

SECTION 39 – APPEALS (Revised – 39.15.1 - June 2012)

The President/CEO will address these questions or guide you to the appropriate key contact, if need be.

39.1 GENERAL PROVISIONS

39.1.1 Preamble

GCG recognizes the right of any Member to appeal the decisions of GCG and hereby provides for an appropriate process for resolving disputes that could arise from time to time from such decisions of GCG.

The purpose of this appeal policy is to enable disputes with Members to be dealt with fairly, expeditiously and affordably within GCG, without having to have recourse to formal legal and court-like procedures.

39.1.2 Definitions

- a. **Appeal Form:** Refers to an Appeal submitted by the Appellant(s) attached as Appendix 13;
- b. **Appellant:** Refers to a Member appealing a decision of GCG;
- c. **Affected Party:** Means any Member who could be potentially affected by the decision of the Appeal Panel and that has been added to the Appeal as a Party;
- d. **Arbitration:** Refers to the arbitration process as established by the SDRCC Code, as amended from time to time;
- e. **Board of Directors:** Means the Board of Directors or one of its Committee of GCG;

- f. **Case Manager:** Refers to a neutral organization or individual responsible for managing the Appeal on behalf of GCG as appointed by the Board;
- g. **Days:** Means total days, irrespective of weekends or holidays;
- h. **Mediation:** Refers to the mediation process as established by the SDRCC Code, as amended from time to time;
- i. **Member:** Refers to Regular and Associate members as defined in GCG By Laws as amended from time to time including, but not limited to, athletes, coaches other than GCG employed coaches, clubs, volunteers, directors, officers, team managers, team captains;
- j. **Appeal Panel:** Refers to the Appeal panel established as provided by Section 39.6;
- k. **Party or Parties:** Means the Appellant, the Respondent and the Affected Party;
- l. **Respondent:** Refers to the body, committee, person or persons whose decision is being appealed;
- m. **SDRCC:** Means the Sport Dispute Resolution Centre of Canada or its successor;
- n. **Working Days:** Means total days, excluding weekends and holidays;
- o. **Written Response:** Refers to the response submitted by the Respondent(s) attached as ***Appendix 14.***

39.2 SCOPE OF APPEAL

- 39.2.1 Any Member of GCG who is affected by a sanction of the Board of Directors, or a sanction / decision 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 GCG or its Board of Directors, will have the right to appeal that sanction or decision, provided there are sufficient grounds for the appeal, as set out in Section 39.7;
- 39.2.2 Request for Reconsideration
- a. A Member of GCG who is not satisfied with a decision rendered by a GCG Program Director / High Performance Director / National Coach may file a request for reconsideration of such decision directly with the Program Director within two (2) days of receiving notice of the decision;
 - b. Before determining the request for reconsideration the Program Director shall inform any Member who could be potentially affected by the decision and invite such Member to make written submissions;
 - c. The Program Director shall render its decision within three (3) working days.
- 39.2.3 A Member may have a decision reviewed by the President/CEO before beginning the appeal process set out herein.
- 39.2.4 Without limiting the scope of section 39.2.1, this appeal policy will not apply to decisions relating to:
- a. Doping offences, which are dealt with under the Canadian Policy on Doping in Sport and the Canadian Doping Control Regulations;
 - b. The technical and competition rules of GCG and FIG and field of play disputes may not be appealed;

- c. Sport Canada Athlete Assistant Program – For any matters related to the Sport Canada Athlete Assistance Program nomination or decarding, all appeals must follow the Policies and Procedures of Sport Canada's Athlete Assistance Program (AAP) Section 13
- d. Disciplinary matters arising during events organized by entities other than GCG, which are dealt with under the policies of these other entities, provided that they have an appeal policy in place;
- e. Criminal offences for which the Appellant(s) is/are seeking a criminal conviction;
- f. Commercial and employment matters for which another legal recourse already exist under applicable laws or contracts;
- g. Decisions that are outside the scope of the present appeal policy as described by GCG By Laws as amended from time to time.

