

Discipline and Complaints Policy

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Purpose

1. The purpose of the Discipline and Complaints Policy (the "Policy") is to set out the process by which Complaints or Reports of violations of the Organization's Code of Conduct and Ethics Policy (the "Code") will be dealt with.
2. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the Organization's Code, all other policies, bylaws, rules and regulations. Noncompliance may result in sanctions pursuant to this policy.

Application of this Policy

3. This policy applies to all Participants relating to matters that may arise during the course of the Organization's business, programs, activities and Events, but not limited to, competitions, practices, evaluations, tryouts, treatment or consultations (e.g. massage therapy), training camps, travel associated with organizational activities, the office environment, and any meetings or social Events, including Member Club activities.
4. This policy applies to Participants' behaviour outside of the business, programs, activities, and Events of the Organization when such conduct adversely affects the Organization's relationships (and the work and sport environment) and/or is detrimental to the image and reputation of the Organization. Such applicability will be determined by the Organization or Independent Third Party (ITP), at its sole discretion.
5. This policy applies to alleged breaches of the Code by Participants who have retired from the sport where any claim regarding a potential breach of the Code occurred when the Participant was active in the sport. In addition, this policy will apply to breaches of the Code that occurred when the Participants involved interacted due to their mutual involvement in the sport, or, if the breach occurred outside of the sport environment, if the breach has a serious and detrimental impact on the Participant(s).
6. This policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline may be applied according to this policy. Any infractions or Complaints occurring within competition will be dealt with by the procedures specific to the competition, if applicable. In such situations, disciplinary sanctions will be for the duration of the competition, training, activity, or Event only.
7. In addition to being subject to disciplinary action pursuant to the Policy, an employee of the Organization who is a Respondent to a Complaint may also be subject to consequences in accordance with the employee's Employment Agreement or policies for human resources, if applicable.

8. The Organization may at its discretion, assume Jurisdiction of a Complaint that was submitted to a Member Club. In such cases, the Organization's Case Manager will determine whether the Complaint process should be re-started or resumed pursuant to the applicable section of this policy.

Reporting a Complaint

Reporting Timelines

9. A Complaint must be submitted in writing and must be filed within fourteen (14) Days of the alleged incident(s).

10. A Complainant wishing to file a Complaint outside of fourteen (14) Days must provide a written statement giving reasons for an exemption to this limitation.

11. The decision to accept or deny the Complaint outside of the fourteen (14) Days will be considered by the Case Manager. This decision may not be appealed.

Reporting Pathways

12. ***Reporting to the Organization:*** Participants are to Report breaches of "additional expected behaviours" defined in the Code to the Organization. Participants must also submit any other Complaint to the Organization regarding breaches of an Organization's internal policies, bylaws, rules, and regulations.

13. ***Reporting to the ITP:*** Participants must Report any allegations of Maltreatment, directly to the ITP.

A .If Sport Manitoba, an Organization, or one of its Athlete Support Personnel receives a Complaint with claims of Maltreatment, the Complaint will be immediately redirected to the ITP

b. Once the Complaint is submitted to the ITP, Sport Manitoba/the Organization will have no further involvement in the management of the Complaint, unless the Complaint is referred back to an Organization by the ITP

c. The Organization must ensure that information on how to submit a Complaint directly to the ITP is available to all Participants

d. The ITP is responsible for receiving, reviewing, and investigating Complaints of Maltreatment. The ITP determines whether Maltreatment has occurred and, where appropriate, impose sanctions or facilitate alternative resolutions

14. ***Reporting to the Sport Integrity Canada (SIC):*** Any incident that involves alleged breaches of the UCCMS, involving a Canadian Safe Sport Program (CSSP) participant must be Reported to the SIC and will be addressed pursuant to the CSSP rules.

a. If such Complaints are made to the ITP or the Organization, the Case Manager will refer the matter to the SIC and notify the Complainant of such action.

b. All Organizations are expected to cooperate fully and in good faith with any complaint process conducted under the CSSP. Such cooperation includes providing information as requested and refraining from any action that may compromise the process.

