



## BC ASSEMBLY OF FIRST NATIONS

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Prince George, BC V2K 5S3  
Website: [www.bcafn.ca](http://www.bcafn.ca)

**BCAFN 17<sup>th</sup> ANNUAL GENERAL MEETING**  
**November 17 & 18, 2020**  
**Online via Zoom**

**Resolution 12/2020**

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**SUBJECT: TERMS OF REFERENCE FOR ELECTIONS APPEAL COMMITTEE**

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**MOVED BY: CHIEF MAUREEN LUGGI, WET'SUWET'EN**

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**SECONDED BY: CHIEF FRED ROBBINS, ESKETEMC FIRST NATION**

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**DECISION: CARRIED**

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### **WHEREAS:**

- A. BCAFN Bylaw 10.1(a) requires that the Chiefs-in-Assembly at this AGM to establish and approve terms of reference of a committee to hear and decide appeals of election results (the "**2020-2023 Terms of Reference**");
- B. The Board has reviewed draft terms of reference for the 2020-2023 Elections Appeal Committee a copy of which is attached as Schedule "A" (the "**Draft 2020-2023 Terms of Reference**");
- C. The Draft 2020-2023 Terms of Reference are substantially similar to the terms of reference for the Elections Appeal Committee that were adopted and ratified by the Chiefs-in-Assembly at the AGM in 2019 (the "**2019-2020 Terms of Reference**");
- D. The version of the Draft 2020-2023 Terms of Reference attached as Schedule "A" shows changes proposed as compared to the 2019-2020 Terms of Reference;

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**Certified copy of a resolution adopted on the 18<sup>th</sup> day of November 2020**

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**Terry Teegee, BC Regional Chief**

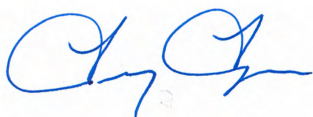
- E. Sections 5.2 and 5.3 of the Draft 2020-2023 Terms of Reference clarify that the term of the individuals appointed to the 2020-2023 Elections Appeal Committee will begin after the close of the appeal period after this AGM or, if an appeal is filed, after the outcome of that appeal, whichever is later;
- F. The BCAFN Board recommends that the Chiefs-in-Assembly approve and ratify the Draft 2020-2023 Terms of Reference;
- G. The BCAFN Board further recommends that the Chiefs-in-Assembly confirm that any appeal of the results of elections that occur at this AGM will be heard and decided by the individuals appointed to the Elections Appeal Committee at the Special Chiefs Assembly in 2019 (the “**2019-2020 Elections Appeal Committee**”), on the basis the subject of such an appeal (i.e. 2020 AGM elections) will have arisen during their term and that these individuals are prepared to fulfil their mandate within the required timelines if an appeal is filed; and
- H. The Chiefs-in-Assembly wish to accept the Board’s recommendations to confirm who would hear and decide any appeal that might arise from the elections at this 2020 AGM and further wish to adopt and ratify the Draft 2020-2023 Terms of Reference.

**THEREFORE BE IT RESOLVED THAT:**

1. any appeal that may be filed in relation to elections taking place at this Annual General Meeting will be heard and decided by the individuals appointed to the 2019-2020 Elections Appeal Committee in accordance with the Bylaws and the 2019-2020 Terms of Reference;
2. the Draft 2020-2023 Terms of Reference are hereby ratified and approved.

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Certified copy of a resolution adopted on the 18<sup>th</sup> day of November 2020



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Terry Teegee, BC Regional Chief

## BC Assembly of First Nations

### Elections Appeal Committee

#### Terms of Reference for ~~2019—2020~~ – 2023

Approved by the Chiefs-in-Assembly on ~~September 18~~ November, ~~2019~~ 2020

#### 1. PREAMBLE

1.1 At every AGM in which there is an election of the Regional Chief, the Chiefs-in-Assembly will:

- (a) establish and provide terms of reference for the Committee to hear and decide appeals of election results; and
- (b) appoint three (3) individuals to serve on the Committee, each for a term of three (3) years that terminates at the close of the third AGM after their appointment.<sup>1</sup>

