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## SECHELT BAND CONSTITUTION

### DEFINITIONS

“Sechelt Indian Band” is hereby changed to the shíshálh Nation. Any references to the Sechelt Indian Band in the Act, other legislation, agreements, policies or documents shall be deemed to refer to the shíshálh Nation;

“Act” means the *Sechelt Indian Band Self-Government Act*, S.C. 1986, c.27;

“Advance Poll” means a poll for the casting of ballots by Voters entitled to vote before the Election or Referendum;:-

“Arbitrator” means an independent third party appointed by the Council to hear appeals of membership decisions of the Nation, elections or referenda;

“Band Electors” means all members of the Sechelt Indian Band who are eighteen years of age or older;

“Band Members” means all members of the Sechelt Indian Band;

~~“Band Office” means the Sechelt government administration building;~~

“Band” means the Sechelt Indian Band or the shíshálh Nation, as the context requires;

“Band List” means the list of persons who are registered Band Members of the Sechelt Indian Band maintained pursuant to Part I of this Constitution;

“Band Office” means the Sechelt government administration building;

“By-election” means an election for the purpose of filling a vacant seat on Council held outside the normal election cycle in accordance with Part 9 of this Constitution;

“Chief” means the candidate elected to Council as Chief, pursuant to Part II of this Constitution;

“Chief Administrative Officer” means the person appointed pursuant to this Constitution;

~~“Chief Financial Officer” means the person appointed under part **Error! Reference source not found.**~~

~~“Community Plan” means the plan prepared pursuant to Part **Error! Reference source not found.**~~

“Corrupt or Fraudulent Practice” means, in connection with an election, the giving or taking of a bribe, intimidating a Voter, candidate or election official, or

engaging in any other conduct that is defined as an offence under a shíshálh election law;:-

“Council” means the collective of the Chief and Council members duly elected pursuant to Part II of this Constitution;

“Councillor” means a candidate elected to Council as a Councillor, under Part II of this Constitution;

“Deputy Electoral Officer” means person appointed by the Electoral Office under Part II of this Constitution;

“Election” means the process by which the Band Members elect the Band Council;

“Electoral Officer” means a person appointed under this Constitution to conduct an Election or referendum;

“Emergency” means exceptional circumstances, including but not limited to circumstances relating to health, safety and socio-economic issues which were not reasonably foreseeable;

~~“Financial Plan” means the financial projections prepared pursuant to Part Error! Reference source not found.~~

“First Nation” means a Band recognized under the *Indian Act*, or a First Nation recognized under a treaty, self-government agreement, or self-government legislation;:-

“Indian” means a person who has the legal status of an Indian under the *Indian Act*;:-

“Majority” means fifty per cent plus one (50%+1);

~~“Members” means all persons who are eligible for membership and who are registered on the shíshálh Membership List maintained by the Nation pursuant to Part Error! Reference source not found. of this Constitution;~~

“Membership Administrator” means the person appointed under Part I and II of this Constitution;

“Minister” means the Minister of Indian Affairs and Northern Development;

requires;

“nNatural rResources” means minerals, stone, sand, gravel, clay, soil, trees, saplings, shrubs, underbrush, timber, cordwood, hay, or other substances which are naturally occurring on, in or under shíshálh Lands.

“Ordinarily Resident” means the place, where in the settled routine of a person’s life, that person regularly, normally or customarily lives;

“Petition” means a formal, signed, written request;

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“Polling Site” means the building in which the polling station is located;

“Scrutineer” means a person appointed in writing by a candidate to observe voting and counting procedures for an Election;

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“Sechelt Indian Band” means the shísháhl Nation

“shísháhl Law” means a law adopted by the Council;

~~“Membership List” means the list of persons who are registered Members maintained pursuant to Part 3 of this Constitution;~~

~~“shísháhl Officer” means the Chief Administrative Officer or the Chief Financial Officer;~~

~~“Voter means a person who is eligible to vote in Elections or By-elections under Part II of this Constitution;~~

~~(a) Wherever the singular, or masculine, or the term “person” is used in this Constitution, it shall be deemed to include the plural, feminine, body corporate, Band or other entity where the context so requires.~~

## **PART I – THE BAND**

### **DIVISION (1) – BAND MEMBERSHIP**

- |                                   |    |  |
|-----------------------------------|----|--|
| Sechelt Band List                 | 1. | The Sechelt Band List shall be maintained by the Sechelt Band Council in the offices of the Band. There shall be entered in the Band List the name of every person who is a member of the Sechelt Indian Band.   |
| First Band List                   | 2. | The first Sechelt Band List shall comprise members of the Band as Recorded in the Band List maintained by the Band upon the date of enactment of the Act. This first Sechelt Band List shall be added to and amended as hereinafter provided.  |
| General Entitlement to be entered | 3. | (1) A person is entitled to be entered in the Band List as a member of the Sechelt Indian Band if he or she is:<br><br>(a) the natural child of a member of the Sechelt Indian Band unless the parents of that child are a non-Indian and a widowed Sechelt Band Member who has no Indian blood;<br>or |

(b) a member of another Indian Band who was originally a member of the Sechelt Indian Band provided that he or she simultaneously resigns his or her membership in that other Indian Band

(2) Where a member of another Indian Band is legally adopted by a Sechelt Band Member that member of the other Indian Band shall be entitled to Sechelt Band membership.

Entitlement under Indian Act 4. A person is entitled to be entered in the Band List as a member of the Sechelt Indian Band if he or she is entitled to be registered as an Indian and a member of the Band under paragraphs 6(1)(a), 6(1)(c), 6(1)(d), 6(1)(e), 6(1)(f) or 6(2) of the Indian Act R.S.C., 1970.

Entitlement by Band Vote 5. A person is entitled to be entered in the Band list as a member of the Sechelt Indian Band if 75% of the Band Electors vote in favour of his or her entitlement to be registered during a referendum of the Band called for this purpose. If less than 75% of the Band Electors but more than 50% of the Band Electors who actually vote in the first referendum vote in favour of a person's entitlement to be entered that person shall be entitled to a second vote on his or her application for membership to the Band, and this second vote shall take place within twelve (12) months of the first and shall require a vote in favour of 75% of the Band Electors who actually vote. The referendum to be held for the purposes of this section shall be conducted in the manner provided for in Division (4) of this Part.

- Membership upon Marriage 6. Where a member of another Indian Band marrying a Sechelt Band Member wants to become a member of the Sechelt Band he or she shall be entitled to Sechelt Band Membership provided that notice of this intention is given to the Band Council within one hundred and twenty (120) days of the marriage. Where a Sechelt Band Member marries a member of another Indian Band that Sechelt Band Member shall have the choice whether to remain a member of the Sechelt Band or to transfer to the spouse's Band if the spouse's Band so allows.
- No entitlement otherwise 7. No person is entitled to be entered in the Sechelt Band List as a member of the Sechelt Indian Band except as provided for in sections 3, 4, 5 and 6 hereof.
- Loss of membership Upon divorce 8. Where a person having no Indian blood has become a member of the Sechelt Band prior to April 17, 1985 on account of marriage to a member of the Band that person having no Indian blood shall no longer be entitled to Band membership upon divorce from the Band Member.
9. Where a person having no Indian blood has become a member of the Sechelt Indian Band prior to April 18, 1985 because of marriage to a member of this Band and that person subsequently has a child or children with another person having no Indian blood, that child or children shall not be entitled to Band membership.
- No other deprivation of Membership 10. No member of the Sechelt Band shall be deprived of his or her Band membership for any cause other than as provided for in section 8.
- Appeal procedure 11. An appeal shall lie to the Supreme Court of British Columbia from a decision of the Sechelt Band Council concerning eligibility to be recorded as a Sechelt Band member on the Sechelt Band List but any decision of the Band Electors pursuant to section 5 shall be final and binding.

## DIVISION (2) – BAND LAND REGIME

- |   |    |  |
|---|----|--|
| Sechelt Lands held for Band and members | 1. | The Sechelt Lands shall be held by the Band for the use and benefit of the band and its members and, subject to section 24(c) of the Act, no further Certificates of Possession shall be issued.   |
| Allocation of residential lots          | 2. | The rights, and the procedures to protect those rights, of the Sechelt Indian to use and occupy the lot upon which his or her house is situated shall be provided for by resolution of the Band Council or Band law. The procedure for the issuance of all residential lots available to Sechelt Indians and the settlement of disputes, if any, shall be decided upon by the Band Council and the lots allocated accordingly.   |
| Taking of Sechelt Lands for purposes    | 3. | <p>(1) Where by an Act of the Legislature of the Province of British Columbia, Her Majesty in right of the Province of British Columbia, a municipal or local authority of a corporation is empowered to take or to use land or any interest therein without the consent of the owner, the power may, with the consent of the Band Council and subject to any terms that may be prescribed by the Band Council, be exercised in relation to Sechelt Lands or any interest therein.</p> <p>(2) Unless the Band Council otherwise directs, all matters relating to compulsory taking or using of Sechelt Lands under subsection (1) are governed by the statute by which the powers are conferred.</p> <p>(3) Wherever the Band Council has consented to the exercise by the Province of British Columbia, the municipal or local authority or a corporation of the powers referred to in subsection (1), the Band Council may, in lieu of the Province, authority or corporation taking or using the Sechelt Lands without the consent of the owners, authorize a transfer or grant of such Sechelt Lands to the Province, or authority or corporation, subject to any terms that may be prescribed by the Band Council.</p> <p>(4) Any amount that is agreed upon or awarded in respect of the compulsory taking or using of Sechelt Lands under this section or that is paid for a transfer or grant of Sechelt Lands pursuant to this section shall be paid to the Band for the use and benefit of the Band members in common.</p> |

- Band approval for Sale of Sechelt Lands 4. (1) Except as provided in section 3, no Sechelt Lands may be mortgage, sold, or otherwise have the title to them transferred, unless the mortgage, sale or title transfer has been first approved in a referendum by a vote 75% in favour by all the Band Electors.
- (2) In the event that a referendum is held under subsection (1), and 50% of those Band Electors voting in the referendum supported the mortgage, sale or title transfer, but 75% of all the Band Electors did not vote in support, then a second referendum may be held. In the event of a second referendum under this subsection, the mortgage, sale or title transfer may be approved by 60% of all the Band Electors.
- Granting of interests in Sechelt Lands 5. The Band, acting through the Band Council, may grant leases, licences, permits, easements, rights-of-way or any other interest in the Sechelt Lands that the Band Council considers desirable and this may be done without the consent of the Band Electors except where:
- (a) the grant of interest is for a term exceeding ninety-nine (99) years;
- (b) the grant of interest is in respect of Sechelt Lands that were previously unimproved.
- The granting of any lease, license, permit, easement, right-of-way or other interest in the Sechelt Lands shall require the approval of 2/3 of the members of the Band Council.
- Band approval for granting of certain interests in Sechelt Lands 6. (1) No lease, licence, permit, easement, right-of-way or other interest in the Sechelt Lands shall be granted for a term exceeding ninety-nine (99) years or in respect of Sechelt Lands that were previously unimproved unless such grant is first approved in a referendum by a vote 50% in favour by all the Band Electors.
- (2) In the event that a referendum is held under subsection (1), and more than 50% of those Band Electors voting in the referendum supported the lease, licence, permit, easement, right-of-way or other interest, but 50% of all the Band Electors did not vote in support, then a second referendum may be held. In the event of a second referendum under this sub-section, the lease, licence, permit, easement, right-of-way or other interest may be approved by 50% of the Band Electors actually voting.
- Legal Surveys 7. All legal surveys carried out on Sechelt Lands shall comply with the provisions of the Canada Lands Surveys Act, R.S.C., 1970, as amended.



Procedure for Referendum 8. The referendum for the purpose of sections 4 ad 6 shall be conducted in the manner provided for in Division (4) of this Part.

### **DIVISION (3) – NATURAL RESOURCES**

Disposition of natural resources 1. Subject to sections 24, 35, 39, 40 and 41 of the Act, the Band has full power to dispose of any rights or interests in all natural resources on, in and under the Sechelt Lands.

Control of natural resources 2. The control over the administration of all natural resources on, in and under the Sechelt Lands is vested in the Band subject to the existing rights thereto, if any, of the Province of British Columbia.

Granting of permits 3. The Band, acting through the Band Council, may grant permits to cut timber on the Sechelt Lands, or to remove minerals, stone, sand, gravel, clay, soil or other substances from the Sechelt Lands and this may be done without the consent of the Band Electors except where:

- (a) the permit is for a term exceeding five (5) years;
- (b) the permit is in respect of Sechelt Lands that were previously in a natural and undeveloped condition.

The granting of any permit under this section shall require the approval of 2/3 of the members of the Band Council.

Band approval for granting of certain permits 4. (1) No permit to cut timber on the Sechelt Lands or to remove minerals, stone, sand, gravel, clay, soil or other substances from the Sechelt Lands shall be granted for a term exceeding five (5) years or in respect of Sechelt Lands that were previously in a natural and undeveloped condition unless such grant is first approved in a referendum by a vote 50% in favour by all the Band Electors.

(2) In the event that a referendum is held under subsection (1), and more than 50% of those Band Electors voting in the referendum supported the permit, but 50% of all the Band Electors did not vote in support, then a second referendum may be held. In the event of a second referendum under this subsection, the permit may be approved by 50% of the Band Electors actually voting.

Procedure for referendum 5. The referendum for the purposes of section 4 shall be conducted in the manner provided for in Division (4) of this Part.

Unauthorized  
removal of Band  
resources

6. (1) A person who, without the written permission of the Band Council,
  - (a) removes or permits anyone to remove from the Sechelt Lands:
    - (i) minerals, stone, sand, gravel, clay or soil, or
    - (ii) trees, saplings, shrubs, underbrush, timber, Cordwood or hay, or
  - (b) has in his or her possession anything removed from the Sechelt Lands contrary to this section, is guilty of an offence and is liable on summary conviction to a fine not exceeding the amount or term of imprisonment for in the Act.
- (2) Whenever a peace officer or a person authorized by the Band Council believes on reasonable grounds that an offence against subsection (1) has been committed, he or she may seize all goods and chattels by means of or in relation to which he or she reasonably believes the offence was committed. All goods and chattels seized may be detained for a period of three (3) months following the day of seizure unless during that period proceedings under this Constitution in respect of such offence are undertaken, in which case the goods and chattels may be further detained until such proceedings are finally concluded.

