



## **COMMISSIONER'S OFFICE – TERMS OF REFERENCE**

### **1.0 Purpose**

Athletics Canada's Commissioner's Office was established to make informed decisions in the following areas of Athletics Canada operations – support program selection, representative team selection, eligibility, Athlete Agreements, and complaints of violations of Athletics Canada's Code of Ethics and Conduct Policy (AC Code). Athletics Canada has signed onto "Abuse-Free Sport" and adopted the Universal Code of Conduct to Prevent and Address Maltreatment in Sport ("UCCMS") which is incorporated into the Code of Ethics and Conduct Policy by reference. Complaints or disputes concerning potential breaches of the UCCMS involving National Team athletes, staff, and coaches, Athletics Canada Staff, and Athletics Canada Board and Committee members are to be directed to Sport Dispute Resolution Centre of Canada. All other disputes or complaints are to be directed to Commissioner's Office for resolution.

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.

### **2.0 Authority**

Athletics Canada's Board of Directors retains individuals to fill the Commissioner's Office and reviews the progress of the Commissioner's Office at the end of every year. 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 Directors or to Athletics Canada staff.

### **3.0 Description**

The Commissioner's Office consists of up to three 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);
- Bi-Annual Review (guided by the criteria listed in the Review section below);
- Termination conditions;
- Confidentiality; and
- Other terms common to case management, mediation, and arbitrator agreements.

Between the individuals occupying the Commissioner's Office, one individual will be the Lead Commissioner (which is reflected in that individual's agreement) who will be responsible for initial contact and assigning cases on a rotational basis to all Commissioners taking into account factors of which include, but are not limited to, the following:

- Complex cases involving intricate legal principles such as those with human rights issues, sexual harassment or serious athlete maltreatment are to be assigned to the Commissioners with the highest level of legal training and expertise;
- Avoidance of conflicts of interest wherein the Lead Commissioner should assign cases to another, 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);
- Allocating workload taking into account ongoing cases (wherein each individual would be the active Commissioner for a respective case); and
- Case load and availability of the Commissioner to complete the work in a timely fashion.

#### **4.0 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)
- Gender and ethnic diversity;
- Legal, Adjudication and dispute resolution experience;
- Understanding of the Canadian sport system;
- Freedom from actual or reasonably perceived conflicts of interest that may impugn the Commissioner's role; and
- 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, and appreciation of timely decision-making.

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

#### **5.0 Scope**

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

- Athlete appeals of support program selections related to Canadian Athletics Performance Pathway (CAPP) and or Athletics Canada's Athlete Assistance (AAP) programs;



- Athlete appeals of representative team selection decisions;
- Athlete appeals of eligibility decisions;
- Disputes relating to the Athlete Agreement, as those are brought forward by athletes; and
- Complaints brought forward through the *Athletics Canada Whistle Blower Policy*. Whistleblower complaints will be redirected to the SDRCC for resolution as appropriate.
- Complaints of violations of Athletics Canada's *Code of Ethics and Conduct Policy (AC Code)* and other Athletics Canada policies as amended from time to time. Complaints will be directed to SDRCC for resolution as appropriate.

The Commissioner's Office is responsible for determining whether a complaint may involve an alleged violation of the AC Code and for appointing an independent Investigator to conduct an investigation pursuant to the terms set out herein. Investigators must be selected from the previously approved pool of qualified investigators vetted by Athletics Canada unless otherwise approved by Athletics Canada.

The Commissioner's Office will determine whether a complaint related to Athlete Maltreatment and/or Harassment may be considered Workplace Harassment. Provincial/Territorial legislation related to Workplace Harassment may apply if the harassment was directed toward a worker in a Workplace. Investigations into a complaint of either Workplace Harassment or Athlete Maltreatment (including but not limited to harassment in an Athlete Workplace) must be guided by applicable principles of natural justice and procedural fairness in addition to applicable Federal and/or Provincial/Territorial legislation. The Commissioner's Office should be familiar with relevant Federal, Provincial, and Territorial workplace safety and human rights legislation and is expected to remain informed of legislative developments related to matters including harassment, maltreatment, and Sport Canada requirements.

The Commissioner's Office can access additional professional expertise or legal advice to support their case work with the prior approval of Athletics Canada's CEO.

The Commissioner's Office may not involve itself in bylaw amendments or decisions made by the Members of Athletics Canada at meetings of the Members respecting at all times that approval of changes is the responsibility of the governance committee, Board of Directors and Membership.

