

## ALGONQUINS OF PIKWAKANAGAN CUSTOM ELECTION CODE

**PRINCIPLE:** Wherever our Members live, we have a duty and an obligation to acknowledge their voting rights and always to act according to their interest by applying the highest standards.

### **PREAMBLE:**

**Whereas,** the Algonquins of Pikwakanagan assert our inherent sovereignty which emanates from our people, our culture and our Aboriginal rights, and as a natural corollary, hereby exercise our powers of self-government and self-determination as recognized and affirmed by Section 35 of the Constitution Act, 1982;

**And Whereas,** the Algonquins of Pikwakanagan have come to a community decision and desire to set out our customary leadership selection rules, and to then modify them to ensure that they continue to honour our traditions and serve the interests of our First Nation;

**And Whereas,** the *Indian Act* acknowledges our Aboriginal right to select our leadership through the Custom of our First Nation.

**Therefore, Be It Resolved** that the Algonquins of Pikwakanagan claim the right and jurisdiction to set our own custom election code.

In this law, reference to the masculine includes the feminine, and references to the singular include the plural.

### **1.0 DEFINITIONS**

**“Administrative Changes”** means, for the purposes of clause 17, a change to the Code to remove any conflicts or inconsistencies that may exist between any of the provisions of this Code and any provision of any applicable law or regulation, to correct any typographical error in this Code, to reflect changed names or references within the Code to persons, offices, or laws, or to make corrections or changes required for the purpose of curing or correcting a clerical omission, mistake, manifest error or an ambiguity arising from defective or inconsistent provisions contained in this Code, provided that in all cases the amendment does not alter the content or effect of the Code.

**“Affidavit”** means a written statement confirmed by oath or affirmation.

**“Appeal Board”** means a board that will investigate, hear, and determine appeals, and which shall consist of three (3) Members of the Algonquins of Pikwakanagan selected by the Manager of Lands, Estates, & Membership (LEM) or their designate from a list of members maintained by the Assistant, (LEM) for that purpose.

**“BCR”** means a Council Resolution.

**“Candidate”** means a Member who

- a) is eligible to hold office;
- b) has been duly nominated for election; and
- c) has accepted such nomination.

**“Code”** means this Election Code.

**“Conflict of Interest”** means any outside interest which causes a reasonable person, aware of all of the circumstances, to suspect a person’s interests may conflict with their duties of office. For the purposes of this Code, and without limiting the scope of this term, this would include a Councillor or Chief holding elected office in another political organization whose interests may conflict with those of the Algonquins of Pikwakanagan.

**“Corrupt Practice”** means any practice, act, or statement that is intended to improperly influence the outcome of an election under this Code or represents an attempt to prevent, fetter, or influence the free exercise of a voter’s right to choose who to vote for. It can include, but is not limited to: buying a vote, stuffing a ballot box, intimidating a voter, or a misuse of personal information held by Council.

**“Council”** means the body composed of those persons elected pursuant to this Code and includes the Chief.

**“Deputy Electoral Officer”** means a person appointed by the Electoral Officer to assist in the election process.

**“Election”** means an election or by-election held pursuant to the provisions of this Code.

**“Electoral Officer”** means a person who will have the responsibility of conducting the nomination meeting and the election.

**“Disqualifying Offence”** means a criminal offence which is contrary to the best interests of the Algonquins of Pikwakanagan First Nation. Disqualifying offences include but are not limited to serious crimes involving violence with weapons or injury, sexual assault, spousal assault, theft, fraud, or breach of trust, but would not include a non-violent offence in the defense of Aboriginal or treaty rights.

**“Member of the Algonquins of Pikwakanagan”** or **“Member”** means a person whose name appears in the Algonquins of Pikwakanagan Membership Register or who has been accepted to have his name appear on the Membership Register.

**“Members of the Same Family”** of any person includes their father, mother, son, daughter, brother, sister, spouse, grandparents, grandchildren, stepfamily, and their spouse’s family.

**“Membership Register”** means the list maintained pursuant to the Algonquins of Pikwakanagan Membership Code containing the name, date of birth and gender of every member of the Algonquins of Pikwakanagan.

**“Nominee”** means a person who has been nominated for office.

**“Nominator”** means a Voter who nominates a person for office.

**“Pikwakanagan”** means the land reserved for the use and benefit of the Algonquins of Pikwakanagan (otherwise known as Indian Reserve No. 39).

