

PROCEDURES: MEMBERSHIP COMPLAINTS, INVESTIGATION AND HEARING PROCEDURES

REFERENCE: By-law 1204

EFFECTIVE DATE: October 4, 2008

APPLICATION OF PROCEDURE

1. These procedures apply to the initiation and conduct of proceedings taken under the Membership Complaints Policy (“Complaints Policy”) and the Membership Harassment Policy.

COMPLAINTS

2. A complaint can only be made against a member of Skate Canada. For the purposes of this procedure “member” includes anyone that:
 - (a) was a member at the time of the conduct that is the subject of the complaint; or,
 - (b) was a member during the 12 month period preceding delivery of the complaint.
3. A complaint may be made by:
 - (a) any member of Skate Canada;
 - (b) any person who was a member of Skate Canada within 12 months preceding delivery of the complaint;
 - (c) a Harassment Officer appointed under the Membership Harassment Policy.
4. Complaints must be in writing, dated and signed by the complainant.
5. Complaints should contain as much information as possible about the conduct which is the subject of the complaint.
6. An individual who files a complaint has the responsibility to:
 - (a) provide details of the dates, times, and locations of the incident(s), names of any witnesses to the incident(s), and a detailed description of the offensive behaviour or misconduct; and
 - (b) refrain from discussing the fact that a complaint has been filed, or the allegations contained in the complaint, except with his or her representative or legal counsel, or except as directed by the Harassment Officer or Complaints Review Officer.

- (c) delivered the complaint as soon as reasonably possible following the incident(s) or conduct which are the subject matter of the Complaint.
7. Complaints shall be delivered to the Complaint Review Officer, who shall be appointed by the President or the President’s delegate (collectively “the President”).

COMPLAINT REVIEW OFFICER

8. The responsibilities of the Complaint Review Officer are:
- (a) to determine whether the complaint meets the requirements of sections 2 and 3 above;
 - (b) in the case of a complaint made under the Complaints Policy, to determine whether the complaint complies with the Preliminary Requirements set out in sections 6 through 9 of the Complaints Policy;
 - (c) to refer complaints to investigation where the above requirements of the procedure and policy are met.
9. Both the Complainant and the person who is the subject of the complaint (the “Respondent”) will be notified by the Complaint Review Officer in writing that the complaint will proceed to investigation. The Respondent will be provided with a copy of the complaint.

CONFIDENTIALITY

10. No person is permitted to disclose either the existence of a complaint or information or records that form part of the investigation of the complaint, except for the purposes of complying with the objectives of the Complaints Policy and these procedures.
11. Section 10 does not apply to final determinations of the Hearing Panel and the Appeal Panel.

DISPUTE RESOLUTION BODIES

12. Two bodies will be appointed to resolve disputes under the Complaints Policy and the Membership Harassment Policy: the Investigator and the Hearing Panel.

Investigator

13. Investigations will be conducted by an investigator appointed by the President. The President may retain an investigator from outside Skate Canada to conduct the investigation.
14. The responsibilities of the Investigator are:

- (a) to gather information relating to disputes;
 - (b) to take any practical steps that may resolve disputes without the need for a hearing;
 - (c) to make a recommendation to the Hearing Panel as to whether a hearing into the matter is required; and
 - (d) when a hearing is necessary, to fairly present relevant evidence gathered in the course of the investigation.
15. In the case of a complaint made under the Membership Harassment Policy, the Investigator may confer with the provincial human rights commission or legal advisors, where required.

Hearing Panel

16. The Hearing Panel shall be composed of a member or members appointed by the President. The President may retain panel members from outside Skate Canada to conduct a hearing.
17. The Hearing Panel shall consist of one or three persons. In the case of a three-person Panel, the Panel shall select one of its members to be the Chairperson.
18. In the case of a three-person Hearing Panel, the Panel shall render, at a minimum, a majority decision.
19. The Hearing Panel shall determine at the outset whether a hearing is required, based on the Investigator's report and recommendation.
20. Should a hearing be required, the responsibility of the Hearing Panel is to provide a fair hearing. Characteristics of a fair hearing include:
- (a) Notice of the hearing;
 - (b) Knowledge of the case to be met;
 - (c) A right to hear or see all information provided to and considered by the Hearing Panel;
 - (d) An opportunity to provide information and arguments;
 - (e) If an oral hearing is conducted (rather than a hearing based solely on written submissions and documents), the right to question witnesses;
 - (f) An unbiased panel who will hear and consider all relevant information.

