

K'ÓMOKS ENROLMENT APPEAL BOARD

RULES

Introduction

The object of these rules is to secure the just and timely determination of every appeal to the K'ómoks Enrolment Appeal Board.

Rule 1 Definitions

1.1 In these rules:

"Appellant" means an applicant, K'ómoks, Canada or British Columbia as set out in paragraph 26 of the Eligibility and Enrolment Chapter of the K'ómoks Treaty;

"Board" means the K'ómoks Enrolment Appeal Board established by K'ómoks and Canada as set out in the K'ómoks Treaty;

"Chairperson" means the chairperson of the Board;

"Document" has an extended meaning and includes a book, map, drawing, chart, letter, paper, photograph, film, recording of sound, and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means;

"Effective Date" means the date on which the K'ómoks Treaty takes effect;

"Intervener" means a person the Board allows to participate in an appeal;

"Participant" means an Appellant, Respondent or Intervener in an appeal;

"Party" means an Appellant or Respondent in an appeal;

"Registrar" means the person responsible for receiving, managing and responding to Documents on behalf of the Board;

"Respondent" means the Enrolment Committee established under the Eligibility and Enrolment Chapter of the K'ómoks Treaty.

Rule 2 Starting an Appeal

2.1 To start an appeal, the Appellant must deliver a notice of appeal to the Board and the Respondent within 60 days of receiving notice of the decision which the Appellant wishes to appeal.

- 2.2 The notice of appeal must:
- (a) be in writing, preferably submitted on Form A,
 - (b) contain the Appellant's name and address,
 - (c) identify the decision being appealed, the date of the decision and the date the Appellant was notified of the decision,
 - (d) include a copy of the decision being appealed,
 - (e) state why the decision being appealed should be changed and what outcome is being requested, and
 - (f) be signed by the Appellant or the Appellant's lawyer or agent.
- 2.3 If the Appellant wishes the appeal to be considered prior to the Effective Date, the notice of appeal must also indicate that the Appellant agrees to participate under the transition process set out in Rule 23.
- 2.4 If the notice of appeal appears to be deficient, the Registrar will notify the Appellant and allow up to 21 days for the Appellant to correct the deficiency.

Rule 3 Communications with the Board

- 3.1 Unless the Board directs otherwise, all communications with the Board must be made through the Registrar of the Board at the following Board office address:

K'ómoks Enrolment Appeal Board

Attention: Registrar

422-1080 Mainland Street
Reception Suite 300
Vancouver, BC
V6B 2T4

Email: kim@mandellpinder.com
phone: 604 681 4146

- 3.2 A Document may be delivered to the Board office by hand, mail, courier or email.

Rule 4 Representation and Contact Information

- 4.1 A Participant may be represented by a lawyer or other agent.
- 4.2 A Participant must provide the Board with contact information consisting of:
- (a) full name,
 - (b) current postal address,
 - (c) telephone number or email addresses (if any), and
 - (d) contact information of the Participant's lawyer or other agent (if any).
- 4.3 A Participant must notify the Board of any change in their contact information within a reasonable time.

Rule 5 Delivering Documents

- 5.1 A Participant that delivers a Document to the Board must also deliver a copy of the Document to each other Participant in the appeal in accordance with this rule.
- 5.2 A Document may be delivered to a person:
- (a) by leaving a copy of it with the person,
 - (b) if the person is a Participant, by providing a copy of it in accordance with their contact information, or
 - (c) by any other means permitted by the Board that allows proof of receipt.
- 5.3 A Document that is delivered after 4:30 pm is deemed delivered on the next day that is not a Saturday, Sunday or public holiday.
- 5.4 A Document that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday, unless there is evidence to the contrary.
- 5.5 If it is impractical to deliver a Document by leaving a copy with the person, or by providing it in accordance with the person's contact information if they are a Participant, the Board may permit an alternate method of delivery to be used including notice by advertisement where necessary.

