

**Escalade Sportive Nouveau-Brunswick  
New Brunswick Sport Climbing (esNBsc)**

**Appeal Policy**

**1. Definitions**

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1.1 The following terms have these meanings in this Policy:

<i>Affected Party</i>	A person who may be affected by a decision rendered under this Policy and who may have recourse to an appeal in their own right, as determined by the Appeal Manager.
<i>Appellant</i>	The Party appealing a decision.
<i>Appeal Manager</i>	An individual, who may be any staff member, committee member, volunteer, Director, or an independent third party, who is appointed from time to time by the Board of Directors of esNBsc to oversee this Policy. The Appeal Manager will have responsibilities that include using decision making authority empowered by this Policy.
<i>Respondent</i>	The party whose decision is being appealed.

Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the CEC's Interpretation Policy.

**2. Purpose**

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2.1 This Policy forms part of the CEC's Safe Sport Manual. The esNBsc is committed to providing an environment in which all Individuals involved with esNBsc are treated with respect. This *Appeal Policy* provides Individuals with a fair and expedient appeal process.

**3. Scope and Application of this Policy**

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3.1 This Policy applies to all Individuals.

3.2 Any Individual who is directly affected by a decision made by esNBsc shall have the right to appeal that decision provided such appeal is based on a Sufficient Ground for Appeal (as defined herein).

3.3 This Policy applies to decisions relating to:

- a) Eligibility
- b) Selection
- c) Discipline and Sanctions
- d) Membership
- e) Athlete Assistance Program ("AAP") carding nominations and recommendations

3.4 This Policy will not apply to decisions relating to:

- a) Matters of general application or corporate organization including, without limitation, amendments to CEC's Bylaws or Articles
- b) CEC's operational structure including, without limitation, employment, coach or volunteer matters, appointments or opportunities
- c) Issues of budgeting and budget implementation
- d) Decisions of a technical nature made during the course of a esNBsc sanctioned event relating to the application of specific rules of competition
- e) Substance, content and establishment of team selection or carding criteria
- f) Commercial matters for which another appeals process exists under a contract or applicable law
- g) Decisions made under this Policy

#### **4. Timing and Submission of Appeal**

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4.1 An Individual who wishes to appeal a decision of the esNBsc which directly impacts them shall deliver a written Notice of Appeal to the Executive Director. In order to be valid, a Notice of Appeal must be delivered to the Executive Director within five business days from the date the decision which is the subject of the appeal was made. Upon receipt of a Notice of Appeal, the Executive Director will provide written confirmation of receipt to the Appellant. Notwithstanding the foregoing, the esNBsc may, in its sole discretion, waive the aforementioned five business day notice deadline.

4.2 The written Notice of Appeal shall contain the following information:

- a) Appellant's name and contact information;
- b) Name and contact information of any other Affected Parties, if known to the Appellant;
- c) A copy of the decision being appealed, or description of decision if a written decision was not provided;
- d) The Ground for the Appeal;
- e) Detailed reasons for the appeal;
- f) Evidence that supports the appeal; and
- g) A summary of the requested remedy or remedies.

4.3 Each Notice of Appeal must be accompanied by an administration fee of two hundred dollars (\$200), which will be refunded if the appeal is upheld.

4.4 Applicability of this Policy will be determined by esNBsc at its sole discretion and shall not be subject to appeal. In the event the esNBsc determines a requested appeal is outside the scope of this Policy or not made in accordance with this Policy it will provide the Appellant with written notice of same. If the esNBsc determines a requested appeal is within the scope of this Policy and has been made in accordance with this Policy it will appoint an Appeal Manager Chair to handle the appeal.

4.5 The Appeal Manager must be: (i) the age of majority; and (ii) not be in a conflict of interest situation in respect of the respective complaint. Provided the foregoing qualifications are met, the Board of Directors may appoint the Executive Director or a Director to act as Appeal Manager if they determine such appointment is appropriate.

#### **5. Grounds for Appeal**

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5.1 A decision cannot be appealed on its merits alone. An appeal may only be heard if it is based on a Sufficient Ground for Appeal. The following are sufficient grounds for appeal:

- a) The Respondent made a decision it did not have the authority or jurisdiction to make;
- b) The Respondent failed to follow its own procedures in making the decision;

- c) The Respondent made a decision in which it had a direct interest in, such interest was not properly disclosed and a reasonable person would view such interest as having unduly impacted the Respondent's decision;
- d) The Respondent exercised its discretion for an improper purpose;
- e) The Respondent made a decision for which there was no supporting evidence; or
- f) The Respondent made a decision that was patently unreasonable,

(each, a "Sufficient Ground of Appeal").