#### **DIVISION (4) – PROCEDURE FOR REFERENDUM**

##### **8.1 Holding a Referendum**

- (a) Council shall hold a referendum by way of vote when so required by this Constitution or when it considers it advisable. A second referendum on any question cannot be held for at least one hundred and twenty (120) days after the first vote on that question.
- (b) Council shall, by Resolution at least ninety (90) days prior to the date on which the referendum is to be held:
  - i set a date for the referendum;
  - ii determine the question or questions, and the legality of the question or questions, to be asked in the referendum;
  - iii appoint an Electoral Officer to conduct the referendum; and
  - iv appoint an Arbitrator to hear and determine any appeals of the referendum.
- (c) Unless otherwise required by this Constitution, a question put to referendum shall be approved, if a Majority of the Voters who cast valid ballots vote "YES" to the question asked.

(d) In order to be entitled to vote in a referendum, a person must be a Voter.

## **8.2 Electoral Officer and Deputy Electoral Officers**

(a) If an Electoral Officer and an Arbitrator have not been appointed within the time set out in Part 8.1(b), the Electoral Officer and Arbitrator shall be appointed by the Chief Administrative Officer as soon as possible.

(b) The Electoral Officer shall not be a Member or salaried officer or employee of shísháhl or holder of other contracts of services for shísháhl.

(c) A Deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.

(d) The Deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.

(e) The Deputy Electoral Officer shall not be a member of Council.

(f) Every Electoral Officer and Deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office and shall file with the Chief Administrative Officer the sworn oath of office before assuming their office.

(g) The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part, as he or she may from time to time deem necessary for the effective administration of the referendum.

## **8.3 Contact Addresses**

(a) Voters shall be responsible for providing the Membership Administrator or the Electoral Officer with current contact addresses.

(b) Membership Administrator shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Members who will have attained the age of eighteen (18) as of the date of the referendum.

(c) The contact address shall take the form of a mailing address.

(d) The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Voters who are entitled to receive them under this Part or Part 9 of this Constitution. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Voter.

(e) A document shall be considered properly provided if it was mailed or delivered to the contact address of the Voter.

#### **8.4 Voters' List**

- (a) The Electoral Officer shall prepare a Voters' List within thirty (30) days of assuming office. The Voters' List will be the official record of Voters for the referendum.
- (b) The Electoral Officer shall post the Voters' List in a public area of the shísháhl government administration building, and on the official website, no later than sixty (60) days prior to the date on which the referendum is to be held.
- (c) A person whose name does not appear or does not correctly appear on the Voters' List and who believes they are eligible to be a Voter, or a Voter acting on their behalf, may, no later than ten (10) days prior to the date on which the referendum is to be held, apply in writing to the Electoral Officer to have his or her name added to the Voters' List.
- (d) The application under **Part 8.4 (c)** shall set out the reasons why the person's name should be added to the Voters' List, together with any documents supporting the application.
- (e) Where the Electoral Officer believes or has information that a person whose name is on the Voters' List is not a Voter, or where a Voter applies in writing to the Electoral Officer to have another person's name removed from the Voters' List because that person does not qualify as a Voter, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least twenty (20) days prior to the date on which the referendum is to be held.
- (f) The application by a Voter under **Part 8.4 (e)** shall set out the reasons why a person's name should be removed from the Voters' List together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the referendum is to be held.
- (g) The notice given under **Part 8.4 (e)**, shall include the reasons for seeking removal of a name from the Voters List and any supporting documents, and shall, provide notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the referendum is to be held.
- (h) After consideration of all information and representations relating to amendments to the Voters' List, the Electoral Officer shall add or delete names to the Voters' List, based on whether persons qualify as Voters.
- (i) The Electoral Officer shall give a person whose name has been added to or deleted from the Voters' List written notice of the decision and shall post the decision in a public area of the shísháhl government administration building, and on the official website, at least five (5) days prior to the date on which the referendum is to be held.
- (j) The decision of the Electoral Officer under **Part 8.4 (h)** is final and not subject to appeal.

- (k) The Electoral Officer shall, at least five (5) days prior to the date on which the referendum is to be held, post a final Voters' List in a public area of the shíshálh government administration building, and on the official website.
- (l) Any person whose name does not appear on the final Voters' List shall not be entitled to vote in the referendum.

### **8.5 Preparation of Ballots**

- (a) The Electoral Officer shall prepare ballots setting out the question to be asked in the referendum.
- (b) The ballots shall indicate that the Elector is to signify his or her choice with an "X" or "✓" check mark under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot.

### **8.6 Entitlement to Vote by Mail-in Ballot (or Electronic Voting)**

- (a) At least sixty (60) days prior to the date on which the referendum is to be held, the Electoral Officer shall publish a notice in the shíshálh newsletter and shíshálh Nation official website or shall forward to Voters at their contact address a notice setting out the conditions for voting by mail-in ballot.
- (b) The notice shall include:
  - i notification that a copy of this Constitution can be obtained at the shíshálh government administration building, or the official website;
  - ii the places where copies of the Voters' List shall be posted in a public area of the shíshálh government administration building, or the official website;
  - iii a statement that Voters Ordinarily Resident on shíshálh Lands who are unable to vote in person due to physical disability on the date of the referendum may at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot;
  - iv a statement that Voters who are not Ordinarily Resident on shíshálh Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them upon receipt of an application for a mail-in ballot at least forty (40) days prior to the date on which the referendum is to be held;
  - v the business address, telephone and email address of the Electoral Officer;  
and
  - vi the date of the notice.
- (c) Any Elector who is Ordinarily Resident on shíshálh Lands and who is unable to vote in person due to physical disability on the date of the referendum is to be held may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in-ballot.

- (d) Any Elector who is not Ordinarily Resident on shíshálh Lands and who has not been sent a mail-in ballot package in accordance with Part xxx may, at least fifteen (15) days prior to the date on which the referendum is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- (e) A Voter requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- (f) The Electoral Officer shall, at least thirty-five (35) days prior the date on which the referendum is to be held, mail to every Elector who is not Ordinarily Resident on shíshálh Lands and to every Elector who is Ordinarily Resident on shíshálh Lands whose application to vote by mail-in ballot has been received, a mail-in ballot a package consisting of:
- i a ballot initialed on the back by the Electoral Officer;
  - ii an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
  - iii a second inner envelope marked "ballot" for insertion of the completed ballot;
  - iv a Voter declaration form which shall set out:
    - A. the name of the Voter;
    - B. the membership number of the Voter; and
    - C. the name, address and telephone number of the witness to the signature of the Voter.
  - v a letter of instruction regarding voting by mail-in ballot; and
  - vi a statement identifying the location of all polling places, advising the Voter that they may vote in person at any polling station on the day of the referendum if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.
- (g) Upon receipt of an application to vote by mail-in ballot under Parts xxxx and xxxx, the Electoral Officer shall mail a mail-in ballot package described in Part xxxx to the Elector whose name appears on the application.

## **8.7 Notice of Polls**

- (a) The Electoral Officer shall, at least thirty (30) days prior to the date on which the referendum is to be held, post a notice of polls in a public area of the shíshálh government administration building and on the official website.
- (b) The notice of polls shall include:
- i the date of the referendum;

- ii the time the polling stations will be open and closed;
- iii the location of the polling stations;
- iv the question or questions to be asked in the referendum; and
- v a statement that the Voters' List is posted in a public area of the shíshálf government administration building and on the official website.

### **8.8 Voting by Mail-in Ballot**

(a) A Voter shall vote by mail-in ballot by:

- i clearly marking the ballot with an "X" or "✓" check mark that clearly indicates the Voter's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
- ii folding the ballot in a manner so as to conceal the mark or marks on the face of the paper but exposing the Electoral Officer's initials on the back;
- iii placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
- iv completing and signing the Voter declaration form in the presence of a witness who is at least eighteen (18) years of age;
- v placing the inner envelope and the completed, signed and witnessed Voter declaration form in the postage-paid, return envelope, pre-addressed to the Electoral Officer; and
- vi delivering to, or otherwise ensuring receipt of the envelope by the Electoral Officer before the time at which the polls close on the day of the referendum.

(b) Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the referendum shall not be counted.

(c) A Voter to whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:

- i the Voter returns the mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
- ii where the Voter does not have the mail-in ballot with them, the Voter provides the Electoral Officer or the Deputy Electoral Officer with a written declaration that they have not previously voted by mail-in ballot and will not vote by mail-in ballot signed in the presence of either the Electoral Officer, Deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

## **8.9 Voting at a Polling Station**

- (a) The polling station shall be open from nine o'clock (9:00) in the morning until eight o'clock (8:00) in the evening on the day on which the referendum is to be held and from two o'clock (2:00) in the afternoon until six o'clock (6:00) in the evening on the day of an advance poll on the afternoon of the Sunday before the day of the referendum.
- (b) The Electoral Officer shall, before the polling station is open, supply the polling station with:
- i ballot boxes;
  - ii a sufficient number of ballots;
  - iii the final Voters' List;
  - iv the necessary materials for marking ballots; and
  - v a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- (c) The Electoral Officer shall provide a voting compartment inside the polling station where the Voters can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- (d) The Electoral Officer or Deputy Electoral Officer shall, immediately before the commencement of the poll:
- i open the ballot box and, in the presence of any appointed security and other Deputy Electoral Officers, confirm that it is empty and complete a written statement to that effect;
  - ii lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
  - iii place the ballot box in public view for the reception of the ballots.
- (e) Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the Federal or Provincial government or by shíshálh.
- (f) Where a person does not have identification they shall be deemed to be properly identified if they are known to the Electoral Officer or Deputy Electoral Officer.
- (g) Where a person is properly identified as a Voter, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.
- (h) Upon signing the sign-in sheet, the Voter shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- (i) The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Voters' List, a mark opposite the name of every Voter receiving a ballot.



- (j) The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Voter.
- (k) Voting at all referendums shall be by secret ballot.
- (l) No Voter may vote by proxy or authorize another person to vote on his or her behalf.
- (m) Notwithstanding Part xxxx and Part xxxx any Voter who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer vote on their behalf in their presence in favour of, or against the question, as the Voter directs.
- (n) In the event that a Voter votes in the manner described in Part xxxx, the Electoral Officer or Deputy Electoral Officer shall note on the Voters' List in the column for remarks opposite the name of such Voter, the fact that the ballot was marked by him or her in the presence of the Voter and the reasons therefore.
- (o) Except for voting in the manner provided in Part xxxx, the Electoral Officer or Deputy Electoral Officer shall ensure the Voter's privacy while in the voting compartment.
- (p) Upon receiving the ballot, each Voter shall:
- i immediately proceed to the voting compartment and clearly mark the ballot with an "X" or "✓" check mark that clearly indicates the Voter's choice under the word "YES" or "NO" in the appropriate space opposite each question stated on the ballot;
  - ii fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and
  - iii without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Deputy Electoral Officer in the polling station.
- (q) A Voter who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Voter with a new ballot initialed by the Electoral Officer or Deputy Electoral Officer.
- (r) A Voter who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word "declined" on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.
- (s) A Voter forfeits his or her right to vote at the referendum after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.

- (t) Any Voter who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.
- (u) No one other than the Voters who are in the process of voting, or in the case of an elderly or physically incapacitated person, an attendant, is permitted to be inside the voting compartment.
- (v) No person shall, on the day the referendum is held, on the premises of the polling site:
  - i distribute any printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purposes of conducting the referendum;
  - ii interfere with or influence, or attempt to interfere with or influence, any Voter in marking his or her ballot; or
  - iii obtain, or attempt to obtain, information as to how a Voter is about to vote or has voted; or
  - iv disrupt, or attempt to disrupt, the voting process.
- (w) The Electoral Officer may request appointed security to remove any person from the Polling Site who is in violation of **Parts xxxx.**

#### **8.10 Procedures After the Close of the Polls**

- (a) Immediately after the close of the polls, the Electoral Officer shall, in the presence of the Deputy Electoral Officer and any Voters who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:
  - i set aside the ballot if:
    - A. it was not accompanied by a Voter declaration form or the Elector declaration form is not signed or witnessed,
    - B. the name of the person set out in the Voter declaration form is not on the Voters' List,
    - C. the Voters' List shows that the Voter has already voted; and
  - ii deposit all remaining ballots in the ballot box and place a mark on the final Voters' List.
- (b) Immediately after all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall, examine the ballots and reject all ballots that:
  - i have not been initialed by the Electoral Officer or Deputy Electoral Officer,
  - ii are marked in such a way that the Voter can be identified; or

iii are marked in such a way that the Voter's choice cannot clearly or unambiguously be determined;

(c) Any rejected ballot shall not be counted as a vote cast.

(d) The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

(e) The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Constitution.

(f) The Electoral Officer shall:

i count the votes given in favour of or against the question or questions submitted in the referendum; and

ii prepare and sign a statement in writing of the number of votes so given and of the number of ballots rejected.

(g) Immediately after the completion of the counting of the votes, the Electoral Officer shall:

i publicly declare the results of the referendum;

ii prepare a statement in duplicate signed by himself or herself indicating:

A. the number of Voters who voted,

B. the number of votes cast in favour of and against the question or questions submitted in the referendum,

C. the number of rejected ballots, and

iii deliver a copy of the statement to Council.

(h) The Electoral Officer shall:

i within three (3) days of the date on which the referendum is held post in a public area of the shisháhl government administration building and on the official website, a written statement signed by the Electoral Officer, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of rejected ballots; and

ii publish a written statement, showing the number of votes cast in favour of and against the question or questions submitted in the referendum and the number of rejected ballots, in the shisháhl newsletter mailed to Voters or in a separate written notice delivered or mailed to Voters.

