



## COMPLAINTS, DISCIPLINARY ACTION and DISPUTE RESOLUTION POLICY

**Policy Section:** Board

**Policy Subsection:** Human Resources

**Policy Title:** Complaints, Disciplinary Action and Dispute Resolution

### **Policy Statement**

Swimming Canada believes in the fair and equitable treatment of all individuals and non-adversarial dispute resolution.

### **Purpose**

Complaints, disciplinary actions and dispute resolutions and their consequences, are complex and involve athletes, coaches, staff and volunteers throughout the swimming community. It is critical that there are procedures in place that encourage open, prompt discussion of any such dispute so as to lead to effective resolution. Swimming Canada encourages all parties to a dispute or complaint to seek non-adversarial consensual resolution. In cases where mediation is unsuccessful, supported complaints, disagreements or challenges between individuals must be settled through a fair, effective and peaceful dispute resolution.

### **Application**

This policy applies to all categories of membership defined by Swimming Canada's General By-Laws, as well as all individuals, registered or not, engaged in activities with Swimming Canada and its member organizations or registrants, including but not limited to athletes, coaches, officials, employees, volunteers, directors, officers, committee members, managers, administrators, contractors and participating non-members.

### **Responsibility**

#### **Body**

Board of Directors

#### **Action**

1. Ensure the CEO has appropriate resources, support and training in mediation, alternate dispute resolution and dispute resolution.

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## CEO

1. Act as mediator, or designate alternative, in non-adversarial disputes.
2. Seek Alternative Dispute Resolution processes as warranted by circumstance.
3. Review and research Operations: Dispute Resolution Procedure to maintain consistency with legal position and processes on dispute resolution.
4. Communication of Disputes Policy and Procedure as needed.

## Limitations

Neither the CEO nor designate shall act as mediator or facilitator, if he/she has, or may have, a vested interest in the outcome of the mediation nor can they agree to a settlement that places Swimming Canada in a deficient position or could cause reputational damage. The Board or designated committee shall act in these cases.

## References

Swimming Canada By-Laws  
Operations: Complaint, Disciplinary Action and Dispute Resolution Procedure

## Review and Approval

Approved: September 11, 2006  
Review: March 2008  
Revision Approved: April 7, 2008  
Revision Approved: April 21, 2017



## **COMPLAINT, DISCIPLINARY ACTION & DISPUTE RESOLUTION PROCEDURE**

### **PART ONE (I)**

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#### **1. DEFINITIONS**

- a) For purposes of this Procedure:
- i) "CEO" means Chief Executive Officer or a substitute as appointed from time to time;
  - ii) "Days" means days, irrespective of weekends or holidays;
  - iii) "Individual" means all categories of membership defined the Swimming Canada's General By-Laws, as well as all individuals registered or not, engaged in activities with Swimming Canada and its member organizations or registrants, including but not limited to athletes, coaches, officials, employees, volunteers, directors, officers, committee members, managers, administrators, contractors and participating non-members;
  - iv) "Swimming Canada" means the body duly incorporated under the name Swimming/Natation Canada and any members or registrant of Swimming Canada as well as all individuals engaged in activities with Swimming Canada, including but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, and administrators;
  - v) "Complaint" means a complaint that allegedly constitutes a violation of this Policy, Swimming Canada Code of Conduct and Harassment Policy against a member or registrant of Swimming Canada as defined by this Policy;
  - vi) "Code of Conduct" means any code of conduct document, signed or to be signed by any Swimming Canada member or registrant, whether under the Swimming Canada Athletes Agreement or otherwise;
  - vii) "Panel" means the Panel appointed pursuant to this Procedure;
  - viii) "Major Infractions" or "Minor Infractions" include, but are not limited to, those matters described in Appendix A of this Procedure.
  - ix) "Safe Sport Officer" means the independent third party who receives safe sport complaints, guides individuals through the complaints process and/or explores informal resolution.
  - x) "Safe Sport Complaint" means a complaint specific to safe sport infractions, including by not limited to abuse, harassment, discrimination and/or bullying.
  - xi) "Senior Employee" means the most Senior employee on available on site.