Reporting Complainants

15. Any Participant may submit a Complaint.

16. Resignation or lapsing of membership after a Complaint is filed does not preclude disciplinary proceedings being pursued under this policy.

17. At the Organization's discretion, the Organization may act as the Complainant and initiate the Complaint process under the terms of this policy. In such cases, the Organization will identify an individual to represent the Organization.

18. Anonymous Complaints may be accepted at the sole discretion of the Case Manager. However, anonymous Complaints are strongly discouraged as non-criminal offences are generally impossible to address without the involvement of the Complainant or witness.

a. The confidentiality of the Complainant's identity may not be guaranteed

b. A Complainant's identity may need to be disclosed if required to ensure Procedural Fairness, or if legally mandated

Duty to Report

19. In Manitoba, it is the legal responsibility and duty of anyone who reasonably believes that a child is, or might be, in need of protection or suffering from child abuse, to Report the information to a Child & Family Services (CFS) agency or, if deemed appropriate, to a parent or guardian.

Complaints Involving Minors

20. Complaints may be brought by or against a Participant who is a minor. Minors must have a parent/guardian or other adult serve as their representative during this process. Where appropriate, the minor's preference regarding their representative should be considered.

21. Communication from the Case Manager, Investigator, Mediator, or Hearing Panel must be directed to the minor's representative.

22. If the minor's representative is not their parent/guardian, the representative must have written permission to act in such a capacity from the minor's parent/guardian, unless the parent/guardian is implicated in the Complaint.

23. A minor is not required to attend or participate in a hearing, if held, or participate in an Investigation, if conducted. In such circumstances, no adverse inference can be drawn against the minor.

Case Manager

24. Upon the submission of a Complaint, an impartial and unbiased Case Manager will be appointed to oversee the management and administration of the Complaint in accordance with the policy. Such an appointment is not appealable.

25. The Case Manager has a responsibility to:

- a. Notify the Complainant that their Complaint has been received within 5 Days of receipt;
- b. Determine whether the Complaint is within the scope of the policy and the Jurisdiction of the entity to which it was reported, and notify the Complainant of the determination;
- c. Propose the use of the Organization's Alternate Dispute Resolution Policy, if appropriate;
- d. Determine if the alleged incident must be investigated and if so, appoint an Investigator;
- e. Assess if the Complaint is frivolous, vexatious, trivial, or if it has been made in bad faith;
- f. Determine whether to combine Complaints into a single disciplinary process, if there are multiple individuals submitting Complaints against the same Respondent for allegations of a similar nature or occurrence in time;
- g. Appoint the Hearing Panel, if and when necessary;
- h. Coordinate all administrative aspects and set timelines;
- i. Provide administrative assistance and logistical support to the Hearing Panel, as required;
- j. Provide any other service or support that may be necessary to ensure a fair and timely proceeding.

26. If the Case Manager deems the Complaint to be frivolous, outside the scope of the policy, or outside the entities Jurisdiction, the Complaint will be dismissed immediately. The Complainant will be provided with written notice as such, including the Case Manager's reasoning for the dismissal.

a. When a Complaint is outside the Jurisdiction of the entity, the Case Manager will refer it to the appropriate Jurisdiction

27. If a Complaint is not frivolous, has been pursued within the required timeframes, is within the scope of the policy and Jurisdiction of the policy, the Complaint will be accepted. The decision to accept the Complaint will be communicated to the Complainant(s) and Respondent(s).

28. A Case Manager's decision to accept or dismiss the Complaint may not be appealed.

29. The Case Manager will establish and adhere to timelines that ensure Procedural Fairness and that the matter is heard in a timely fashion.

30. After a Complaint is accepted, the Case Manager may propose the use of Alternate Dispute Resolution (ADR) when appropriate (see section titled Alternate Dispute Resolution).

