



POLICY CATEGORY: HUMAN RESOURCES

POLICY TITLE: DISCRIMINATION AND HARRASSMENT

Policy Number: 2.05

Date Approved: March 9th, 2018

Purpose:

Definitions:

Policy Statement:

NSCA is committed to creating and maintaining a sport environment which is free from discrimination and harassment on prohibited grounds, including race, ancestry, place of origin, colour, ethnic origin, citizenship, political opinion, creed, sex, sexual orientation, gender, disability, age, marital/family status, language and any other discrimination or harassment prohibited by applicable law.

DEFINITIONS

“NSCA PARTICIPANTS”

These guidelines apply to all NSCA participants, which include all persons engaged in any paid or volunteer capacity with the NSCA or otherwise under the jurisdiction of the NSCA.

Without limiting the reach of the guidelines, NSCA participants include:

- all athletes eligible for nomination to, or forming part of, any team participating in sport competitions over which the NSCA has jurisdiction;
- all persons working with those teams or athletes, including coaches, medical and paramedical personnel, and other support persons;
- NSCA employees and persons under contract with the NSCA; and
- NSCA directors, members and volunteers.

NSCA's Policy and these guidelines apply to NSCA participants at all times, during the course of their work in sport and also during other activities where their conduct may affect the sport environment.

“PERSON IN AUTHORITY”

A person in authority is any NSCA participant in a position of authority over, or trusted by, a person who may be experiencing discrimination or harassment, and can include such persons as team leaders, coaches, trainers, medical or paramedical personnel, parents or other volunteers and supervisors.

“DISCRIMINATION”

Discrimination is any distinction, whether intentional or not but based on prohibited grounds, which has the effect of imposing burdens, obligations or disadvantages on an individual that are not imposed on others, or which withholds or limits access to opportunities, benefits and advantages available to others. The prohibited grounds of discrimination under the NSCA Policy are as follows:

- age (*except for athletes, an age that is nineteen years or more and less than sixty-five*)
- ancestry
- citizenship
- colour
- creed
- disability
- ethnic origin
- gender
- language (*but not where a language is a qualification for employment or office*)
- marital/family status (*defined to include common law relationships, and to not preclude anti-nepotism policies*)
- place of origin
- political opinion
- race
- sex (*defined to include pregnancy*)
- sexual orientation

NSCA’s Policy also applies to any other ground of discrimination prohibited by applicable law.

“HARASSMENT”

Harassment is a form of discrimination, and refers to conduct associated with a prohibited ground that affects the sport environment or leads to adverse consequences within that environment for the person(s) experiencing the harassment, which the perpetrator knew or ought reasonably to have known would be unwelcome.

Harassment can take many forms but generally involves conduct, comment or display that is insulting, intimidating, humiliating, hurtful, demeaning, belittling, malicious, degrading or otherwise causes offence, discomfort, or personal humiliation or embarrassment to a person or group of persons. Examples of harassment include:

- unwelcome remarks, jokes, nicknames, innuendo, or taunting linked to a prohibited ground, such as a person’s age, sexual orientation, race, ancestry, political opinions, etc.
- written or verbal abuse or threats linked to a prohibited ground.
- racial or ethnic slurs.
- displays which may cause offence and are related to prohibited grounds, such as sexual, racial, ethnic or religious posters or graffiti.
- use of terminology that reinforces stereotypes based on prohibited grounds.
- vandalism or physical assaults motivated by prohibited grounds.

- condescension, paternalism, or patronising behaviour linked to prohibited grounds which undermines self-respect or adversely affects performance or working conditions.

Discipline in training is an indispensable part of high performance sport and should not be confused with discrimination or harassment. However, it is of vital importance that those in authority:

1. set and communicate non-discriminatory performance standards, selection criteria, rules and regulations to all participants.
2. ensure that training involving touching or other physical contact occur in an appropriate setting, and only after informed consent has been sought and received.
3. be consistent in taking any corrective or punitive action without discrimination or harassment based on prohibited grounds.
4. use non-discriminatory terminology; address individuals by name and avoid the use of derogatory slang or offensive terms.

“SEXUAL HARASSMENT”

Sexual harassment is unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature or related to a person’s sex when:

- a. submitting to or rejecting this conduct can affect decisions about the individual;
- b. the conduct has the purpose or effect of interfering with the individual’s performance; or
- c. the conduct detrimentally affects the environment.

