

Wula na kinu THIS IS WHO WE ARE

Appeals Process

The regulatory document explaining the key elements and procedures for when an application is rejected.

APPEALS PROCESS

PURPOSE

1. The purpose of the Nova Scotia Mi'kmaw Enrollment Appeals Process is to provide a fair opportunity to individuals to have their eligibility for Enrollment as a Mi'kmaw of Nova Scotia reviewed again from the beginning by an impartial decision-maker, after the Enrollment Committee has refused them Enrollment or removed them from the Enrolled List.

DECISIONS SUBJECT TO APPEAL

2. The Appeals Committee has exclusive jurisdiction to hear and decide appeals from decisions of the Enrollment Committee which:
 - a. rejected an Application for Enrollment;
 - b. denied a request for reconsideration;
 - c. rejected a Reapplication for Enrollment; or
 - d. removed an individual from the Enrolled List.

APPEALS COMMITTEE (ROSTER)

3. There is hereby established an Appeals Committee from which each three-member Appeal Panel shall be appointed. The Appeals Committee may be composed of not less than 9 members and not more than 12 members as follows:
 - a. At least six (6) members appointed by the Assembly, at least three (3) of whom shall be Legal Appointees.
 - b. At least three (3) members recommended by the Grand Council, and appointed by the Assembly.
4. Initial appointments to membership on the Appeals Committee will be for staggered terms and afterward will be for three-year terms.
5. At the beginning of each calendar year, the members of the Appeals Committee shall appoint a Chair from among themselves.
6. All members of the Appeals Committee shall swear an Oath of Office before a Justice of the Peace, Notary Public, or a duly appointed Commissioner of Oaths.

7. Members of the Appeals Committee:
 - a. shall not also be members of the Enrollment Committee;
 - b. shall not be a Chief or Councillor;
 - c. shall not be employed by or receive other remuneration of any kind from KMKNO or the Assembly, except the remuneration to which they are entitled as members of the Appeals Committee.
8. In the case of death, incapacity, resignation, or temporary absence of any member of the Appeals Committee, a new member shall be appointed. The Assembly may remove a committee member for conduct that brings the process into disrepute. The Assembly shall then designate a new alternate member to fill any vacancy created on the Appeals Committee.
9. The Appeals Committee may establish terms of reference and rules of procedure for the administration and hearing of appeals not inconsistent with this *Enrollment Appeals Process*, including rules for conducting proceedings, the use of videoconferencing, written submissions, and time limits. Any such rules of procedure shall be available to the public.
10. The Appeals Committee shall meet as frequently as required for the performance of their duties.
11. Quorum for any meetings of the Appeals Committee shall be seven (7) members.

APPEAL PANEL

12. Appeals shall be heard by an Appeal Panel of three (3) members of the Appeals Committee appointed by the Chair of the Appeals Committee, which may be composed of:
 - a. one Legal Appointee, who shall be the Chair of the Appeal Panel;
 - b. one other appointee; and
 - c. one Grand Council appointee.
13. No member of the Appeals Committee shall hear any appeal in which they have a real or apparent conflict of interest.
14. No member of the Appeals Committee shall hear any appeal in which they have a real or apparent conflict of interest.

APPEAL OFFICER

15. The Appeals Committee may hire and direct an Appeal Officer to administer the appeal process as set out in this *Enrollment Appeals Process* and any rules of procedure established by the Appeals Committee.

INITIATING AN APPEAL

16. An appeal must be initiated by the individual who is the subject of the decision under appeal.
- a. Where an appellant is under a legal disability, the appellant's legal guardian or representative may submit a Notice of Appeal on the appellant's behalf.
17. The appellant may initiate an appeal by submitting a completed Notice of Appeal to the Appeal Officer within 30 days of receipt of:
- a. a Letter of Rejection;
- b. a reconsideration decision; or
- c. notice of their removal from the Enrolled List.
18. The Notice of Appeal shall be in the form and in accordance with any requirements prescribed in any rules of procedure established by the Appeals Committee from time to time.
19. The Notice of Appeal shall include:
- a. a copy of the written reasons of the Enrollment Committee for the decision to be appealed;
- b. a summary of the grounds of appeal;
- c. if applicable, a summary or list of any new or additional information or documentary evidence the appellant intends to rely upon, which was not included in the Application;
- d. if applicable, a list of any witnesses the appellant intends to call at the oral hearing of the appeal;
- e. whether the appellant elects to proceed by way of an oral hearing or Appeal in Writing;

- i. where the appellant requests that the appeal proceed as an Appeal in Writing, the appellant shall include, with the Notice of Appeal, copies of any new or additional information or documentary evidence upon which the appellant relies in support of the appeal.
- f. whether the appellant will be represented at any appeal hearing and, if so, the name and contact information for their authorized representative;
- h. if applicable, any accessibility needs for the appellant or any witnesses to be called by the appellant;
- i. whether the appellant is requesting a closed hearing and, if so, a detailed explanation and any supporting documentation justifying that request.

