

# **DISPUTE RESOLUTION POLICY**

## **PART ONE**

### **DISPUTES INVOLVING MINOR INFRACTIONS**

#### **APPLICATION**

Part One applies to minor infractions which may arise during the course of all OBSA business, activities and events, including but not limited to, competitions, training camps, meetings and travel associated with these activities.

#### **DISCIPLINARY PROCEDURES**

All disciplinary situations involving minor infractions defined in Appendix A and occurring within the jurisdiction of OBSA shall be dealt with by the appropriate person having authority over the situation and the individual involved (this person may include, but is not restricted to, a board member, committee arbitrator, competition chairperson, official, coach, team manager, team captain or head of delegation).

Procedures for dealing with minor infractions shall be informal as compared to Part Three and shall be determined at the discretion of the person responsible for discipline of such infractions, provided the individual being disciplined is told the nature of the infraction and has an opportunity to provide information concerning the incident.

Minor infractions shall be recorded by the appropriate person having authority over the situation using the Incident Report from Appendix C to this Policy and sent to the High Performance Director. Repeat minor offences may result in a further such incident being referred to as a major infraction.

If a party believes the decision of the person having taken the decision has violated the rule of natural justice, the decision may be appealed according to the OBSA Appeal policy.

## **PART TWO**

### **DISPUTES ARISING WHILE IN COMPETITION AND WHERE THERE IS A CRITICAL LACK OF TIME**

Any dispute between OBSA membership arising while in competition and where there is a critical lack of time resulting from a breach of OBSA policies, rules and contracts, shall be governed by these provisions.

As this dispute is while in competition or where there is a critical lack of time every effort should be made by all parties to bring the issue to resolve within 72 hours of the receipt of a written complaint by the HPD.

The term «while in competition» shall mean any period of time where the OBSA member is in or out of Canada under the auspices of OBSA, including traveling to competitive events, participating in or training for such events and traveling home after the events.

#### **Formation of the Panel**

Within 24 hours of having received the written complaint the HPD shall establish a Hearing Panel (the «Panel») and select the Panel.

#### **Number of Arbitrators**

The Panel shall be composed of a sole arbitrator where:

1. The parties so agree;
2. The HPD determines that a sole arbitrator is warranted, taking into account the complexity of the dispute;
3. The statutes, regulations or other applicable rules so require.

The Panel shall be composed of a three arbitrators Panel where:

4. The parties so agree;
5. The HPD determines that three arbitrators are warranted, taking into account the complexity of the dispute.

In the case where the Panel is composed of a sole arbitrator, the HPD shall select the said arbitrator.

In the case where the Panel is composed of three arbitrators, they shall be selected according to the following:

6. One arbitrator nominated by the HPD;
7. One arbitrator nominated by the complainant; and
8. The third arbitrator shall be selected by submission of candidates by the HPD and the complainant and shall be selected by the two arbitrators already nominated;
9. Where the dispute policy applies but is exclusively between two OBSA members, the nomination of the arbitrator in paragraph a. above shall be made by the other party to the dispute.

Where the Panel is composed of three arbitrators, the Panel shall select a chairperson.

The decision regarding Panel size shall be at the sole discretion of the HPD and may not be appealed.

Independence and qualifications of Panel:

Every arbitrator shall be independent of the parties and shall immediately disclose any circumstances likely to affect their independence;

No arbitrator shall have a conflict of interest with respect to the dispute before the panel.

Notice to the parties

As soon as possible, but within 12 hours of the formation of the Panel, the HPD shall advise the parties and transfer the file to the Panel.

The parties have the right to be assisted or represented at the hearing before the Panel. If representation is retained by either party it shall be at their own expense.

Notwithstanding any other process or procedure contained in this Policy, nothing shall prevent the Panel from assuming jurisdiction when the complaint, dispute or the breach of any policy, rules or contract arises while in competition and when there is a critical lack of time to respond to a complaint or the breach and to impose, in a reasonable and fair manner, sanctions or disciplinary action against an OBSA member.

