

LOWER KOOTENAY ELECTION LAW COMPARISON CHART

Issue / Matter	2012 By-Law	Proposed Lower Kootenay Custom Election Law, 2018
Council Composition	S.7 – 1 Chief Councillor (person with highest number of votes) and 4 Band Councillors. No more than two immediate family serving at one time (incl. husband, wife, father, mother, son, daughter, including step children, adopted, foster, and brother, sister)	Ss. 8/105 – 1 Chief – full time in office – must have highest number of votes in an election at which the position of chief is being determined 4 Councillors – undertake duties on as needed basis Cannot have more than 2 Council members who are immediate family to one another (i.e. grandmother, grandfather, mother, father, sister, brother, child, spouse or common-law partner, whether by blood, marriage or adoption)
Increase in Councillors	Not addressed	S. 9 – Additional Councillor for every additional 50 members up to maximum of 9 Councillors
Term in Office	S.9 – 4 year terms in office – staggered	S. 10 – Staggered terms of 3 years
Oath of Office, Confidentiality Agreement, Conflict of Interest	S.27 – sets out the Oath of Office. Cannot assume office until this is signed and if not done within 15d then position is deemed vacant. Currently Confidentiality and Conflict of Interest are mentioned in the by-law but no standard form in the by-law or definitions. Rather they are developed in policy by Council.	S.11, Forms 18, 19 and 22 – New Council must sign these documents within 2 weeks of being declared into office, or they are deemed to have withdrawn their positions
Duties of Council	Not specifically addressed, but the Oath of Office alludes to Council having to uphold the Laws of LKB	S. 12 – Carry out functions prescribed by any law of Canada, or any law, by-law or policy of Lower Kootenay, as well as any duties as per a “Trust Agreement” where they act on behalf of members (example – trustees holding shares in LKB Companies) Must uphold fiduciary duties to members
Indemnification of Council	Not addressed	S. 13 – LKB can pay legal fees of a Chief or Councillor where electors who attend a band meeting vote in favour to do so. 10d notice is given to members and the Council member presents to members at the meeting before a vote is conducted

Council Honorariums	Not addressed	<p>S.14 – Set honorarium amounts: \$52,000 – Chief \$20/hr to maximum of \$200/day and \$1,000/week – Councillors Review of honorariums is by a committee composed of members S. 18 – adjustments made no more than 1x/calendar year and in writing by a committee of members, on advice of Finance and Audit Committee</p>
Council Travel Expenses	No addressed	<p>S.15 – to be paid for travel expenses at same rates as LKB employees but only where business brings them more than 50km from LKB and costs are not covered by a third party already</p>
Council Reporting to Members	Not addressed	<p>S.16 – Council must report on their activities prior to receiving their honorariums. Reporting is at least 1x/calendar month at a community meeting and in writing delivered to all electors at least 1x/2 calendar months. Reports include date, time, location and duration of meetings, purpose of attendance, decisions made, and impact of decisions on members S.17 – Members also entitled access to Council Reports and DOO must maintain a register of reports to make available to members</p>
Electoral Officer	<p>S.12 – appointed 60d before election day and cannot be a member or employee of LKB, hold contracts for services with LKB or be a resident of LKB community, or be married to a member or in common-law relationship with a member. Receives an orientation from DOO.</p>	<p>S. 21 – Appointed by DOO 65d before election day or within 15d of by-election required S.22 – Eligibility Criteria – must have experience, not be a member or immediate family of a member, not be an employee or full-time contractor of LKB, not have interest in outcome S. 25 – Orientation to Election Law given to Electoral Officer Ss. 27/28 – Remuneration is set by DOO and reported in annual financial reports</p>
Pre-Nomination Procedures	<p>S. 13 – DOO provides electoral officer with names of members over 18 years of age. S.14 – powers or process set out for revision of that list S.15 – Notice of Nomination meeting sent to members at least 50d before voting day</p>	<p>S. 29 – Membership Clerk maintains Voters List Ss. 30-36 – Revision Process set out for Membership Clerk S. 37 – Notice of Nomination Meeting to be prepared, published and delivered to electors at least 55d before voting day</p>