- 5.6 To apply for authorization to deliver a Document by an alternate method of delivery, a Participant must deliver a written request to the Board that explains the reasons why it is not feasible to deliver a Document to the person by leaving a copy of it with them or by providing it in accordance with the person's contact information if they are a Participant.

Rule 6 Time Requirements

- 6.1 In calculating time under these rules or in an order or direction of the Board:
- (a) the number of days between two events is counted by excluding the days on which those events happen, and
 - (b) if the last day of a time period for delivering a Document or doing any other thing falls on a Saturday, Sunday or public holiday, the time ends on the next day that is not a Saturday, Sunday or public holiday.
- 6.2 If the Board is satisfied that special circumstances warrant an extension of a time limit to start an appeal, it may grant an extension of time whether or not the time limit has already expired.
- 6.3 The Board may also extend or reduce any time limit in these rules, whether or not the time limit has already expired, as the Board considers fair and appropriate in the circumstances.
- 6.4 To apply to extend or reduce a time limit, a Participant must deliver a written request to the Board that explains:
- (a) the reason(s) the extension or reduction of the time limit is required,
 - (b) whether other Participants agree to the extension or reduction of the time limit (if known), and
 - (c) whether an injustice would result if the extension or reduction of the time limit is not granted.
- 6.5 Before granting the extension or reduction of a time limit, the Board will give other Participants an opportunity to be heard.

Rule 7 Providing and Certifying the Appeal Record

- 7.1 The appeal record consists of the decision being appealed, the Respondent's reasons for decision and all documentary evidence, reports, policies, legislative provisions and submissions considered by the Respondent in making the decision, but it does not include solicitor client privileged communications between the Respondent and the Respondent's lawyer.

- 7.2 Unless the Board authorizes otherwise, within 21 days after delivery of the notice of appeal the Respondent must deliver the appeal record to the Board and to the Appellant.
- 7.3 The appeal record must be clearly legible with sequential page numbering and a detailed table of contents, and when it contains more than 25 pages each copy of the appeal record must be secured in a binder or similar book.
- 7.4 The appeal record must also include the written certification of the Respondent that it is complete and accurate in all respects.
- 7.5 With leave of the Board, any Participant may file material with the Registrar to supplement the appeal record prior to the hearing of the appeal.

Rule 8 Amendment of Notice of Appeal

- 8.1 A notice of appeal may be amended at any time with leave of the Board.

Rule 9 Removing, Adding or Substituting Parties to an Appeal

- 9.1 On its own initiative or on the application of a person, the Board may remove, add or substitute a person as an Appellant to an appeal.
- 9.2 An application to remove, add or substitute an Appellant to an appeal may be made by delivering a written request to the Board that demonstrates the following apply:
- (a) the person to be removed as an Appellant is not, or has ceased to be, a proper or necessary Appellant to the appeal, or
 - (b) the person to be substituted or added as a Appellant is a proper or necessary Appellant to the appeal to ensure that all matters in the appeal are effectually adjudicated.
- 9.3 The Board will give the Parties an opportunity to be heard before removing, adding or substituting a person as an Appellant to an appeal.
- 9.4 The Board will not add or substitute a person as an Appellant without that person's consent.

Rule 10 Interveners

- 10.1 A person may apply to participate as an Intervener in an appeal by delivering a written request to the Board that demonstrates the following apply:
- (a) the person can bring a valuable contribution or bring a valuable perspective to the appeal, and

- (b) the potential benefits of the intervention outweigh any prejudice to the Parties caused by it.
- 10.2 The Board will give the Parties an opportunity to be heard before granting an application to intervene in an appeal.
- 10.3 The Board may limit or impose terms and conditions on the participation of an Intervener in an appeal and, unless specifically authorized by the Board, an Intervener may not submit evidence in an appeal.

Rule 11 Other Applications on Preliminary or Interim Matters

- 11.1 Other applications for directions or orders on preliminary or interim matters must be made, unless otherwise directed by the Board, by delivering a written request to the Board that explains the reason(s) the direction or order is required and whether other Participants agree to it (if known).
- 11.2 Except in extenuating circumstances, the Board will give other Participants an opportunity to be heard before granting an application for a direction or order on a preliminary or interim matter.

