



# XATŚŪLL FIRST NATION

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## Xatśūll Election Code Amendments

### PLEBISCITE INFORMATION PACKAGE

#### Context

On July 4, 2024, there will be a vote (Plebiscite) of Xatśūll “Electors” (members of at least 18 years of age) to consider changes (amendments) to the Xatśūll Custom Election Code (the “2009 Code”).

The 2009 Code was passed in 2009 by a substantial majority of Xatśūll Electors, but over the years, Xatśūll Council and community members, past Electoral Officers and others have made recommendations about how the 2009 Code can be improved. So far, no changes have been made.

The current Xatśūll Chief and Council are committed to having the membership vote on potential changes to the 2009 Code in a Plebiscite.

Included with this Information Package is a Ballot setting out a number of questions for Electors to consider. This Information Package is intended to provide context and background information to help Voters make their decisions.

The attached Ballot was developed based on:

1. a review of comments made by community members (including former Council Members, former Electoral Officers and the Complaints and Appeal Board<sup>1</sup>);
2. a review of Election Codes from several other First Nations, including ones with treaties, ones in formal treaty negotiations and ones outside the treaty process;
3. an informal focused survey of Xatśūll members in November 2022;
4. a formal comprehensive survey of Xatśūll members in November 2023;
5. input received at a Special Membership Meeting held on April 17, 2024; and
6. written submissions submitted by April 30, 2024.

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<sup>1</sup> The Complaints and Appeal Board is the current name for the independent three-person group that makes decisions about Election appeals.

Recommendations coming out of the above sources are discussed below and included in the enclosed Xatsúll Election Code Amendment Ballot.

### **Plebiscite Topics**

The main Election Code topics being considered for amendment and the Plebiscite questions relating to them are shown in the table below:

<b>TOPIC</b>	<b>PLEBISCITE QUESTION #</b>
1. Eligibility to Run for Council <ul style="list-style-type: none"> <li>• Prior Criminal Record</li> <li>• Overdue Debt</li> <li>• Campaign Platform Summary</li> <li>• Participation in All-Candidates Forum</li> </ul>	1 2 3-4 5-6
2. Election Timing <ul style="list-style-type: none"> <li>• Timetable</li> <li>• Nomination Meetings</li> </ul>	7 8
3. Non-Election-Related Topics <ul style="list-style-type: none"> <li>• Council Meeting Procedures</li> <li>• Removal of Council Members</li> </ul>	9 10
4. By-Elections <ul style="list-style-type: none"> <li>• Eligibility to Run</li> </ul>	11-12
5. Secwepemptsin Terms	13
6. Voting Methods <ul style="list-style-type: none"> <li>• Electronic Voting</li> </ul>	14
7. Election Appeals <ul style="list-style-type: none"> <li>• Composition of Appeal Body</li> </ul>	15
8. Improving Drafting and Clarifying Procedures <ul style="list-style-type: none"> <li>• Improve Drafting</li> <li>• Change Some Terms</li> <li>• Add Definitions</li> <li>• Include Election Timetable as Schedule</li> <li>• Identify Deputy Electoral Officers</li> <li>• Clarify Receipt of Mail-in Ballots</li> <li>• Clarify Process for Assisted Voting</li> <li>• Clarify How Electoral Officer gets Voters List and Contact Information</li> <li>• Specify Where Key Notices are Posted</li> </ul>	16(a) 16(b) 16(c) 17(a) 17(b) 17(c) 17(d) 17(e) 17(f)

Here is some background on the above topics and some rationale for the questions to appear on the Plebiscite Ballot.

## 1. **Eligibility to Run for Council (Plebiscite Questions 1-6)**

**Prior Criminal Record:** Unlike the Election Codes of many other First Nations, Xat'sūll's 2009 Code does not prohibit a person with any kind of criminal conviction from being a Candidate for a position on Council. 84% of the 2023 survey respondents felt that a person with a serious and recent criminal record should not be able to serve on Council. In the survey comments, some people said that the prohibition should be time-limited to acknowledge the possibility of rehabilitation and that there should be an exception for convictions in furtherance of Indigenous rights.

