

CODE FOR PROHIBITED CONDUCT IN SPORT

Preamble

This Code for Prohibited Conduct in Sport (the Code) prohibits conduct that is not consistent with the Canadian Policy on Prohibited Conduct in Sport (the Policy). The Code prohibits conduct by individuals in positions of authority that causes physical or emotional harm to athletes and sport participants. The Code prohibits conduct that is fundamentally incompatible with the values of integrity, trust, fair play, respect for others and sportsmanship. The underlying goal of the Code is to prevent prohibited conduct from occurring. The rationale for the Code, and the reason for its limited scope, is to protect athletes and sport participants from misconduct engaged in by individuals in positions of authority over them. The Code is not designed to address the potential misconduct of athletes and sport participants as such conduct is regularly controlled pursuant to existing rules and policies.

Describing the prohibited conduct in the Code will make it clear to those involved in Canadian sport that certain conduct by individuals in positions of authority will absolutely not be tolerated or condoned. Engaging in prohibited conduct will result in significant sanctions being imposed, that may include suspensions and possible expulsion from membership.

The Code contains a list of prohibited conduct and a procedurally fair adjudication process. Some provisions in the adjudication process are mandatory while some procedural steps allow for flexibility in their implementation, so long as the underlying principles in the adjudication process are respected.

Application

Organizations adopt the Code to have it form part of their governing documents. As such, it becomes a policy of the adopting organization and, as a rule of that sport, a means of describing the responsibilities and obligations binding on the members of, and the participants in the activities of, these adopting organizations and their affiliated members.

The Code applies to an adopting organization's coaches, officials, volunteers and administrators who are defined as *Individuals* in the Policy. These individuals are typically in positions of authority over athletes and sport participants. The Code does not apply to athletes or those who are actively participating in the sporting or recreation activity, when engaged in that role. Other rules and policies regularly constrain that behavior.

The Code may apply to discipline an *Individual* for his or her conduct if that *Individual* acted in the role of coach, official, volunteer or administrator and was during that time properly inside the jurisdiction of the Policy and the Code.

The fact a person is not acting in the role of a coach, official, volunteer or administrator when a complaint regarding his or her previous conduct is brought forward is not a bar to proceeding pursuant to the Code.

The Hearing Panel may consider such past conduct and may impose a sanction based on that past conduct. The Hearing Panel may also authorize proceeding in the absence of an **Individual**, regardless of when the conduct complained of occurred, if the Policy and the Code apply to that **Individual** when the relevant conduct occurred.

Notwithstanding the foregoing, with the exception of Section 6 which deals with criminal convictions, complaints may not be brought against an **Individual** if more than eight years have passed after the conduct complained of occurred.

With the exception of Section 6, the Code will not be applied retroactively. The Code is effective from the date of its adoption by the sport organization.

*[Comment: It is intended that a person not be able to avoid a discipline proceeding pursuant to the Code based on a complaint relating to his or her past conduct by ceasing his or her sport involvement in that role - for the time being. The Policy is clear in the definition of an **Individual** that past conduct by that person will be caught in the jurisdiction of the Policy and the Code. For example, an **Individual** can be disciplined today if he or she was an official and was a member of a sport organization or its affiliated member and allegedly acted improperly when in that role and during that earlier time if the Policy and the Code applied during that earlier time. It is not relevant that the person plays no role (or a different role) in sport when the complaint was filed.*

The eight year limitation period on proceedings being commenced was inserted to allow for a measure of certainty and finality after a reasonable period of time had passed after the conduct in question. This also avoids the obvious problems of conducting a hearing and tendering evidence when witnesses have forgotten details of what transpired and other evidence is lost or becomes unavailable. Criminal convictions for the listed offenses obtained more than 8 years prior to the complaint being filed may still be relied on.]

Organizations may adopt, as they desire, additional discipline measures and/or additional Codes of Conduct to form part of their governing documents, and to be concurrently binding on their members, provided these documents are not inconsistent with the prohibited conduct and adjudication process contained in the Code.