LATE APPEALS

- 20. Notwithstanding s. 17, the Appeals Committee may, in exceptional circumstances, grant an appellant an additional period of not more than 30 days to file a Notice of Appeal.

INCOMPLETE APPEALS

- 21. The Appeal Officer shall verify that the Notice of Appeal is complete. In the event of an incomplete Notice of Appeal, the Appeal Officer shall notify the appellant in writing:
 - a. that their Appeal is incomplete;
 - b. identifying the missing information; and
 - c. requesting that the missing information be submitted to the Appeal Officer within 10 days.
- 22. If a Notice of Appeal remains incomplete after the expiry of the time period provided in s. 21(c), the Appeal Officer shall not accept the appeal for filing and shall so notify the appellant.

PROCEDURES UPON RECEIPT OF COMPLETED NOTICE OF APPEAL

- 23. Upon receipt of a completed Notice of Appeal, the Appeal Officer shall:

- a. notify the appellant in writing that their Notice of Appeal has been received;
 - b. request a copy of the appellant's Application file from the Enrollment Officer; and
 - c. provide the Chair of the Appeals Committee with a copy of the Notice of Appeal together with any supporting documentation.
24. Upon receiving the Notice of Appeal, the Chair of the Appeals Committee shall:
- a. appoint an Appeal Panel to hear the appeal, taking into account the language of the proceeding and any real or apparent conflict of interest of any member(s) of the Appeals Committee;
 - b. issue a decision to the appellant regarding any request for a closed hearing under s. 29, if applicable; and
 - c. schedule a date for an oral hearing, unless the appellant has elected to proceed by way of an Appeal in Writing pursuant to s. 26.
25. The appellant is entitled to at least 30 days' written notice of the date for the hearing of their appeal.

PROCEDURE FOR HEARING OF THE APPEAL

26. The appeal shall proceed by way of an oral hearing, unless the appellant requests that the appeal proceed as an Appeal in Writing.
27. The appellant may present evidence, call witnesses, and make oral and/or written submissions to the Appeal Panel in support of the appeal.
28. The Appeal Panel may ask questions of the appellant or any witnesses called by the appellant.

PUBLIC HEARINGS

29. Appeals shall be open to the public, unless the appellant requests that the appeal be closed to the public and the Chair of the Appeals Committee determines that the privacy interests of the appellant outweigh the public interest in the appeal.

30. The Appeal Officer shall publish notice of all appeal hearings that are open to the public at least two weeks in advance of the hearing, on the website of the Appeals Committee or by other comparable means.

EVIDENCE ON APPEAL

31. An appeal shall proceed as a re-hearing in which the appellant may introduce new or additional supporting information or evidence, including witness testimony.
32. The Appeal Panel shall consider and weigh all of the evidence placed before it on the appeal, including:
- a. any new or additional information or evidence adduced by the appellant; and
 - b. the information and evidence contained in the original Application file.
33. The Appeals Committee and any Appeal Panel are not bound by strict rules of evidence and may admit and consider evidence that would be inadmissible in a court of law, except by reason of privilege, and shall give such evidence the weight and consideration it considers appropriate, taking into account its quality and reliability.

STANDING AND PARTICIPATION OF THIRD PARTIES

34. Members of the Enrollment Committee do not have standing to make submissions or introduce evidence at the appeal hearing, but may attend the hearing of the appeal, even if the hearing is closed to the public pursuant to s. 29.
35. Third parties such as Advisory Committee members do not have standing to make submissions at the appeal hearing or to introduce evidence unless called as a witness by the appellant.

LANGUAGE OF PROCEEDINGS

36. At the option of the appellant, appeal hearings may be conducted in either English or Mi'kmaq.
37. In the event that one or more members of the Appeal Panel are not fluent in the language of the proceeding selected by the appellant, the Appeal Officer shall arrange for a qualified interpreter for the duration of the oral hearing or for the translation of documents in an Appeal in Writing.

RIGHT TO REPRESENTATION

38. The appellant may be represented at the appeal hearing by legal counsel or another representative authorized by the appellant.

