



*We speak up for fairness
Au service de l'équité*

Northwest Territories Ombud
Protecteur du citoyen des Territoires du nord-ouest

Hearing Without Listening

FAIRNESS IN STAFFING APPEALS

Entendre sans écouter

L'ÉQUITÉ DU PROCESSUS D'APPELS DES NOMINATIONS DE
PERSONNEL

Special Report 01-2024
Rapport special 01-2024

Le présent document contient la traduction française du sommaire et du message de la protectrice du citoyen.

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From the Ombud

No matter how well-intentioned or well-designed a program or service, people will not always be confident that they have been treated fairly, and things will sometimes go wrong. Appeal, review, and complaints handling processes all contribute to fairness by providing transparency, accountability, and a way of correcting mistakes and other problems. This investigation looked at the processes available when an individual believes something has gone wrong with public service hiring.



The territorial public service represents a substantial share of the NWT's labour market.¹ Public service jobs can amount to life-changing opportunities, particularly for individuals in communities where other employment possibilities are limited. Fairness in public service hiring matters anywhere, but it has extra importance and impact in this environment. Everyone deserves fairness in hiring, and this includes having ways to get concerns addressed and problems and mistakes acknowledged and fixed.

There are three main takeaways from this investigation. The first is that many people find the staffing appeals process hard to use.

The second is that many complaints and concerns about hiring are outside the scope of staffing appeals, and there is nowhere else people can go to have those issues properly heard and addressed.

The third takeaway is that the staffing appeals process lacks structural independence from Finance, which compromises its procedural fairness. Although I am satisfied that Finance does not interfere in individual decisions, which would be a clear violation, it has retained a management and oversight role that undermines the impartiality of the process.

I was pleased that Finance has signalled an intent to implement several of my recommendations, in particular those aimed at addressing complaints about the hiring process that are outside the scope of staffing appeals. Good complaints processes benefit both individuals who have concerns with a program or service and authorities themselves. Complaints are a valuable source of free information that can help

¹ According to the 2022/2023 *Public Service Annual Report*, there were 6,481 public service employees as of March 2023. The NWT workforce averaged just under 24,000 individuals in 2023. NWT Bureau of Statistics. *Newstats* (January 5, 2024), "Labour Force Activity: December and Annual Review 2023". <https://www.statsnwt.ca/labour-income/labour-force-activity/2023%20Annual%20LFS.pdf> The Report is available for download at: https://www.fin.gov.nt.ca/sites/fin/files/resources/public_service_annual_report_2022-2023.pdf

authorities improve their services and make them fairer. All authorities have blind spots that only get worse if there is a culture of defensiveness.

Welcoming, tracking, and responding to complaints helps authorities find and fix problems and oversights, correct misunderstandings for the public and their own employees, and identify systemic issues that are not always evident in day-to-day work that deals with one individual or situation at a time. In other words, a good complaints process is about more than hearing. It is about listening.

Finance has also agreed to some of my recommendations specific to the staffing appeals process, including specific changes aimed at leaving the contents of appeal decisions to the discretion of staffing review officers, and commitments to undertake cross-jurisdictional research to identify best practices and further changes.

Procedural fairness is, at its core, the right to be heard by an impartial (both actual and perceived) decision-maker. Finance's response does not reflect a serious commitment to ensure the structural independence of the staffing appeals process needed to ensure real and perceived impartiality, and instead signals an intent to continue in a management role for an appeals process in which it is also the respondent. It has also rejected my recommendation to make available a source of independent advice and assistance to appellants, and instead proposes to provide applicants with more information. While there may be other solutions than those identified in the recommendations, no amount of reviewing and revising information and support materials for applicants and staffing review officers will overcome the procedural fairness and public trust challenges identified in this report.

I hope that once it has completed the research it has committed to Finance will consider more substantive changes to the appeals process and will be in a position to identify these in its progress report to the Ombud next year. I also wish Finance well with developing processes to deal with issues that fall outside of the scope of appeals. I believe this new way of listening can only help Finance achieve its broader policy goals and lead to improved services for the public.

Colette Langlois
Ombud

May 2024

Message de la protectrice du citoyen

Peu importe la bonne intention ou la bonne conception d'un programme ou d'un service, les gens qui en bénéficient ne sont pas toujours convaincus d'avoir profité d'un traitement équitable, et il arrive que les choses se passent mal. Les processus de traitement des appels, des examens et des dépôts de plaintes contribuent tous à l'équité en permettant au GTNO de faire preuve de transparence, de prendre ses responsabilités, de corriger les erreurs et de régler les problèmes qui peuvent survenir. Cette enquête visait à examiner les processus qui s'appliquent lorsqu'un individu croit qu'il y a eu erreur à l'égard du recrutement au sein de la fonction publique.



La fonction publique territoriale occupe une grande part du marché du travail des TNO². Les emplois au sein de la fonction publique peuvent représenter des occasions de changer sa vie, particulièrement pour les individus qui vivent dans des collectivités où les possibilités d'emploi sont limitées. L'équité est essentielle dans le recrutement de la fonction publique, et dans ces conditions, son importance et son incidence sont encore plus déterminantes. Tout le monde a droit à l'équité en matière d'embauche, et ceci implique de se doter de moyens pour répondre aux préoccupations soulevées, et de reconnaître et de corriger les erreurs et les problèmes qui surviennent.

Cette enquête met en lumière trois éléments principaux. Tout d'abord, plusieurs personnes trouvent le processus d'appel des nominations de personnel difficile à effectuer.

Ensuite, plusieurs plaintes et préoccupations concernant l'embauche dépassent la portée des appels des nominations de personnel, et les gens n'ont nulle part où aller pour faire clairement entendre et correctement traiter leur plainte ou leur préoccupation.

Enfin, le processus d'appel des nominations de personnel manque d'indépendance structurelle à l'égard du ministère des Finances, ce qui en compromet l'équité procédurale. Même si je suis convaincue que le ministère des Finances ne s'ingère pas dans les décisions individuelles (ce qui serait une infraction flagrante), il détient encore un rôle de gestion et de supervision qui mine l'impartialité du processus.

²Selon le Rapport annuel 2022-2023 sur la fonction publique, celle-ci comptait 6 481 employés en mars 2023. Le marché du travail aux TNO comprenait, en moyenne, un peu moins de 24 000 individus en 2023. Bureau de la statistique des TNO, *Newstats* (5 janvier 2024), *Labour Force Activity: December and Annual Review 2023*. <https://www.statsnwt.ca/labour-income/labour-force-activity/2023%20Annual%20LFS.pdf>. Vous pouvez télécharger ce rapport ici : https://www.fin.gov.nt.ca/sites/fin/files/resources/public_service_annual_report_2022-2023.pdf

Je suis heureuse que le ministère des Finances ait manifesté l'intention de mettre en œuvre plusieurs de mes recommandations, en particulier celles visant à tenir compte des plaintes relatives au processus d'embauche qui dépassent la portée du processus d'appel des nominations de personnel. De bons processus de traitement des plaintes profitent tant aux personnes qui expriment des préoccupations à l'égard d'un programme ou d'un service qu'aux autorités offrant ces derniers. Les plaintes représentent une précieuse source d'information gratuite qui peut aider les administrations à améliorer leurs services et à les rendre plus équitables. Toutes les autorités ont des points faibles qui ne peuvent que s'aggraver si on cultive une attitude défensive.

La réception, le suivi et le traitement des plaintes aident les autorités à repérer et corriger les problèmes et les oublis, à clarifier les malentendus auprès du public et de leurs employés, et à déceler les enjeux systémiques qui ne sont pas toujours apparents dans un travail quotidien où l'on doit composer avec un seul individu ou une seule situation à la fois. Autrement dit, un bon processus de traitement des plaintes dépasse le simple fait de les entendre: c'est une question d'écoute.

Le ministère des Finances s'est également dit d'accord avec certaines de mes recommandations liées au processus d'appel des nominations de personnel, notamment des modifications précises visant à laisser le contenu des décisions d'appel à la discrétion des agents de révision des nominations, et un engagement à entreprendre des recherches intergouvernementales pour repérer les pratiques exemplaires et les changements à venir.

L'équité procédurale incarne fondamentalement le droit d'être entendu par un décideur qui fait preuve d'impartialité (réelle et perçue). La réaction du ministère des Finances ne reflète pas un engagement sérieux pour assurer l'indépendance structurelle dont le processus d'appel des nominations de personnel a besoin pour garantir une impartialité réelle et perçue. Il manifeste plutôt l'intention de continuer à jouer un rôle de gestion au sein d'un processus d'appel dont il est en outre l'intimé. Ce ministère a également rejeté ma recommandation d'offrir aux appelants une source de conseils et d'assistance indépendante, proposant à la place d'offrir davantage d'information aux candidats. Il existe probablement d'autres solutions à cette problématique que celles que j'ai identifiées dans mes recommandations. Néanmoins, peu importe le temps consacré à examiner et à réviser les renseignements et les documents de soutien destinés aux candidats et aux agents de révision des nominations, rien de tout cela ne permettra de surmonter les difficultés liées à l'équité procédurale et à la confiance du public ayant été soulevées dans ce rapport.

J'espère qu'une fois que le ministère des Finances aura terminé les recherches qu'il s'est engagé à entreprendre, il envisagera d'apporter des changements plus substantiels au processus d'appel, et sera en mesure d'en souligner le progrès dans le rapport qu'il remettra au protecteur du citoyen l'an prochain. Je souhaite également bonne chance au ministère des Finances dans sa mise au point de processus permettant de traiter des enjeux qui dépassent la portée des appels des nominations de personnel. Je suis convaincue que cette nouvelle manière d'écouter ne peut qu'aider le ministère des Finances à atteindre ses objectifs politiques plus vastes, et mener à des services améliorés pour le public.

