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To: Marvin Yellow Horn
From: Racquel Fraser
File: First Nations Governance Services 467.01
Date: April 25, 2018
Subject: ***Councillor Nominations within the 2003 Little Red River Cree Nation Custom Election Code***

MEMORANDUM

INTRODUCTION

You have asked for an opinion on the interpretation of the Councillor nomination clause contained within the 2003 *Little Red River Cree Nation Custom Election Code* (the “Code”) which provides as follows, under Article 10:

Any elector residing in:

- either of Fox Lake, Garden River, or John D'or Prairie can move or second the nomination of an eligible person as a Candidate for the office of Chief,
- either of Fox Lake, Garden River, or John D'or Prairie can move or second the nomination of an eligible person as a candidate, for the office of Councillor, to represent that specific community

You would like to know whether this clause means that only residents of each community can nominate residents of their own community for a Councillor position, or whether any valid elector of the Little Red River Cree Nation can nominate a candidate for Councillor.

CONCLUSION

The definitions contained within the *Code*, and specifically the definition of “resident” which exclusively applies to Article 10, suggest that one must be a community member in order to nominate a person for Councillor. As such, being a member of Little Red River Cree Nation does not give one the power to nominate a councillor candidate for any community. One must be a resident of a specific community to nominate someone as a councillor candidate for that community.

INTERPRETATION OF ARTICLE 10 AND THE CODE

Definitions in the Code

This issue turns on whether the phrase “that specific community” refers to the community of the nominated candidate, or the person who has nominated the candidate. Based on Maurice Law’s interpretation of both the definitions and articles contained within the *Code*, it is our opinion that the phrase “that specific community” relates to the person nominating the councillor. That is: only a resident of Fox Lake can nominate a candidate for a Fox Lake Councillor position. A resident of Garden River or John D’or Prairie cannot nominate someone for a Fox Lake Councillor position.

This conclusion is two-fold. First, the definition of “resident” contained within the *Code* suggests that one can only nominate, and thereby have influence on, Councillor elections within their own community. The definition of “resident” in the *Code* provides:

For the purpose of Article 10, an elector who moves or seconds a nomination must demonstrate an actual physical and voluntary presence in the respective community immediately preceding the date for nominations unless temporarily absent from the community for a limited period and limited purpose [...]

This definition is clear. In order to nominate or second a nomination for Councillor, one must be: (1) an elector; and (2) demonstrate an actual physical and voluntary presence in their respective community. In the *Code*, “community” means “any one of the following places of residences: Fox Lake I.R. #162, Garden River, John D’Or Prairie I.R. #215.” By contrast, the definition of “Nation” in the *Code* means the “Little Red River Cree Nation”.

Second, had the Code intended for any member of the Little Red River Cree Nation to have the power to nominate any person for any councillor position, there would be no need to add the definition of “resident” for the purposes of Article 10. Similarly, there would be no need to include the clause “that specific community” within the second part of Article 10. If the *Code* had intended for this interpretation, the first and second clauses in Article 10 would be constructed identically.

Applying a Hypothetical to Article 10

The valid interpretation of Article 10 is evident when the general words of the clause are substituted with a hypothetical eligible voter.

Say, as an example, that John Doe is a resident of Fox Lake and has lived in the Fox Lake community for many years. He is validly registered to vote. Because he has lived in the Fox Lake community for many years, he can demonstrate an “actual physical and voluntary presence” in Fox Lake. As such, he satisfies the two requirements under the definition of “resident” in the *Code* for Fox Lake. That is: (1) he is a valid elector; and (2) can demonstrate an actual and physical presence in Fox Lake. He cannot demonstrate that he is a resident of Garden River or John D’Or Prairie as he has no “actual physical and voluntary presence” in those communities.

Turning, then, to Article 10, it is clear that John can only nominate someone as a candidate for Councillor in Fox Lake. First, if we substitute the words “any elector residing in either of Fox

Lake, Garden River, or John D’or Prairie” with just “Fox Lake”, the meaning of the clause is apparent:

Any elector residing in Fox Lake can move or second the nomination of an eligible person as a candidate to represent that specific community

If we substitute John’s name with “any elector residing in Fox Lake” and substitute “that specific community” with John’s community, Fox Lake, Article 10 then provides:

John Doe can move or second the nomination of an eligible person as a candidate to represent Fox Lake

This explicitly underscores that the *Code* intended for only community residents to be able to nominate candidates for councillors. Thus, a resident of Fox Lake cannot nominate a resident of Garden River for councillor, as that resident of Fox Lake cannot demonstrate that he or she has “an actual physical and voluntary presence” in Garden River. Accordingly, the “voluntary and physical presence” requirement contained in the *Code* is intended to only allow residents to nominate councillor candidates for their specific community.