21. Subject to the provisions of section 20, the Hearing Panel shall have the power to establish its own procedures. The Panel may take such steps and conduct the proceedings as considered necessary or desirable by the Panel to avoid delay and achieve a just, speedy and cost-effective resolution of the dispute.

SUSPENSION PENDING INVESTIGATION OR HEARING

22. Pending an investigation or hearing, if the Investigator considers the action necessary to protect the members of Skate Canada or to otherwise fulfill the purposes of the Complaints Policy or Harassment Policy, the matter may be referred to the Hearing Panel who may, with or without notice to the Respondent:
 - (a) set limits or conditions on the Respondent's membership; or,
 - (b) suspend the membership of the Respondent.
23. The Hearing Panel shall not suspend or limit the rights and privileges of a member unless the Panel is satisfied that the action is necessary to protect the members of Skate Canada or to otherwise fulfill the purposes of the Complaints Policy.
24. If action is taken under section 22 above, the Respondent must be notified in writing of the action that has been taken and of the right to apply to have the action rescinded or varied.
25. An application to vary or rescind the action shall be in writing and delivered either:
 - (a) to the Hearing Panel that made the decision; or,
 - (b) the Executive Committee who will determine the application as soon as practicable and notify the respondent.

INVESTIGATION

26. All members of Skate Canada, including the Respondent, must cooperate with an investigation under this section. Failure to cooperate with an investigation may result in a complaint against the member.
27. At the conclusion of the investigation, the investigator shall prepare an Investigation Report for the Hearing Panel. The Investigation Report shall contain a recommendation as to whether the complaint requires a hearing by a Hearing Panel.
28. The Investigation Report will be provided to each of the parties.
29. All parties shall be given an opportunity to respond in writing to the Investigation Report. Responses to the Investigation Report must be provided to the Hearing Panel within 14 days of delivery of the Investigation Report.

SELECTION OF HEARING PROCEDURE

30. The Hearing Panel shall determine, based on the Investigation Report and Responses, whether a hearing is required. If the Hearing Panel determines that a hearing is not required, the matter shall be considered resolved and the Respondent shall not be subject to any penalty.

Documentary Hearing

31. A documentary hearing may be held in cases where the misconduct would result in disciplinary consequences other than suspension or expulsion of the member from Skate Canada or any other penalty listed in section 56 of these procedures.
32. Where the Hearing Panel considers that the case is appropriate for a documentary hearing and meets the criteria in section 31, the parties shall be:
 - (a) informed that a Hearing Panel has been established;
 - (b) informed of the complaint to be heard;
 - (c) provided with copies of the Complaints Policy or Membership Harassment Policy, as appropriate, and these procedures;
 - (d) invited, within a time specified by the Hearing Panel, to provide documentary evidence and make written submissions on information or arguments relevant to the Panel's deliberations;
 - (e) informed of the decision of the Hearing Panel.

Oral Hearing for Major Misconduct

33. If the Hearing Panel considers the alleged misconduct to be major misconduct which could result in the member being suspended or expelled from Skate Canada, or subject to any other penalty listed in section 57 of these procedures, the parties shall have the right to be heard in person.

Reassessment of Process

34. If, during the course of a documentary hearing, the evidence shows that the Respondent may be guilty of misconduct different from or in addition to any misconduct specified in the Complaint or Notice of Hearing, the Hearing Panel may reassess the hearing process and elect to continue by way of an oral hearing.
35. The Hearing Panel may adjourn the hearing for any period that the Panel considers sufficient to give the Respondent an opportunity to prepare a defence to the amended complaint.

Respondent's Election

36. In every case, the Respondent may elect for the proceedings to be conducted in writing. The Respondent must give notice of his or her election within 7 days of receiving the notice of oral hearing.

Legal Counsel

37. Parties may be represented by legal counsel at their own expense.

PROCEDURES FOR ORAL HEARING

Time, Place and Date of Hearing

38. The time, place and date of hearing shall be determined by the Hearing Panel.
39. A Notice of Hearing shall be delivered to the Respondent no less than 14 days before the commencement of the hearing. The Notice of Hearing shall include a statement of the matters to be enquired into and a copy of these procedures and the Complaints Policy or Membership Harassment Policy, as appropriate.
40. The date of the hearing may be adjourned prior to the commencement of the hearing, from time to time, by the Chair of the Hearing Panel on application of either of the parties.

