

Discipline and Appeal			
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1 POLICY

- 1.01 Physical and Health Education Canada (PHE Canada) is committed to providing Representatives with a fair, affordable and expedient discipline and appeal process.
- 1.02 Representatives, as defined, who express any concerns, lodge a formal complaint under this policy, or who provide information regarding a complaint under this policy may do so without fear of retaliation or reprisal. Any such conduct of retaliation or reprisal will be subject to immediate corrective action.
- 1.03 Any potential or actual breaches of PHE Canada policies, in particular those related to the **Code of Conduct and Ethics**, shall be handled in accordance with this policy.
- 1.04 An employee of PHE Canada who is a Respondent will be subject to appropriate disciplinary action per PHE Canada’s Human Resources Policy, as well as the employee’s Employment Agreement, if applicable. Violations may result in a warning, reprimand, restrictions, suspension, or other disciplinary actions up to and including termination of employment.
- 1.05 This policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline may be applied according to this policy.

2 PURPOSE

- 2.01 The purpose of this Statement of Policy and Procedure is to ensure that Representatives receive a fair, affordable and expedient discipline and appeal process.
- 2.02 The purpose of this Statement of Policy and Procedure is to outline PHE Canada’s process for complaints, decisions, sanctions, reconsiderations and appeals.

3 SCOPE

- 3.01 This policy applies to all **Representatives**.
- 3.02 This policy applies to matters that may arise during the course of PHE Canada business, programs, activities, and sanctioned events including, but not limited to, conferences, travel associated with PHE Canada activities, PHE Canada office environment, and any meetings.
- 3.03 This policy applies to Representatives’ conduct outside of PHE Canada business, activities, and sanctioned events when such conduct adversely affects relationships within PHE Canada (and its work environment), is detrimental to the image and reputation of PHE Canada. Applicability will be determined by the Independent Case Manager.

- 3.04 This policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline may be applied according to this Policy.
- 3.05 An employee of PHE Canada who is a Respondent will be subject to appropriate disciplinary action per PHE Canada's Human Resources Policy, as well as the employee's Employment Agreement, if applicable. Violations may result in a warning, reprimand, restrictions, suspension, or other disciplinary actions up to and including termination of employment.

4 RESPONSIBILITY

- 4.01 **Representatives** have the responsibility to, and are expected, encouraged and enabled, to report any activity which:
- (a) They believe contravenes the law.
 - (b) Represents a real or apparent conflict of interest or a breach of a PHE Canada policy.
 - (c) Represents a misuse of PHE Canada funds or assets.
 - (d) Represents a danger to public health, safety, and/or the environment.

5 DEFINITIONS

- 5.01 **Representative:** Individuals employed by, or engaged in activities with PHE Canada including, but not limited to, volunteers, managers, administrators, committee members, and Directors and Officers of PHE Canada.
- 5.02 **Affected Party:** Any individual or entity, as determined by the Independent Case Manager, who may be affected by a decision rendered under this Policy and who may have recourse to an appeal in their own right under this Policy.
- 5.03 **Appellant:** The party submitting an appeal.
- 5.04 **Complainant:** The party submitting a complaint.
- 5.05 **Days:** Days including weekends and holidays.
- 5.06 **Independent Case Manager:** An individual appointed by PHE Canada to address complaints or appeals under this policy. The Independent Case Manager shall not be a member of, or affiliated with, PHE Canada.
- 5.07 **OSIC:** Office of the Sport Integrity Commissioner, an independent division of the SDRCC which comprises the functions of the Sport Integrity Commissioner.
- 5.08 **Panel:** Shall be appointed at the discretion of the Independent Case Manager and consist of a single Arbitrator or a committee of three independent people, as determined by the Independent Case Manager, who are free from a conflict of interest.
- 5.09 **Respondent:** The party responding to the complaint or appeal.
- 5.10 **UCCMS:** Universal Code of Conduct to Prevent and Address Maltreatment in Sport, as amended from time to time by the SDRCC.
- 5.11 **UCCMS Participant:** A representative affiliated with the organizations who has been a) designated by the organization and b) who has signed the required consent form. UCCMS Participants may include an employee, a contractual worker, an administrator, or a volunteer acting on behalf of, or representing the organization in any capacity.

