



**CUSTOM
ELECTION
CODE
2005**

MCHIGEENG FIRST NATION CUSTOM ELECTION CODE

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M'Chigeeng First Nation Custom Election Code
Preamble

Niin, niinawind niwii-makawaanaanig waa-odoogimaamiyangig niinawi ezhianishinaabewiyaang ayaawag isa go igiw nindogimaaminaanig gayad gaa-bi-ogimaawijig. Miidash go apine agiw waa-odoogimaamiyangig. As for us we wish to choose our own chiefs in accordance with Indian Custom we have had as chiefs for a long time those descendant from our ancestors, and these are those whome we wish to have over us.

Manitoulin Chiefs in Council
Mitchigiwadainong (M'Chigeeng), 21 July 1862

Gchi-mnidoo zhonda maanda kiing ngii-bgidnigonaa nonda naaknigewinan waa—naagdooyaang.

Nonda naaknigewinan ezhi-nawemaayaang kina wesiinik, kina maajiging, ki, nbiish, mnidoog, nwiji-bmeedzijig.

Weshkad niinwi Nishnaabeg pane ngii-naagdoonaa Nishnaabe-bmaadziwin miinwa zhitawin, ezhi-nishnaabewiyaang miinwa waa-zhi-naadmaadwiyaang.

M'Chigeeng Niishnaabeg n-nsidwaamdaanaa pane ngii-bi-gkendaanaa ndoo-gimaaminaanig gaa-bi-njibaawaad adik doodemiwaad, dbsihkoo go naa Ogimaa Ogaa, Ogimaa Niibaakhom, Ogimaa Debaasge, miinwaa-sh Ogimaa Bemigwaneshkang. Miinwaa Mazhinawe, Giigdowininiwag, Kwewak gewiinwaa niigaanziwag.

Mii niwi Niizhwaaswi-mishoomsi-kinoomaadwinan: Zaagidwin, Gyakwaadiwin, Nbwaakaawin, Dbasendizowin, Mnaadendamowin, Aakdehewin, Debwewin – M'Chigeeng Nishnaabeg nandawenmaan niigaanzijig wii-naagdoowaad nonda kinoomaadwinan.

Mazhinawe, mii wa e-pwaaganid, naadmawaan niigaanzijin wii-zhi-nishnaabe-zhitawiwaad.

Gechi-piitzijig gewiinwaa nbwaakaawag miinwaa-sh gii-mkowaataagziwag.

M'Chigeeng-kwewag miinwa-sh giikaazmaan niwi kina enchiying miinwaa-sh ndinawendaagninaanig Niizhwaaswi-mishoomsi-kinoomaadwinan.

Wedaaseg bgosenmigaazwag wii-bgidnamwaad bmaadziwinaawaa wii-naagdawenmaawaan debendamaang miinwa gechi-piitenmaang.

Gchi-miigsaabiigan 1764 ngii-debwenmigoonaa gwiindmaagoonaa ezhi-dbendizwyaang miinwaa ezhi-mshkawgaabwiyaang.

Kaa wiikaa ngii-bgidniziinaa pane gaa-naagdoowaang miinwaa gaa-zhi-waandmaagoowaang.

M'Chigeeng Niishnaabeg n-daapnaanaa gimaakeng naaknigewin, mii dash maanda ezhi-nsidwaamdamaang wii-naadmaagooyaang dbendizyaang.

Mii maanda e-naknigeyaang, naasaab maamwi-ndinendaami.

Niin, niinawind niwii-makawaanaanig waa-odoogimaamiyangig niinawi ezhianishinaabewiyaang. Ayaawag isa go igiw nindogimaaminaanig gayad gaa-bi-ogimaawijig. Mii dash go apine agiw waa-odoogimaamiyangig. Mii wi enakonigeyaang. This is our law.

Part 1 — Introductory Provisions

Definitions

1. In this Code:

“administration office” means the M’Chigeeng First Nation Administration office

“by-election” means an election held between general elections for the purposes of filling a vacated council position

“candidate” means a candidate for council

“committee member” means a member of an election appeal committee

“council” means the chief and the councillors

“council member” means a member of council, and includes the chief

“councillor” means a member of council other than the chief, and includes the deputy chief

“day of election” means the final day of poll, or in the case of a mail-out ballot, the last day that returned mail ballots will be counted as ballots cast, and “election date” has a similar meaning

“days” means calendar days

“election” includes a by-election and, where applicable, a referendum

“general election” means an election held to fill all council positions

“member” means a band member of the M’Chigeeng First Nation, and “membership” has a similar meaning

“Membership Register” means the official list of names and addresses of members maintained by the M’Chigeeng First Nation

“off-reserve member” means a member who does not reside on the M’Chigeeng First Nation reserve

“on-reserve member” means a member who resides on the M’Chigeeng First Nation reserve

“registered” means registered to participate in an election

“regulations” means regulations under this code

“return of poll” means the written summary of election results prepared and filed by the electoral officer in accordance with the regulations

Interpretation of the Code

2. (1) The purpose of this code is to provide for the election of a council of the M’Chigeeng First Nation in a manner that accords with custom and law.
- (2) This code and its regulations are to be interpreted and applied having regard to the history, principles and purposes set out in the Preamble.

