

Appendix B

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PART 4
ELECTIONS RE COMMUNITY COUNCILS

Conduct of elections

77 The election of members of a council is to be in accordance with this Part and the regulations.

Four-year term

78(1) A member of council elected at a regular election holds office for a term of four years.

Term — regular election

78(2) The term of office of a member of a council elected at a regular election starts 14 days after the day of the election and ends 14 days after the next regular election held to fill the position.

Term — by-election

78(3) An individual elected to fill a vacancy on council holds office from the day the senior election official declares the results of the by-election and ends 14 days after the next regular election held to fill the position.

Timing of regular elections

79(1) Regular elections must be held on the fourth Wednesday of October in the year prescribed by the minister.

Staggered terms

79(2) A regulation under this Part may provide staggered terms for members of a council.

Election of mayor

80(1) The mayor of a community is to be elected by a vote of the voters of the whole community unless the regulation establishing the community provides that the mayor is to be appointed from among the councillors.

Mayor's term if appointed

80(2) A mayor appointed from among the councillors holds office as mayor for a term of one year, but is eligible for reappointment.

Wards or community vote may be prescribed

81 A regulation under this Part may provide for the election of councillors by a vote of the

voters of the whole community or on the basis of wards. If wards are prescribed, a different number of members may be prescribed for different wards.

Qualifications of voters

82(1) A person is qualified to vote in an election of members of the council of a community if on the day of the election he or she is

- (a) a Canadian citizen who is 18 years of age or older; and
- (b) a resident of the community, and has been so for at least six months before election day.

Residency

82(2) Under this Act, the following rules apply in determining the residency of a person:

1. A person is a resident of the place where he or she has his or her ordinary residence, and to which he or she intends to return when away from it.
2. A person may be a resident of only one place at a time.
3. A person does not change residence until he or she has a new residence.

Persons with no fixed address

82(3) A person who does not have an ordinary residence is deemed to reside at the shelter, hostel or similar institution that most frequently provides lodging, food or other social services to the person.

Oath conclusive in absence of other evidence

82(4) A person's oath regarding the place that most frequently provides lodging, food or other social services to the person is conclusive, in the absence of evidence to the contrary.

New or expanded community

82(5) When a community is formed or the boundaries of a community are extended, a person is deemed to have satisfied the residency requirement in clause (1)(b) if, for at least the six months before election day, the person has been a resident within the area that becomes included in the community.

Qualification of members of council

83 A person is qualified to be nominated for and elected as a member of council if the person is

- (a) a Canadian citizen;
- (b) at least 18 years of age on the day of the election;
- (c) a voter of the community;
- (d) in a community with wards, a resident in the ward in which the person is or may be nominated; and
- (e) not subject to any disqualification under this or any other Act.

Persons who are disqualified

84 The following persons are disqualified from being nominated for, being elected to, and from membership on, a council:

- (a) a judge of the Court of Queen's Bench or The Court of Appeal;
- (b) a provincial judge or justice of the peace;
- (c) a member of the Legislative Assembly of Manitoba, the Senate or House of Commons of Canada, or of a band council;
- (d) subject to section 85, an employee of the community or an affiliated body of the community.

Definition

85(1) In this section, "employee" means a person employed by a community or by an affiliated body, but does not include a person who volunteers services to the community, whether or not the person receives reasonable compensation or expense money from the community for his or her voluntary service.

Rights of employees in elections

85(2) Section 92 of *The Municipal Act* applies, with necessary changes, to an employee.

When member becomes disqualified

86(1) A member of a council is disqualified from council if he or she

- (a) when nominated or elected, was not eligible as a candidate under this Act;
- (b) is liable to the community under a judgment in an action under section 227 (unauthorized expenditures);

- (c) is convicted of an offence under this or any other Act and has not paid a fine imposed on conviction within 120 days after the fine was imposed or such time as the court has permitted for payment;
- (d) is convicted of
 - (i) an offence punishable by imprisonment for five or more years, or
 - (ii) an offence under section 122 (breach of trust by public officer), 123 (municipal corruption), 124 (selling or purchasing office) or 125 (influencing or negotiating appointments or dealings in office) of the *Criminal Code* (Canada);
- (e) receives from the community or an affiliated body of a community, a fee, salary, wage or any other payment for labour or services
 - (i) in an amount that is greater than the amount prescribed by the minister, or
 - (ii) in a manner other than a manner prescribed by the minister;
- (f) ceases to be qualified as a voter; or
- (g) in the case of members elected on the basis of wards, ceases to be a resident of the ward that the person is elected to represent.

Deemed resignation

86(2) A member of a council who is absent for the full duration of three consecutive regular council meetings is deemed to have resigned unless the absences are with the leave of the council, granted by a resolution passed at any of the three meetings, a prior meeting or the next meeting following the third absence.

