

ASHCROFT INDIAN BAND
MEMBERSHIP RULES REGULATION
UNDER THE
1987 ASHCROFT INDIAN BAND MEMBERSHIP RULES

PREAMBLE

- A. The Ashcroft Indian Band *Membership Rules* (the “**Rules**”) came into legal effect on June 26, 1987.
- B. The Rules distinguish between:
- (1) persons entitled automatically to membership in the Band under sections 3 or 4 of the Rules; and
 - (2) persons who may apply for discretionary membership in the Band under Parts III, IV and VI of the Rules, whose applications are subject to approval in a referendum vote.
- C. The Federal Court has found that referendum votes to admit new Members were not held by the Band after 1996: see paragraphs 16 and 63 of the October 5, 2022 decision in *Pittman v. Ashcroft First Nation-Federal Court* (fct-cf.gc.ca) (the “**Court Decision**”).
- D. The direct implication of the Court Decision is that every person who came onto the Band List after 1996, other than by automatic membership under sections 3 or 4 of the Rules, has not been properly admitted to discretionary membership pursuant to a referendum vote under the Rules. These persons not properly admitted to discretionary membership are set out in the “**Post 1996 Discretionary Membership List**” prepared by the Membership Clerk.
- E. Each of the persons on the Post 1996 Discretionary Membership List must now apply to have his or her membership confirmed by way of a referendum vote (the “**Membership Admission Vote**”) conducted under Part VI of the Rules: See paragraphs 63, 106 and 107 of the Court Decision.
- F. There is some urgency to the Membership Admission Vote, as pursuant to paragraph 134 of the Court Decision, all rights and benefits of Band membership for the persons on the Post 1996 Discretionary Membership List will terminate on April 4, 2024, unless those persons are admitted to membership on or before that date.

January 24, 2023 Draft

1. AUTHORITY

1.1 **Authority for this Regulation:** Pursuant to the authority in section 31 of the Rules, Council enacts this Regulation to administer the Rules, including, without limitation, the administration of:

- (a) Discretionary Membership Applications, including applications to transfer membership from another First Nation to the Band;
- (b) Membership Admission Votes on Discretionary Membership Applications to the Band; and
- (c) *Membership Rules* Amendment Votes on the amendment, repeal or replacement of the Rules, under Part VIII of the Rules.

2. PURPOSE OF THIS REGULATION

2.1 **Purpose:** The purpose of this Regulation is to ensure:

- (a) that all Electors understand why, pursuant to the Court Decision, only certain Electors, being "Eligible Electors", are entitled to vote in the Membership Admission Votes and any *Membership Rules* Amendment Vote, held under the Rules;
- (b) that in the event of questions by any Electors as to the process for any Membership Admission Votes or any *Membership Rules* Amendment Vote, that the legal basis for the Band proceeding has been laid out in advance; and
- (c) that in accordance with the custom of the Band, there has been full community consultation in advance, on the process for the Membership Admission Votes and any *Membership Rules* Amendment Vote.

3. DEFINITIONS AND INTERPRETATION

3.1 **Definitions:** For the purposes of this Regulation:

"Administration Office" means the Band administration office currently located at 414 Cornwall Road, Ashcroft Indian Reserve No. 4, PO Box 440, Ashcroft, BC V0K 1A0.

"Alternate Roster" means the list of alternate Membership Committee members, as described in subsection ♦8.6(b), who are agreeable to being appointed by Council to the Membership Committee, on either the absence for any reason, resignation in writing or removal by Council of one or more committee members, including possibly the whole committee.

"amend" includes repeal or replace.

January 24, 2023 Draft

"Appeal" means an appeal, in the form of Appendix 14 to this Regulation, of the result of a *Membership Rules Amendment Vote*.

"Appellant" means any Eligible Elector or Council, as the case may be, who files under Article ♦ 16 of this Regulation, an Appeal of the result of a *Membership Rules Amendment Vote*.

"Applicant" means the person who has submitted a Discretionary Membership Application to the Membership Clerk, in accordance with Parts III, IV and VI of the Rules.

"Applicant Information Form" means the "Applicant Information Form", attached as Appendix 4 to this Regulation, completed by the Membership Clerk following the Membership Committee review of a Discretionary Membership Application under sections ♦ 10.6 to 10.8.

"ballot" means either:

- (a) the Membership Admission Ballot;
- (b) the Membership Admission Mail in Ballot;
- (c) the *Membership Rules Amendment Ballot*; or
- (d) the *Membership Rules Amendment Mail in Ballot*.

"band" means any Indian Band or First Nation in Canada, other than the Ashcroft Indian Band.

"Band bylaw, policy or procedure" means any duly enacted or adopted bylaw, policy, procedure, regulation, manual, or law of the Band.

"Band Manager" means the person appointed by Council to manage Band operations.

"Bill C-31" means An Act to amend the Indian Act, S.C. 1985, c. 27, referred to in the Rules as the "Act".

"broad consensus" means a consensus or agreement among the Eligible Electors either for or against a matter, determined in accordance with the custom of the Band.

"business day" means any day other than a Saturday, Sunday or a statutory or civic holiday observed by the Band.

"Canadian Charter of Rights and Freedoms" means the *Canadian Charter of Rights and Freedoms*, being Schedule B to the *Constitution Act, 1982*, of Canada, as amended or replaced from time to time.

"Chair" means the person appointed by Council to chair the Membership Committee, as described in subsection ♦ 8.6(a) and section ♦ 8.18.

"Chief" means the member of Council who oversees Council meetings and is the primary community and political representative of the Band.

January 24, 2023 Draft

“confidential information” means information that could possibly harm the interests of individuals or the Band if disclosed to persons not authorized by Band bylaws, policies or procedures to access that information.

“conflict of interest” means any situation where the private interest of the Electoral Officer or Deputy Electoral Officer may conflict with the duty of that person to the Band.

“Constitution Act, 1982” means the *Constitution Act, 1982* of Canada, as amended or replaced from time to time.

“Council Member” means any of the Chief or councillors of the Band.

“Council Resolution” means a resolution consented to by Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Council Members.

“Court” means the BC Supreme Court, which hears and decides any Appeal filed under Article ◆ 16 of this Regulation.

“Court Decision” means the October 5, 2022 decision in *Pittman v. Ashcroft First Nation-Federal Court* (fct-cf.gc.ca).

“Deferral Notice” has the meaning set out in section ◆10.5.

“Deficiency Notice” has the meaning set out in subsection ◆9.2(b).

“Deputy Electoral Officer” means the person appointed under subsection ◆ 12.10(f) by Council to assist the Electoral Officer to conduct a Referendum Vote of the Eligible Electors.

“Discretionary Membership Application” means the application for discretionary membership in the Band in the form of either:

- (a) Appendix 1 to this Regulation; or
- (b) any other standard form of application which the Band has accepted after December 31, 1996;

submitted by an Applicant for discretionary membership in the Band, to the Membership Clerk, in accordance with Parts III, IV and VI of the Rules.

“Electoral Officer” means the person appointed under subsection ◆12.10(f) by Council to conduct a Referendum Vote of the Eligible Electors.

“Electors” means all Members of the Band, 18 years of age or older on the date of the Referendum Vote, who are not disqualified from voting in Band elections. Please see Article ◆ 4.

“Eligible Electors” means all Members of the Band, 18 years of age or older on the date of the Referendum Vote, who are on:

January 24, 2023 Draft

- (a) the Pre 1997 Membership List;
- (b) the Post 1996 Automatic Membership List; or
- (c) the Post 2022 Accepted Applications Membership List.

“General Band Membership” means all persons whose names appear in the Band List, or who are entitled under the Rules to have their names appear in that list, and who are 18 years of age or older on the relevant date.

“good faith” means with honesty of intention, and freedom from knowledge of circumstances which ought to place that person upon inquiry as to whether the transaction is unconscientious.

“Indian Act” means the *Indian Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time.

“Mail in Ballot” means either:

- (a) the Membership Admission Mail in Ballot; or
- (b) the Rules Amendment Mail in Ballot.

“Mail in Ballot Package” means either:

- (a) the Membership Admission Mail in Ballot Package; or
- (b) the *Membership Rules* Amendment Mail in Ballot Package.

“Member” means a person whose name appears in the Band List, or who is entitled under the Rules to have his or her name appear in that list, and is referred to in the Rules as a “Member of the Band”.

“Membership Admission Ballot” means the Membership Admission Ballot in the form of Appendix 6 to this Regulation.

“Membership Admission Mail in Ballot” means the Membership Admission Mail in Ballot in the form of Appendix 7 to this Regulation.

“Membership Admission Mail in Ballot Package” means the Membership Admission Mail in Ballot Package assembled by the Electoral Officer, having the contents set out in subsection 12.17(b).

“Membership Admission Vote” means a formal vote carried out among the Eligible Electors in accordance with this Regulation, on Discretionary Membership Applications made to the Band under Part VI of the Rules.

“Membership Admission Vote Results” means the results of the Membership Admission Vote in the form of Appendix 9 to this Regulation, completed by the Electoral Officer after all ballots are counted.

January 24, 2023 Draft

“Membership Clerk Report” means the report in the form of Appendix 2 to this Regulation, which the Membership Clerk forwards to the Membership Committee under section ◆ 10.4 of this Regulation, confirming that the Discretionary Membership Application and supporting documents are complete and conform to the Membership Rules.

“Membership Committee Recommendation” means the non-binding recommendation for acceptance or rejection of a Discretionary Membership Application, made by the Membership Committee in the form of Appendix 3 to this Regulation, as described in subsection ◆ 10.6(c) of this Regulation.

“Membership Rules Amendment Ballot” means the *Membership Rules* Amendment Ballot in the form of Appendix 10 to this Regulation.

“Membership Rules Amendment Mail in Ballot” means the *Membership Rules* Amendment Mail in Ballot in the form of Appendix 11 to this Regulation.

“Membership Rules Amendment Mail in Ballot Package” means the *Membership Rules* Amendment Mail in Ballot Package assembled by the Electoral Officer, having the contents set out in subsection ◆ 12.17(c) of this Regulation.

“Membership Rules Amendment Vote” means a formal vote carried out among the Eligible Electors in accordance with this Regulation, on the amendment, repeal or replacement of the Rules, under Part VIII of the Rules.

“Membership Rules Amendment Vote Results” means the results of the *Membership Rules* Amendment Vote, in the form of Appendix 12 to this Regulation, completed by the Electoral Officer after all ballots are counted.

“Membership Rules Regulation” means this *Membership Rules Regulation* enacted by Council under section 31 of the Rules, as this Regulation is amended or replaced from time to time.

“Notice of Referendum” means the Notice of Referendum prepared by the Electoral Officer in the form of Appendix 5 to this Regulation.

“Off Reserve Eligible Elector” means any Eligible Elector who ordinarily resides off reserve.

“On Reserve Eligible Elector” means any Eligible Elector who ordinarily resides on reserve.

“Pending Applications List” means the list prepared by the Membership Clerk of all persons who have applied for membership in the Band after the May 6, 2021 election of Council, who are not automatically entitled to membership under sections 3 or 4 of the Rules. The persons on this list are more particularly described in section ◆ 5.8 of this Regulation.

“Petition” means the form of petition to Council in the form of Appendix 13 to this Regulation, used to begin the process to amend, repeal or replace the Rules.

