

# BOARDS OF INQUIRY

## 10.0 BOARD OF INQUIRY APPOINTMENT AND NOMINATION PROCESSES

### 10.1 APPOINTMENT TO BOARDS OF INQUIRY ROSTER

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#### 10.1.1 Preamble

The Nova Scotia *Human Rights Act* (Act) provides that Nova Scotia Human Rights Commission (the Commission) may, at any stage after the filing of a complaint, appoint a board of inquiry to inquire into the complaint (s. 32A). The Board of Inquiry Regulations (N.S. Reg. 221/91) (Regulations) made under s. 42 of the Act outline the process to be followed in the appointment of a board of inquiry.

The Board of Inquiry is an independent administrative tribunal and has full jurisdiction to hear, determine and deal with all complaints of discrimination referred by the Commissioners. Section 34 (1) of the Act states that a board of inquiry shall conduct a public hearing and has all the powers and privileges of a commissioner under the *Public Inquiries Act*.

In practice, the Commission maintains a roster of a maximum of twelve (12) potential panel members (the Roster). It is from this Roster that the Chief Judge of the Provincial Court nominates person or persons for appointment to a Human Rights Board of Inquiry in any given case (Panel).

Although the Department of Justice provides budget funding, the government may not direct or influence a Panel in their decision-making or otherwise interfere with their independence through administrative and budgetary matters that touch on decision-making.

Roster Members must maintain high standards of conduct and act to promote and preserve the integrity and responsible of the board of inquiry.

Roster Members are directed in this task by the principles and criteria contained in the legislation and this policy.

### **10.1.2 Policy Objective**

This policy is intended to provide a framework for the appointment of individuals to the Roster by the Commission.

### **10.1.3 Term of Appointment to the Roster**

Successful applicants may be appointed to the Roster for a maximum of five (5) years upon which time applicants will be eligible to reapply.

The timing and frequency of recruiting new Roster Members will support an appropriate resource level as well as an ongoing pool of qualified applicants while ensuring an appropriately broad and representative Roster.

A Roster Member whose appointment expires may conclude any inquiry that the Roster Member has commenced, and their term of appointment shall be deemed extended until the conclusion of such an inquiry, including the rendering of the decision.

### **10.1.4. Standards for Appointment**

#### **10.1.4.1 Guidelines for Professional Conduct**

Roster Members are expected, in the discharge of their official duties and at all times, to conduct themselves in a manner that promotes respect for the law and public confidence in the fairness, impartiality and professionalism of the board of inquiry. Every Roster Member must act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the board of inquiry are preserved and enhanced. In making their decisions, Panel Members are required by law to be independent and impartial.

Roster Members are subject to Guidelines for Professional Conduct in the performance of their role, as outlined in Schedule A.

#### **10.1.4.2 Employment Equity**

The Commission supports the provincial government Employment Equity Policy which is committed to creating a workforce which is representative of the diverse public it serves. To ensure an environment which is supportive of their equitable participation, applications are encouraged from L'nu/Indigenous persons, persons with disabilities, women, African Nova Scotians and other racially visible people. Applicants are invited to self-identify their membership in one of those groups on the application form or in their cover letter.

#### **10.1.4.3 Regional Representation**

The Commission strives to have regional representation on the Roster. Therefore, of the twelve (12) potential panel members, at least three (3) will be from outside the Halifax Regional Municipality.

#### **10.1.4.5 Fees**

The Governor in Council has approved the following fee structure:

- 1) A per diem rate of \$500.00 (\$250.00 per half-day). The per diem rate is for the actual hearing time, preparation work and time for writing the decision itself. The per diem rate is based on a five-hour full day. Additional hours of sitting in the same day may be billed at an additional rate of \$100.00 and pro-rated for part thereof per hour;
- 2) Reasonable and necessary expenses incurred in the discharge of duties; and
- 3) Where a complaint is settled with less than two (2) working days' notice to the Chair, a one-half to one day cancellation fee at the per diem rate may be billed.

#### **10.1.5 Selection Process**

##### **10.1.5.1 Selection Committee**

The purpose of the selection committee will be to screen, interview and recommend a list of qualified individuals for the Roster.

The CEO's office will appoint a diverse selection committee comprised of a maximum of six (6) members. All members will be external to the Commission and will have an understanding of human rights principles and have the ability to represent the public interest.