6 REFERENCES

None

7 PROCEDURES

7.01 Reporting & Sanctions – UCCMS Participants

- (a) Incidents that involve alleged Maltreatment or Prohibited Behaviour (as those terms are defined in the UCCMS) that occurred or continued as of July 1, 2023, involving a UCCMS Participant must be reported to the OSIC [<https://sportintegritycommissioner.ca/>] and will be addressed pursuant to the OSIC's policies and procedures.
- (b) Incidents that involve alleged Maltreatment or Prohibited Behaviour that occurred before July 1, 2023, may be reported to the OSIC; however, the OSIC shall determine the admissibility of such complaints in accordance with the relevant and applicable OSIC Guidelines regarding the initial review and preliminary assessment, and the matter may only proceed pursuant to the OSIC's procedures with the express consent of the Parties involved where the Parties have not been designated by Canadian Women & Sport as a UCCMS Participant.

7.02 Reporting a Complaint

- (a) Any complaints involving alleged breaches of PHE Canada's policies that do not fall within **section 7.01** above may be reported by any individual to the Independent Third Party in writing. For the avoidance of doubt, this includes complaints referred to the Independent Third Party by the OSIC following a determination made by the OSIC that a complaint initially reported to it does not fall within its jurisdiction.
- (b) Any individual may report an incident or complaint to Physical and Health Education Canada (PHE Canada) or to the Independent Case Manager.
- (c) At PHE Canada's discretion, PHE Canada may act as the Complainant and initiate the complaint process under the terms of this policy. In such cases, PHE Canada will identify an individual to represent PHE Canada.
- (d) Complaints or incident reports should be made in writing and the person making the report may contact the Independent Case Manager for direction. The Independent Case Manager may accept any report, in writing or not, at their sole discretion.
- (e) This Policy does not prevent PHE Canada having authority from taking immediate, informal or corrective action in response to a complaint. Further sanctions may be applied in accordance with the procedures set out in this Policy.

7.03 Receiving a Complaint

- (a) The Independent Case Manager may determine that the alleged incident may constitute workplace discrimination, harassment or violence. In this case, the Complainant will be directed to file the complaint under the terms of the Workplace Harassment and Violence Policy.
- (b) The Independent Case Manager may determine that the alleged incident requires investigation. In this case, the Independent Case Manager may appoint an Investigator. The Investigator must be an independent third-party skilled in investigating. The Investigator must not be in a conflict of interest situation and should have no connection to either party.
- (c) The investigation may take any form as decided by the Investigator, guided by any applicable Federal and/or Provincial legislation. The investigation may include:
 - (i) Complainant interviewed;
 - (ii) Witnesses interviewed;
 - (iii) Statement of facts (Complainant's perspective) prepared by Investigator and acknowledged by Complainant;
 - (iv) Statement delivered to Respondent;

- (v) Respondent interviewed;
 - (vi) Witnesses interviewed; and
 - (vii) Statement of facts (Respondent's perspective) prepared by Investigator and acknowledged by Respondent.
- (d) Following the investigation, the Investigator will provide an Investigator's Report to the Independent Case Manager who will disclose it to PHE Canada and to others as necessary, per their discretion, to assist in the decision-making on the reported complaint. The Investigator's Report should include a summary of evidence from the parties (including both statements of facts, if applicable) and recommendations from the Investigator of whether or not, on a balance of probabilities, an incident occurred that could be considered Discrimination, Harassment, Workplace Harassment, Workplace Violence, Sexual Harassment, or Abuse, or a breach of a governing document including, but not limited to, the Code of Conduct and Ethics.
- (e) Upon receipt of a complaint, the Independent Case Manager has a responsibility to:
- (i) Determine whether the complaint is frivolous, and/or not within the jurisdiction of this policy, and therefore dismissed - this decision is not appealable;
 - (ii) Propose to resolve the complaint by alternate dispute resolution;
 - (iii) Determine if an investigation is required; and/or
 - (iv) Choose which process should be followed, and may use the following examples as a general guideline:

Process #1 - the Complaint alleges the following incidents:

- i. Disrespectful, abusive, racist, or sexist comments or behaviour
- ii. Disrespectful conduct
- iii. Minor incidents of violence (e.g., tripping, pushing, elbowing)
- iv. Conduct contrary to the values of PHE Canada
- v. Non-compliance with PHE Canada's policies, procedures, rules, or regulations
- vi. Minor violations of the Code of Conduct and Ethics

Process #2 - the Complaint alleges the following incidents:

- i. Repeated minor incidents
- ii. Any incident of hazing
- iii. Behaviour that constitutes harassment, sexual harassment, or sexual misconduct
- iv. Major incidents of violence (e.g., fighting, attacking, punching)
- v. Pranks, jokes, or other activities that endanger the safety of others
- vi. Conduct that intentionally damages PHE Canada's image, credibility, or reputation
- vii. Consistent disregard for PHE Canada's bylaws, policies, rules, and regulations
- viii. Major or repeated violations of the Code of Conduct and Ethics
- ix. Intentionally damaging PHE Canada property, committing financial misconduct (i.e., fraud), or improperly handling PHE Canada monies
- x. Abusive use of alcohol, any use or possession of alcohol by minors, or use or possession of illicit drugs and narcotics
- xi. A conviction for any Criminal Code offense
- xii. Any possession or use of banned performance enhancing drugs or methods

7.04 **Process #1: Handled by Independent Case Manager**

Sanctions

- (a) Following the determination that the complaint or incident should be handled under Process #1, the Independent Case Manager will review the submissions related to the complaint or incident, including the Investigator's Report (if applicable), and determine one or more of the following sanctions:
 - (i) Verbal or written reprimand
 - (ii) Verbal or written apology
 - (iii) Service or other contribution to PHE Canada
 - (iv) Removal of certain privileges
 - (v) Suspension from certain events and/or activities
 - (vi) Suspension from all PHE Canada activities for a designated period of time
 - (vii) Any other sanction considered appropriate for the offense
- (b) The Independent Case Manager will inform the Respondent of the sanction, which will take effect immediately.
- (c) Records of all sanctions will be maintained by PHE Canada.

Request for Reconsideration

- (d) If there is no sanction, the Complainant may contest the non-sanction by informing Independent Case Manager, within five (5) days of receiving the decision, that the Complainant is not satisfied with the decision. The initial complaint or incident will then be handled under Process #2 of this Policy.
- (e) If there is a sanction, the sanction may not be appealed until the completion of a request for reconsideration. However, the Respondent may contest the sanction by submitting a Request for Reconsideration within five (5) days of receiving the sanction. In the Request for Reconsideration, the Respondent must indicate:
 - (i) Why the sanction is inappropriate;
 - (ii) Summary of evidence that the Respondent will provide to support the Respondent's position; and
 - (iii) What penalty or sanction (if any) would be appropriate.
- (f) Upon receiving a Request for Reconsideration, the Independent Case Manager may decide to accept or reject the Respondent's suggestion for an appropriate sanction.
- (g) Should the Independent Case Manager accept the Respondent's suggestion for an appropriate sanction, that sanction will take effect immediately.
- (h) Should the Independent Case Manager not accept the Respondent's suggestion for an appropriate sanction, the initial complaint or incident will be handled under Process #2 of this Policy.

