for appeal if violation of the Code of Conduct does not disqualify a candidate from running for Office. That requirement might be added at s. 7.7.

(b) Filing an Appeal:

- (i) An Elector (pursuant to section 9.3(a)(i)) or a Chief or a Councillor (pursuant to section 9.3(a)(ii)) may commence an appeal pursuant to this section 9.3 by filing an appeal in the form of an affidavit sworn by that person, in the presence of a notary public or commissioner for oaths, and which:

- A. states the ground(s) on which the appeal is made,
- B. makes reference to relevant clauses of this *Election Code*, and
- C. includes evidence to support each ground on which the appeal is made.

(ii) An appeal filed pursuant to this section 9.3 must:

- A. be filed in writing to the Chair and must enclose a non-refundable filing fee of \$100.00, paid by money order made payable to “Frog Lake First Nations”; and
- B. be filed within:
 - 1. 14 days of Election Day, in the case of an appeal concerning Election results; or
 - 2. 14 days of the removal of a Chief or Councillor from Office, in the case of an appeal concerning a Removal Decision.

Commented [32]: See comment at 9.2(b)(ii) above re: delivery method (courier, registered mail, email, etc.) and recipient (chair or clerk)

(iii) Within 24 hours of receiving an appeal, the Chair shall:

- A. issue a receipt to the Appellant as proof of filing;
- B. determine whether the requirements of section 9.3(b) have been met. If not, the Chair shall immediately inform the Appellant in writing that the appeal is dismissed for failing to meet the requirements of section 9.3(b) and will not receive further consideration.

(c) **Appeal Process:** If an appeal is not dismissed pursuant to section 9.3(b)(iii)(B), then the Chair, within 24 hours of receiving the appeal, shall:

- (i) prepare a Notice of Appeal, to include the following information:
 - A. date, time and location of the appeal hearing;
 - B. the manner in which the appeal will be heard;
 - C. a copy of the appeal being considered;
 - D. the manner in which appeal hearing participants can provide information and evidence; and
 - E. any other information that the Appeal Committee deems advisable.
- (ii) issue the Notice of Appeal:
 - A. by email to the Electoral Officer (in the case of an appeal concerning Election results), Council, persons who are affected by the appeal, and any other persons that the Appeal Committee may determine; and

B. to the Electors in the manner specified in section 6.5 of this *Election Code*.

(d) **Appeal Hearing:** The Appeal Committee shall convene within seven (7) days after the Notice of Appeal is issued to hear an appeal made pursuant to this section 9.3.

(e) **Decision and Remedies:**

(i) Upon hearing an appeal made pursuant to this section 9.3, the Appeal Committee may:

A. dismiss the appeal;

B. in the case of an appeal of an Election result, grant the appeal and:

1. Order a recount and give directions to the Electoral Officer in relation thereto;
2. Set aside the results of the Election, in whole or in part, and direct a new Election or By-Election and give directions to the Electoral Officer in relation thereto;

C. In the case of an appeal of a Removal Decision:

1. Grant the appeal and order a By-Election in accordance with section 12 of this *Election Code*;

D. call for a new Election, Run-Off Election, or By-Election under this *Election Code* of one or more positions and give directions to the Electoral Officer for the conduct of that Election;

E. determine questions or issues of constitutional law; and

F. order any combination of remedies listed above to resolve an appeal.

(ii) Where, as a result of a decision by the Appeal Committee, a quorum of Chief and Council is not possible, the Appeal Committee must order an Election to fill vacancies.

(iii) Within three (3) weeks after the appeal hearing, the Appeal Committee shall communicate its decision and any directions to the Electoral Officer (in the case of appeal concerning Election results), the Appellant, Council, any other person that received a Notice of Appeal pursuant to section 9.3(c)(ii), and to the Electors in the manner specified in section 6.5 of this *Election Code*.

Commented [33]: Further consideration of potential remedies is required.

