

# **Muskowekwan First Nation**

## ***Custom Election Act***

March 2016

**Table of Contents**

<b>PART I.....</b>	<b>6</b>
<b>Short Title, Interpretations and Application .....</b>	<b>6</b>
SHORT TITLE .....	6
INTERPRETATIONS .....	6
APPLICATION .....	8
<b>PART II.....</b>	<b>8</b>
CODE OF ETHICS .....	8
<b>Election Officials.....</b>	<b>8</b>
APPOINTMENTS .....	8
DUTIES AND POWERS OF THE ELECTORAL OFFICERS.....	9
POLLING CLERKS.....	11
SCRUTINEERS.....	12
<b>PART III.....</b>	<b>12</b>
<b>Holding of Elections .....</b>	<b>12</b>
GENERAL ELECTIONS .....	12
BY-ELECTIONS.....	12
NOTIFICATION OF ELECTION .....	13
<b>PART IV .....</b>	<b>13</b>
<b>Candidates .....</b>	<b>13</b>
ELIGIBILITY FOR OFFICE .....	14
DECLARATION OF INTENT .....	14
ELECTION BOND .....	14
WITHDRAWAL OF A DECLARATION OF INTENT.....	15
<b>PART V.....</b>	<b>15</b>
<b>Voter Eligibility.....</b>	<b>15</b>
ELIGIBILITY OF VOTING MEMBERS .....	15
CONFIRMATION OF VOTERS' LIST .....	15
<b>PART VI .....</b>	<b>15</b>
<b>Nominations.....</b>	<b>15</b>
NOMINATION DAY.....	16
NOMINATION PROCEDURES.....	16
<b>PART VII.....</b>	<b>17</b>
<b>Election Day Procedures .....</b>	<b>17</b>
POLLS OPEN.....	17
POLLING STATION(S) .....	17
VOTING .....	18
COUNTING OF BALLOTS .....	20
<b>PART VIII .....</b>	<b>21</b>
<b>Election of Candidates .....</b>	<b>21</b>
DECLARING WINNING CANDIDATES .....	21
OATH OF OFFICE .....	22
COMMENCEMENT OF OFFICE .....	22
TERM OF OFFICE .....	22

BAND COUNCIL PROCEDURAL REGULATIONS.....	22
<b>PART IX .....</b>	<b>22</b>
<b>Appeals .....</b>	<b>22</b>
RIGHT TO APPEAL .....	22
APPEAL TRIBUNAL .....	23
APPEAL HEARING .....	24
DECISION OF THE APPEAL TRIBUNAL .....	25
<b>PART X.....</b>	<b>25</b>
<b>Vacancies in Office.....</b>	<b>25</b>
<b>PART XI .....</b>	<b>26</b>
<b>Review and Amendments .....</b>	<b>26</b>
<b>PART XII.....</b>	<b>27</b>
<b>Coming Into Force .....</b>	<b>27</b>
<b>PART XIII .....</b>	<b>28</b>
<b>History .....</b>	<b>28</b>
<b>APPENDIX A: .....</b>	<b>29</b>
<b>Muskowekwan First Nation .....</b>	<b>29</b>
<b>Election Official Oath of Office .....</b>	<b>29</b>
<b>APPENDIX B:.....</b>	<b>31</b>
<b>Muskowekwan First Nation .....</b>	<b>31</b>
<b>Declaration of Intent .....</b>	<b>31</b>
<b>APPENDIX C: .....</b>	<b>33</b>
<b>Voter Declaration Accompanying Mail-In Ballot .....</b>	<b>33</b>
<b>APPENDIX D.....</b>	<b>35</b>
<b>Declaration Form to Nominate Candidates .....</b>	<b>35</b>
<b>APPENDIX E:.....</b>	<b>37</b>
<b>Oath of Office for Chief and Oath of Office for Council.....</b>	<b>37</b>
<b>APPENDIX F:.....</b>	<b>40</b>
<b><i>Muskowekwan First Nation Executive Accountability Act</i> .....</b>	<b>40</b>
<b>PART I.....</b>	<b>43</b>
<b>Short Title, Interpretations and Application.....</b>	<b>43</b>
<b>SHORT TITLE .....</b>	<b>43</b>
<b>INTERPRETATIONS .....</b>	<b>43</b>
<b>APPLICATION .....</b>	<b>43</b>
<b>PART II.....</b>	<b>44</b>
<b>Composition and Term of Office .....</b>	<b>44</b>
<b>PART III .....</b>	<b>44</b>
<b>Code of Ethics .....</b>	<b>44</b>
<b>CODE OF ETHICS .....</b>	<b>44</b>

<b>PART IV .....</b>	<b>45</b>
<b>Chief and Council’s Power, Authority and Responsibilities .....</b>	<b>45</b>
<b>POWERS, DUTIES AND RESPONSIBILITIES .....</b>	<b>45</b>
<b>PART V .....</b>	<b>47</b>
<b>Vacancies.....</b>	<b>47</b>
<b>VACANCY OF OFFICE.....</b>	<b>47</b>
<b>RESIGNATION.....</b>	<b>49</b>
<b>PART VI .....</b>	<b>50</b>
<b>Election .....</b>	<b>50</b>
<b>ELECTION.....</b>	<b>50</b>
<b>RE-ELECTION .....</b>	<b>50</b>
<b>PART VII.....</b>	<b>51</b>
<b>Discipline.....</b>	<b>51</b>
<b>DISCIPLINARY ACTION .....</b>	<b>52</b>
<b>VERBAL REPRIMAND .....</b>	<b>53</b>
<b>WRITTEN REPRIMAND.....</b>	<b>53</b>
<b>SUSPENSION .....</b>	<b>54</b>
<b>PART VIII .....</b>	<b>55</b>
<b>Remuneration.....</b>	<b>55</b>
<b>REMUNERATION .....</b>	<b>55</b>
<b>PART IX .....</b>	<b>56</b>
<b>Exemption from Employment .....</b>	<b>56</b>
<b>PART X.....</b>	<b>57</b>
<b>General.....</b>	<b>57</b>
<b>REGULATIONS .....</b>	<b>57</b>
<b>INTERPRETATION IN THE EVENT OF A DISPUTE .....</b>	<b>57</b>
<b>AMENDMENTS .....</b>	<b>57</b>
<b>COMING INTO FORCE .....</b>	<b>58</b>
<b>PART XI .....</b>	<b>58</b>
<b>History .....</b>	<b>58</b>
<b>APPENDIX G.....</b>	<b>59</b>
<b>Muskowekwan First Nation Election Instructions.....</b>	<b>59</b>
<b>APPENDIX H: .....</b>	<b>61</b>
<b>Virtual Voting.....</b>	<b>61</b>



# PART I

## Short Title, Interpretations and Application

### SHORT TITLE

1. This Act may be cited as the *Muskowekwan Custom Election Act, 2016* (the “Act”).

### INTERPRETATIONS

2. In this *Act*:

- (a) “Appeal Tribunal” means the Appeal Tribunal established pursuant to sections 99-104 of this *Act*;
- (b) “Amendment” means any addition, deletion, or alteration resulting from the amendment procedure identified in sections 120-124 of this *Act*;
- (c) “Assembly” means the assembly of all Electors/Voters for the purposes of a defined procedure under this *Act* ;
- (d) “Business Days” means Monday to Friday inclusive but excluding holidays;
- (e) “By-Election” means an Election other than a General Election;
- (f) “Candidate” means a person eligible to seek Election to a Muskowekwan Chief and/or Council position;
- (g) “Calendar Days” means all days on the calendar including weekends;
- (h) “Chief” means the Chief of Muskowekwan First Nation;
- (i) “Corrupt Practice” means an action that would provide an unfair advantage to a candidate such as exchanging goods, money, or a promise of future benefit for votes;
- (j) “Council” means the Council of Muskowekwan First Nation and shall consist of the Chief and eight (8) Councillors elected under this *Act*;
- (k) “Election” means a General Election or By-Election held under this *Act*;
- (l) “Election Day” means the day on which a vote at Election is held;
- (m) “Elector” or “Voter” means any registered Member of the Muskowekwan First Nation having attained the age of eighteen (18) years prior to, or on, the date of the “Election” regardless of residency;

