

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 the principles of a procedurally fair adjudication process.

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 behaviour.

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 offences 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 the principles of adjudication 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 behaviours 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 ***Individual's*** 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 **Individual's** continued involvement with athletes and sport participants. Proof of the **Individual's** 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 offences is fundamentally incompatible with an **Individual's** involvement interacting with youth and sport participants. These four classes of offences are not intended to send a message that other serious offences (i.e., murder, assault, armed robbery) are deemed acceptable by their omission. The four offences 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.

Code for Prohibited Conduct in Sport Adjudication Process

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 principles set out hereafter.

- (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 or be advised by an individual with these skills.
- (v) There shall be the right to appeal the Panel's decision in accordance with the organization's appeal policy.

[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.]