

**TA'AN KWÄCH'ÄN COUNCIL**

**Chapter 1**

**Elections Act**

**May 2018**

**Ta'an Kwäch'än Council****ELECTIONS ACT**

Enacted on this 9<sup>th</sup> day of May, 2018

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**Chief Kristina Kane**

**The Ta'an Kwäch'än Council hereby enacts as follows:**

**PART ONE  
GENERAL PROVISIONS**

**Short title**

1. This Act may be cited as the *Elections Act*.

**Definitions**

2. In this Act

“ballot” means a ballot paper actually or apparently placed in a ballot box pursuant to section 57 and in this Act refers to either ballots for Chief or ballots for Deputy-Chief unless otherwise specified;

“by-election” means an election held pursuant to section 9;

“candidate” means a person qualified to be a candidate in an election pursuant to Part Five;

“Chief” means the Chief pursuant to the *Constitution*;

“chief returning officer” means the chief returning officer appointed pursuant to section 15 to section 17;

“Citizen” means a person enrolled as a Citizen in accordance with the *Constitution*, Schedule I, *Ta'an Kwäch'än Council Citizenship Code*, section 2.0 Citizenship;

“citizenship committee” means the citizenship committee established in accordance with the *Constitution*, Schedule I, *Ta’an Kwäch’än Council Citizenship Code*, section 5.0 Citizenship Committee;

“City of Whitehorse” means the land area within the boundaries of the City of Whitehorse pursuant to the *Municipal Act*, Schedule 3;

“common-law partner” means a person who has been cohabiting with a Citizen in a conjugal relationship for at least one year, or who had been so cohabiting with the individual for at least one year immediately before the individual’s death;

“*Constitution*” means the *Constitution of the Ta’an Kwäch’än Council*, as amended from time to time;

“Council” means the Council pursuant to the *Constitution*;

“Councillor” means a Family Councillor pursuant to the *Constitution*;

“Deputy-Chief” means the Deputy-Chief pursuant to the *Constitution*;

“deputy returning officer” means the deputy returning officer appointed pursuant to section 21 to section 23;

“early vote” means the special ballot pursuant to section 71;

“election” means the entire process of the administration and taking of the vote for the office of Chief and Deputy-Chief;

“election committee” means the election committee appointed pursuant to section 11;

“Enrollment Coordinator” means Enrollment Coordinator in accordance with the *Constitution*, Schedule I, *Ta’an Kwäch’än Council Citizenship Code*, section 1.0 Definitions; *BR 2009–11*, *ECR 2009–02*;

“final agreement” means the *Ta’an Kwäch’än Council Final Agreement*;

“immediate family” means

- (a) a Citizen’s spouse or common-law partner,
- (b) a Citizen's father and mother and the spouse or common-law partner of the father or mother,
- (c) a Citizen's children and the children of the employee's spouse or common-law partner,
- (d) a Citizen's grandchildren,
- (e) a Citizen’s brothers and sisters,
- (f) the grandfather and grandmother of a Citizen,
- (g) the father and mother of the spouse or common-law partner of a Citizen and the spouse or common-law partner of the father or mother,
- (h) any relative of a Citizen who resides permanently with the Citizen or with whom a Citizen permanently resides, and whereas;

“Judicial Council” means the Judicial Council established pursuant to the *Constitution*;

“mail-in vote” means a vote held pursuant to section 63;

- “mobile vote” means the mobile poll pursuant to section 74;
- “nomination day” means nomination day pursuant to section 6;
- “oath” includes a solemn affirmation or a statutory declaration;
- “official voters list” means the public list of all electors pursuant section 28;
- “poll clerk” means the poll clerk appointed pursuant to section 24 to section 26;
- “regular vote” means the regular vote pursuant to section 78;
- “surrounding area” means the boundaries of the Yukon Territory;
- “Traditional Family” means a Traditional Family pursuant to the *Constitution*;
- “traditional territory” includes the geographic area within the Yukon identified in the final agreement as the Ta’an Kwäch’än Council traditional territory;
- “vote” means to cast a ballot;
- “voter” means any person qualified to vote at an election pursuant to section 27;
- “voting day” means the day of the regular vote pursuant to section 5;
- “voting place” means a building or location at which a polling station is established;
- “voting station” means the premises secured for the taking of the vote of all or part of the electors;
- “writ” means a writ of election pursuant to section 6; and
- “Yukon” means the Yukon Territory as defined in the *Yukon Act* (Canada).

### **Purpose**

- 3.** The purpose of this Act
- (a) is to provide for the conduct of the Ta’an Kwäch’än Council self-government powers in accordance with the *Constitution*; and
  - (b) to ensure that the elections of a Chief and Deputy-Chief are conducted in a fair, transparent, accountable and equitable manner.

### **Application**

**4.** (1) This Act, in accordance with the *Constitution*, applies to the election of a Chief and a Deputy-Chief of the Ta’an Kwäch’än Council to represent all persons who are enrolled as Citizens.

(2) If there is a conflict between this Act and any other enactment enacted before or after this section comes into force, this *Act* prevails unless the other enactment contains an express provision that it, or a relevant provision of it, applies notwithstanding this *Act*.

PART TWO  
WRIT OF ELECTION

**Timing of an election**

5. After the first election under this *Act*, elections for the office of Chief and Deputy-Chief shall be held every three years on the third Monday in October.

**Writ of election**

6. (1) Every election shall begin by a writ of election in the form of a dated resolution issued by the Council that shall specify the date for the close of nominations and the date of regular voting day.

(2) The close of nominations shall be 45 days before the date of voting day and may be referred to as nomination day. The duration to receive nominations shall be at least 15 consecutive days.

**Notice of issue of writ**

7. The Council shall immediately give notice of the issue of the writ on the Ta'an Kwäch'än Council website, and in the newspapers that have public circulation in the traditional territory of the Ta'an Kwäch'än Council.

**Changes to the time for the taking of the vote**

8. (1) The election committee may, after consultation with the chief returning officer, extend or postpone the time for the taking of the vote, if it is satisfied that a substantial number of voters will be unable to get to their voting station within the time provided due to

- (a) extreme weather conditions; or
- (b) a tragic community event.

(2) No extension or postponement of the time for the taking of the vote, pursuant to subsection 8(1), of more than 72 consecutive hours shall be granted.

**By-election**

9. (1) A date for a by-election shall be declared by the Council within thirty days of the office for Chief or Deputy-Chief becoming vacant in accordance with section 8.13 of the *Constitution*.

(2) If the office for Chief or Deputy-Chief becomes vacant within six months before the holding of a regular election, the office shall remain vacant until the regularly held election pursuant to section 5.

(3) A by-election shall be conducted under the terms of this Act.

**Family Councillor being elected**

10. If a Traditional Family line decides to exercise its rights in accordance with section 8.4.2 of the *Constitution* and selects its Family Councillor by way of election concurrent with the vote for the office of Chief and Deputy-Chief, the family line shall provide notice in writing to the Ta'an Kwäch'än Council ninety days before voting day.

PART THREE  
ELECTION OFFICERS AND STAFF

**Appointment of the election committee**

11. The Council shall appoint three Yukon residents at large, who are aged 19 years or older and who are not TKC Citizens, as members of the election committee 60 days before the issue of the writ. *BR 2009-11, ECR 2009-02.*

**Duration of appointment of the election committee**

12. The members of the election committee shall be appointed for a fixed term of three years from the date of appointment and may be re-appointed.

