



Sport Dispute Resolution Centre of Canada

Appeal Policy Package



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www.sdrcc.ca



IMPORTANT NOTICE

The present document has no official value and must not be given the value of a legal opinion.

The Sport Dispute Resolution Centre of Canada (SDRCC) and the members working under its auspices shall not be held liable of the consequences flowing from the application or the use of this document.

It is highly recommended to consult a legal advisor for the drafting, the revision and/or the application of any internal appeal policy in order to prevent any error for which you could be held liable.



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Introduction

Appeal Policies of National Sport and Multisport Organizations

Education is the key. Through a comprehensive Dispute Prevention Resource Centre (www.sdrcc.ca), interested parties have access to a vast array of information materials, tailored to meet the specific needs of athletes, coaches, officials, administrators, national and multisport organizations, and the legal community.

Education is not a panacea, however, and the reality is that disputes will occur. This document has been developed to assist national sport organizations (**NSO**) and multisport organizations (**MSO**) in effectively managing these situations.

An internal appeal policy spells out the principles and procedures to be followed by an NSO/MSO when one of its members challenges a decision taken by the organization. The policy is not designed to prevent disputes, but it does provide a proven mechanism to settle them fairly and impartially.

Designing an internal appeal policy is not an exercise where “one-size fits all.” Policies will differ, depending on a variety of factors including the size of the organization, available resources, and past experience.

Included in this document you will find two generic models – “model” and “simplified.” These templates will provide your NSO/MSO with a significant head start in developing an internal appeal policy.

There are two key differences between the models. The “model” policy provides for: 1) a case manager and a list of volunteers and 2) a direct meeting between the parties at the beginning of the process. This meeting creates an opportunity to share information and to develop a better understanding of each other’s point of view. These two measures help to make the internal process as objective and transparent as possible, while minimizing the number of formal appeals.

Please take the time to review this document carefully and adapt the models to suit your particular needs. Involve your members at every stage of the policy development and implementation, and seek outside expertise, if needed.

Additional advice and assistance is available through SDRCC at (toll-free) 1.866.733.7767 or by email at [E-Mail](mailto:info@sdrc.ca).



Questions and Answers

TERMS AND DEFINITIONS

1. Rules of Natural Justice

Core rules that must be observed in all cases where the decision will affect one of the parties involved. There are two rules of natural justice:

The right to be heard in a dispute, and

The right to be judged with complete objectivity and impartiality.

This means that a person must be informed of the facts on which any decision will be based so that he or she can prepare a defence. The person must also be given enough time to prepare that defence and be notified of the time, date and location of the hearing. He or she must be informed of any documents in the possession of the other party and be allowed to present evidence by any means deemed appropriate to the case at issue (questioning of witnesses, cross-questioning, response to arguments of other party, etc.)

In addition, every person has the right to be judged by objective, impartial persons; otherwise, the process is unfair.

2. Administrative Rules

Rules governing how a case will be managed—how and within what time frame documents are to be forwarded and notification given to the parties, in what circumstances a process is to be conducted in writing or by telephone, what subjects are to be discussed at the preliminary conference, etc.

These rules can vary from one organization to the next, provided that they do not infringe the rules of natural justice, which must be observed at all times.



3. Conflict of Interest

A fact or specific circumstance that may cause a person to lose his or her impartiality or objectivity in a case. A conflict of interest is a situation that places an individual in a position where his or her own interests are in conflict with those of the case at issue. There is no fixed set of circumstances that automatically trigger conflict of interest; it all depends on the specific facts of the case. However, here are some situations that could involve conflict of interest:

A member of the appeal panel is related to one of the parties in the case; or

A member of the appeal panel is a sponsor or has a financial interest in ensuring that one of the parties wins the case.

Naturally, conflict-of-interest situations must be avoided at all cost, because they violate the rule of natural justice stating that every person has the right to an impartial, objective hearing.

4. External Entity

An organization external to the NSO/MSO and to the appeal process established by the NSO/MSO. In our particular context, the external entity is the dispute resolution secretariat (hereinafter the “**Secretariat**”).

WHAT IS AN INTERNAL APPEAL POLICY?

An internal appeal policy is a document prepared by an NSO/MSO. It outlines the principles and procedures to be followed in the event that a decision made or practice engaged in within the NSO/MSO is challenged by one of its members. The policy is not designed to prevent disputes between members, but it does provide means of settling them fairly and impartially.



WHAT PROVISIONS SHOULD AN INTERNAL APPEAL POLICY CONTAIN?

Internal appeal policies may differ according to the type of organization and especially the number of members, financial and human resources available, past experience, coaching locations and periods, etc. All these factors should be taken into consideration in drafting a policy to meet an NSO/MSO's needs and help it fulfil its potential. So it is impossible to establish a standard internal appeal policy with a fixed content that would apply to all NSOs/MSOs.

That being said, every appeal policy should contain clauses on the following:

Members for whom the policy has been established;

Types of decision and practice subject to appeal under the policy;

Grounds on which a decision or practice may be subject to appeal;

Appeal timelines;

Individual or groups of individuals to be tasked with managing the appeal and ensuring that documents are forwarded to the parties and that all communications are made available to all parties;

Rules governing the establishment of the appeal panel and the number of members on the panel;

Rules governing every appeal (rules of natural justice, administrative rules, etc.);

Time limit for handing down a decision;

Arbitration clause providing for an appeal to an external entity in the event that one of the parties considers the panel's decision to be wrong.

Also note that an internal appeal policy must ensure that all parties receive the same treatment, i.e. are governed by the same rules, are entitled to the same information and time limits, and have the right to be heard by impartial persons who are free of any actual or perceived conflict of interest. It is therefore essential for the persons involved in managing and hearing the case to be objective and to be perceived as such in dealing with the case and with the parties involved.



Examples of Internal Appeal Policies

A “Model” policy and a “Simplified” policy are appended to this document. There are two main characteristics that set them apart: the presence of a Case Manager, the establishment of a List of Volunteers and an informal preliminary stage involving communication between the parties. These two characteristics can, in our view, help to make the appeal process as impartial as possible and keep the number of appeals to a minimum.

EXAMPLE OF THE “MODEL” POLICY

1. Case Manager and List of Volunteers

The policy provides for a List of Volunteers and the presence of a Case Manager.

The Case Manager is not a member of the NSO/MSO but is appointed and paid by it to manage appeal cases. Depending on their availability, several persons may perform the role of Case Manager. The Case Manager may be selected from the List of Volunteers.

Ideally, the List of Volunteers should be made up of people who are not members of the NSO/MSO but have some knowledge of the Canadian sport system and are interested in handling internal appeal cases. Their names may be proposed by members of the NSO/MSO at the annual general meeting, and a representative of the NSO/MSO may then contact them to confirm their interest in being on the list. Volunteers may also be “recruited” by the NSO/MSO by means of announcements on relevant websites asking anyone interested to contact a member of the NSO/MSO in question. A few minutes of reflection can generate all sorts of ideas on how to compile the list!

Naturally, provision should be made for amending the list at any time by deleting or adding names.

Compensation for individuals acting as Case Manager or volunteers in a particular appeal depends on the financial resources available to the NSO/MSO. Some very large NSOs/MSOs may be able to pay people to manage and conduct an appeal. Other NSOs/MSOs do not generate as much revenue and may not be able to pay people for this work. Compensation is thus the prerogative of each NSO/MSO, depending on available financial resources and any other factors considered relevant to the case at issue. There is one undeniable fact, however: inability to compensate volunteers should not be used as a pretext to avoid compiling a list of volunteers.



