

## Able Sail Toronto Appeal Policy

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Initial Approved Date	March 10, 2023
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Archived date	
Replaces and/or amends	
Appendix(-ces) to this Policy	

*Note: The Safe Sport Policy Suite Definitions apply to this policy, please refer to that document for term definitions. Our Safe Sport policies follows the legal practice of capitalized defined terms to assist the reader in identifying that the term has a specific meaning within the policy suite.*

### Purpose

1. The purpose of this policy is to enable Individuals a fair, expeditious, and affordable Appeal process.

### Scope

2. This policy applies to all Individuals.
3. Any Individual who is affected by a decision taken by the Able Sail Toronto Board of Directors, of any Committee of the Board of Directors, or of any entity or Individual who has been delegated authority to make decisions on behalf of Able Sail Toronto or its Board of Directors, including employees of Able Sail Toronto, will have the right to Appeal that decision, provided there are sufficient grounds for the Appeal, as set out in this policy.
4. This Appeal Policy will apply to decisions relating to:
  - a) Eligibility
  - b) Conflict of Interest
  - c) Membership
  - d) Disciplinary decisions made pursuant to Able Sail Toronto's relevant and applicable policies. This does not include decisions made by the Office of Sports Integrity Commissioner or related entities as well as decisions made by other sport partners including, but not limited to, Sail Canada and Ontario Sailing.
5. This Appeal Policy will NOT apply to decisions relating to:
  - a) Decisions made by the Office of the Sports Integrity Commissioner or related entities.
  - b) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport .
  - c) The technical rules of Sail Canada, as set out in the World Sailing Racing Rules of Sailing (RRS) including the Sail Canada Prescriptions to the RRS and associated protests and Appeals.
  - d) Matters relating to regattas in Canada governed by international organizations such as the Olympic Games, Pan American Games, World Championships, and similar Events organized by entities other than Able Sail Toronto, which are dealt with under the policies of these other entities.
  - e) Policy and procedures established by any other agency external to Able Sail Toronto, including selection criteria and quotas.
  - f) Contractual matters between Able Sail Toronto and Individuals for which another dispute resolution process exists under the provisions of the applicable contract.

- g) Operational matters such as employment matters or matters of operational structure, budget, staffing, or volunteer leadership opportunities.
- h) Criminal offences for which the Appellant(s) or Respondent is/are seeking a criminal conviction.
- i) Settlements negotiated pursuant to the Dispute Resolution Policy.

### **Grounds for Appeal**

- 6. An Appeal may be heard only if there are sufficient grounds for the Appeal. Sufficient grounds include:
  - a) Made a decision for which it did not have authority or jurisdiction to make, as set out in Respondent's governing documents.
  - b) Failed to follow its own procedures as set out in the Respondent's governing documents.
  - 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 or that the decision was made on the basis of, or significantly influenced by, factors unrelated to the merits of the decision.
  - d) Made a decision that was grossly unreasonable or unfair.
- 7. The Appellant must demonstrate that the Respondent has made an error as described above and that the error had, or may reasonably have had, a material effect of the decision or the Respondent.

### **Timing of Appeal**

- 8. Individuals who wish to Appeal a decision will have fourteen (14) days from the date they received notice of the decision, to submit their Appeal document in writing to Able Sail Toronto President, who will appoint an Appeal Manager.
- 9. Any Individual wishing to submit an Appeal document beyond the fourteen (14) day period must provide a written request stating reasons for an exemption to the fourteen (14) day period. An Individual may only do so under exceptional circumstances preventing them from filing their appeal within the time period above. The decisions to allow, or not allow this exemption to the time period will be at the sole discretion of the Appeal Manager and may not be appealed.

### **Appeal Submission**

- 10. The formal Appeal document that is required to be submitted to commence an Appeal will include:
  - a. Notice of the 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 reasons for the Appeal.
  - g. All evidence that supports these grounds.
  - h. Requested remedy or remedies.
  - i. An administration fee of two hundred and fifty dollars (\$250), which will be refunded if the Appeal is granted, which may be waived or exempted at the discretion of the Appeal Manager (e.g., in cases of proven financial hardship).
- 11. The Appeal Manager has an overall responsibility to ensure procedural fairness is respected and to implement the policy in a timely manner. More specifically, the Appeal Manager has a responsibility to:
  - a) Receive the Appeal document.
  - b) Determine if the Appeal lies within the jurisdiction of this Policy.

- c) Determine if the Appeal is brought in a timely manner.
  - d) Determine if the Appeal is brought on permissible grounds.
  - e) Appoint the Appeal panel to hear appeals.
  - f) Determine the format of the Appeal hearing.
  - g) Coordinate all administrative and procedure aspects of the Appeal.
  - h) Provide administrative assistance and logistical support to the Appeal Panel as required; and
  - i) Provide any other service or support that may be necessary to ensure a fair and timely Appeal proceeding.
12. Upon commencement of the Appeal, the Appeal Manager will discuss the circumstances with the Appellant(s) and, without any delay, will notify the Respondent(s) in writing and forward a copy of the Appeal Document to the Respondent(s).
13. Notwithstanding any other provision in this Appeal Policy, by agreement between the Parties, the internal appeal process in relation to decisions made by Sail Canada only may be bypassed, and the appeal may be heard directly before the SDRCC. Except where an appeal proceeds before the SDRCC, Sail Canada or the relevant Provincial Sailing Association (as applicable) shall appoint an Appeal Manager and shall follow the process outlined in Sections 21 and following of this *Appeal Policy*, modified and applied accordingly based on the circumstances.

