



## April 14<sup>th</sup> - Discussion Summary

**To:** Election Law – Citizen Working Group

**From:** Jessica Labranche, Advisor to the Special Committee on Governance

**Date:** May 8<sup>th</sup>, 2024

The following is a summary of the Election Law Citizen Working Group discussion held virtually on April 14<sup>h</sup>, 2024, on Zoom. The session was recorded for the purpose of preparing this summary, but the recording will not be posted publicly. Instead, these notes are being provided as a summary of the discussion.

In attendance at the April 14<sup>th</sup>, 2024, session were the following participants:

April McGie	Chad Edgar, Councillor	Irene Armstrong, Committee Member
Diane Gaudet	Christine Lewis, Committee Member	Sandra Donny-Fraser, Committee Member
Jim St. Germaine	Linda Peterson, Committee Member	Diane Purser, EO
Victor Gascon		
Gimaa Kwe Tangie		

Attached to this memo as Appendix A is the background information memo that was emailed to the Governance Reform Project Citizen listserv in advance of the meeting providing proposed topics and background information.

### Council's Term of Office

Citizens were asked to weigh in on the question of whether a 2-, 3- or 4-year term of office was desired (see Survey Question no. 22). Roughly 62% of respondents indicated a preference for a term

of office longer than 2 years. However, there was no clear direction on whether 3 versus 4 years was appropriate.

The question of the term of office was discussed during the March 23<sup>rd</sup> in-person Citizen working group session held in Sault Ste. Marie. The participants attending that engagement session were of the view that a 3-year term is better than a 2-year term, but most were reluctant to endorse extending the term of office to 4 years. The participants who expressed their desire to move away from a 2-year term acknowledge that Council has insufficient time within a 2-year period to get comfortable and build cohesion, identify priority areas for Council's focus, and proceed to making constructive and community informed changes. While some participants suggested that a 4-year term would be appropriate—their view being that more work can be accomplished in a 4-year term—only one participant outwardly expressed their support for extending the term to 4 years.

The question of the length of term was brought up by participants in the April 7<sup>th</sup> virtual session because they wanted to discuss the topic of by-elections in the context of the length of Council's term. Participants were asked to go around and give their input on their desired length of the term and the reason why, which can be summarized as follows:

- Participant 1: expressed a preference for a four-year term to allow for adequate time to work on initiatives. Also, other levels of government typically operate on four year cycles and it would allow the Nation to keep pace with their cycle. Introducing new Councillors, even just one new Councillor, slows down the Council momentum.
- Participant 2: expressed a preference for a four-year term. Development projects last four years or more, the two-year election cycle hinders the Nations progress and expertise in understanding the benefits and pitfalls of the project. Two-year terms are a way suppress First Nations governments so that they cannot get the work done.
- Participant 3: expressed a preference for a four-year term. Council members need to become immersed in their portfolios as well as projects and there is always a learning curve, particularly for new Council members. It takes time to complete projects and it would benefit the Nation to have Council members who are knowledgeable about the projects/issues to see them through.
- Participant 4: expressed a preference for a four-year term. It is challenging to get projects complete in two years, or even three years. The decisions that the Council faces are complex and require thoughtful reflection. It's difficult to bring a new Council up to speed on all the considerations of past discussions.
- Participant 5: expressed a preference for three, maybe a four-year term. Getting up to speed on all the projects takes a lot of time and effort and mentoring new Council members takes time. In the six months leading up to the election, the campaigning begins so there are distractions. A longer term must be accompanied by a clear code of conduct with

enforcement mechanisms because four years is a long time to be sitting with “dead weight” at the Council table. Would accept a four-year term, with a clear code of conduct.

- Participant 6: expressed a preference for a four-year term. Longer term provides for consistency and stability because it allows Council to have more time to implement their agendas and policies effectively. A four-year term in office means less turnover and disruption, providing stability and ongoing projects and initiatives. There is deeper engagement and understanding of the projects/issues when the term is longer and it gives the Council members an opportunity to gain trust and build relationships with the community. A longer term empowers the Council members to advocate more effectively for the interests of the community. Council members can engage in more strategic planning and long-term visioning for the community and focus on initiatives that have sustaining lasting impact rather than short term fixes. Reduces campaign distraction. There are cost savings—from the point of view of forgoing election costs but also productivity of the Council.
- Participant 7: expressed a preference for a four-year term as most beneficial. The development of laws takes time and Council needs the input of Citizens. The process must take time—time needs to be put into developing a process, hiring the right people, executing on the project, ratification and finally implementation. Elections impact the staff—both from the workload and the stress—is challenging and
- Participant 8: expressed a preference for a four-year term. It aligns with other levels of government and give Council more time to complete projects.
- Participant 9: extending the term is essential. The administration works very closely with Council and having to re-establish the team’s (Council and administration) working relationship every two years takes a lot of time and focus away from the administrative tasks.
- Participant 10: expressed a preference for a four-year term. New Council members have a huge mountain to climb to get up to speed. Projects/policy development takes time—not just hard work—and reflection. A four-year term allows for sufficient time rather than rushing through.

The consensus of this group was for a four-year term.

## Filling vacancies on Council

Participants were asked to weigh in on the procedure for filling vacancies on a Council. They were asked to grapple with the pros and cons of appoint the runner up versus a by-election. Here is some of their feedback:

- Appointing the next runner up has many benefits. Allows for continuity – particularly if the promotion is from within for filling a vacancy for the office of the Chief – it’s cost efficient and respects the voters’ choices. However, it is not transparent. By-elections also have their benefits, namely transparency and adhering to the principles of democracy. However, they

introduce uncertainty and cause chaos until the vacancy is filled and they cost just as much as an election.

