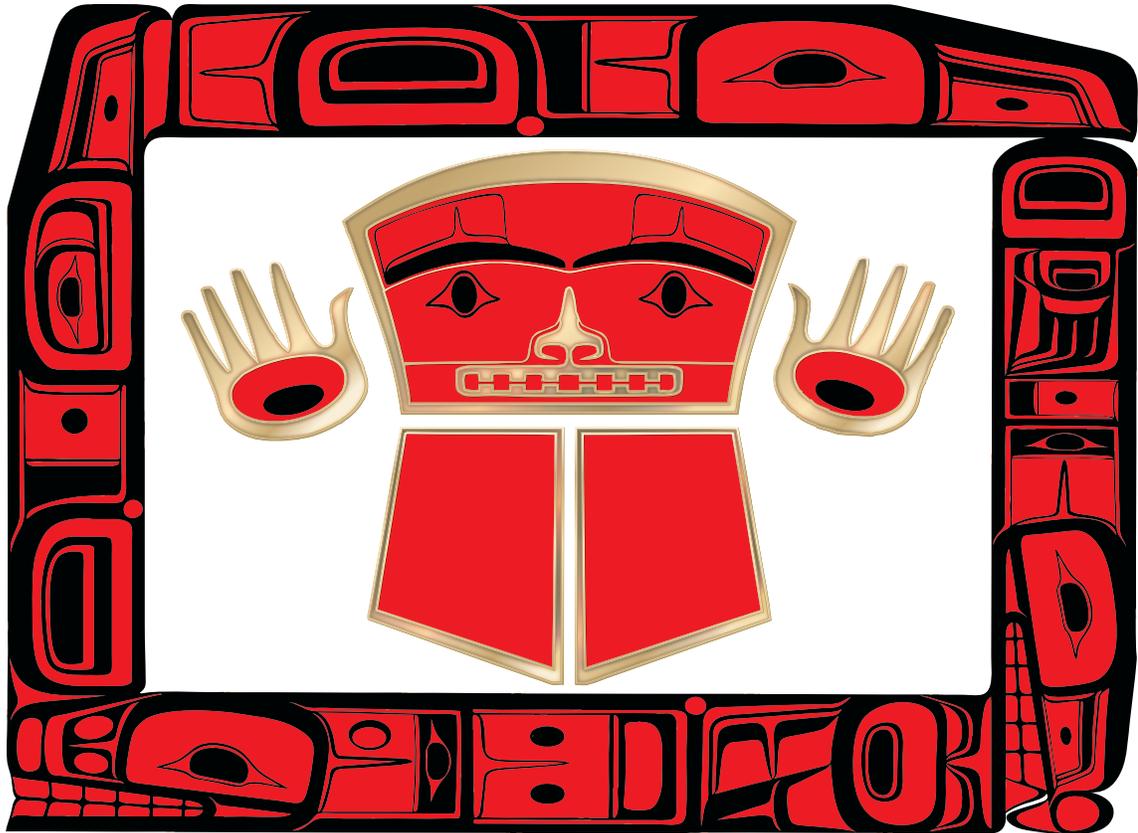


Lax Kw'alaams Band Election Regulations



January 26, 2011 registration No.sor/2011-5

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NOTE: The masculine gender is used throughout this document without bias, in the interest of simplicity and ease of reading.

Robert Rule of order reference: www.robertsrules.org
Corbiere Decision: www.ainc-inac.gc.ca
Gull bay Decision: www.ainc-inac.gc.ca

PART 1 - PREAMBLE & TITLE

1. This code shall be called the “Lax Kw’alaams Election Regulations” of the Lax Kw’alaams First Nation.

PART 2 - COMING INTO FORCE

2. This code comes into force upon the passing of a Ministerial Order proclaiming the removal of Lax Kw’alaams from the election provisions of the *Indian Act*.

PART 3 - INTERPRETATION

3. In this code

“**By-Election**” a special election held between regular elections to fill a vacancy.

“**Candidate**” means a person who:

- a. is at least 18 years of age on the day on which the nomination period is closed;
- b. is a Lax Kw’alaams member at least 12 months prior to election;
- c. has been nominated to be a candidate for one of the positions of Mayor or on-reserve councillor or off reserve councillor in the accordance with this code.
- d. Has not been convicted of an indictable offence, which a pardon has not been granted.

“**Code**” means the leadership selection system set out herein.

“**Code of Conduct**” means guidelines, general rules of behaviour and standards established in accordance with handbook for council, which governs the conduct of candidates running for office and their supporters relating to their participation in the electoral process. Appendix A

“**Complaints and Appeal Board**” means the body appointed by a council resolution in accordance with Part 14 of this code to review and make decisions concerning removal from office and election appeals and complaints.

“**Consecutive Term**” means a 4 year term of office.

“**Corrupt**” means bribery direct or indirect, or providing a financial or material incentive to an elector in exchange for a vote or during term of office.

“**Council**” means the body composed of those persons selected pursuant to this code.

“**Deputy Electoral Officer**” means a person appointed by the electoral officer to assist him in the conduct of the election process.

“**Election**” means a general election of the Lax Kw’alaams held pursuant to the provisions of this code.

“**Electoral Officer**” means a person, appointed by a council resolution before each election, who has the responsibility for conducting the nomination period, the election and post-election procedures.

“**Elector**” means a person who:

- a. is a member of Lax Kw’alaams; and
- b. is at least 18 years of age on the day on which the election is held.

“Indian Registration Administrator”(I.R.A) means the band employee responsible for maintaining the Lax Kw’alaams membership list.

“Mail-in Ballot” means a ballot mailed or delivered in accordance with this code.

“Oath” means a solemn affirmation.

“On Reserve” means for the purpose of this code inside boundaries of Lax Kw’alaams I.R.No.1.

“Off Reserve” means for the purpose of this code outside boundaries of Lax Kw’alaams I.R No.1.

“Petitioner” means an individual who submits a petition in accordance with this code with respect to an election

“Polling Station” means a building, hall or room, which is selected as the site at which voting takes place.

“Proof of Identiy”Identification such as a government approved picture or Birth certificate and medical card.

“Rejected Ballots” means those ballots that have been improperly marked and/or defaced by elector(s), which are not included in the tally of valid ballots cast during the counting of the votes.

“Resident” refers to the residential status of an elector who is considered to have his ordinary residence in one given place. A person’s ordinary residence can be described as:

- a. the place the person normally eats and sleeps 6 months prior to the election; or
- b. the place the person receives mail;

A person can only be ordinarily resident in one place at one time, and a person is ordinarily resident in that place until another place of ordinary residence is acquired

“Resolution” means a Lax Kw’alaams Band Council Resolution adopted at a duly convened meeting of Council.

“Scrutineers” one that observes the count of ballots on the candidates behalf.

“unanimous” quorum of 5 members the Lax Kw’alaams Council

“Voter Declaration Form” means a document that sets out, or provides for:

- a. the name of the elector;
- b. the Lax Kw’alaams membership or registry number of the elector ,the date of birth of the elector; and
- c. the name, address and telephone number of a witness to the signature of the eligible elector.

“Voters List” means the list of Lax Kw’alaams members eligible to vote in an election.

PART 4 - THE COUNCIL

Composition and Size

4. The council shall consist of:
 - a. one Mayor who is a Lax Kw'alaams member
 - b. twelve councillors who are Lax Kw'alaams Band members selected in accordance with section 109 of this code, a maximum of three of whom shall be off-reserve councillors with the highest votes and the remainder of whom shall be on-reserve councillors.

Meetings

5. The first meeting of the council shall be held not later than 3 business days after its election, and meetings shall thereafter be held on such days and at such times as may be necessary for the business of the council or the affairs of the Lax Kw'alaams membership.
6. No member of the council may be absent from three consecutive meetings without being authorized to do so by the Mayor and council.
7. The Mayor of Lax Kw'alaams or a quorum of the Council shall summon a special meeting of the council (ex. emergency or crisis that requires an immediate decision).
8. The secretary to the council shall notify, each member of the council of the day and hour and place of each meeting of the council.

Order and Proceedings

9. The quorum shall be 5 members of Council.
10. If no quorum is present within 30 minutes after the time appointed for the meeting, the secretary shall call the roll and take the names of the members of Council present and council shall stand adjourned until the next meeting.
11. The Mayor of the band shall be the chairman at meetings of council. In the absence of the Mayor, a chairman shall be chosen from among the councillors present until his arrival.
12. Upon a quorum being present, the chairman shall take the chair and call the meeting to order.
13. The order of business at each regular meeting of the council shall be in accordance with Robert's Rules of Order.
14. The council may appoint special committees on any matters as the interests of membership may require.

Mode of Election for Mayor and Councillors

15. Mayor and councillors shall be elected by a vote held in accordance with this code.

Term of Office

16. The term of office for the position of Mayor and Councillors shall not exceed 4 years.
17. Council shall, by council resolution, establish the date on which the election is to be held which must be no sooner than 100 days prior, and no later than 10 days following, the end of the term of office of the council.

Vacancy

18. The Mayor or councillor position may become vacant if, while in office:
 - a. the Mayor or councillor resigns in writing from office of his own accord;
 - b. the Mayor or councillor has been unable to perform the functions of his office for more than six months due to illness or other incapacity;
 - c. the Mayor or councillor dies;
 - d. the Mayor or councillor is removed from office in accordance with section 21;

PART 5 - CODE OF CONDUCT

19. Every person is in breach of the Code of Conduct herein who, directly or indirectly offers a bribe to influence an elector to vote or refrain from voting for a particular candidate, or during term of office, accepts or agrees to accept a bribe that is offered.
20. Every person is in breach of the Code of Conduct herein who, by intimidation or duress, compels a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate in an election.

PART 6 - REMOVAL OF COUNCIL MEMBERS FROM OFFICE

21. The Mayor or Councillor shall be removed from office if he:
 - (1)
 - a. has been absent from three Council meetings within a one-year period without prior authorization from Council;
 - b. fails to uphold the Code of Conduct guidelines;
 - c. fails to remove himself from a Conflict of Interest situation; or
 - d. accepts or offers a bribe, forges a Council document or otherwise acts dishonestly in his role.
 - (2) The Mayor or Councilor who is removed from office shall not be permitted to be nominated for a position on Mayor and Council for a period of one consecutive term after the removal.

Procedure

22. Proceedings to declare a person ineligible to continue to hold the office of Mayor or Councillor shall be initiated by:
 - a. a Lax Kw'alaams member who is at least 18 years of age submitting to the Complaints and Appeal Board a petition on which shall appear:
 - i. the ground pursuant to section 21(1) on which removal of a Mayor or Councillor is sought;
 - ii. the evidence in support of the petition;
 - iii. the signature of the petitioner;
 - iv. the signatures of at least 25% of Lax Kw'alaams members who is at least 18 years of age in support of the petition; and
 - v. a non-refundable filing fee of \$100.00.
 - b. a majority of council members passing a Band Council Resolution and submitting a petition to the Complaints and Appeal Board on which shall appear:
 - i. the ground pursuant to section 21 (1) on which removal of the Mayor or Councillor is sought;
 - ii. the evidence in support of the resolution; and
 - iii. the signatures of all council members who voted for the removal.
23. On receipt of a petition, the Complaints and Appeal Board shall verify that the petition complies with section 21(1). If the petition does not comply, the Complaints and Appeal Board shall so notify the petitioner(s).
24. In a case where the petition complies with section 21(1), the Complaints and Appeal Board shall:
 - a. determine that the grounds put forth in the petition are not true and dismiss the petition; or
 - b. schedule a review hearing, which shall take place within 20 days from the date on which the petition was submitted to the board.
 - c. In a case where the petition has been dismissed under subsection 24(a), the Complaints and Appeal Board shall so inform the petitioner(s) in writing and provide a rationale.
 - d. In a case where the Complaints and Appeal Board schedules a hearing under subsection 24(b), the board shall send a written notice of the hearing by registered mail to council, the petitioner(s) and the council member who is the subject of the petition for removal.
 - e. The written notice described in section 24(d) shall set out:
 - i. the nature of the hearing and all related particulars;
 - ii the date, time and location of the hearing; and
 - iii a statement that the petitioner(s), any member of council or the council who is the subject of the petition for removal may, at the hearing, make a presentation to the board, which may include the presentation of documents and testimony by witnesses.
25. The Complaints and Appeal Board shall conduct a hearing at the time and place set out in the notice provided under section 24.

26. Within 5 business days of the day on which the hearing under section 24 is held, the Complaints and Appeal Board shall rule:
 - a. that the petition shall be allowed to stand, and declare the council position of the member of council who is the subject of the petition to be vacant or:
 - b. that the petition is dismissed.
27. The Complaints and Appeal Board shall send, by registered mail, a written notice of the ruling made under section 26 to council, the petitioner (one who started the appeal) and the council member who is the subject of the petition for removal.
28. The decision of the Complaints and Appeal Board made under section 26 is final and binding upon all parties.
29. If the council position is declared vacant under subsection 26(a), the Complaints and Appeal Board shall further declare the Mayor or Councillor removed from office shall be disqualified from being a candidate for a period of up to 1 consecutive term (4 years) commencing on the date of the board's ruling.

