



# Governance Reform Project

## Consultation Report on the draft Election Law

**To:** Gimaa Kwe & Council;

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

**Date:** July 23<sup>rd</sup>, 2024

This document summarizes the feedback received from Citizens on the 2024 Governance Survey (herein after “Survey”),<sup>1</sup> six virtual Citizen working groups, one in-person Citizen working group sessions<sup>2</sup>, one Citizen information meeting<sup>3</sup> and the written consultation process that took place between May 9<sup>th</sup> through July 15<sup>th</sup>, 2024. The document identifies how that feedback from the Survey and working group sessions was integrated into the draft Election Law and Regulation that was circulated for written consultation (see the text in red).

This report also incorporates the comments received by contributors through the written consultation—the verbatim comments received during the written consultation are attached as Appendix B. Unfortunately, there were only two Citizens who offered their feedback on the draft documents during the written consultation period.

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<sup>1</sup> The 2024 Governance Survey was released through Survey Monkey on January 15<sup>th</sup> and open until March 1<sup>st</sup> and sent to every household of all eligible voters for whom the Nation had a mailing address along with a special newsletter explaining the nature of the Governance Reform Project and distribute via email to those individuals who elect to receive the Nation’s newsletter via email.

<sup>2</sup> Virtual meetings were held on February 25<sup>th</sup>, March 6<sup>th</sup> & 19<sup>th</sup>, April 3<sup>rd</sup>, 7<sup>th</sup>, and 14<sup>th</sup>; the in-person session was held in Sault Ste. Marie on March 23<sup>rd</sup>.

<sup>3</sup> Held in-person and virtually on May 9<sup>th</sup>, 2024, in Sault Ste. Marie.

## Citizen Working Groups and Information Sessions

The Citizen working groups were designed with focused engagement in mind. Participants were provided with background information in advance of the meeting and asked a series of questions to further explore some of the topics outlined in the Survey. However, the sessions functioned very fluidly and allowed for the participants to introduce and direct the flow of the discussion. As such, not all topics planned for the session were in fact discussed.

In total, 30 Citizens participated in the working group discussions dedicated to the topics in the draft Election Law and Regulation (this figure includes Council members who attended). Another 45 Citizens attended the Community Information Session dedicated to discussing the draft election law. It's not possible to determine with any precision how many of these 75 attendees were among the 113 survey respondents.

Attached to this report as Appendix A are the more detailed notes of the seven Citizen working group discussions and the notes from the May 9<sup>th</sup> Citizen Information meeting.

## Traditional Governance

The importance of traditional practices was discussed throughout many of the working groups sessions and generally the topic was introduced by the participants. There was a clear desire from participants for the reintroduction of traditional governance practices into the Nation's governance processes and documents. However, there was also a clear appreciation for the fact that most Citizens are not familiar with those practices or how they might function given the impacted of colonization, community displacement, and the *Indian Act*.

Participants in the working groups understood that there is a learning curve before we can return to a traditional form of governance. The Nation must foster opportunities for enhancing Citizen's knowledge of traditional governance through education and initiating community conversation to reclaim Michipicoten's traditions, customs, and culture.

This version of the governance documents should provide an onramp for the adoption of traditional governance practices and there should be a periodic review and revision to these documents with the goal of further incorporating traditional governance practices. At this point, that onramp will largely find itself in the policy framework since policy is more adaptable to change and adjustments as the Nation becomes reaccustomed to traditional governance.

There will be further discussion with Council on how to build out a policy framework around:

- Youth and Elders advisory council, and

- Developing a portfolio system that borrows from the philosophy of the clan system whereby portfolios can be assigned to the clan member who is most suited to the topics/tasks and the portfolio lead takes the lead over that topic.<sup>4</sup>

The governance documents, more specifically the codes of conduct, will bring in the seven grandfather teachings as the underlying values that inform how elected officials and candidates should conduct themselves.

## Robust Nomination Process

When asked whether Citizens were “satisfied with the current nomination process” (see Survey Question no. 6), the Survey responses indicated an overwhelming “yes”. However, the respondents also provided dozens of suggestions for how the nomination process could be improved (see Question no. 7), which contradicts the response to Question no. 6 of the Survey. Respondents also indicated a desire to implement certain eligibility criteria, such as:

- Nominees should adhere to a code of conduct during campaigning (see Question no. 8).
- Nominees should not be able to run for both the Chief and Councillor positions (see Question no. 9).
- Nominees should meet certain minimum eligibility requirements in order to run, namely: must be a citizen; meet a minimum age requirement; no outstanding debts to the Nation; a clean criminal record; demonstrated knowledge of Michipicoten’s history; and some understanding of Anishinaabemowin (see Questions nos. 10 & 11).
- Council members should reside within a certain geographical scope (see Question no. 12).
- Employees should not be able to sit on Council (see Question no. 13).

The *Indian Act* election process does not provide space for the establishment of eligibility criteria to form part of the nomination process. As such, a custom election process would be needed in order to follow through with the Survey feedback. The working group participants also echoed the importances of these eligibility criteria along with a desire to have more information about candidates so that voters can make an informed decision about who they are electing.

In addition to the eligibility criteria identified on the Survey, participants in the working groups raised further points about the nominations, including:

- Concern for the fact that the current nomination process allows individuals that are not contemplating a seat on Council to be put on the ballot with only a nomination and

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<sup>4</sup> It was shared during the April 3rd working group that there are 8 primary clans (seven, plus the turtle who is the head of the fish clan).

seconded and they stay there until they drop off themselves. If they drop off after the deadline, the candidate's name remains on the ballot and can split the votes.

- A suggestion that individuals who breached their code of conduct during campaigning or while holding an elected position, should be barred from running in the subsequent election.
- Prior to the nominations, there needs to be information disseminated about the role of Chief and Councillor and what's expected so that candidates know what they are signing up for.

Given this feedback, the draft Election Law and Regulation proposes a new process for nomination and campaigning whereby nominees must be vetted for eligibility before their candidacy is accepted and candidates could be prevented from holding office if they failed to adhere to the candidate's code of conduct (see draft Regulation at sections 4 & 5). The new process places the onus on the nominee to be deliberate about their nomination and gather all the required information and undertakings as part of their nomination package so that the process of vetting their eligibility is quick and the campaigning period can begin promptly.

The following summarizes the Citizen feedback on each of the eligibility criteria identified above, including feedback on the nomination process and candidate code of conduct and highlights how that feedback appears in the draft Law and Regulation documents (see notes in red).

## Candidate Eligibility

The only eligibility criteria that were discussed at any length were: minimum age to sit on Council, the criminal records check, residency requirements, and adherence to a candidate code of conduct. Below are the details of the discussion had during the working groups on these topics. The eligibility criteria that received support from a majority of Survey respondents were included in the draft Election Law (see Election Law sections 41 & 42).

### Minimum Age Requirement for the office of the Gimaa

The discussion focused mainly on the minimum age for the office of the Gimaa. Most Survey respondents chose 25 years of age instead of 18-years as a minimum age requirement and the working group participants largely agreed. The rationale was that by 25 years of age, people have some life experience that they can bring to the role. Ideally, they have also completed their studies and bring along some professional/working experience.

At least one participant suggested that the minimum age should be higher and offered 30 years of age as a reasonable minimum for the office of the Chief. While another participant felt that it should remain 18 years of age so as not to discourage young people from pursuing their leadership goals.

The minimum age requirement for the office of the Gimaa was set at 25 years of age and 18 years of age for the office of a Councillor (see Election Law sections 41(a) and 42(a)).

During the written consultation period, one contributor suggested that 18 years of age was too young for a Councillor, particularly since a dedicated Youth and Elders Advisory Council is being created as part of the policy framework. As an advisory Council, they will not have voting rights on Council motions but would provide Council with guidance on their decision making—possibly even influence when it comes to decisions that directly affect these demographics. Given this current approach to an advisory role for youth, it seems responsible to allow youth to run for elected Council positions where they would have a voting right, if elected.

### Criminal Records

There was a good amount of time dedicated during several working group sessions to discussing the requirement for a clean criminal record as part of the nominee's eligibility criteria. This topic was first introduced through the contributions of participants at the working groups who were expressing concern that criminal record check could work against the Nation by eliminating nominees who may have the requisite skills and experience for a leadership role. These participants acknowledge that adversity contributes to growth and individuals who have had to face hardship often have the skills desired in leadership. They also recognized that people heal and can overcome the challenges that led to the criminal behaviour.

Those who did not support the implementation of a criminal background check were concerned:

- That a criminal record check is a blunt screening tool that further perpetuates stereotypes about Indigenous peoples and demonstrates a lack of trust—one of the seven grandfather teachings—in our Citizens.
- That the discrimination, which exists within the criminal justice system and disproportionately impacts Indigenous peoples, is perpetuated by the need for a clean criminal record.
- With how criminal record information would be handled and whether the Nation has the ability to maintain confidentiality over the data nominees would be asked to be produced.
- That, as a screening tool, the criminal record check is ineffective since it does not actually speak to a person's character—not all criminals are convicted—and it is only a snapshot in time. As such, it creates a false sense of security.
- That a criminal record is unnecessary since the role of Council is governance and does not require them to personally provide direct services to vulnerable populations. In so far as a criminal history involving the mismanagement of funds, there are checks and balances built into the policy framework to reduce the risk of fraud by both the administration and the Council.

However, there were also those working group participants who strongly supported a criminal record check, in addition to the Survey respondents (see Survey Question nos. 10 & 11). The working group participants who supported the production of a criminal record check were of the view that:

- It reduces the Nations liability.
- It provides voters with some assurances, although limited, about a candidate's character.

- It enhances confidence in the Council.
- Preserves the integrity of the governance process by dissolving doubt on criminality.

Even participants who supported the need for a criminal record check also agreed that rehabilitation is possible and there should be some leeway given to individuals whose crimes were committed in the past. The timeframe of 5 years and 10 years were discussed as appropriate timeframes for rehabilitation. However, there wasn't clear consensus on whether these timeframes were agreeable. Some participants suggested that the circumstances leading to the criminal activity are also a factor to be considered, not just the lapse of time, suggesting that the process for vetting candidates would require some recounting of those circumstances.

Despite the expressed view that rehabilitation is possible, there was a clear consensus that certain criminal activities are unforgiveable, such as sexual offenses against children and crimes that cast doubt over the Council's financial accountability—such as fraud, money laundering, misappropriation of money held under direction, or corruption (defined as embezzlement, theft of corporate or public property, influence peddling, bribery, or extortion). This short list was distilled following several working group engagements on the topic of what kinds of criminal activity is tolerable versus intolerable but there was no clear consensus reached on a defined list.

There were further concerns raised about initiating a process for vetting a candidate with a criminal history, specifically:

- The fairness and equity of the nomination process becomes questionable since the process of vetting a criminal past introduces too much subjectivity and effectively becomes a second trial when the penalties for committing the crime may have been served.
- The insensitivity of process that “forgives” a person's criminal past because it does not take into consideration the view and needs of the victims of those crimes—who may well be Citizens also. In other words, it sends an untasteful message to the victims of these crimes who may still be healing.

After engaging in these discussions, the working group participants appreciated the difficulty of drawing lines between tolerable and intolerable criminal activity and how divisive and triggering these discussions are for the participants.

There were also participants who felt that a candidate has the option to seek out a pardon and clear a criminal record. The process of vetting could simply be eliminated if individuals with a criminal history were simply required to pursue pardon to clear their criminal record.

Even though there was no consensus among the Committee or Council, the approach adopted in the draft Election Law for consultation was to make a clean criminal record mandatory, except for convictions for non-violent crimes involving the exercise of aboriginal and treaty rights (see Election Law sections 41(e) and 42(e)). This approach requires potential nominees to seek a pardon and clear their criminal record before they can be eligible to stand for election.

During the presentation of the draft Election Law and Regulation on May 9<sup>th</sup>, 2024, this topic of criminal records was again discussed. A Citizen expressed their concern with the approach of

requiring a clean criminal record because it places a heavy burden on nominees and requires them to have the financial resources to seek out a pardon.

### Residency Requirement for Elected Council Members

The topic of a residency requirement was brought to several working groups. The Survey responses indicated a desire for a residency requirement, but the respondents could not agree on the geographical boundaries of that requirement (see Survey Question no. 12). The consensus reached during one of the working group sessions was that Ontario was an appropriate geographic boundary for a residency requirement.

However, a recent decision of the Supreme Court of Canada<sup>5</sup> found that a residency requirement built into a First Nation's constitution did infringe s. 15(1) rights of equality under the *Charter* but that the infringement was permissible since it 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 residency requirement set the “settlement lands”—equivalent to treaty lands—as the geographic boundary for that First Nation. The conclusions suggest that there must be a historic connection between the Nation to the geographical boundary that is set in order to survive a *Charter* challenge. As such, a more appropriate and defensible boundary would be the Nation's traditional and/or treaty territory.

The question of residency was deferred, and a placeholder was left in the draft Election Law that was circulated for consultation. However, the topic was brought back to the series of working groups dedicated to discussing the Chi-Naaknigewin held through May and June. During these sessions, participants were asked about whether the traditional or treaty territory was appropriate. Participants were split between their expressed desire for a residency requirement but also concerned about the practical implications of excluding 55% of the Nation's voting population from being able to run for Council—current demographic data shows that 40% of the Nation's Citizens reside in the traditional territory while another roughly 5% resident in the treaty territory in the areas outside the traditional territory. Nevertheless, there were some participants who felt strongly that elected officials should be resident within the traditional territory.

Most participants recognized the importance of elected officials having a connection to the residents at Michipicoten's Gros Cap Reserve since the elected Chief and Council are solely responsible for providing all services—from safety and health to infrastructure and housing. Garnering a deeper understanding resident's need requires a presence at the reserve and engagement face-to-face with residents. Most participants in the working groups also acknowledge that elected officials should have a connection to the traditional territory because the territory is the cornerstone of Michipicoten's nationhood, and the source of economic, cultural, and spiritual rights. But they did not necessarily feel that elected officials needed to be residents.

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<sup>5</sup> *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10

There was acknowledgment by some participants that the place of residence is not determinative of a person's knowledge of the traditional territory or the reserve. Citizens who may never have lived on the reserve can still have a deeper understanding of the area. Participants generally seemed satisfied to forgo a residency requirement within the text of the Chi-Naaknigewin with more emphasis on a connection to the traditional territory within the legal and policy framework.

This topic oscillated back and forth with a contingent supporting a residency requirement, more precisely in the traditional territory, and no residency requirement but with strict requirements of in-person meetings, leaving elected officials to bear the costs of that travel if their annual travel budget was exhausted.

The draft Election Law circulated for Citizen consultation left the residency requirement as a place holder but this will be removed all together given the working group discussions had subsequent to its release. In its place, emphasis will be put on a candidate's connection to the traditional territory in order to be eligible to run for Council. The governance policies will also reflect a meeting process wherein elected officials must maintain a physical presence within the traditional territory.

### Candidate's Code of Conduct

There was an expressed desire to have nominees adhere to a code of conduct throughout their campaigning period—this was reflected in the survey data as well as through the working group discussion. There was at least one participant who openly expressed that they felt that the code of conduct impeded the standard of campaigning that they felt was appropriate.

Most participants in the working groups were more concerned about candidates upholding Anishinaabe values, namely the seven grandfather teachings, throughout the campaign period and into their term of office for those who were elected. A draft candidate code of conduct was circulated to the working groups on two occasions, largely in the format **contained in the appendices of draft Election Regulation**. The evolution of the document focused on the criminal record check element—which is discussed above. The draft candidate code of conduct reflects both standards of behaviour and eligibility criteria for candidate.

### Consequences for violations during campaigning

The procedure for holding candidates accountable was discussed during two of the working group sessions and the discussion principally focused on what mechanism to employ to hold candidates accountable. The discussion began with a proposal to create an elder's council to whom candidate were accountable. Candidates would undertake an oath to adhere to the code of conduct before this elders council and the elders would be responsible for hearing complaints about breaches of the code of conduct. Consequences could include banning candidates from running in future elections. From here, the discussion veered towards the process for creating an elders council, since one does not currently exist at Michipicoten, as well as the characteristics of the elders who should sit on that council—which are discussed in more detail below.

Throughout these discussions, it became clear that the process for assembling an elders council would take time and it may not be the most suitable avenue for holding candidates accountable at this time. Some participants also expressed reasons why an elders council would be unsuitable for the task, namely concern about the objectivity of a community-based elders council given the strong likelihood of family ties as well as the practicability of having the elders execute the function without extensive support.

The draft Election Law and Regulation developed a process whereby a Grievance Officer, a role distinct from the Electoral Officer, would be responsible for receiving and deciding complaints about any breaches of the candidate's code of conduct.

## Council Composition & Terms of Office

### Council's Term of Office

Roughly 62% of Survey respondents indicated a preference for a term of office exceeding two years (see Survey Question no. 22). However, there was no clear consensus on whether a three- or four-year term was most appropriate. Nearly all working group participants acknowledged that a two-year term was too short for the Council to be effective but the lack of consensus on a three- or four-year term persisted throughout the several discussions.

Those who supported a three-year term indicated this preference because of:

- Efficiency – Council will be motivated to get work done in the shorter window.
- More likely to lose a Council members if the term is any longer than three years.
- More than three years is a long time to wait for the removal of a Council or individual Councillors who is not effective.
- The three-year term seems to work well for other Councils who have made the leap from the *Indian Act* two-year term.

Those who supported a four-year term indicated this preference because:

- It fosters a deep engagement and understanding of the issues faced by Council since many of the policy projects and large development projects span over several years.
- More effective advocacy and representation with the portfolios/issues because of a deeper understanding by the Council.
- Stability and consistency that a longer term fosters. It takes time for a Council to build a working relationship with one another and it takes time for the administration to build rapport with new Council members.
- A longer term avoids the pitfalls of campaign distraction.

- Other levels of governments and PTOs work on four-year term allowing our Nation's government to build/maintain relationships with their counterparts.
- The sacredness to the number four.

The draft Election Law incorporated the four-year term in the hopes that Citizens will provide their input if they feel it is inappropriate.

During the written consultation period, one contributor expressed a preference for a three-year term. They felt that this window is sufficient time to learn the roles and responsibilities and effectively carry out the Nations vision and strategic plan. However, this view is at odds with the contributions provided by sitting Council members during working group discussions. The points raised by Council members indicate a steep learning curve given all the projects, priorities and the diverse skills that a Councillor needs to develop, suggesting that more, not less, time is needed for new Council members to become oriented.

The participant also suggested that perhaps majority could be elected for a four-year term while the remainder sit for a two-year term. This suggestion seems to counter the stated goals of stability amongst the Council.

Nevertheless, these topics are worth further consideration given that the Citizen feedback is quite mixed.

#### Number of seats on Council

There were several questions on the Survey to inquire about the number of Council seats (see Survey Questions nos. 15, 16 & 25). Roughly 82% of respondents stated they are satisfied with the current number of Council seats – seven seats – but the majority of those who responded affirmatively also indicated that the seats should have some form of ratio to the Citizen population. Respondents also indicated that there should be some clear guidance on the number of Council seats rather than leaving the current Council with full discretion to decide how many Council members there should be.

When the question of the number of seats was brought to the working groups, there was recognition that the number of seats should correspond with need and the amount of work that Council is assigned. There was a suggestion that the number of seats should align with the number of portfolios—which currently numbers eleven.

However, further discussion led to the endorsement of nine Council seats as a maximum. The rationale being that it would be difficult to align everyone's schedule with a larger Council, decision making could be more difficult, and governance becomes more costly for the Nation.

The draft Election law attempted to find a comfortable balance between flexibility of allowing Council to set the number of Council members but fix a ceiling to a maximum of nine Council members (Chief plus eight Councillors) to provide the certainty that Citizens desire.

#### Filling vacancies

The Survey respondents indicated a preference for having vacancies filled by the candidate with the next highest number of votes (see Survey Question no. 23). However, the impracticality of that process became apparent once it was examined through the lens of the desired election process—i.e. candidates could only run for one position (Chief or Council) and candidates may make strategic choices; and the term could be upwards of four years and the likelihood of the next candidate even being willing to take up a vacancy more than a year or so on. There were also practical considerations—for example, the benefits of promotion from within Council for the office of the Chief to maintain continuity, or perhaps leaving a vacancy, particularly if the vacancy was for a short amount of time.

Participants during the working groups leaned towards a process whereby vacancies should be addressed through the most appropriate means – whether by-election, backfilled or left vacant—based upon the circumstances – i.e. term remaining, whether quorum could be maintained, whether there was an available candidate from the list of unelected candidates, etc.—arising at the time of the vacancy.

The draft Election Law incorporated the following procedures given the fact that it was proposing a four-year term of office (see Election Law sections 20-25).

- If the vacancy occurs within 90 days into new term for the position of: Gimaa, then filled by calling a By-Election; and Councillor, then filled by the next Candidate with the highest number of votes in the most recent election.
- After 90 days let the Council decide whether to promote or call a by-election.
- The Deputy Chief shall fill a vacancy for the Gimaa if the remainder of the term is less than a year.

The Election Law also outlines considerations for Council when exercising their decision-making power. The election regulation outlines a simplified process with reduced timelines for a by-election so that it may be concluded in about 80 days.

#### Grounds and Process for removing Council members

The Survey respondents indicated the following as appropriate grounds for the removal of an elected Council member (see Survey Question no. 27):

- Criminal conviction for violent crimes, fraud or drug related offenses.
- Failure to attend three consecutive meetings, except for a legitimate reason.
- Multiple breaches, at least two or more, of the code of conduct.

The process for removing Council members was brought to several working group sessions but did not receive a fulsome discussion, generally for lack of time. However, here is some of the guidance that was provided by participants during the April 7<sup>th</sup> session:

- Set clear grounds for removal that the Council member has agreed to before taking office. These grounds should hold leadership accountable when they don't come to meetings and are clearly unprepared for discussion.

- Council should be the body who votes another Council members off. There was one participant who expressed the view that a third-party committee should be the one to decide.
- An elder advisory council will be helpful for the Council in deliberating on a decision to remove a Council member.
- Third party investigation would be required to determine whether the facts can be established as a matter of procedural fairness.

The draft Election Law simply refers to the consequences of being removed from Council (see Election Law, Part 7). The grounds and the process for removing Council members will be incorporated into a separate regulation or policy framework.

#### Reserved Council seats on for Residents of Michipicoten's Gros Cap Reserve

Roughly 62% of Survey respondents identified a preference for dedicated seats on Council for residents of the Gros Cap No. 49 Reserve (see Survey Question No. 14). When this question was brought to the working groups, only one participant suggested that there should be at least one seat on Council that is dedicated for a resident of the reserve. All other participants expressed concerns about a framework that allocated dedicated seats to residents who were nominated for a Council position. Those concerns were expressed as:

- The pool of candidates among the residents is quite small, particularly since the Community Trust operates with a board consisting of mainly residents and members of that board cannot also sit on Council.
- The desired eligibility criteria for the redefined electoral process may make that pool of residents even smaller.
- A large number of candidates who ran in the last election (19 out of 23) were non-residents.
- What happens if there are no candidates who are residents to fill any resident dedicated seats.

Participants felt that it was adequate to require the person elected as Chief to relocate and take up residency on the reserve. In addition, consideration should be given to the following:

- The oath of office for Council members should reflect an explicit undertaking to represent the voice of all Citizens, both on and off the reserve.
- A policy framework could be developed whereby a Councillor(s) has the dedicated role and responsibility of bringing residents voice to the Council table. Either as a portfolio, or community liaison function.
- Establish an advisory role for a resident during any terms where no residents achieve sufficient votes to be elected as a Council member.
- The Deputy Chief could also be required to take up residency on reserve.

At this stage, the office of the Chief is being considered as the dedicated residential seat and this requirement would be built into the governance policies and procedures. There remains an open question as to whether the Deputy Chief must also be resident at the reserve that will need further discussion by Council.

### Dedicated housing for Council Members

The question of dedicated housing for Council members arose ancillary to the conversation on whether there should be dedicated seats on Council for residents. Working groups participants responded that there should be housing for the office of the Chief, since they are expected to be resident at the reserve and housing is in short supply. However, there should not be dedicated housing for the Council member positions.

There remains an open question as to whether the Deputy Chief must also be resident at Michipicoten First Nation. As such, there may also need to be further consideration given as to whether the Deputy Chief should also be provided with dedicated housing.

### Council Portfolios & Working Council

One participant offered a suggestion of having full-time remunerated Councillors positions. This would operate through a portfolio system where the Councillor would act as the administrative lead—e.g. Chief operates as the Executive Officer. This will be taken back for consideration as part of further discussions on the governance policies and procedures.

### Aanikeogimaa - Deputy Chief

When Citizens were asked about the creation of a position for a Deputy Chief on Council, roughly 67% indicated their support for the position (see Survey Question no. 18). The question of whether that position should be elected or appointed was discussed during working group sessions and most participants agreed that it should not be an elected position. During the working group discussions, participants canvassed varying options such as:

- A separate position on a ballot for citizens to elect as Deputy Chief.
- The Councillor with the highest number of votes should take up the role.
- The Council should appoint from among the elected Councillors.
- The Gimaa should be allowed to decide who among the elected Council members should be appointed but certain conditions should be established as to how that discretion is exercised.

The chosen path was to allow Gimaa to select the Deputy Chief, however section 64 of the draft Election Law outlines certain conditions for how that discretion should be exercised.

The reasons for choosing this path is because the Deputy Chief is meant to serve as the right hand of the Chief, taking on tasks that the Chief is unable to attend to. The Deputy Chief should act as a confidant and someone whom the Chief can lean on for guidance. As such, there must be a relationship of trust between the Deputy Chief and Chief. Participants also recognized that the role of Deputy Chief would be demanding and there may be a desire for a seasoned Council member to take up the function.

The Deputy Chief should also be a willing participant and able to take on that role. At the moment, the Councillors with the first highest and second highest number of votes are not willing to take on the function and this may also be the case in the future.

### Role and responsibilities of the Aanikeogimaa - Deputy Chief

Participants also offered their feedback on what the Deputy Chief's role should be, which can be distilled as follows:

- The Chief should have a broader outward looking focus while the Deputy Chief is tasked with providing guidance on the day-to-day.
- The Deputy Chief should not be so involved in the day-to-day administration so as to usurp the function of the Executive Officer or the Management Team.
- Deputy Chief would act as chairperson when Chief is not available or stand in for the Chief at official functions.

The main point raised is that there must be a clear outline of the responsibilities of the Chief, Deputy Chief, and Councillors and who is accountable to whom. Further discussion will be needed on the role and function of the Deputy Chief, the decision on whether it's a full-time function and where the Deputy Chief resides can be discussed.

### Youth and Elder Council, role and responsibility

There was an expressed desire from the Survey respondents (see Survey Question 20) and the working groups discussion for a more prominent role for the Nation's Youth and Elders in governance. Participants in the working groups discussed the role as the custodians of traditional protocol and collective wellbeing.

However, there does not exist a collective body of Youth or Elders who come together regularly and a recognition that time will be needed to foster the interest and willingness of these demographics. Nevertheless, there is a strong desire to bring these demographics into the governance circle.

### Role and Responsibilities of Youth and Elder Council

The main reason for having representative from the Nation's youth and elder demographic is to enhance the diversity of views on Council and to ensure that all demographics are being represented. Participants in the working group agreed that youth and elder representatives should have some form of decision-making capacity and not be relegated to only symbolic function. Responsibilities could include: overseeing programs and services catering to the needs of their respective demographics within the community, decision making over allocate resources to elder care and other youth initiatives, use in conflict resolution and mediation, and overseeing cultural protocols, including point of procedure on decision making.

