



Policy title:	Appeals Policy	
Adopted:	December 22, 2021	
Current version approved by Board of Directors:	December 19, 2022	
<b>This Policy has been prepared by Canada Artistic Swimming (CAS). It is applicable to CAS, and to every PTSO and Affiliated Organization that adopts it once customized and adapted to the PTSO or Affiliated Organization's needs</b>		

*Note: Definitions related to this policy are included in the Safe and Welcoming Sport Overview Policy*

## Purpose

1. The purpose of this Policy is to allow Individuals of a PTSO or Affiliated Organization that has adopted this Policy, and including national team Athletes and Coaches to appeal CAS decisions described in Section 2 or 3, without recourse to external legal or judicial procedures.

## Application

2. A national Team Athlete may appeal the following types of CAS decisions, provided there are sufficient Grounds for the Appeal as set out below:
  - a. decisions regarding the implementation and delivery of CAS's national team programs;
  - b. decisions related to the selection of national level Athletes to a team representing Canada at international multisport events; or
  - c. decisions related to the determination of national team Athletes' AAP status.
3. A national team Coach may appeal sport-related decisions provided there are sufficient Grounds for the Appeal as set out below.
4. Where this Appeals Policy is adopted by a PTSO or Affiliated Organization, an Individual who is affected by a decision of the Organization, its Board, or any committee of the Board or Individual or body who has been delegated to make decisions on behalf of the Organization or its Board (other than a decision described in Section 6) has the right to appeal that decision provided there are sufficient Grounds for the Appeal as set out below.

This Appeal Policy applies to all other decisions of the Organization for which a right of appeal is provided. For clarity, this Appeal Policy does not apply to the following decisions;

- a. a decision by the Organization's Complaint Triage Officer that the allegations contained in a Complaint or Reported Incident are or are not within the jurisdiction of the Organization;
- b. a decision by the Organization's Complaint Triage Officer to accept, redirect or dismiss a Complaint or Reported Incident;
- c. findings or recommendations contained in an investigator's report;
- d. a determination made by the Organization's Complaint Triage Officer that a Complaint or Reported Incident constitutes a Minor Infraction or a Major Infraction, and the consequent referral of the matter to the Organization's Complaint Manager to be dealt with under the applicable part of the Organization's Discipline and Complaint Policy and Procedure;
- e. any decision related to the application of the UCCMS made by the OSIC, the Director of Sanctions and Outcomes, the SDRCC's Safeguarding Tribunal or the Abuse-Free Sport program;
- f. any decision made under the Organization's Discipline and Complaint Policy and Procedure related to a Minor Infraction;
- g. doping offences, which are handled in accordance with the Canadian Anti-doping Program, FINA, major games anti-doping regulations or the anti-doping regulations of any other anti-doping organization;
- h. decisions made by Sport Canada relating to AAP;
- i. decisions made by Sport Partners or other bodies for which CAS is not responsible;
- j. the rules of the sport as set out in the FINA or the Organization's rulebook;
- k. disputes arising during competitions, which have their own appeal procedures or are dealt with under Part IV of the Discipline and Complaint Policy and Procedure;
- l. budgeting and budgeting implementation;
- m. operational structure, committees, staffing, employment, or volunteer opportunities;
- n. disputes related to the Organization's By-laws unless otherwise determined by the Organization's Board;
- o. volunteer appointments and the withdrawal of those appointments;
- p. employment matters;
- q. commercial matters or labour disputes for which another dispute resolution process may exist under the applicable law or contract;
- r. a decision to refuse an Appeal filed under this Policy; or
- s. any other decision that is specified in this Policy or the Organization's other Policies as not being appealable.