39.3 TIMING FOR APPEAL

- 39.3.1 Members who wish to appeal a decision will have twenty-one (21) days from the date they received notice of the decision, to submit their Appeal Form to Case Manager;
- 39.3.2 Any Member wishing to submit the Appeal Form beyond the twenty-one (21)-day period must provide a written request stating reasons for an exemption to the requirement of 39.3.1;
- 39.3.3 The decision to allow or not the exemption as provided by 39.3.2 will be at the discretion of the Panel as established in conformity with Section 39.6.

39.4 APPEAL FORM AND DISCUSSION

39.4.1 Members who wish to appeal a decision of GCG that affects them must apply to the Case Manager to initiate the appeal process using **Appendix 13**. The appeal process does not begin until such application is made.

39.4.2 The Appeal Form 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. When available, the name(s) of any Member (also called Affected Party), who might be potentially affected by the decision of the Appeal Panel;
- e. The decision being appealed;
- f. The grounds for the appeal;
- g. The language (English or French) that the Appellant would like to be heard;
- h. A summary of the evidence that supports these grounds;
- i. If applicable, a list of the witnesses to be called at the hearing with a summary of the evidence to be provided by them;
- j. The remedy sought;
- k. Whether or not representative(s) will be present; and,
- l. The request for timing-exemption, as provided by Sub-section 4.2, when required.

39.4.3 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 means possible in the circumstances. If this attempt is not successful, the Case Manager must be informed within five (5) days of his/her receipt of the Appeal Form. It is expected that most issues will be resolved at this level.

39.5 WRITTEN RESPONSE BY RESPONDENT AND AFFECTED PARTY

- 39.5.1 If the attempt to resolve the dispute through discussion between the parties does not succeed, the Case Manager will request a Written Response by the Respondent(s) (see Form B) outlining the justification for the decision or the practice being appealed.
- 39.5.2 The Written Response will contain:
- a. A summary of the evidence that supports the Respondent(s)' case;
 - b. If applicable, the list of witnesses to be called at the hearing and the summary of the evidence to be provided by them;
 - c. Whether or not representative(s) will be present;
 - d. When available, the name(s) of any Member (also called Affected Party), who might be potentially affected by the decision of the Appeal Panel;
 - e. The language (English or French) that the Respondent would like to be heard;
- 39.5.3 The Written Response of the Respondent shall be forwarded to the Case Manager within seven (7) working days from the date of receipt of Appeal Form by the Case Manager, or such longer period as the Case Manager may specify;
- 39.5.4 The Case Manager must forward a copy of the Written Response to the Appellant(s) and the Affected Party (s) without delay after receipt;
- 39.5.5 If requested by the Affected Party, such Affected Party shall have five (5) days upon receipt of the Written Response to file submissions.
- 39.5.6 Should the Respondent(s) fail to submit the Written Response

within the time-limit provided by 39.5.3, the Case Manager will initiate the establishment of the Panel without further delay and notify the Parties of such decision.

39.6 APPOINTMENT OF THE APPEAL PANEL

39.6.1 Within ten (10) days of having received the Appeal Form, the Case Manager will initiate the establishment of an Appeal 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;
- c. Should the Respondent(s) fail to submit the Written Response, as provided by 39.5.6, the Panel will consist of one person nominated by the Appellant(s), one person nominated by the President/CEO (on behalf of 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; All three members of the Panel must be nominated respecting the following conditions:
 - a. They must have no significant relationship with the 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. Being a member of the

Appellant(s)' or the Respondent(s)' "peer" should not in itself constitute bias or conflict of interest;

- 39.6.2 As soon as they are nominated, the members of the Panel will be forwarded a copy of the Appeal Form and Written Response and submissions of the Affected Party when applicable.
- 39.6.3 The Panel shall have the authority to determine its own jurisdiction and any requests related to issues of conflict of interest.

39.7 GROUNDS FOR APPEAL

- 39.7.1 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 GCG;
 - 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.

39.8 SCREENING OF APPEAL

- 39.8.1 Within two (2) working days of receiving the Appeal Form, the Panel will determine whether there are appropriate grounds for the appeal, as set out in 39.7.1;
- 39.8.2 The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of one or more of the Panel members, clearly erroneous;
- 39.8.3 If the appeal is denied on the basis of insufficient grounds, the Parties will be notified in writing without delay of this decision and its reasons;
- 39.8.4 If the Appellant(s) believe the Panel 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 SDRCC Code, as amended from time to time.

