



## APPEAL POLICY

### Definitions

1. The following terms have these meanings in this Policy:
  - a) “Appellant” – The Party appealing a decision
  - b) “Respondent” – The body whose decision is being appealed
  - c) “Parties” – The Appellant, Respondent, and any other Members or persons affected by the appeal
  - d) “Days” – Days irrespective of weekend and holidays
  - e) “Individuals” – All categories of membership defined in the Surf Canada Bylaws, as well as all “Individuals”: Individuals employed by, or engaged in activities with Surf Canada including, but not limited to, athletes, coaches, event organizers, officials, volunteers, managers, administrators, committee members, and directors and officers of Surf Canada
  - f) “Case Manager” – An individual appointed by Surf Canada, including but not limited to, any Surf Canada Staff, Committee Member, Volunteer or Director; or any independent third party, to oversee this Appeal Policy. The Case Manager’s responsibilities include but are not limited to: i. ensuring procedural fairness and that applicable timelines are respected, and ii; the decision-making authority described in this Policy.

### Purpose

2. Surf Canada is committed to providing an environment in which all Individuals involved with Surf Canada are treated with respect. Surf Canada provides Individuals with this Appeal Policy to enable fair, affordable, and expedient appeals of certain decisions made by Surf Canada.

### Scope and Application of this Policy

3. This Policy applies to all Individuals. Any Individual who is directly affected by a Surf Canada decision 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
  - b) Infractions for doping offenses
  - c) The rules of surfing
  - d) Selection criteria, quotas, policies, and procedures established by entities other than Surf Canada
  - 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) Surf Canada’s operational structure and committee appointments

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- i) Decisions or discipline arising within the business, activities, or events organized by entities other than Surf Canada (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by Surf Canada 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 Surf Canada's office, 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
  - i) Requested remedy or remedies
  - j) An administration fee of one hundred dollars (\$100)
- 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, or not allow, an appeal outside of the seven (7) day period will be at the sole discretion of the Case Manager and 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 authority or jurisdiction (as set out in the Respondent's governing documents)
  - b) Failed to follow its own procedures (as set out in the Respondent's 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
- 9. The Appellant bears the onus of proof and 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), Surf Canada may direct the appeal to be heard first under Surf Canada's Dispute Resolution Policy.

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11. Appeals resolved by mediation under Surf Canada'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, Surf Canada will appoint an independent third-party Case Manager 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 Adjudicator, to hear the appeal. In extraordinary circumstances, and 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.

#### **Procedure for Appeal Hearing**

15. The Case Manager shall notify the Parties that the appeal will be heard. The Case Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Case Manager and may not be appealed.
16. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
17. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone, 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 the appropriate 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
18. In fulfilling its duties, the Panel may obtain independent advice.

#### **Appeal Decision**

19. The Panel shall issue its decision, in writing and with reasons, 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:

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- 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
  - d) Determine whether costs of the appeal, excluding legal fees and legal disbursements of any Parties, will be assessed against any Party. In assessing costs, the Panel will take into account the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources
20. The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and Surf Canada. 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.

### **Confidentiality**

21. The appeals process is confidential and involves only the Parties, the Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings.

### **Final and Binding**

22. The decision of the Panel will be binding on the Parties and on all Surf Canada Individuals; subject to the right of any Party to seek a review of the Panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time, and subject to these limitations:
- a) The 'law' to be considered by the SDRCC tribunal is the internal rules, selection criteria and policies of Surf Canada
  - b) The 'facts' to be considered by the SDRCC tribunal are the facts relevant to the case under appeal
  - c) If the SDRCC tribunal determines that Surf Canada has made a decision in error, the role of the tribunal is to identify that error and send the matter back to Surf Canada to make the decision free from error, unless this is not possible or practical
  - d) The parties will execute an arbitration agreement that will confirm the jurisdiction of the SDRCC tribunal to decide the matter, specify the precise decision under appeal, specify the issues in dispute and specify other matters the parties agree will be binding on themselves and the SDRCC tribunal.
23. No action or legal proceeding will be commenced against Surf Canada or Individuals in respect of a dispute, unless Surf Canada has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in Surf Canada's governing documents.

### **Review**

24. This Policy is subject to review at least once every three years