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| <b>POLICY SECTION:</b> | <b>ORGANIZATION – RISK MANAGEMENT</b>             | <b>PROCEDURE #</b> | <b>O-002-05</b>                                               |
| <b>RESPONSIBILITY:</b> | <b>Chief Operating Officer</b>                    |                    |                                                               |
| <b>SUBJECT:</b>        | <b>COMPLAINT, DISCIPLINE AND APPEAL PROCEDURE</b> | <b>EFFECTIVE</b>   | January 2009                                                  |
| <b>AUTHORIZED BY:</b>  | Board Of Directors                                | <b>REVISED</b>     | MARCH 2017<br>MAY 2019<br>DEC. 2019<br>Nov. 2022<br>JULY 2024 |

## Procedure Support

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

## COMPLAINT, DISCIPLINE AND APPEAL PROCEDURE

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|---------------------------------------------------------------------|---|
| <a href="#">COMPLAINT, DISCIPLINE AND APPEAL PROCEDURE</a> .....    | 1 |
| <a href="#">Statement</a> .....                                     | 2 |
| <a href="#">1. Definitions</a> .....                                | 2 |
| <a href="#">2. Scope and Application of Complaint Process</a> ..... | 3 |
| <a href="#">3. Complaint Process</a> .....                          | 3 |
| <a href="#">3.1 Notice of Complaint</a> .....                       | 3 |
| <a href="#">3.1.2 Complaints Made to Members</a> .....              | 4 |
| <a href="#">3.2 Screening of Notice of Complaint</a> .....          | 4 |
| <a href="#">3.2.1 Stay of a Complaint</a> .....                     | 4 |
| <a href="#">3.3 Interim Suspension</a> .....                        | 4 |
| <a href="#">3.4 Responding Submissions</a> .....                    | 5 |
| <a href="#">3.5 Procedure for Addressing a Complaint</a> .....      | 5 |
| <a href="#">3.5.1 Process 1</a> .....                               | 5 |
| <a href="#">3.5.1 Process 2</a> .....                               | 5 |
| <a href="#">4. Appeal Process</a> .....                             | 7 |
| <a href="#">4.1 Appealing a Discipline Decision</a> .....           | 7 |
| <a href="#">4.1.1 Timing and Notice of Appeal</a> .....             | 7 |
| <a href="#">4.1.2 Grounds</a> .....                                 | 7 |
| <a href="#">4.2 Screening</a> .....                                 | 8 |
| <a href="#">4.3 Procedure</a> .....                                 | 8 |
| <a href="#">5. Confidentiality</a> .....                            | 9 |
| <a href="#">6. Publication of Sanctions</a> .....                   | 9 |

## Statement

Swim Ontario is committed to providing a safe, ethical, and positive environment within its programs, activities, and events. All individuals and entities associated with Swim Ontario are expected to always conduct themselves in a manner consistent with the values of Swim Ontario that include fairness, integrity, open communication, and mutual respect. Conduct that violates Swim Ontario or Member bylaws, policies, procedures and the Swim Ontario *Comprehensive Code of Conduct and Ethics for all Participants Including Parents/Guardians* may be subject to discipline and sanctions pursuant to this Procedure. This Procedure provides a fair and expedient process to address alleged infractions and appeals.

**Swim Ontario will administer ALL Complaints pursuant to the Code (as detailed below) related to any Member or any individual as defined in this procedure.**

This Procedure 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 Board/ Committee members. Further sanctions may be applied in accordance with this Procedure.

Complaint findings and sanctions issued by Swim Ontario are subject to appeal as outlined below unless no appeal is available under the terms of this Procedure. Swim Ontario has standing as a Party in all appeals.

Swim Ontario maintains the right to consult with independent advisors when dealing with a matter pursuant to this Procedure.

Parties may be represented by counsel or an authorized representative if they so choose.

