



## Row Ontario – Appeal Policy

Effective date	Oct. 1, 2021
Archived date	
Date last reviewed	Sept. 15, 2021
Scheduled review date	Oct. 2024
Replaces and/or amends	Appeal Policy
Approved by and date	RO Board of Directors, Set. 15, 2021
Appendix(-ces) to this Policy	

### Purpose

1. This *Appeal Policy* provides Individuals with a fair, affordable, and expedient appeal process.

### Scope and Application of this Policy

2. This Policy applies to all Individuals.
3. Any Individual who is affected by a decision taken by Row Ontario specifically with regard to that Individual by the Board, by any committee of the Board or by anybody or individual within Row Ontario who has been delegated authority to make decisions in accordance with Row Ontario's By-laws and governance policies (as applicable), shall have the right to appeal that decision provided that it is a decision that is subject to appeal pursuant to this Policy, that the conditions indicated in this Policy (as applicable) have been satisfied, and provided that there are sufficient grounds for the appeal as described within this Policy.
4. This Policy **will apply** to decisions relating to:
  - a) eligibility
  - b) team selection decisions
  - c) conflict of interest
  - d) membership
  - e) disciplinary decisions made pursuant to Row Ontario's relevant and applicable policies
5. This Policy **will not apply** to the following decisions relating to:
  - a) Matters of general application such as amendments to Row Ontario's By-laws;
  - b) Row Ontario'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) Except as otherwise provided for in this *Appeal Policy*, decisions made by organizations other than Row Ontario, such as Member Organizations, RCA, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), U

- Sports, the International Olympic Committee (IOC), the International Paralympic Committee (IPC), World Rowing or the Fédération Internationale du Sport Universitaire (FISU) or any other governing body;
- f) Selection criteria, quotas, policies and procedures established by entities other than Row Ontario;
  - g) Substance, content and establishment of team selection criteria;
  - h) The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada (or the provincial/territorial equivalent);
  - i) Policy and procedures established by any other agency, association or organization external to Row Ontario;
  - j) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport and World Rowing;
  - k) Protests and appeals made under the Rules of Racing;
  - l) Contractual matters between Row Ontario and its staff for which another dispute resolution process exists under the provisions of the applicable contract; or
  - m) Settlements negotiated pursuant to the *Dispute Resolution Policy*.

### **Timing of Appeal**

- 6. Individuals who wish to appeal a decision have ten (10) days from the date on which they received notice of the decision to submit to Row Ontario's CEO the following:
  - 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 five hundred dollars (\$500), which will be refunded if the appeal is upheld
- 7. An Individual who wishes to initiate an appeal beyond the ten (10) day period may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated immediately 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 ten (10) day period will be at the sole discretion of the Appeal Manager.

### **Grounds for Appeal**

- 8. A decision cannot be appealed on its merits alone or because an Individual (or Individuals) do not like or agree with a decision. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include 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);
  - 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.
9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described immediately above and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

### **Submitting an Appeal**

#### **Complaint Resolution Officer Decision – Member Organizations**

10. A decision made by a Member Organization's Complaint Resolution Officer following a request for reconsideration by one of the Parties pursuant to the *Harassment, Discipline and Complaints Policy* may be appealed to Row Ontario in accordance with this *Appeal Policy*, applied and modified according to the circumstances.
11. Row Ontario shall appoint an Appeal Manager and shall follow the process outlined below, applied, and modified according to the circumstances.
12. Notwithstanding the aforementioned or any provision that says otherwise in this *Appeal Policy*, the Appeal Manager may only appoint a single member Appeal Panel and, unless the Provincial Rowing Association agrees otherwise, any fees (for example, the mediator's fees) related to the use of the *Dispute Resolution Policy* shall be the responsibility of the Parties to the appeal and not the Member Organization or Row Ontario.

#### **Complaint Resolution Officer Decision – Row Ontario**

13. A decision made by Row Ontario's Complaint Resolution Officer following a request for reconsideration by one of the Parties pursuant to the *Harassment, Discipline and Complaints Policy* may be appealed before the Row Ontario's Appeal Panel in accordance with the terms of this *Appeal Policy*.
14. Row Ontario shall appoint an Appeal Manager and shall follow the process outlined below, modified, and applied accordingly based on the circumstances.

