

KWANLIN DŪN FIRST NATION

An Act To Amend The Referendum Code

2016

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Executive Council Office.

Kwanlin Dün First Nation

AN ACT TO AMEND THE REFERNDUM CODE

Summary

This enactment amends the *Referendum Code* (Kwanlin Dün First Nation), April 2010, to extend the period of time to establish a referendum committee to provide for greater oversight; to change the composition of the referendum committee from Council members to non-political representatives; to confirm that the Council would appoint the chief returning officer; to change early and mobile voting to special voting; to allow the Chief Returning Officer the discretion to appoint the necessary number of deputy returning officers, to comply with the constitutional requirements specific to referendums where not all referendum questions are confirmed with a yes or no answer; and ensure a consistent process as recognized in the Kwanlin Dün Elections Act.

This enactment also provides for offences under the *Referendum Code* and authorizes the Kwanlin Dün Judicial Council to hear complaints under this Act. This enactment reorganizes and renumbers sections to improve readability of the *Referendum Code*.

The Council of the Kwanlin Dün First Nation hereby enacts as follows:

1. The definitions of “beneficiary”, “chief”, “citizen”, “Council”, and “Judicial Council” and “registrar of citizenship” are repealed under section 2 of the *Referendum Code*.
2. Subsection 2(2) is added to the *Referendum Code* and reads as follows
 - (2) In addition to the definitions in subsection (1), the definitions of the constitution shall also apply to this Act.
3. Section 3 of the *Referendum Code* is repealed and replaced by the following
 3. The purpose of this Act
 - (a) is to provide for the conduct of Kwanlin Dün First Nation referenda in accordance with the constitution; and
 - (b) to ensure that Kwanlin Dün First Nation referenda are conducted in a fair, transparent, accountable and impartial manner.
4. Section 6 of the *Referendum Code* is amended as follows
 6. The Council shall by resolution, entitled Order of Referendum, issued at least within 63 days before the voting date fix the

- (a) voting date; and
- (b) referendum questions being asked as they will appear on the ballot.

5. Section 7 of the Referendum Code is replaced by the following

7. (1) The Council shall immediately give notice of the Order of Referendum by posting it

- (a) in the Kwanlin Dün First Nation administration building;
- (b) in a newspaper having circulation in Whitehorse and the Yukon;
- (c) radio or television in the Yukon;
- (d) on the Kwanlin Dün First Nation website;
- (e) in at least three conspicuous locations within Whitehorse; and
- (f) any other location as determined by the referendum committee.

(2) The notice shall contain

- (a) the nature and purpose of the referendum;
- (b) the referendum questions as they will appear on the ballots;
- (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 p.m. six 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.

6. Section 7 of the Referendum Code is renumbered as section 8.

7. Section 8 of the *Referendum Code* is renumbered as section 9 and is amended as follows

9. (1) The referendum committee shall consist of three persons.

(2) The Council shall appoint the referendum committee at least 120 days before the voting date.

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

(4) The referendum committee may operate in the event of a vacancy on the committee.

8. Section 9 of the *Referendum Code* is renumbered as section 10.

9. Section 10 of the *Referendum Code* is renumbered as section 11, renamed “Criteria of appointment to the referendum committee”, and is amended as follows:

11. (1) The members of the referendum committee shall

- (a) be at least 21 years of age;
- (b) not be a member of the Council or the Judicial Council; and
- (c) not be an employee of the Kwanlin Dün First Nation at any point during the referendum period.

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

(3) Notwithstanding subsection (2), 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.

10. (1) Section 11 of the *Referendum Code* is renumbered as section 12.

(2) Section 11(1)(c) is repealed.

(3) Section 11(5) is renumbered section 12(5) and is amended as follows:

(5) The referendum committee, within 30 days after publishing the results of the referendum, shall provide a written report to the Council setting out the results of the referendum and the details of carrying out the referendum process, including the report delivered by the chief returning officer referred to in subsection 15(2), but excluding any duty specifically assigned to a voting officer under this Act, and make any recommendations for future referenda.