[Comment: Sport organizations who adopt the Policy and the Code are encouraged to create, in addition, Codes of Conduct that are specific to their organization and specific to their unique membership structure and sport. Such sport specific Codes of Conduct should be consistent with and complementary to the Code, and may operate concurrently with the Code, but may describe a variety of much less serious misconduct and behaviors sought to be controlled. If desired, stricter prohibited conduct can be included. Under no circumstances shall the Code's prohibited conduct be permitted by a sport organization.

The concurrent operation of sport specific Codes of Conduct with the Code is completely consistent with the Code being a minimum standard only. The Code is a foundation to be built on - as each sport organization desires. The Code and the sport specific Codes of

Conduct created by each organization should, working in combination, prohibit all the conduct the organization deems unacceptable for its members and participants.]

Prohibited Conduct

The following conduct is expressly prohibited by an ***Individual***:

1. The ***Individual*** shall not have sexual relations, or sexual intimacy of any description, with any other ***Individual***, with any athlete the ***Individual*** is coaching or with any other sport participant the ***Individual*** has access to in the sport environment if the other ***Individual***, the athlete being coached or the sport participant is 18 years of age or older and if there exists a significant imbalance of power with respect to the relationship between the other ***Individual***, the athlete being coached or the sport participant and the ***Individual*** which could reasonably jeopardize effective decision making regarding the existence or the nature of the sexual relations or sexual intimacy with the ***Individual***.

*[Comment: The actual relationship between the parties, their respective roles, the nature and duration of the sexual relations, the age of the ***Individual***, the ages of the other ***Individual***, the athlete being coached or the sport participant are all relevant factors to consider in assessing the existence and the extent of the imbalance of power and the degree to which any imbalance of power may jeopardize effective decision making regarding the existence or the nature of the sexual relations or the sexual intimacy with the ***Individual***. It is assumed that there is no imbalance of power in the relationship between two spouses.]*

2. The ***Individual*** shall not have sexual relations, or sexual intimacy of any description, with any athlete the ***Individual*** is coaching, with any other sport participant the ***Individual*** has access to in the sport environment or with any other ***Individual*** if the athlete being coached, the other sport participant or the other ***Individual*** are under the age of 18. With respect to the ***Individuals***' relationship with the other sport participant and the other ***Individual***, they must each be subject, directly or indirectly, to the authority of the ***Individual*** for this section to apply.

*[Comment: It is accepted that in every situation where an athlete is under the age of 18 the unique coach/athlete relationship has the requisite authority present on the part of the coach. Once the athlete/coach relationship is established the authority on the part of the coach over the athlete shall be assumed. However, in situations where the ***Individual*** has sexual relations with a sport participant or sexual relations with any other ***Individual*** under the age of 18 this section will only apply where the ***Individual*** has direct or indirect authority over the sport participant or other ***Individual***. In each relationship, other than the relationship between a coach and an athlete, if the ***Individual***, regardless of his or her age, is not in a position of direct or indirect authority over the person under 18, the section shall not apply.]*

3. The **Individual** shall refrain from all types of sexual misconduct in the sport environment. Age is not relevant to allegations of sexual misconduct. For the purposes of the Code, sexual misconduct shall include either or both of the following:
 - a. the use of power or authority in an attempt, successful or not, to coerce another person to engage in or tolerate sexual activity. Such abuses of power and authority include, but are not limited to, explicit or implicit threats of reprisals for non-compliance or promises of reward for compliance;
 - b. engaging in deliberate or repeated unsolicited sexually oriented comments, anecdotes, gestures or touching, that:
 - i. are offensive and unwelcome, or
 - ii. create an offensive, hostile or intimidating environment, or
 - iii. can reasonably be expected to be harmful to participants in the sport environment.
4. The **Individual** shall not use or possess illegal drugs or substances, as defined by the Criminal Code of Canada, while participating in the sport environment anywhere in the world.
5. When driving a vehicle anywhere in the world with an athlete or other sport participant inside, the **Individual** shall not: (i) consume alcohol; or (ii) have his or her license temporarily or permanently suspended due to an elevated blood alcohol level; or (iii) be under the influence of illegal drugs or substances, as defined by the Criminal Code of Canada.
6. The following Criminal Code of Canada convictions are fundamentally inconsistent with the **Individuals'** continued involvement with athletes and sport participants. Proof of the **Individuals'** conviction for any of the following Criminal Code of Canada offences, whenever obtained, shall be a breach of this Code:
 - a. Any offences involving child pornography
 - b. Any sexual offences involving a minor
 - c. Any offence of assault involving a minor
 - d. Any offence of physical or psychological violence involving a minor