- (n) “Chief Electoral Officer” means a person appointed in accordance with section 5(a) of this *Act*;
- (o) “First Nation” means the Muskowekwan First Nation;
- (p) “General Election” means an Election referred to in section 18 of this *Act*;
- (p) “Indictable Offence” means a more serious criminal charge that carries a higher penalty as compared to a summary offence under the *Criminal Code of Canada*.
- (q) “Legal Counsel” means legal counsel for an Election appointed in accordance with section 5(c) of this *Act*;
- (r) “Majority” means the candidate who receives the most votes cast;
- (s) “Member” means a person registered as a member of the Muskowekwan First Nation as per the section 11 of the *Indian Act*.
- (t) “Nomination Day” means the day on which nominations are held in accordance with sections 38-40 of this *Act*, and is thirty (33) calendar days prior to Election Day;
- (u) “Polling Clerk” means a person appointed in accordance with section 13 of this *Act*;
- (v) “Polling Station” means a place established under sections 52 and 53 of this *Act* for Voters to cast their ballots;
- (w) “Prescribed” means prescribed in this *Act*;
- (x) “Rejected Ballot” means a ballot that is rejected during the counting of ballots as it is unmarked, marked for more than one candidate marked for more than the requested number of candidates, is unidentifiable or does not contain the Electoral Officer’s initials;
- (y) “Scrutineer” means a person appointed by the candidate to observe voting and the counting of ballot papers to ensure that the process is conducted properly.
- (z) “Spoiled Ballot” means a ballot that is marked in such a way that it does not appropriately reflect the wishes of the Voter. A Voter who spoils a ballot may obtain a replacement ballot by giving the spoiled ballot to the Electoral Officer. Spoiled ballots are never placed in a ballot box, and are not included in the counting of ballots at the close of voting;
- (aa) “Voters’ List” means the list of Voters that is provided in accordance with section 33 of this *Act*;

## APPLICATION

3. This *Act* applies to all Elections of the Muskowekwan Chief and Councillors.

## PART II

### CODE OF ETHICS

4. The Election Officials and Scrutineers will:
  - a) remain neutral and not conduct themselves in any way that would benefit any candidate;
  - b) not accept any gift of any value amount, monetary or otherwise during the course of their appointment; and
  - c) not discriminate against any candidate and or voter on the basis of age, gender or religion.

### Election Officials

## APPOINTMENTS

5. Election Officials are those persons appointed to any of the following positions:
  - (a) Chief Electoral Officer;
  - (b) Deputy Electoral Officer;
  - (c) Legal Counsel; and/or
  - (d) Polling Clerk.
- 6.
7. All Election Officials will swear an Oath of Office (Appendix A) prior to commencing their duties.
8. At least sixty (60) calendar days prior to Nomination Day, Council shall call a meeting for the purposes:
  - (a) selecting and appointing a Chief Electoral Officer to carry out the duties outlined in section 11 of this *Act*, and
  - (b) appointing an Elder from a neighbouring First Nation community to

administer the oath of office outlined in section 85 of this *Act*, and

- (c) establishing and appointing an Appeals Tribunal in accordance with section 96 of this *Act*.
9. The Chief Electoral Officer shall, within ten (10) calendar days of receiving notification of his or her appointment, determine the necessary number of Deputy Electoral Officers and appoint a Deputy Electoral Officer(s).
10. To be eligible to be appointed as an Election Official a person must not be:
- (a) a member of the Muskowekwan First Nation;
  - (b) a Candidate's scrutineer, business manager, or other representative; or
  - (c) an employee of the Muskowekwan First Nation or its institutions.
11. The Chief Electoral Officer shall be placed on contract to commence no later than sixty calendar days prior to Nomination Day and to terminate upon completion of their duties in the Election for which they were appointed.

#### **DUTIES AND POWERS OF THE ELECTORAL OFFICERS**

12. The Chief Electoral Officer shall:
- (a) ensure that the provisions of this *Act* are followed;
  - (b) be empowered to draw on the resources of the Muskowekwan First Nation, with the prior approval of Muskowekwan First Nation, to execute their duties;
  - (c) post all notices and distribute all election information pursuant to sections 21 and 22 of this *Act*;
  - (d) Publicly post a list of Voters' names, with all personal information removed, no later than ten (10) calendar days after his or her appointment;
  - (e) conduct a meeting of the Election Officials prior to Election Day;
  - (f) ensure the printing of ballots no later than three (3) business days after the close of Nominations;
  - (g) ensure that ballots list the name of the candidates in alphabetical order by surname.

- (h) prepare and mail out, no later than thirty (30) calendar days prior to Nomination Day, a nominations package to all Muskowekwan First Nation Members whose last known address is off Reserve including:
  - i) the date, time and location of nominations;
  - ii) on the first Election using the *Muskowekwan First Nation Custom Election Act*, a copy of the *Act*;
  - iii) procedures for nominating a Candidate for Chief and/or Councillor and an instruction sheet detailing the correct method of completing the nomination form;
  - iv) a form for nominating a Candidate for Chief and/or Councillor;
  - v) *A Voter Declaration Form to Nominate Candidates* (Appendix D);
  - vi) a self-addressed, pre-paid return envelope.
  
- (i) at least thirty (30) calendar days prior to Election Day, prepare and mail out a Voters' package including:
  - i) the date, time and location of the Election, including the date, time and location of each off-reserve advance polling station that has been established by the Chief Electoral Officer
  - ii) *A Voter Declaration Accompanying Ballot* (Appendix C);
  - iii) a ballot for Voting for a Candidate for Chief;
  - iv) a ballot for Voting for Candidates for Councillors;
  - v) an instruction sheet detailing the correct method of completing the ballots (Appendix G); and
  - vi) an instruction sheet detailing the process each Voter must follow to request a mail-in ballot
  - vi) a self-addressed, pre-paid priority post return envelope.
  
- (j) preside as chairperson of the Election proceedings;
  
- (k) ensure all Election facilities are in order, including the safety and security of Voters through the use of private security and/or the R.C.M.P. if necessary;
  
- (l) oversee the arrangements for, and supervision of, ballots, ballot boxes, and Polling Clerks and Polling Stations;
  
- (m) deliver a copy of the appropriate Voters' List to each Polling Clerk;
  
- (n) oversee the initialling and distribution of the appropriate number of ballots to each Polling Clerk;
  
- (o) examine and rule on the validity of all ballots cast;
  
- (p) oversee the counting of ballots;
  
- (q) announce the results of each ballot count;

- (r) undertake the safeguarding of the Election results, including:
    - (i) placing in separate envelopes:
      1. all Rejected ballots and Spoiled ballots;
      2. all cast ballots;
      3. all unused ballots;
      4. each Polling Clerk's copy of the Voters' List; and
      5. a statement of the Election results;
    - (ii) sealing and initialling all envelopes;
    - (iii) sealing all documents identified in section 11, subsection (r)(i) in a secure container; and
  - (s) perform any other duties as may be required to administer and implement this *Act*.
  - (t) Upon declaring a successful Candidate for each First Nation Council position open for Election, the Chief Electoral Officer shall:
    - i) ensure that all ballots are to be kept for a period of sixty (60) calendar days after Election Day; and
    - ii) in the event there are no appeals of the Election, ensure that all ballots are destroyed once the 60-day period has expired.
    - iii) in the event of an appeal the Chief Electoral Officer shall ensure that all ballots are kept for a 60-day period following the decision of the appeal.
  - (u) prepare an official record of the voting results and provide copies, no later than 10 calendar days following Election Day, of this record to the Muskowekwan First Nation Membership through public posting and by mail for off-reserve members, Indigenous and Northern Affairs Canada, the Touchwood Agency Tribal Council, the Federation of Saskatchewan Indian Nations and the Treaty Four Chiefs' Forum.
13. The Chief Electoral Officer may delegate any or all of his/her duties, including the initialing of ballots, to the Deputy Electoral Officer.

## POLLING CLERKS

14. Polling Clerks, for the purposes of this *Act*, are not considered Election Officers. No later than one (1) calendar week prior to Nomination Day, the Chief Electoral Officer shall appoint, in writing, a sufficient number of Polling Clerks to accommodate the number of Voters at the Muskowekwan Polling Station. Polling Clerks may be Members of the Muskowekwan First Nation and/or current Employees of the Muskowekwan Band. Should one (1) calendar week prior to Nomination Day fall on a statutory holiday or weekend the preceding Friday will be the deadline for the appointment of a Polling Clerk(s).
15. It is the responsibility of a Polling Clerk to:
- (a) ensure that the required number of ballots is received for his/her Polling Station;

- (b) distribute one (1) initialled ballot to each Voter;
- (c) make the appropriate mark, as determined by the Electoral Officer, beside the name of the Voter on the Voters' List after distributing a ballot to a Voter;
- (d) complete and deliver to the Electoral Officer, a statement indicating for his/her Polling Station;
  - (i) the number of eligible Voters;
  - (ii) the number of unused ballots; and
  - (iii) the number of ballots cast; and
- (e) follow the directions and decisions of the Chief Electoral Officer or, in the absence of the Chief Electoral Officer, the Deputy Electoral Officer in all matters.