11. Section 12 of the *Referendum Code* is renumbered as section 13 and is amended as follows

13. The Council shall, at least 90 days before the voting date, 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.

12. Section 13 of the *Referendum Code* is renumbered as section 14 and is amended as follows:

14 The chief returning officer shall

- (a) be at least 21 years of age;
- (b) not be a member of Council or, at any point during the referendum period, be an employee of the Kwanlin Dün First Nation;

- (c) refrain from any active or public support or criticism of any referendum question;
- and
- (d) understand and have experience with the voting procedures and the provisions in this Act.

13. (1) Section 14 of the *Referendum Code* is renumbered as section 15.

(2) Subsection (2) is added to section 15 of the *Referendum Code* and reads as follows

- (2) Within 21 days after the results of the referendum are declared, the chief returning officer shall make a written report to the referendum committee, pursuant to subsection 12(5), on the conduct of the vote and in accordance with section 143.

14. A new section 16 is added to the *Referendum Code* titled “Declaration by a Chief Returning Officer” and reads as follows:

16 When appointed, the chief returning shall make a declaration to

- (a) act impartially;
- (b) refrain from any active or public support or criticism of any voter or candidate and his or her campaign;
- (c) not be an employee of the Kwanlin Dün First Nation at any point during the election period; and
- (d) respect the principles associated with a secret ballot.

15. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 15 is renumbered as section 17;
- (b) section 16 is renumbered as section 18; and
- (c) section 17 is renumbered as section 19.

16. A new section 20 is added to the *Referendum Code* titled “Criteria for an assistant deputy returning officer” and reads as follows:

20. The assistant returning officer shall

- (a) be at least 21 years of age;
- (b) not be a member of the Council or, at any point during the referendum period, be an employee of the Kwanlin Dün First Nation;
- (c) refrain from any active or public support or criticism of any referendum question; and
- (d) understand and have experience with the voting procedures and the provisions of this Act.

17. Section 18 of the *Referendum Code* is renumbered as section 21 and is amended as follows

21. If appointed, the 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;
- (e) not be a member of the Council or, at any point during the referendum period, be an employee of the Kwanlin Dün First Nation; and
- (f) report and be accountable to the chief returning officer.

18. A new section 22 is added to the *Referendum Code* entitled “Appointment of Deputy Returning Officers” and reads as follows:

22. At least 21 days before the voting date, the chief returning officer may appoint sufficient deputy returning officers to conduct the referendum.

19. Section 19 of the *Referendum Code* is renumbered as section 23, renamed “Criteria for appointment of the deputy returning officer, and is amended as follows:

23. Each deputy returning officer shall

- (a) be at least 21 years of age;
- (b) not be a member of the Council or, at any point during the referendum period, be employed in the Executive Council Office or as director of any department of the Kwanlin Dün First Nation;
- (c) refrain from any active or public support or criticism of any referendum question; and
- (d) understand and have experience with the voting procedures and the provisions in this Act.

20. Section 20 of the *Referendum Code* is renumbered as section 24 and is amended as follows:

24. 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;
- (e) not be a member of the Council or, at any point during the referendum period, be employed in the Executive Council Office or as director of any department of the Kwanlin Dün First Nation; and
- (f) report and be accountable to the chief returning officer.

21. Section 21 of the *Referendum Code* is renumbered as section 24 and is renamed “Powers and responsibilities of the deputy returning officer.”

22. Section 20 of the *Referendum Code* is renumbered as section 25 and is renamed “Declaration by the deputy returning officer.”

23. Section 22 of the *Referendum Code* is renumbered as section 26 and is renamed “Criteria for

appointment of the poll clerk.”

