

First Nations Elections Laws Comparison Chart

	Indian Act	First Nations Elections Act	Custom Election Code (Generally)
1. Opting In	“Opt-in” is at the discretion of the Minister of Aboriginal Affairs and Northern Development (AANDC) if the Minister “deem it advisable for the good government of the band”.	A First Nation council can request to come under the First Nations Elections Act by adopting a band council resolution (BCR). No requirement of community consultation.	The Custom Election Code (CEC) must be approved by the community. Community approval is given when: <ol style="list-style-type: none"> 1. a majority of electors (50 percent + 1) vote by secret ballot to approve it; or 2. the community approves it in such other manner as the First Nation and AANDC may agree upon.
2. Term of office	2 years	4 years	No maximum, typically 4 or 5 years
3. Common election day for groups of First Nations	No provision	Six or more First Nations can coordinate their terms of office and hold elections on a common day.	Possibility for multiple bands to enact CECs with common election days. Each CEC must be ratified by the individual community.
4. Composition of Council	One chief; and one councillor for every 100 members of the First Nation (minimum of two and maximum of 12 councillors) The Minister can authorize a First Nation to deviate from the number of councillors that would otherwise be mandated by this rule.	One chief; and one councillor for every 100 members of the First Nation (minimum of two and maximum of 12 councillors) Council can decide by BCR to reduce the number of councillor positions.	The compositions of chief and council in CECs are widely divergent across the country. Generally, however, many codes seem to provide for fewer councillors than the Indian Act sets out.

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5. Electoral Officers	<p>The electoral officer is appointed by the First Nation council with the approval of the Minister.</p> <p>AANDC is involved throughout the entire process</p> <ul style="list-style-type: none"> • approve the electoral officer, training and supporting the officers to ensure elections rules are followed to • appointing an election officer when there is no First Nation council in place. 	<p>Electoral officers must be certified through a training program provided by AANDC or other source or organization approved by the Minister.</p> <p>The electoral officer is appointed by the First Nation's Council. The Minister's approval of the appointment is no longer required.</p>	<p>Electoral officers are not trained by AANDC.</p> <p>A CEC does not have to include all the duties and responsibilities of the electoral officer and others involved in elections; these can be outlined in a handbook or procedural manual.</p>
6. Election Period	Minimum of 79 days	Minimum of 65 days	As set out in the custom election code.
7. Qualifications to nominate, and be, a candidates for Chief and Councillor	Only candidates nominated for councillor positions must be a member of the First Nation and be at least 18 years of age on the day of the nomination meeting.	Candidates nominated for any position must be a member of the First Nation and be at least 18 years of age on the day of the nomination meeting.	The 2007 Gull Bay decision found that the provision of the Indian Act limiting candidacy for council to community residents violated the Canadian Charter of Rights and Freedoms . Similarly, a decision the same year involving the Leq'á:mel First Nation found that provisions of a CEC limiting voting to residents of the traditional territory violated the Canadian Charter of Rights and Freedoms .

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8. Rules and procedures for the nomination of candidates	An elector can nominate a candidate in writing prior to the nomination meeting or orally at the meeting.	<p>An elector can nominate a candidate in writing before the nomination meeting or orally at the meeting.</p> <p>A person can be a candidate for only one position for the same election.</p> <p>A person cannot nominate more candidates than there are Council positions to be filled.</p> <p>A fee of up to \$250 may be imposed on each candidate. The fee can be refunded if the candidate receives more than 5 per cent of the total votes cast.</p>	<p>Most CECs share the following qualities for nominations:</p> <ul style="list-style-type: none"> • A nomination meeting is held well in advance of the election, with the time and place of that meeting made public beforehand. • Nominations must be made and seconded by individuals who are eligible to vote in the upcoming election, which commonly means citizens of the First Nation over the age of 18.
9. Candidate acceptance	Persons nominated automatically become candidates and their names are placed on the ballot unless they withdraw in writing.	Persons nominated must submit a written declaration and acceptance of nomination, and if applicable, the candidacy fee.	As per the custom election code.
10. Qualifications to vote	To be eligible to vote, a person must be a member of the First Nation and be at least 18 years of age on election day.	To be eligible to vote, a person must be a member of the First Nation and be at least 18 years of age on election day.	AANDC discourages changing the minimum voting age from 18. Lowering the age below 18 may be acceptable; increasing the voting age over 18 may violate <i>Charter of Rights and Freedoms</i> .

