

Appeal Policy

“Organization” refers to: Swim Natation Manitoba

Definitions

1. The following terms have these meanings in this Policy:
 - a) “*Affected Party*” - Any individual or entity, as determined by the Appeal Manager, who may be affected by a decision rendered under this Policy and who may have recourse to an appeal in their own right
 - b) “*Appeal Manager*” - An individual, who may be any staff member, Committee Member, volunteer, Director, or an independent third party, who is appointed to oversee this Policy. The Appeal Manager will have responsibilities that include using decision making authority empowered by this Policy
 - c) “*Appellant*” – The Party appealing a decision
 - d) “*Days*” – Days irrespective of weekend and holidays
 - e) “*Participants*” – Refers to all categories of individual members and/or registrants defined in the By-laws of the Organization who are subject to the policies of the Organization, as well as all people employed by, contracted by, or engaged in activities with the Organization including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, and Directors and Officers
 - f) “*Parties*” – The Appellant, Respondent, and any other Participants affected by the appeal
 - g) “*Respondent*” – The Party whose decision is being appealed

Purpose

2. This *Appeal Policy* provides Participants with a fair and expedient appeal process.

Scope and Application of this Policy

3. This Policy applies to all Participants. Subject to sections 4 and 5 herein, any Participant who is directly affected by an Organization decision shall have the right to appeal that decision; provided that an appeal of such decision is not otherwise explicitly prohibited in accordance with the then existing policies and by-laws of the Organization, and provided there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy.
4. This Policy **will apply** to decisions relating to:
 - a. Eligibility
 - b. Selection
 - c. Conflict of Interest

- d. Discipline
 - e. Membership
5. This Policy **will not apply** to decisions relating to:
- a. Employment
 - b. Infractions for doping offenses
 - c. The rules of the sport
 - d. Selection criteria, quotas, policies, and procedures established by entities other than the Organization
 - e. Substance, content and establishment of team selection criteria
 - f. Volunteer/coach appointments and the withdrawal or termination of those appointments
 - g. Budgeting and budget implementation
 - h. The Organization's operational structure and committee appointments
 - i. Decisions or discipline arising within the business, activities, or events organized by entities other than the Organization (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by the Organization at its sole discretion)
 - j. Commercial matters for which another appeals process exists under a contract or applicable law
 - k. Decisions made under this Policy

Timing and Notice of Appeal

6. Participants 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 the Organization, 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 to 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. An administration fee of two hundred fifty dollars (\$250)
7. A Participant who wishes 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 Appeal Manager and may not be appealed.

Grounds for Appeal

8. 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:
 - a. The Respondent made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make
 - b. The Respondent failed to follow its own procedures (as set out in the Respondent's governing documents)
 - c. 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 appears not to have considered other views)
 - d. The Respondent failed to consider relevant information or took into account irrelevant information in making the decision
 - e. The Respondent made a decision that was grossly unreasonable
9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the 'Grounds for Appeal' section of this Policy 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, the fee, and all other information (outlined in the 'Timing and Notice of Appeal' section of this Policy), the Organization and the Appellant may first determine the appeal to be heard under the Organization's *Dispute Resolution Policy*.
11. Appeals resolved by mediation or alternative dispute resolution (in accordance with any *Dispute Resolution Policy* in effect with the Organization) will cause the administration fee to be refunded to the Appellant.
12. Should the appeal not be resolved by mediation/alternative dispute resolution, the Organization will appoint an independent Appeal Manager who has the following responsibilities:
 - 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

For certainty, the Appeal Manager appointed by the Organization shall not be the same individual who acted as Case Manager pursuant to the Discipline and Complaints Policy in rendering the original decision.

13. If the appeal is denied on the basis of insufficient ground, 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 Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an Appeals Panel which shall consist of a single Adjudicator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Appeal Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the Panel's members to serve as the Chair. The person(s) hearing the appeal shall not be members or employees of the Organization and shall not be associated with the sport of swimming in any capacity.

Determination of Affected Parties

15. In order to confirm the identification of any Affected Parties, the Appeal Manager will ask the Organization. The Appeal Manager may determine whether a party is an Affected Party in their sole discretion

Procedure for Appeal Hearing

16. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.
17. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
18. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, 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 Appeal Manager and the Panel deem appropriate in the circumstances, provided that:
 - a. The hearing will be held within a timeline determined by the Appeal Manager
 - b. The Parties will be given reasonable notice of the day, time and place of the hearing
 - 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 the hearing
 - f. The 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

- g. If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in its own right under this Policy, that party will become a party to the appeal in question and will be bound by its outcome
- h. The decision to uphold or reject the appeal will be by a majority vote of Panel members

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

Appeal Decision

20. The Panel shall issue its decision, in writing and with reasons, within fourteen (14) 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 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

21. The Panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and the Organization. In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Timelines

22. Notwithstanding anything to the contrary contained herein, 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 and/or Panel may direct that these timelines be revised.

Confidentiality

23. The appeals process is confidential and involves only the Parties, the Appeal 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 the Participants.

25. No action or legal proceeding will be commenced against the Organization or Participants in respect of a dispute, unless the Organization has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in the Organization's governing documents.

PSO Board of Directors Approval Date:	<u>May 8, 2023</u>
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This Policy is subject to review at least once every three years by Governance Committee.

Date of last review: March 2023

The publication of Swim Natation Manitoba policies will be in English.

In the case of conflicting policies, the most recently dated board approved copy will prevail.

Relevant documents noted within this policy: **Eligibility Policy; Conflict of Interest Policy; Discipline and Complaints Policy; Dispute Resolution Policy**