

## LAKE BABINE NATION ELECTION CODE

### PREAMBLE

WHEREAS Lake Babine Nation is an Indigenous nation with inherent rights of self-government and self-determination that has occupied its territory for millennia;

AND WHEREAS Lake Babine Nation includes the communities of *Wit'at* (Fort Babine), *Nedo'ats* (Old Fort), Tachet, Donald's Landing/Pinkut and Woyenne, as well as significant urban populations in Smithers, Prince George, Vancouver and beyond;

AND WHEREAS Lake Babine Nation is also an Indian Band within the meaning of the *Indian Act*, RSC 1985, Chapter 1-5;

AND WHEREAS Lake Babine Nation has been operating under a custom Lake Babine Nation Election Code for many years;

AND WHEREAS the original version of the Lake Babine Nation Election Code needed updating and was revised under the direction of a Lake Babine Election Code Steering Committee, with the most significant proposed changes being the addition of a Donald's Landing/Pinkut Councillor position, the option of electronic voting, and a process to seek the removal of Council members who are in serious breach of the Lake Babine Nation Council Policy or their Oath of Office;

AND WHEREAS the proposed revisions to the Lake Babine Nation Election Code were approved in a referendum held on January 31, 2024 by a majority of the Lake Babine Nation voters who participated in the referendum, with the exception of the new Donald's Landing/Pinkut Councillor position, which a majority of participating voters rejected;

AND WHEREAS Lake Babine Nation is developing a longer term governance model pursuant to section 9 of the Lake Babine Nation Foundation Agreement, which will include both community and nation governments, be accountable to all Lake Babine citizens, including those living away from Lake Babine's communities, and which will be grounded in Lake Babine Nation's Indigenous laws, customs, and practices, implemented in a way that empowers the Nation, its communities and citizens to meet their 21<sup>st</sup> century political, social, and economic needs and aspirations;

AND WHEREAS the Lake Babine governance model that is under development will replace this Lake Babine Nation Custom Election Code if and when it is ratified by the Lake Babine people.

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## INTERPRETATION

### 1. In this Lake Babine Nation Election Code:

“Appeal Board” means the three non-Members who are free of any real or potential conflicts of interest and who are appointed under sections 7(e) or 63 of this Election Code to hear any Election appeals under section 67 or applications for removals from office under section 83;

“By-election” means the poll conducted by secret ballot under this Election Code to fill a Council position

- a. if the Appeal Board declares one or some of the Election results invalid under section 89(a); or
- b. if a vacancy arises under section 89(b) more than 6 months before the next scheduled Election;

“Candidate” means a Voter who has been nominated to run for office in an Election or By-election, is eligible to run for office under section 5, and who has taken all the required steps to accept a nomination under section 22;

“Candidate Fee” means the non-refundable \$100 fee that a nominated person must pay to run for Councillor and the \$150 fee that a nominated person must pay to run for Chief;

“Candidates Forum” means a meeting where the Candidates running for Chief and for the relevant Councillor positions make their candidacy speech and answer questions from the Voters;

“Chief” means the chief councillor of the Council elected in accordance with this Election Code;

“Chief Executive Officer” means the chief executive officer of Lake Babine Nation or the successor position, should the position’s title change;

“Community” or “Communities” means one or more of the Lake Babine Nation communities of *Wit’at* (Fort Babine), *Nedo’ats* (Old Fort), Tachet, and Woyenne;

“Council” means the council of Lake Babine Nation consisting of the Chief and 10 Councillors;

“Councillor” or “Councillors” means one or more of the 10 councillors elected in accordance with this Election Code;

“Council Policy” means the Lake Babine Nation Council Policy adopted by Chief and Council on January 25, 2022, setting out the roles and responsibilities of Council, as may be updated from time to time;

“Deputy Electoral Officer” or “Deputy Electoral Officers” means the non-Member(s) that the Electoral Officer engages to serve as deputy electoral officer(s) in an Election or By-election;

