



Binche Whut'en Election Code

'A GOOD LEADER IS A GOOD SERVANT'

FINAL DOCUMENT

APPROVED BY BINCHE WHUT'EN BAND MEMBERS NOVEMBER 10, 2019

APPROVED BY CHIEF & COUNCIL DECEMBER 3, 2019

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PREAMBLE

Whereas Binche Whut'en has:

- A. An inherent right of self-government including the right to establish rules and procedures for all matters regarding leadership selection and elections;
- B. Utilized a custom Code for selection of members of Council and is not governed by sections 74-80 of the *Indian Act*, nor by the Indian Band Elections Regulations;
- C. Developed this Code as part of Binche Whut'en's efforts to restore our jurisdiction and authority and rebuild a modern Binche Whut'en government system on the foundation of our traditional values, principles and practices.

PART 1: TITLE

- 1. This Code will be called the Binche Whut'en Election Code (the "Code").

PART 2: DEFINITIONS

In this Election Code:

"Administration Building" means the main office building of Binche Whut'en.

"Appeal Committee" means the body appointed by the Members at a General Meeting under Part 12 of this Code, to review and make decisions concerning election appeals, and to consider petitions for removal of a Chief or Councillor from office for breaching the provisions of this Code.

"By-election" means a special election to fill a position on Council that has become vacant.

"Candidate" means a Binche Whut'en member who has been nominated to be a candidate for Chief or Councillor pursuant to provisions of this Code.

"Chief" means the Chief of Binche Whut'en elected pursuant to the provisions of this Code.

"Code" means the rules, process and procedures to elect the Council in accordance with this Binche Whut'en Election Code, for the conducting of appeals, for the removal of Council members and related matters.

"Corrupt Election Practices" means bribery, direct or indirect, or providing a financial or material incentive to an Elector in exchange for a vote or committing fraud in relation to an Election.

"Council" means the governing body of Binche Whut'en comprised of those individuals elected under this Code and includes the Chief.

"Councillor" means a member of Council who is not the Chief.

"Day" or "Days" is defined for the purpose of counting days before an Election or to a related activity, a day that does not include the day when the initial activity takes place, nor the day of the function itself.

“Deputy Electoral Officer” (DEO) means any person appointed by the Electoral Officer to assist in the conduct of the Election process.

“Elder” means a Member who is at least 60 years of age as of the Election Day.

“Election” means a general election or By-election to select a Chief or members of Council of Binche Whut'en held under this Code.

“Election Day” means the date set for holding the Election.

“Election Documents” means forms used by the Electoral Officer for an Election.

“Electoral Officer” means a person, appointed by Resolution before each Election, that is responsible to carry out the Nomination Meeting, the Election and post-Election procedures.

“Elector” or “Eligible Voter” means an individual who is a Member and at least 18 years of age on Election Day.

“General Meeting” means a meeting of the Electors held on Reserve in accordance with procedures established by the Members.

“Immediate Family” means an individual's spouse, parent, siblings, children, and grandchildren.

“Indictable Offence” means an offence committed by a person which is proceeded by way of an indictment under the Criminal Code of Canada.

“Interim Binche Council” means the Council determined pursuant to the Division Agreement and the Resolution set forth in sections 3 and 4.

“Member” means a person who is a lawful member of Binche Whut'en and is on the Binche Whut'en Membership List currently maintained by the Indigenous Services Canada (Department).

“Membership” means all of Members of Binche Whut'en.

“Membership List” means the list of all Members.

“Nomination Meeting” means the meeting of Electors held to nominate certain Eligible Voters for Chief or Councillor.

“Outstanding Arrears” means an unpaid, overdue debt or unfulfilled financial obligation, owed to Binche Keyoh Bu Society, Binche Keyoh Development Corp., Binche Whut'en or any other corporations, partnerships, including limited partnerships, societies, and other entities which are owned or controlled by Binche Whut'en, either directly or through ownership or control by the Membership, or in which Binche Whut'en has a significant financial interest in, in which the individual has NOT entered into a repayment arrangement with the Binche Whut'en (to be confirmed by the Senior Administrator).

“Notices” means official notices from the Electoral Officer to setting out the time, date and location for the Nomination Meeting and the Election Day and other Election information.

“Polling Station(s)” means a building, hall or room that is selected as the site(s) where the Election will take place.

“Registrar” means the Binche Whut'en employee responsible for maintaining the Binche

Whut'en Membership files. Membership Lists are maintained by Indigenous Services Canada (Department).

“Rejected Ballot” means those ballots that have been improperly marked and/or defaced by Elector(s) that are not included in the tally of valid ballots cast during the counting of votes.

“Reserve” means Binche I.R. 2 or other reserve lands of Binche Whut'en designated by Council.

“Resolution” means a resolution passed by Council at a duly convened meeting.

“Senior Administrator” means the senior administrative person for Binche Whut'en appointed by Council.

“Voters List” means the list of Members eligible to vote in an Election, which shall contain only the names of the Electors but not any personal information.

“Youth” means a Member who is at least eighteen (18) years of age, and no more than twenty-nine (29) years of age as of the Election Day.

