



Di and Complaints Policy

Last Updated September 2022

In this document "Organization" refers to Killarney Gators Swim Club Association.

Definitions

- Terms in this Policy are defined as follows:
 - **Athlete** – An individual who is an Athlete Participant in the Organization who is subject to the policies of the Organization and to the *Code of Conduct and Ethics*.
 - **Case Manager** – An individual appointed to administer complaints that are assessed under Process #2 of this Policy. This individual must not be in a conflict of interest.
 - **Complainant** – A Participant or observer who makes a report of an incident, or a suspected incident, of maltreatment or other behaviour that is a violation of the standards described in the *Code of Conduct and Ethics*.
 - **External Discipline Panel** – A Panel of one or three people who are appointed by the Case Manager to make a decision on complaints that are assessed under Process #2 of this Policy.
 - **Internal Discipline Chair** – An individual appointed by the Organization to make a decision on complaints that are assessed under Process #1 of this Policy. The Internal Discipline Chair may be a Director, head coach, staff member, or other individual affiliated with the Organization but must not be in a conflict of interest.
 - **Minor** – Any Participant who is under the age of 19 years old at the time and in the jurisdiction where the alleged maltreatment has occurred. Adults are responsible for knowing the age of a Minor.
 - **Parties** – the groups involved with a dispute.
 - **Participants** – Refers to all categories of individual members and/or registrants defined in the By-laws of the Organization who are subject to the policies of the Organization, as well as all people employed by, contracted by, or engaged in activities with, the Organization including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, committee members, and Directors and Officers.
 - **Respondent** – The Party responding to the complaint.

Purpose

- Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the policies, By-laws, rules, and regulations of the Organization. Non-compliance may result in the imposition of sanctions pursuant to this Policy.

Application of this Policy

- This Policy applies to all Participants.
- This Policy applies to matters that may arise during the business, activities, and events of the Organization including, but not limited to, competitions, training sessions, treatment or consultations (e.g., massage therapy), camps and clinics, travel associated with the activities of the Organization, and any meetings.
- This Policy also applies to Participants' conduct outside of the business, activities, and events of the Organization when such conduct adversely affects the relationships (or the work and sport environment) of the Organization, is detrimental to the image and reputation of the Organization, or upon the acceptance of the Organization. Accordingly, applicability of this Policy will be determined by the Organization upon its sole discretion.
- This Policy applies to alleged breaches of the *Code of Conduct and Ethics* by Participants who have retired from the sport where any claim regarding a potential breach of the *Code of Conduct and Ethics* occurred when the Participant was active in the sport. In addition, this Policy will apply to breaches of the *Code of Conduct and Ethics* that occurred when the Participants involved interacted due to their mutual involvement in the sport or, if the breach occurred outside of the sport environment, if the breach has a serious and detrimental impact on the Participant(s).
- If it is considered appropriate or necessary based on the circumstances, immediate discipline or the imposition of a sanction may be applied, after which further discipline or sanctions may be applied according to this Policy. Any infractions or complaints occurring within competition will be dealt with by the procedures specific to the competition, if applicable. In such situations, disciplinary sanctions may be for the duration of the competition, training, activity, or event only.
- In addition to being subject to disciplinary action pursuant to this *Discipline and Complaints Policy*, an employee of the Organization who is a Respondent to a complaint may also be subject to consequences in accordance with the employee's Employment Agreement or policies for human resources, if applicable.
- The Organization may, at its discretion, ask Swim BC to take jurisdiction of a complaint that was submitted to the Organization. In such cases, Swim BC's Case Manager will determine whether the complaint process should be re-started or resumed pursuant to the applicable section of Swim BC's policies. Swim BC will accept jurisdiction of a complaint only if the Organization has exhausted all attempts to manage the complaint according to this policy.

Minors

- Complaints may be brought by or against a Participant who is a Minor. Minors must have a parent/guardian or other adult serve as their representative during this process.
- Communication from the Case Manager, Internal Discipline Chair or External Discipline Panel (as applicable) must be directed to the Minor's representative.
- A Minor is not required to attend an oral hearing, if held.

Reporting a Complaint

- Any person may report a complaint to the Organization's Case Manager (when identified) or directly to the Organization, which will then appoint a Case Manager.
- At its discretion, the Organization may act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, the Organization will identify an individual to represent the organization.
- Complaints or incident reports should be made in writing for the discipline and complaints procedure to be initiated. The Case Manager may accept any formal complaint, in writing or not, at their sole discretion.

