

## **SJC CANADA**

### **APPEAL POLICY**

**September 2014**

#### **Preamble**

1. Ski Jumping Canada (SJC) recognizes the right of any Member to appeal the decisions of SJC and hereby provides for an appropriate process for resolving disputes that could arise from time to time from such decisions of SJC.

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

#### **Definitions**

2. **Appeal Form:** Refers to a request submitted by the Appellant(s) attached as Appendix B;

**Appellant:** Refers to a Member appealing a decision of SJC;

**Arbitration:** Refers to the arbitration process as established by the ADRsportRED Code, as amended from time to time;

**Days:** Means total days, irrespective of weekends or holidays;

**Mediation:** Refers to the mediation process as established by the ADRsportRED Code, as amended from time to time;

**Member:** Refers to all categories of members in SJC, as well as to all individuals engaged in activities with or employed by SJC, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, provincial sport organizations and employees including contract personnel;

**Official:** Refers to the person in charge of managing the case. In most cases, the Chair, SJC will be the Official. If the Chair has been involved in the decision being appealed, the Executive of SJC shall name another Official. This person can be anybody who has no involvement with the decision being appealed. The Official will act as the Case Manager;

**Panel:** Refers to the appeal panel established as provided by Section 7;

**Respondent:** Refers to the body, person or persons whose decision is being appealed;

**Working Days:** Means total days, excluding weekends and holidays;

**Written Statement:** Refers to the response submitted by the Respondent(s) attached as Appendix C.

3.1 Any Member of SJC 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 SJC or its Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal, as set out in Section 10;

3.2 Without limiting the scope of section 3.1, 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 rules of SJC, as set out in which may not be appealed;
- c) Disciplinary matters arising during events organized by entities other than SJC, which are dealt with under the policies of these other entities, provided that they have an appeal policy in place.
- d) Criminal offences for which the Appellant(s) is/are seeking a criminal conviction;
- e) Commercial matters for which another appeal process already exists under the applicable law or contract;
- f) Matters relating to employment disputes.

### **Timing for Appeal**

4.1 Members who wish to appeal a decision will have 15 days from the date they received notice of the decision, to submit their Appeal Form to the Official;

4.2 Any Member wishing to submit the Appeal Form beyond the 15-day period must provide a written request stating reasons for an exemption to the requirement of Sub-section 4.1;

4.3 The decisions to allow or not the exemption as provided by Sub-section 4.2 will be at the discretion of the Panel as establish in conformity with Section 8.

### **Appeal Form and Discussion**

5.1 Members who wish to appeal a decision of SJC that affects them must apply to the Official to initiate the appeal process using the Appeal Form (see appendix B). The appeal process does not begin until such application is made.

5.1. 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) The decision being appealed;
- e) The grounds for the appeal;
- f) A summary of the evidence that supports these grounds;

- g) A list of the witnesses to be called at the hearing with a summary of the evidence to be provided by them;
- h) The remedy sought;
- i) Whether or not representative(s) will be present; and
- j) The request for timing-exemption, as provided by Sub-section 4.2, when required;

5.3 Upon receiving the Appeal Form, the Official will discuss the circumstances with the Appellant(s) and, without any delay, will notify the Respondent(s) in writing and forward a copy of the Appeal Form to the Respondent(s);

5.4 Before proceeding further, the Official will ensure that the Appellant(s) and the Respondent(s) have attempted to resolve the dispute privately between themselves, by any mean possible in the circumstances. If this attempt is not successful, the Official must be informed within five days of his/her receipt of the Appeal Form. It is expected that most issues will be resolved at this level.

### **Written Statement**

- 6.1. If the attempt to resolve the dispute through discussion between the parties does not succeed, the Official will request a Written Statement by the Respondent(s) (see Appendix C) outlining the justification for the decision or the practice being appealed;
- 6.2. The Written Statement will contain:
  - a) A summary of the evidence that supports the Respondent(s)' case;
  - b) The list of witnesses to be called at the hearing and the summary of the evidence to be provided by them; and
  - c) Whether or not representative(s) will be present;
- 6.3. The Written Statement shall be forwarded to the Official within five working days from the date of receipt of the Official's request, or such longer period as the Official may specify;
- 6.4. The Official must forward a copy of the Written Statement to the Appellant(s) without delay after receipt;
- 6.5. Should the Respondent(s) fail to submit the Written Statement within the time-limit provided by Sub-section 6.3, the Official will initiate the establishment of the Panel without further delay and notify the parties of such.

### **Appeal Panel**

- 7.1 Within ten days of having received the Appeal Form, the Official will initiate the establishment of a 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

- c) Should the Respondent(s) fail to submit the Written Statement, as provided by Sub-section 6.5, the Panel will consist of one person nominated by the Appellant(s), one person nominated by the Official (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 Official;

7.2 All three members of the Panel must be nominated respecting the following conditions:

- a They must have no significant relationship with the affected 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;

7.3 As soon as they are nominated, the members of the Panel will be forwarded a copy of the Appeal Form and Written Statement

### **Grounds for Appeal**

8.1 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 SJC;
- 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.

### **Screening of Appeal**

9.1 Within 2 working days of receiving the Appeal Form, the Panel will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 8.1 above;

9.2 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;

9.3 If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons; If the Appellant(s) believe(s) 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 ADRsportRED Code, as amended from time to time.

