

DISCIPLINE AND COMPLAINTS POLICY- PORT HAWKESBURY ANTIGONISH SWIM TEAM (PHAST)

** Indicates a section or definition that has been adapted from The Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS)*

Definitions

1. The following terms have these meanings in this Policy:

- a) ***Athlete** – An individual who is an Athlete Participant in PHAST who is subject to the policies of PHAST, Swim Nova Scotia (SNS) and Swimming Canada.
- b) **Case Manager** – An individual appointed by PHAST to administer certain complaints under this policy. The Case Manager does not need to be a member of or affiliated with PHAST.
- c) ***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
- d) **Days** – Days including weekends and holidays
- e) **Discipline Chair** – An individual appointed or assigned by the Case Manager to handle complaints
- f) ***Maltreatment** – As defined in the *Code of Conduct and Ethics*
- g) ***Minor** – Any Participant who is under the age of 19 at the time and in the jurisdiction where the alleged Maltreatment has occurred. Adults are responsible for knowing the age of a Minor.
- h) ***Participants** – Refers to all categories of individual members and/or registrants defined in the By-laws of SNS who are subject to the UCCMS and the policies of SNS, as well as all people employed by, contracted by, or engaged in activities with, SNS 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
- i) ***Respondent** – The Party responding to the complaint

Purpose

2. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with PHAST policies, by-laws, rules and regulations, and the PHAST *Code of Conduct and Ethics*. Non-compliance may result in sanctions pursuant to this Policy.

Principles

3. *The following principles guide the findings and determinations under this Policy:

- a) Any form of Maltreatment violates the integrity of participants and undermines the values of Canadian sport
- b) Sanctions imposed will reflect the seriousness of the maltreatment and the harm to those affected and the values of Canadian sport

Application of this Policy

4. This Policy applies to all Participants.

5. This Policy applies to matters that may arise during PHAST's business, activities, and events including, but not limited to, competitions, practices, tryouts, training camps, travel associated with Swim Nova Scotia (SNS) activities, and any meetings.
6. This Policy also applies to Participants' conduct outside of PHAST's business, activities, and events when such conduct adversely affects relationships within PHAST/SNS (and its work and sport environment) and is detrimental to the image and reputation of PHAST/SNS. Such applicability will be determined by PHAST at its sole discretion.
7. *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).
8. This Policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline 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 will be for the duration of the competition, training, activity, or event only.

Reporting a Complaint

9. Any Participant may report any complaint to the PHAST executive. A complaint must be in writing (by email, fax, or letter) and must be filed within fourteen (14) days of the alleged incident.
10. A Complainant wishing to file a complaint outside of the fourteen (14) day period must provide a written statement giving reasons for an exemption to this limitation. The decision to accept, or not accept, the complaint outside of the fourteen (14) day period will be at the sole discretion of the PHAST executive.
11. This decision may not be appealed.
12. At PHAST's discretion, PHAST may act as the Complainant and initiate the complaint process under the terms of this policy. In such cases, PHAST will identify an individual to represent PHAST.
13. Resignation or lapsing of membership after a complaint is filed does not preclude discipline being pursued under this policy.
14. Upon receipt of a complaint, PHAST, via the President (or designate) or Case Manager, will determine whether the complaint is frivolous and/or within the jurisdiction of this policy. If the complaint is deemed frivolous or outside the jurisdiction of this policy, the complaint will be dismissed. If the complaint is accepted, a case manager will be appointed in accordance with Section 15, if not already appointed per above.
15. The decision to accept or dismiss the complaint may not be appealed.

Case Manager

16. Upon acceptance of a complaint, PHAST will appoint a Case Manager, if not already done so to screen the complaint, to oversee management and administration of complaints submitted in accordance with this policy. The Case Manager should be an independent third-party with no connection to the complainant or respondent. Such appointment is not appealable.
17. The Case Manager has a responsibility to:
 - a) Propose the use of PHAST's *Dispute Resolution Policy*
 - b) Determine if the complaint should be investigated
 - c) Appoint the Discipline Panel, if necessary
 - d) Coordinate all administrative aspects and set timelines
 - e) Provide administrative assistance and logistical support to the Discipline Panel as required
 - f) Provide any other service or support that may be necessary to ensure a fair and timely proceeding

