



DISCIPLINE AND COMPLAINTS POLICY

Definitions

1. The following terms have these meanings in this Policy:
 1. **Athlete** – An individual who is an Athlete Participant in Surf Canada who is subject to the UCCMS and the policies of Surf Canada
 2. **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*
 3. **Days** – Days including weekends and holidays
 4. **Discipline Chair** – an individual appointed to handle the duties of the Discipline Chair as described in the *Discipline and Complaints Policy*.
 5. **Independent Case Manager** – An independent individual (or individuals) appointed by Surf Canada to receive and administer complaints under the *Discipline and Complaints Policy*
 6. **Maltreatment** – as defined in the *Code of Conduct and Ethics*
 7. **Participants** – Refers to all categories of individual members and/or registrants defined in the By-laws of Surf Canada who are subject to the UCCMS and the policies of Surf Canada as well as all people employed by, contracted by, or engaged in activities with, Surf Canada 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
 8. **Parties** – The groups involved with a dispute. In this *Discipline and Complaints Policy*, the Parties are the Complainant and Respondent. In the *Appeal Policy*, the Parties are the Appellant, Respondent, and any Affected Party
 9. **Person in Authority** – Any Participant who holds a position of authority within Surf Canada including, but not limited to, coaches, instructors, officials, managers, support personnel, chaperones, committee members, and Directors and Officers
 10. **Respondent** – The Participant responding to a complaint or, in the case of an appeal, the body whose decision is being appealed.

Purpose

2. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the policies, By-laws, rules and regulations of Surf Canada, as applicable. Non-compliance may result in the imposition of 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.
- c) This Policy and its procedures will be:
 - i. Harmonized (applied to all Participants across Canada)
 - ii. Fair (procedural and substantive due process for all Participants)
 - iii. Comprehensive (all forms of Maltreatment addressed, and potential sanctions described)
 - iv. Expert-informed (the determination of Maltreatment and impositions of sanctions will be informed by those with expertise in such areas as sport, child abuse, and the law)
 - v. Trauma-informed (acknowledgement of the physical, psychological and emotional effects of trauma, and avoidance of re-traumatization)
 - vi. Evidence-driven (evidence of Maltreatment required, where Evidence or “proof” of maltreatment may include the words/report of a complainant if found credible by the relevant authorities. Depending upon the nature of the Maltreatment, physical evidence, corroboration or third-party verification may not be needed)
 - vii. Independent administration (free from all conflicts of interest)

Application of this Policy

- 4. This Policy applies to all Participants.
- 5. This Policy applies to matters that may arise during the business, activities, and events of Surf Canada including, but not limited to, competitions, practices and training, treatment or consultations (e.g., massage therapy), camps and clinics, travel associated with the activities of Surf Canada, and any meetings.
- 6. This Policy also applies to Participants’ conduct outside of the business, activities, and events of Surf Canada, when such conduct adversely affects the relationships (or the work and sport environment) of Surf Canada, is detrimental to the image and reputation of Surf Canada, or upon the acceptance of Surf Canada. Accordingly, applicability of this Policy will be determined by Surf Canada upon 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. In the event that it is considered appropriate or necessary on the basis of 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.
- 9. In addition to being subject to disciplinary action pursuant to this *Discipline and Complaints Policy*, an employee of Surf Canada 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.

Minors

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

Reporting a Complaint

13. Any person may report a complaint to Surf Canada or Surf Canada's Independent Case Manager:

Independent Case Manager: Sport Law & Strategy Group

Email: safesport@sportlaw.ca

Phone: 1-647-348-3080

14. At its discretion, Surf Canada may act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, Surf Canada will identify an individual to represent the organization.
15. Complaints or incident reports should be made in writing and the person making the complaint may contact the Independent Case Manager for direction. The Independent Case Manager may accept any report, in writing or not, at their sole discretion.

Independent Case Manager Responsibilities

16. Upon receipt of a complaint, the Independent Case Manager has a responsibility to:
 - a) Determine whether the complaint is frivolous and/or within the jurisdiction of this Policy and, if so, the complaint will be dismissed immediately and the Independent Case Manager's decision to dismiss the complaint may not be appealed;
 - b) Propose the use of alternative dispute resolution techniques;
 - c) Determine if the alleged incident should be investigated pursuant to **Appendix A – Investigation Procedure**; and/or
 - d) Choose which process (Process #1 or Process #2) should be followed, and may use the following examples as a general guideline:

Process #1 - the Complainant 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 Surf Canada
- v. Non-compliance with the Surf Canada's policies, procedures, rules, or regulations
- vi. Minor violations of the *Code of Conduct and Ethics*

Process #2 - the Complainant 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, sucker punching)
- v. Pranks, jokes, or other activities that endanger the safety of others
- vi. Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
- vii. Conduct that intentionally damages the organization's image, credibility, or reputation
- viii. Consistent disregard for the bylaws, policies, rules, and regulations
- ix. Major or repeated violations of the *Code of Conduct and Ethics*
- x. Intentionally damaging the organization's property or improperly handling the organization's monies
- xi. Abusive use of alcohol, any use or possession of alcohol by Minors, or use or possession of illicit drugs and narcotics
- xii. A conviction for any *Criminal Code* offense
- xiii. Any possession or use of banned performance enhancing drugs or methods

PROCESS #1: Handled by Discipline Chair

Discipline Chair

17. Following the determination that the complaint or incident should be handled under Process #1, the Independent Case Manager will appoint a Discipline Chair who may:
- a) Recommend mediation;
 - b) Make a decision;
 - c) Ask the Complainant and the Respondent for either written or oral submissions regarding the complaint or incident; or
 - d) Convene the parties to a meeting, either in person or by way of video or teleconference in order to ask the parties questions.
18. Thereafter, the Discipline Chair shall determine if a breach occurred and, if so, if one or more sanctions should be applied (see: **Sanctions**).
19. The Discipline Chair will inform the Parties of the decision, which will take effect immediately.
20. Records of all sanctions will be maintained by Surf Canada and may be disclosed at Surf Canada's discretion.

