

Safe Sport Policy Implementation



BY: STEVEN INDIG

Sport Law & Strategy Group



Providing strategic insight to the Canadian sport community through professional services in these areas:

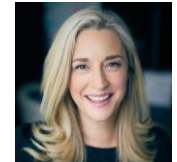
- **Legal Solutions**
- **Communications, Marketing and Event Management**
- **Leadership Development, Human Resource Management and Integral Coaching®**
- **Governance, Compliance, Risk Management, and Financial Management**
- **Strategic Planning, Research, and Member Surveys**

Our Values + Our Team

We strive for excellence in all that we do and aim to provide exceptional value to our clients. We embrace the following values:

Professional Integrity:

- We act fairly, ethically and compassionately.
- We are reasonable and accessible.
- We are a trusted partner.



Continuous Learning

- We educate ourselves and our clients.
- We ask questions, challenge conventional thinking and push boundaries.
- We are driven to find simple solutions to complex problems.



Shared Passion

- We care about our clients and the achievement of their goals.



Agenda

- 1. Why do we need this stuff and how did we get here?**
- 2. Understanding the Safe Sport Policy Suite**
- 3. Managing a Complaint**
- 4. General Tips**

Recent Cases



Recent Cases

- Bertrand Charest
 - Alpine Canada Coach
 - Guilty of 37 sex related charges
 - Sentenced to 12 years in prison
- Larry Nassar
 - USA Gymnastics Physician
 - 368 individuals assaulted within USA Gymnastics
 - Sentenced to over 175 year's in Prison

Recent Cases

- Scott McFarlane
 - Gymnastics Coach
 - Charged with Sexually assaulting teen girl

- Trevor Palmatier
 - Diving Coach
 - Guilty of three sexual exploitation charges with teens
 - Two years house arrest

Recent Cases

- Stanley Lowther
 - Soccer Coach
 - Convicted of Sexual Abuse
 - 6.5 year prison term

- Kelsea Hepburn
 - Ringette Coach
 - Guilty of sexually molesting 13 year old player
 - 18 month in jail

Why do we need this stuff?

- Recent Cases (this week)
 - Two NSO Coach investigations
 - Abuse and harassment
 - One local coach charged with sexual assault
 - One coach being investigated for allowing abuse and one coach being charged with sexual assault

Defining Safe Sport



June 19, 2018 Sport Canada Announcement

Effective immediately:

- Federally funded sport organizations must take all necessary measures to create a workplace free from harassment, abuse or discrimination of any kind.
- They must **immediately disclose** any incident of harassment, abuse or discrimination that could compromise the project or programming to the Minister of Sport and Persons with Disabilities.
- They must make provisions—within their governance framework—for access to an **independent third party** to address harassment and abuse cases.
- They must provide **mandatory training** on harassment and abuse to their members by April 1, 2020 and are challenged to make this a priority and put mandatory training in place as soon as possible.

Since Sport Canada Announcement

- Red Deer Declaration
 - Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation recognize that:
 - **Sport must be free from harassment**, abuse, unethical behaviour, and discrimination, regardless of sex, gender identity or expression, ethnicity, religion, language, age, sexual orientation, ability, or any other basis.
 - **Federal, provincial, and territorial governments have a critical role** to play in ensuring and sustaining a safe, welcoming, inclusive, and respectful environment that is free from harassment, abuse, and discrimination.
 - We, the Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation will work together to:
 - Foster a collaborative and coordinated relationship with sport organizations, participants, and stakeholders, and engage relevant experts **to identify effective approaches to prevent and respond to incidents of harassment, abuse, and discrimination.**

Since Sport Canada Announcement

- We, the Federal, Provincial, and Territorial Ministers responsible for Sport, Physical Activity, and Recreation will work together on the following immediate actions:
 - Establishing a **standing item on safety and integrity in sport**, including harassment, abuse and discrimination, on the agenda for ministerial conference calls and meetings for the purpose of reviewing progress of actions, updating priorities, and exploring innovative approaches.
 - Implementing a **collaborative intergovernmental approach**, with better harmonized commitments, mechanisms, principles, and actions to address harassment, abuse, and discrimination in sport in the areas of awareness, policy, prevention, reporting, management, and monitoring.
 - Investigating a mechanism **to report and monitor incidents of harassment, abuse, and discrimination reported in sport environments** in order to inform future decisions and initiatives.

