

# MUSCOWPETUNG SAULTEAUX NATION CUSTOM ELECTION ACT

Review and Consultation

# AGENDA

## **What we will discuss today:**

- Why change to a Custom Election Act?
- What is in the proposed Custom Election Act?

# REASON FOR CHANGE

## Why change to a Custom Election Act?

- Get Muscowpetung out from under the *Indian Act*
- Assert inherent right to self-government and self-determination
- Empowers Muscowpetung to make its own election rules
  - Longer terms in office – more time to get more done for the community
  - Stronger controls to prevent election fraud
  - Customized to suit Muscowpetung's unique needs


# MAKING THE CHANGE

## **How will the Custom Election Act be ratified?**

- We start with community consultation
- We get feedback from the community
- We provide a draft to Indigenous Services Canada
- Once the draft is finalized, the community votes
- If majority of eligible voters at community meeting vote in favour, Custom Election Act is passed

# DETAILS OF CHANGE

## What is in the proposed Custom Election Act?

- We will now review the main processes and rules of the proposed Custom Election Act
- Please ask questions as you have them
- We have some specific questions we will ask you 

# WHERE ARE WE?

## Tracking our discussion

- We will tell the story, from start to finish, of how an election could work under the new Custom Election Act
- You can see where we are in the story by checking the progress bar at the bottom of each slide
- We have included references to the sections of the proposed Custom Election Act in brackets throughout the presentation - e.g. (s. 1)

Preparing for  
Election

Nominations

Campaigning

Election


After the  
Election

Appeals

Chief & Council

# PREPARING FOR THE ELECTION

## Getting the process started

- Election would take place on the First Friday of April, every three or four years (s. 4.2) 
- Preparation would begin 100 days before election day
  - Chief & Council select Chief Electoral Officer (ss. 6.1 and 6.2)
  - Director of Operations selects Appeal Arbitrator (ss. 6.1 and 6.2)

Preparing for  
Election

Nominations

Campaigning

Election


After the  
Election

Appeals

Chief & Council

# PREPARING FOR THE ELECTION

## Chief Electoral Officer and Appeal Arbitrator

- Both must be independent and impartial (s. 6.3)
- Neither are allowed to be: 
  - A Member of Muscowpetung
  - An Immediate relative of a Member of Muscowpetung
  - A contractor or employee of Muscowpetung or any of Muscowpetung's businesses
- Appeal Arbitrator must be a lawyer

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election


Appeals

Chief & Council



# PREPARING FOR THE ELECTION

## The Chief Electoral Officer is responsible for:

- Posting notice of nomination 40 days before the election (s. 7.1) 
- Making sure the notice includes the following (s. 7.2)
  - Criteria for becoming a Candidate (18+; no serious convictions in last 5 years; not an employee; not removed from office during last term (s. 19.4))
  - Date of the nomination meeting
  - Process for requesting a mail-in ballot
  - A list of eligible voters
  - A copy of the Custom Election Act

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# PREPARING FOR THE ELECTION

## The Chief Electoral Officer is responsible for:

- Making arrangements for polling stations (s. 9.5(a))
- Preparing ballots (s. 9.5(c))
- Distributing mail-in ballots (more on this later in the presentation)
- Preparing voting instructions (s. 9.5(e))

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# NOMINATIONS

## General rules relating to the nomination meeting

- Must be between 25 and 30 days before the election (s. 7.5(a))
- Chief and Council
  - Give up signing authority on the date of the nomination meeting (s. 18.1)
  - Still get salary until election is held (s. 18.2)

Preparing for  
Election

**Nominations**

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# NOMINATIONS

## Nominations process

- Chief Electoral Officer chairs the nomination meeting (s. 7.5(b))
- Each nomination must be moved and seconded (s. 7.5(c))
- Each eligible voter may nominate any number of people for the offices of Chief and Councillor (s. 7.5(d))
- All nominations must be made at the nomination meeting, or in advance of the nomination meeting in writing (ss. 7.5(e) and (f))

