

Manitoba Badminton Association - Appeal Policy

Definitions

1. The following terms have these meanings in this Policy:
 - a) *Appellant*: The individual appealing a decision of the Association;
 - b) *Association*: Manitoba Badminton Association Inc., including any authorized individual or committee acting on its behalf;
 - c) *Case Manager*: The secretary of the association's board of directors will serve as the Case Manager. In the case of a conflict of interest, the board of directors will nominate another member of the board as the Case Manager;
 - d) *Conflict of Interest*: a fact, circumstance or interest sufficient to create a material influence, or a reasonable (objective) perception of a material influence, on an individual's ability to perform his/her duties under this policy impartially (without bias);
 - e) *Days*: Refers to calendar days, including weekends and holidays;
 - f) *Member(s)*: Any registered member(s) of the Association;
 - g) *Parties*: The Appellant, Respondent, and any other Individual(s) directly affected by the appeal and identified as Party(ies) to the proceeding by the Case Manager;
 - h) *Respondent*: The Association, or authorized individual or committee acting on its behalf, whose decision is under appeal.

Purpose

2. The purpose of this appeal policy is to enable disputes with Members to be dealt with and determined in a fair, expeditious, private and affordable manner, in lieu of any recourse to formal legal or court-like procedures.

Application of this Policy

3. This Policy applies to all Members of the Association. Any Member who is directly affected by a decision of the Association may appeal that decision, in accordance with the terms of this policy. Only those appeals which satisfy the "Grounds for Appeal" set out below, will be referred to the Appeal Panel for determination. This Policy does not apply to any employee of the Association with respect to their employment, for any reason.
4. This Policy **will apply** to decisions made by the Association relating to:
 - a) Eligibility;
 - b) Athlete Selection;
 - c) Conflict of Interest;
 - d) Discipline; and
 - e) Membership.
5. This Policy **will not apply** to decisions relating to:
 - a) Employment;
 - b) Infractions for doping offenses;
 - c) The rules of the Association;

- d) Decisions made by entities other than the Association, such as Sport Manitoba or Badminton Canada;
- e) Budgeting and budget implementation;
- f) The Association's operational structure and committee appointments;
- g) Decisions or discipline arising within the business, activities, or events organized by entities other than the Association (appeals of these decisions must be dealt with pursuant to the policies of those other entities, unless otherwise authorized by the Association at its sole discretion);
- h) Decisions made under this Policy.

Timing of Appeal

6. Members who wish to appeal a decision of the Association have twenty-one (21) days, from the date on which they received notice of the decision, to submit, in writing to the Association, the following:
 - a) Notice of the intention to appeal;
 - b) Contact information 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 a detailed description of the decision if there is no documentation available;
 - f) Grounds for the appeal, as set out in section 8 of this policy (below);
 - g) All evidence relied upon by the appellant to support these grounds of appeal; and
 - h) Requested remedy or remedies.
7. Any appellant who wishes to initiate an appeal beyond the twenty-one (21) day period must provide a written request, as soon as possible, setting out the reasons for the delay and any grounds for requesting an extension of time to file the appeal. The decision to allow, or not allow, an appeal received by the Association beyond of the twenty-one (21) day period will be at the sole discretion of the Case Manager and is final and binding and not subject to appeal or review.

Grounds for Appeal

8. A decision of the Association cannot be appealed on its merits alone. An appeal will only be considered and determined by the Appeal Panel if there are sufficient grounds for appeal. Sufficient grounds for appeal are limited to assertions that the Respondent:
 - a) Made a decision that it did not have authority or jurisdiction (as set out in the relevant governing documents) to make;
 - b) Failed to follow its own procedures (as set out in the relevant governing documents);
 - c) Made a decision that was materially influenced by a conflict of interest or bias; or
 - d) Failed to consider important objective information advanced by a Party.
9. The Appellant bears the onus of proof and must demonstrate, on a balance of probabilities, the occurrence of one or more grounds of appeal as set out in Section 8 (eight) of this Policy and that

such circumstances had, or may reasonably have had, a material effect on the decision of the Respondent.

Screening of Appeal

10. Within seven (7) days of receiving a notice of appeal under section 6 of this policy, the Association will appoint a Case Manager and respond, in writing, to the appeal. The Association's response will be sent to the Parties to the appeal and must set out:
 - a) The name(s) of the individual(s) or committee(s) who rendered the decision being appealed, if different than as set out in the notice of appeal;
 - b) The date the appellant or affected Member was advised of the decision being appealed, if different than as set out in the notice of appeal;
 - c) A copy of the decision under appeal, or a detailed description of the decision if different than as set out in the notice of appeal;
 - d) The Respondent's response to the grounds advanced in the notice of appeal;
 - e) All evidence relied upon by the Respondent(s) to support the decision under appeal; and
 - f) Any other information relevant to the appeal.
11. Within fourteen (14) days of being appointed, the Case Manager will:
 - a) Determine if the appeals falls under the scope of this policy;
 - b) Determine if the appeal was submitted in a timely manner, or whether the time limitations for appeal should be exempted or extended;
 - c) Determine if any person(s) are directly affected by the appeal, such that they should be added as Party(ies) to the appeal;
 - d) Determine if there are proper and sufficient grounds for the appeal, as set out in section 8 of this policy.
12. The Case Manager will advise the Parties of the determinations made under section 11 of this policy, in writing. The decision of the Case Manager with respect to any issue under section 11 of this policy is final and binding and is not subject to review or appeal.
13. Where a notice of appeal has met the requirements of this policy, as determined by the Case Manager under section 11, the Case Manager will request the board of directors to appoint an Appeal Panel to hear, consider and determine the appeal. The Appeal Panel will consist of a panel of three individuals. The board of directors will appoint one of the Panel members to serve as the Chair.
14. Every Appeal Panel member must, as a condition to sitting on the Appeal Panel, provide to the Case Manager written confirmation that he/she:
 - a. Has no significant relationship with any of the affected parties;
 - b. Has no involvement with the matters under appeal;
 - c. Is not aware of any fact or circumstance that would create an actual or perceived conflict of interest, and/or detailing any such fact or circumstance.

Procedure for Appeal Hearing

15. The Case Manager will notify the Parties of the names of the individuals selected to the Appeal Panel, and schedule a date for an initial conference call.

16. During the initial conference call, the Appeal Panel will consider and determine the following issues:
 - a. The format of appeal;
 - b. The date and location for the hearing, if applicable;
 - c. Timelines for the exchange of documents;
 - d. Clarification of issues in dispute;
 - e. Clarification of evidence to be presented to the Appeal Panel;
 - f. Order and procedure of hearing;
 - g. Any procedural matter raised by the parties;
 - h. Clarification of remedies sought; or
 - i. Any other matter that may assist in expediting the appeal proceedings.
17. The Appeal Panel will consult with the Case Manager and determine the format to be used for the appeal, which 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 decision with respect to the format of appeal is final and binding and not subject to appeal or review.
18. The Case Manager will advise the Parties of any preliminary determinations made by the Appeal Panel under section 16 of this policy, following the initial conference call.
19. The Case Manager must be copied with, or included in, all communications between the Appeal Panel and the parties to the appeal. The Appeal Panel must not communicate with one Party to an appeal without the knowledge of all other Parties to the appeal.
20. The appeal hearing will be governed by the procedures established by the Appeal Panel, provided that:
 - a) The appeal will be determined within the timelines directed by the Case Manager;
 - b) The Parties will be given reasonable notice 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 Appeal Panel may request that any other individual participate and give evidence at the hearing and may draw adverse inferences against a Party for not calling witnesses or introducing evidence that was available;
 - f) The Appeal Panel may refuse to allow any evidence that is irrelevant, inherently unreliable, or prejudicial;
 - g) The decision to uphold or reject the appeal will be by a majority vote of Panel members; and
 - h) The Appeal Panel shall only have the authority necessary to determine the specific issues raised on appeal. As soon as the Appeal Panel has issued a written decision, as contemplated below, it is *functus officio* and shall only have jurisdiction to clarify the decision, as and when requested by a Party to the appeal, or by the Case Manager.

Appeal Decision

21. The Appeal Panel must consider and render a written decision on the appeal, which shall be issued to the Case Manager, within seven (7) days of the conclusion of the hearing. The Case Manager will review the decision to ensure that the Appeal Panel has met the requirements of this policy. Once approved, the Case Manager will communicate the written decision to the Parties, concurrently and in writing, within fourteen (14) days of the conclusion of the hearing. In cases of urgency, the Case Manager may direct that the Appeal Panel render a decision within such shorter time as may be required.
22. On determining an appeal, the Appeal 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.
23. The Appeal Panel shall have no authority or jurisdiction over the Association or the Parties, other than as expressly set out in this policy.
24. The decision of the Appeal Panel is final and binding and is not subject to further appeal, judicial review or any other form of review. No action or legal proceeding will be commenced against the Association with respect to any matter covered under this policy.

Confidentiality

25. The appeal process set out in this policy is intended to be private and confidential. The Parties to an appeal undertake not to use or rely upon any information or records disclosed during the appeal, for any purpose other than for the purposes of the appeal.
26. All information received by the Appeal Panel shall be considered confidential and shall not be relied upon, used or disclosed to anyone, other than as expressly required to determine the appeal in accordance with this policy. Upon conclusion of an appeal, the Appeal Panel shall promptly return to the Case Manager any and all information and/or records received by the Panel with respect to the appeal.

Manitoba Badminton Association Inc.

Board Approval Date: January 26, 2016