

Water Ski Manitoba

Appeal Policy

Approved: April 2003

Purpose:

The purpose of this appeals policy is to enable disputes with members to be dealt with fairly, expeditiously and affordably, within WSM, without recourse to formal legal and court-like procedures.

DEFINITIONS

- Days -- will mean total days, irrespective of weekends or holidays.
- Member -- refers to all categories of members in WSM, as well as to all individuals engaged in activities with or employed by WSM, 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.

SCOPE OF APPEAL

1. Any member of WSM 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 5 of this policy. **Examples of decisions that may be appealed are those relating to eligibility, harassment, team identification and discipline.**

2. This policy will not apply to decisions relating to:

- a) Matters of employment;
- b) Infractions for doping offenses, which are dealt with pursuant to the Canadian Policy on Doping in Sport and the Canadian Doping Control Regulations;
- c) The rules of waterskiing which may not be appealed;
- d) Discipline matter arising during events organized by entities other than WSM, which are dealt with pursuant to the policies of these other entities; and
- e) Any decisions made under Sections 4 and 7 of this policy.

TIMING OF APPEAL

3. Members who wish to appeal a decision will have 21 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 which supports these grounds, to the President of WSM (the President).

4. Any party wishing to initiate an appeal beyond the 21-day period must provide a written request stating reasons for an exemption to the requirement of Section 3.

The decision to allow, or not allow an appeal outside the 21 day period will be at the sole discretion of the President, and may not be appealed.

GROUNDINGS FOR APPEAL

5. Not every decision may be appealed. A decision cannot be appealed, nor can an appeal be heard, on substantive grounds relating to the merits of the decision. 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 WSM's governing documents;
- b) failing to follow procedures as laid out in the bylaws or approved policies of WSM;
- or
- c) making a decision that was influenced by bias.

SCREENING OF APPEAL

6. 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 Section 5. In the absence of the President, a designate will perform this function.

7. 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, or designate, and may not be appealed.

APPEALS PANEL

8. If the President, or designate, 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 Appeals Panel (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 Panel's members will select from themselves a Chairperson.

PRELIMINARY CONFERENCE

9. The Panel may determine that the circumstances of the appeal warrant a preliminary conference. The matters which 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;
- e) order and procedure of hearing;

- f) identification of witnesses; and
- g) any other procedural matter which may assist in expediting the appeal proceedings.

10. The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

PROCEDURE FOR THE HEARING

11. 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 three Panel members.
- d) Decisions will be by majority vote, where the Chairperson carries a vote.
- e) 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, that party will become a party to the appeal in question.
- f) Any of the parties may be accompanied by a representative or advisor, including legal counsel.
- g) The Panel may direct that any other person participate in the appeal.

12. 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

13. 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 Section 11 are respected.

EVIDENCE THAT MAY BE CONSIDERED

14. As a general rule, the Panel will only consider evidence that was before the original decision-maker. At its discretion, the Panel may hear new evidence that is material and that was not available at the time of the original decision.

APPEAL DECISION

15. 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;
- c) To uphold the appeal and vary the decision 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.

16. A copy of this decision will be provided to each of the parties and to the President.

17. 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 15.

TIMELINES

18. 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

19. 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.

FINAL AND BINDING

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

Review and approval

This policy was approved by the Board of Directors on March 26th, 2003 and will be reviewed by the Executive Board on an annual basis.