

## CREE NATION OF NEMASKA

### By-law No. 87 respecting elections

WHEREAS, pursuant to section 64 of the Cree-Naskapi (of Quebec) Act, the Cree Nation of Nemaska enacted By-law No. 50 respecting elections;

WHEREAS it is desirable and appropriate that By-law No. 50 be replaced in order to reflect the evolution of community standards regarding elections and to facilitate the participation of non-resident voters in council elections;

NOW THEREFORE, pursuant to sections 64 to 66 of the Cree-Naskapi (of Quebec) Act, the Cree Nation of Nemaska, acting through its Council at a meeting of the Council held in Nemaska, on the **9th day of February 2006**, hereby enacts the present by-law respecting the election and term of office of its Council members.

### INTERPRETATION

1. Unless otherwise indicated by express terms or necessary implication, the words and expressions used in this by-law shall have the same meaning as in the Cree-Naskapi (of Quebec) Act, S.C. 1983-84, c. 18. Any omission in this by-law shall be completed by reference to the said Act. The singular includes the plural, and the masculine, the feminine.
2. The following words and expressions shall mean:

"Act":	the <u>Cree-Naskapi (of Quebec) Act</u> , S.C. 1983-84, c. 18;
"Beneficiary list":	the community list of the Cree Nation of Nemaska referred to in section 17 of the Act;
"Council":	the continuing body of persons holding office pursuant to Part II of the Act;
"Elector":	a member of the Cree Nation of Nemaska who is eighteen (18) years of age or over and not declared mentally incompetent under the laws of the Province of Quebec;
"Electoral list":	the list containing the names of those electors who are enrolled or entitled to be enrolled on the beneficiary list of the Cree Nation of Nemaska, as well as those persons deemed to be electors under section 18 of the Act ;

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- "Local Registry Officer": the person who keeps and maintains the beneficiary list in respect of Nemaska pursuant to paragraph 3.5.4 of the Agreement, or, failing such person, the person appointed by Nemaska to prepare and keep current the electoral list;
- "Mail-in ballot": means a ballot delivered or mailed in accordance with sections 68 or 69 hereof;
- "Minister": means the Minister of Indian and Northern Affairs Canada;
- "Returning Officer": the Returning Officer of Nemaska appointed under section 71 of the Act;
- "Voter declaration form": means a document providing for the name, address and beneficiary number of an elector or, if the elector does not have a beneficiary number, the date of birth and Indian status number of the elector, and the name and address of a witness to the signature of the elector;
- "Nemaska": the legal entity incorporated pursuant to section 12 of the Act bearing the legal name Cree Nation of Nemaska and any successor thereto.

**GENERAL**

3. This by-law applies to all elections of the council of Nemaska held pursuant to Part II of the Act.
4. All notices, ballots and other documents contemplated herein respecting such elections may be drawn up in any of the Cree, English and French languages.

**CALLING OF ELECTIONS**

5. General elections for the council shall be held every four (4) years, subject to the Act. In the case of a vacancy, elections for the position of an individual councillor shall be held in accordance with the Act and the provisions of this by-law shall apply thereto with such modifications as the circumstances require.

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6. Subject to section 4 hereof, the council shall determine the date, the hours, and the place, within the Category 1A lands of Nemaska, of the election. The date, hours and the place of any advance poll and the date, hours and places of any travelling poll may also be fixed by resolution of the Council.

General elections shall normally take place during the summer.

**NUMBER OF POSITIONS OF COUNCIL MEMBER**

7. The Council of Nemaska shall consist of seven (7) councillors, comprising the chief and six (6) councillors.

**ELIGIBILITY FOR OFFICE**

8. Any elector of Nemaska is eligible to be elected to the office of councilor, unless:
- a) he has been convicted of committing an act detrimental to the conduct of free and fair elections within the two year period preceding the election date or, where the most recent election for that office took place before that two year period, in respect of the most recent election for that office; he has been appointed as a Returning Officer or as a Deputy or Assistant Returning Office in respect of the election for that office;
  - c) he is the Corporate Secretary or Treasurer of Nemaska;
  - d) he is a judge or a Crown prosecutor; or
  - e) he is, on the election date, imprisoned as a result of having been convicted of an offence under the Criminal Code of Canada.