### **Preliminary Conference**

10.1 . Within seven days of receiving the Appeal Form and Written Statement, the Panel will 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) Clarification of issues in dispute;
- e) Clarification of evidence to be presented to the Panel;
- f) Order and procedure of hearing;
- g) Any procedural matter;
- h) Clarification of remedies sought;
- i) Any other matter that may assist in expediting the appeal proceedings.

10.2 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;

10.3 The participants in the preliminary conference shall be the Appellant(s), the Respondent(s), their representatives, if any, the Case Manager and the Panel;

10.4 The Chairperson and the Case Manager shall arrange the preliminary conference and its precise date and time in concert with the participants;

10.5 The Panel may delegate to its Chairperson the authority to deal with these preliminary matters;

10.6 The Case Manager shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s) and Respondent(s) the appeal procedure established at this preliminary conference within two working days after the conclusion of such conference, and after having received the written confirmation approved by the Panel.

### **Procedure for the Appeal**

11.1 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, 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) 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;
- g) The Panel may direct that any other person or party participate in the appeal;
- 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

### **Procedure for Documentary Appeal**

12.1 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;

The applicable principles and timelines set out in Section 11 are respected.

### **Evidence that may be Considered**

13.1 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.

13.2 Unless a party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Form or Written Statement, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after the preliminary conference, other than that provided orally by witnesses at the hearing;

13.3 The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place;

13.4 If a party believes the Panel has made an error in admitting or rejecting an additional element of proof as provided by Sub-section 13.3, the matter may be referred to Arbitration or Mediation, such Arbitration or Mediation to be administered under the ADRsportRED Code, as amended from time to time.

### **Appeal Decision**

14.1 Within five working days of concluding the appeal, the Panel will issue its written decision, with reasons. 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;
- 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;

14.2 A copy of this decision will be provided to each of the parties and to the Case Manager;

14.3 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 Sub-section 14.1.

### **Modification of Timelines**

15.1 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

## **Arbitration and Mediation**

16.1 All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy;

16.2 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 dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor, which will resolve definitively the dispute in accordance with the ADRsportRED Code, as amended from time to time;

16.3 Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation;

16.4 The award rendered by the dispute resolution secretariat of the Sport Dispute Resolution Centre of Canada or its successor shall be final and binding upon the parties.

## **Appendix A – Chart of Timelines**

<b>Step</b>	<b>Section</b>	<b>Timeline (days) from the previous step</b>	<b>Days since knowledge of the disputed decision</b>
I. Disputed Decision			1
II. Filing of Appeal Form	5	15	16
III. Discussion between the parties	5	5	21
IV. Written statement of the Respondent(s)	6	5	26
V. Establishment of Panel	7	10	36
VI. Screening of Appeal	9	2	38
V. Preliminary Conference	10	7	46

VI. Written confirmation of decisions taken during the Preliminary Conference	10.6	2	48
VII. Hearing	11	As decided during the Preliminary Conference	Unspecified
VIII. Decision	14	5	50

## Appendix B - Formal Appeal

Date:

\_\_\_\_ - \_\_\_\_ - \_\_\_\_  
MM DD YYYY

### **APPELLANT**

Name of the Appellant:

\_\_\_\_\_

Age of Appellant:

\_\_\_\_\_

Address of Appellant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers of Appellant:

Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Other: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax Number of Appellant:

(\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-Mail of Appellant:

\_\_\_\_\_

### **REPRESENTATIVE**

Name and Coordinates of the Representative, if any (including phone numbers):

\_\_\_\_\_  
\_\_\_\_\_

Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

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

### **DECISION**

What decision or practice do you wish to appeal?

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\_\_\_\_\_  
\_\_\_\_\_

Why do you think the decision is wrong or

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**WITNESSES**

- List of Witnesses to be called at the hearing;
- Coordinates of these witnesses (including phone numbers);  
and
- Summary of evidence to be provided by each of them.

**Witness N° 1:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of evidence:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Witness N° 2:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Summary of evidence:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Witness N° 3:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_

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Summary of evidence:

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**Witness N° 4:**

Name:

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Coordinates:

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Summary of evidence:

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**Witness N° 5:**

Name:

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Coordinates:

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Summary of evidence:

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**REMEDY**

What action or decision do you want ABC to take or make to correct the situation?

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**EXEMPTION**

If the decision was taken more than 15 days ago, why haven't you filed this Notice of Disagreement before the 15 days time-limit as provided by ABC's Appeal Policy (Section 4)

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## Appendix C - Written Statement

Date:

\_\_\_\_ - \_\_\_\_ - \_\_\_\_  
MM DD YYYY

### **RESPONDENT**

Name of Respondent:

\_\_\_\_\_

Address of Respondent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers of Respondent:

Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Other: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax Number of Respondent:

(\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-Mail of Respondent:

\_\_\_\_\_

### **REPRESENTATIVE**

Name and Coordinates of the Representative, if any (including phone numbers):

\_\_\_\_\_  
\_\_\_\_\_

Home: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Work: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

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

### **JUSTIFICATION**

- Justification for the decision or practice being appealed (reasons);
- and
- Summary of the evidence that supports this justification (Documents, Pictures, Rules and By-Laws, Audio-Visual, etc.).

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(including phone numbers);

and

- Summary of evidence to be provided by each of them.

Coordinates: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Summary of evidence:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Witness N° 2:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Summary of evidence:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Witness N° 3:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Summary of evidence:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Witness N° 4:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_

\_\_\_\_\_  
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Summary of evidence:

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**Witness N° 5:**

Name: \_\_\_\_\_

Coordinates: \_\_\_\_\_  
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Summary of evidence:

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