One member will be selected as an ex officio representative to act as its chairperson.

The selection committee must incorporate the following characteristics:

- at least one (1) member who is a lawyer;
- at least two (2) members from the employment equity groups (refer to section 10.1.4.2);
- at least one (1) member with experience in social justice issues including systemic discrimination;
- at least two (2) members with knowledge and understanding of human rights law; and
- one member shall be the Chief Judge of the Provincial Court

All selection committee members will be required to affirm their impartiality in all aspects of the selection process.

#### **10.1.5.2 Selection Criteria**

##### ***Minimum Qualifications***

Selection will be based on objective criteria and competency standards that include an assessment of the applicants' ability to understand the adjudicative role and responsibilities, and the basic knowledge and skills necessary to conduct fair hearings.

Applicants must have the following minimum qualifications before their application will be given further consideration:

- a. A law degree;
- b. Be a member in good standing with NS Barrister's Society;
- c. At least five (5) years of experience in the legal profession;
- d. Demonstrated experience in weighing conflicting information/evidence to arrive at a fair decision;

- e. Demonstrated experience in chairing hearings, meetings, or consultations where there are conflicting interests;
- f. Experience with human rights legislation and/or human rights issues;
- g. High degree of cultural competency demonstrated by personal and/or professional experience such as working in and with equity-deserving communities;
- h. Competency and experience employing trauma-informed approaches in legal processes and/or in other contexts;
- i. Experience with human rights legislation and/or human rights issues; and
- j. Resident of Nova Scotia, subject to the discretion of the Selection Committee to appoint to the Roster an individual(s) living within a reasonable travel radius of Nova Scotia, i.e., in Prince Edward Island and New Brunswick.

### ***Desirable Qualifications***

From among the applicants who meet the minimum qualifications listed above, preference for appointment to the Roster will be given to those who have:

- Ability to write clear, well-reasoned decisions based on the law and evidentiary procedures in a timely manner.
- Experience with administrative or quasi-judicial tribunals.
- Experience applying principles of natural justice and procedural fairness.
- Experience with conflict resolution such as mediation or other forms of alternative dispute resolution.
- Knowledge of discrimination including systemic discrimination and its effects on individuals, communities and society.
- Familiarity with approaches to preventing and remedying discrimination.
- Commitment to restorative approaches to dispute resolution.
- Experience with social justice issues.

### 10.1.5.3 Constraints

The Act provides that “no member, officer or employee of the Commission, and no individual who has acted as an investigator in respect of the complaint in relation to which the board of inquiry is appointed, is eligible to be appointed to the board of inquiry” (s. 32A(3)).

Furthermore, while the Selection Committee may refuse applications on any grounds that it considers would be in the best interests of the administration of justice under the Act to do so, circumstances where the Selection Committee will not consider applications include, without limitation:

- The applicant has a criminal conviction that has not been pardoned.
- The applicant has been found to have breached human rights legislation (either by a Court, board of inquiry or similar body).
- The applicant has been appointed to the Bench and is currently (or has been within the past two (2) years) a sitting member.
- The applicant is currently elected or appointed to public office (municipal councils, the provincial legislature, the House of Commons or the Senate of Canada).
- The applicant is currently or has recently (within the past two (2) years) been employed as a staff person by or been a Commissioner of the Commission.
- The applicant is currently or has recently (within the past two (2) years) been employed by the Provincial Government.
- The applicant has been suspended or disbarred by the Nova Scotia Barristers’ Society.
- The applicant is a non-resident (subject to the exception mentioned 10.1.5.2(f) of this policy).
- The applicant is a complainant or respondent in an ongoing matter before the Commission.

#### **10.1.5.4 Stages of the Selection Process**

##### ***Preparing the Application Package***

The CEO's office will develop an application package which will include a covering letter, the board of inquiry policy which includes the Application Form, Guidelines for Professional Conduct, and a copy of the Act.

##### ***Advertising***

The CEO's office will widely distribute knowledge of the application package for a reasonable period of time. The advertisement will request that interested applicants obtain an application package from the Commission website.

Applicants will be asked to submit to the attention of the Selection Committee Chair the following:

1. covering letter outlining why they have an interest in serving;
2. completed Application Form as presented in Schedule B;
3. copy of their Curriculum Vitae; and
4. names of at least two (2) references.

