

FIRST NATION OF NACHO NYAK DUN



ELECTION ACT

Application

- 1.1 This Election Act applies to, and establishes the process, organization and rules for, the election of the Chief, Deputy-Chief, Councillors and Youth Councillor.

ELECTIONS

Elections

- 2.1 The Chief, Deputy-Chief, Councillors and Youth Councillor shall be chosen by way of general election and secret ballot conducted in accordance with this Election Act.
 - (1) General elections shall be held every four years.
 - (2) A vacancy in the office of the Chief, Deputy-Chief, Councillors and Youth Councillor shall be filled by way of general by-election and secret ballot conducted in accordance with this Act to fulfill the remainder of the term.

Approved by the Assembly at its Annual General Meeting held June 26-27, 2009, and at its General Meeting held October 24, 2009.

Electors

3.1 Any person who, as of the date of an election under section 2.1 is:

- (1) 18 years of age; and
- (2) a citizen of the First Nation of Nacho Nyak Dun;

is an elector for the purposes of that election.

For greater certainty, any person who is an elector, and who is a member of the Election Committee or works as a part of the election organization under this Act shall be eligible to vote.

ELECTION COMMITTEE

Establishment

4.1 The Election Committee is hereby established to carry out its mandate at arm's-length from the Council.

Mandate

4.2 The Election Committee shall:

- (1) maintain the fairness and integrity of each election;
- (2) oversee and attend to all election proceedings;
- (3) appoint the Chief Electoral Officer and the Returning Officers;
- (4) submit a budget for each election, including the remuneration of all persons engaged to work in the election in accordance with First Nation of Nacho Nyak Dun rates, to the Council for its review and approval, if appropriate;
- (5) in accordance with this Act, respond as it deems appropriate to any question raised by an elector,
- (6) certify the list of candidates for each election;
- (7) announce the results of each election;
- (8) recommend to any Assembly any amendment of this Act which it believes would provide for better elections;

- (9) in addition, shall have the authority to do all such acts and things consistent with this Act which it may deem conducive to the better conduct of an election; and
- (10) carry out any directions provided by the Council which are consistent with this Act.

Composition

4.3 The Election Committee shall consist of:

- (1) three persons appointed by the Council; and
- (2) one person who is 60 years of age or more appointed by the Elders Council.

Term

4.4 The members of the Election Committee shall serve for a term of three years following the date of their appointments and they may be reappointed by the Council or Elders Council, as appropriate.

Disqualification and Replacement

4.5 A person who is:

- (1) a member of the Council;
- (2) a candidate for election; or
- (3) a spouse, parent, son or daughter of a candidate for election;

shall not be a member of the Election Committee.

4.6 In the event a member of the Election Committee is unable to satisfy the requirements of 4.5, that person's seat on the Committee shall be deemed to be vacant, and the Council or the Elders Council, whichever appointed that person, within 15 days shall appoint a person to fill the vacancy.

- (1) Subject to 4.6, a person who fills a vacancy under this provision shall serve as a member of the Election Committee from the date of his or her appointment for the remainder of the term.

ELECTION PROCESS

Call for Election

5.1 The Council shall give notice in writing to the Election Committee specifying:

- (1) the vacancy to be filled; and
- (2) the date of the election;

at least 60 days prior to the election date.

Notice of Election Call

5.2 The Election Committee shall notify electors that an election has been called by posting notice of the election call and publishing the notice in generally accessible Yukon media.

- (1) The notice of election under section 5.2 shall include:
 - (a) the date for the close of nominations;
 - (b) the date of any advance poll;
 - (c) a summary of the mail-in voting and special ballot processes;
 - (d) the date of the election;
 - (e) the location of the polling stations and the times which an elector may cast a vote at the polling stations on the date of the election.

Eligibility

5.3 A person is eligible to be a candidate for:

- (1) the office of Chief, Deputy-Chief or Councillor, if he or she is an elector;
- (2) the office of Youth Councillor, if he or she is an elector and no older than 26 years of age on the date set for the election;
- (3) provides evidence, by way of a current Royal Canadian Mounted Police clearance, that he or she has no criminal record for an indictable offence or an offence related to theft, fraud or false pretenses;
- (4) files a notice of nomination in accordance with section 5.4 of this Act with the Election Committee at any time after the announcement of the election until 4:30 p.m. on the date stated for the close of nominations; and
- (5) meets the nomination requirements set out in section 5.4.

