

Indian and Northern
Affairs Canada

Alfaires Indiennes
et du Nord Canada

Deputy Minister

Sous-ministre

Ottawa, Canada
K1A0H4

DEC 22 1993

WHEREAS by Order-in-Council P.C. 6016, dated November 12, 1951, and the Indian Bands Council Election Order, dated December 14, 1989, it was declared that the council, consisting of a chief and councillors, of the Shawanaga Band, in the Province of Ontario, should be selected by elections to be held in accordance with the Indian Act;

WHEREAS, following considerable discussion and review, the Shawanaga Band has developed the "Anishinabe of Shawanaga First Nation Custom Election Regulations" as its band custom for selecting a chief and councillors;

WHEREAS for the good government of the Shawanaga Band, reversion to custom for selecting the members of the council of the band would better serve the needs of the band;

AND WHEREAS the Minister of Indian Affairs and Northern Development (DIAND) considers it appropriate to revoke section 74 of the Indian Act as it applies to the Shawanaga Band in order that the said band may select its council in accordance with the custom of the band;

THEREFORE, the Minister of DIAND, pursuant to subsection 74(1) of the Indian Act, hereby amends the Indian Bands Council Election Order, dated December 14, 1989, in accordance with the schedule hereto.

Dated at Hull, Quebec this 22nd day of December, 1993.


Dan E. Goodleaf

Canada

SCHEDULE

1. **Item 58 of Part V of the schedule to the Indian Bands Council Election Order is revoked.**

THE ANISHINABE OF SHAWANAGA FIRST NATION
CUSTOM ELECTION REGULATIONS

We, the Anishinabe of Shawanaga First Nation Ojibway Territory hereby approve the following Custom Election Regulations effective January 1, 1993, which will be used by the Shawanaga First Nation for the purpose of electing the governing body for the Shawanaga First Nation.

I. GOVERNING BODY

The Governing Body for the Anishinabe of Shawanaga First Nation shall consist of a duly elected Council comprised of one Chief and five Council Members. The responsibility of the Shawanaga First Nation/Government, as represented by the duly elected Council will be to self-determine and protect the collective rights and interests of the people and the territorial lands of the Shawanaga First Nation and to include the rights therein of the Robinson-Huron Treaty of 1850.

II. ACCOUNTABILITY

The duly elected Council shall be totally accountable to the people of the Shawanaga First Nation and therefore will ensure to report all activities performed as Council, make all financial transactions of the First Nation Government public, and allow for monthly membership involvement in regular Council meetings.

III. ELIGIBILITY TO HOLD OFFICE

- (a) Candidates for the positions of Chief and Council Member must have maintained a residence on our homeland territory for a period of at least (2) two years prior to their nomination for (1) one position. They must continue to reside on our lands for the duration of their terms in office once elected save and excepting temporary leaves of absence duly approved by the governing Council.
- (b) Any member of Shawanaga seeking the position of Chief must provide a term of experience on the duly elected Council and that they meet the residency requirement III (a).
- (c) Any member of Shawanaga shall be eligible for the position of Council Member provided that they meet the residency requirement III (a).
- (d) Any candidate for these positions who is employed by the Shawanaga First Nation, in any capacity, shall be required to take a leave of absence from their employment for the period of time that they accept nomination to vie for the leadership of Chief or Council member until the results of the votes have been finalized. If the member is duly elected to the position of Chief or Council Member, they must resign their present employment prior to the first meeting of the duly elected Council following the election.

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HONORARY ELIGIBILITY TO HOLD OFFICE

- (a) An honorary youth representative must be on the Governing Council for input into the decision-making process.
- (b) A minimum of one honorary elder must be on the Governing Council for input into the decision-making process.
- (c) An honorary woman representative must be on the Governing Council for input into the decision-making process.

V. TERM

The term of the duly elected Council shall be (4) four years from the effective date of these regulations.