PART 3: COMING INTO FORCE

2. This Code comes into force upon:
 - (a) Approval of the Code by a majority of the Electors in a duly held Referendum, specifically held for that purpose, and;
 - (b) The enactment date as declared in a Resolution following the approval of the Electors pursuant to the Referendum, held under subsection 2(a).

PART 4: INTERIM BINCHE COUNCIL

3. The Tl'azt'en Nation - Terms of Division Agreement ("Division Agreement") sets out (at section 10.1 of the Division Agreement) that an Interim Binche Council was elected (on March 28th, 2015) to take office on the Effective Date of the Division, as defined in the Division Agreement. By Band Council Resolution dated April 11, 2019 Jesse Hallman was added as the Youth Councillor for Binche Whut'en. As a result the current Interim Binche Whut'en Council consists of the following persons:
 - (a) Chief Joshua Hallman
 - (b) Councillor Gloria Duncan
 - (c) Councillor Jessica Erickson
 - (d) Councillor Verne Tom
 - (e) Councillor Jesse Hallman
4. The Division Agreement sets out that the Interim Binche Council will take office on the Effective Date, and may hold office for a maximum of one (1) year.
5. The Members, at a General Meeting, will , establish a fixed date on which the Election Day is to be held, that must be no later than one (1) year after the Effective Date of the Division for the following positions:
 - (a) One (1) Chief (on-Reserve resident);
 - (b) Four (4) Councillors (on-Reserve residents), one of whom will be a Youth and one of whom will be an Elder, subject to section 7; and
 - (c) One (1) Councillor (off-Reserve resident).
6. For greater certainty, the Interim Binche Council will cease to hold office and will be replaced by the Council elected under this Code immediately upon the elected Council taking their Oath of Office and being sworn in as the Chief or a Councillor.

PART 5: BINCHE WHUT'EN COUNCIL

7. Council will be comprised of six individuals, as follows:
 - (a) One (1) Chief (on-Reserve resident);
 - (b) Four (4) Councillors (on-Reserve residents), one of whom will be a Youth and one will be an Elder. Should no Youth or Elder be nominated for Council, after the Election Council will decide who shall hold the portfolios of Youth Councillor or Elder Councillor; and
 - (c) One (1) Councillor (off-Reserve resident).

HONORARIA AND EXPENSES

8. No member of Council shall reserve an honorarium or other financial compensation unless approval has been given by the Electors by way of a vote at a General

Meeting. Members of Council will be reimbursed for their reasonable expenses incurred directly in relation to their work as Council members.

TERM AND TIMING OF ELECTIONS

9. The Council will hold office for a three (3) year term.
10. The first Election Day shall occur on or before March 31, 2020 and each subsequent Election Day shall occur on the first (1st) Tuesday of that month in the 3rd calendar year following the Election Day for the most recently held Election Day;
11. In the event of a death in the Binche Whut'en community, the Election Day may be postponed, by Resolution and in consultation with the Electoral officer, and must be held within seven (7) days of the original Election Day unless the Council and Electoral officer agree on an alternate date.

VOTING OPPORTUNITIES

12. The Council will be elected by a vote of Binche Whut'en Eligible Voters held in accordance with this Code. Employees and contractors of Binche Whut'en are not eligible to run for Council.
13. An Eligible Voter may vote by electronic voting ("E-voting") or mail-in ballot. If economically feasible, Council may establish polling stations for in-person voting.
14. For greater certainty, prior to utilizing E-voting as a method for Electors to nominate Candidates for Chief and Council and to cast a vote, Council must develop E-voting regulations and policies to maintain the integrity and secrecy of Binche Whut'en's voting process to be balanced with practical realities associated with evolving technology. Mandatory regulations must include (but are not limited to):
 - (a) Secrecy and security;
 - (b) Process to authenticate/identify an E-voter;
 - (c) Specific E-voting offences;
 - (d) Specific time period for E-voting;
 - (e) Method of counting ballots/E-votes;
 - (f) The process to declare a ballot/E-vote invalid; and
 - (g) Authority to terminate E-voting.

PART 6: PRE-ELECTION PROCEDURES

15. At least 60 Days before the Election Day the Members must, at a General Meeting, appoint an Electoral Officer. For the second and subsequent Elections the Electoral Officer must have successfully completed a training program on the responsibilities of an electoral officer. The Electoral Officer must not be a member of Council or a Candidate in the Election.
16. The Electoral Officer may appoint one or more Deputy Electoral Officers. The Deputy Electoral Officer(s) will not be a member of Council, or a Candidate in the Election.

VOTERS LIST

17. Indigenous Services Canada (Department) is responsible for maintaining the

Membership List, and as such it is the Department's responsibility to ensure the list is current. Members are responsible for providing the Registrar with their current postal and email addresses and telephone numbers.