“Election” means the poll conducted by secret ballot under this Election Code to select the full Council;

“Electoral Officer” means the non-Member that Council engages under section 7(b) to serve as the electoral officer in an Election or By-election and who is responsible for engaging the Deputy Electoral Officers;

“Electronic Voting Platform” means a secure, web-based database where Voters can vote electronically;

“Hybrid Meeting” means a meeting that is simultaneously held both in-person and online and that allows both in-person and remote participation;

“Indictable Offence” means a serious offence under the *Criminal Code*, RSC 1985, c. C-46 that is prosecuted by way of indictment, such as theft over \$5,000, break and enter, aggravated sexual assault, murder, drug trafficking, impaired driving causing death, as well as other types of offences that the Crown prosecutor chooses to prosecute by indictment rather than as a “summary offence” due to the particularly serious circumstances of the offence;

“Member” means a person who is registered under section 9 of the *Indian Act* as a member of the Lake Babine Nation Indian Band, regardless of where they live;

“Membership Clerk” means the Lake Babine Nation employee responsible for maintaining the list of Members;

“Oath of Office” means the Lake Babine Nation oath of office included in the Council Policy that all Council members swear upon taking office, as may be updated from time to time;

“Spoiled Ballot” means a ballot that

- a. has been marked for more Candidates than are to be elected;
- b. bears a mark not in the prescribed form;
- c. identifies the Voter;
- d. is defaced or altered;
- e. bears any writing; or
- f. is marked for a Candidate who has withdrawn pursuant to section 26 [*how to withdraw*].

“Scrutineer” means an individual appointed by a Candidate under section 40 to observe voting and counting procedures during an Election;

“Voter” means a Member who has attained 18 years by the date of the Election, By-election or referendum to amend this Election Code, as the case may be.

#### **COMPOSITION OF COUNCIL**

2. The Council consists of
  - a. one Chief;
  - b. two Councillors to represent the Community of Tachet;
  - c. two Councillors to represent the Community of Wit’at (Fort Babine);
  - d. one Councillor to represent the Community of Nedo’ats (Old Fort); and
  - e. four Councillors to represent the Community of Woyenne.
3. In addition to representing their Community, all Councillors, like the Chief, shall act for and on behalf of Lake Babine Nation and all its Members.

#### **TIMING OF ELECTIONS**

4. Lake Babine shall conduct an Election for the full Council every third calendar year, during the third week of June.

### **ELIGIBILITY TO RUN FOR AND HOLD OFFICE**

5. To be eligible to run for and hold the office of Chief or Councillor, a person must
  - a. be a Lake Babine Nation Voter;
  - b. not be convicted of an Indictable Offence;
  - c. not have been removed from office under section 87(a) of this Election Code in the past three years; and
  - d. never have been found guilty of a fraudulent or corrupt electoral practice.
6. A Candidate may only run for one position in an Election.

### **PRE-ELECTION COUNCIL MEETING**

7. At least 60 days prior to an Election, the Chief shall convene a Council meeting at which:
  - a. a date shall be set for the Election;
  - b. one Electoral Officer shall be selected and engaged;
  - c. dates, times and locations in Wit'at (Fort Babine), Tachet, and Woyenne shall be set for Candidate nomination meetings for the offices of Chief and Councillors, all of which will be at least 30 days before the Election and run from 4:30pm to 8:30pm;
  - d. dates, times and locations shall be set for Candidates Forums in Wit'at (Fort Babine), Tachet and Woyenne, all of which shall be at least 14 days before the Election and scheduled to run for 5 hours; and
  - e. three persons shall be appointed to the Election Appeal Board, one of whom shall be appointed as the Chairperson, as well as an alternate in the event that any Board member resigns or dies.