## **2. SCOPE AND APPLICATION OF THE PROCEDURE**

- a) This Procedure applies to complaints from, or disputes between, all individuals, including Swimming Canada's current and past members (as long as he or she was a member at the time of the infraction), registrants or participants, its staff and volunteers arising from or pertaining to the business of Swimming Canada.
- b) Disputes or complaints involving the decisions of clubs or provincial sections ought to be pursued through the appropriate remedies of the club or province.
- c) Swimming Canada reserves the right to intervene in club or provincial complaints if the matter is to be of national interest and/or where there is a conflict of interest.
- d) An employee of Swimming Canada found to be a Respondant in a Complaint will be subject to the terms found in the Swimming Canada Human Resources Employee Policy Manual, as well as the employee's Employment agreement where applicable.
- e) Subject to those matters addressed in Parts III, IV and V hereof, Part II of the Procedure shall apply to all complaints and disputes.
- f) Any dispute arising outside of Canada and/or where there is a critical lack of time, shall be governed by Part III of this Procedure;
- g) Any dispute involving a Minor Infraction shall be governed by Part IV of this Procedure.
- h) Any dispute involving a Major Infraction shall be governed by Part V of this Procedure.

## **PART TWO (II)**

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### **3. INITIATION OF COMPLAINTS**

- a) Any complaint must be made in writing with a brief summary of the matter in dispute or infraction and sent by email to the CEO or to the Safe Sport Officer. Potential complainants may contact the Safe Sport Officer for advice prior to making a complaint.
- b) Depending on the nature of the complaint a verbally received summary may be forwarded to the appropriate law enforcement agency or acted on by Swimming Canada in accordance with this procedure.
- c) Depending on the nature of the complaint or on the recommendation of the Safe Sport Officer, the CEO may issue, at its discretion, an immediate interim suspension of membership or

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registration pending the outcome of disciplinary Procedures described in Section 7 of this Procedure or an external investigation initiated by a partner organization or law enforcement agency.

- d) Upon receipt, the CEO or Safe Sport Officer will acknowledge receipt of the complaint to the complainant. will provide notice to any other affected parties that a complaint has been received.
- e) The CEO may assign the matter to a designate to fulfill the duties of the CEO. The designate will fulfill the duties of the CEO as per this Procedure
- f) If the complaint is received by the CEO, depending on the nature of the reported complaint, the CEO may:
  - I. Redirect the complaint to the correct provincial section or club;
  - II. Investigate personally;
  - III. or Appoint an independent investigator. The investigator will submit a written report to the CEO, with recommendations. The CEO will render any decision under this Procedure.
  - IV. Explore an informal resolution
  - V. Designate another Swimming Canada Employee to handle the matter on behalf of Swimming Canada
  - VI. Forward to the Safe Sport Officer
- g) If the complaint is received by the Safe Sport Officer, depending on the nature of the reported complaint, the Safe Sport Officer may:
  - I. Redirect the complaint to the correct provincial section or club;
  - II. Redirect the complaint to the CEO or another Senior Employee;
  - III. Initiate an independent investigation;
  - IV. Explore an informal resolution;
  - V. Close the file where the complaint does not disclose a breach of policy or where Swimming Canada lacks jurisdiction. The decision to close the file is subject to appeal under the Swimming Canada Appeals Procedure.
- h) A summary of the investigators' report can be shared with the parties but the full report will be considered confidential and will not be shared outside of the CEO.



- i) Upon completion of the investigation, or receipt of the investigator's report, the CEO may seek to resolve the dispute to the mutual satisfaction of the involved parties.
- j) In the event of a dispute, if the parties, even with the assistance of the CEO are unable to resolve the dispute, the CEO may decide the following:
  - i) confirm the decision or action under review;
  - ii) alter, vary, or otherwise amend the decision or action under review;
  - iii) Determine that it is a Minor infraction to be dealt with in accordance with the procedure described in Part IV;
  - iv) Determine that it is a Major infraction to be dealt with in accordance with the procedures described in Part V of this Policy.
- j) Complaints made against employees of Swimming Canada will be reviewed in accordance with the Swimming Canada Human Resources Policy and not through this Policy.

## 4. TIMELINES

- a) The CEO or Safe Sport Officer shall render a decision in accordance with Section 3, paragraph i) above within twenty-one (21) days of the receipt of the complaint. The CEO has the authority to extend or abridge this timeline where appropriate or required in the circumstances.

