



Board Policy

Policy Section: Board
Policy Subsection: Human Resources
Policy Title: Harassment

Policy Statement

Swimming Canada is committed to providing opportunities for every individual in the sport of swimming to reach his or her potential in fitness and excellence. In keeping with the spirit of this statement, Swimming Canada is committed to providing a sport and work environment that prohibits discriminatory practices. Harassment is unacceptable and will not be tolerated.

Purpose

Harassment is a form of discrimination and is prohibited by human rights legislation in each province of Canada. Harassment is offensive, degrading and threatening, and in its most extreme forms, harassment can be an offence under Canada's Criminal Code.

The Harassment Policy and Harassment Complaint Procedures are in place to protect all categories of members from a hostile sport and working environment by creating a process by which individuals can report incidents of harassment and these incidents can be resolved appropriately

Application

This policy applies to all categories of members in Swimming Canada, as well as to all individuals engaged in activities with or employed by Swimming Canada, including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees.

This policy applies to harassment which may occur during the course of all Swimming Canada business, activities and events, including but not limited to: swim meets, training camps, exhibitions, meetings and travel associated with these activities. It also applies to harassment between individuals associated with Swimming Canada but outside of Swimming Canada's business and events when such harassment adversely affects relationships within Swimming Canada's work and sport environment.

Harassment arising within the business, activities and events of clubs and provincial/territorial associations, clubs, or affiliated organizations of Swimming Canada shall be dealt with using the policies and mechanisms of such organizations.

See Harassment Complaint Procedure.



Responsibilities

Body

Human Resources
Committee

Action

1. Ensure that all revisions to the Human Rights Legislation policy, definitions, penalties and procedures on harassment are reflected in the Swimming Canada policy

Board

1. Play a positive role in raising the awareness and understanding of harassment among Provincial Sections and all member categories, and make it clear that harassment will not be tolerated

CEO

1. Make sure every employee understands the policy and procedures for dealing with harassment;
2. Inform athletes, coaches, administrators, officials, volunteers and staff of their responsibility to provide a harassment-free sporting and work environment;
3. Identify, where necessary, Harassment Investigators
4. Investigate and correct harassment problems as soon as they come to light, even if a formal complaint has not been received.
5. Take appropriate disciplinary action against an athlete, coaches, administrator, volunteers or employee found to have harassed someone.

Limitations

None apparent

References

Canadian Human Rights Commission, Harassment Policy, provincial legislation & commissions, Harassment Procedure

Review and Approval

Approved: April 7, 2008
Revision approved: April 21, 2017

The Harassment Complaint Procedure follows



HARASSMENT COMPLAINT PROCEDURE

Definitions

Note: For convenience, this procedure uses the term "complainant" to refer to the person who experiences harassment, even though not all persons who experience harassment will make a formal complaint. The term "respondent" refers to the person against whom a complaint is made.

1. Harassment can generally be defined as comment or conduct, directed toward an individual or group of individuals, which is insulting, intimidating, humiliating, malicious, degrading or offensive.
2. Workplace harassment is defined as improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the [*Canadian Human Rights Act*](#) (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).
3. For the purposes of this procedure, *sexual harassment* is defined as unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature when:
 - a) submitting to or rejecting this conduct is used as the basis for making decisions which affect the individual; or
 - b) such conduct has the purpose or effect of interfering with an individual's performance; or
 - c) such conduct creates an intimidating, hostile or offensive environment.
4. Types of behaviour which constitute harassment include, but are not limited to:
 - a) written or verbal abuse or threats
 - b) the display of visual material which is offensive or which one ought to know is offensive
 - c) unwelcome remarks, jokes, comments, innuendo or taunting about a person's looks, body, attire, age, race, religion, sex or sexual orientation
 - d) leering or other suggestive or obscene gestures
 - e) condescending, paternalistic or patronizing behaviour which is intended to undermine self-esteem, diminish performance or adversely affect working conditions
 - f) practical jokes which cause awkwardness or embarrassment, endanger a person's safety or negatively affect performance
 - g) unwanted physical contact including touching, petting, pinching or kissing
 - h) unwelcome sexual flirtations, advances, requests or invitations
 - i) physical or sexual assault

Confidentiality



5. Swimming Canada recognizes that it can be extremely difficult to come forward with a complaint of harassment and that it can be devastating to be wrongly accused of harassment. Swimming Canada recognizes the interests of both the complainant and the respondent in keeping the matter confidential, except where such disclosure is required by law. This shall not preclude publication of the outcome of any matter.

