



<i>Policy Name</i> <b>APPEAL POLICY</b>		<i>Date of Approval</i> <b>04/12/22</b>	<i>Activation Date</i> <b>20/12/22</b>
<i>Approved By</i> GymCan Board of Directors	<i>Linking To</i> 1. Discipline and Complaints Policy		<i>Replacing Previous Version</i> 06/30/2012
<i>Review Cycle</i> Reviewed annually by the Chief Executive Officer with recommendations to the Board of Directors			

## Gymnastics Canada Appeal Policy

### Purpose

1. This *Appeal Policy* provides Individuals with a fair, affordable, and expedient appeal process.

### Scope and Application of this Policy

2. This Policy applies to all Individuals. However, it does not apply to any decision related to the application of the UCCMS made by the OSIC, the Director of Sanctions and Outcomes, the SDRCC's Safeguarding Tribunal or any other competent instance within the Abuse-Free Sport program.
3. Subject to Section 2, any Individual who is affected by a decision taken by Gymnastics Canada specifically with regard to that Individual, including a decision by the Board, by any Committee of the Board or by any body or individual within Gymnastics Canada who has been delegated authority to make decisions in accordance with Gymnastics Canada's By Laws and governance policies (as applicable), shall have the right to appeal that decision provided that it is a decision that is subject to appeal pursuant to Section 4 of this Policy, that the conditions indicated in Sections 6 or 7 of this Policy (as applicable) have been satisfied, and provided that there are sufficient grounds for the appeal pursuant to Section 8 of this Policy.
4. This Policy **will apply** to decisions relating to:
  - a) eligibility
  - b) selection decisions and AAP nominations
  - c) conflict of interest
  - d) disciplinary decisions made pursuant to Gymnastics Canada's relevant and applicable policies
  - e) membership
  - f) international judging assignment decisions made by Gymnastics Canada
5. This Policy **will not apply** to the following decisions relating to:
  - a) Reported complaints that were managed by the OSIC;
  - b) Matters of general application such as amendments to Gymnastics Canada's By Laws;
  - c) Gymnastics Canada's operational structure and committee appointments;
  - d) Issues of budgets and budget implementation;
  - e) Employment matters or matters of operational structure or staffing or volunteer leadership opportunities;
  - f) Except as otherwise provided for in this Policy, decisions made by organizations other than Gymnastics Canada, such as Gymnastics Canada's Member Associations, the Canadian Olympic Committee (COC), the Canadian Paralympic Committee (CPC), the International Olympic Committee (IOC), the International Paralympic Committee

- (IPC), or the Fédération Internationale de gymnastique (FIG) or any other governing body;
- g) Selection criteria, quotas, policies and procedures established by entities other than Gymnastics Canada;
  - h) Substance, content and establishment of team selection criteria;
  - i) The Athlete Assistance Program (AAP) policies and procedures established by Sport Canada;
  - j) Policy and procedures established by any other agency, association or organization external to Gymnastics Canada;
  - k) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program, by the Canadian Centre for Ethics in Sport and the FIG;
  - l) Contractual matters between Gymnastics Canada and its staff for which another dispute resolution process exists under the provisions of the applicable contract; or
  - m) Settlements negotiated pursuant to the *Dispute Resolution Policy*.

### Timing of Appeal

6. Unless otherwise indicated at the time that a decision is communicated, Individuals who wish to appeal a decision have fourteen (14) days from the date on which they received notice of the decision<sup>1</sup> to submit to Gymnastics Canada's CEO the following:
- a) Notice of the intention to appeal
  - b) Their contact information
  - 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 the decision if a written document is not available
  - f) Grounds and detailed reasons for the appeal
  - g) All evidence that supports these grounds
  - h) Requested remedy or remedies

Notwithstanding the above, any decisions regarding a safe sport matter shall be filed with Gymnastics Canada's Independent Third Party.

