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TSAWWASSEN FIRST NATION

2009

## ELECTION ACT

**Date Enacted: 3 April 2009**

*Last Consolidation: 18 November 2021*

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Table of Legislative Changes

<b>Name of Act</b>	<b>Bill Number</b>	<b>Date Enacted</b>	<b>Section(s) Amended</b>
Election Amendment Act*	24-2009	10/06/2009	Part 6 heading amended Part 6 Division 5 (s.97.1 – s.97.8) added
Legislative Terms Amendment Act	003-2021	16/11/2021	s.2 amended s.3 repealed and replaced s.6 repealed and replaced s.7(1)(b) amended

\*The *Election Amendment Act* was enacted during the Executive Council meeting of June 10<sup>th</sup>, 2009, under the authority of the governance transition provisions of the Tsawwassen First Nation Final Agreement (Chapter 16, s.10)

# **TSAWWASSEN FIRST NATION**

**2009**

## **ELECTION ACT**

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Tsawwassen Legislature enacts as follows:

## Title

- 1 This Act may be called the *Election Act*.

## Definitions

- 2 In this Act:

“**candidate**” means a candidate for election;

“**chief**” means the chief of the Tsawwassen First Nation;

“**chief administrative officer**” means the person appointed to that position under the Government Organization Act;

“**deputy election officer**” means an individual appointed to that position under section 72 [Appointment and authority of deputy election officers];

“**effective date**” means the date upon which the Tsawwassen First Nation Final Agreement takes effect;

“**election**” means a general election for the office of chief and for the office of legislators, or a by-election for any one or more of those offices, as the case requires;

“**election day**” means the day fixed for an election in accordance with this Act;

“**election officer**” means the individual appointed as election officer under section 68 [Appointment of election officer] and includes an individual appointed as interim election officer under section 71 [Appointment and authority of interim election officer];

“**eligible voter**” means a Tsawwassen Member eligible to vote at an election under section 12 [Eligible voters];

“**enrolment registrar**” means the person appointed to the position of registrar under the Membership Act;

“**Executive Council**” means the Executive Council of Tsawwassen First Nation established under the Government Organization Act;

“**legislator**” means a person elected to the office of legislator of the Tsawwassen Legislature, but does not include the chief;

“**nomination meeting**” means the meeting held under section 22 [At the nomination meeting];

“**prescribed form**” means a form prescribed by Executive Council by regulation under section 76(f) [General regulation-making authority];

“**scrutineer**” means a person appointed as a scrutineer by a candidate under section 37 [Scrutineers appointed by candidates];

“**Tsawwassen Final Agreement**” means the Tsawwassen First Nation Final Agreement signed on behalf of Tsawwassen First Nation, Her Majesty the Queen in Right of Canada, and Her Majesty the Queen in Right of British Columbia;

“**Tsawwassen First Nation**” means the collectivity that comprise all Tsawwassen individuals;

“**Tsawwassen institution**” means Tsawwassen government as defined in the Tsawwassen Final Agreement, and a Tsawwassen public institution as defined in the Tsawwassen Final Agreement;

**“Tsawwassen Lands”** means the lands set out in Appendix C-4 of the Tsawwassen First Nation Final Agreement as Tsawwassen Lands, as amended from time to time under that agreement;

**“Tsawwassen Legislature”** means the Tsawwassen First Nation Legislature;

**“Tsawwassen Member”** means a Tsawwassen individual who is enrolled under the Tsawwassen Final Agreement in accordance with the eligibility and enrolment chapter;

**“voters list”** means the list of eligible voters prepared under section 13 [Preparation of voters list], as corrected from time to time.

*[Amended by Bill 003-2021; enacted November 16th 2021]*

## **PART 1 – TERMS OF OFFICE OF THE TSAWWASSEN LEGISLATURE**

### **Length of terms of office of the Tsawwassen Legislature**

- 3** (1) The term of office of the chief and the term of office of legislators is four years.
- (2) Each term of office is to be known as a term of the Tsawwassen Legislature and is to be numbered consecutively, with or without the year, to identify it.

*[Amended by Bill 003-2021; enacted November 16th 2021]*

### **First and subsequent terms of office**

- 4** (1) The first term of the Tsawwassen Legislature starts 10 days after the date of the first general election after the effective date.
- (2) Each term of the Tsawwassen Legislature ends 10 days after the date of a general election.
- (3) Each subsequent term of the Tsawwassen Legislature starts immediately after the end of the term of the preceding Tsawwassen Legislature.

### **Sessions of the Tsawwassen Legislature**

- 5** (1) The Tsawwassen Legislature must sit in session at least once [each calendar year] at the call of the chief, or in the event of a vacancy in the office of chief or in the chief's absence or inability, by Executive Council.
- (2) When a session ends, it is not necessary for the Legislature to be reconvened at a particular future date.

## **PART 2 – CALLING ELECTIONS AND CANDIDATES FOR ELECTION**

### **Division 1 – Election Dates**

#### **Date for general elections**

- 6** (1) A general election for chief and legislators must be held in the year 2022 and in every 4<sup>th</sup> year after that.
- (2) General voting day for a general election must be the 3<sup>rd</sup> Saturday of October in the year of the election.
- (3) Executive Council must give at least 90 days notice of the date a general election will be held by posting notices of the general election.



[Amended by Bill 003-2021; enacted November 16th 2021]

#### **By-election for chief or legislator**

- 7 (1) If a vacancy occurs in the office of chief or the office of legislator, Executive Council must
- (a) set a date for a by-election to fill the vacancy for the balance of the term that is within 90 days after the vacancy occurs and post notices of the by-election, unless clause (b) applies;
  - (b) if the vacancy occurs more than 42 months after the start of a term of the Tsawwassen Legislature, no by-election is to be called to fill the vacancy.  
[Amended by Bill 003-2021; enacted November 16th 2021]
- (2) If a general election is called after a date has been set for a by-election, Executive Council must cancel the by-election by notice in writing posted in accordance with the regulations.

### **Division 2 – Eligible Candidates for Election**

#### **Eligibility to be a candidate for chief**

- 8 (1) To be eligible to be a candidate for the office of chief, an individual must
- (a) be a Tsawwassen Member for the 12 months immediately preceding nomination day;
  - (b) be at least 18 years old on election day;
  - (c) be nominated and seconded for chief by mail or in person by eligible voters at a nomination meeting in accordance with this Act and the regulations;
  - (d) have served at least one term as chief or councillor of the Tsawwassen First Nation before the effective date or served at least one term as chief or as a legislator, unless this requirement is waived by a resolution of the Tsawwassen Legislature passed at any time after the first general election after the effective date;
  - (e) not be in personal bankruptcy under the *Bankruptcy Act* (Canada) during the period between the date the election is called and election day;
  - (f) not be in debt to the Tsawwassen First Nation, a Tsawwassen institution or to any other entity described in the regulations for a period or for an amount prescribed in the regulations;
  - (g) not be disqualified from holding elected office by or under this Act or by or under any other Tsawwassen enactment;
  - (h) sign, in the prescribed form, a certificate of qualification verified by the chief administrative officer in accordance with the *Government Organization Act* or other Tsawwassen enactment and disclose, in the prescribed form, the information required to be disclosed by the regulations;
  - (i) in the 5 years immediately preceding election day, not have been convicted of an offence that carried the possibility of imprisonment for 2 years or more but less than 10 years, unless this requirement is waived by a vote conducted in accordance with the regulations;
  - (j) in the 10 years immediately preceding election day, not have been convicted of an offence that carried the possibility of imprisonment for 10 years or more;

- (k) not be serving a sentence in a correctional institution on nomination day or at any time between nomination day and up to and including election day.
- (2) An individual is not disqualified from being eligible as a candidate for the office of chief if a conviction described in subsection (1) was related directly to the assertion or exercise of aboriginal rights, Treaty rights or aboriginal title.

