
CUSTOM ELECTION CODE AND REGULATIONS

WHEREAS the Kapawe’no First Nation has the inherent Aboriginal rights, Treaty rights and authority to govern relations among its members and between the First Nation and other governments.

AND WHEREAS the current customs and traditions of the Kapawe’no First Nation require democratic, fair and open elections for the leadership.

AND WHEREAS the Kapawe’no First Nation now desires that the customs and traditions of the Band in relation to the appointment of the Chief and the election of the Councillors be incorporated and recorded in written customary election regulations and procedures.

AND WHEREAS the peoples of the Kapawe’no First Nation approved by vote the adoption of the Custom Election Code and Regulations of the Kapawe’no First Nation as outlined herein.

NOW THEREFORE, the Chief and Council of the Kapawe’no First Nation at a duly convened meeting of the Chief and Council, hereby enact the following code and regulations to govern the election process of the Kapawe’no First Nation.

SHORT TITLE

1. This code may be cited as the “Kapawe’no First Nation Custom Election Code and Regulations”.

INTERPRETATION

2. In this code and regulations,
 - a. “Act” means the Indian Act, 1985 R.S.C., and as amended from time to time.
 - b. “Candidate” means a person who is properly confirmed by the Electoral Officer as having been properly nominated pursuant to sections 17-19..
 - c. “Chief” means a person holding the office of Chief pursuant to these regulations.
 - d. “Committee” means the Election Appeal Committee as specified in section 47.
 - e. “Council” means those members holding the offices of Chief and Councillors and who are empowered to act on behalf of the First Nation according to First Nation tradition and the Indian Act , 1985 R.S.C.
 - f. “Councillor” means a person elected to the office of Councillor pursuant to these regulations.
 - g. “Elder” means a person who is 55 years of age or older, same definition as senior.
 - h. “General Election” means an election held for the office(s) of Councillor.



- i. Election Day” means the date set for conducting a General Election, By–election or Run-off Election.
- j. “Elector” means a person whose name is entered on the First Nation’s Membership list and is the full age of eighteen (18) years on or before the day of Election.
- k. “Electoral Officer” means a person appointed by Resolution of the Council who is responsible for conducting General Elections, By-elections, and/or Run-off Elections.
- l. “First Nation” means the Kapawe’no First Nation and its members.
- m. “List of Electors” means a list of Electors compiled by the Electoral Officer pursuant to the Regulations.
- n. “Quorum of Council” means at least two members of Council, one of whom must be the Chief, are present.
- o. “Regulations” means The Custom Election Code and Regulations of the Kapawe’no First Nation.
- p. “Run-off Election” means an Election held in the event of a tie among the leading candidates for an office.
- q. “Duly Constituted General Meeting” means a meeting of the majority of electors for the purpose of considering and voting on the proposed amendments to this Election Code and Regulations.
- r. “Majority of Electors” means 50% plus (1) one of the eligible electors of the Kapawe’no First Nation pursuant to 2(k) of this Election Code and Regulations Definitions.
- s. “Reserve” means the Kapawe’no First Nation.
- t. “Nation” means the Kapawe’no First Nation.
- u. “Member” means a person whose name is entered on the Treaty 8 and Aboriginal Rights List maintained by the Nation.
- v. “Treaty 8 and Aboriginal Rights List” means the list of members maintained by the Nation.
- w. “Tribal custom law” means the traditional, customary form of law honored by the Kapawe’no First Nation since time immemorial.



COMPOSITION AND TERM OF OFFICE OF COUNCIL

3. Composition

The composition of the Kapawe'no First Nation Council is established through the appointment of position based on tribal law custom and the clan system.

The First Nation will be governed by a Council of one (1) Chief and two (2) Councillors, each representing a clan of the Kapawe'no First Nation.

4. Term of Office

The term of office for Chief and Council is for life, unless the Chief or Councillor resigns.

5. Position of Chief

The Chief holds his or her position as Chief for life, or until he or she appoints a new Chief and continues to meet the eligibility requirements for the office of Chief.

No elections are held for the position of Chief unless the reigning Chief dies without appointing a successor.

If the reigning Chief dies without the appointment of a successor, and an election is required to appoint a new Chief, then the Kapawe'no Custom Election Code and Regulations will be followed.

A Chief cannot be removed from office by another member of Council or the membership. Only a former Chief of the Kapawe'no First Nation has the authority to remove a reigning Chief from office. If a former Chief removes a reigning Chief from office, the former Chief has the option of resuming the position of Chief or appointing a new Chief.

