



Swim BC Appeal Policy

Section: Swim BC Social Policies

Date of Approval: April 22, 2021

Approved by: SBC Board of Directors

Next Review: February 2022

Definitions

1. The following terms have these meanings in this Policy
 - a) *"Appellant"* – The Party appealing a decision
 - b) *"Respondent"* – The person or persons whose decision is being appealed;
 - c) *"Parties"* – The Appellant, Respondent, and any other Members or persons affected by the appeal
 - d) *"Days"* – Days irrespective of weekend and holidays
 - e) *"Individuals"* – All individuals employed by, or engaged in activities with the Society including, but not limited to, athletes, coaches, coordinators, officials, volunteers, managers, administrators, committee members, directors and officers of the Society
 - f) *"Society"* – Swim BC
 - g) *"Swim BC Staff"* – The Executive Director of Swim BC or their designate
 - h) *"Case Manager"* – An individual appointed by Swim BC Staff. A Case Manager shall be an independent third party. The Case Manager will be responsible for, but not limited to:
 - i. The overall responsibility to ensure procedural fairness and the applicable timelines are respected;
 - ii. The decision-making authority described in this Policy.

Purpose

2. The Society is committed to providing an environment in which all Individuals are treated with respect. The Society provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by the Society.

Application

3. Any Individual who is directly affected by a decision as outlined in the Discipline and Complaints Policy of the Society, has the right to appeal that decision provided that decision is within the categories set out in section 4 and there are sufficient grounds for the appeal under the 'Grounds for Appeal' section of this Policy.
4. This Policy **applies** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of Interest
 - d) Discipline
 - e) Membership
5. This Policy **does not apply** to decisions relating to:
 - a) Employment
 - b) Decisions relating to doping offenses
 - c) The rules of swimming
 - d) Selection criteria, quotas, policies, and procedures established by entities other than the Society
 - e) Budgeting and budget implementation
 - f) Decisions or discipline arising within the business, activities, or events organized by entities other than the Society (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by the Society at its sole discretion)
 - g) Commercial contracts
 - h) Decisions made under this Policy



Timing of Appeal

6. Individuals who wish to appeal a decision have twenty-one (21) days from the date on which they received notice of the decision to submit, in writing to the Society's office, the following information:
 - a) Name of the appellant and relevant contact information
 - b) The grounds for the appeal
 - c) The supporting evidence
 - d) The requested remedy

Individuals who wish to appeal a decision are strongly encouraged to complete the form included in Appendix "A" of this policy.

7. An Individual who wishes to initiate an appeal beyond the twenty-one (21) day period must provide a written request stating the reasons for an exemption in addition to the information requested in section 6. The decision to allow, or not allow, an appeal outside of the twenty-one (21) day period will be at the sole discretion of Swim BC Staff.

Grounds for Appeal

8. An appeal may only be heard if the Appellant can establish one or more of the following grounds for appeal. An appealable error would include, but not necessarily be limited to, the following:
 - a) If the respondent made a decision that it did not have authority or jurisdiction (as set out in the Respondent's governing documents)
 - b) If the Respondent failed to follow its own procedures (as set out in the Respondent's governing documents)
 - c) If the Respondent made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views)
 - d) If the Respondent failed to consider relevant information or took into account irrelevant information in making the decision
 - e) If the Respondent made a decision that was grossly unreasonable
9. The Appellant bears the onus of proof and must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in this section and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

Screening of Appeal

10. Upon receiving the notice of the appeal, and all other information (outlined in the 'Timing of Appeal' section of this Policy), Swim BC Staff will, within ten (10) days, review the appeal and attempt to resolve the appeal by mediation, unless the Society is the respondent.
11. Should the mediation fail to resolve the appeal, Swim BC staff will appoint a Case Manager.
12. If the appeal is denied on the basis of insufficient grounds, or was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant will be notified, in writing, of the reasons for this decision. If the Appellant believes the decision to deny the appeal has been made in error the appellant may refer to the Swimming Canada Appeal Policy.
13. If the Case Manager is satisfied that the appeal is not frivolous, the Case Manager will appoint an Adjudicator to hear the appeal. In extraordinary circumstances and at the discretion of the Case Manager, a Panel of three persons may be appointed to hear the appeal. The Panel members will appoint one member to serve as Chair.