#### **Dispute Resolution**

14. Before proceeding further, the Appeal Manager and/or Appeal Panel may suggest, and the Parties may consent, the Appeal to be heard under Able Sail Toronto's Dispute Resolution Policy.

#### **Screening of Appeal**

15. Within five (5) days of receiving the Appeal, the Appeal Manager will determine whether there are appropriate grounds for the Appeal as set out in this policy.
16. For purposes of screening the appeal, the facts as alleged by the Appellant(s) in the Appeal Document shall be presumed to be correct unless such facts are, to the knowledge of the Appeal Manager, clearly erroneous.
17. If the Appeal is denied on the basis of insufficient grounds, or because it was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons.
18. If the Appeal is accepted because it falls under the scope of this Policy, there are sufficient grounds, and it was submitted in a timely manner, the Appellant(s) and the Respondent(s) will be notified in writing without delay of this decision and its reasons.

#### **Appeal Panel**

19. If the Appeal is accepted, the Appeal Manager will appoint an Appeal Panel. The Panel will be comprised of one Individual, unless the Appeal Manager determines a need to have an Appeal Panel comprised of 3 individuals, in which case one will be appointed chair.
20. When appointing the Appeal Panel, the Appeal Manager must select Individuals who are impartial, free from any real or perceived conflict of interest (and who shall remain so until a final decision has been rendered or the proceedings have otherwise finally terminated), and who do not have any direct relationship with any of the Parties. Although not a strict requirement, the Appeal Manager should attempt to appoint Individuals to the

Appeal Panel who have a legal background and who understand dispute resolution. When justified by the circumstances, the Appeal Manager may appoint Individuals to the Appeal Panel who have specific areas of expertise that would assist in resolving the matter. In fulfilling its duties, the Appeal Panel may obtain independent advice.

### **Procedure for Appeal Hearing**

21. The Appeal Manager shall notify the Parties that the Appeal will be heard. The Appeal Manager, in collaboration with the Appeal Panel, shall then decide the format under which the Appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.
22. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
23. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, a hearing based on documentary submissions alone, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Panel, with the assistance of the Appeal Manager, deem appropriate in the circumstances, provided that:
  - a) The hearing will be held in a timely manner
  - b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
  - c) Copies of any written documents which the Parties wish to have the Appeal Panel consider will be provided to all Parties in advance of the hearing
  - d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
  - e) The Appeal Panel may request that any other Individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.
  - f) The Appeal Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the Appeal but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate.
  - g) If a decision in the Appeal may affect another party to the extent that the other party would have recourse to an Appeal in their own right under this Policy, that party will become a party to the Appeal in question and will be bound by its outcome.
  - h) Any Affected Party shall be permitted to make submissions and file evidence before the Appeal Panel. The Appeal Panel's decision is binding on any Affected Party. The decision to uphold or reject the Appeal will be by a majority vote of the Appeal Panel members, except in cases where the Panel consists of a single member.

### **Appeal Decision**

24. Within fourteen (14) days of concluding the Appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide:
  - a) To reject the Appeal and confirm the decision being appealed.
  - b) To grant the Appeal, in part or in whole, and refer the matter back to the initial decision-maker for a new decision.
  - c) To grant the Appeal, in part or in whole, and vary the decision where it is found that an error occurred, and such an error cannot be corrected by the original decision-maker for reason of lack of clear procedure, lack of time, or lack of neutrality.

- d) To determine how costs of the Appeal, excluding legal fees and legal disbursements of any of the Parties, will be assessed against any party. When assessing such costs, the Panel shall consider the outcome of the proceedings, the conduct of the Parties and their respective financial resources.

25. A copy of this written decision will be provided to all of the Parties and to the Appeal Manager and to Ontario Sailing and Sail Canada. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with full written decision to be issued thereafter.

#### **Timelines**

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

#### **Confidentiality**

27. The Appeal process is confidential and involves only the Parties, the Appeal 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 to any person not involved in the proceedings. Any failure to respect the confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with Able Sail Toronto's relevant and applicable policies.

#### **Final and Binding**

28. The decision of the Panel will be final and binding on the Parties and on all the Association's Individuals, subject to their right to appeal the decision before the SDRCC in accordance with the Canadian Sport Dispute Resolution Code.

29. No action or legal proceeding will be commenced against Able Sail Toronto or any Individuals in respect of a dispute unless Able Sail Toronto has refused or failed to provide or abide by the dispute resolution process and/or Appeal process as set out in governing documents.

#### **Privacy**

30. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Able Sail Toronto's Privacy Policy. Ontario Sailing, or any of its delegates pursuant to this Policy (i.e., Appeal Manager, Appeal Panel), shall comply with Able Sail Toronto's Privacy Policy in the performance of their services under this Policy.