2. Discussion and Meeting between the Parties

The appeal policy template foresees a preliminary meeting for discussion phase between the parties. The purpose of this phase is to favour the parties' discussions over the issues opposing them. In some instances, the simple fact of communicating and of listening to the reasons adopted by one party to make a particular decision gives the other party the opportunity of perceiving an often unknown or misunderstood reality. In short, communication between the parties may often prevent the appeal process to evolve further and this is the reason why it is important that such a phase should occur at the start of the internal appeal process.

Obviously, the nature of the issues at stake should be considered. In some cases, the parties are forced to initiate the appeal process without delay, which may entail that the amount of time allotted for the preliminary communication phase be shortened. In our opinion, this should not prevent the parties from trying to arrange a short meeting for the purpose of understanding why and how the decision being appealed was arrived at.

In other cases, the parties may react very emotionally to a given decision: the Case Manager's role then consists in encouraging the parties to meet and discuss matters over. If he or she determines that this is impossible, the Case Manager must guide the parties to continue the appeal process without any other preliminary meeting or discussion.

EXAMPLE OF "SIMPLIFIED" POLICY

The "Simplified" appeal policy template is very similar to the "Model" one, the main difference being that the appointment of a Case Manager is not proposed when the NSO/MSO human or financial resources are insufficient. In such cases, it is suggested that the individual mandated to run the appeal case and to act as intermediary between the parties be free of any real or potential conflict of interest. Experience has shown that a person serving as intermediary may sometimes be called as a witness or even as a representative of the other party at the hearing. There has been a number of cases where the executive director of an NSO/MSO was the person managing the appeal case at the same time. As a consequence, the appearance of fairness and impartiality of the appeal process was thus flawed

Therefore, if the situation of an NSO/MSO cannot allow for the external services of a Case Manager, it is preferable to retain the services of different people, thus avoiding the risk of tainting the impartiality of the process, and thus complying to pre-determined impartiality criteria at all material times. Indeed, each case could be run by a different person, insofar as he or she is not involved in such case in any other way. This explains why the word "Official" is used in the example of a "simplified" policy: it avoids associating the role with a specific position within the NSO/MSO and offers some flexibility in the management of the case.



Example of an Arbitration and Mediation Clause

If your NSO/MSO has already established a just and equitable internal policy that meets your requirements, you may simply need to add a clause that will refer to the Secretariat.

Following is an example of such a clause:

Arbitration and Mediation

All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy;

Any final decision made by the Panel which may lead to irreversible consequences for one of the parties may be exclusively submitted by way of application to the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor, which will resolve definitively the dispute in accordance with the SDRCC Code, as amended from time to time;

Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;

The award rendered by the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor shall be final and binding upon the parties.

Note: Such a clause should usually be added at the end of your appeal policy because it refers to a last resort mediation or arbitration.



Tips

Here are a few tips to guide you in the implementation of your internal appeal policy or during the revision of your current policy:

Review your NSO/MSO's past experiences to identify what needs to be kept and what needs to be changed;

Take stock of your human and financial resources;

Share ideas and discuss available means for achieving the highest degree of impartiality in your internal appeal process (the attached templates of internal policies and the comments above may be of assistance);

Consult a person with expertise in drafting appeal policies;

Share your ideas with your members and invite their comments, opinions and suggestions. By involving members in the process of preparing and implementing the appeal policy that will eventually govern them, you will foster communication and common understanding of the roles of all concerned. They will feel that they are your allies instead of your "subjects";

Once the content of the policy is defined and established, convey it to all your members using whatever means you consider appropriate (information sessions, mailings, website messages, posters at special events, e-mails, etc.);

Give your members the opportunity to ask questions, as the case may be, and to be informed of the various steps of the procedure and of the applicable rules;

Draw a one- or two-page diagram enabling your members to easily understand the internal appeal process and its main stages. Circulate the diagram among your members.

In short, take stock of your past experience and your resources, involve your members in the decision-making process and, above all, give your members the appropriate information. They will then feel that they all have the same opportunity to express their views and be heard before the first appeal process is even launched.



Key Contact

If you have any questions regarding the present document, please contact the Sport Dispute Resolution Centre of Canada. Our staff will address these questions or guide you to the appropriate key contact, if need be.

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E-Mail



“Model” Appeal Policy Template

A word of caution about this template...this is an example of an appeal policy. It represents a generic model that may work for your organization. The most likely scenario, however, is that you will have to take this template, study and understand it, and then adapt it to suit your own needs and circumstances.

Also keep in mind that if you put in place an appeal policy such as this, you must follow it. If your policy is not enforced or if it does not work the way you intended, then you have a serious problem and you may have to re-think your approach to dealing with appeals.



GENERAL PROVISIONS

SECTION	COMMENTS
1. Preamble	
<p>ABC recognizes the right of any Member to appeal the decisions of ABC and hereby provides for an appropriate process for resolving disputes that could arise from time to time from such decisions of ABC.</p> <p>The purpose of this appeal policy is to enable disputes with Members to be dealt with fairly, expeditiously and affordably within ABC, without having to have recourse to formal legal and court-like procedures.</p>	<p><i>Any party may appeal a decision it considers unfair or unjust.</i></p> <p><i>The purpose of an internal appeal policy is to ensure that any dispute is handled fairly, expeditiously and affordably.</i></p>
2. Definitions	
<p>Appeal Form: Refers to a demand submitted by the Appellant(s) attached as Appendix B;</p> <p>Appellant: Refers to a Member appealing a decision of ABC;</p> <p>Arbitration: Refers to the arbitration process as established by the ADRsportRED Code, as amended from time to time;</p> <p>Days: Means total days, irrespective of weekends or holidays;</p> <p>List of Volunteers: Refers to a list of individuals who would be interested in becoming members of a Panel when required;</p> <p>Mediation: Refers to the mediation process as established by the ADRsportRED Code, as amended from time to time;</p> <p>Member: Refers to all categories of members in ABC, as well as to all individuals engaged in activities with or employed by ABC, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, provincial sport organizations and employees including contract personnel;</p> <p>Notice of Disagreement: Refers to a notice filed by the Appellant(s) attached as Appendix C;</p> <p>Case Manager: Refers to an impartial individual nominated by, but not related to ABC, to accomplish the tasks described in this policy;</p>	<p><i>The appeal policy must differentiate between the internal appeal process and the arbitration and mediation processes under the ADRsportRED Code.</i></p> <p><i>The usefulness of the list will depend on ABC's ability to recruit volunteers. Any person with a basic knowledge of the Canadian sport system and its rules can be a volunteer.</i></p> <p><i>The term "Member" is broadly defined to capture not only actual individual members but also all persons who participate in the activities of the organization. Note, as well, that many national sport organizations do not have individual "members." Thus the defined term must include participants. To find out what's best for your organization, check your bylaws to see how "member" is defined.</i></p> <p><i>The appointment of a Case Manager is a key step in the process of establishing a fair and just appeal policy. The person</i></p>



Panel: Refers to the appeal panel established as provided by Section 9;

Respondent: Refers to the body, person or persons whose decision is being appealed;

Working Days: Means total days, excluding weekends and holidays;

Written Statement: Refers to the response submitted by the Respondent(s) attached as Appendix D.

appointed will not be related to the parties in any way and will enable them to undertake the appeal process in a climate of trust and in the knowledge that the Case Manager is impartial and is interested only in reaching a fair and expeditious settlement of the dispute.

