

Part 3 Conduct of Tribunal hearing

12. Attendance at Tribunal hearings

- 12.1 The following persons shall be required to attend a Tribunal hearing conducted under this By-law:
- (a) the charged person;
 - (b) the president, secretary or other delegate representing a charged team or club;
 - (c) the reporting official(s);
 - (d) any other person involved in the report;
 - (e) witnesses as indicated by the reporting official or charged person to be notified by the officer designated under clause 10.1;
 - (f) any witness required by the Tribunal.
- 12.2 The following persons shall be entitled to attend a Tribunal hearing as appropriate:
- (a) any player of a charged team or club;
 - (b) witnesses called to give evidence by a charged person, team or club;
 - (c) witnesses called to give evidence by the reporting official(s);
 - (d) any adult adviser to a charged person or reporting official.
- 12.3 The following persons shall be entitled to attend a Tribunal hearing with the permission of the Tribunal:
- (a) Organising Body and/or Constituent Association representatives;
 - (b) approved representatives of the media;
 - a. any other person.
- 12.4 Legal representatives or advocates are permitted to appear before the Tribunal where leave to appear has been granted by the Tribunal chairperson.

13. Non-attendance at Tribunal hearings

- 13.1 If any charged person (or representative of a charged team or club) fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Tribunal in the absence of the charged person, team or club, provided that the Tribunal is satisfied that all notification procedures under this By-law have been carried out.
- 13.2 A charged person, team or club or reporting official may apply to the Hearings Officer to have a Tribunal hearing adjourned if there are compelling circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience to the charged person, team or club. This will be at the discretion of the Hearings Officer (or the Tribunal if already convened) and if the application is granted a new date shall be fixed.
- 13.3 A charged person who is unable to attend a Tribunal hearing shall be entitled to appoint a representative (who is not a legal practitioner) to appear in his/her place if that charged person intends on pleading guilty, subject to the Tribunal receiving a letter of consent from the charged person containing the person's guilty plea to the charges contained in the report and any statement that person would have given to the Tribunal had he or she attended the hearing.
- 13.4 If any witness fails to attend a Tribunal hearing, the hearing may continue in their absence.
- 13.5 If a reporting official fails to attend a Tribunal hearing without reasonable cause, the hearing may proceed and a determination made by the Tribunal in the absence of the reporting official, provided that the Tribunal is satisfied that all notification procedures under this By-law have been carried out.
- 13.6 If a reporting official or Organising Body official inadvertently fails to carry out any duties listed in clause 10, the charges shall not be dismissed for this reason, but may be adjourned to allow the omission to be rectified. Where appropriate, the Tribunal shall take the failure into account and make suitable allowance.

14. Tribunal hearing Conducted Via Teleconference

- 14.1 A charged person, team or club may apply to the Tribunal chairperson to have a Tribunal hearing conducted by telephone conference call or other technology if there are compelling

circumstances which warrant such steps being taken to avoid costs, hardship or significant inconvenience to the charged person, team or club. In all other respects the procedure of the Tribunal hearing shall be conducted in accordance with this By-law. The same rights should be available to the reporting person and/or other witnesses.

