



September 20, 2017

It is the role of Administration to assist community members through program and service delivery in an equitable manner. Political commentary or divisiveness should be reserved for Chief and Council / Community meetings and not influence or affect the ability of Administration to provide those services.

Bi-Election

At an election meeting, dated August 2, 2017, it was decided that; The Penticton Indian Band would hold a bi-election to fill the vacant council seats. The Band Administration Office has tried to accommodate that direction by supporting the Electoral Officer, Valerie Baptiste and the Deputy Electoral Officer, Karen Gabriel hold community meetings for the purpose of fulfilling the direction of community, endorsed by Penticton Indian Band Governance. Through the course of this process, community members have become disruptive towards their own personal agenda, in direct contravention of the bi-election, only resulting in further resignations and unnecessary cost. To refocus and ensure an equitable process, the Electoral Officer and Deputy are being replaced by a third-party contractor. This is not a reflection of the past work of our own community members who have sacrificed so much to provide the community with a service. This action is to remove any, “appearance” of a perceived bias in hopes that we can move towards a full council table and the continuance of governing duty. However, due to the timing of the last council meeting it was not possible to secure a 3rd party contractor for the election, we could not provide an Electoral Officer for the September 20th nominations meeting. Please see the following excerpt which outlines the acceptance and terms of the 3rd party contractor. Until the BCR and contract have been

signed, we will do our due diligence to protect the identity of the contractor and have redacted their name.

PIB Band Administrator

From: [REDACTED]
Sent: Wednesday, September 20, 2017 12:29 PM
To: PIB Band Administrator
Subject: Re: PIB By-Election

Hi Brent,

Thanks for your response. Ultimately it would be my preference to run the election from start to finish, as per the Election Code, as opposed to wading into it mid-stream.

[REDACTED]

As noted in my last email, I would be prepared to act as EO if I was properly appointed by Council and had the chance to follow the Election Code as much to the letter as possible. PIB could surely benefit from an appeal-proof election cycle.

[REDACTED]

Obviously it is at your discretion how you wish to proceed, but it is my position that a clean slate is in order to ensure the sanctity of the process.

Let me know if you have any follow up questions.

Cheers,

- Looking forward, proposing the bi-election dates to be consistent with past practice;
- October 11, 2017 PIB Band Hall – Nominations for 5 vacant seats
- October 18, 2017 PIB Band Hall – Candidate Forum
- October 25, 2017 PIB Band Hall – Candidate Forum
- November 18, 2017 PIB Heritage building – Advanced voting
- November 22, 2017 PIB Band Hall – Voting Day and ballot count

Our own Custom Election Code, although deficient in some ways, outlines the process of this bi-election which, in the absence of anything better, we will strive to complete for the benefit of the membership.

Legal Opinions of Non-confidence

Community members have requested the legal opinions sought by Chief and Council to be shared. The following are excerpts of the legal opinions received and their perspectives with redacted pieces totally removed as there were legal opinions provided on matters unrelated to the non-confidence motion and resignations of Council.



CEDAR LAW*
BARRISTERS & SOLICITORS

TO: Penticton Indian Band Council
FROM: Jeanie Lanine
DATE: August 18, 2017
RE: *Non-Confidence Motion*

Issue:

Council has previously received two non-confidence petitions calling for a community meeting to discuss the issues raised and determine the process PIB will follow in response to the non-confidence motions and the most recent nomination meeting was disrupted by members calling for a non-confidence vote.

PIB wishes to know its legal position in relation to the petitions and calls for a non-confidence vote.

Short Answer:

The existing election regulations do not provide clear directions on this matter, but do contain provisions that permit removal from office by a majority of active voters who, among other grounds, feel that a Councillor is no longer carrying out his/her mandate in the best interests of the band.

The existing regulation states that regulations for moving a non-confidence vote must be approved by band membership, but it appears that no regulations were ever enacted or approved by membership.

The Facts and Application of the Law to the Facts:

The current election documents are unclear on the process, but there is provision for removal from office which states:

- b) When the position of chief or councillor is successfully challenged by the majority of active voters where it is felt that the chief or councillor
- 1) is no longer carrying out his/her mandate in the best interest of the band
 - 2) ceases to take an active role in council meetings or council business without just cause
 - 3) refuses to account his actions within the capacity of his elected office when challenged to do so by a general assembly of the electors.

The process for triggering the vote is not identified in the documents, nor is the procedure for conducting the vote despite the fact that section 8(d) of the Regulations

To permit 15 members to compel a vote for non-confidence for alleged conduct reasons without consideration as to the merits of the information presented appears to have both procedural fairness issues and creates an opportunity for a small minority of disgruntled members to create significant expense and disruption to PIB.

