



SPEED SKATING NOVA SCOTIA

Governance Dispute Appeals Policy

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| POLICY TITLE: Governance Dispute Appeals Policy | POLICY No: 100-8 |
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1. PREAMBLE

- 1.1. Speed Skating Nova Scotia (hereafter SSNS) recognizes the right of any Member to appeal Governance Dispute Resolution Decisions of SSNS, or any representative(s) on its behalf, and hereby provides for a process to decide such Appeals.
- 1.2. The purpose of this Appeal Policy is to fairly deal with disputed Dispute Resolution Decisions without requiring recourse to formal legal proceedings.
- 1.3. This Appeals Process refers to Dispute Resolution Decisions made through the Governance Complaint and Dispute Resolution Policy 100-7. Code of Conduct Complaints and Appeals are subject to the SSNS Safe Sport Complaints and Appeals Policies.
- 1.4. In this policy, unless context otherwise requires, words in singular include the plural and vice versa; words importing gender include all genders.

2. DEFINITIONS

Appeal Panel: Refers to the appeal panel established under s.10;

Appellant (also referred to as “Party”): Refers to a Member appealing a Decision of SSNS;

Bias: Refers to a lack of neutrality to such an extent that the Decision-maker is unable to consider other views and/or that the Decision was made on the basis of, or significantly influenced by, factors unrelated to the merits of a matter;

Case Manager: Refers to an impartial individual nominated by SSNS to oversee only the application of the process described in this policy;

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

Decision: Refers to Decisions made by or on behalf of SSNS as a result of the Dispute Resolution process;

Interested Party (also referred to as “Party”): Refers to an individual who can be directly affected or impacted by a Decision of the Appeal Panel and:

- Is accepted as such by the Parties; or
- Is accepted or named as such by the Appeal Panel;

Member: Refers to all categories of members of SSNS, as well as to all individuals engaged in activities with or employed by SSNS, including, but not limited to, athletes and their legal guardians, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, provincial or territorial sport organizations and employees, including contract personnel;

Notice of Appeal: Refers to a notice filed by the Appellant through the form attached as Appendix B;

Respondent (also referred to as “Party”): Refers to the body, person or persons whose Decision is being appealed;

Statement: Refers to the written response submitted by the Respondent through the form attached as Appendix C;

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

3. SCOPE OF APPEAL

- 3.1. Any Member of SSNS who is affected by a Decision will have the right to appeal a Decision, provided there are sufficient grounds for the appeal, as set out in s. 4.

4. GROUNDS OF AN APPEAL

- 4.1. An Appellant is not permitted to challenge a Decision solely on the grounds that it was not favorable to them. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds are:
- The Respondent did not have authority or jurisdiction as set out in governing documents to make the Decision;
 - Failing to follow procedures as laid out in the bylaws or approved policies of SSNS;
 - Making a Decision which was influenced by Bias;
 - Exercising its discretion for an improper purpose;
 - Issuing a penalty which is disproportionate to the Appellant’s actions or misconduct; and/or;
 - Making a Decision that was unreasonable.

5. TIMELINE FOR APPEALS

- 5.1. Members who wish to appeal a Decision have fifteen (15) days from the date they receive notice of the Decision to submit their Notice of Appeal to the Case Manager.
- 5.2. Any Member wishing to submit the Notice of Appeal beyond the 15-day period must provide a written request stating reasons for requesting an exemption at the time of submitting the Notice of Appeal.
- 5.3. The Decision to allow or refuse the exemption as provided by s.5.2 will be at the discretion of the Chairperson of the Appeal Panel as established in accordance with s.11.
- 5.4. Other timelines in this policy may be amended at the discretion of the Case Manager or the Appeal Panel when justified by the circumstances.