## **Timing and Notice of Appeal**

5. Barring exceptional circumstances, Individuals shall have 14 Days from the date on which they receive notice of a decision to submit in writing a notice of their intention to appeal to the CEO, Executive Director, or in the case of an Affiliated Organization, the President, as appropriate.
6. The notice of appeal shall contain:
  - a. Notice of the Appellant's intention to appeal;
  - b. Contact information and the Appellant's role in the sport of AS
  - 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 \$250, paid by e-transfer to [payment@artisticswimming.ca](mailto:payment@artisticswimming.ca), which will be refunded if the Appeal is successful or forfeited if the Appeal is denied. A request with reasons to waive the administrative fee may be made by the Appellant upon filing the notice of appeal. The Case Manager shall decide if the administrative fee shall be waived.
7. Any Individual wishing to initiate an Appeal beyond the 14 Days period must provide a written request stating reasons for an exemption to this requirement. The decision to grant or deny a requested extension of the 14 Day period to submit a notice of Appeal is at the sole discretion of the Case Manager and is final and binding and may not be appealed.

## **Grounds**

8. A decision cannot be appealed on its merits alone. An Appeal may be heard only if there are sufficient Grounds for the Appeal. Grounds for appeal are limited to the following:
- a. That the Respondent did not have authority or jurisdiction to make the decision (as set out in the relevant Policies or governing documents);
  - b. That the Respondent failed to follow or apply the Organization's Policies and Procedures in making the decision;
  - c. That the Respondent's decision was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker was unable to consider or did not consider other views);
  - d. That the Respondent failed to consider relevant information or evidence or took into account irrelevant information or evidence; or
  - e. That the Respondent's decision was grossly unreasonable.

Regardless of the Grounds for appeal cited, the Appellant must establish that they were prejudiced and harm was caused by the decision

9. The Appellant bears the onus of proof in the Appeal, which shall be on a balance of probabilities, and must be able to demonstrate that the Grounds for appeal exist.

## **Administration of Appeal**

10. Appeals shall be administered by the Organization's Case Manager or delegated to an independent third-party acting as Case Manager under the direction of the CEO, Executive Director or Affiliated Organization's President as appropriate. 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 an actual or perceived Conflict of Interest. The Case Manager's role is outlined in Appendix A attached.

## **Initial Screening**

11. Upon receiving the notice of appeal, and all other information as described in Section 8 of this Policy, the Organization will appoint a Case Manager.
12. 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 to initiate the Appeal.
13. If the Appeal does not fall under the scope of this Policy or is denied based on there being insufficient Grounds to initiate an Appeal, the Case Manager will advise the Appellant in writing of the reasons for the decision. This decision by the Case Manager is not appealable.
14. If the Case Manager is satisfied there are sufficient Grounds to initiate the Appeal, the Case Manager will appoint an Appeal Panel.

## **Alternative Dispute Resolution**

15. If the Parties consent to mediation, the Case Manager will appoint a mediator or, if available (in the case of CAS), request the resolution facilitation services of the Sport Dispute Resolution Centre of Canada (SDRCC).
16. Should one of the Parties not agree to mediation or if the mediation fails to settle the dispute, an Appeal Hearing shall be conducted in accordance with this Policy. The mediation process may suspend the timelines described in this Policy.

## **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 no later than 30 Days from the date of the notice of appeal unless otherwise determined by the Case Manager or Appeal Panel under exceptional circumstances.
18. The Appeal Panel will consist of one or three members as determined by and appointed by the Case Manager to hear the Appeal. None of the Panel members 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 an actual or perceived Conflict of Interest. The Case Manager's position is either volunteer or remunerated, as determined by the Organization. The members of the Appeal Panel may receive an honorarium or act on a volunteer basis, as determined by the Organization, at its discretion.

19. In the case of a three-member Appeal Panel:
  - a. The Panel's members shall select a Chair;
  - b. A quorum will be all three Panel members; and
  - c. Decisions will be made by majority vote.

