

# Xat'sull



**2009**

**Custom Election Code  
Brochure**

### *Upcoming Band Vote*

On **April 8, 2009**, the electors of the Soda Creek Indian Band will be asked to vote on the following questions:

Are you in favour of adopting the *Soda Creek Indian Band Custom Election Code*, which would be used to hold elections of Chief and Council instead of the election rules in the *Indian Act* and the *Indian Band Election Regulations*?

YES

NO

Do you believe that the term of office for Councillors should be concurrent or staggered?

CONCURRENT

STAGGERED

If the vote is in favour, Soda Creek Indian Band elections beginning in **2011** will be run under the *Soda Creek Indian Band Custom Election Code* rather than section 74 of the *Indian Act*.

### *What will happen if the Band votes in favour of the proposed Custom Election Code on April 8?*

**If enough electors vote** on April 8, and if most of them vote for the Code, it will come into effect for the election in **2011**.

**If the voter turn-out is low**, however, Indian Affairs may require Xat'sull to have a **second vote** involving only those electors who did not vote the first time. Indian Affairs usually wants to see voting by at least half of the eligible electors.

It is therefore very important that you vote about the proposed Custom Election Code, whether you vote for or against it.

### *What can I do if I have questions about the proposed Code before we vote on April 8?*

If you have any questions about the Code, you can address them to Cliff Thorstenson, Governance Advisor by phone to 250-315-8095 or by email to [cth@uniserve.com](mailto:cth@uniserve.com).

### Removal of a Council Member from Office

Right now, under the *Indian Act*, a person can only be removed from Council by the Minister of Indian Affairs for misconduct **during an election**. The only misconduct that can lead to removal **during their term** of office is missing 3 meetings in a row or being convicted of an indictable offence.

Part 6 of the proposed Custom Election Code allows for the removal of Council members for dishonesty and gross negligence **during their term**.

The process for removal of a Council member can be started by a Band Council **resolution** or a **petition** signed by 25% of the Band electors. The Council member is entitled to know what the accusation is and is given an opportunity to respond. The Complaints and Appeals Board holds a **hearing** with the Council member present and determines if there are grounds for removal.

A Council member removed for misconduct cannot serve on Council again for a period of **6 years**.

Under the proposed Code, conviction for an offence **in furtherance of aboriginal title and rights** is not grounds for removal from Council.

### Amending the Code

Part 16 of the proposed Custom Election Code deals with amending (changing) the Code in the future. The process of change can be started by a Band Council resolution or a petition signed by 25% of the Band electors.

The changes will be submitted to a Band vote by simple majority.

There will also be a presentation on the Custom Election Code at the All-Candidates Forum on a date still to be determined.

### What is a Custom Election Code?

A Custom Election Code is a document developed by an Indian Band to set out its **own** procedure for running its **own** elections. When a Band and Indian Affairs approve the Custom Election Code, the Band no longer runs its elections under the rules set out in section 74 and regulations under the *Indian Act*.

### Why should Xat'sull have a Custom Election Code?

Right now, under the *Indian Act*, the term of Band Council is limited to **2 years**. Many community members, including those who have served on Band Council, believe that this period is too short to get any real business done.

Other governments have longer terms. The British Columbia government has a **4 year** term. The Canadian government can serve up to **5 years**. Municipalities and Regional Districts in BC serve for **3 years**.

A Custom Election Code is an opportunity for Xat'sull to make a longer term of office to increase the effectiveness of Band Council.

Another thing about the *Indian Act* that bothers many community members is that a person does not have to be a Band member to run for (or even make a nomination for) the position of Chief. These community members feel that the Chief needs to be a member of the Band.

A third concern for many about elections under the *Indian Act* is the lack of accountability of Council members. It is almost impossible to remove Council members from office during their term, even for serious problems such as fraud.

There are a number of other concerns with the current system that are discussed elsewhere in this brochure.

A Custom Election Code is an opportunity for Xat'sull to correct some of the above concerns and put a process in place that better meets the needs of the community.

## **How has the proposed “Xat’sull Custom Election Code” been developed?**

Back in 2005, the Band applied for and received Indian Affairs funding to begin discussions about a Custom Election Code. We began by sending out a survey questionnaire to all Band “electors” (members at least 18 years of age) asking your opinion about a number of key election issues, such as length of term, number of Councillors, Band membership, residency, etc.

We then held a series of community meetings from 2006 to 2008. There were \_\_\_ meetings in all, including one in Vancouver for low mainland Xat’sull members. There have also been articles in the Fraser River Run inviting further community input.

Over the course of the meetings, we discussed all major election issues and drafted, reviewed and re-drafted the Xat’sull Custom Election Code that has been sent out to all Band electors together with this brochure.

We hope that the proposed Code reflects the views and needs of the Xat’sull community.

## **Complaints and Appeals**

Right now, under the *Indian Act*, complaints about the election process and appeals of election results are referred to Indian Affairs.

Part 14 of the proposed Custom Election Code provides for Xat’sull to appoint an independent 3-person Complaints and Appeal Board to deal with all election complaints and appeals, and to hear petitions to remove members from Band Council for misconduct.

## **Council Meeting Procedures**

Part 4 of the proposed Custom Election Code clarifies procedures at Band Council meetings.

Council meetings are open to the membership, except to deal with *in camera* (confidential) issues. The Code also establishes the “order of business” at Council meetings, including a time for Band members to make presentations to Council.

Like now, the Chief chairs the meeting unless he or she is absent, and the chair does not vote except to break a tie.