#### **Eligibility to be a candidate for legislator**

- 9**
- (1) To be eligible to be a candidate for the office of legislator, an individual must
    - (a) be a Tsawwassen Member for the 12 months immediately preceding nomination day;
    - (b) be at least 18 years old on election day;
    - (c) be nominated and seconded for legislator by mail or in person by eligible voters at a nomination meeting in accordance with this Act and the regulations;
    - (d) not be in debt to the Tsawwassen First Nation, a Tsawwassen institution or to any other entity described in the regulations for a period or for an amount prescribed in the regulations;
    - (e) not be in personal bankruptcy under the *Bankruptcy Act* (Canada) during the period between the date the election is called and election day;
    - (f) not be disqualified from holding elected office by this Act or any other Tsawwassen enactment;
    - (g) sign, in the prescribed form, a certificate of qualification verified by the chief administration officer in accordance with the *Government Organization Act* or other Tsawwassen enactment, and disclose, in the prescribed form, the information required to be disclosed by the regulations;
    - (h) in the 5 years immediately preceding election day, not have been convicted of an offence that carried the possibility of imprisonment for 2 years or more but less than 10 years, unless this requirement is waived by a vote conducted in accordance with the regulations;
    - (i) in the 10 years immediately preceding election day, not have been convicted of an offence that carried the possibility of imprisonment for 10 years or more;
    - (j) not be serving a sentence in a correctional institution on nomination day or at any time between nomination day and up to and including election day.
  - (2) An individual is not disqualified from being eligible as a candidate for the office of legislator if a conviction described in subsection (1) was related directly to the assertion or exercise of aboriginal rights, Treaty rights or aboriginal title.

#### **Candidate for office for both chief and legislator**

- 10**
- (1) A person may be a candidate for both the office of chief and the office of legislator but if the candidate is elected to both offices, the candidate is elected to the office of chief and is not elected to the office of legislator.
  - (2) If a legislator is elected to the office of chief in a by-election, the legislator ceases to hold the office of legislator as soon as they take office as chief, and a vacancy then occurs in the office of legislator.

- (3) If the chief is elected to the office of legislator in a by-election, the chief ceases to hold the office of chief as soon as he or she takes office as legislator, and a vacancy then occurs in the office of chief.

#### **Holding two offices prohibited**

- 11** No person may hold the office of chief and the office of legislator at the same time.

### **PART 3 – THE ELECTION PROCESS**

#### **Division 1 – Voters list**

##### **Eligible voters**

- 12** At an election, an eligible voter is a Tsawwassen Member who is or will be at least 18 years old on election day.

##### **Preparation of voters list**

- 13**
  - (1) The election officer must prepare a voters list containing all eligible voters for the election based on information obtained from or provided by the enrolment registrar.
  - (2) The voters list must be arranged in alphabetical order and prepared in 2 forms:
    - (a) one containing the name, date of birth, and address of each eligible voter, and
    - (b) the other, for public use, containing only the names of eligible voters.
  - (3) When the election officer is required to post or give public notice of the voters list, the election officer must use the voters list without the dates of birth and addresses of eligible voters.

##### **Posting a voters list**

- 14**
  - (1) The election officer must
    - (a) post the voters list in the Tsawwassen administration office, and
    - (b) give public notice of where the voters list can be looked at.
  - (2) An eligible voter is entitled to examine the voters list to see that their date of birth and address is correct.
  - (3) Executive Council may make regulations respecting
    - (a) who is entitled to see the voters list containing names, dates of birth and addresses;
    - (b) restrictions on the use and disclosure of the voters list.

##### **Correcting the voters list**

- 15**
  - (1) After the voters list is prepared, the election officer
    - (a) may correct errors or add or remove a name if the election officer is satisfied a correction is necessary, and
    - (b) must give written notice of the correction to the person concerned.

- (2) Any question or dispute over an error, omission or correction to the voters list may be referred by the election officer to Judicial Council to resolve and its decision is final.

#### **Application to correct the voters list**

- 16** An eligible voter whose name is omitted from the voters list may request the election officer to correct the list by giving to the election officer
  - (a) written confirmation from the enrolment registrar that the person is an eligible voter and should be on the voters list, or
  - (b) a statutory declaration of a right to vote in the prescribed form.

#### **Appeal from election officer's decision**

- 17**
  - (1) If the election officer is not satisfied that a person who requests a change to the voters list is an eligible voter and should be added to the voters list, the election officer must notify the applicant in writing.
  - (2) An applicant may only appeal the election officer's decision on one or more of the following grounds, namely, that:
    - (a) the person is eligible to vote at the election;
    - (b) their name is on the Tsawwassen enrolment register and that they are or will be 18 years old on election day;
    - (c) their name was mistakenly omitted from the voters list;
    - (d) they are not disqualified from voting.
  - (3) The appeal is made by filing with Judicial Council a written notice of appeal including the reasons for the appeal, verified by statutory declaration, together with material in support of the appeal.
  - (4) Judicial Council may
    - (a) dismiss the application;
    - (b) order the voters list to be corrected,and its decision is final.

#### **Corrected voters list**

- 18** After any disputes over the voters list are resolved, the election officer must post a corrected voters list.

#### **Responsibility of eligible voters to keep their address current**

- 19** Every eligible voter is responsible
  - (a) for keeping the enrolment registrar informed of their current address and for notifying the enrolment registrar of any change of address, and
  - (b) for checking that their address shown on the voters list is correct and notifying the election officer of any correction to be made.

### **Division 2 – Nomination of Candidates and All-candidates Meeting**

#### **Setting date and procedure for nomination meeting and all-candidates meeting**

- 20**
  - (1) The election officer must make arrangements for and set a date for
    - (a) a nomination meeting, and

- (b) an all-candidates meeting, but only after candidates have been declared to be candidates properly nominated for election under section 30 [*Declaration of recognized candidates*].
- (2) Executive Council may make regulations
  - (a) respecting the notice to be given of the nomination meeting, how the notice is to be given, and the information to be contained in the notice;
  - (b) respecting the rules to be followed before, during and after a nomination meeting and the procedure to be followed during the meeting;
  - (c) respecting the notice to be given and the rules for the conduct of the all-candidates meeting.

#### **Notice of the nomination meeting**

- 21** The election officer must, in the prescribed form, send or deliver to each eligible voter on the voters list, to the address shown on the list,
- (a) notice of the nomination meeting;
  - (b) a mail-in nomination in the prescribed form together with an envelope addressed to the election officer;
  - (c) instructions for how to nominate a candidate by mail.

#### **At the nomination meeting**

- 22** (1) Once declared open by the election officer, a nomination meeting must remain open for at least 2 consecutive hours for the purpose of receiving nominations of candidates.
- (2) After the expiry of 2 hours from the opening of the nomination meeting, the meeting closes after a motion to close the meeting is passed, or if no one is present, at the discretion of the election officer.

#### **Nominating candidates**

- 23** A candidate must be eligible for the office for which they wish to be a candidate and must be nominated at the nomination meeting
- (a) verbally, by two eligible voters, or
  - (b) by a mail-in nomination in the prescribed form, supported by two eligible voters, that is received by the election officer before the close of the nomination meeting.

#### **After the nomination meeting**

- 24** After the nomination meeting closes, the election officer must send to each nominated candidate a notice of their nomination in the prescribed form.

#### **Nomination must be accepted by candidate**

- 25** (1) If a nominated candidate intends to be a candidate in the election, the candidate must file with the election officer
- (a) a statutory declaration in the prescribed form accepting the nomination,
  - (b) a deposit payable to the Tsawwassen First Nation of an amount prescribed by Executive Council, the amount of which may vary depending on the office or offices for which the person is a candidate,

- (c) a certificate of qualification in the prescribed form verified by the chief administrative officer in accordance with the *Government Organization Act* or other Tsawwassen enactment, and
  - (d) a disclosure, in the prescribed form, containing the information required to be disclosed by the *Government Organization Act* or by regulations under that Act.
- (2) If a candidate mistakenly omits information or makes a mistake in a certificate or disclosure it must be promptly corrected by an amendment verified by statutory declaration.
  - (3) If subsection (1) is not complied with by a time specified in the regulations, or as modified under section 27(2) [*Too few nominations*], the candidate is conclusively presumed to have declined the nomination and is not permitted to be a candidate in the election.

