



Team Selection Appeals: Top 5 FAQ

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Sport Solution assists Canada's best athletes with a wide variety of sport-related legal issues. When it comes to appeals, team selections are the most common. Many of the issues that athletes face are similar and arise quite often during the appeal process. Below are the Top 5 questions that athletes consistently ask Sport Solution in relation to team selection appeals.

1. I was not selected to a team and I feel I should have been based on my National Sport Organization's Selection Criteria. Can I appeal directly to the SDRCC?

Generally, no. The vast majority of NSOs have established internal appeal policies that must be exhausted before the SDRCC will hear an appeal. This might seem frustrating or a "lost cause" to some athletes, but this mechanism can be quite beneficial to the athlete.

At the NSO level, parties that have knowledge of the sport or the issue at hand will usually decide an internal appeal. In other words, the decision makers will have a better ability to determine whether the selector not only followed the established policy, but whether the athlete who was best suited to fill the position was selected. This can be beneficial to an appealing athlete because he or she will have a better chance of succeeding in the appeal by demonstrating that they should be selected based on athletic ability in the sport.

At the SDRCC level, however, the decision maker will rarely have the tools to assess who is the better "athlete" in the sport *per se*. The SDRCC will generally show "deference" to the decision of the NSO in these situations. The SDRCC will allow an appeal strictly on enumerated grounds for appeal, such as procedural errors in following the selection criteria. This may leave the appealing athlete with a smaller window of opportunity to succeed in an appeal. The arbitrator at the SDRCC ensures that criteria that are already established were followed and applied fairly. As a result, the internal appeal mechanism does serve a practical purpose for the athlete, as they may be more flexible in the interpretation of their criteria and possible resolutions.

2. I was not selected to a team and the selector explained that it was due to subjective intangible factors, such as team chemistry. I disagree with the selector's assessment and I would like to appeal. Do I have a strong case?

Team selection appeals can be quite different depending on the sport. For athletes that compete in individual sports (ex. Taekwondo, Luge, Wrestling), the selection criteria is usually well defined, in the sense that there is less "subjectivity" that gives selectors



discretion to select the team with intangibles in mind. Individual sports are typically selected based on the results of the individual athlete in competition. If the athlete achieves a defined level of success, he or she should be selected to the team as per the selection criteria. If the athlete meets the selection criteria and is not selected, the case for an appeal is strong, regardless of any intangible factors.

On the other hand, it is quite common for the selection criteria of true team sports (ex. Volleyball, Basketball, Cricket) to include intangible factors. It is only natural that elements such as team chemistry and leadership should be taken into account when selecting a team sport. Consequently, succeeding in an appeal in these sports often proves to be difficult. Selectors have wide discretion to select the team as they see fit. If an internal appeal panel does not overturn the decision, it will prove to be extremely difficult to succeed at the SDRCC level. As explained above, the SDRCC decision makers are rarely experts of the team or sport in question, and will therefore likely show deference to the decision of the NSO. Unless there is inherent bias in the decision of the NSO, the case for appealing selections based on intangible factors in team sports is usually weak.

3. I was not selected to a team and I feel that the decision to select a different athlete was due to bias on the part of the selector. Can I appeal on these grounds?

Yes, bias is certainly a ground for appeal. With that said, the threshold for demonstrating bias in law is extremely high.

As athletes know, the reality of being involved in sports is that many of the people within an NSO or team will have close relationships. Some relationships will be closer than others. A selector merely having a strong relationship to a selected athlete is not sufficient to demonstrate bias.

In order to demonstrate bias, the appealing athlete will need evidence that the selector made a decision because it would directly serve the selector's individual interests, not simply the interests of an athlete that the selector has a close relationship with.

4. I was not selected to a team and I would like to appeal. However, I am concerned that doing so will hurt my chances of being selected to the team in future years. What should I do?

As previously noted, the situation will vary depending on whether the appeal is of an individual sport or a team sport.

For individual sports, making an appeal will be less of a concern because of the nature of the selection criteria, which gives less discretion to selectors to select the team as they see fit. The less discretion the team selector has, the less effect making an appeal will be for an athlete in being selected in future years.



For team sports, there is a greater likelihood that making an appeal could affect your chances of being selected to a team in future years. This might not be fair, however it is often the reality of being involved with NSOs that have wide discretion to select teams as they see fit. The athlete can only hope that the NSO will act amicably in the future regardless the disagreement. At the same time, if the athlete feels that they were truly dropped unfairly, launching an appeal may be worthwhile because the NSO could make the same decision in future years anyway.

Team sport athletes have options, however. Sport Solution can assist the athlete and NSO in resolving the situation without a formal appeal. This is done through resolution facilitation and mediation sessions that aim to remedy the situation by having each party clearly explain their position, with Sport Solution facilitating the conversation throughout. The SDRCC also provides these services, should the parties request to use them.

5. I was selected to a team and have been informed that another athlete is appealing the decision, which will affect me should the appeal be allowed. How can I defend my position?

Athletes always have the opportunity to defend themselves if an appeal is being launched that will affect them. Depending on how directly the athlete is being affected (ie. being replaced by another athlete), the affected athlete can be heavily involved in the appeal process.

The NSO will often be the party defending the situation, and affected athletes are encouraged to be active in ensuring that their case is being represented properly. At the SDRCC level, affected athletes can testify in arbitrations and have their voice heard. Sport Solution can assist affected athletes with their position in the appeal. If Sport Solution is already assisting the athlete that is making the appeal, we can assist in finding a pro bono lawyer for the affected athlete.