DECISIONS OF THE APPEAL PANEL

39. In deciding the appeal, the Appeal Panel shall apply the Eligibility Criteria in the *Enrollment Process*, and any applicable guidelines or policies adopted by the *Enrollment Committee*, including the *Enrollment Committee Handbook*.
40. The Appeal Panel may:
 - a. dismiss the appeal on the basis that the appellant does not meet the Eligibility Criteria; or
 - b. allow the appeal on the basis that the appellant meets the Eligibility Criteria, and order that the Enrollment Officer:
 - i. enroll the appellant as a Mi'kmaw of Nova Scotia (in the case of an appeal under s. 2(a), (b), or (c)), or
 - ii. restore the appellant to the Enrolled List (in the case of an appeal under s. 2(d)).
41. The Appeal Panel shall provide written reasons for its decision to the appellant and the Enrollment Officer, within 30 days of the conclusion of the appeal hearing or of receiving a completed notice of an Appeal in Writing.

42. Reasons for decision shall be issued in the language of the proceedings. In the event that the language of the proceedings in Mi'kmaq, a certified English translation of the reasons for decision shall also be issued.
43. All reasons for decision issued by an Appeal Panel shall be available to the public. In the case of an appeal that was closed to the public pursuant to s. 29, the reasons for decision shall be redacted before publication so as not to identify the appellant.
44. All decisions of the Appeal Panel are final and binding and are not subject to further appeal, subject to any right to seek judicial review in the Nova Scotia Supreme Court.

COSTS ON APPEAL

45. The appellant shall bear any costs resulting from their participation in an appeal, including any legal costs.

DEFINITIONS

ADVISORY COMMITTEE MEMBER – An individual appointed pursuant to the Enrollment Process for the purposes of certifying that an applicant is part of a family and/ or accepted by the Nation.

APPEAL IN WRITING – An appeal decided by the Appeal Panel on the basis of the Application file, and any written submissions or additional documentary evidence filed by the appellant, without an oral hearing.

APPEAL OFFICER – Permanent staff person appointed and directed by the Appeals Committee to assist in the administration of the Appeal Process.

APPEALS COMMITTEE – An independent committee of representatives appointed by the Assembly and Grand Council, responsible for administering the Appeals Process. Appeal Panels responsible for deciding appeals are appointed from among the members of the Appeals Committee.

APPEAL PANEL – A three-member panel appointed from among the members of the Appeals Committee to decide an appeal. The Chair of the Appeal Panel is a Legal Appointee.

APPEALS PROCESS – The process to have a case reviewed by an Appeal Panel after an applicant has been rejected by the Enrollment Committee in the Nova Scotia Mi'kmaq Enrollment Process, or their name has been removed from the Enrolled List.

APPELLANT – An individual filing an appeal under the Appeals Process, or an individual on whose behalf an appeal is filed.

APPLICATION – An application to the Enrollment Committee for enrollment as a Mi'kmaq of Nova Scotia under the Nova Scotia Mi'kmaq Enrollment Process.

ASSEMBLY – Assembly of Nova Scotia Mi'kmaw Chiefs, the highest level of decision-making in the negotiation process.

ELIGIBILITY CRITERIA – The criteria an individual must meet in order to be an enrolled as a Mi'kmaq of Nova Scotia. The Eligibility Criteria are: Familial Connection and Acceptance.

ENROLLED LIST – The list of all enrolled Nova Scotia Mi'kmaq

ENROLLMENT COMMITTEE – An independent committee of representatives appointed by the Assembly and Grand Council, responsible for administering the enrollment process and deciding Applications according to the Eligibility Criteria.

ENROLLMENT OFFICER – Permanent staff person appointed and directed by the Enrollment Committee to assist in the administration of the Enrollment Process, including to manage the Enrolled List and Family List.

ENROLLMENT PROCESS – Means the Nova Scotia Mi'kmaq Enrollment Process, or the process created by the Mi'kmaq for the Mi'kmaq to determine who is Nova Scotia Mi'kmaq, meaning the process identifying the individuals who are eligible to exercise Mi'kmaq Aboriginal and Treaty rights.

GRAND COUNCIL (MI'KMAQ GRAND COUNCIL) – Also known as the Santé Mawiómi, is the traditional government for the Mi'kmaq. The Grand Council is made up of representatives from the seven districts in Mi'kma'ki, the *kji-saqmaq* (Grand Chief), the *kji-keptan* (Grand Captain), and the *Putus*.

LEGAL APPOINTEE – Means a member in good standing of the Nova Scotia Barristers' Society or a law society of another province or territory in Canada, or a retired judge of a provincial or federal court in Canada, who has been appointed by the Assembly to the Appeals Committee.

MI'KMAW OF NOVA SCOTIA – An individual enrolled under the Nova Scotia Mi'kmaq Enrollment Process, who is eligible to exercise Mi'kmaq Aboriginal and Treaty rights.