<p>Candidate Eligibility</p>	<p>S.11 – addresses eligibility to be a candidate but does not clearly state those criteria must be maintained throughout Council term. Criteria are:</p> <ul style="list-style-type: none"> • Must be a member 18yrs of age • Must be nominated in accordance with the by-law • Must reside in Canada, within 50km or Creston IR#1 • Must not be convicted of criminal offense within 5 yrs prior to nomination, unless it involved aboriginal rights or title, in which case its ok • Not be removed from Council in past 5 years • Cannot run if you resigned and it is a by-election 	<p>S. 39 – To run in and election – and maintain a seat in office – a person must:</p> <ul style="list-style-type: none"> • be an elector; • not have been convicted of an indictable criminal offence; • not have a civil court judgment against them, or a criminal conviction in respect of any matter involving theft or fraud; • not have been removed from a position on Council within three (3) years prior to the date of the nomination meeting; • if it is a by-election, not be the person who resigns or is removed from their position on Council, prompting the holding of the by-election; • not be in arrears for any debt to Lower Kootenay or a Lower Kootenay business entity, unless: <ul style="list-style-type: none"> ○ they have a debt repayment agreement that is entered into at least six (6) months before election day, and ○ they are in good standing in relation to their debt repayment agreement; and • if that person is a Council member, not be employed by Lower Kootenay or a Lower Kootenay business entity during their term in office. <p>*For first election held under the new law, the timeframe regarding the length of time a person must be in good standing for is waived and a person is eligible as long as they have a repayment agreement and are in good standing at the time of the election</p>
<p>Nomination Candidates</p>	<p>S.15 /16– Notice of nomination meeting sent to all electors at least 50d before voting day. Nomination meeting held 45d before voting day and person wishing to run must be present to accept nomination. No set process for how nominations are made -i.e. orally, by presenting written document, etc. No maximum on number of Candidates who can be nominated by the same person. Nominees must confirm acceptance of nomination in writing and then a final list is compiled (no later than 35d before voting day)</p>	<p>S. 41 – electors can move/second up to 2 candidates each by sending in nomination form, or making the nomination in person at nomination meeting</p> <p>S. 42 – Nomination Meeting to be held at least 40 days prior to election day</p>
<p>All Candidates</p>	<p>S.20 – all candidates must participate in the all candidates’ forum</p>	<p>Ss. 48 – 55 – All candidates must attend All Candidates Forum,</p>

Forum	and 7d notice is posted at the admin office. Candidates give up candidacy if they can't make it unless they justify their absence – no process for justification or who decides. Grounds for justification include illness or injury to candidate or within their immediate family	unless cannot due to serious illness, injury to self or an immediate family member – then need to provide electoral officer something to present. Each candidate gets asked the same questions by electoral officer and has equal time to respond. Questions must pertain to LKB affairs and role of Council. Members can ask questions. Minutes are taken and kept by the DOO for at least 3 years after the meeting and electors have a right of access to those minutes
Illegal Campaigning	“Corrupt and fraudulent practice” is mentioned but not defined as a ground for appeal.	S.56 – Illegal campaigning is defined and includes bribery, intimidation and use of LKB resources that are not available to all Candidates. Can lead to an election appeal
Mail In Voting	S.16(f) – Mail In Ballot packages sent to all electors ordinarily resident off reserve at least 20d before an election day. Must be returned by end of close of polls.	Ss.60-66 – sent to all persons not ordinarily living on-reserve at least 28 days prior to voting day. Must be returned by end of close of polls.
Advance Polls	S.23 – held from noon – 6pm one week in advance of normal polls	No advanced polls
In Person	S.18 – Notice of Polls at least 35d before voting day – posted on-reserve, delivered to all households on reserve and sent to off-reserve persons S.21 – Polls are open from 10am – 7pm and voting is by secret ballot. No proxies but persons who are elderly or physically disabled can have attendant help them but no requirement regarding who the attendant is.	Ss.67-87 – Polling hours are 8am to 8pm on voting day, voting is by secret ballot, No proxies can be used to vote, unless special assistance is required then special process is set out in the law.
Electronic Voting	Not addressed	Ss.88-94 – Process for electronic voting is set out
Tie Votes	S.25(h) – election is declared a tie and a new election is held within 21 d. No set process for how that election will be held. However, if tie is for the position of Chief, the person with most votes becomes chief (not clear here)	S.102/103 – Electoral officer conducts a recount and if its still a tie they put the name of each candidate in a box and draws the name which counts as a vote for that candidate
Re-Counts	Not addressed	S.104 – Candidates can object to the tally if they are present at the count. Can only make 1 objection as a candidate and recount only happens if difference of 5 votes in the final count