## 1. Definitions

The following terms have these meanings in this Procedure:

- a) "Affected Party(ies)" – Any individual who is not the Complainant, Respondent, or Appellant but is either a witness to or affected by the conduct that is subject to the Complaint or the Appeal as determined by the appropriate individual/body.
- b) "Appellant" – The Party(ies) appealing a decision under the Appeal process.
- c) "Code" – The Swim Ontario *Code of Conduct and Ethics for all Participants Including Parents/Guardians*.
- d) "Complainant" – The Party(ies) alleging an infraction.
- e) "Complaint(s)" – Allegations of breaches of bylaws, policies, procedures and the Code.
- f) "Days" – Calendar days including weekends and holidays. Counting of days should not include the first day but should include the last day. All materials are due at 5:00 P.M. Eastern Time (ET) on the last day. Should a deadline fall on a weekend or holiday, the date is extended to 5:00 P.M. ET the next day that is not a weekend or holiday following the due date.
- g) "Independent Person" – an individual appointed to adjudicate a dispute who must be free from any actual or perceived conflict of interest in the circumstances of the matter.
- h) "Dispute Resolution Officer" – an independent third party assigned the role of overseeing, the complaint procedure, or an independent person to whom the Dispute Resolution Officer has designated their authority or responsibilities.
- i) "Individuals" – all persons engaged and registered in activities with Swim Ontario and/or its Members.
- j) "Members" – any registered club of Swim Ontario, who remains in Good Standing with Swim Ontario, incorporated or unincorporated.
- k) "Panel" – The independent person appointed to adjudicate a Complaint or Appeal.
- l) "Parties" – The Complainant(s), Appellant(s), Respondent(s), and any other Individuals or Members affected by the Complaint or Appeal.

- m) “Respondent” – The alleged infracting Party(ies) or the Party(ies) responding to an appeal, as applicable.
- n) “Sanction” – any prohibition, limitation, or action to be taken as a result of the Complaint, whether agreed through mediation or imposed.
- o) “Screening” –the decision on the acceptance (“screened in”) or dismissal (“screened out”) of a Complaint or Appeal by the Swim Ontario Dispute Resolution Officer.

## ***2. Scope and Application of Complaint Process***

This Procedure applies to all Members and Individuals.

This Procedure 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.

All Complaints must be submitted to the Swim Ontario Dispute Resolution Officer.

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 accepted by the Swim Ontario Dispute Resolution Officer at their sole discretion. The Swim Ontario Dispute Resolution Officer also has the discretion to accept a Complaint where the alleged conduct brings the reputation of the sport into disrepute and would be considered a serious breach of the Code had it occurred within the sport environment.

This Procedure will not apply to allegations based on the following:

- employment matters,
- trespass,
- breach of contract,
- financial matters /refunds, or,
- swimming technical matters.

## ***3. Complaint Process***

### **3.1 Notice of Complaint**

Anyone who wishes to file a Notice of Complaint is expected to do so within 30 days after the events giving rise to the Complaint unless the Complainant provides a compelling reason for the delay. A Notice of Complaint is to be submitted in writing to the attention of the Swim Ontario Dispute Resolution Officer and contain the following:

- a) the contact information of the Complainant or the Complainant’s counsel or authorized representative;
- b) the name of the Respondent(s) and any Affected Parties and/or witnesses;
- c) the date and location of the incident;
- d) a detailed summary of the incident;
- e) all evidence that supports the incident; and
- f) information regarding whether the allegations are before the courts, another body, tribunal or under police investigation.

Anonymous Complaints typically will not be accepted. If an anonymous Complaint is received, it will be reviewed by the Swim Ontario Dispute Resolution Officer to determine whether circumstances require that an exception to be made. The Swim Ontario Dispute Resolution Officer will offer an anonymous Complainant the opportunity to put their name to the Complaint before dismissing it on the ground that it was submitted anonymously.

The Swim Ontario Chief Operating Officer may decide, at their discretion that Swim Ontario will act as the Complainant in matters as required. This decision cannot be appealed.

The Swim Ontario Dispute Resolution Officer may refer Complaints to Swimming Canada as required, or at their discretion. This decision cannot be appealed.