6. Position of Councillor

Councillors are appointed by the membership based on tribal custom law. Each clan has one position on Council, and elects a representative from their clan. Only members of the clan whose respective Council position is being elected are eligible to vote.

Once appointed, the term for Councillor is for life, unless the Councillor resigns and continues to meet the eligibility requirements for the office of Councillor.

7. Assumption of Office

Each elected Candidate will assume office immediately following the count and confirmation of votes and the declaration of elected candidates by the Electoral Officer.



ELECTION DAYS

8. Subject to sections 5 and 6, the date for the Election will set upon receipt of a notice of resignation or upon notification of the vacancy of a Council position. Within five (5) days of the setting of the date for the election, a notice will be sent to all Kapawe’no First Nation members, living on and off reserve, providing 45 days notice of the election and the name of the clan position. Only members of the clan for which the position is being filled may vote in the Election, although other members of the Nation may be present.

Date to be set by Chief and Council through Band Council Resolution.

ELECTORAL OFFICER

9. Appointment

At least thirty six (36) days prior to the date set for an Election, an Electoral Officer must be appointed by a Resolution of the Council.

10. Qualifications

The individual appointed by Chief and Council to assume the role of Electoral Officer must:

- a) Be over 30 years of age.
- b) Not be an employee of Band
- c) Be a non Band Member
- d) Not be affiliated with the Kapawe’no First Nation

11. Term of Appointment

The Electoral Officer’s appointment will commence on the date specified in the Council Resolution and continue until six (6) months after the expiry of the Election Appeal period. Unless otherwise determined by a Resolution of the Council, the Electoral Officer will serve as the Electoral Officer for any Run-off Elections arising from the General Election.

12. Remuneration

The Council will also determine in the Resolution appointing the Electoral Officer, the remuneration to be paid to the Electoral Officer.

13. Duties

The general duties and obligations of the Electoral Officer are outlined herein, in Schedule “A” of the Regulations and as may be defined by the Council by Resolution from time to time.



NOMINATIONS

14. Notice of Nomination Meeting

At least twenty eight (28) days prior to the date set for an Election, the Electoral Officer must post Notices of a Nomination Meeting in public places on the Kapawe'no First Nation and any other locations Council may designate.

15. A Notice of a Nomination Meeting must include the following information:

- a) The Qualifications of persons eligible to be Candidates (set forth in section 17);
- b) The specific time, place, and date for the nomination meeting and its duration;
- c) A List of Electors; and
- d) A copy of the Regulations.

16. Date for Nomination Meeting

The nominations meeting will be held fourteen (14) full days prior to the date set for the Election.

17. Persons Eligible for Nomination

- a) Subject to sections 17(b), (c) and 18, any Elector who is on the Membership List of the Nation, is eighteen (18) years of age or older by the Election Day, is a member of the clan for which the election is being held and continuously resident on reserve for at least twelve (12) months prior to the date of nomination is eligible to be nominated for the position of Councillor.
- b) Persons owing money to the First Nation are required to set up a repayment plan three weeks prior to Elections and maintain payments on repayment arrangements and ongoing financial commitments to the First Nation during their stay in office. Default would be grounds for dismissal. This section refers to Electors and families or persons with whom they are living, and does not include debts of family members not living with the elector.
- c) The Electoral Officer will confirm the status of indebtedness, repayment plan, and status of payments with the Band Manager.
- d) Any person nominated for a position must provide a copy of their Criminal Record Check and Child Welfare Check to the Electoral Officer within 14 days of nomination.



18. Process for Nomination

- a) A motion is made and seconded at and during the nomination meeting to nominate the person. The motion and seconding of the motion must be made by two Electors, neither of whom is the person they are nominating;
- b) The person nominated is present at the meeting and accepts the nomination;
- c) The person nominated submits a payment of \$200.00 in cash or certified cheque to the Kapawe'no First Nation. The payment is non-refundable and must be delivered to the Electoral Officer on day of nomination. All nomination payments will be deposited and used for the benefit of the First Nation.

19. Limitations on Nominating

An Elector may only nominate and/or second the nomination of one person for the office of Chief and no more than six (6) persons for the office of Councillor.

20. Conduct of Nomination Meetings

The Electoral Officer will conduct the nomination meeting.

21. Posting of Nominees

Within forty eight (48) hours following the nomination meeting, the Electoral Officer must post the names of Candidates nominated and the office for which they are nominated in public places on the Kapawe'no First Nation and any other locations the Council may designate.

22. Withdrawal of Nominees

Any person nominated may withdrawal his name from nominations by giving notice in writing to the Electoral Officer not less than seventy-two (72) hours before the Election Day. The notice must be signed by the withdrawing Candidate and witnessed.

