



<b>DISPUTE RESOLUTION POLICY: APPENDIX A - DISPUTE RESOLUTION PROCESS</b>			
<b>Reviewed:</b>	October 28, 2016	<b>Effective:</b>	November 10, 2016
<b>Next Review:</b>	November 2019	<b>Approval:</b>	Board of Directors

## **1. APPLICATION**

This Policy applies to matters in dispute (including complaints) between Athletics Ontario (AO) and its Members, or between AO Members, in relation to conduct or actions which are suspected to have breached the AO By-laws, rules and regulations, policies, contracts or agreements.

Previously filed disputes cannot be submitted for reconsideration except through the Appeals Process, where applicable.

## **2. REPORTING A COMPLAINT**

Any individual subject to this Process, whether a Member or a representative of Athletics Ontario, may report a complaint to Athletics Ontario's Board Chair at the Office of Athletics Ontario. Before the Process can proceed, a complaint must be submitted in writing, together with a brief summary of the matters in dispute.

## **3. COMPLAINT SCREENING**

Within five days of receiving the written notice of the complaint and summary, the Board Chair shall determine whether the matters in dispute and the parties to the dispute fall within the limit and application of this Process, or are more appropriately dealt with through another provision of the Dispute Resolution Policy, or another Athletics Ontario policy. In the absence of the Board Chair, a designate shall perform this function. Any decision regarding jurisdiction is final and may not be appealed.

## **4. INVESTIGATION**

Depending on the nature of the reported complaint, the Board Chair may appoint an independent individual to conduct an investigation in order to confirm the background and context of the complaint and to ascertain the facts. If an investigation is ordered, the Investigator shall carry out the task in a timely manner and at the conclusion shall submit a written report to the Board Chair.

## **5. HEARING PANEL**

If the Board Chair, or designate, is satisfied that this Process applies, then within 14 days of having received the original notice of the complaint or within 14 days of receiving the written report of the

Investigator (if an investigation was carried out), the Board Chair shall establish a Hearing Panel (the "Panel") and select the members of the Panel as follows:

- (a) The Panel shall be comprised of either one or three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the complaint or the dispute, and shall be free from any other actual or perceived bias or conflict. The decision regarding the size of the Panel shall be at the sole discretion of the Board Chair who must, in coming to the decision, ensure that the hearing process complies with the principles of natural justice and provides procedural fairness to all parties. The decision regarding Panel size may not be appealed.
- (b) If the Panel consists of three persons, and if an AO Member brings the complaint, one member of the Panel shall be the Member's nominee. The Member may submit a list of three candidates from which the Board Chair shall select one candidate to be a member of the Panel. The Member's three nominees shall have had no involvement with the complaint or the dispute, and shall be free from any other actual or perceived bias or conflict.
- (c) Should the Complainant not recommend an acceptable Panel member as set out in Section 3b above within five days, the Board Chair shall appoint the peer member of the Panel.
- (d) If the Panel consists of three persons, the Panel members shall select a Chairperson.

## **6. PRELIMINARY CONSULTATION**

The Panel may determine that the circumstances of the complaint warrant a preliminary conference. In most cases, the preliminary conference shall be conducted by telephone. The issues that may be considered at a preliminary conference include:

- (a) the format of the hearing, as the hearing may proceed by either, a review of documentary evidence, an in-person hearing, an oral hearing by telephone, or a combination of these methods. The Panel, in coming to its decision regarding the format of the hearing, must ensure that the hearing process complies with the principles of natural justice and provides procedural fairness to all parties;
- (b) the date and (if in-person) location of the hearing;
- (c) the timelines for the exchange of documents and the extent of disclosure required;
- (d) the clarification of issues in dispute;
- (e) the clarification of evidence to be presented to the Panel;
- (f) the order and procedure of the hearing;
- (g) the identification of witnesses; and
- (h) any other procedural matter which may assist in expediting the hearing.

If the Panel consists of three persons, the Panel may delegate to its Chairperson the authority to deal with any or all of these preliminary matters.

## **7. ORAL HEARING PROCEDURE**

Where the Panel has determined that the hearing shall be held by way of oral hearing, whether in-person or by telephone, the Panel shall govern the hearing by such procedures as it deems appropriate and fair, subject to the following provisions:

- (a) The hearing shall be held within 21 days of the Panel's appointment.
- (b) The parties involved shall be given ten days written notice of the date, time, format and place of the hearing.
- (c) The parties shall receive a copy of the Investigator's report, where an investigation was carried out.
- (d) If the decision of the Panel may affect another party to the extent that the other party would have recourse to a hearing in their own right, that party shall become a party to the hearing in question.
- (e) Any of the parties at the hearing may be accompanied by a representative or advisor, including legal counsel.
- (f) The Panel may direct that any other person participate in the hearing.
- (g) A quorum shall be the single Panel member or all three Panel members, as the case may be.
- (h) If there are three Panel members, decisions shall be by majority vote, where the Chairperson carries a vote. In the event that a Panel member is unable or unwilling to continue with the Process once initiated, the matter will be concluded by the remaining Panel members. In the event of a split decision in a two member Panel, the Chairperson's vote shall be decisive.
- (i) The Complainant bears the onus of proof, which must be discharged on a balance of probabilities.

