



Freestyle Canada High Performance Program Selection
Appeal Protocol
Updated November 2020

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Complimentary Policies

Internal to FC

- [Discrimination and Harassment Policy](#)
- [Whistle Blower Protection Policy](#)
- [Bullying Policy](#)
- [Code of Conduct](#)

External to FC

- [CCES Anti-doping](#)
- [WADA Anti-doping](#)
- [FIS Anti-doping](#)
- [Sport Canada AAP](#)

Purpose

1. This document sets out the policy and procedure for appealing a selection decision made by any Freestyle Canada (FC) member who is directly affected by an FC decision. It provides for an internal process and, in most cases, a final external process. The purpose of this Policy is to enable disputes with FC members to be dealt with fairly, expeditiously and affordably within FC and without recourse to external procedures.

Definitions

2. The following terms have these meanings in this policy:
 - a. “*HPP*” – High Performance Program
 - b. “*Appellant*” – The Party appealing a decision
 - c. “*Case Manager*” – Individual experienced with the management of disputes in an unbiased manner (details in section 12)
 - d. “*Days*” – Calendar days including weekends and holidays
 - e. “*Parties*” – The Appellant, Respondent, Case Manager and any other individuals affected by the appeal
 - f. “*FC member*” – all FC members and participants, as defined in the by-laws, including but not limited to coaches, officials, athletes (including athletes training at a national team training camp/centre and those selected to the high performance program), team managers and team staff, competition organizers, administrators, volunteers, staff and contractors of FC.
 - g. “*Respondent*” – the party whose decision is being appealed.
 - h. “*WSC*” – FIS World Ski Championships, “*Jr. WSC*” FIS Junior World Ski Championships.
 - i. “*OWG*” – Olympic Winter Games, “*YOG*” – Youth Olympic Games
 - j. “*FIS*” - Fédération Internationale de Ski (International Ski Federation)
 - k. “*COC*” – Canadian Olympic Committee

Application

3. Any FC HPP member who is affected by a decision taken by FC specifically by any committee or by any individual within FC who has been delegated authority to make a decision in accordance with FC's policies and procedures, shall have the right to appeal that decision subject to the terms and conditions set out in this policy (below).
4. This policy **will apply** to FC decisions relating to eligibility, selection, conflict of interest, discipline, allocation of competitive opportunities and Sport Canada's Athlete Assistance Program (AAP) carding nominations.
5. For further clarity, this policy **will not apply** to matters relating to:
 - a. Selection criteria, quotas, policies and procedures established by entities other than FC including, but not limited to the FIS, the International Olympic Committee, the Canadian Olympic Committee or the Canada Games Council;
 - b. Operational matters such as:
 1. Issues of budgets and budget implementation;
 2. FC employment matters or matters of operational structure, committee structure, staffing or volunteer leadership opportunities;
 3. General application such as amendments to the FC bylaws;
 - c. Substance, content and establishment of team selection criteria. Should a member have suggestions regarding a policy they should express their input to the CEO within a reasonable time, usually within a week, of publication
 - d. Sport Canada's Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
 - e. Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport, the World Anti-Doping Agency, the IOC and FIS;
 - f. Competition rules
 - g. Contractual matters between FC and its staff or members for which another dispute resolution process exists under the provisions of the applicable contract.

Process for Publication of Policies

Freestyle Canada is responsible for the creation of policies for the selection of the HPP members to FIS level competitions up to the level of the WSC.

Freestyle Canada HP staff members will craft the policies then share them with coaches and athletes at which point they will consider input from affected parties during the consultation process.

Once posted, policies are considered in place and cannot be appealed.

The internal nomination procedures for the OWG and YOG are created under the guidance and authority of the COC. The Sport Canada Athlete Assistance Program nomination criteria is created under the guidance of Sport Canada.

Timing of Appeal

6. **Individuals who wish to appeal a decision** must submit a written Notice of Appeal to the Chief Executive Officer (CEO) within the timelines identified on the chart (below) of being notified of the decision.