**TERM OF OFFICE**

9. The councillors shall hold office for a term of four (4) years from the date of their election.

**Notwithstanding the expiry of their term of office, they shall continue to hold office until the election of their successors.**

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10. Where a councillor has, without permission from the council, been absent from three or more consecutive council meetings or more than five council meetings during a financial year, otherwise than by reason of illness or incapacity, any fifteen electors of Nemaska may file a petition with the Corporate Secretary requesting that a special meeting be convened for the purpose of deciding whether the office of that councillor should be declared vacant.
11. Forthwith after the filing of a petition pursuant to section 10, Nemaska shall call a special meeting, to be held as soon as possible, for the purpose of deciding whether the office of the councillor in question should be declared vacant, and if, with at least twenty per cent (20%) of the electors of Nemaska voting on the question, the special meeting decides that that office should be declared vacant, that office thereupon becomes vacant and the provisions of the Act apply with respect to the filling of such vacancy.

**METHOD OF ELECTING COUNCILLORS**

12. The councillors shall be elected by secret ballot or, as the case may be, by acclamation, in accordance with the provisions hereof.

**RETURNING OFFICER**

13. The Returning Officer shall supervise the conduct of the elections of the councillors. He shall also exercise such other functions as may be attributed to him by Nemaska in respect of any band meetings and referenda held regarding an election.
14. The Returning Officer may take such measures as are necessary to ensure the fair and orderly conduct of the nominations and the election.
15. The Deputy Returning Officer and Assistant Returning Officers shall exercise such functions and perform such duties as may be assigned to them by the Returning Officer, subject to his general supervision and direction.

**LOCAL REGISTRY OFFICER**

16. The Local Registry Officer shall prepare and keep current the electoral list on the basis of the beneficiary list, taking into account section 18 of the Act.

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**NOTICE OF ELECTION**

17. When an election is to be held, the Returning Officer shall post a notice, which may be in the form attached as Schedule 1, setting out the date of the election poll and the procedure for the nomination of candidates.
18. The Returning Officer shall mail a copy of the notice of election to each elector who has provided his address in accordance with section 25.
19. Such notice shall be posted in one or more conspicuous places, including the head office of Nemaska, within the Category 1A lands of Nemaska at least 30 clear days prior to the date of the election poll.
20. The election notice shall specify the date, the hours, the place within the Category 1A lands of Nemaska, and the purpose of the election poll. It shall also indicate the date, hours and places of any advance poll and any travelling poll and the means by which non-resident electors may participate in the election process.
21. A copy of this by-law shall be appended to such notice.
22. The Local Registry Officer shall make a copy of the electoral list available at the head office of Nemaska, for inspection by the electors of Nemaska at reasonable hours.
23. Any elector may apply to the Local Registry Officer to have the electoral list revised on the ground that the name of an elector has been incorrectly set out or omitted or that the name of a person not qualified to vote is included therein.
24. If satisfied that the electoral list should be corrected, the Local Registry Officer shall make the necessary correction thereto.

**NON-RESIDENT ELECTORS**

25. An elector who does not reside within the Category 1A lands of Nemaska must provide his current address to the Local Registry Officer in order to be able to participate by mail in an election.

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26. At least 30 days before the date on which an election is to be held, the Local Registry Officer shall deliver to the Returning Officer the electoral list together with the last known addresses of all electors who do not reside within the Category 1A lands of Nemaska.
27. An elector who does not reside within the Category 1A lands of Nemaska shall be deemed to have received all documents to be provided pursuant to this by-law if such documents are mailed to the last known address of the elector.

