

INDEPENDENT APPOINTMENTS COMMISSION

RULES OF PROCEDURE

(Revised as at June 29, 2020)

1 Rules and definitions

1.1 These Rules are the rules adopted by the IAC pursuant to the requirement set out in subsection 6(7) of the Act.

1.2 The words defined in section 2 of the Act shall, whenever used in these Rules, have the meaning ascribed to them in section 2 of the Act.

1.3 In addition to the meanings referred to in Rule 1.2 above, in these Rules:

(a) “Act” means the *Independent Appointments Commission Act, SNL 2016, c. I-2.1*;

(b) “Administrator” means the person contracted by the IAC to provide such office administrative services as the IAC needs from time to time, to perform the duties ascribed to the Administrator by these Rules and to discharge such other duties as may from time to time be assigned by the IAC or the Chairperson;

(c) “Appointing Authority” means the Lieutenant-Governor in Council, a minister or other person or agency authorized to make an appointment under the authority of a statutory provision, or to an entity listed in the schedule to the Act;

(d) “Chairperson” means the person appointed pursuant to subsection 6(4) to be chairperson of the commission and includes the vice-chairperson elected pursuant to subsection 6(5) whenever the Vice-Chairperson is acting in the absence of the Chairperson;

(e) “Commissioner” means any one of the members of the IAC appointed pursuant to subsection 6(3);

(f) “IAC” means the commission defined in section 2;

(g) “PSC” means the Public Service Commission defined in section 2;

(h) “Review Panel” means the panel of three Commissioners designated by the Chairperson, pursuant to section 8, to consider any specific request or requests for recommendations for appointment;

(i) “Rules” means the rules referred to in Rule 1.1 above;

(j) “section” and “subsection” followed by a numerical designation means the specific numerically designated section or subsection, as the case may be, of the Act;

(k) “Vice-Chairperson” means the person elected by the IAC pursuant to subsection 6(5);

2 Structure, staff and means of operating

2.1 The IAC will make such recommendations, as may be requested of it by Appointing Authorities who have forwarded written requests through the PSC or directly to the IAC, for the purpose of filling vacancies in positions existing in entities and statutory appointments listed in the Schedule to the Act, as that Schedule may be amended from time to time or added to pursuant to subsection 15(1).

2.2 The primary means by which the IAC will carry out the activities necessary in the discharge of its responsibilities will be through the services and activities provided by the PSC pursuant to the provisions of section 12, through such other things and advice as the IAC may request the PSC to provide, and such other actions as the IAC may itself initiate.

2.3 The PSC will maintain a record listing all of the positions for which the IAC has responsibility for recommending potential appointees, showing the Appointing Authority, the name of the present holder, his or her residential location, the date of appointment to the position, and the date of expiration of the current term and, a reasonable time before the expiration date of the term, will draw to the attention of the Appointing Authority that pending expiration.

2.4 The IAC will, with the assistance of the PSC, arrange for the engagement by the IAC, or re-engagement or replacement as circumstances may require, on a part time contractual basis or on such terms and conditions as shall be agreed upon by the PSC and IAC, of the person selected by the IAC to provide its administrative and office needs, to be designated Administrator and be answerable only to the IAC through the Chairperson.

2.5 The primary duties of the Administrator shall include:

(a) the provision of all secretarial and administrative services as the IAC may desire to have provided on a basis confidential to the IAC;

(b) being the liaison between the IAC, including individual Commissioners, and the PSC to facilitate, in the manner requested by the PSC, provision by it of the services, assistance, information processing and advice provided for in the

Act, and to facilitate, in the manner directed by the IAC or the Chairperson, interaction between the PSC and the IAC, the Chairperson or a Commissioner;

(c) organizing and putting in place such services as may be necessary to ensure the protection of the privacy of personal information made available to Commissioners in the course of the discharge of their duties;

