

Nordiq Alberta

Dispute Resolution and Appeal Policy



Preamble

1. Membership in Nordiq Alberta (NA) offers many benefits and privileges. It also entails responsibilities and obligations. All Members of NA, and the organization itself, are expected to comply with all NA by-laws, rules and policies (eg, Codes of Conduct, selection criteria), fulfill contracts and agreements they have entered into and abide by all NA decisions which affect them.
2. The NA Dispute Resolution and Appeal Policy addresses NA's obligation to establish mechanisms and procedures for resolving internal disputes. It also provides recourse to members who have valid grounds to appeal certain decisions made by NA, and the decisions of those to whom a decision making authority has been delegated by NA. The Policy reflects NA's corporate commitment to treat all members fairly and with respect. It also responds to Sport Canada's mandated requirements.
3. This Policy encompasses an integrated process that provides sufficient internal options and external alternatives to ensure that issues can be resolved with appropriate transparency and timeliness, and in accordance with the principles of natural justice and procedural fairness.

Definitions

1. For the purposes of this Policy, the following definitions apply:
 - a. **Member** – refers to all categories (individual and corporate) of NA Member, as well as to all individuals engaged in activities with NA. This includes, but is not limited to, athletes, coaches, officials, volunteers, directors and officers. In the case of a member who is under the age of eighteen (18), he or she should be represented by a parent, guardian or legal counsel.
 - b. **Days** – in the context of the time by which an action must be complete, refers to total calendar days, irrespective of weekends or holidays.
 - c. **Complainant** – refers to the Member who reports a complaint and is seeking redress.
 - d. **Appellant** – refers to the Member who is appealing a NA decision.
 - e. **Respondent** – refers to the individual or body which is the subject of a complaint or whose decision is being appealed.

NA Dispute Resolution and Appeal Processes

5. The several discrete but inter-related processes that comprise the NA Dispute Resolution and Appeal Policy are described briefly as follows:
 - a. **NA Dispute Resolution Process.** This Process applies to matters in dispute between NA and its Members, or between Members, relating to conduct or actions which are alleged to contravene NA by-laws, policies, rules and contracts/agreements. No final decision shall have been made with respect to the matters in dispute at the commencement of this Process. Parties who perceive that decisions rendered by the Panel at the conclusion of this Process are procedurally unfair may appeal such decisions through the NA Appeal Process. Alternatively, with the mutual consent of all affected parties, decisions rendered by the Panel at the conclusion of the Dispute Resolution

Process may be submitted to binding arbitration pursuant to the national ADRsportRED Program (see paragraph 6 below). The NA Dispute Resolution Process is set out in detail at Annex A.

- b. **NA Appeal Process.** This Process provides recourse for a Member to appeal, in limited situations, decisions made by NA or any NA body or any individual that has been delegated decision-making authority by the NA Board. Decisions which may be accepted for an appeal include, but are not limited to, contracts, harassment, selection and discipline, as well as decisions made at the conclusion of the NA Dispute Resolution Process or Summary Dispute Resolution Process. The NA Appeal Process is set out in detail at Annex B. Decisions reached through the NA Appeal Process are final and binding on all parties.

6. **National ADR-SPORT-RED Program.** NA provides to all Members the option of seeking redress through an appeal to the National ADR Program rather than the internal NA Appeal Process. The ADRsportRED Program is currently managed by the Sport Dispute Resolution Centre of Canada, with the aim of providing an additional avenue for resolving disputes without the harm and cost of litigation. After the internal process for dispute resolution has been exhausted, or where the parties prefer to seek resolution externally, appeals may, on consent by all parties, be referred to the ADRsportRED Program for mediation or binding arbitration as an alternative to – but not in addition to – the NA Appeal Process. Referral to the ADRsportRED Program must be by mutual agreement of all affected parties to the dispute and is irrevocable. The ADRsportRED Program has the discretion to accept an appeal for arbitration or to reject it. All parties to an accepted appeal must sign an arbitration agreement confirming that the Arbitration decision is final and binding and that there is no further right of appeal.

[For more information on the ADRsportRED program, please visit their website at www.adrsportred.ca.]

Understanding the Process

7. Individuals who are in doubt or who require further elaboration are invited to direct their questions to the NA Chair or to the Sport Manager.

List of Attachments

Annex A	NA Dispute Resolution Process
Annex B	NA Appeal Process

Annex A To NA Dispute Resolution and Appeal Policy Scope and Application

1. This Policy applies to matters in dispute between NA and Members arising from their respective responsibilities and obligations contained in all NA by-laws, policies, rules and contracts. No final decision shall have been made with respect to the matters in dispute at the commencement of this Process.