~~1.2 — Members are authorized to establish the Committee on an interim basis before the AGM in 2020, with all of the duties and powers set out in Article 10 of the Bylaws and on the same terms, except that the term of the three (3) individuals appointed will terminate at the close of the AGM in 2020.<sup>2</sup>~~

~~1.3 — On March 8, 2019, the Chiefs-in-Assembly established the Committee on an interim basis to serve until the close of the AGM in 2020, to develop the terms of reference for the Committee in consultation with the Board, and to put those terms of reference forward for ratification and approval by the Members at the 2019 AGM.<sup>3</sup>~~

~~1.4~~1.2 ~~On September 18, 2019, the Chiefs-in-Assembly~~ On November           , 2020, the Chiefs-in-Assembly appointed            individuals to serve on the Committee and ratified and approved these terms of reference.<sup>42</sup>

#### 2. INTERPRETATION

- 2.1
- (a) “appeal” means an appeal of any BCAFN election made in accordance with Bylaw 10.6;
  - (b) “Chair” means the chair of the Committee appointed in accordance with these Terms of Reference;
  - (c) “Committee” means the Elections Appeal Committee established under the Bylaws, unless otherwise specified;

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<sup>1</sup> Bylaw 10.1.

~~<sup>2</sup> Bylaw 10.2.~~

~~<sup>3</sup> Resolution 06/2019.~~

~~<sup>42</sup> Resolution 16/2019~~ Resolutions            /2020 and            /2020.

- (d) “hearing” means a hearing conducted by the Committee pursuant to the Bylaws;
- (e) “meeting of the Committee” means any meeting of the Committee other than a hearing;
- (f) “parties” means, collectively, the person who files an appeal, each candidate in an impugned election, the Electoral Officer, and any other person who the Chair deems necessary to be a party; and
- (g) “Terms of Reference” means these terms of reference as ratified by the Chiefs-in-Assembly and which are binding on the Committee.

2.2 Words not specifically defined in these Terms of Reference have the same meaning as defined in Bylaw 1.1.

2.3 If any provisions of these Terms of Reference conflict with the Constitution, Bylaws or Governance Manual, the Constitution, Bylaws and Governance Manual will prevail to the extent of such conflict.

### **3. PURPOSE**

3.1 The purpose of the Committee is to hear and decide appeals of election results for any BCAFN election in a timely, fair and impartial manner, and in accordance with the Constitution and Bylaws.<sup>53</sup>

3.2 The purposes of these Terms of Reference are to:

- (a) facilitate the fair, impartial and timely resolution of an appeal;
- (b) ensure the conduct of a hearing is proportional to the complexity and gravity of the appeal;
- (c) allow flexibility in the conduct of a hearing, when it is fair and just to do so; and
- (d) to provide a formal process that instills confidence in the Members as to the fairness and validity of BCAFN elections.

### **4. PRINCIPLES**

4.1 In exercising its powers and fulfilling its responsibilities under the Constitution and Bylaws, the Committee will make decisions and proceed in a manner that ensure fairness to all parties and reflects the principles of transparency and accountability to the Chiefs-in-Assembly.

4.2 In exercising the powers and performing the functions of a member of the Committee, a member of the Committee will at all times:

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<sup>53</sup> Bylaw 10.1(a).  
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- (a) act honestly and in good faith;
- (b) comply with and uphold the Constitution, Bylaws, Governance Manual and these Terms of Reference; and
- (c) exercise the care, diligence and skill of a reasonably prudent person.

## 5. COMMITTEE

### *Appointment and Term*

5.1 The following three individuals are appointed as members of the Committee: ~~Merle Alexander, Edith Loring Kuhanga, and Victoria Russell~~ \_\_\_\_\_,

\_\_\_\_\_, and  
\_\_\_\_\_.<sup>64</sup>

5.2 The term of the individuals appointed in section ~~5.1~~ 5.1 will ~~terminate upon the close of the AGM in 2020.~~<sup>7</sup>

(a) begin on the later of

(i) the eighth (8th) day after the conclusion of the elections at the 2020 AGM, or

(ii) if one or more appeals are filed in respect of the elections at that 2020 AGM, on the day after every such appeal has been finally decided under Bylaw 10.9 or Bylaw 10.14; and

(b) terminate upon the close of the AGM in 2023.<sup>5</sup>

5.3 For certainty, any appeal filed in relation to elections that occur at the AGM in 2023 will be heard by the three individuals appointed under section 6.1 and not by individuals newly appointed by the Chiefs-in-Assembly to serve on the Committee for the subsequent three-year period.

