



# CANADIAN SWIMMING COACHES ASSOCIATION APPEAL POLICY

## Definitions

1. These terms will have these meanings in this policy:
  - a. “*Appellant*”- The party appealing a decision.
  - b. “*CSCA*” – Canadian Swimming Coaches Association
  - c. “*Days*” - Days including weekends or holidays.
  - d. “*Respondent*” - The body whose decision is being appealed.
  - e. “*Member*”- All categories of membership defined in the CSCA Bylaws.
  - f. “*Policy*”- This CSCA Appeal Policy.
  - g. “*WADA*” - World Anti Doping Agency

## Purpose

2. The purpose of this Policy is to enable Members’ appeals to be dealt with fairly, expeditiously and affordably, within CSCA and without recourse to external legal procedures.

## Scope and Application of this Policy

3. Any Member affected by a decision of the CSCA Board of Directors, any committee of CSCA, any body or any individual who has been delegated authority to make decisions on behalf of CSCA, will have the right to appeal the decision provided there are sufficient grounds for the appeal.
4. This Policy will not apply to decisions relating to:
  - a. Matters of employment;
  - b. Volunteer appointments and the withdrawal or termination of those appointments;
  - c. Matters of operational structure, committees, staffing, employment or volunteer opportunities;
  - d. Commercial matters;
  - e. Matters of budgeting and budget implementation;
  - f. Infractions for doping offences which are dealt with pursuant to the *Canadian Anti-Doping Program, WADA* or any successor policies;
  - g. The rules of swimming competitions or disputes over competition rules;
  - h. Policies and procedures established by entities other than CSCA;
  - i. Discipline matters and decisions arising during events organized by entities other than those within CSCA, which are dealt with pursuant to the policies of these other entities; and
  - j. Disputes arising within competitions which have their own appeal procedures;
  - k. Decisions of the CSCA Screening Committee as per the CSCA Screening Policy

## Timing of Appeal

5. Members who wish to appeal a decision will have ten (10) days from the date on which they received notice of the decision, to submit in writing to the CSCA Executive Director (or designate) the following:
  - a. Notice of their intention to appeal;
  - b. A payment of five hundred dollars (\$500), which will be refunded if the appeal is successful.
6. Any party wishing to initiate an appeal beyond the ten (10) day period must provide a written request stating reasons for an exemption.

7. The decision to allow, or not to allow an appeal outside the ten (10) day period will be at the discretion of the CSCA Executive Director (or designate) may not be appealed.
8. Within fourteen (14) days of the filing of their intention to appeal the Member must submit in writing to the CSCA Executive Director (or designate) the following:
  - a. Contact information of the Appellant;
  - b. Grounds for the appeal;
  - c. Reason(s) for the appeal;
  - d. All evidence that supports the reasons and grounds for an appeal, and
  - e. The remedy or remedies requested.

### **Grounds for Appeal**

9. Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on procedural grounds. Procedural grounds are strictly limited to the Respondent
  - a. Making a decision for which it did not have authority or jurisdiction as set out in the Respondent's governing documents;
  - b. Failing to follow procedures as laid out in the bylaws or approved policies of CSCA; and/or
  - c. Making 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 or that the decision was influenced by factors unrelated to the substance or merits of the decision.
10. The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that there are grounds for the appeal.

### **Case Manager**

11. The CSCA will appoint a Case Manager to oversee the management and administration of appeals submitted in accordance with this Policy
12. Upon receipt of the notice, grounds of an appeal, supporting evidence and the required fee, the Case Manager will:
  - a. Determine if the appeal falls within the jurisdiction of this Policy;
  - b. Determine if appeal is brought in a timely manner;
  - c. Determine if there are appropriate grounds for appeal;
  - d. Appoint the Appeals Panel to hear the appeal;
  - e. Determine the format of the appeal hearing;
  - f. Coordinate all administrative and procedural aspects of the appeal;
  - g. Provide administrative assistance and logistical support to the tribunal as required; and
  - h. Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

### **Screening of Appeal**

13. If the Case Manager is satisfied that there are not sufficient grounds for an appeal, the Parties will be notified in writing, stating reasons.
14. If the Case Manager is satisfied that there are sufficient grounds for an appeal, then a hearing will take place. This decision is at the sole discretion of the Case Manager and may not be appealed.

### **Appeals Panel and Dispute Resolution**

15. After notifying the Parties the Appeal has been accepted, the Case Manager will propose the CSCA's *Dispute Resolution Policy* with the objective of resolving the dispute. If the dispute is not resolved or the parties refuse the Dispute Resolution Policy, the Case Manager will appoint a Panel, which shall consist of a single Adjudicator, to hear the complaint. At the discretion of the Case Manager, a larger Panel of two (2) to three (3) persons may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.

### **Procedure for the Hearing**

16. The Case Manager will determine the format of the hearing, which may involve an oral hearing in person, an oral hearing by teleconference, a hearing based on written submissions, or a combination of these or other acceptable methods.
17. The Case Manager, in cooperation with the Panel, will decide the format under which the Appeal will be heard. This decision may not be appealed. The format of the hearing, which may involve direct communications with the Parties, an oral in-person hearing, an oral hearing by telephone or other telecommunications, 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/or 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 the hearing in the case of an oral in-person hearing, an oral hearing by telephone or other telecommunications
  - 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 and/or decision rendered.
  - 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. 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, shall have the right to make submissions and review all evidence, shall be subject to the authority of the Panel and will be bound by its outcome but not required to pay the appeal fee.
  - g. In the situation where the hearing is conducted by a Panel consisting of three persons, a quorum will be all three and decisions will be by majority vote.

### **Appeal Decision**

18. Where time is of the essence, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reasons is rendered with the appropriate timelines.
19. Within thirty (30) days of concluding the receipt of evidence and submissions, the Panel will issue its written decision, 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. Dismiss the appeal and confirm the decision being appealed; or
  - b. Uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
  - c. Uphold the appeal and vary the decision.
20. The result of the appeal will be considered a matter of public record. The Panel may further provide that the written decision also be a matter of a public record, but at a minimum the written decision will be provided to the Appellant, Respondent, the CSCA Executive Director, CSCA Ethics Committee, and any Party to the appeal.

### **Confidentiality**

21. The appeal process is confidential involving only the Parties, their representatives or advisors, the Case Manager and the Panel. Once initiated and until a written decision is released, none of the parties or the Panel will disclose information relating to the appeal to any person not involved in the proceedings. The Panel may implement further confidentiality provisions as it deems appropriate.

**Final and Binding Decision**

22. The decision of the Panel will be binding on the parties and on all CSCA Members.
23. No action or legal proceeding will be commenced against CSCA or its members in respect of a dispute, unless CSCA has refused or failed to abide by the provisions for appeal as set out in the CSCA policies.

**Review and Approval**

24. This Policy was approved by the Board of Directors of CSCA on May 28, 2020.