24. Section 23 of the *Referendum Code* is renumbered as section 28 and is renamed “Declaration by the poll clerk.”

25. Section 24 of the *Referendum Code* is renumbered as section 27 and is renamed “Responsibilities and duties of the poll clerk.”

26. Section 25 of the *Referendum Code* is renumbered as section 29.

27. Section 26 of the *Referendum Code* is renumbered as section 30, renamed “Criteria for appointment of the interpreter, and is amended as follows:

30. The interpreter shall

- (a) be at least 18 years of age;
- (b) not be a member of the Council or, at any point during the referendum period, be employed in the Executive Council Office or as director of any department of the Kwanlin Dün First Nation;
- (c) refrain from any active or public support or criticism of any referendum question;
- (d) be fluent in the language identified as needed by the chief returning officer;
- (e) be able read and write English; and
- (f) refrain from any active or public support or criticism of any referendum question.

28. Section 27 of the *Referendum Code* is renumbered as section 31 and is renamed “Declaration by the interpreter.”

29. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 28 is renumbered as section 32;
- (b) section 29 is renumbered as section 33;
- (c) section 30 is renumbered as section 34; and
- (d) section 31 is renumbered as section 35.

30. Section 32 of the *Referendum Code* is renumbered as section 36, is named “Posting of the official voters list” and is amended as follows:

36. An official voters list shall be made available at least 7 days before the voting date by posting it

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

31. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 33 is renumbered as section 37;
- (b) section 34 is renumbered as section 38;

- (c) sections 35 and 36 are repealed;
- (d) section 37 is renumbered as section 39;
- (e) section 38 is renumbered as section 40; and
- (f) section 39 is renumbered as section 41.

32. Section 40 of the *Referendum Code* is renumbered as section 42 and is renamed “ Rules for behaviour of the scrutineer.”

33. (1) Section 41 of the *Referendum Code* is renumbered as section 43.

(2) Section 41(2) is repealed and replaced with section 43(2) and reads as follows:

(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 42 or any other section of this Act.

34. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 42 is renumbered as section 44;
- (b) section 43 is renumbered as section 45; and
- (c) section 44 is renumbered as section 46.

35. Section 45 of the *Referendum Code* is renumbered as section 47 and is replaced by the following:

47. (1) All referendum questions shall be in plain English.

(2) A referendum for the purposes of section 64 of the constitution shall require

- (a) a written request supported by at least 100 citizens; and
- (b) a resolution made by the Council that shall state a question that can be confirmed with a “yes” or “no” answer.

(3) All other referenda shall require a clear statement to provide the reason for the referendum question.

(4) A referendum for the purpose of amending the constitution shall require

- (a) a clear statement to provide reasons as to why a constitutional amendment is being proposed;
- (b) proposed draft language; and
- (c) citizens to confirm whether the constitution should be amended with a “yes” or “no” answer.

36. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 46 is renumbered as section 48; and

(b) section 47 is renumbered as section 49.

37. A new section 50 titled “Sealing of the ballot boxes” is added to the *Referendum Code* and reads as follows:

50. Within ten minutes before a voting station is to open, the deputy returning officer shall

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

38. Section 48 of the *Referendum Code* is renumbered as section 51.

39. Section 49 of the *Referendum Code* is renumbered as section 52 and renamed “Respect the secrecy of voting.”

40. Section 50 of the *Referendum Code* is renumbered as section 53 and renamed “No attempt to interfere with a voter.”

41. Section 51 of the *Referendum Code* is renumbered as section 54 and renamed “No questioning of the voter.”

42. Section 52 of the *Referendum Code* is renumbered as section 55 and renamed “No appointments of a proxy voter.”

43. Section 53 of the *Referendum Code* is renumbered as section 56 and renamed “Right to receive ballots.”

44. Section 54 of the *Referendum Code* is renumbered as section 57 and is amended as follows:

57. There shall be up to four options available to eligible voters to exercise their vote

- (a) mail-in voting pursuant to sections 58 to 64;
- (b) special voting pursuant to sections 66 to 73;
- (c) advance voting pursuant to section 74;
- (d) regular voting pursuant to sections 75 to 93; and
- (e) electronic voting when available.

