



Athletics Canada

Commissioner's Office

Background

Athletics Canada's Governance Committee was struck following Athletics Canada's successful transition to compliance with Canada's new Not-for-Profit Corporations Act ('NFP Act'). The transition process required that AC change its bylaws and governance structure to comply with the new law.

Ann Peel was appointed as the Chair of the Committee and the Sport Law & Strategy Group was retained to assist with the restructuring of AC's governing documents. The Committee's members include:

- Ann Peel (Chair)
- Grant Mitchell
- Jennifer Joyce
- Kevin Lawrie, Sport Law & Strategy Group
- Rob Guy (AC staff support)
- Michele Edmiston-Hurter (AC staff support)

The Committee developed a comprehensive Governance Policy along with new or updated Terms of Reference for all of AC's committees. Athletics Canada's Member Conduct Policy and Member Conduct Waiver were also reviewed by the Governance Committee. They were replaced by a Code of Conduct and Ethics.

The Committee determined that changes and improvements could be made to Athletics Canada's complaints and appeals processes. With assistance from Rachel Corbett of the Sport Law & Strategy Group, the Committee is proposing a unique "Commissioner's Office" position that would be a first in amateur sport in Canada and that would replace the previous complaints and appeals policies. This Office would act at arms-length from Athletics Canada's Board of Directors and Athletics Canada Staff to resolve complaints and appeals.

This document was submitted to different stakeholder groups (Athlete's Council, Branch Council, AC staff) for review and consultation. It was also communicated to the SDRCC for feedback and will be submitted to Sport Canada.

Commissioner's Office – Terms of Reference

Purpose

Athletics Canada's Commissioner's Office was established to make informed decisions in four areas of Athletics Canada operations – carding, selection, eligibility, and discipline. Athletics Canada's Board of Directors vests the Commissioner's Office to be the autonomous authority in these areas and to resolve disputes within Athletics Canada efficiently, effectively, and fairly.

Authority

Athletics Canada's Board of Directors hires individuals to fill the Commissioner's Office and reviews the progress of the Commissioner's Office at the end of every year-long term. The Board cedes complete and autonomous decision-making authority to the Commissioner's Office during the length of the term and the Commissioner's Office does not report to the Board of the Directors or to Athletics Canada staff.

Description

The Commissioner's Office consists of two individuals who are retained by Athletics Canada. Each individual must enter into an agreement with Athletics Canada that contains the following items:

- Compensation (per diem)
- Annual Review (guided by the criteria listed in the Review section below)
- Termination conditions
- Confidentiality
- Other terms common to arbitrator agreements

Between the two individuals occupying the Commissioner's Office, one individual will be the Acting Commissioner. Generally, the same individual will always be the Acting Commissioner (which is reflected in that individual's agreement) but this individual should rely on the other individual in instances of:

- Complex cases (wherein the two individuals occupying the Commissioner's Office should discuss the case)
- Conflicts of Interest (wherein the Acting Commissioner should defer the Acting Commissioner title to the other, non-conflicted individual)
- Language (wherein at least one of the individuals should be fluent in French and a case to be discussed in French should be handled by the French-speaking individual)
- Multiple ongoing cases (wherein each individual would be the Acting Commissioner for a respective case)
- Unavailability (wherein the available individual would be the Acting Commissioner)

Appointment

Athletics Canada's Board of Directors shall consider the following qualifications and skills (among others) when retaining individuals for the Commissioner's Office:

- Language fluency (multiple languages are an asset)
- Adjudication Dispute resolution experience
- Understanding of the Canadian sport system
- Reasonable perception of neutrality in disputes involving Athletics Canada
- Comfort in complex situations, ability to consider multiple perspectives and contexts, strong decision making record (in sport or other areas), respected by peers, strong ability to communicate for understanding by laypersons, appreciation of timely decision-making

Individuals are appointed to the Commissioner's Office for a one-year term that may be renewed, following a review, at the discretion of Athletics Canada's Board of Directors.

Scope

The Commissioner's Office is responsible for hearing the following:

- Athlete appeals of **carding** decisions
- Athlete appeals of **selection** decisions
- Athlete appeals of **eligibility** decisions
- **Complaints** of violations of Athletics Canada's *Code of Conduct and Ethics*

The Commissioner's Office may not involve itself in bylaws amendments or decisions made by the Members of Athletics Canada at meetings of the Members.

