

CANOE KAYAK ONTARIO SPRINT  
DISPUTE RESOLUTION AND APPEAL POLICY

December 8, 2022

**Preamble and Purpose**

This Canoe Kayak Ontario Sprint (CKO Sprint) Dispute Resolution and Appeal Policy provides mechanisms and procedures for resolving internal disputes. It also provides recourse to parties who wish to appeal certain decisions made by the CKO Sprint, and the decisions of those to whom decision-making authority has been delegated by the CKO Sprint. This Policy reflects the CKO Sprint's commitment to treat all Individuals fairly and with respect.

This Policy encompasses an integrated process that provides sufficient internal options to ensure that issues can be resolved with appropriate transparency and timeliness, and in accordance with the principles of natural justice and procedural fairness.

CKO Sprint encourages all individuals to communicate openly, and to collaborate and use problem-solving and negotiation techniques to resolve their differences. CKO Sprint supports the principles of Alternate Dispute Resolution (ADR) and are committed to the techniques of negotiation, facilitation, and mediation as effective ways to resolve disputes.

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**Definitions**

1. The following terms have these meanings in this Policy:
  - a) “*Affected Party*” – an Individual who may be adversely affected by a decision that is appealed pursuant to this Policy. An Affected Party shall either be accepted as such by the Parties or by the Appeal Manager.
  - b) “*Appellant*” – The Party appealing a decision.
  - c) “*Appeal Manager*” – An individual appointed by Canoe Kayak Ontario Sprint who may be any staff member, committee member, volunteer, Director, or an independent third party, to oversee the administration of this Policy. The Appeal Manager’s responsibilities shall include those described in this Policy.
  - d) “*Respondent*” – The body or person whose decision is being appealed.
  - e) “*Parties*” – The Appellant, Respondent, and any other Individuals affected by the appeal (individually referred to as a ‘Party’)
  - f) “*Days*” – shall mean calendar days<sup>1</sup>
  - g) “*Individual*” – any Individual registered with a club that is a member of the Western Ontario Division, Eastern Ontario Division, including, without limitation, athletes, coaches, convenors, officials, volunteers, managers, administrators, committee members, directors and officers of the CKO Sprint, spectators at events, and parents/guardians of athletes

## DISPUTE RESOLUTION POLICY

### Scope and Application of this Policy

2. This Policy applies to all Individuals.
3. Opportunities for ADR may be pursued at any point in a dispute when all Parties to the dispute agree that such a course of action would be mutually beneficial.

### Facilitation and Mediation

4. If all Parties to a dispute agree to ADR, a mediator or facilitator, shall be appointed to mediate or facilitate the dispute. The costs of the mediation or facilitation shall be borne by the Parties, unless agreed to otherwise with CKO Sprint.
5. The mediator or facilitator shall decide the format under which the dispute shall be mediated or facilitated and may, if they consider it appropriate, specify a deadline before which the Parties must reach a negotiated decision.

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<sup>1</sup> For the purpose of calculating deadlines, the following shall apply: the day of the act is not included in the calculation (i.e., the date of receipt of a decision is not Day 1); instead, the deadline would start on the day following receipt of the decision and would expire at midnight (in the location of the individual seeking to file an appeal) on the last day of the period. If the end date is a Saturday, a Sunday or a legal holiday, the period runs until the next day that is not a Saturday, a Sunday or a legal holiday. For example, if an Individual receives a decision on Thursday December 17, 2020, the 14-day deadline to appeal this decision starts on Friday December 18, 2020 and would expire on Friday January 1, 2021. However, since January 1, 2021 is a legal holiday, January 2, 2021 is a Saturday, and January 3, 2021 is a Sunday, the deadline to appeal would expire at midnight (in the location of the individual seeking to file an appeal) on January 4, 2021.

6. Should a negotiated settlement be reached, the settlement shall be reported to CKO Sprint. Any actions that are to take place as a result of the decision shall be enacted on the timelines specified by the negotiated settlement.
7. Should a negotiated settlement not be reach by the deadline specified by the mediator or facilitator at the start of the process (if set), or if the Parties to the dispute do not agree to ADR, the dispute shall be considered under the Appeal Policy (below), as applicable.

### **Final and Binding**

8. Any negotiated settlement will be binding on the Parties and shall remain confidential, unless otherwise agreed to by the Parties. Negotiated settlements may not be appealed. No action or legal proceeding will be commenced against CKO Sprint, unless CKO Sprint has refused or failed to provide or abide by the dispute resolution process set out in its governing documents.