## **Procedure for Appeal Hearing**

20. The Case Manager or Appeal Panel may determine that the circumstances of the Appeal warrant a preliminary meeting with the Parties to discuss and determine procedural issues such as the date and location of the Hearing, timelines for exchange of documents, format for the Hearing, clarification of issues in dispute, conduct of Hearing, remedies being sought, identification of witnesses, and any other matter which may assist in expediting the appeal proceedings.
21. The Appeal Panel shall determine the format of the Appeal Hearing 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 deems appropriate in the circumstances, provided that:
  - a. The Parties will be given appropriate notice of the date, 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 be represented by a representative, advisor, translators and transcription services or legal counsel at their own expense;
  - d. The Appeal Panel may request that any other Individual participate and provide submissions at the Hearing;
  - e. If the Appeal is from a Discipline Panel decision (in the case of a PTSO or Affiliated Organization that has adopted this Appeals Policy), the appeal will be conducted on the basis of the evidentiary record that was before the Discipline Panel, and new evidence will not be admitted on the appeal unless the Appeal Panel determines there are exceptional circumstances; and
  - f. If the appeal is from a decision other than a Decision Panel decision, the Appeal Panel will determine what if any new evidence may be admitted on the Appeal.
22. Should a Party choose not to participate in the Hearing, the Hearing will proceed in any event without the participation of the Party and will still be decided based on the evidence and submissions adduced before the Panel.
23. If a decision in the Appeal may affect another Party to the extent that the other Party would have recourse to an Ain their own right, that Affected 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.

## **Decision**

24. The Appeal Panel may decide by a majority vote:
  - a. To uphold the decision and dismiss the Appeal;
  - b. To void the decision, in whole or in part, and refer the matter back to the initial decision-maker for a new decision;
  - c. To vary the decision, in whole or in part, where it is found that an error occurred, and such an error cannot be corrected by the original decision-maker for reasons that include lack of clear procedure, lack of time, or lack of neutrality; and
  - d. To determine how costs of the Appeal shall be allocated, excluding legal costs and legal disbursements, if at all.
25. Within 14 Days of the conclusion of the Hearing, the Appeal Panel will issue a written decision for distribution by the Case Manager to the Parties, the Organization, and any other interested organizations or parties. Depending on the circumstances, the Appeal Panel's written decision may include its reasons, or the Appeal Panel may issue a short decision with full written reasons to follow within a reasonable period of time.
26. Except in cases of willful misconduct by the Panel, the Appeal Panel will bear no liability for any act or omission in connection with the Panel's decision or the appeal process under this Policy. Members of the Appeal Panel cannot be called as witnesses during a subsequent Appeal, action or other proceeding seeking to challenge the Panel's decision before the SDRCC or any court of competent jurisdiction.
27. No action or proceeding may be brought against the 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.
28. In the case of CAS, any final decision made by the Appeal Panel related to eligible disputes described in Sections 2 or 3 may be referred to arbitration or mediation by way of application to SDRCC. Decisions rendered by SDRCC are final and binding upon all Parties.

## **Adult Representative**

29. If the Appellant is a Minor Athlete or Vulnerable Participant, 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.
30. The Appeal Panel may decide, at its discretion, that a Minor or Vulnerable Participant will not be required to attend any oral in-person or electronic Hearing.

## **Confidentiality**

31. None of the Parties involved in an Appeal will discuss the appeal or any Confidential Information related to the appeal with any person other than the Case Manager, the Appeal Panel, and the Party's immediate Family Members, legal advisors, or authorized representatives, provided that

such Family Members, legal advisors, and authorized representatives also agree to maintain strict confidentiality about the Appeal. The Panel may instruct the Case Manager to disclose to a PTSO and other interested Organizations information about the Appeal if there is a concern about safety or well-being of others.

## **Records and Distribution of Decisions**

32. Records of all decisions under this Policy will be maintained by the Organization with jurisdiction over the Appeal. PTSOs and Affiliated Organizations will also disclose all Appeal decisions to CAS to maintain a Canadian database.
33. CAS, PTSOs or Affiliated Organizations may advise other Individuals or Organizations, including Sport Partners, national sport organizations, other PTSOs, and the Coaching Association of Canada (CAC) where the Appeal involves a decision that may impact the safety or well-being of others of any appeal decisions rendered in accordance with this Policy.
34. The Organizations shall have the discretion on a case-by case basis to determine how and when to disclose a decision having regard to the best interests of the Organization and its participants. CAS shall not be responsible for public disclosure of appeal decisions made by PTSOs or Organizations.

