



# Baseball New Zealand Judicial Committee Policy (*Non-Event Related*)

<b>Adopted:</b>	07/03/2022 (New)
<b>Scheduled Review:</b>	07/03/2024
<b>Approved (Board and Date):</b>	Approved by all Board Members via email 07/03/2022. Resolution recorded in March 2022 Board meeting minutes.
<b>Related Policies/Guidelines:</b>	Please refer to the Judicial Committee Policy (Tournaments and Events), any and all Code of Conduct documents, the Baseball New Zealand Constitution and any other relevant policies and guidelines.

## 1. Purpose

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- 1.1 It is important that Baseball New Zealand, as a National Sport Organisation (NSO) sets applicable standards and procedures when it comes to the management of our sport, including day-to-day operations and stakeholder relations. It is important that all members and associated stakeholders of Baseball New Zealand observe our policies and rules, operate and communicate with respect and care, and maintain high standards of professional behaviour.
- 1.2 This Judicial Committee Policy is established to provide a process for addressing breaches of these standards and Baseball New Zealand's Code of Conduct Policy in a fair and consistent manner.
- 1.3 Nothing in this Policy waives or limits the right of the Board to make its own enquiries or to impose any sanction that it has authority to impose under the Constitution.

## 2. Scope and Application

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- 2.1 This policy is applicable to stakeholders assisting (or any way involved) with the purposes of baseball within New Zealand and includes those working within Baseball New Zealand. It relates to groups and individuals who have an impact on, or who are impacted by the operations of the NSO. This includes (but is not limited to) staff, volunteers, baseball clubs\*, regional associations\* and partner organisations such as the Auckland Tuatara.

*\*and their representatives*

- 2.2 Applicable standards of conduct are set out in the Baseball New Zealand compendium of rules and policy documents prepared and approved by the NSO. This includes (but is not limited to) the Baseball New Zealand: Constitution; Code of Conduct Policy; Club Affiliation Policy; any Regional Association Affiliation Policy that may be implemented over time; Supplier, Staff and Contractor Contracts; Reimbursement Policy and Spending Authority.

## 3. Definitions

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- 3.1 The following words and phrases, used in this Policy, shall mean as follows:

**Baseball New Zealand** means Baseball New Zealand as the governing body of (or National Sport Organisation for) baseball in New Zealand.

**NSO** means National Sport Organisation, in reference to the governing body of the sport.

**Complainant** means individual or group making the complaint.

**Accused** means the individual or group the complaint is directed towards.

**Appeal** has the meaning given to it in Clause 10.

**Board** means the Board of Baseball New Zealand (as the governing body for Baseball in New Zealand) as described in its Constitution.

**CEO** means the Chief Executive Officer of the NSO

**Chair** means Chair or President of the NSO appointed pursuant to the Baseball New Zealand Constitution and including any delegated authority by the Chair.

**Complaint** has the meaning given to it in Clause 5.1.

**Constitution** means the constitution of Baseball New Zealand Incorporated as adopted 27<sup>th</sup> July, 2017 and lodged with the Companies Office 26<sup>th</sup> August, 2018.

**Guidelines on Process for Hearing and Determining any Complaint** means the guidelines for any Judicial Committee for hearing and determining Complaints as set out in Schedule 1.

**Judicial Committee** means the Baseball New Zealand Judicial Committee appointed in accordance with Clause 6.

**Jury of Appeal** means the Baseball New Zealand Jury of Appeal(s) appointed in accordance with Clause 10.

**Misconduct** has the meaning given to it in Clause 4.

**Public Statements** means any statement in which the whole, part, or essence, is made public. Such a statement may be made in a newspaper, magazine, periodical, or by any electronic media (internet, email, social media etc.), or other means through the medium of television, radio, or in any other manner whatsoever, regardless of the circumstances in which the statement was made.

