

<b>Section V01</b>	<b>VIASPORT:  Alternative Dispute Resolution Policy</b>	
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**PURPOSE:**

The Alternative Dispute Resolution (ADR) process was introduced to the Canadian sport community as a means to effectively and efficiently resolve conflicts at less cost and, in most cases, a better result for everyone involved.

The ADR process is managed by the Sport Dispute Resolution Centre of Canada (SDRCC) and is constituted by a federal act and is funded by the Government of Canada (Sport Canada).

**1. POLICY STATEMENT**

- 1.1 Any breaches of BC Sailing Policy, in particular those related to 'Code of Conduct' and 'Human Resources Policies' shall be handled using the following procedures.
- 1.2 BC Sailing will, through the use of Alternative Dispute Resolution, provide a mechanism to review and dispute decisions made by or on behalf of the Association.
- 1.3 To provide a mechanism for BC Sailing Association to effectively resolve disputes with its members, and avoid the harm of litigation.

**2. DEFINITIONS**

2.1. Alternative Dispute Resolution (ADR): A series of processes that are alternatives to litigation. ADR processes include prevention, negotiations, mediation, facilitation and arbitration. The goals of an ADR system are to:

- 2.1.1. Reduce time and costs for dispute resolution;
- 2.1.2. Maintain or improve disputants' relationships;
- 2.1.3. Ensure that the outcome of the system is workable, durable and implementable; and
- 2.1.4. Develop a process that people can learn from.

The two most common forms of ADR are mediation and arbitration.

2.2 **Arbitration:** Is a dispute resolution process in which disputes are submitted to a neutral adjudicator through presentation of evidence and arguments. The arbitrator is empowered to render a binding decision.

2.3 **Arbitrator:** The role of the arbitrator will be to decide the dispute.

- 2.4 **Mediation:** Is a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.
- 2.5. **Mediator:** Is a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.
- 2.5.1. "BC Sailing Representative" – Any individual employed by, or engaged in activities on behalf of, BC Sailing Association including: employees, contract personnel, volunteers, researchers, Directors of the Board, Members, committee members, and administrators.

### 3. PRINCIPLES

- 3.1 BC Sailing believes in the right to access an independent alternative dispute resolution process.
- 3.2 BC Sailing believes an alternative dispute resolution process will strengthen the transparency and accountability of the Association.
- 3.3 BC Sailing Association believes that independent alternative dispute resolution processes are equitable to all participants.
- 3.4 BC Sailing Association believes that an effective alternative dispute resolution system offers a low cost mechanism that can lead to a quick and efficient resolution to disputes.

### 4. PROVISIONS

- 4.1. BC Sailing supports the principles of Alternative Dispute Resolution and is committed to techniques of mediation and arbitration as effective ways to resolve disputes with its "Members".
- 4.2 This policy applies to disputes with and among members, where the term "Member" refers to all categories of members within BC Sailing, as well as to all individuals engaged in activities with or employed by BC Sailing, including but not limited to: athletes, coaches, instructors, officials, volunteers, directors and employees (including contract personnel).
- 4.3 Accordingly, opportunities for mediation may be pursued at any point in a dispute where it is appropriate and where such a course of action would be mutually beneficial.
- 4.4. In the event a dispute persists after internal avenues of decision-making and appeals have been exhausted, opportunities for arbitration may be pursued. Where the continuing dispute relates to the appeal panel having made a decision which was outside its jurisdiction, having failed to follow proper procedures, or having made a decision which was influenced by bias, such a dispute may be dealt with through binding arbitration before an independent arbitrator who is acceptable to both parties in the dispute.

- 4.5. No action or other legal proceeding shall be commenced against BC Sailing Association in respect of a dispute, unless BC Sailing Association has failed to participate in Alternative Dispute Resolution process arbitration in accordance with this policy.