**Conditions of appointment to the election committee**

13. The members of the election committee shall
- (a) not be a Citizen of the Ta'an Kwäch'än Council;
  - (b) refrain from any active or public support or criticism of any candidate or voter; and
  - (c) not be an Immediate Family member of a Citizen of the Ta'an Kwäch'än Council.

**Powers and responsibilities of the election committee**

14. (1) The election committee shall be responsible for all matters related to the general direction, overall supervision and conduct of the election under this *Act* and in accordance with the laws of the Ta'an Kwäch'än Council.

(2) The election committee, in consultation with the Enrollment Coordinator of the Ta'an Kwäch'än Council, shall compile the official voters list that sets out, in alphabetical order, the name of each Citizen who, on the date of voting day, is 16 years of age or older.

(3) The election committee, in consultation with the chief returning officer, shall submit a budget to the Council for approval.

(4) The members of the election committee shall present an endorsed and dated written report and recommendations to the Council within the time frame specified in Part Fourteen of this Act.

**Appointment of the chief returning officer**

15. Upon recommendations from the Council, the election committee shall, not later than 30 days before the issue of the writ, appoint a chief returning officer who shall make a declaration to
- (a) act impartially;
  - (b) not accept nomination as a candidate in the election;
  - (c) not favour, promote or be associated with the campaign of any candidate; and
  - (d) respect the principles associated with a secret ballot. *BR 2009–11, ECR 2009–02.*

**Conditions for appointment of the chief returning officer**

16. The chief returning officer shall
- (a) not be a Ta'an Kwäch'än Council Citizen;
  - (b) refrain from any active or public support or criticism of any candidate or voter;
  - (c) report and be accountable to the election committee;
  - (d) not be a Chief, a Deputy-Chief or an employee of the Ta'an Kwäch'än Council administration when the writ is issued;
  - (e) be at least 19 years of age; and
  - (f) not be an Immediate Family member of a Citizen of the Ta'an Kwäch'än Council.

**Responsibilities and duties of the chief returning officer**

17. The chief returning officer shall act on behalf of the election committee, and is responsible to
- (a) appoint and train deputy returning officers, poll clerks and all other persons required to conduct the vote;
  - (b) distribute, publish, and manage the official voters list;
  - (c) prepare, post and announce the notice of the election;
  - (d) accept nominations;
  - (e) prepare a list of nominated candidates;
  - (f) procure the necessary materials;
  - (g) establish voting places;
  - (h) establish regulations and accreditation procedures for all personnel involved at the voting places;
  - (i) establish and conduct the mail-in vote;
  - (j) establish and conduct the early vote;
  - (k) establish and conduct the mobile vote;
  - (l) establish and conduct the advance vote;
  - (m) establish and conduct the regular vote and be responsible for all matters during voting;
  - (n) close the vote and receive the sealed ballot boxes;
  - (o) supervise the count of the vote;
  - (p) declare the results;
  - (q) assign or delegate any duties required in the conduct of the vote;
  - (r) generally, oversee and supervise the conduct of the vote to ensure the effective execution of the provisions of this Act; and
  - (s) in accordance with this Act, provide all election materials in sealed and signed envelopes to the Enrollment Coordinator following the close of any appeal procedures.

**Intent of this Act**

18. The chief returning officer must rigorously apply this *Act* to ensure the secrecy of the ballot and the integrity of the voting process.

**Resources provided**

19. The Ta'an Kwäch'än Council shall provide sufficient resources to enable the election committee to fulfill the duties required.

**Deputy returning officer**

20. The chief returning officer may appoint a deputy returning officer who shall
- (a) assist the chief returning officer; and
  - (b) exercise any specific powers delegated to him or her by the chief returning officer.

**Deputy returning officer—criteria for eligibility**

21. Each deputy returning officer shall
- (a) be at least 19 years of age;
  - (b) not be an employee of the Ta'an Kwäch'än Council administration;
  - (c) not be a Ta'an Kwäch'än Council Citizen;
  - (d) be a resident of the Yukon;
  - (e) understand the election procedures; and
  - (f) not be an Immediate Family member of a Citizen of the Ta'an Kwäch'än Council.

**Declaration by a deputy returning officer**

22. Each deputy returning officer shall make a declaration to
- (a) act impartially;
  - (b) not accept nomination as a candidate in the election;
  - (c) not favour, promote or be associated with the campaign of any candidate;
  - (d) refrain from any active or public support or criticism of any candidate or voter;
  - (e) respect the principles associated with a secret ballot;
  - (f) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
  - (g) report and be accountable to the chief returning officer.

**Responsibilities and duties of a deputy returning officer**

23. Each deputy returning officer shall be responsible to
- (a) perform all duties assigned and delegated by the chief returning officer;
  - (b) act as a witness to the conduct of the vote;
  - (c) observe activities at the voting place;
  - (d) assume other duties as required by the chief returning officer; and
  - (e) report to the chief returning officer any violations under this Act.

**Poll clerk – criteria for eligibility**

24. Each poll clerk shall
- (a) be at least 19 years of age;
  - (b) not be a Chief, a Deputy-Chief or an employee of the Ta'an Kwäch'än Council administration;
  - (c) not be a Family Councillor or a candidate for election of either Chief or Deputy-Chief; and
  - (d) understand the election procedures.

**Declaration by a poll clerk**

25. Each poll clerk shall make a declaration to
- (a) act impartially;
  - (b) not accept nomination as a candidate in the election;
  - (c) not favour, promote or be associated with the campaign of any candidate;
  - (d) respect the principles associated with a secret ballot;
  - (e) refrain from any active or public support or criticism of any candidate or voter;
  - (f) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
  - (g) report and be accountable to the chief returning officer.

**Responsibilities and duties of a poll clerk**

26. Each poll clerk is responsible to
- (a) perform all duties assigned and delegated by the chief returning officer;
  - (b) act as a witness to the conduct of the vote;
  - (c) observe activities at the voting place and the counting of ballots;
  - (d) assume other duties as required by the chief returning officer; and
  - (e) report to the chief returning officer any violations under this Act.

PART FOUR  
VOTER RIGHTS AND OFFICIAL VOTERS LIST

**Qualifications as a voter**

27. Every person shall be qualified to vote at an election who, on the date of voting day, is
- (a) 16 years of age or older; and
  - (b) enrolled as a Citizen of Ta'an Kwäch'än Council.

**Compilation of the official voters list**

28. (1) The election committee, in consultation with the Enrollment Coordinator, using the citizen registry of the Ta'an Kwäch'än Council, shall compile the official voters list that sets out, in alphabetical order, the name of each Citizen who, on the date of voting day, is 16 years of age or older.

(2) It shall be the responsibility of the voter to ensure that his or her name appears on the official voters list.

### **Posting of the official voters list**

**29.** (1) A preliminary official voters list shall be made available to the candidates after the close of nominations.

(2) The official voters list shall be posted at the Ta'an Kwäch'än Council principal administrative office no later than 30 consecutive days before the date of voting day.

### **Revisions to the official voters list**

**30.** (1) At any time, including on the date of voting day, the election committee, in consultation with the Enrollment Coordinator, shall revise the official voters list where it is demonstrated that

- (a) the name of a voter has been omitted from the list;
- (b) the name of a voter is incorrectly set out on the list;
- (c) the person named on the list is not a Citizen; or
- (d) the person named on the list is not at least 16 years of age or older on the date of voting day.

