

APPEAL POLICY

1. DEFINITIONS

The following terms have these meanings in this Policy:

- a) *"Affected Party"* - Any individual or entity, as determined by the Case Manager, who may be affected by a decision rendered under this *Appeal Policy* and who may have recourse to an appeal in their own right under this *Appeal Policy*
- b) *"Appellant"* – The Party appealing a Decision
- c) *"Case Manager"* – An individual appointed by Triathlon Canada who may be any staff member, committee member, volunteer, director, or an independent third party, to oversee the administration of this *Appeal Policy*. The Case Manager’s authority is more fully described in this Policy.
- d) *"Decision"* – a Triathlon Canada decision relating to a matter described in section 4 of this Policy.
- e) *"Respondent"* – The body or organization whose decision is being appealed, or the individual who was the subject of a decision that is being appealed.
- f) *"Parties"* – The Appellant, Respondent, Affected Party (or Parties)
- g) *"Participants"* – Refers to all categories of individual members and/or registrants defined in the By-laws of Triathlon Canada who are subject to the policies of Triathlon Canada, as well as all people employed by, contracted by, or engaged in activities with, Triathlon Canada including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, committee members, directors and officers

2. PURPOSE

Triathlon Canada is committed to providing an environment in which all Individuals involved with Triathlon Canada are treated with respect and fairness. Triathlon Canada provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by Triathlon Canada.

3. SCOPE AND APPLICATION OF THIS POLICY

This Policy applies to all Individuals. However, it does not apply to appeals of decisions that were managed by the OSIC, which shall be handled in accordance with the policies and procedures of the OSIC or the Director of Sanctions and Outcomes, as applicable. Subject to the aforementioned and Sections 4 and 5, any Individual who is directly affected by a Triathlon Canada Decision shall have the right to appeal that Decision provided that it is a Decision that is subject to appeal pursuant to this Policy and provided that there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy.

This Policy will apply to Decisions relating to:

- a) Team Eligibility and Selection as described in Triathlon Canada policies
- b) Conflict of Interest
- c) Disciplinary decisions made pursuant to Triathlon Canada’s relevant and applicable policies
- d) Membership
- e) Athlete Assistance Program (AAP) carding nominations

This Policy will not apply to Decisions relating to:

- a) Reported complaints that were managed by the OSIC
- b) Employment matters
- c) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program by the Canadian Centre for Ethics in Sport, World Triathlon or any other anti-doping organization with authority to pursue a doping offence
- d) The rules of the sport
- e) Selection criteria, quotas, policies, and procedures established by entities other than Triathlon Canada
- f) Substance, content and establishment of team selection or carding criteria
- g) Volunteer/coach appointments and the withdrawal or termination of those appointments
- h) Budgeting and budget implementation
- i) Triathlon Canada's operational structure and committee appointments
- j) The business, activities, or events organized by entities other than Triathlon Canada (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by Triathlon Canada at its sole discretion)
- k) Commercial or contractual matters for which another dispute resolution process exists under the provisions of the applicable contract or applicable law
- l) Relay team selections within a Major Games or World Championships situation

4. TIMING OF APPEAL

Individuals who wish to appeal a Decision have seven (7) days from the date on which they received notice of the Decision¹ to submit, in writing to the CEO of Triathlon Canada or to Triathlon Canada Independent Safe Sport Officer when the case is related to a safe sport matter the following:

- a) Notice of the intention to appeal
- b) Their contact information
- c) Name of the Respondent and any Affected Parties, when known to the Appellant
- d) Date the Appellant was advised of the Decision being appealed
- e) A copy of the Decision being appealed, or description of Decision if the Decision was not rendered in writing
- f) Grounds and detailed reasons for the appeal
- g) All evidence that supports these grounds
- h) Relief sought
- i) An administration fee of five hundred dollars (\$500), which will be returned to the Appellant if the appeal is upheld

An Individual who wishes to initiate an appeal beyond the seven (7) day period may only do so if exceptional circumstances prevented them from filing their appeal within the indicated deadline. Any such Individual must provide a written request stating the reasons for which they are seeking an exemption. The decision to allow, or not allow, an appeal outside of the seven (7) day period will be at the sole discretion of the Case Manager and may not be appealed.

¹ Triathlon Canada (or its delegate) may notify decisions via the following means: email to the Individual's most recent email address that it has on file; publication on Triathlon Canada's website, or other electronic means that permit direct communication with the Individual, such as WhatsApp. In such circumstances, notification shall be deemed to have been received on the date that Triathlon Canada publishes notification of the decision on its website and/or, as applicable, the date on which the Individual is sent the decision via email or the other electronic means.

5. GROUNDS FOR APPEAL

An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:

- a) Made the Decision outside the scope of its authority or jurisdiction;
- b) Failed to follow applicable procedures in making the Decision;
- c) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views); or
- d) Made a decision that was grossly unreasonable or unfair.

A Decision cannot be appealed simply because an Individual (or Individuals) does not like or agree with it.

The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the “Grounds of Appeal” section of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker. Decisions under appeal shall remain in effect unless the appeal panel or the SDRCC orders otherwise.

6. SCREENING OF APPEAL

Upon receiving the required documents and fees described in Section 6, by way of personal delivery, e-mail, fax or mail, Triathlon Canada will appoint a Case Manager, who shall have the following responsibilities:

- a) Determine if the appeal falls under the scope of this Policy
- b) Determine if the appeal was submitted in a timely manner
- c) Decide whether there are sufficient grounds for the appeal
- d) Consider the use of mediation to resolve the appeal

If the Case Manager denies the appeal on the basis of insufficient grounds, because it was not submitted in a timely manner, or because it did not fall within the scope of this Policy, the Appellant will be notified in writing of the reasons for this decision.