### **8.11 Disposal of Ballots**

(a) The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the referendum is held or until a

decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

## **8.12 Appeals**

- (a) Any Voter may file an appeal in writing to the Chief Administrative Officer requesting that the referendum be declared invalid on one or more of the following grounds:

  - i there was a violation of any provision of this Part in the conduct of the referendum that might have affected the result of the referendum; or
  - ii there was a corrupt or fraudulent practice in connection with the referendum.
- (b) Every notice of appeal shall be filed with the Chief Administrative Officer within thirty (30) days from the date upon which the referendum was held together with a non-refundable filing fee of one hundred dollars (\$100).
- (c) Every appeal shall also set out in an affidavit sworn before a notary public or a duly appointed commissioner for taking oaths the facts substantiating the grounds for declaring the referendum invalid and shall be accompanied by any documents relied on to support the appeal.
- (d) The Voter appealing the result of the referendum shall deposit with the Chief Administrative Officer, together with the appeal, security for costs in the amount of five hundred dollars (\$500).
- (e) Upon receipt of the referendum appeal, supporting documents and security for costs, the Chief Administrative Officer shall forward the appeal and supporting documents to Council.
- (f) Council shall have seven (7) days from the receipt of the material described in **Part xxxx** to file with the Chief Administrative Officer a written reply to the appeal.
- (g) Upon expiration of the time to file a reply, the Chief Administrative Officer shall forward the appeal, supporting documents and any reply to the Arbitrator to hear and determine the appeal.
- (h) The Arbitrator may, at his or her discretion, give directions for:

  - i fixing the date, time and place for the hearing of the appeal;
  - ii designating the method of taking evidence, either by sworn declaration or written testimony or both;
  - iii designating what persons are to be notified and how they are to be served; and
  - iv dealing with any matter or other thing not otherwise provided for in this Part.
- (i) No witness shall be required to divulge how he or she voted in the referendum.

- (j) The Arbitrator shall provide a written decision together with reasons, confirming or invalidating the referendum results.
- (k) The result in the referendum shall not be declared invalid by reason only of any irregularity or non-compliance with the referendum procedures, or any mistake in the use of forms, if it appears to the Arbitrator that the referendum was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the referendum.
- (l) The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs of the appeal shall be paid. The Arbitrator shall make disposition of the security for costs furnished under this Part, in accordance with their order.
- (m) The Arbitrator shall give the Voter appealing the referendum and Council written notice of the decision and shall post the decision in a public area of the shishálg government administration building, and on the official website.
- (n) The determination of the Arbitrator is final and not subject to appeal.

### **8.13 Penalty**

- (a) In addition to any other penalty or liability, any person who violates any provision of this Part is guilty of an offence and liable upon summary conviction to a fine not exceeding ten thousand dollars (\$10,000).

### **DIVISION (5) – BAND MONEY**

Sources of Band Revenue money

1. Sources of Band Revenue money include but are not limited to:
  - (a) annual lease revenues;
  - (b) annual equivalent rents arising from pre-payment of leases;
  - (c) fees for permits;
  - (d) interest on investments;
  - (e) interest on loans made from the revenue of the Band;
  - (f) interest on capital funds of the Band;

- (g) donations to the Band;
- (h) British Columbia special payment; and
- (i) administrative fees.

Expenditure of Band Revenue money 2. Band Revenue money shall only be expended in the manner and for the uses provided for in Division (7) of Part II of this Constitution.

Sources of Band Capital money 3. Sources of Band Capital money include but are not limited to:

- (a) money from the sale of Sechelt Lands;
- (b) money from the sale of other capital assets of the Band; and
- (c) royalties from the sale of non-renewable resources.

Expenditure of Band Capital money 4. Band Capital money shall be expended in the manner and for the uses provided for in Division (7) of Part II of the Constitution.

Control and management of Band money 5. The Band, acting through its Band Council, shall be solely responsible for the collection, control and management of both Band Revenue money and Band Capital money.

## **PART II – THE BAND COUNCIL**

### **PART 9 – ELECTIONS**

- 9.1 Election of Council
  - 9.2 Term of Office
  - 9.3 Eligibility of Voters
  - 9.4 Eligibility of Candidates
  - 9.5 Appointment of Electoral Officer, Deputy Electoral Officers and Arbitrator
  - 9.6 Contact Addresses
  - 9.7 Voters' List
  - 9.8 Notice of Nomination Meeting and Entitlement to Vote by Mail-in Ballot
  - 9.9 Nomination Process
  - 9.10 Notice of Final List of Candidates
  - 9.11 Notice of Polls
  - 9.12 Preparation of Ballots
  - 9.13 Voting by Mail-in Ballot
  - 9.14 Voting at a Polling Station
  - 9.15 Procedures for the Close of Polls
  - 9.16 Ties
  - 9.17 Disposal of Ballots
  - 9.18 Oath of Office and Criminal Record Search
  - 9.19 Election Appeals
  - 9.20 Procedure on Election Appeals, Petitions for Removal from Office and Appeals from Declaration of Vacancy
  - 9.21 By-elections
  - 9.22 General
  - 9.23 Removal
  - 9.24 Vacancy
- 9.xx Penalty – check that this section is still included
- Forms      Nomination Form

## **PART 9 Elections (2018 Version)**

### **9.1 Election of Council**

- (a) shísháilh Council shall consist of four (4) Councillors and one Chief.
- (b) The offices of Chief and Councillor shall be determined by a vote by secret ballot of Voters in an Election, or in the event of a vacancy on Council, in a By-election.
- (c) By-elections shall be held on the date set by the Electoral Officer in accordance with **Part 9.23**.

### **9.2 Term of Office**

- (a) The term of office for Chief and Councillors shall be three (3) years.
- (b) Except with respect to a By-election held in accordance with **Part 9.23** the Election for Chief and Councillors shall be held on the third Saturday of February in the year their term of office expires.
- (c) The term of office for Chief and Councillors commences when the Electoral Officer publicly declares the results of the Election under **Part 9.xx** and subject to any vacancy arising under this Constitution, expires at eleven fifty-nine (11:59) p.m. on the day preceding the next Election.

### **9.3 Eligibility of Voters**

- (a) In order to be entitled to vote in an Election, a person must, as of the date of the Election:
  - i have attained the age of eighteen (18);
  - ii be listed on the Membership List ; and
  - iii be included on the Voters' List.

### **9.4 Eligibility of Candidates**

- (a) Any candidate for the office of Chief or Councillor must:
  - i qualify as a Voter;
  - ii be nominated for that office, in accordance with the procedures set out in this Part; and



iii not have been convicted of an indictable offence in Canada within ten (10) years prior to their nomination provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this Part;

iv not owe any arrears to the shíshálh Nation or any of its wholly-owned companies, trusts, societies or other related entities; and

v provide a completed Nomination form and resume to the Electoral Officer for publication.

(b) A person may only be a candidate for one of the offices of Chief or Councillor in any Election.

### **9.5 Appointment of Electoral Officer, Deputy Electoral Officers and Arbitrator**

(a) Council shall, at least ninety (90) days prior to the date on which the Election is to be held appoint an Electoral Officer and Arbitrator.

(b) If an Electoral Officer and Arbitrator have not been appointed within the time set out in **Part 9.5 (a)**, the Electoral Officer and Arbitrator shall be appointed by the Chief Administrative Officer as soon as possible.

(c) The Electoral Officer shall not be a Member or salaried employee of shíshálh Nation or holder of other contracts of services with shíshálh Nation.

(d) Deputy Electoral Officer or Officers shall be appointed by the Electoral Officer within fourteen (14) days of the appointment of the Electoral Officer and shall work under the direction of the Electoral Officer.

(e) The Deputy Electoral Officers shall have such powers as described in this Part and those powers of the Electoral Officer as are delegated to them by the Electoral Officer.

(f) The Deputy Electoral Officer shall not be a member of Council or a candidate in an Election.

(g) Every Electoral Officer and Deputy Electoral Officer shall swear an oath of office before a justice of the peace, notary public or duly appointed commissioner for swearing oaths of office swearing to:

i uphold and comply with this Constitution and all shíshálh Laws;

ii fulfil the duties and responsibilities of their office under this Constitution;

iii carry out their duties faithfully, honestly, impartially and to the best of their abilities;

iv keep confidential, both during and after their term of office, any matter or information which, under this Constitution, shíshálh Law or policy, is considered confidential; and

v always act in the best interests of shíshálh in carrying out their duties.

(h) The Electoral Officer may make such order and issue such instructions consistent with the provisions of this Part as he or she may from time to time deem necessary for the effective administration of the Election.

#### **9.6 Contact Addresses**

(a) Voters shall be responsible for providing the Membership Administrator or the Electoral Officer with current contact addresses.

(b) The Membership Administrator shall, within seven (7) days of the Electoral Officer assuming office, provide the Electoral Officer with the names and contact addresses of Members who will have attained the age of eighteen (18) as of the date of the Election.

(c) The contact address shall take the form of a mailing address.

Commented [LB1]: I am to develop a form

(d) The contact address shall be used only for the purposes of providing notices, mail-in ballots or other documents to Voters who are entitled to receive them under this Part or Part 8 of this Constitution. Except for these purposes, the contact address shall not be disclosed by the Electoral Officer without the consent of the Voter.

(e) A document shall be considered properly provided if it was mailed or delivered to the contact address of the Voter.

#### **9.7 Voters' List**

(a) The Electoral Officer shall prepare a Voters' List within thirty (30) days of assuming office. The Voters' List will be the official record of Voters for the next Election.

(b) The Electoral Officer shall post the Voters' List in a public area of the shísháhl government administration building, and on the official website, no later than sixty (60) days prior to the date on which the Election is to be held.

(c) A person whose name does not appear or does not correctly appear on the Voters' List and who believes they are eligible to be a Voter, or a Voter acting on their behalf, may no later than ten (10) days prior to the date on which the Election is to be held, apply in writing to the Electoral Officer to have their name added to the Voters' List.

(d) The application made under Part 9.7 (c) shall set out the reasons why the person's name should be added to the Voters' List, together with any documents supporting the application.

(e) Where the Electoral Officer believes or has information that a person whose name is on the Voters' List is not a Voter, or where a Voter applies in writing to the Electoral Officer to have another person's name removed from the Voters' List because that person does not qualify as a Voter, the Electoral Officer shall give written notice to the person whose eligibility is challenged at least twenty (20) days prior to the date on which the Election is to be held.

- (f) The application by a Voter made under Part 9.7 (e) shall set out the reasons why a person's name should be removed from the Voters' List together with any documents supporting the application and must be received by the Electoral Officer no later than twenty-one (21) days prior to the date on which the Election is to be held.
- (g) The notice given under Part 9.7 (e) to the person whose eligibility is challenged, shall include the reasons for seeking removal of their name from the Voters List and any supporting documents, and shall, provide them notice that a written reply may be sent to the Electoral Officer which must be received no later than ten (10) days prior to the date on which the Election is to be held.
- (h) After consideration of all information and representations relating to amendments to the Voters' List the Electoral Officer shall add or delete names to the Voters' List based on whether persons qualify as Voters.
- (i) The Electoral Officer shall deliver or mail written notice of the decision to a person whose name has been added to or deleted from the Voters' List and shall post the decision in a public area of the shísháhl government administration building, and on the official website, at least five (5) days prior to the date on which the Election is to be held.
- (j) The decision of the Electoral Officer under Part 9.7 (h) is final and not subject to appeal.
- (k) The Electoral Officer shall, at least five (5) days prior to the date on which the Election is to be held, post a final Voters' List in a public area of the shísháhl government administration building, and on the official website.
- (l) Any person whose name does not appear on the final Voters' List shall not be entitled to vote in the Election.

## **9.8 Notice of Nomination Meeting and Entitlement to Vote by Mail-in Ballot**

At least sixty (60) days prior to the date on which the Election is to be held, the Electoral Officer shall publish a notice in the shísháhl newsletter and shishalh Nation official website or shall deliver or mail written notice to Voters at their contact address advising of the nomination meeting and setting out the conditions for voting by mail-in ballot.

- (a) The notice shall include:
  - i the date, time and location of the nomination meeting and a statement that Voters may attend and nominate candidates;
  - ii notification that a copy of this Constitution can be obtained at the shísháhl government administration building, and on the official website;
  - iii the places where copies of the Voters' List shall be posted;
  - iv a statement that Voters Ordinarily Resident on shísháhl Lands who are unable to vote in person due to physical disability on the date of the Election

**Commented [LB2]:** it was decided that documents would not go out to all Nation members, just to ones who have the incentive to check the newsletter (available on line) or the website and request information so does the mail written notice need to be here?

- may at least fifteen (15) days prior to the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot;
- v a statement that Voters who are not Ordinarily Resident on shíshálh Lands are entitled to vote by mail-in ballot and that a mail-in ballot will be sent to them upon receipt of an application for a mail-in ballot at least forty (40) days prior to the date on which the Election is to be held;
- vi the business address, telephone and electronic mail address of the Electoral Officer; and
- vii the date of the notice.
- (c) Any Voter who is Ordinarily Resident on shíshálh Lands and who is unable to vote in person due to physical disability on the date on which the Election is to be held may, at least fifteen (15) days prior to the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- (d) Upon receipt of an application to vote by mail-in ballot under Parts 9.38 and 9.39, the Electoral Officer shall mail a mail-in ballot package described in Part 9.41 to the Voter whose name appears on the application.
- (e) Any Voter who is not Ordinarily Resident on shíshálh Lands and who has not been sent a mail-in ballot package in accordance with Part 9.41 may, at least fifteen (15) days prior to the date on which the Election is to be held, apply to the Electoral Officer to vote by mail-in ballot.
- (f) A Voter requesting a mail-in ballot package shall provide the Electoral Officer with a current mailing address.
- (g) The Electoral Officer shall, at least thirty-five (35) days prior to the date on which the Election is to be held, mail to every Voter who is not Ordinarily Resident on shíshálh Lands and to every Voter who is Ordinarily Resident on shíshálh Lands whose application to vote by mail-in ballot has been received, a mail-in ballot package consisting of:
- i a ballot initialed on the back by the Electoral Officer;
  - ii an inner postage-paid return envelope, pre-addressed to the Electoral Officer;
  - iii a second inner envelope marked "ballot" for insertion of the completed ballot;
  - iv a Voter declaration form which shall set out:
    - A. the name of the Voter;
    - B. the membership number of the Voter; and
    - C. the name, address and telephone number of the witness to the signature of the Voter.
- v a letter of instruction regarding voting by mail-in ballot; and

vi a statement identifying the location of all polling places, advising the Voter that they may vote in person at any polling station on the day of the Election if they return their mail-in ballot to the Electoral Officer at the polling station or swear a written declaration before the Electoral Officer, a justice of the peace, notary public or duly appointed commissioner for taking oaths that they have lost the mail-in ballot.

