

Policy title:	Appeal Policy		
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<b>This Policy has been prepared by Canada Artistic Swimming (CAS) and is applicable to CAS, its Members and Affiliated Organizations. This document cannot be modified without consultation with and approval by CAS.</b>			

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## Definitions

1. The following terms have these meanings in this Policy:
  - a. *"Activity"* – All business and activities of the Organization;
  - b. *"Affiliated Organization"* – Any recreational or competitive club or league that delivers artistic swimming programs and has fulfilled the requirements of registration as required by CAS or the PTSO and has paid any associated registration fees to CAS or the PTSO;
  - c. *"Appeal Panel"* – An individual or individuals appointed to handle the duties of the Appeal Panel as described in this Policy;
  - d. *"Appellant"* – The Party appealing a decision;
  - e. *"Board"* – The Board of Directors of CAS, a CAS Member or Affiliated Organization, as applicable;
  - f. *"CAS"* – Canada Artistic Swimming;
  - g. *"Case Manager"* – An independent individual appointed by the Organization to administer appeals under this *Appeal Policy*;
  - h. *"CEO"* – the CAS Chief Executive Officer;
  - i. *"Days"* – Days including weekends and holidays;
  - j. *"Including"* – Including but not limited to;
  - k. *"Individuals"* – Any organization or individual that has fulfilled the requirements of registration as required by CAS as well as all individuals engaged in Activity with CAS or its Members or Affiliated Organizations. A complete list of Registrant categories can be found in the *CAS Registration Policy*;
  - l. *"Member"* – Any PTSO registered with CAS;
  - m. *"Minor"* – A person under the age of 18 years;
  - n. *"Organization"* – The organization to which this Policy applies and includes CAS and its Members and Affiliated Organizations;
  - o. *"Party or Parties"* – The Complainant, Respondent and any other Individual or body affected by the appeal;
  - p. *"Person in Leadership"* – The CEO, Chief Sport Officer or any board member or Executive Director of CAS, an Affiliated Organization, or a PTSO;
  - q. *"President"* – The President of CAS, a CAS Member or Affiliated Organization, as applicable;
  - r. *"PTSO"* – A Provincial or Territorial Sport Organization that is responsible for the management of artistic swimming within its provincial or territorial boundaries; and
  - s. *"Respondent"* – The Party whose decision is being appealed.

## Purpose

2. The purpose of this Policy is to allow Individuals the ability to appeal certain decisions made by CAS or a CAS Member or Affiliated Organization without recourse to external legal procedures.

## Application

3. This Policy applies to all Individuals.
4. Any Individual who is affected by a decision of the CAS, CAS Member or Affiliated Organization's Board, of any Committee of the Board or individual or body who has been delegated to make decisions on behalf of the Organization or its Board has the right to appeal that decision provided there are sufficient grounds for the appeal as set out below.
5. This Appeal Policy will not apply to decisions relating to:
  - a. Infractions for doping offences, which are handled in accordance with the Canadian Anti-doping Program;
  - b. The rules of the sport as set out in the Organization's Rulebook;
  - c. Team selection criteria;
  - d. Disputes arising during competitions, which have their own appeal procedures;
  - e. Budgeting and budgeting implementation;
  - f. Operational structure, committees, staffing, employment or volunteer opportunities;
  - g. Volunteer appointments and the withdrawal of those appointments;
  - h. Employment;
  - i. Commercial matters or labour disputes for which another appeal process already exists under the applicable law or contract; or
  - j. Decisions made under this Policy.

## Timing and Notice of Appeal

6. Barring exceptional circumstances, Individuals shall have fourteen (14) days from the date on which they received notice of the decision to submit in writing notice of their intention to appeal to the CEO, Executive Director, or in the case of an Affiliated Organization, President, as appropriate.
7. The notice of appeal shall contain:
  - a. Notice of their 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 a description of the decision if a written document is not available;
  - f. Grounds for the appeal;
  - g. Detailed reasons for the appeal;
  - h. All evidence that supports the appeal;
  - i. The requested remedy or remedies; and
  - j. An administrative fee of five hundred dollars (\$500), which will be refunded if the appeal is successful or forfeited if the appeal is denied.

8. Any individual wishing to initiate an appeal beyond the fourteen (14) day period must provide a written request stating reasons for an exemption to this requirement. The decision to allow or not allow an appeal outside the fourteen (14) day period is at the sole discretion of the Case Manager and may not be appealed.

## **Grounds**

9. A decision cannot be appealed on its merits alone. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include the Respondent:
  - a. Not having authority or jurisdiction;
  - b. Failing to follow procedures as set out in the Organization's By-laws or policies;
  - c. Showing bias; or
  - d. Imposing sanctions that are excessive or inappropriate.
10. The Appellant bears the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 9. of this Policy.

## **Administration of Appeal**

11. Appeals shall be administered by CAS or the CAS Member under the direction of the CEO or Executive Director, as appropriate. Appeals shall be administered by Affiliated Organizations under the direction of the President.
12. Administration may be delegated to an independent third-party and, in the event that it is, all of the duties of the CEO, Executive Director or President as described in this Policy will be carried out by such person.

