



**A. Background**

The Elections Act Review Committee consists of Renee Charlie, Robert Bruce Jr, Dorothy Thomas, Roger Kyikavichik and William Josie who have now completed their work on the development of the Law with the assistance and support of Vuntut Gwitchin Government staff, legal counsel and consultants.

The Committee began undertaking the development of the Law several years ago in conjunction with their review of the Constitution which culminated in the 2019 amendments approved by the General Assembly. The 2019 amendments to the Constitution removed VGFN’s election laws that had been previously appended as a schedule and added a new provision requiring Council to make VGFN elections legislation which was already under development by the Committee.

In 2020, while the Law was still under Committee development, Council enacted the Interim Elections Act to address vacancies on Council through by-election on an interim basis which carried forward the same VGFN election laws previously appended to the Constitution. Until the Law is enacted, the Interim Elections Act remains the only existing VGFN legislation governing Council elections.

The Committee produced a consultation draft of the Law, conducted citizen surveys, and held citizen consultation meetings in Old Crow and Whitehorse to inform the final recommended version of the Law for Council’s consideration. Citizen participation in consultation activities was limited; however, all citizen input received was considered by the Committee and addressed or incorporated into the Law.

**B. The Law**

The Law as recommended by the Committee proposes to establish a comprehensive and modernized piece of VGFN legislation governing all aspects of elections for the offices of Chief and Councillor, including: **(1)** qualifications to be nominated to Council; **(2)** qualifications to vote in an election; **(3)** methods of voting; **(4)** elections administration; **(5)** vacancies on Council; **(6)** election recounts; and **(7)** review of elections.

If passed, the Law would result in the following key changes in existing VGFN election laws:

<b>GUIDING PRINCIPLES</b>
<b><i>Committee Recommendation</i></b>
A legal responsibility is established for all citizens who are Electors, Candidates, Elections officers, Elections Committee members, General Assembly members and Council members to be guided by VGFN history, culture, knowledge and values in the exercise of their rights and the fulfillment of their responsibilities under this Law, including guidance providing in the exact words of VGFN elders with respect to leadership.
<b><i>Committee Rationale</i></b>
VGFN wishes its law-making to reflect to its distinct history, culture, knowledge and values and has previously incorporated the words of VGFN elders into VGFN legislation such as the Heritage Act.
By incorporating this guidance into the body of the Law rather than the preamble, this responsibility of citizens will be a legally recognized as such under VGFN law.
<b>AGE TO VOTE</b>
<b><i>Committee Recommendation</i></b>
The voting age is changed from 18 to 16.
<b><i>Committee Rationale</i></b>



Changing the elections voting age to 16 brings consistency with voting age at the General Assembly and promotes broader political participation of VGFN youth in self-government
<b>RESIDENCY TO VOTE</b>
<b><i>Committee Recommendation</i></b>
The current requirement for residency in Yukon is repealed with all citizens eligible to vote regardless of residency including those outside Canada.
<b><i>Committee Rationale</i></b>
Removing the residency requirement for voting will increase the political participation of citizens outside of Yukon in VGFN self-government. The residency requirement for Council ensures an important safeguard and local accountability to citizens in Old Crow.
The current requirement for residency in Yukon is vulnerable to potential legal challenge as it limits certain political and civil rights of citizens guaranteed under the Constitution. As VGFN elections legislation is subordinate to the Constitution, a residency requirement on voting could be found to be invalid unless demonstrably justifiable in a free and democratic VGFN society.
In contrast to the residency requirement for those elected to Council, which was approved by consensus of the General Assembly and included in the Constitution itself, requiring citizens to be resident in Yukon in order to vote in legislation enacted by Council may be difficult to justify.
The Committee also considered and discussed a potential requirement of residency within Canada thereby only limiting the rights of citizens who reside outside of Canada. Such a limitation may be more justifiable than the current requirement for residency in Yukon; however, would still be vulnerable to a legal challenge.
Given limited citizen feedback on voting residency, it is recommended this topic be specifically discussed at the special meeting of the General Assembly scheduled for September 30 to inform the final version of the Law that Council will introduce for second reading.

