



# Whitefish River First Nation Election Code

**FINAL**  
**August 26, 2018**

## **Preamble & Title**

1. This code shall be called the *Whitefish River First Nation Election Code*.

## **Coming Into Force**

2. This *Whitefish River First Nation Election Code* shall come into force upon the passing of an Order in Council by the Department of Crown-Indigenous Relations and Northern Affairs Canada proclaiming the removal of the Whitefish River First Nation from the election provisions and related regulations of the *Indian Act*.

## **Interpretation**

3. In this code:

"Appeal Board" means the body appointed by a band council resolution in accordance with section 109 of this code to review and make decisions concerning election appeals.

"appellant" means a candidate or an elector who submits an appeal in accordance with this code with respect to an election.

"Band Manager" means the person responsible for the overall management and operations of the Whitefish River First Nation and the title of this position may change over time.

"by-election" means a special election to fill a position on the council that has become vacant.

"candidate" means a Whitefish River First Nation citizen who:

- a) is at least 18 years of age on the day on which the nomination meeting is held;
- b) is a citizen of the Whitefish River First Nation;

- c) has been nominated to be a candidate pursuant to the provisions of this code; and,
- d) has not been convicted of an indictable offence within the ten (10) year period preceding the election.

“citizen” means a person who is enrolled in the Citizenship Register.

"Citizenship Registry" means the list that is maintained by the Whitefish River First Nation in accordance with Article III of the *Whitefish River First Nation Citizenship Code* and includes the Band List within the meaning of the *Indian Act* if the context requires.

"Citizenship Registrar" means the Whitefish River First Nation employee responsible for maintaining the Whitefish River First Nation's citizenship list.

"council" means the governing body of the Whitefish River First Nation composed of those persons elected pursuant to this code.

"deputy electoral officer" means any persons appointed by the council for the purposes of the conduct of the election process.

"elder" means a person appointed to the Appeal Board by Chief and Council in accordance with section 109 (a) of this code.

"election" means a general election or by-election of the Whitefish River First Nation held pursuant to this code.

"electoral officer" means a person appointed by a band council resolution before each election who has the responsibility for conducting the nomination meeting, the election and post-election procedures.

"elector" means a person who:

- a) is a citizen of the Whitefish River First Nation; and
- b) is at least 18 years of age on the day on which the election is held.

"mail-in ballot" means a ballot mailed or delivered in accordance with section 69 of this code.

"nomination meeting" means the meeting at which persons come forward to nominate and second candidates to serve on Council.

"oath" means a solemn affirmation.

"polling station" means a building, hall or room which is selected as the site at which voting takes place and can also mean an electronic voting procedure for voting.

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

"voter declaration form" means a document that sets out:

- a) the name of the elector;
- b) the band membership or Citizenship Registry number of the elector or, if the elector cannot provide a band membership or Citizenship Registry number, the date of birth of the elector; and
- c) the name, address and telephone number of a witness to the signature of the elector.

"voters list" means the list of Whitefish River First Nation citizens who are on the Citizenship Register and eligible to vote in an election.

## **The Council**

### **Composition and Size**

4. The Council shall consist of one chief and seven (7) councillors or such other numbers that may be provided for through an amendment to this code.

5. The number of councillors provided for through an amendment to this code shall not exceed eleven (11).

### **Election for Chief and Councillors**

6. Chief and councillors shall be elected by a vote held in accordance with this code.

### **Term of Office**

7. The term of office for the position of chief and councillors shall be four (4) years.

8. The term of office of the council may be extended under mitigating or emergency circumstances, beyond the four year (4) term by a unanimous resolution of council and provided that any such extension of office shall not exceed sixty (60) days.

9. Council shall establish by band council resolution, the date on which the election is to be held, which must be no sooner than forty-five (45) days prior, and no later than ten (10) days following, the end of the term of office of the council.

10. The term of office for the chief and councillors shall commence two (2) days after the election date and expires four (4) years later.

