

Appeals Policy

Department:	High Performance	Section:	Appeals
Effective Date:	January 27, 2023		
Version:	2.0	Replaces:	Previous Appeals Policy

Approved:

Luge Canada Board

Definitions

1. The following terms have these meanings in this Policy:
 - a. **Affected Party** - Any Individual or entity, as determined by the President of Luge Canada or, where applicable, the Independent Case Manager, who may be affected by a decision rendered under the *Appeal Policy* and who may have recourse to an appeal in their own right under this *Appeal Policy*.
 - b. **Appellant** – The Party appealing a decision pursuant to this *Policy*.
 - c. **Days** – calendar days¹
 - d. **Director of Sanctions and Outcomes** – Responsible for overseeing the imposition of Provisional Measures, agreed outcomes, Sanctions and appearing before the Safeguarding Tribunal or the Appeal Tribunal in cases arising from a potential breach of the UCCMS (or other conduct rules, as applicable)
 - e. **Individuals** – All categories of membership defined in Luge Canada’s Bylaws, as well as all individuals employed by, or engaged in activities with, Luge Canada including, but not limited to, Registered Participants (as defined in Luge Canada’s Bylaws), athletes, coaches, convenors, race officials, volunteers, managers, administrators, committee members, directors and officers of Luge Canada, spectators, and parents/guardians of athletes
 - f. **Minor** – As defined in the UCCMS and as amended from time to time by the SDRCC
 - g. **Organizations** – Luge Canada’s provincial/territorial members as well as their affiliated clubs
 - h. **OSIC** - Office of the Sport Integrity Commissioner, an independent division of the SDRCC which comprises the functions of the Sport Integrity Commissioner
 - i. **Parties** – the individuals involved in an appeal, which include the Appellant, Respondent and any Affected Party.
 - j. **Respondent** – The Party responding to the appeal.
 - k. **SDRCC** – The Sport Dispute Resolution Centre of Canada

¹ For the purpose of calculating deadlines, the following shall apply: the day of the act is not included in the calculation (i.e., the date of receipt of a decision is not Day 1); instead, the deadline would start on the day following receipt of the decision and would expire at midnight (in the location of the individual seeking to file an appeal) on the last day of the period. If the end date is a Saturday, a Sunday or a legal holiday, the period runs until the next day that is not a Saturday, a Sunday or a legal holiday. For example, if an Individual receives a decision on Thursday December 17, 2020, the 14-day deadline to appeal this decision starts on Friday December 18, 2020 and would expire on Friday January 1, 2021. However, since January 1, 2021 is a legal holiday, January 2, 2021 is a Saturday, and January 3, 2021 is a Sunday, the deadline to appeal would expire at midnight (in the location of the individual seeking to file an appeal) on January 4, 2021.

All Staff, Athletes and Volunteers are responsible for ensuring that they are using the latest version of this document.

- i. **UCCMS** - *Universal Code of Conduct to Prevent and Address Maltreatment in Sport*, as amended from time to time by the SDRCC.
- m. **UCCMS Participant** - An Individual i) who has been designated by Luge Canada, and ii) who has signed the required consent form. For Luge Canada, UCCMS Participants are: its athletes, coaches, officials, volunteers, administrators, directors, officers, employees, trainers, parents/guardians.
- n. **Vulnerable Participant** – as defined in the UCCMS and as amended from time to time by the SDRCC

Purpose

- 2. The purpose of this policy is to provide Individuals with a fair, affordable, and expedient appeal process.

Application

- 3. This Policy applies to all Individuals. However, it does not apply to appeals of decisions that were managed by the OSIC, which shall be handled in accordance with the policies and procedures of the OSIC or the Director of Sanctions and Outcomes, as applicable.
- 4. Subject to Section 3, any Individual who is directly affected by a decision taken by Luge Canada specifically with regard to that Individual, including a decision by the Board of Directors, by any Committee of the Board, or by any body or individual within Luge Canada who has been delegated authority to make decisions in accordance with Luge Canada's By Laws and governance policies (as applicable), shall have the right to appeal that decision provided that it is a decision that is subject to appeal pursuant to section 5 of this Policy, that the conditions indicated in sections 8 - 10 of this Policy (as applicable) have been satisfied, and provided that there are sufficient grounds for the appeal under the 'Grounds of Appeal' section of this Policy.
- 5. This Policy **will apply** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of interest
 - d) Disciplinary decisions made pursuant to Luge Canada's relevant and applicable policies
 - e) Membership
- 6. This Policy **will not** apply to decisions relating to:
 - a) Reported complaints that were managed by the OSIC
 - b) Matters of general application such as amendments to Luge Canada's Bylaws;
 - c) Employment matters, including staffing or volunteer leadership opportunities