3. Scope of Appeal

3.1. Any Member of ABC who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of ABC or its Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal, as set out in Section 10;

3.2. Without limiting the scope of section 3.1, this appeal policy will not apply to decisions relating to:

- a) Doping offences, which are dealt with under the Canadian Policy on Doping in Sport and the Canadian Doping Control Regulations;
- b) The technical rules of ABC, as set out in *(title of document where the Rules governing the sport in question are established)* which may not be appealed;
- c) Disciplinary matters arising during events organized by entities other than ABC, which are dealt with under the policies of these other entities, provided that they have an appeal policy in place.
- d) Criminal offences for which the Appelant(s) is/are seeking a criminal conviction;
- e) Commercial matters for which another appeal process already exists under the applicable law or contract.

This section defines what decisions may be appealed, and what decisions may not be appealed. The list of decisions that may be appealed is open-ended while the list of decisions that may not be appealed is explicit and definite. It is preferable not to limit the type of decisions that may be appealed in order to avoid unfairness in the event that a new case arises that would automatically be excluded from the appeal process. On the other hand, the list of decisions that cannot be appealed must be explicit and exact.

Decisions that may be appealed include, but are not limited to, matters relating to the following: team selection, carding, harassment, discipline, eligibility, employment, contracts, sponsorship, etc.

Examples of events are major games or events organized by clubs, leagues, provincial associations or organizing committees, sanctioned events and national events where ABC may be a participant, but not an organizer.

Some offences committed by a Member of ABC may be of a criminal nature. If the Appelant is seeking a criminal conviction for this offence, the demand will have to be heard by a court that has jurisdiction in the matter and thus cannot be handled internally through an appeal policy. However, a member may request a civil sanction for such an offence, although the latter may also or alternatively be dealt with in the criminal justice system. In other words, exclusion from the internal appeal



process is dependent upon the expected outcome rather than the offence itself. If the member is expecting a criminal conviction for an offence, the member will have to proceed through the criminal system. If a civil sanction is desired, i.e. reimbursement of money, a firing etc., for the offence, the relevant internal appeal system can be used.

4. Timing for Appeal

- 4.1. Members who wish to appeal a decision will have 15 days from the date they received notice of the decision, to submit their Notice of Disagreement to the Case Manager;
- 4.2. Any Member wishing to submit the Notice of Disagreement beyond the 15-day period must provide a written request stating reasons for an exemption to the requirement of Sub-section 4.1;
- 4.3. The decisions to allow or not the exemption as provided by Sub-section 4.2 will be at the discretion of the Panel as establish in conformity with Section 9.

The appeal must be submitted within a reasonable length of time. The main reason for imposing a time limit on initiating an appeal is that if too much time goes by, the point may become “moot” – in other words, it becomes too late for an effective remedy to be available to the Appellant.

Nonetheless, there may be instances where more time is needed for the Appellant to make his/her decision to initiate an appeal, because of the nature of the dispute, because the impact of an adverse decision may only become apparent after the passage of time or because the Appellant may have been away for an extended period of time.



PROCEDURE

SECTION	COMMENTS
5. Notice of Disagreement and Discussion	
<p>5.1. Members who wish to appeal a decision of ABC that affects them must apply to the Case Manager of ABC to initiate the appeal process using the Notice of Disagreement (see appendix B). The appeal process does not begin until such application is made. The Notice of Disagreement form shall include the name(s) of the Appellant(s), his/her/their coordinates, the name(s) of the Respondent(s), the decision being appealed, the remedy sought and the request for timing-exemption, when required;</p> <p>5.2. Upon receiving the Notice of Disagreement, the Case Manager will discuss the circumstances with the Appellant(s) and, without any delay, will notify the Respondent(s) in writing and forward a copy of the Notice of Disagreement to the Respondent(s);</p> <p>5.3. Before proceeding further, the Case Manager will ensure that the Appellant(s) and the Respondent(s) have attempted to resolve the dispute privately between themselves, by any mean possible in the circumstances. If this attempt is not successful, the Case Manager must be informed within five days of his/her receipt of the Notice of Disagreement. It is expected that most issues will be resolved at this level.</p>	<p><i>Many disputes result from a misinterpretation of the facts or a lack of communication between the parties. A useful, effective internal appeal process should include, where possible, one or more stages where the parties can discuss their differences. It is very important that every effort be made to resolve the concern privately between the parties.</i></p> <p><i>The Case Manager will encourage the parties to solve the dispute through more discussion.</i></p>
6. Facilitation	
<p>6.1. The Case Manager will initiate a mediation process whereby he/she will attempt to help the parties to resolve the situation in consultation with the Appellant(s) and the Respondent(s), together or separately depending on the circumstances;</p> <p>6.2. If the Appellant(s) or the Respondent(s) can demonstrate a need for expediency, then the Case Manager, at his/her discretion, can decide that the dispute should go directly to the formal appeal stage.</p>	<p><i>When the parties are unable to resolve the problem privately through discussion, the Case Manager or someone he/she designates will meet with them, either together or separately, to help find a solution agreeable to both parties.</i></p>



7. Formal Appeal & Written Statement

- 7.1. If the attempt to resolve the dispute by informal means does not succeed, the Case Manager will notify the Appellant(s) that he/she is required to submit an Appeal Form (see Appendix C);
- 7.2. This Appeal Form must be submitted to the Case Manager within three working days from the notification mentioned at Sub-section 7.1;
- 7.3. The Appeal Form will state:
 - a) The grounds for the appeal;
 - b) A summary of the evidence that supports these grounds;
 - c) A list of the witnesses to be called at the hearing with a summary of the evidence to be provided by them;
 - d) The remedy sought; and
 - e) Whether or not representative(s) will be present;
- 7.4. Upon receipt of the Appeal Form, the Case Manager must provide the Respondent(s) with a copy of such within two working days, and request a Written Statement (See Appendix D) from the Respondent(s) outlining the justification for the decision or practice being appealed. The Written Statement will contain:
 - a) A summary of the evidence that supports the Respondent(s)' case;
 - b) The list of witnesses to be called at the hearing and the summary of the evidence to be provided by them; and
 - c) Whether or not representative(s) will be present;
- 7.5. The Written Statement shall be forwarded to the Case Manager within five working days from the date of receipt of the Case Manager request, or such longer period as the Case Manager may specify;
- 7.6. The Case Manager must forward a copy of the Written Statement to the Appellant(s) without delay after receipt;

In some instances, discussions and meetings between the parties may solve nothing. The Appellant may then submit an official Appeal Form to the Case Manager, and the Respondent must subsequently submit a Written Statement.

The Appeal Form and the Written Statement must contain as much information as possible, because these documents will form the basis for the Panel's examination of the case.

Barring exceptions, moreover, these documents will contain all the arguments and information that the parties can adduce as evidence. The parties should therefore fill them out very carefully and, in particular, avoid trying to conceal information in order to catch the other party off guard at the hearing.

The transparency of the appeal process meets the prime purpose of an internal appeal process, as stated in the preamble: to enable disputes to be dealt with expeditiously and fairly.



7.7. Should the Respondent(s) fail to submit the Written Statement within the time-limit provided by Sub-section 7.5, the Case Manager will initiate the establishment of the Panel without further delay and notify the parties of such.

The Respondent could be tempted to derail the process by refusing to accede to a particular request. For an appeal policy to be effective all parties must comply with it or, at the very least, action must be taken to ensure that a party cannot make it ineffective by refusing to comply. It is therefore important to have a special process in place in the event that one of the parties refuses to take the required action within the prescribed timeframe.

Important Note

The step called «Screening of appeal » can be done at different times within the internal appeal process. The present template proposes two options: the first one is represented at section 8 below and the second option is provided for at section 11. Don't forget to make a choice between section 8 and section 11: it will otherwise get very confusing.

