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Self-Government

Autonomie gouvernementale

**LEADERSHIP SELECTION
REGIMES UNDER
SELF-GOVERNMENT**

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**LEADERSHIP SELECTION
REGIMES UNDER
SELF-GOVERNMENT**



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Policy Directorate
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NOTE

This document is a discussion paper whose purpose is to facilitate understanding with respect to the importance of election/leadership selection in self-government regimes. The intent of the paper is to provide some suggestions bands may wish to take into account in designing proposals on selecting their leaders. The paper also lays out criteria and principles generally found in election procedures in use in Canada, and suggests these should be given careful consideration.

An earlier version of this paper was prepared by Elizabeth Tromp. We are grateful to Professor C.E.S. Franks of Queen's University who kindly provided a review of that paper; several of his comments are reflected in this revision.

The paper is not intended to be a statement of policy of either the Department of Indian Affairs and Northern Development or of the Government of Canada. Bands negotiating self-government arrangements will need also to recognize that the contents of this paper do not replace the federal "Guidelines for Community-Based Self-Government Negotiations".

Comments, or requests for additional copies, may be addressed to:

Simon McInnes
Policy Directorate
Self-Government Sector
Department of Indian Affairs and Northern
Development
Les Terrasses de la Chaudière
North Tower, Room 2051
OTTAWA, Ontario
K1A 0H4
(819) 994-9542
Fax: (819) 953-9027

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ANNEXES

I. PURPOSE

This paper discusses elections or like processes for leadership selection to be considered in the context of self-government arrangements.

II. DEFINITION

For the purposes of this paper, an election is a process of selecting political leadership, by a system of votes cast universally by adults on a regular basis, to ensure that government is accountable to them. Leadership selection and accountability can also be ensured by means other than elections. (Both elections and other means of selecting leadership are explained in greater detail below).

III. INTRODUCTION

The process and procedures by which constituents select and remove their leadership constitute the cornerstone of political accountability of governments to their people. Leadership selection provisions, therefore, are an essential prerequisite for self-government.

Under the self-government policy established by the Government of Canada in 1985, and re-affirmed in 1988, diverse needs, traditions and culture of Indian people are recognized. At the same time, self-government leadership selection provisions must be consistent with "the broadly-defined parameters of Canadian constitutional principles and government practice".

This paper examines Canadian constitutional principles and government practices as they relate to leadership selection, examines precedents established in and pursuant to the Indian Act, the Cree-Naskapi (of Quebec) Act and the Sechelt Indian Band Self-Government Act, and suggests some minimum requirements and options for selection regimes.

Readers should note that any self-government proposals dealing with leadership selection regimes will have to be assessed on their individual merits and in the context of Canada's self-government policy.

IV. BACKGROUND

A. Representative Government

Representative government has a long history in both European and native societies. In the western democracies, it achieved its present form of universal adult suffrage and the secret ballot, combined with elected representative bodies, only in the past 200 years. Women only gained the right to vote in this century. In Canada Indians gained the right to vote in 1960. The secret ballot is not much more than 100 years old. Representative institutions are somewhat older in the English tradition.

The reasons for the development of these institutions and processes are twofold. First, increasing prosperity and literacy in western Europe and North America made the old feudal system of government by a traditional elite unworkable. People began to demand equality, and an equal right to participate in, and benefit from, the system of government. Second, government itself became more prominent, taking in a greater proportion of income in taxes, and spending it on important things like public works, education, and welfare programmes. The system of democratic elections and representative government promotes fairness in the decisions of government in these and other matters and towards all parts of the population. The ability to vote a government out of office is especially important in ensuring that governments behave themselves.

These features of democratic representative government are considered so important that they enjoy a special position in the Canadian system of government. They are entrenched as fundamental rights in Canada's constitution, and are to be enjoyed by all Canadians.

At the same time, it must be recognized that the system of elections and representative government has not been fixed for all time. The process of elections for municipal and local governments is very different from those for federal and provincial governments. The American system is very different from the Canadian. The Canadian system itself is still evolving; there are many proposals for Senate reform, and for proportional representation which could, in the future, substantially change the electoral/representative system in Canada.

The important points to be drawn out of this for the development of leadership selection procedures for self-government are twofold. First, modern representative processes have an important purpose in modern government, especially when government controls a large portion of the economic and other resources of a community. Second, there is a wide range of variations in the way that leadership selection and representative government can function and still meet fundamental democratic principles. This flexibility will be very important in the development of successful leadership selection procedures for self-government.

B. Constitutional Principles and Government Practices

This section describes Canadian constitutional principles and government practices, and particularly in the case of the latter, extracts the principles underlying Canadian electoral regimes.

1. Canadian Constitutional Principles

With respect to electoral regimes the most important aspect of the Constitution Act, 1982 is the Canadian Charter of Rights and Freedoms.

First, the Charter provides protection for fundamental individual freedoms which are essential to the effective participation of citizens in a democratic electoral process. These freedoms include:

- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly;
- freedom of association (all from section 2).

Second, the Charter enshrines the principle of a democratic society. Democratic rights are entrenched with respect to federal and provincial legislatures. These rights include:

- right to vote and the right to qualify for candidacy (s.3);
- maximum duration of legislative bodies (5 years), except in extraordinary circumstances (s.4);
- annual sitting of legislative bodies (s.5).

More generally, Canada's democratic character is recognized in section 1:

The [Charter] guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (Emphasis added).

Third, the Charter specifies a host of legal rights (ss.7-14) which would come into play with respect to those infringements of rights and freedoms that are the foundation of a democratic electoral process, such as rights pertaining to arrest or detention, and proceedings in criminal matters. The Charter guarantees the enforcement of those rights when they are infringed or denied (s.24).

Fourth, the Charter (s.15) enshrines equality rights, specifically relating to race, national or ethnic origin, colour, religion, sex, age and mental and physical disability. (It should be noted as well that the Constitution Act, 1982 guarantees existing aboriginal rights equally to male and female persons).

2. Canadian Government Practice

Elections at all levels of government in Canada are based on the practice of representative democracy. Each adult citizen has the right to vote for a representative and to participate in the political process. Elected representatives have the authority to deliberate and vote on laws on behalf of the citizens they represent. They also speak for their constituents in dealing with the level of government to which they are elected.

