

# Canda Games Selection Appeals Policy



## Definitions: In this policy

- “Appellant”** - refers to the member appealing a decision;  
**“Days”** - refers to days of the week including weekends and holidays;  
**“Member”** - refers to individuals engaged in activities with Swim PEI, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel);  
**“Parties”** - includes the Appellant, Respondent, Affected Party, Appeals Panel, and Swim PEI;  
**“Respondent”** - refers to the body whose decision is being appealed.

## SCOPE OF APPEAL

1. Any member who is affected by a decision of the Board of Directors, or any individual who has been delegated authority to make decisions on behalf of the Board of Directors, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Section 4 of this policy. Such decisions may include, but are not limited to harassment, discipline, and team selection.
2. This policy shall not apply to decisions relating to:
  - a) Infractions for doping offences.
  - b) The rules of swimming as defined by the Swimming Canada Rule Book.
  - c) Selection criteria, policies, and procedures established by entities other than Swim PEI.
  - d) Substance, content and establishment of team selection criteria.
  - e) Budgeting and Budget Implementation.
  - f) Swim PEI’s operational structure and committee appointments.

## TIMING OF APPEAL

3. Members who wish to appeal a decision shall have 7 days from the date on which they received notice of the decision, to submit in writing to the President of Swim PEI 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 known by 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 the grounds for the appeal.
  - i) Requested remedy.

## GROUNDS FOR APPEAL

4. 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) making a decision for which it did not have authority or jurisdiction as set out in governing documents;
  - b) failing to follow procedures as laid out in the bylaws or approved policies of Swim PEI;
  - c) making a decision which 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;
  - d) exercising its discretion for an improper purpose;
  - e) making a decision which was grossly unreasonable.

## SCREENING OF APPEAL

5. Within 5 days of receiving the notice of appeal and all other information, the President or designate, shall decide whether or not the appeal is based on one or more of the categories of possible errors by the respondent as set out in Section 4. The president shall not determine if the error has been made, only if the appeal is based on such an allegation of error by the respondent.
6. If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the President, or designate, and may not be appealed.

## APPEALS PANEL

7. If the President or designate is satisfied that there are sufficient grounds for an appeal, within 10 days of having received the original notice of appeal he or she shall appoint an Appeals Chairperson. The chairperson shall appoint an Appeals Panel (The Panel). The Panel shall be comprised of three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict.

## PRELIMINARY CONFERENCE

8. The Panel may determine that the circumstances of the dispute warrant a preliminary conference:
- a) The matters which may be considered at a preliminary conference include date and location of hearing, time-lines for exchange of documents, format for the appeal, clarification of issues in dispute, any procedural matter, order and procedure of hearing, remedies being sought, identification of witnesses, and any other matter which may assist in expediting the appeal proceedings.
  - b) The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

## PROCEDURE FOR THE APPEAL

9. The Panel shall govern the appeal by such procedures as it deems appropriate, provided that:
- a) The appeal hearing shall be held within 21 days of the Panel's appointment.
  - b) The Appellant, respondent and affected parties shall be given 14 days written notice of the date, time and place of the appeal hearing.
  - c) A quorum shall be all three Panel's members.
  - d) Decisions shall be by majority vote, where the Chairperson carries a vote.
  - e) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all other parties, at least 5 days in advance of the hearing.
  - f) Any of the parties may be accompanied by a representative or advisor.
  - g) If the matter under appeal relates to team selection, any person potentially affected by the decision of the Panel shall become a party to the appeal.
  - h) The Panel may direct that any other individual participate in the appeal.
  - i) In the event that one of the Panel's members is unable or unwilling to continue with the appeal, the matter will be concluded by the remaining two Panel members.
  - j) Communication between Panel members and the parties shall be in the presence of, or by copy to, the other parties.
10. In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a conference call or video conference.

## APPEAL DECISION

11. Within 7 days of concluding the appeal, the Panel shall issue its written decision, with reasons. The Panel may decide:
- a) To void or confirm the decision being appealed;
  - b) To vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
  - c) To refer the matter back to the initial decision-maker for a new decision; and
  - d) To determine how costs of the appeal shall be allocated, if at all.

12. A copy of this decision shall be provided to each of the parties and to the Executive.

## TIMELINES

13. If the circumstances of the dispute are such that this policy will not allow a timely appeal, the Panel may direct that these timelines be abridged. If the circumstances of the disputes are such the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be extended.

## DOCUMENTARY APPEAL

14. Any party to the appeal may request that the Panel conduct the appeal by way of documentary evidence. The Panel may seek agreement from the other parties to proceed in this fashion. If

agreement is not forthcoming, the Panel shall decide whether the appeal shall proceed by way of documentary evidence or in-person hearing.

#### ARBITRATION

15. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy. If any party believes the Appeal Panel has made an error such as those described in Section 4 of this Policy, the matter shall be referred to arbitration.

16. Should a matter be referred to arbitration, all parties to the original appeal shall be parties to the arbitration.

17. The parties to arbitration shall enter into a formal Arbitration Agreement and the decision of any arbitration shall be final and binding and not subject to any further review by any court of competent jurisdiction or any other body.

#### LOCATION AND JURISDICTION

18. Any appeal shall take place in Charlottetown, unless held by way of telephone conference call or held elsewhere as may be decided by the Panel as a preliminary matter.

19. This policy shall be governed and construed in accordance with the laws of the Province of PEI.

20. No action or legal proceeding shall be commenced against Swim PEI in respect of a dispute, unless Swim PEI has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this policy.

#### FINAL AND BINDING

21. The Decisions of the Panel will be binding on the Parties and on all Members, subject to appeal in accordance with Swimming Canada's applicable policies to appeals.

22. No Action or legal proceeding will be commenced against Swim PEI or its Members in respect of a dispute unless Swim PEI has refused or failed to provide by the appeal process as set out in Swim PEI's governing documents.