For Complaints that are screened in (see Screening of Notice of Complaint section below), the Swim Ontario Dispute Resolution Officer will inform the Respondent(s) and Affected Party(ies) (as required and at the discretion of the Swim Ontario Dispute Resolution Officer) named in the Complaint and will provide a copy of the Notice of Complaint and other materials submitted by the Complainant(s).

### ***3.1.2 Complaints Made to Members***

All disciplinary Complaints made to Members *must* be directed to the Swim Ontario Dispute Resolution Officer. Members must **not** administer their own Complaint processes.

## ***3.2 Screening of Notice of Complaint***

The Swim Ontario Dispute Resolution Officer will have the discretion and authority to determine if a Complaint will be accepted.

Complaints that relate to matters outside the scope and application of this Procedure will be screened out. Other reasons a Complaint may be screened out include:

- a) the submission is untimely with no reasonable explanation for the delay;
- b) the submissions are frivolous or vexatious;
- c) The allegations do not meet the threshold of a breach of the Code;
- d) the submission has already been addressed and adjudicated in another forum; or
- e) there is 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.

The Swim Ontario Dispute Resolution Officer shall screen Complaints within 10 days of receiving them or notify the Complainant if more time is required.

### ***3.2.1 Stay of a Complaint***

The Complaint may be stayed by the Swim Ontario Dispute Resolution Officer if the matter is before the courts, another body, tribunal or under police investigation. A stay is not a dismissal of the Complaint, but rather a pause in administering this Procedure in relation to a specific Complaint.

## ***3.3. Interim Suspension***

The Chief Operating Officer of Swim Ontario, upon reviewing the Complaint and evidence may determine that an alleged incident is of such seriousness and credibility on its face as to warrant suspension of an Individual or Member pending a hearing and decision. This decision cannot be appealed.

### **3.4 *Responding Submissions***

If the Complaint is accepted by the Swim Ontario Dispute Resolution Officer, the Respondent(s) will be given the opportunity to submit a responding statement in writing and to provide any additional information to be considered.

### **3.5 *Procedure for Addressing a Complaint***

Two processes can be used to address screened in Complaints. The process to be used will be determined by the Swim Ontario Dispute Resolution Officer. Generally speaking, Process 1 will be used for less serious Complaints that can be dealt with quickly (usually within 30 days), and Process 2 will be used for more serious Complaints that require a greater level of procedural safeguards. The process chosen cannot be appealed.

Complaints proceeding under Process 1 may be, at the discretion of the Swim Ontario Dispute Resolution Officer, delegated to a designate.

#### **3.5.1 Process 1**

The below procedure will apply for Process 1 Complaints that are processed by the Swim Ontario Dispute Resolution Officer.

Following the determination that the Complaint should be handled under Process 1, the Swim Ontario Dispute Resolution Officer will review written submissions related to the Complaint from the Complainant(s) and the Respondent(s) and will determine the appropriate sanction, if any.

Sanctions for infractions under Process 1, which may be applied singularly or in combination, may include the following, but are not limited to:

- a) a verbal or written reprimand;
- b) a verbal or written apology;
- c) service or other voluntary contribution to Swim Ontario or a Member;
- d) removal of certain privileges;
- e) a period of suspension of up to one month;
- f) mandatory education or training; and
- g) any other sanction considered appropriate in the circumstances.

The Swim Ontario Dispute Resolution Officer will inform the Respondent(s) and the Complainant(s) of the sanction, which will take effect immediately unless determined otherwise by the Swim Ontario Dispute Resolution Officer. Failure to comply with a sanction will result in automatic suspension until such time as compliance occurs.

There is no right of appeal for sanctions imposed by under Process 1.

#### **3.5.1 Process 2**

##### **Timelines**

The Swim Ontario Dispute Resolution Officer shall have the authority and discretion to establish reasonable timelines for all steps in the process with the goals of both procedural fairness and expediency in mind.

## Investigation

Following the determination that the Complaint should be handled under Process 2, the Swim Ontario Dispute Resolution Officer may order an Investigation. Any Investigator must be an Independent Person skilled in investigating and must have no conflict of interest regarding the Complaint.