Complaint Procedure

6. A person who experiences harassment is encouraged to make it known to the harasser that the behaviour is unwelcome, offensive and contrary to Swimming Canada policy.
7. If confronting the harasser is not possible, or if after confronting the harasser the harassment continues, the complainant should request a meeting with an official of Swimming Canada (for the purposes of this policy, an "official" may be the CEO or a Manager of Swimming Canada or the Board President).
8. Once contacted by a complainant the role of the official is to serve in a neutral, unbiased capacity in receiving the complaint and assisting in its informal resolution. If the official considers that he/she is unable to act in this capacity, the complainant shall be referred to another Swimming Canada official.
9. There are three possible outcomes to this meeting of complainant and official:
 - a) It may be determined that the conduct does not constitute harassment as defined in this Policy, in which case the matter will be closed;
 - b) The complainant may decide to pursue an informal resolution of the complaint, in which case the official will assist the two parties to negotiate an acceptable resolution of the complaint; or
 - c) The complainant may decide to lay a formal written complaint to Swimming Canada CEO, in which case the CEO shall advise the President of Swimming Canada, who shall appoint an independent individual to investigate the complaint.
10. The Investigator should be a person experienced in harassment matters and investigation techniques, and may be an outside professional. He/she shall carry out the investigation in a timely manner and at the conclusion of the investigation shall submit a written report to the CEO.
11. Within seven (7) days of receiving the written report of the Investigator, the CEO shall appoint three (3) individuals to serve as a Panel. All Panel members shall be independent from the complainant and respondent and have no direct knowledge of the dispute.
12. The Panel shall conduct the hearing procedures and determine the matter in accordance with the procedures laid out in part V of the Swimming Canada Complaint and Dispute Resolution Policy and Procedures for Major infraction unless contrary to this Policy, in which case this Policy shall prevail.
13. In accordance with part III of the Swimming Canada Complaint and Dispute Resolution Policy and Procedures, harassment complaints occurring within competition may be dealt with immediately, if necessary, by a Swimming Canada representative in a position of authority, provided the individual being disciplined is told the nature of the infraction and has an opportunity to provide information concerning the incident. In such situations, sanctions shall be made for the duration of the competition only. Further sanctions may be applied but only after review of the matter in accordance with the procedures set out in Part V of the Swimming Canada Complaint and Dispute Resolution Policy and Procedures for Major infraction.



14. This Policy shall not prevent a person in authority taking immediate, informal corrective disciplinary action in response to behaviour that, in their view, constitutes a minor incidence of harassment.

Hearing

15. Unless a conflict between this Policy and the Swimming Canada Complaint and Dispute Resolution Policy and procedures in which case this Policy shall prevail, the hearing procedures and decision shall be conducted respecting basic principles and rules of natural justice and in accordance with the Swimming Canada's Complaint and Dispute Policy, and in addition:
 - a) Both the complainant and the respondent shall be given proper advance notice of the infraction alleged to have been committed and the procedures to deal with the matter.
 - b) Both the complainant and the respondent may be represented by a person of his or her choice.
 - c) The complainant and respondent shall each receive a summary of the Investigator's report.
 - d) Both the complainant and the respondent shall have the right to a fair hearing including submitting evidence and making submissions before the Panel.
 - e) Unless determined otherwise by the Panel, the complainant shall be present at the hearing to respond to the Investigator's report, give evidence and to answer questions of the Panel.
 - f) If after being provided a reasonable opportunity to participate in the hearing, the complainant or the respondent refuses to participate, the Panel may still proceed in absence of either the complainant and/or the respondent. If at any point in the proceedings, the complainant becomes reluctant to continue, it shall be at the sole discretion of the CEO to continue the review of the complaint in accordance with this Policy. In such instances, Swimming Canada may decide to act on behalf of the Complainant and become the complainant.
 - g) The investigator may attend the hearing at the request of the Panel but will not be considered a witness.
16. As soon as possible but in any event within seven (7) days of the hearing or any other timelines as determined by the Panel for legitimate reasons, the Panel shall submit its decision to the CEO, with a copy provided to both the complainant and respondent. This decision shall contain:
 - a) a summary of the relevant facts;
 - b) a determination as to whether the acts complained of constitute harassment as defined in this Policy;
 - c) recommended disciplinary action against the respondent, if the acts constitute harassment; and
 - d) recommended measures to remedy or mitigate the harm or loss suffered by the complainant, if the acts constitute harassment
17. If the Panel determines that the allegations of harassment are false, vexatious, retaliatory or frivolous, their Decision may recommend disciplinary action against the complainant.