*[Comment: These provisions are the only prohibited conduct in the Code having retroactive effect. The list of criminal offences in this section was intentionally kept very narrow and focused. A conviction for one or more of these listed offenses is fundamentally incompatible with an **Individual's** involvement interacting with youth and sport participants. These four classes of offenses are not intended to send a message that other serious offenses (i.e., murder, assault, armed robbery) are deemed acceptable by their omission. The four offenses listed are very serious and relate directly to the safety of sport participants and are*

included in the Code because they are a reasonable and a justifiable infringement on applicable Human Rights legislation in Canada protecting a person against discrimination based on that person's 'record of conviction'.

The discriminatory effect of this section in the Code is a warranted and justified response to conduct directly effecting safety. Where there is a complaint and reliable and persuasive evidence of a conviction for one or more of the offences listed in section 6 (and this evidence may in some cases be difficult or impossible to obtain due to the prior granting of a pardon) a breach of the Code shall have occurred, but the Hearing Panel shall have the discretion, after the required hearing, to impose the appropriate sanction on a case by case basis.]

7. The **Individual** shall not engage in deliberate cheating which is intended to manipulate the outcome of a competition.
8. The **Individual** shall not offer or receive any bribe and shall not offer or receive any similar benefit which is intended to manipulate the outcome of a competition.
9. The **Individual** shall not attempt to cover up or conceal any conduct of an **Individual** that is, or may be, in breach of this Code.

National Code of Conduct Adjudication Process

Reporting a Complaint

Any person who is a member of an organization who has adopted the Code (the organization) may report a complaint, in writing and signed, alleging a breach of the Code by an **Individual**, to both the President and the CEO of the organization or their functional equivalent (hereafter referred to as "President/CEO"), together with a brief summary of the matters complained of.

The organization may act on its own initiative and file a complaint against an **Individual**.

Within 5 days of receiving the written and signed notice of the complaint and a summary, the President/CEO shall jointly determine whether the subject matter of the complaint, the conduct complained of and the parties to the complaint are properly within the scope and application of the Code, or are more properly dealt with pursuant to another policy of the organization, or at all. In the absence of the President/CEO, or in the event of a conflict, a designate of that person shall perform this function. The President/CEO's joint decision regarding the application of the Code is final and may not be appealed.

*[Comment: This Code and its adjudication process are only applicable when conduct by an **Individual** is alleged to be in breach of the prohibited conduct set out in the Code. All other complaints of misconduct, serious or not, shall be dealt with in the normal fashion by the other policies or rules of the organization. The intent of this Code is to provide a useful and fair mechanism to deal with the most serious of misconduct. Accordingly, it is*

not anticipated that complaints regarding a breach of the Code will be received by organizations regularly.]

Applicable Principles

In every case where the Code applies and a hearing is warranted pursuant to the Code, an adjudication process shall be conducted by the organization which respects the principles of Natural Justice and procedural fairness. Such an adjudication process shall conform to the provisions and principles set out hereafter. However, deviations in one or more of the procedural steps contained below shall be permitted, provided in every case the following procedural safeguards are satisfied:

- (i) The ***Individual*** complained of is fully informed of all allegations and evidence brought against him or her and there is full disclosure.
- (ii) The ***Individual*** complained of is given a reasonable opportunity to respond to the allegations brought forward.
- (iii) The ***Individual*** complained of may be represented by legal counsel at that ***Individual's*** expense.
- (iv) The Panel member(s) who decide the complaint shall be independent and unbiased and shall render a written and reasoned decision. The Panel shall have at least one member with legal training or arbitration experience.
- (v) There shall be the right to appeal the Panel's decision.

