

CANOE KAYAK CANADA
APPEAL POLICY

This Policy has been prepared by Canoe Kayak Canada and is a Pan-Canadian Policy applicable to Canoe Kayak Canada and its Members. This document cannot be modified by a Member without consultation and approval from Canoe Kayak Canada.

Purpose

1. This *Appeal Policy* provides Individuals with a fair, affordable, and expedient appeal process.

Scope and Application of this Policy

2. This Policy applies to all Individuals.
3. Any Individual who is directly affected by a decision made by Canoe Kayak Canada or a Member shall have the right to appeal that decision provided that it is a decision that is subject to appeal pursuant to Section 4 of this Policy, that the conditions indicated in Sections 6 or 7 of this Policy (as applicable) have been satisfied, and provided that there are sufficient grounds for the appeal under the 'Grounds for Appeal' section of this Policy.
4. This Policy **will apply** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of interest
 - d) Disciplinary decisions made pursuant to Canoe Kayak Canada or a Member's relevant and applicable policies
 - e) Membership
5. This Policy **will not apply** to the following decisions relating to:
 - a) Matters of general application such as amendments to Canoe Kayak Canada or a Member's Bylaws;
 - b) Employment matters or matters of operational structure or staffing or volunteer leadership opportunities
 - c) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program by the Canadian Centre for Ethics in Sport, the International Canoe Federation or any other Anti-Doping Organization with authority to pursue a doping offence
 - d) The rules of the sport
 - e) Selection criteria, quotas, policies, and procedures established by entities other than Canoe Kayak Canada or a Member (as applicable)
 - f) Substance, content and establishment of team selection or carding criteria
 - g) Volunteer/coach appointments and the withdrawal or termination of those appointments
 - h) Budgeting and budget implementation
 - i) Canoe Kayak Canada or a Member's operational structure and committee appointments
 - j) Decisions made by organizations other than Canoe Kayak Canada, such as Canoe Kayak Canada's Members, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), U Sports, the International Olympic Committee (IOC), the International Paralympic Committee (IPC), the International Canoe Federation (ICF) or the Fédération Internationale du Sport Universitaire (FISU) or any other governing body

- k) Commercial or contractual matters between Canoe Kayak Canada and its staff or Members for which another dispute resolution process exists under the provisions of the applicable contract
- l) Decisions made under this Policy
- m) Settlements negotiated pursuant to the *Dispute Resolution Policy*

Timing of Appeal

6. Individuals who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit to Canoe Kayak Canada's CEO or the CEO (or equivalent position of a Member, where applicable) the following:
 - a) Notice of the intention to appeal
 - b) Their contact information
 - 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 the decision if a written document is not available
 - f) Grounds and detailed reasons for the appeal
 - g) All evidence that supports these grounds
 - h) Requested remedy or remedies
 - i) An administration fee of two hundred dollars (\$200), which will be refunded if the appeal is upheld

7. An Individual who wishes to initiate an appeal beyond the seven (7) day period may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated in Section 6 above. Any such Individual must provide a written request stating the reasons for which they are seeking 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 Appeal Manager and may not be appealed.

Grounds for Appeal

8. A decision cannot be appealed on its merits alone or because an Individual (or Individuals) do not like or agree with a decision. 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); or
 - d) Made a decision that was grossly unreasonable or unfair.

9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 8 of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

Submitting an Appeal

Discipline Chair Decision – CLUBS

10. A decision made by a Club Discipline Chair following a request for reconsideration by one of the Parties pursuant to the *Discipline and Complaints Policy* may be appealed to the Club's Provincial/Territorial Organization (or, where applicable, Division) in accordance with this *Appeal Policy*, applied and modified according to the circumstances.
11. The Provincial/Territorial Organization (or Division, if applicable) shall appoint an Appeal Manager and shall follow the process outlined in Sections 25 and following of this *Appeal Policy*, applied modified according to the circumstances.
12. Notwithstanding the aforementioned or any provision that says otherwise in this *Appeal Policy*, the Appeal Manager may only appoint a single member as the Appeal Panel and, unless the Provincial/Territorial Organization (or Division, if applicable) agrees otherwise, any fees (for example, the mediator's fees) related to the use of the *Dispute Resolution Policy* shall be the responsibility of the Parties to the appeal and not the Club or the Provincial/Territorial Organization (or Division, if applicable).

Discipline Chair Decision – Division or Provincial/Territorial Organizations

13. A decision made by a Provincial/Territorial Organization (or, where applicable, Division)'s Discipline Chair following a request for reconsideration by one of the parties pursuant to the *Discipline and Complaints Policy* may be appealed before the Canoe Kayak Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.
14. Canoe Kayak Canada shall appoint an Appeal Manager and shall follow the process outlined in Sections 25 and following of this *Appeal Policy*.

Discipline Panel Decision – Division or Provincial/Territorial Organizations

15. A decision made by a Provincial/Territorial Organization (or, where applicable, Division)'s Discipline Panel pursuant to the *Discipline and Complaints Policy* may be appealed before the Canoe Kayak Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.
16. Canoe Kayak Canada shall appoint an Appeal Manager and shall follow the process outlined in Sections 25 and following of this *Appeal Policy*.
17. Any decision by the Canoe Kayak Canada Appeal Panel in relation to an appeal filed pursuant to Sections 13 and 15 above shall be final and shall not be subject to any further appeal before the Sport Dispute Resolution Centre of Canada (SDRCC), unless the original Parties to the appeal seize the SDRCC on a fee-for-service basis. If the Parties decide to seize the SDRCC on a fee-for-service basis, Canoe Kayak Canada shall be given notice of the appeal so that it may participate if it sees fit.

