

## **Update to Lake Babine Members: Proposed Changes to Lake Babine Election Code**

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### **A. Why are Changes being proposed to the Lake Babine Election Code?**

The Lake Babine Election Code must be updated to address two major issues:

1. The Lake Babine people adopted a resolution at the 2017 Annual General Assembly to add a Councillor position to represent Donald’s Landing/Pinkut Lake.
2. The current Election Code only allows “in person” voting at six polling stations: Fort Babine, Tachet, Woyenne, Smithers, Prince George, Vancouver. Voters who cannot attend a polling station cannot vote. They need an alternative.

The current Election Code also contains some gaps and ambiguities that should be addressed, as well as some provisions that are out of step with Lake Babine’s actual election practices.

The proposed changes to the Election Code are meant to be *short-term improvements*.

For the longer term, Lake Babine is developing a new governance model to replace the current *Indian Act* Chief and Council government. This more comprehensive governance work is happening under the LBN Foundation Agreement (“Governance Project”). Lake Babine members should have by now received the first research report containing the feedback of Lake Babine people and key issues that Lake Babine’s governance model will need to address. All Lake Babine people are encouraged to share their thoughts on how the Lake Babine government should be structured and selected. Feedback from the July 2023 Election Code

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meetings that is relevant to Lake Babine's Governance Project is being shared with the Governance Advisory Team for their consideration.

For information about the Lake Babine Governance Project, please speak with Governance Director Marilyn Joseph, Governance Coordinator Darcy Dennis, or Foundation Agreement Implementation Director Betty Patrick.

## **B. Who Developed the Proposed Changes to the Election Code?**

Chief and Council appointed an Election Code Steering Committee with representation from all the LBN Communities, plus an urban representative, to develop the revised Election Code: Fred William (Fort Babine), Val Johnson (Tachet), Antoinette Charlie (Donald's Landing/Pinkut), Gordon Alec (Old Fort), Dianne Matthews (Woyenne) and Holly Crowell (urban, Vancouver). None of these representatives belong to the Lake Babine administration.

Rosa Johnny provides administrative support to the Steering Committee and Dominique Nouvet provides legal support and has drafted the revised Election Code as per the Steering Committee's direction.

Lake Babine Chief and Council appointed the Steering Committee and received an update at their May 2023 Council meeting, but they have not met with the Committee or provided any direction since the Committee got to work.

Lake Babine members who participated in the July 11-15, 2023 community meetings in Fort Babine, Tachet, Woyenne, Prince George, Vancouver and online provided feedback to the Steering Committee. Some of the suggestions were incorporated into this new draft, while others would represent significant changes to how Lake Babine governs itself. Those suggestions require more discussion within the nation and should be considered in developing Lake Babine's new governance model. A separate document entitled "Lake Babine member recommendations on Governance: feedback from the July 2023 Election Code Meetings" has been prepared for the Governance Advisory Team. It is also available for all LBN members to review. These ideas all deserve attention and discussion within the Nation as part of developing Lake Babine's own Governance Model, which will, once developed and ratified by the Lake Babine people, will replace the Election Code.

### C. Who Approves the Proposed Changes?

Lake Babine voters. Lake Babine voters will be invited to vote on whether to accept the revised Election Code in a referendum in January 2024 (date still to be confirmed).

If a majority of the Lake Babine voters who participate in the referendum vote in favour of the revised Election Code, Chief and Council will adopt it in time for the 2024 LBN election. If most of the ballots that are cast reject the revised Code, the current Code will remain in place.

### D. What are the Proposed Changes and Why are they being Proposed?

This is a list of the substantive proposed changes, including reference to the relevant revised Election Code provision. A short explanation for each proposed change is also provided. The revised Election Code contains additional edits to clarify language that do not change the substance of the Code. Those are not discussed here.

#### 4 Biggest Changes

1. New Councillor position for Donald's Landing/Pinkut. This will make a total of 10 Councillors plus Chief (section 2(e)).

Why? LBN 2017 AGA Resolution called for this change to ensure all 5 existing communities are directly represented on Council.

2. New, additional, option to vote electronically (i.e. online). Voters will have a 10-day period to vote online. In-person voting remains in place for at least 2 more election cycles (2024 and 2027) to see how LBN voters adapt to electronic voting (section 34).

