

Appeal Policy

Purpose

1. This *Appeal Policy* provides Organizational Participants with a fair and expedient appeal process.

Scope and Application of this Policy

2. This Policy applies to all Organizational Participants, including Players and Spectators.
3. Any Organizational Participant or other individual who is directly affected by a decision of Esport Canada or a Dispute Resolution Officer, as the case may be, shall have the right to appeal that decision if there are sufficient grounds for the appeal under the **Grounds for Appeal** section of this Policy.
4. This Policy **will apply** to decisions relating to the following, except where excluded by policy:
 - a) eligibility;
 - b) selection;
 - c) conflict of interest;
 - d) discipline; and
 - e) membership, including application for membership.
5. This Policy **will not apply** to decisions relating to:
 - a) employment;
 - b) infractions for doping offenses;
 - c) the rules of the sport;
 - d) selection criteria, quotas, policies, and procedures established by entities other than Esport Canada;
 - e) substance, content and establishment of team selection or carding criteria;
 - f) volunteer/coach appointments and the withdrawal or termination of those appointments;

- g) budgeting and budget implementation;
- h) the applicable organization's operational structure and committee appointments;
- i) Operational decisions of a Member or decisions or discipline arising within the business, activities, or events organized by entities other than Esport Canada, including Members (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by Esport Canada at its sole discretion);
- j) commercial matters for which another appeals process exists under a contract or applicable law;
- k) decisions made under this Policy;
- l) decisions made by the Internal Discipline Chair under Process #1 of the *Discipline and Complaints Policy*, or
- m) any complaint dealt with under the CSSP process, and any decision made thereunder.

Timing of Appeal

6. Organizational Participants who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit all the following, in writing, to Esport Canada or their identified designate:
- a) notice of the intention to appeal;
 - b) their contact information;
 - c) name and contact information 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 decision if written document is not available;
 - f) grounds for the appeal;
 - g) detailed reasons for the appeal;
 - h) all evidence that supports these grounds;
 - i) requested remedy or remedies; and

- j) an administration fee of five hundred dollars (\$500).
7. An Organizational Participant who wishes to initiate an appeal beyond the seven (7) day period must provide a written request stating the reasons for an exemption. The decision to allow, or not allow an appeal outside of the seven (7) day period will be at the sole discretion of the Appeal Manager and may not be appealed.

Decisions (Generally)

8. A decision made by a Dispute Resolution Officer pursuant to the *Discipline and Complaints Policy* may be appealed Panel in accordance with the terms of this Appeal Policy.
9. Notwithstanding any other provision in this Appeal Policy, by agreement between the Parties, the internal appeal process may be bypassed, and the appeal may be heard directly before the Sport Dispute Resolution Centre of Canada (SDRCC).
10. Except where an appeal proceeds before the SDRCC, Esport Canada shall appoint an Appeal Manager and shall follow the process outlined in accordance with Sections 22-25 of this Appeal Policy.

Member Appeals

11. Esport Canada may hear appeals of Member decisions heard pursuant to this Policy, at its discretion, upon receiving a written request from a Member for Esport Canada to hear an appeal under this Policy.
12. In such circumstances, the Member is responsible for all costs associated with the appeal.

Grounds for Appeal

13. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include Esport Canada or designate:
- a) made a decision that it did not have the authority or jurisdiction (as set out in the applicable governing documents) to make;
 - b) failed to follow its own procedures (as set out in the applicable 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 unreasonable.

14. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 12 of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

Screening of Appeal

15. Esport Canada will appoint an Appeal Manager, who must not be in a conflict of interest, 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; and
 - c) to decide whether there are sufficient grounds for the appeal.
16. If the Appeal Manager denies the appeal because 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. This decision may not be appealed.
17. If the Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an Appeal Panel which shall consist of a single arbitrator to hear the appeal.
18. In extraordinary circumstances, and at the discretion of the Appeal Manager, an Appeal Panel composed of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the Appeal Panel's members to serve as the Chair.
19. 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 esports. 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.

Dispute Resolution

20. If the appeal has been accepted pursuant to Section 17, the Parties may attempt to resolve the appeal through informal dispute resolution pursuant to the *Discipline and Complaints Policy* before proceeding to an appeal hearing. Appeals resolved by mediation under Esport Canada's *Dispute Resolution Policy* or through Early

Resolution Facilitation at the SDRCC will result in the administration fee being refunded to the Appellant.

Determination of Affected Parties

21. To confirm the identification of any Affected Parties, the Appeal Manager will engage Esport Canada. The Appeal Manager may determine whether a Party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

22. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager 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.
23. If a Party chooses not to participate in the hearing, the hearing will proceed without further notice or opportunity to participate or provide submissions for the Party refusing to participate.
24. The format of the hearing may involve an 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, 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. The following guidelines will apply to the hearing:
 - a) The hearing will be held 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 any of 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) 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 Policy, that Party will become an Affected Party to the appeal in question and will be bound by its outcome; and
- h) The decision to uphold or reject the appeal will be by a majority vote of Appeal Panel members.

25. In fulfilling its duties, the Appeal Panel may obtain independent advice.

Appeal Decision

- 26. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made an error as described in the Grounds for Appeal section of this Policy and that this error had a material effect on the decision or decision-maker.
- 27. The Appeal Panel shall issue its decision, in writing and with reasons, within seven (7) 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 and refer the matter back to the initial decision-maker for a new decision;
 - c) uphold the appeal 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.
- 28. If the appeal hearing concerns a decision related to selection to competition for which Esport Canada is responsible for selecting the team, such decision shall be issued within seven (7) days of the hearing's conclusion, unless a decision must be rendered sooner due to an impending departure, or entry deadline.
- 29. The Appeal Panel's written decision, with reasons, will be distributed to all parties, the Appeal Manager, and Esport Canada. 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 and published according to

the Publication Guidelines 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.

30. Publication of an Appeal shall follow the *Publication Guidelines* outlined in Appendix “B” of the *Discipline and Complaints Policy*.

Timelines

31. 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 Appeal Panel may direct that these timelines be revised.

Confidentiality

32. The appeals process is confidential and involves only the parties, Esport Canada, the Appeal Manager, the Appeal Panel, and any independent advisors to the Appeal Panel. Once initiated and until a decision is released, none of the Parties (or their representatives or witnesses) will disclose confidential information relating to the appeal to any person not involved in the proceedings, unless Esport Canada is required to notify an organization such as an international federation, other sport organization (i.e., where an interim measure or Provisional Suspension has been imposed and communication is required to ensure that they may be enforced), or notification is otherwise required by law.
33. Any failure to respect the confidentiality requirement may result in further sanctions or discipline by the Appeal Panel.

Final and Binding

34. The decision of the Panel shall be binding on the Parties.
35. No action or legal proceeding will be commenced against Esport Canada, its designates or Organizational Participants in respect of a dispute, unless Esport Canada has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.

Privacy

36. The collection, use and disclosure of any Personal Information pursuant to this Policy is subject to Esport Canada’s *Privacy Policy*.
37. Esport Canada or any of its delegates pursuant to this Policy (i.e., Appeal Manager, Appeal Panel), shall comply with Esport Canada’s *Privacy Policy* in the performance of their services under this Policy.