**“Polling Station”** means a building, hall, or room, which is selected to be the site for voting to take place.

**“Scrutineer”** means a person designated by the candidate to be present for the count of the ballots.

**“Secunder”** means a Voter who seconds the nomination of a person running for office.

**“Voter”** means a person who, pursuant to the provisions of this Code, is eligible to vote.

## **2.0 GOVERNING BODY**

- 2.1. The Governing Body of the Algonquins of Pikwakanagan shall consist of a duly elected Council comprised of one (1) Chief and Councillors. The number of Councillors shall not be less than four (4) and shall not exceed twelve (12) and will be determined by Council of the previous term prior to each election on the basis of workload.
- 2.2. A quorum of Council shall be more than half of the total number of elected Councillors. To conduct a Council meeting, there must be a quorum of Council present. In the event that the minimum requirement is not met by one Councillor, voting privileges may be extended to the Chief for the purpose of securing quorum and conducting the meeting. In order to extend the vote to the Chief, an alternate chair must be appointed by Council.
- 2.3. In order to pass, a motion presented to Council must be supported by more than half the total number of elected Councillors, regardless of the number of Councillors in attendance at the Council meeting. If quorum is reached by the Chief voting under clause 2.2, all motions require a unanimous vote in order to pass.

## **3.0 ELIGIBILITY**

### **3.1 Eligibility to Vote:**

A person is eligible to vote if:

- a) Their name appears in the Membership Register or they provide documented proof to the Electoral Officer that they are entitled have their name included in the Membership Register; and,
- b) They have attained the age of eighteen (18) years.

### **3.2 Eligibility to be a Candidate:**

Each Candidate for election for the position of Chief or the position of Councillor must:

- a) be a person whose name appears in the Algonquins of Pikwakanagan Membership Register;
- b) have attained the age of eighteen (18) years on or before the date upon which the nomination meeting is held;
- c) have a nominator and seconder for his nomination;
- d) have accepted his nomination in writing to the Electoral Officer within ten (10) calendar days of the nomination meeting;
- e) have provided a current Canadian Police Information Check (CPIC) to the Electoral Officer within ten (10) calendar days of the nomination meeting (CPIC must be dated no earlier than three (3) months prior to nomination meeting);
- f) have no record of conviction for a disqualifying offence within the three (3) years prior to the nomination meeting.

If all of the above conditions are met, the Electoral Officer will place the candidate's name on the ballot.

### **3.3 Eligibility to Hold Office**

- a) A person may hold and continue to hold the office of Chief or Councillor only if:

- i) he has been duly elected pursuant to the provisions of this Code;
  - ii) he is not convicted of a disqualifying offence while in office; and
  - iii) he has not been removed in accordance with Section 5 of this Code.
- b) No more than two (2) Members of the Same Family may be elected to Chief and Council at the same time. If this is about to happen then the Electoral Officer shall advise those family members and allow for volunteers to withdraw their candidacy. If the issue is not resolved by voluntary withdrawals within twenty-four (24) hours of the notification, then,
- i) if any member of that family has been elected or acclaimed to the position of Chief, they will be seated in priority by the Electoral Officer;
  - ii) in the case of acclamations to Council, the successful candidate or candidates shall be selected by the Electoral Officer depositing the names into a container and randomly selecting names until there are only two members from the same family who sit on Council; or
  - iii) after an election, the Electoral Officer shall seat members of the Same Family based on who has the highest number of votes until there are two members from the same family who are on Council. In the case of a tied vote, the Electoral Officer shall deposit the tied candidates' names into a container and randomly select the candidate who will hold office.

#### 3.4 **Councillors Residing Outside of the Community**

Councillors are not required to reside within the Algonquins of Pikwakanagan First Nation; however, Councillors residing outside of the First Nation will not receive additional expense reimbursements due to their place of residency.

#### 4.0 **TERM**

- 4.1 The term of the duly elected Council shall be for a three (3) year period from the date of their election.
- 4.2 An Election for Council shall be held every three (3) years, on the last Saturday in March.

#### 5.0 **VACANCY**

- 5.1 The position of Council becomes vacant when the person who holds that office is deemed by Council to be ineligible to hold that office by virtue of this Code, which may include but is not limited to situations where the office holder:
  - a) is no longer eligible to be a candidate for the position as defined in article 3 above;
  - b) is convicted of a disqualifying offence;
  - c) passes away;
  - d) resigns in writing from office and the resignation is accepted by Council Resolution;
  - e) is declared to be mentally incompetent by a Court of competent jurisdiction or by a medical professional;
  - f) is absent for more than three (3) consecutive meetings of Council without just cause;
  - g) was found guilty, in connection with an election, of a Corrupt Practice;
  - h) engages in, during his term, any wrongful conduct that substantially affects, interrupts or interferes with the performance of his official duties or his ability to govern the First Nation, or the reputation of the First Nation; or,