[Comment: It is not intended that all organizations will use precisely the same dispute resolution process and procedures to resolve complaints pursuant to the Code. This is acceptable. However, it is imperative that the principles of Natural Justice are respected in every hearing and that certain substantive rules contained in the Code are followed in every case. The Code provides an example of a procedurally fair method of conducting a hearing. Despite the flexibility with regard to selecting fair procedures, a number of the substantive provisions in this Code are mandatory and must be implemented in every case. These mandatory provisions include: Investigation, Onus of Proof and Parties, Evidence, Decision, Sanctions, Confidentiality, Reporting, Reciprocity and Right of Appeal. The remaining procedural steps may be modified, as required, provided the principles of Natural Justice are respected.]

Investigation

Depending on the nature of the reported complaint, the President/CEO may appoint an independent person to conduct an investigation. If this is the case, the Investigator shall carry out the investigation in a fair and timely manner and at the conclusion of the investigation shall submit a written report to the President/CEO.

Procedure for selecting a Hearing Panel

After reviewing all relevant information, the President/CEO shall, if the President/CEO is satisfied in the exercise of their discretion that there is sufficient reasonable, reliable and persuasive evidence to support the complaint alleging a breach of the Code, establish a Hearing Panel (the "Panel") and select the members of the Panel as follows:

- a) The Panel shall be comprised of either one or three individuals who shall have no significant relationship with the parties, shall have had no involvement with the substance of the complaint, and shall be free from any other actual or perceived bias or conflict. The decision regarding the size of the Panel shall be in the sole discretion of the President/CEO who must, in coming to their decision, ensure that the hearing process complies with the principles of Natural Justice and provides procedural fairness to all parties. The Panel shall have at least one member with legal training or arbitration experience.
- b) If the Panel consists of three persons, one member of the Panel shall be the nominee of the **Individual** complained of. The **Individual** complained of may submit a list of three nominees from which the President/CEO shall select one nominee to be a member of the Panel. The nominee of the **Individual** complained of shall have had no involvement with the substance of the complaint, and shall be free from any other actual or perceived bias or conflict.
- c) If the Panel consists of three persons, the Panel's members shall select from themselves a Chairperson.

Procedure for a Preliminary Conference

The Panel may determine that the circumstances of the complaint warrant a preliminary conference. In most cases the preliminary conference shall be conducted by telephone. The issues that may be considered at a preliminary conference include:

- a) the format of the hearing, as the hearing may proceed by either a review of documentary evidence, an in-person hearing, an oral hearing by telephone or a combination of these methods. The Panel, in coming to its decision regarding the format of the hearing, must ensure that the hearing process complies with the principles of Natural Justice and provides procedural fairness to all parties;
- b) timelines for the exchange of documents and the extent of disclosure required;
- c) clarification of the issues in dispute and the parties to be involved;
- d) clarification of evidence to be presented to the Panel;
- e) order and procedure of the hearing;
- f) identification of witnesses; and
- g) any other procedural matter which may assist in the conduct of the hearing.

If the Panel consists of three persons, the Panel may delegate to its Chairperson the authority to deal with any or all of these preliminary matters.

Procedure for an Oral Hearing

Where the Panel has determined that the hearing shall be held by way of oral hearing, whether in-person or not, the Panel shall govern the hearing by such procedures as it deems appropriate and fair, provided that:

- a) The hearing shall be held in a timely fashion after the Panel's appointment.
- b) The parties involved shall be given adequate written notice of the date, time and place of the hearing.
- c) The parties involved shall receive a copy of the Investigator's report, where an investigation was carried out.

- d) A quorum shall be the single Panel member or all three Panel members, as the case may be.
- e) If there are three Panel members, decisions shall be by majority vote, where the Chairperson carries a vote.
- f) Any of the parties at the hearing may be accompanied by a representative or advisor, including legal counsel.

Procedure for a Documentary Hearing

Where the Panel has determined that the hearing shall be held by way of documentary review, it shall govern the hearing by such procedures as it deems appropriate and fair provided that:

- a) All parties are given a reasonable opportunity to review the Investigator's report, where an investigation was carried out; to provide written submissions to the Panel; to review the written submissions of the other parties; to provide written rebuttal; and to provide written arguments.
- b) The applicable principles and timelines set out above are respected.

