

KWANLIN DÜN FIRST NATION

The Consolidated Referendum Code

August 2016

Kwanlin Dün First Nation
THE CONSOLIDATED REFERNDUM CODE

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

PART ONE
SHORT TITLE

Short Title

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

PART TWO
DEFINITIONS AND GENERAL PROVISIONS

Definitions

2. (1) In this Act

the terms defined in this Act have the same meaning whether capitalized or in lower case;

“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 74 of this Act;

“assistant returning officer” means the person holding or acting in the office of chief returning officer as set out in sections 19 to 21 of this Act;

“ballot” means the ballot as defined in Part Eight of this Act;

“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;

“Council” means the branch of Kwanlin Dün 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 22 to 26 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 consecutive days after the voting date;

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

“mail-in vote” means the taking of votes pursuant to sections 68 to 64 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 section 7 of this Act and subsection 2(1), Schedule 3, Part B, of the constitution;

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

“official voters list” means the list of voters as defined in sections 34 to 38 of this Act;

“poll clerk” means the person or office appointed pursuant to sections 27 to 29 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 subsection 1(1), Schedule 3, Part B, of the constitution;

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

“regular vote” means the vote on the voting date pursuant to section 75 of this Act;

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

“vote” means to cast a ballot;

“voter” means a person who is eligible to vote pursuant to section 33 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.

(2) In addition to the definitions in subsection (1), the definitions of the constitution shall also apply to this Act. *[Amended by CR–2016–33]*

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. *[Amended by CR–2016–33]*

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 per cent plus one) 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 per cent plus one) of citizens who are eligible to vote cast a ballot in the referendum;

(b) it is supported by at least a majority (50 per cent plus one) 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 per cent plus one) of the beneficiaries eligible to vote support it in a further vote held among

beneficiaries alone, after the amendment has passed paragraphs (a) and (b).

(3) A referendum question under section 64 of the constitution will have been passed if it is supported by at least 60 per cent of the citizens who vote in the referendum.

PART THREE
ORDER OF REFERENDUM

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. *[Amended by CR-2016-33]*

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. *[Amended by CR-2016-33]*

(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. *[Amended by CR-2016-33]*

8. (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 (1), of more than 72 consecutive hours shall be granted.

PART FOUR
VOTING OFFICERS AND STAFF

Appointment of the referendum committee

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.
[Amended by CR-2016-33]

Duration of appointment of the referendum committee

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

Criteria of appointment to the referendum committee

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. *[Amended by CR-2016-33]*

Powers and responsibilities of the referendum committee

12. (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; and

(b) establishing its own internal procedures for the convening and conduct of its meetings, and appointing its Chair.

(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, 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. *[Amended by CR-2016-33]*

Appointment of the chief returning officer

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. *[Amended by CR-2016-33]*

Conditions for appointment of the chief returning officer

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. *[Amended by CR-2016-33]*

Responsibilities and duties of the chief returning officer

15. (1) The chief returning officer shall, acting on behalf of the referendum committee, be responsible for

- (a) appointing and training deputy returning officers, poll clerks and all other persons required to conduct the vote;
- (b) distributing and publishing the official voters list;
- (c) preparing, posting and announcing the notice of the referendum;
- (d) procuring the necessary materials, including the ballots and ballot packages;
- (e) developing all the necessary forms for the conduct of the vote;
- (f) establishing all necessary voting places;
- (g) establishing regulations and accreditation procedures for all personnel involved at the voting places;
- (h) establishing and conducting the mail-in vote;
- (i) establishing and conducting the special vote;
- (j) establishing and conducting the mobile vote;
- (k) establishing and conducting the advance vote;
- (l) establishing and conducting the regular vote and be responsible for all matters during the times of voting;
- (m) closing the vote and receive the sealed ballot boxes;
- (n) supervising the count of the vote;
- (o) declaring the results;
- (p) assigning or delegating any duties required in the conduct of the vote; and
- (q) generally, overseeing and supervising the conduct of the vote to ensure the effective execution of the provisions of this Act.

