

# Appeals Policy

## DEFINITIONS

- **BCS** means the body duly incorporated under the name Bobsleigh CANADA Skeleton.
- **Member** means (i) any recognized member of BCS per BCS's governing By-Laws, and (ii) any individual engaged in activities with or employed/contracted by BCS including athletes, coaches, managers, officials, volunteers, medical and paramedical personnel, administrators, employees, contractors, directors and officers.
- **BoD** means the Board of Directors of BCS.
- **CEO** means the Chief Executive Officer of BCS or a substitute as appointed from time-to-time by the BCS BoD.
- **Decisioner** refers to the BCS BoD or any body or individual who has been given authority to act on behalf of BCS (such as the CEO), and which/who has made a decision that is the subject of appeal.
- **Appellant** refers to the Member appealing a decision by the Decisioner.
- **Days** means days inclusive of weekends and holidays, as applicable.
- **Panel** means the Appeals Committee.

## SCOPE of APPEAL

1. Any Member who is directly affected by a decision of the Decisioner shall have the right to appeal that decision, provided the Member (as Appellant) can evidence sufficient grounds for the appeal as set out in Paragraph 10 and 11 of this Appeals Policy.
2. This Appeals Policy applies to the following:
  - a. Appeal by an affected Member of a decision regarding BCS's Conflict of Interest Policy and/or Code of Conduct;
  - b. Appeal by an affected Athlete of a decision regarding their BCS Athlete's Agreement;
  - c. Appeal by an affected Athlete of a decision regarding: (i) the implementation and delivery of BCS's national team programs, (ii) nomination or non-nomination to the Athlete Assistance Program (AAP), or (iii) athlete selection to a team representing Canada at international multisport event; and
  - d. Appeal by an affected Coach of a decision regarding any sport-related matter.
3. For matters pertaining to Paragraph 2c(iii), if time is of the essence and the Appellant, the Decisioner and, as applicable per Paragraph 5, the BCS CEO or BoD Chair/President unanimously agree, the procedures of this Appeals Policy can be by-passed in favour of the Appellant pursuing an appeal directly through the Sport Dispute Resolution Centre of Canada (SDRCC).
4. This Appeals Policy does NOT apply to:
  - a. Matters relating to the rules of bobsleigh and skeleton, which may not be appealed;
  - b. Matters relating to international competitions in Canada but not governed by BCS, such as the Olympic Games, World Championships and similar events governed by other international organizations;
  - c. Matters of BCS employment (other than as those pertaining to BCS's Conflict of Interest Policy and Code of Conduct) unless otherwise stated;

- d. Matters of BCS budgeting and budget implementation;
- e. Matters of BCS operational structure and staffing;
- f. Matters governed by the Universal Code of Conduct to Prevent & Address Maltreatment in Sport (“UCCMS”) and/or related BCS policies (such as BCS’s Harassment & Discrimination Policy); and
- g. The conduct (including but not limited to decisions and recommendations) of the Canadian Centre for Ethics in Sport (CCES) or the Panel of this Appeals Policy.

## **NOTICE of APPEAL**

- 5. A Member who elects to be an Appellant by appealing a decision shall have seven (7) days from the date on which the Member received notice of the decision to deliver a written Notice of Appeal to the CEO or, if the CEO was the Decisioner, to the Chair/President of the BoD.
- 6. Notice of Appeal shall contain the following information:
  - a. Appellant’s name and address;
  - b. Date the Appellant was advised of the subject decision;
  - c. Name of the BCS authority who communicated the decision to the Appellant;
  - d. Appellant’s status with BCS;
  - e. Copy of decision being appealed or description of decision if written document is not available;
  - f. The basis for appeal upon which the Appellant is relying.
- 7. Each Notice of Appeal must be accompanied by a \$250 Deposit, which must also be received by BCS within the 7-day period, per Paragraph 5. The deposit is refundable in the case of a successful appeal.
- 8. The Notice of Appeal and the Deposit may be delivered to the, as applicable, CEO or Chair/President in person or by email. If notification is by email, it must be followed with the Deposit payment.
- 9. Any Member wishing to initiate an appeal beyond the 7-day period must provide a written request stating the reason for an exemption to the Timing requirement. Whether or not to allow a Notice of Appeal to be accepted outside the 7-day period shall be at the sole discretion of the, as applicable, CEO or Chair/President.

## **GROUNDINGS for APPEAL**

- 10. A decision cannot be appealed on its facts alone. An appeal may be heard only if the appeal on its face discloses sufficient grounds for the appeal. In order for an appeal to demonstrate sufficient grounds for appeal, it must allege that the Decisioner did one or more of the following:
  - a. Made a decision for which it did not have authority or jurisdiction as set out in the BCS’s governing documents, rules and policies;
  - b. Failed to follow procedures as laid out in BCS By-Laws or approved policies of BCS;
  - c. Made the subject decision while being influenced by bias, which is defined as a lack of neutrality to such an extent that the Decisioner was unable to consider other views;
  - d. Exercised its discretion for an improper purpose;
  - e. Made the subject decision with no supporting evidence;
  - f. Made the subject decision grossly unreasonable.