Reporting a Complaint

2. Any individual subject to this Process (whether a Member or the representative of NA) may report a complaint to NA's Chair at the NA Office (hereafter referred to as the "Chair"). Before the Process can proceed, a complaint must be submitted in writing, together with a brief summary of the matters in dispute.

Screening of Complaint

3. Within five days of receiving the written notice of the complaint and summary, the Chair shall determine whether the matters in dispute and the parties to the dispute are properly within the scope and application of this Process, or are more properly dealt with pursuant to another provision of the Dispute Resolution and Appeal Policy or to another policy of NA. In the absence of the Chair, a designate shall perform this function. This decision regarding jurisdiction is final and may not be appealed.

Investigation

4. Depending on the nature of the reported complaint, the Chair may appoint an independent individual to conduct an investigation in order to confirm the background and context of the complaint and to ascertain the facts. If an investigation is ordered, the Investigator shall carry out the task in a timely manner and at the conclusion shall submit a written report to the Chair.

Hearing Panel

2. If the Chair, or designate, is satisfied that this Process applies, then within 14 days of having received the original notice of the complaint or within 14 days of receiving the written report of the Investigator (if an investigation was carried out), the Chair shall establish a Hearing Panel (the "Panel") and select the members of the Panel as follows:
 - a. The Panel shall be comprised of either one or three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the complaint or the dispute, and shall be free from any other actual or perceived bias or conflict. The decision regarding the size of the Panel shall be at the sole discretion of the Chair who must, in coming to the decision, ensure that the hearing process complies with the principles of natural justice and provides procedural fairness to all parties. The decision regarding Panel size may not be appealed.
 - b. If the Panel consists of three persons, and if a NA Member brings the complaint, one member of the Panel shall be the Member's nominee. The Member may submit a list of three candidates from which the Chair shall select one candidate to be a member of the Panel. The Member's three nominees shall have had no involvement with the complaint or the dispute, and shall be free from any other actual or perceived bias or conflict.
 - c. If the Panel consists of three persons, the Panel members shall select a Chairperson.

Preliminary Conference

6. The Panel may determine that the circumstances of the complaint warrant a preliminary conference. In most cases, the preliminary conference shall be conducted by telephone. The issues that may be considered at a preliminary conference include:

- a. the format of the hearing, as the hearing may proceed by either a review of documentary evidence, an in-person hearing, an oral hearing by telephone or a combination of these methods. The Panel, in coming to its decision regarding the format of the hearing, must ensure that the hearing process complies with the principles of natural justice and provides procedural fairness to all parties;
- b. the date and (if in-person) location of the hearing;
- c. the timelines for the exchange of documents and the extent of disclosure required;
- d. the clarification of issues in dispute;
- e. the clarification of evidence to be presented to the Panel;
- f. the order and procedure of the hearing;
- g. the identification of witnesses; and
- h. any other procedural matter which may assist in expediting the hearing.

7. If the Panel consists of three persons, the Panel may delegate to its Chairperson the authority to deal with any or all of these preliminary matters.

Procedure for an Oral Hearing

8. Where the Panel has determined that the hearing shall be held by way of oral hearing, whether in-person or by telephone, the Panel shall govern the hearing by such procedures as it deems appropriate and fair, subject to the following provisions:

- a. The hearing shall be held within 21 days of the Panel's appointment.
- b. The parties involved shall be given ten days written notice of the date, time, format and place of the hearing.
- c. The parties shall receive a copy of the Investigator's report, where an investigation was carried out.
- d. If the decision of the Panel may affect another party to the extent that the other party would have recourse to a hearing in their own right, that party shall become a party to the hearing in question.
- e. Any of the parties at the hearing may be accompanied by a representative or advisor, including legal counsel.
- f. The Panel may direct that any other person participate in the hearing.
- g. Subject to Paragraph 8h, a quorum shall be the single Panel member or all three Panel members, as the case may be.
- h. If there are three Panel members, decisions shall be by majority vote, where the Chairperson carries a vote. In the event that a Panel member is unable or unwilling to continue with the Process once initiated, the matter will be concluded by the remaining Panel members. In the event of a split decision in a two member Panel, the Chairperson's vote shall be decisive. The Complainant bears the onus of proof which must be discharged on a balance of probabilities.

Procedure for a Documentary Hearing

9. Where the Panel has determined that the hearing shall be held by way of documentary review, it shall govern the hearing by such procedures as it deems appropriate and fair, subject to the following provisions:

- a. All parties must be given a reasonable opportunity to review the Investigator's report, where an investigation was carried out; to provide written submissions to the Panel; to review the written submissions of the other parties; to provide written rebuttal; and to provide written arguments.
- b. The applicable principles and timelines set out in Paragraph 8 must be respected.

