

**ASHCROFT INDIAN BAND**

**REFERENDUM REGULATION**

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**ASHCROFT INDIAN BAND**  
**REFERENDUM REGULATION**

**PREAMBLE**

Whereas:

- A. The Band as one of the aboriginal peoples of Canada has the inherent right to self-government within its traditional territory, including the right to determine how a formal vote is conducted among all its Electors, residing both on and off reserve, on matters requiring a broad consensus;
- B. The existing aboriginal rights and freedoms of the Band as one of the aboriginal peoples of Canada are, by reason of sections 25 and 35 the *Constitution Act, 1982*, constitutionally protected in Canada; and
- C. The custom of the Band is that a formal vote is held among all its Electors on matters requiring a broad consensus, by way of a Referendum Vote conducted under this Referendum Regulation.

**1. APPLICATION**

1.1 **Regulation Shall Not Apply:** This Regulation shall not apply to:

- (a) a referendum on an absolute surrender of reserve lands by the Electors to the Federal Crown, held under subparagraph 39(1)(b)(iii) of the *Indian Act*;
- (b) a second referendum on an absolute surrender of reserve lands by the Electors to the Federal Crown, held under subsection 39(2) of the *Indian Act*;
- (c) a referendum on a designation of reserve lands by the Electors to the Federal Crown, for the purpose or leasing or a right or interest in those lands being granted, held under section 39.1 of the *Indian Act*;
- (d) the election of Chief and Council to office, held under the *First Nations Elections Act*;
- (e) any other matter under federal or provincial legislation binding on the Band, requiring a formal vote among all Electors, where the voting process is laid out in that legislation; or
- (f) any other matter under any Band bylaw, policy or procedure, requiring a formal vote among all Electors, where the voting process is laid out in that Band bylaw, policy or procedure.

**2. OBJECTS**

2.1 **Objects:** The objects of this Regulation are to set out comprehensive, transparent and fair provisions for conducting a formal referendum vote by secret ballot among all Electors of our Band, residing both on and off reserve, on matters requiring a broad consensus, as a means of:

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- (a) having all such votes fully and finally determined; and
- (b) protecting the sovereignty and self governance processes of our Band.

### 3. DEFINITIONS AND INTERPRETATION

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

- (a) **“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.
- (b) **“Appeal”** means an appeal, in the form of Appendix F to this Regulation, of the result of a Referendum Vote.
- (c) **“Appellant”** means any Elector or Chief and Council, as the case may be, who files under Article 8 of this Regulation, an Appeal of the result of a Referendum Vote.
- (d) **“ballot”** means either the Ballot in the form of Appendix A to this Regulation or the Mail in Ballot in the form of Appendix B to this Regulation.
- (e) **“Ballot”** means the Ballot in the form of Appendix A to this Regulation.
- (f) **“Band”** means the Ashcroft Indian Band.
- (g) **“Band bylaw, policy or procedure”** means any duly enacted or adopted bylaw, policy, procedure, regulation, manual, or law of the Band.
- (h) **“Band Manager”** means the person appointed by Chief and Council to manage Band operations.
- (i) **“broad consensus”** means a consensus or agreement among the Electors either for or against a matter, determined in accordance with the custom of the Band.
- (j) **“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.
- (k) **“Chief”** means the member of Chief and Council who oversees council meetings and is the primary community and political representative of the Band.
- (l) **“Chief and Council”** means the council established or chosen by the Band from time to time, consisting of a chief and councillors, exercising legal authority as the governing body of the Band.
- (m) **“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.

