INTRODUCTION

This Final Report was prepared by Marcus Hadley, Marcus Hadley Law Corporation. It was drafted following discussion of the Interim Report by the Xaxli'p community at an in-community meeting held on November 22, 2025. Hardcopies will be available at the Xaxli'p administrative offices and it will also be posted online at www.electoralofficer.com and on various Xaxli'p social media sites from December 1, 2025. The direction provided by the community based on the Interim Report has informed this Final Report which includes recommendations and specific text to be used. This Final Report will go to a community vote to be held on December 7, 2025.

BACKGROUND

1. Mandate and Process

I was retained on October 17, 2025 by Xaxli'p to carry out a community engagement process to develop a list of proposed amendments to the *Xaxli'p Custom Elections Code* (the *Code*), draft the proposed amendments and conduct a community vote in accordance with s. 24 of the *Code* (*Appendix 'A'- Section 24 of the Code*).

Community meetings to develop the list of proposed amendments were held on November 7, 2025 (virtual) and November 8, 2025 (in-community). As well, a webpage on the website www.electoralofficer.com was set up to collect input online from November 11 to November 18, 2025.

The Interim Report was posted on the webpage and provided to Xaxli'p administration to post and distribute on November 19, 2025. It was discussed at a meeting of the community on November 22, 2025 (in-community).

Based on direction given at that meeting, this Final Report will go to a meeting to be held on December 7, 2025 (in-community and virtual) to vote on the final proposed amendments.

2. History

The history of amendments to the *Code* is discussed in the *Interim Report*.

3. 2025 Community Engagement

The proceedings of the November 7 and 8, 2025 community meetings are detailed in the *Interim Report.*

At the November 22, 2025 community meeting the list of proposed amendments was narrowed to five in accordance with the recommendations of the *Interim Report.*

Notices for all meetings were drafted and posted in accordance with s. 8 of the *Code*.

I also received one proposed amendment via email, listed below as "Amendment 6".

PROPOSED AMENDMENTS

(i) Definition of "Custom"

Section: Part II, section 1 Definitions

Sponsor Member: Franny Alec

Motion: That the Election Code be amended to include the definition of "Custom" from the context that Xaxli'p members may from time to time amend their election law as they see fit and appropriate.

Draft: *"Custom" means this Code is subject to the interests of Xaxli'p members who may amend it from time-to-time as they see fit and appropriate in accordance with the provisions of this Code.*

Recommendation: Add draft language to the *Code*.

(ii) Residency Requirements (Member submission attached as Schedule II)

Section: 5.1(d)

Sponsor Member: Rena Joseph

Motion: That Section 5.1(d) be amended to include the proposed language which changes the Ordinarily Resident boundary to 270km.

Draft: *Commit, through a signed undertaking, to be Ordinarily Resident within 270km from the Xaxli'p administration building if elected to ensure availability and fulfill all Council Duties;*

Recommendation: Not recommended. As all residency requirements and ordinarily resident requirements have been found by the courts to be illegal, I cannot recommend that this draft language be added to the *Code*. Rather, all residency requirements should be removed.

(iii) Criminal Record Check

Section: 5.1(e)

Sponsor Member: Marie Patrick

Motion: That Section 5.1(e) be amended to state that the Candidate must not have been convicted of and indictable offence within the past 10 years.

Draft: *Not have been convicted of an indictable offence within 10 years prior to his or her nomination. …;*

Recommendation: Add draft language to the *Code*.

(iv) Candidate Profiles/ All-Candidates Forum

Section: New

Sponsor Member: Jennifer McEwen

Motion: That a new section be added to the *Code* requiring each Candidate to submit a one-page Candidate Profile and attend an All-Candidates Forum.

Draft: *5.3 (a) Each Candidate must submit to the Electoral Officer before the date of the All-Candidates Forum a one-page Candidate Profile and all Candidate Profiles will be posted on Xaxli'p social media websites and made available to Voters in hardcopy. (b) Each Candidate must speak at an All-Candidates Forum to be organized by Xaxli'p Administration and chaired by a neutral third-party who may or may not be the Electoral Officer. (c) Failure of a Candidate to comply with sections 5.3(a) or (b) will disqualify that Candidate from standing for election.*

Recommendation: Add draft language to the *Code*.

(v) Evoting

Section: New

Sponsor Member: Marie Patrick

Motion: That a new section be added to the *Code* providing for the use of online and telephone voting.

Draft: *14.5 Online and telephone voting will be conducted in accordance with Appendix 9. [See Schedule 1 for Appendix 9 language.]*

Recommendation: Add draft language to the *Code*.

(vi) Requirement to Vote for Number of Vacancies (Member submission attached as Schedule III)

Section: 17.1(b)

Sponsor Member: Bernard John

Motion: That a section 17.1(b) be amended to provide that a ballot which contains fewer votes than there are Candidates to be elected be rejected.

