

# **PROVINCIAL WOMEN'S SOFTBALL ASSOCIATION APPEAL POLICY**

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## **Purpose**

1. The purpose of this policy is to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within the Provincial Women's Softball Association and without recourse to external legal procedures.

## **Definitions**

- Days - will mean total days, irrespective of weekends or holidays.
- Member - refers to all categories of Members in the Provincial Women's Softball Association, as well as to all individuals engaged in activities with, or employed by, the Provincial Women's Softball Association including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel).
- Appellant - refers to the Member appealing a decision.
- Respondent - refers to the body whose decision is being appealed.

## **Application of Policy**

2. In this policy, the term Member refers to all categories of members as defined in the By-Laws of the Provincial Women's Softball Association, as well as to all individuals engaged in activities with the Provincial Women's Softball Association including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel).
3. A Member who is affected by a decision of the Board of Directors, of a 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.
4. This right to appeal will not apply to decisions relating to:
  - a) Infractions for doping offences, which are dealt with through the Canadian Anti-Doping Program;
  - b) Discipline matters arising during events organized by entities other than the Provincial Women's Softball Association, including Member Leagues and Local Associations which are dealt with through the policies of these other entities;
  - c) Eligibility or team selection matters that are within the jurisdiction of Team Members of Association/League Members;
  - d) Matters of budgeting, budget implementation, or operational structure;

- e) Matters that are decided by the general membership of Provincial Women's Softball Association such as the approval and amendment of the By-Laws;
- f) Commercial matters for which another dispute resolution process exists under a contract or applicable law;
- g) Decisions of the Screening Task Force on Police Records Checks; or
- h) Any decision made under Section 11 of this Policy.

**NOTE: Not applicable to automatic suspensions which do not go to a Discipline Committee, however, the member has the right to a hearing.**

### **Timing 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 of their intention to appeal to the **Association Secretary** of the Provincial Women's Softball Association, **with a copy to the President**.
- 6. The notice will contain the contact information for the Appellant, the name of the Respondent (the body whose decision is being appealed), grounds for the appeal, a summary of the evidence that supports these grounds, and the remedy or remedies requested.
- 7. 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 Section 5.

### **Grounds for Appeal**

- 8. Not every decision may be appealed. Decisions may only be appealed, and appeals may only be heard, 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 governing documents;
  - b) Failing to follow procedures as laid out in the By-Laws or approved policies of the Provincial Women's Softball Association;
  - c) Making 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, or made a decision that was influenced by factors unrelated to the merit of the decision; or
  - d) Making a decision that is grossly unreasonable or unfair.

### **Screening of Appeal**

- 9. Within 7 days of receiving the notice of an appeal, the President will determine whether there is a right of appeal as set out in Section 4 and whether the appeal is brought on appropriate grounds, as set out in Section 8. In the absence of the President, a designate will perform this function.

10. If the appeal is denied on the basis of insufficient grounds, the President will notify the Appellant of this decision in writing, giving reasons. This decision is at the sole discretion of the President, and may not be appealed.

**NOTE:** The President may make a determination beyond the 7-day period by providing in writing to the appellant stating reasons for an exemption to the requirement of Section 9.

### **Appeals Panel**

11. If the President is satisfied that there is a right of appeal and that there are sufficient grounds for an appeal, within 14 days of the President having received the original notice of appeal, the President will establish an Appeals Panel (hereafter referred to as the “Panel”) as follows:
  - a) The Panel will be comprised of three individuals 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.
  - b) At least two members of the Panel will be actively involved in the sport of softball in Ontario.
  - c) The President will name one of the Panel members to serve as Chairperson of the Panel.

**NOTE:** The President may make a determination beyond the 14-day period by providing in writing to the appellant stating reasons for an exemption to the requirement of Section 11.

### **Preliminary Conference**

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) Format of the appeal (hearing by documentary evidence, oral hearing by telephone, video conference, oral hearing in person, or a combination of such methods).
- b) Timelines for exchange of documents.
- c) Clarification of issues in dispute.
- d) Identification of affected parties.
- e) Clarification of reports to be presented to the Panel.
- f) Order and procedure of hearing.
- g) Location of hearing, where the hearing is an oral hearing.
- h) Identification of witnesses.
- i) Any other procedural matter that may assist in expediting the appeal proceedings.