(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 142. *[Amended by CR-2016-33]*

Declaration by the chief returning officer

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. *[Amended by CR-2016-33]*

Intent of this Act

17. 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

18. 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

19. 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.

Criteria for appointment of the assistant returning officer

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. *[Amended by CR-2016-33]*

Declaration by the assistant returning officer

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. *[Amended by CR-2016-33]*

Appointment of deputy returning officers

22. At least 21 days before the voting date, the chief returning officer may appoint sufficient deputy returning officers to conduct the referendum. *[Amended by CR-2016-33]*

Criteria for appointment of the deputy returning officer

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. *[Amended by CR–2016–33]*

Declaration by the deputy returning officer

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. *[Amended by CR–2016–33]*

Responsibilities and duties of the deputy returning officer

25. Each deputy returning officer shall be responsible for
- (a) performing all duties assigned and delegated by the chief returning officer;
 - (b) acting as a witness to the conduct of the vote;
 - (c) observing activities at the voting place;
 - (d) assuming other duties as required by the chief returning officer; and
 - (e) reporting to the chief returning officer any violations under this Act.

Declaration by the deputy returning officer

26. 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.

Criteria for appointment of the poll clerk

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

Declaration by the poll clerk

- 28.** 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 the poll clerk

- 29.** 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.

Criteria for appointment of the interpreter

- 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.
[Amended by CR–2016–33]

Declaration by the interpreter

- 31.** An interpreter 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.

Indemnity

32. 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

- 33.** (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 Kwanlin Dün First Nation,
- 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

34. (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

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

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

Posting of the official voters list

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. *[Amended by CR–2016–33]*

Revisions to the official voters list

37. (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.

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

PART SIX
SCRUTINEERS OF THE VOTE

Appointment of scrutineer

39. A citizen may be a scrutineer to monitor a voting station.

Number of scrutineers in a voting place

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

Access to a voting station

41. 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 42 of this Act; and,
- (b) accept the authority of the deputy returning officer.

Rules for behaviour of the scrutineer

42. 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 or her written declaration.

Authority in a voting station

43. (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 42 or any other section of this Act. *[Amended by CR-2016-33]*

Activity by a scrutineer in a voting station

44. 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

- 45. (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 SEVEN BALLOTS

Ballots

- 46. There shall be a separate ballot for each referendum question.

Wording

- 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. *[Amended by CR–2016–33]*

Design of ballot

- 48. Each ballot shall
 - (a) be designed so that on the reverse side of the question, it will have the words “Kwanlin Dün First Nation 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

49. (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.

Sealing of the ballot boxes

- 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. *[Amended by CR-2016-33]*

PART EIGHT
VOTING RIGHTS

Secrecy of voting

51. The vote shall be by secret ballot.

Respect the secrecy of voting

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

No attempt to interfere with a voter

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

No questioning of the voter

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

No appointments of a proxy voter

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

Right to receive ballots

56. Each person who is eligible to vote according to section 33 of this Act shall have the right to receive a ballot.

Voting options

57. There shall be up to five options available to eligible voters to exercise their vote
- (a) mail-in voting pursuant to sections 68 to 64;
 - (b) special voting pursuant to sections 65 to 73;
 - (c) advance voting pursuant to section 74;
 - (d) regular voting pursuant to section 75; and
 - (e) electronic voting when available. *[Amended by CR-2016-33]*

PART NINE
VOTING PROCEDURES

Mail-in voting

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 paragraphs 57(b) to (e).