Ratification and Amendment

3. (1) This code must be ratified by a majority of the members voting in a referendum.
- (2) Amendments to this code must be ratified by a majority of the members voting in a referendum.
- (3) A majority must be determined as the majority of members who cast a ballot.

Part 2— Council

Composition of Council

4. (1) Except as authorised by this code, the council consists of the chief and ten councillors.
- (2) One councillor will be the deputy chief.

Role of Council

5. (1) The council is the elected representative of the M'Chigeeng First Nation and will, at all times, act in good faith and in a manner it considers in the best interests of the membership as a whole.
- (2) The council will exercise the powers and perform the duties conferred on it under this code.
- (3) The council may exercise the powers and perform the duties conferred upon it under the authority of the M'Chigeeng First Nation.
- (4) The powers and rights conferred on the council under this code are in addition to, and in no way in derogation from, the powers and rights conferred on a band council under the Indian Act.

Oath of Office

- 6 A council member must take an oath of office before assuming office.

Conflict of Interest

- 7 (1) A council member must, at the earliest possible opportunity, disclose to the council any interest or association giving rise to a potential conflict of interest in relation to a matter before the council.
- (2) Where a disclosure is made under subsection (1), the remaining council members must determine whether the disclosed interest requires the council member to abstain, in whole or in part, from discussions and votes relating to the matter.

Council Meetings

Except where a matter or class of matter has been specifically provided for as an in camera proceeding, meetings of the council will be open to the membership.

- (2) If in attendance, the chief will preside over a council meeting.
- (3) If the chief is not in attendance, the deputy chief will preside over a council meeting.
- (4) If neither the chief nor deputy chief are in attendance, a councillor will be chosen to preside over a council meeting by the councillors present.

Quorum

9. (1) The council must not proceed with a matter unless a quorum is present and remains present throughout a meeting.
- (2) A quorum consists of six councillors.
- (3) A decision of the majority of councillors present at a meeting is the decision of the council, except that if there is a tie, the vote of the chief will determine the outcome.

Term of Office

10. Subject to this code, council members hold office for a term of two years.

Vacancy Arising

11. (1) The position of a council member will be deemed vacant if, during a term of office, the council member

- (a) dies,
- (b) resigns,
- (c) is convicted of an indictable offence,
- (d) is convicted of a summary offence that, in the opinion of the council, involves dishonesty,
- (e) fails to attend more than three consecutive council meetings without, what is in the opinion of council, reasonable excuse,
- (f) is determined by the council to have knowingly failed to disclose a potential conflict of interest as required by this code.

(2) The position of a council member will be deemed vacant if it is discovered that the council member

- (a) ran for office on the basis of a statutory declaration of criminal record that, in the opinion of council, materially differed from his or her criminal record check,
- (b) was convicted of an indictable offence between his or her date of nomination and taking office, or
- (c) was convicted of a summary offence that, in the opinion of the council, involved dishonesty, between his or her date of nomination and taking office.

Practice and Procedure

12. (1) Subject to this code, the council may determine its own practice and procedure.

(2) The council may make written rules governing its practice and procedure.

Part 3— Elections

Calling of Elections

13. The council must establish an election date and appoint an appeal committee and an electoral officer in respect of

- (a) a general election,
- (b) a by-election, and
- (c) where the council resolves to conduct a referendum under this code and the regulations, a referendum.

Division 1 — General Elections

Setting General Election Date

14. (1) The council must set the date of the next general election at least six months before the expiration of the term of office.
- (2) A general election set under subsection (1) must take place no later than 30 days after expiration of the term of office.

General Election of Council

15. In a general election,
- (a) the candidate receiving the highest number of votes cast for the position of chief will be declared chief,
 - (b) the candidate receiving the highest number of votes cast for a councilor will be declared deputy chief, and
 - (c) the candidates receiving the next highest numbers of votes cast for councillor will be declared councillors.

Division 2— By-elections

Filling Vacancies

16. (1) If a council position is vacated between general elections, a by-election may be held to fill the vacant position.
- (2) Subject to section 17, where the council votes in favour of leaving a council position vacant, a position may remain vacant pending the next general election.

Vacancy in Chief's Office

17. In the event the chief's position is vacated between general elections,
- (a) if there are more than six months remaining in the original term of office, a by-election must be held to elect a chief, and
 - (b) if there are six months or less remaining in the original term of office, the deputy chief will assume the chief position, the sitting councilor that obtained the next highest number of votes cast in the last general election will be declared deputy chief, and a councillor position will be declared vacant.

Term of Office Under By-election

18. A council member elected under a by-election, or awarded a position under section 17, holds office only until expiry of the original office holder's term of office.

