

Missanabie Cree First Nation CUSTOM ELECTION CODE

Ratification Date: April 18, 2015



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PREAMBLE

WHEREAS:

- A. **Whereas** the Missanabie Cree First Nation is a First Nation with existing Aboriginal, Treaty and inherent rights and powers that include governance of its land, resources and people, and in particular, the selection of the leaders of the Missanabie Cree First Nation; and
- B. **Whereas** the *Indian Act*, R.S.C., 1985, c. I-5, has to date regulated the electoral process of the Missanabie Cree First Nation, however, the Missanabie Cree First Nation desires to exercise its inherent power and authority to assume full control of its leadership selection process and to relieve the *Indian Act*, and its associated regulations, from application to the Missanabie Cree First Nation;
- C. **Whereas** this Missanabie Cree First Nation Custom Election Code has been considered by the citizens of the Missanabie Cree First Nation and has been approved by their vote on April 18, 2015;
- D. **Now therefore**, the custom election process to select the leaders of the Missanabie Cree First Nation in accordance with its practice and traditions is set forth in this Missanabie Cree Custom Election Code.

THE MISSANABIE CREE FIRST NATION, by and with the advice and consent of its citizens, enacts as follows:

1.0 CITATION

This Code shall be cited as the *Missanabie Cree First Nation Custom Election Code*.

2.0 DEFINITIONS

Unless otherwise expressly stated in this Code,

“Ballot” means a document that contains the names of all candidates for elected positions to be used for the conduct of an election;

“Resolution of Council” means the evidence in writing of a formal decision made by Council at a duly convened meeting;

“Candidate” means a person who is confirmed by the Electoral Officer as having been properly nominated in accordance with section 6 of this Code;

“Chief” means a person elected to the office of Chief pursuant to this Code;

“Council” means a body composed of Chief and Councillors elected pursuant to this Code and who is empowered to govern the Nation and act on its behalf according to the Nations’ customs, traditions, practices, and to exercise the power and authority set out in the *Indian Act*, R.S.C. 1985, c.1-5.

“Councillor” means a person elected to the office of Councillor pursuant to this Code.

“Code” means the *Missanabie Cree First Nation Custom Election Code*;

“Election” means a formal voting process by which the citizens of the Nation elect persons to hold the offices of Chief and / or Councillor in accordance with the provisions of this Code;

“Election Appeal Board” means a Board established pursuant to section 14 of this Code;

“Election Day” means the date set for voting in a regular Election;

“Election Poll” means the Poll held on Election Day to cast and record votes in accordance with this Code;

“Elector” means a person whose name appears on the Missanabie Cree Citizenship Register and is the full age of eighteen (18) years on or before Election Day, and is otherwise not disentitled under this Code to vote in an Election;

“Electoral Officer” means a person appointed by a Resolution of Council who is responsible for conducting Elections;

“Identification” means documentation for the purposes of verifying a person’s identity as an eligible Elector, and includes but is not limited to an Indian status card, driver’s licence or birth certificate;

“List of Electors” means a list of eligible Electors who may vote in an Election prepared by the Citizenship Registrar and authorized by the Electoral Officer;

“Mail-in-Ballot” means a Ballot mailed to an Elector to be completed and delivered or mailed back to the Electoral Officer;

“Malfeasance” means a wrongful act or unlawful misconduct that cannot be legally justified or conflicts with the law or this Code;

“Mentally Incapacitated” means a person who is unable through a mental disorder or illness to carry on every day affairs of life or to care for one’s person or property with reasonable discretion;

“Missanabie Cree First Nation” or “MCFN” means the Missanabie Cree First Nation, which is a band defined by the traditions of its citizens and the *Indian Act*, R.S.C. 1985, c.1-5 ;

“Scrutineer” means a person designated or appointed by a candidate to represent him or her during Election Day to scrutinize the conduct of an election poll, including the voting, the counting of votes, and a recount if applicable;

“Time” means reference to Eastern Standard Time;

3.0 COMPOSITION AND TERM OF COUNCIL

3.1 Composition

3.1.1 The Council shall consist of one (1) Chief and five (5) Councillors.

3.2 Term of Office

3.2.1 The term of office of the Chief and Councillors elected pursuant to this Code is three (3) years.

3.2.2 The term of the Chief and Councillors who hold office immediately prior to the coming into force of this Code shall conclude on the day following the first Election held in accordance with this Code.

3.2.3 Following an Election, the preceding Council, if requested by their successors, will work to assist the newly elected Chief and / or Councillors for a transition period of two (2) weeks at the same level of salary earned prior to the Election.

3.3 Extenuating Circumstances

3.3.1 A person who assumes a position on Council to fill a vacancy caused by the death, resignation or termination of an office holder, pursuant to this Code, will hold office for the remainder of that term of office of Chief or Councillor, as the case may be.