- (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. *[Amended by CR-2016-33]*

Criteria for the mail-in ballot to be counted

- 59.** 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 consecutive days after the voting date; or
 - (c) a deputy returning officer during the hours of voting at the regular vote in Whitehorse. *[Amended by CR-2016-33]*

Responsibility of the return of ballots

- 60.** (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.
- (2) Any costs to return a ballot, other than use of the postage paid return envelope included in the package referred to in paragraph 58(3)(b), shall be the responsibility of the voter. *[Amended by CR-2016-33]*

Assistance to vote by mail-in ballot

- 61.** 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

62. (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 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

63. 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. *[Amended by CR-2016-33]*

Extension for mail-in voting

64. If there is an extension or postponement of the time for the taking of the vote pursuant to section 8, the date for receiving mail-in ballots shall be adjusted accordingly. *[Amended by CR-2016-33]*

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. *[Amended by CR-2016-33]*

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. *[Amended by CR-2016-33]*

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. *[Amended by CR–2016–33]*

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. *[Amended by CR–2016–33]*

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 section 8, the date for receiving mail-in ballots shall be adjusted accordingly. *[Amended by CR–2016–33]*

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. *[Amended by CR–2016–33]*

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. *[Amended by CR-2016-33]*

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). *[Amended by CR-2016-33]*

Record of special ballot

73. The chief returning officer shall keep a record of who has been provided a special ballot package. *[Amended by CR-2016-33]*

PART TEN
ADVANCE AND REGULAR VOTING PROCEDURES

Advance voting

74. (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 7 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 79 to 92 of this Act and the instructions provided by the chief returning officer

Regular hours of voting

75. 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 79 to 92 and the instructions provided by the chief returning officer.

Seal on a ballot box

76. 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 Eleven on the count.

Who may be present at a voting station

77. 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

78. 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

79. 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

80. The chief returning officer shall issue on voting day to all individuals referred to in paragraphs 77(a) to (c) identification badges to wear in a prominent manner to identify their office.

Procedure to provide the ballot to the voter

81. 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 to indicate its valid issuance; and
- (d) provide the initialed ballot to the voter with instructions on marking the ballot.

After receiving a ballot

82. (1) After receiving the ballot, a voter shall

- (a) immediately proceed to the compartment provided for marking ballot;

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

(2) While a voter is in the compartment for the purpose of marking his or her ballot, no other person shall, except as provided for in section 84, 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.

Returning the ballot to the ballot box

- 83.** Upon receiving the returned ballot, the deputy returning officer shall
- (a) leave the ballot 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 has been returned.

Providing assistance to a voter

84. (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 subsection 82(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.

(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. *[Amended by CR-2016-33]*

Recording assistance

85. 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

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. *[Amended by CR-2016-33]*

Voter whose name resembles another on the official voters list

87. 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

88. 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

89. In any case referred to section 88, 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

90. 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

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

Refusal of the voter to vote

92. 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 82(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

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. *[Amended by CR-2016-33]*

PART TWELVE
COUNTING THE BALLOTS

Who is present for the count

94. 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 special votes

- 95.** (1) The deputy returning officer responsible for the special votes shall
- (a) review all special 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 mail-in voters only voted once

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 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; and
- (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. *[Amended by CR-2016-33]*

Opening the ballot boxes

97. After the mail-in vote has been dealt with pursuant to paragraphs 96(1)(a) and 96(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

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. *[Amended by CR-2016-33]*

Rejection of ballots

- 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. *[Amended by CR-2016-33]*

Recording of rejected ballots

100. 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

- 101.** (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

102. (1) After all ballots from each ballot box have been examined, and accepted or rejected pursuant to subsections 95(1) to 101(1), the deputy returning officer shall

- (a) count the votes for approving or not approving the referendum question 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 approving the referendum question, and
 - (ix) total number of ballots cast as not approving the referendum 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. *[Amended by CR-2016-33]*

Signing the statement of vote

103. The written statement referred to in paragraph 102(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,
- (d) may be signed by any scrutineer who is present.