Conduct of the Hearing

41. Unless otherwise directed by the Hearing Panel, the hearing will be in camera.
42. Proceedings may be recorded by a court reporter if requested by either of the parties or the Hearing Panel.
43. Skate Canada and the Respondent may, at their own expense, call witnesses to testify. Witnesses shall be truthful in their testimony and may be subject to examination and cross-examination.
44. Unless the Hearing Panel orders otherwise, witnesses called by Skate Canada shall testify first, followed by witnesses for the Respondent.
45. The Hearing Panel may:
 - (a) Accept any written statement of agreed facts as executed by both the Respondent or Respondent's counsel; and by Skate Canada or Skate Canada's counsel;
 - (b) Admit evidence tendered in a form which is agreed to by both the Respondent or Respondent's counsel and by Skate Canada or Skate Canada's counsel;
 - (c) Admit evidence in any other manner it considers appropriate; and

- (d) Receive submissions in writing either at the request of the Panel or by agreement of the parties.

Experts

- 46. The Hearing Panel may retain an individual who is an expert on matters at issue in the hearing to advise the Hearing Panel. The expert's advise and any report the expert may create shall be disclosed to the parties.
- 47. Parties shall be given an opportunity to respond to an expert's evidence.

Attendance at the Hearing

- 48. If the Respondent fails to attend at the hearing, the Hearing Panel may proceed with the hearing of the matter on the date and time specified in the Notice of Hearing without further notice to the Respondent and may make any determination and impose any penalty available to the Hearing Panel, which decision will be final and not subject to appeal.
- 49. Any member of Skate Canada may be required by a Hearing Panel to:
 - (a) attend before it at the hearing and give evidence respecting any matter involved in the proceeding; and
 - (b) produce any documents or other thing relevant to the matters being considered.
- 50. Failure of a member to attend a hearing as required by the Hearing Panel may result in a complaint against the member and action under section 22.

Submissions

- 51. Following completion of the evidence, the Respondent and Skate Canada or their counsel may make submissions on the allegations in the complaint.
- 52. After receiving the parties' submissions, the Hearing Panel shall invite the Respondent and Skate Canada counsel to present evidence and to make submissions as to penalty and costs.

ACTION FOLLOWING HEARING

Decision

- 53. After a written or oral hearing, the Hearing Panel will prepare a written report of its decision and determination regarding penalty (the "Decision"):
- 54. The Hearing Panel may:
 - (a) Dismiss the complaint or any part of it;

- (b) Determine that the Respondent has committed an offence(s) described under the Complaints Policy or the Membership Harassment Policy.
55. A copy of the Decision shall be delivered to the parties or their counsel and to the Complainant.

PENALTY

56. Where the Hearing Panel determines that a documentary hearing is appropriate, the penalty may include one or more of the following, on such terms and conditions, if any, as the Hearing Panel considers appropriate. The Hearing Panel may order:
- (a) a verbal apology;
 - (b) a written apology;
 - (c) that a letter of reprimand be placed on the Respondent's membership file;
 - (d) payment of a fine or levy (in money or in volunteer hours);
 - (e) that the Respondent participate in counselling or training.
57. In the case of major misconduct, the Hearing Panel may order:
- (a) that the Respondent's membership in Skate Canada or any one or more of the Respondent's privileges of membership be temporarily suspended or permanently revoked;
 - (b) that the member's participation in any Skate Canada Committee, business, skating activity or event (including Committees, business or skating activities or events of member organizations) be suspended or cancelled;
 - (c) that the Respondent be granted a right to apply for reinstatement of membership in Skate Canada or on any Committee of Skate Canada on terms and conditions (including but not limited to temporarily suspending any right granted, or requiring the member to fulfill certain terms and conditions as a prerequisite to any right granted); and
 - (d) any other penalty that the Panel deems just, including those set out in section 56.

