



OCHAPOWACE

ELECTION

ACT

OCHAPOWACE ELECTION ACT

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OCHAPOWACE ELECTION ACT

PREAMBLE:

We the people of Ochapowace within Treaty Four Territory are;

CONVINCED that it is our inherent right to control our own destiny and government;

POSSESSING our inherent natural rights to function as a Nation;

CONFIRMING that our people are organized with rules which establish, empower and regulate our institution of government;

REAFFIRMING our ancestors' guarantees, by Treaty Four with the Crown of Great Britain, to preserve our way of life in perpetuity;

CONVINCED that we must affirm our rights as Peoples to honour our system of government;

BELIEVING that the Chief and Council are the representatives of our Government of Ochapowace;

PERSUADED that the rules for establishing, empowering and regulating our institution of government, although evolving since time immemorial, must be written to better regulate our lives and to provide us with a clear means of procedure according to our Laws and Customs connected with our traditions and culture;

ACCORDINGLY the Ochapowace people through extensive consultation and involvement, who exhibited their full powers found to be in good form, have agreed to this Election Act of Ochapowace, for the institutions thereof, and the procedures connected therewith. The Election Act, which is an Act respecting the election procedures and processes of Ochapowace shall henceforth be referred to as the Ochapowace Election Act.

PURPOSES AND PRINCIPLES:

1. *To formalize and implement the Ochapowace Election Act, we the people of Turtle Island, recognize that we:*

Are the Original Peoples and that the Creator has placed us here.

The Creator gave us Laws that govern all our relationships to live in harmony with nature and mankind.

The Laws of the Creator defined our rights and responsibilities.

The Creator gave us our Spiritual Beliefs, our Language, our Culture and a place on Mother Earth which provided us with all our needs..

We have maintained our Freedom, our Languages, and our Traditions from time immemorial.

We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the Land upon which we were placed.

The Creator has given us the Right To Govern ourselves and the Right to Determine our own destiny.

The Rights and Responsibilities given to us by the Creator cannot be altered, diminished or taken away by any other Nation.

And by this reference, the Election Act is made a part thereof.

The Governing body of Ochapowace is the elected Chief and Council. As such, they have the capacity and mandate to protect, promote, implement and plan our Government, laws, policies and structures.

This Election Act forms one aspect of this responsibility.

- 2. To establish and confirm Ochapowace Sovereignty, and the strengthening of Ochapowace status as a Nation under International Law.*
- 3. To implement and practice government recognized on a nation-to-nation basis by virtue of Treaty Four.*
- 4. To recognize and uphold our jurisdictions and that no other jurisdictions shall infringe, impede, or affect this Election Act.*
- 5. To include total eligible voting membership of Ochapowace regardless of residence, in the nomination and voting processes.*

PART ONE - GENERAL

1. **Definitions:**

In this Election Act:

- (a). *"Band Member"* means a member of Ochapowace if he/she is a Treaty Indian registered as a member of Ochapowace on the membership list maintained by the Ochapowace Registrar.
- (b). *"Electors"* means a person who is a member of Ochapowace whose name appears on the membership list maintained by the Ochapowace Registrar and is of the full age of eighteen (18) years of age.
- (c). *"By-Election"* means a special election to fill a position that has become vacant.
- (d). *"Election"* means the leadership selection process whereby the Chief and Council are chosen in accordance with this Act.
- (e). *"Election Day"* is the day upon which the Election or By-Election is held.
- (f). *"Electoral Officer"* means the Electoral Officer and his/her appointed Deputy, who are empowered and entrusted to conduct and oversee an Election or By-Election according to the terms of this Act.
- (g). *"Majority of Voters"* means a simple majority of the votes cast.
- (h). *"Nomination Meeting"* is the day upon which the Candidates are formally nominated.

- (i). *"Rejected/Spoiled Ballots"* are those ballots that have been improperly marked and/or defaced by the Voters and left out of the tally of properly cast ballots by the Electoral Officer.
- (j) *"Community Tribunal"* means an appointed body of band members to establish and implement the rules and regulations governing the Election, by-election and appeals.
- (k) *"Chief and Council"* means the executive government of Ochapowace.
- (l) *"Chief"* means the duly elected Chief of Ochapowace.
- (m) *"Councillor"* means a duly elected Councillor of Ochapowace.
- (n) *"Registrar"* means that function responsible for maintaining the Ochapowace Membership list.
- (o) *"Code of Conduct"* are guidelines that govern the conduct of candidates running for office at Ochapowace.
- (p) *"Oath of Office"* means a sworn statement required of duly elected officials of Ochapowace.
- (q) *"Senior/Elders Council"* means a group of seniors/elders from Ochapowace.
- (r) *"Residence"* means a household maintained and occupied by a member of Ochapowace located on those lands designated Ochapowace Reserve status or Fee simple.