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- (n) **"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.
- (o) **"Constitution Act, 1982"** means the *Constitution Act, 1982* of Canada, as amended or replaced from time to time.
- (p) **"Council Member"** means any of the Chief or councillors of the Band.
- (q) **"Council Resolution"** means a resolution consented to by the Chief and Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Council Members.
- (r) **"Court"** means the BC Supreme Court, which hears and decides any Appeal filed under Article 8 of this Regulation.
- (s) **"Deputy Electoral Officer"** means the person appointed under section 4.11 by Chief and Council to assist the Electoral Officer to conduct a Referendum Vote of the Electors.
- (t) **"Electoral Officer"** means the person appointed under section 4.11 by Chief and Council to conduct a Referendum Vote of the Electors.
- (u) **"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.
- (v) **"General Band Membership"** means all persons whose names appear in the Membership List, or who are entitled under the Membership Rules, or the Membership Code when brought into legal effect, as the case may be, to have their names appear in that list, and who are 18 years of age or older on the relevant date.
- (w) **"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.
- (x) **"Indian Act"** means the *Indian Act* of Canada and any regulations made pursuant to it, all as amended or replaced from time to time.
- (y) **"Mail in Ballot"** means the Mail in Ballot in the form of Appendix B to this Regulation.
- (z) **"Mail in Ballot Package"** means the Mail in Ballot Package assembled by the Electoral Officer, having the contents set out in subsection 4.17(b).
- (aa) **"Member"** means a person whose name appears in the Membership List, or who is entitled under the Membership Rules, or the Membership Code when brought into legal effect, as the case may be, to have his or her name appear in that list.
- (bb) **"Membership Code"** means the Ashcroft Indian Band Membership Code, which has not yet been brought into legal effect, which will repeal and replace the Membership Rules.

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- (cc) **"Membership Coordinator"** means the Band employee, acting under the direction of the Band Manager, responsible for administering on a day to day basis, the Membership List, the Membership Rules, the Membership Code when brought into legal effect, and the membership programs and services of the Band.
  - (dd) **"Membership List"** means the list of the names of the Band Members, as revised and updated from time to time by the Membership Coordinator.
  - (ee) **"Membership Rules"** means the Ashcroft Indian Band Membership Rules which came into effect on June 26, 1987, by which the Band assumed control of its own membership from the Department of Indian Affairs and Northern Development.
  - (ff) **"Notice of Referendum"** means the notice prepared by the Electoral Officer in the form of Appendix C to this Regulation.
  - (gg) **"Off Reserve Elector"** means any Elector who resides off reserve.
  - (hh) **"On Reserve Elector"** means any Elector who resides on reserve.
  - (ii) **"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.
  - (jj) **"Referendum Vote"** means a formal vote carried out among all the Electors of our Band, on matters requiring a broad consensus, in accordance with this Regulation.
  - (kk) **"Regulation"** means this Ashcroft Indian Band Referendum Regulation.
  - (ll) **"traditional territory"** means that portion of the traditional territory of the indigenous people of North America known as the Nlaka'pamux Nation, which portion the Band administers.
  - (mm) **"Voter Declaration Form"** means the form attached as Appendix D to this Regulation.
  - (nn) **"Voters List"** means the list, prepared by the Membership Coordinator from the Membership List, of all Electors entitled under section 4.13 to vote on the referendum, in alphabetical order, together with the mailing address, e-mail address and Band membership number of each.
- 3.2 **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.
- 3.3 **Issuing Authority:** This Regulation is issued under the authority of the Chief and Council of the Band, following consultation with the General Band Membership.



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3.4 **Amendments to Regulation:** This Regulation may be amended, revoked or replaced, either in whole or in part, by Chief and Council, following consultation with the General Band Membership.

3.5 **Amendment and Replacement of Laws:** Reference to any Band bylaw, policy or procedure includes that item as amended or replaced from time to time.

#### 4. PREPARATION FOR REFERENDUM VOTE

4.1 **Secret Ballot:** The Referendum Vote shall be conducted by secret ballot among all the On Reserve Electors and Off Reserve Electors, held in accordance with this Regulation.

4.2 **Chief and Council Determines:** Chief and Council may by Council Resolution issued under section 4.11, whenever they consider it advisable, determine that a Referendum Vote be held among the Electors of the Band on a matter requiring a broad consensus.

