

Dear Chief and Councillors:

I am writing to you to as a First Nation that holds its elections under the *Indian Act* and the *Indian Band Election Regulations*. The purpose of this letter is to inform you of Indigenous and Northern Affairs Canada's intent to proceed with a proposed small change to section 14 of the *Indian Band Election Regulations* that would help to avoid delays in resolving election appeals. The proposed change is purely administrative in nature and would not affect the *Indian Act* election system in any way, nor would you or your community members see any difference as a result of the change.

As you likely know, appeals of elections held under the *Indian Act* are managed and decided upon by the Department and the Minister. Section 79 of the *Indian Act* and sections 12 through 14 of the *Indian Band Election Regulations* guide election appeals.

Currently, the Regulations require the Minister to report to the Governor in Council when there appears to be election fraud or violations of the Regulations even if the evidence may be insufficient for the Governor in Council to contemplate setting aside the election under section 79 of the *Indian Act*.

Section 14 of the *Indian Band Election Regulations* states the Minister shall report to the Governor in Council where it appears that:

- (a) there was corrupt practice in connection with an election,
- (b) there was a violation of the Act or these Regulations that might have affected the result of an election, or
- (c) a person nominated to be a candidate in an election was ineligible to be a candidate.

However, under section 79 of the *Indian Act*, the Governor in Council may set aside the election based on a report of the Minister that he/she is satisfied that:

- (a) there was corrupt practice in connection with the election;

(b) there was a contravention of this Act that might have affected the result of the election; or

(c) a person nominated to be a candidate in an election was ineligible to be a candidate.

Under the proposed change to the *Indian Band Election Regulations* the Minister would only be required to make a report to the Governor in Council when there is enough evidence for the Governor in Council to contemplate the set aside of the election; in instances where he or she is satisfied. From a practical point of view, this change would shorten the period of time required to resolve election appeals.

It is important to note that this change would not alter the election appeal process, nor would it change the standard of proof required for an election to be set aside. Candidates, elected officials, voters and those launching the election appeal would not see the impacts of this change. If you have any questions or concerns about this proposed change, I invite you to send an email message to

aadnc.elections-elections.aandc@canada.ca

I would also like to take the opportunity to remind you of the *First Nations Elections Act*, an electoral option you might find interesting. This Act was developed in partnership with First Nations organizations and offers several improvements over the *Indian Act* election system, among them:

- Four year terms of office
- the possibility for individual First Nations to institute a candidacy fee of no more than \$250, which would be refunded if the candidate received at least 5% of the total votes cast.
- similar to other election laws, penalties for defined offences such as obstructing the electoral process and engaging in corrupt or fraudulent activities in relation to an election
- no role for the Minister in receiving, investigating and deciding on election appeals

You can obtain further information on the *First Nations Elections Act* on the Department's website at:

<https://www.aadnc-aandc.gc.ca/eng/1323195944486/1323196005595#chp3>

Sincerely,

Marc Boivin

Director

Governance Policy and Implementation