



## Basketball Nova Scotia Appeal Policy

### Definitions

The following terms have these meanings in this Policy:

“Appellant” – The Party appealing a decision

“Association” - Basketball Nova Scotia

“Case Manager” – An individual appointed by the Association, who may be any Association Staff, Committee member, Volunteer, Director, or an independent third party, to oversee this Appeal Policy.

“Days” – Any day of the week, including weekends and holidays

“Individuals” – All categories of membership defined in the Association’s Bylaws, as well as all individuals engaged in activities with the Association including, but not limited to, athletes, coaches, managers, officials, volunteers, and committee or board members of the Association.

“Parties” – The Appellant, Respondent, and any other Individuals or persons affected by the appeal

“Respondent” – The party whose decision is being appealed

### Purpose

The Association is committed to providing an environment in which all Individuals involved with the Association are treated with respect. The Association provides Individuals with this Appeal Policy to enable fair, affordable, and expedient appeals of certain decisions made by the Association.

### Scope and Application of this Policy

This Policy applies to all Individuals. Any Individual who is directly affected by an Association decision shall have the right to appeal that decision; provided there are sufficient grounds for the appeal under the ‘Grounds for Appeal’ section of this Policy. This Policy does not apply to any Association employees as such matters are governed by the Association’s policies that expressly apply to its employees.

This Policy **will apply** to decisions made by the Association relating to:

- Eligibility
- Conflict of Interest
- Discipline
- Membership

This Policy **will not apply** to decisions relating to:

- Employment

- Infractions for doping offenses
- The rules of sport
- Athlete Selection, selection criteria, quotas, policies, and procedures established by entities other than the Association
- Substance, content and establishment of team selection criteria
- Volunteer/coach appointments and the withdrawal or termination of those appointments
- Budgeting and budget implementation
- The Association's operational structure and committee appointments
- Decisions or discipline arising within the business, activities, or events organized by entities other than the Association (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless accepted by the Association at its sole discretion)
- Decisions or discipline arising within competition
- Decisions made under this Policy

### **Timing of Appeal**

Individuals who wish to appeal a decision 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:

- Notice of the intention to appeal
- Contact information of the appellant
- Name of the respondent and any affected parties
- Date the appellant was advised of the decision being appealed
- A copy of the decision being appealed, or description of decision if written document is not available
- Grounds for the appeal
- Detailed reasons for the appeal
- All evidence that supports these grounds
- Requested remedy or remedies

An Individual who wishes to initiate an appeal beyond the twenty-one (21) 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 twenty-one (21) day period will be at the sole discretion of the Case Manager and may not be appealed.

### **Grounds for Appeal**

A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds are limited to submissions that include the Respondent:

- Made a decision that it did not have authority or jurisdiction (as set out in the relevant governing documents)
- Failed to follow its own procedures (as set out in the relevant governing documents)
- 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 is unable to consider other views)

- Failed to consider relevant information or took into account irrelevant information in making the decision

The Appellant bears the onus of proof and must demonstrate, on a balance of probabilities, the occurrence of one of the circumstances 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 or decision-maker.

### **Screening of Appeal**

Upon receiving the notice of the appeal, and all other information (outlined in the 'Timing of Appeal' section of this Policy), the Association will review the appeal and attempt to resolve the appeal by mediation.

Should the mediation fail to resolve the appeal, the Association will appoint an independent third-party Case Manager who has the following responsibilities:

- Determine if the appeal falls under the scope of this Policy
- Determine if the appeal was submitted in a timely manner
- Decide whether there are sufficient grounds for the appeal

If the appeal is denied 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.

If the Case Manager is satisfied that the appeal should not be denied as provided in Section 12 (twelve) of this Policy, the Case Manager will appoint an Appeals Panel which shall consist of a single Panel Member to hear the appeal. At the discretion of the Case Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Case Manager will appoint one of the Panel's members to serve as the Chair.

### **Procedure for Appeal Hearing**

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

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

The format of the hearing 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 hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate in the circumstances, provided that:

- The hearing will be held within the appropriate timeline determined by the Case Manager
- The Parties will be given reasonable notice of the day, time and place of the hearing

- 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
- The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
- The Panel may request that any other individual participate and give evidence at the hearing
- 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
- If a decision in the appeal may affect another person to the extent that the other person would have recourse to an appeal in their own right under this Policy, that person will become a party to the appeal in question and will be bound by its outcome
- The decision to uphold or reject the appeal will be by a majority vote of Panel members

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

### **Appeal Decision**

The Panel shall issue its decision, in writing and with reasons, after the hearing's conclusion. The Panel may decide to:

- Reject the appeal and confirm the decision being appealed
- Uphold the appeal and refer the matter back to the initial decision-maker for a new decision
- Uphold the appeal and vary the decision

The Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and the Association. 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.

### **Confidentiality**

The appeals process is confidential and involves only the Parties, the Case 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.

Appeal decisions that are matters of public interest shall be publicly available with the names of the individuals redacted. Names of persons disciplined/affected may be disclosed to the extent necessary to give effect to any decision imposed.

### **Final and Binding**

The decision of the Panel will be binding on the Parties and on all Individuals associated with the Association.

No action or legal proceeding will be commenced against the Association or Individuals in respect of a dispute, unless the Association has refused or failed to provide or abide by the dispute resolution

process and/or appeal process as set out in the Association's policies, procedures, rules and regulations.

**APPROVAL**

This policy was developed and adopted by the Basketball Nova Scotia Board of Directors on Sunday, October 23, 2016.