

## DRAGON BOAT CANADA BATEAU-DRAGON CANADA APPEALS POLICY

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### 1. PURPOSE

1.1. The purpose of this appeals policy is to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within Dragon Boat Canada ("DBC"), without recourse to external legal procedures.

### 2. DEFINITIONS

2.1. These terms will have these meanings in this policy:

- a) *Days* -- will mean total days, irrespective of weekends or holidays.
- b) *Member* -- refers to all categories of members in DBC as well as to all individuals engaged in activities with or employed by DBC, 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)
- c) *Appellant* -- refers to the Member appealing a decision
- d) *Respondent* -- refers to the body whose decision is being appealed.

### 3. SCOPE OF APPEAL

3.1 Any Member of DBC 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 the Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in section 5 of this policy.

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

- a) Matters of employment unless otherwise stated;
- b) Infractions for doping offences, which are dealt with pursuant to the *Canadian Policy on Doping in Sport* and the *Canadian Doping Control Regulations*;
- c) Matters relating to entries, decisions of on-water and off-water officials and decisions of the Race Committee at or in relation to trials for national team and international competition; provided that this policy does apply to a decision of the Race Committee that is made without authority or jurisdiction to do so;
- d) Discipline matters arising during events organized by entities other than DBC, which are dealt with pursuant to the policies of these other entities;
- e) Matters relating to the substance, content and establishment of National Team selection criteria (including criteria used to select team members and criteria used to select who will be the actual entries at events and who will make up the crew at events) which may not be appealed;
- f) Any decisions made under sections 4.4 and 7.1 of this policy.

#### 4. TIMING OF APPEAL

- 4.1. Members who wish to appeal a decision will have 21 days from the date on which they received notice of the decision, to deliver a written Notice of Appeal on the attached Notice of Appeal (or similar) form to the President of DBC (hereafter referred to as "Official").
- 4.2. Each Notice of Appeal must be accompanied by a \$150.00 deposit (certified cheque or money order payable to Dragon Boat Canada), refundable in the case of a successful appeal.
- 4.3. Notices may be delivered by fax, courier, or special delivery or in person to Dragon Boat Canada. Please note that a Notice of Appeal is not delivered until it is received personally by the President of Dragon Boat Canada or arrives at the National Office.
- 4.4. Any party wishing to initiate an appeal beyond the 21-day period must provide a written request stating reasons for an exemption to the requirement of section 4.1 of this Policy. The decision to allow, or not allow an appeal outside the 21 day period will be at the sole discretion of the Official or his or her designate, and may not be appealed.

#### 5. GROUNDS FOR APPEAL

- 5.1. A decision cannot be appealed on its merits alone. An appeal may be heard only if the appeal on its face discloses sufficient grounds for the appeal. In order for an appeal to demonstrate sufficient grounds for appeal, it must allege that the respondent did one or more of the following;
- (a.) Made a decision for which it did not have the authority or jurisdiction to make that decision (as set out in Dragon Boat Canada's governing documents?)
  - (b.) Failed to follow procedures as laid out in the Dragon Boat Canada Discipline Policy;
  - (c.) Made 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;
  - (d.) Exercised its discretion for an improper use;
  - (e.) Made a decision for which there is no supporting evidence;
  - (f.) Failed to make its decision in accordance with criteria and/or principles established and approved by the appropriate body for the purpose of the decision in question;
  - (g.) Made a decision which was unreasonable having regard to the terms of reference or criteria upon which the decision was to be made.
- 5.2. With respect to grounds of appeal c) and f) above, the appellant must establish he or she was prejudiced because of the matter complained of under that ground of appeal, or the matter complained of had, or may reasonable have had, or had it been known by the decision maker may reasonable have had, a material effect of the decision maker whose decision is under appeal.
- 5.3. With respect to ground of appeal g), the appellant must establish that the decision under appeal was not made within the range of possible reasonable decisions on the matter under appeal, and the appeals Panel shall dismiss the appeal if it is satisfied that the appellant

has failed to demonstrate that the decision under appeal was outside of the range of reasonable decisions that may have been made by the decision maker.