The proposed amendment for your consideration lists some serious convictions and court findings that prohibit a person from serving on Council for a period of 10 years. The language is similar to that found in some other First Nations Election Codes.

**Overdue Debt:** The 2023 survey respondents were divided as to whether having an overdue debt to Xat'sūll or a Xat'sūll entity should prohibit a person from being a Candidate for a position on Council. 54% answered "no" but some of them qualified their answer by saying "unless there is a repayment agreement" or words to that effect.

The proposed amendment for your consideration is to prohibit a person who is in arrears (overdue in their payments) in a debt to Xat'sūll or a "Xat'sūll Empowered Entity" unless they are in good standing with respect to a repayment agreement in place within 6 days after the Nomination Meeting and before the Mail-in Ballots are sent out. The language is similar to that found in some other First Nations Election Codes (eg shíshálh (Sechelt)).

**Campaign Platform Summary:** The 2009 Code requires nominees to swear a declaration that they will submit a summary of their Election Platform prior to the All-Candidates Forum. However, under the current Election Schedule, Mail-in Ballots with Candidate names on them usually have to be sent out prior to the All-Candidates Forum. Therefore, there is no consequence for not submitting the platform summary. The person's name still remains on the Ballot. The election of a Councillor in 2013 was appealed unsuccessfully for failing to submit the platform summary.

Although it is rare for other First Nations to make a platform summary mandatory, 92% of the 2023 survey respondents felt that it should be mandatory, though 65% of them said that the summary could be in written or video format. 83% of the survey respondents felt that the content of the summaries should be standardized so that the Candidates have some guidelines.

The proposed amendment for your consideration makes the submission of a summary of a nominee's platform mandatory, but allows for it to be in written or video format. The Chief Administrative Officer will develop guidelines to standardize the content of the summaries. Failure to provide a platform summary will mean that the person will not be a Candidate in the Election and their name will not appear on the Ballot.

**Participation in All-Candidates Forum:** Similar to the requirement for campaign platforms, under the 2009 Code, nominees must swear a declaration that they will participate in an All-Candidates Forum, but their name is not removed from the Ballot if they don't do so.

86% of the 2023 survey respondents felt that participation at the All-Candidates Forum should be mandatory, but only slightly more than half of them (52%) felt that attendance had to be in-person. The others thought that Candidates should be able to attend/participate in the forum by videoconference, although a number of comments were to the effect that attendance in-person is strongly preferred.

Some other First Nations, such as T'kemplups, require participation in All-Candidates Forums except with "reasonable excuse".

The proposed amendment for your consideration makes participation in the All-Candidates Forum mandatory. Candidates must participate in-person, but if they can't because of unexpected and unavoidable circumstances, they may appear by videoconference, in which case they will be required to explain their reasons for not attending in-person. If these requirements are not met, the person will not be a Candidate in the Election and their name will not appear on the Ballot.

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## **2. Election Timing (Plebiscite Questions 7-8)**

**Timetable:** Under the 2009 Code, the Election Day for Chief is the second Tuesday in March every four years and the Election Day for two Councillors is the second Tuesday in May the same year. Under the current schedule, this means that the Electoral Officer is mailing out the Notice of Nomination Meeting for Councillors before the Chief's Election is held. This has caused confusion in the past for some voters.

Also, although dates for Elections are fixed in the 2009 Code, dates for Nomination Meetings and All-Candidates Forums are not. In practice, the date for an All-Candidates Forum is often only set after the Nomination Meeting has been held, which may make it difficult/impossible for some Candidates to attend.

78% of the 2023 survey respondents favoured adjusting the Election Schedules so they do not overlap. Huu-ay-aht First Nations set out a detailed timetable of election activities directly in their *Election Act*.

The proposed amendment for your consideration moves the Election Day for Councillors from the second Tuesday in May to the second Tuesday in June so the process does not overlap with the Chief Election process. It also includes an Election Timetable that fixes the dates of Nomination Meetings, All-Candidates Forums and Elections in advance, barring unforeseen circumstances.