Certain factors must be present for this democratic process to work. First, citizens should participate. They must receive information, have the critical capacity for evaluating it, and be prepared to exercise their political rights. Second, voters must have an effective choice. This criterion would not be met if, for example, a system limited choice to one party or candidate, or its outcome did not reflect the collective will of the electorate. Finally, in a representative democracy, elected representatives should have effective power and control.

With respect to election procedures themselves, the exercise of representative democracy requires that they be free and fair. This implies the following:

"free" elections

- each citizen has the right to vote, to be a candidate, to campaign on someone's behalf, and to exercise other fundamental freedoms to participate in the process;
- elections are held periodically;
- candidates and parties can campaign in opposition;
- voters are protected from intimidation, coercion or duress.

"fair" elections

- procedures are free from bias; ¹
- appeals can be made to an impartial body; ¹
- the process is open, accessible and comprehensible to all participants (voters, candidates);
- voters receive accurate information.

The necessity of ensuring that the electoral system remains free and fair, and therefore protected from manipulation, has in Canada translated into detailed statutory laws and regulations. As well, Canadian election law explicitly requires secrecy of voting, and creates offences and provides sanctions with respect to intimidation, bribery, and other possible interference with the democratic process. This approach is a response to earlier times, when corrupt practice with respect to elections was the norm.

¹. These two points essentially represent the basic principles of natural justice which are: "Nemo iudex in sua causa debet esse" (No man can be a judge in his own case) and "Audi alteram partem" (Hear the other side.)

C. Typical Provisions Governing An Electoral Regime

This section outlines the key provisions of Canadian electoral legislation and regulations and relates these provisions to the principles underlying Canadian electoral processes. (This section is summarized in Annex I).

In the calling of elections the date for municipal elections are often specified in the legislation, while at the provincial and federal levels elections occur at the end of the term when either the government is defeated on a vote in the legislature or when the Prime Minister or premier calls an election. The calling of elections should be at regular intervals to reflect the expression of public will and, ensure the confidence of the electorate.

One or more individuals are appointed either by the governing body or by the Governor-in-Council to serve as impartial administrators at the election. The appointment of the electoral officers assures procedural fairness and impartiality. Electoral officers often cannot vote except to break a tie. The electoral officer must post in conspicuous places - in a given number of days prior to nominations day - the nomination day(s), meeting or deadline, as well as the posts to be filled.

The posting of notice for nominations ensures accessibility and the right to participate in the political process. It gives the citizen a period in which she/he can decide whether to stand for office personally, or whether to nominate someone else.

It is the responsibility of the electoral officer to prepare, post and correct voters lists. Usually a preliminary list must be posted a given amount of time before the election and there is a deadline in applying for revisions and additions. Only those on the voters list can vote. This helps prevent names fraudulently appearing on the voters' list. Prior to voting the electoral officer ensures the security of the ballot box in the presence of others. The form of ballot papers is clearly prescribed. Some legislation allows for the use of voting machines or other voting devices and also stipulates established polling stations. Supplies such as ballot boxes, materials for voting, and voting compartments, are the responsibility of the electoral officer.

The time of the poll can vary, but it is clearly specified in legislation or regulations. An advance poll is usually held and voters may be given time off work to vote to ensure their accessibility to the poll. Voting is by secret ballot with one vote per elector or per position. In special circumstances the electoral officer may assist individuals. Voting may also be done by proxy (i.e., you may authorize someone to cast your vote for you).

Nominations may occur by way of filing a nomination at a certain time or by a certain date or at a nomination meeting which must be of a certain duration. The consent of the candidate is required and a given number of nominees are required for each candidate. When more candidates are nominated than positions available the electoral officer will declare the poll.

The declaration and posting of the poll must be posted within a given amount of time and reflect information such as date, times, and positions. The candidates names must be clearly stated.

Restrictions on the right to vote are clear. For example, residency requirements must be met and officials cannot vote. Normally, you have to live in your constituency to be able to vote. But there are exceptions. For example, armed forces personnel abroad and foreign service officers, and their dependants, have the right to vote. The right of citizens to participate in the political process and the right to vote subject only to certain specific, non-arbitrary restrictions are reflected under voter eligibility provisions. Restrictions on candidate eligibility may be somewhat greater than for voter eligibility. One such instance could be indebtedness to the municipality in question for arrears of taxes. Candidates should have the right to stand for election, subject only to specific, non-arbitrary restrictions.

The powers and duties of the elected body are specified in legislation. The elected body must have effective power and control but must be accountable to the electorate. To ensure effective representation the composition of the governing body is often tied to the number of voters and may be linked to electoral sections or constituencies.

Procedures after the poll entail the counting of votes in the presence of candidates or their agents. There are specific rules describing invalid or spoilt ballots, recounts and ties, and sometimes the electoral officers are given the deciding vote in the situation. As part of the procedures following the poll the electoral officer is responsible for the certification and posting of election results. Ballot papers are retained for a specified period after the election.

The winner is selected by majority vote, although there could be dual or multi-member constituencies, and run-off balloting. The leader may be selected at large or from amongst elected representatives. The term of office for local or municipal governments is two to four years. Federal parliament and provincial legislatures are restricted to a five-year maximum.

Election offences and corrupt practices can include interference with voting or with secrecy of voting; unlawful voting; destruction of or tampering with ballots; or corrupt practices such as bribery, treating or intimidation. Such election offences and corrupt practices deny the voter his right to free and fair elections and destroy the proper exercise of political rights of each citizen. In situations in which an election is controverted, and declared invalid, it could be because the successful candidate may be guilty of corrupt practice, or because an act or omission by an elected official could have affected the outcome. There are procedures to be followed in making such a discovery as well as the possible rulings which may apply (i.e. new election; or person who would have otherwise won is determined to be elected). Appeals may be made for judicial recounts or election petitions may be brought before the courts. Depending on the type of complaint the Chief Electoral Officer may have powers of inquiry.

Legislation may specifically provide for by-elections if the position becomes vacant (due to a resignation or death) within a given length of time before the next general election, or if an elected person is removed from office (for abstenteeism or corrupt practices).