Discipline Chair Decision – Canoe Kayak Canada

18. A decision made by Canoe Kayak's Discipline Chair following a request for reconsideration by one of the Parties pursuant to the *Discipline and Complaints Policy* may be appealed to the Canoe Kayak Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.

19. A decision made by Canoe Kayak Canada's Discipline Panel pursuant to the *Discipline and Complaints Policy* may be appealed to the Canoe Kayak Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.

Other decisions

20. Any other decision relating to the matters indicated in Section 4 above may be appealed in accordance with Sections 25 and following of this Policy.

21. Notwithstanding any other provision in this *Appeal Policy*, by agreement between the parties, the internal appeal process **in relation to decisions made by Canoe Kayak Canada only** may be bypassed, and the appeal may be heard directly before the SDRCC.

22. Except where an appeal proceeds before the SDRCC, Canoe Kayak Canada shall appoint an Appeal Manager and shall follow the process outlined in Sections 25 and following of this *Appeal Policy*, modified and applied accordingly based on the circumstances.

Dispute Resolution

23. For appeals filed pursuant to Sections 18, 19 and 20, the Parties may first attempt to resolve the appeal through the *Dispute Resolution Policy* once the notice of the appeal, the fee, and the information required pursuant to Section 6 have been received.

24. Appeals resolved under the *Dispute Resolution Policy* will result in the administration fee being refunded to the Appellant.

25. Should the appeal not be resolved by using the *Dispute Resolution Policy* or otherwise, Canoe Kayak Canada or the Provincial/Territorial Organization (or, where applicable, Division) will appoint an independent Appeal Manager (who must not be in a conflict of interest or have any direct relationship with the parties) who has the following responsibilities:

- a) To determine if the appeal falls under the scope of this Policy (Sections 2-5)
- b) To determine if the appeal was submitted in a timely manner (Sections 6 and 7)
- c) To decide whether there are sufficient grounds for the appeal (Section 8)

Screening of Appeal

26. If the Appeal Manager denies the appeal on the basis of insufficient grounds, 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.

27. If the Appeal Manager accepts an appeal because it falls under the scope of this Policy, there are sufficient grounds and it was submitted in a timely manner, the Appeal Manager will notify the Parties of their decision in writing and will follow the steps described hereunder.

Appointment of Appeal Panel

28. If an appeal is accepted, the Appeal Manager will appoint an appeal panel which shall consist of a single member to hear the appeal. However, at the discretion of the Appeal Manager, an appeal panel

composed of three members may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the panel's members to serve as the Chair.

29. When appointing the appeal panel, the Appeal Manager must select individuals who are impartial, free from any real or perceived conflict of interest (and who shall remain so until a final decision has been rendered or the proceedings have otherwise finally terminated), and who do not have any direct relationship with any of the Parties. Although not a strict requirement, the Appeal Manager should attempt to appoint individuals to the appeal panel who have a legal background and who understand the sport of canoe kayak (and, where relevant, the specific discipline). When justified by the circumstances, the Appeal Manager may appoint individuals to the appeal panel who have specific areas of expertise that would assist in resolving the matter.

Determination of Affected Parties

30. In order to confirm the identification of any Affected Parties, the Appeal Manager will engage Canoe Kayak Canada or the Member (as applicable). The Appeal Manager may determine whether a party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

31. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager, in collaboration with the appeal panel, shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.
32. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
33. 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, a hearing based on documentary submissions alone, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Manager and the appeal panel deem appropriate in the circumstances, provided that:
 - a) The hearing will be held in a timely manner and within a timeline determined by the Appeal Manager
 - b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
 - c) Copies of any written documents which the Parties wish to have the appeal 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 appeal panel may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.
 - f) The appeal 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) Any Affected Party shall be permitted to make submissions and file evidence before the appeal panel. The appeal panel's decision is binding on any Affected Party.
 - h) The decision to uphold or reject the appeal will be by a majority vote of appeal panel members, except in cases where the panel consists of a single member
34. In fulfilling its duties, the appeal panel may obtain independent advice.

Appeal Decision

35. The appeal panel shall issue its decision, in writing and with reasons, within fourteen (14) days after the hearing's conclusion. In making its decision, the appeal panel will have no greater authority than that of the original decision-maker. The appeal panel may decide to:
- a) Reject the appeal and confirm the decision being appealed
 - b) Uphold the appeal, in whole or in part, and refer the matter back to the initial decision-maker for a new decision
 - c) Uphold the appeal, in whole or in part, and vary the decision
 - d) Determine whether costs of the appeal, excluding legal fees and legal disbursements of any Parties, may be assessed against any Party. In assessing costs, the appeal panel will take into account the nature and amount of the costs, the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources.
36. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and Canoe Kayak Canada or the Member (as applicable). In extraordinary circumstances, the appeal 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 a Party otherwise makes a request to the appeal panel and the panel orders that the decision, in whole or in part, remain confidential.

Timelines

37. 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 Appeal Manager and/or Panel may direct that these timelines be revised.

Confidentiality

38. The appeals process is confidential and involves only the Parties, the Appeal 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.
39. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with Canoe Kayak Canada or the Member's relevant and applicable policies..

Final and Binding

40. No action or legal proceeding will be commenced against Canoe Kayak Canada, Members, or Individuals in respect of a dispute, unless Canoe Kayak Canada or the Member (as applicable) has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.

| Policy History | |
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| Approved | |
| Next Review Date | |
| Revision Approval Dates | |