Division 3— Referendum

Referendum

19. (1) The council may hold a referendum under this code and the regulations.
- (2) The council may determine whether voter registration will be required for a referendum.
- (3) The voting provisions of this code and the regulations may be applied to a referendum with such necessary variations as are authorised by the election appeal committee.
- (4) The time line for a referendum may be determined by the election appeal committee, except that a mail out of ballots to registered off-reserve members must take place no later than 30 days before the date set for return of mail ballots.

Division 4— Voting

Eligibility to Vote

20. A member is eligible to vote if the member
 - (a) (i) is listed on the Membership Register, or
 - (ii) provides the electoral officer with evidence of membership, in a form satisfactory to the electoral officer, and
 - (b) will be at least 18 years of age on the day of election.

Registration to Vote

21. Except as authorised by this code or the regulations, an eligible voter must be registered in order to cast a ballot.

Voting Requirements

22. (1) All voting under this code must be by secret ballot cast in such a manner that the person expressing a choice cannot be identified with the choice expressed.
- (2) The results of a vote under this code, including the number of ballots cast, the number of ballots rejected, and the number of votes for and against must be made available to the membership.
- (3) A vote under this code must be conducted in accordance with the regulations.

Use of Mail Ballots

23. (1) A vote under this code may be conducted by mail ballot or in part by mail ballot and in part by attendance at one or more polling stations.

Tie Vote

24. (1) In the event of a tie vote, the tie must be broken by the electoral officer before filing a return of poll.

- (2) In the event of a tie vote, the return of poll must indicate the winner of the tie by underlining his or her name.
- (3) The electoral officer must break a tie by applying the following rules:
 - (i) if one or more of the tied candidates is an incumbent, the tie must be broken in favour of the non-incumbent candidate or candidates,
 - (ii) if, after application of the rule in subsection (i), there is still a tie and the tied candidates are of different genders, the tie must be broken in favour of the candidate who will move gender balance on the council closer to 50% male and 50% female, and
 - iii) if the application of the above rules fails to produce an outcome, the tie will be broken by random chance in the presence of the affected candidates.

Division 5— Nomination, Acclamation, Withdrawal, and Disqualification

Qualification to Nominate

25. Only an eligible voter may nominate or second the nomination of a candidate.

Eligibility for Nomination

26. (1) Only an eligible voter may be nominated as a candidate.
- (2) A nominee must, in accordance with the regulations, provide the electoral officer with
 - (a) (i) the criminal record check or checks specified by the electoral officer, or
 - (ii) another form of documentation of criminal record permitted under the regulations, and
 - (b) a signed consent form authorising the nominee's criminal record to be made available for review by the membership.

Employees of M'Chigeeng First Nation

27. (1) Employees of the M'Chigeeng First Nation are eligible for nomination as candidates, but must resign or take a leave of absence from such employment before accepting a nomination.
- (2) A leave of absence under subsection (1) must encompass the period of candidacy and any term of office actually served as a council member as a result of the election.
- (3) A candidate who accepts employment with the M'Chigeeng First Nation during his or her period of candidacy will be deemed to have withdrawn from candidacy.

- (4) A council member who accepts employment with the M'Chigeeng First Nation during his or her term of office will be deemed to have resigned from council.

Nomination Process

28. (1) Nomination procedures must be conducted in accordance with the regulations.
- (2) The nomination process must provide for written nominations to be made.

Acclamation

29. (1) Where all council positions are filled by acclamation, the electoral officer must immediately publish a signed notice of acclamation to the membership setting out the names of the persons acclaimed and stating that a vote will not be conducted in respect of the election.
- (2) The notice of acclamation must be published by posting on the official M'Chigeeng First Nation website, at the administration office, and at the M'Chigeeng Community Complex.
- (3) In the event that all council positions are filled by acclamation, election to the office of deputy chief will be by vote of the council.
- (4) A vote under subsection (3) must be a secret vote and the results of the vote must be recorded in the minutes of council.

Withdrawal of Candidates

30. (1) Subject to subsection (3), a candidate may withdraw from candidacy at any time before acclamation or the close of the polls by providing the electoral officer with a written withdrawal of nomination signed by the candidate in the presence of the electoral officer, a justice of the peace, a notary public or a commissioner for taking of oaths.
- (2) Where a candidate withdraws before the printing of ballots has begun, the candidate's name will be removed from the ballots.
- (3) Where a candidate withdraws after the printing of ballots has begun, the candidate's name will remain on the ballot, but votes cast in favour of that candidate will be disregarded for all purposes.
- (4) A candidate who dies before the close of polls will be considered to have withdrawn his or her candidacy.

Disqualification of Candidates

31. (1) Subject to subsection (2), where a candidate is disqualified at any time before acclamation or close of the polls, the candidate's name will be removed from the ballots.
- (2) Where a candidate is disqualified after the printing of ballots has begun, the candidate's name will remain on the ballot, but votes cast in favour of that candidate will be disregarded for all purposes.