11. Regarding Paragraph 10c and 10f, the Appellant must establish that he or she was prejudiced against because, had the Decisioner been more fully informed, the subject decision would not reasonably have been made.

## **APPEALS COMMITTEE**

12. The Panel shall be established within seven (7) days of the receipt of the Appellant's Notice of Appeal and his/her Deposit.
13. The Panel shall be formed as follows:
  - a. The Panel shall be comprised of three (3) Members as follows:
    - i. one appointed by the BoD from the Governance & Risk Management Committee;
    - ii. one appointed by the BoD from the Nominations & Human Resources Committee;
    - iii. one appointed by the Appellant from their peer group, with the proviso that, should the Appellant not appoint a peer onto the Panel within the first (5) days of the 7-day period cited in Paragraph 12, the CEO or Chair/President will appoint a peer for the Appellant.
  - b. Each Panel member will:
    - i. have no significant relationship with the affected parties;
    - ii. have had no involvement with the subject decision being appealed;
    - iii. be free from any other actual or perceived bias or conflict.
14. The Panel shall select either of the two BoD-appointed members to act as Chairperson of the Panel.

## **SCREENING of the APPEAL'S VALIDITY**

15. Within ten (10) days of its establishment, the Panel shall (i) complete its assessment of the validity of the Notice of Appeal per Paragraph 16, 17 and 18, and (ii) advise the Appellant and the Decisioner of its determination.
16. If a majority of the Panel is of the view that the Notice of Appeal and reasons stated therein for the appeal do NOT, on their face, appear to set forth sufficient grounds for an appeal, the Panel shall so advise the Appellant and provide the Appellant with an opportunity to demonstrate that the Notice of Appeal and reasons for the appeal do, in fact, show sufficient grounds for an appeal. The Decisioner shall also be advised by the Panel of this process and be given the opportunity to make submissions to the Panel on this issue as well.
17. If the Panel *unanimously* determines that what is contained in the Notice of Appeal and in the subsequent demonstration of the Appellant do NOT establish sufficient grounds for an appeal and, thus, the appeal cannot succeed, even if the allegations contained in the Notice of Appeal may be true, the appeal shall be dismissed by the Panel. The Panel shall notify the Appellant of this dismissal determination in writing, stating the reasons. The determination of the Panel shall be final and binding and not subject to further review or arbitration and may not be appealed.
18. If the Panel determines that there are sufficient grounds for an appeal, the Panel shall proceed to conducting a Hearing.

## HEARING NOTIFICATION

19. Upon determining that a Hearing should be conducted per Paragraph 18, the Panel shall provide the Appellant and Decisioner with at least seven (7) days prior written notice of the date, time and location (or, if applicable, telephone or video conference) of the Hearing, subject to any changes that may be subsequently agreed per Paragraph 20.

## PRE-HEARING CONFERENCE

20. Prior to commencement of the Hearing, the Panel may decide that the dispute warrants a conference amongst the Panel, the Appellant and the Decisioner in order to clarify/agree details, such as: date, time and location (or, if applicable, telephone or video conference) of the Hearing; timelines for exchange of documents; clarification of issues in the dispute; order and procedure of the Hearing; other procedural matters; remedies being sought; identification of witnesses; and any other matter that may assist in expediting the proceedings.
21. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.
22. Any pre-Hearing conference must be completed within seven (7) days of the Panel determining, per Paragraph 18, that there are sufficient grounds for the appeal to proceed to a Hearing.

## PROCEDURE for the APPEAL

23. The Panel shall govern the Appeals Hearing by such procedures as it deems appropriate, provided that:
  - a. The Hearing is held within twenty-one (21) days of the Panel being established;
  - b. A quorum shall require all three Panel members;
  - c. In the case that a Panel member shall die, or refuse to act, or become incapable of acting as a Panel member *before* the Hearing begins, the party who appointed such Panel member shall forthwith appoint a replacement Panel member who meets the criteria of Paragraph 13b.
  - d. In the case that a Panel member shall die, or refuse to act, or become incapable of acting as a Panel member *after* the Hearing begins, the Hearing and Appeal process shall be completed to its end by the remaining Panel members. In such a case, a quorum shall be the Panel members remaining;
  - e. Decisions shall be by majority vote, where the Chairperson carries a vote;
  - f. Copies of any written documents that the Appellant or Decisioner would like the Panel to consider shall be provided to the Panel, and to the other party, at least five (5) days in advance of the Hearing. Written documents shall not otherwise be received and considered by the Panel, unless with the unanimous consent of all parties or in the event the Panel determines it just and equitable to do so;
  - g. Both the Appellant and Decisioner may be accompanied by a representative or adviser, including legal counsel;
  - h. The Panel, at its sole discretion, may request other individual(s) to participate and give evidence at the Hearing;

