

TOQUAHT NATION GOVERNMENT

ELECTIONS ACT

TNS 1/2014



OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

This is a certified true copy of the consolidated Elections Act TNS 1/2014, Current to June 10, 2014

Date: August 11, 2014

Kristen Plummer

Signed: _____
Law Clerk

TOQUAHT NATION GOVERNMENT
ELECTIONS ACT TNS 1/2014
OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

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TOQUAHT NATION GOVERNMENT
ELECTIONS ACT TNS 1/2014
OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

PREAMBLE

Through our inherent right to self-government, the Toquaht Nation has preserved and protected our territories and culture with the advice and counsel of our Ha'wiih. While embracing our past and relying on the guidance provided by our Ha'wiih, as a self-governing treaty first nation, the Toquaht Nation also recognizes the importance of responsible government and the honour and integrity of our elected representatives.

The Toquaht Nation assumes the responsibility of providing transparent and accountable government through impartial, open, fair and free elections. This requires an electoral process that is conducted with honesty and integrity for the common good of all Toquaht citizens.

Through the establishment of election rules and procedures to realize these goals, Toquaht elections will be conducted in a manner that promotes public confidence and trust in the integrity of Toquaht officials and the Toquaht government.

The Toquaht Nation adopts this Act based on these values.

TOQUAHT NATION GOVERNMENT
ELECTIONS ACT TNS 1/2014
OFFICIAL CONSOLIDATION – CURRENT TO JUNE 10, 2014

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Elections Act.

Executive oversight

1.2 The chairperson of Council is responsible for the executive oversight of this Act.

Application

- 1.3 (a) This Act is enacted under 13.11.1 of Chapter 13 Governance of the Maa-nulth Treaty and under sections 2.7 and 3.3(b) of the Constitution.
- (b) This Act applies to the processes by which elected Toquaht government representatives are chosen.

Definitions

1.4 In this Act,

“advance voting” means voting in person on the advance voting day in accordance with Part 7;

“advance voting day” means the date fixed by the chief electoral officer for advance voting in accordance with section 2.2;

“ballot” means a paper ballot, a mail-in ballot or an electronic ballot;

“ballot box” means a paper ballot box or an electronic ballot box;

“by-election” means an election other than a regular election;

“candidate” means a nominee whose nomination has been confirmed in accordance with section 4.7;

“candidate’s representative” means an individual appointed to represent a candidate under section 4.11;

“chief electoral officer” means an individual appointed under section 3.1;

“deputy electoral officer” means an individual appointed under section 3.3;

“elected office” means the office of an elected member of Council;

“election” means a regular election or a by-election;

“electoral officer” means the chief electoral officer, the system electoral officer or deputy electoral officers;

“electronic ballot” means an image of a ballot on a computer screen prepared in accordance with section 6.6;

“electronic ballot box” means a database in the system where electronic ballots are recorded, designed in accordance with section 6.7;

“electronic voting” means voting via the internet on electronic voting days in accordance with Part 9;

“electronic voting days” means the dates fixed by the chief electoral officer for electronic voting in accordance with section 2.3 and “electronic voting day” means any one of those days;

“eligible voter” means an individual whose name is on the most recent voters list;

“general voting” means voting in person on the general voting day in accordance with Part 7;

“general voting day” means the day on which an election is held under section 2.1(b) or 13.1(b);

“intimidate” includes

- (a) to use or threaten to use force, violence or restraint against a person,
- (b) to inflict injury, harm, damage or loss on a person or property or to threaten to do any of the foregoing, or
- (c) to otherwise intimidate a person or threaten to do anything that is otherwise intimidation of a person;

“mail-in ballot” means a paper ballot prepared in accordance with section 8.2;

“nomination deposit” means the deposit required under section 4.3;

“nomination meeting” means a meeting held in accordance with section 4.2;

“nomination papers” means the documents filed in accordance with section 4.6;

“nominee” means a Toquaht citizen who is eligible under section 4.1 to become a candidate and has been nominated to stand as a candidate for any elected office to be filled in an election in accordance with this Act;

“notice of election” means a notice given in accordance with section 2.4;

“paper ballot” means a ballot on a piece of paper prepared in accordance with section 6.3;

“paper ballot box” means a box or receptacle prepared in accordance with section 6.4;

“PIN” means a unique personal identification number issued to an eligible voter for electronic voting;

“referendum” means a vote on a question conducted in accordance with the Referendum Act;

“regular election” means an election held under section 2.1;

“secrecy envelope” means an envelope within which a mail-in ballot may be placed in accordance with section 8.3 and identified only with the words “Secrecy Envelope” and the date of the general voting day;

“sworn statement” means a statement in the form approved by the chief electoral officer that is sworn or affirmed in the presence of

- (a) an electoral officer, or
- (b) a solicitor, notary public or other person authorized by the Evidence Act (British Columbia) to take affidavits for use in British Columbia;

“system” means the technology, including software, established by the system electoral officer under section 9.3(a)(i);

“system electoral officer” means a person appointed under section 3.2;

“voter declaration form” means a document that sets out

- (a) the name of an eligible voter,
- (b) the citizenship number of the eligible voter or, if the eligible voter does not have a citizenship number, the date of birth of the eligible voter,
- (c) a statement that the eligible voter has read and understands the nature of the vote and has voted freely and without compulsion, and

- (d) the name, address and telephone number of a witness to the signature of the eligible voter;

“voters list” means the list prepared under section 5.4;

“voting hours” means the hours established for voting under section 2.8;

“voting place” means a place established under section 2.7.

PART 2 - TIMING AND NOTICE OF ELECTIONS

Regular elections

- 2.1 (a) Regular elections for Council must be held in the year 2015 and in every fourth year after that.
- (b) The general voting day for a regular election must be on a date established by Council, by resolution.

Advance voting day

- 2.2 (a) Before posting a notice in accordance with section 2.4, the chief electoral officer must establish the advance voting day in accordance with subsection (b).
- (b) The chief electoral officer must conduct advance voting on a day that is at least 10 but not more than 14 days before the general voting day.
- (c) For certainty, advance voting must end before the commencement of electronic voting.

Electronic voting days

- 2.3 (a) Before posting a notice in accordance with section 2.4, the chief electoral officer must establish the electronic voting days in accordance with subsection (b).
- (b) The chief electoral officer must
- (i) conduct electronic voting on at least three but no more than seven days during the nine day period before the general voting day, and
 - (ii) end electronic voting at least two days before the general voting day.

Notice of elections and nomination meetings

- 2.4 At least 60 days before the general voting day for a regular election or, in the case of a by-election, as soon as practicable after the date for the by-election has been determined, the chief electoral officer must post in accordance with Toquaht law a notice of the election and the nomination meeting that includes
- (a) the date, time and location of the nomination meeting,
 - (b) the elected offices for which nominations may be made,
 - (c) information about the nomination process, including how an eligible voter may make and second a nomination,

- (d) how eligible voters may vote in the election.
- (e) the date of the general voting day and the voting hours and the voting places for general voting,
- (f) the date of the advance voting day and the voting hours and the voting places for advance voting;
- (g) that voting by mail-in ballot is permitted if an eligible voter's mail-in ballot is received by the chief electoral officer on or before the general voting day,
- (h) the dates for electronic voting days and the voting hours for electronic voting,
- (i) the name of and contact information for the chief electoral officer,
- (j) the voters list containing only the names of eligible voters, and
- (k) any other information that the chief electoral officer considers necessary or advisable for the better administration of the election.

Information package

- 2.5 (a) At least 30 days before the general voting day, the chief electoral officer must deliver in accordance with Toquaht law to every eligible voter whose mailing address as it appears on the voters list is outside a 25 kilometer radius of the closest voting place an information package regarding the election, including
- (i) instructions for general voting and advance voting,
 - (ii) a mail-in ballot with instructions on how to vote by mail-in ballot,
 - (iii) instructions on how to vote by electronic voting and a statement that eligible voters will be mailed a PIN separately, and
 - (iv) any other information that the chief electoral officer considers necessary or advisable for the better administration of the election.
- (b) Upon written request from the eligible voter, the chief electoral officer must deliver in accordance with Toquaht law to an eligible voter whose mailing address as it appears on the voters list is within a 25 kilometer radius of the closest voting place, an information package prepared in accordance with in subsection (a).