7. An Individual who wishes to initiate an appeal beyond the fourteen (14) day period may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated in Section 6 above. Any such Individual must provide a written request stating the reasons for which they are seeking an exemption. The decision to allow, or not allow, an appeal outside the fourteen (14) day period will be at the sole discretion of the Appeal Manager.

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<sup>1</sup> Gymnastics Canada may notify decisions via the following means: email to the Individual's most recent email address that it has on file; publication on Gymnastics Canada's website, or other electronic means that permit direct communication with the Individual, such as WhatsApp. In such circumstances, notification shall be deemed to have been received on the date that Gymnastics Canada publishes notification of the decision on its website and/or, as applicable, the date on which the Individual is sent the decision via email or the other electronic means.

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## Grounds for Appeal

8. A decision cannot be appealed on its merits alone or because an Individual (or Individuals) do not like or agree with a decision. 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 take into account information that was relevant to the final decision or took information into account that was irrelevant to the final decision;
  - c) Failed to follow its own procedures (as set out in the Respondent's governing documents);
  - d) 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); or
  - e) Made a decision that was grossly unreasonable or unfair.
9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 8 of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.
10. Notwithstanding any other provision in this *Appeal Policy*, by agreement between all of the Parties, the internal appeal process in relation to decisions made by Gymnastics Canada, a Case Manager, Appeal Manager or a discipline panel appointed by Gymnastics Canada may be bypassed, and the appeal may be heard directly before the SDRCC.
11. Except where an appeal proceeds before the SDRCC, Gymnastics Canada shall appoint an Appeal Manager and shall follow the process outlined in Sections 13 and following of this *Appeal Policy*.

## Dispute Resolution

12. The Parties may first attempt to resolve the appeal through the *Dispute Resolution Policy* once the notice of the appeal and the information required pursuant to Section 6 has been received.

## Screening of Appeal

13. Upon receipt of an appeal, Gymnastics 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 (Sections 2-5)
  - b) To determine if the appeal was submitted in a timely manner (Sections 6 and 7)
  - c) To decide whether there are sufficient grounds for the appeal (Section 8)
14. 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. Any such decisions rendered by the Appeal Manager may be appealed to the Sport Dispute Resolution Centre of Canada (SDRCC) pursuant to the Canadian Sport Dispute Resolution Code.
15. If the Appeal Manager accepts an appeal because it falls under the scope of this Policy, there are sufficient grounds and it was submitted in a timely manner, the Appeal Manager will notify the Parties of their decision in writing and will follow the steps described hereunder.

**Appointment of Appeal Panel**

16. If an appeal is accepted, the Appeal Manager will appoint an appeal panel which shall consist of a three members to hear the appeal. The Appeal Manager will appoint one of the panel's members to serve as the chair. However, where justified based on the nature of the case, an appeal panel composed of one member may be appointed to hear the appeal at the discretion of the Appeal Manager.
17. When appointing the appeal panel, the Appeal Manager must select individuals who are impartial, free from any real or perceived conflict of interest (and who shall remain so until a final decision has been rendered or the proceedings have otherwise finally terminated), and who do not have any direct relationship with any of the Parties. Although not a strict requirement, the Appeal Manager should attempt to appoint individuals to the appeal panel who have a legal background and who understand the sport of gymnastics. When justified by the circumstances, the Appeal Manager may appoint individuals to the appeal panel who have specific areas of expertise that would assist in resolving the matter.

**Determination of Affected Parties**

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

**Procedure for Appeal Hearing**

19. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager, in collaboration with the appeal panel, shall then consult with the Parties to determine the format under which the appeal will be heard. However, if the Parties cannot agree to the format of the hearing, the Appeal Manager shall decide its format. This decision is at the sole discretion of the Appeal Manager and may not be appealed.
20. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
21. 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, a hearing based on documentary submissions alone, or a combination of these methods. Unless the hearing format is otherwise agreed to by the Parties as provided for in Section 19, the hearing will be governed by the procedures that the Appeal Manager and the appeal panel deem appropriate in the circumstances, provided that:
  - a) The hearing will be held in a timely manner 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 appeal panel consider will be provided to all Parties in advance of the hearing

- d) The Parties may be accompanied by a representative, advisor, translator, transcription services, or legal counsel at their own expense
- e) The appeal 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 appeal panel may exclude any evidence filed by the Parties that is unduly repetitious or otherwise an abuse of process. The appeal panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to any evidence filed by the Parties
- g) Nothing is admissible in evidence at a hearing that:
  - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
  - ii. is inadmissible by any statute.
- h) Any Affected Party shall be permitted to make submissions and file evidence before the appeal panel. The appeal panel's decision is binding on any Affected Party
- i) The decision to uphold or reject the appeal will be by a majority vote of the appeal panel members, except in cases where the panel consists of a single member

22. In fulfilling its duties, the appeal panel may obtain independent advice.

#### **Appeal Decision**

23. The appeal panel shall issue its decision, in writing and with reasons, within fourteen (14) days after the hearing's conclusion. In making its decision, the appeal panel will have no greater authority than that of the original decision-maker. The appeal panel may decide to:
- a) Reject the appeal and confirm the decision being appealed
  - b) Uphold the appeal, in whole or in part, and refer the matter back to the initial decision-maker for a new decision
  - c) Uphold the appeal, in whole or in part, and vary the decision
  - d) Determine whether costs of the appeal, excluding legal fees and legal disbursements of any Parties, may be assessed against any Party. In assessing costs, the appeal panel will take into account the nature and amount of the costs, the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources
24. The appeal panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and Gymnastics Canada. Where necessary due to time constraints, the appeal panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter.
25. Subject to Section 26 below, unless the matter involves a Vulnerable Participant, once the deadline to appeal to the SDRCC (where applicable), as indicated in the Canadian Sport Dispute Resolution Code, has expired, Gymnastics Canada may publish the outcome of the appeal on their website where doing so is in the interest of its membership. Publication shall be limited to, where applicable, the provision(s) of any relevant policies that have been violated, the name(s) of the Registered Individual(s) involved, the sanction(s) or order imposed, if any. Additionally, where Gymnastics Canada acts as the Complainant under Section 10 of the *Discipline and Complaints Policy* and any decision issued pursuant to that Policy is appealed, only Gymnastics Canada, and not the original Complainant, shall be identified. Identifying information regarding Minors or Vulnerable Participants will never be published by Gymnastics Canada.

26. If the appeal panel dismisses the appeal, the decision may only be published, as provided for in Section 25, with the Respondent's consent. If the Respondent does not provide such consent, the decision will be kept confidential by the Parties, the Appeal Manager and Gymnastics Canada and shall be retained and discarded in accordance with the relevant and applicable privacy legislation. Failure to respect this provision may result in disciplinary action being taken pursuant to this *Policy*.
27. Other individuals or organizations, including but not limited to, Members, shall be advised of the outcome of any decisions rendered in accordance with this *Policy*.
28. Any decision rendered pursuant to this *Policy* shall apply automatically to and must be respected by Gymnastics Canada and its Members.
29. Records of all decisions will be maintained by Gymnastics Canada and its Members in accordance with their respective privacy policies.
30. The appeal panel's decision is final and binding on the Parties, subject to their right to appeal the decision before the SDRCC in accordance with the Canadian Sport Dispute Resolution Code.

#### **Timelines**

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

#### **Confidentiality**

32. The appeals process is confidential and involves only the Parties, the Appeal Manager, the appeal 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.
33. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the Individual(s) in accordance with Gymnastics Canada's relevant and applicable policies.

#### **Final and Binding**

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

#### **Privacy**

35. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Gymnastics Canada's Privacy Policy.
36. Gymnastics Canada or any of its delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel), shall comply with Gymnastics Canada's Privacy Policy in the performance of their services under this Policy.