## **6. APPEALS PANEL**

6.1. If the Official, or designate, is satisfied that there are sufficient grounds for an appeal, within 14 days of having received the original notice of appeal the Official will establish an Appeals Panel (hereafter referred to as the "Panel") as follows:

- (a.) The Panel will be comprised of three individuals who will have no significant relationship with the affected parties, will have had no involvement with the decision being appealed, and will be free from any other actual or perceived bias or conflict.
- (b.) The Official may designate one of the Panel members to serve as chairperson of the Panel. In the event the Official does not designate a Chairperson, the members of the Panel will select from themselves a Chairperson.
- (c.) All individuals will be members of current and good standing with Dragon Boat Canada.

## **7. SCREENING OF APPEAL**

7.1. Within 7 days of its appointment the Appeals Panel shall review the Notice of Appeal and reasons for the appeal. If the Appeals Panel is of the view that the Notice of Appeal and reasons stated therein for the appeal do not on their face appear to set forth sufficient grounds for an appeal, the Appeals Panel shall so advise the appellant and provide the appellant with an opportunity to demonstrate that the Notice of Appeal and reasons for the appeal do in fact on their face show sufficient grounds for an appeal. The respondent shall also be advised by the Appeals Panel of their process and given the opportunity to make submissions to the Appeals Panel on this issue as well. If and only if, the Appeals Panel is of the unanimous opinion that it is patent and obvious from what is contained in the Notice of Appeal that, notwithstanding the submissions of the appellant, there are not sufficient grounds for an appeal and the appeal cannot possibly succeed even if the allegations contained in the Notice of Appeal are accepted as true and accurate, the appeal shall be dismissed by the Appeals Panel. This decision of the Appeals Panel is discretionary, is final and binding and is not subject to further review or arbitration and may not be appealed.

7.2.1. If the Appeals Panel is satisfied that there are not sufficient grounds for an appeal, it shall notify the appellant of this decision in writing, stating reasons. If the Appeals Panel is satisfied that there are sufficient grounds for an appeal, it shall conduct a Hearing.

## **8. ADMINISTRATION OF APPEAL**

8.1. Appeals shall be administered by the National Office of Dragon Boat Canada under the direction of the Executive Director.

8.2. Where two or more Notices of Appeal have been delivered and it appears to the Executive Director (or other person named to direct the administration of the appeals, if such be the case) that:

- (a.) They have questions of interpretation or factual bases in common;
- (b.) The appeals arise out of the same circumstance or decision or decision making process;
- or
- (c.) For any other reason there is sufficient commonality between or among the appeals that the appeals ought to be heard together,

the Executive Director (or designate) may determine and so advise the appellants that the appeals will be heard together by the one and same Appeals Panel and in that event the appeals shall be heard in that manner and dealt with as if one appeal.

8.3. Should an appellant or a respondent dispute the determination to have an appeal heard together with another or other appeals, the appellant's or respondent's only recourse shall be to raise the matter as a preliminary objection with the appeals Panel and the Appeals Panel shall either allow or disallow the objection and provide appropriate directions so that the appellant's appeal can be otherwise heard in the event that the appeals Panel allows the objection

## 9. PRELIMINARY CONFERENCE

9.1. The Panel may determine that the circumstances of the appeal warrant a preliminary conference.

9.2. The matters that may be considered at a preliminary conference include:

- (a.) Date and location of hearing
- (b.) Timelines for exchange of documents
- (c.) Format of the appeal (hearing by documentary evidence, oral hearing or a combination of both)
- (d.) Clarification of issues in dispute
- (e.) Order and procedure of hearing
- (f.) Remedies being sought
- (g.) Clarification of evidence to be presented to the Panel;
- (h.) Identification of witnesses; and
- (j.) Any other matter that may assist in expediting the appeal proceedings.

9.3. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters on behalf of the Panel.