### **LIST OF VOTERS AND CONTACT ADDRESSES**

8. It is the responsibility of all Voters to provide the Membership Clerk with their current mailing address and/or email address.
9. Within seven days of Council scheduling the Election, the Membership Clerk shall
  - a. prepare a list of Voters in alphabetical order that also includes the Electoral Officer's contact information;
  - b. promptly provide to the Electoral Officer the Voters list and all known Voter mailing addresses and email addresses.
10. Any Voter may request that the Electoral Officer confirm that their name is on the Voters List and the spelling of their name and may request that the Electoral Officer revise the list of Voters on the ground that
  - a. their name is incorrectly set out; or
  - b. their name is missing and needs to be added.
11. The Electoral Officer shall promptly consider all requests to revise the list of Voters, correct it as needed, and provide written reasons for the correction to Council and the Chief Executive Officer.

### **NOTICE OF ELECTION MAIL-OUT**

12. The Electoral Officer shall mail and email Voters the following information as soon as possible upon receiving their known addresses from the Membership Clerk:
  - a. the Election date;
  - b. dates, times and locations of the Candidate nomination meetings and Candidates Forums and how to join the meetings online;
  - c. names of the Electoral Officer and Deputy Electoral Officer(s) and Electoral Officer's contact information;
  - d. notice that Voters will have the option to vote electronically and how to find out more about this option; and
  - e. notice that there will be no further mail-outs, and the web address where Voters can receive further information about the Election.

### **NOTICE OF NOMINATION MEETINGS AND CANDIDATE FORUMS**

13. The Candidates nomination meetings and the Candidates Forums shall be Hybrid Meetings.
14. The Electoral Officer shall ensure the following notices are promptly posted in the relevant Community administration office as well as on Lake Babine Nation's website:
  - a. Dates, times and locations for Candidate nomination meetings in Wit'at (Fort Babine), Tachet, and Woyenne for the offices of Chief and Councillors;
  - b. dates, times and locations for the following Candidates Forum meetings:
    - i. in Wit'at (Fort Babine), for the offices of Chief and Wit'at Councillors;
    - ii. in Tachet, for the offices of Chief, Tachet Councillors and Nedo'ats (Old Fort) Councillor; and
    - iii. in Woyenne, for the offices of Chief and Woyenne Councillors.
15. The meeting notices shall include instructions for joining the meeting online and the prohibition stated in sections 17 and 32.

### **NOMINATION MEETINGS**

16. At the start of each nomination meeting, the Electoral Officer or Deputy Electoral Officer shall
  - a. ensure that online meeting participants are admitted to the nomination meeting;
  - b. declare the nomination meeting open for the purpose of receiving nominations for Candidates; and
  - c. specify that the meeting will end at 8:30 pm.
17. Disruptive conduct is not permitted in the nomination meetings and the Electoral Officer or Deputy Electoral Officer may remove or cause to be removed anyone who is being disruptive.
18. A Voter who is attending the meeting in person or online may
  - a. nominate or second a nomination for one person for Chief; and

- b. nominate or second a nomination for as many people for Councillor as there are Councillor positions in that Community (e.g. a Voter may nominate or second a nomination for one Old Fort Councillor).
19. A person who is nominated may decline the nomination, indicate that they intend to accept the nomination, or provide no comment.
20. If no one is nominated for an office, or if any nominated person declines at the meeting, the incumbent shall remain in office until the next Election.
21. The Electoral Officer shall maintain the following records:
- a. dates, times and locations of each nomination meeting;
  - b. list of all nomination meeting attendees;
  - c. names of the persons nominated, the office for which they were nominated, names of the persons nominating and seconding each nomination, any response from the nominee;
  - d. names of any nominations rejected by the Electoral Officer or Deputy Electoral Officer and the reasons therefor; and
  - e. names of any incumbents who shall remain in office.