Annex I summarizes the key provisions of Canadian electoral legislation and regulations and relates them to the underlying principles.

D. Leadership Selection Regimes in Indian Communities

1. Indian Act

The Indian Act provides for two processes for band council selection. The first process, recognized under section 2 of the Act, is the selection in accordance with band custom of council members or chief if there is no council. Sections 74-79 of the Act, and the accompanying regulations, define the second process. As of April 1989, not including Cree-Naskapi or Sechelt Bands, a total of 255 bands operated according to custom, with the remainder (331) following the electoral regime described in the Indian Act.

i) Customary Regimes

First, bands which have never been brought under sections 74 to 79 of the Indian Act, by order of the Minister or of the Governor-in-Council, operate according to their custom. There are close to 190 bands in this category. These bands have never been required to codify, specify, or otherwise report on their selection procedures.

Second, for many years, the Minister of Indian Affairs and Northern Development has allowed Indian bands under Section 74 of the Indian Act to revert to customary practices, by revocation of the original order. Prior to 1985, it was the practice generally to accept as custom whatever was presented by the band, and require only that a general meeting be held to discuss reversion to custom and what that might be, and that the opinion of reserve residents be sought. In most cases, the systems adopted were variations of the Indian Act regime. Reasons for reverting to "custom" included: changing the age requirement for eligible voters; extending or varying the term of office; and providing for the participation of off-reserve members in the election process. Some sixty-five bands have reverted to "custom" since 1951, with the vast majority of reversions occurring between 1972 and 1985.

In March 1988, a new set of criteria for reversions to custom was adopted to deal with the backlog of requests from communities.

The emphasis is now on community acceptance of the proposed selection system and the removal of departmental involvement therein. Specifically, the proposed system must:

- be supported by the band membership (as demonstrated by a majority secret ballot vote at a general band meeting or plebiscite, or by petition);
- protect the rights of individual band members;
- not involve the department or its officers at any stage;
- include a provision for the settlement of election appeals and an amending system involving membership concurrence;
- follow the basic principles of natural justice and be consistent with the Canadian Charter of Rights and Freedoms;
- be in a clear written format.

At present there are a number of requests for reversion to custom being processed under these new guidelines.

It is worth noting that there may be different implications for Indian Act bands as opposed to self-government bands, operating under custom. The need for appropriate mechanisms of accountability (both financial and political) under a self-government regime may necessitate stricter considerations as to the suitability of customary procedures. (For further information, see "Concepts of Political and Financial Accountability, and Decision-Making for Consideration in a Self-Government Setting") (available from DIAND).

ii) Sections 74-79 of the Indian Act and Regulations

This process is patterned on typical Canadian electoral procedures, as described above. The level of discretion left to the band council is extremely limited. Virtually all discretionary powers with respect to procedures and appointments, of which there are typically few in local government regimes, rest with the Minister or depend on the Minister's approval. As well, unlike most electoral regimes, appeals are handled through an administrative process within the Department of Indian Affairs and Northern Development.

The election of band chiefs and councillors and the date on which elections will be held is established by the Minister and is set out in the legislation under s. 74. The composition of the councils is specified (i.e. one chief and councillor for every 100 band members) unless otherwise ordered by the Minister. Provisions for the process of election of the Chief as determined by a majority vote of band electors or by a majority vote by elected councillors from amongst themselves is decided by the Governor-in-Council. For voting purposes a reserve will consist of one electoral section unless otherwise recommended by the Governor-in-Council or passed by band referendum.

Provisions regarding candidate eligibility are contained in s. 75 of the Act, and stipulate residency requirements and nomination procedures.

The Governor-in-Council may make regulations with respect to nomination meetings; the appointment and duties of electoral officers; the conduct of voting procedures (secrecy of voting); election appeals; and, voter eligibility, pursuant to s.76 of the Indian Act. Restrictions on voter eligibility are clearly stated in s.77 of the Act, and specify that the elector must be 18 years of age and must meet residency requirements to participate in the election process.

The normal term of office for chiefs and councillors is two years. An office shall be deemed vacant if the successful candidate is found guilty of corrupt practices; resigns or dies in office; is convicted of an indictable offence; has been absent from council meetings; or is ineligible to hold office under the provisions of the Act. Any person found guilty of corrupt practices in connection with an election may be ineligible to be a candidate for a period not to exceed six years. Any decision on disqualification is made by the Minister. Section 78(4) of the Act specifically calls for a special election if the office of chief or councillor becomes vacant more than three months before the next scheduled election. The election may be declared invalid if the Governor-in-Council rules that corrupt practices were carried out in connection with the election; that a violation of the Act affected the election outcome; or on the basis that the candidate did not meet eligibility requirements.

At present, some 10-20% of elections held pursuant to the Indian Act and the Indian Band Election Regulations are appealed. By far the most prevalent reasons for appeals can be traced to the following difficulties with the process:

- 1) inadequate definition of the "ordinarily resident" criterion for determining voter and candidate eligibility;
- 2) unclear provisions regarding the conduct of nomination meetings, and no provision allowing the electoral officer to verify nominees' and nominators' eligibility outside the 2 hours allotted for receipt of nominations;
- 3) no provision for the preparation of a preliminary voters list prior to the nomination meeting, nor for the date by which the voters list must be posted;
- 4) no provisions for a recount.

As more bands express an interest in reverting to customary traditions, or as they express an interest in self-government, the need for clearly understood and fair election procedures will be important.

2. Cree-Naskapi (of Quebec) Act

Part II of the Act establishes the Band Elections Regime (ss. 63-78) whereas Part III addresses the conduct of meetings and referenda of the Band.

This Act gives the 9 bands the authority to make by-laws respecting the election and terms of office of its council members.

The by-laws must include provisions regarding:

- the calling of elections and notice of elections
- the number of positions
- the length of term
- the method of selection
- the circumstances under which council members would exercise the powers and duties of the chief and deputy-chief
- nomination procedures
- election methods and procedures
- election appeals
- the recording and certification of results.

If the by-law is within the band's power under the Act, and includes the above provisions, the Minister must approve it. Presently all nine communities have election by-laws (see below).