## **9.9 Nomination Process**

- (a) The nomination meeting shall be held at least forty-five (45) days prior to the date on which the Election is to be held.
- (b) The Electoral Officer shall post notice of the nomination meeting in a public area of the shíshálh government administration building and on the shíshálh Nation official website.
- (c) The notice of the nomination meeting shall include:
- i the date, time and place of the nomination meeting;
  - ii notification that a copy of this Constitution can be obtained at the shíshálh government administration building, an on the official website;
  - iii the places where copies of the Voters' List shall be posted; and
  - iv the business address, electronic mail address, and business telephone number of the Electoral Officer.
- (d) At the time and place specified in the notice of the nomination meeting, the Electoral Officer shall declare the nomination meeting open for the purpose of receiving nominations.
- (e) The nomination meeting shall remain open for not less than two (2) hours from when it commenced.
- (f) Any person who is a Voter may propose or second a nomination of any qualified candidate to serve as Chief or Councillor.
- (g) No Voter may nominate or second more than two persons to serve as Chief and no more than two persons to serve as Councillors;
- (h) Notwithstanding paragraph (g), in the case of a By-election, any person who is a Voter may propose or second the nomination of not more than two persons for each of the vacancies on Council.
- (i) After nominating or seconding a candidate, the Voter shall sign a sworn declaration in the presence of the Electoral Officer or Deputy Electoral Officer, confirming their nomination or seconding of the candidate.
- (j) If only one eligible candidate is nominated for the office of Chief, the Electoral Officer shall declare that candidate to be elected.

**Commented [LB3]:** Need something to clarify that someone must be present at the meeting to nominate a person, however, the person nominated does not need to attend, but must provide nomination form

- (k) Where the number of eligible candidates nominated for the office of Councillor does not exceed the number of positions available, the Electoral Officer shall declare such candidates to be elected.
- (l) In the event that more than the required number of persons are nominated for the offices of Chief and Councillor, the Electoral Officer shall declare that a poll will be held.
- (m) Within forty-eight (48) hours of the close of the nominations, the Electoral Officer shall post in a public area of the shísháhl government administration building, and on the shísháhl official website, a list of nominees and the offices for which they are nominated.
- (n) Upon the close of nominations the Electoral Officer shall, as soon as possible, contact each person nominated and require him or her to sign the following documents:
- i a notice of acceptance of nomination; resume and Nomination form; and
  - ii a sworn declaration confirming their eligibility as a candidate.
- (o) A nominee may file the documents required under **Part 9.53** with the Electoral Officer by mail, facsimile transmission or in person.
- (p) Any nominee who fails to file the documents required under **Part 9.53** with the Electoral Officer within seven (7) days of the nomination meeting shall have their name removed as a nominee.
- (q) Any nominee who has been nominated may withdraw at any time after his or her nomination, but no later than forty-eight (48) hours before the time of the opening of the advance poll, by filing with the Electoral Officer a written withdrawal of his or her nomination, signed by himself or herself in the presence of the Electoral Officer, a justice of the peace, a notary public, or a commissioner for oaths, and any votes cast for such nominee shall be null and void.

#### **9.10 Notice of Final List of Candidates**

- (a) The final list of candidates shall be composed of nominees who have complied with Part **9.9** of this Part.
- (b) The Electoral Officer shall, no earlier than the eighth (8) day after the date of the nomination meeting and no later than thirty-five (35) days prior to the date on which the Election is to be held:
- i post the final list of candidates and the offices for which they are nominated in a public area of the shísháhl government administration building; and;
  - ii publish the list of candidates and the offices for which they are nominated in the shísháhl newsletter and on the shísháhl official website, or in a separate written notice delivered or mailed to Voters.

### **9.11 Notice of Polls**

- (a) Whenever a poll is required, the Electoral Officer shall, at least thirty (30) days prior to the date on which the Election is to be held, post a notice of polls in a public area of the shíshálh government administration building, and the shíshálh official website.
- (b) The notice of polls shall include:

  - i the date of the Election; the date of an Advance Poll;
  - ii the time the polling stations will be open and closed;
  - iii the location of the polling stations; and
  - iv a statement that the Voters' List is posted in a public area of the shíshálh government administration building and on the shishalh Nation official website.

### **9.12 Preparation of Ballots**

- (a) The Electoral Officer shall prepare ballots setting out:

  - i the names of the candidates nominated for election as Chief in alphabetical order; and
  - ii the names of the candidates nominated for election as Councillor in alphabetical order.
- (b) The ballot may, at the request of the candidate, include a candidate's commonly used nickname.
- (c) The ballot shall indicate that the Voter is to signify his or her choice of candidate(s) by clearly marking an "X" or "✓" check mark in the appropriate space opposite the name of the candidate(s).

### **9.13 Voting by Mail-in Ballot**

- (a) A Voter shall vote by mail-in ballot by:

  - i clearly marking the ballot with an "X" or "✓" check mark in the appropriate space opposite the name of the candidates of his or her choice;
  - ii folding the ballot in a manner so as to conceal their choices, but exposing the Electoral Officer's initials on the back;
  - iii placing the ballot in the inner envelope marked "ballot" and sealing the envelope;
  - iv completing and signing the Voter declaration form in the presence of a witness who is at least eighteen (18) years of age;

- v placing the inner envelope and the completed, signed and witnessed declaration form in the postage-paid, return envelope pre-addressed to the Electoral Officer; and
- vi delivering to, or otherwise ensuring receipt of the envelope by, the Electoral Officer before the time at which polls close on the day of the Election.
- (b) Mail-in ballots that are not received by the Electoral Officer before the time at which the polls close on the day of the Election shall not be counted.
- (c) A Voter to whom a mail-in ballot was mailed or delivered may vote in person at a polling station if:
  - i the Voter returns the mail-in ballot to the Electoral Officer or Deputy Electoral Officer; or
  - ii Where the Voter does not have the mail-in ballot with them, the Voter provides the Electoral Officer or the Deputy Electoral Officer with a written declaration that they have not previously voted by mail-in ballot and will not vote by mail-in ballot signed in the presence of either the Electoral Officer, Deputy Electoral Officer, justice of the peace, notary public or commissioner for taking oaths.

#### **9.14 Voting at a Polling Station**

- (a) The polling station shall be open from nine o'clock (9:00) in the morning until eight o'clock (8:00) in the evening on the day on which the Election is to be held.
- (b) The polling station for an Advance Poll shall be open on the afternoon of the Sunday before the day of the Election from two o'clock (2:00) in the afternoon until six o'clock (6:00) in the evening.
- (c) The Electoral Officer shall, before the polling station is open, supply the polling station with:
  - i ballot boxes;
  - ii a sufficient number of ballots;
  - iii the final Voters' List;
  - iv the necessary materials for marking ballots; and
  - v a ballot tally sheet to identify the number of confirmed votes and the number of rejected ballots.
- (d) The Electoral Officer shall provide a voting compartment in the polling station where the Voters can mark their ballots free from observation and the Electoral Officer may appoint security to maintain order at the Polling Site.
- (e) Where a candidate wishes to authorize a Scrutineer he or she shall provide a letter of authorization to the Electoral Officer or Deputy Electoral Officer on or before the opening of the polling station, in which the candidate names the



Scrutineer. Each candidate shall be entitled to have two (2) Scrutineers at a polling station at any one time.

(f) The Electoral Officer and Deputy Electoral Officer shall immediately before the commencement of the poll:

- i open the ballot box and, in the presence of any Scrutineers, appointed security and other Deputy Electoral Officers present, confirm that it is empty and complete a written statement to that effect;
- ii lock and properly seal the ballot box in a manner preventing it from being opened without breaking the seal; and
- iii place the ballot box in public view for the reception of the ballots; and
- iv secure the ballot box in the administration safe after an advance poll.

Commented [LB4]: currently do not have a safe

(g) Each person presenting themselves at a polling station for the purpose of voting shall present to the Electoral Officer or Deputy Electoral Officer identification issued by the federal or provincial government or by shísháhlh.

(h) Where a person does not have identification described in Part 9.14 (f) they shall be deemed to be properly identified if two Voters sign a sworn declaration in the presence of the Electoral Officer or Deputy Electoral officer, confirming the identity of the person.

(i) Where a person is properly identified as a Voter, he or she shall sign the sign-in sheet presented by the Electoral Officer or Deputy Electoral Officer and list their membership number on the sign-in sheet.

(j) Upon signing the sign-in sheet, the Elector shall receive a ballot initialed by the Electoral Officer or Deputy Electoral Officer.

(k) The Electoral Officer or Deputy Electoral Officer shall place in the proper column of the Voters' List, a mark opposite the name of every Voter receiving a ballot.

(l) The Electoral Officer or Deputy Electoral Officer shall, when requested to do so, explain the method of voting to the Voter.

(m) Voting at all Elections shall be by secret ballot.

(n) No Voter may vote by proxy or authorize another person to vote on his or her behalf.

(o) Notwithstanding Part 9.14 (l) and 9.14 (m), any Voter who requires assistance may request that the Electoral Officer or a Deputy Electoral Officer mark the ballot for them for candidates of the Elector's choice in their presence.

(p) In the event that a Voter votes in the manner described in Part 9.14 (n), the Electoral Officer or Deputy Electoral Officer shall note on the Voters' List in the column for remarks opposite the name of such Voter, the fact that the ballot was marked by him or her in the presence of the Voter and the reasons therefore.

(g) Except as in the manner provided in Part 9.14 (n), the Electoral Officer or Deputy Electoral Officer shall ensure the Voter's privacy while in the voting compartment.

(r) Upon receiving the ballot, each Voter shall:

i immediately proceed to the voting compartment and clearly place an "X" or "✓" check mark in the appropriate space opposite the name of the candidates of their choice;

ii fold the ballot, so as to conceal their choice in such a manner that only exposes the initials of the Electoral Officer or Deputy Electoral Officer; and

iii without unfolding the ballot, have the Electoral Officer or Deputy Electoral Officer verify his or her initials and at once deposit the ballot into the ballot box in the presence of the Electoral Officer or Deputy Electoral Officer and any scrutineers present in the polling station.

(s) A Voter who inadvertently spoils his or her ballot may return it to the Electoral Officer or Deputy Electoral Officer in order to obtain another ballot, and the Electoral Officer or Deputy Electoral Officer shall write the word "cancelled" upon the spoiled ballot, deposit it in an envelope for cancelled and declined ballots and provide the Voter with a new ballot initialled by the Electoral Officer or Deputy Electoral Officer.

(t) A Voter who has received a ballot and subsequently decides not to vote, must return the ballot to the Electoral Officer or Deputy Electoral Officer, who shall mark the word "declined" on the face of the ballot and deposit it in an envelope for cancelled and declined ballots.

(u) A Voter forfeits his or her right to vote at the Election after being provided a ballot by the Electoral Officer or Deputy Electoral Officer if that person leaves the polling station without delivering the ballot to the Electoral Officer or the Deputy Electoral Officer.

(v) Any Voter who is inside the polling station at the time fixed for closing the poll shall be entitled to vote.

(w) No one other than Voters who are in the process of voting, or in the case of an elderly or physically incapacitated person, their attendant, are permitted to be inside the voting compartment.

i The Electoral Officer may request appointed security to remove any person from the Polling Site who is:

A. distributing any Election related printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purpose of conducting the Election;

B. interfering with or influencing, or attempt to interfere with or influence, any Voter in marking his or her ballot;

C. obtaining, or attempt to obtain, information as to how a Voter is about to vote or has voted; or

D. disrupting, or attempting to disrupt, the voting process.

**Law to be drafted**

**9.15 Procedures for the Close of Polls**

(a) Immediately after the close of the polls, the Electoral Officer shall in the presence of the Deputy Electoral Officers, candidates, Scrutineers and any Voters who choose to be present, open each envelope containing a mail-in ballot that was received before the close of the polls and without unfolding the ballot:

i set aside the ballot if:

A. it was not accompanied by a Voter declaration form or the Voter declaration form is not signed or witnessed; or

B. the name of the person set out in the Voter declaration form is not on the Voters' List; or

C. the Voters' List shows that the Voter has already voted; and

ii deposit all remaining ballots in the ballot box and place a mark on the final Voters' List opposite the name of the Voter.

(b) Immediately after all valid mail-in ballots have been deposited in the ballot box, the Electoral Officer shall open the ballot box and examine the ballots and reject all ballots that:

i have not been initialled by the Electoral Officer or Deputy Electoral Officer;

ii contain more votes than are candidates to be elected;

iii are marked in such a way that the Voter can be identified; or

iv are marked in such a way that the Voter's choice cannot clearly or unambiguously be determined.

(c) Any rejected ballot shall not be counted as a vote cast.

(d) The Electoral Officer shall report in writing the reasons for rejection of each ballot and attach that report to the rejected ballot.

(e) The rejected ballot and the written report shall be held by the Electoral Officer until the expiration of any appeal period provided for in this Constitution.