(2) Only those Citizens whose names are on the official voters list shall be entitled to vote in the election for the office of either the Chief or Deputy-Chief.

## **PART FIVE CANDIDATES**

### **Eligibility for the candidacy of Chief or Deputy-Chief**

**31.** An individual is eligible to be a candidate, pursuant to section 39, for the office of either Chief or Deputy-Chief if he or she

- (a) is enrolled as a Citizen;
- (b) is 19 years of age or older on the date set for the close of nomination;
- (c) has resided in the Yukon for a period of six months before the date of voting day in accordance with section 9.3 of the *Constitution*;
- (d) is resident within the traditional territory or surrounding area of the Ta'an Kwäch'än Council during his or her term in accordance with section 8.10 of the *Constitution*;
- (e) has evidence, by way of a current Royal Canadian Mounted Police clearance, of no criminal record for an indictable offense or an offense related to theft, fraud or false pretenses in accordance with section 8.14 of the *Constitution*; and
- (f) delivers signed and completed in full the necessary nomination forms by the close of nomination as prescribed by section 39.

### **Exemption from a criminal record**

**32.** Paragraph 31(e) does not apply to a Citizen who has been granted a pardon/record suspension removing any remaining penalties or punishments and preventing any new prosecution of the Citizen for the offenses for which the pardon was given.

**Additional qualification for the position of Chief**

**33.** To qualify as a candidate for the office of Chief, a Citizen, in addition to qualifying pursuant to section 31, shall also

- (a) be a direct descendent of a Traditional Family in accordance with section 9.1.1.1 of the *Constitution*; or
- (b) submit a completed family line consent form that provides written consent from each of the family lines represented by a Councillor, in accordance with section 9.1.1.2 of the *Constitution*, with his or her candidacy form.

**Refusal of letter of consent from a family line**

**34.** If a family line represented by a Councillor does not provide written consent to a Citizen pursuant to paragraph 33(b), that Councillor shall, at the time of refusal, provide in writing the reasons for the refusal of his or her family line.

**Appeal of a family refusal**

**35.** The Citizen trying to qualify as a candidate for Chief may appeal the refusal received pursuant to section 34 to the Judicial Council by submitting the written decision from the family line and a request for an appeal by the close of nominations in accordance with this Act and section 9.1.3 of the *Constitution*.

**Judicial Council review**

- 36.** (1) The Judicial Council shall review the appeal received pursuant to section 35 and
- (a) affirm the decision of the family line; or
  - (b) order that the Citizen may be a candidate for the office of Chief.

(2) The Judicial Council shall review appeals only if received by the close of nominations pursuant to section 39.

**Timing of a decision by the Judicial Council**

**37.** (1) The decision of the Judicial Council referred to in section 36 shall be delivered to the chief returning officer within 72 consecutive hours of the close of nominations pursuant to section 39.

- (2) The decision of the Judicial Council shall be final.

**Incumbent candidates**

**38.** An incumbent running for the office of either the Chief or Deputy Chief shall be bound by the same provisions set out in this Act as any other candidate.

**Nomination forms and time**

**39.** (1) To be considered for candidacy, a Citizen shall submit the necessary completed candidacy form for the office of either the Chief or Deputy-Chief to the chief returning officer

- (a) at any time after the issue of the writ pursuant to subsection 6(1);
- (b) no later than 45 calendar days before the date of voting day; and
- (c) before four o'clock in the afternoon on the date of nomination day pursuant to subsection 6(2).

(2) It shall be the responsibility of the potential candidate to ensure that all criteria are met and the necessary forms are completed for consideration. *BR 2009–11, ECR 2009–02.*

**Notice to the prospective candidates**

**40.** Within one business day of nomination forms being filed pursuant to subsection 39(1), the chief returning officer shall

- (a) verify to the prospective candidate that all conditions prescribed by section 31, section 32, and section 33, if applicable, have been fulfilled; and
- (b) give notice to the prospective candidate of the confirmation or refusal of his or her candidacy.

**Order of names by the drawing of lots**

**41.** (1) If there are no appeals filed under section 35, the chief returning officer shall, after the close of nominations and the confirmation of eligibility of all submissions, at a location to be determined by the chief returning officer and in the presence of any candidates or agents and voters who are present, establish, by the drawing of lots, the order in which the names of the candidates shall appear on the ballot paper

(2) If there is an appeal filed under section 35, the chief returning officer shall wait until the appeal procedure is completed and then shall, at a location to be determined by the chief returning officer and in the presence of any candidates or agents and voters who are present, establish, by the drawing of lots, the order in which the names of the candidates shall appear on the ballot paper. *BR 2009–11, ECR 2009–02.*

**Notice of election and candidates**

**42.** The chief returning officer shall give notice, as soon as practical after the close of nominations, in the newspapers that have public circulation in the traditional territory of the Ta'an Kwäch'än Council

- (a) the date of voting day;
- (b) the location, date and time of all voting options;
- (c) the list of candidates nominated for the election of Chief and Deputy-Chief in the order established pursuant to section 41;
- (d) the chief returning officer's
  - (i) name,
  - (ii) office mailing address,
  - (iii) office telephone number,
  - (iv) office facsimile number; and
- (e) any other matters with respect to the vote.

**Acclamations**

- 43.** If only one candidate has been officially nominated for the office of either Chief or Deputy-Chief, pursuant to section 31, section 33 and section 39, the chief returning officer shall immediately
- (a) declare the candidate elected to the position;
  - (b) post, at the Ta'an Kwäch'än Council principal administrative office, a notice that sets out the name of the person who has been acclaimed and state that an election shall not be held for that office; and
  - (c) section 44 to section 141 do not apply for that office.

**Withdrawal of a candidate**

- 44.** A candidate may withdraw his or her candidacy at any time up to the close of nominations by submitting to the chief returning officer a written withdrawal of nomination signed by the candidate in the presence of a member of the election committee, a justice of the peace or a notary public.

**Death of a candidate**

- 45.** If a candidate dies before the closing of the vote, the chief returning officer shall immediately notify the election committee, issue a public notice and make every effort to strike the name of the candidate from the ballot.

**Notification regarding incapacitation of a candidate**

- 46.** The chief returning officer shall notify the election committee if he or she, between the close of nomination and voting day, receives notice that a candidate is incapacitated to an extent that will prevent the candidate from holding office.

**Possible effect on an election**

- 47.** Upon notification pursuant to section 45 or section 46, the election committee may order that
- (a) the election shall proceed subject to any conditions specified by the election committee;
  - (b) the original election shall be cancelled and that a new election shall be held in accordance with the directions of the election committee; or
  - (c) if only one candidate remains for a particular office, the chief returning officer state the remaining candidate acclaimed pursuant to section 43.

**Void ballots**

- 48.** Any votes cast for a candidate who has withdrawn for reasons referred to in section 45 or section 46 are void and shall not affect the count or results of the final vote.

PART SIX  
CANDIDATES' SCRUTINEERS

**Appointment of scrutineers**

49. A candidate may, by using the prescribed appointment form, appoint one or more scrutineers to represent the candidate at a voting station.

