



# Team BC and BC Summer Games Athlete Appeal Policy

## Definitions

- 1) These terms will have these meanings in this policy:
  - a) "*Appellant*"- The party appealing a decision.
  - b) "*Days*" - Days irrespective of weekends or holidays.
  - c) "*Respondent*" - The body whose decision is being appealed.
  - d) "*Athlete*"- Team BC Athlete, which has a current signed Team BC Athlete – Softball BC Commitment and Agreement on file with Softball BC.
  - e) "*MOB*"- The member of the Board of Directors of British Columbia Amateur Softball Association (Softball BC) who is responsible for the Team BC Program. This position/person could change yearly.

## Purpose

- 2) The purpose of this Policy is to enable disputes with an Athlete to be dealt with fairly, expeditiously and affordably, within Softball BC and without recourse to external legal procedures.

## Scope and Application of this Policy

- 3) Any Athlete, subject to the provisions of Section 4 and 5, of Softball BC who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of anybody or individual who has been delegated authority to make decisions on behalf of the 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 of this policy.
- 4) This Policy will apply to decisions relating to conflict of interest, eligibility, selection, discipline, membership or any other matter deemed appropriate by Softball BC.
- 5) This policy will not apply to decisions relating to:
  - a) Matters relating to the playing rules of softball, which may not be appealed,
  - b) Matters relating to competitions in Canada but not governed by Softball BC.
  - c) Infractions for doping offences, which are dealt with pursuant to the *Canadian Anti-Doping Program* or any successor policy.
  - d) Matters relating to the substance, content and establishment of Team BC Selection criteria, which may not be appealed.
  - e) Matters that are decided by and within the jurisdiction of the general membership of Softball BC, such as the enactment of an amendment of the Constitution, By-Laws and Special Operating rules.
  - f) Matters of budgeting and budget implementation.
  - g) Matters of operational structure, committees, staffing, employment or volunteer opportunities.
  - h) Volunteer appointments and the withdrawal of those appointments by the Board of Directors.
  - i) Matters of employment, unless otherwise stated.



- j) Commercial Matters.
- k) Discipline matters and decisions arising during events organized by entities other than those within Softball BC which are dealt with pursuant to the policies of these other entities.
- l) Disputes arising within competitions which have their own appeal procedures.

## Timing of Appeal

- 6) Members who wish to appeal a decision will have forty-eight (48) hours to notify Softball BC of their intent to appeal, either electronically, or verbally, and seventy-two (72) hours from time of notification to submit, in writing, grounds for the appeal, a summary of evidence that supports these grounds and the remedy or remedies that are being sought to the Member of the Board of Directors of Softball BC responsible for the Team BC Program (the "MOB"). The notice of appeal must be accompanied by \$250.00 deposit (certified cheque or money order payable to Softball BC), refundable in case of a successful appeal.
- 7) Any party wishing to initiate an appeal beyond the seventy-two-hour period must provide a written request stating reasons for an exemption to the requirement of Section 6. The decision to allow, or not to allow, an appeal outside that period will be at the sole discretion of the MOB and may not be appealed.

## Grounds for Appeal

- 8) A decision cannot be appealed on its merits alone. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include 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 bylaws or approved policies of Softball BC; and/or
  - c) Failing to make its decision in accordance with criteria and/or principles established and approved by the appropriate body for the purpose of the decision in question.
- 9) The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made an error as described in Section 8

## Screening of Appeal

- 10) Upon receiving the notice of appeal, the MOB will review the notice, grounds and summary of evidence and will determine whether there is sufficient basis to support an appeal based on one or more of the grounds set out in Section 8. Sufficient evidence will mean that all of the evidence taken together, if unexplained or not contradicted, could support a finding of one or more of the grounds for an appeal as set out in Section 8 of this policy. If the MOB considers it appropriate in the circumstances, he/she may delegate this function to any other appropriate person.

- 11) If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the MOB (or designate) and may not be appealed.

## Appeals Panel

- 12) If the MOB (or designate) is satisfied that there are sufficient grounds for an appeal, he or she, in their sole discretion, shall establish an Appeals Panel (the "Panel") as follows:
- a) The Panel will be comprised of one (1) or three (3) individuals, at the MOB's sole discretion, to hear the appeal who will have no significant relationship with the affected parties, will have had no involvement with the decision being appealed, and will be free from any other actual or perceived bias or conflict.