## 10. PROCEDURE FOR THE HEARING

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

- (a.) The hearing will be held within 21 days of the Panel's appointment.
- (b.) The Appellant and Respondent will be given 10 days written notice of the date, time and place of the hearing.
- (c.) A quorum will be all three Panel members.
- (d.) Decisions will be by majority vote, where the Chairperson carries a vote.

- (e.) 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 other parties, at least 3 days in advance of the hearing. Written documents shall not otherwise be received and considered by the Appeals Panel unless on the consent of the parties, or in the event the Appeals Panel determines it just and equitable to do so.
- (f.) Both the appellant and respondent may be accompanied by a representative or adviser, including legal counsel;
- (g.) The appeals Panel may request that any other individual participate and give evidence at the Hearing;
- (h.) The Appeals Panel may shorten any of the time periods provided for relative to the hearing, having particular regard to the timing of any event or circumstance that is imminent and once passed will render the appeal of no practical consequence;
- (j.) The Appeals Panel may, at any stage of the appeal but not after the hearing has been completed, order that any other member be added as a party to the appeal, whose presence as a party is necessary to enable the Appeals Panel to determine effectively and completely the issues raised by the appeal, and any member so added shall have all the same rights as a respondent to the appeal except to the extent such may reasonably be abridged by the Appeals Panel having regard to the timing of the order adding the member. The Appeals Panel may delegate to its Chairperson the authority to deal with the issue of adding a party to the appeal and other related issues thereto as provided herein;
- (k.) Any party to the Appeal (the appellant, respondent, or an added party) shall be entitled to address the Appeals Panel in either English or French and shall notify the Appeals Panel of the language intended to be used so that appropriate translation services, if necessary can be arranged. Should a party to the appeal wish to provide evidence, oral or written, from a witness that party shall be responsible for the costs of any translation services necessary for that witness;
- (l.) The Appeals Panel may allow as evidence at the hearing, subject to the disclosure requirements provided for herein, any oral evidence and any document or thing relevant to the subject matter of the appeal, but the Appeals Panel may exclude any such evidence that is unduly repetitious.
- (m.) The onus shall be on the appellant to establish on the balance of probabilities any factual basis for the appeal, and the grounds of the appeal themselves;
- (n.) The Appeals Panel may conduct such preliminary meeting (by conference call, videoconference or in person) with the parties as it deems appropriate to expedite the actual hearing of the appeal.

10.2. In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a telephone or video conference.

## **11. APPEAL DECISION**

11.1. Within 14 days of concluding the appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:

- (a.) To confirm the decision and dismiss the appeal;

- (b.) To void the decision and refer the matter back to the initial decision-maker for a new decision; or
- (d.) 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; and
- (e.) To determine how costs of the appeal shall be allocated, if at all.

11.2. The decision will be considered a matter of public record, but the extent and facts of the hearing will only be published at the discretion of the Panel. A copy of the decision will be provided to each of the Parties and to the Official.

11.3. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reasons is rendered within the timelines specified in Section 11.1 of this Policy.

11.4 The decision of the Appeals Panel shall be final and binding of all parties and all persons concerned, including Dragon Boat Canada and any and all committees concerned with the decision, and not open to any further appeals or intervention by any court, with the exception of referral by arbitration as provided for in Section 14 of this Policy.

## **12. TIMELINES**

12.1. If the circumstances of the appeal, or circumstances beyond or outside of the appeal, are such that this policy will not allow a timely appeal or timely appeal decision, or if the circumstances beyond or outside of the appeal, are such the appeal cannot be concluded within the timelines dictated in this Policy, the Panel may direct that these timelines be extended. The Panel may delegate this authority to abridge or extend the timelines to the Chairperson as provided for in section 10.1 a) in this Policy.

## **13. DOCUMENTARY APPEAL**

13.1. Any Party to the appeal may request that the Panel conduct the appeal by way of documentary evidence. The Panel may seek agreement from the other Parties to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the appeal shall proceed by way of documentary evidence or in-person hearing.

