



## Mallards Swim Team Appeal Policy

### Definitions

1. The following terms have these meanings in this Policy:
  - a) “*Affected Party*” - Any individual or entity, as determined by the Case Manager, who may be affected by a decision rendered under this Policy and who may have recourse to an appeal, in their own right, under this Policy
  - b) “*Appellant*” – The Party appealing a decision
  - c) “*Case Manager*” – An individual appointed by Mallards Swim Team to administer the appeal process. The Case Manager does not need to be a member of, or affiliated with, Mallards Swim Team. The Case Manager should not be in a conflict of interest and should have expertise in appeals or dispute resolution matters. The Case Manager will have responsibilities that include, but are not limited to:
    - i. Ensuring procedural fairness;
    - ii. Respecting the applicable timelines; and
    - iii. Using decision making authority empowered by this Policy.
  - d) “*Days*” – Calendar days including weekends and holidays
  - e) “*Individuals*” – All categories of membership defined in Mallards Swim Team’s Bylaws, as well as all individuals employed by, or engaged in activities with, Mallards Swim Team including, but not limited to, athletes, coaches, convenors, officials, volunteers, managers, administrators, committee members, Directors and Officers Mallards Swim Team, and parents/guardians of athletes
  - f) “*Parties*” – The Appellant, Respondent, and any other Individuals affected by the appeal
  - g) “*Respondent*” – The body whose decision is being appealed

### Purpose

2. Mallards Swim Team is committed to providing an environment in which all Individuals involved with Mallards Swim Team are treated with respect and fairness. Mallards Swim Team provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by Mallards Swim Team. Further, some decisions made by the process outlined in Mallards Swim Team’s *Discipline and Complaints Policy* may be appealed under this Policy.

### Scope and Application of this Policy

3. This Policy applies to all Individuals. Any Individual who is directly affected by a decision by Mallards Swim Team shall have the right to appeal that decision provided there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy.
4. This Policy **will apply** to decisions relating to:
  - a) Eligibility
  - b) Selection
  - c) Conflict of Interest
  - d) Discipline
  - e) Membership
5. This Policy **will not apply** to decisions relating to:
  - a) Employment matters
  - b) Infractions for doping offenses
  - c) The rules of the sport

- d) Selection criteria, quotas, policies, and procedures established by entities other than Mallards Swim Team
- e) Substance, content and establishment of team selection criteria
- f) Volunteer/coach appointments and the withdrawal or termination of those appointments
- g) Budgeting and budget implementation
- h) Mallards Swim Team's operational structure and committee appointments
- i) Decisions or discipline arising within the business, activities, or events organized by entities other than Mallards Swim Team (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by Mallards Swim Team at its sole discretion)
- j) Commercial matters for which another appeals process exists under a contract or applicable law
- k) Decisions made under this Policy.

### **Timing of Appeal**

6. Individuals who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit, in writing to Mallards Swim Team, 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, when known to 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 these grounds;
  - i) Requested remedy or remedies; and,
  - j) An administration fee of five hundred dollars (\$500), which will be refunded if the appeal is upheld
7. An Individual who wishes to initiate an appeal beyond the seven (7) day period must provide a written request stating the reasons for an exemption. The decision to allow, any appeal to proceed outside of the seven (7) day period will be at the sole discretion of the Case Manager. This decision may not be appealed.

### **Grounds for Appeal**

8. 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 the Respondent:
  - a) Made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make;
  - b) Failed to follow the procedures, as set out in the Respondent's governing documents; or
  - 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 appears not to have considered other views).
9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the 'Grounds for Appeal' section of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

### **Screening of Appeal**

10. Upon receiving the notice of the appeal, the fee, and all other information (outlined in the ‘Timing of Appeal’ section of this Policy), Mallards Swim Team and the Appellant may first determine the appeal to be considered under Mallards Swim Team’s *Dispute Resolution Policy*.
11. Appeals resolved by mediation under Mallards Swim Team’s *Dispute Resolution Policy* will cause the administration fee to be refunded to the Appellant.
12. Should the appeal not be resolved by using the *Dispute Resolution Policy*, Mallards Swim Team will appoint an independent Case Manager (who must not be in a conflict of interest) who has the following responsibilities:
  - 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
13. 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.
14. If the Case Manager is satisfied there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals Panel which shall consist of a single Arbitrator, to hear the appeal. At the discretion of the Case Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Case Manager will appoint one of the Panel’s members to serve as the Chair.

### **Determination of Affected Parties**

15. In order to ensure the identification of any Affected Parties, the Case Manager will engage with Mallards Swim Team. The Case Manager will determine whether a party is an Affected Party at his or her sole discretion.

### **Procedure for Appeal Hearing**

16. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, 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:
  - a) The hearing will be held within a timeline determined by the Case Manager
  - b) The Parties will be given reasonable notice of the day, time and place of the hearing
  - c) 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
  - d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
  - e) The Panel may request that any other individual participate and give evidence at the hearing
  - f) The Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the appeal, but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate
  - g) If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Policy, that party will become a party to the appeal in question and will be bound by its outcome
  - h) The decision to uphold or reject the appeal will be by a majority vote of Panel members
  - i) Any decision will be shared with Swim Ontario

17. In fulfilling its duties, the Panel may obtain independent advice.

18. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.

### **Appeal Decision**

19. The Panel shall issue its decision, in writing and with reasons, within fourteen (14) days after the hearing's conclusion. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The 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;  
or
- c) Uphold the appeal and vary the decision.

20. The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, Mallards Swim Team, and Swim Ontario. In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon 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 Panel.

### **Timelines**

21. If the circumstances of the appeal are such that adhering to the timelines outlined by this Policy is not appropriate, The Case Manager or the Appeal Panel may direct that these timelines be revised.

### **Confidentiality**

22. The Appeals process is confidential and involves only the Parties, the Case Manager, the Discipline Panel, the Appeal Panel, and Swim Ontario. The Parties will not disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

### **Final and Binding**

23. No action or legal proceeding will be commenced against Mallards Swim Team, or Individuals in respect of a dispute, unless Mallards Swim Team has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in Mallards Swim Team's governing documents.