4.3 **Time Required:** The minimum time required for the Band to proceed through a Referendum Vote process from the community consultation to the voting by the Electors, is 90 days.

4.4 **Community Consultation:** The custom of the Band for community consultation on matters requiring a Referendum Vote among the Electors, is as follows:

- (a) The Band shall keep the 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 Electors for or against a matter requiring a Referendum Vote, by:
  - (i) posting reasonably detailed information about the matter on the Band website;
  - (ii) e-mailing all the 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 Electors; and
    - (B) written responses from all Electors within the 14 day period; and
  - (iv) tallying the responses received from the Electors within the 14 day period to determine the broad consensus among the Electors for or against the matter.

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- (c) On matters concerning confidential information of the Band, the custom of the Band is to determine the broad consensus among the Electors for or against a matter requiring a Referendum Vote, by:
    - (i) providing reasonably detailed information about the matter either by mail or delivery to all Electors, together with a notice from the Band:
      - (A) inviting questions and comments from all Electors; and
      - (B) requesting a written response from each Elector within 28 days of the date of the notice; and
    - (ii) tallying the responses received from the Electors within the 28 day period to determine the broad consensus among the Electors for or against the matter.
- 4.5 **Conclusion of Community Consultation:** The community consultation on the Referendum Vote shall be completed at least 75 days prior to the day of the Referendum Vote.
- 4.6 **Electoral Officers:** Both the Electoral Officer and Deputy Electoral Officer can be Electors and/or Band employees.
- 4.7 **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 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.
- 4.8 **Electoral Officers Voting:** The Electoral Officer and Deputy Electoral Officer can each vote in the Referendum Vote, if his or her name is on the Voters List. The vote of either, if given in person in accordance with section 6.10, shall be supervised by the other. The Mail in Ballot package of either shall be processed by the other after closing of the poll, along with all the other Mail in Ballots to be processed under section 7.1.
- 4.9 **Conflict of Interest:** Any complaint or allegation that the Electoral Officer or Deputy Electoral Officer 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; and
  - (b) ensuring that all Electors entitled to vote on the referendum, have that opportunity.

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Any decision by either the Electoral Officer or the Deputy Electoral Officer, made and documented in writing, according to these principles, is not subject to question on the basis of conflict of interest.

- 4.10 **Electoral Officer Discretion:** Any discretion of the Electoral Officer under this Regulation shall be exercised so as to apply the principles stated in subsections 4.9(a) and (b).
- 4.11 **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) set the wording of the question submitted on the referendum to the Electors for voting;
  - (c) set out the timeline of important dates and events in the process for the Referendum Vote;
  - (d) set the date, time and place for the information session for the General Band Membership on the referendum; and
  - (e) appoint an Electoral Officer and a Deputy Electoral Officer to conduct the Referendum Vote.
- 4.12 **Notice to Electors re Current Addresses Required:** At least 70 days prior to the day of the Referendum Vote, the Band shall give all the Electors notice by e-mail and on the Band website that all 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.
- 4.13 **Electors Entitled to Vote:** The Membership Coordinator shall remove from the Voters List being prepared for the Referendum Vote, the name of any 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 4.12. Any 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 Coordinator prior to the date of the Referendum Vote. In that case, the Membership Coordinator will add the name of that Elector back onto the Voters List to be used by the Electoral Officer for the Referendum Vote.
- 4.14 **Voters List:** At least 40 days prior to the day of the Referendum Vote, the Membership Coordinator shall conclude preparation of the Voters List, which will include the revisions under section 4.13, and provide the Voters List to the Electoral Officer.
- 4.15 **Section 4.13 Disputes:** Judicial review in Federal Court of the decision of the Membership Coordinator to add, refuse to add, remove or refuse to remove the name of a person from the Voters List under section 4.13, is not allowed. The proper remedy is to file an Appeal under this Regulation.
- 4.16 **Other Disputes About the Membership List or Voters List:** Any dispute arising apart from section 4.13, about whether the name of any person should be added to, removed from, or is

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incorrectly spelled on either the Membership List or the Voters List, shall be referred by the Electoral Officer to the Membership Coordinator. That dispute shall be addressed by the Membership Coordinator according to the procedures set out either under the Membership Rules of the Band, if still in legal effect, or under the Membership Code, if brought into legal effect by the Band. The Electoral Officer has no legal authority to amend the Membership List or Voters List, as part of a Referendum Vote, or otherwise.