#### **Questionable candidates**

- 26** (1) The election officer is not required to investigate the eligibility, candidacy or nomination of a candidate unless credible information questioning any of those matters comes to the election officer's attention, in which case the election officer may
- (a) investigate and make a decision about whether an individual is a valid candidate and whether the candidate and nomination complies with this Act and the regulations, and
  - (b) notify the person concerned of the decision, giving written reasons.
- (2) If the election officer's decision is that a candidate is not a valid candidate, that person may, within 3 days after receipt of the election officer's decision, appeal to Judicial Council
- (a) by filing with Judicial Council a notice of appeal, with reasons for the appeal and any supporting documentation, and
  - (b) sending a copy of the notice and supporting documents to the election officer.
- (3) After considering the matter and conducting any hearing it considers necessary or appropriate in the circumstances, Judicial Council must decide the matter and the decision is final.
- (4) Pending the decision of Judicial Council, the person appealing the election officer's decision remains as, and is to be treated for all purposes as, a candidate for the election.

#### **Too few nominations**

- 27** (1) If
- (a) no nominations are received for a candidate for chief,
  - (b) no or an inadequate number of nominations are received for candidates to fill all the vacancies for an election for legislator, or
  - (c) through disqualification, withdrawal, death or other circumstance no candidates or an inadequate number of candidates are nominated to fill vacancies required to be filled,

the election officer must make arrangements to hold another nomination meeting and give notice of the date, time and place it will be held.

- (2) In circumstances described in subsection (1), the election officer may, with the approval of Executive Council, adjust any dates or time periods prescribed by the regulations to accommodate a new nomination meeting and the consequences that result, but the election officer may not change election day.
- (3) In circumstances described in subsection (1), Executive Council may set a new date for the election, despite section 6(2) [*Date for general elections*] or section 7(1)(a) [*By-election for chief or legislator*], and may adjust other dates or time periods as may be required to accommodate the new election day.

### **Division 3 – Declaration of Candidates and Notice of Election**

#### **Strict compliance**

- 28** If a candidate is not permitted to be a candidate because they did not comply with section 25 [*Nomination must be accepted by candidate*], the election officer must
- (a) remove the name of the person as candidate from any ballot or election materials;
  - (b) not place the name of the person on a ballot.

#### **Use of filed information**

- 29** (1) The election officer must retain the certificate of qualification and notice of disclosure filed under section 25 [*Nomination must be accepted by candidate*] and any amendments to those documents, with other election material and include them in the binder compiled by the election officer after the election.
- (2) On written request, the election officer must produce for inspection by a Tsawwassen Member a candidate's certificate of qualification and notice of disclosure.

#### **Declaration of recognized candidates**

- 30** When the requirements of this Act and the regulation have been met, the election officer must declare the candidates for election.

#### **Campaign advertising**

- 31** (1) Candidates may send to the election officer campaign advertising.
- (2) The election officer may, in accordance with the regulations, mail the campaign advertising to eligible voters at the address shown on the voters list.
- (3) Executive Council may make regulations
- (a) respecting the ethical standards required for campaign advertising and for the campaign advertising to be mailed out;
  - (b) limiting the type, amount, size and weight of the campaign advertising material to be mailed out;
  - (c) establishing fees to be paid by candidates to cover the cost of the mail out;
  - (d) requiring the name of the candidate for whom the advertising is distributed to be identified on the campaign advertising;

- (e) requiring the election officer to conduct additional mail outs and the rules related to them.
- (4) The election officer must reject campaign advertising that is not received on time or that does not meet the requirements of the regulations, or that the election officer considers offensive, inappropriate or that brings the election into disrepute.

#### **Notice of the election**

- 32** (1) The election officer must, in the prescribed form, post notices of the election
- (a) in conspicuous public places frequented by Tsawwassen Members on Tsawwassen Lands,
  - (b) on the Tsawwassen First Nation website, and
  - (c) in the Tsawwassen First Nation community newsletter.
- (2) The notices must include
- (a) the date of election day,
  - (b) the individuals who are declared by the election officer to be candidates,
  - (c) the times during which voting stations will be open,
  - (d) the location of the one or more voting stations where eligible voters may vote,
  - (e) the methods for voting at the election, and
  - (f) any other matters described in the regulations.

#### **Distribution of ballots for mail-in vote**

- 33** (1) In accordance with the regulations, the election officer must
- (a) prepare separate mail-in ballots, as required, for the election of chief and for the election of legislator;
  - (b) distribute mail-in ballots to each person on the voters list at the address shown on the list, with instructions for voting by mail;
  - (c) mail out any other information required by the regulations.
- (2) Candidates campaign material may be distributed with the notice of the election or in a separate mailing.

#### **Mail-in votes: regulations**

- 34** (1) Executive Council may make regulations
- (a) respecting the verification of mail-in votes;
  - (b) respecting the maintenance of secrecy of mail-in votes;
  - (c) governing how mail-in voting is to be conducted;
  - (d) ensuring that an eligible voter only votes once in each election;
  - (e) respecting any other matter to regulate mail-in voting and to protect the integrity of the election;
  - (f) respecting the preparation, printing and security of mail-in ballots;
  - (g) respecting the nature and form of mail-in ballots, including distinguishing features for mail-in ballots.



- (2) Executive Council may make regulations authorizing advance voting by eligible voters before election day in an advance vote, respecting rules for the advance vote, and voting at the advance vote.
- (3) Executive Council may, by regulation, declare that no mail-in vote is to be conducted at an election in which case the provisions of this Act and the regulations about mail-in voting do not apply to that election.

#### **Election by acclamation**

- 35** (1) If only one person accepts a nomination for the office of chief, the election officer must declare that person elected as chief, effective at the commencement of the next term of the Tsawwassen Legislature.
- (2) If there are the same number of candidates as there are vacancies to be filled, or if there are fewer candidates than there are vacancies to be filled, for the office of legislator, the election must continue for the purpose of determining who is to assume positions on Executive Council.
- (3) If a person who is declared elected resigns before taking office, then that resignation takes effect and creates a vacancy as it would if the resignation were effective immediately after the person took office.

#### **Withdrawal of candidate**

- 36** (1) A candidate who has accepted a nomination and has been declared a candidate for an election may only withdraw as a candidate if
  - (a) they send or give to the election officer a written notice of withdrawal, signed by the candidate, and
  - (b) the notice of withdrawal is received by the election officer before the close of the voting station on election day.
- (2) A candidate who withdraws from an election forfeits their deposit to the Tsawwassen First Nation.
- (3) If the withdraw of a candidate results in no candidate or an inadequate number of candidates to fill all vacancies in an election, the withdrawal must be treated as creating a vacancy immediately after the person would otherwise have assumed office.

## **PART 4 – ELECTION DAY**

### **Division 1 – Voting**

#### **Scrutineers appointed by candidates**

- 37** (1) Each candidate may appoint scrutineers by using the prescribed form and giving the form to the election officer.
- (2) Not more than 2 scrutineers for each candidate are entitled to be present at voting stations to watch voting and the counting of ballots.
- (3) Scrutineers may be appointed by a candidate up to the time voting stations close.

#### **No electioneering on election day**

- 38** No candidate or a person on their behalf may

- (a) electioneer on election day, or
- (b) on election day, display election campaign advertising in a voting station or within an area outside the voting station designated by the election officer.

#### **Preparing for voting**

**39** Executive Council may make regulations

- (a) respecting the acquisition and use of ballot boxes for the election and their security;
- (b) respecting the acquisition, use and location of voting booths to ensure a secret ballot and accessibility for eligible voters;
- (c) respecting the materials to be provided for marking ballots and the instructions to be provided;
- (d) respecting who may or who may not stay in voting stations before, during and after voting takes place.

#### **Voting by secret ballot**

**40** Voting at an election must be by secret ballot.

#### **How votes may be cast**

**41** A vote for a candidate may be cast

- (a) on election day, in person,
- (b) by mail-in ballot, or
- (c) if an advance vote is permitted, in person at the advance vote.

#### **Voting rules**

- 42**
- (1) An eligible voter may only vote once for a candidate for the office of chief.
  - (2) For the election to the office of legislator, an eligible voter
    - (a) may vote for as many candidates as there are vacancies to be filled;
    - (b) may vote once only for each candidate.
  - (3) If an eligible voter, in the opinion of the election officer, deliberately votes or attempts to vote more than once for the same candidate
    - (a) no vote by that eligible voter for that candidate is to be counted,
    - (b) the ballot must be marked “spoilt”, and
    - (c) the election officer must record the reason why the ballot is marked “spoilt”.
  - (4) Votes cast for a candidate who withdraws or dies before voting stations close must be treated as if they were spoilt ballots for the candidate for which they voted.

