

KAMLOOPS INDIAN BAND
REFERENDUM BY-LAW

1994-2

WHEREAS Section 81 of the *Indian Act*, and in particular sub-sections 81(1)(c) and (q) therein, provide that the Council of the Band may make by-laws for the observance of law and order and other ancillary matters;

AND WHEREAS there are matters of general importance upon which members of the Kamloops Indian Band wish to express their views to the Council of the Kamloops Indian Band;

AND WHEREAS there are matters of general importance upon which the Council of the Kamloops Indian Band would like to obtain the views of the members of the Kamloops Indian Band;

AND WHEREAS the Council of the Kamloops Indian Band deems it advisable to hold referenda on matters which are of general importance to the Kamloops Indian Band;

AND WHEREAS the Council of the Kamloops Indian Band deems it to be in the best interests of the band to make a by-law for such purposes;

NOW THEREFORE BE IT RESOLVED that the Council of the Kamloops Indian Band at a duly convened meeting, enacts the following by-law.

1. SHORT TITLE

This bylaw may be cited as the "Referendum By-law".

2. INTERPRETATION

(a) "Band"

means the Kamloops Indian Band.

(b) "Band Meeting"

means a duly convened general meeting of members of the Band.

- 2 -

(c) "Band Member"

means a person who is a member of the Kamloops Indian Band and registered on the Band List as defined in the Indian Act

(d) "Chairperson"

means the person presiding at a Band Meeting;

(e) "Chief and Council" or
"Band Council"

means the Chief and Council elected according to the custom of the Kamloops Indian Band.

(f) "ethical duty"

means a duty of fairness, honesty and integrity which is consistent with the standards of fair play of the Kamloops Indian Band community.

(g) "Judge"

means a Judge of the Provincial Court who will act as a friend of the Band as a whole, and, upon request by the Band Council at the time of the appointment of the Referendum Officer, agrees to act in all cases of referenda appeals brought before him or her.

(h) "Notice"

means a Notice of the Referendum Vote in the form prescribed in Schedule "A" and as provided for in this by-law.

(i) "Proposed Question"

means a question put forward for consideration as a Referendum Question pursuant to the provisions of this by-law;

- 3 -

(j) "Referendum Committee"

means the committee appointed by Band Council, which may include a member of Band Council, and which shall include two Band Members, one of whom is a supporter of the Proposed Question;

(k) "Referendum Officer"

means a person appointed by Chief and Council of the Kamloops Indian Band for the purposes of holding a Referendum Vote, and includes his or her assistant.

(l) "Referendum Question"

means a question which may be put to a Referendum Vote pursuant to the provisions of this bylaw.

(m) "Referendum Vote"

means the determination of a Referendum Question by Referendum Voters.

(n) "Referendum Voter"

means a Band Member who is of the full age of 18 years on or before the Referendum Vote.

(o) "Referendum Voter List"

means a list prepared by the Referendum Officer pursuant to the provisions of this by-law listing all of the Referendum Voters.

(p) "Reserve"

means reserve lands of the Kamloops Indian Band, including designated lands, as defined by the Indian Act.

3. OBJECT OF THE REFERENDUM BY-LAW

- (1) The object of the Referendum By-law is to enable the Band to hold a Referendum Vote on matters which are of special significance to the Band.

- 4 -

- (2) A Referendum Vote shall be restricted to questions affecting issues of significance to the Band as a whole.

4. REFERENDUM QUESTIONS

- (1) Any Band Member 18 years of age or over may put forward a Proposed Question in the following manner:

- (a) at a Band Meeting;
- (b) by a Petition stating the Proposed Question which is:
 - (i) addressed to Chief and Council;
 - (ii) signed by not less than 20% of Band Members eligible to vote on a Referendum Question; and
 - (iii) witnessed as to the signatures, in the presence of those signing the petition under sub-section 4(1)(b)(ii), by a person who is of the full age of 18 years or over;

and such Petition shall be placed on the agenda of a Band Meeting.