- 4.17 **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
  - (b) send by mail to all Off Reserve Electors the Mail in Ballot Package consisting of:
    - (i) the Notice of Referendum;
    - (ii) a 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 matter that is the subject of the Referendum Vote.
- 4.18 **Requesting a Mail in Ballot Package:** For any 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 Elector.
- 4.19 **Tracking the Issued Mail in Ballots:** The Electoral Officer shall indicate on the Voters List each 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.
- 4.20 **Information Meeting:** At least 12 days prior to the day of the Referendum Vote, the Band shall hold an information meeting at the Administration Office to advise the Electors of the nature and purpose of the Referendum Vote.
- 4.21 **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;

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- (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.

4.22 **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 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 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 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;
- (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

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- (q) otherwise obstruct the conduct of the Referendum Vote.

## 5. VOTING BY MAIL IN BALLOT

### 5.1 Steps for the Elector: An Elector may vote by Mail in Ballot by:

- (a) marking the ballot by placing a cross, check mark or other mark, clearly indicating the Elector's response to the question stated on the ballot, but that does not identify the 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;
- (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 5.7, 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.

5.2 **Elector Unable to Vote:** Where an Elector is unable to vote in the manner set out in section 5.1, the Elector may enlist the assistance of another person to mark the ballot and complete and sign the Voter Declaration Form, on behalf of the Elector.

5.3 **Witnessing the Voter Declaration Form:** The witness referred to in subsection 5.1(d) shall attest by his or her signature on the form that:

- (a) the person completing and signing the Voter Declaration Form is the Elector whose name is set out on that form; or
- (b) where the Elector enlisted the assistance of another person under section 5.2, the fact that the 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 Elector.

5.4 **Mail or Delivery Only:** Mail in Ballots may be received by the Electoral Officer from the Elector only by mail or delivery, and only following the procedure set out in section 5.1. A Mail in Ballot that is received by the Electoral Officer from an Elector by fax, e-mail, or other method of electronic transmission, is void, and shall not be counted, but that Elector shall still have the opportunity to vote in an authorized fashion. Voting by telephone or proxy is not allowed, but any Elector attempting to so vote shall still have the opportunity to vote in an authorized fashion.

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- 5.5 **Spoiled Ballot:** An 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.
- 5.6 **Losing a Mail in Ballot:** An 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.
- 5.7 **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.
- 5.8 **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 7.1.
6. **VOTING ON REFERENDUM DAY**
- 6.1 **Preparation of the Poll:** The Electoral Officer shall:
- (a) prepare sufficient Ballots, initialled on the back by the Electoral Officer, stating the question to be submitted to the Electors in the Referendum Vote;
  - (b) 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;
  - (c) set up at the poll:
    - (i) the ballot box, which shall remain in plain sight at all times; and
    - (ii) one or more voting booths where each Elector may mark his or her Ballot in private and free from observation; and
  - (d) provide a sufficient number of pencils for marking the Ballots.
- 6.2 **Hours of Poll:** The poll shall remain open from 9:00 AM until 8:00 PM on the date of the referendum.
- 6.3 **Maintaining Order:** The Electoral Officer shall maintain peace and order both within the polling station, and its immediate vicinity, on the date of the Referendum Vote. The Electoral Officer may designate a person to assist for this purpose.
- 6.4 **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.
- 6.5 **Elector in Poll at Closing:** An Elector who is inside the polling station at the time it is to close, is entitled to vote.
- 6.6 **Identification:** Each Elector shall produce to the Electoral Officer proof of identity.