“Post 1996 Automatic Membership List” is the list prepared by the Membership Clerk of all persons admitted to membership in the Band after December 31, 1996, automatically, under

January 24, 2023 Draft

sections 3 or 4 of the Rules. The persons on this list are more particularly described in sections ◆ 5.2 to 5.5 of this Regulation.

“Post 1996 Discretionary Membership List” is the list prepared by the Membership Clerk by excluding the persons on the Post 1996 Automatic Membership List from the Post 1996 Membership List. The persons on this list are more particularly described in section ◆ 5.6 of this Regulation.

“Post 1996 Membership List” is the list prepared by the Membership Clerk from the Voters List for the 2021 Election, of all persons admitted to membership in the Band after December 31, 1996. This list includes the following 27 persons in the “second disputed group”, listed at paragraph 62 of the Court Decision:

Dallas Blain, Jason Blain, Kyle Blain, Logan Blain, Melissa Blain, Roman Blain, Trista Blain, Zachary Blain, Matthew Comin, Brendan Dixon, Nolan Dixon, Rachel Dixon, Kenneth Ryley Gardner, Flecia Gordon, Adam Gurney, Jacqueline Kouprie, Adrian Pelletier, Alexander Pelletier, Blaise Pelletier, Cecila Pelletier, Ellen Pelletier (Lambert), Katherine Pelletier, Michael Pelletier, Regina Pelletier, Roland Pelletier, Vincent Pelletier and Michael Van Nostrand.

“Post 2022 Accepted Applications Membership List” means the list prepared by the Membership Clerk from all Membership Admission Votes held after December 31, 2022, of all persons admitted as discretionary members of the Band, under Parts III, IV and VI of the Rules.

“Pre 1997 Membership List” is the list prepared by the Membership Clerk from the Voters List for the 2021 Election, of all persons admitted to membership in the Band on or before December 31, 1996. This list includes the following 21 persons in the “first disputed group” listed at paragraph 42 of the Court Decision:

Arnold Blain, Greg Blain, Leslie Blain Jr., Clinton Blankinship, Shawn Blankinship, Lavonne Comin, Arlene Dixon, Alfred Gardner, Dawn Gardner, Kenneth Peter Gardner, Marcie Gordon, Denise Gurney, Lesley Heidel, Debra Kilback (Van Nostrand), Betty Lowry, James Martin, Kenneth Martin, Erin Pelletier, Sharon Schamehorn, Teresa Vandell and Deloress Warneboldt.

“proof of identity” shall mean either:

- (i) the Indian status card issued by the federal government to a Band Member confirming his or her Band membership number; or
- (ii) other identification evidence satisfactory to the Electoral Officer of the identity and Band membership number of a person.

“Referendum Regulation” means the *Referendum Regulation* of the Band, which came into legal effect on September 6, 2019.

“Referendum Vote” means either:

January 24, 2023 Draft

- (a) a *Membership Rules* Amendment Vote among the Eligible Electors conducted in accordance with this Regulation, on the amendment, repeal or replacement of the Rules, under Part VIII of the Rules; or
- (b) a Membership Admission Vote among the Eligible Electors conducted in accordance with this Regulation, on applications for discretionary membership in the Band under Part VI of the Rules.

“Regulation” means this Rules *Regulation*.

“Rules” means the Ashcroft Indian Band *Membership Rules* which came into legal effect on June 26, 1987, by which the Band assumed control of its own membership from the Department of Indian Affairs and Northern Development.

“Status Indian” means a person who, under the *Indian Act*:

- (a) is registered or entitled to be registered in the Indian Register as an Indian; or
- (b) if no longer living:
 - (i) was registered or entitled to be registered at the time of death; or
 - (ii) would have been entitled to be registered under any later amendments to the *Indian Act*, had he or she not died.

“Transfer In List” is the list prepared by the Membership Clerk from the Voters List for the 2021 Election, of all persons who have applied to transfer membership from another First Nation to the Band, after December 31, 1996. The persons on this list are more particularly described in section ◆ 5.7 of this Regulation.

“Voter Declaration Form” means the Voter Declaration Form in the form of Appendix 8 to this Regulation, included by the Electoral Officer in a Mail in Ballot Package forwarded to an Eligible Elector, by which the Eligible Elector confirms his or her eligibility to vote.

“Voters List” means the list, prepared by the Membership Clerk from the Band List, of the names of all Eligible Electors entitled to vote in a Referendum Vote, in alphabetical order.

“Voters List for the 2021 Election” means the voters list used by the Electoral Officer to conduct the May 6, 2021 election of Council.

- 3.2 **Restored Member:** The Court Decision at paragraph 10 has confirmed that the term, “restored member” at subsection 2(20) of the Rules, means a person who regained Indian status under Bill C-31, and is entitled to automatic membership in the Band under subsection 3(3) of the Rules.
- 3.3 **Headings:** Headings inserted in this Regulation are for convenience of reference only, and in no way define, limit or enlarge the scope or meaning of this Regulation or any provision.

January 24, 2023 Draft

- 3.4 **Issuing Authority:** This Regulation is issued under the authority of the Council of the Band, following consultation with the General Band Membership.
- 3.5 **Amendments to Regulation:** This Regulation may be amended, revoked or replaced, either in whole or in part, by Council, following consultation with the General Band Membership.
- 3.6 **Amendment and Replacement of Laws:** Reference to any Band bylaw, policy or procedure includes that item as amended or replaced from time to time.
- 3.7 **Terms Defined in Rules:** Terms defined in the Rules shall have the same meaning in this Regulation, subject to Article 4.
- 3.8 **Referendum Regulation Inapplicable:** Pursuant to subsection 1.1(f) of the *Referendum Regulation* of the Band, the *Referendum Regulation* does not apply to any Referendum Vote held pursuant to the Rules, because that voting process is laid out in this Regulation.
- 3.9 **Relationship to Rules:** This Regulation is subordinate to the Rules.

4. DEFINITION OF ELECTOR MUST CONFORM TO INDIAN ACT AS AMENDED BY CORBIERE

- 4.1 **Elector:** The definition of the term, "Elector" in subsection 2(8) of the Rules is as follows:

- (8) "Elector" means a person who is:
- (a) registered on the Band List;
 - (b) of the full age of eighteen years; and
 - (c) ordinarily resident on the reserve;

- 4.2 **Origin of Subsections (a) and (b) of the Definition:** Subsections (a) and (b) of the definition of "Elector" in the Rules were copied from the *Indian Act*, R.S.C 1970, c I-6, subsection 2(1), as amended by Bill C-31. The full definition of "elector" in Bill C-31 is as follows:

- "elector" means a person who
- (a) is registered on a Band List,
 - (b) is of the full age of eighteen years, and
 - (c) is not disqualified from voting at Band elections;

The definition of "elector" in subsection 2(1) of the *Indian Act* has not changed since 1985.

- 4.3 **Origin of Subsection (c) of the Definition:** Subsection (c) of the definition of "Elector" in the Rules appears to have originated in subsection 77(1) of Bill C-31, which stated that a person had to be ordinarily resident on the reserve in order to be able to vote in elections for Council:

January 24, 2023 Draft

- 77(1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors. [Underlining added.]

Subsection 77(1) has not changed since 1985.

- 4.4 **Purpose of Subsection (c) of the Definition:** Subsection (c) of the definition of “Elector” in the Rules, appears to have stated the qualification set out in subsection 77(1) for voting in Band elections, namely that one had to be ordinarily resident on reserve. This shortcuts the hunt for the disqualification if one follows subsection (c) of the definition of “elector” in Bill C-31, because it is not obvious where in the *Indian Act*, the disqualification is stated.
- 4.5 **Conformity with the *Indian Act*:** The definition of “Elector” in the Rules was in conformity with the definition of “elector” in the *Indian Act* as amended by Bill C-31, when the Rules came into legal effect on June 26, 1987.
- 4.6 **Corbiere:** The Supreme Court of Canada in *Corbiere v. Canada* [1999] S.C.J. No. 24 (“*Corbiere*”) at paragraphs 17-24, ruled that the underlined words in subsection 77(1) of the *Indian Act* (see section ◆ 4.3 above), were to be struck out of that section. The reason was that the offending words discriminated against off reserve band members, in Canada, generally, contrary to subsection 15(1) of the *Canadian Charter of Rights and Freedoms*.
- 4.7 **Legal Effect of *Corbiere* on the Rules:** The legal effect of *Corbiere* was to remove:
- (a) for all bands in Canada holding elections of chiefs and band councils under sections 74-80 of the *Indian Act*, the qualification of being ordinarily resident on reserve from the legal meaning of “elector” in the *Indian Act*; and
 - (b) for the Ashcroft Indian Band, the qualification of being ordinarily resident on reserve from the definition of “Elector” in the Rules, as a person entitled to vote in elections for Council, or in any Membership Admission Votes, or any *Membership Rules* Amendment Votes held under the Rules.

Thereafter, all members of the Band, 18 years of age or older, and whether ordinarily resident on or off the reserve, have been Electors, according to the Rules, and have voted in elections for Council.

- 4.8 **Legal Authority for the Band to Make the Rules:** The legal authority for the Band to make the Rules came from the Parliament of Canada via federal legislation, in the form of subsections 10(1) and 10(2) of the *Indian Act* of Canada, as amended by Bill C-31. These subsections stated as follows:
- 10.(1) A band may assume control of its own membership if it establishes Rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band’s control of its own membership.

- (2) A band may, pursuant to the consent of a majority of the electors of the band,
 - (a) after it has given appropriate notice of its intention to do so, establish Rules for itself; and
 - (b) provide for a mechanism for reviewing decisions on membership.

4.9 No Contradiction of the Delegating Instrument: The Court Decision held at paragraph 91:

Moreover, as I explained above, it is a basic legal principle that a delegation of power is presumed not to include the power to contradict the delegating instrument.

4.10 Application of the Principle: What the principle stated in section ◆4.9 means for the Band is that because:

- (a) the Rules get their legal authority from the *Indian Act*, sections 10(1) and (2);
- (b) the Supreme Court of Canada has in *Corbiere* explicitly amended the *Indian Act* generally for all bands in Canada, including the Ashcroft Indian Band, to remove the qualification of being ordinarily resident on reserve, from the definition of “elector” in the *Indian Act*, for a person to be entitled to vote in elections for Council;
- (c) the definition of “Elector” in the Rules, must conform for all purposes, and cannot be either wider or narrower than the definition of “elector” in the *Indian Act*, as modified by *Corbiere*, without creating a contradiction of the delegating instrument, being the *Indian Act*;
- (d) members of the Band ordinarily resident on and off reserve, 18 years of age or older, are “Electors” of the Band under the Rules, they are entitled to vote in any referendum of Electors authorized by the Rules, including:
 - (i) a Membership Admission Vote under Part VI of the Rules; and
 - (ii) a *Membership Rules* Amendment Vote, under Part VIII of the Rules.

Please see paragraph 18 of the Court Decision.

4.11 Restriction by the Court Decision of those Entitled to Vote: The direct implication of the Court Decision is that only those persons:

- (a) who came onto the Band List prior to 1997, being those persons on the Pre 1997 Membership List;
- (b) who were admitted to automatic membership in the Band after 1996, being those persons on the Post 1996 Automatic Membership List; or
- (c) who have applied for discretionary membership in the Band under Parts III, IV and VI of the Rules, which application has been accepted by a prior Membership Admission Vote

January 24, 2023 Draft

held under this Regulation, being those persons on the Post 2022 Accepted Applications Membership List;

are Eligible Electors, and entitled to vote in either:

- (I) a Membership Admission Vote under Part VI of the Rules; or
- (II) a *Membership Rules* Amendment Vote, under Part VIII of the Rules.