## Administration of Panel

- 13) Appeals shall be administered by the Provincial Office of Softball BC under the direction of the Executive Director. Administration of the appeal(s) may be contracted by the ED of Softball BC to an outside source, or agency, and in the event that it is, all of the duties and functions of the ED or Softball BC as set forth herein will be carried out by such person or agency.
- 14) Where two or more Notices of Appeal have been delivered and it appears to the ED (or other person named to direct the administration of the appeals, if such to be the case) that:
- a) They have questions of interpretation or factual bases in common;
  - b) The appeals arise out of the same circumstance or decision or decision-making process; or
  - c) For any other reason there is sufficient commonality between or among the appeals that the appeals ought to be heard together, the ED (or other person named by the ED to direct the administration of the appeals, if such be the case) may determine and so advise the Appellants that the appeals will be heard together by the one and same Panel and in that event the appeals shall be heard in that manner and dealt with as if one appeal.
- 15) Should an Appellant dispute the determination to have an appeal heard together with another or other appeals, the Appellant's only recourse shall be to raise the matter as a preliminary objection with the Panel and the Panel will either allow or disallow the objection and provide appropriate directions so that the Appellant's appeal can be otherwise heard in the event that the Panel allows the objection.

## Preliminary Conference

- 16) The Panel may determine that the circumstances of the dispute warrant a preliminary conference:
- a) The matters which may be considered at a preliminary conference include date of hearing, timelines 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

- which may assist in expediting the appeal proceedings.
- b) In the case of a three (3) person Panel, the Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

## Documentary Panel

- 17) 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 other 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 documentary supplemented by telephone.

## Procedure for the Appeal

- 18) The Panel will govern the appeal by such procedures as it deems appropriate, provided that:
  - a) The appeal hearing shall be held within **10** days of the Panel's appointment.
  - b) The Appellant, Respondent and affected parties will be given **3** days' notice, either sent by fax, email, or courier, of the date and time of the appeal hearing.
  - c) In the case of a three (3) person Panel, the Panel's members shall select from themselves a Chairperson.
  - d) In the case of a three (3) person Panel, a quorum will be all three Panel members.
  - e) In the case of a three (3) person Panel, decisions will be by majority vote, where the Chairperson carries a vote.
  - f) In the case of a one (1) person Panel, a quorum will be the sole Panel Member, and the decisions will be made solely by the single Panel Member.
  - g) Copies of any written documents which any of the parties would like the Panel to consider will be provided to the Panel, and to all other parties, at least 3 days in advance of the hearing.
  - h) Any of the parties may be accompanied by a representative or advisor, including legal counsel.
  - i) If the matter under appeal relates to team selection, any person potentially affected by the decision of the Panel will become a party to the appeal. This is defined as a person whose continued participation in the sport may be directly or indirectly prejudiced by any decision of the Appeals Panel.
  - j) The Panel may direct that any other individuals participate in the appeal.
  - k) In the case of a three (3) person Panel and in the event that one of the Panel's members is unable or unwilling to continue with the appeal, the matter will be concluded by the remaining two Panel members.
  - l) Unless otherwise agreed by the parties, there shall be no communication between Panel member(s) and the parties except in the presence of, or by copy to, the other parties.
- 19) In order to keep costs to a reasonable level, the Panel will, as a normal course of action, conduct the appeal by means of a documentary hearing or documentary supplemented by telephone.

## Appeal Decision

- 20) Within 7 days of concluding the appeal, 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:
- a) To void or confirm the decision being appealed;
  - b) To vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
  - c) To refer the matter back to the initial decision-maker for a new decision; and
  - d) To determine how costs of the appeal shall be allocated, if at all.
- 21) The decision will be considered a matter of public record. A copy of this decision will be provided to the Parties and to Softball BC. 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.

## Timelines

- 22) 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 disputes are such that the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be extended.

## Confidentiality

- 23) The appeal process is confidential, and 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.

## Arbitration

- 24) All differences or disputes will first be submitted to appeal pursuant to the appeal process set out in this policy. If any party believes the Panel has made an error such as those described in Section 8 of this Policy, the matter shall be referred to arbitration, such arbitration to be administered under the Sport Dispute Resolution Centre of Canada or representatives from viaSport, as amended from time to time.
- 25) Should a matter be referred to arbitration, all parties to the original appeal shall be parties to the arbitration.
- 26) 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.



## **Jurisdiction**

- 27) This policy shall be governed and construed in accordance with the laws of the Province of British Columbia.
- 28) No action or legal proceeding shall be commenced against Softball BC in respect of a dispute unless Softball BC has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this policy.