
26. APPEAL POLICY

26.1 Definitions

The following definitions shall apply in the context of the Appeal Policy:

- a) **“Appellant”** – The Party appealing a decision
- b) **“Case Manager”** – The individual who implements procedures described in this *Appeal Policy*. The Case Manager does not need to be a member of, or affiliated with, BC Artistic Swimming. The Case Manager’s role is further described in BC Artistic Swimming’s *Case Manager Job Description*.
- c) **“Respondent”** – The body whose decision is being appealed
- d) **“Parties”** – The Appellant, Respondent, and any other Individuals affected by the appeal
- e) **“Days”** – Days including weekends and holidays
- f) **“Individuals”** – All categories of membership defined in BC Artistic Swimming’s Bylaws, as well as all individuals employed by, or engaged in activities with, BC Artistic Swimming including, but not limited to, athletes, coaches, convenors, referees, officials, volunteers, managers, administrators, committee members, Directors and Officers of BC Artistic Swimming, spectators at events, and parents/guardians of athletes

26.2 Purpose

BC Artistic Swimming is committed to providing an environment in which all Individuals involved with BC Artistic Swimming are treated with respect and fairness. BC Artistic Swimming provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by BC Artistic Swimming. Further, some decisions made by the process outlined in BC Artistic Swimming’s *Discipline and Complaints Policy* may be appealed under this Policy.

26.3 Adult Representative

26.3.1 Appeals may be filed by an Individual who is a minor (younger than 19 years old). Minors must have a parent/guardian or other adult serve as their representative during this process

26.3.2 Communication from the Case Manager must be directed to the minor’s representative.

26.3.3 A minor is not required to attend an oral hearing, if held.

26.4 Scope and Application of this Policy

26.4.1 This Policy applies to all Individuals. Any Individual who is directly affected by a BC Artistic Swimming decision shall have the right to appeal that decision provided there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy.

26.4.2 This Policy **will apply** to decisions relating to:

- a) Eligibility
- b) Selection
- c) Conflict of Interest
- d) Discipline
- e) Membership
- f) Athlete funding or carding selection

26.4.3 This Policy **will not apply** to decisions relating to:

- a) Employment
- b) Infractions for doping offenses

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- c) The rules of the sport
 - d) Selection criteria, quotas, policies, and procedures established by entities other than BC Artistic Swimming
 - 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) BC Artistic Swimming's operational structure and committee appointments
 - i) Decisions or discipline arising within the business, activities, or events organized by entities other than BC Artistic Swimming (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by BC Artistic Swimming 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

26.5 *Timing of Appeal*

26.5.1 Individuals who wish to appeal a decision have ten (10) days from the date on which they received notice of the decision to submit, in writing to BC Artistic Swimming, the following:

- a) Notice of the intention to appeal
- b) Contact information 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 one hundred fifty dollars (\$150), which will be refunded if the appeal is upheld

26.5.2 An Individual who wishes to initiate an appeal beyond the ten (10) 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 ten (10) day period will be at the sole discretion of the Case Manager and may not be appealed.

26.6 *Grounds for Appeal*

26.6.1 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 the authority or jurisdiction (as set out in the Respondent's governing documents) to make
- 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 appears not to have considered other views)
- d) Made a decision that was grossly unreasonable

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- 26.6.2 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.
- 26.6.3 **Screening of Appeal** - Upon receiving the notice of the appeal, the fee, and all other information (outlined in the 'Timing of Appeal' section of this Policy), BC Artistic Swimming and the Appellant may first determine the appeal to be heard under BC Artistic Swimming's *Dispute Resolution Policy*.
- 26.6.4 Appeals resolved by mediation under BC Artistic Swimming's *Dispute Resolution Policy* will cause the administration fee to be refunded to the Appellant.
- 26.6.5 Should the appeal not be resolved by using the *Dispute Resolution Policy*, BC Artistic Swimming will appoint a Case Manager. The Case Manager should not be in a conflict of interest and should have expertise in dispute resolution matters. The job description for the Case Manager is described in the *Case Manager Job Description*, which is an internal document provided to the Case Manager once appointed. Such appointment is not appealable.
- 26.6.6 The Case Manager 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
- 26.6.7 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.
- 26.6.8 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.
- 26.7 Procedure for Appeal Hearing**
- 26.7.1 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.
- 26.7.2 If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
- 26.7.3 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 Case Manager and the Panel deem appropriate in the circumstances, provided that:
- a) The hearing will be held within a timeline determined by the Case Manager
 - b) The Parties will be given reasonable notice of the day, time and place of the hearing

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- 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 their 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

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

26.8 Appeal Decision

26.8.1 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

26.8.2 The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and BC Artistic Swimming. 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.

26.9 Retaliation

No person may engage in retaliation, intimidation or any other form of punishment against and Individual who files an appeal. Retaliation may be grounds for a complaint under the *Discipline and Complaints Policy*.

26.10 Timelines

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 Case Manager and/or Panel may direct that these timelines be revised.

26.11 Confidentiality

The appeals process is confidential and involves only 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.

26.12 Records and Distribution of Decisions

Other individuals or organizations, including but not limited to, national sport organizations, provincial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this Policy.

26.13 *Final and Binding*

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