



Enacted: April 27, 2010

## **Kwanlin Dün First Nation**

**Referendum Code**

**PART ONE  
SHORT TITLE**

**Short title**

1. This Act may be cited as the *Referendum Code*.

**PART TWO  
DEFINITIONS and GENERAL PROVISIONS**

**Definitions**

2. In this Act,

Terms defined in this Act have the same meaning whether capitalized or in lower case, and

"Address of Record" means the mailing address of the voter maintained by the registrar of citizenship;

"Advance Vote" means a vote conducted prior to the final voting day and in accordance with section 69 of this Act ;

"Assistant Returning Officer" means the person holding or acting in the office of chief returning officer as set out in sections 17 to 18 of this Act;

"Ballot" means the ballot as defined in Part Eight of this Act;

"Beneficiary" means a person enrolled under Chapter 3 of the Final Agreement, as defined in section 67(1) (c) of the *Constitution*;

"Chief" means the person holding or acting in the office of Chief of the Kwanlin Dun First Nation, as constituted under section 41 of the *Constitution*;

"Chief Returning Officer" means the person holding or acting in the office of chief returning officer as set out in sections 13 to 16 of this Act and has the same meaning as the Chief Electoral Officer described in section 67(1)(f) of the *Constitution*;

"Citizen" means a person who is a Citizen in accordance with section 67(1)(g) of the *Constitution*;

“Council” means the branch of Kwanlin Dun First Nation constituted under Chapter 5 of the *Constitution*;

“Constitution” means the Constitution of the Kwanlin Dun First Nation;

“Deputy Returning Officer” means the person or office appointed pursuant to sections 19 to 21 of this Act;

“Early Vote” means the taking of votes pursuant to sections 63 to 65 of this Act;

“Final Count” means the time and procedure used for the count of the mail-in ballots received by 5:00 pm six (6) consecutive days after the voting date

“Interpreter” means a person that may be appointed under section 26 of this Act;

“Judicial Council” means the branch of Kwanlin Dun First Nation constituted under Chapter 8 of the *Constitution*;

“Mail-in Vote” means the taking of votes pursuant to sections 55 to 62 of this Act;

“Mobile Vote” means the taking of votes pursuant to section 66 to 68 of this Act;

“Notice” means the Referendum Notice in accordance with sections 35 and 36 of this Act and Schedule 3-Part B.2(1) of the *Constitution*;

“Oath” includes a solemn affirmation or a statutory declaration;

“Official Voters List” means the list of Voters as defined in sections 30 to 34 of this Act;

“Poll Clerk” means the person or office appointed pursuant to sections 22 to 24 of this Act;

“Referendum” means a referendum conducted under this Act and under section 16, section 63, or section 64 of the *Constitution*;

“Referendum Committee” means the committee appointed pursuant to sections 9 to 12 of this Act and Schedule 3-Part B 1(1) of the *Constitution*;

“Referendum Period” means the time from the appointment of the referendum committee until the publishing of the referendum results;

“Registrar of Citizenship” means the person who is the “Registrar” pursuant to the *Constitution*;

“Regular Vote” means the vote on the Voting Date pursuant to section 70 of this Act;

“Scrutineer” means a voter who may monitor the vote pursuant to Part Seven of this Act;

“Vote” means to cast a ballot;

“Voter” means a person who is eligible to vote pursuant to section 29 of this Act;

“Voting Date” means the last date for voting in the Referendum;

“Voting Officers” means the individuals that are involved in the conduct of the vote as described in Part Four of this Act;

“Voting Place” means a building or location at which a voting station is established;

“Voting Station” means the premises secured for the taking of the vote of all or part of the voters; and

“Website” means the Kwanlin Dün First Nation website.

### **Purpose**

**3.** The purpose of this Act is to establish rules for the conduct of referenda.

### **Application**

**4.(1)** This Act, in accordance with the *Constitution*, applies to a referendum required under section 16, section 63, or section 64 of the *Constitution*.

**(2)** If there is a conflict between this Act and any other enactment enacted before or after this section comes into force, this Act prevails unless the other enactment contains an express provision that it, or a relevant provision of it, applies notwithstanding this Act.

### **Question is passed**

**5.(1)** A referendum question under section 16 of the *Constitution* will have been passed if it is supported by at least a majority (50%+1) of all Beneficiaries entitled to vote in the Referendum.

**(2)** A referendum question under section 63 of the *Constitution* will have been passed if:

- (a) at least a majority (50%+1) of Citizens who are eligible to vote cast a ballot in the referendum;
- (b) it is supported by at least a majority (50%+1) of the Citizens who vote in the referendum; and
- (c) in the case of an amendment to Chapter 3, or an amendment that is inconsistent with Chapter 3, at least a majority (50%+1) of the Beneficiaries eligible to vote support it in a further vote held among

Beneficiaries alone, after the amendment has passed paragraph (a) and (b) above.

(3) A referendum question under section 64 of the *Constitution* will have been passed if it is supported by at least 60% of the Kwanlin Dun First Nation Citizens who vote in the referendum.

### **PART THREE Order of Referendum**

#### **Order for a referendum**

6. The Council shall by resolution duly enacted within 49 days before the Voting Date, fix the:

- (a) Voting Date; and
- (b) question(s) being asked as they will appear on the ballot

#### **Changes to the time for the taking of the vote**

7.(1) The referendum committee may, after consultation with the chief returning officer, extend or postpone the time for the taking of the vote, if it is satisfied that a substantial number of voters will be unable to get to their voting station within the time provided due to

- (a) extreme weather conditions; or
- (b) a tragic community event.

(2) No extension or postponement of the time for the taking of the vote, pursuant to subsection 7(1), of more than 72 consecutive hours shall be granted.

### **PART FOUR Voting Officers & Staff**

#### **Appointment of the referendum committee**

8.(1) The referendum committee shall consist of three (3) members of Council.

(2) The Council shall appoint three members of Council as members of the referendum committee at least 30 days before the issue of the order as referred to in section 6.

(3) In the event of a vacancy on the referendum committee, Council shall appoint a replacement.

### **Duration of appointment of the referendum committee**

**9.** The members of the referendum committee shall be appointed for a fixed term and may be re-appointed.

### **Conditions of appointment to the referendum committee**

**10. (1)** The members of the referendum committee may engage in active or public support or criticism of any referendum question.

