

## **ROWING CANADA AVIRON APPEAL POLICY AND PROCEDURE**

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### **INTRODUCTION**

1. This document sets out the policy and procedure for appeals by all categories of member of RCA against decisions that affect them. It provides for an internal process and, in most cases, a final external process. The purpose of this Policy is to enable disputes with members to be dealt with fairly, expeditiously and affordably within RCA and without recourse to external procedures.

### **PRINCIPLES**

2. Any member of RCA who is affected by a decision taken by RCA specifically with regard to that member by the Board, by any Committee of the Board or by any body or individual within RCA who has been delegated authority to make decisions in accordance with RCA's constitution and governance policies, shall have the right to appeal that decision subject to the terms and conditions set out in this Policy below.
3. This Policy will apply to decisions made by RCA relating to eligibility, selection, allocation of competitive opportunities, harassment and Athlete Assistance Program ("AAP") carding nominations.
4. For further clarity, this Policy will not apply to matters relating to:
  - a. Matters of general application such as amendments to the RCA Constitution;
  - b. Issues of budgets and budget implementation;
  - c. Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;
  - d. Matters relating to regattas in Canada governed by other international organizations such as the Olympic Games, Pan American Games, World Championships and similar events;
  - e. Selection criteria, quotas, policies and procedures established by entities other than RCA;
  - f. The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
  - g. Policy and procedures established by any other agency, association or organization external to RCA;
  - h. Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, the Canadian Centre for Ethics in Sport, the World Anti-Doping Agency and FISA;
  - i. Disputes over competition rules;

- j. Contractual matters between RCA and its members for which another dispute resolution process exists under the provisions of the applicable contract.
5. A decision cannot be appealed simply because a member does not like or agree with it; there must be sufficient grounds for the appeal. The possible grounds for appeal are that the individual, group or committee making the decision:
  - a. Did not have authority or jurisdiction as set out in governing documents to
  - b. make the decision;
  - c. Failed to follow procedures as laid out in the Constitution or approved policies of RCA;
  - d. Made a decision which was influenced by bias, bias being defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views;
  - e. Exercised its discretion for an improper purpose;
  - f. Made a decision that was grossly unreasonable or unfair.
6. The RCA shall appoint a Case Manager to oversee management and administration of appeals submitted in accordance with this Policy. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Policy and to implement the Policy in a timely manner. More particularly, the Case Manager has a responsibility to:
  - a. Receive appeals;
  - b. Determine if appeals lie within the jurisdiction of this Policy;
  - c. Determine if appeals are brought in a timely manner;
  - d. Determine if appeals are brought on permissible grounds;
  - e. Appoint the appeal panel to hear appeals and/or determine the preliminary questions set out in paragraph 6 (a) to (d) above;
  - f. Determine the format of the appeal hearing;
  - g. Coordinate all administrative and procedure aspects of the appeal;
  - h. Provide administrative assistance and logistical support to the appeal panel as required; and
  - i. Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

## **PROCEDURE**

### *GENERAL*

7. The following timelines shall govern this Policy. Note that “days” refers to the total number of calendar days including weekends or holidays. The Case Manager reserves the right to modify these timelines to accommodate the particular circumstances of any appeal.
8. Unless otherwise specified in this Policy, a member wishing to appeal a decision must submit a written Notice of Appeal to the Case Manager within fourteen (14) days of being notified of the decision.
9. The appeal must be accompanied by the sum of Five Hundred Dollars (\$500.00) (cash, certified cheque, bank draft or credit card). This sum shall be refunded if the appeal is upheld.

