

Band Custom Election Code

INAC Policy:

The BFN may switch from the Indian Act procedures to a custom election procedure by requesting that a section (s.) 74 Order be repealed.

INAC's Policy:

The Minister will repeal the (s. 74) Order (concerning Band elections) if it is satisfied that:

- the proposed election code is clear, includes an election appeals process, follows principles of natural justice, is consistent with the Charter of Rights and Freedoms, and has been reviewed by INAC;
- the code is approved by the community by a majority vote or another mechanism; and
- after ratification (voting), supporting documents are sent to INAC.

Upcoming consultations for BFN Band Custom Election Code

In 2011, contractors were hired by the First Nation to complete a band custom election code. The document has been in final draft stages but has never been approved by successive Councils nor communicated or voted on by the membership.

In the upcoming months, the Chief and Council are asking for the membership's input into the development of BFN's band custom election code.

The pros and cons of each electoral system will be discussed at each one of the community consultation sessions, including topics such as: rules for nominations, voters' lists, number of polling stations, casting of ballots, election appeals, term of office, setting aside elections, and other procedural requirements.

In addition, members will have the opportunity to ask questions with a legal expert.

The consultation will be provided in a large group format for the presentation by Sharon Venne, followed by smaller break-out groups.

Chief and Council are inviting you to participate at one of the sessions.

Consultation Schedule

- **CHRISTIAN ISLAND**

Saturday, October 28, 2017—Christian Island Recreation Centre *12 p.m to 5 p.m

- **TORONTO**

Wednesday, November 1, 2017—*Holiday Inn- Yorkdale- D'Havilland Room*, 3450 Dufferin St, Toronto, Ontario --- *5 p.m to 10 p.m

- **BARRIE**

Thursday, November 2, 2017---*Holiday Inn- 20 Fairview Rd (near Essa),- Churchill-- Barrie, Ontario -- *5 p.m to 10 p.m*

Lunch and/or Supper will be provided at these locations (including prizes)-

**estimated time only- may be shorter duration.*



Contact info

**Peggy Monague
McGregor**

Coordinator

(705) 285-1634

p.monague@gmail.com

SHARON H. VENNE (Cree) is an Indigenous Rights lawyer who holds a Master of Laws degree from the University of Alberta. She has lectured all over the world regarding the rights of Indigenous Peoples. She is a renowned author and has worked with the United Nations (UN) that worked to secure a UN study on Treaties. She has won a number of awards, and has been a delegate at many United Nations conferences on the environment and on Indigenous Peoples, contributing greatly to the UNDRIP. She was an assistant editor, consultant and writer for The Gaia Atlas of First Peoples and is the author of *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Peoples*.

**Sharon will be our guest facilitator and presenter at all these BFN venues.

Steps and Timeline:

Consultation → Member Feedback → Draft- Revise Code → C & C
Review and Approval → Final Code → Approval by Members (Ratification
vote March/April, 2018) → INAC repeal → Implementation of Election
Code/ Law

BACKGROUND

From January to April 2011, two Coordinators were hired- Vaughn Johnston and Georgia Monague. Shortly thereafter, a committee was formed, consisting of the following members:

Janice Monague
Jane Copegog-Marsden
Jennifer Copegog
Greg King
Deldin Assance
Renee Jamieson
Kevin Tim Monague
Karry Sandy-McKenzie

This committee was responsible for performing the hard task of developing the “BFN custom election code” to the final stage and as it exists today. This included involving the community in the development of this document through survey monkey, social media, focus groups and consultations on and off reserve. Input was derived from a variety of sources but final consultation never achieved on the final document.

Before a new Election custom code is implemented, it has to be accepted and ratified by the community. *Therefore, it's imperative that you read the custom code as drafted and come to the meeting to contribute your opinions and thoughts on this final phase.*

Once BFN implements a Custom Election Code, Indian Affairs is not involved in how we run elections nor does it handle the appeal process. We can, however, realistically amend the code if something is missing or not working after it's had at least one trial run (election process). The plan by the current Chief and Council is to have the Election Code ready for ratification vote in 2018.

Tentative AGENDA

- 1) Lunch/Dinner (½ hour at each location)
- 2) Welcoming Remarks- Chief and Council
- 3) Background /Overview of BFN Draft Code- Video format
- 4) Presentation & Questions, Answers- Sharon Venne, lawyer
- 5) Break-out groups- small discussion circles- All
- 6) Next Steps- Reports back from break-out groups- Sharon & Peggy
- 7) Closing

Leadership selection under the Indian Act

Around 200 out of 634 First Nations in Canada hold elections under the Indian Act. Under the act, elections must be held every two years.

A typical election under the Indian Act may include:

- the appointment of an electoral officer to manage the overall election process and all related activities
- the opportunity for voters to nominate candidates for the positions of chief and councillors
- the ability to vote in person on-reserve or by mail-in ballot
- the counting of votes and declaration of elected candidates

In an election held under the Indian Act, Indigenous and Northern Affairs Canada (INAC):

- approves the appointment, training and choice of electoral officers
- receives, investigates and decides on election appeals within 45 days if:
 - they feel there were corrupt practices in connection with the election
 - there was a violation of the Indian Act or the regulation that might have affected the results of the election
 - there was a person running who was not eligible to be a candidate

Conversion to community custom election system

A First Nation that holds its elections under the Indian Act election system may develop its own community election code, according to its own laws. This Custom code may contain provisions for elections for a duration acceptable to the community (example: 2 to 4 years in office).

This will include all the components or variations of the Indian Act system, including:

- the appointment of an electoral officer to manage the overall election process and all related activities
- the opportunity for voters to nominate candidates for the positions of chief and councillors
- the ability to vote in advance polls, in-person on-reserve or by mail-in ballot or through e-vote systems
- the counting of votes and declaration of elected candidates

Community or custom leadership selection processes are often documented in a community's election code, which provide the rules under which chiefs and councillors are chosen for those First Nations who are not under the Indian Act election rules. These codes vary depending on the First Nation and are often unique to the specific community.

INAC is never involved in elections held under community or custom election processes, nor will it interpret, decide on the validity of the process, or resolve election appeals. The department's role is *limited* to recording the election results provided by the First Nation.

When a dispute arises concerning a community or custom election process, it must be resolved according to the related provisions in a community's election code, or by the courts.

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