



## Appeal Policy

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Note*	Changes made to reflect transition of UCCMS administration from SDRCC to CCES.

### **PURPOSE**

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

### **SCOPE AND APPLICATION OF THIS POLICY**

2. This Policy applies to all Organizational Participants. Any Organizational Participant who is directly affected by a decision taken by Curling Canada shall have the right to appeal that decision provided that it is a decision that is subject to appeal pursuant to Section 4 of this Policy, that the conditions indicated in Sections 6 or 7 of this Policy (as applicable) have been satisfied, and provided that there are sufficient grounds for the appeal pursuant to Section 8 of this Policy.
3. This Policy **will apply** to decisions relating to:
  - a) Eligibility
  - b) Selection
  - c) Conflict of Interest
  - d) Disciplinary decisions made pursuant to Curling Canada's relevant and applicable policies
  - e) Membership
4. This Policy **will not apply** to decisions relating to:
  - a) Matters of general application such as amendments to Curling Canada's By-Laws;
  - b) Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;

- c) Infractions for doping offenses, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport (CCES) and World Curling;
- d) The rules of the sport;
- e) Except as otherwise provided for in this Policy, decisions made by organizations other than Curling Canada, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), U Sports, the International Olympic Committee (IOC), the International Paralympic Committee (IPC), World Curling or the Fédération Internationale du Sport Universitaire (FISU) or any other governing body;
- f) Decisions through the process and procedures of the Canadian Safe Sport Program (CSSP) under the CCES
- g) Selection criteria, quotas, policies, and procedures established by entities other than Curling Canada
- h) Substance, content and establishment of team selection criteria;
- i) The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
- j) Policy and procedures established by any other agency, association or organization external to Curling Canada;
- k) Volunteer/coach appointments and the withdrawal or termination of those appointments;
- l) Budgeting and budget implementation;
- m) Curling Canada's operational structure and committee appointments;
- n) Contractual matters between Curling Canada and its staff or Members for which another dispute resolution process exists under the provisions of the applicable contract;
- o) Commercial matters for which another appeals process exists under a contract or applicable law;
- p) Decisions made under this Policy; or
- q) Settlements negotiated pursuant to the *Dispute Resolution Policy*.

#### **TIMING OF APPEAL**

5. 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, in writing to Curling Canada's CEO, 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 written document is not available
  - f. Grounds and detailed reasons for the appeal
  - g. All evidence that supports these grounds
  - h. Requested remedy or remedies

- i. An administration fee of two hundred fifty dollars (\$250), which will be refunded if the appeal is upheld
6. An Organizational Participant 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 deadline indicated in Section 5 above. Any such Organizational Participant must provide a written request stating the reasons for which they are seeking 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.

#### **GROUNDS FOR APPEAL**

7. A decision cannot be appealed on its merits alone or because an Organizational Participant (or Organizational Participants) do not like or agree with a decision. 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 grossly unreasonable or unfair.
8. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 7 of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

#### **DISCIPLINE CHAIR DECISION**

9. A decision made by the Discipline Chair following a request for reconsideration by one of the Parties pursuant to the *Discipline and Complaints Policy* may be appealed to the Curling Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.

#### **DISCIPLINE PANEL DECISION**

10. A decision made by Curling Canada's Discipline Panel pursuant to the *Discipline and Complaints Policy* may be appealed to the Curling Canada Appeal Panel in accordance with the terms of this *Appeal Policy*.

#### **OTHER DECISIONS**

11. Any other Curling Canada decision relating to the matters indicated in Section 3 above may be appealed in accordance with Sections 19 and following of this Policy.

12. Notwithstanding any other provision in this *Appeal Policy*, 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).
13. Except where an appeal proceeds before the SDRCC, Curling Canada shall appoint an Appeal Manager and shall follow the process outlined in Sections 19 and following this *Appeal Policy*.