11. The successful candidate in a by-election shall hold office for the remainder of the original term of office of the chief or councillor whom he or she is elected to replace.

12. In the event that a successful appeal results in a new general election, the term of the newly elected council shall commence two (2) days after the election date and expires four (4) years later.

12.1 All members of Council must swear and sign an oath to uphold their duties as members of the Whitefish River First Nation Council within ten (10) days of assuming office.

## **Vacancy**

13. A chief or councillor position on the council may become vacant if, while in office:

- a) the chief or councillor resigns in writing;
- b) the chief or councillor has been unable to perform the functions of his or her office for more than six months due to illness or other incapacity;
- c) the chief or councillor dies;
- d) the chief or councillor is absent from three (3) consecutive Council meetings without prior authorization;
- e) contravenes applicable conflict of interest rules;
- f) uses confidential information for his/her or other benefit or discloses confidential information to anyone not authorized to receive the confidential information; or,
- g) is convicted of an indictable offence;

## **Code of Conduct during Election Campaign**

14. Candidates shall campaign:

- a) according to the rules set out in this code;
- b) without coercion or vote-buying;
- c) respecting the right and freedom of other parties to organize and campaign;
- d) respecting the rights of voters to obtain information from a variety of sources and to attend political gatherings;
- e) ethically, focusing on political issues and candidate platforms, instead of conducting smear campaigns or starting rumours and innuendo;
- f) non-violently, without intimidating opposing party candidates, opposition supporters or the media, and without the use of language inciting their own supporters to violence;
- g) respecting the freedom of the press to cover the campaign and to express opinions on the campaign;
- h) respecting the electoral officials and not interfering with the performance of their duties;
- i) accepting and complying with the official election results and any final decision of the Appeal Board; and,

j) only in public buildings authorized by Chief and Council.

15. Every person is in breach of this code who, during an election period, directly or indirectly offers a bribe to influence an elector to vote or refrain from voting or to vote or refrain from voting for a particular candidate, or during an election period, accepts or agrees to accept a bribe that is offered.

16. Every person is in breach of this code 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, or by any pretence or contrivance, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate in an election.

## **Election Procedures**

### **By-election**

17. Unless otherwise provided in this code, in the event that the office of chief or councillor becomes vacant, a by-election shall be held within forty-five (45) days after the date on which the position is declared vacant.

18. No by-election shall be held if there are less than six (6) months remaining in the term of the council member whose office has become vacant, except where a by-election is necessary to have sufficient council members to maintain a quorum.

19. No sitting council member is eligible to be a candidate in a by-election. If a council member wishes to be a candidate in a by-election, he or she must resign his or her council position prior to the nomination meeting for the by-election.

20. This code shall apply to by-elections.

## **Pre-Nomination Procedure**

### **Appointment of an Electoral Officer**

21. The electoral officer and any deputy electoral officer(s) shall be appointed by a band council resolution not less than one hundred (100) days before the expiration of the council's term of office.

22. The band council resolution for the appointment of the electoral officer and deputy electoral officer(s) shall contain his or her full name and address, the date of the election, the type of election which is to be conducted (general election or by-election), as well as any special instructions.

23. If an electoral officer and deputy electoral officer(s) have not been appointed within the time set out in section 21, the electoral officer and any deputy electoral officers shall be appointed by the Band Manager as soon as possible.

24. The electoral officer and any deputy electoral officer(s) must be a person who:

1. is not a citizen of the band;
2. has no vested interest in the outcome of the election;
3. is at least 18 years of age; and
4. has experience in the conduct of elections or has received appropriate training.

## **Oath of Office**

25. The electoral officer and any deputy electoral officers must swear and sign an oath to uphold the office in accordance with this code.