18. The Registrar will provide the Electoral Officer with:
 - (a) An updated Voters List containing the names of members, membership numbers, and dates of birth;
 - (b) A list of the last known postal address of each Elector;
 - (c) The last known email address of each off-Reserve Elector for off-Reserve Electors with no known postal address; and
 - (d) The telephone numbers of the Electors, if known.
19. The Electoral Officer will only use the information provided in section 18 as follows:
 - (a) An Elector's postal address for the purpose of providing Notices and other Election Documents;
 - (b) An Elector's email address for the purpose of providing Notices and other Election Documents;
 - (c) An Elector's telephone number if that is the only way to contact an Elector; and
 - (d) Only with consent of the Elector in writing or by email, to provide Candidates an Elector's postal and email address, for the purpose of providing information on each Candidate and their platform.
20. No later than 55 days before the Election Day, the Electoral Officer will post the Voters List containing only the names of the Electors and no other information in a public area of the Binche Whut'en Administration building and in conspicuous places on the Reserve as determined by the Electoral Officer.
21. No later than 55 days before Election Day, the Electoral Officer will post the following in a public area of the Binche Whut'en Administration building, and in conspicuous places on the Reserve as determined by the Electoral Officer, and on the Binche Whut'en website, a Notice of Election that includes the following information:
 - (a) The date, time, location and hours of operation of each polling station;
 - (b) The number of positions on Council to be filled;
 - (c) The date, location and hours of the Nomination Meeting; and
 - (d) The Electoral Officer's name, phone number, fax number, postal address and email address.
22. Upon request of a Member, the Electoral Officer will confirm whether that Member is on the Voters List.
23. A Member may demonstrate that an Elector's name has been omitted from the Voters List, or incorrectly set out in the Voters List, by presenting written evidence from the Department's Registrar, or the Council, that the Elector is on the Membership List and will be at least 18 years of age on the day of the Election.
24. The Electoral Officer will maintain the Voters List during the Election and revise the Voters List (add or delete names) if it is demonstrated that:

- (a) The Electoral Officer may add an elector to the voters list provided the member has documentation from the Department's Registrar clearly showing that he or she is a Band Member and at least 18 years of age, and has been added to the Department's list. If the Electoral Officer or Deputy Electoral Officer is satisfied that the person is qualified to vote, his or her name can be added to the voters list and that person should be permitted to vote.
- (b) If a person, who is not on the voters list, presents himself or herself at the poll and states that he or she is entitled to vote and will sign a declaration stating this, he or she should not be permitted to vote unless the person can present documentation from the Department.
- (c) The Membership Clerk cannot systematically add electors from the official voters list (Section 11) because they are on the Band list.

NOMINATION MEETING

25. At least 15 days before the day of the Nomination Meeting, the Electoral Officer will:
- (a) Post a notice of the Nomination Meeting in a public area of the Binche Whut'en Administration building, and in conspicuous places on the Reserve as determined by the Electoral Officer, and on the Binche Whut'en website; and
 - (b) Send by postal mail or email, or both, a notice of the Nomination Meeting, a nomination form and a voter declaration form to every Elector who does not reside on the Reserve and who have provided postal and/or email addresses.
26. A notice of a Nomination Meeting must contain the following information:
- (a) The date, time, duration and location of the Nomination Meeting;
 - (b) The date of the Election and location of each polling station;
 - (c) The number of positions on Council to be filled;
 - (d) A statement that any Elector (on-Reserve or off-Reserve) may vote by electronic voting, by mail-in ballot or by paper ballot;
 - (e) A description of the procedure for Electors to nominate a Candidate, or second the nomination of a Candidate;
 - (f) The Electoral Officer's name, phone number, fax number, postal address and email address; and
 - (g) A statement that if an Elector wants to receive information directly from Candidates, the Elector can consent to the Electoral Officer releasing their postal and/or email addresses to the Candidates.

CANDIDATES

27. Only Electors who meet the requirements of a Candidate as set out in section 28 of this Code may be nominated as a Candidate.
28. In order to be eligible to stand for election, a Candidate must, within ten (10) days of the close of the Nomination Meeting:
- (a) Complete, sign and file with the Electoral Officer a form prepared by the Electoral Officer that includes:
 - (i) Confirmation that they are an Elector;

- (ii) The individual's full name and ordinary residential address (NOTE: whether the Candidate lives 'on-Reserve' or 'off-Reserve' must be included on the electronic, paper or mail-in ballot beside the Candidates name);
 - (iii) The individual's usual name, if their usual name is different from their full name, and they wish to have their usual name included (NOTE: if requested by the Candidate, their usual name must be included on the ballot beside the Candidate's full name);
- (b) Provide a copy of a criminal record check report to demonstrate proof of not having been charged or convicted of an Indictable Offence or an offence under the Controlled Drugs and Substances Act of Canada. The only exception is where the proposed Candidate has received a pardon at least ten (10) years before the date of the Nomination Meeting;
 - (c) Provide a letter to the Electoral Officer from the Binche Whut'en Senior Administrator verifying the proposed Candidate does not have Outstanding Arrears; and
 - (d) Provide a declaration sworn or affirmed before a lawyer, notary public or commissioner for taking oaths stating that they have:
 - (i) never had a lawsuit instituted against them by Binche Whut'en;
 - (ii) have never been unsuccessful in a lawsuit filed against Binche Whut'en or a Council member acting in their capacity as a member of Council; and
 - (iii) have never commenced a lawsuit against Binche Whut'en or a Council member acting in their capacity as a member of Council which is frivolous, vexatious or unmeritorious.

