



CANADIAN FREESTYLE SKI ASSOCIATION
ASSOCIATION CANADIENNE DE SKI ACROBATIQUE

808 Pacific Street, Vancouver, British Columbia V6Z 1C2
Tel: (604) 714-2233 Fax: (604) 714-2232 E-Mail: info@freestyleski.com

July 24, 2009

APPEALS PROTOCOL

AS AMENDED THROUGH July 24, 2009

This document sets out an appeals Protocol for use by the Canadian Freestyle Ski Association ("CFSA") and its athletes and coaches. The purpose of this Protocol is to ensure fair and timely consideration of appeals of decisions made within the CFSA High Performance Program.

PROTOCOL

1. Any licensed athlete or coach who is a member of CFSA will have the right to appeal a decision made by the CFSA Board of Directors, of any Committee of the Board, or of any body or individual who has been delegated authority to make decisions on behalf of the Board subject to the limits set out in Articles 2, 3 and 7 of this Protocol.
2. This Protocol will apply to decisions within the CFSA High Performance Program regarding eligibility, selection, allocation of competitive opportunities, discipline or Athlete Assistance Program ("AAP") carding.
3. For further clarity, this Protocol will not apply to matters relating to:
 - a) Selection criteria, quotas, policies and procedures established by entities other than CFSA including, but not limited to, Fédération Internationale de Ski,

- International Olympic Committee, Canadian Olympic Committee or the Canada Games Council;
- b) The Sport Canada Athlete Assistance Program policies and procedures established by Sport Canada;
 - c) Policy and procedures established by any other agency, association or organization external to the CFSA;
 - d) Infractions for doping offences, which are dealt with pursuant to the *Canadian Anti-Doping Program* or any successor policy.
 - e) Allegations of harassment;
 - f) Operational structure, staffing or employment;
 - g) Budgeting or budget implementation;
 - h) Competition rules; or
 - i) Commercial matters for which another dispute resolution process exists under a contract or applicable law.

4. The CFSA will appoint a Case Manager to oversee management and administration of appeals submitted in accordance with this Protocol. The Case Manager will be an appointee of the CFSA Board of Directors. The Case Manager will be independent of the CFSA and will have an appropriate background in law and/or dispute resolution. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Protocol, and to implement this Protocol in a timely manner. More particularly, the Case Manager has a responsibility to receive appeals, determine if appeals lie within the jurisdiction of this Protocol, determine if appeals are brought on permissible grounds, appoint the tribunal to hear appeals, determine the format of the appeal hearing, coordinate all administrative and procedural aspects of the appeal, and provide administrative assistance and logistical support to the tribunal as required.

5. The timelines that govern this Protocol are as shown in the attached chart titled 'Appeal Timelines'. The Case Manager reserves the right to modify these timelines as required to accommodate the particular circumstances of an appeal.

6. Athletes and coaches who wish to appeal a decision must submit a written Notice of Appeal to the Case Manager within the appropriate timeline indicating:

- a) Their intention to appeal;
- b) Coordinates of the Appellant;
- c) Name of the Respondent;
- d) Detail reason(s) for the appeal;
- e) Grounds for the appeal;
- f) Summary of the evidence to support these reason(s) and grounds for the

- g) appeal;
The suggested remedy or remedies requested.

All appeals must be accompanied by a \$250 administrative fee that is non-refundable.

7. An appeal may only be heard if there are sufficient grounds for the appeal. Sufficient grounds include 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 the Association;
- (c) Making a decision that was influenced by bias;
- (d) Failing to consider relevant information or taking into account irrelevant information in making the decision.
- (e) Exercising its discretion for an improper purpose; and/or
- (f) Making a decision that was unreasonable.

8. Within the appropriate timeline the Case Manager will review the Notice of Appeal and will decide whether or not there are sufficient grounds for an appeal. If the Case Manager is satisfied that there are not sufficient grounds for an appeal, the parties will be notified of this decision in writing, stating reasons. If the Case Manager is satisfied that there are sufficient grounds for an appeal, then a hearing will take place.

9. Within the appropriate timelines, the Case Manager will appoint a tribunal consisting of a single Adjudicator to hear the appeal. In extraordinary circumstances, and at the discretion of the Case Manager, a tribunal of 3 Adjudicators may be appointed to hear and decide a case. In this event, the Case Manager will appoint one of the tribunal's members to serve as the Chair.

10. The Case Manager will determine the format of the hearing, which may involve an oral hearing in person, an oral hearing by telephone, a hearing based on written submissions or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the tribunal deem appropriate in the circumstances, provided that:

- a) The hearing will be held within the appropriate timeline.
- b) The parties will be given appropriate notice of the day, time and place of the hearing.
- c) Copies of any written documents which the parties wish to have the tribunal consider will be provided to all parties in advance of the hearing

- in accordance with the appropriate timeline.
- d) Both parties may be accompanied by a representative or adviser, including legal counsel.
- e) The tribunal may request that any other individual participate and give evidence at the hearing.
- f) If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Protocol, that party will become a party to the appeal in question and will be bound by its outcome.
- g) The hearing will be conducted in the official language of choice of the Appellant.
- h) In the situation where the hearing is conducted by a Tribunal consisting of three Adjudicators, a quorum will be all three and decisions will be by majority vote.

11. At the conclusion of the Hearing, the tribunal will, within the appropriate timeline, issue a written decision with reasons. The tribunal will have no greater authority than that of the original decision-maker. The tribunal may decide:

- (a) To reject the appeal and confirm the decision being appealed; or
- (b) To uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
- (c) To uphold the appeal and vary the decision but only 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 procedures, lack of time, or lack of neutrality; and
- (d) To determine whether costs of the appeal, excluding legal fees and legal disbursements of any parties, will be assessed against any party. In assessing costs, the Adjudicator will take into account the outcome of the appeal, the conduct of the parties and their respective financial resources.

12. The decision will be considered a matter of public record. A copy of this decision will be provided to the parties and to the Chief Executive Officer of the CFSA. Where time is of the essence, the tribunal may issue a verbal decision or a summary written decision, with reasons to follow provided the written decision with reasons is rendered with the appropriate timelines.

13. The appeal process is confidential involving only the parties, the Case Manager and the tribunal. Once initiated and until a written decision is released, none of the parties or the tribunal will disclose confidential information relating to the appeal to any person not involved in the proceedings.

14. The decision of the tribunal will be final and binding upon the parties and upon all members of CFSA subject to the right of any party to seek a review of the decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time, and subject to these limitations:

- a) The 'law' to be considered by the SDRCC tribunal is the internal rules, criteria and policies of CFSA;
- b) The 'facts' to be considered by the SDRCC tribunal are the facts relevant to the case under appeal;
- c) If the SDRCC tribunal determines that CFSA has made a decision in error, the role of the tribunal is to identify that error and send the matter back to the CFSA to make the decision free from error, unless this is not possible or practical;
- d) The parties will execute a arbitration agreement that will confirm the jurisdiction of the SDRCC tribunal to decide the matter, specify the precise decision under appeal, specify the issues in dispute and specify other matters the parties agree will be binding on themselves and the SDRCC tribunal.

15. Notwithstanding above paragraphs, for any matters related to the Athlete Assistance Program Nomination or de-carding, all appeals must follow the Policies and Procedures of Sport Canada's Athlete Assistance Program (AAP) Section 13.1 http://www.pch.gc.ca/progs/sc/pol/athlete05/1_e.cfm.