## **6. Procedure for Appeal Hearing**

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6.1 Upon receiving a valid Notice of Appeal, the Appeal Manager will appoint an Appeal Panel to hear the appeal. The Appeal Panel shall consist of three individuals, one of whom shall be the Appeal Manager, each of whom must be: (i) the age of majority; and (ii) not be in a conflict of interest situation in respect of such appeal. The Appeal Manager shall use reasonable efforts to confirm the members of the Appeal Panel as soon as possible, and in any event no more than 5 business days, after the Appeal Manager receives a valid Notice of Appeal.

6.2 The Appeal Panel shall determine the format and process under which the appeal will be heard. The Appeal Manager will, in writing, inform the Appellant, Respondent and any then identified Affected Parties of the appeal format and process. The Appeal Manager will use its best efforts to determine the format and process of an appeal and to notify the Parties of same within five business days after determining an appeal will be heard.

6.3 Within two business days of being appointed, the Appeal Panel will provide written notice of same to the Appellant and the Respondent (the "Process Notice"). The Process Notice shall outline the appeal process that will be used, provide the applicable timelines and include copies of the Notice of Appeal and the decision which is being appealed. The Appeal Panel may determine to conduct an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing or a combination of these methods or such other format as the Appeal Panel may determine. Any hearing will be governed by the procedures that the Appeal Panel deem appropriate in the circumstances, provided that:

- a) The parties will be given appropriate notice, which in any event shall be not less than five business days, of the day, time, and place of the hearing;
- b) Copies of any written documents which the parties wish to have the Appeal Panel consider will be provided to all parties, through the Appeal Manager, in advance of the hearing;
- c) The parties may engage a representative, advisor, translator, or legal counsel at their own expense;
- d) The Appeal Panel may request that any other individual participate and give evidence;
- e) The Appellant and the Respondent shall have the right to submit to the Appeal Panel any relevant evidence, including, but not limited to witness statements, documentary evidence or evidence from other media (i.e., photos, screenshots, videos or other recordings);
- f) The Appeal Panel may allow as evidence any oral evidence or document or thing relevant to the subject matter of the complaint, but may exclude such evidence that is unduly repetitious, and shall place such weight on the evidence as it deems appropriate;
- g) if the outcome of an appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Policy, that party will become an Affected Party to the appeal in question and will be bound by its outcome; and
- h) where an appeal relates to a carding matter governed by the policies and procedures of

the AAP of the Federal Government, Sport Canada shall be invited as an Affected Party.

6.4 The Appeal Panel will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.

6.5 In fulfilling its duties, the Panel may, at its own expense, obtain independent advice.

## **7. Appeal Decision**

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7.1 The Appellant must establish, on a balance of probabilities, a Sufficient Ground of Appeal. If the Appeal Panel determines a Sufficient Ground of Appeal has been established, the Appeal Panel may then make a finding, on a balance of probabilities, on whether the decision which is the subject of the Appeal was reasonable or not.

7.2 After hearing the appeal, the Appeal Panel shall issue its decision to the Parties, in writing and with reasons, within five business days of conclusion of any hearing or completion of their documentary review, as applicable. If the Appeal Panel deems it appropriate, the Appeal Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued within the timeline set forth above. In making its decision, the Appeal Panel will have no greater authority than that of the original decision-maker. The Appeal Panel may decide to:

- a) Reject the appeal and confirm the decision being appealed;
- b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision;  
or
- c) Uphold the appeal and vary the decision.

7.3 Decisions of the Appeal Panel need to be approved by a majority of its members.

## **8. Timelines**

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

## **9. Confidentiality**

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9.1 The appeal process is confidential and involves only the Parties, the Appeal Panel and any independent advisors to such parties. Once initiated and until a decision is rendered, no person will disclose confidential information to any person not directly involved in the appeal proceedings.

9.2 Any failure to respect the aforementioned confidentiality requirement may result in further sanctions or discipline by the esNBsc.

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