(f) The Electoral Officer shall:

i show the ballots to be counted to any Scrutineers present;

ii count the votes given for each candidate from the ballots not rejected; and

- iii at the conclusion of the count complete and sign a ballot tally sheet setting out the number of confirmed votes for each candidate and the number of rejected ballots.
- (g) Immediately after the completion of the counting of the votes, the Electoral Officer shall, subject to Part 9.(h) to 9.(l), publicly declare:
  - i the candidate for Chief with the highest number of votes to be elected; and
  - ii the four (4) candidates for Councillor with the highest number of votes to be elected.
- (h) If the difference in vote totals between the candidate receiving the highest number of votes for Chief and another candidate for Chief is five votes or less, including a tie, the Electoral Officer shall immediately after the completion of counting of the votes conduct a recount of the votes for Chief;
- (i) If the difference in vote totals between the candidate for Councillor receiving the highest number of votes and another candidate for Councillor is five votes or less, including a tie, and that result could affect the results of the Councillors elected to office, the Electoral Officer shall immediately after the completion of the counting of votes conduct a recount of the votes for Councillors;
- (j) The recount conducted under paragraphs (a) or (b) shall be carried out under procedures set out in Part 9.15;
- (k) Upon completion of the recount the Electoral Officer shall publicly declare the results of the recount conducted under paragraphs (a) or (b) and shall declare the candidate with the highest number of votes in the recount to be elected; and
- (l) Subject to Part 9.16, the results of the recount shall be final.
- (m) Subject to Part 9.(h) to 9.(l) and Part 9.16 where two or more candidates have an equal number of votes for Chief or for the fourth highest vote total for the office of Councillor, the Electoral Officer shall declare the Election for that office a tie and a new Election for that office shall be held within sixty (60) days of the declaration of the Electoral Officer;
- (n) The Electoral Officer shall:
  - i within three (3) days of the date on which the Election is held post in a public area of the shishálh government administration building, and on the official website, a written statement signed by the Electoral Officer, showing the number of votes cast for each candidate and the number of rejected ballots;
  - ii publish a written statement, showing the number of votes cast for each candidate and the number of rejected ballots in the shishálh newsletter mailed to Voters or in a separate written notice delivered or mailed to Voters; and

#### **9.16 Ties**

- (a) In the event there is an appeal of an Election result a new Election for that office will only be held where the Arbitrator considering the appeal confirms that two or more candidates had the same number of votes for that office.
- (b) Where a new Election for an office is required to break a tie under Part 9.15 (m) or 9.16 (a) , all the provisions of this Part shall apply to the Election, provided:
- i the final Voters' List for the new Election shall be the final Voters' List from the Election which resulted in the tie;
  - ii the candidates for office to be determined in the new Election shall be the candidates who received an equal number of votes for that office in the original Election;
  - iii Parts 9.7. 9.8 (b) (i) including reference in chapeau of Part 9 >8 to a nomination meeting and Part 9.9x shall not apply to the new Election required to break the tie; and
  - iv the term of office for the successful candidate in the new election shall be deemed to have commenced on the day of the Election which resulted in the tie.

#### **9.17 Disposal of Ballots**

- (a) The Electoral Officer shall deposit the ballots used in the voting and the cancelled and declined ballots in a sealed envelope and retain it for one hundred and twenty (120) days after the date on which the Election is held or until a decision on an appeal is rendered, whichever date is later, after which time the Electoral Officer may, unless directed otherwise by the Council, destroy them in the presence of two witnesses.

#### **9.18 Oath of Office and Criminal Record Search**

- (a) A candidate who has been elected as Chief or Councillor shall swear an Oath of Office before either a justice of the peace, notary public or duly appointed commissioner for taking oaths, swearing to:
- i uphold and comply with this Constitution and all shíshálh Laws;
  - ii fulfil the duties and responsibilities of their office under this Constitution and all shíshálh Laws;
  - iii carry out their duties faithfully, honestly, impartially and to the best of their abilities;
  - iv keep confidential, both during and after their term of office, any matter or information which, under this Constitution, shíshálh Law or policy, is considered confidential; and shíshálh
  - v always act in the best interests of shíshálh in carrying out their duties.

- (b) A candidate who has been elected Chief or Councillor shall provide to the Chief Administrative Officer a written consent to a criminal record search in a form that may be required by law enforcement agencies in Canada and as soon as possible the elected candidate shall request confirmation from law enforcement agencies in Canada that they have not been convicted of an indictable offence in Canada within ten (10) years of their nomination, provided that a conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be an offence for the purposes of this Part.
- (c) No person elected as Chief or Councillor shall be permitted to assume their office until they have sworn and filed with the Electoral Officer the Oath of Office required under **Part 9.18 (a)** and provided to the Chief Administrative Officer the consent to a criminal record search and request for confirmation from law enforcement agencies in Canada required under **Part 9.18 (b)**.
- (d) Subject to **Part 9.18 (e) and (f)**, if a person elected as Chief or Councillor fails to file the sworn oath of office with the Electoral Officer on or before the first Monday after being declared elected, the Electoral Officer shall declare the office vacant.
- (e) Where a candidate elected as Chief or Councillor cannot because of illness or other valid reason swear the Oath of Office within the time prescribed in **Part 9.18 (a)** they, or a Voter acting on their behalf, may within that time file a Petition with the Electoral Officer for an extension of the time to swear the Oath of Office.
- (f) The Electoral Officer shall determine whether the circumstances justify an extension of the time to swear the Oath of Office and shall provide the candidate making the request written notice of the decision together with reasons.
- (g) The Electoral Officer shall give notice in writing to the candidate elected as Chief or Councillor whose office is declared vacant under **Part 9.18 (d)**.
- (h) A candidate elected as Chief or Councillor whose office is declared vacant as a result of the Electoral Officer's decision made under **Part 9.18 (e)** may appeal the decision by filing a notice of appeal together with supporting documents and a non-refundable filing fee of seventy-five dollars (\$75) with the Arbitrator within fifteen (15) days of the date notice of the Electoral Officer's decision was sent.
- (i) Where an appeal has been filed under **Part 9.18 (h)** no By-election shall be called unless the Arbitrator's decision confirms the vacancy.
- (j) The Chief Administrative Officer shall cause a criminal record search to be conducted in Canada for each elected candidate who has assumed office.
- (k) Each elected candidate who has assumed office shall provide the Chief Administrative Officer with the response received from a **Criminal Record check** as soon as such response is received.

- (l) The information received by the Chief Administrative Officer under **Parts 9.18 (j) and (k)** shall remain confidential and only be used for the purpose of confirming the qualifications of each elected candidate who has assumed office.

### **9.19 Election Appeals**

- (a) Any candidate or Voter may file a notice of appeal with the Arbitrator, requesting that the election of the Chief or a Councillor be declared invalid, based on one or more of the following grounds:
- i the person declared elected was not eligible to be a candidate;
  - ii the person declared elected was not nominated in accordance with the procedures set out in this Part;
  - iii there was a violation of any provision of this Part in the conduct of the Election that might have affected the result of the Election; or
  - iv there was corrupt or fraudulent practice in relation to the Election.
- (b) Every notice of appeal shall:
- i identify the offices being appealed;
  - ii set out in an affidavit sworn before a notary public or duly appointed commissioner for taking oaths the facts substantiating the appeal;
  - iii be accompanied by any supporting documentation; and
  - iv be filed with the Arbitrator within thirty (30) days from the date upon which the Council member was declared elected together with a non-refundable filing fee of seventy-five dollars (\$75).

### **9.20 Procedure on Election Appeals, Petitions for Removal from Office and Appeals from Declaration of Vacancy**

- (a) Where no Arbitrator has been appointed an appeal or Petition shall be filed with the Chief Administrative Officer who shall upon receipt request Council to appoint an Arbitrator.
- (b) If Council has not appointed an Arbitrator within ten (10) days of the request of the Chief Administrative Officer under **Part 9.xx** the Chief Administrative Officer shall appoint an Arbitrator.
- (c) In the case of an Election appeal, the security of costs shall be five hundred dollars (\$500) for each position appealed.
- (d) In the case of an appeal from the decision of the Chief Administrative Officer or the Electoral Officer that an office is vacant, the security for costs shall be five hundred dollars (\$500).
- (e) In the case of a Petition for the removal of a Council member or members, security for costs shall be two thousand dollars (\$2,000).

- (f) The security for costs shall be deposited with the Chief Administrative Officer.
- (g) Upon deposit of the required security for costs, the Chief Administrative Officer shall forward the appeal or Petition and all supporting documents to the Arbitrator.
- (h) The Arbitrator may, at his or her discretion, give directions for:
- i fixing the date, time and place for the hearing of the Petition or appeal;
  - ii designating the method of taking evidence, either by sworn declaration or written testimony, or both;
  - iii designating what persons are to be notified and how they are to be served; and
  - iv dealing with any matter or other thing not otherwise provided for in this Part.
- (i) A copy of the notice of appeal or Petition and any documents relied upon shall be delivered to the Council member whose election is being appealed or the Council member whose removal is sought or the person whose office is being declared vacant.
- (j) In the case of an appeal under Part 9.xx or 9.xx the notice of appeal and supporting documentation shall be delivered to the Electoral Officer at least fourteen (14) days prior to the date of the hearing.
- (k) In the case of an appeal by a Voter under Part 9.xx the notice of appeal and supporting documentation shall be delivered to the Council member whose election is being appealed at least fourteen (14) days prior to the date of the hearing.
- (l) In the case of an appeal under Part 9.xx to 9.xx the notice of appeal and supporting documentation shall be delivered to the Chief Administrative Officer at least fourteen (14) days prior to the date of the hearing.
- (m) The Council member whose election is being appealed, the Chief Administrative Officer in an appeal under Part 9.xx, or the Electoral Officer in an appeal under Part 9.xx or Part 9.xx and 9.xx, as the case may be, may file a written reply with the Arbitrator at least four (4) days prior to the date of the hearing.
- (n) No witness shall be required to divulge whom he or she voted for in the Election.
- (o) The Arbitrator shall issue a written decision together with reasons in every appeal or Petition.
- (p) In the case of an Election appeal under Part 9.xx and 9.xx the Arbitrator may:
- i confirm the election of the Council member; or
  - ii invalidate the election of the Council member.



- (g) If the election of a Council member is declared invalid, the Arbitrator shall order that any person found not to have been duly elected shall be removed from office and if it is adjudged that some other person was duly elected, the Arbitrator shall order that such person take office upon their swearing the Oath of Office described in **Part 9.xx** within three (3) days of the making of the order.
- (r) The election of a Council member shall not be declared invalid by reason only of an irregularity or non-compliance with the rules set out in this Part if it appears to the Arbitrator that the Election was conducted in good faith unless the non-compliance, irregularity or mistake materially affected the result of the Election.
- (s) In an appeal of the decision of the Electoral Officer under **Part 9.xx** the Arbitrator may:
- i confirm the decision of the Electoral Officer and declare the office vacant; or
  - ii reverse the decision of the Electoral Officer and allow the candidate elected as Chief or Councillor a specified time within which to sign the oath of office.
- (t) In an appeal of the decision of the Chief Administrative Officer under **Part 9.xx**, the Arbitrator may:
- i confirm the decision of the Chief Administrative Officer and declare the office vacant; or
  - ii reverse the decision of the Chief Administrative Officer and declare the Council member entitled to remain in office.
- (u) If the Petition is for removal of a Council member under **Part 9.xx to 9.xx** the Arbitrator may:
- i confirm the Council member in their office; or
  - ii remove the Council member from office and declare the office vacant.
- (v) The Arbitrator may in his or her discretion order by whom, to whom and in what manner costs shall be paid. The Arbitrator shall make disposition of the security for costs in accordance with their order.
- (w) The Arbitrator shall provide a copy of the decision to the Chief Administrative Officer and to any party to an appeal or Petition.
- (x) The Arbitrator's decision shall be:
- i published in the shíshálh newsletter and on the shíshálh Nation official website, or in a separate written notice delivered or mailed to Voters; and
  - ii posted in a public area of the shíshálh government administration building.
- (y) The decision of the Arbitrator is final and not subject to appeal.

### **9.21 By-elections**

- (a) Unless otherwise provided in Part 9.xx ( b) , in the event that the office of Chief or Councillor becomes vacant[ under Part 4 XX ], a By-election shall be held within ninety (90) days on a date set by the Electoral Officer.
- (b) No By-election shall be held if there are less than six (6) months remaining in the term of the Council member whose office has become vacant, except where a By-election is necessary to have sufficient Council members to maintain a quorum.
- (c) No sitting Council member is eligible to be a candidate in a By-election.
- (d) If a Council member wishes to be a candidate in a By-election, he or she must resign from Council prior to the date for nominations in the By-election.
- (e) The successful candidate in the By-election shall hold office for the remainder of the original term of the Chief or Councillor whom he or she is elected to replace.
- (f) Except as expressly provided otherwise, the rules and procedures in this Part shall apply to By-elections.

### **9.22 General**

- (a) Employees of shíshálh or of any corporation wholly owned by shíshálh, who are elected to Council, shall be entitled to take an unpaid leave of absence from their employment for the period during which they are a Council member.
- (b) Employees elected to Council wishing to take an unpaid leave of absence under Part 9.xx (a) shall file a written request with the Chief Administrative Officer prior to taking office.
- (c) The right of an employee to take an unpaid leave of absence under Part 9.xx (a) shall be determined in respect of each term of office for which they are elected, provided that no employee shall be entitled to take an unpaid leave of absence for two consecutive terms of office.
- (a) 9.xx A Council member whose office is declared vacant under Part 9.xx:

  - i is personally liable to shíshálh for any monies that he or she received for serving as a member of Council from the time he or she assumed office to the time his or her office is declared vacant;
  - ii is personally liable to shíshálh for the costs of the By-election resulting from his or her office being declared vacant, to a maximum of ten thousand dollars (\$10,000); and
  - iii is disqualified from holding elected office for ten (10) years from the date his or her office is declared vacant.

### **9.23 Removal of Chief or Councillor**

- (a) A member of Council is disqualified from holding office if the person:
- i. is convicted of an indictable offence;
  - ii. dies or resigns his or her office;
  - iii. has been absent from meetings of the Council for three (3) consecutive meetings without being authorized to do so;
  - iv. is the subject of a recall petition supported by at least a majority of shishálh Voters, following processes defined by shishálh Law;
  - v. authorizes an expenditure, loan, borrowing, guarantee, indemnity or investment contrary to this Constitution;
  - vi. has been the subject of a judgment against him or her in civil proceedings for the recovery of debt by the Nation or any of its wholly-owned companies, trusts, societies or other related entities; or
  - vii. is deemed by an Arbitrator, after due process and on a balance of probabilities, to have engaged in a Corrupt Practice in the course of their election.
- (b) A member of Council may be disqualified from holding office if the rest of Council pass a unanimous resolution, after due process and considering in good faith whether a lesser form of discipline is warranted, deeming that the member has:
- i. breached their obligations under **Error! Reference source not found.** (conflict of interest); or
  - ii. breached their obligations under the Oath of Office.
- (c) A person who is disqualified from office is not eligible to seek election prior to the next general election.