45. (1) Section 55 of the *Referendum Code* is renumbered as section 58.

(2) Section 56 is renumbered as section 58(5).

(3) Section 58 is repealed and replaced by the following:

58. (1) Every voter whose mailing address of record is outside of the traditional territory of the Kwanlin Dün First Nation shall be mailed a voting package.

(2) A voter receiving a voting package pursuant to subsection (1) shall retain the right to vote in person by any one of the other voting options referred to in sections 57(b) to (d).

(3) A mail-in voting package shall consist of

- (a) the ballot 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.

(4) The package referred to in subsection (1) shall be mailed

- (a) at least 34 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.

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

(6) A voter with mailing address of record outside Canada may receive a pre-addressed return envelope without pre-paid postage.

46. Section 57 of the *Referendum Code* is renumbered as section 59.

47. (1) Section 58 of the *Referendum Code* is renumbered as section 60.

(2) Section 58(1) is renumbered as section 60(1) and is amended as follows:

(1) It shall be the responsibility of the voter to ensure that his or her ballot is returned in time and the appropriate manner for purposes of the count and pursuant to section 59.

48. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 59 is renumbered as section 61;
- (b) section 60 is renumbered section 62;
- (c) section 61 is renumbered as section 63; and
- (d) section 62 is renumbered as section 64.

49. Section 63 to and including section 65 are repealed and replaced by the following:

Special voting

65. (1) Any voter may request to vote by special ballot.
- (2) A special ballot shall be issued to a voter who applies to the chief returning officer in a prescribed form.
- (3) A voter issued a special ballot shall not be issued a second ballot paper and shall be marked as having voted in the official voter poll book when the special ballot voting package has been issued.
- (4) The special ballot voting package shall be mailed to the voter or delivered to the voter at the elections office notwithstanding section 72.

Time limit for special voting

66. A voter may apply for a special ballot from 30 days before the voting date until noon two days before the voting date.

Special ballot voting package

67. The special ballot voting package shall consist of
- (a) the ballot 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 marked ballot;
 - (d) a voter declaration and witness security envelope; and
 - (e) instructions regarding procedures for voting by mail.

Criteria for special ballot to be counted

68. (1) To be valid for purposes of the count, a special ballot shall be returned by six o'clock in the afternoon on the voting date
- (a) in the voter declaration envelope signed by the voter and a witness; and
 - (b) received by the chief returning officer or designate, in person or by mail; or
 - (c) a deputy returning officer at a voting station in Whitehorse.
- (2) The chief returning officer or assistant returning officer may act as a witness for a voter voting by special ballot.

Responsibility of the return of special ballots

69. (1) It shall be the responsibility of the voter to ensure that his or her ballot is received pursuant to section 68.
- (2) Any costs to return a ballot, other than the use of the postage paid return envelope included in the voting package referred to in section 67(b), shall be the

responsibility of the voter.

(3) If there is an extension or postponement of the time for the taking of the vote pursuant to subsection 8(1), the date for receiving mail-in ballots shall be adjusted accordingly.

Assistance to vote by special ballot

70. 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 for a special ballot

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

(2) The failure of a person to sign as witness under subsection (1) shall invalidate the ballot and prevent it from being eligible for the count.

Housebound or institutionalized voters

72. (1) The chief returning officer may hand deliver a special ballot voting package to voters within the traditional territory of the Kwanlin Dün First Nation who, for reasons of being housebound or institutionalized, are unable to vote in any other manner under this Act.

(2) The chief returning officer shall determine whether a voter is eligible to vote under subsection (1).