## **APPEAL POLICY**

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

9. This Policy applies to all Individuals.
10. Any Individual who is affected by a decision taken by the CKO Sprint, including by the board, by any committee of the board or by any body or individual within the CKO Sprint who has been delegated authority to make decisions, 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.
11. This Policy **will apply** only to decisions relating to:
  - a) CKO Sprint eligibility and Ontario Team selection decisions or Quest for Gold carding nominations made pursuant to any CKO Sprint selection or nomination policy;
  - b) conflict of interest;
  - c) disciplinary decisions made pursuant to any of the CKO Sprint's relevant and applicable policies, including any event discipline policies; or
  - d) Membership within the CKO Sprint.
12. This Policy **will not apply** to the following decisions relating to:
  - a) Matters of general application such as amendments to CKO Sprint's By-Laws;
  - b) CKO Sprint's operational structure and committee appointments;
  - c) Issues of budgets and budget implementation;
  - d) Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;
  - e) Decisions made by organizations other than CKO Sprint, such as Canoe Kayak Canada (CKC) or any other governing body;
  - f) Selection and eligibility criteria, quotas, policies and procedures established by

- entities other than the CKO Sprint;
- g) The Quest for Gold policies and procedures established by the Government of Ontario;
- h) Policy and procedures established by any other agency, association or organization external to the CKO Sprint;
- i) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport and/or the International Canoe Federation (ICF) or any other anti-doping organization that has relevant and applicable authority;
- j) Contractual matters between CKO Sprint and its staff for which another dispute resolution process exists under the provisions of the applicable contract; or
- k) The Appeal Policy does not apply to settlements negotiated pursuant to this Policy.

### Timing of Appeal

13. Individuals who wish to appeal any of the decisions listed in Section 11 of this Policy have fourteen (14) days from the date on which they received notice of the decision to submit the following to the CKO Sprint's Chair in writing:

- 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 the decision if a 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 and fifty dollars (\$250), which will be refunded if the parties resolve the matter in dispute resolution prior to arbitration or if the Appellant's appeal is upheld in its entirety<sup>2</sup>

14. An Individual who wishes to initiate an appeal beyond the fourteen (14) day period may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated in Section 6 above. Any such Individual must provide a written request stating the reasons for which they are seeking an exemption. The decision to allow, or not allow, an appeal outside of the fourteen (14) day period will be at the sole discretion of the Appeal Manager and may not be appealed.

### Grounds for Appeal

15. A decision cannot be appealed on its merits alone or because an Individual(s) does not like or agree with a decision. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include where 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 or selection criteria);

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<sup>2</sup> The administration fee will not be refunded if the appeal is upheld in part.

- 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); or
- d) Made a decision that was grossly unreasonable or unfair.

### **Screening of Appeal**

16. Upon receipt of an appeal, the Appeal Manager will first confirm that he or she is not in a conflict of interest or has any direct relationship with the Parties involved with the appeal. In the case that he or she declares a real or perceived conflict of interest, the Appeal Manager will recuse his/herself and an alternative Appeal Manager will be appointed by the CKO Sprint Chair.
17. The Appeal Manager has the following responsibilities, in addition to those otherwise described in this Policy:
  - a) To determine if the appeal falls under the scope of this Policy (Sections 9-12)
  - b) To determine if the appeal was submitted in a timely manner (Sections 13 or 14); and
  - c) To decide whether there are sufficient grounds for the appeal (Section 15)
18. If the Appeal Manager denies the appeal 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 Appeal Manager will notify the Appellant, in writing, including the reasons for this decision. This decision may not be appealed.
19. If the Appeal Manager accepts an appeal because it falls under the scope of this Policy, there are sufficient grounds and it was submitted in a timely manner, the Appeal Manager will notify the Parties of their decision in writing and will follow the steps described hereunder.
20. Once the Appeal Manager accepts an appeal, they shall engage with the Parties in order to confirm the identity and contact information of any Affected Party (or Parties). Failing the agreement of the Parties regarding the identity of the Affected Party (or Parties), the Appeal Manager may determine whether a Party is an Affected Party in their sole discretion. The Appeal Manager's decision in this regard is not subject to appeal.