Preparing for  
Election

**Nominations**

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# NOMINATIONS

## Nominations process

- All nominees must attend the nomination meeting in person, and accept their nomination (s. 7.5(g))
- Nominees must pay a non-refundable nomination fee if they accept their nomination
  - \$1,000 for nominees for Chief
  - \$500 for nominees for Councillor
- Nominees acclaimed in office if not enough nominees for election (s. 8)

Preparing for  
Election

**Nominations**

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# CAMPAIGNING

## Campaigning starts with notice of election

- Chief Electoral Officer posts notice of election at least 21 days before the election (s. 9.2)
- Notice of Election must include
  - Date of the election
  - Names of the Candidates
  - The dates and locations of public forums
  - Locations of the polling stations
  - List of eligible voters

Preparing for  
Election

Nominations

**Campaigning**

Election

After the  
Election

Appeals

Chief & Council

# CAMPAIGNING

## Public forums

- Chief Electoral Officer arranges two public forums (s. 9.4)
- One forum is on reserve, the other is in Regina
- Each forum must be held at least 10 days before the election
- Each Candidate may speak at the forum for up to 10 minutes
- Members attending the forum may ask Candidates questions

Preparing for  
Election

Nominations

**Campaigning**

Election

After the  
Election

Appeals

Chief & Council

# CAMPAIGNING

## Other rules for campaigning

- Chief and Council who are in office leading up to election
  - Cannot ask Muscowpetung employees to help with their campaign (s. 18.3)
  - Cannot use money or property of Muscowpetung to help with their campaign (s. 18.3)
- Candidates wishing to campaign in public places must first get permission from the Director of Operations (s. 18.4)
- Candidates cannot campaign in ways that interfere with the regular activities of Muscowpetung (s. 18.4)

Preparing for  
Election

Nominations

**Campaigning**

Election

After the  
Election


Appeals

Chief & Council



# ELECTION

## Going to the polls

- Should Muscowpetung's elections have advance polling stations; if so, where? (s. 9.7) 
- One polling station located on reserve, one in Regina (s. 9.6)
- Polls open at 10am and close at 7pm (s. 9.6)
- Voting is by secret ballot (s. 9.10)

Preparing for  
Election

Nominations

Campaigning

**Election**


After the  
Election

Appeals

Chief & Council

# ELECTION

## Mail-in ballots

- Chief Electoral Officer sets process for requesting a mail-in ballot, can change each election (s. 10.2) 
- Voters must request mail-in ballots at or before the nomination meeting (s. 10.3)
- Mail-in ballots distributed at least 21 days before election (10.4)

Preparing for  
Election

Nominations

Campaigning

**Election**

After the  
Election

Appeals

Chief & Council

# ELECTION

## Mail-in ballots

- Must be witnessed by someone other than the voter (s. 10.6(d))
- Must be mailed to the Chief Electoral Officer (s. 10.6(f))
- Must be received by Chief Electoral Officer on or before election day (s. 10.6)
- Voters who get a mail-in ballot can choose to vote in person instead, and the mail-in ballot will not be counted (ss. 9.25 and 11.1(c))

Preparing for  
Election

Nominations

Campaigning

**Election**

After the  
Election

Appeals

Chief & Council

# ELECTION

## Counting the votes

- Chief Electoral Officer is responsible for counting votes (s. 11.1)
- Chief Electoral Officer can count votes that are not marked on the ballot properly, if the Officer is sure who the vote is for (s. 11.2)
- Candidates may examine ballots and watch them be counted (s. 11.3)
- Chief Electoral Officer announces winners as soon as possible, not later than 3 days after election (s. 12.1)

Preparing for  
Election

Nominations

Campaigning

**Election**

After the  
Election

Appeals

Chief & Council

# ELECTION

## What happens if there is a tied vote?

- If there is a tied vote, then the tie is broken by a run-off election (s. 13)
  - Process is similar to the normal election
  - Run-off election must happen within 30 days of the end of the appeal period
  - Only Candidates who tied participate in the run-off election

