



ROWING CANADA AVIRON

APPEAL POLICY

Effective date	December 13, 2022
Archived date	-
Date last reviewed	December 2022
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Replaces and/or amends	Replaces RCA Appeal Policy in force as of July 23, 2021
Approved by and date	RCA Board of Directors, December 7, 2022
Appendix(-ces) to this Policy	Appendix A – National Team Appeals

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. However, it does not apply to appeals of decisions that were managed by the OSIC, which shall be handled in accordance with the policies and procedures of the OSIC or the Director of Sanctions and Outcomes, as applicable.
3. Subject to Section 2, any Individual who is affected by a decision taken by Rowing Canada Aviron (RCA)¹ or a Member (as applicable) specifically with regard to that Individual, including a decision by the Board, by any Committee of the Board or by any body or individual within RCA or the Member (as applicable) who has been delegated authority to make decisions in accordance with RCA or a Member's By Laws and governance policies (as applicable), 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 pursuant to Section 8 of this Policy.
4. This Policy **will apply** to decisions relating to:
 - a) eligibility
 - b) selection, RCA High Performance program/National Team decisions and AAP nominations (*****SEE NOTE IMMEDIATELY BELOW*****)
 - c) conflict of interest

¹ A separate document with term definitions that apply to all RCA Policy is found online and in the RCA Safe Sport Manual.

- d) disciplinary decisions made pursuant to RCA or a Member's relevant and applicable policies
- e) membership

*****IMPORTANT*** The appeal process for all RCA High Performance program/National Team decisions and AAP nomination decisions is set out in Appendix A of this *Appeal Policy*, which sets out specific timelines and procedures that are different from those indicated in this *Appeal Policy*. It is important to note that the appeal process for Member team selection or funding decisions are not governed by Appendix A and shall be administered by the relevant Member pursuant to this *Appeal Policy*, applied and modified according to the circumstances.**

5. This Policy **will not apply** to the following decisions relating to:
- a) Reported complaints that were managed by the OSIC;
 - b) Matters of general application such as amendments to the RCA or a Member's By Laws;
 - c) RCA or a Member's operational structure and committee appointments;
 - d) Issues of budgets and budget implementation;
 - e) Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;
 - f) Except as otherwise provided for in this Policy, decisions made by organizations other than RCA, such as RCA's Members, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), U Sports, the International Olympic Committee (IOC), the International Paralympic Committee (IPC), World Rowing or the Fédération Internationale du Sport Universitaire (FISU) or any other governing body;
 - g) Selection criteria, quotas, policies and procedures established by entities other than RCA or a Member;
 - h) Substance, content and establishment of team selection criteria;
 - i) The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
 - j) Policy and procedures established by any other agency, association or organization external to RCA or a Member;
 - k) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport and World Rowing;
 - l) Protests and appeals made under the RCA Rules of Racing;
 - m) Contractual matters between RCA and its staff or Members for which another dispute resolution process exists under the provisions of the applicable contract; or
 - n) Settlements negotiated pursuant to the *Dispute Resolution Policy*.

Timing of Appeal

6. Individuals who wish to appeal a decision have fourteen (14) days from the date on which they received notice of the decision to submit to RCA's CEO or the CEO (or equivalent position of a Member) 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 five hundred dollars (\$500), which will be refunded if the appeal is upheld

Notwithstanding the above, appeals in relation to disciplinary decisions made pursuant to the Discipline and Complaints Policy must be filed with the Independent Third Party, which must otherwise comply with the requirements of this Section 6.

- 7. An Individual who wishes to initiate an appeal beyond the fourteen (14) 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 fourteen (14) day period will be at the sole discretion of the Appeal Manager.

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

Complaint Resolution Officer Decision – Clubs

- 10. A decision made by a Club Complaint Resolution Officer 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 Rowing Association in accordance with this *Appeal Policy*, applied and modified according to the circumstances.
- 11. The Provincial Rowing Association shall appoint an Appeal Manager and shall follow the process outlined in Sections 24 and following of this *Appeal Policy*, applied and 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 Appeal Panel and, unless the Provincial Rowing Association 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 Rowing Association.