While there seemed to be harmony among the participants in terms of the responsibilities of the Youth and Elders, there was no consensus among participants about how they would execute that role—as part of the Council proper or a distinct Council. Instead, the feedback focused on the following:

- As elected members of the Council, the Youth and Elders should make up at least two of a seven-member Council or four out of a nine-member Council to find balance and diversity among the Council. As elected officials, their responsibility is to weigh in on decisions with the lens of the demographic they represent and have authority over the Council's deliberation process to ensure that the demographic they represent are apprised of what Council is doing and bringing their voice forward. Youth would be a junior chief, which would offer that position the much-needed mentorship opportunities. The elders' function would be akin to a Deputy Chief to steward the decision-making process through a traditional lens to decide when the Council adequately deliberated and could make a decision on a matter.
- As a combined Youth and Elders Council.
- The Youth and Elders Council should only function in an advisory capacity at this time since there needs to be worked through how to assemble this Council and identify whether and how many individuals are interested in taking up this function. Some of the suggestions for how to form an Elders Advisory Council included:
  - A call for nominations to endorse a candidate for a position on the Elders Council or an Elder may put their name forward themselves, which includes a letter of endorsement. The Council would be responsible for selecting who would form part of the Elders Council based upon whether those individuals meet distinct qualities outlined below.
  - Chief and Council should, as a collective, decide who should sit on the Elders Advisory Council.

Note: there was no specific discussion on how to nominate/appoint Youth to an advisory Council. However, there was mention of creating a youth coordinator position within the administration whose role it would be to steward and coordinate Youth mentorship opportunities.

- Creation of an Elder Election Council whose function is to oversee the election process, such as: vet nominees for eligibility, vet candidates who were previously banned for their fitness to stand for election, decide whether there were violations of the code of conduct. This Council could be a subcommittee of the Elders Council. However, until a Council of Elders can be established, the responsibilities of vetting nominees and deciding violations of a code of conduct will fall to the Electoral Officer and Grievance Officer—their responsibilities in this regard are outlined in the draft Election Regulation at Parts 4 & 21.

### Defining the Qualities on an Elder

The qualities of an Elder were described by working group participants as follows:

- Age is not a factor. There is no age limit or threshold to become an Elders but not all old people are Elders.
- Genuine/authentic humans that carry a palpable kindness in their being that personifies pure love, which can be felt by being in their presence.

- They have a deep understanding of the seven grandfather teachings and live by those teachings of honesty, love, respect, humility, courage, wisdom and truth in their day-to-day.
- They have a deep understanding of Anishinaabe culture and traditions and an openness to share and teach others about the knowledge they carry.
- Deep understanding of Michipicoten First Nation's history and traditions.
- They are role models who have experienced life's hardships. They are open to sharing their trials and tribulations and the life lessons to be learned.
- Elders are kind, selfless, humble and committed to serving others for no reason; not motivated by the promise of an honourarium in exchange for their knowledge.
- Elders can walk in both worlds without putting down the other side.
- Someone who has no prejudice or judgment in their heart and sees people for whom they are, people.
- Someone who has earned the respect of the community.

Some participants offered the names of individuals that they felt met most of these criteria. However, it was not clear whether these individuals meet the qualities that participants outlined. Further discussion would be needed to develop eligibility criteria for the individuals who can sit on the Elders Council and defining the process for appointment to the advisory council.

### Defining Youth Eligibility

The age category of 18-28 was thrown out as a number without any real conversation about why this is an appropriate age range. It was also suggested that there should not be a minimum age. Instead, any capable and interested Youth should be given the opportunity to take up a position as a youth representative. But if a youth was selected that wasn't 18 years of age, they wouldn't have a vote for any decision making but still could have a voice in deliberations.

There was no discussion as to whether there are other criteria that should be established for eligibility—e.g. must be enrolled/attending schools; must be literate; etc....

### Other topics related to Youth and Elders' Council

Other topics that were raised in the context of the Youth and Elders Council were:

- Incentivizing participation since the role may require a great deal of effort.
- General uncertainty around whether it is feasible to recruit individuals to take up these roles on a Youth and Elders' Council, particularly given the stringent criteria used to define an elder and the fact that the Nation's demographic is largely an older population.

Given the general concerns, it was decided that it would be prudent to stick with developing a process for appointing and defining the roles and responsibilities of a Youth and Elders Council in

the policy framework, where the process could be adapted as engagement with Youth and Elders progresses and the Youth and Elders Council is developed.

## Calling Elections

One contributor during the written consultation was concerned by the authority that the Executive Officer exercises in calling an election where a quorum of Council cannot be established—see Election Law, sections 28 and 55. These responsibilities are assigned to the Executive Officer to ensure that an election can be called in the unlikely event that the majority of Council seats become vacant, and quorum can no longer be established to call an election. This approach was adopted since the Executive Officer has a responsibility for ensuring good governance and that the Nation can execute its function. The scenario where the Executive Officer is intended to take up the responsibility for calling an election could likely be at a time where there is a fractured and/or dysfunctional Council.

The alternative would be to allow the remaining Council to call the election but to set out strict deadlines for when the election must be called before the Executive Officer exercises that function. This topic will be brought back for further discussion with Council as the draft regulation is refined.

## Election Appeals Committee

The Survey was split between an impartial committee and a community led process for hearing election appeals. There was not a lot of discussion during working groups on the topic, even though it was presented as a topic for discussion on numerous agendas. However, one participant shared their experience of acting as an electoral officer for First Nation elections. The appeals process for those First Nations consisted of a three-person panel—one member from the community, one non-member but Indigenous, and one arm's length businessperson. This approach seems to blend both a community led and impartial process.

As such, the draft Election Law (see Part 5) reflects the approach of a three-person blended panel. The process for vetting objections is laid out in the draft Regulation (see section 22).

This participant also stated that, in their experience, there was a fee required as part of the appeal. As such, it eliminated the likelihood of frivolous appeals, and the fee deferred the cost of the election.

## Election Costs

Throughout the working group and Citizen information sessions, Citizens expressed concern around the cost of managing their own elections. Citizens were informed that ISC does not provide specific funding for elections—in other words, elections are already self funded. However, the process outlined in the election law and regulation would be far more elaborate.

## Accessibility to the Election

During the written consultation period, one contributor offered suggestions on how to improve the in-person voting process for Citizens with disabilities—namely individuals who are non-verbal—by allowing a support person to mark their ballot. The proposed changes would enhance accessibility. The draft Election Regulation will be revised to allow for a support person to mark a ballot and will incorporate a draft oath of confidentiality for the support person.



## February 25<sup>th</sup> - Discussion Summary

To: Election Law – Working Group

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

Date: March 4<sup>th</sup>, 2024

The following is a summary of the Election Law Working Group discussion held on February 25<sup>th</sup>, 2024. This memo also incorporates the feedback participants provided in the Zoom Chat function. Most participants expressed their desire to retain the recording for the session for note-taking purposes but did not want the video to be posted publicly. As such, I will endeavor to provide detailed memos of the sessions that contain my understanding of the discussion so that the sessions can be shared with citizens who were unable to attend. The full recording will be retained as confidential to the Special Projects Committee for reference purposes.

In attendance at the February 25<sup>th</sup>, 2024, session were the following participants:

April McGie

Peggy Rice (attended a portion of the meeting)

Gimaa Kwe Patricia Tangie

Dan Beaupré

Rachelle Philippe

Sandra Donny-Fraser,  
Committee Member

Diane Gaudet

Victor Gascon

Irene Armstrong,  
Committee Member

Jim St. Germain

Will Morin

Kenna DuFresne

The session only covered one of the four topics planned for discussion—the power point slides that were presented are attached to this memo as Appendix A. Also attached to this memo as Appendix B is the background information memo that was emailed to those individuals who indicated, by

email to michipicoten@michipicoten.com, that they would be attending the February 25th, 2024, session.

## Standards for a Code of Conduct for Nominees

The session began with a discussion of a code of conduct for nominees that focuses on acceptable behavior and standards for individuals running for elected positions. The goal of the election law is to build out a framework that establishes a code of conduct for nominees along with procedures for implementing and enforcing it. Overall, the group expressed the view that candidates should be required to demonstrate respect for all individuals, including opponents, community members, and electoral officers, throughout the campaign process.

The proposal is to incorporate the seven grandfather teachings—humility, bravery/courage, honesty, wisdom, truth, respect, and love—as the foundational principles that guide the standards of behaviour for nominees. Incorporating Anishinaabe values into council governance is essential to designing a process that is representative of Anishinaabe culture and teachings.

There was also a suggestion that a candidate’s social media history should be vetted since it speaks to their character.

**Action: Jessica Labranche to translate the seven grandfather teachings into a code of conduct for nominees and circulate a draft code of conduct for discussion at the next working group meeting.**

While the focus of discussions was on a code of conduct for Candidates during nomination and campaigning process, some participants raised their views on a code of conduct for elected Councillors, such as:

- Forgoing your self interest in favour of the collective,
- the importance of attending meetings, and
- being prepared for meetings,

The code of conduct for elected Councillors should also incorporate the seven grandfather teachings as its foundational principles for guiding councillors’ conduct while they hold office.

## Elders Council

On the question of a framework for making determination on whether there are violations of a code of conduct, there was a clear leaning towards the establishment of a committee for this task. Discussion focused on the creation of an Elders council since it brings elders back into their central role as custodians of tradition and valuable contributors to the collective wellbeing of the Nation.

The Elders Council could be composed of either Michipicoten elders, who are not participating in the election or sitting on Council, or a combination of Michipicoten elders and non-citizen elders. Their role could be to:

- vet the nominees using an objective standard to evaluate whether their name could be on the ballot.
- vet candidates who were banned from the electoral process to determine whether they have reformed.
- determine whether there was a violation of the code of conduct and what the penalties would be for that violation.

**Action: Participants were asked to consider how to create the Elders Council and what criteria would be used for electing/nominating individuals to the Elders Council.**

## Consequences for candidates violating nominees code of conduct

The suggestions where varied. Some proposed banning candidates from running again indefinitely or for a time period if their behavior was uncalled for and inexcusable. Concerns were raised about giving people a chance to heal and improve themselves before being banned from running again. There is a recognition that people are constantly challenged in life and should be given an opportunity to grow. Instead of having strict rules that prevent people from running for office, the Elders Council could evaluate whether candidates have reformed from past band behaviour and can sit for elected have criminal records and determine if someone can move forward.

The topic of consequences will need to be revisited and further fleshed out.

## Criminal Records

There was a good amount of discussion on the impact of a criminal record on a candidate's ability to run or get elected. After some discussion, there was a leaning among the group that a criminal record is not determinative of eligibility.

There was a general sentiment that not all crimes would lead to the ineligibility of the candidate. Certain crimes are not behaviors that put other people at risk while other crimes do highlight behaviors that are inconsistent with the responsibilities of an elected councillor. For example fiscal responsibility is a huge part of Council's role and individuals found guilty of fraud, embezzlement, or theft may be ineligible to hold office.

There was also a sentiment that the passage of time between the crime and the candidate's nomination/election – 5 or 10 years as an objective standard – may be used to evaluate whether a candidate's criminal history should become a factor for eligibility.

Some emphasize the importance of evaluating individuals on an individual basis, taking into account the circumstances surrounding their criminal record and their ability to demonstrate that they have rehabilitated.

There were sentiments expressed that criminal records can come back to haunt people, possibly unfairly. There was a discussion as to whether a criminal record check was necessary at all. There was no resolution to that discussion since the session was ended on time.

## Feedback received following the session:

After the session, further input was provided on some procedural aspects to the candidate nomination process that focuses on having all nominations put forward in advance of the nomination meeting so the nominees can be vetted by the Election Elder Committee in a timely manner. Then the candidates that have been nominated and seconded, have already been vetted by the committee. Should they accept the nomination, the candidate should make a declaration to the committee and membership present (live in person & virtually on zoom) that they will honour the values of our ancestors through the Seven Grandfather Teachings, in accordance with the conditions and requirements set out by the code of conduct.



# **Governance Reform Project**

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**Election Law Working Group**  
**February 25, 2024**  
**Prepared by**  
**Jessica Labranche**  
**Committee Advisor**  
**Special Committee on Governance**

## Code of Conduct for Nominees

Candidates must campaign:

- respectfully towards other Candidates and their supporters and organizers.
- with integrity by focusing on political issues and Candidate platforms and avoiding any smear campaigns, rumors, gossip or innuendo.
- without coercion or vote buying or bribing.
- non-violently, without intimidation, harassment, the use of duress, or any type of threat or promise against fellow Candidates, any of their supporters, or any voters.
- by co-operating fully with the Electoral Officer and Deputy Electoral Officer and the Election Appeal Committee, following all lawful directions and requirements of each and not interfering with any of them in the performance of official duties.
- Accept the results of the election or challenge the result through the channels of appeal provided for under the election law. Consequences for failing to do so may carry over into the next election/campaign cycle by disqualifying a Candidate from nominations.

**Consider what kinds of standards you would like to see in a code of conduct for Candidates who are campaigning in Michipicoten's elections.**

## **Consequences for Violations of a Code of Conduct for Nominees**

- Warning or Reprimand
- Apology or Correction
- Financial Penalties and Fines
- Removal from the Campaign/Ballot

**Consider whether there should be varied approaches or degrees of penalties for Candidates who violate a code of conduct and what the consequences might be in relation to the alleged violation.**

**Consider what framework for addressing violations that align with the Nation's values and whether the individual(s) appointed to resolve allegations are citizens of the Nation or arm's length.**



## 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 February 25<sup>th</sup>, 2024

The purpose of this document is to provide participants with some information to consider before engaging in discussion during the February 25<sup>th</sup>, 2024, Election Law 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.

### Code of Conduct for Nominees

There are many reasons why a code of conduct would be important, for example:

- It sets clear expectations for behavior among candidates. This helps maintain the integrity of the campaign and creates a safe, respectful and professional space for candidates.
- It holds candidates accountable for their actions and provides a framework for addressing any violations of the code. This helps maintain discipline within the campaign team and ensures that everyone is held to the same standards.
- It helps build trust with voters and demonstrates a commitment to open and honest communication.

Standards for the code of conduct may be that Candidates must campaign:

- respectfully towards other Candidates and their supporters to campaign and organize.
- with integrity by focusing on political issues and Candidate platforms and avoiding any smear campaigns, rumors, gossip or innuendo.
- without coercion or vote buying or bribing.

- non-violently, without intimidation, harassment, the use of duress, or any type of threat or promise against fellow Candidates, any of their supporters, or any voters.
- by co-operating fully with the Electoral Officer and Deputy Electoral Officer and the Election Appeal Committee, following all lawful directions and requirements of each and not interfering with any of them in the performance of official duties.
- Accept the results of the election or challenge the result through the channels of appeal provided for under the election law. Consequences for failing to do so may carry over into the next election/campaign cycle by disqualifying a Candidate from nominations.

**Consider what kinds of standards you would like to see in a code of conduct for Candidates who are campaigning in Michipicoten’s elections.**

In considering consequences for violating the code of conduct from Candidates during campaigns, they can be varied, such as:

- Warning or Reprimand: For minor violations, a Candidate may receive a warning or reprimand. This serves as a reminder of the expected behavior and can help prevent future violations.
- Apology or Correction: In some cases, a Candidate may be required to issue a public apology or correction for their actions. This helps mitigate any harm caused by the violation and demonstrates accountability.
- Financial Penalties and Fines: a Candidate may be required to pay a financial penalty, whether as a stand-alone consequence or in combination of some other consequences (such as reprimands or apologies).
- Removal from the Campaign/Ballot: a Candidate may be removed from the campaign altogether. This is typically reserved for serious violations that have caused significant harm to another Candidate, supporter, voter or the Nation’s image.

**Consider whether there should be varied approaches or degrees of penalties for Candidates who violate a code of conduct and what the consequences might be in relation to the alleged violation.**

Final step in developing a code of conduct is developing a framework for addressing any violations of the code. Typically, there would be an ethics committee established or adjudicator appointed to receive, investigate, and resolve allegations of misconduct.

**Consider what approaches best suit the Nation’s values and whether the individual(s) appointed to resolve allegations are citizens of the Nation or arm’s length.**

## Residency Requirements for Elected Officials

Residency requirements for elected officials are seen as a way to promote accountability, ensure effective representation, and strengthen the connection between elected officials and the community they serve. There are several reasons why a residency requirement for an elected official is considered appropriate, such as:

- Residency requirements ensure that elected officials have a direct connection to the community and territory they represent. This can help ensure that officials are familiar with local issues and concerns.
- By requiring elected officials to live in the area they represent, residency requirements make officials more accessible and accountable to the citizens they represent.
- Residency requirements can prevent individuals who are remote from the community from running for office solely for political gain or personal ambition, without a genuine commitment to serving the community.

While Michipicoten First Nation's Citizens are spread out across provinces and continents, their Nationhood status is tied to a defined territory located around the Gros Cap, Dog Lake and Chapleau reserves. To further complicate this question of residency requirements, there is case law that lends itself to support Charter challenges for residency requirements set out by a First Nation and there is a chance that Indigenous Services Canada may not approve Michipicoten's Election Law if there are residency requirements built into the Law.

- 1. Consider how to define "resident" – someone who resides on any reserve land base? Someone who resides within the Nation's traditional territory? Someone who resides within a 200/300/500-kilometer radius of any of the Nations reserve land bases?**
- 2. Consider whether there should be residency requirements for the Chief as distinct from Councillors.**
- 3. Consider alternatives to residency requirements, for example, fixed number of visits to the community per year, exceptions for extenuating circumstances, etc.**
- 4. Consider whether there should be one or two seats on Council for Candidates who are "non-residents".**
- 5. Consider whether the Election should include provision for residency, regardless of what the Courts or Indigenous Services Canada have to say about the residency requirements.**

## Appendix B

### Composition of Council

Diversity on an elected council is important for several reasons:

- A diverse council is more likely to reflect the demographics of the community it serves. This can lead to more inclusive and representative decision-making that considers the needs and perspectives of all community members.
- When a council is diverse and representative, community members are more likely to trust that their interests are being considered in decision-making processes. This can lead to greater confidence in the council and its decisions.
- Diverse groups tend to make better decisions than homogeneous groups. By including a range of perspectives, a diverse council is more likely to consider a broader range of options and make decisions that benefit the whole community.

### Consider how we can build diversity into Michipicoten First Nation's Council?

### Grounds for Removal of Council members

Some of the common grounds for the removal of elected officials include:

- Incapacity: If an elected official becomes physically or mentally incapacitated and is unable to perform their duties, they may be removed from office.
- Abuse of Power: If an elected official abuses their power or engages in corrupt practices, they may be subject to removal from office.
- Violation of Law: Elected officials can be removed if they are found guilty of violating specific laws or regulations governing their conduct in office.
- Violations of the Oath of Office: Elected officials can be removed for misconduct when they violate their oath of office.
- Conflict of Interest: Elected officials may be removed if they have a conflict of interest that prevents them from impartially performing their duties.
- Neglect of Duty: Elected officials can be removed for neglecting their duties or failing to perform their official responsibilities.

Of these grounds, there may be some that warrant an immediate removal following a finding that an allegation is true. However, some of these grounds may require a progressive approach to discipline.

Consider whether there should be varied approaches or degrees of discipline for elected Councillors who meet the identified grounds for removal.

Consider what the framework should be for reporting, investigating, and resolving allegations that an elected Councillors has conducted themselves in a manner that warrants discipline.



## March 6<sup>th</sup> - Discussion Summary

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

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

**Date:** March 21<sup>st</sup>, 2024

The following is a summary of the Election Law Citizen Working Group discussion held on March 6<sup>th</sup>, 2024. This memo also incorporates the feedback from Citizens who were unable to attend the virtual working group session but wanted to provide input on the topics being discussed. The session was recorded for the purposes of creating 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 March 6<sup>th</sup>, 2024, session were the following participants:

April McGie	Chad Edgar, Councillor	Linda Peterson, Committee Member
Kenna DuFresne	Christine Lewis, Committee Member	Sandra Donny-Fraser, Committee Member
Robin Joannis	Irene Armstrong, Committee Member	
Chris Nelson		

The session carried on the conversation of nominations with a focus on the Elders Council and nominee eligibility criteria. Attached to this memo as Appendix A is the background information memo that was emailed to the Governance Reform Project Citizen listserv prior to the March 6<sup>th</sup> meeting.

## Nominations and Candidate code of conduct

The nomination process envisioned is one wherein Candidates are nominated and endorsed through formal letters of endorsement (at least two) explaining why the Candidate is suitable for the leadership role—whether Chief or Councillor. These letters of endorsement could be a template or guideline in order to outline the kinds of things that voters want to know about a Candidate. These letters of endorsement become part of the public record that is shared with voters. If the Candidate accepts the nomination, they will sign off on the code of conduct and undertake the commitments outlined in the code of conduct before the Elders Council.

There was expressed support at the prior working group session for the implementation of a code of conduct as part of the nomination process. Nearly 90% of respondents to the Governance Survey also supported the idea of instituting a code of conduct during the nomination process. A draft code of conduct was circulated by email in advance of the March 6<sup>th</sup> working group session. There was a brief overview of the standards set out in the code of conduct. However, limited feedback was given by the participants on the contents of the draft code of conduct—except for the discussion on criminal records captured below—and the conversation turned to the topic of who would enforce the code.

## Enforcement of the Candidate Code of Conduct

In prior working group sessions, participants expressed a desire to have the Elders Council serve as the body that would hold Candidates accountable and dispense consequences for failing to adhere to the code of conduct. As facilitator, I informed the group that laying out a framework for consequences would require a level of subjectivity in the decision making since there is no way of clearly defining all actionable wrongs and their defined consequence. Rather, it would be a set of guidelines for the Elders Council to follow but the decision on whether there was a violation and what consequences to impose would remain theirs.

There were also concerns expressed about the objectivity of a community-based Elders Council and their ability to make decisions about nomination, code of conduct violations, and appeals given the strong likelihood of family ties.

There were expressed concerns about the practicability of having the Elders Council execute the function, of vetting candidates and enforcing violations, in part because there was not a clear picture about who would make up this Elders Council.

## Process of Creating an Elders Council

I presented the committee with the responses received on the 2024 Governance Survey regarding the creation of a Youth & Elders Council where Citizens expressed a leaning towards an elected

process for the creation of these types of Councils or for the selection of Youth or Elder representative sitting on Council—see Appendix A, Question 20 for the survey results on the creation Youth and Elders representation. The responses to this question may be used to extrapolate an endorsement by Citizens for an elected process for the creation of an Elders Council.

The conversation around the creation of an Elders Council evolved. Initially, the suggestion was to put the word out there to let people know that Michipicoten is interested in establishing an Elders Council to help advise the Chief and Council. Citizens would be asked to endorse a good Candidate for a position on the Elders Council or an Elder may put their name forward themselves. In either case, a letter of endorsement would be required. The Council would be responsible for selecting who would form part of the Elders Council based upon whether that individuals meet distinct qualities outlined below.

Participants also suggested that the Chief and Council should, as a collective, decide who should sit on the Elders Council.

Note: these above suggestions on the process for creating an Elders Council were largely aimed at the creation of an Elders Advisory Council for Chief and Council but not necessarily for the creation of an Elders Election Council.

I suggested that perhaps the Elders Election Council could be a subgroup of the Elders Advisory Council and the Elders themselves would decide based upon who was running in that election—Elders with family ties to Candidates would have to step down. The conversation on the creation of a community base Elders Election Council seemed to be stifled by the sentiment that it is impractical to form an objective Elders Election Council.

## Defining an elder and their qualities.

The participants were asked to define the qualities of an Elder and they contributed the following:

- Elders are genuine and carry a palpable kindness in their being that personifies pure love, which can be felt by being in their presence.
- They have a deep understanding of the seven grandfather teachings and live by those teachings of honesty, love, respect, humility, courage, wisdom and truth in their day-to-day.
- They have a deep understanding of Anishinaabe culture and traditions and an openness to share and teach others about the knowledge they carry.
- To be a Michipicoten Elder, they have a deep understanding of Michipicoten First Nation.
- They are role models who have experienced life and its hardships. They are open to sharing their trials and tribulations and the life lessons to be learned.
- Elder are kind, selfless, humble and committed to serving others for no reason; not motivate by the promise of an honourarium in exchange for their knowledge.

- Elders can walk in both worlds without putting down the other side.
- Someone who has no prejudice or judgment in their heart and sees people for whom they are, people.
- Someone who has earned the respect of the community.
- Age is not a factor. There is no age limit or threshold to become an Elders but not all old people are Elders.

Several names were raised in the course of this discussion, such as Bill Swanson, Myrtle Swanson, Verlyn Robinson-Edgar, and Rachelle (??) were identified by some participants as representing values incumbent of an Elder.

## Appeals Committee

An experience was shared by one of the participants who acted as an Electoral Officer in the past about the appeals process for those communities. The appeal committee was made up of three people: an elder from the community, an elder from another community, and a businessperson from a non-Indigenous community. They would hear the appeals and make a decision on the appeal, but their role was not to vet who was able to run for Council. Anybody that wanted to appeal an election outcome would have to pay \$250 and \$500.

## Costs of the conducting Elections Election

There were questions about where the funds for running an election come from. Indigenous Services Canada (ISC) provides approximately \$250,000 annually to support the Nation's governance. These funds are wholly inadequate since they must cover Chief's remuneration and Councillor honourariums, travel, administrative and technological supports, strategic planning initiatives, functions of Committees, communications, elections, etc.

If the Nations decides to adopt its own Election Law, they would be opting out of the *Indian Act* and the limited supports that are provided from ISC—which is narrowly limited to the administration of election appeals. Under its own Election Law, the Nation would be responsible for funding any Youth & Elders Councils (whether advisory or elected) that might be established, an Elders Election Council, Electoral Officers, the Election Appeals Committee and any communications that are produced and circulated through campaigns.

The Nation reimburses employees who have to produce criminal record check for their employment, and it was suggested that they could also reimburse Candidates for their criminal record and vulnerable sector checks. However, there was a view expressed that Candidates should be responsible for incurring those expenses as part of the process—in lieu of paying a fee to run.

## Criminal record checks

The group discusses again the idea of requiring a criminal record check as part of Candidate eligibility. At a prior working group meeting, there was a view that it is unfair fair to hold past mistakes against someone for an indefinite future. Consideration for the fact that Indigenous people face a biased justice system, with longer sentences for crimes, must also weigh into a decision on the requirement for criminal record checks. It's unclear how this bias impacts the process of requesting pardons. Concerns were raised about introducing subjectivity into the process of vetting Candidates with criminal records as well as concerns with maintaining confidentiality over documents that required disclosure.

The general consensus of this group was that criminal record checks were still desired, with one participant expressing that they preserve the integrity of the governance process by dissolving any doubt about the potential for criminal behavior of the Council.

Ten years (10) was endorsed by some as a recommended time frame for rehabilitation—in other words, charges that date back to ten years or prior would not merit disqualification of a Candidate. Participants offered the following as list of crimes that cannot be forgiven:

- Sex Offenders.
- Fraud and other financial crimes.
- Intimate Partner Violence – although not all participants fully supported this item as an inclusion to the list.

## Feedback provided outside the session:

Following the meeting, I proceeded to apply for a criminal record check (CRC) to validate the process and identify any challenges. At the time of the application, there was a notice posted on the website indicating that application processing was 3-4 weeks. At the time of releasing this memo, the results from that CRC are still pending. As such, the timeline for nominations would need to be sufficiently robust to allow for the results of the CRC to be returned to the Candidate, if there is a requirement to produce it.

The following email was received from a Citizen regarding: “Concerns Regarding Criminal Checks for Chief and Council Nominees”

Dear Members of the Election Law Working Group,

I hope this email finds you well. I am writing to express my concerns regarding the proposal to implement criminal background checks for nominees for Chief and Council positions on the Michipicoten Band.

While I understand the intention behind this proposal, I believe it is important to consider the potential consequences and implications of such a decision. Implementing criminal background checks could have a significant impact on our community and the way we govern ourselves.

Firstly, I would like to highlight that requesting criminal background checks for Chief and Council nominees goes against our traditional ways and values. It sends a message that we do not trust our community members to uphold our laws and principles without external validation. This is a poor reflection of our governance practices and could erode trust within our community.

Additionally, determining what constitutes a "dangerous crime" can be subjective and open to interpretation. This raises concerns about fairness and equity in the nomination process. We risk excluding individuals who may have made mistakes in the past but have since rehabilitated and are committed to serving their community.

