

JULY 11, 2018



BEAVER FIRST NATION

APPEALS PROCESS POLICY

BEAVER FIRST NATION
BOX 270 HIGH LEVEL, ALBERTA T0H 1Z0
780-927-3544

Table of Contents

Section 1: Definitions	2
Section 2: Introduction.....	4
Section 3: Appeals Committee.....	5
Section 4: Informal Complaint Process.....	7
Section 5: Formal Appeal Process	8
APPENDIX 1: APPEALS COMMITTEE TERMS OF REFERENCE	10

Section 1: Definitions

“Agency” means any board, tribunal, commission, committee of the Nation including a society or a non-profit corporation, but it does not include a corporation or any type of business structure that is operated for the purpose of making a profit, even if controlled by the Nation

“Appeals Committee” means the Appeals Committee established pursuant to this Appeals Process Policy;

“Company” means a for profit company or corporation incorporated under the laws of Alberta, Canada or any other jurisdiction and which is owned by Nation;

“Committee” means a group of Members who are delegated certain powers and tasks by Resolution of Council pursuant to the Governance Policies and Procedures;

“Complainant” is the person who believes they have been unfairly or unjustly treated by an Employee or Committee of the Nation in respect of certain opportunities and allocations of Nation programs, services, and benefits;

“Complaint” means a complaint or appeal of a decision or action taken by an Employee or Committee of the Nation in which a Complainant believes they were unfairly or unjustly treated in respect of certain opportunities and allocations of Nation programs, services, and benefits;

“Confidential Information” means, but is not limited to, any information, data, technology, material or other property, of any kind and in whatever form, that is confidential or proprietary to the Nation or its Agencies, including, without limitation, Personal Confidential Information, Business Information, Information Not for Public Consumption, and Employee Personal Information, as such are defined in the Confidentiality and Access to Information Policy and any such other information as outlined in the Confidentiality and Access to Information Policy; but does not include information which is or becomes generally available to the public or is required by regulation or law to be disclosed;

“Council” means the duly elected Chief and Council of the Nation;

“Employee” means all categories of Nation staff, including full-time, part-time, casual, temporary and seasonal employees; but not contractors;

“Manager/Director” means an Employee of the Nation who is responsible for a program, project or Agency;

“Member” means a person whose name appears on the Band List of the Nation

maintained by Indigenous and Northern Affairs Canada, or its successor, or on a list maintained by the Nation, should the Nation adopt its own membership code pursuant to section 10(1) of the *Indian Act*;

“**Nation**” or “**BFN**” means the Beaver First Nation;

“**Nation Administrator**” means the senior administrative officer responsible for the administration of the Nation and who reports directly to Council;

“**Policy**” means a program of actions adopted by Council and the principles upon which they are based; and

“**Respondent**” is the person against whom a Complaint is brought.

Section 2: Introduction

Purpose

- 2.1 This Appeals Process Policy establishes the appeals process for persons to seek redress for decisions or actions taken by an Employee or Committee of the Nation in which a person believes they were unfairly or unjustly treated in respect of certain opportunities and allocations of Nation programs, services, and benefits.
- 2.2 Nothing in this Appeals Process Policy shall abrogate or derogate from BFN's inherent right to self-governance and self-determination, Treaty 8 rights, or any of BFN's other rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 2.3 Council may decide not to implement an appeal committee due to a lack of community interest, or in the absence of a committee, council would assume the role of the committee with the responsibilities and process as outlined within these policies and procedures.

Content

- 2.4 This Appeals Process Policy contains operational policies and procedures that have been approved and adopted by Council. Operational policies and procedures assist Council and the Nation Administrator in managing the ongoing operations of the Nation. Operational policies and procedures are created and updated at the discretion of Council. It is not necessary for operational policies and procedures to be ratified by the Members as they are not laws.

Interpretation and Severability

- 2.5 In this Appeals Process Policy, words in the singular include the plural and *vice versa*, words importing gender include all genders, and a reference to any Act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule or regulation or provision enacted in substitution therefore or amendment thereof.
- 2.6 The provisions of this Appeals Process Policy shall be deemed severable. If any provision of these Policies and Procedures shall be held unenforceable by any court of competent jurisdiction, such provision shall be modified to the extent necessary to be enforceable, and the remaining provisions shall remain in full force and effect.