Request for Reconsideration

21. If there is no sanction, the Complainant may contest the non-sanction by informing the 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.
22. 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:
- a. Why the sanction is inappropriate;
 - b. Summary of evidence that the Respondent will provide to support the Respondent's position; and
 - c. What penalty or sanction (if any) would be appropriate?

23. Upon receiving a request for reconsideration, the Discipline Chair may decide to accept or reject the Respondent's suggestion for an appropriate sanction.
24. Should the Discipline Chair accept the Respondent's suggestion for an appropriate sanction, that sanction will take effect immediately.
25. Should the 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 the Independent Case Manager

26. Following the determination that the complaint or incident should be handled under Process #2, the Independent Case Manager has a responsibility to:
 - a) Propose the use of alternative dispute resolution techniques
 - b) Appoint the Discipline Panel, if necessary
 - c) Coordinate all administrative aspects and set timelines
 - d) Provide administrative assistance and logistical support to the Discipline Panel as required
 - e) Provide any other service or support that may be necessary to ensure a fair and timely proceeding
27. The Independent Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
28. The Independent Case Manager may propose using alternative dispute resolution with the objective of resolving the dispute. If applicable, and if the dispute is not resolved, or if the parties refuse to attempt alternative dispute resolution (such as mediation or a negotiated settlement) the Independent Case Manager will appoint a Discipline Panel, which shall consist of a single Arbitrator, to hear the complaint. At the discretion of the Independent Case Manager, a Discipline Panel of three people may be appointed to hear the complaint. In this event, the Independent Case Manager will appoint one of the Discipline Panel's members to serve as the Chair.
29. The Independent 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 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 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 Independent Case Manager, in advance of the hearing
 - c) The Parties may engage 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

30. 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.

31. The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.

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

Decision

33. After hearing 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 Independent Case Manager and to Surf Canada. 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

34. 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;
- 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 Surf Canada;
- 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.

35. 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.

36. 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 of time
 - 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 Surf Canada. 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 Surf Canada 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
37. 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 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
38. A Participant's conviction for a *Criminal Code* offense shall carry a presumptive sanction of permanent ineligibility from participating with Surf 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
39. 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.

40. Records of all decisions will be maintained by Surf Canada.

Appeals

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

Suspension Pending a Hearing

42. Surf Canada 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 Discipline Panel.

Confidentiality

43. The discipline and complaints process is confidential and involves only Surf Canada, the Parties, the Independent Case Manager, the Discipline Chair, 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.

44. Any failure to respect the aforementioned confidentiality requirement may result in further sanctions or discipline by the Discipline Chair or Discipline Panel (as applicable).

Timelines

45. 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 Independent Case Manager may direct that these timelines be revised.

Records and Distribution of Decisions

46. Other individuals or organizations, including but not limited to, national sport organizations, Provincial/Territorial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this Policy.

47. Surf Canada recognizes that a publicly-available searchable database or registry of Respondents who have been sanctioned, or whose eligibility to participate in sport has in some way been restricted, may be maintained and may be subject to provisions in the UCCMS.

Appendix A – Investigation Procedure

Determination

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

Investigation

2. The Independent 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.
3. Federal and/or Provincial/Territorial 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.
4. The investigation may take any form as decided by the Investigator, guided by any applicable Federal and/or Provincial/Territorial legislation. The investigation may include:
 - a) Interviews with the Complainant
 - b) Witness interviews
 - c) Statement of facts (Complainant's perspective) prepared by Investigator, acknowledged by the Complainant and provided to the Respondent
 - d) Interviews with the Respondent
 - e) Statement of facts (Respondent's perspective) prepared by Investigator, acknowledged by the Respondent and provided to the Complainant

Investigator's Report

5. 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.
6. 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.
7. The Investigator's Report will be provided to the Independent Case Manager who will disclose it, at their discretion, to Surf Canada or any other third party.
8. 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 Surf Canada to refer the matter to police.
9. The Investigator must also inform Surf Canada of any findings of criminal activity. Surf Canada 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 Surf Canada, or other offences where the lack of reporting would bring Surf Canada into disrepute.

Reprisal and Retaliation

10. A Participant who submits a complaint to Surf Canada 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

11. A Participant who submits allegations that the Investigator determines to be malicious, false or for the purpose of retribution, retaliation or vengeance (or that otherwise fall within the definition of Maltreatment) 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. Surf Canada or the Participant against whom the allegations were submitted, may act as the Complainant.

Confidentiality

12. The Investigator will make every effort to preserve the confidentiality of the complainant, respondent, and any other party. However, Surf Canada recognizes that disclosure of some information may be necessary to ensure that principles of due process and natural justice are followed.