**Number of scrutineers in a voting place**

50. (1) No more than two scrutineers for each candidate may be present at the voting station at any time.

(2) A candidate, upon making the same declaration required for scrutineers, may be present at a polling station.

**Access to a voting station**

51. (1) Each scrutineer, upon entering a voting station, shall provide the prescribed appointment form to the deputy returning officer and make a declaration as requested by the deputy returning officer.

(2) Each scrutineer, upon being admitted to a voting station, shall sign a written declaration to keep secret the name of the candidate for whom the ballot paper of any voter is marked.

**Rules for behaviour of a scrutineer**

52. A candidate or a scrutineer, while in a polling station, shall
- (a) not influence or interfere with any voter in the voting station;
  - (b) not obstruct or interfere with the deputy returning officer in performing the duties of that office;
  - (c) not delay any voter in exercising his or her duties; and
  - (d) respect the principles associated with a secret ballot.

**Authority in a polling station**

53. (1) Any dispute as to which scrutineer may be in the room where the vote is taken shall be determined by the deputy returning officer.

(2) The chief returning officer or deputy returning officer may order to leave the voting station any candidate or scrutineer who obstructs the taking of the vote, speaks to any voter who has stated a desire not to be spoken to or commits any offense under this Act.

**Activity by a scrutineer in a voting station**

54. A scrutineer may, only during the hours of voting,
- (a) examine the poll book or voter sign-in sheets and take information from it; and

(b) convey information obtained from the poll book outside the voting station.  
*BR 2009–11, ECR 2009–02.*

### **Inspection of election documents**

**55.** At least 15 minutes before the opening of the voting station, scrutineers shall be entitled to inspect the ballot papers and all other papers, forms and documents related to the vote.

### **Candidate as own representative**

**56.** A candidate may, on making the declaration pursuant to section 51, do anything a scrutineer is authorized to do under this Act.

## **PART SEVEN BALLOTS**

### **Ballots**

**57.** (1) Unless section 43 applies, there shall be two ballots:  
(a) one ballot for the office of Chief; and  
(b) one ballot for office of Deputy-Chief.

(2) The names on the ballot shall be printed in the order as prescribed by section 41.

(3) Where two or more candidates have the same name, such additional information shall be provided as is necessary to distinguish between those candidates on the ballot.

(4) Each ballot shall be designed so that it may be folded after the vote to conceal the marks on the ballot while exposing the initials of the designated returning officer.

(5) Each ballot shall have a counterfoil and a stub with a line of perforation between the ballot paper, and the counterfoil and a line of perforation between the counterfoil and the stub.

(6) Every ballot paper shall have a different number that shall be printed both on the back of the stub and on the back of the counterfoil.

### **Ballot boxes**

**58.** (1) The chief returning officer shall provide as many ballot boxes as are required for the purposes of the vote at each polling station.

(2) Each ballot box shall  
(a) be made of durable material;  
(b) be accompanied by adequate seals; and  
(c) be designed so that ballots, once deposited, cannot be tampered with.

**Sealing of the ballot boxes**

59. Up to ten minutes before a voting station is to open, the deputy returning officer shall
- (a) open each ballot box to be used at that voting place;
  - (b) permit any scrutineer or person present to verify that the box is empty;
  - (c) seal each box to prevent it from being opened without breaking the seal; and
  - (d) place each box in public view for the reception of ballots.

**Seal on a ballot box**

60. The seal on a ballot box shall not be broken until the vote is officially closed and the ballots are to be counted except for the reconciliation process at the close of the advance vote.

PART EIGHT  
VOTING RIGHTS

**Secrecy of voting**

61. (1) The vote shall be by secret ballot.
- (2) Every eligible Citizen 16 years of age or older as of the date of the regular vote shall have the right to vote.
- (3) A voter may vote for
- (a) one candidate only for the office of Chief; and
  - (b) one candidate only for the office of Deputy-Chief.
- (4) Every person in a voting station shall respect and maintain the secrecy of the voting process.
- (5) No person shall interfere or attempt to interfere with a voter when the voter is marking his or her ballot.
- (6) No person shall ask a voter at the voting place how the voter is about to vote or has voted.
- (7) There shall be no appointments of another person as a proxy voter to vote in place of the voter at the vote.

**Voting options**

62. There shall be up to five options available to eligible Citizens to exercise their vote:
- (a) mail-in voting;
  - (b) early voting;
  - (c) mobile voting;
  - (d) advance voting; and
  - (e) regular voting.

PART NINE  
VOTING PROCEDURES

**Mail-in voting**

**63.** At least 32 consecutive days before the regular voting day, every voter who does not live in the City of Whitehorse shall be sent a package consisting of

- (a) the ballot the voter is eligible to cast;
- (b) an outer, postage-paid return envelope, pre-addressed to the chief returning officer;
- (c) a second, inner envelope marked "ballots enclosed" for insertion of the completed marked ballot;
- (d) a voter declaration and witness envelope;
- (e) instructions regarding procedures for voting by mail;
- (f) information on other voting options available and how to exercise them; and
- (g) a list of the names of any candidates who were acclaimed.

**Any voter may vote by mail**

**64.** (1) Any voter may request to vote by mail. All requests shall be made by contacting the chief returning officer.

(2) A voter receiving a mail-in ballot may still choose to vote in person by way of the early vote, the advance vote or at the regular vote.

**Criteria for the mail-in ballot to be counted**

**65.** To be considered for purposes of the count, a mail-in ballot shall be

- (a) received by the chief returning officer, in person or by mail, before the close of the vote on the date of regular voting day; or
- (b) received by a deputy returning officer during the hours of voting at the regular vote in Whitehorse; and
- (c) returned in the voter declaration envelope signed by the voter and a witness.

*BR 2009–11, ECR 2009–02.*

**Responsibility of the return of ballots**

**66.** (1) It shall be the responsibility of the voter to ensure that his or her ballot is received, pursuant to section 65, to be counted.

(2) Any costs to return a ballot, other than use of the postage paid return envelope included in the package referred to in section 63, shall be the responsibility of the voter.

**Assistance to vote by mail-in ballot**

**67.** A voter may seek the assistance of another person to mark a ballot and complete and sign the voter declaration form in accordance with this Act.

**Witness of declaration**

68. A witness referred to in paragraph 65(c) shall confirm, by signing as a witness the voter declaration envelope, that the person completing and signing the voter declaration form is the person whose name is set out in the declaration.

**Lost or spoiled mail-in ballot**

69. A voter who inadvertently spoils or loses his or her mail-in ballot may obtain a replacement ballot by contacting the chief returning officer. Only one replacement of either ballot shall be allowed for each voter.

**Extension for mail-in voting**

70. If there is an extension or postponement of the time for the taking of the vote pursuant to section 8, the date for receiving mail-in ballots shall be adjusted accordingly.

**Early voting**

71. Any eligible voter may vote by early ballot.

**Time limit for early voting**

72. (1) An early ballot may be obtained by any Citizen eligible to vote from 30 days before the date set for the regular vote to noon three days before the date set for the regular vote.

(2) A request for an early ballot shall be made by contacting the chief returning officer or his or her designate.

**Criteria for early ballot to be counted**

73. To be valid for purposes of the count, an early ballot shall be in a voter declaration envelope signed by the voter and the deputy returning officer, as a witness, for the early vote.  
*BR 2009-11, ECR 2009-02.*

**Mobile voting**

74. The chief returning officer may establish a separate, mobile vote for voters in the area of the traditional territory of the Ta'an Kwäch'än Council who, for reasons including physical disability or institutionalization, are unable to vote in any other manner prescribed by this Act.