## **8. DOCUMENTARY HEARING PROCEDURE**

Where the Panel has determined that the hearing shall be held by way of documentary review, it shall govern the hearing by such procedures as it deems appropriate and fair, subject to the following provisions:

- (a) All parties must be given a reasonable opportunity to review the Investigator's report, where an investigation was carried out:
  - (i) to provide written submissions to the Panel,
  - (ii) to review the written submissions of the other parties;
  - (iii) to provide written rebuttal; and
  - (iv) to provide written arguments.
- (b) The applicable principles and timelines set out in Section 6 above shall be followed.

## **9. EVIDENCE CONSIDERED**

As a general rule, the Panel shall consider any evidence that is relevant to the matters in dispute. The normal rules of evidence will be relaxed. The Panel shall have authority to consider hearsay evidence, in certain situations, provided that the Panel gives such evidence appropriate weight as might be reasonable in light of the circumstances of its inclusion.

## **10. DECISION**

Within 14 days of concluding the hearing, the Panel shall issue its written decision, with reasons. The Panel may decide to:

- (a) uphold the complaint;

- (b) deny the complaint;
- (c) design a remedy that, in the opinion of the Panel, will resolve the dispute. However, in doing so the Panel is not authorized to change or alter any rule, criteria, policy, procedure or by-law of Athletics Ontario that has been properly passed and implemented by the Board of Directors. A remedy designed by the Panel may include:
  - i. an order of specific performance;
  - ii. a written reprimand;
  - iii. removal of certain privileges, including the right to compete, train, coach, manage or provide team support for Provincial Team Program;
  - iv. suspension from AO Programs, either for specified events or for a specified period of time;
  - v. dismissal from the Provincial Team Program, through termination of the Athletics Ontario Athlete Agreement; and
  - vi. any other sanction(s) which the Panel considers appropriate in the circumstances.

A copy of the decision shall be provided to each of the parties and to the Board Chair. The Panel's decision shall be binding on all parties to the dispute. In the case of an athlete who is a member of the Provincial Team, failure to comply with a decision and remedy shall result in an automatic suspension of all the athlete's privileges, and there shall be no further right to participate, in any capacity, as a member of the Team until such time as the decision and remedy are complied with.

#### **11. TIMELINES**

If the circumstances of a complaint or a dispute are such that this Process will not allow a timely resolution of the matter, or if the circumstances of a complaint or a dispute are such that the matter cannot be resolved within the timelines dictated in this Process, the Board Chair or the Panel may direct that these timelines be revised.

#### **12. CONFIDENTIALITY**

As disputes can be highly sensitive, Athletics Ontario shall conduct all proceedings under this Process in a confidential manner, except where disclosure is directed by the Panel as part of the remedy to resolve the dispute, is required by law, Canada's Doping Policy, or is in the best interests of the public.

As a general rule, the decision of the Panel shall become a matter of public record.

#### **13. LOCATION**

The hearing shall take place in a location designated by the Board Chair, unless the Panel decides the hearing is to be held by way of telephone conference or unless, at the specific request of a party, a different location is mandated by the Panel as a preliminary matter.

#### **14. JURISDICTION**

This Process shall be governed and construed in accordance with the laws of the Province of Ontario.

## **15. APPEAL PROCEDURE**

If a party believes the decision rendered by the Panel, after completing this Process, was procedurally unfair, the decision of the Panel may be appealed under the AO Appeal Process (see Appendix C of the Athletics Ontario Dispute Resolution Policy). If this is a viable option, the decision reached through the AO Appeal Process will be final and binding on all parties. There shall be no further recourse to any appeal to a Court on any matter of fact or law.

Alternatively and under limited circumstances, if the Appellant and the Respondent and all affected parties mutually agree to take part in an alternative appeal process, and if all parties sign an arbitration agreement confirming their intent to submit to binding arbitration, the appeal may be referred to arbitration under the policies of the Sport Dispute Resolution Centre of Canada (SDRCC). Any such appeal must be initiated by notification to the Board Chair in writing within five days of the decision of the Panel being provided to parties as per section 9 above.

For more information on the SDRCC appeal process, please see the Appeal Policies section of SRDCC's website at [www.crdsc-sdrcc.ca](http://www.crdsc-sdrcc.ca)