Procedures - General

The following general procedures will apply to all dispute resolution procedures undertaken by the Commissioner's Office:

1. The Commissioner's Office has the discretion to assist the parties with procedural issues without becoming an advocate for either party.
2. The Commissioner's Office will determine all deadlines, at all times respectful of the urgency of the situation, particularly in relation to carding and selection appeals. Deadlines may be changed at the discretion of the Commissioner's Office, with notice to all parties.
3. In cases where either party is a group or organization (such as Athletics Canada), the group or organization will name an individual to be the contact person during the dispute.
4. Each party is permitted to have a representative (counsel or other individual) represent the party during the dispute.
5. Additionally, a party who is a minor has the right to have a parent or guardian act for the party and/or attend an in-person or conference call hearing.
6. When an in-person hearing or conference call hearing is held, and Athletics Canada is not one of the parties, Athletics Canada is permitted to have an observer attend the hearing.
7. All documents and arguments submitted during a dispute resolution procedure are considered to be confidential and may not be communicated to groups or individuals not involved in the dispute.
8. When the Commissioner's Office issues a decision, the reasons for the decision will be communicated in writing to all parties and submitted to Athletics Canada for retention and/or distribution (if necessary or required by the content of the decision). In cases where time is essential, the Commissioner's Office may issue a verbal decision with written reasons to follow at a later date.
9. The Commissioner's Office shall retain a record of all written decisions made for the purpose of developing jurisprudence.
10. All athlete appeals of carding decisions, selection decisions, eligibility decisions, or complaints of violations of Athletics Canada's *Code of Conduct and Ethics* must be accompanied by a fee of \$250 (payable to Athletics Canada). This amount will be returned if the appeal is successful or complaint is found to be legitimate.

Procedures – Carding, Selection, Eligibility

The Commissioner's Office is empowered to resolve appeals of carding, selection, and eligibility decisions in any manner. However, to ensure procedural fairness in the resolution of the appeal, the Commissioner's Office must be guided by the following procedures:

1. Appeals of carding, selection, and eligibility decisions must contain:
 - a) date the decision was made;
 - b) content of the decision;
 - c) identity and contact information of the Appellant;

- d) identity of any affected parties if the decision were to be changed (if known);
 - e) a description of the decision;
 - f) the Appellant's reasons why the decision made was improper or incorrect; and
 - g) the requested remedy or solution.
2. Upon receiving the appeal, the Commissioner's Office must determine if it was submitted within a reasonable timeframe following the date of the decision, or if a reasonable explanation has been provided for granting an extension. Reasonable timeframes include:
 - a) For carding appeals – 14 days
 - b) For selection appeals – 7 days
 - c) For eligibility appeals – 7 days
 3. If the Commissioner's Office decides that the appeal has not been submitted within a reasonable timeframe, or if a reasonable explanation for requesting an extension has not been provided, then the appeal is dismissed.
 4. Upon receiving the appeal, the Commissioner's Office may determine that the appeal is frivolous or vexatious, outside of the jurisdiction of the Commissioner's Office, or that the Appellant's reasoning is incomplete or inaccurate. Such appeals will be dismissed unless the Commissioner's Office permits the complaint to be resubmitted with more complete or accurate reasoning.
 5. The Respondent will be provided with the content of the appeal and instructed to submit a response to the Commissioner's Office.
 6. By communicating with each of the parties (the Appellant and the Respondent), the Commissioner's Office will first determine if it is possible to reach a resolution to the dispute by mediation. If so determined, the Commissioner's Office will refer the mediation process to a resolution facilitator of the Sport Dispute Resolution Centre of Canada (SDRCC).
 7. If mediation fails or is not possible, the Commissioner's Office must liaise with Athletics Canada staff to determine which (if any) parties or athletes may be affected by the appeal. Affected parties will be provided with the appeal and the response and will be offered the opportunity to submit a response that will be shared with the other parties.
 8. The Appellant will be provided with the Respondent's response and will be permitted to submit a short rebuttal document to the Commissioner's Office. The rebuttal document will be provided to the other parties.
 9. The Commissioner's Office, in consultation with the parties, will determine if an in-person hearing, a conference call hearing, or a hearing on documentary evidence alone is the most effective method to share and consider the evidence relating to the appeal.
 10. If an in-person hearing or conference call hearing is necessary, the parties (along with any affected athletes, and other interested individuals identified by the Commissioner's Office) will be invited to participate alongside a representative or counsel (if desired). The hearing will take a form specified by the Commissioner's Office wherein the parties and/or the Commissioner's Office may ask questions about the evidence submitted by any party.
 11. Following the hearing (if held) or the conclusion of the documentary submissions, the Commissioner's Office will issue a written decision with reasons. The written decision will:
 - i. Reject the appeal and confirm the decision being appealed;
 - ii. Uphold the appeal and refer the matter back to the initial decision-maker for a new decision;
 - iii. Uphold the appeal and vary the decision, but only 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; or
 - iv. Determine whether costs of the appeal, excluding legal fees and legal disbursements of any parties, will be assessed against any party. In assessing costs, the Commissioner's Office will take

