



SWIM NATATION MANITOBA APPEAL POLICY

Definitions

These terms will have these meanings in this policy:

“*APPELLANT*” - The party appealing a decision.

“*DAYS*” - Days irrespective of weekends or holidays.

“*RESPONDENT*” - The body whose decision is being appealed.

“*SNM*” - Swim Natation Manitoba

“*MEMBER*” - All categories of membership defined in SNM’s Bylaws.

“*STAFF*” - People in the employ of SNM

“*VOLUNTEERS*” people engaged in activities with SNM, including but not limited to, directors, officers, committee members, officials, referees, volunteers, and administrators.

“*PANEL*” The adjudicator or adjudicators appointed by the Case Manager to hear the appeal

“*PARTIES*” - The appellant, respondent and all person defined in section 8ib.

“*CASE MANAGER*” – The individual appointed by SNM who has overall responsibility for the appeal (See section 5)

1) Purpose

- a) The purpose of this policy is to enable disputes with Members to be dealt with fairly, expeditiously and affordably, within SNM and without recourse to external legal procedures.

2) Scope and Application of this Policy

- a) Any Member will have the right to appeal a decision of SNM's Board of Directors, any committee of SNM, or any body or individual who has been delegated authority to make decisions on behalf of SNM, provided the decision falls within the scope of this policy and there are sufficient grounds for the appeal as set out in Section 4 of this Policy subject to the limits in Section 2 c) of this policy.
- b) This policy will apply to decisions made by SNM, any committee of SNM, or any body or individual who has been delegated authority to make decisions on behalf of SNM, relating to eligibility, selection, or discipline.
- c) This policy will not apply to decisions relating to:
 - i) Infractions for doping offences which are dealt with pursuant to the Canadian Anti-Doping Program or any successor programme;
 - ii) The rules of swimming or disputes over competition rules;
 - iii) Policies and procedures established by entities other than SNM;
 - iv) Issues of operational structure, staffing, employment or volunteer opportunities;
 - v) Commercial matters;
 - vi) Issues of budgeting and budget implementation;
 - vii) Discipline matters and decisions arising during events organized by entities other than SNM, which are dealt with pursuant to the policies of these other entities;
 - viii) Disputes arising within competitions which have their own appeal procedures;
 - ix) Any decisions made under Sections 4, 5 and 6 of this Policy

3) Timing of Appeal

- a) Members who wish to appeal a decision will have fourteen (14) Days from the date on which they received notice of the decision, to submit in writing to the head office of SNM ([email:swim.ed@sportmanitoba.ca](mailto:swim.ed@sportmanitoba.ca) or [postal:145 Pacific Ave, Winnipeg, MB R3B 2Z6](#)) the following:
 - i) Notice of their intention to appeal;
 - ii) A non-refundable payment of two hundred fifty dollars (\$250);
 - iii) Contact information of the Appellant;
 - iv) Name of the Respondent;
 - v) Grounds for the appeal;

- vi) Detailed reason(s) for the appeal;
 - vii) All evidence that supports the reasons and grounds for an appeal;
 - viii) The remedy or remedies requested.
- b) Any appellant wishing to initiate an appeal beyond the fourteen (14) day period, specified in section 3a) must submit a written request stating reasons for such a request. The decision to allow, or not to allow an appeal outside the 14-day period will be at the sole discretion of the Case Manager and this decision may not be appealed.

4) Grounds for Appeal

- a) Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, on the following grounds:
- i) The Respondent making a decision for which it did not have authority or jurisdiction as set out in the Respondent's governing documents.
 - ii) The Respondent failing to follow procedures as laid out in the bylaws or approved policies of SNM.
 - iii) The Respondent making a decision that was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the Respondent is unable to consider other views.
 - iv) The decision was influenced by factors unrelated to the substance or merits of the decision.
- b) The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made an error as described in Section 4.