Option 1

8. Screening of Appeal

- 8.1. Within two working days of receiving the Appeal Form, the Case Manager will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 10.1;
- 8.2. The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of the Case Manager, clearly erroneous;
- 8.3. If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons;
- 8.4. If the Appellant(s) believe(s) the Case Manager has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

Not all appeals submitted will satisfy the grounds and thus not all appeals should be automatically accepted. However, this preliminary decision of the Case Manager must be taken very carefully – upon review, an appeal may be rejected because it appears not to be grounded, which is very different than an appeal that is not on satisfactory grounds. The Case Manager needs to be careful at this stage, err on the side of caution and allow the appeal if it is not entirely clear whether the grounds have been met.

Experience has shown that very few appeals have been rejected at this stage of the procedure, for the reasons listed above. Thus this preliminary analysis phase is an optional one and may easily be performed by the Panel at a later date, as a preliminary issue (see option 2, section 11, p.21).

On the other hand, some organizations may apprehend frivolous and unfounded requests and want to avoid having to call a Panel for nothing, as this latter step can be



complicated where there is no list of volunteers to sit on a Panel. For that reason, we advocate option 1 which, although it rarely leads to a rejection, may enable an organization to avoid having to set up a Panel in the rare cases where the appeal is obviously frivolous or unfounded.

9. Appeal Panel

9.1. Within ten days of having received the Appeal Form, the Case Manager will initiate the establishment of a Panel as follows:

- a) The Panel will be comprised of three individuals taken from the List of Volunteers;
- b) The Panel will consist of one person nominated by the Appellant(s), one person nominated by the Respondent(s) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s) and Respondent(s) nominees to the Panel, or failing agreement by such nominees, appointed by the Case Manager;
- c) Should the Respondent(s) fail to submit the Written Statement, as provided by Sub-section 7.7, the Panel will consist of one person nominated by the Appellant(s), one person nominated by the Case Manager (on behalf of the Respondent(s)) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s) and Respondent(s) nominees to the Panel, or failing agreement by such nominees, appointed by the Case Manager;

9.2. All three members of the Panel must be nominated respecting the following conditions:

- a) They must have no significant relationship with the affected parties;
- b) They must have no involvement with the decision being appealed;
- c) They must be free from any actual or perceived bias or conflict of interest. Being a member of the Appellant(s) or the Respondent(s) "peer" should not in itself constitute bias or conflict of interest;

9.3. As soon as they are nominated, the members of the Panel will be forwarded with a copy of the Notice of Disagreement, Appeal Form and Written Statement.

Appeals are best heard by panels of three persons. Bringing more minds to bear on a dispute usually results in a more informed and more principled decision.

In order to comply with the principle of Panel impartiality, the three members should be nominated by the parties or independent third parties. The principle is respected when each party nominates a Panel member and the two selected members choose a chairperson.

Any individual can be named to a Panel – they don't have to be members of ABC or representatives of the sport. Many organizations try to include a "peer" member on the Panel, which is a good idea except experience has shown that athletes are reluctant to sit in judgment of other athletes. When constituting a Panel, the organization should be most concerned about bringing together thoughtful, independent and fair-minded persons. It is also a good idea to have a lawyer, or at least a very skilled individual, to serve as Chairperson of the Panel.



10. Grounds for Appeal

- 10.1. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include, but are not limited to, the Respondent:
- Making a decision for which it did not have authority or jurisdiction as set out in governing documents;
 - Failing to follow procedures as laid out in the bylaws or approved policies of ABC;
 - Making a decision which 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 or that the decision was made on the basis of, or significantly influenced by factors unrelated to the merits of the decision;
 - Exercising its discretion for an improper purpose;
 - Making a decision that was grossly unreasonable or unfair.

Appeals are not for re-deciding matters. They are for correcting errors in decision-making. An appeal policy exists to make sure that decision-makers make only those decisions they have the power to make, that decision-makers are unbiased, and that decisions are made fairly and according to the organization's policies and procedures. An Appellant cannot challenge a decision simply because he or she disagrees with it. Allowing an Appellant to appeal a decision on its merits simply because he/she doesn't like the outcome does a great disservice to those who made the decision in the first place. If any and all decisions may be appealed, then decision-makers might as well not take the time and effort to make decisions diligently, thoughtfully and fairly in the first place.

Option 2

11. Screening of Appeal

- 11.1. Within 2 working days of receiving the Appeal Form, the Panel will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 10.1 above;
- 11.2. The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of one or more of the Panel members, clearly erroneous;
- 11.3. If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons;
- 11.4. If the Appellant(s) believe(s) the Panel has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

Not all appeals submitted will satisfy the grounds and thus not all appeals should be automatically accepted. However, this preliminary decision of the Case Manager must be taken very carefully – upon review, an appeal may be rejected because it appears not to be grounded, which is very different than an appeal that is not on satisfactory grounds. The Case Manager needs to be careful at this stage, err on the side of caution and allow the appeal if it is not entirely clear whether the grounds have been met.

Experience has shown that very few appeals have been rejected at this stage of the procedure, for the reasons listed above. Thus this preliminary analysis phase is an optional one and may easily be performed beforehand, (see option 1, section 8, p.19), or after the Panel is struck (option 2).



12. Preliminary Conference

12.1. Within seven days of receiving the Appeal Form and Written Statement, the Panel will hold a preliminary conference to consider various preliminary issues, such as, but not limited to, the following ones:

- a) Date and location of the hearing;
- b) Timelines for exchange of documents;
- c) Format of the appeal (written or oral submissions or a combination of both);
- d) Clarification of issues in dispute;
- e) Clarification of evidence to be presented to the Panel;
- f) Order and procedure of hearing;
- g) Any procedural matter;
- h) Clarification of remedies sought;
- i) Any other matter that may assist in expediting the appeal proceedings.

12.2. The preliminary conference can be held by conference-call or in person, depending on the circumstances: this decision is at the sole discretion of the Chairperson and may not be appealed;

12.3. The participants in the preliminary conference shall be the Appellant(s), the Respondent(s), their representatives, if any, the Case Manager and the Panel;

12.4. The Chairperson and the Case Manager shall arrange the preliminary conference and its precise date and time in concert with the participants;

12.5. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters;

12.6. The Case Manager shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s) and Respondent(s) the appeal procedure established at this preliminary conference within two working days after the conclusion of such conference, and after having received the written confirmation approved by the Panel.

The preliminary conference is a very valuable tool that can give one more chance for the parties to communicate before the hearing. If this communication doesn't lead to the resolution of the dispute, it can certainly save a lot of time and energy in preparation for the hearing. Preliminary meetings don't get into the merits of the dispute but they can help clarify the issues in dispute. They are also used to resolve procedural, administrative and logistical issues, in advance of the actual hearing where the merits will be explored

To keep them simple and functional, preliminary meetings are usually conducted by telephone and they can also be conducted by the Chairperson alone, if the Panel so wishes.



13. Procedure for the Appeal

13.1. The Panel shall govern the hearing by such procedures as it deems appropriate, provided that the following directives be applied:

- a) The appeal shall be heard as quickly as reasonably possible, having regard to the nature of the appeal, and the circumstances of the case;
- b) All three members of the Panel shall hear the appeal, but a majority in favour of the same result shall be sufficient to effect a decision;
- c) Each party shall have the right to be represented at the hearing;
- d) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all parties, within the time limits established during the preliminary conference or by the Panel;
- e) The appeal may proceed on the basis of written submissions and documentation if all parties to the appeal consent;
- f) If the decision of the Panel 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 and will be bound by its outcome;
- g) The Panel may direct that any other person or party participate in the appeal;
- h) For sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred with such safeguards as the Panel considers necessary to protect the interests of the parties;
- i) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to the other parties.