VI. VACANCY

(a) The office of Chief or Council Member becomes vacant when:

(i) A person who holds that office:

- (a) is convicted of an offence by our Tribal Court,
- (b) resigns from office,
- (c) deceased,
- (d) is or becomes ineligible to hold office by virtue of these regulations.

(ii) The person who holds office misses (3) three consecutive regular meetings without just cause, or

(iii) engages in, during his/her term, any wrongful conduct that affects, interrupts, or interferes with the performance of their official duties.

(b) Where a vacancy occurs in the position of Chief, the position shall be filled in the interim by one of the Council Members who attained the majority votes of the election until such time as a by-election is held or an appeal is decided. Such an interim position shall not exceed (3) three months from the date of the vacancy.

(c) Where a vacancy occurs in any of the positions of the Council Members, that position shall remain vacant until a by-election is held, or an appeal is decided. Such an interim position shall not exceed (3) three months from the date of the vacancy.

(d) Where a person is dismissed for other than (i) (a), (b), (c) or (d) of the preceding, that person shall have the right to an appeal of the decision for their suspension. The suspension appeal shall be held within (30) thirty days of the

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dismissal and shall be decided by a majority of the people in a special meeting where the facts leading to the suspension shall be presented to the membership following which the person suspended shall have the right to present their case.

- (e) Where a person is known of these violations or offences, he/she shall be scrutinized by a tribunal of elders. If he/she succeeds in his/her appeal, they shall then be reinstated.
- (f) Sub-paragraph (a) (i) (a) does not apply where the offence committed arises out of the exercise of inherent or Aboriginal and Treaty Rights or rights by the Chief or Council Member(s) which has been approved by a majority of the membership at a general/special meeting regarding the issue.

VII. TRANSITION PERIOD

Following an election for Council, and where there has been a new Chief elected, a (4) four week transition period shall commence, whereby the former Chief and newly elected Chief shall work together to ensure continuity of programming and administration and to ensure proper briefing of all upcoming meetings, projects and activities.

VIII. POWERS OF THE CHIEF

- (a) The Chief shall be ex-officio member of all committees or portfolios.
- (b) The Chief shall be the Chairperson of all meetings of the duly elected Council, and, in the absence of the Chief, a Chairperson shall be selected by Council.
- (c) The Chief shall recommend the Council Members to position on committees or to portfolios of the duly elected Council.
- (d) The Chief shall be the Political spokesperson for Shawanaga First Nation of the Anishinabe.
- (e) The Chief shall make available monthly written/oral reports on all activities performed on behalf of the Shawanaga First Nation of the Anishinabe.

IX. POWERS OF THE GOVERNING BODY

- (a) The duly elected Council may, by majority vote of Council, make laws, regulations and ordinances in relation to matters of the following subjects next hereinafter enumerated; that is to say:
 - 1. Property;
 - 2. The regulation of trade and commerce;
 - 3. The raising of money by any mode or system of taxation;
 - 4. Borrowing of money on credit;
 - 5. The fixing of and providing for the salaries and allowances of all employees

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- of the duly elected Council;
6. Fisheries and fish stocks;
 7. Interest;
 8. Membership;
 9. Residency;
 10. The establishment, maintenance and management of charities;
 11. Shop, salon, tavern, auctioneer, and other licences in order to raise revenues;
 12. Local works and undertakings;
 13. The imposition of tribal law by fine, penalty or community services; for enforcing any laws of the Shawanaga First Nation of Anishinabe made in relation to any matter coming within any of the classes of such enumerated in this section;
 14. The duly elected Council may appoint persons to have signing authority on behalf of the Shawanaga First Nation;
 15. Generally, all matters of concern of Shawanaga First Nation;
 16. Establish Policy and/or Guidelines for Electoral Officers;
 17. The control of public games, sports, races, athletic contests and other amusements;
 18. The regulation of the environment;
 19. To enact laws pertinent to our territory;
 20. Preservation, protection and management of wildlife;
 21. Administration of Tribal Court and Justice.

X. ELECTION PROCEDURES

- (a) The duly elected Council shall appoint an Electoral Officer to preside over the election of Chief and Council Members. They shall also appoint a Deputy Electoral Officer to assume the duties and powers of the Electoral Officer if the Electoral Officer should be unable to complete the duties and may, if so directed by the duly elected Council, assist the Electoral Officer.
- (b) If the duly elected Council does not appoint an Electoral Officer and Deputy Electoral Officer by a date at least (40) forty days prior to the end of the (4) four year term in office, the Chief shall appoint an Electoral Officer by a date at least (30) thirty days prior to the end of the (4) four year term in office.
- (c) The duly elected Council shall, within (2) two days of appointing an Electoral Officer, select the date on which the elections will be held which date shall be set out not later than (14) fourteen days prior to the expiry of the (4) four year term in office.

XI. NOMINATION MEETING

- (a) Once appointed, the Electoral Officer shall, as soon as possible, 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

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conspicuous places (7) seven days prior to the date of the proposed nomination meeting and at least (14) fourteen days prior to the date set for the election.

- (b) 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 Chief or Council Member. Any duly qualified person may be nominated for the office of Chief or Council Member. The meeting shall remain open for not less than (2) two hours after the commencement when, if the number of persons nominated to serve on the duly elected Council does not exceed the requisite number, the Electoral Officer shall declare the persons so nominated to be duly elected.
- (c) The Electoral Officer shall not close the nomination meeting until such business as he/she considers may properly be brought before it has been disposed of.
- (d) In the event that more than the required number of persons are nominated for the position of Chief and Council Members, the Electoral Officer shall declare that elections will be held on the date selected by the duly elected Council.
- (e) Whenever elections are to be held, the Electoral Officer shall, within (7) seven days of the close of the nominations, cause to be posted in one or more conspicuous places a notice to that effect in the form prescribed.

XII. VOTING ELIGIBILITY

- (a) A member of the Shawanaga First Nation of the Anishinabe, whose name appears on the membership list (18) eighteen years of age or older (and who has resided on the Shawanaga First Nation's lands for a period of at least (2) two years of office - (3) three months to vote prior to the election) shall be eligible to vote at elections.
- (b) Sub-paragraph (a) herein does not apply so as to restrict the right of a member of the Shawanaga First Nation of the Anishinabe to vote when that member is away for education purposes, employment, health or because of other reasons.
- (c) Any member of the Shawanaga First Nation of the Anishinabe who does not meet the residency requirements set out in sub-paragraph (a) for any of the reasons set in sub-paragraph (b) shall submit, in writing, to the Electoral Officer, the details for not meeting the residency requirements and the Electoral Officer, may, if satisfied that the reasons comply with sub-paragraph (b) herein, add that member's name to the voting list. If the Electoral Officer does not accept the member's reason, then the member may appeal to the duly elected Council who shall, by majority vote, decide the issue and the decision of the duly elected Council shall be final.

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- (d) Voting by proxy will not be allowed.

XIII. MANNER OF VOTING

- (a) The Electoral Officer shall prepare a voter's list containing the names, in alphabetical order, of all electors.
- (b) The Electoral Officer shall post one or more copies of the voter's list in conspicuous places throughout the territory of Shawanaga First Nation.
- (c) An elector may apply to the Electoral Officer to have the voter's list revised on the grounds that the name of the elector is incorrectly set out therein or the name of a person not qualified to vote is included therein.
- (d) If the Electoral Officer is satisfied that the list should be corrected, he/she shall make the necessary corrections therein.
- (e) Ballot papers shall be prepared in the prescribed form containing the names of the candidates for the positions of Chief and Council Members, which names shall be listed on the ballot papers in alphabetical order.
- (f) Any candidate who has been nominated may withdraw at any time after his nomination, but not later than (48) forty-eight hours before the time of the opening of the poll, by filing with the Electoral Officer a written notice of withdrawal which must be signed by the candidates in the presence of the Electoral Officer, a justice of the peace, a notary public or commissioner for the taking of oaths, and any votes cast for any such candidate thereafter shall be null and void.
- (g) 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.
- (h) The Electoral Officer shall, before the poll is open, cause to be delivered to his deputy, the ballot papers, materials for making the ballot papers, and a sufficient number of directions for voting policy as may be required.
- (i) 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.
- (j) The poll shall be kept open from 9:00 a.m. local time until 8:00 p.m. local time on the election day; as established by the Electoral Officer on directions received from the duly elected Council, but in no case shall the polls be open less than (10) ten hours.