Colette Langlois
Protectrice du citoyen

Mai 2024

Executive Summary

This report presents findings and recommendations from our own-motion investigation into the public service staffing appeals process. The process applies to all union and excluded positions, as well as senior management positions at the Director level. Appeals are heard by staffing review officers (SROs) who are appointed by the Minister for 3-year renewable terms during good behaviour. SROs cannot be public servants or union employees. The authority for the staffing appeal process is set out in sections 17 and 17.1 of the Act, and the *Staffing Appeal Regulations* (the Regulations). The current staffing appeal process dates back to 2006.

We investigated:

- the fairness of the staffing appeals process; and
- whether the Department follows up on concerns and complaints raised in appeals in a way that demonstrates accountability and fosters a culture of ongoing quality review and continuing service improvement.

What we found

The appeal process is hard for some people to use. Identifying and setting out grounds of appeal can be especially difficult, especially without access to confidential documents related to the competition, and without a source of independent help and advice.

A few procedural fairness issues arose with the appeal process itself. First, while the legislation only requires a hearing after a first stage review confirms that criteria for the appeal to proceed are met, some people saw the lack of opportunity to speak with the SRO as unfair. Some SROs do contact some or all appellants even if the criteria for a hearing are not met. Second, Finance does not forward some appeals to an SRO. Although there is no evidence that Finance does this for any reason other than administrative efficiency, the practice is not consistent with section 4.1 and section 5 of the Regulations. Finally, Finance may not be giving appellants clear information about the possibility of applying for judicial review of SRO decisions.

Finance has advised SROs not to include information in their decisions about the affirmative action priority status of the successful candidate, for privacy reasons, and the candidate's scores on interviews and assignments. In both cases, SROs feel this information would be helpful to appellants. SROs are public bodies in their own right under ATIPPA and are therefore independently responsible for interpreting and applying privacy legislation to their work. Decisions are generally well-written and meet legislative requirements, however the format could be adjusted to make them clearer and more readable for appellants.

Some SROs felt that the location of recruitment, training, and administrative support for staffing appeals in Finance, which is the same Department responsible for the hiring process, weakened the perception of their independence. Lack of structural independence does undermine procedural fairness, specifically the opportunity to be heard by an impartial decision-maker, even in the absence of actual interference with decisions. SROs also had some specific suggestions to improve the support for their work and effectiveness.

The appeal process has a limited scope of issues it can address and provides limited remedies. Concerns about the hiring process that are outside the grounds for appeal and/or that are not suited to an appeal process include: concerns arising from misconceptions about the hiring process; service and decision fairness issues, including systemic issues; concerns of candidates who do not have appeal rights, and concerns about non-competitive hiring processes. Finance provides information and services such as mock interviews and resumé reviews that can address some of these issues if people use them. Finance does not have a complaints process to address non-procedural concerns about individual competitions. Some issues, particularly systemic issues, might be best addressed through better communication and reporting and policy changes.

Finance prepares internal reports on appeals and follows up on procedural errors identified in appeal decisions. Finance does not track or report on non-procedural issues raised in appeals.

Some survey respondents expressed overall distrust in the appeal process. This is consistent with comments our Office has heard from past complainants. Reasons for distrust include doubting the independence of the SROs, not having a chance to speak to the SRO deciding their appeal, lack of specific information in their decision, and having their appeal decided by a non-Indigenous SRO. Some people told us they were fearful of retaliation for using the appeal process, which is especially concerning. There is no process to make a complaint of retaliation.

Ombud's Opinion and Recommendations

The Ombud found that the following were unfair within the meaning of the *Ombud Act*:

- the lack of an accessible appeal process;
- Finance's practice of not forwarding some appeals to SROs;
- Finance's failure to provide clear information about the availability of applications for judicial review;
- Finance's advice to SROs to withhold certain information from their written reasons for decisions;
- failure to ensure the structural independence of SROs;

- lack of a complaint process for addressing fairness concerns that fall outside of the scope of the appeal process;
- failure to track and act on information from appeals other than procedural errors; and
- failure to take steps to protect appellants from retaliation for making appeals.

The Ombud made 13 recommendations to Finance to address the unfairness, including a recommendation to report back to the Ombud by June 30, 2025 on progress made.

The Ombud did not make any findings of unfairness or recommendations respecting SROs, however did include comments and suggestions for their consideration in her opinion.

Sommaire

Ce rapport contient les conclusions et les recommandations qui font suite à l'enquête sur le processus d'appel des nominations de personnel dans la fonction publique, enquête partie de l'initiative du Bureau du protecteur du citoyen. Le processus d'appel s'applique aux postes syndiqués et non syndiqués ainsi qu'aux postes de haute direction. Les appels sont entendus par des agents de révision des nominations (ARN), nommés à titre inamovible par le ministre pour un mandat renouvelable de trois ans. Ces ARN ne peuvent pas occuper un poste de fonctionnaire territorial ni celui d'employé syndiqué. Les pouvoirs concernant le processus d'appel des nominations de personnel sont prévus aux articles 17 et 17.1 de la Loi ainsi que dans le *Règlement sur les appels des nominations de personnel*. Le processus d'appel des nominations de personnel actuel remonte à 2006.

Nous avons enquêté sur :

- l'équité du processus d'appels des nominations de personnel; et
- le suivi effectué par le ministère des Finances à l'égard des préoccupations et des plaintes soulevées lors d'appels, pour voir s'il fait preuve de responsabilité, et s'il favorise une culture d'examen permanent de la qualité et de l'amélioration continue des services.

Nos conclusions

Le processus d'appel est difficile à utiliser pour certaines personnes. Il peut être particulièrement complexe de déterminer et d'exposer les motifs de l'appel, surtout sans accès à des documents confidentiels liés au concours en question ni conseils ou assistance d'un tiers.

Le processus d'appel lui-même a suscité quelques questions d'équité procédurale. Premièrement, la Loi exige une audience seulement après qu'un premier examen a confirmé que les critères pour procéder à l'appel ont été respectés, certaines personnes ont trouvé injuste de ne pas pouvoir obtenir l'occasion de parler à un ARN. Certains ARN communiquent avec certains des appelants, voire tous les appelants, même lorsque les critères d'un appel ne sont pas respectés. Deuxièmement, il arrive que le ministère des Finances n'achemine pas certains des appels à un ARN. Bien qu'il n'existe aucune preuve que le ministère des Finances procède ainsi pour aucune autre raison qu'à des fins d'efficacité administrative, cette pratique ne correspond pas aux articles 4.1 et 5 du Règlement. Enfin, il se pourrait que le ministère des Finances n'informe pas clairement les appelants de la possibilité de faire la demande d'une requête en révision judiciaire concernant la décision d'un ARN.

Le ministère des Finances a demandé aux ARN, pour des raisons de confidentialité, de ne divulguer, dans leurs décisions, aucune information que ce soit sur le statut du candidat retenu en vertu du Programme de promotion sociale, ni le pointage obtenu par ce candidat lors de ses entrevues et de ses évaluations. Dans les deux cas, les ARN croient que cette information serait utile pour les appelants. Les ARN sont considérés comme des organismes publics reconnus à part entière en vertu de *la Loi sur l'accès à l'information et la protection de la vie privée*, et disposent donc d'une indépendance quant à l'interprétation et à l'application de cette loi dans leur travail. En général, leurs décisions sont bien rédigées et respectent les exigences de la Loi. Néanmoins, leur format pourrait être revu afin qu'elles soient plus claires et plus lisibles pour les appelants.

Certains ARN pensent que l'endroit où ont lieu le recrutement, la formation et l'offre de soutien administratif liés aux appels de nominations de personnel au ministère des Finances, qui a aussi sous sa responsabilité le processus d'embauche, influence négativement sur la perception de leur indépendance. En fait, le manque d'indépendance structurelle compromet l'équité procédurale, plus précisément la possibilité d'être entendu par un décideur impartial, même en l'absence d'une véritable ingérence dans les décisions. Les ARN ont également fait des suggestions pour améliorer le soutien envers leur travail et leur efficacité.

Le processus d'appel peut seulement traiter des enjeux d'une portée limitée, et offre des solutions restreintes. Voici certaines des préoccupations au sujet du processus d'embauche qui sont exclues des motifs d'appel ou qui ne conviennent pas à un processus d'appels : les préoccupations découlant d'idées fausses sur le processus d'embauche; les enjeux relatifs à l'équité des décisions et des services, y compris des enjeux systémiques; les préoccupations des candidats qui n'ont pas de droit d'appel ainsi que les préoccupations au sujet des processus d'embauche non concurrentiels. Le ministère des Finances offre de l'information et des services tels des entrevues fictives et la révision de CV qui peuvent répondre à certains de ces enjeux, si les gens les utilisent. Le ministère des Finances n'a pas de processus de traitement des plaintes pour répondre aux préoccupations non procédurales concernant les concours individuels. Certains enjeux, en particulier ceux qui sont systémiques, pourraient être mieux abordés par une meilleure communication et la production de meilleurs rapports, et des changements apportés à la politique.

Le ministère des Finances produit des rapports internes sur les appels et effectue un suivi à l'égard des erreurs procédurales décelées dans les décisions relatives aux appels. Il ne comptabilise pas les enjeux non procéduraux soulevés lors des appels ni n'en fait aucun rapport.