Part 4— Electoral Officer

Role of Electoral Officer

32. (1) An electoral officer must administer the registration of voters, the nomination process, and conduct the taking and counting of a vote under this code.
- (2) An electoral officer must exercise the powers and perform the duties set out in this code and the regulations and such additional duties as are assigned to the electoral officer by the council.

Appointment

33. An electoral officer must be appointed in accordance with the regulations.

Eligibility

34. (1) A person appointed as electoral officer in respect of an election must not nominate or second a candidate, or stand as a candidate, in the election.
- (2) An electoral officer must, prior to appointment, provide the council with an undertaking to discharge the duties and responsibilities of the position in a fair and neutral manner.

Reference to Committee

35. (1) The electoral officer may refer a question regarding the interpretation or application of this code or the regulations to the election appeal committee at any time in the course of his or her duties, and the committee may provide the electoral officer with directions.
- (2) A direction under subsection
- (1) does not bar a complaint or application to the election appeal committee regarding the same matter and does not bind the committee in determining any application or complaint.

Part 5— Election Appeal Committee

Role of Committee

36. An election appeal committee must oversee the conduct of an election and exercise the rights and perform the duties conferred upon it by this code.

Appointment

37. (1) An election appeal committee must be appointed in accordance with the regulations.
- (2) An election appeal committee appointed in respect of an election will continue as a committee until the completion or expiry of all relevant appeals or appeal periods, including judicial review and appellate court applications.

Qualifications for Appointment

38. (1) A person appointed to the election appeal committee in respect of an election must not nominate or second a candidate, or stand as a candidate, in the election.
- (2) A committee member must, prior to appointment, provide the council with an undertaking to discharge the duties and responsibilities of the position in a fair and neutral manner.

Composition

39. (1) An election appeal committee must have a minimum of three committee members.
- (2) The majority of the committee members on an election appeal committee must be members of the M'Chigeeng First Nation.
- (3) In the event that an election appeal committee falls below three in number during the term of a committee, the remaining committee members must agree upon a third and the council must appoint the person so selected.
- (4) If the remaining committee members are unable to agree under subsection (3) within a reasonable time, council may apply to the Federal Court and the Court may make the appointments necessary to constitute the committee, and a person appointed by the Court is deemed to be appointed under this code.

Majority Determination

40. A decision or report of the majority of an election appeal committee is the decision or report of the committee.

Practice and Procedure

41. (1) Subject to the code and regulations, an election appeal committee may determine its own practice and procedure, but must give affected persons an opportunity to make submissions in respect of matters before it for determination.
- (2) An election appeal committee may make rules governing its practice and procedure.

Application for Recount

42. (1) A candidate may apply to the election appeal committee for a recount in accordance with the regulations.
- (2) An application for a recount must be made within 7 days of publication of the election results.
- (3) Only one recount will be conducted with respect to the ballots cast for chief.
- (4) Only one recount will be conducted with respect to the ballots cast for councillors.

- (5) Notwithstanding this section, the election appeal committee may order recounts as it considers appropriate following a declaration of contravention of this code or the regulations.
- (6) Following a recount, the electoral officer must complete, sign and file copies of a new return of poll in the same manner as for an original return of poll.

Reports of Election Appeal Committee

43. (1) Within 30 days following an election, the election appeal committee may provide a report to the council and the membership.
- (2) An election appeal committee report may include observations and
- (3) The election appeal committee must, on the day that it issues a report, file a copy with the administration office, and the office must make the report available to the membership.

Complaints to Election Appeal Committee

44. (1) A complaint alleging a contravention of this code or the regulations may be made at any time during an election, but must be made within 15 days after publication of the election results or, where applicable, the publication of recount results.
- (2) The election appeal committee may provide relief against the time limit for filing a complaint where satisfied it is just and reasonable to do so in the circumstances.
- (3) A complaint must be filed in accordance with the regulations.
- (4) If a complaint is properly filed, the election appeal committee must determine whether there has been a contravention of the code or regulations, and must issue a decision in respect of the complaint.

Inquiries

45. (1) If satisfied that an inquiry into whether an election is being or was conducted in accordance with this code and the regulations is justified, an election appeal committee may conduct an inquiry on its own motion.
- (2) Where an election appeal committee conducts an inquiry on its own motion, the committee must.
 - (a) issue a statement of inquiry before beginning its inquiry, and
 - (b) must, upon completion of the inquiry, set out its findings in a decision.
- (3) A statement of inquiry may be issued by an election appeal committee at any time during an election, but must be issued within 15 days after publication of the election results or, where applicable, the publication of recount results.
- (4) A statement of inquiry must be issued in accordance with the regulations.

General Powers

46. The election appeal committee has, in respect of an application, complaint, question or inquiry before it, the power to
- (a) examine records and make the inquiries it considers necessary,
 - (b) examine and consider any evidence placed before it, regardless of whether such evidence would be admissible in a court of law, and
 - (c) provide notice of a proceeding before it to persons directly affected.