3.4 Assumption of Office

3.4.1 The elected Chief and / or Councillors shall assume office on the day following Election Day.

4.0 ELECTION DAY

4.1 Setting the Date

- 4.1.1 For a regular Election, the Council shall set the Election Day at least one hundred and fifty (150) days prior to the date upon which their current term ends, through a Resolution of Council.
- 4.1.2 Commencing upon the coming into force of this Code, an Election must be held every three (3) years in August, on a day prior to the expiration of the existing term of office for the Chief and Councillors.

5.0 ELECTION OFFICIALS

5.1 Appointment of Electoral Officer

- 5.1.1 At least one hundred and twenty (120) days prior to the Election Day the Council shall, through a Resolution of Council, appoint an Electoral Officer to preside over the Election of the Chief and Councillors.

5.2 Qualifications of Electoral Officer

- 5.2.1 The Electoral Officer must:

- a. be eighteen (18) years of age or older;
- b. have previous experience as a First Nations Electoral Officer, or be a practicing member of a Law Society in Canada with at least five (5) years related experience in representing First Nation clients;
- c. not be a citizen of the Missanabie Cree First Nation;
- d. not be an employee of the Missanabie Cree First Nation or its business entities or corporations.

5.3 Term of Appointment

The Electoral Officer's appointment will commence on the date specified in the Resolution of Council and continue until six (6) months after the Election.

5.4 Remuneration and Expenses

- 5.4.1 The Resolution of Council appointing the Electoral Officer shall set out the remuneration to be paid to the Electoral Officer.
- 5.4.2 The Council administration shall be responsible to pay for all related and reasonable expenses associated with the administration of the Election.

5.5 Duties and Responsibilities

5.5.1 In addition to any other duties that may be stipulated by Council in its Resolution appointing the Electoral Officer, the general nature and scope of the Electoral Officer's duties and responsibilities are set out in Schedule 'A' to this Code.

5.6 Appointment of Deputy Electoral Officer

5.6.1 The Electoral Officer shall, within thirty (30) days of his or her appointment, select and appoint a Deputy Electoral Officer to work under the direction and assist the Electoral Officer in the administration of an Election conducted pursuant to this Code.

5.6.2 The Deputy Electoral officer must be a person who is eighteen (18) years or older and a citizen of the MCFN, and who is not a participant in the nomination process for the current election.

5.6.3 In the event that the Electoral Officer is unable to perform his or her duties, the Deputy Electoral Officer shall temporarily act in the capacity of the Electoral Officer until he or she is able to resume his or her duties.

5.6.4 In the event that the Electoral Officer is unable to resume his or her duties, the Council will appoint a new Electoral Officer through a Resolution of Council.

5.6.5 The Electoral Officer and the Deputy Electoral Officer will sign an oath of office, to be affirmed by an MCFN Elder, to honour and abide by this Code and to act in the best interest of the MCFN in the discharge of his or her duties.

6.0 NOTICE OF ELECTION

6.1.1 The Resolution of Council that sets the Election date in accordance with sub-section 4.1.1 of this Code shall be posted at least one hundred and twenty (120) days prior to Election Day in one or more conspicuous places in the community and on the MCFN website.

7.0 NOMINATION OF CANDIDATES

7.1 Notice of Nomination

7.1.1 At least ninety (90) days prior to the Election Day, the Electoral Officer will post a Notice of Nomination in one or more public places as designated by the Council.

7.1.2 The Notice must include the following information:

- a. the qualifications of persons eligible for nomination as set forth in section 7.2 of this Code;
- b. the specific time, place and date by which nomination papers of prospective candidates must be submitted to the Electoral Officer.

7.2 Eligibility to be Nominated

7.2.1 A person may be nominated for the office of Chief or Councillor if that person is:

- a. a registered citizen of the Missanabie Cree First Nation; and
- b. eighteen (18) years of age on or before Election Day.

7.2.2 Any Elector of MCFN who:

- a. has been convicted of, but not pardoned for, an indictable offence under the *Criminal Code*, R.S.C. 1985, c. C-46 in the five years prior to the proposed nomination and was sentenced to a period of incarceration as a result of the criminal conviction;
- b. has been convicted or found liable by an independent inquiry, commission or court of law for corrupt practices related to any public office including dishonesty, malfeasance or fraud or has been convicted or been found liable for breach of trust;
- c. is subject to an order for parole which states that such person cannot hold public office; or
- d. has been removed from office as a Chief or Councillor and has yet to exhaust the restriction period pursuant to this Code;

is not eligible to be nominated for the position of Chief or Councillor.

7.2.3 An employee of the Missanabie Cree First Nation is eligible to be a candidate, however, he or she will be required to take a leave of absence from their employment with the First Nation effective from the date of nomination to the date following the Election Day.

7.2.4 If an employee referred to in subsection 7.2.3 is elected to office he or she shall be deemed to have resigned from his or her employment with Missanabie Cree First Nation upon the election results being announced.

7.3 Nomination for One Office Only

7.3.1 A person may be nominated for either Chief or Councillor but shall not be nominated for both offices.

7.4 Nomination Forms

7.4.1 The nomination application of each candidate for Chief or Councillor must be on a prescribed nomination form made available by the Electoral Officer at least ninety (90) days prior to the Election Day.