Complaint Resolution Officer Decision – Provincial Rowing Associations

13. A decision made by a Provincial Rowing Association's Complaint Resolution Officer following a request for reconsideration by one of the Parties pursuant to the *Discipline and Complaints Policy* may be appealed before the Provincial Rowing Association's Appeal Panel in accordance with the terms of this *Appeal Policy*.
14. The Provincial Rowing Association shall appoint an Appeal Manager and shall follow the process outlined in Sections 24 and following of this *Appeal Policy*, modified and applied accordingly based on the circumstances.

Discipline Panel Decision – Provincial Rowing Associations

15. A decision made by a Provincial Rowing Association's discipline panel pursuant to the *Discipline and Complaints Policy* may be appealed before the Provincial Rowing Association's Appeal Panel in accordance with the terms of this *Appeal Policy*.
16. The Provincial Rowing Association shall appoint an Appeal Manager and shall follow the process outlined in Sections 24 and following of this *Appeal Policy*, modified and applied accordingly based on the circumstances.
17. Any decision by the Provincial Rowing Association's 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 SDRCC, unless the original Parties to the appeal seize the Sport Dispute Resolution Centre of Canada (SDRCC) on a fee-for-service basis.

Complaint Resolution Officer Decision – RCA

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

Discipline Panel Decision – RCA

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

Other decisions

20. With the exception of RCA High Performance program/National Team decisions and AAP nomination decisions, which shall be addressed pursuant to Appendix A, any other RCA decision relating to the matters indicated in Section 4 above may be appealed in accordance with Sections 23 and following of this Policy. Member decisions relating to the matters indicated in Sections 4(a)-(c) and (e) may be appealed in accordance with Sections 23 and following of this Policy, modified and applied accordingly based on the circumstances. Member decisions relating to the matters indicated in Section 4(d) may be heard as indicated in Sections 10-17. Where RCA was not the decision-maker in any of the decisions made pursuant to Section 4, it shall have a right of appeal and may appeal the decision in accordance with this *Appeal 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 RCA only** may be bypassed, and the appeal may be heard directly before the SDRCC.

22. Except where an appeal proceeds before the SDRCC, RCA or the relevant Provincial Rowing Association (as applicable) shall appoint an Appeal Manager and shall follow the process outlined in Sections 23 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 has been received.

Screening of Appeal

24. Should the appeal not be resolved by using the *Dispute Resolution Policy*, RCA or the Provincial Rowing Association 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)

25. 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.

26. 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

27. 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.

28. 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 rowing. 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

29. In order to confirm the identification of any Affected Parties, the Appeal Manager will engage RCA 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

30. 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.
31. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
32. 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 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, translator, transcription services, 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 exclude any evidence filed by the Parties that is unduly repetitious or otherwise an abuse of process. The appeal panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to any evidence filed by the Parties
 - g) Nothing is admissible in evidence at a hearing that:
 - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - ii. is inadmissible by any statute.
 - h) 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
 - i) The decision to uphold or reject the appeal will be by a majority vote of the appeal panel members, except in cases where the panel consists of a single member
33. In fulfilling its duties, the appeal panel may obtain independent advice.

