

# Kwantlen First Nation Leadership Selection Code

Draft

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## ***Preamble***

To be written by KFN citizens.

## ***Title***

1. This code shall be referred to as the Kwantlen First Nation Leadership Selection Code.

## ***Coming into Force***

2. This Code shall be approved by way of a referendum whereby every citizen of Kwantlen First Nation who is the full age of eighteen (18) years and whose residence address is known by Kwantlen First Nation, is provided the opportunity to take part in the voting process. The Code is considered to be approved by the Members if at least 25 Members participate in the vote, with 50% plus one or more of votes are cast in favour. An independent Referendum Officer shall be retained for the sole purpose of this referendum. The Referendum Officer shall make best efforts to conduct a referendum in accordance with best practices. This Code shall be deemed to be in force upon a favourable vote-count that has been certified by the Referendum Officer.

## ***Sub-headings***

3. Sub-headings used in this document shall not be used to interpret articles of the Kwantlen Leadership Selection Code.

## ***Use of hə́qəmiḥəm***

4. This code makes use of both English and hə́qəmiḥəm.
5. The meaning hə́qəmiḥəm terms used in this Code shall be interpreted and defined only by a committee composed of three competent speakers of the hə́qəmiḥəm dialect.

## ***Definitions***

6. In this code,

*Citizen* means a person whose name appears in the Kwantlen First Nation membership register or who has been accepted to have their name appear on the membership register.

*Elders Assemblies* are informal advisory bodies which may be convened by the Leadership Council to review and be informed of Council actions. Membership is open to all Kwantlen Citizens above the age of 59.

*Eligible Voter* means a Citizen of Kwantlen First Nation who is 18 years of age or older.

*Election* means General Election for Leadership Council, Referendum, or By-Election as the case may be.

*Electoral Officer* means the person with responsibility for conducting and supervising the electoral activities.

*hiwaq<sup>w</sup>* means the Band citizen with the status of Hereditary Chief who has been selected by the Leadership Council to service as symbolic head of the nation.

*Hereditary Chief* means the class of individuals who receive the status of hereditary chief according to stələw custom.

*Leadership Council member* means a person who is elected to the Kwantlen First Nation Leadership Council and is interchangeable with the term councillor and Leadership Councillor in the context of this Code.

*Referendum Officer* means the person with responsibility for conducting and supervising the referendum mentioned in section 2.

## ***The sḷənəq***

7. The sḷənəq maintains authority over and above the Leadership Council. For the purposes of clarity a sḷənəq can be convened by any hereditary chief, and its decisions must be enacted by The Leadership Council if that sḷənəq is:
  - a. composed of 12% or more of Kwantlen Citizens of voting age and

- b. its decisions receive the approval of the majority of voting age members present at the sʕənəq.

### ***Role of the Canadian Charter of Rights and Freedoms***

8. The Kwantlen Leadership Selection Code, as amended, shall be compliant with the *Canadian Charter of Rights and Freedoms*. Nothing in this statute shall be construed as to abrogate or derogate from the protection of the *Charter of Rights and Freedoms*.

### ***Office of hiwaqʷ***

9. In addition to the elected councillors of the Kwantlen Leadership Council, there shall be one seat reserved for a Hereditary Chief, who shall take the position of hiwaqʷ.
10. The position of hiwaqʷ is symbolic. The person occupying this office does not have a vote in Kwantlen Leadership Council decision-making processes.
11. The names of Hereditary Chiefs eligible to serve as hiwaqʷ are to be determined by Sto:lo customary law.
12. The position of hiwaqʷ, in connection with the Kwantlen First Nation Leadership Council, may be selected by Council members within 30 days of their taking office.
13. For greater certainty, the selection process noted in section 12 is to be conducted by secret ballot with a simple majority determining the selection for hiwaqʷ.
14. The office of hiwaqʷ, in connection with the Kwantlen First Nation Leadership Council, may be vacant from time to time.
15. The term of office of hiwaqʷ, in connection with the Kwantlen First Nation Leadership Council, ends with each cycle of the Kwantlen First Nation Leadership Council.

### ***Leadership Council***

16. The Leadership Council shall consist of five seats/members.
17. Each member of the Leadership Council shall take an Oath of Office.
18. A quorum of Leadership Council shall be more than half of the total number of elected councillors. To conduct a Leadership Council meeting, there must be a quorum of Leadership Council present.

19. In order to pass, a motion presented to the Leadership Council must be supported by more than half the total number of elected councillors, regardless of the number of Councillors in attendance at the Leadership Council meeting.

### ***Changeover***

20. There shall be a fourteen (14) day transitional period between the Election and the changeover of the Leadership Councils, during which time the outgoing Leadership Council must meet with the incoming Leadership Council to brief them on the affairs of the Leadership Council.
21. For greater certainty, the new Leadership Council mandate does not begin until the end of the fourteen day (14) day transition period.

