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## Canada Games Council

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### Policies and Procedures Appeal Policy

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| <b>Policy Number:</b>             | <b>8.11.4</b>                                            |
| <b>Name:</b>                      | <b>Appeal Policy</b>                                     |
| <b>Origin:</b>                    | <b>Governance Committee</b>                              |
| <b>Approval by:</b>               | <b>Board of Directors</b>                                |
| <b>Original Approval Date:</b>    | <b>June 30, 2005</b>                                     |
| <b>Next Review Date:</b>          | <b>March 2017</b>                                        |
| <b>Revision Approval Date(s):</b> | <b>April 26, 2006; September 16, 2010; June 25, 2015</b> |
| <b>Related Policy References:</b> |                                                          |

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### 1. Policy Statement

The Canada Games Council (the 'Council') is committed to making fair and ethical decisions in a transparent manner, and is committed to be accountable for such decision-making through an appeal process.

### 2. Purpose

The purpose of this policy is to provide direction as to how disputes within the Council, and between the Council and its partners and stakeholders will be handled. The policy also ensures that individuals or organizations that have a dispute with decisions of the Council, its committees, officers or staff are afforded 'due process' in the resolution of these disputes.

### 3. Definitions

|                      |                                                                                                                                                                                                                                     |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Adjudicator:</b>  | Refers to the impartial person appointed to hear and decide the appeal;                                                                                                                                                             |
| <b>Appeal Form:</b>  | Refers to a request submitted by the Appellant(s) attached as Appendix B;                                                                                                                                                           |
| <b>Appellant:</b>    | Refers to the person or organization appealing a decision of the Canada Games Council;                                                                                                                                              |
| <b>Case Manager:</b> | Refers to the person in charge of managing the case. This person will be independent of the parties and will have had no involvement with the decision being appealed. The contact information for the Case Manager is available on |

the Appeal Form of this policy, located on the website and at the top of the Appeal Form (Appendix B);

**Days:** Means total days, irrespective of weekends or holidays;

**Member:** Refers to any athlete, coach, manager, mission staff, technical official, official, host society volunteer or staff, Host Society corporate entity, Provincial Sport Organization, National Sport Organization or other stakeholder that is affected by a decision of the Council or of any Committee of the Council, or of any body or individual who has been delegated authority to make decisions on behalf of the Council;

**Respondent:** Refers to the person, persons or organization whose decision is being appealed. In the case of this policy, the Respondent is always the Council.

#### **4. Jurisdiction**

This policy applies to, but is not limited to, disputes regarding the application of:

- a) regulations for eligibility and residency of competitors;
- b) sport technical packages;
- c) the sport selection process;
- d) the harassment policy;
- e) the privacy policy;
- f) the commercialization policy.

This policy also applies to matters related to provincial/territorial team discipline (athlete, coach, manager, mission staff, or other) at the time of the Games, if a specific agreement for such exists between the Council and the team in question.

This policy does not apply to the following:

- a) Drug-testing or infractions for doping offences, which are governed by the Canadian Anti-Doping Program;
- b) Competition or "field of play" rules and regulations of National Sport Organizations;
- c) Selection of athletes, coaches, managers or mission staff to provincial/territorial teams;
- d) Personnel matters related to the professional staff of the Council;
- e) The existence or validity of Board or Committee-approved budgets, policies, procedures, criteria or processes.


A person or organization sanctioned under this policy may also be subject to the disciplinary rules and procedures of other associations, clubs, organizations or institutions with which they are affiliated.

#### **5. Role of the Case Manager**

The contact information for the Case Manager is available on the Appeal Form of this policy, located on the website and at the top of the Appeal Form (Appendix B).

The Case Manager has an overall responsibility to ensure procedural fairness and timeliness are respected at all times in the appeal process, and more particularly, has a responsibility to:

- a) Receive Appeal Forms;
- b) Encourage informal resolution of the dispute;
- c) Document the outcome of the informal resolution stage, to both parties;
- d) Determine if appeals lie within the jurisdiction of this Policy;
- e) Determine if appeals are brought on permissible grounds;
- f) Appoint the Adjudicator to hear and decide appeals;
- g) Determine the format of the appeal hearing;
- h) Coordinate all administrative and procedural aspects of the appeal;

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- i) Provide administrative assistance and logistical support to the Adjudicator as required; and
  - j) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

## **6. Timelines**

Except as outlined in the paragraphs below, Members who wish to appeal a decision will have 21 days from the date the Council's decision was communicated via the appropriate information channel, to submit their Appeal Form to the Case Manager.