10. The member appealing a decision (the “Appellant”) will bear the onus of proof in the appeal and therefore must be able to demonstrate, on a balance of probabilities, that the Respondent to the Appeal has made an error as described in paragraph 5 above.
11. Within the appropriate time lines, the Case Manager shall in consultation with the President of RCA, appoint an appeal panel consisting of a single adjudicator to hear the appeal. In extraordinary circumstances and in the sole discretion of the Case Manager an appeal panel of three (3) persons may be appointed to hear and decide a case. In this event the Case Manager will appoint one of the appeal panel’s members to serve as the Chair of the Appeal Panel and the Appeal Panel Chair shall appoint the remaining two (2) members of the Panel. Each member of the Appeal Panel shall be appointed for their independence and expertise.
12. The Case Manager will first consider whether sufficient grounds for making an appeal have been demonstrated and will reject the appeal without further consideration if it determines that the required criteria for an appeal set out in paragraph 5 have not been met. If satisfied that there are not sufficient grounds for an appeal, the parties will be notified of this decision in writing with reasons. If satisfied that there are sufficient grounds for an appeal, then a hearing will take place in accordance with the provisions of this Policy.
13. The Case Manager has the authority to establish the appeal panel’s process provided that it respects the basic principles of fairness – the right to know the case to be met and the right to make a case in response. All parties are entitled to receive all material put before the appeal panel.
14. The Case Manager shall give the concerned parties at least fourteen (14) days’ notice of the time and date at which the appeal is to be heard and whether the hearing will be on the basis of documentary submissions or whether it will be expanded to allow verbal submissions. In the latter case, all parties have the right to be present at the same time and to rebut information.
15. The Appeal panel is expected to render its decision within seven (7) days of receipt of the written appeal but the Case Manager may vary this time frame according to the circumstances and complexity of the matter. An exception to this is the time frame within which decisions relating to National Team selection will be rendered (see paragraph 19).
16. The appeal process is confidential involving only the parties, the Case Manager and the appeal panel. Once initiated and until a decision is released, none of the parties or the appeal panel shall disclose information relating to the appeal to any person not involved in the proceedings save and except legal counsel.
17. The decision of the appeal panel shall be final and binding upon the parties and upon all members of the RCA subject to the right of any party to seek judicial review of the appeal panel’s decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time and subject to the following limitations:
  - a. In the event that a member is successful during the process of judicial review before the SDRCC, the SDRCC Tribunal shall only have the jurisdiction to remit the matter back to

RCA to correct the error identified by the SDRCC, unless this is not practicable in the circumstances or the parties agree otherwise;

- b. The parties will execute an arbitration agreement that shall confirm the jurisdiction of the SDRCC Tribunal to decide the matter, specifically the precise decision under appeal and the issues in dispute and shall specify other matters that the parties agree will be binding on themselves and the SDRCC Tribunal.
18. Where a decision under appeal relates to a carding matter governed by the policies and procedures of the AAP of the Federal Government, Sport Canada shall be invited as a party in the review of the appeal panel's decision before the SDRCC.

### ***Selection to National Teams***

19. Selection to National Teams may be made close to the time that the team is to depart for the regatta, allowing little time for an appeal from a selection decision to be heard or to give effect to a successful appeal. For this reason a number of individuals shall be designated in advance of any National Team selection decisions, to serve as an appeal panel if required. The member(s) of the Appeal Panel will familiarize themselves with the published criteria by which National Team selections are to be made so as to be able to respond quickly in the event of an appeal.
20. Before appealing decisions relating to selection to National Teams a member is advised to discuss his or her concerns with the Program Coach within twenty four (24) hours of receipt of official notification of the original decision. If the matter cannot be resolved, the member is advised to discuss his or her concerns with the Director of High Performance within forty-eight (48) hours of receipt of official notification of the original decision. If discussions with the Director of High Performance do not resolve the matter, the appeal will be heard according to the general procedures set out in this Policy, amended as follows:
- a. Appeals from team selection decisions must be sent in writing to the Case Manager as soon as possible and no later than seventy-two (72) hours of receipt of official notification of the original decision.
  - b. The payment normally required to accompany appeals as set out in paragraph 9 above, is not required.
  - c. Considering the sensitivity of time in these appeals, the appeal panel will provide its decision on Team Selection appeals within a time frame that enables a successful appeal to be implemented, and in any case within seventy-two (72) hours of receipt of the written appeal.

### ***Nomination for AAP Carding***

21. A number of individuals shall be designated in advance of any Nomination for AAP Carding decisions, to serve as an appeal panel if required. The member(s) of the Appeal Panel will familiarize themselves with the published criteria by which Nominations for APP Carding are to be made so as to be able to respond quickly in the event of an appeal.

22. Before appealing decisions relating to AAP Carding nominations a member is advised to discuss his or her concerns with the High Performance Director within twenty four (24) hours of receipt of official notification of the original decision. The High Performance Director upon receipt of concerns from a member regarding AAP nominations shall immediately notify the RCA Chief Executive Officer. If discussions with the High Performance Director do not resolve the matter, the appeal will be heard according to the general procedures set out in this Policy, amended as follows:
  - a. Appeals from Nomination for AAP Carding decisions must be sent in writing to the Chief Executive Officer as soon as possible for delivery to the Case Manager no later than seventy-two (72) hours of receipt of official notification of the original decision.
  - b. The payment normally required to accompany appeals as set out in paragraph 9 above, is not required.
  - c. The appeal panel will provide its decision on Nomination for AAP Carding within a time frame that enables a successful appeal to be implemented, and in any case within seventy-two (72) hours of receipt of the written appeal.

**Disputes Arising Under The Terms Of An Agreement With a Member, including but not limited to hosting agreements**

1. The manner of resolving disputes arising under the terms of an Agreement is usually spelled out in the agreement between the parties. In cases where this is not so, RCA will agree to enter into arbitration of such disputes in accordance with the provisions of paragraphs 7 to 18 above.