Electronic voting PIN

- 2.6 (a) At least 30 days before the general voting day, the system electoral officer must deliver in accordance with Toquaht law to every eligible voter whose mailing address as it appears on the voters list is outside a 25 kilometer radius of the

closest voting place, separately from the information package provided under section 2.5, a PIN for electronic voting.

- (b) Upon written request from the eligible voter, the system electoral officer must deliver in accordance with Toquaht law to an eligible voter whose mailing address as it appears on the voters list is within a 25 kilometer radius of the closest voting place, a PIN for electronic voting.

Voting places

2.7 The voting places for general voting and advance voting for all elections must be

- (a) the Toquaht administrative office, and
- (b) any other place determined by Council, by resolution.

Voting hours

2.8 (a) Subject to subsection (b), the voting hours for general voting and advance voting must be from 8:00 am until 8:00 pm.

- (b) The chief electoral officer may extend the hours for general voting and advance voting to 10:00 pm if, in the view of the chief electoral officer, weather conditions warrant it.

- (c) The chief electoral officer may set the voting hours for electronic voting which at minimum must be from 8:30 am until 8:00 pm on each electronic voting day.

PART 3 - ELECTION ADMINISTRATION

Chief electoral officer

- 3.1 Subject to section 3.6, Council must appoint an individual to act as chief electoral officer at least 90 days before the date of a regular election or, in the case of a by-election, as soon as practicable after the date for the by-election has been determined.

System electoral officer

- 3.2 (a) The Executive must, by resolution, appoint a person to act as system electoral officer at least 75 days before the general voting day for a regular election or, in the case of a by-election, as soon as practicable after the date for the by-election has been determined.
- (b) The Executive may, at any time, appoint a replacement system electoral officer if a system electoral officer resigns or is unable to perform its duties.

Deputy electoral officers

- 3.3 (a) As soon as practicable after being appointed under section 3.1, the chief electoral officer must appoint a deputy electoral officer.
- (b) The chief electoral officer may, at any time, appoint one or more additional deputy electoral officers or a replacement deputy electoral officer if a deputy electoral officer resigns or is unable to perform his or her duties.

Individuals ineligible for appointment as electoral officers

- 3.4 The following individuals must not be appointed, accept an appointment or act as an electoral officer:
- (a) a Toquaht government representative;
 - (b) a Toquaht government employee;
 - (c) an individual who is a candidate or a candidate's representative in the election;
 - (d) an individual who has been an employee of, or holds a position or has made a contribution in relation to the candidacy of, any individual who is, intends to be or was a candidate in the election; or
 - (e) an individual who has been convicted of an offence under this Act.

Impartiality of electoral officers

- 3.5 Every electoral officer must make a solemn declaration before the Tyee Ha'wiltth that they
- (a) will faithfully and impartially perform their duties and exercise their powers in accordance with this Act,
 - (b) have not accepted and will not accept any inducement to subvert an election, and
 - (c) will preserve the secrecy of all ballots.

Duties and powers of electoral officers

- 3.6
- (a) Electoral officers must perform their duties and exercise their powers in accordance with this Act.
 - (b) Electoral officers must use all means reasonably necessary to ensure that elections are conducted fairly and impartially, that peace and order is maintained at each voting place and that eligible voters are provided relevant and necessary information regarding the election.
 - (c) In addition to any other duties, the chief electoral officer must ensure that the other electoral officers perform their duties and exercise their powers fairly and impartially.
 - (d) The deputy electoral officer, or the first deputy electoral officer appointed under section 3.3 if there is more than one deputy electoral officer, must perform the duties and exercise the powers of the chief electoral officer in the absence of the chief electoral officer or in circumstances where the chief electoral officer is unable to perform the duties or exercise the powers of that office.

Resignation of electoral officers

- 3.7
- (a) The chief electoral officer may resign by providing the Tyee Ha'wiltth written notice at least 30 days prior to the date the resignation is to take effect.
 - (b) The system electoral officer may resign by providing the Tyee Ha'wiltth, with a copy to the chief electoral officer, written notice at least 30 days prior to the date the resignation is to take effect.
 - (c) A deputy electoral officer may resign by providing the chief electoral officer written notice at least seven days prior to the date the resignation is to take effect.

PART 4 - NOMINATIONS AND CANDIDATE QUALIFICATIONS

Qualifications of candidates

- 4.1 (a) Subject to this Act, any Toquaht citizen who is at least 18 years of age may be nominated to stand as a candidate for any elected office to be filled in an election.
- (b) A Toquaht citizen may not be a candidate in an election if that person
- (i) is not, or will not be, at least 18 years of age on the general voting day for that election,
 - (ii) is an electoral officer for that election,
 - (iii) is an undischarged bankrupt,
 - (iv) is suffering from a medical condition, including mental illness or dependency on drugs or alcohol, that a medical practitioner in writing concludes would render that person likely to be incapable of performing the duties or exercising the powers of the elected office, or
 - (v) has been convicted and incarcerated for an indictable offence.

Nomination meeting

- 4.2 (a) A nomination meeting must be held at the Toquaht Nation administrative office at least 45 days before the date of a regular election or, in the case of a by-election, as soon as practicable after the date for the by-election has been determined.
- (b) Notice of the nomination meeting must be provided in accordance with section 2.4.
- (c) The chief electoral officer must
- (i) make the necessary arrangements for holding the nomination meeting,
 - (ii) ensure nomination papers are available to any eligible voter upon request, and
 - (iii) receive, record and file all nomination papers.

Nomination deposit

- 4.3 (a) A nomination deposit of \$100, payable in cash or by money order or certified cheque payable to the Toquaht Nation, must be deposited with the chief electoral officer at the time a candidate files his or her nomination papers.

- (b) If the chief electoral officer is of the view that the circumstances of a candidate warrant it, the chief electoral officer may extend the time required for payment of the nomination deposit by up to seven days.
- (c) A nomination deposit paid to the chief electoral officer must be dealt with as follows
 - (i) if the candidate for whom it is paid receives 10% of the total votes accepted and counted for his or her contested office, the nomination deposit is to be returned to the candidate;
 - (ii) if the candidate for whom the nomination deposit is paid dies before the close of the general voting for the election, the nomination deposit is to be paid to the estate of the deceased candidate; and
 - (iii) in any other case, the nomination deposit is forfeited to the Toquaht Nation.

Nomination procedures

- 4.4 (a) An eligible voter may nominate a Toquaht citizen who qualifies under section 4.1 to be a candidate
 - (i) by hand delivering or mailing a written nomination and a completed, signed and witnessed voter declaration form to the chief electoral officer so it is received by the chief electoral officer before the time set for the nomination meeting to begin, or
 - (ii) in person at the nomination meeting.
- (b) In order for a nomination under subsection (a) to stand, the nomination must be seconded by an eligible voter in person at the nomination meeting.
- (c) An eligible voter may not
 - (i) nominate and second the nomination of the same nominee,
 - (ii) nominate himself or herself, or
 - (iii) nominate or second the nomination of more than one nominee for the same elected office in an election.
- (d) As soon as practicable following a nomination meeting, the chief electoral officer must notify any nominee who was not present at the nomination meeting of his or her nomination.

Requirements for candidates

- 4.5 A nomination is complete when the nominee has
- (a) been nominated and that nomination has been seconded at a nomination meeting in accordance with section 4.4,
 - (b) communicated acceptance of the nomination to the chief electoral officer either verbally or in writing,
 - (c) filed the nomination papers required under this Act, and
 - (d) the chief electoral officer has received the required nomination deposit on behalf of the nominee.

Nomination papers

- 4.6 (a) Within seven days after the nomination meeting, a nominee who wishes to stand as a candidate for office must file with the chief electoral officer nomination papers in the form approved by the chief electoral officer, which must include an oath or affirmation by the nominee that he or she satisfies the qualifications set out in section 4.1.
- (b) Nomination papers are deemed to be filed with the chief electoral officer when they are received by the chief electoral officer or a deputy electoral officer.