Furthermore, it is important to recognize that the role of Chief and Council primarily involves governance and decision-making responsibilities. They are not directly involved in working with vulnerable populations or handling sensitive information that would warrant a criminal background check. Therefore, the necessity of such checks for these positions is questionable.

Before moving forward with this proposal, I urge the working group to carefully consider the long-term implications and engage in thorough discussions with community members. We must ensure that any decisions we make align with our values, respect our traditions, and serve the best interests of our community.



## 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 Wednesday March 6<sup>th</sup>, 2024

The purpose of this document is to provide participants with some information to consider before engaging in discussion during the March 6<sup>th</sup>, 2024, Election Law 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.

### Code of Conduct for Nominees

Attached as Appendix A is a draft document for discussion that outlines code of conduct for nominees. As input into finalizing this draft code of conduct, I have also attached here as Appendix B the results of Questions 8, 10 & 11 from the 2024 Governance Reform Survey that address code of conduct for nominees and identify certain eligibility criteria.

### Composition of the Elders Council

At the end of the last working group session, participants were asked to consider how to create the Elders Council and what criteria would be used for electing/nominating individuals to the Elders Council. Attached as Appendix C are the results of Question 20 from the 2024 Governance Reform Survey that might help in framing the discussion.

## Consequences for Violating the Code of Conduct

Guidelines for the Elders Council for determining whether there is a violation of the code of conduct from Candidates during campaigns and what the consequences may be are essential to building blocks to an objective process. The draft code of conduct (Appendix A) outlines the types of behaviours that could be disciplined but there is also a need to determine what kinds of discipline are appropriate. Consider the following:

- Warning or Reprimand: For minor violations, a Candidate may receive a warning or reprimand. This serves as a reminder of the expected behavior and can help prevent future violations.
- Apology or Correction: In some cases, a Candidate may be required to issue a public apology or correction for their actions. This helps mitigate any harm caused by the violation and demonstrates accountability.
- Financial Penalties and Fines: a Candidate may be required to pay a financial penalty, whether as a stand-alone consequence or in combination of some other consequences (such as reprimands or apologies).
- Removal from the Campaign/Ballot: a Candidate may be removed from the campaign altogether. This is typically reserved for serious violations that have caused significant harm to another Candidate, supporter, voter or the Nation's image.
- Banned from future Elections: A Candidate may be banned from standing for nomination in future elections on a temporary basis.

**What instructions should be given to the Elders Council regarding dishonourable behaviour by Candidates?**

Appendix A to March 6 Working Group Background Information Memo

**DRAFT FOR DISCUSSION**

**MICHIPICOTEN FIRST NATION**

**Candidate's Code of Ethics**

I, \_\_\_\_\_, accept my nomination for the position as Councillor/Chief on Michipicoten First Nation's Council [NTD: *I would like to use the Anishinaabe word for Council here as well*], and honestly and truthfully state that:

1. I am a Michipicoten First Nation citizen possessing the following eligibility criteria for holding office under Michipicoten's Election Law:
  - a. I am at least 18/25 years of age as of the date of nomination.
  - b. I have served on Council in the past as a Councillor/Elder Advisor/Youth Advisor [NTD: *only applicable for the position of Chief*].
  - c. I have knowledge of Michipicoten First Nation's history.
  - d. I have some understanding of Anishinaabemowin.
  - e. I have a clean criminal record in the last 5/10 years and I will produce it within 10 business days to the Elders Council for their inspection. [NTD: *the 10-day time period should be adequate if there is no need for fingerprinting. However, if application requires finger printing (which can happen if you share a name with someone who has a criminal record) the 10 days would be inadequate. Also, if the candidate has lived in large urban centres that have their own police services, they may need to make multiple requests.*]
  - f. I have a clean vulnerable sector check and I will produce it within 10 business days to the Elders Council for their inspection. [NTD: *the 10-day time period should be adequate if there is no need for fingerprinting. However, if application requires finger printing (which can happen if you share a name with someone who has a criminal record) the 10 days would be inadequate. Also, if the candidate has lived in large urban centres that have their own police services, they may need to make multiple requests.*]
  - g. I do not owe any debts to Michipicoten First Nation and consent to releasing any information held by the Nation that may contradict this statement for the Elders Council to inspect.

Should an event occur that would change the accuracy of any of the above statements, I undertake to inform the Elders Council immediately.

2. As a candidate for election to Michipicoten First Nation's Council, I commit to conducting my campaign in harmony with the seven grandfather teachings—respect, humility, wisdom, honesty, bravery/courage, love, truth—which instructs me to:
  - a. Show respect towards other Candidates, their supporters, and the election organizers and officials

Appendix A to March 6 Working Group Background Information Memo

and ensure that my supporters also behave non-violently, without intimidation, harassment, the use of duress, or any type of threat against fellow Candidates or their supporters.

- b. Personify love towards all voters and refrain from coercion, vote buying, or bribing.
  - c. Exercise wisdom by focusing on political issues and Candidate platforms and speak with honesty and truth by avoiding any smear campaigns, rumors, gossip or innuendo.
  - d. Act humbly by co-operating fully with the Elders Council, Electoral Officer and Deputy Electoral Officer, and the Election Appeal Committee by following all lawful directions and requirements of each and not interfering with any of them in the performance of official duties.
  - e. Be brave and humble in accepting the official election results as determined by the Electoral Officer or the final appeal decision in the event of a challenge of those official results through the channels of appeal provided for under the election law.
3. I understand that failing to comply to the standards herein could result in a determination by the Elders Council that would disqualify my candidacy for Councillor/Chief for this election and that consequences may also carry over into future elections. I will show courage when engaging the Elders Council/ Election Appeal Committee for any alleged violation of this code of conduct. I acknowledge that the determination of consequences for violations of this code of conduct will be at the sole discretion of the Elders Council who are guided by the seven grandfather teachings and policy laid out in Election Law Policy and Procedure [*NTD: should there be an appeals process to the election appeal committee?*].
4. If I am elected to a position on Michipicoten First Nation's Council, I undertake to:
- a. Conduct myself in a manner that upholds the sacred laws found in the teachings of the seven grandfather that have been passed down to us, the Anishinaabe, through the generations and fulfill the duties and responsibilities, powers and authorities of a Council Member faithfully, positively, impartially, carefully, diligently, loyally, and with honesty, integrity and respect, remembering that the main objective is to serve to the best of my abilities all Michipicoten First Nation citizens, people of the land, and the lands, waters, resources, to which they belong.
  - b. Uphold and abide by Michipicoten First Nation's Chi-Naaknigewin, Election Law, Oath of Office, Council Code of Conduct, Confidentiality and Conflict of Interest Policy and Guidelines, Governance Policy and Procedure and all other laws and policies of the Nation that are validly enacted.

I make these statements in support of my candidacy for the (insert year) Michipicoten First Nation Chief and Council election.

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Signature of Candidate

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Date

**WITNESSES**

DRAFT FOR DISCUSSION – Michipicoten First Nation Election Law

Appendix A to March 6 Working Group Background Information Memo

As witnesses, we honestly and truthfully declare that this document was signed in our presence at \_\_\_\_\_ (city/town/reserve) in the province of \_\_\_\_\_ on the above date.

Witness 1

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Witness 2

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

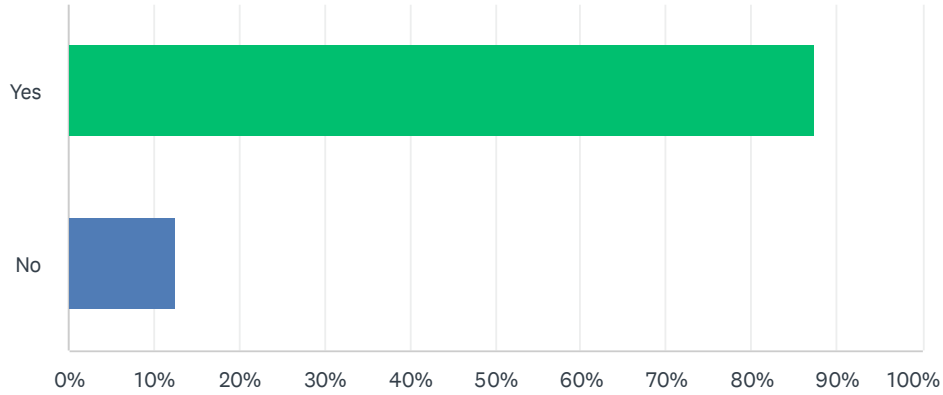
Signature: \_\_\_\_\_

DRAFT FOR DISCUSSION

**Appendix B**

Q8 Should the nominees be required to adhere to a code of conduct during their campaign with serious consequences if they fail to do so—such as a declaration of ineligibility to run or hold office?

Answered: 112 Skipped: 0

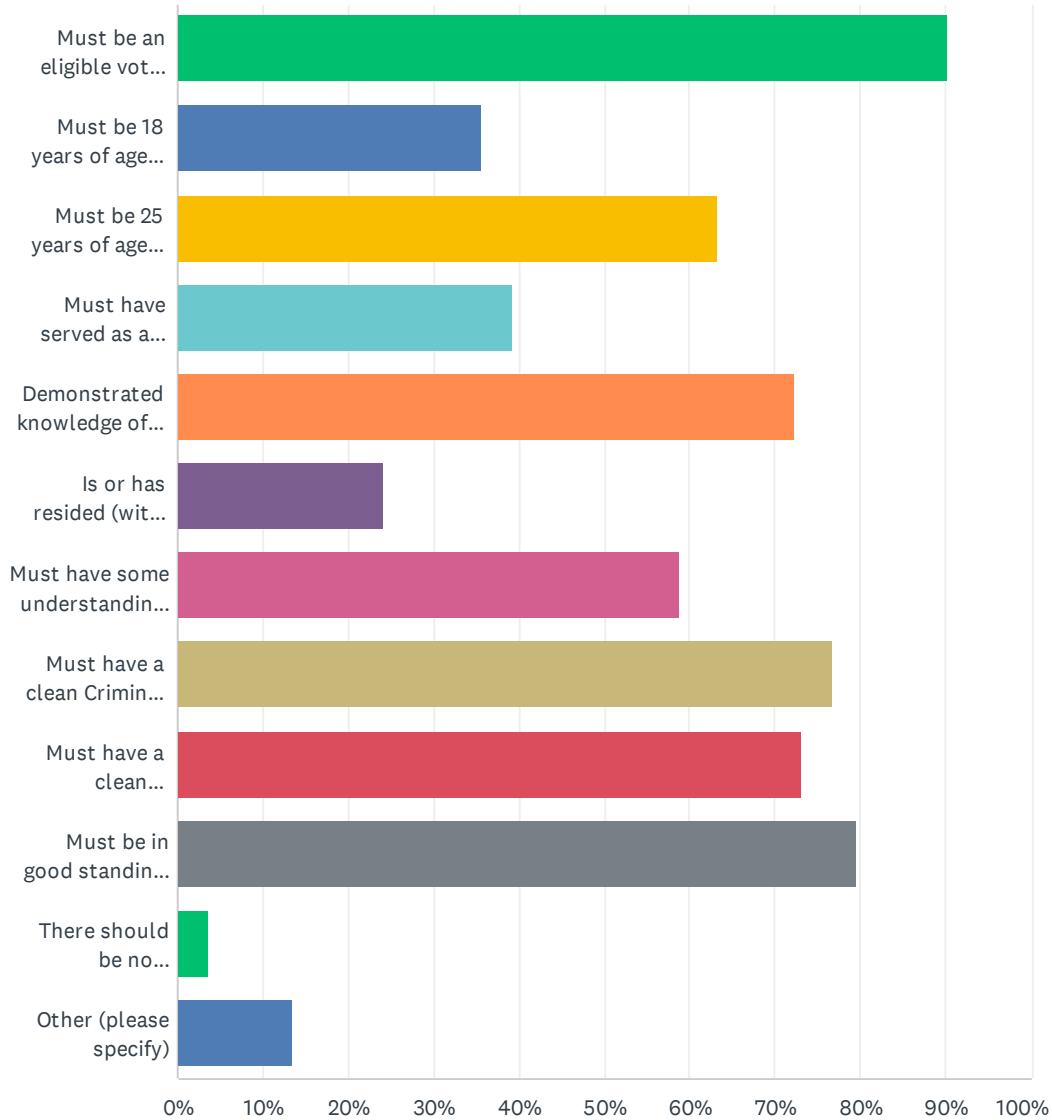


ANSWER CHOICES	RESPONSES
Yes	87.50%
No	12.50%
TOTAL	112

**Appendix B**

**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: 112 Skipped: 0



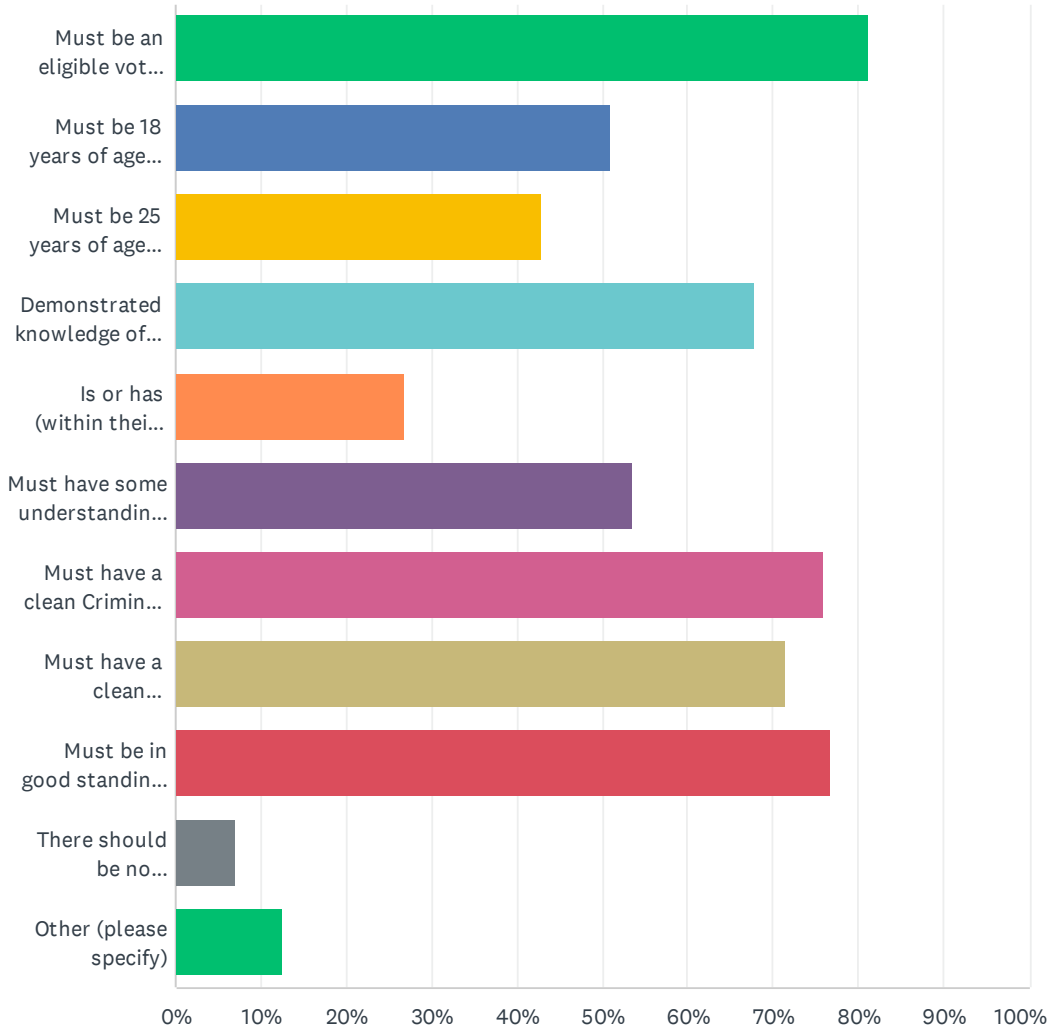
Appendix B CES	RESPONSES	
1. Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	90.18%	101
2. Must be 18 years of age at the time of nomination.	35.71%	40
3. Must be 25 years of age at the time of nomination.	63.39%	71
4. Must have served as a Council member in the past.	39.29%	44
5. Demonstrated knowledge of Michipicoten First Nation's history.	72.32%	81
6. Is or has resided (within their lifetime) in Michipicoten's traditional territory.	24.11%	27
7. Must have some understanding of Anishinaabemowin.	58.93%	66
8. Must have a clean Criminal Record check.	76.79%	86
9. Must have a clean Vulnerable Sector check.	73.21%	82
10. Must be in good standing with the Nation, meaning they do not owe any debts to the Nation.	79.46%	89
11. There should be no restrictions to run for Chief.	3.57%	4
Other (please specify)	13.39%	15
Total Respondents: 112		

- The above says it all
- Chief has his/her own duties, as do councillors. I believe each follow own assignments.
- A chief is a god given position. A leader to their people. He/she should be honourable, honest, hard working, caring, having compassion and empathy, wisdom and strength, vision for a better future, loving, otherwise and amazing person. No one is perfect. Always be open to opinions. I believe my sister Patricia is a great Chief.
- -Identification with photo and name (2 pieces of ID) -If reside in another country in the pass a criminal and vulnerable sector check should be done in those countries.
- Experience working with a board of directors and financial knowledge.
- Whoever wishes to run for office - should be allowed apart from those items checked above [*items checked are 1, 2, 8, 9 & 10*]. 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.
- Should be at least 30
- Anyone can run. Criminal background check is about it.
- Chief must be a member of Michipicoten First Nation
- There should be some required standard of education.
- 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.
- If they have not resided, they should have been to or visited the community within the last 24 months of the application.
- Must have demonstrated knowledge of and relationship with MFN on committees attending events etc.
- 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.
- Knowledge of MFN culture, traditions, customs, and ways of life

**Appendix B**

**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: 112 Skipped: 0



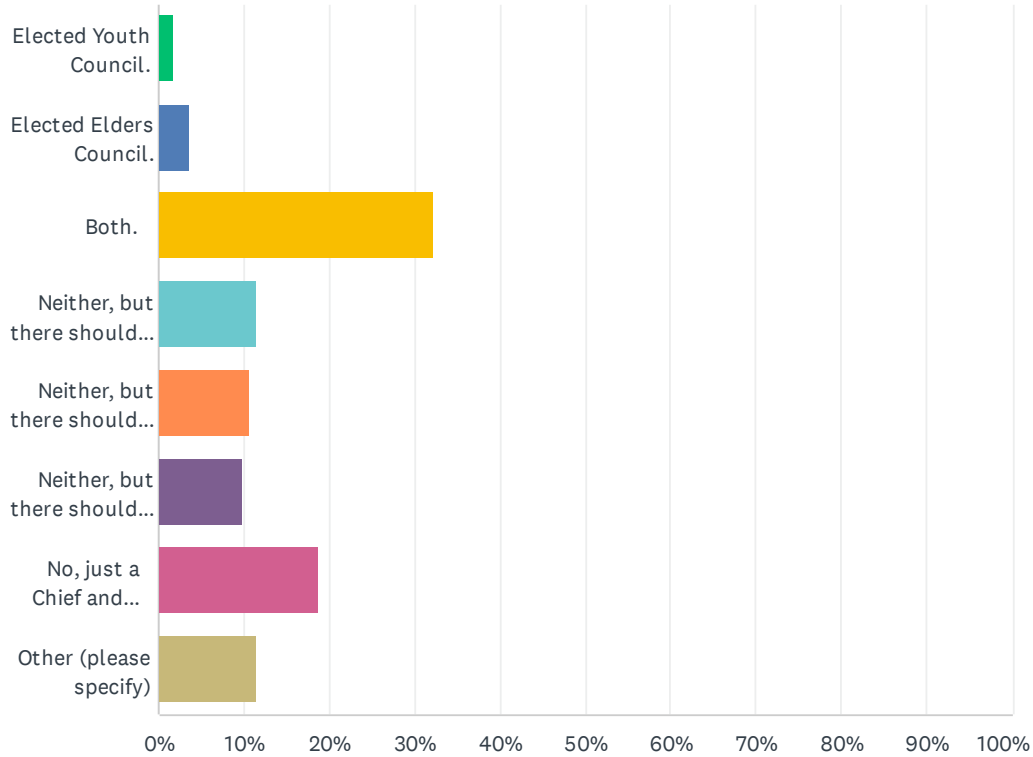
APPENDIX B	RESPONSES	
1. Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	81.25%	91
2. Must be 18 years of age at the time of nomination.	50.89%	57
3. Must be 25 years of age at the time of nomination.	42.86%	48
4. Demonstrated knowledge of Michipicoten First Nation's history.	67.86%	76
5. Is or has (within their lifetime) resided in Michipicoten's traditional territory.	26.79%	30
6. Must have some understanding of Anishinaabemowin.	53.57%	60
7. Must have a clean Criminal Record check.	75.89%	85
8. Must have a clean Vulnerable Sector check.	71.43%	80
9. Must be in good standing with the Nation, meaning they do not owe any debts to the Nation.	76.79%	86
10. There should be no restrictions to run for Councillor.	7.14%	8
Other (please specify)	12.50%	14
Total Respondents: 112		

- Hi
- Everything is fine
- The above says it all
- 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)
- Mature and financial knowledge.
- See same comment as was written for the Chief above.: Whoever wishes to run for office - should be allowed apart from those items checked above. [items checked are 1, 2, 8, 9 & 10] 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.
- Anyone can run. Clearance check of any. Criminal charges
- Should be required to attend a set amount of meetings -- ei 70%
- They should be a member at least 3-5 years to be a Councillor or Chief
- Would be nice that some people that are looking for answers for people who are part of 60's scoop
- A standard of education.
- Criteria are the same as above.
- 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
- 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.

**Appendix C**

**Q20 Should the Nation’s governance also consist of a youth and/or elders Council?**

Answered: 112 Skipped: 0



ANSWER CHOICES	RESPONSES	
Elected Youth Council.	1.79%	2
Elected Elders Council.	3.57%	4
Both.	32.14%	36
Neither, but there should be at least two elected seats on Council: one for a youth and one for an elder.	11.61%	13
Neither, but there should be non-voting advisory seats on Council: one for a youth and one for an elder, to be nominated by their peers and appointed by the incoming Council.	10.71%	12
Neither, but there should be two non-voting advisory seats on Council: one for a youth and one for an elder, that should be appointed by their peers.	9.82%	11
No, just a Chief and Councillors is sufficient.	18.75%	21
Other (please specify)	11.61%	13
<b>TOTAL</b>		<b>112</b>

## Appendix C

### Other Responses.

- Youth -- our future. We need them as we move forward. Elder -- knowledgeable elders give me much hope for us people. We all need to look out for one another.
- Nonvoting advisory council for both youth and elders
- Both youth and elders but internally, not an election process like chief and council. Youth and elders council can be a sounding board for chief and council, made up of representatives of different family lines
- No, just a chief and councillors is sufficient. I say this because we could engage in having Elders/Youth groups within the First Nation.
- Another great idea! Youth and elders can give us great insight.
- jl - multiple responses selected 3 & 7
- jl - multiple responses 3 & 7
- jl - multiple responses 3 & 7
- An elders seat and a youth seat for representing
- Both a youth and Elders advisory council each with a chosen representative that attends council meetings
- Only if the demand and need has been established by citizens of MFN.
- A youth could bring fresh ideas & an elder for experience & knowledge.
- Elder and youth advisory councils are good but should not be elected, equal opportunity for all and should apply, those who meet criteria be random selected and max one year terms to allow others opportunity to participate and build capacity.



## March 19<sup>th</sup> - Discussion Summary

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

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

**Date:** March 22<sup>nd</sup>, 2024

The following is a summary of the Election Law Citizen Working Group discussion held on March 19<sup>th</sup>, 2024. 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 March 19<sup>th</sup>, 2024, session were the following participants:

Diane Gaudet

Christine Lewis, Committee  
Member

Sandra Donny-Fraser,  
Committee Member

Chad Edgar, Councillor

Linda Peterson, Committee  
Member

Diane Purser, Executive  
Officer

The session focused on residency requirements for Candidates and elected officials, the latter being a discussion on whether there should be a set number of seats on Council for residents of the Michipicoten Gros Cap No. 49 reserve. 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.

## Residency Requirements for Elected Council Members

There was leaning (although not a clear consensus) among participants that imposing a residency requirement is justifiable for sitting Councillors and the group expressed the view that Ontario as an acceptable geographic limitation for residency—barring what the Supreme Court of Canada may have to say on the subject.<sup>1</sup> These conclusions align with 2024 Governance Survey respondents' leanings.

Although the virtual meeting platforms are working well for conducting Council business, participants in the working group arrived at the conclusion that an Ontario residency requirement was justifiable based two main factors, namely:

- Council has a need for in person meetings (inauguration was named as one of those significant meetings) and Council members should also have a physical presence on the reserve to maintain a connection to the needs of the residents (the example of attendance at the Youth and Elders Gathering was raised).
- The Nation has a limited budget for Council travel and needs to stick to it. Others suggested that the Nation should not be absorbing the costs of travel for Council members to attend in-person meetings or have a presence on reserve, rather, that should be the responsibility of the Council member.

Less significant, although important considerations for setting an Ontario residency requirement are:

- Ontario residents would have a more intimate knowledge with the provincial government and agencies that the Nation must engage with by virtue of the Nation's land base being located in Ontario.

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<sup>1</sup> There is a case waiting judgement at the Supreme Court of Canada challenging a residency requirement which could influence the limits of a residency requirement: *Cindy Dickson v. Vuntut Gwitchin First Nation (Yukon Territory)*, Court Ref No. 39856—the hearing was in February 2023 and the decision has yet to be release. Cindy Dickson, a member of the Vuntut Gwitchin First Nation (VGFN) and sought candidacy as a Councillor. However, the VGFN constitution specified that any Councillor must reside in the settlement land, and if they were a non-resident, they must relocate to the settlement lands within 14 days of election day. The VGFN council declined to remove the residency requirement and rejected Dickson's candidacy. Dickson sought a declaration that the residency requirement is inconsistent with her right to equality under s. 15(1) of the Charter. The chambers judge held that the residency requirement did not infringe the Charter. The Court of Appeal agreed but felt that the 14 days time limit did infringe on s.15(1) rights guaranteed under the Charter.

- Most Citizens reside in Ontario.
- Ensuring that Council members are operating in the same time zone to facilitate Council business.

There was a leaning among participants that the Chief should be living in proximity to the reserve in order to take up office hours but some also expressed the view that the Chief should be resident of the reserve and participants discussed the provision of with housing as part of the function (discussion captured in the next question).

### Dedicated Housing for Council Members

Participants were asked to give input on whether housing should be dedicated to Council members who are required to maintain residency. The feedback was unanimous that Councillors should not be the recipient of housing when elected since dedicated housing is too costly for the Nation to bear.

Most participants expressed the view that by agreeing to take on the role as a Councillor, Candidates are aware of the commitment to be present at meetings and key community events and show up to do the work without expecting payment or housing in return.

However, there was mixed feedback on whether the Chief should be provided with a home on the reserve. For those who felt that the Chief should have dedicated housing, they cited the fact that the Chief is required to hold regular office hours at the Band Hall when the Chief is not travelling on business.

### Working Council members

There was a question asked about whether the Governance Committee was contemplating the establishment of working Councillor positions—defined as a Councillor who would earn full-time compensation in exchange for dedicating themselves full time to the role. Working Councils exist in other Nations and appear to function well, according to one contributor. Some Nations have portfolio systems that see Council members assigned dedicated functions and they work full time alongside the administration to execute that portfolio. Other Nations have Council members who take up dedicate jobs at the Nation level – e.g. the Chief holds the position to Executive Officer. At this stage the Committee has not considered the option of a working Council, but that feedback would be taken under advisement.

There was a suggestion that perhaps the role of Deputy Chief could be a full-time function as a working Councillor. But there were diverging views on this point. The Deputy Chief would be an elected position that has some role and function distinct from the Chief but in support of the work of the Chief.