**Rules of Baseball** means all rules, policies and laws for as adopted and approved by Baseball New Zealand.

**Stakeholders** means all stakeholders assisting (or any way involved) with the purposes of baseball within New Zealand and includes those working within Baseball New Zealand. It relates to groups and individuals who have an impact on, or who are impacted by the operations of the NSO. This includes (but is not limited to) staff, volunteers, baseball clubs\*, regional associations\* and partner organisations such as the Auckland Tuatara.

*\*and their representatives*

#### **4. Standards of Conduct**

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- 4.1 These standards of conduct operate in conjunction with Baseball New Zealand's Code of Conduct. All stakeholders shall, at all times, conduct themselves fairly and in a proper manner, including maintaining a high standard of personal conduct, so as not to prejudice the interests of baseball or bring themselves, the game of baseball, or Baseball New Zealand, into disrepute.
- 4.2 Stakeholders shall not participate in, or support, any form of baseball betting or gaming activities, including online betting or gaming activities where they may have inside knowledge coaching management, operations of the teams, clubs or organisations involved.
- 4.3 Stakeholders shall not accept or induce a bribe or corrupt payment or otherwise allegedly agree to manipulate the management of either the NSO or the sport in any way or give inside information for betting purposes.

- 4.4 Any act, transaction, practice or conduct that is not in the best interests of Baseball is misconduct (**Misconduct**). This includes any breach of any of the standards of conduct (set out in this clause 4) and/or breach of the standards of conduct noted in Clause 2.1. The following are examples of conduct that shall be regarded as Misconduct:
- a. Verbal or physical abuse, or hostility, towards any other Baseball New Zealand stakeholder.
  - b. Reacting in an inflammatory and damaging manner, toward any decision made by the Baseball New Zealand CEO or Board.
  - c. Making any detrimental Public Statements, in respect of any stakeholder, including the NSO and other similar or partnering codes, such as softball.

## **5. Complaints**

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- 5.1 An allegation of Misconduct can be made, by any person to either the CEO or Chair.
- 5.2 The allegation of Misconduct should set out in writing in as much detail as possible:
- a. the nature of the incident;
  - b. the person/s involved;
  - c. the date(s) and time(s) when the alleged Misconduct occurred,  
together (the **Complaint**).
- 5.3 Nothing in this Policy prevents the CEO or Chair initiating an investigation, in his/her own right, if he/she considers there has been Misconduct.
- 5.4 The lodging of a complaint to the CEO or Chair should be carried out within two weeks (14 days) of the incident occurring, at which point the CEO or Chair may use their own discretion whether or not to consider the complaint.

## **6. Appointment of Judicial Committee**

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- 6.1 After investigating the alleged Misconduct, and concluding that a hearing may be required, Chair (on consultation with the CEO) will appoint a Judicial Committee to consider and determine the Complaint/s.
- 6.2 The Judicial Committee shall consist of a minimum of three (3) persons including a Committee Chairperson, appointed by the Chair of the Baseball New Zealand Board.

## **7. Hearings**

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- 7.1 On receipt of a formal written Complaint, the Judicial Committee shall conduct a hearing in accordance with the Guidelines on Process for Hearing and Determining any Complaint attached as Schedule 1 to this Policy, unless in their sole discretion, a hearing is not warranted.
- 7.2 All proceedings (including the hearing and decision) before the Judicial Committee are confidential to the parties unless the Judicial Committee directs otherwise. In the case of a decision involving a sanction, the details of the charge, verdict and sanction will be communicated to the wider baseball community as required.
- 7.3 Each party shall be responsible for their own costs (if any) associated with the hearing.

## **8. The Decision**

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- 8.1 After the hearing of a Complaint, the Judicial Committee shall:
- a. dismiss the matter if it finds that Misconduct has not been committed;

- b. issue any such penalty as it thinks fit, in accordance with clause 9 (Penalties) if it finds Misconduct has occurred;
- c. refer the Complaint to the Board for hearing and determination, in accordance with Rule 11 of the Constitution, where the Judicial Committee, in its sole discretion, concludes that a hearing, and determination by the Board, may be more appropriate in the circumstances; and/or
- d. refer the matter to the Police.