Confirmation of nominations

- 4.7 (a) The chief electoral officer must, as soon as practicable after the nomination meeting, but in any event in no less than 10 days thereafter, determine whether
- (i) the nomination of a nominee has been completed in accordance with section 4.5, and
 - (ii) the nominee meets the qualifications set out in section 4.1.
- (b) Before determining whether the nominee meets the qualifications set out in section 4.1, the chief electoral officer may, in accordance with any regulations,
- (i) require the nominee to provide the chief electoral officer with such additional relevant documents or information relating to those qualifications as the chief electoral officer considers necessary or advisable, and
 - (ii) conduct such additional investigations in respect to those qualifications as the chief electoral officer considers necessary or advisable.

- (c) As soon as practicable after making a determination under subsection (a), the chief electoral officer must
 - (i) notify in writing each nominee whether or not their nomination is complete and whether or not they meet the qualifications set out in section 4.1, and
 - (ii) if the nomination of a nominee is not complete or that nominee does not meet the qualifications set out in section 4.1, provide the nominee with sufficient details of those deficiencies.

Notice of candidates and preparation of ballots

- 4.8 (a) As soon as practicable after making all the determinations required under section 4.7(a), the chief electoral officer must post in accordance with Toquaht law a notice of the names of all the candidates for each elected office to be filled in that election.
- (b) When preparing a ballot to be used for voting in an election, the chief electoral officer must include on that ballot only the names of the candidates for each elected office to be filled in that election.

Withdrawal of a candidate

- 4.9 (a) A candidate may withdraw from the election by delivering a signed notice of withdrawal to the chief electoral officer in accordance with any regulations.
- (b) If a candidate withdraws from an election after the ballots for the election have already been prepared and the chief electoral officer determines that it is not practicable to replace those ballots in time for advance voting, the chief electoral officer must as soon as practicable use reasonable efforts to advise eligible voters of the withdrawal of that candidate and post in accordance with Toquaht law and in every voting place during advance voting and general voting a notice of the withdrawal of that candidate.

Acclamation

- 4.10 The chief electoral officer must immediately declare a candidate elected by acclamation if the number of candidates is equal to or less than the number of members of Council to be elected.

Appointment of candidate's representative

- 4.11 A candidate may appoint a representative to observe the conduct of voting and counting of ballots in the election.

PART 5 - VOTING METHODS AND VOTER ELIGIBILITY

Voting methods

- 5.1 (a) Council must, by resolution, at least 90 days before the date of a regular election or, in the case of a by-election, as soon as practicable after the date for the by-election has been determined, determine which of the following voting methods will be available in the election, provided that at least two of the following voting methods must be available in an election:
- (i) in person, on general voting day, in accordance with Part 7;
 - (ii) in person, on the advance voting day, in accordance with Part 7;
 - (iii) by mail-in ballot in accordance with Part 8; or
 - (iv) by electronic voting, on electronic voting days, in accordance with Part 9.
- (b) An eligible voter may vote in an election using one of the voting methods approved by Council under subsection (a).
- (c) For certainty, an eligible voter must not vote on more than one occasion in the same election.
- (d) If a voting method referred to in subsection (a) is not available in an election,
- (i) the provisions of this Act relating to that voting method do not apply to that election, and
 - (ii) the balance of the Act is applicable to the election with the necessary changes required and so far as applicable.

Eligible voters

- 5.2 A Toquaht citizen who is or will be at least 18 years of age on the general voting day is entitled to vote in an election.

Voting rights

- 5.3 (a) An eligible voter who is on the voters list may vote for each elected office to be filled in an election or on a question in a referendum.
- (b) An individual who is not on the voters list may vote if,
- (i) on the general voting day, the individual is or will be at least 18 years of age, and

- (ii) the individual complies with the requirements of section 7.5(b).
- (c) The chief electoral officer must do everything reasonably possible to
 - (i) accommodate eligible voters who have special needs, such as elderly, blind, physically handicapped or illiterate voters, and
 - (ii) ensure each voting place is accessible to persons with those special needs.

Voters list

- 5.4 (a) The chief electoral officer must prepare a list of Toquaht citizens entitled to vote in an election based on the Toquaht citizenship register provided by the citizenship and enrolment registrar under subsection (b).
- (a.1) At least
- (i) 90 days before the date of a regular election, or
 - (ii) in the case of a by-election, as soon as practicable after the date for the by-election has been determined,
- the citizenship and enrolment registrar must provide the chief electoral officer with a copy of the Toquaht citizenship register.
- (b) The voters list must be arranged in alphabetical order by last name and contain the name, date of birth and address of each eligible voter.

Posting the voters list

- 5.5 (a) The chief electoral officer must post in accordance with Toquaht law the voters list containing only the names of eligible voters.
- (b) In addition to posting a voters list under subsection (a), the chief electoral officer must utilize whatever other means of communication is deemed appropriate to inform citizens of the election.

Access to voters list during election

- 5.6 (a) The chief electoral officer must, on request and without charge, provide a candidate in an election with a printed or electronic copy of the most recent voters list containing the names of eligible voters.
- (b) The chief electoral officer must, in accordance with any regulations, make available for inspection by Toquaht citizens at the Toquaht administrative office, copies of the most recent voters list containing only the names of eligible voters.

Objections to voters list

5.7 An eligible voter whose name

- (a) does not appear on the voters list, or
- (b) is incorrectly set out on the voters list

may in person or by telephone, courier, mail, fax or email request the chief electoral officer to revise the voters list.

Correcting the voters list

5.8 (a) If a request is made by an eligible voter under section 5.7,

- (i) the chief electoral officer must, as soon as is reasonably practicable, inform the citizenship and enrolment registrar of the request,
- (ii) the citizenship and enrolment registrar must, as soon as is reasonably practicable, consider the request and provide the chief electoral officer with
 - (A) whatever information the citizenship and enrolment registrar considers necessary or advisable in order that the chief electoral officer may make a decision regarding the request, and
 - (B) his or her recommendation regarding the request, and
- (iii) if, after considering the information and recommendation provided by the citizenship and enrolment registrar under paragraph (ii), the chief electoral officer is satisfied that the voters list should be corrected, the chief electoral officer must make the necessary correction.

- (b) The chief electoral officer must maintain a written record of all requests under section 5.7 along with the chief electoral officer's decision in relation to the request and reasons for the decision.

Corrected voters list

5.9 After any disputes over the voters list are resolved, the chief electoral officer must post a corrected voters list in accordance with section 5.5.

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PART 6 - BALLOTS AND BALLOT BOXES

Voting by ballot

6.1 All voting in an election must be made on ballots in accordance with this Act.

Secrecy of ballots

- 6.2 (a) Voting in an election must be by secret ballot.
- (b) Every individual present
- (i) at a voting place,
 - (ii) when a vote is being cast by mail-in ballot or electronic voting, or
 - (iii) at the counting of ballots
- must maintain the secrecy of every ballot and must not
- (iv) interfere or attempt to interfere with an eligible voter who is marking a ballot,
 - (v) attempt to discover how an eligible voter voted,
 - (vi) communicate information regarding how an eligible voter voted or marked a ballot, or
 - (vii) induce an eligible voter, directly or indirectly, to show a ballot in a way that reveals how that eligible voter voted.
- (c) The chief electoral officer must ensure that each voting place has at least one voting compartment that is arranged in a manner that an eligible voter may mark his or her ballot, screened off from observation by others and without interference or intimidation.

Style of paper ballot

- 6.3 (a) A paper ballot must be in the form approved by the chief electoral officer and, in the case of an election, must
- (i) list every candidate in alphabetical order by surname for each elected office to be filled in that election,
 - (ii) include a photograph of the candidate opposite each candidate's name on the ballot, and

- (iii) provide a space opposite each candidate's name for the eligible voter to enter a mark indicating his or her vote.
- (b) A paper ballot must be designed so that the eligible voter's identity cannot be ascertained after the paper ballot has been deposited in a paper ballot box.

Paper ballot boxes

- 6.4 Paper ballot boxes used in an election may be any physical box or other appropriate receptacle that is constructed so it can be sealed and paper ballots inserted but not withdrawn or the paper ballot box opened unless the seal is broken.

Paper ballots and other materials

- 6.5 Before the beginning of voting on the advance voting day and the general voting day, the chief electoral officer must deliver or cause to be delivered to each voting place
- (a) sufficient paper ballots,
 - (b) as many paper ballot boxes sealed in accordance with section 10.2 as are required, and
 - (c) sufficient copies of voting instructions, pencils and other materials for the marking of the paper ballots by eligible voters.