- into account the outcome of the appeal, the conduct of the parties, and the parties' respective financial resources.
12. The Commissioner's Office's written decision, with reasons, will be distributed to all parties. The decision will be considered a matter of public record (unless decided otherwise by the Commissioner's Office).

Procedures – Complaints

The Commissioner's Office is empowered to receive complaints of violations of Athletics Canada's *Code of Conduct and Ethics* and to resolve such complaints. However, to ensure procedural fairness in the resolution of the complaint, the Commissioner's Office must be guided by the following procedure:

1. Complaints must contain:
 - a) date of the incident;
 - b) identity and contact information of the Complainant (when an organization, such as Athletics Canada, acts as the Complainant an individual must be identified to represent the organization);
 - c) identity of the individual(s) who violated the *Code of Conduct and Ethics*;
 - d) description of the incident;
 - e) the sections of the *Code of Conduct and Ethics* that were allegedly violated; and
 - f) the requested remedy or solution.
2. Upon receiving the complaint, the Commissioner's Office must determine if it was submitted within 14 days of when the Complainant knew or ought to have known about the incident that caused the complaint. The Commissioner's Office may grant an extension to this timeline if a reasonable explanation has been provided for granting an extension. If the Commissioner's Office decides that the complaint has not been submitted within a reasonable timeframe then it may be dismissed.
3. Upon receiving the complaint, the Commissioner's Office may determine that the complaint is frivolous or vexatious, outside of the jurisdiction of the Commissioner's Office, or that the description of the incident is insufficient. Such complaints will be dismissed unless the Commissioner's Office permits the complaint to be resubmitted with more complete or accurate reasoning.
4. By communicating with each of the parties (the Appellant and the Respondent), the Commissioner's Office will first determine if it is possible to reach a resolution to the dispute by mediation. If so determined, the Commissioner's Office will refer the mediation process to a resolution facilitator of the Sport Dispute Resolution Centre of Canada (SDRCC).
5. During the complaint procedure, the Commissioner's Office may decide that the alleged incident is of such seriousness as to warrant suspension of an individual pending completion of any criminal process, or of the complaint procedure and the release of a decision by the Commissioner's Office.
6. If mediation fails or is not possible, the Commissioner's Office will determine if the alleged violation is a minor infraction or a major infraction.
7. Minor infractions are defined as:
 - a) Disrespectful, abusive, racist, or sexist comments or behaviour
 - b) Disrespectful conduct
 - c) Conduct contrary to the values of Athletics Canada
 - d) Neglecting attendance at Athletics Canada events and activities for which attendance is expected or required
 - e) Non-compliance with Athletics Canada's policies, procedures, rules, or regulations
 - f) Minor violations of Athletics Canada's *Code of Conduct and Ethics*, at the discretion of the Commissioner's Office
8. If the alleged violation is determined to be a minor infraction, the Commissioner's Office will refer the complaint to be handled by an appropriate person who has authority over both the situation and the individual(s) involved. The person in authority can be, but is not restricted to being, staff, officials, coaches,

judges, organizers, or Athletics Canada decision-makers. The person in authority must report any sanction or discipline (if applied) back to the Commissioner's Office for retention or distribution as necessary.