Rule 12 Appeal Management

- 12.1 The Board will manage the appeal process to ensure the just and timely hearing and resolution of appeals, including making recommendations, directions and orders about any one or more of the following:
 - (a) the identification and simplification of facts and issues,
 - (b) the timely disclosure of Documents, witness lists and the anticipated evidence of witnesses,
 - (c) the form and delivery of Documents or other evidence, admissions, agreed facts and submissions,
 - (d) determining whether preliminary or interim matters or the hearing of an appeal will be conducted by any combination of written, electronic or oral hearing,
 - (e) time estimates and scheduling matters, and
 - (f) procedural matters raised by the Board or the Participants.

Rule 13 Appeal Management Conferences

- 13.1 On its own initiative or at the request of a Participant, the Board may schedule an appeal management conference by written notice to the Participants and may direct the Participants to deliver Documents or submissions prior to the conference.

- 13.2 To apply to change the date of a scheduled appeal management conference, a Participant must deliver a written request to the Board that explains the reason(s) the change is required and whether other Participants agree to it (if known).
- 13.3 Unless the Board authorizes otherwise, all Participants or their representatives must attend appeal management conferences.
- 13.4 The Board member or delegate appointed to conduct an appeal management conference may:
- (a) discuss clarification and simplification of issues on the appeal,
 - (b) schedule the date, time and place for the hearing of the appeal, or the hearing of preliminary or interim issues, including jurisdictional issues;
 - (c) discuss the identification of agreed facts,
 - (d) discuss any evidence that will be required and the procedure that will be followed for the hearing of the appeal,
 - (e) order a Participant to produce Documents at the appeal management conference or the hearing of the appeal,
 - (f) order a Participant to give another Party copies of Documents by a set date or to allow another Participant to inspect and copy Documents by a set date,
 - (g) discuss and set a schedule for Participants' delivery and exchange of Documents and submissions,
 - (h) hear and decide applications on preliminary or interim matters, including applications to extend a time limit, amend or cancel a summons to a witness, temporarily suspend the decision being appealed or adjourn a hearing date, or
 - (i) make any other recommendation, direction or order for the just and timely resolution of the appeal.
- 13.5 The Board member or delegate who conducts an appeal management conference may issue a report that includes any recommendations, directions or orders made by the Board member or delegate and the consensus of the Participants on any facts, issues or procedural matters on the appeal.
- 13.6 A Board member who conducts an appeal management conference where confidential settlement matters are discussed will not, unless the Parties agree, sit on the panel hearing the merits of the appeal.

Rule 14 Withdrawing an Appeal

- 14.1 To withdraw all or part of an appeal, the Appellant must deliver written notice of withdrawal to the Board. The Appellant may do this at any time before the Board has made its final decision disposing of the appeal and the Board will order that the appeal or part of it is dismissed.

Rule 15 Hearing of an Appeal

- 15.1 The hearing of an appeal will be in person, unless otherwise ordered by the Board in its discretion.
- 15.2 The Board will schedule the written, oral or electronic hearing of an appeal by written notice to the Participants.
- 15.3 An application to adjourn a scheduled hearing date must be made at the earliest opportunity and may be made:
- (a) by delivering a written request to the Board that explains the reason(s) an adjournment is required and whether other Participants agree to it (if known), or
 - (b) if the hearing is underway, by a verbal request to the Board member(s) hearing the appeal that explains the reason(s) an adjournment is required and whether other Participants agree to it (if known).
- 15.4 Except in extenuating circumstances, the Board will give other Participants an opportunity to be heard before granting an application to adjourn a scheduled hearing date.
- 15.5 In considering whether to grant an application to adjourn a scheduled hearing date, the Board will have regard generally to the following factors:
- (a) the reason(s) an adjournment is required,
 - (b) whether an adjournment will help resolve all or part of the appeal,
 - (c) whether, and the extent to which, prejudice will result if an adjournment is granted or refused,
 - (d) whether other Participants agree to an adjournment,
 - (e) the impact that an adjournment would have on the progress of the appeal,
 - (f) the number, length and causes of any previous delays in the progress of the appeal,

