

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 that participate in ratification vote 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



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)

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PREPARING FOR THE ELECTION

Getting the process started

- Election would take place on the First Friday of April, every 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)

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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

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PREPARING FOR THE ELECTION

The Chief Electoral Officer is responsible for:

- Posting notice of nomination 40 days before the election (s. 8.1)
- Making sure the notice includes the following (s. 8.2)
 - 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

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PREPARING FOR THE ELECTION

The Chief Electoral Officer is responsible for:

- Making arrangements for polling stations (s. 10.5(a))
- Preparing voting instructions (s. 10.5(c))
- Distributing mail-in ballots (more on this later in the presentation)
- Preparing ballots (s. 10.5(d))

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NOMINATIONS

General rules relating to the nomination meeting

- Must be 30 days before the election (s. 8.6(a))
- Chief and Council
 - Give up signing authority on the date of the nomination meeting (s. 20.1)
 - Still get salary until election is held (s. 20.2)

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NOMINATIONS

Nominations process

- Chief Electoral Officer chairs the nomination meeting (s. 8.6(c))
- Each nomination must be moved and seconded (s. 8.6(d))
- Each eligible voter may nominate any number of people for the offices of Chief and Councillor (s. 8.6(e))
- All nominations must be made at the nomination meeting, or in advance of the nomination meeting in writing (ss. 8.6(f) and (g))

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NOMINATIONS

Nominations process

- 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. 9)

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CAMPAIGNING

Campaigning starts with notice of election

- Chief Electoral Officer posts notice of election at least 25 days before the election (s. 10.2,10.3)
 - Date of the election
 - Names of the Candidates
 - The dates and locations of public forums
 - Locations of the polling stations
 - List of eligible voters
 - Instructions for requesting mail-in ballot
 - Instructions for participating in electronic balloting, if offered

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CAMPAIGNING

Public forums

- Director of Operations arranges two public forums (s. 10.4)
- 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

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CAMPAIGNING

Campaigning Contact List

- Electors will have the option to opt-in to receive campaign communications from Candidates (s. 20.5)
- To be on the Campaigning Contact List, Electors must provide their consent to the Electoral Officer
- Candidates may only use the Campaigning Contact List for campaigning purposes that are reasonable (s. 20.7)

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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. 20.3)
 - Cannot use money or property of Muscowpetung to help with their campaign (s. 20.3)
- Candidates wishing to campaign in public places must first get permission from the Director of Operations (s. 20.4)
- Candidates cannot campaign in ways that interfere with the regular activities of Muscowpetung (s. 20.4)

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ELECTION

Going to the polls

- Only polling station located on reserve (s. 10.7)
- Polls open at 9am and close at 8pm (s. 10.7)
- Voting is by secret ballot (s. 10.10)

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Mail-in ballots

- Mail-in ballots will be used as a means of voting (s. 11.1)
- Voters must request mail-in ballots 20 days prior to Election (s. 11.4(b))
- Mail-in ballots distributed at least 15 days before election (s. 11.4(c))

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Mail-in ballots

- Must be witnessed by someone other than the voter (s. 13.1(a)(i))
- Must be mailed to the Chief Electoral Officer (s. 11.7(f))
- Must be received by Chief Electoral Officer on or before the close of polling on election day (s. 11.8)
- Voters who get a mail-in ballot can choose to vote in person instead, and the mail-in ballot will not be counted (ss. 10.22 and 13.1(a)(iii))

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ELECTION

Voting by Electronic Ballot

- Council may direct the Electoral Officer to include electronic balloting as a means of voting in the Election (s. 12)
- The provider of electronic balloting services must be reliable, secure, and usable by Electors (s. 12.3)
- Electronic balloting must take place over a period of at least 7 days

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ELECTION

Voting by Electronic Ballot

- Voters who chose to cast their vote by electronic ballot may obtain a ballot and vote at the polling station if (s. 10.23):
 - Provider of electronic balloting services cancels or removes the electronic ballot cast by the Elector; and
 - The Elector signs a written declaration form stating the Elector wishes to cast their vote in person

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ELECTION

Counting the votes

- Chief Electoral Officer is responsible for counting votes (s. 13.1)
- 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. 13.3)
- Candidates may examine ballots and watch them be counted (s. 13.2)
- Chief Electoral Officer announces winners as soon as possible, not later than 3 days after election (s. 14.1)

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What happens if there is a tied vote?