- i) is found to be in a conflict of interest situation that cannot effectively be resolved.
- 5.2 To determine if a member of Council is ineligible to remain in office due to any of the criteria outlined in 5.1,
- a) a motion must be made before Council seeking a determination of their ineligibility;
  - b) the motion must set out the facts relied upon by the party making the motion;
  - c) the motion must be served on the subject of the motion at least fourteen (14) calendar days before Council considers the motion;
  - d) the subject must be allowed to respond to the allegations and argue against the motion;
  - e) the Council procedure on the motion shall be consistent with fundamental justice, fairness, and the traditions and customs of the Algonquins of Pikwakanagan;
  - f) Council's decision shall be rendered by BCR and must include reasons for the decision;
  - g) If Council determines the person is ineligible to remain in office, then Council shall remove the person from office effective immediately.
- 5.3 A member of Council removed from office by Council may, within fifteen (15) calendar days of the removal, appeal the decision and removal to the Appeal Board established to hear such appeals, but only on the grounds that:
- a) the evidence presented could not reasonably support the decision;
  - b) the appellant was denied fundamental justice or fairness in the procedure used by the Council to remove them from office; or,
  - c) there is new and substantial evidence which was unavailable to the appellant at the time of the decision.
- 5.4 The Appeal Board shall, unless extenuating and substantial reasons exist, hear the appeal and provide their findings within thirty (30) calendar days of receiving the appeal. It is within the power of the Appeal Board to:
- a) quash the decision and re-instate the appellant;
  - b) quash the decision and send the matter back to Council for a new review; or
  - c) deny the appeal.
- 5.5 Members may have an elected official removed by a petition and an affidavit. To be considered:
- a) The affidavit must clearly state the allegation against the elected official's integrity and ability to uphold his or her duties of office, provide evidence of the allegation, and request that the elected official be removed from office;
  - b) the petition must clearly state its purpose and the grounds being relied upon;
  - c) the signatures on the petition must have been signed no more than two (2) months prior to its submission to Council and have been signed by at least 15% of the eligible voters;
  - d) the signatures must include a legibly printed copy of the signer's name and address, as well as the date and place where the signature was made; and,
  - e) both the affidavit and the petition must be submitted to Council for referral to the Appeal Board to determine the request.

- 5.6 When considering a petition, the Appeal Board shall give the elected official an opportunity to respond to the allegations. If the Appeal Board determines that there is merit and that the alleged matter has affected the person's integrity and ability to uphold his or her duties of office, then the Appeal Board shall report its findings to Council and recommend that the person be removed from office. Council shall consider the Appeal Board's report and findings, and may remove the elected official by Council Resolution outlining their reasons. If the allegations are not proven, or found not to warrant a removal, the recommendation will be to dismiss the petition. The decision of Council is final.

## **6.0 POWERS OF THE CHIEF**

- 6.1 The Chief shall be an *ex-officio* member of all committees and portfolios.
- 6.2 The Chief shall be the Chairperson of all meetings of the duly elected Council where the Chief is present. In the absence of the Chief, Council shall select a Chairperson of their choice from the Councillors present.
- 6.3 The Chief shall recommend the Councillors to positions on committees or to portfolios of the duly elected Council.
- 6.4 The Chief shall be the political spokesperson for the Algonquins of Pikwakanagan.
- 6.5 The Chief shall not vote on motions before Council, unless the Chief has stepped down to secure quorum under clause 2.2.

## **7.0 POWERS OF THE GOVERNING BODY**

- 7.1 The duly elected Council, may by quorum of Council, make laws in relation to Section 81, 82, 83, 84, 85.1, 86 and 88 of the *Indian Act* or as outlined under the First Nation Lands Management Act Land Code.
- 7.2 Where any law of the Algonquins of Pikwakanagan is contravened, in addition to any other remedy available to Council or any penalty imposed by the laws, a court of competent jurisdiction may make, at any time, an order prohibiting the continuation or repetition of the act which contravenes the law or an order with respect to any penalty imposed by the law. Such contravention may be restrained by court action at the instance of the Council.
- 7.3 The Council may make orders or regulations with respect to elections that do not contradict this Code, and, without restricting the generality of the foregoing, may make regulations with respect to:
- a) meetings to nominate candidates;
  - b) the appointment and duties of electoral officers;
  - c) the way voting is to be carried out;
  - d) election appeals;
  - e) secrecy of voting;
  - f) the holding of a poll;
  - g) what constitutes a spoiled ballot;
  - h) vacancies of the office of Chief or Councillor;
  - i) the selection of Appeal Board Members to hear appeals on the election; or
  - j) any matter ancillary to the matters dealt with herein.