### **Dispute Resolution**

21. Unless all of the Parties agree otherwise or, if, in the circumstances, there is insufficient time, the Parties, including any Affected Party, must first attempt to resolve their dispute through mediation prior to the matter being adjudicated, using [CKO Sprint's Dispute Resolution Policy](#), once the notice of the appeal, the fee, and the information required pursuant to Section 13 have been received.
22. Appeals resolved through mediation will result in the administration fee being refunded to the Appellant.
23. Should the dispute not be resolved through mediation for any reason, the Appeal Manager will proceed with the steps indicated immediately below.

### **Appointment of Appeal Panel**

24. The Appeal Manager will appoint an appeal panel which shall consist of a single member to hear the appeal. However, at the discretion of the Appeal Manager, an appeal panel composed of three members may be appointed to hear the appeal, for example, based on the nature or complexity of the case. In this event, the Appeal Manager will appoint one of the panel members to serve as the chair.
25. When appointing the appeal panel, the Appeal Manager must select individuals 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), who do not have any direct relationship with any of the Parties, and who has not had any prior involvement in the matter under appeal. Although not a strict requirement, the Appeal Manager should attempt to appoint individuals to the appeal panel who have a legal background and who understand the sport of sprint canoe/kayak. When justified by the circumstances, the Appeal Manager may appoint individuals to the appeal panel who have specific areas of expertise that would assist in resolving the matter.
26. Any member appointed to the appeal panel must exercise their functions with total objectivity, independence and impartiality and in conformity with any relevant and applicable CKO Sprint policy. Where applicable, the member shall also declare any circumstances that could impact their independence or impartiality, including, but not limited to, any prior or current relationship they may have with any of the Parties.
27. The Appeal Manager shall have the authority to remove an appointed member from the appeal panel should they consider that there are any circumstances that would compromise their objectivity, independence or impartiality. The Appeal Manager's decision in this regard is not subject to appeal.

### **Procedure for Appeal Hearing**

28. The Appeal Manager, in collaboration with the appeal panel, shall decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and appeal panel and may not be appealed.
29. If a Party chooses not to participate in the hearing, the hearing may proceed at the appeal panel's discretion.
30. 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 and evidence alone, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Manager and the panel deem appropriate in the circumstances, provided that:
  - a) The hearing will be held in a timely manner and within a timeline determined by the Appeal Manager;
  - b) The Parties will be given reasonable advance notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications;
  - c) Copies of any written documents which the Parties wish to have the panel consider will be communicated to all Parties no later than three days prior to the hearing. This deadline may be extended or shortened by the appeal panel depending on the circumstances of the case, provided that the Parties must nevertheless be provided with any of the aforementioned written documents in advance of the hearing and within a reasonable time period that allows them to review the documents prior to

- the hearing;
- d) The Parties may each be accompanied by one representative or advisor, and may also be represented by legal counsel at their own expense;
  - e) The appeal panel may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications;
  - f) The appeal panel may allow as evidence at the hearing any oral evidence and document or item 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; and
  - h) Where consensus on decision among the appeal panel members cannot be reached, the appeal panel's decision shall be made by a majority vote, except in cases where the panel consists of a single member.

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

### **Appeal Decision**

32. When rendering its decision, the appeal panel must consider whether the Appellant has demonstrated, on a balance of probabilities, that the Respondent has made an error as described in Section 15 of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

33. 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, in whole or in part;
- 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; and
- 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

34. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and the CKO Sprint's Chair. In extraordinary circumstances, the appeal panel may first issue a verbal or summary decision shortly after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record (e.g., posted to the CKO Sprint website or made available to those who request it) 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.

35. The appeal panel's decision is final and binding on the Parties, subject to their right to appeal the decision before the SDRCC in accordance with the Canadian Sport Dispute Resolution Code on a fee-for-service basis.

### **Timelines**

36. 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**

37. The appeals process is confidential and involves only 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.
38. Any failure to respect the aforementioned confidentiality requirement may result in further disciplinary action being taken against the Individual(s) in accordance with the CKO Sprint's relevant and applicable policies.

### **Limitations**

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

### **Privacy**

40. The collection, use and disclosure of any personal information pursuant to this Policy is subject to the CKO Sprint's Privacy Policy.
41. CKO Sprint and any of their delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel), shall comply with the CKO Sprint's Privacy Policy in the performance of their services under this Policy.