## **Initial Screening**

13. Upon receiving the notice of appeal, the fee and all other information as described in Section 7. of this Policy, the Organization will appoint a Case Manager. The Case Manager must not have been previously involved in the matter, have a significant relationship with any of the Parties to the appeal or otherwise have a real or perceived conflict of interest.
14. The Case Manager has the following responsibilities:
  - a. To determine whether the notice of appeal was submitted in a timely manner;
  - b. To determine whether the appeal falls under the scope of this Policy;
  - c. To determine whether the appeal is frivolous or vexatious; and
  - d. To decide whether there are sufficient grounds for the appeal.
15. If the appeal is denied based on the grounds referred to in Section 9. of this Policy, the Case Manager will advise the Appellant in writing of the reasons for the decision. This decision may not be appealed.

16. If the Case Manager is satisfied there are sufficient grounds for the appeal, the Case Manager will appoint an Appeal Panel.

## **Appointment of Appeal Panel**

17. An appeal under this Policy will be heard and determined by an Appeal Panel appointed by the Case Manager as soon as feasible, but in no event later than thirty (30) days from the date of the notice of appeal.
18. The Appeal Panel will consist of one (1) or three (3) persons to hear the appeal. None of the persons hearing the appeal may have been previously involved in the matter, have a significant relationship with any of the Parties to the appeal or otherwise have a real or perceived conflict of interest.
19. In the case of a three (3) person Appeal Panel:
  - a. The Panel's members shall select a Chair;
  - b. A quorum will be all three (3) Panel members; and
  - c. Decisions will be by majority vote, where the Chair carries a vote.

## **Procedure for Appeal Hearing**

20. The Appeal Panel shall determine the format of the appeal process, which may involve a hearing based on written submissions, an oral in-person hearing, an oral electronic hearing, or a combination of these methods. This decision may not be appealed. The 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 of the day, time, and place of the oral in-person or electronic hearing;
  - b. Copies of any written documents the Parties wish to have the Appeal Panel consider will be provided to all Parties in advance of the hearing;
  - c. The Parties may engage a representative, advisor, or legal counsel at their own expense;
  - d. The Appeal Panel may request that any other individual participate and give evidence at the hearing; and
  - e. The Appeal Panel may allow as evidence at the hearing any oral evidence and 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.
21. Should a Party choose not to participate in the hearing, the hearing will proceed in any event.
22. 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, that party will receive notice of the appeal, will become a Party to the current appeal, will be permitted to make a submission as part of the appeal process, and will be bound by the decision.
23. 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.
24. In fulfilling its duties, the Appeal Panel may obtain independent advice.

## **Decision**

25. The Appeal Panel's deliberations shall take place *in camera*. No other person shall be present during the deliberations.
26. The Appeal Panel, by a majority of votes cast, may:
  - a. Reject the appeal and confirm the decision being appealed; or
  - b. Uphold the appeal and vary the decision.
27. Within fourteen (14) days of the hearing's conclusion, the Appeal Panel will issue a written decision, including reasons, for distribution by the Case Manager to the Appellant, Respondent, Organization and any other interested parties. In extraordinary circumstances, the Appeal Panel may issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to follow within a reasonable delay.
28. Except in cases of willful misconduct, the Appeal Panel will bear no liability for any act or omission in connection with the resolution of a dispute under this Policy. Members of the Appeal Panel cannot be called as witnesses during an appeal or before any court of competent jurisdiction.
29. No action or proceeding may be brought against CAS, a CAS Member or Affiliated Organization in respect of an appeal, unless the Organization has refused or failed to comply with the provisions for appeal set out in this Policy.
30. Any final decision made by the Appeal Panel may be referred to arbitration or mediation by way of application to the Sport Dispute Resolution Centre of Canada (SDRCC). The decision rendered by SDRCC will be final and binding upon all parties.

## **Adult Representative**

31. If the Appellant is a minor athlete or other vulnerable person, an appeal may be brought forward by a parent or other responsible adult who may serve as their representative during the appeal process. All communication must be directed to or include the adult representative.
32. A minor or other vulnerable person may not be required to attend an oral in-person or electronic hearing, if held.

## **Confidentiality**

33. Once initiated and until a decision is released, none of the Parties involved in an appeal will discuss any information related to the appeal with any person other than those appointed as Case Manager or to the Appeal Panel, and the Party's immediate family members or legal advisors, provided such family members or legal advisors also agree to maintain strict confidentiality about the appeal.

## **Records and Distribution of Decisions**

- 34. Records of all decisions under this Policy will be maintained by the Organization maintaining jurisdiction over the appeal. CAS Members and Affiliated Organizations will disclose all decisions to CAS to maintain a Canadian database.
- 35. CAS, the CAS Member or Affiliated Organization may advise other individuals or organizations, including national sport organizations, PTSOs, and the Coaching Association of Canada (CAC) where the appeal involves a coach, of any decisions rendered in accordance with this Policy.
- 36. Decisions on how and when to disclose will be made on a case-by-case basis and will be in the best interest of the Organization.

## **Communication**

- 37. CAS, CAS Members and Affiliated Organizations will ensure that this Policy is communicated to their members and to any other person who may be subject to the Discipline and Complaints Policy, or who may otherwise wish to appeal a decision of the CAS, CAS Member or Affiliated Organization, and to those persons who will be responsible for its implementation.

## **Review**

- 38. CAS will conduct a review of this Policy every two (2) years or as decided by the CEO or CAS Board. Every time the Policy is reviewed or amended, CAS shall ensure CAS Member input is sought and considered.