

## Cascade Swim Club

Document: Appeals Policy & Procedure document

Application: Resolution of concerns and grievances is always a difficult issue and the Club strongly encourages that reasonable attempts be made to resolve them discreetly on a personal level between the parties directly involved, whether they are swimmers, coaches, or parents. In the event that this procedure results in actions that are grossly unsatisfactory to the member they have the right to consider appeal.

Related: Cascade Swim Club Disciplinary Procedure Document  
Cascade Swim Club Parent Code of Conduct Document  
Cascade Swim Club Swimmer Code of Conduct Document  
Cascade Swim Club Grievance Policy Document

## Policy Statement

The Cascade Swim Club (CASC) is committed to providing opportunities for every individual in the sport of swimming to reach his or her potential in fitness and excellence. In keeping with the spirit of this statement and ensuring CASC provides a safe and healthy environment for all members, CASC is committed to providing a sport and work environment where decisions made and actions taken are done so in a proper, fair and informed manner. Any member has the right to appeal decisions that are deemed to be inconsistent with policy and procedure, biased or that in their opinion carry an undue adverse impact.

### 1. Definitions

For purposes of this Policy and Procedure Document:

1. "Appeal" refers to the appeal conducted under this Policy and Procedure document;
2. "Appellant" refers to the member appealing a decision;
3. "Decision" means the written decision communicated to the appellant;
4. "Board" or "Board of Directors" means the Board of Directors of The Cascade Swim Club;
5. "Club Manager" means, The Club Manager of The Cascade Swim Club or a substitute as appointed from time to time by the Board of Directors of CASC;
6. "Director of Swimming" means, The Director of Swimming of the Cascade Swim Club or a substitute as appointed from time to time by the Board of Directors of CASC;
7. "Chairperson" means the Appeal Panel member acting as chair of the Appeal Panel;
8. "Days" means days irrespective of weekends or holidays;

9. "Discovery" means initial review of the documentation by the committee;
10. "Hearing" means the hearing conducted under this Policy and Procedure document;
11. "Notice of Appeal" means a notice of appeal duly filed in accordance with this Policy and Procedure document;
12. "Panel" or "Appeal Panel" shall be deemed to be the Appeal Committee as defined in this document as an Independent Committee of the Board but may include Board of Director members if so appointed by either party;
13. President means the elected Chair of the Board of Directors, as appointed every second year;
14. "Party" or "Parties" means the Appellant, the Respondent and any other affected Party participating in the Appeal;
15. "Respondent" refers to the individual or body whose decision is being appealed;
16. "CASC" means the body duly incorporated under the name The Cascade Swim Club and any members in good standing of CASC as well as all individuals engaged in activities with or employed by CASC.

2. Board of Directors Responsibilities (as it relates to this Appeal Policy and Procedure)
  1. Ensure training is facilitated for the Club Manager and or Director of Swimming in Mediation, Dispute Resolution and Alternate Dispute Resolution;
  2. Develop specific Terms of Reference for Appeals Committee as needed;
  3. Adhere to the decision/outcome of the appeals process;
  4. Seek Alternative Dispute Resolution processes as warranted by circumstance;
  5. Review and research CASC Appeals Procedures to maintain consistency with legal position and processes on dispute resolution; and
  6. Ensuring the Appeals Procedure is readily available to CASC members.
3. Scope of Appeal
  - A. This Policy and Procedure Document applies to:
    1. any matter which has been the subject of an investigation or decision pursuant to CASC's Code of Conduct – Swimmers / Code of Conduct – Parents / Grievance Policy; and
    2. any other dispute for which resort to this Policy and Procedure Document is expressly mandated.

- B. This Policy and Procedure Document shall not apply to decisions:
1. relating to the technical (field of play) rules of swimming, which may not be appealed;
  2. In matters related to doping offenses which are dealt with under the Canadian Policy Against Doping in Sport and the Canadian Anti-Doping Program;
  3. in matters relating to alleged or actual criminal offences
  4. in matters of employment unless otherwise stated;
  5. in matters of budgeting and budget implementation; and
  6. in matters of operational structure and staffing.