ELECTION BY ACCLAMATION

- 23. At the end of the nomination meeting, if the number of candidates nominated for any office is the same or less than the number to be elected, the Electoral Office will declare the persons nominated to be elected, subject to confirmation of eligibility.
- 24. Immediately upon having declared a Candidate elected, the Electoral Officer will give the First Nation Council written notification of the name(s) of the Candidate(s) elected by acclamation.



ELECTIONS

25. Notice of Election

- a) At least twelve (12) days prior to the General Election, the Electoral Officer must post Notices of Election in public places on the Kapawe'no First Nation and any other locations the Council may designate.
- b) The Notice of Election must set out the following information:
 - i) The Candidates nominated and the office for which they are nominated;
 - ii) The location of the Polling Station and the hours when the Polling Station will be open;
 - iii) A list of Electors
 - iv) a copy of these Regulations.

26. Administrative Preparations

The Electoral Officer must ensure all necessary preparations are undertaken for the proper conduct of the Election or Run-off Election including arrangements of Polling Stations, construction of proper election facilities and voting compartments, preparation of ballots, acquisition of ballot boxes, preparation of written voting instructions, ensuring Polling Clerks and interpreters are available at each Polling Station and proper completion of any other necessary and incidental administrative functions.

27. Location of Polling Stations

The Polling Station will be located on the Kapawe'no First Nation.

28. Secret Vote

Voting in all Elections and Run-off Elections will be by secret ballot. No person may be required to disclose in any legal proceeding whether they voted or for which particular Candidate they voted.

29. Restriction on Voting

- a) An Elector may only vote for persons whose names are indicated on the ballot.
- b) Electors are limited to voting for candidates of their respective clan.
- c) Electors make only make one vote per position.



30. Manner of Voting

- a) On an Election Day, upon entering the Polling Station each Elector will receive a ballot for each position being filled for which the Elector is eligible to place a vote. Ballots will contain the names of Candidates nominated for each respected position.
- b) Each ballot must contain the following instructions:
 - i) Each Elector is entitled to vote for Candidates for their respected clan position
 - ii) The Elector must use an “X” or “+” or “√” to mark their vote.
 - iii) No other writing or marking may be made on the ballot.
 - iv) If you accidentally tear or damage a ballot, please request a replacement from the Polling Clerk or Electoral Officer. Torn, defaced or otherwise mutilated ballots will not be counted.
- c) Physically handicapped or otherwise incapacitated Electors who are incapable of marking a ballot may indicate their selection of Candidates to the Polling Clerk who will mark their ballots on their behalf.
- d) Physically handicapped or otherwise incapacitated Electors who are unable to attend the polling station to vote may make arrangements with the Polling Clerk to have a ballot delivered to their home to complete. A Polling Clerk will be designated to undertake this role for all such electors. The completed ballot will be sealed by the Elector, returned to the Polling Clerk, who will then deliver the completed ballot to the polling station.
- e) If requested to do so by the Electoral Officer or the Polling Clerk, each person requesting a ballot must present identification to the Electoral Officer or Polling Clerk verifying his age, name and residency.
- f) After marking the ballot in the voting compartment, the Elector must immediately fold the ballot and return it to the Electoral Officer or Polling clerk who will initial it and place it in the ballot box.
- g) An Elector who inadvertently spoils their ballot may return the ballot to the Electoral Officer or the Polling Clerk and receive another ballot. The officer must write the word “spoiled” on the ballot, initial the ballot, and place it in the ballot box.
- h) With the exception of 30(d), no Elector who has received a ballot from the Electoral Officer or Polling Clerk may take the ballot out of the Polling Station and anyone doing so forfeits their right to vote at that Election.



- i) The Electoral Officer or Polling Clerk must record the total number of ballots distributed to Electors at each Polling Station, the number of Electors who voted, and the number of spoiled or unused ballots.

31. Refusal of Permission to Vote

The Electoral Officer or Polling Clerk may refuse to allow a member to vote if:

- i) The person's name is not listed on the List of Electors;
- ii) The person is intoxicated by any substance; or
- iii) The person is otherwise not eligible to vote.

32. Removal of Persons from Polling Stations

The Electoral Officer or Polling Clerk must maintain order in the Polling Station and may cause to be removed from the Polling Station any person who, in any way, interferes, disrupts, or attempts to influence the orderly conduct of the vote.

COUNTING OF VOTES

33. Immediately upon the close of Polling Stations, the Electoral Officer or Polling Clerk will, in the presence of at least one other Elector and any Candidates who wish to attend, open each ballot box and count and record the number of votes cast for each Candidate.