Style of electronic ballot

- 6.6 (a) An electronic ballot must be in the form approved by the chief electoral officer and, in the case of an election, must
- (i) list every candidate in alphabetical order by surname for each elected office to be filled in that election,
 - (ii) include a photograph of the candidate opposite each candidate's name on the ballot, and
 - (iii) provide a space opposite each candidate's name for the eligible voter to enter a mark indicating his or her vote.
- (b) An electronic ballot must be designed so that the eligible voter's identity cannot be ascertained after the electronic ballot has been recorded in the electronic ballot box.

Electronic ballot boxes

- 6.7 Electronic ballot boxes must be designed within the system to

- (a) be able to be electronically sealed,
- (b) permit electronic ballots to be recorded but not deleted, and
- (c) not be opened unless the electronic seal is clearly indicated as having been broken by the system electoral officer.

PART 7 - VOTING IN PERSON

Application of this Part

7.1 This Part applies to general voting and advance voting in an election.

Individuals who must be present at a voting place

7.2 At least one electoral officer must be present at all times at each voting place while voting is being conducted.

Individuals who may be present at a voting place

7.3 Only the following individuals may be present at a voting place while voting is being conducted:

- (a) electoral officers authorized to be present at the voting place;
- (b) individuals who are
 - (i) present at the voting place to vote,
 - (ii) assisting an eligible voter present to vote, or
 - (iii) in the care of an eligible voter present to vote;
- (c) an individual acting as a translator;
- (d) one candidate's representative for each candidate in the election; and
- (e) one additional candidate's representative for each candidate in the election temporarily present at the voting place for the purpose of conveying information to and from the candidate's representative referred to in subsection (d).

Requirements before eligible voter may be given a paper ballot

7.4 An eligible voter must meet the following requirements in order to obtain a paper ballot during general voting or advance voting:

- (a) the eligible voter's name must appear on the voters list; or
- (b) the eligible voter's name must be added to the voters list in accordance with section 7.5(b); and
- (c) the eligible voter must sign the voters list in the space provided next to his or her name.

Voting in person

- 7.5 (a) When an eligible voter wishes to vote in person at a voting place, an electoral officer must
- (i) verify that the eligible voter's name is on the voters list and, if requested by the electoral officer, the eligible voter must provide identification so that the eligible voter can be reliably identified by the election official as an eligible voter and the individual that they claim to be,
 - (ii) verify on the voters list whether or not the eligible voter has already voted,
 - (iii) if the individual is an eligible voter and has not already voted in that election, issue a paper ballot, initialed by an electoral officer on the back of the ballot, to the eligible voter in a manner that ensures the secrecy of the paper ballot and protects the secrecy of the eligible voter's vote,
 - (iv) provide to the eligible voter, in the form approved by the chief electoral officer, written instructions for marking the paper ballot, and
 - (v) indicate on the voters list that the eligible voter has voted as soon as the paper ballot is deposited in the paper ballot box.
- (b) If an individual wishes to vote in person in an election but his or her name is not on the voters list, an electoral officer may add that individual's name to the voters list and issue that individual a paper ballot in accordance with subsection (a) and allow him or her to vote only if
- (i) the electoral officer is satisfied that individual is an eligible voter and was omitted from the voters list in error, or
 - (ii) that individual provides the electoral officer with
 - (A) a sworn statement stating that the individual is an eligible voter, and
 - (B) any other information the electoral officer considers necessary or advisable to verify that the individual is an eligible voter.

How to vote by paper ballot

- 7.6 (a) After receiving a paper ballot, an eligible voter must
- (i) proceed without delay to a voting compartment provided,

- (ii) while the paper ballot is screened from observation by others, mark it by placing a mark in the blank space opposite the name of the candidate for whom the eligible voter wishes to vote,
 - (iii) fold the paper ballot to conceal all marks made on it by the eligible voter but so as to expose the initials of the electoral officer on the back of the paper ballot,
 - (iv) leave the voting compartment without delay,
 - (v) deliver the paper ballot to the electoral officer from whom he or she received it,
 - (vi) observe the electoral officer deposit his or her marked paper ballot into the paper ballot box, and
 - (vii) leave the voting place without delay.
- (b) After receiving a paper ballot in accordance with subsection (a), the electoral officer must, without delay and without unfolding the paper ballot, verify the initials of the electoral officer on the back of the ballot and deposit the paper ballot in a paper ballot box in the presence of the eligible voter and at least one other individual.
- (c) An electoral officer may, and if requested by an eligible voter must, explain to the eligible voter the proper method for voting by paper ballot.

One individual to a voting compartment

7.7 While an eligible voter is in a voting compartment to mark a paper ballot, no other individual may observe or be in a position to observe the paper ballot being marked except

- (a) an individual assisting the eligible voter under section 7.8, or
- (b) if an electoral officer permits, an individual who is in the care of the eligible voter.

Individuals needing assistance to mark their ballots

- 7.8 (a) An eligible voter who is unable to mark a paper ballot because of physical disability may be assisted in voting by an electoral officer or by an individual accompanying that eligible voter.
- (b) An individual who assists an eligible voter under subsection (a) must
- (i) preserve the secrecy of the paper ballot of the eligible voter being assisted,

- (ii) mark the paper ballot in accordance with the wishes of the eligible voter, and
 - (iii) refrain from influencing or attempting in any manner to influence the eligible voter as to how the eligible voter should vote.
- (c) An electoral officer must indicate on the voters list opposite the name of the eligible voter receiving assistance
- (i) the fact that
 - (A) the eligible voter's paper ballot was marked by another individual at the request of the eligible voter, or
 - (B) another individual accompanied the eligible voter in the voting compartment,
 - (ii) the name of the individual assisting or accompanying the eligible voter, and
 - (iii) the reason for which the eligible voter requested assistance or another individual to accompany the eligible voter.

Replacement of spoiled paper ballot

- 7.9 (a) If an eligible voter unintentionally spoils a paper ballot before it is deposited in a paper ballot box, the eligible voter may obtain a replacement paper ballot by giving the spoiled paper ballot to an electoral officer.
- (b) If an electoral officer receives a spoiled paper ballot in accordance with subsection (a), he or she must immediately
- (i) mark that paper ballot as spoiled,
 - (ii) provide that eligible voter with a replacement paper ballot, and
 - (iii) retain the spoiled paper ballot until it is dealt with in accordance with section 11.4.

Suspension of voting

- 7.10 (a) Voting at a voting place may be suspended by the responsible electoral officer if that electoral officer considers that
- (i) the health or safety of persons is at risk, or
 - (ii) the integrity of the voting is at risk.

- (b) If the responsible electoral officer suspends voting under subsection (a), that electoral officer must
 - (i) immediately notify the chief electoral officer of the suspension, and
 - (ii) follow any directions given by the chief electoral officer in relation to the suspension.
- (c) Voting may be suspended under subsection (a)
 - (i) to a later time on the same day at the same voting place,
 - (ii) to a later time on the same day at another location not more than 15 kilometres away, or
 - (iii) to a day, time and place to be set by the chief electoral officer.
- (d) While voting is suspended under subsection (a), the responsible electoral officer must make all reasonable efforts to ensure
 - (i) the paper ballot boxes, paper ballots and other election materials are secured, and
 - (ii) the integrity of the election is not compromised.
- (e) The responsible electoral officer must give notice to persons affected by any suspension of voting under this section as directed by the chief electoral officer or, in the absence of such direction, in any manner the responsible electoral officer considers appropriate.

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PART 8 - VOTING BY MAIL-IN BALLOT

Application of this Part

8.1 This Part applies to voting by mail-in ballot in an election.

Mail-in ballot

8.2 All mail-in ballots delivered to eligible voters by the chief electoral officer in accordance with section 2.5 require

- (a) the chief electoral officer's initials to be signed on the back of the mail-in ballot prior to being delivered,
- (b) a secrecy envelope,
- (c) a voter declaration form, and
- (d) a pre-addressed postage-paid return envelope addressed to the attention of the chief electoral officer.