There are three general types of appeals:

- Competitive opportunity
 - Normal – at least 14 days before the departure to the event
 - Short Turnaround – 7 days or less before the departure to the event
- HPP selection
- Other decisions

Appeal Timeline Table

Appellant Action	Case manager action / timeline	Timeline (black font – appellant; red font – case manager)			Freestyle Canada Action
		Competitive Opportunity – short turnaround	Competitive Opportunity – normal	HPP Selection	
Verbal or electronic notice of intent to appeal to the CEO	n/a	Within 24 hours of announcement	Within 48 hours of announcement	Within 3 days of announcement	CEO to acknowledge receipt and initiate communication with case manager; share with appellant
Written grounds provided to case manager	<i>Acknowledgment of receipt</i>	Within 24 hours of noting of intent	Within 24 hours of noting of intent	As determined by the case manager	
	<i>Screening: are the grounds for appeal are substantiated</i>	Within 4 business hours (EST) of receipt of grounds	Within 24 hours of receipt of grounds	Within 48 hours of receipt of grounds	
	<i>Appointment of tribunal</i>	Put on standby pending substantiated grounds	Put on standby pending substantiated grounds	Within 7 days of determining if grounds exist for an appeal	
	<i>Hearing</i>	Within 24 hours if grounds exist	Within 24 hours if grounds exist	Within 7 days if grounds exist	
	<i>Release of Decision</i>	Within 2 hours of the completion of the hearing	Within 2 hours of the completion of the hearing	Within 3 days of the completion of the hearing	Implementation of decision

Note 1: “Days” refers to total number of days.

Note 2: Pursuant to Article 5, the Case Manager reserves the right to modify these timelines as required to accommodate the particular circumstances of an appeal.”

Note 3: The Case Manager will have the ability to address selection situations not covered in this table in a fair manner.

Grounds for Appeal

7. A decision cannot be appealed simply because a member does not like or agree with it. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds for appeal occur where the Respondent:
 - a. Made a decision that it did not have authority or jurisdiction to do so as set out in governing documents;
 - b. Failed to follow procedures as laid out in the policies or protocols of FC;
 - c. Made a decision which was influenced by bias, bias being 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 purpose;
 - e. Made a decision that was grossly unreasonable or unfair.
8. The Appellant will bear the onus of proof in the appeal and therefore must be able to demonstrate, on a balance of probabilities, that the Respondent to the Appeal has made an error as described in section 7 above.

Notice of Intent to Appeal

9. The Notice of Intent to Appeal sets in motion the Appeal Process. An appellant begins this process when they contact the CEO of Freestyle Canada to express their intent to appeal a decision. This can be done verbally (in person or by phone) or electronically (e-mail, text, etc.).

In the discussion/message, the appellant will:

- a. Identify the decision they wish to appeal and their contention as to reason the decision was wrong.
- b. Provide their current contact information including phone and e-mail.

Submission of the Written Appeal

10. The Notice of Intent to Appeal shall include the following information:
 - a. Notice of the Intention to Appeal
 - b. Contact information and status of the Appellant
 - c. Name of the Respondent and any affected parties
 - d. Date the Appellant was advised of the decision under appeal
 - e. Copy of the decision being appealed, or description of the decision if the written document is not available
 - f. Grounds for Appeal
 - g. Detailed reasons to support the grounds raised
 - h. Requested remedy or remedies
 - i. Administrative fee of Five Hundred Dollars (\$250.00) - cash, certified cheque, e-transfer, bank draft or credit card; this sum shall be refunded if the appeal is upheld.
11. An Individual who wishes to initiate an appeal beyond the identified timelines must provide a written request stating the reasons for an exemption. The decision to allow, or not allow, an appeal outside the identified period will be at the discretion of FC and may not be appealed.

