

Attachment 4

Paul Speering - Review of the SMCA Protests, Disputes & Appeals Process

As promised earlier, I have conducted a review of our current setup and compared it to many different systems across sporting codes and other associations. The whole process is complicated and messy, so I apologise in advance! I did list this in my Agenda items for inclusion, but it must have been left out by mistake.

There are several key issues that stand out. These include, but are not limited to, the below:

- ***Consistency of language and terminology***
 - ***With alterations made to the base By-Laws over the years it has become a bit of a mess, some areas are far too wordy, while others are not spelled out well enough***
- ***Lack of adequately defined processes***
 - ***With the lack of consistency mentioned above goes a poorly defined process, or set of processes, with too many By-Laws cross referencing other By-Laws***
- ***Transparency***
 - ***No decision of anyone on this Committee should be above review, and a robust appeals system is integral to this ideal, this suffers from both of the above mentioned items***

I am of the firm belief that we should rewrite the entire section titled 'SMCA Protests and Disputes By-Laws', to better communicate the disciplinary measures that we have in place. The title alone does not fit anymore ... perhaps a new heading of 'SMCA Disciplinary By-Laws' should be developed and made separate from 'SMCA Protest and Disputes By-Laws' which are quite different things. The nomenclature surrounding the 'Protests, Disputes and Appeals Board' needs to be redefined, and the many roles this 'Board' plays should be streamlined. To be honest, protests and disputes are few and far between (particularly if we move Appeals into the Disciplinary section). The current reading of the By-Laws suggests that 'Disputes' are between two clubs, or people from the same club;

whereas a 'Protest' has no such clear definition, but is generally between a club and the Association, or a decision of the Association. Those two can be set aside for the moment, and should really be looked at in parallel with the Constitution.

Most of the comparable 'Disciplinary Systems' I've looked at over the last few months work on a version of a three tiered process. Here is a quick rundown, and I strongly suggest we move towards something like this:

- ***Penalty is offered and the party either pleads guilty or not guilty***
 - ***Failure to respond within a given timeframe is considered a guilty plea***
 - ***An incentive is often given to accept an early guilty plea and avoid the Tribunal process***
- ***If the party pleads not guilty, it goes to a Tribunal (not an Appeals board at this stage)***
 - ***The Tribunal has the ability to find the party guilty or not guilty of the offence and hand down the original penalty with any incentive removed***
 - ***It also has the power to find the party guilty or not guilty of any other offence, and hand down a penalty, as it sees fit (such as a lesser offence)***
 - ***For minor offences (such as fines), the Tribunal can be made up of members of the Committee and can be determined using written submissions***
- § ***I would strongly suggest that we build this particular 'clause' into our By-Laws***
- ***The Tribunal's decision can be appealed by either the party or the Association to the Appeals Board***
 - ***There are strict, but well defined, grounds for appeal (these vary quite widely)***
- § ***Generally speaking, appeals should proceed as it tests our rules and assists with the Transparency problem that I have mentioned above***
 - ***Costs/ disincentives are varied for Appeals but we should proceed very carefully here***
 - ***Members of the Appeals Board can include senior members of the***

Committee, but should not include anyone who sat on the corresponding Tribunal for obvious reasons

○ **Timeframes for Appeals varies and is usually dependant on the complexity of the matter**

§ **An 'Intention to Appeal' is often enough to start the process, with written submissions to follow within an appropriate period**

○ **All decisions of the Appeal Board are final**