- d) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program by the Canadian Centre for Ethics in Sport, the International Luge Federation (FIL) or any other Anti-Doping Organization with authority to pursue a doping offence
- e) The rules of the sport
- f) Selection criteria, quotas, policies, and procedures established by entities other than Luge Canada
- g) Substance, content and establishment of team selection or carding criteria
- h) Volunteer/coach appointments and the withdrawal or termination of those appointments
- i) Budgeting and budget implementation
- j) Luge Canada's operational structure and committee appointments
- k) Except as otherwise provided for in this Policy, decisions made by organizations other than Luge Canada, such as Luge Canada's Organizations, the Canadian Olympic Committee (COC), the International Olympic Committee (IOC), the International Luge Federation (FIL), or any other governing body
- l) Commercial or contractual matters between Luge Canada and its staff or Organizations for which another dispute resolution process exists under the provisions of the applicable contract
- m) Decisions made under this Policy
- n) Settlements negotiated pursuant to the *Dispute Resolution Policy*

Interpretation

7. In the event of a dispute between the English and French versions of this policy, the English version shall be used to interpret the drafter's intent. Timelines in this policy are in total days, irrespective of weekends or holidays. Where a deadline falls on a weekend or holiday, the next business day shall be the deadline for the purpose of this policy.

Timing of Appeal

8. Except as otherwise provided for in the relevant and applicable selection criteria or as otherwise communicated in a selection decision, any Individual who wishes to appeal a decision shall have 7 days from the date on which they received notice of the decision,² to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President (or designate) of Luge Canada. Notwithstanding the aforementioned, any appeals related to decisions rendered pursuant to the Discipline

² Luge Canada (or its delegate) may notify of decisions via the following means: email to the Individual's most recent email address that Luge Canada has on file; publication on Luge Canada's website; or other electronic means that permit direct communication with the Individual, such as WhatsApp. In such circumstances, notification shall be deemed to have been received on the date that Luge Canada publishes notification of the decision on its website and/or, as applicable, the date on which the Individual is sent the decision via email or the other electronic means.

and Complaints Policy shall be filed with Luge Canada's Independent Case Manager in accordance with the requirements indicated in Section

9.

9. Any Individual who wishes to initiate an appeal beyond the 7 day period may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated in Section 8 above. Any such Individual must provide a written request stating the reasons for which they are seeking an exemption. The decision to allow, or not allow an appeal outside the 7 day period shall be at the sole discretion of the President (or designate) and 2 Luge Canada Board Members or the Independent Case Manager (as applicable pursuant to Section 8).

10. Subject to appeals that must be filed with the Independent Case Manager pursuant to Section 8 above, Individuals who wish to appeal a decision must submit a written notice of the Appeal to the President within the appropriate timeline indicating;

- a) Their intention to appeal;
- b) Their contact information;
- c) Name 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 the decision if a written document is not available;
- f) Grounds and detailed reason(s) of the appeal;
- g) All evidence in support of these grounds and reason(s);
- h) The remedy or remedies requested
- i) The appeal must be accompanied with a \$250.00 administrative fee, which may be refundable if the appeal is upheld

Grounds of Appeal

11. A decision cannot be appealed, nor can an appeal be heard, on the merits of the decision alone or because an Individual does not like or agree with a decision. Decisions may only be appealed, and appeals may only be heard, if there are sufficient grounds. Sufficient grounds are limited to a decision made by the Discipline Chair or Discipline Panel, or such other decision maker indicated in Section 4 above who:

- a) makes a decision for which it did not have authority or jurisdiction (as set out in the governing documents of the Respondent);
- b) fails to follow procedures (as laid out in the governing documents of the Respondent);
- c) makes a decision that 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
- d) makes a decision that was grossly unreasonable or unfair.