Vacancy of Mayor and Council

30. In the event that the office of the Mayor or on-reserve councillor or off-reserve councillor becomes vacant, the candidate who had the next highest votes in the last general election shall fill the vacancy and hold office for the remainder of the council's term of office.
31. Despite section 30, a vacancy in the office of off-reserve councillor shall only be filled by an off-reserve candidate if the off-reserve councillor who had the next highest votes in the last general election was in the top 12 in the last general election. If he was not, then the vacancy shall be filled by the on-reserve candidate who had the next highest votes in the last general election. If a vacancy cannot be filled in accordance to 30 and 31 then a by-election will be called.

PART 7 - PRE-NOMINATION PROCEDURE

Appointment of an Electoral Officer

32. The electoral officer shall be appointed by a council resolution not less than 100 days before the expiration of the council's term of office.
33. The council resolution for the appointment of the electoral officer shall contain his full name and address, the date of the election, the type of election that is to be conducted as well as any special instructions.
34. The electoral officer must be a person who:
 - a. has no vested interest in the outcome of the election;
 - b. is at least 21 years of age; and

- c. has experience in the conduct of elections or has received appropriate training with references.

35. In the event that the electoral officer cannot fulfill his duties, an existing deputy electoral officer shall be appointed by a council resolution, to undertake the duties of the electoral officer. In the absence of an existing deputy electoral officer, the council shall appoint a new electoral officer.

Oath of Office

36. The electoral officer must swear an oath to uphold the office in accordance with this code.

Responsibilities and Ethics

37. The electoral officer is responsible for managing and executing all pre- electoral, electoral and post-electoral processes and procedures included in this code. The electoral officer must:
- a. uphold and abide by the rules and regulations established in this code;
 - b. remain neutral and professional in the conduct of the duties of his office, and refrain from providing any preferential treatment or expressing support for or opposition to any candidate;
 - c. not pressure or intimidate other officials or personnel to favour a certain candidate; and
 - d. avoid conflicts of interest, or the appearance of conflicts of interest, by abstaining from decision-making where the electoral officer has a personal or private interest in the matter at issue.

Voters List

38. At least 79 days before the day on which an election is to be held, the electoral officer shall obtain the names of Lax Kw'alaams membership numbers and dates of birth of all band members who will have attained the age of 18 years on the date on which the election is to be held and last known addresses for electors who do not reside in Lax Kw'alaams from the IRA.
39. To register to vote electors are responsible for providing the Indian Registration Administrator with their current addresses and requesting a mail-in ballot voting package from the electoral officer.
- a. upon request nomination papers and/ or a mail-in voting package will mailed to an elector who does not live where a polling is station is stationed or is unable to attend a polling station.
40. The electoral officer shall not disclose an elector's address without the consent of the elector.
41. A candidate for election as Mayor or Councillor may obtain from the electoral officer a list of the names and addresses of electors who have consented to have their addresses disclosed to candidates.
42. At least 79 days before the day on which an election is to be held, the electoral officer shall prepare a voters list containing the names of all of the electors in alphabetical order.
43. The electoral officer shall post the voters list in a public area of the Lax Kw'alaams Band Office as may be determined by the electoral officer, no later than 72 days prior to the date on which

the election is to be held.

44. On request, the electoral officer or deputy electoral officer shall confirm whether the name of a person is on the voters list.
45. After consideration of all information and representations relating to amendments of the voters list, the electoral officer shall add or delete names from the voters list based on whether persons qualify as electors.
46. The decision of the electoral officer under this code is final and is not subject to appeal.

Appointment of Deputies and Interpreters

47. The electoral officer shall appoint deputies as he deems necessary, which shall work under his direction.
48. The deputy electoral officer shall have such powers as described in this code as well as those powers of the electoral officer as delegated to the deputy by the electoral officer.
49. A deputy electoral officer shall not be a member of council or a candidate in the election.
50. Every deputy electoral officer shall swear an oath of office to:
 - a. uphold and comply with this code, the Code of Conduct and all the laws of the community;
 - b. fulfill the duties and responsibilities of his office under this code;
 - c. carry out the duties faithfully, honestly, impartially and to the best of his abilities;
 - d. keep confidential, both during and after his term of office, any matter or information which, under this code, community law or policy, is considered confidential; and
 - e. always act in the best interests of the community in carrying out his duties.

PART 8 - THE NOMINATION PROCESS

Notice of Nomination Process and Mail-in Procedures

51. On behalf of the Lax Kw'alaams membership the electoral officer shall, at least 30 days before the date on which the nomination period is to be closed.
 - a. post a notice of the nomination process in a conspicuous place on reserve and on the Lax Kw'alaams web site;
 - b. mail a notice of the nomination process to all addresses from the I.R.A.
52. A notice of nomination process shall contain at minimum:
 - a. the location for receipt of nomination papers;
 - b. the date on which the nomination period will begin and the time and date the nomination period will close;

- c. a description of the manner in which an eligible elector may become a candidate in accordance with this code;
- d. the statement that a candidate's failure to comply with rules and procedures set out in this code related to the nomination process will void the nomination of the candidate;
- e. the date and location of the public posting of all the candidates;
- f. the date on which the election will be held, the location of each polling place and the times set for the opening and closing of the polling stations;
- g. the name and contact information for the electoral officer;
- h. the statement that any voter that has requested a mail-in package may vote by mail-in ballot;
- i. the statement that, if the elector wants to receive information from candidates, the elector can agree to have his address released to the candidates.

Nomination Period

53. (1) The nomination period shall commence on a date established by the electoral officer and shall close at 5p.m. on the 42nd day prior to the date on which the election is to be held.
- (2) The nomination period will not be less than seven (7) days.

Nomination Papers

54. Only the nomination papers of those electors who meet the requirements of a candidate as set out in this code, shall be accepted by the electoral officer.
55. A person shall only submit nomination papers for one of the offices of the Mayor, on-reserve councillor or off-reserve councillor.
56. An elector who wishes to run as a candidate must submit to the electoral officer written nomination papers during the nomination period
57. Written nomination papers shall include:
- a. A declaration to include the name, signature, address, telephone and registry number of at least 25 eligible electors endorsing an individual as a candidate for election to the position on council so identified;
 - b. a declaration signed by the candidate attesting that he or she meets the eligibility requirements to be a candidate set out in these election code with the 25 names; and
 - c. a statement by the prospective candidate consenting to be a candidate for election to the position of the Mayor and council as so identified.