## **Responsibilities and Ethics of the Electoral and Deputy Electoral Officers**

26 The electoral officer and deputy electoral officers are responsible for managing and executing all pre-electoral, electoral and post-electoral processes and procedures included in this code. The electoral officer and any deputy electoral officers must:

- a) uphold and abide by this code;
- b) remain neutral and professional in the conduct of the duties of his or her office, and refrain from providing any preferential treatment or expressing support for or opposition to any candidate;
- c) not accept anything of value (including but not limited to money, offers of employment, gifts, travel) in exchange for preferential treatment or access to a public official or non-public information;
- d) not discriminate against anyone, including because of race, religion, sex, age or handicap;
- e) only use any public office facilities to fulfill the terms of his or her office, and not for personal or partisan benefit;
- f) not pressure or intimidate other officials or personnel to favour a certain candidate; and
- g) 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;
- h) make any required rulings on candidates eligibility for office or voter eligibility.

## **Voters List**

27. At least forty-five (45) days before the day on which a nomination meeting is to be held, the electoral officer shall obtain the names, Citizenship Register numbers and dates of birth of all citizens who will have attained the age of eighteen (18) on the date on which the nomination meeting is to be held.

28. The Citizenship Registrar shall, no later than forty-five (45) days before the date on which the nomination meeting is to be held, provide the electoral officer with the last

known addresses, if any, of all electors who do not reside on the Whitefish River First Nation.

29. Electors are responsible for providing the Citizenship Registrar with their current addresses.

30. An elector's address shall be used by the electoral officer only for the purpose of providing notices, mail-in ballots, the availability of electronic voting procedures or other election documents to electors who are entitled to receive them under this code.

31. Except for the purposes noted in section 30, the electoral officer shall not disclose an elector's address without the consent of the elector.

32. A candidate for election as chief 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.

33. At least forty-five (45) days before the day on which a nomination meeting is to be held, the electoral officer shall prepare a voters list containing the names of all of the electors in alphabetical order.

34. The electoral officer shall post the voters list in the band administration building, the community centre and the post office and in such other conspicuous places on the Whitefish River First Nation as may be determined by the electoral officer, no later than forty-five (45) days prior to the date on which the nomination meeting is to be held.

35. Upon request, the electoral officer or deputy electoral officer shall confirm whether the name of a person is on the voters list.

36. The electoral officer shall revise the voters list upon presentation of documentary evidence which demonstrates that:

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

37. A person, or an elector acting on his or her behalf, may, no later than two (2) days prior to the date on which an election is to be held, demonstrate that the name of an elector has been omitted from, or incorrectly set out in the voters list by presenting in writing to the electoral officer evidence from the Citizenship Registrar that the elector:

- a) is entitled to have his or her name entered on the band list;
- b) will be at least 18 years of age on the date on which the election is to be held; and
- c) is qualified to vote in band elections.

38. A person may demonstrate that the name of a person not qualified to vote has been included in the voters list by presenting in writing to the electoral officer, no later than fifteen (15) days prior to the date on which an election is to be held, evidence that the person:

- a) is neither on the Citizenship list nor entitled to have his or her name entered on the band list;
- b) will not be at least 18 years of age on the date on which the election is to be held;  
or
- c) is not qualified to vote in band elections.

39. Where the electoral officer believes or has information that a person whose name is on the voters list is not an elector, or where, in accordance with section 38, an elector demonstrates to the electoral officer that the name of a person not qualified to vote appears on the voters list, the electoral officer shall give written notice to the person whose eligibility is challenged at least ten (10) days prior to the date on which the election is to be held.

40. The written notice given under section 39 shall include the reasons for seeking the removal of the name from the voters list and any supporting documents, and shall provide notice that a written reply may be sent to the electoral officer, which must be received no later than four (4) days prior to the date on which the election is to be held.

41. 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.

42. The decision of the electoral officer under section 41 is final and is not subject to appeal.

43. A person whose name does not appear on the voters list shall be entitled to vote on election day, provided he or she presents documentary proof to the electoral officer demonstrating his her qualifications as an elector to the electoral officer's satisfaction.