Commented [34]: For FLFNs to decide. May add another layer of "protection" against appeals to the federal court.

9.4 Decisions of the Appeal Committee

(a) All decisions of the Appeal Committee:

(i) are final and binding;

(ii) are not subject to any further appeals; and

(iii) may not be reviewed by the Federal Court.

9.5 Appeal Committee Procedures

- (a) The Appeal Committee must follow and apply the procedures and timelines established in sections 9.2 and 9.3 of this *Election Code*.
- (b) Notwithstanding the generality of the foregoing, the Appeals Committee must make every reasonable effort to follow the timelines for hearing and determining appeals in accordance with sections 9.2 (c)-(e) and 9.3 (c)-(e). However, the Appeals Committee may:
 - (i) start, adjourn, and continue appeal hearings after the deadlines specified in sections 9.2(d) and 9.3(d), above, in consideration of the volume of appeals received by the Appeal committee or other circumstances in which an adjustment to timelines is reasonably required to ensure procedural fairness to the participants in the appeal;
 - (ii) divide matters under one appeal into separate appeal hearings;
 - (iii) combine the related matters from several appeals into a single appeal hearing; or
 - (iv) otherwise schedule and hold hearings to consider any combination of matters under one or more petitions in an expeditious manner as it deems appropriate.
- (c) Individuals and Appeal Committee members may participate in an appeal hearing in person or remotely.
- (d) Individuals may participate in appeal hearings directly, and/or through representation by legal or other counsel. Individuals shall pay their own costs to participate in an appeal hearing, including but not limited to legal or other counsel, experts, preparation of materials, or travel costs, and:
 - (i) no person shall provide compensation to any other person to provide testimony or information to the Appeal Committee;
 - (ii) notwithstanding the foregoing, the Appeal Committee may reimburse reasonable travel and logistical expenses from FLFNs funds to individuals to provide information or evidence requested by the Appeal Committee.
- (e) An appeal hearing participant shall have the right to know all accusations, evidence, or other information presented by any party to the Appeal Committee and shall have the right to respond.
- (f) The Appeal Committee shall investigate the appeal and shall have power to compel sworn testimony and the production of documents, recordings, and other evidence from the Electoral Officer, Candidates, nominators, seconders, Scrutineers, Electors, and any other individuals or persons who participated in the Election or are relevant to the appeal.
- (g) The Appeal Committee shall set its own procedures for hearing of evidence, deliberations, and any other matter concerning its own work as it deems necessary.

10.0 OFFICE VACANCIES

- (a) Council shall duly and publicly declare a vacancy when the Chief or a Councillor:
 - (i) resigns from Office;
 - (ii) returns to the Creator; or
- (b) is removed by other means specified in section 11. An Office of Chief or Councillor shall be vacant:
 - (i) when a Candidate elected to that Office fails to swear the oath required by section 4.2 (c); or
 - (ii) as a result of a decision of the Appeal Committee.
- (c) A vacancy must be declared within 30 days after Council receives notice or becomes aware of a vacancy.
- (d) Vacancies for the Office of Chief or the Office of Councillor shall be filled by way of By-Election, if there are more than twelve (12) months until the next regular Election.
- (e) If the Office of Chief or Councillor becomes vacant and there are fewer than twelve (12) months until the next regular Election, then the position shall remain vacant, unless the vacancy, alone or in combination with other vacancies, results in there being fewer than four (4) members of Council.

