

Policies - TENNIS NEW BRUNSWICK - APPEALS POLICY

APPEALS POLICY

Note: In this policy "member" refers to all categories of members in Tennis New Brunswick (TNB), as well as to all individuals engaged in activities with or employed by TNB, including but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, medical and paramedical personnel, administrators and employees. "Appellant" refers to the member appealing a decision and "Respondent" refers to the body whose decision is being appealed.

SCOPE OF APPEAL

1. Any member of TNB who is affected by a decision of the Executive or of any body or individual who has been delegated authority to make decisions on behalf of the Executive, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Section 4 of this policy. Such decisions may include, but are not limited to, employment, harassment, selection and discipline.

2. This policy shall not apply to matters relating to the rules of tennis, which may not be appealed. This policy shall also not apply to circumstances in which the Atlantic Tennis Alliance discipline and appeals policy is applicable.

TIMING OF APPEAL

3. Members who wish to appeal a decision shall have 21 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 President of TNB.

GROUNDINGS FOR APPEAL

4. 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:

- 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 bylaws or approved policies of TNB;
- c) making a decision which 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;
- d) exercising its discretion for an improper purpose;
- e) making a decision which was grossly unreasonable.

SCREENING OF APPEAL

5. Within 3 days of receiving the notice of appeal, the President shall decide whether or not the appeal is based on one or more of the categories of possible errors by the respondent as set out in Section 4. The President shall not determine if the error has been made, only if the appeal is based on such an allegation of error by the respondent. In the absence of the President, a member of the Executive shall perform this function.

6. 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 President, or designate, and may not be appealed.

APPEALS PANEL

7. If the President is satisfied that there are sufficient grounds for an appeal, within 10 days of having received the original notice of appeal he or she shall establish an Appeals Panel (the "Panel") as follows:

- a) The Panel shall be comprised of three individuals who shall have no significant 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.
- b) At least one of the Panel's members shall be from among the Appellant's peers and shall be at least 19 years of age..
- c) The Appellant shall be given the opportunity to recommend the peer member on the Panel, provided that member satisfies criteria a) above.
- d) Should the Appellant not recommend the Panel member as set out in c) above within 5 days, the President shall appoint the peer member of the Panel

PRELIMINARY CONFERENCE

8. The Panel may determine that the circumstances of the dispute warrant a preliminary conference:
- a) The matters which may be considered at a preliminary conference include date and location of hearing, time-lines 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.
 - b) The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.

PROCEDURE FOR THE APPEAL

9. The Panel shall govern the appeal by such procedures as it deems appropriate, provided that:
- a) The appeal hearing shall be held within 21 days of the Panel's appointment.
 - b) The Appellant, respondent and affected parties shall be given 14 days written notice of the date, time and place of the appeal hearing.
 - c) The Panel's members shall select from themselves a Chairperson.
 - d) A quorum shall be all three Panel's members.
 - e) Decisions shall be by majority vote, where the Chairperson carries a vote.
 - f) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all other parties, at least 5 days in advance of the hearing.
 - g) Any of the parties may be accompanied by a representative or advisor.
 - h) If the matter under appeal relates to team selection, any person potentially affected by the decision of the Panel shall become a party to the appeal.
 - i) The Panel may direct that any other individual participate in the appeal.
 - j) In the event that one of the Panel's members is unable or unwilling to continue with the appeal, the matter shall be concluded by the remaining two Panel members.
 - k) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.
10. In order to keep costs to a reasonable level the Panel may conduct the appeal by means of a conference call or video conference.

APPEALS DECISION

11. Within 7 days of concluding the appeal, the Panel shall issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:
- a) To void or confirm the decision being appealed;

b) 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;

c) To refer the matter back to the initial decision-maker for a new decision; and

d) To determine how costs of the appeal shall be allocated, if at all.

12. A copy of this decision shall be provided to each of the parties and to the President.

TIME-LINES

13. If the circumstances of the dispute are such that this policy will not allow a timely appeal, the Panel may direct that these time-lines be abridged. If the circumstances of the disputes are such that the appeal cannot be concluded with the time-lines dictated in this policy, the Panel may direct that these time-lines be extended.

DOCUMENTARY APPEAL

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

ARBITRATION

15. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy. If any party believes the Appeal Panel has made an error such as those described in Section 4 of this policy, the matter shall be referred to arbitration, such arbitration to be administered under the Sport New Brunswick Provincial Sport Arbitration System for Amateur Sport and its Rules of Arbitration, as amended from time to time.

16. Should a matter be referred to arbitration, all parties to the original appeal shall be parties to the arbitration.

17. The parties to an arbitration shall enter into a formal Arbitration Agreement and the decision of any arbitration shall be final and binding and not subject to any further review by any court of competent jurisdiction or any other body.

LOCATION AND JURISDICTION

18. Any appeal shall take place in Fredericton, unless held by way of telephone conference call or held elsewhere as may be decided by the Panel as a preliminary matter.

19. This policy shall be governed and construed in accordance with the laws of the Province of New Brunswick.

20. No action or legal proceeding shall be commenced against TNB in respect of a dispute, unless TNB has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this policy.