Specific examples can include:

- criminal conduct such as stalking, and physical or sexual assault or abuse.
- inappropriate comments about a person’s body or appearance.
- inquiries or comments about an individual’s sex life, sexual preferences, etc.
- leering or other obscene or suggestive gestures.
- promises or threats contingent on the performance of sexual favours.
- sexual/sexist graffiti or any displaying of sexually explicit material or pictures.
- unwanted or unconsented to physical contact including touching, kissing, patting and pinching.
- unwelcome flirtation, sexual remarks, invitations or requests whether indirect or explicit.
- use of inappropriate or derogatory sexual terms.

“REPRISAL”

Reprisals or threats of reprisal are an aggravating factor in any situation involving discrimination or harassment, particularly where the reprisal or threat of reprisal is by a person in authority. Examples of reprisal include:

- acts of retaliation designed to punish an individual who has reported discrimination or harassment.
- threats of retaliation designed to dissuade an individual from reporting discrimination or harassment.

In sexual harassment situations, reprisals can also include:

- acts of retaliation to punish an individual who has rejected sexual advances.
- threats of retaliation if sexual advances are rejected.

For the purpose of these guidelines, the making of a groundless complaint shall also be deemed a reprisal.

“CONDONATION”

If a person in authority knows, or should reasonably have known, that discrimination or harassment may have occurred and fails to take appropriate action, the person in authority has condoned the discrimination or harassment and may be subject to sanctions under these guidelines.

PREVENTION AND INTERVENTION

Prevention and intervention are key to achieving a sport environment free of discrimination and harassment. NSCA must present a positive role model. NSCA participants should:

1. Communicate the NSCA’s objective to create and maintain a sport environment free of harassment and discrimination.
2. Exercise good judgment and initiate appropriate action in consultation with a NSCA resource person, if they become aware that discrimination or harassment may have occurred.
3. Follow-up in consultation with a resource person if discrimination or harassment is suspected or rumoured, appreciating that individuals who experience discrimination or harassment are often reluctant to report it.

COMPLAINT PROCEDURE

Receiving Reports

All NSCA participants are encouraged to report suspected discrimination or harassment. Such reports may be made to the Executive Director of NSCA, or to any other person in authority. All such reports shall be brought promptly to the attention of the Executive Director by whoever receives the report, unless the report is by or against the Executive Director, in which case the report would go to the NSCA President.

Assistance to Complainants

A complainant may request the assistance of a NSCA resource person in understanding these guidelines, in pursuing resolution short of lodging a complaint if appropriate, and in formulating the written complaint. The NSCA resource person shall refer the complainant to counseling upon request and may explore the possibility of alternative forms of dispute resolution with the complainant following the complaint, if appropriate.

Should a complainant choose to retain legal counsel at any stage of a complaint or appeal, it shall be at the complainant’s own expense.

The Complaint

Although anyone may report discrimination or harassment, a complaint may be made only by persons affected by the alleged discrimination or harassment, or by the Executive Director on behalf of NSCA.

A complaint shall be in writing and signed by the complainant or by the Executive Director if the complaint is brought on behalf of NSCA. The complaint shall be submitted to the Executive Director of NSCA, or in the case where the complaint is in regards to the Executive Director, then the complaint shall be submitted to the NSCA President.

The complaint should include particulars of the discrimination or harassment, including details of the incident or incidents, including dates, times, locations, description of action, account of dialogue, the name of the perpetrator(s) and any witnesses or names of other individuals who may also have experienced discrimination or harassment. The complaint should detail any corrective action taken to date.

The parties to a complaint are NSCA, the respondent(s) and the complainant(s), if any. The complainant may withdraw the complaint at any time. However, such a complaint may be continued as a complaint by the Executive Director on behalf of NSCA, if NSCA does not consent to the withdrawal.

Processing the Complaint

The person responsible for processing the complaint (hereinafter the "NSCA Official") may vary, as follows:

- where a complaint involves conduct by an employee of, or person under contract to NSCA other than the Executive Director, the NSCA Official shall be the Executive Director.
- in all other cases, the NSCA Official shall be the President (or where a complaint involves conduct by the President, an alternate appointed by the Executive Director and Board members of the NSCA to perform the President's functions under these guidelines). However, the President (or alternate) may delegate part or all of the President's (or alternate's) responsibilities under these guidelines to the Executive Director, except where a complaint is by or against the Executive Director.

