

# **Policy on Selection Appeals**



## **Definitions**

1. These terms will have these meanings in this policy:

- a) "Appellant"- The party appealing a decision.
- b) "Days" - Days irrespective of weekends or holidays.
- c) "Respondent" – For the purpose of this policy, the Respondent is always the Canadian Fencing Federation.
- d) "Affected Party" - A person who is not the appellant or the respondent but who could be impacted by the outcome of the appeal
- e) "Fencing Canada High Performance Program Athlete"- A person who is a valid license holder, who has been invited to the High Performance Program as an athlete and who has paid the High Performance Program fee for the season

## **Purpose**

2. The purpose of this Policy is to enable disputes with High Performance Program Athletes to be dealt with fairly, expeditiously and affordably, within Canadian Fencing Federation (hereafter CFF) and without recourse to external legal procedures.

## **Scope and Application of this Policy**

3. Any CFF High Performance Program Athlete will have the right to appeal a decision of the CFF Board of Directors, of any committee of the CFF, or any body or individual who has been delegated authority to make decisions on behalf of the CFF, provided there are sufficient grounds for the appeal as set out in Section 8 of this Policy subject to the limits in Sections 5, 6, 7, 10 and 11 of this Policy.

4. This Policy will only apply to decisions made by the CFF relating to eligibility, selection, carding or discipline. Notwithstanding which proceeds, for any matters related to the Athlete Assistance Program nomination or de-carding, all appeals must follow the Policies and Procedures of Sport Canada's Athlete Assistance Program (AAP) Section 13.

<http://www.pch.gc.ca/pgm/sc/pol/athl/114-eng.cfm>

5. This Policy will not apply to decisions relating to:

- a) Infractions for doping offences which are dealt with pursuant to the Canadian Anti-Doping Program or any successor policy;
- b) The rules of fencing or disputes over competition rules;
- c) Policies and procedures established by entities other than the CFF;
- d) Issues of operational structure, staffing, employment or volunteer opportunities;
- e) Commercial matters;
- f) Issues of budgeting and budget implementation;
- g) Discipline matters and decisions arising during events organized by entities other than the CFF, which are dealt with pursuant to the policies of these other entities;
- h) Disputes arising within competitions which have their own appeal procedures; and
- i) Any decisions made under Sections 7, 9 and 11 of this Policy.

### **Timing of Appeal**

6. The CFF High Performance Program Athletes who wish to appeal a decision will have seven (7) days from the date on which they received notice of the decision, to submit their appeal in writing addressed to the head office of the CFF, attention of the President and include the following:

- a) Notice of their intention to appeal;
- b) Contact information of the Appellant;
- c) Detailed reason(s) for the appeal;
- d) Grounds for the appeal;
- e) Name(s) of identified Affected Party(ies)
- f) All evidence that supports the reasons and grounds for an appeal;
- g) The remedy or remedies requested, and
- h) A payment of two hundred fifty dollars (\$250), which is non-refundable.

7. Any party wishing to initiate an appeal beyond the seven (7) day period must provide a written request stating reasons for an exemption to the requirement of Section 6. The decision to allow, or not allow an appeal outside the 7-day period will be at the sole discretion of the Case Administrator appointed by the CFF and may not be appealed.

### **Grounds for Appeal**

8. Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on procedural grounds. Procedural grounds are strictly limited to the Respondent:

- a) Making a decision for which it did not have authority or jurisdiction as set out in the letters patent, bylaws, resolutions or approved policies;
- b) Failing to follow procedures as laid out in the letters patent, bylaws, resolutions or approved policies of Fencing Canada;
- c) Making a decision that was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views or that the decision was influenced by factors unrelated to the substance or merits of the decision;
- d) Failing to consider relevant information or taking into account irrelevant information in making the decision;
- e) Exercising its discretion for an improper purpose; and/or
- f) Making a decision that was grossly unreasonable.

9. The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 8.

### **Case Administrator**

10. The Executive Director will serve as Case Administrator to oversee the management and administration of appeals submitted in accordance with this Policy. In a case where the Executive Director is faced with a conflict of interest, the CFF will appoint another individual to serve as Case Administrator. The Case Administrator has an overall responsibility to ensure procedural fairness is respected at all times, and to implement this Policy in a timely manner. More specifically, the Case Administrator has a responsibility to:

- a) Determine if appeals lie within the jurisdiction of this Policy;
- b) Determine if appeals are brought in a timely manner;
- c) Determine if appeals are brought on permissible grounds;
- d) Coordinate all administrative and procedural aspects of the appeal;

- e) Provide administrative assistance and logistical support to the Panel as required; and
- f) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

### **Screening of Appeal**

11. Upon receipt of the notice and grounds of an appeal and the required fee, the Case Administrator will review the appeal and will decide whether or not there are sufficient grounds for an appeal. If the Case Administrator is satisfied that there are not sufficient grounds for an appeal, the Parties will be notified in writing, stating reasons. If the Case Administrator is satisfied that there are sufficient grounds for an appeal, then a hearing will take place. This decision is at the sole discretion of the Case Administrator and may not be appealed under this policy.