- Elders who sit on the Elder Committee could be appointed as proxied into a vacant position.
- Since the circumstances around the vacancy matter—for example, the length time remaining in the term; whether Council can function despite the vacancy; whether the cost is justifiable—Council needs to make the decision as to whether the next Candidate/runner up is promoted or call a by-election at the time the vacancy arises.
- The shorter the duration to the next election, the more reasonable it is to leave the position vacant, in the case of a Councillor, because Council may be able to run effectively with a vacancy.
- Anyone who sits as candidate who is not elected should undertake to contribute to Council's business by sit on a Committee, for example. This would be a factor for Council's to consider when deciding on appointing someone to fill the vacancy.

The participants agreed that the circumstances at the time will dictate the most appropriate approach to filling a vacancy. They did not want to lock Council into a process that is not going to serve the best interest of the Nation, even though they recognize the overarching values of democracy, transparency, inclusion, and participation as part of the desire to govern in a good way. A decision on how to fill a vacancy should ensure that the government can function and transition smoothly. Budgets must be part of Council's consideration. Candidate circumstances are going to be considered as well as whether Council could manage with a vacancy.

Participants agreed that filling a vacancy with the next candidate on the election list could be appropriate but that the Council should be given guidance on what to consider when weighing that option. However, they also felt that circumstances could allow for the vacancy to remain vacant until the next election or that a by-election could be called. Overall, the participants were in favour of a process that would allow the Council the discretion to make the decision on a promotion, an appointment, leave the position vacant, or by-election when the vacancy arises. Consideration will need to be given for guidance on who should be appointed if there is more than one person with the next highest votes because of a tie.

Participants were asked to consider whether a sitting Councillor could run in a by-election for the position of Gimaa. The question was never fully addressed, except to acknowledge

## Residency Requirement

Participants were presented with background information on the discussions had so far about residency requirements and an update on the current case law—see attached April 14<sup>th</sup> Background

Information memo. When asked about their feedback on whether to include a residency requirement and why, participants had this to say:

- It is important for the Chief to be in the community and for Council to meet face-to-face and for Citizens to get to know their Council members. It is essential that elected officials have a knowledge of the traditional territory.
- One participant voiced that residency should be within the Nation's traditional territory.
- Another participant voiced that Ontario would be more appropriate, but they are also mindful that the historical relocation of the Nation's population on several occasions and the disenfranchisement through *Indian Act* status policy has resulted in the Nation's Citizens being disbursed. As such, the residency requirement would further compound the injustice.
- Citizens running for Council should be apprehensive about making decisions that impact Michipicoten residents without a personal connection to the area. Even though the residents are a minority, elected officials must
- Canada and Ontario have always been hopeful that we would lose our love and connection to our land. The participant expressed concern that those living far from the territory may have in fact lost their connection to the Nations territory and our relationship to all our relatives in creation. Other participants echoed that sentiment that the traditional territory must be preserved and protected at all costs.

The discussion on residency requirements was deferred due to a shortage of time. There are further working groups planned on proposed amendments to the Chi-Naaknigewin that will focus on the question of a residency requirement.



# Citizen Working Group

## Background Information

**To:** Election Law – Working Group

**From:** Jessica Labranche, Advisor to the Special Committee on Governance

**Date:** Prepared for the session hosted on Sunday April 14<sup>th</sup>, 2024

The purpose of this document is to provide participants with some background information for the discussions during the April 14<sup>th</sup>, 2024, Election Law Citizen working group session. The document is intended to help provoke discussion and is not intended to reflect the views of Council or the Special Committee on Governance.

### Filling Vacancies on Council

At the present time there is no mechanism to fill a Council vacancy under the *Indian Act* procedure. The Nation’s Election Law will include a process for filling vacancies on Council. On the 2024 Governance Survey, Citizens were asked to provide input on how the process of filling vacancies should unfold. Of the options provided, most respondents chose “Ask the candidate with the next highest number of votes until the vacancy is filled”—see Appendix A, Question 23.

During our April 7<sup>th</sup> working group session, the participants were asked to provide input on how by-election procedures should function. There were a few options provided but due to a shortage of time, the options were not explored fully – nor was there consensus on the approach to filling a Councillor vacancy. Some of the participants wanted to have the conversation about by-elections alongside a conversation about the length of the term of office since the length of term may impact whether and how a by-election is triggered.

Some of the approaches raised, included:

*For the office of the Chief*, back-fill with the Deputy Chief if the term is less than one year (six months was also suggested but participants didn't indicate a preference). Otherwise, hold a by-election. Further questions to be explored – **should a sitting Councillor or the Deputy Chief be permitted to run in a by-election for the office of the Chief?**

*For the office of a Councillor*, the options discussed were varied. The survey results leaned towards asking the candidate with the next highest number of votes to fill the vacancy—see Appendix A, Question 23. However, there was a view expressed that the “next” candidate was not elected and this option is not appropriate.

**The options to consider are as follows:**

- **Leave vacant if the remaining term is less than one year and quorum can still be met;**
- **For terms exceed one year:**
  - **Backfill with the Councillor who had the next highest votes at the election.**
  - **Hold a by-election, or**
  - **A combination of these two – backfill is the term is less than 2 years and hold a by-election is more than two years.**

There was also a suggestion that the by-election procedure should be a simplified approach, which was described as uniquely online voting. Michipicoten First Nation has an ageing population. The desire to maintain a mail-in ballot process is quite strong, particularly given that the Nation has an ageing population. As such, there are limited ways in which to simplify the process since mail-in ballots take time to circulate and would still need to be counted under the guidance of an electoral officer. Nevertheless, the suggestion prompted the idea that the by-election procedure should be found in the Election Regulation rather than the Election Law so that it may be amended later outside the ratification process defined in the Chi-Naaknigewin as the Citizens become comfortable with technology.