### **SCRUTINEERS**

- 16. Each Candidate may appoint a maximum of two (2) Scrutineers to:
  - (a) observe the Election and voting process to ensure procedural fairness; and
  - (b) observe and ensure a proper count of the ballots.
- 17. Only one Scrutineer for each candidate will be on duty at any one time.
- 18. A Candidate's Scrutineer must present a letter of authorization to the Chief Electoral Officer or the Deputy Electoral Officer, signed by the Candidate, in order to be permitted to remain in the polling station.

## **PART III**

### **Holding of Elections**

#### **GENERAL ELECTIONS**

- 19. A General Election shall be held on the first Sunday in April of each following election year. The term of Office shall be four years, for the Muskowekwan First Nation Chief and eight (8) Council positions.

#### **BY-ELECTIONS**

20. Where a Chief and Councillor position becomes vacant more than six (6) months prior to the date of the next scheduled General Election, a By-Election shall be held to fill the vacancy, and the provisions of the *Act* shall apply.
- (a) In the event that the vacancy is for a Councillor position, and is less than six (6) months, the position will remain vacant if quorum is not lost.
  - (b) In the event that the vacancy is for the Office of Chief, and is less than six (6) months and quorum is not lost, the Council will, by a consensus decision and in the presence of an Elder, appoint an Acting Chief from among their Council and no by-election will be required.
21. The term of office of a Chief and/or Councillor position filled in a By-Election shall be for the unexpired portion of the term of office remaining when the vacancy occurred.

#### **NOTIFICATION OF ELECTION**

22. No less than thirty (30) calendar days prior to Nomination Day, the Electoral Officer shall provide notification of the Election in:
- (a) The Muskowekwan First Nation Band Office;
  - (b) no less than one (1) advertisement in newspapers published in:
    - (i) Edmonton;
    - (ii) Regina;
    - (iii) Saskatoon;
    - (iv) Calgary;
    - (v) Winnipeg; and
    - (vi) such other cities or towns that the Electoral Officer deems necessary.
  - (c) an official Muskowekwan First Nation website.
23. Notification posted under section 21 of this *Act* shall include information concerning:
- (a) the date and time of the Election;
  - (b) the location of the Election;
  - (c) the positions that are open for Election;
  - (d) the date, time and location of Nomination Day; and
  - (e) the procedures for declaring eligibility as either a Voter or an eligible Candidate.

## **PART IV**

### **Candidates**

## ELIGIBILITY FOR OFFICE

24. In order to be eligible to seek the position of Chief or Councillor a person must:
- (a) be an Elector and a Member of the Nation for the past ten (10) years;
  - (b) submit a criminal records check indicating that he/she has not been convicted, within five (5) years preceding the date of the Election, of an Indictable Offence under the *Criminal Code of Canada* or a dual offence on which the Crown has elected to proceed by way of indictment or of an offence under the *Narcotic Control Act* or the *Food and Drug Act of Canada* involving trafficking of a prohibited or controlled substance, unless such a conviction relates to the exercise of an aboriginal or Treaty right which is a matter of legal dispute;
  - (c) must possess a valid Saskatchewan Driver's License except in the case of a medically documented disability that prohibits the operation of a motor vehicle; and
  - (d) may not, as of Nomination Day, owe more than three hundred dollars (\$300.00) to the First Nation or any of its entities. Potential candidates shall be notified by the First Nation upon their Declaration of Intent of any monies owed to the First Nation, and shall resolve any debt owing to the First Nation within one week of Nomination Day.

## DECLARATION OF INTENT

26. Every person wishing to be a Candidate for the position of Muskowekwan First Nation Chief or Council shall file a Declaration of Intent (Appendix B) with the Chief Electoral Officer no later than 9:00 am on Nomination Day. **[NTD: Nominations on the floor?]**
27. The Chief Electoral Officer shall not accept a Declaration of Intent without the Election Bond as required by sections 28 and 29 of this *Act*.

## ELECTION BOND

28. A Declaration of Intent for the Office of Chief must be accompanied by an Election Bond in the amount of five hundred (\$500.00) in either cash, certified cheque or money order.
29. A Declaration of Intent for the Office of Councillor must be accompanied by an Election Bond in the amount of two hundred and fifty dollars (\$250.00) in either cash, certified cheque or money order.
30. All Election Bonds shall be non-refundable and shall be deposited to the Muskowekwan

First Nation General Revenue Fund in order to offset the costs of Election in which a candidate has declared his/her intent to seek office.

#### **WITHDRAWAL OF A DECLARATION OF INTENT**

31. A Candidate may withdraw his/her Declaration of Intent by notifying the Chief Electoral Officer, in writing, no less than three (3) calendar days following the Nomination Day.
32. A Candidate who withdraws his/her Declaration of Intent shall forfeit his/her Election Bond.

### **PART V**

#### **Voter Eligibility**

#### **ELIGIBILITY OF VOTING MEMBERS**

33. Only Members of Muskowekwan First Nation who are at least eighteen (18) years of age as of Election Day are eligible to vote.

#### **CONFIRMATION OF VOTERS' LIST**

34. The number of Members of the Muskowekwan First Nation's section 11 list shall be used to determine the number of Voters.
35. The Chief Electoral Officer shall confirm the Voters' List at least thirty (30) calendar days prior to the Nomination Day.
36. The Voters' List shall include the name and ten (10) digit status number of each Voter and shall be for the confidential use of the Election Officials.
37. The Chief Electoral Officer shall sign the Voters' List.
38. Upon confirmation and signing of the Voters' List, as per sections 34-36 of this *Act*, the Chief Electoral Office shall publicly post a list of Voters names, redacted of all personal information, in the Muskowekwan Band Office and provide a copy of this list to all Candidates upon being nominated.

### **PART VI**

#### **Nominations**

## NOMINATION DAY

39. Nomination Day is thirty (33) calendar days prior to Election Day, and nominations shall be open from 5:00 pm – 8:00 pm on Nomination Day. **[NTD: Typically, do nominees have to file their declaration of intent in advance?]**
40. The Chief Electoral Officer shall act as chairperson on Nomination Day.
41. The Chief Electoral Officer shall have available all verified Declarations of Intent on Nomination Day.

## NOMINATION PROCEDURES

42. The Chief Electoral Officer shall:
  - (a) declare nominations open;
  - (b) open and read nomination forms for Candidates for Chief and/or Council that have been received by mail;
  - (c) make three calls, each at regular intervals, for a Voter to nominate a Candidate for Chief;
  - (d) upon receiving the nomination of a Candidate for Chief shall thereafter make three calls, each at regular intervals, for a Voter to second the nomination of a Candidate for Chief; and
  - (e) repeat the process outlined in section 41, subsections (a) to (c) for the position of Councillor.
43. A Candidate, including one who is acclaimed, must be nominated by a [Voter/Elector].
44. The nomination of a Candidate, including one who is acclaimed, must be seconded by a Voter.
45. The Chief Electoral Officer shall deem each Candidate who has submitted a Declaration of Intent and Election Bond, and who has been nominated in accordance with sections 41-43 of this *Act* eligible to have his/her name on the ballot.
46. The Chief Electoral Officer shall deem a Candidate, including one who is acclaimed, who is not nominated in accordance with sections 41-43 of this *Act* to be unable to proceed, and the Candidate's name will be struck from the ballot.
47. A Voter may nominate only one Candidate or second the nomination of only one Candidate

for Chief.

48. A Voter may nominate only one Candidate or second the nomination of only one Candidate for Councillor.
49. The Chief Electoral Officer, at 8:00 p.m. on Nomination Day, shall call for a motion that nominations cease.
50. The motion shall be deemed passed by a show of hands by a Majority of the Assembly in favour of the motion that nominations cease.
51. Following the close of nominations, the Chief Electoral Officer shall declare a Candidate for Chief who is unopposed as elected by acclamation.
52. Following the close of nominations, the Chief Electoral Officer shall declare Candidates for Councillor as acclaimed in the event that there are eight (8) or less Candidates nominated for the position of Councillor who have accepted the nomination and submitted their Declaration of Intent and Election Bond as described in sections 25-29 of this *Act*.

## **PART VII**

### **Election Day Procedures**

#### **POLLS OPEN**

53. The Poll shall be open from 9:00 am to 8:00 pm on Election Day.

#### **POLLING STATION(S)**

54. There shall be one (1) polling station on the Muskowekwan First Nation.
55. The Chief Electoral Officer may establish an advance polling station at any location that the Chief Electoral Officer considers suitable and hold an advance poll for the period beginning on the tenth day and ending on the fifth day before the day on which the election is to be held. The procedures set out in sections 54 to 70 apply to advance polling stations. As soon as the advance polling station closes, the Chief Electoral Officer must seal the ballot box in a manner that prevents it from being opened without breaking the seal, place their initials on the seal, invite two witnesses to initial the seal, and ensure the safekeeping of the ballot box until the counting of the votes following the close of the polling stations on the day of the election.
56. The Chief Electoral Officer may establish a virtual voting process, to be attached as Appendix "F" to this Act, from which the submitted virtual ballots are to be cast and

tabulated alongside the ballot forms used at the polls on the First Nation. These virtual ballots shall be cast during the period of time the Polling Station is open as outlined in section 53.