Procedure for Appeal Hearing



14. The Adjudicator/ Panel will notify the Parties that the appeal will be heard. The Adjudicator/ Panel shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Adjudicator/Panel and may not be appealed.
15. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
16. The format of the hearing may involve written submissions, an oral in-person hearing, an oral hearing by telephone or telecommunication, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Adjudicator/Panel deem appropriate in the circumstances, provided that:
 - a) If the hearing is to be by written submissions only, the Adjudicator/Panel will provide the Parties with details of the procedures for the hearing;
 - b) The oral hearing will be held within the appropriate timeline determined by the Adjudicator/Panel;
 - c) The Parties will be given reasonable notice of the day, time and place of the hearing;
 - d) Copies of any written documents which the parties wish to have the Panel consider will be provided to all Parties in advance of the hearing;
 - e) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense;
 - f) The Adjudicator/Panel may request that any other individual participate and give evidence at the hearing;
 - g) The Adjudicator/Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the appeal, but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate;
 - h) If a decision in the appeal may affect another person to the extent that the other person would have recourse to an appeal in their own right under this Policy, the Adjudicator/Panel shall notify that person that they will become a Party to the Appeal in question. The affected Party will have an opportunity to become involved in the Appeal process as deemed appropriate by the Adjudicator/Panel;
 - i) The decision to uphold or reject the appeal will be by Adjudicator or a majority vote of Panel members.
17. In fulfilling its duties, the Adjudicator/Panel may obtain independent advice.

Appeal Decision

18. The Adjudicator/Panel will issue its decision, in writing and with reasons, within ten (10) days after the hearing's conclusion. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Adjudicator/ 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;
 - c) Uphold the appeal and vary the decision;
 - d) 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 Panel will take into account the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources.
19. The Adjudicator/Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and the Society. In extraordinary circumstances, the Adjudicator/Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter.

Timelines

20. If the circumstances of the Appeal, or if circumstances beyond or outside of the Appeal, are such that the Procedure will not allow a timely decision, the Adjudicator/Panel may direct that these timelines be abridged. If the circumstances of the Appeal, or if circumstances beyond or outside of the Appeal, are such that the Appeal cannot be concluded within the timelines dictated in this Procedure, the Adjudicator/Panel may direct



that these timelines be extended. The Adjudicator/Panel may delegate this authority to abridge or extend the timelines to the Case Manager.

Confidentiality

21. The appeals process is confidential and involves only the Parties, the Case Manager, the Adjudicator/Panel, the Society, and any independent advisors to the Adjudicator/Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings.

Liability Disclaimer

22. Except in cases of willful misconduct, the Adjudicator/Panel and the Case Manager will bear no liability in respect of either of the Parties for any act or omission in connection with the resolution of a dispute in accordance with the policies of the Society.
23. The Case Manager and the Adjudicator/Panel cannot be called as witnesses during an appeal or before any court of competent jurisdiction, including with respect to costs.
24. No action or proceedings may be brought against the Society or its Members in respect of a dispute, unless the Society is failing or refusing to comply with the provisions with regards to appeals or dispute resolution as provided in this Policy.

Final and Binding

25. The decision of the Adjudicator/Panel will be final and binding on the Parties and on all individuals associated with the Society; subject to the right of any Party to seek a review of the Adjudicator/Panel's decision pursuant to the policies of Swimming Canada and/or the Sport Dispute Resolution Centre of Canada (SDRCC).
26. Swim BC Staff is to update the Swim BC Board at each Swim BC Board meeting with the number and nature of any appeals that may have been lodged since the previous meeting.