#### **LIST OF CANDIDATES**

22. Within 24 hours of the nomination meetings, the Electoral Officer shall notify each person who was nominated and for whom contact information has been provided and request the following:
- a. written declaration by form provided by the Electoral Officer confirming that they seek to be elected into office;
  - b. a sworn declaration that the person has not been convicted of any Indictable Offence; and
  - c. Candidate Fee, payable by cash, cheque, money order or electronic transfer to Lake Babine Nation, unless the number of nominated persons equals or is less than the number of available positions, in which case there is no Candidate Fee.
23. Any person who fails to complete the requirements in section 22 within five days of receiving notice of their nomination shall not be a Candidate.
24. In addition to taking all the steps described in section 22, any nominated person who is a Lake Babine Nation employee shall immediately, upon becoming a Candidate, take an unpaid leave of absence until the day after the Election.

#### **NOTICES OF INCUMBENTS, ACCLAMATION AND ELECTION NEW**

25. Within seven days of notifying nominated persons under section 22, the Electoral Officer shall ensure that a notice is posted in the administration offices of Wit'at (Fort Babine), Tachet and Woyenne as well as on Lake Babine Nation's website providing the following information:

- a. any sitting Council member that remains in office due to lack of any Candidates for their office;
- b. any Candidates that are acclaimed because the number of Candidates for that office equals the number of available positions;
- c. polls that will take place to fill the remaining offices and the Candidates running for each office;
- d. date, time and locations for in-person voting;
- e. option of electronic voting and how to register for electronic voting;
- f. Electoral Officer's contact information;
- g. where on Lake Babine's website to find information about the Election.

#### **CANDIDATE WITHDRAWAL**

26. A Candidate may withdraw from the Election by filing with the Electoral Officer a withdrawal of their candidacy signed by the Candidate in the presence of the Electoral Officer or a Commissioner of Oaths.
27. The Electoral Officer shall ensure that the name of the withdrawn Candidate is removed from the ballot, time permitting, and that a notice of the Candidate's withdrawal is promptly posted
  - a. in the administration offices of Wit'at (Fort Babine), Tachet and Woyenne, time permitting;
  - b. on Lake Babine Nation's website, time permitting, and
  - c. at a conspicuous location in each polling station as well as in each voting compartment.
28. Any ballot cast for a Candidate who has withdrawn under section 26 shall be a Spoiled Ballot.

#### **CANDIDATES FORUMS**

29. The Candidates Forums shall be Hybrid Meetings.
30. The Electoral Officer shall ensure that online meeting participants are admitted to the Candidates Forums and shall declare the meeting open.
31. The Electoral Officer shall facilitate the meeting in accordance with the following rules:
  - a. The order of speeches shall be alphabetical by surname; where two or more Candidates share a surname, the order shall be alphabetical by first name; and where two or more candidates share the same full name, the order shall be decided by drawing names from a hat under the Electoral Officer's supervision.
  - b. Each Candidate shall have a maximum of five minutes to make their speech.
  - c. The Electoral Officer shall allow questions in writing only from Voters attending in-person and online after all the speeches have completed.
  - d. The Electoral Officer shall act as moderator, which includes maintaining order, enforcing time limits for speeches, limiting questions to matters affecting Lake Babine governance and administration, limiting the time that Candidates spend answering questions, and ensuring that as many Voters as possible get time to ask a question.
32. Disruptive conduct is not permitted in the Candidate Forums and the Electoral Officer or Deputy Electoral Officer may remove or cause to be removed anyone who is being disruptive.



## **ELECTION PREPARATION**

33. The Electoral Officer shall prepare the final list of Voters in time for advance electronic and in-person voting and ensure that it is at each polling station before it opens.
34. The Electoral Officer shall cause an Electronic Voting Platform to be prepared and shall ensure that technical support is available in the lead up to the Election to help interested Voters register for electronic voting. Voters will have a 10-day window to vote electronically, with the last day being the day of the Election.
35. The Electoral Officer shall cause ballots to be prepared containing the Candidate names for each office, in the same order as described in section 31(a), in time for advance in-person voting. There shall be separate ballots for the office of Chief and for each set of Community Councillor Candidates.
36. The Electoral Officer shall ensure that there are polling stations in each of the following locations:
  - a. Wit'at (Fort Babine);
  - b. Tachet;
  - c. Woyenne;
  - d. Vancouver, at the Friendship Centre if possible and otherwise at another location;
  - e. Prince George, at the Friendship Centre if possible and otherwise at another location;  
and
  - f. Smithers, at the Friendship Centre if possible and otherwise at another location.
37. The Electoral Officer shall provide a voting compartment in each polling station where Voters can mark their ballot in full privacy.
38. The Electoral Officer may engage security to maintain order at the polling stations.
39. The Electoral Officer shall, prior to the opening of the polling stations, cause to be delivered sufficient ballots, materials for marking the ballots, and sufficient samples and written definitions of a Spoiled Ballot to place in a conspicuous location within the voting compartment.
40. No later than 24 hours before the Election begins, each Candidate may submit to the Electoral Officer the name of one person per polling station to act as their Scrutineer during the live polling and ballot counting.