Since Sport Canada Announcement

- **14 Safe Sport Summits**
- **Consensus Statements:**
 - Federal / Provincial / Jurisdiction: To **collaborate** with Federal, Provincial, and Territorial governments to create a harmonized approach to a **universal Code of Conduct**.
 - Education and Awareness: To build on and **develop robust, approved education and training programs** to be deployed at all levels and roles in sport. And to develop awareness among Canadians that change is happening.
 - Financial Resources: For **new funding to be identified** and dedicated to the implementation of safe sport initiatives in all jurisdictions.
 - Harmonized Code: To **develop a single, harmonized code governing safe sport in Canada**, to include updated definitions of all forms of maltreatment.
 - Independent Body: To identify **an independent body** with responsibility for implementing the harmonized and universal code.
 - Prohibited Conduct: To **prohibit sexual relations between National Team coaches and National Team athletes**, with the ability to expand the scope to positions of authority. The immediate intent is to protect athletes now.
 - Implementation Plan: To **conduct an audit** of the existing sport landscape and stakeholders; to establish a critical path; and to initiate a process to educate the sport community.

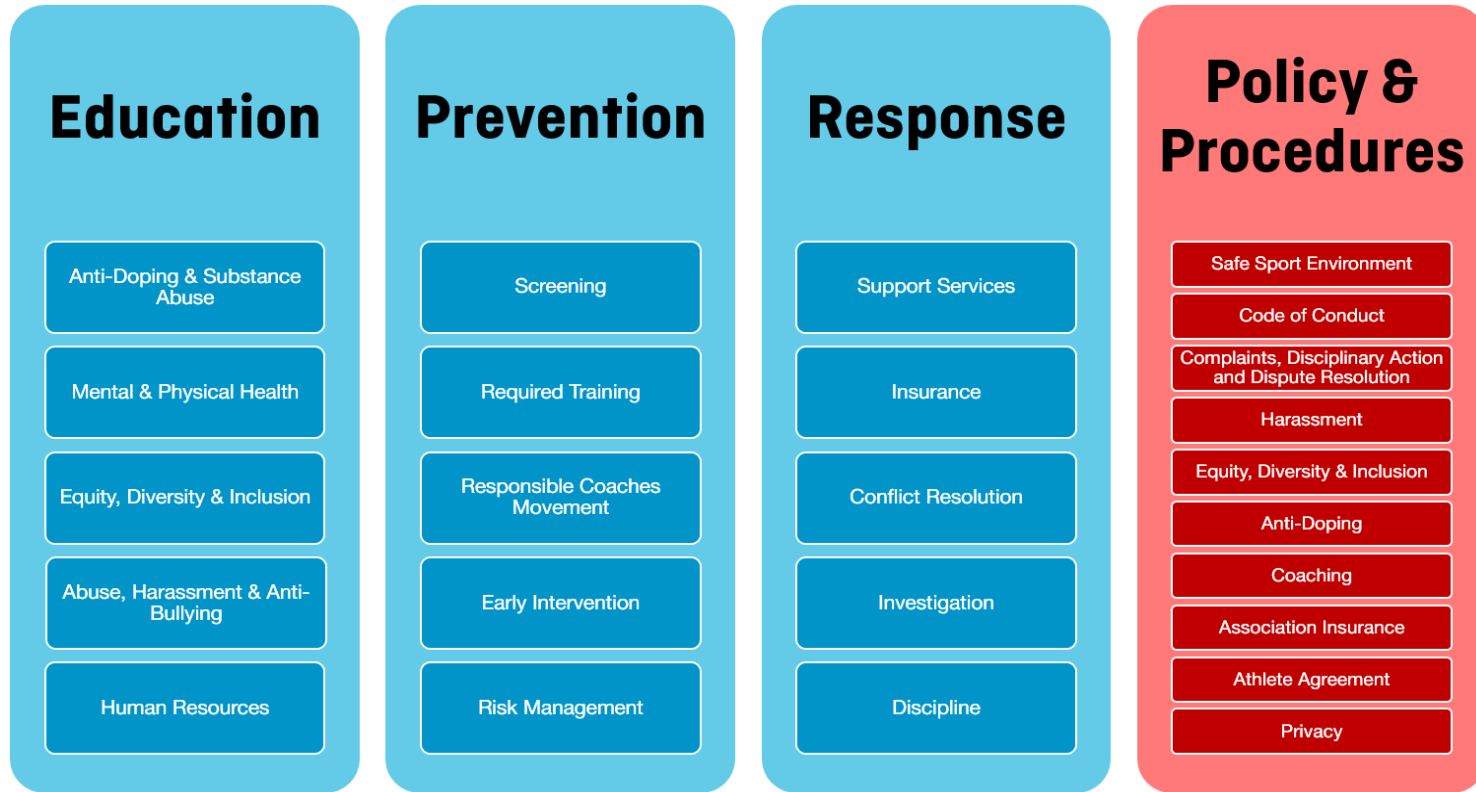
The safe sport landscape

- ✓ Swimming Canada and Skate Canada hired a full-time employee last year to oversee all Safe Sport projects
- ✓ Gymnastics Canada hired a full-time Director, Safe Sport
- ✓ CAC's Responsible Coaching Movement
- ✓ SDRCC launched an investigation Unit and Hot Line
- ✓ Safe Sport Coalition (currently disbanded)
- ✓ Respect in Sport
- ✓ True Sport
- ✓ Sport Canada/Coaching Association of Canada engaging in Safe Sport Summits

