

Cranbrook Minor Hockey Association
Independent Appeal Committee
Report and Recommendations

Re: Appeal of Cranbrook Minor Hockey Association Decision
to Expel Bruce CLARK and Susan PEL from CMHA

Dated February 16, 2017

Appellants: Bruce CLARK and Susan PEL

Respondents: Cranbrook Minor Hockey Association ("CMHA")

Together Known as "the Parties."

A.) Summary of Report and Recommendations

On January 18, 2017, the Discipline Committee and the Board of Cranbrook Minor Hockey Association made a decision to permanently expel Bruce Clark and Susan Pel from the Cranbrook Minor Hockey Association. As the Appellants right to appeal the decision was to the Board of the CMHA, in order to comply with the principles of natural justice, by an agreement in writing dated February 8, 2017, the parties agreed to an appeal of the expulsion, before an independent Appeal Committee. The terms of this agreement included that this Appeal Committee would have the jurisdiction to decide the resolution of all matters at issue in the Appeal, and that the decision of the Appeal Committee would be a final and binding settlement of all matters at issue in the appeal. It was agreed that the independent Appeal Committee would consist of Jason Wheeldon as the Chair, and two additional members, namely, Leona Lim and Dave Butler.

The CMHA Independent Appeal Committee held a hearing regarding this matter on February 13, 2017 in Cranbrook, BC. The committee holding the hearing was composed of three local individuals with no ties to, or involvement in the matter. The committee was assisted by a retired local solicitor and a local practicing solicitor with no ties to the Parties in this matter and whose combined role was to act as advisers to the committee to ensure that the hearing was conducted in accordance with the principles of natural justice. This committee and advisers have expended upwards of 100 hours of volunteer resources to review the matter at hand.

This hearing was based on 380+ pages of written evidence provided by the Parties prior to the hearing, and verbal submissions made by (and questions posed and answers provided to/from) the Parties at the hearing.

Based on the evidence and submissions, the appeal committee makes the following recommendations (background reasoning for recommendations detailed in Section (B.) below):

- 1.) **Process for Suspensions and Expulsions from CMHA Membership** – the committee recommends that the Respondents (CMHA) provide clarifying statements within their bylaws (or as a separate policy) laying out the process for discipline actions (steps, timing, responsibilities, etc.).
- 2.) **Process for Members to Raise Issues or Concerns with the CMHA Board of Directors** – the committee recommends that the Respondents develop a Communication Policy to clarify the way in which issues or concerns should be brought to the Board’s attention for action.
- 3.) **Code of Conduct for Parents in the CMHA** – the committee recommends that the CMHA translate the Fair Play and Turning Point sections of its bylaws into a Parental Code of Conduct, and that all parents be required to sign the code of conduct before their children are registered in the association.
- 4.) **Resolution of the Expulsion of Bruce CLARK and Susan PEL from the CMHA** – because of the significant impacts this matter has had on everyone involved, the committee recommends that:
 - a. the expulsion of the Appellants remains in place for the remainder of the 2016- 2017 CMHA hockey season (*);
 - b. the Appellants be offered a pro-rated refund of fees paid to the CMHA for the 2016-17 season, based on the time from start of the season to the date of the hearing (February 13, 2017);
 - c. the Appellants be allowed to re-apply for membership and entry into the CMHA in the fall of 2017 (for the 2017-18 and subsequent seasons) providing they:
 - i. agree to (via signatures) the Parental Code of Conduct;
 - ii. comply with the revised CMHA bylaws (or policy) regarding how questions or concerns are to be brought to the attention of the CMHA Board; and
 - iii. submit a written apology to the CMHA Board regarding comments made through social media (see details in section B(4) below).
 - d. In the event that 4 (c) (above) is not followed and the appellants choose to register their children in a different league, the CMHA should allow the appellants to observe games in CMHA facilities when their children are playing.

(*If the expulsion continues for the rest of this season, the committee encourages both Parties to do all they can to ensure that the Clark/Pel children can play in a minor hockey program in another community for the remainder of this season).

