



APPEAL POLICY

Definitions

1. The following terms have these meanings in this Policy:
 - a) “*Affected Party*” – Any individual or entity, as determined by the Case Manager, who may be affected by a decision rendered under this Policy and who may have recourse to an appeal in their own right under this Policy.
 - b) “*Appellant*” – The Party appealing a decision.
 - c) “*Case Manager*” - Refers to the person designated by Swim Alberta to administer this Policy as described herein.
 - d) “*Days*” – Days including weekends and holidays
 - e) “*Member*” - All categories of membership defined in Section 2.1 of the Swim Alberta *Constitution and Bylaws* as well as all individuals employed by, or engaged in activities with, Swim Alberta including but not limited to, clubs, athletes, coaches, officials, volunteers, managers, administrators, directors and officers of Swim Alberta and parents/guardians of athletes
 - f) “*Parties*” – The Appellant, Respondent, Affected Party and Swim Alberta.
 - g) “*Respondent*” – The body whose decision is being appealed

Purpose

2. The purpose of this Policy is to outline the process to enable appeals of decisions, within the jurisdiction of this Policy, made by Swim Alberta to be dealt with fairly, expeditiously and affordably, within Swim Alberta and without recourse to external legal procedures.

Scope and Application of this Policy

3. This Policy applies to all Members. Any Member who is directly affected by a Swim Alberta decision shall have the right to appeal that decision; provided there are sufficient grounds for the appeal under the **Grounds for Appeal**, subject to the limits set out in this Policy.
4. This Policy will apply to decisions made by Swim Alberta relating to eligibility, selection, discipline, or any other matter deemed appropriate by Swim Alberta.
5. This Policy will **not** apply to decisions relating to:
 - a) Employment
 - b) Infractions for doping offenses
 - c) Classification protests
 - d) The rules of swimming as defined by the Swimming Canada Rule Book and rules of Swim Alberta related to competition.
 - e) Selection criteria, quotas, policies, and procedures established by entities other than Swim Alberta
 - f) Substance, content and establishment of team selection criteria
 - g) Volunteer appointments and the withdrawal or termination of those appointments
 - h) Budgeting and budget implementation
 - i) Swim Alberta’s operational structure and committee appointments

- j) Decisions or discipline arising within the business, activities, or events organized by entities other than Swim Alberta (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by Swim Alberta at its sole discretion)
- k) Decisions or discipline arising within competition (appeals of these decisions shall be dealt with within competition under the competition's appeal process)
- l) Commercial matters
- m) Decisions made by the Case Manager in accordance with this Policy which indicate they are not appealable.

Alternate Dispute Resolution

6. Swim Alberta supports the options of mediation and facilitation as provided by Alternate Dispute Resolution (ADR). At any time in the Appeals process, the Parties, by mutual agreement, may decide to pursue alternate dispute resolution as described in Swim Alberta's *Alternate Dispute Resolution Policy*. Failing the resolution of the appeal through that process, or if either Party chooses to forego alternate dispute resolution, the appeal shall continue to be addressed under this Policy.

Appeal Submission Requirements

7. Members who wish to appeal a decision have fourteen (14) days from the date on which they received notice of the decision to submit, in writing to Swim Alberta's head office, the following:
 - a) Notice of the intention to appeal
 - b) Contact information and status of the Appellant
 - c) Name of the Respondent and any affected parties, when known by the Appellant
 - d) Date the Appellant was advised of the decision being appealed
 - e) A copy of the decision being appealed, or description of decision if written document is not available
 - f) Grounds for the appeal
 - g) Detailed reasons for the appeal
 - h) All evidence that supports these grounds
 - i) Requested remedy or remedies
 - j) A payment of two hundred fifty dollars (\$250), which will be refunded if the appeal is successful.
8. A Member wishing to initiate an appeal beyond the fourteen (14) day period must provide a written request stating the reasons for an exemption. The decision to allow, or not allow, an appeal outside of the fourteen (14) day period will be at the sole discretion of the Case Manager and may not be appealed.

Grounds for Appeal

9. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
 - a) Made a decision that it did not have authority or jurisdiction (as set out in the Respondent's governing documents)
 - b) Failed to follow its own procedures (as set out in the Respondent's governing documents)
 - c) 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) Made a decision that was patently unreasonable
10. 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 the **Grounds for Appeal (Section 9)**.

Screening of Appeal

11. Upon receiving the notice of the appeal, the fee, and all other information (outlined in **Appeal Submissions Requirements** section of this Policy), Swim Alberta will appoint a Case Manager who may/will first determine if the appeal should be referred to Swim Alberta's Alternate Dispute Resolution Policy. Appeals resolved by mediation under the Alternate Dispute Resolution Policy will cause the administration fee to be refunded to the Appellant.
12. Should the appeal not be resolved by using the Alternate Dispute Resolution Policy, the Case Manager:
 - a) Determine if the appeal falls under the scope of this Policy
 - b) Determine if the appeal was submitted in a timely manner
 - c) Decide whether there are sufficient grounds for the appeal
13. If the appeal is denied on the basis of insufficient grounds, because it 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. This decision may not be appealed.
14. If the Case Manager is satisfied there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals Panel which shall consist of a single Arbitrator, 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. In this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.
15. Upon the consent of the Parties, the mediator or facilitator as described in the Alternate Dispute Resolution Policy may also act as the Appeals Panel or a party to the Appeals Panel in the case of a three-person Panel.

Determination of Affected Parties

16. In order to ensure the identification of any Affected Parties, the Case Manager will engage Swim Alberta, the Appellant and the Respondent for their input on whether a party is an Affected Party. The Case Manager will determine whether a party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

17. The Case Manager shall notify the Parties that the appeal will be heard. The Case Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Case Manager and may not be appealed.
18. If a Party chooses not to participate in the appeal process, the process will proceed in any event.
19. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or electronic communications, a hearing based on a review of documentary evidence, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate in the circumstances, provided that:
 - a) The hearing will be held within the appropriate timeline determined by the Case Manager.
 - b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
 - c) 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
 - d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
 - e) The Panel may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.

- f) If a decision in the 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.
- g) The decision to uphold or reject the appeal will be by a majority vote of Panel members

20. In fulfilling its duties, the Panel may obtain independent advice.

Appeal Decision

21. The Panel shall issue its decision, in writing and with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The 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
22. The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and Swim Alberta. In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Confidentiality

23. The appeals process is confidential and involves only Swim Alberta, the Parties, the Case Manager, the Panel, and any independent advisors to the 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.

Final and Binding

24. The decision of the Panel will be binding on the Parties and on all Members, subject to appeal in accordance with Swimming Canada's applicable policies relating to appeals.
25. No action or legal proceeding will be commenced against Swim Alberta or its Members in respect of a dispute, unless Swim Alberta has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in Swim Alberta's governing documents.