39.9 PRELIMINARY CONFERENCE

- 39.9.1 Should the Panel determine that the Appeal presents sufficient grounds to hear the Appeal, the Panel will, within five (5) days of receiving the Appeal Form and Written Responses, hold a preliminary conference to consider various preliminary issues, such as, but not limited to, the following ones:
 - 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. The language (English or French) that the Parties would like to be heard;

- e. Clarification of issues in dispute;
 - f. Clarification of evidence to be presented to the Panel;
 - g. Order and procedure of hearing;
 - h. Any procedural matter;
 - i. Clarification of remedies sought;
 - j. Any other matter that may assist in expediting the appeal proceedings.
- 39.9.2 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;
- 39.9.3 The participants in the preliminary conference shall be the Appellant(s), the respondent(s), the Affected Party (s), their representatives, if any, the Case Manager and the Panel;
- 39.9.4 The Chairperson and the Case Manager shall arrange the preliminary conference and its precise date and time in concert with the participants;
- 39.9.5 The Panel may delegate to its Chairperson the authority to deal with these preliminary matters;
- 39.9.6 The Case Manager shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s), Respondent(s) and Affected Party (s) the appeal procedure established at this preliminary conference within two (2) working days after the conclusion of such conference, and after having received the written confirmation approved by the Panel.

39.10

PROCEDURE FOR THE APPEAL

39.10.1 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 and no later than ten (10) days from the appointment of the Panel unless otherwise agreed to by all Parties or determined by the Panel under exceptional circumstances, having regard to the nature of the appeal, and the circumstances of the case;
- b. All three members 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. The Panel may direct that any other person or party participate in the appeal;
- g. 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;
- 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 members and the parties except in the presence of, or by copy to the other Parties.
- j. Parties are free to agree on the language of the proceedings to be either English or French. Failing such agreement, the Panel shall determine the language of the proceedings, taking into consideration all relevant circumstances of the case. Prior to the appointment of the Panel, if Parties cannot agree, the language of the proceedings shall be deemed to be the official language in which the Request was filed. The Panel shall have the authority to rule on any issues regarding the language of the proceedings and translation.

39.11 PROCEDURE FOR DOCUMENTARY APPEAL

- 39.11.1 Where the Panel has determined that the appeal will be held by way of written submissions, it will govern the appeal by such procedures as it deems appropriate provided that:
- a. All Parties are given a reasonable opportunity to provide written submissions to the Panel, to review written submissions of the other parties, and to provide written rebuttal and argument;
 - b. The applicable principles and timelines set out in 39.10 are respected.

39.12 EVIDENCE THAT MAY BE CONSIDERED

- 39.12.1 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.

- 39.12.2 The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place;
- 39.12.3 If a Party believes the Panel has made an error in admitting or rejecting an additional element of proof as provided by 39.12.2, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the SDRCC Code, as amended from time to time.

39.13 APPEAL DECISION

- 39.13.1 Unless otherwise agreed to by all Parties or determined by the Panel in exceptional circumstances, the Panel will issue its written decision with reasons within seven (7) working days of concluding the appeal's hearing. 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, such new decision shall be final and might be appealed directly for arbitration or mediation at the SDRCC;
 - 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;

- 39.13.2 A copy of this decision will be provided to each of the Parties and to the Case Manager;
- 39.13.3 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 39.13.1.

39.14 MODIFICATION OF TIMELINES

- 39.14.1 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.

39.15 ARBITRATION AND MEDIATION

- 39.15.1 All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in the policy. However, notwithstanding the Appeal Procedure under Section 39 – Appeals, an associate member may appeal a competition selection decision made by a Program for any major games or championships directly to the SDRCC, with consent of the President/CEO;

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- 39.15.2 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 SDRCC or its successor, which will resolve definitively the dispute in accordance with the

SDRCC Code, as amended from time to time;

- 39.15.3 Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;
- 39.15.4 The award rendered by the SDRCC or its successor shall be final and binding upon the parties.