12. The Panel may delegate to one of its members, the authority to deal with these preliminary matters on behalf of the Panel.

### **Procedure for the Hearing**

13. 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 14 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 three Panel members. Decisions will be by majority vote, where the Chairperson carries a vote.
  - d) 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.

**NOTE: per item 19 Timelines, the Panel may direct alternate timelines to those specified in this policy.**

### **Procedure for Documentary Appeal**

14. 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 other parties, and to provide written rebuttal and argument; and
  - b) The applicable principles and timelines set out are respected.

### **Appeal Decision**

15. Within 7 days of concluding the appeal, the Panel will issue its written decision, with reasons.
16. 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 or
  - b) 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
  - c) To determine whether costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be assessed against any party. In

assessing costs, the Panel will take into account the outcome of the appeal, the conduct of the parties and their respective financial resources.

**NOTE: per item 19 Timelines, the Panel may direct alternate timelines to those specified in this policy.**

17. The decision will be considered a matter of public record. A copy of the decision will be presented to each of the parties and to the Board.
18. In extraordinary circumstances, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reason is rendered within the timelines specified in Section 15.

### **Timelines**

19. 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 the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct alternate timelines to those specified in this policy.

### **Location**

20. 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, the Panel as a preliminary matter mandates a different location.

### **Final and Binding Decision**

21. The decision of the Panel will be final and binding on the parties and on all Members of the Provincial Women's Softball Association.

### **Arbitration**

22. In the event that a dispute persists after appeals have been exhausted, and where the continuing dispute relates to an Appeal Panel having made a decision that was outside its jurisdiction, having failed to follow proper procedures, or having made a decision that was influenced by bias, such a dispute may be dealt with through binding arbitration before an independent arbitrator who is acceptable to the parties in the dispute.
23. Should a dispute be referred to arbitration, all parties to the original appeal will be Parties to the arbitration. Furthermore, the parties to the arbitration will enter into a written Arbitration Agreement that will specify the decision of the arbitrator,

will be final and binding upon the parties, and not subject to any further review by any court or any other body.

24. No action, application for judicial review or other legal proceeding will be commenced against the Provincial Women's Softball Association in respect of a dispute with a member unless the Provincial Women's Softball Association has failed or refused to participate in binding arbitration in accordance with this policy.

## **PROCEDURE TO FOLLOW ACCORDING TO APPROVED P.W.S.A. APPEALS POLICY**

### **1. SUSPENSION - 3 P.W.S.A. GAMES**

Automatic suspension according to Rule Book or suspension given verbally to member by Tournament Chairperson or Assistant or Umpire.

Notification to proper Director (i.e. Divisional Coordinator, Play-off Chairperson, President, Secretary or whoever necessary.)

2. Member decides to appeal the 3 game suspension. Notice to appeal the "decision" must be sent in writing to the Association Secretary with a copy to the President within 7 days.

3. President decides or determines (within 7 days of the notice of the appeal) whether there is a right of appeal and whether the appeal is brought on appropriate grounds. **This decision is at the sole discretion of the President and may not be appealed.**

4. If the President is satisfied that there is a right of appeal and there are sufficient grounds for an appeal, they will, within 14 days of having received the original notice of appeal, establish an Appeals Panel and name one of the Panel to serve as the Chairman.

5. The Panel determines if the circumstances of the appeal warrant a Preliminary Conference.

6. The Panel delegates to one of its members, the authority to deal with the preliminary matters on behalf of the Panel.

7. The Hearing is held.

8. Within 7 days, the Panel will issue its written decisions with reasons.

9. A copy of the decision will be sent/presented to each of the Parties and to the Board.

10. The decision of the Panel will be final and binding on all parties and on all members of the Provincial Women's' Softball Association.

**NOTE: per item 19 Timelines, the Panel may direct alternate timelines to those specified in this policy.**

**Policy Name:** Appeal Policy

**Ratification Date:** January 28, 2023

**Review Date:** January, 2026