

Decision of the Appeal Panel Appointed under the authority of the *Ditidaht First Nation – Election Regulations 2010*, Ratified February 5th, 2011

Between: Jerry Peter,
Appellant

And; OneFeather Election Services as represented by Benjamin Turner,
Electoral Officer

Before Appeal Panel:

Ian Benoit, appointed Appeal Panel member

Tracy Andrews, appointed Appeal Panel member

David Johnsen, appointed Appeal Panel member

On appeal from:

The Notice of Appeal filed in accordance with s.14.03(b) of the *Ditidaht First Nation Election Regulations* (the Regulation), on July 18 and July 21, 2023.

Decision of the Appeal Panel

On July 18 and 21, 2023, the Appellant filed an appeal in accordance with s. 14.03(b) of the Regulation, opposing the results of the 2023 Election on the grounds that the Regulations were violated.

The Appeal Panel has reached a consensus that the appeal is upheld. It is the opinion of the Appeal Panel, based on the evidence considered, the 2023 Ditidaht Election allowed votes to be cast electronically, the provision of electronic voting was not permitted by the Regulation, and the use of electronic voting affected the results of the election.

Reasons for the Appeal:

The Appellant opposed the results of the 2023 Ditidaht Election based on the following:

1. Nominations did not remain open for the minimum one hour required under section 7.02 of the Regulations.
2. The Electoral Officer failed to post an alphabetical list of voters' names for inspection at the DFN office no less than 28 days before the nomination meeting, in contravention of section 6.02 of the Regulations.

3. Persons were permitted to vote who were on the Voters List but who do not have status cards.
4. Persons were permitted to vote in person who were not on the Voters List and who did not have status cards:
 - a. These persons were added to the Voters List in pen, but the Electoral Officer did not have specific written authority from the Ditidaht Membership Clerk to do so in contravention of section 6.03 of the Regulations.
 - b. The Electoral Officer allowed persons to vote who were not on the Voters List and who did not present identification in contravention of section 10.03. Instead of presenting identification, a DFN member “vouched” for these persons.
5. A council member was present at the hall during voting and was “vouching for people with no status card”.
6. Persons eligible to vote, many of whom are youth members, were not on the Voters List. These persons were prevented from voting online.
7. Electronic voting is not permitted by the Regulations.

Consideration of those Reasons by the Appeal Panel:

The Appeal Panel did not find the reasons for the appeal demonstrated corrupt practice or candidate ineligibility in accordance with s.14.03(a) or (c) . The appeal panel accepted the following reasons for the appeal as elements of the appeal that represent potential violations of the Regulation in accordance with s.14.03(b).

1. Nominations did not remain open for the minimum one hour required under section 7.02 of the Regulations.
2. The Electoral Officer failed to post an alphabetical list of voters’ names for inspection at the DFN office no less than 28 days before the nomination meeting, in contravention of section 6.02 of the Regulations.
- 4b. The Electoral Officer allowed persons to vote who were not on the Voters List and who did not present identification in contravention of section 10.03. Instead of presenting identification, a DFN member “vouched” for these persons.
7. Electronic voting is not permitted by the Regulations.

Information considered by the Panel

- *Ditidaht First Nation – Election Regulations 2010*, Ratified February 5th, 2011
- Ditidaht First Nation Notice of Election Appeal between Jerry Peter, Appellant, and OneFeather, as represented by Benjamin Turner, Electoral Officer
- Ditidaht First Nation Final EO Report, 2023 Election. Benjamin Turner, Electoral Officer, OneFeather
- Legal Opinion, Jordan R. Helm, Kina Law Corporation, August 8, 2023. Re: Appeal of Ditidaht’s 2023 Election

Reasons for the Decision to Uphold the Appeal

- The *Ditidaht First Nation – Election Regulations 2010*, Ratified February 5th, 2011 outlines two methods of voting, in person or by mail-in ballot (s. 9 and 10 respectively). The procedure to be

followed, and the roles and responsibilities of the Electoral Officer is outlined in detail in the Regulation.

- The *Ditidaht First Nation – Election Regulations 2010*, Ratified February 5th, 2011 does not include any reference to online voting and does not include any procedure or responsibilities for the Electoral Officer to follow respecting online voting.
- In the Ditidaht First Nation Final EO Report, 2023 Election, the Electoral Officer summarizes the voter participation numbers, as follows:
 - Total number of eligible voters: 589
 - Total number of Ballots cast: 194
 - Percentage of voter participation: 33%
- In the Ditidaht First Nation Final EO Report, 2023 Election, the Electoral Officer summarizes the mail-in ballot packages and electronic voting as follows:
 - Mail-in ballots accounted for 4 of the 194 votes cast, or approximately 2% of members who voted in the election.
 - Electronic ballots accounted for 124 of the 194 votes cast, or approximately 64% of members who voted in the election.
- Considering these numbers, the remaining 66 ballots would have been cast in person, or approximately 34% of members who voted in the election.
- The Appeal Panel reached consensus agreement that, on a balance of probabilities, it is more likely than not that the use of electronic voting in the 2023 Ditidaht Election affected the results of the election by influencing the behaviour of voters. Since the use of electronic voting was not permitted by the Regulation, this constitutes a violation of the Regulation.
- The appeal must be upheld.