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- (k) A candidate shall be entitled to have not more than (2) two agents in a polling place at any one time.
- (l) Voting at all elections shall be by ballot in the prescribed form.
- (m) The Electoral Officer or his deputy shall immediately before the commencement of the election, 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 allotted for the election.

XIV. THE ELECTION

- (a) Where an elector presents himself for the purpose of voting, the Electoral Officer or his deputy may ask the elector for identification which shall be used to ensure that the elector presenting himself/herself is the person who is listed on the voter's list and entitled to vote and once satisfied that the name of such person is entered on the voter's list, he shall provide the elector with a ballot upon which to register the vote.
- (b) The Electoral Officer or his deputy shall cause to be placed in the proper column of the voter's list a mark opposite the name of every voter receiving a ballot paper.
- (c) Any person representing himself/herself to be a person listed on the voting list and not having proper identification may be required to swear an oath or affirmation in prescribed form that he/she is the person whom he/she claims to be.
- (d) Any elector whose name has been left off the voter's list may, by swearing an oath or affirmation in the form prescribed in the presence of the Electoral Officer or his deputy, swear that he/she is a person entitled to vote in this election and upon swearing of the oath or affirmation, that elector's name shall be added to the list and that elector shall then be permitted to vote.
- (e) The Electoral Officer or his deputy may and when requested to, shall explain the method of voting to a voter.
- (f) Each person receiving a ballot paper shall forthwith proceed to the compartment provided for marking ballots and shall mark his/her ballot paper by placing a cross (x) opposite the name of the candidate for whom he/she desires to vote; the elector 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 ballot paper to the Electoral Officer or his deputy who

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shall, without unfolding the ballot paper, verify his initials and at once deposit it in the ballot box in the presence of the elector and of all other persons entitled to be present in the polling place.

(g) **Balloting**

- (i) While any voter is in the compartment for the purpose of marking his/her ballot paper, no other person shall, except as provided in subsection (ii) below, be allowed in the same compartment or be in any position from which he/she can see the manner in which such elector marks his/her ballot.
- (ii) The Electoral Officer or his deputy, on the application of any elector who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed in subsection (i) above, shall assist such elector in the presence of the agent of the candidates in the polling place and of no other person, and place such ballot in the ballot box.
- (iii) The Electoral Officer or his deputy shall state in the voter's list in the column for remarks opposite the name of such elector the fact that the ballot paper was marked by him at the request of the elector and the reason therefore.
- (iv) An elector who has inadvertently dealt with his/her 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.
- (v) Any person who has received a ballot paper and who leaves the polling place without delivering the ballot paper to the Electoral Officer or his deputy in the manner provided, or if, after receiving the ballot paper, refuses to vote, shall forfeit his/her right to vote at the election.

(h) Immediately after the close of the poll, the Electoral officer or his deputy shall, in the presence of the candidates or their agents, or electors as may be present, open the ballot box:

- (l) examine the ballot papers and reject all ballot papers;
 - (1) that have not been supplied by him or his deputy;
 - (2) by which votes have been given for more candidates than are to be elected; or
 - (3) upon which anything appears by which the voter can be

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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 void it or warrant its rejection.