Investigation

18. The Case Manager may appoint an investigator who is not in a conflict of interest and who is appropriately qualified to conduct an investigation.
19. Federal and/or Provincial legislation related to Workplace Harassment may apply to the investigation if harassment was directed toward a worker in a Workplace (defined in the *Code of Conduct and Ethics*). The investigator should review workplace safety legislation, and/or consult independent experts to determine whether legislation applies to the complaint.
20. The investigation may take any form as decided by the investigator, guided by any applicable Federal and/or Provincial legislation. The investigation may include:
 - a) Complainant interviewed.
 - b) Witnesses interviewed.
 - c) Statement of facts (Complainant's perspective) prepared by Investigator and acknowledged by Complainant.
 - d) Statement delivered to Respondent.
 - e) Respondent interviewed.
 - f) Witnesses interviewed; and
 - g) Statement of facts (Respondent's perspective) prepared by Investigator and acknowledged by Respondent
21. *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.
22. *A Participant who submits a complaint to PHAST 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*.
23. When the investigation is completed, the investigator will provide the Case Manager with an Investigator's Report which 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 was in violation of the *Code of Conduct and Ethics*. The Case Manager may disclose the Investigator's Report to the PHAST executive and to others as necessary, per their discretion.

Procedures

24. If the complaint is accepted, the Case Manager will notify the parties that the complaint is accepted and of the applicable next steps
25. The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
26. After notifying the Parties that the complaint has been accepted, the Case Manager will first propose using PHAST's *Dispute Resolution Policy* with the objective of resolving the dispute. If the dispute is not resolved or if the parties refuse to use the *Dispute Resolution Policy*, the Case Manager will appoint a Discipline Panel, which shall consist of a single Adjudicator, to hear the complaint. In extraordinary circumstances, and at the discretion of the Case Manager, a Discipline Panel of three persons may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the Discipline Panel's members to serve as the Chair.
27. The Case Manager, in cooperation with the 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, which may involve direct communication with the Parties, 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 Discipline Panel deem appropriate in the circumstances, provided that:
 - a) 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
 - b) Copies of any written documents which the parties wish to have the Discipline Panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing
 - c) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
 - d) The Discipline Panel may request that any other individual participate and give evidence at the hearing
 - e) The 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
 - f) The decision will be by a majority vote of the Discipline Panel
28. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Discipline Panel will determine the appropriate sanction. The Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
29. The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.

30. 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.
31. In fulfilling its duties, the Discipline Panel may obtain independent advice.

Decision

32. After hearing and/or reviewing the matter, the 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 Discipline Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and PHAST executive. In extraordinary circumstances, the 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 Discipline Panel.

Sanctions

33. *Prior to determining sanctions, the Discipline Chair or Discipline Panel, as applicable, will consider factors relevant to determining appropriate sanctions which include:
- a) The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance (as defined in the *Code of Conduct and Ethics*).
 - b) The Respondent's prior history and any pattern of inappropriate behaviour or maltreatment.
 - c) The ages of the individuals involved.
 - d) Whether the Respondent poses an ongoing and/or potential threat to the safety of others.
 - e) The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the Maltreatment, and/or cooperation in the process of PHAST.
 - f) Real or perceived impact of the incident on the Complainant, sport organization or the sporting community.
 - g) 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);
 - h) Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate.
 - i) A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
 - j) Other mitigating and aggravating circumstances
34. *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.
35. *The Discipline Chair or Discipline Panel, as applicable, may apply the following disciplinary sanctions, singularly or in combination:
- a) **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
 - b) **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*

- c) **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.
 - d) **Suspension** - Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of SNS. 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
 - e) **Eligibility Restrictions** - Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions
 - f) **Permanent Ineligibility** - Permanent ineligibility to participate, in any sport, in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of SNS and/or any sport organization subject to the UCCMS
 - g) **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
36. *The Discipline Chair or Discipline Panel, as applicable, may apply the following presumptive sanctions which are presumed to be fair and appropriate for the listed maltreatment:
- a) Sexual maltreatment involving a Minor Complainant shall carry a presumptive sanction of permanent ineligibility
 - b) 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
 - c) While a Respondent has pending charges or dispositions in violation of the criminal law, the presumptive sanction shall be a period of suspension
37. A Participant's conviction for a *Criminal Code* offense, as determined by PHAST executive, will be deemed an infraction under this Policy and will result in expulsion from PHAST/SNS. *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
38. Unless the Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the Discipline Panel will result in an automatic suspension until such time as compliance occurs.
39. Infractions that result in discipline will be recorded and records will be maintained by PHAST/SNS.

Suspension Pending a Hearing

40. PHAST executive may determine that an alleged incident is of such seriousness as to warrant suspension of a participant pending completion of a criminal process, the hearing, or a decision of the Discipline Panel.

Confidentiality

41. The discipline and complaints process is confidential and involves only the Parties, counsel or representatives, the Case Manager, the Discipline Panel, and any independent advisors to the 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.

Timelines

42. 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 Discipline Panel may direct that these timelines be revised.

Records and Distribution of Decisions

43. 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.

Appeals Procedure

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