## Term of Office for Council Members

The 2024 Governance Survey asked the question of whether a 2-, 3- or 4-year term of office was desired—see Appendix A, Question 22. The responses leaned towards a term of office longer than 2 years, however, there was no clear direction on whether 3 versus 4 years was appropriate.

The question of the term of office was discussed during the March 23<sup>rd</sup> in-person Citizen working group session held in Sault Ste. Marie. The participants attending that engagement session were of the view that a 3-year term is better than a 2-year term, but most were reluctant to endorse extending the term of office to 4 years. The participants expressed their desire to move away from a 2-year term because they acknowledge that Council has insufficient time within a 2-year period to

get comfortable and build cohesion, identify priority areas for Council's focus, and proceed to making constructive and community informed changes. While some participants suggested that a 4-year term would be appropriate—their view being that more work can be accomplished in a 4-year term—only one participant outwardly expressed their support for extending the term to 4 years.

The April 7<sup>th</sup> working group participants had a desire to discuss the question of term of office along side of their deliberations on the by-election.

## Residency Requirement for Elected Councillors

Residency requirements for elected officials are seen as a way to ensure effective representation and strengthen the connection between elected officials and the community they serve. While Michipicoten's Citizens live everywhere, their Indigeneity and Nation is intrinsically tied to Michipicoten's traditional territory.

In the past, residency requirements were addressed by the fact that the Council met in-person. In turn, these in-person meeting requirements limited the pool of candidates to those who lived in proximity to the Council's meeting location. When it comes to the office of the Chief, the fact of having to maintain their office at Michipicoten's administrative buildings located at Gros Cap No. 49, by default, forces the Chief to maintain a residence in proximity.

However, the Nation has embraced technology and the Council's meetings have moved to a virtual platform in order to facilitate access by Citizens who live off reserve. Offices has been opened in Wawa and Sault Ste. Marie—with citizens pressing for offices in Thunder Bay and Sudbury.

A question on residency requirements was put to Citizens in the 2024 Governance Survey and 78.67% of respondents indicated their desire for some form of residency requirement for Council members—see Appendix A, Question 14. Among the options provided on the survey, Ontario was the most preferred geographic region, while residency within the Traditional Territory was the next favoured option.

The responses to Question 14 can also be contrasted to responses provided to Questions 10 & 11 of the survey that asked what requirements, if any, should a candidate meet to be eligible to run for Council. The respondents there indicate that Citizens are less likely require that a Candidate “is or has resided (within their lifetime) in Michipicoten's traditional territory” in order to qualify for a nomination—see Appendix A, Questions 10 & 11. It seems that the place of residence is only significant if a person is elected.

During the March 19<sup>th</sup> Citizen working group session, participants were asked to reflect upon the expressed desire to impose a “residency requirement” for Council members. The consensus of the group was that elected Council members should be resident of Ontario. Since that discussion, the

Supreme Court of Canada (SCC) released its decision in the *Dickson v. Vuntut Gwitchin First Nation*<sup>1</sup> case (herein after *Dickson Case*) stating that the Vuntut Gwitchin First Nation residency requirement imposed by their Constitution was permissible under s. 25 of the *Charter* even though it infringes Mrs. Dickson’s s. 15(1) rights under the *Charter*. According to the SCC, the residency requirement protects Indigenous difference — understood as interests connected to Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, or Aboriginal participation in the treaty process – which they considered to be an “other right” under s. 25 of the *Charter*.

A significant fact supporting the SCC’s conclusion was that the Vuntut Gwitchin First Nation Constitution’s residency requirement was permissible is that residency had to be within the settlement land (equivalent to Treaty lands) or in the village of Old Crow in the traditional territory of the Vuntut Gwitchin. A summary of the key facts in that case is attached to this memo as Appendix B – *Dickson Case: Residency Requirements*.

### Implications of the Dickson Case for Michipicoten’s Governance Reform Project

The precedence set by the *Dickson Case* suggests that a residency requirement that maps the Nation’s traditional territory and even Treaty territory would be acceptable and defensible from a *Charter* challenge, even though it infringes a Candidate’s rights to equality under the *Charter*. However, this precedence does not align with the direction expressed by Citizens, thus far.

### Consider the following options towards the inclusion of a residency requirement:

- 1. Set out a residency requirement that maps the traditional and treaty territory of Michipicoten First Nation in the Nation’s Chi-Naaknigewin. Note, that a residency requirement that maps the traditional and treaty territory would eliminate anyone resident in Sault Ste. Marie, Sudbury (and anywhere in between) from taking up a role on Council, even though they are just as close or closer to the reserve than those Citizens living in Thunder Bay (which falls within the Treaty territory).**
- 2. Spell out a residency requirement that maps the province of Ontario with the understanding that it may be challenged down the road. The Nation would be leaning heavily on the fact this residency requirement was endorsed by Citizens.**
- 3. Do not spell out any form of residency requirement in either the Election Law or Chi-Naaknigewin. Instead, re-institute the procedural aspect that would bring Council members closer to the Nation. For example, in-person attendance at key**