## PART THREE (III)

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### 5. DISPUTES ARISING OUTSIDE CANADA AND/OR WHERE THERE IS A CRITICAL LACK OF TIME

- a) Any dispute between Swimming Canada and its membership arising outside of Canada and/or where there is a critical lack of time to deal with a dispute resulting from a breach of Swimming Canada Policies, Procedures, rules and contracts shall be governed by these provisions.
- b) The term «outside Canada» shall mean any period of time where the Swimming Canada member or registrant is out of Canada under the auspices of Swimming Canada, including traveling to competitive events, participating in or training for such events and traveling home after the events.
- c) The term «where there is a critical lack of time» shall mean any situation where action needs to be taken immediately, including infractions that occur at events held in Canada.
- d) Whenever possible, disputes under this Part shall be heard and determined by a Senior employee of Swimming Canada;



- e) The employee will hold the title of Senior Employee. Depending on the nature of the complaint or dispute and the severity at the time, the High Performance Director or CEO of Swimming Canada may decide immediately on a course of action.
- f) Notwithstanding any other process contained in this Procedure, nothing shall prevent the Senior Employee from assuming jurisdiction when the complaint, dispute or the breach of any Policy, rules or contract arises outside Canada and/or when there is a critical lack of time to respond to a complaint or the breach and to impose, in a reasonable and fair manner, sanctions or disciplinary action against an Swimming Canada member;
- g) Any sanction, discipline or remedy imposed upon the Swimming Canada member or registrant by the Senior Employee shall:
  - i) be reasonable and proportionate to the conduct complained of after reasonably investigating the manner and hearing the Swimming Canada member or registrant's version of events in a procedurally fair manner; and
- h) where a decision is made by the Senior Employee that results in the removal of an Swimming Canada member or registrant from a competition, such a decision may only be implemented by the Senior Employee after the Senior Employee consults and obtains written approval from the CEO or the President of Swimming Canada or their designated representatives. The decisions of the Senior Employee shall be binding on all parties. Failure by an Swimming Canada member or registrant to comply with a decision and/or remedy properly imposed by the Senior Employee shall result in an automatic suspension of all the Swimming Canada member or registrant's privileges and there shall be no further right to participate at such event or competition, until the sanctions, discipline or other remedies are complied with;
- i) Where a dispute is of a highly sensitive nature, Swimming Canada shall keep all proceedings under this Part confidential, except where disclosure is directed as part of the remedy to resolve the dispute, is required by law, by order of a Court of competent jurisdiction, pursuant to the Canadian Anti-Doping Policy or is in the best interests of the public;
- j) If a party believes the decision of the Senior Employee rendered pursuant to this Part III of the Policy has violated the rules of natural justice, the decision of the Senior Employee may be appealed according to the Swimming Canada Appeals Procedure.

## PART FOUR (IV)

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### DISPUTES INVOLVING MINOR INFRACTIONS

Minor Infractions are behaviors that are less severe than Major infractions. Examples of Minor infractions are described in Appendix A.



## 6. APPLICATION

- a) This part of the Policy applies to Minor infractions which may arise during all Swimming Canada business, activities and events, including but not limited to, swim meets, training camps, meetings and travel associated with these activities.
- b) Disciplinary matters arising within the business, activities or events of provincial/territorial swimming associations, clubs, or affiliated organizations of Swimming Canada shall be dealt with using the discipline policies and mechanisms of such organizations.
- c) Swimming Canada reserves its rights to deal with and resolve a Minor infraction arising within the business, activities or events of provincial/territorial swimming associations, clubs, or affiliated organizations of Swimming Canada if Swimming Canada determines the infraction, at its discretion, to be of a national interest.

## 7. DISCIPLINARY PROCEDURES

- a) Disciplinary situations involving Minor Infractions occurring within the jurisdiction of Swimming Canada shall be dealt with by the appropriate person having authority over the situation and the individual involved (this person may include, but is not restricted to, a board member, committee, swim meet chairperson, official, coach, team manager, team captain or head of delegation).
- b) Procedures may be informal and shall be determined at the discretion of the person responsible for discipline of such infractions, provided the individual being disciplined is informed of the details of the alleged infraction, and has an opportunity to provide information, and his or her position concerning the incident, and be represented by the person of his or her choice.
- c) Depending on the circumstances and the nature of the Minor Infraction, Swimming Canada may decide to impose an immediate or future period of suspension as determined by Swimming Canada at its discretion.
- d) The following disciplinary sanctions may be applied, in addition to a period of suspension, singularly or in combination, for Minor Infractions:
  - i) verbal reprimand;
  - ii) written reprimand to be placed in individual's file;
  - iii) verbal or written apology;
  - iv) further education, training or counselling;



- v) ;
  - vi) team service or other voluntary contribution to Swimming Canada;
  - vii) removal of certain privileges of membership for a designated period of time.
  - viii) Any other sanction considered appropriate for the offence;
- e) Minor Infractions shall be recorded by the CEO. Repeat minor offences may result in a further such incident being referred to as a Major Infraction.
  - f) If a party believes the decision of the person having taken the decision has violated rules of natural justice, the decision may be appealed according to the Swimming Canada Appeal Procedure.