Complaint Investigation

The NSCA Official may decide not to deal with a complaint:

1. if in the opinion of the NSCA Official, the facts alleged in the complaint would be insufficient, if proven, to establish discrimination or harassment under NSCA's Policy; or
2. if in the opinion of the NSCA Official, the investigation of the complaint would not advance the purpose of NSCA's Policy in the circumstances, because of a significant delay between the alleged events and the time of the complaint.

In all other cases, the NSCA Official shall investigate the complaint or appoint and provide terms of reference to an investigator who shall investigate the complaint and make findings of fact.

Before the investigation begins, the NSCA Official shall advise each respondent of the complaint and shall provide each complainant and respondent a copy of the written complaint, of the NSCA's Policy and these guidelines, and of the investigator's terms of reference, if any.

Before the investigation report is issued, each respondent shall have a reasonable opportunity to respond to the allegations. If a respondent declines to respond, or does not respond within the time-frame provided, the investigator's report may nonetheless be issued.

All NSCA participants, including the respondent(s), must co-operate fully in any investigation under these guidelines.

The NSCA Official may consult with the investigator during the course of the investigation, may review the investigation report in draft and may provide additional terms of reference to, or request clarification from, the investigator.

A copy of the investigation report shall be provided to the complainant(s) and the respondent(s).

Assistance to Respondents

A respondent may request the assistance of a NSCA resource person without previous involvement in the complaint in understanding these guidelines. The NSCA resource person shall refer the respondent to counseling upon request, and may explore the possibility of alternative forms of dispute resolution with the respondent.

Should a respondent choose to retain legal counsel at any stage of a complaint or appeal, it shall be at the respondent's own expense.

Determinations Following Investigation

The NSCA Official shall determine whether discrimination or harassment has been established in light of the findings of fact contained in the investigation report, and if so, the nature and particulars of the discrimination or harassment. NSCA Official's determinations shall be communicated to the complainant(s) and the respondent(s), and to the Chef de Mission if the complaint involves conduct at Canada Winter Games.

Settlement

A complaint may be settled at any stage. A resolution agreement should be in writing and signed by all parties.

Mediation

NSCA may provide a mediator, if the NSCA Official views mediation as appropriate and if the complainant and respondent are willing to enter a mediation agreement.

SANCTIONS

The NSCA Official shall have the authority to impose sanctions, if warranted, in light of the determinations. When the complaint arises from conduct at Canada Winter Games, the NSCA Official shall consult with the Chef de Mission before imposing sanctions, unless the complaint involves conduct by the Chef de Mission.

The complainant(s) and the respondent(s) shall be given a reasonable opportunity to make submissions to the NSCA Official prior to the imposition of sanctions.

Sanctions may include, but are not limited to:

1. a recommendation that a person's membership be revoked in accordance with the by-laws of NSCA.
2. temporary or permanent suspension from employment with NSCA, or from participation in some or all of the activities over which NSCA has jurisdiction (hereinafter collectively referred to as "NSCA activities").
3. the imposition of such temporary or permanent conditions on continued employment with NSCA, or participation in NSCA activities as the NSCA Official may view as appropriate in the circumstances.
4. the issuance of a warning and/or reprimand.

The NSCA Official shall provide the complainant(s) with such information about any sanctions imposed as is appropriate in the circumstances.

Should any sanction that the NSCA Official views as appropriate require a resolution to be passed by the NSCA Board of Directors, the NSCA Official shall take such action as is appropriate to have the matter placed before the NSCA Board of Directors for its consideration, but the matter will not be considered prior to any appeal under these guidelines.

INTERIM MEASURES

The NSCA Official may impose interim measures pending the investigation and disposition of a complaint, if the NSCA Official is of the view that the imposition of such measures is in the best interest of the complainant(s), respondent(s) and/or the NSCA.

Interim measures are not sanctions, and they may take many forms, including but not limited to:

- the imposition of conditions upon the continued participation of the respondent(s) in the activities or work of the NSCA.
- suspension of the respondent(s) from participation in the activities or work of the NSCA, with or without pay, or under such other terms as are seen to be appropriate.
- security arrangements.

APPEALS

Grounds for Appeal by Respondents

A respondent may appeal to the NSCA Board of Directors from the NSCA Official's determination(s) on the following grounds only:

1. that the investigation was conducted in an unfair or biased manner contrary to the rules of natural justice.
2. that the findings of fact contained in the investigation report are insufficient to support a determination that discrimination or harassment has been established.

In an appeal by the respondent from the NSCA Official's determination(s), the complainant shall be entitled to participate as a respondent in the appeal.