**NOMINATION PROCEDURE**

28. There shall be separate nominations for the office of chief and for the office of councillor.
29. Any elector may propose the nomination of and second the nomination of any other elector eligible to hold office as chief or councillor. No one may propose or second the nomination of more than one candidate in respect of any office.
30. The nomination of a candidate for the office of chief or of councillor shall be done in writing by filing a nomination paper, in the form annexed hereto as Schedule 2, with the Returning Officer.
31. The nomination paper shall set out the name of the candidate and the office for which he is being nominated. In order for a nomination to be valid, the candidate must indicate his acceptance of the nomination by signing the nomination paper.
32. Each nomination of a candidate shall be supported by five electors who second the nomination.
33. The name of the elector nominating the candidate and the names of the seconders together with their signatures shall be indicated on the nomination paper.
34. A nomination paper may be filed with the Returning Officer either in person, by mail or by fax.
35. The nominations for chief and councillor shall close not less than 20 clear days prior to the date of the election poll.

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36. The Returning Officer shall not accept the filing of any nomination papers after the close of nominations.
37. Forthwith upon the close of the nominations, the Returning Officer shall prepare a list of all the candidates who have been nominated in accordance with the provisions of this by-law, indicate upon such list the positions for which the respective candidates are nominated, transmit a copy of such list, signed by him, to the Corporate Secretary of Nemaska and post a copy of such list at one or more prominent public places, including the head office of Nemaska, within the Category 1A lands of Nemaska.
38. If the number of candidates appearing on the list of candidates does not exceed the number of offices for which those candidates have been respectively nominated, the Returning Officer shall declare the candidates so nominated to be elected by acclamation, and no poll shall be held in respect of those offices. The Returning Officer shall then, without undue delay, prepare and sign a written statement to each of the candidates, the Corporate Secretary of Nemaska, the Secretary of the Cree Regional Authority, and the Minister.
39. If the number of candidates acclaimed pursuant to section 38 is less than the number of positions of councillor to be filled, the Returning Officer shall post a notice extending the deadline for nominations by not more than 10 days in respect only of the positions remaining to be filled, and the provisions of sections 17 to 38 shall apply thereto with such modifications as the circumstances require.
40. If more than the required number of candidates is nominated for the office of chief and of councillor, the Returning Officer shall declare that a poll will be held in respect of those offices on the dates specified in the notice of election.

**WITHDRAWAL OF CANDIDATES**

41. A candidate who has been nominated may withdraw his candidacy at any time up to 10 days prior to the date of the election by submitting to the Returning Officer a written withdrawal of nomination, signed by the candidate in the presence of a witness.

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**ELECTION METHOD AND PROCEDURE**

42. The poll shall be held on the date, at the time and at the place fixed in the notice of the election and, in any event, not less than 10 clear days from the close of nominations.
43. Each elector shall be entitled to cast one vote for the office of chief and one vote for each position for the office of councillor which is the object of the election.

**Ballot Papers**

44. Each candidate for office shall provide to the Returning Officer a portrait photograph for use on the ballot papers.
45. The Returning Officer shall cause to be prepared a sufficient number of ballot papers, in the form attached hereto as Schedule 3, for the poll to be conducted.
46. Separate ballot papers shall be prepared for the election for the office of chief and for the office of councillor. Such ballot papers shall list, in alphabetical order, the names of the candidates standing for the office of chief and of councillor and the photograph of each candidate shall appear below his name.

**Ballot Boxes**

47. The Returning Officer shall obtain as many ballot boxes as are necessary for the conduct of the election, keep a count of such boxes and keep them under his supervision until the election is held.
48. Each ballot box shall be constructed of suitable material and in such a manner that the ballots deposited therein cannot be withdrawn without opening the ballot box.

**Preparations for Poll**

49. The Returning Officer shall provide a compartment at each polling place where the electors can mark their ballot papers free from observation.



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50. Before the poll opens, the Returning Officer shall make available at each polling place a sufficient quantity of ballot papers and materials for marking the ballot papers in order for the poll to be conducted.
51. Immediately before the poll opens, the Returning Officer, his Deputy or Assistant, as the case may be, responsible for each polling place shall open the ballot box located there and shall call upon such persons as may be present to witness that it is empty. He shall then close the ballot box and place it in view for the reception of the ballots. The ballot box shall not be opened during the time appointed for taking the poll.