7.05 **Process #2: Handled by Panel**

Independent Case Manager

- (a) Following the determination that the complaint or incident should be handled under Process #2, the Independent Case Manager will oversee management and administration of the complaint or incident.
- (b) The Independent Case Manager has a responsibility to:
 - (i) Determine whether the complaint is frivolous and/or within the jurisdiction of this Policy
 - (ii) Propose to resolve the complaint using alternate dispute resolution
 - (iii) Work with the Investigator, if appointed, to receive the Investigator's report
 - (iv) Appoint the Panel, if necessary
 - (v) Coordinate all administrative aspects and set timelines
 - (vi) Provide administrative assistance and logistical support to the Panel as required

- (vii) Provide any other service or support that may be necessary to ensure a fair and timely proceeding
- (c) The Independent Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
- (d) After notifying the Parties that the complaint has been accepted, the Independent Case Manager may propose using alternate dispute resolution with the objective of resolving the dispute. If all parties to a dispute agree to alternate dispute resolution, a mediator or facilitator, acceptable to all parties, shall be appointed to mediate or facilitate the dispute. The Mediator or Facilitator shall decide the format under which the dispute shall be mediated or facilitated and shall specify a deadline before which the parties must reach a negotiated decision. Any negotiated decision will be binding on the parties. Negotiated decisions may not be appealed.
- (e) If the dispute is not resolved via alternate dispute resolution, the Independent Case Manager will appoint a Panel to hear the complaint. In extraordinary circumstances, and at the discretion of the Independent Case Manager, a Panel may be extended to a committee of three independent people appointed to hear the complaint. In this event, the Independent Case Manager will appoint one of the Panel's members to serve as the Chair.
- (f) The Independent Case Manager, in cooperation with the Panel, will then decide the format under which the complaint will be heard. This decision may not be appealed. The format of the hearing may be an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Independent Case Manager and the Panel deem appropriate in the circumstances, provided that:
 - (i) 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
 - (ii) Copies of any written documents which the parties wish to have the Panel consider will be provided to all Parties, through the Independent Case Manager, in advance of the hearing
 - (iii) The Parties may engage a representative, advisor, or legal counsel at their own expense
 - (iv) The Panel may request that any other Individual participate and give evidence at the hearing
 - (v) The Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the complaint, but may exclude such evidence that is unduly repetitious, and shall place such weight on the evidence as it deems appropriate
 - (vi) The decision will be by a majority vote of the Panel
- (g) If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Panel will determine the appropriate sanction. The Panel may still hold a hearing for the purpose of determining an appropriate sanction.
- (h) The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.
- (i) If a decision may affect another party to the extent that the other party would have recourse to a complaint or an appeal in their own right, that party will become a Party to the current complaint and will be bound by the decision.
- (j) In fulfilling its duties, the Panel may obtain independent advice.

Decision

- (k) After hearing and/or reviewing the matter, the Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. Within twenty (20) days of the hearing's conclusion, the Panel's written decision, with reasons, will be distributed to all Parties, the Independent Case Manager, and PHE Canada. In extraordinary circumstances, the Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the twenty (20) day period. The decision will be considered a matter of public record unless decided otherwise by the Panel.

Sanctions

- (l) The Panel may apply the following disciplinary sanctions, singularly or in combination:
 - (i) Verbal or written reprimand
 - (ii) Verbal or written apology
 - (iii) Service or other contribution to PHE Canada
 - (iv) Removal of certain privileges
 - (v) Suspension from certain events and/or activities
 - (vi) Suspension from all PHE Canada activities for a designated period of time
 - (vii) Payment of the cost of repairs for property damage
 - (viii) Suspension of funding from PHE Canada or from other sources
 - (ix) Expulsion from PHE Canada
 - (x) Any other sanction considered appropriate for the offense
- (m) Unless the Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the Panel will result in an automatic suspension until such time as compliance occurs.
- (n) Records of all decisions will be maintained by PHE Canada.