#### **9.24 Vacancies**

- (a) The office of Chief or Councillor shall become vacant when the person who holds that office:
- i. dies;
  - ii. resigns from office;
  - iii. has been convicted of an indictable offence in Canada since their election and all appeals are completed, provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this Part;
  - iv. has his or her election declared invalid by the Arbitrator and no other person has been declared by the Arbitrator as duly elected, or

v has been removed from office by declaration of the Arbitrator.

(b) The office of Chief or Councillor shall become vacant if:

i the person has been unable to perform the functions of his or her office for more than six (6) months due to illness or other incapacity;

ii the person has missed three (3) Council Meetings, which may include a combination thereof, within a period of twelve (12) months, without just cause; or

iii the criminal record check conducted under Part 9.xx reveals that the person who holds that office has been convicted of an indictable offence in Canada within (10) years prior to their nomination, provided that conviction of an offence relating to the assertion or exercise of aboriginal rights or title shall be deemed not to be a conviction for the purposes of this Part.

(c) Whether just cause exists for a Council member missing a meeting shall be determined after each absence by a Majority vote of other Council members present at a Council meeting and the decision shall be recorded in the minutes of that meeting.

(d) The Council member whose absence from a meeting is being considered shall be deemed in conflict of interest and shall leave the room prior to any debate on the question, not be counted in determining whether there is a quorum, nor Participate in the vote determining whether the absence was with just cause.

(e) The Council member who missed a meeting shall be notified in writing by the Chief Administrative Officer whether his or her absence has been determined under Part 9.xx to be without just cause. The failure to notify a Council member shall not invalidate Council's decision on whether just cause for the absence exists.

(f) The Chief Administrative Officer shall determine whether an office of Chief or Councillor becomes vacant under Part 9.xx and shall give written notice to the Council member affected.

(g) The Council member whose office has been declared vacant under Part 9.xx, or in the case of illness or incapacity of the Council member, a Voter acting on his or her behalf, may appeal the Director of Operation's decision by filing a notice of appeal together with supporting documents and a non-refundable filing fee of seventy-five dollars (\$75) with the Arbitrator within fifteen (15) days of the date notice of the decision was sent.

(h) Where an appeal has been filed under Part 9.xx no By-election shall be called unless the Arbitrator's decision confirms the vacancy.

#### **DIVISION (1) – ELECTION OF BAND COUNCIL**

#### **DIVISION (2) – MEETINGS**

- |                                  |   |
|----------------------------------|---|
| Meeting of Band Council          | 1. An inaugural meeting of the Band Council shall be held each year in the afternoon of the first Monday after March 1. Thereafter the Band Council shall meet as it may decide or as provided in this Constitution.  |
| Place of Band Council Meetings   | 2. Meetings of the Band Council shall take place within the Sechelt Lands.  |
| Notice of special meeting        | 3. (1) A notice of the day, hour and place of a special meeting of the Band Council, being a meeting other than a statutory, regular or adjourned meetings, shall be given twenty-four (24) hours at least before the time of meeting by posting a copy of the notice at the regular Band Council meeting place and by leaving one copy for each member of the Band Council at the place to which he or she has directed notices to be sent. Notice may be waived by unanimous vote of all the members of the Band Council. Each copy of the notice shall be signed by the Chief.<br><br>(2) Two (2) or more members of the Band Council may, in writing, request the Chief to call a special meeting.<br><br>(3) Where the Chief, within twenty-four (24) hours after receiving the request, refuses or neglects to call the special meeting to be held within seven (7) days after he or she received the request, or where the Chief is absent, two (2) or more members of the Band Council may call a special meeting for any purpose they deem necessary and they shall sign the notice. |
| Attendance of public at meetings | 4. All regular meetings of the Band Council shall be open to the Band members and no eligible person shall be excluded, except for improper conduct. If in the opinion of the Band Council the public interest so requires, persons other than Councillors and officers, or persons other than Councillors, may be excluded from a special meetings.  |

Expulsion	5.	The Chief or other person presiding may expel and exclude from a meeting of the Band Council a person he or she considers guilty of improper conduct.
Quorum of Band Council	6.	A quorum of the Band Council shall be a majority of the members of the Band Council.
Majority decision	7.	All acts authorized or required by this Constitution to be done by the Band Council, and all other questions, including adjournment, that may come before the Band Council shall, except where otherwise provided, be done and decided by a majority of the members of the Band Council and a record thereof shall be kept for inspection by Band Members.
Chief to preside at meeting	8.	The Chief, if present, shall preside at meetings of the Band Council. Any member of the Band Council may preside in committee of the whole.
Conflict of interest	9.	A member of the Band Council shall disclose to the Band Council any financial interest that he or she has in any matter before the Band Council and shall not take part in deliberations of the Band Council on that matter or vote on that matter unless a majority of members present at the meeting agree to allow that member to participate in the discussion and vote on the matter.
Voting	10.	Where the votes of the members of the Band Council then present, including the vote of the Chief or other persons presiding, are equal for and against a question, the question shall be negative, and it shall be the duty of the member presiding to so declare. The same procedure applies in committee of the whole.
Points of order	11.	The Chief or the member presiding at a meeting of the Band Council shall preserve order and decide points of order which may arise, subject to an appeal to the other members of the Band Council then present.
Appeal	12.	(1) On an appeal by a Councillor from the decision of the Chief, the question shall be immediately put by him or her, and decided without debate, "Shall the Chair be sustained?" and the Chief shall be governed by the vote of the majority of the members then present, excluding himself or herself. In the event of the votes being equal, the question shall pass in the affirmative. The names of the members of the Band Council voting for or against the question shall be recorded in the minutes.

- (2) If the Chief refuses to put the question "Shall the Chair be sustained" the Band Council shall immediately appoint a member to preside temporarily. He or she shall proceed in accordance with sub-section (1). A resolution or motion carried under this subsection is as binding as if carried under subsection (1).

- Absence of Chief 13. Where the Chief or the acting Chief, if any, is absent from a meeting of the Band Council, the members then present shall choose a member to preside. That member has, for the purpose, all the powers and is subject to the same rules as the Chief.
- Meeting of the Band 14. The Band Council shall convene at least one meeting of the Band Members every four (4) months and thirty (30) days' notice of this meeting shall be posted in a conspicuous place at the offices of the Band. In the event that a meeting of the Band Members is not held when required by this section, any ten (10) Band members shall have the right to present to the Band Council a petition requesting that a meeting of the Band Members be convened forthwith and the Band Council shall give thirty (30) days notice of such meeting within five (5) days of receipt of the petition.
- Quorum at meetings of Band 15. At any properly convened meeting of the Band, a majority of Band Electors personally present shall be able to transact all business that comes before the meeting.
- Responsibility for Band meetings 16. The Band Council shall have responsibility for all matters concerning the conduct of meetings of the Band.
17. (1) In issues determined by the Band Council to be of great importance to the Band, the Band Council shall submit a question or questions for determination in a referendum.
- (2) Without limiting the generality of the foregoing, a referendum shall be held at which the question will be the settlement of the Band's Comprehensive land claim. At this referendum the question shall be approved by the affirmative vote of a majority of the Band Members who are eighteen years of age or older and who actually vote on this question.

### **DIVISION (3) – OFFICERS AND EMPLOYEES**

- Powers and duties of Chief 1. The Chief is the head and chief executive officer of the Band and shall perform any duties assigned to him or her by this Constitution or by the Band. He or she shall chair all meetings of the Band Council and the Band.

Acting Chief, temporary	2. The Band Council may appoint one of its members to be acting Chief. He or she has, during the absence, illness or other disability of the Chief, all the powers and is subject to the same rules as the Chief.
Acting Chief, on vacancy	3. Where the office of Chief become vacant, the Band Council shall appoint a member to be acting Chief, and he or she shall continue in office until another Chief is elected or appointed.
Officers and employees	4. The Band Council may provide by law for the officers and employees that may be deemed necessary to carry on the good government of the band and the provisions of this Constitution, and may prescribe their powers, duties and responsibilities, subject to this Constitution.
Terms of employment	5. The Band Council may, in the same or a separate law, or by a collective or other agreement, fix officers' and employees' remuneration and other benefits, hours of work and other conditions of employment, and the manner of appointment, promotion and dismissal.
Termination of employment	6. (1) Subject to a contract of employment, the engagement of an employee may be terminated, if engaged on <ul style="list-style-type: none"> <li data-bbox="428 1010 1031 1066">(a) a monthly or longer basis, on one month's notice in writing;</li> <li data-bbox="428 1094 917 1119">(b) a weekly basis, on one week's notice; or</li> <li data-bbox="428 1146 1096 1171">(c) a daily or hourly basis, on one day's or one hour's notice.</li> </ul> (2) An employee may be dismissed without notice for cause.
Sickness or other benefits	7. Without restricting the generality of section 5, the Band Council may by law provide the whole or part of the premium for: <ul style="list-style-type: none"> <li data-bbox="371 1346 1075 1402">(a) a contract for medical services provided on a group basis for employees or employees and their dependents;</li> <li data-bbox="371 1430 1068 1507">(b) a benefit, accident, sickness or life insurance policy insuring employees of the Band on a group insurance basis against accident, sickness or death;</li> <li data-bbox="371 1535 1096 1585">(c) an accident insurance policy insuring members of the Band Council, on a group insurance basis, against accident while on</li> </ul>



Official business for the Band.

- Bonding employees 8. Those employees designated by the Band Council shall be bonded, for the obligation, in the amount, and with the surety the Band Council directs. The premium, if any, shall be paid by the Band.

**DIVISION (4) – FINANCIAL CONTROLS**

- Establishment of bank accounts 1. The Band Council shall establish separate accounts in a chartered bank, trust company or credit union for:
- (a) Band Revenue money and Federal Transfer payments;
  - (b) Band Capital money.
- Signing Officers 2. (1) The Band Council shall authorize three (3) persons, two (2) of whom shall be members of the Band Council, to sign cheques and other bills of exchange or transfers drawn on the accounts.
- (2) All persons authorized as signing officers shall be bonded.
- No expenditure without authorization 3. (1) The Band Council shall only expend monies or commit itself, by contract or otherwise, to expend monies where such expenditure is authorized by this Constitution and under a Band law or Band Council resolution.
- (2) Any omission by the Band Council of the procedures provided for in subsection (1) shall not affect the validity of the contract, but a report of the circumstances of that omission shall be given to the Band Members at the next meeting of the Band.
- Budget committee 4. The Band Council may establish a Budget committee, two (2) members of which shall be members of the Band Council.
- Investment of surplus money 5. (1) Money surplus to current needs may be invested in short term interest bearing deposits and the interest so earned shall be considered Band Revenue money.
- (2) All expenditures must be in accordance with the budgets approved pursuant to Division (7) of this Part.
- (3) An expenditure not provided for in the annual budget of the Band is not lawful.

- Year end 6. The year end of the band shall be March 31.
- Financial Statements 7. Within three months after the end of each fiscal year, the Band council shall prepare a detailed statement of the financial position of the Band, prepared in conformity with generally accepted accounting principles, and copies thereof shall be made available at the band Office for inspection by Band Members.
- The treasurer 8. (1) The Band Council may appoint a treasurer, who, in addition to the duties and powers prescribed by the Band council, is responsible to the band
- (a) for keeping or supervising the keeping of all funds and securities of the Band;
  - (b) for receiving all money paid to the Band;
  - (c) for disbursing the Band funds in accordance with the procedures laid down by the law of the Band Council;
  - (d) for keeping or supervising the keeping of a full account of all money received, receivable, disbursed and expended by him or her or by another person for the Band;
  - (e) for keeping or supervising the keeping of a full account of all assets and liabilities, and of all transactions affecting the financial position of the Band;
  - (f) for preparing interim financial statements under any local government regulations; and
  - (g) for compiling and supplying information on financial affairs required by the Government of Canada or, if applicable, the Province of British Columbia.
- (2) The treasurer may inspect the records of and direct an officer of the Band or of an administrative body handling local government funds, in matters involving his or her responsibility.
- (3) It is a good defence to any action brought against the treasurer for unlawful expenditure of Band funds if it is proved that he or she, in writing, over his or her signature, warned the Band Council that in his or her opinion the expenditure would be unlawful.

- (4) If the Band Council does not appoint a treasurer as aforesaid, the Band Council shall be responsible for carrying out the duties listed in subsection (1) hereof.

#### **DIVISION (5) – PASSAGE OF LAWS**

- |                                   |    |   |
|-----------------------------------|----|---|
| Procedure law                     | 1. | (1) The Band Council shall by law regulate its meetings and their conduct.  |
|                                   |    | (2) A law relating to the procedure of the Band Council shall not be altered except by law passed at a regular meeting of the Band Council pursuant to a notice in writing given and openly announced at an earlier regular meeting.  |
|                                   |    | (3) A law relating to procedure may include provision for:  |
|                                   |    | (a) the manner and extent for a reading of a law; and   |
|                                   |    | (b) suspension of the rules of procedure to permit two or more readings at one meeting of the Band Council.   |
| Acts require law or resolution    | 2. | An act or proceeding of the Band Council is not valid unless it is authorized or adopted by Band law, where so required, or otherwise by resolution at a meeting of the Band Council.   |
| Laws: procedure law               | 3. | Subject to this Division, the Band Council shall by law provide for the procedure to be followed in passing laws including a procedure for challenging those laws. Every law passed by the Band Council shall be reconsidered not less than one day after third reading and before adoption.  |
| Approval or assent                | 4. | Where under this Constitution a law requires the assent of the Band Electors the assent shall be obtained after the law has been given third reading by the Band Council and before it is adopted.  |
| Return of law for reconsideration | 5. | (1) The Chief may, at any time within one month after its adoption, return for reconsideration a law, resolution or proceeding of the Band Council which has not had the assent of the Band Electors, has not been reconsidered by the Band Council under subsection (3) or has not been acted on by an officer, employee or agent of the Band. |
|                                   |    | (2) The Chief may state his or her objections to the Band Council. The secretary of the meeting shall record in the minute book the objections, suggestions or amendments of the Chief.   |

- (3) The Band Council shall, as soon as convenient, consider the objections, and either reaffirm or reject the law resolution or proceeding, and if rejected, it is deemed to be repealed and is of no force or effect whatever.
- (4) The rejected law, resolution or proceeding shall not be reintroduced to the Band Council for six (6) months, except with the unanimous consent of the Band Council.
- (5) The conditions which applied to the passage of the original law, resolution or proceeding apply to its rejection.