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- 6.7 **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.
- 6.8 **Voting at the Poll After Receiving a Mail in Ballot:** An 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 Elector returns the Mail in Ballot to the Electoral Officer; or
  - (b) an Elector who has lost a Mail in Ballot, provides to the Electoral Officer the statutory declaration confirming the lost ballot, required by section 5.6.
- 6.9 **Explaining the Voting Procedure:** The Electoral Officer shall explain the voting procedure to each Elector.
- 6.10 **Voting Procedure:** Every 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 Elector's response to the question stated on the Ballot, but that does not identify the 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.

- 6.11 **Spoiled Ballot:** An 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".
- 6.12 **Forfeiting the Vote:** An 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.



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- 6.13 **Interpreter:** Where the Electoral Officer does not understand the language spoken by the Elector, the Electoral Officer shall use an interpreter for all matters required to enable that Elector to vote.
- 6.14 **Inability to Vote:** For any Elector who is unable to vote in the manner set out in section 6.10, the Electoral Officer shall assist the Elector in the voting booth by marking the Ballot as directed by the Elector, and placing that Ballot in the ballot box. This process must take place in the presence of a witness selected by the Elector. The Electoral Officer shall make the appropriate notation on the Voters List as to the inability of the Elector, that the Ballot was marked by the Electoral Officer as directed by the Elector, and the name, address and phone number of the witness.
- 6.15 **One Elector in Voting Booth:** The Electoral Officer shall allow only one Elector in the voting booth at any one time.
- 6.16 **Order to Leave:** The Electoral Officer:
- (a) may order a person to leave the polling station if that person has breached any provision of this Regulation which threatens either the maintenance of peace and order at the polling station, or the voting process, including where the Electoral Officer believes on reasonable grounds that a person has done so; and
  - (b) will immediately request the assistance of the RCMP to remove any such person from the polling station, failing that person leaving the polling station as ordered by the Electoral Officer.

## 7. COUNTING THE VOTES

- 7.1 **Depositing the Mail in Ballots:** Upon the closing of the poll, the Electoral Officer shall in the presence of the 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;
  - (b) check that the name on the Voter Declaration Form is that of an 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.
- 7.2 **Defective Mail in Ballots:** The Electoral Officer shall set aside any Mail in Ballots received for which the conditions in both subsections 7.1 (a) and (b) are not satisfied.
- 7.3 **Counting the Ballots:** After the Mail in Ballots have been deposited in the ballot box under section 7.1, the Electoral Officer shall in the presence of the 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;

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- (b) mark as “rejected” all ballots:
  - (i) that have been marked incorrectly; or
  - (ii) upon which anything appears by which the Elector can be identified;
- (c) take note of any objection made by any 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 Electors as directed by section 7.4, adding any such ballots which are accepted to the vote count;
- (g) confirm whether a majority of the Electors on the Voters List voted, and whether the majority of the Electors who voted approved the referendum; and
- (h) prepare and sign the statement of the Referendum Vote Results in the form of Appendix E to this Regulation.

7.4 **Mail in Ballots from Deceased Electors:** The Membership Coordinator will provide the Electoral Officer with a list of the 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 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 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 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 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 Electors, mark them “accepted”, count them, and include them in the final tally of votes.