Certains répondants au sondage ont manifesté un manque de confiance général envers le processus d'appel. Ceci correspond aux commentaires entendus par notre Bureau et

émis par d'anciens plaignants. Parmi les raisons évoquées par ces derniers pour expliquer ce manque de confiance, on compte un doute quant à l'indépendance des ARN, l'impossibilité pour les plaignants de parler à l'ARN qui a pris une décision relative à leur appel, le manque d'information précise sur la décision qui les concernait, et le fait que la décision relative à l'appel soit prise par un ARN non autochtone. Certaines personnes nous ont dit craindre des représailles en cas de recours au processus d'appel, ce qui est particulièrement préoccupant, du fait qu'il n'existe aucun processus qui permettrait à un plaignant de porter plainte en cas de représailles.

Avis et recommandations de la protectrice du citoyen

La protectrice du citoyen a conclu que ce qui suit est injuste au sens de la *Loi sur le protecteur du citoyen* :

- le manque d'accessibilité du processus d'appel;
- la pratique du ministère des Finances visant à ne pas acheminer certains appels aux ARN;
- l'incapacité du ministère des Finances à fournir une information claire sur la possibilité de déposer une requête de révision judiciaire;
- la recommandation aux ARN de ne pas divulguer certains renseignements dans la rédaction de leurs raisons pour expliquer leur décision;
- le manque d'indépendance structurelle des ARN;
- l'inexistence d'un processus de plaintes pour traiter les préoccupations d'équité qui dépassent la portée du processus d'appel;
- le manque de comptabilisation et de traitement de l'information sur les appels dont l'objet diffère d'une erreur procédurale; et
- l'incapacité du ministère des Finances à ne prendre aucune mesure pour protéger les appelants qui craignent des représailles en déposant une requête d'appel.

La protectrice du citoyen a fait 13 recommandations au ministère des Finances pour aborder l'iniquité, y compris la recommandation de répondre à la protectrice du citoyen d'ici le 30 juin 2025 pour faire état de ses progrès.

La protectrice du citoyen n'est arrivée à aucune conclusion d'iniquité ni n'a fait de recommandations concernant les ARN. Néanmoins, elle a intégré à son rapport des commentaires et des suggestions qui, à son avis, doivent être pris en compte.

Introduction

This report presents findings and recommendations from our own-motion investigation into the fairness of the public service staffing appeals process. “Own-motion” means that the investigation was started on the Ombud’s initiative and was not based on a specific complaint.

The Office of the Ombud receives many complaints each year about public service hiring competitions. Unsuccessful candidates who are either existing public service employees, or who are eligible for priority consideration under the GNWT’s *Affirmative Action Policy*³, have the right to challenge hiring decisions through a staffing appeal. However, many people have told us that they thought the appeal process was unfair, that their appeal decision did not address some or all of the issues they were concerned about, or that they did not believe it was worth making an appeal at all.

Human resources policies and shared services are under the responsibility of the Department of Finance (Finance). The *Public Service Act* (the Act) and regulations provide the legislative basis for these policies and services.⁴ The Act applies to all Government of the Northwest Territories (GNWT) Departments, as well as many other public authorities such as Aurora College, health and social services authorities, Housing NWT and most education authorities.

The Act gives the Minister Responsible for the Public Service (the Minister) the exclusive right and authority for most appointments. It also provides for a staffing appeals process and for the appointment of staffing review officers (SROs) by the Minister.⁵ Finance provides administrative support for the appeal process, and coordinates recruitment and orientation of SROs.

In this report we provide background on the staffing appeals process, present our analysis and the Ombud’s opinion, including some suggestions for SROs, and provide recommendations to Finance.

³ Available for download at <https://www.fin.gov.nt.ca/sites/fin/files/affirmativeactionpolicy.pdf>

⁴ R.S.N.W.T. 1988, c. P-16.

⁵ See sections 16 through 17.1.

Principles of Administrative Fairness

The Ombud has a mandate to investigate “maladministration”, or “administrative unfairness”. Guidance on the principles of administrative fairness comes from the *Ombud Act*⁶, administrative law, and from standards that legislative ombuds have developed together.⁷

Standards of administrative fairness can be grouped into three categories: fair decisions (what was decided?); fair process (how was it decided?); and fair service (how was the person treated?).⁸

This investigation primarily considered issues of procedural fairness and service fairness. The core of procedural fairness is the opportunity to be heard by an impartial decision-maker, which is central to any review or appeal process. Service fairness includes accessibility and accountability, specifically, providing accessible and responsive services, seeking continuous improvement, developing complaint processes, and tracking feedback and complaints.

Although the investigation centred on procedural and service fairness standards, it also indirectly addresses the fairness standard of equity, which is part of decision fairness.

How the standard of equity relates to the staffing appeals process

The fairness standard of equity includes taking steps to ensure people are not treated unfavourably or subjected to lesser outcomes because of their personal characteristics. The GNWT’s *Affirmative Action Policy* is an example of a policy designed to address inequities in public service hiring. The staffing appeals process is in part intended as an accountability mechanism for the *Affirmative Action Policy*. Failure to apply the policy correctly can be grounds for an appeal by an unsuccessful candidate. Appeals can serve as a check on how the policy is applied in individual cases.

Over the last few decades, there has been a great deal of public discussion in the Legislative Assembly and elsewhere about the failure to achieve a representative public service, despite the *Affirmative Action Policy* having been in place since the 1980s. An unfair staffing appeals process, while far from the only cause, could indirectly contribute to unfair employment equity outcomes by weakening accountability for how the policy and other practices intended to promote equity are applied in individual competitions.

⁶ S.N.W.T. 2018, c. 19, ss. 33(1).

⁷ See, e.g., Canadian Council of Parliamentary Ombudsman (2019). *Fairness by Design: An Administrative Fairness Self-Assessment Guide*. Available at www.nwtombud.ca

⁸ For more about administrative fairness, see www.nwtombud.ca

A definitive answer to whether and how much the staffing appeals process has supported or weakened application of the policy is beyond the scope of this investigation. However, it is important to acknowledge the possibility that the staffing appeals process may indirectly influence employment equity outcomes as part of the bigger picture of why the fairness of staffing appeals matters.

Background

The Staffing Appeal Process

The authority for the staffing appeal process is set out in sections 17 and 17.1 of the Act, and the *Staffing Appeal Regulations* (the Regulations), and summarized in section 0109 of the GNWT's *Human Resource Manual*.⁹ The process applies to all union and excluded positions, as well as senior management positions at the Director level.

Grounds for Appeal

The only ground for appeal is that an error was made in the application of the Act, the regulations, or the applicable policies, directives or procedural guidelines during the competition process. This is set out in subsection 2(1) of the Regulations.

Who Can Appeal

To appeal the results of a competition, a person must have unsuccessfully applied on the competition, and must be either a current public service employee, or a person with priority status under the *Affirmative Action Policy*. Examples of people who would NOT have appeal rights include:

- Someone who is not an existing public service employee and who does not have priority status under the *Affirmative Action Policy*;
- Someone who is not an existing public service employee and who would have been eligible for priority consideration under the *Affirmative Action Policy*, but who did not identify themselves as having priority status;
- Someone who was interested in a position but did not apply on the competition.

The Regulations set out certain other specific exceptions to appeal rights.

In 2021, according to Finance's estimates, approximately 16.5% of all candidates would have had appeal rights.

⁹ R-025-2006. The *Human Resource Manual* is available online at <https://my.hr.gov.nt.ca/human-resource-manual>

Who Hears Appeals

Appeals are heard by staffing review officers (SROs) who are appointed by the Minister for 3-year renewable terms during good behaviour. SROs cannot be public servants or union employees. Their qualifications are set out in section 10 of the Regulations and include experience and skills in interpreting legislation, policies and guidelines; mediation or arbitration; conducting interviews and investigations; and administrative proceedings.

As of December 2023, there were 4 SROs. All had had multiple reappointments with two in office since 2009, one in office since 2011, and one in office since 2016. All were either lawyers, or had certificates in administrative justice, and three of the four were also currently serving, or had previously served, as Employment Standards Adjudicators. Two SROs were resident in Yellowknife, and two were resident in Fort Smith. One of the four identified as Indigenous.

Appeal Procedure

Appeal procedures are set out in the Regulations.

Unsuccessful candidates are given notice of their appeal rights and have 4 business days from that notice to file their appeal.

Appeals must be made in writing and must include general information about the candidate and the competition, as well as the reasons for the appeal. The reasons given must include “details respecting the errors that the appellant believes were made in the application of the Act, the regulations, or the applicable policies, directives or procedural guidelines.”¹⁰

SROs consider appeals in two stages. In the first stage, set out in s. 5 of the Regulations, the SRO decides whether the appeal meets the three basic criteria to proceed to a hearing: the appellant has appeal rights; the appointment is appealable; and it appears there may be grounds for appeal.

If an appeal proceeds to the second stage, set out in s. 6 of the Regulations, the SRO holds a hearing, and reviews the documents associated with the appeal and the competition. The Regulations provide an itemized list of the documents the SRO must review. The SRO can also interview the appellant, selection committee members, Finance staff responsible for administering the Act, regulations, policies, directives and procedural guidelines, and any other persons the SRO considers necessary. Under

¹⁰ Subsection 4(1) of the Regulations.

subsection 6(4), the SRO must give the appellant or their representative the opportunity to be heard.

If the SRO finds that an error was made and that the error adversely affected the appellant's candidacy, the SRO must grant the appeal and the Minister must revoke the appointment. Two outcomes are possible if the SRO grants the appeal: the SRO can either direct that the competition be restarted at the point at which the error occurred, or direct that it be redone.

The SRO must provide a written decision to the Deputy Minister within 3 days of concluding the hearing. The Deputy Minister is then responsible for providing a copy "without delay" to the appellant.