**Time of mobile operating**

75. The mobile vote shall operate at the discretion of the chief returning officer based on need and demand.

**Request for a mobile vote**

76. (1) A voter who is housebound or in an institution may request to vote by mobile vote.

(2) Requests for a mobile vote shall be made directly to the chief returning officer or the designated deputy returning officer of the mobile vote no later than 12 noon, three days before regular voting day.

(3) The mobile vote shall be conducted by a deputy returning officer using the mail-in ballot voting process, pursuant to section 63 to section 70, with the deputy returning officer acting as the witness.

PART TEN  
ADVANCE AND REGULAR VOTING PROCEDURES

**Advance voting**

77. (1) The election committee may establish an advance vote and shall publish the date, time and location of such a vote to take place.

(2) The same procedures that apply for regular voting shall apply to the advance voting as prescribed by section 79 to section 96.

**Regular hours of voting**

78. Regular voting places shall be kept open from eight o'clock in the forenoon to eight o'clock in the afternoon on the date of regular voting day.

**Examining and securing ballot boxes**

79. The deputy returning officer shall, immediately before the commencement of the regular vote, open the ballot box to show that it is empty to any scrutineers present. The deputy returning officer shall then properly seal the box to prevent it being opened without breaking the seal, and shall place it in view for the reception of ballots. The seals shall not be broken or the box moved from its location until after the set time for the close of vote.

**Who may be present at a voting station**

80. During the time that the voting station remains open for voting, only the following people may be present:

- (a) the deputy returning officer and the poll clerk;
- (b) candidates and, or, up to two scrutineers for each candidate;
- (c) any other persons who have been authorized by the chief returning officer; and
- (d) voters who are present and are actually engaged in voting.

**Allowing media at a voting station**

81. During the time that voting takes place, representatives of the media may be present only with written permission from the chief returning officer.

**Campaign information at a voting station**

82. No candidate may post any campaign materials or undertake any campaign activities at or about the voting station.

**Badges at voting stations**

83. The chief returning officer shall issue on voting day to all individuals referred to in paragraph 80(a) to paragraph 80(c) identification badges to wear in a prominent manner to identify their office.

**Procedure to provide the ballot to the voter**

84. When a person present at the advance vote or regular vote requests a ballot for voting purposes, the deputy returning officer shall

- (a) ensure that the person is registered on the official voters list;
- (b) if the person is eligible, ensure that the poll clerk
  - (i) prints the voter's name and number on the voter sheets,
  - (ii) asks the voter to sign his or her name beside his or her printed name, and
  - (iii) puts a line through the voter's name in the official voters poll book;
- (c) initial the ballot to indicate its valid issuance; and
- (d) provide the initialed ballot to the voter with instructions on marking the ballot for the candidate of their choice.

**After receiving a ballot**

85. (1) After receiving the ballot, a voter shall
- (a) immediately proceed to the compartment provided for marking ballots;
  - (b) mark the ballot by placing a cross, check or other mark to clearly indicate the voter's choice;
  - (c) fold the ballot concealing the mark on the face of the ballot while exposing the initials of the deputy returning officer; and
  - (d) deliver the ballot to the deputy returning officer.

(2) While a voter is in the compartment for the purpose of marking his or her ballot, no other person shall, except as provided for in section 87, be allowed in the same compartment or be in any such position from which he or she can see the manner in which a voter marks his or her ballot paper.

**Returning the ballot to the ballot box**

86. Upon receiving the returned ballot, the deputy returning officer shall
- (a) leave the ballot folded;

- (b) verify the initials of the returning officer;
- (c) remove the counterfoil;
- (d) have the voter deposit the ballot in the ballot box; and
- (e) ensure that the poll clerk marks in the official voters poll book in the designated column beside the voter's name that the ballot has been returned.

### **Providing assistance to a voter**

**87.** (1) When requested to do so, the deputy returning officer may explain any voting procedure to an eligible voter.

(2) At the request of a voter who is unable to vote pursuant to subsection 85(1), the deputy returning officer may, in the presence of the poll clerk

- (a) explain the voting procedures to the voter;
- (b) identify the candidates in the order as on the ballots;
- (c) assist the voter in casting a ballot; and
- (d) in the case of a person who is visually impaired or physically unable, mark the ballot as instructed by the voter.

### **Recording assistance**

**88.** The deputy returning officer shall identify in the official voters poll book the name of any voter who requested assistance from the deputy returning officer and the reasons therefore.

### **Name not on the official voters list**

**89.** (1) If a person's name is not on the official voters list, that person may be declared eligible to vote if that person

- (a) has a member of the election committee complete the necessary form;
- (b) has his or her citizenship verified by the Enrollment Coordinator; and,
- (c) returns the signed form to the deputy returning officer before the close of the vote on the last day of regular voting.

(2) If a person is declared eligible pursuant to subsection 89(1), the deputy returning officer shall add that person to the official voters poll book.

(3) A deputy returning officer shall not issue a ballot to a person whose name does not appear on the official voters list.

### **Voter whose name resembles another on the official voters list**

**90.** If a person applies for a ballot paper and it is not clear to the deputy returning officer which name on the official voters list pertains to that person, the deputy returning officer shall

- (a) select, with the assistance of that person if needed, the entry that seems to correspond most closely to the person; and
- (b) enter in the official voters poll book a notation as to how the selection was determined, including any characteristics such as age, sex and address that may distinguish the voter from another voter with the same or a similar name.

**Impersonated voter**

91. A voter, who on requesting a ballot, claims to be a particular voter after another voter has voted in the same name, shall be entitled to receive a ballot and to vote after making the declaration of an impersonated voter using the designated form.

**Notation in the poll book**

92. In any case referred to section 91, the deputy returning officer shall enter in the official voters poll book, opposite the name of the voter, a notation,

- (a) that the voter voted on a second ballot paper issued under the same name;
- (b) that the declaration of impersonated voter was made; and
- (c) any objections made by any candidate's scrutineer.

**Spoiled ballot**

93. A voter who has inadvertently dealt with his or her ballot papers in such a manner that it cannot be used may return it to the deputy returning officer who shall then

- (a) write the word "spoiled" on the back of the spoiled ballot;
- (b) keep the spoiled ballot separate from the ballot box;
- (c) issue another ballot to the voter; and
- (d) make a note in the official voters poll book beside the voter's name.

**Number of spoiled ballots per voter**

94. Only one spoiled ballot shall be allowed per voter per office voting.

**Refusal of a voter to vote**

95. Any voter who receives a ballot and leaves the voting station, without delivering the ballot to the deputy returning officer in the manner pursuant to subsection 85(1), or, if after receiving the ballot, refuses to vote, shall forfeit his or her right to vote at the election and the deputy returning officer shall

- (a) mark the word "cancelled" on the face of the ballot, if returned;
- (b) ensure that the voter shall not be allowed another ballot;
- (c) make an entry in the official voters poll book indicating that the voter "declined" to vote; and
- (d) keep the "cancelled" ballot separate from the ballot box.