Considerations under the Membership Harassment Policy

58. In selecting a penalty for an offence described under the Membership Harassment Policy, the Panel shall take into consideration relevant factors including, but not limited to:
- (a) the nature of the harassment
 - (b) whether the harassment involved any physical contact

- (c) whether the harassment was an isolated incident or part of an ongoing pattern
- (d) the nature of the relationship between the complainant and the harasser
- (e) the respective ages and positions of the complainant and the harasser
- (f) whether the harasser had been involved in previous harassment incidents
- (g) whether the harasser admitted responsibility and expressed a willingness to change
- (h) whether the harasser retaliated or attempted to retaliate against the complainant.

COSTS

59. The Hearing Panel may make an award of costs against a party.

APPEAL PROCEDURES

Urgent Appeals

60. An appeal will be treated as an “Urgent Appeal” if the Decision will adversely and directly affect the member’s ability to:
- (a) Continue to participate in an ongoing Skate Canada event; or
 - (b) Participate in a Skate Canada event scheduled to commence not later than 15 days from the date of the Decision.
61. Urgent appeals must be decided in an expedited manner, and not later than 12 days from the date of the Decision.

Deadline for Notice of Appeal

62. Skate Canada or a member who has been found guilty of misconduct may appeal the Decision of the Hearing Panel by delivering a written Appeal Notice addressed to the Skate Canada President;
- (a) In case of an urgent appeal, within 3 days of the date of the Decision;
 - (b) In all other cases, within 14 days of the date of the Decision.

Contents of Appeal Notice

63. The Appeal Notice must be dated and signed and must include:
- (a) The specific ground(s) which the Appellant relies upon in the appeal;

- (b) Whether the Appellant is requesting that the Urgent Appeal process be followed and if so, the circumstances of urgency to support that request.

Appointment of Appeal Panel

64. Upon receiving an Appeal Notice, the Skate Canada President shall appoint a three person Appeal Panel consisting of at least two members of Skate Canada.

Scheduling of Appeal

65. Appeals will be in writing. At the discretion of the Appeal Panel, urgent appeals may be done orally or by teleconference.

Appeal Procedure

66. In the case of an Urgent Appeal, the Appellant will deliver its written brief with the Notice of Appeal. The Respondent to the Appeal will have 3 days to deliver its materials to the Appeal Panel.
67. For regular Appeals, the written brief of the Appellant must be delivered to the Appeal Panel, care of Skate Canada, no later than 21 days after the Notice of Appeal.
68. The written brief of the Respondent to the Appeal must be delivered to the Appellant and to the Appeal Panel, care of Skate Canada, within 14 days of receipt of the Appellant's brief.
69. The Appellant may deliver a reply submission within 7 days of receipt of the Respondent's brief.
70. The Appeal Panel can vary any of the times set out in this section as required or on application by either party.

Decision of Appeal Panel

71. The Appeal Panel has the authority to uphold, set aside, or vary the Decision and/or the penalty and/or any costs assessed by the Hearing Panel.
72. The Appeal Panel shall deliver its decision and reasons to the Appellant and Skate Canada, in writing, as soon as practicable. In the case of Urgent Appeals the Appeal Panel Decision will be delivered in accordance with section 61.
73. The Appeal Panel may give its decision orally to be followed by a written decision.
74. Decisions of the Appeal Panel shall be final and binding and shall not be subject to further appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding.

MEMBERSHIP RECORDS

75. Decisions of the Hearing Panel shall be placed in the membership file of the person against whom the complaint was made.
76. Where there is an Appeal, both the Panel Decision and the Appeal Decision will be placed in the membership file of the Respondent.

REINSTATEMENT APPLICATION PROCESS

Application

77. Where a member has been granted a right to apply for reinstatement of membership in Skate Canada, the following process for application will apply:
 - (a) The applicant will deliver a written application for reinstatement to the Chair of the Rules/Membership Committee setting out the facts in support of the application.
 - (b) The Committee will review the application and will deliver its decision (“Reinstatement Decision”), in writing, to the member within 14 days of receiving the application. The Reinstatement Decision of the Committee will be final, and there will be no right of appeal.

Re-Application

78. A member whose previous application for reinstatement has been denied may, after 6 months, re-apply by following the process set out under section 77, if there are new facts or circumstances which support the re-application.

Effective Date

79. These procedures have been approved by the Skate Canada Board of Directors to come into effect October 4, 2008.