

Policies and Procedures

90 – Conduct and Enforcement

Policy Number:	90.40
Name:	Appeals Policy
Origin:	Board of Directors
Approved:	June 1999
Approval Process:	Board of Directors
Revision Date(s):	June 2002, June 2004, June 2005, June 2007, June 2008, June 2015, August 2017, August 2018

PREAMBLE

- A. U SPORTS expects that all participants including Member Institutions, Regional Associations, Directors of Athletics (or equivalents), coaches, officials, student-athletes, administrators, Institution Representatives, volunteers, and others connected to our athletic programs and events uphold our core values of honesty, integrity, fair play, sincerity and honourability. All participants shall accept and actively encourage compliance with both the spirit and the letter of the rules governing U SPORTS, and shall ask for clarity on or interpretation of any rule regarding which there is uncertainty. An accepted element of the spirit of those rules is that any suspected violation be brought forward as a Complaint or be brought to the attention of the alleged violator as soon as possible, and that intentionally withholding such suspicion until a later date is against the spirit of the rules.
- B. As a legal entity, U SPORTS has the authority to establish policies to govern its own affairs and to prescribe, monitor and enforce the conduct of its Member Institutions and the conduct of other individuals involved directly or indirectly in U SPORTS activities pursuant to such policies.
- C. No action or legal proceeding may be commenced against U SPORTS in respect of a dispute unless U SPORTS has refused or failed to provide or abide by the appeal process as set out in U SPORTS' policies and all remedies available under these policies has been exhausted.

90.40.1 DEFINITIONS

90.40.1.1 Member – for the purposes of this policy any category of member of U SPORTS, as well as any individual engaged in activities with U SPORTS.

90.40.1.2 Appellant – the Member appealing a decision.

90.40.1.3 Respondent – the body or individual whose decision is being appealed.

90.40.2 SCOPE OF APPEAL

90.40.2.1 Any Member who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, 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 pursuant to this Policy.

90.40.2.2 Decisions which may be appealed include, but are not limited to, those involving discipline, membership, awards, eligibility rules, U SPORTS imposed sanctions

associated with Anti-Doping Rule Violations, contract matters, or harassment and discrimination.

- 90.40.2.3 This policy shall not apply to the following decisions, which may not be appealed:
- a) relief from eligibility rules for compassionate reasons,
 - b) field of play playing rules and regulations,
 - c) suspension/termination of membership for failure to pay dues, fines, penalties or other levies,
 - d) infractions for doping offenses that have been determined by the Doping Tribunal, which have their own procedures for appeal separate from U SPORTS. U SPORTS has adopted the Canadian Policy on Doping in Sport.

90.40.2.4 Each appeal shall be accompanied by a payment of \$500 which is non-refundable.

90.40.2.5 As a condition of launching a complaint or an appeal the complainant and respondent agree to a total media ban during the proceedings. The intent of such a ban is to have the dispute resolved in a procedurally fair manner. The final result of a hearing/appeal shall be made public.

90.40.2.6 Choice of appeal process: If the Appellant and the Respondent mutually agree to take part in an alternative appeal process, and if both parties sign an arbitration agreement confirming their intent to submit to binding arbitration, the appeal may be referred to arbitration pursuant to the Sport Dispute Resolution Centre of Canada (SDRCC) program. In that case, the appeal will be adjudicated by a single arbitrator, subject to the arbitrator appointment rules and processes contained in the SDRCC Code.

90.40.3 TIMING OF APPEAL

90.40.3.1 Members who wish to appeal a decision shall have 21 days from the date

- 1) the decision was communicated to their university
- 2) circulated to the U SPORTS membership (if applicable) or
- 3) posted on the U SPORTS website (if applicable)

which ever comes last, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the Chief Executive Officer (CEO).

90.40.3.2 Any party wishing to initiate an appeal beyond the 21 day period must provide a written request stating reasons for an exemption to the requirement of Section 90.40.3.1. The decision to allow, or not allow an appeal outside the 21 day period shall be at the sole discretion of the CEO and two members of the Executive Committee and may not be appealed. The three individuals 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. If anyone is in a conflict situation the CEO will recruit alternates.

90.40.4 GROUNDINGS FOR APPEAL

90.40.4.1 A decision cannot be appealed on its merits, and may only be appealed by raising allegations of procedural error. Sufficient procedural grounds include allegations the Respondent:

- a) made a decision for which it did not have authority or jurisdiction as set out in U SPORTS' governing documents;
- b) failed to follow procedures as laid out in the By-laws or approved policies of U SPORTS;

- 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 its discretion for an improper purpose.

90.40.5 APPEALS PANEL

90.40.5.1 Within 10 (ten) working days of receipt of written notice of intent to appeal, the CEO shall establish an Appeals Panel (the “Panel”) 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. The Panel’s members shall select from themselves a Chairperson. The Panel may be advised by legal counsel in the sole discretion of the CEO.