Remedial Powers

47. (1) If satisfied that an election was not conducted in a manner consistent with this code or the regulations, an election appeal committee may declare a contravention.
- (2) If satisfied that the contravention materially affected the outcome of the election, the election appeal committee may, in addition to a declaration, make such further orders as it considers appropriate.
- (3) Without limiting the generality of subsection (2), the election appeal committee may:
- (a) give directions to the electoral officer and order a recount conducted based on those directions,
 - (b) set aside the results of an election, in whole or in part, or
 - (c) order a new election, including an election for one or more positions, and give directions to the electoral officer for the conduct of that election.

Where Positions Set Aside

48. Where, as a result of a setting aside of election results by an election appeal committee, a quorum of council is not possible, the committee must order a further election.

Jurisdiction

49. (1) The election appeal committee has exclusive authority to determine whether an election was conducted in a manner consistent with this code and the regulations.
- (2) The election appeal committee has and must exercise exclusive jurisdiction to hear and decide an application or complaint made under this code or the regulations and to answer questions referred to it by an electoral officer in respect of an election.
- (3) Without limiting the jurisdiction of the election appeal committee, the committee may decide whether

- (a) a person is an eligible voter,
- (b) a person is entitled to be registered,
- (c) a person is qualified for nomination,
- (d) a candidate has withdrawn or is disqualified,
- (e) a ballot should be rejected,
- (f) a tie was properly broken,
- (g) a return of poll accurately records the results of an election, and
- (h) a candidate campaigned in a prohibited manner or place or at a prohibited time.

Decisions

- 50. (1) An election appeal committee must issue its decisions in writing.
- (2) The election appeal committee must, on the day that it issues a decision, file a copy with the administration office, and that office must make the decision available to the membership.

Final and Binding

- 51. (1) A decision of an election appeal committee is final and binding.
- (2) A decision of an election appeal committee may be reviewed by the Federal Court solely by reason that the committee failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction under this Code.
- (3) An application for judicial review of a decision of an election appeal committee must be made within 15 days of the date the decision was filed with the administration office.
- (4) An applicant may not make an application to court in respect of a matter under this code or the regulations without first exhausting the remedies available before an election appeal committee.

Part 6— Regulations & Guidelines

Regulations

- 52. (1) The council may make regulations respecting voting and elections under this code, including establishing time frames for the conduct of an election.
- (2) Without limiting subsection (1), the council may make regulations
 - (a) respecting preparation of a list of eligible voters,
 - (b) respecting voter registration,

- (c) respecting nomination of candidates, including limiting the number of nominations that may be accepted by a candidate in respect of an election,
- (d) regarding proof of criminal record,
- (e) establishing the duties and responsibilities of an electoral officer,
- (f) setting a form of ballot,
- (g) establishing a process for counting of ballots,
- (h) setting a return of poll form,
- (i) setting requirements for complaints and applications to an election appeal committee,
- (j) specifying information to be included in an election appeal committee statement of inquiry,
- (k) establishing and setting fees for filing complaints and applications with an election appeal committee, and
- (l) imposing restrictions and conditions on campaigns in respect of elections under this code.

Guidelines

- 53. (1) The council may authorise non-binding guidelines to further the operation of this code and the regulations.
- (2) The council must make any guidelines available in writing to the membership.

Part 7 — Miscellaneous

Transitional Provision

- 54. (1) In this section, “administrator” means the entity acting under the administration agreement between Indian and Northern Affairs, and Enkamigak Community Inc.
- (2) The administrator will continue to act pending the election of a council under this code and the regulations.
- (3) The administrator may exercise the powers and authority conferred on the council by this code for the limited purposes of conducting the first election of a council under this code and regulations.
- (4) The administrator may make such variations to the election timelines established under this code and the regulations as are required to allow the first election to take place in a timely and fair manner, but must provide for mail out ballots to be sent to registered off-reserve voters no later than 30 days before the election date.

Automatic Repeal

- 55. Sections 53 and 54, their reference notes, and the heading “Part 7 — Miscellaneous” will be repealed effective December 31, 2005.

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ELECTION CODE REGULATION

Under the M'Chigeeng First Nation Custom Election Code

Interpretation

1. (1) The defined terms set out in the M'Chigeeng First Nation Custom Election Code apply to the interpretation of this regulation, except as expressly noted otherwise.
- (2) In this regulation,

“code” means the M'Chigeeng First Nation Custom Election Code
“double-sealed ballot” means a ballot deposited in a sealed envelope marked
“ballot” which envelope is placed inside a second sealed envelope which is,
in turn, marked on the outside with the name of the voter

PART 1- ELECTION PROCEDURES

Division 1 - Timelines

General Election Timelines

2. (1) The council must appoint an electoral officer and an election appeal committee at least six months before the expiration of the term of office.
- (2) The electoral officer must
 - (a) obtain a list of members' names, band numbers, dates of birth and most recent addresses from the Membership Register and, no later than 138 days prior to the election date, compile a list of eligible voters,
 - (b) no later than 78 days prior to the election date, send by mail to all off-reserve members:
 - (i) notice of the upcoming election and the election date,
 - (ii) a notice of registration and directions on how to register to participate in the election process, and
 - (iii) a nomination form and directions on how to nominate a candidate, including the date by which written nominations must be received by the electoral officer,
 - (c) no later than 64 days before the election date, compile a registered voters list consisting of eligible onreserve members and those eligible off-reserve members who have registered to participate,
 - (d) no later than 63 days before the election date, provide notice of the scheduled nomination meeting to on-reserve members by posting notices on reserve property,

- (e) no later than 30 days before the election date, mail out ballots to registered off-reserve voters, and
- (f) no later than 5 days before the election date, provide for one or more advance polls.