A respondent may also appeal to the NSCA Board of Directors from the sanction(s) imposed or recommended following a complaint. In such an appeal, the complainant shall be advised by the NSCA Official that an appeal has been filed, and shall be entitled to make written representations, but shall not be entitled to participate as a respondent in the appeal.

There shall be no appeal from any finding of fact contained in the investigation report.

Grounds for Appeal by Complainants

A complainant may appeal to the NSCA Board of Directors from the NSCA Official's determination(s) on the following grounds only:

1. that the investigation was conducted in an unfair or biased manner contrary to the rules of natural justice.
2. that the findings of fact contained in the investigation report ought to have resulted in a determination that discrimination or harassment has been established.

In an appeal by the complainant from the NSCA Official's determination(s), the respondent shall be entitled to participate as a respondent in the appeal.

There shall be no appeal from any finding of fact contained in the investigation report.

Notice of Appeal

The notice of appeal must be made in writing to NSCA's Executive Director, within fourteen days of the appellant receiving notice of the NSCA Official's (or NSCA's) decision with respect to sanctions, and must state the specific grounds for the appeal.

A copy of the notice of appeal shall be promptly provided to the President, the NSCA Official, the Chef de Mission if the appeal involves conduct at Canada Winter Games, and to every person entitled to participate as a respondent in the appeal.

The Hearing

The following persons may appear before the NSCA Board of Directors at its in-camera hearing and make representations in the appeal:

1. the appellant(s);
2. any person entitled to participate as a respondent in the appeal;
3. the NSCA Official who may make representations with respect to the investigation of the appeal, the determinations and any sanctions imposed and/or recommended;
4. the Chef de Mission who may make representations where the appeal involves conduct at Canada Winter Games;
5. if the appeal is from a decision by NSCA, NSCA may designate a representative to make representations on behalf of the NSCA; and
6. any other person invited by the NSCA Board of Directors to make representations.

No member of the NSCA Board of Directors having had any personal involvement in the complaint, or who is otherwise in conflict of interest, shall participate in the deliberations or decision in the appeal.

Disposition of an Appeal

The NSCA Board of Directors' deliberations shall take place in-camera. The appellant(s), respondent(s) if any, and the NSCA Official (or NSCA representative) shall not be present during the deliberations.

The NSCA Board of Directors, by a majority of votes cast, may:

1. dismiss the appeal;
2. substitute its own determination for the determination under appeal;
3. substitute a sanction for the sanction under appeal; or
4. remit the complaint for further investigation and/or for re-determination in accordance with its directions.

The NSCA Board of Directors shall provide reasons for its disposition. Minority and dissenting reasons may also be provided.

A copy of the reasons shall be provided to the appellant, to any respondent in the appeal, to NSCA if applicable, and to the Chef de Mission if the appeal involves conduct at Canada Winter Games. In an appeal from sanctions, the NSCA Official shall give the complainant(s) such information about the disposition of the appeal as is appropriate in the circumstances.

Appeal Summaries

A summary of each appeal and the reasons for disposition shall be published annually in such a form as to protect the identities of individuals involved.

RECORD KEEPING

The Executive Director shall keep a secure record of every report and complaint under these guidelines. The record shall contain all relevant documentation, including:

1. details of the report(s) and/or a copy of the complaint(s);
2. the response(s), if any;
3. the terms of reference of the investigator, if any;
4. the interim measures, if any;
5. any witness statements;
6. the investigation report, if any;
7. the terms of any informal resolution or written resolution agreement;
8. the NSCA Official's determinations, if any; the sanctions imposed, if any;
9. all other correspondence;
10. any appeal(s) filed;
11. any material filed in an appeal; and
12. any minutes of the NSCA Board of Directors.

CONFIDENTIALITY

To the extent possible, reports, complaints, witness statements and other documents produced under these guidelines shall be held in confidence by NSCA. However, no absolute guarantees of confidentiality may be made by NSCA. Circumstances in which information may be shared include:

- when criminal conduct may be involved.
- when child abuse may have occurred.
- when it is felt to be necessary to protect others from harassment or discrimination.
- when required to ensure fairness or natural justice in the procedures contemplated by these guidelines.
- in the course of an investigation by a law enforcement agency.
- to protect the interests of NSCA.
- when required by law.

Scope:

Related Procedure(s):

Revision History	
Date Approved	Comments

3. Discrimination and Harassment

No: 1

**Policy Title: Policy Statement and Guidelines on
Discrimination and Harassment**