

MANITOBA SAILING ASSOCIATION (MSA)

APPEAL POLICY

Purpose

1. The purpose of this appeals policy is to enable disputes with members and participants to be dealt with fairly, expeditiously and affordably, within MSA, without recourse to external legal procedures. An appellant may not appeal a decision before first using the problem-solving techniques of negotiation, and facilitation and mediation as set out in the MSA Alternative Dispute Resolution Policy.

Definitions

2. These terms will have these meanings in this policy:
 - a) *Days* -- will mean total days, irrespective of weekends or holidays.
 - b) *Member* -- refers to all categories of members in the MSA, as well as to all individuals engaged in activities with or employed by the MSA, including, but not limited to, athletes, parents, coaches, instructors, officials, volunteers, directors and employees (including contract personnel)
 - c) *Appellant* -- refers to the Member appealing a decision
 - d) *Respondent* -- refers to the body whose decision is being appealed.
 - e) *Official* —refers to the President of the MSA, or in his absence, his/her designate.

Scope of Appeal

3. Any Member of MSA 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 Paragraph 7 of this policy. Examples of decisions that may be appealed include but are not limited to those relating to eligibility, team selection, carding, harassment, discipline and entitlements and obligations under an athlete agreement or national team agreement.
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 racing rules of sailing,
 - d) Discipline matters arising during events organized by entities other than MSA, which are dealt with pursuant to the policies of these other entities; and
 - e) Any decisions made under Paragraphs 6 of this policy.

Timing of Appeal

5. A Member who wishes to appeal a decision will have 5 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 Official.
6. Any Member wishing to initiate an appeal beyond the period of 5-Days must provide a written request stating reasons for an exemption to the requirement of Paragraph 5. The decision to allow, or not allow an appeal outside the period of 5-Days will be at the sole discretion of the Official, and may not be appealed.

Grounds for Appeal

7. 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's:
 - a) Making a decision for which it did not have authority or jurisdiction as set out in MSA's governing documents;

- b) Failing to follow procedures as laid out in the bylaws or approved policies of MSA; or
- c) Making a decision that was influenced by bias.

Screening of Appeal

8. Within 2 Days of receiving the notice and grounds of an appeal, the Official will determine whether there are appropriate grounds for the appeal to proceed as set out herein.
9. 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 Official and may not be appealed.

Appeals Panel

10. If the Official is satisfied that there are sufficient grounds for an appeal, within 3 Days of 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) The Official may designate one of the Panel appointees to serve as chairperson of the Panel. In the event the Official does not designate a Chairperson, the members of the Panel will select from themselves a Chairperson.

Preliminary Conference

11. 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) Clarification of evidence to be presented to the Panel; order and procedure of hearing;
 - e) Location of hearing, where the hearing is an oral hearing;
 - f) Identification of witnesses; and
 - g) Any other procedural matter that may assist in expediting the appeal proceedings.
12. The Panel may delegate to its Chairperson 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 7 Days written notice of the date, time and place of the hearing.
 - c) A quorum will be all three Panel appointees. 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.
 - e) A representative or advisor, including legal counsel, may accompany any of the parties.
 - f) The Panel may direct that any other person participate in the appeal.

14. 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

15. 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.
 - b) The applicable principles and timelines set out in Paragraph 12 are respected.

Appeal Decision

16. Within 7 Days of concluding the appeal, the Panel will issue its written decision, with reasons. In making its decision, the Panel will consider the terms of reference and authority levels, which would have guided 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 how costs of the appeal, excluding legal fees and legal disbursements of any of the parties, will be allocated, if at all.
17. A copy of this decision will be provided to each of the parties and to the Official.
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 reasons is rendered within the timelines specified in Paragraph 16.

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

Location

20. 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, the Panel 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 MSA, subject only to the Arbitration provisions of the MSA Alternative Dispute Resolution Policy.

Responsibility

22. The administration and review of this policy is the responsibility of the VP Operations.

Review and Approval

29. This policy was first approved by the Board of Directors of the Manitoba Sailing Association on March 10, 2003. It was reviewed, amended and re-approved by the Board of Directors on March 2, 2010. The next re-approval date is March 2012.

