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Appeal Committee Determination

August 26, 2026

Re: Barry Duncan Affidavit seeking Removal of Elected Council member Corbin Tom.

I. Election Code References

Unless otherwise expressly stated, all references to Sections and Parts in this determination are references to Sections and Parts of the Binche Whut'en Election Code, which came into force on December 3, 2019.

II. Background

Barry Duncan submitted an affidavit, sworn on April 30, 2026, to the Appeal Committee, in which statements were made regarding the location of ordinary residence of Corbin Tom.

In his affidavit, Mr. Duncan stated that: "*I make this Affidavit in good faith in support of the appeal concerning Corbin Tom's eligibility and acclamation, and to assist the Appeal Committee in determining appropriate findings and remedies*." [emphasis added]

While Mr. Duncan's affidavit states that it is made in support of an appeal regarding Corbin Tom, no such separate appeal has been submitted to the Appeal Committee.

Nevertheless, in good faith, the Appeal Committee has reviewed the affidavit from the standpoint of the following provisions of the Binche Whut'en Election Code that speak to submissions of affidavits similar to that of Mr. Duncan:

(1) Section 79 of Part 13 (i.e., an appeal submitted to the Appeal Committee); and

(2) Section 96(c) of Part 15 (i.e., ground for removal of a Council member).

The Appeal Committee's determination on each of these grounds is discussed below.

III. Determination

(a) Part 13 Appeal

The Appeal Committee has determined that Mr. Duncan's affidavit does not comply with Section 80(c) of Part 13.

Per Section 80(c), an appeal submitted to the Appeal Committee under Part 13 requires a $200 filing fee, which fee was not included with the affidavit submitted by Barry Duncan.

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Even if the required filing fee was made as part of the submission of Mr. Duncan's affidavit, the Appeal Committee has determined that the affidavit itself does not provide sufficient information to support any of the grounds of appeal outlined in Section 79. In particular, the affidavit does not sufficiently outline that:

a) Corbin Tom was not qualified to be a Candidate;
b) There was a violation of the Code in the conduct of the Election that might have affected the result of the Election; or
c) An election offence was committed.

The focus of the affidavit is on the residency of Corbin Tom, but the Binche Whut'en Election Code simply provides in Part 5 the composition of Council, including on and off reserve residents for different positions. There is no specified term for such on or off reserve residency (i.e., does such residency need to be maintained throughout the Councillor's elected term), and there was no supporting documentation provides of any falsified forms provided by Corbin Tom.

Given such lack of supporting documentation, the Appeal Committee conferred with the Electoral Officer engaged by the Nation for the recent 2026 election. Such Electoral Officer has confirmed that Corbin Tom met all the requirements specified in Section 30 of Part 6, and was therefore declared an eligible Candidate in the duly held March 31, 2026 election.

As Barry Duncan's submission did not meet the requirements of Section 80 (for failure to submit the required filing fee), nor provide sufficient information to support any of the grounds of appeal outlined in Section 79, the Appeal Committee has determined, pursuant to Section 82(b), that the affidavit will not receive further consideration under Part 13.

(b) Part 15 Council Member Removal

Part 15 sets a high standard for the removal of a Council member – including (i) conviction of an Indictable Offence or an offence under the *Controlled Drugs and Substances Act*, (ii) frequent unauthorized absence from Council meetings, or (iii) failure to uphold the integrity of Binche Whut'en governance through blatant disregard for the Oath of Office and/or the Code of Conduct (Section 96).

Section 98(a) in turn sets out the affidavit requirements for this ground of Council member removal under Part 15, which include the requirement to set out in said affidavit the specific grounds for removal of a Chief or Councillor (in accordance with section 96, per above) and, if applicable, accompanying supporting documentation.

Mr. Duncan's affidavit does not set out the specific ground for removal under Section 96, and the Appeal Committee has thus been compelled to consider the affidavit in consideration of

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those grounds. The sole potential ground applicable based on the information set out in Mr. Duncan's affidavit is Section 96(c) (*failure to uphold the integrity of Binche Whut'en governance through blatant disregard for the Oath of Office and/or the Code of Conduct*). That being said, there is not sufficient evidence provided in, or in support of, Mr. Duncan's affidavit to support this high standard associated with the serious and exceptional remedy of removal of an elected official, especially given the information shared by the Electoral Officer (as noted in the discussion under Part 13, above).

Accordingly, pursuant to Section 100, the Appeal Committee has determined that Mr. Duncan's affidavit does not comply with the requirements of Section 98(a). Further, while Mr. Duncan's Affidavit raises concerns and reflects ongoing tensions in the community, the evidence does not establish a factual basis to justify the removal of Corban Tom from office. As such, even if the specific ground for removal under Section 96 had been sufficiently set out in Mr. Duncan's affidavit, such ground was not sufficiently substantiated, and, in accordance with Section 100(a), the Appeal Committee hereby also dismisses this submission under Part 15.

IV. Conclusion

For the reasons set out above, the Appeal Committee dismisses Mr. Barry Duncan's affidavit as both an appeal under Part 13, and a ground for Council removal under Part 15.

On behalf of the Appeal Committee,

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Hopeton Louden
Appeal Committee Chair