Under this template, the Panel is the master of its own proceedings. While some guidelines are set out that must be respected, the Panel is responsible for ensuring that the appeal is conducted fairly. Allowing the Panel to have this authority enables appeals to be accommodated in a flexible manner, in a wide range of situations, not all of which can be anticipated.

Some key items set out in these guidelines are:

- *While a unanimous decision is ideal, a majority decision is allowed;*
- *The appeal may involve affected parties (i.e. selection disputes). When this happens, the affected party is brought into the proceedings and is bound by the Appeal Panel's decision;*
- *Parties may be accompanied by an advisor, including legal counsel. Under Canadian law, the right to representation cannot be denied to a person (keeping in mind that the right to have counselling does not include the right to have the costs of such counselling paid for by someone else!);*
- *Minors must be accompanied by a responsible adult. It doesn't have to be a parent or guardian: it could be a coach, for example.*



14. Procedure for Documentary Appeal

14.1. Where the Panel has determined that the appeal will be held by way of written submissions, it will govern the appeal by such procedures as it deems appropriate provided that:

- a) All parties are given a reasonable opportunity to provide written submissions to the Panel, to review written submissions of the other parties, and to provide written rebuttal and argument;
- b) The applicable principles and timelines set out in Section 12 are respected.

This section allows the Panel to determine procedures for a documentary hearing. Documentary hearings are appropriate in certain situations, such as those where the dispute may revolve around the interpretation of technical matters. They are less appropriate when the outcome of the appeal may depend on an individual's credibility. The decision as to the most appropriate format of the appeal rests with the Panel, to be determined with the parties as a preliminary matter.

15. Evidence that may be Considered

- 15.1. As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.
- 15.2. Unless a party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Form or Written Statement, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after the preliminary conference, other than that provided orally by witnesses at the hearing;
- 15.3. The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place;
- 15.4. If a party believes the Panel has made an error in admitting or rejecting an additional element of prove as provided by Sub-section 15.3, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.



16. Appeal Decision

16.1. Within five working days of concluding the appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide:

- a) To reject the appeal and confirm the decision being appealed;
- b) To uphold the appeal and refer the matter back to the initial decision-maker for a new decision;
- c) To uphold the appeal and vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reason of lack of clear procedure, lack of time, or lack of neutrality;
- d) To determine how costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be allocated, if at all. When granting such costs, the Panel shall take into account the outcome of the proceedings, the conduct of the parties and their respective financial resources;

Appeal panels must have no greater authority than that of the original decision-maker. Appeal panels cannot change policy, rewrite selection criteria, insert new clauses into contracts.

As part of the decision, the Panel may also award costs. This should be done very reluctantly, and only where a party has been unduly uncooperative, vexatious, frivolous or fraudulent.

16.2. A copy of this decision will be provided to each of the parties and to the Case Manager;

16.3. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided that the written decision with reasons is rendered within the timelines specified in Sub-section 16.1.

This section allows the Panel to issue its decision quickly. Sometimes this may be necessary, when the Panel has only a few hours to decide (not an uncommon situation with selection disputes). Reasons must still follow where an oral or summary decision is rendered.

17. Modification of Timelines

17.1. If the circumstances of the dispute are such that this policy will not allow a timely appeal, or if the circumstances of the disputes are such that the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be revised.

The Panel's broad authority extends to abridging or extending timelines to suit the circumstances of the appeal.



18. Arbitration and Mediation

- 18.1. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy;
- 18.2. Any final decision made by the Panel that may lead to irreversible consequences for one of the parties may be exclusively submitted by way of application to the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor, which will resolve definitively the dispute in accordance with the ADRsportRED Code, as amended from time to time;
- 18.3. Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;
- 18.4. The award rendered by the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor shall be final and binding upon the parties.

Any dispute between parties should be dealt with pursuant to the internal appeal policy and end with the Panel's decision. However, after all this internal process has taken place, it may happen that one of the parties be unsatisfied by the decision rendered. In such case, this party will have a right to appeal this decision through an external mechanism, the Secretariat proceedings in the present instance.

The decision rendered by this external panel or arbitrator will then be final and binding upon all parties.



APPENDIX A – CHART OF TIMELINES

Step	Section	Timeline (days) from the previous step	Days since knowledge of the disputed decision
I. Disputed Decision			1
II. Filing of Notice of Disagreement	4	15	16
III. Discussion between the parties	5	5	21
IV. Mediation	6	Unspecified	Unspecified
V. Notice to the Case Manager that the facilitation process failed	7.1	Unspecified	Unspecified
VI. Filing of Appeal Form	7.2	3	24
VII. Delivery of Appeal Form to the Respondent(s)	7.4	2	26
VIII. Answer	7.5	5	31

Option 1

IX. Screening of Appeal	8	2	33
X. Establishment of Panel	9	10	43

Option 2

IX. Establishment of Panel	9	10	41
X. Screening of Appeal	11	2	43

Continuation

XI. Preliminary Conference	12	7	50
XII. Written confirmation of decisions taken during the Preliminary Conference	12.6	2	52
XIII. Hearing	14	As decided during the Preliminary Conference	Unspecified
XIV. Decision	16	5	60



APPENDIX B - NOTICE OF DISAGREEMENT

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: _____

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?

REMEDY

What action or decision do you want ABC to take or make to correct the situation?

EXEMPTION

If the decision was taken more than 15 days ago, why haven't you filed this Notice of Disagreement before the 15 days time limit as provided by ABC's Appeal Policy (Section 4)



APPENDIX C - FORMAL APPEAL

Date:

____ - ____ - ____
MM DD YYYY

Name of the Appellant:

REPRESENTATIVE

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

Home: (____) ____ - _____

Work: (____) ____ - _____

Fax: (____) ____ - _____

E-mail: _____

GROUNDS

- 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.

Witness N° 1:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 2:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 3:

Name: _____

Coordinates: _____

Summary of evidence:



Witness N° 4:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 5:

Name: _____

Coordinates: _____

Summary of evidence:



APPENDIX D - WRITTEN STATEMENT

Date: _____
MM DD YYYY

RESPONDENT

Name of Respondent: _____

Address of Respondent: _____

Telephone Numbers of Respondent: Home: (____) ____ - _____
Work: (____) ____ - _____
Other: (____) ____ - _____

Fax Number of Respondent: (____) ____ - _____

E-Mail of Respondent: _____

REPRESENTATIVE

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

Home: (____) ____ - _____
Work: (____) ____ - _____
Fax: (____) ____ - _____
E-mail: _____

JUSTIFICATION

- Justification for the decision or practice being appealed (reasons);
and
- Summary of the evidence that supports this justification (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.

Witness N° 1:

Name: _____

Coordinates: _____

Summary of evidence:



Witness N° 2:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 3:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 4:

Name: _____

Coordinates: _____

Summary of evidence:



Witness N° 5:

Name: _____

Coordinates: _____

Summary of evidence:



“Simplified” Appeal Policy Template

A word of caution about this template...this is an example of an appeal policy. It represents a generic model that may work for your organization. The most likely scenario, however, is that you will have to take this template, study and understand it, and then adapt it to suit your own needs and circumstances.

Also keep in mind that if you put in place an appeal policy such as this, you must follow it. If your policy is not enforced or if it does not work the way you intended, then you have a serious problem and you may have to re-think your approach to dealing with appeals.



