

**ABORIGINAL SPORT CIRCLE (“ASC”)
OPERATIONAL POLICES**

Type: Governance
Name: APPEAL POLICY

Authority: Board of Directors
Date Approved: July 15, 2019
Date Revised: June 18, 2019

See Appendix A for the Appeal Policy Flowchart

Definitions

1. The following terms have these meanings in this Policy:
 - a) *“Appellant”* – The Party appealing a decision
 - b) *“Independent Safe Sport Officer”* – An individual appointed by the ASC who may be any staff member, committee member, volunteer, Director, or an independent third party, to oversee this Appeal Policy. The *Independent Safe Sport Officer* roles and responsibilities are further outlined in the *Independent Safe Sport Officer Job Description*.
 - c) *“Respondent”* – The body whose decision is being appealed
 - d) *“Parties”* – The Appellant, Respondent, and any other Individuals affected by the appeal
 - e) *“Days”* – Days including weekends and holidays
 - f) *“Individuals”* – All categories of membership defined in the ASC’s Bylaws, as well as all individuals employed by, or engaged in activities with, the ASC including, but not limited to, athletes, coaches, convenors, officials, volunteers, managers, administrators, committee members, Directors and Officers of the ASC, spectators at events, and parents/guardians of athletes

Purpose

2. The ASC is committed to providing an environment in which all Individuals involved with the ASC are treated with respect and fairness. The ASC provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by the ASC. Further, some decisions made by the process outlined in the ASC’s *Discipline and Complaints Policy* may be appealed under this Policy.

Scope and Application of this Policy

3. This Policy applies to all Individuals. Any Individual who is directly affected by a decision by the ASC shall have the right to appeal that decision provided 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 sport
 - d) Selection criteria, quotas, policies, and procedures established by entities other than the ASC
 - e) Substance, content and establishment of team selection criteria
 - f) Volunteer/coach appointments and the withdrawal or termination of those appointments
 - g) Budgeting and budget implementation

- h) The ASC's operational structure and committee appointments
- i) Decisions or discipline arising within the business, activities, or events organized by entities other than the ASC (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by the ASC at its sole discretion)
- j) Commercial matters for which another appeals process exists under a contract or applicable law
- k) Decisions made under this Policy

Timing of Appeal

6. Individuals who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit, in writing to the ASC, the following:
 - a) Notice of the intention to appeal
 - b) Contact information and status of the appellant
 - 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 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 five hundred dollars (\$500), which will be refunded if the appeal is upheld

7. An Individual 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 Case Manager and may not be appealed.

Grounds for Appeal

8. 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) Failed to consider relevant information or took into account irrelevant information in making the decision
 - e) Made a decision that was patently unreasonable

9. 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.

Screening of Appeal

10. Upon receiving the notice of the appeal, the fee, and all other information (outlined in the 'Timing of Appeal' section of this Policy), the ASC and the Appellant may first determine the appeal to be heard under the ASC's *Dispute Resolution Policy*.

11. Appeals resolved by mediation under the ASC's *Dispute Resolution Policy* will cause the administration fee to be refunded to the Appellant.

12. Should the appeal not be resolved by using the *Dispute Resolution Policy*, the ASC will appoint an *Independent Safe Sport Officer* (who must not be in a conflict of interest) who has the following responsibilities (which are further described in the *Independent Safe Sport Officer*):
 - 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
13. If the appeal is denied 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.
14. If the *Independent Safe Sport Officer* is satisfied there are sufficient grounds for an appeal, the *Independent Safe Sport Officer* will appoint an Appeals Panel which shall consist of a single Arbitrator, to hear the appeal. In extraordinary circumstances, and at the discretion of the *Independent Safe Sport Officer*, a Panel of three persons may be appointed to hear the appeal. In this event, the *Independent Safe Sport Officer* will appoint one of the Panel's members to serve as the Chair.

Procedure for Appeal Hearing

15. The *Independent Safe Sport Officer* shall notify the Parties that the appeal will be heard. The *Independent Safe Sport Officer* shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the *Independent Safe Sport Officer* and may not be appealed.
16. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
17. 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 *Independent Safe Sport Officer* and the Panel deem appropriate in the circumstances, provided that:
 - a) The hearing will be held within a timeline determined by the *Independent Safe Sport Officer*
 - b) The Parties will be given reasonable notice of the day, time and place of the hearing
 - 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 the hearing
 - 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 a 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
18. In fulfilling its duties, the Panel may obtain independent advice.

Appeal Decision

19. The Panel shall issue its decision, in writing and with reasons, within fourteen (14) 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

c) Uphold the appeal and vary the decision

20. The Panel's written decision, with reasons, will be distributed to all Parties, the *Independent Safe Sport Officer*, and the ASC. 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

21. 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 *Independent Safe Sport Officer* and/or Panel may direct that these timelines be revised.

Confidentiality

22. The appeals process is confidential and involves only the Parties, the *Independent Safe Sport Officer*, 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.

Final and Binding

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

Appeal Policy Flowchart