## **The Nomination Process**

### **Notice of Nomination Meeting and Mail-in Procedures for Nominations**

44. The electoral officer shall, at least thirty (30) days before the date on which the nomination meeting is to be held, post a notice of nomination meeting at the band administration building, the community centre and the post office and on the official Whitefish River First Nation web-site.

45. The electoral officer shall, at least thirty (30) days before the date on which the nomination meeting is to be held, mail a notice of the nomination meeting to every elector and mail a voter declaration form along with the notice of the nomination meeting to every



elector who does not reside on the Whitefish River First Nation in respect of whom the electoral officer has been provided with, or has been able to obtain, an address.

46. A notice of a nomination meeting shall include:

- a) the date, time, duration and location of the nomination meeting;
- b) the date on which the election will be held and the location of each polling place;
- c) the name and phone number of the electoral officer and of any deputy electoral officers;
- d) the statement that any voter may vote by mail-in ballot, in-person or by electronic means if available;
- e) a description of the manner in which an elector can nominate a candidate, or second the nomination of a candidate; and
- f) the statement that, if the elector wants to receive information from candidates, the elector can agree to have his or her address released to the candidates.

47. The electoral officer shall record the names of the electors to whom a notice of the nomination meeting was mailed, the addresses of those electors, and the date on which the notices were mailed.

## **Eligibility to Nominate**

48. In order to be entitled to nominate a candidate at an election, an elector must, on the day of the nomination meeting:

- a) be at least 18 years of age; and
- b) be included on the voters list.

49. Subject to section 48, any elector may nominate or second the nomination of any qualified person to serve as the chief or councillor:

- a) by delivering or mailing a written nomination and a completed, signed and witnessed voter declaration form to the electoral officer before the time set for the nomination meeting; or
- b) orally, at the nomination meeting, and provided:
  - (i) the person nominated for either chief or councillor consents in writing to their nomination; and,
  - (ii) that an elector may only nominate or second one (1) candidate for Chief; and,
  - (iii) that an elector may only nominate or second up to seven (7) candidates for Council.

## **Nomination Meeting**

50. The nomination meeting shall be held at least forty-five (45) days prior to the date on which the election is to be held.

51. At the time and place set for the nomination meeting, the electoral officer shall declare the nomination meeting open for the purpose of receiving the nomination of candidates for the available council positions.

52. The electoral officer is responsible for managing and conducting the nomination meeting.

53. Immediately following the opening of the nomination meeting, the electoral officer shall read aloud all written nominations and secondments that have been received by mail or delivered in accordance with subsection 49 (a).

### **Duration**

54. The nomination meeting shall remain open for (3) hours.

### **Maintaining Order and Security**

55. The electoral officer shall maintain order at all times during the nomination meeting and may cause to be removed any person who, in his or her opinion, is disrupting or otherwise interfering with the nomination proceedings.

### **Nomination Procedure**

56. Nominations which have been mailed in and that are not received by the electoral officer before the time set for the nomination meeting are void and will not be accepted.

57. The electoral officer shall record the name of the candidate, the nominator and the seconder and confirm to those present at the meeting that the proposed candidate is eligible to be elected to the position of chief or councillor of the band.

58. A person present at a nomination meeting who is eligible to do so may second the nomination of any person nominated in writing.

59. At the end of the nomination meeting, the electoral officer shall:

- a) if only one person has been nominated for election as chief, declare that person to be elected;
- b) if the number of persons nominated to serve as councillors 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 chief or councillors, announce that an election will be held; and,

- d) if less than seven (7) councillors are nominated and proclaimed into office by the electoral officer, then the electoral officer shall call an election to fill any vacancies on council.

60. On the day following the nomination meeting, the electoral officer shall post in the band administration building, the community centre and the post office and on the Whitefish River First Nation's official website, a list of nominees, their nominators and seconders and the offices for which they are nominated.

### **Candidacy**

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

62. A person may only be a candidate for one of the offices of chief or councillor in any election.

### **Withdrawal**

63. A candidate may withdraw his or her candidacy within five (5) days of the date on which the nomination meeting was held by submitting a written withdrawal of nomination form to the electoral officer or by sending an e-mail with an attached voter declaration form to the electoral officer.