57. The Polling Station shall:
  - (a) allow for the privacy of the vote; and
  - (b) create an area separate from the main Assembly area for the purpose of casting ballots.

## VOTING

58. Voting shall be conducted by secret ballot.
59. There shall be only one (1) vote cast by each Voter on the ballot for the position of Chief.
60. No Elector may vote by proxy or authorize another person to vote on his or her behalf.
61. There will be one (1) ballot for the eight (8) Councillor positions.
62. Voting for the position of Chief and Councillor shall be:
  - (a) conducted at one time, subject to votes cast in accordance with Section 55; and
  - (b) conducted on ballots that clearly list the name of each Candidate in alphabetical order.
63. The Chief Electoral Officer may assist a Voter who requires assistance in casting his/her ballot in the polling booth. In the event that the Chief Electoral Officer or Deputy Electoral Officer is called upon to assist an Elector in marking a ballot, the Chief Electoral Officer or Deputy Electoral Officer shall note on the Voter's list that the ballot was marked by the Chief Electoral Officer or Deputy Electoral Officer at the request of the Elector.
64. The Chief Electoral Officer may add to the Voters' List an individual who is a Member of the Muskowekwan First Nation and whose name was omitted from the Voters' List upon production of a letter, signed by the Indigenous and Northern Affairs Canada Registrar, indicating that they are a member of the Muskowekwan Band.
65. There shall be secure, tamper-free ballot boxes located at the Polling Station(s).
66. Prior to the commencement of voting the Chief Electoral Officer shall ensure, in front of witnesses, that the ballot boxes are empty, lock and seal the empty ballot box, and place the ballot box in public view for the reception of ballots.
67. No person shall, on the day the Election is held, on the premises of the polling station:

- (a) distribute any election-related printed materials except such materials as may be distributed by the Chief Electoral Officer for the purpose of conducting the Election;
  - (b) attempt to interfere with or influence any Voter in marking his or her ballot; or
  - (c) attempt to obtain information as to how a Voter is about to vote or has voted.
68. Each person, on arriving at the polling station, shall give his or her name to the Chief Electoral Officer.
69. An Elector to whom a mail-in ballot was mailed may obtain a ballot and vote in person at a polling station if:
- (a) the Elector returns the mail-in ballot to the Chief Electoral Officer; or
  - (b) where the Elector has lost the mail-in ballot, the Elector provides the Chief Electoral Officer with a written affirmation that the Elector has lost the mail-in ballot, signed by the Elector in the presence of the Chief Electoral Officer.
70. After receiving a ballot, an Elector shall:
- (a) immediately proceed to the station provided for marking ballots;
  - (b) mark the ballot for Chief by placing an “X” on the ballot for Chief that clearly indicates the Elector’s choice but does not identify the Elector;
  - (c) mark the ballot for Councillor by placing a total not to exceed eight (8) “X” marks that clearly indicates the Electors choices for the eight (8) Councillor positions but does not identify the Elector;
  - (d) fold the ballot in a manner that conceals the names of the Candidates and any marks, but exposes the initials of the Chief Electoral Officer or Deputy Electoral Officer on the back; and
  - (e) deliver the ballot to the Chief Electoral Officer or Polling Clerk.
71. On receipt of a completed ballot, the Chief Electoral Officer or Polling Clerk shall, without unfolding the ballot, verify the initials placed on it and deposit it in the ballot box in the presence of the Elector and any other persons entitled to be at the Polling Station.
72. While an Elector is in the compartment for the purpose of marking his or her ballot, no other person shall, except as provided in section 60, be allowed in the same compartment or be in any position from which he or she can see the manner in which the Elector marks

his or her ballot.

73. Any person who has received a ballot and who leaves the polling station without delivering the same to the Chief Electoral Officer or Polling Clerk in the manner provided or who, after receiving a ballot, refuses to vote, shall forfeit his or her right to vote at the Election, and the Chief Electoral Officer shall make an entry in the Voters' List opposite the name of such person to document that the person received a ballot and declined to vote. The Chief Electoral Officer shall mark upon the face of the ballot the word "declined" and all ballots so marked shall be preserved and treated in the identical manner as a "spoiled" or "rejected" ballot.

### COUNTING OF BALLOTS

74. The Election Officials or Polling Clerks, as delegated by the Chief Electoral Officer shall oversee the counting of ballots deposited in the ballot boxes and those received by mail immediately following the closing of the polls in the presence of the Voters.
75. At the time of the counting of Ballots, the Chief Electoral Officer shall open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,
- (a) reject the ballot if:
    - i) it was not accompanied by a Voter Declaration Form or the Voter Declaration Form is not fully completed, including a signature and witness;
    - ii) the Voter Declaration Form does not contain personal information that matches the information contained for that Elector on the Voters' List;
    - iii) the name of the Elector set out in the Voter Declaration Form is not on the Voters' List; or
    - iv) the Voters' List shows that the Elector has already voted.
  - (b) in any other case, place a mark on the Voters' List opposite the name of the Elector set out in the Voter Declaration Form and deposit the ballot in the ballot box.
76. The Chief Electoral Officer shall supply all Election Officials present and all persons present who so request with a tally sheet to keep their own tally of the votes.
77. Immediately after the mail-in ballots have been deposited in the ballot box as per section 72, the Chief Electoral Officer shall, in the presence of the Electors who choose to remain present, open all ballot boxes and examine each ballot.

78. The Chief Electoral Officer shall call out the names of the Candidates for whom the votes were cast on all valid ballots.
79. The Chief Electoral Officer shall mark a tally sheet in accordance with the names being called out for the purpose of arriving at the total number of votes cast for each Candidate.
80. The Chief Electoral Officer must reject any ballots that:
  - (a) do not contain the initials of the Chief Electoral Officer or Deputy Electoral Officer;
  - (b) do not give clear indication of the Elector's intention;
  - (c) contain more votes than there are Candidates to be elected; and/or
  - (d) contain a mark by which the Elector can be identified.
81. The Chief Electoral Officer shall attach a note to each rejected ballot which notes the reason for rejection.
82. The Chief Electoral Officer shall take a note of any objections made by any Candidate or his or her Scrutineer to any of the ballots found in the ballot box and render a decision on any questions arising out of the objection.
83. After the first ballot count, in the event that there is a tie for the Office of Chief or the last Councillor position, the Chief Electoral Officer shall supervise a recount of the ballots. In the event that a tie still exists after a recount, the Chief Electoral Officer shall place the names of the Candidates who are in a tie in an empty container in the presence of the Voters, and the Chief Electoral Officer shall draw a name from the container. The Candidate whose name is drawn shall be declared elected.

## **PART VIII**

### **Election of Candidates**

#### **DECLARING WINNING CANDIDATES**

84. Following the counting of ballots, or a recount if one has become necessary, the Chief Electoral Officer shall declare the winning Candidates for all positions in the presence of the Assembly.
85. A Candidate for Chief is declared a winner by the Chief Electoral Officer when:
  - (a) he/she receives a majority of the total of properly cast votes; or

(b) his/her name is drawn in accordance with section 80 of this *Act*;

86. The Chief Electoral Officer shall prepare a list of all of the Candidates for the eight (8) Council positions in the Election, ranked in order of the number of votes received, with the highest ranking Candidate being the one who received the most votes for Councillor in the election.

#### **OATH OF OFFICE**

87. Upon being declared elected by the Chief Electoral Officer, each Candidate will be required to swear an Oath of Office (Appendix E) on the next business day.
88. The Oath of Office will be administered by the Elder appointed by the Chief and Council prior to Election Day in accordance with section 8(b) of this *Act*.

#### **COMMENCEMENT OF OFFICE**

89. The term of office for each Candidate who is elected or acclaimed commences upon swearing the Oath of Office as per section 84.

#### **TERM OF OFFICE**

90. The term of office for each duly elected Candidate will be four (4) years.
91. The Muskowekwan Council, including those who seek re-election, will continue to function in their elected capacity during the campaign period.
92. Any member of the Council who fails to achieve re-election will be deemed to no longer be a member of the Council upon declaration of election results by the Chief Electoral Officer.

#### **BAND COUNCIL PROCEDURAL REGULATIONS**

93. Band Council Procedural Regulations will be governed by Section 10 of the *Muskowekwan First Nation Executive Accountability Act* (Appendix F).

## **PART IX**

### **Appeals**

#### **RIGHT TO APPEAL**

94. Any Candidate or Voter may, by submitting a written notice of appeal within fifteen (15) calendar days of the Election to the chairperson of the Appeal Tribunal, appeal an Election.

