



**McLAREN**  
GLOBAL SPORT SOLUTIONS

OCTOBER 2020

# Aiming High

**INDEPENDENT APPROACHES TO ADMINISTER THE  
UNIVERSAL CODE OF CONDUCT TO PREVENT AND  
ADDRESS MALTREATMENT IN SPORT IN CANADA**

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FINAL REPORT



5 October 2020

## **Final Report on Independent Approaches to Administer the *Universal Code of Conduct to Prevent and Address Maltreatment in Sport in Canada (“UCCMS”)***

Prepared for Sport Information Resource Center (“SIRC”) and the UCCMS  
Leadership Group

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### **A McLaren Global Sport Solutions Inc. (MGSS) Project**

Led by Professor Richard H. McLaren, O.C., MGSS is a specialised sport consulting firm with deep experience in sport governance, sport strategic planning, policy reviews, legal analysis, investigations, risk management, research, and education. Organisations who have trusted MGSS to provide solutions include: USPORTS, Canadian Centre for Ethics in Sport (“CCES”), Own The Podium, the Canadian Olympic Committee, the Canadian Football League, IRONMAN Triathlon, The European Tour, The Ultimate Fighting Championship (“UFC”), International Basketball Federation (“FIBA”), the International Weightlifting Federation (“IWF”), ZWIFT, Josoor Institute (Qatar), and the Conference of Independent Schools of Ontario, among other public and private organisations. [www.mclarenglobalsportsolutions.com](http://www.mclarenglobalsportsolutions.com)

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## GLOSSARY

<b>AACP</b>	Aboriginal Apprentice Coach Program
<b>ACM</b>	Aboriginal Coaching Modules
<b>AAP</b>	Athlete Assistance Program
<b>ADR</b>	Alternative Dispute Resolution
<b>ADR POLICY</b>	Alternate Dispute Resolution Policy
<b>ARP</b>	Activation and Resolution Process
<b>ARSS</b>	Act Respecting Safety in Sports (Loi sur la sécurité dans les sports)
<b>ASADA</b>	Australian Anti-Doping Agency
<b>ASC</b>	Aboriginal Sport Circle
<b>CAC</b>	Coaching Association of Canada
<b>CADP</b>	Canadian Anti-Doping Program
<b>CCAA</b>	Canadian Collegiate Athletic Association
<b>CCCP</b>	Canadian Centre for Child Protection
<b>CCES</b>	Canadian Centre for Ethics in Sport
<b>CCMHS</b>	Canadian Centre for Mental Health and Sport
<b>CCP&amp;TSF</b>	Canadian Council of Provincial and Territorial Sport Federations
<b>CFSRB</b>	Child and Family Services Review Board
<b>COC</b>	Canadian Olympic Committee
<b>COP</b>	Chief Operating Person
<b>COPSIN</b>	Canadian Olympic and Paralympic Sport Institute Network
<b>COU</b>	Council of Europe
<b>CPC</b>	Canadian Paralympic Committee
<b>CPSU</b>	UK's Child Protection in Sport Unit
<b>CSCA</b>	Canadian Sport Centre Atlantic
<b>CSG</b>	A Code for Sports Governance
<b>CSH</b>	Canadian Sport Helpline
<b>CSP</b>	Canadian Sport Policy
<b>CWS</b>	<a href="#">Canadian Women &amp; Sport</a>
<b>DCMS</b>	Department for Culture, Media and Sport
<b>DRO</b>	Sask Sport's Dispute Resolution Officer
<b>DSO</b>	Disabled Sport Organisations
<b>EPAC</b>	New South Wales, Department of Education's Employee Performance and Conduct Directorate
<b>EPAS</b>	Enlarged Partial Agreement on Sport
<b>FFSOs</b>	Federally Funded Sport Organisations
<b>HPMOs</b>	High-Performance Management Organizations
<b>ICOP</b>	Indigenous Coaches and Officials Program
<b>ICRP</b>	Internal Complaint Review Panel

<b>IF</b>	International Federation
<b>INS</b>	Institut national du sport du Québec
<b>IOC</b>	International Olympic Committee
<b>IRT</b>	Independent Research Team
<b>ISCS</b>	International Safeguards for Children in Sport
<b>IST</b>	Integrated Support Team
<b>ITP</b>	Independent Third Party or Independent Third Party Harassment and Abuse Officer
<b>IU</b>	Investigation Unit
<b>LAO</b>	Local Affiliated Organizations
<b>LG</b>	UCCMS Leadership Group
<b>MAAPP</b>	Minor Athlete Abuse Prevention Policies
<b>MED</b>	CAC's Make Ethical Decisions ("MED") program
<b>MGSS</b>	McLaren Global Sport Solutions Inc.
<b>MPP</b>	Member Protection Policy
<b>MSOs</b>	Multi Sport Organisations
<b>MTAC</b>	Ministry of Tourism, Arts and Culture
<b>NADO</b>	National Anti-Doping Organisation
<b>NAP</b>	National Athlete Pool
<b>NCCP</b>	Coaching Association of Canada's National Coaching Certification Program
<b>NGBs</b>	National Governing Bodies
<b>NIM</b>	National Independent Mechanism
<b>NISU</b>	National Integrity of Sport Unit
<b>NSOs</b>	National Sport Organisations
<b>NSP</b>	National Safeguarding Panel
<b>NSPCC</b>	National Society for the Prevention of Cruelty to Children
<b>NSSOs</b>	National Sport Safeguarding Officers
<b>NST</b>	Australian National Sport Tribunal
<b>NSTF</b>	National Sport Trust Fund
<b>OTP</b>	Own The Podium
<b>PHAC</b>	Public Health Agency of Canada
<b>PIPEDA</b>	Personal Information Protection and Electronic Documents Act
<b>PPER</b>	Pilot Project Evaluation Report
<b>PSGB</b>	Provincial Sport Governing Body
<b>PSOs</b>	Provincial Sport Organisations
<b>PTRA</b>	Physical Training and Recreation Act
<b>PTSOs</b>	Provincial and Territorial Sport Organisations
<b>RCAAA</b>	Registered Canadian Amateur Athletics Association
<b>SA</b>	Sport Australia
<b>Sask Sport</b>	Sask Sport Inc.
<b>SAT</b>	Self-Assessment Tool

<b>SDRCC</b>	Sport Dispute Resolution Centre of Canada
<b>SFAF</b>	Sport Funding Accountability Framework
<b>SIA</b>	Sport Integrity Australia
<b>SIRC</b>	Sport Information Resource Centre
<b>SLCP</b>	Sport Law Connect Program
<b>SNF</b>	Sport North Federation
<b>SPSS</b>	A statistics software package used for interactive, or batched, statistical analysis
<b>SSC</b>	Safe Sport Canada
<b>UCCMS</b>	Universal Code of Conduct to Prevent and Address Maltreatment in Sport
<b>UKAD</b>	UK Anti-Doping
<b>USC</b>	U.S. Centre for Safe Sport
<b>USOC</b>	United States Olympic Committee
<b>USOPC</b>	United States Olympic and Paralympic Committee
<b>WADA</b>	World Anti-Doping Agency
<b>WAG</b>	Women's Artistic Gymnastics
<b>WARM</b>	Washington State Risk Assessment Matrix



# Chapter 1

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## EXECUTIVE SUMMARY

### 1.1 Introduction

There is wide reaching consensus that not only is the participation in sport a human right, but so too is participation in safe sport. As a result, there has been rapid rise of global awareness among the sport community of the severe physical, psychological, and emotional consequences to athlete survivors of abuse, harassment and discrimination. This awareness has resulted in international sports organisations and national governments mobilising to address sport that is free from abuse, harassment and discrimination. As this global cultural shift is still in its nascent stages, the safe sport landscape is currently at various different phases of implementation and adoption with some national governments legislating safe sport codes and mechanisms to address breaches thereof, while others are in the beginning phases of policy development. What makes Canada unique in this evolution process is that it is trying to bring about this safe sport landscape without the use of national legislation.

The Canadian sport community could be considered an early entrant into the landscape of the safe sport movement having marshalled national support for progressive steps forward as early as the beginning of the 1990s. Early action was directed at mobilising the entire sector to create the necessary changes from a sport policy perspective and to begin playing sports safe and free from all forms of maltreatment. It has however been a long journey because of Canada's unique federated structure. Sport is principally within provincial jurisdiction. The federal government's



interest is at the policy level, but it faces jurisdictional challenges therefore limiting its action to the financial assistance of national level sport. Therefore, it has taken several years of national summits, creation of national level sport leadership groups, the harmonised code of conduct development and agreement to finally reach the present point of establishing a roadmap to create a pan-Canadian structure to deal with maltreatment in sport.

More recently, the Canadian sport community expressed, through the various summits, overwhelming support to proceed with establishing a pan-Canadian code of conduct with harmonised definitions and sanctions. That support, with the financial stimulus of Sport Canada, resulted in the drafting of the “Universal Code of Conduct to Prevent and Address Maltreatment in Sport” (“UCCMS” or the “Universal Code”) led by the Canadian Centre for Ethics in Sport (“CCES”) in conjunction with the Sport Information Research Center (“SIRC”).

The UCCMS addresses maltreatment broadly and comprehensively, covering all types of conduct that inflict physical or psychological harm by a person against another person, within the sport community. That harm can be caused in a number of ways including through psychological, physical or racial maltreatment.<sup>1</sup> The most recent version (5.1) is publicly available on the SIRC website (<https://sirc.ca/safe-sport/>). Adoption and integration of the UCCMS into organisational policies and procedures will become a condition of all federally funded, national-level sport organisations by 1 April 2021.

With the UCCMS nearing finalisation, an informal Leadership Group was created to fulfill the next phase, the implementation and administration of the UCCMS. The Leadership Group is comprised of athletes and representatives from National Sport Organisations (“NSOs”), Multi-sport Service Organisations (“MSOs”), Canadian Olympic and Paralympic Sport Institute Network (“COPSIN”), subject matter experts and Sport Canada. Facilitated by SIRC, the Leadership Group commenced a tender process to outsource the analytical thought necessary in the conceptualisation of a structure to implement and administer the Universal Code.

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<sup>1</sup>Psychological maltreatment refers to behaviors and conduct in the form of verbal acts, non-assaultive physical acts, and acts that deny attention or support, such as neglect. For physical maltreatment, the conduct and harm relate to behaviours that have the potential to cause physical harm. The UCCMS further makes the important distinction between sexual maltreatment and grooming. It also includes provisions that contemplate maltreatment in terms of process and reporting manipulation.

In a press release dated 15 July 2020, it was announced that McLaren Global Sport Solutions Inc. (“MGSS”) was chosen to execute the mandate in response to SIRC’s request for proposal. MGSS was engaged to provide analysis, input, and recommendations based on Canadian and international models, for preventing and addressing maltreatment in sport in Canada. MGSS assembled an Independent Review Team (“IRT”) led by Professor Richard McLaren, O.C., MGSS Vice President, Bob Copeland and lawyer Diana Tesic. The IRT was assisted by the tireless efforts of its research group which included Senior Research Associate Wade Wilson, Ph.D.; and Tamara Kljatic, Jeffrey Buchan and Liam Billings who all went above and beyond the call to support the IRT. This Report represents the completion of the analytical phase of implementation.

The IRT reviewed and analysed over 500 documents; examined various existing international safe sport and other sector models; held over 90 interviews with Canadian sport stakeholders, international safe sport experts and various subject matter experts; and implemented a confidential and anonymous survey of the Canadian sport sector. The result of the foregoing work led the IRT to recommend the structure, responsibility and phases of implementation for a National Independent Mechanism (“NIM”). In its analysis, the IRT has weighed on the various challenges existing in Canada that simply do not exist elsewhere. These include jurisdictional challenges and the different degrees of alignment between National Sport Organisations (“NSOs”) and their member Provincial and Territorial Sport Organisations (“PTSOs”). Therefore, in balancing all of the above, the IRT is confident that the proposed architecture of the NIM and the implementation thereof is the best path forward for Canada to prevent and address maltreatment in sport.

The urgency of getting on with the task of accepting the Universal Code and having the NIM administer it is underscored by high profile litigation on the subject of maltreatment in sport. The case of former national alpine ski coach, Bertrand Charest, convicted on various assault charges including sexual assault of minors, served as one of the galvanising events for the surge of maltreatment reports in Canadian sport.<sup>2,3</sup> A further recent example can be found in a class action law suit involving Daniel Carillo, now a former National Hockey League (“NHL”) Player, who alleges

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<sup>2</sup> *R v Charest*, 2017 QCCQ 7017. Charest was convicted in June 2017 on 37 charges, including 16 assaults involving 9 female athletes between the ages of 12 and 18 and was sentenced to 12 years in prison.

<sup>3</sup> *Charest v R*, 2019 QCCA 1401. On appeal Charest had his sentence reduced to 10 years and 3 months.

that the more senior players used abusive hazing activities toward him when he joined an Ontario Hockey League (“OHL”) hockey club as a rookie.<sup>4</sup>

In addition to this sampling of litigation involving maltreatment in sport, on a broader scale, the Canadian Broadcasting Company has investigated sexual abuse in sport. They found that at least 222 coaches involved in amateur sports in Canada had been convicted of sexual offenses between 1998 and 2018, involving 600 survivors under the age of 18. These offenses implicated 36 different sports, with hockey having the highest incident rate at 59 convictions. Offenses included sexual assault, sexual exploitation, child luring and making or possessing child pornography.<sup>5</sup> Since its investigation, at least 22 more coaches in Canada have been charged with sexually abusing a minor.<sup>6</sup> These are troubling facts, which demonstratively illustrate the need for immediate action.

## 1.2 Terms of Reference

MGSS was engaged to:

*“...provide a review of existing international, national and provincial/territorial practices, structures and mechanisms related to preventing and addressing maltreatment in sport, as well as an analysis of how the most effective and relevant elements of existing practices could be applied to the independent administration of the UCCMS in Canada.”*

This Report contains an independent analysis of existing research and evidence-informed best practices to assist in the identification of the most appropriate and effective method and approach to independently administer and enforce the UCCMS at the national level in Canada. The resulting analysis, along with recommendations and additional input from the national sport community,

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<sup>4</sup> John Chidley-Hill, “Ex-NHLer Carcillo recalls alleged OHL beating with sawed-off goalie stick” (26 November 2018), online: *CBC* <<https://www.cbc.ca/sports/hockey/nhl/carcillo-hazing-hockey-ohl-1.4920922>> [last accessed 10 September 2020].

<sup>5</sup> Lori Ward and Jamie Strashin, “Sex offences against minors: Investigation reveals more than 200 Canadian coaches convicted in last 20 years” (10 February 2019), online: *CBC*. <<https://www.cbc.ca/sports/sex-offences-against-minors-investigation-reveals-more-than-200-canadian-coaches-convicted-in-last-20-years-1.5006609>> [last accessed 10 September 2020].

<sup>6</sup> Lori Ward and Jamie Strashin, “Government falls short on pledge to better protect kids against abuse in sport” (3 September 2019), online: *CBC* <<https://www.cbc.ca/news/canada/government-falls-short-on-pledge-to-better-protect-kids-against-abuse-in-sport-1.5260360>> [last accessed 10 September 2020].

will inform Sport Canada’s identification of proposed requirements, necessary structure, and key responsibilities and services that would be mandatory for an independent body to administer the UCCMS for Federally Funded Sport Organisations (“FFSO”) who choose to adopt it.

A draft of the Report was provided to the SIRC Leadership Group on 10 September 2020. A PowerPoint presentation and discussion of the draft was presented to them by the IRT on the 15th of September. Feedback was largely completed by the 27<sup>th</sup> of September, requiring an extension to file this Final Report which was submitted on 5 October 2020.

## 1.3 Methodology

The Canadian amateur sporting landscape is a mosaic of stakeholders affected by different sport contexts, cultural influences, resources, special needs, and competitive goals. Each of these stakeholders have different perspectives and experiences related to the issue of maltreatment in sport. For these reasons, the IRT was deliberate in its approach to seek as many different perspectives as possible within strict time limitations to inform its recommendations. A combination of qualitative and quantitative data was used to inform the IRT’s recommendations.

The IRT undertook both primary and secondary research. Primary research methods included personal interviews and a survey of national and provincial sport organisations. Secondary research included an extensive review of Canadian and International literature and an analysis of international and domestic investigation and adjudication models across various sectors. The review of literature included sources identified in the Terms of Reference, as well as many additional sources that were researched and sourced by the IRT.

### 1.3.1 Primary Research Summary

#### *Interviews*

- i. Structured interview guides were developed for interview subjects including those grouped as follows: (i) Leadership Group (N=24); (ii) Canadian sport stakeholders and experts in maltreatment (N=56); and (iii) International sport and maltreatment experts (N=11).

- ii. Preliminary interviews were conducted with members of the Leadership Group who were asked to identify any other persons who the IRT might find value in interviewing. Several additional interview subjects were identified through this process.
- iii. Several interviewees in the Canadian and International sport stakeholder groups also identified new interview subjects for the IRT, and additional documentation of value to the IRT.
- iv. Confidential interviews were conducted by Zoom videoconferencing and all interviews were recorded with the permission of those being interviewed. Interviews were, on average, approximately 50 minutes.
- v. Interview subjects were asked for their feedback about a conceptual framework for an Activation and Response Process (“ARP”) that was presented in the Request for Proposal submitted by MGSS. The eventual ARP that is provided in this Report (Figure 2), reflects this interview feedback.
- vi. Interviewees were asked various other questions about maltreatment in sport relative to their particular context, as well as feedback on optimal structures to prevent and address maltreatment in sport that might be considered for Canada.
- vii. Most interviews were conducted individually. Some group interviews were conducted. Several follow-up interviews were conducted so that the IRT could develop a deeper understanding of some important concepts that were identified. A complete list of interviews is provided in Annex A.
- viii. Confidential, written transcripts of all interviews were generated and reviewed by the IRT. A thematic analysis of interviews was undertaken. A summary of the Leadership Group Feedback is provided in Chapter 10. Feedback from other interviews has been incorporated throughout the Report where appropriate.

### *IRT Sport Sector Survey*

A bilingual web-based survey of NSOs and PTSOs was developed and implemented using the Qualtrics survey platform. A draft survey was developed by MGSS then shared with the Leadership Group for input and feedback. The survey was sent to a distribution list of NSOs, MSOs, and COPSIN by SIRC. Each of these organisations was also asked to invite their respective PTSOs to participate in the survey. Communication about distribution of the survey was also coordinated between SIRC and Sport Canada.

Responses included 61 NSOs, 17 MSOs, 4 COPSIN members, 20 PTSOs, and two organisations who identified themselves as “other.” The response rate indicates the results are representative of NSOs and MSOs. The IRT was not provided a total distribution list of PTSOs. The results of the survey may not be considered a representative sample of PTSOs nationally based on the response rates.

The survey included a combination of qualitative and quantitative questions. Qualitative questions were organised by theme areas where appropriate. Quantitative questions were organized using SPSS – a statistics software package used for interactive, or batched, statistical analysis.

### 1.3.2 Secondary Research

Secondary research included an extensive review of Canadian and International literature aimed to review the existing academic research in this field. The IRT reviewed a curated list of more than 550 Canadian and international sport documents identified by SIRC and the Leadership Group, as well as other documents in sport and non-sport sectors identified by MGSS. An analysis of international and domestic investigation and adjudication models across various sectors was also completed as a means to identify existing best practises. Secondary research was organised into thematic areas and presented in the Report. The IRT extracted points of comparison, interest, and best practises from these sources to support the recommendations provided.

### 1.3.3 Draft Report Leadership Group Feedback

Regular updates were provided by MGSS to the Leadership Group. A copy of the Draft Report was circulated to the Leadership Group on 10 September 2020. MGSS presented the Draft Report to the Leadership Group on 15 September 2020 via video conference. The Leadership Group provided MGSS feedback during the video conference, and written feedback was invited to be submitted by the deadline of 21 September 2020.

Written feedback was received by MGSS directly from several Leadership Group members. MGSS accepted written feedback beyond the deadline up to the 27<sup>th</sup> September. A summary of the substantive changes to the Final Report based on this feedback was provided to SIRC together with the Final Report submitted on 5 October 2020.

## 1.4 The Report Structure & How to Read the Report

The Report comprises nine chapters aside from this summary. The design is straightforward. Chapter 2 describes what is required to complete the Universal Code. Chapter 3 describes the recommended model to administer the UCCMS, the NIM. Chapter 4 describes the recommended implementation process of the NIM. These three initial chapters draw on the descriptive information, analysis, and recommendations contained in the subsequent seven chapters, the penultimate Chapter being the summary of the extensive stakeholder, Leadership Group and other interview and survey information.

The IRT's analysis and recommendations in Chapters 2, 3 and 4 is drawn from the work of the IRT described in Chapters 5 through 10. It is in those latter Chapters that the reader will find the rationale for the recommendations and the reasons behind the NIM's constituting component parts and its implementation. The recommendations of the IRT will be found throughout these descriptive and analytical Chapters where the particular topic arises.

At the conclusion of this Executive Summary, you will find the consolidated list of recommendations grouped under thematic headings. The various recommendations have references to the Chapters and sections from where the applicable analysis was drawn. Thus, the reader can inform themselves of why the particular recommendation was made and what the pros and cons were in so doing.

The suggested reading of the Report is to read Chapters 2, 3 and 4 first, and then subsequently reading the Summary of Recommendations contained at the conclusion of this Chapter. The parentheses following each recommendation in the Summary of Recommendations directs the reader to the applicable section in the Report from where the analysis was drawn. Significant or major recommendations have in some places summary rationale taken from sources or other



information in the Report and its Annexes. This was done to assist the reader without having to necessarily continually cross reference the section to the recommendation. It is ultimately the reader's choice as to whether the information in Chapters 5 through 10 is read in its entirety or the cross references to sections of those Chapters are relied upon alone. The Annexes attached to the Report contain information forming part of MGSS's engagement by the SIRC and its Terms of Reference. They are to be a resource for readers of the Report and assistance to those who will be engaged to implement the recommendations.

# RECOMMENDATIONS



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## A FRAMEWORK TO MOVE FORWARD

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The IRT’s recommendations have been informed by research, best practises, and significant feedback from stakeholders in the Canadian sport sectors as well as international experts in maltreatment and subject matter experts in investigations, child protection, and sexual violence. This includes personal interviews with more than 90 individuals and survey responses from 104 NSOs, MSOs, COPSIN members, and PTSOs. The IRT is attuned to the philosophy which guides the Canadian sports sector of “*by the sector, for the sector*” which has informed our recommendations. For example, the NIM cannot be mandated and, therefore, must be accepted voluntarily.

The IRT strongly encourages FFSOs and PTSOs to adopt the NIM and work towards alignment in a manner that reflects their unique jurisdictions. The feedback from the sport sector is unequivocal in supporting the need for a system that is aligned with a single national independent mechanism which will be critical to preventing and addressing maltreatment in Canada. Thus, the IRT is confident that there will be strong interest from sport organisations in voluntarily adopting the NIM.

## 1.5 Overall Recommendations

During the course of the IRT’s feedback process with various stakeholders it became apparent that there was strong desire to see some forward movement and implementation, at a minimum, by 1 April 2021. In order to implement the recommendations, an initial start-up phase is necessary. The IRT suggests two different alternatives to achieve the objective of the Request for Proposal (“RFP”), based on this Report (see section 3.4).

The first involves the sector working through the SIRC to select a corporate entity through a competitive bidding process, which has a pre-existing corporate governance structure. The other is the identification and appointment of a person to the role of Chief Operating Person (“COP”) by a search committee, likely drawn from the Leadership Group. The latter process would require the COP to first identify the core personnel before creating an entirely new legal entity to house the NIM with its own formed corporate board and governance process. While this alternative may be unconventional, it offers the primary advantage of expediency and immediate recognition of the NIM. The selection of the existing corporate entity with the appropriate appetite and experience to execute the NIM on the other hand could offer initial guidance and stability. In this option, it is that entity’s existing board of directors who appoint a COP to implement the NIM. Both alternatives ultimately require the same process to implement the NIM, as proposed in this Report.

All the following recommendations arise from the work of the IRT, are contained in the Report and are located by bracketed numbers. They reflect the consolidation of the IRT’s recommendations throughout the Report, set out herein by operational and thematic topics.

## Recommendations for the Final Development of the UCCMS

1. The UCCMS requires the addition of procedures and development of protocols within the time limits set out above; the critical areas for amendment include: (2.2)
  - i. Addition of a definition for each of the individuals described in the Sport Canada Contribution Agreement, beyond athletes, to whom jurisdiction will apply;
  - ii. Scope and purpose of the NIM;
  - iii. Procedures of how to activate the Mechanism;
  - iv. Assessment of the complaints;
  - v. Investigation procedures;
  - vi. Specific obligations of complainants, respondents and third parties, including duties to cooperate with the process, possible duty to attend investigations, duties to produce documents and evidence, etc.;
  - vii. Evaluation and determination of defined sanctions;
  - viii. Adjudicative procedures including final and binding arbitration;
  - ix. Assistance of the sport in accepting the sanction and assisting in its implementation;
  - x. Education on the existence and use of the NIM and the UCCMS.
2. Despite the difficulties that might arise, a review and possible development of a definition of “individual affiliated with” an FFSO be standardised according to the definition in the Contribution Agreement to apply across the sport sector. (2.4.1)
3. The NIM to have oversight and responsibility over managing any future amendments to the UCCMS. (2.2)

4. The NIM must be independent from all sports bodies in order to provide support, comfort, and trust in the system of maltreatment protection. (3.1, 3.2 and 8.3)
5. Acceptance and use of the NIM is voluntary for all sports organisations. PTSOs and Clubs who choose to join the NIM will be required to align their rules and procedures with their FFSOs and their respective participating provinces or territories. (2.3)
6. The role of the NIM is to guarantee the protection of all sport participants from maltreatment in Canadian sport. The Mission is to create a safe and welcoming environment for all participants in sport – free from harassment, abuse, discrimination and all other forms of maltreatment. (3.2)
7. The core of the NIM is to focus on: (3.2)
  - i. Providing confidential paths for disclosure and reporting of maltreatment;
  - ii. Conducting investigations of allegations of maltreatment reported to the NIM by a covered participant;
  - iii. Recommending disciplinary and remedial actions in regard to complaints;
  - iv. Providing legal representation to victims on any adjudication of the sanction. Developing a counsel's assistance program for the use of complainants and respondents who are not FFSOs and become involved in the adjudicative process.
  - v. Directing and researching prevention education for all those connected to the sport sector.
  - vi. Providing advice, guidance, and support to FFSOs.
  - vii. Ensuring a system of excellence through compliance and audit functions.
8. The NIM and its staff, assisted by its Visionary Advisors and Think Tanks, provide the leadership to ensure a trusted independent mechanism to prevent and address maltreatment in sport in Canada. (3.2)

9. The COP, in place from the outset, will have responsibility during transition and development of the NIM. The COP will provide the overall leadership and stewardship thereafter. (3.7.1)
10. A Director of Investigation to be appointed in the Pilot phase to oversee the development and management of the Preliminary Assessment Team and Internal Investigators. (3.7.2)
11. Chief Legal Officer be appointed in the Pilot phase. (3.7)
12. A Director of Complainant and User Support to be appointed to manage the National Sport Safeguarding Officers (“NSSOs”) and the Complainant Defence Counsel. The Director will also be responsible for liaising with the outsourced portions of the NIM. (3.7.5)
13. A Director of Education to be responsible for directing the content and creation of training and maltreatment prevention content. (3.7.7)
14. Internal Investigators to be appointed as needed. Such persons must have experience conducting trauma informed interviews, gathering, and analysing complex evidence and analytical skills to write a report. (3.7.4)
  - a. *Review EPAC recommendation from the New South Wales Department of Education that suggests private contractors who conduct investigations output work which varies in quality.* (Appendix C.2.2)
15. Preliminary Assessment Team to be established and staffed by full time employees responsible for receiving, assessing, and prioritising formal reports about alleged maltreatment. (3.7.3)
16. Two NSSOs to be appointed initially, and others as needed. These individuals will be the primary point of contact for all disclosures. Their responsibilities will include making referrals and assisting with activating and navigating formal complaints processes. They will also be the liaison with the Independent Third Party at the FFSO level. (3.7.6 and 8.3)

## Recommendations on Governance Structure and Visionary Advisors

17. Evaluate whether the NIM ought to have its own governance structure or utilise an existing structure of a Canadian not-for-profit organisation. (3.4)
18. The NIM will require the appointment of a group of Visionary Advisors with proven experience in order to fulfill its leadership role. The group's composition, background and expertise as described (3.10). The Visionary Advisors will provide the thought leadership and advocacy to prevent and address maltreatment in Canadian sport. (3.5)
19. Two key Think Tank working groups to be appointed. One to deal with Education, Prevention, and Research and the other comprised of members of Field of Play (athletes, coaches and referees). (3.5)

## Recommendations on Organisational Structure

20. The COP is to develop a flat line organisational structure. This will allow the NIM to focus on the core functions of the mechanism while also maintaining direction over outsourced functions and retaining the ability to conduct research on the same. (3.6)
  - a. *The recommended organisational structure has been informed by an analysis of the US Centre for Safe Sport. Key staffing positions were informed by the IRT's analysis of the UK's Child Protection in Sport Unit, among other sectors staffing complements' such as the New South Wales Department of Education and Scotland's child protection services agency. The IRT's staffing model was also informed by the IRT's interviews with other subject matter experts. (7.1, 7.2.4, C.5.1, C.2.1 (Australia) and C.5.1)*
21. The senior executive team of the NIM to be responsible for the direction and oversight of all outsourced functions of the NIM. (3.8)



22. Outsourced functions should be seamlessly integrated for users of the NIM. The functions should include 24/7 crisis contact services, mental health support services, education and adjudication. All other functions should remain internal to the NIM. (3.8)
23. A partnership with Kids Help Phone be created to provide crisis intervention and referral services for both youth and adults. (3.8.1 & 3.8.2)
  - a. *The Kids Help Phone offers national, fully accessible, multi-lingual crisis support services for both youth and adults. No equivalent crisis intervention service with the scope and capacity to scale with the NIM was identified by the IRT. (3.8.1)*
24. Mental health support be outsourced to the Canadian Centre for Mental Health and Sport. (3.8.2 and 8.3)
  - a. *No other organisation has been identified by the IRT that provides collaborative sport-focused mental care to athletes and coaches. (3.8.2)*
25. Education to be directed and outsourced by the NIM through an RFP process. A national strategy needs to be developed which includes identification of mandatory educational requirements designed for specific stakeholder groups, curriculum design, financial models for training, frequency of education, evaluation processes and tracking and database management. (3.8.3 and 8.4)
26. The NIM should outsource technological platforms and educational delivery programs. (3.8.3 and 3.8.6)
  - a. *The IRT notes that the Canadian company, i-Sight, provides this service to the US Centre to Safe Sport. (3.8.6)*
27. Adjudication processes should be outsourced to the Sport Dispute Resolution Centre of Canada (“SDRCC”) providing it is completely independent as a provider of these services. (3.8.5)
  - a. *The IRT notes that in the 24 September 2020 SDRCC annual public meeting speaking points, the SDRCC’s non-adjudicative services are outlined. (3.8.5)*
28. The outsourced function to the SDRCC may require consideration of an additional, new Maltreatment Tribunal with arbitrators trained in adjudication and dispute resolution processes specific to maltreatment in sport. (3.8.5)

- a. *The proposed Safeguarding Tribunal appears to be intended to service the BC UCCMS as per the Draft v. 3 Canadian Sport Dispute Resolution Code effective 1 January 2021.*

## Recommendations on NIM Core Components

### *Investigations*

29. The investigation function to be housed internally within the NIM. (3.6.2)
30. The Director of Investigation duties will include creating, monitoring, and modifying the disclosure and formal complaint procedures. (3.6.2)
31. The investigative function will comprise: (i) the preliminary assessment; (ii) the full-scale internal investigation; and (iii) referral to and oversight over lower risk FFSOs' Independent Third Party external investigations. (3.6.2)
32. Preliminary assessment of complaints to be carried out by a specialised team of individuals with appropriate skills, training, and experience in risk assessment. (3.6.2)
33. The NIM will have discretionary authority to investigate all other forms of maltreatment. Lower risk assessments to be referred to the FFSOs' Independent Third Party. (3.6.2)
34. The NIM will have exclusive authority to investigate sexual maltreatment, grooming, serious physical abuse, and consent with persons over the age of majority. These being high risk incidents. (3.6.2)
  - a. *Review the Netherland's Healthcare Inspectorate who reviews the most serious complaints involving violence or serious employee dismissal and the Child Safeguarding Practice Review Panel in England who has authority to review the most serious child safeguarding cases. (C.1.6 and C.5.1)*
  - b. *Review the US Centre for Safe Sport's practice (7.1)*

## Complainant and User Support

35. The NIM to provide access to mental health support to users who either make a disclosure or formal report. (3.6.3 and 8.3)
36. The NSSOs are to be the initial point of contact for confidential or anonymous disclosures. They will determine if the conduct falls within the definitions of maltreatment in the UCCMS. If so, they may activate a formal complaint process or refer to law enforcement or child welfare agencies. (3.6.3)
37. Appoint Complainant Defence Counsel who are to be independent of the NIM and be available for complainants who meet the criteria. (3.8.4)
  - a. *Review Sport Integrity Australia’s Legal Assistance Panel for individuals who do not have the financial means to adjudicate, Scotland’s “Safeguarder” role in child protection adjudication, and a recommended role by the To-Zero: The Independent Report of the Ministers Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991. (7.3.5, C.5.1 (Scotland) and 3.8.4)*
38. The appointment of a Complainant Defence Counsel would occur upon selection by the Director of Complainant and User Support. (3.8.4)
39. Complainant Defence Counsel would have carriage of providing legal services to the complainant in the adjudication process. (3.8.4)

## Dispute Resolution, Remedial Actions and Sanctions

40. The COP is the sole authority for issuing sanctions under the UCCMS. (3.6.4)
41. The FSSOs may be required to support or implement the recommended sanction. (3.6.4)
42. Lower risk breaches of the UCCMS can result in resolution before the commencement of any adjudication process. (3.6.4)

## Compliance and System Excellence

43. The NIM has a responsibility to engage in compliance review to ensure the integrity of its operations. The purpose is to provide leadership and information to FFSOs related to NIM requirements and operations and ensure ongoing leadership. The result will be an assurance that FFSOs are compliant with their Contribution Agreements. (3.6.5)
- a. *Review audit process of the UK's Child Protection in Sport Unit ("CPSU") and the US Centre for Safe Sport. (7.2.3 and 7.1.5)*
44. The NIM is to file an annual report with Sport Canada to be tabled in the House of Commons which will inform their Report Card evaluation of participating FFSOs. (3.6.5)
- c. *Review the consulting and auditing processes in the UK administered by the National Society for the Prevention of Cruelty to Children ("NSPCC") and CPSU. Netherland's auditing procedures for the education sector and Norway's auditing procedures for the healthcare system. (7.2.3(iii), C.2.7 and C.1.2)*

### Recommendations to Facilitate the Introduction of the NIM

45. FFSOs will have to ensure their participants' (athletes, coaches, volunteers, medical personnel, etc.) acceptance of the UCCMS through a contractual agreement which may include oversight by the NIM. (4.3)
46. A new provision in the Contribution Agreement may be required to the following effect: Amending Annex A paragraph 5, to add 5.1.4 The Recipient voluntarily accepts the NIM's oversight of maltreatment under the UCCMS.