#### **Discipline Panel Decision – Row Ontario**

15. A decision made by Row Ontario's discipline panel pursuant to the *Harassment, Discipline and Complaints Policy* may be appealed before Row Ontario's Appeal Panel in accordance with the terms of this *Appeal Policy*.
16. Row Ontario shall appoint an Appeal Manager and shall follow the process outlined below, modified, and applied accordingly based on the circumstances.

17. Any decision by Row Ontario's Appeal Panel in relation to an appeal filed related to a Row Ontario Complaint Resolution Officer or Discipline Panel decision shall be final and shall not be subject to any further appeal before the SDRCC, unless the original Parties to the appeal seize the Sport Dispute Resolution Centre of Canada (SDRCC) on a fee-for-service basis.

### **Other Decisions**

18. Any other Row Ontario decision relating to the matters that fall within this policy as listed above may be appealed in accordance with the process below. Row Ontario decisions relating to the matters indicated in Sections 4(a)-(d) may be appealed in accordance with the process below, modified, and applied accordingly based on the circumstances. Row Ontario decisions relating to the disciplinary decisions made pursuant to Row Ontario's relevant and applicable policies may be heard as indicated in above as laid out in the policy.
19. Row Ontario shall appoint an Appeal Manager and shall follow the process below, modified, and applied accordingly based on the circumstances.

### **Dispute Resolution**

20. For appeals filed pursuant to Sections 13, 15 and 18, the Parties may first attempt to resolve the appeal through the *Dispute Resolution Policy* once the notice of the appeal, the fee, and the information required pursuant to this policy has been received.

### **Screening of Appeal**

21. Should the appeal not be resolved by using the *Dispute Resolution Policy*, Row Ontario will appoint an independent Appeal Manager (who must not be in a conflict of interest or have any direct relationship with the Parties) who has the following responsibilities:
  - a) To determine if the appeal falls under the scope of this Policy
  - b) To determine if the appeal was submitted in a timely manner
  - c) To decide whether there are sufficient grounds for the appeal
22. 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 Appellant will be notified, in writing, of the reasons for this decision.
23. 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.

### **Appointment of Appeal Panel**

24. If an appeal is accepted, 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. In this event, the Appeal Manager will appoint one of the panel's 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), and who do not have any direct relationship with any of the Parties. 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 rowing. 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.

#### **Determination of Affected Parties**

26. In order to confirm the identification of any Affected Parties, the Appeal Manager will engage Row Ontario. The Appeal Manager may determine whether a party is an Affected Party in their sole discretion.

#### **Procedure for Appeal Hearing**

27. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager, in collaboration with the appeal panel, shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.

28. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.

29. 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 alone, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Manager and the appeal panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held in a timely manner within a timeline determined by the Appeal Manager
- b) The Parties will be given reasonable 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 appeal panel consider will be provided to all Parties in advance of the hearing
- d) The Parties may be accompanied by a representative, advisor, or 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 thing 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. The decision to uphold or reject the appeal will be by a majority vote of the appeal panel members, except in cases where the panel consists of a single member

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

## **Appeal Decision**

31. 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
  - 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
  - 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
32. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and Row Ontario. In extraordinary circumstances, the appeal panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record 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.
33. Subject to Section 17 above, the appeal panel's decision is final and binding on the Parties.

## **Timelines**

34. 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 Panel may direct that these timelines be revised.

## **Confidentiality**

35. The appeals process is confidential and involves only the Parties, the Appeal Manager, the 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.
36. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with Row Ontario's relevant and applicable policies.

## **Final and Binding**

37. No action or legal proceeding will be commenced against Row Ontario or any Individuals in respect of a dispute unless Row Ontario has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.

## **Privacy**

38. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Row Ontario's Privacy Policy.
39. Row Ontario or any of its delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel) shall comply with Row Ontario's Privacy Policy in the performance of their services under this Policy.

*Definitions of terms used in this policy can be found as a separate document in the Resource Library online on the Row Ontario website.*