Eligibility at next election

86(3) A member of a council who is disqualified under this section is eligible to be elected at the next regular election in the community if the person is then otherwise eligible for nomination under section 83.

Eligibility after disqualification under conflict provisions

86(4) A member of a council who is disqualified under section 105 (conflict provisions) is eligible to be elected at the next

regular election in the community if the person is then otherwise eligible for nomination under section 83.

Disqualified person must resign

87(1) A member of a council who is disqualified under this Act must resign immediately.

Application to court

87(2) If the member of a council does not resign immediately upon disqualification, the court may, on an application, declare the member to be disqualified and his or her position on the council to be vacant.

How application made

87(3) An application for a declaration that alleges that the member is disqualified must be made in accordance with the regulations.

Only one office at a time

88(1) A person may not at any one time

- (a) hold more than one office on a council;
- or
- (b) be nominated for more than one office on a council.

Current member must resign to run in by-election

88(2) A person who holds office on a council may not be nominated in a by-election for an office on the same council.

Vacancy in councillor position after regular election

89(1) If a councillor position is not filled at a regular election, the remaining members and the members who are elected may fill the vacancy by appointing as councillor a person who was eligible to be nominated for the position at the election, and any person so appointed is deemed to have been elected at a by-election.

Vacancy in office of mayor after regular election

89(2) If the office of mayor is not filled at a regular election, the councillors who are elected may appoint one of their members as mayor, in which case the appointed councillor

is deemed to have been elected as the mayor at the election and a by-election must be held to fill the councillor position.

Vacancy after by-election

89(3) If no person is elected at a by-election held to fill a vacancy on a council, subsections (1) and (2) apply with necessary changes.

Section does not apply in case of a tie or death

89(4) This section does not apply

- (a) if two or more candidates in an election cannot be declared elected because the same number of votes were cast for each; or
- (b) if a position on a council is not filled at an election because a candidate has died.

Appointment of administrator if no council or quorum

90 Despite section 89, if the number of members of a council is fewer than is required for a quorum or if a council resigns, the minister may appoint an administrator for the community, in which case section 197, except subsection 197(1), applies with necessary changes.

Resignation of member

91(1) The resignation of a member must be in writing and given to the community administrative officer.

Effective day of resignation

91(2) A resignation is effective and a vacancy on the council occurs at the time the resignation is given to the community administrative officer despite any other date set out in the resignation, and the resignation may not thereafter be revoked.

C.A.O. to report resignation to council

91(3) The community administrative officer must report a resignation at the first meeting of the council after the resignation is received.

By-election to fill vacancy on council

92(1) Subject to section 89 (vacancy after regular election), a council must hold a

by-election to fill a vacancy on the council as soon as is reasonably practicable unless

- (a) the vacancy occurs in the six months preceding the day on which the term of office for the vacant position expires; or
- (b) the vacancy occurs in the 12 months preceding the day on which the term of office for the vacant position expires and the remaining members
 - (i) are a majority of the number of members comprising the council, and
 - (ii) decide not to hold a by-election.

Appointment of mayor by councillors

92(2) If the position of mayor becomes vacant and a by-election is not required under subsection (1), the council may appoint one of their members as the mayor.

By-election to be held on request of council

92(3) The community's senior election official must hold a by-election when requested to do so by a council. Election day for the election must be as soon as reasonably practicable, but in fixing the day the senior election official must consider

- (a) voter participation; and
- (b) availability of persons to serve as election officials, and facilities to be used as voting places.

Appointed, elected person to file oath of office

92(4) Section 104 (oath of office) applies, with necessary changes, to a person appointed by a council or elected at a by-election.

Election of first council

93 In a regulation that designates a community, the minister must make all necessary provisions for the election of the first council of the community, including, without limitation,

- (a) providing for the appointment of one or more election officials for the community;
- (b) establishing if the mayor is to be elected by a vote of the voters of the whole community or if the council is to appoint the mayor from among the councillors;

- (c) establishing the number of councillors to be elected, and if they are to be elected by a vote of the voters of the whole community or by wards;
- (d) specifying the date by which the first voters list must be completed;
- (e) specifying the date and time when, and the place where, nominations of candidates for members of the first council must be filed;
- (f) specifying the date and time when elections must be held for the members of the first council;
- (g) specifying the date, time and place for the first meeting of the council;
- (h) designating a person to act as community administrative officer until its council appoints a community administrative officer; and
- (i) making any other provision that, in the opinion of the minister, is necessary or advisable for the establishment of the community and the election and operation of its first council.

Appointment of prescribed election officials

94(1) The council of a community must by by-law appoint, and fix and provide for the remuneration of prescribed election officials.

