

# SOFTBALL ONTARIO

## Appeal Policy

### Purpose

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

### Application of Policy

2. In this policy, the term *Member* refers to all categories of member as defined in the By-Laws of Softball Ontario, as well as to all individuals engaged in activities with Softball Ontario, including but not limited to directors, officers, coaches, athletes, umpires, and volunteers.
3. A Member who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body 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 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 Softball Ontario, including Member Associations, which are dealt with through the policies of these other entities;
  - c) Eligibility or team selection matters that are within the jurisdiction of Member Associations;
  - d) Matters of budgeting, budget implementation, operational structure, staffing or employment;
  - e) Matters that are decided by the general membership of Softball Ontario such as approval and amendment of the Constitution and By-laws;
  - f) Matters that are set out in the Letter of Understanding negotiated by the Finance Committee to confirm roles and responsibilities of umpires at provincial and qualifying tournaments;
  - g) Matters that are set out in the Letter of Agreement negotiated by Softball Ontario and its Member Associations;
  - h) Commercial matters for which another dispute resolution process exists under either a contract or applicable law;
  - i) Decisions of the Screening Task Force on Police Records Checks, or
  - j) Any decision made under Sections 9 and 10 of this policy.

### 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 notice of their intention to appeal to the Chair of Softball Ontario.
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. Upon receiving a notice of appeal, the Chair will designate an 'Official' (an individual independent of the parties) to administer the appeal on behalf of the parties.

### **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 Softball Ontario;
  - 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 merits 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 Official will determine whether there is a right of appeal and appropriate grounds for the appeal to proceed, as set out in Sections 4 and 8.
10. If the appeal is denied on the basis of insufficient grounds, the Official will notify the Appellant of this decision in writing, giving reasons. This decision is at the sole discretion of the Official, and may not be appealed.

### **Appeals Panel**

11. If the Official is satisfied that there is a right of appeal and that there are sufficient grounds for an appeal, within 14 days of the Chair having received the original notice of appeal, the Official 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 Official will name one of the Panel members to serve as Chair the Panel.

### **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) Format of the appeal (hearing by documentary evidence, oral hearing or a combination of both);
  - b) Timelines for exchange of documents;
  - c) Clarification of issues in dispute;
  - d) Identification of affected parties;
  - e) Clarification of evidence 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; and

- i) Any other procedural matter that may assist in expediting the appeal proceedings.
13. The Panel may delegate to its Chair 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 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 Chair 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.
  - e) A representative or advisor, including legal counsel, may accompany any of the parties at the party's own expense.
  - f) The Panel may direct that any other person participates in the appeal.
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 Section 14 are respected.

### **Appeal Decision**

17. Within 7 days of concluding the appeal, the Panel will issue its written decision, with reasons.

18. 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 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 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.
19. The decision will be considered a matter of public record. A copy of the decision will be provided to each of the parties and to the Official.
20. 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 Section 17.

### **Timelines**

21. 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**

22. The appeal will take place in the location designated by the Official, 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.

### **Final and Binding Decision**

23. The decision of the Panel will be final and binding on the parties and on all Members of Softball Ontario.

**Policy Name:** Appeal

**Ratification Date:** January 18, 2020

**Review Date:** January 18, 2023

**Revised Date:**