6. FILING NOTICE OF APPEAL

- 6.1. Members must initiate the appeal process by filing a Notice of Appeal (see Appendix B) with the Case Manager. The appeal process cannot begin until this application is made. If the member has not dealt with a Case Manager during the dispute resolution process, the Notice of Appeal must be filed with the Board of SSNS.
- 6.2. The Notice of Appeal must include:
- The Appellant's name and contact information, including:
 - Address;
 - Phone Number(s); and,
 - Email address;
 - The Respondent's name and any known contact information;
 - The name of the head/chairperson of the committee or panel;
 - The Decision being appealed;
 - The grounds for the appeal;
 - A brief summary of any evidence the Appellant intends to provide to the Appeal Panel supporting their grounds of appeal, including a description of documents to be relied upon, a list of witnesses and a summary of their expected testimony;
 - The remedy sought or solutions proposed by the Appellant;
 - The names of any potential Interested Parties, if known;
 - The name of the Appellant's representative(s) and their contact information, if applicable; and,
 - If applicable, the request for timeline-exemption with justification as required by s.5.2.
- 6.3. The Case Manager will contact the Appellant if the Notice of Appeal is incomplete or to seek any necessary clarifications.

7. INITIAL SCREENING OF APPEAL

- 7.1. Upon receipt of the Notice of Appeal, the Case Manager has the discretion to decide whether the Notice of Appeal is admissible. The Case Manager, in their sole discretion, may immediately dismiss all or part of the Appeal in the event it is determined that
- The deadline for filing the Notice of Appeal has not been met; or,
 - The grounds of the Appeal are not those listed in s. 4.1.

- 7.2. For the purposes of the decision under s.7.1, the Case Manager will presume the facts presented by the Appellant are correct unless such facts are patently incorrect.
- 7.3. If the appeal is dismissed under s.7.1, the Case Manager will provide notice in writing of this decision and the reasons for it to the Appellant within five (5) working days from the receipt of the Notice of Appeal.

8. NOTIFICATION OF THE APPEAL AND STATEMENT BY THE RESPONDENT

- 8.1. If the appeal is deemed admissible, the Case Manager will provide a copy of the Notice of Appeal to the Respondent within seven (7) working days and request a written Statement (see Appendix C) by the Respondent briefly outlining the basis or justification for the Decision being appealed.
- 8.2. The Respondent's statement must contain:
 - A summary of facts relating to the matter;
 - A summary of the evidence supporting the Respondent's case, including a description of documents to be relied upon;
 - Solutions proposed by the Respondent;
 - Any potential Interested Parties and their contact information, if applicable; and,
 - The name of the Respondent's representative and their contact information, if applicable.
- 8.3. The written Statement, complete and signed, shall be forwarded to the Case Manager within five (5) working days from the date of receipt of the Case Manager's request or such shorter or longer period as the Case Manager may specify depending on the urgency of the matter.
- 8.4. The Case Manager must forward a copy of the written Statement to the Appellant without delay after receipt.
- 8.5. Should the Respondent submit an incomplete Statement or fail to submit the Statement in writing within the time-limit provided by s. 8.3, the Case Manager will initiate the establishment of the Appeal Panel, without further delay and without any attempt to settle amicably, and will notify the Parties accordingly.

9. INTERESTED PARTIES

- 9.1. After both the Appellant and the Respondent have provided their documents to the Case Manager, the Case Manager will notify Interested Parties of the appeal, and invite them to take part in the appeal.

- 9.2. In the event the Appeal Panel determines that there are Interested Parties who have not been provided notice, the Appeal Panel may notify the party and take necessary procedural steps to ensure the Interested Party is provided an opportunity to participate in the appeal.
- 9.3. Interested Parties shall have a right to make submissions in the Appeal in a manner determined by the Appeal Panel, in its sole discretion.