### Recommendations for the NIM Pilot Phase-In

47. A gradual development of the NIM through a Pilot is recommended in order to: (4.3)
- (i) manage capacity as the system develops and grows;
  - (ii) allow for testing and evaluation of the system; and

- (iii) allow NSOs and their affiliates to first align policies before full operation of the NIM.
- a. *Justification for a Pilot phase: ADR Sport RED was piloted over a 4-year period. The creation, development, and scaling of the NIM is significantly more complex than the pilot of an adjudicative body. Sport Integrity Australia is proceeding by means of a two-year staged implementation plan (7.3.1). The US Centre for Safe Sport did not proceed by means of a pilot and at first, were crippled by the unanticipated volume of complaints. As a result, participants lost considerable trust in the system. (7.1)*
48. It is recommended that the NIM be developed in three phases, starting in 2021 with the creation of the core of the NIM and expectation that the NIM be fully launched, nationally, by 2024. Successful implementation may expedite an acceleration of these phases. (4.2)
49. An application and review process to be initiated by the NIM for FFSOs and PTSOs wishing to gain access to the Pilot. Those selected should include FFSOs of different sizes, complexity, and features that will allow the NIM Pilot to evaluate its ongoing development. (4.2)
50. All of the NIM’s described features to be mandatory requirements for all FFSOs participating throughout the Pilot period. (4.2)
51. The NIM will be available to all remaining FFSOs who wish to voluntarily adopt the NIM by 2024 when it is expected to be fully operational. (4.2)

## Recommendations for the Evolving NIM

### *Start-up Phase*

52. During the start-up phase, staffing should be modest and limited to the hiring of the following full-time staff: Chief Legal Officer, Director of Education and Research, Director of Investigation, and Business Manager. Technological requirements including website development, and case management tools will be outsourced. (4.3)
53. The NIM will establish outsourced providers in accordance with the suggestions in this Report. (4.3)

54. In the start-up phase it is recommended that existing educational training requirements, provided through the Coaching Association of Canada (“CAC”), Respect Group, or other equivalent national providers continue until such time as the NIM’s oversight of education and training becomes operational. (4.3)
55. The NIM to establish a communication plan as early as possible to communicate to the Canadian public and sport community the values of the UCCMS dealing with maltreatment. This will require Sport Canada, the SIRC, and possibly MGSS, to work closely with the COP. (4.2)

### *Pilot Year 1 (2022)*

56. It is recommended in Pilot Year 1 there be 12 NSOs selected together with two Provincial Sport Governing Bodies (“PSGBs”): Sport Manitoba and SASK Sport (willing participants). See the IRT’s suggestions at 4.3.
57. The core staff will be augmented by 14 full-time staff to launch Pilot Year 1. The staff will need to include appointments of two NSSOs, a Director of Communications, Senior Investigator, two Preliminary Assessment Officers, Director of Compliance and System Excellence, Director of Complainant and User Support, Complainant Defence Counsel as well as additional full time or contract investigators and intake officer(s) as required. (4.3)
58. To be operational in this phase will require outsourced services. See the discussions at 4.3.

### *Pilot Year 2 (2023)*

59. An additional 20 NSOs to be selected to augment the inaugural complement together with selecting MSOs and COPSIN members. (4.4)
60. The inaugural group of participants will remit, for the first time, a user fee on behalf of their registered participants. The group selected for the second year will pay their first-year user fees in 2024. (4.4)
61. In Pilot Year 2, the NIM will provide its first annual report to be filed as recommended above. Furthermore, an independent review of the Pilot is to be conducted in this second year to be delivered to Sport Canada and tabled in the House of Commons. (4.4)

## *Fully Operational (2024)*

62. Remaining organisations wishing to join the NIM may do so in this first fully operational year. This will be the first year where all participants will be required to remit an annual user fee. (4.6)

## Recommendations on the Activation and Resolution Process

### *Activation of the NIM*

63. From the outset, the NIM is to develop an intake process for both disclosure and formal reporting procedures. (3.3.1 and 3.3.2)
64. The available intake process should include access via telephone, text messaging, web portal, webchat, and email. Other accessible formats to be made available for those who are unable to use the foregoing formats. There will be no 24/7 phone line available for intake. (3.3.1, 3.3.2 and 9.2)

### *Disclosure Process*

65. Disclosure should follow a process similar to that of the University of Toronto's Sexual Assault Policy. Guidelines would include: (3.3.2)
- a. Disclosure is simply sharing your experience of maltreatment. A disclosure does not launch any kind of formal process, and it does not have to include significant or specific detail.
  - b. The person can disclose to anyone – a friend, colleague. You can also disclose to the NIM.
  - c. When you disclose to the NIM, it will make available support and services, and can discuss whether counselling, access or referrals to medical services, and other accommodations may be appropriate. You do not have to make a report to access these services.
  - d. A disclosure does not lead to a report unless the person wants it to.
66. The NSSO will be responsible for taking or overseeing action in one of the following ways: (i) listening to the disclosure; (ii) referring the individual to support services or protection



agencies such as mental health, child protection, and/or law enforcement; and (iii) assisting the individual in activating the formal reporting mechanism. (3.3.2)

### *Formal Reporting Process*

67. The formal reporting process will be activated through the online web portal, except where issues of accessibility must be addressed. (3.3.3, 8.3 and 9.2)
  - a. *Recommendation is based on a similar process operated by the U.S. Centre for Safe Sport.*
68. The Preliminary Assessment Team will receive and review complaints. The review will include the determination that the complaint is within the UCCMS and the NIM will process the complaint. (3.3.3)
69. Upon confirmation of jurisdiction, the Preliminary Assessment Team will determine how the complaint should be appropriately resolved. (3.3.3)
70. The NIM to develop the threshold, scope and guidelines for the Preliminary Assessment Team. (3.3.3)
71. The NIM should investigate all conduct defined in the UCCMS that carries a presumptive sanction of permanent ineligibility. (3.3.3)
72. The Director of Investigation will review the determination of the Preliminary Assessment Team and inform the alleged perpetrator that a complaint was filed against him/her if required. (3.3.3)

### *Investigation Process*

73. Upon acceptance of a complaint for processing, the Director of Investigation will appoint an internal investigator. (3.3.4)
74. When the Preliminary Assessment Team directs a complaint to the Independent Third Party of an FFSO, they will be required to submit a final report to an appointed NIM investigator. The NIM appointed investigator to be made available to assist the Independent Third Party, if requested. (3.3.4)
75. A process for the NIM to reassume authority over complaints directed to external investigation to be developed. (3.3.4)

76. Where the NIM reassumes authority over a complaint it is recommended that an internal NIM investigator who did not perform the oversight role be appointed to reduce possible bias. (3.3.4)
77. The investigator to issue a draft report to the parties and request them to review and provide final comment. (3.3.4)
78. The investigator to offer the option of early resolution through alternative dispute resolution should the parties accept the facts as written. (3.3.4)
  - a. *Review Netherland's healthcare complaint's officer who offers early resolution at the onset of complaint and can also aid in the submission of a formal complaint. (C.1.6)*
79. The early resolution function will be part of the adjudication function provided by the outsourced service provider. Early resolution should not be utilised in instances of sexual maltreatment. (3.3.4)
80. The investigator to prepare a final report to determine the facts and whether the alleged conduct occurred. The report may include recommended sanctions. The report to be submitted to the COP who makes the final decision. (3.3.4)
81. The COP may issue a request for further investigation based on need to consider issues, findings of fact, or sanction. (3.3.4)
82. If the recommended sanction is life-time ineligibility, then the COP is to chair a three-person panel to determine the final sanction. (3.3.4)
  - a. *Review the extensive consultations within a panel necessary to review sanctions of termination of employment or demotion from EPAC recommendation in New South Wales. (C.2.2)*
83. On the occasion where an investigator finds the alleged sexual maltreatment did not occur, the COP should have the discretion to convene an external panel of sexual assault counsellors to review the investigator's report and determine if certain factors were considered appropriately (known as the Philadelphia Model). (3.3.4)

### *Sanction and Enforcement*

84. Upon the communication of a final decision and sanction, implementation of any sanction may require an FFSO to accept and on occasion act in tandem with the NIM to complete enforcement. (3.3.5)

## *Adjudication Process*

85. Anyone disagreeing with the decision of the NIM, for either procedural or substantive reasons, may apply for adjudication of the matter. (3.3.6)
86. The outsourced adjudication provider may require the development of procedural rules and establishing a Maltreatment Tribunal in order to provide adjudication services to the NIM. Some disputers may require a three-person arbitration panel in appropriate cases. (3.3.6)

## Recommendations on Education and Prevention

87. The NIM to oversee the national development of resources and policies focused on prevention and education. It will also endeavour to ensure foundational change in the culture of sport so that it is safe for all participants. (3.2)
88. The Director of Education to direct the content and creation of educational programs. (3.7.7)
89. Prevention and education will require targeted approaches for different stakeholders (e.g. coaches, other activity leaders, board members, athletes, parents). The Education Think Tank and Director of Education to determine the appropriate outsourced education service providers. (3.6.6)

## Recommendations on Funding the NIM

90. Sport Canada to provide seed funding from 2021 through to the launch of the NIM in 2024. The NIM however must be financially sustainable upon being fully operational in 2024 and must not rely exclusively on funding from Sport Canada. (4.2 and 3.10.2)

91. Participation in the NIM will carry with it the requirement to pay a \$4.00 participant user fee to support the operations of the NIM. Collection of the fee would commence in Year 2 for a FFSO who participated in the previous year. This proposed funding is intended to limit the financial burden on FFSOs. (4.2)
  - a. *All models reviewed by the IRT were established by legislation and most funded by government. See consensus support for this recommendation through IRT's Leadership Group feedback (10.2.6)*
92. Upon full operation in 2024, or earlier, user fees will be a mandatory for all participants; the federal government cannot and will not be the only contributor to the cost of the operation of the NIM. (4.2)
93. Should provincial or territorial governments decide to join the NIM, the IRT recommends that the Federal-Provincial-Territorial Ministers responsible for Sport, Physical Activity and Recreation consult and collaborate with one another on how the provinces and territories can share in a portion of the funding. (3.10.1)
94. A portion of the user fee may be allocated to FFSOs to support their ongoing maltreatment efforts, such as the Independent Third Party. The FFSOs will be required to gather and remit this fee on an annual basis to the NIM. (3.10)
95. A comprehensive *pro forma* financial model to be developed. This should be informed by participation statistics provided by FFSOs. (3.10)
96. A public foundation, eligible to issue tax receipts, requires examination to determine if it could be a source of funding. Charitable donations and sponsorship as sources of funding should be explored. (3.10.2)
97. Outsource services provided through NIM can be subject to user fees. (3.10.2)
  - a. *Review Netherland's healthcare model in which administrative court fees are paid by patients and handling fees are paid by healthcare providers. (C.1.6)*
98. Other departments of the federal government, aside from Sport Canada, ought to be explored as sources of funding. (3.10.2)

99. In order to be a proactive participant in changing the culture of maltreatment in sport in Canada, all FFSOs are encouraged to voluntarily participate in the NIM. (3.9)
100. FFSOs joining the NIM have an obligation to inform affiliated individuals that the NIM is available to them for disclosure or reports of maltreatment as defined in the UCCMS.
101. The current requirement for FFSOs to have an Independent Third Party to receive and manage reports of harassment and abuse as outlined in the Contribution Agreement should remain in place for those FFSOs that have joined the NIM. (3.9)
  - a. *According to Sport Canada's Integration of UCCMS into Organisational Policies and Procedures Reference Tool document, the requirement of an Independent Third Party will not change with the integration of the UCCMS and the identification of the Independent Body.*



# Chapter 2

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## IMPLEMENTATION OF THE UNIVERSAL CODE OF CONDUCT TO PREVENT AND ADDRESS MALTREATMENT IN SPORT (“UCCMS”)

### 2.1 Introduction

The IRT has identified certain challenges that need to be addressed before a pan-Canadian system of preventing and addressing maltreatment in sport can be implemented. These challenges relate to the amendments of the UCCMS based on and informed by the work of the IRT from MGSS. These amendments are required to tie together the NIM as recommended herein with the UCCMS in order to ensure effective jurisdiction over participants covered by the UCCMS; and to ensure the acceptance of the proposed model as the authority at the centre of the system to administer the UCCMS. The IRT addresses complex jurisdictional issues at the Federal-Provincial-Territorial level and within the amateur sport continuum (Federally Funded Sport Organisations (“FFSOs”)/PTSOs/Clubs) to inform our recommended structure of the NIM.

### 2.2 Acceptance of UCCMS Amendments

At present, the UCCMS comprehensively defines the scope of maltreatment and the specifics of conduct that amount to maltreatment. It also prescribes a range of potential sanctions and considerations to be assessed when determining the appropriate sanction. The IRT notes that the

development of the UCCMS was led by the CCES and although it initially included some of the gaps identified by the IRT, its current direction was informed by Sport Canada. As a result, many sections of the initial Universal Code as drafted by the CCES, were removed, leaving areas that the present version does not address, for example, procedural and jurisdictional provisions. To illustrate, at present there is no detail on how jurisdiction over participants in the system, other than athletes, will be acquired.

The IRT was not retained to review the initial version of the UCCMS, nor to amend or draft the procedures pertaining to the NIM. However, the IRT strongly recommends that a review and amendment of the of the Universal Code be undertaken immediately so as to be in final form by 31 March 2021. In so doing the IRT recommends these key areas for review:

- (i) Addition of a definition for each of the individuals described in the Sport Canada Contribution Agreement, beyond athletes, to whom jurisdiction will apply;
- (ii) Scope and purpose of the NIM;
- (iii) Procedures of how to activate the Mechanism;
- (iv) Assessment of the complaints;
- (v) Investigation procedures;
- (vi) Specific obligations of complainants, respondents and third parties, including duties to cooperate with the process, possible duty to attend investigations, duties to produce documents and evidence, etc.;
- (vii) Evaluation and determination of defined sanctions;
- (viii) Adjudicative procedures including final and binding arbitration;
- (ix) Assistance of the sport in accepting the sanction and assisting in its implementation;
- (x) Education on the existence and use of the NIM and the UCCMS.

The recommendations in this Report will assist the drafters in developing and amending the critical provisions of the UCCMS. The amended Universal Code will require FFSOs to update their internal rules and procedures, consistent with their obligations in the Contribution Agreement with Sport Canada.

The Universal Code needs to be amended to include the procedural steps of the NIM. This would also mean that the FFSO will agree to assist in the implementation of the sanctions recommended by the NIM. Those who do not voluntarily accept to use the NIM will have to provide their own procedural process for violations of the Universal Code. These revisions and amendments will have implications for affiliated organisations of FFSOs, including PTSOs and local Clubs.

In fact, many FFSOs who were surveyed are already contemplating issues related to jurisdiction of the UCCMS at the PTSO level. As part of the process of integrating the rules of the UCCMS into their policies, the FFSOs will be agreeing that, in respect of all forms of maltreatment covered by the Universal Code, the FFSOs internal disciplinary procedures will not be applicable and the Universal Code and its procedures will apply.

As explained in Chapter 3, the NIM will have exclusive authority in response to some forms of maltreatment and discretionary authority over other forms of maltreatment. These other forms of maltreatment may be referred to an FFSO's Independent Third Party harassment and abuse officer ("ITP"), as defined in the Sport Canada Contribution Agreement, for resolution. Additionally, the FFSOs will be performing the final element of a disciplinary procedure jointly with the NIM, namely the enforcement of sanctions through the Response and Resolution Process ("RRP") of the NIM.

Adoption of the UCCMS into the FFSOs' policies and procedures will act as the primary means of promulgating the Canadian sport rules in respect of maltreatment in sport. The Universal Code must also address concerns related to scaling to provincial, territorial and local contexts and the relationship between FFSOs and their PTSO counterparts.



## 2.3 Scope and Application of the National Independent Mechanism

The UCCMS will not and cannot constitutionally be federally legislated. It must be implemented by contract. Each FFSO therefore must agree to and voluntarily accept and incorporate the Universal Code as part of its rules.

The subject matter of maltreatment in sport can be considered to fall within the legislative authority of the provinces and territories. However, the federal government can fund initiatives that will encourage the sport community to adopt and apply the Universal Code.

Sport Canada has attached conditions specifically related to the functions of the UCCMS in FFSO Contribution Agreements. One such condition is that FFSOs must adopt and integrate the UCCMS into their organisational policies and procedures by 31 March 2021, per section 5.1.3 of Annex A of the Contribution Agreement. FFSOs can voluntarily accept the funding from Sport Canada, or they can refuse it.

Unlike the Canadian Anti-Doping Program (“CADP”), Adoption Agreements between the NIM and the FFSOs will not be necessary.<sup>7</sup> The amendment of the procedures to implement the UCCMS by the NIM can be voluntarily agreed upon. The integration of the UCCMS within the FFSOs’ internal codes, policies, and procedures can include the use and application of the NIM or the sport may opt out but must still comply with the non-procedural parts of the UCCMS. Those that do not agree will have to provide their own procedures and process for the application of the UCCMS in accordance with the standards set out by Sport Canada.

The means by which the FFSOs will ensure their participants’ compliance with the Universal Code and the NIM’s jurisdiction over them is through contractual arrangements with their members. It is noted that there are circumstances where FFSOs do not have contractual arrangements with their members and therefore, those individuals would not be subject to or have access to the NIM.

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<sup>7</sup> The CADP has adoption agreements with all NSOs because the CCES is exercising the individual NSO’s obligations under the WADA Code. It does so because the authority imposed by the WADA Code on the NSO is the sport’s International Federation (“IF”). Therefore, CCES does not obtain its authority via the Sport Canada Contribution Agreement, but through contractual agreements with the NSOs, who outsource their results management obligations imposed by the IF to CCES in respect of sample collection, testing and prosecution of cases.

Annex A of Sport Canada’s FFSOs Contribution Agreements requires that the Universal Code apply to all “individuals affiliated” with an FFSO. Therefore, the most direct way to achieve the siloed effect where all participants fall under the jurisdiction of the NIM, is through express provisions of mandatory compliance with the Universal Code through the FFSOs’ contractual obligations with national team coaches, athlete agreements, volunteer agreements, officials agreements, employee agreements, medical personnel agreements, and all other referenced individuals as described in Annex A, section 5.1.

Lastly, in contemplation of eventual scaling of the Universal Code to provinces and territories, the IRT notes that provinces and territories are in alignment with the general principles of maltreatment free sport.<sup>8</sup> Moreover, the IRT’s research indicates that many PTSOs and NSOs support alignment with a national system as the most effective way to address and prevent maltreatment in sport. Some provinces have expressed interest in aligning with the NIM immediately upon its creation. This alignment would be achieved through contractual arrangements made between the NIM and the province, where the provinces would consent to the jurisdiction of the NIM to resolve their PSO and local level maltreatment disputes.

Where provinces have created and wish to maintain their own reporting and resolution mechanism, a provision must be included in the contractual relationship with the NIM that provincial level individuals would be prohibited from “forum or venue shopping”. If the NIM is activated, the individual would not be permitted to use provincial ADR. Similarly, if an individual at the provincial level chooses to use the provincial dispute resolution mechanism, the individual would not be permitted to access the NIM. These are important considerations that would allow provinces the flexibility and autonomy to choose how they may wish to align with a national system.

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<sup>8</sup> Canadian Intergovernmental Conference Secretariat, “Red Deer Declaration” (February 2019) online: <<https://scics.ca/en/product-produit/red-deer-declaration-for-the-prevention-of-harassment-abuse-and-discrimination-in-sport/>> [last accessed 5 September 2020].

## 2.4 Jurisdictional and NSO Structural Considerations

### 2.4.1 Sport Canada Contribution Agreement

Sport Canada has provided financial assistance in the development of the UCCMS, which has been developed by and for FFSOs. In contemplation of what is considered a FFSO, the IRT examined the template Contribution Agreement. According to the Contribution Agreement, a recipient of federal funds is defined as a not-for profit organisation which qualifies for support under the Sport Support Program. Annex A to the Contribution Agreement further defines the recipient of the program as a:

*“[N]ational sport organisation that, in conjunction with its provincial members, provides sport-related programs and services for mainstream athletes and/or athletes with a disability, if applicable, for [the specific sport] to advance sport development in Canada”.  
(Annex A, paragraph 1, Contribution Agreement)*

Within this Annex, there are specific conditions related to harassment and abuse that a federally funded organisation must adhere to in order to receive funds related to the programming. This is described below:

*“For the purposes of this Agreement, “individuals affiliated with the organisation” includes an athlete, a coach, an official, an athlete support personnel, an employee, a contractual worker, an administrator or a volunteer acting on behalf of, or representing the recipient in any capacity.” (Annex A, Section 5, Contribution Agreement)*

There is ambiguity as to Sport Canada’s definition of what constitutes an individual “affiliated with the organisation”. For example, it is clear to most that a national team athlete is affiliated with an NSO. However, there is ambiguity regarding how a recreational athlete who pays a mandatory flow through registration fee from a PTSO to an NSO is treated. Many would assume that such an athlete is affiliated with the NSO through this payment and other benefits that the individual may receive as a result. However, there are inconsistencies in this interpretation that are exacerbated, in part, by other documents that the IRT reviewed including Sport Canada’s guidance documents: “Minimum Standards for Mandatory Training to Prevent and Address Harassment and Abuse” (July

2020) (“Mandatory Training Standard”) and *“Integration of the UCCMS into Organisational Policies and Procedures”*.

In the Mandatory Training Standard, Sport Canada narrows the definition of what constitutes an affiliated athlete to *“National Team Program Athletes”* and *“Junior National Team Athletes.”* Another example in this document includes defining coaches as *“Paid or Unpaid” “Individuals with direct contact with athletes.”* It is unclear if this reference is strictly to national team coaches, or coaches more broadly within the continuum of a sport from grassroots to elite competition. Such variations of description have created confusion related to the implementation of the UCCMS and raise issues with respect to the scope of its application.

Furthermore, there are differences in governance structures between PTSOs and their affiliated NSOs which may clash with Sport Canada’s definitions of who is, and/or is not, an individual affiliated with an FFSO. For example, Hockey Canada recommends all coaches at the local and PTSO level complete Respect in Sport training, and recommends parents complete similar training, although this may not be required by Sport Canada. The IRT recommends that the definition of “individual affiliated” with an FFSO be standardised according to the definition in the Contribution Agreement to apply across the sport sector.

The specific conditions related to the Program in the area of harassment and abuse are defined in the Contribution Agreement as follows:

*5.1.1 The Recipient shall provide the individuals affiliated with the organisation with access to an independent third party to address harassment and abuse allegations.*

*5.1.2 The Recipient shall ensure that the individuals affiliated with the organisation complete appropriate mandatory training on preventing and addressing harassment and abuse.*

*5.1.3 The Recipient shall, by March 31, 2021, adopt and integrate the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) into their organisational policies and procedures.*

In addition to the Contribution Agreement, Sport Canada’s guidelines on the UCCMS integration outline that federally funded organisations (i) *“can determine how to best undertake the integration process for their own purposes”*; and (ii) since Sport Canada *“does not have the*

*mandate nor the authority to require that NSOs mandate the adoption of the UCCMS by their PTSOs members”*; (iii) nor is the UCCMS meant to replace what is currently existing at the PTSO level. This has resulted in a disordered and incongruous reality of the FFSO structural and governance landscape as discussed in the following section.

As described below, FFSOs have taken varying approaches to UCCMS integration which, as a consequence, may be inconsistent with the narrowly envisioned structure of a NIM, applying only to national level participants as characterised by the RFP. Sport Canada’s vision for the NIM does not account for how the FFSOs have structured their governance policies to align, or not, with that of its affiliated individuals and members, including PTSOs and Clubs, or potentially with provincial legislation.

#### 2.4.2 NSO Structures and Participant Analysis

All FFSOs are required to comply with the terms of their Contribution Agreement. There is a lack of uniformity across FFSOs as it concerns their jurisdiction in respect of their affiliated organisations in attempting to comply with terms related to the UCCMS. The means by which “individuals affiliated with the organisation” are defined in policy and practise differs markedly across FFSOs. There are complex differences in governance structures and authority over affiliated individuals as it relates to compliance with the UCCMS.

The IRT Survey illustrates some of the differences in governance structures of FFSOs as it concerns their application of maltreatment policies. Approximately 43% of NSOs do not have jurisdiction beyond the national level. There is a contradiction between the Contribution Agreement and what Sport Canada requires FFSOs to do. The Sport Canada Contribution Agreement has specific provisions (5.1.1 Access to Independent Third Party; 5.1.2 Mandatory training; 5.1.3 Adoption of UCCMS). Those provisions apply to all individuals affiliated with the organisation described in the document, which could include provincially based individuals. The problem is that many NSOs do not have the authority to mandate those requirements to their PTSO members. To this point, one NSO had the following comment:

43% of NSOs do not have jurisdiction beyond the national level

– IRT Survey

*“Our PTSOs do not want to report to us. Clubs are independent organisations and are members of the PTSOs and not the national body. We are being told we have accountability but as an NSO have zero authority to implement beyond our own organisation.”*

Conversely, 57% of the NSOs surveyed by the IRT indicated more alignment with the grassroots participants within branches and clubs as it concerns maltreatment policies. Some of these NSOs have developed contractual agreements with their affiliated organisations that stipulate compliance with NSO policies concerning maltreatment (for example, reporting, education, and dispute resolution). Therefore, these NSOs are positioned to have the authority to mandate compliance as it concerns implementation of the UCCMS. An example in support of NSO/PTSO alignment, as it concerns jurisdiction of maltreatment, is provided by the following comment:

*“Athletes don't differentiate 'jurisdictions' in sport. They compete in sport and they assume already the NSO/PSO's are working together (or should be). If they've been maltreated, they are likely to want to go 'to the top'. The sport is the sport--if maltreatment occurs at any level in a sport, it's going to affect every province and*

*national organisation because people don't see 'borders'. They just see the sport. And, as the governing body for the sport in Canada, we should be expected to have more formal ties to what happens provincially.”*

Table 1-A illustrates the spectrum of these different governance structures where some NSOs enjoy greater alignment and authority with their PTSOs and Clubs.

Table 1-A: Alignment of NSOs/PTSOs re UCCMS

This table demonstrates the alignment of internal processes between NSOs and PTSOs as it concerns maltreatment. This table provides examples of different spectrums of alignment between NSOs and PTSOs from full alignment to very limited/no alignment.

Safe Sport Integration Levels Legend

Indicates full alignment of noted feature	
Indicates partial alignment/shared feature	
Indicates no alignment/separate features	

	Fully Aligned Model	Partially Aligned Model	Partially Aligned Model	Low Alignment Model	Low Alignment Model
	Canoe Kayak Canada	Skate Canada	Gymnastics Canada	Athletics Canada	Curling Canada
1 UCCMS	Both the NSO and PTSO have UCCMS integration in their internal policies	Both the NSO and PTSO have <i>partial</i> UCCMS integration in their internal policies, but more detail is needed at one or both levels	Both the NSO and PTSO have <i>part</i> UCCMS integration in their internal policies, but more detail is needed at one or both levels	NSO has UCCMS integration in their internal policies Some PTSOs <i>do not</i> have UCCMS integration in their internal policies	NSO has UCCMS integration in their internal policies Some PTSOs <i>do not</i> have UCCMS integration in their internal policies
2 Complaints	NSO receives all complaints and directs to appropriate level	NSO receives all complaints and directs to appropriate level	NSO and PTSOs receive complaints, but can be re-directed to more appropriate level	NSO and PTSOs receive complaints, but can be re-directed to more appropriate level	NSO and PTSOs receive complaints, but can be re-directed to more appropriate level
3 Appeals	Clubs may appeal to Provincial ADR Body, PTSOs may appeal to National ADR Body	Clubs may appeal to Provincial ADR Body, PTSOs <i>may not</i> appeal to National ADR Body	Clubs may appeal to Provincial ADR Body, PTSOs may not appeal to National ADR Body	Clubs <i>may not</i> appeal to Provincial ADR Body, PTSOs <i>may not appeal</i> to National ADR Body	Clubs <i>may not</i> appeal to Provincial ADR Body, PTSOs <i>may not appeal</i> to National ADR Body
4 Education	NSO and PTSO have the same training recommendations	NSO and PTSO have some overlap in training recommendations	NSO and PTSO have the same training recommendations	NSO and PTSO training recommendations are separate	NSO and PTSO training recommendations are separate



Table 1-B: Rating of NSO/PTSO Features re Alignment with UCCMS

❶ UCCMS: Do the internal maltreatment policies or codes of conduct for the NSO <u>and</u> the PTSO integrate the UCCMS?		❷ Complaints: Are complaints centralised at the NSO level and then directed to the appropriate level of organisation?		❸ Appeals: Can lower level organisations appeal decisions to the next level of organisation in their sport?		❹ Education and Training: Is there an education or training recommendations for all members of the sport?	
Both the NSO and PTSO have UCCMS integration in their internal policies		NSO receives all complaints and directs to appropriate level		Clubs may appeal to Provincial ADR Body, PTSOs may appeal to National ADR Body		NSO and PTSO have the same training recommendations	
Both the NSO and PTSO have <i>partial</i> UCCMS integration in their internal policies, but more detail is needed at one or both levels		NSO and PTSOs receive complaints, but can be re-directed to more appropriate level		Clubs may appeal to Provincial ADR Body, PTSOs <i>may not</i> appeal to National ADR Body		NSO and PTSO have some overlap in training recommendations	
NSO has UCCMS integration in their internal policies Some PTSOs <i>do not</i> have UCCMS integration in their internal policies		NSO and PTSOs receive complaints, little to no re-direction to more appropriate level		Clubs <i>may not</i> appeal to Provincial ADR Body, PTSOs <i>may not appeal</i> to National ADR Body		NSO and PTSO training recommendations are separate	

### Alignment Measures

NSOs were rated on alignment on the basis of 4 features: UCCMS Code, Complaints, Appeals and Education and Training. The “UCCMS Code” reflects whether the internal maltreatment policies or codes of conduct for the NSO and the PTSO integrate the UCCMS. The “Complaints” row demonstrates whether complaints are centralised at the NSO level and/or directed to the appropriate level of organisation. “Appeals” is rated based on the ability of lower level organisations to appeal decisions to the next level of organisation in their sport. Finally, “Education and Training” shows whether there is an education or training requirement for all members of the sport. Table X-B illustrates how each feature above was rated.

Canoe Kayak Canada, for example, represents an NSO which is aligned with its affiliated organisations as it relates to maltreatment across the four features noted: 1) UCCMS; 2) Complaints; 3) Appeals; and 4) Education and Training. All reports within the sport of canoe kayak are sent to an Independent Safe Sport Officer. The Officer then re-directs the report to the

appropriate jurisdiction (NSO, PTSO, or Club) for administering the complaint. This centralised process reflects a high level of alignment in addressing maltreatment across the sport from the grassroots to elite level. It also reflects a centralised triaging system to assess and assign every level and type of complaint in a consistent manner.

Conversely, Curling Canada does not have the same scope of authority over its affiliated members and individuals. Curling Canada has appointed an independent third party specialised in harassment, abuse, and discrimination to be a resource to national level athletes who have complaints. The NSO has recently integrated the UCCMS into their policies and directs reports to the CEO of Curling Canada. The PTSOs are not aligned in their approaches. On their websites, Curling Alberta and Curling Manitoba do not provide an avenue for reporting nor do they provide a link to complaints process. The inconsistency in procedure and jurisdiction over complaints raises difficulties for the sport to manage anti-maltreatment efforts on a national basis or to ensure compliance with the Sport Canada Contribution Agreement.

Finally, many NSOs fall in the middle of this spectrum. For example, Gymnastics Canada is aligned with its affiliated organisations regarding education and has some degree of alignment on disciplinary decisions, but other processes are not fully aligned. For example, Gymnastics Canada requires its national level coaches, judges, and staff to complete Respect in Sport training. Some of their PTSOs also require this training (Manitoba and Nova Scotia) and others strongly encourage it (British Columbia). This structure reflects a high level of integration when it comes to tackling education and training, although it is not made mandatory under the Mandatory Training Standard.

Gymnastics Canada allows for appeals of disciplinary decisions at the national level but does not permit appeals to be heard from decisions originating at the PTSO or Club level (ex. PTSO disciplinary decisions can only be appealed to the PTSO which will appoint a single adjudicator whose decision is final and binding). The lack of progression for appeals between jurisdictions reflects a lower level of integration and the NSO's inability to evaluate decisions made at PTSO or Club levels.

The complaints process is described briefly in Table 1-A. This is a complex process, which differs considerably between NSOs. One difference between the NSOs is the receipt of complaints, both where a report may be made and who receives the initial notification. Canoe Kayak Canada and

Skate Canada, for example, have a centralised reporting system in which all athletes from the grassroots up can report to an Independent Third Party or Safe Sport Department. See Annex D NSO Complaint Structures. In comparison, for NSOs such as Swimming Canada and Curling Canada, complainants report to the CEO of the PTSO or NSO depending on their level of membership. These differences in reporting reflect the absence of harmony in decision-making across jurisdictions.

Another difference between the NSOs is the evaluation of a complaint and how it progresses through a disciplinary procedure onto dispute resolution. NSOs such as Canoe Kayak Canada and Curling Canada will evaluate the report based on the conduct (see Annex D). Disrespectful comments and minor incidents of violence would be considered “Minor” offenses. “Major” offenses would cover repeated minor incidents, hazing, sexual harassment, and convictions under the Criminal Code. The severity of the conduct guides the assessor in dealing with the complaint. Canoe Kayak Canada will send minor incidents to the local Club level and major incidents to the PTSO level. For Curling Canada, minor incidents will be handled by a discipline chair, whereas a case manager and discipline panel will address major incidents.

Not all NSOs evaluate the complaint based on the severity of the complaint. Skate Canada decides where to direct the complaint based on the significance of the matter. Significant matters are not only of personal importance to the person(s) initiating the complaint, but also sufficiently serious to be of general importance to skating and/or the overall ability of Skate Canada to discharge its primary objective. If a complaint is deemed significant in this way, the NSO will deal with the complaint, whereas other complaints will be sent to the local Club or PTSO for resolution.

Many NSOs have similar approaches to adjudication. Most NSOs follow a similar structure in first attempting dispute resolution through mediation or negotiation, followed by the assignment of a disciplinary chair or panel to evaluate the complaint and, where appropriate, the imposition of corresponding sanctions. The sports vary with regard to the number of panel members.