Draft: *17.1(b) Contain more <u>or fewer</u> votes than there are Candidates to be elected.*

Recommendation: Not recommended. As the courts have consistently rejected this provision on the basis that it is against public policy in that it is illegal, unconstitutional and immoral to force a voter to vote for a Candidate that they do not know and/or do not want to vote for I cannot recommend that this draft language be added to the *Code*.

SCHEDULE 1

APPENDIX 9 – Electronic Voting

1. Electronic Voting: Requirements

1.1 The Electronic Voting Contractor will provide an Electronic Vote Management platform that shall provide the following:

a) a secure SSL web-based platform for Eligible Voter registration, electronic voting and vote management along with data encryption provisions to secure and protect personal voter data and voting event activities;

b) web based access and management of the voting event activities and voters list for the Electoral Officer;

c) web based access and observation of the voting event activities and voters list for the Verifier;

d) web based registration and voting support for Eligible Voters and technical support the Electoral and Deputy Electoral Officers;

e) multiple physical polling station vote management integrations, including the ability to enter vote result manually following the close of polls;

f) mail in ballot vote management integrations, including the ability to enter vote result manually following the close of polls;

g) a complete electronic audit record of each Eligible Voters interaction with the voting platform accessible by the Eligible Voter, Electoral Officer and Verifier; and

h) a final voting event tabulation and finalization by the Electoral Officer, including the electronic posting of results.

1.2. The Electronic Voting Platform will ensure that:

(a) *individual Electronic Voting results will remain secret at all times and individual voter choices shall be encrypted in such a way as to ensure voter anonymity;*

(b) *once a Registered Voter has voted once by Electronic Voting using their personal credentials, they cannot vote again by Electronic Voting using the same credentials, and will be restricted from doing so again by the Electronic Voting Platform;*

(c) *automated email notifications are generated in real-time to the voter, Verifier and Electoral Officer of all and any activity associated with a voter using the electronic voting platform, including:*

i. confirmation of registration;
ii. delivery of electronic voting instructions;
iii. delivery of personal PIN (Personal Identification Number);
iv. notification of vote recorded; and
v. notification of the voting events final results.

1.3. At a minimum, Electronic Voting procedures will exceed the threshold of verification and due diligence for Mail-in Ballots, and at minimum will require for each Eligible Voter:

(a) *confirmed registration status;*
(b) *their date of birth;*
(c) *their PIN (Personal Identification Number); and*
(d) *their registry number (status card number).*

1.4. The Electronic Voting Contractor will, in a timely manner, provide by email to each Eligible Voter who has registered for Electronic Voting:

(a) *a website address which Eligible Voters can use to vote electronically;*
(b) *a unique voter identification code PIN; and*
(c) *instructions for voting electronically.*

1.5. The Electronic Voting Contractor will provide the Electoral Officer and Verifier with electronic notifications of:

a) *real-time updates of each electronic vote cast;*
b) *a daily summary of voting event activities (at approximately 6pm); and,*
c) *any unresolved Eligible Voter use or interface errors.*

1.6. The Electronic Voting Contractor will provide the Electoral Officer and Verifier with timely notification of any system or communication failures, interruptions or lost data.

1.7. The Electoral Officer will provide the list of Eligible Voters, in the precise manner and format prescribed the Electronic Voting Contractor, on the last Thursday of January, prior to the first Regular Voting Day. The Electronic Voting Contractor will immediately upload the list on the Electronic Voting Platform.

1.8 Following the close of all Polling locations at the time prescribed and once finalized by the Electoral Officer, the Electronic Voting Contractor will provide for a complete tabulation of all voting results:

a) *by location;*
b) *by type; and*
c) *a summary of overall voting results.*

2 . Electronic Voting: Process

2.1 An Eligible Voter may cast a ballot by Electronic Voting.

2.2 To cast an Electronic Vote, an Eligible Voter will:

(a) *enter the website address provided;*
(b) *confirm their name, date of birth, and Band registry number;*
(c) *be provided the opportunity to update their personal contact information;*
(d) *confirm their desire to be engaged electronically;*
(e) *confirm their eligibility to participate using Electronic Voting;*
(f) *declare their intent to vote electronically;*
(g) *confirm their Electronic Registration and intent to vote electronically by entering their PIN*

(Personal Identification Number), Date of Birth and Registration (Treaty/Status) number;

(h) *open the link to their electronic ballot sent by email and make their Electronic Vote by selecting between YES or NO; and*

(i) *confirm their Electronic Vote.*

2.3 Immediately after an Electronic Vote is completed the electronic Voters List will be automatically updated with the exact time, and date that the electronic vote was properly cast and recorded for the Eligible Voter.

