



Appeals Process – Information for Appellants

General Information

The *Public Service Act (PSA)* provides that appointments made to the Government of the Northwest Territories (GNWT), its boards and agencies may be appealed.

Appeals are heard by independent Staffing Review Officers (SROs). SROs are appointed under section 17.1 of the *Public Service Act* for a term of three (3) years and may be reappointed by the Minister upon expiration of their term.

The *Staffing Appeals Regulations* provide detailed information on the appeals process. Once an appeal is received, an SRO reviews the appeal application and consistent with the *Staffing Appeals Regulations* decides if the position is appealable, if the Appellant is eligible to appeal, and if there are grounds to appeal. Not every job competition can be appealed and not every employee can appeal.

An unsuccessful candidate for a competition can appeal a position within the following employee classifications:

- Bargaining unit of the Union of Northern Workers;
- Excluded category; and
- Senior Management category up to and including director level.

Additionally, the unsuccessful candidate must belong to one of the following categories in order to make an appeal:

- An employee of the GNWT at the time they applied for the position;
- An Indigenous Aboriginal person;
- A resident disabled person;
- An indigenous non-Aboriginal person who was either born in the Northwest Territories (NWT) or who has lived more than half their life in the NWT;
- A resident woman applying for a position classified in a management or non-traditional occupation. A position is considered to be non-traditional if it is an occupation group where 70% or more of the employees are male. The job advertisement will note if the position is in a non-traditional occupation.

Unsuccessful candidates cannot appeal a position if the appointments are to:

- Deputy Minister positions;
- Assistant Deputy Minister positions;



- Executive Manager positions;
- Teacher/Principal positions;
- Direct appointments made by Executive Council;
- Appointments under the Staff Retention Policy; and
- Appointments from eligibility lists.

The role of the SRO is to review the Appellant's appeal application and if required, all documents pertaining to the competition (as listed in the *PSA*). The SRO determines if an error was made in the application of the *PSA*, the regulations or the applicable policies, directives or procedural guidelines during the competition process for the position to which the appointment is made; and if the error adversely affected the Appellant's opportunity for appointment.

Appeals Process

- (1) When an appeal is received by the Deputy Minister of Finance, the Appeals Administrator forwards an appeal package to an SRO; the appeal package consists of the appeal application and checklist, and a report of the competition. SROs are chosen on a rotational basis and are given the opportunity to accept or not accept the referral of an appeal. There may be more than one individual who submits an appeal for a competition. Any subsequent appeals for the same competition are forwarded to the same SRO.
- (2) Within four (4) days of receiving the documents, the SRO reviews the information to determine if the appeal is denied or if it referred to a hearing. If the appeal is denied, the SRO issues a report and provides it to the Appeals Administrator. The Appeals Administrator then forwards the report to both the Appellant and the Staffing Committee for the competition.
- (3) If an SRO determines that a hearing is required, they request the complete competition package used by the Staffing Committee. After reviewing the file, the SRO sets up interviews with the Appellant and/or member(s) of the Staffing Committee and/or any other individual who the SRO determines has information related to the competition. The hearing is typically completed by the SRO within four (4) days; however this process can take longer depending on the availability and schedule of the individuals being interviewed.
- (4) Within three (3) working days of the conclusion of the hearing, the SRO provides the appeals report to the Appeals Administrator. The appeals report contains the following information:



- Competition background (position, location, etc.);
- Documents examined by the SRO;
- Interviews conducted by the SRO;
- SRO's analysis of the staffing competition;
- SRO's determination of:
 - (a) if there was an error in the staffing process; and
 - (b) if this error had an adverse impact on the appellant.
- SRO's decision; and
- SRO's direction. The SRO has the ability to direct that the staffing competition be restarted from the beginning OR to direct that the staffing competition be restarted from where the error occurred.

(5) The Appeals Administrator immediately provides the appeals report to the Appellant and to the Staffing Committee. If the appeal is denied by the SRO, the Staffing Committee proceeds with the appointment of the proposed appointee. If the appeal is upheld by the SRO, the competition is restarted completely OR it is restarted at the point in the competition where the SRO has determined that an error occurred.

Understanding the SRO Report

SRO reports contain several different sections, and each contains important information for appellants. Please see Appendix 1 for an explanation of each section.

Judicial Review

Since the legislation and regulations do not contain any direction or guidance on what the GNWT may do in the event it does not agree with the analysis and/or decision of an SRO, the only recourse available to the GNWT is judicial review. Judicial review is a legal process between the Employer (as represented by the Department of Finance with assistance from the Department of Justice) and the SRO, where a Judge reviews submissions and makes a decision to either uphold the SRO report, or overturn it. Judicial reviews are a lengthy process and can take several months to be resolved, during which time the competition is put on hold. In the event the GNWT makes a decision to proceed with a judicial review, the SRO and the appellant receive formal notification of this process from the Department of Justice.

The Appeals Administrator is the main point of contact for SROs and appellants and can be reached at (867) 767-9151 ext. 14035.



Appendix A Staffing Review Officer Report

Facts of the Appeal Application

This section outlines factual details such as the name of the individual who submitted the appeal, the position being appealed, the competition number, the position number, the date the appeal application was received, and the date the appeal period closes.

Procedural Review

This section is where the SRO assesses whether or not the position is one that can be appealed, and whether or not the individual who submitted the appeal application is able to appeal. The following information is examined by the SRO in this section.

(1) The proposed appointment is not:

- (a) A demotion under section 29 of the *Public Service Act* of the Northwest Territories.
- (b) An employee returning from leave of absence.
- (c) Made for health purposes or a promotion.
- (d) A person completing a GNWT training program.
- (e) A person appointed through direct appointment.
- (f) A person appointed from an eligibility list.
- (g) A position above Director Level (e.g., Assistant Deputy Minister, Deputy Minister).
- (h) A person eligible under the Staff Retention Policy and applicable guidelines.

(2) The Appellant is an employee as defined under the *Public Service Act*.

(3) The Appellant is eligible for priority consideration under the Affirmative Action Policy.

Hearing

This section is where the SRO summarizes the competition background, the individuals who were interviewed, documents that were examined, etc.

Decision

The section is where the SRO outlines their review and decision, and where the SRO identifies any errors that may have occurred and any recommended actions that should be taken, including whether the appeal is upheld or denied. Supporting documentation such as references to human resources processes, procedures, legislation and/or policy are noted by the SRO to assist the reader in understanding how the SRO arrived at their decision.