

APPEAL POLICY

Type: Governance

Policy Number: 21

Authority: Board of Directors

**Date
Approved:
January 2022**

21.1 Rationale:

This policy is designed to provide rules and regulations for all members that pertain to any appeal proceedings.

21.2 Guidelines and Procedures:

1. Purpose

Manitoba Water Polo Association (hereinafter "MWPA") recognizes the right of any Member to appeal the decisions of MWPA and hereby provides for an appropriate process for resolving disputes that could arise from time to time from such decisions of MWPA.

The purpose of this appeal policy is to enable disputes with Members to be dealt with fairly, expeditiously, and affordably within MWPA, without having to have recourse to formal legal and court-like procedures.

2. Definitions

- a) Appeal Form: Refers to an Appeal submitted by the Appellant(s) attached as Appendix B;
- b) Appellant: Refers to a Member appealing a decision of MWPA;
- c) Affected Party: Means any Member who could be potentially affected by the decision of the Appeal Panel and that has been added to the Appeal as a Party;
- d) Arbitration: Refers to the arbitration process as established by the SDRCC Code, as amended from time to time;
- e) Board of Directors: Means the Board of Directors or one of its Committee of MWPA;
- f) Case Manager: Refers to a neutral organization or individual responsible for managing the Appeal on behalf of MWPA where the Executive Director is in conflict of interest;
- g) Days: Means total days, irrespective of weekends or holidays;
- h) Mediation: Refers to the mediation process as established by the SDRCC Code, as amended from time to time;
- i) Panel or Appeal Panel: Refers to the Appeal panel established as provided by Section 7;
- j) Party or Parties: Means the Appellant, the Respondent and the Affected Party;

- k) Member: Refers to members as defined in MWPA' by-laws as amended from time to time;
- l) Respondent: Refers to the body, committee, person or persons whose decision is being appealed;
- m) SDRCC: Means the Sport Dispute Resolution Centre of Canada or its successor;
- n) Working Days: Means total days, excluding weekends and holidays;
- o) Written Response: Refers to the response submitted by the Respondent(s), attached as Appendix C.

3. Scope of Appeal

3.1. Any Member of MWPA who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors or of any body or individual who has been delegated authority to make decisions on behalf of MWPA or its Board of Directors, will have the right to appeal that decision, provided there are sufficient grounds for the appeal, as set out in Section 8.

3.2. A Member may have a decision reviewed by the Executive Director before beginning the appeal process set out herein.

3.3. Without limiting the scope of section 3.1, this appeal policy will not apply to decisions relating to:

- a) The technical and competition rules of WPC and FINA and field of play disputes may not be appealed;
- c) Disciplinary matters arising during events organized by entities other than MWPA, which are dealt with under the policies of these other entities, provided that they have an appeal policy in place;
- d) Criminal offences for which the Appellant(s) is/are seeking a criminal conviction;
- e) Commercial and employment matters for which other legal recourses already exist under applicable laws or contracts; or
- f) Decisions that are outside the scope of the present appeal policy as described by MWPA by-laws as amended from time to time.
- g) Decisions rendered by Water Polo Canada;
- h) This appeal policy will not apply to decisions related to the National Championship League (NCL)

4. Timing for Appeal

4.1. Members who wish to appeal a decision will have seven (7) days from the date they received notice of the decision to submit their Appeal Form to the Executive Director or Case Manager.

4.2. Any Member wishing to submit the Appeal Form beyond the twenty-one (21) day period must provide a written request stating reasons for an exemption to the requirement of Sub-section

4.3. The decision as to whether to allow the exemption, as provided by Sub-section 4.2, will be at the discretion of the Panel, as established in conformity with Section 7.

PROCEDURE

5. Appeal Form and Discussion

5.1. Members who wish to appeal a decision of MWPA that affects them must apply to the Executive Director or Case Manager to initiate the appeal process using the Appeal Form (see Appendix B). The appeal process does not begin until such application is made.

5.2. The Appeal Form will state:

- a) The name(s) of the Appellant(s);
- b) The coordinates of the Appellant(s);
- c) The name(s) of the Respondent(s);
- d) When available, the name(s) of any Registrant (also called Affected Party), who might be potentially affected by the decision of the Appeal Panel;
- e) The decision being appealed;
- f) The grounds for the appeal;
- g) A summary of the evidence that supports these grounds;
- h) If applicable, a list of the witnesses to be called at the hearing, with a summary of the evidence to be provided by them;
- i) The remedy sought;
- j) Whether or not representative(s) will be present; and
- k) The request for timing-exemption, as provided by Sub-section 4.2, when required.

5.3. Before proceeding further, the Executive Director or Case Manager will make reasonable attempt to ensure that the Appellant(s) and the Respondent(s) have attempted to resolve the dispute privately between themselves. If, in the opinion of the Executive Director or Case Manager, as applicable, the Appellant(s) and the Respondent(s) have made reasonable attempts to resolve the dispute privately, and that resolution is unlikely in the reasonable foreseeable future, the Executive Director or Case Manager, as applicable, shall proceed pursuant to the terms hereunder.