### 2.4.3 NSO and PTSO Alignment

More than 84% of survey respondents favour a national independent system to administer the UCCMS

-IRT Survey

Some NSOs indicated that they are in the process of better aligning policies with their affiliated organisations. This suggests that there is an appetite for alignment between NSOs, PTSOs, and Clubs within some sports. This is further supported by the IRT Survey. More than 84% of respondents support, in principle, the development of a national system for the administration of the UCCMS that includes the participation of PTSOs in addition to FFSOs. Only one respondent disagreed. 12% of the respondents were unsure.

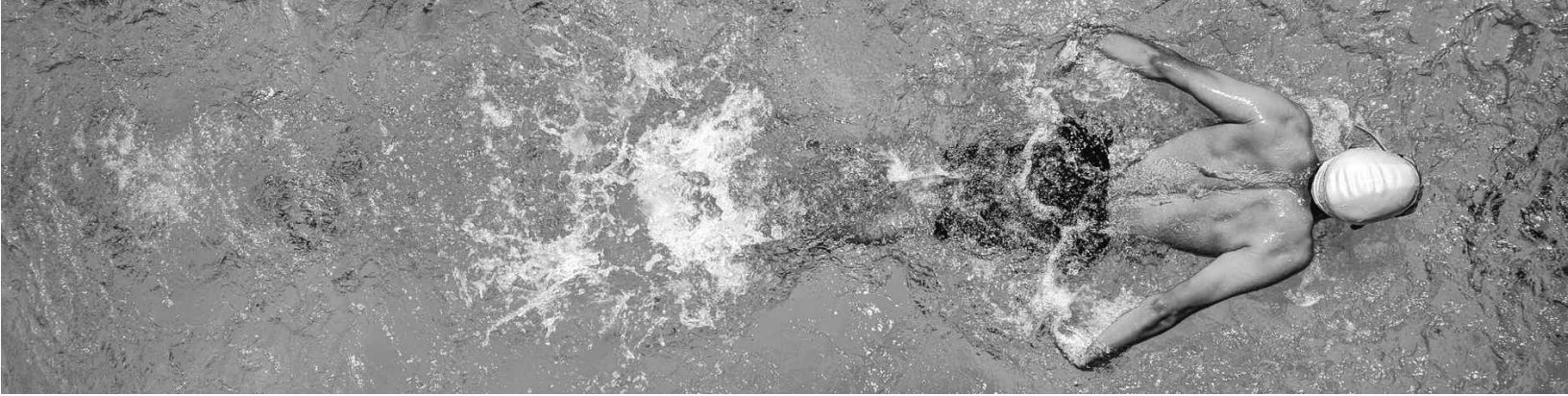
The IRT Survey results illustrate the strong support for alignment. This is encouraging because it suggests “organic buy-in” to the process rather than something that requires a legislated approach to application and compliance.

The differences in alignment between NSOs and PTSOs/Clubs suggest that there will be drastically different access for individuals, including athletes at the grassroots level, to the proposed NIM when implemented. This is an important factor to consider when building out the Mechanism.

As described in the previous examples, some NSOs already include affiliated individuals at the PTSO and Club levels who already have access to national processes concerning reporting and dispute resolution. Thus, by extension, these individuals would also have similar access to the proposed NIM. Conversely, individuals at the grassroots level who are not aligned with their NSO would not have similar access, until their respective policies are brought into alignment. The process by which NSOs will endeavour to align their governance structures with their affiliated PTSO members and Clubs must be evaluated on an individual basis by each NSO. The IRT does not offer any recommendation on how NSOs are to proceed in this regard as it is out of scope of its mandate.

The absence of alignment caused by differing NSO governance structures suggest a need for flexibility in how FFSOs are determined to be compliant with the NIM. A process of phasing in national participation with the NIM is therefore important for the following reasons: (i) to manage

capacity as the system develops and grows; (ii) to allow for testing and evaluation of the system; and (iii) to allow NSOs and their affiliates to first align policies before full operation of the NIM.



# Chapter 3

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## THE PROPOSED CANADIAN MODEL FOR ADDRESSING SPORT MALTREATMENT

### 3.1 Introduction

Canadian sports law is shaped by Canada's federal system of government. Section 92 of the *Constitution Act, 1867* assigns the provinces legislative authority over matters related to property and civil rights, which encompasses most aspects of sport. As discussed in the previous chapter, there is no legislative authority to compel adoption of the UCCMS; instead, federally funded sport organisations (“FFSOs”) could be required to comply with the Universal Code as a condition of their Contribution Agreement with Sport Canada. There is no similar agreement between PTSOs and local Clubs. However, the IRT’s consultation process suggests that there is strong support for access to a national independent process to resolve maltreatment issues that may arise at the local and PTSO level.

This Chapter contains the IRT’s recommendations for the NIM’s structure and responsibilities, a staffing model and outsourced services. The conclusions and details of these recommendations summarised throughout this Chapter have been drawn from various sources and analysis of different subject areas contained in subsequent Chapters and Annexes. Based on the foregoing analysis, the IRT has developed a model that will best serve the Canadian sports sector with its various challenges in administering the Universal Code. It is a flexible model that considers the peculiarities of the Canadian federal/provincial division of legislative power and the governance complexities of the amateur sport landscape.

Many stakeholders expressed opinions as to how the Universal Code should be administered and complied with. The key message repeated throughout the consultation, survey process, and literature review is that detachment from the NSOs is essential to generate the level of independence and confidence of the users to implement the core of the NIM. Therefore, this condition precedent of independence from the sport bodies is the starting point from which the remainder of this Chapter will discuss the NIM's core functions including: potential governance structures; processes for disclosure and reporting including assessment and threshold analysis reports; investigation protocols; identification and enforcement of sanctions; appeal processes; prevention and education.

In accordance with the Terms of Reference, the IRT has also recommended a diversified revenue funding model. In its analysis, the IRT has weighed the financial stability of the model against the accessibility of Sport Canada funds and certain shared responsibilities within the Canadian sport sector. The IRT's proposed funding model therefore considers that since all participants in the sport sector are responsible to change the culture of maltreatment in sport, they should also be responsible for sharing the funding thereof.

Lastly, the IRT is confident that the described features of the NIM will provide value-added services, support, and cost savings for those PTSOs and Clubs who may wish to participate in the pan-Canadian mechanism. Given that access to the NIM is voluntary for FFSOs, as it would be for any other organisation who joins the NIM, PTSOs and Clubs' access must ultimately be predicated on alignment with FFSOs and/or their respective participating provinces or territories. The IRT is encouraged by the fact that many NSOs already have some alignment with their affiliated PTSOs with respect to the governance of maltreatment; and others are in the process of consultation to achieve greater alignment. A strong majority of those surveyed expressed the view that a national system to prevent and address maltreatment in sport should include the participation of PTSOs as part of a fully aligned system. Therefore, the IRT has designed a national system that is scalable to provincial and local levels.

## 3.2 Core of the National Independent Mechanism

It is widely agreed that an independent mechanism should be national in scope, and that there be uniform application of the UCCMS across all FFSOs. At this stage, adoption of the Universal Code is underway but uniformity across the national landscape has not been achieved.

The mission of the NIM and its roles and functions should ultimately be determined by its governing body. The potential models of governance are discussed below. Notwithstanding the foregoing, the IRT recommends that the NIM mission be a simple one – to create a safe and welcoming environment for all participants in sport – free from harassment, abuse and all other forms of maltreatment. The NIM’s role should include ensuring that victims of maltreatment in Canadian sport have the proper support, comfort, and trust in the system. It should also be responsible for developing resources and policies surrounding prevention and education that will be foundational to change the culture of sport so that it is safe for all participants. Ultimately, the NIM should be a thought leader, expert, and trusted independent mechanism to prevent and address maltreatment in sport in Canada.

The IRT recommends that the core of the central mechanism focus on:

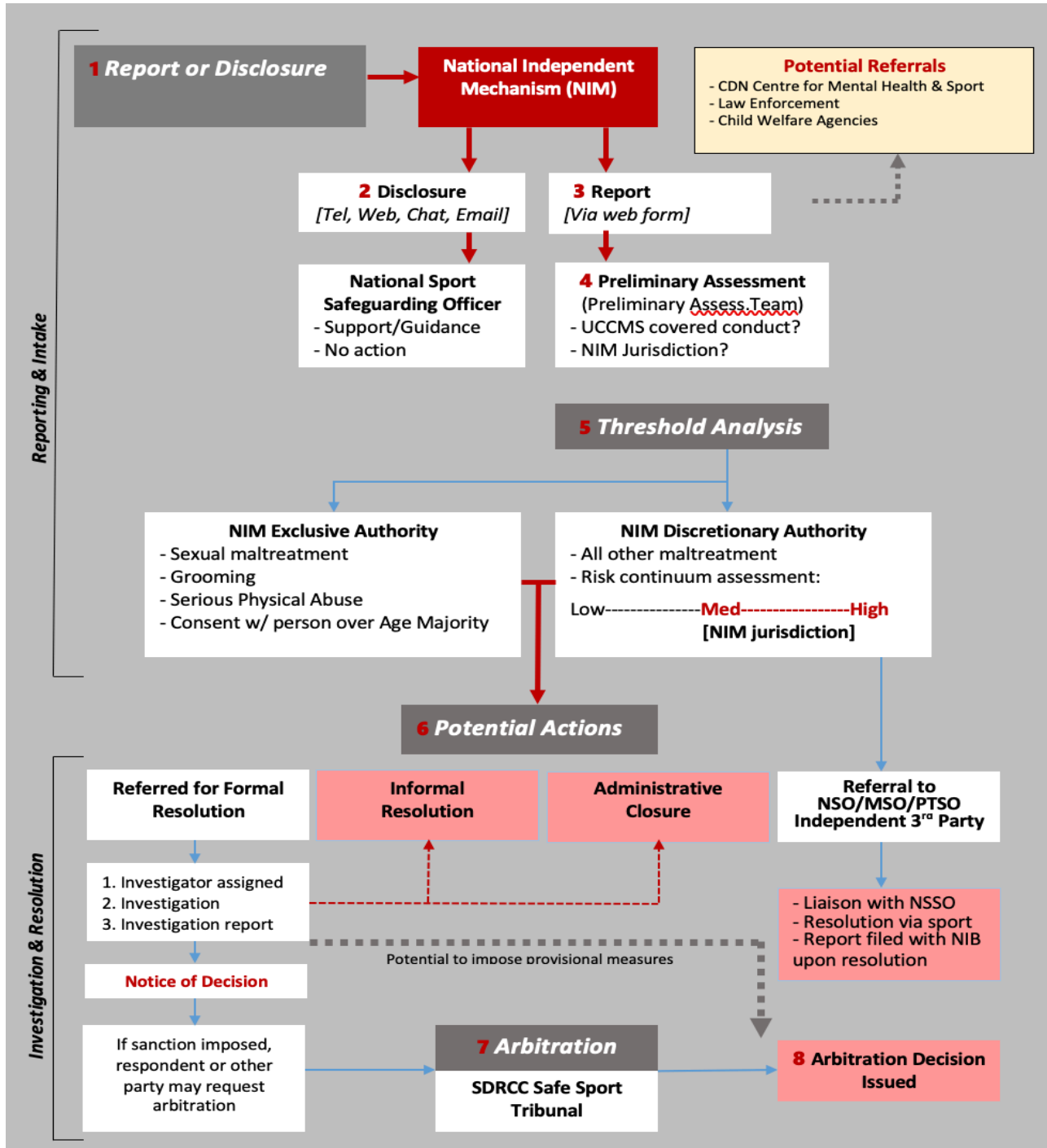
1. Providing confidential paths for disclosure and reporting of maltreatment.
2. Conducting investigations of allegations of maltreatment reported to the NIM by a covered participant.
3. Recommending appropriate dispositions of complaints including imposition of discipline when appropriate.
4. Providing legal representation to victims on any adjudication of the sanction. Developing a legal aid program for the use of respondents who are not FFSOs and becoming involved in an arbitration procedure.
5. Directing and researching prevention education for the sport sector and public.
6. Providing advice, guidance and support to FFSOs.
7. Ensuring a system of excellence through compliance and audit functions.



### 3.3 Operation of the Mechanism

This section describes the Activation and Resolution Process (“ARP”) of the NIM.

Figure 1: Action And Resolution Process



### 3.3.1 Activation of the Mechanism

Initial activation of the NIM can only be by or about a jurisdictionally covered party and this could happen in one of two ways – through a disclosure or a formal report. Disclosing or reporting are separate decisions that result in different levels of response or action by the NIM.

With respect to disclosure, based on results from the University of Toronto’s Sexual Assault Policy, a large percentage of sexual assault allegations are resolved using the disclosure process, in many cases avoiding the formal investigation process. The IRT recommends the NIM develop an intake process which provides for both disclosure and formal reporting procedures. This intake process does not require a 24/7 call centre. This recommendation is supported by the IRT’s research. This intake process should be an internally developed process of the NIM. For example, the statistics from the U.S. Center for Safe Sport model indicate that U.S. Centre receives over 80% of reports via an on-line web form. The IRT notes that the completion of the on-line form means that there are no administrative initiation costs for the preparation of a report. The remaining 20% of reports enter their mechanism either via email or telephone directly to their office during regular office hours. Reports are not made through a call centre.

This online process appears not to have affected users’ access to the system as the number of complaints entering their system continues to rise. Therefore, the IRT does not consider a 24/7 call centre to be an essential service as it relates to disclosure and reporting.

The IRT recommends that for accessibility reasons, the NIM maintain a phone line operational only during normal business hours for inquiries and disclosures, and not for formal reporting. Any inquiry or disclosure made via telephone, text messaging, web portal, webchat, or email would be directed to a National Sport Safeguarding Officer (“NSSO”) for a personal follow-up response. The ability to have direct contact with the NIM staff is supported through numerous interviews and experts.

### 3.3.2 Disclosure Process

Activating the mechanism through the disclosure process could occur by any of the communication methods recommended above by the IRT. The Kids Help Phone operation

provides supporting rationale for the IRT's recommendation to operate the disclosure process in this manner. Their data shows that 36% of professional counselling occurred via phone and live chat and 64% of volunteer crisis response occurred via text messaging. Given the widespread adoption of various communication modes to activate, the disclosure process becomes not only more accessible to users; but also, less intimidating than by communicating by telephone. Furthermore, the cost to develop and staff call centre functionality would be cost prohibitive for the NIM.

All disclosures would be directed to the NSSO of the NIM. The NSSO would first determine if the NIM has jurisdiction to hear the disclosure. The NIM only has jurisdiction over conduct that is defined in the Universal Code. If the complained about conduct falls outside of the Universal Code, the disclosure would not enter the system.

The IRT recommends that disclosure follow a process similar to that of the University of Toronto's Sexual Assault Policy. The guidelines for disclosure would include that:

- Disclosure is simply sharing your experience of maltreatment. A disclosure does not launch any kind of formal process, and it does not have to include significant or specific detail.
- The person can disclose to anyone –for example, a friend, or a colleague. You can also disclose to the NIM.
- When you disclose to the NIM, it will make available support and services, and can discuss whether counselling, access or referrals to medical services, and other accommodations may be appropriate. You do not have to make a report to access these services.
- A disclosure does not lead to a report unless the person wants it to.<sup>9</sup>

When an individual activates the disclosure process, the NSSO could take several actions which include: (i) listening to the disclosure; (ii) referring the individual to support services or protection

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<sup>9</sup> These guidelines are based off the University of Toronto Sexual Violence Prevention and Support Centre's guidelines indicated on their webpage, "Disclosure or Report", online: <<https://www.svpscentre.utoronto.ca/support/disclose-or-report/>> [last accessed 5 September 2020].

agencies such as mental health, child protection, and/or law enforcement; and (iii) assisting the individual in activating the formal reporting mechanism.

### 3.3.3 Formal Reporting Process

To initiate a formal process a report must be made. The IRT recommends that activating the mechanism through the formal report process should only occur through the online web portal. The web portal should be fully accessible to those who use screen readers or other communication devices like switches and voice input technology. The online web portal reporting form requests information on the complainant such as name, sport, characterisation of the maltreatment, date that it occurred, who the complainant alleges perpetrated the conduct and confirmation that the individual is making a formal complaint. This recommendation is based on a similar process operated by the U.S. Centre for Safe Sport. The reporting form would be generated and reviewed by the Preliminary Assessment Team. The functions of the Preliminary Assessment Team are only triggered upon receipt of a formal complaint.

Once the complaint is received, a preliminary assessment will be made to first determine whether the NIM has jurisdiction over the complaint. If the assessment determines that the NIM does not have jurisdiction, the complainant will be informed of such and the file will be closed.

Where jurisdiction is confirmed, the complaint proceeds to the next step of the assessment which requires the Preliminary Assessment Team to determine where the complaint should be appropriately resolved. There are two possible options: (i) the complaint is resolved internally through the Mechanism; or (ii) the complaint is directed to the ITP of the FFSO, with continuing oversight of the NIM. This is the threshold analysis.

Threshold scope and guidelines for the Preliminary Assessment Team should be developed by the future administration of the NIM. At the very least, however, the IRT recommends that conduct defined in the Universal Code that carries a presumptive sanction of permanent ineligibility should automatically meet the threshold to be resolved internally by the NIM,<sup>10</sup> while conduct that is assessed as low risk with informal resolution as the likely outcome, should be referred to resources

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<sup>10</sup> See UCCMS provision 3.3.1 (a) “Sexual Maltreatment Involving a Minor Complainant”.

outside of the NIM. This process of referring low risk conduct has received support from sport administrators, Subject Matter Experts in investigations and athletes. However, the findings and outcomes of the ITP would be required to be reported back to the NIM. The recommended process is informed by similar practises in the education and law enforcement sectors.

The Preliminary Assessment Team may be required to conduct a preliminary enquiry to have enough information upon which to base its assessment and determination. This may include speaking with the complainant and witnesses. Once the Preliminary Assessment Team determines whether the complaint will be resolved by the Mechanism, a report will be generated to the Director of Investigation, who may or may not overturn their decision. If the decision has been made that the complaint will be resolved by the Mechanism, the Director of Investigation informs the alleged perpetrator that a complaint was filed against him/her, that the alleged conduct will be investigated and where the complaint will be managed, either internally at the NIM or externally with the ITP.

### 3.3.4 The Investigation Process

The resulting effect of relieving the NIM from internally investigating all complaints that enter the mechanism is that there will be two investigation processes. If the complaint proceeds to investigation internally with the NIM, an internal investigator will be appointed to manage the case. If the complaint proceeds to investigation externally, managed by an ITP, a NIM investigator will be appointed in an oversight capacity. This will help to build trust and system excellence in how complaints are resolved.

The IRT recommends developing a method for the NIM to reassume authority over cases which are initially sent out of the Mechanism and managed by an ITP at the sport level. If the ITP in the course of their investigation determines the facts show that the alleged conduct is more serious than was originally assessed, or the investigation has become too complex to execute, the ITP can request that the matter be transferred to the NIM. The mode of assuming authority over the ITP investigation should be determined by the future administrators of the NIM. Where the NIM does accept the matter, however, the IRT recommends that an investigator who did not perform the oversight role be appointed to reduce possible bias.

In both investigations, internal and external to the NIM, the investigator performs a fact-finding role and credibility assessment of the complainant, alleged perpetrator, and witnesses, accomplished through interviews, inquiries, and intelligence and evidence gathering. At the end of the investigation, the investigator will issue a draft report to the parties and request them to review and provide final comment. If the parties accept the facts as written, the investigator will offer the option of early resolution through ADR. The IRT recommends that the NIM outsource this early resolution function to the SDRCC, which, under Version 3 of the SDRCC's draft rules for implementation on 1 January 2021, allows for the use of a SDRCC facilitator to resolve the dispute if a final decision has not been issued in a matter. This process is not recommended in instances of sexual maltreatment.

Should the parties disagree with the facts, and ADR is not accepted, the investigator will finalise the report with a determination of whether the alleged conduct occurred and include recommended sanctions if it did, and no action if it did not. The report is then provided to the COP who makes the final decision.

The COP's decision could include requesting that the investigation be reopened, requesting for additional issues to be considered, or accepting the findings of fact and issuing a sanction. In instances where the recommended sanction would result in lifetime ineligibility, the IRT recommends that the COP form a three-person panel chaired by the COP to make the determination. The IRT also recommends that in a narrow set of circumstances where the investigator finds that the alleged sexual maltreatment conduct did not occur, that the NIM look into adopting the Philadelphia Model of review, where an external panel of sexual assault counsellors review the investigator's report to determine if certain factors were or were not considered.

### 3.3.5 Sanction and Enforcement

Once the COP makes the final decision, the result is communicated to the parties and the sanction enforced. However, the full implementation of the sanction may require the FFSO to act in tandem with the NIM to complete enforcement. The FFSO may be required to take independent action, for example, terminating the employment relationship with the perpetrator. The remainder of

the sport sector will be equally responsible for acknowledging and applying the sanction, where required. Therefore, the enforcement of issued sanctions will be, for all intents and purposes, a team effort for it to be effective across the sport sector.

### 3.3.6 Adjudication Process

If the parties do not agree with the decision of the NIM, for either procedural or substantive reasons, they can apply for adjudication of the matter to an outsourced adjudication provider. The SDRCC could fulfill this role. The outsourced adjudication provider may require the development of procedural rules and the establishment of a Maltreatment Tribunal in order to provide adjudication services to the NIM. Some disputes may require a three-person arbitration panel in appropriate cases. The NIM would require that:

1. The full array of adjudicative services including dispute facilitation, mediation or arbitration will be made available by the outsourced adjudication provider to deal with challenges to decisions taken by the NIM.
2. If final and binding arbitration is chosen, it will go to an appropriately created Maltreatment Tribunal. The NIM would accept the rules of the adjudication provider, but no mandatory mediation because that process would have occurred earlier in the NIM's internal procedures.
3. Any sanction imposed would remain in place as a temporary measure until final adjudication is complete.<sup>11</sup>

Appeal of the adjudicated decision may be appealed to an appropriate Appeal Tribunal. The IRT recommends for a panel of three arbitrators to hear the appeal. Adjudication will be fee-for-service according to the adjudication service provider's rules.

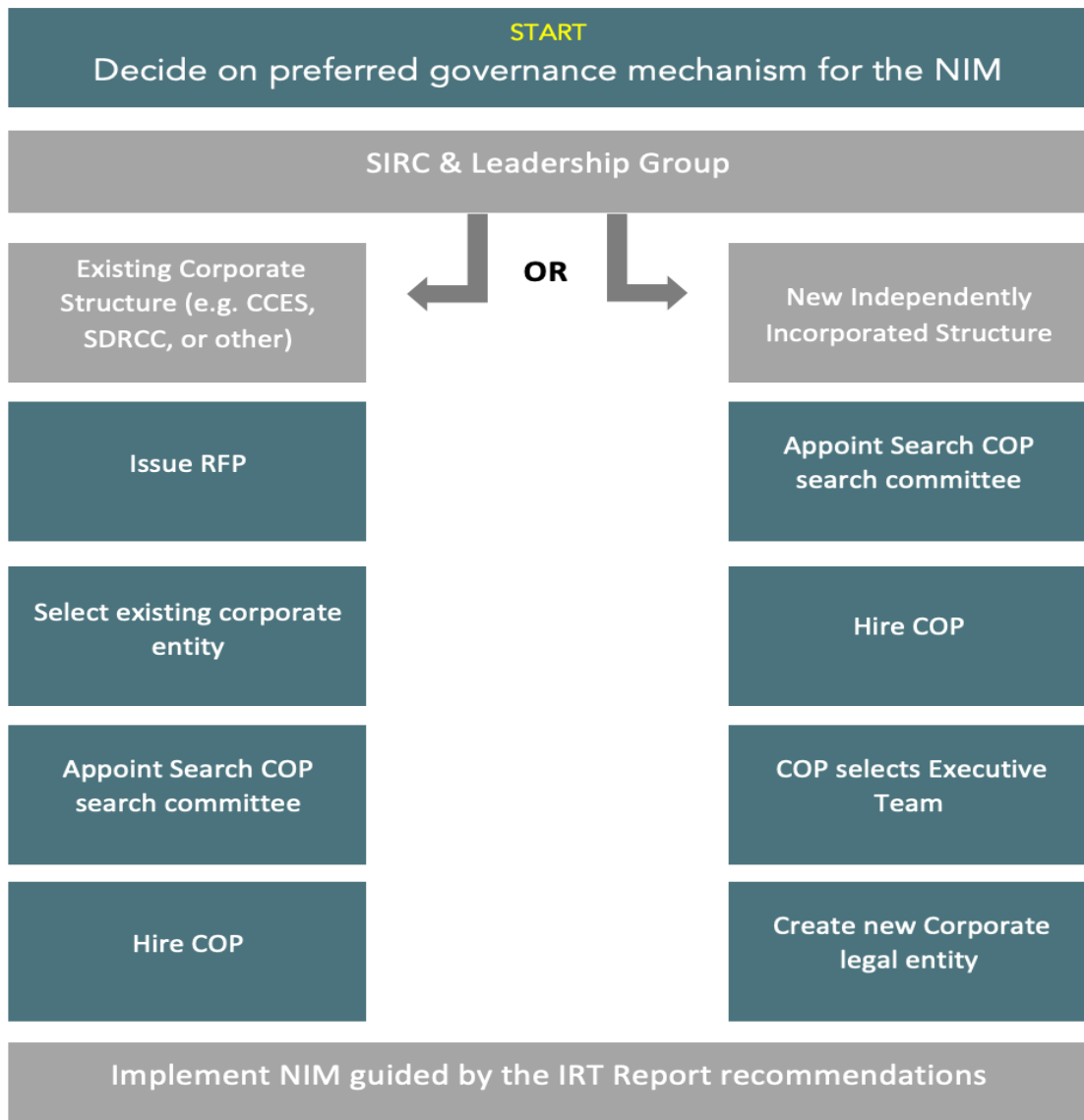
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<sup>11</sup> SDRCC rules allow for applications for stays of sanctions to be heard by the arbitration panel.

### 3.4 Governance Structure

The RFP required that the IRT “*identif(y) the most appropriate and effective mechanism(s) and approach to independently administer and enforce the UCCMS at the national level in Canada.*” Three potential governance oversight and regulatory control structures have been identified by the IRT. These are illustrated in Figure 2.

Figure 2: Steps to Create the Initial Governance Structure of the NIM





First, the Mechanism could reside within existing governance structures such as the CCES, SDRCC, or others. Both the CCES and SDRCC have already made proposals to Sport Canada to lead such efforts. The IRT notes that it was out of scope for it to undertake a thorough evaluation of the existing governance structures including reach, effectiveness and adoption of each organisation's relevant programs and services. However, this is a critical step that should be completed before either organisation be considered to house the NIM. The IRT has however, identified a number of advantages and disadvantages to be considered if either the CCES or the SDRCC wish to house the NIM within their existing governance structure.

### *Pros and Cons: Existing Corporate Structure*

#### **Pros:**

- Established governance
- May leverage existing national sport governance structures
- May leverage existing capacity within established organisations

#### **Cons:**

- Appearance of not being truly independent
- Existing governance not solely focused on maltreatment in sport
- May require resolution of existing governance conflicts to allow integration of the NIM (e.g. see discussion on SDRCC structures)

### **Pros and Cons: New Independent Structure**

#### **Pros:**

- Faster implementation of NIM
- Fully independent
- Single focus of the newly created entity is maltreatment in sport
- No existing governance conflicts that must be resolved

#### **Cons:**

- Initial work to create governance structure
- Perception of another separate national sport entity

Second, and perhaps the most obvious, is to create a completely new not-for-profit structure. Lastly, as an alternative to the above conventional approaches, consider whether all sports integrity functions should be integrated in a unified and centralised sports integrity NGO. While the IRT has primarily focused on recommending the function of the Mechanism itself, we will briefly examine the advantages and disadvantages of the identified governance structures.

## 1. Created within an existing governance structure

The institutions who might be able to provide this guidance are discussed below.

### *Sport Dispute Resolution Centre of Canada (“SDRCC”)*

The SDRCC operates under a statutory mandate. Its mission, as dictated in the *Physical Activity and Sport Act*, SC 2003, c.2 is to provide the sport community with a national service for the prevention and resolution of sport disputes as well as expertise and assistance regarding ADR. It was established by legislation to address the need to offer the Canadian sport community tools to prevent conflicts and, when they are inevitable, to resolve them.

The perceived advantages are therefore related to its statutory mandate and partial alignment in aspects of prevention and adjudication. The IRT Survey results also demonstrated that the sport sector perceived the SDRCC as having a high degree of independence. Furthermore, it has experience and familiarity in applying the CADP and therefore applying the UCCMS would result in resolution through the same methods: adjudication by facilitation, mediation or arbitration of the matter that has arisen within the provisions of the Universal Code. To do otherwise is to have a governance structure appointed by government rather than “*by the sport sector, for the sport sector.*”

The disadvantages of housing the Mechanism within the already existing governance structure of the SDRCC is that the Board is enshrined by legislation,<sup>12</sup> which at this time does not have specific expertise to lead the cultural shift required to prevent and address maltreatment in sport (see below for the characteristics of the Visionary Advisors group members required to advise the NIM). Furthermore, there is mandated athlete representation on the Board. Athlete

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<sup>12</sup> Section 14 (1) *Physical Activity and Sport Act* (SC 2003, c 2). “14. (1) The directors shall be appointed by the Minister to hold office during good behaviour for any term of not more than three years that will ensure, as far as possible, the expiry in any one year of the terms of office of not more than one half of the directors.

representation on this type of board has its own challenges that should be examined and evaluated separately. The SDRCC's Board is appointed by the Minister of Sport, who is tasked with appointing men and women for the promotion and development of sport across Canada with representation from the sport community. Thus, a legislative amendment would not only be required to amend the makeup of the Board, but also to amend its required purpose for full alignment with the mission of the NIM.

International best practises further dictate that investigation and adjudication functions be separate from all other functions. Therefore, should the SDRCC decide to submit an application to govern the NIM, it must demonstrate how it will create a firewall between the administration of the NIM and that of the existing structure of the SDRCC to ensure no conflicts of interest and bias occur and the governance structure is independent of government.

### *Canadian Center for Ethics in Sport ("CCES")*

The CCES is a national, not-for-profit organisation independent from sport organisations and government. It is working for and on behalf of athletes, players, coaches, parents, officials and administrators. It is Canada's National Anti-Doping Organisation ("NADO") and is responsible for implementing the CADP and offers Anti-Doping related services for partners and clients, such as international sport federations and major games. Its vision is advocating for sport that is fair, safe and open to everyone.

Although the CCES is best known to the Canadian sport community as the enforcer of the CADP, there is partial alignment with the recommended purpose of the NIM as described by the IRT in its review of current national service providers in Canada (Chapter 4.3). The CCES is currently engaged in assessing their strategic priorities as an organisation. It has currently paused a self-examination of what its optimal activities ought to be and is awaiting the results of this Report.

The NIM could be placed within the structure of the CCES, should it decide to continue to pursue a strategy of having responsibility for a broad array of integrity services including anti-doping, gambling, match-manipulation, and maltreatment in sport. This approach to governance of the NIM, along with others presented by the IRT, requires further evaluation by the reviewers of their proposal. However, should the CCES choose to submit an application to govern the NIM, it will be

absolutely necessary for it to demonstrate how it will create a firewall between the administration of the NIM and that of the existing structure of the CCES to ensure independence

## 2. Created in a new independent not-for-profit governing organisation

Perhaps the most obvious incarnation of a NIM would be to create a wholly new and independent governing structure. The advantages of this approach would be that it would have its own independent board, fit for purpose and made up of the experts and visionaries suggested by the IRT's research to promote the singular mission of providing a safe sport environment free from harassment and abuse. The IRT would recommend the composition of the Board of Directors should be no greater than five individuals fit for purpose with appropriate expertise.

This would be the most independent option and provides the Mechanism with a true fresh start, without the history or public image of other existing organisations as suggested by several individuals who were consulted. The disadvantage of course would be that it may simply become another patch on Canada's already existing patchwork sport system.

The concept of a wholly new independent mechanism received strong support from the consultation process if it is structured in a way that leverages existing capacity and expertise in the system including, for example, education, dispute resolution, and mental health support. Rather than create a "mega-structure", a lean central mechanism that builds on existing capacity appears to have consensus support. Therefore, the IRT recommends that the NIM design and develop its own oversight board for governance of the NIM, if creating a new independent governing structure is the chosen path. This would require the creation of a new corporate legal entity and appointment of an independent board of directors to whom the COP would be accountable.

In this scenario, the IRT recommends that the NIM ultimately be accountable to the citizens of Canada. In that respect, the NIM would be required to file an annual report with Sport Canada which would be tabled in the House of Commons. Given that this is an important moment to shift the societal norms and culture around sport, the IRT recommends that the House of Commons

determine the overall impact and effectiveness of the NIM on an ongoing basis. Only by being accountable to the society it is meant to serve; will real change be possible.

### 3. Creation of an integrity super NGO

There is a growing global trend for consolidation of all sports integrity functions from doping, to match fixing, to maltreatment and adjudication under one overarching organisation. In July 2020, Australia's Ministry of Sport declared the creation of such a new super unit, to be known as Sport Integrity Australia ("SIA"). This organisation would house all of Australia's integrity functions including all of the aforementioned functions and other integrity issues. For example, the Australian Sports Anti-Doping Authority has migrated into Australia's new integrity NGO.

The most recent declaration in the UK by UK Anti-Doping ("UKAD") suggests that the UK will be determining whether this is the proper structure to follow as well. Whether this is the proper approach for the Canadian sport sector is for the sector to decide. Complete alignment and consolidation of the entire sphere of integrity issues does offer some advantages: it more easily drives the cultural shift required to prevent and address these behaviours; from a user or participant's perspective it simplifies access; and it creates a singular national agenda, whose messaging can be unified. This would be a monumental undertaking that would require buy-in from the sector that has spent the past 60 years decentralising and providing innovative solutions to its participants. It also has the risk of becoming too bureaucratic and less nimble.

However, the most important reason for not going this route in Canada is that the very fractured Canadian sport landscape cannot easily accommodate such an overarching structure because of the distribution of the legislative powers of the provinces and the federal government. The only way such an overarching structure could be established would be through comprehensive operational federal/provincial co-operation, the likes of which has never been seen in Canada to date. It is this latter point which really forms the significant impediment to a national overarching institution following the models of other countries.

### 3.5 The Visionary Advisors

Regardless of what is decided upon by the sport community as the ideal governance structure of the NIM, the IRT recommends that one key feature of the NIM be accepted and adopted: the creation of a group of Visionary Advisors who will provide the thought leadership to push and innovate for the end of maltreatment in Canadian sport. These individuals should have proven experience to act quickly and nimbly and will come from varied and highly skilled backgrounds with a breadth of expertise. Persons with the following backgrounds should be included:

1. Human rights/investigative and legal litigation of those topics.
2. Psychologist/mental health/victim support, domestic violence and child abuse, educational psychology, and legal issues in education.
3. Child protection/trauma informed investigations/litigation experience ideally of the same subject areas.
4. Ethics/compliance/business leadership.
5. Educational curriculum design and delivery expertise.