Nominations

- 5.4 A person shall be nominated upon the filing of the original notice of that person's nomination with the Election Committee in a form acceptable to the Election Committee specifying which office he or she is being nominated.
- (1) A notice of nomination shall specify which office the person is being nominated and for:
 - (a) Chief or Deputy-Chief, as the case may be, shall be signed by not less than 7 electors who are 60 years of age or more;
 - (b) Councillor shall be signed by not less than 7 electors who are members of the same Clan as the person being nominated; or
 - (c) Youth Councillor shall be signed by not less than 7 electors who are no older than 26 years of age.
- 5.5 A person who is duly nominated under section 5.4 and personally affirms in writing received by the Election Committee by mail or in person by any member of the Election Committee, no later than 4.30 p.m. on the third day after the day nominations closed, that he or she is willing to accept that nomination shall be certified by the Election Committee as a candidate for election to the office for which he or she was nominated. A person who is nominated but who is not certified by the Election Committee under this provision shall not be entitled to become a candidate for election.
- 5.6 If, at the time nominations otherwise would close, there are fewer nominees than there are offices to be filled, the Election Committee shall extend the time for nominations by no more than 14 days, immediately cause notice to be given to the electors of that extension, and conclude the nomination process in accordance with section 5.4 by that further date.
- (1) If, after the procedure described in section 5.6, there still are fewer nominees than there are offices to be filled, any vacancy of office upon the conclusion of the election process shall be referred to the next Assembly for a determination of the process to be followed to fill that vacancy.
- 5.7 The Election Committee shall cause notice of the candidates for election to be published forthwith after the list of candidates is certified.

All-Candidates Meeting

- 5.8 The Election Committee shall endeavour to convene an all-candidates meeting prior to the election date in each of Mayo and Whitehorse.
- (1) Each candidate shall be permitted to make a presentation for five minutes at each all-candidates meeting and may provide a two-minute response to a question from the audience.
 - (2) The chairperson of an all-candidates meeting shall carry out his or her duties in an impartial and fair manner. A person who is a spouse, parent, son or daughter of a candidate for election shall not act as a chairperson of an all-candidates meeting.

Integrity

- 5.9 A candidate shall campaign honestly, fairly, by lawful means and with respect for other candidates, and shall bear responsibility for the conduct of others campaigning on his or her behalf.
- 5.10 Any candidate who is an employee of the First Nation of Nacho Nyak Dun or an incumbent:
- (1) shall campaign in a manner which preserves any confidentiality attached to information of which he or she is aware as a result of his or her employment or office;
 - (2) shall not use his or her access to information concerning the affairs of the First Nation of Nacho Nyak Dun to unfair advantage; and
 - (3) shall campaign on his or her own time and, if he or she wishes to campaign during normal working hours in the two weeks prior to the date of the election, shall take leave of absence without pay or accrued but unused holiday time or time off in lieu of overtime.
- 5.11 The Election Committee shall give **written** notice to a candidate alleged to be in violation of 5.9 or 5.10 that such an allegation has been received, and shall require that candidate to attend as it reasonably may specify at a meeting with the Election Committee. The Election Committee shall consider each allegation it receives within a reasonable time, and may make such findings on the merits as it considers reasonable, having regard to any information it considers relevant. Where the Election Committee finds that, on a balance of probabilities, a violation of 5.9 or 5.10 has occurred, it may make such order as it deems appropriate in the circumstances and to ensure compliance in future.
- (1) An allegation that section 5.9 or 5.10 has been violated may be brought before the Election Committee only by a candidate or by a member of the Election Committee.

- (2) The Election Committee shall have no obligation to consider an allegation which, in its judgment, is frivolous, vexatious or capricious.
- (3) The Election Committee may consider an allegation even if the candidate impugned fails to attend as required under section 5.11, but, in that event, shall give that candidate written notice of any order made, and an opportunity to be heard within 3 days of the making of that order.
- (4) Any order made under section 5.11 shall be binding upon the person who made the original allegation, and the candidate impugned.
- (5) The Election Committee may refer any failure to comply with an order made under 5.11 to the Elders Council, and the Elders Council in such a case may consider any information it deems relevant and make any order it deems appropriate to ensure compliance with section 5.9 or 5.10, or an order terminating the candidacy of the non-complying person.