8.2 All decisions of the Judicial Committee shall be final and binding on the parties, except where the provisions of clause 10.1 apply.

## **9. Penalties Available for Judicial Committee**

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9.1 If the Judicial Committee finds that Misconduct has occurred, it may impose any one or more of the following penalties:

- a. a warning or reprimand;
- b. require the accused to make a formal apology;
- c. suspension from such activities of the Baseball New Zealand, including competitions (local or national), events, meetings, and other functions, for such period(s) and on such terms and conditions as it thinks fit;
- d. exclusion from a particular competition activity, meeting, event, or events of Baseball New Zealand;
- e. demotion or removal from any position or function granted by Baseball New Zealand or as a representative of Baseball New Zealand;
- f. reparation and/or compensation by way of monetary payment to the complainant and/or other parties involved in the matter, in an amount and in such manner as the Judicial Committee thinks fit;
- g. fines imposed in such manner, and in such amount(s), as the Judicial Committee thinks fit; and/or
- h. such other penalty as the Judicial Committee considers commensurate with the misconduct.

## **10. Appeals**

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10.1 A party to a decision of the Judicial Committee may appeal such decision, to a Jury of Appeal, only on one or more of the following grounds:

- a. natural justice was denied;
- b. the decision-maker or decision-making body acted outside of its powers and/or jurisdiction (i.e. acted ultra vires);
- c. substantial new evidence became available after the decision by the Judicial Committee was made.

10.2 An Appeal must be made in writing to the Chair of Baseball New Zealand accompanied by a fee of \$500 NZD, within one week of the release of the Judicial Committee's decision. This fee may be reviewed, at the discretion of the Chair, based on exceptional circumstances.

10.3 Baseball New Zealand will appoint a Jury of Appeal to hear and determine appeals where one of the grounds in clause 10.1 exist.

10.4 A Jury of Appeal shall consist of three persons, including a chairperson, appointed by the Chair.

10.5 A Judicial Committee member who heard the matter under appeal, must not be appointed to the relevant Jury of Appeal.

- 10.6 The Appeal is not by way of a re-hearing of the evidence. However, in exceptional circumstances, the Jury of Appeal may choose to re-hear the matter on a de novo basis. In this case, they may re-consider substantive issues at their discretion where they deem this necessary to fulfil the requirements of natural justice.

## **11. Proceedings of the Jury of Appeal**

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- 11.1 On receipt of an Appeal, the Jury of Appeal shall conduct a hearing in accordance with the Guidelines on Process for Hearing and Determining any Complaint attached as Schedule 1 to this Policy.
- 11.2 All proceedings (including the hearing and decision) before the Jury of Appeal are confidential to the parties unless the Jury of Appeal directs otherwise. In the case of a decision involving a sanction, the details of the charge, verdict and sanction will be communicated to the wider baseball community. Each party shall be responsible for their own costs (if any) associated with the hearing.

## **12. The Decision**

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- 12.1 After the hearing of an Appeal, the Jury of Appeal has the power to:
- a. allow or dismiss the Appeal;
  - b. vary the decision of the Judicial Committee;
  - c. increase, decrease, remit, or otherwise vary, any penalty included in the decision of the Judicial Committee;
  - d. impose such other penalty or sanction as it deems fit;
  - e. make an order that the appeal fee be refunded or forfeited; and/or
  - f. make an order for costs against any party.
- 12.2 The decision of the Jury of Appeal is final and binding on all parties and there shall be no further right of appeal.