### ***Powers of the Leadership Council***

22. The duly elected Leadership Council, may by quorum of Leadership Council, make laws in relation to authorities under the *Indian Act*.
23. Where any law of the Kwantlen First Nation is contravened, in addition to any other remedy available to Leadership Council or any penalty imposed by the laws, a court of competent jurisdiction may make, at any time, an order prohibiting the continuation or repetition of the act which contravenes the law or an order with respect to any penalty imposed by the law. Such contravention may be restrained by court action at the instance of the Leadership Council.
24. The Leadership Council may make orders or regulations with respect to elections that do not contradict this statute, and, without restricting the generality of the foregoing, may make regulations with respect to:
  - a) meetings to nominate candidates;
  - b) the appointment and duties of Electoral Officers;
  - c) the way voting is to be carried out;
  - d) election appeals;
  - e) secrecy of voting;
  - f) the holding of a poll;
  - g) what constitutes a spoiled ballot;
  - h) vacancies of the office of Chief or Councillor; or
  - i) any matter ancillary to the matters dealt with herein.

### ***Council Spokesperson***

25. The Leadership Council shall select a Council Spokesperson from time to time to:
  - a. Communicate Leadership Council decisions;
  - b. Convene council meetings; and

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- c. Convene elders assemblies.
- 26. A Council Spokesperson shall not have any other duties other than those expressly specified by Leadership Council in section 25.
- 27. A Council Spokesperson shall be selected in the manner described in sections 18 And 19 of this code.
- 28. A Council Spokesperson's term shall expire after 90 days of appointment, or by a motion of the Leadership Council, whichever comes first.

### ***Electoral Officer***

- 29. Kwantlen First Nation Leadership Council shall appoint an Electoral Officer 120 days before the Election.
- 30. By way of a Leadership Council motion, the Leadership Council shall set out the Electoral Officer's roles and responsibilities upon appointing the Electoral Officer.
- 31. The Electoral Officer's term shall cease upon certification of a Election.

### ***Leadership Council Candidates***

- 32. Only an Eligible Voter of Kwantlen First Nation is eligible to be nominated as a candidate for the position of councillor of the Kwantlen Leadership Council.
- 33. An Eligible Voter becomes a candidate only if
  - a. their nomination is moved one Eligible Voter and seconded by another Eligible Voter of Kwantlen First Nation;
  - b. they provide their consent to be a candidate; and
  - c. the fee imposed on them under section 36, if any, is remitted.
- 34. An Eligible Voter must not nominate more than one candidate for each position to be filled.
- 35. A person must not, in connection with a General Election, consent to be a candidate knowing that they are not eligible to be a candidate.
- 36. Kwantlen First Nation may, if authorized through resolution by the Kwantlen Leadership Council, impose a fee of up to \$250 on each candidate in an election, to be refunded if the candidate receives more than five per cent of the total votes cast.
- 37. A person must not, in connection with an election,
  - a. by intimidation or duress, attempt to influence another person to

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- i. nominate or refrain from nominating a particular candidate,
    - ii. accept or decline a nomination, or
    - iii. withdraw as a candidate;
  - b. act, or incite another person to act, in a disorderly manner, with the intention of disrupting the conduct of a nomination meeting; or
  - c. knowingly publish a false statement that a candidate is withdrawing or has withdrawn their candidacy.
38. (1) An Electoral Officer may order a person to leave a nomination meeting if the person is committing an offence under this Code that threatens the maintenance of order at the meeting, or if the officer believes on reasonable grounds that the person has done so.
- (2) A person to whom an order is given under subsection (1) must obey it without delay.

### **Ballots**

39. A person must not, in connection with an election,
- a. provide a false name in order to obtain a ballot;
  - b. a person's traditional name does not constitute a false name for the purposes of sub-section 39 (a);
  - c. possess a ballot that was not provided to them in accordance with the regulations;
  - d. purchase a mail-in ballot that was issued to another person;
  - e. sell or give away a mail-in ballot; or
  - f. print or reproduce a ballot with the intention that the print or reproduction be used as a genuine ballot, unless that person is authorized to do so under the regulations.

