

INDIAN BAND ELECTION REGULATIONS

Made under the INDIAN ACT



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Indian Act—Indian Band Election Regulations

P.C. 1954-1367

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 17th day of September, 1954.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

His Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration and pursuant to section 75 of the Indian Act, is pleased to order as follows:

1. The Indian Band Election Regulations, established by Order in Council P.C. 2604 of 9th May, 1952, as amended, are hereby revoked; and
2. The annexed "Regulations governing Band Elections" are hereby made and established in substitution for the Regulations hereby revoked.

Certified to be a true copy

R. B. BRYCE,
Clerk of the Privy Council.

REGULATIONS GOVERNING BAND ELECTIONS

1. These regulations may be cited as the "Indian Band Election Regulations".
2. In these regulations,
 - (a) "Act" means The Indian Act;
 - (b) "deputy electoral officer" means any person appointed by the electoral officer for the purposes of an election;
 - (c) "Director" means the Director of the Indian Affairs Branch of the Department of Citizenship and Immigration;
 - (d) "election" means a band election held pursuant to the provisions of the Act;
 - (e) "elector" means a person who
 - (i) is registered on a Band List;
 - (ii) is of the full age of twenty-one years, and
 - (iii) is not disqualified from voting at band elections;
 - (f) "electoral officer" means the Superintendent or the person appointed by the Council of the Band with the approval of the Minister;
 - (g) "Minister" means the Minister of Citizenship and Immigration;
 - (h) "Superintendent" means the Superintendent or senior field officer of the Indian Affairs Branch in charge of the agency and includes the Indian Commissioner for British Columbia, all Regional Supervisors and any other officer acting under the instructions of the Minister or Director.

Definition of residence for the purpose of determining the eligibility of voters

3. The following rules apply to the interpretation of the words "ordinarily resident" in respect of all matters pertaining to the right of an elector to vote in an election:

- (a) Subject to the other provisions of this section, the question as to where a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case;
- (b) The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereto, when away therefrom, he intends to return and, specifically, where a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where that person sleeps;
- (c) A person can have one place of ordinary residence only, and he shall retain such place of ordinary residence until another is acquired;
- (d) Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

Nomination meeting

4. (1) When an election is to be held the electoral officer shall post a notice in the form prescribed of a meeting of the electors for the purpose of nominating candidates for election; such notice shall be posted in one or more conspicuous places in each electoral section at least six clear days prior to the date of the proposed nomination meeting and at least twelve clear days prior to the date set for the election.

(2) Where it is not practicable to hold a meeting for the nomination of candidates in accordance with the provisions of sub-section one, the Director may order that the meeting shall be held on a date less than six clear days before the day on which the election is to be held.

(3) At the time and place specified in the notice, the electoral officer shall declare the meeting open for the purpose of receiving nominations, and any person who is an elector may propose or second the nomination of any duly qualified person to serve as a chief or councillor, and the meeting shall remain open for not less than two hours after commencement when, if the number of persons nominated to serve on the band council does not exceed the requisite number, the electoral officer shall declare the persons so nominated duly elected.

(4) The electoral officer shall not close the nomination meeting until such business as he considers may properly be brought before it has been disposed of.

(5) In the event of more than the required number of persons being nominated for chief and councillors, the electoral officer shall declare that a poll will be held and shall name the time and the place where such poll shall be taken.

(6) Whenever a poll is to be taken the electoral officer shall, without any unreasonable delay after the nomination, cause to be posted in one or more conspicuous places within the section a notice to that effect in the form prescribed.

Manner in which voting shall be carried out

5. (1) The electoral officer shall prepare a voters' list containing the names, in alphabetical order, of all electors.

(2) The electoral officer shall post one or more copies of the voters' list in a conspicuous place in the section, and where a reserve is divided into more than one section, he shall post one or more copies of the voters' list in a conspicuous place in each section.

(3) Any elector may apply to have the voters' list revised on the ground that the name of an elector has been omitted therefrom or the name of an elector is incorrectly set out therein or the name of a person not qualified to vote is included therein.

(4) If the electoral officer is satisfied that a list should be corrected, he shall make the necessary correction therein.

(5) There shall be prepared ballot papers in the form prescribed containing the names of the candidates for chief and for councillors, which shall be listed on the ballot papers in alphabetical order.

