



December 1, 2020

Re: 2020 Council Election Appeal

Ki?su?k kyukyit ?aqamnik,

Some of you may have read our newsletter that announced that our 2020 Council Election was appealed and that the appeal was upheld. I appreciate that this raises many questions. Enclosed you will find a copy of the letter received by the Appeal and Complaints Board in response to two calls for appeal received. As noted in the letter several errors were identified, in order for an appeal to be successful it must identify an error was made that could have potentially impacted the outcome. In this instance, the appeal was upheld on matters specific to Section 98. Although no one wishes for errors, the ?aqam administration commends membership for identifying the errors, this means the process mattered and the appeal process is effective. We give thanks to the Appeal and Complaints Board for their work and unbiased opinion.

The appeal process and board are activated when an appeal is received within 7 days of an election. From there, the appeal is mailed via registered mail to the Electoral Officer and all candidates; they are given 14 days to respond. The board then comes together to investigate and determine a finding. On November 27th, 2020 the Appeal and Complaints board determined the error made could have impacted the election outcome and deemed the election invalid. What does this mean for next steps...?

The regulations mandate that the candidates are notified, and that Community is notified via publishing the findings in the newsletter and posting in a conspicuous place. This has been completed.

Section 194 of the ?aqam Custom Election Regulations states that if an appeal is upheld, the newly elected members would step down UNLESS doing so would impact the ability to achieve quorum. As this election filled the Chief and 2 Councillor seats, removing them would impact quorum therefor they will remain in their seats until the new election is complete.

The election regulations state that a new election must be completed within 90 days and because of the required preceding steps, it cannot happen sooner than 45 days. This means a new election could take place as soon as mid January and no later than February 27th, 2021; with respect to January ceremony, I suspect a date in February to be chosen. Unfortunately, the regulations do not prescribe more clarity for timelines, therefore, on December 3, 2020 Council will convene and give direction on suggested dates, choosing a new Chief Electoral Officer and an Appeal and Complaint Board. As soon as the Electoral Officer is secured, communication on timelines will be sent out.



?AQ'AM

There have been some questions regarding the process for a by-election. Essentially, this is a brand new election, candidates who wish to run again will take part in the nomination process again and if community wishes to nominate new candidates, they may do so.

For those wishing to receive a copy of our election regulations, they are available on our website <https://aqam.net/sites/default/files/SMIB%20Custom%20Election%20Regulations%20January%202016.pdf>, they can also be emailed or mailed on request. Please send your requests for the regulations to Andrew at afletcher@aqam.net

I am committed to ensuring decisions and information are communicated to membership as we go down this unchartered path. I again commend community for being vested in a process and I believe we will grow stronger as a result. I understand that you may have additional questions, I welcome you to phone me at 250-423-1877 or Nasu?kin Joe Pierre at 250-417-1491 or email questions to jgravelle@aqam.net or jpierre@aqam.net.

Taxa

Jodi Gravelle
Chief Administrative Officer

ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ

November 27, 2020

Jodi Gravelle
ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ
7470 Mission Rd.
Cranbrook, BC
V1C 7E5

Dear Jodi:

The Complaints and Appeal Board have considered the two appeals received regarding the October 28, 2020 election for ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᐱᑭᐱᑭ.

As the Appeal Board, we can only base our assessment and decision on those issues resulting from the election process following the ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ ᑭᐱᑭᐱᑭ (revised 2016). We cannot consider those issues that derive from deficiencies within the current Regulations.

We agree that some of the matters brought forward in the two appeals result from ambiguities within the Code. The Chief Electoral Officer, in some cases, was left to interpret the Regulations due to the lack of clarity.

Appeal # 1 (appellant - Kimberley Joseph)

The basis of this appeal was that the appellant's phone-in vote was received by a Band Member who is also the Membership Clerk and was in a conflict of interest. There is nothing in the Regulations that speaks to the relationship between those acting as deputies and polling clerks and the candidates or that prevents a Band member from being appointed as a Deputy Electoral Officer or Polling Clerk. As the Regulation is silent on this matter, we cannot agree that this was a contravention of the Regulations' application in conducting the election.

Furthermore, it is within the Chief Electoral Officer's authority and discretion to delegate the Deputy Electoral Officer with receiving phone-in votes.

We do not feel that the appellant has put forward valid grounds for appeal under section 203 of Regulation. We have not been presented with any evidence to support an allegation that any corrupt or fraudulent practice occurred.

Appeal #2 (Appellant - Diane Whitehead)

It should be disclosed that, upon receipt, it was noted that this appeal submission was not properly witnessed. Although the Commissioner for Taking Affidavits did place their stamp next to the appellant's signature, the Commissioner failed to sign and date as is the standard practice. However, we chose to confirm with the Commissioner that they had witnessed the signature, rather than rejecting the appeal submission.

The basis of this appeal was that several errors and violations of the ?Aqam Custom Election Regulations occurred, which might have impacted the outcome of the entire election.

The Complaints and Appeals Board has considered each of the alleged errors and violations brought forward in the appeal. We have also reviewed the video where the tie in votes for the position of Chief was decided. While we agree that errors and violations were made, for the most part, we cannot concur that those errors would not have affected the result of the election. Furthermore, we were presented with no evidence to support allegations of fraudulent or corrupt practice regarding the October 28, 2020 election.

Regarding the nomination being initially declined and later accepted, we have confirmed that the nominee did formally accept the nomination by signing the "acceptance of nomination" within the stated 24-hour period.

Regarding the matter of the tie-breaking procedure, while an error occurred by not using an unused ballot, after reviewing the video, we are satisfied that the error would not have affected the outcome of the election. The blank pieces of paper used were reasonably the same size and shape, clearly contained the candidates' names, and each had an equal chance of being selected from the vessel used.

However, we have confirmed that as brought forward in this appeal, the mail-out required per Section 98 did not occur. As this mail-out contained information vital to the participation of a significant number of electors, this violation of the Regulation might have affected the results of the election.

As such, we are deeming the October 28, 2020 election invalid and call for a completely new election process starting from the beginning, following the current ?Aqam Custom Election Regulations (revised 2016).

We would like to reiterate that the current Regulations do not speak to any issues related to the familial or ?Aqam employment relationships between the Deputy Chief Electoral Officer or the polling clerks. If these are parameters that the membership of ?Aqam feel are important, the Regulations be amended accordingly once the new election process has been concluded.

As the Complaints and Appeals Board, we do not feel that it is our place to conduct an in-depth investigation to identify errors and violations that may have occurred throughout the October 28, 2020 election process, aside from those brought forward in the two letters of appeal.

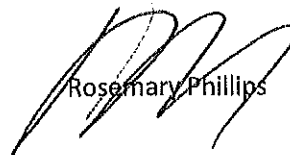
Sincerely,



Colin Sinclair



Monte Webb



Rosemary Phillips