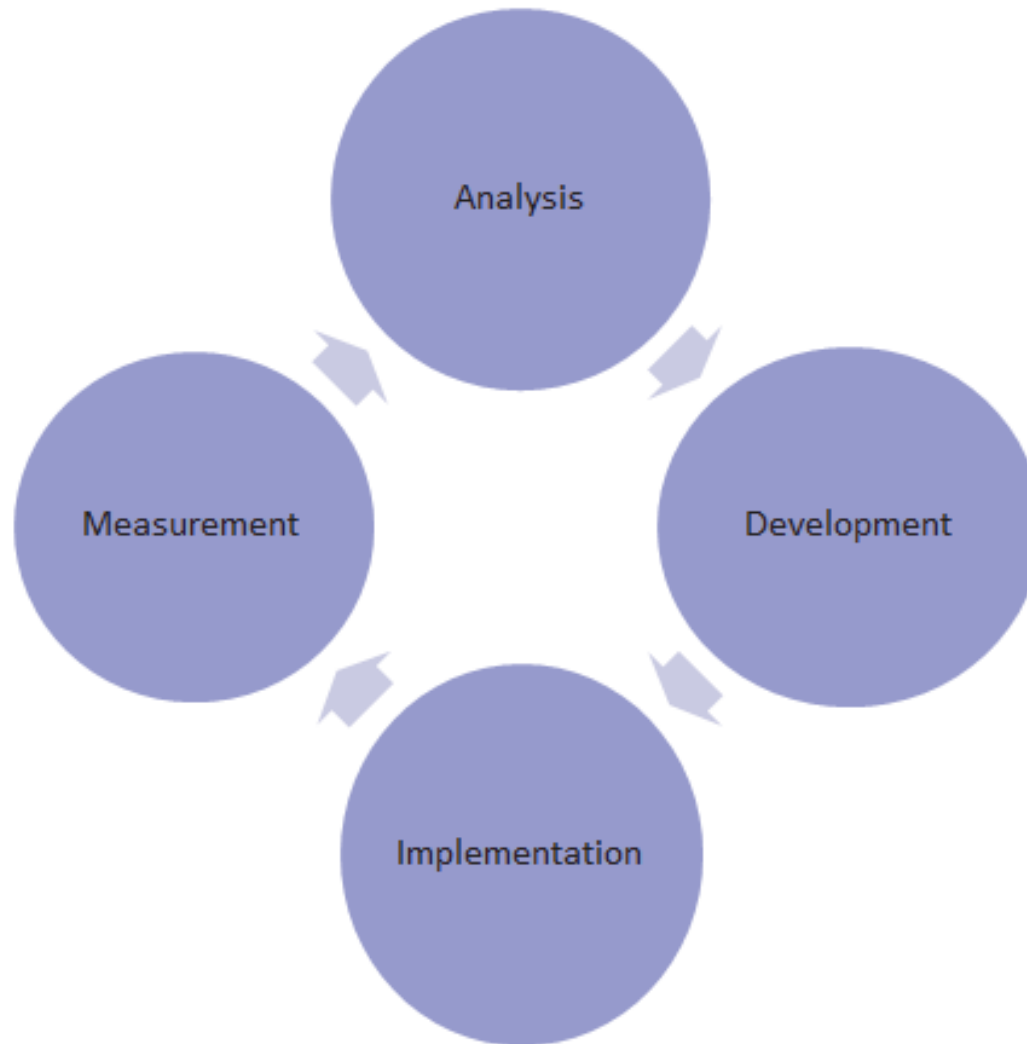
What others are doing – Prevention

- ✓ Updating policies around sexual, physical, emotional abuse, bullying, threats, harassment and discrimination
- ✓ Adopted Respect in Sport and Respect in the Workplace
- ✓ Policy Alignment
- ✓ Insurance Audits (abuse coverage may be excluded)
- ✓ Hired independent third party to manage matters of reported complaints, abuse, discrimination, harassment
- ✓ Educating PSOs and Clubs to ensure a consistent approach
- ✓ Working on creating a club management manual to ensure consistency and alignment with safe sport policies

Swimming Canada Safe Sport Framework



4-Step Safe Sport Implementation Strategy (SSIS)



Step 1: Analysis

- Allows you to identify your organization's strengths and gaps in providing a safe and thriving sport environment.