### *Resignation and Replacement*

~~5.3~~ 5.4 A member of the Committee may resign by providing written notice to the Chair or, in the case of the Chair's resignation, to other members of the Committee.

~~5.4~~ 5.5 Any casual vacancy on the Committee may be filled by ordinary resolution of the Chiefs-in-Assembly.

~~5.5~~ 5.6 The Chair or other member of the Committee will advise the Board of any casual vacancy so that notice of same may be delivered to the Members in advance of an Annual General Meeting or Special Chiefs Assembly.

~~5.6~~ 5.7 An act or proceeding of the Committee is not invalid merely because there are fewer than three members on the Committee.

<sup>64</sup> Resolution ~~06/2019~~ \_\_\_\_/2020.

<sup>7</sup> ~~Resolution 06/2019.~~

<sup>5</sup> Resolution \_\_\_\_/2020; Bylaw 10.1(b).

### **Chair**

~~5.7~~5.8 At the first meeting of the Committee after these Terms of Reference are ratified by the Chiefs-in-Assembly at the ~~2019-2020~~ Annual General Meeting, the Committee will appoint one of its members as the Chair. Any subsequent vacancy in the position of Chair will be filled by the Committee by appointing another of its members.

~~5.8~~5.9 If the members of the Committee cannot agree on the Chair appointment, they will request the Board to appoint the Chair.

~~5.9~~5.10 The Chair is responsible for

- (a) coordinating and chairing meetings of the Committee;
- (b) communicating with and ensuring that all correspondence received regarding an appeal is disseminated to members of the Committee and the parties, as the case may be;
- (c) determining time extensions for an appeal; and
- (d) communicating with the Board on behalf of the Committee, including delivering written decisions of the Committee.<sup>86</sup>

### **Meetings**

~~5.10~~5.11 The first meeting of the Committee will be held within 30 days of these Terms of Reference being ratified by the Chiefs-in-Assembly.

~~5.11~~5.12 Although the Committee is not expected to have meetings during its term other than the first meeting and any meeting to review and make a determination pursuant to Bylaw 10.9, any member of the Committee may call a meeting of the Committee by providing fourteen (14) days written notice to the other members of the Committee.

### **Quorum**

~~5.12~~5.13 Quorum for a hearing or any meeting of the Committee is two (2) members of the Committee.

### **Decision making**

~~5.13~~5.14 Unless otherwise specified in the Bylaws, members of the Committee will attempt to reach consensus on appeal determinations and on all decisions arising at meeting of the Committee.

~~5.14~~5.15 If consensus cannot be reached, the members of the Committee will make a decision by simple majority.

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<sup>86</sup> Bylaws 10.7, 10.8.  
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### ***Reimbursement and honoraria***

~~5.15~~5.16 Members of the Committee shall not receive honorariums or other remuneration for service on the Committee, other than for service provided in respect of an appeal that requires more than one day to be determined.

~~5.16~~5.17 If service is provided by members of the Committee in respect of an appeal that requires more than one day to be determined, the Board will fix an amount to be paid to each member having performed such service.

~~5.17~~5.18 Expenses reasonably incurred by a member of the Committee in fulfilment of the Committee's responsibilities will be reimbursed by the BCAFN, subject to any expense reimbursement policy in force from time to time.

### ***Meeting and hearing participation***

~~5.18~~5.19 The Committee may hold meetings at the places and times it deems fit to conduct its business.

~~5.19~~5.20 Members of the Committee may, in respect of a meeting, participate by means of a telephone conference or similar communications equipment.

~~5.20~~5.21 Members of the Committee must participate in person at a hearing.

### ***Administrative and legal support***

~~5.21~~5.22 BCAFN will provide the Committee with the support needed to fulfil its responsibilities under the Bylaws and these Terms of Reference, including:

- (a) providing at least one staff person to attend each meeting of the Committee and to record and circulate minutes; and
- (b) providing legal counsel recommended by the Chair pursuant to Bylaw 10.7(d).