Voting by mail-in ballot

8.3 An eligible voter may vote by mail-in ballot received from the chief electoral officer by

- (a) marking the mail-in ballot by placing a cross, check mark or other mark clearly indicating the eligible voter's choice on the mail-in ballot,
- (b) folding the mail-in ballot in a manner that conceals the choices and any marks, but exposes the chief electoral officer's initials on the back of the mail-in ballot,
- (c) placing the mail-in ballot in the secrecy envelope and sealing that secrecy envelope,
- (d) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age,
- (e) placing the secrecy envelope and the completed, signed and witnessed voter declaration form in the pre-addressed return envelope, and
- (f) subject to section 10.4(d), hand delivering or mailing the pre-addressed return envelope to the chief electoral officer.

Witness

8.4 A witness referred to in section 8.3(d) must attest to

- (a) the fact that the individual completing and signing the voter declaration form is the individual whose name is set out in the form, or
- (b) where the eligible voter enlisted the assistance of another individual under section 8.5 the fact that the eligible voter is the individual whose name is set out in the voter declaration form and that the mail-in ballot was marked according to the directions of the eligible voter.

Individuals needing assistance to mark their mail-in ballot

8.5 Where an eligible voter is unable to vote in the manner set out in section 8.3 because of a physical disability, the eligible voter may enlist the assistance of another individual to mark the mail-in ballot and complete and sign the voter declaration form in accordance with section 8.3.

Replacement of spoiled or lost mail-in ballot

- 8.6
- (a) If an eligible voter unintentionally spoils a mail-in ballot, the eligible voter may obtain a replacement mail-in ballot from the chief electoral officer by delivering the spoiled mail-in ballot to the chief electoral officer.
 - (b) If the chief electoral officer receives a spoiled mail-in ballot in accordance with subsection (a) he or she must as soon as practicable after receipt of the spoiled mail-in ballot
 - (i) mark the mail-in ballot as spoiled,
 - (ii) provide that eligible voter with a replacement mail-in ballot, and
 - (iii) retain the spoiled mail-in ballot until it is dealt with in accordance with section 11.4.
 - (c) An eligible voter who loses a mail-in ballot may obtain another mail-in ballot by delivering to the chief electoral officer a sworn statement stating that the eligible voter has lost the mail-in ballot.

PART 9 - ELECTRONIC VOTING

Application of this Part

9.1 This Part applies to electronic voting in an election.

Rules for electronic voting

- 9.2 The chief electoral officer, with the assistance of the system electoral officer, may make written rules regarding
- (a) how an eligible voter may vote by electronic voting,
 - (b) the administration of electronic voting, and
 - (c) the counting and tallying of votes cast by electronic voting.

Electronic system

- 9.3
- (a) The system electoral officer is responsible for
 - (i) establishing the technology, including software, for electronic voting, and
 - (ii) administering, maintaining, monitoring and performing audits of the system.
 - (b) For certainty, for the purposes of carrying out its duties under subsection (a), the system electoral officer must have access to the system beyond the access necessary to vote by electronic voting.
 - (c) When an eligible voter wishes to vote using electronic voting, the system must
 - (i) request the PIN issued to the eligible voter and at least one other piece of information unique to the eligible voter so that the eligible voter can be reliably identified as an eligible voter and the individual that they claim to be,
 - (ii) verify on the voters list whether or not the eligible voter has already voted,
 - (iii) if the individual is an eligible voter and has not already voted in that election, issue an electronic ballot to the eligible voter in a manner that ensures the secrecy of the ballot and protects the secrecy of the eligible voter's vote,
 - (iv) provide to the eligible voter, in the form approved by the chief electoral officer, instructions for marking the electronic ballot,

- (v) permit the eligible voter to mark the electronic ballot and record it in the electronic ballot box, and
- (vi) indicate on the voters list that the eligible voter has voted as soon as the electronic ballot is recorded in the electronic ballot box.

Individuals needing assistance to mark their electronic ballot

9.4 Where an eligible voter is unable to vote by electronic voting because of a physical disability, the eligible voter may enlist the assistance of another individual to enter the eligible voter's PIN, mark the eligible voter's electronic ballot and record it in the electronic ballot box.

Replacement PIN

- 9.5 (a) If an eligible voter did not receive a PIN, has lost his or her PIN or the PIN does not work, the chief electoral officer, after seeking the advice of the system electoral officer, may direct the system electoral officer to issue a new PIN to the eligible voter to allow him or her to vote only if
- (i) the chief electoral officer is satisfied that the individual is an eligible voter whose name appears on the voters list and who has not already voted in that election, and
 - (ii) if applicable, the system electoral officer has cancelled the original PIN assigned to that eligible voter such that the original PIN cannot be used for electronic voting.
- (b) The system electoral officer must maintain a record of the original and any replacement PIN assigned to each eligible voter until the end of the retention period under section 11.4.

Suspension of electronic voting

- 9.6 (a) Electronic voting may be suspended by the chief electoral officer or the system electoral officer if the chief electoral officer or the system electoral officer considers that
- (i) the health or safety of persons is at risk, or
 - (ii) the integrity of the voting is at risk.
- (b) If the system electoral officer suspends voting under subsection (a), the system electoral officer must
- (i) immediately notify the chief electoral officer of the suspension, and

- (ii) follow any directions given by the chief electoral officer in relation to the suspension.
- (c) Voting may be suspended under subsection (a)
 - (i) to a later time on the same day, or
 - (ii) to a day and time to be set by the chief electoral officer.
- (d) While voting is suspended under subsection (a), the system electoral officer must make all reasonable efforts to ensure
 - (i) the electronic ballot box, electronic ballots and other election materials are secured, and
 - (ii) the integrity of the election is not compromised.
- (e) The system electoral officer must give notice to persons affected by any suspension of voting under this section as directed by the chief electoral officer or, in the absence of such direction, in any manner the system electoral officer considers necessary or advisable in the circumstances.

List of persons who voted

- 9.7
- (a) As soon as reasonably practicable after the close of electronic voting, the system electoral officer must cause the system to
 - (i) generate a list of all eligible voters who voted by electronic voting, and
 - (ii) draw a line on the voters list through the name of all the eligible voters who voted by electronic voting.
 - (b) A printed and electronic copy of the lists under subsection (a) must be delivered to the chief electoral officer within 24 hours of the close of electronic voting and the chief electoral officer must, as soon as reasonably practicable, place a mark on the voters list opposite the name of each eligible voter who voted by electronic voting indicating the eligible voter has voted in that election.

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PART 10 - SECURING, COUNTING AND DISPOSING OF BALLOTS

Definitions

10.1 In this Part, “paper ballot” includes a mail-in ballot.

Sealing of paper ballot boxes

- 10.2 (a) Before any marked paper ballot is deposited in a paper ballot box, the chief electoral officer must, in the presence of at least one other electoral officer, inspect the paper ballot box to ensure that it is empty and then seal the paper ballot box in such a manner that paper ballots can be deposited but not withdrawn and the paper ballot box cannot be opened without breaking the seal.
- (b) After one or more marked paper ballots have been deposited in a paper ballot box, the chief electoral officer must, in the presence of at least one other electoral officer, seal the deposit slot of the paper ballot box at the following times in a manner that prevents the deposit of additional paper ballots:
- (i) when the paper ballot box appears to be full;
 - (ii) at the close of advance voting;
 - (iii) at the close of general voting;
 - (iv) between each deposit of mail-in ballots, and
 - (v) if voting is suspended under section 7.10.
- (c) Before additional paper ballots may be deposited in a paper ballot box sealed under subsection (b), the chief electoral officer must, in the presence of at least one other electoral officer, remove the seal of the paper ballot box deposit slot.
- (d) Between the close of advance voting and the commencement of general voting, the chief electoral officer must ensure that all paper ballot boxes used in advance voting are maintained in a secure location, free from any interference.

Sealing of electronic ballot box

- 10.3 (a) Before any electronic ballots are recorded in the electronic ballot box, the system electoral officer must cause the system to generate a report that indicates the electronic ballot box is empty and then ensure the electronic ballot box is sealed in such a manner that electronic ballots can be recorded but not deleted and the electronic ballot box cannot be opened unless the electronic seal is clearly indicated as having been broken by the system electoral officer.