Field of Play Matters

31. Where a Complaint relates to conduct occurring during competition, including conduct that may constitute Maltreatment, and/or may concern a decision, ruling, action, or incident arising on the Field of Play, the Independent Third Party (ITP) retains the discretion to determine whether the Complaint is more appropriately addressed through the applicable Organization's Field of Play discipline, protest, or appeal mechanism.

a. In exercising this discretion, the ITP may determine that, despite the characterization of the Complaint as Maltreatment, the substance of the Complaint is properly dealt with under the sport rules and competition framework of the Organization.

b. Where the ITP makes such a determination, the ITP may decline Jurisdiction under this Policy and direct the Complainant to the appropriate Field of Play process. This determination is final and may not be appealed.

c. For greater certainty, discretionary decisions made by Officials in the application of sport rules during competition are not subject to review under this Policy, unless the Complaint alleges misconduct beyond the exercise of sport-specific discretion, including bad faith, bias, abuse of authority, or a breach of another applicable policy.

Alternate Dispute Resolution

32. Sport Manitoba and the Organization supports the principles of ADR and is committed to the techniques of negotiation, facilitation, and mediation as effective ways to resolve Disputes. ADR also avoids the uncertainty, costs, and other negative effects associated with lengthy Investigation, hearings, and Appeals. Negotiated settlements are most often preferable to arbitrated outcomes.

33. If Parties unanimously agree to using ADR, the process set out in the Alternate Dispute Resolution Policy shall be followed from this point. If it is declined by one or more Parties, or the Parties are unable to resolve the Dispute, in the established timeframe, the Case Manager will appoint a Hearing Panel and the matter will proceed to the hearing process.

34. When a Complaint involving Maltreatment of a Young Athlete by a Coach or Athlete Support Personnel (including minors playing these roles) is resolved through ADR, this will be communicated to all Organizations through written notice from Sport Manitoba (see point 61).

a. All sanctions must be upheld by all Organizations in which the Respondent is currently involved or becomes involved.

Investigation

35. In exceptional circumstances where it is impossible to reasonably proceed without the benefit of an Investigation, the Case Manager may order an Investigation by an independent, skilled investigator, before appointing a Hearing Panel.

36. The Case Manager and investigator shall follow the Investigation procedures outlined in Appendix A.

Provisional Measures

37. The President/Chair, or designated alternate, of an Organization's Board of Directors may determine that an alleged incident is of such severity that it warrants imposing a provisional suspension or other interim measures for the Respondent, pending the completion of an Investigation, criminal process, ADR, a hearing, or a decision of the Hearing Panel.

38. Provisional Measures may be imposed in a reasonable and proportionate manner, without limitation, taking into account the following factors:

- a. The safety or well-being of any Participant and the Manitoba sport community;
- b. The seriousness of the allegations and the facts and circumstances of the case;
- c. Potential risks and prejudice from action and inaction;
- d. The best interest of sport and those who participate in it;
- e. The impact of the measures on the Respondent; and
- f. The integrity of the process.

39. The Case Manager, upon receipt of a Complaint, may make recommendations to an Organization regarding an immediate provisional suspension or interim measure, if no such restrictions have yet been imposed by the Organization.

40. Any Respondent against whom a Provisional Measure is imposed may make a request to the Case Manager to have the Provisional Measures lifted. In such circumstances, the Organization shall be provided with an opportunity to make submissions, orally or in writing, regarding the Respondent's request to have the measures lifted. Provisional Measures shall only be lifted in circumstances where the Respondent establishes that it would be manifestly unfair to maintain the measures against them.

Hearing Process

41. The Case Manager will appoint a Hearing Panel, which will consist of a single adjudicator, to hear the Complaint. In extraordinary circumstances, and at the discretion of the Case Manager, a Hearing Panel of three (3) members may be appointed to hear the Complaint. In this event, the Case Manager will appoint one for the Hearing Panel members to serve as chair.

42. The Case Manager, in cooperation with the Hearing Panel, will decide the format of the hearing, which may involve:

- a. direct communication with the Parties;
- b. an oral in-person hearing;
- c. an oral hearing by telephone or another format;

- d. a hearing based on a review of documentary evidence submitted in advance of the hearing;
- e. or a combination of these methods.