The Commissioners Office may communicate with the Athletics Canada CEO, Director of Domestic Programs & Safe Sport, or finance staff to obtain administrative assistance as required to support the independent work of the Commissioner's Office such as formalizing contracts with investigators, facilitating legal services, payment for services, and/or communications required by the Commissioner's Office.

## **6.0 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 but shall not become 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 support program and representative 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. A party who is a minor has the right to have a parent/guardian act for the party and/or attend an in-person or conference call hearing;
6. 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;
7. 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;
8. The Commissioner's Office shall retain a record of all written decisions made for the purpose of developing jurisprudence; copies of the decision will be distributed to each party. Decisions will be considered a matter of public record, and will be published on the Athletics Canada website (unless decided otherwise by the Commissioner's Office); and all athlete appeals of support program selection decisions, representative team selection decisions, or eligibility decisions, must be accompanied by a fee of \$250 (payable to Athletics Canada). This amount will be returned if the appeal is successful or if the complaint is found to be legitimate. There is no fee required for complaints of violations of Athletics Canada's Code.

## **7.0 Procedures – Support Program, Representative Team Selection, Eligibility**

The Commissioner's Office is empowered to resolve appeals of support program selection, representative team selection, and eligibility decisions in any manner that the Commissioner's Office considers appropriate to the circumstances. 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 support program selection, representative team 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 support program selection appeals – fourteen (14) days;
  - b) For representative team selection appeals – five (5) days of the date that the affected athlete is notified of the decision to be appealed. Appeal deadlines imposed by external organizations will supersede this Rule; and
  - c) For eligibility appeals – seven (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 submission is incomplete or inaccurate. Such appeals will be dismissed unless the Commissioner's Office permits the appeal to be resubmitted with more complete or accurate information.
5. The Respondent will be provided with a copy 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 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 responding to new issues raised by the Respondent. The rebuttal document will be provided to the other parties.
9. The Commissioner's Office will determine if an in-person hearing, a tele/video hearing, or a hearing conducted in writing with documentary evidence and written submissions alone is the most effective method to share and consider the evidence relating to the appeal.
10. If an in-person hearing or virtual (including tele/video options) 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 in-person or virtual hearing (if held) or following the consideration of the documentary evidence and written submissions, the Commissioner's Office will issue a written decision with reasons. The written decision will:
  - a) Reject the appeal and confirm/uphold the decision being appealed;
  - b) Grant the appeal and refer the matter back to the initial decision-maker for a new decision; or
  - c) Grant 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.
12. The Commissioner's Office's written decision will also determine whether costs, including legal fees and disbursements, of the appeal, will be assessed against any party. Each party is presumed to be reasonable for their own costs however in assessing costs, the Commissioner's Office may take into account factors which include the outcome of the appeal, the conduct of the parties during the investigation and/or hearing process, and the parties' respective financial resources and each party's intent to resolve the dispute prior to a hearing. Success in any appeal does not mean that a party is automatically entitled to an award of costs.
13. The Commissioner's Office's written decision, with reasons, will be distributed to all parties within seven (7) days of the hearing's conclusion.
14. Athletics Canada will publish the Commissioner's Office's written decision on the Athletics Canada website, unless otherwise directed by the Commissioner, who will consider such factors as: whether one of the parties is a minor; whether the report will needlessly create unwelcome criticism of any party or subject them to ridicule;

whether the matter is, or likely will be, subject to a police or other investigation, whether the matter may be heard in civil court; or any other reasonable consideration at the sole discretion of the Commissioner. In all cases where the SDRCC has heard an appeal of any Commissioner's decision which has been published on the Athletics Canada website, and the SDRCC has overturned the Commissioner's decision, that decision will be removed from the website.

## 8.0 Procedures – Complaints

The Commissioner's Office may be contacted at the following email address: [commissioner@athletics.ca](mailto:commissioner@athletics.ca). There is also a contact form on the "Filing a Complaint" tab on the Athletics Canada [Safe Sport page](#).