Should the declaration be untrue they are ineligible to run for a Council position for life.

- 29. A person may only be a Candidate for Chief or Councillor, but not both, in any Election.
- 30. An Elector is eligible to become a Candidate if:
 - (a) Their nomination is moved and seconded by other Electors of Binche Whut'en;
 - (b) They provide their written consent to be a Candidate; and
 - (c) They have met all of the requirements set forth in section 28 and are not ineligible due to their not meeting the prerequisites set forth in subsections 28(a), (b), (c) and (d) or their declaration has been determined by the Electoral Officer to be false.
- 31. An Eligible Elector may only nominate or second one (1) Candidate for the position of Chief and may nominate or second one (1) Candidate for each of the Councillor positions and must:
 - (a) Verbally nominate the Candidate or second the nomination of the Candidate at the Nomination Meeting; or

- (b) Deliver or send by mail, email or fax to the Electoral Officer a completed nomination form and voter declaration form.
32. For greater certainty:
- (a) the witness to the Elector's signature appearing on the voter declaration form will not be considered a seconder to the nomination; and
 - (b) an Eligible Elector may only nominate or second only one (1) on-Reserve Candidate, one (1) off-Reserve Candidate, one (1) Youth Candidate and one (1) Elder Candidate.
33. Mailed nominations not received by the Electoral Officer before the start time of the Nomination Meeting will be void.
34. At the beginning of the Nomination Meeting, the Electoral Officer must read aloud all nominations received by mail, email or fax.
35. If the same person receives two written nominations for the same position, the second nomination is considered to be a 'seconder' to the first nomination.
36. The Nomination Meeting will remain open for two (2) hours or such longer period as may be determined by the Electoral Officer. The Electoral Officer is responsible for managing and chairing the Nomination Meeting.
37. In addition to what is set forth in section 30, a nominee must submit a signed declaration accepting the nomination for no more than one of the positions for which they have been nominated within ten (10) days of the close of the Nomination Meeting.
38. A nominee may withdraw their candidacy within ten (10) days of the date on which the Nomination Meeting was held by submitting a letter, or email signifying that they decline their nomination or sign and send a decline form (the form of which may be determined by the Electoral Officer) to the Electoral Officer.
39. A nominee who fails to submit the documents required in sections 28, 30 and 37 within 10 days of the close of the Nomination Meeting will be removed as a nominee and his or her name will not be included as a Candidate in the Election.
40. At the end of the Nomination Meeting, the Electoral Officer will:
- (a) If only one (1) person has been nominated for election as Chief, declare that person to be elected by acclamation;
 - (b) If the number of persons nominated to serve as Councillors does not exceed the number to be elected, declare those persons to be elected as of the Election Day by acclamation, provided that the residency requirements have been fulfilled; and
 - (c) Where more than the required number of persons is nominated for election as Chief or Councillors, announce that an Election will be held for the positions not filled by acclamation on the Election Day.
41. On the day following the Nomination Meeting, the Electoral Officer will post in a public area of the Binche Whut'en Administration building, and in conspicuous places on the Reserve as determined by the Electoral Officer, and on the Binche Whut'en website the following information:

- (a) A list of nominees, their nominators and seconders; and
 - (b) The names of persons (if any) elected by acclamation.
42. The Electoral Officer will:
- (a) Mail the same information to all off-Reserve Electors on the Voters List for which there is a known postal address;
 - (b) Email the same information to all off-Reserve Electors on the Voters List for which there is a known email address; and
 - (c) Post the same information on the Binche Whut'en website and known social media sites.

PART 7: CODE OF ETHICS

43. Candidates must operate their campaign according to the rules and regulations established in this Code and will:
- (a) Refrain from coercion or vote-buying;
 - (b) Respect the right and freedom of other persons to organize and campaign;
 - (c) Respect the rights of Electors to obtain information from a variety of sources and to attend Candidate forums;
 - (d) Refrain from committing slander or libel against opposing Candidates;
 - (e) Be cordial and not make inflammatory statements concerning other Candidates or their supporters;
 - (f) Clearly state their positions on issues that are important to Members;
 - (g) Refrain from violence, the use of language to incite their own supporters to violence, and the intimidation of the other Candidates, their supporters or the media;
 - (h) Respect the Electoral officer and the Deputy Electoral Officer(s) and not interfere with the performance of their duties; and
 - (i) Accept and comply with the official election results and, if necessary, the final decision of the Appeal Committee.
44. Every individual is in breach of the Code of Ethics who during an Election period:
- (a) Directly or indirectly offers a bribe to influence an Elector to:
 - (i) Vote or refrain from voting; or
 - (ii) To vote or refrain from voting for a particular Candidate; or
 - (b) Accepts or agrees to accept a bribe that is offered.
45. Every individual is in breach of the Code of Ethics who:
- (a) By intimidation, duress, or deception, compels or induces a person to:
 - (i) Vote or refrain from voting; or
 - (ii) Vote or refrain from voting for a particular Candidate in an election.