34. Void Ballots

The Electoral Officer or his designate will examine the ballots and a ballot will be declared invalid and not to be counted if:

- a) it is not bearing the initials of the Electoral Officer or Polling Clerk;
- b) it has more votes than an Elector is entitled to cast;
- c) it has anything written or marked on it by which a voter can be identified;
- d) it is torn, defaced, or is otherwise dealt with by an Elector so they can be identified;
- e) it is not marked with an "X" or "+" or "√" or
- f) it does not have a vote cast on it by an Elector



35. Ballot Count Form

The Electoral Officer or Polling Clerk must complete and sign a Ballot Count Form supplied by the Electoral Officer containing the following information:

- i) The name of the Polling Station;
- ii) The date of the Election;
- iii) The number of ballots marked for each Candidate; and
- iv) A summary of the total number of ballots distributed to Electors, the number of Electors who voted, the number of rejected, spoiled, voided and unused ballots and the number of ballots not accounted for.

36. Sealing Ballot Boxes

Following the initial count by the Electoral Officer or Polling Clerk, all ballots and the Ballot Count Form must be placed in a ballot box, sealed, and returned to the Electoral Officer.

37. Destruction of Ballot and Ballot Count Forms

The Electoral Officer will retain custody of the sealed ballot boxes. Six (6) months following the expiry of the Election Appeal period, the Electoral Officer will destroy the ballots and Ballot Count Forms.

DECLARATION OF OUTCOME

38. Within six (6) hours of the closing of the Polling Stations, the Electoral Officer will declare the Candidate for each position elected receiving the greatest number of votes to be elected;

39. Posting of Election Results

Within twenty four (24) hours of the closing of the Polling Stations, the Electoral Officer must post a notice in the First Nation office identifying the names of those Candidates elected and the office for which they are elected.

RUN-OFF ELECTION

40. Tie Vote

In the event of a tie vote, a Run-off Election will be held within fourteen (14) days of and including the Election or By-election giving rise to the tie vote. The only eligible Candidates will be these Candidates who received the same largest number of votes in the Election or run-off Election.



41. Notice of Run-off Election

Within three (3) days following the Election Day giving rise to the Run-off Election. The Electoral Officer must post a Notice of Run-off Election in the same time, manner, form, and places as the initial Notice of Election set forth in section 25.

42. List of Electors for Run-off Elections

In a Run-off Election, the List of Electors must be the same as the List of Electors used in the Election.

43. Procedures for Run-off Elections

The location of polling stations and the rules and procedures for conducting a Run-off Election will otherwise be the same as those used for conducting an Election.

44. Tie Vote in Run-off Election

In the event of a tie vote in the Run-off Election, another Run-off Election will be held.

ELECTION APPEALS

45. Grounds for Appeal of Election

Within fourteen (14) consecutive days of and including the Election Day, or in the event a Councillor or Chief is elected by acclamation, within fourteen (14) consecutive days of and including the day of the nomination meeting, any Candidate or member voting in the election may appeal the results of an Election or Run-off Election if, on reasonable and probable grounds, they believe:

- a) An error was made in the interpretation or application of the Regulations materially and directly affecting the conduct and outcome of the Election or Run-off Election;
- b) A Candidate did not meet the eligibility requirements set for sections 17 and 18.
- c) A Candidate was guilty of promoting or aiding corrupt Election practices including, but not limited to, bribery, threats and intimidation of Candidates, Electors, the Electoral Officer or Polling Clerk;
- d) A person voted who was not eligible to vote; or
- e) Any other circumstance or event materially and directly affecting the conduct and outcome of the Election or Run-off Election.



46. Notice of Appeal

An appeal may be made by the forwarding a Notice of Appeal in writing to the Electoral Officer at the Council offices outlining the grounds for the appeal.

The Notice of Appeal must be received at the Council offices within fourteen (14) days from the Election Day or, in the case of an election by acclamation, within fourteen (14) days from the nomination meeting, giving rise to the appeal.

The Electoral Officer will promptly notify all Candidates for the office affected by the Notice of Appeal.

47. Election Appeal Committee

- a) Shall consist of three (3) Elders from the Kapawe'no First Nation community, one from each clan.
- b) Members may not be part of the immediate family of the person or persons whose conduct is in the subject of the appeal.
- c) Shall have legal representation.
- d) Committee shall be appointed by Chief and Council.
- e) Remuneration shall be set by Chief and Council.