2. **Title of This Act**

This act shall be called the Ochapowace Election Act.

3. **Effect of This Act**

From the date this Act comes into force, it shall govern the election of the Band Council for Ochapowace.

4. **Coming Into Force of This Act**

This Act comes into force on the 1st day of January, 1999.

5. **Jurisdiction**

The Ochapowace Band Members agree that by ratification of this Act, it is hereby agreed that no other jurisdiction or external laws may apply when governing the elections of Ochapowace. Where necessary, those federal legislation and statute can apply subject to the discretion of the Community Tribunal.

PART TWO - BAND COUNCIL

6. Chief and Councillors

The Ochapowace Council shall consist of one (1) Chief and six (6) Councillors, who shall be elected by the electors under the supervision of the Electoral Officer and Deputy Electoral Officer(s) according to the provisions of this Act.

7. Seeking of Two (2) Positions Not Allowed

No person may run for the office of Chief and the office of Councillor at the same time on Ochapowace.

PART THREE - THE CHIEF

8. Age

The Candidate(s) for Chief must be twenty-one (21) years of age or older on the day of his/her nomination.

9. Residence

- a) The Candidate(s) for Chief must have resided full time on the Ochapowace Reserve for at least one (1) year immediately prior to the day of his/her election and must reside and maintain a full time residence on the reserve during his/her term.
- b) Maintenance may be established by applying three (3) or more of the following criteria:
 - i) must have an income from the Ochapowace Reserve;
 - ii) must have a mailing address which indicates residence on reserve;
 - iii) must have a signed affidavit from the head of the household indicating residence;
 - iv) must have monthly bills from the household such as utilities;
 - v) if not listed as the head of the household, must be listed as a member of the household on the Maintenance Fee Agreement;
 - vi) any other criteria that may be identified by the Community Tribunal.

10. Membership

The candidate(s) for Chief must be a member of Ochapowace.

PART FOUR - COUNCILLORS

11. Age

The Candidate(s) for Councillor must be eighteen (18) years of age or older on the day of his/her nomination.

12. Residence

- a) A candidate(s) for Councillor must have resided full time on the Ochapowace Reserve for at least one (1) year immediately prior to the day of his/her election and must maintain a full time residence on the reserve for his/her entire term of office.
- b) Maintenance may be established by applying three (3) or more of the following criteria:
 - i) must have an income from the Ochapowace Reserve;
 - ii) must have a mailing address which indicates residence on reserve;
 - iii) must have a signed affidavit from the head of the household indicating residence;
 - iv) must have monthly bills from the household such as utilities;
 - v) if not listed as the head of the household, must be listed as a member of the household on the Maintenance Fee Agreement;
 - vi) any other criteria that may be identified by the Community Tribunal.

13. Membership

A candidate(s) for Councillor must be a member of Ochapowace.

PART FIVE - TAKING OF OFFICE

14. Term of Office

- a) A newly elected and/or an acclaimed Chief and Council shall take office immediately after the current Chief and Council's term has expired.
- b) A newly elected and/or an acclaimed Chief and Council shall hold office for a term of three (3) years from the day he/she takes office.

15. Oath of Office

The Oath of Office shall be taken after the election process has been completed and before any elector who wishes to be present.

PART SIX - ELECTOR

16. Age of Elector

An elector must be eighteen (18) years of age or older on the day of the election.

17. Elector

An elector must be a member of Ochapowace whose name appears on the membership list maintained by the Ochapowace Registrar.

18. Membership

An Elector must be a band member on the day of an election.

19. Right of Elector

It is the right of each elector who is qualified, as set out in this Act, to vote at an election/by-election for Chief and any election for Councillors of Ochapowace.

PART SEVEN - COMMUNITY TRIBUNAL

20. Mandate

The "Community Tribunal" is authorized by Ochapowace as expressed by this Act and other laws of the Nation. The Community Tribunal is hereby mandated to manage and make decisions on the following matters:

- a) Election Appeals;
- b) Develop and monitor the Standards of Conduct during the campaign period;
- c) Grievances, Discipline or Removal from Office as contained in the Community Tribunal Manual.