12. The Appellant must demonstrate, on a balance of probabilities, that the Discipline Chair or Discipline Panel or such other decision maker, as the case may be, made a procedural error as described in Section 11 of this Policy and that the error had, or may reasonably have had, a material effect on the decision or decision-maker. Decisions under appeal shall remain in effect unless the Appeals Panel or the SDRCC orders otherwise.

Screening of Appeal

13. Within an appropriate timeline, the President (or designate), and 2 CLA Board Members (or, where applicable as provided in Section 8, the Independent Case Manager), shall decide whether or not the appeal raises one or more of the grounds described in Section 11.

14. If the appeal is denied on the basis of insufficient grounds, or because it was not filed in accordance with Sections 8 and/or 10 above, the Appellant shall be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the President (or designate) and 2 CLA Board Members (or, where applicable as provided in Section 8, the Independent Case Manager) and may not be appealed.

Appeals Panel

15. If the President (or designate) and 2 CLA Board Members (or, where applicable as provided in Section 8, the Independent Case Manager) are satisfied that there are sufficient grounds for an appeal, within an appropriate timeline of receiving the notice of appeal the President (or, where applicable as provided in Section 8, the Independent Case Manager) shall establish an Appeals Panel (the "Panel") as follows:

- a) The Panel shall be comprised of one individual who shall have no significant relationship with the Parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict. In exceptional circumstances, due to the nature of the decision appealed from, the President may appoint a Panel composed of three members;
- b) Where the Panel is composed of three members, at least one the Panel's members shall be a former luge athlete; and
- c) Where the Panel is composed of three members, the Panel's members shall select from themselves a Chairperson.

16. Notwithstanding any other provision in this Policy, by agreement between the Parties, the internal appeal process may be bypassed, and the appeal may be heard directly before the SDRCC.

Preliminary Conference

17. The Panel may determine that the circumstances of the dispute warrant a preliminary conference. The matters that may be considered at a preliminary conference include:

- a) Format for the appeal (hearing by documentary evidence, oral hearing in-person, oral hearing by telephone conference, or a combination of these methods);
- b) Date and location of hearing;
- c) Timelines for exchange of documents;
- d) Clarification of issues in dispute;
- e) Clarification of materials to be presented to the Panel, including new evidence to be presented in the appeal to the Panel;
- f) Order and procedure of hearing;
- g) Remedies being sought;
- h) Identification of any Affected Parties;
- i) Identification of witnesses; and
- j) Any other matter that may assist in expediting the appeal proceedings.

18. The Panel may delegate to its Chairperson or to one of its members the authority to deal with these preliminary matters.

Procedure for the Appeal

19. Where the Panel has determined that the appeal shall be held by way of oral hearing (whether in-person or by telephone or electronic means), the Panel shall govern the hearing by such procedures as it deems appropriate in the circumstances, provided that:

- a) The hearing shall be held within an appropriate timeline of the Panel’s appointment.
- 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, translator, transcription services, or legal counsel at their own expense
- e) Any Affected Party shall be permitted to make submissions .
- f) The Panel’s decision is binding on any Affected Party.
- g) The decision to uphold or reject the appeal will be by a majority vote of the Panel members, except in cases where the Panel consists of a single member

Independent Advice

20. In fulfilling its duties, the appeal panel may obtain independent advice.

1 PROCEDURE FOR A DOCUMENTARY HEARING

21. Where the Panel has determined that the appeal shall be held by way of documentary evidence, it shall govern the appeal by such procedures as it deems appropriate in the circumstances provided that:

- a) All Parties are given an opportunity to provide written submissions to the Panel, to review written submissions of the other Parties, and to provide written rebuttal.
- b) The applicable principles and timelines of Sections 19 and 22 are respected.

1.1.1 Evidence That May be Considered

22. As a general rule, the Panel shall only consider that evidence that was before the Discipline Chair, the Discipline Panel or such other decision maker, as the case may be. However, at its discretion, the Panel may hear new evidence that is material and that was not available at the time of the original decision, in which case:

- a) The Panel may request that any other individual participate and give evidence at a hearing
- b) The Panel may exclude any evidence filed by the Parties that is unduly repetitious or otherwise an abuse of process.
- c) The Panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to evidence filed by the Parties
- d) Nothing is admissible in evidence at a hearing that:
 - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - ii. is inadmissible by any statute.