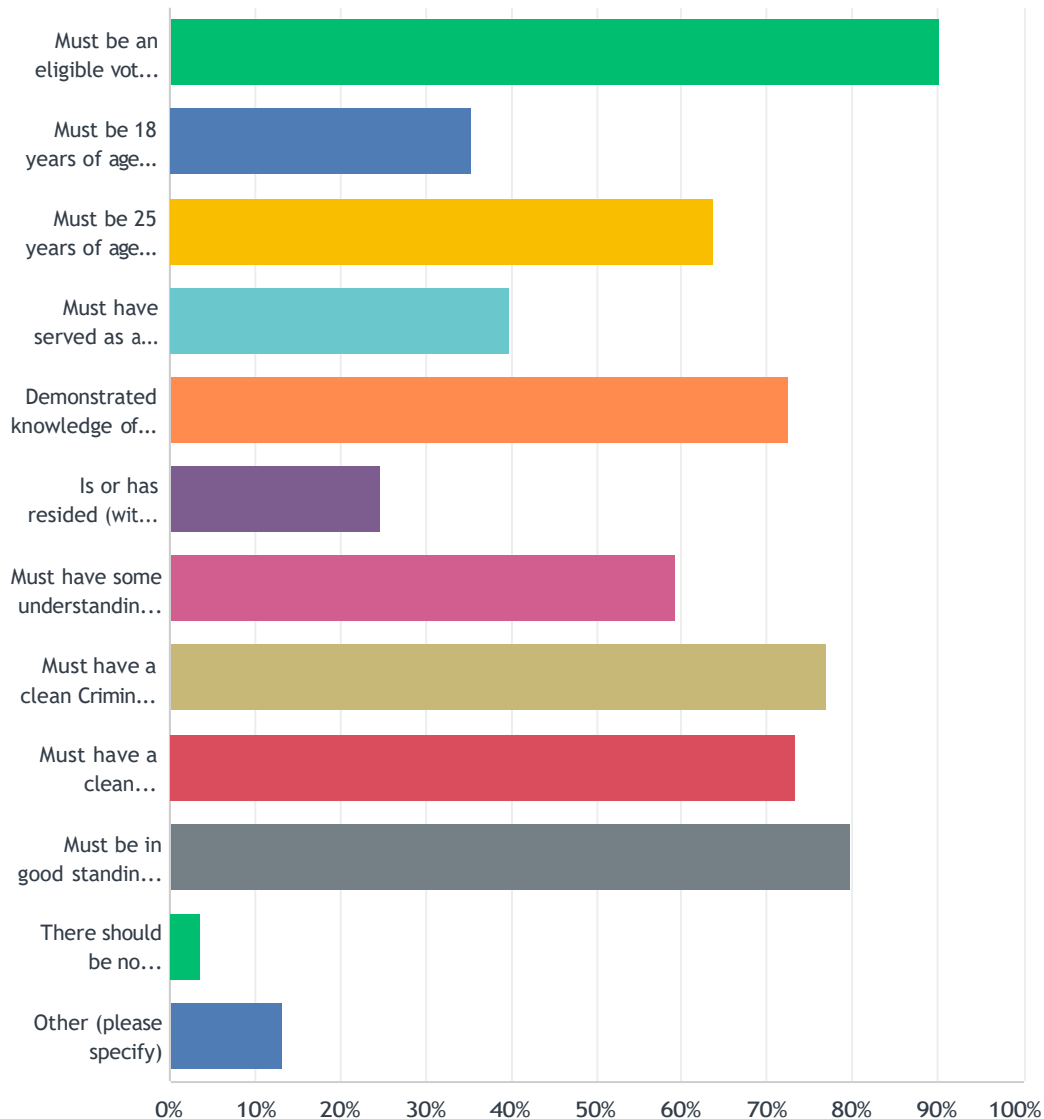
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<sup>1</sup> 2024 SCC 10

electoral/community events (such as nomination meeting, inaugural meeting, youth and elders gathering, Citizen information meetings); re-instate in-person meetings for regular Council business (with virtual attendance for Citizens)—other meetings, particularly those hosted on short notice, could be hosted virtually; establish office hours for all Council members (particularly since they will be holding portfolios that may require direct engagement with the Administration/resident/citizens); budgetary limitation for travel for in-person activities. Note, these processes would all fall within a policy framework and not the Election Law.

## Q10 Should there be eligibility criteria for a nominee to be placed on the ballot for the position of Chief? (select all that you think should apply)

Answered: 113 Skipped: 0



Of the possible options provided, the responses indicate that six (highlighted in yellow) of the eligibility criteria proposed meet the materiality threshold (defined as 60% or more of respondents) and should be considered. Note, the response that “Must have some understanding of Anishinaabemowin” came in seventh and just narrowly misses the materiality threshold. However, those who offered other criteria suggest that a strong connection to culture is important. As such, knowledge of Anishinaabemowin should also be considered a material eligibility standard.

Q10 ANSWER CHOICES	RESPONSES	
Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	90.27%	102
Must be 18 years of age at the time of nomination.	35.40%	40
Must be 25 years of age at the time of nomination.	63.72%	72

Must have served as a Council member in the past.	39.82%	45
Demonstrated knowledge of Michipicoten First Nation's history.	72.57%	82
Is or has resided (within their lifetime) in Michipicoten's traditional territory.	24.78%	28
Must have some understanding of Anishinaabemowin.	59.29%	67
Must have a clean Criminal Record check.	76.99%	87
Must have a clean Vulnerable Sector check.	73.45%	83
Must be in good standing with the Nation, meaning they do not owe any debts to the Nation.	79.65%	90
There should be no restrictions to run for Chief.	3.54%	4
Other (please specify)	13.27%	15
<b>Total</b>		<b>113</b>