The Act provides that the Governor-in-Council may make regulations respecting the election of council members and their term of office, including the matters as listed under s.65; and, prohibiting acts that are detrimental to the conduct of free and fair elections. These regulations apply to all elections except in the first instance where they apply only where, at the time of the calling of an election, there was not in force an election by-law made under s.64. The Cree-Naskapi Band Elections regulations were approved on June 9, 1988.

The legislation itself does establish rules with respect to voter and candidate eligibility; circumstances upon which an office becomes vacant; eligibility requirements for returning officers and circumstances upon which this office becomes vacant; the calling of elections; and contestation of elections. Consequently, individual bands have little or no flexibility in these areas.

There are two unusual aspects of the Cree-Naskapi regime that are worthy of consideration by other communities. Both elements reflect the fact that communities are generally small, and that traditionally community decisions have been based on consensus and direct involvement by band members.

The first element relates to the capability of electors to force the calling of an election. According to the Act, any ten electors may, by petition, request a special band meeting for the purposes of deciding whether a general election should be held. If, at that meeting, a given percentage of electors vote, and are in favour, then the band must call an election. The only limitation on the filing of the petition is that it must not be within one year of the previous election or the filing of a similar petition.

The second provision of interest pertains to a vacancy on council which occurs less than six months prior to the next general election. The band does have the option, as in most jurisdictions, of holding a by-election during that time if it so chooses. In addition, however, if the vacancy results in an inability to obtain a quorum, the band may convene an ordinary band meeting, at which the electors present will appoint, by vote, someone to fill the position until the end of the term. Although not common, similar provisions can be found in municipal election legislation (see, for example, section 42(3) to 42(8) of the Municipalities Act of New Brunswick, which provides for such a procedure for vacancies remaining on a village council after a by-election.)

By-Laws

All the Cree and Naskapi bands have incorporated a standard electoral regime but some bands have developed by-law provisions that are in accordance with band custom as well.

The electoral by-laws of the Eastmain, the Nemaska, and the Wemindji Bands state that "council members shall be elected in accordance with the custom of the band as specified herein and subject to the provisions hereof".

The custom of the Eastmain and Wemindji Bands is described in the by-laws as follows:

Candidates shall stand in a line at the front of the place where the election meeting is held. Each elector present who desires to do so shall vote by physically standing in a line behind the candidate for whom he wishes to vote, and shall remain so standing until all the votes have been counted.

The Nemaska Band by-law incorporates the traditional importance of women as the advisors to decision-making and elders as the keepers of knowledge in the community. The provisions for the number of positions of council members and the nomination process require at least one woman and one elder to be elected to council. The by-law provides for special nomination procedures to fulfill this requirement.

Other bands, such as the Naskapi Band, have established highly structured provisions based on a standard electoral regime but which nevertheless incorporate particular elements. For example, provisions for election method and procedure state that there will be one ballot box per candidate. Each will be colour coded depending on the position (chief or councillor). Each box must have a 2-1/2 inch photograph of the candidate placed on it in a manner that is easily discernable to voters. To ensure secrecy of voting, a special compartment is provided for the purposes of depositing one's ballot.

3. Sechelt Indian Band Self-Government Act

This Act recognizes the band council as the governing body of the band, and the band constitution as the procedural guide for the election of council members. It states that the constitution shall be in writing and may "establish the composition of the council, the term of office and tenure of its members and procedures relating to the election of Council members". The Act also gives the band the authority to pass by-laws with respect to the conduct of band elections.

The election provisions detailed in the constitution are based in part on the British Columbia Municipal Act, but sections of the constitution read identically to the Indian Act regulations. The Minister of Indian Affairs and Northern Development no longer has a role in the band's electoral process, and appeals are made to the Supreme Court of British Columbia.

The drafting of the band constitution, which required Governor-in-Council approval prior to being in effect, raised questions about the level of detail required in the elections provisions.

V. OPTIONS FOR LEADERSHIP SELECTION REGIMES

This section will consider three options for leadership selection regimes:

- 1) contemporary electoral regime, conforming to Canadian practice;
- 2) any atypical election regime, combining Canadian electoral practices with customary and traditional features; and
- 3) customary regimes.

Basic democratic principles will be considered first; criteria by which the three options can be evaluated will be set up; and finally the advantages and disadvantages will be discussed.

A. Democratic Standards

Democratic principles exist to protect individuals and ensure fairness. A leadership selection regime should be central to a democratic system of governance. Some general guidelines for assessing whether a system is democratic, and free, might be:

i) community approval

A system cannot be considered to be democratic unless it has the support of the majority of community members. Ultimately, it is the community which decides whether a particular regime, existing or proposed, adequately meets minimum requirements.

ii) amending system

It follows that any changes to the leadership selection regime must also be approved by the community. All self-government proposals, therefore, should include an amending formula/mechanism which involves community approval, and which is accepted by the community.

iii) full participation of community members in leadership selection and decision-making processes

Restrictions on participation should be non-arbitrary and reasonable. Processes should be open and accessible and operate according to well-understood practices. Means for communicating decisions to members, as well as notifying members of upcoming meetings and important events, should be present in the regime.

Basic freedoms of thought, belief, opinion and expression, peaceful assembly, and association should be respected.

iv) frequent and periodic review of leadership/government performance, and a means of removing government leaders, should they prove to be unacceptable to the community

This does not necessarily require a maximum term of office to be identified. In many customary regimes, leaders cannot govern in the absence of consensus. In a traditional Iroquois system, for example, leaders can be recalled by the clan mothers who selected them if they fail to uphold certain standards.

Clearly then, a maximum term of office "provision" will be directly related to the level and frequency of scrutiny of the leader(s)'s decisions by community members, and to available mechanisms to change leadership if unacceptable (e.g. Cree-Naskapi provisions whereby electors can, by petition, request an election).

B. Traditional and Customary Leadership Selection

Nearly all Indian bands operate in a modern cash economy and in many instances the band government is responsible for distributing and using a large proportion of the cash income on the total economy of the band and its members. Under these circumstances the principles of equality, participation and accountability which were part of traditional leadership may take on a different meaning.