Conduct of Poll

52. The poll shall be kept open during the period specified in the election notice, provided that such period extends for at least ten (10) continuous hours between 8 o'clock in the forenoon and 8 o'clock in the afternoon of the same day.
53. Voting shall be by secret ballot.
54. Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of voting.
55. No person shall interfere or attempt to interfere with a voter when marking his ballot paper or obtain or attempt to obtain at the polling place information as to how a voter is about to vote.
56. Where a person presents himself for the purpose of voting, the Returning Officer, his Deputy or Assistant, as the case may be, shall, if satisfied that the name of such person is entered on the electoral list at the polling place, provide him with a ballot paper, initialled by such Officer, on which to register his vote.
57. The Returning Officer, his Deputy or Assistant, as the case may be, shall cause to be placed in the proper column of the electoral list a mark opposite the name of every elector receiving a ballot paper.
58. The Returning Officer, his Deputy or Assistant, as the case may be, may and, when requested to do so, shall explain the method of voting to an elector.

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59. Each elector receiving a ballot paper shall forthwith proceed to the compartment provided for marking ballots and shall there mark his ballot paper by placing a cross, or any other mark which clearly identifies the elector's choice but does not identify the elector, opposite the name of the candidate or candidates for whom he desires to vote; he shall then fold the ballot paper so as to conceal the names of the candidates and the marks on the face of the paper but so as to expose the initials of the Returning Officer, his Deputy or Assistant, as the case may be, and on leaving the compartment shall forthwith deliver the ballot paper to the said Officer, who shall, without unfolding the ballot paper, verify his initials and at once deposit it in the ballot box in the presence of the elector and of all other persons entitled to be present at the polling place.
60. While any elector is in the compartment for the purpose of marking his ballot paper, no other person shall, except as provided in section 61, be allowed in the same compartment or be in any position from which he can see the manner in which such elector marks his ballot paper.
61. Notwithstanding paragraphs 54, 55 and 60, the Returning Officer, his Deputy or Assistant, as the case may be, shall, on the application of any elector who is unable to read or to understand the language of the ballot paper, or is incapacitated by blindness or other physical cause from voting in the manner prescribed in section 59, assist such elector by marking his ballot paper in the manner directed by the elector, and, in the presence of one witness, place such ballot in the ballot box.
62. The Returning Officer, his Deputy or Assistant, as the case may be, shall note in the electoral list in the column for remarks opposite the name of such elector the fact that the ballot paper was marked by him at the request of the voter and the reasons therefor.
63. An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used or does not accurately signify his intention shall, upon returning it to the Returning Officer, his Deputy or Assistant, as the case may be, be entitled to obtain one other ballot paper, and the said Officer shall thereupon write the word "cancelled" upon the spoiled ballot paper and preserve it.

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64. Any person who has received a ballot paper and who leaves the polling place without delivering the ballot paper to the Returning Officer, his Deputy or Assistant, as the case may be, in the manner provided, or who, after receiving the ballot paper, refuses to vote, shall forfeit his right to vote at the election, and the said Officer shall make an entry in the electoral list in the column for remarks opposite the name of such person to show that such person received the ballot paper and declined to vote and the said Officer shall mark upon the face of the ballot paper the word "declined", and all such ballot papers so marked shall be preserved.
65. Every elector who is inside the polling place at the time fixed for closing the poll shall be entitled to vote before the poll is closed.

**MAIL-IN VOTING**

66. At least 10 days prior to the day on which an election is to be held, the Returning Officer shall mail, to every non-resident elector for whom an address has been provided in accordance with section 25, a package consisting of:
- a) a ballot, initialled by the Returning Officer, for the office which is the object of the election;
  - b) a voter declaration form in the form set out in Schedule 4;
  - c) a letter of instructions regarding voting by mail-in ballot or by faxed ballot;
  - d) a statement identifying the location of all polling places and the fax number of the Returning Officer, and advising the elector that he may vote in person at a polling place on the day of the election in lieu of voting by fax or by mail-in ballot; and
  - e) a list of the names of any candidates who were acclaimed.
67. The Returning Officer shall indicate on the voters list those electors to whom a mail-in ballot was mailed and keep a record of the date on which and the address to which each mail-in ballot was mailed.
68. An elector may vote by mail-in ballot by:
- a) marking the ballot by placing an "X", or any other mark that clearly indicates the elector's choice but does not identify the elector, opposite the name of the candidate or candidates for whom he desires to vote;
  - b) folding the ballot in a manner that conceals the names of the candidates and any "X"s or marks but exposes the Returning Officer's initials on the back;
  - b) placing the ballot in the envelope marked "Ballot" and sealing that envelope;