#### **Voting in person**

- 43**
- (1) When an individual wishes to vote in person at a voting station, the election officer must
    - (a) verify that the individual’s name is on the voters list and may request photograph identification so that the individual can be reliably identified as an eligible voter and the individual that they claim to be;
    - (b) verify on the voters list whether or not the person has already voted;

- (c) if the individual is an eligible voter and has not already voted in the election for which he or she wishes to vote, issue a ballot to the eligible voter in a manner that ensures secrecy and protects the eligible voter's secret ballot;
  - (d) mark the back of the ballot in a distinctive manner;
  - (e) provide, in the prescribed form, voting instructions for marking the ballot;
  - (f) indicate on the voters list that the eligible voter has voted as soon as the ballot has been deposited in the ballot box.
- (2) If an individual who wishes to vote on election day is not on the voters list, the election officer may issue the individual a ballot and allow him or her to vote only if
- (a) the election officer is satisfied the individual is an eligible voter and was omitted from the voters list in error, or
  - (b) the individual concerned provides the election officer with a statutory declaration that the individual is an eligible voter and any other verification the election officer considers necessary to verify the individual is an eligible voter.

#### **No loitering in voting stations**

- 44** The election officer must not allow anyone to stay in a voting station for an unreasonable period before or after voting unless permitted by the regulations or there is an appropriate reason for the person to be present.

#### **Special voting provisions**

- 45**
- (1) This section applies only to eligible voters resident on Tsawwassen Lands unless the regulation otherwise provide.
  - (2) Eligible voters with a disability or who are incapacitated and unable to attend a voting station on election day may request the election officer to make arrangements so that the eligible voter is able to vote at home.
  - (3) A ballot package must be hand-delivered to the eligible voter or person on the eligible voter's behalf by the election officer.
  - (4) The election officer or a person acting on the eligible voter's behalf may assist the eligible voter to cast their ballot.
  - (5) The marked ballot must be deposited in a sealed ballot box.
  - (6) Executive Council may make regulations
    - (a) respecting the conditions and time period for applying for and casting a vote under this section;
    - (b) respecting the procedures to be followed when a vote is cast under this section;
    - (c) extending the area to which this section applies.

#### **Spoilt ballots**

- 46**
- (1) If an eligible voter makes a mistake on a ballot they may exchange their spoilt ballot for another ballot issued by the election officer.
  - (2) The election officer must write the word "Cancelled" on the spoiled ballot and store it separately.

**Deposit of ballots in ballot box**

- 47** (1) After marking their ballot, an eligible voter must return the folded ballot to the election officer.
- (2) The election officer must verify that the ballot is the same ballot issued to the eligible voter and the folded ballot must then be deposited in the ballot box.
- (3) Only ballots issued by the election officer on election day may be cast in person on election day.

**Forfeited ballots**

- 48** (1) If an eligible voter who received a ballot refuses to vote, or leaves the voting station without returning his or her ballot to the election officer, then he or she forfeits the right to vote in the election.
- (2) If an eligible voter forfeits their right to vote, the election officer must mark “Declined” on the voters list beside the person’s name.
- (3) If a ballot is returned by an eligible voter who has forfeited their vote, the election officer must mark the ballot “Declined” and deposit or allow the ballot to be deposited in the ballot box.

**Reconciling mail-in ballots and in-person ballots**

- 49** In accordance with the regulations, the election officer must determine whether
- (a) an eligible voter has voted by mail-in ballot, in which case any ballot cast or attempted to be cast in person must be set aside and not counted, or
  - (b) an eligible voter has voted in person on election day, in which case any mail-in ballot received from that eligible voter must be set aside and not counted.

**Voting hours**

- 50** (1) Voting stations open at 9:00 a.m. and close at precisely 8:00 p.m., unless subsection (3) applies,
- (2) An eligible voter inside a voting station when the voting station closes and who has not voted is entitled to vote.
- (3) If the election officer is satisfied that eligible voters are unable to enter the voting station to vote before 8:00 p.m., the election officer may, for a limited time specified by the election officer, extend the period for voting.

**Division 2 – Counting Ballots****Counting ballots**

- 51** (1) Executive Council may make regulations respecting
- (a) when, how and the manner in which ballots are collected, verified and counted;
  - (b) processes and procedures to ensure that the secrecy of the vote is maintained;
  - (c) a means for a fair, efficient and accurate count and if necessary, recount of ballots;
  - (d) processes to ensure all valid ballots are counted;

- (e) when a ballot must not be counted because it is spoilt, would result in an eligible voter voting twice, and when ballots must be declined;
  - (f) the mailing, marking, receipt, security, verification and, unless a person has voted in person, counting of mail-in ballots, and ballots cast in an advance vote, if any, and how and when they are counted;
  - (g) the role, responsibility and function of election clerks and election witnesses;
  - (h) the sealing and unsealing of ballot boxes and the verification or examination of those processes;
  - (i) the integrity, honesty, and fairness of voting at an election and the counting of ballots, and the verification of processes required by this Act and the regulations.
- (2) Executive Council may make regulations respecting
- (a) who, how and when mail-in packages are opened and how envelopes appearing to contain ballots are to be securely stored, handled, opened, not opened, and counted;
  - (b) the process to identify whether the ballot is a proper ballot and cast by an eligible voter;
  - (c) record-keeping of mail-in ballots that are spoilt, declined, rejected or set aside;
  - (d) procedures to prevent an eligible voter from voting both by mail-in ballot and in person and to prevent ballots being counted contrary to this Act or the regulations;
  - (e) the record to be made that an eligible voter has voted in an election.

#### **Arrangements for the count**

- 52** (1) The election officer must
- (a) seal the ballot boxes after the vote is concluded, verify that fact and arrange to collect all ballot boxes in one location;
  - (b) arrange the room in which ballots are to be counted so that those Tsawwassen Members who wish to do so and other persons permitted to do so may watch the count without interfering with the ballots or the count;
  - (c) verify those present are Tsawwassen Members or others who are permitted to be present.
- (2) Executive Council may make regulations respecting any of the matters described in subsection (1), including who is permitted to watch the count of ballots in addition to Tsawwassen Members.

#### **Right to watch the count**

- 53** (1) Tsawwassen Members are entitled to be present and watch the counting of ballots, and other persons are only entitled to be present if so permitted under the regulations, unless any person is excluded by the election officer under subsection (2).
- (2) The election officer may exclude or direct the exclusion from the place where ballots are counted a person whose activities interfere with the efficient and accurate counting of ballots.

**Election witnesses**

- 54** An election witness must
- (a) be present at the voting station at least one hour before the voting station closes, and witness the closing, and
  - (b) be present while ballots are counted and watch the count.

**Counting duties of election officer**

- 55** (1) The election officer must examine each ballot and reject those ballots that:
- (a) were not issued, mailed out or handed out by the election officer,
  - (b) are not identified as a ballot mailed out or handed out by the election officer,
  - (c) are marked “spoilt” “cancelled” or “declined”,
  - (d) contain votes for more than the number of vacancies to be filled, or
  - (e) contain a mark that identifies or may identify an eligible voter.
- (2) Ballots that contain votes for less than the number of vacancies to be filled must be counted if they are otherwise proper ballots.
- (3) The election officer must document the results of the count of ballots in the prescribed form and record the results in a prescribed form of the official results of the vote.

**Declaration of election results**

- 56** (1) Immediately after completing the prescribed form of the official result of the vote, the election officer must declare
- (a) the number of votes received by each candidate, and
  - (b) the candidates who are elected.
- (2) The candidate for chief who receives the most votes must be declared by the election officer as elected to the office of chief.
- (3) The candidates for the office of legislator who receives the most votes for the vacant offices must be declared by the election officer as elected as legislator to the Tsawwassen Legislature.

**Tie votes**

- 57** (1) If there is a tie vote for the office of chief, the election officer must conduct a recount of the votes for the office of chief.
- (2) If there is a tie vote for any office of legislator, the election officer must conduct a recount of all the votes of all candidates for the office of legislator.