The juxtaposition of traditional forms of leadership and a contemporary democratic leadership selection process presents one of the most difficult areas in self-government. A reinstitution of forms of traditional government must respect the principles of the Canadian Charter of Rights and Freedoms. It remains to be determined by the courts the extent to which s.25 of the Charter may enable customary practices to withstand challenges based on the Charter. Careful drafting of leadership selection provisions will be necessary.

C. Criteria for Evaluating Leadership Selection Regimes

The criteria below are neither exhaustive nor definitive. However, they have been drawn from an appreciation of democratic electoral practices, and Indian Act practices.

Compatibility with principles of natural justice and fairness

The process should be free from bias.

There should be checks and balances in the regime sufficient to minimize the possibility of manipulation of the selection process.

Appeals

An appeal mechanism, or more generally, a means of resolving disputes, is fundamental to upholding the principles of natural justice. In standard electoral regimes, appeals may be made to the courts. In self-government regimes, however, an internal appeals procedure should be provided, as well as ultimately enabling appeals to be made to outside courts.

Respect for individual rights

The election/selection regime must not discriminate against individuals on the basis of sex, age, and mental or physical disability, except to the extent that limits on these rights are reasonable and justified.

For example, minimum age requirements for voters and candidates are reasonable and are consistent with Canadian government practice. So too are maximum ages; for instance, the appointed Canadian senators must retire at age 75.

Minimal departmental involvement

Under self-government arrangements, it would be unusual for the Minister, the department and its officers to continue to have a role in ruling on the legitimacy of selection outcomes in any particular instance. This role should be assumed by an internal appeals mechanism and/or by the courts. However, communities would still be required to notify the Minister of the results, and advise on community-approved amendments to the regime.

Workability

If the community is confirming a selection procedure which is already in place, and there have been few appeals, disputes or uncertainties associated with the process in the past, then workability could reasonably be assumed.

If a community is proposing a standard electoral regime, then key steps in the process must be explicitly defined to remove ambiguities which could lead to questionable election results and numerous appeals.

Atypical regimes, which combine standard electoral with customary or traditional institutions and practices, will require a clear description of how the process will work, and how various stages of leadership selection will be addressed. Clearly, the issue of codification is central to ascertaining workability in most cases.

The next section elaborates on this important aspect of election proposals. A summary of these minimum requirements is provided in Annex 2.

D. Electoral Regimes

1. Standard Electoral Regime

Standard electoral regimes do not differ significantly from government to government in Canada as virtually all regimes include the elements discussed on pages 5 - 7 under "Typical Provisions Governing An Electoral Regime." As noted earlier, the Indian Act, the Sechelt Act, and in most respects, the Cree-Naskapi (of Quebec) Act and by-laws all adhere to this type of process. Procedural details may differ with regard to length of terms of office, voter and candidate eligibility and similar matters but the basic elements are present.

A community that wishes to continue, or adopt, a standard regime would be well-advised to consider as a basis for their proposal existing election legislation and regulations which have proven to be workable for a community of comparable size.

Proposals of this option would likely be tabled by communities currently under sections 74-79 of the Indian Act. However, there are some communities operating under section 2 of the Act, and particularly many of those which have reverted to custom, that also follow standard electoral practices. Those communities may simply want to confirm these regimes, and their control over them, in a self-government agreement. The Blood Tribe in Alberta, for example, reverted to custom in 1976 but since 1982 has operated pursuant to its election by-laws and regulations. However, the only substantial differences between the Blood Tribe and Indian Act regimes relate to voter eligibility, and the term of office.

A community might also want to consider using as its basis the municipal election regime of the province in which it is located. This would be practical, although not essential, in instances where appeals would be brought before the provincial courts, as they would no doubt be familiar with that province's regime.

Once the basic electoral framework has been established, the community might want to vary the nature of some provisions to suit its needs. Some of the most likely areas where variations might be desired are discussed below.

a) Term of Office/Frequency of Elections

Any self-government proposal stipulating a term of office of two to four years is well within the Canadian norm. Although there is an historical precedent in Canada for one year terms at the municipal level, this would be an impractical option except perhaps in very small communities.

Terms of five years or more could pose problems with respect to the inability of the electorate to effect its will on the governing body in any concerted way over a considerable period of time. Proposals for longer terms would have to include, therefore, specific provisions for the support of the electorate at mid-term or at more frequent intervals and, if confidence in the governing body is lacking, for holding an election before the end of the term. Review mechanisms may consist of a plebescite, referendum, petition or other similar mechanisms which would provide a meaningful indication of the level of support within the community for the government in power. In the case of the Waskaganish Band under the Cree-Naskapi Act, for example, the term of office is six years, but the ability of band members to force an election by way of petition and vote at a special band meeting (see page 13) ensures that leaders can be replaced prior to the end of the full term.

Finally, terms of individual council members can be staggered, such that a given proportion of the total number of members are elected each year. Communities might also want to consider terms of different lengths for the office of leader and councillors. Both these practices conform to democratic standards and do exist or have existed in Canada.

b) Voter/Candidate Eligibility

Some communities may wish to change or implement standard restrictions with respect to matters such as minimum age or residency. They may, however, also want to incorporate traditional values or criteria in eligibility requirements. These, to the extent that they are reasonable and non-arbitrary, would be given careful review under Canada's self-government policy. For example, stipulating that leaders must speak the native language would be reasonable, unless of course only a handful of people on the reserve could meet this requirement. Likewise, requiring each clan to elect one member to a governing body might be acceptable providing internal clan election procedures meet the standard tests mentioned in this paper (see also below, "Composition of Governing Body"). However, restricting voting or candidacy to men (or to women) only, would violate the Canadian Charter of Rights and Freedoms. A band proposing such a restriction would have to understand that the courts might find that leadership selection regime unacceptable.

c) Composition of governing body

The number of positions, and whether they are elected at large or on the basis of electoral sections can be varied by a community. Positions could be tied to traditional clan systems or roles in the community (for example, the Nemaska Band by-law requiring one woman and one elder to be elected). A leader could be elected at-large, or chosen by elected council members from amongst themselves.

d) Procedures

Procedural details could be varied for nominations and polling. For example, separate ballot boxes for each candidate, as in the Naskapi Band by-law (see p. 14), would be different from, but not incompatible with, standard practice. Other more mundane variations, such as nomination meetings vs. submitting nominations in writing, format of ballot papers, whether to have proxy voting, and/or advance polls, need not be addressed here because they would clearly be consistent with Canadian practice.

e) Appeals

Typically, appeals and judicial recounts are made to the courts. The most practical approach is to have provincial courts hear these.