(6) Any candidate who has been nominated may withdraw at any time after his nomination but not later than forty-eight hours before the time of the opening of the poll, by filing with the electoral officer a written withdrawal of his nomination, signed by himself in the presence of the electoral officer, a justice of the peace, a notary public, or a commissioner for oaths, and any votes cast for any such candidate shall be null and void.

(7) The electoral officer shall procure or cause to be procured as many ballot boxes as there are polling places, and shall cause to be prepared a sufficient number of ballot papers for the purpose of the election.

(8) The electoral officer shall before the poll is open cause to be delivered to his deputy the ballot papers, materials for marking the ballot papers, and a sufficient number of directions-for-voting as may be prescribed.

(9) The electoral officer or his deputy shall provide a compartment at each polling place where the electors can mark their ballot papers free from observation, and he may appoint a constable to maintain order at such polling place.

(10) The poll shall be kept open from nine o'clock (standard time) in the forenoon until six o'clock (standard time) in the afternoon of the same day, but where it appears to the electoral officer that it would be inconvenient to the electors to have the poll closed at six o'clock, he may order that it be kept open until not later than eight o'clock (standard time) of the afternoon of the same day.

(11) A candidate shall be entitled to not more than two agents in a polling place at any one time.

(12) Voting at all elections shall be by ballot in the manner set forth in section six.

(13) The electoral officer or his deputy shall immediately before the commencement of the poll open the ballot box and call such persons as may be present to witness that it is empty; he shall then lock and properly seal the box to prevent it being opened without breaking the seal and shall place it in view for the reception of the ballots, and the seal shall not be broken nor the box unlocked during the time appointed for taking the poll.

(14) At the request of any candidate or his agent or any elector, an oath or affirmation in the form prescribed as to his rights to vote shall be administered to any person tendering his vote at any election.

The poll

6. (1) On a person presenting himself for the purpose of voting, the electoral officer or his deputy shall, if satisfied that the name of such person is entered on the voters' list at the polling place, provide him with a ballot paper on which to register his vote.

(2) The electoral officer or his deputy shall cause to be placed in the proper column of the voters' list a mark opposite the name of every voter receiving a ballot paper.

(3) No person who has refused to take the oath or affirmation referred to in sub-section fourteen of section five when requested so to do shall receive a ballot paper or be permitted to vote.

(4) The electoral officer or his deputy may and when requested to do so shall explain the mode of voting to a voter.

(5) Each person receiving a ballot paper shall forthwith proceed to the compartment provided for marking ballots and shall mark his ballot paper by placing a cross opposite the name of the candidate or candidates for whom he desires to vote; he shall then fold the ballot paper so as to conceal the names of the candidates and the marks on the face of the paper but so as to expose the initials of the electoral officer or his deputy, and on leaving the compartment shall forthwith deliver the same to the electoral officer or his deputy, who shall without unfolding the ballot paper verify his initials and at once deposit it in the ballot box in the presence of the voter and of all other persons entitled to be present in the polling place.

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

(7) The electoral officer or his deputy on the application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by sub-section five shall assist such voter by marking his ballot paper in the manner directed by such voter in the presence of the agents of the candidates in the polling place and of no other person, and place such ballot in the ballot box.

(8) The electoral officer or his deputy shall state in the voters' list opposite the name of such elector in the column for remarks the fact that the ballot paper was marked by him at the request of the voter and the reasons therefor.

(9) A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used shall upon returning it to the electoral officer or his deputy be entitled to obtain another ballot paper, and the electoral officer or his deputy shall thereupon write the word "cancelled" upon the spoiled ballot paper and preserve it.

(10) Any person who has received a ballot paper and who leaves the polling place without delivering the same to the electoral officer or his deputy, in the manner provided, or if, after receiving the same, refuses to

vote, shall forfeit his right to vote at the election, and the electoral officer or his deputy shall make an entry in the voters' list in the column for remarks opposite the name of such person to show that such person received the ballot paper and declined to vote, in which case the electoral officer or his deputy shall mark upon the face of the ballot paper the word "declined", and all ballot papers so marked shall be preserved.

(11) An elector whose name does not appear on the voters' list may vote at an election, providing that the electoral officer or his deputy is satisfied that such person is qualified to vote.

(12) Every elector who is inside the polling place at the time fixed for closing the poll shall be entitled to vote before the poll is closed.