### **Voting**

40. (1) Subject to subsection (2), only an Eligible Voter of Kwantlen First Nation is entitled to vote in a Election of Kwantlen First Nation.
- (2) An Eligible Voter who is appointed as the Electoral Officer in respect of an Election is not entitled to vote in that Election.
41. A person must not, in connection with a Election,
- a. vote or attempt to vote knowing that they are not entitled to vote;
  - b. attempt to influence another person to vote knowing that the other person is not entitled to do so;
  - c. knowingly use a forged ballot;
  - d. put a ballot into a ballot box knowing that they are not authorized to do so;
  - e. by intimidation or duress, attempt to influence another person to vote or refrain from voting or to vote or refrain from voting for a particular candidate; or



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- f. offer money, goods, employment or other valuable consideration in an attempt to influence an Eligible Voter to vote or refrain from voting or to vote or refrain from voting for a particular candidate.
42. An Eligible Voter must not, in connection with an election,
- a. intentionally vote more than once in respect of any given position for the Leadership Council; or
  - b. accept or agree to accept money, goods, employment or other valuable consideration to vote or refrain from voting or to vote or refrain from voting for a particular candidate.
43. Voting in a Election is to be conducted by secret ballot.
44. An Eligible Voter must not, in connection with an Election,
- a. show their ballot, when marked, to reveal the name of the candidate for whom the elector has voted, other than in accordance with the Kwantlen First Nation Leadership Selection Code; or
  - b. in the polling station, openly declare for whom the Eligible Voter intends to vote or has voted.

### ***Polling Stations***

45. A person must not, in connection with an Election,
- a. post or display in, or on the exterior surface of, a polling station any campaign literature or other material that promotes or opposes the election of a particular candidate;
  - b. within hearing distance of a polling station, orally promote or oppose the election of a candidate;
  - c. in a polling station, attempt to influence an Eligible Voter to vote or refrain from voting or to vote or refrain from voting for a particular candidate; or
  - d. act, or incite another person to act, in a disorderly manner with the intention of disrupting the conduct of the vote in a polling station.
46. (1) An Electoral Officer may order a person to leave a polling station if the person is committing an offence under this Code that threatens the maintenance of order at the polling station, or if the Officer believes on reasonable grounds that a person has done so.
- (2) A person to whom an order is given under subsection (1) must obey it without delay.
47. A person must not, in connection with a Election, destroy, take, open or otherwise interfere with a ballot box knowing that they are not authorized to do so under the regulations.

## ***Awarding of Positions***

48. The Leadership Council positions of Kwantlen First Nation are awarded to the candidates for those positions who receive the highest number of votes.
49. If it is not possible to award a position under section 48 because there are two or more candidates with the same number of votes, the Electoral Officer must conduct a draw to break the tie.

## ***By-Elections***

50. If a member of the Leadership Councillor ceases to hold office more than three months before the day on which their term of office would have expired the Kwantlen Leadership Council may direct that a by-election be held for that position, in accordance with relevant sections of this Code.

## ***Obstruction of Elections***

51. A person must not intentionally obstruct an Electoral Officer in the performance of their duties.
52. A person must not, in a manner that this Act does not otherwise prohibit, intentionally obstruct the conduct of an election.

## ***Term of Office***

53. (1) Subject to subsection (2) and section 21, councillors hold office for two years commencing at the expiry of the term of office of councillors that they replace.  
  
(2) A member of Kwantlen Leadership Council ceases to hold office if
  - a. they are convicted of an indictable offence and sentenced to a term of imprisonment of more than 30 consecutive days;
  - b. they are impeached by the unanimous vote of all other members of the Leadership Council after having been found to have committed an offence under this Code;
  - c. they die or resign from office;
  - d. a court sets aside their election; or
  - e. they are removed from office by means of a petition.
54. Kwantlen First Nation citizens may have an elected official removed by a petition and an affidavit. To be considered:
  - a. The affidavit must clearly state the allegation against the elected official's integrity and ability to uphold his or her duties of office, provide evidence of the allegation, and request that the elected official be removed from office;
  - b. the petition must clearly state its purpose and the grounds being relied upon;

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- c. the signatures on the petition must have been signed no more than two (2) months prior to its submission to Leadership Council and have been signed by at least 20% of the eligible voters;
  - d. the signatures must include a legibly printed copy of the signatory's name and address, as well as the date and place where the signature was made; and,
  - e. both the affidavit and the petition must be submitted to the Leadership Council for referral to the Appeal Board to determine the request.
55. When considering a petition, the Appeal Board shall give the elected official an opportunity to respond to the allegations. If the Appeal Board determines that there is merit and that the alleged matter has affected the person's integrity and ability to uphold his or her duties of office, then the Appeal Board shall report its findings to Leadership Council and recommend that the person be removed from office. Leadership Council shall consider the Appeal Board's report and findings, and may remove the elected official by Resolution outlining their reasons. If the allegations are not proven, or found not to warrant a removal, the recommendation will be to dismiss the petition. The decision of Leadership Council is final.
56. A Leadership Council member who is elected in a by-election held under section 50. holds office commencing on the date of their election for the remainder of the term of office that they were elected to fill.

### ***Timelines***

57. General Elections for Leadership Council shall take place between February 1st and March 30th of the final year of the term of the current council.
- a. This does not apply to the initial election which shall take place 65 days after this election code comes into force.
58. A nomination meeting shall be held;
- a. This nomination meeting for the General Election shall be held 65 days before the date of the General Election.