### **Mediation**

- 4.6. Mediation is the use by disputing parties of a neutral third party to facilitate their own resolution of their dispute. It works only when both parties agree to engage in the process and where there is some hope of a mediated solution. Mediation only brings a dispute to an end if both parties, with the intervention and assistance of the mediator, are able to come to an agreement that resolves the dispute.

### **Arbitration**

- 4.7 Arbitration, on the other hand, employs a neutral third party to hear evidence and decide for the disputants how their conflict should be resolved. Arbitration tends to be more structured and formal than mediation. Unlike mediation, arbitration will bring finality to the dispute whether the parties agree or not; the arbitrator's decision is, and is meant to be final and binding on the parties to the dispute. Indeed, the decision of the arbitrator may not accord with the resolution suggested by either party but it will be final.

### **Neutrality**

- 4.8 In both, mediation and arbitration, the independence of the third party – whether one individual or a panel – is critical. Both methods also tend to be more successful when the mediator or arbitrator has expertise in the area being disputed.

### **SDRCC**

- 4.9 SDRCC (Sport Dispute Resolution Centre of Canada) offers national alternative dispute resolution programs and is available to the Canadian sport community. Programs include arbitration, mediation and education services, accessible in both official languages and at a low cost for the parties.

- 4.10 The SDRCC can hear cases on the following national level issues:

- National team selection for an international event
- Athlete Assistance Program funding
- Harassment
- Discipline
- Eligibility
- Interpretation of a contract
- Doping
- Field of play decision
- Any decision handed down by a national sport organization or a multisport organization or one of its representatives that affects one of its members

## **5. PROCEDURES**

### **5.1 Reporting a Complaint**

- 5.1.1. Any client or BC Sailing Association representative may report any complaint to the BC Sailing Association office. Such a complaint must be in writing and signed, and must be filed within fourteen (14) days of the alleged incident. Anonymous complaints may be accepted at the sole discretion of BC Sailing.
- 5.1.2. Clients or BC Sailing Association representatives may only report complaints directed at BC Sailing Association employees or volunteers as defined in the Definitions Section.
- 5.1.3. A Complainant wishing to file a complaint outside of the fourteen (14) day period must provide a written statement giving reasons for an exemption from this limitation. The decision to accept, or not accept, the complaint outside of the fourteen (14) day period will be at the sole discretion of Executive Director or Designate of the BC Sailing Association. This decision may not be appealed.

## **5.2 Dispute Resolution and Mediation**

- 5.2.1. Before any complaint proceeds to the formal stage, the dispute will first be referred to the BC Sailing Executive Director. In the event that the Executive Director is involved in the complaint, the President will take over the roles normally fulfilled by the Executive Director.
- 5.2.2. BC Sailing Association encourages all Employees, Volunteers and Clients to communicate openly, collaborate, and use problem-solving and negotiation techniques to resolve their differences. BC Sailing Association believes that negotiated settlements are usually preferable to outcomes resolved through other dispute resolution techniques. Negotiated resolutions to disputes with and among Employees, Volunteers and Clients are strongly encouraged.
- 5.2.3. Disputes may be referred to the alternative dispute resolution services of the SDRCC once the internal process has been completed.

## **5.3. Case Manager**

Should the review by BC Sailing Association Executive Director (or designate) not resolve the dispute, BC Sailing Association will appoint a Case Manager from a list of approved candidates to oversee management and administration of complaints submitted in accordance with this Policy and such appointment is not appealable. The Case Manager is not required to be associated with BC Sailing Association. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Policy, and to implement this Policy in a timely manner. More specifically, the Case Manager has a responsibility to:

- i. Determine whether the complaint is frivolous or vexatious and within the jurisdiction of this Policy. If the Case Manager determines the complaint is frivolous or vexatious or outside the jurisdiction of this Policy, the complaint will be dismissed immediately. The Case Manager's decision to accept or dismiss the complaint may not be appealed;
- ii. Determine if the complaint is a minor or major infraction;
- iii. Appoint the Panel, if necessary, in accordance with this Policy;
- iv. Coordinate all administrative aspects of the complaint;
- v. Provide administrative assistance and logistical support to the Panel as required; and

- vi. Provide any other service or support that may be necessary to ensure a fair and timely proceeding.