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- (e) if the Electoral Officer concludes that the Mail in Ballots from deceased 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 Elector who apparently voted by Mail in Ballot.
  - (f) the Electoral Officer shall satisfy himself by questioning this witness, whether the Mail in Ballot for the deceased Elector was completed, signed, and witnessed, and then mailed either by the deceased Elector or the witness, back to the Electoral Officer prior to the Elector passing on. If so, the Electoral Officer shall open the inner sealed envelope containing the Mail in Ballot from that deceased Elector, mark the ballot "accepted", count the ballot, 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 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 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 7.10
- 7.5 **Ballots Set Aside or Rejected:** Ballots set aside or rejected under any of sections 7.2, 7.3 or 7.4 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.
- 7.6 **Recount:** A recount is conducted by the Electoral Officer if there are five or fewer votes between approval and rejection of the referendum.
- 7.7 **Tie:** A tie in the voting is resolved by the Electoral Officer who conducts a draw.
- 7.8 **Public Declaration:** The Electoral Officer then makes a public declaration to the Electors of the Referendum Vote results.
- 7.9 **Referendum Vote Results:** The Electoral Officer completes the record of the Referendum Vote Results in the form of Appendix E to this Regulation, and within seven days of the date of the Referendum Vote posts those results:
- (a) in the Administration Office; and
  - (b) on the Band website.
- 7.10 **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.

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7.11 **Destruction of the Ballots:** Provided an Appeal of the result of the Referendum Vote is not filed under Article 8, the Electoral Officer shall destroy all ballots used in the voting and all referendum documents after 90 days from the date of the vote.

## 8. APPEALS

8.1 **Means of Contesting:** The validity of a Referendum Vote result may be contested only in accordance with this Article.

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

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

8.4 **Parties to the Appeal:** The parties to the Appeal shall be Chief and Council, the Electoral Officer, the Appellant and any other persons whose participation is necessary to the proper disposition of the Appeal.

8.5 **Grounds of Appeal:** The grounds of Appeal shall be that a contravention of this Regulation is likely to have affected the result of the Referendum Vote.

8.6 **Minor or Technical Breaches:** Any minor or technical breaches of this Regulation not likely to affect the result of the Referendum Vote, will not be subject to Appeal, or otherwise grounds for contesting the result of the Referendum Vote.

8.7 **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.

8.8 **Informing the Band and Electoral Officer:** The Appellant shall forthwith deliver to Chief and Council, the Electoral Officer and any other parties to the Appeal, a copy of the Appeal after filing in the Court registry.

8.9 **Material to be Provided to the Court:** On receipt under section 8.8 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.

8.10 **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;

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- (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 Referendum Vote, or refer the subject matter of the Referendum Vote back to the Band with directions for the conduct of a new vote among the 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.

8.11 **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.

8.12 **Bringing the Decision into Effect:** Following the decision by the Court on the Appeal, Chief and Council, the Membership Coordinator and the Electoral Officer shall take whatever steps are necessary to bring that decision into effect.

8.13 **Distribution of the Decision:** The reasons of the Court shall be made available by the Membership Coordinator, for distribution to the General Band Membership.

8.14 **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 Referendum Vote and the Appeal.

## 9. APPROVAL BY GENERAL BAND MEMBERSHIP

9.1 **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 or repealing it.

9.2 **Custom of the Band:** Any approvals or consents required from the General Band Membership prior to bringing this Regulation into effect, amending or repealing it, shall be obtained according to the custom of the Band, as set out in this Article 9.

9.3 **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.

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- 9.4 **Broad Consensus:** Subject to section 9.5, 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.
- 9.5 **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.
10. **NOTICE**
- 10.1 **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:

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- (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.

10.2 **Band Newsletter and Website:** The Band may, in addition to the methods specified in section 10.1, give written notice to the Electors by placing the notice:

- (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 10.1, of the newsletter by the Band to that Elector; or
- (b) on the Band website, in which case the notice shall be deemed to have been given and received by all Electors on the fourth business day after placing by the Band on the website.

10.3 **Invalid Notice:** Any notice received by the Band from an Elector or other person under this Regulation, has to be in writing, have the signature of the Elector or other person at the end, and be dated, to be a valid legal notice.

10.4 **Current Addresses:** All Electors shall be responsible to advise the Administration Office of their current mailing, delivery and e-mail addresses, and fax and phone numbers.