10. APPEAL PANEL

- 10.1. Within fifteen (15) working days of receipt of the Notice of Appeal, the Case Manager will establish an Appeal Panel in the following manner:
 - o The Case Manager will appoint a Chairperson from a list of volunteers pre-established by SSNS for this purpose;
 - o The Chairperson will decide, in their sole discretion, whether to hear the appeal as the sole member of the Appeal Panel, or to establish a panel with two additional members from the list of volunteers; and,
 - o The Case Manager will provide copies of all documents provided by the Parties in connection with the appeal to the Appeal Panel.
- 10.2. The Appeal Panel must be satisfied that they can freely and independently adjudicate the appeal. If any member of the panel believes they would be biased or unable to decide in an impartial manner for any reason, they must identify this to the Chairperson or, in the case the Chairperson is unable to act, to the Case Manager, and upon providing such notice, the Case Manager or Chairperson will appoint another panel member in their place.
- 10.3. Without limiting the generality of s.10.2, Appeal Panel members are unable to act in the event they:
 - o Have a direct financial or personal relationship with the Parties involved;
 - o Had any form of personal involvement with the Decision under appeal or could be personally affected by the outcome of the appeal; or,
 - o Are otherwise in a conflict of interest.
- 10.4. Allegations of Bias against a member of an Appeal Panel by a Party must be raised as soon as they are aware of the potential conflict.

11. PRELIMINARY CONFERENCE

- 11.1. Within five (5) working days of the establishment of the Appeal Panel the Panel will hold a preliminary conference to determine procedural rules for the appeal. Issues to be determined at this conference may include the following:
 - Date and location of the hearing;
 - A determination of any allegations of Bias under s.10.4; should no such issues be raised, the Parties are deemed to have accepted the Appeal Panel as constituted;
 - Timelines for exchange of documents;
 - Format of the appeal (written or oral submissions or a combination of both);
 - Clarification of the issue(s) in dispute;
 - Clarification of evidence to be presented to the Appeal Panel, including whether direct or cross examination of the parties is required;
 - Order and procedure of the hearing;
 - Any procedural matters;
 - Clarification of remedies sought;
 - Any follow up conference that might be required; and
 - Any other matter that may assist in expediting the appeal proceedings.
- 11.2. The Chairperson shall determine whether the preliminary conference will be held by conference-call, in person, or in any other format.
- 11.3. The participants in the preliminary conference shall be all Parties, their representatives, if any, the Case Manager and the Appeal Panel members.
- 11.4. The chairperson and the Case Manager shall arrange the preliminary conference and its precise date and time in consultation with the participants.
- 11.5. The Appeal Panel may delegate the authority to deal with these preliminary matters to the Chairperson.
- 11.6. The Case Manager shall act as secretary of the preliminary conference and prepare a written confirmation of the appeal procedures established during that preliminary conference and provide a copy to all Parties within five (5) working days.

12. PROCEDURES FOR THE APPEAL

- 12.1. The Appellant bears the burden of proof in the appeal. In order for the appeal to succeed, the Appellant must prove, on a balance of probabilities, that one of the grounds enumerated in s.4.1 applies to the Decision being appealed.

- 12.2. The Appeal Panel shall govern the hearing by such procedures as it deems appropriate, including rules of evidence, and has ancillary authority to determine all procedures not specifically outlined in this Policy, provided that the following directives be applied:
- The appeal shall be heard as quickly as reasonably possible, having regard to the nature of the appeal, and the circumstances of the case;
 - The Appeal Panel shall hear the appeal, and a majority in favour of the same result shall be sufficient to affect a decision in favour of a result;
 - Each Party shall have the right to be represented at the hearing;
 - Copies of any written documents which any of the Parties would like the Appeal 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;
 - The appeal may proceed on the basis of written submissions and documentation provided all Parties are given a reasonable opportunity to present their written submissions to the Appeal Panel, to review the written submissions of the other Parties as well as to provide a written reply and statement;
 - The Appeal Panel may direct that any other person or party participate in the appeal, as a Party or otherwise;
 - For sake of expediency and cost reduction, a hearing either by way of written submissions, or via telephone or video conference is to be preferred with such safeguards as the Appeal Panel considers necessary to protect the interests of the Parties;
 - There shall be no recording of hearings conducted via telephone, by video conference, or in person, either by the Appeal Panel or by the participants; and,
 - Unless otherwise agreed by the Parties, there shall be no communication between Appeal Panel members and the Parties except in the presence of, or by copy to the other Parties.