In the event of alleged or actual criminal activity, our first step will be to involve the appropriate law enforcement agency, in addition to any other disciplinary actions CASC may deem appropriate.

**Appellants must exhaust all internal remedies prior to resorting to this Policy and Procedure Document.**

#### 4. Application / Grounds for Appeal

In the event a decision made by CASC against a CASC member is viewed by that member to be inconsistent with policy and procedure, the member may appeal that decision based on any one of the following:

1. A decision was made by an individual who did not have authority or jurisdiction as set out in the CASC's governing documents, rules and policies;
2. A decision, judgment or action failed to follow procedures as laid out in the bylaws, procedures or approved policies of CASC;
3. A decision, judgment or action was made that was influenced by bias, that is defined as a lack of neutrality to the extent that the decision-maker is unable to consider other views;
4. A decision maker exercised authority for an improper purpose;
5. A decision was made for which there is no supporting evidence.

#### 5. Timing of Appeal

A member may appeal a decision by the club in writing to the Club Manager and / or Director of Swimming within twenty-one (21) days of the notification of the decision. Appeals must be submitted by 12:00PM (Noon) of the 21<sup>st</sup> day to be received. (Any party wishing to file a Notice of Appeal beyond the twenty-one (21) days must provide a written request stating reasons for an exemption to the requirement.)

## 6. Notice of Appeal

- 1) Notice of Appeal shall contain the following information (formatted in numbered and separate paragraphs):
  - appellant's name and address;
  - date the appellant was advised of the decision being appealed;
  - name of the individual who communicated the decision to the appellant;
  - copy of decision being appealed or description of said decision if a written document is not available;
  - the grounds of appeal (see details of Grounds for Appeal within the CASC Appeals Policy Document);
  - pertinent documents, if any, shall be attached;
  - pertinent documents to be included: all evidence including the appellants written summary of events;
  - the name of their nominee to sit on the appeal panel; and
  - the remedy sought.
- 2) Each Notice of Appeal must be accompanied by a \$200.00 deposit, refundable in the case of a successful appeal or at the discretion of the Appeal Panel.
- 3) Notices of Appeal may be delivered in person to the Club Manager / Director of Swimming, or delivered by electronic means, email, fax, courier, special delivery, or in person to the CASC Office.

## 7. Appeal Panel

Within five (5) days of receiving the Notice of Appeal, the Appeal Panel shall be formed to initially determine whether there are appropriate grounds for the appeal. The Appeal Panel shall be made up of current club members and be selected as follows:

1. The Appeal Panel shall be comprised of three individuals who, together shall have no significant relationship with the affected Parties, nor interest, personal or otherwise, in the decision being appealed, and shall be free from any other actual or perceived bias or conflict;
2. The Panel will consist of one person nominated by the Appellant(s), one person nominated by the Respondent(s) and the third person, who shall act as chairperson of the Panel, nominated by the Appellant(s)' and Respondent(s)' nominees to the Panel, or failing agreement by such nominees with three (3) days, appointed by the President; The Cascade President will sit as a non-participating member of the panel to ensure adherence to club policy and procedure;

3. Members of the panel shall be laypersons and not lawyers or members of the judiciary;
4. The Club Manager and Director of Swimming cannot be involved, select an alternative or identify panel members if they have a vested interest in the outcome of the appeal.

## 8. Screen Appeal & Discovery Process

Each party shall submit a written summary of the facts to be reviewed by all parties within two (2) days of receipt of the appeal request.

In the case of the Appellant, the facts as alleged by the Appellant(s) in the Notice of Appeal shall be presumed to be correct unless such facts are, to the knowledge of the Club Manager and / or Director of Swimming, clearly erroneous. The Club Manager and / or Director of Swimming can refute the facts by providing written proof that such facts are erroneous.