**SCHEDULE 1**  
**Guidelines on Process for Hearing and Determining any Complaint**

The purpose of these guidelines is to ensure Judicial Committees follows a consistent process and comply with the principles of natural justice. Complaints should, in the first instance, be directed to the email address: [complaints@baseballnewzealand.co.nz](mailto:complaints@baseballnewzealand.co.nz)

**1. Receipt of Complaint or Appeal**

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- 1.1 On receipt of a Complaint or Appeal, the Judicial Committee or Jury of Appeal shall notify the Complainant and the Accused, and any other relevant parties of:
- a. the details of the Complaint
  - b. the time and place of the hearing;
  - c. where relevant, the names of the people who will be serving on the Judicial Committee or Jury of Appeal for the proceedings; and
  - d. the right of all parties to be represented (this includes the accused having one representative).
- 1.2 The Judicial Committee or Jury of Appeal shall hear and determine the Complaint in whatever manner it considers appropriate in the circumstances (including by way of teleconference, videoconference, in person or otherwise).

**2. Details of the Complaint**

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- 2.1 The details of the Complaint should be in writing and include:
- a. the fact of the report of the Complaint;
  - b. the identity of the Accused;
  - c. the Misconduct alleged;
  - d. any evidence provided with the Complaint.
- 2.2 The details of any Appeal will be in writing and include:
- a. the fact of the report of the Appeal; and
  - b. the grounds on which the Appeal has been made.

**3. The Hearing**

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- 3.1 The Accused is entitled to be present at the hearing. Should the Accused fail to attend the hearing, the hearing shall take place in their absence and the facts around the failure to attend shall be taken into account in the determination of the appropriate penalty in the event that Misconduct is found to have been committed.
- 3.2 At the hearing, the Judicial Committee shall:
- a. provide the Accused with an opportunity to make a statement or provide evidence in relation to the Complaint;
  - b. consider other evidence e.g. witness statements, video evidence;

- c. provide the Accused with an opportunity to make further submissions or provide additional evidence; and
- d. give due consideration to the allegations and the evidence.

3.3 At the hearing, the Jury of Appeal shall:

- a. provide the Accused with an opportunity to make a statement or representation at the hearing;
- b. if the Appeal has been raised under clause 10.1 (c) of this Policy, consider any other evidence which has come to light after the original decision; and
- c. give due consideration to the Appeal.

#### **4. Proof**

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- 4.1 The onus of proof will be on the person or group who has made the Complaint.
- 4.2 The standard of proof is on the balance of probabilities. The Judicial Committee or Jury of Appeal need only be satisfied on the balance of probabilities (more likely than not).
- 4.3 Where there is a direct conflict between evidence of the Accused and other relevant parties and no corroborative supporting evidence exists either way then the Judicial Committee or Jury of Appeal may in their absolute discretion, give a presumptive but not conclusive weight, to other accounts without in any way pre-determining the final decision.
- 4.4 Greater significance should be placed on the Accused's intention than on the actual outcome in reaching any decision. The consequences of the action may however, influence the penalty.
- 4.5 In any case in which it is claimed the Accused was guilty of an offence by reason of provocative conduct on the part of another stakeholder, such provocative conduct shall be no defence for any incident but may be taken into account in determining the penalty or suspension.
- 4.6 An Accused's previous history should not be considered when determining guilt. However, their history should be considered when determining a penalty or suspension. Repeat offenders should expect more severe penalties.

#### **5. The Decision**

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- 5.1 Any decision in relation to a Complaint or investigation should be in writing and deal with the following matters:
  - a. Whether the Accused accepts that Misconduct has occurred resulting in a breach of this Policy;
  - b. If the Accused does not accept the breach, a finding as to whether a breach has occurred and why; and
  - c. The penalty for any breach.
- 5.2 Any decision in relation to an Appeal should be in writing and deal with the following matters:
  - a. The outcome of the Appeal; and
  - b. If the Appeal is upheld, whether the fee for lodgement of the Protest will be returned.

## **6. The Penalty**

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- 6.1 Any penalties will be determined by the committee and established based upon on the severity and impacts of the incident in question and the outcomes of the judicial committee process.
- 6.2 Penalties may include prescribed sanctions, restrictions, recommendations and/or monetary reparation.



## **SCHEDULE 2**

### **Checklists for use of this Policy**

The following lists are provided as a guide for those involved in a judicial process. Their use should be seen to assist a fair process and to ensure the spirit of natural justice is followed. It is not intended that an omission or oversight would result in the basis of an appeal unless the provisions of clause 10.1 apply.