- i. The Panel may elect to shorten any of the time periods noted in this Appeals Policy regarding the Hearing, having particular regard for the timing of any event or circumstance that, once passed, will render the Appeal of no practical consequence;
- j. The Panel may, at any stage of the Appeal (including for *Screening of the Appeal's Validity*) but not after the Hearing has been completed, order other Member(s) to be added as a party to the Appeal, whose presence as a party is necessary to enable the Panel to determine effectively and completely the issues raised by the Appeal. Any Member so added shall have the same rights as a Decisioner to the Appeal except to the extent such may reasonably be abridged by the Panel having regard for the timing of the order of adding such Member. The Panel may delegate to its Chairperson the authority to deal with the issue of adding a party to the appeal and other related issues thereto as provided herein;
- k. The Panel may allow as evidence at the Hearing, subject to the disclosure requirements provided for herein, any oral evidence and any document or thing relevant to the subject matter of the Appeal, but the Panel may exclude any such evidence that is unduly repetitious;
- l. The onus shall be on the Appellant to establish on the balance of probabilities any factual basis for the Appeal, and the grounds of Appeal themselves;
- m. The Panel may conduct such preliminary meetings (by conference call, videoconference or in person) with the parties as it deems appropriate to expedite the actual Hearing of the appeal.

## **APPEAL DECISION**

24. Within seven (7) days of concluding the Hearing, the Panel shall issue its written decision, with reasons, to all Parties and to the CEO. In making this decision, the Panel shall have no greater authority than that of the Decisioner. The Panel may decide:
- a. To confirm the decision and dismiss the appeal;
  - b. To void the decision and refer the matter back to the Decisioner for a new decision;
  - c. To vary the decision where it is found that an error occurred and such an error cannot be corrected by the Decisioner for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
  - d. To determine how costs of the Appeal shall be allocated excluding the legal costs and legal disbursements, if at all.
25. The decision of the Panel shall be final and binding on all parties, except for matters that are eligible for arbitration through the Sport Dispute Resolution Centre of Canada (SDRCC) per Paragraph 30.

## **TIMEFRAMES**

26. If the circumstances of the Appeal, or if circumstances beyond or outside of the Appeal, are such that the Panel determines that the Appeal process cannot be completed per the timeframes contemplated in this Appeals Policy (summarized in Appendix I), the Panel may elect to shorten or to lengthen the process, as the circumstances dictate.
27. The Panel may delegate to the Chairperson this authority to abridge or extend the timeframes.

## **DOCUMENTARY APPEAL**

28. Either the Appellant or Decisioner may request that the Panel conduct the Appeal by way of documentary evidence. The Panel may seek agreement from the other party to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the Appeal shall proceed by way of documentary evidence or in-person Hearing.

#### **ARBITRATION**

29. Members shall, first, pursue any dispute with a decision of a Decisioner through formal appeal as set out in this Appeals Policy.
30. Decisions of the Panel resulting from appeals undertaken Paragraph 2c and 2d, may subsequently be referred to independent arbitration through the Sport Dispute Resolution Centre of Canada (SDRCC), provided the Appellant does so in accordance with the prescribed timeline, rules and procedures of the Canadian Sport Dispute Resolution Code.

#### **LOCATION and JURISDICTION**

31. An appeal may be held in person, by videoconference or by telephone conference as may be decided by the Panel as a preliminary matter.
32. This Appeals Policy shall be governed and construed in accordance with the laws of the Province of Alberta even though the appeal may occur in another jurisdiction.
33. No action or legal proceeding shall be commenced against BCS in respect of a dispute, unless BCS has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this Appeals Policy.

### Appendix I: Timeframes

Appeals Process Step	Timeframe for Step	Maximum Calendar Days Elapsed by end of Step
paragraph 5: Receipt of Decisioner's decision by Appellant	n/a	day 0
paragraph 5: Appellant's Notice of Appeal to CEO	≤7 days	day 7
paragraph 12: Establishment of Appeals Panel	≤7 days	day 14
paragraph 15: Panel's decision to dismiss Appeal or proceed to Hearing	≤10 days	day 24
paragraph 19: If a Hearing, Panel's formal notice of same	≥7 days	day 28
paragraph 23f: Appellant's and/or Decisioner's submission of documents for Hearing (if applicable)	≥5 days	day 29
paragraph 22: Pre-Hearing Conference (if applicable)	≤7 days	day 31
paragraph 23a: Appeals Hearing	≤1 day	day 35
paragraph 24: Panel's communication of its ruling on the Hearing	≤7 days	day 42