PART 8: VOTING PROCEDURE

46. No later than 21 days before the Election Date, the Electoral Officer must mail or email, or both, to all off-Reserve Electors on the Voters List for which there is a known postal or email address, a package consisting of the following:
- (a) A notice of Election;
 - (b) A list of names of any Candidates who were elected by acclamation;
 - (c) A voter declaration form, ballot, sealed envelope and other documents required to allow an Elector to vote electronically or by mail-in ballot; and
 - (d) Instructions regarding voting electronically (in person at the Administration building or separately online) and by mail-in ballot.

POLLING STATION

47. The Electoral Officer will establish at least one Polling Station on the Election Date, to be held at the Binche Whut'en administration building, and will remain open from 8:00 a.m. to 8:00 p.m. Computers will be available for people to do electronic voting and the Electoral Officer will be able to help people log in to E-vote if they require assistance.
48. The Electoral Officer will provide a voting compartment in the Binche Whut'en Administration building where Electors can log in their votes free from observation.
49. The Electoral Officer or Deputy Electoral Officer(s) will maintain order at all times in the Binche Whut'en Administration building Polling Station and may cause to be removed any person who in any way interferes, disrupts or attempts to influence the orderly conduct of the poll, and may hire or appoint security to maintain order in the polling station.
50. Voting will be by electronic means or mail-in ballot. Only Eligible Voters may vote.
51. Each person arriving at the Polling Station will provide their name to the Electoral Officer or Deputy Electoral Officer ("DEO"); and
- (a) If the person's name is set out on the Voters List, the Electoral Officer or DEO will allow Electors to log in to vote electronically.
 - (b) The Electoral Officer or DEO will immediately cross out or place in a column opposite the name of every person on the Voters List who logs in to vote electronically.
52. The Electoral Officer or DEO will explain the method of voting to the Eligible Voter.
53. After receiving log-in information, the Eligible Voter will:
- (a) Immediately proceed to the compartment provided to log in for electronic voting; and
 - (b) Mark the ballot with an "X" or other mark that clearly indicates the Elector's choice but does not identify the Elector opposite the name of the Candidate or Candidates for whom he desires to vote. If doing electronic voting, follow the instructions given for marking the ballot.
54. At the request of any Elector who is unable to vote in the manner set out in section 50, the Electoral Officer or DEO will assist the voter by helping them to log in and marking his or her ballot in the manner directed by the Elector, in the presence of

another Elector selected by the Elector as a witness or a member of the Binche Whut'en administration.

- (a) The Electoral Officer or DEO will note on the Voters List the fact that the log in ballot was marked with assistance at the request of the voter and the reason.

PART 9: COUNTING THE BALLOTS

55. At the time of the close of the poll(s), the Electoral Officer or DEO will, in the presence of any Candidates, their appointed scrutineers, and any interested Electors will:

- (a) Count the E-votes;
- (b) Prior to counting the mail-in ballots, a procedure is required for the verification of the voter declarations before the ballots are placed in the ballot box. The verifications should be done with scrutineers and any interested members.
- (c) Count the mail-in ballots;
- (d) Publicly announce the results; and
- (e) Declare the elected Council members.

COUNTING THE BALLOTS FOR COUNCILLORS

56. The successful Candidates for the five (5) positions of Councillor will be:

- (a) The four (4) on-Reserve Candidates that receive the highest number of votes cast based upon their categories; and
- (b) The one (1) off-Reserve Candidate that receives the highest number of votes cast.

COUNTING THE BALLOTS FOR CHIEF

57. The successful Candidate for the one (1) position of Chief is the Candidate who receives the highest number of votes for Chief.

TIE VOTE

58. If it is not possible to determine the successful Candidate(s) for either Chief or a Councillor position due to an equal number of votes being cast (i.e. tie vote), the Electoral Officer will immediately request a recount in the presence of all those present in the polling station.

59. If the recount fails to determine a successful Candidate because there are two or more Candidates with the same number of votes, the Electoral Officer shall first ask whether one or more of the Candidates wish to withdraw. If they do, or do not, and there is still a tie the names of the Candidates will be placed on pieces of paper folded over so that the names can not be seen and will then be placed in a receptacle from which the Electoral Officer will pick out the name of the successful Candidate(s).

ANNOUNCEMENT

60. After counting votes and establishing the successful Candidates as set out in this

Code, the Electoral Officer will declare the elected Candidates in writing.

PART 10: POST ELECTION PROCEDURE

61. Following the declaration of elected Candidates made pursuant to section 60, the Electoral Officer will complete a final statement of results that will contain the:
 - (a) Names of all Candidates;
 - (b) Number of electronic and mail-in votes cast for each Candidate; and
 - (c) Number of Rejected Ballots.
62. Within four (4) days after completion of the counting of electronic and mail-in votes, the Electoral Officer will sign the final statement of results, and:
 - (a) Post a copy in the Binche Whut'en Administration building, and any other conspicuous place on Reserve as determined by the Electoral Officer;
 - (b) Email a copy to every off-Reserve Elector for which there is a known email address;
 - (c) Mail a copy to every off-Reserve Elector for whom there is a known postal address but not an email address or if the email bounces back;
 - (d) Post it on the Binche Whut'en website and social media sites; and
 - (e) Forward a copy to the Binche Whut'en Senior Administrator.
 - (f) The final statement of results of the election is to be forwarded to the Department of Indigenous Services Canada in order to keep data up to date.

