



<b>DISPUTE RESOLUTION POLICY: APPENDIX C - APPEAL 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**

Any Member who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors or Operational Committee, or of any body or individual who has been delegated authority to make decisions on behalf of the Board of Directors, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out below. Such decisions may include, but are not limited to, contract matters, harassment, selection and discipline.

A decision cannot be appealed simply because a different result is sought. An appeal may be heard only if there are sufficient grounds for the appeal. Appeals that are deemed to have sufficient grounds include those which allege that AO made one of the following procedural errors:

- a) made a decision without the appropriate authority or jurisdiction as set out in AO governing documents;
- b) failed to follow procedures as laid out in AO by-law or approved policies;
- c) made a decision which was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views;
- d) exercised discretion for an improper purpose; or
- e) made a decision which was grossly unreasonable.

This Process shall not apply to matters relating to employment disputes or to the relevant athletics rules, which may not be appealed.

## **2. APPEAL SUBMISSION**

Members who wish to appeal a decision shall have 21 days from the date on which they received notice of the decision to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the AO Board Chair.

Any party wishing to initiate an appeal beyond the 21 day period must provide a written request stating reasons for an exemption to this requirement. The decision to allow or not allow an appeal outside the 21 day period shall be at the sole discretion of the Board Chair and may not be appealed.

## **3. APPEAL SCREENING**

Within five days of receiving the written notice of appeal, the Board Chair shall decide whether or not the appeal appears to be within the scope of this Process and based on one or more of the categories of possible errors by the Respondent as set out above, in Paragraph 2. The Board Chair shall not determine

if the error has been made, only if the appeal is based on such an allegation of error by the Appellant. In the absence of the Board Chair, a designated member of the AO Executive shall perform this function.

If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this decision in writing along with reasons. This decision is at the sole discretion of the Board Chair, or designate, and may not be appealed.

#### **4. APPEAL PANEL**

If the Board Chair is satisfied that there are sufficient grounds for an appeal, then within 14 days of having received the original notice of appeal the Board Chair shall establish an Appeal Panel (the "Panel") as follows:

- (a) The Panel shall be comprised of three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict.
- (b) At least one of the Panel members shall be from among the Appellant's peers. The Appellant may submit a list of three candidates from which the Board Chair shall select one candidate to be a member of the Panel, provided that individual satisfies the criteria in Section 3a above.
- (c) Should the Appellant 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) The Panel shall select a Chairperson.

#### **5. PRELIMINARY CONFERENCE**

The Panel may determine that the circumstances of the dispute 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 appeal hearing, as the hearing may proceed by either, an in-person hearing, an oral hearing by telephone conference call, a video teleconference or a combination of these methods. The Panel, in coming to a decision on format, must ensure that the hearing process complies with the principles of natural justice, provides procedural fairness to all parties, and keeps costs to a reasonable level;
- b) the date and (if in-person) location of hearing;
- c) the timelines for exchange of documents and extent of disclosure required;
- d) the clarification of issues in dispute;
- e) the identification of witnesses;
- f) remedies being sought; and
- g) any procedural matter, order and procedure of hearing, or any other matter which may assist in expediting the appeal proceedings.

Any party to the appeal may request that the Panel conduct the appeal by way of documentary evidence. The Panel may seek agreement from the other parties to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the appeal shall proceed by way of documentary evidence or in-person hearing as a preliminary matter.

The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

## **6. APPEAL PROCEDURE**

The Panel shall govern the appeal by such procedures as it deems appropriate, subject to the following provisions:

- a) The appeal hearing shall be held within 21 days of the Panel's appointment.
- b) The Appellant, Respondent and affected parties shall be given ten days written notice of the date, time, format and place of the appeal hearing.
- c) A quorum shall be all three Panel members, subject to section 5. i) below.
- d) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all other parties, at least five days in advance of the hearing.
- e) Any of the parties may be accompanied by a representative or advisor, including legal counsel.
- f) If the matter under appeal relates to team selection, any person potentially affected by the decision of the Panel shall become a party to the appeal.
- g) The Panel may direct that any other individual participate in the appeal.
- h) The Appellant bears the onus of proof, which must be discharged on a balance of probabilities. Decisions shall be by majority vote, where the Chairperson carries a vote.
- i) In the event that one of the Panel members is unable or unwilling to continue with the appeal, the matter will be concluded by the remaining two Panel members. In the event of a split decision on a two member Panel, the Chairperson's vote shall be decisive.
- j) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.

## **7. APPEAL DECISION**

Within 14 days of concluding the appeal hearing, the Panel shall issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:

- a) to void or confirm the decision being appealed;
- b) to vary the decision, only where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
- c) to refer the matter back to the initial decision-maker for a new decision; and/or
- d) to determine how costs of the appeal shall be allocated, if at all.

A copy of this decision shall be provided to each of the parties and to the Board chair.

## **8. TIMELINES**

If the circumstances of the dispute are such that this Process will not allow a timely appeal, the Panel may direct that these timelines be abridged. If the circumstances of the dispute are such the appeal cannot be concluded within the timelines dictated in this Process, the Panel may direct that these timelines be extended.

## **9. CONFIDENTIALITY**

As disputes can be highly sensitive, AO 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.

## **10. LOCATION**

The hearing shall take place in the 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.

## **11. JURISDICTION**

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

## **12. FINAL DECISION**

The decision of the Appeal Panel shall be final and binding on all parties with regard to all matters in dispute, and there shall be no recourse to any further appeal to a Court on a question of either fact or law.