The Investigator will have Terms of Reference for the Investigation that will be provided by the Swim Ontario Dispute Resolution Officer.

The Investigation will begin as soon as the investigator is available. The investigation report will be shared with Swim Ontario. The Swim Ontario Dispute Resolution Officer will determine whether the report or a summary thereof will be shared with the Parties or anyone they deem appropriate.

The Swim Ontario Chief Operating Officer may, within their sole discretion, decide to share the report or summary thereof with any third party they deem necessary.

## Mediation

The Swim Ontario Dispute Resolution Officer may require the Parties to mediate the Complaint at any time during the process with the participation of the Complainant(s) and Respondent(s). Affected Parties may be required to participate in the mediation at the discretion of the Swim Ontario Dispute Resolution Officer. Swim Ontario will have standing to participate in all mediations. Should the mediation be successful, the proposed resolution and sanctions (as appropriate) must be approved by the Chief Operating Officer of Swim Ontario.

## Hearing

The Dispute Resolution Officer of Swim Ontario will decide the format under which the hearing will be conducted, may choose to invite any other Parties or persons to participate in the hearing, and may obtain independent advice.

The Swim Ontario Dispute Resolution Officer will appoint an independent Panel to adjudicate the hearing

The Panel will have the authority to determine the admissibility of the investigation report and how the findings of the investigation report may be relied upon at the hearing, if at all. This decision cannot be appealed.

The Panel will issue a decision and Sanctions, if applicable, in writing and with reasons. The reasoned decision will be distributed to the parties, Swim Ontario and any third party deemed necessary by Swim Ontario within thirty 30 days of the conclusion of the hearing, unless it is unreasonable or impractical to do so, in which case the decision will be distributed as soon as possible after the hearing.

If the Panel deems it necessary or appropriate, a verbal or summary decision may be issued after the hearing's conclusion, with the full written decision to be issued thereafter.

## Sanctions

Sanctions for infractions under Process 2, which may be applied singularly or in combination, may include the following, but are not limited to:

- a) verbal or written apology from one Party to another Party;
- b) service or other work contribution to Swim Ontario or one of its Members;
- c) removal of certain privileges of membership for a designated period of time;
- d) suspension from the current competition, activity, or event;

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

Unless the Panel 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. Appeal Process**

Complaint findings and Sanctions issued by Swim Ontario are subject to appeal as outlined below unless no appeal is available under the terms of this Procedure. Swim Ontario has standing as a Party in all appeals.

Other Swim Ontario decisions may also be subject to this appeal Procedure.

### **4.1 Appealing a Discipline Decision**

#### **4.1.1 Timing and Notice of Appeal**

Complaint Parties who wish to appeal a discipline decision of either Swim Ontario, shall submit, in writing, a Notice of Appeal to the attention of the Swim Ontario Dispute Resolution Officer, within fourteen (14) days from the date on which the Party(ies) received notice of the decision being appealed.

The Notice of Appeal shall contain:

- a) A \$750.00 fee must accompany the filing of the Notice of Appeal.
- b) Contact information and status of the Appellant or the Appellant's counsel or authorized representative.
- 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.
- i) Requested remedy or remedies.

A Party who wishes to initiate an appeal beyond the fourteen (14) day period must provide a written request stating the reasons for an extension. The Swim Ontario Dispute Resolution Officer shall retain sole discretion as to whether an extension to the deadline shall be granted.

#### **4.1.2 Grounds**

An appeal may only be heard if the Swim Ontario Dispute Resolution Officer determines there are sufficient grounds for appeal. Sufficient grounds include:

- a) the decision-maker 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 their governing documents);
- b) the decision-maker failed to follow its own procedures (as set out in their governing documents);
- c) the decision-maker 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) the decision-maker made a decision that was grossly unreasonable (meaning that the decision-maker's decision and justification thereof must be manifestly outside of the range of possible decisions that a reasonable person with all the information on which the decision-maker would have made);
- e) the decision was based on a misunderstanding of the facts at issue (not simply a preference for the fact submissions of one Party over another); and
- f) new evidence has been discovered that was not available at the time of the decision being appealed that will have a material impact on the result of the decision.