Special Provisions

- 5.12 A candidate may withdraw his or her candidacy by filing written notice of his or her withdrawal with the Election Committee at any time prior to 10.00 a.m. on the date of the election.
- 5.13 If, between the date nominations closed and the date of the election, a candidate dies:
- (1) the candidacy of that person shall terminate as of the date of his or her death or disability; and
 - (2) any advance poll or mobile poll which may have occurred shall be a nullity.
- 5.14 In the event all candidates for an office withdraw, or section 5.13 applies, the Election Committee shall:
- (1) convene and complete as soon as practicable a nomination process in accordance with sections 5.4 and 5.5 for the purpose only of receiving new nominations in lieu, and thereafter proceed as provided in this Act; and
 - (2) postpone the date of the election, any advance poll, **any mobile poll** and any other election proceedings for such time as the Election Committee may deem reasonable in the circumstances.
- 5.15 Where section 5.14 applies, the Election Committee shall cause notice of the change to be published forthwith and the Chief Electoral Officer shall endeavour to ensure that all ballots are amended so as to reflect the change.

Acclamation

- 5.16 Where there is only one candidate for an office, whether upon certification of the list of candidates or as a result of proceedings under 5.11, 5.12 or 5.13 and 5.14, the Election Committee shall declare that candidate to be elected by acclamation to that office, and there shall be no further obligation to complete the election procedures set out hereunder.

Polling Stations

- 5.17 On the date of the election, a polling station shall be established in Mayo and Whitehorse and any other location as determined by the Election Committee.

In addition, a postal mail box, separate from any other mail box registered to the First Nation of Nacho Nyak Dun, shall be established under the control of the Chief Electoral Officer at the postal outlet in Mayo for the receipt of mail-in ballots.

Advance Polls

- 5.18 An advance poll shall be established at the polling station locations specified in section 5.17 on a date not more than 15 days and not less than 10 days prior to the date of the election.
- 5.19 Each polling station shall be open continuously from 10.00 a.m. until 8.00 p.m. on the date of the election and the advance poll.
- 5.20 An elector may cast his or her ballot in an election only once, and may do so at any polling station on the date of the election or the advance poll, as the case may be, or by mobile poll or by mail where permitted by this Act.

Proxy voting application and certificate

- 5.21 (1) If an elector has reason to believe that voting may not be possible because of absence from the Yukon, the elector may by proxy application in the prescribed form:
- (a) appoint another elector as a proxy voter to vote in place of the elector at the election; or
 - (b) authorize a candidate to appoint elector as a proxy voter to vote for and in place of the elector at the election.

- (2) Any elector who has signed a proxy application or any proxy voted named in the application may apply in person for a proxy certificate:
 - (a) at any time before the close of the poll on polling day, to the Chief Electoral Officer or his or her designate; or
 - (b) at a polling station on the election date, to a returning officer.
- (3) The Chief Electoral Officer or a returning officer shall issue a proxy certificate in the prescribed form on receipt of a completed proxy application and consent in the prescribed form if he or she is satisfied that the names of the elector and the proxy voter both appear on the voters list.
- (4) On completion of a proxy certificate pursuant to subsection (3), the Chief Electoral Officer or a returning officer shall:
 - (a) deliver the original copy of the certificate to the elector or proxy voter who made the application; and
 - (b) retain a copy of the certificate together with the application.
- (6) An elector may withdraw a proxy certificate by delivering a statement in the prescribed form to the Chief Electoral Officer or a returning officer, but the withdrawal is of no effect if the proxy has been exercised.
 - (a) On receiving a withdrawal of proxy, the Chief Electoral Officer or a returning officer shall:
 - (i) deliver one copy to the elector; and
 - (ii) retain one copy.

Proxy Voting at the Polling Station

- 5.22 (1) Subject to the other provisions of this Act, a proxy voter is entitled to vote at the election for and in the place of the elector who has chosen to vote by proxy if the elector has not voted and the proxy voter:
- (a) delivers the proxy certificate to a returning officer; and
 - (b) verifies by statutory declaration made before the returning officer that the proxy voter has not already voted in the election as a proxy voter, and that, to the best of the proxy voter's knowledge, the elector is absent from the Yukon.

- (2) If a proxy voter produces a proxy certificate the returning officer shall determine whether the name of the person who is voting by proxy appears on the voters list.
- (3) When it has been determined that a person is entitled to receive a ballot as a proxy voter at a polling station,
 - (i) the person's name and address shall be recorded by the returning officer; and
 - (ii) the person shall immediately be allowed to vote.

