



2.7 APPEALS POLICY & PROCEDURE

Purpose of Policy

This policy provides guidance and procedures for appealing MSABC-related decisions.

Policy

a. Scope of the appeal

- i. Any member of MSABC who is affected by a decision of the Board, of any Committee of the Board, or of any body or individual who has been delegated authority to make decisions on behalf of the Board, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Section c of this policy.

Prior to an appeal being officially started, the parties must address the possibility of resolving the dispute through mediation and/or negotiation. Failure to do so may result in costs associated with the appeal being assigned to the parties.

- ii. This policy shall not apply to matters relating to the rules of the sport as set out in the MSC Rule Book, which may not be appealed.
- iii. The Appeals process and procedure for Harassment are outlined within the MSABC Harassment Policy 2.8.

b. Timing of appeal

- i. Members who wish to appeal a decision shall have 14 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the MSABC Board of Directors. Where external timelines imposed by parties other than MSABC or internal competition timelines do not allow for a 14 days appeal period, the Board may direct that the appeal period be shortened and the appeal process shall be governed by the provisions of Section g.i of this policy.
- ii. Any party wishing to initiate an appeal beyond the 14 day period must provide a written request stating reasons for an exemption to this requirement. The decision to allow, or not allow an appeal outside the 14 day period shall be at the sole discretion of the Board.



c. Grounds for appeal

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 (“Respondent” refers to the body whose decision is being appealed):

1. making a decision for which it did not have authority or jurisdiction as set out in the Constitution and By-Laws of MSABC;
2. failing to follow procedures as laid out in the By-Laws or approved policies of MSABC;
3. making a decision which was influenced by bias, where bias is defined as lack of neutrality to such an extent that the decision-maker is unable to consider other view;
4. exercising its discretion for an improper purpose;
5. making a decision which was grossly unreasonable; and/or,
6. failing to follow the principles of natural justice.

d. Appeals committee

Within 3 days of receiving a written request for appeal, the MSABC Board shall appoint a Chairperson plus three persons to constitute the Appeals Committee (the “Committee”), in accordance with the following:

1. the Committee shall be comprised of four individuals who shall have no direct personal or professional relationship with the affected parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict;
2. there will be at least one man and one woman on the Committee;
3. at least one of the Committee’s members shall be from among the Appellant’s (“Appellant” refers to the member appealing a decision) peers;
4. an attempt should be made to have one Committee member from a non-swimming sports organization;
5. in appointing the Committee, consideration shall be given to the geographical location of the Appellant, any affected parties, the Respondent and other Committee members, in order to minimize the inconvenience and expense to all parties;
6. the Appellant shall be given the opportunity to recommend the peer member on the Committee, provided that member satisfies criteria 1 and 2 above;



7. should the Appellant not recommend the Committee member as set out in 6 above, within 5 days of the Chair's request, the Chair shall appoint the peer member of the Committee; and,
8. no member of the Discipline Committee which dealt with the issue under appeal may serve on the Appeals Committee.

In the absence of the Chair, and/or if the Chair is unable to perform in a non-partisan manner, a member of the Board of Directors shall be selected to perform this function.

e. Screening of appeal

- i. Within 14 days of receiving the notice of appeal, the Appeal Committee Chair, in consultation with the other members of the Committee, shall decide whether or not there are sufficient grounds for an appeal.
- ii. 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 Committee and may not be appealed.

f. Preliminary conference

The Committee may determine that the circumstances of the dispute warrant a preliminary conference:

1. The matters which may be considered at a preliminary conference include date and location 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.
2. The Committee may delegate to its Chair the authority to deal with these preliminary matters.

g. Procedure for the appeal

- i. The Committee shall govern the appeal by such procedures as it deems appropriate, provided that:
 1. the appeal hearing shall be held within 21 days of the Committee's appointment;
 2. the Appellant, Respondent and affected parties shall be given 14 days written notice of the date, time and place of the appeal hearing;
 3. a quorum shall be three committee members;



4. decisions shall be by majority vote; the Chair is not a voting member unless one of the other three Committee members is unable to attend;
 5. copies of any written documents which any of the parties would like the Committee to consider shall be provided to the Committee, and to all other parties, at least 5 days in advance of the hearing;
 6. any of the parties may be accompanied by a representative or advisor, including legal counsel for which any associated costs will be borne by the parties requesting advice or counsel;
 7. if the matter under appeal refers to team selection, any person potentially affected by the decision of the Committee shall become a party to the appeal;
 8. the Committee may direct that any other individual participate in the appeal;
 9. in the event that one of the Committee's members is unable or unwilling to continue with the appeal, the matter will be concluded by the remaining committee members;
 10. the timelines stipulated in this Section may be varied in accordance with Section i of this policy; and,
 11. unless otherwise agreed by the parties, there shall be no communication between Committee members and the parties except in the presence of, or by copy to, the other parties.
- ii. In order to keep costs to a reasonable level the Committee may conduct the appeal by means of a conference call or video conference.

h. Appeal decision

Within 7 days of concluding the appeal, the Committee shall issue its written decision, with reasons. In making its decision, the Committee shall have no greater authority than that of the original decision-maker. The Committee may decide:

1. to void or confirm the decision being appealed;
2. 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;
3. to refer the matter back to the initial decision-maker for a new decision; and,
4. to determine how costs of the appeal shall be allocated, if at all.

i. Timelines



If the circumstances of the dispute are such that this policy will not allow a timely appeal, the Committee may direct that these timelines be shortened. If the circumstances of the disputes are such that the appeal cannot be concluded within the timelines dictated in this policy, the Committee may extend the timelines.

j. Documentary appeal

Any party to the appeal may request that the Committee conduct the appeal by way of documentary evidence. The Committee may seek agreement from the other parties to proceed in this fashion. If agreement is not forthcoming, the Committee shall decide whether the appeal shall proceed by way of documentary evidence or in-person hearing.

k. Location and jurisdiction

- i. Appeals shall take place by any means of communication as decided by the Committee as a preliminary matter.
- ii. This policy shall be governed and construed in accordance with the principles of natural justice.
- iii. No action or legal proceedings shall be commenced against MSABC in respect of a dispute, unless MSABC has refused or failed to abide by the provisions for appeal as set out in this policy.

Review of policy

This policy shall be reviewed by the MSABC Board of Directors as required.

Adopted and in effect – 15-April-2013

Last reviewed – 12-January-2019