- (g) whether an adjournment is necessary to ensure a fair hearing of the appeal, and
 - (h) the public interest in the efficient and speedy conduct of appeals.
- 15.6 The Board will generally require the Appellant's case to be presented first, followed by the Respondent's case, and the Appellant will have the final opportunity of reply.
- 15.7 The Board will generally require written or oral evidence to be given under oath or affirmation.
- 15.8 Where timely notice of the hearing of an appeal is given and a Participant fails to attend at the hearing, the Board may proceed with the hearing and disposition of the appeal, without further notice to the Participant.
- 15.9 The Board will generally arrange for the recording of an oral hearing of an appeal by a qualified verbatim recorder.

Rule 16 Audio and Video Recordings of Hearings

- 16.1 Audio and video recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate.
- 16.2 The Board may refuse to permit the recording of all or part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceedings in any way.
- 16.3 Where recording is allowed, the following will apply unless otherwise directed by the Board:
- (a) only equipment which does not produce distracting sound or light will be used,
 - (b) where possible, existing audio systems present in the hearing room will be used,
 - (c) media personnel will not move about while the hearing is in progress, and
 - (d) equipment will be positioned unobtrusively before the hearing begins and shall not be relocated while the hearing is in progress.

Rule 17 Witnesses

- 17.1 After the Effective Date and, at the request of a Party, the Board may summon a witness to attend to give evidence at the hearing of an appeal or to produce a Document or other thing that is in the witness's possession or control.

- 17.2 A summons issued pursuant to Rule 17.1 will be issued in the form prescribed by the Board and may set out the names of any number of persons required to appear before the Board.
- 17.3 At the time the summons is delivered, the Participant summoning the witness must offer the witness reasonable estimated travelling expenses in advance of the required attendance.
- 17.4 A summons will be served personally on the person to whom it is directed at least two clear business days before the date on which the person is to appear.
- 17.5 If a person will attend to give evidence or to produce a Document or other thing voluntarily, a summons is not necessary.

Rule 18 Amending or Cancelling a Summons to a Witness

- 18.1 A witness summoned may apply to the Board to amend the terms of, or to cancel, the summons by delivering a written request to the Board that explains the reason(s) the summons should be cancelled or its terms should be amended.
- 18.2 An application to amend the terms of, or to cancel, a summons to a witness must also be delivered to the Participant summoning the witness.
- 18.3 Except in extenuating circumstances, the Board will give the Participant summoning the witness an opportunity to be heard before amending the terms of, or cancelling, a summons to a witness.

Rule 19 Expert Evidence

- 19.1 Unless the Board authorizes otherwise, a Participant who wishes to submit the evidence of an expert must deliver a report stating the qualifications and stating the evidence of the expert:
- (a) at least 30 days before the scheduled hearing date of the appeal, or
 - (b) in the case of evidence of an expert submitted in response to an expert report delivered by another Participant, at least 7 days before the scheduled hearing date of the appeal.
- 19.2 Unless the Board authorizes, or the other Participants agree otherwise, a Participant who submits the evidence of an expert must make the expert available for cross-examination at the hearing of the appeal.