43. The hearing will be governed by the procedures that the Case Manager and the Hearing Panel deem appropriate in the circumstances, provided that:

- a. The Parties will be given appropriate notice of the day, time, and place of the hearing, in the case of an oral in-person hearing or an oral hearing by telephone or other communication medium
- b. All Parties are given the opportunity to present evidence (including, but not limited to witness statements, documentary evidence, or evidence from other media [i.e., photos, screenshots, videos or other recordings]) in a manner which complies with the fundamental principles of Procedural Fairness, and is sensitive to the needs of minors, survivors of trauma, and other Vulnerable Participants/individuals. Copies of any documents which the Parties wish to have the Hearing Panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing
- c. The Parties may engage a representative, advisor, or legal counsel at their own expense
- d. The Hearing Panel may request that any other individuals participate and give evidence at the hearing, including the Organization, provided such participation is reasonably required to effectively conduct the proceedings and is not prejudicial to the interest of the Parties
- e. The Hearing Panel may allow as evidence at the hearing any oral evidence and document or anything relevant to the subject matter of the Complaint, but may exclude such evidence that is unduly repetitious, and will place such weight on the evidence as it deems appropriate
- f. The decision will be by a majority vote of the Hearing Panel, if there are three persons on the panel

44. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Hearing Panel will determine the appropriate sanction. The Hearing Panel may still hold a hearing for the purpose of determining an appropriate sanction. In such circumstances, victim impact statements may be considered by the Hearing Panel.

45. The hearing will proceed in any event, even if a party chooses not to participate in the hearing.

46. In fulfilling its duties, the Hearing Panel may obtain independent advice.

Decisions

47. After hearing the matter, the Hearing Panel will determine, on a balance of probabilities, whether an infraction has occurred and, if so, the sanctions to be imposed. If the Hearing Panel considers that no infraction has occurred, the Complaint will be dismissed.

48. Within fourteen (14) Days of the hearing's conclusion, the Hearing Panel's written Decision Report, with detailed reasons, will be distributed to the Complainant and the Respondent.

- a. In complex cases or where other circumstances warrant, the Case Manager may extend the timeline for completion of the Decision Report
- b. The Hearing Panel may first issue a verbal or summary decision soon after the conclusion of the hearing, with the full written decision to be issued before the end of the fourteen (14) Day period

49. The Hearing Panel's Decision Report must provide notice of the decision rendered and reason for the decision. At the discretion of the Case Manager, the Report may also include additional information such as:

- a. Overview of the submitted Complaint and relevant background information, such as pertinent facts and evidence, and the specific provisions of the Code that have been breached, etc.;
- b. Overview of the decision including, where applicable, any sanctions imposed and any conditions for reinstatement that the Respondent must satisfy, etc.

50. For any Complaints alleging Maltreatment, the ITP must provide the applicable Organization and Sport Manitoba with a decision summary that will include the following information:

- a. The name of the Respondent (subject of the Complaint)
- b. A brief overview of the submitted Complaint that describes the nature of the Complaint
- c. The Hearing Panel's findings on the Complaint including, whether or not Maltreatment occurred and, where applicable, the sanctions or other methods of resolution that have been imposed, including the end date of any sanctions
- d. The date of the Hearing Panel's decision

51. The Hearing Panel's decision will come into effect as of the date on which it is rendered, unless decided otherwise by the Hearing Panel.

52. Decision Reports or decision summaries, in the case of Maltreatment Complaints, shall be provided to and maintained in the records of the Organization.

53. If necessary, a party - or the entity that is responsible for implementing or monitoring a sanction may seek clarifications from the Hearing Panel regarding any sanction so that it can be implemented or monitored appropriately.

54. Entities, including but not limited to, National sport organizations, Provincial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this policy.

Sanctions

55. Prior to determining sanctions, the Hearing Panel will consider factors relevant to determining appropriate sanctions which include:

- a. The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;

- b. The Respondent's prior history and any pattern of misconduct, or Maltreatment;
- c. The ages of the individuals involved;
- d. Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
- e. The Respondent's voluntary admission of the offense(s), acceptance of the responsibility for the Maltreatment, and/or cooperation in the disciplinary process;
- f. Real or perceived impact of the incident on the Complainant, sport organization or the sporting community;
- g. Circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training regarding the requirements in the Code; addiction; disability; illness;)
- h. Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate;
- i. A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions' and/or
- j. Other mitigating and aggravating circumstances.