95. Grounds for an appeal are limited to:
- (a) evidence of a Corrupt Practice that could have affected the results of the election; and/or
  - (b) evidence of a violation of any provision of this *Act* that could have affected the results of the election.
96. Any written notice of appeal must be accompanied by a sworn affidavit which shall:
- (a) include details of the grounds of appeal;
  - (b) be accompanied by two hundred and fifty dollars (\$250.00) in cash, certified cheque or money order which shall be refundable in the event of a successful appeal; and
  - (c) be signed by the Candidate or Voter who wishes to appeal.
97. In the event of an unsuccessful Appeal, the payment outlined in section 93(b) shall be non-refundable and shall be deposited to the Muskowekwan First Nation General Revenue Fund in order to offset the costs of the Appeal.
98. Copies of the Notice of Appeal and affidavit shall be provided to each Candidate and to the Chief Electoral Officer within five (5) business days of being received by the chairperson of the Appeal Tribunal.

#### **APPEAL TRIBUNAL**

99. The Appeal Tribunal shall be made up of a panel of five (5) persons, including one Lawyer, based on the following qualifications:
- (a) Of good character and reputation;
  - (b) Educated and experienced in law;
  - (c) Independent and impartial; and
  - (d) Familiar with the First Nation's Customs and Law.
100. The Appeal Tribunal shall remain at five (5) persons at all times, as a pool from which Appeal Tribunal members will be delegated at the Appeal Tribunal's discretion.
101. All hearings shall be conducted by three (3) members of the Appeal Tribunal, and must include at least one Lawyer. The members of the Appeal Tribunal shall appoint a chairperson, registrar, and secretary from among themselves.

102. The Appeal Tribunal shall meet within ten (10) business days after being notified of an Appeal.
103. The Appeal Tribunal shall rule on the validity of the appeal no later than fourteen (14) calendar days after the date of its first meeting.
104. Where a majority of the Appeal Tribunal rules that the grounds for an appeal are valid, the Appeal Tribunal shall order an appeal hearing to be conducted within fourteen (14) business days of its ruling.

#### **APPEAL HEARING**

105. An appeal hearing shall be a closed session, audio recorded, and may be attended by only:
  - (a) the appellant and his/her legal counsel;
  - (b) the Election Officials and their legal counsel;
  - (c) the Appeal Tribunal;
  - (d) any witnesses who are called to give evidence;
  - (e) the individual whose Election is appealed;
  - (f) a recording secretary appointed by the Appeal Tribunal.
106. The Appeal Tribunal may order the attendance of any witnesses it deems necessary.
107. The Appeal Tribunal may order the production of any documentation it deems relevant.
108. The Appellant may be represented by legal counsel at his/her own expense.
109. The Election Officials may be represented by legal counsel at the expense of Muskowekwan First Nation.
110. The individual whose Election is appealed may be represented by legal counsel at his/her own expense.
111. The Appellant, the individual whose election is appealed, and the Election Officials have the right to:
  - (a) examine and cross-examine witnesses; and
  - (b) present oral or written argument to the Appeal Tribunal.

## DECISION OF THE APPEAL TRIBUNAL

112. The Appeal Tribunal shall render its decision, in writing, no later than ten (10) calendar days after the conclusion of the appeal hearing. The posting shall contain its decision only and ensure that any personal information has been redacted.
113. The written decision of the Appeal Tribunal shall include its final decision and the reasons for its decision.
114. The Appeal Tribunal will provide copies of its written decision to the parties and their legal counsel, within fourteen (14) calendar days upon rendering its decision by registered mail.
115. The Appeal Tribunal may in its decision:
  - (a) uphold the results of the Election; or
  - (b) overturn the results of the Election, either in whole or in part.
116. Where the Appeal Tribunal overturns the results of the Election, either in whole or in part, a By-Election for the position affected by the Appeal Tribunal's decision shall be held in accordance with section 19 of this *Act*.
117. The chairperson of the Appeal Tribunal shall publicly post its decision on whether to uphold or overturn the results of the election within twenty-four (24) hours of providing written notification to the parties and their legal counsel.

## PART X

### Vacancies in Office

118. A Chief and/or Councillor position is deemed to be vacant when the person holding the position:
  - (a) is convicted of an Indictable Offence under the *Criminal Code of Canada* or a dual offence on which the Crown has elected to proceed by way of indictment or of an offence under the *Narcotic Control Act* or the *Food and Drug Act of Canada* involving trafficking of a prohibited or controlled substance, unless such a conviction relates to the exercise of an aboriginal or Treaty right which is a matter of legal dispute: or
  - (b) dies; or
  - (c) resigns his/her office, in writing, to Council, or is removed by a decision of Council in accordance with the *Muskowekwan First Nation Executive Accountability Act*;

- (d) is declared not to have been elected as a result of a decision by the Appeal Tribunal.
119. A Vacancy of a Chief and/or Councillor position requires a Band Council Resolution, taken at a duly convened meeting at which a quorum of the Chief and Council is present, declaring the Vacancy.

## PART XI

### Review and Amendments

120. This *Act* shall be reviewed no less than every three years by the Membership at a duly convened Band membership meeting.
121. Any amendments to this *Act* require the majority vote of [Electors/Voters].
122. Amendments to this *Act* shall be made using the following process:
- (a) the need for an amendment(s) is identified by an [Elector/Voter];
  - (b) the [Elector/Voter] who identifies a need for an amendment(s) shall detail the sections that require amendment(s) and the reason(s) for amendment in writing to Council;
  - (c) Council will forward the written request for amendments to legal counsel for review and a recommendation regarding whether to proceed with the proposed amendments.
  - (d) Based on the advice of legal counsel the Chief and Council will
    - i) decide that the amendments are not required and reply, in writing, to the [Elector/Voter] seeking an amendment(s) within fourteen (14) calendar days of receiving the request; or
    - ii) proceed with the request for amendment(s) by presenting the [Elector's/Voter's] letter of request to the membership at the next regularly scheduled Band membership meeting;
  - (e) Council will provide an annual update, in December of each year, detailing any requests for amendments to this *Act* received during the previous calendar year, the decision regarding whether or not to pursue the amendments, and the reasons for the decision
  - (f) The draft amendments, upon completion, will be mailed to the [Electors/Voters] of the Muskowekwan First Nation in an information package that includes:

- i) a summary of the proposed amendment(s) to the *Act*;
  - ii) the time, date and location of a Membership meeting called to ratify the amendment(s) to the *Act*;
  - iii) a ballot to vote on whether or not to ratify the amendment(s);
  - iv) the name and contact information of the person to whom [Voters/Electors] should address their questions concerning the amendment(s); and
  - v) a self-addressed, stamped envelope addressed to the Electoral Officer appointed to supervise the ratification of the amendment(s).
123. The amendment(s) to this *Act* shall be deemed when 50% plus one of all [Voters/Electors] chose to vote supported the amendment(s).
124. No amendments to this *Act* may be made during an Assembly at which an Election is held.

## **PART XII**

### **Coming Into Force**

125. This *Act* shall come into force immediately upon the issuance of an order by the Minister of Aboriginal Affairs and Northern Development Canada removing Muskowekwan First Nation from the application of sections 74-79 of the *Indian Act*.

## PART XIII

### History

<b>Date</b>	<b>Activity</b>
February 2012	-original drafted by Consultant
February 13, 2012	- draft reviewed by MFN Governance Committee and recommended to Chief and Council for review.
March 24, 2012	-draft presented to Chief and Council for review Motion to forward to the Minister of AANDC for review
February 12, 2013	-draft reviewed by Chief and Council
June 7, 2013	-Revised draft sent to AANDC
October, 2013	-Second Revised draft sent to AANDC
July 2015	Comments received from AANDC
March, 2016	3 <sup>rd</sup> revised draft sent to INAC, comments received, 4 <sup>th</sup> revised draft sent to INAC

**APPENDIX A:**  
**Muskowekwan First Nation**  
**Election Official Oath of Office**

## Muskowekwan First Nation Election Officials OATH OF OFFICE

I, \_\_\_\_\_, the undersigned in this Oath of Office, agree to accept the position of

Chief Electoral Officer

Deputy Electoral Officer

Legal Counsel

Polling Clerk

In accepting this position I do solemnly swear to carry out my duties with honesty, efficiency and integrity and to faithfully adhere to any and all provisions of the *Muskowekwan First Nation Custom Election Act*, [♦].