7.4.2 The Electoral Officer shall send the prescribed nomination form, reproduced in Schedule B of this Code, and a pre-paid return addressed envelope, by registered mail to all eligible Voters at least ninety (90) days prior to the Election Day.

7.4.3 A nominee must complete a nomination form and provide the names and signed attestation of the people who move and second a nomination, and who are citizens of the MCFN as evidenced by their citizenship registry numbers and their original signatures. Neither the Deputy Electoral Officer nor a member of the Appeal Committee can nominate or second a candidate's nomination for elected office.

7.4.4 The nominee must provide a signed statement acknowledging his or her acceptance of the nomination and their oath to abide by this Code and any other electoral rules or regulations prescribed by the First Nation.

7.4.5 A properly completed nomination form must be returned to the Electoral Officer in the return envelope provided in the nomination package, and must be received by the Electoral Officer no later than sixty (60) days prior to Election Day.

7.5 Close of Nominations

7.5.1 The period for receiving nominations shall be closed at midnight on the sixtieth (60) day prior to Election Day for a regular Election. The Electoral Officer will not accept any nomination forms received after the close of nominations.

7.6 Void Nominations

7.6.1 The Electoral Officer will reject any nomination form that fails to comply with the criteria in subsections 7.4.3, 7.4.4 or 7.4.5 and shall provide clear reasons to the proposed candidate for the rejected nomination.

7.6.2 If a candidate receives a notice of void nomination, the candidate may re-file their nomination form provided that it is returned before the close of nominations.

7.7 Posting Nominations

7.7.1 The Electoral Officer will notify all candidates of the results of the nominations and post the list of candidates in conspicuous public places designated by the Council within three (3) days after the closing date for nominations.

7.8 Appointing a Scrutineer

7.8.1 A candidate, once nominated, may appoint an election Scrutineer to represent him or her on Election Day at the Polls and during the counting of votes, including a recount if applicable. The appointed Scrutineer shall,

- a. be named in writing and submitted by the candidate to the Electoral Officer no later than twenty-four (24) hours prior to the opening of the poll on Election Day; and
- b. upon request by the Electoral Officer or his designate, show proof of his or her appointment as Scrutineer.

7.9 Restrictions on Campaigning

7.9.1 Once nominated, a candidate for office shall not:

- a. seek financial sponsorship, gratuities, gifts or monetary contributions for the purpose of campaigning for elected office; or
- b. campaign within the administration or business offices of the Missanabie Cree First Nation; or
- c. campaign on Election Day.

8.0 WITHDRAWAL OF CANDIDATES

8.1 Procedure for Withdrawal

8.1.1 A candidate may withdraw their nomination by providing written notice to the Electoral Officer within forty-five (45) days before Election Day. Upon receipt of written notice, the Electoral Officer shall accept the withdrawal and provide written confirmation to the withdrawing candidate no later than ten (10) days after receipt of the notice.

8.2 Death of Candidate

8.2.1 If a nominated candidate dies before the close of Polls on Election Day,

- a. the election shall proceed as if the deceased candidate had not died, and
- b. the Electoral Officer shall not count the votes of the deceased but shall otherwise validate the ballot and count the votes of the other nominees; and
- c. the Electoral Officer shall cause notice of the candidate's death to be posted at the polling station on Election Day.

8.3 Mental Incapacity of Candidate

- 8.3.1 If a nominated candidate is found to be mentally Incapacitated before the close of voting on voting day,
- a. the Election shall proceed as if the candidate had not become incapacitated; and
 - b. the Electoral Officer shall not count the votes of the incapacitated person but shall otherwise validate the ballot and count the votes of the other nominees; and
 - c. the Electoral Officer shall cause notice of the candidate's inability to participate as a result of incapacity to be posted at the polling station on Election Day.

9.0 ELECTION BY ACCLAMATION

9.1 Acclamation

- 9.1.1 At the close of Nominations, if the number of candidates for either the position of Chief and / or Councillors is the same as the number to be elected, and if the candidates comply with subsection 7.2 of this Code, the Electoral Officer may declare the person(s) nominated to be duly elected, as the case may be.
- 9.1.2 In the event of Acclamation of Councillors, at the first official meeting of the Chief and Council they will vote to appoint a Deputy Chief amongst themselves.

9.2 Notification

- 9.2.1 The Electoral Officer shall within three (3) days of the close of nominations give the Council written and official notification of the name(s) of the Candidate(s) declared elected by acclamation under section 9.1.1 and post the notice in a conspicuous public place in the Band Office and publish an official notice in MCFN Newsletter.
- 9.2.2 The acclaimed Chief and/or Council shall assume their duties of office on the day following the end of the term of the current Chief and Council.

10.0 VOTERS LIST

10.1 Preparation of Voters List

- 10.1.1 As soon as possible after the appointment of the Electoral Officer:

- a. the Citizenship Registrar shall prepare a Voters List that contains a list of eligible Electors in alphabetical order, their dates of birth and addresses;
- b. the Citizenship Registrar shall deliver the Voters List to the Electoral Officer within thirty (30) days of his or her appointment;
- c. the Electoral Officer shall post the Voters List no later than 90 days prior to Election Day in conspicuous places in the Band Office and print a copy in the MCFN Newsletter.