The Case Manager will inform the Parties if the incident is to be dealt with as a minor infraction or major infraction and the matter will be dealt with according to the applicable section relating to the minor or major infraction.

This Policy does not prevent an appropriate person having authority from taking immediate, informal or corrective action in response to behaviour that constitutes either a minor or major infraction. Further sanctions may be applied in accordance with the procedures set out in this Policy.

#### **5.4. Minor Infractions**

- 5.4.1. Minor infractions are single incidents of failing to achieve expected standards of conduct that generally do not result in harm to others or to Sport for Life Society. Examples of minor infractions can include, but are not limited to, a single incident of:
  - i. Disrespectful, offensive, abusive, racist, or sexist comments or behavior;
  - ii. Disrespectful conduct such as outbursts of anger or argument;
  - iii. Conduct contrary to the values of BC Sailing Association;
  - iv. Being late for, or absent from, BC Sailing Association events and activities at which attendance is expected or required;
  - v. Non-compliance with BC Sailing Association's policies, procedures, rules, or regulations; and
  - vi. Minor violations of BC Sailing Associations Code of Conduct.
- 5.4.2. All disciplinary situations involving minor infractions will be dealt with by the appropriate person who has authority over both the situation and the individual involved. The person in authority can be, but is not restricted to being, BC Sailing Association representative, organizers, or BC Sailing Association decision-makers.
- 5.4.3. Provided that the BC Sailing Association representative being disciplined is told the nature of the infraction and has an opportunity to provide information concerning the incident, procedures for dealing with minor infractions will be informal (compared to the procedures for major infractions) and will be determined at the discretion of the person responsible for discipline of such infractions (as noted above).
- 5.4.4. Penalties for minor infractions, which may be applied singularly or in combination, include the following:
  - i. Verbal or written reprimand from BC Sailing Association to one of the Parties;
  - ii. Verbal or written apology from one Party to the other Party;
  - iii. Service or other voluntary contribution to BC Sailing Association;
  - iv. Restriction of activities;
  - v. Fines; and
  - vi. Any other sanction considered appropriate for the offense.

5.4.5. Minor infractions that result in discipline will be recorded and records will be maintained by BC Sailing Association. Repeat minor infractions may result in further such incidents being considered a major infraction.

## **5.5. Major Infractions**

5.5.1. Major infractions are instances of failing to achieve the expected standards of conduct that result, or have the potential to result, in harm to other persons or to BC Sailing Association. Examples of major infractions include, but are not limited to:

- i. Repeated minor infractions;
- ii. Any incident of hazing;
- iii. Incidents of physical abuse;
- iv. Behaviour that constitutes harassment, sexual harassment, or sexual misconduct;
- v. Pranks, jokes, or other activities that endanger the safety of others;
- vi. Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition;
- vii. Conduct that intentionally damages BC Sailing Association's image, credibility, or reputation
- viii. Disregard for BC Sailing Association's bylaws, policies, rules, and regulations;
- ix. Major or repeated violations of BC Sailing Association's Code of Conduct;
- x. Intentionally damaging BC Sailing Association's property or improperly handling BC Sailing Association's monies;
- xi. Abusive use of alcohol, any use or possession of alcohol by minors, or use or possession of illicit drugs and narcotics; and
- xii. Any possession or use of banned performance enhancing drugs or methods.

5.5.2. Major infractions will be handled using the Procedure for Major Infraction Hearing set out in this Policy, except where a dispute resolution procedure contained within a contract, employee agreement, or other formal written agreement takes precedence.

## **5.6. Procedure for Major Infraction Hearing**

5.6.1. The Case Manager shall notify the Parties that the complaint is potentially legitimate and the incident shall be dealt with as a major infraction. The Case Manager shall then decide the format under which the complaint will be heard. This decision is at the sole discretion of the Case Manager and may not be appealed.