Requirements of Endorsers to a Candidate's Nomination

58. In order to be entitled to endorse a candidate's nomination, an elector must, on the day of endorsement
 - a. be at least 18 years of age; and
 - b. is included on the voters list.
59. The submission of a candidate's nomination papers must be accompanied by a \$100.00 non-refundable fee in Canadian funds by certified cheque or money order made payable to the Lax Kw'alaams Band Office.
60. Any elector may sign the nomination paper of:
 - a. one or more eligible person for the office of Mayor; and
 - b. one or more eligible person for the position of councillor;

Candidate Deposit

61. All Canadian funds received as candidate deposit fees under this code will be non refundable and shall be placed in a special bank account, which contains only those funds. The funds shall be held in trust by the electoral officer in this account and then paid out of to offset the cost of election.
62. An elector, who fails to submit nomination papers in the form prescribed under section 56 and the deposit required under section 58 of this code with the electoral officer by 5 p.m. on the 42nd day preceding the day on which the election is to be held will not be a candidate in the election.
63. On the day following the close of the nomination period, the electoral officer shall prepare a list of candidates whose nomination papers have been received and accepted in accordance with this code and shall,
 - a. if the nomination papers of only one candidate for Mayor have been accepted, declare that person to be elected;
 - b. if the number of candidates for councillor whose nomination papers have been accepted does not exceed the number to be elected, declare those persons to be elected; and
 - c. where more than the required number of persons are nominated for election as Mayor or councillors, announce that an election will be held.
64. Two days following the end of the nomination period, the electoral officer shall post in at least one conspicuous place on reserve a list containing the names of the candidates, the names of those electors who have endorsed their nomination papers and the corresponding declarations and statements required under this code.

PART 9 – CANDIDACY

65. Only electors who meet the requirements of a candidate as set out in this code may be nominated as a candidate.

- a. A person may only be a candidate for one of the offices of Mayor, on-reserve councillor or off-reserve councillor in any election

Withdrawal

66. A candidate may withdraw his candidacy within 5 days of the date on which the nomination period ends by submitting a written withdrawal of nomination to the electoral officer.
67. A candidate who withdraws shall forfeit his deposit.
68. A candidate who dies before the close of the polls shall be considered to have withdrawn his candidacy and the \$100.00 deposit will be returned to the estate.

PART 10 - PRE-ELECTION PROCEDURE

Acclamation

69. Where the office of the Mayor and all offices of Councillor are filled by acclamation: the electoral officer shall post in at least one conspicuous place on reserve, and mail to every elector who resides off-reserve and who has registered to vote with the Electoral officer, a notice that sets out the names of the persons who have been acclaimed and states that an election will not be held.

Ballots

70. The electoral officer shall prepare ballot papers setting out:
 - a. the names of the candidates nominated for election as Mayor, in alphabetical order by surname and residency:
 - b. the names of the candidates nominated for election as on-reserve councillors and off-reserve councillors, in alphabetical order by surname and residency.
71. Where two or more candidates have the same name, the electoral officer shall add to the ballots such additional information as is necessary to distinguish between those candidates. The ballot may, at the request of the candidate, include a candidate's commonly used nickname.

Notice of the Election

72. The election shall be held at least 42 days after the day on which the nomination period ended.
73. The electoral officer shall, within 3 days after the day on which the nomination period ended, post a notice of election in at least one conspicuous place on the reserve and on the Lax Kw'alaams Web site.
74. The notice shall include:
 - a. the date of the election;

- b. the times at which the polling station(s) will open and close;
- c. the location of the polling station(s);
- d. the time and location of the counting of the votes; and
- e. a statement that the voters list is posted for public viewing and its location.

Mail-in Ballots

75. An elector who wishes to obtain a mail-in voting package must complete and sign a request to vote by mail-in ballot and return it to the electoral officer along with proof of identity. If the electoral officer is in receipt of an elector's request to vote by mail-in ballot proof of identity at least 10 days before the day on which the election is to be held, then the electoral officer shall between 35 days and 10 days before the day on which the election is to be held mail or otherwise deliver a mail-in ballot package to the elector who so requests consisting of:
- a. ballot(s) for Mayor and on-reserve and off-reserve councilor initialed on the back by the electoral officer;
 - b. an inner postage-paid return envelope, pre-addressed to the electoral officer;
 - c. a second inner envelope marked "ballot" for insertion of the completed ballots;
 - d. a voter declaration form, which shall set out:
 - i) the name of the elector;
 - ii) the membership number and date of birth of the elector; and address and phone number; and
 - iii) the name, address and telephone number of the witness to the signature of the elector;
 - e. the notice of election set out this code; and
 - f. a letter of instruction regarding voting by mail-in ballot which shall also include:
 - i) a statement-advising electors that they may vote in person at any polling station on the day of the election if they return their mail-in ballot to the electoral officer at the polling station or swear a written declaration before the electoral officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot; and
 - ii) a list of the names of any candidates who were acclaimed (if applicable).
76. An elector who is ordinarily Resident of Lax Kw'alaams who is unable to vote in person on election day may, at least 1 day prior to the day on which the election is to be held, request a mail-in ballot package under this section 75, the electoral officer or deputy shall hand deliver a mail-in ballot package described in section 75 to the elector who so requests.

77. The electoral officer shall indicate on the voters list that a ballot has been provided to each elector to whom a mail-in ballot was mailed or otherwise provided and keep a record of the date on which, and the address to which, each mail-in ballot was mailed or otherwise provided.
78. An elector shall vote by mail-in ballot by:
- a. placing an “X” or other mark that clearly indicates the elector's choice, but does not identify the elector, opposite the name of the candidate or candidates for whom he desires to vote;
 - b. folding the ballot in a manner that conceals the names of the candidates or any marks but exposes the electoral officer’s initials on the back;
 - c. placing the ballot in the inner envelope and sealing the envelope;
 - d. completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age;
 - e. placing the inner envelope and the completed, signed and witnessed voter declaration form in the postage-paid envelope; and
 - f. delivering, mailing or otherwise ensuring receipt by the electoral officer of the envelope before the close of polls on the day of the election.
79. Where an elector is unable to vote in the manner set out in this code, the elector may enlist the assistance of another person to mark the ballot and complete and sign the voter declaration form in accordance with that section.
80. Mail-in ballots that are not received by the electoral officer before the close of polls on the day of the election shall not be counted.