Why? Not everyone can make it to a polling station, so an alternative is needed. Electronic voting is *the most secure and cost-effective alternative to in-person voting*. It has become the most popular voting method for Indigenous nations across Canada along with in-person voting and has been used successfully for many years now.

3. New eligibility criteria to run for Council, in addition to the existing requirements that Candidates be LBN members and 18 years old on the date of the Election (section 5):
  - a. Not convicted of an Indictable Offence. (See below for what counts as an Indictable Offence)
  - b. Not removed from LBN Council in the past 3 years.
  - c. Never found guilty of a fraudulent or corrupt electoral practice.

## Why?

People convicted of serious criminal offences are not suitable leaders or role models for Lake Babine, nor are people who have been found guilty of dishonest conduct in relation to past LBN Elections. Lastly, if a Council member is removed from office by the Appeal Board for a *serious breach* of LBN's Council Policy (that new proposed process is described below), they should have to sit out the next Election before they can run again.

## What is an Indictable Offence?

"Indictable Offence" means a serious offence under the *Criminal Code* that is prosecuted by way of indictment. Some offences are *always* "indictable", such as theft over \$5,000, break and enter, aggravated sexual assault, murder, drug trafficking, impaired driving causing death. Other offences are "hybrid", meaning that the Crown prosecutor chooses whether to prosecute them by indictment or as a "summary offence", which would lead to lighter consequences. When the prosecutor has this choice, they will proceed by indictment where the circumstances of the offence are more serious, for example, where the victim was seriously harmed.

Candidates will need to provide a sworn declaration that they have not been convicted of any indictable offence ([section 22\(b\)](#)). If they lied, any Voter may apply to LBN Appeal Board to have the Candidate disqualified or, if the Candidate was elected, removed from office ([section 67\(a\)](#)).

## Why rely on Candidates to swear a declaration?

Criminal record checks are time consuming and cannot necessarily be completed in time for an Election, and sometimes they do not specify whether a person was convicted of an "indictable offence" (as opposed to a less serious, "summary offence"). It is simply not realistic for LBN or the Electoral Officer to complete Criminal Record checks in time for an Election. If a Candidate lies about their criminal record, any LBN Voter may apply to the Lake Babine Appeal Board to have the Candidate/Council member removed. (The Appeal Board already exists under LBN's current Election Code).

4. New procedure that voters or Council can initiate to seek removal of a Council member (Chief or Councillor) for *serious breach* of LBN Council Policy or if a Council member has become disqualified from holding office. LBN's Appeal Board hears and decides these applications ([sections 78-88](#)). This would be the procedure for removing a Council member for serious breach of the LBN Council policy:
  - a. Voters who participated in the vote for the Council position at issue may sign petition seeking removal of Council member. Petition needs signatures of at

least 60% of the people who cast a ballot for that Community (or in the case of Chief, 60% of all the people who voted). Must explain why seeking removal and provide supporting evidence. **Alternatively**, Council starts the process with a Band Council Resolution explaining why they seek removal of Council member, with supporting evidence.

- b. Lake Babine's Appeal Board reviews and decides whether to remove Council members after providing the Council member with the opportunity to respond and provide evidence of their own. Process must be fair to the Council member. If needed, Appeal Board may secure an investigation to gather more facts.
- c. Appeal Board provides a timely and fair process and provides written reasons for its decision on whether Council member should be removed.

Why is a removal process being proposed? There must be a process to remove from office a Council member who becomes disqualified from holding office. There should also be a process to hold Council members accountable if they commit a *serious breach* of the LBN Council Policy.

Why should the *Appeal Board* make the final decision about removals? The process to remove a Council member from office must be fair and objective. It must only happen with solid evidence in support of the application and after the Council member has had a meaningful opportunity to respond to the claims against them. Lake Babine's Appeal Board is made up of non-LBN members who are free of any real or potential conflicts of interest. It is already responsible under the current Election Code for deciding other election-related challenges. It is the most appropriate body to handle removal applications in a timely, neutral, cost-effective, and evidence-based way.