Members who wish to appeal a decision within 60 days from the Games' Opening Ceremony will have 7 days from the date the Council's decision was communicated via the appropriate information channel, to submit their Appeal Form to the Case Manager.

Members who wish to appeal a decision within 14 days from the Games' Opening Ceremony or within 14 days following the Games' Closing Ceremony will have 3 days from the date the Council's decision was communicated via the appropriate information channel, to submit an appeal form directly to the Sport Dispute Resolution Centre of Canada (SDRCC) via the Canada Games Council's Director of Sport. Such appeals will be heard under the rules of the SDRCC.

## **7. Informal Resolution of Disputes**

From time to time, decisions may be made based upon incomplete information or a simple misunderstanding of circumstances. In these cases, it may not be necessary for a decision to be challenged through a formal appeal. If a situation is presented to the Council, the Council in its sole discretion may determine if an ordinary error occurred and should be corrected. If the Council determines that an ordinary error has not occurred, and the Appellant is not satisfied by the rationale presented by the Council for the decision, the decision may be subject to a formal appeal.

The correction of an ordinary error may, however, give rise to an appeal from another party. Where they are noted, ordinary errors will be corrected and communicated immediately.


Where the decision does not arise from an ordinary error, the Member may initiate an appeal by submitting an Appeal Form to the Case Manager. Upon receiving the Appeal Form, the Case Manager will discuss the circumstances with the Appellant(s) and, without delay, will forward a copy of the Appeal Form to the Council.

Before proceeding further, the Case Manager will require the Appellant(s) and the Council to attempt to resolve the dispute using the Resolution Facilitation Services offered by the SDRCC. Upon notice from any of the Parties that the Resolution Facilitation was unsuccessful, the Case Manager will move the appeal to the next step. If the dispute is resolved, then the matter will be considered closed. The Case Manager will document the outcome of the Resolution Facilitation phase, and provide this in writing to both parties.

## **8. Screening of Appeal**

According to the timelines in Appendix A, once notified that Resolution Facilitation of the dispute was not successful, the Case Manager will review the Appeal Form and will determine whether the appeal falls within the jurisdiction of this Policy, and whether there are appropriate grounds for the appeal, as set out in Section 11.

If the Case Manager is satisfied that the appeal may be dealt with under this Policy and that there are sufficient grounds for an appeal, he or she will appoint an Adjudicator to conduct a Hearing.



If the Case Manager has determined that the appeal does not fall within the jurisdiction of this Policy or that there are insufficient grounds, then the Appellant(s) and the Council will be notified in writing, with reasons.

## **9. Appointment of Adjudicator**

Appeals under this policy will be heard by a single Adjudicator, appointed by the Case Manager. The Adjudicator will be independent from the Council and will have had no involvement with the matter in dispute or with the parties in dispute.

For the period beginning 14 days before the Opening Ceremony of a Games to 14 days following the Closing Ceremony of a Games, the Sport Dispute Resolution Centre of Canada (SDRCC) shall resolve disputes in accordance with its Code of procedure with no opportunity for further appeal of decisions taken in this time period. Such decisions, in this time period, are in place of the Adjudicator. The SDRCC Code shall take precedence over this policy.

## **10. Disclosure and Confidentiality**

The appeal process is confidential involving only the Appellant(s), the Respondent, the Case Manager, and the Adjudicator. Once initiated and until a written decision is released, these persons will not disclose confidential information relating to the appeal to anyone not involved in the proceedings. Decisions rendered under this policy will be released to the public, if requested, unless the Adjudicator determines otherwise.

## **11. Grounds for appeal**

An appeal may only be heard if it is based on permissible grounds. These grounds include the Respondent:

- a) making a decision for which it did not have authority or jurisdiction as set out in governing documents;
- b) failing to follow procedures as laid out in the bylaws or approved policies of the Council;
- c) Making a decision that was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views;
- d) failing to consider relevant information or taking into account irrelevant information in making the decision;
- e) exercising its discretion for an improper purpose or in bad faith; and/or
- f) making a decision that was unreasonable.

## **12. Authority**

The Adjudicator has the authority to intervene in the decision of the Council being appealed, but has no greater scope of authority than the Council who made the initial decision. The Adjudicator can make any decision the Council could have made, including any decision the Adjudicator considers the Council should have made in the circumstances.

The Adjudicator may decide:

- a) To void, vary, or confirm the decision being appealed;
- b) To make any decision he or she feels the Council should have made; and/or
- c) To refer the matter back to the Council for a new decision, correcting any errors that were made.