Sanction



18. When directing appropriate disciplinary sanction, the Panel shall consider factors such as:
 - a) the nature and severity of the harassment;
 - b) whether the harassment involved any physical contact;
 - c) whether the harassment was an isolated incident or part of an ongoing pattern;
 - d) the nature of the relationship between the complainant and harasser;
 - e) the age of the complainant;
 - f) whether the harasser had been involved in previous harassment incidents;
 - g) whether the harasser admitted responsibility and expressed a willingness to change;
 - h) whether the harasser retaliated against the complainant
19. In directing disciplinary sanctions, the Panel may consider the following options, singly or in combination, depending on the nature and severity of the harassment:
 - a) verbal apology;
 - b) written apology;
 - c) letter of reprimand from the organization;
 - d) a fine or levy;
 - e) referral to counselling;
 - f) removal of certain privileges of membership or employment;
 - g) temporary suspension with or without pay;
 - h) termination of employment or contract;
 - i) expulsion from membership;
 - j) publication of the decision
20. Failure to comply with a sanction as determined by the Panel shall result in automatic suspension in membership from Swimming Canada until the sanction is fulfilled.
21. The CEO may determine that the alleged conduct is of such seriousness as to warrant suspension of the member from the Swimming Canada pending the hearing and decision of the Panel.
22. Notwithstanding the procedures set out in this Policy, any member of Swimming Canada who is convicted of a criminal offence involving sexual exploitation, invitation to sexual touching, sexual interference, sexual assault, shall face automatic suspension from participating in any activities of Swimming Canada for a period of time corresponding to the length of the criminal sentence imposed by the Court, and may face further disciplinary action by Swimming Canada in accordance with this Policy.

Appeals Procedure

23. Both the complainant and respondent shall have the right to appeal the decision and sanctions of the Panel, in accordance with Swimming Canada's Appeals Policy.

SAMPLE TERMS OF REFERENCE FOR COMPLAINT INVESTIGATION

[NAME OF INVESTIGATOR] of [NAME OF FIRM OR ORGANIZATION] (the "Investigator") has been appointed to investigate the complaint of misconduct made by one of the athletes of



[NAME OF ASSOCIATION] (the "Association") against [IDENTITY OF PERSON BY NAME OR POSITION].

The terms of reference of the investigation are as follows:

1. The purpose of the investigation is three-fold:
 - a) To establish the factual circumstances of the complaint;
 - b) To express an opinion as to the nature of the alleged misconduct; and
 - c) To recommend to the Executive of the Association a course of action.
2. In order to carry out the investigation, the Investigator shall conduct interviews with the primary parties, that is, the complainant and [NAME OR IDENTITY OF PERSON AGAINST WHOM COMPLAINT HAS BEEN MADE], as well as with any other people who, in the Investigator's opinion, can provide factual information about the alleged incident.
3. The Investigator may also review any documents which he/she deems pertinent including, but not limited to, the Association's by-laws, policies of the Association (e.g., code of conduct, discipline policy, harassment policy, etc.) and any other documents (e.g., athlete's agreement, coaches contract, etc.).
4. At the conclusion of the investigation, the Investigator shall compile a written report setting out his/her findings and shall provide recommendations to the CEO of the Association for further action, if any.
5. The investigation shall be carried out forthwith and time shall remain of the essence throughout.

Review and Approval by CEO

Approved: April 7, 2008

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Harassment Officer: harassmentofficer@swimming.ca