10.2 Revisions to Voters List

10.2.1 The Electoral Officer shall, after conferring with the Citizenship Registrar, revise the Voters List where, at any time prior to the election, it is demonstrated that:

- a. the name of an eligible Elector has been omitted from the Voters List;
- b. the name of an eligible Elector has been incorrectly set out in the Voters List; or
- c. the name of a person not eligible to vote is included in the Voters List.

10.3 Evidence for Adding Names to Voters List

10.3.1 A person whose name was omitted from the Voters List may provide evidence of his or her eligibility to vote by presenting to the Electoral Officer documentation to establish that:

- a. his or her name appears in the MCFN Citizenship Register or Band List, or is entitled to have his or her name entered on the Citizenship Register; and
- b. he or she is, or will be, on or before Election Day, eighteen (18) years age; or
- c. is otherwise eligible to vote in the Election.

10.3.2 If the Electoral Officer, after conferring with the Citizenship Registrar, is satisfied that the person's whose name was initially omitted from the Voters List is eligible to vote in the Election, the Electoral Officer will add his or her name to the Voters List.

10.4 Evidence for Removing Names from Voters' List

10.4.1 A person may demonstrate that the name of an individual not eligible to be an Elector is included in the Voters List by presenting to the Electoral Officer evidence that the individual:

- a. is neither on the Citizenship Register or Band List nor entitled to be on the Citizenship Register or Band List; or
- b. is not, and will not be, eighteen (18) years of age on or before Election Day, or
- c. is not otherwise eligible to vote at Missanabie Cree First Nation Election.

10.4.2 The Electoral Officer will confer with the Citizenship Registrar to determine validity of the allegations advance pursuant to subsection 10.4.1, and once a decision is made, will notify the person who challenged the name of the person on the Voters List.

11.0 ELECTIONS

11.1 Notice of Elections

11.1.1 At least forty five (45) days prior to the Election Day, the Electoral Officer must post a Notice of Election in conspicuous public places designated by the Council.

11.1.2 The Notice of Election must set out the following information:

- a. The list of candidates nominated and the offices for which they are nominated; and
- b. The date and location of the polling station and voting hours.

11.2 Secret Vote

11.2.1 Voting in all Elections shall be by way of a secret ballot.

11.3 Location of Polling Station

11.3.1 Polling station(s) shall be situated in a location(s) determined by Council and any other location the Electoral Officer deems necessary.

11.4 Mail-In Ballots

11.4.1 The Electoral Officer shall send by registered mail, a mail-in ballot package to all eligible voters on the Voters List.

11.4.2 Each mail-in ballot package shall contain:

- a. One (1) ballot listing in alphabetical order the candidates for the office of Chief and initialled on back by the Electoral Officer; and
- b. One (1) ballot listing in alphabetical order the candidates for the office of Councillor and initialled on back by the Electoral Officer; and
- c. One (1) postage paid return envelope pre-addressed to the Electoral Officer; and
- d. One (1) second envelope marked "Ballot" for insertion of the completed ballots;
- e. a voter declaration form prescribed by the Electoral Officer;
- f. a letter of instruction regarding voting by mail-in ballot; and
- g. such further information the Electoral Officer deems appropriate.

11.4.3 An Elector who has completed and delivered a mail-in ballot shall not be entitled to vote in person on Election Day.

11.4.4 In the event that an Elector has inadvertently spoiled or misplaced a mail-in ballot, the Electoral Officer shall provide to an Elector a mail-in-ballot package:

- a. a fresh ballot in exchange for the return of the spoiled ballot;
- b. a fresh ballot where the Elector has lost his or her mail-in ballot and has provided the Electoral Officer with a written affirmation that he or she lost the ballot which is signed by the Elector in the presence of a Notary Public.

11.4.5 Mail-in ballots not received on or before Election Day by close of Polls will not be accepted or counted as votes in the Election.

11.4.6 An Elector may exercise their vote by mail-in ballot by;

- a. marking the ballot by placing a cross, check mark or other mark that clearly indicates the Elector's choice but does not identify the Elector, opposite the name of the candidate for whom they desire to vote; and
- b. folding the marked ballot and placing the completed ballot in the envelope marked "Ballot" and sealing that envelope; and
- c. completing and signing the voter declaration form in the presence of a witness who is at least eighteen (18) years of age

and placing it, and the Ballot envelope, in the pre-addressed envelope referred to in subsection 11.3.4 (c); and

- e. mailing the ballot so as to be received by the Electoral Officer on or before Election Day by the close of polls

11.4.7 The Electoral Officer shall cause and be responsible for the secure keeping of all mail-in ballots which ballots shall not be opened and counted until the close of the Poll on Election Day in accordance with section 11.6.1.

11.5 Election Day Procedures

11.5.1 On Election Day, the polling station shall be opened for voting from 8:00 a.m. to 8:00 p.m. eastern standard time.