## **8.0 APPOINTMENT OF THE ELECTORAL OFFICER**

8.1 The Electoral Officer will be appointed by Council Resolution.

## **9.0 ELECTION CALL**

9.1 At least seventy-five (75) calendar days prior to the date of an election, the Council shall appoint an Electoral Officer. The Council shall direct that the Electoral Officer be provided with:

- a) a copy of the Membership Register;
- b) the current mailing addresses of the members of the Algonquins of Pikwakanagan;
- c) a copy of this Election Code; and,
- d) a copy of the Election Rules of Notice and Procedures.

9.2 A written statement setting out the name of the Electoral Officer and a preliminary voters list shall be posted in the Administration Office of the Algonquins of Pikwakanagan and such other places in Pikwakanagan as deemed necessary by the Electoral Officer. A Notice of Election will be mailed to all members who have provided a current mailing address.

## **10.0 NOMINATION MEETING**

10.1 The Electoral Officer shall hold a nomination meeting at least forty-five (45) calendar days prior to Election Day.

10.2 If the number of persons nominated for Council positions does not exceed the number of positions to be filled, the Electoral Officer will declare the nominees elected by acclamation when all criteria as outlined in Section 3.2 and 3.3 of this Code are met by the candidates.

10.3 Persons must acknowledge acceptance of their nomination in writing within ten (10) calendar days of the nomination meeting. A person who is nominated for office must provide a current Canadian Police Information Check and meet the criteria outlined in Section 3.2 of this Code before having his name placed on the election ballot.

## **11.0 PLATFORM PROCESS**

11.1 If an election is to be held, the Electoral Officer shall invite the nominees to speak to the electors after nominees have accepted their nomination.

## **12.0 ELECTION**

11.1 The polling station shall be open from 9:00 a.m. to 7:00 p.m. local time.

11.2 The polling station shall provide for secrecy of voting.

### **13.0 APPEAL BOARD**

- 13.1 The Appeal Board Members are a group of volunteers, appointed by Council, to sit and hear cases and appeals on all laws and Codes developed by the Algonquins of Pikwakanagan.
- 13.2 The Manager LEM shall name three (3) persons from the list of Board Members within five (5) calendar days of the nomination meeting. If an appeal is received, the Manager LEM shall take reasonable steps to ensure that the Board Members are not in a conflict of interest in relation to the appeal and the appellant. The Manager LEM will select an additional two (2) alternates from the list of Board Member in case of conflict by any of the original 3 persons selected. Those chosen persons must be informed that they will be dismissed if they have been involved in the election process in any manner except voting.

### **14.0 ISSUES PRIOR TO ELECTIONS**

- 14.1 Any issues or concerns that there was a breach of the election rules or procedures which may affect the results of the election must be submitted in writing to the Electoral Officer.
- 14.2 The Electoral Officer will review the written submission and make a determination as to whether:
  - A) there was a breach of either this Custom Election Code or the Custom Election Rules of Notice and Procedures on a balance of probabilities; and,
  - B) there is a reasonable risk that the breach may influence the outcome of the election.
- 14.3 If the Electoral Officer determines that both 14.2 conditions are met, the Electoral Officer will take the necessary measures to ensure that the breach does not influence the outcome of the election, which may result in Council setting a new Election Date. Otherwise, the Electoral Officer will inform the applicant that the appeal will be dismissed.

### **15.0 ELECTION APPEALS AFTER ELECTION**

- 15.1 An appeal must be received within fifteen (15) calendar days after an election.
- 15.2 Any candidate in the election or any voter who gave or tendered his vote at the election, who has reasonable grounds for believing that:
  - 15.2.1 a person nominated to be a candidate in the election was ineligible to be a candidate; or
  - 15.2.2 a person or persons who voted in the election was ineligible to vote, and that vote, or votes, could have made a difference in the election results; or
  - 15.2.3 there was corrupt practice in connection with the election or there was a contravention of this Code that could have affected the results of the election,may lodge an appeal by completing and submitting an Appeal Form and a petition by registered mail to the Assistant, Lands, Estates & Membership with particulars thereof duly supported by a sworn affidavit.
- 15.3 The appellant's petition must be signed by ten (10) members who voted in the election and who support the appeal and the grounds for the appeal. Signatures must include the signer's legibly printed name, and date and place that they signed the petition.