### **Ballots**

64. The electoral officer shall prepare ballot papers setting out:

- a) the names of the candidates nominated for election as chief, in alphabetical order by surname; and
- b) the names of the candidates nominated for election as councillors, in alphabetical order by surname.

65. Where two (2) 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, their traditional name or their Anishinaabe name.

### **Notice of the Election**

66. The election shall be held at least forty-five (45) days after the day on which the nomination meeting was held.

67. The electoral officer shall, within one (1) day after the day on which the nomination meeting was held, post a notice of election in the band administration building, the

community centre and the post office and on the Whitefish River First Nation's official website.

68. 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**

69. The electoral officer shall, at least thirty-five (35) days prior to the date on which the election is to be held, mail to every elector who is not ordinarily resident on the Whitefish River First Nation and to every elector whose request to vote by mail-in ballot has been received, a mail-in ballot package consisting of:

- a) a ballot initialled 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 ballot;
- 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
  - iii. the name, address and telephone number of the witness to the signature of the elector;
- e) the notice of election set out in section 67; 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 the 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.

70. An elector who is ordinarily resident on the Whitefish River First Nation and who is unable to vote in person on election day may, at least ten (10) days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.

71. An elector not residing on the Whitefish River First Nation who has not received a mail-in ballot package may, not later than fifteen (15) days prior to the date on which the election is to be held, request a mail-in ballot package from the electoral officer.

72. Upon receipt of a request for a mail-in ballot package under section 69, 70 and 71, the electoral officer shall mail or deliver a mail-in ballot package described in section 69 to the elector who so requests.

73. 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.

74. 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 or she 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.

75. 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.

### **Polling Stations**

76. The electoral officer will establish at least one (1) polling station on the Whitefish River First Nation.

77. The electoral officer shall provide a voting compartment in the polling station where electors can mark their ballots free from observation and the electoral officer may appoint security to maintain order in the polling station. However, an elector may request the assistance of a family member to help them to understand the voting procedures, but not mark the ballot on their behalf.

### **Election Day**

#### **Candidate's Scrutineer**

78. A candidate shall be entitled to not more than two (2) scrutineers in the polling station at any one time and they shall be required to identify themselves as such.

### **Polling Hours**

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

## **Verification of the Ballot Box**

80. The electoral officer or deputy electoral officer shall, immediately before the commencement of the poll:

- a) open all 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;
- b) lock and properly seal all ballot boxes in a manner preventing them from being opened without breaking the seal; and
- c) place the ballot boxes in public view for the reception of the ballots.

## **Secrecy and Security**

81. Voting shall be by secret ballot.

82. No elector may vote by proxy or authorize another person to vote on his or her behalf.

83. 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.

84. 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 or her ballot; or
- c) attempt to obtain information as to how an elector is about to vote or has voted.

## **Voting Procedure**

85. Each person, on arriving at the polling station, shall give his or her name and their Indian status card or another photo identification to the electoral officer or deputy electoral officer.

86. The electoral officer or deputy electoral officer shall, if the person's name is set out in the voters list, place his or her initials on the ballot(s) and provide it to the elector.

87. 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.

88. An elector to whom a mail-in ballot was mailed or provided under section 69, 70 or 71 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 or a deputy electoral officer.

89. The electoral officer or deputy electoral officer shall, when requested to do so, explain the method of voting to the elector.

90. 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 or she 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.

91. 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.

92. While an elector is in the compartment for the purpose of marking his or her ballot, no other person shall, except as provided in section 77, be allowed in the same compartment or be in any position from which he or she can see the manner in which the elector marks his or her ballot or mark the ballot on behalf of the voter.

### **Closing of the Polling Station**

93. 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.