Equipment for the Election

81. The electoral officer shall, before the polling station is open, supply the polling station with:
- a. sufficient ballot boxes;
 - b. a sufficient number of ballots;
 - c. a sufficient number of voting compartments enabling electors to mark their ballots free from observation;
 - d. instruments for marking the ballots;
 - e. a sufficient number of voting instructions as may be required;
 - f. all other equipment necessary to establish and equip the polling stations; and

- g. the final voters list.

Polling Stations

- 82. The electoral officer will establish two polling stations, on reserve and one in Prince Rupert.

PART 11 - ELECTION DAY

Electoral Officer

- 83. The electoral officer shall be allowed to vote in the election provided that his name appears on the voters list.

Polling Hours

- 84. The polling station shall be open from 9 a.m. until 8 p.m. local time on the day of the election.

Verification of the Ballot Box

- 85. The electoral officer or deputy electoral officer shall, immediately before the commencement of the poll:
 - a. one ballot box for the Mayor, one ballot box for councillor;
 - b. open the ballot boxes and call such persons as may be present to witness that they are empty and complete a written statement to that effect, verified by a witness;
 - c. lock and/ or properly seal the ballot boxes in a manner preventing them from being opened without breaking the seal; and
 - d. place the ballot boxes in public view for the reception of the ballots.

Secrecy and Security

- 86. Voting shall be by secret ballot.
- 87. The electoral officer or deputy electoral officer shall maintain order at all times in the polling station and may cause to be removed any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll.
- 88. No person shall, on the day the election is held, on the premises of the polling station:
 - a. distribute any election-related printed materials except such materials as may be distributed by the electoral officer or deputy electoral officer for the purpose of conducting the election;
 - b. attempt to interfere with or influence any elector in marking his ballot; or
 - c. attempt to obtain information as to how an elector is about to vote or has voted.

Voting Procedure

89. Each person, on arriving at the polling station, shall give his name to the electoral officer or deputy electoral officer. The electoral officer or the deputy electoral may request identification from an Elector for the purpose of confirming his identity.
90. The electoral officer or deputy electoral officer shall, if the person's name is set out in the voters list, place his initials on the ballot(s) and provide them to the elector.
91. The electoral officer or deputy electoral officer shall cause to be placed in the proper column of the voters list a mark opposite the name of every person receiving a ballot.
92. An elector to whom a mail-in ballot was mailed or provided under this code may obtain a ballot and vote in person at a polling place if:
 - a. the elector returns the mail-in ballot to the electoral officer or deputy electoral officer; or
 - b. where the elector has lost the mail-in ballot, the elector provides the electoral officer or deputy electoral officer with a written affirmation that the elector has lost the mail-in ballot, signed by the elector in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.
93. The electoral officer or deputy electoral officer shall, when requested to do so, explain the method of voting to the elector.
94. After receiving a ballot, an elector shall:
 - a. immediately proceed to the compartment provided for marking ballots;
 - b. mark the ballot by placing an "X" or other mark that clearly indicates the elector's choice but does not identify the elector opposite the name of the candidate or candidates for whom he desires to vote;
 - c. fold the ballot in a manner that conceals the names of the candidates and any marks, but exposes the initials on the back; and
 - d. deliver the ballot to the electoral officer or deputy electoral officer.
95. On receipt of a completed ballot, the electoral officer or deputy electoral officer shall, without unfolding the ballot, verify the initials placed on it and deposit it in the ballot box in the presence of the elector and any other persons entitled to be present at the polling station.
96. While an elector is in the compartment for the purpose of marking his ballot, no other person shall, except as provided in this code, be allowed in the same compartment or be in any position from which they can see the manner in which the elector marks their ballot.

Voting Irregularities

97. At the request of any elector who is unable to vote in the manner set out in this code, the electoral officer or deputy electoral officer shall assist that elector by marking his ballot in the manner directed by the elector in the presence of another elector selected by the elector as a

witness and shall place the ballot in the ballot box.

98. The electoral officer or deputy electoral officer shall note on the voters list opposite the name of an elector requiring assistance, the fact that the ballot was marked by him at the request of the elector and the reasons therefore.
99. An elector who has inadvertently dealt with their ballot paper in such a manner that cannot be conveniently used shall, on one occasion only, upon returning it to the electoral officer or deputy electoral officer, be entitled to obtain another ballot paper. The electoral officer or deputy electoral officer shall write the word "cancelled" upon the spoiled ballot paper and preserve it.
100. Any person who has received a ballot and who leaves the polling place without delivering the same to the electoral officer or a deputy electoral officer in the manner provided, or after receiving a ballot, refuses to vote, shall forfeit his right to vote at the election, and the electoral officer or deputy electoral officer shall make an entry in the voters list in the column for remarks opposite the name of such person to show that such person received a ballot and declined to vote, and the electoral officer or deputy electoral officer shall mark upon the face of the ballot the word "declined" and all ballots so marked shall be preserved.

Closing of the Polling Station

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

PART 12 - COUNTING OF THE VOTES

Opening Mail-in Ballots

102. On the day after the Election, the Electoral Officer will, in full view of at least two other Deputy Electoral Officers and any scrutineers who are present, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot:
 - a. reject the ballot if:
 - i. it was not accompanied by a completed voter declaration form, or the voter declaration form is not signed or witnessed;
 - ii the name of the elector set out in the voter declaration form is not on the voters list;
or
 - iii the voters list shows that the Elector has already voted.
 - b. in any other case, place a mark on the voters list opposite the name of the Elector set out in the voter declaration form, and deposit the ballot in the correct box for the Mayor, and/or council ballot box.

Counting the Ballots

103. Immediately following the verification of mail-in ballots at the Primary Polling Station and or Secondary Polling Station, the Electoral Officer shall, in the presence of such deputy electoral officers or scrutineers as may be present, open the ballot box or boxes, examine each ballot and call out the names of the candidates for whom the votes cast on all valid ballots.

104. A deputy electoral officer shall mark a tally sheet in accordance with the names being called for the purpose of arriving at the total number of votes cast for each candidate.