GENERAL PROVISIONS

SECTION	COMMENTS
<p>1. Preamble</p> <p>ABC recognizes the right of any Member to appeal the decisions of ABC and hereby provides for an appropriate process for resolving disputes that could arise from time to time from such decisions of ABC.</p> <p>The purpose of this appeal policy is to enable disputes with Members to be dealt with fairly, expeditiously and affordably within ABC, without having to have recourse to formal legal and court-like procedures.</p>	<p><i>Any party may appeal a decision it considers unfair or unjust.</i></p> <p><i>The purpose of an internal appeal policy is to ensure that any dispute is handled fairly, expeditiously and affordably.</i></p>
<p>2. Definitions</p> <p>Appeal Form: Refers to a request submitted by the Appellant(s) attached as Appendix A;</p> <p>Appellant: Refers to a Member appealing a decision of ABC;</p> <p>Arbitration: Refers to the arbitration process as established by the ADRsportRED Code, as amended from time to time;</p> <p>Days: Means total days, irrespective of weekends or holidays;</p> <p>Mediation: Refers to the mediation process as established by the ADRsportRED Code, as amended from time to time;</p> <p>Member: Refers to all categories of members in ABC, as well as to all individuals engaged in activities with or employed by ABC, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, provincial sport organizations and employees including contract personnel;</p> <p>Official: Refers to the person in charge of managing the case. This person can be anybody who has no involvement with the decision being appealed;</p> <p>Panel: Refers to the appeal panel established as provided by Section 8;</p> <p>Respondent: Refers to the body, person or persons whose decision is being appealed;</p>	<p><i>The appeal policy must differentiate between the internal appeal process and the arbitration and mediation processes under the ADRsportRED Code.</i></p> <p><i>The term "Member" is broadly defined to capture not only actual individual members but also all persons who participate in the activities of the organization. Note, as well, that many national sport organizations do not have individual "members" thus the defined term must include participants. To find out what's best for your organization, check your bylaws to see how "member" is defined.</i></p> <p><i>The Official will be the person in charge of managing the case: he/she will receive the documents from the parties, forward these documents to the other parties, contact them to organize the preliminary conference, etc. Ideally, the Official is a third party not linked in any way to ABC's organization. Realistically, some</i></p>



Working Days: Means total days, excluding weekends and holidays;

Written Statement: Refers to the response submitted by the Respondent(s) attached as Appendix C.

organizations don't have the human and/or financial resources to name a third party as Official. In such occurrence, the Official could be a member of ABC's organization (i.e. Executive Director, Vice-President Administration, President, etc). But in any event, the Official should not be a person who could eventually be called to testify or argue before the Panel with respect to the case he/she manages.

3. Scope of Appeal

- 3.1. Any Member of ABC who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of ABC or its Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal, as set out in Section 10;
- 3.2. Without limiting the scope of section 3.1, this appeal policy will not apply to decisions relating to:
 - f) Doping offences, which are dealt with under the Canadian Policy on Doping in Sport and the Canadian Doping Control Regulations;
 - g) The technical rules of ABC, as set out in *(title of document where the Rules governing the sport in question are established)* which may not be appealed;
 - h) Disciplinary matters arising during events organized by entities other than ABC, which are dealt with under the policies of these other entities, provided that they have an appeal policy in place.
 - i) Criminal offences for which the Appellant(s) is/are seeking a criminal conviction;
 - j) Commercial matters for which another appeal process already exists under the applicable law or contract.

This section defines what decisions may be appealed, and what decisions may not be appealed. The list of decisions that may be appealed is open-ended while the list of decisions that may not be appealed is explicit and definite. It is preferable not to limit the type of decisions that may be appealed in order to avoid unfairness in the event that a new case arises that would automatically be excluded from the appeal process. On the other hand, the list of decisions that cannot be appealed must be explicit and exact.

Decisions that may be appealed include, but are not limited to, matters relating to the following: team selection, carding, harassment, discipline, eligibility, employment, contracts, sponsorship, etc.

Examples of events are major games or events organized by clubs, leagues, provincial associations or organizing committees, sanctioned events and national events where ABC may be a participant, but not an organizer.

Some offences committed by a Member of ABC may be of a criminal nature. If the Appellant is seeking a criminal conviction for this offence, the demand will have to be heard by a court that has jurisdiction in the matter and thus cannot be handled internally through an appeal policy. However, a Member may request a civil sanction for such an offence, although the latter may also or alternatively be dealt with in the criminal justice system. In other words, exclusion from the internal appeal process is dependent upon the expected



outcome rather than the offence itself. If the Member is expecting a criminal conviction for an offence, the member will have to proceed through the criminal system. If a civil sanction is desired, i.e. reimbursement of money, a firing etc., for the offence, the relevant internal appeal system can be used.

4. Timing for Appeal

- 4.1. Members who wish to appeal a decision will have 15 days from the date they received notice of the decision, to submit their Appeal Form to the Official;
- 4.2. Any Member wishing to submit the Appeal Form beyond the 15-day period must provide a written request stating reasons for an exemption to the requirement of Sub-section 4.1;
- 4.3. The decisions to allow or not the exemption as provided by Sub-section 4.2 will be at the discretion of the Panel as establish in conformity with Section 8.

The appeal must be submitted within a reasonable length of time. The main reason for imposing a time limit on initiating an appeal is that if too much time goes by, the point may become “moot” – in other words, it becomes too late for an effective remedy to be available to the Appellant.

Nonetheless, there may be instances where more time is needed for the Appellant to make his/her decision to initiate an appeal, because of the nature of the dispute, because the impact of an adverse decision may only become apparent after the passage of time or because the Appellant may have been away for an extended period of time.



PROCEDURE

SECTION	COMMENTS
5. Appeal Form and Discussion	
<p>5.1. Members who wish to appeal a decision of ABC that affects them must apply to the Official to initiate the appeal process using the Appeal Form (see appendix B). The appeal process does not begin until such application is made.</p> <p>5.2. The Appeal Form will state:</p> <ul style="list-style-type: none"> a) The name(s) of the Appellant(s); b) The coordinates of the Appellant(s); c) The name(s) of the Respondent(s); d) The decision being appealed; e) The grounds for the appeal; f) A summary of the evidence that supports these grounds; g) A list of the witnesses to be called at the hearing with a summary of the evidence to be provided by them; h) The remedy sought; i) Whether or not representative(s) will be present; and j) The request for timing-exemption, as provided by Sub-section 4.2, when required; <p>5.3. Upon receiving the Appeal Form, the Official will discuss the circumstances with the Appellant(s) and, without any delay, will notify the Respondent(s) in writing and forward a copy of the Appeal Form to the Respondent(s);</p> <p>5.4. Before proceeding further, the Official will ensure that the Appellant(s) and the Respondent(s) have attempted to resolve the dispute privately between themselves, by any mean possible in the circumstances. If this attempt is not successful, the Official must be informed within five days of his/her receipt of the Appeal Form. It is expected that most issues will be resolved at this level.</p>	<p><i>Many disputes result from a misinterpretation of the facts or a lack of communication between the parties. A useful, effective internal appeal process should include, where possible, one or more stages where the parties can discuss their differences. It is very important that every effort be made to resolve the concern privately between the parties.</i></p> <p><i>The Official will encourage the parties to solve the dispute through more discussion.</i></p>



6. Written Statement

- 6.1. If the attempt to resolve the dispute through discussion between the parties does not succeed, the Official will request a Written Statement by the Respondent(s) (see Appendix C) outlining the justification for the decision or the practice being appealed;
- 6.2. The Written Statement will contain:
 - a) A summary of the evidence that supports the Respondent(s)' case;
 - b) The list of witnesses to be called at the hearing and the summary of the evidence to be provided by them; and
 - c) Whether or not representative(s) will be present;
- 6.3. The Written Statement shall be forwarded to the Official within five working days from the date of receipt of the Official's request, or such longer period as the Official may specify;
- 6.4. The Official must forward a copy of the Written Statement to the Appellant(s) without delay after receipt;
- 6.5. Should the Respondent(s) fail to submit the Written Statement within the time-limit provided by Sub-section 6.3, the Official will initiate the establishment of the Panel without further delay and notify the parties of such.