### **Counting of the Votes**

#### **Opening Mail-in Ballots**

94. At the time published in the notice prepared under section 67 for the counting of the votes, the electoral officer or deputy electoral officer shall, in the presence of any candidates or their 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 voter declaration form, or the voter declaration form is not signed or witnessed,

- ii. the voter declaration form does not contain a date of birth or a band number that matches the information contained for that elector on the voters list;
  - iii. the name of the elector set out in the voter declaration form is not on the voters list; or
  - iv. 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 ballot box for mail-in ballots.

## **Counting the Ballots**

95. Immediately after the mail-in ballots have been deposited in the separate ballot box for mail-in ballots under subsection 94 (b), the electoral officer or deputy electoral officer shall, in the presence of any candidates or their scrutineers who are present, open all ballot boxes and examine each ballot, whether received through in person voting, mail in ballot or electronic means.

96. The electoral officer or deputy electoral officer shall call out the names of the candidates for whom the votes were cast on all valid ballots.

97. An electoral officer or deputy electoral officer shall mark a tally sheet recording the names being called out under section 96, for the purpose of arriving at the total number of votes cast for each candidate.

## **Ballots not Counted**

98. In examining the ballots, the electoral officer or deputy electoral officer 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.

99. The electoral officer or deputy electoral officer shall attach a note to each ballot rejected which outlines the reason for rejection.

100. Subject to review on recount or on an election appeal, the electoral officer or deputy electoral officer shall take a note of any objections made by any candidate or his or her scrutineer to any of the ballots found in the ballot box and decide any questions arising out of the objection.

101. The electoral officer or deputy electoral officer shall number objections to ballots raised pursuant to section 100 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 or her initials.



## **Tie**

102. If it is not possible to determine the successful candidate(s) for either a chief or councillor position due to an equal number of votes being cast (i.e., tie vote), the electoral officer shall place the names of the candidates having the same number of votes on a paper and place each in a receptacle and invite a volunteer present to draw the name(s) from the receptacle and announce this procedure for breaking a tie prior to counting the ballots.

103. The electoral officer or deputy electoral officer(s) shall declare the candidate's name drawn from the receptacle as elected.

## **Post-Election Procedures**

### **Announcement**

104. After completing the counting of the votes and establishing the successful candidates, the electoral officer shall declare to be elected the candidates having the highest number of votes.

105. Following the declaration of elected candidates made pursuant to section 104, the electoral officer shall complete and sign an election report which shall contain:

- a) the names of all candidates and how many votes they received;
- b) the number of ballots cast by mail-in ballot;
- c) the number of ballots cast in-person;
- d) the number of vote cast by electronic means, if available;
- e) the number of eligible voters;
- f) the number of eligible voters who voted;
- g) the number of spoiled ballots;
- h) the number of unused ballots; and
- i) the number of rejected ballots.

106. Within four (4) days after completion of the counting of the votes, the electoral officer shall:

- a) sign and post, in the band administration building, the community centre and the post office and on the Whitefish River First Nation's official website the election report prepared in accordance with section 105; and,
- b) forward a copy of the election report to the band manager.

### **Retention of Ballots and Other Election Material**

107. 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.

108. All ballots and materials retained in accordance with section 107 shall be retained for forty-five (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 they shall be destroyed in the presence of two witnesses who shall make a declaration that they witnessed the destruction of those papers.

## **Appeal Board**

### **Composition**

109. The Appeal Board shall be comprised of three (3) people as follows:

- a) an elder, who is not a member of the band;
- b) a person, at least 18 years of age, who is not a member of the band and who does not have a vested interest in the outcome of an election appeal and preferably with legal training; and
- c) a person who is at least 18 years of age, who is familiar with the traditions, values and language of the band.

110. All members of the Appeal Board shall possess an understanding of the principles of natural justice or be provided with this training shortly after their appointment.

111. At least one hundred (100) days before the date on which the election is to be held, the Chief and Council shall:

- a) select the members of the Appeal Board in accordance with section 109; and
- b) draw a list of additional potential Appeal Board members.