13. RULES OF EVIDENCE

- 13.1. As a general rule, the Appeal Panel will only consider evidence that was before the original Decision-maker. At its discretion, the Panel may also accept new material evidence that was not available at the time of the original Decision.
- 13.2. Unless a Party can prove that it could not possibly have been aware of a fact or argument at the time of filing its evidence or submissions, the Appeal Panel should not accept any other argument or information from the Parties after the close of the submission period established at the preliminary conference, with the exception of oral submissions of witnesses at the hearing.

- 13.3. The Appeal Panel will determine if an additional element of proof should be admitted or rejected after the close of the submission period, as long as all other Parties are permitted to reply to any new element admitted.
- 13.4. The Appeal Panel has discretion to refuse or accept and consider additional relevant evidence of any kind after the close of the submission period or the hearing of the appeal as long as all Parties have an opportunity to review and, if necessary, respond to the evidence.

14. APPEAL DECISION

- 14.1. Within fifteen (15) working days of the conclusion of the hearing, the Appeal 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 Appeal Panel cannot amend a policy, rewrite selection criteria or insert new clauses into a contract. The Panel may decide:
 - To reject the appeal and confirm the Decision being appealed;
 - To uphold the appeal and refer the matter back to the initial Decision-maker for a new Decision; and/or
 - 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.
- 14.2. The Appeal Panel may, at its own discretion, determine how the 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 Appeal Panel shall take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources.
- 14.3. A copy of the Decision will be provided to each of the Parties and to the Case Manager.
- 14.4. The Appeal Panel may issue an oral Decision or a summary written Decision, with reasons to follow, provided that the written reasons are rendered within the timelines specified in s. 14.1.

15. DEFERENCE TO OTHER AUTHORITIES

- 15.1. Where the Case Manager or Chairperson of the Appeal Panel believes that a person or persons whose conduct is subject of the appeal may be guilty of a criminal offence, that person shall refer the matter to the appropriate authority forthwith and, where appropriate, adjourn the appeal pending resolution.

16. LIABILITY DISCLAIMER

- 16.1. Except in cases of willful misconduct, the Appeal Panel and the Case Manager will bear no liability in respect of either of the Parties for any act or omission in connection with the resolution of a dispute in accordance with the policies of SSNS.
- 16.2. The Case Manager and the members of the Appeal Panel may not be called as witnesses during an appeal or before any court of competent jurisdiction, including with respect to costs.
- 16.3. No action or proceeding may be brought against SSNS or its Members in respect of a dispute, unless SSNS is failing or refusing to comply with the provisions with regards to appeals or dispute resolution as provided in the policies of SSNS.

17. PRIVATIVE CLAUSE

- 17.1. By utilizing this appeal policy, the Parties agree to be bound by the decision of the Appeal Panel and further the Appeal Panel's decision is final and cannot be appealed from.

APPENDIX A – CHART OF TIMELINES

This table is intended as a guide to establish reasonable time limits in processing appeals. Each case having a different degree of urgency or complexity, it is appropriate to provide some flexibility; each appeal process launched must be completed in time for justice to be done. In case of an urgent appeal, for instance, the time will be shortened in order to render a Decision before it is too late for the parties. It is recommended to use a percentage system to help determine reasonable deadlines in urgent cases. In a case that is not urgent but carries complex implications, insisting on the prescribed timelines set out in the policy could hinder the proper resolution of the matter.