There is no further appeal, however SRO decisions can be the subject of judicial review following an application to the court by either the appellant or Finance. This has happened in a few instances.

History of the Staffing Appeals Process

The current staffing appeal process dates back to 2006.

Prior to 2006, staffing appeals were only available for unionized positions and were heard by a staffing appeal committee made up of a Financial Management Board Secretariat (FMBS) delegate, a Union of Northern Workers (UNW) delegate, and a mutually agreed upon chairperson. The appeal committee did not provide reasons for their decisions. Candidates were told only whether or not their appeal was upheld, without explanation.

The changes introduced in 2006 were intended to address criticisms that:

- direct involvement of FMBS and the UNW in decision-making gave rise to real or perceived bias;
- there was no recourse for non-union positions (excluded and senior management); and
- the process lacked transparency and accountability because no reasons were provided for decisions.

Number of Staffing Appeals 2018-2023¹¹

	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Total Appeals	71	82	87	49	70
Appeals Upheld	5	0	1	1	6
Appeals Denied	66	82	71	42	57
No Appeal Rights			1	3	3
Appeal withdrawn			10		
NTPC Appeals			4	3	4

Finance's Role in Staffing Appeals

There are two Divisions within Finance's Human Resources branch that are involved in staffing appeals.

Strategic Human Resources (SHR) has the following responsibilities, which are located in the Employee Development and Workforce Planning (EDWP) unit:

- coordinating the SRO appointment process and orientation of new SROs;
- receiving appeals and assigning them to individual SROs;
- obtaining relevant documents and providing them to SROs;
- receiving and distributing appeal decisions.

Management and Recruitment Services (MRS) includes the client service officers who coordinate hiring competitions. With respect to staffing appeals, MRS has the following responsibilities:

- advising successful candidates at the time of their verbal offer that the offer is conditional on staffing appeals;
- informing unsuccessful candidates of their appeal rights;
- communicating to the hiring Department and the successful applicant that an appeal has been received;
- providing competition documents to EDWP; and
- answering any questions the SRO has about the competition.

¹¹ Data are from the *Public Service Annual Reports* for the corresponding years. Available at <https://www.fin.gov.nt.ca/en/resources>

Investigation Scope and Process

What we investigated

We investigated

- the fairness of the staffing appeals process; and
- whether the Department follows up on concerns and complaints raised in appeals in a way that demonstrates accountability and fosters a culture of ongoing quality review and continuing service improvement.

Investigation Process

We reviewed the *Public Service Act* and regulations, the *Human Resource Manual*, other relevant human resource policies, publicly available reports and statistics, and public information about the staffing appeal process. We researched staffing appeal processes in other Canadian jurisdictions.

We also reviewed 172 staffing appeal decisions, NWT Supreme Court judicial reviews of SRO decisions, Hansard, Standing Committee reports, media reports, and prior complaints to our Office.

We interviewed all current and some former SROs. In this report we refer to both as “SROs” and do not distinguish between those who are still in office and those who are not. We also interviewed Finance officials from the SHR and MRS divisions.

Finally, we invited members of the public to complete a survey on experiences with staffing appeals. Seventeen individuals completed the survey or provided comments in an alternate format. Details of the survey are provided in Appendix B to this report. While this is a small number of responses, they were consistent with comments the Office has heard from complainants over the years, confirmed some of the observations made by SROs and by us in our review of appeal decisions, and provided examples of specific experiences and situations some of which are mentioned in this report.

Analysis

In the course of this investigation, we heard suggestions that the hiring process must be working well because there are so few successful staffing appeals. There are several reasons why this assumption could be wrong.

First, people might not be using the appeal process or might not be using it effectively.

Second, the appeal process itself might not be procedurally fair.

Third, the grounds for appeal might not allow for consideration of all fairness concerns related to hiring.

There are no doubt many things that are working well in the hiring process. Many people, including many candidates with priority under the *Affirmative Action Policy*, are hired into the public service each year, and many are promoted. Many unsuccessful candidates, although disappointed, likely are satisfied with the fairness of the hiring process. This report is about what safeguards are there when things go wrong, or when people do not believe they have been treated fairly, which will inevitably happen in any program that deals with so many individuals.

In this section, we discuss accessibility and procedural fairness of the appeal process, appeal decisions, SROs' independence, limitations of the appeal process, how Finance tracks and uses information from appeals, and public trust in the appeal process.

Sometimes not appealing in itself is a tell as to the unfairness of the process.

– Survey participant

Accessibility of the Appeal Process

The difficulty of making an appeal was a recurring theme among interviewees and survey participants. For an appeal process to be fair, it also needs to be accessible.

Identifying and presenting grounds of appeal

Many people struggle to translate their sense that something unfair or wrong happened during a competition into “grounds of appeal”. Although a few survey participants said that they found the appeal process straightforward and easy to use because they had prior work experience in human resources or related skills, most indicated they did not have enough information or guidance to effectively set out the grounds for their appeal. This is consistent with what SROs told us they had observed in dealing with appellants over several years.

EDWP told us they are aware that this is a challenge and have been trying to think of additional information resources to help and ways to make information easier to find. Finance also told us that when an incomplete appeal is received within the deadline, it does contact the prospective appellant and give them an opportunity to clarify or correct their submission. It also advises prospective appellants that they can reach out to the human resource officer who administered the competition for further information and feedback to help inform their submission.

The SROs advised that even if an appellant does not identify any grounds, they will review the Department's materials for procedural errors or potential issues. However, appellants do not have the opportunity to review those materials themselves.

For example, among the appeal decisions we reviewed, there were several where failure to apply the Affirmative Action Policy was indicated as the only ground for appeal. Many of those candidates seemed to misunderstand how the policy and the hiring process work together. They seemed to be under the impression that their higher affirmative action priority status meant they should still get the position even if they did not meet the screening criteria or did not pass the interview. Those appeals were correctly denied. However, if the appellants had understood that they were unsuccessful because they were screened out, or because they did not get a passing score on the interview, they might have considered appealing those stages of the competition process.

Access to information to support an appeal

The lack of access to documents to support an appeal can also be a barrier. Competition information and documents, including screening criteria as signed off by selection committees, interview scores, and the affirmative action priority status of the successful candidate are kept confidential.

SROs told us they did not consider staffing appeals as involving “hearings” within the usual meaning of the word, in part because there is no exchange of materials between the parties or opportunity to respond. While there are policy and legal reasons for maintaining confidentiality of at least some competition information, this does put appellants at a disadvantage from the outset.

Who can help?

Not everyone can advocate for themselves effectively. There are any number of reasons for this. For example, people may be too emotional to present their case well, they may have a hard time with the technical requirements for the appeal, or they may just be nervous about speaking to the SRO.

Some SROs suggested there was a need for an independent neutral position outside of Finance to help appellants. As one said, “sometimes people lose the tree they need because they are so lost in the forest. They may need to describe all those trees to you so you can help them find the right one.”

Finance itself is not in a good position to provide that help, because it is also the respondent to the appeal. Even if EDWP or another unit in Finance were tasked with providing enhanced support to appellants, the perception of bias and partiality would be difficult to overcome.

People appeal competitions because they believe the process was unfair or stacked against them in some way. Comments along the lines of “they knew who they wanted to hire already and they made sure that happened” or “they manipulate the system to keep some people out” were common in the survey responses, especially among people who have been unsuccessful in multiple competitions. Complainants to our Office have made

MRS/HR would not share any information or direct me on how to appeal other than the basic script they use to describe the appeal itself. I wasn't given any actual tools on how to dispute the process.

– Survey participant

How can you appeal a procedural mistake when you do not know what the procedure is? I.e., what are the screening criteria? ... How can you appeal a procedural mistake when the GNWT does not advise what decisions were made during the selection process? I.e., why were you screened-out vs a different candidate? What weighting was given to [Affirmative Action Priority 1] P1 Status? ... Without the above information, any appeal is limited to 'I think I have the skills to do the job but didn't get the job.'

– Survey participant

many similar comments over the years. It is hard to imagine that people who feel this way would have confidence in a unit embedded in the same organization as the human resource officers who administer the competitions.

Procedural Fairness of the Appeal Process

Opportunity to be heard

The most common issue raised about the fairness of the appeal process itself was the lack of opportunity to speak to the SRO. This contributed to distrust in the process for some survey respondents who felt that it confirmed SROs were there mainly to uphold management decisions.

Some SROs told us they did not speak to appellants if there were no grounds for appeal. This practice meets the requirements of s. 6 of the Regulations.

However other SROs said they do speak to the appellant regardless to ensure they feel heard and to ensure the SRO understands why they are making the appeal. While this practice is not required under s. 6 of the Regulations, nothing prohibits it.

I can tell from their tone in the appeal, their state of mind, if they seem really upset, I will call them so they can have their say, even if I didn't find an appealable issue on the materials. I will do a hearing because based on all my experience, it is important to people to be heard. Regardless of the outcome, they want to know that someone listened to them and believed them.

- SRO

Some appeals not forwarded by Finance

Some SROs expressed concerns that Finance does not forward some appeals to an SRO. This is done in very limited circumstances: the appeal was sent after the deadline, the competition was cancelled, or the appellant was not eligible to use the process. While no SROs suggested Finance was abusing this process, and we did not find any evidence that Finance officials were doing this for any reason other than efficiency, this practice is not consistent with s. 4.1 and s. 5 of the Regulations, which require that an SRO consider each appeal. S. 4.1 provides that SROs may dismiss appeals that do not meet the requirements of s. 4 of the Act. This would include, for example, appeals sent after the deadline. S. 5 sets out the review criteria SROs must consider to decide whether the appeal should proceed to a hearing. This criteria includes whether the appellant is entitled to appeal the appointment.