- (2) The Secretary at the Band Meeting shall keep a record of the Proposed Question and give a copy of the Proposed Question to the Referendum Committee as soon as possible and within seven days of the Band Meeting.

- (3) The Referendum Committee shall:

- (a) meet within seven days of the Band Meeting to review the Proposed Question and, if necessary, redraft the Proposed Question consistent with the purposes of this by-law;
- (b) advise the Chairperson, at the next Band Meeting, of the Proposed Question approved by the Referendum Committee.

- 5 -

- (4) Without restricting the generality of sub-section 3(2), none of the following matters shall be considered as a Referendum Question and, if put forward, shall not be voted on:
- (a) any matter which concerns questions of procedure or administration at meetings of Chief and Council;
 - (b) any matter personal to an individual Band Member or their family and which does not affect a majority of the Band membership;
 - (c) any matter which would require the Band to release information which is of a confidential nature and which the Band may be under a legal or ethical duty not to release;
 - (d) any matter for which there are mandatory provisions in the Indian Act for determining the wishes of the Band on a particular issue, which provisions conflict with the provisions of this By-law;
 - (e) any matter concerning the land use policy of the Band unless a majority of the Band Members are directly affected;
 - (f) any matter dealing with financial policy of the Band unless the amount in issue exceeds \$50,000.00 in any fiscal year;
- (5) The Chairperson at the Band Meeting shall decide during the meeting whether the Proposed Question, approved by the Referendum Committee, may be a Referendum Question under sub-section 3(2) or any other provision of this by-law.
- (6) Band Council members in attendance at the Band Meeting shall be informed of the decision made by the Chairperson under sub-section 4(5) and that decision shall be dealt with in the following manner:
- (a) if a majority of Band Council present at the meeting agree with the decision of the Chairperson then the decision will be affirmed;

- 6 -

- (b) if a majority of Band Council present at the meeting do not agree with the decision of the Chairperson, then that decision will be announced at the Band Meeting as overruled and the decision of Band Council shall be substituted in its place;
 - (c) at the request of a Band Member 18 years of age or over, the decision made in sub-section 4(6)(b) shall be voted on and the decision of the Chairperson will be affirmed if it receives the support of 75% of Band Members who are 18 years of age or over.
 - (d) if the Chairperson is also on Band Council then he/she will not be permitted to vote under this sub-section.
- (7) The Chairperson shall state to those present at the Band Meeting the Proposed Question considered to be a Referendum Question under sub-section 4(6) and the Proposed Question will be determined to be a Referendum Question if:
- (a) a quorum of Band Members are present at the Band Meeting;
 - (b) 75% of those at the Band Meeting are in favour of the Proposed Question being considered as a Referendum Question, for any question which concerns issues of procedure at Band Meetings;
 - (c) a majority of those present at the Band Meeting are in favour of the Proposed Question being considered as a Referendum Question, for any question other than those referred to in sub-section 4(7)(b).
- (8) The Band Council may, if there is unanimous agreement, designate any question to be a Referendum Question and exempt from section 3 and sub-sections 4(1) through 4(7).

5. REFERENDUM VOTE

SETTING THE REFERENDUM VOTE

- (1) The Chief and Council shall, as soon as possible under the provisions of this by-law, set a date for a Referendum Vote for any question decided to be a Referendum Question under sub-sections 4(6), (7) or (8).
- (2) A Referendum Vote may deal with more than one Referendum Question.

- 7 -

APPOINTMENT OF REFERENDUM OFFICER

- (3) The Chief and Council shall appoint a Referendum Officer.