<b>VOTING METHODS</b>
<b><i>Committee Recommendation</i></b>
The Law introduces the method of online voting in addition to the current methods of special ballot and ballot.
Any citizen qualified to vote and on the list of electors can vote in the election by either ballot or online ballot (or alternatively, special ballot if they are qualified for one and apply to the returning officer). A citizen may only vote by one method in an election.
An online polling period will open 10 days prior to the polling day at the polling stations in Old Crow and Whitehorse, and close at the close of polls on polling day.
<b><i>Committee Rationale</i></b>
The only consistently practiced and existing voting methods in VGFN elections has been by ballot at the polling station in Old Crow or Whitehorse on polling day or at an earlier date by special ballot.
The voting methods of mail-in ballots and proxy voting have also been utilized in the past but discontinued in part due to the administrative burden.
The recommendation of extending voting eligibility to citizens who reside outside of Yukon under the Law requires a method other than voting by ballot at the polling station



<b>NOMINATIONS</b>
<b><i>Committee Recommendation</i></b>
<p>The qualifications to be nominated and elected to Council remain the same.</p> <p>The number of signatures required on the nomination form is reduced from 25 to 5 for Chief and 3 for Councillor.</p> <p>A person can be nominated as a candidate for both Chief and Councillor in an election. If they receive the most votes out of candidates for Chief, they will be declared elected and while their votes received for Councillor will still be counted, they will be ineligible to be elected to office as Councillor for that term.</p>
<b><i>Committee Rationale</i></b>
<p>Reducing barriers to citizens seeking candidacy for Council and increasing democratic choice in candidates for Council should be promoted given past experiences where there have been an insufficient number of candidates for Council in an election or by-election.</p>
<b>INSUFFICIENT NOMINEES</b>
<b><i>Committee Recommendation</i></b>
<p>The citizens in the General Assembly have the responsibility of selecting a suitable candidate and declaring them elected to Council by resolution at a special meeting if there are not enough citizens nominated as candidates for Council.</p> <p>If there is no candidate for the office of Chief or less than four Candidates for the office Councillor that have been nominated or declared elected by acclamation at the close of the nomination period, then the General Assembly must convene a special meeting ten days after the scheduled Polling day to select a Candidate and declare them as elected by resolution.</p>
<b><i>Committee Rationale</i></b>
<p>The current process set out in the Constitution for addressing the situation of an insufficient number of candidates for Council in an election has proven ineffective and difficult to practically implement requiring involvement of Elders, a public meeting in Old Crow and community consensus often resulting in a lack of formal clarity, delay, prolonged gaps in governance on Council that may affect quorum and sometimes conflict.</p> <p>The General Assembly is an established VGFN governing body with decision-making rules and procedures familiar to most citizens. The General Assembly as a body, and its processes, provide more clarity than the current process involving a limited and ill-defined group of citizens (i.e., "Elders" and "Old Crow residents").</p> <p>The General Assembly, as the representative voice of all citizens, is also better placed to identify and decide upon a suitable candidate to be declared as elected to Council where there has been an insufficient number of candidates.</p>
<b>COUNCIL VACANCIES</b>
<b><i>Committee Recommendation</i></b>
<p>Vacancies on Council continue to be addressed through a by-election if there is more than 6 months to go until the next general election.</p> <p>If a vacancy on Council arises with less than 6 months to go until the next general election, then the vacancy will no longer be within the mandate of the Review Council and instead be addressed by the General Assembly selecting a suitable candidate and declaring them elected at a special meeting 21 days after the vacancy occurs.</p>



<b>LIST OF ELECTORS</b>
<b><i>Committee Recommendation</i></b>
<p>The Law requires the creation and maintenance of a list of electors that includes the name, address and citizenship number of every citizen qualified to vote in an election.</p> <p>The executive director is responsible for keeping and maintaining the list until the writ is dropped when it is provided to the returning officer.</p> <p>It is the sole responsibility of a citizen qualified to vote to ensure their name is on the list and information up to-date.</p> <p>A citizen can be added to the list of electors at any time before the vote including at the polling station on polling day. However, decisions on applications for citizenship are unable to be made during an election period once the writ is dropped.</p>
<b><i>Committee Rationale</i></b>
<p>This list is necessary for the administration of elections including verification of voters and online voting.</p>