5.4. The Appellant shall pay a filing fee of \$250. The Panel may determine, at its discretion, when rendering its decision if such filing fee shall be reimbursed to the appellant. Many criteria will be used for determining whether the filing fee should be returned including, without limitation, whether the Appeal Panel believes the Appeal was frivolous or vexatious. Unless MWPA waives or delays the payment of the filing fee, the Appeal will not proceed until the filing fee is paid by the appellant to MWPA.

6. Written Response by Respondent and Affected Party

6.1. If the attempt to resolve the dispute through discussion between the parties fails, the Executive Director or Case Manager will request a Written Response by the Respondent(s) (see Appendix C) outlining the justification for the decision or the practice being appealed.

6.2. The Written Response will contain:

- a) A summary of the evidence that supports the Respondent(s)' case;
- b) If applicable, the list of witnesses to be called at the hearing and the summary of the evidence to be provided by them;
- c) Whether or not representative(s) will be present;
- d) When available, the name(s) of any Member (also called Affected Party), who might be potentially affected by the decision of the Appeal Panel;

6.3. The Written Response of the Respondent shall be forwarded to the Executive Director or Case Manager within five (5) working days of the date of receipt of the Appeal Form by the Executive Director or Case Manager, or such longer period as the Executive Director or Case Manager may specify.

6.4. The Executive Director or Case Manager must forward a copy of the Written Response to the Appellant(s) and the Affected Party (s) without delay after receipt.

6.5. If requested by the Affected Party, such Affected Party shall have five (5) days upon receipt of the Written Response to file submissions.

6.6. Should the Respondent(s) fail to submit the Written Response within the time-limit provided by Sub-section 6.3, the Executive Director or Case Manager will initiate the establishment of the Panel without further delay and notify the Parties of such decision.

7. Appointment of the Appeal Panel

7.1. Within ten (10) days of having received the Appeal Form, the Executive Director or Case Manager will appoint an Appeal Panel as follows:

- a) The Panel will be comprised of three (3) individuals who shall determine among themselves who shall act as chairperson of the Panel;
- b) The Appeals Panel members must have no significant relationship with the Parties;
- c) The Appeals Panel members must have no involvement with the decision being appealed; and
- d) The Appeals Panel members must be free from any actual or perceived bias or conflict of interest.

7.2 As soon as they are appointed, the members of the Panel will be forwarded a copy of the Appeal Form and Written Response and submissions of the Affected Party, when applicable.

7.3 The Panel shall have the authority to determine its own jurisdiction and any requests related to issues of conflict of interest.

8. Grounds for Appeal

8.1. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include, but are not limited to, the Respondent:

- a) Making a decision for which it did not have authority or jurisdiction, as set out in governing documents;
- b) Failing to follow procedures as laid out in the by-laws or approved policies of MWPA;
- c) Making a decision which 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 or that the decision was made on the basis of, or significantly influenced by, factors unrelated to the merits of the decision.
- d) Exercising its discretion for an improper purpose; and
- e) Making a decision that was grossly unreasonable or unfair.

9. Screening of Appeal

9.1. Within two (2) working days of receiving the Appeal Form, the Panel will determine whether there are appropriate grounds for the appeal, as set out in Sub-section 8.1 above.

9.2. The facts as alleged by the Appellant(s) in the Appeal Form shall be presumed to be correct unless such facts are, to the knowledge of one or more of the Panel members, clearly erroneous.

9.3. If the appeal is denied because of insufficient grounds, the Parties will be notified in writing without delay, of this decision and its reasons.

9.4. If the Appellant(s) believe the Panel has made an error in denying the right to appeal a decision, the matter may be referred to Arbitration or Mediation. Such Arbitration or Mediation is to be administered under the SDRCC Code, as amended from time to time.

10. Preliminary Conference

10.1. Should the Panel determine that the Appeal presents sufficient grounds to hear the Appeal, the Panel will, within seven (7) days of receiving the Appeal Form and Written Responses, hold a preliminary conference to consider various preliminary issues, such as, but not limited to, the following:

- a) Date and location of the hearing;
- b) Timelines for exchange of documents;
- c) Format of the appeal (written or oral submissions or a combination of both);
- d) Clarification of issues in dispute;

- e) Clarification of evidence to be presented to the Panel;
- f) Order and procedure of hearing;
- g) Any procedural matter;
- h) Clarification of remedies sought; and
- i) Any other matter that may assist in expediting the appeal proceedings.

10.2. The preliminary conference can be held by conference-call or in person, depending on the circumstances. This decision is at the sole discretion of the Chairperson and may not be appealed.

10.3. The participants in the preliminary conference shall be the Appellant(s), the respondent(s), the Affected Party (s), their representatives, if any, the Executive Director or Case Manager and the Panel.

10.4. The Chairperson and the Executive Director or Case Manager shall arrange the preliminary conference and its precise date and time in concert with the participants.

10.5. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

10.6. The Case Manager shall act as secretary of the preliminary conference and shall confirm in writing to the Appellant(s), Respondent(s) and Affected Party (s) the appeal procedure established at this preliminary conference within two (2) working days after the conclusion of such conference and after having received the written confirmation approved by the Panel.

11. Procedure for the Appeal

11.1. The Panel shall govern the hearing by such procedures as it deems appropriate, provided that the following directives be applied:

- a) The appeal shall be heard as quickly as reasonably possible and no later than ten (10) days from the appointment of the Panel, unless otherwise agreed to by all Parties or determined by the Panel under exceptional circumstances, having regard to the nature of the appeal, and the circumstances of the case;
- b) All three (3) members of the Panel shall hear the appeal, but a majority in favor of the same result shall be sufficient to affect a decision;
- c) Each Party shall have the right to be represented at the hearing;
- d) Copies of any written documents which any of the Parties would like the Panel to consider shall be provided to the Panel and to all Parties, within the time limits established during the preliminary conference or by the Panel;
- e) The appeal may proceed on the basis of written submissions and documentation if all Parties to the appeal consent;
- f) The Panel may direct that any other person or party participate in the appeal;

g) If the decision of the Panel 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) For sake of expediency and cost reduction, a hearing either by way of written submissions, via telephone conference or video conference is to be preferred, with such safeguards as the Panel considers necessary to protect the interests of the parties;

i) 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; and

12. Procedure for Documentary Appeal

12.1. Where the Panel has determined that the appeal will be held by way of written submissions, it will govern the appeal by such procedures as it deems appropriate provided that:

a) All Parties are given a reasonable opportunity to provide written submissions to the Panel, to review written submissions of the other parties and to provide written rebuttal and argument.

b) The applicable principles and timelines set out in Section 11 are respected.

13. Evidence that may be considered

13.1. As a rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new material evidence that was not available at the time of the original decision.

13.2. The Panel will determine if an additional element of proof should be admitted or rejected where the preliminary conference has taken place.

13.3. If a Party believes the Panel has made an error in admitting or rejecting an additional element of proof as provided by Sub-section 13.2, the matter may be referred to Arbitration or Mediation. Such Arbitration or Mediation is to be administered under the SDRCC Code, as amended from time to time.

14. Appeal Decision

14.1. Unless otherwise agreed to by all Parties or determined by the Panel in exceptional circumstances, the Panel will issue its written decision with reasons within ten (10) days of concluding the appeal's hearing. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide:

a) To reject the appeal and confirm the decision being appealed;

b) To uphold the appeal and refer the matter back to an alternate decision-maker for a new decision. Such new decision shall be final and may be appealed directly for arbitration or mediation at the SDRCC;

c) To uphold the appeal and vary the decision, where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reason of lack of clear procedure, lack of time or lack of neutrality; or

d) To determine how costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be allocated, if at all. When granting such costs, the Panel shall take into account the outcome of the proceedings, the conduct of the parties and their respective financial resources.

14.2. A copy of this decision will be provided to each of the Parties and to the Executive Director and Case Manager.

14.3. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided that the written decision with reasons is rendered within the timelines specified in Sub-section 14.1.

15. Modification of Timelines

15.1. If the circumstances of the dispute are such that this policy will not allow a timely appeal, or if the circumstances of the dispute are such that the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be revised.

16. Arbitration and Mediation

16.1. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy.

16.2. Any final decision made by the Panel that may lead to irreversible consequences for one of the parties may be exclusively submitted by way of application to the SDRCC or its successor, which will resolve definitively the dispute in accordance with the SDRCC Code, as amended from time to time.

16.3. Should a matter be referred to Arbitration or Mediation, all parties to the original appeal shall be parties to this Arbitration or Mediation.

16.4. The award rendered by the SDRCC or its successor shall be final and binding upon the parties.

APPENDICES:

APPENDIX B – APPEALS FORM

Date: _____

Contact Information:

Name of Appellant: _____ Age: _____

Address of Appellant: -

Telephone: _____ Email: _____

Name of Representative (if any): _____

Telephone: _____ Email: _____

Decision:

What decision or practice do you wish to appeal?

Why do you think the decision is wrong or unfair?

When was that decision taken?

Respondent:

Who made the decision?

Grounds:

Grounds for the Appeal (arguments):

Summary of the evidence that supports these grounds. (i.e., documents, pictures, rules, By-laws, etc.)

Affected Party:

When available, provide the names and contact information of any member who might be potentially affected by the decision of the Appeal Panel.

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Witnesses:

List of Witnesses to be called at the hearing.

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Remedy:

What action or decision do you want MWPA to take or make to correct the situation?

Signature:

Claimant's Name: _____

Claimants' Signature: _____

Date: _____

APPENDIX C – WRITTEN RESPONSE

Date: _____

Contact Information:

Name of Respondent: _____ Age: _____

Address of Respondent: -

Telephone: _____ Email: _____

Name of Representative (if any): _____

Telephone: _____ Email: _____

Justification:

Justification for the decision or practice being appealed (reasons):

Summary of evidence that supports this justification.

Affected Party:

When available, provide the names and contact information of any member who might be potentially affected by the decision of the Appeal Panel.

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Witnesses:

List of Witnesses to be called at the hearing.

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Name: _____

Address: _____

Summary of evidence:

Signature:

Respondent's Name and Committee:

Respondent's Signature: _____ Date:
