**MCFN ELECTION LAW**

**SUMMARY**

This document is a summary of a custom election law produced by the Lands, Research, and Membership Department, in coordination with the Mississaugas of the Credit First Nation’s (“MCFN”) Governance Unit and Chief and Council. It is intended for use by MCFN, who are looking to opt out of the election provisions of the *Indian Act* and undertake its own process of carrying out elections under a MCFN-specific election law. A draft custom election law has been produced. This Summary, highlights some major changes that Members could see in a MCFN election law that may differ from the *Indian Act*.

***Please note that this is a “draft” law and is intended for use at community consultations and will not come into effect until it has received community support through a ratification/approval process by the membership of the Mississaugas of the Credit First Nation. Further, the results/comments from the MCFN Code of Conduct and Election Code Questionnaire that was circulated in April 2019, have not been reflected in the most recent draft of the election law, as well as this Summary.***

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|  | **INDIAN ACT** | **MCFN *PROPOSED* ELECTION LAW** | **MCFN CODE OF CONDUCT & ELECTION LAW QUESTIONNAIRE RESULTS** |
| **Definitions** | Terms are general to the entire Act, not just an election. | Terms are specific to MCFN and the election law. Some examples include:  ***Code of Ethics –*** guidelines, general rules of behaviour, and standards established…which governs the conduct of candidates running for office and their supporters relating to their participation in the electoral process  ***Election Appeal Board*** (Board) ***–*** the body appointed…to review and make decisions concerning election appeals  ***Territory of the MCFN –*** the geographical area in which the MCFN Council holds jurisdiction… |  |
| **Term of Office** | 2 years | 2, 3, or 4 years | **Q23 How long should the term of Council be?**  (A)2 years – 102, (B) 4 years -28  (C) 3 years – 44 (D) 12 said to stagger terms  (E) 2 - other  **Reasons**: (C) so projects can be completed  (B)-2 yrs is not enough time to get things done  (A) -Gives the opportunity for new ideas/change  (A)Council is a demanding job that may result in fatigue |
|  | 1 Chief & 1 Councillor for every 100 FN members (min. 2 & max. 12) | 1 Chief and 7 or 9 Councillors | **Q21- How many positions should be on MCFN Council, including Chief?**  a.130 8- current 7 Councillors & 1 Chief   1. 36 – 10 2. 10 – 12 3. 4: other 9 members would be preferred   **Reasons:** (c) More Councillors means a greater mix of ideals  (d) Split decision can be decided by the Chief with 9 member  (a)Anymore would be too many hands in the pot (13)  (a)The more there are, the better outcome for the people  (a)Would like to see Directors in place for programs, working as volunteers with an honorarium and being accountable to C & C |
| **Code of Ethics for Candidates** | No provision | Follow rules, no coercion, vote-bullying, respect rights of others, no violence/intimidation, no bribing, no smear campaigns or spreading of rumours  If violate, guilty of offence – penalty as decided by Board or such other body | **Q1. Should there be any discipline for Chief & Council?**   1. Yes (181) 2. No (4)   **Q.2 What should be included code of conduct?** a. spectrum-slap on the wrist. (50)  b. progressive same thing done multiple times-discipline gets more serious or fine increases. (77)  c. One kind only (ex. same disciplinary action for all violations of the code. Don’t increase. Ex. Every time election code violated pay set fine. (26)  d. Leave it to some kind of enforcement board /body to determine penalty ex. No set type of discipline – board/body would evaluate situation and decide on own what penalty would be. (87)  e. Combination of the above (circle which combination) (60)  **Q3.** **Types of penalties would you like to see in the Code of Conduct and in election law?**  a. fine (79)  b.Community service, (60) c. Restorative justice, (64)  d. Other cultural type of discipline (27)  e. Other (15)  Banned from election process/jail/fine (6)  All of the above (7) |
| **Removal of Council Member from Office** | A person ceases to hold office when they die, resign, or are convicted of an indictable offence.  OR  When the Minister removes them for having committed corrupt practices in connection with an election or for having missed 3 consecutive meetings of the Council without authorization. | If violates the election law, fails to attend regular meetings, fails to maintain standard of conduct, convicted of indictable offence or felony, convicted of summary offence involving dishonesty, negligent in duties/protecting members, abuses office.  If violate – removal and prevented from running for 6 years; other penalty as decided by Board. | **Q. 4 What Mechanisms should be in place to discipline C & C**  a. Council, (20)  b. some kind of enforcement board/body, (112)  c. Indigenous Peoples’ Court (68)  d. Other: Women’s Council  **Q5.What types of actions behaviour would warrant discipline**:  Money stealing/theft/criminal charges. (78)  Drugs or drinking on the job, sex or child abuse. (3) consistently missing monthly meetings (2)  Not demonstrating full transparency, being dishonest, false representation (68)  **Q6. If complaints are made against members of Council and/or MCFN members, who should deal with the complaints:** one or more of Council members as individuals (15) Council as a whole, (68)  some kind of enforcement board/body (102)  a court (indigenous peoples’ court or common law court (64)  Combination of the above (46)  **Q7. Should there be a formal and informal complaints process for members Chief and Council and/or other MCFN members:**  informal and formal (113) informal only (13) formal only (57)  none (4) |
| **Electoral Officer (EO)** | EO is appointed by FN Council with approval of Minister. | Chief Operating Officer (formerly Executive Director) (COO) will post job position for EO. If not candidate, COO will appoint a person.  EO shall be at least 18 years old and have experience in conducting elections. Can’t vote.  Will swear/affirm oath of office and be responsible for managing and running all pre-electoral, electoral, and post-electoral processes and follow the election law.  EO will appoint Deputy EOs and Interpreters and can remove from office.  EO can accept complaints from electors and make decisions regarding said complaints. |  |
| **Election Period** | Min. 79 days | Min. 90 days |  |
| **Qualifications to nominate & be candidate for Council** | Only candidates nominated for Councillor positions must be a member of the FN & be at least 18 years old on day of nomination meeting. Must be nominated by 2 Members. | To be nominated, must be at least 18 years old and included on voter’s list.  Elector may propose or second the nomination of a qualified person to serve as chief or councillor.  No elector may nominate/second more than 1 candidate, including chief and councillors. | **Q11. Would an in-person orientation training session be helpful to those joining Council or who are on Council for reference & review.**   1. Yes (178) 2. No (10)   **Q12. What should be in the manual; policies, code of conduct, oath of office, roles** & r**esponsibilities**.  All of the above (126)  **Q26.How many times can a person nominate or second a candidate for Chief &/or Council.**  a. 1 nomination and second total for C & C (89)  b. I nomination & second for Chief and same for Councillor (52)  c. 1 nomination & second for and 1 nomination & second for up to 7 councillors (21)  d. you can nominate & second as many as you like (20) |
| **Rules/Procedures for nomination of candidates** | An elector can nominate a candidate in writing prior to the nomination meeting or orally at the meeting. | Elector can nominate in writing or orally. |  |
| **Candidate acceptance** | Persons nominated automatically become candidates & their names are placed on ballot unless they withdraw in writing. | Once nominated, candidate has to accept nomination in writing and can only run for either chief or councillor, not both.  Each candidate shall be required to pay a fee to run. Fee used for running future elections and appeals.  Candidate can withdraw at any time in writing. |  |
| **Qualifications to Vote** | Must be a Member & at least 18 years old on election day and on voters list. | Same. If not on voter’s list, can apply to EO to be put on. EO makes decision, which can’t be appealed. | **Q27. How would you like to vote:**  a. secret ballot (as currently done) (174  b. Publicly (people would know who you vote for) (12)  c. other (0) |
| **Ballots** | EO sends a mail-in ballot to all off reserve electors whose addresses appear on the voters list  Paper ballots filled out at polling location | Can vote by mail-in ballot, electronic ballots (e-voting to come into force at a later date), or in person.  Mail-in ballots only to be sent out to Members on request not automatically. Contact EO to request 1 | **Q28. By what method you you like to vote:**  a. Vote on-line for the 1st referendum and election with option to vote by mail- in or in-person. (69)  b. vote on-line for the next election & any future referendums with option to vote by mail-in or in-person  (36)  c. no on-line voting, mail-in or in-person (69)  d. more traditional methods (such as standing behind candidate in support of candidate) (11)  e. show of hands (6)  f. other (3)  \* make voting as accessible as possible (2) |
| **Advance Polls** | No provision | No provision | No |
| **Proxy Vote** | No provision | No provision | No |
| **Recount** | No provision. EO currently draws from hat if a tie occurs. | EO will announce time of recount, which must take place within 24 hours of the announcement. EO will conduct recount of valid ballots.  If tie, then EO will draw name from receptacle without looking & that candidate will be the successful candidate. |  |
| **Offences & Penalties** | None |  |  |
| **Appeals** | Directed to Minister who may conduct an investigation and report findings to Governor-in-Council (GIC). The GIC may set aside the election on the report of the Minister. | Appeals may be made to the Board.  Board likely to be made up of 3 members who understand principles of natural justice (fairness, impartiality, and objectiveness) and be of good character.  Shall supervise and administer all election appeals under the election law.  Elector may submit an appeal based on candidate not qualified to run, violation of the election law, where there is corrupt or fraudulent practice, ineligible voter voted, or Member violates election law. |  |
| **Amendments** | No provision. Indian Act amendments by Minister | Made by Council with approval of Members in certain cases | **Q.29 How would you like to see Council make amendments to the Election Law:**  a. option for petition from members with proposed amendments (45)  b. Council could pass a BCR with proposed amendments  (14)  c. both A & B (122)  d. None of the above (5)  **Q30. What % of members’ signatures would you like to see to put a petition forward to Council for amendments;**   1. 10% (8) 2. 25%, (14) 3. 40%, (28) 4. 50%, (43) 5. 75%, (36) 6. other; (9)   Comments; 75% (2)  55 (1), 51% (4), 60% (1)  **Q31- How often should Council review to see if amendments are needed: a. E**very year (66)  b. Every 2 yrs (75)  c. Every 3 yrs (25)  d. Every 5 yrs (14)  e. others 4 yrs (1) & 1 year (1)  law **Q32 -Do you want Council to have a referendum for amendments to the Election law**;   1. Yes (170) 2. No (12)   **Q33: If yes what % of members should be required to approve a proposed amendment:**   1. 25% (17) 2. 50% (56) 3. simple majority of those who come out to vote, majority approves or rejects (65) 4. double majority the majority of total members must come out and vote and of those who vote, the majority must approve/reject (24) 5. other; (10)   51% (3) majority vote of total membership  **Q34 Would you be okay with council making the amendments by BCR with notice of the change to the** **members:**  a. yes (32)  b. No (18) |