

# **BOWLING FEDERATION OF CANADA – APPEALS PROCESS**

## **1.1 General**

The Appeals Process of the Bowling Federation of Canada is not intended to replace the appeals process of any member organization. Rather, the Bowling Federation of Canada will only hear an appeal after the appeals process in the member organization has been exhausted.

1.2 The Appeals Process of the Bowling Federation of Canada is available to all members, where the term “member” refers to all categories of members within BFC and its member organizations, as well as to all individuals engaged in activities with or employed by BFC, including but not limited to: athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel).

1.3 At any point during this process, the matter may be referred to mediation.

1.4 This process does not apply to disputes relating to:

1. Matters of employment
2. Infractions for doping offenses, which are dealt with pursuant to the *Canadian Policy on Doping in Sport and Canadian Doping Control Regulations*.
3. The rules of Bowling, which may not be appealed.
4. Any decision made under #4 or #6 of this policy.

## **2.1 No Legal Action**

No action, application for judicial review or other legal proceedings will be commenced against BFC or its member organizations, unless the remedies of this policy have been exhausted.

## **3.1 Definitions**

Executive – the President, Vice President and Treasurer of the Bowling Federation of Canada

Administrator – the senior administrator of the Bowling Federation of Canada

Board – the Board of Directors of the Bowling Federation of Canada

Member – for the purpose of this policy any category of member in the Bowling Federation of Canada including its member organizations, as well as any individual engaged in activities with, or employed by BFC.

Appellant – the Member appealing a decision.

Respondent – the body or individual within the Federation whose decision is being appealed.

#### **4.1 Timing of Appeal**

Members who wish to appeal a decision shall have fifteen (15) days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President (or Administrator) of the Federation.

4.2 Any party wishing to initiate an appeal beyond the fifteen (15) day period must provide a written request stating reasons for an exemption to the requirement of Paragraph 4.1. the decision to allow, or not allow an appeal outside the fifteen (15) day period will be at the sole discretion of the Executive, and may not be appealed.

#### **5.1 Grounds for Appeal, other than Harassment and Abuse Policy Cases, that fall under COC jurisdiction**

A request for leave to appeal a member organization's decision shall be based on the following:

- Lack of jurisdiction
- Improper application of Federation policy or procedure
- Improper discipline, penalty or punishment
- The decision making was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker was unable to consider other view
- Failure to follow due process
- The issue is of great significance to BFC

#### **5.2 Grounds for Appeal by Respondents in Harassment and Abuse Policy cases that fall under COC jurisdiction**

##### **Grounds for Appeal by Respondents**

A respondent may appeal to the Executive Committee of the Canadian Olympic Committee from the BFC Official's determination(s) on the following grounds only:

a) that the investigation was conducted in an unfair or biased manner contrary to the rules of natural justice.

b) that the findings of fact contained in the investigation report are insufficient to support a determination that discrimination or harassment has been established.

In an appeal by the respondent from the BFC Official's determination(s), the complainant shall be entitled to participate as a respondent in the appeal.

A respondent may also appeal to the COC Executive Committee from the sanction(s) imposed or recommended following a complaint. In such an appeal, the complainant shall be advised by the BFC Official that an appeal has been filed, and shall be entitled to make written representations, but shall not be entitled to participate as a respondent in the appeal.

There shall be no appeal from any finding of fact contained in the investigation report.

### **Grounds for Appeal by Complainants**

In an appeal by the complainant from the BFC Official's determination(s), the respondent shall be entitled to participate as a respondent in the appeal.

A complainant may also appeal to the COC Executive Committee from the BFC Official's decision not to deal with a complaint. In such a case, the respondent shall not be identified in the appeal and shall not be entitled to participate as a respondent in the appeal.

There shall be no appeal from any finding of fact contained in the investigation report.

### **Notice of Appeal**

The notice of appeal must be made in writing to the Secretary of the Canadian Olympic Committee, within fourteen days of the appellant receiving notice of the BFC Official's (or BFC's) decision with respect to sanctions, and must state the specific grounds for the appeal.

A copy of the notice of appeal shall be promptly provided to the President, the BFC Official, and to every person entitled to participate as a respondent in the appeal.

## **The Hearing**

The conduct of the appeal shall be as provided by the Canadian Olympic Committees Guidelines on Discrimination and Harassment, which provide (in their relevant parts):

The following persons may appear before the COC Executive Committee at its in camera hearing and make representations in the appeal:

- a) the appellant(s);
- b) any person entitled to participate as a respondent in the appeal;
- c) if the appeal is from a decision by an BFC, the BFC may designate a representative to make representations on behalf of the BFC; and
- d) any other person invited by the BFC Executive Committee to make representations.

No member of the COC Executive Committee having had any personal involvement in the complaint, or who is otherwise in conflict of interest, shall participate in the deliberations or decision in the appeal.

## **Disposition of an Appeal**

The COC Executive Committee's deliberations shall take place in camera. The appellant(s), respondent(s) if any, and the COC Official (or BFC representative) shall not be present during the deliberations.

The COC Executive Committee, by a majority of votes cast, may:

- a) dismiss the appeal;
- b) substitute its own determination for the determination under appeal;
- c) substitute a sanction for the sanction under appeal; or
- d) remit the complaint for further investigation and/or for re-determination in accordance with its directions.

The COC Executive Committee shall provide reasons for its disposition. Minority and dissenting reasons may also be provided.