**(2)** Despite subsection (1), no member of the referendum committee shall influence or interfere with or attempt to influence or interfere with the exercise of any power or the performance of any duty or responsibility under this Act by the chief returning officer, a deputy returning officer or a poll clerk.

### **Powers and responsibilities of the referendum committee**

**11.(1)** The referendum committee shall be responsible for all matters related to the general direction, overall supervision and conduct of the referendum under this Act and in accordance with the laws of the Kwanlin Dun First Nation, including:

- (a) in co-ordination with the registrar of citizenship of the Kwanlin Dun First Nation, compiling the official voters list that sets out, in alphabetical order, the name of each beneficiary who, on the Voting Date, is 18 years of age or older.
- (b) establishing its own internal procedures for the convening and conduct of its meetings, and appointing its Chair; and
- (c) providing a report to Council setting out the results of the referendum and the details of carrying out the referendum process within seven days after publishing the results of the referendum, but excluding any duty specifically assigned to a voting officer under this Act.

**(2)** The referendum committee shall decide all matters by majority unless otherwise specified in these rules.

**(3)** In performing its responsibilities, the referendum committee may:

- (a) seek the advice of the chief returning officer and such other advisors as it considers appropriate and may rely upon such advice; and
- (b) proceed to perform its responsibilities in the absence of a member unless the absent member objects in writing in advance, provided that if the referendum committee must perform its responsibilities at a place and time established pursuant to this Act, the member or members present may proceed to perform the responsibilities of the referendum committee.

(4) The referendum committee, in consultation with the chief returning officer, shall submit a budget for the conduct of the vote to the Council for approval.

(5) The referendum committee shall present a written report to the Council at the end of their term.

### **Appointment of the chief returning officer**

12. The referendum committee shall, not less than 27 days before the issue of the Notice, appoint a chief returning officer who shall make a declaration to:

- (a) act impartially;
- (b) not favour, oppose, promote or be associated with a campaign on any aspect of any referendum question; and
- (c) respect the principles associated with a secret ballot.

### **Conditions for appointment of the chief returning officer**

13. The chief returning officer shall:

- (a) be at least 21 years of age;
- (b) not be a member of Council of Kwanlin Dun First Nation; and
- (c) refrain from any active or public support or criticism of any referendum question

### **Responsibilities and duties of the chief returning officer**

14. The chief returning officer shall, acting on behalf of the referendum committee, be responsible to :

- (a) appoint and train deputy returning officers, poll clerks and all other persons required to conduct the vote;
- (b) distribute and publish the official voters list;
- (c) prepare, post and announce the notice of the referendum;
- (d) procure the necessary materials, including the ballots and ballot packages;
- (e) develop all the necessary forms for the conduct of the Vote;
- (f) establish all necessary voting places;
- (g) establish regulations and accreditation procedures for all personnel involved at the voting places;
- (h) establish and conduct the mail-in vote;
- (i) establish and conduct the early vote;
- (j) establish and conduct the mobile vote;
- (k) establish and conduct the advance vote;
- (l) establish and conduct the regular vote and be responsible for all matters during the times of voting;
- (m) close the vote and receive the sealed ballot boxes;
- (n) supervise the count of the vote;
- (o) declare the results;

- (p) assign or delegate any duties required in the conduct of the vote; and
- (q) generally, oversee and supervise the conduct of the vote to ensure the effective execution of the provisions of this Act.

**Intent of this Act**

15. The chief returning officer may modify any procedure, to execute any of his or her duties if it is deemed necessary to ensure the secrecy of the ballot or the integrity of the voting process.

**Resources provided**

16. The Council shall provide sufficient space and resources to enable the referendum committee and the chief returning officer to fulfill the duties required.

**Assistant returning officer**

17. The chief returning officer may appoint an assistant returning officer who shall
- (a) assist the chief returning officer; and
  - (b) exercise any specific powers delegated to him or her by the chief returning officer.

**Declaration by a assistant returning officer**

18. If appointed, an assistant returning officer shall make a declaration to:
- (a) act impartially;
  - (b) refrain from any active or public support or criticism of any referendum question;
  - (c) respect the principles associated with a secret ballot;
  - (d) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
  - (e) report and be accountable to the chief returning officer.

**Deputy returning officer—criteria for eligibility**

19. Each deputy returning officer shall:
- (a) be at least 21 years of age;
  - (b) not be a member of Council of Kwanlin Dun First Nation
  - (c) refrain from any active or public support or criticism of any referendum question; and,
  - (d) understand the voting procedures.



**Declaration by a deputy returning officer**

20. Each deputy returning officer shall make a declaration to:
- (a) act impartially;
  - (b) refrain from any active or public support or criticism of any referendum question;
  - (c) respect the principles associated with a secret ballot;
  - (d) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
  - (e) report and be accountable to the chief returning officer.

**Responsibilities and duties of a deputy returning officer**

21. Each deputy returning officer shall be responsible to:
- (a) perform all duties assigned and delegated by the chief returning officer;
  - (b) act as a witness to the conduct of the vote;
  - (c) observe activities at the voting place;
  - (d) assume other duties as required by the chief returning officer; and
  - (e) report to the chief returning officer any violations under this Act.

**Criteria for eligibility of a poll clerk**

22. Each poll clerk shall:
- (a) be at least 18 years of age;
  - (b) not be a member of Council of Kwanlin Dun First Nation
  - (c) refrain from any active or public support or criticism of any referendum question; and,
  - (d) understand the voting procedures

**Declaration by a poll clerk**

23. Each poll clerk shall make a declaration to:
- (a) act impartially;
  - (b) refrain from any active or public support or criticism of any referendum question;
  - (c) respect the principles associated with a secret ballot;
  - (d) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
  - (e) report and be accountable to the chief returning officer.

**Responsibilities and duties of a poll clerk**

24. Each poll clerk is responsible to:

- (a) perform all duties assigned and delegated by the chief returning officer;
- (b) act as a witness to the conduct of the vote;
- (c) observe activities at the voting place and the counting of ballots;
- (d) assume other duties as required by the chief returning officer; and,
- (e) report to the chief returning officer any violations under this Act.

**Availability of an interpreter**

25. The chief returning officer may appoint interpreters to assist with the vote.

**Criteria for eligibility of an interpreter**

26. Each interpreter must :

- (a) be at least 18 years of age;
- (b) be fluent in the language identified as needed by the chief returning officer;
- (c) read and write english;
- (d) not be a member of Council of Kwanlin Dun First Nation; and,
- (e) refrain from any active or public support or criticism of any referendum question.