PREPARATION OF THE REFERENDUM VOTER LIST

- (4) The Referendum Officer shall prepare, at least 30 days prior to the Referendum Vote, a list of those entitled to be a Referendum Voter. The Referendum Officer will present the list to Chief and Council for approval. After approval by Chief and Council, the Referendum Officer in accordance with this by-law, shall certify that it is correct and immediately produce sufficient copies of the Referendum Voter List and post them in conspicuous places on the Reserve, including the bulletin board in the Band Administration building.
- (5) The Referendum Voter List will list those entitled to be a Referendum Voter in alphabetical order and show the name, business address and business telephone number of the Referendum Officer;
- (6) The Referendum Officer may, up until seven full days prior to the Referendum Vote, seek the approval of Chief and Council to amend the Referendum Voter List on the grounds that:
- (a) the name of a Referendum Voter has been omitted or incorrectly listed from the Referendum Voter List; or
 - (b) the name of a person not qualified to vote is included on the Referendum Voter List.

NOTICE OF REFERENDUM VOTE

- (7) Whenever a Referendum Vote is to be taken, the Referendum Officer shall, without any unreasonable delay after the date for the Referendum Vote has been set under sub-section 5(1), cause to be posted a Notice in the form prescribed in Schedule "A".
- (8) The Notice shall include:
- (a) a statement of the Referendum Question(s);
 - (b) the date of the Referendum Vote;

- 8 -

- (c) the times of day when a Referendum Voter may vote on the Referendum Question(s).
 - (d) the location where a Referendum Voter may vote on the Referendum Question(s);
 - (e) the signature, name, business address and business telephone number of the Referendum Officer;
 - (f) a statement that a list of those entitled to vote on the Referendum Question(s) is posted in the Band Administration Building.
- (9) The Notice shall be posted in three or more conspicuous places on the Reserve, including the Band Administration Building, at least 30 days prior to the Referendum Vote.
- (10) As soon as the Notice has been posted, or immediately thereafter, the Referendum Officer will cause to be:
- (a) published in a local newspaper for three consecutive days, the same information contained in the Notice;
 - (b) broadcast at least once on three consecutive days by local radio or television station the same information contained in the Notice.
- (11) Every Referendum Voter shall receive at least thirty days notice of the Referendum Vote referred to in sub-section 5(1), except where the Referendum Voter has been added to the Referendum Voter List pursuant to sub-section 5(6).

PREPARATION OF BALLOT PAPERS

- (12) The Referendum Officer will cause to be prepared ballot papers which shall state the Referendum Question(s) and signify:
- (a) that each Referendum Voter may express their opinion on the Referendum Question by making an "X" after the word "yes" on the ballot paper or an "X" after the word "no" on the ballot paper; or
 - (b) if the Referendum Question(s) present two or more alternative options, then the ballot paper would have to clearly state that the options are alternative to each other and that the Referendum Voter may vote in favour of only one of the options or against all of the options.

- 9 -

- (13) The ballot paper will be designed by the Referendum Officer in such a manner as, in his/her opinion, will best ensure that the purposes of this by-law are achieved. The ballot paper shall be submitted to Chief and Council for approval.

MANNER OF VOTING

- (14) Referendum Votes will only be held at a place to be designated in the Notice and: ✓
- (a) (i) in April or September;
 - (ii) on one Wednesday and the Saturday immediately following;
 - (iii) between the hours of 8:00¹ a.m. and 8:00 p.m.; or
 - (b) as designated by a decision of Chief and Council.
- (15) The Referendum Officer shall procure, or cause to be procured, as many ballot boxes as there are polling places, and shall supply a sufficient number of ballot papers for the purpose of the Referendum Vote.
- (16) The Referendum Officer shall before the poll is open, cause to be delivered to the place of the poll, the ballot papers, materials for marking the ballot papers, and post in conspicuous places directions for voting as may be prescribed.
- (17) Until after the votes are counted and the Referendum Officer completes the declaration pursuant to clause 5(41), there shall be in attendance two scrutineers who shall observe the Referendum Officer in the performance of his/her tasks pursuant to this by-law. The scrutineers shall be appointed by Chief and Council. Proponents and opponents of a Referendum Question may also appoint one scrutineer each. 7 50-7-4-2 14 54 107
- (18) The Referendum Officer shall provide a compartment at each polling place where the Referendum Voters can mark their ballot papers free from observation, and may appoint assistants to maintain order at such polling place.
- (19) Voting at all Referendum Votes shall be by secret ballot.