Rule 20 Access and Restriction of Access to Hearings and Documents

- 20.1 An oral hearing of an appeal will be open to the public unless the Board directs that all or part of the information be received to the exclusion of the public because in the opinion of the Board:
- (a) the desirability of avoiding disclosure in the interests of any person or Participant affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public, or
 - (b) it is not practicable to hold the hearing in a manner that is open to the public.
- 20.2 A Document submitted in the hearing of an appeal will be accessible to the public unless:
- (a) the Board directs that all or part of the Document be received to the exclusion of the public because, in the opinion of the Board, the desirability of avoiding disclosure in the interests of any person or Participant affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public, or
 - (b) the Board directs that all or part of the Document be received in confidence to the exclusion of a Participant or Participants because, in the opinion of the Board, its nature requires that direction to ensure the proper administration of justice.
- 20.3 The evidence of a witness at the hearing of an appeal will be accessible to the Participants unless the Board directs that all or part of the evidence be received in confidence to the exclusion of a Participant or Participants because, in the opinion of the Board, its nature requires that direction to ensure the proper administration of justice.
- 20.4 The Board will not provide access to the following:
- (a) personal notes, communications or draft decisions of a Board decision-maker, or
 - (b) information received by the Board at the hearing of an appeal from which the public or a Participant was excluded.

Rule 21 Non-compliance with Board Process

- 21.1 If a Participant fails to participate in the appeal process in accordance with these rules or a procedural order or direction of the Board, the Board may:
- (a) manage, hear and dispose of the appeal without the participation of that Participant including, if that Participant is the Appellant, summary dismissal of the appeal without hearing evidence, and
 - (b) make any other order or direction that the Board considers fair.

Rule 22 Decisions, Orders and Rulings of the Board

- 22.1 The Board will issue a final decision in writing and give reasons for the decision.
- 22.2 The Board may make any other decision, order, direction or ruling in a proceeding orally or in writing and it will be effective at the time of pronouncement.
- 22.3 Unless the Board orders otherwise, the Board may amend a final decision to correct any of the following:
- (a) a clerical or typographical error,
 - (b) an accidental or inadvertent error, omission or other similar mistake,
 - (c) an arithmetic error made in computation.

Rule 23 Transition Process

- 23.1 The Board may, on application by an Appellant, hear an appeal prior to the Effective Date under the following conditions:
- (a) the Board will not require by summons any individual to appear before it as a witness and produce any relevant Document in their possession,
 - (b) the Board will consider the appeal based on provisions set out in the K'ómoks Treaty,
 - (c) all Participants agree that all decisions of the Board regarding the appeal are final and binding upon them subject to the ability of the parties to apply to a court of competent jurisdiction to review and set aside a decision of the Board as set out in paragraph 38 of the Eligibility and Enrolment Chapter of the K'ómoks Treaty.

Rule 24 Return of Exhibits

- 24.1 A person who has submitted exhibits to the Board may request that the Board return the exhibits.

Rule 25 Storage of Appeal Record

- 25.1 The Board, at the end of six months from the date of the final order in the proceedings, provided no appeal or judicial review has been commenced within that time, may deliver the record to K'ómoks on its agreement to store the records for a minimum of ten years from the date of the final order.

For further information regarding the Board and its rules, contact the Enrolment Appeal Board office at 604-681-4146

FORM A

**K'ÓMOKS ENROLMENT APPEAL BOARD
422-1080 Mainland Street
Reception Suite 300
Vancouver, B.C.
V6B 2T4
Telephone: 604-681-4146
email: kim@mandellpinder.com
Attention: Registrar**

IN THE MATTER OF an appeal under the K'ómoks Treaty by:

_____ [Legal Name of Appellant]

NOTICE OF APPEAL

TAKE NOTICE that the Appellant appeals from a decision of the K'ómoks

Enrolment Committee made the _____ day of _____, 20____,

and mailed to the Appellant on the _____ day of _____, 20____,

respecting the enrolment of _____.

AND THAT

- (1) the reason(s) why the decision being appealed should be changed are as follows
[specify the nature of the claim and include a copy of any decision of the
Enrolment Committee received]:

- (2) the Appellant agrees/does not agree [Appellant to circle the response which is appropriate] to participate under the transition process set out in Rule 23 of the K'ómoks Enrolment Appeal Board Rules, if the appeal is to be considered prior to the Effective Date of the K'ómoks Treaty.

DATED at _____, British Columbia, this _____ day of
_____, 20_____.

Name of Appellant (please print)

Appellant's lawyer or representative (if any)

Signature of Appellant or
Appellant's lawyer or representative

MAILING ADDRESS:

Telephone: _____