15. Procedures of the Tribunal

- 15.1 For the purpose of this clause 15, a reference to a charged person includes a reference to the representative(s) of a charged team or club.
- 15.2 In the event of a team or club being reported, one (1) member of the team or club shall act as spokesperson for the team or club provided that an individual member of that team or club may elect to speak on their own behalf.
- 15.3 At the commencement of a hearing, the chairperson shall identify the members of the Tribunal and determine whether the charged person is present to answer the charge(s) set out in the report.
- 15.4 The charged person shall be asked whether they accept the members of the Tribunal as impartial and independent, or whether they wish to raise any objection in relation to any member. If the objection is found by the Tribunal to be valid, then the Tribunal member shall stand down for the duration of the hearing.
- 15.5 The charged person and the reporting official(s) shall be notified of their right to remain in the hearing until all evidence is presented but not to be present whilst the Tribunal considers its findings and determines an appropriate penalty (if any).
- 15.6 The chairperson shall advise all those persons present of the method of recording the hearing.
- 15.7 The charge(s) as contained in the report shall be read out in the presence of all persons eligible to be present.
- 15.8 The charged person shall be asked whether the charge is understood and the reporting official asked whether the charge correctly represents their intention.
- 15.9 The charged person shall be asked to indicate whether they:
- a. Admit the charges;
 - b. Admit part of the charges but wish to bring other evidence;
 - c. Deny the charges.
- 15.10 If the charged person admits the charge(s), the chairperson may read a short summary of the facts, admit the reporting official's evidence (written/verbal) and no witnesses need be called to give evidence unless the Tribunal requires it.
- 15.11 If the charged person admits part of the charges the chairperson may read a short summary of the facts and ask the charged person to identify what is admitted. Those facts will then be accepted by the Tribunal and no witnesses need be called to give evidence on those matters unless the Tribunal requires it.
- 15.12 If the charged person denies the charges then the chairperson shall ask all witnesses except the reporting official(s) and the charged person (and their advisers if appointed in accordance with this by-law) to leave the room and to wait to be called to give their evidence. An adviser may not also be a witness.
- 15.13 The reporting official shall proceed to give evidence and the witnesses of the reporting official(s) shall be called upon to give his/her evidence in turn, subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. The charged person or his/her adviser may ask questions of the reporting official or any witness called.
- 15.14 Each witness shall be entitled to leave the Tribunal hearing after giving evidence unless otherwise directed by the Tribunal. Witnesses shall be entitled to remain in the hearing room after giving evidence with the permission of the Tribunal.

- 15.15 The charged person shall then be entitled to present their defence. Witnesses may be called subject to the approval of the number of witnesses to be called by the Tribunal in its discretion. Reporting officials or the adviser to a reporting official who is a minor may ask questions of the charged person or any witness called.
- 15.16 The Tribunal is empowered to question any person giving evidence.
- 15.17 Where a person exercises their right to have an adult adviser present in accordance with this by-law, an opportunity for consultation shall be provided.
- 15.18 Video evidence may be presented at the absolute discretion of the Tribunal.
- 15.19 At the conclusion of all of the evidence and submissions the chairperson shall ask the charged person, the reporting official and all other persons present to leave the hearing room while the Tribunal considers its findings.
- 15.20 If the Tribunal is not satisfied that a particular charge has been proved, but is satisfied that a lesser charge has been established, then the Tribunal may find such lesser charge established and shall apply a penalty applicable to the lesser charge.
- 15.21 Where it appears to the Tribunal that the reporting official has made an error in laying the wrong charge or omitted charges that should have been laid, the Tribunal may amend the charges and proceed to make a finding. Further, the Tribunal has the right to direct that a person other than the charged person be charged with an offence under this by-law on the basis of evidence presented before it during the course of conducting a hearing.
- 15.22 Where charges have been amended under clause 15.21, the Tribunal shall adjourn the hearing unless the charged person consents to it proceeding at that time.
- 15.23 The charged person, reporting official and any witnesses may be present when the decision of the Tribunal is given by the Tribunal chairperson. If the charged person is not present the Tribunal chairperson shall ensure that the decision is conveyed to the charged person by the most expedient means.
- 15.24 Subject to clause 15.20, if the Tribunal is satisfied that a charge has been established on the balance of probabilities (ie more probable than not) it shall find the charge proved. Otherwise the charge shall be dismissed.
- 15.25 If a charge has been found proven by the Tribunal the charged person shall be informed of the finding. Any previous convictions against the charged person should then be laid before the Tribunal.
- 15.26 The charged person is then given the right to make a final statement in relation to previous convictions or other mitigating circumstances before being asked to leave the room a second time. The charged person may, with the consent of the Tribunal Chairman, call witnesses or submit written statements or references for consideration by the Tribunal on the decision of penalty.
- 15.27 The Tribunal shall then determine the penalty to be imposed (if any) and shall recall the charged person and reporting official to advise of the penalty.
- 15.28 The Tribunal is not obliged to give reasons for any decision made by it under this By-law.
- 15.29 A charged person who has been convicted of an offence and received a penalty under this By-law shall not play, coach, referee or otherwise take part in basketball activities as directed by the Tribunal until the penalty has been served to the satisfaction of the Organising Body. However a decision of the Tribunal does not prevent a person carrying out duties directly related to their employment.