5.6.2. The Case Manager will appoint a Discipline Panel, which shall consist of a single Adjudicator, to hear the complaint. In extraordinary circumstances, and at the discretion of the Case Manager, a Panel of three persons may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.

5.6.3. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Panel will determine the appropriate

disciplinary sanction. The Panel may still hold a hearing for the purpose of determining an appropriate sanction.

5.6.4. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.

5.6.5. The Case Manager will determine the format of the hearing, which may involve an oral in-person hearing, an oral hearing by telephone, 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 Case Manager deems appropriate in the circumstances, provided that:

- i. The Parties will be given appropriate notice of the day, time, and place of the hearing;
- ii. 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;
- iii. The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense;
- iv. The Panel may request that any other individual participate and give evidence at the hearing;
- v. The Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the complaint, but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate; and
- vi. The decision will be by a majority vote of Panel members.

5.6.6. If a decision may affect another party to the extent that the other party would have recourse to a complaint or an appeal in their own right, that party will become a Party to the complaint in question and will be bound by the decision.

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

## **5.7. Decision**

5.7.1. After hearing the matter, the Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. Within fourteen (14) days of the hearing's conclusion, the Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and BC Sailing Association.

In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the fourteen (14) day period. The decision will be considered a matter of public record unless decided otherwise by the Panel.

## **5.8. Sanctions**

5.8.1. The Panel may apply the following disciplinary sanctions, singularly or in combination, for major infractions:

- i. Verbal or written reprimand from BC Sailing Association to one of the Parties;
- ii. Verbal or written apology from one Party to the other Party;

- iii. Service or other voluntary contribution to BC Sailing Association;
- iv. Restriction of activities;
- v. Expulsion or dismissal from BC Sailing Association;
- vi. Payment of the cost of repairs for property damage;
- vii. Any other sanction in accordance with BC Sailing Association's Human Resources Policy; and
- viii. Any other sanction considered appropriate for the offense.

5.8.2. Unless the Panel decides otherwise, any disciplinary sanctions will begin immediately. Failure to comply with a sanction as determined by the Panel will result in automatic suspension until such time as compliance occurs.

5.8.3. Major infractions that result in discipline will be recorded and records will be maintained by BC Sailing Association.

## **5.9. Suspension Pending a Hearing**

5.9.1. BC Sailing Association may determine that an alleged incident is of such seriousness as to warrant suspension of an Individual pending a hearing and a decision of the Panel and/or completion of the criminal process.

## **5.10. Criminal Convictions**

5.10.1. BC Sailing Association representative conviction for any of the following Criminal Code offenses will be deemed a major infraction under this Policy and will result in dismissal from BC Sailing Association upon the sole discretion of BC Sailing Association:

- i. Any child pornography offences;
- ii. Any sexual offences;
- iii. Any offence of physical or psychological violence;
- iv. Any offence of assault; and
- v. Any offence involving trafficking of illegal drugs.

## **5.11. Confidentiality**

5.11.1. The discipline and complaints process is confidential and involves only the Parties, the Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

## **5.12. Timelines**

If the circumstances of the complaint are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the complaint, the Panel may direct that these timelines be revised.



Upon receipt of the complaint, and throughout the process, the complainant will receive regular (every 2-4 weeks) communications back from the organization on the status of their complaint.

### **5.13. Records and Distribution of Decisions**

Minor and major infractions that result in discipline shall be recorded and maintained by BC Sailing Association.

Decisions are matters of public interest and shall be publicly available with the names of the individuals redacted. Names of persons disciplined may be disclosed to the extent necessary to give effect to any sanction imposed.

### **5.14. Referral**

Once a decision is received from the Panel, the BC Sailing Association Discipline, Complaints & Dispute Resolution internal process will have been completed. The next step would be to refer the dispute to the alternative dispute resolutions services of the SRDCC. This referral offers an external process to review the issue and make further attempts for a resolution or decision.