

# Safe Sport



**PRESENTATION 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



# 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

# Defining Safe Sport





# Current Landscape around 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.

# 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
- ✓ Canada Soccer is piloting Safe Sport Coaching initiatives
- ✓ CAC's Responsible Coaching Movement
- ✓ SDRCC launched an investigation Unit and Hot Line
- ✓ Safe Sport Coalition
- ✓ 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 PSO's and Clubs to ensure a consistent approach
- ✓ Working on creating a club management manual to ensure consistency and alignment with safe sport policies

# Safe Sport Framework

## Education

Anti-Doping & Substance Abuse

Mental & Physical Health

Equity, Diversity & Inclusion

Abuse, Harassment & Anti-Bullying

Human Resources

## Prevention

Screening

Required Training

Responsible Coaches Movement

Early Intervention

Risk Management

## Response

Support Services

Insurance

Conflict Resolution

Investigation

Discipline

## Policy & Procedures

Safe Sport Environment

Code of Conduct

Complaints, Disciplinary Action and Dispute Resolution

Harassment

Equity, Diversity & Inclusion

Anti-Doping

Coaching

Association Insurance

Athlete Agreement

Privacy

# Resources

- ✓ <https://skatecanada.ca/safe-sport/>
- ✓ <https://www.coach.ca/responsible-coaching-movement-p160721>
- ✓ <https://www.swimming.ca/en/safe-sport/>
- ✓ <https://sportlaw.ca/?s=complaints>
- ✓ <http://clubexcellence.com/>
- ✓ <http://www.crdsc-sdrcc.ca/eng/home>
- ✓ <https://safesport.org/>

# Mitigating Risk through Policies



# Evolution of Policy Development



**GO BACK. WE ~~FUCKED~~ UP EVERYTHING.**



## 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

## Some thoughts on policies

- Policies need to be accessible and available
  - On your website, easy to find → not on a shelf in someone's office or in a file on someone's computer
- Everyone who is subject to a policy needs to be aware of it
  - Tools: membership forms that include acknowledgement of existence of policies, that have read and understood that they are subject to the policies (but also where to find the policies)

# Safe Sport Policies



# Safe Sport Policies

- Appropriate policies and procedures to deal with and prevent harassment and abuse in sport are a matter of sport governance
- Sport governance is currently a matter of considerable concern for sport organizations in general

# Safe Sport Strategy

1. Analysis
  - a) Engaging Athletes
  - b) Reviewing Policy
  - c) Review past incidents
2. Development
  - a) Policies
  - b) Education
  - c) Resources
3. Implementation
4. Culture Shift
5. Review

# Safe Sport Policies

- Code of Conduct
- Abuse Policy
- Discipline and Complaints
- Appeals
- Dispute Resolution (Mediation)
- Investigation Policy
- Whistleblower Policy
- Screening
- Event Discipline Procedure
- Reciprocation
- Athlete Protection

# Code of Conduct Recommendations

- Topics to include:
  - Jurisdiction and Application
  - Grooming
  - Human Rights Grounds
  - Harassment
    - Workplace, Sexual and Discrimination
  - Drugs and Alcohol
  - Abuse
  - Anti-Doping
  - Abuse of Power/Position of Trust
  - Sub-Categories (Directors, Officers, Coaches, Chaperones, Athletes, Officials, Parents/Guardians)



# What should be in a Discipline Policy?

- Purpose
- Jurisdiction and Application
- Reporting
- Appointment of Case Manager
- Screening of Complaint
- Discipline Panel
- Hearing
- Decision as to whether there is a breach
- Sanctions in the event there is a breach
- Serious infractions and automatic sanctions
- Confidentiality
- Appeal

# Appeal Policy

- What may be appealed and when?
- Grounds for appeal
  - No authority for decision
  - Not following procedures
  - Bias
  - Patently Unreasonable
- Who does what & when
- Scope of authority of decision-makers

# GROWING CONSENSUS

Debate is not on whether we must screen (as it is widely accepted that we must) but:

- How it should be done...

Given the need to find balance between the duty of an organization to provide a safe environment and the practical limits of what an organization can do.

# THINGS TO THINK ABOUT

- Drafting a Screening Policy
  - Who is to be screened:
    - Those persons who have difficulty protecting themselves and are at risk due to age, disability, or other circumstance”
  - What acts are prohibited?
  - How are you going to make decisions on each person?
  - How are you going to manage confidential records ... etc.
  - Jurisdiction of PRC/VSC
  - True Copies/Fraud
- Pre-Hiring Screening Tools
- Post-Hiring Screening Tools

# TEN “SAFE STEPS” PROGRAM

1. Determine the risk
2. Write a clear position description
3. Establish a formal recruitment process
4. Use an application form
5. Conduct interviews
6. Follow up on references
7. Request a Police Records Check
8. Conduct orientation and training sessions
9. Supervise and evaluate
10. Follow up with program participants

# Issues to Consider

- Anonymous Complaints
- Investigations
- Zero Tolerance
- Jurisdictional Issues
- Suspensions
- Minimum Membership Requirements
- Reciprocity
- Pan-Canadian Alignment

# Whistleblower Purpose and Application

## Purpose

- The purpose of this Policy is to allow people to have a discrete and safe procedure by which they can disclose incidents of wrongdoing in the workplace and sporting environment without fear of unfair treatment or reprisal.

## Pledge:

- The Organization pledges not to dismiss, penalize, discipline, or retaliate or discriminate against any individual who discloses information or submits, in good faith, a report against a person under the terms of this Policy.
- Any individual affiliated with the Organization who breaks this Pledge will be subject to disciplinary action.

# Whistleblower Issues to Consider

- Who receives the complaint and is their an alternate
- Screen the complaint
- Determine appropriate policy (Discipline and Complaint)
- Determine if police are required
- Mediation an option?
- Investigation?



# Rule of Two

- The Coaching Association of Canada describes the intention of the ‘Rule of Two’ as:
  - The intention of the ‘Rule of Two’ is that **a coach is never alone or out of sight with a minor athlete**. Two NCCP trained or certified coaches should always be present with an athlete, especially a minor athlete, when in a potentially vulnerable situation such as in a locker room or meeting room.
  - All **one-on-one interactions between a coach and an athlete must take place within earshot and in view of the second coach** except for medical emergencies.
  - One of the **coaches must also be of the same gender as the athlete**. Should there be a circumstance where a second screened and NCCP trained or certified coach is not available, a screened volunteer, parent, or adult can be recruited.

# Rule of Two

- Implementing the 'Rule of Two' in all circumstances may not be possible. In these cases, to adhere as much as possible with the spirit of the 'Rule of Two', interactions between coaches and athletes should be:
  - Transparent
    - Allow the training environment to be open to observation by parents. Ensure an open and observable environment for all interactions between adults and athletes. This could include leaving the door open when having a meeting, moving away from others in a public space but staying within eyesight.
    - Avoid private or one-on-one situations unless they are open and observable by another adult or athlete.

# ARE YOU PREPARED?

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

# Any Questions or Comments?



**For more information:**

**Steven Indig**

**[sji@sportlaw.ca](mailto:sji@sportlaw.ca)**

**647-348-3080**

---

**[www.sportlaw.ca](http://www.sportlaw.ca)**