11.0 REMOVAL OF CHIEF OR COUNCIL MEMBER

11.1 Grounds for Removal From Office

- (a) An individual holding the Office of Chief or Councillor shall be subject to removal proceedings if that individual, while holding Office:
 - (i) is convicted of an indictable offense under the *Criminal Code*;
 - (ii) engages in the improper or illegal use of funds as determined by FLFNs' auditors;
 - (iii) violates their oath of office;
 - (iv) fails to attend three consecutive Council meetings without, in the opinion of Council, reasonable excuse;
 - (v) engaged in recurring intoxicated, disorderly or irresponsible conduct at a Council meeting, community or other public forum or function which interferes with the conduct of business of Council; or
 - (vi) is unable to perform their duties due to incapacity for a period of more than six (6) months.
- (b) Within fourteen (14) days of evidence of a circumstance under section 11.1 (a) being brought to the attention of any Council member, Council shall:

Commented [35]: Need to establish a procedure for removal. We had previously suggested a procedure in which Council calls a meeting, provides the impacted councillor or Chief with a description of the reasons for potential removal in advance of the meeting, the councillor or Chief has a fair opportunity to provide their response to the allegations and then the remaining members of Council can make a decision. The appeal process then ties into that formal removal.

This could be included as subsection (b).

Commented [36]: Should removal proceedings even be specified in an Election Code?

Who should be able to trigger removal proceedings? What are the thresholds for being able to trigger this?

Should band members at large be able to mandate removal proceedings without the agreement of Council?

- (i) issue a notice of removal proceedings which shall start between the seventh (7th) and fourteenth (14th) after the date on which the notice is issued;
- (ii) provide the impacted Councillor or Chief with a written description of the reasons and evidence for potential removal;
- (iii) conduct removal proceedings at which:
 - (I) All FLFNs Members shall have the right to attend in person or remotely; and
 - (II) the impacted Councillor or Chief may respond, directly and/or through legal and other counsel, to any allegations and evidence, and to present their own witnesses, evidence, and arguments;
- (iv) deliberate *in camera* and without the impacted Councillor or Chief or their representative(s) whether to remove the impacted Councillor or Chief; and
- (v) issue a decision in writing within ten (10) days of the conclusion of the removal proceedings.
- (c) The affected Councillor or Chief may appeal a Removal Decision issued in accordance with section (b) to the Appeal Committee in accordance with section 9.3.
- (d) After initiating removal proceedings against a Councillor or Chief concerning a specific set of circumstances, Council shall not initiate subsequent removal proceedings against that same Councillor or Chief concerning the same grounds.

Commented [37]: Should other parties be able to appeal a removal decision? Or a decision not to remove? Who should have standing?

12.0 BY-ELECTIONS

- (a) A By-Election shall be called when a vacancy is declared, or a Chief or Councillor is removed from Office, with more than 12 months remaining until the next regular Election, or as otherwise ordered by the Appeal Committee. Such a By-Election shall:
 - (ii) use the rules specified in this Election Code for a regular Election;
 - (iii) be limited to the vacant Office; and
 - (iv) be held within ninety (90) days after the date on which the Office is declared vacant.
- (b) If at any time there are fewer than four (4) members of Chief and Council, and there are more than six (6) months until the next regular Election, a By-Election shall be deemed to have been called on the 14th day after the most recent vacancy by an Office holder.
 - (i) a By-Election called under these circumstances:
 - (I) shall not require a band council resolution to commence;

- (II) empowers the remaining Council members to appoint an Electoral Officer without a Band Council Resolution if no Electoral Officer is currently appointed;
- (III) empowers the remaining Council members to appoint an Appeal Committee without a Band Council Resolution if no Appeal Committee is already appointed; and
- (IV) shall follow all other requirements of a By-Election.

13.0 MISCELLANEOUS PROVISIONS

- (a) Council may pass regulations under this *Election Code* from time to time:
 - (i) respecting non-retroactive penalties for persons who violate any provisions of this *Election Code*;
 - (ii) respecting increases to fees and fines specified in this *Election Code*;
 - (iii) respecting the forms for the purposes of this *Election Code*;
 - (iv) prescribing the oaths to be used;
 - (v) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the implementation of this *Election Code*; or
 - (vi) governing any necessary matter for which no provision is made in this *Election Code*.
- (b) Where the provisions of this *Election Code* conflict with those of any FLFNs Band Council Resolution, policy, bylaw, or other code whether or not enacted by referendum, this *Election Code* supersedes such other provisions to the extent of the conflict.