## **6. RESPONSIBILITIES**

### ***Receiving an appeal***

6.1 Within seven (7) days of the conclusion of an election, any candidate or member delegate may file an appeal in writing to the Chair that alleges significant unfairness to a candidate resulted from one or more of the following:

- (a) conduct or actions during the election campaign of a candidate or his or her representatives or agents;
- (b) election irregularities; or
- (c) the Electoral Officer having:



- (i) acted without jurisdiction or authority,
- (ii) refused to exercise his or her jurisdiction or authority,
- (iii) failed to observe procedural fairness,
- (iv) failed to interpret the Bylaws and the Governance Manual correctly, or
- (v) based a decision, action or omission on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the information before him or her.<sup>97</sup>

6.2 Within two (2) days of receiving an appeal, the Chair:

- (a) must deliver a copy to each party, the other members of the Committee and the Board;
- (b) may require the parties to provide the Chair within seven (7) days copies of all records in their custody or under their control respecting the appeal;
- (c) may invite the parties to provide the Chair within seven (7) days affidavit evidence respecting the facts alleged in the appeal; and
- (d) may recommend to the Board that legal counsel be retained on behalf of the Society to advise the Committee on its duties and obligations, or any other matter related to the appeal.<sup>108</sup>

6.3 Any party may apply to the Chair to extend the time for submitting records or affidavit evidence under Bylaw 10.7(b) or Bylaw 10.7(c), whether or not the time allowed under those sections has expired, and the Chair may order an extension of time.

6.4 Within fourteen (14) days of the Chair receiving an appeal or, if an extension of time has been granted under Bylaw 10.8, such later time as may be determined by the Chair, the Committee must review the appeal and any records or affidavit evidence received under Bylaw 10.7 and decide, by majority vote, either:

- (a) there are insufficient grounds to hold a hearing, and affirm the election results; or
- (b) there are sufficient grounds to warrant a hearing, and schedule a hearing.<sup>119</sup>

6.5 In making a decision with respect to sufficient grounds to hold a hearing, the Committee may consider all of the circumstances surrounding the appeal, including the following criteria:

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<sup>97</sup> Bylaw 10.6.

<sup>108</sup> Bylaw 10.7.

<sup>119</sup> Bylaw 10.9.

- (a) whether the appeal is incomplete or otherwise defective, or the person submitting the appeal has failed to diligently pursue the appeal;
  - (b) whether the appeal was delivered to the Committee within the applicable time limit or extension of time granted;
  - (c) whether the appeal alleges significant unfairness to a candidate and is otherwise consistent with the grounds for an appeal in accordance with Bylaw 10.6;
  - (d) whether the appeal is frivolous, vexatious or trivial, made in bad faith or filed for an improper purpose or motive; and
  - (e) the substance of the appeal has been appropriately dealt with in another proceeding or process.
- 6.6 To determine that there are sufficient grounds to warrant a hearing, an appeal must
- (a) allege significant unfairness to a candidate resulting from one of the grounds for appeal pursuant to Bylaw 10.6; and
  - (b) disclose on its face sufficient grounds that the alleged unfairness affected the result of the election and that, if substantiated, the election results could be set aside.
- 6.7 If the Committee decides that there are insufficient grounds to hold a hearing and affirms the election results, within seven (7) days of that decision, the Chair will submit written reasons to the Board and the Board will send a copy of those reasons to each of the parties.
- 6.8 If the Committee decides that there are sufficient grounds to warrant a hearing, it will, in consultation with the Board and BCAFN staff:
- (a) schedule a date that must be not less than fourteen (14) days and no more than twenty-one (21) days after the date the Chair received the appeal or, if an extension of time has been granted under Bylaw 10.8, such later time as may be determined by the Chair,<sup>1210</sup> and
  - (b) fix a location within the Greater Vancouver Regional District for the hearing, or such other location as may be reasonably accessible to the parties, as determined by the Committee.

### ***Hearing an appeal***

6.9 The Committee will provide each party with written notice of a hearing.<sup>1311</sup>

6.10 A hearing will be:

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<sup>1210</sup> Bylaw 10.11.

<sup>1311</sup> Bylaw 10.10.