PART ELEVEN  
COUNTING THE VOTES

**Closing the polls**

96. (1) At the designated closing time, pursuant to section 77 and section 78, the deputy returning officer shall publicly declare that the polls are closed.

(2) Any eligible voters who are inside a voting place when the poll is declared closed, but who have not yet voted, shall be permitted to vote, but no other voter may be admitted to the voting place to vote.

### **Counting procedure**

**97.** Only after the handling of the mobile and mail-in ballots, pursuant to section 99 and section 100, shall the count begin.

### **Who is present for the count**

**98.** The count shall proceed according to instructions provided by the chief returning officer and in the presence of

- (a) no more than two scrutineers for each candidate; and
- (b) any other persons who have been authorized by the chief returning officer.

### **Verifying that mobile voters only voted once**

**99.** (1) Immediately after the close of the regular vote, the designated deputy returning officer, in the presence of the election committee, shall review all mobile vote ballot envelopes to ensure the legitimacy of the envelope by checking against the official voters poll book by way of the following:

- (a) if a mobile vote ballot envelope was received from a voter who appears to have voted in person at the early vote, advance vote or regular vote, the envelope shall be set aside unopened and the deputy returning officer shall note on the envelope “cancelled” and the reason for setting aside the envelope and make the same notation beside the voter’s name in the official voters poll book;
- (b) if the voter does not appear to have voted otherwise,
  - (i) a line shall be drawn through his or her name in the official voters poll book to indicate that he or she has voted, and
  - (ii) the deputy returning officer shall open the declaration envelope and place its contents into the designated ballot box;
- (c) after all envelopes have been dealt with in this manner, the deputy returning officer shall open all the ballot enclosed envelopes and place any ballots in the designated ballot box for purposes of counting.

(2) During the course of transfer to the ballot box, any accidental disclosure of how the ballot is marked shall be kept confidential but shall not negate the validity of the ballot.

### **Verifying that mail-in voters only voted once**

**100.** (1) After the close of the regular vote and after the mobile vote envelopes have been recorded pursuant to paragraph 99(a) and paragraph 99(b), the designated deputy returning officer, in the presence of the election committee, shall review all mail-in ballot envelopes by using the following procedures to identify voters who voted by mail-in ballot only:

- (a) if a mail-in ballot envelope was received from a voter who appears to have voted at the advance, regular, early or mobile vote, the envelope shall be set aside unopened and the deputy returning officer shall note on the envelope “cancelled” and the reason

for setting aside the envelope and make the same notation beside the voter's name in the official voters poll book;

(b) if the voter does not appear to have voted otherwise, the deputy returning officer shall verify that there is a witness signature on the declaration envelope. If there is no witness signature, the envelope shall be set aside unopened and the deputy returning officer shall note on the envelope "cancelled" and the reason for setting aside the envelope and make the same notation beside the voter's name in the official voters poll book;

(c) if the voter does not appear to have voted otherwise, the deputy returning officer shall verify there is a witness signature on the declaration envelope. If there is

(i) a line shall be drawn through the voter's name in the official voters poll book to indicate that he or she has voted, and

(ii) the deputy returning officer shall open the declaration envelope and place its contents into the designated ballot box;

(d) after all mail-in envelopes have been dealt with in this manner, the deputy returning officer shall open the ballot enclosed envelope and place any ballots in the designated ballot box for purposes of counting.

(2) During the course of transfer to the ballot box, any accidental disclosure of how the ballot is marked shall be kept confidential but shall not negate the validity of the ballot.

### **Opening the ballot boxes**

**101.** After the mobile vote and the mail-in vote have been dealt with pursuant to paragraph 99(a), paragraph 99(b), and paragraph 100(a) to paragraph 100(c), each deputy returning officer shall open each ballot box and proceed to count the votes in the respective boxes and according to the instructions provided by the chief returning officer.

### **Ballot reconciliation**

**102.** Each deputy returning officer shall follow the procedures set out by the *Elections Act* and record the number of eligible Citizens who voted, the number of ballots unused and the number of spoiled ballots, on the prescribed form.

### **Rejection of ballots**

**103.** (1) After separating the ballots for Chief and the ballots for Deputy-Chief, the deputy returning officer shall examine every ballot and determine the number of ballots marked for each candidate.

(2) The deputy returning officer shall reject any ballot

(a) upon which votes have been cast for more than one candidate;

(b) upon which anything appears by which the voter can be identified;

(c) that is not on an official and valid ballot;

(d) that has not been marked for any candidate; or

(e) that does not indicate a clear and unambiguous preference for one candidate.

**Recording of rejected ballots**

**104.** On the back of each rejected ballot, the deputy returning officer shall mark “rejected”, indicate the reason for the rejection and initial the ballot.

**Objections to a rejected ballot**

**105.** (1) If a scrutineer objects to the acceptance or rejection of a ballot, the deputy returning officer shall

- (a) make a note of the objection in the form provided;
- (b) number the objection;
- (c) place the same number on the back of the ballot in question;
- (d) initial the ballot; and
- (e) decide any questions arising out of the objection and, if necessary, in consultation with the chief returning officer.

(2) The decision of the deputy returning officer shall be final.

**Preparing the statement of vote**

**106.** After all ballots from each ballot box have been examined, and accepted or rejected pursuant to section 102 to section 105, the deputy returning officer shall

- (a) count the votes given each candidate on the ballots not rejected; and
- (b) prepare a written “statement of vote” indicating the
  - (i) date of the vote,
  - (ii) total number of Citizens who voted at voting station,
  - (iii) total number of ballots supplied,
  - (iv) total number of ballots unused,
  - (v) total number of spoiled and cancelled ballots,
  - (vi) total number of ballots cast,
  - (vii) total number of ballots cast that were rejected, and
  - (viii) total number of ballots cast for each candidate.

**Signing the statement of vote**

**107.** (1) The written statement referred to in paragraph 106(b) shall be signed by

- (a) the deputy returning officer who carried out the count;
- (b) the poll clerk; and
- (c) may be signed by any scrutineer who is present.

(2) The processes pursuant to section 102 to section 106 shall be followed for the counting of the ballots for the Chief and for the Deputy-Chief separately.

**Witnessing the sealing of votes**

**108.** At the completion of the counting of the votes and in the presence of any scrutineer who may be still present, the deputy returning officer shall make up packets of sealed separate envelopes, as provided, for the

- (a) ballots for each candidate that have been counted;

- (b) rejected ballots;
- (c) unused ballots;
- (d) canceled and spoiled ballots;
- (e) notes taken on objections made to ballots found in the ballot box; and
- (f) list of eligible voters and the official voters poll book.

#### **Delivering all material to the chief returning officer**

**109.** The deputy returning officer shall

- (a) sign and write a description of the contents of a packet referred to in section 108; and
- (b) deliver all material used during the vote to the chief returning officer as instructed.

#### **Validation of votes and disposition of the ballots**

**110.** (1) The chief returning officer shall

- (a) take possession of all voting materials in the presence of the election committee;
- (b) tabulate and validate the votes in presence of the election committee;
- (c) keep all packets secure until the time for consideration of all appeals has passed; and
- (d) destroy the packets in the presence of the election committee only after
  - (i) the time for any appeal has passed, and
  - (ii) all appeal procedures have been concluded.

(2) The chief returning officer shall validate the votes and provide a certificate of validation to the election committee within seven days after the close of the regular vote.