112. The term of office of the Appeal Board shall be from its appointment under section 111 until the day on which the council selects another Appeal Board in accordance with this code.

113. Upon receipt of an election appeal in accordance with section 117, any Appeal Board member who is an immediate family member 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 Board.

114. The remaining members of the Appeal Board will select additional members as required to attain three (3) from the list of potential Appeal Board members drawn by the band council in accordance with subsection 111(b).

115. Each member of the Appeal Board shall execute an oath of office and accept his or her appointment by forwarding a letter of acceptance to the council.

## **Functions**

116. The Appeal Board shall supervise and administer any election appeals in accordance with the provisions of this code:

## **Timing**

117. A candidate or an elector may, within thirty (30) days from the date on which the election was held, submit an appeal to the Band Manager who shall forward all materials to the Appeal Board.

## **Grounds for Appeal**

118. An appeal submitted pursuant to section 117 must sufficiently outline one or more of the following:

- a) that the person declared elected was not eligible 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.

## **Submission**

119. An appeal submitted to the Band Manager on behalf of the 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 other supporting documentation;
- b) be accompanied by a deposit in the amount of two hundred (\$200) dollars payable to the Whitefish River First Nation; and,
- c) if the appellant is successful in their appeal, they shall be entitled to have their deposit returned.

## **Procedure**

120. Upon receipt of an election appeal, the Appeal Board shall:

- a) in the case where the appeal is submitted in accordance with section 119, forward a copy together with all supporting documents by registered mail to the electoral officer and to each candidate at the election; or
- b) in the case where the appeal is not submitted in accordance with section 119, inform the appellant(s) in writing that the appeal will not receive further consideration.

## **Response to the Allegations**

121. Any candidate or the electoral officer may, within fourteen (14) days of the receipt of the appeal materials at subsection 120 (a), forward to the Band Manager by registered mail a written response to the appeal allegations, together with any supporting documentation.

## **Decision**

122. After a review of all of the evidence that it has received, the 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 eligible to be a candidate; or
  - iii. there was a corrupt or fraudulent practice in relation to the election that might have affected its results, 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 eligible to be a candidate; or
  - iii. there was a corrupt or fraudulent practice in relation to the election that might have affected its results, and uphold the appeal by setting aside the election of one or more council members.

123. The decision of the Appeal Board made pursuant to section 122 shall be in writing and must be rendered within forty-five (45) days of receipt of the appeal and:

- a) published in a special bulletin and which is included the community's newsletter; and,
- b) posted at the band administration building, the community centre and the post office at the Whitefish River First Nation and on the official Whitefish River First Nation web-site;
- c) a copy of the decision shall be sent to the appellant.

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

## **Amendments**

125. Amendments to this code may be initiated by:

- a) bringing a written submission to council, signed by at least 15% of all eligible electors and setting out any suggested amendments; or
- b) a band council resolution, and,

provided that no suggested amendments may be initiated in an election year.

126. Upon receipt of a suggested amendment in accordance with section 125, council shall prepare a notice that sets out:

- a) a summary of the suggested amendments to this code;
- b) a statement that the full copy of the suggested amendments can be obtained at the band administration office; and
- c) a description of the amendment process.

127. The notice provided for in section 126 shall be:

- a) published in the community's newsletter, delivered or mailed to band electors, or by separate notice delivered or mailed to all band electors; and
- b) posted in the band administration building, the community centre and the post office and on the Whitefish River First Nation's official website.

128. Electors may, within fourteen (14) days of publication of the notice outlined in section 127, provide comments concerning the suggested amendments in writing to council.

129. Following receipt of comments concerning the suggested amendments pursuant to section 128, the council shall review the comments and make such changes to the suggested amendments as they deem necessary in order to arrive at a final amendment language.

130. The council shall submit the final amendment language to a community vote to be conducted in accordance with the community's referendum procedures.

131. Should the majority of the votes cast at a referendum be in favour of the suggested amendments being brought to the code, council shall amend the code accordingly.