**Deciding tie votes**

- 58** (1) The election officer must organize the following means to resolve a tie vote that
- (a) has not been resolved by a recount, or
  - (b) has not been resolved by a recount conducted by Judicial Council.
- (2) As many pieces of paper with the names of the candidates who are in a tie vote must be placed in a receptacle that ensures the pieces of paper cannot be seen when the draw is made.

- (3) One piece of paper or as many as are required to resolve tie votes must be drawn one by one from the receptacle by a person appointed by the election officer who is not a candidate, chief, legislator, election officer, deputy election officer, election clerk, election witness or scrutineer.
- (4) The candidate or candidates whose name or names appear on the paper or papers drawn, in the order in which they are drawn by the appointed person, must be declared elected by the election officer.

#### **Judicial Council recount**

- 59**
- (1) A candidate, an eligible voter or the election officer may, within 3 days after election day deliver to Judicial Council a written application for a Judicial Council recount of the votes for the office of chief or the votes for the office of legislator on the grounds that:
    - (a) votes were incorrectly accepted or rejected or were inaccurately counted or recounted and that this affected or may have affected the outcome of the election, or
    - (b) the election officer's report and results do not accurately record the number of votes for a candidate.
  - (2) The application must be verified by a statutory declaration and accompanied by a deposit in an amount prescribed by regulation.

#### **Judicial Council responsibilities**

- 60**
- (1) If Judicial Council is satisfied the matter complained of could have affected the outcome of the election, then as soon as possible after receiving an application for a recount, Judicial Council must deliver to the election officer and any affected candidates in the election
    - (a) a copy of the application for the Judicial Council recount and supporting statutory declaration, and
    - (b) notice of the date, place and time of the recount, which must be adequate time to allow Judicial Council to complete the recount within 9 days of election day.
  - (2) The applicant for the recount, the election officer, the candidates in the election, the counsel for the candidates and any other persons permitted by Judicial Council, are entitled to be present at a Judicial Council recount.
  - (3) At the completion of the recount, Judicial Council must declare the results of the election, unless a tie or ties are declared, in which case the tie or ties must be broken in accordance with section 58 [*Deciding tie votes*].

#### **Candidates take office despite an appeal**

- 61**
- (1) A candidate who is declared elected by the election officer, or after a Judicial Council recount by the Judicial Council, takes office
    - (a) in the case of a general election, at the start of the next term of office of the Tsawwassen Legislature;
    - (b) in the case of a by-election, when the result of the election is finally declared.

- (2) Subsection (1) applies whether or not an appeal to Judicial is filed under this Act and whether or not the appeal is filed before or after the candidate who is declared elected takes office.

### **Division 3 – Appeal of Election**

#### **Appeal of election to Judicial Council**

- 62**
- (1) Within 30 days after election day, an eligible voter may appeal to Judicial Council the results of the election on the grounds that:
    - (a) this Act or the regulations were contravened and the contravention did or may have affected the outcome of the election,
    - (b) an offence was committed, whether or not the offence is or was the subject of a prosecution, and the contravention did or may have affected the outcome of the election, or
    - (c) a candidate was ineligible to be a candidate or to be elected.
  - (2) The appeal must be in writing, containing particulars and information supporting the appeal verified by a statutory declaration and filed with Judicial Council, with a deposit in an amount prescribed by the regulations.
  - (3) The appellant has the sole responsibility to provide relevant evidence in support of the appeal.
  - (4) The grounds for the appeal must be stated clearly and precisely and include references to any relevant section of this Act or the regulations that is alleged to have been contravened or in respect of which an offence is alleged to have been committed.

#### **Notice of appeal**

- 63**
- (1) Judicial Council must as soon as possible after receiving an appeal of an election, send a copy of the appeal and supporting documents to:
    - (a) the election officer;
    - (b) each candidate;
    - (c) Executive Council.
  - (2) The election officer or a candidate may, within 14 days of receipt of the appeal of the election, send to Judicial Council a written response, verified by statutory declaration, together with any supporting documents.
  - (3) As soon as practicable after an appeal is received and after such consideration as it considers necessary, Judicial Council must make a decision on the appeal.
  - (4) In its decision Judicial Council may
    - (a) dismissal the appeal;
    - (b) disqualify the chief or one or more legislators from office;
    - (c) order a by-election for the office of chief or for some or all of the offices of legislator;
    - (d) make recommendations to the Tsawwassen Legislature.
  - (5) If Judicial Council finds that the appeal was filed without just cause, or if the appeal is denied, the deposit paid to make the appeal is forfeited to the Tsawwassen First Nation.



- (6) Judicial Council must provide a copy of its decision to the chief, every legislator, the election officer and the candidates.
- (7) The decision of Judicial Council is final.

#### **Inadvertent errors**

- 64** No election is to be declared invalid and the chief or a legislator is not to be disqualified by reason of mistake or non-compliance with this Act or the regulations if, in the opinion of Judicial Council,
- (a) the non-compliance or mistake did not reasonably affect the final result of the election, and
  - (b) the election was otherwise conducted in accordance with this Act and the regulations.

### **Division 4 – Final Responsibilities of Election Officer**

#### **Disposal of election materials**

- 65**
- (1) The election officer must retain the ballots and documents related to the election in a secure location until they are disposed of.
  - (2) The election officer may dispose of the ballots and election material used in the election when the results of an election are conclusively resolved, and then in the presence of two witnesses who must certify that they witnessed the destruction of the ballots by signing a certificate in the prescribed form.
  - (3) The disposal must not take place earlier than 45 days after election day, or if there is an appeal, 45 days after the appeal is conclusively resolved.

#### **Report of the election**

- 66** When an election is finally decided the election officer must
- (a) send to the Tsawwassen administrative office a report of election results in the prescribed form;
  - (b) promptly post the election results;
  - (c) mail a copy of the election results to each eligible voter at the address shown on the voters list.

#### **Completion of election manual**

- 67** On final completion of the election, the election officer must compile and deliver to Executive Council a manual containing
- (a) the appointment and agreement between the election officer and Tsawwassen First Nation;
  - (b) a copy of all appointments made by the election officer;
  - (c) a copy of all forms completed under this Act or the regulations for the purpose of the election;
  - (d) a copy of the voters list with the names of eligible voters only;
  - (e) a copy of official vote;
  - (f) a copy of the final report;
  - (g) anything else required by the regulations.

## **PART 5 – ADMINISTRATION OF AN ELECTION AND ELECTION REGULATIONS**

### **Division 1 – Appointments**

#### **Appointment of election officer**

- 68** (1) Executive Council must appoint a qualified individual as the election officer for an election.
- (2) An individual is qualified to be appointed as election officer only if
- (a) the individual, in the opinion of Executive Council, has the knowledge, experience and ability to conduct an election,
  - (b) the individual is not a Tsawwassen Member, and
  - (c) the individual is not an employee of the Tsawwassen First Nation or an employee of a Tsawwassen institution.
- (3) The appointment of an election officer does not take effect until the individual appointed
- (a) accepts the appointment in writing and delivers the written acceptance to Executive Council, and
  - (b) provides a statutory declaration to Executive Council in the prescribed form.
- (4) Executive Council may set the remuneration and expenses payable to the election officer.
- (5) Executive Council may only terminate the appointment of the election officer
- (a) for just cause, or
  - (b) for incapacity.

#### **Timeframe for appointment**

- 69** Executive Council may appoint an election officer at any time but no later than 14 days after the date notice of an election is given under section 6(2) [*Date for general elections*] or section 7 [*By-elections for chief or legislator*].

#### **Responsibility of election officer**

- 70** (1) The election officer is responsible for the fair, efficient and proper conduct of an election in accordance with this Act and the regulations.
- (2) The election officer may take all reasonable means to encourage, in an impartial manner, all eligible voters to engage in and to vote at an election.
- (3) If this Act requires or anticipates regulations being made but they have not been made, or if the regulations do not adequately or appropriately deal with an issue, or do not deal with an issue at all, the election officer may make any decision or rule
- (a) to deal with any matter that the circumstances require, and
  - (b) that protects the integrity of the election within generally accepted standards for the conduct of elections.