Election Appeals	S.28 – Heard by an arbitrator. Procedures set out in the law. Grounds for appeal include person not being qualified to be a candidate, not being nominated proper, the electoral officer violating the rules of the election, or a “corrupt or fraudulent practice” in relation to the election – lacks definition of “corrupt or fraudulent”	Ss.111-130 – Heard by an arbitrator who must be a lawyer who has never acted for LKB in any other matter other than as arbitrator. Most procedures are set out in the law, but where there is no procedure set, the arbitrator can set it. Costs for the arbitrator are paid by LKB unless arbitrator makes an order for costs to be paid by an individual who loses the appeal. Candidates can ask for an appeal (must be within 10 days) if they believe people voted who weren’t allowed to, illegal campaigning happened, or the election law wasn’t followed properly. If no facts are presented to support an allegation, or the allegation doesn’t meet the criteria then the arbitrator can dismiss the appeal. Applicants have right to participate as do affected persons such as Council members. Decisions must be in writing and published for members to see, and all decisions are final and binding without further review by courts.
Council Meeting Procedures	Not addressed	Ss.131-156 – Rules are set out for Council procedures, access to Council meetings, the keeping of Council minutes and access to Council minutes, in-camera sessions, and decision-making
Vacancies and By-elections	S30 – Vacancies occur if a Council member dies, resigns, is convicted of a criminal offence and all appeals are completed, transfers membership to another band, the election is declared invalid in an appeal, removed by an arbitrator, unable to perform duties for 6months due to illness or incapacity (process for council member who wants to challenge this is also set out – arbitrator with costs paid by LKB), misses 3 council or membership meeting within a 12month period without just cause (as determined by remaining Council members who are not in conflict on the matter). By-elections held within 45d of vacant seat in office but not required if next election will be within 120days	Ss.158/183 – Council position is deemed vacant if they (a) resign, - deemed resigned if they don’t maintain eligibility criteria throughout their term in office; (b) die, (c) are absent from 3 Council meetings in a row or 3 within a 12 month period and are not approved for that absence by the rest of Council in accordance with rules set out in s.137 . S.159-161 – By elections held if position is vacant and more than 16month left in term. If chief position is vacant and less than 16month left then Council appoints interim Chief from rest of Council

<p>Council Accountability</p>	<p>No process for accountability to be taken by a Council member or for a Council member to learn from their mistakes</p>	<p>Ss.165-185 – Full Council Accountability Process</p> <ol style="list-style-type: none"> 1. Council Accountability Panel established – composed of 2 members elected into their positions on a roster, each of whom must meet same eligibility criteria as are required to be on Council; 2 Council members who are not in conflict; and 1 elder. 2. Grounds for Accountability include: breach of Council duties, missing meetings without consent from rest of Council, missing more than 3 community meetings in a row, missing an AGM or meeting where they need to report back to members, make promises to band members regarding access to benefits, services or funding without authority from Council to make those promises, enter agreements with third parties without Council consent to do so, breaches of Oath of Office, Confidentiality Agreement or Conflict of Interest Agreement, physical violence, or bullying. 3. If Council member denies an allegation, Council members who are not in a conflict of interest decide whether to conduct an investigation – strict criteria to be considered are set out in the law. Investigations are conducted by a neutral third party to decide whether there is any doubt about the allegation. 4. If doubt exists it's the end of the matter. If doubt does not exist then the Council Accountability Panel decides what the order against the Council member should be. Orders may include: Council member to pay investigator's costs or to pay restitution to a person who suffered a loss from their actions, or to pay reparation to a person to make amends with them for an action against them; public apology, verbal or written warning, suspension for up to 60d without honorarium, or volunteer work of up to 50hrs which needs to be done in time ordered that cant be more than 6 months; or last resort could be a removal order (could still be removal order if serious enough). There are guidelines for what the Council Accountability Panel needs to
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<p>Council Removal</p>	<p>S.29 – removal can occur where a Council member violates the election by-law or another LKB law, breaches their oath of office, loses confidence of band as evidenced by 30 signatures, or is convicted of an indictable offence while in office. Process is run by an arbitrator and they make the rules. Band pays for the arbitration costs and there is power set out for the arbitrator to order that a person who is party to the arbitration pay costs. S.31 – arbitration process followed. Process is set out in the law, with no involvement of community members – all the power is with the arbitrator once they receive the notice of petition for removal from the DOO. No process for Council member who the removal relates to to challenge the petition. Decision of Arbitrator is final and no appealing it to the courts.</p>	<p>consider when making their order.</p> <p>Ss.165-185 – Full Council Accountability Process also addresses removal for Loss of Confidence in a Council Member</p> <ol style="list-style-type: none"> 1. Loss of Confidence Petition to initiate accountability process - >requires signatures from 30 members, each of whom must make themselves available to confirm their signatures are authentic on the petition 2. Council member has 3 months to defeat petition by submitting own petition signed by at least 30 members, each of whom must confirm their signatures are authentic in the petition. If Council member cannot do this, they are deemed to have resigned from office
<p>Amendments</p>	<p>S.32 – Can be initiated by any member of Council member. Amendments can be done at a band meeting to which members who live on reserve receive a notice and a notice is published at LKB Administration office. The meeting is chaired by a Council member. At that meeting, recommendations are made by members and they then go before Council. Final meeting notice is sent to all eligible electors along with the proposed amendments and then those who attend the meeting vote on the amendments. No minimum number of members who must be present to participate in drafting or approval of amendments. Changes cannot be made more than 1x/4yrs or within 120d before an election day</p>	<p>Ss.186-187 - Amendments require approval of members in a ratification vote held in same way as one being used to pass the law in the first place, which means as follows: Vote # 1 – At least 50% of electors must participate and of those who participate 50% plus one of them have to vote in approval Vote # 2 – if less than 50% of electors participate in Vote #1 a second vote can be held (must be within one year) and amendments will be approved if 50% of those who participate approve the amendments Changes cannot be made more than 1x/4yrs or within 120d before an election day</p>