In the case of the respondent, the facts as alleged by the Respondent(s) in response to the Notice of Appeal shall be presumed to be correct unless such facts are, to the knowledge of the Appellant, clearly erroneous. The Appellant can refute the facts by providing written proof that such facts are erroneous.

During the discovery process the appeal panel has full discretion to put forth a mediated recommendation that if accepted by both parties becomes binding.

The Appeal Committee shall render a decision regarding the merit of any appeal within three (3) days of receipt of all summary's provided by all parties.

If the appeal is denied on the basis of insufficient grounds, the Appellant(s) and the Respondent(s) will be notified in writing with reasons.

## 9. Procedure For the Appeal Hearing

- A. If the Panel conducts a Hearing, it shall govern the appeal by such procedures as it deems appropriate, provided that:
  1. the Appeal shall be heard as quickly as reasonably possible, having regard to the nature and circumstances of the case;
  2. all three members of the Panel shall hear the Appeal, but a majority in favour of the same result shall be sufficient to effect a decision;
  3. each Party shall have the right to be present at the hearing to clarify any written statements. The parties may be represented at the hearing personally or by a family member. As this is intended to be a lay appeal, no parties shall be represented at the hearing by a lawyer or agent;

4. 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 Parties, within the time limits established by the Panel;
5. if the decision of the Panel may affect another party to the extent that the other party would have recourse to an appeal in their own right, that party will become a Party to the appeal in question and will be bound by its outcome;
6. the Panel may direct that any other person or party participate in the appeal;
7. for the sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred with such safeguards as the Panel considers necessary to protect the interests of the Parties;
8. unless otherwise agreed by the parties, there shall be no communication between Panel members and the Parties except in the presence of, or by copy to the other Parties.

#### 10. Evidence That May Be Considered

- A. As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.
- B. Unless a Party can prove that he/she couldn't possibly have been aware of a certain fact or argument at the time of the submission of his/her Appeal Form or Written Statement, no additional information or argument will be accepted from the Appellant(s) or Respondent(s) by the Panel after the preliminary conference, other than that provided orally by witnesses at the hearing.

#### 11. Appeal Decision

- A. Within two (2) Days of the Hearing, the Panel shall issue its written decision with reasons. In making this decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:
  1. To uphold the decision and dismiss the Appeal;
  2. To void the decision and refer the matter back to the initial decision-maker for a new decision;
  3. To vary the decision where it is found that an error occurred and such an error should not 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; and
  4. A copy of the decision shall be provided to all Parties and the Cascade Swim Club President;

5. The decision of the Appeal Panel shall be final and binding on all parties.

12. Timelines

A. If the circumstances of the Appeal, or if circumstances beyond or outside of the Appeal, are such that this Procedure will not allow a timely decision, the Panel may direct that these timelines be abridged. If the circumstances of the Appeal, or if circumstances beyond or outside of the appeal, are such that the Appeal cannot be concluded within the timelines dictated in this Policy and Procedure Document, the Panel may direct that these timelines be extended. The Panel may delegate this authority to abridge or extend the timelines to the Chairperson.

13. Documentary Appeal

A. Any Party to the Appeal may request that the Panel conduct the Appeal by way of documentary evidence alone. The Panel may seek agreement to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the Appeal shall proceed by way of documentary evidence and submissions alone.

14. Location and Jurisdiction

- A. Appeals shall take place in Calgary unless held by way of telephone/video conference call or held elsewhere as may be decided by the Panel as a preliminary matter.
- B. This Procedure shall be governed and construed in accordance with the laws of the Province of Alberta.
- C. No action or legal proceeding shall be commenced against CASC or any panel member in respect of a dispute of the outcome of the Appeal process.
- D. Complete confidentiality of the nature of the appeal, the identity of the Appellant(s) and all information relating to the Appeal and its process will be held in the strictest of confidence, not be shared or discussed in the presence of or with any party outside the Appeal Panel.

15 January 2013

Approved: \_\_\_\_\_