## **Council Ethics**

Part 5 of the proposed Code establishes rules for campaigning by candidates to ensure there is no coercion, intimidation or vote-buying. Council members are also required to sign and abide by a Code of Conduct during their term of office.

Community members who prefer staggered terms like the idea that the Band would always have at least 2 Band Councillors with at least 2 years of Council experience. This ensures continuity. They also like the opportunity to make changes on Council every 2 years.

Community members who prefer concurrent terms point out that staggered terms would still result in elections every 2 years—one of the main complaints about the current *Indian Act* system. They feel that continuity on Council would be addressed by having the Chief in office 2 months before Band Councillors, as proposed in the Code.

Because there was quite a bit of division among community members on the concurrent/staggered term issue, Band Council has directed that **both options** be on the ballot for consideration by the Soda Creek Indian Band electors.

### Nomination and Election Procedures

Parts 7 through 13 of the proposed Custom Election Code deal with nomination and election procedures. Most of these procedures are quite similar to those under the *Indian Act*.

Members at the community meetings expressed a concern that a candidate's name could appear on the ballot without any assurance that that candidate is truly serious and committed to serving on Council. A number of suggestions were made to ensure a candidate's seriousness, including the requirement for a cash deposit. This option was eventually rejected because of its potential for discriminating against a qualified candidate on a limited income. Instead, the proposed Custom Election Code requires candidates to indicate their seriousness by:

- accepting the nomination in writing;
- declaring in writing that they:
  - ⇒ have read and understood, and (if elected) will abide by the Council Code of Conduct, the Oath of Office the Declaration of Confidentiality and Council Roles and Responsibilities
  - ⇒ will participate in an all-Candidates forum prior to the election and will submit their election platform in writing prior to the forum.

## What's in the proposed Code?

The proposed Code is divided into several parts, dealing with the following topics:

<b>Eligibility to Vote and Run for Council</b>	<b>Size and Composition of Council</b>	<b>Term of Office</b>
<b>Nomination &amp; Election Procedures</b>	<b>Complaints and Appeals</b>	<b>Council Meeting Procedures</b>
<b>Council Ethics</b>	<b>Removal of Council from Office</b>	<b>Amending the Code</b>

Here are some of the important changes/issues in each part:

### Eligibility to Vote and Run for Council

The definitions of “Candidate” and “Elector” in Part 3 of the proposed Custom Election Code confirm that a Xat'sull member can vote and run for Council when they are **18 years of age**. (This is the same as now under the *Indian Act*.)

There was some discussion in the community meetings about raising the age for people to run for Chief, but the majority view was that this issue should be left to the voters. If voters feel the candidate is too young, they can nominate and/or vote for another candidate.

Both candidates and people who nominate and second nominations must be **Soda Creek Indian Band members**. (This is a change from now under the *Indian Act*, which allows a non-Band member to run for Chief.)

Due to a recent Federal Court of Appeal decision called *Esquega v. Canada (Attorney General)*, off-reserve electors in *Indian Act* elections can now **nominate, second a nomination and run for election** as Chief or Band Councillor. Off-reserve members can also do so under the proposed Custom Election Code but, if elected, are responsible for their own costs of attending Band Council meetings.

### Size and Composition of Council

Part 4 of the proposed Code deals with the size and composition of Council.

Right now, under the *Indian Act*, the Xat'sull Band Council has **1 Chief** and **3 Band Councillors**.

Community members proposed that the number of Band Councillors be **increased to 4** to give the community a wider base of representation on Council.

It was recommended that quorum<sup>1</sup> for Band Council meetings should remain at **3 members** of Council. With a small Council (4 or 5 members) with many responsibilities, it is sometimes difficult to get quorum, especially on short notice. By increasing the size of Council by one member but leaving quorum at 3, the official business of the Band is less likely to be delayed.

There was some discussion at community meetings about doing away with the position of Chief, or at least giving it a different name. However, there was no consensus to make such a change.

### Term of Office

Part 4 (paragraphs 38 to 49) of the proposed Custom Election Code also deals with the term of office for members of Council.

There was general consensus at the community meetings that the two year term of office now under the *Indian Act* is too short. The majority view was that the term of office for the Chief and for each member of Council should be **4 years**.

<sup>1</sup>“Quorum” is the number of members of Band Council who must be present for their meetings to be official.

There was also general consensus that the election for Chief should be held a few months **before** the election for Band Councillors. This gives the opportunity for highly qualified but unsuccessful candidates for Chief to still run for a position as Band Councillor.

The issue that caused more discussion at the community meetings than any other was whether the term of Band Councillors should be “**concurrent**” or “**staggered**”.

A **concurrent** term for Band Councillors mean that all Band Councillors would be elected at the same time and their term of office would end at the same time 4 years later.

A **staggered** term would mean that half the Band Councillors would be elected to a four year term in a given year and the other half would be elected to a four year term two years later. Under this plan, here is how the elections would work:

March 2011:	Chief elected for a <b>4 year term</b> (until March 2015)
May 2011:	Councillor A and Councillor B positions elected for a <b>4 year term</b> (until May 2015) Councillor C and Councillor D positions elected for a <b>2 year term</b> (until May 2013) <sup>2</sup>
May 2013:	Councillor C and Councillor D positions elected for a <b>4 year term</b> (until May 2017)
March 2015:	Chief elected for a <b>4 year term</b> (until March 2019)
May 2015:	Councillor A and Councillor B positions elected for a <b>4 year term</b> (until May 2019)
May 2017:	Councillor C and Councillor D positions elected for a <b>4 year term</b> (until May 2021)

<sup>2</sup>The initial 2 year term for Councillor C and Councillor D positions is necessary to get the staggered terms in place.