**Notice of Election Timetable:** The proposed amendment for your consideration requires Xatsúll to post and publish a Notice with the name of the Electoral Officer, the date of the Election and the date, time and place of the Nomination Meeting and All-Candidates Forum several weeks in advance of the Election. This will allow voters and potential Candidates to plan to attend. A copy of the proposed timetable for General Elections is attached to this information package.

**Nomination Meetings:** 80% of the 2023 survey respondents favoured keeping formal Nomination Meetings, but 68% favoured reducing their duration from 3 hours to 2 hours. Nomination Meetings for a number of other First Nations are typically 1.5 to 2 hours in duration.

The proposed amendment for your consideration reduces the duration of Nomination Meetings from 3 hours to 2 hours.

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### **3. Non-Election-Related Topics (Plebiscite Questions 9-10)**

**Council Meeting Procedures:** The 2009 Code has very detailed (and potentially restrictive) provisions about Council and committee meetings—agendas, procedures, etc. At the time of negotiating the 2009 Code, INAC wanted to see this level of detail in all Custom Codes. However, such provisions are about the conduct of Council after they are in office and are not part of an Election process. 83% of the 2023 survey respondents felt that Council and committee proceedings should be addressed in a separate policy rather than in the Election Code. That is the approach taken by many other First Nations.

The proposed amendment for your consideration is to take the detailed provisions about Council and committee proceedings out of the Election Code and address the subject in a separate comprehensive governance policy developed with community input.

**Removal of Council Members:** The 2009 Code includes detailed provisions about the grounds and process for removing a Council Member during their term of office. Again, this is something that INAC wanted to have addressed in Custom Election Codes at the time. However, these provisions are about the conduct of Council after they are in office and are not part of the Election process. 71% of the 2023 survey respondents felt that removal of Council Members should be addressed in a separate policy rather than in the Election Code. Although some First Nations address grounds for removal from office in their Election Codes, others deal with the issue in separate governance policies.

The proposed amendment for your consideration is to take the provisions about removal of Council Members out of the Election Code and address the subject in a separate comprehensive governance policy developed with community input.

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#### **4. By-Elections (Plebiscite Questions 11-12)**

**Eligibility to Run:** Nothing in the 2009 Code prevents a Council Member from resigning and then running in the By-Election to fill the position created by their own resignation. When asked, 88% of the 2023 survey respondents felt that this should not be allowed. Also, there is nothing in the 2009 Code preventing a Chief from resigning during their term and then running in a By-Election for a vacant Councillor position. 68% of the 2023 survey respondents also felt that this should not be allowed.

The proposed amendment for your consideration is to prohibit a Council Member from running in a By-Election triggered by their own resignation, and to prohibit a Chief from resigning during term to run in a Councillor By-Election.

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#### **5. Secwepemtsin Terms (Plebiscite Question 13)**

The 2009 Code contains no words in Secwepemtsin other than “Xatśúll”. Currently, Secwepemc Chiefs address themselves and are addressed by others as “Kúkpi7”. An accepted Secwepemtsin term for Councillor is “Tkwenmíple7”, though it is not yet in common use.

The proposed question for your consideration is whether to use the above Secwepemtsin titles instead of Chief or Councillor throughout the Election Code.

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#### **6. Voting Methods (Plebiscite Question 14)**

Currently, Xatśúll Electors can vote in-person at a polling station on the Election Day or by Mail-in Ballot. 69% of the 2023 survey respondents favoured adding voting “by secure electronic means” to increase the ease of voting, especially for those away from the reserve, and to increase voter participation. Others respondents expressed concerns about the safety of electronic voting, ie whether it is possible to ensure that it is actually the Elector doing the voting, whether anonymity can be ensured and whether the system can be “hack-proof”.

Many First Nations, such as Heiltsuk, and organizations such as the Assembly of First Nations successfully use electronic voting. Electronic safeguards are in place with the most popular systems to protect the integrity of the balloting.

