

PUBLIC SERVICE ACT

CONSOLIDATION OF STAFFING REVIEW AND APPEALS REGULATIONS

R-023-2013

In force September 20, 2013

(Current to: October 27, 2013)

AS AMENDED BY:

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of regulations can be ascertained from the *Revised Regulations of the Northwest Territories, 1990* and the monthly publication of Part II of the *Northwest Territories Gazette* (for regulations made before April 1, 1999) and Part II of the *Nunavut Gazette* (for regulations made on or after April 1, 1999).

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

c.	means "chapter".
CIF	means "comes into force".
NIF	means "not in force".
s.	means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
Sch.	means "schedule".

Citation of Acts

R.S.N.W.T. 1988,c.D-22	means Chapter D-22 of the <i>Revised Statutes of the Northwest Territories, 1988</i> .
R.S.N.W.T. 1988,c.10(Supp.)	means Chapter 10 of the Supplement to the <i>Revised Statutes of the Northwest Territories, 1988</i> . (Note: The Supplement is in three volumes.)
S.N.W.T. 1996,c.26	means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
S.Nu. 2002,c.14	means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

Citation of Regulations and other Statutory Instruments

R.R.N.W.T. 1990,c.A-1	means Chapter A-1 of the <i>Revised Regulations of the Northwest Territories, 1990</i> .
R-005-98	means the regulation registered as R-005-98 in 1998. (Note: This is a Northwest Territories regulation if it is made before April 1, 1999, and a Nunavut regulation if it is made on or after April 1, 1999 and before January 1, 2000.)
R-012-2003	means the regulation registered as R-012-2003 in 2003. (Note: This is a Nunavut regulation made on or after January 1, 2000.)
SI-005-98	means the instrument registered as SI-005-98 in 1998. (Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.)
SI-012-2003	means the instrument registered as SI-012-2003 in 2003. (Note: This is a Nunavut statutory instrument made on or after January 1, 2000.)

STAFFING REVIEW AND APPEALS REGULATIONS**1.** (1) In these regulations,

"Act" means the *Public Service Act*; (*Loi*)

"applicant" means a person who makes an application under subsection 4(1) or 7(1); (*demandeur*)

"application" means an application made under section 4 or 7; (*demande*)

"Committee" means a Staffing Appeals Committee established by subsection 2(1) or 3(1); (*comité*)

"Deputy Minister" means the Deputy Minister responsible for the administration of the Act; (*sous-ministre*)

"hearing" means a hearing referred to in section 8; (*audition*)

"lay-off" means an employee or a former employee who has been laid off under section 21 of the Act, and who, as a result of being laid off, has priority hiring status under the terms of a collective agreement or a priority hiring policy, and includes a surplus employee; (*personne mise en disponibilité*)

"surplus employee" means an employee who has received a written notice from the deputy head of the department or the portion of the public service in which the employee is employed advising that

- (a) the duties of the position held by the employee will no longer be required to be performed, and
- (b) the employee will be laid off unless he or she is appointed to another position in the public service within the period specified in the notice; (*fonctionnaire surnuméraire*)

(2) Where the time for doing a thing is limited under these regulations, that time is calculated by excluding Saturdays, Sundays and the days that are holidays for the public service under section 27 of the Act.

2. (1) Where an application is submitted under section 7 or with respect to a competition for a position included in a bargaining unit established under paragraph 55(5)(a) or (b) of the Act, a Staffing Appeals Committee for a Unionized Position shall be formed, composed of

- (a) the Deputy Minister, or his or her delegate;
- (b) the President of the Nunavut Employees Union, or his or her delegate; and
- (c) with respect to each application, one other person that the persons referred to in paragraphs (a) and (b) agree on.

(2) The person referred to in paragraph (1)(c) shall be the chairperson of the Committee.

3. (1) Where an application is submitted with respect to a competition for a position not included in a bargaining unit as defined in subsection 55(1) of the Act, a Staffing Appeals Committee for a Non-Unionized Position shall be formed, composed of

- (a) the Deputy Minister, or his or her delegate; and
- (b) two persons selected by the Deputy Minister from a list of qualified persons maintained by the Minister.

(2) One of the persons referred to in paragraph (1)(b) shall be the chairperson of the Committee.

Appeal of Appointment or Composition of an Eligibility List

4. (1) Subject to section 5, where, after competition, an appointment has been made to a position in the public service, the following persons may appeal the appointment or the composition of an eligibility list:

- (a) an employee who is an unsuccessful candidate;
- (b) a person who is an unsuccessful candidate and who
 - (i) is eligible for priority consideration under the Priority Hiring Policy, and
 - (ii) has identified that eligibility prior to the day on which the appointment is made.

(2) A person referred to in subsection (1) may appeal the appointment or the composition of an eligibility list by sending an application in writing to the Deputy Minister.

(3) An application under subsection (2) must be received by the Deputy Minister within four days after receipt of notice, given in accordance with section 6, of the appointment.

5. (1) No person is entitled to make an application under subsection 4(1) where the appointment

- (a) is a classification or reclassification of an existing position;
- (b) is being made for reasons of the health of the appointee and the appointment is not a promotion;
- (c) is an appointment from an eligibility list under section 11 of the Act;
- (d) is an appointment without competition under section 12 of the Act;
- (e) is an appointment of a person to an internship position, or to a position on completion of an internship position under section 13 of the Act or on completion of another government training program;
- (f) is a demotion made under paragraph 22(1)(c) of the Act;
- (g) is an appointment of an employee returning from leave under subsection 29(2) of the Act; or
- (h) is to a position as a teacher as defined in subsection 55(1) of the Act.