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- d) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age;
  - e) placing the envelope marked "Ballot" and the completed voter declaration form in the pre-addressed envelope; and
  - f) delivering or mailing the pre-addressed envelope to the Returning Officer before the time at which the polls close on the day of the election.
69. An elector may vote by faxed ballot by:
- a) marking the ballot by placing an "X", or any other mark that clearly indicates the elector's choice but does not identify the elector, opposite the name of the candidate or candidates for whom he desires to vote;
  - b) completing and signing the voter declaration form in the presence of a witness who is at least 18 years of age; and
  - c) faxing the ballot, and the completed voter declaration form together with a piece of identification containing the voter's name, date of birth, and signature to the Returning Officer at the fax number provided before the time at which the polls close on the day of the election.
70. Ballots sent by mail or by fax that are not received by the Returning Officer before the time at which the polls close on the day of the election are null and void.

**SCRUTINEERS**

71. Any candidate may appoint in writing one scrutineer to represent him at each polling place during the conduct of the poll, and one scrutineer to represent him during the counting of the votes.

**ADVANCE POLLS**

72. Advance polls may be held either within or outside of the Category 1A lands of Nemaska on such day and at such place or places as may be fixed by Council resolution.
73. All such polls shall be held under the supervision of the Returning Officer in accordance with sections 42 to 65 and shall take place prior to the holding of the election poll.

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**TRAVELLING POLLS**

74. The Council may provide, by resolution, for the holding of a travelling poll with respect to an election.
75. Travelling polls may be held on such days and at such places as are fixed by Council resolution for the benefit of those electors who do not reside within the Category 1A lands of Nemaska.
76. The procedures described in sections 42 to 65 of this by-law shall apply with such modifications as the circumstances require to such travelling polls.

**COUNTING OF THE VOTE**

77. The Returning Officer shall keep all mail-in ballots and all faxed ballots in a secure place until the close of the election.
78. As soon as practicable after the close of the election and in the presence of the Deputy Returning Officer or Assistant Returning Officer, the Returning Officer shall review each ballot received by fax before the close of the election and:
- a) reject the faxed ballot if:
    - i) a voter declaration form is not included or the voter declaration form is not signed or witnessed;
    - ii) the voter has not provided satisfactory identification in accordance with section 69;
    - iii) the name of the elector set out in the voter declaration form is not on the electoral list;
    - iv) the electoral list shows that the elector has already voted at a polling place;
    - v) the initials of the electoral officer are not on the ballot; or
  - b) in all other cases, place a mark on the electoral list opposite the name of the elector set out in the voter declaration form and deposit the faxed ballot in a ballot box.
79. As soon as practicable after the close of the election and in the presence of any candidates or their scrutineers who are present, the Returning Officer shall open each mail-in ballot that was received before the close of the election and
- a) reject the mail-in ballot if:
    - i) a voter declaration form is not included or the voter declaration form is not signed or witnessed;
    - ii) the name of the elector set out in the voter declaration form is not on the electoral list;

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- iii) the electoral list shows that the elector has already voted at a polling place;
  - iv) the initials of the electoral officer are not on the ballot; or
- b) in all other cases, place a mark on the electoral list opposite the name of the elector set out in the voter declaration form and deposit the mail-in ballot in a ballot box.
80. Immediately after the close of the poll, the Returning Officer shall, in the presence of such candidates, scrutineers and electors as may be present, open the ballot box and count the votes given for each candidate from the ballot papers not rejected.
81. The Returning Officer shall reject all ballot papers:
- a) that have not been supplied and initialled by him, his Deputy or Assistant, as the case may be;
  - b) by which votes have been given for more candidates than are to be elected;
  - c) upon which anything appears by which the voter can be identified;
  - d) left in blank or spoiled by the voter; or
  - e) that do not clearly manifest the intention of the voter.
82. The Returning Officer shall take note of any objection made by any candidate or scrutineer to any ballot paper found in the ballot box and decide any question arising out of the objection. The Returning Officer shall number every such objection and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be with his initials.

