

POLICY SECTION:	ORGANIZATION – RISK MANAGEMENT	PROCEDURE #	O-002-05
RESPONSIBILITY:	Executive Director		
SUBJECT:	COMPLAINT, DISCIPLINE AND APPEAL PROCEDURE	EFFECTIVE	January 2009
AUTHORIZED BY:	Board Of Directors	REVISED	MARCH 2017

Policy Support

In accordance with Swim Ontario Bylaws Article II Membership, Section 2.05 and 2.06, Swim Ontario will utilize the following Complaint and Appeal procedure in dealing with matters of appeal and dispute with Swim Ontario.

Please note that the following procedure was approved in principle by the Board Of Directors in March, 2017. It continues to be actively reviewed. For any further clarification on the Complaint and Appeals Procedure please contact Swim Ontario Staff.

COMPLAINT, DISCIPLINE AND APPEAL PROCEDURE

1. Purpose

Swim Ontario is committed to providing a safe, ethical and positive environment within its programs, activities and events. Individuals are expected to conduct themselves at all times in a manner consistent with the values of Swim Ontario that include fairness, integrity, open communication and mutual respect. Conduct that violates the Swim Ontario values, bylaws, policies, procedures and comprehensive code of conduct and ethics may be subject to discipline and sanctions pursuant to this Policy. This Policy provides Individuals with a fair and expedient process to address alleged infractions.

2. Definitions

The following terms have these meanings in this Policy:

- a) *“Complainant”* – The party(ies) alleging an infraction
- b) *“Respondent”* – The alleged infracting party (ies)
- c) *“Parties”* – The complainant(s), respondent(s), and any other Individuals affected by the complaint
- d) *“Days”* – Days irrespective of weekends and holidays
- e) *“Individuals”* – All categories of membership within Swim Ontario, as per the Swim Ontario bylaws, as well as all individuals engaged in activities with Swim Ontario, including but not limited to, clubs, athletes, coaches, officials, volunteers, managers, administrators, directors and officers of Swim Ontario, and parents/guardians of Swim Ontario registrants.
- f) *“Complaints”* – Complaints are considered to be incidents of failing to achieve expected standards of conduct that have the potential to result in harm to others, Swim Ontario, or to the sport of swimming.

3. Scope and Application

This Policy applies to all Individuals.

This Policy applies to complaints and related discipline/sanctions that may arise during the course of Swim Ontario business, activities, and events including, but not limited to, competitions, practices, try-outs, tournaments, training camps, travel associated with Swim Ontario activities, business affairs, and meetings.

This Policy does not prevent discipline from being applied, during a competition or event, according to specific procedures in place for the particular event. Further sanctions may be applied according to this Policy.

This Policy does not prevent an appropriate person having authority from taking immediate, informal or corrective action in response to behaviour that constitutes an infraction. The person in authority can be, but is not restricted to being, staff, officials, coaches, organizers or Swim Ontario decision-makers. Further sanctions may be applied in accordance with the procedures set out in this Policy.

Any infractions or complaints occurring during a specific event will be dealt with by the procedures specific to that event, if applicable. In such situations, sanctions will be for the duration of the event only. Further sanctions may be applied, but only after a review of the matter in accordance with the procedures set out in this Policy.

Discipline matters and complaints arising within the business, activities, or events organized by entities other than Swim Ontario will be dealt with pursuant to the policies of these other entities unless requested and accepted by Swim Ontario at its sole discretion.

4. Complaint Process

4.1 Notice of Complaint

Any Individual who wishes to file a notice of complaint is expected to do so as soon as possible after the events giving rise to the complaint and to submit, in writing, to the attention of the Swim Ontario Dispute Resolution Officer, the following:

- a) Notice of complaint / incident
- b) Contact information of the complainant
- c) Name of the respondent and any affected parties and/or witnesses
- d) Date and location of the incident
- e) Detailed summary of the incident
- f) All evidence that supports the incident

Anonymous complaints may be accepted at the sole discretion of the Executive Director of Swim Ontario upon recommendation from the Swim Ontario Dispute Resolution Officer.

For complaints that are screened in (see Screening of Notice of Complaint section below), the Dispute Resolution Officer will inform the Individual(s) cited of a complaint having been lodged and will provide a copy of the allegations and materials submitted by the complainant(s). The Individual(s) cited, will have the opportunity to submit in writing, any additional information to be considered.

4.2 Screening of Notice of Complaint

The Swim Ontario Dispute Resolution Officer will have the authority to determine if a complaint will be accepted. Complaints that relate to matters outside the scope and application of this Policy will be screened out. Other reasons for a complaint to be screened out include, but are not limited to, submissions that are unreasonably untimely, frivolous or vexatious, allegations that do not, on the face of it, meet the threshold of a breach, and insufficient information to support the allegation(s). The complainant will be advised in writing of the reasons for which a complaint has been screened out. The decision of the Swim Ontario Dispute Resolution Officer to screen out a complaint is not subject to appeal.

4.3 Procedure for Addressing a Complaint

Once a complaint has been accepted, the Swim Ontario Dispute Resolution Officer will attempt to mediate the complaint with the voluntary participation of the complainant and respondent. Should the mediation be successful, the proposed resolution and sanctions (as appropriate) will be proposed to the Executive Director of Swim Ontario for approval.

If mediation is unsuccessful or waived, the complaint will be referred to the Swim Ontario Executive Director for a hearing. In referring the complaint, the Swim Ontario Dispute Resolution Officer will provide an assessment of the complaint and may make recommendations including recommended sanctions. All materials submitted by the complainant and respondent regarding the complaint as well as the recommendations of the Swim Ontario Dispute Resolution Officer will be shared with the complainant and the respondent.