Concerning the Election of Chief and Council states that there shall be regulations approved by band membership including:

- d) Provisions for moving a non-confidence vote.

It appears that no regulation was ever enacted.

Quorum

Memo

TO: Garry Benson

From: Dana

Re: Quorum

A. Issue:

Penticton Indian Band ("PIB") council has recently lost some of its councillors due to their voluntary resignation leaving three current councillors in position. With three councillors and one chief, does the council remain in power of making decisions with regard to the band?

C. Customary Council: *Indian Act* does not apply

Pursuant to the definition under s.2(1)(d) of the *Indian Act*, the customary council, the “council of the band” could mean (1) the chief of the band and the fully elected council pursuant to the custom election code, or (1) the chief of the band himself if there is no other councillors elected. The *Indian Act* does not apply when council is elected pursuant to the customary election code. All procedures and compositions

¹ http://pib.ca/?page_id=224

Composition of Council

2. The Band Council shall consist of one chief and not less than four councillors.

Simply stated, this means that the minimum number of councillors that can be elected is four (4). It does not state that four have to continuously preside as councillors for the continuous governance or functionality of the PIB.

E. Conclusion

PIB council is a customary council, thus only needs to comply with the PIB election regulations. Since the regulations are silent as to a quorum of the council, the chief with a majority of elected and available councillors, is sufficient for a the PIB council to pass resolutions.

The *Indian Act* does not apply and thus the mandatory quorum under the IBCPR provisions does not apply. The resignations of various councillors will not take away the power of the council to continue serving the band.

Misinformation regarding the amount of Councillors required for a “quorum” has been circulating among community and the media. To discourage further disruption, the Penticton Indian Band is also including the email received by Indigenous and Northern Affairs Canada (INAC) which confirms the authority of Chief and Council and capacity to fulfil our INAC reporting requirements.

PIB Band Administrator

From: Chiara Taylor [Chiara.Taylor@aandc-aadnc.gc.ca]
Sent: Wednesday, September 20, 2017 3:37 PM
To: PIB Band Administrator
Subject: RE: List of Electoral Officers and Info Needed re: Quorum

Thank you.

>>> "PIB Band Administrator" <bandadministrator@pib.ca> 9/20/2017 3:26 PM >>>

Hello Chiara,

I have been advised that the chief with a majority of elected and available councilors, is sufficient for a the PIB council to pass resolutions.

Regards,

Brent Ryan-Lewis, LLB

From: Chiara Taylor [mailto:Chiara.Taylor@aandc-aadnc.gc.ca]
Sent: Wednesday, September 20, 2017 1:27 PM
To: PIB Band Administrator
CC: [REDACTED]
Subject: RE: List of Electoral Officers and Info Needed re: Quorum

Hi Brent,

Thank you for your email. I wish you well settling into your new position.

Chief Eneas has provided us with the legal opinion previously. However, the department cannot interpret custom codes or legal opinions related to the codes and we need PIB to advise us of your decision-making process. Since PIB has previously advised us that quorum is 5, if you are going to be working with something different, we need you to advise us of this. Specifically, we request confirmation of the following:

- 1) That the PIB custom allows for a council of less than nine to continue to function as a Council or, alternatively, that the PIB custom does not prohibit a council of less than nine to continue to function as a Council;
- 2) How many Council members will be required to constitute a duly convened meeting (i.e., what is your quorum); and,
- 3) With respect to decision-making, how many Council members must consent in order to pass a motion.

Please be advised that for future Band Council Resolutions (BCRs), INAC may request confirmation that the BCR was passed at a duly convened meeting and in accordance with the decision-making requirements you have advised us of. I would also like to take this opportunity to respond in writing to your request that INAC assist with conducting the nomination meeting for your upcoming by-election. As PIB selects its leadership outside of the *Indian Act*, we are not able to be involved in your election process. I have attached a list of electoral officers who have been trained by INAC in conducting *Indian Act* elections. You may wish to consider contracting an electoral officer from this list.

I look forward to working with Tabitha and Brent on the preparation of Professional and Institutional Development program funding proposals to access support for mediation and community engagement. Please do not hesitate to get in touch if you have any questions.

Chiara Taylor
Manager, Governance and Capacity Development
Indigenous and Northern Affairs Canada
(604) 666-0270
chiara.taylor@aandc-aadnc.gc.ca

If you have any further questions or comments on details contained in this package, please direct them in writing to your elected Chief and Council.

Chief and Council

C/O Penticton Indian Band Administration

841 Westhills Dr

Penticton BC V2A 6J7