11.5.2 The Electoral Officer shall, prior to opening of the Poll, cause to be provided to his Deputy and/or other designates the ballot papers and materials for marking the ballot.

11.5.3 The Electoral Officer or his Deputy Electoral Officer shall immediately before the commencement of the Poll,

- a. open the ballot box and call such persons as may be present to witness that it is empty;
- b. proceed to lock and properly seal the box so that ballots can be deposited therein but cannot be withdrawn without unsealing the box or without evidence remaining of such tampering;

11.5.4 The ballot box shall remain sealed during the voting day and shall only be re-opened in accordance with 11.6.

11.5.5 The Electoral Officer or their designate shall, prior to the commencement of the Poll, provide a compartment at the polling station where Electors can mark their ballot papers free from observation and the Electoral Officer may appoint a constable to maintain order at the polling station.

11.5.6 No person shall remain at the polling station after their vote has been cast except,

- a. the Electoral Officer and Deputy Electoral Officer, constable if appointed.

11.5.7 Candidates' Scrutineers are entitled to:

- a. enter the voting place fifteen (15) minutes before the Poll opens and to inspect the ballot boxes, ballots and all other papers or forms relating to the vote but not so as to delay the timely opening of the voting place at 8:00 a.m. eastern standard time;

- b. examine, without touching, each ballot as the votes are being counted; and
- c. object to a ballot or to the counting of votes in a ballot under sections 11.6.3 and 11.6.4.

11.5.8 Where a person presents themselves for the purpose of voting, the Electoral Officer or their designate shall, if satisfied that the name of such person is entered on the Voters List at the polling station, and the person presenting himself or herself provides identification to verify their identity, provide them with a ballot on which to register their vote. An Elector who is present at the polling station at the time for closing set out in section 11.5.1 and who has not yet voted is entitled to vote.

11.5.9 Any Elector whose name has been left off the Voters List may, by swearing an oath or affirmation in the form prescribed by the Electoral Officer, in the presence of the Electoral Officer or his or her Deputy Electoral Officer, that they meet the requirements of an Elector and are entitled to vote in the Election. Upon swearing the oath or affirmation, the Electoral Officer will confer with the Citizenship Registrar and if the person is determined to be a citizen of the MCFN and eligible to vote, his or her name shall be added to the Voters List and they shall be permitted to vote.

11.5.10 After providing an Elector with a ballot, the Electoral Officer or their designate shall place in the proper column of the Voters List a mark opposite the name of the voter who received the ballot.

11.5.11 On receiving the Ballot from the Electoral Officer or their designate, the Elector,

- a. may, if necessary, ask the Electoral Officer or their designate to explain the method of voting;
- b. shall proceed to the compartment provided for marking ballots; and
- c. shall make a cross or other mark on the ballot within the space to the right of the name of the candidate or candidates for whom the Elector wishes to vote; and
- d. shall fold the ballot in a manner that conceals the names of the candidates; and
- e. shall return the folded ballot and deposit in the ballot box.

11.5.12 No person, other than prescribed in subsection 11.5.15 shall occupy the voting compartment at the same time as an Elector for the purpose of marking a ballot.

11.5.13 No person shall:

- a. interfere or attempt to interfere with an Elector who is marking a ballot;
- b. obtain or attempt to obtain at a polling station information about how an Elector intends to vote or has voted; or
- c. communicate any information obtained at a polling station about how an Elector intends to vote or has voted.

11.5.14 Every person who is present at the polling station or at the counting of the votes shall maintain the secrecy of the voting.

11.5.15 No Elector shall show their marked ballot to any person so as to reveal how they have voted, except where an Elector requires assistance because they are unable to read, are blind or are afflicted with a condition that prevents the Elector from marking their ballot. In those circumstances the Elector may request assistance and the Electoral Officer or their designate shall provide such assistance to the Elector in the voting compartment to mark their ballot.

11.5.16 The Electoral Officer or their designate shall note in the Voters List in the column for remarks opposite the Elector's name that assistance was requested, reason for assistance, and that such assistance was provided in accordance with section 11.5.17.

11.5.17 An Elector who has received a ballot shall not take it out of the polling station and any Elector who leaves without delivering the ballot to the Electoral Officer or their designate forfeits the right to vote and the Electoral Officer, or their designate, shall cause an entry to be made in the remarks column of the Voters List that the Elector took their ballot out of the polling station.

11.5.18 An Elector who has received a ballot and returns it to the Electoral Officer or their designate declining to vote forfeits the right to vote and the Electoral Officer, or their designate, shall immediately write the word "declined" on the back of the ballot with their initials, preserve it and shall then make an entry in the remarks column of the voters list that the Elector declined to vote.

11.5.19 The Electoral Officer or their designate may replace a ballot with another one if,

- a. it has been improperly printed;
- b. it has inadvertently been spoiled; or

- c. the Elector has marked the ballot issued to them otherwise than they intended.