See paragraphs 63, 106 and 107 of the Court Decision.

4.12 **Eligible Electors Reside Both On and Off Reserve:** There is no distinction made in the Court Decision between the legal rights of On and Off Reserve Eligible Electors to vote in elections, referenda, at Band general meetings or in any Referendum Vote under the Rules.

5. MEMBERSHIP LISTS

5.1 **Maintaining the Band List:** The Membership Clerk shall in accordance with the Rules, maintain the Band List, in which shall be recorded:

- (a) the name of every person who is registered as a Band Member under the Rules;
- (b) the Status Indian number from the Indian Register for each Member;
- (c) the date each name was added to or deleted from the Band List;
- (d) the birthdate and place, and if applicable, the date and place of death for each Member; and
- (e) the last known mailing address, e-mail address and phone number for each Member, the date that information was supplied to the Membership Clerk, and whether the information is current;

and may include other information which Council or the Membership Clerk consider appropriate.

5.2 **The Post 1996 Automatic Membership List:** The Post 1996 Automatic Membership List is the list of persons who were admitted to membership after 1996, automatically, under sections 3 or 4 of the Rules. As these persons automatically became members upon application, approval of their membership by a Membership Admission Vote is not required.

5.3 **Automatic Membership under Section 3 of the Rules:** Automatic membership under section 3 of the Rules includes:

- (a) persons who were Band Members prior to April 17, 1985;
- (b) persons born on or after April 17, 1985, whose parents are both Members of the Band; and

January 24, 2023 Draft

- (c) persons who regained Indian status under Bill C-31, referred to in the Rules as “**restored members**”.

5.4 **Automatic Membership under Section 4 of the Rules:** Automatic membership under section 4 of the Rules includes all minor children, who have at least one restored member parent residing on reserve.

5.5 **Section 4 of the Rules Does Not Apply:** The Court Decision confirms in paragraph 13 that section 4 of the Membership Rules does not apply to persons:

- (a) who were already adults on June 26, 1987, when the Rules came into force; or
- (b) who are the children of a restored member parent residing off reserve.

All such persons can apply for discretionary membership in the Band under Parts III, IV and VI of the Rules.

5.6 **Post 1996 Discretionary Membership List:** The Post 1996 Discretionary Membership List is the list of persons who, following the Court Decision, can be admitted as discretionary Members of the Band, by way of a Membership Admission Vote. This list should include two groups identified in section 7 of the Rules:

- (a) children of restored members, which children were already adults on June 26, 1987, when the Rules came into force; and
- (b) any children born after April 17, 1985 who have one Band Member parent (provided of course they are not automatic Members under section 4 of the Rules).

5.7 **Transfer In List:** In accordance with subsection 7(6) of the Rules and the Court Decision, the persons on the Transfer in List may be admitted as discretionary Members of the Band, by way of a Membership Admission Vote.

5.8 **Pending Applications List:** Following the Court Decision, the persons on the Pending Applications List may be admitted as discretionary Members of the Band, by way of a Membership Admission Vote.

5.9 **Post 2022 Accepted Applications Membership List:** The persons on the Post 2022 Accepted Applications Membership List have been admitted as discretionary Members of the Band under Parts III, IV and VI of the Rules, by way of a Membership Admission Vote, held after December 31st, 2022.

5.10 **Preparation of the Lists:** At least 135 days prior to the day of the Referendum Vote, the Membership Clerk shall prepare the following lists:

- (a) the Pre 1997 Membership List;

January 24, 2023 Draft

- (b) the Post 1996 Membership List;
- (c) the Post 1996 Automatic Membership List;
- (d) the Transfer in List;
- (e) the Pending Applications List;
- (f) the Post 1996 Discretionary Membership List; and
- (g) the Post 2022 Accepted Applications Membership List.

5.11 **Incomplete Membership Files for Persons on the Pre 1997 Membership List:** As the membership in the Band of all the persons on the Pre 1997 Membership List has been confirmed by the Court Decision, they are all Eligible Electors whether or not their membership file contains an application for membership or any supporting documents. Please see paragraphs 48, 55, 59, 60 and 63 of the Court Decision, where it is determined that all persons whose names appear on the Band List on or before December 31, 1996, were properly admitted to Band membership pursuant to a Band membership vote.

5.12 **Lists are Confidential:** Other than the Voters List for the Referendum Vote, all the lists described in this article are confidential to the Band, and are not required to be disclosed by the Band to any person, whether Band Member or non-Band Member.

5.13 **Information on Voters List is Confidential:** Other than the name of the Eligible Elector, all information on the Voters List is confidential to the Band, and not required to be disclosed by the Band to any person, whether Band Member or non-Band Member.

6. EVIDENTIARY MATTERS

6.1 **Unknown or Unstated Parentage:** If a parent, grandparent, or other ancestor of a person in respect of whom a Discretionary Membership Application is made, is either:

- (a) unknown; or
- (b) unstated on a birth certificate that, if the parent, grandparent or other ancestor were named on it, would help to establish the person's entitlement to membership;

the Membership Clerk shall, without being required to establish the identity of that parent, grandparent or other ancestor, determine, after considering all the relevant evidence, whether that parent, grandparent or other ancestor is, was or would have been entitled to membership in the Band. In making that determination, the Membership Clerk shall rely on any credible evidence that is presented by the Applicant in support of the application, or that the Membership Clerk otherwise has knowledge of, and shall draw from it every reasonable inference in favour of the person in respect of whom the application is made.

6.2 **Origin:** Section ♦ 6.1 tracks the *Indian Act* s. 5(6), which was added by the 2017 amendments to that Act, dealing with status. The membership in the Band of a parent of an Applicant, can now be established by means other than a birth certificate.

January 24, 2023 Draft

- 6.3 **No Presumption:** For greater certainty, if the identity of a parent, grandparent or other ancestor of an Applicant is unknown or unstated on a birth certificate, there is no presumption that this parent, grandparent or other ancestor is not, was not or would not have been entitled to membership in the Band.
- 6.4 **Origin:** Section ◆ 6.3 tracks the *Indian Act* s. 5(7), which was added by the 2017 amendments to that Act, dealing with status. Any presumption that an unknown parent was not a Band member, has been removed.
- 6.5 **Inquiry Not Required:** The Membership Clerk is not required to conduct an inquiry or give an Applicant a hearing when considering a Discretionary Membership Application. The Membership Clerk functions as an historian to review the evidence supporting the Application, to determine if it is sufficient to support entitlement to membership. That entitlement does not have to be proved to the Membership Clerk on a balance of probabilities, or beyond any reasonable doubt.
- 6.6 **Authority:** The authority for section ◆ 6.5 is *Canada v. Sinclair* [2001] F.C.J. No. 553 (Fed.T.D.), at paragraphs 55, 76 and 103, decision quashed on other grounds [2003] F.C.J. No. 1967 (Fed.C.A.), leave to appeal refused [2003] S.C.C. A. No. 431 (S.C.C.).
- 6.7 **Evidence:** The Membership Clerk:
- (a) may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as the Membership Clerk, in his or her discretion, sees fit or deems just;
 - (b) shall consider oral history without independent corroboration;
 - (c) shall, where the father or mother of the Applicant is unknown, consider any evidence which is capable of giving rise to the inference that the unknown father or mother may have been a Band Member, which constitutes sufficient proof of maternity or paternity for the purposes of the Rules, in the absence of any evidence to the contrary;
 - (d) shall consider a statutory declaration from the Applicant stating that he or she has no basis for believing that his or her father, mother, grandfather, grandmother or other male or female ancestor, would not have been entitled to Band membership;
 - (e) will accept:
 - (i) birth certificates or baptismal certificates;
 - (ii) court orders declaring paternity or maternity;
 - (iii) statutory declarations, from both parents or two close relatives, confirming paternity or maternity from personal knowledge;
 - (iv) DNA testing; or

January 24, 2023 Draft

- (v) previous Band Lists or Voters Lists;
- to determine ancestry; and
- (f) may hold an oral hearing.

6.8 **Authority:** The authority for:

- (a) subsection ◆6.7 (b) above is *Wilson v. Canada* [1999] B.C. J. No. 2510 (B.C.S.C.), at paragraph 30.
- (b) subsections ◆6.7(c) and (d) above is *Gehl v. Canada* 2017 ONCA 319 (Ont. C.A.) at paragraph 54, 75, 77 and 88.
- (c) paragraphs ◆6.7 (e)(i) to (iv) above is *Gehl v. Canada* 2017 ONCA 319 (Ont. C.A.) at paragraph 18.
- (d) paragraph ◆6.7 (e)(v) above is *LeBouthillier v. Canada* [2010] N.B.J. No. 385 (N.B.Q.B.), at paragraph 8.

6.9 **Abusive Language or Aggressive Behaviour:** The Applicant for discretionary membership shall at all times use respectful language and behaviour in communicating with the Membership Clerk about that application. If the Applicant uses abusive language or shows aggressive behaviour to the Membership Clerk after being verbally warned by the Membership Clerk, the Membership Clerk shall terminate the administration of that application for the upcoming Membership Admission Vote. The Membership Clerk shall advise the Applicant by letter of the termination and the reason. That Applicant will be eligible to reapply for discretionary membership after the upcoming Membership Admission Vote.

7. **PERSONS WHOSE MEMBERSHIP IS NOW SUBJECT TO A MEMBERSHIP ADMISSION VOTE**

7.1 **Court Decision:** The direct implication of the Court Decision is that every person who came onto the Band List after 1996, has not been properly admitted to Band membership pursuant to a Membership Admission Vote. Each of these persons must now apply to have his or her membership approved by way of a Membership Admission Vote conducted under Part VI of the Rules. Persons on the Post 1996 Automatic Membership List now have automatic membership in the Band, and approval of their membership by a Membership Admission Vote is not required.

7.2 **Membership Admission Vote Required:** Persons on the following lists must have their memberships approved by way of a Membership Admission Vote held on or before April 4, 2024, failing which any and all membership rights cease effective on the close of business, at the Administration Office, on that day:

- (a) the Post 1996 Discretionary Membership List; and
- (b) the Transfer in List.

January 24, 2023 Draft

Persons on the Pending Applications List can following the Court Decision only be admitted to Band membership if their Discretionary Membership Application is approved in a Membership Admission Vote.

8. THE MEMBERSHIP COMMITTEE

8.1 **Purpose:** The purpose of the Membership Committee, under sections 16 and 17 of the Rules, is to:

- (a) check the processing by the Membership Clerk of completed Discretionary Membership Applications; and
- (b) make a non-binding recommendation to Council for the acceptance or rejection of each Discretionary Membership Application.

8.2 **Composition:** The Membership Committee will consist of:

- (a) four Eligible Electors, each of whom represents one of the four major families of the Band; and
- (b) one impartial non-Band member who enjoys the confidence of the Band.

Please see paragraphs 63, 106 and 107 of the Court Decision.

8.3 **Identification of the Four Major Families of the Band:** At least 125 days prior to the day of the Membership Admission Vote, the Membership Clerk identifies from:

- (a) the Pre 1997 Membership List;
- (b) the Post 1996 Automatic Membership List; and
- (c) the Post 2022 Accepted Applications Membership List;

the four major families of the Band, on the basis of the total current population in each family on all three lists when combined.

