

## ATTACHMENT “D”

### Sail Canada Policy; Appeal Process and Dispute Resolution



#### GENERAL PROVISIONS

##### 1. Preamble

- 1.1 Sail Canada recognizes the right of any Registered Participant to appeal the decisions of the Sail Canada, including those relating to matters such as national team selection, harassment, discipline, and governance (e.g. election processes, interpretations of by-laws, undeclared conflicts of interest).
- 1.2 The purpose of this policy is to enable disputes with Registered Participants to be dealt with fairly, expeditiously and affordably within Sail Canada, without having to have recourse to formal legal procedures.
- 1.3 The adjudication procedure described in this policy conforms to the principles of natural justice and procedural fairness:
  - a) The right to be heard in a dispute.
  - b) The right to be judged objectively and impartially.
  - c) The right to be judged by objective, impartial persons.

##### 2. Definitions

Appellant:	Refers to a Registered Participant of appealing a decision of Sail Canada;
Arbitration:	Refers to the arbitration process as established by the Canadian Sport Dispute Resolution Code, as amended from time to time;
Days:	Means total days, irrespective of weekends or holidays;
Mediation:	Refers to the mediation process as established by the Canadian Sport Dispute Resolution Code, as amended from time to time;
Registered Participants:	Refers to individuals who are registered to participate in Sail Canada programs and activities, including, but not limited to, athletes, coaches, instructors, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, Case Managers, employees and contractors;
Case Manager:	Refers to the person appointed to oversee and manage the specific case. This person can be anybody who has no involvement with the decision being appealed, as provided in Section 5;
Panel:	Refers to the appeal panel established as provided by Section 7;
Respondent:	Refers to the body, person or persons whose decision is being appealed; and

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Written Statement: Refers to the response submitted by the Respondent(s).

### 3. Scope of Appeal

3.1. Any Registered Participant of Sail Canada who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of Sail Canada or its Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal, as set out in Section 8;

3.2. This appeal policy will not apply to decisions relating to:

- a) The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
- b) Doping offences, which are dealt with under the Canadian Policy on Doping in Sport and the Canadian Doping Control Regulations;
- c) The technical rules of Sail Canada, as set out in the International Sailing Federation (ISAF) Racing Rules of Sailing (RRS) including the Sail Canada Prescriptions to the RRS;
- d) Matters relating to regattas in Canada governed by international organizations such as the Olympic Games, Pan American Games, World Championships and similar events organized by entities other than Sail Canada, which are dealt with under the policies of these other entities;
- e) Contractual matters between Sail Canada and its Registered Participants for which another dispute resolution process exists under the provisions of the applicable contract;
- f) Employment matters or matters of operational structure, staffing or volunteer leadership opportunities;
- g) Criminal offences for which the Appellant(s) is/are seeking a criminal conviction.

### 4. Timing of Appeal

- 4.1. Registered Participants who wish to appeal a decision will have 15 days from the date they received notice of the decision, to submit their appeal in writing to Sail Canada Executive Director, who will appoint a Case Manager;
- 4.2. Any Registered Participant wishing to submit the written appeal beyond the 15-day period must provide a written request stating reasons for an exemption to the requirement of Sub-section 4.1;
- 4.3. The decisions to allow or not the exemption as provided by Sub-section 4.2 will be at the discretion of the Panel as establish in conformity with Section 7.

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### PROCEDURE

#### 5. Appeal Document and Discussion

5.1. The Sail Canada Executive Director shall appoint a Case Manager to oversee management and administration of appeals submitted in accordance with this Policy. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Policy, and to implement the Policy in a timely manner. More particularly, the Case Manager has a responsibility to:

- a) Receive the appeal document;
- b) Determine if appeals lie within the jurisdiction of this Policy;
- c) Determine if appeals are brought in a timely manner;
- d) Determine if appeals are brought on permissible grounds;
- e) Appoint the appeal panel to hear appeals and/or determine the preliminary questions set out in paragraph 5.1 (a) to (d) above;
- f) Determine the format of the appeal hearing;
- g) Coordinate all administrative and procedure aspects of the appeal;
- h) Provide administrative assistance and logistical support to the appeals panel as required; and
- i) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

5.2. Registered Participants who wish to appeal a decision of Sail Canada that affects them must apply to the Case Manager to initiate the appeal process by completing a formal, written appeal document. The appeal process does not begin until such application is made.

5.3. The formal Appeal Document will state:

- a) The name(s) of the Appellant(s);
  - b) The coordinates of the Appellant(s);
  - c) The name(s) of the Respondent(s);
  - d) The decision being appealed;
  - e) The grounds for the appeal;
  - f) A summary of the evidence that supports these grounds;
  - g) A list of the witnesses to be called at the hearing with a summary of the evidence to be provided by them;
  - h) The remedy sought;
  - i) Whether or not representative(s) will be present;
- and
- j) Any request for timing-exemption, as provided by Sub-section 4.2, when required.

5.4. Upon receiving the written Appeal Document, the Case Manager will discuss the circumstances with the Appellant(s) and, without any delay, will notify the Respondent(s) in writing and forward a copy of the Appeal Document to the Respondent(s);

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- 5.5. Before proceeding further, the Case Manager will ensure that the Appellant(s) and the Respondent(s) have attempted to resolve the dispute privately between themselves, by any mean possible in the circumstances. If this attempt is not successful, the Case Manager must be informed within five days of his/her receipt of the Appeal Document. It is expected that most issues will be resolved at this level.
- 5.6. If the issue is not resolved at this stage, the Case Manager may refer the appeal to Resolution Facilitation, a service of the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor. Resolution Facilitation is a process that enables the parties involved in a dispute to better communicate with each other and to resolve their dispute through an amicable settlement.