11.6 Counting of Ballots

11.6.1 As soon as feasible after the close of the Poll, the Electoral Officer or the Deputy Electoral Officer shall, in the presence the Scrutineers, or the Electoral Officer's designates who are present, open each mail-in ballot envelope that was received, remove the mail-in ballot from the enclosed envelope marked "Ballot" without unfolding it, and

- a. reject the mail-in ballot if:
 - (i) the name of the Elector set out on the voter declaration form is not on the Voters List;
 - (ii) the Voters List shows the Elector has already voted;
or
 - (iii) the voter declaration form is not enclosed.
- b. If the mail-in ballot has not been rejected under the conditions set out in 11.6.1(a), the Electoral Officer or the Deputy Electoral Officer shall place a mark on the Voters List opposite the name of the Elector set out in the voter's declaration form and deposit the mail-in ballot in the ballot box.

11.6.2 Immediately after the mail-in ballots have been deposited under section 11.6.1, the Electoral Officer or Deputy Electoral Officer shall, in the presence of the Scrutineers or any Electoral Officer designates as are present, open the ballot boxes and:

- a. reject all ballot papers that,
 - (i) are spoiled as a result of too many circles or boxes marked;
 - (ii) are marked so as to identify the Elector.
- b. proceed to count the number of votes for each candidate;
- c. prepare a written statement of the number of votes given to each candidate, the total number of eligible Electors who cast a ballot and the number of ballot papers. The written statement will be signed by the Electoral Officer and witnessed by at least two (2) individuals present at the counting.

11.6.3 A Scrutineer may object to a ballot or the counting of some or all the votes on the grounds that the ballot or votes do not comply with this Code.

11.6.4 In the event of an objection by a Scrutineer, the Electoral Officer or Deputy Electoral Officer shall:

- a. decide all objections as they arise;
- b. establish a list in which the objections are summarized and individually numbered; and
- c. write the number of each objection on the back of the relevant ballot, initial the number and write the word “allowed” or “disallowed” followed by the Electoral Officer or Deputy Electoral Officer’s initials.

11.6.5 All accepted ballots indicating the votes given for each candidate respectively and all unmarked, rejected, cancelled, declined and unissued ballots shall be counted and sealed in separate envelopes by the Deputy Electoral Officer.

11.7 Determination of Outcome

11.7.1 Immediately after the votes are counted the Electoral Officer shall publicly declare:

- a. The candidate with the highest number of votes cast for Chief as duly elected for that position;
- b. The candidate with the highest number of votes cast for Councillor as duly elected, holding the title of Deputy Chief;
- c. The succeeding four (4) candidates with the highest number of votes cast for the office of Councillor, descending from the Deputy Chief, as duly elected to the remaining positions of Councillor.

11.7.2 In the event that two or more candidates receive the same number of votes to create a tie, the Electoral Officer will:

- a. announce the tie vote, and if the tie is between two candidates for Chief, shall make arrangements for a recount. If a recount does not resolve the tie, the Electoral Officer shall make arrangements to hold a mail-in ballot election for the position of Chief as soon as is practicable.
- b. announce the tie vote to the Electors and if the tie is between two or more Councillors, and maximum number of Councillors has not been reached with other candidates receiving higher votes, confirm all as elected to the position of Councillor; or

- c. announce the tie vote and if the positions remaining for Councillor cannot accommodate the candidates who are tied, shall make arrangements for a recount. If a recount does not resolve the tie the Electoral Office shall make arrangements to hold a mail-in ballot election for the two tied positions as soon as is practicable.

11.7.3 In the event of a mail-in ballot election for the position of Chief, the Deputy Chief shall assume the office of Chief until such time as the Electoral Officer provides written notice of the results of the election.

11.7.4 As soon as practicable after the final results of the Election are known to the Electoral Officer, the Electoral Officer, or the Deputy Electoral Officer, shall prepare a written statement in triplicate showing the results of the Election and the names of the candidates duly elected, which statement shall be signed by the Electoral Officer and the Deputy Electoral Officer and which statement shall be provided to all candidates and one copy filed in the Band Council Office.

11.7.5 The Electoral Officer, or their designate, shall mail a copy of the statement to every Elector who voted by way of mail-in ballot and shall also cause the statement to be published in the MCFN Newsletter.

11.7.6 The ballots sealed pursuant to Section 11.6.5 shall be retained with the Band Manager for a period of eight (8) weeks, and unless directed otherwise by the Electoral Officer, the ballots shall be destroyed in the presence of the Electoral Officer and the Deputy Electoral Officer, who shall document the same.

12.0 ELECTION APPEALS

12.1 Composition of Appeal Board

12.1.1 An Appeal Board shall be appointed by the outgoing Chief and Council 30 days prior to the end of their term. The Appeal Board shall be composed of an Elder, a person who is not a citizen of MCFN who is over twenty-one (21) years of age, of good character and reputation, and who does not have a vested interest in the outcome of the election, and a citizen of MCFN who is over twenty-one (21) years of age and who is familiar with the traditions, values and language of MCFN.

12.1.2 No member of the Election Appeal Board shall be a member of the outgoing Council, a person who nominated or seconded a candidate for office, or a candidate for Council in the election.

