



APPEAL POLICY

Definitions

1. The following terms have these meanings in this Policy:
 - a) **Affected Party** – Any individual or entity, as determined by the Appeal Manager, who may be affected by a decision rendered under this *Policy* and who may have recourse to an appeal in their own right
 - b) **Appellant** – The Party appealing a decision
 - c) **Appeal Manager** – An individual, who may be any staff member, committee member, volunteer, Director, or an independent third party, who is appointed to oversee the *Appeal Policy*. The Appeal Manager will have responsibilities that include using decision making authority empowered by the *Appeal Policy*
 - d) **Independent Case Manager** – An independent individual (or individuals) appointed by Surf Canada to receive and administer complaints under the *Discipline and Complaints Policy*
 - e) **Days** – Days including weekends and holidays
 - f) **Participants** – Refers to all categories of individual members and/or registrants defined in the By-laws of Surf Canada who are subject to the UCCMS and the policies of Surf Canada as well as all people employed by, contracted by, or engaged in activities with, Surf Canada including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, committee members, and Directors and Officers
 - g) **Parties** – The groups involved with a dispute. In the *Discipline and Complaints Policy*, the Parties are the Complainant and Respondent. In the *Appeal Policy*, the Parties are the Appellant, Respondent, and any Affected Party
 - h) **Respondent** – The Participant responding to a complaint or, in the case of an appeal, the body whose decision is being appealed.
 - i) **UCCMS** – Means the Universal Code of Conduct to Prevent and Address Maltreatment in Sport;
 - j) **UCCMS Participant** – Means a registered Participant affiliated with SC who has been a) designated by SC and b) who has signed the required consent form. UCCMS Participants may include an Athlete, an official, an Athlete Support Personnel, an employee, a contractual worker, an administrator, or a volunteer acting on behalf of, or representing SC in any capacity.

Purpose

2. This *Appeal Policy* provides Participants with a fair and expedient appeal process.

Scope and Application of this Policy

3. This Policy applies to all Participants.
4. Any Participant who is directly affected by a decision made by Surf Canada shall have the right to appeal that decision provided that there are sufficient grounds for the appeal under the **Grounds for Appeal** section of this Policy.
5. This Policy **will apply** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of Interest
 - d) Discipline
 - e) Membership

6. This Policy **will not apply** to decisions relating to:
- a) Employment
 - b) Infractions for doping offenses
 - c) The rules of the sport
 - d) Selection criteria, quotas, policies, and procedures established by entities other than Surf Canada
 - e) Substance, content and establishment of team selection or carding criteria
 - f) Volunteer/coach appointments and the withdrawal or termination of those appointments
 - g) Budgeting and budget implementation
 - h) The organization's operational structure and committee appointments
 - 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
 - l) Decisions made by the Office of the Sport Integrity Commissioner (OSIC), the Director of Sanctions and Outcomes (DSO), the Safeguarding Tribunal (ST) of the Sport Dispute Resolution Center of Canada (SDRCC) related to a UCCMS violation involving a UCCMS Participant.

Timing of Appeal

7. Participants who wish to appeal a decision have seven (7) days from the date on which they received notice of the decision to submit the following:
- a) Notice of the intention to appeal
 - b) Their contact information
 - c) Name and contact information 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
 - j) An administration fee of two hundred dollars (\$200), which will be refunded if the appeal is upheld
8. A Participant 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 Appeal Manager and may not be appealed.

Submitting an Appeal

9. Appeals of decisions made by Surf Canada can be submitted to Surf Canada to be heard pursuant to this Policy.
10. Surf Canada shall appoint an Appeal Manager and shall follow the process outlined in this *Appeal Policy*.

Discipline Chair or Discipline Panel Decision – Surf Canada

11. A decision made by Surf Canada's Discipline Chair following a request for reconsideration by one of the parties pursuant to the *Discipline and Complaints Policy*, and a decision made by Surf Canada's Discipline Panel, may be appealed to Surf Canada in accordance with the terms of this *Appeal Policy*.
12. Alternatively, by agreement between the parties, the internal appeal process may be bypassed, and the appeal may be heard directly before the Sport Dispute Resolution Centre of Canada (SDRCC).

13. Except where an appeal proceeds before the SDRCC, Surf Canada shall appoint an Appeal Manager and shall follow the process outlined in this *Appeal Policy*.

Grounds for Appeal

14. 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 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 appears not to have considered other views)
- d) Made a decision that was patently unreasonable

Screening of Appeal

15. The parties may first attempt to resolve the appeal through the *Dispute Resolution Policy*.

16. Appeals resolved under the *Dispute Resolution Policy* will result in the administration fee being refunded to the Appellant.

17. Should the appeal not be resolved by using the *Dispute Resolution Policy*, Surf Canada will appoint an independent Appeal Manager (who must not be in a conflict of interest or have any direct relationship with the parties) who has the following responsibilities:

- a) To determine if the appeal falls under the scope of this Policy
- b) To determine if the appeal was submitted in a timely manner
- c) To decide whether there are sufficient grounds for the appeal

18. If the Appeal Manager denies the appeal 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.

19. If the Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an Appeal Panel which shall consist of a single Arbitrator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Appeal Manager, an Appeal Panel composed of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the Panel's members to serve as the Chair.

Determination of Affected Parties

20. In order to confirm the identification of any Affected Parties, the Appeal Manager will engage Surf Canada. The Appeal Manager may determine whether a party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

21. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.

22. If a party chooses not to participate in the hearing, the hearing will proceed in any event.

23. 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 Appeal Manager and the Panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held within a timeline determined by the Appeal Manager
- b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
- 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 an oral in-person hearing or oral hearing by telephone or electronic communications.
- 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 an Affected 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

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

Appeal Decision

25. 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.

26. The Panel shall issue its decision, in writing and with reasons, within seven (7) 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.

27. The Panel will also 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.

28. The Panel's written decision, with reasons, will be distributed to all parties, the Appeal 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.

Timelines

29. If the circumstances of the appeal are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the appeal, the Appeal Manager and/or Panel may direct that these timelines be revised.

Confidentiality

30. The appeals process is confidential and involves only the parties, the Appeal 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

31. No action or legal proceeding will be commenced against Surf Canada or Participants 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 governing documents.