If the Case Manager determines that the Appeal may proceed, they will notify the Parties in writing of their decision. The Case Manager may propose that the Parties attempt to resolve the appeal through mediation. If the Appeal is not resolved, or if the Parties refuse to use mediation, the Case Manager will appoint an Appeals Panel which shall consist of a single Arbitrator, to hear the appeal. At the discretion of the Case Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Case Manager will appoint one of the Panel members to serve as the Chair.

When appointing the appeal panel, the Case Manager must select individuals who are impartial, free from any real or perceived conflict of interest (and who shall remain so until a final decision has been rendered or the proceedings have otherwise finally terminated), and who do not have any direct relationship with any of the Parties. Although not a strict requirement, the Appeal Manager should attempt to appoint individuals to the appeal panel who have a legal background and who understand the sport of triathlon. When justified by the circumstances, the Appeal Manager may appoint individuals to the appeal panel who have specific areas of expertise that would assist in resolving the matter

7. PROCEDURE FOR APPEAL HEARING

In order to confirm the identification of any Affected Parties, the Case Manager may engage Triathlon Canada. The Case Manager may determine whether a Party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

The Case Manager shall notify the Parties that the appeal will be heard. The Case Manager, in collaboration with the appeal panel, shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Case Manager and may not be appealed.

If a Party chooses not to participate in the hearing, the hearing will proceed in any event.

The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, a hearing based on documentary submissions alone, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the appeal panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held in a timely manner within a timeline determined by the Case Manager
- b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
- c) Copies of any written documents which the Parties wish to have the appeal panel consider will be provided to all Parties in advance of the hearing
- d) The Parties may be accompanied by a representative, advisor, translator, transcription services, or legal counsel at their own expense
- e) The appeal panel may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.
- f) The appeal panel shall allow any evidence at the hearing filed by the Parties and may exclude any evidence is unduly repetitious or otherwise an abuse of process. The appeal panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to evidence filed by the Parties
- g) Nothing is admissible in evidence at a hearing that:
 - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - ii. is inadmissible by any statute.
- h) Any Affected Party shall be permitted to make submissions and file evidence before the appeal panel. The appeal panel's decision is binding on any Affected Party.
- i) The decision to uphold or reject the appeal will be by a majority vote of the appeal panel members, except in cases where the panel consists of a single member

In fulfilling its duties, the appeal panel may obtain independent advice.

Appeal Decision

The appeal panel shall issue its decision, in writing and with reasons, within fourteen (14) days after the hearing's conclusion. In making its decision, the appeal panel will have no greater authority than that of the original decision-maker. The appeal panel may decide to:

- a) Reject the appeal and confirm the decision being appealed
- b) Uphold the appeal, in whole or in part, and refer the matter back to the initial decision-maker for a new decision
- c) Uphold the appeal, in whole or in part, and vary the decision
- d) Determine whether the costs of the appeal, excluding legal fees and legal disbursements of any Parties, may be assessed against any Party. In assessing costs, the appeal panel will take into account the nature and amount of the costs, the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources.

The appeal panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and Triathlon Canada. In extraordinary circumstances, the appeal panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter.

Unless the matter involves a Vulnerable Participant, once the deadline to appeal to the SDRCC (where applicable), as indicated in the Canadian Sport Dispute Resolution Code, has expired, Triathlon Canada shall publish the outcome of the appeal on their website. Publication shall be limited to, where applicable, the provision(s) of any relevant policies that have been violated, the name(s) of the Individual(s) involved, the sanction(s) or order imposed, if any. Identifying information regarding Minors or Vulnerable Participants will never be published by Triathlon Canada.

If the appeal panel dismisses the appeal, the decision may only be published, as provided for immediately above, with the Respondent's consent. If the Respondent does not provide such consent, the decision will be kept confidential by the Parties, the Case Manager and Triathlon Canada, and shall be retained and discarded in accordance with the relevant and applicable privacy legislation. Failure to respect this provision may result in disciplinary action being taken pursuant to the *Discipline and Complaints Policy*.

Other individuals or organizations, including but not limited to, Triathlon Canada's Members, shall be advised of the outcome of any decisions rendered in accordance with this *Policy*. Any decision rendered pursuant to this *Policy* shall apply automatically to and must be respected by Triathlon and its Members. Records of all decisions will be maintained by Triathlon Canada in accordance with their respective privacy policies.

The appeal panel's decision will come into effect as of the date that it is rendered, unless decided otherwise by the appeal panel. The appeal panel's decision is final and binding on the Parties, subject to any right to appeal the decision before the SDRCC in accordance with the *Canadian Sport Dispute Resolution Code*.

8. TIMELINES

If the circumstances of the appeal are such that adhering to the timelines outlined by this *Policy* will not allow a timely resolution to the appeal, the Case Manager and/or panel may direct that these timelines be revised.

9. CONFIDENTIALITY

The appeals process is confidential and involves only the Parties, the Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with the *Discipline and Complaints Policy*.

10. FINAL AND BINDING

The decision of the Panel will be binding on the Parties and on all Triathlon Canada's Individuals; subject to the right of any Party to seek a review of the Panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC).

No action or legal proceeding will be commenced against Triathlon Canada or Individuals in respect of a dispute, unless Triathlon Canada has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in Triathlon Canada's governing documents.

11. PRIVACY

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

Triathlon Canada, or any of their delegates pursuant to this *Policy* (i.e., Case Manager, appeal panel), shall comply with Triathlon Canada's Privacy Policy in the performance of their services under this *Policy*.