Rejected Ballots

105. In examining the ballots, the electoral officer or deputy electoral officers must reject any ballots that:
- a. do not contain the initials of the electoral officer or deputy electoral officer;
 - b. do not give a clear indication of the elector's intention;
 - c. contain more votes than there are candidates to be elected; or
 - d. contain a mark by which the voter can be identified.
106. The electoral officer or deputy electoral officer shall number objections to ballots raised and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, with his initials.

Procedure for equal number of votes

107. If it is not possible to determine the successful candidate(s) for either a Mayor or Councillor position due to an equal number of votes being cast (i.e., tie vote), the electoral officer shall immediately conduct a recount and publicly announce to all those present in the polling station that a recount will be immediately conducted.
108. If the recount fails to determine a successful candidate, the electoral officer shall decide the vote as follows:
- a. The deputy electoral officer shall place the names of the tied candidates on a blank paper and having folded the paper and place each in an empty ballot box: and
 - b. The Electoral Officer without looking shall draw for the position available. The candidate(s) whose name(s) appear on the pieces of paper the electoral officer has drawn shall constitute the successful candidate.

PART 13 - POST-ELECTION PROCEDURES

Announcement

109. After completing the counting of the votes and establishing the successful candidates, the electoral officer shall declare to be elected:
- a. for the positions of Mayor the candidate for the having the highest number of votes:
 - b. for the positions of off-reserve councillor, the 3 candidates having the highest number of votes: and
 - c. for the offices of on-reserve councillor, the 9 candidates having the highest numbers of

votes

110. Despite section 109, a candidate for the office of off-reserve councillor shall only be declared to be elected if he was in the top 12 in the election. If less than 3 candidates for the office of off-reserve councillor were in the top 12 in the election, then the electoral officer shall declare to be elected.
 - a. for the office of Mayor, the candidate having the highest number of votes:
 - b. for the offices of off-reserve councillor, the candidates in the top 12 in the election, if any:
and
 - c. for the offices of on-reserve councillor, the candidates having the highest number of votes such that the total number of councillors declared to be elected is 12
111. Following the declaration of elected candidates made pursuant of this code the electoral officer shall complete and sign an election report, which shall contain:
 - a. the names of all candidates;
 - b. the number of ballots cast for each; and
 - c. the number of rejected ballots.
112. Within 4 days after completion of the counting of the votes, the electoral officer shall:
 - a. sign and post, in at least one conspicuous place at the Band Office and on the Lax- Kw'Alaams community channel and website the election report.
 - b. mail a copy of the election report to every off reserve elector who has voted by mail in ballot who resides off reserve.

Retention of Ballots and Other Election Material

113. The electoral officer shall deposit all ballot papers in sealed envelopes, including those rejected, spoiled and unused, and shall retain these ballots and all materials in connection with the election.
114. All ballots and materials retained in accordance with this code shall be retained for 45 days from the date on which the election was held or until a decision on an appeal is rendered, whichever date is later, after which time the electoral officer may, unless directed otherwise by the council, destroy them in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those papers.

Mayor and Councillor Appointment of Office

115. A candidate who has been elected Mayor or Councillor shall, within 3 business days of the electoral officer's declaration under section 109, agree to uphold and comply with the Code of Conduct guidelines.

116. There will be a 2 day transitional period between the Election and the changeover of the governing Council where:
 - a. During this 2-day period the outgoing council must meet with the incoming council to brief them on the affairs of the council.
 - b. The new council does not begin until the end of the 2-day transitional period.
117. If a person elected as Mayor or on-reserve councillor or off-reserve councillor was not qualified to be a candidate in accordance with this code then the electoral officer shall declare the office of that person vacant and declare to be elected the candidate who had the highest votes in the election.
118. Despite section 117, off-reserve candidates shall only fill a vacancy in the office of off-reserve councillor if the off-reserve candidate who had the next highest votes in the election was in the top 12 in the election. If he was not, then the on-reserve candidate who had the next highest votes in the election shall fill the vacancy.
119. The electoral officer shall give notice in writing to the elected candidate whose office is declared vacant under section 117 and to the elected Mayor and Council.

PART 14 - COMPLAINTS AND APPEAL BOARD

Composition

120. The Complaints and Appeal Board shall be composed of five Lax Kw'Alaams members I.R #1 as appointed by the Mayor and Council for the 4-year term commencing on the day they are appointed until the day the members of another board are selected.
 - a. be at least 18 years of age and,
 - b. not have a vested interest in the outcome of an election appeal or a petition for the removal of a council member from office.
121. At least 100 days before the date on which the election is to be held, the council shall: select the members of the Complaints and Appeal Board in accordance with section 120.
122. Upon receipt of an election appeal in accordance with part 15 any Complaints and Appeal Board member who is immediate family of any appellant or candidate, or who may be reasonably apprehended to have a bias or conflict in connection with the appeal, shall excuse themselves from the appeal meeting.

Functions

123. The Complaints and Appeal Board shall supervise and administer all election appeals and complaints in accordance with the provisions of this code.

PART 15 - APPEAL MECHANISM

Timing

124. A candidate or an elector may, within 45 days from the date on which the election was held, submit an appeal to the Complaints and Appeal Board by registered mail.

Grounds for Appeals

125. An appeal submitted to the Complaints and Appeal Board must sufficiently outline one or more of the following:
- a. that the person declared elected was not qualified to be a candidate;
 - b. that there was a violation of this code in the conduct of the election that might have affected the result of the election; or
 - c. that there was corrupt or fraudulent practice in relation to the election and or term of office.

Submission

126. An appeal submitted to the Complaints and Appeal Board must:
- a. be in writing and set out in an affidavit sworn before a notary public or duly appointed Commissioner for taking oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation; and
 - b. be accompanied by a non-refundable fee of \$100.00. by certified by cheque or money order payable to the Lax Kw'Alaams Band Office, which shall be used to offset the cost of the appeal.

Procedure

127. Upon receipt of an election appeal, the Complaints and Appeal Board shall:
- a. in the case where the appeal is submitted in accordance with section 124, 125, and 126 forward a copy together with supporting documents by registered mail to each candidate at the election; or
 - b. in the case where the appeal is not submitted in accordance with section 124, 125 and 126 inform the appellant(s) in writing that the appeal will not receive further consideration.

Response to the Allegations

128. Any candidate or the electoral officer may, within 14 days of the receipt of the appeal(s), forward to the Complaints and Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation.

Investigation

129. The appeal Committee may, if the material that has been filed is not adequate for deciding the appeal, conduct further investigation into the matter, as the Appeal Board deems necessary.