## 11. APPENDICES

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

**Appendix A – Ballot**

**Appendix B – Mail in Ballot**

**Appendix C – Notice of Referendum**

**Appendix D – Voter Declaration Form**

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Appendix E – Referendum Vote Results

Appendix F – Appeal

12. COMING INTO EFFECT

12.1 **Approval Process:** Following consultation with the General Band Membership, in accordance with the custom of the Band as described in Article 9, this Regulation shall be brought into legal effect by Council Resolution.

Coming Into Effect

The ASHCROFT INDIAN BAND CHIEF AND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Chief and Council duly convened and held on the 6th day of September, 2019 that:

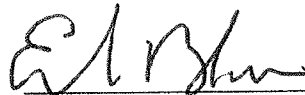
The General Band Membership having been consulted, in accordance with custom of the Ashcroft Indian Band, this Regulation is issued under the authority of the Chief and Council of the Band, to come into immediate legal effect.

ASHCROFT INDIAN BAND

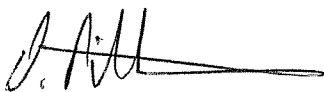
Per:



Chief



Councillor



Councillor



**ASHCROFT INDIAN BAND**

**REFERENDUM 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](mailto:cnlc@CNixonLaw.ca)  
[www.CNixonLaw.ca](http://www.CNixonLaw.ca)

File No. 112-065  
CN / sv

**APPENDIX A**  
**BALLOT**  
**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

The question upon which you as an Elector are asked to vote is:

---

---

I vote either

Yes

No

Place a cross, check mark or other mark in one of the boxes.

Do not otherwise mark this ballot.

**APPENDIX B**  
**MAIL IN BALLOT**  
**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

The question upon which you as an Elector are asked to vote is:

---

---

I vote either

Yes

No

Place a cross, check mark or other mark in one of the boxes.

Do not otherwise mark this ballot.

Please follow the letter of instruction from the Electoral Officer to mail this ballot once completed, in the two envelopes provided, to the Electoral Officer.

**APPENDIX C**  
**NOTICE OF REFERENDUM**  
**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

The question to be submitted to the Electors for a Referendum Vote is:

\_\_\_\_\_  
\_\_\_\_\_

The date on which the Referendum Vote will take place is: \_\_\_\_\_, 20\_\_\_\_

The polling station will be located at the Ashcroft Indian Band Administration Office, 414 Cornwall Road, Ashcroft, BC, V0K 1A0, and will be open for voting from 9:00 AM to 8:00 PM.

The votes will be counted at the polling station at the close of the poll.

Electors may vote either in person at the polling station, or by Mail in Ballot received by the Electoral Officer prior to the close of the poll. Please forward a written request and proof of identity to the Electoral Officer if you require a Mail in Ballot package.

The Electoral Officer is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No: \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail: \_\_\_\_\_

An information meeting will be held by the Band on the Referendum Vote at the Band Administration Office on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_AM/PM.

\_\_\_\_\_  
(Signature of Electoral Officer)

Please print name \_\_\_\_\_

**APPENDIX D**  
**VOTER DECLARATION FORM**  
**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

**To accompany mail in referendum ballots**

I, \_\_\_\_\_ (print name), state that:

1. I am a member of the Ashcroft Indian Band, and my Band membership number is \_\_\_\_\_.
2. I will be 18 years of age or older on the day of the Referendum Vote on \_\_\_\_\_, 20\_\_\_\_.
3. I know of no reason why I am ineligible to vote in the referendum.
4. I have read and understood the information package regarding the Referendum Vote and have voted freely and without compulsion.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in  
\_\_\_\_\_ (name of town or city, and province).

