

Ottawa Sport Council Appeals Policy

Definitions

1. The following terms have these meanings in this Policy:
 - a) “*Appellant*” – The Party appealing a decision
 - b) “*Association*” – The Ottawa Sport Council
 - c) “*Case Manager*” – An individual appointed by the Association, who need not be a member or affiliated with the Association, to administer this Discipline and Complaints Policy. The Case Manager will comply with the position description described in Appendix “A”.
 - d) “*Respondent*” – The body whose decision is being appealed
 - e) “*Parties*” – The Appellant, Respondent, and any other Members or persons affected by the appeal
 - f) “*Days*” – Days including weekend and holidays
 - g) “*Individuals*” – All categories of membership defined in the Association’s Bylaws, as well as all individuals employed by, or engaged in activities with, the Association including, but not limited to volunteers, managers, administrators, committee members, Directors and Officers of the Association

Purpose

2. The Association is committed to providing an environment in which all Individuals involved with the Association are treated with respect and fairness. The Association provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by the Association. Further, some decisions made by the process outlined in the Association’s *Discipline and Complaints Policy* may be appealed under this Policy.

Scope and Application of this Policy

3. This Policy applies to all Individuals. Any Individual who is directly affected by a the Association decision shall have the right to appeal that decision; provided there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy.
4. This Policy **will not apply** to decisions relating to:
 - a) Employment
 - b) Budgeting and budget implementation
 - c) The Association’s operational structure and committee appointments
 - d) Decisions or discipline arising within the business, activities, or events organized by entities other than the Association (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by the Association at its sole discretion)
 - e) Commercial matters for which another appeals process exists under a contract or applicable law
 - f) Decisions made under this Policy

Timing of Appeal

5. Individuals who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit, in writing to the Association, the following:
 - a) Notice of the intention to appeal
 - b) Contact information and status of the appellant
 - c) Name of the respondent and any affected parties, when known to the Appellant
 - d) Date the appellant was advised of the decision being appealed
 - e) A copy of the decision being appealed, or description of decision if written document is not available
 - f) Grounds for the appeal
 - g) Detailed reasons for the appeal
 - h) All evidence that supports these grounds
 - i) Requested remedy or remedies
 - j) An administration fee of one hundred dollars (\$100)
6. An Individual who wishes to initiate an appeal beyond the seven (7) day period must provide a written request stating the reasons for an exemption. The decision to allow, or not allow, an appeal outside of the seven (7) day period will be at the sole discretion of the Case Manager and may not be appealed.

Grounds for Appeal

7. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
 - a) Made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make
 - b) Failed to follow its own procedures (as set out in the Respondent's governing documents)
 - c) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views)
 - d) Failed to consider relevant information or took into account irrelevant information in making the decision
 - e) Made a decision that was grossly unreasonable
8. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the 'Grounds for Appeal' section of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

Screening of Appeal

9. Upon receiving the notice of the appeal, the fee, and all other information (outlined in the 'Timing of Appeal' section of this Policy), the Association and the Appellant may first determine the appeal to be heard under the Association's *Dispute Resolution Policy*.
10. Appeals resolved by mediation under the Association's *Dispute Resolution Policy* will cause the administration fee to be refunded to the Appellant.
11. Should the appeal not be resolved by using the *Dispute Resolution Policy*, the Association will appoint an independent Case Manager who has the following responsibilities:
 - a) Determine if the appeal falls under the scope of this Policy
 - b) Determine if the appeal was submitted in a timely manner
 - c) Decide whether there are sufficient grounds for the appeal
12. If the appeal is denied on the basis of insufficient ground, because it was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed.
13. If the Case Manager is satisfied there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals Panel which shall consist of a single Adjudicator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Case Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.

Procedure for Appeal Hearing

14. The Case Manager shall notify the Parties that the appeal will be heard. The Case Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Case Manager and may not be appealed.
15. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
16. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate in the circumstances, provided that:
 - a) The hearing will be held within a timeline determined by the Case Manager
 - b) The Parties will be given reasonable notice of the day, time and place of the hearing
 - c) Copies of any written documents which the parties wish to have the Panel consider will be provided to all Parties in advance of the hearing

- d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
- e) The Panel may request that any other individual participate and give evidence at the hearing
- f) The Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the appeal, but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate
- g) If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Policy, that party will become a party to the appeal in question and will be bound by its outcome
- h) The decision to uphold or reject the appeal will be by a majority vote of Panel members

17. In fulfilling its duties, the Panel may obtain independent advice.

Appeal Decision

18. The Panel shall issue its decision, in writing and with reasons, after the hearing's conclusion. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide to:
- a) Reject the appeal and confirm the decision being appealed
 - b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision
 - c) Uphold the appeal and vary the decision
 - d) Determine whether costs of the appeal, excluding legal fees and legal disbursements of any Parties, will be assessed against any Party. In assessing costs, the Panel will take into account the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources
19. The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and the Association. In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Timelines

20. If the circumstances of the appeal are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the appeal, the Case Manager and/or Panel may direct that these timelines be revised.

Confidentiality

21. The appeals process is confidential and involves only the Parties, the Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings.

Final and Binding

22. The decision of the Panel will be binding on the Parties and on all the Association's Individuals; subject to the right of any Party to seek a review of the Panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC).
23. No action or legal proceeding will be commenced against the Association or Individuals in respect of a dispute, unless the Association has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in the Association's governing documents.