Qualifications

94(2) The minister may prescribe qualifications of person to be appointed as election officials.

Appointment of principal electoral officer

95(1) The minister may appoint a principal electoral officer for northern Manitoba.

P.E.O. may delegate

95(2) The principal electoral officer may delegate any of his or her powers and duties to another person, subject to any restrictions or conditions specified in the delegation.

P.E.O. retains powers and duties

95(3) The principal electoral officer may continue to exercise the delegated powers and duties despite the delegation.

Powers and duties of P.E.O.

- 96(1)** The principal electoral officer is to
- (a) exercise general direction and supervision over the administrative conduct of elections in northern Manitoba communities;
 - (b) enforce fairness, impartiality and compliance with this Act and the regulations on the part of all election officials;
 - (c) issue to election officials the instructions he or she believes are necessary to ensure the effective conduct of elections in northern Manitoba; and
 - (d) perform such other duties as are prescribed by this or any other enactment.

Public education and information

96(2) The principal electoral officer may at any time, using any means that the principal electoral officer considers appropriate, provide residents of northern Manitoba with information about the electoral process, the democratic right to vote and the right to be a candidate at a election in a community.

Notices by P.E.O.

96(3) The principal electoral officer may determine the form of notices and other documents under this Part and the regulations and the method of publishing them when they are required to be published.

Special powers of P.E.O.

- 96(4)** The principal electoral officer may
- (a) extend the time for doing anything under this Act or the regulations, other than extending the time for opening or closing an ordinary or advance poll;
 - (b) approve forms for the purposes of elections and may provide that the forms are to be used in particular cases or classes of cases or for prescribed purposes;
 - (c) modify a provision of this Act or the regulations to permit its use at a by-election; and
 - (d) generally adapt the provisions of this Act and the regulations to existing circumstances.

Direct appointment of election officials

96(5) The principal electoral officer may rescind an election official's appointment by a community and direct that the community appoint a replacement if he or she is satisfied that the official

- (a) is unable, for any reason, to perform his or her duties;
- (b) has failed to perform his or her duties satisfactorily;
- (c) has not followed an instruction of the principal electoral officer; or
- (d) after being appointed, has engaged in partisan political activities, whether or not this was done in the course of performing duties under this Act or the regulations.

Community must comply

96(6) The council of a community must comply with a direction to appoint a replacement election official as soon as practicable.

P.E.O. may appoint

96(7) If, in the opinion of the principal electoral officer, there is insufficient time before an election for a council to appoint a replacement, the principal electoral officer may make the appointment.

Order to deliver material

96(8) An election official whose appointment is rescinded must deliver any election material in his or her possession to any person the principal electoral officer directs.

Postponing an election

97(1) If for any reason it is impossible to close nominations or hold an election in a community on the day prescribed for a regular election or fixed for a by-election, the principal electoral officer may, by written order made to the community's senior election official, specify a new closing day for nominations, or a new election day, or both.

Terms extended

97(2) If a member holds a position that is to be filled at a regular election that is postponed under subsection (1), the member's term is

extended until 14 days after the new election day.

Effect of order

97(3) An order made under this section is binding on the council of the community, its election officials and candidates.

When order may be made

97(4) An order may be made under this section at any time before voting begins on election day. For the purposes of this section, "**election day**" means the day fixed for voting in the election, other than a day fixed for advance voting.

Protection from liability

98 No action or proceeding may be brought against the principal electoral officer for anything done or not done, or for any neglect,
(a) in the performance or intended performance of a duty under this Act or the regulations; or
(b) in the exercise or intended exercise of a power under this Act or the regulations; unless the principal electoral officer was acting in bad faith.

PART 5
GOVERNANCE

DIVISION 2
COMMUNITIES – COUNCILS

Composition

101(2) A council is composed of
(a) a mayor and not fewer than two and not more than six councillors; or
(b) if the mayor is appointed from among the councillors, not fewer than three and not more than seven councillors.

Establishing the number of councillors

101(3) The number of councillors to be elected for a community is the number prescribed by the minister.

OATH

Oath of office

104(1) A person elected as a member of a council must make and file with the community administrative officer an oath of

office in the form approved by the minister, and the person may not carry out a power, duty or function as a member of the council until the oath of office is filed.

Failure to comply

104(2) If an elected person does not, within 30 days after being elected, comply with subsection (1), the position to which the person was elected is deemed to be vacant and the person is disqualified from being nominated for, being elected to and from membership on the council until the next regular election.

CONFLICT PROVISIONS

Municipal Councils Conflict of Interest Act applies

105 *The Municipal Council Conflict of Interest Act* applies to members of council, subject to the changes prescribed by the minister and other changes necessary in order for that Act to operate in northern Manitoba.