Sworn by me on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

And Witnessed by:

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

**APPENDIX B:**  
**Muskowekwan First Nation**  
**Declaration of Intent**

**Muskowekwan First Nation**  
**DECLARATION OF INTENT TO SEEK OFFICE**

I, \_\_\_\_\_, hereby declare my intent to seek the position of

Chief

Councillor

Of the Muskowekwan First Nation on \_\_\_\_\_. (*insert date of election*)

I do solemnly declare that I meet all the requirements of section 23-24 of the *Muskowekwan First Nation Custom Election Act*, “Eligibility for Office” and hereby submit a copy of:

- a) My birth certificate or government issued photo identification confirming I will be at least eighteen (18) years of age as of Nomination Day;
- b) A copy of my Status Card confirming I have been a member of the Muskowekwan First Nation for the past ten (10) years;
- c) A copy of a criminal records check completed within the last three (3) months; and
- d) The election bond in the amount of \_\_\_\_\_ in accordance with the *Muskowekwan First Nation Custom Election Act*.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX C:**  
**Voter Declaration Accompanying Mail-In Ballot**

**Voter Declaration Accompanying the Mail-in Ballot**

**This declaration must be signed by you and a witness, who is at least 18 years old, and returned to the Chief Electoral Officer with your completed ballot, or your vote will not be counted.**

In the matter of the election of the \_\_\_\_\_, held according to the *Muskowekwan First Nation Custom Election Act*, I, \_\_\_\_\_ solemnly declare that:

(Please print your name)

1. I am a member of the Muskowekwan Band of Indians.
2. My band/treaty/registry/status number is \_\_\_\_\_ and/or my date of birth is \_\_\_\_\_
3. My current mailing address is: \_\_\_\_\_
4. I am at least 18 years of age.
5. I do not know of any reason why I would be disqualified from voting at this election.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath. I understand that it is an offence to make a false statement in this declaration.

\_\_\_\_\_  
Signature of Elector

\_\_\_\_\_  
Date

**WITNESS DECLARATION** (to be filled out by any person who is at least 18 years old)

Declared before me \_\_\_\_\_ (Witness name) at  
\_\_\_\_\_ (First Nation/Municipality)

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.  
(Date) (Month) (Year)

**Signature of Witness**  
\_\_\_\_\_

**Witness Declaration Address** \_\_\_\_\_

**Witness Declaration Phone Number** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

## **APPENDIX D**

### **Declaration Form to Nominate Candidates**

**VOTER DECLARATION FORM TO NOMINATE CANDIDATES**

I, \_\_\_\_\_, do solemnly declare that I am a registered member of the Muskowekwan First Nation and that I am at least eighteen (18) years of age and therefore eligible to nominate Candidates for the Muskowekwan First Nation election for Chief and Council held on \_\_\_\_\_. I am aware that I am only eligible to nominate and/or second one (1) Candidate for Chief and one (1) Candidate for Council as per the *Muskowekwan First Nation Election Act* section 47. I further declare that my status number is \_\_\_\_\_,

And that I reside at: \_\_\_\_\_  
\_\_\_\_\_

Please be advised that I wish to NOMINATE/SECOND THE NOMINATION (please circle ONE):

\_\_\_\_\_ for the position of **Chief**  
Name of Candidate for Chief

And/Or

I wish to NOMINATE/SECOND THE NOMINATION (please circle ONE):

\_\_\_\_\_ for the position of **Councillor**  
Name of Candidate for Councillor

\_\_\_\_\_  
Signature of Eligible Voter

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Witness (PLEASE PRINT)

\_\_\_\_\_  
Contact Phone Number of Witness

**APPENDIX E:**

**Oath of Office for Chief and Oath of Office for Council**

**OATH OF OFFICE FOR MUSKOWEKWAN CHIEF**

I, \_\_\_\_\_, do solemnly and sincerely swear that I will bear true allegiance to the MUSKOWEKWAN FIRST NATION, that I will adhere to the laws, customs and traditions of the MUSKOWEKWAN FIRST NATION, and further that I will truly and faithfully, and to the best of my skills and knowledge, execute and perform the duties that devolve upon me as a CHIEF of the MUSKOWEKWAN FIRST NATION.

Finally, barring any unforeseen or extraordinary circumstances I, \_\_\_\_\_, undertake to serve the full term of the office to which I have been elected and will not do anything that would disqualify me from holding this office. If I should fail to meet this undertaking, I hereby forfeit any benefits to which I may otherwise be entitled.

\_\_\_\_\_  
Elder

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Band Manager

\_\_\_\_\_  
Date

**OATH OF OFFICE FOR MUSKOWEKWAN COUNCILLOR**

I, \_\_\_\_\_ , do solemnly and sincerely swear that I will bear true allegiance to the MUSKOWEKWAN FIRST NATION, that I will adhere to the laws, customs and traditions of the MUSKOWEKWAN FIRST NATION, and further that I will truly and faithfully, and to the best of my skills and knowledge, execute and perform the duties that devolve upon me as a COUNCILLOR of the MUSKOWEKWAN FIRST NATION.

Finally, barring any unforeseen or extraordinary circumstances, I, \_\_\_\_\_, undertake to serve the full term of the office to which I have been elected and will not do anything that would disqualify me from holding this office. If I should fail to meet this undertaking, I hereby forfeit any benefits to which I may otherwise be entitled.

\_\_\_\_\_

Senator

\_\_\_\_\_

Council Member

\_\_\_\_\_

Band Manager

\_\_\_\_\_

Date

**APPENDIX F:**

*Muskowekwan First Nation Executive Accountability Act*

# **Muskowekwan First Nation**

*Executive*

*Accountability Act*

2013



## PART I

### Short Title, Interpretations and Application

#### SHORT TITLE

1. This *Act* may be cited as the “*Muskowekwan First Nation Executive Accountability Act, 2013*”

#### INTERPRETATIONS

2. The Definitions in the *Muskowekwan First Nation Custom Election Act* shall apply to this *Act*.
3. In this *Act*:
  - (a) “Campaign Period” means the thirty (30) calendar day period extending from midnight on Nomination Day to midnight on Election Day.
  - (b) “Petitioner” means an Elector of the Muskowekwan First Nation.
  - (c) “Respondent” means a Muskowekwan First Nation Chief or Councillor who is subject to a Petition for a Motion of Non-Confidence outlined in section 18 of this *Act*.

#### APPLICATION

4. This *Act* applies to the duly elected Muskowekwan First Nation Chief and/or Councillors.

## **PART II**

### **Composition and Term of Office**

5. The Executive of the Muskowekwan First Nation shall consist of a Chief and eight (8) Councillors. Procedures for election and term of office for the Chief or Councillor shall be governed by the *Muskowekwan First Nation Custom Election Act*.

## **PART III**

### **Code of Ethics**

#### **CODE OF ETHICS**

6. The Muskowekwan First Nation Chief and Councillors shall comply with the following Code of Ethics:
  - (a) to work harmoniously with the First Nations Government of the Muskowekwan First Nation, its institutions, entities, boards and commissions;
  - (b) to promote and protect the fundamental rights of all First Nation members, including their inherent and Treaty rights;
  - (c) to maintain fairness and consistency in the application of Acts, regulations and policies of the Muskowekwan First Nation;
  - (d) to utilize his or her time and budgets in the most efficient, effective and economical manner possible;
  - (e) to observe and follow all Muskowekwan First Nation Acts, policies and procedures;

- (f) to enhance the moral and political integrity and dignity of the Muskowekwan First Nation at all times;
- (g) to demonstrate and promote cooperation and open communication within the Chief and Council at all times;
- (h) to maintain and protect confidentiality on all matters concerning the Muskowekwan First Nation; and
- (i) to maintain an illegal narcotic free lifestyle.

## **PART IV**

### **Chief and Council's Power, Authority and Responsibilities**

#### **POWERS, DUTIES AND RESPONSIBILITIES**

7. The powers, duties and functions of the Muskowekwan First Nation shall continue to be vested in the Chief and Council.
8. The Chief and Council's powers, duties and responsibilities extend to and include all matters over which the Muskowekwan First Nation Chief and Council has jurisdiction and the Chief or Councillor shall:
  - (a) act in the best interests of the Muskowekwan First Nation;
  - (b) protect and preserve the culture, traditions and sovereignty of the Muskowekwan First Nation including the natural and traditional laws endowed by the Creator and the Treaties to which Muskowekwan is a party;

- (c) preserve the First Nations' culture, language and traditions by the development and chartering of First Nations' control of political, economic, social and judicial institutions;
- (d) protect, preserve and reclaim Muskowekwan First Nation's traditional homelands and resources;
- (e) maintain the political autonomy of the Muskowekwan First Nation government;
- (f) assist Muskowekwan members to reaffirm their dignity and their faith in the Treaties;
- (g) promote the recognition and safeguard the Treaties and Aboriginal rights in the provincial, national and international forum among the governments of Canada and the member states of the United Nations;
- (h) initiate, develop and negotiate for protocols and agreements including, but not limited to:
  - (i) the principles of the First Nation and Crown in Right of Canada relationship according to the spirit and intent of the Treaties based on a trust and protectorate status between the First Nations people and the Crown;
  - (ii) the implementation of a series of federal and provincial legislation confirming and protecting First Nations' Treaty rights on different subjects, including the application of revenue sharing for First Nations governments;
- (i) encourage communication and exchange with other First Nations who represent Indigenous peoples from other parts of Canada and the world;
- (j) implement and formalize the First Nation and Crown in Right of Canada relationship guaranteed by agreements, convention and customary law;

- (k) enhance the social and economic independence of the Muskowekwan First Nation; and
  - (l) plan legislation and regulations, and amendments thereto, regarding the process and procedure for the development of policy and for enacting legislation for the Muskowekwan First Nation.
9. *The Muskowekwan First Nation Custom Election Act* bestows upon the Chief or Councillor a position of high and respected authority within the Muskowekwan First Nation, and by virtue of the powers and authority bestowed upon him/her, the Chief or Councillor must:
- (a) be required to uphold the trust bestowed upon him/her by the Muskowekwan First Nation Members; and
  - (b) ensure the proper administrative and financial management of the Muskowekwan First Nation.