Appendix A

CASE MANAGER POSITION DESCRIPTION

Purpose

1. In some of its policies, the Association requires the appointment of a Case Manager. This Position Description outlines the role, identity, responsibilities and tasks of the Case Manager.

Policies

1. The following Policies require the appointment of a Case Manager:
 - a) Discipline and Complaints
 - b) Appeal
 - c) Alternate Dispute Resolution Policy

Identity

2. The Case Manager, whether or not appointed by the Association at its sole discretion, should be experienced with the management of disputes in an unbiased manner. The individual should not be connected in any way to the issue being disputed (and/or the outcome of the dispute) but does not necessarily need to be an independent third-party not connected with the Association – though the guaranteed independence and neutrality of a third-party is preferred. The individual does not need to be a Member of the Association.
3. The Case Manager's identity does not need to be approved by any of the parties involved in the dispute, excluding the Association.

Discretion - Complaints

4. When a complaint is filed, the Case Manager is required to:
 - h) Determine whether the complaint is frivolous and within the jurisdiction of the Discipline and Complaints Policy
 - i) Propose the use of the Association's Alternate Dispute Resolution Policy
 - j) Appoint the Panel, if necessary
 - k) Coordinate all administrative aspects and set timelines
 - l) Provide administrative assistance and logistical support to the Panel as required
 - m) Provide any other service or support that may be necessary to ensure a fair and timely proceeding

Discretion - Appeals

5. When an appeal is filed, the Case Manager is required to:
 - a) Propose the use of the Association's Alternate Dispute Resolution Policy
 - b) Determine if the appeal falls under the scope of the Appeal Policy
 - c) Determine if the appeal was submitted in a timely manner
 - d) Decide whether there are sufficient grounds for the appeal
 - e) Appoint the Panel, if necessary
 - f) Coordinate all administrative aspects and set timelines
 - g) Provide administrative assistance and logistical support to the Panel as required
 - h) Provide any other service or support that may be necessary to ensure a fair and timely proceeding
6. When determining if there are sufficient grounds for appeal, the Case Manager is not acting as the Panel and determining the merits of the appeal, but instead determining whether the Appellant has properly shown that an error, as described in the Appeal Policy, has been properly argued. The Case Manager will need to carefully consult the Association's policies and procedures, and analyze the process that contributed to the decision, to determine whether there are appropriate grounds.

Discretion – Alternate Dispute Resolution

7. When the parties agree to the jurisdiction of the Alternate Dispute Resolution Policy, the Case Manager maybe required to:
 - a) Appoint the mediator or facilitator

- b) Coordinate all administrative aspects and set timelines
- c) Provide administrative assistance and logistical support to the mediator or facilitator as required

Hearing Format - Discretion

8. If necessary, the Case Manager is required to exercise their discretion to determine the format of the hearing. Hearings typically take the following forms, but are not limited to:
 - a) In person
 - b) Conference call
 - c) Written submissions
 - d) Conference call plus written submissions
9. In determining the format of the hearing the Case Manager should consider:
 - a) The distance between the parties
 - b) The animosity between the parties
 - c) The time commitment and location of the Panel
 - d) The timelines for a decision
 - e) The language barriers between the parties
 - f) The gravity of the complaint/appeal

Panel Appointment

10. The Case Manager is required to appoint a Panel of one person, or three in extraordinary circumstances, to decide the issue.
11. The Case Manager should remind the Panel to adhere to the powers given to the Panel by the applicable policy. For example, if the policy does not permit the Panel to suspend the respondent indefinitely, then the Panel cannot sanction the respondent in this manner.

Communication

12. Especially when the hearing is to be held by written submissions, the Case Manager is required to communicate swiftly, clearly, and decisively with each party. The parties must adhere to the deadlines set by the Case Manager or by the applicable policy and the process must move forward even if a party misses a deadline.
13. When coordinating an oral hearing, the Case Manager should first consider the schedule of the Panel, then the schedule of the complainant, and then the schedule of the respondent in an attempt to find a suitable time for everyone.

Suggested Procedure

14. The Case Manager may implement the following procedure to facilitate the Discipline and Complaints Policy or the Appeal Policy:
 - a) Receive the written complaint or appeal
 - b) Communicate with the Complainant/Appellant that you have been appointed the Case Manager and that their complaint/appeal will be disclosed to the Respondent and Panel. Also determine if there is additional evidence or written submissions to follow, if so, provide a deadline for receipt. (After this step, the Complainant/Appellant may not have another opportunity to make additional submissions or provide evidence, unless determined otherwise by the Panel)
 - c) Determine whether the complaint is within the jurisdiction of the applicable Policy.
 - d) Notify the Respondent that you are the Case Manager and are in receipt of a complaint/appeal. Communicate to the Respondent that any submissions will be provided to the Complainant/Appellant and Panel. Provide the Respondent with a reasonable timeframe to submit their response document and any applicable evidence. (After this step, the Respondent may not have another opportunity to make additional submissions or provide evidence, unless determined otherwise by the Panel).
 - e) The Case Manager may wish to provide the Complainant/Appellant to submit a rebuttal, but the rebuttal must be limited to issues raised by the Respondent and is not an opportunity to provide new evidence. The Panel may exclude such new evidence.
 - f) Appoint the Panel

- g) Conduct a hearing either via written documentation, teleconference, in – person, or a combination of these techniques.
- h) Ensure the Panel renders a written decision within a prescribed timeline.