### *Other Substantive Changes*

5. Revised Preamble at top of the Election Code acknowledges the longer-term Governance work that LBN is doing under the Foundation Agreement and that the custom Election Code will eventually be replaced by a new Governance Model.
6. New Table of Contents for the Code to make it easier for readers to find the provisions they want to read.
7. Electoral Officer will send Notice of Election to known addresses/emails of LBN Voters (**section 12**). It is up to Voters to keep their contact info current with LBN (**section 8**).

Why? Help create awareness of Election, especially amongst urban Voters.

8. Candidate Meetings and Candidate Forums will be Hybrid Meetings, meaning that people can attend either in-person or online. (section 13).

Why? Lake Babine started doing online meetings during Covid. Hybrid meetings allow Members to attend in person while also allowing Members who live away from the Community or who are not physically well enough to join in person to participate.

9. Voters cannot nominate or second more Candidates than there are positions (eg: Voter can nominate or second 1 person for “Chief”, 2 persons for Tachet Councillor positions) (section 18).

Why? Some Voters nominate a lot of people to run for office, instead of prioritizing the ones they believe would make the best Council members, and sometimes there are far too many candidates running for a position. The Committee expects this rule will help reduce the Candidates down to a more reasonable number.

10. Nominated persons must confirm within 5 days that they are running for office. If they are, they must provide a sworn declaration that they have not been convicted of an indictable offence and they must provide a non-refundable Candidate Fee (\$100 to run for Councillor; \$150 to run for Chief), unless they are acclaimed. (section 22-23).

Why charge a Candidate Fee? Sometimes there are far too many candidates running for a position, and at times there are candidates who are running more for fun than out of a serious interest in becoming a leader. The Committee is proposing a modest fee that is high enough to discourage running for fun but low enough so as not to create a real barrier to running. The fees collected will contribute to the high cost of running Elections. During the July round of community meetings on the proposed changes to the Election Code, the Committee heard mixed feedback: some members supported the fee, some called for a higher fee, some said there should be no fee. Since feedback ranged widely, the Committee decided to stick with the approach of modest fees.

11. A Council position becomes vacant if person cannot perform their duties of office for 90 consecutive days due to illness or other incapacity (section 77(c)).

This new rule aims to strike a balance between excusing a Council member from their obligations when they are ill or otherwise incapable of working, while also recognizing that 3 months away from their vital responsibilities as an elected leader is too long. As explained below, any vacancy that arises more than 6 months before the next Election will be filled with a By-election.

12. There will be a By-election if a Council position becomes vacant at least 6 months before the next LBN election (section 89). A vacancy arises if the Council member dies, becomes unable to perform their duties, or is removed by Appeal Board. If the By-election is for a Councillor position, only the Voters who participated in the Vote for that Community get to vote in the by-election (section 90).

Why? A By-election gives the Voters a chance to pick their preferred replacement at the time the vacancy arises. The current rule of offering the position to the runner up in the last Election would fill the position more quickly and cheaply (if that person accepts), but the runner up may not have the most Community support. If a position becomes vacant, the affected voters should get to decide who they want to fill the vacancy.

13. Amendments to Election Code: clarifies that substantive amendments must go to LBN referendum. Changes to Code require support of majority of the Voters who participate in the vote (section 94).

Why: It was already understood that the LBN Voters must decide, collectively, whether to change the substance of the LBN Election Code. Making this rule explicit ensures this principle will be respected and avoids any risk of changes to the Election Code happening any other way.

## E. Upcoming Referendum

All registered Lake Babine members who are 18 years old by the date of the referendum will get to vote on whether LBN should adopt the revised Election Code.

The vote is not scheduled yet but is expected to happen in January 2024. Voting will be in person (in Woyenne, Fort Babine, Tachet, Smithers, Prince George and Vancouver) and electronic voting will also be available for the first time.

The Electoral Officer will mail out information about the vote to all known mailing addresses of Lake Babine voters. Information will also be available on the Lake Babine website.

Darcy Dennis is preparing a recorded Nadut'en summary of the changes to the Election Code. It will be posted on the Lake Babine website.

Please email any questions about the revised Election Code to [Rose.johnny@lakebabine.com](mailto:Rose.johnny@lakebabine.com). Rosa will forward them to the Steering Committee and legal counsel, who will answer as quickly as possible.

**Mesi y for your interest. Please take the time to ask any questions and to vote in the referendum!**