- (b) The system electoral officer must ensure the integrity of the electronic ballot box and that the electronic ballot box is secure at all times, free from any tampering, during electronic voting and until the end of the retention period under section 11.4.

Procedures for depositing mail-in ballots

- 10.4 (a) Upon receipt of a pre-addressed return envelope under section 8.3(f), the chief electoral officer must ensure the envelope and its contents are secure at all times, free from any tampering, until the envelope is opened in accordance with subsection (b).
- (b) Subject to subsection (e), the chief electoral officer must, in the presence of a deputy electoral officer, open each pre-addressed return envelope received under section 8.3(f) provided the envelope was received before the end of voting hours on general voting day and
 - (i) set aside the unopened secrecy envelope if
 - (A) it was not accompanied by a voter declaration form or the voter declaration form is not signed or witnessed in accordance with Part 8,
 - (B) the name of the individual set out in the voter declaration form is not on the voters list, or
 - (C) the voters list shows that the eligible voter has already voted in that election,
 - (ii) if the secrecy envelope is not set aside in accordance with paragraph (i), open the secrecy envelope and, without unfolding the mail-in ballot, examine the mail-in ballot and set aside any mail-in ballot that does not have the initials of the chief electoral officer on the back, and
 - (iii) if the mail-in ballot is not set aside in accordance with paragraph (ii), place a mark on the voters list opposite the name of the eligible voter set out in the voter declaration form indicating the eligible voter has voted in that election and deposit the unfolded mail-in ballot in a paper ballot box sealed in accordance with section 10.2.
- (c) A vote cast on a mail-in ballot set aside by the chief electoral officer under subsection (b) is void and must not be counted as a vote cast.
- (d) A vote cast on a mail-in ballot that is not received by the chief electoral officer before the end of voting hours on general voting day is void and must not be counted as a vote cast.

- (e) The chief electoral officer must not deposit a mail-in ballot into a paper ballot box in accordance with this section until the voters list has been updated in accordance with section 9.7(b) after the close of electronic voting.

When and where counting is to be done

- 10.5 (a) The counting of paper ballots must not take place until the end of voting hours on general voting day, but the counting of paper ballots must take place as soon as practicable after that time.
- (b) The counting of paper ballots must take place at a voting place unless the chief electoral officer directs that the counting is to take place at another location.
- (c) The counting of electronic ballots must take place in accordance with section 10.11.

Who may be present at counting

- 10.6 (a) While the counting of paper ballots is being conducted
 - (i) a deputy electoral officer must be present, and
 - (ii) a candidate in the election, or one candidate's representative for a candidate not present, is entitled to be present.
- (b) No other individuals, other than those referred to in subsection (a), may be present when the counting of paper ballots is being conducted, unless permitted by the chief electoral officer.

Who does the counting

- 10.7 (a) An electoral officer must conduct the counting of paper ballots in accordance with sections 10.8 to 10.10.
- (b) If reasonably satisfied with the conduct of electronic voting for the election, the system electoral officer must certify the counting of electronic ballots by the system in accordance with section 10.11.
- (c) The chief electoral officer must combine the results of the counting of paper ballots and electronic ballots in accordance with section 10.13.

Procedures for counting paper ballots

- 10.8 (a) All paper ballots deposited in a paper ballot box must be counted in accordance with this section.

- (b) An electoral officer, and no other individual, must open each paper ballot box one at a time by breaking the seals of that paper ballot box and removing every paper ballot in that ballot box one at a time to be counted in accordance with this section and before proceeding to open and count the paper ballots in another paper ballot box.
- (c) As each paper ballot is counted, it must be placed in such a manner that individuals present at the counting table are able to see how the ballot is marked.
- (d) Counting must proceed as continuously as is practicable and the votes counted must be recorded by an electoral officer.
- (e) An electoral officer must endorse each paper ballot to indicate, in relation to each vote cast on that paper ballot, whether
 - (i) the vote was accepted in accordance with section 10.9,
 - (ii) the vote was rejected in accordance with section 10.9, or
 - (iii) the acceptance or rejection of the vote was objected to in accordance with section 10.10.

Rules for accepting and rejecting paper ballots

- 10.9 (a) Subject to subsection (b), an electoral officer must accept and count as a valid vote each cast on a paper ballot.
- (b) A vote cast on a paper ballot must be rejected as invalid if
- (i) the ballot does not have the initials of an electoral officer on the back of the ballot,
 - (ii) the marks on the ballot are not sufficiently clear so as to make it reasonably possible to determine the eligible voter's intention,
 - (iii) there are no marks on the ballot,
 - (iv) there are more marks on the ballot than there are candidates to be elected, or
 - (v) the ballot is marked in such a manner that the eligible voter can reasonably be identified.

Objections to acceptance or rejection of paper ballots

- 10.10 (a) A candidate or a candidate's representative may object to the decision of an electoral officer to accept or reject a vote cast on a paper ballot.

- (b) If an objection is made under subsection (a), an electoral officer must record the objection and endorse the back of the paper ballot with the details of the objection.
- (c) An objection must be made at the time the ballot is considered by an electoral officer.

Procedures for counting electronic ballots

- 10.11 (a) All electronic ballots recorded in an electronic ballot box must be counted in accordance with this section.
- (b) At the close of electronic voting, the system electoral officer must cause the system to generate a report that contains
 - (i) a count of the total number of eligible voters who voted by electronic voting,
 - (ii) for each candidate in the election, a separate count of the total number of votes accepted in accordance with section 10.12,
 - (iii) for each elected office to be filled in the election, a separate count of the total number of votes rejected in accordance with section 10.12, and
 - (iv) any other information the chief electoral officer may reasonably require.
 - (c) If reasonably satisfied with the conduct of electronic voting for the election, the system electoral officer must certify and provide a copy of the report generated in accordance with subsection (b) to the chief electoral officer with the lists of eligible voters who voted by electronic voting required under section 9.7.

Rules for accepting and rejecting electronic ballots

- 10.12 The system must be designed so that
- (a) subject to subsection (b), each vote cast on an electronic ballot is accepted and counted as a valid vote,
 - (b) a vote cast on an electronic ballot is rejected as invalid if it is recorded in the electronic ballot box without any marks,
 - (c) eligible voters are prompted if they are about to record an electronic ballot in the electronic ballot box without any marks for one or more elected offices to be filled in the election and given the option to go back and mark their choices for those elected offices before recording the electronic ballot in the electronic ballot box, and

- (d) eligible voters cannot make more marks on the ballot than there are candidates to be elected.

Combining ballot counts

- 10.13 The chief electoral officer must, in a timely manner, combine the results of the counting of paper ballots and electronic ballots in relation to each candidate in the election.

PART 11 - ELECTION RESULTS

Election results

- 11.1 The chief electoral officer must, without delay after completing the counting of ballots,
- (a) declare elected the three candidates who receive the highest number of valid votes; and
 - (b) prepare and post in accordance with Toquaht law a written report setting out
 - (i) the number of eligible voters who voted in the election,
 - (ii) the number of votes accepted for each candidate in the election, and
 - (iii) the number of votes rejected for each elected office to be filled in the election; and
 - (c) certify the results announced under subsection (a).

Tied votes

- 11.2
- (a) If two or more candidates for an office have an equal number of votes, the chief electoral officer must cast the deciding vote in accordance with this section.
 - (b) The names of each of those tied candidates must be written on separate slips of paper, folded sufficiently to conceal the names of the tied candidates written on the slips of paper and placed into a small box or other suitable receptacle so as to allow a name draw.
 - (c) The chief electoral officer must then
 - (i) impartially draw one slip of paper from the box or other receptacle,
 - (ii) mark a ballot so as to indicate a vote cast for the candidate whose name is on that slip of paper,
 - (iii) count and record that ballot as a vote cast for the candidate whose name is on that slip of paper,
 - (iv) endorse on the back of that ballot that it is a vote cast under this section, and
 - (v) declare the candidate whose name is on that slip of paper the winner of the election for that office.

- (d) For certainty, if there are more than two tied votes for two or more offices, the procedures under this section must be repeated until all offices for which there have been tied votes have been declared elected and filled.

Final count

- 11.3 Subject to section 12.1, the results of an election declared in accordance with section 11.1 or section 11.2 are final.