12.1.3 The Appeal Board shall choose a Chairperson from their numbers.

12.2 Supervision of Appeal

12.2.1 The Appeal Board shall supervise and administer all Election appeals, in accordance with the provisions of this Code.

12.3 Office held until appeal is determined

12.3.1 The members of the Appeal Board shall hold office until all appeals have been determined.

12.4 Grounds for Appeal

12.4.1 Any candidate, or any Elector who tendered a vote at the Election, may within fourteen (14) days of the Poll, file a notice of appeal with the Appeals Board, requesting that the Election of the Chief or Councillor(s) be declared invalid, based upon one or more of the following grounds:

- a. A person declared elected was not qualified as a Candidate or to hold office as a Chief or Councillor, as outlined in sub-section 7.2 of this Code;
- b. The Candidate declared elected was not nominated in accordance with the procedures set out in sub-section 7.4 of this Code, and / or the candidate misrepresented or withheld material facts in relation to requirements set out in sub-section 7.2 of this Code;
- c. There was a violation of this Code that may have materially affected the results of the Election.

12.5 Process of Appeal

12.5.1 An application for an appeal of an Election shall be made by delivering by registered mail a Notice of Appeal, in writing on or before the 14 day limitation period set out in subsection 12.4.1 to the Appeal Board addressed to

Chairperson, Election Appeal Board
Missanabie Cree First Nation
Address

12.5.2 The Notice of Appeal must outline the grounds for appeal, include any evidence relied upon in support of the appeal, and be signed by the Candidate or Elector initiating the appeal.

12.5.3 The Notice of Appeal must be received by the Chairperson within fourteen (14) days of the Election Day, or, in the case of an acclamation, within fourteen days of the notice of Acclamation.

12.5.4 The Notice of Appeal must be accompanied by a payment of \$100 in the form of a certified cheque or money order made in favour of the Missanabie Cree First Nation.

12.5.5 If the appeal is successful, the payment received under subsection 12.5.4 shall be refunded forthwith.

12.6 Powers of Appeal Board

12.6.1 Where appeals are received by the Appeal Board pursuant to this Code,

- a. the Appeal Board shall, within seven (7) days of the end of the 14 day period described in sub-section 12.5.3, forward a copy of all appeals received together with supporting documents by registered mail to each candidate in the Election and to the Electoral Officer;
- b. any candidate or the Electoral Officer may within fourteen (14) days of receipt of the appeal(s), forward to the Appeal Board by registered mail a written response to the appeal allegations, together with any supporting documentation;
- c. the Appeal Board may conduct or authorize such further investigation into the appeal allegations as it deems appropriate and necessary.

12.7 Results of Appeal

12.7.1 After a review of all of the evidence that it has received the Appeal Board shall render a decision within 28 days to:

- a. deny the appeal on the grounds that the evidence presented did not reveal an infraction of this Code, or on the grounds that an infraction of this Code was revealed but the infraction did not materially affect the result of the Election, or,
- b. uphold the appeal, and identify the person next in line who received the most votes after the person whose election was appealed for designation to the office affected.

12.7.2 The Appeal Board shall forward their decision to the Electoral Officer who shall provide a written statement of the results of the Appeal to MCFN band administrator.

12.7.3 The band administrator shall cause the deposit to be returned to the applicant if the appeal was successful.

13.0 VACANCIES

13.1 Determination of an Office Vacancy

13.1.1 A Chief or Councillor's position on the Band Council may become vacant if, while in office:

- a. the Chief or Councillor in question misses three (3) consecutive regular Council meetings without authorization from a quorum of Council;
- b. the Chief or Councillor in question is convicted of an indictable offence which offence does not arise out of the exercise of an Aboriginal Treaty Right;
- c. the Chief or Councillor in question dies or resigns from office;
- d. the Chief or Councillor in question is declared to be mentally incapacitated by a Court of competent jurisdiction;
- e. the Chief or Councillor in question engages in conduct that interferes with the performance of their official duties.

13.2 Notice

13.2.1 If a situation described in sub-section 13.1.1 occurs, a notice with valid evidence must be presented at a duly convened regular Council meeting, calling for the position of the Chief or Councillor in question to become vacant. A Resolution of Council must be passed by a quorum of Council outlining the situation and calling the position to become vacant.

13.3 Interim Appointee

13.3.1 In the event a vacancy is created pursuant to sub-sections 13.1.1 and 13.2.1 in the Office of Chief, the Deputy Chief will assume the office of Chief until the next Election.

13.3.2 Where there are less than six (6) months remaining in the term of Council, a vacancy created in the Office of Councillor will not be filled, except where filling the vacancy is necessary to maintain a quorum of Council.

13.3.3 In the event a vacancy is created pursuant to sub-sections 13.1.1 and 13.2.1 in the Office of Councillor, and there are more than six (6) months remaining in the term of Council, the candidate who received the most votes descending from the last councillor elected in the previous Election shall be designated as Councillor.