## PART FIVE (V)

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### DISPUTES INVOLVING MAJOR INFRACTIONS

Major Infractions are behaviors that are more severe than Minor infractions that may result into more serious consequences. Examples of Major infractions are described in Appendix A.

#### 1. DISCIPLINARY PROCEDURES FOR MAJOR INFRACTIONS

- a) If Swimming Canada's CEO determines that the complaint or matter should be dealt with more formally by means of a hearing because it is a Major Infraction, Swimming Canada's CEO will refer the matter to a Discipline Panel.
- b) Within three (3) days of decision of Swimming Canada to refer the matter to the Discipline Panel, Swimming Canada's CEO appoints three (3) members to act as Panel members and a Chair among them.
- c) The Discipline Panel shall be independent from the parties and Swimming Canada and all Panel members shall sign a declaration of independence.
- d) The Discipline Panel shall conduct the procedures and may request the assistance of Swimming Canada or an independent third party to act as Case Manager.
- e) Having regard to the nature of the Major Infraction and the potential consequences of any resulting sanctions, the Discipline Panel will decide whether to conduct the hearing by way of review of documentary evidence, by way of oral hearing or by way of a combination of these two methods, after consulting with the parties. If the Discipline Panel decides to conduct an oral hearing, it may decide to do so in-person or by means of telephone or videoconference.

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- f) The Discipline Panel may determine that the circumstances of the infraction warrant a preliminary meeting. If no Case Manager is requested, The Discipline Panel may delegate to one of its members the authority to deal with these preliminary matters, which may include but are not limited to:
  - i) date and location of the hearing;
  - ii) timelines for the exchange of documents;
  - iii) clarification of issues in the Infraction;
  - iv) order and procedure of the hearing;
  - v) evidentiary rules and evidence to be brought before the hearing;
  - vi) identification of any witnesses; or
  - vii) any other procedural matter that may assist in expediting the hearing as long as it respects the rules of natural justice.
- g) The Discipline panel will govern the hearing as it sees fit, provided that:
  - i) the hearing will take place within ten (10) days of the Panel's appointment, unless otherwise determined by the Disciplinary Panel after consulting with the Parties;
  - ii) all parties will be given ten (10) days written notice of the day, time and place of the hearing;
  - iii) all parties receive a summary copy of the Investigator's report, if an investigation was carried out;
  - iv) all parties will have an opportunity to adduce evidence and make submissions before the Panel;
  - v) all parties may be accompanied by a representative at their own expense;
  - vi) a quorum will be all three (3) Panel members, and decisions will be by majority vote;
  - vii) the Discipline Panel may request that any witness or any other person be present at the hearing or submit written evidence in advance of the hearing;
  - viii) if the respondent(s) chooses not to participate in the hearing, the hearing will still proceed in his or her absence;
  - ix) the hearing will be held in private;
  - x) once appointed, the Discipline Panel will have the authority to abridge or extend timelines associated with any aspect of the hearing.
- h) In deciding the matter, the Discipline Panel has shall review all the facts, policies and the law.
- i) After hearing the matter, the Discipline Panel will determine whether the individual has committed a Major Infraction and if so, the appropriate penalty to be imposed and any measures to mitigate the harm suffered by others as a result. The Discipline Panel's written decision, with reasons, will be distributed to all parties and to Swimming Canada's CEO within seven (7) days of the conclusion of the hearing. In exceptional circumstances, the Panel may immediately issue a short written or verbal decision with reasons to follow.