## **CONDUCT OF IN-PERSON POLLS**

41. The polling stations shall be open from 8:00 a.m. until 8:00 p.m. on day of the Election.
42. Immediately before the polls open, the Electoral Officer or Deputy Electoral Officer shall open each ballot box and call anyone present to witness that it is empty, after which they shall secure and seal each ballot box and place it somewhere in the polling station where it can be viewed at all times.
43. Each person who attends a polling station and whose name is on the list of Voters shall show the Electoral Officer or Deputy Electoral Officer photo identification to confirm their identity and, in the event the Voter is unable to produce such identification, that person may swear or affirm an oath before the Electoral Officer or Deputy Electoral Officer stating their identity, after which the Electoral Officer or Deputy Electoral Officer shall permit them to receive a ballot.

44. Anyone whose name does not appear on the list of Voters may swear or affirm an oath before the Electoral Officer or Deputy Electoral Officer stating that they are a Voter. The Electoral Officer or Deputy Electoral Officer may verify this fact with the Membership Clerk before giving them a ballot.
45. Once the Electoral Officer or Deputy Electoral Officers confirms that a person attending the polling station is a Voter, they shall
  - a. ask the Voter which Community ballot they wish to use;
  - b. provide the Voter the ballot for the office of Chief and the ballot for the Community of their choice;
  - c. provide the Voter with marking material;
  - d. explain to each Voter how to vote, as set out in section 47 and the definition of a Spoiled Ballot; and
  - e. direct the Voter to the voting compartment.
46. While a Voter is in the voting compartment, no one else may be in the voting compartment or in any position to view how the Voter marks the ballot, except in the case of assisted voting as described in section 53.

#### **IN-PERSON VOTING**

47. Upon receiving the ballots, each Voter shall
  - a. proceed to the voting compartment;
  - b. mark the ballots with an "X" or "check mark" in the space provided opposite the names of the Candidate(s) for whom the Voter desires to vote;
  - c. fold the ballot to conceal the Candidate name(s) and mark(s) while showing the initials of the Electoral Officer or Deputy Electoral Officer;
  - d. return the folded ballot to the Electoral Officer or Deputy Electoral Officer.
48. Upon receiving the Voter's ballot, the Electoral Officer or Deputy Officer shall, without unfolding the ballot, verify the initials and immediately deposit it into the ballot box in the presence of the Voter.
49. Any Voter who inadvertently spoiled their ballot may return it to the Electoral Officer or Deputy Electoral Officer, who shall provide the Voter with a new ballot, write "cancelled" on the old ballot, and deposit the old ballot in the ballot box.
50. Any Voter who receives a ballot and leaves the polling station without delivering it to the Electoral Officer or Deputy Electoral Officer or who refuses to vote forfeits their right to vote, and the Electoral Officer or Deputy Electoral Officer shall
  - a. make a notation of this fact beside the Voter's name on the list of Voters; and
  - b. if the Voter returns the ballot, write the word "returned" on the ballot and deposit it in the ballot box, or, if the Voter does not return the ballot, deposit a paper in the ballot box indicating that a ballot that was provided to a Voter was not returned.
51. Any Voter who enters the polling station before 8:00 p.m. and who has not yet voted may cast their ballot before the poll closes.