21 Structure

- a) The Community Tribunal shall consist of seven (7) members as appointed by the Seniors/Elders Council upon expression of interest by individual band members.
- b) The members of the Tribunal shall be selected on the following basis:
 - i) Two (2) Band members aged sixty-five (65) and older from the on-reserve community;
 - ii) Three (3) Band members aged twenty-one (21) to sixty-four (64) from the on-reserve community, one of which shall serve as a Chairperson;
 - iii) Two (2) Band members aged sixteen (16) to twenty (20) from the on-reserve community.

PART EIGHT - ELECTORAL OFFICER

22. Electoral Officer

In advance of the official notice of any election, the Community Tribunal of Ochapowace shall appoint by resolution, an Electoral Officer and one or more Deputy Electoral Officers.

23. Membership

- a) The Electoral Officer must not be a band member at the time of their appointment;
- b) The Deputy Electoral Officer(s) shall be a band member;
- c) The Deputy Electoral Officer(s) cannot be a candidate for office.

PART NINE - NOTICE OF NOMINATION MEETING

24. Notice of Nomination Meeting

- a) The nomination meeting will take place on the *first Saturday in May* commencing on *May 1, 1999 and every 3 years afterwards.*
- b) Not less than fourteen (14) days before the nomination meeting takes place, the Electoral Officer shall post a notice.

25. Contents of Notice of Nomination Meeting

The notice of a nomination meeting shall contain the date, time and place of the nomination meeting.

26. Posting of Notice of Nomination Meeting

The Chief Electoral Officer shall post a notice at a minimum of two (2) public locations.

PART TEN - THE NOMINATION MEETING

27. Electoral Officer - Chairperson of Nomination Meeting

During the nomination meeting, the Electoral Officer shall function as the Chairperson of the meeting and he/she shall call for nominations of Chief and Councillors.

28. Nomination of Candidate

- a) The nomination must be moved and seconded by Electors of the Ochapowace First Nation.
- b) The nominator and seconder must be present at the nomination meeting.
- c) The candidate does not have to be present.
- d) Candidates not accepting nomination shall submit a signed Non Acceptance Form to the Deputy Electoral Officer within five (5) working days of the nomination meeting or their name will appear on the ballot.

29. Time For Nomination Meeting

Nomination for Chief and Councillors shall last for three (3) hours from one o'clock in the afternoon (1:00 p.m.) until four o'clock in the afternoon (4:00 p.m.)

30. **Cease Nominations**

The Electoral Officer will declare the nomination meeting closed when the three (3) hours have expired.

31. **Standard of Conduct During Election Process**

Candidates running for office will be governed by the Code of Ethics and other rules adopted by the Community Tribunal.

PART ELEVEN - NOTICE OF ELECTION

32. **Notice of Election**

The election will be held the *third Saturday of May commencing on May 15, 1999 and every three years afterwards.*

33. **Posting Notice of Election**

The Electoral Officer shall post a notice of election at a minimum of two (2) public locations.

PART TWELVE - ELECTION PROCEDURE

34. Hours of Voting

The hours of voting shall be 9 o'clock in the forenoon to 6 o'clock on the day of election.

35. Method of Voting

- a) All voting shall be by secret ballot, which will be placed in a locked ballot box.
- b) All Ballots must be clearly marked in the appropriate box(es).
- c) Special Needs cases shall consist of the following circumstances and a family member /care giver would provide assistance in voting with the Electoral Officer bearing witness:
 - i) Mentally handicapped;
 - ii) Vision Impaired;
 - iii) Physically Handicapped.

36. Counting of Votes

- a) The Electoral Officer shall count the votes cast for each candidate following the closing of the polling station.
- b) If requested by a candidate, immediately following, the Electoral Officer shall conduct a recount of the ballots and issue a declaration of the results.

- c) A spoiled ballot would be considered as:
 - i) a ballot that is not marked inside the appropriate box(es);
 - ii) a ballot that has unidentified markings in the box(es);
 - iii) a ballot that has more votes than the number of positions.
 - iv) a ballot that is unintelligible

37 **Election of Chief**

The candidate for the position of Chief who has received the most votes cast in the election by the electors shall be declared the winner.