- (a) conducted in accordance with the rules of order and procedure set out in Schedule A; and
- (b) open to all member delegates.<sup>1412</sup>

### ***Deciding an appeal***

- 6.11 Upon conclusion of a hearing, if the Committee decides that the alleged election irregularities or decision, action or failure of the Electoral Officer, as the case may be:
- (a) would not have reasonably affected the outcome of the election, it must order that the appeal is dismissed and affirm the election results; or
  - (b) would have reasonably affected the outcome of the election, it must order that the BCAFN hold a new election at a Special Chiefs Assembly called for that purpose.<sup>1513</sup>
- 6.12 In deciding whether the alleged candidate conduct, election irregularity, or decision, action or failure of the Electoral Officer, as the case may be, would have affected the election results, the Committee may consider the following criteria:
- (a) the difference between the number of votes received by the winner of the election and the number of votes received by other candidates;
  - (b) the number of votes not cast or cast improperly due to the subject of the appeal; and
  - (c) any other factor that the Committee deems to be relevant to determining the outcome of the election.
- 6.13 The burden of proof is on the party submitting the appeal. The applicable standard of proof is a balance of probabilities.
- 6.14 The Committee must make its order without delay, but in any event, no later than fourteen (14) days after the close of a hearing, and such order is final and binding on the parties and is not subject to further appeal.<sup>1614</sup>
- 6.15 Within seven (7) days of making an order under Bylaw 10.13, the Committee will submit written reasons for its decision to the Board and the Board will send a copy of those reasons to all BCAFN members.<sup>1715</sup>

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<sup>1412</sup> Bylaw 10.12.

<sup>1513</sup> Bylaw 10.13.

<sup>1614</sup> Bylaw 10.14.

<sup>1715</sup> Bylaw 10.15.

## **7. HEARING PROCEDURES**

- 7.1 A hearing will be conducted by the Committee in accordance with the rules of order and procedures attached as Schedule A.

## **8. CONFIDENTIALITY**

- 8.1 Unless otherwise determined by the Committee, the members of the Committee will treat all discussions between members of the Committee that relate to the receipt, hearing or decision of an appeal as confidential information.
- 8.2 Any recording of or minutes from a portion of a meeting involving discussions between members of the Committee that relate to the receipt, hearing or decision of an appeal will be treated as confidential information and disclosed only with the consent of the Committee.

## **9. CONFLICT OF INTEREST**

- 9.1 Conflicts of interest and perceived conflicts of interest are understood by the members of the Committee to occur when a member participates in discussions or decision-making processes about a matter that may directly or indirectly result in benefits (financial or other and regardless of the size) to this member or someone with whom the member has a familial or professional relationship.
- 9.2 Every member of the Committee must avoid any situation in which there is an actual or apparent conflict of interest that could or could appear to interfere with that member's judgment in making decisions in accordance with the Bylaws and these Terms of Reference.
- 9.3 A member of the Committee who is in an actual or apparent conflict of interest:
- (a) in respect of a decision to be deliberated on at a meeting of the Committee, must remove herself or himself from such meeting; or
  - (b) in respect of an appeal, must recuse him or herself from any decision related to such appeal and must not participate in any hearing in respect of the appeal.
- 9.4 If a member of the Committee believes that another member is in a conflict of interest and has not declared it, it is the responsibility of that member to inform the Chair of the perceived conflict of interest. The Chair will rule on the matter.

## **10. GENERAL**

- 10.1 The Committee may, by consensus decision, make amendments to Schedule A of these Terms of Reference, and such amendments will come into force upon the Committee giving written notice to the Board.
- 10.2 Any amendment to these Terms of Reference other than to Schedule A must be ratified by the Chiefs-in-Assembly.