The concept of an internal appeal mechanism, such as an appointed appeals board, is consistent with the existing practice of having quasi-judicial boards rule on specific matters that are clearly delineated in legislation. Furthermore, appeals of decisions of such boards to the courts would need to be specifically provided for by legislation. Communities adopting a standard regime could therefore allow for recourse to the courts in addition to an internal appeals mechanism.

Internal appeal decisions could possibly be brought before the courts for judicial review, although the very existence of an appeal procedure has been used at times by the courts to refuse to grant judicial review remedies. Judicial review is the process by which the courts review how a decision was taken, rather than its substance. If the decision-maker is found to have exceeded its jurisdiction, the courts will strike down the decision. An excess of jurisdiction depends on statutory interpretation, but might occur when a decision was given in bad faith, the requirements of natural justice were not followed, or the decision-maker misconstrued provisions giving it power to act, took into account irrelevant factors or failed to consider relevant ones.

Two principal characteristics which often distinguish customary and alternative leadership selection from typical electoral regimes are:

- all or some of the leaders/decision-makers are chosen on the basis of heredity or appointed by a given group of individuals;
- the absence of voting secrecy.

Customary or alternative regimes could include many other unusual elements as well.

A.1 - 2

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Posting of notice for nominations	Electoral officer must post in conspicuous places, a given number of days prior to nomination day and to polling day, the nomination day(s), meeting, or deadline, as well as the posts to be filled	<ul style="list-style-type: none">- procedural fairness; accessibility- right to participate in political process
Conduct of nomination procedures	Nominations may occur by way of filing nomination, at certain time or by certain date, or at nomination meeting which must be of certain minimum duration; given number of nominees usually required for each candidate, consent of candidate required	<ul style="list-style-type: none">- procedural fairness; accessibility
Voters lists	Responsibility of electoral officer to prepare, post and correct voters list; usually preliminary list must be posted a given amount of time before election, and there is a deadline to apply for revisions, additions etc. (i.e. x days before voting day); only those on voters list can vote	<ul style="list-style-type: none">- procedural fairness- protection of right to vote

A.1 - 3

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Declaration and posting of poll	When more candidates nominated than positions available, electoral officer will declare poll; notice must be posted, usually within a given amount of time, information such as date, times, positions, candidates must be clearly stated	- procedural fairness; accessibility
Preparation of papers/poll	Form of ballot papers clearly prescribed; some legislation allows for use of voting machines or other voting devices; also stipulated: establishing polling stations, supplies such as ballot boxes, materials for voting, voting compartments	- procedural clarity (fairness)
Polling/voting procedures	Prior to voting, electoral officer (EQ) ensures security of ballot box in presence of others (shows that it is empty, then seals); voting by secret ballot; one vote per elector (per position); in special circumstances EO may assist individuals; may also have proxy voting	- fairness

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Time of poll	Can vary, but is clearly specified in legislation or regulations; usually an advance poll; may include time off from work to vote	<ul style="list-style-type: none">- fairness- accessibility
Procedures after poll/certification of result	Votes counted in presence of candidates or agents who may be present; rules describing invalid/spoilt ballots, recounts and ties; sometimes electoral officer is given deciding vote in tie situation; certification and posting of election results by Electoral Officer; ballot papers retained for specified period after election	<ul style="list-style-type: none">- procedural fairness- impartiality
Appeals	Judicial recounts, also election petitions can be brought before the courts; depending on the complaint, chief Electoral Officer may have powers of inquiry	<ul style="list-style-type: none">- fairness- right to appeal

A.1 - 5

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Election offences and corrupt practices	May include: interference with voting or with secrecy of voting; unlawful voting; destruction of or tampering with ballots; corrupt practices such as bribery, treating, intimidation, etc.	<ul style="list-style-type: none">- free and fair elections- protection of proper exercise of political rights of citizens
Controverted elections	Situations in which an election is declared invalid; usually when successful candidate is guilty of corrupt practice or where commission of corrupt practice or act or omission of election official has affected election outcome; procedure/appeals to be followed in ascertaining the above, as well as possible rulings (new election, or person who would otherwise have won is determined to be elected).	<ul style="list-style-type: none">- procedural clarity- fairness

A.1 - 6

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Removal from office/Vacancy	Situations in which a position is deemed to be vacant, such as resignation, and particularly situations in which an individual can be removed from office (e.g. absenteeism, criminal code conviction etc.)	<ul style="list-style-type: none">- procedural clarity- effective representation- fairness (to individual)
By-elections	Legislation may specifically provide for by-elections if position becomes vacant a given length of time before the next general election	<ul style="list-style-type: none">- effective representation

ANNEX 2

Requirements for Self-Government Election Proposals

1. Democratic system

- i) community approval
- ii) amending mechanism (involving community approval)
- iii) full participation (non-restrictive) of community members:
 - open and accessible process
 - notice and communication of decisions
- iv) frequent and periodic review of leaders

2. Compatibility with principles of natural justice and fairness

- i) appeals mechanism

3. Respect for individual rights

4. Minimal departmental involvement

5. Workability

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codif- ication	Implementation
1. Standard electoral regime	All communities (band, tribal council etc.)	<ul style="list-style-type: none"> - the community's election procedures should be based on existing election legislation which has proven itself to be workable for a community of its size, with appropriate and desired revisions - the community can vary terms of office, eligibility requirements for voters and candidates, the composition of governing bodies and procedural details, consistent with Canadian government practice and individual rights - appeal mechanisms can be internal or external or both but must not involve the Minister at any stage - there must be an amending formula requiring community approval for adoption and amendment 	Yes	<ul style="list-style-type: none"> i) community government is given responsibility for the design and operation of its electoral process in enabling legislation ii) enabling legislation may provide that this jurisdiction be exercised through community constitution, by-laws and/or regulations iii) enabling legislation may describe minimum requirements/essential elements iv) details of electoral regime can be incorporated in community constitution and/or by-laws and/or regulations; these can be amended by the community according to its amending formula