38. **Election of Councillors**

- a) The Electoral Officer shall prepare a list of the candidates for positions as Councillors and beside the name of each candidate, the Electoral Officer shall indicate the number of votes received by that candidate.
- b) The Candidate who has received the highest number of votes shall be declared elected as a Councillor and the candidate who has received the next highest number of votes shall be declared elected to the next vacancy and so on until all vacant positions as Councillor have been filled.

39. Tie Vote

In the event there is a tie vote, a by-election shall be called within thirty (30) days for the position(s) that resulted in a tied vote.

40. Right of Candidates

- a) Each person who is a candidate in an election shall have the right to be present when the votes are counted or to have one other person present as his/her representative when the votes are counted.
- b) In cases where the candidate chooses to have a representative, he/she must notify the Electoral Officer, in writing, two (2) hours prior to the closing of the poll. The notification must contain the name of the representative.

41. Disposal of Ballots

The Electoral Officer shall retain the ballots in some safe place until thirty (30) days after the election and then he/she shall destroy the ballots. Unless there has been an appeal of the results of the election, in which case, he/she shall not dispose of the ballots until the appeal has been finally settled.

42. **Death**

A position of the Band Council shall be considered vacant when the person holding the position dies.

43. **Resignation**

- a) A position on the Band Council shall be considered vacant when the person holding that position resigns from this position. Resignation must be in written format and presented to the Chairperson of the Community Tribunal.
- b) In the event of the resignation of the Chief, the remaining Council shall select from within the remaining members, an Acting Chief until a by-election or a general election is called.
- c) In the event that all the positions in the Chief and Council resign at the same time, a general election will be called in accordance with the by-election procedures as indicated in Part Thirteen in this Act.

44. **Conviction of a Serious Offence**

A position on the Band Council shall be considered suspended when the person holding the position is convicted of an offence which the Community Tribunal considers to be of such a serious nature. e.g. Conviction under the Criminal Code of Canada, theft or fraud of Band funds or property.

The Community Tribunal shall then consider all the relevant circumstances that the person who has been convicted and shall decide if that person shall continue to hold office and their decision is final.

45. **Mentally Incompetent**

The Community Tribunal shall deem a position on the Band Council vacant where through sickness or injury, the person holding that position is found to be mentally incompetent and shall rely upon the opinion(s) that a certified medical professional can provide.

46. **Physically Handicapped**

The Community Tribunal shall deem a position on the Band Council vacant should the physical handicap restrict or severely limit the effective performance or functions of the office he/she holds.

47. **Term of Office Expires**

A position of the Band Council shall be considered vacant when the term of office of the person holding that position has expired.

PART THIRTEEN - BY-ELECTION

48. Vacant Position(s) for By-Election

- a) When a vacancy occurs in any Council position during an elected term of office, there shall be a by-election held for the purpose of filling the vacant position or positions, if the position or positions will be vacant six months or more prior to the next general election. The remaining members of the Council shall set the date for the by-election.
- b) In the event that there is no quorum due to vacancies or resignations, an immediate by-election would be called.

49. Appointment of Electoral Officer

When a vacancy occurs in any Band Council position during an elected term of office, the Community Tribunal shall appoint an Electoral Officer and a Deputy Electoral Officer, if it is deemed that a Deputy Electoral Officer is required. Then the Electoral Officer shall give notice of a general meeting to be held for the purpose of electing a person to fill the vacancy on the Band Council.

50. Procedure

- a) During the general meeting the Electoral Officer shall function as the Chairperson of the meeting. He/she shall call for nominations to the vacant position. When the nominations have ceased, the Electoral Officer shall call for a vote by secret ballot using the same procedures as in a general election.
- b) The Electoral Officer shall count the votes cast in a by-election and he/she shall declare a winner of the election according to the procedure set out in this act for declaring a winner in a general election. The Electoral Officer shall retain the ballots according to the procedure set out in the act for disposal of ballots in a general election.

PART FOURTEEN - APPEALS

51. Appeal of Election

Any elector may appeal an election prior to 4:30 in the afternoon within the tenth (10) working day of the election by delivering an appeal in writing setting out the grounds of the appeal to the Electoral Officer or a Deputy Electoral Officer.

52. Grounds for Appeal

An appeal is restricted to the following grounds:

- a) Election practices which contravene this Act, or
- b) Illegal, fraudulent or criminal activity which may have reasonably affected the outcome of the election in question.