Step 2: Development

- Develop and establish your safe sport plan to create a safe and thriving sport environment.



Organizations Run Into Trouble When:

- They do not set out rules **[policies]** or procedures to deal with something
- They set out rules **[policies]** but they are incomplete, vague or contradictory
- They set out rules **[policies]** but then choose not to follow them
- They have rules **[policies]** that do not “fit” with their culture or their resources
- Fail to review – Suggest every three years

Policies are Your Best Friend

- They provide you with a guide for your actions
- They help you to **avoid** a problem or crisis
- In the event you cannot avoid a problem or a crisis, they will help you to act uniformly, consistently and fairly in how you **manage** your problem or crisis

Implementation

- Communication!
- Communication!
- Communication!



Measurement

- Similar to Analysis, evaluate your safe sport implementation through athlete engagement.



ARE YOU PREPARED?

1. Have you done everything reasonable to provide a safe environment?
2. Media, parents, victims
3. Can you sleep at night?

Understanding the Safe Sport Suite

- Safe Sport Policy (outlines organizations commitment to Safe Sport)
- Athlete Protection (outlines the protection of athletes)
 - Rule of 2, travel, communications, locker rooms, photos, physical contact
- Code of Conduct (integrates the Universal Code of Conduct)
- Abuse Policy (integrates conduct issues specific to abuse)
 - Physical, emotional, neglect, sexual, grooming
- Investigations Policy
- Discipline and Complaints Policy
- Dispute Resolution Policy
- Appeal Policy
- Whistleblower Policy
- Event Discipline Procedure
- Social Media Policy

Managing a Complaint



Complaint Management

- Identify the Organization's person who will receive complaints
- Thereafter the Organization will appoint a case manager (who may be the same person who receives complaints)
- Complaints must be in writing (there is no timeline restriction)
- An organization may act at the complainant and will appoint an individual to represent the organization
- If the case manager is conflicted, they may appoint another person or external person

The Complaint

- The complaint should include:
 - The complaint in writing
 - Contact information of the complainant
 - Name of the Respondent and their contact information
 - Sections of the Code alleged to have been violated
 - All evidence to support the complaint
 - Emails, videos, witness statements, etc.
 - Requested remedies/sanctions
- If the complaint is incomplete or vague, ask for a re-write

Receipt of a Complaint

- Upon receipt of a complaint, the organization will appoint a case manager who will determine one or more of the following:
 - The complaint is not filed within the correct jurisdiction
 - Consult with Pentathlon Canada/PTO and any affected Organization
 - Inform the parties they have been appointed
 - Determine if the complaint is frivolous or outside the code
 - Request clarifying documentation
 - Facilitate the exchange of written submissions between the parties
 - Request a response from the Respondent
 - Appoint an investigator, if necessary
 - Propose use of Mediation
 - Establish timelines
 - Determine the appropriate process (#1 or #2)
 - Distribute the Decision

Process #1 – Minor Incidents

- The Case Manager will appoint a Discipline Chair to render a decision considering less procedural fairness restrictions as Process #2
- Decisions will take effect immediately , subject to Reconsideration

Request for Reconsideration

- After a decision is rendered by the Discipline Chair, either party may submit a Request for Reconsideration within four days.
- The Request must include:
 - Why they reject the Proposed Result
 - Summary of evidence to be relied upon if there is a hearing
 - Suggested appropriate outcome
- Upon receipt, the Case Manager will notify the parties and appoint a Discipline Panel.

Process # 2 - Decision Making Panel

- Composed of a single arbitrator and in extraordinary circumstances a panel of 3
- The Case Manager and the Panel will determine the format of the hearing (written, telecommunications or in-person)
- Decisions will be by majority vote

Procedures

- Parties are to be provided notice of the hearing if any
- All information to be relied upon by the Panel should be disclosed to the Parties in advance to reply
- Parties may engage representation
- If the Respondent acknowledges the facts, the Respondent may decline to participate at the hearing, in which case the Panel will determine the appropriate sanction

The Decision

- Decisions are to be rendered within 14 days of the hearing.
- Decisions should include:
 - Summary of Facts
 - Reasons for the decision
 - Breaches of the Code
- Decisions may be conducted orally and a full decision to be issued within 14 days.
- Possible sanctions listed in the Code:
 - Reprimand, Apology, Suspension, Expulsion, etc.
- Sanctions will begin immediately