Mail-in Ballots

5.23 An elector may contact the Chief Electoral Officer and request to cast his or her ballot by mail.

- (1) The Chief Electoral Officer, as soon as practicable after the list of candidates is certified by the Election Committee, shall send a list of the candidates for election, a ballot initialled by the Chief Electoral Officer, a statutory declaration and instructions for completion and return of the ballot and declaration to each elector who has made a request for a mail-in ballot to the address that he or she has provided.
- (2) A mailing under subsection (1) shall be by priority or express post, with proof of delivery.

5.24 A ballot cast by mail must be:

- (1) sealed within an envelope addressed to the Chief Electoral Officer;
- (2) in the hands of the Chief Electoral Officer at the polling station in Mayo by or before 8.00 p.m. on the date of the election;
- (3) accompanied by the statutory declaration of the elector that he or she personally completed the ballot; and
- (4) bear the initials of the Chief Electoral Officer or his or her designate;

in order to be eligible to be included in the final count of the vote. A ballot cast by mail which does not conform to this provision shall be a nullity.

5.25 The Chief Electoral Officer shall maintain in his or her custody and keep safe all mail-in ballots as he or she may receive, and shall deliver all such ballots to the polling station in Mayo by or before 8.00 p.m. on the election date, and shall ensure that all such ballots are included in the count of the vote.

Special ballot

- 5.26 A special ballot enables an elector to vote without attendance at an advance poll or at a polling station on the date of the election.
- 5.27 The following electors whose names appear on the voters list may, at any time after the issue of the writ and before the opening of the polls on the date of the election, apply to the returning officer to vote by special ballot:
- (1) electors who are housebound;
 - (2) electors who are unable to vote at an advance or regular poll because of their employment, business or profession; or
 - (3) an elector who is temporary resident in a transition home.

ELECTION ORGANIZATION

Officers

- 6.1 There shall be:
- (1) a Chief Electoral Officer;
 - (2) a Returning Officer for each polling station, including any special ballot; and
 - (3) one or more Poll Clerks for each polling station, as the Chief Electoral Officer may deem required.

The Chief Electoral Officer may serve as the Returning Officer for the polling station in Mayo.

Upon the request of an elector, a Chief Electoral Officer, Returning Officer or Poll Clerk shall make best efforts to provide a translator fluent in the Northern Tutchone language.

Chief Electoral Officer

- 6.2 The Election Committee shall endeavour to appoint the Chief Electoral Officer no later than 40 days prior to the date of the election, and the term of that appointment shall end 31 days after the date of the election.

6.3 The Chief Electoral Officer shall report to the Election Committee and shall:

- (1) be responsible for the organization and administration of the election process, including:
 - (a) the preparation of a budget for the consideration of the Election Committee;
 - (b) the timely preparation and distribution of the voters' list and of all forms and ballots;
 - (c) the publication of all notices to electors, including notices of the location of polling stations and the hours of the polls at the locations specified in 5.17 and in generally accessible Yukon media;
 - (d) the preparation and conduct of polling stations, the vote, and the count of the vote; and
 - (e) the recommendation of Returning Officers, for appointment by the Election Committee;
 - (f) the appointment of any Poll Clerks and translators required;
- (2) confirm and report the final count of the vote to the Election Committee forthwith after the close of the polls;
- (3) prepare and provide to the Election Committee, within 14 days after each election is concluded, a report setting out:
 - (a) the results of the election, showing the number of votes cast for each candidate by polling station, by special ballot and by mail-in ballot;
 - (b) the particulars of any complaint and any remedy provided; and
 - (c) any recommended improvement to the election process and organization;
- (4) perform such other duties as may be assigned to the Chief Electoral Officer by this Act or by the Election Committee, as it may deem conducive to the better conduct of an election; and
- (5) work co-operatively with the First Nation of Nacho Nyak Dun registrar of citizens; and
- (6) consult with the Election Committee with respect to any matter on which guidance or clarification is required.

Returning Officers

6.4 Returning Officers shall be appointed no later than 7 days prior to the date of the election and the term of their appointments shall end at the close of business on the day following the date of the election.

