

**November 2010**

**CANADIAN AMATEUR DIVING ASSOCIATION (BC SECTION)  
APPEALS POLICY**

**Preamble**

The Canadian Amateur Diving Association (BC Section) (BC Diving) is committed to providing an environment in which all individuals are treated with respect. Members are expected to conduct themselves at all times in a manner consistent with the values of BC Diving, which include fairness, integrity, open communication and mutual respect. Irresponsible behaviour by members can result in severe damage to the sport and to the support that all divers have worked hard to achieve. Conduct that sanctions may be applied, it is only fair to provide BC Diving's Discipline Policy. Since sanctions may be applied, it is only fair to provide BC Diving's members with some mechanism to appeal what may appear to the recipient as unfair treatment.

In this policy "member" refers to all categories of members of BC Diving, as well as to all individuals employed by or engaged in activities with BC Diving, including but not limited to athletes, coaches, officials, volunteers, directors, officers, team managers, medical and paramedical personnel, administrators and employees (regular & contract). "Appellant" refers to the member appealing a decision; and "respondent" refers to the body whose decision is being appealed.

**Scope of Appeal**

1. Any member of BC Diving who is affected by a decision of
  - a) the Board of Directors or its Committees, or
  - b) any body or individual who has authority to make decisions on behalf of the Board of Directors,shall have the right to appeal that decision, provided there are sufficient grounds for appeal as set out in Section 5 of this policy. Such decisions may include, but are not limited to, carding, employment, contract matters, harassment, selection and discipline.
2. This policy shall not apply to matters relating to the rules of diving, which may not be appealed.

**Timing of Appeal**

3. Members who wish to appeal a decision
  - Shall have 21 days from the date on which they received notice of the decision to submit an appeal
  - Must submit to the Executive Director of BC Diving (or the Board of Directors if more appropriate) written intention of appeal.
  - Must include with the intention to appeal detailed reasons for the appeal.
4. Any party wishing to initiate an appeal beyond the 21-day period must provide a written request for an exemption to this requirement. The Executive Director or designate has the sole discretion to allow or disallow an appeal outside the 21 day period.

### **Grounds for Appeal**

5. A decision cannot be appealed on its merits alone. An appeal may be heard only if there are sufficient grounds for appeal. Sufficient grounds include the respondent:
  - Making a decision for which it did not have authority or jurisdiction as set out in the governing documents.
  - Failing to follow procedures as laid out in the bylaws or approved policies of BC Diving
  - Making a biased decision where bias is defined as lack of neutrality to such extent that the decision-maker is unable to consider other views.
  - Exercising its discretion for an improper purpose.
  - Making a decision based on a policy that is illegal or contrary to a statutory provision
  - Making a decision which is grossly unreasonable and in no way supportable by the facts.

### **Screening of Appeal**

6. Within 5 days of receiving the notice of appeal, the Executive director shall decide whether or not the appeal is based on one or more of the possible respondent errors set out in Section 5. The Executive director is not to determine if an error has been made but only if the appeal is based on such an allegation of error by the respondent. A member of the Board of Directors shall perform this function in the absence of the Executive director.
7. If the appeal is denied on the basis of insufficient grounds, the appellant shall be given written notice of this decision citing reasons. This decision is at the sole discretion of the Executive Director or designate and may not be appealed.

### **Appeals Panel**

8. If the Executive director is satisfied that there are sufficient grounds for appeal, he/she shall establish an Appeals Panel within 15 days of receipt of the original notice of appeal. The Appeals Panel shall:
  - Be comprised of 3 individuals who have no significant relationship with the affected parties, no involvement with the decision being appealed and free of any actual or perceived bias or conflict.
  - Have at least 1 member from among the appellant's peers. The appellant shall be given the opportunity to recommend the peer member provided that member satisfies the criteria noted under the first bullet of this section. If the appellant does not make a recommendation within 5 days of being notified by the Executive Director of the formation of the panel, the Executive Director shall appoint a peer member.

### **Preliminary Conference**

9. The Appeal Panel may determine the circumstances of the dispute warrant a preliminary conference. Matters which may be considered at a preliminary conference include:
  - Date and location of hearing
  - Timeliness for exchange of documents

- Format for the appeal
  - Clarification of issues in dispute
  - Any procedural matter
  - Order and procedure of hearing
  - Remedies being sought
  - Identification of witnesses, and
  - Any other matter that may assist in expediting the appeal proceedings.
- The panel may delegate the authority to deal with these preliminary matters to its Chairman.

### **Procedure for the Appeal**

10. The panel shall govern the appeal by such procedures as it deems appropriate, provided that:
  - a) The appeal hearing shall be held within 21 days of the Panel's appointment
  - b) The appellant, respondent and affected parties shall be given 14 days written notice of the date, time and place of the appeal hearing.
  - c) The Panel's members shall select a Chairperson from among themselves.
  - d) A quorum shall be all 3 Panel members.
  - e) Decisions shall be by majority vote, where the Chairperson carries a vote.
  - f) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and all other parties, at least 5 days in advance of the hearing.
  - g) A representative or advisor, including legal counsel, at their own cost, may accompany any of the parties.
  - h) If the matter under appeal relates to team selection, any person potentially affected by the decision of the panel shall become a party to the appeal.
  - i) The Panel may direct that any other individual participate in the appeal.
  - j) In the event that a Panel member is unable or unwilling to continue with the appeal, a new member will be sought out and appointed or the Panel shall be dissolved and a new Panel formed.
  - k) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.
  
11. In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a conference call or videoconference.

### **Appeal Decision**

12. Within 10 days of concluding the appeal, the Panel shall issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide to:
  - Void or confirm the decision being appealed.
  - Vary the decision where it is found that an error occurred and such error cannot be corrected by the original decision-maker for reasons which included but are not limited to, lack of clear procedure, lack of time, or lack of neutrality.
  - Refer the matter back to the initial decision-maker for a new decision

- Determine how costs of the appeal shall be allocated, if at all
13. A copy of the decision shall be provided to each of the parties and the BC Diving President.

#### **Timelines**

14. If the circumstances of the dispute are such that this policy will not allow a timely appeal, the Panel may direct that these timelines be abridged. If the circumstances of the dispute are such that the appeal cannot be concluded within the timelines dictated by this policy, the Panel may direct that these timelines be extended.

#### **Documentary Appeal**

15. Any party to the appeal may request that the Panel conduct the appeal by way of documentary evidence. The Panel may seek agreement from the parties to proceed in this fashion. If agreement is not forthcoming, the Panel shall decide whether the appeal shall proceed by way of documentary evidence or an in-person hearing.

#### **Arbitration**

16. All differences or disputes shall be submitted first to appeal pursuant to the appeal process set out in this policy. If any party believes that Appeal Panel has made an error such as those described in Section 5 of this policy, the matter shall be referred to arbitration. Such arbitration shall be administered under the Alternate Dispute Resolution (ADR) Program for Amateur Sport and its Rules of Arbitration, as amended from time to time.
17. Should a matter be referred to arbitration, all parties to the original appeal shall be parties to the arbitration.
18. The parties to arbitration shall enter into a formal Arbitration Agreement and the decision of any arbitration shall be final and binding and not subject to any further review by any court of competent jurisdiction or any other body.

#### **Location and Jurisdiction**

19. Any appeal shall take place in the Province of BC, unless held by way of telephone conference call or held elsewhere as may be decided by the Panel as a preliminary matter.
20. This policy shall be governed and construed in accordance with the laws of Province of BC.
21. No action or legal proceeding shall be commenced against BC Diving in respect of a dispute, unless BC Diving has refused or failed to abide by the provisions for appeal and /or arbitration of the dispute, as set out in this policy.

**APPENDIX C**

**CANADIAN AMATEUR DIVING ASSOCIATION (BC SECTION)  
BC DIVING INCIDENT REPORT**

Date and time of incident: \_\_\_\_\_

Name of writer: \_\_\_\_\_ Position: \_\_\_\_\_

Location of incident: \_\_\_\_\_

This incident is a: \_\_\_\_\_ minor infraction \_\_\_\_\_ major infraction

Individual(s) involved in the incident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Objective description of the incident (please be concise, accurate and non-judgmental):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names of individuals who observed the incident: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Disciplinary action that was taken (if applicable): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Writer: \_\_\_\_\_ Date: \_\_\_\_\_