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codif- ication	Implementation
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- election regimes based on the Indian Act process should incorporate provisions on voter eligibility, election dates, recounts, etc. in order to fill "gaps" and flaws in the existing procedures, unless those gaps are clearly filled by existing, accepted practices in the community

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codif- ication	Implementation
2. Combination standard electoral regime with cultural/ customary elements	All communities (band, tribal council, etc.)	<ul style="list-style-type: none"> - process must be democratic and must respect the rights of individuals - procedures must be open, accessible and comprehensible to all participants (candidates and electors) and provide for reasonable notice, so as to ensure full participation of community members - review/selection/election of leaders must be frequent and periodic 	Yes	<ul style="list-style-type: none"> i) community government is given responsibility for the design and operation of its electoral process in enabling legislation ii) enabling legislation may provide that this jurisdiction be exercised through community constitution, by-laws and/or regulations iii) enabling legislation will set minimum requirements/essential elements

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codif- ication	Implementation
		<ul style="list-style-type: none"> - should be compatible with the basic principles of fairness/natural justice - appeal mechanism can be internal or external or both, as appropriate, but must not involve the Minister at any stage - there must be an amending mechanism/process requiring community approval for adoption and amendment - there may be a combination of elected and appointed leaders as all of them are accountable to the electorate for their decisions, and can be removed if found to be unacceptable 		<ul style="list-style-type: none"> iv) details of electoral regime can be incorporated in community constitution and/or by-laws and/or regulations; these can be amended by the community according to its amending formula

ANNEX 1

Typical Provisions Governing an Electoral Regime

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Elected body	Governing body to be elected; powers and duties of elected body specified in legislation	<ul style="list-style-type: none">- accountability- elected body must have effective power and control
Voter eligibility	Restrictions on right to vote are clearly stated; e.g. election officials cannot vote; residency requirements must be met, etc.	<ul style="list-style-type: none">- right of all citizens to participate in political process; right to vote subject only to certain specific, non-arbitrary restrictions
Candidate eligibility	Restrictions on candidate eligibility may be somewhat greater than for voter eligibility, e.g. must not be indebted to municipality in question for arrears of taxes	<ul style="list-style-type: none">- right of all citizens to participate in political process; right to stand for election subject only to specific, non-arbitrary restriction
Composition of governing body	Number of positions is specified; often tied to number of voters; may be electoral sections or constituencies	<ul style="list-style-type: none">- procedural fairness- effective representation- accountability
Basis for selection	Usually winner by majority of votes; could have dual or multi-member constituencies, run-off balloting, etc; leader may be selected at large or from amongst elected representatives	<ul style="list-style-type: none">- procedural fairness- one person one vote, representative democracy

<u>Provision</u>	<u>Description</u>	<u>Principle</u>
Term of office	For local governments, the norm is two to four years; Parliament and provincial legislatures are restricted to a five-year maximum	- free elections, held <u>periodically</u> and <u>frequently</u>
Calling of elections	Date for municipal elections often specified in legislation; at provincial and federal levels elections occur at the end of term, when the government is defeated on vote in legislature, or when the PM/premier calls an election	- ensure confidence of electorate, expression of public will, at <u>frequent</u> intervals
Appointment and duties of electoral officers	One or more individuals are appointed either by the governing body, or by-Lieutenant-in-Council (in some provinces) to be impartial administrators at election; often they cannot vote except to break a tie	- procedural fairness; impartiality

As with the practice of consultation, the apparent lack of need for voting secrecy might be indicative of the value system and the norms of behaviour in the community which, although unwritten, carry the force of law. As well, there may be customary means of dealing with individuals who abuse the system. It will be up to the community to articulate these deterrents and, at a general level, codify some offences which would be punishable under band law.

E. Codification

In order to ensure that laws and rules will effectively govern behaviour, they must be knowable and commonly understood by the community. This is the first basic rationale for codification. The second rationale, as mentioned above, is to make the laws, rules, and procedures workable, by removing ambiguities and setting specific standards.

The question of codification remains to be fully understood, and practices will likely develop over time. Common elements would likely include the following:

i) Codification of Custom

In particular, the community must demonstrate that the customary selection procedures are compatible with the minimum requirements outlined above.

A community should provide some written description of how its regime works. These descriptions need not provide minute procedural detail, particularly if the community is already operating successfully under the customary regime, but should be sufficiently detailed as to be comprehensible.

ii) Level of Detail

The details of leadership selection procedures would likely be contained in the community's constitution, within the by-laws they are empowered to pass and in the application of regulations which, along with federal legislation, would establish the self-government arrangements.

With respect to communities following either a contemporary or a traditional leadership selection regime, codification in the community's constitution would be required. For contemporary regimes, codification to the smallest detail of procedures is part and parcel of that type of system. As amply demonstrated with the Indian Act section 74 regime, gaps in procedural detail lead to ambiguities and appeals. In the case of an atypical regime, written procedures ensure that everyone in the community understands the rules of the proposed system. Ambiguity should be at a minimum in order to improve the workability of the regime. In both these instances however, flexibility will be maximized if the elaboration of the procedures are contained in the community constitution and by-laws, where they could be amended by the community. Amendments to the electoral regime will yet have to meet the standard tests identified earlier in this paper.

V. CONCLUSION

Whatever leadership selection regime a band proposes, this paper has suggested that the regime will have to be well-understood within the community, and conform to general principles of democracy. Customary regimes are not necessarily incompatible with such principles, but will require some careful drafting to meet them. In any event, each community proposal will require assessment within the overall self-government policy.

The issues raised in this paper can be pursued by interested bands in discussion with DIAND Self-government sector officials. By examining and discussing each individual case, it will be possible to develop leadership selection procedures to meet the needs of each community.

BIBLIOGRAPHY

GOVERNMENT REFERENCES

An Ordinance Respecting The Election of Members To The Council of The Yukon Territory. Revised Ordinances of The Yukon Territory, 1958. Chapter 34, p. 372 - 379.