**Declaration by an interpreter**

27. An interpreter must make a declaration to:

- (a) act impartially;
- (b) refrain from any active or public support or criticism of any referendum question;
- (c) respect the principles associated with a secret ballot;
- (d) not make public comment or release information on the conduct of the vote or voting that has not been authorized by the chief returning officer; and
- (e) report and be accountable to the chief returning officer.

**Indemnity**

28. At all times, the Kwanlin Dün First Nation shall indemnify and save harmless the Voting Officers and staff, during good behaviour, from any liability whatsoever and howsoever incurred in performing the duties under this Act.

**PART FIVE  
VOTER RIGHTS AND OFFICIAL VOTERS LIST**

**Eligibility as a voter**

**29.(1)** For a referendum conducted under section 16 of the *Constitution*, every person who is:

- (a) 18 years of age or older; and
- (b) enrolled as a beneficiary with the KDFN,

shall have the right to one vote for each referendum question.

**(2)** For referendum question under section 63 of the *Constitution*:

- (a) every citizen, 18 years of age or older as of the voting date, shall have the right to one vote for each referendum question; and
- (b) in the case of an amendment to Chapter 3, or an amendment that is inconsistent with Chapter 3, every beneficiary, 18 years of age or older as of the voting date shall have the right to one vote for each referendum question when a further vote is held.

**(3)** For a referendum question under section 64 of the *Constitution*, every citizen, 18 years of age or older as of the voting date, shall have the right to one vote for each referendum question.

**Compilation of the official voters list**

**30.(1)** The referendum committee, acting in concert with the registrar of citizenship and the chief returning officer, shall compile the official voters list that sets out, in alphabetical order, the name of each person who has the right to vote in the referendum question.

**(2)** It shall be the responsibility of the voter to ensure that his or her name appears on the official voters list.

**Posting of the preliminary voters list**

**31.** A preliminary voters list shall be made available 45 days prior to the voting date by posting it:

- (a) at the Kwanlin Dun First Nation administrative building,
- (b) on the KDFN website, and
- (c) at any other place designated by the chief returning officer..

**32.** At least 30 days before the final day of voting, an Official Voters list shall be made available and posted:

- (a) at the Kwanlin Dun First Nation administrative building,

- (b) on the KDFN website,
- (c) any other place designated by the chief returning officer, and
- (d) to individual citizens upon request.

**Revisions to the official voters list**

**33.(1)** At any time before the date of the vote, the referendum committee or Registrar of Citizenship shall advise the chief returning officer of any change to the official voters list where it is demonstrated that:

- (a) the name of a voter has been omitted from the list;
- (b) the name of a voter is incorrectly set out on the list;
- (c) the person named on the list is not a beneficiary; or
- (d) the person named on the list is not at least 18 years of age or older on the date of voting day.

**(2)** No person shall be added to the Official Voters List on the voting date.

**34.** Only those persons whose names are on the official voters list shall be entitled to vote.

**PART SIX  
NOTICE OF QUESTION**

**Publication of referendum notice**

**35.** At least 30 days before the date of the final vote, the referendum committee shall make public the Notice by posting it:

- (a) in the Kwanlin Dun Administration building;
- (b) in a newspaper having circulation in Whitehorse and the Yukon;
- (c) radio or television in Yukon;
- (d) on the KDFN website;
- (e) in at least 3 conspicuous locations within Whitehorse; and,
- (f) any other location as determined by the referendum committee.

**36.** The Notice shall contain:

- (a) the nature and purpose of the Referendum;
- (b) the question(s) as they will appear on the ballot(s);
- (c) the Voting Date;
- (d) the location, date and time of all voting options;
- (e) the location, date and time of the count of the mail-in ballots received up until 5:00 pm six (6) consecutive days after the voting date.
- (f) the chief returning officer's:
  - (i) name,
  - (ii) office mailing address,

- (iii) office telephone number,
- (iv) office facsimile number;
- (v) office email;
- (g) the names of the members of the referendum committee; and,
- (h) any other information with respect to the vote deemed necessary.

## **PART SEVEN Scrutineers of the Vote**

### **Appointment of scrutineer**

**37.** A citizen may be a scrutineer to monitor a voting station.

### **Number of scrutineers in a voting place**

**38.** No more than three scrutineers may be present at the voting station at any time.

### **Access to a voting station**

**39.** Upon entering a voting station, each person wanting to be a scrutineer shall:

- (a) sign a written declaration form provided by the deputy returning officer setting out the rules of behaviour as noted in section 40 of this Act; and,
- (b) accept the authority of the deputy returning officer.

### **Rules for behaviour of a scrutineer**

**40.** A scrutineer, while in a voting station, shall

- (a) not influence, harass, or interfere with any voter in the voting station;
- (b) not obstruct or interfere with the deputy returning officer in performing the duties of that office;
- (c) not delay any voter in exercising his or her duties;
- (d) respect the principles associated with a secret ballot; and,
- (e) comply with his/her written declaration.

### **Authority in a voting station**

**41.(1)** Any dispute as to which scrutineer may be in the room where the vote is taken shall be determined by the deputy returning officer.

**(2)** The chief returning officer or deputy returning officer may order any scrutineer to leave the voting station if he or she has reason to believe the scrutineer has failed to comply with section 40 or any other section of this Act.

**Activity by a scrutineer in a voting station**

- 42.** A scrutineer may, only during the hours of voting,
- (a) examine the poll book or voter sign-in sheets and take information from it; and
  - (b) convey information obtained from the poll book outside the voting station.

**Inspection of voting documents**

**43.(1)** Ten minutes before the opening of a voting station, any scrutineer present shall be entitled to inspect the ballot papers and all other papers, forms and documents related to the vote.

**(2)** The lack of a scrutineer shall not prohibit the deputy returning officer from opening a voting station or a poll.