Preparing for  
Election

Nominations

Campaigning

**Election**

After the  
Election

Appeals

Chief & Council

# AFTER THE ELECTION

## Reporting and records

- Chief Electoral Officer must prepare a report about what happened during the election (s. 11.4)
- Chief Electoral Officer holds on to the ballots and other information related to the election for 60 days (s. 11.6)

Preparing for  
Election

Nominations

Campaigning

Election

**After the  
Election**

Appeals

Chief & Council

# APPEALS

## For what reasons can an election be appealed?

- An election can only be appealed in certain situations (s. 14.2)
  - If the Chief Electoral Officer makes a mistake that effects the election process or the outcome of the election
  - If a Candidate was not eligible for nomination
  - If a Candidate cheated in the election
    - Vote buying or bribing election officials
    - Intimidating voters or election officials
    - Fraud or other dishonesty

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council

# APPEALS

## How is an appeal started?

- A member that votes in the election can appeal an election result (s. 14.1)
  - Result of a general election, run-off election or acclamation
- The member appealing must give notice of their appeal (ss. 14.3 and 14.16)
  - Notice must be given within 14 days of learning the election result
  - Notice must explain reason for appeal and provide relevant evidence
  - Notice must explain what should happen if Member wins appeal
  - Member must pay \$1,000 to support appeal (money is refunded if Member wins appeal)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council



# APPEALS

## How is an appeal handled?

- Chief and Council stay in office during appeal process (s. 4.5)
- Director of Operations reviews the notice of appeal and within 7 days must do one of these things:
  - Reject the notice of appeal if it does not meet the requirements from last slide (s. 14.5)
  - Accept the notice of appeal and send it to the Appeal Arbitrator (s. 14.7)
- Director of Operations provides notice of appeal to effected Candidates and posts it in public places (s. 14.6)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council

# APPEALS

## How is an appeal handled?

- Appeal Arbitrator chosen at the beginning of the election process is responsible for handling the appeal (ss. 6.1, 6.2 and 14.7)
- Appeal Arbitrator must review the notice of appeal within 15 days of receiving it (s. 14.8)
- Appeal Arbitrator assumes everything in the notice is true, and then either
  - Dismisses the appeal, if the facts do not support the claims in the appeal (14.8(a))
  - Proceeds with a hearing, if the facts would support the claims in the appeal (s. 14.8(b))

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council

# APPEALS

## How is an appeal handled?

- If the Appeal Arbitrator proceeds with a hearing:
  - The Appeal Arbitrator stops assuming everything in the notice of appeal is true
  - The Appeal Arbitrator uses the hearing to decide the facts
  - The hearing must happen within 15 days of when Appeal Arbitrator received notice of appeal (s. 14.9(a))
  - Notice of the hearing is given to Candidates and posted in public places (s. 14.9 (b) and (c))

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council

# APPEALS

## How is the hearing handled?

- Appeal Arbitrator is allowed to set the hearing process (s. 14.11)
- Appeal Arbitrator reviews evidence and can decide what to consider (s. 14.12)
- Appeal Arbitrator has to treat everyone equally and fairly, and give each person in the appeal a chance to speak (s. 14.10)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

**Appeals**

Chief & Council

# APPEALS

## Decision of the Appeal Arbitrator

- Decision must come within 14 days hearing (s. 14.14)
- Decision must be made by the rules in the Custom Election Act or other relevant rules to the facts (s. 14.13)
- Appeal Arbitrator may (i) dismiss the appeal, (ii) order a new election for affected positions, or (iii) make other orders as appropriate (s. 14.15)
- Appeal Arbitrator's decision is final, and everyone must respect it (s. 14.13)

Preparing for  
Election

Nominations

Campaigning

Election


After the  
Election

**Appeals**

Chief & Council

# CHIEF & COUNCIL

**At the end of an election, Chief and Council takes office**

- One Chief
- Five Councillors
- Should Muscowpetung have a set number of on-reserve Councillors, and a set number of off-reserve Councillors? (ss. 4.1, 4.6) 