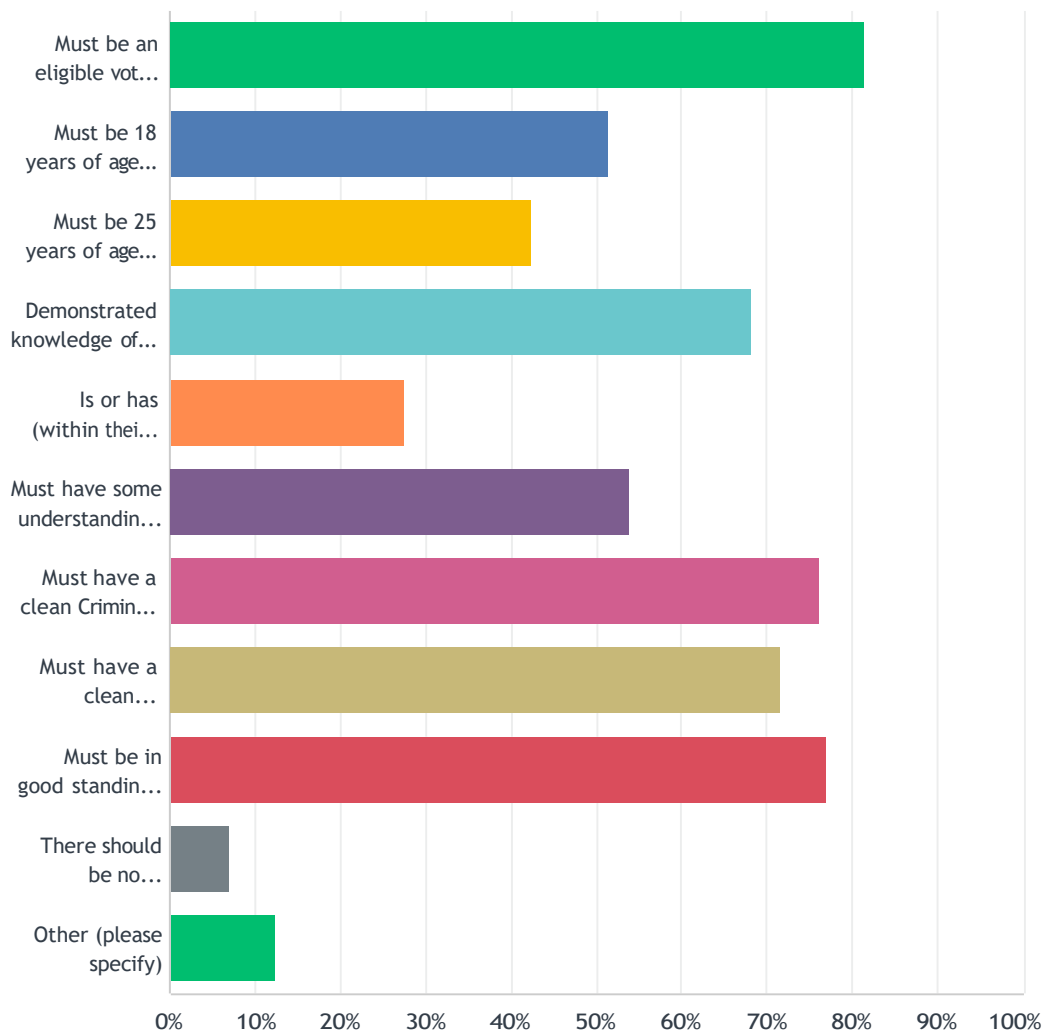
#	OTHER (PLEASE SPECIFY)
1	Chief has his/her own duties, as do Councillors. I believe each follow own assignments.
2	A chief is a God-given position. A leader to their people. He/she should be honourable, honest, hardworking, caring, having compassion and empathy, wisdom and strength, vision for a better future, loving, otherwise an amazing person. No one is perfect. Always be open to opinions. I believe my sister Patricia is a great Chief.
3	The above says it all
4	-Identification with photo and name (2 pieces of ID) -If reside in another country in the past a criminal and vulnerable sector check should be done in those countries.
5	Experience working with a board of directors and financial knowledge.
6	Whoever wishes to run for office - should be allowed apart from those items checked above. And they should know the applicable governing Indigenous (federal) laws - and not cite or quote inapplicable Provincial laws. And there should absolutely be no non-native leases allocated for any reason. The lands are only to benefit the band members or what you are calling 'eligible electors'. Where does that term come from???? It is not from the Indian Act.
7	Should be at least 30
8	Anyone can run. Criminal background check is about it.
9	Chief must be a member of Michipicoten First Nation
10	There should be some required standard of education.
11	The ideal candidate for Chief should embody a deep connection to cultural traditions, showcasing a profound understanding of traditional healings and a commitment to preserving indigenous practices. This candidate must maintain a strong communication line with elders, medicine men/women, and other respected figures, acknowledging the importance of intergenerational knowledge transfer. Additionally, community engagement is paramount, with the candidate actively participating in events, addressing concerns, and fostering unity to represent the collective voice and interests of the Native band. Furthermore, the Chief should possess strong leadership qualities and a proven track record of effective community leadership. This includes navigating challenges, making informed decisions, and promoting the overall well-being of the community. The combination of cultural preservation, community

engagement, and strong leadership ensures that the Chief serves as a unifying force, representing the traditions, aspirations, and resilience of the Native band.

12	If they have not resided, they should have been to or visited the community within the last 24 months of the application.
13	Must have demonstrated knowledge of and relationship with MFN on committees attending events etc.
14	Must Submit an in depth CV clearly outlining professional experience, community contributions, and cultural formation. CV should be made available to all MFN voters along with their written statement.
15	Knowledge of MFN culture, traditions, customs, and ways of life

### Q11 Should there be eligibility criteria for a nominee to be placed on the ballot for the position of Councillor? (select all that you think should apply)

Answered: 113 Skipped: 0



Of the options provided, the responses indicate that six of these options (highlighted in yellow) meet the materiality threshold (defined as 60% or more of respondents) and should be considered as part of the eligibility criteria. While there is clear sense that a minimum age requirement is necessary, there is a leaning towards age 18. Note, the

response that “Must have some understanding of Anishinaabemowin” is acceptable to more than half the respondents but misses the materiality threshold.