The advertisement will include language pursuant to the goals of employment equity and also reference protected characteristics enumerated in the Act.

##### ***Preliminary Screening***

The Selection Committee will meet and review each applicant's application form and Curriculum Vitae. Based on the minimum and desirable criteria described above, the Selection Committee will reach a consensus on suitability of each applicant for further consideration. The applicants will be informed in writing of whether or not they have been successful in the initial review process.

The following provides a break down of the values that will be assigned to the selection criteria. A minimum score of 65/100 will be necessary to proceed to the interview stage.

<b>Criteria</b>	<b>Value</b>
Ability to write clear, well-reasoned decisions based on the law and evidentiary procedures in a timely manner	20
Experience with administrative or quasi-judicial tribunals	20
Experience applying principles of natural justice	10
Experience with conflict resolution such as mediation or other forms of alternative dispute resolution	20
Knowledge of the social, economic and systemic impacts of discrimination and appropriate remedies	20
Experience with social justice issues	10
<b>Total</b>	<b>100</b>

### ***Interviews***

The Selection Committee will invite successful applicants to participate in interviews by a three-member panel including the Chair of the Committee (or designate) and two (2) other members.

The interviewers will follow an interview guide that includes situational questions aimed at assessing behavioural responses.

To be considered for appointment, candidates must achieve a total minimum score of 65/100.

### ***Reference/Validation Checks***

Reference checks will be conducted on each applicant that is being considered for appointment.



Each candidate will be expected to provide two references who can speak to their professional background and ability to perform the adjudicative responsibilities of a potential panel member as well as their personal suitability in fulfilling the duties in accordance with the Guidelines for Professional Conduct.

In some situations, further validation may be required.

### ***Representativeness***

In keeping with the provincial government's Employment Equity Policy, which seeks to increase the representation of members from the designated groups, preference for appointment may be given to applicants with characteristics described in s. 5(1) of the Act that would enhance the diversity of the Roster. Preference for appointment may also be given to applicants who can conduct hearings in French and/or Mi'kmaq and other languages in order to improve access for French and Mi'kmaq speakers and others. Regional representation will also be taken into consideration.

### ***The Roster***

Based on the results of the interview and reference/validation checks, the Selection Committee will arrive at a recommended list for appointment. The Selection Committee chair (or delegate) will present the recommended list to the Commissioners for their approval. The presentation should outline the process and provide supporting documentation for the recommendations. Following approval by the Commissioners, the Chair of the Commission will notify the successful applicants of their appointment.

### ***Submission to the Chief Judge***

The Roster will be provided to the Chief Judge of the Provincial Court by the CEO's office along with copies of each of the Roster Members' Application Form and Curriculum Vitae.

### ***Orientation Session***

Roster Members will participate in an orientation session organized by the CEO's office.

## **10.2 NOMINATING A PANEL CHAIR**

The Act and Regulations provide that the Commission may, at any stage after the filing of a complaint, request the Chief Judge of the Provincial Court to nominate a person or persons to a maximum of 3, for approval by the Commission to a Human Rights Board of Inquiry to inquire into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry there into is warranted.

### **10.2.1 Nomination Discretion**

It should be emphasized that membership on the Roster does not necessarily mean that an individual will in fact be nominated to a board of inquiry by the Chief Judge of the Provincial Court during that individual's term(s) of appointment to the Roster.

### **10.2.2 Conflict of Interest**

Any person nominated to chair a board of inquiry should disclose to the parties at the earliest opportunity any connection that person has to the Commission or any party to the complaint. That person should allow the parties to make submissions on that connection as a possible conflict of interest and to comment on whether or not that connection should lead the person to withdraw from the inquiry.

Also refer to the Guidelines for Professional Conduct in Schedule A.

### **10.2.3 Appointment of Extra-provincial Chair**

The Commission may request that the Chief Judge of the Provincial Court consider nominating a person from the roster of another Province to chair a board of inquiry in a case that the Chief Judge considers appropriate due to the unique nature of the issue to be adjudicated and the desire to have a board of inquiry chair, in both fact and perception, without a connection to that issue.

## **SCHEDULE A**

### **Guidelines for Professional Conduct**

**SCHEDULE B**

**Board of Inquiry Roster Application**