The Respondent could be tempted to derail the process by refusing to accede to a particular request. For an appeal policy to be effective all parties must comply with it or, at the very least, action must be taken to ensure that a party cannot make it ineffective by refusing to comply. It is therefore important to have a special procedure in place in the event that one of the parties refuses to take the required action within the prescribed timeframe.

Important Note

The step called «Screening of appeal » can be done at different times within the internal appeal process. The present template proposes two options: the first one is represented at section 7 below and the second option is provided for at section 10. Don't forget to make a choice between section 7 and section 10: it will otherwise get very confusing.

Option 1

7. Screening of Appeal

- 7.1. Within two working days of receiving the Appeal Form, the Official will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 9.1;

Not all appeals submitted will satisfy the grounds and thus not all appeals should be automatically accepted. However, this preliminary decision of the Official must be taken very carefully – upon review, an



- 7.2. The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of the Official, clearly erroneous;
- 7.3. If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons;
- 7.4. If the Appellant(s) believe(s) the Official has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

appeal may be rejected because it appears not to be grounded, which is very different than an appeal that is not on satisfactory grounds. The Official needs to be careful at this stage, err on the side of caution and allow the appeal if it is not entirely clear whether the grounds have been met.

Experience has shown that very few appeals have been rejected at this stage of the procedure, for the reasons listed above. Thus this preliminary analysis phase is an optional one and may easily be performed by the Panel at a later date, as a preliminary issue (see option 2, section 10, p.45).

On the other hand, some organizations may apprehend frivolous and unfounded requests and want to avoid having to call a Panel for nothing, as this latter step can be complicated. For that reason, we advocate option 1, which, although it rarely leads to a rejection, may enable an organization to avoid having to set up a Panel in the rare cases when the appeal is obviously frivolous or unfounded.

8. Appeal Panel

- 8.1. Within ten days of having received the Appeal Form, the Official will initiate the establishment of a Panel as follows:
 - a) The Panel will be comprised of three individuals;
 - b) The Panel will consist of one person nominated by the Appellant(s), one person nominated by the Respondent(s) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s)' and Respondent(s)' nominees to the Panel, or failing agreement by such nominees, appointed by the Official;
 - c) Should the Respondent(s) fail to submit the Written Statement, as provided by Sub-section 6.5, the Panel will consist of one person nominated by the Appellant(s), one person nominated by the Official (on behalf of the Respondent(s)) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s)' and

Appeals are best heard by panels of three persons. Bringing more minds to bear on a dispute usually results in a more informed and more principled decision.

In order to comply with the principle of Panel impartiality, the three members should be nominated by the parties or independent third parties. The principle is respected when each party nominates a Panel member and the two selected members choose a chairperson.

Any individual can be named to a Panel – they don't have to be members of ABC or representatives of the sport. Many organizations try to include a "peer" member on the Panel, which is a good idea except experience has shown that athletes are reluctant to sit in judgment of



- Respondent(s)' nominees to the Panel, or failing agreement by such nominees, appointed by the Official;
- 8.2. All three members of the Panel must be nominated respecting the following conditions:
- They must have no significant relationship with the affected parties;
 - They must have no involvement with the decision being appealed;
 - They must be free from any actual or perceived bias or conflict of interest. Being a member of the Appellant(s)' or the Respondent(s)' "peer" should not in itself constitute bias or conflict of interest;
- 8.3. As soon as they are nominated, the members of the Panel will be forwarded a copy of the Appeal Form and Written Statement.

other athletes. When constituting a Panel, the organization should be most concerned about bringing together thoughtful, independent and fair-minded persons. It is also a good idea to have a lawyer, or at least a very skilled individual, to serve as Chairperson of the Panel.

9. Grounds for Appeal

- 9.1. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include, but are not limited to, the Respondent:
- Making a decision for which it did not have authority or jurisdiction as set out in governing documents;
 - Failing to follow procedures as laid out in the bylaws or approved policies of ABC;
 - Making a decision which 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 or that the decision was made on the basis of, or significantly influenced by factors unrelated to the merits of the decision;
 - Exercising its discretion for an improper purpose;
 - Making a decision that was grossly unreasonable or unfair.

Appeals are not for re-deciding matters. They are for correcting errors in decision-making. An appeal policy exists to make sure that decision-makers make only those decisions they have the power to make, that decision-makers are unbiased, and that decisions are made fairly and according to the organization's policies and procedures. An Appellant cannot challenge a decision simply because he or she disagrees with it. Allowing an Appellant to appeal a decision on its merits simply because he/she doesn't like the outcome does a great disservice to those who made the decision in the first place. If any and all decisions may be appealed, then decision-makers might as well not take the time and effort to make decisions diligently, thoughtfully and fairly in the first place.



Option 1

10. Screening of Appeal

- 10.1. Within two working days of receiving the Appeal Form, the Panel will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 9.1 above;
- 10.2. The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of one or more of the Panel members, clearly erroneous;
- 10.3. If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons;
- 10.4. If the Appellant(s) believe the Panel has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

Not all appeals submitted will satisfy the grounds and thus not all appeals should be automatically accepted. However, this preliminary decision of the Panel must be taken very carefully – upon review, an appeal may be rejected because it appears not to be grounded, which is very different than an appeal that is not on satisfactory grounds. The Panel needs to be careful at this stage, err on the side of caution and allow the appeal if it is not entirely clear whether the grounds have been met.

Experience has shown that very few appeals have been rejected at this stage of the procedure, for the reasons listed above. Thus this preliminary analysis phase is an optional one and may easily be performed beforehand by the Official, (see option 1, section 7, p. 42), or after the Panel is struck (option 2).

11. Preliminary Conference

- 11.1. Within seven days of receiving the Appeal Form and Written Statement, the Panel will hold a preliminary conference to consider various preliminary issues, such as, but not limited to, the following ones:
 - a) Date and location of the hearing;
 - b) Timelines for exchange of documents;
 - c) Format of the appeal (written or oral submissions or a combination of both);
 - d) Clarification of issues in dispute;
 - e) Clarification of evidence to be presented to the Panel;
 - f) Order and procedure of hearing;
 - g) Any procedural matter;
 - h) Clarification of remedies sought;
 - i) Any other matter that may assist in expediting the appeal proceedings.

The preliminary conference is a very valuable tool that can give one more chance for the parties to communicate before the hearing. If this communication doesn't lead to the resolution of the dispute, it can certainly save a lot of time and energy in preparation for the hearing. Preliminary meetings don't get into the merits of the dispute but they can help clarify the issues in dispute. They are also used to resolve procedural, administrative and logistical issues, in advance of the actual hearing where the merits will be explored.

To keep them simple and functional, preliminary meetings are usually conducted by telephone and they can also be conducted by the Chairperson alone, if the Panel so wishes.