CHIEF AND COUNCIL OATH OF OFFICE

63. A Candidate who has been elected to Council will, within seven (7) days of the Electoral Officer's declaration under section 60, swear or affirm an oath of office in front of all Binche Whut'en Electors present at the swearing in ceremony. A Candidate may attend the swearing in ceremony and swear or affirm their Oath of Office via video conferencing technology if they are unable to attend the swearing-in ceremony and have made prior arrangements with the Binche Whut'en staff.
64. The Oath of Office will include that the Chief and Councillor will:
 - (a) Fulfill the duties and responsibilities of office;
 - (b) Carry out their duties faithfully, honestly, impartially and to the best of their abilities;
 - (c) Keep confidential, both during and after their term of office, any matter or information that under this Code or other Binche Whut'en policies is considered confidential; and
 - (d) Always act in the best interests of Binche Whut'en and its Members in carrying out their duties.
65. No person elected as Chief or Councillor will be permitted to assume office until they have sworn or affirmed the Oath of Office required under section 63.
66. A Candidate elected as Chief or Councillor who cannot, due to illness or other valid reason, swear or affirm the Oath of Office within the time prescribed in section 63,

may send a request in writing or by email to the Electoral Officer seeking an extension of time to swear or affirm the Oath of Office. The Electoral Officer receiving the request will determine whether the circumstances justify an extension and provide the Candidate making the request written notice of their decision and, where applicable, set out the extension period.

67. Subject to section 66, if a Candidate elected as Chief or Councillor fails to swear or affirm their Oath of Office on or before the specified time period, the Electoral Officer will declare the office vacant.
68. The Electoral Officer will give notice in writing to the elected Candidate whose office is declared vacant under section 67 and to the Council.
69. Unless the vacancy occurring under section 67 results in a situation where the Council can no longer form a quorum, the position will remain vacant until such time as a By-election is called by Council.

PART 11: ELECTION OFFENCES

70. A person is deemed to have committed an election offence if they, directly or indirectly:
 - (a) Disrespect the Electoral Officer or DEOs by interfering in the performance of their duties;
 - (b) Use intimidation or bribery to persuade or compel a person to:
 - (i) Vote or refrain from voting; or
 - (ii) Vote or refrain from voting for a particular Candidate;
 - (c) Use intimidation to punish a person for having voted or refrained from voting;
 - (d) Purport to withdraw a Candidate from an Election without authority to do so or publish or cause to be published a false statement that a Candidate has withdrawn;
 - (e) Vote at an Election when not entitled to do so; or
 - (f) Vote more than once.

PART 12: APPEAL COMMITTEE

71. The Appeal Committee will supervise and administer, in accordance with the provisions of this Code, all:
 - (a) Election appeals; and
 - (b) Petitions for removal of a Council member in accordance with Part 15.

COMPOSITION OF THE APPEAL COMMITTEE

72. At least fifty (50) days before the Election Date, the Senior Administrator will advertise through regular job posting methods to request letters of interest and resumes from Members and other persons interested in serving on the Appeal Committee. Members and other persons who wish to serve on the Appeal Committee shall submit letters of interest and resumes within fourteen (14) days of the posting of the advertisement.

73. At least thirty (30) days before the Election Date the Electors will, at a General Meeting:
 - (a) Appoint three (3) individuals to the Appeal Committee from those who have submitted letters of interest and resumes and in accordance with section 71, including at least one individual with experience in complaint and appeal processes or who possesses an understanding of the principles of natural justice. At all times the Appeal Committee shall consist of two (2) non-Members and one (1) Member. The Member shall not be in a conflict of interest.
 - (b) Develop a list of ten (10) additional potential Appeal Committee members.
74. Each member of the Appeal Committee will execute an Oath of Office and accept their appointment by forwarding a letter of acceptance to the Senior Administrator within fourteen (14) days of being notified of their appointment.
75. Members of the Appeal Committee hold office for a term of three years from the date of their appointment unless the Electors, at a General Meeting, vote to terminate an Appeal Committee member or extend their time.
76. If a member of the Appeal Committee resigns, or is otherwise unable to complete the term of their appointment, The Electors, at a General Meeting, may appoint a replacement for the balance of the term.
77. Upon receipt of an Election appeal in accordance with sections 78 to 80, or a petition for removal of a Council member in accordance with section 98 or 99, any Appeal Committee member who is Immediate Family of any appellant or Candidate named in the appeal, or who may be reasonably apprehended to have a bias or conflict in connection with the appeal, will excuse themselves from the proceedings.