#### **Appointment and authority of interim election officer**

- 71**
- (1) In the absence or inability of an election officer, or if no election officer is appointed, Executive Council may appoint an interim election officer.
  - (2) An individual may only be appointed as interim election officer if the individual
    - (a) in the opinion of Executive Council, has the knowledge, experience and ability to conduct an election,
    - (b) is not a Tsawwassen Member, and
    - (c) is not an employee of the Tsawwassen First Nation or a Tsawwassen institution.
  - (3) An interim election officer, during their term of office, may exercise the authority and has the responsibility of an election officer.
  - (4) The appointment of an interim election officer does not take effect until the individual appointed
    - (a) accepts the appointment in writing and delivers the written acceptance to Executive Council, and
    - (b) provides a statutory declaration to Executive Council in the prescribed form.
  - (5) Executive Council may set the remuneration and expenses to be paid to an interim election officer.
  - (6) Executive Council may terminate the appointment of an interim election officer
    - (a) for cause,
    - (b) for incapacity, or
    - (c) by the appointment of a replacement election officer, in which case the appointment of the interim election officer terminates immediately.

#### **Appointment and authority of deputy election officers**

- 72**
- (1) The election officer
    - (a) may appoint one or more deputy election officers;
    - (b) must determine the nature and extent of the election officer's authority that the deputy election officers are also permitted to exercise with respect to the election.
  - (2) A deputy election officer must not be
    - (a) a Tsawwassen Member, or
    - (b) an employee of the Tsawwassen First Nation or an employee of a Tsawwassen institution.
  - (3) Executive Council may set the remuneration and expenses payable to deputy election officers.
  - (4) The election officer may, at any time, terminate the appointment of a deputy election officer.

#### **Appointment of peace officer**

- 73**
- (1) The election officer may appoint a person as a peace officer for the purpose of preserving the public peace during the conduct of an election, and before, during or after voting.

- (2) The peace officer may act on their own initiative and must comply with any directions of the election officer.

#### **Appointment of election clerks**

- 74** (1) The election officer may appoint election clerks.
- (2) Election clerks must, as directed by the election officer, perform the duties required of them by the regulations and by the election officer.

#### **Appointment of election witnesses**

- 75** (1) The election officer may appoint individuals as election witnesses.
- (2) Election witnesses must, as directed by the election officer, perform the duties required of them by the regulation and by the election officer.

### **Division 2 – Regulations**

#### **General regulation-making authority**

- 76** Executive Council may make regulations
- (a) respecting the conduct of a voting process to decide whether to waive a disqualification of an individual under section 8(1)(i) [*Eligibility to be a candidate for chief*] or section 9(1)(h) [*Eligibility to be a candidate for legislator*] who wishes to be a candidate for chief or legislator, or both including
    - (i) when or the period within which a person may apply for the waiver;
    - (ii) any criteria or conditions for an application to be made;
    - (iii) the requirements for giving notice of the date, time and place for the vote and any meeting required to discuss the matter, and by when notice is to be given and to whom;
    - (iv) the information to be provided about the reasons for the vote and the disclosure of details about the person making the waiver application;
    - (v) the process for conducting a meeting or vote, or both and deciding who may rule on the waiver;
    - (vi) the manner and rules for voting, counting and announcement of the vote;
    - (vii) any other matter required for the conduct of a vote and a decision to be made;
  - (b) respecting the posting or publication of notices required under this Act or the regulations;
  - (c) the amount of deposits payable to be a candidate for chief or legislator, and the form in which they must be paid;
  - (d) designating an address or person to whom a notice may be served, referred, delivered, filed or sent to Judicial Council, the chief administrative officer, Executive Council or the election officer and the manner in which the document is to be served, referred, directed, filed or sent;
  - (e) respecting the material to be provided to eligible voters about portable voting stations in a special vote;
  - (f) respecting any matter for which regulations may be made under this Act;

- (g) prescribing forms for the purpose of this Act and the regulations;
- (h) to deal with an unusual or urgent circumstance or to deal with anything not provided for or inadequately provided for in this Act, but a regulation under this paragraph is repealed 3 months after the election date in respect of the election for which it is made.

### **Division 3 – Judicial Council Trusteeship**

#### **Lack of legislators and chief**

- 77** (1) If at a general election there is no one acclaimed or elected as legislator, or if there are an insufficient number of legislators acclaimed or elected to form a quorum in the Tsawwassen Legislature, Judicial Council becomes the trustee of the Tsawwassen First Nation pending further elections.
- (2) If, in the circumstances described in subsection (1), a chief is elected, the chief may act as, and has all the powers of, Executive Council, but must act by and with the consent of Judicial Council pending further elections.

#### **Authority of Judicial Council as trustee**

- 78** (1) As trustee, Judicial Council has all the authority and may exercise any authority to manage, protect and administer the Tsawwassen First Nation, including regulation-making authority, that Executive Council has under an enactment, and any authority Tsawwassen First Nation or Executive Council has under an instrument, arrangement or agreement.
- (2) Judicial Council must, as quickly as circumstances permit, take all necessary measures to return the governance of Tsawwassen First Nation to the Tsawwassen Legislature and Executive Council.

## **PART 6 – OFFENCES, PENALTIES, DISQUALIFICATION AND SUSPENSION**

*[Amended by Bill 24-2009; Enacted on June 16, 2009]*

### **Division 1 – Offences and Penalties**

#### **Definitions**

**79** In this Part

*“inducement” includes money, gift, valuable consideration, refreshment, entertainment, office, placement, employment and any other benefit of any kind;*

*“intimidate” means to do or threaten to do any of the following:*

- (a) use force, violence or restraint against a person;
- (b) inflict injury, harm, damage or loss on a person or property;
- (c) intimidate a person.

#### **Inducement offence**

- 80** (1) A person is guilty of an offence who, by inducement, directly or indirectly, through an agent or personally, seeks to persuade another person to vote or refrain from voting in an election, or seeks to persuade another person to vote or refrain from voting for or against a particular candidate.

- (2) A person is guilty of an offence who accepts an inducement to vote or refrain from voting in an election, or to vote or refrain from voting for or against a particular candidate.

#### **Intimidation offence**

- 81** A person is guilty of an offence who intimidates or coerces another person or that person's family for any of the following purposes:
- (a) to persuade or compel a person to vote or refrain from voting in an election;
  - (b) to persuade or compel a person to vote or refrain from voting for or against a particular candidate;
  - (c) to punish a person for having voted or refrained from voting in an election or for voting or not voting for or against a particular candidate.

#### **Interference with voting**

- 82** A person is guilty of an offence who directly or indirectly, personally or through an agent, by abduction, duress or fraudulent means, does any of the following:
- (a) impedes, prevents or otherwise interferes with a person's right to vote at an election;
  - (b) compels, persuades or otherwise causes a person to vote or refrain from voting at an election;
  - (c) compels, persuades or otherwise causes a person to vote or refrain from voting for a particular candidate.

#### **General offences**

- 83** A person is guilty of an offence who contravenes any provision of this Act or the regulations.

#### **Specific election offences**

- 84**
- (1) A person is guilty of an offence who purports to withdraw a candidate from an election without authority to do so or to publish or cause to be published a false statement that a candidate has withdrawn.
  - (2) A person is guilty of an offence who does any of the following:
    - (a) votes in an election when not entitled to do so;
    - (b) without authority, obtains a ballot in the name of another person.
  - (3) A person is guilty of an offence who does any of the following:
    - (a) without authority, obtains a ballot;
    - (b) without authority, supplies a ballot to another person;
    - (c) puts in a ballot box, or cause to be put in a ballot box, anything other than a ballot that the person is authorized to deposit there;
    - (d) without authority destroys, tampers with, takes, opens or interferes with a ballot box or ballots;
    - (e) votes or attempts to vote for the same candidate twice;
    - (f) votes in an election when not entitled to do so.