Law to be signed 6. Where a law is adopted by the Band Council, it shall be signed by the Chief or other member presiding at the meeting when it was adopted.

Resubmitting rejected laws 7. If a law which requires the assent of the Band Electors does not receive their assent, no other law for the same purpose shall be submitted to the Band Electors within a period of six (6) months from the last submission.

Effective date of law 8. A law adopted by the Band Council is in force from the date of the adoption or from a subsequent date fixed by the law.

Register of Band laws 9. The Band Council shall keep at the Band Office a register of all Band laws, which register shall be available for inspection during normal business hours.

Disqualified member present 10. A law, resolution or other proceeding of the Band Council shall not be set aside or declared invalid by reason only that a person sitting or voting as a member of the Band Council is not qualified for office, was not qualified at the time of his election or subsequent to his or her election ceased to be qualified or became disqualified.

Effect of invalid election on status 11. Where the election of the Band Council has been set aside or declared invalid, the election of a Councillor has been set aside, the office of a Councillor has been disclaimed, or a Councillor has been declared disqualified from holding office, a law, contract or other proceeding adopted, made or taken by the Band Council prior to the order, disclaimer or declaration shall not, if otherwise within the jurisdiction and powers of the Band Council, be invalidated or attacked by reason only of the order, disclaimer or declaration.

## **DIVISION (6) – FEDERAL TRANSFER PAYMENTS**

- |  |    |   |
|--|----|---|
| Federal Transfer payments – operations and maintenance | 1. | Pursuant to section 33 of the Act, the Band shall negotiate and enter into agreements with the Minister to transfer funds for operations and maintenance by way of grants over such period of time and subject to such terms and conditions as are specified in the agreements, and the elements of such agreements should embody the principles of cost-sharing, volume and price. |
| Federal Transfer payments capital                      | 2. | Pursuant to section 33 of the Act, the Band shall negotiate and enter into agreements with the Minister to transfer capital moneys by way of grant over such period of time and subject to such terms and conditions as are specified in the agreements and the elements of such agreements should embody the principles of cost-sharing, volume and price.                         |

## **DIVISION (7) – BUDGETS**

- |                                      |    |   |
|--------------------------------------|----|---|
| Band budgets                         | 1. | Prior to February 28, the Budget Committee shall present to the Band Council the Band budget for the ensuring fiscal year.  |
| Budget for Band Revenue              | 2. | The Band Revenue budget shall show sources of Band Revenue money as indicated in Division (5) of Part I and expenditures in detail as indicated in section 6 hereof.  |
| Budget for Band Capital              | 3. | The Band Capital budget shall show sources of Band Capital money as indicated in Division (5) of Part I and expenditures in detail as indicated in section 7 hereof.  |
| Budget for Federal Transfer payments | 4. | (1) The budget for Federal Transfer payments, determined under Division (6) section 1 of this Part and the expenditures in detail as indicated in section 8 hereof.<br><br>(2) The budget for Federal Transfer payments, capital, shall show the amount determined under Division (6) section 2 of this Part and expenditures in detail as indicated in section 9 hereof. |
| Approval of Band budgets             | 5. | (1) Upon approval by the Band Council, the budget shall be placed before the Band Electors for review and amendment at a special general meeting, such meeting to be held no later than the last day of February.   |

- (2) Subsequent to the special general meeting provided for in subsection (1) but no later than March 15, the Band Council shall ratify the budget for the ensuing year.
- (3) Changes to the budget must be presented to the Band Electors at a special general meeting for review and amendment and subsequent to that meeting the Band Council shall ratify the amended budget.

Band Revenue -  
expenditures

- 6. (1) Band Revenue money expenditures include but are not limited to:
  - (a) administration of Band programs;
  - (b) contributions to the Sechelt Indian Band Housing Program;
  - (c) community services including food, fish, emergency assistance, burials and recreation grants;
  - (d) jointly funded programs;
  - (e) supplements to Band programs;
  - (f) loans or grants to Band Members for the purposes of housing or economic development;
  - (g) economic development;
  - (h) Band planning;
  - (i) charitable donations;
  - (j) provision for asset replacement; and
  - (k) for any other purpose that in the opinion of the Band Council is for the benefit of the Band.
- (2) In addition to the uses itemized in subsection (1), a provision for contingencies in an amount not exceeding five percent (5%) of the estimated annual Band Revenue may be provided for in the annual budget.

Band Capital  
expenditures

- 7. Band Capital money expenditures include but are not limited to:
  - (a) construction or improvement of roads, bridges and water courses on Sechelt Lands;

- (b) construction or improvement of outer boundary fences on Sechelt Lands;
- (c) purchase of land for use by the Band as new Band lands or as an addition to Sechelt Lands;
- (d) purchase for the Band of the interest of a member of the Band in the Sechelt Lands;
- (e) purchase of vehicles, machinery, and other equipment for the Band;
- (f) construction on or in connection with the Sechelt Lands of such improvements or work as in considers will be of permanent value to the Band or will constitute a capital investment;
- (g) loans to Band Members on terms deemed suitable by the Band Council for the purpose of promoting the livelihood of the Band; and
- (h) for any other purpose that in the opinion of the Band Council is for the benefit of the Band is deemed in its nature to be a capital expenditure.

Federal Transfer payments, operations and maintenance expenditures

- 8. (1) Expenditures of money transferred pursuant to section 1 of Division (6) of this Part include but are not limited to:
  - (a) administration of Band programs;
  - (b) operation of Band-owned schools and education support services;
  - (c) contractual payments to the local school board in accordance with the terms and conditions of the Federal/Provincial Master Tuition Agreement;
  - (d) payments as necessary for provision of local government services;
  - (e) shelter and special needs payments to eligible Band Members;
  - (f) job creation;
  - (g) joint-funded programs;
  - (h) payments of health premiums t the Provincial Government;

- (i) Band planning;
- (j) economic development;
- (k) Sechelt Lands and Estates; and
- (l) for any other purpose that in the opinion of the Band Council is for the benefit of the Band.

(2) Payments required under subsections (1)(b), (c), (e) and (h) are to be considered a mandatory budget requirement and cannot be circumvented or eliminated by procedures set out in section 5 hereof.

(3) Expenditures which are capital in nature cannot be made from this money.

Federal Transfer payments, capital expenditures

9. (1) Expenditures of money transferred pursuant to section 2 of Division (6) of this Part include but are not limited to:
- (a) transfers to the Sechelt Indian Band Housing Program;
  - (b) construction or improvement of roads, bridges and water courses on Sechelt Lands;
  - (c) construction or improvement of outer boundary fences on Sechelt Lands;
  - (d) purchase of land for use by the Band as new Sechelt Lands or as an addition to Sechelt Lands;
  - (e) purchase for the Band of the interest of a Band Member in Sechelt Lands;
  - (f) purchase of vehicles, machinery and other equipment for the Band;
  - (g) construction on or in connection with Sechelt Lands of such improvements or works as it considers will be of permanent value to the Band or will constitute a capital investment;
  - (h) payment to local school district for negotiated share of capital construction;
  - (i) transfers to special reserves for future capital projects; and



(j) for any other purpose that in the opinion of the Band Council is for the benefit of the Band and is deemed in its nature to be a capital expenditure.

(2) Transfers pursuant to subsection 1(a) are to be considered a mandatory budget requirement and cannot be circumvented or eliminated by the procedures set out in section 5 hereof.

Federal Transfer payments – mandatory programs

10. With respect to section 8 and 9 hereof, the Band shall make expenditures only as may be permitted by, and subject to the terms and conditions of, agreements which may be entered into with Her Majesty the Queen in right of Canada for the provision of federal transfer payments.

#### **DIVISION (8) – BORROWING**

Band may obtain loans

1. (1) The Band may obtain loans individually not exceeding two million five hundred thousand (2,500,000) dollars nor collectively at any time exceeding ten (10) million dollars.
- (2) The loans shall be for either local municipal works including but not limited to roads, sewers, water systems and community buildings or economic development projects.
- (3) The loans shall be number consecutively.
- (4) Loans shall be amortized over a period of less than three (3) years or greater than thirty (30) years with respect to municipal works loans and no greater than twenty (20) years in respect to economic development loans. Notwithstanding the provisions of this subsection, the band may obtain short term demand loans as may be approved at a meeting of Band Members.
- (5) Interest payable annually on municipal works loans shall be equivalent to the prevailing rates for loans for such purposes but, if financed internally, shall be repaid at rates set by the Band Council.

Loan authorization law

2. (1) Upon completion of all necessary technical studies, including alternatives considered and design criteria relating to the proposed project, the Band Council shall adopt a loan authorization law for the specific project subject to the assent of the Band Electors.
- (2) The law shall provide for the following:

- (a) the amount of debt;
- (b) the amount of unused credit prior to paragraph (a);
- (c) the term of the debt and the interest rate applicable;
- (d) the purpose of the proposed work;
- (e) the time schedule of the project;
- (f) the source or sources of repayment
- (g) assurances that the works meet all legislation and construction codes required by each body of competent jurisdiction; and
- (h) authorization for creation of a sinking fund into which all related funds are deposited.

Investment of funds 3. Money in a sinking fund which cannot immediately be applied against the debt because no part of the debt or obligation is yet payable, may be invested or reinvested by the Band Council in:

- (a) securities of Canada or a province;
- (b) securities guaranteed for interest and principal by Canada or a province;
- (c) investments guaranteed by a chartered bank; and
- (d) deposits in or evidence of debt of a credit union or a trust company.

Sources of funds for debt retirement 4. Sources of debt retirement funds include but are not limited to

- (a) special levy on the Band electors;
- (b) transfer allocations from Federal Government;
- (c) transfers from Band Revenue money;
- (d) transfers from Band Capital money;
- (e) payments from the profits or net cash flow of an economic development project; and
- (f) a combination of the foregoing.

Comprehensive  
loan authorization  
law

5. (1) Instead of a loan authorization law for one purpose, the Band Council may adopt a comprehensive loan authorization law to borrow money to carry out works and services during a period, not exceeding ten (10) years, determined by the Band Council.
- (2) The total amount proposed to be borrowed under the law must have the assent of the Band Electors to a question setting out the dates of commencement and termination of the period, the total amount proposed to be borrowed under the law and the works and services determined by the Band Council.
- (3) the question may be in the following or similar form:
- Do you assent to the Band Council having the power, during a (number of years in period) year period commencing on \_\_\_\_\_ (month, day, 19\_\_\_, to adopt laws for borrowing, from time to time, of money not to exceed a total of (number of dollars proposed to be borrowed) dollars to carry out the following projects: (List the works and services and the money to be allocated for each.)?
- (4) The total money authorized to be borrowed by law shall not exceed the amount in the question.
- (5) The Band Council may, by law adopted by 2/3 of the members and with the assent of the Band Electors, vary the works services and allocations.

Handling of  
loan proceeds

6. (1) Money drawn under each loan authorization law shall be deposited to an account in a savings institution and money not immediately required may be invested as detailed in section 3 hereof.
- (2) Interest earned under subsection (1) shall be considered money relating to the loan.
- (3) Any surplus remaining after completion of the project may be
- (a) transferred to the sinking fund authorized in the law; or
- (b) applied against the loan firstly in payment of any interest accrued since the date of the loan advance and then to reduce the principal amount of the debt.

Separate accounting

7. Separate accounting shall be made of all activities relating to each loan and its related sinking fund.

Use of loan for other purposes

8. Use of the loan or the sinking fund related to the loan for any purposes other than authorized by the law by any member of Band Council or its employees or agents shall cause that individual or individuals to be personally liable for the amount.
9. The Band Council may obtain loans as necessary for working capital for operational purposes provided that such loans are fully repaid within twelve (12) months.

**DIVISION (9) – COMPREHENSIVE CLAIM SETTLEMENT**

1. (1) The monetary component of any settlement of the Band's comprehensive land claim shall be deposited in a fund to be called the Sechelt Prosperity Fund.  
  
(2) Sechelt Prosperity Fund investment shall be restricted to government guaranteed securities and Schedule "A" chartered bank acceptances.
2. The annual interest earned on the Sechelt Prosperity Fund shall be allocated on each anniversary of the establishment of the Sechelt Prosperity Fund as follows:
  - (1) 30% shall be reinvested in the Sechelt Prosperity Fund;
  - (2) 40% shall be deposited to a fund to be called the Sechelt Dividend Fund;
  - (3) 20% shall be deposited to a fund to be called the Sechelt Economic Development Fund;
  - (4) 10% shall be deposited to the Band Revenue account.
3. (1) On each anniversary date of the establishment of the Sechelt Property Fund, the entire amount of the Sechelt Dividend Fund shall be distributed per capita to the Band Member.  
  
(2) A Band Member shall be entitled to the dividend described in subsection (1) if his or her name appears on the Sechelt Band List sixty (60) days prior to the distribution date.  
  
(3) Dividends payable to Band Members who are minors shall be deposited in a separate trust account and invested only in government guaranteed securities. The dividend credited to a minor, together with accrued interest, shall be disbursed to the minor on his or her 18<sup>th</sup> birthday.

4. (1) Annual expenditures from the Sechelt Economic Development Fund shall be limited to 50% of the balance of the Fund.
- (2) The Band Council may authorize expenditures from the Sechelt Economic Development Fund for the following purposes:
  - (a) investment in share capital of private and public companies;
  - (b) investment in conventional secured mortgage loans;
  - (c) secured business loans;
  - (d) investment in joint ventures;
  - (e) for any other activity deemed by the Band Council to be economically beneficial to the Band or Band Members.
5. Proceeds from the resources sharing component of any comprehensive claim settlement shall be deposited to the Band Capital account and expended in accordance with section 4 hereof.

