

Penticton Indian Band Draft Custom Election Code
Engagement Feedback
Legal Review

1. Instead of the CAO deciding on the Chief Electoral Officer, Deputy Electoral Officer and the Adjudicator, how about having the Elders and Youth group make the selection?
No issues with this from a legal perspective but would need to set out a process which meets legal requirements. It is a policy issue which requires further discussion.
2. Where it refers to “discrimination” include, as defined by the “Canadian Human Rights Act”.
The word used is “discriminate” in sections 23(g) and 130(d). From a legal perspective, the word as used here probably has a broader meaning than it does in the HRA, so I would not recommend this change.
3. Have a term limit (2 terms).
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
4. If a nominee for Chief or Councillor had resigned from their position, they should be disqualified from running in the next election.
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
5. The CAO should be disqualified from consideration for either Councillor or Chief due to conflict of interest.
A better approach if this issue is to be addressed is to require that all employees who run for office take a (paid or unpaid) leave of absence during the election and resign if they are elected. It is a policy issue which requires further discussion.
6. Chief and Council should swear their oaths of office in a PIB Member ceremony.
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
7. The clause about a candidate having a history of being terminated by PIB should be removed. Convicted in court needs to be added.
These are possible and do not raise legal issues. It is a policy issue which requires further discussion.
8. Spell out CEO as Chief Electoral Officer so that people don’t get confused.
This is possible and does not raise legal issues. It is a drafting issue which requires further discussion.
9. Prohibit candidates who have outstanding Child Support Payments.
This is possible and does not raise legal issues. I will point out that it can be difficult to

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Engagement Feedback
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confirm that a person owes child support. Also, need to allow for person to pay off debt to run. It is a policy issue which requires further discussion.

10. Seek out ways to protect voter identity fraud in the mail-in ballot section. By including important information like; full name, date of birth, address and status number, we are potentially exposing members to risk of identity theft.
The electoral process operated by the CEO has built-in confidentiality measures which protect Electors' identity.
11. Add "Custom" to "Code" any areas pertinent to the word "Code".
This is possible and does not raise legal issues. It is a drafting issue which requires further discussion.
12. In any area which pertains to either one or more council member, use the "Council(lors)" to ensure the point can be applied to one or more members of the council.
Legal interpretation requires that words and phrases be interpreted in context so that this would only be an issue where there is ambiguity. I have reviewed all instances of the word "Councillor" and "Councillors" and do not consider there to be any ambiguity. If this remains a concern, I would recommend adding a section which states that the singular includes the plural and *vice versa*.
13. Ensure consistency in the number of days, choose either 3 or 5, but don't go back and forth.
Consistency of the number of days is less important than ensuring the efficient flow of the election process.
14. Section 136, remove the \$100 application fee as it is a barrier to the member's ability to be heard.
This is possible and does not raise legal issues. I will point out that this is a common practice as it prevents frivolous appeals and the \$100 fee is not prohibitive. Could make the fee refundable if the appeal is successful. It is a policy issue which requires further discussion.
15. Remove the word "May" in the Code as it promotes ambiguity in the application of the Custom Code.
The word "may" is used extensively in legal documents and its meaning is well understood.
16. Change "Ordinarily Resident on Reserve" to "Primary Residence".
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.

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Engagement Feedback
Legal Review

17. Section 87, change “nominate” to “appoint”.
This is possible and does not raise legal issues. It is a drafting issue which requires further discussion.
18. Section 120 (a), indicate a “Public inauguration ceremony on PIB IR#1”
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
19. Rather than a non-gender specific term of “they” being used, change all “He, she or they” to “PIB Member”.
This is possible and does not raise legal issues. I will point out that many of the “they”s do not refer to a “PIB Member”. Also, if this change is to be made, I would recommend “Elector(s)” rather than “PIB Member”. It is a drafting issue which requires further discussion.
20. Section 142, change “whether or not the information would be admissible in a court of Law” to “would be admissible (if necessary) in a court of law.”
The current phrase is a term of art which is well understood. Recommend leaving as is.
21. Section 156, change “Community Meeting” to “Band Meeting”.
This is possible and does not raise legal issues. It is a drafting issue which requires further discussion.
22. Section 152 (d), change “10 days” to “20 days”.
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
23. Remove sections 30-36.
These sections are legally required as otherwise an Elector may be excluded from voting which would likely be found to invalidate an election.
24. Remove section 10 & 11.
These sections are needed to ensure that byelections can be conducted.
25. In section 45, indicate that both the nominator and candidate need to be in the Hall for the nomination meeting.
This is possible and does not raise legal issues. It is a policy issue which requires further discussion.
26. Section 44 (c), if the Criminal Record Check is not completed the candidate needs to provide a receipt or documentation that the CRC has been requested.

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This section does not require that the Candidate complete a criminal record check in 5 days but that the Candidate “consent to a criminal record search”.

27. Instant Runoff Voting (IRV), also called Plurality with Elimination, is a modification of the plurality method that attempts to address the issue of insincere voting. In IRV, voting is done with preference ballots, and a preference schedule is generated. The choice with the *least* first-place votes is then eliminated from the election, and any votes for that candidate are redistributed to the voters’ next choice. This continues until a choice has a majority (over 50%). This is similar to the idea of holding runoff elections, but since every voter’s order of preference is recorded on the ballot, the runoff can be computed without requiring a second costly election. This voting method is used in several political elections around the world, including election of members of the Australian House of Representatives, and was used for county positions in Pierce County, Washington until it was eliminated by voters in 2009. A version of IRV is used by the International Olympic Committee to select host nations.

This is possible and does not raise legal issues. It is a policy issue which requires further discussion. I note that there are hundreds of voting methods and a thorough review of the pros and cons and appropriateness to PIB elections need to be considered before a particular voting method is adopted.

28. That Council be reduced to 4 plus the Chief.

This is possible and does not raise legal issues. It is a policy issue which requires further discussion.

29. The Electoral officer and any other person assigned to the process be Band Members appointed by Council and ratified by the Electorate.

This is possible and does not raise legal issues. It is a policy issue which requires further discussion. I note that very few First Nations appoint Band Members as election officials due to concerns over conflicts of interest and impartiality.

30. That preferential voting be allowed. Meaning that the voter does not have to vote for each of the council seats. I.e. May vote only for 2-3 candidates.

This is possible and does not raise legal issues. It is a policy issue which requires further discussion. I note that most Codes allow for Voters to cast their ballots for “up to” the full number of Councillors.