Application

2.7 This Appeals Process Policy shall apply to any and all Complaints.

Section 3: Appeals Committee

- 3.1 Council has delegated certain powers related to the consideration of Complaints to an Appeals Committee.
- 3.2 The Appeals Committee shall be accountable to Council for decisions made under this Appeals Process Policy.
- 3.3 The Appeals Committee shall be appointed by Council to include three (3) Members who are not Council members or Employees. Council shall appoint one of the members of the Appeals Committee as Chairperson.
- 3.4 Any recommendation of the Appeals Commission is vested in the Appeals Committee as a whole and no Appeals Committee member shall act as an individual on behalf of the Appeals Committee.
- 3.5 The Appeals Committee shall make recommendations to Council on matters related to this Appeals Process Policy. Council shall have the final authority to implement a recommendation of the Appeals Committee.
- 3.6 All Appeals Committee members must agree, in writing, to follow and adhere to the Confidentiality and Access to Information, Conflict of Interest and Code of Conduct included as Appendices to the Governance Policies and Procedures.
- 3.7 The terms of reference for the Appeals Committee are set out at Appendix 1 to this Appeals Process Policy.

Section 4: Informal Complaint Process

- 4.1 It is in the best interests of all parties to seek resolution of a Complaint as early as possible.
- 4.2 A person who believes they have a Complaint must, where reasonably possible, first discuss their concern with the Respondent.
- 4.3 If it is not reasonably possible to discuss the Complaint with the Respondent, or if there is no resolution through initial discussion with the Respondent, the Complainant must seek the confidential advice of the Nation Administrator or, if the Complaint concerns the Nation Administrator, another Manager/Director.
- 4.4 The Nation Administrator or Manager/Director shall, upon receipt of a Complaint, seek to resolve it through informal discussion with the Complainant and Respondent.
- 4.5 If the Complaint cannot be resolved through informal discussion, the Nation Administrator or Manager/Director may recommend the Complaint be filed with the Appeals Committee in accordance with section 5 of this Appeals Process Policy.
- 4.6 The Complainant may, at any time during the informal complaint process, file their Complaint with the Appeals Committee in accordance with section 5 of this Appeals Process Policy.
- 4.7 All information regarding a Complaint is Confidential Information and must be kept in accordance with the Confidentiality and Access to Information Policy set out in the Governance Policies and Procedures, as may be amended from time to time.

Section 5: Formal Appeal Process

- 5.1 Where a Complaint cannot be resolved through the informal process set out under section 4 of this Appeals Process Policy, the Complainant can submit their Complaint to the Appeals Committee.
- 5.2 A Complaint submitted to the Appeals Committee must:
 - a) Be in writing;
 - b) Clearly state the reason or reasons why the Complainant believes they were unfairly or unjustly treated in respect of certain opportunities and allocations of Nation programs, services, and benefits; and
 - c) Be submitted within ten (10) business days of the action or decision being appealed.
- 5.3 The Appeals Committee shall decide, in its sole discretion, whether to accept or reject a Complaint. The Complainant will be advised in writing of the decision of the Appeals Committee.
- 5.4 If the Appeals Committee accepts a Complaint for appeal, a formal appeal hearing will be held to provide the Complainant and the Respondent with an opportunity to present their arguments and to answer any questions of the Appeals Committee
- 5.5 The Appeals Committee will provide Council with a written decision and recommendation in relation to the appeal hearing within thirty (30) days of hearing the appeal. This decision must contain the following information:
 - a) Background of the Complaint including the informal processes followed;
 - b) Positions of the Complainant and Respondent;
 - c) Findings of fact;
 - d) Policies considered;
 - e) Reasons why the Complaint was or was not substantiated; and
 - f) Recommended action.

- 5.6 Council shall decide whether to accept the recommendation of the Appeals Committee and will inform the Complainant and Respondent of their decision.
- 5.7 The decision of Council is final and binding.

APPENDIX 1: APPEALS COMMITTEE TERMS OF REFERENCE

Purpose

1. The purpose of the Appeals Committee is to consider Complaints of persons who believe they were unfairly or unjustly treated in respect of certain opportunities and allocations of Nation programs, services, and benefits.

Composition and Quorum

2. Council shall, in their full discretion, appoint three (3) Members to the Appeals Committee; one of whom will be appointed by Council to be the Chairperson.
3. The general eligibility criteria for membership includes, but is not limited to:
 - a) A Member;
 - b) Not an Employee;
 - c) Not a Council member; and
 - d) Knowledge of Nation Policies.
4. The term of service for an Appeals Committee member will be two (2) years; but an Appeals Committee member may reapply at the end of their term.
5. Quorum for an Appeals Committee meetings is two (2) Appeal Committee members. A vote on issues will be carried by a majority.