Any sanction, discipline or remedy imposed upon the BCS member by the Panel shall:

1. shall be communicated to the OBSA member by the HPD as soon as possible with written follow up within three business days;
2. be consistent with this Policy;
3. be reasonable and proportionate to the conduct complained of after reasonably investigating the manner and hearing the BCS member's version of events in a procedurally fair manner;
4. where a decision is made by the Panel that results in the removal of a OBSA member(s) from a competition, such a decision may only be implemented by the Panel after the Panel consults and obtains written approval from the HPD and the President of OBSA or their representatives. The OBSA member(s) shall have the right to request a meeting (in person, electronically or via telephone) with the HPD and the President before such a decision be rendered

The decisions of the Panel shall be binding on all parties. Failure by a OBSA member to comply with a decision and remedy properly imposed by the Panel shall result in an automatic suspension of all the OBSA member's privileges and there shall be no further right to participate at such event or competition, until such time as the sanctions, discipline or other remedies are complied with.

Where a dispute is of a highly sensitive nature, OBSA shall keep all proceedings under Part Two of this policy confidential, except where disclosure is directed by the Panel as part of the remedy to resolve the dispute, is required by law, by order of a Court of competent jurisdiction, pursuant to Canada's Doping Policy or is in the best interests of the public.

**An appeal from this Dispute Policy may be made based upon the stipulation for Grounds for Appeal contained with the OBSA Appeal Policy.**

## **PART THREE**

### **DISPUTES INVOLVING MAJOR INFRACTIONS**

#### **II. INITIATION OF COMPLAINTS**

Any intent to dispute must be made in writing with a brief summary of the matter in dispute and sent to the HPD within 10 days of the incident in dispute and be accompanied with a \$100 fee. The \$100 fee is refundable if a ruling is made in favour of the person(s) filing the intent to dispute. The HPD, upon accepting an intent, will immediately notify, by telephone or email if out of country, the Respondent(s) identified in the intent and any other affected Parties, informing them that a dispute has been initiated and that OBSA has agreed to proceed with a review of the matter.

Depending on the nature of the reported complaint, the HPD may appoint an independent individual to conduct an investigation. If this is the case, the Investigator shall carry out the investigation within ten (10) days of agreeing to carry out such an investigation and at the conclusion of the investigation shall submit a written report to the HPD. The investigator shall have no power to render any decision against the applicant or the complainant under this policy.

#### **III. FORMATION OF THE PANEL**

Within 14 days of having received the written complaint or within 14 days of receiving the written report of the Investigator if any investigation was carried out, the HPD shall establish a Hearing Panel (the «Panel») and select the Panel.

Number of Arbitrators

In determining whether the Panel shall be composed of a sole arbitrator the HPD shall consider:

1. The interests of the Parties;
2. The legal and factual complexity of the dispute;
3. Any statutes, regulations or other rules that may be applicable in the circumstances of the dispute.

In determining whether the Panel shall be composed of a three arbitrators the HPD shall consider:

4. The interests of the Parties;
5. The legal and factual complexity of the dispute.
6. Any statutes, regulations or other rules that may be applicable in the circumstances of the dispute

In the case where the Panel is composed of a sole arbitrator, the HPD shall select the said arbitrator.

In the case where the Panel is composed of three arbitrators, they shall be selected according to the following:

1. One arbitrator nominated by the HPD;
2. One arbitrator nominated by the complainant; and
3. The third arbitrator shall be selected by submission of candidates by the HPD and the complainant and shall be selected by the two arbitrators already nominated;
4. Where the dispute policy applies but is exclusively between two OBSA members, the nomination of the arbitrator in paragraph a. above shall be made by the other party to the dispute.

Where the Panel is composed of three arbitrators, the Panel shall select a chairperson.

The decision regarding Panel size shall be at the sole discretion of the HPD and may not be appealed.

Independence and qualifications of Panel:

Every arbitrator shall be independent of the parties and shall immediately disclose any circumstances likely to affect their independence;

No arbitrator shall have a conflict of interest with respect to the dispute before the panel.