Appeal Decision

34. 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
35. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and RCA 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.
36. Subject to Section 37 below, unless the matter involves a Vulnerable Participant, once the deadline to appeal to the SDRCC (where applicable), as indicated in the Canadian Sport Dispute Resolution Code, has expired, RCA or the Member (as applicable) shall publish the outcome of the appeal on their website. Publication shall be limited to, where applicable, the provision(s) of any relevant policies that have been violated, the name(s) of the Individual(s) involved, the sanction(s) or order imposed, if any. Additionally, where RCA acts as the Complainant under Section 16 of the *Discipline and Complaints Policy* and any decision issued pursuant to that Policy is appealed, only RCA, and not the original Complainant, shall be identified as an involved Individual. Identifying information regarding Minors or Vulnerable Participants will never be published by RCA or one of its Members.
37. If the appeal panel dismisses the appeal, the decision may only be published, as provided for in Section 36, with the Respondent's consent. If the Respondent does not provide such consent, the decision will be kept confidential by the Parties, the Appeal Manager, RCA and the Member (including the Respondent's Club) and shall be retained and discarded in accordance with the relevant and applicable privacy legislation. Failure to respect this provision may result in disciplinary action being taken pursuant to this *Policy*.
38. Other individuals or organizations, including but not limited to, Members, shall be advised of the outcome of any decisions rendered in accordance with this *Policy*.
39. Any decision rendered pursuant to this *Policy* shall apply automatically to and must be respected by RCA and its Members.
40. Records of all decisions will be maintained by RCA and its Members in accordance with their respective privacy policies.
41. The appeal panel's decision is final and binding on the Parties, subject to their right to appeal the decision before the SDRCC in accordance with the Canadian Sport Dispute Resolution Code.

Timelines

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

Confidentiality

43. The appeals process is confidential and involves only the Parties, the Appeal Manager, the appeal 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.

44. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with RCA or the Member's relevant and applicable policies.

Final and Binding

45. No action or legal proceeding will be commenced against RCA, Members, or Individuals in respect of a dispute, unless RCA 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.

Privacy

46. The collection, use and disclosure of any personal information pursuant to this Policy is subject to RCA's Privacy Policy.

47. RCA, its Members, or any of their delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel), shall comply with RCA's Privacy Policy (or, in the case if a Member, the Member's Privacy Policy) in the performance of their services under this Policy.

Appendix A – National Team Appeals

A: Selection to National Teams

1. Invitation and Selection for National Teams may allow little time for an appeal from a decision to be heard or to give effect to a successful appeal.
2. Before appealing decisions relating to National Teams, Athletes are advised to discuss their 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 Athlete is advised to discuss their concerns with the High Performance Director 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 the *Appeal Policy*, amended as follows:
 - a. Appeals of team invitation or selection decisions must be sent in writing to the RCA CEO as soon as possible and no later than seventy-two (72) hours of receipt of official notification of the original decision. The RCA CEO must provide the Appeal Manager with the appeal as soon as possible, and no later than 24 hours after receiving the appeal.
 - b. Considering the time sensitivity of selection appeals, the appeal panel will provide its decision on team invitation or selection appeals within a time frame that enables a successful appeal to be implemented, and in any case, no later than seventy-two (72) hours of receipt of the written appeal.
 - c. When rendering its decision, the appeal panel may issue a short decision, with reasons to follow.
3. Notwithstanding Section 2 above, by agreement between the Parties, the internal appeal process in relation to decisions made by RCA only may be bypassed, and the appeal may be heard directly before the SDRCC.
4. With respect to appeals regarding National Team invitation or selection decisions, it is important to note that Sections 8-9, 24-37 of the *Appeal Policy* shall be applied, modified according to the circumstances. Section 23 of the *Appeal Policy* may also apply if time permits.

B: Nomination for AAP Carding

5. Before appealing decisions relating to AAP Carding nomination, Athletes are advised to discuss their concerns with the High Performance Director within twenty four (24) hours of receipt of official notification of the original decision. Upon receipt of concerns from an Athlete regarding AAP nominations, the High Performance Director 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 of AAP carding nomination decisions must be sent in writing to the RCA CEO no later than seventy-two (72) hours of receipt of official notification of the original decision. The RCA CEO must provide the Appeal Manager with the appeal as soon as possible, and no later than 24 hours after receiving the appeal.

- b. The appeal panel will provide its decision 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. When rendering its decision, the appeal panel may issue a short decision, with reasons to follow.
6. Notwithstanding Section 5 above, by agreement between the Parties, the internal appeal process in relation to decisions made by RCA only may be bypassed, and the appeal may be heard directly before the SDRCC.
7. With respect to appeals regarding AAP Carding nomination decisions, it is important to note that Sections 8-9, 24-25 and 27-37 of the *Appeal Policy* shall be applied, modified according to the circumstances. Section 22 of the *Appeal Policy* may also apply if time permits.