- (ii) 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 candidates for such office; but such ballot paper shall be good as regards the votes for any other offices in respect of which the voter has not voted for more candidates than are to be elected;
 - (iii) 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;
 - (iv) 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, and his initials;
 - (v) 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 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 statements.
- (i) 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.
 - (j) 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.
 - (k)
 - (i) The Electoral Officer shall prepare a statement in triplicate showing the names of all those who voted, the total number of votes cast for each candidate, the number of rejected ballots and the names of the candidates duly declared elected.
 - (ii) A copy of such statement shall be forwarded to all the candidates and one copy filed in the Council Office.
 - (iii) The statement shall be signed by the Electoral Officer and such of the candidates or their agents who are present and desire to sign it.

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XV. DISPOSITION OF BALLOT PAPERS

The Electoral Officer shall deposit all ballot papers in sealed envelopes with the police officer in charge, who shall retain them in his possession for (6) six weeks, and unless otherwise directed by the Electoral Officer, shall then destroy the ballot papers in the presences of (2) two witnesses who shall make a declaration that they witnessed the destruction of those papers.

XVI. ELECTION APPEALS

- (a) Within (30) thirty days after an election, any candidate in the election or any elector who gave or tendered his/her vote at the election, who has reasonable grounds for believing that a person nominated to be a candidate, or a person or persons who voted in the election was ineligible to vote, and that vote, or votes, could have made a difference in the election results, may lodge an appeal by forwarding, by registered mail, to the Electoral Officer particulars thereof, duly verified by Affidavit.
- (b) The appellant must also submit a petition signed by 50% of the eligible voters who casted ballots in the election supporting the need for an appeal.
- (c) Where an appeal is received by the Electoral Officer pursuant to subsection (1) and (2), the Electoral Officer shall, within (7) seven days of the receipt of the appeal, forward a copy of the appeal, together with all supporting documents, by registered mail to each candidate in the election.
- (d) Any candidate may, within (14) fourteen days of the receipt of the copy of the appeal, forward to the Electoral Officer 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.
- (e) All particulars and documents filed in accordance with the provisions of this section shall constitute and form the record.
- (f) The Electoral Officer 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 he deems necessary, in such manner as he deems expedient, in order to acquire further facts for the appeal.
- (g) The Electoral Officer shall then call a general meeting of the electors where the record and material will be submitted to the general meeting for a decision to be made by secret ballot.
- (h) The majority of the votes cast at the general meeting shall decide the issue and shall be final.

XVII. SECRECY OF VOTING

- (a) 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.
- (b) No person shall interfere or attempt to interfere with a voter when marking his/her 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.
- (c) The duly elected Council may make such orders and issue such instructions as may be necessary from time to time for the effective administration of these regulations.
- (d) Such forms as are required for the purpose of these regulations shall be prescribed by the duly elected Council.
- (e) Any person who violates any of the provisions of this section is subject to penalties as may be defined by the Council.

XVIII. BY-ELECTIONS

The duly elected Council may require a by-election to be held when necessary and the rules applying to the elections shall apply to by-elections, except that the by-election must occur at least (30) thirty days after the decision to hold a by-election has been made.

XIX. PENALTIES

Any person who violates any of the provisions of the Constitution, Custom Election Regulations and government policy may be liable by Tribal ordinance, or custom law.

XX. AMENDMENTS, AUGMENTATIONS AND REPEALS

This Custom Elections and any related policies of the Anishinabe of Shawanaga First Nation, or any part of this documentation, may be augmented, amended, or repealed by the governing Council upon posting notice of such change in a conspicuous place (30) thirty days prior to a membership forum being held to discuss such proposed change(s). Upon such public consultation, the governing Council may make the proposed change(s) as directed by the Anishinabe of Shawanaga First Nation Membership. Such change(s) must be sanctioned by consensus or affirmative vote of the people.

The resultant change(s) must be published for public viewing in a conspicuous place.