Screening of Appeal

12. FC shall appoint a Case Manager to oversee management and administration of appeals submitted in accordance with this Policy. The Case Manager should be an experienced individual in the management of disputes with a record of behaving in an unbiased manner. He or she must not have a direct connection to the dispute or the outcome. The Case Manager may or may not be a member of Freestyle Canada.
13. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this policy and to implement the policy in a timely manner. More particularly, the Case Manager has a responsibility to:
 - a. Receive the appeal;
 - b. Determine if the appeal lies within the jurisdiction of this Policy;
 - c. Determine if the appeal has been brought on permissible grounds;
 - d. Appoint an Appeal Panel to hear the appeal;
 - e. Determine the format of the appeal hearing;
 - f. Coordinate all administrative and procedure aspects of the appeal;
 - g. Provide administrative assistance and logistical support to the appeal panel as required; and
 - h. Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.
14. The Case Manager will first consider whether sufficient grounds for making an appeal have been demonstrated and will reject the appeal without further consideration if it determines that the required criteria for an appeal set out in paragraph 9 have not been met. If satisfied that there are not sufficient grounds for an appeal, the parties will be notified of this decision in writing with reasons. **This decision may not be appealed.**
15. If the Case Manager is satisfied that there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals Panel consisting of a single adjudicator to hear the appeal. In extraordinary circumstances and in the sole discretion of the Case Manager an appeal panel of three (3) persons may be appointed to hear and decide a case. In this event the Case Manager will appoint one of the appeal panel's members to serve as the Chair of the Appeal Panel and the Appeal Panel Chair shall appoint the remaining two (2) members of the Panel. Each member of the Appeal Panel shall be appointed for their independence and expertise.

Timing of Appeal

16. The timelines that govern this Protocol are as shown in the above chart titled 'Appeal Timelines'.
 - a. For the decision as to whether the hearing will proceed, the Case Manager will adhere to the timelines published in the Appeal Timeline table.
 - b. Should a hearing proceed, the Case Manager reserves the right to modify the timelines as required to accommodate the particular circumstances of an appeal.

Procedure for the Appeal Hearing

17. The Case Manager shall notify the parties that the appeal will be heard.

18. The format of the hearing may involve an in-person hearing, an electronic (phone, video conference, etc.), a hearing based on document review, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the panel deem appropriate, provided that:
 - a. The hearing will be held within the appropriate timeline determined by the Case Manager,
 - b. The parties will be given reasonable notice of the day, time and place of the hearing
 - c. Copies of any written documents which the parties wish to have the 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 panel may request any other person to participate and give evidence at the hearing;
 - f. The panel may allow as evidence at the hearing any oral and documentary evidence relevant to the subject matter of the appeal, but may also 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, that party will become a party to the appeal in question and will be bound by its outcome;
 - h. If more than one panel member is appointed, the decision to uphold or reject the appeal will be a made by a majority vote of the panel members.

19. Should a party choose not to participate in the hearing; the hearing will proceed in any event.

Appeal Decision

20. The Appeal panel is expected to render its written decision, with reasons, in accordance with the Appeals Timeline table: the Case Manager may vary this time frame according to the circumstances and complexity of the matter. An exception to this is the time frame within which decisions relating to National Team selection or AAP Carding will be rendered.

21. 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, will be assessed against any Party. In determining costs, the Panel will take into account the outcome of the appeal, the conduct of the Parties and the Parties' respective financial resources.

22. The Panel's written decision, which reasons, will be distributed to the Parties, the Case Manager and FC. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Confidentiality

23. The appeal process is confidential involving only the parties, the Case Manager and the appeal panel. Once initiated and until a decision is released, none of the parties or the appeal panel

shall disclose information relating to the appeal to any person not involved in the proceedings save and except legal counsel.

Final and Binding Decision

24. The decision of the appeal panel shall be final and binding upon the parties and upon all FC members, subject to the right of any party to seek judicial review of the appeal panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time and subject to the following limitations:
 - e. The 'law' to be considered by the SDRCC tribunal is the internal rules, criteria and policies of FC;
 - f. In the event that a member is successful during the process of judicial review before the SDRCC, the SDRCC Tribunal shall only have the jurisdiction to remit the matter back to FC to correct the error;
 - g. Identified by the SDRCC, unless this is not practicable in the circumstances or the parties agree otherwise;
 - h. The parties will execute an arbitration agreement that shall confirm the jurisdiction of the SDRCC Tribunal to decide the matter, specifically the precise decision under appeal and the issues in dispute and shall specify other matters that the parties agree will be binding on themselves and the SDRCC Tribunal.

Where a decision under appeal relates to a carding matter governed by the policies and procedures of the AAP of the Federal Government, Sport Canada shall be invited as a party in the review of the appeal panel's