Notice to the parties:

Within 5 days of the formation of the Panel, the HPD shall advise the parties and transfer the file to the Panel including the Investigator's Report in circumstances where an investigation was conducted.

### **PRE-HEARING CONFERENCE**

The Panel, in its sole discretion, may call the parties to a pre-hearing conference if it is considered useful and the circumstances of the case allow it. In most cases, the pre-hearing conference shall be conducted by telephone. In the case of out of country the conference shall be conducted using the most efficient and cost effective means of communication like Skype.

The purpose of the pre-hearing conference is:

1. To define the questions to be dealt with at the hearing;
2. To assess the advisability of clarifying and specifying the claims of the parties and the conclusions sought;

3. To ensure that all documentary evidence is exchanged by the parties;
4. To plan the conduct of the proceedings and the evidence to be presented at the hearing;
5. To examine the possibility for the parties of admitting certain facts or of proving them by means of sworn statements, this does not preclude the facts from being restated in the hearing;
6. To examine any other question likely to simplify or accelerate the conduct of the hearing. Minutes

Minutes of the pre-hearing conference shall be drawn up and signed or approved via email by the parties and by the Panel who called the parties to the conference. All minutes distributed via email shall be in pdf format.

Agreements and decisions recorded in the minutes shall, as far as they may apply, govern the conduct of the proceeding, unless the Panel, when hearing the matter, permits derogation there from to prevent an injustice.

## **HEARING**

The Panel shall have the sole discretion to determine whether an oral hearing or documentary hearing is warranted.

### **Oral hearing**

The Panel shall, so far as is possible, facilitate the holding of a hearing at a date and time when the parties and their witnesses, if any, are able to attend (in person or via telephone/Skype) without unduly disrupting their usual occupations.

The hearing shall be held within 21 days of the Notice to the Parties by the HPD

### **Notice by the Panel**

Notice shall be sent by the Panel to the parties within 10 days before the hearing stating:

1. the purpose, date, time and place of the hearing;
2. that the parties have the right to be assisted or represented at the hearing before the Panel. If representation is retained by either party it shall be at their own expense;
3. that the Panel has the authority to proceed, without further delay or notice, despite the failure of a party to appear at the time and place fixed unless the Panel determines in its sole discretion that an adjournment is appropriate, but in no case shall an adjournment extend the hearing beyond the 21 day period.

### **Publication Ban**

The Panel may, of its own initiative or on an application by a party, ban or restrict the disclosure, publication or dissemination of any information or documents it indicates, where necessary to maintain public order or where the confidential nature of the information or documents requires the prohibition or restriction to ensure the proper administration of natural justice.

### **Examination**

Any party may examine and cross-examine witnesses, including the Investigator in cases where an Investigator's Report is provided to the Panel, to the extent necessary to ensure a fair process and fully test the facts of a particular dispute.

### **Witnesses and Effected Parties**

A witness may not refuse, without valid reason, to answer a question legally put to him by the Panel or by the parties. Parties that may be directly effected by the decision may be allowed to participate upon written application to the Panel a minimum of three days before the commencement of the hearing.

#### Adjournment

The Panel may adjourn the hearing, on the conditions it determines, if it is of the opinion that the adjournment will not cause unreasonable delay in the proceeding or a denial of justice, in particular, for the purpose of fostering an amicable settlement.

#### Continuance of hearing

Where a sole arbitrator is unable to continue a hearing, another arbitrator designated by the HPD shall continue the hearing and, in the case of oral or written evidence already produced, rely on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing, if any.

Where a three member Panel is appointed and a member or members of the Panel are unable to continue as members of the Panel, the HPD shall ensure the appointment of another Panel member(s), and such new member(s) shall continue the hearing and, in the case of oral or written evidence already produced, rely on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing, if any.

#### Documentary hearing

### **EVIDENCE**

In the case where a written hearing is held all parties will be given a reasonable opportunity to:

- a) review the Investigator's report where an investigation was carried out; ask questions of the Investigator and other Parties to the hearing;
- b) to provide written submissions to the Panel;
- c) to review the written submissions of the other parties and provide written rebuttal; arguments.