Also, the steps outlined in the table below may overlap and are not necessarily successive. Some steps will begin before the previous one ends. In some urgent cases, it may even be that certain steps can be consolidated into one. Timelines in the table below are for illustrative purposes only.

| Step | Section | Days since Decision | Timelines According to the Model Policy (Ordinary Procedure) |
|--|---------|--------------------------------------|--|
| Filing of Notice of Appeal | 5 | 15 | 15 days from the day on which the Appellant was advised of the Decision |
| Initial Screening of Appeal | 7.3 | 17 | 5 working days from the receipt of Notice of Appeal and related documents |
| Notice of Appeal transmitted to the Respondent | 8.1 | 24 | 7 working days from the completion of the initial screening |
| Statement of the Respondent | 8.3 | 29 | 5 working days from the date the Notice of Appeal was provided, or as may be specified by the Case Manager |
| Establishment of the Appeal Panel | 10.1 | 30 | 15 days following the receipt of the Notice of Appeal |
| Preliminary Conference | 11.1 | 35 | 5 working days after the establishment of the Appeal Panel |
| Written Confirmation of Decisions made during the Preliminary Conference | 11.6 | 40 | 5 working days after the end of the preliminary conference |
| Hearing | 12 | As agreed | At the date set during the preliminary conference |
| Oral or Summary Decision | 14.4 | As agreed | As required and depending on urgency |
| Written Reasons | 14.1 | Depending on the date of the hearing | 15 working days after the end of the hearing |

APPENDIX B – SAMPLE NOTICE OF APPEAL FORM

Date:

DD MM YYYY

Appellant

Name:

Address:

Telephone (home):

Telephone (office):

Telephone (cell.):

Email:

Date of birth:

DD MM YYYY

Representative of the Appellant *(if applicable)*

Note: An adult representative is mandatory for any Appellant who is a minor in the province where the proceedings are held.

Name:

Address:

Telephone (home):

Telephone (office):

Telephone (cell.):

Email:

Decision

What Decision do you wish to appeal?

Why do you think the Decision is wrong or unfair?

When was that Decision rendered?

DD MM YYYY

Respondent

Who made the Decision that you wish to appeal?

Grounds

Please provide:

1. Grounds for the appeal (arguments); and
2. Summary of the evidence that supports these grounds (documents, pictures, rules and by-laws, audio-visual material, etc.)

Witness(es)

For each witness, please provide the following information (if there is more than one witness, please attach the information to the form):

Name:

Telephone1:

Telephone2:

Email:

Summary of evidence to be provided by this witness:

Recourse

What measure or Decision do you ask SSNS to take or make to correct the situation?

Exemption

If the Decision was rendered more than 15 days ago, why are you filing this Notice of Appeal form beyond the 15 days time limit as provided by SSNS's Appeal Policy (Section 5)?

Signature

Signature:

Name (print):

Function/Title:

Date:

DD

MM

YYYY

APPENDIX C – SAMPLE FORM FOR RESPONDENT’S STATEMENT

Date:

DD MM YYYY

Respondent

Name:

Address:

Telephone (home):

Telephone (office):

Telephone (cell.):

Email:

Date of birth:

DD MM YYYY

Representative of the Respondent *(if applicable)*

Name:

Address:

Telephone (home):

Telephone (office):

Telephone (cell.):

Email:

Justification

Please provide:

1. Justification for the Decision being appealed (reasons); and
2. Summary of the evidence that supports this justification (documents, pictures, rules and by-laws, audio-visual material, etc.)

Interested Party(ies)

Please provide, to the best of your knowledge, the name and contact information of any person whose selection, carding, ranking, or other status could be affected by the Decision. Please also indicate the reasons why this person might be affected by the outcome of the procedure. For each Interested Party, please provide the following information (if more than one Interested Party, please attach the information to the form):

Name: _____

Telephone1: _____

Telephone2: _____

Email: _____

Reasons why this person could be affected:

Witness(es)

For each witness, please provide the following information (if there is more than one witness, please attach the information to the form):

Name:

Telephone1:

Telephone2:

Email:

Summary of evidence to be provided by this witness:

Signature

Signature:

Name (print):

Function/Title:

Date:

DD

MM

YYYY