Furthermore, it would be helpful for some of these individuals to have familiarity with the Canadian sport system to provide contextual insight to the application of maltreatment to different sporting contexts.

This group's key purpose would also be to possibly choose and then advise the COP who would be responsible to operationalise the vision of the group. Some of the initial activities would include the implementation steps of the Mechanism, the creation and oversight of the NIM's future development and continuous realignment of research in maltreatment, and development of its own policies and procedures.

Assisting both the Visionary Advisors and the COP would be the creation of working Think Tank groups. The IRT recommends beginning with two key working groups, to be adjusted as and when deemed necessary by the COP and Visionary Advisors. These are (i) an Education, Prevention and Research Think Tank to provide the in-depth knowledge of educational design, content packaging, and practical applied content delivery to differentiated audiences, including marginalised groups and minorities; and (ii) a Field of Play Think Tank comprised of athletes, coaches, and referees to represent the field of play participants voices in the model. The IRT's interviews informed the composition of these Think Tanks.

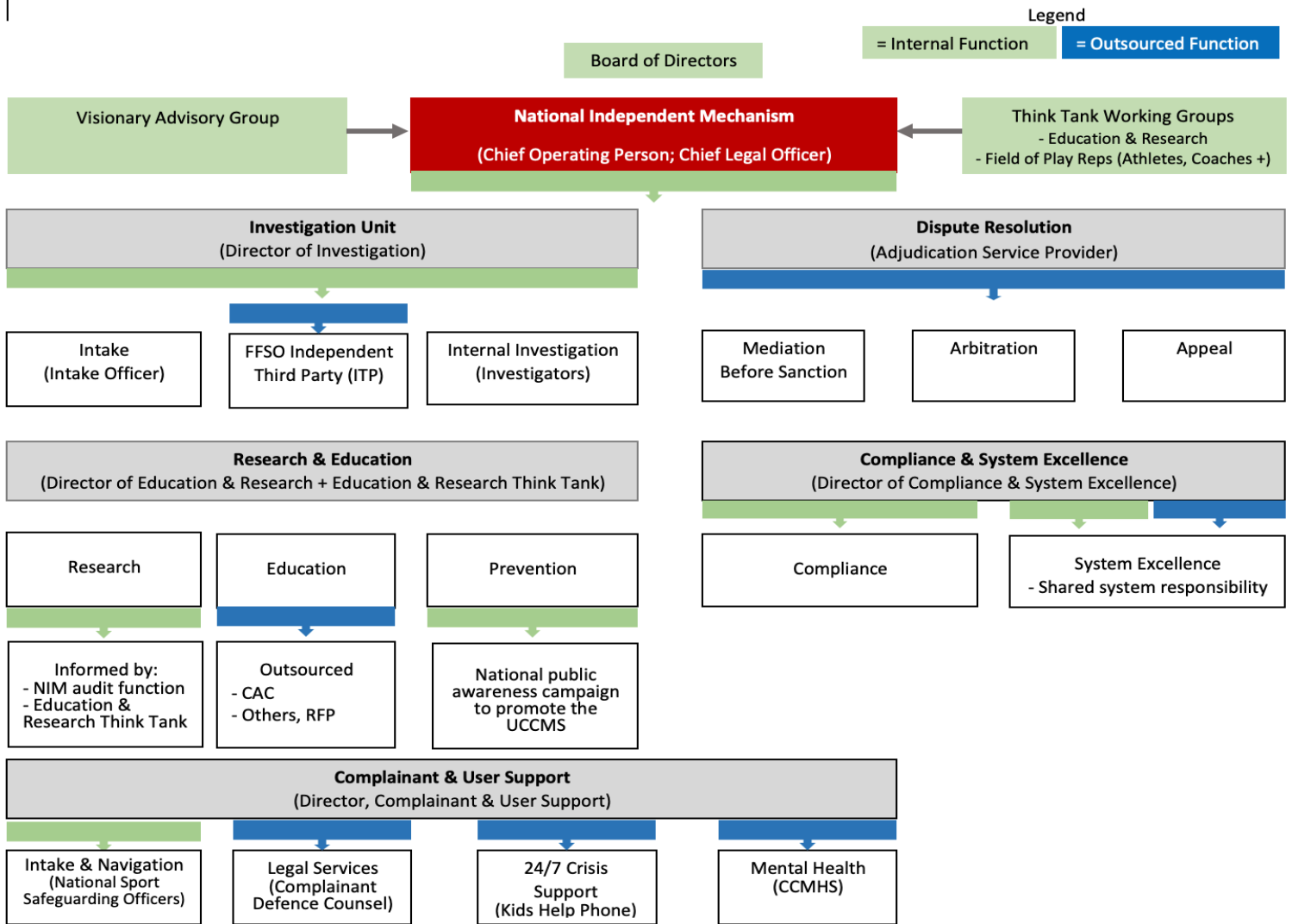
### 3.6 Organisational Structure

The organisational structure during the Pilot phase ought to be flat and non-hierarchical with individuals having cross functional experience assuming the key roles within the core functions. A flat structure increases the ability to quickly respond to issues as they arise, adapting and realigning where needed. The IRT recommends a hybrid vertical/modular structure to allow the NIM to focus on the core functions of the mechanism while in parallel maintaining direction over outsourced functions and the ability to conduct research on the same.

Of the roles internal to the NIM, the key decision maker, the COP, would have the main responsibility of operationalising the IRT's recommendations herein and creating the managerial organisational and operational structures for the NIM. Notwithstanding the foregoing, the IRT has outlined what it recommends as the initial organisational structure. This first section is organised according to the primary components of the core central mechanism, which represent the critical operations of the NIM. While some aspects of the organisational hierarchy, departmentalisation, and delegation of responsibilities will be discussed, the IRT notes that these are all areas that the COP would ultimately assess and create. The second section outlines the key roles and responsibilities of the key positions to be filled by the COP, and their touch points within the NIM.

### 3.6.1 Core Components

Figure 3: Core Components of the NIM





## 3.6.2 Investigations

### *Intake: Activation of the Mechanism*

Intake is a key critical component to the entire function of the NIM. Lack of resources or lack of experienced staff for this process could easily paralyse the entire Mechanism. To illustrate, the IRT notes that an inadequate reporting and investigation process was rectified by the creation and proper staffing of the New South Wales, Department of Education's Employee Performance and Conduct Directorate ("EPAC") Preliminary Intake Team. After becoming a permanent department within the EPAC, the EPAC's resolution of complaints statistics improved considerably. It positively affected the case load for internal investigators and decreased the overall length of time for investigations.

With respect to the NIM, intake can be broken down into four separate procedures: (i) anonymous disclosure; (ii) confidential disclosure; (iii) formal reports; and (iv) anonymous reports. It is recommended that the responsibility of creating, monitoring and modifying the disclosure and formal complaint procedures fall under the responsibility of the Director of Investigation. There would need to be some cross functional work between the Director of Investigation and the Director of Complainant and User Support, given that different intake processes would apply for disclosure and formal report procedures discussed above.

### *Investigations*

The core investigative function is comprised of three separate investigation processes: (i) the preliminary assessment; (ii) the full-scale internal investigation; and (iii) referral to and oversight over lower risk ITP external investigations. The preliminary assessment of formal complaints should be done by a specialised team of individuals who have well developed risk assessment skills, training and experience. Within this process, cases need to be triaged appropriately and identified as low, medium or high risk; a preliminary enquiry must be undertaken; relevant issues need to be determined; and a preliminary investigation plan needs to be developed.

Those complaints identified as high risk should be prioritised and would remain internal to the NIM, and low risk complaints would be referred to the ITP. High-risk complaints would be investigated by the NIM's internal investigator. Oversight of low risk complaints referred to the ITP would be effected by an internal investigator, appointed by the Director of Investigation. This oversight role concerning matters referred to the ITP has been identified in the literature review and through other international best practises as a necessary feature of the NIM.

### 3.6.3 Complainant and User Support

There are four distinct areas of complainant support proposed by the IRT: (i) mental health support; (ii) crisis support line for youth and adults; (iii) NSSOs; and (iv) Complainant Defence Counsel. Mental health support, crisis support services and the Complainant Defence Counsel would be outsourced functions.

Users would be referred to mental health support during the intake processes for disclosures or formal reports. An assessment would be completed by the intake person to determine whether the individual disclosing or reporting would benefit from mental health services and a referral would be made accordingly. Once the referral is made, the NIM would not have any further oversight or monitoring role and the individual referred would be responsible for further engagement with the service provider.

Likewise, the crisis support line should be a wholly autonomous external service provided by, ideally, a pre-existing national entity, such as the Kids Help Phone, who would act as the 24/7 crisis support line for the NIM. These are decisions that need to be made by the NIM.

The Complainant Defence Counsel role should be external to the NIM to reduce any perception of bias or conflict of interest. In circumstances where a complainant appeals the decision of the NIM, the Complainant Defence Counsel would provide legal services to the complainant. The appointment of a Complainant Defence Counsel to a matter would occur on a case by case basis and decided by the Director of Complainant and User Support. The Complainant Defence Counsel could also represent a victim as an Affected Party in instances where the FFSO or alleged perpetrator appeal the decision of the NIM.

Finally, the NSSO would be an internal function of the NIM and would be the initial point of contact for any confidential or anonymous disclosures. This individual would determine if the person making the disclosure is a covered person and concludes whether the conduct falls within the definitions of maltreatment in the UCCMS. They could also assist the covered person in activating the formal complaint report process. In addition, necessary referrals to law enforcement and child welfare agencies would occur at this point of entry into the system.

### 3.6.4 Dispute resolution, remedial actions, and sanctions

Dispute resolution, remedial actions and sanctioning are also critical components of the mechanism. Given that the NIM will not exercise a regulatory role, it will be unable to effectively complete sanctions against individuals found to have perpetrated maltreatment. While the NIM will have the authority to impose the sanction, FFSOs will be required to complete certain actions to make the sanction effective. The initial determination of a sanction should rest in the sole authority of the COP. This will ensure consistency of sanctions for all types of maltreatment and across all sports.

The IRT also recognises that the NIM should provide a dispute resolution capacity for lower risk alleged maltreatment allowing participants to exit the system at different points throughout the process. The decision to offer mediation would also rest in the sphere of responsibility of the COP upon recommendation by the investigator or as requested by the parties.

### 3.6.5 Compliance and System Excellence

One of the reasons cited for failure of Canada's efforts to enact a pan-Canadian system to address maltreatment in the 1990s involved the lack of oversight concerning NSOs' compliance with the Sport Funding Accountability Framework ("SFAF"). Similar provisions that are currently in FFSO Contribution Agreements pertaining to the UCCMS were included in the SFAF but were not monitored effectively for compliance. As such, the IRT recommends that a compliance function be a central component of the NIM. This is informed by best practises in other international jurisdictions including the U.S. Centre for Safe Sport and the U.K. CPSU, both of which include independent compliance functions within their mechanisms.

A compliance role for the NIM will also play an important role in developing excellence across the system by working collaboratively with FFSOs to support and inform their efforts in addressing maltreatment. Many respondents to the IRT Survey suggested they are unclear as to their responsibilities with respect to the implementation of the UCCMS. The Compliance and System Excellence function of the NIM can provide leadership and information to FFSOs as to these requirements as well as ongoing leadership to ensure they are meeting their obligations under their Contribution Agreements. The IRT recommends that this function of the NIM include annual reports to Sport Canada to inform their Report Card evaluation of FFSOs.

Initially, the NIM would be responsible to ensure compliance with the following:

- How complaints are followed up; responsibility to ensure the matter is concluded in accordance with the provisions and proper application of the Universal Code.
- Ensure that recommendations from the NIM are followed up and implemented into the organisation.
- Review the enforcement of sanction.

The COP would be responsible for this component initially, and thereafter consideration may be given to a cross functional Director of Audit and System Excellence.

If referred to the ITP, then the NIM must ensure that the complaint was managed in accordance with the provisions of the UCCMS.

### 3.6.6 Education

The key areas to the education component are training and prevention education and providing guidance to FFSOs and others, as the system scales. These include education for FFSO Safe Sport Officers as well as ITPs charged with receiving complaints of maltreatment. Directing prevention and education at the national level for different stakeholders (e.g. coaches, other activity leaders, board members, athletes, parents) would primarily be an outsourced function through the

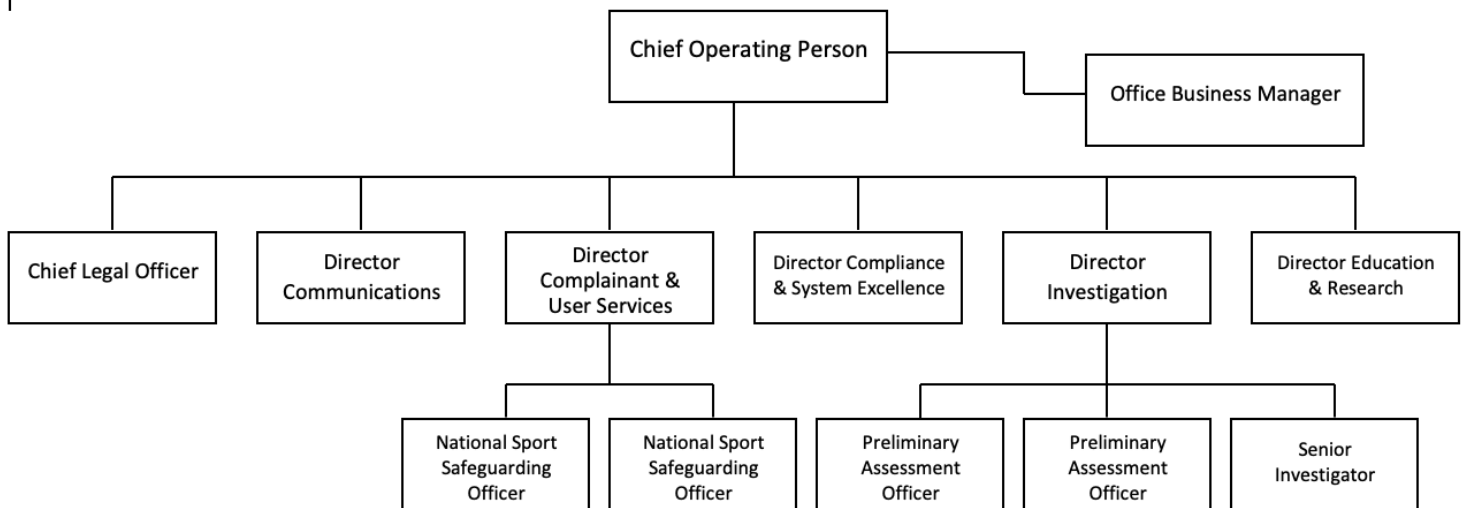
Education Working Group and Director of Education. See description of all outsourced functions below.

NSSOs would be responsible for providing ongoing advice and guidance to FFSOs about the system and any concerns they have with implementing safe sport protocols.

### 3.7 Functional Roles and Responsibilities

This is the proposed organisational chart for the NIM.

Figure 4: Organisational Structure of the NIM



### 3.7.1 Chief Operating Person (“COP”)

In addition to the overall leadership and stewardship of the NIM and determining and implementing the organisational policies and procedures, the COP has the critical function of deciding on the recommended sanctions where the investigation has found that any alleged misconduct has occurred.

Initially, the COP will be responsible for making the staffing decision and hiring the NIM’s core team. This person must be the winner of the hearts and minds of the Canadian sport sector, a champion that can get this monumental task completed and provide the enthusiastic leadership to ensure that it is accomplished.

### 3.7.2 Director of Investigation

The Director of Investigation will report directly to the COP and will oversee the management of both the Preliminary Assessment Team and the internal investigators. This role would be a key part of the organisation and would assist in the development of policies and strategies of the NIM. The Director of Investigation would ensure the proper management, assessment and prioritisation of a complaint until the matter is closed. The Director of Investigation would, upon the recommendation of the Preliminary Assessment Team, make a final determination whether an allegation should remain within the system and be investigated or whether the allegation should be sent to an ITP for resolution.

The decision to investigate is an important one not only in terms of resources for the NIM, but also the personal and professional ramifications of the target of the investigation. The Director of Investigation, in carrying out the duties, may require the Preliminary Assessment Team to gather additional information before a decision can be made. If the Preliminary Assessment Team and the Director of Investigation disagree whether an investigation should be initiated, the COP makes the final decision.

The Director of Investigation would support and advise the COP in the decision-making process to determine a sanction. The Director of Investigation is empowered to retain external legal advisors and counsel to assist and represent the NIM and pursue the adjudication process. The Director of Investigation will also develop the risk continuum, procedures, and policies for the Preliminary Assessment Team and investigators.

### 3.7.3 Preliminary Assessment Team

The individuals who staff the Preliminary Assessment Team should be designated full time positions responsible for receiving, assessing, and prioritising formal reports about alleged maltreatment. These individuals undertake a sufficient preliminary enquiry to establish whether a matter reaches the threshold for investigation by the NIM. The Preliminary Assessment Team can make one of two recommendations: (i) the allegation meets the threshold to initiate an investigation by investigators internal to the NIM or (ii) the allegation does not meet the threshold and is referred to an ITP for resolution.

In addition to the threshold assessment, the Preliminary Assessment Team should categorise the complaint as simple, not exceptional, or complex. There may be instances where simple cases that meet the threshold to remain within the system would best be resolved with the ITP to reduce overall demand on the internal investigation mechanism. Through the IRT's consultation and research, this process of referring simple or low risk matters to lower administrative levels are commonly practised in other sectors such as education. This process is also a feature of U.S. Centre for Safe Sport. The Preliminary Assessment Team would provide their recommendation of where the complaint ought to be investigated to the Director of Investigation who would make the final decision.

### 3.7.4 Investigators

Investigators should have experience conducting trauma informed interviews. The investigator must have well developed skills and expertise in interviewing witnesses who are children or trauma affected, gathering and analysing complex evidence, and analytical skills to write the report. There is also a requirement for good judgement in arriving at recommendations for sanctions or remedial action. The investigator drafts a final report and determines whether on the balance of probabilities the alleged maltreatment occurred. If it did, then the investigator recommends the sanctions to be applied. If not, no further action is required, and the case is closed. All reports and recommendations are to be sent to the Director of Investigation for final decision making.

### 3.7.5 Director of Complainant and User Support

The Director of Complainant and User Support reports to the COP and would manage the NSSOs and the Complainant Defence Counsel, as well as liaising with the organisations undertaking the outsourced functions of crisis lines and mental health support. The Director of Complainant and User Support would manage the disclosure process and the workflow of the NSSOs responsible to receive disclosures. This approach was informed by the IRT’s research and consultation process which suggested the importance of providing comprehensive support and guidance for users of the system.

### 3.7.6 National Sport Safeguarding Officer (“NSSO”)

The National Sport Safeguarding Officers (“NSSOs”) would report directly to the Director of Complainant and User Support. This role has a victim/user support centered purpose. It has several key functions. First, to be the primary point of contact for all disclosures reported to the NIM. The NSSOs would first perform a jurisdictional analysis to determine whether the person disclosing falls within the Universal Code’s categories of maltreatment. If it does not fall within the categories, the NSSOs could refer the person to look at the NSO policies for the proper process of resolution.

Depending on whether it is an anonymous or confidential disclosure, the NSSOs could make certain referrals to the Canadian Sport and Mental Health Center, the crisis line, the law enforcement, or child welfare. The NSSOs could also be asked to simply listen to the disclosure and not act. If a user decides that disclosure was not effective to resolve the issue and would like to make a complaint, the NSSOs can assist to help activate the formal complaint process and remain in a support role for the victim/user guiding them through the mechanism and managing expectations.

The IRT proposes the creation of two NSSOs as part of the initial full-time staffing composition of the NIM. The three primary functions of the NSSOs are: (i) support for individuals at point of disclosure; (ii) support of users in the system; and (iii) FFSO liaison and support. The IRT expects the number of NSSOs to scale with the NIM. When this occurs, the COP and executive leadership of the NIM may wish to consider modelling a structure similar to how High-Performance Sport Advisors are deployed by Own The Podium to support NSOs. By following this approach, NSSOs can be assigned to specific groupings of sports that will allow greater specialisation, support, and



consistency in terms of how these sports are supported. The NSSOs should be viewed as a resource to FFSOs to help expand their internal capacity which is very limited for many as evidenced by the IRT's research.

The NSSOs have a pivotal role in supporting individuals at the point of disclosure, and throughout the activation and resolution process. This feature of the Mechanism was recommended by several people who were interviewed who considered it a vital function to help users navigate the system, and this includes specialised knowledge and attention to the requirements of unique stakeholder groups. The current system of reporting maltreatment is described as confusing, complex, and intimidating for those who may wish to disclose or report abuse. The role of the NSSOs is important for all individuals who may disclose or report and is especially important for those with special needs. For example, Special Olympians with an intellectual impairment.

The NSSOs will support many functions of the NIM. They will act as a central liaison with Safe Sport Officers at the FFSO level. This will provide an important source of support to FFSOs concerning all processes associated with the NIM. The IRT's research indicates this structure is analogous to similar roles in other international organisations such as the U.K.'s Child Protection in Sport Unit ("CPSU"). The CPSU, for example, employs consultants who work with sport organisations to improve their standards and help them with any issues the sport may have. The consultants are also often contacted by sport organisations in the early stages of serious case management processes. These consultants also assist sport organisations to develop their safeguarding standards. Similarly, the U.S. Centre for Safe Sport employs "Resource and Process Advisors" who perform functions similar to those proposed for the NSSOs.

Creating these NSSO positions will answer many of the questions raised through the IRT Survey. For example, several organisations expressed frustration and confusion about the initial roll-out of the UCCMS and a myriad of questions about implementation. Moreover, small organisations are concerned about their capacity to implement the UCCMS. The NIM itself, and the role of the NSSOs, will serve to alleviate these concerns and provide more clarity and consistency as it relates to the implementation of the NIM system-wide. The creation of NSSOs addresses the many calls for a collaborative approach to maltreatment and support for claimants to navigate the system.

Given the small footprint of the initial staffing structure of the NIM, it is expected that NSSOs may have other cross-functional responsibilities in supporting various functions of the NIM, and this will be for the COP and Visionary Advisors to determine. This may include support in areas including education, compliance, and management of the referral of maltreatment complaints between the NIM and FFSOs.

### 3.7.7 Director of Education and Research

The Director of Education and Research with support of the Education Think Tank group would be responsible in directing the content and creation of the training and maltreatment prevention content. The Director of Education and Research would report directly to the COP. The delivery of the education and training materials should be an outsourced function. The Director of Education and Research would also be responsible to coordinate national education campaigns with the education service providers. The Director of Education and Research fills the gap that has been identified relating to consolidating maltreatment data and research available in Canada and internationally. The Director of Education and Research will have the responsibility of commissioning appropriate research originating from internal and external data sources.

### 3.8 Outsourced Functions

There is strong consensus among survey responses to use external service providers where available in the Canadian sport system. The IRT recommends a structure that outsources functions under the authority of the NIM where it is practical to do so.

Outsourcing will enable a system that is both efficient and effective. It is important that these outsourced relationships are seamlessly integrated for the users of the NIM so that it has an appearance of a “one stop shop.” Strategic marketing and promotion of the NIM as the single point of contact and authority as it relates to implementation of the UCCMS will assist in developing the right public image in that respect. The recommended outsourced functions include: (i) 24/7 Crisis Contact Services; (ii) Mental Health Support Services; (iii) Education; and (iv) Adjudication. It is recommended that all other functions remain internal to the NIM.

The rationale for the IRT’s recommendation of specific outsourced service providers is discussed below and supported through an examination of current national services being offered by several of these organisations as described in Chapter 4.3. These recommendations will require further evaluation and due diligence to be completed by the NIM and its executive team before it can further negotiate and/or contract the services of such outsourced functions.

### 3.8.1 Crisis Contact Services

Although the IRT has identified that a call centre is not required to accept disclosures or reports of maltreatment, access to a 24/7 crisis support is important. The U.S. Centre for Safe Sport has developed an outsourced partnership with RAINN, the largest anti-sexual violence organisation in the United States. This Safe Sport Helpline:

*“[P]rovides crisis intervention, referrals, and emotional support specifically designed for athletes, staff, and other Safe Sport participants affected by sexual violence. Through this service, support specialists provide live, confidential, one-on-one support. All services are anonymous, secure, and available 24/7.”*

The IRT recommends developing a partnership with the Kids Help Phone to provide crisis intervention and referral services for both youth and adults. The Kids Help Phone is:

*“Canada’s only 24/7, national support service (who) offer professional counselling, information and referrals and volunteer-led, text-based support to young people in both English and French.”* Recently, the Kids Help Phone has extended some of these services to provide support to adults.

The Kids Help Phone offers a national, fully accessible, multi-lingual crisis support services for both youth and adults. It offers a sophisticated suite of tools to support users through live trained operators via telephone and chat functionality which are popular modes to access their services. They are a ubiquitous national brand in Canada that would add value and support to the NIM. They have expressed interest in piloting a relationship with the eventual NIM to support national safe sport initiatives in Canada. They also expressed their willingness to act as a referral mechanism to the NIM where any individual in crisis reports a sport related maltreatment matter.

The IRT examined the three other national crisis support providers recognised by the Government of Canada and they were not appropriate to provide the required services to the NIM.<sup>13</sup> Therefore, no Kids Help Phone equivalent national crisis support service with the scope and capacity to scale with the NIM was identified by the IRT.

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<sup>13</sup> The Government of Canada’s website lists Crisis Services Canada, which provides suicide prevention and support service and referrals to provincial or territorial organisations, Kids Help Phone and the Hope for Wellness Help Line, which provides crisis intervention to Indigenous peoples across Canada, <https://www.canada.ca/en/public-health/services/mental-health-services/mental-health-get-help.html> [last accessed on 30 September 2020].

The IRT recommends that the NIM take a similar approach to the U.S. Centre for Safe Sport and outsource the crisis line to Kids Help Phone. Kids and adults who require immediate crisis support would be directed to the Kids Help Phone services. Referrals from the NIM can be flagged when using their text chat functionally by assigning keywords. For example, “text Safe Sport to 686868”. This functionality would help the Kids Help Phone track calls that are flagged Safe Sport for additional reporting and analysis. Kids Help Phone also would integrate training for their operators as it pertains to the NIM and include information of the NIM within their Youth Services Database. For example, a caller or texter who indicates an issue related to maltreatment in sport would be apprised of the ability to contact the NIM to disclose, report, or access additional services.

Kids Help Phone has the scale and expertise to support the NIM and its expected growth. Kids Help Phone currently receives more than 2 million unique visitors per year to their website and offer the ability to develop curated content and information for users on maltreatment in sport which represents a tremendous opportunity to raise awareness. A fee-for-service arrangement would need to be negotiated predicated on the volume of referrals and other services that may be required (e.g. research and analysis, curated educational content).

Although Kids Help Phone is not a subject matter expert as it relates to sport, it is a subject matter expert related to crisis intervention and has a long and proven track record. As such, their recommended primary purpose in the NIM should be a listening and crisis intervention service related to allegations of maltreatment, albeit in a sport context. They have expressed a willingness to grow with the NIM and scale their services to meet the needs of the NIM to best serve individuals requiring immediate 24/7 crisis management. The services, reach, capacity, and costs associated with the Kids Help Phone should be evaluated against the same of other approaches including the Canadian Sport Helpline (“CSH”).

### 3.8.2 Mental Health Support Services

The IRT recommends outsourcing mental health support to the Canadian Centre for Mental Health and Sport (“CCMHS”). The CCMHS’s mission is to *“provide timely and effective mental health services to athletes and coaches.”* This agency partnered with the SDRCC to provide the training and staffing of the current CSH. Referrals to the CCMHS can be made by the NSSOs and promoted on the website of the NIM.

The CCMHS offers many advantages. It not only employs counsellors, psychotherapists and psychologists with sport background or expertise, it has unique expertise relevant to the sport context that would augment other services that may be available to certain individuals who may access the NIM. For example, carded national team athletes may have access to mental health support services through their Integrated Support Team (“IST”) program via the COPSIN or through agencies such as Game Plan. However, athletes and coaches who do not have similar access can be referred to the CCMHS. The service-user pathway includes an intake session with a CCMHS Care Coordinator that is provided free-of-charge. Additional services are made available through a roster of qualified counsellors, psychotherapists, and psychologists who bill on a fee-for-service basis. An appealing feature of the CCMHS is a sliding fee schedule down to a minimal fee for users who may have difficulty accessing these services through insurance or other means.

The CCMHS is a nascent registered charitable organisation that generates modest income through fees charged to practitioners and some fundraising which could be viewed as a drawback in terms of capacity. It is proposed that a budget line item be established to support their outsourced services as part of the NIM and this be evaluated as the volume of referrals is accessed through a Pilot phase.

### 3.8.3 Education

There are a number of qualified providers of safe sport education and training including the Coaching Association of Canada (“CAC”), the Respect Group, and the Canadian Centre for Child Protection (“CCCP” or “Commit to Kids”). The IRT includes a more expansive review of these current services in Chapter 4.3. It is recommended that education be directed and outsourced by the NIM. Given the complexity, cost, and alternatives that currently exist in the marketplace, the IRT does not recommend the NIM develop technological platforms and educational program delivery.

*“Is there any way to only require one method of training? [Respect in Sport], Commit to Kids, CAC Safe Sport – everyone requires something different and it [is] pushing away our volunteers because every time they turn around, they are expected to take training in yet “one more thing”.*

The launch of the CAC's mandatory Safe Sport program has created some confusion, duplication, and frustration amongst users who do not understand why they have to take multiple programs, from different organisations, some paid and some free. Some PTSOs have expressed concerns that the overlap of existing programs and additional mandatory requirements may drive volunteer coaches away from sports.

An important consideration in developing educational strategies pertaining to the UCCMS and, in particular, scaling this to PTISO and local levels concerns the plethora of existing relationships and business models amongst NSOs, MSOs, PTSOs, and local Clubs. These must be taken into consideration when contemplating any form of national roll-out and mandatory compliance features. For example, organisations including Sport Manitoba and Hockey Canada have been early adopters in providing education for their stakeholder groups. Hockey Canada has long recommended the Respect in Sport for Parents program and the Respect in Sport Activity Leader training for coaches and others.

Hockey Canada offers as fee-for-service programs. Parents are required to pay \$12 to complete the course, and coaches and activity leaders are required to pay \$30. Respect in Sport offers different financial models that can be negotiated with the client based on their specific needs and the volume of use. For example, Sport Manitoba and SASK Sport pay a licencing fee and provide the education free-of-charge to users. Therefore, a hockey coach in Saskatchewan does not have to pay the \$30 user fee to Hockey Canada because this cost is paid for by SASK Sport. This illustrates the level of complexity and integration that is required on the back end to accommodate these various models on a national basis.

The Respect Group's approach is one of social enterprise where sport organisations have the flexibility to negotiate arrangements that work best for their stakeholders and their organisation. This approach is flexible, customisable, and scalable to different organisations. Another example is Canadian Tire Jumpstart which provided funding so that the Respect in Sport Activity Leader program could be delivered free-of-charge to members of AthletesCAN.

A proposal to implement a pan-Canadian strategy to align safe sport education nationally was developed by The Respect Group and presented to Sport Canada in 2007 with partners including the Canadian Red Cross, True Sport, and PREVNet, a national network committed to stopping

bullying sponsored by the Networks of Centres of Excellence. This proposed a single pan-Canadian curriculum for all provinces and territories. This curriculum included an embedded Universal Code of Conduct, and the opportunity for unique landing pages and customisation for different sport organisations. We understand that this was strongly supported by Sport Canada but there was not consensus from the Federal-Provincial/Territorial Sport Committee. The presence of the NIM encourages a successful pan-Canadian education and prevention strategy.

The IRT recommends outsourcing education through an RFP process upon creation of the NIM and should give strong consideration to both the CAC and The Respect Group, both of whom are approved by Sport Canada as it relates to UCCMS educational requirements that FFSOs are contractually bound to in their Contribution Agreements. The Commit to Kids program also provides expert knowledge related to developing educational curriculum as it concerns maltreatment and children. The availability of multiple qualified providers of maltreatment in sport education suggests that a national strategy needs to be developed under the leadership of the NIM to include the following elements:

- i. Identification of mandatory educational requirements designed for specific stakeholder groups. For example: coaches, athletes, staff, volunteers, parents.
- ii. Curriculum design reflecting different unique stakeholder group requirements (including specialised training requirements for athletes with intellectual impairment and physical or sensory disabilities, for example).
- iii. A financial model to implement the designated mandatory requirements (for example, fee-for-service versus licenced model and provided free of charge).
- iv. Frequency of education for each stakeholder group identified (for example, recertification period for coaches versus other stakeholders).
- v. Annual “refresher” content curriculum if/when annual training is required.
- vi. Evaluation process to determine equivalency for other educational programs in the marketplace.
- vii. Tracking and database management.

These are important educational design features that must be informed by an Education and Research Think Tank under the direction of the NIM, once established. Feedback through the consultation process suggests there needs to be greater consistency and alignment of mandated educational training. Thus, the NIM should provide leadership in charting this direction that is both efficient and effective in meeting the education and training needs of stakeholders.

### 3.8.4 Complainant Defence Counsel

A foundational reason for the creation of a Complainant Defence Counsel role is the resource imbalance in certain relationships and resource related issues that could deny equal access to justice. In order to remedy that imbalance and provide a lower threshold entry into the adjudication mechanism for complainants who may not agree with the resolution of their complaints, the IRT recommends the NIM develop a pool of appropriate Complainant Defence Counsel. This role, while external to the NIM for reasons of maintaining independence and avoiding conflicts of interest, would however be fully funded by the NIM. The appointment of a Complainant Defence Counsel to a matter would occur on a case by case basis and be decided by the Director of Complainant and User Support. The COP and the Director of Complainant and User Support would be responsible for determining the evaluative criteria for appointment of a Complainant Defence Counsel to an adjudicated matter.

This is a novel and innovative step in a positive direction unlike what currently exists in any sector evaluated by the IRT. In consultation with Senator McPhedran, who has done considerable work on recommendations to prevent the sexual abuse of patients in the healthcare sector,<sup>14</sup> the IRT was alerted to the lack of legal resources and education that is made available to victims of sexual abuse in the healthcare sector. One of Senator McPhedran’s key recommendations to solve this systemic issue is to:

*“[R]emove barriers that prevent patients in vulnerable populations from:*

- *[...];*
- *[...]; and*

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<sup>14</sup> Marilou McPhedran, Sheila McDonald, “To-Zero The Independent Report of the Ministers Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act 1991” (15 December 2015).



- *receiving appropriate and timely resources so that they can fully participate in the investigation and adjudication of sexual abuse complaints.*<sup>15</sup>

Some domestic and international models, such as the SDRCC’s Pro Bono Program, the Australian National Sport Tribunal (“NST”) or the role of the “Safeguarder” in Scotland’s child protection agency offer support for this recommendation. Australia’s NST has created a Legal Assistance Panel staffed with lawyers who offer their services either discounted or free for individuals with financial hardship, while In Scotland, a “Safeguarder” is appointed in child protection cases in order to ensure that a child or young person’s interests are looked after. The SDRCC maintains a list of lawyers willing to provide pro bono services. In this regard, the IRT has considered all of these models and specific recommendations from Senator McPhedran in coming to its recommendation that the NIM include the outsourced role of Complainant Defence Counsel.