Decision

130. After a review of all of the evidence that it has received, the Complaints and Appeal Board shall rule:
- a. that the evidence presented was not sufficiently substantive to determine that:
 - i. a violation of this code has taken place that might have affected the result of the election;
 - ii. the person declared elected was not qualified to be a candidate; or
 - iii. there was a corrupt or fraudulent practice in relation to the election or

and dismiss the appeal; or

- b. that all evidence and information gathered allows for the reasonable conclusion that:
 - i. a violation of this code has taken place that might have affected the result of the election;
 - ii. the person declared elected was not qualified to be a candidate; or
 - iii. there was a corrupt or fraudulent practice in relation to the election or

and uphold the appeal for one or more council members and declare to be elected candidates for the position(s) set aside in the manner set out in sections 117 of this code.

131. The decision according to section 130 shall be:
- a. published in the community's newsletter, or in a separate written notice delivered or mailed to all band members; or posted on the community channel or the Lax Kw'alaams web site.
 - b. posted in at least one conspicuous place on the Lax Kw'alaams Band office.

132. The decision of the Complaints and Appeal Board is final and not subject to appeal.

PART 16 – AMENDMENTS

133. Development and passage of amendments to this code may be initiated by:

- a. unanimous Band Council Resolution.

134. Upon passing a Band Council Resolution in accordance with section 133, council shall prepare a notice that sets out a:

- a. summary of the proposed amendments to this code;
- b. statement that the full copy of the proposed amendments can be obtained at the band

administration office; and

c. description of the amendment process.

135. The notice provided for in section 134 shall be mailed or hand delivered to all known members being 18 years of age and older.
136. A member 18 years of age or older may within (45) days from the date the notice provided from in section 134 is mailed or hand delivered to him file a written objection to the proposed amendments.
137. If no written objection is received from an eligible elector in accordance to 136 council shall by way of council resolution adopt the proposed amendment.
138. If there is any written objection from an eligible elector in accordance to 136 the Council shall arrange for a referendum to poll all eligible voters by a simple majority vote before proceeding with the proposed amendments. The decision of the referendum will be binding on Council.
139. Any amendment approved more than three (3) months prior to an Election shall be effective for the next election. Any amendments approved less than three(3) months prior to an Election shall not come into force until the conclusion of that Election process.

LAX KW'ALAAMS BAND ELECTION
Notice of Nomination Period

Nomination process will commence on _____ at 8:30 am
End on _____ at 5:00 p.m

- Candidates for the positions of Mayor and 12 Councillors on the Band Council for the next 4-year term.
- Obtain your application form from the Electoral officer or the deputy officer.
- You must be 18 years or older to be a candidate or vote or endorse a candidate.
- To nominate candidates for the positions of 5 Trustees for the Lax-Kw'alaams Indian Band Settlement Trust for the next term. No less than four of the Trustees elected must be ordinarily Resident on reserve and only one Trustee elected may be a member of the Band Council. You must be 19 years or older to nominate, be a candidate or vote. (Trustees: submit form less fee and require 5 signatures from Lax-Kw'alaams Members)

Electors residing on/off reserve may be a candidates for the position of Mayor or Council or Trustee. Nominations form must include the **signed declaration forms** and a \$100.00 non-refundable fee in cheque or money order payable to the Lax Kw'alaams Band. The electoral officer must receive nomination forms before the end of the nomination period. Forms received after 5 PM on October 12 will not be accepted.

The election will be held at Lax Kw'alaams, B.C. on November 23rd 2009.
A second polling station will be held at the Prince Rupert on the same day.
Any elector may vote in person or by requesting a mail-in ballot from the electoral officer.

Given under my hand ___ day of _____ 200__.

Electoral Officer: _____

Address: _____

Email address: _____ Phone: _____ Fax: _____

If you wish to have your name and address released to any candidate for this election for the purpose of sending you campaign literature, please check the statement below, print and sign your name, detach this form and return it to the Electoral Officer.

I authorize my name and address to be released to any candidate at this election.

Name _____ Birth date _____ Phone _____
674-1

LAX KW'ALAAMS BAND ELECTION Nomination Form
for
Election to be held on

Nomination process will commence on _____ at 8:30 am and End on
at 5:00 p.m

**Nomination for the Position of Mayor or Councillor for
the Lax Kw'alaams Band and Trustee**

The Lax-Kw'alaams Election Regulations states that a candidate can have their name submitted for one office according to Part 8:55 and Part 9:65a

Mayor _____
On Reserve Council _____
Off Reserve Council _____
Trustee _____

I _____ born on _____
(name of candidate) (birth date)

Do declare that I am a Lax-Kw'alaams Band member with the registry number **674** _____

My residency is located at: _____ (address) _____ (city)

Phone# _____

Nomination papers will be only accepted with a \$100.00 non-refundable fee in the form of a certified cheque or money order to the Lax-Kw'alaams Band

The 25 names that have shown to support my candidacy are all eligible electors of the Lax-Kw'alaams Election code.

Attached to this form are the 25 supporters

SIGNATURE of CANDIDATE: _____ DATE: _____

By signing you are confirming that the information you have provided is true

LAX KW'ALAAMS BAND ELECTION
Declaration Form for support for Candidate

**This declaration must be signed by
Lax-Kw'alaams members who are at least 18 years old**

Declaration to support for Mayor or on/off reserve councillor and trustee

In the matter of the election of the Mayor _____ On reserve councillor _____ off reserve councillor _____ trustee _____
Check one of the candidate

I hereby support:

_____, for the above position.
Print name of candidate

In accordance with the provisions of the Lax Kw'alaams Election Regulations,

I, _____ solemnly declare that:
(Please print your name)

1. I am a member of the Lax Kw'alaams Band. Registration # 674
2. My date of birth is _____
3. My current mailing address is: _____

4. I am at least 18 years of age.
5. This form is to be attached with nomination form for the candidate.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and affect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

Signature of Elector Supporter

Date

This form is protected under the privacy act and is only used for the purpose of election regulations with the Lax Kw'Alaams Band

LAX KW'ALAAMS BAND ELECTION

Mail –In voter Declaration

For Ballot(s) Only

I _____ solemnly declare that:

(Please print your name)

- 1. I am a member of the Lax Kw'alaams Band. Registration # 674 _____
- 2. I am at least 18 years or older on voting Day. My date of birth is _____
- 3. My current mailing address is: _____

- 6. I have read and understood the mail-in package sent to me. In marking the Ballot, I have voted freely and without compulsion or undue influence of anyone.
- 7. I have folded the Ballot, hiding my mark and showing and the electoral officers initials on the back, and have placed the Ballot in the ballot envelope.
- 8. I understand that I may only vote once, and that if I vote in person, this Ballot will not be counted as a vote cast.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and affect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

signed this _____ *day of* _____ *200* _____ *at* _____

Signature of Voter

Witness Declaration

In the presence of _____ at _____
(please print witness name) *(town or city)*

This _____ day of _____ 200____.