By-election Timelines

3. An election timeline may be established by an election appeal committee in respect of a by-election, but must provide for mail out ballots to be sent to registered off-reserve voters no later than 30 days before the election date.

Division 2 - Registration

Voter Registration

- 4. (1) The most recent address listed on the Membership Register at the time of compilation of the eligible voters list will be determinative of whether a member has on-reserve or off-reserve status for purposes of an election.
- (2) The electoral officer must include on the registered voters list
 - (a) all eligible on-reserve voters,
 - (b) all eligible off-reserve voters who return by mail a notice of registration or otherwise provide, in a manner satisfactory to the electoral officer, notice of desire to be registered, and
 - (c) any person who, prior to close of poll, provides the electoral officer with satisfactory evidence of membership and age and declares a desire to vote.

Late Registration by Off-Reserve Voter

- 5. (1) If an eligible off-reserve voter returns his or her registration card or otherwise provides, in a form satisfactory to the electoral officer, notice of desire to be registered after the 30 day time for mail out of ballots has passed, but less than seven days before the election date, the electoral officer must register the voter and mail out a mail ballot package out to that voter as soon as reasonably possible.
- (2) A mail ballot package sent out under subsection (1) need only be sent by regular mail.
- (3) A ballot sent out under subsection (1) must be returned by the same date set for return of other mail ballots in order to be counted as a ballot cast.

Ballot of Unregistered Person

- 6. (1) If an unregistered person attends at the poll, and is unable to provide satisfactory evidence of membership and age before close of poll, the electoral officer may permit the person to mark a ballot, double-seal the ballot, and refer the question of eligibility to the election appeal committee under section 35(1) of the code.
- (2) Where a person marks a ballot under subsection (1), the double-sealed ballot must be kept separate from the ballots cast by registered voters pending a decision by the election appeal committee.

Division 3 - Nominations

Nomination Meeting

7. (1) The electoral officer must schedule and conduct at least one nomination meeting.
- (2) Nomination meetings must be held no later than 42 days before the election date and no earlier than the day after the last day set for acceptance of written nominations.

Nomination Procedure

8. (1) A nomination must specify whether the nomination is for the position of chief or the position of councillor.
- (2) Nominations must be proposed and seconded.
- (3) Nominations may be made in person at a nomination meeting or by nomination form delivered to the electoral officer by the date set for acceptance of written nominations.
- (4) Written nominations, including the name of the proposing member, must be read aloud by the electoral officer at the outset of a nomination meeting.
- (5) In the event the same nominee is nominated by two or more written nominations, the earliest dated written nomination will be deemed a proposal and the next earliest will be deemed to second the proposal.

Acceptance of Nomination

9. (1) A nomination must be accepted by a nominee in order for the nominee to become a candidate.
- (2) A nominee may only accept one nomination in respect of an election.
- (3) A nominee may accept a nomination in person at a nomination meeting or by signed written notice delivered to the electoral officer within seven days of the nomination meeting.

Criminal Record Check

10. (1) Where a candidate has resided in more than one jurisdiction, the electoral officer must require the candidate to file a criminal record check in respect of each jurisdiction.
- (2) A criminal record check must include the period of time up to and including a candidate's date of nomination.

Filing of Criminal Record Check

11. (1) A candidate must file with the electoral officer, no later than 28 days before the election date,

- (a) the criminal record check or checks required by the electoral officer, or
 - (b) if not yet in possession of a required check, with evidence, in a form satisfactory to the electoral officer, that a request was submitted to the proper authority in a timely manner.
- (2) A candidate who files evidence of a request under subsection (1)(b) must, within 14 days of the election date, file
- (a) the criminal record check, or
 - (b) if due to circumstances beyond the control of the candidate, the check is not yet available, a statutory declaration setting out his or her criminal record.
- (3) A candidate who files a statutory declaration under subsection (2)(b) must file the criminal record check as soon as possible.
- (4) The electoral officer may waive the subsection (3) filing requirement if satisfied that the candidate's continuing inability to file is due to exceptional circumstances such as war, political unrest or state of emergency in the jurisdiction in question.
- (5) Subject to a waiver granted under subsection (4), a candidate who fails to comply with this provision must be disqualified from candidacy.