Witnessing the sealing of votes

104. 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 as approving each referendum question;

- (b) ballots marked as not approving each referendum 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. *[Amended by CR–2016–33]*

Delivering all material to the chief returning officer

- 105.** 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

- 106.** (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 the
 - (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 approving the referendum question, and
 - (ix) total number of ballots cast as not approving the referendum 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. *[Amended by CR–2016–33]*

107. The same procedure outlined by subsection 95(1) to subsection 106(1) shall be used for the count of the ballots received by mail by 5:00 pm PST six consecutive days after the final vote and which shall be counted before the declaration of the results as stated in subsection 108(1).

Declaration of the results

108. (1) Subject to subsection (2), immediately after the completion of the counting of the final mail-in ballots six consecutive days after the voting date but within seven 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 Dün First Nation administration building,
 - (ii) in a newspaper having circulation in the Yukon,
 - (iii) on the Kwanlin Dün First Nation 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

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

Time and place of automatic recount

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

Who may attend

111. The following people may attend an automatic recount:

- (a) two scrutineers;
- (b) the necessary poll staff as determined by the chief returning officer; and
- (c) members of the referendum committee. *[Amended by CR-2016-33]*

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. *[Amended by CR-2016-33]*

Documents to be supplied

113. 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 104.

Documents that may be examined

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. *[Amended by CR-2016-33]*

Steps to be taken by the chief returning officer

- 115.** 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
 - (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. *[Amended by CR-2016-33]*

Clerical assistance

116. 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 section 99 to subsection 101(1).

Proceedings to be continuous

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

Security of documents

118. 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

119. 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

120. 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 104;
 - (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 paragraph 102 (1)(b);
 - (c) seal the ballot boxes; and,
 - (d) make public the results of the recount.

Deadline for the declaration of results

121. (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 subsection 108(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

122. (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 approving or not approving the referendum question.

(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. *[Amended by CR-2016-33]*

Time for an application

123. (1) Notwithstanding the *Judicial Council Act* (Kwanlin Dūn 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). *[Amended by CR-2016-33]*

(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 125. *[Amended by CR-2016-33]*

Notification

124. (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

125. 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 108(1).

Persons present at a judicial recount

126. (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 (1) may be present at the recount.

Materials to be used

127. 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 subsection 102(1).

Documents that may be examined

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. *[Amended by CR-2016-33]*

Steps to be taken by the Judicial Council

129. 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

130. 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

131. 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

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

Security of documents

133. (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 132, 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

134. 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

135. (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

- 136.** (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 104;
 - (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 102(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. *[Amended by CR-2016-33]*

PART FIFTEEN
APPEAL

Grounds and time limit for an appeal

137. (1) Notwithstanding the *Judicial Council Act* (Kwanlin Dün First Nation), within 14 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; 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 subsections (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. *[Amended by CR-2016-33]*

Notice by the Judicial Council

138. (1) Where an appeal is submitted pursuant to section 137(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. *[Amended by CR-2016-33]*

Documents made public

139. (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. *[Amended by CR-2016-33]*

Limit of finding fault

140. 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.
- [Amended by CR–2016–33]*

Declaration of judgment

141. (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. *[Amended by CR–2016–33]*

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 Fifteen, 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. *[Amended by CR–2016–33]*

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 sections 34 to 37.

(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 Fifteen, if applicable. *[Amended by CR-2016-33]*

Regulations

144. The Council may, from time to time, make regulations providing for any matter that is required by this Act to be prescribed. *[Amended by CR-2016-33]*

Offences of this Act

145. (1) A person who knowingly violates any section of this Act commits an offence. *[Amended by CR-2016-33]*

(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. *[Amended by CR-2016-33]*

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. *[Amended by CR-2016-33]*

Act in force

147. This Act comes into legal force on a day to be fixed by the Council. *[Amended by CR-2016-33]*

The Act amends

148. The *Referendum Code* (Kwanlin Dün First Nation), 2010, is hereby amended. [*Amended by CR-2016-33*]