<hr/> <p>(Signature of Elector)</p>	<hr/> <p>(Signature of witness)</p> <hr/> <p>(Name of witness)</p> <hr/> <p>(Address of witness)</p> <hr/> <p>(Phone number of witness)</p>
-------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------

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(OR)

**ONLY COMPLETE THIS PART OF THE FORM IF THE ELECTOR HAS REQUIRED ASSISTANCE TO VOTE**

I am the person who assisted the Elector by marking the Ballot as directed by him or her, and completing the Voter Declaration Form to identify the Elector, and signing below. In this case, the Elector does not have to sign above.

<hr/> <p>(Signature of Person Assisting Elector)</p>	<hr/> <p>(Signature of witness)</p> <hr/> <p>(Name of witness)</p> <hr/> <p>(Address of witness)</p> <hr/> <p>(Phone number of witness)</p>
------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------

**APPENDIX E**  
**REFERENDUM VOTE RESULTS**  
**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

The question submitted to the Electors of the Band for a Referendum Vote held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ was:

---

---

1. The number of Electors on the Voters List was \_\_\_\_\_
2. The number of Electors who voted was \_\_\_\_\_
3. A majority of the Electors on the Voters List voted [*circle one*]    yes                      no
4. The votes in favour of the question submitted on the referendum were \_\_\_\_\_
5. The votes against the question submitted on the referendum were \_\_\_\_\_
6. The majority of those Electors who voted [*circle one*]    approved                      rejected  
the referendum.
7. As a majority of the Electors on the Voters List voted, and the majority of those Electors who voted approved the referendum, the referendum is approved by the Electors:  
  
                                         [*circle one*]    yes                      no
8. The number of ballots set aside was \_\_\_\_\_
9. The number of ballots rejected was \_\_\_\_\_

Dated at Ashcroft, BC, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Electoral Officer Signature

Please print name \_\_\_\_\_

**APPENDIX F**

**APPEAL**

**ASHCROFT INDIAN BAND REFERENDUM REGULATION**

Filing: **The Registrar**  
British Columbia Supreme Court  
455 Columbia Street  
Kamloops, BC V2C 6K4

To: **The Electoral Officer on the Referendum:**

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_

And to: **Ashcroft Indian Band Chief and Council (the "Chief and Council")**  
414 Cornwall Road, PO Box 440  
Ashcroft, BC V0K 1A0  
Attention: Chief  
  
Phone: 250-453-9154  
Fax: 250-453-9156

And to: **Any other parties to the Appeal:**

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_

This Appeal is filed in the Kamloops Registry of the BC Supreme Court pursuant to Article 8, Appeals, of the Ashcroft Indian Band Referendum Regulation (the "**Regulation**"). The Appeal is filed regarding the result of a vote on a referendum (the "**Referendum Vote**") held by the Ashcroft Indian Band (the "**Band**") amongst its Electors, pursuant to the Regulation.

1. Person filing the Appeal (the "**Appellant**"):

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Address: \_\_\_\_\_



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I am an Elector of the Ashcroft Indian Band: *[circle one]* Yes No

I am a member of Chief and Council of the Band, and am filing the Appeal on behalf of the Band: *[circle one]* Yes No

I am the legal representative of: \_\_\_\_\_, and am filing the Appeal on behalf of that party.

2. The Referendum Vote that is being appealed:

Date of Referendum Vote: \_\_\_\_\_

Question submitted to the Electors of the Band for the Referendum Vote: \_\_\_\_\_

\_\_\_\_\_

The referendum was: *[circle one]* approved rejected by the Electors of the Band.

3. The contravention of the Regulation, that is being appealed:

Date of contravention: \_\_\_\_\_

Who contravened the Regulation: \_\_\_\_\_

Nature of contravention: \_\_\_\_\_

\_\_\_\_\_

4. The grounds of the Appeal are:

*[The Appeal shall be on the basis that a contravention of the Regulation is likely to have affected the result of the Referendum Vote.]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. The Appellant will deliver a copy of this Appeal following entry in the Court registry, to the Electoral Officer, to Chief and Council, and to any other parties to the appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Signature of Appellant/Legal Representative  
Please Print Name: \_\_\_\_\_