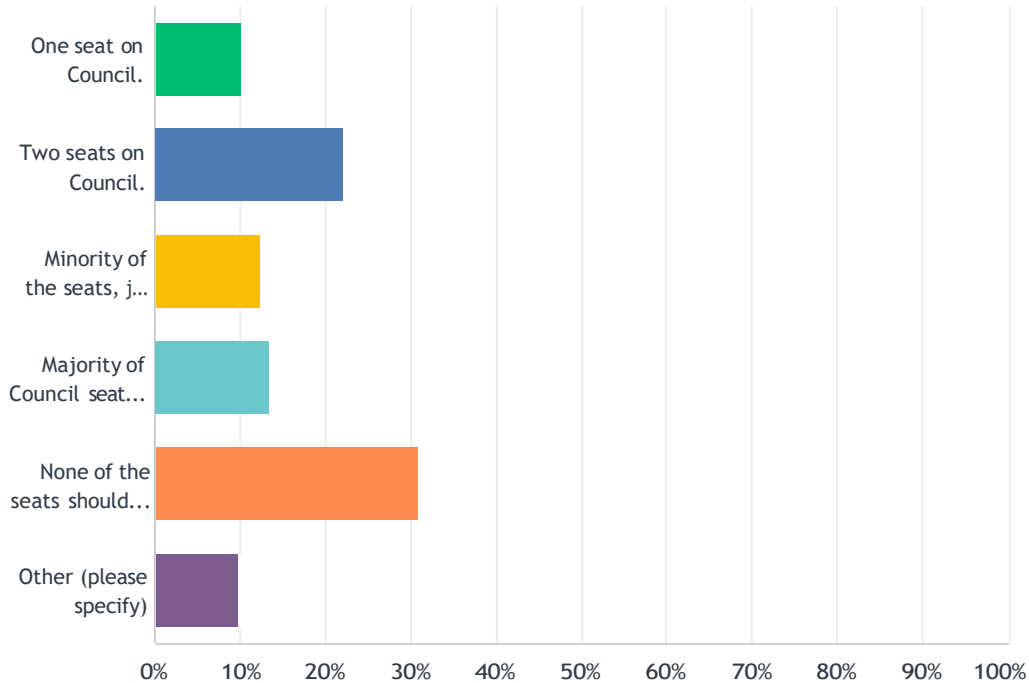
Q11 ANSWER CHOICES	RESPONSES	
Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	81.42%	92
Must be 18 years of age at the time of nomination.	51.33%	58
Must be 25 years of age at the time of nomination.	42.48%	48
Demonstrated knowledge of Michipicoten First Nation’s history.	68.14%	77
Is or has (within their lifetime) resided in Michipicoten’s traditional territory.	27.43%	31
Must have some understanding of Anishinaabemowin.	53.98%	61
Must have a clean Criminal Record check.	76.11%	86
Must have a clean Vulnerable Sector check.	71.68%	81
Must be in good standing with the Nation, meaning they do not owe any debts to the Nation.	76.99%	87
There should be no restrictions to run for Councillor.	7.08%	8
Other (please specify)	12.39%	14
<b>Total</b>		<b>113</b>

#	OTHER (PLEASE SPECIFY)
1	Hi
2	Everything is fine
3	same
4	If you were ever in a scandal with being a chief or Councillor should not be able to run for either position (if you ever ripped them off)
5	Mature and financial knowledge.
6	See same comment as was written for the Chief above.
7	Anyone can run. Clearance check of any. Criminal charges
8	Should be required to attend a set amount of meetings -- ei 70%
9	They should be a member at least 3-5 years to be a Councillor or Chief
10	Would be nice that some people that are looking for answers for people who are part of 60's scoop
11	A standard of education.
12	Criteria are the same as above.
13	I don't think this should be on ballots because their name should not go on ballots if they don't meet criteria or are ineligible to have nominations stand
14	Must Submit an in-depth CV clearly outlining professional experience, community contributions, and cultural formation. CV should be made available to all MFN voters along with their written statement

### III. Council Composition

#### Q14 Should there be a certain number of seats on Council reserved for candidates who reside full time on the reserve at Michipicoten First Nation (Gros Cap No. 49)?

Answered: 109 Skipped: 1 Multiple Responses Recorded: 1 Invalid Responses: 2



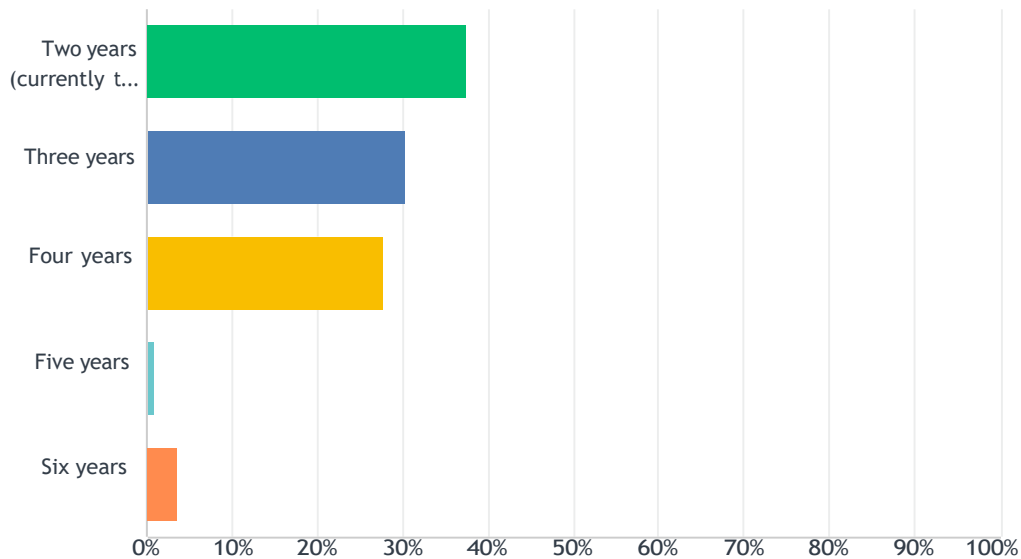
69\* respondents—reflecting 62.16% —identified a preference for dedicated seats on Council for residents of Gros Cap No. 49 Reserve. Some number less than half is the clear leaning with a preference for two reserved Council seats.