Commented [38]: Should C+C be limited to passing regulations in relation to this point only? Or to passing regulations under the Election Code more generally?

14.0 AMENDMENTS

- (a) The process to amend this *Election Code* shall be initiated with:
 - (i) a petition presented to Council, signed by at least fifty percent (50%) of Electors, specifying the section(s) of this *Election Code* proposed to be amended; or
 - (ii) a Band Council Resolution specifying the section(s) of this *Election Code* proposed to be amended.
- (b) Upon the process to amend this *Election Code* being initiated:
 - (i) an Electoral Officer must be appointed to conduct a referendum on the proposed amendment; and
 - (ii) a referendum must be called within 180 days of receipt of the petition or Band Council Resolution which proposed the amendment.
- (c) Upon ratification of the amendment by a majority of Electors voting in the referendum, this *Election Code* shall be amended according to the passed amendment.

- (d) Any amendments approved less than three (3) months prior to an Election shall not come into force until the conclusion of that Election.

14.1 EFFECT OF COURT RULINGS

- (a) Notwithstanding the above, if a final decision from a court of competent jurisdiction causes a portion of this *Election Code* to become non-compliant, this *Election Code* shall be amended without a referendum by the Appeal Committee only to the extent necessary to conform with the court decision. Council shall approve funds and other resources required by the Appeal Committee to convene, deliberate, seek legal advice, and communicate with FLFNs' members about the amendment process and outcomes.

15.0 LIABILITY

- (a) FLFNs, its Members, its committees (including the Appeals Committee) its employees and officers (including its administrator and the Electoral Officer) shall not be liable for any claims, losses or damages resulting from the inadvertent deletion or addition of an individual's name to the List of Electors, any inadvertent breach of this *Election Code*, or any decision made pursuant to this *Election Code*.
- (b) It is the responsibility of each Member to ensure FLFNs has their current address. Addresses provided to FLFNs for the purpose of contacting Members in respect of this *Election Code*, will be treated as confidential information by FLFNs.

16.0 SEVERABILITY

- (a) If any part of this *Election Code* is declared to be invalid or unenforceable by a Court of competent jurisdiction such invalidity or unenforceability shall not affect the validity or enforceability of any other part of this *Election Code*.

17.0 COMING INTO FORCE

- (a) This *Election Code* shall come into force upon the passing of a Ministerial order proclaiming removal of FLFNs from the election provisions of the *Act*.

18.0 APPENDIX

Schedule “A” - Candidate Campaign Code of Conduct

According to the following rules and regulations established in this *Election Code*, candidates must campaign:

- (a) Without coercion or vote-buying;
- (b) Respecting the rights and freedoms of other individuals and groups to organize and campaign;
- (c) Respecting the rights of Electors to obtain information from a variety of sources and to attend political gatherings;
- (d) Ethically, focusing on political issues and candidate platforms, instead of conducting smear campaigns or ones of rumour and innuendo;
- (e) Non-violently, without intimidating opposing party candidates, opposition supporters or the media, and without the use of language inciting their own supporters to violence;
- (f) Respecting the freedom of the press to cover the campaign and to express opinions on the campaign;
- (g) Respecting the electoral officials and not interfering with the performance of their duties;
- (h) Respecting the processes and procedures of the *Frog Lake First Nations Election Code*; and
- (i) Accepting and complying with the official election results and the final decision of the Election Appeal Committee.

Commented [39]: Members expressed that some candidates often conduct themselves in negative ways that don't add value to the election process.

A code of conduct would reduce members' experiences of some candidates' threatening behavior

Signature of the Candidate	Signature of the Witness
Printed Name of the Candidate	Printed Name of the Witness
Date	Date