(d) providing such administrative assistance, including travel arrangements and claims for the same, meeting arrangements, electronic and telephone conferencing arrangements, and any other assistance any Commissioner may reasonably request for the purpose of the discharge of duties as a Commissioner;

(e) arranging through the PSC for access to such accommodation, office supplies and services and all other matters and things necessary for the performance of their duties and responsibilities by the IAC and each Commissioner;

(f) preparing, in the manner directed by the Chairperson, and forwarding to the Appointing Authority the formal decision of the IAC respecting its recommendations of the persons to be considered for appointment;

(g) preparing, under the direction of the Chairperson, the formal decision of the IAC in respect of all requests for recommendations, any and all reports required by law; and

(h) doing all such other things and providing all such assistance as the Chairperson may direct as being necessary or beneficial in the course of the IAC and the Commissioners carrying out their duties under the Act.

3 Meetings

3.1 The Commissioners will, for the purpose of discharging their duties:

(a) schedule an in-person meeting in the City of St. John's on the third Wednesday of June each year for such period of time as the Chairperson determines to be necessary in the circumstances;

(b) meet in person at such other times, if any, in such places for such periods of time as the Chairperson may designate;

(c) hold such telephone or video conference meetings at such times as the Chairperson may from time to time designate;

(d) schedule such meetings of Review Panels as the Chairperson or the members of the Review Panel concerned consider to be necessary; and

(e) for any reason whatsoever, defer or reschedule any such meeting.

3.2 No decision shall be recorded as a decision of the IAC at any meeting held pursuant to rule 3.1 at which less than a majority of Commissioners then in office are participating in person or by electronic means.

3.3 The PSC official providing information, advice and services being provided in respect of the recommendations under consideration and the Administrator shall be present at all meetings of the IAC unless the majority of Commissioners present determine that the either one or both should be excused for a portion or all of the meeting.

3.4 The Administrator shall record the minutes of all meetings of the IAC whether held in person or by electronic means or a combination of both, provided that at any meeting in respect of which the Administrator is unable to participate or from which the Administrator is excused the Vice-Chairperson shall record the minutes.

3.5 The decision that is supported by the majority of the Commissioners participating in person or electronically shall constitute the decision of the IAC.

4 Operational needs, accounting and accountability

4.1 The IAC will not maintain its own accounting and expenditure control systems and all cost and accounting for goods and services used or consumed by the IAC will be maintained and provided for in the accounts of the PSC.

4.2 All goods, services, office supplies, travel expense allocations and all other matters or things reasonably necessary for the performance of their duties and responsibilities by the IAC or a Commissioner will be arranged by the Administrator, or in the absence of the Administrator by the Chairperson and obtained from the PSC.

4.3 All reports required to be filed by the Act, or any other act of the Legislature will be filed within the time required by the statute.

4.4 The Chairperson will be the spokesperson for the IAC in respect of all aspects of the performance by the IAC or any Commissioner of their duties and responsibilities, unless by formal decision the IAC decides otherwise.

5 Requests for recommendations

5.1 In the ordinary course, all requests for recommendations for appointment will be received by the Administrator on behalf of the IAC from the Appointing Authority concerned and the Administrator will provide the Chairperson with a copy of the request.

5.2 Unless the Chairperson instructs otherwise, the Administrator will immediately provide the PSC with a copy of the written request and any supporting material received. The PSC will immediately thereafter start the process of identifying, from the IAC list of applicants and any other information available, the persons whose qualifications for the position are to be assessed. After obtaining the reasonably available information necessary to assess, on a merit basis, the suitability of each such potential appointee for the position under consideration, the PSC will complete the assessment solely on a merit basis.

5.3 Upon completing its assessment, the PSC will provide the Administrator with a summary report indicating: (i) the names and residential locations of all persons assessed by the PSC; (ii) any specific educational achievement or skills training of those persons; (iii) the extent to which each person met or failed to meet the specified criteria for the position; (iv) any other information considered relevant; and (v) those persons on the list that the PSC considers to be qualified for the position and recommends for consideration by the IAC.