56. Any sanction imposed must be proportionate and reasonable. However, progressive discipline is not required and a single incident may justify elevated or combined sanctions.

57. The Hearing Panel may apply the following disciplinary sanctions, singularly or in combination:

- a. Verbal or written warning
- b. Education
- c. Probation
- d. Suspension
- e. Eligibility restrictions
- f. Permanent ineligibility
- g. Other discretionary sanctions - e.g., other loss of privileges, no contact directives, fine or monetary payment to compensate for direct losses, etc.

58. The Hearing Panel may apply the following Presumptive Sanctions which are presumed to be fair and appropriate for the listed Maltreatment:

- a. Sexual Maltreatment involving a Young Athlete or Complainant who is a minor at the time of the incidents Complaints of shall carry a Presumptive Sanction of permanent ineligibility

b. Sexual Maltreatment, Physical Maltreatment with contact, and Maltreatment related interference or manipulation of process shall carry a Presumptive Sanction of either a period of suspension or eligibility restrictions

c. While a Respondent has pending charges or allegations of a crime against a person, if justified by the seriousness of the offense, the Presumptive Sanction shall be a period of suspension until a final determination is made by the applicable process

59. Organizations must promptly implement any sanctions or other decisions applied by the Hearing Panel.

60. When a Respondent is involved in more than one sport or Organization, sanctions and decisions issued by the ITP as a result of a violation of Maltreatment must be upheld by all Organizations in which the Respondent is involved or becomes involved.

61. If the Complaint involves a finding of Maltreatment against a Young Athlete by a Coach or Athlete Support Personnel (including minors playing these roles), whether the Complaint was resolved through a Hearing Panel or ADR, Sport Manitoba will provide written notice to all Organizations that includes the following:

a. The name of the Coach or Athlete Support Personnel involved

b. The sport in which the violation occurred

c. The sanctions or other decisions imposed, including the end date of any suspension

d. The date of the decision

62. When an NSO informs an Organization of a CSSP-rendered decision, determining that maltreatment has occurred, the Organization must recognize and enforce the disciplinary sanctions imposed.

a. When the Organization receives a CSSP disciplinary decision from the NSO, the Organization may, in accordance with its policies, decide whether to take additional action against the individual(s) identified in that decision.

Criminal Convictions

63. A Participant's conviction for a Criminal Code offense, will be deemed an infraction under this policy and will result in expulsion from the Organization. Criminal Code offences may include, but are not limited to:

a. Any child pornography offences

b. Any sexual offences

c. Any offence of physical violence

d. Any offence of assault

e. Any offence involving trafficking of illegal drugs

64. A Participant's conviction for a Criminal Code offense in the following categories shall carry a Presumptive Sanction of permanent ineligibility from participating with the Organization:

a. ***Violent Crimes*** - Examples: Murder, Manslaughter, Aggravated Assault, Robbery, Kidnapping, Assault with a Weapon

b. ***Sexual Offenses*** - Examples: Sexual Assault, Sexual Interference, Sexual Exploitation, Sexual Assault with a Weapon, Sexual Assault causing Bodily Harm, Child Pornography

Other Considerations

65. The Complaints process is confidential and involves only the Parties, the Case Manager, the Hearing Panel, witnesses, and any person or Organization involved in advising or providing information to the Case Manager or Hearing Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the Complaint to any person not involved in the Complaints process.

66. Facts accepted by a criminal court, by a civil court or by a professional disciplinary tribunal of competent Jurisdiction shall be admissible as evidence within the applicable Complaint, as allowable by applicable law.

Appeal Information

67. The decision of the Hearing Panel may be appealed in accordance with the Appeal Policy.

Confidentiality

68. Any person who becomes aware of information about a Complaint made under this Policy must keep the information confidential and must not disclose it to any other person or entity unless:

a. The information is available to the public or is authorized or required to be disclosed under The Protecting Youth in Sports Act;

b. The disclosure is necessary to administer or enforce The Protecting Youth in Sports Act;

c. The disclosure is necessary to comply with an order made by a court or other person or body with Jurisdiction to compel production of the information; or

d. The person the information is about consents to the disclosure.

