



## Understanding Your Responsibility as an Internal Appeal Panel Member

By L. Deborah Sword, Mediator / Arbitrator and SDRCC

October 2009

You have been appointed a panel member of a NSO to hear an appeal from a decision of its executive committee. This comes with a responsibility to do what's right. This article does not constitute a how-to guide to hearing an appeal, but it provides a few ideas to help you work around some common issues with which appeal panel members grapple: jurisdiction vs. merits, natural justice, conflict of interest, standing, and communicating a decision.

### **Jurisdictional Issues versus Merits**

There is a difference between the jurisdictional issues and the merits of the appeal. The merits of an appeal concern the issue that is the subject matter of the dispute (i.e. team selection, carding, etc.). Merits go to the heart of the case or which party will win. Jurisdiction is a separate and distinct part of decision-making: jurisdictional arguments are preliminary matters limited to questions of what, how, who, and/or when the parties will proceed to the appeal. So, what is done and how it is done are just as important as the decision itself. A good decision made using a flawed process can create just as costly a dispute as a decision that someone believes is bad.

Jurisdiction means what you have the power, and the obligation, to do. If you don't have the power or authority to do something, and you do it anyway, you have exceeded your jurisdiction. As a result, what you did might be invalid, and your actions challenged. On the other hand, if you fail to do something that is within your jurisdiction, you might be challenged for breach of your duty to act. So knowing your jurisdictional limits and mandates are equally important.

Jurisdiction applies at every level of decision-making. Just as you must have jurisdiction to hear the appeal, so too must the body or person whose decision is being appealed to you also have had jurisdiction. Sometimes, the actual issue in dispute may not be appealed on its merits, but rather on the jurisdiction to decide the issue: as when the decision-making body was not entitled by policy to make that decision, or when the decision was made in breach of the rules of natural justice. Any decisions made under those conditions are ripe for jurisdictional challenges.

As an appeal panel, adhering to your own jurisdiction (i.e. exercising the power and the duties within the boundaries of the job) will avoid adding another layer of conflict. Acting outside your jurisdiction serves to escalate the dispute and enlarge the number of issues in dispute. Those issues can then become the grounds for the appeal of your own panel's decision.

### **Knowing and Following the Rules of Natural Justice**

The rules of natural justice constitute another limit to authority. There is a careful balance between the rights of decision-makers to govern, and the rights of the governed to know that the governors will be fair, transparent, and accountable. The rules of natural justice include, among others, the right for all parties to be heard by an unbiased panel; to have advance notice of the proceedings; to know the case s/he has to meet; and to present one's case, ask questions, and contradict evidence. You should familiarize yourself with those principles at the outset of your appointment.

### **Managing Conflict of Interest**

Being appointed to an appeal panel does not necessarily mean you are independent or free from conflict of interest. Moreover, once you review the case, you may realize that you are not



unbiased or impartial after all. It is proper procedure to declare any relationship you may have with the parties, or to declare any personal interest that puts into question your impartiality. Failing to do so, or to recuse yourself voluntarily, may open the door for your panel's decision to be challenged.

### **Standing: Making Sure the Right Parties are Involved**

Each level of the decision-making process takes its jurisdiction from the fact that the level below has made a decision that has been appealed by a party with 'standing' to bring that appeal. Standing means the party has a recognizable interest to stand before the judge. Without standing, the decision-makers will not hear from a party because that party has no reason to intervene in a dispute. Your appeal panel can canvas with the parties who else should be at the hearing, such as an athlete who risks losing a spot on a team as a result of the panel's decision. The question gives standing to other parties because their attendance is needed for a sound decision to be made and implemented.

### **Writing a Clear and Reasoned Decision**

The best policies say that the tribunal must render decisions with reasons for coming to the conclusion it did; so any decision with inadequate reasons supporting the conclusion reached might be subject to a jurisdictional appeal. It is essential then, that the decision-maker ensures a written decision be both timely and comprehensive, reviews the evidence upon which the decision-making relies, and outlines the logic used to reach the conclusions reached. If this does not occur, the panel's decision may then be subject to appeal. When writing a decision be mindful of the need to be thorough in reasoning against preserving confidentiality about certain information revealed during hearing; this is especially true if the decision is to be made public.

### **Conclusion**

Appeal panels take their jurisdiction from a lawful source of authority empowering that decision-making body, such as a policy, bylaw, or legal document passed at the Board of Directors or such other body. Once a conflict begins, people look to the bylaws and policies for direction on how to challenge or defend what was done. Conflict can be made worse when attempts to solve the problem are made contrary to a process laid out in the bylaws and policies. Be mindful of the jurisdictional limits of your authority, and know the importance of following applicable laws, rules, bylaws and policies.