

## **Pictou County Mariners APPEAL POLICY**

### **Definitions**

1. These terms will have these meanings in this policy:

- a) *"Appellant"* - The party appealing a decision.
- b) *"Days"* - Days excluding weekends or holidays.
- c) *"Respondent"* - The body whose decision is being appealed.
- d) *"Member"* - All categories of membership defined in the PCM Bylaws, as well as all individuals engaged in activities with PCM, including but not limited to, directors, officers, committee members, coaches, officials, volunteers, and administrators.
- e) *"Policy"* - This Swim Nova Scotia Appeal Policy.
- f) *"PCM"* – Pictou County Mariners.

### **Purpose**

2. The purpose of this Policy is to enable disputes with Members to be dealt with fairly, expeditiously and affordably, within PCM and without recourse to external legal procedures.

### **Scope and Application of this Policy**

3. Any Member affected by a decision will have the right to appeal the decision of PCM Board of Directors, any committee of PCM, anybody or individual who has been delegated authority to make decisions on behalf of PCM, provided there are sufficient grounds for the appeal as set out in Section 8 of this Policy subject to the limits in Section 6 of this Policy.

4. This Policy will apply to decisions relating to conflict of interest, eligibility, selection, discipline, membership or any other matter deemed appropriate by PCM.

5. This Policy will not apply to decisions relating to:

- a) Matters of employment;
- b) Volunteer appointments and the withdrawal or termination of those appointments;
- c) Matters of operational structure, committees, staffing, employment or volunteer opportunities;
- d) Commercial matters;
- e) Matters of budgeting and budget implementation;
- f) Infractions for doping offences which are dealt with pursuant to the *Canadian Anti-Doping Program* or any successor policy;
- g) The rules of swimming competitions or disputes over competition rules;
- h) Matters relating to the substance, content and establishment of team selection criteria;
- i) Policies and procedures established by entities other than PCM;
- j) Discipline matters and decisions arising during events organized by entities other than those within PCM, which are dealt with pursuant to the policies of these other entities;
- k) Disputes arising within competitions which have their own appeal procedures; and
- l) Any decisions made under Sections 6 and 11 of this Policy.

### **Timing of Appeal**

6. Members who wish to appeal a decision will have fourteen (14) days from the date on which they received notice of the decision, to submit in writing to the head office of PCM the following:

- a) Notice of their intention to appeal;
- b) Contact information of the Appellant;
- c) Name of the Respondent;
- d) Grounds for the appeal;
- e) Detailed reason(s) for the appeal;
- f) All evidence that supports the reasons and grounds for an appeal;
- g) The remedy or remedies requested, and
- h) A payment of five hundred dollars (\$500), which is non-refundable.

7. Any party wishing to initiate an appeal beyond the fourteen (14) day period must provide a written request stating reasons for an exemption to the requirement of Section 6. The decision to allow, or not to allow an appeal outside the 14-day period will be at the sole discretion of the Case Manager appointed by PCM pursuant to section 10 hereof and may not be appealed.

#### **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 the Respondent's governing documents;
- b) Failing to follow procedures as laid out in the bylaws or approved policies of PCM;
- 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 that the decision was influenced by factors unrelated to the substance or merits of the decision; and/or
- d) Making a decision that was grossly unreasonable.

9. The Appellant will bear the onus of proof in the appeal, and thus must be able to demonstrate, on a balance of probabilities, that the Respondent has made an error as described in Section 8.

#### **Case Manager**

10. PCM will appoint a Case Manager to oversee the management and administration of appeals submitted in accordance with this Policy. The Case Manager has an overall responsibility to ensure procedural fairness is respected at all times in this Policy, and to implement this Policy in a timely manner. More specifically, the Case Manager has a responsibility to:

- a) Determine if the appeal lies within the jurisdiction of this Policy;
- b) Determine if appeal is brought in a timely manner;
- c) Determine if the appeal is brought on any of the grounds listed in section 8 hereof ;
- d) Appoint the tribunal to hear the appeal;
- e) Determine the format of the appeal hearing;
- f) Coordinate all administrative and procedural aspects of the appeal;
- g) Provide administrative assistance and logistical support to the tribunal as required; and

h) Provide any other service or support that may be necessary to ensure a fair and timely appeal proceeding.

### **Screening of Appeal**

11. Upon receipt of the notice, grounds of an appeal, supporting evidence and the required fee, the Case Manager will review the appeal and will decide whether or not there are sufficient grounds for an appeal. If the Case Manager is satisfied that there are not sufficient grounds for an appeal, the parties will be notified in writing, stating reasons. If the Case Manager is satisfied that there are sufficient grounds for an appeal, then a hearing will take place. This decision is at the sole discretion of the Case Manager and may not be appealed.

### **Appeals Panel**

12. If the Case Manager is satisfied that there are sufficient grounds for an appeal, the Case Manager will establish an Appeals Panel (the "Panel") consisting of a one (1) or three (3) persons to hear the appeal.

### **Procedure for the Hearing**

13. The Case Manager will determine the format of the hearing, which may involve an oral hearing in person, an oral hearing by teleconference, a hearing based on written submissions or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Panel deem appropriate in the circumstances, provided that:

- a) The hearing will be held within the appropriate timeline determined by the Case Manager.
- b) The Parties will be given reasonable notice of the day, time and place of the hearing.
- c) Copies of any written documents which the Parties wish to have the Panel consider will be provided to all Parties in advance of the hearing in accordance with the appropriate timeline.
- d) Both Parties may be accompanied by a representative or adviser, including legal counsel.
- e) The Panel may request that any other individual participate and give evidence at the hearing.
- f) If a decision in the appeal 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, shall have the right to make submissions and review all evidence, shall be subject to the authority of the Panel and will be bound by its outcome but not required to pay the \$500 fee.
- g) The hearing will be conducted in the official language of choice of the Appellant.
- h) In the situation where the hearing is conducted by a Panel consisting of three persons, a quorum will be all three and decisions will be by majority vote.

### **Appeal Decision**

14. Within fourteen (14) days of concluding the receipt of evidence and submissions, 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 to:

- a) Dismiss the appeal and confirm the decision being appealed; or
  - b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision;
- or

c) 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 procedures, lack of time, or lack of neutrality.

15. The decision will be considered a matter of public record. A copy of this decision will be provided to the Appellant, Respondent and any other party (section 13f hereof) and to PCM. Where time is of the essence, the Panel may issue a verbal decision or a summary written decision, with reasons to follow, provided the written decision with reasons is rendered with the appropriate timelines.

### **Confidentiality**

16. The appeal process is confidential involving only the parties, their representatives or advisors, the Case Manager and the Panel. Once initiated and until a written decision is released, none of the parties or the Panel shall disclose information relating to the appeal to any person not involved in the proceedings.

### **Final and Binding Decision**

17. The decision of the Panel will be binding on the parties and on all PCM Members, subject only the PCM Dispute Resolution Policy.

18. No action or legal proceeding will be commenced against PCM or its members in respect of a dispute, unless PCM has refused or failed to abide by the provisions for appeal and/or dispute resolution as set out in the PCM policies.