8.4 **Community Consultation on the Appointments to the Membership Committee:** For the community consultation on the Eligible Electors who will be appointed by Council to the Membership Committee, the Membership Clerk:

- (a) posts the names of the four major families on the Band website, and asks for written comments; and
- (b) invites on the Band website suggestions from the Electors of each of those four families as to:

January 24, 2023 Draft

- (i) the Eligible Elector to be appointed by Council to sit on the Membership Committee for that family; and
- (ii) the impartial non- Band member who enjoys the confidence of the Band, who will be appointed by Council to be the chair of the Membership Committee.

Please see paragraphs 63, 106 and 107 of the Court Decision.

- 8.5 **Invitation to Serve on Membership Committee:** At least 135 days prior to the day of the Membership Admission Vote, the Membership Clerk will forward a written invitation to serve on the Membership Committee, to any known mail or e-mail address of each Eligible Elector, excluding:
- (a) any Council Member; or
 - (b) anyone working in the Administration Office or in a business owned or controlled by the Band.
- 8.6 **Appointment of Membership Committee:** Following consideration of the suggestions received in the community consultation process, Council by Council Resolution:
- (a) will appoint the five persons including the Chair, who will be the Membership Committee, effective on the day after the appointment, for a term of office expiring on the conclusion of the next Membership Admission Vote; and
 - (b) may appoint five alternate committee members including a Chair, who are agreeable to sit as members of the committee, on either the absence for any reason, resignation in writing or removal by Council of one or more committee members, including possibly the whole committee (altogether, the "**Alternate Roster**").
- 8.7 **Honouraria:** The Band will pay an honourarium in accordance with Band policy, to each member of the Membership Committee for each half day meeting of the committee, consisting of three hours or more, held so that the committee may carry out its functions for the upcoming Membership Admission Vote, as outlined in sections 10.6 to 10.8 of this Regulation. The Chair will be paid a different honourarium from the other members.
- 8.8 **Expenses:** Each Membership Committee member will in accordance with Band policy, be reimbursed by the Band for any and all reasonable and documented expenses actually and necessarily incurred at the request of the Band in the performance of his or her duties. These expenses shall be preauthorized by the Membership Clerk. Travel from the residence of the committee member to the Administration Office for work, and back each day, is at his/her own expense, unless specifically authorized in writing by the Membership Clerk.
- 8.9 **Meeting Schedule and Deadline:** The Membership Committee meets in person for at least three hours every work day, Monday through Friday, at the Administration Office, for at least two consecutive weeks, so that its review and recommendation for acceptance or rejection of

January 24, 2023 Draft

each completed Discretionary Membership Application is completed and delivered to Council at least 60 days prior to the day of the Membership Admission Vote.

- 8.10 **Membership Committee Cannot be Established:** If Council finds that for any reason, the Membership Committee cannot be established in time to complete its work by the deadline specified in the previous section, then Council may confirm this fact in a Council Resolution and waive the establishment of the Membership Committee for the upcoming Membership Admission Vote.
- 8.11 **In Person Meetings Only:** By reason of the confidentiality of the Band membership files being reviewed, meetings of the Membership Committee shall be in person only with all committee members physically present at the Administration Office. Meetings by teleconference, video conference or other communication device are not permitted.
- 8.12 **Meeting Schedule:** The meeting schedule each work day for the Membership Committee will be set by the Membership Clerk, and in the case of urgency may include up to three, three hour meetings per day. The meeting schedule will be communicated either verbally, by phone, text message or e-mail by the Membership Clerk to each member of the committee.
- 8.13 **No Slippage in Meeting Schedule:** Each committee member is aware that the deadline specified in section ◆ 8.9 for the committee to complete its work, is a hard and fast deadline, which cannot be postponed. Each Applicant for discretionary membership is therefore depending upon each member of the committee to attend only to the business of the committee as outlined in the Rules and this Regulation, at each and every meeting of the committee.
- 8.14 **Conflicts with Meeting Schedule:** Persons who have conflicts with the meeting schedule for the Membership Committee set out in section ◆8.12, should advise the Membership Clerk, prior to their appointment to the committee by Council.
- 8.15 **Special Meetings:** A special meeting of the Membership Committee may be called by the Membership Clerk to deal with a particular issue, at any time during the term of the committee specified in section ◆8.6. Only that business for which the special meeting has been called may be dealt with at that special meeting.
- 8.16 **Quorum:** The quorum for meetings of the Membership Committee is three persons, not including the Chair, present at the commencement of and throughout the meeting at all times. If within one-half hour from the time appointed for a Membership Committee meeting, a quorum is not present, the meeting shall stand adjourned to the same time and place on the next business day. The members present at the first appointed Membership Committee meeting shall notify the other members in writing of the adjournment. If within one-half hour from the time appointed for the resumption of the Membership Committee meeting, a quorum is not present, the members present shall be a quorum.
- 8.17 **Voting:** Each member of the Membership Committee shall have one vote on the committee. The Chair is non-voting, except where there is a tie in the voting, in which case the Chair shall vote to break the tie. The affirmative votes of a majority present at a meeting at which a

January 24, 2023 Draft

quorum is present are sufficient to pass a resolution or recommendation of the committee. Voting by proxy is not allowed.

- 8.18 **Chair:** The Chair shall preside at all meeting of the Membership Committee. If the Chair is not present at a meeting of the Membership Committee, the members present shall choose one of their number to act as chair.
- 8.19 **Meetings in Camera:** All meetings of the Membership Committee are in camera, that is closed to Council, the Band Members and the public. The Chair will work with the Membership Clerk to arrange the attendance of the Membership Clerk, Band legal counsel, or persons having any other specific expertise, where required, at meetings of the Membership Committee.
- 8.20 **Minutes:** The Chair is not required to keep minutes of Membership Committee meetings, other than:
- (a) for any resolution of the committee required by this Regulation; or
 - (b) for each non-binding recommendation in writing, which minute will be in the form of Appendix 3 to this Regulation, for acceptance or rejection of each Discretionary Membership Application reviewed by the committee.

The minutes shall not include the discussion preceding any resolution or recommendation, or the votes for or against.

- 8.21 **Confidentiality of Membership File:** Each membership file of the Band shall remain confidential to the Membership Clerk, the Band Manager and Council. The Membership Committee shall not be entitled to review any information or documents in any membership file, except as strictly required to perform its function under the Rules and this Regulation. Information and documents in a membership file shall only be disclosed to any other person where authorized by the Rules, this Regulation, Chief and Council or the Band Manager.
- 8.22 **Confidentiality of Minutes:** Minutes of Membership Committee meetings, including all completed recommendations on Discretionary Membership Applications, in the form of Appendix 3 to this Regulation, are to remain confidential to the committee, the Membership Clerk, the Band Manager, and Council, except where outside disclosure is authorized by the Rules, this Regulation, Chief and Council or the Band Manager.
- 8.23 **No Contact with any Applicant:** No member of the Membership Committee shall have any verbal or written contact with any Applicant about the Discretionary Membership Application, during the term of the Membership Committee. The Chair of the Membership Committee will advise the Membership Clerk of any inquiries or follow-up which the committee desires to be made with the Applicant. These inquiries or follow-up will only be made by the Membership Clerk and not by the Membership Committee or any of its members.
- 8.24 **Removal:** Membership Committee members may be removed by Council without notice or compensation in lieu of notice, for just cause, including:

January 24, 2023 Draft

- (a) missing any committee meeting held in any term of office of the committee, without a reasonable excuse, accepted by written resolution of the committee;
- (b) making or repeating any complaints, destructive criticism, rumours, false or misleading statements, half-truths, gossip or innuendo about any Applicant or committee member;
- (c) any attempt to discuss Band politics or the history of the legal dispute about the Band List, or perceived faults of the current or any past:
 - (i) Council Members: or
 - (ii) Band employees;
- (d) any personality clash among the members of the committee which slows down the work of the committee;
- (e) any behaviour which may lower the reputation of the committee among the Band Members;
- (f) any breach of the confidentiality of all Membership Committee meetings, information, documents and processes;
- (g) a deadlocked or non-functional committee; or
- (h) any attempt to discuss anything within the committee not authorized by the Rules or this Regulation.

8.25 **Emergency Resolutions:** In an emergency arising during the term of the Membership Committee, the Chair may canvass each member of the Membership Committee by conference telephone, or individually by telephone, to propose a resolution, or a recommendation on a Discretionary Membership Application, and to record each member's vote. Any resolution or recommendation resulting shall be as effective as if passed at meeting of the committee properly constituted.

8.26 **Process for Removal of Committee Member:** The Chair will give any Membership Committee member apparently in breach of section 8.24, one verbal warning for that apparent breach. On any repetition of the apparent breach by that member, the Chair will ask that member to immediately leave that Membership Committee meeting, explaining why, and direct that member to forthwith meet with the Membership Clerk. The Chair will give a brief verbal and written report to the Membership Clerk about the apparent breach. The Membership Clerk will attempt to obtain from the member in question his or her version of events and then will forthwith report verbally and in writing to the Chief about the apparent breach, including both:

- (a) the verbal and written reports from the Chair; and
- (b) a written description of the version of events from the member in question, if provided by that member.

January 24, 2023 Draft

8.27 **Process for Removal of Chair:** Any three Membership Committee members other than the Chair, can, by following the process set out in section ◆8.26, with any necessary changes in points of detail, initiate the process for removal of the Chair.

8.28 **Process for Removal of the Entire Membership Committee:** Where the Membership Committee as a whole is apparently in breach of section ◆8.24, the Membership Clerk shall advise the Chief verbally, and then give one verbal warning to each member of the committee, including the Chair, for that apparent breach. On any repetition of that apparent breach by the committee as a whole, the Membership Clerk shall forthwith advise the Chief, and then shall intervene to:

- (a) attempt to obtain from each committee member, his or her version of events; and then
- (b) suspend the committee as a whole, pending a decision by Council for removal of the entire committee.

The Membership Clerk shall then forthwith report verbally and in writing to the Chief about the apparent breach, including both:

- (c) verbal and written descriptions of the apparent breaches by the committee as a whole; and
- (d) verbal and written descriptions of the version of events from each committee member.

8.29 **Removal by Council:** Council may by Council Resolution, in the circumstances described in sections ◆8.26, ◆8.27 or ◆8.28, remove and/or replace a Membership Committee member, the Chair or the entire committee, as the case may be.

9. NOTICE RE MEMBERSHIP ADMISSION VOTE

9.1 **Notice:** At least 135 days prior to the day of the Membership Admission Vote, the Band will give written notice of the legal effect of the Court Decision, for the Band membership of those persons on:

- (a) the Post 1996 Discretionary Membership List;
- (b) the Transfer in List; and
- (c) the Pending Applications List.

The Band will forward this notice to all persons on these lists, to any known mail or e-mail addresses of these persons.

9.2 **Deadline for Submitting Discretionary Membership Applications:** The notice referred to in section ◆ 9.1 advises all the persons notified:

January 24, 2023 Draft

- (a) of the necessity to submit a Discretionary Membership Application and supporting documents to the Membership Clerk, for review by the Membership Clerk within 28 days following the date of the notice, if these have not been provided;
- (b) that if the Discretionary Membership Application is incomplete, the Membership Clerk will give that person a written deficiency notice (the “**Deficiency Notice**”) stating either:
 - (i) that there are minor deficiencies in the application that must be corrected and submitted to the Membership Clerk within the 28 day period; or
 - (ii) that a fully completed Discretionary Membership Application in the form of Appendix 1 to this Regulation, and supporting documents must be submitted to the Membership Clerk within the 28 day period; and
- (c) that if the materials requested in the Deficiency Notice are not received by the Membership Clerk within the 28 day period:
 - (i) the name of that person will not be included in any further processes for the Membership Admission Vote; and
 - (ii) the Membership Clerk shall give that person the Deferral Notice described below in section ◆10.5.