General Information

- Appeals may be heard within the jurisdiction of the decision-making organization
- The Policy provides a provision to suspend pending the outcome of a hearing
- A criminal conviction listed in the Policy will result in automatic suspension
- The process is to be confidential involving the parties, the Case Manager and the Panel.
- After release of the decision, the only information release should be the result of the decision and the sanction

Complaint Management Tips

Identity of the Case Manager

- **Experience with dispute resolution**
- **Clear communicator**
- **Strong technical writer**
- **Not in a conflict / not biased**
- **Does not favour one side or the other**

Role of the Case Manager

- **Ensure Procedural Fairness**

- 1. Person affected by decision:**

- Knows the case against them
- Knows the identity of the complainant
- Has opportunity to respond

- 2. Decision-maker (appointed by Case Manager):**

- Not biased / not in conflict of interest
- Listens to both sides
- Makes reasonable decision
- Sanctions (if applicable) are reasonable

Complaints (General)

- **Receive complaint**
- **Complainant focuses complaint**
- **Case Manager accepts complaint (or rejects!)**
- **Complaint sent to Respondent**
- **Respondent writes response / sent to Complainant**
- **Complainants writes rebuttal / sent to Respondent**
- **Appoint Judicial Body**
- **HEARING (usually documentary review)**
- **Distribute Judicial Body's decision to parties**

Procedural Fairness Scenarios

- The Respondent needs to know the identity of the complainant
- **Can the Complainant be anonymous?**
 - Maybe, based on evidence. Limited exception when organization can act as the complainant (discussed later)
- **Can the Complainant submit material directly to the Judicial Body without the Respondent seeing it?**
 - No. The Respondent needs to see everything.
 - Case Manager should remind parties that any witness statements are sent to the other party – witnesses should be aware!

Procedural Fairness Scenarios

- **When should there be a ‘personal hearing’ instead of a hearing by documentary review?**

AND

- **When should there be a three-person Judicial Body instead of a single person Judicial Body?**
 - Only rarely. If the plausible sanction is significant (e.g., long-term suspension or expulsion) then a personal hearing is more applicable and a 3-person Judicial Body may be warranted.

Procedural Fairness Scenarios

- **Can a party email the Judicial Body?**
 - No. The Judicial Body only communicates with the parties through the Case Manager. If – somehow – a party sends something to the Judicial Body, that message must be disclosed to the other party.
- **What if the Complainant is also at fault ?**
 - The Complainant is not the subject of the process. A separate complaint may be filed.
 - Rare exception: cross-complaints (discussed later)

General Tips

- **Communication**

- All communication should be professional and neutral
- All communication should be via email (not phone or mail)
- Case Manager can **guide** a party but should never **advise** a party

- **No response?**

- A party may not respond or stop responding
- Case Manager must find alternate means of communication
- Process will continue without party's involvement
- Medical / personal request for delay? Must be reasonable

General Tips

- **Blame?**

- Respondent may try to "shoot the messenger" (the Case Manager)
- Complainant may blame Case Manager for decision
- Don't accept a request for a phone call / rant !
- Case Manager should refer to policy – remain neutral

- **Handling Counsel**

- Counsel will always challenge the process and perceived lack of procedural fairness (don't take it personally!)
- Counsel may be involved in amateur sport for the first time ever
- Stick to the policy
- Counsel can appeal the decision or take it to court

General Tips – Suspension

- **Suspension**

- In some circumstances, organizations may be permitted to suspend a Respondent pending a hearing
- Based on the nature of the complaint, seek guidance from Softball Canada and/or legal counsel before proceeding
- Suspensions do not pre-judge the individual
- Timelines should be shorter (lengthy process impacts the individual who is suspended)



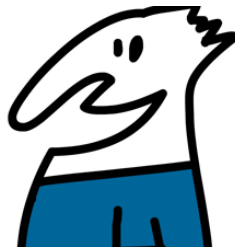
SUSPENDED

Pentathlon Canada : Safe Sport

- New Safe Sport Section of the website:
<https://www.pentathloncanada.ca/safe-sport/>
- Adopted a new Safe Sport Policy Suite
- Independent Safe Sport Officer in place- Brian Ward
- Secured Credits to take Respect in the Workplace and Respect for Activity leaders – please contact Shelley Callaghan, Pentathlon ED, to gain access to this training FREE of charge:
executivedirector@pentathloncanada.ca



Any Questions or Comments?



Thank You!

Steven Indig

SJI@sportlaw.ca

www.sportlaw.ca