#### **4.2 Screening**

Upon receiving the Notice of Appeal, the Swim Ontario Dispute Resolution Officer as applicable, will:

- a) determine if the appeal falls under the scope of this Procedure
- b) determine if the appeal was submitted in a timely manner; and
- c) decide whether there appear to be sufficient grounds for the appeal.

If the appeal is denied, the appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed.

If there is no basis to screen out an appeal, the Swim Ontario Dispute Resolution Officer or designate will appoint an Appeal Panel. The Appeal Panel must be comprised of an Independent Person.

#### **4.3 Procedure**

The Appeal Panel shall decide the format under which the appeal will be considered. In all cases the Respondent will be provided the opportunity to submit any written material within a reasonable time frame that shall be shared with the Appellant.

The appeal may be directed to be decided based solely on the written information submitted or a hearing may be held. The Parties shall be given a fair opportunity to present their respective cases at the hearing, if any.

In fulfilling appeal-related duties, the Swim Ontario Dispute Resolution Officer and the Appeal Panel may obtain independent advice.

The appeal decision shall be issued in writing and with reasons, normally within thirty (30) days after the hearing conclusion or receipt of the final written submission, as applicable, unless it is unreasonable or impractical to do so, in which case the decision will be issued as soon as possible.

In reaching a decision, the Appeal Panel shall have the same scope of authority as the original decision-maker.

The Appeal Panel may decide to:

- a) reject the appeal and confirm the decision being appealed;
- b) allow the appeal, based on one or more of the grounds listed in sections 4.1.2 above, as applicable, and refer the matter back to the initial decision-maker for a new decision; or



- c) allow the appeal based on one or more of the grounds listed in sections 4.1.2 above, as applicable, and vary the decision.

The written decision, with reasons, will be distributed to the Parties, the Swim Ontario Dispute Resolution Officer, and the Swim Ontario Chief Operating Officer. The Swim Ontario Chief Operating Officer has the discretion to send the decision to any other stakeholders to the Appeal as appropriate.

If deemed necessary or appropriate by the Appeal Panel, a verbal or summary decision after the hearing's conclusion may be issued, with the full written decision to be issued thereafter.

Should the Appeal Panel resolve the matter in favour of the Appellant, the appeal fee may be refunded to the Appellant at the discretion of the Appeal Panel.

## 5. Confidentiality

The complaint, discipline and appeal processes are confidential. Once initiated, none of those involved will disclose information relating to the ongoing process except to facilitate representation or as required by a screening procedure or by law.

Swim Ontario may share details of the decision with the Affected Party(ies) and other third parties as deemed appropriate by the Chief Operating Officer of Swim Ontario.

The confidentiality of the Swim Ontario disciplinary finding does not lessen or limit the responsibility of the Respondent to disclose the result of the disciplinary process to any other organization as required by their policy or procedure subject to protecting the identity of the Complainant.

## 6. Publication of Sanctions

Once a final decision has been reached in respect of a Complaint or appeal, and the result of the decision the following information may be released by Swim Ontario and/or published on the Swim Ontario Website:

- a) the identity of the Respondent;
- b) the nature of the infraction and/or the provision of the applicable bylaw, policy, procedure, or Code provision that has been breached; and/or,
- c) the sanction that has been imposed on the Respondent, and if so, details concerning the sanction.

Swim Ontario will not publish the sanctions imposed against a Respondent who is a minor.

| <b><i>Responsibility</i></b>                                                                                                                                                                 | <b><i>Action</i></b>                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| Complainant/Appellant/Respondent                                                                                                                                                             | To consider the procedures and apply them accordingly                |
| Swim Ontario Dispute Resolution Officer, and Chief Operating Officer                                                                                                                         | To provide an environment which supports the procedures listed above |
| <b>Please note that while every effort is taken to ensure accuracy, this Procedure may have changed.<br/>Please contact Swim Ontario staff for any assistance or additional information.</b> |                                                                      |