Case Manager Responsibilities

- Upon receipt of a complaint, the Case Manager has a responsibility to:
- Determine the appropriate jurisdiction to manage the complaint and consider the following:
- Whether the complaint should be handled by the Organization or by Swim BC. In making this decision, the Case Manager will consider:
 - whether the incident has occurred within the business, activities or events of the Organization, or Swim BC; and
 - if the Organization is otherwise unable to manage the complaint for valid and justifiable reasons, such as a conflict of interest or due to a lack of capacity
- If the Case Manager determines that the complaint or incident should be handled by the Organization, the Case Manager will fulfil the responsibilities listed below.
- Determine whether the complaint is frivolous and/or outside of the jurisdiction of this Policy and, if so, the complaint will be dismissed immediately and the Case Manager's decision to dismiss the complaint may not be appealed
- Propose the use of alternative dispute resolution techniques

- Determine if the alleged incident should be investigated pursuant to **Appendix A – Investigation Procedure**; and/or
- Choose which process (Process #1 or Process #2, as outlined below) should be followed to hear and adjudicate the complaint.

There are two different processes that may be used to hear and adjudicate complaints. The Case Manager will decide which process should be followed based on the nature of the complaint.

Process #1 - the Complainant alleges the following incidents:

- Disrespectful conduct or comments
- Minor incidents of physical violence outside of competition or training (e.g., tripping, pushing, elbowing)
- Conduct contrary to the values of the Organization
- Non-compliance with the organization's policies, procedures, rules, or regulations
- Minor violations of the ***Code of Conduct and Ethics***, ***Social Media Policy***, or ***Athlete Protection Policy***

Process #2 - the Complainant alleges the following incidents:

- Repeated minor incidents
- Hazing
- Abusive, racist, or sexist comments or behaviour
- Behaviour that constitutes harassment, sexual harassment, or sexual misconduct
- Major incidents of violence outside of competition or training (e.g., fighting, attacking, sucker punching)
- Pranks, jokes, or other activities that endanger the safety of others
- Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
- Conduct that intentionally damages the organization's image, credibility, or reputation
- Consistent disregard for the by-laws, policies, rules, and regulations
- Major or repeated violations of the ***Code of Conduct and Ethics***
- Intentionally damaging the organization's property or improperly handling the organization's monies
- Abusive use of alcohol, any use or possession of alcohol by Minors, or use or possession of illicit drugs and narcotics
- A conviction for any *Criminal Code* offense
- Any possession or use of banned performance enhancing drugs or methods

PROCESS #1: Handled by Internal Discipline Chair
Internal Discipline Chair

- Following the determination that the complaint or incident should be handled under Process #1, the Case Manager will ask the Organization to appoint an Internal Discipline Chair who may:
 - Recommend mediation
 - Make a decision
 - Ask the Complainant and the Respondent for either written or oral submissions regarding the complaint or incident; or
 - Convene the parties to a meeting, either in person or by way of video or teleconference in order to ask the parties questions.
- Thereafter, the Internal Discipline Chair shall determine if a breach occurred and if sanctions should be applied (see: **Sanctions**).
- The Internal Discipline Chair will inform the Parties of the decision, which will take effect immediately.
- Records of all sanctions will be maintained by the Organization.

Request for Reconsideration

- If there is no sanction, the Complainant may contest the non-sanction by informing the Internal Discipline Chair, 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.
- 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:
 - Why the sanction is inappropriate
 - Summary of evidence that the Respondent will provide to support the Respondent's position; and
 - What alternative penalty or sanction (if any) would be appropriate.
- Upon receiving a request for reconsideration, the Internal Discipline Chair may decide to accept or reject the Respondent's suggestion for an alternative sanction.
- Should the Internal Discipline Chair accept the Respondent's suggestion for an appropriate sanction, that sanction will take effect immediately.

- Should the Internal Discipline Chair not accept the Respondent's suggestion for an appropriate sanction, the initial complaint or incident will be handled under Process #2 of this Policy.

