

# NNI Tribunal

## Annual Report for 2017-2018

In accordance with section 9.30 of the NNI Regulations,

**9.30 The members of the Tribunal shall prepare and submit to the Minister an annual report on the operations of the Tribunal within six months of the end of each fiscal year.**

The members of the NNI Tribunal present the following report.

### **Background**

- The NNI Tribunal took over from the NNI Appeals Board on April 1, 2017
- The terminology in the new NNI gives added authority to the work of the Tribunal as per section 9.26 of the NNI Regulations.

**“9.26 The Contract Authority shall implement all recommendations given by the Tribunal to the greatest extent possible.”**

The Tribunal will only hear complaints related to a reported failure of applying NNI correctly in the procurement evaluation process as per section 9.1 (a) of the NNI Regulations.

**“9.1 An independent NNI Tribunal (the “Tribunal”) shall be established to hear and decide on complaints regarding the application of the NNI in the award of any contracts covered by the NNI in accordance with section 4.1.**

**The Tribunal shall not:**

**“(a) Review any aspect of a procurement process other than the application of the NNI.”**

- Section 9 of the NNI Regulations encompasses the authority and jurisdiction of the NNI Tribunal.
- The Tribunal activity is limited to the implementation of the NNI and it cannot review other types of contracting issues.
- The Tribunal does not engage in adjudicating procurement award disputes as such authority is reserved for the courts.
- The appointed Tribunal Members were selected based on their previous experience sitting on similar boards. Three having served on the NNI Appeals Board and one having served on the Canadian International Trade Tribunal.

- The GN is currently waiting for a nominee from NTI to fill the final position on the NNI Tribunal.
- To date there has only been one challenge launched under the new NNI, however it did not proceed as the Tribunal determined that it did not qualify under the Tribunal’s jurisdiction as described in section 9.1 of the NNI Regulations.
- There has been no further activity with the Tribunal since October of 2017 when the members came to Iqaluit for training and to review a procurement award challenge which was dismissed as not falling under the jurisdiction of the Tribunal.

**Tribunal Members**

Under the NNI (the Act and Regulations) Tribunal members are appointed by the Minister. The Cabinet Appointments Policy requires Cabinet approval for high profile appointment decisions such as these.

The Tribunal is composed of 5 members as per section 9.2 of the NNI Regulations:

**9.2 The Tribunal is composed of five (5) members as follows who serve on a part-time basis for a term of three (3) years:**

- (a) two (2) members, appointed by the Government of Nunavut on the nomination of Nunavut Tunngavik Incorporated;**
- (b) three (3) other members appointed by the Government of Nunavut.**

<b>James Ogilvy</b>	<p>Served on the Canadian International Trade Tribunal and has extensive experience in procurement and administrative law, resident of Ottawa. (GN appointee)</p> <ul style="list-style-type: none"> <li>• <b>Appointed June 1, 2017</b></li> <li>• <b>Term ends May 31, 2020</b></li> <li>• <b>Mr. Ogilvy was appointed as the designated Chairman of the Tribunal</b></li> </ul>
<b>Barbara Tartak</b>	<p>GN employee living in Rankin Inlet and previously on the NNI Appeals Board. (GN Appointee)</p> <ul style="list-style-type: none"> <li>• <b>Appointed June 1, 2017</b></li> <li>• <b>Term Ends May 31, 2020</b></li> </ul>
<b>Al Lahure</b>	<p>Long-time Businessperson from Baker Lake and previously on the NNI Appeals Board. (GN Appointee)</p> <ul style="list-style-type: none"> <li>• <b>Appointed June 1, 2017</b></li> <li>• <b>Term ends May 31, 2020</b></li> </ul>

<b>Sarah Maniapik</b>	<b>Employee of the Baffin Business Development Corporation – resident of Iqaluit and previously on the NNI Appeals Board. (NTI Nominated)</b> <ul style="list-style-type: none"> <li>• <b>Appointed June 1, 2017</b></li> <li>• <b>Term ends May 31, 2020</b></li> </ul>
<b>Vacant Position</b>	<b>To date NTI has been unable to nominate an individual to fill the remaining Tribunal position which the NNI Regulations allocates to them.</b>

Section 9.4 of the NNI Regulations allows for the Tribunal to operate with as few as three members which maintains a quorum.

Training has been provided to the Tribunal Members on October 3 and 4, 2017 to ensure the members are prepared to fulfil the NNI Regulation requirements. The training included presentations by the Department of Justice and the Department of Community and Government Services.

**Costs**

- Training session and review of one challenge during October 3 and 4, 2017 cost \$11,687.56. This consisted primarily of airfare, accommodations, meals and honorariums.
- Honorariums are paid to the participating Tribunal Members in accordance with the FAM Directive 810.

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J. Ogilvy – Tribunal Chairman

April 8, 2018