#### **For the CEO, Chair and Judicial Committees:**

- The details of Schedule 1 should be considered carefully
- The Complainant, and the accused should be notified of the details of the complaint. If appropriate, ensure other affected parties are advised
- Advise a timeline for the process
- Initiate an investigation
- Ensure no conflicts of interest or perceived conflicts. Be vigilant with professionalism, confidentiality and privacy. Ensure no pre-judgements are made by people privy to information
- If a hearing is required, the Chair will appoint a Judicial Committee
- Complete a formal notification of charge form (*Form 3c from Schedule 3*)
- Notify all parties that a hearing will take place
- Outline the details of the time and place of the hearing to relevant parties
- Detail the name of the Judicial Committee
- Invite the Accused to the hearing. Note that the hearing will still proceed in the absence of the Accused
- Indicate that a support person may be present
- Provide any reports or evidence that is available at the time of notification
- Indicate the alleged misconduct and charge if appropriate

#### **For those lodging a complaint:**

Complaints should be lodged within a two-week (14 day) time frame (use form *3a Allegation of Misconduct*). Complaints should, in the first instance, be directed to the email address: [complaints@baseballnewzealand.co.nz](mailto:complaints@baseballnewzealand.co.nz)

#### **At the hearing:**

- The Judicial Committee should be introduced
- Accurate minutes of the meeting should be taken
- The Accused, and support person acknowledged and introduced
- The Judicial Committee should outline the alleged misconduct and indicate the charge
- The Judicial Committee should give the accused an opportunity to make an opening statement, and to make a plea
- The Accused should then be given the opportunity to give evidence relevant to the alleged Misconduct
- The Judicial Committee should consider all other evidence relevant e.g. reports, video footage, witness accounts. At any stage, individuals or parties may be asked to leave the room
- The Accused should be given opportunity to make further submissions
- The Judicial Committee should consider the allegations and evidence
- The Judicial Committee should make a decision and impose any sanction(s)

- The right to appeal
- The decision should be communicated verbally at the meeting, then in writing as soon as practicable after the completion of the meeting
- The Accused and other parties involved in the alleged Misconduct should be informed of the decision and sanction. Ensure that this communication is acknowledged as received by all parties

### **SCHEDULE 3 Complaints Templates**

The following templates are designed to allow correct flow of information between the various parties involved with a judicial process. It is not compulsory to use these forms (i.e. a process would not be deemed invalid if alternative documentation was used), but it is recommended so that the correct information flow and communication between parties result in a fair and open process.

Templates listed:

- 3a Allegation of Misconduct (Complaint)
- 3b Formal Notification of a Charge

**Baseball New Zealand**  
**Judicial Committee Policy (Non-Events)**

**Template 3a: Allegation of Misconduct (Complaint)**

**Introduction:** *(Detail the time, date, location, match details (if applicable), umpires (if applicable)).*

<b>Time:</b>	
<b>Date:</b>	
<b>Location:</b>	
<b>Other Details:</b>	

**Participants:** *(identify the person(s) involved and their role as defined by Policy Clause 2.1).*

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**Describe the nature of the incident:** *(A detailed factual account of the event including anything leading up to the event and anything occurring afterwards (if applicable), and any verbal comments made surrounding the incident).*

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**List potential witnesses:**

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<b>Signed:</b>			
<b>Name:</b>		<b>Date:</b>	

**Baseball New Zealand**  
**Judicial Committee Policy (Non-Events)**

**Template 3b: Formal Notification of a Charge**

**Date:**

**Name of accused** *(person charged):*

**Charge:** *(description of the charge to ensure the participant is fairly informed)*

On the \_\_\_\_\_ (day) of \_\_\_\_\_ (month) \_\_\_\_\_ (year)

<b>Signed:</b>		<b>Name:</b>	
<b>Role:</b>		<b>Date:</b>	