- 6.5 Each Returning Officer, under the direction of the Chief Electoral Officer, shall:
- (1) be responsible for the administration of the election at the polling station in respect of which he or she is appointed; and
 - (2) perform such duties as may be assigned to him or her by this Act or the Chief Electoral Officer. A Returning Officer may identify and recommend to the Chief Electoral Officer any Poll Clerk and/or translator or other arrangement he or she believes to be required for the better administration of the election at that polling station.

VOTERS LIST

Preparation

- 7.1 The Chief Electoral Officer, with the assistance of the First Nation of Nacho Nyak Dun registrar of citizens, shall prepare the voters list prior to the date of the first nomination meeting, on the basis of information contained within the records of the First Nation of Nacho Nyak Dun.

Contents

- 7.2 The voters list shall contain the name of each person eligible to be an elector, and shall be posted at the locations specified in section 5.17.
- 7.3 The voters list shall be legible, and the names of the electors shall appear on the voters list in alphabetical order, surname first.

Changes to the List

- 7.4 Any person who believes that he or she is eligible to be an elector, but whose name does not appear on the voters list, may:
- (1) apply in writing to the Chief Electoral Officer at any time; or
 - (2) apply in person to a Returning Officer on the date of the election or the advance poll or any mobile poll;
- to be added to the list.

- 7.5 A person who applies under subsection 7.4 (1) shall provide particulars of his or her claim to eligibility. The Chief Electoral Officer shall endeavour to review and decide the matter on the face of the application and in accordance with this Act as soon as practicable and, in any event, on or before the date of the election.
- (1) If the Chief Electoral Officer decides that an applicant for addition is eligible to be an elector, the Chief Electoral Officer shall add that person's name to the voters list and give notice of the addition forthwith to each Returning Officer.
 - (2) If applicant is an elector who is entitled to vote by mail, the Chief Electoral Officer shall provide a mail ballot to that person forthwith.
- 7.6 A person who applies under subsection 7.4 (2) shall provide to the Returning Officer for the polling station at which his or her application is made proof that he or she is a citizen of the First Nation of Nacho Nyak Dun.
- The Returning Officer shall consult with the Chief Electoral Officer to determine whether the proof provided is satisfactory. If the Chief Electoral Officer is satisfied that the person is an elector, the Returning Officer shall add that person's name to the voters list, confirm the addition to the Chief Electoral Officer, and provide a ballot to that person. A person who fails to provide satisfactory proof under this provision shall not be provided a ballot.
- 7.7 Where a person's name appears on the voters list, but that person at a polling station identifies an address different from the address appearing on the list, that person shall provide proof of current address satisfactory to the Returning Officer for that polling station before being provided with a ballot. If satisfied, the Returning Officer shall enter the current address of that person on the voters list, give notice of the change to the Chief Electoral Officer, and provide a ballot to that person.

Access to the Voters List

- 7.8 Upon the request of a candidate, the Chief Electoral Officer shall provide that candidate with a copy of the voters list and notice of any change which may be made to the voters list prior to the date of the election. On the date of the election, a candidate, whether directly or by authorized representative, shall be advised of any change to the voters list.

CONDUCT OF THE POLL

Ballots

- 8.1 Forthwith after the list of candidates is affirmed by the Election Committee, the Chief Electoral Officer shall cause a sufficient number of ballots, in a form acceptable to the Election Committee, to be printed in the English language.

- (1) The Chief Electoral Officer shall, after the close of nominations and the confirmation of eligibility of all nominations, in the presence of any candidates or agents and voters who are present, establish, by the drawing of lots, the order in which the names of the candidates shall appear on the ballots.

Ballot Boxes

- 8.2 A ballot box shall be located at each polling station on the date of the election and of the advance poll. There shall be one ballot box for each office to be filled and one ballot box for the special ballot. Each ballot box shall be:
- (1) of durable material;
 - (2) constructed so as to enable ballots to be deposited within, but not withdrawn from, the box; and
 - (3) secured by lock or other similar device.

Poll Materials

- 8.3 At least 1 day prior to the date of the election or of the advance poll **or the mobile poll**, as the case may be, the Chief Electoral Officer shall supply to each Returning Officer at each polling station:
- (1) the number of ballots estimated to be sufficient for that polling station;
 - (2) all necessary supplies and materials for the establishment of at least one polling booth, and the marking of ballots;
 - (3) a copy of the voters list, as amended to that date;
 - (4) printed instructions to Returning Officers, translators and electors; and
 - (5) a blank poll book;

and the Returning Officer shall keep all such material in his or her custody and safekeeping until the return thereof to the Chief Election Officer as provided hereunder.