Notice of possibility of application to the court for judicial review of SRO decisions

Although there is no further appeal from SRO decisions, they are still subject to applications to the court for judicial review. One SRO pointed out that Finance should make this clear to appellants as the statement that appeals are final, although technically correct, may mislead people into believing there is no further recourse from the SRO's decision. Most of the survey respondents who had used the appeal process were entirely unaware that judicial review was possible, however their experience may

not have been recent. One survey respondent who had made a more recent appeal said that Finance had told them something about judicial review, but they did not understand what it meant.

SRO Decisions

Decision Contents

Several survey respondents complained that the appeal process was too “secretive” and did not provide them with enough information. SROs sympathized with this dissatisfaction. Although they felt the process was efficient and fair, they understood that withholding some details in the decision could contribute to a perception that the process is not fair.

One piece of information that Finance officials have discouraged SROs from including in their decisions is the affirmative action priority status of the successful candidate. The basis for this is the *Access to Information and Protection of Privacy Act* (ATIPPA).¹²

SROs pointed out that if unsuccessful candidates could be told the affirmative action status of the successful candidate, there would be fewer appeals to start with, and/or the reasons some appeals are denied would be better understood. Our review of appeal decisions and survey responses supports this. There were several instances where an unsuccessful candidate was clearly baffled as to why they were not offered the position even though they received highly positive feedback on their interview. The appeal decision did not give them the straightforward answer they were looking for. Some SROs also expressed concerns of how the courts would view the exclusion of this information if a decision were to go to judicial review.

[some appellants have even said to me] ‘if I was confident that a P1 got the position, I would take no issue, I would understand why. But I just don’t know.’ What they are getting is just the SRO saying something like, ‘I have reviewed all the documents, and I am satisfied that the decision by the selection committee was reasonable and in keeping with policies and procedures.’

-SRO

Part 2 Division C of ATIPPA addresses the disclosure of personal information by public bodies. In particular, s. 48 sets out circumstances in which a public body may make a disclosure outside of a response to an access to information request.

¹² S.N.W.T. 1994, c. 20.

While it is outside the Ombud’s mandate to comment on how substantive privacy protections apply to staffing appeal decisions, it is within our mandate to comment on authorities’ administration of the Act as with any other territorial legislation.

The definition of a public body under ATIPPA includes a “department, branch, or office of the Government of the Northwest Territories”. SROs are not public servants or employees of the Department of Finance, however as Ministerial appointees, they are public officers. The implication of this is not only that ATIPPA applies to SROs, but that they are public bodies in their own right. This means that they, and not the Department of Finance, are responsible for interpreting and applying the privacy protections of ATIPPA to their work.

SROs also told us Finance discourages them from telling people their own interview scores. Finance officials confirmed that this is not based on ATIPPA but is instead a Finance internal policy to avoid arguments with unsuccessful candidates about the specifics of their marks.

With respect to both affirmative action priority status and marks, EDWP officials clarified that while they might ask SROs to reconsider including that information in decisions, they would never demand that they remove it as they understand that this would interfere with SROs’ independence.

Decision Format

It is important that decisions be clear and well-reasoned, not only for the benefit of appellants and Finance, but also because they could be subjected to judicial review. The decisions we reviewed were generally well-written and met the requirements of the Act and regulations. Some improvements could be made to their readability, keeping in mind that not all appellants will be used to legal writing.

For example, consideration could be given to putting the full text of applicable policies and legislation in footnotes or at the end of the decision instead of front and centre; to the use of summaries, headings, subheadings and paragraph breaks; to plain language explanations of jargon; and to the order in which information is presented. Each of the SROs had their own template, and each of them had good decision-writing practices others lacked. If they were able to pool their best practices, they might easily arrive at a more appellant-friendly format.

Independence of SROs

None of the SROs expressed any concern that individual Finance officials were interfering in appeals. Our discussions with Finance officials confirmed their understanding of the importance of the SROs' independence and the need to avoid any real or perceived attempts to influence the appeal process.

Some SROs did however still see a structural conflict of interest in having the same Department responsible for hiring also coordinate SRO recruitment and training and provide administrative support for the appeal process. They suggested these functions should be moved to another Department such as Justice and could perhaps be combined with support for other appeal processes currently located in other authorities.

I have never seen anything wrong or corrupt on the part of the Department – but it's just not good practice. An SRO should never even have it cross their mind – could something I write cost me this position?

-SRO

Lack of structural independence undermines procedural fairness, which includes not only the opportunity to be heard, but the opportunity to be heard by an impartial decision-maker. Impartiality has to be both real and perceived. This means that even in the absence of any actual interference with decisions, if there is a reasonable concern that the respondent to an appeal (Finance in this case) has or could have influence over the decision-maker, the requirements of procedural fairness are not met.

Professional Development Support for SROs

SROs mentioned how valuable annual meetings have been in the past to allow them to discuss issues of common interest and learn from each other. These meetings stopped during the COVID-19 pandemic, and SROs hoped there would be one again soon.

Other suggestions from SROs to better support their work were to allow them to access each others' decisions, to proactively notify them of relevant updates to the *Human Resources Manual*, and to provide some funding for courses and/or training to keep their knowledge current.

Limitations of the Appeal Process

The appeal process has a limited scope of issues it can address and provides limited remedies. It was clear from our investigation that concerns about staffing are much broader. That does not mean that the appeal process should be expanded or that it is the best or only way to resolve those concerns. Appeals are not the solution to every problem or complaint.

Some concerns come from misconceptions about the hiring process. Other concerns relate to service and decision fairness. Some are limited to a specific competition, while others are systemic. Some come from people who do not have appeal rights. Different kinds of concerns may call for different approaches.

Misconceptions about the hiring process

Our review of staffing appeal decisions identified five common misconceptions about the hiring process that together accounted for a majority of appeals.

The first, mentioned in an earlier section, is that the *Affirmative Action Policy* overrides screening criteria and interview scores. This is incorrect: for hiring priority to apply, candidates still need to meet screening criteria and achieve passing marks. For example, if a Priority 1 (P1) candidate and a P2 candidate both pass the interview for a position, the P1 candidate would be offered the position first, even if they scored lower than the P2 candidate. However, if two P1 candidates pass the interview, the one with the higher score would be offered the position first.

Four other common misconceptions are:

- If a candidate's resumé is not specific enough about their education and experience, the hiring committee will contact them to get more details or seek clarification before making a screening decision.

This is incorrect: candidates are responsible for showing how they meet screening criteria in their application. Even if they have the required education and experience, they will be screened out if they do not clearly show that in their application. For example, in our review of appeal decisions we saw that some appellants had the required work experience but did not provide the dates of that experience in their resúmes. This meant that the hiring committee could not determine whether they had the required years of experience and was forced to screen them out.

- If a candidate does not answer an interview question fully enough, the hiring committee will ask them to elaborate.

This is incorrect: the hiring committee will not always “probe” for more information, especially when candidates have received the questions ahead of time, which is now common practice. It is candidates’ responsibility to provide complete answers.

- If a candidate screens in they will automatically be invited to an interview.

This is incorrect: hiring committees sometimes short-list priority applicants. For example, if 2 P1 candidates, 3 P2 candidates, and 6 non-priority candidates screen into a competition, the hiring committee might decide to interview only the P1 candidates to start. This is not a requirement, but it is more efficient, because no matter how the other candidates perform on the interview, they will not be offered the position if a P1 candidate passes the interview and reference checks and accepts the position. If neither of the P1 candidates is offered and accepts the position, the hiring committee could decide to go ahead with interviewing the P2 candidates only and then move on to the non-priority candidates if none of the P2 candidates is hired.

- A candidate’s education and experience are considered throughout the process. For example, even if a candidate scores lower on an interview, they might still receive the first offer based on having more credentials or experience than other candidates.

This is incorrect: education and experience are only considered at the screening stage. Once candidates screen in, they are evaluated based on assignment and interview scores.

Services offered by Finance

Finance offers a number of services and sources of information to help candidates prepare, including explanations of the hiring process and *Affirmative Action Policy*, providing feedback on resumés, and mock interviews. In theory, these services should address most misunderstandings about the hiring process and help overcome systemic barriers. However for them to work, people have to use them. Finance does not report publicly on how many people request resumé feedback or mock interviews. If the uptake is low or if there are not enough resources to meet demand, Finance should consider ways to improve accessibility to those services.

Grounds for appeal

The appeal process is restricted to addressing procedural errors in individual competitions.¹³ Other matters of concern to candidates, such as service fairness and

¹³ See subsection 2(1) of the Regulations: “An appointment may only be appealed on the grounds that an error was made in the application of the Act, the regulations or the applicable policies, directives or procedural guidelines during the competition process for the position to which the appointment is made.”

decision fairness issues are not grounds for appeal. Several specific examples of these matters came to our attention in the course of this investigation.

Service fairness

Service fairness includes practices like acknowledging and correcting mistakes, timely and responsive communication, trauma-informed approaches, offering clear information upfront rather than waiting to be asked for it, and providing meaningful feedback to unsuccessful candidates. While they may not directly affect competition results, service issues can contribute to distrust of the hiring process, add to the stress of applying for a job a candidate really wants, and/or cause a candidate to form an unfavourable impression of the employer.

Decision fairness

Decision fairness issues include whether screening criteria, assignments and interview questions are reasonable and fair. For example, an unsuccessful candidate might:

- question the relevance of the screening criteria and/or assignment to the position;
- have concerns about the cultural appropriateness of the STAR interview approach;¹⁴
- question whether the hiring committee was diligent in checking the successful candidate's eligibility for priority hiring and/or their credentials; and/or
- wonder how it could be that they did not screen in for a position in their work unit yet are expected to train the successful candidate.