PROCESS #2: Handled by Case Manager and External Discipline Panel

Case Manager

- Following the determination that the complaint or incident should be handled under Process #2, the Case Manager has a responsibility to:
 - Propose the use of alternative dispute resolution techniques
 - Appoint the External Discipline Panel, if necessary
 - Coordinate all administrative aspects of the process and set reasonable timelines
 - Provide administrative assistance and logistical support to the External Discipline Panel as required
 - Provide any other service or support that may be necessary to ensure a fair and timely proceeding
- The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
- The Case Manager may propose using alternative dispute resolution methods, such as mediation or a negotiated settlement.
- If the dispute is not resolved using alternative methods, the Case Manager will appoint an External Discipline Panel of one (1) person to hear the complaint. Depending on the severity of the allegations and at the Case Manager's discretion, an External Discipline Panel of three (3) people may be appointed. When a three-person External Discipline Panel is appointed, the Case Manager will appoint one of the External Discipline Panel's members to serve as the Chair.
- The Case Manager, in cooperation with the External Discipline 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 Case Manager and the External Discipline Panel deem appropriate for the circumstances. The following guidelines will apply to the hearing:

- The Parties will be given appropriate notice of the day, time, and place of the hearing
 - Copies of any written documents which any of the Parties wishes to have the External Discipline Panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing
 - The Parties may engage a representative, advisor, or legal counsel at their own expense
 - The External Discipline Panel may request that any other individual participate and give evidence at the hearing
 - The External Discipline 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
 - The decision will be by a majority vote of the External Discipline Panel, when the Panel consists of three people
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- If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the External Discipline Panel will determine the appropriate sanction. The External Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
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- The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.
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- In fulfilling its duties, the External Discipline Panel may obtain independent advice.

Decision

- After hearing the matter, the External Discipline Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. Within fourteen (14) days of the hearing's conclusion, the External Discipline Panel's written decision, with reasons, will be distributed to all parties, the Case Manager, to the Organization. In extraordinary circumstances, the External Discipline 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 fourteen (14) day period. The decision will be considered a matter of public record unless decided otherwise by the External Discipline Panel.

Sanctions

- Prior to determining sanctions, the Internal Discipline Chair or External Discipline Panel, as applicable, will consider factors relevant to determining appropriate sanctions which include:

- The nature and duration of the Respondent's relationship with the Complainant, including whether there is a power imbalance
 - The Respondent's prior history and any pattern of inappropriate behaviour or maltreatment
 - The ages of the individuals involved
 - Whether the Respondent poses an ongoing and/or potential threat to the safety of others
 - The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the maltreatment, and/or cooperation in the process of the Organization
 - Real or perceived impact of the incident on the Complainant, Organization, or the sporting community
 - Circumstances specific to the Respondent being sanctioned (e.g., lack of appropriate knowledge or training regarding the requirements in the *Code of Conduct and Ethics*; addiction; disability; illness)
 - Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate
 - A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
 - Other mitigating and aggravating circumstances.
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- Any sanction imposed must be proportionate and reasonable. However, progressive discipline is not required, and a single incident of maltreatment or other prohibited behaviour may justify elevated or combined sanctions.
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- The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following disciplinary sanctions, singularly or in combination:
 - **Verbal or Written Warning** - A verbal reprimand or an official, written notice and formal admonition that a Participant has violated the *Code of Conduct and Ethics* and that more severe sanctions will result should the Participant be involved in other violations
 - **Education** - The requirement that a Participant undertake specified educational or similar remedial measures to address the violation(s) of the *Code of Conduct and Ethics*
 - **Probation** - Should any further violations of the *Code of Conduct and Ethics* occur during the probationary period, will result in additional disciplinary measures, likely including a period of suspension or permanent ineligibility. This sanction can also include loss of privileges or other conditions, restrictions, or requirements for a specified period of time
 - **Suspension** - Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of the Organization. A suspended Participant is eligible to return to participation, but reinstatement may be subject to certain restrictions or contingent upon the Participant satisfying specific conditions noted at the time of suspension

- **Eligibility Restrictions** - Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions
 - **Permanent Ineligibility** - Ineligibility to participate in any capacity in any program, activity, event, or competition sponsored by, organized by, or under the auspices of the Organization
 - **Other Discretionary Sanctions** - Other sanctions may be imposed, including, but not limited to, other loss of privileges, no contact directives, a fine or a monetary payment to compensate for direct losses, or other restrictions or conditions as deemed necessary or appropriate
- The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following presumptive sanctions which are presumed to be fair and appropriate for the listed maltreatment:
 - Sexual maltreatment involving a Minor Complainant shall carry a presumptive sanction of permanent ineligibility
 - Sexual maltreatment, physical maltreatment with contact, and maltreatment related to interference or manipulation of process shall carry a presumptive sanction of either a period of suspension or eligibility restrictions
 - While a Respondent has pending charges or dispositions in violation of the criminal law, the presumptive sanction shall be a period of suspension
- A Participant's conviction for a *Criminal Code* offense shall carry a presumptive sanction of permanent ineligibility from participating with the Organization. *Criminal Code* offences may include, but are not limited to:
 - Any child pornography offences
 - Any sexual offences
 - Any offence of physical violence
 - Any offence of assault
 - Any offence involving trafficking of illegal drugs
- Unless the External Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the External Discipline Panel will result in an automatic suspension until such time as compliance occurs.
- Records of all decisions will be maintained by the Organization.