14.0 AMENDMENTS

14.1 Process for proposed amendments

14.1.1 Any proposed amendments to this Code must first be approved by a Resolution of the Council.

14.1.2 Notice shall be given to Electors of Special General Meeting to consider and approve the proposed amendments:

- a. The Council must post a Notice of a Special General Meeting of the Electors in the Band Office and other places as Council may deem appropriate at least fourteen (14) days prior to the date of the Special General Meeting for the purposes of conducting a ratification vote on the Proposed Amendments.
- b. The Notice must state the purpose of the meeting and shall include the time, place, and date of the ratification meetings.
- c. A copy of the proposed amendments to the Code must be attached to the notice.

14.1.3 The proposed amendments must be approved by a ratification vote held in accordance with the MCFN Ratification procedures, and the proposed amendments shall be approved if:

- a. a quorum consisting of at least fifty (50) Electors cast their votes either by mail-in ballot or at a polling station; and
- b. a majority (50 percent plus one) of the ballots cast are in favour of the proposed amendments.

14.2 Effective Date of Amendments

14.2.1 If the proposed amendments are approved pursuant to a ratification vote of the Missanabie Cree First Nation, the amendments shall be adopted and come into effect as of the date that the results of the ratification vote are officially made known to the MCFN.

15.0 SEVERANCE

15.1.1 If all or any part of any provision contained herein is found to be inoperable by a court of law, it shall be severed from the Code and the remaining provisions shall remain in full force and effect.

16.0 EFFECTIVE DATE

16.1.1 Upon ratification in accordance with the MCFN ratification procedures, this Code shall be adopted as of the date that the results of the ratification vote are made known to the Missanabie Cree First Nation.

17.0 COMING INTO FORCE

17.1.1 This Code shall come into force upon the passing of a Ministerial Order of the Minister of Indian Affairs and Northern Development proclaiming removal of the First Nation from the election provisions of the *Indian Act* R.S.C., 1985, c. I-5.

17.1.2 The provisions of the *Indian Act*, R.S.C. 1985 c. I-5 respecting Elections of Chiefs and Band Councils, namely sections 74-79 inclusively, and all related regulations will cease to apply to the Missanabie Cree First Nation upon the coming into force of this Code.

MCFN Custom Election Code - Schedule A

Duties and Responsibilities of Electoral Officer

1. An Electoral Officer's responsibilities for conducting an election include but are not limited to the following:
 - (a) preparing for the election;
 - (b) preparing for the counting of ballots and conducting a recount in the election; and
 - (c) maintaining peace and order in connection with the election.
2. In conducting an Election the Electoral Officer may provide for any matter or procedure that,
 - (a) is not otherwise provided for in this Election Code or the Indian Act; and
 - (b) is, in the Electoral Officer's opinion, necessary or desirable for conducting the election.
3. The Electoral Officer shall provide electors, candidates and those eligible to be electors with information to enable them to exercise their rights under this Election Code.
4. The Electoral Officer may delegate to the Deputy Electoral Officer any of the Electoral Officer's powers and duties in relation to the election as he or she considers necessary.
5. The Electoral Officer may appoint designates to assist in the counting of ballots or recounting.
6. The Electoral Officer shall provide notice to nominated candidates that their biographies may be published in the community newsletter.
7. In the event of a tie, the Electoral Officer shall be available to conduct a recount, or to conduct a mail-in ballot according to the provisions as outlined in the MCFN Election Act.
8. In the event of an appeal, the Electoral Officer shall
 - (a) be available to provide a written response to the Appeal Board, and
 - (b) provide written notice of the decision of the Appeal Board to the Band Administrator.

MCFN Custom Election Code - Schedule B

Missanabie Cree First Nation Nomination Form

Please return Nomination Form to:

**Electoral Officer's Name:
Electoral Officer's Address**

<p style="text-align: center;"><u>Nominator</u></p> <p>I hereby nominate: _____</p> <p>For the position of: (Please circle one.) Chief Councillor</p> <p>Name of nominator: _____</p> <p>Nominator's Contact Information _____</p> <p>Band # _____</p> <p>Signature of nominator: _____ Date: _____</p> <p>Witness signature _____ Date: _____</p>	
<p style="text-align: center;"><u>Seconder</u></p> <p>I hereby second the nomination of the person named above for the position of:</p> <p style="text-align: center;">(Please circle one.) Chief Councillor</p> <p>Name of seconder: _____</p> <p>Band # _____</p> <p>Signature of seconder: _____ Date: _____</p> <p>Witness signature _____ Date: _____</p>	
<p style="text-align: center;"><u>NOMINEE</u></p> <p>My band # is: _____</p> <p>My address and contact information: _____</p> <p>_____</p> <p>_____</p>	

<p>I want my name to appear on the ballot as follows:</p> <p>_____ , _____ (Surname) (First or given name)</p> <p>Signature of Nominee: _____ Date: _____</p> <p>Witness signature _____ Date: _____</p>		
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When filling out this form, please remember the following:

1. Print clearly.
2. Fill in all required information.
3. Candidate will be notified of any void nominations by the Electoral Officer, if a contact number is provided.
4. If a candidate receives a notice of void nomination, the candidate may refile their nomination form provided that it is returned before the close of nominations.

Closing Date for receipt of Nominations is _____