B.) Background to Recommendations

Recommendation #1 – Process for Suspensions and Expulsions from CMHA Membership

The committee heard evidence and submissions that CMHA Bylaws are the applicable rules for the Society to administer suspensions and expulsions from membership. Any reference to BC Minor Hockey Association discipline procedures are for the parent organization to deal with at their own society level. The two Associations have bylaws and rules that do not conflict.

However, the committee found that the CMHA bylaws have a limited scope of process, with only four points for a discipline committee to follow. It is the committee's recommendation that this section of the bylaws be revised (or a separate discipline policy enacted) that provides clear instruction to both the Board and its members around due process for these levels of discipline. This should include process steps, timing, information requirements, etc. The BCHA Bylaws include more detailed information that could be used as a template.

Recommendation #2 – Process for Members of CMHA to Raise Issues or Concerns with CMHA Board of Directors

The committee heard evidence and submissions that the Appellants appear to have had three underlying concerns about CMHA bylaws, policy and their implementation. These include:

- 1) Mentoring program and equitable ice time
- 2) Moving of players/teams up or down in divisions
- 3) Cost of hockey

The committee recognizes that youth organized sports are driven by volunteers and as such have limited resources. The need for volunteers in any sporting organization is to keep the costs down for members. Without volunteers, youth sports programming would be in jeopardy.

The current CMHA bylaws state that any complaints to the CMHA board regarding minor hockey must be made in writing and signed. Specifically, the Turning Point program mentions communication: *"If you feel that something unacceptable is being done, direct constructive comments to the association."* This last term is vague and should be clarified and expanded. Providing a clear communication policy establishing how members are to communicate and how the Board will respond may prevent scattered and/or inconsistent communication by ensuring that concerns are dealt with the Board as a whole.

The committee found that the Appellant's comments to the CMHA were in the form of text, email, face-to-face conversation, phone conversation and social media. The concerns raised by the Appellants may or may not have had merit, but the delivery of the communication was unproductive, inflammatory and one-sided, and was seen by the respondents as abusive, threatening and intimidating. The committee reviewed many examples of this. In the opinion of the committee, the Appellants used words and phrases that were completely inappropriate. Further, it is suggested that no volunteer in any capacity should be subjected to inflammatory forms of communication, either individually or as part of a group. The committee recommends

that the Appellants provide a written apology to the CMHA Board for their communication, particularly on social media.

Communication from the Appellant was scattered amongst individual board members using a range of methods, and without a clear line or mode of communication to the Board, likely resulted in confusion and poor communication. If a clearer policy had been in place, the majority of the communication would have been addressed to the Board as whole, in writing, to allow for a proper response.

The Committee recognizes that individual board members tried to resolve the Appellant's concerns but were inundated by multiple forms of communications, and by demands for details of complaints. The Board was clearly in a difficult position because of concerns over what they felt to be bullying and intimidation. The evidence presented to the committee shows that the Respondents were trying to work with the Appellants on their underlying concerns in a polite and civil manner that is expected from a volunteer Board of Directors.

Based on this, the appeal committee recommends that the Respondents develop and implement a Communications Policy that will clarify the way in which concerns or issues are to be brought to the Board's attention, and the Board's responsibilities when such concerns are raised. The CMHA, like every association, should welcome input from its members to ensure optimal achievement of its stated Purpose. But it needs to clarify how that input should be communicated, and it should clarify how it will act when it is. Streamlining and clarifying communication pathways will assist in ensuring that issues and concerns from members are dealt with in a civil and professional manner.

Recommendation #3 – Code of Conduct for Parents in the CMHA

The committee heard evidence and submissions that seemed to suggest – at least to the committee members – that there's a lack of clarity about how parents should behave in the context of the CMHA. This relates to how issues or concerns are raised to the Board of Directors (see #2) but it also relates to how parents communicate about the CMHA (the organization as a whole, its Board, coaches and other support people, and its officials) and its activities and decisions to family, friends and other external parties. Of particular concern is the use of social media. However, on reflection, it appears that the Fair Play and Turning Point sections of the CMHA bylaws are solid pieces of work that provide significant relevant guidance.

Based on this, the appeal committee recommends that the CMHA Board, working with its members (and using successful examples from other organizations and jurisdictions), expand the Fair Play and Turning Point sections of the bylaws as a basis for creating a Parental Code of Conduct. Further, the committee recommends that each parent be required to sign the Code of Conduct before their children are registered in the association.