The proposed question for your consideration is whether to add the option of voting by “secure electronic means”. To avoid the possibility of “double-voting”, Electronic Ballots must be cast no later than the day before the Election Day.

## **7. Election Appeals (Plebiscite Question 15)**

**Composition of Appeal Body:** The 2009 Code provides for an independent 3-person Complaints and Appeal Board to adjudicate Election Appeals and petitions to remove a Council Member from office. Over the years, populating the Board with members with no potential conflict of interest has been challenging. Also, some Xatsúll members have suggested that the appeal body needs legal expertise. 60% of the 2023 survey respondents favoured continuing with a 3-person Board, while the other 40% supported replacing it with a single professional Arbitrator. Comments in favour of an Arbitrator mentioned objectivity and professional expertise.

The proposed amendment for your consideration is a compromise between the two approaches-- to continue with a 3-person Board but ensure that one member is a professional Arbitrator.

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## **8. Improving Drafting and Clarifying Procedures (Plebiscite Questions 16-17)**

*The following technical changes are grouped together for simplicity into two ballot questions. It is hoped that none of the proposed changes are controversial and that they can be supported as a group in the Plebiscite.*

**Improving Drafting:** There are a few typos and grammatical errors in the 2009 Code. Defined terms are not always capitalized. With amendments to the Code, section numbers will have to change. The 2009 Code does not set out its parts in chronological order.

The proposed amendments for your consideration improve the clarity and structure of the Code without changing its substance.

**Change Some Terms:** The proposed amendments for your consideration include a number of changes to existing terms for greater clarity.

**Add Definitions:** The 2009 Code contains numerous terms without defining them in the document. This makes interpretation difficult and potentially contentious. The proposed amendments add a number of defined terms for greater clarity.

**Include Election Timetable as Schedule:** The proposed amendment adds a timetable for General Elections, setting out in advance the dates for Nomination Meetings, All-Candidates Forums and Election Days for greater clarity.

**Identify Deputy Electoral Officers:** The proposed amendment requires the Electoral Officer to provide a list of the official Deputy Electoral Officers in advance of the Election Day for greater clarity and to reduce confusion about the receipt of Ballots and other procedures.

**Clarify Receipt of Mail-in Ballots:** The date and time that an Electoral Officer receives a Mail-in Ballot is critical. If it is received too late or not at all, it is not counted. However, the 2009 Code does not define what constitutes “receipt” of a Ballot by the Electoral Officer. This issue created some controversy in a recent Election, though it did not result in an appeal.

The proposed amendment deems that a Mail-in Ballot is received by the Electoral Officer if it is delivered to him or her or to a Deputy Electoral Officer personally or deposited in a mailbox or other secure receptacle identified by the Electoral Officer for that purpose.

**Clarify Process for Assisted Voting:** The 2009 Code provides that if a person is unable to cast a Ballot on their own, the Electoral Officer may assist them.

The proposed amendment for your consideration is to have the Voter identify a person (which could include the Electoral Officer or Deputy Electoral Officer) to assist with casting the Ballot, and for the Electoral Officer to then record that fact and the name and contact information of the person assisting.

**Clarify How Electoral Officer gets Voters List and Contact Information:** The 2009 Code provides for two separate lists to be provided to the Electoral Officer some weeks in advance of an Election. One is the official membership list with names and dates of birth of members; the other provides the addresses—if known-- of members who are not resident on reserve.

The proposed amendment for your consideration is to streamline the process by having an identified Xatsùll representative (Membership Registrar) provide the Electoral Officer with a single list with all the above information.

**Specify Where Key Notices are Posted:** The 2009 Code requires a number of notices (eg Notice of Election) to be posted “in at least one conspicuous place on the reserve”. Xatsùll has two populated reserves and notices should be posted on both.

The proposed amendment for your consideration is to ensure that any notices required to be posted on reserve are posted on each Xatsùll reserve and published on the Xatsùll website.