10. DISCRETIONARY MEMBERSHIP APPLICATIONS

10.1 **Application Form:** Any person wishing to apply for discretionary membership in the Band under Part III, IV and VI of the Rules will provide to the Membership Clerk:

- (a) the Discretionary Membership Application form duly completed;
- (b) the supporting documents listed in Part IV of the Rules, being:
 - (i) proof of Indian status; and
 - (ii) independent documentary evidence of direct descent from a Band Member descended either from:
 - (A) a Band Member; or
 - (B) a person who has Indian status, other than a woman who acquired Indian status upon marrying a status Indian male;
- (c) full particulars of the family background and family tree at least to grandparents; and

January 24, 2023 Draft

- (d) any other information and documents required by the Membership Clerk to determine the eligibility of the Applicant for discretionary membership.

10.2 **Processing by the Membership Clerk:** At least 105 days prior to the day of the Membership Admission Vote, the Membership Clerk reviews the membership file for each of the persons on the following lists:

- (a) the Post 1996 Discretionary Membership List;
- (b) the Transfer In List; and
- (c) the Pending Applications List;

to determine whether there is a Discretionary Membership Application and supporting documents, on file that are complete. If so, the Membership Clerk reports to the Membership Committee, as required by section ◆10.4.

10.3 **Incomplete Applications:** A Discretionary Membership Application is incomplete if the application and other documents supplied by the Applicant do not allow the Membership Clerk to determine the eligibility of the Applicant for any of the seven classes of discretionary membership set out in Part III of the Rules. For the purposes of sections 15 and 16 of the Rules, only a complete application will conform with those Rules.

10.4 **Report by Membership Clerk to the Membership Committee:** When the Membership Clerk forwards a copy of the Discretionary Membership Application and supporting documents to the Membership Committee, the Membership Clerk shall as required by section 16 of the *Membership Rules*, also forward the Membership Clerk Report confirming the application and supporting documents are complete and conform to those rules. The report shall be in the form of Appendix 2 to this Regulation.

10.5 **Deferral Notices Given to Discretionary Membership Applicants:** The Membership Clerk gives each Applicant for discretionary membership, who was forwarded a Deficiency Notice regarding an incomplete Discretionary Membership Application, and who did not correct the Deficiency Notice within the 28 day period specified in that notice, a written deferral notice (the “**Deferral Notice**”) stating that:

- (a) the name of that person will not be included in any further processes for the upcoming Membership Admission Vote; and
- (b) consideration of that person’s Discretionary Membership Application will be deferred until a future Membership Admission Vote.

10.6 **Processing by the Membership Committee:** The Rules in sections 16 and 17 do not give the Membership Committee the authority to accept or reject any Discretionary Membership Applications received by that committee from the Membership Clerk. The function of the

January 24, 2023 Draft

Membership Committee is to check the processing by the Membership Clerk of completed applications, by:

- (a) reviewing each application, supporting documents, and the Membership Clerk Report;
- (b) following up with the Membership Clerk regarding any applications which appear to the committee to be incomplete or not to conform to the Rules, to determine if the required information or documents are available or can be obtained in a timely manner;
- (c) making a non-binding recommendation for acceptance or rejection of that application, in the form of Appendix 3 to this Regulation (the "**Membership Committee Recommendation**"); and
- (d) if rejection of the application is recommended by the committee, giving a brief written explanation in the Membership Committee Recommendation, as to why the committee disagrees with the Membership Clerk Report confirming that the application and supporting documents are complete and conform with the Membership Rules. An example of a proper ground for the committee recommending rejection of an application is that the committee is of the view that the application and supporting documents do not establish eligibility for any of the seven classes of discretionary membership in the Band set out in Part III of the Rules.

10.7 **Recommending Rejection:** The Membership Committee cannot recommend rejection of any Discretionary Membership Application because of:

- (a) a personal dislike or personality clash either with the Applicant or someone else in the Applicant's family;
- (b) the Applicant coming from a different family within the Band;
- (c) the, colour, religion, sex, age, mental or physical disability or place of residence of the Applicant;
- (d) complaints, destructive criticism, rumours, false or misleading statements, half-truths, gossip or innuendo about the Applicant; or
- (e) any other reason not authorized in the Rules.

10.8 **Information About the Applicants:** Upon receipt from the Chair of the Membership Committee of the Membership Committee Recommendation upon each Discretionary Membership Application reviewed by the committee, the Membership Clerk shall complete the Applicant Information Form as set out at Appendix 4 to this Regulation, for each of the Applicants for discretionary membership. The completed form gives a brief summary of the findings of the Membership Committee about each Applicant, and is for distribution to the Eligible Electors by the Electoral Officer, for the Membership Admission Vote.

10.9 **Membership Committee Work Not Complete:** The Membership Committee Recommendation for one or more Applicants may not be completed by the by the deadline specified in section ◆ 8.9, for any number of reasons, including without limitation:

January 24, 2023 Draft

- (a) the committee running out of time;
- (b) the removal under section ◆8.29 by Council of one or more committee members; or
- (c) a Council Resolution being made under section ◆8.10, waiving the establishment of the Membership Committee for the upcoming Membership Admission Vote.

In any such case, the Applicant Information Form completed by the Membership Clerk for distribution to the Eligible Electors, will indicate that the Membership Committee did not complete its review of that application. That application will still go forward to the Membership Admission Vote.

10.10 **Completed Application Must Be Voted On:** Any Discretionary Membership Application together with supporting documents which the Membership Clerk has in the Applicant Information Form confirmed to be complete and to conform to the Rules, will be submitted to the Membership Admission Vote. Neither Council nor the Membership Committee has the authority under the Rules, to prevent that application from being submitted to that vote.

10.11 **Distribution to all Eligible Electors:** The completed Applicant Information Form for each Applicant is for distribution by the Electoral Officer to all Eligible Electors, either:

- (a) as part of the Membership Admission Mail in Ballot Package, referred to in subsection 12.17(b)◆; or
- (b) at the Membership Admission Vote, to those Eligible Electors voting in person.

11. AMENDING THE RULES

11.1 **Petition:** The Petition which under section 26 of the Rules, must be signed by one third of the Eligible Electors to begin the process to amend, repeal or replace the Rules, is attached in the form of Appendix 13 to this Regulation.

11.2 **Council Holding Referendum Vote:** The Council shall upon receipt of the Petition signed by one third of the Eligible Electors, proceed under this Regulation to schedule the *Membership Rules* Amendment Vote, as required by section 27 of the Rules.

12. PREPARATION FOR A REFERENDUM VOTE

12.1 **Secret Ballot:** The Referendum Vote shall be conducted by secret ballot among all the Eligible Electors, held in accordance with this Regulation.

12.2 **Chief and Council Determines:** Chief and Council may by Council Resolution issued under section ◆12.10, determine that a Referendum Vote be held among the Eligible Electors of the Band.

12.3 **Time Required:** The minimum time required for the Band to proceed through a Referendum Vote, from the preparation by the Membership Clerk of the membership lists required under section ◆ 5.10, to the voting by the Eligible Electors, is 135 days.

- 12.4 **Community Consultation:** The custom of the Band for community consultation on matters requiring a Referendum Vote among the Eligible Electors, is as follows:
- (a) The Band shall keep the Eligible Electors informed of matters requiring a Referendum Vote by way of the Band newsletter and website.
 - (b) Subject to subsection (c), the custom of the Band is to determine the broad consensus amongst the Eligible Electors regarding a Referendum Vote, by:
 - (i) posting reasonably detailed information about the matter on the Band website;
 - (ii) e-mailing all the Eligible Electors to advise them that an important matter requiring their written response within 14 days of the date of the notice, has been placed on the Band website;
 - (iii) inviting on the Band website:
 - (A) questions and comments from all the Eligible Electors; and
 - (B) written responses from all Eligible Electors within the 14 day period; and
 - (iv) tallying the responses received from the Eligible Electors within the 14 day period to determine the broad consensus among the Eligible Electors for or against the matter.
 - (c) On matters concerning confidential information of the Band, the custom of the Band is to determine the broad consensus among the Eligible Electors for or against a Referendum Vote, by:
 - (i) providing reasonably detailed information about the matter either by mail or delivery to all Eligible Electors, together with a notice from the Band:
 - (A) inviting questions and comments from all Eligible Electors; and
 - (B) requesting a written response from each Eligible Elector within 28 days of the date of the notice; and
 - (ii) tallying the responses received from the Eligible Electors within the 28 day period to determine the broad consensus among the Eligible Electors for or against the matter.

January 24, 2023 Draft

- 12.5 **Conclusion of Community Consultation:** The community consultation on a Referendum Vote shall be completed at least 90 days prior to the day of the vote.
- 12.6 **Electoral Officers:** Neither the Electoral Officer nor Deputy Electoral Officer can be Band Members. The Deputy Electoral Officer can be a Band employee, but the Electoral Officer cannot.
- 12.7 **Authority of Electoral Officer and Deputy Electoral Officer:** The Electoral Officer shall have all the power and authority necessary to carry out the duties and responsibilities of that position set out in the Rules and this Regulation. The Deputy Electoral Officer:
- (a) shall have all the power and authority of the Electoral Officer in his or her absence; and otherwise
 - (b) shall act under the direction of the Electoral Officer.
- 12.8 **Conflict of Interest:** Any complaint or allegation that the Electoral Officer, Deputy Electoral Office or Membership Clerk is in a conflict of interest in relation to any decision or process under this Regulation, will be resolved by the application of the principles of:
- (a) protecting fairness, justice and transparency in the referendum process;
 - (b) ensuring that all Discretionary Membership Applications and supporting documents which are complete and conform to the Rules, are submitted for acceptance or rejection by the Eligible Electors in the next Membership Admission Vote; and
 - (c) ensuring that all Eligible Electors entitled to vote on the referendum, have that opportunity.
- 12.9 **Discretion:** Any discretion of the Electoral Officer or the Membership Clerk under this Regulation shall be exercised so as to apply the principles stated in subsections ◆ (a) and (b).
- 12.10 **Contents of Council Resolution:** The Council Resolution authorizing the Referendum Vote shall be made at least 70 days prior to the day of the Referendum Vote. That resolution shall:
- (a) set the date, time and place for the Referendum Vote;
 - (b) confirm for a Membership Admission Vote, that those Applicants for discretionary membership for whom a Membership Clerk Report has been completed at least 105 days prior to the vote, will go forward to that vote, for approval of their membership applications, by the Eligible Electors;
 - (c) set the wording of the question submitted on the Referendum Vote to the Eligible Electors for voting;
 - (d) set out the timeline of important dates and events in the process for the Referendum Vote;