- 10 -

- (20) The Referendum Officer or assistant shall immediately, before the commencement of the poll, open the ballot box and call such persons as may be present to witness that it is empty; he or she shall then look and properly seal the box to prevent it being opened without breaking the seal and shall place it in view for the reception of the ballots. The Referendum Officer or assistant shall then have witnesses sign a statement as follows:

I, _____ do solemnly declare that, prior to the sealing of the ballot boxes for the include date (day, month and year) Referendum Vote, I inspected the ballot boxes and am satisfied that they were completely empty of ballots or any other items which would influence the outcome of the Referendum Vote mentioned herein (signed) _____ date: _____.
(witness) _____.

The seal shall not be broken nor the box be unlocked during the time appointed for taking the Referendum Vote.

- (21) Every person in attendance at a polling place or at the counting of votes shall maintain and aid in maintaining the secrecy for voting.
- (22) No person shall interfere or attempt to interfere with a voter when marking their ballot paper or obtain or attempt to obtain at the polling place information as to how a Referendum Voter is about to vote or has voted.
- (23) No influencing of Referendum Voters in any form whatsoever shall be allowed in, at, or near the place of the poll and the Referendum Officer shall take appropriate actions to stop any such influencing.
- (24) Where a person, who has been deemed to have interfered in a manner described in subsection 5(23), refuses to leave the place of the poll, the Referendum Officer, with the assistance of the Sergeant at Arms who shall attend the voting, may take appropriate steps to remove the person.
- (25) the Referendum Officer or his/her assistant shall, if satisfied that a person presenting themselves for the purpose of voting is a Referendum Voter, provide the Referendum Voter with a ballot paper on which to register his/her vote and the Referendum Officer or assistant will place their initials on the back of the ballot so that they may verify that the ballot paper was issued by them.
- (26) The Referendum Officer or assistant shall cause to be placed in the proper column of the Referendum Voter List a mark opposite the name of every Referendum Voter receiving a ballot paper.

- 11 -

- (27) At the discretion of the Referendum Officer or assistant an oath or affirmation in the form prescribed in Schedule "B" shall be administered to any person claiming to be a Referendum Voter.
- (28) No person who has refused to take the oath or affirmation referred to in sub-section 5(27) shall be allowed to vote.
- (29) The Referendum Officer or assistant may, and when required to do so shall, explain the mode of voting to a Referendum Voter.
- (30) Each Referendum Voter receiving a ballot paper shall forthwith proceed to the compartment provided for marking ballots and shall mark their ballot paper by placing a cross "X" in the appropriate space as provided in sub-section 5(12); the Referendum Voter shall then fold the ballot paper so as to conceal the choices made by the Referendum Voter, and on leaving the compartment shall forthwith deliver the same to the Referendum Officer or assistant, who shall, without unfolding the ballot paper, verify his/her initials and at once deposit the ballot paper in the ballot box in the presence of the Referendum Voter and of all other persons entitled to be present in the polling places.
- (31) While any Referendum Voter is in the compartment for the purpose of marking the ballot paper, no other person shall, except as provided in sub-section 5(32), be allowed in the same compartment or be in any position from which he/she can see the manner in which a Referendum Voter marks their ballot paper.
- (32) The Referendum Officer or assistant, on the application of any Referendum Voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the normal manner, shall assist such voter by marking their ballot paper in the manner directed by such voter and place such ballot in the ballot box.
- (33) The Referendum Officer or assistant shall state on the Referendum Voter List, opposite the name of the Referendum Voter described in sub-section 5(32), that the ballot paper was marked by him/her at the request of the Referendum Voter and the reason for the request.
- (34) A Referendum Voter who has inadvertently dealt with their ballot paper in such a manner that it cannot be conveniently used shall upon returning it to the Referendum Officer or assistant be provided with a new ballot paper; and the Referendum Officer or assistant shall immediately write the word "cancelled" upon the spoiled ballot paper and preserve it.