7. Immediately after the close of the poll the electoral officer or his deputy shall in the presence of such of the candidates or their agents as may be present open the ballot box and

- (a) examine the ballot papers and reject all ballot papers,
 - (i) which have not been supplied by him; or
 - (ii) by which votes have been given for more candidates than are to be elected; or
 - (iii) upon which anything appears by which the voter can be identified, but no word, letter or marks written or made or omitted to be written or made by the electoral officer or his deputy on a ballot paper shall avoid it or warrant its rejection;
- (b) declare a ballot paper containing the names of candidates for more than one office, on which votes are given for more candidates for any office than are to be elected, to be void as regards all the candidates for such office; but such ballot paper shall be good as regard the votes for any other offices in respect of which the voter has not voted for more candidates than are to be elected;
- (c) subject to review on recount or on an election appeal, take a note of any objection made by any candidate or his agent to any ballot paper found in the ballot box and decide any question arising out of the objection;
- (d) number such objection and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, with his initials;
- (e) count the votes given for each candidate from the ballot papers not rejected and make a written statement of the number of votes given to each candidate and of the number of ballot papers rejected and not counted by him which statement shall be then signed by him and such other persons authorized to be present as may desire to sign the same.

8. Immediately after the completion of the counting of the votes the electoral officer shall publicly declare to be elected the candidate or candidates having the highest number of votes, and he shall also post in some conspicuous place a statement signed by him showing the number of votes cast for each candidate.

9. Where it appears that two or more candidates have an equal number of votes, the electoral officer shall give a casting vote for one or more of such candidates, but the electoral officer shall not otherwise be entitled to vote.

10. (1) The electoral officer shall prepare a statement in triplicate showing the total number of votes cast for each candidate, the number of rejected ballots and the names of the candidates duly declared elected.

(2) One copy of such statement shall be forwarded to the Director, one to the Regional Supervisor or the Indian Commissioner for the Province of British Columbia, and one copy filed in the Agency Office.

(3) The statement shall be signed by the electoral officer and such of the candidates or their agents as are present and desire to sign it.

Disposition of ballot papers

11. The electoral officer shall deposit all ballot papers in sealed envelopes with the Superintendent, who shall retain them in his possession for eight weeks, and unless otherwise directed by the Minister or by a person authorized by him shall then destroy the ballot papers in the presence of two witnesses who shall make a declaration that they witnessed the destruction of them.

Election appeals

12. (1) Within thirty days after an election any candidate at the election or any elector who gave or tendered his vote at the election who has reasonable grounds for believing that

- (a) there was corrupt practice in connection with the election;
- (b) there was a violation of the Act or these regulations that might have affected the result of the election; or
- (c) a person nominated to be a candidate in the election was ineligible to be a candidate,

may lodge an appeal by forwarding by registered mail to the Director particulars thereof duly verified by affidavit.

(2) Where an appeal is received by the Director pursuant to subsection one, the Director shall within seven days of the receipt of the appeal forward a copy of the appeal together with all supporting documents by registered mail to the electoral officer and to each candidate in the electoral section.

(3) Any candidate may within fourteen days of the receipt of the copy of the appeal forward to the Director by registered mail a written answer to the particulars set out in the appeal together with any supporting documents relating thereto duly verified by affidavit.

(4) All particulars and documents filed in accordance with the provisions of this section shall constitute and form the record.

13. (1) The Minister may, if the material that has been filed is not adequate for deciding the validity of the election complained of, conduct such further investigation into the matter as he deems necessary, in such manner as he deems expedient.

(2) Such investigation may be held by the Minister or by any person designated by the Minister for the purpose.

(3) Where the Minister designates a person to hold such an investigation, such person shall submit a detailed report of the investigation to the Minister for his consideration.

14. Where it appears that,
- (a) there was corrupt practice in connection with an election;
 - (b) there was a violation of the Act or these regulations that might have affected the result of an election; or
 - (c) a person nominated to be candidate in an election was ineligible to be a candidate,

the Minister shall report to the Governor in Council accordingly.

Secrecy of voting

15. (1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.

(2) No person shall interfere or attempt to interfere with a voter when marking his ballot paper or obtain or attempt to obtain at the polling place information as to how a voter is about to vote or has voted.

16. The Minister may make such orders and issue such instructions as he may deem necessary from time to time for the effective administration of these regulations.

17. Such forms as are required for the purposes of these regulations shall be as are prescribed by the Minister.

18. Any person who violates any of the provisions of these regulations is subject to the penalties provided by section one hundred of the Act.