- (4) A person is guilty of an offence who
  - (a) interferes or attempts to interfere with an eligible voter marking their ballot;
  - (b) in a voting station, deliberately finds out or tries to find out how a person voted or discloses, without the permission of the voter, how a person voted.
- (5) A person is guilty of an offence who does any of the following:
  - (a) makes a false or misleading statement or declaration when required under this Act or the regulations to make a statement or declaration, or gives a false or misleading certificate;
  - (b) except as authorized under this Act or the regulations, inspects, accesses, discloses or uses information from:
    - (i) the voters list,
    - (ii) nomination documents, or
    - (iii) disclosure statements or supplementary reports;
  - (c) impedes or obstructs the election officer, deputy returning officer or other person performing duties and exercising powers given to the person under this Act or the regulations.
- (6) A person is guilty of an offence who, being the election officer, interim election officer, deputy returning officer, election witness, election clerk or scrutineer, contravenes this Act with the intention of affecting the result or validity of an election.

#### **Penalties**

- 85** A person who is guilty of an offence under this Act or the regulations is, on conviction, liable to one or more of the following penalties:
- (a) a fine of not more than \$10 000;
  - (b) a prohibition for a period of not longer than 7 years from holding the office of chief or the office of legislator.

#### **Contravention respecting suspensions under Division 5**

- 85.1** A person is guilty of an offence if he or she contravenes section 97.6.

*[Amended by Bill 24-2009; Enacted on June 16, 2009]*

#### **Defence to prosecution**

- 86** It is a defence to a prosecution under this Act or the regulations if a person proves to the satisfaction of the judge that the person exercised due diligence to prevent or avoid contravening this Act or the regulations.

## **Division 2 – Disqualification of Chief or Legislator**

### **Disqualification of chief or legislator**

- 87** (1) The chief or a legislator is disqualified from holding office and the office becomes vacant if the chief or legislator, as the case may be:
- (a) is convicted of an offence prosecuted by way of indictment that carried the possibility of imprisonment for 2 years or more and all rights of appeal have been exhausted;
  - (b) is in arrears on payment of a debt to the Tsawwassen First Nation or to a Tsawwassen institution of an amount and for a period prescribed by regulations;
  - (c) declares bankruptcy or is declared bankrupt under the *Bankruptcy Act* (Canada);
  - (d) is disqualified under Tsawwassen law from the office of chief or the office of legislator.
- (2) A chief or a legislator is not disqualified from office if a conviction described in subsection (1) was related directly to the assertion or exercise of aboriginal rights, Treaty rights or aboriginal title.

### **Disqualification by declaration of Judicial Council**

- 88** The chief or a legislator is disqualified from holding office, and the office becomes vacant
- (a) on a declaration of disqualification by Judicial Council that the chief or a legislator
    - (i) was not eligible to be a candidate in the election in which he or she was elected, or
    - (ii) after having accepted a nomination to be a candidate became ineligible before taking office;
  - (b) on a declaration of disqualification by Judicial Council that the chief or a legislator is incapacitated to the extent that he or she is no longer able to perform the duties of office, but only if this declaration is supported by the opinion of a medical practitioner;
  - (c) on a declaration of disqualification by Judicial Council under this or any other Tsawwassen enactment.

### **Disqualification by election or appointment to another office**

- 89** The chief or a legislator is disqualified from holding office and the office becomes vacant if the chief or legislator, as the case may be:
- (a) becomes a judge of a court of the province of British Columbia or of Canada or becomes a member of the House of Commons or Senate of Canada or a member of a provincial Legislature;
  - (b) is appointed as a member of Judicial Council.

### **Resignation or death**

- 90** The office of chief or of a legislator becomes vacant if the chief or legislator, as the case may be
- (a) dies, or



- (b) resigns their office by sending a notice of resignation in writing to the chief administrative officer, signed by the person resigning.

#### **Absence of chief from meetings of Executive Council**

- 91** If the chief is absent, without cause, for more than the number of meetings of Executive Council prescribed by regulation under the *Government Organization Act*, the chief is disqualified from office and the office of chief becomes vacant.

### **Division 3 – Resolution of Disputes about Disqualification**

#### **Referral of disputes**

- 92** (1) If there is a dispute or question about whether the chief or a legislator has been disqualified or whether the office of chief or the office of legislator is vacant, the matter may be referred to Judicial Council by
- (a) the chief;
  - (b) the Executive Council,
  - (c) a member of Executive Council,
  - (d) a resolution of the Legislature, or
  - (e) the person alleged to be disqualified;
  - (f) any other person prescribed by regulation.
- (2) The referral of a dispute about disqualification must
- (a) be made within 30 days of the date the alleged disqualification became known;
  - (b) be in writing;
  - (c) state the nature of the question or dispute;
  - (d) be accompanied by relevant supporting material.

#### **Hearing by Judicial Council**

- 93** (1) Judicial Council must hear and decide a dispute or question about disqualification as soon as possible after the referral is filed.
- (2) The referral of a dispute or question about disqualification may be started or continued whether or not another election has been held between the time the disqualification is alleged to have occurred and the time the referral is or was made and despite the fact that the chief or legislator in question was re-elected in that election.

#### **Decision by Judicial Council**

- 94** (1) Judicial Council may, as the circumstances require:
- (a) declare the chief or legislator to be disqualified and the office of chief or the office of legislator to be vacant;
  - (b) declare that the chief or a legislator is not disqualified;
  - (c) dismiss the application.
- (2) If Judicial Council declares the chief or a legislator to be disqualified because the person used his or her office to gain financial benefit, Judicial Council may order the disqualified person to pay an amount of money in damages to the Tsawwassen

First Nation to reimburse the Tsawwassen First Nation and to cover the cost and expenses of the proceedings before Judicial Council.

- (3) Judicial Council may, if it declares that the chief or a legislator is not disqualified, order that any costs and expenses incurred by the chief or the legislator be reimbursed by the Tsawwassen First Nation.

#### **Genuine errors**

- 95** If Judicial Council decides that the chief or a legislator could be disqualified, it may still dismiss the application if it is of the opinion that the action of the chief or legislator
- (a) was inadvertent or was the result of a genuine error in judgment, or
  - (b) occurred without any intention of wrongfully benefiting or of depriving the Tsawwassen First Nation of a benefit it otherwise would have received and the actions which caused the disqualification were inadvertent or a genuine error in judgment.

### **Division 4 – Application for Disqualification**

#### **Application for declaration of disqualification**

- 96**
- (1) A Tsawwassen Member may apply to Judicial Council for a declaration that the chief or legislator be declared disqualified from office.
  - (2) The application may be made only if the applicant has evidence that the chief or a legislator has engaged in an activity that brings the office into disrepute, as described in subsection (3).
  - (3) An activity that brings the office of chief or of a legislator into disrepute includes:
    - (a) a contravention of any conflict of interest provisions under a Tsawwassen enactment respecting the chief or legislators;
    - (b) knowingly failing to disclose a material fact in a disclosure statement that was required to be disclosed as a candidate;
    - (c) signing a certification or a statutory declaration required under this Act or the regulations knowing it to be false or misleading;
    - (d) knowingly making a claim for expenses that are false, incorrect, over-stated or not incurred as chief or legislator;
    - (e) defrauding or attempting to defraud the Tsawwassen First Nation or a Tsawwassen institution;
    - (f) a conviction of an offence under this or any other Tsawwassen enactment;
    - (g) being found by Judicial Council to have committed an offence under this Act or the regulations, whether or not a prosecution for that offence was conducted and whether or not a prosecution was successful;
    - (h) a conviction of an offence under this Act or the regulations;
    - (i) any other matter, act, omission or conduct prescribed by regulations.
  - (4) If Judicial Council finds that the chief or a legislator has engaged in conduct that brings the office of chief or legislator into disrepute, Judicial Council may:
    - (a) issue a warning or a reprimand;
    - (b) suspend the chief or a legislator from office for a period of not more than one year;

- (c) disqualify the chief or a legislator from office and declare the office vacant;
  - (d) disqualify the chief or legislator from office, declare the office vacant, and prohibit the chief or legislator from holding the office of chief and the office of legislator for a period of not more than 7 years.
- (5) Judicial Council may make a decision under this section whether or not there has been an intervening election and whether or not the person concerned has resigned his or her office.
- (6) If there has been an intervening election, Judicial Council may make a declaration with respect to the status of the person in respect of both the office they held that is the subject of the proceedings and also the status of the person in respect of the office held when the decision is made.

#### **Chief or legislator continues in office pending decision**

- 97** A chief or legislator who is the subject of an application, question or a determination by Judicial Council under this Part remains in office pending the decision of Judicial Council, unless they resign.