### 6. Screening of Appeal

- 6.1 Within two working days of receiving the Appeal Document, the Case Manager will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 8;
- 6.2 The facts as alleged by the Appellant(s) in the Appeal Document shall be presumed to be correct unless such facts are, to the knowledge of the Case Manager, clearly erroneous;
- 6.3 If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons;
- 6.4 If the Appellant(s) believe(s) the Case Manager has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the Canadian Sport Dispute Resolution Code, as amended from time to time.

### 7. Appeal Panel

- 7.1 Within ten days of having received the Appeal Document, the Case Manager will initiate the establishment of a Panel as follows:
  - a) The Panel will be comprised of three individuals;
  - b) The Panel will consist of one person nominated by the Appellant(s), one person nominated by the Respondent(s) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s)' and Respondent(s)' nominees to the Panel, or failing agreement by such nominees, appointed by the Case Manager;
- 7.2 All three Registered Participants of the Panel must be nominated respecting the following conditions:

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- a) They must have no significant relationship with the affected parties;
- b) They must have no involvement with the decision being appealed;
- c) They must be free from any actual or perceived bias or conflict of interest;

7.3 As soon as they are nominated, the Registered Participants of the Panel will be forwarded a copy of the Appeal Document.

### 8. Grounds for Appeal

8.1 An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include, but are not limited to, the Respondent:

- a) Making a decision for which it did not have authority or jurisdiction as set out in governing documents;
- b) Failing to follow procedures as laid out in the bylaws or approved policies of Sail Canada;
- c) Making a decision which 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 made on the basis of, or significantly influenced by factors unrelated to the merits of the decision;
- d) Exercising its discretion for an improper purpose;
- e) Making a decision that was grossly unreasonable or unfair.

### 9. Preliminary Conference

9.1 Within seven days of receiving the Appeal Document, the Panel will hold a conference to consider various preliminary issues, such as, but not limited to, the following:

- a) Date and location of the hearing;
- b) Timelines for exchange of documents;
- c) Format of the appeal (written or oral submissions or a combination of both);
- d) Clarification of issues in dispute;
- e) Clarification of evidence to be presented to the Panel;
- f) Order and procedure of hearing;
- g) Any procedural matter;
- h) Clarification of remedies sought;
- i) Any other matter that may assist in expediting the appeal proceedings.

9.2 The preliminary conference can be held by conference-call or in person, depending on the circumstances: this decision is at the sole discretion of the Chairperson and may not be appealed;

9.3 The participants in the preliminary conference shall be the Appellant(s), the respondent(s), their representatives, if any, the Case Manager and the Panel;

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- 9.4 The Chairperson and the Case Manager shall arrange the preliminary conference and its precise date and time in concert with the participants;
- 9.5 The Panel may delegate to its Chairperson the authority to deal with these preliminary matters;
- 9.6 The Case Manager shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s) and Respondent(s) the appeal procedure established at this preliminary conference within two working days after the conclusion of such conference, and after having received the written confirmation approved by the Panel.

### 10. Procedure for Appeal

- 10.1 The Panel shall govern the hearing by such procedures as it deems appropriate, provided that the following directives be applied:
  - a) The appeal shall be heard as quickly as reasonably possible, having regard to the nature of the appeal, and the circumstances of the case;
  - b) All three Registered Participants of the Panel shall hear the appeal, but a majority in favour of the same result shall be sufficient to effect a decision;
  - c) Each party shall have the right to be represented at the hearing;
  - d) Copies of any written documents which any of the parties would like the 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;
  - e) The appeal may proceed on the basis of written submissions and documentation if all parties to the appeal consent;
  - f) If the decision of the Panel 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;
  - g) The Panel may direct that any other person or party participate in the appeal;
  - h) For sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred with such safeguards as the Panel considers necessary to protect the interests of the parties;
  - i) Unless otherwise agreed by the parties, there shall be no communication between Panel Registered Participants and the parties except in the presence of, or by copy to the other parties.

### 11. Evidence that May be Considered

- 11.1 As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.

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11.2 Unless a party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Document, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after the preliminary conference, other than that provided orally by witnesses at the hearing.

11.3 The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place.

11.4 If a party believes the Panel has made an error in admitting or rejecting an additional element of proof as provided by Sub-section 11.3, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the Canadian Sport Dispute Resolution Code, as amended from time to time.

## 12. Appeal Decision

12.1 Within five working 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:

- a) To reject the appeal and confirm the decision being appealed;
- b) To uphold the appeal and refer the matter back to the initial decision-maker for a new decision;
- c) 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;
- d) To determine how 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 Panel shall take into account the outcome of the proceedings, the conduct of the parties and their respective financial resources.

12.2 A copy of this decision will be provided to each of the parties and to the Case Manager;

12.3 In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided that the written decision with reasons is rendered within the timelines specified in Sub-section 12.1.

13. Modification of Timelines

13.1 If the circumstances of the dispute are such that this policy will not allow a timely appeal, or if the circumstances of the disputes are such that the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be revised.

14. Arbitration and Mediation

14.1 All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy;

14.2 Any final decision made by the Panel that may lead to irreversible consequences for one of the parties may be exclusively submitted by way of application to the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor, which will resolve definitively the dispute in accordance with the Canadian Sport Dispute Resolution Code, as amended from time to time;

14.3 Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;

14.4 The award rendered by the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor shall be final and binding upon the parties.