January 24, 2023 Draft

- (e) set the format, date, time and place for the information session for the Eligible Electors on the Referendum Vote;
 - (f) appoint an Electoral Officer and a Deputy Electoral Officer to conduct the Referendum Vote; and
 - (g) confirm that the Referendum Vote will be conducted under this Regulation.
- 12.11 **Council May Adjust Timeline:** Council may by Council Resolution, amend, repeal or replace the timeline for any particular Referendum Vote, as necessary, to preserve the integrity of the referendum process.
- 12.12 **Notice to Eligible Electors re Current Addresses Required:** At least 70 days prior to the day of the Referendum Vote, the Band shall give all the Eligible Electors notice by e-mail and on the Band website that all Eligible Electors must provide the Administration Office with their current mailing address, within three weeks, to ensure that they are able to cast a ballot in the Referendum Vote.
- 12.13 **Eligible Electors Entitled to Vote:** The Membership Clerk shall remove from the Voters List being prepared for the Referendum Vote, the name of any Eligible Elector who has not reported a current mailing address to the Administration Office before the end of the three week period referred to in section ◆12.12. Any Eligible Elector whose name is not on the Voters List at the end of that period shall not be entitled to vote unless he or she provides proof of his or her identity and current mailing address to the Membership Clerk prior to the date of the Referendum Vote. In that case, the Membership Clerk will add the name of that Eligible Elector back onto the Voters List to be used by the Electoral Officer for the Referendum Vote.
- 12.14 **Voters List:** At least 40 days prior to the day of the Referendum Vote, the Membership Clerk shall conclude preparation of the Voters List, which will include the revisions under section ◆12.13, and provide the Voters List to the Electoral Officer.
- 12.15 **Section ◆ 12.13 Disputes:** Judicial review in Federal Court may be taken of the decision of the Membership Clerk to add, refuse to add, remove or refuse to remove the name of a person from the Voters List under section ◆12.13.
- 12.16 **Other Disputes About the Band List or Voters List:** Any dispute arising apart from section ◆12.13, about whether the name of any person should be added to, removed from, or is incorrectly spelled on either the Band List or the Voters List, shall be referred by the Electoral Officer to the Membership Clerk. That dispute shall be addressed by the Membership Clerk according to the procedures set out under the Rules. The Electoral Officer has no legal authority to amend the Band List or Voters List, as part of a Referendum Vote, or otherwise.
- 12.17 **Notice of Referendum Vote and Mail in Ballot Package:** At least 33 days prior to the day of the Referendum Vote, the Electoral Officer shall:
- (a) post the Notice of Referendum and the Voters List at the Administration Office; and

January 24, 2023 Draft

- (b) for a Membership Admission Vote, send by mail to all Off Reserve Eligible Electors the Membership Admission Mail in Ballot Package consisting of:
 - (i) the Notice of Referendum;
 - (ii) the Applicant Information Forms;
 - (iii) a Membership Admission Mail in Ballot, initialled on the back by the Electoral Officer;
 - (iv) an outer, postage-paid return envelope, pre-addressed to the Electoral Officer;
 - (v) a second, inner envelope marked "Ballot" for insertion of the completed Mail in Ballot;
 - (vi) the Voter Declaration Form;
 - (vii) a letter of instruction regarding voting by Mail in Ballot; and
 - (viii) an information sheet regarding the Membership Admission Vote.

- (c) for a *Membership Rules Amendment* Vote, send by mail to all Off Reserve Eligible Electors the *Membership Rules Amendment* Mail in Ballot Package consisting of:
 - (i) the Notice of Referendum;
 - (ii) a *Membership Rules Amendment* Mail in Ballot, initialled on the back by the Electoral Officer;
 - (iii) an outer, postage-paid return envelope, pre-addressed to the Electoral Officer;
 - (iv) a second, inner envelope marked "Ballot" for insertion of the completed Mail in Ballot;
 - (v) the Voter Declaration Form;
 - (vi) a letter of instruction regarding voting by Mail in Ballot; and
 - (vii) an information sheet regarding the *Membership Rules Amendment* Vote.

12.18 **Requesting a Mail in Ballot Package:** For any Eligible Elector who requests in writing a Mail in Ballot Package and provides a copy of his or her proof of identity, at least 12 days prior to the day of the Referendum Vote, the Electoral Officer shall mail or deliver the Mail in Ballot Package to that Eligible Elector.

12.19 **Tracking the Issued Mail in Ballots:** The Electoral Officer shall indicate on the Voters List each Eligible Elector to whom a Mail in Ballot Package has been provided, the date, and whether the package was mailed, delivered, or provided by e-mail or in some other fashion, and to which address.

January 24, 2023 Draft

12.20 **Information Session:** At least 12 days prior to the day of the Referendum Vote, the Band shall hold an information session for the Electors on the Referendum Vote, to advise the Electors of the nature and purpose of the Referendum Vote.

12.21 **Prohibitions re Ballots:** A person must not, in connection with a Referendum Vote:

- (a) provide a false name in order to obtain a ballot;
- (b) possess any ballot that was not provided to him or her by the Electoral Officer in accordance with this Regulation;
- (c) purchase a Mail in Ballot that was issued to another person;
- (d) sell or give away a Mail in Ballot; or
- (e) print or reproduce a ballot, except if that person is acting under the direction of the Electoral Officer.

12.22 **Prohibitions re Voting:** A person must not, in connection with a Referendum Vote:

- (a) vote or attempt to vote knowing that he or she is not entitled to vote;
- (b) attempt to influence another person to vote knowing that the other person is not entitled to vote;
- (c) put a ballot into a ballot box except if authorized to do so under this Regulation;
- (d) attempt to influence another person to vote or refrain from voting;
- (e) offer money, goods, employment or other valuable consideration in an attempt to influence an Eligible Elector to vote or refrain from voting;
- (f) vote more than once;
- (g) accept or agree to accept money, goods, employment or other valuable consideration to vote or refrain from voting;
- (h) attempt to interfere with any Eligible Elector at any time in the voting process;
- (i) show his or her ballot, when marked to reveal how he or she has voted;
- (j) in the polling station, openly declare how he or she intends to vote or has voted;
- (k) in the polling station, attempt to determine how any Eligible Elector has voted;
- (l) post or display within, or on the exterior surface of the polling station, any campaign literature or other material that promotes or opposes the subject matter of the Referendum Vote;

January 24, 2023 Draft

- (m) within hearing distance of the polling station, orally promote or oppose the subject matter of the Referendum Vote;
- (n) act, or incite another person to act, in a disorderly manner with the intention of disrupting the conduct of the vote in the polling station;
- (o) destroy, take, open or otherwise interfere with any ballots or the ballot box, unless authorized to do so by this Regulation;
- (p) obstruct either the Electoral Officer or Deputy Electoral Officer in the performance of his or her duties; or
- (q) otherwise obstruct the conduct of the Referendum Vote.

12.23 **Losing the Right to Vote:** If the Electoral Officer believes on reasonable grounds that any Eligible Elector or other person has breached any of the provisions of sections 12.21 or 12.22:

- (a) any such Eligible Elector shall forfeit the right to vote in the referendum, and the Electoral Officer shall make the appropriate notation as to forfeiture, and the reason why, on the Voters List;
- (b) any such Eligible Elector or other person may be forthwith ordered by the Electoral Officer to leave the polling station and the area within a 100 meter radius of the polling station for the rest of that day;
- (c) any such Eligible Elector or other person not complying with the order of the Electoral Officer made under subsection (b) shall be removed by the Band from the restricted area for the rest of that day, as being in trespass on the reserve, and punished as a trespasser; and
- (d) the Band will request the assistance of the RCMP if necessary to remove any such person from the restricted area for the rest of that day.

13. VOTING BY MAIL IN BALLOT

13.1 **Steps for the Eligible Elector:** An Eligible Elector may vote by Mail in Ballot by:

- (a) marking the ballot by placing a cross, check mark or other mark, clearly indicating the Eligible Elector's response to each of the questions stated on the ballot, but that does not identify the Eligible Elector;
- (b) folding the ballot in a manner that conceals the question and any marks, but exposes the initials of the Electoral Officer on the back;
- (c) placing the ballot in the inner envelope marked "Ballot" and sealing that envelope;
- (d) completing and signing the Voter Declaration Form in the presence of a witness who is at least 18 years of age, who also signs as a witness and completes particulars of his or her name, address and phone number;

January 24, 2023 Draft

- (e) placing the inner envelope marked "Ballot" and the completed, signed and witnessed Voter Declaration Form in the outer, postage-paid return envelope, pre-addressed to the Electoral Officer; and
 - (f) delivering or, subject to section ◆13.7, mailing the outer envelope to the Electoral Officer for receipt before the time at which the polls close on the day of the Referendum Vote.
- 13.2 **Eligible Elector Unable to Vote:** Where an Eligible Elector is unable to vote in the manner set out in section ◆13.1, the Eligible Elector may enlist the assistance of another person to mark the ballot and complete and sign the Voter Declaration Form, on behalf of the Eligible Elector.
- 13.3 **Witnessing the Voter Declaration Form:** The witness referred to in subsection ◆ 13.1(d) shall attest by his or her signature on the form that:
- (a) the person completing and signing the Voter Declaration Form is the Eligible Elector whose name is set out on that form; or
 - (b) where the Eligible Elector enlisted the assistance of another person under section ◆ 13.2, the fact that the Eligible Elector is the person whose name is set out on the Voter Declaration Form, and that the ballot was marked according to the directions of the Eligible Elector.
- 13.4 **Mail or Delivery Only:** Mail in Ballots may be received by the Electoral Officer from the Eligible Elector only by mail or delivery, and only following the procedure set out in section ◆13.1. A Mail in Ballot that is received by the Electoral Officer from an Eligible Elector by fax, e-mail, or other method of electronic transmission, is void, and shall not be counted, but that Eligible Elector shall still have the opportunity to vote in an authorized fashion. Voting by telephone or proxy is not allowed, but any Eligible Elector attempting to so vote shall still have the opportunity to vote in an authorized fashion.
- 13.5 **Spoiled Ballot:** An Eligible Elector who inadvertently spoils a Mail in Ballot may obtain another Mail in Ballot by returning the spoiled Mail in Ballot to the Electoral Officer.
- 13.6 **Losing a Mail in Ballot:** An Eligible Elector who loses a Mail in Ballot may obtain another ballot by providing to the Electoral Officer a statutory declaration confirming the lost ballot, sworn before a commissioner for taking oaths or a notary public.
- 13.7 **Receipt Prior to Close of Poll:** Mail in Ballots that are not received by the Electoral Officer before the time at which the poll closes on the day of the Referendum Vote are void and shall not be counted.
- 13.8 **Safekeeping the Mail in Ballots:** The Electoral Officer and Deputy Electoral Officer must together ensure the safekeeping of the Mail in Ballots until they are opened at the poll in accordance with section ◆15.1.

January 24, 2023 Draft

14. **VOTING ON REFERENDUM DAY**

14.1 **Preparation of the Poll:** The Electoral Officer shall:

- (a) prepare sufficient ballots, initialed on the back by the Electoral Officer, stating the question to be submitted to the Eligible Electors in the Referendum Vote;
- (b) in the case of a Membership Admission Vote, have sufficient Applicant Information Forms available to provide one to assist each Eligible Elector in voting;
- (c) immediately before the opening of the poll, open the ballot box so that all persons who are present can verify that it is empty, and then lock and seal the box, so that it is secure for the reception of ballots;
- (d) set up at the poll:
 - (i) the ballot box, which shall remain in plain sight at all times;
 - (ii) in the case of a *Membership Rules Amendment Vote*, one or more voting booths where each Eligible Elector may mark his or her ballot in private and free from observation; and
 - (iii) in the case of a Membership Admission Vote, multiple voting booths where each Eligible Elector may mark his or her ballot in private and free from observation, keeping in mind the number of votes each Eligible Elector is entitled to make, and the time likely required to complete this task; and
- (e) provide a sufficient number of pencils for marking the ballots.

