

# PTFN TRUST AMENDMENT VOTE

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## **Trust Amendment Vote in October 2024**

Exciting developments are underway in our community as we gear up for an important vote that will shape the future of the Peerless Trout First Nation (PTFN) Trust. The same day as the PTFN October 2024 general election (or electronic voting open now), PTFN members will have the opportunity to cast their votes on a crucial matter: **the amendment of the PTFN Trust Agreement.**

This vital legal document governing our community's assets, is set to undergo potential amendments. This process is a cornerstone of our democratic principles, ensuring that the interests and voices of all PTFN members are heard and considered.



## **Key Details of the Trust Amendment Vote:**

1. **Date and Timing:** The Trust Amendment Vote will coincide with the October 2024 general election, providing an excellent opportunity for all PTFN members 18 years or older to participate in shaping our collective future. Electronic voting is now open (see QR code or website to access).
2. **Scope of Amendment:** The proposed amendments to the PTFN Trust Agreement aim to address pertinent issues and adapt the trust to better serve the needs and aspirations of our community. See the explanation articles on each amendment in this newsletter: #1 Aligning the Trust text with current Trust law and #2 Removing ambiguous or confusing wording relating to the management of surplus or unallocated Trust funds.
3. **Minimum Voter Turnout:** In order for the Trust Amendment Vote to be valid, a minimum voter turnout of 25% of all voting aged PTFN members is required. This ensures that the decision reflects a substantial portion of the community's consensus.
4. **Voting Locations:** A multi-poll approach will be conducted with a location in Peerless Lake (*Peerless Lake residents only*), Trout Lake (*Trout Lake residents only*), mail-in ballots and electronic-voting. This provides convenient access for all eligible voters to participate in the democratic process.

## Key Details—Continued

**5. Decision Making:** The amendment of the PTFN Trust Agreement will be determined by a majority vote of the participating PTFN members through the vote. (50% plus 1 of the voting PTFN members who cast a ballot who have voted yes to amend the Trust Agreement)

This is a vital opportunity for each member of our community to engage in shaping the future trajectory of the Peerless Trout First Nation. Your voice matters, and your participation in this vote is crucial in ensuring that our collective interests and aspirations are duly represented.

As we move closer to the October 2024 general election and Trust Amendment Vote, stay tuned for further updates and information on voting procedures. Please give yourself time to review the details on the proposed amendments to the PTFN Trust Agreement in this newsletter and let us come together as a community, exercise our rights, and work towards a prosperous and sustainable future for all.

## Trust Amendment Project—Phase 2

The Trustees have a responsibility to the Trust beneficiaries to take ongoing action to safeguard and strengthen the trust. You will recall that on October 4, 2021 a vote was passed to restrict the Trust from making loans from the Trust capital. This vote ensured that the PTFN Trust could never again be used to make loans and that all Trust property would be invested with the objective of maintaining or increasing the real value of the Trust.

The Trustees followed up on this successful amendment with a legal review of the PTFN Trust to ensure that it is in alignment with provincial trust law and to remedy any other weaknesses in the original drafting. **This review led to the identification of two proposals for further amendment and reform as follows:**

1. Aligning the text of the Trust with current provincial trust law; and
2. Eliminating wording that creates ambiguity on how trust property is to be managed and expended.

## **Trust Amendment Project—Phase 2**

### **Why is a Trust Amendment Vote Necessary?**

Our Trust, as it is currently written, contains provisions that are not in compliance with existing legal standards in the Province of Alberta. This discrepancy has significant implications for the operation and administration of the Trust. If we do not address these issues promptly through a vote of the beneficiaries, the Trustees will be compelled to make the necessary amendments independently.

### **Consequences of Not Voting**

If the beneficiaries do not vote on these important amendments, or vote no to them, the Trustees will be forced to seek legal intervention to align the Trust with the legal requirements. This process will not only be time-consuming but will also incur substantial costs. These additional expenses could otherwise be used for the benefit of the community.

### **The Role of the Trustees**

As your Trustees, we are dedicated to upholding the best interests of the beneficiaries and ensuring the proper management of the Trust. However, without the required amendments, we are legally obligated to take corrective action. This may involve engaging legal counsel and potentially presenting our case before a judge to enforce the necessary changes. This judicial process is a last resort, but it will be pursued if necessary to bring the Trust into legal compliance.

### **Your Participation is Crucial**

We strongly urge all beneficiaries to participate in the upcoming Trust Amendment Vote which will be held at the same time as the PTFN General Election for your convenience. Your involvement is essential to:

- Ensure the Trust operates legally and efficiently.
- Avoid unnecessary legal costs and delays.
- Maintain the Trust's integrity and effectiveness for the benefit of the entire community.