Evidence which may be admitted

As a general rule, the Panel shall consider any evidence that is relevant to the matters in dispute. The normal rules of evidence will be relaxed. The Panel shall have authority to consider hearsay evidence provided the Panel gives to such evidence appropriate weight as might be reasonable in light of the circumstances of its inclusion.

Onus of Proof and Parties

It shall be the responsibility of the organization adopting the Code, and deciding to proceed to a hearing pursuant to the Code, to satisfy the Hearing Panel that there has been a breach of the Code. Proof will be required on the civil onus of a balance of probability. The civil standard of proof shall not be elevated regardless of the seriousness of the allegation or the potential consequences.

The parties to the hearing shall include the ***Individual*** complained of and the organization with the onus of proof. The hearing may proceed in the absence of the ***Individual*** complained of, if the Hearing Panel so directs.

The decision

Within 14 days of concluding the hearing, the Panel shall issue its written decision, with reasons. The Panel may decide:

- a) To uphold the complaint and confirm that a breach of the Code occurred;
- b) To deny the complaint and confirm that there was no breach of the Code;
- c) To impose a sanction, as authorized below;
- d) To determine how costs of the hearing, excluding legal fees and legal disbursements of any of the parties, shall be allocated, if at all.

A copy of the decision shall be provided to each of the parties and to the President. The Panel's decision shall be binding on all parties to the hearing.

Sanctions

Any sanctions imposed by the Panel against an ***Individual*** must be proportionate and reasonable, relative to the conduct that is proven to have occurred. The decision regarding the appropriate sanction shall be up to the Panel deciding each complaint. Sanctions may range from a warning and a reprimand to suspension from sport involvement for a period of time. Suspensions from sport involvement may be temporary or permanent. The most severe sanction possible to impose will be permanent suspension from sport involvement and expulsion from the relevant organization's membership.

For the purposes of the Code, a suspension from sport involvement shall mean that for the duration of the period of suspension the ***Individual*** may not participate in any capacity or in any role in the business, events or activities of the relevant organization or its affiliated members. All adopting organizations shall respect and be bound by the decision of the Panel imposing a sanction against the ***Individual*** if the sanction involves a suspension from sport involvement.

Timelines

If the circumstances of a complaint are such that this Code will not allow a timely resolution of the matter, or if the circumstances of a complaint are such that the matter cannot be resolved within the timelines dictated in this Code, the Panel may direct that these timelines be revised.

Confidentiality

The conduct of the hearing shall be private but the result and the Panel's reasoned decision shall be a matter of public record. The relevant organization shall notify its membership of the Panel's decision and the sanction imposed, if any, provided the disclosure otherwise permitted may be modified to protect the rights and interests of any minor involved in the complaint. The extent of any modification deemed necessary to protect a minor's rights and interests shall be determined by the organization in the exercise of its discretion, acting reasonably.

Location

The hearing shall take place in the location designated by the President/CEO, unless the Panel decides the hearing is to be held by way of telephone conference or unless, at the specific request of a party, a different location is mandated by the Panel as a preliminary matter.

Right of Appeal

The decision of the Panel with regard to a breach of the Code, or a sanction, or both, may be appealed by a party to the Sport Dispute Resolution Centre of Canada (SDRCC) and any such appeal shall be conducted pursuant to the applicable SDRCC Code of Procedure in effect at that time. The decision of the SDRCC arbitrator shall be final and binding and there shall be no further right of appeal on a matter of fact or law.

Reporting to the Review Authority

In addition to any other circulation or disclosure of the Panel's decision, the Panel shall send a copy of the decision and the sanctions imposed, if any, to the CCES to be included

in its National Code of Conduct Registry pursuant to its role as the Review Authority. The decision of the SDRCC arbitrator hearing an appeal pursuant to the Code will also be sent to the CCES and included in its National Code of Conduct Registry. The National Code of Conduct Registry shall be open to review by all organizations who have adopted the Code, and all of those organizations' affiliated members.

Reciprocity

All organizations who have adopted the Code, and all of those organizations' affiliated members, shall respect and uphold the sanctions imposed, if any, by the Panel or on appeal and will respect and uphold any suspension from sport involvement imposed by the Panel or on appeal against an ***Individual***.