Appeals

- (o) A decision made by a Panel on a complaint may be appealed. Decisions made by PHE Canada related to conflict of interest and membership may also be appealed. A party that wishes to appeal a decision have five (5) days from the date on which they received notice of the decision to submit, in writing to PHE Canada, the following:
 - (i) Notice of the intention to appeal
 - (ii) Contact information and status of the Appellant
 - (iii) Name of the respondent and any affected parties, when known to the Appellant
 - (iv) Date the appellant was advised of the decision being appealed
 - (v) A copy of the decision being appealed, or description of decision if written document is not available
 - (vi) Grounds for the appeal
 - (vii) Detailed reasons for the appeal
 - (viii) All evidence that supports these grounds
 - (ix) Requested remedy or remedies
 - (x) An administration fee of one hundred dollars (\$100), which will be refunded if the appeal is successful
- (p) A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
 - (i) Made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make
 - (ii) Failed to follow its own procedures (as set out in the Respondent's governing documents)

- (iii) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views)
- (q) The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.
- (r) PHE Canada will appoint an Independent Case Manager who has the following responsibilities:
 - a) Determine if the appeal falls under the scope of this Policy
 - b) Determine if the appeal was submitted in a timely manner
 - c) Decide whether there are sufficient grounds for the appeal
- (s) If the appeal is denied on the basis of insufficient grounds, because it was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed and administration fee will not be refunded.
- (t) If the Independent Case Manager is satisfied there are sufficient grounds for an appeal, the Independent Case Manager will appoint a Panel which shall consist of a single Arbitrator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Independent Case Manager, a Panel of three persons may be appointed to hear the appeal. In this event, the Independent Case Manager will appoint one of the Panel's members to serve as the Chair. The Panel will be free from bias and conflict of interest.
- (u) The appeal hearing will have a format as determined by the Panel and the Independent Case Manager and may be similar in format to hearings on complaints. The Independent Case Manager will engage with PHE Canada to determine if there are any Affected Parties that should participate in the appeal hearing.
- (v) The Panel shall issue its decision, in writing and with reasons, within twenty (20) days after the hearing's conclusion. In making its decision, the Panel will have no greater authority than that of the original decision-maker. The Panel may decide to:
 - (i) Reject the appeal and confirm the decision being appealed
 - (ii) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision
 - (iii) Uphold the appeal and vary the decision
- (w) The decision of the Panel will be binding on the Parties and on all PHE Canada's Representatives; subject to the right of any Party to seek a review of the Panel's decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC).

7.06 **Suspension Pending a Hearing**

The Independent Case Manager may determine that an alleged incident is of such seriousness as to warrant suspension of an Individual pending completion of a criminal process, the hearing, or a decision of the Panel.

7.07 **Criminal Convictions**

A Representative's conviction for a Criminal Code offense, as determined by PHE Canada, will be deemed an infraction under this Policy and will result in expulsion from PHE Canada. 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

In appropriate situations, the Independent Case Manager may, upon receiving a complaint, contact law enforcement officials as part of their duty to report.

7.08 Confidentiality

The discipline process and appeals process are confidential and involve only PHE Canada, the Parties, the Independent Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the discipline or appeal to any person not involved in the proceedings.

7.09 Privacy

The collection, use and disclosure of any personal information pursuant to this Policy is subject to PHE Canada's Privacy Policy. PHE Canada, or any of their delegates pursuant to this Policy (i.e., Independent Third Party, Discipline Panel), shall comply with the PHE Canada's Privacy Policy in the performance of their services under this Policy.

7.10 Timelines

If the circumstances of the complaint are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the complaint, the Panel may direct that these timelines be revised.

7.11 Records and Distribution of Decisions

Other individuals or organizations, 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.

7.12 Government Agencies

A number of government agencies have been established to prevent and redress discrimination, harassment and violence. Implementation of these procedures do not prohibit employees from reporting incidents to their respective provincial government body.

8 ATTACHMENTS

None