Division 4 - Campaigning

Prohibition on Day of Poll

12. (1) For purposes of this section, "active campaigning" means active solicitation and includes the transport of advertisements and banners, but does not include stationary advertisements and banners.
- (2) Active campaigning in the immediate vicinity of a polling station on a day of poll is prohibited.
- (3) The electoral officer is authorised to temporarily seize documents, equipment or other materials being used or displayed in contravention of subsection (2).

Division 5 - Ballots and Election Forms

Use of Mail

13. (1) If a vote is conducted in part by mail, then for purposes of the code and this regulation, the mail out of notices, ballots or other communications, is deemed to take place on the day that the papers are left with a post office for mail out and, if papers are left on more than one day, on the last of those days.
- (2) A notice, ballot, or other communication sent by mail to a member at the address listed on the Membership Register at the time of compilation of the eligible voters list is deemed to have been received by the addressee in the ordinary course of mail, unless the member has provided the electoral officer with a more recent address.

Form and Content of Mail Ballot

14. A mail ballot must be sent out in a package containing the following information and materials
- (a) a ballot,
 - (b) a letter setting out information regarding the vote, including
 - (i) the name and contact information of the electoral officer, and the internet address of the official MChigeeng First Nation website,
 - (ii) instructions for voting, including how to obtain information relating to candidate withdrawals, disqualifications and criminal records, and
 - (iii) the date by which the ballot must be returned in order to be counted as a ballot cast,
 - (c) a blank envelope with the word "ballot" printed on it, and
 - (d) an addressed return envelope for return of the ballot containing a voter declaration form requiring the voter's name, band number and signature.

PART 2- COUNTING OF VOTES

Late Mail Ballots

15. (1) Mail ballots received after the date set for return of mail ballots must be rejected by the electoral officer.

Reviewing Mail Return Envelopes

16. The electoral officer must reject a mail ballot if, on inspection of the return envelope,
- (a) the voter declaration form is incomplete,
 - (b) the name and number of the voter are not on the registered voters list, or
 - (c) the record of ballots issued indicates the voter has already cast a ballot.

Bringing Together of Ballots

17. As soon as is reasonably possible after the close of polls, the electoral officer must
- (a) retrieve any advance poll ballot boxes from safekeeping and add them to the boxes from the other polling stations, and
 - (b) in sight of any candidate or candidate's agent present, but in a manner that ensures the secrecy of the content of the ballot,

- (i) for any double-sealed ballot the counting of which has been directed by the elections appeal committee under section 35(1) of the code, remove the ballot from its envelopes and deposit it into a ballot box, and
- (ii) for any mail ballot accepted on review under section 15, remove the ballot from its envelopes and deposit it into a ballot box.

Counting Ballots

18. As soon as is reasonably possible, the electoral officer must, in sight of any candidate or candidate's agent present, open all ballot boxes and
- (a) review all the ballots and reject any ballot that
 - (i) lacks an authentication mark,
 - (ii) has not been marked by the voter,
 - (iii) has been marked by the voter with a mark other than an "X" except where the voter has, in the opinion of the electoral officer, clearly indicated an intention, in which case the electoral officer may declare the ballot not rejected,
 - (iv) contain votes for more candidates than are to be elected, or
 - (v) in any way identifies the voter,
 - (b) declare a ballot containing the names of candidates for more than one office, on which votes are given for more candidates for any office than are to be elected, to be void as regards all the candidates for such office; but such ballot shall be good as regards the votes for any other offices in respect of which the voter has not voted for more candidates than are to be elected,
 - (c) make note of any objection raised by a candidate or candidate's agent with respect to any ballot and make a determination regarding the objection,
 - (d) number any such objection and place a corresponding number on the back of the ballot, along with the word "allowed" or "disallowed" as the case may be, and initial that ballot,
 - (e) from the ballots not rejected or declared void under paragraph (b), count the votes given for each candidate that did not withdraw and was not disqualified before the close of polls; and
 - (f) prepare a return of poll.

Return of Poll

19. (1) A return of poll must indicate the results of the vote including the total number of ballots cast, and the number of votes for each candidate and the number of ballots rejected.

- (2) Where a vote is held simultaneously for the positions of chief and councillors, the return of poll must separately record the results of the vote for chief and the results of the vote for councillors.
- (3) Where a candidate is acclaimed to a position, the return of poll must specifically so indicate.
- (4) A return of poll must be signed by the electoral officer.

PART 3- POST-ELECTION MATTERS

Publication of Election Results

20. (1) The results of the election, as set out in the return of poll, must be published to the members immediately after the electoral officer files copies of the return of poll.
- (2) The results of the election may be published by posting on the official M'Chigeeng First Nation website, at the administration office, and at the M'Chigeeng Community Complex.

Application for Recount

21. (1) An application for recount must be made in writing to the election appeal committee.
- (2) An application for recount must indicate whether the recount is being requested in respect of the position of chief or in respect of the councillors.
- (3) An application for recount must be accompanied by a certified money order or bank draft in the amount of two hundred (200) dollars.