The Commissioner's Office is empowered to receive complaints within its defined scope as defined in Section 5.0 and to resolve such complaints. To ensure natural justice and procedural fairness in the handling of the complaint, the Commissioner's Office must be guided by the following procedures:

1. Complaints must contain:
  - a) Date(s) of the incident(s);
  - b) Identity and contact information of the Complainant (when an organization, such as Athletics Canada, acts as the Complainant an individual must be identified by the Board to represent the organization);
  - c) Identity of the individual(s) who allegedly violated the *AC Code*;
  - d) Description of the incident(s);
  - e) The sections of the *AC Code* that were allegedly violated; and
  - f) The requested remedy or solution.
2. When any complaint is submitted to the Commissioner's Office, the Commissioner's Office will determine whether it has jurisdiction over the subject matter of the complaint. The Commissioner may refer the complaint to SDRCC as appropriate. Any decision on jurisdiction shall be final and binding.
3. The Commissioner's Office has jurisdiction over complaints that contain allegations of any violations of the *AC Code* (except those covered by SDRCC as described in the "Purpose"), in the following situations:
  - a) Incidents that occur during Athletics Canada's business, activities, or events including, but not limited to, competitions, practices, tryouts, training camps, travel associated with Athletics Canada's activities, Athletics Canada's office environment, and any meetings; and
  - b) Instances where Athletics Canada is required to take jurisdiction due to



requirements imposed by government, Sport Canada or other governing body as amended from time to time.

- c) Incidents or complaints involving an allegation of maltreatment that occur during any Club or Member business, activities, or events including, but not limited to, competitions, practices, tryouts, training camps, travel associated with a Club or Branch's activities, a Club or Branch's office environment, and any meetings, except in circumstances where at the time the complaint is filed with the Commissioner:
    - the claimant has registered the same or similar complaint with the relevant
    - Club or Member;
    - the Club or Member has a Policy and Procedure that governs the subject matter of the complaint;
  - d) Notwithstanding the forgoing, the Commissioner may exercise jurisdiction over a maltreatment complaint involving a Club or Branch where one of the Parties to the Complaint submits and the Commissioner agrees:
    - that there has been undue delay in the review of the complaint;
    - that the complaint cannot be fairly reviewed under the Club or Member Policy or Process due to a conflict of interest;
  - e) Where a complaint does not concern a matter of maltreatment, the Commissioner's Office will direct that the complaint be handled under the jurisdiction of the policies of the Club or Member.
4. Complaints within the jurisdiction of the Commissioner's Office will be handled in a manner consistent with the process(es) described in the Commissioner's Office Terms of Reference. In addition, the Commissioner's Office may also appoint an independent Investigator to investigate the allegations if:
- a) The complaint contains an element of Maltreatment against a worker in a Workplace; or
  - b) The complaint contains an element of Maltreatment against an athlete in an Athlete Workplace; or
  - c) As determined by the Commissioner's Office in their sole discretion
5. 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 information.



6. The Respondent may, at any time in a Commissioner's complaint process, communicate to the Commissioner that they accept responsibility for the alleged breach of the Code. The Commissioner may then determine if the breach was minor or major and provide a sanction as described in the AC Code.
7. After the Commissioner has confirmed jurisdiction the Commissioner may, by communicating with each of the parties (the Appellant and the Respondent), determine if it is possible to reach a resolution to the dispute by mediation or by means of private negotiation between the parties and/or their legal representative, if any. If so determined, the Commissioner's Office will permit the parties to engage in a period of without prejudice private negotiation and/or refer the mediation process to a resolution facilitator of the Sport Dispute Resolution Centre of Canada (SDRCC).
8. 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.
9. The Commissioner's Office will determine if the complaint needs to be investigated and, if so, will appoint an independent investigator to investigate the complaint and prepare an Investigator's Report.

Investigators must be selected from the previously approved pool of qualified investigators vetted by Athletics Canada.

Federal and/or Provincial/Territorial legislation related to Workplace Harassment may apply to the investigation if the Maltreatment involved a worker in a Workplace. The Commissioner's Office should review workplace safety legislation and/or consult independent experts to determine whether legislation applies to the complaint.

When appointed, the Investigator will have terms of reference as determined by the Commissioner's Office.

The Investigator may not be an Athletics Canada representative or Director and must be an independent third-party skilled in investigating claims of Maltreatment. The Investigator must be neutral and have no conflict of interest regarding the complaint and may have no connection to either party.

In accordance with timelines determined by the Commissioner's Office, which may be modified as necessary, the Investigator will prepare and submit an investigation report into the allegations of Maltreatment. The report will be considered by the Commissioner's Office prior to a decision on the complaint being made.

