



PENTATHLON CANADA

Appeal Policy

This Policy has been prepared by Pentathlon Canada and is a Pan-Canadian Policy applicable to Pentathlon Canada and its Provincial/Territorial Associations. This document cannot be modified by a Provincial/Territorial Association without consultation and approval from Pentathlon Canada.

Purpose

1. This *Appeal Policy* provides Organizational Participants with a fair and expedient appeal process.

Scope and Application of this Policy

2. This Policy applies to all Organizational Participants.
3. Any Organizational Participant who is directly affected by a decision made by Pentathlon Canada or a Provincial/Territorial Association shall have the right to appeal that decision provided that there are sufficient grounds for the appeal under the **Grounds for Appeal** section of this Policy.
4. This Policy **will apply** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of Interest
 - d) Discipline
 - e) Membership
5. This Policy **will not apply** to decisions relating to:

- a) Employment
- b) Infractions for doping offenses
- c) The rules of the sport
- d) Selection criteria, quotas, policies, and procedures established by entities other than Pentathlon Canada or a Provincial/Territorial Association (as applicable)
- e) Substance, content and establishment of team selection or carding criteria
- f) Volunteer/coach appointments and the withdrawal or termination of those appointments
- g) Budgeting and budget implementation
- h) The organization's operational structure and committee appointments
- i) Decisions or discipline arising within the business, activities, or events organized by entities other than Pentathlon Canada or its Provincial/Territorial Associations (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by the organization at its sole discretion)
- j) Decisions made by the Office for the Sport Integrity Commissioner ("OSIC")
- k) Commercial matters for which another appeals process exists under a contract or applicable law
- l) Decisions made under this Policy

Timing of Appeal

6. Organizational Participants who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit the following:
 - a) Notice of the intention to appeal
 - b) Their contact information
 - c) Name and contact information 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 written document is not available
 - f) Grounds for the appeal

- g) Detailed reasons for the appeal
 - h) All evidence that supports these grounds
 - i) Requested remedy or remedies
 - j) An administration fee of two hundred dollars (\$200), which will be refunded if the appeal is upheld
7. An Organizational Participant who wishes to initiate an appeal beyond the seven (7) day period must provide a written request stating the reasons for 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 Appeal Manager and may not be appealed.

Submitting an Appeal

8. Appeals of decisions made by a Provincial/Territorial Association can be submitted to the Provincial/Territorial Association to be heard pursuant to this Policy. Alternately, Pentathlon Canada may hear appeals of Provincial/Territorial Association decisions at its discretion.
9. Appeals of decisions made by Pentathlon Canada can be submitted to Pentathlon Canada to be heard pursuant to this Policy.

Discipline Panel Decision – Provincial/Territorial Associations

10. A decision made by a Provincial/Territorial Association's Discipline Panel pursuant to the *Discipline and Complaints Policy* may be appealed to Pentathlon Canada in accordance with the terms of this *Appeal Policy*.
11. Pentathlon Canada shall appoint an Appeal Manager and shall follow the process outlined in this *Appeal Policy*.

Internal Discipline Chair or External Discipline Panel Decision – Pentathlon Canada

12. A decision made by Pentathlon Canada's Internal Discipline Chair or External Discipline Panel may be appealed to Pentathlon Canada in accordance with the terms of this *Appeal Policy*.
13. Alternatively, by agreement between the parties, the internal appeal process may be bypassed, and the appeal may be heard directly before the Sport Dispute Resolution Centre of Canada (SDRCC).
14. Except where an appeal proceeds before the SDRCC, Pentathlon Canada shall appoint an Appeal Manager and shall follow the process outlined in this *Appeal Policy*.

Grounds for Appeal

15. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
- a) Made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make
 - b) Failed to follow its own procedures (as set out in the Respondent's governing documents)
 - c) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views)
 - d) Made a decision that was unreasonable

Screening of Appeal

16. The parties may first attempt to resolve the appeal through the *Alternative Dispute Resolution Policy*.
17. Appeals resolved under the *Alternative Dispute Resolution Policy* will result in the administration fee being refunded to the Appellant.
18. Should the appeal not be resolved by using the *Alternative Dispute Resolution Policy*, Pentathlon Canada or the Provincial/Territorial Association will appoint an independent Appeal Manager (who must not be in a conflict of interest or have any direct relationship with the parties) who has the following responsibilities:
- a) To determine if the appeal falls under the scope of this Policy
 - b) To determine if the appeal was submitted in a timely manner
 - c) To decide whether there are sufficient grounds for the appeal
19. If the Appeal Manager denies the appeal on the basis of insufficient grounds, because it was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed.
20. If the Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an Appeal Panel which shall consist of a single Arbitrator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Appeal Manager, an Appeal Panel composed of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the Panel's members to serve as the Chair.

Determination of Affected Parties

21. To confirm the identification of any Affected Parties, the Appeal Manager will engage Pentathlon Canada or the Provincial/Territorial Association (as applicable). The Appeal Manager may determine whether a party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

22. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.

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

24. 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, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Manager and the Panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held within a timeline determined by the Appeal Manager
- b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
- c) Copies of any written documents which the parties wish to have the Panel consider will be provided to all Parties in advance of the hearing
- d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
- e) The 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 Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the appeal, but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate
- g) If a decision in the appeal 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 an Affected Party to the appeal in question and will be bound by its outcome
- h) The decision to uphold or reject the appeal will be by a majority vote of Panel members

25. In fulfilling its duties, the Panel may obtain independent advice.

Appeal Decision

26. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the **Grounds for Appeal** section of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

27. The Panel shall issue its decision, in writing and with reasons, within seven (7) days after the hearing's conclusion. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide to:

- a) Reject the appeal and confirm the decision being appealed;
- b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
- c) Uphold the appeal and vary the decision.

28. The Panel will also determine whether costs of the appeal, excluding legal fees and legal disbursements of any parties, will be assessed against any party. In assessing costs, the Panel will take into account the outcome of the appeal, the conduct of the parties, and the parties' respective financial resources.

29. The Panel's written decision, with reasons, will be distributed to all parties, the Appeal Manager, and Pentathlon Canada or the Provincial/Territorial Association (as applicable). In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Timelines

30. 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 Appeal Manager and/or Panel may direct that these timelines be revised.

Confidentiality

31. The appeals process is confidential and involves only the parties, Pentathlon Canada, the Appeal 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.

32. Notwithstanding the above, Pentathlon Canada recognizes that it is required to notify Sport Canada of all reported complaints and reports of potential complaints.

33. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the discipline or complaint to any person not involved in the appeals process, unless Pentathlon Canada is required to notify an organization such as an international federation, Sport Canada or other sport organization (i.e., where a Provisional Suspension or interim measures have been imposed and communication is required to ensure that they may be enforced), or notification is otherwise required by law.

Final and Binding

34. No action or legal proceeding will be commenced against Pentathlon Canada, Provincial/Territorial Associations, or Organizational Participants in respect of a dispute, unless Pentathlon Canada or the Provincial/Territorial Association (as applicable) has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.

Policy History	
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