Ballots at each Polling Station

- 8.4 Immediately upon the receipt of ballots, each Returning Officer shall count the number of ballots he or she receives for each office to be filled and provide the Chief Electoral Officer with a written receipt certifying the result of that count. The Returning Officer shall:
- (1) initial each ballot in ink, but shall not remove a ballot from the book until it is necessary to do so in order to enable an elector to cast his or her vote; and
 - (2) cause the printed instructions to electors to be posted at the polling station and in each polling booth.

Opening of the Poll

- 8.5 At the opening of each polling station on the date of the election or of the advance poll, each Returning Officer shall open each ballot box, demonstrate that it is empty, close and lock the box, place it in full view to any person at the polling station, and keep the box locked until such time as the poll has closed and the count of the vote is ready to begin.

Persons Present

- 8.6 Any member of the Election Committee and any person working as part of the election organization in respect of a polling station may be present at that polling station during the time the poll is open. In addition, any candidate, and one representative of each candidate, identified for that polling station by way of authorization executed by that candidate and delivered to the Returning Officer, may be present at a polling station during the time the poll is open, provided that there shall be no harassment of polling station officials, and any complaint by a candidate or candidate's representative with respect to the conduct of that polling station shall be directed to the Chief Electoral Officer.
- 8.7 An elector who is not described in 8.6 may be present at a polling station during the time that the poll is open only for the purpose of casting his or her vote and only for the time reasonably required for that person to do so.
- 8.8 Every person shall:
- (1) respect and maintain the secrecy of the votes cast by electors and refrain within the polling station from attempting to discover the vote of an elector;
 - (2) refrain from intimidating, interfering with or guiding an elector with respect to the marking of his or her ballot; and
 - (3) respect the order and decorum of the poll.

Voting by an Elector

- 8.9 Each elector upon attending at a polling station shall identify himself or herself to the Returning Officer by way of name and address. The Returning Officer shall determine whether that person is on the voters list or should be added to the list and, if so, shall provide that person with a ballot and affirm that action by drawing a line through that person's name on the voters list.
- 8.10 An elector shall fold and return to the Returning Officer the ballot which he or she has been provided, whether marked by the elector or not, before leaving the polling station.
- 8.11 A ballot may be marked in ink or pencil.
- 8.12 Where so requested by an elector who is blind, unable to read or write, or otherwise disabled in such manner as to be unable to cast his or her vote without assistance, the Returning Officer may permit that elector to be accompanied at the polling station and in the polling booth by a person chosen by the elector. A person who marks a ballot under this provision shall mark the ballot provided to the elector as the elector shall direct.

Unusable Ballots

- 8.13 An elector who accidentally renders a ballot unusable or who marks a ballot in error shall return that ballot to the Returning Officer, whereupon the Returning Officer shall mark that ballot as "void", issue a replacement ballot to the elector and make appropriate entries in the poll book. Ballots marked "void" shall be segregated from other ballots by the Returning Officer and kept in his or her custody until the close of the poll.

Duties of Returning Officers

- 8.14 Each Returning Officer shall:
- (1) have the responsibility and authority to maintain order and decorum at the polling station, and to seek the assistance of law enforcement authorities to do so, as he or she deems necessary;
 - (2) ensure that there is entered in the poll book:
 - (a) the number and order of voting;
 - (b) the number of electors on the voters list;
 - (c) the name and address of each elector to whom a ballot is provided;
 - (d) the name of the polling station at which that ballot is provided;
 - (3) verify that each ballot returned for deposit by an elector bears the Returning Officer's initials;

- (4) deposit each initialled ballot returned in the appropriate ballot box; and
 - (5) mark “voted” in the poll book alongside that person’s name.
- 8.15 A Returning Officer shall permit the representative of a candidate to examine the poll book at any time while the poll is open.
- 8.16 At the time for close of the poll, the Returning Officer shall permit any elector within the polling station who has not yet voted to complete his or her vote, and otherwise shall prevent any further entry by electors into the polling station and any further vote to be cast.

COUNT OF THE VOTE

Close of the Poll

- 9.1 Forthwith upon the completion of voting and the close of the poll, each Returning Officer shall:
- (1) cause all persons other than those entitled to be present under 8.6 to depart from within the polling station;
 - (2) count the number of electors who are recorded in the poll book as having voted and, immediately below the name of the elector who voted last, make and initial an entry in the poll book certifying that number;
 - (3) count the ballots spoiled in error and marked void, and place those in a sealed envelope marked with the number of ballots it contains; and
 - (4) count the number of unused ballots, and place those in a sealed envelope marked with the number of ballots it contains.

The Count

- 9.2 Upon the completion of the procedures described in 9.1, the Returning Officer, in the presence of at least two witnesses, shall, in sequence, unlock the ballot box for each office to be filled, empty out the contents in such a manner that those present may have the contents in full view at all times, and count the number of votes cast at that polling station for each candidate for each office, as well as the number of ballots spoiled.

- (1) In the count, a ballot shall be declared to evidence a vote cast by an elector if:
 - (a) the ballot bears the initials of the Returning Officer;
 - (b) the ballot does not evidence the identity of the elector by or under whose direction it was marked; and
 - (c) the intention of the elector can be discerned to the satisfaction of the Returning Officer from the mark or marks appearing on the face of the ballot as to a vote for one candidate for each office to be filled, whether the mark or marks be made by way of an X, check mark, line or other means.
- (2) A ballot which evidences a vote for a candidate, and which also evidences any other mark or writing, shall be included in the count.
- (3) Any ballot which does not satisfy the requirements of subsection 9.2(1) shall be declared spoiled.
- (4) The Returning Officer shall ensure that at least two persons present other than the Returning Officer keep a tally of the count during the whole of the count.

After the Count

- 9.3 Upon the completion of the count at a polling station, the Returning Officer shall:
- (1) place all ballots evidencing a vote for a candidate in a sealed envelope marked with the number of ballots it contains;
 - (2) place all ballots declared spoiled in a sealed envelope marked with the number of ballots it contains;
 - (3) advise the Chief Electoral Officer of the results of the vote for each candidate at that polling station;
 - (4) prepare and execute in duplicate a statement of the polling station certifying the number of:
 - (i) ballots received at the polling station but not used;
 - (ii) ballots issued;
 - (iii) ballots returned, marked void and replaced;
 - (iv) ballots counted as spoiled;

- (v) ballots counted as evidencing a vote; and
 - (vi) the number of votes counted for each candidate; and
- (5) place one copy of the statement of the poll, the poll book, all envelopes containing ballots, and all records of the polling station into a ballot box designated for the purpose, seal and lock the box, and, as soon as practicable, deliver the box and lock key into the custody of the Chief Electoral Officer.

RESULTS OF THE VOTE

Gathering of Results

- 10.1 The Chief Electoral Officer shall assemble and report the results of the vote for each candidate, by polling station, special ballot, mail-in and in aggregate, to the Election Committee forthwith upon the receipt of those results.

Announcement of Results

- 10.2 Forthwith upon receipt of the report of the Chief Electoral Officer under section 10.1, the Election Committee shall announce the results of the vote.
- 10.3 Where a candidate for an office receives more votes than any other candidate for that office, that candidate shall be declared by the Election Committee to be elected to that office, and the Election Committee shall cause notice of that result to be posted at each poll as soon as practicable.

Tie Vote

- 10.4 Where more than one candidate for the same office receives the same highest number of votes, the Election Committee shall declare the result to be a tie, and shall cause a run-off vote to occur within 30 days upon such notice to the electors and with such provision for an all-candidates meeting, the date of the run-off vote and of any advance poll as the Election Committee may deem reasonable in the circumstances.

Recount

10.5 If:

- (1) there is a difference of 3 or less votes between the candidate indicated by the count to have been elected and the candidate counted as receiving the next highest number of votes; or
- (2) the candidate counted as receiving the next highest number of votes after the candidate indicated by the count to have been elected so requests in writing delivered to the Election Committee no later than 4.30 p.m. on the fifth day after the date of the election, and the difference between that candidate and the candidate indicated by the count to have been elected is 5 votes or less;

the Election Committee shall cause the Chief Electoral Officer to conduct a recount of the vote with respect to that office forthwith upon the return of all ballot boxes concerning that office from the Returning Officers to the Chief Electoral Officer, and the results of that recount shall be reported by the Chief Electoral Officer and announced by the Election Committee as conclusive as to the result of the election.