An Ordinance Respecting The Franchise of Electors and The Election of Members To The Council of The Northwest Territories. Ordinances of The Northwest Territories, 1978. Chapter 3, p. 161 - 245.

Election Act. Revised Statutes of New Brunswick, 1973. Volume 1, Chapter E-3, p. 1 - 100.

Election Act. Revised Statutes of Alberta, 1980. Volume 2, Chapter E-2, p. 2 - 80.

Election Act. Revised Statutes of Ontario, 1980. Volume 2, Chapter 133, p. 1023 - 1079.

Indian Act. Office Consolidation. Ottawa: Government Publishing Centre, 1985. (and Regulations).

Municipalities Act. Revised Statutes of New Brunswick, 1973. Volume 3, Chapter M-22, p. 1 - 113.

Municipal Election Act. Revised Statutes of Alberta, 1980. Volume 5, Chapter M-25, p. 2 - 64.

Municipal Election Act. Revised Statutes of Ontario, 1980. Volume 5, Chapter 308, p. 491 - 552.

Municipal Elections Ordinance. Ordinances of The Yukon Territory, 1972. Chapter 12, p. 96 - 121.

GENERAL COMMENTARY

Boyer, Patrick J. Local Elections In Canada: The Law Governing Elections of Municipal Councils, School Boards and Other Local Authorities. Toronto: Butterworths, 1988

Election Law In Canada: The Law and Procedure of Federal, Provincial and Territorial Elections, Volumes 1 and 2. Toronto: Butterworths, 1987

The Legal Framework of Elections in Canada. Toronto: Butterworths, 1981

Background Materials On Self-Government

Canada, Department of Indian Affairs and Northern Development. Proposals for a System of Indian Government. Hull, Quebec: Department of Indian Affairs and Northern Development; September, 1979; 15p. (Available at the Assembly of First Nations, Ottawa, on microfiche).

Canada, Department of Indian Affairs and Northern Development. Strengthening Indian Band Government in Canada. Ottawa: Department of Indian Affairs and Northern Development, 1982; 8 p.

Clare, Michael. Training for Band Self-Government. Prince Albert: Centre for Training Research and Development; 1978; 6 volumes. Note: includes:

- Vol. 1: Introduction to the Training Program, 96 p.;
- Vol. 2: The Background of Band Self-Government, 240 p.;
- Vol. 3: Political Process of Band Government, 359 p.;
- Vol. 4: Administration for Band Government Part I, 356 p.;
- Vol. 5: Administration for Band Government, Part II, 465 p.;
- Vol. 6: Planning for Band Government, 477 p.

Daugherty, Wayne E. and Madill, Dennis. Indian Government Under Indian Act Legislation, 1868-1951. Ottawa: Department of Indian Affairs and Northern Development; 1980; 179 p.

Denton, T., "The Foundations of Local Self-Government: A Comparison of Municipal with Proposed Band Government". DIAND, 1982.

DIAND. "Indian Band Government: General Background." 1982.

DIAND. "Proposals for a System of Indian Government". 1979.

Hawkes and Peters. Issues in Entrenching Aboriginal Self-Government, Ch. 3 - Aboriginal Self-Government and the Federation. Ch. 4 - Legal Obstacles. Workshop Report. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1987.

Rowat, D. "Implementing Local Government for Indians: The Need for Clarifying Concepts." Ottawa: Carleton University, Department of Political Science; October 1973; 18 p. (Unpublished paper available at the Department of Indian Affairs Library, Ottawa).

Future Possibilities

Constitutional Development in the NWT.

Franks, C.E.S. Public Administration Questions Relating to Aboriginal Self-Government. Background Paper No. 12. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1987.

Gibbins, R. and Ponting, J. Rick, "An Assessment of the Probable Impact of Aboriginal Self-Government in Canada" in Cairns, A. The Politics of Gender, Ethnicity and Language in Canada. Toronto: University of Toronto Press, 1986; p. 171-241.

Littlebear, Boldt, Long, Pathways to Self-Determination, i.e. Ch. 3 - "Bureaucracy, Public Policy and Indian Government." Ch. 4 - "Legal, Political and Economic Constraints." Ch. 6 - "Indian Government and the Constitution." Toronto: University of Toronto Press. 1984. p. 169-180.

Whittington, M.S., "Political and Constitutional Development in the NWT and Yukon: The Issues and Interests", in M.S. Whittington, The North, 1985.

Present Electoral Regimes for Bands and Self-Government

Bill C-93: An Act Relating to Self-Government for The Sechelt Indian Band. Ottawa: Government Publishing Centre, 1986.

Cree-Naskapi (of Quebec) Act. Revised Statutes of Canada. 1983 - 84. Chapter 18, p. 425 - 522. (Additionally, Draft Regulations and By-Laws).

Plunkett, T.J. Associates Ltd. "Local Government on Indian Reserves". DIAND, 1967.

Sechelt Band Constitution. The Canadian Gazette Ottawa: Queen's Printer, Sept. 1987.

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codif- ication	Implementation
3. Traditional leadership selection and removal	Band are free to propose any system which they believe meets their needs.	<ul style="list-style-type: none"> - leadership election and removal, as part of the band's overall decision-making process, must receive community support and must balance the rights of individuals with those of the community - procedures must be open, accessible and comprehensible to all participants and provide for reasonable notice, so as to ensure full participation of community members - review/selection/election of leaders must be frequent and periodic - should be compatible with basic principle of natural justice/fairness - there must be an internal mechanism for dispute resolution 	Yes	<ul style="list-style-type: none"> i) enabling legislation would recognize that the community selects its leaders according to custom/internal appeals ii) enabling legislation may describe minimum requirements (including internal appeals mechanism) iii) procedures, would be detailed in a band constitution and/or by-laws and/or band regulations all of which can be amended by the band according to its custom, such amendments still conforming to standard tests identified in the third column

ANNEX: SUMMARY OF POSSIBLE OPTIONS FOR LEADERSHIP SELECTION PROCEDURES UNDER SELF-GOVERNMENT

Type of Proposal	Community Applicability	Parameters/Options	Codification	Implementation
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- there must be an amending mechanism/process requiring community approval for adoption and amendment
- any risks, or ambiguities, particularly with respect to individual
communicate to ratification

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