(2) No person, except a lay-off, is entitled to appeal an appointment under subsection 4(1) where the appointment is an appointment of a lay-off.

6. (1) The notice referred to in subsection 4(3) may be given to an applicant in person, by telephone or in writing by an employee authorized by the Minister.

(2) Where the notice referred to in subsection 4(3) is given in person or by telephone, the notice is, for the purposes of that subsection, received on the day it is given.

(3) Where the notice referred to in subsection 4(3) is given in writing sent by email, the notice is, for the purposes of that subsection, deemed to have been received six days after the day the notice was sent to the applicant.

(4) Where the notice referred to in subsection 4(3) is given in writing sent by ordinary mail, the notice is, for the purposes of that subsection, deemed to have been received ten days after the day the notice was sent to the applicant.

Review of Offer of Employment

7. (1) Where an offer of employment in respect of a position in the public service for an indeterminate period has been made to a surplus employee who is a member of the bargaining unit described in paragraph 55(5)(a) of the Act, the employee may apply to a Committee established under section 2 for a review by the Committee to determine whether or not the offer is reasonable by sending an application in writing to the Deputy Minister.

(2) An application for a review under subsection (1) must be received by the Deputy Minister within four days after the day the offer of employment is received by the employee.

Hearing

8. (1) A Committee shall hold a hearing within two days after the day the Deputy Minister receives an application sent under subsection 4(2) or 7(1) or within such further time as may be agreed to by the persons referred to in paragraphs 2(1)(a) and (b) or 3(1)(a) and (b), as applicable.

(2) On the completion of a hearing, the Committee shall,

- (a) where the application was made under section 4, grant or deny the appeal;
or
- (b) where the application was made under section 7, determine, in accordance with subsection (7), whether or not the offer of employment is reasonable.

(3) Where an appeal is granted under paragraph (2)(a), the Committee shall decide which of the following actions be taken:

- (a) revoke the appointment and direct that a new competition be held on the basis of the original job description, advertisement, screening criteria and any applicable test requirements;

- (b) revoke the appointment and direct that a new competition be held following the review and revision of the original job description, advertisement, screening criteria or any applicable test requirements;
- (c) revoke the appointment and direct that the competition process be recommenced from the step where an irregularity in the process occurred;
- (d) revoke the appointment, direct that the appointee and the applicant be re-interviewed, using different interview questions, and order that no further appeals may be made by the applicant;
- (e) confirm the appointment and direct that the applicant and, if necessary, persons placed on an eligibility list following the competition be re-evaluated in order to review the exclusion of the applicant from an eligibility list that was created following the competition or the rank of the applicant on that eligibility list;
- (f) direct that a competition, interview or re-evaluation held or recommenced pursuant to paragraphs (a) to (e) be conducted by a staffing officer and screening panel that did not participate in the original competition;
- (g) confirm the appointment and, if applicable, the composition of an eligibility list despite an irregularity in the competition process or documents if the Committee is satisfied that the irregularity did not prejudice the applicant.

(4) A decision made under subsection (3) does not limit the discretion of the Minister to cancel a competition that the Committee directs be held or recommenced.

(5) If a competition is cancelled after the Committee has made a decision under paragraph (3)(b) and a new competition is subsequently held for the same or an identical position, the review and revision directed by the Committee must be completed prior to holding the new competition.

(6) Nothing in paragraph (3)(e) compels the creation of an eligibility list following a competition.

(7) An offer of employment is reasonable where it is an offer to appoint the employee to a position in the public service for an indeterminate period for which he or she is qualified and where it is fair to the employee, taking into account the location, responsibilities and salary in respect of the position as compared to the location, responsibilities and salary in respect of the position held by the employee.

9. (1) A Committee shall give the applicant or his or her representative an opportunity to be heard.

(2) Subject to subsection (1), a Committee shall conduct a hearing in accordance with directives issued by the Minister.

10. A Committee shall forward its decision to the Minister.

11. The Deputy Minister shall inform the applicant of the decision of the Committee.

12. (1) No employee shall lose pay for time spent making an application or attending the hearing.

(2) An employee who is required to attend a hearing by a Committee shall be considered to be travelling on government business and shall be reimbursed for any reasonable travel, living and meal expenses incurred by him or her in accordance with directives under the *Financial Administration Act*.

(3) A Committee may reimburse, according to the criteria that govern the payment of travel, living and meal expenses to employees, an applicant for reasonable travel, living and meal expenses incurred as a result of a hearing where

- (a) the applicant is not an employee;
- (b) the applicant is required to attend the hearing; and
- (c) the applicant's appeal is granted.

(4) A Committee may reimburse, according to the criteria that govern the payment of travel, living and meal expenses to employees, the representative of an applicant for reasonable travel, living and meal expenses incurred as a result of a hearing where

- (a) the applicant is not an employee;
- (b) the applicant is required to attend the hearing and sends the representative in his or her place; and
- (c) the applicant's appeal is granted.

Repeal

13. The *Staffing Review and Appeals Regulations, R.R.N.W.T. 1990, c.P-29*, as duplicated for Nunavut by section 29 of the *Nunavut Act (Canada)*, are repealed.