2.4 Immediately after an Electronic Vote is completed an email will be automatically generated by the Electronic Voting Platform that confirms the vote of the Eligible Voter was properly received and recorded to:

a) *the Eligible Voter;*
b) *the Electoral Officer; and*
c) *the Verifier.*

2.5 Upon receipt of the email notification, the Electoral Officer will:

(a) *confirm that the voter has registered in accordance with this Electoral Process and will record the registration;*

(b) *confirm that no other Mail-in Voting Package, in-person, or electronic vote was received for the same voter; and*

(c) *record the date when the electronic vote was received.*

2.6 Where the Electoral Officer is notified of an incomplete or failed electronic voter registration or vote, the Electoral Officer will contact the voter immediately with alternative voting solutions, including Mail-in Ballot or voting in person.

2.7 Electronic Voting will end automatically at 8:00PM PST, and the Electronic Voting Platform will no longer be accessible by voters. Electronic Voting must be completed by this time.

2.8 Immediately upon the closing of the poll on the last Regular Voting Day or, if applicable, the Additional Polling Day, the Electronic Voting Contractor will upon the voting event finalization by the Electoral Officer have automatically emailed to each electronic voted elector, the Verifier and Electoral Officer a link to a web page which summarizes the Electronic Voting results, and make the information accessible on the Electronic Voting Platform.

SCHEDULE II

Dear Marcus,

Re: Recommendations and Motions Concerning the Mandell Pinder Memorandum and the Custom Election Code

I am formally submitting recommendations and proposed motions to be discussed at the November 22, 2025, Custom Election Code meeting. After reviewing the current Code, several sections require amendment to ensure that our election process remains fair, transparent, and non-discriminato1y for all Xaxli'p members.

To uphold these principles, it is essential that every member-whether residing on-reserve or off-reserve-has an equal opp01tunity to participate in reviewing, discussing, and proposing amendments to the Custom Election Code. Our governance system must reflect inclusivity and uphold the legal standards required under Canadian law.

A memorandum dated October 21, 2017, from Mandell Pinder LLP outlined legal considerations and identified discriminato1y practices concerning the following provision:

Eligibility of Candidates

Section 5.1: Any candidate for the office of Chief or Council must:
(d) Commit, through a signed undertaking, to be ordinarily resident within forty (40) kilometres of the Xaxli'p Administration building if elected, to ensure availability and fulfillment of all council duties.

Under Section 15 of the Canadian Charter of Rights and Freedoms, every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination-including discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The Charter applies to all Custom Election Codes.

Fmiher, in Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999], the Supreme Cami of Canada held that restricting electoral paiiicipation or candidacy based on residency is unconstitutional. The Court found that the Indian Act provisions only limited voting rights to members who were "ordinarily resident on-reserve," finding them discriminatory.

To ensure that the Xaxli'p election process is equitable and compliant with the law, residency requirements imposed on candidates must not unfairly exclude off-reserve members. With

approximately 1,100 Xaxli'p members-300 residing on Xaxli'p territory and 800 living off-reserve--our system must reflect and respect the realities of our population.

Motion (to read)

That Section 5.l(d) of the Custom Election Code be amended to read as follows:

"(d) Commit, through a signed undertaking, to reside ordinarily within two hundred and seventy (270) kilometres of the Xaxli'p Administration building, if elected, to ensure availability and fulfillment of all council duties."

SCHEDULE III

Dear Electoral Officer,

I am writing to raise concerns regarding the current electoral practices used in the selection of the Xaxli'p Chief and Council. Specifically, in the past two election cycles, it appears that a significant number of eligible voters have not been marking the full number of Council positions available on their ballots. Instead, many voters are selecting only one or two candidates, despite multiple seats being open.

Under standard electoral procedure, a ballot is rejected if it contains more selections than the number of seats to be filled. However, our cunent process does not clearly address whether a ballot should also be deemed spoiled or rejected when a voter marks fewer than the required number of selections.

The absence of a clear rule on this matter may be influencing electoral outcomes and could result in the community not electing the most qualified or representative Council. To uphold the integrity of our governance system and ensure democratic fairness, it is essential that our election laws clearly define voter obligations regarding ballot completion.

To that end, I respectfully request that the following motion be brought before the Xaxli'p membership for consideration.

Motion to Amend Xaxli'p Election Regulations

WHEREAS the legitimacy and accountability of the Xaxli'p governance structure depend upon a transparent, fair, and consistent electoral process; and

WHEREAS Section 15.19 of the Xaxli'p Election Regulations does not explicitly address whether a ballot is valid when fewer than the required number of candidates are selected; and

WHEREAS incomplete ballots may undermine the principle of equal representation by affecting the distribution of votes across available Council seats.

THEREFORE, BE IT RESOLVED THAT:

Section 15.19 be amended to add the following provisions:

(a) A voter must select the full number of candidates listed on the ballot corresponding to the number of Council positions to be filled.

(b) Any ballot that does not contain selections for the full number of positions shall

be deemed incomplete and shall be rejected as a spoiled ballot.

Respectfully submitted,
Bernard John