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## Rules for Chief and Council

- Chief and Council must take and follow the oath of office (Schedule “A”)
  - Must act honestly and perform to best of their ability
  - Must uphold Muscowpetung’s policies, institutions and programs
  - Must disclose conflicts of interest, not participate where there is a conflict
  - Respect all Members and employees
  - Remain accountable to the Creator and community
  - Not abuse alcohol, abuse drugs or harm anyone

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## Rules for Chief and Council

- Chief and Council must follow all laws, rules, standards and policies of Muscowpetung (s. 4.8)
- Chief and Council must hold two membership meetings each year – one in spring and one in fall (s. 4.9)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**



# CHIEF & COUNCIL

## Resignation, suspension and removal from office

- Chief or Councillor may resign at any time (s. 15.1)
- Council may suspend Chief or Councilor if they are charged and under investigation for a serious offence (s. 17.1)
- Eligible voters can submit complaints to suspend or remove Chief or Councillor from office (s. 16.1)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## When can a complaint be made against the Chief or a Councillor?

- A complaint can only be made in certain situations (s. 16.2)
  - If drugs or alcohol are interfering with their performance or reputation of Council
  - If they are convicted of a serious offence
  - If they cheated in the election
  - If they are ineligible to hold office
  - If they have been absent from office for more than 90 days without approval of Council
  - If they miss three duly convened Council meetings in a row
  - If they fail to follow the oath of office or other law, rule or standard of Muscowpetung

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## Complaints against the Chief or a Councillor

- Complaint must be:
  - Submitted by an eligible voter (s. 16.3)
  - In writing (s. 16.3(a))
  - Supported by a \$500 deposit (16.3(b))
  - Supported by a petition of 35 or more eligible voters (s. 16.3(c))

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## How is the complaint handled?

- If the complaint is supported by the facts alleged and all requirements are met, Director of Operations appoints a Discipline Arbitrator (s. 16.7)
- Discipline Arbitrator (s. 16.7)
  - Must be impartial, and have no major business dealings with Muscowpetung
  - Must be a lawyer
  - Must not be a Member or an Immediate relative of a Member
  - Must not be an employee or contractor of Muscowpetung

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## How is the complaint handled?

- Discipline Arbitrator runs the discipline process
- Discipline process is very similar to election appeal process
- After a hearing, if there is one, the Discipline Arbitrator may (s. 16.15)
  - Dismiss the Chief or Councillor complained against
  - Allow the Chief or Councillor complained against to stay in office with conditions
  - Dismiss the complaint

Preparing for  
Election

Nominations

Campaigning

Election


After the  
Election

Appeals

**Chief & Council**

# CHIEF & COUNCIL

## What happens if there is a vacancy in office?

- Vacancy may be filled at the next general election, or, if Council decides, in a by-election (19.1)
- If the office of Chief is vacant, Council appoints a Councillor to serve as Chief for rest of term (s. 19.2)
- If there are three vacancies at once, a by-election is required (s. 19.3) 
- Procedure for by-election is the same as for regular elections (s. 19.5)

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# MISCELLANEOUS NOTES

## A few odds and ends

- The Custom Election Act includes some procedures for temporarily extending Chief and Council's term if there is a pandemic – procedures based on Canada's legislation (ss. 20.5, 20.6, 20.7, 20.9 and 20.9)
- The Custom Election Act includes an amendment procedure
  - Chief and Council prepare amendments and share with community (ss. 20.3(a) and 20.4)
  - Would need quorum of 20% of eligible voters at a meeting to make amendment (s. 20.3(b))
  - Majority of quorum would need to be in favour of amendment (s. 20.3(d))

Preparing for  
Election

Nominations

Campaigning

Election

After the  
Election

Appeals

Chief & Council

# Q & A



# THANK YOU

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