The investigation may take any form as decided by the Investigator, guided by applicable Federal and/or Provincial legislation and principles of natural justice and procedural fairness. The investigation may include:

- a. Complainant interviewed;
- b. Witnesses interviewed;



- c. Statement of facts (Complainant's perspective) prepared by Investigator and acknowledged by Complainant;
- d. Statement delivered to Respondent;
- e. Respondent interviewed;
- f. Witnesses interviewed; and
- g. Statement of facts (Respondent's perspective) prepared by Investigator and acknowledged by Respondent.

The Investigator's Report should include a summary of evidence from the parties (including both statements of facts, if applicable) findings of fact and conclusions of whether on a balance of probabilities, the allegations have been substantiated and an incident occurred that could be considered Maltreatment.

The Investigator's Report will be provided to the parties with the names and identifying details of any witnesses redacted. The provision of the Investigator's Report is conditional on the parties not distributing the Report to any third party without the written permission of Athletics Canada.

The information obtained about an incident or complaint (including identifying information about any individuals involved) will remain confidential, unless disclosure is necessary for the purpose of investigating or taking corrective action or is otherwise required by law.

The Investigator will make every effort to preserve the confidentiality of the Complainant, Respondent, and any other party to the investigation. However, Athletics Canada recognizes that maintaining anonymity of any party is not an absolute guarantee and may be difficult for the Investigator during the course of the investigation where the identity of the Complainant is relevant to the Respondent's ability to provide a full answer and response to the allegations against them.

- 10. If mediation fails, is not possible, or is not deemed appropriate by the Commissioner, the Commissioner's Office will determine if the alleged violation is a minor infraction or a major infraction.
- 11. Minor infractions are defined as:
  - a) Disrespectful, abusive, racist, or sexist comments or behaviour that do not represent a sustained pattern of conduct;
  - b) Conduct contrary to the values of Athletics Canada;
  - c) Neglecting attendance at Athletics Canada events and activities for which attendance is expected or required;
  - d) Non-compliance with Athletics Canada's policies, procedures, rules, or



regulations which non-compliance does not represent a sustained pattern ; or

- e) Minor violations of Athletics Canada's *Code*, at the discretion of the Commissioner's Office.

12. 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, staff, event group leaders, team managers, 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.

13. Major infractions are defined as:

- a) Repeated minor infractions;
- b) Any incident of hazing, which is any form of conduct which exhibits any potentially humiliating, degrading, abusive, or dangerous activity expected of a junior-ranking individual by a more senior individual, which does not contribute to either individual's positive development, but is required to be accepted as part of a team or group, regardless of the junior-ranking individual's willingness to participate. This includes, but is not limited to, any activity, no matter how traditional or seemingly benign, that sets apart or alienates any teammate or group member based on class, number of years on the team or with the group, or ability;
- c) Incidents of physical abuse;
- d) Behaviour that constitutes Harassment, Sexual Harassment, Abuse, or sexual misconduct;
- e) Pranks, jokes, or other activities that may or did endanger the safety of others;
- f) Conduct that interferes with a competition or with any athlete's preparation for a competition;
- g) Conduct that damages Athletics Canada's image, credibility, or reputation;
- h) Consistent disregard for Athletics Canada's bylaws, policies, rules, and
- i) regulations;
- j) Major or repeated violations of Athletics Canada's *Code*, at the discretion of the
- k) Commissioner's Office;



- l) Damaging Athletics Canada property or improperly handling Athletics Canada monies;
  - m) Abusive use of alcohol or cannabis, any use or possession of alcohol or cannabis by minors, or use or possession of illegal drugs and narcotics;
  - n) A conviction for any Criminal Code offence, or
  - o) Any possession or use of banned performance enhancing drugs or methods.
14. In cases where the Commissioner's Office has determined that a major infraction has allegedly occurred, the Respondent will be provided with a copy of the complaint and instructed to submit a response to the Commissioner's Office
15. The Complainant will be provided with the Respondent's response and be permitted to submit a rebuttal to new information raised by the Respondent to the Commissioner's Office. The rebuttal will be provided to the Complainant.
- The Commissioner's Office will determine if an in-person hearing, a virtual hearing, or a hearing conducted in writing with documentary evidence and written submissions alone is the most effective method to share and consider the evidence relating to the appeal.
16. If an in-person hearing, conference call or virtual 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.
17. Following the hearing (if held) or the conclusion of the documentary submissions, the Commissioner's Office will issue a written decision resolving the complaint. When making a decision, the Commissioner's Office must consider the Investigator's Report (if applicable). The absence of corroboration of any complaint of Maltreatment does not prevent the Commissioner's Office from finding that an infraction has occurred. If a sanction is to be applied, the sanction will correspond with the severity of the violation committed, the age of the Respondent, the Respondent's remorse, a public or private written or verbal apology, and any corrective action the Respondent has already taken. The Commissioner's Office may apply disciplinary sanctions, singularly or in combination as defined in AC Code.
18. 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 applicable Club or Branch until such time as compliance occurs.
19. Major infractions that occur at training camps or competitions may be dealt with immediately by the appropriate person having authority. In such situations,