**PART EIGHT  
BALLOTS**

**Ballots**

**44.** There shall be a separate ballot for each referendum question.

**Wording**

**45.** All Referendum questions shall be in plain English and require an answer of either "yes" or "no".

**Design of ballot**

- 46.** Each ballot shall:
- (a) be designed so that on the reverse side of the question, it will have the words "KDFN Referendum Vote", the voting date, and a box for the initials of the designated returning officer;
  - (b) be designed so that it can be folded after the vote to conceal the marks on the ballot while exposing the initials of the designated returning officer;
  - (c) have a counterfoil and a stub with a line of perforation between the ballot paper, and the counterfoil and a line of perforation between the counterfoil and the stub;
  - (d) sequentially numbered printed both on the back of the stub and on the back of the counterfoil.

## **Ballot boxes**

**47.(1)** The chief returning officer shall provide as many ballot boxes as are required for the purposes of the vote at each voting station.

**(2)** Each ballot box shall be:

- (a) made of durable material;
- (b) accompanied by adequate seals;
- (c) designed so that ballots, once deposited, cannot be tampered with; and,
- (d) duly labelled.

## **PART NINE VOTING RIGHTS**

### **Secrecy of voting**

**48.** The vote shall be by secret ballot.

**49.** Every person in a voting station shall respect and maintain the secrecy of the voting process.

**50.** No person shall interfere or attempt to interfere with a voter when the voter is marking his or her ballot.

**51.** No person shall ask a voter at the voting place how the voter is about to vote or has voted.

**52.** There shall be no appointments of another person as a proxy voter.

**53.** Each person who is eligible to vote according to section 29 of this Act shall have the right to receive a ballot.

### **Voting options**

**54.** There shall be up to five (5) options available to eligible voters to exercise their vote:

- (a) mail-in voting;
- (b) early voting;
- (c) mobile voting;
- (d) advance voting; and
- (e) regular voting.

**PART NINE  
VOTING PROCEDURES**

**Mail-in voting**

**55.(1)** A mail-in voting package shall consist of :

- (a) the ballot(s) the voter is eligible to cast;
- (b) an outer, postage-paid return envelope, pre-addressed to the chief returning officer;
- (c) a white, inner envelope marked "ballots enclosed" for insertion of the completed marked ballot;
- (d) a voter declaration and witness security envelope;
- (e) instructions regarding procedures for voting by mail; and,
- (f) information on other voting options available and how to exercise them.

**(2)** The package defined in section 55(1) shall be mailed:

- (a) at least 35 days before the voting date to voters whose Address of Record is not within the Yukon; or,
- (b) at least 31 days before the voting date to voters whose Address of Record is within the Yukon.

**56.** A voter receiving a mail-in ballot may still choose to vote in person by any one of the other voting options provided.

**Criteria for the mail-in ballot to be counted**

**57.** To be considered for purposes of the count, a mail-in ballot shall be returned in the voter declaration envelope signed by the voter and received by:

- (a) the chief returning officer or designate, in person or by mail, before the close of the vote on the voting date; or
- (b) the chief returning officer, by mail by 5:00 pm six (6) consecutive days after the voting date; or
- (c) a deputy returning officer during the hours of voting at the regular vote in Whitehorse.

**Responsibility of the return of ballots**

**58.(1)** It shall be the responsibility of the voter to ensure that his or her ballot is received pursuant to section 57.

**(2)** Any costs to return a ballot, other than use of the postage paid return envelope included in the package referred to in section 55(1)(b), shall be the responsibility of the voter.



**Assistance to vote by mail-in ballot**

**59.** A voter may seek the assistance of another person to mark a ballot and complete and sign the voter declaration envelope in accordance with this Act.

**Declaration of witness**

**60.(1)** A person who signs the voter declaration envelope as a witness confirms that the person who marked the ballot(s) and signed the voter declaration envelope is the person whose name is set out in the declaration.

**(2)** The failure of a person to sign as witness under subsection (1) shall not invalidate a ballot or prevent it from being counted.

**Lost or spoiled mail-in ballot**

**61.** A voter who inadvertently spoils or loses his or her mail-in ballot may obtain a replacement ballot by contacting the chief returning officer. Only one replacement of any ballot shall be allowed for each voter.

**Extension for mail-in voting**

**62.** If there is an extension or postponement of the time for the taking of the vote pursuant to section 7(1), the date for receiving mail-in ballots shall be adjusted accordingly.

**Early voting**

**63.(1)** Any eligible voter may vote by early ballot.

**(2)** Once an early ballot has been issued, the voter will be marked as having voted and a line will be drawn through their name in the official voter poll book.

**Time limit for early voting**

**64.(1)** An early ballot may be obtained by any voter to vote from 30 days before the date set for the regular vote until noon three days before the date set for the regular vote during the hours set by the chief returning officer.

**(2)** A request for an early ballot shall be made by contacting the chief returning officer or designate.

**Criteria for early ballot to be counted**

**65.** To be valid for purposes of the count, an early ballot shall be in a voter declaration envelope signed by the voter and the deputy returning officer as a witness.

**Mobile voting**

**66.** The chief returning officer may establish a separate, mobile vote for voters in the area of the traditional territory of the Kwanlin Dun who, for reasons of being housebound or institutionalized, are unable to vote in any other manner under this Act

**Time of mobile operating**

**67.** The mobile vote shall operate at the discretion of the chief returning officer based on need and demand.

**Request for a mobile vote**

**68.(1)** A voter who is housebound or in an institution may ask to vote by mobile vote.

**(2)** Requests for a mobile vote shall be made directly to the chief returning officer or the designated deputy returning officer of the mobile vote no later than 12 noon, three days before final voting day.

**(3)** The mobile vote shall be conducted by a returning officer using the mail-in ballot envelopes with the deputy returning officer acting as the witness, and process established by the chief returning officer,

**(4)** Once a mobile ballot has been received by the deputy returning officer, a line will be drawn through the name of the voter in the official voter poll book and the voter will be marked as having voted.

**(5)** The chief returning officer shall determine whether a voter is eligible to vote under section 66.

**PART TEN  
ADVANCE AND REGULAR VOTING PROCEDURES**

**Advance voting**

**69.(1)** The chief returning officer may establish an advance vote and shall publish the date, time and location of such a vote as required under section 36 of this Act.

**(2)** The same procedures for administration of the vote that apply for regular voting shall apply to the advance voting as prescribed by sections 71 to 88 of this Act and the instructions provided by the chief returning officer

### **Regular hours of voting**

**70.** Regular voting shall take place from nine o'clock in the morning to seven o'clock in the evening on the voting date, following the procedures outlined in sections 71 to 90 and the instructions provided by the chief returning officer.