## Other Resources

### On the Public Access Area of the [www.xatsull.com](http://www.xatsull.com) Website

1. **Xat'sùll Custom Election Code (2009)**. Click on "Governance", then "Bylaws, Permits and Governance Documents".

### On the "Members Only Documents and Videos" Area of the [www.xatsull.com](http://www.xatsull.com) Website

1. This **Plebiscite Information Package**.
2. **2024 Xat'sùll Election Code Concordance Document**. This document shows which parts of the 2009 Code would be removed and which new parts would be added if all of the proposed amendments were supported in the Plebiscite.
3. **2022 and 2023 Election Code Amendment Survey Results**.

### On Other Websites

4. Many First Nations post their Election Codes and related laws online. The ones that were specifically referred to in preparing this Information Package were:

**Champagne and Aishihik**- a Yukon Treaty First Nation with a separate Self-Government Agreement with Canada. C&A's Treaty is constitutionally protected. Its Self-Government Agreement is not. C&A has its own Constitution, its own Government Administration Act and its own Election Code.

**Huu-ay-aht, Tla'amin and Tsawwassen First Nations**- Three BC First Nations implementing treaties with constitutionally protected Self-Government Agreements imbedded in them. Each FN has its own Constitution, Governance Act and Election Code.

**shíshálh (Sechelt) First Nation**- a BC First Nation with a municipal style Self-Government Agreement with both Canada and BC, a Constitution and an Election Code.

**Tk'emlúps** - a Secwepemc First Nation outside the treaty process with a Custom Election Code.

**Westbank**- a BC First Nation with a Self-Government Agreement with Canada with respect to its reserve lands. The contents of the SGA dealing with governance and Elections are included in the Westbank Constitution. There is no separate Election Code or Governance Act.

**Williams Lake**- a Secwepemc First Nation in the treaty process with a Custom Election Code.

**SCHEDULE A- XAT'SULL ELECTION TIMETABLE (Proposed)**

Activity	Days before Election	Range of Dates Chief Election	Range of Dates Councillor Election
Electoral Officer and Appeal Board appointed	100	November 28- December 4	February 28- March 6
Membership Registrar provides Electoral Officer with Voters List and known contact information	79	December 19-25	March 21- 27
Voters List posted	72	December 26- January 1	March 28- April 3
Notice of Nomination Meeting posted and mailed to off-reserve members	72	December 26- January 1	March 28- April 3
<b>Nomination Meeting held</b>	<b>49</b>	<b>January 18-24</b>	<b>April 20- 26</b>
Last day for Candidates to file Declaration and platform summary	43	January 24-30	April 26- May 2
<b>All-Candidates Forum held</b>	<b>42</b>	<b>January 25-31</b>	<b>April 27- May 3</b>
Electoral Officer posts Notice of Election	39	January 28- February 3	April 30- May 6
Electoral Officer mails out Mail-in Ballot packages to off-reserve members	35	February 1-7	May 4- 10
Last day for requesting Mail-in Ballot from Electoral Officer; Electoral Officer notifies people who shouldn't be on the Voters List.	10	February 26- March 4	May 29- June 4
Last day for requesting a name to be added to the Voters List	2	March 6-12	June 6- 12
<b>Election Day</b>	<b>0</b>	<b>Second Tuesday in March. (March 8-14)<sup>2</sup></b>	<b>Second Tuesday in June. (June 8-14)<sup>3</sup></b>
Electoral Officer posts and mails out to NORORs the Election results	-4	March 12-18	June 12-18
Deadline for person elected to swear the Oath of Office	-5	March 13-19	June 13-19
Deadline for filing an Election appeal with Complaints and Appeal Board.	-30	April 7-13	July 8- 14
Electoral Officer may destroy Election materials. Time extended if there is an appeal. Approximately deadline for candidates to provide C&A Board with written responses to appeal.	-45	April 22-28	July 23-29

<sup>2</sup> The earliest a second Tuesday in March can be is March 8. The latest it can be is March 14.

<sup>3</sup> The earliest a second Tuesday in June can be is June 8. The latest it can be is June 14.