Accountability to Council

6. The Appeals Committee has no authority to direct the Nation Administrator or to commit the Nation unless specifically authorized by Council by Resolution.

Duties and Responsibilities

7. The Appeals Committee will act honestly and with integrity, and in an efficient, effective and ethical manner when executing the provisions of this Appeals Process Policy.
8. The Appeals Committee will perform the following duties:
 - a) Review Complaints in accordance with the Appeals Process Policy.

- b) Determine whether or not a Complaint will proceed to a formal appeals hearing.
 - c) Ensure hearings are conducted in a fair and equitable manner and provide each party with procedural fairness.
 - d) Prepare a written decision with recommendations to provide to Council in accordance with the Appeals Process Policy.
9. All Appeals Committee members shall agree, in writing, to follow and adhere to the Confidentiality and Access to Information Policy and Conflict of Interest and Code of Ethics (see Appendices to Governance Policies and Procedures).

Frequency of Meetings

10. The Appeals Committee must meet at a minimum once quarterly.
11. The Chairperson may, at any time, on their own behalf, or at the request of an Appeals Committee member or Council, call a special meeting of the Appeals Committee, provided proper notice is given to the Appeals Committee members.
12. The Chairperson shall prepare and distribute to the Appeals Committee members notice of meetings, including location and time, at least two (2) days in advance of meetings if reasonably possible.

Committee Rules

13. Robert's Rules of Order, included as an Appendix to the Governance Policies and Procedures, will be followed by the Appeals Committee in the conduct of its procedures.
14. Questions arising at any meeting of the Appeals Committees shall be decided by majority of votes, provided quorum is met. All decisions are to be recorded in the meeting minutes.
15. Appeals Committee members will conduct all business in a fair, honest, and professional manner and will refrain from bringing personal biases and negative opinions to the meeting discussion unless there is a direct bearing on the issues under debate.
16. All in camera discussions, debate and draft documents of the Appeals Committee are confidential. No Appeal Committee member present at a meeting shall make

public any information or business from the meeting, unless that information or business is deemed to be public information by the Committee as a whole.

Reporting

17. Minutes of meetings of the Appeals Committee will be reviewed and signed by the Chairperson and submitted for Council review.

External Advisors

18. The Appeals Committee may engage independent advisors only upon the approval of Council.

Applicable Policies

19. All Appeals Committee members will be required to adhere to this Appeals Process Policy, Conflict of Interest Policy, Confidentiality and Access to Information Policy, and Code of Ethics as set out in the Governance Policies and Procedures and any other applicable Policy, as may be adopted or amended from time to time.

Removal of a Member from the Appeals Committee

20. Council may, in their full discretion, terminate the term of an Appeals Committee member at any time.

21. A member of the Appeals Committee shall be removed by Council for any of the following reasons:

(a) Not willing to remove themselves from a decision when a conflict of interest arises;

(b) Breach of confidentiality;

(c) Gaining personal benefit from sitting on the Appeals Committee; or

(d) Missing more than three (3) consecutive meetings, or frequently missing meetings without a justifiable reason.

22. When a member of the Appeals Committee has been removed, Council will appoint a new member to fill the vacancy at the next scheduled meeting.

Honorarium

23. A member of the Appeals Committee shall be entitled to an honorarium in accordance with the Board and Committee Honorarium section of the Governance Policies and Procedures, as may be amended from time to time.

APPENDIX 2: FORMAL COMPLAINT FORM

Please ensure you have read the Appeals Process Policy prior to submitting this Complaint Form and that your Complaint is submitted within ten (10) business days of the action or decision being appealed. Submission of this Complaint Form does not guarantee that the Appeals Committee will hear your Complaint. You will be advised in writing of the Appeals Committee's decision to accept or reject your Complaint.

Complainant Information	
Name:	
Address:	
Contact Number:	

Respondent Information	
Name:	
Department or Committee:	

Details of Complaint	
Date of Action or Decision:	
Reason You Believe You Were Unfairly or Unjustly Treated. Please Include (attach additional pages if needed):	
<ul style="list-style-type: none"> • The opportunity, service, benefit the Complaint relates to • What was said or done • Details that contributed to the action or decision 	<ul style="list-style-type: none"> • Why you disagree with the action or decision • Any other information you would like the Appeals Committee to consider