The Executive Director of Swim Ontario will hear the complaint providing both the complainant and respondent have the opportunity to submit any additional written material that shall be shared with the other party. The Executive Director of Swim Ontario will decide the format under which the hearing will be conducted, may choose to invite any parties to participate in the hearing and may obtain independent advice.

The Swim Ontario Executive Director will issue his/her decision and sanctions, if applicable, in writing and with reasons, normally within fourteen (14) days after the hearing's conclusion.

The written decision, with reasons, will be distributed to the parties. In extraordinary circumstances, the Swim Ontario Executive Director may first issue a verbal or summary decision after the hearing's conclusion, with the full written decision to be issued thereafter.

4.4 Sanctions

Sanctions for infractions, which may be applied singularly or in combination, may include the following, but are not limited to:

- a) verbal or written reprimand from Swim Ontario
- b) verbal or written apology from one party to another party
- c) service or other voluntary contribution to Swim Ontario
- d) removal of certain privileges of membership for a designated period of time
- e) suspension from the current competition, activity, or event
- f) suspension from all Swim Ontario activities for a period of time

- g) fines
- h) withholding of prize money, awards
- i) payment of costs (e.g. event related costs such as flight, room/board; property damage)
- j) suspension of funding from Swim Ontario or from other sources
- k) discipline specific to the activity, if applicable
- l) any other sanction considered appropriate for the infraction
- m) any other sanction determined by a third party, as applicable

Unless the Executive Director of Swim Ontario determines otherwise, any disciplinary sanctions will begin immediately. Failure to comply with a sanction will result in automatic suspension until such time as compliance occurs.

4.5 Suspension Pending a Hearing

The Executive Director of Swim Ontario may determine that an alleged incident is of such seriousness as to warrant suspension of an Individual pending a hearing and decision.

4.6 Criminal Convictions

An Individual's conviction for any of the following "Criminal Code" offences will result in immediate suspension from Swim Ontario and/or removal from Swim Ontario competitions, programs, activities and events upon the sole discretion of the Executive Director of Swim Ontario:

- a) any child pornography offences
- b) any sexual offences
- c) any offence of physical or psychological violence
- d) any offence of assault
- e) any offence involving trafficking of illegal drugs

5. Appeal Process

Complaint findings and sanctions by the Executive Director of Swim Ontario are subject to appeal to the Swim Ontario Board of Directors as outlined below.

5.1 Timing

Individuals who wish to appeal a decision have fourteen (14) days from the date on which they received notice of the decision to submit, in writing, to the attention of the President of the Swim Ontario Board of Directors, 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
- 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

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- i) Requested remedy or remedies
- j) A \$750.00 fee must accompany the filing of the intent to appeal.

An Individual who wishes to initiate an appeal beyond the fourteen (14) day period must provide a written request stating the reasons for an exemption. The Swim Ontario Board of Directors shall maintain sole discretion as whether an exemption to the deadline shall be granted.

5.2 Grounds

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 that Swim Ontario:

- a) Made a decision in regard to the complaint and/or related sanction(s) that it did not have the authority or jurisdiction to make (as set out in the Swim Ontario governing documents).
- b) Failed to follow its own procedures (as set out in the Swim Ontario 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 is unable to consider other views).
- d) Failed to consider relevant information or took into account irrelevant information in making the decision.
- e) Made a decision that was grossly unreasonable.

The appellant bears the onus of proof and must demonstrate, on a balance of probabilities, that Swim Ontario has made an error as described in the grounds listed above and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

5.3 Screening

Upon receiving the notice of the appeal, the Swim Ontario Board of Directors will:

- 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

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.

If there are sufficient grounds for an appeal, the Swim Ontario Board of Directors will appoint a single arbitrator or a panel of up to three persons to hear the appeal. If a panel, the Swim Ontario Board of Directors will name the person to serve as panel chair with accountability to prepare the written decision and oversee the appeal process. Arbitrators or panel members may be members of the Swim Ontario Board of Directors or external sport or legal experts or a combination thereof.

5.4 Procedure

The Board of Directors shall decide the format under which the appeal will be considered. The appeal may be directed to be decided based solely on the information submitted or a hearing may be held.

In fulfilling appeal related duties, the Board of Directors, arbitrators, and panel chairs may obtain independent advice.

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The appeal decision shall be issued in writing and with reasons, normally within fourteen (14) days after the hearing conclusion. In reaching a decision, the arbitrator or appeal panel will have no greater authority than that of the original decision-maker. The arbitrator or appeal 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

The written decision, with reasons, will be distributed to the appellant, the respondent, the President of the Swim Ontario Board of Directors and the Executive Director of Swim Ontario.

In extraordinary circumstances, the arbitrator or appeal panel chair may first issue a verbal or summary decision 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 Swim Ontario Board of Directors.

Should the arbitrator or appeal panel resolve the matter in favour of the appellant, the appeal fee may be refunded to the appellant at the discretion of the arbitrator or appeal panel chair.

6. Confidentiality

The complaint, discipline and appeal process is confidential. Once initiated and until a decision is released, none of those involved will disclose information relating to the on-going process to any person not involved in the proceedings.

7. Disclosure

Results of the complaint, appeal and discipline/sanctions shall be published on the Swim Ontario website unless the Executive Director of Swim Ontario orders otherwise or in the case of an appeal, unless the Swim Ontario Board of Directors orders otherwise.

Responsibility	Action
Appellant	To consider the procedures and apply them accordingly
ED	To provide an environment which supports the procedures listed above
Counsel	Coordinate and follow the procedures listed above
Please note that while every effort is taken to ensure accuracy this procedure may have changed. Please contact Swim Ontario staff for any assistance or additional information.	