(3) If a judicial recount under section 126 is in progress, the chief returning officer shall provide a certificate of validation to the election committee within 14 days after the close of the regular vote.

#### **Declaration of the candidate or candidates to be elected**

**111.** (1) Subject to subsection 111(2), immediately after the completion of the counting of the ballots pursuant to section 102 to section 108, the chief returning officer shall

- (a) publicly declare to be elected the candidate for whom the greatest number of ballots have been cast for the position of Deputy-Chief;
- (b) publicly declare to be elected the candidate for whom the greatest number of ballots have been cast for the position of Chief; and
- (c) cause to be published the number of votes for each candidate and the name of the person elected or acclaimed for the offices of Chief and Deputy-Chief in the newspapers that have public circulation in the traditional territory of the Ta'an Kwäch'än Council.

(2) If the difference between the number of ballots cast for the candidate receiving the greatest number of ballots and another candidate is four or less, including a "tie", the chief returning officer shall declare the results as "preliminary" and to be verified by an automatic recount pursuant to section 112 under Part Twelve.

PART TWELVE  
AUTOMATIC RECOUNTS

**Automatic recount by the chief returning officer**

**112.** An automatic recount, pursuant to subsection 111(2), shall be conducted by the chief returning officer.

**Time and place of automatic recount**

**113.** (1) The automatic recount shall take place at noon the day after the regular vote, or as soon as practical thereafter, at the Whitehorse voting place unless the candidates are notified otherwise.

(2) In any event, the automatic recount shall take place within 48 hours of the close of the regular vote.

**Who may attend**

**114.** Each candidate affected and one of his or her scrutineers referred to in Part Six of this Act may attend an automatic recount.

**No other person may attend**

**115.** Only members of the election committee and those persons referred to in section 114 may be present at an automatic recount. If no candidate or their scrutineer are present, the chief returning officer may delay the recount for up to two hours to ensure that there is a witness present.

**Documents to be supplied**

**116.** The chief returning officer shall bring all relevant voting materials to an automatic recount, including

- (a) the ballot boxes;
- (b) the statements of the vote used to validate the results; and
- (c) all ballots cast and other material used as prescribed by section 108.

**Documents that may be examined**

**117.** At an automatic recount, the chief returning officer shall open the sealed envelopes that contain the used and counted ballots, unused ballots, rejected ballots, spoiled and cancelled ballots. The chief returning officer shall not open any envelopes that appear to contain other documents or refer to any other voting materials other than the voter sheets. *BR 2009–11, ECR 2009–02.*

**Steps to be taken by the chief returning officer**

- 118.** At an automatic recount, the chief returning officer shall
- (a) count all ballots in the manner prescribed for a deputy returning officer by section 102 to section 105;
  - (b) verify or correct, if necessary, each statement of the vote; and
  - (c) review the decision of the deputy returning officer with respect to the number of votes cast for a candidate.

**Clerical assistance**

**119.** The chief returning officer may be assisted in counting at an automatic recount by other election officials, but shall personally make all decisions regarding the acceptance or the rejection of ballots that were subject to an objection pursuant to section 105.

**Proceedings to be continuous**

**120.** As far as practicable, an automatic recount shall proceed continuously except for necessary breaks.

**Security of documents**

**121.** During a break referred to in section 120, the chief returning officer or any other person who has possession of ballots and other voting documents shall keep them sealed in parcels and the seal shall be signed by the chief returning officer and may be signed by any other person in attendance.

**Reverse of a decision of another election official**

**122.** The chief returning officer may reverse the decision of another election official regarding the counting of the ballots at an automatic recount. If this is done, the chief returning officer shall make a note of doing so.

**Procedure at completion of automatic recount**

- 123.** At the completion of an automatic recount, the chief returning officer shall
- (a) seal the ballots in a separate envelope for each polling station pursuant to section 108;
  - (b) mark on the original statement of vote any changes made pursuant to this section or prepare a new statement of vote of the results of the counting pursuant to section 106;
  - (c) seal the ballot boxes; and,
  - (d) make public the results of the recount.

**Drawing of lots to resolve a tie**

**124.** Where two or more candidates have the most and an equal number of votes, the drawing of lots by the chief returning officer or his or her designate shall resolve the tie by the following procedure:

- (a) the name of each candidate shall be written on a separate piece of paper as similar as possible to all other pieces prepared for the draw;
- (b) the pieces of paper shall be folded in a uniform manner in such a way that the names of the candidates are not visible;
- (c) the pieces of paper shall be placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random and the container shall be shaken for this purpose;
- (d) the chief returning officer shall direct a person who is not a candidate or candidate representative to withdraw one paper; and
- (e) the chief returning officer shall declare elected the candidate whose name is on the paper that was drawn.

#### **Deadline for the declaration of results**

**125.** (1) Before noon on the third day following the close of regular voting, the chief returning officer shall declare the results of an automatic recount.

(2) The decision of the chief returning officer shall be final and cannot be appealed to the Judicial Council.

### PART THIRTEEN APPLICATION FOR JUDICIAL RECOUNT

#### **Grounds for a judicial recount**

**126.** (1) An application to the Judicial Council for a recount may only be made for one or more of the following reasons:

- (a) the ballots were not correctly accepted or rejected as required;
- (b) a statement of the vote does not accurately record the number of valid votes for a candidate; or
- (c) the final determination did not correctly calculate the total number of valid votes for a candidate.

(2) The application to the Judicial Council shall specifically set out the facts on how the ballots were improperly counted and shall be supported by a credible witness.

(3) An application may not be made if an automatic recount has already been done.

#### **Time for an application**

**127.** (1) An application to the Judicial Council may be made not later than fourteen days after the close of the regular vote. *BR 2009–11, ECR 2009–02.*

(2) Upon receipt of the application, the Judicial Council shall set a time for the recount that is convenient to complete the recount within the time limit prescribed by section 130.

**Who can make an application**

**128.** Any voter may apply in writing to the Judicial Council for a recount according to the terms prescribed by section 126.

**Notification**

**129.** (1) The voter making the application to the Judicial Council shall provide enough copies for the members of the Judicial Council and all persons affected, including the

- (a) chief returning officer;
- (b) affected candidates in the election; and
- (c) members of the election committee.

(2) The Judicial Council shall decide the method of delivery of the notice of recount.

**Date for a recount**

**130.** A judicial recount shall be conducted in accordance with this Part and be completed not more than twenty days after the close of the regular vote.

**Persons present at a judicial recount**

**131.** (1) Persons allowed to be present at a judicial recount shall be limited to the

- (a) person who made the application;
- (b) chief returning officer;
- (c) candidates in the election and up to one of his or her representatives;
- (d) members of the election committee; and
- (e) any other person with permission of the Judicial Council.

(2) Except with the permission of the Judicial Council, no person other than those referred to in subsection 131(1) may be present at the recount.

**Materials to be used**

**132.** The chief returning officer shall attend the recount and bring all voting material used to determine the official voting results, including

- (a) the relevant ballot boxes; and
- (b) the statements of the vote together with the ballots that were counted pursuant to section 106.

**Documents that may be examined**

**133.** If a recount of all of the ballots returned is required, the Judicial Council may open the sealed envelopes that contain the used, unused, rejected, spoiled and canceled ballots. The Judicial Council shall not open any envelopes that appear to contain other documents or refer to any other voting documents.