14.2 **Hours of Poll:** The poll shall remain open from 9:00 AM until 8:00 PM on the date of the Referendum Vote.

14.3 **Maintaining Order:** The Electoral Officer shall maintain peace and order both within the polling station, and the area within a 100 meter radius of the polling station, on the date of the Referendum Vote. The Electoral Officer may designate a person to assist for this purpose.

14.4 **Seal:** The seal of the ballot box must not be broken, and the ballot box must not be opened prior to the close of the poll.

14.5 **Only Eligible Electors Vote:** In accordance with sections ◆4.11 and 4.12 above, only Eligible Electors may vote in person at the poll, or my Mail in Ballot.

14.6 **Eligible Elector in Poll at Closing:** An Eligible Elector who is inside the polling station at the time it is to close, is entitled to vote.

14.7 **Identification:** Each Eligible Elector shall produce to the Electoral Officer proof of identity.

January 24, 2023 Draft

- 14.8 **Issuing the Ballot:** The Electoral Officer shall confirm from the Voters List the entitlement to vote of that person, issue that person a ballot, and mark the Voters List to confirm that person has received a ballot.
- 14.9 **Voting at the Poll After Receiving a Mail in Ballot:** An Eligible Elector who was provided a Mail in Ballot Package from the Electoral Officer may obtain a ballot from the Electoral Officer to vote in person at the poll if:
- (a) the Eligible Elector returns the Mail in Ballot to the Electoral Officer; or
 - (b) an Eligible Elector who has lost a Mail in Ballot, provides to the Electoral Officer the statutory declaration confirming the lost ballot, required by section 13.6.
- 14.10 **Explaining the Voting Procedure:** The Electoral Officer shall explain the voting procedure to each Eligible Elector. In the case of a Membership Admission Vote, the Electoral Officer shall also explain:
- (a) to the Eligible Elector that the Applicant Information Form is provided to assist the Eligible Elector in making a decision on the admission to discretionary membership of each Applicant listed; and
 - (b) how to properly complete the Membership Admission Ballot, which may be extensive.
- 14.11 **Voting Procedure:** Every Eligible Elector receiving a ballot shall:
- (a) proceed immediately to the voting booth;
 - (b) mark the ballot by placing a cross, check mark or other mark, clearly indicating the Eligible Elector's response to the question stated on the ballot, but that does not identify the Eligible Elector;
 - (c) fold the ballot in a manner that conceals the question and any marks, but exposes the initials of the Electoral Officer on the back; and
 - (d) forthwith deliver the ballot to the Electoral Officer for deposit by the Electoral Officer in the ballot box.
- The Electoral Officer shall, without unfolding the ballot, verify the initials placed on it, and then deposit the ballot in the ballot box.
- 14.12 **Spoiled Ballot:** An Eligible Elector who receives a soiled or improperly printed ballot, or inadvertently spoils his or her ballot, shall upon returning the ballot to the Electoral Officer, be entitled to another ballot. The Electoral Officer shall retain the spoiled ballot, and mark it as "Spoiled".
- 14.13 **Forfeiting the Vote:** An Eligible Elector who receives a ballot and:
- (a) leaves the voting booth without immediately delivering the ballot to the Electoral Officer; or

- (b) refuses to vote;

shall forfeit the right to vote in the referendum, and the Electoral Officer shall make the appropriate notation as to forfeiture, and the reason why, on the Voters List.

- 14.14 **Interpreter:** Where the Electoral Officer does not understand the language spoken by the Eligible Elector, the Electoral Officer shall use an interpreter for all matters required to enable that Eligible Elector to vote.
- 14.15 **Inability to Vote:** For any Eligible Elector who is unable to vote in the manner set out in section ◆14.11, the Electoral Officer shall assist the Eligible Elector in the voting booth by marking the ballot as directed by the Eligible Elector, and placing that ballot in the ballot box. This process must take place in the presence of a witness selected by the Eligible Elector. The Electoral Officer shall make the appropriate notation on the Voters List as to the inability of the Eligible Elector, that the ballot was marked by the Electoral Officer as directed by the Eligible Elector, and the name, address and phone number of the witness.
- 14.16 **One Eligible Elector in Voting Booth:** The Electoral Officer shall allow only one Eligible Elector in the voting booth at any one time.

15. COUNTING THE VOTES

- 15.1 **Depositing the Mail in Ballots:** Upon the closing of the poll, the Electoral Officer shall in the presence of the Eligible Electors, open each outer envelope containing a Mail in Ballot, received before the close of the poll, and:
- (a) check that the Voter Declaration Form is properly completed, signed and witnessed; and
 - (b) check that the name on the Voter Declaration Form is that of an Eligible Elector on the Voters List who has not already voted; and

shall mark the Voters List to confirm that person has voted by Mail in Ballot, open the inner envelope marked, "Ballot", and without unfolding that ballot, deposit that ballot in the ballot box.

- 15.2 **Defective Mail in Ballots:** The Electoral Officer shall set aside any Mail in Ballots received for which the conditions in both subsections ◆15.1 (a) and (b) are not satisfied.
- 15.3 **Counting the Ballots-Membership Rules Amendment Vote:** After the Mail in Ballots have been deposited in the ballot box under section ◆ 15.1, the Electoral Officer shall for a *Membership Rules Amendment Vote*, in the presence of the Eligible Electors, open all ballot boxes and examine all the ballots, and:
- (a) set aside any ballot that does not have the initials of the Electoral Officer on the back;
 - (b) mark as "rejected" all ballots:
 - (i) that have been marked incorrectly; or

January 24, 2023 Draft

- (ii) upon which anything appears by which the Eligible Elector can be identified;
- (c) take note of any objection made by any Eligible Elector to any ballot found in the ballot box, and decide any question arising out of the objection;
- (d) number any objection and place a corresponding number on the back of the ballot, with the Electoral Officer's initials, and the words "ballot allowed" or "ballot disallowed" as the case may be, and the reason;
- (e) count the votes in favour of and against the question submitted on the referendum;
- (f) deal with any Mail in Ballots from deceased Eligible Electors as directed by section ◆ 15.5, adding any such ballots which are accepted to the vote count;
- (g) confirm whether a majority of the Eligible Electors on the Voters List voted, and whether the majority of the Eligible Electors who voted approved the referendum; and
- (h) prepare and sign the statement of the *Membership Rules* Amendment Vote Results in the form of Appendix 12 to this Regulation.

15.4 **Counting the Ballots-Membership Admission Vote:** On the next and each succeeding business day after the date of the Membership Admission Vote, from 9:00 AM until 5:00 PM each day, until completion of the ballot count, the Electoral Officer shall in the presence of the Eligible Electors, open all ballot boxes and examine all the ballots, and:

- (a) set aside any ballot that does not have the initials of the Electoral Officer on the back;
- (b) mark as "rejected" all ballots:
 - (i) that have been marked incorrectly; or
 - (ii) upon which anything appears by which the Eligible Elector can be identified;
- (c) take note of any objection made by any Eligible Elector to any ballot found in the ballot box, and decide any question arising out of the objection;
- (d) number any objection and place a corresponding number on the back of the ballot, with the Electoral Officer's initials, and the words "ballot allowed" or "ballot disallowed" as the case may be, and the reason;
- (e) count the votes in favour of and against admitting to discretionary membership in the Band, each Applicant listed on the ballot;
- (f) deal with any Mail in Ballots from deceased Eligible Electors as directed by section ◆ 15.5, adding any such ballots which are accepted to the vote count;
- (g) pursuant to section 21 of the Rules, confirm for each Applicant listed on the ballot, whether or not the majority of those Eligible Electors who voted, approved the

January 24, 2023 Draft

admission to discretionary membership in the Band effective on the date of the referendum; and

- (h) prepare and sign the statement of the Membership Admission Vote Results in the form of Appendix 9 to this Regulation.

15.5 **Mail in Ballots from Deceased Eligible Electors:** The Membership Clerk will provide the Electoral Officer with a list of the Eligible Electors whose names are on the Voters List, but who have passed away prior to the date of the Referendum Vote. If the Electoral Officer receives a Mail in Ballot from an Eligible Elector who has passed away, the Electoral Officer shall on the close of the poll, proceed as follows:

- (a) when the outer sealed envelope for that Mail in Ballot is opened, the Electoral Officer will check that the Voter Declaration Form is properly completed, signed and witnessed.
- (b) the Electoral Officer will check that the name on the Voter Declaration Form is that of an Eligible Elector on the Voters List who has not already voted.
- (c) the Electoral Officer will hold and secure separately, without opening, the inner sealed envelope containing the Mail in Ballot for the deceased Eligible Elector. The Electoral Officer will also hold and secure separately, the accompanying Voter Declaration Form, and the outer envelope, carefully preserving any postmark.
- (d) when all the other ballots are counted at the close of the poll, the Electoral Officer may conclude that the Mail in Ballots from deceased Eligible Electors could not possibly affect the referendum results, regardless of how such ballots were voted. In that case, the Electoral Officer shall open the inner sealed envelopes containing the Mail in Ballots from deceased Eligible Electors, mark them "accepted", count them, and include them in the final tally of votes.
- (e) if the Electoral Officer concludes that the Mail in Ballots from deceased Eligible Electors may affect the referendum results, the Electoral Officer shall contact in person or by telephone, the witness on the Voter Declaration Form for each deceased Eligible Elector who apparently voted by Mail in Ballot.
- (f) the Electoral Officer shall satisfy himself or herself, by questioning this witness, whether:
 - (i) the Mail in Ballot for the deceased Eligible Elector was completed;
 - (ii) the Voter Declaration Form for the deceased Eligible Elector was completed, signed and witnessed; and
 - (iii) both forms were then mailed either by the deceased Eligible Elector or the witness, back to the Electoral Officer prior to the Eligible Elector passing on.

If so, the Electoral Officer shall open the inner sealed envelope containing the Mail in Ballot from that deceased Eligible Elector, mark the ballot "accepted", count the ballot,

January 24, 2023 Draft

and include the ballot in the final tally of votes. If not, that Mail in Ballot will not be counted and will be marked as “rejected”.

- (g) the Electoral Officer shall mark the Voters List to confirm which Eligible Electors had passed away prior to the date of the Referendum Vote, whether a Mail in Ballot was received, and whether that Mail in Ballot was accepted or rejected, and the reason.
 - (h) the Electoral Officer shall segregate any Mail in Ballots from deceased Eligible Electors whether marked “accepted” or “rejected”, the Voter Declaration Forms, and the inner and outer envelopes. These shall all be deposited for safekeeping by the Electoral Officer with the balance of the referendum documents, under section ♦15.12.
- 15.6 **Ballots Set Aside or Rejected:** Ballots set aside or rejected under any of sections ♦ 15.2, 15.3, 15.4 or 15.5 . are void and shall not be counted. All such ballots shall be identified by the Electoral Officer as either “set aside” or “rejected”, along with the reason therefor, and preserved by the Electoral Officer along with all the ballots counted on the Referendum Vote.
- 15.7 **Recount:** A recount is conducted by the Electoral Officer if there are five or fewer votes between either acceptance or rejection of:
- (a) the amendment to the Rules; or
 - (b) the admission to discretionary membership of any Applicant listed on the ballot;
- as the case may be.
- 15.8 **Tie:** A tie in the voting is resolved by the Electoral Officer who conducts a draw.
- 15.9 **Majority Required for Approval:** The majority required:
- (a) on a Membership Admission Vote for approval of an Applicant for admission to discretionary membership in the Band, is a majority of the Eligible Electors voting regarding that Applicant: See the Rules section 21; and
 - (b) on a *Membership Rules* Amendment Vote for the amendment of the Rules, is a double majority, in which a majority of the Eligible Electors vote, and a majority of those voting approve the amendment: See the Rules section 28 and the Court Case at paragraph 99.
- 15.10 **Public Declaration:** The Electoral Officer then makes a public declaration to the Eligible Electors of the Referendum Vote results.
- 15.11 **Referendum Vote Results:** The Electoral Officer completes the record of the Referendum Vote results in the form of either:
- (a) Appendix 9 to this Regulation, for Membership Admission Vote Results; or
 - (b) Appendix 12 to this Regulation, for *Membership Rules* Amendment Vote Results;

January 24, 2023 Draft

as the case may be, and within seven days of the date of the Referendum Vote posts those results:

- (c) in the Administration Office; and
- (d) on the Band website.