5) Case Manager

- a) Within seven (7) days of receiving a notice of appeal SNM will appoint a Case Manager to oversee the management and administration of the appeal. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in the application of this policy, and to implement this policy in a timely manner. More specifically, the Case Manager has a responsibility to:
- i) Determine if submitted appeals lie within the jurisdiction of this policy;
 - ii) Determine if appeals are brought within the time limits prescribed by this policy;
 - iii) Determine if appeals are brought on permissible grounds;
 - iv) Appoint a Panel to hear appeals;
 - v) Determine the format of the appeal hearing;
 - vi) Coordinate all administrative and procedural aspects of the appeal;
 - vii) Provide administrative assistance and logistical support to the Panel as required; and
 - viii) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

- ix) The Case Manager, at their sole discretion, may choose to add additional Members, as a Party, to the appeal.

6) Screening of Appeal

- a) Upon receipt of the notice, grounds of an appeal and the required fee, the Case Manager will review the appeal and decide whether or not the appeal was submitted within the prescribed time limit and if there are sufficient grounds for an appeal. If the Case Manager is satisfied that the appeal was not submitted within the prescribed time limit or that there are not sufficient grounds for an appeal, the parties will be notified in writing, stating reasons. If the Case Manager is satisfied that there are sufficient grounds for an appeal, then a hearing will take place. This screening decision is within sole discretion of the Case Manager and may not be appealed.

7) Appeals Panel

- a) Subject to section 7 b) the Case Manager is satisfied that there are sufficient grounds for an appeal, the Case Manager will establish a Panel consisting of a single adjudicator.
- b) In extraordinary circumstances, and at the discretion the Case Manager, a Panel of three persons may be appointed to hear and decide an appeal and in this event, the Case Manager will appoint one of the Panel members to serve as the Chair. The person(s) hearing the appeal shall not be members or employees of SNM and shall not be associated with the sport of swimming in any capacity.

8) Procedure for the Hearing

- a) The Case Manager will determine the format of the hearing, which may involve an oral hearing in person, an oral hearing by telephone, or internet, or a hearing based on written submissions 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:
 - i) The hearing will be held within the timeline determined by the Case Manager.
 - ii) The Parties will be given reasonable notice of the day, time and place of the hearing.
 - iii) 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 in accordance with the appropriate timeline.
 - iv) All Parties may be accompanied by a representative or adviser, including legal counsel.
 - v) The Panel may request that any other individual participate and give evidence at the hearing.
 - vi) If a decision in the appeal may affect another Member to the extent that the other Member would have recourse to an appeal in their own right under this policy, that Member will become a Party to the appeal in question and will be bound by its outcome.
 - vii) The hearing will be conducted in the official language of choice of the Appellant.
 - viii) 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.

9) Appeal Decision

- a) Within fourteen (14) days of concluding the appeal, 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 Respondent. The Panel may decide to:
 - i) Reject the appeal and confirm the decision being appealed.
 - ii) Uphold the appeal and refer the matter back to the initial Respondent for a new decision
 - iii) Uphold the appeal and vary the decision but only where it is found that an error occurred and such an error cannot be corrected by the original Respondent for reason of lack of clear procedures, lack of time, or lack of neutrality.
- b) The decision will be considered a matter of public record. A copy of the decision will be provided to the Parties and to SNM. 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 what is meant by appropriate timelines.

10) Confidentiality

- a) Until a decision is rendered by the Panel, and presented to the SNM Board, the appeal process will remain confidential, involving only the Parties, the Case Manager, the Panel, plus any individuals that assist or advocate on behalf of the Parties.
- b) Once initiated and until a decision is released, none of the Parties, Panel, Case Manager, SNM Board or individuals that assist or advocate on behalf of the Parties, will disclose confidential information relating to the appeal to any person not involved in the proceedings.

11) Final and Binding Decision

- a) The decision of the Panel will be binding on the Parties and on all Members, subject only SNM's Dispute Resolution Policy.
- b) No action or legal proceeding will be commenced against SNM, or its members in respect of a dispute, unless SNM has refused or failed to abide by the provisions for appeal and or dispute resolution as set out in SNM policies.

Review and Approval

This policy was approved by the Board on December 9, 2013 and shall be reviewed as needed by the Board.