

Safe Sport Policy Implementation

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Sport Law & Strategy Group



Providing strategic insight to the Canadian sport community through professional services in these areas:

- **Legal Solutions**
- **Communications, Marketing and Event Management**
- **Leadership Development, Human Resource Management and Integral Coaching®**
- **Governance, Compliance, Risk Management, and Financial Management**
- **Strategic Planning, Research, and Member Surveys**

Our Values + Our Team

We strive for excellence in all that we do and aim to provide exceptional value to our clients. We embrace the following values:

Professional Integrity:

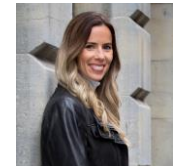
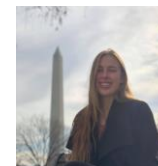
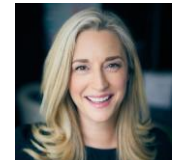
- We act fairly, ethically and compassionately.
- We are reasonable and accessible.
- We are a trusted partner.

Continuous Learning

- We educate ourselves and our clients.
- We ask questions, challenge conventional thinking and push boundaries.
- We are driven to find simple solutions to complex problems.

Shared Passion

- We care about our clients and the achievement of their goals.



Agenda

- 1. Why do we need this stuff and how did we get here?**
- 2. Understanding the Safe Sport Policy Suite**
- 3. General Tips for Complaint Management**

Recent Cases



Recent Cases

- Bertrand Charest
 - Alpine Canada Coach
 - Guilty of 37 sex related charges
 - Sentenced to 12 years in prison
- Larry Nassar
 - USA Gymnastics Physician
 - 368 individuals assaulted within USA Gymnastics
 - Sentenced to over 175 years in Prison

Recent Cases

- Scott McFarlane
 - Gymnastics Coach
 - Charged with Sexually assaulting teen girl
- Trevor Palmatier
 - Diving Coach
 - Guilty of three sexual exploitation charges with teens
 - Two years house arrest

Recent Cases

- Stanley Lowther
 - Soccer Coach
 - Convicted of Sexual Abuse
 - 6.5 year prison term
- Kelsea Hepburn
 - Ringette Coach
 - Guilty of sexually molesting 13 year old player
 - 18 month in jail

Why do we need this stuff?

- Recent Cases
 - Two NSO Coach investigations
 - Abuse and harassment
 - One local coach charged with sexual assault
 - One coach being investigated for allowing abuse and one coach being charged with sexual assault

June 19, 2018 Sport Canada Announcement

Effective immediately:

- Federally funded sport organizations must take all necessary measures to create a workplace free from harassment, abuse or discrimination of any kind.
- They must **immediately disclose** any incident of harassment, abuse or discrimination that could compromise the project or programming to the Minister of Sport and Persons with Disabilities.
- They must make provisions—within their governance framework—for access to an **independent third party** to address harassment and abuse cases.
- They must provide **mandatory training** on harassment and abuse to their members by April 1, 2020 and are challenged to make this a priority and put mandatory training in place as soon as possible.

Since Sport Canada Announcement

- Red Deer Declaration
 - Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation recognize that:
 - **Sport must be free from harassment**, abuse, unethical behaviour, and discrimination, regardless of sex, gender identity or expression, ethnicity, religion, language, age, sexual orientation, ability, or any other basis.
 - **Federal, provincial, and territorial governments have a critical role** to play in ensuring and sustaining a safe, welcoming, inclusive, and respectful environment that is free from harassment, abuse, and discrimination.
 - We, the Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation will work together to:
 - Foster a collaborative and coordinated relationship with sport organizations, participants, and stakeholders, and engage relevant experts **to identify effective approaches to prevent and respond to incidents of harassment, abuse, and discrimination.**

Since Sport Canada Announcement

- We, the Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation will work together on the following immediate actions:
 - Establishing **a standing item on safety and integrity in sport**, including harassment, abuse and discrimination, on the agenda for ministerial conference calls and meetings for the purpose of reviewing progress of actions, updating priorities, and exploring innovative approaches.
 - Implementing **a collaborative intergovernmental approach**, with better harmonized commitments, mechanisms, principles, and actions to address harassment, abuse, and discrimination in sport in the areas of awareness, policy, prevention, reporting, management, and monitoring.
 - Investigating a mechanism **to report and monitor incidents of harassment, abuse, and discrimination reported in sport environments** in order to inform future decisions and initiatives.