### **Division 5 – Suspension**

#### **Definitions**

- 97.1** In this Division:

*“enactment date” means the date of the enactment of this Division;*

*“office”, in relation to*

- (a) the chief means his or her office as such, and as a member and the head of Executive Council and as a legislator,
- (b) a member of Executive Council includes his or her office as such and as a legislator, and
- (c) a legislator means his or her office as such and his or her office, if any, as a member of Executive Council.

*[Amended by Bill 24-2009; Enacted on June 16, 2009]*

#### **Suspension of chief, member of Executive Council or legislator**

- 97.2** The chief, a member of Executive Council or a legislator is suspended from office if he or she is charged with
- (a) the offence described in section 87 (1) (a),
  - (b) any offence involving fraud or dishonesty, or
  - (c) any offence involving
    - (i) assaulting, or causing death or bodily harm to any individual, or
    - (ii) threatening to assault, or to cause death or bodily harm to any individual.

*[Amended by Bill 24-2009; Enacted on June 16, 2009]*

#### **Duration of suspension and consequences if court convicts**

- 97.3** (1) A suspension under this Division of the chief, a member of Executive Council or a legislator for being charged with an offence described in section 87 (1) (a)
- (a) starts,

- (i) on the date of the charge if the charge is made on or after the enactment date, or
  - (ii) on the enactment date if the charge is made before that date, and
- (b) remains in effect until
  - (i) he or she is acquitted by a court of competent jurisdiction, or,
  - (ii) under section 87,
    - (A) he or she is disqualified from holding office as chief, member of Executive Council or legislator, as the case may be, and
    - (B) that office becomes vacant.
- (2) A suspension under this Division of the chief, a member of Executive Council or a legislator for being charged with an offence described in section 97.2 (b) or (c)
  - (a) starts
    - (i) on the date of the charge if the charge is made on or after the enactment date, or
    - (ii) on the enactment date if the charge is made before that date, and
  - (b) remains in effect until
    - (i) he or she is acquitted of the offence by a court of competent jurisdiction, or
    - (ii) after all rights of appeal have been exhausted, he or she is convicted of the offence by a court of competent jurisdiction.
- (3) Where the chief, a member of Executive Council or a legislator, having been charged with an offence described in section 97.2 (b) or (c), is convicted of the offence (as set out in subsection (2) (b) (ii) of this section),
  - (a) he or she is disqualified from holding office for 2 years, as chief, member of Executive Council or legislator, as the case may be, and
  - (b) that office becomes vacant.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

#### **Acting chief to be appointed while suspension in effect**

**97.4** If the chief is suspended from office under this Division,

- (a) section 25 of the *Government Organization Act* applies in respect of the suspension as if the suspension were a vacancy referred to in that section, and
- (b) section 26 of that Act also applies.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

#### **Rule respecting remuneration**

**97.5** An individual suspended from office under this Division

- (a) continues, for only the first month immediately following the start of the suspension to receive remuneration at the rate in effect at the date on which the suspension starts, and
- (b) is not entitled to receive, and must not be paid, any remuneration while the suspension remains in effect, other than the remuneration for that first month.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

### **Prohibition against certain activities for suspension period**

**97.6** An individual suspended from office under this Division, whether as chief, member of Executive Council or legislator, must not, during the suspension period, participate in performing the functions and duties, or exercising the powers, associated with, any of those offices.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

### **Effect of elections on suspensions under this Division**

**97.7** (1) If a person

- (a) has been suspended from office under this Division, whether as chief, member of Executive Council or legislator, and
- (b) the suspension is in effect on a date fixed under this Act for an election, then
- (c) that person's office as chief, member of the Executive Council or legislator, as the case may be, becomes vacant on that date, and
- (d) that person is not eligible to be a candidate for office as chief or legislator in that election.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

### **Application to suspensions from office occurring after April 3, 2009**

**97.8** This Part applies in respect of any suspension from office under section 97.2 of this Act after April 3, 2009, whether the conduct that gives rise to that suspension occurs before on or after the date of enactment of the *Election Amendment Act*, 2009.

[Amended by Bill 24-2009; Enacted on June 16, 2009]

## **PART 7 – MANNER AND FORM OF AMENDING THIS ACT**

### **Application**

**98** This Part establishes the manner and form by which amendments to this Act are to be proposed.

### **Preparation of proposed amendments**

**99** (1) Executive Council must first prepare any proposals to amend this Act for approval by resolution of the Tsawwassen Legislature.

(2) If the Tsawwassen Legislature approves Executive Council's proposals for amendments to this Act, the Legislature must, if the amendments are not otherwise required to be the subject of a referendum, decide in its resolution whether to hold a vote of eligible voters on the proposed amendments.

### **Notice of and meeting about amendments**

**100** If the Tsawwassen Legislature, by resolution, approves the amendments proposed by Executive Council,

- (a) notice of the proposed amendments must be given in accordance with the regulations, and
- (b) the proposed amendments must be discussed at a meeting of Tsawwassen Members.

### **Procedure after meeting**

- 101**
- (1) After the meeting of Tsawwassen Members to discuss proposed amendments to this Act, Executive Council may decide whether to proceed with the amendment or not.
  - (2) If Executive Council decides to proceed with the proposed amendments, or any modifications to the amendments made with the approval of the Tsawwassen Legislature, then
    - (a) if the amendments are required to be the subject of a referendum, the referendum must be conducted;
    - (b) if no referendum is required and the Tsawwassen Legislature requires a vote of the proposed amendments to be conducted, that vote must be conducted in accordance with the regulations;
    - (c) if neither paragraph (a) nor (b) applies, Executive Council may decide whether to introduce a Bill into the Tsawwassen Legislature respecting the proposed amendments.
  - (3) If a vote of eligible voters, by referendum or otherwise ,
    - (a) approves the proposed amendments, a Bill may be introduced and passed in the Tsawwassen Legislature making the amendments, with minor technical or editorial modifications not affecting the substance of the amendments as may be required;
    - (b) does not approve the proposed amendments, no Bill containing the amendments proposed may be tabled in the Tsawwassen Legislature in the current session of the Legislature.

### **Regulations for a vote**

- 102**
- (1) Executive Council may make regulations
    - (a) respecting the notice to be provided to Tsawwassen Members about proposed changes to the identified provisions and where the notice must be posted;
    - (b) respecting the distribution of and explanation of the proposed changes, and the collection and distribution of comments in favour of and opposed to the changes proposed;
    - (c) governing the location and date of meetings, how they are to be conducted, and who is to present information at them;
    - (d) respecting the notice, calling, conduct and count of votes at a vote of eligible voters called to vote on proposed amendments.
  - (2) As an alternative to a vote conducted under regulations made under subsection (1)(d), Executive Council may conduct the vote in accordance with the *Government Organization Act*.

### **First general election**

- 103**
- (1) After the effective date, Executive Council must set a date for the first general election for the office of chief and for the office of legislators and that date must be no later than 6 months after the effective date.

- (2) Despite section 8(1)(a) [*Eligibility to be a candidate for chief*], to be eligible to be a candidate for the office of chief at the first general election after the effective date, an individual must
  - (a) have been a Tsawwassen Member for the period starting on the effective date up to and including nomination day, and
  - (b) for the difference in time between the period of time described in paragraph (a) and 12 months, have been on the membership list of the Tsawwassen First Nation immediately preceding the effective date.
- (3) Despite section 9(1)(a) [*Eligibility to be a candidate for legislator*], to be eligible to be a candidate for the office of legislator at the first general election after the effective date, an individual must
  - (a) have been a Tsawwassen Member for the period starting on the effective date up to and including nomination day, and
  - (b) for the difference in time between the period of time described in paragraph (a) and 12 months, have been on the membership list of the Tsawwassen First Nation immediately preceding the effective date.
- (4) Nothing in this section affects the other eligibility requirements to be a candidate for the office of chief or the office of legislator set out in this Act and the regulations.

***Interpretation Act (British Columbia)***

- 104** Unless the context otherwise requires, the *Interpretation Act* (British Columbia) applies to this Act.

**Repeal**

- 105** The Tsawwassen First Nation *Election Code* is repealed.

**Coming into force**

- 106** This Act comes into effect on the date of enactment.