PART 13: ELECTION APPEAL PROCEDURES

78. A Candidate or an Elector may, within 30 days from the Election Date, submit an appeal to the Appeal Committee.

GROUND FOR APPEAL

79. An appeal submitted in accordance with section 78 must sufficiently outline one or more of the following, that:
 - (a) The person declared elected was not qualified to be a Candidate;
 - (b) There was a violation of the Code in the conduct of the Election that might have affected the result of the Election; or
 - (c) An election offence was committed.
80. An appeal submitted to the Appeal Committee must:
 - (a) Be in a written affidavit sworn or affirmed before a lawyer, notary public or a duly appointed commissioner for taking oaths in British Columbia;
 - (b) Set out the facts demonstrating the grounds for appeal, accompanied by supporting documentation; and
 - (c) Include a \$200 filing fee, to be returned to the appellant if the appeal is successful.

81. The Appeal Committee may conduct such further investigation into the matter, as the Appeal Committee deems necessary, if the material that has been filed is not adequate for deciding the validity of the appeal.
82. In the case where the appeal is:
 - (a) Submitted in accordance with sections 78 to 80, the Appeal Committee will forward a copy, together with supporting documents, by registered mail to the Electoral Officer and to each Candidate in the Election; or
 - (b) Not submitted in accordance with sections 78 to 80, inform the appellant(s) in writing that the appeal will not receive further consideration or request additional information or documentation, or both, to be submitted in the form and within the time as stipulated by the Appeal Committee.
83. Any Candidate, within 14 days of receipt of a copy of the appeal, may forward to the Appeal Committee a written answer to the particulars set out in the appeal together with any supporting documents contained in an affidavit sworn or affirmed before a lawyer, notary public or a duly appointed commissioner for taking oaths in the Province of British Columbia.
84. All particulars and documents submitted in accordance with this Part 13 will constitute the record for the appeal.

DECISION OF THE APPEAL COMMITTEE

85. After a review of all the evidence that it has received the Appeal Committee will, within 60 days of receiving an appeal, issue a written report that sets out all the evidence and information gathered and will either:
 - (a) Uphold the appeal, by setting aside the election of one or more Council members setting out the manner in which:
 - (i) The person declared elected was not qualified to be a Candidate;
 - (ii) There was a violation of the Code in the conduct of the Election that might have affected the result of the Election; or
 - (iii) An election offence was committed.
 - (b) Dismiss the appeal.
86. The decision of the Appeal Committee made in accordance with section 85 must be:
 - (a) Published in a newsletter and/or in a written notice delivered door to door on-Reserve;
 - (b) Posted in at least one conspicuous place on-Reserve, including at the Administration building;
 - (c) Emailed to all Binche Whut'en Voters residing off-Reserve for which there is a known email address or sent by regular mail if there is a postal address or both; and
 - (d) Posted on the Binche Whut'en website and social media sites.
87. For greater certainty, the Appeal Committee has the authority to make binding decisions regarding:

- (a) Election appeals; and
 - (b) Petitions for the removal of a Council member from office in accordance with sections 98 or 100.
88. If the Appeal Committee upholds the appeal in accordance with subsection 85(a), they may order that there be an Election or By-election for all or some of the positions on Council.
89. The decision of the Appeal Committee is final and subject only to an appeal to the Federal Court of Canada, Trial Division.
90. An application to the Federal Court of Canada, Trial Division, to challenge the decision of an Appeal Committee must be made within 10 days of the decision of the Appeal Committee.

PART 14: BY-ELECTION PROCEDURES

91. A By-election will be held for:
- (a) Chief, if the office becomes vacant under the terms of this Code with more than six (6) months remaining in the Chief's term; or
 - (b) A Councillor(s) if the office becomes vacant under the terms of this Code and as a result there are less than three (3) members of Council.
92. In the event that the Chief position becomes vacant with less than six (6) months remaining in the term, the Councillor who received the highest number of votes in the previous Election will act as Chief for the remainder of the term.
93. With respect to any By-election, the rules and procedures for Elections in this Code will apply, with the following exceptions:
- (a) The By-election Date will be forty-five (45) Days from the date of the vacancy; and
 - (b) The Nomination Meeting will be held between fifteen and twenty (15-20) Days from the date of the vacancy.
94. For greater certainty, in the event of a By-election, the Electoral Officer must follow all the substantive guidelines in this Code regarding notice (on and off-Reserve), and hold the Poll Station at the Binche Whut'en Administration building but ensure the forty-five (45) Day deadline for the By-election is met.
95. The successful Candidate in a By-election will hold office for the remainder of the original term of office of the Chief or Councillor they are elected to replace.