## PART V

### Vacancies

#### VACANCY OF OFFICE

10. The Muskowekwan First Nation Chief or Councillor position becomes vacant when the person holding office:
- (a) is convicted of an Indictable Offence under the *Criminal Code of Canada* or a dual offence on which the Crown has elected to proceed by way of indictment or of an offence under the *Narcotic Control Act* or the *Food and Drug Act of Canada* involving trafficking of a

prohibited or controlled substance, unless such a conviction relates to the exercise of an Aboriginal or Treaty right which is a matter of legal dispute; or

- (b) dies; or
  - (c) resigns his/her office, in writing, to the Muskowekwan First Nation Chief and Council; or
  - (d) is the subject of a successful motion of non-confidence pursuant to section 18 of this *Act*; or
  - (e) is declared not to have been elected as a result of a decision by the Appeal Tribunal, pursuant to Part IX of the *Muskowekwan First Nation Custom Election Act*; or
  - (f) upon the election of a successor; or
  - (g) has been absent from two (2) Chief and Council consecutive meetings, or has been absent for more than three (3) Chief and Council meetings in any twelve (12) month period (without a motion, by consensus, of the Chief and Council excusing his/her absence unless the absences are a result of a documented medical condition); or
  - (h) has been absent for any of the Muskowekwan First Nation Legislative Assemblies (without a motion, by consensus, of the Chief and Council excusing his/her absence unless the absences are a result of a documented medical condition).
11. A Chief or Councillor seeking elected office at the Tribal Council, municipal, provincial, federal, AFN or FSIN level shall:
- (a) be on paid leave effective on the nomination day of the election;

- (b) the powers, duties and responsibilities of the Chief or Councillor shall be assigned, by motion of the Chief and Council, to an individual for the duration of the respective political campaign;;
- (c) the incumbent Chief or Councillor shall not use any Muskowekwan First Nation office equipment, human resources or facilities for the political campaign;
- (d) the Chief or Councillor shall not commit Muskowekwan First Nation resources during the political campaign;
- (e) the incumbent Chief or Councillor shall not be eligible for any travel expenses, including his/her standard travel or vehicle allowance during the campaign period; and
- (f) the incumbent Chief or Councillor shall turn in any and all equipment, including cellular telephones or devices that were purchased by the Muskowekwan First Nation, in his/her possession during the political campaign.

## RESIGNATION

12. In the event that a Chief or Councillor resigns his/her position he/she shall provide written notification and resignation to the Muskowekwan First Nation Chief and Council of not less than thirty (30) calendar days, unless the Chief and Council has approved a shorter time period.
13. In the event that a Chief or Councillor resigns his/her position he/she shall:
  - (a) return all computer, cellular devices, fax and other equipment purchased by the Muskowekwan First Nation for use by the Chief or Councillor by the date of resignation. In the event that such equipment is not returned to the Muskowekwan First Nation within seven (7) calendar days from the date of resignation, the Chief or Councillor shall be personally responsible for paying to the Muskowekwan First Nation the replacement costs of all equipment that is not returned, and replacement costs of such equipment may be deducted from any monies owing to the Chief or Councillor by the Muskowekwan First Nation.

## **PART VI**

### **Election**

#### **ELECTION**

14. Upon being elected to the position of Muskowekwan First Nation Chief or Councillor, the Chief or Councillor shall, on the day of the Election, resign all elected positions for which he/she receives remuneration.
  
15. Upon being elected to the position of Muskowekwan First Nation Chief or Councillor, the Chief or Councillor shall, on the day of election, resign from any current employment either on or off Reserve.

#### **RE-ELECTION**

16. When the Chief or Councillor seeks re-election, the Chief and Council will require that, during the Campaign Period:
  - (a) the incumbent Chief or Councillor shall receive his/her salary during the Campaign Period;
  
  - (b) the incumbent Chief or Councillor shall not use any Muskowekwan First Nation office equipment, human resources or facilities for the political campaign; and
  
  - (c) the incumbent Chief and Council will protect the confidentiality of all First Nations business, as per section 6(h) above, during the Campaign Period.
  
17. In the event that the incumbent Chief or Councillor is not re-elected to the Muskowekwan First Nation, and he/she fails to return any and all Muskowekwan First Nation equipment in his/her possession within seven (7) calendar days:

- (a) he/she shall be personally responsible for paying the Muskowekwan First Nation the replacement costs of such equipment; and
- (b) Muskowekwan First Nation will deduct the replacement costs of such equipment from any monies owing to the Chief and Councillor who is not re-elected.

## **PART VII**

### **Discipline**

18. The process for a motion of non-confidence shall include the following procedures:
- (a) a motion of non-confidence will be triggered by a breach of any Muskowekwan First Nation legislation and/or the *Muskowekwan First Nation Conflict of Interest Guidelines*;
  - (b) the process for a motion on non-confidence begins when an eligible Elector or Voter of the Muskowekwan First Nation files, with the Band Administrator, a signed complaint, in writing, detailing the Chief or Council member's behaviour, the legislation that has been breached, and any evidence to support his/her claim that a breach has occurred;
  - (c) the complaint will be accompanied by a certified cheque for \$1,000, which is 50% refundable only in the event that the motion of non-confidence results in the removal of a Chief or Councillor;
  - (d) the Chief and Council will immediately provide written notification to the Respondent;
  - (e) the Chief and Council will retain the services of a qualified, independent arbitrator to examine the complaint and applicable evidence and determine if the matter should proceed;

- (f) the independent arbitrator, after considering all the evidence, shall either:
  - (i) rule the matter closed; or
  - (ii) recommend disciplinary action other than removal; or
  - (iii) rule that the motion of non-confidence should proceed to a Muskowekwan First Nation Legislative Assembly;
- (g) if a Legislative Assembly is required, then the motion of non-confidence for the removal of a Chief or Councillor will proceed to a ballot; **[NTD: We should define the Leg. Assembly]**
- (h) any Chief or Councillor who is the subject of a motion of non-confidence will be placed on paid administrative leave immediately upon the decision to call for a motion of non-confidence, and will remain on paid administrative leave until the matter is deemed closed; and
- (i) the motion of non-confidence, if required, will be held in accordance with the process for election outlined in the *Muskowekwan First Nation Custom Election Act*.

## DISCIPLINARY ACTION

19. Excluding the process identified in section 18, the authority to determine the disciplinary action to be taken with respect to a Chief or Councillor for breaches of this *Act* shall be undertaken using the following principles:
  - (a) the main objective of disciplinary action is to correct a Chief's or Councillor's conduct in order that the Chief or Councillor be provided a fair opportunity to correct conduct, improve performance and continue his/her term; and
  - (b) in the event that it is determined that more serious action is required to correct a Chief's or Councillor's conduct or to improve performance, the Chief and Council will, at its discretion, have the ability to bypass any or all of the steps in the disciplinary process.
20. The disciplinary process will be carried out as follows:

- (a) The Chief and Council may, at their discretion, undertake the disciplinary process outlined in this *Act*.

#### VERBAL REPRIMAND

- (b) The Chief and Council, by decision duly recorded in a Motion, may give a verbal reprimand to a Chief or Councillor for minor infractions.
- (c) Verbal reprimands shall be conducted in an *in camera* session of the Chief and Council at which a quorum is present.
- (d) Any Chief or Councillor may receive a maximum of one (1) verbal reprimand during the course of a single term for the same or similar offence, at the discretion of Chief and Council.