## **14. ARBITRATION**

14.1. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this Policy. If any Party is not satisfied with the decision of the appeals Panel, that party may refer the matter to arbitration provided the party does so within the prescribed timeline as set out in the ADR – SPORT-RED PROGRAM (Sport Dispute Resolution Centre of Canada). The matters that can be considered by arbitration and the terms under which the arbitration can be conducted will be determined by the ADR – SPORT- RED PROGRAM.

## 15. LOCATION AND JURISDICTION

15.1. The appeal will take place in the location designated by the Official, unless the Panel decides the appeal is to be held by way of telephone conference, or unless, at the specific request of a party, a different location is mandated by the Panel as a preliminary matter.

15.2. This Policy shall be governed and construed in accordance with the laws of the Province of Ontario.

15.3. No action or legal proceeding shall be commenced against Dragon Boat Canada in respect of a dispute, unless Dragon Boat Canada has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this Policy.

## 16. URGENT APPEALS

16.1. Where the appeal relates to a decision arising during a competition and must be dealt with on an urgent basis, notice of the appeal will be provided to the Race Director within 90 minutes of the decision being communicated to the Appellant.

16.2. Within 60 minutes of receiving the notice of appeal, the Race Director will appoint a Panel comprised of three individuals who will have no significant relationship with the affected parties, will have had no involvement with the decision being appealed, and will be free from any other actual or perceived bias or conflict. The Race Director will designate one of the Panel members to serve as Chairperson.

16.3. The Panel will hear and decide the matter using the following procedures:

- (a.) The hearing will be an oral hearing, held in private;
- (b.) The parties will be given 60 minutes notice of the hearing, and may each be accompanied at the hearing by a representative;
- (c.) Quorum will be all three Panel members. Decisions will be by majority vote where the Chairperson carries a vote;
- (d.) The Panel may direct that any other person participate in the appeal;
- (e.) The Panel will render its decision, with reasons, verbally within 30 minutes of the conclusion of the hearing;

16.4. The Panel may, in its sole discretion, adapt such procedures and timelines to accommodate any unique, urgent or unforeseen circumstances during a competition, at all times ensuring that the matter is heard and decided in a timely and fair manner.

16.5. Where the appeal does not relate to a decision arising during a competition but is nonetheless of an extraordinary and urgent nature, upon receiving notice of the appeal the Official will respect the principles set out in this policy but may, in his or her sole discretion, adapt procedures and timelines to ensure that the appeal is heard and decided in a fair and timely manner.

## **17. APPROVAL OF POLICY**

17.1. This policy was first approved by the Board of Directors of Dragon Boat Canada on 15 January 2009. It will be reviewed on an annual basis by the Board and may be amended, deleted or replaced by a resolution of the Board.

## FORM OF NOTICE OF APPEAL

1. Appellant Name: \_\_\_\_\_

2. Appellant Address: \_\_\_\_\_

\_\_\_\_\_

3. At the time of the decision appealed from, I was:

A Team Member of; \_\_\_\_\_

A Coach for; \_\_\_\_\_

Other; \_\_\_\_\_

4. I am appealing for the decision of: \_\_\_\_\_,  
who is a Coach, Team Leader, Program Director, High Performance Program Committee  
Member (strike out inapplicable) or (name position)

\_\_\_\_\_

5. Decision appealed from (describe in some detail):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Date of decision: \_\_\_\_\_

7. Date I was informed of this decision: \_\_\_\_\_

8. I was informed of this decision by (whom): \_\_\_\_\_

9. The decision directly affects me because: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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10. This is what I believe the decision should have been:

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10. The grounds for my appeal are: (describe what you believe was wrong with the decision and why it was wrong and attach as many additional pages as you feel necessary to fully set forth your arguments)

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**NOTE:** Please notify, in writing, the National Office immediately of any change in your contact information. The Committee will communicate with you by mail at the address shown by you unless you notify the national Office of any change n your contact information.