Record of special ballot

73. The chief returning officer shall keep a record of who has been provided a special ballot package.

50. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 69 is renumbered as section 74;
- (b) section 70 is renumbered as section 75;
- (c) section 71 is repealed;
- (d) section 72 is renumbered as section 76;
- (e) section 73 is renumbered as section 77;
- (f) section 74 is renumbered as section 78;
- (g) section 75 is renumbered as section 79;
- (h) section 76 is renumbered as section 80;
- (i) section 77 is renumbered as section 81;
- (j) section 78 is renumbered as section 82; and
- (k) section 79 is renumbered as section 83.

51. (1) Section 80 of the *Referendum Code* is renumbered as section 84.

(2) A new section 84(3) is added to the *Referendum Code* and reads as follows:

(3) The deputy returning officer may order people to leave the voting station if he or she feels the process of assisting the voter referred to in subsection (2) could jeopardize the secrecy of the ballot.

52. Section 81 of the *Referendum Code* is renumbered as section 85.

53. Section 82 of the *Referendum Code* is renumbered as section 86 and is replaced by the following:

86. (1) A deputy returning officer shall not provide a ballot to a person whose name does not appear on the official voters list.

(2) If a person's name is not on the official voters list, that person may be declared eligible to vote if that person

(a) has the registrar of citizenship complete the prescribed form; and

(b) returns the signed form to the deputy returning officer before the close of the vote on the voting date.

(3) If a person is declared eligible pursuant to subsection (2), the deputy returning officer shall add that person to the official voters poll book and provide a ballot as described in sections 82 to 85 above.

54. Sections of the *Referendum Code* are renumbered as follows:

(a) section 83 is renumbered as section 87;

(b) section 84 is renumbered as section 88;

(c) section 85 is renumbered as section 89;

(d) section 86 is renumbered as section 90; and

(e) section 87 is renumbered as section 91.

55. Section 88 of the *Referendum Code* is renumbered as section 92 and renamed "Refusal of the voter to vote."

56. Sections 89 and 90 of the *Referendum Code* are repealed and replaced by the following:

93. (1) At the designated closing time as determined in section 74 for the advance vote and section 75 for the regular vote, the deputy returning officer shall publicly announce that the polls are closed.

(2) 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.

57. Section 91 of the *Referendum Code* is renumbered as section 94.

58. (1) Section 92 of the *Referendum Code* is renumbered as section 95.

(2) The term “early vote” under section 96 is replaced with the term “special vote”.

59. Section 93 is repealed.

60. Section 94 of the *Referendum Code* is repealed and replaced by the following:

96. (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 special 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

(c) if there are the necessary signatures in accordance with section 59,

(i) open the declaration envelope and place its contents into the designated ballot box, and

(ii) after all declaration 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;

(d) if the declaration envelope is missing either of the required signatures, setting the envelope aside unopened and noting on the envelope “cancelled” and the reason for setting aside the envelope and making the same notation beside the voter’s name in the official voters poll book.

(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.

61. Section 95 of the *Referendum Code* is renumbered as section 97.

62. Sections 96 and 97 are repealed and replaced by the following:

98. (1) 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.

(2) After separating the ballots for each referendum question, the deputy returning officer shall examine each ballot and determine the number of ballots clearly marked for approving the referendum question and the number of ballots marked for not approving the referendum question.

63. Section 98 of the *Referendum Code* is renumbered as section 99 and is amended as follows:

99. The deputy returning officer shall reject any ballot

- (a) upon which votes have been cast for approving and not approving the referendum question;
- (b) that has not been marked for either approving or not approving the referendum question;
- (c) that does not indicate a clear and unambiguous preference for approving or not approving the referendum question;
- (d) upon which anything appears by which the voter can be identified; or
- (e) that is not on an official and valid ballot.

64. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 99 is renumbered as section 100; and
- (b) section 100 is renumbered as section 101.

65. (1) Section 101 of the *Referendum Code* is now renumbered as section 102.