Appeal Decision

23. Absent proof on a balance of probabilities that the Discipline Chair, the Discipline Panel or such other decision maker made a decision that satisfies one of the grounds of appeal enumerated in Section 11, the Panel shall conduct the appeal on a deferential standard. Within an appropriate timeline, the Panel shall issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide to:

- a) Reject the appeal and confirm the decision being appealed
- b) Uphold the appeal, in whole or in part, and refer the matter back to the initial decision-maker for a new decision
- c) Uphold the appeal, in whole or in part, and vary the decision
- d) Determine whether the 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.

24. A copy of the Panel's written decision, with reasons, shall be provided to each of the Parties and to Luge Canada. 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 thereafter.

25. Subject to Section 26 below, unless the matter involves a Minor or Vulnerable Participant and subject to any determination of the Appeal Panel that the name of any Party should remain confidential or be redacted, once the deadline to appeal to the SDRCC (where applicable and as indicated in the *Canadian Sport Dispute Resolution Code*) has expired, Luge Canada shall publish the outcome of the appeal on their website. Publication shall be limited to, where applicable, the provision(s) of any relevant policies that have been violated, the name(s) of the Individual(s) involved, and the sanction(s) or order imposed, if any. Identifying information regarding Minors or Vulnerable Participants will never be published by Luge Canada or one of its Organizations.

26. If the Panel dismisses the appeal, the decision may only be published, as provided for in Section 25, with the Respondent's consent. If the Respondent does not provide such consent, the decision will be kept confidential by the Parties and Luge Canada and shall be retained and discarded in accordance with the relevant and applicable privacy legislation and policies and practices of Luge Canada. Failure to respect this provision may result in disciplinary action being taken pursuant to the *Discipline and Complaints Policy*.

27. Notwithstanding the foregoing, other individuals or organizations, including but not limited to, Luge Canada's Organizations, may be advised of the outcome of any decisions rendered in accordance with this Policy, as necessary.

28. Any decision rendered pursuant to this Policy shall apply automatically to and must be respected by Luge Canada and its Organizations. The Panel's decision will come into effect as of the date that it is rendered, unless decided otherwise by the Panel.

29. Records of all decisions will be maintained by Luge Canada and its Organizations in accordance with their respective privacy policies and practices.

30. The Panel's decision is final and binding on the Parties, subject to any right to appeal the decision before the SDRCC in accordance with the *Canadian Sport Dispute Resolution Code*. Notwithstanding any provision to the contrary in the Canadian Sport Dispute Resolution Code, appeals must be filed with the SDRCC within 14 days of receipt of the appealing Party's receipt of the appeal panel's decision.

1.1.2 Timelines

31. If the circumstances of the dispute are such that this Policy will not allow a timely appeal, the Panel may direct that these timelines be abridged. If the circumstances of the dispute are such the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be extended.

32. Where there is a need to render a decision quickly, the Panel may issue a summary decision, verbally or in writing, with reasons to follow, provided the written decision, with reasons, is rendered within 14 days of concluding the appeal, or such other timeline as may be required in the circumstances.

Confidentiality

33. The appeals process is confidential and involves only the Parties, the President and named Board members, the Independent Case Manager (as applicable), 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 to any person not involved in the proceedings.

34. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with Luge Canada *Discipline and Complaints Policy*.

Final and Binding

35. No action or legal proceeding shall be commenced against the Canadian Luge Association, its Organizations or Individuals in respect of a dispute, unless the Canadian Luge Association has refused or failed to abide by the appeal process, as set out in this Policy.

Privacy

36. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Luge Canada’s usual privacy policies and practices regarding private and/or confidential information.

37. Luge Canada and any of its delegates pursuant to this Policy (i.e., the President and named Board members, the Independent Case Manager, the Appeal Panel) shall comply with Luge Canada’s usual privacy policies and practices regarding private and/or confidential information in the performance of their services under this Policy.

2 REVISION HISTORY

Noted below is the revision history of this document.

Version	Date	Comments
1	January 20, 2016	
2	January 27, 2023	