## **13. Affected Parties**

If the Council is of the view that the Adjudicator's decision 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, will have opportunity to participate in the appeal proceedings, and will be bound by the outcome of the appeal.

#### **14. Decision**

The Adjudicator will provide his or her decision, with reasons, as soon as reasonably possible. Where the circumstances are such that an urgent decision is required, the Adjudicator may issue a verbal or summary decision, with a written decision to follow.

The decision of the Adjudicator will be final and binding, subject only to the jurisdiction of the Sport Dispute Resolution Centre of Canada (see section 16).

#### **15. Costs**

A Party to an appeal may request that the Adjudicator award costs for reasonable expenses incurred to participate in the appeal. Such a request will be made in writing, and all other parties will have an opportunity to respond to the request in writing, and the Adjudicator will render a decision on the request within 15 days. Costs may not be awarded on a punitive basis, or for intangibles such as for pain and suffering, hardship or loss of reputation.

#### **16. Sport Dispute Resolution Centre of Canada**

***Decisions of Adjudicators or the Case Manager under this policy are final and binding upon the Parties and upon all members of the Council, subject only to an appeal as may be permitted under the rules of the Sport Dispute Resolution Centre of Canada (SDRCC).*** Parties who will have used the services of an SDRCC resolution facilitator under section 7 of this policy will be exempted from the mandatory resolution facilitation process provided for in the Canadian Sport Dispute Resolution Code.

##### *Policy History:*

Approved: June 30, 2005

Updated, April 26, 2006 ; Updated *September 16, 2010*; Updated *June 25, 2015*

Next Review Date: March 2017

For more information contact: Director of Sport & Games

## Appendix A – Appeal Policy Timelines

|                                             | More than 60 days prior to Opening Ceremonies | Less than 60 days, but Greater than 14 days prior to Opening Ceremonies | Less than 14 days prior to Opening Ceremonies or Less than 14 days after Closing Ceremonies                                                                  |
|---------------------------------------------|-----------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step                                        | Timeline (days) from the previous step        | Timeline (days) from the previous step                                  | Timeline (days) from the previous step                                                                                                                       |
| I. Decision                                 | 1                                             | 1                                                                       | 1                                                                                                                                                            |
| II. Filing of Appeal Form with Case Manager | 21                                            | 7                                                                       | 3                                                                                                                                                            |
| III. Informal Resolution of Dispute         | 7*                                            | 3*                                                                      | Appeal is filed directly with Sport Dispute Resolution Centre of Canada (SDRCC) through Canada Games Director of Sport. Appeal is heard under rules of SDRCC |
| IV. Screening of Appeal                     | 3*                                            | 1*                                                                      |                                                                                                                                                              |
| V. Appointment of Adjudicator               | 5*                                            | 2*                                                                      |                                                                                                                                                              |
| VI. Hearing                                 | As decided between appellant and adjudicator  | As decided between appellant and adjudicator                            |                                                                                                                                                              |
| VII. Decision                               | As soon as possible                           | As soon as possible                                                     |                                                                                                                                                              |

\* The Case Manager may alter these timeline items as required, based on the period of time prior to the Opening Ceremony.



## **Appendix B – Canada Games Council Appeal Form\***

\*A complete word version is available on the Council's website at [www.canadagames.ca](http://www.canadagames.ca), under the SPORT and STAKEHOLDER REFERENCE MANUAL page (can be downloaded and completed by free-hand or electronically).

In order to file an appeal please complete the form below and forward to the Canada Games Council Case Manager for Appeals, Steven Indig of the Sport Law & Strategy Group, at [sji@sportlaw.ca](mailto:sji@sportlaw.ca). If you do not receive confirmation of receipt by Mr. Indig within 24 hours, please call him directly at 416-505-9195.

Date: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
MM DD YYYY

### **APPELLANT**

Name of the Appellant:

Age of Appellant:

Address of Appellant:

Telephone Numbers of Appellant: Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Other: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax Number of Appellant: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-Mail of Appellant:

### **REPRESENTATIVE**

Name and Coordinates of the Representative, if any (including phone numbers):

Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
E-mail:

### **DECISION**

What decision or practice do you wish to appeal?  
Why do you think the decision is wrong or unfair?

When was that decision taken? \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
MM DD YYYY

### **RESPONDENT**

Who made the decision?

### **GROUND**

Grounds for the Appeal (arguments); and summary of the evidence that supports these grounds  
(Documents,  
Pictures, Rules & By-Laws, Audio-Visual, etc).

### **WITNESSES**

List of Witnesses to be called at the hearing; coordinates of these witnesses (including phone numbers); and summary of evidence to be provided by each of them.