### **ASSISTED IN-PERSON VOTING**

52. A Voter who is unable to read or who is physically challenged in a way that prevents them from marking their ballot without assistance may request voting assistance from the Electoral Officer or Deputy Electoral Officer.
53. Where requested to assist under section 52, the Electoral Officer or Deputy Electoral Officer shall mark the ballot in the manner directed by the Voter, place the ballot into the ballot box, and place a check mark beside the Voter's name on the list of Voters along with a notation that they provided assistance to the Voter.
54. The Electoral Officer or Deputy Electoral Officer who assists a Voter under shall not disclose to anyone which Candidate(s) the Voter voted for.

### **ADVANCE IN-PERSON VOTING**

55. The Electoral Officer shall conduct advance in-person polls at Wit'at (Fort Babine), Tachet and Woyenne on the 10<sup>th</sup> day prior to the date of the Election from noon to 8 p.m. and in accordance with the procedure described in this Election Code.

### **COUNTING THE VOTES**

56. As soon as the polling station closes, the Electoral Officer or the Deputy Electoral Officer(s) shall open the ballot boxes, including the advance poll ballot boxes, in the presence of any Candidates and scrutineers and
  - a. examine the ballots and reject
    - i. all ballots having written upon them the words "declined" or "cancelled"; and
    - ii. all Spoiled Ballots;
  - b. take note of any objection to a ballot by a Candidate or scrutineer, decide whether to accept or reject the objection, and make a notation identifying the ballot as contested, the nature of the objection, and the Electoral Officer or Deputy Electoral Officer's decision;
  - c. count the votes for each Candidate from the non-rejected ballots; and
  - d. prepare a written statement of the number of votes for each Candidate and the number of ballot papers rejected and counted, sign the statement and allow any Candidates or scrutineers who have watched the counting of the votes and who wish to sign the statement do so.
57. The Electoral Officer shall access the results of the electronic voting after counting the ballots from the in-person polling, and shall add those results to the in-person polling results.
58. As soon as they have calculated the total votes for each Candidate, the Electoral Officer shall publicly declare the Candidate for each office with the highest number of votes to be elected.
59. If the votes for two or more Candidates for an office are tied, the Electoral Officer or Deputy Electoral Officer shall place the names of the tied Candidates into a hat, draw a name therefrom, mark a ballot in favour of that Candidate, and declare that Candidate to be elected.

60. The Electoral Officer shall deposit all ballots into sealed ballot boxes and keep them secure for three months or until the conclusion of any legal challenge to the Election results.
61. Within 24 hours of the ballot counting, the Electoral Officer shall prepare and sign a statement with the following information and cause it to be posted in the administration offices of Wit'at (Fort Babine), Tachet and Woyenne, as well as on Lake Babine Nation's website:
  - a. number of Voters who took a ballot or voted electronically;
  - b. number of ballots cast;
  - c. number of ballots not counted and the reasons therefor;
  - d. number of votes cast for each Candidate;
  - e. names of the elected Candidates; and
  - f. names of each Candidate's scrutineers, if any.

#### **APPEAL BOARD**

62. The Appeal Board members shall remain in office until they die, resign, or the Council replaces them with new appointments.
63. Responsibility for filling vacancies on the Appeal Board is as follows:
  - a. Council shall make appointments starting on the later of these two dates:
    - i. day they are sworn in or
    - ii. if there is an Election appeal, the day after that appeal concludes;
  - b. Council shall continue to make appointments up to and including the day they appoint the Appeal Board for the next Election under section 7(e);
  - c. the Chief Executive Officer shall appoint the alternate selected by Council under section 7(e) to fill any vacancy that arises between the appointment of the Appeal Board under section 7(e) and the day the new Council is sworn in or, if there is an Election appeal, the day after that appeal concludes, whichever happens later; and
  - d. If, during the period described in 63(c), the alternate selected by Council under s. 7(e) is unavailable to fill a vacancy or a second vacancy arises, the Chief Executive Officer shall appoint a new Appeal Board member to fill that vacancy.
64. The Appeal Board shall conduct all its proceedings in accordance with the principles of natural justice while also advancing all its proceedings as expeditiously as possible.
65. The Appeal Board may, in its sole discretion, retain an investigator, legal counsel or other person reasonably required to conduct its work, as long as this person is qualified to do the work and is not a Member, employee of Lake Babine Nation, the Electoral Officer or Deputy Electoral Officer, or in a potential or actual conflict of interest. Lake Babine Nation shall promptly pay the reasonable fees and disbursements for such services upon receiving the invoices.
66. All Appeal Board decisions are final and not subject to appeal.