## Seats on Council for Resident

As part of the 2024 Governance Survey, Citizens were asked whether there should be a dedicated number of seats on Council for Candidates who have their place of residence located on the reserve. Of the total 111 survey responses received, 69 respondents identified a preference for dedicated seats on Council for residents of the Gros Cap No. 49 Reserve. While one participant of the working group suggested that there should be at least one seat on Council that is dedicated for a resident of the reserve, others expressed concern about a framework that allocated dedicated seats to residents who were nominated for a Council position. Those concerns were expressed as:

- What happens if there are not enough Candidates who are residents to fill any resident dedicated seats. The position would be acclaimed.
- The pool of Candidates among the residents is quite small, particularly since the Community Trust operates with a board consisting of mainly residents and members of that board cannot sit as Council members.
- A large number of Candidates who ran in the last election (19 out of 23) were non-residents. Voters should be allowed to decide on who gets elected among those eligible nominees rather than be required to elect a portion of residents.

It was also suggested to participants that a residency requirement could allow for non-residents who are elected to commit to relocating to the reserve in order to take up an elected position for a “resident only” seat. The participants viewed this option to relocate to take up a “resident only” Council position as impractical—impractical because of lack of housing and employment opportunities on the reserve.

Instead of dedicated seats on Council for residents, the following could be implemented:

- The oath of office for Council members should reflect an explicit undertaking to represent the voice of all citizens, both on and off the reserve.
- A policy framework could be developed whereby a Councillor(s) has the dedicated role and responsibility of bringing residents voice to the Council table. Either as a portfolio, or community liaison function.

- Establish an advisory role for a resident during terms where no residents achieve sufficient votes to be elected as a Council member.
- The Deputy Chief could also be required to take up residency on reserve.



# 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 Tuesday March 19<sup>th</sup>, 2024

The purpose of this document is to provide participants with some background information for the discussions during the March 19<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.

### Residency Requirement

While Michipicoten First Nation's Citizens are spread out across provinces and continents, their Nationhood status is tied to a defined territory located around the Gros Cap, Dog Lake and Chapleau reserves. Residency requirements for elected officials are seen as a way to promote accountability, ensure effective representation, and strengthen the connection between elected officials and the community they serve. There are several reasons why a residency requirement for an elected official is considered appropriate, such as:

- Residency requirements ensure that elected officials have a direct connection to the community and territory they represent. This can help ensure that officials are familiar with local issues and concerns.
- By requiring elected officials to live in the area they represent, residency requirements make officials more accessible and accountable to the citizens they represent.

- Residency requirements can prevent individuals who are remote from the community from running for office solely for political gain or personal ambition, without a genuine commitment to serving the community.

There was a question put to Citizens on residency requirements in the 2024 Governance Survey (Question 12) and 78.67% of respondents indicated their desire for some form of residency requirement for Council members—see Appendix A for the respondent breakdown for Question 12. Among the residency options provided, Ontario as the geographic region was the preferred option, while residency within the Traditional Territory was the next favoured option.

The responses to Question 12 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 responses there indicate that Citizens are less likely to ask 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 for the respondent breakdown for Questions 10 & 11. It seems that the place of residence is only significant if a person is elected.

- 1. Consider what the appropriate geographic boundaries might be for a residency requirement and why those boundaries are justifiable.**
- 2. Consider alternatives to residency requirements, for example, fixed number of visits to the community per year, exceptions for extenuating circumstances, etc.**
- 3. Consider whether a residency requirement should be accompanied by dedicated housing on reserve if a Councillor is elected?**

## Seats on Council Reserved for Residents of Gros Cap Reserve No. 49

Residents at Michipicoten’s Gros Cap No. 49 reserve rely solely on the Chief and Council for the governance of provision of services for their community. As such, there is a strong argument that Council representatives should have a clear understanding of the needs and challenges of residents on reserve. However, a policy framework built upon a specific number of seats reserved for residents is complicated by a number of factors, such as:

- For decades, there has been a lack of development at Gros Cap Reserve No. 49 and there have been very few new residents. Many of the same families continue to occupy the existing

housing stock. However, the community is developing, and new homes are being constructed in the near future that would provide opportunities for growth.

- The Nation's Citizenship has grown exponentially since the amendments to the *Indian Act* under Bill-C3. Until the 21<sup>st</sup> century, many Citizens were disenfranchised from the Nation and have had little to no opportunity to establish themselves on Michipicoten's reserve land.
- There are limited services at the reserve—health, social or otherwise—which makes it challenging for anyone who has complicated health or social needs to take up residence on the reserve.
- Outside of the Nation's administration, there are virtually no employment opportunities at Michipicoten.

There was a question put to Citizens regarding whether there should be a dedicated number of seats on Council for Candidates who have their place of residence located on the reserve. Of the total 111 responses received, 69 respondents—reflecting 62.16% of the total—identified a preference for dedicated seats on Council for residents of Gros Cap No. 49 Reserve. See Appendix A-Question 14 for the breakdown of responses. This trend indicates that respondents to the survey are aware of the importance of Council members having ties to the reserve.

However, 35 respondents—31.53%--indicated that none of the seats on Council should be reserved for reserve residents. Additionally, there is always a risk that a residency requirement could get challenged under the Charter—in fact such challenges have been successful in the past. Nevertheless, there is a broad acceptance that representative government should have a community connection and we see this reflected in Canada's provincial, federal and territorial government.

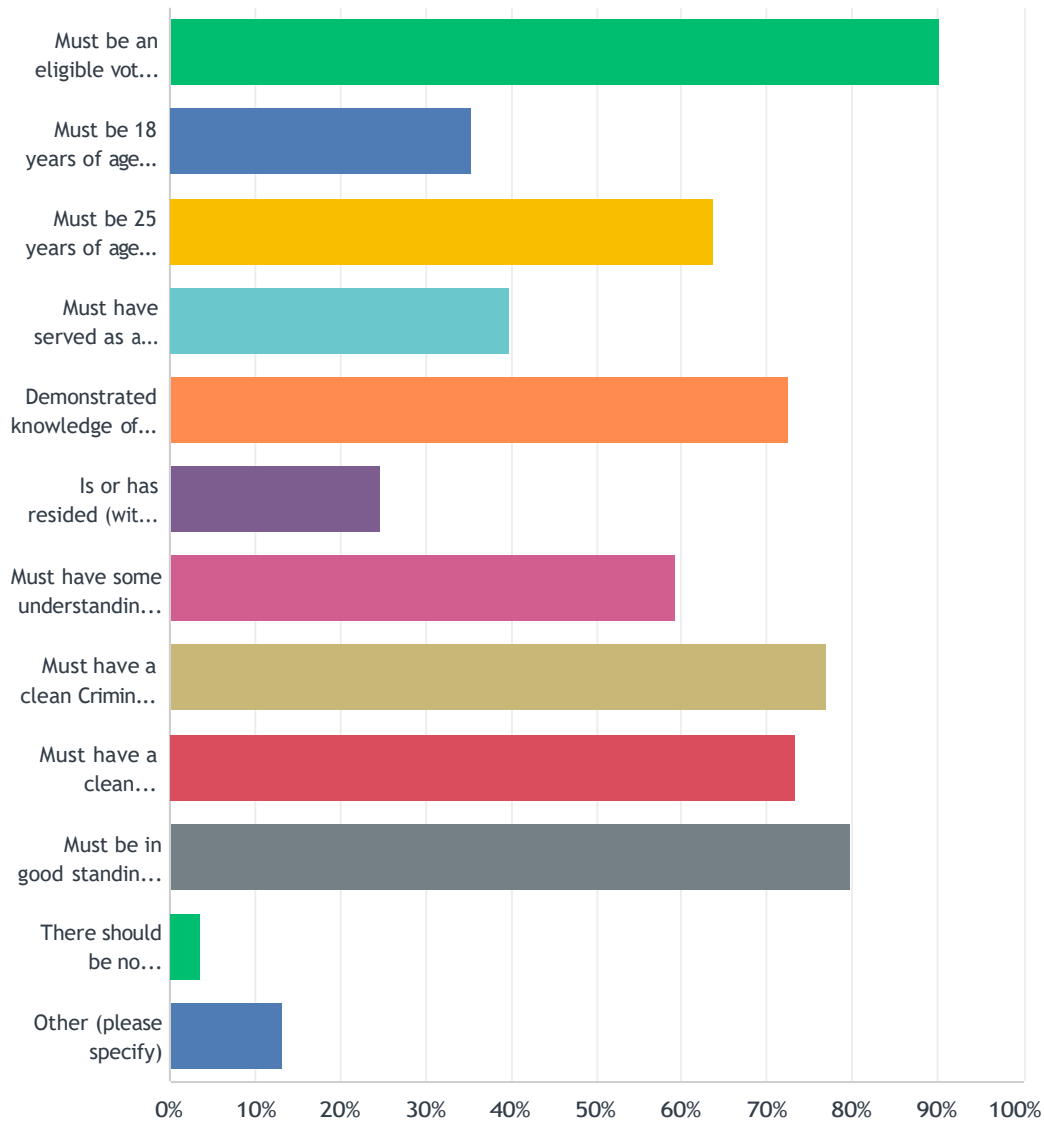
Despite a leaning towards having dedicated seats reserved for residents, respondents to the survey did not have a clear preference for how many seats should be reserved for residents.

- 1. Consider whether there should be one, two or more seats on Council for Candidates who are “residents”.**
- 2. Consider the definition of the term “resident”. Do Candidates have to be current residents, or could they simply be willing to relocate and become residents?**
- 3. Consider the definition of the term “reserve”. Should it be limited to the Gros Cap No. 49 reserve, or extend to all three of the Nations reserves?**
- 4. Consider what the procedure might look like if there were insufficient nominations to fill the “residents only” quota of seats?**

Appendix A

## 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

Appendix A

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 won 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 and 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 pass 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

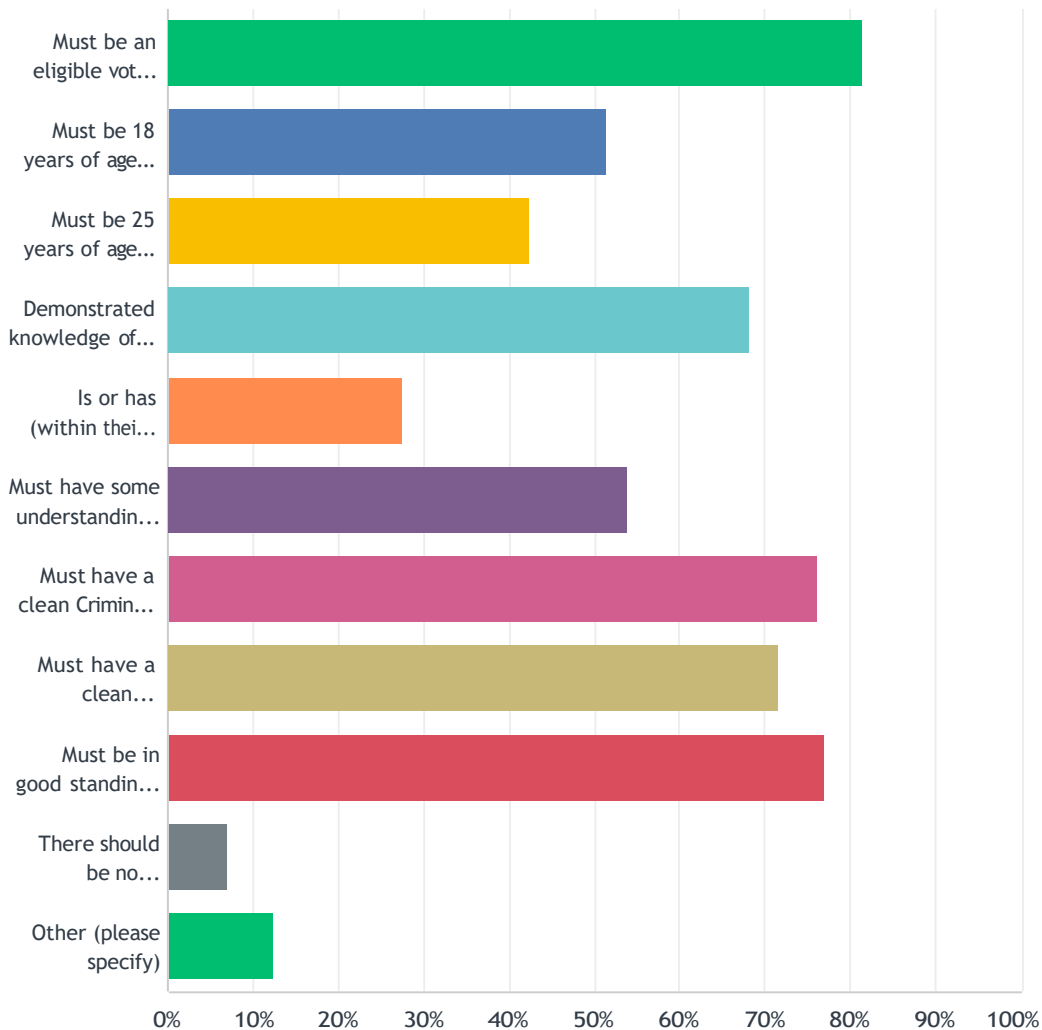
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engagement, and strong leadership ensures that the Chief serves as a unifying force, representing the traditions, aspirations, and resilience of the Native band.

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

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

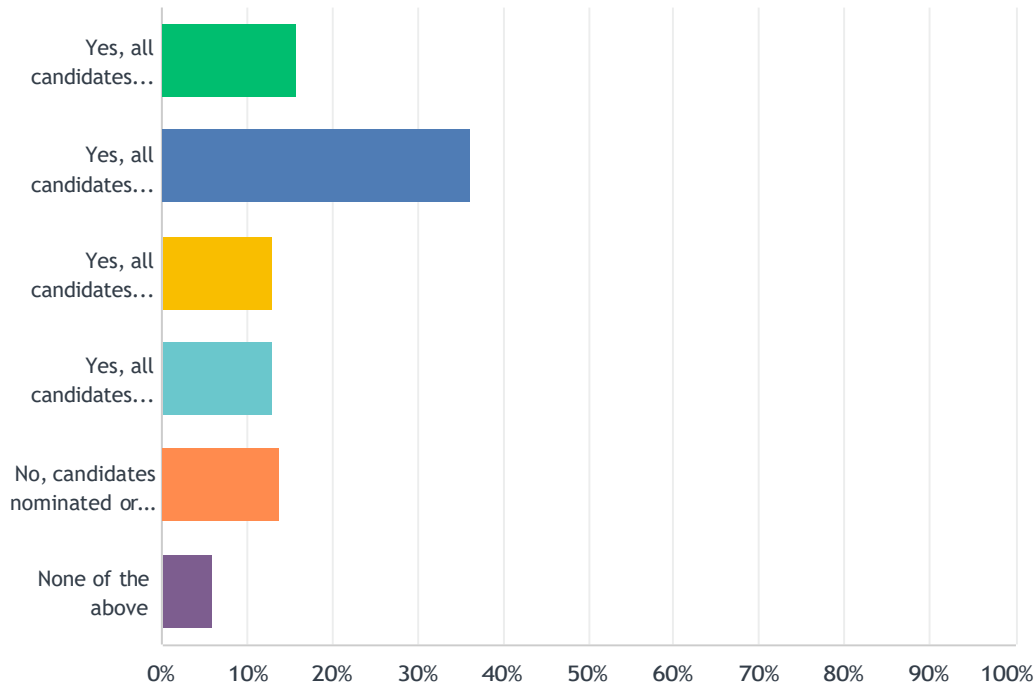
Q11 ANSWER CHOICES	RESPONSES	
Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	81.42%	92
Must be 18 years of age at the time of nomination.	51.33%	58
Must be 25 years of age at the time of nomination.	42.48%	48
Demonstrated knowledge of Michipicoten First Nation’s history.	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

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## Q12 Should there be a residency requirement for nominees/Council members?

Answered: 108 Skipped: 1 Multiple Responses Recorded: 8 Invalid Responses: 3



Respondents for the online survey could only select one option among the possibilities provided. However, 47 out of 113 respondents submitted their responses by mail. Eleven of the mailed in surveys had multiple selections, some invalid for having chosen inconsistent responses (for example “Yes, all candidates should reside in ...” and “No...they can live anywhere”).

Of the total 136 responses, 78.67% of respondents indicated their desire for some form of residency requirement for Council members. Among the residency options provided, Ontario as the geographic region was the preference.

Q12 ANSWER CHOICES	RESPONSES	
Yes, all candidates should reside within the Nation’s traditional territory to be eligible to run for and sit on Council.	16.18%	22
Yes, all candidates should reside within the province of Ontario to be eligible to run for and sit on Council.	36.03%	49
Yes, all candidates should reside within Canada to be eligible to run for and sit on Council.	13.23%	18
Yes, all candidates should reside within North America (Canada and United States of America) to be eligible to run for and sit on Council.	13.23%	18
No, candidates nominated or elected for Chief and Councillor positions can live anywhere they choose.	14.71%	20
None of the above	6.62%	9
<b>TOTAL</b>		<b>136</b>

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#	Comments
1	As long as the candidate is able to attend most of the meetings in person and some through zoom.
2	Everything is fine
3	Can't discriminate.
4	To a certain point! I do not believe Sault Ste. Marie is part of the traditional territory but it is close enough for the members to be able to attend anything that is happening in the traditional territory.
5	With a strong limit cap on travel or meetings to be held via conference call. most should be this way anyway. accept for annual MTG.
6	within a reasonable distance
7	Regardless of where you live, it is your right if you want to run for council.
8	Commitment and engaged participation in council business is most important and there are several online and virtual platforms that would make this possible.
9	These questions/statements are discriminatory?
10	Chief and Councillors must live no more than 600KM from MFN. MFN presently has an office on its reserve and in Wawa and SSM. It should consider having offices in T-Bay and Sudbury.
11	<p>Establishing a residency requirement for nominees and providing adequate housing and accommodations for elected officials is a policy decision that can have several implications. Here are some considerations.</p> <p>Advantages:</p> <ol style="list-style-type: none"> <li>1. Community Connection: Requiring nominees to be residents ensures a direct connection to the community they aim to represent. This can enhance their understanding of local issues and increase accountability.</li> <li>2. Accessibility: Residents are more likely to be physically present in the community, making it easier for them to attend functions, engage with constituents, and participate in local events.</li> <li>3. Understanding Local Dynamics: Living in the community provides firsthand experience of local dynamics, allowing council members to make informed decisions that directly benefit residents.</li> </ol> <p>Disadvantages:</p> <ol style="list-style-type: none"> <li>1. Limiting Candidate Pool: A residency requirement might limit the pool of eligible candidates, especially in smaller communities. Some individuals with valuable skills or experiences might be excluded based on their current place of residence.</li> <li>2. Personal Circumstances: There may be instances where personal circumstances, such as work or family commitments, prevent someone from residing in the community but not from effectively serving it.</li> </ol> <p>Providing Housing and Accommodations:</p> <p>Advantages:</p> <ol style="list-style-type: none"> <li>1. Accessibility and Availability: Providing housing and accommodations can ensure that council members are readily available for meetings and events, promoting a more engaged and present leadership.</li> <li>2. Equal Access: Offering housing can make it feasible for individuals with limited financial means to participate in leadership roles, promoting inclusivity and equal access to opportunities.</li> </ol> <p>Disadvantages:</p> <ol style="list-style-type: none"> <li>1. Financial Burden: Establishing and maintaining housing can be a financial</li> </ol>

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burden on the community or organization, and the cost should be carefully considered in relation to the available resources.

2. Perception and Accountability: Providing housing may raise questions about potential conflicts of interest or the perception that elected officials are receiving additional benefits. Transparency and clear guidelines are essential to address these concerns. Ultimately, these decisions should be made in consultation with the community, taking into account the unique circumstances and needs of the population. Public input, open discussions, and a transparent decision-making process can help ensure that policies reflect the values and priorities of the community

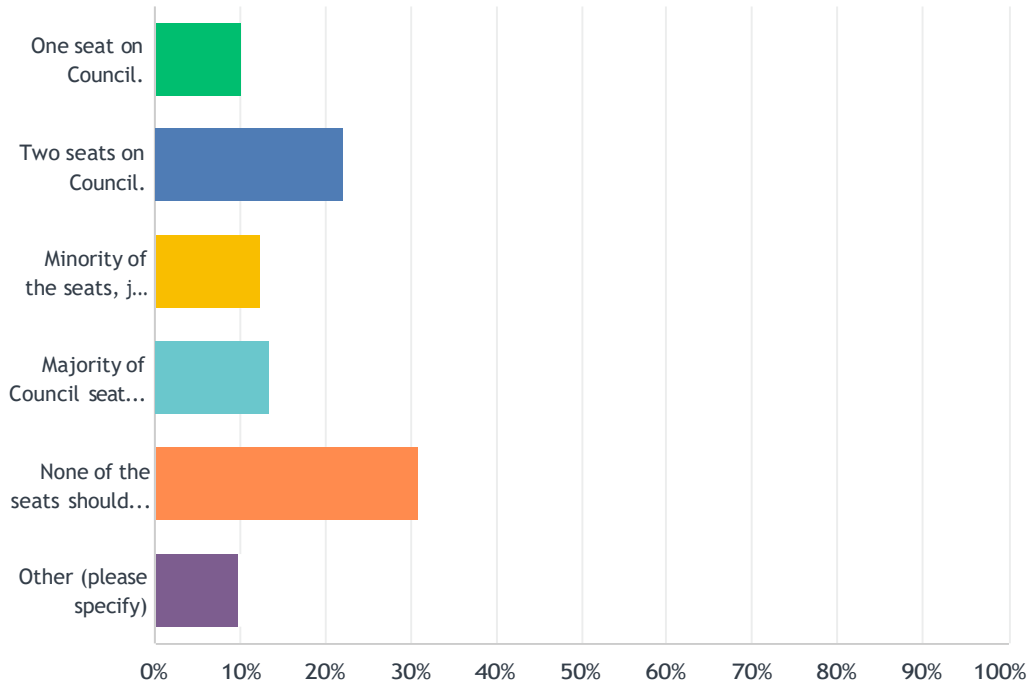
- 
- |    |   |
|----|---|
| 12 | This is difficult to answer I do not think they should be eligible if they have never lived in the traditional territory but if they have and are residing out of province or country for employment, family, etc. Then they should be eligible with criteria they willing to move back or spend at least six months of year on the traditional territory |
| 13 | provided that candidates for Chief agree to relocate to MFN if elected, and candidates for council agree to visit MFN a minimum of 4 times a year with no travel costs coved if elected.  |
| 14 | Chief and council should be present and live close, if not on Reserve. Committees can be formed locally, and each Councillor participate in those local communities   |
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Appendix A

### 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>

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#	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.</li> </ol> <p>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</p>
10	Use the clan system, a representative from each respective clan



## March 23<sup>rd</sup> - Discussion Summary

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

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

**Date:** April 18<sup>th</sup>, 2024

The following is a summary of the Election Law Citizen Working Group discussion held on March 23<sup>rd</sup>, 2024, in Sault Ste. Marie, Quattro Hotel. This was an in-person session. 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 March 23<sup>rd</sup>, 2024, session were the following participants:

Alice Donney	Maryellen Chapman	Evelyn Stone, Councillor
Danny Wynne	Mavis Harden	Sandra Donny-Fraser, Committee Member
Don Humphries	Susan Samakesse	Diane Purser, Executive Officer
Jesse Gauvin	Chad Edgar, Councillor (left the session early)	
Judy Champman-Price	Christine Lewis, Committee Member	
Kenna Dufresen		

The session focused on the candidate's code of conduct and eligibility criteria and term of office for elected officials. Attached to this memo as Appendix A are the handouts that were distributed to participants who attended.

## Candidate's Code of Conduct

The participants were presented with the draft Candidate's code of conduct that was a revised version from the document circulated during the March 6<sup>th</sup> citizen working group session. The revisions to the document focused on the attestation of a clean criminal record and vulnerable sector check rather than the provision of these documents. Changes were proposed to address concerns around delays in producing a CRC or VCC. Amendments also included specificity around the types of criminal conduct that would lead to a nominee's ineligibility. I provided participants with some background information as to how we arrived at the implementation of a Candidate's code of conduct through the survey results and prior working group discussions.

### Eligibility:

Participants supported the notion of a minimum age of 18 years old for the position of Councillor and 25 years old for the position of Chief. The discussion focused on the office of the Chief and most participants endorsed 25-year age minimum because individuals of that age are likely to have completed their postsecondary education and have some life experience to support them in this function. One participant expressed the opinion that the minimum age for both the office of the Chief and Councillor should be the same so as not to discourage the youth, who may have the desired leadership skills and drive, from running for Chief. There was also consideration given to the fact that the electorate can decide whether the Candidate has adequate experience by electing or not electing them. On the other hand, another participant expressed the view that 25 years of age is too young and would prefer to see a minimum age of 30 for the office of the Chief.

The remainder of the discussion dedicated to the Candidates code of conduct was focused on the need to produce a criminal record.

Participants felt strongly that a CRC and VCC should be produced as part of the nomination process, rather than merely having the candidate attest to a clean criminal record. They were of the view that a candidate could easily lie about criminal background, particularly if there is recent criminal activity. It was expressed as an essential part of the Nation's due diligence to request that the criminal record be produced.

Despite this view, participants also acknowledge that some criminal acts may have been socially acceptable in the past and would not lead to criminal charges because victims did not come forward. In other words, the absence of criminal record is not determinative of a person's criminal history. As such, a Candidate's character cannot be gleaned from a criminal record alone.

The participants also acknowledge that there is room for personal growth and healing for individuals who may have committed a crime in the past and that a criminal record should not necessarily bar a Candidate from running or holding office. There was no clear consensus that 5 or 10 years was an appropriate amount of time for rehabilitation. One participant characterized the rehabilitation period as “a significant period of stability”. One participant also asked whether statistics on recidivism were being examined to decide what this rehabilitation time should be. At this point, no research has been done on recidivism.

This group was also of the view that not all criminal acts are forgivable. The draft Candidate’s code of conduct outlined a list of crimes that were unforgivable, namely:

- i. sexual offences (specifically, sexual interference, invitation to sexual touching, sexual exploitation, incest, bestiality (compelling the commission of, and in presence of or by a child), child pornography (making, possession, distribution), parent or guardian procuring sexual activity, exposure, sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm, aggravated sexual assault, or attempt or conspiracy to commit any of the above offences) – this list reflect the crimes identified on the National Sex Offender Registry.
- ii. fraud, money laundering, misappropriation of money held under direction, or corruption (defined as embezzlement, theft of corporate or public property, influence peddling bribery, or extortion), or
- iii. intimate partner violence.

In addition to these crimes, one participant expressed a concern about individuals with a criminal history associated with substance abuse (for example DUIs) and the desire to prevent these individuals from sitting on Council. The participant cited concern about elected officials being called to make decisions while under the influence.

One participant expressed that this list was too robust. In their opinion, circumstances matter—for example, a person convicted of incest may have been raised in an environment where incest was common. However, they may have learned their lesson through a criminal conviction. This participant’s preferred list of unforgivable crimes was narrowly sexual offenses against children.

One participant did not agree with the process of vetting criminal backgrounds. They expressed concern around the victims and the re-traumatizing that could occur through this process of vetting criminal backgrounds and “forgiving” the crimes of perpetrators. They described it as a process of branding and judging people, which is inconsistent with Anishinaabe values. Although another

participant felt that this was not judgment but rather proactively preserving the integrity of the Nation.

### Enforcement for Violations of the Code of Conduct

In past working group conversations, there was concern expressed over the practicality of enforcing a Candidate's code of conduct. It was proposed to this group that perhaps there is no actual enforcement of the Candidate's code of conduct, but rather that it be a process of self-regulating where Candidates themselves could call each other out for poor conduct.

One participant responded that there should be an enforcement mechanism but the topics of how violations are reported and to whom was not explored due to a shortage of time. Participants were left to reflect on whether the committee/process for enforcing violations should be impartial (third-party(ies) from outside the community) or kept as a community process. Similarly for the Election Appeals Committee.