#### **SCREENING OF APPEAL**

14. Upon receipt of an appeal, Curling Canada will appoint an independent Appeal Manager (who must not be in a conflict of interest) who has the following responsibilities:
  - a) Determine if the appeal falls under the scope of this Policy (Sections 2-4);
  - b) Determine if the appeal was submitted in a timely manner (Sections 5 and 6); and
  - c) Decide whether there are sufficient grounds for the appeal (Section 7).
15. 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.
16. 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, a panel 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.
17. When appointing the appeal panel, the Appeal Manager must select Organizational Participants 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 Organizational Participants to the appeal panel who have a legal background and who understand the sport of curling. When justified by the circumstances, the Appeal Manager may appoint Organizational Participants to the appeal panel who have specific areas of expertise that would assist in resolving the matter.

#### **DISPUTE RESOLUTION**

18. If the appeal has been accepted pursuant to Section 16, the Parties may attempt to resolve the appeal through the *Dispute Resolution Policy* before proceeding to an appeal hearing.
19. Appeals resolved by mediation under Curling Canada's *Dispute Resolution Policy* or through Early Resolution Facilitation at the SDRCC will result in the administration fee being refunded to the Appellant.

#### **DETERMINATION OF AFFECTED PARTIES**

20. To confirm the identification of any Affected Parties, the Appeal Manager will engage Curling Canada. The Appeal Manager may determine whether a party is an Affected Party in their sole discretion.

#### **PROCEDURE FOR APPEAL HEARING**

21. 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.

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

23. 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 Appeal 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 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 other 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, translator, transcription services, or legal counsel at their own expense.
- e) The appeal panel may request that any other Organizational Participant participate and give evidence at the hearing.
- f) The appeal 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) 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.
- h) 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.

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

#### **APPEAL DECISION**

25. 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 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.
26. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and Curling 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. The decision will be considered a matter of public record unless a Party otherwise makes a request to the appeal panel and the panel orders that the decision, in whole or in part, remain confidential.
27. The appeal panel's decision is final and binding on the Parties, subject to their right to appeal the decision to the SDRCC in accordance with the Canadian Sport Dispute Resolution Code.

#### **TIMELINES**

28. 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 appeal panel may direct that these timelines be revised.

#### **CONFIDENTIALITY**

29. The appeals process is confidential and involves only Curling Canada, the Parties, the Appeal Manager, the appeal 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.
30. Once initiated and until a decision is released, none of the parties involved in the appeal will disclose confidential information relating to the discipline or complaint to any person not involved in the appeals process, unless Curling 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.
31. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Organizational Participant(s) in accordance with Curling Canada's relevant and applicable policies.

#### **FINAL AND BINDING**

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

## **PRIVACY**

33. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Curling Canada's Privacy Policy.
34. Curling Canada or any of its delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel), shall comply with Curling Canada's Privacy Policy in the performance of their services under this Policy.

## **DEFINITIONS**

35. The following terms have these meanings in this Policy:
  - a) **"Affected Party"** - Any individual or entity, as determined by the Appeal Manager, who may be affected by a decision rendered under the *Appeal Policy* and who may have recourse to an appeal in their own right
  - b) **"Appellant"** – The Party appealing a decision
  - c) **"Appeal Manager"** – An Organizational Participant appointed by the Chief Executive Officer who may be any staff member, committee member, volunteer, Director, or an independent third party, to oversee this Appeal Policy. The Appeal Manager will have responsibilities that include, but are not limited to:
    - i. Ensuring procedural fairness;
    - ii. Respecting the applicable timelines; and
    - iii. Using decision making authority empowered by this Policy.
  - d) **"Respondent"** – The individual or body whose decision is being appealed or, in the case of an appeal of a written decision made per to the *Discipline and Complaints Policy*, the other party to the dispute
  - e) **"Parties"** – The Appellant, Respondent, and any other Organizational Participants affected by the appeal
  - f) **"Days"** – Days including weekends and holidays
  - g) **"Organizational Participants"** – Refers to all categories of individual members and/or registrants defined in the By-laws of the Organization who are subject to the policies of the Organization, as well as all people employed by, contracted by, or engaged in activities with, the Organization including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, parents or guardians, spectators, committee members, and Directors and Officers.