### 3.8.5 Dispute Resolution Services

The IRT recommends outsourcing dispute resolution to the SDRCC acting as an independent third party service provider. This follows the international best practises of sport maltreatment cases being adjudicated by national sports tribunals in countires, such as Autralia and Norway where they exist. In contrast, the United States does not have a national sports tribunal, and as such adjudication of U.S. Centre for Safe Sport decisions is conducted by a private company providing dispute resolution services.

The SDRCC is a not-for-profit corporation that operates with a statutory mandate under the authority of the *Physical Activity and Sport Act* (SC 2003, c 2). As provided in the Act, the mission of the SDRCC is to provide to the sport community “(a) a national alternative dispute resolution service for sport disputes; and (b) expertise and assistance regarding alternative dispute resolution.” Accordingly, the SDRCC has the statutory authority and independence to provide ADR in the model proposed for the NIM. Many leadership group members felt the SDRCC would be an appropriate

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<sup>15</sup> Recommendation 18. Access to Justice for Ontario Patients Pilot with Legal Aid Ontario in: “To-Zero The Independent Report of the Ministers Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act 1991”(15 December 2015).

outsourced provider of dispute resolution services with a strong track record of providing these services independently to the sport community.

The IRT recommends, as a condition of this outsourced relationship, that the SDRCC establish a Maltreatment Tribunal that is staffed with arbitrators trained in dispute resolution specific to maltreatment in sport. It may be possible to merge this Maltreatment Tribunal with the SDRCC's proposed Safeguarding Tribunal. This requires specialised knowledge that is essential for the NIM to properly serve both complainants and respondents in the system.

### 3.8.6 Technology: Case Management Software

The NIM will require robust case management software. It is recommended that this be outsourced due to the complexity and cost of attempting to develop such a capability internally. Furthermore, outsourced products will provide important functionality "out of the box" that can be customised and scaled to meet the unique requirements of the NIM. The NIM and its executive team will ultimately be responsible for selecting the preferred vendor to meet its needs. However, the IRT recommends that i-Sight receive consideration for this outsourced role.

i-Sight is a Canadian company based in Ottawa. It could be implemented as an enterprise complaint reporting and case management solution to manage a range of cases across different units. In the case of the NIM, this solution would provide the ability to seamlessly integrate reporting and case management functions between the NIM and ITP with sport organisations.

Sport organisations currently using i-Sight include the U.S. Centre for Safe Sport, the United States Olympic Committee, and seven U.S. national governing bodies including U.S.A. Gymnastics. U.S.A. Gymnastics deployed i-Sight in 2018 to provide greater functionality in managing investigations and as a risk reduction measure. i-Sight is currently being evaluated by Environment Canada to manage their Ombudsman complaint management process. Other large Canadian companies who are clients include Manulife Financial and Great West Life. Many other Fortune 500 companies utilise i-Sight.

A key advantage of the i-Sight platform is its configurability that would allow the NIM to build out its own unique processes, workflows, controls, and reporting. The ability to route case

assignments is particularly important as it relates to the referral of complaints between the NIM and ITP.

The data analytics and reporting capability of i-Sight would provide important functionality to the NIM. The ability to analyse and map out data as charts, graphs, and other types of reports would allow the NIM to identify patterns and trends and use that information to align action with business strategy. This is an area that is lacking as it concerns tracking maltreatment in sport data in Canada. For example, according to the IRT Survey, two-thirds of sport organisation do not compile any statistics about complaints or reports concerning maltreatment. This is counter to international best practises and recommendations to develop strategies to effectively prevent and address maltreatment in sport. Centralising this reporting through the NIM would help close this gap.

Approximate start-up costs include: development and configuration fees (\$25,000), and business mapping of software (\$15,000). Annual costs include hosting, maintenance, and support (\$18,000), and a per-user license (\$499). It is recommended that licenses be purchased for NIM staff (investigators, Preliminary Assessment Team, NSSOs), as well as for ITP of sport organisations.

### 3.9 Roles and Responsibilities of Federally Funded Sport Organisations

The effectiveness of the NIM will rely on the co-operation of the FFSOs in adopting the recommended amendments to the rules and procedures of the UCCMS. The success of the NIM will be dependent on FFSOs being active participants and playing a vital role in communicating and operationalising the UCCMS procedures to allow their affiliated individuals access to the NIM. The IRT considers it important that the eventual NIM and FSSOs form a good faith partnership to execute their respective obligations to prevent and address maltreatment in sport. If a culture shift in this area is to be achieved, this partnership is fundamental.

The ongoing role the FFSOs should play with the NIM is related to the three conditions set forth in Annex A of the Contribution Agreement, pertaining to Harassment and Abuse set out below.

***5.1.1 The Recipient shall provide the individuals affiliated with the organisation with access to an independent third party to address harassment and abuse allegations.***

The current requirement under the Contribution Agreement is for FFSOs to provide its affiliated individuals with access to an ITP to address harassment and abuse allegations. Sport Canada has made it clear through the 26 August 2020 guidance document sent to FFSOs that this position will remain in place, despite the fact that an independent mechanism will eventually operate to receive and resolve complaints. Thus, the IRT has developed a model which incorporates the mandatory ITP position as an essential channel within the NIM's ARP.

The IRT recommends that the function of the ITP be triggered in certain circumstances and at specific risk assessed levels. The IRT has proposed that the NIM maintain exclusive authority over certain forms of maltreatment (Sexual Maltreatment, Serious Physical abuse, Grooming, Consent with Person over Age of Majority) and discretionary authority over other forms of maltreatment. Any matters that are deemed of low risk or that fall outside of the NIM's exclusive authority, would be referred to the FFSO's ITP for investigation and resolution. The determination of who should investigate the complaint (the NIM, the ITP or some other individual) will be made according to an assessment of the complaint. Any disclosures or reports made to the eventual NIM, that are outside the scope of the UCCMS will be referred back to the FFSO's ITP for resolution.

The recommended ARP requires that the ITP file a report with the NIM once the complaint is resolved. Thus, FFSOs' ITP will continue to play a vital role in resolving certain maltreatment issues through an integrated process with the NIM. The IRT recommends that the staff of the NIM work collaboratively with the ITP of all FFSOs and further provide support, education, and training of ITPs to ensure greater consistency and professionalism across the system.

***5.1.2 The recipient shall ensure that individuals affiliated with the organisation complete appropriate mandatory training on preventing and addressing harassment and abuse.***

FFSOs have a continuing vital role to play as it concerns educating and training affiliated individuals on the UCCMS. The IRT believes this role extends beyond any mandatory training requirements as stipulated in the Contribution Agreement. As evidenced in the IRT Survey responses, the trend of FFSOs providing education and training beyond the mandatory requirements should continue. Many individuals surveyed and interviewed suggested that to be effective, education, and training

must be contextualised to reflect different audiences and sport factors. Many FFSOs are currently providing this through various methods including in-person training, webinars, and seminars.

***5.1.3 The Recipient shall, by March 31, 2021 adopt and integrate the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”) into their organisational policies and procedures.***

The proposed rules and procedures of the NIM, if adopted, will require FFSOs to enter into contracts with affiliated individuals and organisations as it relates to adoption and enforcement of the Universal Code. Other responsibilities will include cooperation with the NIM concerning areas of compliance with the Code through a compliance function. The compliance function is for the purpose of system excellence and assisting FFSOs to build capacity to best serve their affiliated individuals. FFSOs also will have the responsibility to assist with the completion of sanctions imposed by the NIM.

### 3.10 Operating Costs and Funding Model

Funding the system is a complex challenge and the IRT recognises current financial limitations across the sector. The IRT’s proposed funding model limits the financial burden on FFSOs as feedback suggests many of these sport organisations are at a financial breaking point. Moreover, some NSOs are further financially threatened by litigation of maltreatment cases. The NIM may reduce financial pressure on participating organisations while providing a more effective and trusted system.

The NIM must be financially sustainable yet cannot rely exclusively on funding from Sport Canada. Given the reluctance and inability of most FFSOs to directly fund this system, the IRT proposes the below funding strategies to allow the system to scale with adoption of the UCCMS. The IRT’s research and evidence from other jurisdictions, including the United States, suggests that the proposed NIM will grow significantly as the system builds awareness, trust, and widespread adoption by PTSOs and local users. The proposed financial model accounts for this growth. The IRT notes however the distinguishing factor between “safe sport” mechanisms evaluated for this Report and the proposed funding model for the NIM, is that Canada would be the only jurisdiction

where the NIM is not federally funded. In contrast, most other safe sport systems also appear to be funded in large part through government, which has acted as the safety net allowing these systems or mechanisms to respond adequately to increased financial pressures.

The NIM, while independent from FFSOs, will rely upon FFSOs actively adopting the NIM and implementing the Universal Code for it to be operational. Given that the IRT's recommended model further integrates areas of shared responsibility, including education and the resolution of certain complaints by the FFSOs ITP, the IRT proposes that funding the NIM will also require some shared aspects. In this regard, the IRT recommends that NSOs participating in the NIM implement a mandatory annual user fee charged to their registered participant members. This will allow those registered participants access to the NIM. The NSOs would therefore be required to gather and remit this fee on an annual basis to the NIM.

### 3.10.1 Sources of Funding for the NIM

Once the seed funding contribution from Sport Canada NIM is exhausted, the NIM will require other streams of revenue. To ensure a sustainable system, the IRT recommends that the principal source of funding be derived from a modest user fee charged to registered participants of organisations that adopt the NIM.

Eventually other sources of funding ought to be developed including, continued strategic investment from Sport Canada and charitable contributions to augment the user fee. The ability to receive charitable donations and sponsorship could represent a lucrative and rewarding proposition for the NIM, both of which are supported by responses to the IRT Survey. However, a further evaluation is necessary to determine whether the NIM could apply for charitable status and if setting up a public foundation in support of the NIM would be feasible.

Moreover, if and when provincial or territorial governments decide to join the NIM, there should be an expectation that a portion of the funding be shared between both federal and provincial/territorial governments. Given that the majority of provincial sport governing bodies are funded in major part through the provincial lottery system, a portion of those proceeds could be earmarked for the NIM. This will undoubtedly require further consultation and collaboration

between the Federal-Provincial-Territorial Ministers responsible for Sport, Physical Activity and Recreation. As the NIM endeavours to fulfill its ambition to offer a pan-Canadian program, other provincial and federal government sources of funding could be explored as the goal to prevent maltreatment in sport is one that crosses other governmental ministries and departments.

### Federal Government Support

Strong opinions were shared by many stakeholders regarding the federal government's contribution to the NIM. The overwhelming sentiment shared by those stakeholders is that the UCCMS and its mechanisms should primarily be funded by the federal government via Sport Canada. Others suggested that given the focus on maltreatment, it might be appropriate to seek funding from other federal ministries, such as Justice, Heritage, Health and other departments of government such as the Public Health Agency of Canada and Youth, and Women and Gender Equality Canada. These warrant further examination as potential funding sources for activities that may fall under the auspices of the NIM.

Another group of stakeholders however expressed that funding should be a collaborative responsibility rather than a singular one for government and that everyone should have *“skin in the game.”*

*“Funding is the key to success. If the Federal and Provincial government does not intend to fund this project, we are all wasting our time as far as I am concerned.”*

### Provincial/Territorial Government & Provincial/Territorial Sport Agencies

Once the NIM is established for FFSOs, further evaluation of provincial partners and their potential funding contribution to the NIM should be explored.

*“I also strongly believe that preventing and responding to the maltreatment of athletes must be a priority for our society. Collaborations between provincial and federal governments is, in my opinion, the most secure strategy to ensure that a third-party organisation should be funded.”*

### NIM User Fee

The IRT recommends that an FFSO’s registered participants, and others who will have access to the NIM (coaches, officials), be required to pay a nominal annual user fee to access the benefits of the mechanism. The FFSO will be responsible to implement and collect this proposed user fee. The IRT recommends that it be the primary funding source to ensure sustainability of the NIM.

Given the financial limitations of FFSOs to support the implementation of the UCCMS, there are few funding alternatives that would sustain the NIM and allow it to scale nationally. While other sources of funding are recommended to augment the revenues of the NIM, including charitable support, these sources either are insufficient or highly variable.

*“Realistically, for sustainability it should be predominantly ‘all-user’ pay, an isolated annual fee deemed separate from membership or registration fee for all sports, so no one sport is less or more impacted by increased cost of participation.”*

The concept of a modest (e.g. \$4) user fee required of sport participants received strong support by those who were interviewed.

Some limited concerns included that user fees might reduce access for some individuals. Furthermore, there are some other factors to consider in its implementation. Some MSOs, for example, do not charge participant fees, or include as members individuals who are



already a member of another organization such as an NSO or PTSO. In circumstances such as this, it will be important not to “double charge” participants. Therefore, MSOs such as the COC/CPC or Canada Games should not be required to remit a participant user fee to the NIM, if such fees are already being remitted and collected by another sport organisation. This complexity needs to be considered in the implementation of the user fee.

However, the collective scale of such an approach has benefits beyond the obvious financial ones. For example, some suggested that a national user fee could help generate conversations and understanding at the grassroots level about the issue of maltreatment in sport.

*“It will be important to future-proof this. Too much from the Federal Government creates the risk that it will be defunded and de-stabilize the whole thing. Sports could fund it directly or pass on a user-fee to their participants.”*

Moreover, given the attention paid to egregious issues concerning sport sexual abuse in the media, some interviewees suggested that such a fee be positioned as a collective responsibility or as an insurance policy of sorts that would provide individuals with a pathway to resolution by access to a national mechanism. While others suggested that a strong value proposition focused on safety, education, and public awareness would be supported by the general public. The IRT agrees with these observations. Feedback from the sport sector was highly supportive of this approach, especially in view of limited funding alternatives, and the reluctance and inability of NSOs to fund the NIM through their operating budgets.

The IRT’s research indicates that a majority of NSOs currently collect participant membership fees. The NIM user fee proposal could be built into the existing fee collection mechanism, but clearly defined as a requirement to access the benefits of the NIM. This approach would be unique when compared to other existing safe sport models that are legislated for at the national level and are fully funded by the government, such as Norway, Australia, United States and Netherlands.

Depending on how the NIM scales and the level of funding required to support the NIM’s administrative functions and staffing, the IRT envisions that a portion of the annual user fee could

be allocated to FFSOs to support ongoing efforts combatting maltreatment. The IRT suggests positioning the user fee as a national requirement of the NIM, rather than a requirement imposed by the FFSO. Therefore, insulating FFSOs from any potential resistance from registered participants and isolating the user fee from other fees the FFSOs must charge.

As noted in the description of the Pilot process, the IRT recommends that the user fee commence in Year 2 of the Pilot for those FFSOs who entered the Pilot in Year 1. This allows FFSOs who enter the Pilot in Year 1 a full year to implement the user fee. In the interim, it will be necessary to fund the initiation of the Mechanism through Sport Canada's seed funding.

An example of a funding projection is provided below for the first year of the Pilot, based on participant statistics provided by NSOs. These NSOs have been randomly selected and do not represent the actual or desired composition of NSO participation in the first year of the Pilot and are for illustrative purposes only.

Table 2: Hypothetical Pilot Program Safe Sport Fee Income (2023)

NSO	Participants	Total Fee @ \$4.00/participant
Archery Canada	8,000	\$32,000
Alpine Canada	6,000	\$24,000
Badminton Canada	80,000	\$320,000
Canada Snowboard	2,280	\$9,120
Canada Soccer	800,000	\$3,200,000
Canadian Blind Sports Association	1,600	\$6,400
Canoe Kayak Canada	40,000	\$160,000
Curling Canada	165,000	\$660,000
Luge Canada	250	\$1000
Swimming Canada	65,000	\$260,000
Skate Canada	185,000	\$740,000
Wheelchair Basketball Canada	1,000	\$4,000
<b>Total</b>	<b>1,354,130</b>	<b>\$5,416,520</b>

The accuracy of the above participant numbers requires verification. There is a lot of uncertainty and variability with the costs associated with this proposal. It will be dependent on the number of complaints that are reported and the demands that will require from there NIM. It needs to maintain flexibility to adjust and increase capacity where necessary.

A pro-forma analysis needs to be undertaken based on affiliated user data supplied by FFSOs, including registered participants in the sport, coaches, and officials.

### 3.10.2 Operating Costs

The primary operating costs for the NIM include staffing and administration of the NIM office, costs related to the outsourced adjudication provider, education, and complainant support services. Additional costs include outsourced services for technology, such as including website development and case management software. The IRT was cautioned by many individuals that it

was not advisable to create a bloated super structure, instead to leverage existing expertise and capacity in the system to fulfill certain functions. The IRT agrees with this assessment and furthermore notes that outsourcing certain functions also provides greater flexibility in building these components of the overall Mechanism.

The NIM was designed to limit the need for exorbitant start-up costs required to develop functions that have taken years of expertise and investment. These functions include, for example, dispute resolution structures developed by the outsourced adjudication provider, sophisticated educational platforms offered by many providers, and crisis response technology and support.

The IRT recommends that certain functions be housed within the NIM, for strategic as well as financial reasons. For example, the recommendation to house the investigation function within the NIM rather than outsource it is important so that this function remains separate from the dispute resolution process, and to build a body of expertise and consistency within the Mechanism. It will also be more cost effective for operation purposes. It is much more cost-effective to have investigators as full-time staff rather than an outsourced function where costs could spiral quickly. As the need for more investigative capacity grows as the NIM scales, more full-time positions can be added. This mirrors the approach of the U.S. Centre for Safe Sport.

Table 3: Initial Operating Cost Projections

Expense	2021	2022	Notes
<b>Staffing Expenses</b>			
Chief Operating Person	\$260,000	\$260,000	Salary range: \$240k-\$280k
Chief Legal Officer	\$210,000	\$210,000	Salary range: \$190k-\$225k
Director Education & Research	\$165,000	\$165,000	Salary range: \$155k-\$175k
Director Investigations	\$175,000	\$175,000	Salary range: \$165k-\$185k
Office Business Manager	\$100,000	\$100,000	Salary range: \$90k-\$110k
Nat'l Safeguarding Officers(2)	\$40,000*	\$160,000	Salary range: \$70k-\$90k
Director Compliance	\$75,000*	\$150,000	Salary range: \$140k-\$160k
Assessment Team Officers (2)	\$50,000*	\$200,000	Salary range: \$90k-\$110k
Senior Investigator	\$40,000*	\$120,000	Salary range: \$110k-\$130k
Director, Communications	n/a	\$130,000	Salary range: \$120k-\$140k
Director, Victim & User Support	\$25,000*	\$100,000	Salary range: \$90k-\$110k
Victim Defence Counsel	n/a	\$135,000	Salary range: \$115k-\$135k
			*Phased-in hiring during 2021/2022
<b>Sub-Total Staffing</b>	<b>\$1,140,000</b>	<b>\$1,905,000</b>	
<b>Workplace Expenses</b>			
Office Furnishings & Other	\$40,000	n/a	Office start-up costs
Hardware (computers, etc.)	\$50,000	\$15,000	
Rent	\$48,000	\$48,000	
Travel	\$20,000	\$30,000	
Internet, Telephone, Web Hosting	\$5,200	\$7,200	
Insurance	TBD	TBD	*Requires quotation
Miscellaneous	\$5,000	\$5,000	
<b>Sub-Total Workplace</b>	<b>\$168,200</b>	<b>\$105,200</b>	
<b>Outsourced Expenses</b>			
Legal	\$75,000	\$75,000	
Accounting & Bookkeeping	\$45,000	\$45,000	
Other consulting	\$50,000	n/a	
Outsourced Education	n/a	\$300,000	Curriculum design and platform development
Kids Help Phone Pilot	n/a	\$30,000	Pilot costs for 24/7 service provision on multiple platforms including telephone, chat
Canadian Centre for Mental Health and Sport	n/a	\$20,000	Dedicated staffing to manage referral volume
SDRCC Training	\$15,000	\$7,500	Specialized maltreatment training of arbitrators
Technology: case management software	n/a	\$66,000	Costs in 2022 include one-time start-up costs of \$40K, \$18K annual licence fee, and \$8K user licence (based on 16 users)
Technology: web development, other		\$35,000	
<b>Sub-Total Outsourced Expenses</b>	<b>\$185,000</b>	<b>\$578,000</b>	
<b>Total Expenses</b>	<b>\$1,493,200</b>	<b>\$2,588,700</b>	

The above demonstrates the IRT’s preliminary cost projections for the initialisation of the office based on our recommendations as to how the NIM should be structured. It is anticipated that these costs will be funded by seed money from Sport Canada. As the NIM enters the Pilot phase, additional costs are projected to deliver the outsourced services as noted.

The total estimated costs for 2021 (initialisation of the NIM) and Year 1 of the Pilot (2022) are \$1,493,200 and \$2,588,700 respectively. It is important that a complete business plan be developed as it relates to these estimated costs as well as confirming the level of seed funding from Sport Canada, as well as assumptions made with reference to sources of income. For comparison, the U.S. Centre for Safe Sport projected a five-year operating budget of \$25 million (USD), or approximately \$5 million per year in 2017.<sup>16</sup> This funding included the annual appropriation of \$1 million each year for fiscal years 2017 to 2021 by the Congressional Budget Office to the U.S. Centre for Safe Sport, according to s. 1426 of the *United States Center for Safe Sport Authorisation Act of 2017*.<sup>17</sup> As noted in Chapter 6, these budget estimates far underestimated the demands on the system. In 2019, the Center’s annual expenses reached almost \$10 million (twice the original estimate) and these costs are expected to reach or exceed \$20 million on an annualized basis.

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<sup>16</sup>Will Hobson, “Senators propose legislation to offer money, legal protection to Olympic sex abuse prevention agency”, (23 June 2017), online: *The Washington Post* <<https://www.washingtonpost.com/news/sports/wp/2017/06/23/senators-propose-legislation-to-offer-money-legal-protection-to-olympic-sex-abuse-prevention-agency/>> [last accessed 10 September 2020].

<sup>17</sup> United States Congressional Budget Office, “S. 1426, United States Center for Safe Sport Authorization Act of 2017” (18 August 2017), online: <<https://www.cbo.gov/publication/53046>> [last accessed 10 September 2020].



# Chapter 4

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## THE IMPLEMENTATION OF THE NIM

### 4.1 Scaling the National Independent Mechanism (“NIM”)

The RFP required the IRT to “... consider potential for scaling beyond the national sport community (e.g. to the provincial/territorial and community levels of the Canadian sport system.” The IRT has carefully considered this potential in its approaches to ensure that all Canadians have the opportunity to participate in a sport environment free from maltreatment.

Developing a mechanism for the benefit of all Canadians in the amateur sport system is highly complex because of the jurisdictional issues that are identified throughout this Report. However, the RFP is unambiguous in its direction as to the eventual purpose and scope of a mechanism to prevent and address maltreatment in sport:

*“The analysis should reflect on the roles and responsibilities of organisations in the Canadian sport system, including the independent administrative entity, relative to promoting and sustaining safe sport experiences for **all Canadians** (emphasis added).”*

The IRT notes that initialising a mechanism that is confined only to national level athletes and staff would be ineffective in preventing and addressing maltreatment in sport for all Canadian participants and contrary to all international best practises. Therefore, in following the direction of the RFP and observing international best practises, the IRT has developed a framework for

scaling a truly national and independent mechanism for the benefit of all stakeholders in the Canadian amateur sport system.

This recommended framework, flowing from the strong support for access to all sport participants in Canada, was echoed through the IRT's extensive consultation with Canadian stakeholders by way of interviews and an intentionally designed sport survey. Access for all participants is fundamental to changing the culture of maltreatment in sport that has been discussed for decades in Canada without an effective national approach. The IRT's recommendations provide flexibility and autonomy to FFSOs as to how they wish to organise their internal policies to join the NIM to meet the needs of their participants at the local, provincial, and national level. The IRT believes this is a more realistic approach capable of developing buy-in amongst FFSOs rather than obligating FFSOs to take certain definitive action and make drastic changes to their internal policies and procedures upon the initialising of the NIM. It is clear to the IRT that such an approach would be difficult for many FFSOs to implement. Therefore, a phased-in Pilot is the IRT's recommended process to initialise and scale the NIM.

This Pilot process recognises that NSOs which already have an integrated and aligned approach to maltreatment with their PTSOs, including adoption of the UCCMS, will from the outset provide accessibility to the NIM for participants at both NSO and PTSO levels. Many other NSOs that are working towards policy alignment with PTSOs have told the IRT that a national independent mechanism must be accessible to all participants from the outset, not simply those athletes in the national athlete pool. Others, however, would find it difficult to adopt and enforce the NIM at the PTSO level because of perceived lack of jurisdiction. The IRT's Pilot process facilitates NSOs in each of these different circumstances to scale participant access to the NIM in a manner that works for them. This approach also reflects the philosophy of "by the sector, for the sector" that has been expressed to the IRT.

The reality of confining the NIM to national level athletes and staff is therefore an impossibility and not supportive of the responses the IRT heard during its consultation process. Furthermore, the IRT's recommended user fee funding model will provide immediate funding to the NIM beyond the very limited national athlete pool which in itself would not have been able to fund the Mechanism.



Ultimately, an approach that confines the NIM solely to national level participants in the formative stages is incongruous with many existing FFSOs' structures and desires. This would be a step backwards for some FFSOs who are in a position of readiness today to make the NIM accessible to all participants. For example, one survey respondent stated that, *"we are currently in the process of finalising our safe sport policies in partnership with our provinces so that everyone is working from one harmonised policy."* Others are not in a similar position of readiness and can voluntarily choose how they may wish to participate in the NIM during the Pilot phase. Furthermore, this period of transition, or scaling, will allow the NIM to evaluate these various structures so that the Mechanism evolves both efficiently and effectively, based on actual experience with the Pilot.

## 4.2 The Basis for a Pilot

Designing a NIM to implement the UCCMS is a significant undertaking, particularly with the jurisdictional complexity and variances in operating practises at the local, PTSO, and national levels. If not properly accounted for, this complexity could overwhelm the NIM. If that were to occur it could lead to a lack of trust, dissatisfaction, and poor adoption of the mechanisms provided by the NIM.

One way to avoid those undesired outcomes and to ensure agility to rapidly address issues, is to initiate a pilot project with phased implementation. This system of development was very effective in transforming the ADR Sport RED system into the SDRCC in the first decade of the century. This process was also the precursor for the federal government's *Physical Activity and Sport Act (supra)*. The IRT recommends proceeding in the same fashion. This is supported by the IRT's research and analysis which suggest that the NIM should direct all aspects of the UCCMS including the management and review of outsourced resources. However, it ought to proceed modestly allowing adequate time to identify the operational requirements and techniques before having it available nationally.

The research and analysis conducted by the IRT recognises the advantages in an approach which thinks big, starts small, and scales up. It allows the NIM to: (i) scale capacity and resource requirements commensurate with demands on the system; (ii) quickly assess the various features

of the NIM through key expert and stakeholder consultations; and (iii) provide sport organisations with a flexible period of transition to adopt the features and requirements of the NIM.

Several sport organisations expressed concerns about timing and implementation. For example, one survey respondent expressed concern about *“the timelines for implementation, especially if we need to pivot to accommodate any changes in NSO/PTSO expectations as a result of a new body to implement the Code.”* Such concerns are best addressed through the recommended phased-in Pilot process prior to full adoption of the NIM. At the end of this process, the NIM will have had an opportunity to develop its policies, procedures, and processes; quickly address gaps allowing it to nimbly optimise its services based on actual operations before its national adoption by all of the Canadian sport community.

As the NIM tests ideas, develops, and evolves, it should be capable of scaling up to a larger organisation based on operational skill and ground experience. The phased-in approach will allow the NIM to work out any issues integrating outsourced providers foundational to its structure. Outsourced service providers will require appropriate time to integrate their existing systems or newly established with the NIM. Feedback from users of the system, outsourced providers, and expert advisors together will help develop a system that is effective, sustainable, and trusted by users.

A Pilot NIM also provides necessary time to develop budget requirements and other potential sources of revenue as seed funding from Sport Canada which will need to be augmented. It is proposed that seed funding be provided to the NIM by Sport Canada from 2021 through to the launch year of the fully mature NIM (2024) when it becomes operational for all national users. The IRT recommends that participation in the NIM be conditional on payment of a modest user fee to support the NIM that would be gradually phased in, in Year 2 of the Pilot (2023). Thus, an NSO which elects to participate in the launch year of the Pilot (2022) would not be required to remit this user fee until its second year of participation in the Pilot (2023). This affords these organisations (and the NIM) the opportunity to educate their stakeholders about this fee requirement and the related value of access to the NIM brought with it. It has the advantage of bringing all those within the sport community together to contribute to the funding of the NIM.

Once the NIM is fully operational, such fees would be a mandatory requirement for all participants; government cannot and will not be the only contributor to the cost of the operation of the NIM.

This will reduce reliance on federal funding and contribute to a sustainable model to prevent and reduce maltreatment in sport in Canada.

Some NSOs and provinces have expressed immediate readiness to adopt the NIM for reporting and dispute resolution, whereas others are not in a similar state of readiness. The IRT recommends entry into the Pilot be conditional on acceptance of certain terms, separate from and in addition to the requirements under Sport Canada's Contribution Agreement. For example, Pilot participants would be required to use the NIM's reporting and resolution process for all forms of maltreatment. Non-Pilot participants' existing reporting and resolution processes would be unaffected and would continue until the NIM becomes accessible to them. It is recommended that all FFSOs be required to adopt the NIM by 2024 when it is expected to be fully operational. It is anticipated that other organisations at the PTSO level will also voluntarily become signatories to the NIM throughout the Pilot and after the NIM becomes fully operational in 2024. It is proposed that all the NIM's described features be mandatory requirements for all FFSOs which participate in the NIM throughout the Pilot period.

The Pilot of the NIM would be introduced to the Canadian sport system in three phases starting in 2021 until the NIM's expected fully inclusive national launch in 2024. Because the IRT recommends capped participation in the initial phases of the Pilot, an application and review process should be initiated by the NIM for those FFSOs and PTSOs that wish to gain access. The IRT recommends that consideration be given to FFSOs of different sizes, complexity, and features that will allow the NIM Pilot to evaluate its processes across these different contexts.

The IRT believes this approach will ensure greater buy-in from the sport community and provide adequate time to prepare for full compliance with the NIM by 2024.

### 4.3 Establishing the National Independent Mechanism - 2021 (10-12 months)

First, the NIM must be established, funded, and have its administrative structures developed. This is anticipated to take between 10-12 months including the appointment of Visionary Advisors and a COP. The COP will hire the initial staffing complement and proceed to develop the structures,

rules, and administrative procedures of the NIM. This will also require amendments to the UCCMS to incorporate the administrative procedures and dispute resolution mechanisms of the NIM.

Operating agreements will need to be established with outsourced providers who will constitute foundational components of the Mechanism. During this phase, it is recommended that existing educational training requirements, provided through the CAC, The Respect Group, or other equivalent national providers to continue until such time as the NIM's oversight of education and training becomes operational. Other technological functions will need to be developed during this phase including building a website and implementing a case management system and an intelligence investigation data bank. Such developments will carefully observe the requirements of *Personal Information Protection and Electronic Documents Act* ("PIPEDA") and equivalent provincial legislation. This is a complex area that will require careful administration and management once the NIM is operational.

Staffing will be modest during this start-up phase with a recommendation to hire five full-time staff including a COP, Chief Legal Officer, Director of Education and Research, Director of Investigation, and Business Manager. Technological requirements including website development, and case management tools will be outsourced.

A critical part of this initial phase is communication to the Canadian public and sport community regarding the establishment of the NIM and what this means for Canadian amateur sport. This will be an important opportunity for Sport Canada and its stakeholders in amateur sport to demonstrate their commitment to addressing the issue of maltreatment in sport. It is recommended that Sport Canada, the SIRC, and possibly MGSS, work closely with the COP to

## KEY ACTIONS

- Confirm SC funding
- Sport/public communication
- Establish NIM
- Appoint Advisory Team
- Hire Chief Operating Person (COP)
  
- Hire core staff
- Establish office
- Draft NIM rules
- UCCMS amendments, processes
  
- Develop SDRCC processes
- Sport consultation/education
  
- Develop intake processes
- Contract with CCMHS
- Contract with Kids Help Phone
  
- Build website

## Outsourced Services:

- Education - CAC, The Respect Group
- Technology services

develop this communication plan. Beyond the initial communication that announces the NIM, ongoing communication and education sessions between the NIM and FFSOs are of paramount importance throughout this start-up period. There will be a steep learning curve for these organisations and many questions to answer by the NIM, including how to participate in the Pilot.

#### 4.4 Pilot Year 1 (2022)

##### KEY ACTIONS

- Contract with Pilot sport organizations (Adopters of NIM processes)
- Establish Think Tank Working Groups
- Hire additional staff (Total 11 FT)
- Intake processes fully functional
- Case management tools developed
- Launch activation & resolution process
- Develop education plan/RFPs
- Develop audit plan, process
- Issue Year 1 report

##### Outsourced Services:

- Education (CAC, The Respect Group)
- Dispute Resolution (SDRCC)
- Mental Health Support (CCMHS)
- Crisis Response (Kids Help Phone)
- Case Management Software (i-Sight)

##### Pilot Sport Organizations (14)

- 12 NSOs
- SASK Sport/Sport Manitoba

Once the NIM has been established, a limited number of FFSOs will be granted access to the Mechanism in Year 1 of implementation. It is recommended to target 12 NSOs for participation. The determination of the Pilot NSOs will be made through an application process.

Through the IRT's consultation process, it is evident that many in the Canadian sport sector, including PTSOs and some provincial governing agencies, support an integrated pan-Canadian service. Therefore, it is essential that some of these organisations be included in the Pilot. In the IRT's interviews, both Sport Manitoba and SASK Sport expressed the desire for immediate inclusion in the NIM. Therefore, the IRT suggests inviting Sport Manitoba and SASK Sport to participate in this first phase of the Pilot.

In order to gain insight into how the NIM would service the sport sector at large, it is critical to include the broadest group of different NSO configurations. For example, some FFSOs' members include national level and non-national level athletes. The different structures need to be reflected in the Pilot. For example, Canoe Kayak Canada and Skate Canada represent summer and

winter sports which have jurisdiction over participants from grassroots to national team athletes.

By contrast, other NSOs only have jurisdiction of athletes in the national athlete pool. An example of this structure is Curling. The total number of athletes in the national athlete pool is approximately 5450. The NIM may wish to include some sports that are faced with significant maltreatment legal actions proceeding at the time of writing such as gymnastics, athletics, alpine skiing, hockey and others. Some of these organisations have expressed their immediate interest to the IRT about participating in the NIM.