A copy of the reasons shall be provided to the appellant, to any respondent in the appeal, to the BFC if applicable, and to the Chef de Mission if the appeal involves conduct at Games.

### **Appeals Summaries**

A summary of each appeal and the reasons for disposition shall be published annually in such a form as to protect the identities of individuals involved.

In an appeal from sanctions, the BFC Official shall give the complainant(s) such information about the disposition of the appeal as is appropriate in the circumstances.

### **6.1 Screening of Appeal**

Within seven (7) working days of receiving the notice of appeal, a member of the Executive, who is not involved in any manner with the matter (including by extension), shall decide whether or not the appeal is based on one or more of the categories of possible errors by the Respondent as set out in **Grounds for Appeal – Paragraph 5.1**. In the absence or conflict of interest of the President, a designated member of the Executive may perform this function.

6.2 If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this decision in writing, giving reasons. The decision is at the sole discretion of the President or designate, and may not be appealed.

### **7.1 Appeals Panel**

If the President, or designate, is satisfied that there are sufficient grounds for an appeal, within ten (10) working days of having received the original notice of appeal the President or designate shall establish an Appeals Panel (the Panel) comprised of three (3) individuals who

1. shall have no significant relationship with the affected parties,
2. shall have had no involvement with the decision being appealed, and
3. shall be free from any other actual or perceived bias or conflict.
4. These individuals should not be members of the BFC Board of Directors.
5. All members of the Panel need not be members of BFC.

7.2 The Panel's members shall select from themselves a Chairperson.

### **8.1 Format of Appeal**

Once appointed, the Panel shall determine the format for the appeal. The Panel may decide to conduct the appeal:

- by way of oral hearing
- by way of documentary evidence, or
- by way of a combination of these two methods.

8.2 If the Panel decides to conduct an oral hearing, it may decide to do so in-person or by means of video or telephone conference.

### **9.1 Preliminary Conference**

The Panel may determine that the circumstances of the dispute warrant a preliminary conference. The matters which may be considered at a preliminary conference include:

- format of the appeal
- timelines for exchange of documents
- clarification of issues in dispute
- clarification of evidence to be presented to the Panel
- order and procedure of the hearing
- location of the hearing
- identification of witnesses, and
- any other procedural matter which may assist in expediting the appeal proceedings.

9.2 The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

### **10.1 Procedure for Hearing**

Where the Panel has determined that the appeal shall be held by way of oral hearing, the Panel shall govern the hearing by such procedures as it deems appropriate provided that:

1. the hearing shall be held within twenty-one (21) days of the Panel's appointment;
2. the Appellant and Respondent shall be given fourteen (14) days written notice of the date, time and place of the hearing;
3. a quorum shall be all three (3) Panel members;
4. decisions shall be by majority vote, where the chairperson carries a vote;

5. copies of written documents which any of the parties would like the Panel to consider shall be provided to all members of the Panel, and to all other parties, at least five (5) days in advance of the hearing;
6. if the decision of the Panel may affect another party to the extent that they would have recourse to an appeal in their own right, that party shall become a party to the appeal in question;
7. any of the parties may be accompanied by a representative or advisor, including legal counsel;
8. the Panel may direct that any other person participate in the appeal;
9. in the event that one of the Panel's members is unable or unwilling to continue with the appeal, the matter shall be concluded by the remaining two Panel members, who shall make their decision by unanimous vote; and
10. unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.

### **11.1 Procedure for Documentary Appeal**

Where the Panel has determined that the appeal shall be held by way of documentary evidence, it shall govern the appeal by such procedures as it deems appropriate provided that:

1. all parties are given an opportunity to provide written submissions to the Panel, to review written submissions of the other parties, and to provide written rebuttal; and
2. the applicable principles and timelines set out in **Procedure for Hearing, Paragraph 10**, are respected.

### **12.1 Evidence Which May Be Considered**

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

### **13.1 Appeal Decision**

Within ten (10) days of concluding the appeal, the Panel shall issue its written decision, with reasons.

#### **13.2** The decision will follow this format

- a) Issue to be decided
- b) Background to the case
- c) Statement of the facts
- d) Authorities considered
- e) Decision
- f) Reasons for decision

- 13.3 In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:
- a) to void or confirm the decision being appealed;
  - b) to vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality
  - c) to refer the matter back to the initial decision-maker for a new decision; and
  - d) to determine how costs of the appeal shall be allocated, if at all.
- 13.4 A copy of this decision shall be provided to each of the parties and to the Administrator.

#### **14.1 Timelines**

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

#### **15.1 Final and Binding**

The decision of the Panel shall be final and binding on the parties.

#### **16.1 Arbitration**

All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy. If any party believes the Panel has made an error, the matter may be referred to independent arbitration, such arbitration to be administered under the services of the Sport Dispute Resolution Centre of Canada, as amended from time to time.

- 16.2 Should a matter be referred to arbitration, all parties to the original appeal shall be parties to the arbitration.

- 16.3.1 The parties to arbitration shall enter into a formal Arbitration Agreement and the decision of any arbitration shall be final and binding and not subject to any further review by any court of competent jurisdiction or any other body.

#### **17.1 Approval**

This policy was approved by the Bowling Federation of Canada Board of Directors in November 2012. It will be reviewed on an annual basis and may be amended, deleted or replaced by resolution of the Board.