Since Sport Canada Announcement

- **14 Safe Sport Summits**
- **Consensus Statements:**
 - Federal / Provincial / Jurisdiction: To **collaborate** with Federal, Provincial, and Territorial governments to create a harmonized approach to a **universal Code of Conduct**.
 - Education and Awareness: To build on and **develop robust, approved education and training programs** to be deployed at all levels and roles in sport. And to develop awareness among Canadians that change is happening.
 - Financial Resources: For **new funding to be identified** and dedicated to the implementation of safe sport initiatives in all jurisdictions.
 - Harmonized Code: To **develop a single, harmonized code governing safe sport in Canada**, to include updated definitions of all forms of maltreatment.
 - Independent Body: To identify **an independent body** with responsibility for implementing the harmonized and universal code.
 - Prohibited Conduct: To **prohibit sexual relations between National Team coaches and National Team athletes**, with the ability to expand the scope to positions of authority. The immediate intent is to protect athletes now.
 - Implementation Plan: To **conduct an audit** of the existing sport landscape and stakeholders; to establish a critical path; and to initiate a process to educate the sport community.

The safe sport landscape

- ✓ Swimming Canada and Skate Canada hired a full-time employee last year to oversee all Safe Sport projects
- ✓ Gymnastics Canada hired a full-time Director, Safe Sport
- ✓ CAC's Responsible Coaching Movement
- ✓ SDRCC launched an investigation Unit and Hot Line
- ✓ Safe Sport Coalition (currently disbanded)
- ✓ Respect in Sport
- ✓ True Sport
- ✓ Sport Canada/Coaching Association of Canada engaging in Safe Sport Summits

What others are doing – Prevention

- ✓ Updating policies around sexual, physical, emotional abuse, bullying, threats, harassment and discrimination
- ✓ Adopted Respect in Sport and Respect in the Workplace
- ✓ Policy Alignment
- ✓ Insurance Audits (abuse coverage may be excluded)
- ✓ Hired independent third party to manage matters of reported complaints, abuse, discrimination, harassment
- ✓ Educating PSOs and Clubs to ensure a consistent approach
- ✓ Working on creating a club management manual to ensure consistency and alignment with safe sport policies

Complaint Management Tips

Identity of the Case Manager

- Experience with dispute resolution
- Clear communicator
- Strong technical writer
- Not in a conflict / not biased
- Does not favour one side or the other

Role of the Case Manager

- **Ensure Procedural Fairness**

- 1. Person affected by decision:**

- Knows the case against them
- Knows the identity of the complainant
- Has opportunity to respond

- 2. Decision-maker (appointed by Case Manager):**

- Not biased / not in conflict of interest
- Listens to both sides
- Makes reasonable decision
- Sanctions (if applicable) are reasonable

Complaints (General)

- **Receive complaint**
- **Complainant focuses complaint**
- **Case Manager accepts complaint (or rejects!)**
- **Complaint sent to Respondent**
- **Respondent writes response / sent to Complainant**
- **Complainants writes rebuttal / sent to Respondent**
- **Appoint Judicial Body**
- **HEARING (usually documentary review)**
- **Distribute Judicial Body's decision to parties**

Procedural Fairness Scenarios

- The Respondent needs to know the identity of the complainant
- **Can the Complainant be anonymous?**
 - Maybe, based on evidence. Limited exception when organization can act as the complainant (discussed later)
- **Can the Complainant submit material directly to the Judicial Body without the Respondent seeing it?**
 - No. The Respondent needs to see everything.
 - Case Manager should remind parties that any witness statements are sent to the other party – witnesses should be aware!

Procedural Fairness Scenarios

- When should there be a 'personal hearing' instead of a hearing by documentary review?

AND

- When should there be a three-person Judicial Body instead of a single person Judicial Body?
 - Only rarely. If the plausible sanction is significant (e.g., long-term suspension or expulsion) then a personal hearing is more applicable and a 3-person Judicial Body may be warranted.

Procedural Fairness Scenarios

- **Can a party email the Judicial Body?**
 - No. The Judicial Body only communicates with the parties through the Case Manager. If – somehow – a party sends something to the Judicial Body, that message must be disclosed to the other party.
- **What if the Complainant is also at fault ?**
 - The Complainant is not the subject of the process. A separate complaint may be filed.
 - Rare exception: cross-complaints (discussed later)

General Tips

- **Communication**

- All communication should be professional and neutral
- All communication should be via email (not phone or mail)
- Case Manager can ***guide*** a party but should never ***advise*** a party

- **No response?**

- A party may not respond or stop responding
- Case Manager must find alternate means of communication
- Process will continue without party's involvement
- Medical / personal request for delay? Must be reasonable

General Tips

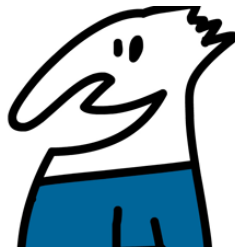
- **Blame?**

- Respondent may try to "shoot the messenger" (the Case Manager)
- Complainant may blame Case Manager for decision
- Don't accept a request for a phone call / rant !
- Case Manager should refer to policy – remain neutral

- **Handling Counsel**

- Counsel will always challenge the process and perceived lack of procedural fairness (don't take it personally!)
- Counsel may be involved in amateur sport for the first time ever
- Stick to the policy
- Counsel can appeal the decision or take it to court

Any Questions or Comments?



Thank You!

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