5.4 Upon receipt of that summary report, the Administrator will notify the Chairperson and will, unless the Chairperson shall have instructed otherwise, immediately forward a copy of the same to the Chairperson and each Commissioner to enable each Commissioner to determine: (i) whether there exist any reason why that Commissioner ought to be recused from serving on the Review Panel, and (ii) whether that Commissioner is of the view that any other person assessed by the PSC ought also to be considered by the IAC.

5.5 At the earliest opportunity and, in any event, within five days of receipt of that information each Commissioner shall advise the Administrator as to whether there exists any reason why that Commissioner ought to be recused from determining which of the potential appointees the IAC should recommended be considered for the appointment, and the name, if any, of any other person that Commissioner feels should also be considered by the Review Panel.

5.6 Immediately upon hearing from the last of the four Commissioners or upon the expiration of five days from forwarding the information to the Commissioners, whichever shall first occur, the Administrator shall advise the Chairperson of the responses of the Commissioners.

5.7 The Chairperson will, immediately, determine the persons, if any, to be added to those recommended by the PSC for consideration by the IAC and designate the three Commissioners who will constitute the Review Panel for the purpose of making recommendations for the appointment or appointments concerned.

5.8 The Administrator will immediately: (i) advise the PSC of the additional persons, if any, being considered by the Review Panel; (ii) obtain from the PSC all additional information respecting those persons; (iii) provide copies of the same to each Commissioner on the Review Panel; and (iv) make all other arrangements necessary to enable the Review Panel to conduct its review.

6 Review Panel proceedings

6.1 If, at any stage of the proceedings the Review Panel or the Chairperson concludes;

- (a) that further information respecting the persons identified as potential appointees is necessary;
- (b) that a further number of potential appointees is desirable, or
- (c) in any case where the material does not contain the results of an interview, as to the skill sets, experience, aptitude or other qualities necessary or desirable in the person to be recommended for appointment, that an interview ought to be conducted

the Administrator will make such request of the PSC to provide that further information, further list of names or conduct such interviews as the Chairperson directs or take such other action as the Chairperson may direct.

6.2 Should it become apparent at any stage of the proceedings that it would be necessary or desirable for the purpose of achieving the objective of the Act, for either the Review Panel or the IAC to, itself, arrange for further identification of potential appointees, further information respecting potential appointees identified by the PSC or the completion of any other support service normally supplied by the PSC, the Administrator will take such action as may be directed by the Chairperson.

6.3 If at any stage of its considerations the Review Panel concludes that it is necessary to conduct an interview or interviews with a potential appointee or appointees, the Chairperson will be so advised and, after discussion with the Commissioners on the Review Panel, will decide whether or not an interview or interviews will be conducted and, if interviews are to be conducted, whether it will be done by the Review Panel or by the full IAC.

6.4 Where the Chairperson directs that interviews should be conducted, the Administrator will consult with the PSC as to the most convenient time, place and manner of conducting the interviews and will, unless otherwise instructed by the Chairperson, request that the PSC make the necessary arrangements for the interviews.

6.5 In the course of making its decision as to the persons it proposes be recommended, the Review Panel shall:

- (a) where only 1 position is to be filled for that office, recommend 3 persons for consideration;
- (b) where more than 1 but less than 4 positions are to be filled for that office, recommend for consideration the number of positions to be filled plus 3 persons for consideration;
- (c) where 4 or more but less than 7 positions are to be filled for that office, recommend for consideration twice the number of persons as there are positions to be filled; and
- (d) where 7 or more positions are to be filled for that office, recommend for consideration the number of positions to be filled plus six persons.