#### **DIVISION (10) – AUDITOR**

Auditor

1. (1) The band Council shall appoint an auditor to audit the accounts and transactions of the Band and of every administrative body, trust or corporation handling Band money, or Federal Transfer payments, for which no statutory audit provision is made.
- (2) The auditor shall be a member, or a partnership whose partners are members in good standing of the Canadian Institute of Chartered Accountants, or the Certified General Accountants Association of British Columbia.
- (3) The band Council shall notify, in writing, the auditor and the Governor in Council promptly of each appointment and termination of an auditor.
- (4) Where, in the opinion of the Governor in Council, an auditor has discharged his or her duties in a negligent manner, he or she may require the Band Council to dispense with the auditor's services and to appoint another auditor.

- (5) Termination is not effective until a successor is appointed.
- Auditor may appeal termination 2. (1) Where the engagement of an auditor is terminated, the auditor within one month of notification may appeal in writing from the Band Council's decision to the Governor in Council who may confirm or set aside the termination. The auditor shall file a copy of his or her notice of appeal with the Band Council.
- (2) The Band Council shall not appoint another auditor until the time allowed for an appeal by the auditor has elapsed or, if an appeal has been made, until the appeal has been dealt with.
- Failure to appoint an auditor 3. Where the Band Council fails or neglects to appoint an auditor, the Governor in Council may, on one month's notice to the Band Council of his or his intention to do so, appoint an auditor. The Governor in Council may fix the remuneration to be paid to the appointee by the Band and may limit the duration of the appointment.
- Duties of auditor 4. (1) The auditor shall make an examination that enables him or her to report to the Band Electors under this section.
- (2) The auditor has a right of access in all times to every record, instrument, account and any other component of the financial reporting system of the Band or of any other administrative body handling Band affairs or money.
- (3) The auditor is entitled to require from members of the Band Council or any other administrative body, from officials and employees of the Band, or any other administrative body, any information or explanation necessary to perform his or her duties. Every Band Council member, official or employee and every member or servant of any other administrative body handling Band Revenue or Band Capital money or Federal Transfer payments shall make available all necessary records referred to in subsection (2) necessary for an audit or required by the auditor, and shall give him or her every reasonable facility and furnish full information and explanations about the affairs of the Band or administrative body necessary for the performance of his or her duty.
- (4) The auditor shall submit a report to the Band Council on the annual financial statements for the Band, and any other administrative body. The Band Council shall provide a copy of this report to the Governor in Council or the Minister as the case may be.

- (5) He or she shall state in his or her report whether his or her examination included a general review of accounting procedures and test of accounting records and other supporting evidence he or she considered necessary under the circumstances and whether in his or her opinion the financial statements present fairly the financial position of the Band, and other administrative bodies at the end of their respective fiscal years, and the results of their operations for the year then ended, in accordance with generally accepted accounting principles applied on a basis consistent with that of the previous year. He or she shall separately report each disbursement, expenditure or other transaction lacking proper authority under this Constitution. He or she shall further state that his or her review was made in accordance with generally accepted auditing standards.
- (6) The annual financial statements shall be presented in form and content usual to the accountability requirements of the Band with regards to Band Revenue and Capital money and the accountability requirements of the Federal Government with regards to the Federal Transfer payments for operation and maintenance money and capital money.
- (7) The annual financial report is to be completed by the 30th day of June each year for the preceding fiscal year.

## PART III – LAWS

### DIVISION (1)

Note: The powers in sections labelled with an \* have been transferred to the Sechelt Indian Government District by Order-in-Council P.C. 1987-2125.

Access to and residence on Sechelt Lands

1. The Band Council shall have the right to make laws in relation to access to, and residence on, Sechelt Lands, subject to:
  - (a) the following persons having the right to reside on Sechelt Lands:
    - (1) lessees;
    - (2) permittees;
    - (3) Band Members, subject to the availability of housing within the Band subdivisions, and subject to the allocation of a residential lot pursuant to Part I Division 2, section 2 of this Constitution
    - (4) lawfully married husbands or wives of persons referred to in subsection (a)(3).

All other persons may only reside on Sechelt Lands pursuant to a law of the Band Council; and
  - (b) the following persons having the right of access to Sechelt Lands:
    - (1) lessees and his or her invitees;
    - (2) permittees and those granted a right of access under the permit;
    - (3) Band members;
    - (4) lawfully married husbands or wives of persons referred to in subsection (b)(3);
    - (5) a person who is authorized by a government body or any other public body established by or under an Act of Parliament, an Act of the Legislature of British Columbia or a law of the Band Council to perform a public function, establish, operate or administer a public service, construct or operate a public installation or conduct a technical survey thereon;



- (6) a member of the public seeking access to the public facilities and installations situated on Sechelt Lands; and
- (7) a person authorized in writing by, or pursuant to a law of, the Band Council.

Zoning and land use planning in respect of Sechelt Land \*2.

The Band Council shall have the right to make laws in relation to zoning and land use planning in respect of Sechelt Lands subject to:

- (a) the Band Council adopting such provisions of the municipal Act of British Columbia as it may require for the purposes of zoning and land use planning in respect of Sechelt Lands. Without limiting the generality of the foregoing, the Band Council, by law, may provide for a separate community plan in respect of those areas of the Sechelt Lands occupied only by Band members; and
- (b) such provisions and laws including and containing standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time. Without limiting the generality of the foregoing, such provisions and laws shall include:
  - (1) procedures for the adoption and amendment of zoning laws and development laws, including the holding of public hearings on the establishment, amendment or repeal of such laws or plans; and
  - (2) the procedures for the issuance of building and development permits, including the right of appeal to an independent board as appointed by the Band Council.

Expropriation, for community purposes, of interests in Sechelt Lands by the Band 3.

The Band Council shall have the right to make laws in relation to expropriation, for community purposes, of interests in Sechelt Lands by the Band, subject to the following:

- (a) where laws made under section 4 are in force, the Band may, subject to and in accordance with those laws, for community purposes expropriate any right or interest in its land or in any building situated thereon, except for a right or interest of her Majesty the Queen in right of Canada or British Columbia;
- (b) the right of the Band to expropriate pursuant to this Division does not restrict any right that the Band has to acquire by mutual agreement, rights or interests in land or buildings;

- (c) the Band shall, subject to and in accordance with Laws made under section 4, pay compensation to holders of rights or interests expropriated pursuant to this Division;
- (d) the Band Council shall make fair and reasonable laws respecting substantive or procedural aspects of expropriations permitted by this Park, which shall include, without limiting the generality of the foregoing, laws respecting:
  - (1) procedures governing expropriation, including the taking of possession, compulsory taking of possession and transfer of title;
  - (2) entitlement to compensation, determination of the amount of compensation and the method of payment of compensation;
  - (3) contesting or disputing
    - (i) the right of the Band to expropriate and
    - (ii) the amount of compensation awarded to the Expropriated party; and
  - (4) rights of appeal to an independent board as appointed by the Band Council; and
- (e) such laws shall include and contain standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time.

Use, construction  
maintenance, repair  
and demolition of  
buildings and  
structures on Sechelt  
Lands

- \*4. The Band Council shall have the right to make laws in relation to use, construction, maintenance, repair and demolition of buildings and structures on Sechelt Lands, subject to:
- (a) the Band Council adopting such provisions of the Municipal Act of British Columbia as it may require for the purpose of making laws concerning the use, construction, maintenance, repair and demolition of buildings and structures on Sechelt Lands; and
  - (b) such provision and laws including and containing standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time. Without limiting the generality of the foregoing, the Band Council shall adopt the National or Provincial Codes with respect to building, electrical energy, gas, fire services and other matters related to the exercise of its authority set out herein.

- Taxation for local purposes, of interest in Sechelt Lands, and of occupants and tenants of Sechelt Lands, including assessment, collection and enforcement procedures and appeals relating thereto
- \*5. The Band Council, in the exercise of its taxation powers, shall have the right to make laws providing for taxation, for local purposes, of interests in Sechelt Lands, and of occupants and tenants of Sechelt Lands i respect of their interest in those lands, including assessment, collection and enforcement procedures and appeals relating thereto, subject to:
- (a) the Band Council adopting such provisions of the laws of British Columbia, as it may require, in respect of such taxation;
  - (b) such provisions and laws including and containing standards and rights at least equivalent to those prevailing from time to time in the Province of British Columbia. Without limiting the generality of the foregoing, such provisions and laws shall include procedures for the assessment and collection of taxes, the enforcement of laws, and appeals relating thereto;
  - (c) there being no law concerning the taxation of tenants on Sechelt Lands unless the Province of British Columbia has either withdrawn from such taxation or has suspended its right to tax those tenants; and
  - (d) the restriction that no law so made by the Band Council shall have the effect or purpose of imposing an income tax on those who reside on, are occupants of, or tenants on, Sechelt Lands.
- Administration and management of property belonging to the Band
6. The Band Council, in exercise of its administration and management powers, shall have the right to make fair and reasonable laws with respect to the control and management of property belonging to the Band.
- Preservation and management of natural resources on Sechelt Lands
7. The Band Council shall have the right to make laws providing for the preservation and management of natural resources on Sechelt Lands, subject to:
- (a) such laws containing and including standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time. Without limiting the generality of the foregoing, such law shall include:
    - (1) procedures for the operation of resource development by application to, and permit by the Band Council, including the holding of public hearings related thereto; and
    - (2) procedures for the appointment of a Band inspector for resource development; and

- (b) the Band authority as set out in Division 3 of Part I of this Constitution.

Preservation, protection and management of fur-bearing animals, fish and game on Sechelt Lands

- 8. The Band Council, by law, may provide for the Band to enter into contracts or other mutually acceptable arrangements for joint management with other jurisdictions in respect of the preservation, protection and management of fur-bearing animals, fish and game on Sechelt Lands.

Public order and safety on Sechelt Lands

- \*9. the Band Council shall have the right to make fair and reasonable laws for the protection of public order and safety on Sechelt Lands, including those for the control of noise, animals, waste disposal and places of amusement. Such provisions and laws, particularly with respect to waste disposal, shall include and contain standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time.

Construction, maintenance and management of roads and the regulation of traffic on Sechelt Lands

- \*10. The Band Council shall have the right to make laws in relation to construction, maintenance and management of roads and the regulation of traffic on Sechelt Lands, subject to:
  - (a) the Band Council adopting such provisions of the laws of the Province of British Columbia and regulations ancillary thereto as it may require in respect of the construction, maintenance and management of roads and the regulation of traffic on Sechelt Lands; and
  - (b) such provisions and laws including and containing standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time.

Operation of businesses, professions and trades on Sechelt Lands

- \*11. The Band Council shall have the right to make laws in relation to the operation of businesses, professions and trades on Sechelt Lands, subject to:
  - (a) the Band Council adopting such provisions of the Municipal Act of British Columbia as it may require in respect of the operation of businesses, professions and trades on Sechelt Lands; and
  - (b) such provisions and laws including and containing standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time. Without limiting the generality of the foregoing, such provisions and laws shall include:

- (1) procedures for the licencing of businesses, imposition of licence fees, and collection of licence fees; and
- (2) classification of business according to business type.

Prohibition of the sale, barter, supply manufacture or possession of intoxicants on Sechelt Lands and any exceptions to a prohibition of possession

12. The Band Council shall have the right to make laws prohibiting the sale, barter, supply manufacture or possession of intoxicants on Sechelt Lands. A law may not be made under this section unless it is first assented to by a majority of the Band Electors who voted at a special meeting of the Band called for the purpose of considering the law.

Imposition on summary conviction of fines or imprisonment for the contravention of any law made by the Band Government

\*13. The Band Council shall have the right to make laws in relation to the imposition on summary conviction of fines or imprisonment for the contravention of any law made by the Band Council, subject to:

the law of the Band Council specifying a maximum fine or a maximum term of imprisonment, or both, the maximum fine not exceeding \$2,000.00 and the maximum term of imprisonment.

\* NOTE: Power is transferred only in relation to laws made pursuant to sections 2, 4, 5, 9, 10, 11 and 18 of this Division.

Devolution, by testate or intestate succession, of real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands

14. The Band Council shall have the right to make laws in relation to devolution, by testate or intestate succession, or real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands subject to:

- (a) The Band Council adopting such laws of the Province of British Columbia as it may require, concerning the devolution, by testate or intestate succession, or real property of Band Members on Sechelt Lands and personal property of Band Members ordinarily resident on Sechelt Lands;
- (b) no such law coming into effect until the first day of April, 1988;
- (c) any such law providing that, in the event of intestacy, the administrator of the estate shall be appointed by the Band Council; and

- (d) such laws including and containing standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time. Without limiting the generality of the foregoing, such laws shall include:
- (1) procedures for the granting of administration and amendments required thereto;
  - (2) designation of powers, responsibilities, obligations and liabilities of administrators and requirement for security related thereto;
  - (3) provisions relating to the devolution of estates;
  - (4) procedures for the appointment of an administrator by the Band Council;
  - (5) provisions with respect to insolvent estates; and
  - (6) provisions with respect to rules of law, legal procedures, evidence and appeals with respect to the administration of estates.

Financial administration of the Band

15. The Band Council shall have the right to make fair and reasonable laws with respect to the financial administration of the band for the purpose of implementing the Band's authority as set out in Division 4, Division 6 and Division 7 of Part II of the Band Constitution.

Conduct of Band elections and referenda

16. The Band Council shall have the right to make fair and reasonable laws with respect to the conduct of Band elections and referenda for the purpose of implementing the Band's authority as set out in Division 4 of Part I and Division 1 of Part II of the Band Constitution.

Creation of administrative bodies and agencies to assist in the administration of the affairs of the Band

17. The Band Council shall have the right to make laws to create administrative bodies and agencies to assist in the administration of the affairs of the Band for the purpose of implementing the Band's authority as set out in the Band Constitution.

Matters related to the good government of the Band, its members or Sechelt Lands

- \*18. The Band Council shall have the right to make fair and reasonable laws with respect to matters related to the good government of the Band, its members or Sechelt Lands for the purpose of implementing the Band's authority as set out in the Band Constitution.

\* NOTE: Power transferred only in relation to good government of Sechelt Lands.

19. The Band Council shall have the right to make laws in relation to health services on Sechelt Lands. Such laws shall include and contain standards and rights at least equivalent to those prevailing in the Province of British Columbia from time to time.