**This Trust Amendment Vote is a critical step in safeguarding the future of our Trust and ensuring it continues to serve our community effectively. Your prompt participation will help us avoid the complexities and costs associated with judicial intervention.**

**AMENDMENT #1 ALIGNING THE TEXT OF THE TRUST WITH CURRENT PROVINCIAL TRUST LAW**

In Accordance with the *Trustee Act* of Alberta:

A Trust is a relationship created when property is transferred by one person (“Settlor”) to another person (“Trustee”) to hold for the benefit of specified persons (“Beneficiaries”).

The PTFN Trust was created as a result of a Settlement Agreement dated December 18, 2009 between Canada and Bigstone Cree Nation whereby Canada agreed to transfer to PTFN (represented by Council) Compensation pursuant to the Settlement Agreement. PTFN as Settlor created a trust fund known as the PTFN Trust which will hold and invest the Compensation paid to PTFN by Canada.

**The Trustees** (individual members of Council and an Independent Trustee) agree to oversee the Trust pursuant to the terms and conditions of the PTFN Trust Agreement dated December 18, 2009 and the Trustee Act of Alberta for the benefit of the Beneficiaries which are the members of the Peerless Trout First Nation.

**It is the legal responsibility of the Trustees, not Council, to administer the Trust.**

**Unfortunately, there are various references in the PTFN Trust Agreement using the term “Council” in regard to the administration of the Trust which contradicts the Trustee Act of Alberta.**

All incorrect references to “Council” in the PTFN Trust will be replaced with “Trustees” so that the PTFN Trust complies with the *Trustee Act* of Alberta.

## **AMENDMENT #2 AMEND WORDING THAT CREATES AMBIGUITY ON HOW TRUST PROPERTY IS TO BE MANAGED AND EXPENDED**

The current PTFN Trust includes two sections which confuse the way in which trust programs are authorized and by which funds are later expended.

Section 6.3.7 sets out the process by which the Trustees may address a vote by the Trust Beneficiaries not to approve a proposed trust program. This section allows the Trustees to convene a subsequent or second vote to reconsider the proposed programs and services and/or to propose new programs and services. The Trustees believe that these provisions are prudent and do not need to be amended.

**The concern relates to the last sentence in section 6.3.7:**

***“Any Net Income not approved for expenditure by vote of the Voting Beneficiaries, after subsequent vote(s), shall be allocated to Chief and Council for the benefit of the Band, and the Trustees shall then add such Net Income so allocated to the capital of the trust property”***

This sentence is problematic for several reasons. The first is that it can read as a back door for the trust to be used for programs and services which were rejected by a vote of the Voting Beneficiaries – which is totally inconsistent with the rest of the wording of the PTFN Trust. Secondly it confuses the role of Chief and Council with that of the Trustees. As explained above, only the Trustees make decisions for the management of the Trust. Lastly, it can also be read that the unapproved program and services funds need to be returned to the capital of the Trust Property – which the Trustees believe is the appropriate course of action.

**In order to address these issues and to provide clarity the Trustees propose replacing this sentence with the following:**

***“Any Net Annual Income not approved for expenditure by vote of the Voting Beneficiaries, after subsequent vote(s), shall be allocated to the capital of the Trust Property”***

The Trustees believe that this relatively straight forward change would remove the potential misuse of the current clause and would provide absolute clarity that Trust programs and services can only be authorized by a successful vote of the Trust Beneficiaries.

**AMENDMENT #2 AMEND WORDING THAT CREATES AMBIGUITY ON HOW TRUST PROPERTY IS TO BE MANAGED AND EXPENDED**

The second section which the Trustees believe needs to be addressed is **the current section 6.3.9:**

***‘Net Income which has not been allocated for programs and services in each Fiscal Year shall be allocated to Chief and Council for the benefit of the Band, and the Trustees shall then add the full amount of the Net Income so allocated to the capital of the Trust Property’***

This wording is confusing. It is not clear if unexpended funds can be provided to Chief and Council to be used for the benefit of the band or if the funds should remain with the Trustees and be allocated to the capital of the Trust Property. This provision is illegal. Net Income under Alberta Trust law not allocated for programs and services must be returned to the Trust for the benefit of the beneficiaries.

Once again, this sentence also confuses the role of the Chief and Council and that of the Trustees.

In line with this, the Trustees recommend that **section 6.3.9 be deleted.**

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## QUESTIONS & FEEDBACK

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Please share any questions, comments or feedback—these can be sent to [ptfn-trust@ptfn.net](mailto:ptfn-trust@ptfn.net) and they will be directed and addressed as soon as possible.

If you would like to review a copy of the Trust Agreement showing all proposed amendments please visit the Trust Department or request by email.