**Steps to be taken by the Judicial Council**

134. At a recount, the Judicial Council shall
- (a) open the ballot boxes containing the ballots for which a recount is requested;
  - (b) count the ballots in the manner prescribed for a deputy returning officer; and
  - (c) verify or correct, if necessary, each statement of vote.

**Additional powers of the Judicial Council**

135. For the purpose of conducting a recount, the Judicial Council has the power to summon any deputy returning officer or poll clerk as a witness and to require him or her to give evidence on oath.

**Clerical assistance**

136. At the recommendation of the chief returning officer, the Judicial Council may retain the services of support staff to assist in the performance of its duties under this Part.

**Proceedings to be continuous**

137. The Judicial Council shall, as far as practicable, proceed continuously with a recount except for necessary breaks.

**Security of documents**

138. (1) Unless otherwise directed by the Judicial Council, the ballot boxes shall remain in the custody of the chief returning officer.

(2) During a recess or a break referred to in section 137, the Judicial Council or any other person who has possession of ballots and other election documents shall keep them sealed in parcels, the seal of which shall be signed by the Judicial Council and may be signed by any other person in attendance.

**Supervision of sealing**

139. The Judicial Council shall supervise the parceling and sealing of ballots and documents at a recount and take all necessary precautions for their security.

**Judicial Council may terminate a recount**

140. (1) The Judicial Council may refuse to hear an application if it deems the application without merit.

(2) The Judicial Council may, at any time, terminate a recount, if requested in writing, by the person who applied for the recount.

**Procedure at completion of a recount**

141. (1) At the completion of a recount, the Judicial Council shall
- (a) seal the ballots in a separate envelope for each polling station pursuant to section 108;
  - (b) without delay, prepare a statement of vote that sets out the number of votes cast for each candidate pursuant to section 106;
  - (c) deliver the original of the statement of vote to the chief returning officer and a copy to each candidate; and
  - (d) make public the results of the recount.

(2) Where two or more candidates have the most and an equal number of votes, the drawing of lots, pursuant to section 124, shall resolve the tie.

(3) The decision of the Judicial Council shall be final.

PART FOURTEEN  
APPLICATION FOR APPEAL

**Grounds and time limit for an appeal**

142. (1) Within thirty consecutive days after the close of the vote on regular voting day, a candidate or a voter may submit a written appeal to the Judicial Council detailing the evidence regarding:

- (a) corrupt practices in connection with the election;
- (b) a violation of this Act that might have affected the result of the election; or
- (c) a candidate in the election who was ineligible to be a candidate.

(2) At the time an application is filed, the Judicial Council shall set a date for it to hear the application.

(3) The Judicial Council shall hear and determine an application under subsection 142(1) as soon as possible and, for this purpose, shall ensure that the proceedings are conducted within thirty days of receipt of the written complaint

(4) The Judicial Council may refuse to hear an application if it deems the application without merit. *BR 2009–11, ECR 2009–02.*

**Notice by the Judicial Council**

143. (1) Where an appeal is submitted pursuant to section 142, the Judicial Council shall forward a copy of the appeal and all supporting documents within five business days to

- (a) the chief returning officer;
- (b) each candidate affected by the appeal; and
- (c) the members of the election committee.

(2) The chief returning officer, members of the election committee or any candidate may, within 14 consecutive days of the receipt of the copy of the appeal, forward to the Judicial Council a written submission addressing the details of the appeal with any supporting documents.

**Documents made public**

**144.** (1) All documents filed in accordance with this Part shall constitute and form the record and be available to the public.

(2) The Judicial Council may, if the material that has been filed is not adequate for deciding the validity of the election, conduct such further investigation into the matter as it deems necessary and in such manner as it deems expedient.

**Withdrawal of an application**

**145.** If a candidate affected by an application files a written statement renouncing all claim to the office to which the candidate was elected, the Judicial Council may permit the petition for the application to be withdrawn.

**Possible rulings of the Judicial Council on an application**

**146.** (1) On the hearing of an application pursuant to paragraph 142(1)(a) or paragraph 142(1)(b) regarding the validity of an election, the Judicial Council may declare that the election

- (a) is confirmed as valid;
- (b) is invalid and that another election shall be held to fill the position for the office that was to be filled in the election that was declared invalid;
- (c) of a candidate is invalid and that the office is vacant; or
- (d) of a candidate is invalid and that another candidate is duly elected.

(2) On the hearing of an application, pursuant to paragraph 142(1)(c), regarding the qualification of an elected candidate to take office, the Judicial Council may

- (a) declare that the candidate is confirmed as qualified to take and hold office;
- (b) declare that the candidate is not qualified to hold office and that the office is vacant; or
- (c) declare that the candidate is not qualified to hold office and that the candidate who received the next highest number of valid votes is elected in place of the disqualified candidate.

**Limit of finding fault**

**147.** The Judicial Council shall not declare an election invalid by reason only of an irregularity or failure to comply with this Act or a regulation under this Act if it is satisfied that

- (a) the election was conducted in good faith and in accordance with the provisions of this Act, and
- (b) the irregularity or failure did not materially affect the result of the election.

**Declaration of judgment**

**148.** (1) Upon the completion of its review of an appeal lodged pursuant to section 142, the Judicial Council shall report to the Council accordingly and provide reasons and order that the election stands or be voided and that a new election be held.

(2) If the Judicial Council makes a declaration that another candidate is elected, the candidate who is replaced shall cease to be entitled to take or hold the office and the other candidate declared elected shall be entitled to take the office.

(3) All decisions by the Judicial Council shall be final and the ballots shall then be destroyed in accordance with section 110(d)

## PART FIFTEEN MISCELLANEOUS

### **When elected candidates may take office**

**149.** (1) A candidate declared elected pursuant to section 111, shall take office immediately.

(2) A candidate declared elected pursuant to section 111 shall make the oath of office after the process for a judicial recount has been completed.

(3) The Judicial Council may, on application, authorize a candidate who has been declared elected to make the oath of office if the Judicial Council is satisfied that the candidate's election will not be affected by the results of the judicial recount.

### **Status of an elected candidate**

**150.** A person affected by an application, pursuant to section 142, who has been declared elected shall be entitled to hold office and to vote and otherwise act in the office unless and until the Judicial Council declares the candidate disqualified and the office vacant.

### **Report of election results**

**151.** (1) The chief returning officer shall, within 30 days after the declaration of the official election results, submit a report of the results to the election committee and the Council, including, but not limited to, the number of names on the official voters list, and by voting stations, the number of ballots cast for each candidate, the number of rejected ballots and the number of Citizens who voted.

(2) The Ta'an Kwäch'än Council administration shall maintain an archive of election results and relevant material.

### **Availability of Enrollment Coordinator**

**152.** The Enrollment Coordinator of the Ta'an Kwäch'än Council, or his or her qualified designate, shall be available to the election committee for any matter arising with regard to the citizen registry referred to in subsection 14(2). The Enrollment Coordinator shall be available from the time of the writ for an election, referred to in section 6, until voting day, referred to in section 5, and for the time of an application for appeal pursuant to Part Fourteen, if applicable. *BR 2009-11, ECR 2009-02.*

**Regulations**

**153.** The Council may, from time to time, make regulations providing for any matter that is required by this Act to be prescribed.

**Act in force**

**154.** This Act comes into force on a day to be fixed by the Council.