Again, the Committee recognizes that youth sport organisations rely on volunteers and that these volunteers expend significant amount of time and energy in fulfilling their commitments to the organization. It is often a thankless job for most but at the same time, it is critical to building community spirit and ensuring that active sporting is available to the youth in our community. The

committee has made recommendation about bylaw changes and/or policy development, and it suggests that the off-season for CMHA is a prudent time to undertake that work. The committee does recognize with the change in *Society Act* that most non-profits will be updating and revising their Bylaws. This is an opportune time to build new policy through membership input.

Recommendation #4 – Resolution of the Expulsion of Bruce CLARK and Susan PEL from the CMHA

The committee heard evidence and submissions that the subject expulsion has not only resulted in significant impacts on the Parties, but on Cranbrook's hockey (and perhaps youth sport) community more broadly. Of particular concern to committee members is the impact that it may have had on children directly or indirectly involved, and the message such a dispute sends to them about how adults resolve conflicts.

As a result, the committee recognizes that there is significant value in a timely resolution of the matter in a manner that, to the greatest degree possible, meets the needs of the Parties and appears fair and equitable to those watching from the outside.

The committee reviewed and carefully weighed all of the evidence presented for its relevance to the issue at hand. At the end of the hearing, after all of the statements and the questions and answers, the committee also asked both parties to answer the question: "what would it take to resolve this situation?" The answers to that question have also been considered in the following recommendation.

Based on all of the evidence, submissions and discussions during the hearing, the appeal committee therefore recommends that:

- a. the expulsion of the appellants remains in place for the remainder of the 2016- 2017 CMHA hockey season; (*)
- b. the appellants be offered a pro-rated refund of fees paid to the CMHA for the 2016-17 season, based on the time from start of the season to the date of the hearing (February 13, 2017);
- c. the appellants be allowed to re-apply for membership and entry into the CMHA in the fall of 2017 (for the 2017-18 and subsequent seasons) providing they:
 - i. agree to (via signatures) the Parental Code of Conduct;
 - ii. comply with the revised CMHA bylaws (or policy) regarding how questions or concerns are to be brought to the attention of the CMHA Board; and
 - iii. offer a written apology to the CMHA Board for comments made through social media.

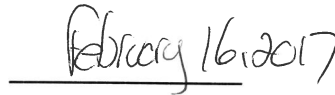
- d. In the event that 4 (c) is not followed and the appellants choose to register their children in a different league, the CMHA should allow the appellants to observe games in CMHA facilities when their children are playing.

(*If the expulsion continues for the rest of this season, the committee encourages both Parties to do all they can to ensure that the Clark/Pel children can play in a minor hockey program in another community for the remainder of this season).

This was clearly an unfortunate, difficult and emotionally-charged issue that has impacted many people. The above recommendations are offered by the independent appeal committee, acting in good faith and with a sincere interest in resolving the issue, based on a review and weighting of all of the evidence submitted by, and statements made by the Parties.



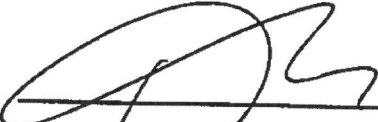
Original Signed by Appeal Committee Chair



Date

**Cranbrook Minor Hockey Association
Independent Appeal Committee**

As advisors to the Independent Appeal Committee we confirm that with regard to the appeal of the Appellants Bruce CLARK and Susan PEL, in regards to the January 18, 2017, decision of the Discipline Committee and the Board of Cranbrook Minor Hockey Association to permanently expel Bruce Clark and Susan Pel from the Cranbrook Minor Hockey Association, that we were satisfied that the Independent Appeal Committee acted in a fair manner and in accordance with the principles of natural justice. Our observation was that the hearing held by the Committee on February 13, 2017, was conducted in a fair and reasonable manner by the committee, without any evidence of bias by any of the committee members. In addition, the process followed by the committee in establishing the rules and manner in which the hearing would be held was also observed to be fair and equitable to both parties.



DUNCAN F. SMITH, LLB



JOHN C. ZIMMER, Q.C.