#### **APPEALS**

67. Within 30 days after an Election, any Candidate or Voter may file an appeal with the Appeal Board if they have reasonable ground for believing that
  - a. a Candidate running for office is ineligible to do so under section 5;

- b. a Candidate who was elected is ineligible to hold office under section 5;
  - c. there was a corrupt or fraudulent practice in connection with the Election; or
  - d. there was a violation of this Election Code that may have affected one or more Election Results.
68. To file an appeal, the Candidate or Voter must file with the Appeal Board
- a. a notice of appeal with enough particulars to explain the basis of the appeal; and
  - b. evidence to support the appeal, which must include one or more sworn statements and which may also include additional evidence such as recordings, photos, and documents.
69. The Candidate or Voter must file the appeal materials by hand delivering them or sending them by registered mail to: Lake Babine Nation, 225 Sus Avenue, PO Box 879, Burns Lake, British Columbia, V0J 1E0, to the attention of the Chief and Chief Executive Officer.
70. The Chief or Chief Executive Officer shall promptly forward the appeal materials to the Appeal Board.
71. The Chairperson of the Appeal Board shall promptly forward the appeal materials to the Candidate(s) affected by the appeal and the Electoral Officer, along with the deadline for responding and instructions for filing the response.
72. The Candidate(s) affected by the appeal may respond within 14 days of receiving it by delivering to the Appeal Board a sworn statement responding to the particulars of the appeal and any further supporting evidence. They may also request an oral hearing of the appeal.
73. The Electoral Officer shall, within 14 days of receiving the notice of appeal, provide any relevant evidence by means of sworn statement and any further supporting evidence. They may also request an oral hearing.
74. If the Appeal Board determines that the materials filed are insufficient to decide the appeal, it may
- a. schedule an oral hearing in-person or online; or
  - b. retain an investigator to investigate the matter and deliver a written report on their findings.
75. The Appeal Board shall review the appeal materials and render a written decision:
- a. If it is satisfied the evidence establishes that a Candidate in an upcoming Election is ineligible to run for office, it shall make this declaration and the Candidate shall be deemed withdrawn from the Election.
  - b. If it is satisfied that the basis for an appeal is made out under sub-sections 67(b), (c), or (d), it shall declare the relevant Election result(s) null and void and order a new Election or By-election, as the case may be; or
  - c. If it is not satisfied that any ground for appeal has been made out, it shall reject the appeal.
76. The Appeal Board shall promptly deliver its decision to
- a. the person who filed the appeal;

- b. the Candidate(s) subject to the challenge;
- c. the Electoral Officer;
- d. the Chief; and
- e. the Chief Executive Officer;

and the Chief or Chief Executive Officer shall ensure the decision is promptly posted in the administration offices of Wit'at (Fort Babine), Tachet and Woyenne as well as on Lake Babine Nation's website.

#### **VACANCIES**

77. A Chief or Councillor position becomes vacant if the person who holds office:
- a. dies;
  - b. resigns in writing;
  - c. has been unable to perform their duties of office for 90 consecutive days due to illness or other incapacity; or
  - d. is removed from office in accordance with section 87(a).