The IRT recommends increasing staffing to a total of 14 full-time staff in anticipation of the launch of the reporting and resolution features of the NIM. Additional staff include two NSSOs, a Director of Communications, a Senior Investigator, two Preliminary Assessment Officers, a Director of Compliance and System Excellence, a Director of Complainant and User Support, a Complainant Defence Counsel as well as additional full time or contract investigators and intake officer(s) as required.

Outsourced services that will be operational during this phase include dispute resolution through the SDRCC, mental health support through the CCMHS, 24/7 crisis support through the Kids Help Phone, and education as it currently exists through the CAC. These services will have been developed during Pilot Year 1.

#### 4.5 Pilot Year 2 (2023)

An additional 20 NSOs, as well as some MSOs and COPSIN members will be added to the second year of the Pilot through the same application and review mechanism as developed in Year 1. This will bring the total number of organisations to approximately 37 including the NSOs and provincial governing agencies continuing from Year 1. Those organisations entering their second year within the Pilot will be required to remit a user fee on behalf of their registered participation base. Those organisations entering their first year within the Pilot, will not be required to remit a user fee. All participating FFSOs will be required to remit an annual user fee commencing in 2024.

Staffing functions should be reviewed following an internal report prepared by the NIM at the end of the first year of the Pilot. Additional staff may be needed depending on the number of reports that are received by the NIM. It is recommended that an independent review of the Pilot be conducted during its second year and be tabled in the House of Commons upon its completion.

#### 4.6 Fully Operational (2024)

Following the Pilot program and evaluation, it is anticipated that the NIM will become fully operational commencing in 2024. Remaining organisations wishing to join the NIM may do so in this first fully operational year. The inclusion of all FFSOs is the ultimate goal, which would constitute a fully operational pan-Canadian independent mechanism to oversee the operation of the UCCMS.

The two provincial governing agencies in the Pilot will help inform the federal-provincial-territorial discussions about inclusion in the NIM. The provincial bodies will need to determine which of their PSOs will have access to the NIM. For example, whether all member organisations in a province will have access to the NIM, or limited to those PSOs fully aligned with their parent NSOs.

### KEY ACTIONS

- Evaluate outsourced services from Pilot Year 1
- Add additional participants (adopters of NIM)
- Launch new educational programming

#### Outsourced Services:

- Education (as determined by RFP)
- Dispute Resolution
- Mental Health Support (CCMHS)
- Crisis Response (Kids Help Phone)

#### Pilot Sport Organizations (37+)

- 12 NSOs (continued from Year 1)
- SASK Sport/Sport Manitoba (cont. from Year 1)
- +20 NSOs (Year 1)
- +2 MSOs (Year 1); 1 COPSIN (Year 1)
- +1 COPSIN (Year 1)
- + Additional PTSOs as negotiated



# Chapter 5

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## THE CANADIAN MALTREATMENT LANDSCAPE

### 5.1 Introduction

The UCCMS is the product of a lengthy consultation process that followed an announcement on 19 June 2018 by the then Federal Sport Minister, Kirsty Duncan, which called for “*stronger measures to eliminate harassment in the Canadian sport system.*”<sup>18</sup> These measures included new provisions in the funding agreements designed to foster “*health and safe workplace environments.*” The key features of the announcement included: i) the requirement for FFSOs to (i) “*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*”; (ii) FFSOs “*must make provisions – within their governance framework – for access to an independent third party to address harassment and abuse cases*”; and (iii) FFSOs “*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 Minister’s announcement initiated a consultation process including a series of nationwide safe sport summits involving stakeholders in the amateur sport community, as well as consultation amongst Federal-Provincial-Territorial Sport Ministers that gave rise to the Red Deer Declaration

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<sup>18</sup> Government of Canada, “Minister Duncan Announces Stronger Measures to Eliminate Harassment, Abuse and Discrimination in Sport,” Press Release, 19 June 2018.



For the Prevention of Harassment, Abuse and Discrimination in Sport (“Red Deer Declaration”).<sup>19</sup> The Red Deer Declaration outlines a common set of principles with an aim to eliminate abuse, discrimination and harassment in sport. Additional consultation and leadership were provided by the National Sport Organization Safe Sport Task Force who, together with other stakeholders, resulted in the publication of the UCCMS (version 5.1) that was delivered to the national sport community in December 2019.<sup>20</sup>

According to the Centre for Sport Policy Studies at the University of Toronto, by the late 1990s, Canada was at the forefront of producing “one of the most progressive examples in the world of a policy to deal with harassment and abuse in sport.”<sup>21</sup> Sport Canada’s funding regulations at the time, not unlike the UCCMS, required all FFSOs to have a policy:

*“(a) to deal appropriately with incidents of harassment and abuse; (b) to have designated arm’s length trained Harassment Officers (one male and one female) with whom athletes and/or their parents and others could raise queries, and to whom they could address complaints without fear of reprisal from coaches or other sport officials; and c) to report annually their compliance with the policy in order to receive that funding.”*

Other pioneering initiatives included, for example, a group of 40 NSOs formed in 1997 called the Harassment and Abuse Sport Collective. These federal initiatives “began to spread to provincial ministries responsible for sport and to Provincial Sport Organizations (“PSOs”), and to become considered internationally.”<sup>22</sup>

Despite these efforts, momentum stalled, and efforts failed to realise a pan-Canadian strategy to address and prevent maltreatment in sport. Reasons cited include the lack of centralised oversight, failure to update policies based on new trends and research, and a Federal-Provincial-

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<sup>19</sup> Canadian Intergovernmental Conference Secretariat, Conference of Federal-Provincial-Territorial Ministers Responsible for Sport, Physical Activity and Recreation, “Red Deer Declaration”, online: <<https://scics.ca/en/product-produit/red-deer-declaration-for-the-prevention-of-harassment-abuse-and-discrimination-in-sport/>> [last accessed 5 September 2020].

<sup>20</sup> Sport Information Resource Centre, “UCCMS Leadership Group Terms of Reference”, online: <https://sirc.ca/safe-sport/universal-code-of-conduct-to-prevent-and-address-maltreatment-in-sport-uccms-version-5-1/uccms-leadership-group-terms-of-reference/> [last accessed 5 July 2020].

<sup>21</sup>Peter Donnelly and Gretchen Kerr, Centre for Sport Policy Studies, University of Toronto, “Revising Canada’s Policies on Harassment and Abuse in Sport: A Position Paper and Recommendations,” (August 2018).

<sup>22</sup> *Ibid.*

Territorial system moving forward without alignment. Furthermore, *“ongoing and current cases of sexual harassment and abuse in various sectors, including sport, raised questions about the extent to which sport organizations were adhering to the SFAF’s funding regulations and whether sufficient attention was being devoted to prevention.”*

These reasons underscore the critical importance for a national independent mechanism to provide the necessary structures and thought leadership to avoid a second failure. As one respondent to the IRT Survey commented,

*“Sport as a whole, needs to move this across the finish line and be able to demonstrate the protections to ensure an environment our athletes deserve. Alignment, collaboration and leadership through accountability is the path to this goal.”*

In addition to the UCCMS and the available legislative or policy means to address maltreatment in the sport context, this Chapter also discusses the various legislative structures for the general public to address and seek redress for forms of maltreatment in Canada. These include the Canadian *Criminal Code*, Child Protective Services and the federal and provincial Human Rights systems.

## 5.2 Sport Policy and Legislation

### 5.2.1 The Universal Code of Conduct to Prevent and Address Maltreatment in Sport

The Universal Code is intended to *“provide the foundation for the development of a coordinated implementation strategy to prevent and address maltreatment across all levels of the Canadian sport system, and for all participants (athletes, coaches, officials, administrators, practitioners, etc.)”*. The intended mandate of the UCCMS to prevent and address maltreatment across *“all levels”* of the Canadian sport system and for *“all participants”* is aspirational since the current implementation of the Universal Code is narrowly focused on FFSOs.

As illustrated throughout this Report, there is no pan-Canadian policy platform guiding an integrated approach to prevent and address maltreatment in sport for all participants, at all levels. Despite this, the UCCMS, and the consultation process that gave rise to it, has stimulated both

debate and action as it concerns potential alignment. It has exposed gaps in the system, as well as drawn attention to best practises in the area of maltreatment with recognition that “*many groups and sport organisations are already doing things right, yet there are different programs.*”<sup>23</sup> Although the pan-Canadian sport landscape for managing maltreatment in sport is a patchwork of different approaches, expertise, and capacity, many are calling for a system with greater alignment. For example, according to the CEO of the CAC, “[i]f we are taking the time to implement this universal and national code of conduct, it’s to ensure it will be adopted, permanently, by all sport organizations and associations across the country.”

In its current version, the UCCMS is a Code of Conduct that sets out definitions for maltreatment and a range of disciplinary and remedial sanctions. As of 1 April 2021, NSOs who wish to receive federal funding must adopt and integrate the Universal Code into their organisational policies and procedures as a condition of their Contribution Agreement. The current version of the UCCMS is missing procedural guidelines that outline the jurisdiction and powers of administration of the Universal Code, as well as the adjudication of violations and complaints.

### 5.2.2 Physical Activity and Sport Act

The *Physical Activity and Sports Act* (SC 2003) (*Supra*) sets out the legislative and policy framework for the Government of Canada regarding physical activity and sport. It outlines the objectives of the Government and the principles of sport policy in the country. It is intended to increase participation in sport and support excellence within it. It also sets out the objective and mandate of the Minister. The Act additionally establishes the SDRCC as a national ADR service to resolve disputes among sport organisations and persons affiliated with it.<sup>24</sup>

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<sup>23</sup> Coaching Association of Canada, “Putting an End to Abuse in Sport: The Coaching Association of Canada is Working on Developing a National Code of Conduct,” February 11, 2019.

<sup>24</sup> *Physical Activity and Sport Act*, SC 2003, c 2.

### 5.2.3 Red Deer Declaration

The Red Deer Declaration is a joint statement regarding the prevention of harassment, abuse and discrimination of sport from the Federal, Provincial and Territorial Ministers responsible for Sport, Physical Activity and Recreation. In the statement, the Ministers recognise the importance of harassment free sport and commit to prioritising collective action to address these issues. The Ministers further agreed to immediately establish a standing item on safety and integrity in sport, implement a collaborative intergovernmental approach and invest in a mechanism for the reporting and monitoring of incidents of harassment, abuse and discrimination. Although the Government of Quebec does not participate in these initiatives, the province agreed to exchange information and best practises with other governments.<sup>25</sup>

### 5.2.4 Long-Term Development in Sport and Physical Activity

Long-Term Development in Sport and Physical Activity is a framework for the development of children, youth and adults to enable optimal participation in sport and physical activity. Key factors underlying long-term development are personal, organisational and systemic factors. The framework includes the identification of shortcomings and recommendations for growth in different sectors of Canadian sport including physical literacy and sport fundamentals, training and recovery, and podium performances.

The framework is built upon four guiding principles: quality experiences, optimal programming, inclusion, and collaboration. First, the framework states that every child, youth and adult deserve a quality experience when they participate in physical activity or sport. This means *“good programs, in good places, delivered by good people.”* Second, there is a focus on optimal programming that gives every participant what they need to succeed in a participant centered and developmentally appropriate way. Third, the framework states that inclusion is non-negotiable and is crucial for participants to feel safe, welcomed and included in the sport environment. It

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<sup>25</sup> Canadian Intergovernmental Conference Secretariat, “Red Deer Declaration – For the Prevention of Harassment, Abuse and Discrimination in Sport”, online: <<https://scics.ca/en/product-produit/red-deer-declaration-for-the-prevention-of-harassment-abuse-and-discrimination-in-sport/>> [last accessed 3 September 2020].

also states that services need to be ready and in place to support diverse needs across all dimensions of an individual. Finally, the framework highlights collaboration for effective development. This requires the alignment of all parts of the Canadian sport and physical activity ecosystem, from community programming to targeted high-performance sport excellence. This framework is continually developed to include the latest research and updated objectives for the sport system in Canada.<sup>26</sup>

### 5.2.5 General Provincial Sport Legislation

Some provinces have enacted their own safety in sport legislation. Although these Acts do not relate to maltreatment exclusively, they are connected to the overall safe sport movement through topics of concussion safety, combative sport limits, and the establishment of councils and commissioners.

*Rowan's Law (Concussion Safety)* in Ontario, for example, imposes various requirements on sport organisations in following concussion awareness and protocols. It requires organisations to establish a concussion code of conduct as well as a removal-from-sport protocol for athletes who are suspected of having sustained a concussion. This legislation is intended to protect athletes by improving concussion safety in their sports.<sup>27</sup>

The *Snow Sport Helmet Act* in Nova Scotia requires those under the age of 16 to wear a helmet during participation in snow sports. The Minister of Health and Wellness is provided the power to appoint officers for enforcement of this Act.<sup>28</sup>

The *Athletic Commissioner Act* in British Columbia established an Athletic Commissioner who is responsible for the administration of provincial standards and safety protocols for participants and officials in professional boxing and mixed martial arts. Through uniform licensing, consistent

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<sup>26</sup> Sport for Life, "Long-Term Development in Sport and Physical Activity 3.0", (2019) online: <<https://sportforlife.ca/portfolio-view/long-term-development-in-sport-and-physical-activity-3-0/>> [last accessed 3 September 2020].

<sup>27</sup> *Rowan's Law (Concussion Safety)*, 2018, SO 2018, c 1.

<sup>28</sup> *Snow Sport Helmet Act*, 2011, c 47, s 1.

regulation and compliance, the Act will enhance the safety of participants by providing a more consistent regulatory approach.<sup>29</sup>

### 5.2.6 Quebec’s Act Respecting Safety in Sports

The Province of Quebec legislated the *Act Respecting Safety in Sports (Loi sur la sécurité dans les sports)*<sup>30</sup> (“ARSS”) to regulate certain inherently dangerous sporting activities. The ARSS covers professional combat sports, alpine skiing, recreative underwater diving, and target shooting. The ARSS does not address any issues of maltreatment, but rather establishes rules to ensure that individuals are not harmed through the sporting activities themselves. Section 26 requires every sports federation and unaffiliated sports body to adopt safety regulations concerning the matters prescribed by regulation of the Government and to ensure that they are observed by its members. Moreover, pursuant to s. 27, those sports federations and unaffiliated sports bodies must have their safety regulations approved by the Minister of Education, Recreation and Sports (the “Minister”).

Professor Sylvie Parent of L’Université Laval,<sup>31</sup> a member of Quebec ministerial committees of the Ministry of Education, Recreation and Sports: “Become Better Together”<sup>32</sup> and “Distinct Entity”,<sup>33</sup> advised the IRT that the ARSS may be used to develop a statutory maltreatment regime in Québec. In order to do so, the ARSS would require amendment to alter its statutory purpose.

Certain provisions in the ARSS may facilitate the creation of a regulatory administrative body. Section 55(1) allows the Minister to adopt standards promoting the safety of participants and spectators during the practice of a sport; s. 55(7) allows the Minister to establish committees for the application of the ARSS and; s. 55(8) allows the Minister to establish rules of procedure for the examination of questions within the Minister’s jurisdiction. If the ARSS was amended to cover

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<sup>29</sup> *Athletic Commissioner Act*, 2012, c 29.

<sup>30</sup> *Act Respecting Safety in Sports*, RSQ, c S-3.1.

<sup>31</sup> Personal interview with Professor Sylvie Parent (20 August 2020).

<sup>32</sup> Comité ministériel « Devenir meilleurs ensemble ». Visé à définir les éléments du plan d’action sur la sécurité et l’intégrité en milieu sportif et à cibler les besoins d’accompagnement des fédérations sportives pour mettre en œuvre le plan d’action.

<sup>33</sup> Comité ministériel « Entité distincte ». Visé à réfléchir aux solutions afin d’assurer une gestion efficace et indépendante des plaintes en matière de violence en contexte sportif.

maltreatment, these regulatory powers would facilitate the creation of a mechanism to address maltreatment.

### *Powers and Obligations of the Minister*

Under s. 20, the Minister is responsible for supervising personal safety and integrity in the practice of sports. To fulfill this obligation the Minister is granted certain powers under the ARSS. For example, pursuant to s. 22, the Minister may order investigations of situations that could endanger the safety of persons practicing a sport. Furthermore, under s. 25, the Minister may authorise an audit of a sport organisation to ensure compliance with the ARSS. The Minister also has the power to modify, suspend, cancel, revoke or refuse to renew a licence under s. 46.37.

### *Sport regulations*

The ARSS requires covered organisations and persons to fulfill certain obligations. It outlines the licensing requirements and the grounds for refusing, revoking, suspending and modifying a licence for combat sport event organisers and participants, recreative diving participants, and shooting range operators and participants. Examples include: (i) the obligation of shooting range operators and members to report misuse of firearms and other dangerous activities under ss. 46.31 and 46.42; and (ii) the obligation of alpine ski facilities to meet certain first aid standards under ss. 46.7 and 46.8. Alpine ski facilities also have the obligation to post the Alpine Skiers Code of Conduct under s. 46.4. The Alpine Skiers Code of Conduct is a regulation under the ARSS that denotes certain behavioural requirements for skiers and employees to follow. These behaviours do not relate to maltreatment.

### *Ministerial reviews and proceedings before the Administrative Tribunal of Quebec*

The Ministerial review process for alleged breaches of the ARSS is outlined in chapter six of the ARSS. The Minister reviews decisions rendered by sports federations and unaffiliated sports bodies in accordance with a safety regulation under the ARSS. Chapter six also states that the Administrative Tribunal of Quebec hears appeals from decisions of the Minister or the Quebec

Sports Safety Board that may issue or reject licences. The IRT notes that the Quebec Sports Safety Board was abolished in 1997 and its responsibilities were passed onto the Minister of Municipal Affairs.<sup>34</sup>

### *Establishment of Regulations*

Chapter seven of the ARSS grants the Government of Quebec and the Minister the power to establish regulations under the ARSS. These powers include, but are not limited to, the adoption of safety standards, the adoption of equipment standards and the establishment of committees. The Minister is also granted the specific power to establish the Alpine Skiers Code of Conduct under s. 55.1(1).

### *Features Noted by the IRT*

The IRT took note of s. 20, which makes the Minister responsible for supervising personal safety and integrity in the practise of sport. Mandating ministerial responsibility for the objectives of the NIM would help foster greater governmental participation in the project and may help bolster provincial funding.

## 5.3 National Services to Prevent and Address Maltreatment

A variety of services are currently offered nationally in Canada including education and training, dispute resolution, investigations, mental health support, and safe sport referral services. These services are currently being provided through a range of public and private organisations that may be accessed by national, provincial, and local stakeholders in the amateur sport system in Canada. As noted in the Report's discussion of outsourced services, the IRT recommends that the NIM integrate into its structure and use to its advantage the capacity and expertise of some of these organisations. Some of these existing services have emerge from the introduction of the UCCMS and requirements from the Contribution Agreements.

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<sup>34</sup> Gouvernement du Québec, "Fondements de la Partique Sportive au Québec", (2019), online: <<https://www.loisirmunicipal.gc.ca/wp-content/uploads/2019/09/Fondements-de-la-pratique-sportive-au-Québec.pdf>> [last accessed 28 August 2020].



### 5.3.1 Education and Training

There are several organisations currently delivering educational content to the Canadian sport sector including the CAC, The Respect Group, and the CCCP, among others. The IRT Survey responses demonstrated that these are the most utilised education service providers amongst amateur sport organisations in Canada.

#### *Coaching Association of Canada (“CAC”)*

The CAC offers a suite of education and training programs for coaches and other sport stakeholders that encompass ethical behavior. The CAC leads a program called the Responsible Coaching Movement which *“aims to protect athletes and coaches from unethical and illegal behaviour through the implementation of measures such as the Rule of Two, background screening (e.g. police record checks) and respect and ethics training.”*<sup>35</sup> Several resources are provided under the banner of sport safety for coaches including information about the Rule of Two, background screening, respect and ethics training, and reporting concerning behavior (including misconduct, concerning behavior, and child sexual abuse).

The CAC has also been at the forefront of pioneering educational initiatives that fall within the spectrum of safe sport, such as gender-based violence in sport. The CAC received funding from the Public Health Agency of Canada (“PHAC”) *“to build the capacity of coaches and other sport system stakeholders to prevent and address gender based violence in sports.”*<sup>36</sup> This funding was part of PHAC’s Health Perspective program which supports Canada’s strategy to prevent and address gender-based violence.

The CAC also led the development of a UCCMS based safe sport training program following new requirements set forth by Sport Canada for FFSOs. This program is an online product that was developed following an RFP process for an approximate initial development cost of \$150,000. The

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<sup>35</sup> Canadian Centre for Ethics in Sport, “Responsible Coaching Movement,” online: <<https://cces.ca/responsible-coaching-movement>> [last accessed 21 September 2020].

<sup>36</sup> Coaching Association of Canada, “Gender-based violence/Teen Dating Violence in Sport”, (online: <<https://coach.ca/gender-based-violence-teen-dating-violence-sport>> [last accessed 21 September 2020].

program was led by the CAC who assembled a group of subject matter experts to inform the content. This was then outsourced to another provider for development and hosting. This program is currently provided free-of-charge and is directed primarily to national level coaches and other activity leaders and staff as a mandated requirement. It is the responsibility of the NSOs to determine who must take this course (and how often) according to the terms of reference in their Contribution Agreements (e.g. employees, volunteers, contractors with specific parameters of engagement). Key features of the CAC safe sport program include the following:

- Provided free-of-charge to users
- Integrated with CAC database/“the locker”
- UCCMS core concepts, definitions, and obligations
- Maltreatment concepts
- Suitable (with targeted content) for coaches, administrators, athletes, and other technical staff (anyone under the authority of the national organisation)
- Suitable for early specialisation sports
- Provides first-instance, core training
- Not adaptable to community/volunteer coaching

This training is focused primarily to satisfy the mandated UCCMS training requirements at the national sport level. However, it has been criticised by athletes as not necessarily understanding the athlete’s perspective or really explaining how an athlete is to recognise certain forms of maltreatment. Athletes also noted the content is directed at the national level and would require more targeted content, particularly for minors.

The CAC offers a wide array of complementary educational training including Making Ethical Decisions. Although this is not specifically focussed on maltreatment in sport, it provides important foundational information to support an ethical decision-making process.

### *The Respect Group*

Founded by former professional hockey player and safe sport advocate, Sheldon Kennedy, The Respect Group offers a variety of popular education programs in Canada including the Respect in

Sport Activity Leader Program (for coaches and other leaders), as well as targeted programs for girls (“Keeping Girls in Sport”), youth participants (“Stay in the Game”), and officials (“Respect in Sport Officials”). They have certified more than 566,924 leaders through the Activity Leader Program and 471,065 parents through the Parent Program through a number of innovative partnerships. They also offer a Respect in the Workplace program that targets employees, volunteers, and board members. The Respect in the Workplace program is offered widely to non-sport organisations as well and their platform has been used by KPMG as core educational component of KPMG’s diversity and inclusion practise.

The Respect Group is well-entrenched in the Canadian amateur sport marketplace with service agreements with 53 NSOs and many PTSOs. They have productive and complementary relationships with several MSOs including AthletesCAN, Canadian Tire Jumpstart, and the CAC, among others. In 2014, in a letter that was intended to clarify some confusion between the CAC’s Make Ethical Decisions (“MED”) program and the Respect in Sport Program, the CAC wrote the following:

*“In terms of curriculum, be advised that Respect in Sport/Respect in Soccer programs (RiS) focus on important foundational information for coaches/activity leaders including:*

- *the prevention of bullying, abuse, harassment and neglect*
- *proper reporting procedures/protocols for the above behaviors*
- *the use of positive power*
- *an athlete’s emotional development*

*...To enhance coach training and education, several National Sport Organizations (i.e. Hockey Canada, Gymnastics Canada) and Provincial Sport Organizations (e.g. Sport Manitoba, Sask Sport, Ontario Soccer) require the completion of RiS programs to ensure the safest sport environment.”<sup>37</sup>*

Respect in Sport courses are recognised by the CAC and are eligible for National Coaching Certification Program (“NCCP”) professional development credits and completion is recorded in the CAC’s central database (“The Locker”). This relationship between CAC programs and The

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<sup>37</sup> Coaching Association of Canada, “Letter by Lorraine Lafreniere”, (October 2014).

Respect Group illustrates the complementary educational opportunities and flexibility currently available in the Canadian marketplace.

Key features of The Respect Group's educational offerings include the following:

- Programs that target multiple stakeholders, from grassroots to high performance
- Local customisation (e.g. customer leader messages, branding)
- Role category emulation
- Front and back-end integration with other databases
- Cross-sport certificate porting
- Off-line "App"
- Auto recertification function
- PIPEDA compliance
- Accessibility compliance (Government of Canada)
- Child management tool
- Embedded user surveys
- Comprehensive reporting

The Respect in Sport Activity Leader program does a complete refresh of content on a four-year cycle, with annual updates as required depending on specific organisational and legislated requirements where applicable in a jurisdiction. Their content continues to evolve to address needs in the sector. For example, they have recently introduced multi-lingual closed captioning to better serve non-English speaking communities. Current modules include gender equity, LGBTQ+ awareness, racism and unconscious bias, and indigenous awareness in addition to core content on bullying, abuse, harassment, and discrimination. Current content in its online products does not include information about the UCCMS (a paper handout is provided in some methods of delivery). The Respect in Sport Activity Leader training program was recently granted approval by Sport Canada as meeting the educational requirements pertaining to the implementation of the UCCMS as set forth in the Contribution Agreements.

## *The Canadian Centre for Child Protection (“CCCP” or “Commit to Kids”)*

The Canadian Centre for Child Protection is the leading national agency in Canada educating stakeholders about child protection.

*“Today, the Canadian Centre’s core programs—Cybertip.ca, CSFAD (which includes MissingKids.ca), Kids in the Know, and Commit to Kids—work harmoniously to educate Canadian families, children, teachers, and child-serving organizations, build awareness, and most importantly, reduce child victimization.”<sup>38</sup>*

The Centre is funded, in part, by the Government of Canada through Public Safety Canada who provide ongoing support of Cybertip.ca *“under the National Strategy for the Protection of Children from Sexual Exploitation on the Internet.”<sup>39</sup>* They have well-established relationships with law enforcement in Canada including the RCMP’s National Child Exploitation Resource Centre, as well global law enforcement agencies.

Commit to Kids was developed by the CCCP in 2007 in order to *“address the needs of child-serving organizations, which are often targeted by individuals seeking access to children. Commit to Kids, a step-by-step plan to help organizations reduce the risk of child sexual abuse of children in their care, was piloted through 2009 and released to the public in 2010.”* Approximately 3,800 organisations and 42,000 users have been engaged with Commit to Kids program and training.

The Commit to Kids for Sport program was developed by the CCCP under contract from the CAC. It was developed to target community level coaches, volunteers, and activity leaders who are working with children and is narrowly focused on sexual exploitation training versus the broader definition of training provided in the UCCMS. The program also provides *“resources that help sports organizations develop policies for coaches and volunteers that uphold standards of conduct to keep*

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<sup>38</sup> Canadian Centre for Child Protection, “History”, online: < <https://www.protectchildren.ca/en/about-us/history/>> [last accessed 20 September 2020].

<sup>39</sup> Canadian Centre for Child Protection, “About Us – Partners”, online: <<https://www.protectchildren.ca/en/about-us/partners/>> [last accessed 15 August 2020].

*kids safe in sport.*” The following user statistics about the Commit to Kids for Sport program were provided by the CCCP:

- 8,806 *Commit to Kids for Coaches* online training accounts have been issued to sport organisations (1 March 2017 to 18 August 2020)
- 640 *Commit to Kids* program have been provided to sport organisations (95% of which have been provided between 2017 and 2020).

The figures provided above include NSOs, PSOs, LSOs, MSOs, and Disabled Sports Organisations (“DSOs”).

The Commit to Kids online training program represents only a narrow slice of the overall Commit to Kids program that is offered free-of-charge through the CCCP. They offer broader safeguarding programs including *Commit to Kids: An Introduction to Safeguarding Children from Sexual Abuse*.

The CCPP also provides important research and reporting including “Social Value Reports” and other research. This year they released a report entitled *The Prevalence of Sexual Abuse by K–12 School Personnel in Canada, 1997–2017* which aimed to detail the sexual offences committed (or allegedly committed) against children by employees of K–12 schools across Canada over 20 years.<sup>40</sup> Similar research of maltreatment in sport in Canada is lacking and international best practises suggest that research should be a part of any integrated safe sport strategy.

### *Sport Dispute Resolution Centre of Canada (“SDRCC”)*

The SDRCC has been a strong collaborator with myriad stakeholders in the amateur sport community in Canada and was represented on the NSO Safe Sport Taskforce and the Federal-Provincial-Territorial Safety, Integrity and Ethics in Sport Working Group.<sup>41</sup>

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<sup>40</sup> Canadian Centre for Child Protection, “About Us – Partners”, online: <<https://www.protectchildren.ca/en/about-us/partners/>> [last accessed 15 August 2020].

<sup>41</sup> Coaching Association of Canada, News Release, “Putting an End to Abuse in Sport: The Coaching Association of Canada is Working on Developing a National Code of Conduct” (11 February 2019), online: *Coach.ca*.

The SDRCC played a leadership role in launching and managing two pilot projects concerning safe sport in Canada: (1) CSH, and (2) Investigation Unit (“IU”). Given the SDRCC’s involvement with these initiatives, they also have provided safe sport training and education leadership. For example, the SDRCC developed a document entitled “Third-Party Profile and Role” *“at the request of several federally funded sport organizations.”*<sup>42</sup> Following the directive by Sport Canada to provide a third-party mechanism to manage complaints of maltreatment, many NSOs were unsure of what this role entailed which led to the development of this document.

The SDRCC also launched and host a website: [www.abuse-free-sport.ca](http://www.abuse-free-sport.ca). The website is described as follows:

*“The Abuse-Free-Sport.ca webpage was created in March 2019 to host the Canadian Sport Helpline, aimed at offering a safe place for victims and witnesses of abuse, harassment and discrimination in sport to share their concerns and get advice on next steps. Since then, several projects and initiatives have been put in place to enhance the safety of the Canadian sport system. This new and improved Abuse-Free-Sport.ca website can now serve as a centralized hub of information for those who support the vision of safe sport in Canada.”*<sup>43</sup>

The bilingual website includes information about the following: CSH and links to other helplines; Investigation Unit; Code of Conduct (“UCCMS”); Complaint Process (including Third-Party Profile and Role); Education (Links to CAC, Respect in Sport, Commit to Kids); and Links to additional resources.

### *The Canadian Centre for Ethics in Sport (“CCES”)*

The CCES is well-known as Canada’s independent national Anti-Doping agency. However, the CCES has a broader mission that promotes *“a values-based and principle-driven sport system”*<sup>44</sup> and an advocacy role *“for sport that is fair, safe and open.”* This underlies their extension into advocacy and education in areas other than Anti-Doping including, for example, match-fixing, and safe sport.

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<sup>42</sup> Sport Dispute Resolution Centre of Canada, “Third-Party Profile and Role”, online: <[http://www.crdsc-sdrcc.ca/eng/documents/Third\\_Party\\_-\\_Profile\\_and\\_Role\\_with\\_Declaration\\_EN.pdf](http://www.crdsc-sdrcc.ca/eng/documents/Third_Party_-_Profile_and_Role_with_Declaration_EN.pdf)> [last accessed 11 August 2020].

<sup>43</sup> Sport Dispute Resolution Centre of Canada, “Advocating for a Safe Sport System”, online: <<https://abuse-free-sport.ca/>> [last accessed 11 August 2020].

<sup>44</sup> Canadian Centre for Ethics in Sport, website, online: <https://cces.ca/> [last accessed 26 September 2020].

The CCES is also a partner and educator in the “True Sport” movement that promotes the values of fair play and good sportsmanship.

They offer a range of services focused primarily in the sphere of anti-doping, including the following:

- Ethics Services
- Anti-Doping Services
- Personnel Training and Certification
- Customised Education Programs
- Major Games Services
- Program Audits and Evaluations
- Policy Development and Review

Within its current mission, the CCES provides limited safe sport education resources through its website. This includes promotion of the Safe Sport Helpline and coordination of the Responsible Coaching Movement in collaboration with the Coaching Association of Canada. The Responsible Coaching Movement is a “Canada-wide initiative that is the result of ongoing consultations with the Canadian sport community.”<sup>45</sup> Information about the Responsible Coaching Movement is made available to parents, sports organisations, and coaches. For example, sport safety for coaches is offered through a link to Coach.ca. A link to a brief explanation of physical punishment is also provided on the CCES website under their safe sport programs section.

The CCES played a vital role as the final drafter of the UCCMS version 5.1. They did so following an extensive process of consultation and feedback from stakeholders in the sport community, experts in maltreatment, and Sport Canada. The existing version would have always required amendments to provide for the procedural process. It has been suggested to the IRT that there are gaps of a substantive nature in the UCCMS related to child protection and special needs populations. The analysis of the content of the UCCMS is beyond the scope of the IRT’s engagement.

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<sup>45</sup> Sport Dispute Resolution Centre of Canada, “Advocating for a Safe Sport System”, online: <<https://abuse-free-sport.ca/>> [last accessed 11 August 2020].



### *Other Education Providers*

Several NSOs, MSOs, and PTSOs who were surveyed indicated that they have developed their own internal education and training programs for maltreatment, as well as use of other available programs. For example, Saskatchewan Volleyball is launching a new program for student-athletes in September 2020. Other examples include the following:

- Ontario Ministry of Labour Workplace Violence and Workplace Harassment Training
- Thomlinson Training
- IOC on-line training
- Specialised training for people with intellectual disabilities
- Canadian Red Cross training
- On-line educational model developed with Deloitte Consulting to educate COC staff about LGBTQ inclusion
- Indigenous Coach Development training for provincial coaches
- Development of learning platforms to address gender equity, inclusion, diversity as they may relate to oppression in soccer
- External consultants and safety experts

### *5.3.2 Referral and Support Services*

Less than half (47%) of sport organisations who completed the IRT survey indicated that they provide support services for athletes or other individuals related to mental health issues, and many of these services are restricted to certain classes of high-performance athletes.

Examples of mental health support services that are provided include:

- All national teams have access to mental trainers and sport psychologists through Institut National du Sport du Quebec

- Game Plan access for national team Athlete Assistance Program carded athletes include access to Morneau Shepell services
- Canadian College Athletic Association “Make Some Noise for Mental Health” campaign that links student-athletes to resources at their institutions.
- Team access to a mental health performance consultant
- Mental performance coaching (virtual and live one-on-one sessions and some group sessions at events) made available to carded and Team 2020 (OTP) targeted athletes only
- University-specific mental health resources for students.
- Promote CSH

### *Canadian Sport Helpline (“CSH”)*

The CSH is a national service that was launched as a pilot project via the SDRCC in March, 2019 as a confidential service to *“provide assistance to victims or witnesses of harassment, abuse, or discrimination.”*<sup>46</sup> The toll-free CSH is staffed by live operators from 8 a.m. to 8 p.m. (ET) seven days per week and *“is a listening and referral service.”* The call centre includes *“a team of practitioners with expertise in counselling, psychology, and sport to act as helpline operators.”* However, because the CSH is staffed by employees of the CCMHS, it was deemed a conflict of interest for call centre staff to refer individuals to the CCMHS for mental health support – their key competency.