### Council Term of Office

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 among the Council, identify priority areas for their focus, and proceed with making constructive and community informed changes. One participant suggested that a 3-year term seems to be working well in other First Nations who made the transition.

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 because you build more capacity and more in-depth knowledge at the Council table—only one participant outwardly expressed their support for extending the term to 4 years.

Participants were informed that a proposal about a working Council—defined as a Council who works full time—could resolve the concerns about getting more work done. Overall, participants saw this as too costly.

One participant suggested that a larger number of Council seats may impact the length of the term—more Councillors may lead to more deliberation, necessitating a longer term. Through this conversation, participants expressed a need to increase the number of Council seats, one participant suggesting that nine seats was appropriate.

## Other Topics Raised by Participants

### Nomination Process

Although not formally part of the discussion, a participant offered some thoughts on the nomination process. The process being proposed would see the Candidate being proactive to seek out nominations and submit them as part of their nomination. The proposed process requires Candidates to be more accountable and deliberate rather than springing a nomination on an unsuspecting Citizen, who later drops off due to lack of commitment.

Generally, participants expressed a desire for a longer process between nomination and election. One participant indicated their preference of 60 days as a reasonable timeframe between nomination and election—although a short window the process would happen expeditiously. Another participant expressed that two months was not enough time to really get to know your Candidates, six months would be more appropriate.

### Accountability of Elected Council Members

Several participants expressed concerns around ongoing criminal conduct and substance use for elected officials and how this would be addressed. We discussed how these elements, further criminal behaviour and substance abuse, can be carried forward into a code of conduct for elected officials. Participants also raised important points to include in the code of conduct for elected officials, such as: Council working for the best interest of all its Citizens; Council members acting as role models; and carrying on those values in the Candidate's code of conduct through to their term of office.

One of the participants suggested a process whereby the Chief could be removed if the 50-60% of the Citizens endorsed their removal from office.

### Process for Adopting Election Law

A participant raised a question about the process for deciding on the adoption of an Election Law. The first step is community conversations about the content of the Law—which is being executed through these working groups. A draft will be released to citizens to review and provide feedback. There is the possibility of further conversations based upon whatever input is provided. Then the law will go to three readings this fall followed by a ratification vote. Citizens get to vote yes or no on the final document. One participant felt that the process was being rushed and indicated a need for more time. The current work plan leading to the adoption of the election law will span over eight months with various points where Citizens can provide input.

## Information Gathered on Recidivism

### Recidivism of federal offenders is declining and new offences are less severe

Source: <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2020/aug01.html>

According to a 2019 Correctional Services Canada study, 23% of a 2011/2012 cohort of federal offenders re-offended, compared to 32% of offenders from a 2007/2008 cohort. Of Indigenous male offenders in the 2011/2012 cohort, 38% re-offended compared to 21% of non-Indigenous male offenders. For Indigenous women, 20% re-offended compared to 9% of non-Indigenous women offenders. In addition, 12% of the 2011/2012 cohort re-offended with a violent offence, 4 compared to 18% from the 2007/2008 cohort. Of those who re-offended, 60% were charged with a new offence of a lesser severity.

### Sexual recidivism rates

Source: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/sx-ffndr-rcdvsm/index-en.aspx>

**Table 2: Sexual Recidivism (%) across Time and Samples.**

Sub-Group		5 Years	10 Years	15 Years
All sexual offenders		14	20	24
Rapists		14	21	24
Extended Incest Child Molesters		6	9	13
"Girl Victim" Child Molesters		9	13	16
"Boy Victim" Child Molesters		23	28	35
Offenders without a previous sexual conviction versus those with a previous sexual conviction	Without	10	15	19
	With	25	32	37
Offenders over age 50 at release versus offenders less than age 50 at release	Over 50	7	11	12
	Less than 50	15	21	26

Sex Offenders - offence free in the community for Five, Ten, and Fifteen year	5 years	7	12	15
	10 years	5	9	*
	15 years	4	*	*

\* = Insufficient data to compute reliable estimates

### Interpretation of recidivism estimates

The recidivism estimates may be applied to the general case or to the individual offender. For example, if you were faced with a group of 100 newly released rapists and you wanted to follow these offenders in the community over time (Looking at Table 2 - Second sub-group - "Rapists") you would expect fourteen (14) of these 100 rapists to reoffend within the first 5 years. In the following 5 years, follow-up years 6 through 10, you would expect a further 7 rapists to reoffend for a total of 21 offenders failing after 10 years. In the following 5 years, follow-up years 10 through 15, you would expect a further 3 rapists to recidivate for a 15-year estimated total of 24 out of 100, or 24% of the sample. It is interesting to note that in each successive 5-year period that the recidivism rate basically halves, from 14% in the first 5 years post-release, to 7% in the second 5-year period, to 3% in the third 5-year period.

**DRAFT FOR DISCUSSION**

**MICHIPICOTEN FIRST NATION**

**Candidate's Code of Ethics**

I, \_\_\_\_\_, accept my nomination for the position as Councillor/Chief on Michipicoten First Nation's Council [NTD: I would like to use the Anishinaabe word for Council here as well], and honestly and truthfully state that:

1. I am a Michipicoten First Nation Citizen and meet the following eligibility criteria for holding office under Michipicoten's Election Law:
  - a. I am at least 18 [for Councillors]/25 [for Chief] years of age as of the date of nomination.
  - b. I have served on Council in the past as a Councillor/Elder Advisor/Youth Advisor [NTD: only applicable for the position of Chief].
  - c. I have knowledge of Michipicoten First Nation's history.
  - d. I have some understanding of Anishinaabemowin.
  - e. I have a clean criminal record and vulnerable sector check in the last 10 years, and I have never throughout my lifetime been found guilty of a criminal offense involving:
    - i. sexual offences (specifically, sexual interference, invitation to sexual touching, sexual exploitation, incest, bestiality (compelling the commission of, and in presence of or by a child), child pornography (making, possession, distribution), parent or guardian procuring sexual activity, exposure, sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm, aggravated sexual assault, or attempt or conspiracy to commit any of the above offences),
    - ii. fraud, money laundering, misappropriation of money held under direction, or corruption (defined as embezzlement, theft of corporate or public property, influence peddling bribery, or extortion), or
    - iii. intimate partner violence [no-consensus on this point].
  - f. I do not owe any debts to Michipicoten First Nation and consent to releasing any information held by the Nation that may contradict this statement for the Elders Council to inspect.

Should an event occur that would change the accuracy of any of the above statements, I undertake to inform the [XXX] immediately.

2. As a candidate for election to Michipicoten First Nation's Council, I commit to conducting my campaign in harmony with the seven grandfather teachings—respect, humility, wisdom, honesty, bravery/courage, love, truth—which instructs me to:

- a. Show respect towards other Candidates, their supporters, and the election organizers and officials and ensure that my supporters also behave non-violently, without intimidation, harassment, the use of duress, or any type of threat against fellow Candidates or their supporters.
  - b. Personify love towards all voters and refrain from coercion, vote buying, or bribing.
  - c. Exercise wisdom by focusing on political issues and Candidate platforms and speak with honesty and truth by avoiding any smear campaigns, rumors, gossip or innuendo.
  - d. Act humbly by co-operating fully with the Elders Council, Electoral Officer and Deputy Electoral Officer, and the Election Appeal Committee by following all lawful directions and requirements of each and not interfering with any of them in the performance of official duties.
  - e. Be brave and humble in accepting the official election results as determined by the Electoral Officer or the final appeal decision in the event of a challenge of those official results through the channels of appeal provided for under the election law.
3. I understand that false declarations or a failure to comply to the standards herein could result in a determination by the [XXXX] that would disqualify my candidacy for Councillor/Chief for this election and that consequences may also carry over into future elections. I will show courage when engaging the [XXX] and Election Appeal Committee for any alleged violation of this code of conduct. I acknowledge that the determination of consequences for violations of this code of conduct will be at the sole discretion of the [XXX] who is guided by the Election Law Policy and Procedure [NTD: should there be an appeals process to the election appeal committee?].
4. If I am elected to a position on Michipicoten First Nation's Council, I undertake to:
- a. Conduct myself in a manner that upholds the sacred laws found in the teachings of the seven grandfather that have been passed down to us, the Anishinaabe, through the generations and fulfill the duties and responsibilities, powers and authorities of a Council Member faithfully, positively, impartially, carefully, diligently, loyally, and with honesty, integrity and respect, remembering that the main objective is to serve to the best of my abilities all Michipicoten First Nation citizens, people of the land, and the lands, waters, resources, to which they belong.
  - b. Uphold and abide by Michipicoten First Nation's Chi-Naaknigewin, Election Law, Oath of Office, Council Code of Conduct, Confidentiality and Conflict of Interest Policy and Guidelines, Governance Policy and Procedure and all other laws and policies of the Nation that are validly enacted.

I make these statements in support of my candidacy for the (insert year) Michipicoten First Nation Chief and Council election.

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Signature of Candidate

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Date

DRAFT FOR DISCUSSION – Michipicoten First Nation Election Law

**WITNESSES**

As witnesses, we honestly and truthfully declare that this document was signed in our presence at \_\_\_\_\_ (city/town/reserve) in the province of \_\_\_\_\_ on the above date.

Witness 1

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Witness 2

Name: \_\_\_\_\_

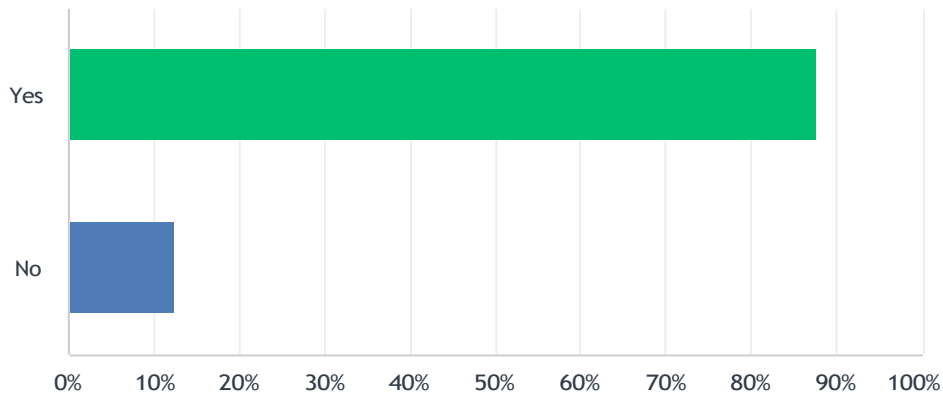
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Signature: \_\_\_\_\_

DRAFT FOR DISCUSSION

## Q8 Should the nominees be required to adhere to a code of conduct during their campaign with serious consequences if they fail to do so—such as a declaration of ineligibility to run or hold office?

Answered: 112 Skipped: 1



Q8 ANSWER CHOICES	RESPONSES	
Yes	88.39%	99
No	11.61%	13
<b>TOTAL</b>		<b>112</b>

#	COMMENT
1	Unable to manage - campaign. I wouldn't trust them to be able to help me.
2	Nominees should be honest
3	I also think if an honourable person makes a mistake, their character and achievements should be considered--declaration of ineligibility is severe like white man's law.
4	It should already be in the nomination package re: eligibility. Add it there and its known before someone gets nominated.
5	Everything is going fine
6	It would be the responsibility of the person, common sense, ask questions before.
7	The nominees conduct should reflect their opinions and feelings. If your conduct does not reflect mine then I will not vote for you. A person should not change their conduct for an election.
8	for the greater good and not individual gain
9	need to define the code of conduct
10	totally agree
11	just like any job . there should be a code of reliability and integrity

12	It's necessary to protect vulnerable beneficiaries and assets of MFN
13	we depend on those people
14	need to protect vulnerable members and assets of MFN
15	Since social media dominates the elections with false information a strict code of conduct should be enforced for all. Unfortunately, those not involved in the community or the band itself tend to believe what they hear. Most of this is false information and lateral violence.
16	Only if their conduct is illegal then the laws will be applied and used.
17	Any code of conduct should include a candidate's online presence and commentary on social media platforms such as Facebook, etc.
18	Rude or negative comments aimed at anyone else running or present C&C should not be allowed
19	Maybe a declaration of ineligibility to run or hold office should depend on the seriousness of the offence against the code of conduct, but they should definitely be held accountable for any violations.
20	Common sense says anyone campaigning and smearing others is not a good candidate, if proven to be acting out of conduct should be automatic removal. Provided circumstances have been proven.
21	Who will monitor this code of conduct and it could be a burden to monitor. The conduct from candidates has not been an issue from what I have seen and experienced thus far. Every nominee has been respectful.
22	How is ineligibility measured?
23	Everyone should hold accountability.
24	All other campaigns have to adhere to a code of conduct
25	Serious people should be accounted for any funny business
26	Yes
27	The difficulty with administering a code of conduct is determining its content, policing and decision-making process. could be an arduous undertaking if not kept simple and manageable.
28	Facebook slashing other candidates online should been removed immediately from running for office
29	If there is no code of conduct, there should be one.
30	Everyone should be supportive and not negative to each one
31	Too many lies and "dirty" politics in last election. One candidate had his family attacking all the other candidates even though they were lying. Another candidate got himself made moderator of the Facebook page then started a smear campaign against the current chief and council
32	No USA politicking
33	The question of whether nominees should be required to adhere to a code of conduct during their campaign, with serious consequences for non-compliance, is subjective and involves balancing free speech with ethical considerations in the political process. Having a code of conduct can promote fair and respectful campaigning, fostering a more constructive and informative political environment. It can discourage negative campaigning, personal attacks, and the spread of misinformation, which can undermine the democratic process. However, it's crucial to consider potential challenges such as defining the boundaries of acceptable conduct

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and avoiding the restriction of legitimate criticism or debate. Striking the right balance between promoting ethical behavior and safeguarding free expression is essential. Implementing serious consequences, such as declaring ineligibility to run or hold office, should be approached with caution. Any punitive measures should be proportionate to the offense and mindful of the need to protect democratic principles. Striking a balance between accountability and avoiding potential abuse of power is essential. Ultimately, the decision to enforce a code of conduct and its consequences should involve careful consideration, public input, and possibly legal expertise to ensure that the rules are fair, transparent, and conducive to a healthy democratic process.

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34 Depends what the code of conduct is who develops it and how it will be enforced this should not be a yes or no required response, there should be an option for maybe , I would be very afraid if we got another chief like our previous one who controlled the entire council and staff to have control and power over individual conduct, so I have to say no because the survey demands a response, but I would prefer to be able to say yes of the membership, the entire membership and not just a few favorites, are engaged and have input into a code of conduct that aligns with traditional teachings and is unique to MFN and not cut and pasted from legal documents or other organizations

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35 Hard to enforce, could be a slippery slope

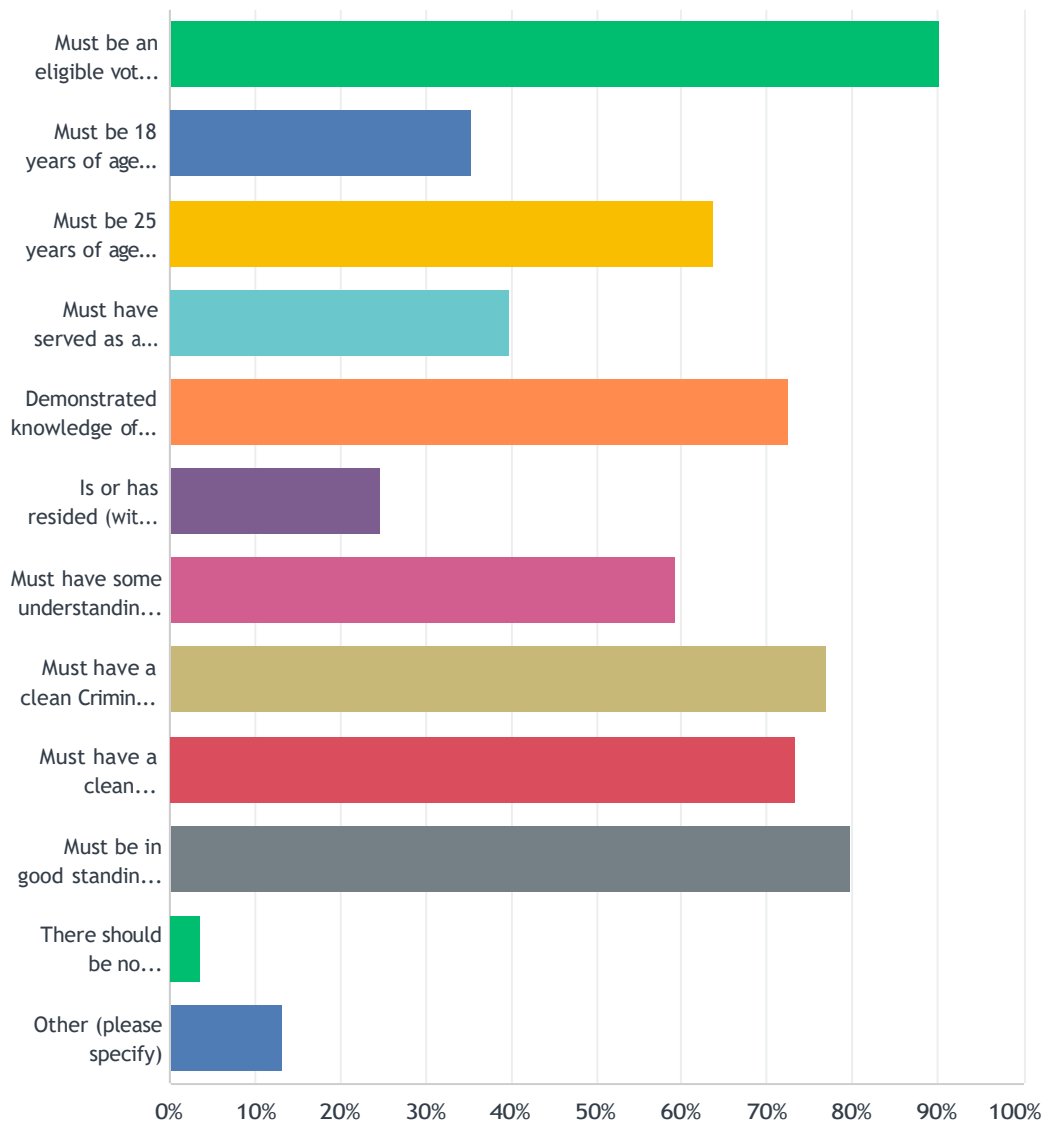
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36 Set the standards, change from lateral violence to lateral kindness

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## 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>

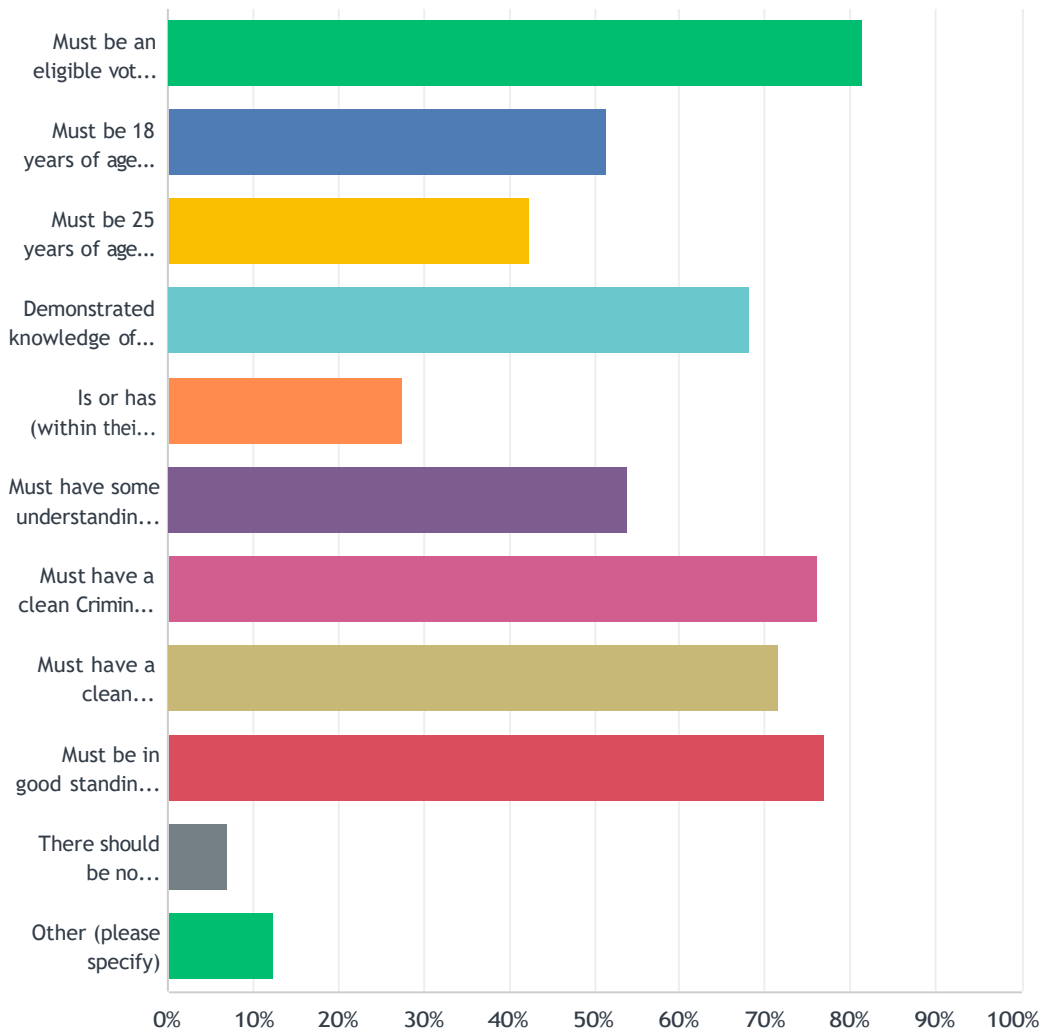
#	OTHER (PLEASE SPECIFY)
1	Chief has his/her own duties, as do Councillors. I believe each follow own assignments.
2	A chief is a God-given position. A leader to their people. He/she should be honourable, honest, hardworking, caring, having compassion and empathy, wisdom and strength, vision for a better future, loving, otherwise and 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

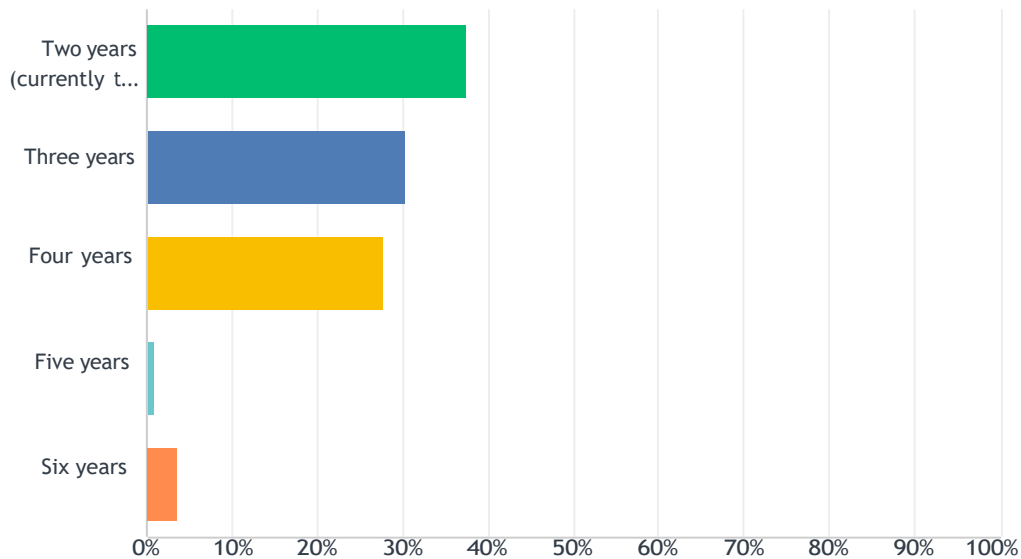
response that “Must have some understanding of Anishinaabemowin” is acceptable to more than half the respondents but misses the materiality threshold.

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

## 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

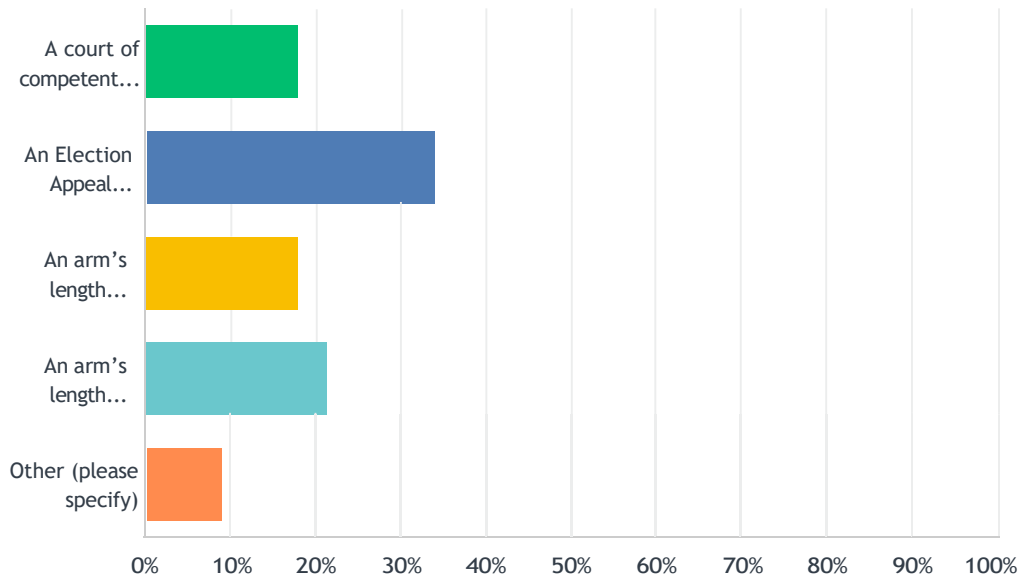


The responses indicate that 70 or 62.5% of respondents would accept a longer term of office than there is currently under the *Indian Act*

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>

## Q24 If a nominee or eligible voter feels that the election was conducted in a manner inconsistent with the election code/law and wishes to appeal the election results, they should be able to appeal to...

Answered: 110 Skipped: 3



Q24 ANSWER CHOICES	RESPONSES	
A court of competent jurisdiction.	18.18%	20
An Election Appeal Committee made up of Michipicoten eligible voters who are neither nominees in the election nor participants in the election process, such as scrutineers. This Election Appeal Committee would be appointed by Council 30 days prior to the election date.	34.55%	38
An arm's length third-party who is qualified and is appointed by the Council 30 days prior to the election.	18.18%	20
An arm's length third-party who is qualified and is appointed by Michipicoten First Nation's administration 30 days prior to the election.	21.81%	24
Other (please specify)	7.28%	8
<b>TOTAL</b>		<b>110</b>

#	OTHER (PLEASE SPECIFY)
1	not sure. If I was concerned, I'd make sure my voice was heard by someone.
2	Election appeal committee of MFN voters but only appoint after the election.
3	The membership. I don't see council or administration appointing someone within 30 days prior. This would look like conflict. How would you know who is or who may be a scrutineer when time comes?? Maybe this is one topic that members could come to some kind of suggest that is good for all. More info, sharing and listening to them.
4	Indian Act filed complaint

5	Don't allow any fraudulent candidates to run ever again
6	A committee of non Michipicoten voting members ie: 1) Elder and/or 2) elected official from another First Nation, 3) non indigenous community member mayor, banker, teacher etc
7	Band Manager should have some kind of input as long as there no conflict of interest. Had a problem with missing monies and was directed to the band manager and this achieved the monies returned to the rightful owner.
8	Status quo



## April 3<sup>rd</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 on April 3<sup>rd</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 3<sup>rd</sup>, 2024, session were the following participants:

Anais Tangie

Mavis Harden

Irene Armstrong,  
Committee Member

Diane Gaudet

Victor Gascon

Sandra Donny-Fraser,  
Committee Member

Jennifer Jacques

Will Morin

Diane Purser, Executive  
Officer

Jim St. Germaine

Gimaa Kwe Tangie

John Paul Chalykoff

Chad Edgar, Councillor

Kenna Dufresen

Christine Lewis, Committee  
Member

The session covered: diversity on Council; the number of Council seats; Council portfolios; and the desire to return to traditional governance practices. 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.