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- j) Where the individual acknowledges the facts of the incident, he or she may waive the hearing, in which case the Discipline Panel will determine the appropriate disciplinary sanction, the Discipline Panel may hold a hearing for the purpose of determining an appropriate sanction.
- k) Where the Major Infraction relates to harassment and where the Discipline Panel determines that the allegations of harassment are false, vexatious, retaliatory or frivolous, the Discipline Panel may direct that there be disciplinary action against the complainant.
- l) The decision of the Discipline Panel will be final and binding upon the individual being disciplined and Swimming Canada, subject only to an appeal pursuant to Swimming Canada's Appeals Policy.
- m) The Discipline Panel may apply the following disciplinary sanctions singly or in combination, for major infractions:
  - i) written reprimand;
  - ii) removal of certain privileges of membership or employment;
  - iii) suspension from certain events which may include suspension from the current competition or from future teams or competitions;
  - iv) suspension from certain Swimming Canada activities such as competing, coaching or officiating for a designated period of time;
  - v) suspension from employment with or without pay;
  - vi) suspension from all Swimming Canada's activities for a designated period of time;
  - vii) expulsion from membership;
  - viii) publication of the decision;
  - ix) further education, training or counselling;
  - x) other sanctions as may be considered appropriate for the offense.
- n) Unless the Discipline Panel decides otherwise, any disciplinary sanctions will commence immediately. Failure to comply with a sanctioned as determined by the Discipline Panel will result in automatic suspension of membership or participation in Swimming Canada activities until such time as the sanction is complied with.
- o) In applying sanctions, the Discipline Panel may have regard to the following aggravating or mitigating circumstances:
  - i) the nature and severity of the infraction;
  - ii) the extent to which others have been harmed by the infraction;
  - iii) the cooperation of the individual being disciplined in the proceedings under this Policy;
  - iv) whether the incident is a first offense or has occurred repeatedly;
  - v) the individual's acknowledgment of responsibility;
  - vi) the individual's remorse and post-infraction conduct;
  - vii) the age, maturity or experience of the individual;
  - viii) whether the individual retaliated, where the incident involves harassment; and

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- ix) the individual's prospects for rehabilitation.
- p) Where the reported behavior may constitute harassment, or is of a similar sensitive nature, Swimming Canada will keep all proceedings under this Policy confidential, except where disclosure is directed by the Discipline Panel as part of a sanction, is required by law or is in the best interests of the public.

## Allegation of Misconduct Involving Coaches

- q) Where Swimming Canada receives a complaint of misconduct about a coach who is a member of the Coaching Association of Canada (CAC), this complaint will be referred to CAC to be dealt with pursuant to its conduct and disciplinary procedures. This referral to the CAC shall not prevent Swimming Canada from sanctioning a coach in accordance with this Procedure.

## Appeals Procedures

- r) Except where otherwise provided, the decision of the Discipline Panel may be appealed in accordance with the Swimming Canada's Appeals Policy.

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## APPENDIX A

### **Examples of minor infractions include but are not limited to:**

- a) a single incident of disrespectful, offensive, abusive, racist or sexist comments or behaviour directed towards others, including but not limited to peers, opponents, athletes, coaches, officials, administrators, spectators, parents, and sponsors;
- b) a single incident of disrespectful conduct such as outbursts of anger or argument
- c) a single incident of being late for or absent from Swimming Canada events and activities at which attendance is expected or required;
- d) breach of curfew as designated by the Swimming Canada Coach or Team Leader; and
- e) non-compliance with the rules and regulations of Swimming Canada.
- f) minor violations of Swimming Canada's Code of Conduct

### **Examples of major infractions include but are not limited to:**

- a) an egregious or repeated incidents of disrespectful, offensive, abusive, racist or sexist comments or behaviour directed towards others, including but not limited to peers, opponents, athletes, coaches, officials, administrators, spectators, parents, and sponsors;

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- b) repeated incidents of being late for or absent from Swimming Canada events and activities at which attendance is expected or required;
- c) any action or conduct that would, in the discretion of the Swimming Canada CEO or his or her designate be detrimental to the reputation or image of Swimming Canada;
- d) intentionally damaging Swimming Canada property or improperly handing Swimming Canada monies;
- e) a serious breach of curfew as designated by the Swimming Canada CEO or his or her designate;
- f) activities or behaviours which interfere with a competition or with any athlete's preparation for a competition;
- g) any incident of hazing, pranks, or other activities, which may be construed as abusive or humiliating or that endanger the safety of others;
- h) any threats of violence or incidents of physical abuse;
- i) deliberate disregard for the rules and regulations under which Swimming Canada events are conducted, whether at the local, provincial, national or international level;
- j) abusive use of alcohol where abuse means a level of consumption which impairs the individual's ability to function safely and appropriately;
- k) any use of alcohol by athletes under the age of 18 or where prohibited by law;
- l) use of illicit drugs and narcotics;
- m) use of banned performance enhancing drugs or methods
- n) use of drugs for the use for which they were not intended including over the counter drugs
- o) behaviour that constitutes harassment, sexual harassment or sexual misconduct.
- p) harassment as defined by the Swimming Canada Harassment Policya major or repeated violations of the Swimming Canada Code of Conduct.
- q)

## **Review and Approval by CEO:**

1 November 2008

19 February 2009

1 November 2010

11 August 2011

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21 April, 2017