6.6 Notwithstanding the preceding Rule, where, in the opinion of the Review Panel:

- (a) it is not aware of sufficient qualified persons to enable it to propose the number of persons specified in the relevant paragraph of Rule 6.5, the Review Panel may propose fewer than the number specified; or
- (b) one or more persons greater than the number specified in the relevant paragraph of Rule 6.5 are also particularly worthy of consideration, the Review Panel may propose for consideration the additional person or persons,

but, in either case, it shall outline its efforts to comply with the relevant paragraph and the reason for the variation.

7 Checking for Conflicts of Interest

7.1 Upon receipt from the Administrator of the names proposed by the Review Panel, the PSC will advise each of those persons, that his or her name is on a list of persons being considered by the IAC for the position concerned and request that he or she, within the next 10 days, confirm continuing interest in the position and state whether she or he, if appointed, would be in an actual, apparent, or potential conflict of

interest. Failure to answer this question fully will be reported by the PSC to the Lieutenant Governor in Council or other appointing authority.

7.2 Immediately upon receipt of responses from all to whom such requests were directed, or on the expiration of 10 days after sending the inquiries, whichever first occurs, the PSC will forward the received responses to the Administrator, and forward any other responses subsequently received, when received.

8 Conclusion of the process

8.1 When the Review Panel has completed its review and reached conclusions as to the persons the Review Panel suggests should be recommended for consideration by the Appointing Authority, the Administrator will obtain sufficient information from the Review Panel to prepare a list of those persons that the Review Panel suggests should be recommended and a brief summary of the reasons for the conclusions reached by the Review Panel, and forward the same to the Commissioners who were not members of the Review Panel, and forward to all Commissioners all information respecting conflict of interest checking received from the PSC.

8.2 Within three days of that information being forwarded to the Commissioners, they shall, by means of an in person, an electronic meeting, or by the Administrator gathering the views of each Commissioner, whichever the Chairperson deems appropriate, make a final determination as to the three persons, or where appropriate another number of persons, to be recommended for consideration for appointment.

8.3 Upon completion of the IAC process:

(a) the Administrator will, after consultation with the Chairperson, prepare a draft report for consideration by the Chairperson, setting out:

(i) the names, in alphabetical order, of the persons that the Review Panel recommends be considered for appointment;

(ii) any exceptional characteristic or matter related to a person being recommended that the Commission considers should be drawn to the attention of the Appointing Authority;

(iii) any explanation that may be necessary to address the requirements of subsection 10(2); and

(iv) any other matter directed by the Chairperson;

(b) upon receipt of approval by the Chairperson, the Administrator will forward a copy of the draft to each Commissioner; and

- (c) the Chairperson shall, when satisfied that the draft report meets with the fullest level of approval likely to be achieved, sign it on behalf of the IAC and the Administrator will forward the same to the Appointing Authority as the report of the IAC, with a copy to the Chief Executive Officer of the PSC.

8.4 Under no circumstances will any Commissioner, the Administrator, or any person connected with the PSC who becomes aware of the names of the persons recommended by the IAC for consideration for appointment, disclose that information or any other information that would result in disclosure of the names recommended or the names of the persons considered but not recommended, except to the extent and in the manner specified in these rules.

9 Preservation of public confidence in the IAC

9.1 Where sixty days have expired after the report of the IAC has been forwarded to the Appointing Authority and there has been no announcement of the appointment of a person to fill the vacancy for which a recommendation was made, the Administrator will, unless for good reason the Chairperson directs otherwise, prepare a news release indicating only that the recommendations required to be made by the IAC for the described positions have been made and the date on which they were forwarded to the Appointing Authority.

9.2 Where any commissioner or the Administrator is made aware by the PSC, or otherwise becomes aware, that a position for which the IAC made recommendations has been filled by appointment of a person who was not one of the names recommended by the IAC for appointment to that position, and the Appointing Authority has not, within ten days of making the appointment, made that fact public, the Administrator will, unless for good reason the Chairperson otherwise directs, prepare a news release indicating only that a person other than one of the persons recommended by the IAC was appointed to the position, and the same shall be released on the authority of the Chairperson.