## Youth and Elders Representation on Council

There was a clear desire among survey respondents for an elected youth and elder council. However, there is no clear path to how to bring those voices into the governance structure. Participants were asked to consider the question of whether the youth and elder council was advisory versus elected by considering what role and function the youth and elders would take up in governance. The suggestions were varied:

- One participant suggested that there should be a combined youth and elder council. This Council would have a dedicated role and function, such as: overseeing programs and services catering to the needs of youth and elders within the community; decision making over allocate resources to elder care and other initiatives; use in conflict resolution and mediation; overseeing cultural protocols. One combined youth and elders Council would create an opportunity for reciprocity and mentorship between youth and elders.
- There are not a lot of youth at Michipicoten—the demographic is largely older—and those youth that are there need mentorship. Michipicoten needs a youth coordinator to steward that mentorship.
- Other participants offered that the youth and elders should function in an advisory capacity only to Council.
- One participant suggested that the positions be elected—distinct positions on the ballot—and that these positions have the dedicated role of stewarding the process of Council decision making and acting as the resource/communications person for the demographic they represent. Their responsibility is to weigh in on decisions with the lens of the demographic they represent and also have authority over the process, in terms of how decision-making processes unfolds, to ensure that the demographic they represent are apprised of what Council is doing and there is opportunity to bringing that voice forward. Youth would be a junior chief, which would offer that position the much-needed mentorship opportunities. If a youth was elected that wasn't 18, they wouldn't have a vote but still could have a voice. The process for electing an elder must set out defined eligibility criteria for an elder (qualified as a “healthy elder” or elder not older). The elder's function would be akin to a Deputy Chief to steward the decision-making process through a traditional lens to decide when the Council can make decisions. While there was an acknowledgement that Michipicoten is lacking in elders who truly understand the deeper traditional governance processes, the mere presence of an elder on Council will be a reminder that the Council must lean into traditional approaches. The elder role that we are aspiring to is an elder who is an archive of the Nation's traditions, to be able to help leadership who are still learning about traditional ways and traditional value systems.

Other topics that were tabled throughout this conversation were:

- How do we define youth? One participant suggested that age should not be a factor. Some youth are very competent and have the skills to make thoughtful decisions even at young ages. Another participant tended to agree but stated that any youth councillor under 18 should not be permitted to vote but their voice remains as part of the discussion.
- Concerns were raised about how to incentivize youth and elder to participate—would there be honourariums paid, particularly if they are being delegated a distinct role?
- The Council would be comprised of Chief, Councillor, Youth, and Elder on the ballot—you could only run for one position. The candidates need to focus.
- Prior to an election, there needs to be information disseminated about the role of Chief and Councillor and what's expected so that candidates know what they are signing up for.
- Part of the procedures, there needs to be the ability to hold Councillors accountable if they do not come prepared to meetings (e.g. if a Councillor comes unprepared, they cannot vote on the motion, or the decision is deferred).

As the conversation evolved, there was a general sense that formulating a youth and elders council is complex and will require a process in and of itself. The group consensus on this topic is that there is much more work to be done to foster relationships between and among the youth and elders. It was suggested that the Youth and Elders Gathering be a launching pad to initiate conversation with youth and elders on how they would like to be reflected in governance. It was also suggested that whatever is drafted today, it provides a runway for growth towards a more Anishinaabeg governance system.

## Size of Council

Participants were asked to consider what an appropriate method for determining the number of seats on Council would be. Participants also recognized that there have been 7 seats on Council for some of the time and the population of the Nation has doubled. The discussion focused on the number of portfolios that currently exist and whether this could be used as the figure that represents the number seats. At the present time, there are 11 portfolios. However, some participants expressed concern regarding the jump from 7 to 11.

Overall, participants felt that that the need should determine the number of Council seats – versus the Citizenship population – but there was no clear path towards what the sliding scale should be moderated.

One participant offered their input, based on conversations with Councillors from larger First Nations, that it can be more difficult to make decisions or organize Council meetings with larger Council. The sweet spot was identified as nine (9) Council members. Several other participants also endorse a Council of nine (9)—current seven plus one youth and one elder for the next election.

## Portfolios

A participant shared some information about the traditional clan system that can be used to inform the portfolio system. There are 8 primary clans (seven, plus the turtle who is the head of the fish clan). Under the clan system, each clan had a specific function and depending on what the need of the community was, that clan would step up to become Chief. The portfolio system around a similar philosophy and provide the portfolio with the leadership function of their portfolio—acting as spokesperson for the Nation in that regard.

Leaders were selected based on skill, and the Councillors take up the portfolio that is suited to their skills. Another participant suggested that perhaps the portfolios could be developed around the clan system and have the Councillor whose clan matches up could take up that portfolio since they would have a natural ability to do the work.

One participant offered that the role of the portfolio holder is involved in developing policy and programs that fall within their portfolio and to act as a resource person for the staff who do the work.

## Traditional Systems of Governance

Several participants expressed a desire towards moving away from a colonial approach to governance and taking up the tools that our ancestors used. However, there was also acknowledgement that it is going to take time to wean the Citizenship off their colonial mindset. As part of this process, there needs to be a path towards onboarding our traditions.

All participants acknowledge that there is a long road to decolonizing our thinking on governance and we need to move incrementally.



# 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 Wednesday April 3<sup>rd</sup>, 2024

The purpose of this document is to provide participants with some background information for the discussions during the April 3<sup>rd</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.

### Representation on Council

Diversity on an elected council is important for several reasons:

- A diverse council is more likely to reflect the demographics of the community it serves. This can lead to more inclusive and representative decision-making that considers the needs and perspectives of all community members.
- When a council is diverse and representative, community members are more likely to trust that their interests are being considered in decision-making processes. This can lead to greater confidence in the council and its decisions.
- Diverse groups tend to make better decisions than homogeneous groups. By including a range of perspectives, a diverse council is more likely to consider a broader range of options and make decisions that benefit the whole community.

The inclusion of youth and elders as part of the Nation's governance is one way of enhancing diversity. Survey respondents were asked to consider whether incorporating youth and elders on Council was desirable and there is a clear desire for an established presence for youth and elders as part of the Nation's governance—see Appendix A, Question 20. However, there is no clear consensus on whether there should be youth and elders Councils distinct from the Council. Among the 90 responses that supported youth and elder representation, 59 respondents—65.56%—preferred an elected process for selecting youth or elder representations.

- 1. Consider how a youth and elders Council would function alongside the Chief and Council? Would they be a decision-making body, in its own right? If so, in what areas?**
- 2. If their role is purely advisory, is it essential that the youth and elders advisors be elected to these roles? If so, by whom?**

## Number of Council Seats

Michipicoten currently elects its Council according to the *Indian Act* regulations, which limits the number of Council seats to one seat for every 100 members on the band list. Nearly a decade ago, Michipicoten made the decision, by band council resolution, to limit that representation to seven seats. At the present time, Council operates with seven Council members—one Chief and six Councillors.

According to the responses on the 2024 Governance Survey, there is no clear consensus on the number of Council seats. However, respondents were of the view that there should be some clear guidance on the number of seats rather than leaving Council with full discretion to decide how many Council members there should be.

The most common responses were seven Council seats or a 1/200 seat to population/citizenship ratio—see Appendix A, Questions 15, 16, 17 and 25. While the majority of survey responses leaned towards some form of ratio.

- 1. Consider whether establishing a ratio of 1/200 seat to population ratio with a cap at 11 seats on Council is reasonable.**

## Council Term of Office

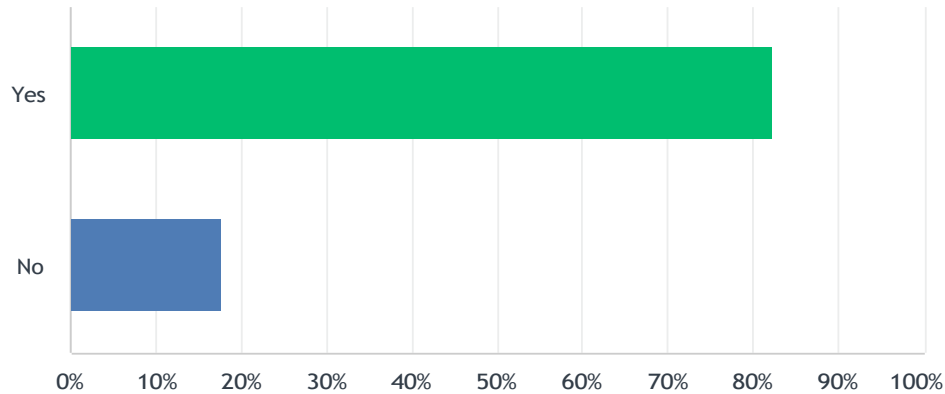
At the present time, Council's term of office is two years. This term is short and Council has limited time to undertake thorough and thoughtful planning and policy review, in addition to the many other functions that Council fulfills—such as approving budgets and administrative oversight.

The survey responses indicate that a term longer than two years is reasonable, however, there is no clear consensus on whether the Nation should move to a three- or four-year term—see Appendix A, Question 22. During our last working group session—March 23 in-person session in Sault Ste. Marie—where this topic was discussed, the group was leaning towards a three year term since there was a view that a four year term was too long if the Council proved to be dysfunctional.

- 1. Consider whether the Nation is better served with a Council sitting for a three- or four-year term and why?**

## Q15 There are currently seven seats on Council, one for the Chief and six Councillors, who represent an estimated 1350 Michipicoten citizens. Are you satisfied with the number of Council seats?

Answered: 113 Skipped: 0



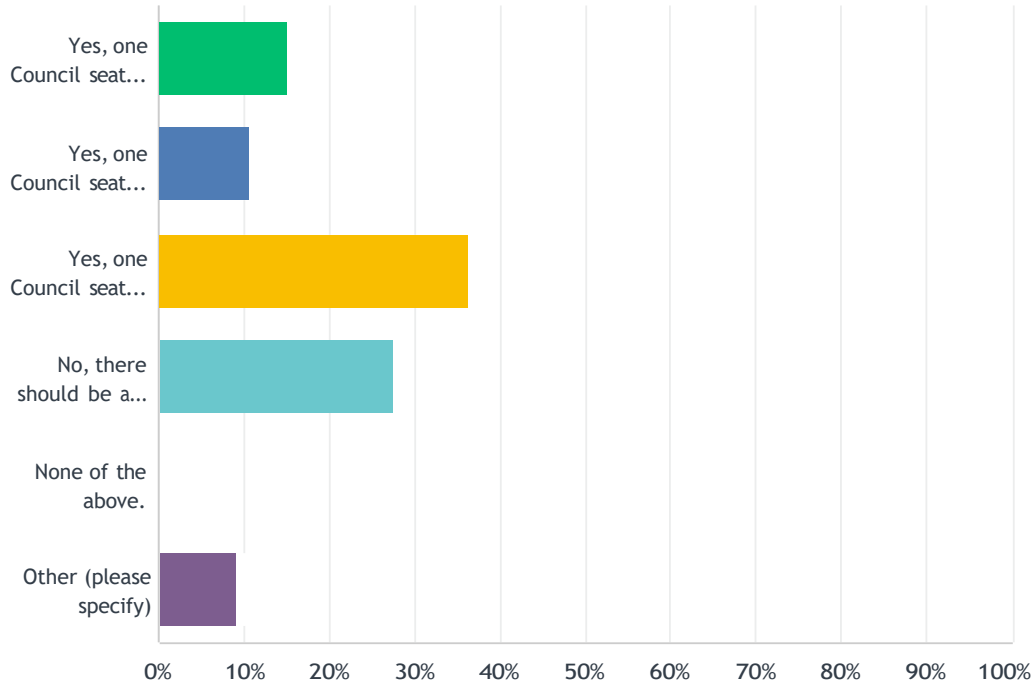
A clear majority of respondents answered that they are satisfied with the current number of Council seats. The “Yes” respondents are also subdivided into the following categories:

- 35 respondents also answered “Yes, one Council seat for every 200 registered band members (with the current registration data, that would mean 7 seats, status quo)” to Question 16.
- 28 respondents also answered “No, there should be a fixed number of Council seats.” to Question 16.
- 13 respondents answered “Other” to Question 16—the other options they propose can be read in the summary of data at Question 16.
- 17 respondents also answered inconsistently by selecting either a 1-100 ratio or 1-150 ratio was desirable.

ANSWER CHOICES	RESPONSES	
Yes	82.30%	93
No	17.70%	20
TOTAL		113

## Q16 Should there be a ratio of Council seats relative to the population of the Nation (i.e. total number of citizens on the Band list); considering that there should be an odd number of Council seats (e.g. 3, 5, 7, 9, 11) so that there can be a tie breaking vote?

Answered: 110 Skipped: 3



There are 70 respondents--63.63%--that prefer setting a ratio for the number of Council with more than half of these respondents suggesting that a 1/200 seat/citizen ratio was appropriate. However, at least one of these 70 respondents expressed a desire for a cap on the total number of seats--maximum of 9 seats.

Q16 ANSWER CHOICES	RESPONSES	
Yes, one Council seat for every 100 registered band members (just like the Indian Act)	15.45%	17
Yes, one Council seat for every 150 registered band members (with the current registration data, that would mean 9 seats)	10.90%	12
Yes, one Council seat for every 200 registered band members (with the current registration data, that would mean 7 seats, status quo)	36.36%	40
No, there should be a fixed number of Council seats.	28.18%	31
None of the above.	0.00%	0
Other (please specify)	9.09%	10
<b>TOTAL</b>		<b>110</b>

#	Q16 OTHER (PLEASE SPECIFY)
1	Odd number seven is a good number
2	It doesn't matter because the Chief (ex-officio) is the one who can break the tie.
3	I do not have enough knowledge of existing rules to make a decision. I do think a tie breaker should always be with Chief.
4	6 seats work now, the Chief can break a tie.
5	Odd or even number does not matter, for the Council, and/or person who holds the floor in the meeting and/or who is proposing the BCR then needs to include more valid points and/or reasons to those who are undecided and/or unsure. This is the very reasoning behind a council and quorum. If 4 and 4 tie then the item is tabled, plain and simple. Then perhaps something is amiss or there was not enough leg work done to prove otherwise.
6	Current number is fine
7	Fixed for now as the # lines up with 1/200 members but as membership grows so should the seats on council
8	7 plus Chief
9	I think if there needs to be a tie-breaking vote. The council should go back to the people and redesign the matter voted on. The matter should only come to council once the community has been involved.
10	Fixed number of councilors, I would support more if the councilors were actually holding portfolios and working groups planning tables etc. If community development requires it but to pay travel and honorarium for more councilors with no measurable productivity is not acceptable

## Q17 If you responded that there should be a fixed number of seats in question 16, how many Council seats do you think is reasonable? (please consider that Council should be an odd number of seats--e.g. 3, 5, 7, 9, 11--so that there is a tie breaking vote)

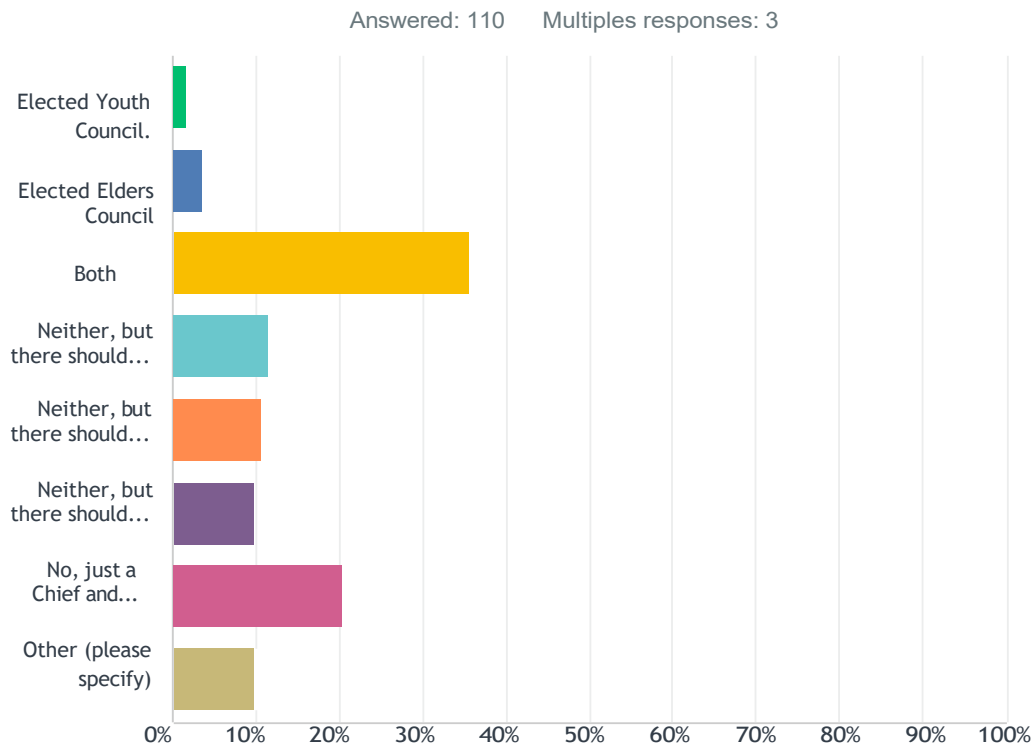
Answered: 69 Skipped: 38 Non-responsive: 6

Only 31 respondents answered “No...” to Question 16 above. However, there were 69 responses provided to this question. Among the 31 respondents who answered “No...” to Question 16, they offered the following suggestions for a fix number of Council seats

- 3 respondents supported five seats
- 19 respondents supported seven seats
- 6 respondents supported nine seats
- 2 respondents supported nine or seven seats
- 1 did not respond

Q17 ANSWER CHOICES	RESPONSES	
Three	1.45%	1
Five	5.79%	4
Seven	57.97%	40
Seven or Nine	4.35%	3
Nine	24.64%	17
Eleven	2.90%	2
More than eleven	2.90%	2
<b>TOTAL</b>		<b>69</b>

## Q20 Should the Nation’s governance also consist of a youth and/or elders Council?



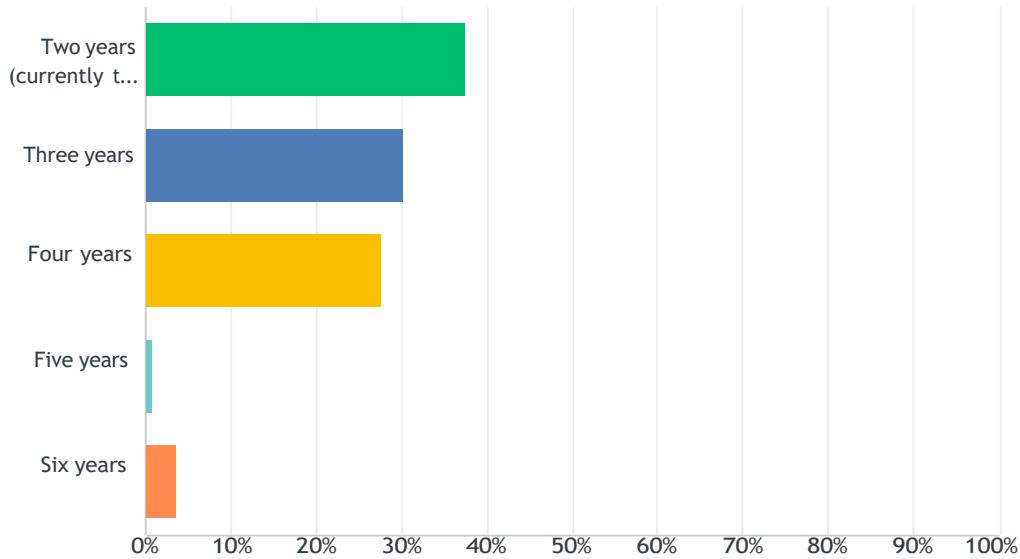
There is a clear desire for an established presence for youth and elders as part of the Nation’s governance—the idea being endorsed by 90 responses. However, there is no clear consensus on whether there should be Youth and Elders Councils distinct from the Council. Among the 90 responses that are supporting of Youth and Elders representation, 59 respondents—65.56%—preferred an elected process for selecting Youth or Elder representations.

Q20 ANSWER CHOICES	RESPONSES	
Elected Youth Council.	1.72%	2
Elected Elders Council.	3.44%	4
Both.	34.49%	40
Neither, but there should be at least two elected seats on Council: one for a youth and one for an elder.	11.20%	13
Neither, but there should be non-voting advisory seats on Council: one for a youth and one for an elder, to be nominated by their peers and appointed by the incoming Council.	10.35%	12
Neither, but there should be two non-voting advisory seats on Council: one for a youth and one for an elder, that should be appointed by their peers.	9.48%	11
No, just a Chief and Councillors is sufficient.	20.70%	24
Other (please specify)	8.62%	10
<b>TOTAL</b>		<b>116</b>

#	OTHER (PLEASE SPECIFY)
1	Youth -- our future. We need them as we move forward. Elder -- knowledgeable elders give me much hope for us people. We all need to look out for one another.
2	non voting advisory council for both youth and elders
3	Both youth and elders but internally, not an election process like chief and council. Youth and elders council can be a sounding board for chief and council, made up of representatives of different family lines
4	No, just a chief and councilors is sufficient. I say this because we could engage in having Elders/Youth groups within the First Nation.
5	Another great idea! Youth and elders can give us great insight
6	An elders seat and a youth seat for representing
7	Both a youth and Elders advisory council each with a chosen representative that attends council meetings
8	Only if the demand and need has been established by citizens of MFN
9	A youth could bring fresh ideas & an elder for experience & knowledge.
10	Elder and youth advisory councils are good but should not be elected, equal opportunity for all and should apply, those who meet criteria be random selected and max one year terms to allow others opportunity to participate and build capacity

## 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

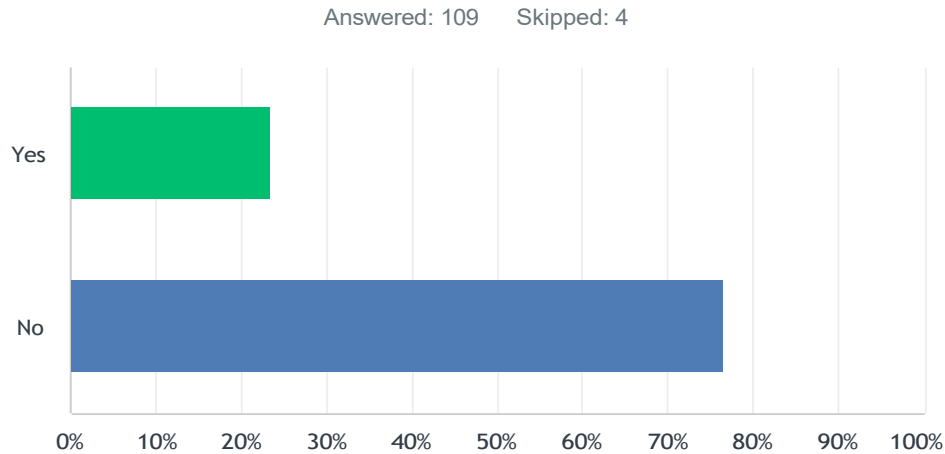


The responses indicate that 70 or 62.5% of respondents would accept a longer term of office than there is currently under the *Indian Act*

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>

## V. Council Jurisdiction

### Q25 Should there be provisions in the election law that would allow the elected Council to increase or decrease the number of Council seats on their own accord?



Q25 ANSWER CHOICES	RESPONSES	
Yes	23.85%	26
No	76.15%	83
<b>TOTAL</b>		<b>109</b>

#	COMMENT
1	why bother with survey or election if each one can dismiss, rules and do their own thing.
2	As a member, off reserve, I feel we could use a little more thoughtfulness.
3	To account for increase or decrease in band membership
4	This should be all members
5	dictatorship comes to mind
6	by a motion at a council meeting
7	Members should have a say
8	This is a big can of worms to open. You cant have 75 members running the other 1200 members. Why you even asked this questioned is beyond me.
9	any provision in the increase or decrease in the number of Council should be brought to the band members, with a rational, for approval



## April 7<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 on April 7<sup>th</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 7<sup>th</sup>, 2024, session were the following participants:

Diane Gaudet

Victor Gascon

Irene Armstrong,  
Committee Member

Jackie Tangie

Gimaa Kwe Tangie

Sandra Donny-Fraser,  
Committee Member

Jim St. Germaine

Chad Edgar, Councillor

The session covered topics of: appointment of the deputy officer, grounds for removing Councillors, evaluating Council performance, and filling vacancies. 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.

### Appointment of Deputy Chief

The participants were asked whether the position of a Deputy Chief should be elected as a separate position on the ballots and whether it should be a full-time role.

Several participants expressed varying views, but they were all consistent in the fact that the role of Deputy Chief should not be a separate position on the ballot for Citizens to elect nor should the process be automated—i.e. appoint the Councillor with the highest number of votes. The latter suggestion was rejected because there was an overall acceptance that not all Councillors are prepared or desiring of the role of Deputy Chief.

- One participant offered the view that it should be a full-time function, a salaried position that supports the Chief that the Chief selects. The Chief can strategically choose a Deputy Chief, whose skills and expertise and leadership skills complements the Chief's style. You end up with a well-rounded leadership team.
- Another participant offered that the role of deputy chief should be elected by the councillors.
- Another participant suggested that the Deputy Chief should be chosen from among the Councillors.
- One participant expressed concern about being appointed to the role of Deputy Chief since the Councillors typically have full time jobs that they would be required to leave if appointed.
- Another participant felt that either was appropriate but offered that the Chief selecting the Deputy Chief may be the best approach since there has to be a trusting relationship between the Chief and Deputy Chief, they have to be the sounding board, have to be available, have to have the skills, but it should not be a full-time paid position.

### Role of Deputy Chief

Participants also offered a lot about what the Deputy Chief's role should be:

- The Chief should have a broader outward looking focus while the Deputy Chief is tasked with providing input on the day-to-day.
- The Deputy Chief should not be so involved in the day-to-day so as to be usurping the function of the Executive Officer or the Management Team.
- Act as chairperson when Chief is not available.

The main point raised is that there must be a clear outline of the responsibilities of the Chief, Deputy Chief, and Councillors and who is accountable to whom—one participant suggested that the Deputy Chief should be accountable to the Chief and the Chief accountable to the Council. Once we understand the role and function of the Deputy Chief, the decision on whether it's a full-time function and where the Deputy Chief resides can be discussed.

### Grounds for Removing Council Members

Removal of an elected Council member is difficult, even for misbehavior, with courts having the final say. However, communities can develop a process that would be upheld by the courts if the process was procedurally fair and if the process was followed. The highlights from participants can be distilled as follows:

- Council members should be required to agree, up front, to the grounds for removal. This agreement should be found as early as the nomination process and the Candidate's Code of Conduct.
- Council should be the body who votes another Council members off.
- Another participant felt that it should be a third-party committee to decide—whether an elders or youth council. They also expressed concern over having Council make the decision when they work alongside Council every day.
- An elder's advisory council could be helpful for Council to deliberate on this decision but ultimately Council should decide.
- Third party investigation should be required for procedural fairness and then it is up to the Council to make that decision on whether a Councillor is removed.
- Evaluating the mental health of Council members should also form part of the dismissal process.
- Unpreparedness for meetings should be a violation of the oath of office and code of conduct, potentially leading to removal from office—more robust notes on the discussion are found below.

### Code of Conduct for Elected Council Members

Throughout the discussion on the grounds for removal, participants expressed certain behavioural guidelines for Council members that should find their way into a code of conduct. These included:

- Attendance of meetings.
- Coming prepared to participate in discussion—having reviewed the materials provided.
- Collaborating and open communication among the Council.
- Integrity and Accountability.

### Evaluating Council's Performance

All participants agreed that a Council member's lack of preparation and understanding of materials can hinder decision-making processes. As such, there should be a requirement to read and vet information before voting on it at a Council meeting. However, reading something and understanding it are different concepts and Council meetings are the forum where a Council member can ask questions about the information provided. In addition, there has to be sufficient time between the delivery of materials and the meetings to give Council members the opportunity to

review all the materials—there was an expressed frustration by one of the Councillors in attendance of feeling overwhelmed by too much information.

Evaluating the Council's performance would be a difficult task because the Council receives a lot of materials and they do not have the staff support to assist them in vetting and understanding the materials. Rather, the Council meetings if the forum for doing this work. The Council meets frequently to deliberate before a decision is made at a Council meeting. As such, the governance policies should be developed to reflect the need for more meetings of the Council. There should also be some form of procedure around abstaining from voting and participating in decisions if a Council member is unprepared.

### Filling a Vacancy on Council

Participants were largely of the view that the process for filling a vacancy really depends on the length of the term and that they would like to have that conversation together.

However, there was a general sense that a by-election should be called for the position of Chief if the position is vacant for longer than a year. If the vacancy period is short, the Council should promote from among Council to the office of the Chief.

For the position of Councillor the next Candidate with the highest number of votes take up the vacancy as Councillor. However, one participant acknowledge that this approach is fiscally responsible. But that participant strongly felt that the Candidate with the next highest votes was not elected, therefore it is not appropriate to promote them.

One participant suggested that a simplified process should be adopted for by-election.

Some participants voiced the opinion that the term should be four years and we decided to bring these topics, term and filling vacancies, would be brought back to the next meeting.



# 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 7<sup>th</sup>, 2024

The purpose of this document is to provide participants with some background information for the discussions during the April 7<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.

### Appointing a Deputy Chief

There is an identified need for a position of Deputy Chief as part of Council and the following were listed by respondents to the 2024 Governance Survey as part of the function of a Deputy Chief—see Appendix A, Questions 18 & 19:

- As a substitute for the Chief when the Chief was unable to take on duties (whether due to death, absence, illness or simply too busy).
- As an advisor or sounding board to the Chief.
- As an assistant to the Chief to take on whatever duties the Chief has assigned.
- Distinct duties from the Chief (such as dealing with internal affairs, strategic direction, or ensuring accountability to citizens).

During prior working group discussions, there was a suggestion that the role of the Deputy Chief could be a full-time remunerated function. There was also a suggestion that there be a dedicated seat on Council for a youth that would serve as a “young Chief”.

- 1. Consider whether a position of the Deputy Chief should appear on the election ballot as a distinction position from Councillor or Chief? Alternatively, should the role of Deputy Chief be appointed—whether by default as the Councillor who receives the highest number of votes or the most seasoned/longest running Councillor? Should the function of Deputy Chief be reserved for a youth candidate (defined as someone who is between 18-28 years of age)?**
- 2. Consider whether the role of Deputy Chief should be a “full time” function and be remunerated on the basis of a full-time roll? If so, should the position be required to maintain full time office hours at the reserve?**
- 3. Consider whether the role of Deputy Chief should be reserved for a resident of Michipicoten First Nation’s Gros Cap No. 49 reserve? Or if the person who is elected or appointed to the function of Deputy Chief should be required to relocate to the reserve at Gros Cap No. 49?**

## Grounds for Removal of Council members

Some of the more common grounds for the removal of an elected official include:

- Incapacity: If an elected official becomes physically or mentally incapacitated and is unable to perform their duties, they may be removed from office.
- Abuse of Power: If an elected official abuses their power or engages in corrupt practices, they may be subject to removal from office.
- Violation of Law: Elected officials can be removed if they are found guilty of violating specific laws or regulations governing their conduct in office.
- Violations of the Oath of Office: Elected officials can be removed for misconduct when they violate their oath of office.
- Conflict of Interest: Elected officials may be removed if they have a conflict of interest that prevents them from impartially performing their duties.
- Neglect of Duty: Elected officials can be removed for neglecting their duties or failing to perform their official responsibilities.

Results from the 2024 Governance Survey suggest that respondents are agreeable to using the following grounds as a basis for removal (1) criminal conviction (2) Failure to attend at least three consecutive meetings, except for a legitimate reason and (3) Multiple breaches, at least two or more, of the code of conduct—see Appendix A, Question 27.

1. **During our April 3<sup>rd</sup> virtual working group session, there was a suggestion that Councillors who came unprepared to meetings—defined specifically as having not read the materials provided in advance—would be barred from voting on a related motion. Consider whether being unprepared – vs simply missing meetings – is a reasonable group for removal.**
2. **Consider what the framework should be for reporting, investigating, and resolving allegations that an elected Councillors has conducted themselves in a manner that warrants discipline and who should lead that process--Council, the Administration, an arm's length third party, committee of Citizens, a combination of these?**

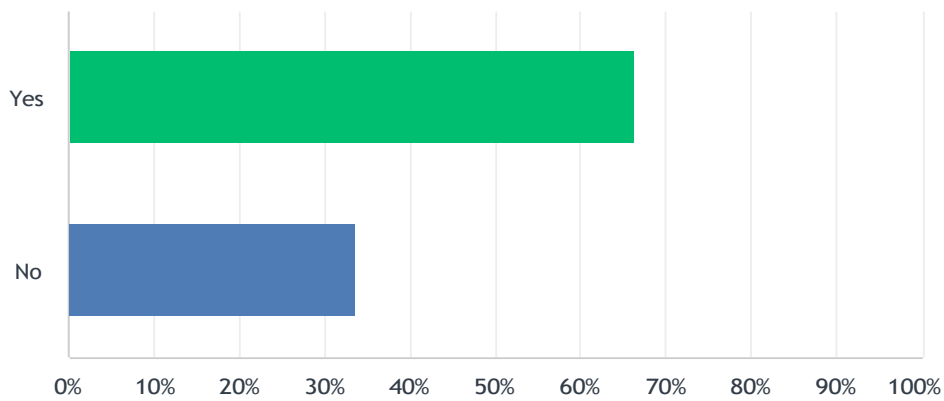
## Filling Vacancies on Council

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, whether they arise from the removal of a Council member or the Council member's resignation. 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.

1. **If the Election Law restricted Candidates from running for multiple roles—example, could only appear on the ballot for the position of Chief or Councillor but not both—is the option of filling a vacancy by selecting the Candidate with the next highest votes still viable?**
2. **Consider whether there should be a different process for filling a Councillor seat versus filling a vacancy for the position of Chief or Deputy Chief?**

### Q18 Should there be a position for a Deputy Chief (aanikeogimaa)?

Answered: 111 Skipped: 2



Q18 ANSWER CHOICES	RESPONSES	
Yes	67.27%	75
No	32.73%	36
<b>TOTAL</b>		<b>111</b>

#	Q18 COMMENT
1	If needed, yes
2	I think that the deputy chief can help alleviate the Chief's responsibilities and may help with problem solving.
3	for some cases where the chief is ill and unable to fulfill their duties
4	should chief need to be away from the office, deputy chief can take care of matters on hand.
5	I think having a council is enough to advise the chief.
6	One of the Council members be named as a deputy chief
7	Designate a councillor as a deputy chief, no need to elect another
8	One who resides on the First Nation if Chief does not.
9	This would be a great idea
10	not sure
12	non-voting position
13	I believe Deputy Chief can help relieve some of the chiefs duties and help with problem solving
15	It will help with Chief's duties
16	WHEN CHIEF CANNOT CARRY OUT DUTIES
17	having watched Chiefs in any First Nations, it is the Chief who mainly represents their respective first nation, a lot of times their time places. It is a demanding and tiring position. There should always be a dependable and knowledgeable helper kind of position to the Chief
18	A Hereditary Chief yes
19	Senior Council member
20	Only if Chief passes away
22	In case of illness, etc
23	The Councilor with the highest # of votes
24	Only if the workload of Chief necessitates such a position. Otherwise a simple policy stipulation could be made that indicates the council member with most votes would replace the Chief in cases of dire necessity.
25	To support the Chief when the Chief is not well or out of town...
26	Should be appointed by council
27	This could open another can of worms. We can't have 75 residents controlling the majority of members. No way this should ever happen. Example- TRUST FUND

28	<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. 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.</li> </ol> <p>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</p>
29	<p>But I support an elder advisory council, a youth advisory council, and keeping past chief on in an ex official position of respect and transmission (succession)</p>
30	<p>Elected among the Chief and Council by secret ballot.</p>
31	<p>The Councillor with the most votes should be the Deputy Chief or a Councillor that is chosen by all of Council at their first meeting following the election.</p>
32	<p>With portfolio</p>

## Q19 If there were a position for Deputy Chief, what function/role should the Deputy Chief (aanikeogimaa) have?

Answered: 67 Skipped: 37 Non-responsive: 9

Responses can be categorized into four main categories:

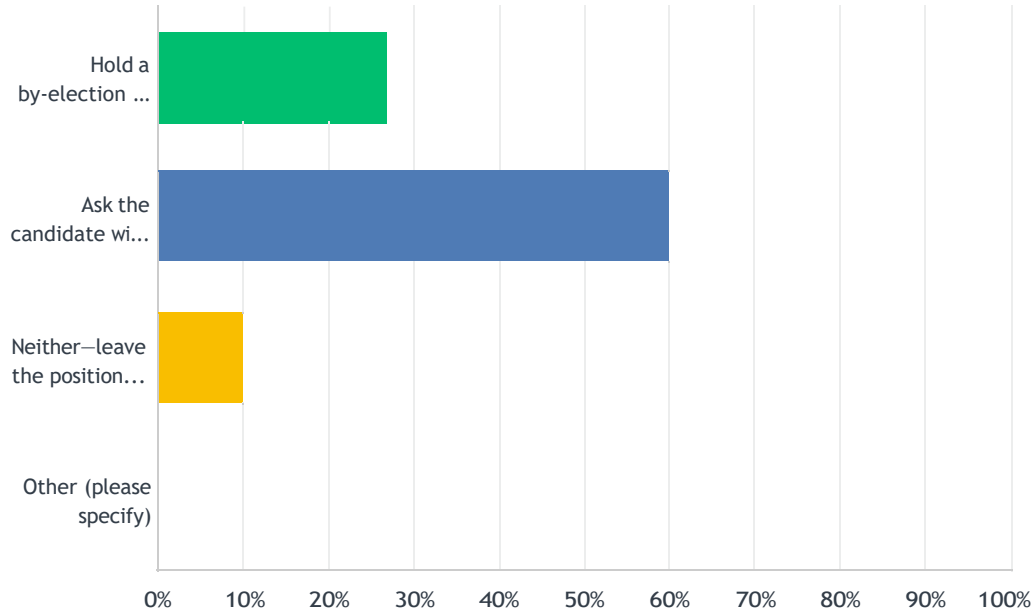
- (1) As a substitute for the Chief when the Chief was unable to take on duties (whether due to death, absence, illness or simply too busy).
- (2) As an advisor or sounding board to the Chief.
- (3) As an assistant to the Chief to take on whatever duties the Chief has assigned.
- (4) With distinct duties from the Chief (such as dealing with internal affairs, strategic direction, or ensuring accountability to citizens).

#	Q19 RESPONSES
1	Advisor
2	2nd in command
3	Assist Chief and act as Chief in absence of the Chief
4	Assist the Chief and act in Chiefs position if the Chief is absent and cannot perform their duties.
5	Assist the Chief in his/her duties & represent the Chief in his/her absence.
6	Attend meetings that chief can not
7	Be there to cover for chief when chief can't
8	Chief assistant
9	Chief dead him/her step up.
10	Chiefs right hand man
11	Choose a council member
12	Directions from the CHIEF
13	duties as required by chief
14	Everything
15	Fill in and
16	Fill in for the Chief if absent/ill. Deputy Chief should assist the Chief in decisions making and be knowledgeable of all the Chiefs doings.
17	Fill in for the Chief when not there
18	Fill on for chief. Do things delegated by chief. Be a sounding board. filling in for chief in case of emergency, assist with any other policies or work needed as needed.
19	General assistance for chief and counsel
20	Help out when the chief has other obligations to band members
21	help the chief with assigned duties attend meeting if the chief cannot attend help with decision making during meetings
22	Help the Chief with their responsibilities and duties
23	Help with chief duties and to be well informed of the position in case the chief is unable to perform his/her duties.
24	i dont think there should be a deputy Chief
25	If there was a deputy chief, I think it would be to support the elected Chief. And if any emergency, help if necessary.
26	Interim Chief in the event current Chief cannon remain in the position.
27	internal affairs -- looking after the community
28	Internal affairs on reserve or in the territory or more of a focus on cultural activities and ceremonies
29	

- 30 Internal procedures, systems, processes, review of policies, human resources
- 31 Just like the chief
- 32 Like municipal elections, highest councillor votes becomes deputy and completes duties as assigned.
- 33 Making sure that us as members are included in making decisions
- 34 Not sure one is required
- 35 observe proper protocols and ensure rights of band members respected.
- 36 On reserve business flow manager leaving the Chief with time to look after larger issues off reserve
- 37 one of the councillors can be designated as deputy chief until a full time chief is voted in.
- 38 Only step in if chief unable to fulfill duties and aware of issues discussed at council meetings
- 39 Only step in when the Chief is on leave for governance business only.
- 40 Oversee all Council business (accountability)
- 41 represent chief in the interim when chief cannot to attend functions
- 42 Responsible for reporting all criminal activity
- 43 same position as chief
- 44 Second signing off on all bank, funding, sponsoners and payouts to have two signatures
- 45 share duties with the Chief; divide duties
- 46 Should step in for the chief
- 47 Should the Chief become unable to perform her or his task, the Deputy Chief could step in and assist the Chief.
- 48 Should the sitting chief become unable to perform duties for what ever reason.
- 49 step in when chief is absent
- 50 take over responsibility for decision making in case of illness, death, vacation
- 51 The Deputy Chief should be accountable for implementing the strategic objectives. This includes priority setting, resource planning, and establishing goals, targets, and metrics.
- 52 The Deputy Chief should be ready to assist the Chief and cover in the absence of the Chief.
- 53 To act as a delegate when the Chief is not available, only.
- 54 To assist the Chief with duties and to take charge in case of emergency
- 55 to be determine be needs and priority of council and Chief.
- 56 To be determined
- 57 To cover for or attend functions the chief is unable to attend
- 58 TO FILL IN WITH NO VOTE
- 59 To provide support to the Chief and in the event that the Chief is unable to fulfill their responsibilities (surgery/leave) to step in when needed.
- 60 to replace the chief when it is impossible for Chief to attend (illness, weather, etc.)
- 61 To second all the decisions the Chief makes
- 62 To step in as interim Chief until the next election if for any reason the Chief is unable to continue ( illness, death etc)
- 63 To take over if the chief is busy.
- 64 When the chief is unavailable to go out of town for a gathering the deputy chief should go in their place
- 65 Work with Chief and council
- 66 Working alongside the chief on different project programs
- 67 Yes to be able to attend meetings that the elected chief is not able to attend

## 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?

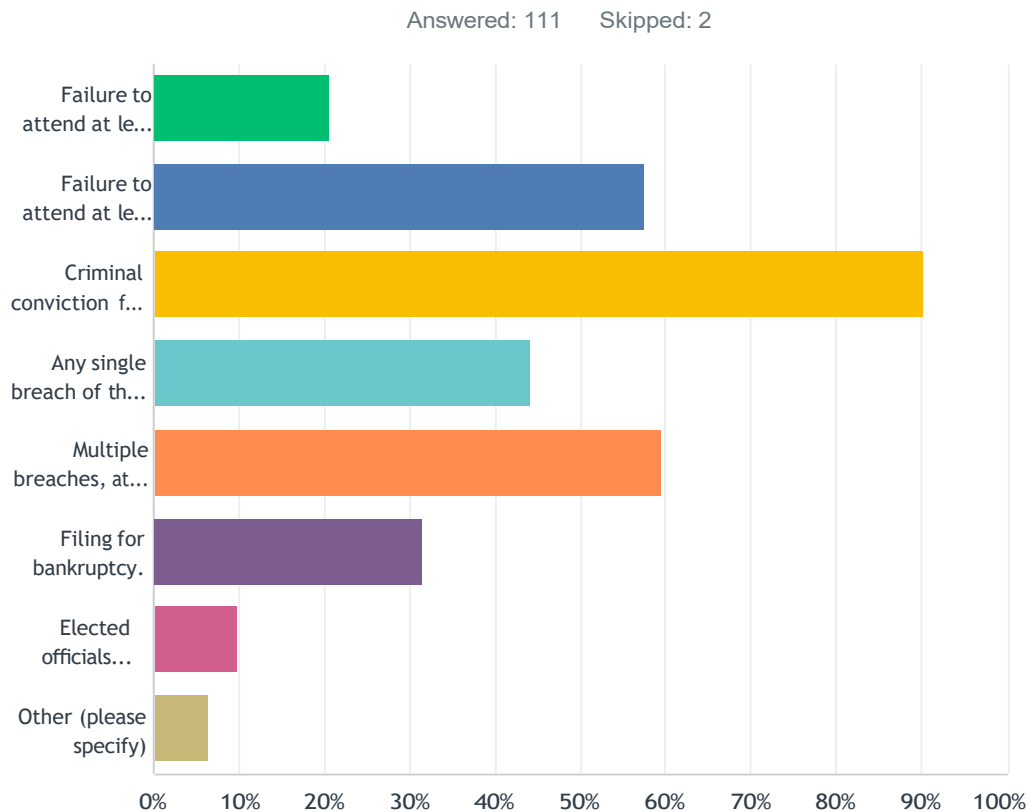
Answered: 112 Skipped: 1



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.

## Q27 Are the following grounds reasonable for removing the Chief or Council from office? (select all that should apply)



Only one of the options provided in the survey meets the materiality threshold (highlighted in yellow below). However, there are two options: “Failure to attend at least three consecutive meetings, except for a legitimate reason” and “Multiple breaches, at least two or more, of the code of conduct” that sit close to the materiality threshold. Given the responses provided under the “Other” option (such as “Any wrongdoing of any sort should be dismissed. No question”, “Only a very serious delinquent conduct should a person be removed from office. Obviously, an unworthy member should be removed” and “Undeclared conflicts of interest that become known during the term - failure to disclose”) these two options (highlighted in blue below) become material considerations.

Q27 ANSWER CHOICES	RESPONSES	
Failure to attend at least three consecutive meetings, regardless of the reason.	20.72%	23
Failure to attend at least three consecutive meetings, except for a legitimate reason.	57.66%	64
Criminal conviction for violent crimes, fraud, or drug related offenses.	90.09%	100
Any single breach of the code of conduct.	44.14%	49
Multiple breaches, at least two or more, of the code of conduct.	59.46%	66
Filing for bankruptcy.	31.53%	35
Elected officials should only be removed from office through the subsequent election process.	9.91%	11
Other (please specify)	6.31%	7
<b>Total Respondents:</b>		<b>111</b>

#	OTHER (PLEASE SPECIFY)
1	Any wrongdoing of any sort should be dismissed. No question.
2	Only a very serious delinquent conduct should a person be removed from office. Obviously, an unworthy member should be removed.
3	Undeclared conflicts of interest that become known during the term - failure to disclose. MFN members need to be notified of breaches of code of conduct by C&C.
4	What code of conduct is referred to above?
5	It would have to be an extreme situation; the voting members would do this. Not by the Chief/Council!
6	Temporary removal for criminal charges Removal for any criminal conviction (not just violent crimes, fraud, or drug related offenses. Qualified their response with failure to attend compulsory meetings.
7	For criminal convictions regarding the convictions, I would hate for someone to be removed for possession when they need treatment/intervention instead. Trafficking is a bit of a different situation.



## 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:

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*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**

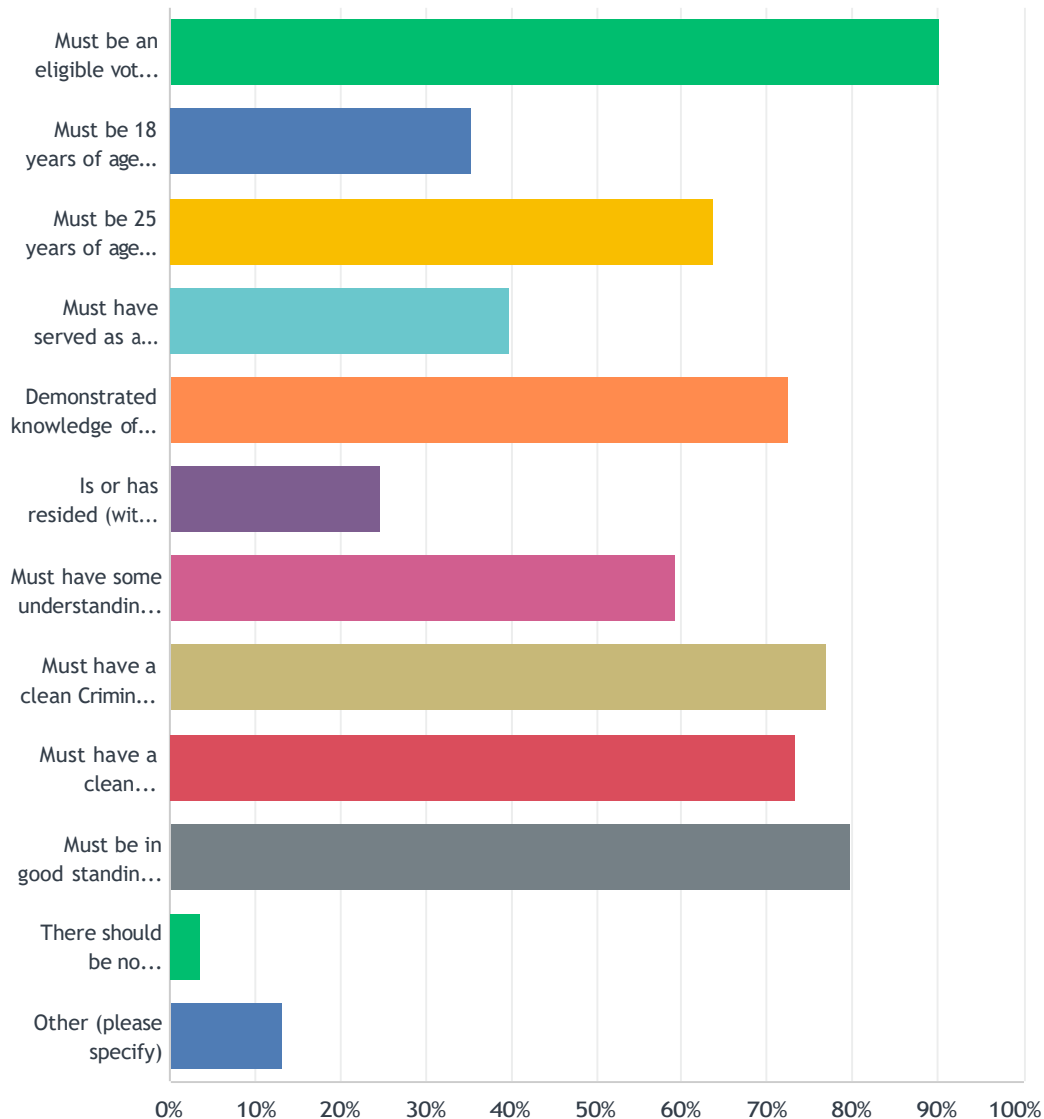
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<sup>1</sup> 2024 SCC 10

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>

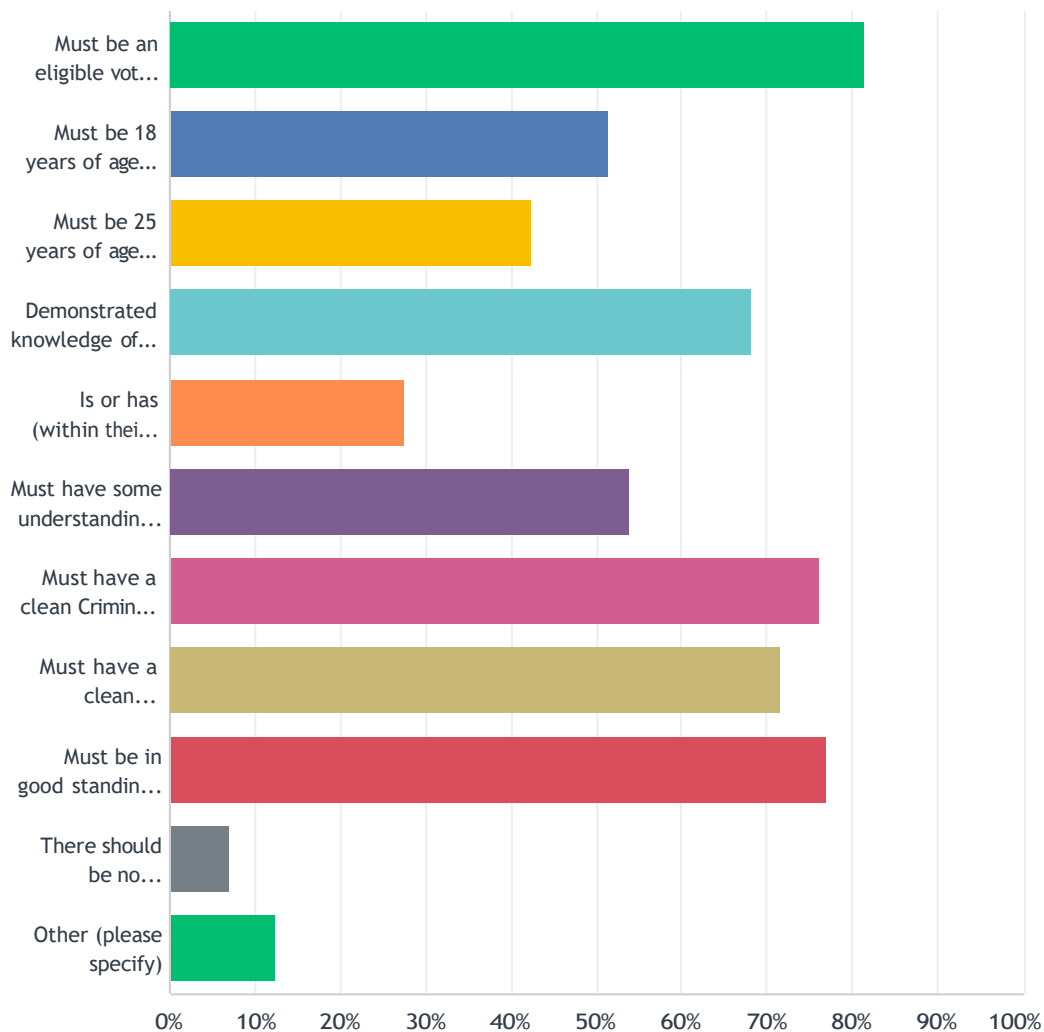
#	OTHER (PLEASE SPECIFY)
1	Chief has his/her won duties, as do Councillors. I believe each follow own assignments.
2	A chief is a god given position. A leader to their people. He/she should be honourable, honest, hardworking, caring, having compassion and empathy, wisdom and strength, vision for a better future, loving, otherwise and 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 pass 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.

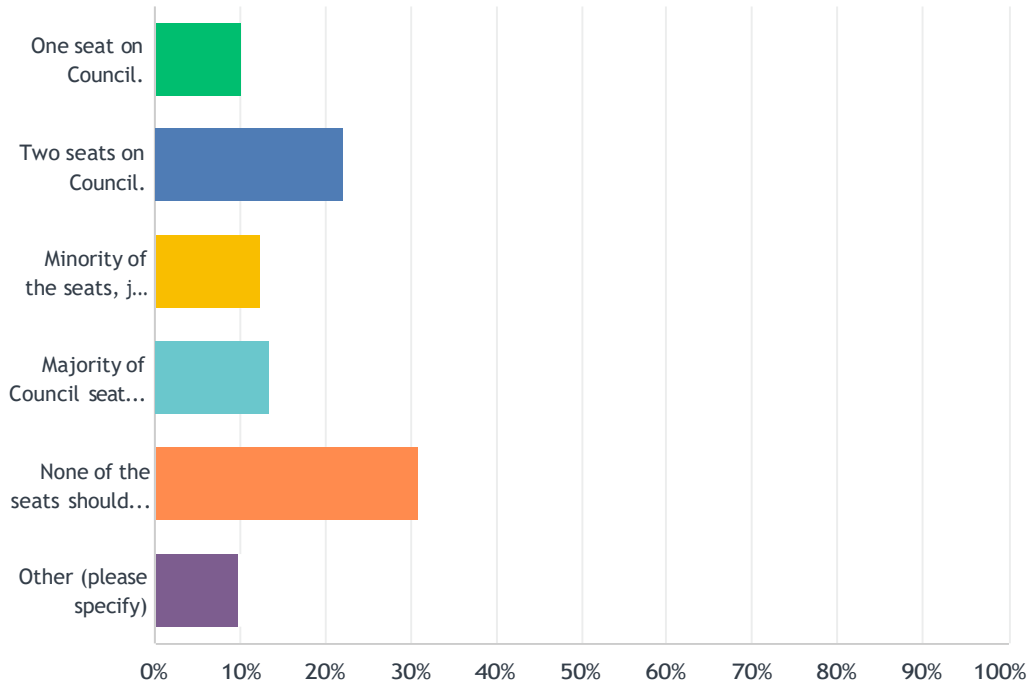
Q11 ANSWER CHOICES	RESPONSES	
Must be an eligible voter (by extension a citizen) of Michipicoten First Nation.	81.42%	92
Must be 18 years of age at the time of nomination.	51.33%	58
Must be 25 years of age at the time of nomination.	42.48%	48
Demonstrated knowledge of Michipicoten First Nation’s history.	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



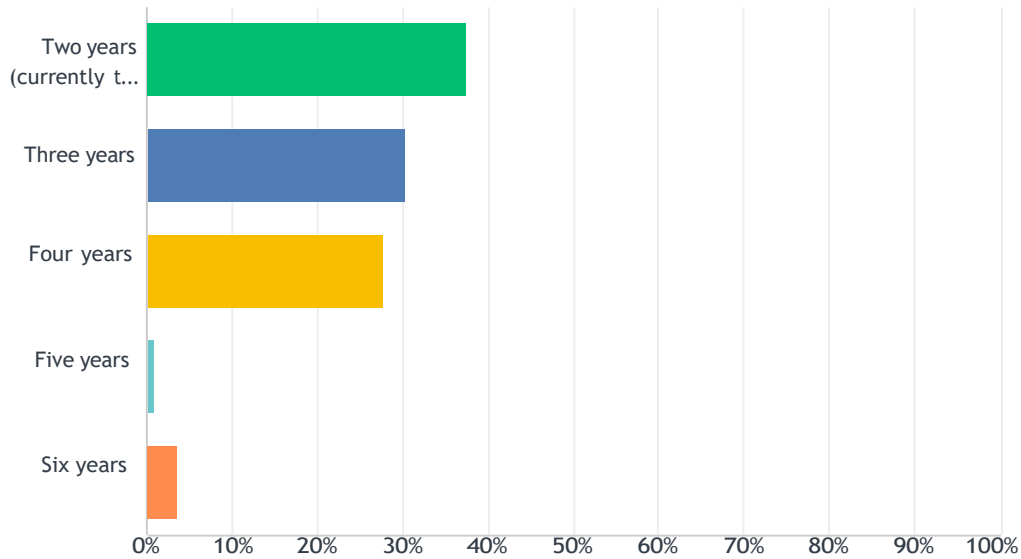
69\* respondents—reflecting 62.16% —identified a preference for dedicated seats on Council for residents of Gros Cap No. 49 Reserve. Some number less than half is the clear leaning with a preference for two reserved Council seats.

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.</li> </ol> <p>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</p>
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

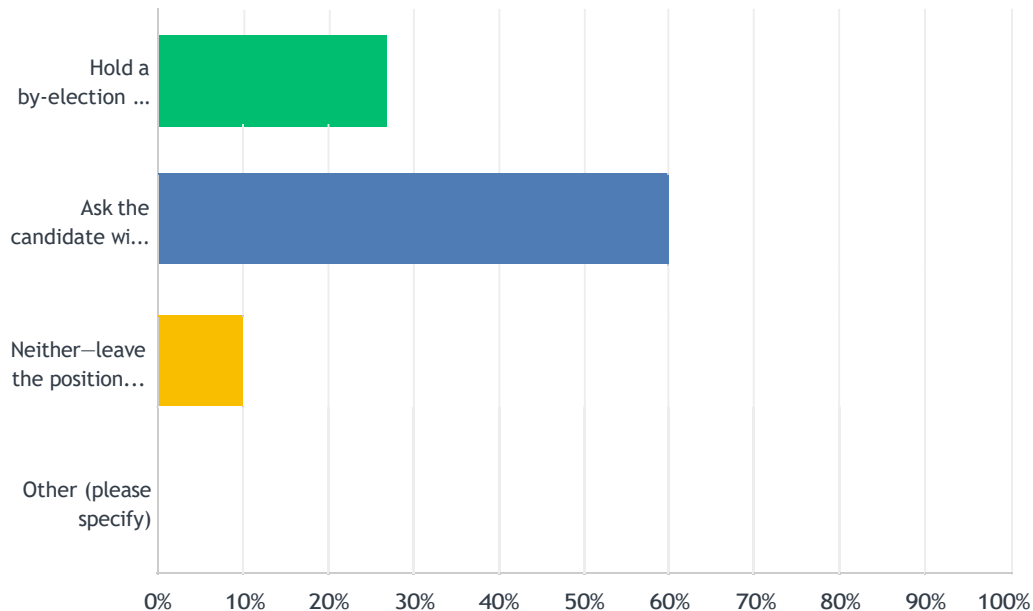


The responses indicate that 70 or 62.5% of respondents would accept a longer term of office than there is currently under the *Indian Act*.

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)

Record of the Citizen Information Meeting  
Draft Election Law presentation and discussion  
May 9<sup>th</sup>, 2024 – Sault Ste. Marie, Quattro Hotel

Attendees:

Council:

Gimaa Kwe Tangie  
Councillor Sandra Donney-Fraser  
Councillor Irene Armstrong  
Councillor Chad Edgar  
Councillor Linda Peterson

Citizens and guests:

Kim Belleau	Earlyn Kudlec	Judy Price
Brenda Lee Brining	Peter Mann	Verlyn Prive
Mary Ellen Chapman	Joni Marchini	Peggy Rice
Alice Donney	Malorie Marinich	Clyde Rowan
Darcy Dumas	Margaret Marinich	Lori Rowan
Nathalie Given	Bernice McMillan	Linda Rowan
Terry-Lynn Glave	Daisy Nadeau	Sharleen Stone
Christopher Gravelle	Cecile Nadeau	Christine Wilson
Monique Gravelle	Paula Penno	Patricia Wilson
Christopher Gravelle Jr.	Penny Penno	Isabelle Wilson
Jasmine Gravelle	Norma Penno	Bill Wilson
Celia Higo	Gladys Perrault	Daniel Wynne
Paul Kudlec	Carrie Peterson	Daryl Belanger

Documents Provided :

- Draft Election Law dated May 9<sup>th</sup>, 2024
- Draft Election Regulation dated May 9<sup>th</sup>, 2024
- 2024 Governance Survey Results
- Notice of Written Consultation Period
- Poster of the schedule of upcoming working group session

Opening Prayer: Councillor Linda Peterson  
Opening statement and welcome: Gimaa Kwe Tangie

Presentation:

**MICHIPICOTEN**

# **Governance Reform Project**



**FIRST NATION**

**Citizen Information Meeting**

**May 9<sup>th</sup>, 2024**

**Prepared by**

**Jessica Labranche**

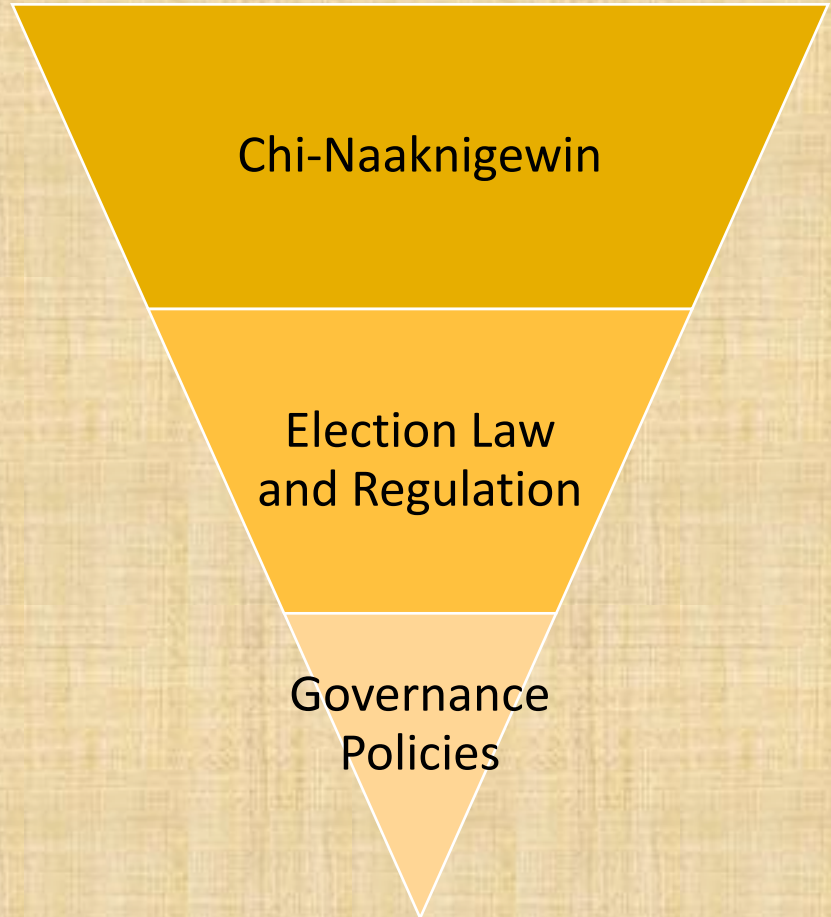
**Committee Advisor , Special Committee on Governance**

# Agenda

- Opening Prayer
- Overview of the Governance Reform Project
- Overview of Draft Election Law and Regulation
- Summary of Citizen engagement
- Input received and draft of the Law

# Governance Reform Project

**Project is to look at those governing documents that target leadership selection and decision making, specifically:**



# Citizen Engagement to date

- Governance Survey – released January 15<sup>th</sup> through until March 1<sup>st</sup>.
- Seven working group sessions throughout February, March, & April;
  - Traditional Governance
  - Candidate's Code of Conduct
  - Criminal Records
  - Consequences for violations of a Code of Conduct – both during campaigning and once elected
  - Process for Creating an Elder's Council & defining the qualities of an elder
  - Residency Requirement for Elected Council Members
- Reserved Council seats on for Residents of Michipicoten's Gros Cap Reserve
- Dedicated housing for Council Members
- Council's Term of Office
- Number of seats on Council
- Process for removing Council members
- Filling vacancies
- Council Portfolios
- Youth and Elder Council, role and responsibility
- Election Appeals Committee

# Traditional Governance

- Move towards traditional governance model
- Learning curve before we get there
- On ramps within the governance framework to move towards traditional governance
- Policy framework— why? more adaptable to change
  - Youth and Elders advisory council
  - Borrowing from the philosophy of the clan system to develop the portfolio

# Robust Nomination Process

- Set eligibility criteria for Candidates
  - criminal record checks
- Candidates should adhere to a code of conduct during their campaign
- Candidates should not be allowed to run for both Chief and Councillor positions
- Candidates cannot be employees
- More time to get to know Candidate
- More information about Candidates

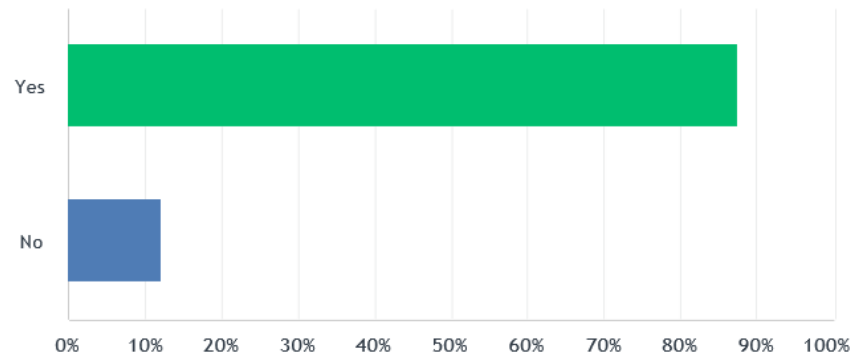
# Candidate Eligibility

- Gimaa: minimum 25 years of age
- Councillor: minimum 18 years of age
  - [Place holder for discussion on residency requirement];
  - has knowledge of Michipicoten First Nation's history;
  - has some understanding of Anishinaabemowin;
  - has a clean criminal record, except for convictions for non-violent crimes involving the exercise of aboriginal and treaty rights in the Michipicoten First Nation's traditional territory;
  - does not owe any debts to Michipicoten First Nation as of the date of the close of nominations; and
  - has submitted a complete nomination package to the Electoral Office by the close of nominations.

# Candidates Code of Conduct

**Q8 Should the nominees be required to adhere to a code of conduct during their campaign with serious consequences if they fail to do so—such as a declaration of ineligibility to run or hold office?**

Answered: 112 Skipped: 1



Q8 ANSWER CHOICES	RESPONSES	
Yes	88.39%	99
No	11.61%	13
<b>TOTAL</b>		<b>112</b>

# Breaches of Candidate's Code of Conduct - Regulation

- behaving violently, harassing, or uttering threat against fellow Candidates, their sporters, the Electoral Officer, Deputy Electoral Officer(s), Election Appeal Committee members, and the employees of Michipicoten First Nation;
- engaging in Corrupt Practices:
- engaging in smear campaigns, rumors, gossip or innuendo;
- interfering with the performance of Electoral Officer, Deputy Electoral Officer(s), or the Election Appeal Committee in their official duties;
- misinforming or withholding information from the Electoral Officer about their eligibility to stand as Candidate.

# Process – Regulation Article 21

- Grievance Officer vet complaints (see Law s. 34)
  - non-Citizen
  - prior experience carrying out the duties of investigation into complaints and impartial decision making
- Only fellow Candidates may file a petition
  - Discuss whether that should extend to the Electoral Officer?
- 10 days to file a petition from the date of the event
- Object to the Election Appeals Committee

# Residency Requirement - Survey

Of the total 136 responses, 78.67% of respondents indicated their desire for some form of residency requirement for Council members. Among the residency options provided, Ontario as the geographic region was the preference.

Q12 ANSWER CHOICES	RESPONSES	
Yes, all candidates should reside within the Nation’s traditional territory to be eligible to run for and sit on Council.	16.18%	22
Yes, all candidates should reside within the province of Ontario to be eligible to run for and sit on Council.	36.03%	49
Yes, all candidates should reside within Canada to be eligible to run for and sit on Council.	13.23%	18
Yes, all candidates should reside within North America (Canada and United States of America) to be eligible to run for and sit on Council.	13.23%	18
No, candidates nominated or elected for Chief and Councillor positions can live anywhere they choose.	14.71%	20
None of the above	6.62%	9
<b>TOTAL</b>		<b>136</b>

# Residency Requirement - Session

- Resident of Ontario to hold office
- SCC Decision released on March 28<sup>th</sup>, 2024 in *Dickson v. Vuntut Gwitchin First Nation*
  - *First Nation* has a residency requirement built into their Constitution that requires all elected official to be resident in the traditional territory
  - Even though it contravenes the *Charter* the residency requirement protects Indigenous difference and was allowed
- Bring the discussion to a further working group

# Questions?

# Number of Council Members

- Several Questions:
  - There is no clear consensus in the Survey data, but the most common responses were seven Council seats or a 1/200 seat to Citizens ratio.
  - Respondents were of the view that there should be some clear guidance on the number of seats rather than leaving Council with full discretion to decide how many Council members there should be.

**Law - At most 9 seats – one Gimaa and eight Councillors**

# Seats on Council for Residents

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>	

# Seats on Council for Residents

At least one contemplated

Concerns expressed by the working group:

- The pool of Candidates among the residents is quite small, particularly since the Community Trust operates with a board consisting of mainly residents and members of that board cannot sit as Council members.
- The eligibility criteria may make that pool even smaller.
- A large number of Candidates who ran in the last election (19 out of 23) were non-residents.
- What happens if there are no Candidates who are residents to fill any resident dedicated seats.

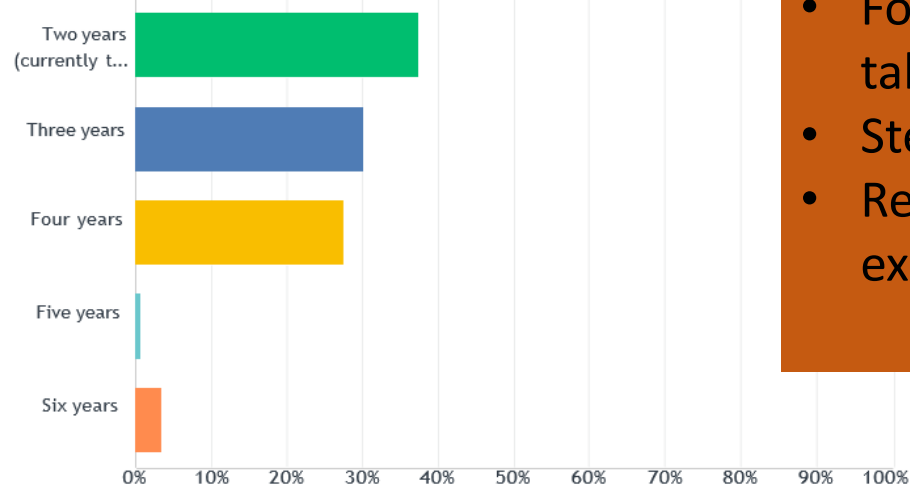
# Alternatives to dedicated seats

- The oath of office for Council members should reflect an explicit undertaking to represent the voice of all citizens, both on and off the reserve.
- A policy framework could be developed whereby a Councillor(s) has the dedicated role and responsibility of bringing residents voice to the Council table. Either as a portfolio, or community liaison function.
- Establish an advisory role for a resident during terms where no residents achieve sufficient votes to be elected as a Council member.
- The Deputy Chief could also be required to take up residency on reserve.

# Aanikeogimaa - Deputy Chief

- A Councillor shall be appointed to the role – instead of an elected position
- Appointed by Gimaa – (Law - s. 64)
  - recommendation from the Councillors, collectively;
  - whether they are an incumbent;
  - where they the number of votes;
  - ability and capacity;
  - experience;
  - familiarity with the Nation’s administrative departments and programs; and
  - proximity of their place of residence to Reserve.

# Term of Office – Survey



- Forming a Council takes time
- Steep learning
- Retaining Council expertise

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	<u>3.57%</u>	4
<b>TOTAL</b>		<b>112</b>

# Term of Office – Working Group

## Support for 3-year terms

- Efficiency – Council will be motivated to get work done
- Risk losing Council members if it's any longer than 3 years
- More than 3 years is a long time when Council or individual Councillors are not effective
- Works well for other Councils who have made the leap from the Indian Act 2-year term

**Law – 4 years**

## Support for 4-year term

- Deep engagement and understanding: most of the policy projects and large development projects last several years
- Effective advocacy and representation
- Stability and Consistency
  - Takes time for a Council to gel
  - Takes time for the administration to build rapport with Council
- Avoid the pitfalls of campaign distraction
- Other levels of government work on 4-year terms
- Sacredness to the number four

# Removal of Council Members

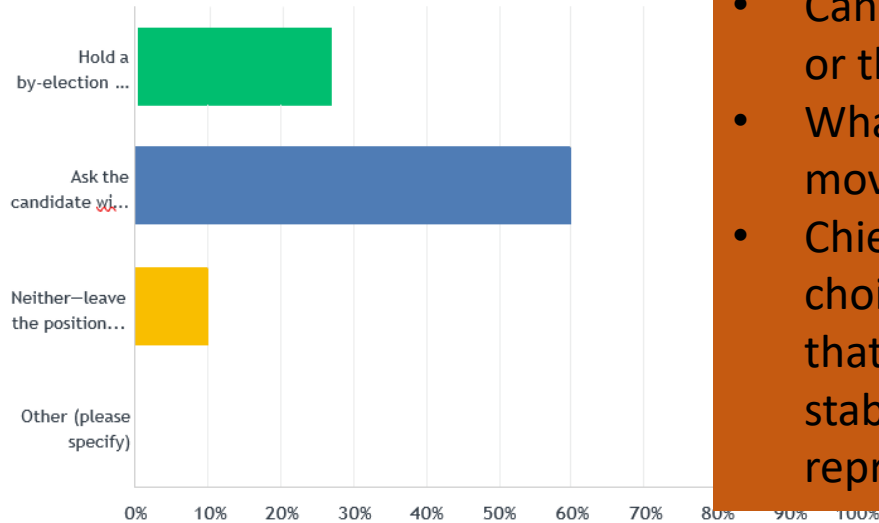
Q27 ANSWER CHOICES	RESPONSES	
Failure to attend at least three consecutive meetings, regardless of the reason.	20.72%	23
Failure to attend at least three consecutive meetings, except for a legitimate reason.	57.66%	64
Criminal conviction for violent crimes, fraud, or drug related offenses.	90.09%	100
Any single breach of the code of conduct.	44.14%	49
Multiple breaches, at least two or more, of the code of conduct.	59.46%	66
Filing for bankruptcy.	31.53%	35
Elected officials should only be removed from office through the subsequent election process.	9.91%	11
Other (please specify)	6.31%	7
Total Respondents:	111	

More robust measures of accountability and a process for removing Council Members – found in the policy framework

# Process for Removing

- Set clear grounds that the Council Member has agreed to before taking office
- Council should be the body who votes another Council members off.
- An elders advisory council will be helpful for Council to deliberate on this decision.
- Third party investigation would be required for procedural fairness.
- This process will be found in the policy framework

# Filling a Vacancy - Survey



## Factors to Consider:

- Candidates can only run for one or the other
- What if the next Candidate has moved on/unprepared
- Chief: is there an appropriate choice among the Councillors that maintain stability/continuity/effective representation, etc.

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>

# **Vacancies – Law sections 20-24**

90 days into new term:

- the position of Gimaa filled by calling a By-Election, and
- the position of Councillor shall be filled by the next Candidate with the highest number of votes in the most recent election.

After 90 days let Council decide whether to promote or call a by-election.

# Election Appeals Committee

Survey: split between an impartial committee and a community led process

Composition (Law):

- One citizen
- One Anishinaabe non-citizen
- One non-citizen professional

Process for vetting objections in found in the Regulation

# Upcoming/Ongoing Activities

Written Consultation Period from May 9<sup>th</sup> to July 15<sup>th</sup>

Working Group Sessions:

- Tuesday, May 14<sup>th</sup> in-person at the Band Hall
- Sunday, May 26<sup>th</sup> virtually
- Thursday, June 6<sup>th</sup> in-person in Sudbury
- Tuesday, June 11<sup>th</sup> virtually
- Tuesday, June 18<sup>th</sup> virtually

Email: [michipicoten@michipicoten.com](mailto:michipicoten@michipicoten.com)

# Questions?

## **Concerns raised by Citizens regarding the draft Election Law**

Q: Why are we looking at changing the nomination process when the survey indicates that more than 83% citizens are satisfied with the current process?

A: Responses to several other questions about the need for eligibility requirements and a more robust nomination process indicate that citizens want more from their candidates, which necessitates a process where nominees are vetted for eligibility.

Q: How do we get more people involved? Only 112 out of a possible 976 eligible voters responded to the survey.

A: Roughly 33% of citizens vote in elections – estimated about 320 people. More than one third responded to the survey. Another 30 people participated in the working group discussion. The outreach is extensive—mailed a special newsletter to every household with the survey enclosed; regularly email a listserve with approximately 150 email addresses with updates; social media posts, flyer posters and newsletter updating Citizens of upcoming engagement. Everyone is welcome to the working group discussion – hosted virtually and in-person (one held in SSM and there is one schedule for Michipicoten and Sudbury). We cannot force people to engage.

C: A Citizen expressed their concern with the approach of requiring a clean criminal record because it places a heavy burden on nominees and requires them to have the financial resources to seek out a pardon.

### **Information requested by Citizens in order to provide informed input:**

- Map of the territorial boundaries
- Locations where Citizens reside
- Cost of elections and an estimate for the costs under the revised process

The following is the feedback received from the written consultation period held from May 9<sup>th</sup> through July 15<sup>th</sup>, 2024.

### **Contributor No. 1**

This addition will ensure that voters with disabilities receive the support they need to participate in the election process effectively.

15.6 The Electoral Officer will explain the method of voting upon request.

15.7 If requested by a Voter who:

1. 15.7.1 is not able to read;
2. 15.7.2 is incapacitated by blindness or other physical cause; or
3. 15.7.3 requires assistance for any other reason;

the Electoral Officer will assist that Voter by marking their Ballot(s) as directed by the Voter and the Electoral Officer will immediately fold and deposit it into the ballot box.

15.8 In the circumstances described in section 15.7 herein, the Electoral Officer, after assisting the Voter, will make an entry on the List of Votes Cast opposite the name of the Voter indicating that the ballot was marked by the Electoral Officer at the request of the Voter and the reason for the Voter's request.

We also need to allow a designated person to assist a voter with a severe disability in casting their vote as an Electoral Officer may not be able to communicate with the person with a severe disability. The election official should record the name of the person providing assistance and get them to take an oath, especially if the voter is non-verbal and requires AAC (Augmentative Alternative Communication) assistance.

*“During an election or by-election, a support person assisting a voter will be required to take an oath, stating their commitment to confidentiality and that they will mark the ballot as directed by the voter.”*

(Taken from the City of Toronto election process for People with Disabilities)

<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/city-clerks-office/city-clerks-office-customer-service-standards/providing-services-to-people-with-disabilities/>

### **Contributor No. 2**

Here is my input for consideration:

1. I absolutely do not agree that Gimaa should choose the Deputy Gimaa, it should be the peoples vote, the next Gimaa candidate with the most amount of votes. Only time the Gimaa should choose is if there is two with tie or very close number of votes, or if that next person

declines the position. Citizens votes need to be respected and its good way to ensure balance in citizen's issues and needs.

2. I do not agree that a Councilor can be 18 years old, I feel they should be 21 years old, especially as we are now moving forward with a Youth council member. (I can't remember what the survey results were on this one)

3. Both documents should define Executive Officer, It appears the Executive Officer has too much authority, but I don't think that was the intention, it just reads like that. I feel like if its defined and if their job description makes it clear that their duties are based on consultation with Council, it would be more transparent, or else everywhere the EO is mentioned, eg. pg. 6 \*; pg. 10 55, pg. 11 60 etc. it needs to say the EO, after consulting with Council, will do....The EO should never be placed in a position to make a decision when Council can not agree, thats a conflict of interest, if/when that ever happens, an external dispute resolution negotiator or an internal committee should address.

4. Not sure why the decision was made for 4 year term when the survey results, majority of citizens did not agree with this? I think 3 years is sufficient time to learn the roles and issues and be productive in carrying out the community vision/strategic plan.

5. If we are going with 4 year terms, lets be innovative!! I suggest the councilors terms are staggered, and an election held every two years to replace half the councilors. Half the councilors get a four year term along with the Gimaa, and the other half have two year terms, with an election for those positions in two years. With a code in place to replace any one on Council for reasons listed in the documents, by elections may be necessary anyways and this would send a message to anyone running or elected that they have to continue to be productive in their position.