

# **Manitoba Baseball Association**

## **APPEAL POLICY**

### **PURPOSE**

1. The purpose of this appeal policy is to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within Manitoba Baseball Association (MBA), without recourse to external legal procedures.

### **DEFINITIONS**

2. The following terms will have the meaning in this policy as hereinafter set forth:
  - a) *Days* -- will mean all days, whether weekdays, weekends or holidays;
  - b) *Member* -- means any and all categories of members in the MBA, as well as all individuals engaged in activities with or employed by the MBA, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, , administrators and employees, including contract personnel;
  - c) *Appellant* -- means the Member appealing a decision; and
  - d) *Respondent* -- means the person, team, league, association, committee, or entity whose decision is being appealed.

### **SCOPE OF APPEAL**

3. Any Member of the MBA who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors excluding the Management Committee, or of any person, team, league, association, committee, or entity who has authority to make a decision, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Paragraph 7 of this policy and any appeal fee established by the MBA is paid at the time the appeal is commenced. Such decisions may include, but are not limited to, contract matters, harassment, and discipline.
4. This policy will not apply to decisions relating to:
  - a) Matters of employment;
  - b) Infractions for doping offences, which are dealt with pursuant to the *Canadian Policy on Doping in Sport* and the *Canadian Doping Control Regulations*;
  - c) The interpretation and application of the rules of baseball, which may not be appealed;
  - d) Discipline matters arising during events organized by entities other than MBA, which are dealt with pursuant to the policies of those other entities; and
  - e) Any decisions made under Paragraphs 6 and 9 of this policy.

### **TIMING, FORM AND COST OF APPEAL**

5. Members who wish to appeal a decision will have 7 days from the date on which they received notice of the decision, to submit in writing notice of their intention to appeal, grounds for the appeal and a summary of the evidence that supports these grounds, to the Executive Director of the MBA (hereafter referred to as "Official").
6. Any party wishing to initiate an appeal beyond the 7 day period must provide a written request stating reasons for an exemption to the requirement of Paragraph 5. The decision to allow, or not to

allow an appeal outside the 7 day period will be at the sole discretion of the President of the MBA, and may not be appealed.

7. The MBA has established a \$1,000 bond to cover its administration costs that must be paid by any Appellant as a prerequisite to commencing an appeal. Any expenses incurred by the Appeal Committee will come from this bond, with the balance returned regardless of the outcome of the appeal. This bond will be refunded in full if the Appeal Committee does not incur expenses. Appeals will not proceed until the \$1000 bond is received.

### **GROUND FOR APPEAL**

8. Not every decision may be appealed. Decisions may only be appealed on procedural grounds. Procedural grounds are strictly limited to the Respondent:
  - a) making a decision for which it did not have authority or jurisdiction as set out in MBA's governing documents;
  - b) failing to follow procedures as laid out in the Rules, Regulations, Bylaws, Policies or Constitution of MBA;
  - c) making a decision that was influenced by bias;
  - d) exercising its discretion for an improper purpose; or
  - e) making a decision that was grossly unreasonable.

### **SCREENING OF APPEAL**

9. Within 5 days of receiving the notice and grounds of an appeal, the President will determine whether there are appropriate grounds for the appeal to proceed as set out in Paragraph 7. The President shall not determine if an error has been made, but only if the appeal is based on such an allegation of procedural error by the Respondent. In the absence of the President, a member of the Management Committee shall perform this function.
10. If the appeal is denied on the basis of insufficient grounds, the Appellant will be notified of this decision in writing, giving reasons. This decision is at the sole discretion of the President, and may not be appealed.

### **APPEAL PANEL**

11. If the President, is satisfied that there are sufficient grounds for an appeal, within 14 days of having received the original notice of appeal the President will establish an Appeal Panel (hereafter referred to as the "Panel") as follows:
  - a) The Panel will be comprised of three individuals who shall have no significant relationship with the affected parties and shall not have participated in any way in the decision being appealed, ; and
  - b) The President may designate one of the Panel members to serve as Chairman of the Panel. In the event the President does not designate a Chairman, the members of the Panel will select from themselves a Chairman.

### **PRELIMINARY CONFERENCE**

12. The Panel may determine that the circumstances of the appeal warrant a preliminary conference. The matters that may be considered at a preliminary conference include:

- a) Date and location of hearing;
  - b) Format of the appeal (hearing by documentary evidence, oral hearing or a combination of both);
  - c) Timelines for exchange of documents;
  - d) Clarification of issues in dispute;
  - e) Clarification of evidence to be presented to the Panel;
  - f) Order and procedure of hearing;
  - g) Identification of witnesses; and
  - h) Any other procedural matter that may assist in expediting the appeal proceedings.
13. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters on behalf of the Panel.

### **PROCEDURE FOR THE HEARING**

14. Where the Panel has determined that the appeal will be held by way of oral hearing, the Panel will govern the hearing by such procedures as it deems appropriate, provided that:
- a) The hearing will be held within 21 days of the Panel's appointment;
  - b) The Appellant and Respondent will be given 10 days written notice of the date, time and place of the hearing;
  - c) A quorum will be all the Panel members;
  - d) Decisions will be by majority vote, where the Chairman carries a vote;
  - e) 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 other parties, at least 5 days in advance of the hearing;
  - f) 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;
  - g) Any of the parties may be accompanied by a representative or advisor, including legal counsel;
  - h) The Panel may direct that any other person participate in the appeal;
  - i) In the event 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; and
  - j) Unless otherwise agreed to 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.
15. In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a telephone conference.

### **PROCEDURE FOR DOCUMENTARY APPEAL**

16. Where the Panel has determined that the appeal will be held by way of documentary 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; and
  - b) The applicable principles and timelines set out in Paragraph 12 are respected.

### **APPEAL DECISION**

17. Within 14 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 reject the appeal and confirm the decision being appealed;
  - b) To uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
  - c) To uphold the appeal and vary the decision, but only 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; and
  - d) To determine how costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be allocated and paid, if at all.
18. A copy of this decision will be provided to each of the parties and to the President.
19. In extraordinary circumstances, 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 timelines specified in Paragraph 16.

**TIMELINES**

20. If the circumstances of the dispute are such that this policy will not allow a timely appeal, or 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.

**LOCATION AND JURISDICTION**

21. The appeal will take place in the location designated by the President, unless the Panel decides the appeal is to be held by way of telephone conference, or unless, at the specific request of a party, a different location is mandated by the Panel as a preliminary matter.
22. No action or legal proceedings shall be commenced against the MBA in respect of a dispute, unless the MBA has refused or failed without reasonable cause to conduct such appeal as is permitted by this policy.

**FINAL AND BINDING DECISION**

23. The decision of the Panel will be final and binding on the parties and on all members of the MBA, subject only to the provisions of MBA's policies relating to Alternative Dispute Resolution.

APPROVED BY RESOLUTION OF THE MANAGEMENT COMMITTEE OF THE MBA this 26<sup>th</sup> day of April, 2005

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President

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Vice-President, Policy

Reviewed by Executive Committee – November, 2007 – no amendments or additions.