<b>CANDIDATES FORUM</b>
<b><i>Committee Recommendation</i></b>
<p>A forum of the Candidates shall be organized and facilitated by the Returning officer or designate after the close of the time for receiving nomination papers and at least fourteen days before the Polling day.</p> <p>The forum shall be held in Old Crow and accessible online to enable remote attendance by Candidates and Electors.</p> <p>The Returning officer or designate and all Candidates and Electors participating the forum of the Candidates shall use best efforts to ensure that the principles of fairness and equal opportunity for each Candidate is applied to the conduct of the forum.</p>
<b><i>Committee Rationale</i></b>
<p>In the past, there was no guidance or regulation of Candidates forums and were left to Candidates to self-organize. By including it in the Law with responsibility to the Returning officer the Candidates forum will be formalized with greater clarity and opportunity for Citizens to engage with Candidates prior to voting.</p>

<b>ELECTIONS ADMINISTRATION</b>
<b><i>Committee Recommendation</i></b>
<p>The Law will introduce a comprehensive system for the administration of elections independent from Council with rules, procedures and standardized forms that give clear guidance to elections officers, candidates and voters.</p> <p>This includes the appointment of a returning officer by Council resolution prior to the Writ who is responsible for the administration of the election. The returning officer may be a non-VGFN citizen and can appoint and delegate to assistant returning officers and poll clerks. They cannot vote and must refrain from political activity in the election.</p> <p>This also includes the appointment of an Elections Committee by Council resolution prior to the writ. An Elections Committee is composed of 4 citizens and is only convened in two instances: (1) as an advisory body to the returning officer during the election period but only if requested by the returning</p>



officer, and (2) as a final decision-making body if a citizen files an application to review the validity of an election.

**Committee Rationale**

VGFN’s past and existing elections laws have provided only basic and limited guidance on the conduct and administration of election procedures.

The standardization of clear, transparent and independent elections administration is essential for VGFN as a modern self-governing First Nation and to assist the elections officers in fulfilling their important responsibilities.

**ELECTION TIES AND RECOUNTS**

**Committee Recommendation**

A tie in votes will now be determined by the random drawing of names.  
 There will be an automatic recount conducted by the returning officer if there is a margin of 3 or less votes between a candidate who was elected and a candidate who was not elected.

**Committee Rationale**

VGFN’s past and existing elections laws have provided no guidance on ties and currently the Review Council has the responsibility for recounts under the Constitution. The returning officer is better suited to conduct a recount in a timely manner than the Review Council.

This will also help to address gaps in VGFN elections laws and to prevent disputes or conflicts regarding the results of an election.

**ELECTION REVIEWS**

**Committee Recommendation**

A citizen can apply to the Election Committee within 14 days after the polling day to review the validity of an election on any one of the following grounds: (a) corrupt practices in connection with the election, (b) a candidate was not qualified to be elected; or (c) the election was not conducted in accordance with the Law.

A review application must be in writing and include any supporting evidence. All candidates will be entitled to make submissions to the Election Committee before they make their decision.

The Election Committee may decide either of the following: (a) an elected candidate is qualified, (b) an elected candidate is not qualified and their office vacant, (c) the election was valid, (d) the election invalid and the office(s) vacant.

The decisions of the Elections Committee must be made in writing within 30 days of receiving an application and are considered final (no appeal). They can seek independent legal advice.

**Committee Rationale**

VGFN’s existing elections laws provide no guidance on how the challenge to the validity or results of an election may occur and what body has jurisdiction to decide on such challenges.

The Elections Committee, as a citizen committee appointed by the outgoing Council, provides an ad hoc internal body that is separate and apart from any of VGFN’s governing bodies to review specific allegations formally made regarding the validity of an election with clear and fair processes and timelines for a decision.

As a final decision-making body, the decisions of the Election Committee in reviewing the validity of an election will be final with right of appeal or judicial review within the Canadian courts.



### **C. Law-Making Procedure**

Council has the ultimate authority under the Constitution and VGFN Governance Act to make new legislation such as the Law. The Constitution also specifically requires Council to make this Law as it relates to elections.

The Law must be made by Council in accordance with the requirements under the Governance Act for first and second reading before it may be enacted and have the force of law.

Council retains their discretion as elected lawmakers to make any changes to the Law as currently recommended before completing second reading.