PART 15: REMOVAL OF COUNCIL MEMBER

96. Grounds for which a Chief or Councillor may be determined to be ineligible to continue to hold office include:
- (a) Conviction of an Indictable Offence or an offence under the Controlled Drugs and Substances Act;
 - (b) Absence from three (3) consecutive scheduled duly convened meetings of the Council, or three (3) scheduled Council meetings in a calendar year, without

- being authorized to do so by Council; or
- (c) Failing to uphold the integrity of Binche Whut'en governance through blatant disregard for the Oath of Office and/or the Code of Conduct.
97. Proceedings to declare a Council member ineligible to continue to hold the office of Chief or Councillor may be initiated by:
- (a) Any Eligible Voter, in accordance with section 98, or;
- (b) A majority of Council members passing a Resolution, in accordance with section 99.
98. An Eligible Voter making a submission to remove the Chief or a Councillor must provide the following to the Appeal Committee:
- (a) A written affidavit (preferably in 200 words or less) sworn or affirmed before a lawyer, notary public or a duly appointed commissioner for taking oaths in British Columbia, which sets out the specific grounds for removal of a Chief or Councillor (in accordance with section 96) and, if applicable, accompanying supporting documentation; or
- (b) A petition that sets out the grounds on which removal of the Chief or Councillor is sought, including:
- (i) Evidence in support of the petition sworn or affirmed before a lawyer, notary public or commissioner for taking oaths in the Province of British Columbia; and
- (ii) The signatures of at least 50% of all Eligible Voters in support of the petition.
99. A majority of Council members making a submission to remove a Chief or Councillor must provide the following to the Appeal Committee:
- (a) A Resolution (preferably in 200 words or less) that sets out the specific grounds for removal of a Chief or Councillor (in accordance with section 96);
- (b) Evidence in support of the submission; and
- (c) The signature of all Council members who voted for the removal of the Chief or Councillor.
100. In a case where the appeal submission or petition complies with sections 98 or 99 the Appeal Committee will either determine the grounds in the submission or petition:
- (a) Are frivolous in nature or unsubstantiated and dismiss the submission or petition; or
- (b) Warrant further investigation and will schedule a review hearing that will take place within twenty (20) days from the date that the submission or petition was made to the Committee.
101. In a case where the submission or petition has been dismissed under subsection 100(a), the Appeal Committee will inform the person(s) making the submission in writing together with written reasons.
102. In a case where the Appeal Committee schedules a hearing under subsection 100(b), the Appeal Committee will send a written notice of the hearing by registered

mail to:

- (a) The Council members who are not the subject of the submission or petition;
- (b) The submitter or petitioner(s); and
- (c) The Chief or Councillor(s) who is the subject of the submission or petition for removal.

103. The written notice will set out:

- (a) The nature of the hearing and all related particulars;
- (b) The date, time and location of the hearing; and
- (c) A statement that the petitioner(s), any member of Council, or the Council member(s) who is the subject of the petition for removal may, at the hearing, make a presentation to the Appeal Committee which may include the presentation of documents and testimony by witnesses.

104. The Appeal Committee will conduct a hearing at the time and place set out in the notice provided under section 103.

105. Within five (5) days of the day on which the hearing under section 104 is held, the Appeal Committee will issue a ruling that includes written reasons setting out that the submission or petition will either be:

- (a) Upheld and that the position of Chief or Councillor who is the subject of the submission or petition is to be vacant; or
- (b) Dismissed and that the position of Chief or Councillor who is the subject of the submission or petition will remain in office.

106. The Appeal Committee will send, by registered mail, a written notice of the ruling made under section 105 to:

- (a) The Council members who are not the subject of the submission or petition;
- (b) The submitter(s) or petitioner(s); and
- (c) The Chief or Councillor who is the subject of the submission or petition for removal.

107. The report of the decision of the Appeal Committee will be taken to a General Band Meeting of Binche Whut'en specifically called for this purpose.

108. The decision of the Appeal Committee made under section 105 is final and binding on all parties, subject to any appeal to the Federal Court of Canada, Trial Division.

PART 16 - AMENDMENTS TO THIS CODE

109. Subject to section 116, the process for development and passage of amendments to this Code may be initiated by:

- (a) A petition presented to the Senior Administrator, signed by at least fifty percent (50%) of all Electors setting out the specific area in this Code proposed for amendment; or
- (b) Council, by way of a Resolution.

110. Upon receipt of an amendment proposal in accordance with section 109, the Senior Administrator will prepare a notice that sets out:
 - (a) A summary of the proposed amendments to this Code;
 - (b) A statement that the full copy of the proposed amendment(s) can be obtained at the Binche Whut'en Administration building; and
 - (c) A description of the amendment process.
111. The notice provided for in section 110 will be:
 - (a) Published in a newsletter and/or written notice delivered door to door on-Reserve;
 - (b) Posted in at least one conspicuous place on-Reserve;
 - (c) Emailed to all Electors residing off-Reserve for which there is a known email address or sent by regular mail to Electors residing off-Reserve where the postal address of the Elector is known, or both; and
 - (d) Posted on the Binche Whut'en website and social media sites.
112. Electors may, within fourteen (14) days of publication of the notice set forth in section 110, provide written comments to the Senior Administrator on the proposed amendments.
113. Following receipt of the comments on the proposed amendments, if any, the Senior Administrator will review the comments and make such changes, as they deem necessary, in order to arrive at a final amendment proposal.
114. The Senior Administrator will submit the final amendment proposal to a Referendum.
115. Should the majority of votes cast at the referendum be in favour of the proposed amendments, the Senior Administrator will amend the Code and set a date for the coming into force of the amendments to the Code.
116. Notwithstanding the foregoing, minor non-substantive amendments to the Code may be made by the Members at a General Meeting without the procedure set forth in sections 109 through 115 having to be followed.