Disposition of election materials

- 11.4 (a) The chief electoral officer must maintain all ballots, including spoiled ballots, voters lists and other materials specific to the election, except information required to be maintained by the system electoral officer under subsection (b) in a secure location, free from any interference
- (i) for 90 days after the general voting date,
 - (ii) until the conclusion of any application for recount under section 12.1, or
 - (iii) until the conclusion of any application to set aside the election under section 12.6,
- whichever is later.
- (b) The system electoral officer must ensure the integrity of all information specific to electronic voting in an election, including the information required to be maintained under sections 9.5(b) and 10.3(b), and that such information is secure at all times, free from any tampering until the end of the retention period under subsection (a).
- (c) At the end of the retention period under subsection (a), the chief electoral officer must,
- (i) in the presence of at least one witness, destroy the materials retained by the chief electoral officer under subsection (a), and
 - (ii) direct the system electoral officer to destroy the information retained by the system election officer under subsection (b).

PART 12 - ELECTION APPEALS

Application for recount

- 12.1 (a) After the results of an election are declared in accordance with section 11.1 or 11.2, a candidate for an elected office in that election may, in accordance with subsection (b), apply to the chief electoral officer for a recount of the votes cast in that election for that office on one or more of the following grounds:
- (i) that ballots for that office were not correctly accepted or rejected in accordance with this Act;
 - (ii) that mail-in ballots for that office that were not counted should have been counted in accordance with this Act;
 - (iii) that the written report under section 11.1 did not accurately record the number of votes for a candidate for that office.
- (b) An application under subsection (a) must be made by filing an application with the chief electoral officer in the form approved by the chief electoral officer within two days after the chief electoral officer posts the written report in accordance with section 11.1.
- (c) On the filing of an application in accordance with subsection (b), the chief electoral officer must,
- (i) by directive, dismiss the application if the chief electoral officer determines that the recount, if it were to be conducted, would not materially affect the results of the election, or
 - (ii) conduct a recount of the votes cast in that election for that office.

Individuals who may be present at recount

- 12.2 (a) While a recount is being conducted in accordance with section 12.1:
- (i) a deputy electoral officer must be present, and
 - (ii) the following individuals may be present:
 - (A) candidates for that office; and
 - (B) for each candidate under paragraph (i), one candidate's representative, and for each candidate under paragraph (i) who is not present, two candidate's representatives.

- (b) No other individual, other than those referred to in subsection (a), may be present when the recounting of ballots is being conducted, unless permitted by the chief electoral officer.

Recount of electronic voting results

- 12.3 (a) In the event of a recount of electronic ballots, the system electoral officer must cause the system to regenerate the count of electronic ballots and a copy of the regenerated count must be given to the chief electoral officer.
- (b) If the initial count and the regenerated count of electronic ballots match, the regenerated count is the final count of the votes cast by electronic voting.
- (c) If the regenerated count and the initial count of electronic ballots do not match, the chief electoral officer must, with the assistance of the system electoral officer, do the following:
 - (i) direct one final count of the electronic ballots be regenerated; and
 - (ii) attend while the final count is being regenerated.
- (d) A regenerated count conducted in accordance with subsection (c) is the final count of the votes cast by electronic voting.

Certification of results of recount

- 12.4 After conducting a recount in accordance with section 12.1, the chief electoral officer must certify the results of the recount by issuing a certificate setting out the results of the recount.

Posting of results

- 12.5 As soon as practicable after certifying the official results of a recount under section 12.4, the chief electoral officer must post in accordance with Toquaht law, a notice containing the results of the recount.

Application to set aside election

- 12.6 (a) Within 10 days after an election, any eligible voter who voted in that election may challenge the validity of the election on the grounds that
 - (i) the election was not conducted in accordance with this Act in a way that materially affected the result,
 - (ii) a candidate in the election was ineligible to be a candidate and this fact materially affected the election result, or

- (iii) there was vote buying, intimidation or other corrupt practice in connection with the election,

by filing an application with the chief electoral officer in the form approved by the chief electoral officer.
- (b) An application under subsection (a) must include
 - (i) a statement of the grounds of which the application is based,
 - (ii) a statement of the details on which the application is based, and
 - (iii) all supporting documents upon which the applicant relies.
- (c) The chief electoral officer must, without delay, forward a copy of an application received in accordance with subsections (a) and (b) to each candidate in the election.

Candidate response

- 12.7 (a) A candidate may, within seven days of receiving a copy of an application made in accordance with section 12.6, file a written response with the chief electoral officer.
- (b) The response under subsection (a) must include all supporting documents upon which the candidate relies.

Application hearing

- 12.8 (a) The chief electoral officer must, without delay, refer an application made in accordance with section 12.6 and any responses given in accordance with section 12.7 to the Administrative Decisions Review Board.
- (b) For certainty, an application made in accordance with section 12.6 is deemed to be a review request filed under section 3.1 of the Administrative Decisions Review Act to which section 1.3(a) of that Act applies and
 - (i) that review request does not require a preliminary assessment under section 3.4 of the Administrative Decisions Review Act or a review report from the review officer under section 3.5 of that Act,
 - (ii) the eligible voter who filed the application in accordance with section 12.6 is deemed to be the applicant under the Administrative Decisions Review Act,

- (iii) a candidate who delivers a written response in accordance with section 12.7 is deemed to be a party to the review under the Administrative Decisions Review Act, and
 - (iv) the chief electoral officer is deemed to be a party to the review under the Administrative Decisions Review Act and a Toquaht public employee for purposes of interpreting his or her obligations under the Administrative Decisions Review Act.
- (c) The Administrative Decisions Review Board
- (i) may hold a hearing in accordance with the Administrative Decisions Review Act at which the parties to the review have an opportunity to present oral and other evidence,
 - (ii) may conduct further inquiries as the Administrative Decisions Review Board considers necessary or advisable,
 - (iii) must order, despite section 4.7 of the Administrative Decisions Review Act, either to
 - (A) reject the application and confirm the results of the election, or
 - (B) allow the application, in whole or in part, and declare the relevant elected office vacant, and
 - (iv) must make an order under paragraph (iii) within 30 days of receiving the application and responses from the chief electoral officer.

Costs of review

- 12.9 Despite sections 4.7 and 4.8 of the Administrative Decisions Review Act, if under section 12.8 the Administrative Decisions Review Board
- (a) allows an application made under section 12.6 and declares an elected office vacant, the Toquaht Nation must pay the cost of the Administrative Decisions Review Board, or
 - (b) rejects an application made under section 12.6 and confirms the results of an election, the eligible voter who made the application under section 12.6 must pay the cost of the Administrative Decisions Review Board.

PART 13 - BY-ELECTIONS

By-election for elected office

- 13.1 (a) Subject to subsection (c), when a vacancy occurs in an elected office, a by-election must be held to fill that vacancy within 90 days after the vacancy occurs.
- (b) A by-election must be held on a date determined by Council, by resolution.
- (c) A by-election
- (i) must be held to fill an elected office that becomes vacant only if more than six months remain until the next regular election, and
 - (ii) may be held to fill an elected office that becomes vacant at least four months before the next regular election.
- (d) A candidate elected in a by-election is only elected to complete the balance of the term of the elected office of the individual he or she is replacing.

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PART 14 - OFFENCES

Restriction on election campaigning near election offices and voting places

- 14.1 (a) A person must not post, display or disseminate within 100 metres of the office of the chief electoral officer
- (i) any election advertising, or
 - (ii) any material that identifies a candidate or represents a particular choice on a question in a referendum or at a ratification meeting.
- (b) While voting is being conducted at a voting place, a person must not do any of the following within 100 metres of the voting place:
- (i) post, display or disseminate
 - (A) election advertising, or
 - (B) any material that identifies a candidate or represents a particular choice on a question in a referendum or at a ratification meeting unless authorized by the chief electoral officer;
 - (ii) canvass or solicit votes or otherwise attempt to influence how an eligible voter votes;
 - (iii) carry, wear or supply a flag, badge or other thing indicating that the person using it is a supporter of a particular candidate or choice on a question in a referendum or at a ratification meeting; or
 - (iv) post, display, disseminate or leave a representation of a ballot marked for a particular candidate or choice on a question in a referendum or at a ratification meeting.
- (c) If subsection (a) or (b) is contravened, the chief electoral officer or other electoral officer authorized by the chief electoral officer may enter on the property where the materials are located and remove, cover or otherwise obscure them from view.
- (d) While voting is being conducted at a voting place, a person must not conduct election advertising by means of a public address system that is within hearing distance of the voting place.