- 11.2. The preliminary conference can be held by conference-call or in person, depending on the circumstances: this decision is at the sole discretion of the Chairperson and may not be appealed;
- 11.3. The participants in the preliminary conference shall be the Appellant(s), the respondent(s), their representatives, if any, the Official and the Panel;
- 11.4. The Chairperson and the Official shall arrange the preliminary conference and its precise date and time in concert with the participants;
- 11.5. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters;
- 11.6. The Official shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s) and Respondent(s) the appeal procedure established at this preliminary conference within two working days after the conclusion of such conference, and after having received the written confirmation approved by the Panel.

12. Procedure for the Appeal

- 12.1. The Panel shall govern the hearing by such procedures as it deems appropriate, provided that the following directives be applied:
 - a) The appeal shall be heard as quickly as reasonably possible, having regard to the nature of the appeal, and the circumstances of the case;
 - b) All three members of the Panel shall hear the appeal, but a majority in favour of the same result shall be sufficient to effect a decision;
 - c) Each party shall have the right to be represented at the hearing;
 - d) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all parties, within the time limits established during the preliminary conference or by the Panel;
 - e) The appeal may proceed on the basis of written submissions and documentation if all parties to the appeal consent;

Under this template, the Panel is the master of its own proceedings. While some guidelines are set out that must be respected, the Panel is responsible for ensuring that the appeal is conducted fairly. Allowing the Panel to have this authority enables appeals to be accommodated in a flexible manner, in a wide range of situations, not all of which can be anticipated.

Some key items set out in these guidelines are:

- While a unanimous decision is ideal, a majority decision is allowed;

- The appeal may involve affected parties (i.e. selection disputes). When this happens, the affected party is brought into the proceedings and is bound by the Panel's decision;

- Parties may be accompanied by an advisor, including legal counsel. Under Canadian law, the right to representation



- f) If the decision of the Panel 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 and will be bound by its outcome;
- g) The Panel may direct that any other person or party participate in the appeal;
- h) For sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred with such safeguards as the Panel considers necessary to protect the interests of the parties;
- i) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to the other parties.

cannot be denied to a person (keeping in mind that the right to have counselling does not include the right to have the costs of such counselling paid for by someone else!);

Minors must be accompanied by a responsible adult. It doesn't have to be a parent or guardian: it could be a coach, for example.

13. Procedure for Documentary Appeal

- 13.1. Where the Panel has determined that the appeal will be held by way of written submissions, it will govern the appeal by such procedures as it deems appropriate provided that:
- a) All parties are given a reasonable opportunity to provide written submissions to the Panel, to review written submissions of the other parties, and to provide written rebuttal and argument;
 - b) The applicable principles and timelines set out in Section 11 are respected.

This section allows the Panel to determine procedures for a documentary hearing. Documentary hearings are appropriate in certain situations, such as those where the dispute may revolve around the interpretation of technical matters. They are less appropriate when the outcome of the appeal may depend on an individual's credibility. The decision as to the most appropriate format of the appeal rests with the Panel, to be determined with the parties as a preliminary matter.

14. Evidence that may be Considered

- 14.1. As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.
- 14.2. Unless a party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Form or Written Statement, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after



- the preliminary conference, other than that provided orally by witnesses at the hearing;
- 14.3. The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place;
- 14.4. If a party believes the Panel has made an error in admitting or rejecting an additional element of prove as provided by Sub-section 14.3, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

15. Appeal Decision

- 15.1. Within five working days of concluding the appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide:
- a) To reject the appeal and confirm the decision being appealed;
 - b) To uphold the appeal and refer the matter back to the initial decision-maker for a new decision;
 - c) To uphold the appeal and vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reason of lack of clear procedure, lack of time, or lack of neutrality;
 - d) To determine how costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be allocated, if at all. When granting such costs, the Panel shall take into account the outcome of the proceedings, the conduct of the parties and their respective financial resources;
- 15.2. A copy of this decision will be provided to each of the parties and to the Official;
- 15.3. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided that the written decision with reasons is rendered within the timelines specified in Sub-section 15.1.

Appeal panels must have no greater authority than that of the original decision-maker. Appeal panels cannot change policy, rewrite selection criteria, insert new clauses into contracts.

As part of the decision, the Panel may also award costs. This should be done very reluctantly, and only where a party has been unduly uncooperative, vexatious, frivolous or fraudulent.

This section allows the Panel to issue its decision quickly. Sometimes this may be necessary, when the Panel has only a few hours to decide (not an uncommon situation with selection disputes). Reasons must still follow where an oral or summary decision is rendered.



16. Modification of Timelines

- 16.1. If the circumstances of the dispute are such that this policy will not allow a timely appeal, or if the circumstances of the disputes are such that the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be revised.

The Panel's broad authority extends to abridging or extending timelines to suit the circumstances of the appeal.

17. Arbitration and Mediation

- 17.1. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy;
- 17.2. Any final decision made by the Panel that may lead to irreversible consequences for one of the parties may be exclusively submitted by way of application to the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor, which will resolve definitively the dispute in accordance with the ADRsportRED Code, as amended from time to time;
- 17.3. Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;
- 17.4. The award rendered by the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor shall be final and binding upon the parties.

Any dispute between parties should be dealt with pursuant to the internal appeal policy and end with the Panel's decision. However, after all this internal process has taken place, it may happen that one of the parties be unsatisfied with the decision rendered. In such case, this party will have a right to appeal this decision through an external mechanism, the Secretariat proceedings in the present instance.

The decision rendered by this external panel or arbitrator will then be final and binding upon all parties.



APPENDIX A – CHART OF TIMELINES

Step	Section	Timeline (days) from the previous step	Days since knowledge of the disputed decision
I. Disputed Decision			1
II. Filing of Appeal Form	5	15	16
III. Discussion between the parties	5	5	21
IV. Written statement of the Respondent(s)	6	5	26

Option 1

V. Screening of Appeal	7	2	33
VI. Establishment of Panel	8	10	43

Option 2

V. Establishment of Panel	8	10	36
VI. Screening of Appeal	10	2	38

Continuation

VII. Preliminary Conference	11	7	46
VIII. Written confirmation of decisions taken during the Preliminary Conference	11.6	2	48
IX. Hearing	12	As decided during the Preliminary Conference	Unspecified
X. Decision	15	5	50



APPENDIX B - FORMAL APPEAL

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? _____



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.

Witness N° 1:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 2:

Name: _____

Coordinates: _____

Summary of evidence:



Witness N° 3:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 4:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 5:

Name: _____

Coordinates: _____

Summary of evidence:



REMEDY

What action or decision do you want ABC to take or make to correct the situation?

EXEMPTION

If the decision was taken more than 15 days ago, why haven't you filed this Notice of Disagreement before the 15 days time-limit as provided by ABC's Appeal Policy (Section 4)

**APPENDIX C - WRITTEN STATEMENT**

Date:

MM DD YYYY

RESPONDENT

Name of Respondent:

Address of Respondent:

Telephone Numbers of Respondent:

Home: () - - - -Work: () - - - -Other: () - - - -

Fax Number of Respondent:

() - - - -

E-Mail of Respondent:

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

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

JUSTIFICATION- Justification for the decision or practice
being appealed (reasons);

and

- Summary of the evidence that supports
this justification (Documents, Pictures,
Rules and 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.

Witness N° 1:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 2:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 3:

Name: _____

Coordinates: _____

Summary of evidence:



Witness N° 4:

Name: _____

Coordinates: _____

Summary of evidence:

Witness N° 5:

Name: _____

Coordinates: _____

Summary of evidence:

