



BASKETBALL NEW BRUNSWICK

APPEAL POLICY

(Adapted from Canada Basketball)

Definitions

1. These terms will have these meanings in this Policy:
 - a) *"Appellant"* – The Party appealing a decision.
 - b) *"Days"* – Days including weekends and holidays.
 - c) *"Case Manager"* – An individual appointed by Basketball New Brunswick (BNB) who may be any staff member, committee member, volunteer, Director, or an independent third party, to oversee this Policy. The Case Manager will have responsibilities that include, but are not limited to:
 - i. Ensuring procedural fairness;
 - ii. Respecting the applicable timelines; and
 - iii. Using decision-making authority empowered by this Policy.
 - d) *"Individuals"* – All categories of membership defined in BNB Bylaws, provided they are in good standing at the time the appeal is filed, as well as all individuals engaged in activities with BNB, including, but not limited to, Provincial Participants, athletes, coaches, administrators, committee members, officials, directors, officers, and managers.
 - e) *"Parties"* – The Appellant, Respondent, and any other Individuals affected by the appeal.
 - f) *"Respondent"* – the individual or body whose decision is being appealed.

Purpose

2. BNB is committed to providing an environment in which all Individuals involved with BNB are treated with respect and fairness. BNB provides Individuals with this *Appeal Policy* to enable fair, affordable, and expedient appeals of certain decisions made by BNB. Further, some decisions made by the process outlined in BNB's *Discipline and Complaints Policy* may be appealed under this Policy.

Scope and Application

3. This Policy applies to all Individuals. Any Individual who is directly affected by a decision by BNB 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.
4. This Policy **will apply** to decisions relating to:
 - a) Eligibility
 - b) Selection
 - c) Conflict of Interest
 - d) Discipline
 - e) Membership
5. This Policy **will not apply** to matters relating to:
 - a) Employment.

- b) Infractions for doping offences.
- c) The rules of the sport.
- d) Selection criteria, quotas, policies, and procedures established by entities other than BNB.
- e) Substance, content and establishment of team selection criteria.
- f) Volunteer/coach appointments and the withdrawal or termination of those appointments.
- g) Budgeting and budget implementation.
- h) BNB's operational structure and committee appointments.
- i) Decisions or discipline arising within the business, activities, or events organized by entities other than BNB (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by BNB at its sole discretion).
- j) Commercial matters for which another appeals process exists under a contract or applicable law.
- k) Decisions made under this Policy.

Timing of Appeal

6. Individuals who wish to appeal a decision listed under section 4 (above) will have seven (7) days from the date on which they received notice of the decision. **NOTE:** Decisions related to **athlete or coach** selection will have two (2) days to submit their appeal and the follow up process may be expedited. All appeals must be submitted in writing to the head office of BNB and include the following:
 - a) Notice of their intention to appeal.
 - b) Contact information and status of the Appellant.
 - 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 decision if written document is not available.
 - f) Grounds for the appeal.
 - g) Detailed reason(s) for the appeal.
 - h) All evidence that supports the reasons and grounds for an appeal.
 - i) The remedy or remedies requested.
 - j) A payment of one hundred dollars (\$100), which may be refundable.
7. Any party wishing to initiate an appeal beyond the time period listed above must provide a written request stating reasons for an exemption. The decision to allow, or not to allow an appeal outside the time period will be at the sole discretion of the Case Manager and may not be appealed.

Grounds for Appeal

8. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
 - a) Made a decision for which it did not have authority or jurisdiction to make, as set out in the Respondent's governing documents.
 - b) Failed to follow procedures as laid out in the bylaws or approved policies.
 - c) 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).
9. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the 'Grounds for Appeal' section of this Policy and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

Screening of Appeal

10. Upon receiving the notice of the appeal, the fee, and all other information (outlined in the 'Timing of Appeal' section of this Policy), BNB and the Appellant may first determine the appeal to be considered under BNB's *Dispute Resolution Policy*.
11. Appeals resolved by mediation under BNB's *Dispute Resolution Policy* will cause the administration fee to be refunded to the Appellant.
12. Should the appeal not be resolved by using the *Dispute Resolution Policy*, BNB will appoint an independent Case Manager (who must not be in a conflict of interest) who has the following responsibilities:
 - a) Determine if the appeal falls under the scope of this Policy
 - b) Determine if the appeal was submitted in a timely manner
 - c) Decide whether there are sufficient grounds for the appeal
13. 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.
14. If the Case Manager is satisfied there are sufficient grounds for an appeal, the Case Manager will appoint an Appeals Panel which shall consist of a single Arbitrator, to hear the appeal. In extraordinary circumstances, and 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 the Hearing

15. 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. The Case Manager will determine whether the appellant is to be excluded or reinstated in participation in BNB programming until the conclusion of the appeal process.
16. If a Party chooses not to participate in the hearing, the hearing will proceed in any event.
17. 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, 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:
 - a) The hearing will be held within the appropriate timeline determined by the Case Manager.
 - b) The Parties will be given reasonable notice of the day, time and place 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 in accordance with the appropriate timeline.
 - d) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense.
 - e) The Panel may request that any other individual participate and give evidence at the hearing or request further information from the Parties.
 - f) 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.
 - g) If a decision in the appeal 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) Decisions of the Panel will be by majority vote of Panel members.

Appeal Decision

18. Within fourteen (14) days of the hearing's conclusion, the Panel will issue its written decision, with reasons. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide to:
- a) Reject the appeal and confirm the decision being appealed; or
 - 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.
19. The decision will be considered a matter of public record. A copy of this decision will be provided to the Parties and to BNB. Where time is of the essence, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reasons is rendered within the appropriate timelines.

Confidentiality

20. The appeal process is confidential involving only the parties, the Case Manager and the Panel. Once initiated and until a written decision is released, none of the parties or the Panel will disclose confidential information relating to the appeal to any person not involved in the proceedings.

Timelines

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

Final and Binding Decision

22. The decision of the Panel will be final and binding upon the parties and upon all members of BNB subject to the right of any party to seek a review of the Panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC), as amended from time to time.

Review and Approval

23. This Policy was reviewed and approved by the BNB Board of Directors on June 4th, 2020.