### **Sealing of the ballot boxes**

**71.** Within ten minutes before a voting station is to open, the deputy returning officer shall complete the following procedures:

- (a) open each ballot box to be used at that voting place;
- (b) permit any scrutineer or person present to verify that the box is empty;
- (c) seal each box according to the instructions to prevent it from being opened without breaking the seal; and
- (d) place each box in public view for the reception of ballots.

### **Seal on a ballot box**

**72.** The seals on a ballot box shall not be broken or the box moved from its location until the vote is officially closed and in accordance with the process described in Part Twelve on the count.

### **Who may be present at a voting station**

**73.** During the time that the voting station remains open for voting, only the following people may be present:

- (a) the deputy returning officer and the poll clerk;
- (b) up to three scrutineers;
- (c) others concerned with the conduct of the vote as assigned by the chief returning officer; and
- (d) voters who are present and are actually engaged in voting.

### **Allowing media at a voting station**

**74.** During the time that voting takes place, representatives of the media may be present only with written permission from the chief returning officer.

### **Campaign information at a voting station**

**75.** No material relating to the yes or no of any referendum question may be posted in or about the voting station.

### **Badges at voting stations**

**76.** The chief returning officer shall issue on voting day to all individuals referred to in paragraphs 73(a) to (c) identification badges to wear in a prominent manner to identify their office.

### **Procedure to provide the ballot to the voter**

**77.** When a person present at the advance vote or regular vote requests a ballot for voting purposes, the deputy returning officer shall:

- (a) ensure that the person is on the official voters list;
- (b) if the person is on the official voters list, ensure that the poll clerk:
  - (i) prints the voter's name and number on the voter sign-in sheet,
  - (ii) asks the voter to sign his or her name beside his or her printed name, and
  - (iii) puts a line through the voter's name in the official voters poll book;
- (c) initial the ballot(s) to indicate its valid issuance; and
- (d) provide the initialed ballot(s) to the voter with instructions on marking the ballot.

### **After receiving a ballot**

**78.(1)** After receiving the ballot, a voter shall:

- (a) immediately proceed to the compartment provided for marking ballot(s);
- (b) mark the ballot(s) by placing a cross, check or other mark to clearly indicate the voter's choice;
- (c) fold the ballot(s) concealing the mark on the face of the ballot while exposing the initials of the deputy returning officer; and
- (d) deliver the ballot(s) to the deputy returning officer.

**(2)** While a voter is in the compartment for the purpose of marking his or her ballot(s), no other person shall, except as provided for in section 80, be allowed in the same compartment or be in any such position from which he or she can see the manner in which a voter marks his or her ballot paper(s).

### **Returning the ballot to the ballot box**

**79.** Upon receiving the returned ballot(s), the deputy returning officer shall

- (a) leave the ballot(s) folded;
- (b) verify the initials of the returning officer;
- (c) remove the counterfoil;
- (d) have the voter deposit the ballot in the ballot box; and
- (e) ensure that the poll clerk marks in the official voters poll book in the designated column beside the voter's name that the ballot(s) has been returned.

**Providing assistance to a voter -- deputy returning officer**

**80.(1)** When requested to do so, the deputy returning officer may explain any voting procedure to a voter.

**(2)** At the request of a voter who is unable to vote pursuant to section 78(1), the deputy returning officer may, in the presence of the poll clerk,

- (a) explain the voting procedures to the voter;
- (b) read the question as it appears on the ballot;
- (c) assist the voter in casting a ballot in the manner they have requested; and
- (d) in the case of a person who is visually impaired or physically unable, mark the ballot as instructed by the voter.

**Recording assistance**

**81.** The deputy returning officer shall identify in the official voters poll book the name of any voter who requested assistance from the deputy returning officer and the reason for assistance.

**Name not on the official voters list**

**82.** A deputy returning officer shall not provide a ballot to a person whose name does not appear on the official voters list.

**Voter whose name resembles another on the official voters list**

**83.** If a person applies for a ballot paper and it is not clear to the deputy returning officer which name on the official voters list pertains to that person, the deputy returning officer shall:

- (a) select, with the assistance of that person if needed, the entry that seems to correspond most closely to the person; and
- (b) enter in the official voters poll book a notation as to how the selection was determined, including any characteristics such as age, sex and address that may distinguish the voter from another voter with the same or a similar name.

**Impersonated voter**

**84** A voter, who on requesting a ballot, claims to be a particular voter after another voter has voted in the same name, shall be entitled to receive a ballot and to vote after making the declaration of an impersonated voter using the designated form.

### **Notation in the poll book**

**85.** In any case referred to section 84, the deputy returning officer shall enter in the official voters poll book, opposite the name of the voter, a notation,

- (a) that the voter voted on a second ballot paper issued under the same name;
- (b) that the declaration of impersonated voter was made; and
- (c) any objections made by any scrutineer.

### **Spoiled ballot**

**86.** A voter who has inadvertently dealt with his or her ballot papers in such a manner that it cannot be used may return it to the deputy returning officer who shall then:

- (a) write the word "spoiled" on the back of the spoiled ballot;
- (b) keep the spoiled ballot separate from the ballot box;
- (c) provide another ballot to the voter; and
- (d) make a note in the official voters poll book beside the voter's name.

### **Number of spoiled ballots per voter**

**87.** Each voter shall be allowed only one spoiled ballot for each referendum question.

### **Refusal of a voter to vote--cancelled ballot**

**88.** Any voter who receives a ballot and leaves the voting station, without delivering a ballot to the deputy returning officer in the manner pursuant to section 78(1), or, if after receiving the ballot, refuses to vote, shall forfeit his or her right to cast that ballot and the deputy returning officer shall:

- (a) mark the word "cancelled" on the face of the ballot, if returned;
- (b) ensure that the voter shall not be allowed another ballot;
- (c) make an entry in the official voters poll book indicating that the voter "declined" to cast a ballot; and
- (d) keep the "cancelled" ballot separate from the ballot box.

## **PART ELEVEN CLOSING THE POLLS**

### **Closing the polls**

**89.** At the designated closing time, pursuant to section 70, the deputy returning officer shall publicly announce the polls are closed.

**90.** Any voters who are inside a voting place when the poll is declared closed, but who have not yet voted, shall be permitted to vote, but no other voter may be admitted to the voting place to vote.

## **PART TWELVE COUNTING THE BALLOTS**

### **Who is present for the count**

**91.** Immediately after the close of regular vote, the deputy returning officer shall proceed with the count according to instructions provided by the chief returning officer and in the presence of :

- (a) the referendum committee,
- (b) no more than three scrutineers for each poll; and
- (c) any other persons who have been authorized by the chief returning officer.

### **Verifying early votes**

**92.(1)** The deputy returning officer responsible for the early votes shall:

- (a) review all early vote ballot envelopes to ensure the legitimacy of the envelope as instructed by the chief returning officer;
- (b) open the declaration envelope and place its contents into the designated ballot box;
- (c) after all envelopes have been dealt with in this manner, open all the ballot enclosed envelopes and place any ballots in the designated ballot box for purposes of counting, making a note if an envelope does not include all ballots issued.

**(2)** During the course of transfer to the ballot box, any accidental disclosure of how the ballot is marked shall be kept confidential but shall not negate the validity of the ballot.

### **Verifying that mobile voters**

**93.** The deputy returning officer for the mobile votes shall deal with all mobile envelopes in the same manner as prescribed in section 92 (1).

### **Verifying that mail-in voters only voted once**

**94.(1)** The deputy returning officer for the mail-in votes shall review all mail-in ballot envelopes to ensure the legitimacy of the envelope by checking against the official voters poll book by way of the following :

- (a) if a mail-in ballot envelope was received from a voter who appears to

have voted at the advance, regular, early, or mobile vote, the envelope shall be set aside unopened and the deputy returning officer shall note on the envelope "cancelled" and the reason for setting aside the envelope and make the same notation beside the voter's name in the official voters poll book;

- (b) if the voter does not appear to have voted otherwise, the deputy returning officer shall verify there is a voter signature on the declaration envelope and :
  - (i) a line shall be drawn through the voter's name in the official voters poll book to indicate that he or she has voted, and
  - (ii) the deputy returning officer shall open the declaration envelope and place its contents into the designated ballot box;
- (c) after all mail-in envelopes have been dealt with in this manner, the deputy returning officer shall open the ballot enclosed envelope and place any ballots in the designated ballot box for purposes of counting, making a note if an envelope does not include all ballots issued.

**(2)** During the course of transfer to the ballot box, any accidental disclosure of how the ballot is marked shall be kept confidential but shall not negate the validity of the ballot.

### **Opening the ballot boxes**

**95.** After the mail-in vote has been dealt with pursuant to section 94(1)(a) and section 94(1)(b), each deputy returning officer shall open their respective ballot box and proceed to count the votes in the respective boxes and according to the instructions provided by the chief returning officer.

### **Ballot reconciliation**

**96.** Each deputy returning officer shall follow the procedures set out by the chief returning officer and record all information on the forms provided by the chief returning officer.

**97.** After separating the ballots for each question, the deputy returning officer shall examine each ballot and determine the number of ballots clearly marked 'yes' and the number of ballots marked 'no'.

### **Rejection of ballots**

- 98.** The deputy returning officer shall reject any ballot :
- (a) upon which votes have been cast for yes and no;
  - (b) upon which anything appears by which the voter can be identified;
  - (c) that has not been marked for either option;



- (d) that does not indicate a clear and unambiguous preference for 'yes' or 'no'; or,
- (e) that is not on an official and valid ballot.

### **Recording of rejected ballots**

**99.** On the back of each rejected ballot, the deputy returning officer shall mark "rejected", indicate the reason for the rejection and initial the ballot.

### **Objections to a rejected ballot**

**100.(1)** If a scrutineer objects to the acceptance or rejection of a ballot, the deputy returning officer shall:

- (a) make a note of the objection on the form provided;
- (b) number the objection;
- (c) place the same number on the back of the ballot in question;
- (d) initial the number on the back of the ballot; and
- (e) decide any questions arising out of the objection and, if necessary, in consultation with the chief returning officer.

**(2)** The decision of the deputy returning officer shall be final.

### **Preparing the statement of vote**

**101.(1)** After all ballots from each ballot box have been examined, and accepted or rejected pursuant to sections 92(1) to 100(1), the deputy returning officer shall

- (a) count the votes for 'yes' and 'no' on the ballots not rejected; and
- (b) prepare on the "statement of vote" provided the
  - (i) date of the vote,
  - (ii) total number of eligible beneficiaries who voted,
  - (iii) total number of ballots supplied,
  - (iv) total number of unused ballots,
  - (v) total number of spoiled and cancelled ballots,
  - (vi) total number of ballots cast,
  - (vii) total number of ballots cast that were rejected,
  - (viii) total number of ballots cast as 'yes' for the question, and
  - (ix) total number of ballots cast as 'no' for the question.

**(2)** Any member of the referendum committee present shall observe, count and tabulate the ballots according to the procedures established for the count by the chief returning officer.

### **Signing the statement of vote**

**102.** The written statement referred to in section 101(1)(b) shall be signed by:

- (a) the deputy returning officer who carried out the count;
- (b) the poll clerk;
- (c) any referendum committee member present; and,
- (c) may be signed by any scrutineer who is present.

**Witnessing the sealing of votes**

**103.** At the completion of the counting of the votes and in the presence of any scrutineer who may still be present, the deputy returning officer shall make up and seal separate envelopes, as provided, for the

- (a) ballots marked 'yes' for each question;
- (b) ballots marked 'no' for each question;
- (c) rejected ballots, including any notes taken on objections made to ballots found in the ballot box;
- (d) unused ballots;
- (e) cancelled and spoiled ballots; and
- (f) list of eligible voters and the official voters poll book.

**Delivering all material to the chief returning officer**

**104.** The deputy returning officer shall

- (a) sign and write a description of the contents of a packet; and
- (b) deliver all material used during the vote to the chief returning officer as instructed.

**Validation of votes and disposition of the ballots**

**105.** (1) The chief returning officer shall

- (a) take possession of all voting materials;
- (b) prepare a summary Statement of the Vote for each question that includes:
  - (i) date of the vote,
  - (ii) total number of voters who voted per poll,
  - (iii) total number of ballots supplied,
  - (iv) total number of unused ballots,
  - (v) total number of spoiled and cancelled ballots,
  - (vi) total number of ballots cast,
  - (vii) total number of ballots cast that were rejected,
  - (viii) total number of ballots cast as 'yes' for the question, and
  - (ix) total number of ballots cast as 'no' for the question;
- (c) keep all packets secure until the time for consideration of all appeals has passed; and
- (d) destroy the packets only after
  - (i) the time for any appeal has passed, and
  - (ii) all appeal procedures have been concluded.

