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Our File: 2072

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Dear Spuzzum First Nation Member,

Re: Amending Spuzzum First Nation's Membership Rules

Over the past two years, DGW Law has been assisting Spuzzum First Nation ("Spuzzum") with developing a modern Custom Membership Code that will amend (and effectively replace) the *Spuzzum Indian Band Membership Rules* adopted in 1987 (the "1987 Rules").

The community engagement process has included community meetings, online and paper questionnaires and worksheets, small group workshops, and many meetings with Spuzzum's Chief and Council ("Council"). This engagement has resulted in a draft version of a revised and updated Custom Membership Code (the "Revised Code"). Importantly, the Revised Code will not have any legal effect until it is officially approved by Spuzzum's electors.

Council has decided that it is now time for Spuzzum's electors to determine whether they support adopting the Revised Code. As such, Council is initiating an amendment procedure, which will determine whether the Revised Code will become Spuzzum's membership law moving forward.

To help Spuzzum members understand the amendment procedure, Council has asked DGW Law to provide this briefing letter to explain the legal process that must unfold in order to give the Revised Code the power of law.

The Amendment Procedure

The *1987 Rules* set out Spuzzum's current membership laws, as well as a process for amending them. This is the process that Spuzzum must take in order to adopt the Revised Code.

The amendment procedure is set out in part VII of the *1987 Rules* and states as follows:

AMENDMENT PROCEDURE:

23. These rules may be amended if one third (1/3) of the electors sign a petition to Council which outlines the reasons for the proposed amendment.

24. Upon receipt of the petition, the Council shall:

- 1) give 30 days notice to each home on the reserve of a special meeting to vote on the proposed amendment;
- 2) post a copy of the notice described in subsection (1) in the Band Office for 30 days prior to the said meeting; and,
- 3) attach the text of the proposed amendment to the notices.

25. If the proposed amendment receives the consent of the majority of the electors of the Band present at the meeting, these Rules shall be amended accordingly.

This process involves three steps: the Petition, the Referendum Vote, and Enactment and Implementation. We now review these three steps.

Step 1: Petition

The first step is the Petition. In order to initiate the amendment procedure, pursuant to section 23 of the *1987 Rules*, one third of Spuzzum electors have to sign and provide to Council a petition outlining the reasons for the proposed amendment.

We have attached to this letter the Petition that is now being circulated by Spuzzum electors who support this initiative. As the Revised Code significantly revises the *1987 Rules*, the Petition lists many reasons supporting such a thorough revision. These reasons include: addressing issues of discrimination, resolving procedural ambiguities, streamlining and simplifying the registration and application processes, and generally updating the *1987 Rules* into a modern document.

In order to be eligible to sign the Petition, you must be an “Eligible Voter” as defined by Spuzzum’s Custom Election Code. This basically means that you have to be a Spuzzum member and at least 18 years of age.

Currently, we understand that the Petition is only in paper-form. However, if insufficient signatures are collected to satisfy the 1/3 threshold, we expect that the Petition will be circulated more broadly, perhaps by an online version or a community mail-out.

It is important to emphasize two things about the Petition. First, the Petition does not enact the revised Code. It merely binds Chief and Council to initiate the next step, the Referendum Vote.

Second, if a Spuzzum elector decides to sign the Petition, they are merely supporting Spuzzum moving to the next step in the process. By signing the Petition, you are not bound to vote in favour of the revised Code in the Referendum Vote.

Step 2: Referendum Vote

If one third of Spuzzum electors sign the Petition, then section 24 of the *1987 Rules* requires Council to call a vote on the Revised Code (the “Referendum Vote”).

Section 24(1) provides that Council must give “*30 days notice to each home on the reserve of a special meeting to vote on the proposed amendment.*” However, we have recommended that Council go above and beyond this process, by providing a longer notice period and making the notice and voting process available to all Spuzzum electors, not just to those who live on reserve.

We make this recommendation because the law regarding First Nation residency has developed considerably in the 30+ years since the enactment of the *1987 Rules*. The Supreme Court of Canada has found that laws that have the effect of limiting off-reserve members from participating in important band governance decisions contravene unjustifiably on those members’ constitutional right to equal protection and equal benefit of the law, without discrimination.

The decision to amend the *1987 Rules* is a decision that impacts the entirety of Spuzzum’s membership, not just those who live on reserve. As such, we understand that if the Petition is successful, Council will hire an electoral officer to ensure that the Referendum Vote includes adequate procedures to include both on-reserve and off-reserve Spuzzum electors.

So, the second stage of the amendment process—the Referendum Vote—will be more rigorous than the process set out in the *1987 Rules*.

Step 3: Enactment and Implementation

The *1987 Rules* state that the results of the Referendum Vote are **binding**. If a majority of the Spuzzum electors voting in the Referendum Vote are in favour of adopting the amendments set out in the Revised Code, then, pursuant to section 25 of the *1987 Rules*, the rules are amended and Council is bound to enact and implement the Revised Code.

Early steps of implementation will include appointing a person to the position of Membership Clerk and convening a Committee Appointment Meeting to appoint the Membership Committee.

If the Referendum Vote is unsuccessful, then the *1987 Rules* persist as Spuzzum's membership law. Council will then have to decide whether to continue the project of developing new membership laws.

Conclusion

In summary, the first step to amending the *1987 Rules* is the Petition, which we understand is being circulated by members of Spuzzum who support this initiative. If enough signatures are collected on the Petition, there will be a Ratification Vote open to all Spuzzum members. Further information about the Ratification Vote, as well as copies of the draft Revised Code will be circulated at that time.

If you are interested in reading the latest version of the draft Revised Code, please contact the Spuzzum band office.

Yours truly,
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