Appeals

- The decision of the External Discipline Panel may be appealed in accordance with the ***Appeal Policy***.

Suspension Pending a Hearing

- The Organization may determine that an alleged incident is of such seriousness as to warrant suspension of a Participant pending completion of an investigation, criminal process, the hearing, or a decision of the External Discipline Panel.

Confidentiality

- The discipline and complaint process is confidential and involves only the Organization, the Parties, the Case Manager, the Internal Discipline Chair, the External Discipline Panel, and any independent advisors to the External Discipline Panel. Once initiated and until a decision is released, none of the parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.
- Any failure to respect the aforementioned confidentiality requirement may result in further sanctions or discipline by the Internal Discipline Chair or External Discipline Panel (as applicable).

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 Case Manager may direct that these timelines be revised.

Records and Distribution of Decisions

- Other individuals or organizations, including but not limited to, Swim BC, Swimming Canada, other swim clubs, etc., may be advised of any decisions rendered in accordance with this Policy.

Appendix A – Investigation Procedure

Determination

- When a complaint is submitted pursuant to the *Discipline and Complaints Policy*, the Case Manager will determine if the incident should be investigated.

Investigation

- The Case Manager will 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.
- Federal and/or Provincial legislation related to Workplace Harassment may apply to the investigation if Harassment was directed toward a worker in a Workplace. The Investigator should review workplace safety legislation, the organization's policies for human resources, and/or consult independent experts to determine whether legislation applies to the complaint.
- The investigation may take any form as decided by the Investigator, guided by any applicable Federal and/or Provincial legislation. The investigation may include:
 - Interviews with the Complainant
 - Witness interviews
 - Statement of facts (Complainant's perspective) prepared by Investigator, acknowledged by the Complainant, and provided to the Respondent
 - Interviews with the Respondent
 - Statement of facts (Respondent's perspective) prepared by Investigator, acknowledged by the Respondent, and provided to the Complainant

Investigator's Report

- Upon completion of their investigation, the Investigator shall prepare a report that should include a summary of evidence from the parties (including both statements of facts, if applicable) and recommendations from the Investigator of whether, on a balance of probabilities, a breach of the *Code of Conduct and Ethics* occurred.
- The Investigator must be aware that sport-specific differences exist with respect to such aspects as acceptable levels of touch, physical contact, and aggression during training or competition and will consider such differences during the investigative process.
- The Investigator's Report will be provided to the Case Manager who will disclose it, at their discretion, to the Organization.
- Should the Investigator find that there are possible instances of offence under the *Criminal Code*, particularly related to Criminal Harassment (or Stalking), Uttering Threats, Assault, Sexual Interference, or Sexual Exploitation, the Investigator shall advise the Complainant and the Organization to refer the matter to police.

- The Investigator must also inform the Organization of any findings of criminal activity. The Organization may decide whether to report such findings to police but is required to inform police if there are findings related to the trafficking of prohibited substances or methods (as indicated in the version of the World Anti-Doping Agency's Prohibited List currently in force), any sexual crime involving Minors, fraud against the Organization, or other offences where the lack of reporting would bring the Organization into disrepute.

Reprisal and Retaliation

- A Participant who submits a complaint to the Organization or who gives evidence in an investigation may not be subject to reprisal or retaliation from any individual or group. Any such conduct may constitute maltreatment and will be subject to disciplinary proceedings pursuant to the *Discipline and Complaints Policy*.

False Allegations

- A Participant who submits allegations that the Investigator determines to be malicious, false, or for the purpose of retribution, retaliation or vengeance may be subject to a complaint under the terms of the *Discipline and Complaints Policy* and may be required to pay for the costs of any investigation that comes to this conclusion. The Organization or the Participant against whom the allegations were submitted, may act as the Complainant.

Confidentiality

- The Investigator will make reasonable efforts to preserve the anonymity of the complainant, respondent, and any other party. However, the Organization recognizes that maintaining full anonymity during an investigation may not be feasible.