#### Grounds of law or fact

Each party may introduce facts or rely on law relevant to the determination of his rights and obligations.

#### Refusal of evidence

The Panel may accord weight to and refuse to admit any evidence that is not relevant or that is not of a nature likely to further the interests of justice

#### Judicial notice

The Panel shall take judicial notice of facts that are generally recognized and of opinions and information, which fall within its area of expertise.

#### Evidence

No evidence may be relied on by the Panel in making its decision unless the parties have been given an opportunity to comment on the substance of the evidence or to refute it.

### **DECISION**

#### Decision

Where a matter is heard by more than one arbitrator, it shall be decided by a majority of the arbitrators who have heard it. If any arbitrator dissents, the grounds for his dissent must be recorded in the decision.

The decisions of the Panel shall be binding on all parties.

Where a dispute is of a highly sensitive nature, OBSA shall keep all proceedings under Part Three of this policy confidential, except where disclosure is directed by the Panel as part of the remedy to resolve the dispute, is required by law, by order of a Court of competent jurisdiction, pursuant to Canada's Doping Policy or is in the best interests of the public.

#### Advisement

In any matter of whatever nature, the decision should be given immediately to the affected parties. Any decision will be accompanied by reasons;

1. Immediate, verbal decisions will be followed with a written statement of the decision and the reasons within one week;
2. In complex cases that require more time, the panel will provide their decision and reasons no later than fourteen (14) days after the hearing. Once a decision is reached, it will be communicated verbally, with a written statement of the decision and reason within one week by electronic mail;
3. Unless the panel decides otherwise, any disciplinary sanctions applied shall take effect immediately.

#### Withdrawal

Where the Panel seized of a matter fails to give a decision within the above mentioned time frame or, as the case may be, within such additional time as has been granted, the HPD may, on his own initiative or on an application by a party, withdraw the matter from said Panel. In such a case the HPD would be required to strike another Panel to review the matter to ensure a resolve is reached.

#### Extension or withdrawal

Before granting an extension or withdrawing a matter from a Panel who has failed to give its decision within the required time, the HPD shall take account of the circumstances and of the interests of the parties.

#### Order

Any order made by the Panel in the course of a proceeding for a hearing to be held in camera or banning disclosure, publication or dissemination of documents or information shall be stated expressly in the decision.

#### Copy

A copy of the decision shall be sent by the Panel to each of the parties and to any other person specified by law.

#### Clerical errors

A decision containing an error in writing or in calculation or any other clerical error may be corrected, in the record and without further formality, by the Panel that rendered the decision.

Any decision of the Panel is operative according to the terms and conditions stated therein provided the parties have received a copy of the decision or have otherwise been advised of it.

The Panel may decide:

1. To uphold the complaint;
2. To deny the complaint;

3. To design a remedy that, in the opinion of the Panel, will resolve the dispute;
4. To determine how costs of the hearing, excluding legal fees and legal disbursements of any of the parties, shall be allocated, if at all.

The decision may include an order of specific performance, and/or a written reprimand and/or removal of certain privileges, including the right to compete, train, coach, manage or provide team support for the Provincial Team; suspension from the Provincial Team whether for a specified events and for specified period of time; dismissal from the Provincial Team, termination of the Athlete Agreement; any other sanction which the Panel considers appropriate in the circumstances. Disciplinary sanctions for a major infraction are outlined in Appendix B of this policy.

If a party believes the decision of the Panel rendered pursuant to this section of the Policy has violated the rule of natural justice, the decision of the Panel may be appealed on errors of law or jurisdiction alone according to the OBSA Appeal Policy. Sanctions imposed by the Panel will remain in effect until such time as the Appeal Committee has rendered a decision.

### **TIMELINES**

If the circumstances of a complaint or a dispute are such that this policy will not allow a timely resolution of the matter, or if the circumstances of a complaint or a dispute are such that the matter cannot be resolved within the timelines dictated in this policy, the Panel may direct that these timelines be revised by the HPD.