Signature of Witness

Phone Number of Witness

Mailing address Witness _____

LAX KW'ALAAMS BAND ELECTION

To: Electoral or Deputy Electoral Officer

From: _____
(Full name of candidate)

**Re: Appointment of Scrutineers
Lax Kw'alaams First Nation Election**

I hereby appoint:

_____ **and**

_____ **to act as**

Scrutineer on my behalf on election day.

_____ **signature**

_____ **date**



LAX KW'ALAAMS BAND
COUNCIL CODE OF CONDUCT AND CONFLICT OF INTEREST POLICY

Members of the Council of the Lax Kw'alaams Band are fully aware of the responsibilities placed upon them by the First Nation members and acknowledge their responsibility to carry out their duties with integrity, honesty, professionalism, and respect for human rights and dignity, under the constitution, by-laws, and policies of the Lax Kw'alaams First Nation and the laws of Canada and the Province of BC, taking into account the best interests of all members of the Lax Kw'alaams First Nation.

1. Loyalty

All Councillors, including the Chief Councillor, must be loyal to the interests of all Lax Kw'alaams First Nation members. As such, when acting in an official capacity as a Council member, this loyalty supersedes:

- a) Any advocacy or special interest group or membership on other councils, boards or staffs;
- b) The personal interest of any Council member acting as an individual user of a Lax Kw'alaams Band program or service; and
- c) The individual Councillor's family.

2. Conflict of Interest

- a) Every Council member who, in any way, directly or indirectly, has an interest that conflicts or might reasonably be expected to conflict with the interests of the Lax Kw'alaams First Nation, or which may call into question the integrity of a decision of the Council, shall disclose the nature and extent of their interest to the Council at the earliest opportunity.
- b) Where a Council member or their immediate family has an interest in a corporation, partnership, sole proprietorship or is a director of a non-profit society or organization that may benefit from any contract, loan, grant, financial guarantee or other similar financial relationship entered into by the Lax Kw'alaams First Nation, the Council member shall be deemed to be in a conflict of interest for the purposes of awarding the contract, loan, grant, financial guarantee or other similar financial relationship. For purposes of this policy, an immediate family member is a spouse, common-law spouse, parent, brother, sister, son, daughter, father-in-law, uncle, aunt, grandparent, son-in-law, daughter-in-law, or any relative permanently residing in the Council member's household. The Council may waive the policy on members of an immediate family, where the Council is satisfied that sufficient safeguards are in place to ensure that the Council member's interests are not compromised.
- c) Where a member of Council is in conflict of interest and a decision must be made, the member in conflict shall excuse him or herself from the Council meeting while the matter is under discussion and being put to a vote.
- d) A member of Council who excuses him or herself from a meeting due to a conflict of interest shall be counted as present and form part of the quorum, and the councillor's absence must be recorded in the minutes.
- e) Council information including minutes, records or proceedings of any "in camera" Council or committee meetings must be kept confidential whenever required in the best interests of the First Nation.

3. Extra Benefit

- a) A member of Council must not accept any personal benefit including any gift, favour, service, or fee either directly or indirectly from any individual, organization or corporation having dealings with the First Nation when such practice is offered as a reward for actions performed by virtue of the member of Council's position or could compromise the Council member's objectivity and independence.
- b) Subsection a) does not apply to a personal benefit that is received through protocol or social obligation normally accompanying the performance of the duties of a member of Council.
- c) A member of Council must ensure that he or she is not placed in a situation where he or she is obligated to any person who might benefit from or seek to gain special consideration or favour.
- d) A Council member must exercise care in the management of his or her private affairs so as not to benefit from the use of information acquired from the appointment to Council or from any Band transactions that involve decisions over which the Council member has influence, such as investments, borrowing, purchases, sales, contracts, grants, and approvals.

4. Employment

- a) No member of Council shall be hired as an employee of the Lax Kw'alaams Band unless the Council member resigns his or her Council seat immediately upon receiving written notice of employment.
- b) If an employee of the Band is elected to Council, he or she must either resign his or her position or take a leave of absence for the duration of the Council term.
- c) A member of Council may engage in employment with another employer or carry on a business provided that:
 - it is not in conflict (perceived or otherwise) with this policy;
 - it does not interfere with the performance of his or her Council duties;
 - it does not bring the First Nation into disrepute;
 - he or she does not have an advantage derived from being a Council member; and
 - the matter has been reviewed by Council and has received Council approval.

5. Authority

Council members may not exercise individual authority over the organization except in accordance with Council policies. As such:

- a) Individual Council members must recognize that they have no authority to direct the Band Administrator, managers, or other staff except as may be stated under other Band policies;
- b) Individual Council members have no authority to interact with the public, the media or other entities on behalf of Council, unless the authority has been granted by the Chief Councillor or Council;
- c) Individual Council members have no authority to evaluate the performance of the Band Administrator during the person's regular performance review, except where specifically authorized by Council and in accordance with the prescribed performance evaluation process; and

- d) Council members will accept authorized signing authorities and approval processes as established by Council by-laws and Band policies covering such areas as budget expenditures, capital expenditures, purchases, and payments.

6. Procedures

Council members have a responsibility to conduct themselves in a manner that does not compromise the ability of the Council to accomplish its mandate or undermine the Council member's ability to discharge his or her duties properly.

Council members must disclose any possible infraction (perceived or otherwise) of this policy to the Council, which will determine an appropriate course of action and which may include proceeding with removal from Council of the Council member if the offence continues or if the offence is of an extreme nature. Where a possible infraction (perceived or otherwise) has occurred, the following guidelines will be followed:

- a) The Council member committing the infraction will be sent a letter from the Chief Councillor outlining the circumstances and the corrective actions that are required;
- b) If the offence continues, a motion of censorship may be brought before Council which may result in a voluntary withdrawal or, upon a vote of the majority of Council, a removal of the member from specific committee membership or involvement;
- c) If the offence continues, the Council member may be removed from office by a resolution as prescribed in Band Council by-laws;
- d) In circumstances of an extreme and serious nature requiring immediate action by the Chief Councillor or Council, the offending Council member will be removed from office immediately according to Band Council by-laws.