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11. Mail-in ballots	<p>The electoral officer sends a mail-in ballot to all off-reserve electors whose addresses appear on the list provided by the First Nation.</p> <p>The electoral officer will also respond to specific requests for a mail-in ballot and can do so until polling day.</p>	<p>Electors wishing to vote by mail-in ballot must provide a written request to the electoral officer along with a photocopy of an identification document.</p> <p>The electoral officer will send mail-in ballot packages to all those electors whose request is received six days before the election. After this time, no mail-in ballots will be given out and the elector will have to vote in person either at an advance poll or at the polling station on election day.</p>	<p>Must be consistent with the Charter of Rights and Freedoms, which, among other points, includes a realistic mechanism by which off-reserve electors can participate in the electoral process</p> <ul style="list-style-type: none"> - e.g., mail-in ballots.
12. Advance Polls	No provision	The electoral officer may hold advance polls between the 10th and 5th days before the election, on and off reserve.	Opportunity to hold advance polls. Make sure advance poll ballots remain secure and secret. As well provision to open advance polls together with ballots from regular voting day.
13. Recount	No provision	If the margin of votes between a winning candidate and one or more runners-up is five or fewer, the electoral officer must recount the ballots for these candidates.	<p>As per the custom election code.</p> <p>** If you don't have a recount provision then it may increase appeals based on a close election count.</p>

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14. Offences and Penalties	None	<p>Prohibits corrupt activities such as offering and accepting bribes, purchasing and selling mail-in ballots, obstructing the electoral process and breaching the secrecy of the vote.</p> <p>Persons who breach these prohibitions are guilty of an offence that is punishable by fines and up to five years in prison.</p> <p>Elected officials convicted of any of these offences are removed from office and candidates convicted of certain offences are not eligible to run again for five years.</p> <p>Provisions are very similar to those found in the <i>Canada Elections Act</i>.</p>	AANDC suggests mirroring the <i>First Nations Election Act</i> provisions.
15. Removal from Office	<p>A person ceases to hold office when they die, resign or are convicted of an indictable offence.</p> <p>OR</p> <p>When the Minister removes them for having committed a corrupt practice in connection to an election or for missing 3 consecutive meetings of Council without authorization</p>	<p>A person ceases to hold office when they die, resign or are convicted of an indictable offence that is accompanied by a prison sentence greater than 30 consecutive days for the person to lose their position.</p> <p>No ministerial powers to remove elected officials.</p>	<p>May only remove a councilor from office in the circumstances expressly permitted under the Code. This however, must follow procedural fairness ie.</p> <ul style="list-style-type: none"> • a hearing appropriate to the circumstances; • lack of bias; • evidence to support a decision; and • inquiry into matters in dispute.

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16. Appeals	<p>Directed to the Minister who may conduct an investigation and report findings to the Governor in Council.</p> <p>The Governor in Council may set aside the election based on the report of the Minister</p>	Directed to Superior provincial courts or federal courts, which can, after hearing the particulars, set aside an election.	<p>Must include a provision for the settlement of election appeals without involving AANDC or the Minister.</p> <p>If the code sets out an appeal mechanism then appeals must be brought to that body rather than the courts. Once that process is used the courts will entertain appeals of the body's decision.</p> <p>If the CEC does not set out a formal appeals process Federal Court may be the only avenue to appeal the election results.</p>
17. Opting Out	<p>No provisions</p> <p>(removal from the Indian Act election system is guided by the Department's Conversion to Community Election System Policy)</p>	The First Nation must develop a community election code which must be approved by the majority of votes cast at a secret ballot vote in which at least 50 per cent of all the electors of the First Nation participate.	<p>Can't go back to Indian Act.</p> <p>If there are problems you can amend the custom code.</p> <p>Chief and Council can submit a BCR to go under the First Nation Elections Act.</p>