Evidence Which May Be Considered

10. As a general rule, the Panel shall consider any evidence that is relevant to the matters in dispute. The normal rules of evidence will be relaxed. The Panel shall have authority to consider hearsay evidence provided the Panel gives to such evidence appropriate weight as might be reasonable in light of the circumstances of its inclusion.

The Decision

11. Within 14 days of concluding the hearing, the Panel shall issue its written decision, with reasons. The Panel may decide:

- a. to uphold the complaint;
- b. to deny the complaint;

- c. to design a remedy that, in the opinion of the Panel, will resolve the dispute. However, in so doing the Panel is not authorized to change or alter any rule, criteria, policy, procedure or bylaw of NA that has been properly passed and implemented by the appropriate governing body. A remedy designed by the Panel may include: an order of specific performance; a written reprimand; removal of certain privileges, including the right to compete, train, coach, manage or provide team support for the AST/ADT Program; suspension from the AST/ADT Program, either for specified events or for a specified period of time; dismissal from the AST/ADT Program, through termination of the NA Athlete Agreement; or any other sanction which the Panel considers appropriate in the circumstances; and
- d. to determine how costs of the hearing, excluding legal fees and legal disbursements of any of the parties, shall be allocated, if at all.

12. A copy of the decision shall be provided to each of the parties and to the Chair. The Panel's decision shall be binding on all parties to the dispute. In the case of an athlete who is a member of the AST/ADT, failure to comply with a decision and remedy shall result in an automatic suspension of all the athlete's privileges, and there shall be no further right to participate in any fashion as a member of the AST/ADT until such time as the decision and remedy are complied with.

Timelines

13. If the circumstances of a complaint or a dispute are such that this Process 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 Process, the Chair or the Panel may direct that these timelines be revised.

Confidentiality

14. As disputes can be highly sensitive, NA shall conduct all proceedings under this Process in a confidential manner, except where disclosure is directed by the Panel as part of the remedy to resolve the dispute, is required by law, Canada's Doping Policy or is in the best interests of the public.

15. As a general rule, the decision of the Panel shall become a matter of public record.

Location

16. The hearing shall take place in the location designated by the Chair, 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.

Jurisdiction

17. This Process shall be governed and construed in accordance with the laws of the Province of Alberta.

Appeal Procedure

18. If a party believes the decision of the Panel rendered pursuant to this Process was procedurally unfair, the decision of the Panel may be appealed pursuant to the NA Appeal Process (see Annex B to the NA Dispute Resolution and Appeal Policy). If this option is elected, the decision reached through the NA Appeal Process will be final and binding on all parties and there shall be no recourse to any further appeal to a Court on any matter of fact or law. In the alternative, if the Appellant and the Respondent and all affected parties mutually agree to take part in an alternative appeal process, and if all parties sign an arbitration agreement confirming their intent to submit to binding arbitration, the appeal may be referred to arbitration pursuant to the ADRsportRED Program. In that case, the appeal will be adjudicated by a single arbitrator, subject to the arbitrator appointment rules and processes contained in the ADRsportRED Code. The ADRsportRED Arbitration will be final and binding on all matters in dispute and there shall be no recourse to any further appeal to a Court on any matter of fact or law.

[For more information on the ADRsportRED program, please visit their website at www.adrsportred.ca.]

Annex B
To NA Dispute Resolution and Appeal Policy

NA APPEAL PROCESS

Scope and Application

1. Any member of NA who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors or Operational Committee, or of any body or individual who has been delegated authority to make decisions on behalf of the Board of Directors, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Paragraph 2 below. Such decisions may include, but are not limited to, contract matters, harassment, selection and discipline.
2. A decision cannot be appealed simply because a different result is sought. An appeal may be heard only if there are sufficient grounds for the appeal. Appeals which are deemed to have sufficient grounds include those which allege that the Respondent made one of the following procedural errors:
 - a. made a decision without the appropriate authority or jurisdiction as set out in governing documents;
 - b. failed to follow procedures as laid out in the bylaws or approved policies of NA;
 - c. made a decision which 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;
 - d. exercised discretion for an improper purpose; or
 - e. made a decision which was grossly unreasonable.
3. This Process shall not apply to matters relating to employment disputes or to the relevant rules of cross country skiing, which may not be appealed.

Submitting an Appeal

4. Members who wish to appeal a decision shall have 21 days from the date on which they received notice of the decision to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the Chair of NA.
5. Any party wishing to initiate an appeal beyond the 21 day period must provide a written request stating reasons for an exemption to this requirement. The decision to allow or not allow an appeal outside the 21 day period shall be at the sole discretion of the Chair and may not be appealed.