#### WRITTEN REPRIMAND

- (e) The Muskowekwan First Nation Chief and Council may, at their discretion, provide a letter of reprimand to a Chief or Councillor in the event that:
  - (i) the Chief and Council have passed a Motion to provide a written reprimand at a duly convened Chief and Council meeting at which a quorum was present;
  - (ii) the Chief's or Councillor's conduct constitutes a breach of the the *Muskowekwan Executive Accountability Act*; or
  - (iii) the Chief or Councillor has received the maximum verbal reprimands during the course of his/her term with the Muskowekwan First Nation.
- (f) The letter of reprimand will:
  - (i) state the infraction;

- (ii) state a reasonable time frame for improvement;
  - (iii) be signed by a quorum of Chief and Council; and
  - (iv) serve as a warning that repetition of the infraction may result in suspension or Motion of non-confidence.
- (g) A Chief or Councillor may receive a maximum of one (1) letter of reprimand.

## **SUSPENSION**

- (h) The Muskowekwan First Nation Chief and Council may, at their discretion and through a Band Council Resolution (BCR) taken at a duly convened Chief and Council meeting at which a quorum was present, suspend a Chief or Councillor with salary, but not expenses or allowances, for a period of up to sixty (60) calendar days when:
- (i) the Chief and Councillor has received the maximum of one written reprimand during the course of his/her term with the Muskowekwan First Nation; or
  - (ii) the infraction is of a major nature that requires suspension as the first step of the disciplinary process; and
  - (iii) the Chief and Council has passed a Band Council Resolution to suspend at a duly convened meeting of the Chief and Council at which a quorum was present.
- (i) A written notice of suspension will be provided to the Chief or Councillor and will:
- (i) state the effective date of the suspension;

- (ii) state the duration of the suspension;
  - (iii) state the reason for the suspension;
  - (iv) be signed by a quorum of Chief and Council; and
  - (vi) serve as a warning that repetition of the infraction may result in a Motion of Non-Confidence.
- (j) Upon serving written notice of suspension the Chief and Council will, by motion, assign all the duties and responsibilities of the suspended Chief or Councillor to another member of the Muskowekwan First Nation Council for the duration of the suspension.

## **PART VIII**

### **Remuneration**

#### **REMUNERATION**

21. Base remuneration shall be paid to the Chief or Councillor in accordance with the rate determined and ratified by Motion of the Chief and Council.
22. Travel shall be paid based on the *Muskowekwan First Nation Travel Policy* as ratified by Chief and Council.
23. The Chief or Councillor shall be provided with reasonable expenses for participation on Boards, Committees and Commissions of the Muskowekwan First Nation and its institutions according to the *Muskowekwan First Nation Per Diem Policy*.

24. All remuneration owing to a Chief or Councillor upon his or her termination of office shall be payable within fourteen (14) calendar days. All advances and monies owing shall be deducted from the final payment.
25. Where a Chief or Councillor receives per diem or expenses from an outside agency for activities attended by the Chief or Councillor on behalf of the Muskowekwan First Nation, the Chief or Councillor shall not be eligible to receive expenses and/or per diem from the Muskowekwan First Nation for those activities.
26. No Chief or Councillor shall receive any form of remuneration, other than reasonable expenses, from any outside agencies in compensation for duties performed which are included in their duties as a member of Muskowekwan First Nation Chief and Council.
27. No Chief or Councillor shall accept any kind of cash payment or gift from any third party either conducting, or attempting to conduct, business with the Muskowekwan First Nation.
28. All gifts presented to the Chief or Councillor while representing the Muskowekwan First Nation shall be the property of the Chief or Councillor. All prizes received in random draws in the name of Muskowekwan First Nation shall be the property of the Chief or Councillor.

## **PART IX**

### **Exemption from Employment**

29. The Chief or Councillor shall not be considered an employee of the Muskowekwan First Nation.

## PART X

### General

#### REGULATIONS

30. For the purposes of carrying out the provisions of this *Act* according to their intent:

- (a) the Muskowekwan First Nation may make regulations that are ancillary to and are not inconsistent with this *Act*.

31. The Muskowekwan First Nation Chief and Council may make regulations for, but not limited to:

- (a) Conflict of Interest;
- (b) Campaign period code of conduct; and
- (c) respecting any matter that the Muskowekwan First Nation Chief and Council considers necessary or applicable.

#### INTERPRETATION IN THE EVENT OF A DISPUTE

32. In the event of a dispute or disagreement arising from the interpretation of any term, condition, word or procedure in this *Act*, the matter will be referred to the Touchwood Agency Tribal Council Justice Department for its decision that shall be final and binding on all parties.

#### AMENDMENTS

33. This *Act* may be reviewed and amended, from time to time, in accordance for the procedure for amending Muskowekwan First Nation law as set out in the *Muskowekwan First Nation Constitution*, with such amendments immediately coming into force.

## COMING INTO FORCE

34. This *Act* shall come into force on ratification by the Muskowekwan First Nation Legislative Assembly.

## PART XI

### History

<b>Date</b>	<b>Action</b>
Original drafted	May 2013
Draft presented to Chief and Council	September 2013
Revised draft presented to Chief and Council	October 2013
Final reading	December 2013

## **APPENDIX G**

### **Muskowekwan First Nation Election Instructions**

**MUSKOWEKWAN FIRST NATION**

## ELECTION INSTRUCTION SHEET

### INSTRUCTIONS FOR NOMINATING A CANDIDATE:

1. Complete the enclosed *Voter Declaration Form to Nominate Candidates*. **Be sure to complete the form fully and sign and date the form. Ensure that your witness also signs and dates the form.**
2. Insert the completed *Voter Declaration Form to Nominate Candidates* into the self-addressed envelope and mail it **on or before** (*insert date*). Nominations received after this date will not be considered for placement on the ballot.

### INSTRUCTIONS FOR VOTING IN THE ELECTION:

1. Please note that you have received two (2) separate ballots to vote for the position of one (1) Chief and eight (8) Councillors. The (*insert color of ballot*) is to be used to cast for vote for the Chief's position. The (*insert color of ballot*) is to be used to cast your vote for the eight (8) Council positions.
2. When voting for the **Chief's** position, place an "X" inside the box directly opposite the name of the person for whom you wish to cast your vote. **Do not put any other marks on the ballot.**
3. When voting for the eight (8) **Council** positions, place an "x" inside the eight (8) boxes directly opposite the eight (8) names of the persons for whom you wish to cast your vote. There should be a total of exactly eight (8) "X" marks on your ballot. **Do not put any other marks on your ballot.**
4. Fold the ballots in the same way that you received them, so that the Chief Electoral Officer's initials are visible on the back of the ballots.
5. Complete the enclosed *Declaration of Voter Eligibility Form*. **Be sure to complete the form fully and sign and date the form. Ensure that your witness also signs and dates the form. If you do not complete the form fully and correctly your ballot will not be accepted and counted.**
6. Insert the *Declaration of Voter Eligibility Form* and both ballots into the self-addressed envelope provided, and mail it on or before (*insert date*). **Any ballots postmarked after this date will not be accepted and counted.**
7. If you decide to vote in person, **bring your mail-in ballot package with you.** Only one (1) ballot for the position of Chief and one (1) ballot for the positions of Councillor will be accepted.
8. If you decide to vote in person, the election will be held on (*insert date*) at the (*insert location*). Polls will be open from (*insert time*).
9. If you have any questions regarding the above instructions, please call the Chief Electoral Officer, (*insert name and contact information*).

**APPENDIX H:**  
**Virtual Voting**

## **Muskowekwan First Nation**

### **Virtual Voting Process**

The Chief Electoral Officer may use this virtual voting process in accordance with section 56 of the *Muskowekwan First Nation Custom Election Act, 2016* (the “Act”).

1. Those wanting to vote by the virtual method must register with the Chief Electoral Officer before the day of the election poll. The deadline for registration will be 9:00 pm Saskatchewan Time before the day of the election poll.
2. Registration will commence on the day after the nomination meeting.
3. The Chief Electoral Officer will accept the registration by email or text. Electors shall provide their name, status number, or appropriate identification as required by the Chief Electoral Officer in order to complete their registration for a virtual vote. If necessary, the Chief Electoral Officer may require the Declaration of Elector Identity attached as Appendix “C” to the Act.
4. When the poll opens, the Deputy Electoral Officer or Membership Clerk will confirm the identity of the registered Elector.
5. Once the Elector is confirmed, they will be sent a link to access their vote and a computer-generated password will also be sent to them. Only one ballot, containing the Chief and Councilors ballots, will be sent to that particular email or the text number.
6. The virtual team, as defined and supervised by the Chief Electoral Officer, will monitor the status of each virtual vote to ensure they have received the ballot, and will monitor if the vote has been cast.
7. Google Docs is manned by the membership clerks at the polls to ensure that each Elector who votes is recorded and each Membership Clerk at each poll is notified that the Elector has voted.
8. The Elector who cast their vote will then be recorded as voted and will not be able to cast another vote at any other poll.
9. The results of the virtual vote are not accessible until the election poll closes.
10. When the poll closes, the results from the virtual vote are sent to the virtual team.
11. The results are then given to the Chief Electoral Officer for complete tabulation alongside the cast ballots at the main poll.