Hiring fairness outside of competitions

Staffing decisions outside of competitive processes can also raise concerns. Questions about the fairness of the use (or in some cases the non-use) of direct appointments, eligibility lists, transfer assignments, and developmental opportunities, or suspected bias against them or in favour of others came up in appeals and survey responses, and have been raised in several past complaints to our Office. One survey respondent, for example, referred to a “who-knows-who” culture. Another wondered why, as a P1 who had completed education and developmental assignments to support their career advancement, they had not been considered for a transfer assignment before a position was opened to competition.

The cancellation of competitions also raises suspicions for some candidates. Although competitions can be cancelled for a number of legitimate operational reasons, such as

¹⁴ Situation, task, action and result. See https://www.gov.nt.ca/careers/sites/careers/files/resources/x_star_-_applicant_handout_-_updated_november_1_2017.pdf

delay of a specific project, budgetary issues, or organizational changes, some candidates suspected competitions were cancelled specifically to avoid hiring them.

Eligibility to appeal

Not everyone with a concern about a competitive hiring process is eligible to make an appeal.

Even successful candidates may have concerns about procedural fairness of a competition however they do not have appeal rights. For example, one successful candidate was concerned that a human resources officer repeatedly tried to influence them not to accept the offer of the position.

People may also have concerns about competitions they choose not to apply on. For example, they may disagree with the qualifications or feel the window to apply is too short.

There is no process for people who are not already in the public service and do not have priority under the *Affirmative Action Policy* to bring forward concerns about procedural errors in the hiring process.

Appeal outcomes

The appeal process is set up to identify procedural mistakes in competitions within a short window of time so that hiring can proceed, either by confirming the appointment, or by directing that the competition be restarted from the beginning or at the stage where the mistake happened (e.g., at the interview stage).

This limited remedy is disappointing for many people. However, it is the right remedy for procedural issues. The appeal process needs to consider not only fairness to the appellant, but also fairness to all of the other candidates who applied on the competition. Sometimes the only fair way forward for everyone is to restart the competition from an earlier stage or from the beginning.

[We] are not substitute decision-makers. That is hard for people to understand, they think the SRO can just give them the job because they are the best candidate.

- SRO

How issues outside the scope of appeals are handled

Issues about competitive hiring processes

There is no formal process for people to make complaints about service or decision fairness. Candidates who do not have appeal rights also do not have a process to make complaints about procedural fairness. If Finance becomes aware of problems, they may address them internally, but they do not communicate about them with individual candidates or report on them publicly.

Finance advised that while there is no formal complaints process, candidates can still raise any concerns with the human resource officer who administered the competition. While this may work in some cases and should still be encouraged as a first resort, it is not adequate.

For example, from the survey responses and from past complaints to our Office, we know that some candidates perceive human resource officers as having more influence than they actually do on hiring decisions, including on future competitions. Those candidates may not come forward out of fear of antagonizing the officer, especially if their complaint is about the officer themselves and/or if they live in a smaller centre where there is only one officer who administers all the competitions for the area.

Further, in the absence of a tracking system, complaints can easily fall through the cracks in a busy week. While an officer with a heavy workload might innocently forget to respond to a candidate, from the candidate's perspective it might seem that the officer is avoiding them or is even angry at them for raising an issue. Lack of tracking also makes it harder to identify systemic issues because information about complaints is not consolidated in any one place.

[Commentary on non-procedural issues in SRO decisions](#)

SROs told us Finance has instructed them to communicate any issues they identify that did not affect the outcome of the competition, but that should be addressed to improve the staffing or appeals process, directly to Finance rather than including them in their decisions.¹⁵ This could include service fairness issues like poor communication.

Some SROs told us they do not follow this procedure as they believe the appellant should be assured that the SRO considered all the issues they raised even if those issues did not meet the criteria for grounds for appeal. While these issues do not meet the criteria for granting an appeal under s. 7 of the Regulations, nothing prevents SROs from mentioning them in a decision. It is a common practice for reasons given by administrative tribunals and courts to include non-binding comments and observations beyond what is necessary to explain the decision. It is also consistent with principles of

¹⁵ *Human Resource Manual* section 109(37).

administrative fairness for reasoned decisions to demonstrate to the appellant that their evidence was heard and considered even if it did not affect the outcome.

Service fairness issues

The appeal process is not suited to addressing service fairness complaints. The outcome of a service fairness complaint should be that the person feels heard and understood and that, if appropriate, steps are taken to prevent the issue from happening again.

However, in the absence of any other complaint process, the approach some SROs have taken of noting service issues in their decisions at least assures the appellant that their concern has been heard and documented.

Decision fairness issues

There are multiple ways that decision fairness issues could be addressed, through an expanded appeal process, a review process, a complaints process, improved feedback to individual candidates, enhanced communication and public reporting, and/or a combination of all of the above.¹⁶

For example, if a candidate had concerns that an assignment was not sufficiently related to the duties of the position, could this be a ground for appeal that might lead to restarting the competition? Could it be dealt with through a substantive review or complaint process that might lead to an explanation and/or changes to future competitions? Could it be addressed through a meeting with the candidate? The choice of process is a policy decision; the administrative fairness issue is that there is currently no way to address these concerns at all.

Concerns from individuals who are not eligible to appeal

Concerns from individuals such as successful candidates and non-priority candidates could be addressed through a complaints process and/or improved communication and feedback.

Hiring fairness outside of competitions

There is no process to address concerns about the use of direct appointments, eligibility lists, transfer assignments, or developmental assignments, or about the cancellation of competitions.

Direct appointments to permanent positions are made according to restrictive criteria at the political level. They should not be subject to administrative review processes. Other

¹⁶ As one example, British Columbia's Office of the Merit Commissioner can consider, in addition to procedural issues, whether fair hiring principles were applied, such as objective and job-related assessments, reasonable decisions, and fair and equitable treatment.

concerns about hiring fairness outside of competitions might be addressed in a number of ways, such as policy changes to make processes and criteria clearer or more restrictive, better communication and feedback to individuals affected by decisions, and enhanced transparency and accountability, such as public reporting and/or providing explanations and reasons for decisions like cancelling competitions.

Internal tracking of issues and appeals

Finance prepares internal annual reports with statistical information such as the number of appeals, the priority status of appellants, the number of appealable competitions, and the region and community appeals come from.

Over the 2 fiscal years 2021-2022 and 2022-2023, Finance received a total of 130 appeals, of which 65, or 50% came from Indigenous Aboriginal (P1) candidates; 24, or 18% came from Indigenous non-Aboriginal (P2) candidates; 10, or 8% came from resident disabled candidates; and 31, or 24% came from candidates with no priority.

The internal reports also detail the procedural errors identified in appeals. Not all procedural errors result in the appeal being granted. For example, the SRO might find that an error was made at the interview stage but that it would not have made a difference to the competition result because the successful candidate had a higher priority status than the person appealing. In that case the appeal would be denied because the error did not affect the candidate's opportunity for appointment. Over the 2 fiscal years 2021-2022 and 2022-2023, 7 appeals were upheld, and 3 were denied but identified procedural errors.

Finance does follow up regularly with human resource officers individually and collectively to ensure there is learning from procedural errors.

Issues other than procedural errors

Finance does not do any further qualitative analysis of appeal decisions beyond procedural errors, and in fact had difficulty even locating all of the appeal decisions from the previous three fiscal years to send to us. This is a missed opportunity as there is a great deal of information in appeal decisions that could be useful to Finance.

For example, in the 172 decisions we reviewed, we noted that several people did not seem to have received feedback from the human resources officer or hiring manager before starting the appeal process. This might have been important to help them prepare for their appeal. In some provincial jurisdictions, candidates must first have a feedback appointment with the person responsible for the hiring decision before requesting a further review of the competition.¹⁷ As noted above, Finance does advise prospective appellants that they can contact the human resource officer for information about the competition and feedback to assist in preparing their appeal. How often appellants actually request and receive that feedback ought to be of interest to MRS.

Some appeal decisions include comments from SROs on non-procedural issues and more detailed explanations of the unsuccessful candidate's concerns from what they

¹⁷ British Columbia, e.g.

included in their appeal documents. This should be useful feedback and information for the Department.

It should also be of interest to Finance to know the concerns people raise in appeals, regardless of whether they fit within the allowable grounds. Some recurring concerns we found in our review of the decisions were: perceived failure to apply the *Affirmative Action Policy*, confusing assignment directions, unfair interview questions, unfairly scored assignments and interview questions (especially behaviour-based questions), bias and conflicts of interest, scheduling and communication issues, fairness of the reference check process, consideration of qualifications and experience, lack of a trauma-informed approach, and examples of systemic discrimination, particularly against Indigenous candidates. Finance could use this information to identify communication and policy gaps, and/or to make improvements to the hiring process. It is, for example, noteworthy that although the *Affirmative Action Policy* and information about it have long been publicly available, so many individuals still seem to misunderstand it.

Trust in the Process

Some survey respondents expressed an overall distrust in the appeal process. Among the survey respondents were some who said they would never use the appeal process again because it was not a genuinely fair process and/or was emotionally draining, and others who said they had never even tried the appeal process because they believed it was flawed and not worthwhile. We have heard many similar comments from complainants to our Office; it is not unusual for people to come to us with concerns about a hiring competition without having made an appeal even if they would have been eligible to do so.