## **Communication**

35. The Organization will ensure that this Policy is communicated to their members, Registrants and Individuals involved in their Activities or Events and to any other person who may be subject to the Organization's Policies, or who may otherwise wish to appeal a decision of the Organization, and to those persons who will be responsible for its implementation.

## **Review**

36. CAS will conduct a review of this Policy every two years or as decided by the CEO or Board. Every time the Policy is reviewed or amended, CAS will consider any feedback received.

## **APPENDIX A**

### **CASE MANAGER POSITION DESCRIPTION**

#### **Purpose**

1. The Organization may appoint a Case Manager for the purpose of administering an Appeal under the Appeals Policy. This position description outlines the role, identity, responsibilities, and tasks of the Case Manager.

#### **Identity**

2. The Case Manager appointed by the Organization at its sole discretion should be experienced with the management of disputes in an unbiased manner. The Case Manager shall not be connected in any way to the issue being disputed or the Parties to the dispute.
3. The Case Manager does not need to be approved by any of the Parties involved in the Appeal.

#### **Discretion for Appeals**

4. When an Appeal is filed, the Case Manager is required to:
  - a) Propose the use of an alternative dispute resolution mechanism, if appropriate;
  - b) Determine if the Appeal falls under the scope of the Appeals Policy;
  - c) Determine if the Appeal is frivolous or vexatious;
  - d) Determine if the Appeal was submitted in a timely manner;
  - e) Decide whether the Appellant has identified any sufficient Grounds to initiate the Appeal;
  - f) Appoint an Appeal Panel, if necessary;
  - g) Coordinate all administrative aspects and set timelines in conjunction with the Appeal Panel;
  - h) Provide administrative assistance and logistical support to the Parties and Appeal Panel as required; and
  - i) Provide any other service or support that may be necessary to ensure a fair and timely proceeding.
5. When determining if there are sufficient identified Grounds for appeal, the Case Manager is not acting as the Panel or determining the merits of the Appeal, but instead determining whether the Appellant has properly identified a Ground, as described in the Appeals Policy, that provides a valid basis to initiate an Appeal under the Appeals Policy.

#### **Discretion for Alternative Dispute Resolution**

6. When the Parties agree to alternative dispute resolution, the Case Manager may be required to:
  - a) Appoint a mediator or facilitator;
  - b) Coordinate all administrative aspects and set timelines; and



- c) Provide administrative assistance and logistical support to the mediator or facilitator as required.

### **Discretion for Hearing**

7. If necessary, the Case Manager, in conjunction with the Appeal Panel, as appropriate, is required to exercise their discretion to determine the format of the Hearing. Hearings typically take the following forms:
  - a) Documentary review only;
  - b) Conference call or videoconference;
  - c) In-person Hearing;
  - d) Written submissions; or
  - e) A combination of those means.
  
8. In determining the format of the Hearing, the Case Manager should consider:
  - a) The relationship between the Parties;
  - b) The time commitment of the Panel;
  - c) The timelines for a decision;
  - d) The language barriers between the Parties;
  - e) The gravity of the Appeal;
  - f) The complexity of the issues involved;
  - g) The amount of documentary evidence;
  - h) Whether one or both Parties are represented by legal counsel;
  - i) The existence of written arguments provided in advance;
  - j) Whether credibility findings must be made; or
  - k) Accommodations required due to a Party's disability.

### **Panel Appointment**

9. The Case Manager is required to appoint members of the Appeal Panel. The Panel members are more important to the resolution of the dispute than the Case Manager and should have the following characteristics:
  - a) Experience in dispute resolution;
  - b) Experience with sport disputes;
  - c) No connection to either Party;
  - d) Decisiveness;
  - e) Fluency in the language in which the Appeal is being argued; and
  - f) Availability to make a decision on the Appeal within the timeframes set under this Policy.