The lack of direct mental health counselling support, and the fact that many individuals were directed back to a PTSO or NSO caused frustration for some who called this service, as noted in the *Pilot Project Evaluation Report (“PPER”)*.

*“Operators reported that they do receive phone calls from people who are frustrated that the CSH does not provide counselling; that it provides referrals which are (in some cases) perceived as*

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<sup>46</sup> Prairie Research Associates, “Pilot Project Evaluation Report: Canadian Sport Helpline and Investigation Unit” (31 March 2020).

*redirection to a sport organization that is believed to be “part of the problem.” or that is not more action oriented (i.e. does not act on concerns and complaints), and does not perform any follow-up.”*

According to the PPER, *“the main clients/users of the CSH are the parents of children or youth in club-level sports as well as some national-level athletes and some coaches (mostly at the club and provincial level, some at the national level).”* This is consistent with data from the CCCP who suggest that child victims typically do not report behavior related to sexual abuse and it is more likely that a parent or other adult reports such allegations.

The CSH received 1,192 calls and 193 emails over a period of 361 days that the call centre operated.<sup>47</sup> This translates to about 3.3 calls/day with each day staffed for a period of 12 hours. The total budget for the CSH was approximately \$252,500 which amounts to an expenditure of \$212 per call. Several of these calls were unrelated to maltreatment in sport issues.

The PPER acknowledges that:

*“[T]he evaluation of the CSH ad IU pilot projects took place at a time when there were important conversations underway among stakeholders about making sport safer, including how best to implement the Universal Code of Conduct to Prevent and Address Maltreatment in Sport and whether an independent organization dedicated to safe sport is required.”*

While the IRT agrees in principle with the requirement of an independent mechanism, the IRT’s recommendations related to method of implementation of the listening referral and investigations services conflict with the recommendations of the PPER. An important observation included in the PPER is that *“there was a strong belief among key stakeholders that a listening and referral service and independent investigations are critical parts of a safer sport system in Canada and should continue in some form.”* The IRT agrees, however, the form of listening, referral, and investigations recommended by the IRT include mechanisms and methodologies that are different from the current services provided by the CSH and the SDRCC Investigation Unit. The explanation for which is set out in Chapter 3.

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<sup>47</sup> *Ibid.*

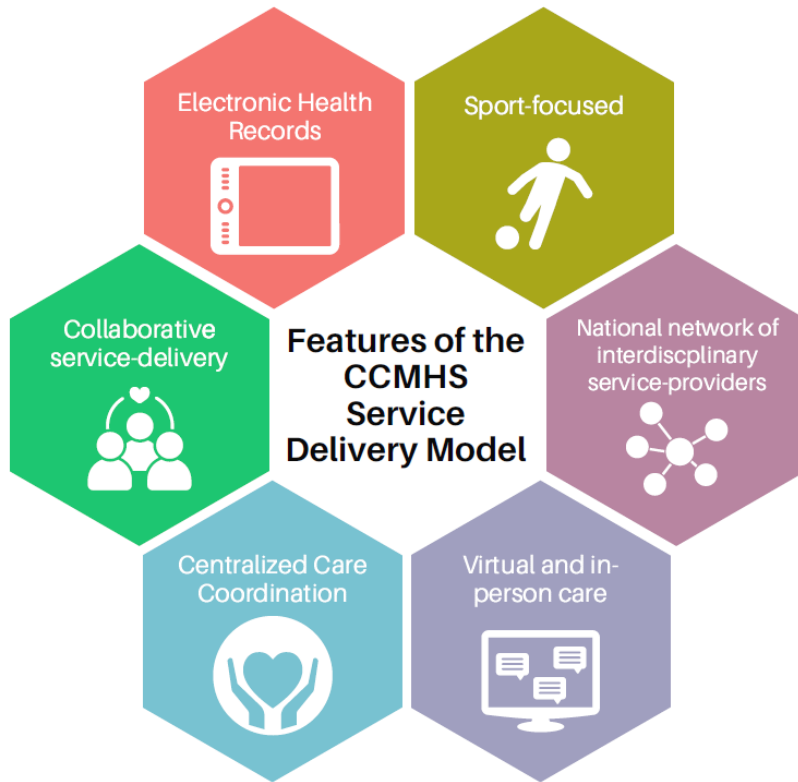
There are various approaches as to how agencies manage reporting and mental health support related to safe sport programming as noted in other areas of this Report. The U.S. Centre for Safe Sport, for example, does not operate a 24/7 call centre to receive complaints. The vast majority of complaints are made through a web-based reporting form, although people can also call the Centre directly where a staff member will accept the call during regular business hours. The U.S. Centre for Safe Sport does, however, contract with an independent third-party call centre who provides crisis intervention, listening, and mental health referral services.

### *Canadian Centre for Mental Health and Sport (“CCMHS”)*

The CCMHS is unique in Canada in that it is a registered charitable organisation which provides mental health services specifically tailored to the sport environment. Its strategic focus is *“providing collaborative, sport-focused mental care to athletes and coaches,”* as well as research and community engagement.<sup>48</sup> The CCMHS Service Delivery Model is shown below.

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<sup>48</sup> Canadian Centre for Mental Health and Sport, “Organization Overview Document” (2020).



The CCMHS has developed a service-user pathway including a referral submission followed by an intake session with a CCMHS Care Coordinator, provided free-of-charge. The CCMHS Care Coordinator *“is a centralized and neutral point of contact who guides services users through the care process.”* Where appropriate, the individual may be assigned a Collaborative Care Team followed by Care Delivery on a fee-for-service basis. The CCMHS Collaborative Care Team *“is comprised of 17 mental health practitioners with a background in sport.”* These practitioners include nine registered or clinical psychologists, five counsellors/psychotherapists, and three mental performance consultants.

Following the free intake session, fees vary from \$150 (Counsellor, Psychotherapist) to \$200 (Psychologist) that may be covered by private insurance. The CCMHS notes that *“when athletes struggle to pay for services, many CCMHS practitioners will work on a sliding scale down to a minimum fee that is allowed by their regulatory body”* and *“National team athletes often covered by Game Plan.”*

### 5.3.3 Safe Sport Officers and Independent Third Parties

Approximately 42% of organisations who responded to the IRT Survey indicated dedicated positions for managing issues related to maltreatment. Amongst NSOs, 56% (N=34) indicated having a dedicated position and 44% (N=27) did not. The majority of these positions are part-time or volunteer and include positions described as “Safe Sport Officer”, “Independent Third Party”, among many other titles.

It has become apparent to the IRT that some sport organisations are using the terms “Safe Sport Officer” and “Independent Third Party” interchangeably. This has led to considerable confusion among FFSOs. The IRT underscores that there should be a clear distinction between a Safe Sport Officer and an Independent Third Party. The IRT will use the Tennis Canada position “Director of Safe Sport and Integrity” to illustrate this distinction.

Tennis Canada’s Director of Safe Sport and Integrity position pre-dates the UCCMS requirement for an Independent Third Party. The role of a Safe Sport Officer is not a mandated requirement. The role of the Tennis Canada’s Director of Safe Sport and Integrity position includes many responsibilities beyond those that constitute maltreatment. For example, this role includes many oversight functions related to privacy, compliance, insurance, and risk management beyond the narrow scope of maltreatment. Importantly, Tennis Canada’s Director of Safe Sport and Integrity is completely detached from Tennis Canada’s Independent Third Party. The latter position was added to fulfill the UCCMS requirement.

The role of Independent Third Parties is described in Contribution Agreements as follows (s. 5.1.1): *“The Recipient shall provide the individuals affiliated with the organization with access to an independent third party to address harassment and abuse allegations.”* As such, the functions of an Independent Third Party would not rest with a Safe Sport Officer (such as described with Tennis Canada) who is not independent from their organisation and who performs other functions on behalf of their organisation.

The majority of Independent Third Parties as described to the IRT include part-time positions who may receive complaints of maltreatment if, and when, required. In some cases, Safe Sport Officers employed by one NSO are acting as the Independent Third Party for other NSOs. One person

interviewed described this arrangement as “*hanging out a shingle*”, and another person expressed concerns about the true independence of such arrangements.

The ongoing role of Independent Third Parties is fundamental to the NIM and reflects the varied mechanisms that will still need to be in place to manage maltreatment. This includes the need for ITPs to act on less serious complaints of maltreatment under the discretionary authority of the NIM that may be referred to sport organisations. This role of the ITP in these circumstances is essential to continue to manage less serious complaints on an independent basis at the sport level. It provides the necessary independence and reassurance to athletes (and others) that all complaints will be dealt with independently, whether this be through the NIM or the sport.

The IRT’s proposed recommendations for NSSOs in contrast, encompasses a different (and narrower) set of job responsibilities than Safe Sport Officers that may exist at the NSO level. The Tennis Canada position is illustrative of this point. As a result, the NSSO should not, and is not intended to, replace existing or planned Safe Sport Officers (or similarly named positions) at the NSO, MSO, or PTSO levels.

Moreover, Sport Canada, in its guidance to NSOs, MSOs, and COPSIN about integration of the UCCMS into Organisational Policies and Procedures, noted the following:

*“Funded organizations are required, to have an independent third party in place to receive and manage reports of harassment and abuse, as outlined in the contribution agreement. This requirement will not change with the integration of the UCCMS and the identification of the independent body.”<sup>49</sup>*

## 5.4 Provincial Sports Federations’ Services

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<sup>49</sup> Sport Canada, “Integration of the UCCMS into Organizational Policies and Procedures. REFERENCE TOOL” (26 August 2020).

### 5.4.1 viaSport British Columbia

viaSport is a not-for-profit organisation created by the Province of British Columbia in 2011.<sup>50</sup> Its primary function is to manage the Province’s investment in sport on behalf of the Ministry of Tourism, Arts and Culture (“MTAC”). These investments are directed towards growing sport participation in an equitable fashion by increasing and retaining participation in sport, especially among underrepresented groups. It also seeks to support organisational and system excellence across BC sport organisations by promoting their financial independence, developing leadership and improving their practises. viaSport is primarily funded by the Province of British Columbia. However, it also receives funding from the Government of Canada, private foundations and corporations. It is led by a CEO and a Board of Directors. Within the organisation are also the Sport Leadership Committee, the Coaches Advisory Group and the Girls and Women Advisory Group. These groups provide specialised recommendations to the Board of Directors on the development of policies, procedures and programming in their respective fields of expertise.

viaSport does not currently manage maltreatment complaints. However, they are developing a provincial equivalent to the UCCMS and an accompanying administrative body. The IRT contacted viaSport leadership for information regarding their plans for the BC maltreatment code and mechanism. viaSport indicated that the IRT could have access to their provincial equivalent to the UCCMS, once it leaves its final verification committee on 18 September 2020. Despite requests, the IRT did not receive it.

#### (i) Funding<sup>51</sup>

viaSport’s total revenue in 2019 was \$16,236,337, the majority of which was funded by the Province of British Columbia. In addition to its provincially generated funds, viaSport also received \$41,500 in private sector funding during 2018-2019. Most of this revenue is directed towards funding sport organisations in BC. In 2019, viaSport gave \$14,148,721 in grants to the PSOs, DSOs, MSOs and special projects. The remaining revenue was directed towards its own administrative

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<sup>50</sup>“Government Partners”, online: viaSport <<https://www.viaSport.ca/partners/government>> [last accessed 4 September 2020].

<sup>51</sup> “viaSport British Columbia Society: Financial Statements” (31 March 2019), online (pdf): viaSport <<https://www.viaSport.ca/sites/default/files/viaSport%20British%20Columbia%20Society%20Audited%20FS%2C%20Mar%202019%20-%20Final%20%28Signed%29.pdf>> [last accessed 4 September 2020].



costs. In 2018-2019, 57 accredited PSOs and DSOs, and 11 MSOs in BC received funding through viaSport grants.

### (ii) Community Outreach

viaSport conducts several public outreach programs to help foster a more equitable sport community in BC. These programs address female and disabled persons representation in sport, responsible coaching, and bullying. viaSport uses traditional media, newsletters, social media and in-person engagement to spread awareness about these issues. They estimated that their potential reach was 11,019,077 people in 2018-2019.

### (iii) Dispute Resolution: The Sport Law Connect Program

The Sport Law Connect Program (“SLCP”) was created by the SDRCC and is being piloted in BC in partnership with viaSport, the University of British Columbia, the University of Victoria and the Alternative Dispute Resolution Institute of BC. The SLCP allows athletes and sport organisations to connect with SLCP Participants (law students and other legal professionals) to facilitate dispute resolution; however, SLCP Participants do not offer legal advice. viaSport itself performs several functions in the SLCP process including: promotion of the program; accepting and managing requests for the services of panel members, facilitators or case managers; appointing SLCP Participants to cases; maintaining a program database; and sending out evaluation forms at the completion of the proceedings.

Sport organisations may also apply to the SDRCC to have their dispute officially resolved.

### (iv) Accessibility

viaSport conducts further operations to help foster the participation of disabled persons in sport including “Access Sport Hub”, a chatbot tool for people to find, share and connect to inclusive and adaptive sport and recreation programs that meet their needs across BC and disability inclusion research in partnership with the University of British Columbia.

## 5.4.2 Sask Sport Inc.

Sask Sport Inc. (“Sask Sport”) serves as the provincial federation for amateur sport in Saskatchewan. It is a volunteer-driven, non-profit organisation whose membership has grown to include over 70 PSOs and MSOs since its inception in 1972.<sup>52</sup> Through partnerships with the government, non-profit organisations, businesses, and volunteer sectors, Sask Sport works to enhance the lives of those in Saskatchewan by fostering positive and inclusive experiences at all levels of sport.

Sask Sport provides a number of services to aid their member organisations in combating maltreatment in sport. It has developed a policy framework for its member organisations to adopt and implement to ensure they are equipped to handle complaints and resolve disputes.<sup>53</sup> Sask Sport also provides its members with independent ADR services such as case management and mediator/arbitrator selection by contracting with the ADR Institute of Saskatchewan.<sup>54</sup> To ensure that key personnel within its member organisations receive the proper training regarding maltreatment in sport, Sask Sport has made certain training, such as participation in the Respect in Sport Group Inc., mandatory for all activity leaders and coaches.<sup>55</sup>

Pursuant to an agreement (“Agreement”) with the Government of Saskatchewan, lottery proceeds are placed in the Saskatchewan Lotteries Trust Fund for Sport, Culture and Recreation (the “Trust”), which are then distributed to eligible sport, culture and recreation organisations in the province.<sup>56</sup> As the provincial federation for sport, Sask Sport receives funding from the Trust and is responsible for distributing it to Saskatchewan’s PSOs.<sup>57</sup> Sask Sport retains some of this funding to partially cover its own operations. To be eligible for funding, the PSOs must meet certain

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<sup>52</sup>Sask Sport Volunteer Board, “2019/2020 Annual Report”, online: *Sask Sport* <<https://sasksport.ca/pdf/AnnualReport/1920AnnualReport.pdf>> [last accessed: 3 September 2020].

<sup>53</sup> “Dispute Resolution Policies and Procedures”, online: *Sask Sport* <https://sasksport.ca/dispute.php> [last accessed: 4 September 2020].

<sup>54</sup> “Dispute Resolution Policies and Procedures Program, Frequently asked Questions”, online: *Sask Sport* [https://sasksport.ca/pdf/dispute/FAQ\\_July2019.pdf](https://sasksport.ca/pdf/dispute/FAQ_July2019.pdf) [last accessed: 4 September 2020].

<sup>55</sup> Sask Sport, “Respect in Sport: Frequently Asked Questions”, online: *Respect in Sport* <http://www.sasksport.sk.ca/RiS/faq.html> [last accessed: 4 September 2020].

<sup>56</sup> The Agreement designates Sask Sport as the provincial marketing organisation to sell Western Lottery Corporation tickets in the province. Sask Sport created the Western Canada Lottery – Saskatchewan Division Inc., which is responsible for marketing, and Sask Sport Distributors Inc. to distribute tickets on its behalf. Sask Sport is one of three independent community partners (Sask Culture Inc., and Saskatchewan Parks and Recreation Association being the other two) responsible for hearing funding applications made to the Trust.

<sup>57</sup> Virtus Group, “Financial Statements of Saskatchewan Lotteries Trust Fund For Sport, Culture and Recreation”, online: <http://www.sasklotteries.ca/about-us/sask-lotteries-trust-fund.htm> [last accessed: 4 September 2020].

organisational policy requirements set by Sask Sport, in addition to the criteria set by the Minister of Parks, Culture and Sport. Funding is then funneled through the PSOs to their associated lower-level sport organisations.<sup>58</sup>

Membership requirements and other key features of Sask Sport are described below.

### (i) Membership Requirements

In order to receive provincial funding in Saskatchewan, PSOs must be members of Sask Sport.<sup>59</sup> Membership is conditional on the PSO having dispute resolution and harassment and abuse policies and procedures in place. To ensure this requirement is met, PSOs submit a “Dispute Resolution policy suite” to Sask Sport. The Dispute Resolution policy suite consists of the following:

- Discipline and Complaints Policy Flowchart
- Appeal Policy and Flowchart
- ADR (Mediation) Policy
- Code of Conduct Policy
- Conflict of Interest Policy
- Dispute Resolution Policies and Procedures Checklist

Sask Sport provides templates for each of these policies, which are to be personalised by the PSO to include their contact information for filing complaints or appeals, their reporting timelines, and their appeal payment procedures. The personalised policies are then submitted to Sask Sport for approval. Any changes made to an organisation’s dispute resolution policies must be approved by Sask Sport. Rob Kennedy, the Manager of Provincial Sport Development at Sask Sport, noted that this policy suite has been helpful in terms of dealing with conflict resolution. However, although the policies touch on harassment and bullying, they do not deal with more serious forms of maltreatment.

In addition, Sask Sport members must have

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<sup>58</sup> “Funding”, online: *Sask Sport* <<https://sasksport.ca/funding.php>> [last accessed: 4 September 2020].

<sup>59</sup> Coaching Association of Canada, Summary of Summit, “National Safe Sport Summit Report” [last accessed: 7 July 2020].

*“an appropriate number of active coaches certified under the NSO and Coaching Association of Canada’s National Coaching Certification Program (“NCCP”), and be committed to ongoing coach education and formal training”. They also must have “an appropriate number of active officials certified through a formalized education and training program sanctioned by the NSO, and be committed to ongoing official’s education and formal training.”<sup>60</sup>*

PSOs are responsible for ensuring compliance with Sask Sport’s membership requirements. However, Sask Sport conducts audits to investigate concerns pertaining to the conditions of membership. If any of the criteria for Sask Sport Membership are not met, the PSO is given a one-year probationary period to make the necessary corrections. If the criteria are still not met after one year, Sask Sport will prepare a report to be reviewed by the Sask Sport Board, who will determine whether the PSO is eligible for membership.

## (ii) Funding

In 2019, the total revenue from the lottery was \$210,754,891. Approximately 75% of the total revenue goes toward covering various expenses such as provincial administration, prizes, and retailer commissions. The remaining 25% goes to the Trust to be distributed among eligible beneficiaries. Net profits transferred to the Trust in 2019 totalled \$61,800,433. The costs of operating the Trust and other related expenses are taken from this amount. 50% of the remaining amount is restricted for granting to eligible organisations in sport. As noted above, in order to be eligible for funding as a PSO, the PSO must be a member of Sask Sport. In addition, the PSO must be designated as eligible by the Minister of Parks, Culture, and Sport.

In 2019, Sask Sport’s annual expenses were \$12,802,860, a decrease of approximately \$1.5m from the previous year. The primary sources of revenue for Sask Sport are as follows:

### Revenue Sources – 2019

Rent & Service Income:	\$2,210,214
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<sup>60</sup> Sask Sport, “Criteria for Active Membership in Sask Sport”, online: *Sask Sport* <https://sasksport.ca/pdf/membership/SaskSportMembershipCriteria.pdf> [last accessed: 4 September 2020].

Grant and Contract Revenue:	\$9,593,113
Interest & Other Income:	\$1,025,435

As mentioned above, Sask Sport receives grants from the Trust to provide programs and services to its member sport organisations. In 2019, these grants totalled \$5,405,964. Resources used by Sask Sport in its role as the manager and administrator of the Trust are included in the Trust’s administrative expenses.

Under the terms of the Agreement, the Trust is required to make payments to Sask Sport Distributors Inc. to cover payments made to those volunteer non-profit organisations that previously acted as ticket distributors. As a previous ticket distributor, Sask Sport received \$358,560 in 2019. Moreover, pursuant to the Agreement, Sask Sport was paid an additional \$2,500,000 to fulfill their commitment to the City of Regina to facilitate lower-level sport organisations’ access to new facilities.

As a member of the Canadian Council of Provincial and Territorial Sport Federations (“CCP&TSF”), Sask Sport has also been authorised to operate the Saskatchewan Branch of the National Sport Trust Fund (“NSTF”). The CCP&TSF is recognised by the Canadian Revenue Agency under the qualified donees category as a Registered Canadian Amateur Athletics Association (“RCAAA”). The RCAAA serves to develop amateur sport on a national basis and does so under the name of the NSTF. As the provincial fund manager, Sask Sport approves projects, receives donations and allocates grants to approved projects in Saskatchewan.<sup>61</sup>

### (iii) Reporting & Dispute Resolution Procedures

Sask Sport does not handle complaints regarding maltreatment in sport. However, through a partnership with the Government of Saskatchewan, they have produced campaigns to promote the Respect Resource Line, a free 24-hour helpline run by the Respect in Sport Group that provides users with advice regarding how to deal with maltreatment in sport and directs them to appropriate resources. The campaigns included social and earned media, as well as posters

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<sup>61</sup> Sask Sport, “Fundraising”, online: *Sask Sport* <<https://sasksport.ca/fundraising.php>> [last accessed: 4 September 2020].

distributed to schools and sport facilities throughout Saskatchewan. The most recent campaign resulted in a 50% increase in Sask Sport’s website traffic. Sask Sport spends approximately \$15,000 annually to operate the Respect Resource Line. Notably, there is an interest on the part of Sask Sport to be aligned with the NIM at its inauguration.

As noted above, the dispute resolution procedure for member organisations is set out in the *Discipline and Complaints Policy* template provided by Sask Sport. Complaints are to be submitted in writing to the relevant PSO. The timeframe in which the complaint must be submitted following the incident is determined by the PSO when customising the Discipline and Complaints template provided by Sask Sport.<sup>62</sup>

Upon receiving a complaint, the PSO can either appoint their own Case Manager or request the appointment of an independent Case Manager by contacting Sask Sport’s Dispute Resolution Officer (“DRO”). ADR Saskatchewan provides Sask Sport members with a pool of qualified Case Managers to aid in the resolution of disputes. Sask Sport covers the cost of the Case Manager for the member organisation, which is approximately \$500 per case. The request for an independent Case Manager can be made only after the organisation’s attempts to resolve the matter internally have failed. The DRO then refers the complaint to ADR Saskatchewan who will appoint a neutral Case Manager. There is an eagerness on the part of Sask Sport to refer the complaint to ADR Saskatchewan as they are more experienced in dealing with conflict resolution.

The Case Manager first determines whether the complaint is frivolous or outside the jurisdiction of the PSO’s Policy. If the complaint falls within the jurisdiction of the Policy, the parties are notified that the complaint has been accepted. The Case Manager then proposes the use of the *Alternate Dispute Resolution Policy* (“ADR Policy”), which provides for the appointment of a mediator or facilitator to resolve the issue. This ADR Policy is included in the dispute resolution policy suite templates provided by Sask Sport. Both parties must consent to the application of the ADR Policy.

If the complaint is not resolved through ADR, the Case Manager will appoint a Discipline Panel consisting of one adjudicator. However, depending on the complexity of the issue and the discretion of the Case Manager, two additional panel members may be appointed.

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<sup>62</sup> Sask Sport & Sport Law Strategy Group, “Discipline and Complaints Policy”, online: *Sask Sport* <[https://sasksport.ca/pdf/dispute/DisciplineComplaintsPolicy\\_Oct2016.pdf](https://sasksport.ca/pdf/dispute/DisciplineComplaintsPolicy_Oct2016.pdf)> [last accessed: 4 September 2020].

Third-party investigators from ADR Saskatchewan may be appointed to collect supplemental information and conduct interviews. However, this is an informal process as there is no formal investigation procedure set out in the dispute resolution documents provided by Sask Sport. Instead, a formal hearing is held in an appropriate format depending on the circumstances, i.e., by telephone or in person. The parties submit any documents they wish to have considered, and they may have a representative or advisor accompany them during the hearing process. Upon completion of the hearing, the Panel decides whether there has been an infraction and whether sanctions are appropriate. Prior to the hearing, the respondent may acknowledge and accept the allegations. However, the Panel may still hold a hearing for the purpose of determining appropriate sanctions.

Decisions can only be appealed on specific grounds and within the timeframe set out in the PSO's *Appeal Policy*.<sup>63</sup> There are four grounds for appeal outlined in the *Appeal Policy* template: three of which are centred around "natural justice" and the last involves a "grossly unreasonable" decision made on the part of the sport organisation involved in the dispute. An appeal fee of \$500 is charged to the party appealing, which is reimbursed if the appeal is successful. The Case Manager will again propose the use of the ADR Policy. If either party does not consent to ADR, then an appeal hearing will be held. The Case Manager will appoint one or three Panel Members to hear the appeal depending on the complexity of the issue. Decisions made at the appeal hearing are final and binding on the parties and on the PSO.

Confidentiality is mentioned in the *Code of Conduct Policy*, the *Discipline and Complaints Policy*, and the *Appeal Policy*. The *Code of Conduct Policy* notes that it is the responsibility of Board/Committee members, coaches, and officials to maintain confidentiality in issues of a "sensitive nature". The *Discipline and Complaints Policy* and the *Appeal Policy* note "[t]he [appeals] process is confidential and involves only the Parties, the Case Manager, the Panel, and any independent advisors to the Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings."

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<sup>63</sup> Sask Sport & Sport Law Strategy Group, "Appeal Policy" online: *Sask Sport* <[https://sasksport.ca/pdf/dispute/AppealPolicy\\_Feb2016.pdf](https://sasksport.ca/pdf/dispute/AppealPolicy_Feb2016.pdf)> [last accessed: 4 September 2020].

There is a feeling among participants at the local level that their voice is not heard in the conflict resolution process because when a complaint is sent from the local level to the PSO, the PSO always takes the side of the local level organisation. There is potential for the oversight provided by the NIM to help reduce this apparent bias.

#### (iv) Education & Training

Sask Sport does not independently engage in the development of educational or training modules or courses. However, as a condition of membership, sport organisations must meet certain requirements in regard to the training of their personnel. The training programs required by Sask Sport's conditions of membership are provided by separate organisations.

Activity Leaders and coaches within Sask Sport's member organisations must complete the Respect in Sport program. The Respect in Sport program was designed by the Respect in Sport Group. Sask Sport covers the cost of this training for its member organisations through a formal agreement with the Respect in Sport Group. The agreement also includes the Respect Line discussed above as well as the "Respect in the Workplace" training course for the staff of Sask Sport. The PSOs are responsible for ensuring that all coaches have taken the training. Approximately 5,000 to 6,000 coaches take the mandatory training each year. Sask Sport has not yet made recertification of the Respect in Sport training mandatory, but they are looking to do so. Previously, Sask Sport was in partnership with Red Cross to provide similar mandatory training. Although this partnership no longer exists, Red Cross education and training is still employed as an option for remedial action in the ADR process.

In addition, although they are not mandatory for membership, Sask Sport also provides links to various training and educational programs developed by other organisations such as Commit to Kids, SIRC, Volunteer Canada, and the CAC.<sup>64</sup>

The Ministry of Parks, Culture and Sport is also a signatory of the *Saskatchewan Abuse Protocol 2019*, which includes definitions of various forms of child abuse, information on reporting and investigating child abuse, and the roles and responsibilities of various organisations including

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<sup>64</sup> Sask Sport, "Safe Sport: Keep Sport Healthy, Safe and Fun", online: *Sask Sport Safe Sport* <<https://sasksport.ca/safesport/>> [last accessed: 4 September 2020].



Parks, Culture and Sport. As a signatory to the Protocol, it is the responsibility of the Ministry of Parks, Culture, and Sport to “ensure that instructors, coaches, staff and leaders in our communities are aware of their legal obligations and “Duty to Report” suspicions of child abuse.”<sup>65</sup> A link to the Protocol is included on Sask Sport’s website.

#### (v) IRT Notes

The IRT notes a number of important considerations arising from the analysis of the Sask Sport model. First, Sask Sport’s status as a qualified donee under the RCAA provides a good example of a way to diversify sources of funding for the implementation of the NIM so as to not rely solely on the government. Second, there is willingness and enthusiasm on the part of Sask Sport to be aligned with NSOs and to be a part of the UCCMS implementation process. And third, Sask Sport’s current policy suite and auditing functions provide an example of possible ways to ensure compliance with organisational policy requirements.

### 5.4.3 Sport Manitoba

Sport Manitoba is a volunteer-led, not-for-profit organisation incorporated in 1996 after the merger of the Manitoba Sports Federation and the Province of Manitoba Sport Directorate.<sup>66</sup> Its primary function is to manage the Government of Manitoba’s investment in sport by funding and supporting over 100 Manitoba amateur sport organisations including MSOs, PSOs and universities. There are over 350,000 participants under Sport Manitoba’s jurisdiction. It also assists the government in developing policy in sport.

While Sport Manitoba primarily manages the government’s investment in sport, it also supports the maltreatment mechanisms of the PSOs under its umbrella and operates a maltreatment

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<sup>65</sup> Government of Saskatchewan, “Saskatchewan Child Abuse Protocol”, online: <<https://sasksport.ca/SkChildAbuse.php>> [last accessed: 4 September 2020].

<sup>66</sup> Sport Manitoba, “About Sport Manitoba”, online: <<https://www.sportmanitoba.ca/about/>> [last accessed: 28 August 2020].

referral phone service. Moreover, Sport Manitoba operates its own internal complaint intake and resolution mechanism.

Sport Manitoba is governed by a 16-member volunteer Board of Directors who represent Sport Manitoba's major partners. The primary function of the Board of Directors is policy creation. Assisting the Board is the President and Chief Executive Office who provides leadership, strategic direction and oversees all business operations.

### (i) Funding<sup>67</sup>

Sport Manitoba's primary source of revenue is through grants from the Province of Manitoba. It also receives bilateral funding from the Province of Manitoba and the federal government intended to increase participation in sport of underrepresented and marginalised populations. The total revenue in 2019 was \$17,592,852 with \$8,716,220 forwarded to sport organisations in Manitoba. The other major expense was for administration and "services provided" which totaled \$7,358,780.

### (ii) Government Involvement

While Sport Manitoba is not itself a government entity, it collaborates with the Government of Manitoba to develop and deliver sport policies and programs. Sport Manitoba has a sport secretariat within the government that develops high level sport policy. Furthermore, the government relies on Sport Manitoba to provide recommendations for policy in sport.

### (iii) Complaint Reporting and Resolution

## PSO Support

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<sup>67</sup> Sport Manitoba, "Consolidated Financial Statements of Sport Manitoba inc. and Independent Auditors' Report thereon Year ended March 31, 2020", online (pdf): <<https://www.sportmanitoba.ca/wp-content/uploads/2020/07/AuditedFinancialStatementsEnding2020.pdf>>.

Sport Manitoba does not intake complaints but rather, influences the maltreatment mechanisms at the PSO and Club level in several ways. First, Sport Manitoba assists the PSOs with their policy development. This is especially vital as the Minister of Tourism, Culture, Heritage, Sport and Consumer Protection directed all sport organisations in Manitoba to establish a code of conduct and ethics policy. Second, Sport Manitoba requested that all PSOs name a case manager to handle maltreatment issues; however, it is not required that the case manager be independent as many PSOs do not have the resources to fulfill that obligation. Finally, Sport Manitoba financially supports the PSOs in contracting an independent case manager by paying half of the fee. Currently, this officer is a former sport coach trained in risk mitigation. In addition to these supporting functions, Sport Manitoba requests that the PSOs notify them of the outcome of every maltreatment case. They are not involved in the case, but simply use the information for policy development.

### Sport Support Line

Sport Manitoba offers a Sport Support Line to help participants deal with questions related to maltreatment of varying levels of severity. A single contracted staff person at the support line has experience in sport related abuse prevention, risk management, dispute resolution, and crisis intervention. The support line is not an official complaint filing mechanism but is a referral service that helps direct complainants to the appropriate resources. This line receives 500 to 1,000 calls a year and costs approximately \$10,000 a year to operate.

### Internal Mechanism

Sport Manitoba operates a complaint intake and resolution mechanism that applies to Sport Manitoba's business and activities. This does not extend to affairs conducted by organisations under Sport Manitoba's umbrella. Only members of the public and stakeholders may make complaints to Sport Manitoba through this procedure.

Complaints are received by the staff member (the "relevant person") at Sport Manitoba who is most connected to the concern. Complainants can locate this person through the Sport Manitoba website or by contacting Sport Manitoba via email or telephone. Complaints can be made anonymously. The relevant person will not respond if the complaint is made anonymously, but

the matter will still be investigated. The relevant person then documents the complaint and attempts to resolve the complaint informally. If the complaint is not resolved, or if the complainant is not comfortable discussing the issue with the relevant person, they can inform the supervisor of the relevant person. If the complaint is about the President or CEO, the complainant may direct the complaint to the Chair of the Board of Directors who will work to resolve the complaint.

If the relevant person and other staff are not able to resolve the complaint, it is referred to the President. He or she may choose to bring the complaint to the Board of Directors or an outside agency, such as a sport dispute resolution service or law enforcement, for review, advice and/or action. Unless the matter is criminal in nature, the ultimate responsibility of resolution remains with Sport Manitoba staff. Sport Manitoba maintains the right not to investigate complaints it deems unfounded or frivolous.

#### 5.4.4 Sport'Aide Quebec

Sport'Aide is an independent, non-profit organisation that offers guidance, support and orientation services to all sport participants in Québec dealing with violence in sport.<sup>68</sup> It is governed by a 10-member Board of Directors. Members are of diverse backgrounds including university researchers, former athletes, coaches, heads of Québec sports federations and volunteers. Operations are also overseen by a general manager, development agent and project manager. Sport'Aide is partnered with the Government of Québec, Sports Québec, Safe Sport International, the CPSU and Cégep de Jonquière; however, the nature of those relationships is unclear. The primary function of Sport'Aide is to operate a support and referral phone line for those who have experienced or witnessed maltreatment in sport.

### Reporting

Sport'Aide operates a support contact service for sport participants who have experienced or witnessed maltreatment towards young persons in sport. Participants can contact Sport'Aide through telephone, text message, email, Facebook, or through their website's contact service. The support service is free and confidential. This is not an official complaint intake mechanism, but a

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<sup>68</sup> Sport'Aide, "About Us", online: <<https://sportaide.ca/en/about/>> [last accessed: 18 August 2020].

referral service that helps participants reach the appropriate resources. Sport'Aide employs a team of counsellors “*trained in assistance relationships*”<sup>69</sup> as the contact persons for participants.