(2) Section 101(a) is renumbered as section 102(a) and is amended as follows:

(a) count the votes for approving or not approving the referendum question on the ballots not rejected;

(3) Sections 101(b)(viii) and 101(b)(ix) are renumbered as sections 102(b)(viii) and 102(b)(ix) and are amended as follows:

- (viii) total number of ballots cast as approving the referendum question, and
- (ix) total number of ballots cast as not approving the referendum question.

66. Section 102 of the *Referendum Code* is renumbered as section 103.

- 67. (1)** Section 103 of the *Referendum Code* is renumbered as section 104.
- (2)** Sections 103(a) and 103(b) are renumbered as sections 104(a) and 104(b) and are amended as follows:
- (a) ballots marked as approving each referendum question;
 - (b) ballots marked as not approving each referendum question;
- 68.** Section 104 of the *Referendum Code* is renumbered as section 105.
- 69. (1)** Section 105 of the *Referendum Code* is renumbered as section 106.
- (2)** Subsections 105(viii) and 105(ix) are now renumbered as subsections 106(viii) and 106(ix) and are amended as follows:
- (viii) total number of ballots cast as approving the referendum question, and
 - (ix) total number of ballots cast as not approving the referendum question;
- 70.** Sections of the *Referendum Code* are renumbered as follows:
- (a) section 106 is renumbered as section 107;
 - (b) section 107 is renumbered as section 108;
 - (c) section 108 is renumbered as section 109; and
 - (d) section 109 is renumbered as section 110.
- 71. (1)** Section 110 is renumbered as section 111.
- (2)** Subsection 111(c) is added to the *Referendum Code* and reads as follows:
- (c) members of the referendum committee.
- 72. (1)** Section 111 of the *Referendum Code* is renumbered as section 112 and is amended as follows:
- 112. (1)** Except with the permission of the chief returning officer, only those persons referred to in section 111 may be present at an automatic recount.
- (2)** The chief returning officer may delay the recount for up to two hours to ensure the presence of a witness.
- 73.** Section 112 of the *Referendum Code* is renumbered as section 113.
- 74.** Section 113 of the *Referendum Code* is renumbered as section 114 and is amended as follows

114. (1) 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.

(2) 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.

75. (1) Section 114 of the *Referendum Code* is renumbered as section 115.

(2) Section 114(d) is repealed and replaced with section 115 (c) and reads as follows:

(c) review the decision of the deputy returning officer with respect to the number of votes cast as approving or not approving the referendum question.

76. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 115 is renumbered as section 116;
- (b) section 116 is renumbered as section 117;
- (c) section 117 is renumbered as section 118;
- (d) section 118 is renumbered as section 119;
- (e) section 119 is renumbered as section 120; and
- (f) section 120 is renumbered as section 121.

77. (1) Section 121 of the *Referendum Code* is renumbered as section 122.

(2) Subsection 121(1)(c) is renumbered as subsection 122(c) and is amended as follows:

(c) the final determination did not correctly calculate the total number of valid votes for approving or not approving the referendum question.

78. Section 122 of the *Referendum Code* is renumbered as section 123, renamed "Time for the application for a judicial recount" and is amended as follows:

(1) Notwithstanding the Judicial Council Act (Kwanlin Dün First Nation), an application for a judicial recount to the Judicial Council shall be made within four days after the declaration of the results pursuant to subsection 108(1).

(2) Upon receipt of the application for a judicial recount, the Judicial Council shall set a time for the recount that is convenient to complete the recount within the time limit prescribed by section 126.

79. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 123 is renumbered section 124;
- (b) section 124 is renumbered section 125;
- (c) section 125 is renumbered section 126;
- (d) section 126 is renumbered section 127.

80. Section 127 of the *Referendum Code* is renumbered as section 128 and is amended as follows:

128. (1) 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.

(2) The Judicial Council shall not open any envelopes that appear to contain other documents or refer to any other voting documents.

81. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 128 is renumbered section 129;
- (b) section 129 is renumbered section 130;
- (c) section 130 is renumbered section 131;
- (d) section 131 is renumbered section 132;
- (e) section 132 is renumbered section 133;
- (f) section 133 is renumbered section 134; and
- (g) section 134 is renumbered section 135.

82. (1) Section 135 of the *Referendum Code* is renumbered as section 136.

(2) Section 135(1)(b) is renumbered as section 136(1)(b) and is amended as follows:

(b) without delay, prepare a statement of vote that sets out the number of votes cast for approving and not approving each referendum question pursuant to subsection 103(1);

83. Section 136 of the *Referendum Code* is renumbered as section 137 and is amended as follows:

137. (1) Notwithstanding the *Judicial Council Act* (Kwanlin Dün First Nation), within 14 days after the declaration of the results pursuant to subsection 108(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; and
- (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 (1) and (2) 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.

(5) A voter who makes an appeal shall pay his or her own costs.

84. Sections of the *Referendum Code* are renumbered as follows:

- (a) section 137 is renumbered section 138;
- (b) section 138 is renumbered section 139;
- (c) section 139 is renumbered section 140; and
- (d) section 140 is renumbered section 141.

85. Sections 141 and 142 of the *Referendum Code* are repealed.

86. Sections 143 to 149 are added to the *Referendum Code* and read as follows:

Report of referendum results

142. (1) The chief returning officer, within 21 days after the declaration of the official referendum results, shall submit a report of the results to the referendum committee, including, but not limited to

- (a) the number of names on the official voters list;
- (b) copies of the summary by poll of the statement of votes;
- (c) the number of ballots cast;
- (d) the number of rejected ballots;
- (e) the number of persons who voted in a referendum referred to in subsection 4(1);
- (f) an overview of the referendum preparations and proceedings consistent with this Act;
- (g) any recommendations that could improve the administrative expediency, efficiency and clarity of this Act;
- (h) all public notices, brochures, lists, declarations, certificates, forms and instructions; and
- (i) other documents and materials pertinent to the preparations and proceedings of the referendum.

(2) If an appeal has been lodged under Part Sixteen, the report shall be due 21 days after the completion of the appeal.

(3) The Kwanlin Dün First Nation shall maintain an archive of referenda results and relevant documentation and materials.

Availability of citizenship registrar

143. (1) The Citizenship Registrar of the Kwanlin Dün First Nation shall be available to the referendum committee and chief returning officer for any matter arising with regard to the citizen registry referred to in section 35 to 33.

(2) The Citizenship Registrar shall be available from the time of the order for a referendum, referred to in section 6, until the day of the regular vote, referred to in

section 75, and for the time of an application for appeal pursuant to Part Seventeen, if applicable.

Regulations

144. The Council may, from time to time, make regulations providing for any matter that is required by this Act to be prescribed.

Offences of this Act

145. (1) A person who knowingly violates any section of this Act commits an offence.

(2) A person who knowingly violates an order of the Judicial Council or the chief returning officer commits an offence.

(3) A person who is guilty of an offence under this section is liable on conviction to a fine up to \$5,000 and imprisonment to a maximum of six months in accordance with the power of the Kwanlin Dün First Nation to impose penalties under section 13.6 of the self-government agreement.

Judicial Council may inquire into a complaint

146. (1) Any person may complain in writing to the Judicial Council that a citizen has engaged in a corrupt practice in connection with a referendum.

(2) Upon receipt of a complaint, the Judicial Council may inquire into the complaint and if, after giving the citizen the opportunity to be heard, it is satisfied, on balance of probabilities, that the citizen has engaged in a corrupt practice in connection with an election, the Judicial Council may make such order as is just and reasonable in the circumstances.

Act in force

147. This Act comes into legal force on a day to be fixed by the Council.

The Act amends

148. The *Referendum Code* (Kwanlin Dün First Nation), 2010, is hereby amended.