#### **REMOVALS FROM OFFICE**

78. A Chief or Councillor
- a. may be removed from office for a serious breach of the Council Policy or Oath of Office, and
  - b. shall be removed from office if they are convicted of an Indictable Offence or cease to be a Member.
79. An application to remove a Chief or Councillor from office may be initiated by:
- a. a band council resolution stating the ground upon which removal is sought; or
  - b. a petition stating the ground upon which removal is sought, signed by at least 60% of Voters
    - i. who voted in the last Election, where the application concerns the Chief; or
    - ii. who voted in the last Election for the relevant Community, where the application concerns a Councillor.
80. The band council resolution or the petition for removal shall contain enough details to explain the basis of the application. It must be supported evidence, which must include one or more sworn statements and which may also include additional evidence such as recordings, photos, and documents.
81. The application for removal must be hand delivered or sent by registered mail to: Lake Babine Nation Election Appeal Board, c/o Lake Babine Nation, 225 Sus Avenue, PO Box 879, Burns Lake, British Columbia, V0J 1E0, to the attention of the Chief and Chief Executive Officer.
82. The Chief or Chief Executive Officer shall promptly forward the application for removal to the Appeal Board.

83. The Appeal Board shall review the application for removal and decide whether it meets the requirements set out in sections 79 and 80, which, in the case of a Petition, may include verifying the Petition signatories against the list of Voters in the last Election.
84. If the application meets the requirements of sections 79 and 80, the Chairperson of the Appeal Board shall share it with the Council member subject to the challenge, along with the deadline for responding and instructions for filing the response. If the application does not meet the requirements, the Chairperson of the Appeal Board shall notify the applicant.
85. The Council member subject to the challenge may respond within 14 days of receiving the application by delivering to the Appeal Board a sworn statement responding to the particulars of the application and any further supporting evidence. They may also request an oral hearing of the application.
86. If the Appeal Board determines that the materials filed are insufficient to decide the application, it may:
  - a. schedule an oral hearing in-person or online; or
  - b. retain an investigator to investigate the matter and deliver a written report on their findings.
87. The Appeal Board shall review the application materials and render a written decision:
  - a. If it is satisfied that the evidence establishes one or more grounds for removal under section 78, it shall declare that the Council member is removed from office and that the position is vacant; or
  - b. If it is not satisfied that the evidence establishes a ground for removal, it shall reject the application.
88. The Appeal Board shall promptly deliver its decision to
  - a. the applicant,
  - b. the Council member subject to the challenge,
  - c. the Chief and the Chief Executive Officerand the Chief or Chief Executive Officer shall ensure the decision is promptly posted in the administration offices of Wit'at (Fort Babine), Tachet and Woyenne as well as on Lake Babine Nation's website.

#### **BY-ELECTIONS**

89. Council shall promptly declare and schedule a By-election where
  - a. the Appeal Board declares one or more Election results, but not the entire Election, null and void under section 75(b); or
  - b. a Council position becomes vacant under section 77, and more than 6 months remain before the next Lake Babine Election.

90. Where the By-election is for a Councillor position, only the Voters who participated in the vote for that Community in the last Election may participate in the By-election.
91. The rules of this Election Code shall apply to the By-election except where expressly modified or to the extent that they require modification in the context of a By-election.

#### **ELECTION CODE AMENDMENTS**

92. The Council may amend this Election Code by band council resolution to implement any of the following changes:
  - a. bring it into compliance with any ruling by a court of competent jurisdiction;
  - b. make minor improvements to the language that clarify but do not change the original intended meaning; or
  - c. correct grammatical or typographical errors.
93. Lake Babine Nation will amend this Election Code to eliminate in-person voting in Smithers, Prince George and/or Vancouver anytime after the 2027 election and before a date has been set for the next Election if the membership adopts an Annual General Assembly Resolution to this effect.
94. Any other Election Code amendments must be approved by a Lake Babine Nation referendum in which a simple majority of the Voters who participate in the referendum approve the amendments.

#### **COMING INTO FORCE**

95. This Lake Babine Nation Election Code comes into force on March 13, 2024.