- 12 -

(35) A Referendum Voter, after being provided with a ballot paper, forfeits their right to vote if they:

- (a) leave the polling place without delivering their ballot to the Referendum Officer or assistant;
- (b) refuse to vote.

The Referendum Officer or assistant shall record the circumstances on the Referendum Voter List and any such ballot returned shall have the word "declined" marked upon the face of it and all such ballot papers shall be preserved.

- (36) Every Referendum Voter who is inside the polling place at the time fixed for closing the poll shall be entitled to vote before the poll is closed.
- (37) The Referendum Officer may make such orders and issue such instructions as they may deem necessary from time to time for the effective administration of this by-law.
- (38) A Referendum Voter who is unable to vote because of sickness, physical handicap or infirmity may, if they have notified the Referendum Officer at least forty-eight hours before the poll opens, cast their ballot and the Referendum Officer or assistant shall on the day of the poll proceed to the location of the Referendum Voter and provide them with a ballot and if it is appropriately marked by the Referendum Voter accept it and as soon as practical thereafter, deposit the ballot in the ballot box at the poll.
- (39) Notwithstanding the generality of sub-section 5(38), only Referendum Voters present on the reserve on the day of the poll may exercise the right to vote under that sub-section, unless:
 - (a) the Referendum Voter is in a hospital or health care facility in the greater Kamloops area;
 - (b) the Referendum Voter is incarcerated in the greater Kamloops area, but not convicted of a crime, and being in an incarceration institution and provided that the proper arrangements can be made by the Referendum Officer and officials of that incarceration institution.

REFERENDUM VOTE RESULTS

- (40) The Referendum Officer shall commence counting the votes within one-half hour of the closure of the polls on the second day of voting, being the Saturday, or as prescribed in sub-section 5(14).

-13-

- (41) The Referendum Officer shall, immediately after the counting of the votes, sign a written declaration in triplicate of the number of votes cast for and against the Referendum Question and whether or not the Referendum Question has received an affirmative majority.
- (42) With respect to the declarations referred to in sub-section 5(41) of the votes cast in the referendum, the Referendum Officer shall:
- (a) provide on copy to Chief and Council for consideration of the issue;
 - (b) post one copy at the Band office;
 - (c) post one copy in a conspicuous place.

DISPOSAL OF BALLOT PAPERS

- (43) The Referendum Officer shall place all ballot papers in a sealed envelope and shall retain them in his/her possession for eight weeks, and unless an appeal is made under this by-law, destroy the ballot papers in the presence of two witnesses who shall make a declaration that they witnessed the destruction of the ballot papers. A copy of this declaration is to be forwarded to the Band Office by registered mail.

6. IMPLEMENTATION OF THE REFERENDUM VOTE RESULTS

- (1) The Referendum Vote results shall be implemented by Chief and Council as soon as practicable if:
- (a) for a Referendum Question concerning band membership, land claims issues or the disposal of land within the reserve, the Referendum Question receives the affirmative vote of not less than 75% of those casting a vote in the Referendum;
 - (b) for Referendum Questions which do not raise the issues referred to in sub-section 6(1)(a) the Referendum Question receives the affirmative vote of not less than 50% plus 1 of those casting a vote in the Referendum.

- 14 -

- (2) Any Referendum Question which does not receive the votes required under sub-section 6(1) shall not be:
 - (a) implemented by Chief and Council; and
 - (b) considered as a Referendum Question for at least one year after the Referendum Vote.
- (3) Chief and Council shall, upon receiving the Referendum Vote results and determining that the results are to be implemented under sub-section 6(1), make best efforts to inform the Band Members of the plan for the implementation of the Referendum Vote results at the next Band Meeting.