APPEALS

Opportunity to Appeal

11.1 A decision of a Returning Officer, the Chief Electoral Officer or the Election Committee in the conduct of an election, and the results of an election, shall be final and binding and not subject to judicial review in any court, provided that a candidate shall have the right to appeal against that decision or result on the ground that it was obtained in a manner:

- (1) not in accordance with this Act;
- (2) inconsistent with the principles of natural justice or otherwise without jurisdiction;
- (3) in error of law; or
- (4) based on an erroneous finding of fact made in a perverse or capricious manner.

Notice of Appeal

11.2 A nominee or candidate who wishes to appeal under section 11.1 shall do so by filing notice of appeal in writing with the Election Committee within 10 days after the date of the election and shall specify in that notice the decision or result against which the appeal is made and the ground or grounds under section 11.1 for the appeal.

Hearing of Appeal

- 11.3 Upon receipt of a notice of appeal under section 11.2, the Election Committee shall endeavour to hear the appeal (or convene a hearing for the reconsideration of its decision, if the appeal is against a decision of the Election Committee) within 30 days after the date the notice of appeal was received.
- 11.4 At a hearing under section 11.3, the Election Committee shall:
- (1) provide an opportunity to be heard to the applicant, any other candidate in the election, the Chief Electoral Officer and any Returning Officer whose activities in the election may be relevant;
 - (2) consider any other information it may deem relevant; and
 - (3) render its decision in the matter in writing, with reasons, as soon as practicable after the hearing of the matter is concluded.

Final Appeal

- 11.5 In the event that the justice system contemplated in Part III of the Constitution of the First Nation of Nacho Nyak Dun is not sufficiently established so as to enable an appeal from a decision of the Election Committee under section 11.4 to be heard, the applicant may appeal from a decision under section 11.4 to the next Annual Meeting of the Assembly by notice of appeal filed with the Council of the First Nation of Nacho Nyak Dun at least 30 days prior to the date thereof, and the decision of the Annual Meeting of the Assembly in respect of that appeal shall be final and binding and not liable to review in any Court.

Disturbance of Election Result

- 11.6 The result of an election shall not be disturbed as a result of an appeal unless, in the opinion of the body hearing the appeal, there would have been a substantial difference in the result had the election been conducted or the election result obtained in a manner consistent with that body's decision on the appeal.

GENERAL PROVISIONS

Records

- 12.1 For the purposes of this Act, the information contained within the records of the First Nation of Nacho Nyak Dun, on their face, shall be conclusive as to the identity and particulars of any person, unless satisfactory information to the contrary is accepted under sections 7.5, 7.6 or 7.7.

Costs

12.2 Council shall fix the remuneration of the Election Committee.

12.3 The First Nation of Nacho Nyak Dun shall pay the costs of:

- (1) the approved budget for each election;
- (2) the process of appeal;
- (3) the Election Committee; and
- (4) the Elders Council;

including all reasonable travel and incidental expenses.

12.4 The First Nation of Nacho Nyak Dun shall not be responsible for or pay any costs whatsoever of any person who is a nominee or candidate, including campaign costs and any costs of such a person in connection with an appeal.

Notices

12.5 Any notice which may be given or application which may be made under this Act shall be given by hand or surface mail addressed to the Election Committee or the Chief Electoral Officer, as the case may be. If given by hand, it may be delivered to any member of the Election Committee or to the Chief Electoral Officer personally. If given by mail, it shall be addressed to the postal address of the First Nation of Nacho Nyak Dun in Mayo to the attention of the Election Committee or the Chief Electoral Officer, as the case may be.

No Liability

12.6 Any person engaged to work in an election, including Poll Clerks, translators, Returning Officers, the Chief Electoral Officer, and the Election Committee and each of its members, the Elders Council and each of its members, as well as the First Nation of Nacho Nyak Dun, its Council members, employees, agents and servants, shall not be liable for any wilful or negligent act or omission, decision, procedure or error done, made or undertaken in connection with any matter or proceeding under this Act.

Indemnification

- 12.7 Notwithstanding section 12.6, the First Nation of Nacho Nyak Dun shall indemnify and save harmless all persons engaged to work in an election, as well as the Election Committee and its members, and the Elders Council and its members, from and against any and all actions, causes of action or proceedings of any kind whatsoever which may be threatened, prosecuted or brought against them in respect of any act, omission or decision, made by them, respectively, in the conduct of their office or the performance of their duties under this Act.