**(2)** The chief returning officer shall provide a certificate of validation to the referendum committee within seven days after the completion of the count.

**106.** The same procedure outlined by sections 92 (1) to section 105(1) will be used for the count of the ballots received by mail by 5:00 pm PST six (6) consecutive days after the final vote and which will be counted before the declaration of the results as stated in section 107(1).

### **Declaration of the results**

**107.(1)** Subject to subsection 107(2), immediately after the completion of the counting of the final mail-in ballots six (6) consecutive days after the voting date but within seven (7) days after the voting day, the referendum committee shall:

- (a) publicly declare the result of the vote for each question including the total number of :
  - (i) persons on the Official Voters List;
  - (ii) ballots cast;
  - (iii) ballots approving the question;
  - (iv) ballots not approving the question;
  - (v) spoiled ballots; and
  - (vi) rejected ballots.;
- (b) whether the referendum question has passed; and,
- (c) cause to be published the results of the vote for each question
  - (i) in the Kwanlin Dun Administration building;
  - (ii) in a newspaper having circulation in the Yukon;
  - (iii) on the KDFN website; and
  - (iv) any other location deemed appropriate.

**(2)** If the difference between the number of ballots cast for the 'yes' and for 'no' of the question is four or less, including a "tie", the chief returning officer shall declare there shall be verification by an automatic recount pursuant to Part Thirteen.

## **PART THIRTEEN AUTOMATIC RECOUNTS**

### **Automatic recount by the chief returning officer**

**108.** An automatic recount, pursuant to section 107(2), shall be conducted by the chief returning officer in the presence of the referendum committee

### **Time and place of automatic recount**

**109.** The automatic recount shall take place no later than noon the day after the final count, at the Whitehorse voting place.

### **Who may attend**

**110.** The following people may attend an automatic recount:

- (a) two scrutineers; and,
- (b) the necessary poll staff as determined by the chief returning officer.

### **No other person may attend**

**111.** Except with the permission of the chief returning officer, only those persons referred to in section 110 may be present at an automatic recount. The chief returning officer may delay the recount for up to two hours to ensure that there is a witness present.

### **Documents to be supplied**

**112.** The chief returning officer shall bring all relevant voting materials to an automatic recount, including:

- (a) the ballot boxes;
- (b) the statements of the vote used to validate the results; and
- (c) all ballots cast and other material used as prescribed by section 103.

### **Documents that may be examined**

**113.** At an automatic recount, the chief returning officer shall open the sealed envelopes that contain the used and counted ballots, unused ballots, rejected ballots, spoiled and cancelled ballots. The chief returning officer shall not open any envelopes that appear to contain other documents or refer to any other voting materials other than the voter sheets.

### **Steps to be taken by the chief returning officer**

**114.** At an automatic recount, the chief returning officer shall

- (a) count all ballots according to section 92 (1) to section 100 (1);
- (b) verify or correct, if necessary, each statement of the vote; and
- (d) review the decision of the deputy returning officer with respect to the number of votes cast as a 'yes' or 'no'.

### **Clerical assistance**

**115.** The chief returning officer may be assisted in counting at an automatic recount by other election officials, but shall personally make all decisions regarding the acceptance or the rejection of ballots that were subject to an objection pursuant to sections 98 to 100 (1).

### **Proceedings to be continuous**

**116.** As far as practicable, an automatic recount shall proceed continuously except for necessary breaks.

### **Security of documents**

**117.** During a break referred to in section 116, the chief returning officer or any other person who has possession of ballots and other voting documents shall keep them sealed in parcels and the seal shall be signed by the chief returning officer and may be signed by any other person in attendance.

### **Reverse of a decision of another election official**

**118.** The chief returning officer may reverse the decision of another election official regarding the counting of the ballots at an automatic recount. If this is done, the chief returning officer shall make a note of doing so.

### **Procedure at completion of automatic recount**

**119.** At the completion of an automatic recount, the chief returning officer shall

- (a) seal the ballots in a separate envelope for each voting station pursuant to section 103;
- (b) mark on the original statement of vote any changes made pursuant to this section or prepare a new statement of vote of the results of the counting pursuant to section 101 (1)(b);
- (c) seal the ballot boxes; and,
- (d) make public the results of the recount.

### **Deadline for the declaration of results**

**120.(1)** When the automatic recount is complete, the chief returning officer shall provide the results of an automatic recount to the referendum committee who shall publicly declare the results in accordance with section 107(1).

**(2)** The decision of the chief returning officer shall be final and cannot be appealed to or reviewed by the Judicial Council.

## **PART FOURTEEN APPLICATION FOR JUDICIAL RECOUNT**

### **Grounds for a judicial recount**

**121.(1)** Any voter may apply to the Judicial Council for a recount if:

- (a) the ballots were not correctly accepted or rejected;
- (b) a statement of the vote does not accurately record the number of valid votes for a question; or
- (c) the final determination did not correctly calculate the total number of valid votes for a yes or a no.

(2) The application to the Judicial Council shall specifically set out the facts upon which the application is based and shall be supported by the evidence of a witness under oath.

(3) An application may not be made if an automatic recount has already been done.

### **Time for an application**

**122.(1)** Despite the *Kwanlin Dun First Nation Judicial Council Act*, an application to the Judicial Council shall be made within four days after the declaration of the results pursuant to subsection 107(1).

(2) Upon receipt of the application, the Judicial Council shall set a time for the recount that is convenient to complete the recount within the time limit prescribed by section 124.

### **Notification**

**123.(1)** A voter applying to the Judicial Council shall provide enough copies of the application for the members of the Judicial Council and all persons affected, including the chief returning officer.

(2) The Judicial Council shall decide the method of delivery of the notice of recount.

### **Date for a recount**

**124.** A judicial recount shall be conducted in accordance with this Part and be completed within ten days after the declaration of the results pursuant to subsection 107(1).

### **Persons present at a judicial recount**

**125.(1)** The Judicial Council shall allow the following persons, along with their agent, to be present and be heard at a judicial recount :

- (a) person who made the application;
- (b) chief returning officer;
- (c) referendum committee; and,
- (d) any other person with permission of the Judicial Council.