**BASIS OF ELECTION OF CHIEF AND COUNCILLORS**

83. The candidate for the office of chief who receives not less than a clear majority of valid votes cast in respect of that office shall be elected chief.

In the event there are not a sufficient number of valid votes cast for a candidate to be declared elected chief, a second ballot shall take place not less than 10 (ten) days following the first ballot. The candidates on the second ballot shall be the two candidates receiving respectively the highest and second highest number of valid votes cast on the first ballot for the office of chief. Sections 17 to 24 and 41 to 89 of this by-law shall apply to the second ballot with such modifications as the circumstances require.

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84. The candidate for the office of councillor receiving the highest number of valid votes cast in respect of that office shall be elected deputy chief.
85. The candidate for the office of councillor receiving the next highest number of valid votes cast in respect of that office shall be elected councillor. This process shall be repeated until all vacant councillor positions are filled.
86. In the case of a tie vote for the position of deputy chief or for the last position of councillor, the Returning Officer shall call another election in respect of that position to take place not less than 10 (ten) days following the date of the tie vote. Only those candidates who are the subject of a tie vote shall be candidates in that election. Sections 17 to 24 and 41 to 89 of this by-law shall apply to such election with such modifications as the circumstances require.

**RECORDING AND CERTIFICATION OF ELECTION RESULTS**

87. Forthwith upon the completion of the counting of the votes, the Returning Officer shall publicly declare to be elected the candidate or candidates elected in conformity with this by-law.
88. The Returning Officer shall, without undue delay after the counting of the votes, prepare a written statement, in the form attached hereto as Schedule 5, of the results of the election showing the total number of ballots made available, the total number of votes cast for each candidate, the number of unused, rejected, cancelled and declined ballots and the names of the candidates duly declared elected to the respective offices. The Returning Officer, and such candidates and scrutineers as may be present and so desire, shall sign the statement.
89. The Returning Officer shall, without undue delay, transmit a copy of the completed election statement to each of the candidates, the Corporate Secretary of Nemaska, the Secretary of the Cree Regional Authority, and the Minister, and shall post a copy of such statement at one or more conspicuous places, including the head office of Nemaska, within the Category 1A lands of Nemaska.

**CONTESTATION OF ELECTION RESULTS**

90. Any candidate for election or any fifteen electors may, within five days of the date on which the election was held, contest the election of any council member or members by submitting to the Returning Officer a written notice to that effect.
91. The election of a council member may be contested on the grounds that:

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- a) a regulation made under the election regulation enacted pursuant to section 67(1)(b) of the Act was contravened in respect of the election of that council member, whether or not anyone has been prosecuted or convicted for such contravention;
- b) there was non-compliance with the Act, this by-law or the election regulation enacted pursuant to section 67(1)(a) in respect of the election of that council member; or
- c) the person elected council member was ineligible to be elected to that office.

92. The procedure for the contestation of the election shall be governed by section 78 of the Act.

**DISPOSITION OF BALLOT PAPERS**

93. The Returning Officer shall conserve in his possession all ballot papers relating to the election for a period of seven (7) days from the date of the election. If the election is not contested, he shall then destroy the ballot papers in the presence of two (2) witnesses who shall sign a statement certifying that they witnessed the destruction of these papers. If the election is contested, he shall conserve the ballot papers until otherwise directed by the judge inquiring into the election.


**SWEARING IN**

94. Following the certification of the election results, the elected candidates shall take an oath of office in the form attached hereto as Schedule 6.

**COMING INTO FORCE**

95. This by-law replaces By-law No. 50 effective the date of its enactment and shall come into force on the date when it has been approved both by the electors and by the Minister in accordance with section 66 of the Act.

IN WITNESS WHEREOF, we have signed in Nemaska this 27th day of February 2006 and posted it this 7th day of March 2006.

  
Chairman

  
Corporate Secretary

*Present Corporate Secretary*  
COPIE CONFORME dated 15 January 2007.