- If there is a tied vote, first there is a recount, and then if the recount does not determine a result, the tie is broken by a run-off election (s. 15)
 - Process is similar to the normal election
 - Run-off election must happen within 30 days of the end of the appeal period or the decision of the Appeal Arbitrator, whichever is later (s. 15.3(a) and s. 15(b))
 - Only Candidates who tied participate in the run-off election

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AFTER THE ELECTION

Reporting and records

- Chief Electoral Officer must prepare a report about what happened during the election (s. 13.4)
- Chief Electoral Officer holds on to the ballots and other information related to the election for 60 days (s. 13.6)

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APPEALS

For what reasons can an election be appealed?

- An election can only be appealed in certain situations (s. 16.2)
 - 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

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How is an appeal started?

- A member that votes in the election can appeal an election result (s. 16.1)
 - Result of a general election, run-off election or acclamation
- The member appealing must give notice of their appeal (ss. 16.3 and 16.14)
 - Notice must be given within 14 days of learning the election result
 - Notice must explain reason for appeal and describe relevant facts
 - 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)

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How is an appeal handled?

- Chief and Council stay in office during appeal process (s. 4.4)
- 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. 16.5)
 - Accept the notice of appeal and send it to the Appeal Arbitrator (s. 16.6(c))
- Director of Operations provides notice of appeal to effected Candidates and posts it in public places (s. 16.6)

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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 16.6(c))
- Appeal Arbitrator must review the notice of appeal within 14 days of receiving it (s. 16.7)
- 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 (16.7(a))
 - Proceeds with a hearing, if the facts would support the claims in the appeal (s. 16.7(b))

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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 30 - 45 days after the date of the Election (s. 16.8(a))
 - Notice of the hearing is given to Candidates and posted in public places (s. 16.8 (b) and (c))

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How is the hearing handled?

- Appeal Arbitrator is allowed to set the hearing process (s. 16.10)
- Appeal Arbitrator reviews evidence and can decide what to consider (s. 16.10(b))
- Appeal Arbitrator has to treat everyone equally and fairly, and give each person in the appeal a chance to speak (s. 16.9)

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Decision of the Appeal Arbitrator

- Decision must come within 14 days hearing (s. 16.12)
- Decision must be made by the rules in the Custom Election Act or other relevant rules to the facts (s. 16.11)
- Appeal Arbitrator may (i) dismiss the appeal, (ii) order a new election for affected positions, or (iii) make other orders as appropriate (s. 16.13)
- Appeal Arbitrator's decision is final, and everyone must respect it (s. 16.12)

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CHIEF & COUNCIL

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

- One Chief
- Five Councillors

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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

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CHIEF & COUNCIL

Rules for Chief and Council

- Chief and Council must follow all laws, rules, standards and policies of Muscowpetung (s. 4.6)
- Chief and Council must hold two membership meetings each year – one in spring and one in fall (s. 4.7)

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CHIEF & COUNCIL

Resignation, suspension and removal from office

- Chief or Councillor may resign at any time (s. 17.1)
- Council may suspend Chief or Councilor if they are charged and under investigation for a serious offence (s. 19.1)
- Eligible voters can submit complaints to suspend or remove Chief or Councillor from office (s. 18.1)

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CHIEF & COUNCIL

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

- A complaint can only be made in certain situations (s. 18.2)
 - 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

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Complaints against the Chief or a Councillor

- Complaint must be:
 - Submitted by an eligible voter (s. 18.3)
 - In writing (s. 18.3(a))
 - Supported by a \$500 deposit (18.3(b))
 - Supported by a petition of 35 or more eligible voters (s. 18.3(c))

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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. 18.7)
 - 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

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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. 18.15)
 - Dismiss the Chief or Councillor complained against
 - Allow the Chief or Councillor complained against to stay in office with conditions
 - Dismiss the complaint

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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 (21.1)
- If the office of Chief is vacant, Council appoints a Councillor to serve as Chief for rest of term (s. 21.2)
- If there are three vacancies at once, a by-election is required (s. 21.3)
- Procedure for by-election is the same as for regular elections (s. 21.4)

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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. 22.1, 22.2, 22.3, 22.4)
- The Custom Election Act includes an amendment procedure
 - Chief and Council prepare amendments and share with community (ss. 23.2(a))
 - Would need quorum of 20% of eligible voters at a meeting to make amendment (s. 23.5(a))
 - Majority of quorum would need to be in favour of amendment (s. 23.5(b))

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Q & A



THANK YOU

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