Complaints

22. (1) A complaint alleging a contravention of the code or regulations must be made in writing to the election appeal committee.
- (2) A complaint must
 - (a) include the name and contact number of the complainant,
 - (b) set out the facts relating to the alleged contravention, including dates, witnesses and persons involved, and
 - (c) describe how the facts alleged amount to a contravention of the code or regulations.

Statement of Inquiry

23. (1) If the election appeal committee resolves to hold an inquiry, it must first publish to the membership a statement outlining the alleged facts and how the code or regulations may have been contravened.
- (2) The committee must provide a copy of the statement of inquiry to any individual directly affected by the matter.

- (3) For the purposes of this section, a statement of inquiry may be published to the membership by posting a copy of the statement in the administration office.

PART 4- ELECTORAL OFFICER

Duties of Electoral Officer

24. (1) Subject to the code and this regulation, the electoral officer must

- (a) set the date, time and place or places for taking a vote and ensure that every person eligible to vote has a reasonable opportunity to do so,
- (b) compile a list of eligible voters,
- (c) compile a list of registered voters,
- (d) compile a list of candidates,
- (e) set the form of the ballot,
- (f) fix the number and location of polling places, each of which must contain private polling booths or private spaces for voting,
- (g) provide for at least one advance poll to be held on the M'Chigeeng First Nation reserve,
- (h) make arrangements for security and order in and around the polling areas,
- (i) keep a record of the persons to whom ballots are issued,
- (j) mark all ballots, including mail ballots, by handwritten initial or otherwise, in manner that will permit reliable authentication of cast ballots,
- (k) safekeep all ballots cast pending the close of poll,
- (l) at the close of poll, but prior to any counting of ballots, refer any double-sealed ballots to the election appeal committee for directions under section 35(1) of the code,
- (m) ensure that all ballots properly cast are included in the counting of the vote,
- (n) supervise the counting and recounting of ballots,
- (o) immediately upon completion of a count or recount, and with the candidates or candidates agents, if any, present, prepare a return of poll form and sign it,
- (p) immediately upon completion of the return of poll form, file signed copies of the return of poll with the administration office, the council, and the election appeal committee,
- (q) preserve all documents relating to the vote, including all ballots and the original return of poll, until all relevant appeals or appeal periods, including judicial review and appellate court applications, are completed or expired, and

- (r) upon completion of the expiry of all relevant appeals and appeal periods, file the original return of poll with the administration office and destroy the documents relating to the vote.
- (2) The electoral officer may appoint a deputy electoral officer and may delegate the performance of administrative tasks and functions to the deputy electoral officer.

Schedule A

Preamble — Official English Translation

Ni, niinawind niwii-makawaanaanig waa-odoogimaamiyangig nhinawi ezhianishinaabewiyaang ayaawag isa go igiw nindogimaaminaanig gayad gaa-bi-ogimaawijig. Mu dash go apine agiw waa-odoogimaamiyangig. *As for us we wish to choose our own chiefs in accordance with Indian custom we have had as chiefs for a long time those descendant from our ancestors, and these are those whom we wish to have over us.*

Manitoulin Chiefs in Council
Mitchigiwadinong (M'Chigeeng), 21 July 1862

Gichi-manidoo, placed us upon this land and gave us laws to follow. These laws focussed mainly upon relationships — relationship to the earth, to the animals, to the plants, to the spirits and to our fellow human beings. Since time immemorial, we the Ojibwe Anishinaabe adhered to a system of governance based upon our society's concerns, beliefs, culture, customs, traditions, land and spirituality. The clan system has acted and continues to act as framework for re-enforcing and implementing our spirituality, beliefs, culture and governance. The Anishinaabe of M'Chigeeng recognize that, historically, our leadership has mainly been of the Adik (Caribou) clan, notably Chief Ogaa, Chief Niibaakhom, Chief Taibosegai and Chief Bemigwaneshkang.

The M'Chigeeng Anishinabek expect their leaders to live the Seven Grandfather Teachings which are as follows: Love, Honesty, Wisdom, Humility, Truth, Respect, Bravery. The functions of leadership include Mazhinawe, Giigdoniniwag, Gechipiitzzig, Wedaaseg and Anishinaabe Kwewak.

The Elders are honoured as wisdom keepers and act as advisors. Anishinabek-kwewak ensure our families, community and nation live the Seven Grandfather Teachings. Wedaaseg (warriors) were called upon and pledged to offer their lives when necessary in order to protect and defend members of the nation, resources, territory and honour.

The Covenant Chain Wampum Belt of 1764 affirms our status as an independent nation. We recognize that the British and successive colonial governments, present day Canada included, have taken deliberate measures to undermine that independence and supplant our governance system by implementing and enforcing the Indian Act which mandated that the Chief and Council had to be elected according to colonial principles. Furthermore, we recognize that the Indian Act and other law of Canada have served to diminish Anishinabek authority and jurisdiction.

In our continued effort to restore our authority and jurisdiction while endeavouring to strengthen self governance through our cultural institutions, we adopt the M'Chigeeng First Nation Custom Election Code.