Vote or PIN buying

- 14.2 (a) A person must not pay, give, lend or procure an inducement for any of the following purposes:

- (i) to induce an individual to vote or refrain from voting in an election;
 - (ii) to induce an individual to vote or refrain from voting for or against a particular candidate or choice on a question in a referendum or at a ratification meeting; or
 - (iii) to reward an individual for having voted or refrained from voting as described in paragraph (i) or (ii).
- (b) An individual must not accept an inducement
- (i) to vote or refrain from voting in an election,
 - (ii) to vote or refrain from voting for or against a particular candidate or choice on a question in a referendum or at a ratification meeting, or
 - (iii) as a reward for having voted or refrained from voting as described in paragraph (i) or (ii).
- (c) A person must not
- (i) use an individual's PIN that is not their own to vote or access the system unless the person is assisting that person in accordance with section 9.4,
 - (ii) take, seize or deprive an eligible voter of his or her PIN, or
 - (iii) sell, gift, transfer, assign or purchase a PIN.
- (d) A person must not advance, pay or otherwise provide an inducement, or cause an inducement to be provided with the intent that the inducement is to be used for any of the acts prohibited by this section.
- (e) A person must not offer, agree or promise to do anything otherwise prohibited by this section.
- (f) A person prohibited from doing something by this section must not do the prohibited thing directly or indirectly.

Intimidation

- 14.3 (a) A person must not intimidate an individual for any of the following purposes:
- (i) to persuade or compel the individual to vote or refrain from voting in an election;

- (ii) to persuade or compel the individual to vote or refrain from voting for a particular candidate or choice on a question in a referendum or at a ratification meeting; or
 - (iii) to punish the individual for having voted or refrained from voting as described in paragraph (i) or (ii).
- (b) A person must not, by abduction, duress or fraudulent means, do any of the following:
 - (i) impede, prevent or otherwise interfere with an individual's right to vote in an election;
 - (ii) compel, persuade or otherwise cause an individual to vote or refrain from voting in an election; or
 - (iii) compel, persuade or otherwise cause an individual to vote or refrain from voting for or against a particular candidate or choice on a question in a referendum or at a ratification meeting.
- (c) A person prohibited from doing something by this section must not do the prohibited thing directly or indirectly.

Interference with electronic voting

- 14.4 (a) A person must not
- (i) impede, prevent or otherwise interfere or attempt to interfere with anyone who is casting a vote by electronic voting, or
 - (ii) impede, prevent or otherwise interfere or attempt to interfere with electronic voting or the system.
- (b) A person prohibited from doing something by this section must not do the prohibited thing directly or indirectly.

Corrupt voting

- 14.5 An individual must not
- (a) vote in an election when not entitled to do so,
 - (b) vote on more than one occasion in an election,
 - (c) apply for more than one mail-in ballot in an election,

- (d) fail to mark a ballot in accordance with the directions of the eligible voter being assisted by that individual, or
- (e) obtain a ballot in the name of another individual, whether the name is of a living, dead or fictitious individual.

Electoral officers

- 14.6
- (a) An electoral officer must not contravene this Act or a direction of the chief electoral officer.
 - (b) A person must not advance, pay or otherwise provide an inducement, or cause an inducement to be provided, with the intent that the inducement is to be used to procure a contravention of subsection (a).
 - (c) A person must not offer, agree or promise to do anything otherwise prohibited by this section.
 - (d) A person prohibited from doing something by this section must not do the prohibited thing directly or indirectly.

Offences in relation to candidates

- 14.7 In the case of an election, a person must not
- (a) purport to withdraw a candidate from an election without authority to do so, or
 - (b) publish, or cause to be published, a false statement that a candidate has withdrawn from an election.

Offences in relation to ballots and other voting materials

- 14.8 A person must not, without authority under this Act,
- (a) supply a ballot to any person,
 - (b) print or reproduce a ballot or paper image or electronic representation that is capable of being used as a ballot,
 - (c) remove a ballot from a voting place,
 - (d) deposit in a ballot box, or cause to be deposited in a ballot box, anything other than a ballot authorized to be deposited, or
 - (e) destroy, remove, open or otherwise interfere with a ballot, secrecy envelope, ballot box, written report or other voting materials.

Offences in relation to voting and counting proceedings

14.9 A person must not

- (a) contravene section 6.2 regarding the secrecy of ballots,
- (b) without authority under this Act, be present at a voting place or where the counting of ballots is being conducted, or
- (c) without authority under this Act, remove, cover up, mutilate, deface or alter a notice or other document authorized or required to be posted under this Act.

Offences in relation to electoral officers

14.10 A person must not

- (a) represent that the person is an electoral officer if they are not,
- (b) accept appointment or act as an electoral officer when they are not qualified,
- (c) having made a solemn declaration under this Act to exercise their powers and perform their duties faithfully and impartially, act other than faithfully and impartially in exercising those powers or performing those duties, or
- (d) impede or obstruct an electoral officer or other person in performing duties and exercising powers given to the person under this Act.

Offences in relation to false or misleading information

14.11 (a) A person must not

- (i) provide false or misleading information when required or authorized under this Act to provide information, or
 - (ii) make a false or misleading statement or declaration when required under this Act to make a statement or declaration.
- (b) A person is not guilty of an offence under this section if, at the time the information was provided or the statement or declaration was made, the person did not know that the information, statement or declaration was false or misleading and could not, even with the exercise of reasonable diligence, have known that it was false or misleading.

Penalties

- 14.12 Every person who contravenes this Part commits an offence and is liable, on summary conviction, to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 30 days.

PART 15 - GENERAL PROVISIONS

Regulations

- 15.1 (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.
- (b) Without limiting subsection (a), the Executive may make regulations in relation to
- (i) requests for review by and applications to the chief electoral officer, and his or her consideration of those requests and applications,
 - (ii) the filing of documents with the chief electoral officer,
 - (iii) nomination papers and other documents required to be filed with the chief electoral officer in connection with the nomination of an individual as a candidate,
 - (iv) the opportunities to vote in elections afforded to eligible voters who are Toquaht government employees,
 - (v) ballots, secrecy envelopes, ballot boxes, written reports or other voting materials,
 - (vi) the rules and procedures to be followed in counting or recounting ballots, including the circumstances in which
 - (A) ballots must be rejected, or
 - (B) secrecy envelopes must not be opened,
 - (vii) the terms and conditions of the appointment, employment, resignation and removal from office of
 - (A) the chief electoral officer, or
 - (B) any other electoral officer,
 - (viii) the verification of mail-in ballots and electronic ballots,
 - (ix) maintaining secrecy of mail-in ballots and electronic ballots,
 - (x) how voting by mail-in ballot and electronic voting is to be conducted, including
 - (A) how eligible voters are to be contacted on matters relating to electronic voting, and

- (B) how electronic voting materials, including electronic ballots, are to be destroyed,
- (xi) ensuring that an eligible voter only votes once in each election,
- (xii) any other matter regulating voting by mail-in ballot and electronic voting and to protect the integrity of the election, and
- (xiii) the preparation, printing and security of mail-in ballots and electronic ballots.

Repeal

15.2 The Elections Act TNS 8/2011 is repealed.

Commencement

- 15.3 (a) Sections 13.1(a) and 13.1(c) come into force on the day after section 2.8 of the Constitution is amended in accordance with Chapter 9 of the Constitution to remove the requirement that a by-election be held within 30 days after a vacancy occurs.
- (b) All provisions of this Act other than the provisions referred to in subsection (a) come into force on the date this Act is enacted.

LEGISLATIVE HISTORY

Elections Act TNS 1/2014 enacted March 11, 2014

Amendments

Section	Amendment	In Force
12.1(c)	TNS 8/2014, s.4.6(a)	June 10, 2014
12.8(c)(iii)	TNS 8/2014, s.4.6(b)	June 10, 2014

Amending Acts:

TNS 8/2014 Enforcement Framework Amendment Act No. 2 enacted June 10, 2014

Regulations: