

## **ATHLETICS NEW BRUNSWICK**

### **POLICY STATEMENT 22.0: HARASSMENT: POLICY AND PROCEDURES MANUAL**

#### **INTRODUCTION: POLICY STATEMENTS**

Athletics New Brunswick is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Athletics New Brunswick is also committed to providing opportunities to individuals in the sport of athletics to reach their potential in fitness and excellence. Each individual has the right to participate and work in an environment, which promotes equal opportunities and prohibits discriminatory practices.

- Harassment is a form of discrimination and is prohibited by the *Canadian Charter of Rights and Freedom* and by the *Human Rights Legislation* in New Brunswick.
- Harassment is offensive, degrading and threatening. In extreme forms, harassment can be an offence under Canada's *Criminal Code*. However, it is equally as serious in less extreme forms because constant intimidation and humiliation are threatening and create a hostile environment for individuals who experience them.
- Athletics New Brunswick is committed to providing a sport and work environment free of harassment on the basis of race, national or ethnic origin, colour, religion, age, sexual orientation, marital status, family status, disability or pardoned convictions.

This policy applies to all members of Athletics New Brunswick, including the members of the Board of Directors or any designate appointed by the Board, and all individuals engaged in activities with, or employed by, Athletics New Brunswick. These include, but are not limited to, athletes, coaches, officials, volunteers, Meet Directors, officials, team managers, team captains, medical and paramedical staff, administrators, employees, contract personnel.

This policy applies to harassment which may occur during the course of Athletics New Brunswick's business activities and events, not limited to athletics competitions, training camps, competitions, meetings and travel associated with these activities. It also applies to harassment between individuals associated with Athletics New Brunswick but occurring outside of Athletics New Brunswick's business and events if the harassment adversely affects relations within Athletics New Brunswick's sport and work environment.

Notwithstanding this policy, every individual who experiences harassment continues to have the right to seek assistance from their provincial and territorial Human Rights Commission, even when steps are being taken under this policy.

## **PROCEDURES MANUAL**

### **DEFINITIONS**

1. Harassment can take many forms, and includes sexual harassment, abuse and racism. Harassment can generally be defined as comments, conduct or gestures that are insulting, intimidating, hurtful, humiliating, malicious, degrading, or otherwise offensive to an individual or a group of individuals or which creates an uncomfortable sport or work environment or which causes embarrassment, insecurity, discomfort, offence or humiliation to other individuals or groups.
2. Types of behaviour which constitute harassment include, but are not limited to:
  - a) written or verbal abuse or threats;
  - b) unwelcome remarks, jokes, innuendoes or taunting about a person's body, sexual orientation, attire, age, marital status, ethnic or racial origin, religion etc.;
  - c) unwanted physical conduct that includes touching, pinching, kissing;
  - d) unwelcome sexual flirtations, advances, request or invitations or;
  - e) physical assault;
  - f) displaying of sexually explicit, racist or other offensive or derogatory material, sexual, racial, ethnic or religious graffiti;
  - g) practical jokes which directly or indirectly cause awkwardness or embarrassment, endangering a person's safety or negatively affecting performance;
  - h) hazing or initiation rights;
  - i) leering or other suggestive or obscene gestures;
  - j) intimidation, through the suggestion or offer of a reward or privilege or through threats of retaliation related to speaking out about harassment;
  - k) condescension, paternalism, or patronizing behaviour which undermines self respect or adversely affects performance or working conditions;
  - l) conduct, comments, gestures or contact of a sexual nature that is likely to cause offence or humiliation or that might, on reasonable grounds, be perceived as placing a condition of a sexual nature on employment or any opportunity for selection, training or advancement;
  - m) false accusations of harassment motivated by malice or mischief, and meant to cause other harm, is considered harassment; or
  - n) sexual harassment, abuse or racism as defined in this policy.
3. Sexual Harassment is defined as unwelcome sexual advances, request for sexual favours, or other verbal or physical conduct of a sexual nature when:

- a) submitting to or rejecting this conduct is used as a basis for making a decision which affects the individual;
  - b) such conduct has the purpose or effect of interfering with a individual's sport or work performance; or
  - c) such conduct creates an intimidating, hostile or offensive sport or work environment.
4. Abuse can be physical, emotional or sexual, as follows:
- a) Physical abuse - using physical force or actions that result, or could result in injury.
  - b) Emotional abuse - a pattern of hurting an individual's feelings to the point of damaging their self-respect. It includes verbal attacks on the individual, insults, humiliation or rejection.
  - c) Sexual abuse - occurs when someone uses an individual for sexual stimulation or gratification.
5. Racism can be defined as, but is not limited to:
- a) Interpersonal behaviour such as name calling, derogatory remarks, gestures and physical attack, or
  - b) Racial bias within Athletics New Brunswick, club or sport related decisions such as team selection, program access, and participation in activities and decisions related to sport related issued, or
  - c) Racial bias in administrative decisions, assignments, promotion, holidays, leave, salary increases, or
  - d) Stereotyping language that universalizes experience and ignores the differences between people and cultures, or
  - e) Discriminatory language, which denotes a stereotyped view of a subject or which has offensive overtones.
6. Complainant is the individual who thinks he or she has been harassed.
7. Respondent refers to the individual against whom the complaint has been made.
8. Harassment Advisor is a person appointed in accordance with ss. 21 and 22 of this policy.
9. Harassment Officer is a person appointed in accordance with ss. 23 and 24 of this policy.
10. Investigator is an individual appointed to investigate a complaint of harassment in accordance with s. 33.
11. Review Panel is the body which will hear and decide a complaint in accordance with this policy and consists of at least 3 individuals appointed by the Board of Directors for the purpose of presiding at a hearing. No members of the Review Panel shall have a

personal or professional involvement with the Complainant or Respondent, or any other conflict of interest.

## **RESPONSIBILITIES**

12. All members, employees, volunteers and in particular the Board of Directors of Athletics New Brunswick are responsible for familiarizing themselves with this policy in an effort to strive towards a sport and working environment free of harassment. In addition, any member of Athletics New Brunswick who believes that an individual has experienced or is experiencing harassment is encouraged to notify a harassment officer appointed under this policy.
13. Athletics New Brunswick's responsibilities with respect to harassment include the following:
  - a) discouraging and preventing harassment within all activities of Athletics New Brunswick through a commitment of awareness, education and support for this policy;
  - b) investigating or appointing an Investigator to respond to formal complaints of harassment in a sensitive, responsible and timely manner with the goal of resolving the situation fairly and of preventing future occurrences, including determining and enforcing appropriate discipline;
  - c) imposing appropriate disciplinary or corrective measures when a complaint of harassment has been substantiated, regardless of the position or authority of the offender;
  - d) providing support and assistance to individuals who experience harassment;
  - e) fostering an environment free of harassment by attempting to stop incidents of harassment whether there is a complaint or not;
  - f) informing both the complainants and respondents of the procedure contained in this policy;
  - g) appointing a Harassment Officer and providing the training and resources they needed by that individual to fulfil his or her responsibilities under this policy;
  - h) appointing an unbiased Review Panel and providing the Review Panel with the resources and support needed to fulfil their responsibilities under this policy;
  - i) appointing an unbiased Appeals Panel and providing the Appeals Panel with the resources and support needed to fulfil their responsibilities under this policy; and
  - j) annually reviewing the terms of this policy to ensure that they adequately meet Athletics New Brunswick's legal obligations and public policy objectives.

## **CONFIDENTIALITY**

14. Athletics New Brunswick understands that it can be extremely difficult to come forward with a complaint of harassment and that it can be devastating to be wrongly convicted of

harassment. Athletics New Brunswick recognizes the interests of both the Complainant and the Respondent in keeping the matter confidential.

15. Athletics New Brunswick and its representatives shall not disclose to parties outside of Athletics New Brunswick the name of the Complainant, the circumstances giving rise to a complaint, or the name of the Respondent except in accordance with this policy.
16. When a complaint is received, the Board of Directors may only disclose the names of the Complainant and Respondent to individuals within Athletics New Brunswick if absolutely necessary and the circumstances warrant it. Athletics New Brunswick will limit the number of people who are notified of the Complainant and Respondent's name, and will only notify those individuals to whom disclosure is absolutely necessary, keeping in mind the need to protect confidentiality.
17. All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential by Athletics New Brunswick except where disclosure is required in accordance with this policy.
18. In all reported instances, a prompt, thorough, fair investigation will take place giving careful consideration to protect the rights and dignity of all the individuals involved.
19. The regular procedures associated with privacy and confidentiality will be observed at all times, including the sealing of all documents upon the conclusion of the investigation.

#### **COACH and ATHLETE RELATIONS**

20. Athletics New Brunswick believes that all coaches are in a position of trust and authority to their team members. Athletics New Brunswick, therefore, takes the position that any sexual relation between a coach who is at least eighteen (18) years of age and a team member who is less than eighteen (18) years of age is prohibited, and may constitute an offence under the *Criminal Code* of Canada.

#### **HARASSMENT OFFICERS**

21. The Board of Directors shall appoint at least two individuals, one male and one female, who are themselves members of Athletics New Brunswick, to serve as Harassment Officers under this policy. If more than two Harassment Officers are appointed, Athletics New Brunswick shall ensure a gender balance.
22. The role of the Harassment Officer, serving in a neutral, unbiased capacity, is to receive those complaints forwarded by to him/her; to assist, when it is still possible to do so, in an informal resolution of any such complaints; or to investigate, or appoint an Investigator to investigate, all formal written complaints.
23. In carrying out their duties under this policy, the Harassment Officer shall be directly responsible to the Board of Directors.
24. Athletics New Brunswick shall ensure that Harassment Officers receive appropriate training and support in order to carry out their responsibilities under this policy.
25. At the discretion of the Board of Directors, another Provincial Branch may be asked to assist in this process by making the services of the Branch Harassment Officer(s) available where the alleged harassment involves a member or members of that Branch.

## **PROTECTION AGAINST REPRISAL**

26. Reprisals or threats of reprisals are an aggravating factor in any situation involving discrimination, racism or harassment, particularly where the reprisals or threats of reprisal is from an individual with authority. Athletics New Brunswick views any form of a reprisals as harassment. Athletics New Brunswick will protect against reprisals for, but not limited to:
- a) having invoked this policy;
  - b) having participated or cooperated in any investigation under this policy; or
  - c) having been associated with an individual who has invoked this policy, participated and/or cooperated in any investigation.

## **COMPLAINT PROCEDURE**

### **Initiation of Complaint**

27. A person who experiences harassment is encouraged to make it known to the Respondent that the behaviour is unwelcome, offensive, and contrary to this policy.
28. If confronting the Respondent is not possible or if, after confronting the respondent, the harassment continues, the Complainant should seek the advice of a Harassment Officer.
29. The Harassment Officer shall inform the Complainant of:
- a) the options for pursuing an informal resolution of their complaint;
  - b) the right to lay a formal written complaint under this policy when an informal resolution is inappropriate or not feasible;
  - c) the availability of counselling and other resources;
  - d) the confidentiality provisions of this policy;
  - e) the right to be represented by a person of choice (including legal counsel) at any stage in the complaint process;
  - f) any external mediation and/or arbitration mechanisms that may be available;
  - g) the right to withdraw from any further action in connection with the complaint at any stage, even though Athletics New Brunswick may continue to investigate the complaint; and
  - h) other avenues of recourse, including the right to file a complaint with a *Human Rights Commission* or, where appropriate, to contact the police to have them lay a formal charge under the *Criminal Code* of Canada.
30. There are four possible outcomes to this initial meeting of Complainant and Harassment Officer.

**(a) The Complainant and Harassment Officer agree that the conduct does not constitute harassment.**

If this occurs, the Harassment Officer will take no further action and will not make a written record of the complaint.

**(b) The Complainant chooses to pursue an informal resolution of the complaint.**

The Harassment Officer works with the parties or appoints a mediator to assist in resolving the complaint on an informal basis. If informal resolution yields a result which is acceptable to both parties, the Harassment Officer will make a written record that a complaint was made and was resolved informally to the satisfaction of both parties, and will take no further action.

If informal resolution fails to satisfy the Complainant, the Complainant will reserve the option of submitting a formal written complaint.

**(c) The Complainant decides to submit a formal written complaint.**

If this occurs, the Harassment Officer will advise the Complainant to draft a formal written complaint, to be signed by the Complainant, and will be advised that the Respondent will be given a copy of the written complaint without delay. The written complaint should set out the details of the incident(s), the names of any witnesses to the incident(s), and should be dated and signed.

The Respondent will be given an opportunity to provide a written response to the complaint, and the response shall be provided to the Harassment Officer.

**(d) The Complainant contacts the Harassment Officer about an incident of harassment, but does not wish to submit a formal complaint.**

If this occurs, the Harassment Officer must decide if the alleged harassment is serious enough to warrant submitting a formal written complaint, even if it is against the wishes of the Complainant.

When the Harassment Officer decides that the evidence and surrounding circumstances require a formal written complaint, the Harassment Officer will issue a formal written complaint, and, without delay, provide copies of the complaint to both the Complainant and the Respondent.

If the Complainant does not wish to submit a formal complaint, and the Harassment Officer chooses to pursue the complaint under this section, the Complainant's identity will not be disclosed to the Respondent without first obtaining the Complainant's written permission.

**Investigation of Complaints**

31. When a written complaint is received, the Harassment Officer shall commence an investigation or appoint an Investigator to conduct a preliminary investigation of the complaint.

32. The person conducting the investigation may request any person to answer any questions and to procure to him or them any documents, papers, notes and other materials and things relevant to the investigation.
33. A person conducting a preliminary investigation shall conduct the investigation in a manner considered to be most suitable in all of the circumstances.
34. If the Respondent fails to cooperate with the investigation, the person conducting the investigation shall promptly inform the Board of Directors, who may then automatically suspend the Respondent's membership for failing to cooperate with the investigation.
35. Upon concluding the investigation, the person conducting the preliminary investigation will submit a written report to
  - a) the Harassment Officer, if the Harassment Officer is not conducting the preliminary investigation, or
  - b) the Board of Directors, if the Harassment Officer is conducting the preliminary investigation.
36. The written report shall include the documentation filed by both parties along with a summary of the relevant facts, and a recommendation as to whether the actions in question constitute harassment within the meaning of the policy.
37. Upon receiving the written report, the party to whom the report is provided under s. 36 shall, in accordance with the Investigator's findings, direct:
  - a) that no further action be taken because the complaint is unfounded or the conduct cannot reasonably be said to fall within this policy's definition of harassment; or
  - b) that the Complaint should be referred to a Review Panel.
38. Upon receiving the written report, the party to whom the written report is provided under s. 36 shall provide a copy to both the Complainant and the Respondent without delay.

#### **Respondent Agrees to Investigator's Findings**

39. If, after receiving the Investigator's report, the Respondent is in agreement with the recommendations of the person conducting the preliminary investigation, he or she has the option of acknowledging the conduct complained of, and proceeding directly to the Review Panel.
40. In this circumstance, the Respondent shall notify the Board of Directors, within seven (7) days of receiving the Investigator's report that he or she agrees with the findings of the Investigator.
41. The Board of Directors shall then appoint a Review Panel, who shall convene within fourteen (14) days of its appointment, or as soon thereafter as possible. The Review Panel will adopt the investigator's findings of fact and determination as to whether the conduct in question constitutes harassment, but shall hear submissions from both the Respondent and/or Complainant with respect to the appropriate disciplinary action in the circumstances.

42. The Review Panel shall make a determination pursuant to s. 55 as to the disciplinary action, which is appropriate in the circumstances, and shall issue its decision in writing within fourteen (14) days of hearing submissions with respect to the appropriate disciplinary action.
43. The Board of Directors may then proceed to implement the recommended discipline, and shall inform the Complainant in writing of its decision.

#### **Suspension Pending Review Panel Hearing**

44. Notwithstanding anything in this policy, if the person conducting the preliminary investigation determines in accordance with s. 36 that the Respondent's conduct constitutes harassment, the Board of Directors may, upon receiving the report, suspend the Respondent's membership on a temporary basis pending the hearing.

#### **Referral to Review Panel**

45. If the Respondent does not agree with the Investigator's findings and chooses not to avail him or herself with the procedure set out ss. 39-42, the Board of Directors shall, within fourteen (14) days of receiving the report of the preliminary investigation, appoint a Review Panel to conduct a hearing into the alleged conduct of the Respondent.

#### **Hearing of Complaint**

46. Within twenty-one (21) days of its appointment, or as soon thereafter as possible, the Review Panel shall convene a hearing.
47. The hearing shall be governed by such procedures as the Review Panel may decide, subject to the following requirements:
  - a) the Complainant and Respondent shall be given fourteen (14) days notice in writing, of the day, time and place of the hearing;
  - b) both parties shall be provided with all relevant information concerning the complaint in issue, including a summary of the specific allegations to be considered during the course of the hearing;
  - c) a quorum of at least three (3) members of the Review Panel shall be present at the hearing;
  - d) the hearing shall be held *in camera*;
  - e) both the Complainant and the Respondent have the opportunity to be present at the hearing to give evidence and to answer questions of the other party and of the Review Panel;
  - f) evidence may be given in any manner the Review Panel considers appropriate, and the Review Panel is not bound by the rules of law respecting evidence applicable to judicial proceedings;
  - g) the Complainant, Respondent and Athletics Canada have the right to be represented by legal counsel or another advisor.

#### **Failure to Appear**

48. If the Complainant does not appear at the hearing, the matter will be dismissed, (unless the Complainant decided not to submit a formal complaint, but the evidence and surrounding circumstances were such as to require a formal written complaint).
49. If the Respondent does not appear, the hearing may proceed in the Respondent's absence, provided that Respondent had adequate notice of the hearing. In the event that the Respondent does not attend the hearing, the Review Panel is entitled to impose any of the sanctions on the Respondent, which are referred to in s. 55, in the Respondent's absence.

### **Written Reasons**

50. Within fourteen (14) days of the hearing, the Review Panel shall provide its written reasons to the Board of Directors. The written reasons shall contain:
  - a) a summary of the relevant facts including factual findings alleged were proven;
  - b) a determination as to whether the acts complained, if proven, constitute harassment as defined in this policy; and
  - c) a summary of the disciplinary action against the Respondent, if the acts complained of constitute harassment, as outlined in s. 55.
51. If the Review Panel determines that the allegations of harassment are false, vexatious, retaliatory, or unfounded, the Review Panel may impose disciplinary action against the Complainant, as outlined in s. 55.
52. Upon receiving the decision of the Review Panel, the Board of Directors shall immediately implement the disciplinary action outlined in the Review Panel's written reasons.
53. A copy of the written reasons of the Review Panel shall be provided by the Board of Directors, without delay, to both the Complainant and the Respondent.

### **Disciplinary Action**

54. In considering appropriate disciplinary action, a person conducting a preliminary investigation or a Review 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 Complainant and Respondent;
  - e) the age of the Complainant;
  - f) whether the Respondent had been involved in previous harassment incidents;
  - g) whether the Respondent admitted responsibility and expressed a willingness to change; and

- h) whether the Respondent retaliated against the Complainant.
55. In recommending disciplinary sanctions, the person conducting the preliminary investigation or Review Panel may consider the following options, singly or in combination, depending on the severity of the harassment:
- a) a verbal apology;
  - b) a written apology;
  - c) suspension with or without pay;
  - d) a letter of reprimand from Athletics New Brunswick;
  - e) referral to counselling;
  - f) removal of certain privileges of membership or employment;
  - g) demotion;
  - h) temporary termination of employment and/or contract;
  - i) temporary suspension or expulsion from membership; or
  - j) other sanctions as may be considered appropriate for the conduct.
56. Where the investigation does not result in a finding of harassment, a copy of the Review Panel's decision shall be placed in the Harassment Officer's files and no person shall be permitted access to it.
57. Where the investigation results in a finding of harassment, a copy of the report of the Review Panel shall be placed in the personnel or membership file of the Respondent. Unless the findings of the Review Panel are overturned upon appeal, this report shall be retained for a minimum of seven (7) years.
58. The Board of Directors may also publish the decision in a manner deemed appropriate by the Board of Directors, and may include issuing a summary of the decision in an Athletics New Brunswick newsletter or publication. If publication occurs, the Complainant's name will not be released.

#### **Suspension for Criminal Conduct or Failure to Comply with Order**

59. The Board of Directors may automatically suspend a Respondent from membership with Athletics New Brunswick without notice for failure or refusal to comply with any disciplinary action referred to in s. 55.
60. Notwithstanding the procedures set out in this policy, any member of Athletics New Brunswick who has been charged with a criminal offence involving conduct which may constitute harassment under this policy may be temporarily suspended until further notice, whether or not a complaint has been received or an investigation has been completed
61. Notwithstanding the procedures set out in this policy, any member of Athletics New Brunswick who is convicted of a criminal offence involving conduct which may constitute

harassment under this policy, shall face automatic suspension from participating in any and all activities of Athletics New Brunswick and 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 Athletics New Brunswick in accordance with this policy.

### **PROCEDURE WHERE AN INDIVIDUAL BELIEVES THAT A COLLEAGUE HAS BEEN HARASSED**

62. When an individual believes that a colleague has experienced or is experiencing harassment and reports this belief to a Harassment Officer, the Harassment Officer shall attempt to meet with the individual who is said to have experienced harassment and shall then proceed in accordance with the Complaint Procedure.

### **APPEALS PROCEDURE**

63. Both the Complainant and the Respondent shall have the right to appeal the decision and sanctions of the Review Panel, in accordance with Athletics New Brunswick's Appeal Policy as set out in Athletics New Brunswick's Bylaws and Policy Statements.

### **APPROVAL and REVIEW**

64. This policy was approved by the Board of Directors and the Membership of Athletics New Brunswick on April 2nd, 2001.
65. The Board of Directors' and Staff of Athletics New Brunswick shall review this policy on an annual basis.

### **ACKNOWLEDGEMENTS**

Athletics New Brunswick would like to recognize the contributions of the following Sports Association Manuals used in the development of Athletics New Brunswick's Anti-Harassment Policy and Procedures Manual.

Athletics Canada  
Harassment in Sport: A Guide To Policies, Procedures and Resources  
Sport for Disabled – Ontario  
Ontario Track and Field Association  
Basketball Canada  
Canadian Olympic Association's: Model Policy Statement  
Law Society of Upper Canada's: Harassment and Abuse in Sport – Model Harassment Policy  
Basketball Ontario  
Canadian Sport Council  
Coaching Association of Canada  
Sport Canada  
Volleyball Canada

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