9. Major infractions are defined as:
 - a) Repeated minor infractions
 - b) Any incident of hazing
 - c) Incidents of physical abuse
 - d) Behaviour that constitutes harassment, sexual harassment, or sexual misconduct
 - e) Pranks, jokes, or other activities that endanger the safety of others
 - f) Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
 - g) Conduct that intentionally damages Athletics Canada's image, credibility, or reputation
 - h) Consistent disregard for Athletics Canada's bylaws, policies, rules, and regulations
 - i) Major or repeated violations of Athletics Canada's *Code of Conduct and Ethics*, at the discretion of the Commissioner's Office
 - j) Intentionally damaging Athletics Canada property or improperly handling Athletics Canada monies
 - k) Abusive use of alcohol, any use or possession of alcohol by minors, or use or possession of illicit drugs and narcotics
 - l) A conviction for any *Criminal Code* offense
 - m) Any possession or use of banned performance enhancing drugs or methods
10. In cases where the Commissioner's Office has determined that a major infraction has allegedly occurred, the Respondent will be provided with the content of the complaint and instructed to submit a response to the content to the Commissioner's Office
11. The Complainant will be provided with the Respondent's response and be permitted to submit a rebuttal document to the Commissioner's Office. The rebuttal document will be provided to the Respondent
12. The Commissioner's Office will determine if an in-person hearing or conference call hearing is necessary to hear and consider the evidence in the complaint, or if the complaint can be addressed based on the submitted documents
13. If an in-person hearing or conference call hearing is necessary, the parties (along with any interested individuals or witnesses identified by the Commissioner's Office) will be invited to participate alongside a representative or counsel (if desired). The hearing will take a form specified by the Commissioner's Office wherein the parties and/or the Commissioner's Office may ask questions about the content of the evidence submitted

Following the hearing (if held) or the conclusion of the documentary submissions, the Commissioner's Office will issue a written decision resolving the complaint. If a sanction is to be applied, the sanction will correspond with the severity of the offence committed, the age of the offender, the offender's remorse, and any corrective action the offender has already taken. The Commissioner's Office may apply the following disciplinary sanctions, singularly or in combination:

- a) Verbal or written reprimand from Athletics Canada to the Respondent
- b) Verbal or written apology from the Respondent to the Complainant
- c) Expulsion from Athletics Canada
- d) Removal of certain privileges accorded to members or associates
- e) Suspension from relevant teams, events, and/or activities
- f) Suspension from all Athletics Canada's activities for a designated period of time
- g) Payment of the cost of repairs for property damage
- h) Suspension of funding from Athletics Canada or from other sources
- i) Any other sanction considered to be reasonable

14. Unless the Commissioner's Office decides otherwise, any disciplinary sanctions will begin immediately and may be applied retroactively. Failure to comply with a sanction as determined by the Commissioner's Office will result in automatic suspension from any provincial branch until such time as compliance occurs.
15. The Commissioner's Office's written decision, with reasons, will be distributed to all parties. The decision will be considered a matter of public record (unless decided otherwise by the Commissioner's Office).

Criminal Code Convictions

If the Commissioner's Office becomes aware, via a submitted complaint or by other means, of an individual associated with Athletics Canada being convicted of any of the following Criminal Code offenses, the individual will be expelled from Athletics Canada, expelled from the applicable provincial branch, and/or removed from competitions, programs, activities, and events at the sole discretion of the Commissioner's Office:

- Any child pornography offences
- Any sexual offences
- Any offence of physical or psychological violence
- Any offence of assault
- Any offence involving trafficking of illegal drugs

Appeals of Decisions by the Commissioner's Office

Decisions of the Commissioner's Office may be appealed. The Appellant party has the following options for appeal:

- Coordinating with the Commissioner's Office and the other party to reach a mediated settlement (the Commissioner's Office and the other party must agree to this option and to be bound by the mediated settlement agreement)
- If a mediated settlement cannot be reached, or the parties do not agree to submit to mediation, a party may seek a review of the Commissioner's Office's decision pursuant to the rules of the SDRCC

Reporting

The Commissioner's Office will submit written decisions, with reasons, to Athletics Canada's Board of Directors with instructions to post the decisions on a section of Athletics Canada's website.

Review

This Terms of Reference were approved by the Board on July 25, 2015. The Board, along with the Athlete Representatives to the Board, will review the Terms of Reference and the performance of the Commissioner's Office on an annual basis, with input from the Commissioner's Office as required.

The review will consider the following questions, among others that may be relevant:

- Are the two individuals who occupy the Commissioner's Office working effectively together?
- Is the Commissioner's Office accepting or rejecting appeals or complaints only in accordance with this Terms of Reference?
- Is the Commissioner's Office managed effectively?
- Has the Commissioner's Office been successful in establishing effective practices of decision making; including timeliness, lack of bias, preparedness of the Commissioner's Office and of the parties, procedurally fair hearings, and transparency?
- Were decisions communicated effectively, in a timely manner, and in a way that they were understood by all parties?
- Have the parties perceived the process to be fair?
- Are the parties satisfied that they "told their story"?