Screening of Appeal

6. Within five days of receiving the written notice of appeal, the Chair shall decide whether or not the appeal appears to be within the scope of this Process and based on one or more of the categories of possible errors by the Respondent as set out in Paragraph 2. The Chair shall not determine if the error has been made, only if the appeal is based on such an allegation of error by the Respondent. In the absence of the Chair, a designated member of the NA Executive shall perform this function.
7. If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the Chair, or designate, and may not be appealed.

Appeal Panel

8. If the Chair is satisfied that there are sufficient grounds for an appeal, then within 14 days of having received the original notice of appeal the Chair shall establish an Appeal Panel (the "Panel") as follows:

- a. The Panel shall be comprised of three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict.
- b. At least one of the Panel members shall be from among the Appellant's peers. The Appellant may submit a list of three candidates from which the Chair shall select one candidate to be a member of the Panel, provided that individual satisfies the criteria in Paragraph 8a above.
- c. Should the Appellant not recommend an acceptable Panel member as set out in Paragraph 8b above within five days, the Chair shall appoint the peer member of the Panel.
- d. The Panel shall select a Chairperson.

Preliminary Conference

9. The Panel may determine that the circumstances of the dispute warrant a preliminary conference. In most cases, the preliminary conference shall be conducted by telephone. The issues which may be considered at a preliminary conference include:

- a. the format of the appeal hearing, as the hearing may proceed by either an in-person hearing, an oral hearing by telephone conference call, a video teleconference or a combination of these methods. The Panel, in coming to a decision on format, must ensure that the hearing process complies with the principles of natural justice, provides procedural fairness to all parties, and keeps costs to a reasonable level;
- b. the date and (if in-person) location of hearing;
- c. the timelines for exchange of documents and extent of disclosure required;
- d. the clarification of issues in dispute;
- e. the identification of witnesses;
- f. remedies being sought; and
- g. any procedural matter, order and procedure of hearing, or any other matter which may assist in expediting the appeal proceedings.

10. Any party to the appeal may request that the Panel conduct the appeal by way of documentary evidence. The Panel may seek agreement from the other parties to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the appeal shall proceed by way of documentary evidence or in-person hearing as a preliminary matter.

11. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

Procedure for the Appeal

12. The Panel shall govern the appeal by such procedures as it deems appropriate, subject to the following provisions:

- a. The appeal hearing shall be held within 21 days of the Panel's appointment.

- b. The Appellant, Respondent and affected parties shall be given ten days written notice of the date, time, format and place of the appeal hearing.
- c. A quorum shall be all three Panel members, subject to Paragraph 12i below.
- d. Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all other parties, at least five days in advance of the hearing.
- e. Any of the parties may be accompanied by a representative or advisor, including legal counsel.
- f. If the matter under appeal relates to team selection, any person potentially affected by the decision of the Panel shall become a party to the appeal.
- g. The Panel may direct that any other individual participate in the appeal.
- h. The Appellant bears the onus of proof which must be discharged on a balance of probabilities. Decisions shall be by majority vote, where the Chairperson carries a vote.
- i. In the event that one of the Panel members is unable or unwilling to continue with the appeal, the matter will be concluded by the remaining two Panel members. In the event of a split decision on a two member Panel, the Chairperson's vote shall be decisive.
- j. Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.

Appeal Decision

13. Within 14 days of concluding the appeal hearing, 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:

- a. to void or confirm the decision being appealed;
- b. to vary the decision, only where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
- c. to refer the matter back to the initial decision-maker for a new decision; and/or
- d. to determine how costs of the appeal shall be allocated, if at all.

14. A copy of this decision shall be provided to each of the parties and to the Chair.

Timelines

15. If the circumstances of the dispute are such that this Process 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 Process, the Panel may direct that these timelines be extended.

Confidentiality

16. As disputes can be highly sensitive, NA shall conduct all proceedings under this Process in a confidential manner, except where disclosure is directed by the Panel as part of the remedy to resolve the dispute, is required by law, Alberta's Doping Policy or is in the best interests of the public.

17. As a general rule, the decision of the Panel shall become a matter of public record.

Location

18. The hearing shall take place in the location designated by the Chair, 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.

Jurisdiction

19. This Process shall be governed and construed in accordance with the laws of the Province of Alberta.

Decision Final

20. The decision of the Appeal Panel shall be final and binding on all parties with regard to all matters in dispute, and there shall be no recourse to any further appeal to a Court on a question of either fact or law. ten days written notice of the date, time, format and place of the appeal hearing.