10.3 Notices to each of the Committee members may be made to the following addresses:

~~(a) Merle: Merle@millertiterle.com~~

~~(b) Edith: 4169 Quadra Street, Victoria, BC V8X 1L3 and loringkuhanga@gmail.com~~

~~(c) Victoria: healthdirector@gitwangakhealth.com and victoria.russell@gitsegukla.net~~

(a) \_\_\_\_\_:

(b) \_\_\_\_\_:

(c) \_\_\_\_\_:

10.4 Notices required to be served on the Board or BCAFN may be made to the following address:

1004 Landooz Road, Prince George, BC V2K 5S3

Attention: Chief of Staff

## SCHEDULE A

### RULES OF ORDER AND PROCEDURE FOR A HEARING

#### ***Filings and notice***

1. Any filing in respect of an appeal may be done in writing by email, courier or personal delivery.
2. To determine the time of service in an appeal, any notice or filing that is:
  - (a) emailed will be considered to have been served the day following confirmation that the email has been sent to the correct addressee; and
  - (b) delivered by courier or personal delivery will be considered to have been served on the same day.
3. Proof of service or delivery may be established by acknowledgment in writing by the person served or a solemn declaration of the person serving or delivering the document.
4. Notwithstanding section 3, the Committee may proceed with consideration of an appeal where service has not been properly effected if there is no prejudice to any party or if any such prejudice can be addressed by an adjournment or other means.

#### ***Order of hearing***

5. A hearing must proceed in the following order:
  - (a) a member of the Committee must summarize the appeal, either by oral presentation at the beginning of the hearing or in writing;
  - (b) the parties may provide the Committee with additional or new documentary evidence regarding the appeal;
  - (c) the parties may provide oral evidence or call one or more witnesses to provide oral evidence regarding the appeal;
  - (d) the parties may make submissions to the Committee regarding the appeal; and
  - (e) the Committee may ask questions of the parties regarding the appeal.

#### ***Adjournments***

6. During a hearing the Committee may, on its own initiative or on the reasonable request of a party, adjourn the hearing and set a date or time for the hearing to resume.
7. The Committee may consider the following criteria in adjourning a hearing:
  - (a) the value of continuing with the hearing in a timely manner;

- (b) whether the appeal can be properly heard and decided without an adjournment;
- (c) whether the Committee believes that a request for adjournment is a stalling tactic or otherwise not genuine, or where the party requesting adjournment has delayed in seeking legal counsel;
- (d) whether refusal to grant a request for adjournment would amount to a denial of procedural fairness to any party; and
- (e) any other criteria that the Committee reasonably decides is necessary to consider.

### ***Representation***

8. (a.) For certainty, a party may represent him or herself or be represented by an agent or counsel at a hearing.
- (b) A member of the Committee may direct that legal counsel for the Committee be present at a hearing.
- (c) With the permission of the Committee, a party may be assisted by a friend, family member or other person while representing him or herself in a hearing.
- (d) A person must provide written notice to the Committee if they are retained and subsequently cease to represent a party as an agent or legal counsel in a hearing.
- (e) An agent or legal counsel of a party or any person permitted by the Committee to assist a party under subsection (c) may not appear without the party present without the permission of the Committee.

### ***Evidence***

9. (a.) Subject to subsections (b) and (c), the legal rules of evidence do not apply at a hearing and the Committee may admit any evidence it considers relevant and appropriate in the circumstances.
- (b) Nothing is admissible before the Committee that is inadmissible in British Columbia Supreme Court because of privilege under the law of evidence.
- (c) For certainty, all evidence in a hearing must be given under oath or solemn affirmation.

### ***Transcript***

10. A transcript will be prepared for the hearing, and the transcript will form part of the official record of the hearing.

### ***Recording***

11. (a) Unless otherwise directed by the Committee, a hearing must not be audio recorded.

- (b) If a hearing is audio recorded,
  - (i) the parties will be provided notice in advance of such audio recording, and
  - (ii) the audio recording forms part of the official record of the hearing.
- (c) A hearing is not invalidated as a result of a malfunction of recording equipment during the hearing, a failure to record the whole or part of the hearing or the destruction of any recording of the hearing.

***Committee direction***

- 12. The Committee may make any direction the Committee considers necessary or desirable for the conduct of a hearing, or for the fair, just and timely resolution of an appeal.

***Waiver or variance of rules***

- 13. At any time, the Committee may waive or vary any of these rules of order and procedure on its own initiative or at the reasonable request of a party in order to facilitate the just and timely resolution of an appeal.
- 14. A failure to comply with these rules of order and procedure does not invalidate a hearing.
- 15. Where these rules do not provide sufficient guidance on procedure, the Committee may make reference to the British Columbia Supreme Court Civil Rules for guidance.