

## ROWING CANADA AVIRON

### APPEAL POLICY AND PROCEDURE

#### DEFINITIONS

1. The following terms have these meanings in this Policy:
  - a. “*Appellant*” – The Party appealing a decision
  - b. “*Days*” = Calendar days including weekends and holidays
  - c. “*Parties*” – The Appellant, Respondent, Case Manager, and any other individuals affected by the appeal
  - d. “*RCA Member*” - all RCA Members and Participants, as defined in the by-laws, including but not limited to coaches, officials, athletes (including athletes training at a National Team training camp/centre and those selected to the National Team), team managers and team staff, regatta organizers, administrators, volunteers, staff and contractors of RCA.
  - e. “*Respondent*” – The Party whose decision is being appealed.

#### PURPOSE

2. This document sets out the policy and procedure for appeals by any RCA Member who is directly affected by an RCA decision. It provides for an internal process and, in most cases, a final external process. The purpose of this Policy is to enable disputes with RCA Members to be dealt with fairly, expeditiously and affordably within RCA and without recourse to external procedures.

#### APPLICATION

3. Any RCA Member 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 By Laws and governance policies, shall have the right to appeal that decision subject to the terms and conditions set out in this Policy below.
4. This Policy **will apply** to decisions by RCA relating to: eligibility, selection, conflict of interest, discipline, allocation of competitive opportunities, and Athlete Assistance Program (“AAP”) carding nominations.
5. For further clarity, this Policy **will not apply** to matters relating to:
  - a. Matters of general application such as amendments to the RCA By Laws;
  - b. RCA’s operational structure and committee appointments;
  - c. Issues of budgets and budget implementation;
  - d. Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;

- e. Matters relating to regattas in Canada governed by other international organizations such as the Olympic Games, Pan American Games, World Championships and similar events;
- f. Selection criteria, quotas, policies and procedures established by entities other than RCA;
- g. Substance, content and establishment of team selection criteria;
- h. The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
- i. Policy and procedures established by any other agency, association or organization external to RCA;
- j. Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport, the World Anti-Doping Agency and FISA;
- k. Protests and appeals made under the RCA Rules of Racing;
- l. Contractual matters between RCA and its staff or members for which another dispute resolution process exists under the provisions of the applicable contract.

## **TIMING OF APPEAL**

- 6. **Individuals who wish to appeal a decision** must submit a written Notice of Appeal to the CEO within fourteen (14) days of being notified of the decision.
- 7. The Notice of Appeal shall include the following information:
  - a. Notice of the Intention to Appeal
  - b. Contact information and status of the Appellant
  - c. Name of the Respondent and any affected parties
  - d. Date the Appellant was advised of the decision under appeal
  - e. Copy of the decision being appealed, or description of the decision if the written document is not available
  - f. Grounds for Appeal
  - g. Detailed reasons to support the grounds raised
  - h. Requested remedy or remedies
  - i. Administrative fee of Five Hundred Dollars (\$500.00) - cash, certified cheque, bank draft or credit card. (This sum shall be refunded if the appeal is upheld).
- 8. An Individual who wishes to initiate an appeal beyond the fourteen (14) days must provide a written request stating the reasons for an exemption. The decision to allow, or not allow, an appeal outside the fourteen (14) day period will be at the discretion of RCA and may not be appealed.

## **GROUNDINGS FOR APPEAL**

- 9. A decision cannot be appealed simply because a member does not like or agree with it; an Appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds for appeal occur where the Respondent:
  - a. Made a decision that it did not have authority or jurisdiction to do so as set out in governing documents;
  - b. Failed to follow procedures as laid out in the By Laws or approved policies of RCA;

- c. 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;
  - d. Exercised its discretion for an improper purpose;
  - e. Made a decision that was grossly unreasonable or unfair.
10. 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 9 above.

## **SCREENING OF APPEAL**

11. 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 the appeal;
  - b. Determine if the appeal lies within the jurisdiction of this Policy;
  - c. Determine if the appeal has been brought on permissible grounds;
  - d. Appoint an Appeal Panel to hear the appeal;
  - e. Determine the format of the appeal hearing;
  - f. Coordinate all administrative and procedure aspects of the appeal;
  - g. Provide administrative assistance and logistical support to the appeal panel as required; and
  - h. Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.
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 9 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. **This decision may not be appealed.**
13. If the Case Manager is satisfied that there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals 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.

## **PROCEDURE FOR APPEAL HEARING**

14. The Case Manager shall notify the Parties that the Appeal will be heard.
15. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone, a hearing based on document review, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate, provided that:

- a. The hearing will be held within the appropriate 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 any other person to participate and give evidence at the hearing;
- f. The Panel may allow as evidence at the hearing any oral and documentary evidence relevant to the subject matter of the appeal, but may also 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, that party will become a party to the appeal in question and will be bound by its outcome;
- h. If more than one Panel member is appointed, the decision to uphold or reject the appeal will be made by a majority vote of the panel members.

16. Should a Party choose not to participate in the hearing; the hearing will proceed in any event.

## **APPEAL DECISION**

17. The Appeal panel is expected to render its written decision, with reasons, within seven (7) days of the hearing or document review, 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 or AAP Carding will be rendered (see paragraphs 23-27).

18. The Appeal 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, will be assessed against any Party. In determining 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 the Parties, the Case Manager and Rowing Canada. The Decision will be considered a matter of public record unless decided otherwise by the Panel.

## **CONFIDENTIALITY**

20. 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.

## **FINAL AND BINDING**

21. The decision of the appeal panel shall be final and binding upon the parties and upon all RCA Members, 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.
22. 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.

## **SPECIAL CONSIDERATIONS**

### **A: Selection to National Teams**

23. 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.
24. 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 7 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.

## **B: Nomination for AAP Carding**

25. 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.
26. 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 CEO. 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 CEO 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.

## **C: Disputes Arising under the Terms of an Agreement with an RCA Member organization, including but not limited to hosting agreements**

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 21 above.