53. Method of Appeal

- a) Upon receipt of a written appeal, the Electoral Officer or Deputy Electoral Officer shall immediately deliver the appeal to the Chairperson of the Community Tribunal along with copies of the appeal letter to Council and specifically to any individual whose election to Council is affected by the appeal.
- b) The Community Tribunal shall hold a formal appeal hearing within fifteen (15) days of receiving notice. This hearing shall involve those appealing as well as the individual(s) whose election to Council is called into question by the appeal.

- c) The Community Tribunal may establish its own rules of evidence and procedures. Subject to this, both those launching the appeal and the individual(s) against whom the appeal is brought, shall be afforded a reasonable opportunity to know and respond to the allegations which form the appeal.

54. Results of Appeal

- a) Upon conclusion of the appeal hearing, the Community Tribunal shall undertake to reach a decision on the Appeal and its decision shall:
 - i) determine whether those appealing have proven the grounds for appeal as set out in their letter of appeal;
 - ii) determine whether the grounds as proven may reasonably have affected the outcome of the election;
 - iii) order a new election for the position(s) on Council contested by the Appeal where the Community Tribunal is satisfied that the grounds for appeal have been proven and are in accordance with this Act;
 - iv) uphold the election where the grounds of appeal were not proven; or even if proven, could not reasonably have affected the outcome of the election.

- b) The decision of the majority of the Community Tribunal shall be final on all parties. No other tribunal or court may hold a hearing subsequent to the decision of the Community Tribunal; nor is the decision of the Community Tribunal subject to any further appeal or any other court or tribunal.
- c) The decision of the Community Tribunal shall be relayed to those appealing; the individual(s) whose election is the subject of the appeal; and to the Electoral Officer and to Council.
- d) Upon being notified of the decision of the Community Tribunal, Council shall take all steps necessary to enforce the decision, including the calling of a by-election where necessary. Council shall ensure that full public notification is given to the membership about the decision of the Community Tribunal.

PART FIFTEEN - ELECTORAL OFFICER GENERAL

55. Posting Notices

The Electoral Officer is responsible to post all notices and distribute all election information required to carry out an election.

56. Chairperson of Nomination Meeting

The Electoral Officer shall function as the Chairperson of a nomination meeting.

57. Place of Nomination Meeting and Election

The Electoral Officer is responsible to arrange for a suitable facility to hold a nomination meeting and an election.

58. Supply of Ballots and Ballot Box

The Electoral Officer is responsible to provide a supply of ballots and ballot boxes in a quantity that is necessary to carry out an election.

59. Supervision of Voting

The Electoral Officer is responsible to be present and supervise the voting at an election and to determine the eligibility of a person to vote who present themselves for the purpose of casting ballots.

60. **Validity of Votes**

The Electoral Officer is responsible to determine the validity of ballots cast in an election or by-election.

61. **Counting of Ballots**

The Electoral Officer is responsible to count the ballots cast in the election or by-election.

62. **Announce Results of Election**

The Electoral Officer is responsible to announce the results of the election or by-election.

63. **Posting Results of Election**

The Electoral Officer is responsible to post the results of an election at the Band Office and any other place that is deemed to be suitable by the Electoral Officer.

64. **Notice to Indian & Northern Affairs Canada**

Within forty eight (48) hours of the results of the election being posted, the Electoral Officer is responsible to notify the Department of Indian and Northern Affairs Canada of the results of an election or by-election.

PART SIXTEEN - ELECTORAL OFFICER AND DEPUTY

65. Deputy Electoral Officer Role

The Deputy Electoral Officer is responsible to assist the Electoral Officer through-out the election process.

66. Deputy to Replace Electoral Officer

If the Electoral Officer becomes unable to carry out his/her duties under this act, then the Deputy Electoral Officer shall take the place of the Electoral Officer and he/she shall be responsible to carry out the duties of Electoral Officer with the same authority and responsibility as an Electoral Officer.

67. Deputy Electoral Officer to Vote

The Deputy Electoral Officer shall not vote in an election or by-election for Chief and Councillor.

PART SEVENTEEN - AMENDMENT

68. Amendment to the Act

As necessary, this Election Act can be improved, altered and developed as a result of continued Ochapowace membership input as well as input from the Ochapowace Chief and Council, concerning parts not addressed or changes to be made in this current document.

- a) Where changes or amendments are necessary, a minimum of 100 eligible voters are required to enact the amendment process;
- b) The approval process required to ratify and amend this Election Act shall be given providing a fifty percent (50%) plus one (1) majority of all eligible voters is in favour;
- c) The Ochapowace Chief and Council will be responsible for coordinating the proposed amendments.