- 15.4 The Appeal Board shall investigate the allegations within thirty (30) calendar days from the closing date of the appeal period and shall give the appellant and the subject of the appeal the right to submit evidence and make submissions on the appeal. The appellant must prove his or her allegations on a balance of probabilities.
- 15.5 Where the Appeal Board finds that a candidate for the position of Chief has not been elected to office in accordance with this Code, that candidate shall vacate the office to which he was elected upon receipt of written notification, and a new election will be called to fill the vacant Chief position.
- 15.6 Where the Appeal Board finds that a candidate for the position of Councillor has not been elected to office in accordance with this Code, that candidate shall vacate the office to which he or she was elected upon written notification and the Electoral Officer shall appoint the next candidate with the most votes on the election results.
- 15.7 Where the Appeal Board finds that a person submitted evidence to the Appeal Board which they knew or reasonably out to have known contained false or misleading information, that person may be barred from running for office for a period of up to five (5) years.

## **16.0 BY-ELECTIONS**

- 16.1 The duly elected Council may require a by-election to be held when necessary and the rules applying to the regular elections shall apply to by-elections except that the by-election must occur within sixty (60) days after Council's decision to hold a by-election has been made.

### **Chief Position Vacancy**

- 16.2 If the Chief's position becomes vacant, a by-election will be called, except if the Chief's position becomes vacant within one (1) year prior to the date of the next scheduled General Election, in which case the Council shall elect from amongst its own numbers an Acting Chief for the remainder of the current term and that person shall have the full powers of the office of Chief.

### **Councillor Position Vacancy**

- 16.3 If a Councillor position is vacated,
- 16.3.1 within one (1) year immediately following the election, the candidate in the election who received the next highest number of votes who is not a member of the same family as two members of Chief and Council will be offered the vacated position. If the candidate refuses this offer, then a by-election may be called;
- 16.3.2 If a Councillor position becomes vacant within the second year after the election, Council will decide whether to call a by-election;
- 16.3.3 If a Councillor position becomes vacant within one (1) year prior to the date of the next scheduled General Election, that Councillor position may remain vacant for the remainder of the term, and

notwithstanding any discretion Council has to call a by-election, a by-election must be held if quorum cannot be reached because of vacancies.

## **17.0 AMENDMENTS TO THIS CODE**

- 17.1 Any proposed administrative changes to this Code must be presented to the Standing Committee of Council on Lands, Estates & Membership who will make a recommendation to Council whether to make a change to the Code. Upon receipt of a recommended administrative change, Council shall review the recommended change and if it is deemed to be in the best interest of the First Nation, Council shall mail the proposed changes to all Members of the Algonquins of Pikwakanagan and allow them at least thirty (30) days to reply to the proposed changes with any concerns.
- 17.2 Any member who wants to challenge those changes must do so in writing to the Council within the thirty (30) day period.
- 17.3 If a challenge is received, then to take effect, a meeting of the voters will be held and a vote must be taken where a majority of those present who vote by show of hands agree to the proposed changes. Notice of this meeting must:
- a) be posted in the Administration Office and at other prominent places in Pikwakanagan; and
  - b) be mailed out to all members who will be over eighteen (18) years of age at the time of the vote and who have provided a current mailing address at least two (2) weeks prior to the meeting.
- 17.4 If no challenge is received, then to take effect, the Council may approve the proposed changes after the end of the thirty (30) day period.
- 17.5 If the Standing Committee recommends significant change to the Election Code, then a Referendum, as described below, must be held to decide if the changes are to be made. A significant change is any change other than an administrative change.
- 17.6 This Code may be amended by a referendum in which over fifty percent (50%) of the total numbers of votes are in favour of the amendment. The total number of votes will not include spoiled ballots.
- 17.7 Notice of the vote shall be given a minimum of forty (40) days in advance by posting in a prominent place at the Administration Office a notice containing a summary of the intended changes and the date and time of the vote. The posting must also include the referendum procedures to be relied upon on at any such referendum. All postings and recommended changes must be fixed and made publicly available thirty (30) days before any such referendum.
- 17.8 In any referendum on an Election matter, the vote shall be carried out in a manner consistent with this Subsection. Every voter shall be entitled to one vote. The Council shall make Rules of Notice and Procedures for Referendum by BCR.
- 17.9 Where a protest was registered prior to this Code coming into effect and was not resolved at the time the Code came into effect, that protest shall be resolved in accordance with the provisions of the Election Code in effect at the time the protest was registered.
- 17.10 The Council may approve, by BCR, any procedures (including the Oath of Office and Election Rules of Notice and Procedures) for meetings of Council, forms, and other administrative rules for the better administration of this Code.