7. APPEAL PROCEDURE

- (1) The validity of the Referendum Vote shall not be called into question or determined otherwise than in accordance with the following provisions, and, the determination shall only be made by the Judge, whose decision is final.
 - (a) Any 10 or more Referendum Voters may present a petition to the Judge, verified by affidavit, stating that the Referendum Vote be declared invalid because it was not conducted according to the provisions of this By-law or because there was corrupt practice in connection with the Referendum Vote;
 - (b) Every petition to have a Referendum Vote declared invalid shall be filed within 10 days from the date upon which the Referendum Vote was held;
 - (c) If the Judge is satisfied that there is reasonable grounds for supposing that the declaration should be made, he/she shall require the petitioners to deposit a \$500.00 filing fee with the Band Administrator, which filing fee shall be refunded if the petition is granted or put into a fund to defray expenses of referenda if the petition is denied.
 - (d) The Judge shall hear and determine the matters in a summary manner without formal pleadings once the filing fee has been paid to the Band Administrator.
- (2) The Judge, has the same powers, jurisdiction, and authority with respect to the hearing of the petition and proceedings therein, as if it were an ordinary matter within his/her jurisdiction.

- 15 -

- (3) The Judge may, in his/her discretion, give directions for:
- (a) fixing the times and places for the hearing of the petition;
 - (b) designating the method of taking evidence, either by affidavit or oral testimony, or both; provided that any allegations of bribery or corrupt practices shall be proved by oral testimony;
 - (c) designating what persons are to be notified of the petition and how they may be served, whether personally or substitutionally;
 - (d) dealing with any matter or thing not otherwise provided for.
- (4) No witness shall be required to divulge how they voted in the Referendum Vote.
- (5) The Judge must make a declaration:
- (a) confirming the Referendum Vote results; or
 - (b) adjudging the Referendum Vote invalid; or
 - (c) adjudging that the Referendum Vote results be set aside; or
 - (d) adjudging that some other result received an affirmative majority of votes.
- (6) No Referendum Vote shall be declared invalid by reason only of any irregularity or noncompliance with a provision of these by-laws if it appears to the Judge that the Referendum Vote was conducted in good faith and in accordance with the principles laid down herein and that such irregularity or noncompliance did not materially affect the result of the Referendum Vote.
- (7) The costs of, and incidental to, any petition shall be in the discretion of the Judge; provided, that the costs of a successful petitioner shall be paid forthwith by the Band and the Band may recover such costs as may be directed by the Judge.

8. AMENDING PROCEDURE

- (1) Any and all rules of the Referendum By-law may be amended by a majority vote at a Band Meeting.

- 16 -

- 9. COMING INTO FORCE

- (1) This By-law shall come into force upon approval of Chief and Council after approval at a Band meeting.

APPROVED BY CHIEF AND COUNCIL THIS 9th day of August, 1998.

Chief Clarence J. [Signature]
Chief

Councillors :

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

- 17 -

SCHEDULE A

KAMLOOPS INDIAN BAND REFERENDUM BY-LAW

NOTICE

TAKE NOTICE that a referendum vote will be conducted by secret ballot as set out in this notice.

- (a) the referendum question to be voted on is:

[state Referendum Question(s)];

- (b) voting will be held between the hours of 8:00 a.m. - 8:00 p.m. [state applicable times and dates];

- (c) the polling booths will be located at [state place(s)];

AND FURTHER TAKE NOTICE that a list of those entitled to vote on the referendum question(s) will be posted at the Band Administration Building [List any other locations where a list will be posted] on or before ____ day of [state month and year].

DATED AT [Place], this ____ day of [state month and year].

Referendum Officer
[Provide name, business
address and business
telephone number]

- 18 -

SCHEDULE B**KAMLOOPS INDIAN BAND REFERENDUM BY-LAW****OATH OF AFFIRMATION**

To be administered by the Referendum Officer or assistant:

You swear (or solemnly affirm):

- (a) That you are legally qualified to vote at this referendum;
- (b) That you are the person referred to as [name]
in the Referendum Voter List being used in this referendum;
- (c) That you have not voted before in this referendum;
- (d) That you are the full age of _____ years;
- (e) That you are a member of the Kamloops Indian Band;
- (f) That you have not, directly or indirectly, received any reward or gift, nor do you expect to receive anything in respect of the vote for which you have attended here today.

Signed