15.12 **Retaining the Ballots:** The Electoral Officer shall deposit all ballots used in the voting, and all referendum documents, in a sealed envelope and retain them.

15.13 **Destruction of the Ballots-Membership Rules Amendment Vote:** Provided that an Appeal of the result of the *Membership Rules* Amendment Vote is not filed under Article ◆16, the Electoral Officer shall destroy all ballots used in the voting and all referendum documents after 90 days from the date of the vote.

15.14 **Destruction of the Ballots-Membership Admission Vote:** Provided that a judicial review of the result of the Membership Admission Vote is not filed in Federal Court, the Electoral Officer shall destroy all ballots used in the voting and all referendum documents after 90 days from the date of the vote.

16. APPEALS

16.1 **Means of Contesting-Membership Admission Vote:** Part VII of the Rules specifies the appeal procedure for an Applicant rejected for membership in a Membership Admission Vote:

- (a) the appeal procedure is a right of re-application for discretionary membership in the Band, after three months from the date of the Membership Admission Vote in which the original Application was rejected;
- (b) on re-application, the Applicant may provide additional evidence of eligibility; and
- (c) there is only one right of re-application, and the second Membership Admission Vote made in response to any re-application is final.

16.2 **Means of Contesting-Membership Rules Amendment Vote:** The validity of a *Membership Rules* Amendment Vote may be contested only by an Appeal filed in accordance with the balance of this Article.

16.3 **Appeal:** Chief and Council, any Eligible Elector or the legal representative of any such person, may by filing an Appeal in the form of Appendix 14 to this Regulation, within 30 days from the date of the *Membership Rules* Amendment Vote, appeal the result of that vote. The date when any person discovers the *Membership Rules* Amendment Vote result is not relevant to the running of this limitation period.

16.4 **Filing:** The Appeal is filed in the Kamloops, BC registry of the BC Supreme Court, together with the filing fee required by the Court.

January 24, 2023 Draft

- 16.5 **Parties to the Appeal:** The parties to the Appeal shall be Council, the Electoral Officer, the Appellant and any other persons whose participation is necessary to the proper disposition of the Appeal.
- 16.6 **Grounds of Appeal:** The grounds of Appeal shall be that a contravention of this Regulation is likely to have affected the result of the *Membership Rules* Amendment Vote.
- 16.7 **Minor or Technical Breaches:** Any minor or technical breaches of this Regulation not likely to affect the result of the *Membership Rules* Amendment Vote, will not be subject to Appeal, or otherwise grounds for contesting the result of that vote.
- 16.8 **Canadian Charter of Rights and Freedoms:** If the Appellant wishes to raise arguments under the *Canadian Charter of Rights and Freedoms* on the Appeal, the Appellant shall in addition to the Appeal file a separate Notice of Civil Claim in the BC Supreme Court raising the charter arguments. The two matters shall be heard by the same judge at the same time.
- 16.9 **Informing the Band and Electoral Officer:** The Appellant shall forthwith deliver to Council, the Electoral Officer and any other parties to the Appeal, a copy of the Appeal after filing in the Court registry.
- 16.10 **Material to be Provided to the Court:** On receipt under section 16.9 of a copy of an Appeal filed, the Electoral Officer shall forthwith provide to the Court a copy of this Regulation, together with all ballots used in the voting and all referendum documents.
- 16.11 **Conduct of the Appeal:** The Appeal will be conducted as follows:
- (a) as the Electoral Officer has expertise in determining factual matters, the findings of fact by the Electoral Officer should only be set aside on Appeal where they are clearly wrong;
 - (b) the Court will determine all matters of procedure for the Appeal, subject to this Regulation;
 - (c) the onus of establishing the merits of the Appeal shall be on the Appellant;
 - (d) the Court may confirm, vary or set aside the result of the *Membership Rules* Amendment Vote, or refer the subject matter of that vote back to the Band with directions for the conduct of a new vote among the Eligible Electors; and
 - (e) the Court may make any other order, direction, declaration or record necessary in its discretion to fairly and justly dispose of the Appeal.
- 16.12 **Judicial Review:** Judicial review of any decisions made under this Regulation is not permitted until any rights of Appeal for that matter have been exhausted.
- 16.13 **Bringing the Decision into Effect:** Following the decision by the Court on the Appeal, Chief and Council, the Membership Clerk and the Electoral Officer shall take whatever steps are necessary to bring that decision into effect.

January 24, 2023 Draft

- 16.14 **Distribution of the Decision:** The reasons of the Court shall be made available by the Membership Clerk, for distribution to the General Band Membership.
- 16.15 **Electoral Officer Legal Costs:** The reasonable and necessary legal costs of the Electoral Officer on the Appeal shall be paid by the Band, provided that the Electoral Officer has acted in good faith throughout, both regarding the conduct of the *Membership Rules* Amendment Vote and the Appeal.
17. **APPROVAL BY GENERAL BAND MEMBERSHIP**
- 17.1 **Difficulties:** The Band acknowledges that many of the Band Members reside off reserve, and a considerable distance from the reserve lands of the Band, making:
- (a) assembly of the General Band Membership in person on the reserve for an in person vote; or
 - (b) a mail in referendum vote for the whole of the General Band Membership;
- time consuming and difficult, and beyond the financial and administrative resources of the Band, for seeking approvals or consents of the General Band Membership for bringing this Regulation into effect, amending, repealing or replacing it.
- 17.2 **Custom of the Band:** Any approvals or consents required from the General Band Membership prior to bringing this Regulation into effect, amending, repealing or replacing it, shall be obtained according to the custom of the Band, as set out in this Article ◆17.
- 17.3 **Band Newsletter and Website:** The custom of the Band is to keep the General Band Membership informed by way of the Band newsletter and website.
- 17.4 **Broad Consensus:** Subject to section ◆17.5, the custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:
- (a) posting reasonably detailed information about the matter on the Band website;
 - (b) e-mailing all Band Members to advise them that an important matter requiring their written response within 14 days of the date of the notice, has been placed on the Band website;
 - (c) inviting on the Band website:
 - (i) questions and comments from all the Band Members; and
 - (ii) written responses from all Band Members within the 14 day period; and

- (d) tallying the responses received from the Band Members within the 14 day period to determine the broad consensus in the General Band Membership for or against the matter.

17.5 **Confidential Matters:** On matters concerning confidential information of the Band, the custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:

- (a) providing reasonably detailed information about the matter either by mail or delivery to all Band Members, together with a notice from the Band:
 - (i) inviting questions and comments from all Band Members; and
 - (ii) requesting a written response from each Band Member within 28 days of the date of the notice; and
- (b) tallying the responses received from the Band Members within the 28 day period to determine the broad consensus in the General Band Membership for or against the matter.

18. NOTICE

18.1 **Method:** Any notice to be given to a person pursuant to this Regulation shall be in writing, have the signature of the sender at the end, be dated, and shall be:

- (a) sent in a fully prepaid envelope mailed in the Province of British Columbia, addressed to the person receiving. Any such notice shall be deemed to have been given and received by the persons concerned on the fourth business day following the mailing thereof;
- (b) delivered, and if delivered shall be deemed to have been given and received by the persons concerned upon delivery thereof. If delivering to a residence, business or other building at which no one answers, it shall be sufficient to complete the delivery by putting the notice in a mail box, putting it through a mail slot, or fixing it right to the entrance door; or
- (c) e-mailed or faxed, and shall be deemed to have been given and received by the persons concerned on the next business day after e-mailing or faxing.

18.2 **Band Newsletter and Website:** The Band may, in addition to the methods specified in section 18.1, give written notice to the Eligible Electors by placing the notice: ◆

January 24, 2023 Draft

- (a) in the Band newsletter, in which case the notice shall be deemed to have been given and received, according to the method of forwarding as specified in section 18.1, of the newsletter by the Band to that Eligible Elector; or
 - (b) on the Band website, in which case the notice shall be deemed to have been given and received by all Eligible Electors on the fourth business day after placing by the Band on the website.
- 18.3 **Invalid Notice:** Any notice received by the Band from an Eligible Elector or other person under this Regulation, has to be in writing, have the signature of the Eligible Elector or other person at the end, and be dated, to be a valid legal notice.
- 18.4 **Current Addresses:** All Eligible Electors shall be responsible to advise the Administration Office of their current mailing, delivery and e-mail addresses, and fax and phone numbers.

19. APPENDICES

- 19.1 **Appendices:** The Appendices attached to and forming part of this Regulation are:

Appendix 1 – Discretionary Membership Application

Appendix 2 – Membership Clerk Report

Appendix 3 – Membership Committee Recommendation

Appendix 4 – Applicant Information Form

Appendix 5 – Notice of Referendum

Appendix 6 – Membership Admission Ballot

Appendix 7 – Membership Admission Mail in Ballot

Appendix 8 – Voter Declaration Form

Appendix 9 – Membership Admission Vote Results

Appendix 10 – *Membership Rules* Amendment Ballot

Appendix 11 – *Membership Rules* Amendment Mail in Ballot

Appendix 12 – *Membership Rules* Amendment Vote Results

Appendix 13 – Petition to Council for the Amendment of the *Membership Rules*

Appendix 14 - Appeal

19.2 **Modification of Appendices:** Each of the Appendices to this Regulation may be modified as necessary to fit particular circumstances, as long as the modified from still meets the requirements set out in the Rules and this Regulation.

20. **COMING INTO EFFECT**

20.1 **Approval Process:** Following consultation with the General Band Membership, in accordance with the custom of the Band as described in Article ♦17 , this Regulation shall be brought into legal effect by Council Resolution.

Coming Into Effect

The ASHCROFT INDIAN BAND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Council duly convened and held on the ____day of _____, 2023 that:

The General Band Membership having been consulted, in accordance with custom of the Ashcroft Indian Band, this Regulation is issued under the authority of the Council of the Band, to come into immediate legal effect.

ASHCROFT INDIAN BAND

Per:

Chief

Councillor

Councillor

ASHCROFT INDIAN BAND

MEMBERSHIP RULES REGULATION

CRAIG NIXON LAW CORPORATION

Barristers and Solicitors
880 - 175 Second Avenue
Kamloops, BC V2C 5W1
Telephone: (250) 374-1555
Fax: (250) 374-9992

E-mail: cnlc@CNixonLaw.ca
www.CNixonLaw.ca

File No. 112-105
CN / kk