(2) Except with the permission of the Judicial Council, no person other than those referred to in subsection 125(1) may be present at the recount.

#### **Materials to be used**

**126.** The chief returning officer shall attend the recount and bring all voting material used to determine the official voting results, including the

- (a) relevant ballot boxes; and
- (b) statements of the vote together with the ballots that were counted pursuant to section 101 (1).

#### **Documents that may be examined**

**127.** If a recount of all of the ballots returned is required, the Judicial Council may open the sealed envelopes that contain the used, unused, rejected, spoiled and canceled ballots. The Judicial Council shall not open any envelopes that appear to contain other documents or refer to any other voting documents.

#### **Steps to be taken by the Judicial Council**

**128.** At a recount, the Judicial Council shall

- (a) open the ballot boxes containing the ballots for which a recount is requested;
- (b) count the ballots in the manner prescribed for a deputy returning officer; and,
- (c) verify or correct, if necessary, each statement of vote.

#### **Additional powers of the Judicial Council**

**129.** For the purpose of conducting a recount, the Judicial Council has the power to summon any deputy returning officer or poll clerk as a witness and to require him or her to give evidence on oath.

#### **Clerical assistance**

**130.** At the recommendation of the chief returning officer, the Judicial Council may retain the services of support staff to assist in the performance of its duties under this Part.

#### **Proceedings to be continuous**

**131.** The Judicial Council shall, as far as practicable, proceed continuously with a recount except for necessary breaks.

### **Security of documents**

**132.(1)** Unless otherwise directed by the Judicial Council, the ballot boxes shall remain in the custody of the chief returning officer.

**(2)** During a recess or a break referred to in section 131, the Judicial Council or any other person who has possession of ballots and other election documents shall keep them sealed in parcels, the seal of which shall be signed by the Judicial Council and may be signed by any other person in attendance.

### **Supervision of sealing**

**133.** The Judicial Council shall supervise the parceling and sealing of ballots and documents at a recount and take all necessary precautions for their security.

### **Judicial Council may terminate a recount**

**134.(1)** The Judicial Council may refuse to hear an application if it deems the application without merit.

**(2)** The Judicial Council may, at any time, terminate a recount, if requested in writing, by the person who applied for the recount.

### **Procedure at completion of a recount**

**135.(1)** At the completion of a recount, the Judicial Council shall

- (a) seal the ballots in separate envelopes for each polling station pursuant to section 103;
- (b) without delay, prepare a statement of vote that sets out the number of votes cast 'yes' and 'no' for each question pursuant to section 101(1);
- (c) deliver the original of the statement of vote to the chief returning officer and a copy to the referendum committee; and
- (d) make public the results of the recount.

**(2)** The decision of the Judicial Council shall be final.

## **PART FIFTEEN APPEAL**

### **Grounds and time limit for an appeal**

**136.(1)** Despite the *Kwanlin Dun First Nation Judicial Council Act*, within ten days after the declaration of the results pursuant to subsection 107(1) a voter may appeal the results of the referendum in writing to the Judicial Council detailing the evidence regarding:



- (a) corrupt practices in connection with the referendum;
  - (b) a violation of this Act that might have affected the result of the referendum.
- (2) After an appeal is filed, the Judicial Council shall set a date for it to hear the appeal.
- (3) The Judicial Council shall hear and determine an appeal under subsection 136(1) as soon as possible and, for this purpose, shall ensure that the proceedings are conducted as expeditiously as possible.
- (4) The Judicial Council may refuse to hear an appeal if it deems the appeal without merit.

### **Notice by the Judicial Council**

**137.(1)** Where an appeal is submitted pursuant to section 136 (1), the Judicial Council shall forward a copy of the appeal and all supporting documents within five business days to

- (a) the chief returning officer; and,
- (b) the referendum committee.

(2) The chief returning officer or the referendum committee may, within 14 days of the receipt of the copy of the appeal, forward to the Judicial Council a written submission addressing the details of the appeal with any supporting documents.

### **Documents made public**

**138.(1)** All documents filed in accordance with this Part shall constitute and form the record and be available to the public.

(2) The Judicial Council may, if the material that has been filed is not adequate for deciding the appeal or to hold a hearing, conduct such further investigation into the matter as it deems necessary and in such manner as it deems expedient.

### **Limit of finding fault**

**139.** The Judicial Council shall not declare a referendum result invalid or void by reason only of an irregularity or failure to comply with this Act if it is satisfied that

- (a) the referendum was conducted in good faith and substantially in accordance with the provisions of this Act, and
- (b) the irregularity or failure did not materially affect the result of the referendum.

**Declaration of judgment**

**140.(1)** Upon the completion of its review of an appeal, the Judicial Council shall provide written reasons for its decision that orders the referendum result is either:

- (a) confirmed as valid; or,
- (b) declared void.

**(2)** All decisions by the Judicial Council shall be final.


**141.** The referendum Rules for Beneficiaries enacted by Chief and Council on February 22, 2010, are hereby repealed.

**142.** This Act shall come into force on April 27, 2010.

THIS KWANLIN DUN FIRST NATION REFERENDUM CODE IS HEREBY ENACTED by the Chief and a quorum of Councillors at a duly convened third meeting of the council of the Kwanlin Dun First Nation pursuant to section 49(1) of the *Constitution of the Kwanlin Dun First Nation* on this 27<sup>th</sup> day of April, 2010.

Voting in favour of the Kwanlin Dun first Nation Referendum Code are the following members of the Council of the Kwanlin Dun First Nation:

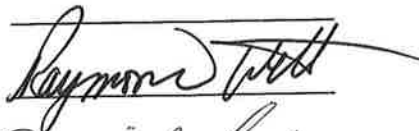
Chief Mike Smith



Councillor Edith Baker



Councillor Jessie Dawson



Councillor Ray Webb

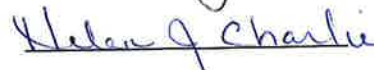
Councillor Jennifer Edzerza



Councillor Shirley Dawson



Councillor Helen J. Charlie



being the majority of those members of the Council of the Kwanlin Dun First Nation present at the aforesaid meeting of the council of the Kwanlin Dun First Nation.

The quorum of the Council of the Kwanlin Dun first Nation is five (5) members.