### **Appeal Panel**

12. If the Case Administrator is satisfied that there are sufficient grounds for an appeal, the Executive Committee, or the Case Administrator when the Executive Committee is faced with a conflict of interest, will establish a Panel consisting of a single Adjudicator to hear the appeal. In extraordinary circumstance, the Executive Committee/Case Administrator may appoint a Panel of three persons. In this event the Executive Committee/Case Administrator will appoint one of the Panel's members to serve as the Chair.

### **Procedure for the Hearing**

13. The Panel will determine the format of the hearing, which may involve an oral hearing by telephone, a hearing based on written submissions or a combination of these methods. The hearing will be governed by the procedures that the Panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held within the appropriate timeline determined by the Panel.
- b) The parties will be given appropriate 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 in accordance with the appropriate timeline.
- d) A representative or adviser, including legal counsel, may accompany both Parties.
- e) The Panel and either Party may request that any other individual participate and give evidence at the hearing.
- f) 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 ("Affected Party").
- g) The hearing will be conducted in the official language of choice of the Appellant.
- h) In the situation where a Panel consisting of three persons conducts the hearing, a quorum will be all three and decisions will be by majority vote.

### **Appeal Decision**

14. Within seven (7) days of concluding the appeal, the 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 Panel may decide to:

- a) Reject the appeal and confirm the decision being appealed; or
- b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
- c) To uphold the appeal and vary the decision but only where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons of lack of clear procedures, lack of time, or lack of neutrality.

15. The decision will be considered a matter of public record unless determined otherwise by the Appeal Panel. A copy of this decision will be provided to the Parties and to the CFF. Where time is of the essence, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision including reasons is rendered within the appropriate timelines.

16. The appeal process may be declared confidential by the Panel, only if the situation requires it and has to follow the terms and conditions set forth by the Panel.

### **Interpretation**

17. Where needed in this policy, a male gender word includes the female gender and vice versa; and plural nouns include singular nouns and vice versa.

### **Final and Binding Decision**

18. The decision of the Panel will be binding on the parties and on all CFF High Performance Program Athletes, subject to the right of any Party to seek a review of the decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time.

19. No action or legal proceeding will be commenced against the CFF or its High Performance Program Athletes with respect to a dispute, unless the CFF has refused or failed to abide by the provisions for appeal and/or dispute resolution as set out in the CFF's policies.

### **Review and Approval**

20. This policy was approved by the Board of Directors on *month date, year* and shall be reviewed every two years by the Board of Directors.

**APPENDIX 1: REQUEST FOR APPEAL FORM**

- Please ensure you complete all sections of the form marked with “\*”. The appeal cannot proceed until all information has been submitted.
- Send your completed form, supporting documents and money to the CFF Head Office.

**IDENTIFICATION OF THE PARTIES**

**\*Appellant**

**Name:**  
**Phone number:**  
**E-mail address:**

**Authorized representative** (\*required if the appellant is considered a minor in his/her province of residence)

**Name:**  
**Phone number:**  
**E-mail address:**

**\*Affected Party(ies)**

**Name:**  
**Phone number**  
**E-mail address:**

**APPEAL**

**\*Describe the decision being appealed with the facts and your arguments.**

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**\*Date of the decision being appealed:**

**\*Describe the solution being sought.**

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**LANGUAGE**

**\*Select your preferred language for the proceedings.**                       English                       Français

**EXHIBITS & EVIDENCE**

**\*List all the supporting documents you are submitting for your appeal.**

Attach the section of a policy/procedure you believe were not respected (part of Exhibits and Evidence).

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**DECLARATION**

**To file an appeal, it must be signed by the Appellant or his/her authorized representative. If the Appellant is considered a minor in his/her province of residence, the Appeal must be signed by his/her parent or legal guardian.**

I, the undersigned, file this Appeal under the provisions of the Canadian Fencing Federation's Appeal Policy and agree to pay the applicable filing fee of 250\$ to the CFF;

I, the undersigned, recognize that it is my responsibility to read and be aware of the CFF's applicable rules and I agree in writing to observe them;

I, the undersigned, understand and accept that the decisions rendered by the Appeal Panel are final and binding and may be subject to a review by the Sport Dispute Resolution Centre of Canada (SDRCC) at the request of any Party;

**\*Name:**

**\*Signature:**

**\*Date:**