Q14 ANSWER CHOICES	RESPONSES	
*One seat on Council.	10.81%	12
*Two seats on Council.	22.52%	25
*Minority of the seats, just less than half the total number of Council seats, should be reserved for residents of the Michipicoten reserve.	12.61%	14
*Majority of Council seats should be reserved for residents of the Michipicoten reserve.	13.51%	15
None of the seats should be reserved for residents of the Michipicoten reserve, only those with highest number of votes should hold office.	31.53%	35
Other (please specify)	9.00%	10
<b>TOTAL</b>		<b>111</b>

#	Q14 OTHER (PLEASE SPECIFY)
1	depends on how the nominations go.
2	I'm not sure off reserve members have enough say, though. (jl-respondent also marked that majority of seats should be reserved for residents of the MFN reserve.)
3*	50% of seats reserved
4*	Actually they should all live on the reserve!
5	Discriminatory
6	Should be based on number of people on rez, to those who are not on res
7	Because of lack of reverse housing, this should not be an issue
8	NO WAY should residents hold a majority. Example trust fund. Had to beg for a bank statement and at one time it was impossible to get one. when the statement finally showed up it was full of unbelievable figures. No way should there be a majority for residents.
9*	<p>Given the importance of community representation and the unique dynamics of First Nations governance, a strong recommendation would be to reserve a significant portion of council seats for candidates residing full time on the reserve. A 50/50 distribution, where half the council seats are reserved for residents, is a reasonable and balanced approach.</p> <p>Reason for the Recommendation:</p> <ol style="list-style-type: none"> <li>1. Direct Community Connection: Reserving a substantial number of seats ensures that the council includes individuals who have a direct and continuous connection to the community. This fosters a deeper understanding of local issues and needs.</li> <li>2. Enhanced Accountability: Council members residing on the reserve are more likely to be directly affected by the decisions they make. This can enhance accountability and a sense of shared responsibility for the well-being of the community.</li> <li>3. Inclusivity and Representation: A 50/50 distribution promotes inclusivity and representation, acknowledging the importance of diverse perspectives within the council. It helps prevent potential imbalances in decision-making that could arise if the majority of council members reside off the reserve.</li> <li>4. Community Trust: Reserving a significant number of seats for residents demonstrates a commitment to community engagement and can contribute to building trust between the council and the residents. Considerations: While the recommendation leans towards a majority of council seats being reserved for residents of the reserve, it's essential to consider flexibility and the specific context of Michipicoten First Nation. Balancing the need for on-reserve representation with the recognition of valuable skills or experiences that off-reserve members may bring to the council is crucial. Ultimately, the goal is to create a governance structure that best serves the interests of the community, promotes inclusivity, and ensures effective representation of the diverse perspectives within Michipicoten First Nation. Public input and discussions can help fine-tune the approach to meet the unique needs and aspirations of the community</li> </ol>
10	Use the clan system, a representative from each respective clan

## Q22 How long should the term of office be for the Chief and Councillors? Term of office means the length of time that the Chief and Councillors are elected for in their role.

Answered: 112 Skipped: 1

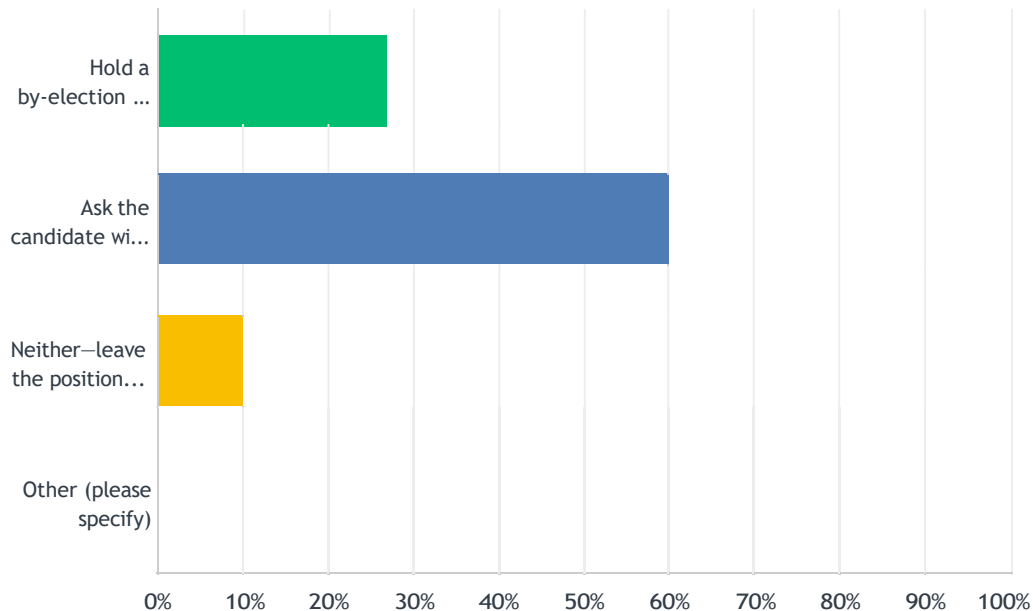


The responses indicate that 70 or 62.5% of respondents would accept a longer term of office than there is currently under the *Indian Act*.