Appendix A - Investigation Procedures

Determination

1. When a Complaint is submitted pursuant to the Discipline and Complaints Policy, the Case Manager will determine if the incident requires an Investigation in order to determine acceptability or if further information is needed before proceeding.

Investigation

2. If the Case Manager determines that an Investigation is necessary, they will appoint an investigator. The investigator must be a neutral party skilled in investigating. The investigator must not be in a Conflict of Interest situation and should have no connection to either party.
3. Federal and/or Provincial/Territorial legislation related to workplace Harassment may apply to the Investigation, if Harassment was directed toward a worker in a workplace. The investigator should review workplace safety legislation, the Organization's policies for human resources, and/or consult independent experts to determine whether legislation applies to the Complaint.
4. The Case Manager and Investigator will collaborate to define the scope and parameters of each Investigation. Investigations should focus on clarifying details or addressing gaps relevant to the Complaint.
5. Investigations should be completed within forty-five (45) Days of the appointment of the investigator. In complex cases or where other circumstances warrant, the Case Manager may extend the timeline for completion of the Investigation.
6. The Investigation may take any form as decided by the investigator, guided by any applicable Federal and/or Provincial legislation. The Investigation may include:
 - A Interviews with the Complainant
 - B .Witness interviews
 - c. Statement of facts (Complainant's perspective) prepared by the investigator, acknowledged by the Complainant, and provided to the Respondent)
 - d. Interviews with the Respondent
 - e. Statement of facts (Respondent's perspective) prepared by the investigator, acknowledged by the Respondent, and provided to the Complainant
7. The Investigation shall be conducted using trauma-informed best practices to ensure a fair, respectful and minimally harmful process.

Investigator's Report

8. Upon completion of their Investigation, the investigator shall prepare a Report that should include a summary of evidence from the Parties (including both statements of facts, if applicable) and any witnesses interviewed. The Report shall include a non-binding recommendation from the investigator regarding whether an allegation should be heard by a Hearing Panel pursuant to the Policy.
9. The investigator must be aware that sport-specific differences exist with respect to such aspects as acceptable levels of touch, physical contact, and aggression during training or competition and will consider such differences during the investigative process.
10. The investigator's Report will be provided to the Case Manager who will disclose it, at their discretion, to the Complainant, Respondent, and the Hearing Panel (if applicable).

11. Should the investigator find that there are possible instances of offence under the Criminal Code, particularly related to criminal Harassment (or stalking), uttering threats, assault, sexual interference, or sexual exploitation, the investigator shall advise the Complainant and the Case Manager before referring the matter to law enforcement or other responsible authority.

12. The investigator must also inform the Organization of any findings of criminal activity. The Organization may decide whether to Report such findings to police but is required to inform police if there are findings related to the trafficking of Prohibited Substances or Prohibited Methods, any sexual crime involving minors, fraud against the Organization, or other offences where the lack of Reporting would bring the Organization into disrepute.

Reprisal and Retaliation

13. A Participant who submits a Complaint or who gives evidence in an Investigation may not be subject to reprisal or retaliation. Any such conduct may constitute Maltreatment and will be subject to disciplinary proceedings pursuant to the Discipline and Complaint Policy.

False Allegations

14. A Participant who submits allegations that the investigator determines to be malicious, false, or for the purpose of retribution or vengeance (or that otherwise fall within the definition of Maltreatment) may be subject to a Complaint under the terms of the Discipline and Complaints Policy and may be required to pay for the costs of any Investigation that comes to this conclusion. The Organization or the Participant against whom the allegations were submitted, may act as the Complainant.

15. Any Participant who is liable to pay for such costs shall be automatically deemed to be not in good standing until the costs are paid in full and shall be prohibited from participating in any Organization's Events, activities or business, including Member Club activities.

Confidentiality

16. The investigator will make reasonable efforts to preserve the anonymity of the Complainant, Respondent, and any other party, when appropriate and necessary. However, the Organization recognizes that maintaining full anonymity during an Investigation may not be feasible.