Some factors that contribute to distrust are mentioned in earlier sections of this report: lack of opportunity to speak directly with the SRO, lack of specific information in the appeal decision, a perception that hiring managers are already too invested in the successful candidate by the time the appeal process becomes available, and a perception that SROs are not genuinely independent and are paid to side with the employer. Having their appeal decided by a non-Indigenous SRO also affected the credibility of the process for some Indigenous appellants.

Some people told us they were worried that using the appeal process would lead to bias against them and hurt their chances for future opportunities. One survey participant believed it had ruined their career. This is very concerning as actual or perceived risk of retaliation for using the appeal process directly undermines candidates' right to be heard. Members of the public should be able to feel they can safely access any review or appeal process, especially one provided for by law, without fear of reprisal. Finance has not taken any steps to address the issue of potential retaliation, and there is no process to make a complaint of retaliation.

Summary of Analysis

The appeal process is hard for some people to use. Identifying and setting out grounds of appeal can be especially difficult, especially without access to confidential documents related to the competition, and without a source of independent help and advice.

A few procedural fairness issues arose with the appeal process itself. First, while the legislation only requires a hearing after a first stage review confirms that criteria for the appeal to proceed are met, some people saw the lack of opportunity to speak with the SRO as unfair. Some SROs do contact some or all appellants even if the criteria for a hearing are not met. Second, Finance does not forward some appeals to an SRO. Although there is no evidence that Finance does this for any reason other than administrative efficiency, the practice is not consistent with section 4.1 and section 5 of the Regulations. Finally, Finance may not be giving appellants clear information about the possibility of applying for judicial review of SRO decisions.

Finance has advised SROs not to include information in their decisions about the affirmative action priority status of the successful candidate, for privacy reasons, and the candidate's scores on interviews and assignments. In both cases, SROs feel this information would be helpful to appellants. SROs are public bodies in their own right under ATIPPA, and are therefore independently responsible for interpreting and applying privacy legislation to their work. Decisions are generally well-written and meet legislative requirements, however the format could be adjusted to make them clearer and more readable for appellants.

Some SROs felt that the location of recruitment, training, and administrative support for staffing appeals in Finance, which is the same Department responsible for the hiring process, weakened the perception of their independence. Lack of structural independence does undermine procedural fairness, specifically the opportunity to be heard by an impartial decision-maker, even in the absence of actual interference with decisions. SROs also had some specific suggestions to improve the support for their work and effectiveness.

The appeal process has a limited scope of issues it can address and provides limited remedies. Concerns about the hiring process that are outside the grounds for appeal and/or that are not suited to an appeal process include: concerns arising from misconceptions about the hiring process; service and decision fairness issues, including systemic issues; concerns of candidates who do not have appeal rights, and concerns about non-competitive hiring processes. Finance provides information and services such as mock interviews and resumé reviews that can address some of these issues if people use them. Finance does not have a complaints process to address non-procedural concerns about individual competitions. Some issues, particularly systemic issues,

might be best addressed through better communication and reporting and policy changes.

Finance prepares internal reports on appeals and follows up on procedural errors identified in appeal decisions. Finance does not track or report on non-procedural issues raised in appeals.

Some survey respondents expressed overall distrust in the appeal process. This is consistent with comments our Office has heard from past complainants. Reasons for distrust include doubting the independence of the SROs, not having a chance to speak to the SRO deciding their appeal, lack of specific information in their decision, and having their appeal decided by a non-Indigenous SRO. Some people told us they were fearful of retaliation for using the appeal process, which is especially concerning. There is no process to make a complaint of retaliation.

Opinion of the Ombud

In my opinion,

- the failure to provide an accessible appeal process, and specifically the difficulty of preparing the contents for an appeal combined with the lack of availability of independent advice and assistance and lack of entitlement to an oral hearing with the SRO, is unjust within the meaning of subparagraph 33(1)(a)(ii) of the *Ombud Act*;
- Finance's practice of not forwarding some appeals to an SRO, however well-intended, is contrary to law within the meaning of subparagraph 33(1)(a)(i) of the *Ombud Act*;
- the failure to consistently and clearly advise appellants that while there is no further appeal of SRO decisions, it is still possible to apply for judicial review is wrong within the meaning of subparagraph 33(1)(a)(vi) of the *Ombud Act*;
- the advice from Finance to SROs to withhold certain information in their decisions is wrong within the meaning of subparagraph 33(1)(a)(vi) of the *Ombud Act*;
- the failure to ensure the structural independence of the SROs is wrong within the meaning of subparagraph 33(1)(a)(vi) of the *Ombud Act*;
- the lack of a complaint process for addressing fairness concerns raised in individual competitions that are outside the scope of the appeal process is wrong within the meaning of subparagraph 33(1)(a)(vi) of the *Ombud Act*;
- the failure to track and act on information from appeals other than procedural errors is unreasonable within the meaning of subparagraph 33(1)(a)(ii) of the *Ombud Act*;
- the failure to take steps to protect appellants from retaliation for making an appeal or to provide a process for appellants to raise allegations of retaliation is unjust within the meaning of subparagraph 33(1)(a)(ii) of the *Ombud Act*.

In my opinion, the decision formats used by the SROs are not unfair within the meaning set out in paragraph 33(1)(a) of the *Ombud Act*. However, as commented in this report, they could be revised to make them more accessible and readable for appellants, and I encourage the SROs to consider changes to that effect.

Although it is in my opinion wrong for Finance to advise or direct SROs not to disclose candidates' affirmative action priority status in staffing appeals decisions, it would nonetheless be advisable for SROs to carefully consider the privacy provisions of ATIPPA and to consult with the Information and Privacy Commissioner on their application.

Finally, in my opinion, it is not unfair within the meaning set out in paragraph 33(1)(a) of the *Ombud Act* for SROs to decide appeals without speaking to appellants where not

required by the Regulations. However, in light of comments from SROs who do find it helpful to speak with most or all appellants regardless of whether their appeal meets the criteria for a hearing, I encourage SROs who do not already follow this practice to consider doing so unless and until changes are made to provide for independent advice and assistance to appellants.

Recommendations

Recommendations to Finance:

It is recommended that Finance immediately:

1. Begin forwarding all appeals, including those it deems ineligible for consideration, to an SRO.
2. Cease advising SROs not to include appellants' marks in their decisions and leave this to the discretion of individual SROs.
3. Cease advising or directing SROs not to include the affirmative action status of successful candidates in their decisions and leave the responsibility for interpreting and applying the privacy provisions of ATIPPA to individual SROs.
4. Cease advising SROs not to include non-procedural issues in their decisions, and revise subsection 109(37) of the *Human Resources Manual* accordingly.

It is recommended that by June 30 2024, Finance:

5. Make available resources for SROs to hold at least one in person meeting annually, with the meeting agenda, date, and location to be decided by the SROs
6. Develop and make available to appellants a plain language statement advising that while there is no appeal of an SRO's decision, it is still possible for an appellant or for Finance to apply to the court to request a judicial review of the decision.
7. Develop and implement a process for tracking and following up on non-procedural issues identified in appeal decisions to support continuous improvements to the hiring process.

It is recommended that by June 30, 2025, Finance:

8. Develop and implement measures to protect appellants from retaliation, including a communications plan, a process for appellants to make complaints of retaliation, and consideration of amendments to the Regulations.

9. Develop a plan and specific measures to improve accessibility of the appeal process, including:
 - making available a source of independent advice and assistance to appellants; and
 - consideration of changes to the Regulations to expand the circumstances in which SROs must grant a hearing to the appellant.

10. Develop a plan and measures to ensure the structural independence of SROs, including consideration of moving administrative support for the appeal process and recruitment and orientation of SROs outside of Finance;

11. Implement one or more processes to address concerns about hiring that do not currently fit within the scope of appeals, including:
 - an internal complaints process to track and address at minimum service fairness concerns (see Appendix A for guidelines on fair complaints processes);
 - one or more means of considering decision fairness issues and concerns raised by persons without appeal rights;
 - a process for identifying and acting on systemic issues.

12. Consider changes to accountability and transparency requirements for decisions such as cancelling competitions, transfer assignments and eligibility lists to support public confidence in the fairness of those decisions.

13. Provide a report to the Ombud on progress made implementing the recommendations.

Appendix A

Complaint Handling Best Practices¹⁸

Good complaint handling systems are efficient, accountable, and responsive, and benefit both the public and authorities. What the public wants is a user-friendly complaint system that allows them to be heard and understood, to be respected, and to get explanations, apologies, and/or action as soon as possible. Authorities benefit by resolving conflicts in a timely and efficient way, getting information that helps them make their services better, and improving their reputation and client relationships.

A good complaint handling system can:

- fix problems before they get worse or are escalated;
- provide better outcomes for clients who make complaints;
- help authorities understand their clients;
- improve relationships and interactions between clients and staff;
- increase both client and staff satisfaction;
- provide information to help authorities improve their services;
- inform decisions about future services and programs; and
- enhance accountability and transparency and strengthen public trust in the authority.

Effective complaint systems incorporate the principles of fairness, accessibility, responsiveness and efficiency. Effective complaint processes are user-centred, set out in writing, clearly explained, well-publicized, and easy to understand and use. They provide for:

- prompt acknowledgement of complaints;
- keeping the person making the complaint informed of progress;
- quick resolution of complaints by frontline staff wherever possible;
- a way of determining the facts and identifying options for resolving complaints that do not get addressed through a quick resolution process;
- a clear and informative response to the person making the complaint, including information about other internal or external review options if the person is still not satisfied;
- a remedy, if a complaint is upheld; and
- consideration of whether the complaint raises any systemic issues that need the authority's attention.¹⁹


¹⁸ This content was previously included in the special report 02-22 *An Ounce of Prevention: Fairness in the Income Assistance Program*.