### **LOCATION**

The hearing shall take place in Ottawa, Ontario, unless the Panel decides the hearing is to be held by way of telephone conference or unless, at the specific request of a party, a different location is mandated by the Panel as a preliminary matter. Due to out of country travel the hearing may be conducted via the most efficient and cost effective method of electronic communications.

### **APPENDIX A**

#### **Examples of minor infractions, but not limited to:**

1. A single incident of noncompliance with the Athletes' Code of Conduct;
2. A single incident of disrespectful, offensive, abusive, racist or sexist comments or behaviour directed towards others, including but not limited to peers, opponents, athletes, coaches, officials, administrators, spectators and sponsors;
3. A single incident of being absent from OBSA events and activities at which attendance is expected or required;
4. A single incident of non-compliance with the rules and regulations under which OBSA events are conducted, whether at the local, provincial, national or international level.

The following disciplinary sanctions may be applied: singularly, in combination and in any order of sequence for minor infractions:

1. Verbal reprimand;
2. Written reprimand to be placed in individual's file;
3. Verbal apology;
4. Hand delivered written apology;
5. Team service or other voluntary contribution to OBSA;
6. Suspension from the current competition or camp;
7. Levy of a fine up to \$250;
8. Other sanctions as may be considered appropriate for the offense.



## **APPENDIX B**

### **Examples of major infractions, but not limited to:**

1. Repeated incidents of noncompliance with the Athletes' Code of Conduct or other policies of OBSA;
2. Repeated incidents of disrespectful, offensive, abusive, racist or sexist comments or behaviour directed towards others, including but not limited to peers, opponents, athletes, coaches, officials, administrators, spectators and sponsors;
3. Repeated incidents of being late for or absent from OBSA events and activities at which attendance is expected or required;
4. Activities or behaviour that interfere with a competition or with any athlete's preparation for a competition;
5. Hazing, pranks, jokes or other activities, which may be construed as harassing, abusive, humiliation; or having the potential to endanger the safety of others. This would include coercive activities such as pressure to participate in a specific initiation rite and shall include acts of both physical and psychological nature;
6. Deliberate disregard for the rules and regulations under which OBSA events are conducted, whether at the local, provincial, national or international level;
7. Any abusive use of alcohol consumption;
8. Any use of alcohol by athletes under the age of 18 or where prohibited by law;
9. Use of illicit drugs and narcotics;
10. Use of banned performance enhancing drugs or methods as defined by IOC, WADA, IBSF, CCES, BCS and/or OBSA;
11. Any use of illegal equipment, illegal training methods or illegal performance enhancement activities as defined by IOC, IBSF, BCS or OBSA whether in training or competition.

The following disciplinary sanctions may be applied: singularly, in combination and in any order of sequence for a major infraction: (disciplinary sanctions may escalate for repeated infractions):

1. Verbal reprimand;
2. Written reprimand to be placed in individual's file;
3. Verbal apology;
4. Hand delivered written apology;
5. Team service or other voluntary contribution to OBSA;
6. Suspension from certain OBSA events, which may include suspension from the current competition or from future teams or competitions;
7. Levy of a fine up to \$1000;
8. Suspension of all OBSA or Q4G funding;
9. Suspension from certain OBSA activities (teams, coaching or officiating) for periods of up to three years;
10. Suspension from all OBSA activities for periods of up to three years;
11. Expulsion from OBSA;
12. Other sanctions as may be considered appropriate for the offense.

The preceding sanctions may be modified, or added to, as required by the provisions of any other pertinent BCS policy (harassment, etc).

## **APPENDIX C**

### **INCIDENT REPORT**

Date and time of incident: \_\_\_\_\_ Name of writer:

\_\_\_\_\_ Position:

Location of incident: \_\_\_\_\_

This incident is a: \_\_\_\_ minor infraction \_\_\_\_ major infraction

Individual(s) involved in the incident: \_\_\_\_\_

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

Objective description of the incident (please be concise, accurate and non-judgmental):

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

Names of individuals who observed the incident: \_\_\_\_\_

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

Requested outcome of the Incident: \_\_\_\_\_

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

Signature: \_\_\_\_\_ Date \_\_\_\_\_