48. Meeting of the Election Appeal Committee

Subject to section 47, within seven (7) days of receiving the Notice of Appeal, the Electoral Officer will convene a meeting of the Committee for the purpose of hearing the appeal. The meeting will be chaired by the Electoral Officer who will not be entitled to vote.

49. Notice of the meeting must be posted in the same places as the Notices of Election were posted at least three (3) days prior to the date set for the meeting.

50. The appellant, the individual in respect of which the appeal is brought and other interested parties or their representatives may present oral or written submissions to the Committee at the meeting.

51. Within three (3) days of the meeting, the committee will promptly make one of the following decisions;

- a) To deny the appeal on the basis the evidence presented did not fully and properly establish the necessary grounds for an appeal;



- b) To uphold the ground for an appeal but allow the results of the Election in question to stand as the infraction did not materially or directly affect the result of the Election; or
- c) To uphold the appeal and call for:
 - i) a new Election or Run-off Election
 - ii) a new Election or Run-off Election for only those offices directly affected; or
 - iii) a Run-off Election

52. Forthwith, the Electoral Officer will notify affected parties of the decision

BY-ELECTIONS

53. By-elections are utilized to fill vacancies to Council that occur during a specified term of office. Because Kapawe'no Council appointments are for life, no provisions have been established for a By-Election process for the Nation.

AMENDMENTS TO CUSTOM ELECTION CODE AND REGULATIONS

54. The Custom Election Code and Regulations of the Kapawe'no First Nation may be amended in the following manner:

- a) Proposed amendments to the Regulations must first be approved by motion of the Council.
- b) Upon approval of the proposed amendments, Council establishes a date for a Special General Meeting.
- c) The Council must then post a Notice of a Special General Meeting of the Electors of the First Nation on the Kapawe'no First Nation and such other places as Council may determine at least fourteen (14) days prior to the date of the Special General Meeting.
- d) The Notice must state the purpose of the meeting is to consider and vote upon amendments to the Regulations. It must also state the time, place, and date of the meeting.
- e) A copy of the proposed amendments to the Regulations must be attached to the Notice.



55. Approval of Amendments by Electors

A duly constituted Special General Meeting of Electors to consider and vote upon amendments will consist of a majority of electors.

Upon the approval of the proposed amendments by the majority of Electors and voting by secret ballot at such a dully-constituted Special General Meeting, the Chief and Council shall ratify the said Amended Regulations within fourteen (14) days. The Amended Regulations shall be adopted and be effective as of the date of the meeting.

56. Affidavit

Following the Special General Meeting, the Chief, a Councillor, or chairman of the meeting will swear an affidavit stating:

- i) Proper notice of the meeting was given;
- ii) The meeting was duly constituted;
- iii) The motion which was voted upon;
- iv) The total number of votes cast by Electors;
- v) The number of votes for and against the amendments;
- vi) That, to the best of their knowledge, the vote was properly conducted.

SEVERANCE

57. If all or any part of any provision contained herein is deleted or found to be inoperable by a Court, it will be severed from the Regulations and the remaining provisions will remain in full force and effect.

THIS CODE IS HEREBY ENACTED at a duly convened meeting of the Chief and Council of the Kapawe'no First Nation this _____ day of _____, 2003.

Chief Frank T. Halcrow

Witness

Sydney Lee Halcrow, Councillor

Witness

Peter H. Chalifoux, Councillor

Witness



SCHEDULE “A”

TO THE CUSTOM ELECTION CODE AND REGULATIONS OF THE KAPAWE’NO FIRST NATION

DUTIES OF THE ELECTORAL OFFICER

The Electoral Officer will be responsible for the completing and/or performing the following:

1. In co-operation with the First Nation Residency Clerk, prepare a list of Electors.
2. Establish an election file for each election containing copies of all correspondence, memorandums, and other information relevant to the conduct of each Election, By-election or Run-off Election.
3. Undertake any activities or responsibilities necessary to conduct the nominations manner prescribed in the Regulations.
4. Supervise and ensure all Elections, By-elections or Run-off Elections are conducted in accordance with the Regulations and procedures outlined herein and do all things necessary to ensure proper conduct of and Election, By-election or Run-off Election.
5. At least seven (7) days prior to an Election Day, appoint such Polling Clerks and Interpreters, as he/she deems necessary for the proper conduct of the Election, By-Election or Run-off Election. Polling Clerks must not be Electors. Interpreters must not be a member of the Kapawe’no First Nation and must be fluent in the Cree language.
6. Arrange for the appropriate polling booths constructed in such a manner as to insure the secrecy and privacy of the voting procedure.
7. Any other duties assigned by the Council from time to time relating to the conduct of an Election, By-election or Run-off Election.