90.40.6 SCREENING OF APPEAL

90.40.6.1 Within 15 (fifteen) working days of appointing the Appeal Panel, the Panel shall decide whether or not the appeal appears to be based on one or more of the categories of possible errors by the Respondent as set out in Section 90.40.4.1.

90.40.6.2 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 Appeal Panel and may not be appealed.

90.40.6.3 At the CEO and/or Board’s or Appeal Panel’s discretion, an independent screening of the file being appealed may take place, prior to determining whether to proceed with the appeal. The independent overseer/s should consider carefully if there are merits to the appellant's complaints (based on the grounds of appeal) such that proceeding with the appeal may be unwise. If there are situations identified by the reviewer/s as being potentially problematic on an appeal, this advice can be communicated to the CEO, and U SPORTS would have the option of calling no evidence on the appeal or otherwise trying to settle the matter.

90.40.7 FORMAT OF APPEAL

90.40.7.1 Once appointed, the Panel shall determine the format for the appeal. The Panel may decide to conduct the appeal by way of oral hearing, by way of documentary evidence, or by way of a combination of these two methods.

90.40.8 PRELIMINARY CONFERENCE

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

- a) format of the appeal;
- b) timelines for exchange of documents;
- c) clarification of issues in dispute;
- d) clarification of evidence to be presented to the Panel;
- e) order and procedure of hearing;
- f) identification of witnesses; and
- g) any other procedural matter which may assist in expediting the appeal proceedings.

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

90.40.9 PROCEDURE FOR THE HEARING

90.40.9.1 Where the Panel has determined that the appeal shall be held by way of oral hearing, the Panel shall govern the hearing by such procedures as it deems appropriate, provided that:

- a) The hearing shall be held within 30 days of the Panel's appointment.
- b) The Appellant and Respondent shall be given 10 days written notice of the date, time and place of the hearing.
- c) Subject to i), a quorum shall be three Panel members.
- d) Decisions shall be by majority vote, where the Chairperson carries a vote.
- e) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to all members of the Panel, and to all other parties, at least 5 days in advance of the hearing.
- f) If the decision of the Panel may affect another party to the extent that they would have recourse to an appeal in their own right, that party shall become a party to the appeal in question.
- g) Any of the parties may be accompanied by a representative or advisor, including legal counsel.
- h) The Panel may direct that any other person participate in the appeal.
- i) In the event that one of the Panel's members is unable or unwilling to continue with the appeal, the matter shall be concluded by the remaining two Panel members, who shall make their decision by unanimous vote.
- 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.

90.40.9.2 In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a telephone or video conference.

90.40.10 PROCEDURE FOR DOCUMENTARY APPEAL

90.40.10.1 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 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 set out in Section 90.40.9.1 are respected.

90.40.11 EVIDENCE WHICH MAY BE CONSIDERED

As a general rule, the Panel shall only consider that evidence which was before the original decision-maker. At its discretion the Panel may hear new evidence which is material and which was not available at the time of the original decision.

90.40.12 APPEAL DECISION

90.40.12.1 Within 14 days of concluding the appeal, 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 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
- d) To determine how costs of the appeal shall be allocated, if at all.

90.40.12.2 A copy of this decision shall be provided to each of the parties and to the CEO.

90.40.13 TIMELINES

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

90.40.13.2 For extraordinary situations which require an immediate resolution, as determined by the CEO or the **Chair** in their sole discretion, the **Chair** and CEO and a third person independent of the dispute shall convene a conference call of the affected parties. After hearing all affected parties' versions of the events, an oral decision will be rendered within 24 hours. The decision shall be by majority vote. If the **Chair** or CEO is in a conflict situation they shall be replaced by one of the Past President/President Elect and/or one of the vice-presidents of U SPORTS.

90.40.14 FINAL AND BINDING

90.40.14.1 The decision of the Panel shall be final and binding on the parties and on all members of U SPORTS and there shall be no recourse to the Courts on any question of either fact or law.

Policies and Procedures

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Policy Number:	90.50
Name:	Alternative Dispute Resolution (ADR)
Origin:	Board of Directors
Approved:	June 1999
Approval Process:	Board of Directors
Revision Date(s):	June 2002, June 2004, June 2006, August 2017, August 2018

- 90.50.1 U SPORTS supports the principles of the Alternative Dispute Resolution and is committed to the techniques of mediation and arbitration as effective ways to resolve disputes with its members, and avoid the harm of litigation.
- 90.50.2 Accordingly, opportunities for ADR may be pursued at any point in a dispute where it is appropriate for the dispute in question and where the disputing parties each agree that such a course of action would be mutually beneficial and mutually agreeable.
- 90.50.3 As a condition of agreeing to enter into arbitration, U SPORTS can require the other party(ies) to agree to have the dispute heard in an accelerated fashion.
- 90.50.4 The decision to pursue arbitration shall be at the discretion of the:
a) Executive Committee, or, if in conflict,
b) Board of Directors;
who shall be empowered to enter into an arbitration agreement on behalf of U SPORTS.
- 90.50.5 If arbitration is pursued, the services provided by the Sport Dispute Resolution Centre of Canada (SDRCC) shall be used.