### ***Pre-Election Appeals***

59. Any issues or concerns that there was a breach of the election rules or procedures which may affect the results of the election must be submitted in writing to the Electoral Officer.
60. The Electoral Officer will review the written submission and make a determination as to whether:
- a. there was a breach of this Code on a balance of probabilities; and,
  - b. there is a reasonable risk that the breach may influence the outcome of the election.

61. If the Electoral Officer determines that both conditions in section 58 are met, the Electoral Officer will take the necessary measures to ensure that the breach does not influence the outcome of the election, which may result in setting a new Election Date. Otherwise, the Electoral Officer will inform the applicant that the appeal will be dismissed.

### ***Post-Election Appeals***

62. An appeal must be received within fifteen (15) calendar days after an election.
63. Any candidate in the election or any voter who gave or tendered his vote at the election, who has reasonable grounds for believing that:
- a. a person nominated to be a candidate in the election was ineligible to be a candidate; or
  - b. a person or persons who voted in the election was ineligible to vote, and that vote, or votes, could have made a difference in the election results; or
  - c. there was corrupt practice in connection with the election or there was a contravention of this Code that could have affected the results of the election, may lodge an appeal by completing and submitting an Appeal Form and a petition by registered mail to the Electoral Officer with particulars thereof duly supported by a sworn affidavit.
64. The appellant's petition must be signed by ten (10) members who voted in the election and who support the appeal and the grounds for the appeal. Signatures must include the signer's legibly printed name, and date and place that they signed the petition.
65. The Appeal Board shall investigate the allegations within thirty (30) calendar days from the closing date of the appeal period and shall give the appellant and the subject of the appeal the right to submit evidence and make submissions on the appeal. The appellant must prove his or her allegations on a balance of probabilities.
66. Where the Appeal Board finds that a candidate for the position of Chief has not been elected to office in accordance with this Code, that candidate shall vacate the office to which they were elected upon receipt of written notification, and a new election will be called to fill the vacant Chief position.
67. Where the Appeal Board finds that a candidate for the position of Councillor has not been elected to office in accordance with this Code, that candidate shall vacate the office to which they were elected upon written notification and the Electoral Officer shall appoint the next candidate with the most votes on the election results.
68. Where the Appeal Board finds that a person submitted evidence to the Appeal Board which they knew or reasonably out to have known contained false or misleading

information, that person may be barred from running for office for a period of up to five (5) years.

### ***Appeal Board***

69. The Appeal Board members are a group of volunteers, appointed by Leadership Council, to sit and hear cases and appeals on all laws and Codes developed by the Kwantlen First Nation Leadership Council.
70. The Electoral Officer shall name three (3) persons from the list of Board Members within five (5) calendar days of the nomination meeting. If an appeal is received, the Electoral Officer shall take reasonable steps to ensure that the Board Members are not in a conflict of interest in relation to the appeal and the appellant. The Electoral Officer will select an additional two (2) alternates from the list of Board Members in case of conflict by any of the original 3 persons selected. Those chosen persons must be informed that they will be dismissed if they have been involved in the election process in any manner except voting.

### ***Amendment Process***

71. The Kwantlen First Nation Leadership Selection Code may be amended by a referendum duly called for this purpose.
72. The Kwantlen Leadership Council may, subject to the availability of adequate financial resources, require that a referendum on a matter be held if 20 per cent of eligible voters sign a referendum request delivered to the Kwantlen Leadership Council stating in general terms a matter to be voted on that relates to an amendment to this Code.
73. The Kwantlen Leadership Council may consult Kwantlen First Nation citizens and professional advisors that may be necessary or desirable to decide an appropriate question for the referendum on a matter referred to in section 66.
74. A motion of the Kwantlen Leadership Council requiring that a referendum be held must
  - a. approve the matter in general terms that will be put to eligible voters for their consideration, and
  - b. designate a general voting day that is no sooner than 120 days.
75. A referendum on substantially the same question as that described in section 66. must not be held more than once in any five-year period unless approved by Kwantlen Leadership Council.
76. The method of voting in a referendum described in section 73 shall be the same as the election voting mechanism outlined in the Kwantlen First Nation Leadership Selection Code.

## ***Statutory Review Conference***

77. A statutory conference composed of all Leadership Council members of the Kwantlen government shall be convened within three years after constituting the first sitting Leadership Council meeting. The conference convened shall have the review of this Code as its purpose. The Leadership Council shall invite all citizens of Kwantlen First Nation to participate in the discussions. This Code shall be amended by a referendum duly called for this purpose, based on the direction of the citizenry participation, where appropriate. This section shall be repealed at the conclusion of the conference.