¹⁹ The information on this page is adapted from: Commonwealth Ombudsman (Australia). *Better Practice Guide to Complaint Handling* (2009) and (2021) editions <https://www.ombudsman.gov.au/publications/better-practice-guides/Better-practice-complaint-handling-guide>; and Ombudsman Western Australia. *Guidelines on Complaint Handling* (2020)

Appendix B

Staffing Appeals Survey

The Office of the Ombud invited members of the public to complete a survey on their experiences with the staffing appeals process. The survey, which was open from October 23, 2023 to November 17, 2023 was advertised through a media release and Facebook advertisement. People were able to participate either by sending their comments in writing, or by answering the survey questions over the phone with one of the Office staff.

**NWT Ombud - Protecteur du citoyen TN-O**...

· October 23, 2023 · 

*Have your say * ᐃᓯᓯᓯᓯᓯᓯᓯᓯ ᐱᓯᓯᓯᓯᓯᓯᓯᓯ * T'asósi' Yidhën Dé Háini ** Jidii tthak gaginohkhii guk'agqhdaii * îya ekwa pikiskwe * Faites entendre votre voix * Ahsáa duhsí enedhe énidé káa dúlé ahsáa dı̄ndı̄ * Uqaqlutin *

The Ombud is investigating the fairness of the GNWT's Staffing Appeal Process. As part of the investigation, we are asking people who have used the staffing appeal process about their experience.

You can participate from now until November 17 by filling out our survey form at www.nwtombud.ca or by calling us at 1-844-686-6283 (874-6623 in Hay River).

La protectrice du citoyen des Territoires du Nord-Ouest, Colette Langlois, enquête sur l'équité du processus d'appel des nominations de personnel du GTNO. Dans le cadre de cette enquête systémique, la protectrice du citoyen demande aux membres du public de lui faire part de leurs expériences concernant le processus d'appel des nominations de personnel du GTNO.

Il est possible de participer par téléphone en appelant le 1-844-686-6283 et en parlant avec un membre de l'équipe de la protectrice du citoyen, ou en remplissant le sondage sur le processus d'appel des nominations de personnel sur notre site Web d'ici le 17 novembre.

7. If you didn't agree with the appeal decision, did you do anything further about it? What?

8. How easy or difficult was it to find out how to make an appeal?

9. How easy or difficult was it to follow the appeal process (gather information, send it to the right place, etc.)? Did you get help from anyone else to make your appeal? If yes who (e.g., family member, friend, supervisor, professional)?

10. How easy or difficult was it to understand your appeal decision?

11. Were there any issues you raised that you were told the investigator/appeal process could not deal with? If yes, what were they?

12. What specific concerns, if any, do you have to with your staffing appeal? This could include areas such as:

- The process you had to follow to make an appeal
- Communication with you about the appeal process by HR staff
- Communication with you about the appeal process by the Staffing Review Officer
- How the Staffing Review Officer gathered information
- How you were treated by HR staff and/or the Staffing Review Officer
- Which issues were covered by the appeal
- The Staffing Review Officer's decision
- Anything else to do with your staffing appeal

13. What if anything do you think is working well with the appeals process now?

14. What if anything do you think needs to change with the appeals process?

15. Is there anything else you would like to tell us about your experience with the appeals process?

16. Are you willing to give us, your name, home community, and an email or phone number in case we have any follow-up questions for you?

17. Do you give us permission to include a quote from your words in this survey in our report?

- YES NO

*** Thank you * Merci * Mársı * Kinanāskomitin * Hai' * Quana *
Qujannamiik, Nakurmiik * Quyanainni * Máhsı * Mahsi ***



Appendix C

May 22, 2024

Ms. Colette Langlois
Northwest Territories Ombud
#5-6 COURTOREILLE STREET
PO BOX 4297
HAY RIVER NWT X0E 1G5

Via E-mail: admin@nwtombud.ca

Dear Ms. Langlois:

RE: Draft Report – File OM-04-23 Staffing Appeals

Thank you for your report and the agency's own-motion investigation into the Government of the Northwest Territories' (GNWT) Staffing Appeal Process.

I appreciate the time you have taken in your report to clearly delineate between issues with the Staffing Appeal Process and concerns that are outside of the appeals process, but do not have a proper forum to be heard or responded to. Your report highlights more needs to be done to close the gap in available remedies between appeals and complaints outside of the appeals parameters to ensure people are heard and their concerns are addressed.

A response to the recommendations contained in the Ombud's report follows:

1. Begin forwarding all appeals, including those it deems ineligible for consideration, to an SRO.

The Department of Finance will explore and introduce an approach that allows for review by a Staffing Review Officer of all submissions by persons who meet the eligibility criteria to appeal as per section 2(2) of the *Staffing Appeal Regulations* to ensure that all eligible appeals are reviewed by a Staffing Review Officer.

2. Cease advising SROs not to include appellants' marks in their decisions and leave this to the discretion of individual SROs.

The Department of Finance will cease advising Staffing Review Officers to omit appellant marks from Staffing Review Officer decisions, thereby leaving it to the discretion of individual Staffing Review Officers whether to include that information. The Department of Finance will proactively communicate to Staffing Review Officers that this practice has been rescinded, and that they are now able to include in their decisions any information allowable within the legislation and regulations that they determine is necessary or would aid the appellant in ensuring they were heard.

.../2

3. Cease advising or directing SROs not to include the affirmative action status of successful candidates in their decisions and leave the responsibility for interpreting and applying the privacy provisions of ATIPPA to individual SROs.

The Department of Finance will develop materials to support Staffing Review Officers in interpreting and applying the privacy provisions of *ATIPPA* and other applicable legislation.

4. Cease advising SROs not to include non-procedural issues in their decisions, and revise subsection 109(37) of the *Human Resources Manual* accordingly.

The Department of Finance will no longer advise SROs to omit non-procedural issues from their decisions.

Section 109(37) of the regulations sets out: If the Staffing Review Officer identifies any issue(s) during the review of the appeal package that did not adversely affect the appellant but that needs to be addressed to improve the staffing or appeals process, the Staffing Review Officer will advise the Director, Strategic Human Resources in writing.

The Department of Finance welcomes changes, including supporting SROs to include non-procedural information in their decisions, however, the department does not consider removing the conditions set out in Section 109(37) to be a support to appellants or to others affected by staffing.

5. Make available resources for SROs to hold at least one in-person meeting annually.

The Department of Finance will commit to hold one annual meeting annually for SROs and will endeavour to have these in person when possible.

6. Develop and make available to appellants a plain language statement advising that while there is no appeal of an SRO's decision, it is still possible for an appellant or for Finance to apply to the court to request a judicial review of the decision.

The Department of Finance has updated the Staffing Appeals website and Staffing Appeals Information Guide to include a plain language statement advising appellants of the judicial review process and how to proceed with application for judicial review.

7. Develop and implement a process for tracking and following up on non-procedural issues identified in appeal decisions to support continuous improvements to the hiring process.

The Department of Finance will develop and implement an approach for identifying, tracking, and addressing non-procedural issues related to staffing. This will include providing to applicants information about the supports and options available to them, both at the time of application and in the event that they are unsuccessful in a competition. Through this process, the GNWT intends to reduce the instances that cause applicants concern and respond swiftly to those concerns that arise.

8. Develop and implement measures to protect appellants from retaliation, including a communications plan, a process for appellants to make complaints of retaliation and consideration of amendments to the Regulations.

The Department of Finance will develop and implement measures to protect appellants from the potential for retaliation, including regular review of staffing processes and spot inspections to ensure that staffing process are managed accordingly.

9. Develop a plan and specific measures to improve accessibility of the appeal process, including:

- **making available a source of independent advice and assistance to appellants; and**
- **consideration of changes to the Regulations to expand the circumstances in which SROs must grant a hearing to the appellant.**

The Department of Finance will provide applicants with information about the supports and options available to them, both at the time of application and in the event that they are unsuccessful in a competition. Through this process, the GNWT intends to reduce the instances that cause applicants concern and respond quickly to concerns that arise.

The Department of Finance will conduct a review of the staffing appeal process, including a cross-jurisdictional review, to determine if there are changes needed to the Regulations to expand the circumstances in which SROs must grant a hearing to the appellant.

10. Develop a plan and measures to ensure the structural independence of SROs, including consideration of moving administrative support for the appeal process and recruitment and orientation of SROs outside of Finance.

The Department of Finance will conduct a review of the staffing appeal process, including a cross-jurisdictional review, to ensure that our process reflects best practices, and our standards support potential applicants properly. This will include reviewing and revising Staffing Review Officer support materials to ensure they are given all they need to be successful and feel confident in their independence and the importance of their role.

11. Implement one or more processes to address concerns about hiring that do not currently fit within the scope of appeals, including:

- an internal complaints process to track and address at minimum service fairness concerns (see Appendix A for guidelines on fair complaints);
- one or more means of considering decision fairness issues and concerns raised by persons without appeal rights; and,
- a process for identifying and acting on systemic issues.

The Department of Finance will review and implement processes to address concerns regarding hiring that do not currently fit within the scope of appeals as noted above.

12. Consider changes to accountability and transparency requirements for decisions such as cancelling competitions, transfer assignments and eligibility lists to support public confidence in the fairness of those decisions.

The Department of Finance will review measures to ensure that competitions are managed appropriately.

13. Provide a report to the Ombud on progress made implementing the recommendations.

The Department of Finance commits to reporting to the Ombud on the progress made implementing the recommendations.

Sincerely,



William MacKay
Deputy Minister of Finance

c. Tara Hunter, Deputy Secretary Human Resources, Finance