Q22 ANSWER CHOICES	RESPONSES	
Two years (currently the term set under the Indian Act)	37.50%	42
Three years	30.36%	34
Four years	27.68%	31
Five years	0.89%	1
Six years	3.57%	4
<b>TOTAL</b>		<b>112</b>

## Q23 Should there be a By-Election to fill a vacancy on Council if that vacancy is longer than a 12-month period or should the candidate with the next highest number of votes during the most recent election be given the opportunity to take up the vacancy?

Answered: 112 Skipped: 1



Q23 ANSWER CHOICES	RESPONSES	
Hold a by-election to fill the vacancy.	26.79%	30
Ask the candidate with the next highest number of votes until the vacancy is filled.	60.71%	68
Neither—leave the position vacant until the next election, so long as Council can still achieve quorum.	10.71%	12
Other (please specify)	1.79%	2
<b>TOTAL</b>		<b>112</b>

#	OTHER (PLEASE SPECIFY)
1	Only for the remainder of the term. Elections are expensive. By elections are too mainstream.
2	Hold a by-election to fill the vacancy. As question previous, need a certain number to eliminate a tie.

## ***Dickson Case: Residency Requirements***

**To:** Special Committee on Governance

**From:** Jessica Labranche (Black Feather Law)

**Date:** April 12, 2024

### **Background**

On March 28<sup>th</sup>, 2024, the Supreme Court of Canada (herein after “SCC”) released its decision on the *Dickson v. Vuntut Gwitchin First Nation*<sup>1</sup> case (herein after *Dickson Case*) stating that the Vuntut Gwitchin First Nation’s (herein after “VGFN”) residency requirement imposed by their Constitution was permissible under s. 25 of the *Charter* even though it infringes s. 15(1) equality right under the *Charter*. The following memo outlines the relevant details of the Supreme Court of Canada’s recent decision in the *Dickson Case* and its implication for the imposition of a residency requirement for the Nation as part of the governance reform project.

### **Summary of the Decision**

VGFN Constitution includes a residency requirement stating that all Chief and Councillors must reside on the VGFN’s settlement land, in the village of Old Crow in the traditional territory of the Vuntut Gwitchin or relocate there within 14 days of their election. Mrs. Dickson lived in Whitehorse, the capital of the Yukon, about 800 kilometers south of Old Crow but wished to stand for election as a VGFN Councillor. She could not move to Old Crow if elected, largely because her son required access to medical care unavailable there. Mrs. Dickson challenged the Constitutional residency requirement, asserting that it unjustifiably infringes her right to equality under s. 15(1) of the *Charter*.

Both the trial judge and the Court of Appeal held that the *Charter* applies to the VGFN and its Constitution, pursuant to s. 32(1) of the *Charter*, and held that if Mrs. Dickson’s s. 15(1) equality right is infringed, the residency requirement is shielded by s. 25 of the *Charter*. The Supreme Court of Canada said that the *Vuntut Gwitchin First Nation* residency requirement imposed by their Constitution was

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<sup>1</sup> 2024 SCC 10

permissible under s. 25 of the *Charter* even though it infringes Mrs. Dickson’s s. 15(1) rights under the *Charter*. According to the SCC, the residency requirement protects Indigenous difference — understood as interests connected to Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, or Aboriginal participation in the treaty process – which they considered to be an “other right” under s. 25 of the *Charter*. The SCC has this to say in support of the residency requirement:

The right to impose residency-based restrictions on the membership of its governing bodies enables Vuntut Gwitchin society to preserve the distinctive emphasis it places on its leaders’ connection to the land. This is plainly a foundation for the connection between Indigenous difference and the residency requirement. Requiring VGFN leaders to reside on settlement land helps preserve the leaders’ connection to the land, which is deeply rooted in the VGFN’s distinctive culture and governance practices. It also bolsters the VGFN’s ability to resist the outside forces that pull citizens away from its settlement land and prevents erosion of its important connection with the land. Such interests are associated with various aspects of Indigenous difference. ... The Indigenous difference protected by the residency requirement is inextricably tied to the VGFN’s connection to the settlement land. (SCC Summary)

However, it is important to highlight that the decision was not unanimous—only four of seven justices agreed with this position. One of the seven justices (Justice Rowe) felt that the *Charter* should not apply to the VGFN Constitution—in his view the *Charter* only applies to federal, provincial and territorial governments in respect of matters within their authority.

While two of the seven justices (Justice Martin and O’Bonsawin) did not agree that s. 25 of the *Charter* should be used to create a *Charter*-free zone in the context of Indigenous self-government—ironically, one of these justices is the only Indigenous judge at the SCC. In support of their view that the residency requirement is discriminatory, these justices argued that the residency requirement was not necessary to the maintenance of the VGFN’s distinctive culture. They also had this to say:

[T]he residency requirement is discriminatory because it denies [Mrs. Dickson] the benefit of serving in government, which is a form of political exclusion that bars her from a core aspect of democratic participation and the opportunity to affect decision-making processes that impact her. This benefit is denied in a discriminatory manner because the residency requirement reinforces

the stereotypes that non-resident VGFN citizens are less worthy and entitled because they live off their traditional territory and that to be truly Aboriginal, one has to live on the reserve or the settlement land. This at the very least perpetuates disadvantage. Requiring a non-resident citizen to relocate to the settlement land to participate in community governance means requiring a person to change a constructively immutable characteristic. Such an illusory choice to move back to the settlement land is not relevant as a matter of law. (SCC Summary)