disciplinary sanctions will be for the duration of the training camp or competition only. Further sanctions may be imposed after review of the matter using the procedures set out in these Terms of Reference or through the SDRCC as appropriate.

20. The Commissioner's Office's written decision, with reasons, will be distributed to all parties within fourteen (14) days of the hearing's conclusion.
21. Athletics Canada will publish the Commissioner's Office's written decision on the Athletics Canada website, unless otherwise directed by the Commissioner, who will consider such factors as: whether one of the parties is a minor; whether the report will needlessly create unwelcome criticism of any party or subject them to ridicule; whether the matter is, or likely will be, subject to a police or other investigation, whether the matter may be heard in civil court; or any other reasonable consideration at the sole discretion of the Commissioner. In all cases where the SDRCC has heard an appeal of any Commissioner's decision which has been published on the Athletics Canada website, and the SDRCC has overturned the Commissioner's decision, that decision will be removed from the website.

## **9.0 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 offences, the individual will be expelled from Athletics Canada, expelled from the applicable Club or Branch, and/or removed from competitions, programs, activities, and events at the sole discretion of the Commissioner's Office:

- Child pornography offences
- Sexual offences
- Offence of physical or psychological violence
- Offence of assault
- Offence involving possession or trafficking of illegal drugs

## **10.0 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 mediation, a party may seek a review of the Commissioner's Office's decision pursuant to the rules of the SDRCC.

## **11.0 Record Keeping, Reporting & Confidentiality**

The Commissioner's Office will submit written decisions, with reasons, to Athletics Canada's Board of Directors and the CEO, with instructions to post or not post the decisions on a section of Athletics Canada's website. The Commissioner's Office may decide the decision is not to be a matter of public record.

All records of a complaint and an investigation will be safeguarded and maintained in a secure file management system ensuring the privacy and permanence of the records. The information obtained about an incident or complaint (including identifying information about any individuals involved) will remain confidential unless disclosure is necessary for the purpose of investigating or taking corrective action or is otherwise required by law.

## **12.0 Timelines**

If the circumstances of the dispute are such that it cannot be resolved within the timelines dictated in this rule, the Commissioner's Office may direct that these timelines be revised.

## **13.0 Location**

In-person hearings will take place at the location determined by the Commissioner's Office, unless the Commissioner's Office decides the matter is to be heard by way of telephone or virtual conference, or unless, at the specific request of a party, a different location is mandated by the Commissioner's Office as a preliminary matter.

## **14.0 Final and Binding Decision**

The decision of the Commissioner's Office and mediated settlements pursuant to section 10 will be final and binding upon the parties and upon all members of Athletics Canada, subject to the right of any party to seek a review of the decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time and subject to these limitations:

- a. The 'law' to be considered by the SDRCC tribunal is the internal rules, policies and/or selection criteria of Athletes Canada;
- b. The 'facts' to be considered by the SDRCC tribunal are the facts relevant to the case under appeal;
- c. If the SDRCC tribunal determines that Athletics Canada has made a decision in error, the role of the SDRCC tribunal is to identify that error and send the matter back to Athletics Canada to make the decision free from error, unless this is not practical;
- d. The parties will execute an arbitration agreement that will confirm the jurisdiction of the SDRCC tribunal to decide the matter, specify the precise decision under appeal, specify the issues in dispute and specify other matters the parties agree will be binding on themselves and the SDRCC tribunal.

## **15.0 Review of the Terms of Reference by the Board of Directors**



These Terms of Reference were first approved by the Board on July 25, 2015, and were last revised on February XX, 2023.

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 a bi-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 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"?