### 5.4.5 Sport Nova Scotia

Sport Nova Scotia is a non-profit, non-government federated organisation. It is made up of over 55 PSOs representing 160,000 Nova Scotians. The organisation has five main areas of responsibility: sport development, marketing and events, coaching, public relations and communications and finance and administration. Sport Nova Scotia is funded by the province, the provincial lotteries and casino corporation, as well as by revenues from their programs, membership fees and building.<sup>70</sup>

Sport Nova Scotia provides consultations to the PSOs to offer advice on funding opportunities, program planning, implementation, delivery and how to launch a sustainable sporting program.

#### (i) Programs

##### *reSPORT*

reSPORT was created to find innovative ways for more Nova Scotians to access sport opportunities. It is sponsored by a collaboration between Sport Nova Scotia, the Canadian Sport Centre Atlantic (“CSCA”), and Nova Scotia Department of Communities Culture and Heritage.<sup>71</sup> Its mission is to “*transform the nature of sport for all in Nova Scotia to be more equitable, by further embedding the values of access, inclusion, community and belonging.*” The project has a core team of 35 community leaders who work to identify new ideas to test in sport. The organisation develops

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<sup>69</sup> Sport'Aide, “Our Board of Directors”, online: <<https://sportaide.ca/en/team-2/>> [last accessed: 18 August 2020].

<sup>70</sup> Sport Nova Scotia, “Overview”, online: <<http://www.sportnovascotia.ca/AboutUs/Overview/tabid/1445/Default.aspx>> [last accessed: 4 September 2020].

<sup>71</sup> Sport Nova Scotia, “Increasing opportunities for all Nova Scotians to participate in sport”, online: <<http://www.snsannualreport.ca/pages/opportunities-or-all/>> [last accessed: 4 September 2020].

“prototypes” to design, implement, evaluate, and optimise a reSPORT idea. They are looking to improve areas on accessibility, gender equity, geography, and scheduling.<sup>72</sup>

One initiative that came out of the reSPORT program is the creation of a new permanent position called the Safe Sport Lead. Nova Scotia is the first province in the country to create and hire a Lead responsible for the development of safe sport policies, practises and education in the province. These safe sport policies will be mandatory and provincial funding will be conditional on their adoption.

The Safe Sport Lead works with government counterparts, local, provincial and national stakeholders to implement international safe sport principles.<sup>73</sup> The Lead has two major initiatives: (i) a commitment to making a policy suite across the province with safe sport resources; and (ii) increasing education around the topic.

There is a safe sport advisory group that includes the provincial government, CSCA and regional sports. As part of the group’s educational goals, they are launching a video for all ages about the meaning of the word “safe” in safe sport. The group defines “safe” as not just an absence of harm, but rather a welcoming and belonging environment. The group is currently working on the logistics of the education program, but other topics may include a safe sport overview, the Rule of Two and other coaching specific issues.<sup>74</sup>

### *Support 4Sport Program*

The Support4Sport program is funded by the Nova Scotia Gaming Corporation. It is the largest funder of sport in the province and is projected to provide approximately \$2 million annually to the PSOs. The program raises funds for training and development grants for athletes, coaches and officials. The program supports organisations in purchasing sport equipment, enhancing programming, supporting performance training and creating full-time positions such as provincial

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<sup>72</sup> reSPORT, “reSPORT Explained”, online: <<https://www.resportns.ca/resport-explained>> [last accessed: 4 September 2020].

<sup>73</sup> Sport Nova Scotia, “News”, online: <<http://www.sportnovascotia.ca/Home/News/TabId/1587/ArtMID/3473/ArticleID/873/Sport-Nova-Scotia-welcomes-Elana-Liberman.aspx>> [last accessed 5 September 2020].

<sup>74</sup> Interview with Elana Liberman (17 August 2020).

coaches, officials and technical directors. The program supports individuals in Nova Scotia by providing grants for individual coaching certifications and training, grants to increase participation in sport and grants to assist high-performance athletes.<sup>75</sup>

### *Parasport NS*

Parasport NS supports and promotes the delivery of accessible sport programs across the province. It is administered by Sport Nova Scotia. Parasport NS is the first point of contact to connect with the parasport community. Although Parasport NS does not provide coaching themselves, they link to training resources from NSOs and MSOs in the province, including responsible coaching, diversity and inclusion training, and an NCCP online training for coaching athletes with a disability.<sup>76</sup>

## 5.4.6 Sport PEI, Sport New Brunswick and Canadian Sport Center Atlantic

### (i) Sport PEI

Sport PEI is a non-profit sport federation under the guidance of a volunteer Board of Directors and professional staff. It represents more than 50 PEI member sport organisations. The federation provides support and leadership to PEI sports through partnerships and the delivery of programs and services. Sport PEI does not govern sport, nor do they provide funds to them. Sport PEI's major source of funding comes from the Province of PEI, the Department of Health and Wellness and the Sport Recreation and Physical Activity Division. They also get funds from several corporate sponsors.<sup>77</sup>

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<sup>75</sup> Sport Nova Scotia, "Support4Sport", online:

<<http://sportnovascotia.ca/SportDevelopment/Support4Sport/tabid/1447/Default.aspx>> [last accessed 4 September 2020].

<sup>76</sup>Parasport NS, "Welcome to Parasport NS Adapted and Inclusive Sports in Nova Scotia", online: <<https://parasportns.com/>> [last accessed: 4 September 2020].

<sup>77</sup>SportPEI, "President's Package for Provincial Sport Organizations", online:

<[https://sportpei.pe.ca/userfiles/files/Presidents\\_Package\\_3.pdf](https://sportpei.pe.ca/userfiles/files/Presidents_Package_3.pdf)> [last accessed: 4 September 2020].

Sport PEI does not run unique programming to prevent and address maltreatment; however, they do provide links to national resources on the topic. Sport PEI's website provides a link to the CSH. The federation also acknowledges that everyone has a role to play in keeping sport safe and directs people to take safe sport training to find out what to do if they suspect maltreatment and create a culture of protection. Finally, Sport PEI supports and promotes the delivery of coaches training through the NCCP and Respect in Sport.<sup>78</sup>

## (ii) Sport New Brunswick

Sport New Brunswick ("Sport NB") is a non-profit, volunteer organisation that works in partnership with the Government of New Brunswick. It is a federation dedicated to the development and promotion of the amateur sport community in the Province. It consists of over 60 PSOs and other sport-related organisations. The organisation receives a portion of its funding from the Province through the Department of Healthy and Inclusive Communities.<sup>79</sup>

Sport NB does not run unique programming in regard to safe sport; however, they do provide links to national resources on the topic including the CSH, the CAC and other agencies and their ethics and conduct programs.

## (iii) Canadian Sport Centre Atlantic ("CSCA")

The Canadian Sport Centre Atlantic ("CSCA") provides coordinated services to high performance athletes and coaches in Atlantic Canada. They are part of a national network for the MSOs with an aim to work with the existing sport system to offer services for the sport community. Their purpose is to achieve meaningful performance progress with their partners by meeting the needs of athletes and coaches, achieving excellence with limited resources and developing partnerships to build an effective athlete development system.

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<sup>78</sup> Sport PEI, "Safe Sport", online: <[https://sportpei.pe.ca/safe\\_sport](https://sportpei.pe.ca/safe_sport)> [last accessed: 4 September 2020].

<sup>79</sup> Sport New Brunswick, "About Us", online: <<https://www.sportnb.com/about-us/>> [last accessed: 4 September 2020].



The CSCA links to the CSH and pledged to align their practises with the responsible coaching movement.<sup>80</sup> They have committed to ensuring athletes and coaches are protected by the Rule of Two, by obligating all staff to complete a background screening and by providing respect and ethics training to all personnel. All CSCA staff complete training on making ethical decisions, Respect in Sport, and Commit to Kids.

#### 5.4.7 Sport North Federation (“SNF”)<sup>81</sup>

SNF is a not for profit corporation created to assist in the promotion and development of sport in the Northwest Territories. It is governed by a volunteer board of directors consisting of eight members. The SNF offers services to Territorial Sport Organisations (“TSOs”), sport clubs and athletes in its jurisdiction including athletic development, coaching courses and athlete grants. The SNF operates an internal complaint intake and dispute resolution process; however, it only applies to conduct within the SNF itself and does not extend to resolve complaints originating from TSOs.<sup>82</sup> The SNF used to fund the TSOs under their jurisdiction; however, this function has been assumed by the Department of Municipal and Community Affairs.<sup>83</sup>

In 2019, SNF generated \$1,624,234 in revenue, all of which came through the Physical Activity, Sport and Recreation Fund (the “Fund”). The Fund generates its revenue through the Northwest Territories Lottery Commission pursuant to the *Western Canada Lottery Act*.<sup>84</sup>

While SNF does not operate a complaint intake and dispute resolution mechanism that extends to TSOs and sport clubs within its jurisdiction, it intends to support the internal anti-maltreatment efforts of TSOs.

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<sup>80</sup> Canadian Sport Centre Atlantic, “Safe Sport”, online: <<https://cscatlantic.ca/safe-sport>> [last accessed: 4 September 2020].

<sup>81</sup> “About us”, online: *Sport North Federation* <<https://www.sportnorth.com/about/about-us>> [last accessed: 5 September 2020].

<sup>82</sup> “Harassment” (3 May 2008), online (pdf): *Sport North Federation* <[https://www.sportnorth.com/sites/default/files/harrasment\\_policy.pdf](https://www.sportnorth.com/sites/default/files/harrasment_policy.pdf)> [last accessed: 5 September 2020].

<sup>83</sup> “POLICY Department of Municipal and Community Affairs Recreation and Sport Contributions” (9 July, 2015), online: *Northwest Territories* [https://www.maca.gov.nt.ca/sites/maca/files/resources/2017\\_03\\_30\\_maca-recreation-and-sport-contributions-policy.pdf](https://www.maca.gov.nt.ca/sites/maca/files/resources/2017_03_30_maca-recreation-and-sport-contributions-policy.pdf) [last accessed: 8 September 2020].

<sup>84</sup> *Western Canada Lottery Act*, SNWT 2018, c 5.

## 5.5 Current Legislative Frameworks to address Maltreatment

The Canadian *Criminal Code*, Child Protective Services and the federal and provincial Human Rights Systems are some of the currently available legislative mechanisms to address and seek redress for forms of maltreatment in Canada.

### 5.5.1 Criminal Code

The Canadian *Criminal Code* codifies most criminal offenses and procedures in Canada. It contains legislation that addresses violent and non-violent actions that are to some extent, related to maltreatment. The prohibitions contained in the general criminal offenses are concerned with protecting the public at large and maintaining the accepted behavioural norms and values of Canadian society, and protection of the person being one of them. Some crimes are general criminal offenses for adults that are also applicable to violent acts against children, while others are child-specific offenses. Since offenses under the *Criminal Code* are seen as crimes against the whole of society, a criminal prosecution is launched by the state and the victim's role is to provide a witness account for the state. If found guilty, perpetrators will be punished by the state. The victims however will not receive specific monetary compensation or individual reparations for the actions committed against them.<sup>85</sup>

The IRT identified 14 *Criminal Code* offenses that overlap with misconduct under the UCCMS; they are listed in the table below. While there is overlap between the UCCMS and the *Criminal Code*, there are differences between the prohibited conduct and how the provisions are applied. First, the UCCMS applies a much lower standard to determine which behaviours amount to maltreatment. For example, a single vicious insult does not result in an offense under the *Criminal Code* but does fit the wording of s. 2.2.1.2.1 of the UCCMS for psychological maltreatment. Section 2.2.1.2.1 makes it an offense to body shame or verbally harass a Participant under the UCCMS. Conversely, to be convicted of Harassing Communications under s. 327(1) of the *Criminal Code*, the accused must be found guilty, beyond a reasonable doubt, of repeatedly communicating, or

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<sup>85</sup> *Criminal Code*, RSC, 1985, c C-46.

causing repeated communications to be made, with a victim via telecommunication with the intent to harass. In other words, a Participant convicted of Harassing Communications under s. 372(1) of the *Criminal Code* would also have breached s. 2.2.1.2.1 of the UCCMS, but a Participant who has breached s. 2.2.1.2.1 is not necessarily guilty under s. 327(1) of the *Criminal Code*.

The second difference is that provisions under the UCCMS are worded openly so as to allow conduct that is not necessarily contemplated by the definitions of maltreatment to be considered an offense. For example, s. 2.2.3.2 states that sexual maltreatment

*“includes, without limitation, any act targeting a person’s sexuality, gender identity or expression, that is committed, threatened or attempted against a person, and includes but is not limited to the Criminal Code Offences of sexual assault, sexual exploitation, sexual interference, invitation to sexual touching indecent exposure, voyeurism and non-consensual distribution of sexual/intimate images.”*

Conversely, provisions under the *Criminal Code* are worded very narrowly to ensure that Canadian citizens know exactly what types of behaviours constitute crimes in Canada.

Table 4: Equivalency between UCCMS and Criminal Code

UCCMS Provision	Criminal Code Provision
2.2.1.2.1 Psychological Maltreatment: Verbal Acts	S. 372(1): Harassing Communications - Everyone commits an offence who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by a means of telecommunication.
2.2.1.2.2 Non-Assaultive Physical Acts	S. 423(1): Intimidation
2.2.1.2.3 Acts that Deny Attention or Support	S. 219: Criminal Negligence (requires a duty towards the Athlete)
2.2.2.2.1 Contact behaviors	S. 265(1): Assault
2.2.2.2.2 Non-contact behaviours	S. 219: Criminal Negligence
2.2.3.2 Sexual Maltreatment	S. 271: Sexual Assault S. 153(1): Sexual Exploitation S. 151: Sexual Interference
2.2.4.1. Neglect	S. 219: Criminal Negligence

2.2.5.1. Grooming	S. 153(1) Sexual Exploitation
2.2.6.1.1. Interference with or Manipulation of Process	S. 139(1): Obstructing Justice
2.2.6.1.2 Retaliation	S. 423(1): Intimidation
2.2.6.1.3 Aiding and Abetting	S. 21: Parties to an offence & Common Intention
2.2.7.1 Failure to Report Maltreatment of a Minor	N/A
2.2.7.2 Failure to Report Inappropriate Conduct	N/A
2.2.7.3 Intentionally Filing a False Allegation	S. 140(1): Public Mischief

### 5.5.2 Child Protective Services

The aim of child protective services is to safeguard children from abuse and neglect. Agencies responsible for these services will typically receive and investigate allegations, make decisions regarding child protection and intervention, and supervise and arrange foster care and adoptions.

Canada has a decentralised child welfare system. With the exception of federally funded services to First Nations peoples living on reserves, protective services are funded, legislated, and governed by the provincial and territorial governments. Indigenous child welfare agencies have signed agreements with either the federal government, or both the federal and provincial governments, that authorise them to provide the full range of child protective services.<sup>86</sup>

The federal government supports initiatives regarding child protection to prevent and address child and family violence. For example, at the federal level, the Family Violence Initiative unites 12 partner departments to address, prevent, and respond to family violence.<sup>87</sup> Examples of activities the initiative performs include enhancing the criminal justice response to family violence and supporting shelter development and improvement. The Public Health Agency of Canada and

<sup>86</sup> Government of Canada, “First Nations Child and Family Services”, online: <<https://www.sac-isc.gc.ca/eng/1100100035204/1533307858805>> [last accessed: 13 August 2020].

<sup>87</sup> Public Health Agency of Canada, “Provincial and Territorial Child Protection Legislation and Policy 2018”, online: <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/provincial-territorial-child-protection-legislation-policy-2018.html>> [last accessed: 13 August 2020].

provincial and territorial partners have been involved in child maltreatment surveillance and track the incidence and prevalence of family violence in Canada.

### *Provincial Services*

Approaches to child protection in the country may vary from one province or territory to another, as each jurisdiction has its own policies and decision-making structure. Although there are some differences, the child protection systems throughout Canada are similar in that their main interest is safeguarding children. The systems also share many common legislative features, including mandatory reporting of suspected child abuse and neglect, investigations and risk and safety assessments, and the placement of children when intervention is necessary. Most provinces have an independent advocate, representative or ombudsperson for children.<sup>88</sup>

Differences among provinces and territories include the age of protection, the duty to report and decision-making processes for safety and risk intervention. First, each province and territory have their own definition of “child” and “youth.” The age of protection under legislation varies from under 16 to under 19 years of age. Second, although each province and territory share a legal duty to report maltreatment, the wording of each legislative directive differs from jurisdiction to jurisdiction. This may result in variances in an individual’s understanding of when they are responsible for reporting; this is important as it imposes a duty to report any misconduct to the NIM.

For example, in Manitoba, a broader duty to report states that an individual must report when they have *“information that leads the person to a reasonable belief that a child might be in need of protection.”* This is in contrast to New Brunswick which has a more specific duty requiring that,

*“[a]ny person who has information causing him to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated, including exploitation through child pornography or otherwise abused shall inform the Minister of Families and Children.”*

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<sup>88</sup> Ontario, PEI, and the NWTs do not have one.

Finally, each province and territory have their own customised structured decision-making process that guides their agencies in making intervention decisions. Some provinces use external resources such as Nova Scotia’s usage of the “Washington State Risk Assessment Matrix (“WARM”)” while other provinces and territories develop their own internal guidelines.

### *Ontario’s Children Aid Societies*

The child protective services framework for Ontario will be used to describe some of the features of investigations for child maltreatment complaints, as well as internal complaints aimed at the children protective agencies themselves.

#### Funding and Jurisdiction

In Ontario, the *Child, Youth and Family Services Act, 2017* (“CYFSA”)<sup>89</sup> provides “*the Children’s Aid Societies*” (“CAS”) *the exclusive mandate to oversee the quality and delivery of child protective services.*”<sup>90</sup> Through the CYFSA, the CAS are deemed a “*lead agency.*” The CAS are responsible for investigating allegations or evidence that indicates a child may be in need of protection, protecting those children who have been or are at risk, providing for their care and supervision where necessary and placing children for adoption.<sup>91</sup> There are 50 CAS across Ontario and 12 of them are Indigenous societies.

The CAS are an independent non-governmental organisations that have charitable registration and thus can receive donations. The Ministry of Children, Community and Social Services provides funding to and monitors the actions of the CAS. Funding is based on a three-year average of

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<sup>89</sup> SO 2017, c 14, Sched. 1.

<sup>90</sup> Government of Ontario, “About Ontario’s children aid societies”, online: <<http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/societies/index.aspx>> [last accessed: 13 August 2020].

<sup>91</sup> *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, s 25(1).

service volumes (number of investigations completed, open cases, children in care) and on socioeconomic factors (how many low-income, lone-parent families are there in the area).<sup>92</sup>

## Reporting

In Ontario, everyone, including members of the public and professionals who work closely with children, is required by law to report suspected child abuse or neglect.<sup>93</sup> Reports made to the CAS are received and evaluated by a welfare specialist.<sup>94</sup> The specialists are trained to listen to concerns and make decisions based on risk and urgency. They assess the levels of risk based on a comprehensive “Eligibility Spectrum”. This is an intervention document that rates incidents of maltreatment and designates an “Intervention Line” that if met, must lead to child intervention and protection.<sup>95</sup>

A typical response to a report will include checking a provincial database for prior involvement with the CAS. The specialist will consider other factors to determine how to investigate the concerns such as the age of the child, presence of injuries and other red flags that the specialist reviews. The CAS can involve police or other agencies as needed. If an investigation is initiated, the CAS must develop an Investigation Plan based on all known information about the child and his/her family. Some required actions in an investigation include an interview with the alleged victim, direct observation of the child’s living situation and interviews with the alleged perpetrator and the child’s non-abusive caregiver, if present. The CAS will conduct a safety assessment and

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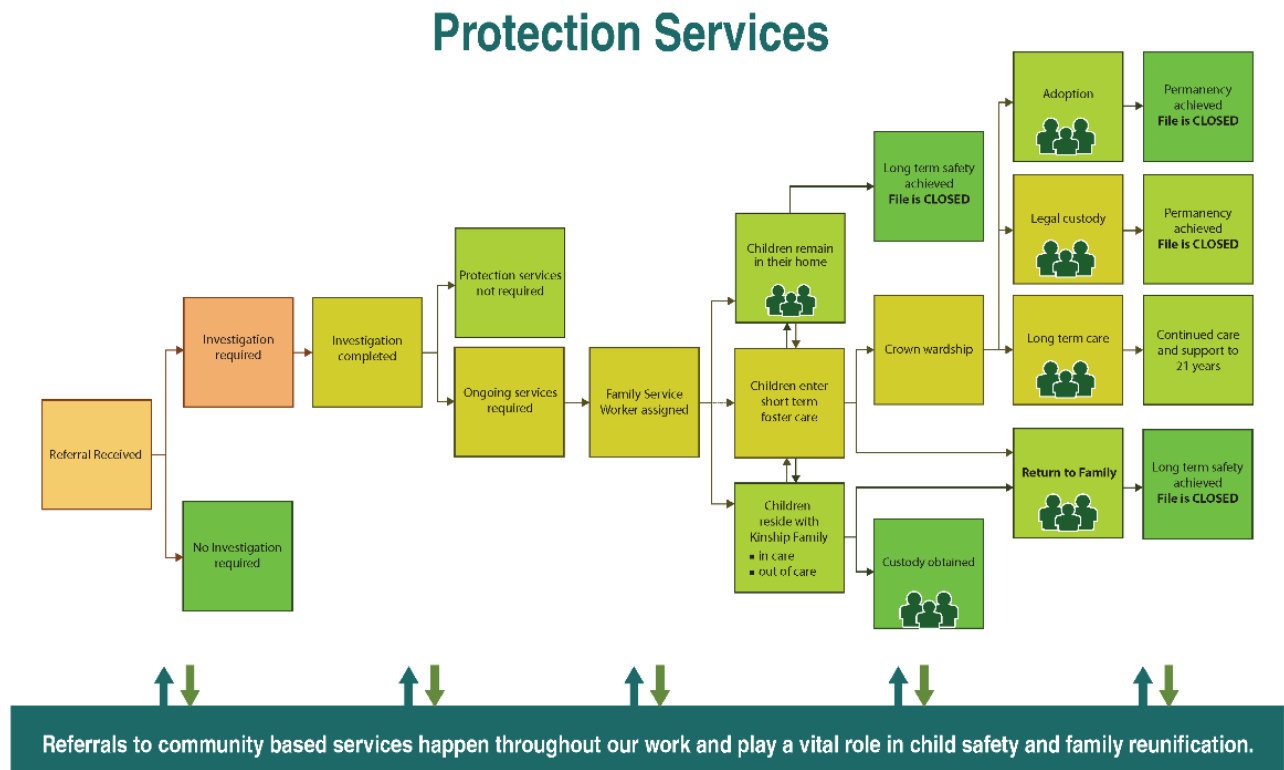
<sup>92</sup>Ontario Ministry of Children, Community and Social Services, “Funding”, online: <<http://www.children.gov.on.ca/htdocs/English/professionals/childwelfare/residential/residential-review-panel-report/3funding.aspx>> [last accessed: 14 August 2020].

<sup>93</sup>Government of Ontario, “Reporting child abuse and neglect”, online: <<http://www.children.gov.on.ca/htdocs/English/childrensaid/reportingabuse/index.aspx>> [last accessed: 13 August 2020].

<sup>94</sup> Ontario Association of Children’s Aid Societies, “How to report abuse”, online: <<http://www.oacas.org/childrens-aid-child-protection/how-to-report-abuse/>> [last accessed 13 August 2020].

<sup>95</sup> Ontario Child Welfare, “Eligibility Spectrum”, online: <<http://www.oacas.org/wp-content/uploads/2019/12/Eligibility-Spectrum-2019-EN-updated-feb-2020.pdf>> [last accessed: 13 August 2020].

maintain a safety plan where imminent threats to the child are identified.<sup>96</sup> The following chart illustrates the flow of protective services.<sup>97</sup>



This chart reflects general service flow through child protection services. However, as each family situation is unique, this chart may not capture every family's circumstances.

## Appeals and Review of Decisions

There are a few avenues that an individual may take in order to make a complaint about a CAS or Indigenous Society. First, they may take a complaint directly to the CAS they are dealing with and initiate a formal complaint to their Internal Complaint Review Panel (“ICRP”). Second, an individual may take the complaint to the Child and Family Services Review Board (“CFSRB”). Finally, they may inform the Ontario Ombudsman.

<sup>96</sup> Auditors Report, “Child Protection Services, Children’s Aid Societies Chapter 3 Section 3.02 2015”, online: <[https://www.auditor.on.ca/en/reports\\_en/en15/3.02en15.pdf](https://www.auditor.on.ca/en/reports_en/en15/3.02en15.pdf)> [last accessed: 13 August 2020].

<sup>97</sup> Ontario Association of Children’s Aid Societies, “Protection Services”, online: <[http://www.oacas.org/wp-content/uploads/2015/01/CAPM\\_2014\\_Flow-Chart.png](http://www.oacas.org/wp-content/uploads/2015/01/CAPM_2014_Flow-Chart.png)> [last accessed: 13 August 2020].



## Complaints Direct to Society

Under s. 119 of the CYFSA, an individual has the right to complain to the CAS relating to the service they have sought or received.<sup>98</sup> Individuals are encouraged to first speak to the society directly. However, if they do not want to or they do not receive answers, they have the right to initiate a formal complaint process. Complaints that are related to an issue decided by a court or are related to another decision-making process under the CYFSA or *Labour Relations Act, 1995*<sup>99</sup> are not eligible for review in this process.<sup>100</sup>

After the complaint is received, the ICRP will review the complaint to determine whether it is eligible for review. If so, a panel may be created. This panel will consist of a small number of people not directly involved with the case. The CAS's Executive Director will select the panel members which will include a senior manager and also an individual external to the society.<sup>101</sup> The panel will ask questions and review the complainant's concerns. Within 14 days of the meeting, the panel will send the complainant and the Executive Director of the CAS a written summary of the meeting results, including any steps that were agreed upon during the panel proceedings. If the complaint is resolved to the complainant's satisfaction, the CAS will send confirmation of that resolution in writing to the parties involved.

Individuals can also go directly to the Child and Family Services Board with a complaint, bypassing the internal CAS procedure. They may initiate a complaint internally with the CAS and with the CFSRB simultaneously. They may also decide to reach out to the CFSRB if the internal CAS procedure was not completed with accuracy or fairness.

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<sup>98</sup> *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, Sched 1.

<sup>99</sup> SO 1995, c 1, Sched A.

<sup>100</sup> Ontario Ministry Children Community and Social Services, "Formal Complaint To A Society's Internal Complaints Review Panel (ICRP)", online: <

<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=3249&NO=006-3249E>> [last accessed: 13 August 2020].

<sup>101</sup> Ontario Ministry Children Community and Social Services, "Your right to complain to a children's aid society or indigenous society", online:

<<http://www.children.gov.on.ca/htdocs/English/childrensaid/societies/ocascomplaint.aspx#:~:text=Child%20Welfare%20Engagement,Your%20Right%20to%20Complain%20to%20a%20Children's%20Aid%20Society%20Or,someone%20else%20at%20the%20society>> [last accessed: 13 August 2020].

## Complaints to Child and Family Services Review Board

An individual may submit their complaint to the CFSRB under ss. 119 and 120 of the CYFA. This can be done for many reasons including: if a society does not proceed with a submitted internal complaint, if the society does not respond to the complaint within the required timeframe, if the CAS does not comply with procedural requirements for reviewing complaints, if the society does not ensure that children and their parents have an opportunity (where appropriate) to be heard and represented, if the society does not provide an individual with reasons for the decision, and if one thinks there is an inaccuracy in the society's records.

Once a complaint has been filed, the CFSRB will decide whether the complaint is eligible for review. If so, the CFSRB will either make a decision based on the written and submitted material, or it may schedule a hearing. If a hearing is chosen, the CFSRB will schedule a pre-hearing conference that will allow parties an opportunity to participate in mediation. If the parties do not agree to participate in mediation, or if a settlement was not reached during mediation, a hearing is scheduled that could be held in person, in writing or by phone or video conference.<sup>102</sup> Decisions of the CFSRB cannot be appealed. However, the Ontario Ombudsman may investigate complaints about the CFSRB and may report and make recommendations arising from such reviews.

## Complaints to Ontario Ombudsman

The Ontario Ombudsman oversees and investigates provincial government and broader public sector bodies. As of 1 May 2019, the Ombudsman's mandate includes investigating individual complaints about child protective services. The Ombudsman may investigate any matter concerning a child with respect to a CAS' service.<sup>103</sup>

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<sup>102</sup> Child and Family Services Review Board, "Complain about services of a children's aid society", online: <<http://tribunalsontario.ca/cfsrb/complain-about-services-of-a-childrens-aid-society/>> [last accessed: 13 August 2020].

<sup>103</sup> Ontario Ombudsman, "Who we oversee", online: <<https://www.ombudsman.on.ca/have-a-complaint/who-we-oversee>> [last accessed: 13 August 2020].

When contacted, the Ombudsman will first attempt to resolve the complaint informally and quickly. Most complaints are resolved within two weeks. If it cannot be resolved informally, the Ombudsman can issue a formal notice of investigation. Investigators gather evidence by reviewing documents, interviewing people involved in the matter and completing other actions as related to the complaint. The organisation that is being investigated has a chance to respond before the Ombudsman’s recommendations are finalised and made public. The Ombudsman cannot enforce recommendations nor overturn decisions that the CAS has made. However, most recommendations are accepted, and the Ombudsman staff follow up to ensure they have been implemented. Complaints about the Ombudsman’s decision are submitted to the management team. No appeals can be made of their findings.<sup>104</sup>

### 5.5.3 Human Rights System

In Canada, everyone has the right to live free from discrimination. Harassment is a form of discrimination that includes any unwanted “*physical or verbal behaviour that offends or humiliates you.*” Harassment often persists over time; however, serious one-time incident can also be considered harassment.<sup>105</sup>

Human rights laws, both federally and provincially, protect people in Canada from discrimination based on a number of grounds including race, sex, religion, and disability. The federal *Canadian Human Rights Act* is a statute that individuals can use to protect themselves against harassment or discrimination when based on one or more of the 11 grounds of discrimination.<sup>106</sup> The *Act* applies to people who are employed by or receive services from the federal government, First Nations governments or private companies that are regulated by the federal government. To seek protection for provincial matters, individuals can turn to the respective provincial Human Rights Code which applies to people who are employed by or receive services in areas of housing,

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<sup>104</sup> Ontario Ombudsman, “What we do”, online: <<https://www.ombudsman.on.ca/what-we-do>> [last accessed: 13 August 202].

<sup>105</sup> Canadian Human Rights Commission, “What is harassment”, online: <<https://www.chrc-ccdp.gc.ca/eng/content/what-harassment-1>> [last accessed: 15 August 2020].

<sup>106</sup> *Canadian Human Rights Act*, RSC 1985, c H-6.

contracts, employment, goods services and facilities, and memberships in unions, trade or professional associations.<sup>107</sup>

### *Federal Human Rights*

Individuals can make complaints to the Canadian Human Rights Commission online, by email, or by phone. The complaint must be made within 12 months of the incident. The Commission will review the report to ensure it meets the necessary criteria of a human rights complaint and will inform the complainant about the next steps of the process.<sup>108</sup>

If a complaint is accepted, the Commission will recommend and facilitate a mediation session between the complainant and the respondent. If a party refuses mediation or if a settlement is not reached during the process, the complaint may be assigned to a human rights officer for assessment. The Commission advises that it takes about four months for parties to complete mediation and could take up to six months to assess a complaint thereafter. During a complaint assessment by a human rights officer, evidence and statements will be considered in preparation for a report that will be provided to Human Rights Commissioners. The Commissioners will make a decision on the report and decide whether to dismiss the complaint, send it to conciliation, defer their decision and request more information, or refer the complaint to the Canadian Human Rights Tribunal. Decisions made by the Commission in this instance are final.

The Canadian Human Rights Tribunal decides whether a person or an organisation has engaged in a discriminatory practise under the *Canadian Human Rights Act*. The Tribunal can only deal with cases which have been referred to it by the Commission.<sup>109</sup> A mediation is also optional and available throughout the Tribunal's processes. If there is no settlement through mediation or no mediation has taken place, a hearing will occur where document evidence and witness statements will be presented to the Tribunal. The Tribunal will decide whether there has been discrimination.

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<sup>107</sup> Canadian Human Rights Commission, "Human Rights in Canada", online: <<https://www.chrc-ccdp.gc.ca/eng/content/human-rights-in-canada>> [last accessed: 15 August 2020].

<sup>108</sup> Canadian Human Rights Commission, "About the Process", online: <<https://www.chrc-ccdp.gc.ca/eng/content/about-process#:~:text=Stage%201%3A%20Filing%20your%20complaint,confirmation%20email%20within%2024%20hours>> [last accessed: 15 August 2020].

<sup>109</sup> Canadian Human Rights Commission, "Complaint FAQ", online: <<https://www.chrc-ccdp.gc.ca/eng/content/complaint-faq>> [last accessed 15 August 2020].

The Tribunal has the ability to enforce corrective measures which include making the respondent change its rules or policies, pay lost wages, learn about human rights or pay for pain and suffering. If a party disagrees with the Tribunal's decision, it can ask the Federal Court of Canada to review it within 30 days after the decision was first communicated to the parties.

### *Provincial Human Rights*

Individuals may access provincial Human Rights Codes and their affiliated adjudication procedures for issues outside of federal jurisdiction. While the provinces and territories all have similar frameworks, the human rights framework of British Columbia will be used to illustrate some of the features of the system.

Citizens of BC have access to the *BC Human Rights Code*<sup>110</sup> (the "Code"). The Code applies to all businesses, agencies and services in BC, except those regulated by the federal government. The Code helps protect individuals from discrimination and harassment and allows individuals to file a complaint with the BC Human Rights Tribunal.

BC's human rights system includes an Office of the Human Rights Commissioner, a Human Rights Tribunal and a Human Rights Clinic. The Office of the Human Rights Commissioner works to address root causes of discrimination through education, research, advocacy and investigations into systemic discrimination. The BC Human Rights Tribunal is the receiver of all human rights complaints and completes investigations and hearings into matters when appropriate. The BC Human Rights Clinic provides individuals with free legal advice and guidance when a discriminatory act has allegedly occurred.<sup>111</sup>

Once a complaint is filed with the BC Human Rights Tribunal, it will decide whether it has the power under the Code to deal with the complaint. If the complaint is accepted, the Tribunal will notify the respondent and will ask him/her to provide a written response to the complaint. At any point

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<sup>110</sup> RSBC 1996, c 210.

<sup>111</sup> Office of the Human Rights Commissioner, "About the office", online: <<https://bchumanrights.ca/about-the-office/>> [last accessed: 15 August 2020].

during the Tribunal process, the parties can decide to settle all or part of the complaint. The Tribunal will also assign a case manager to the complaint.<sup>112</sup>

The parties will be asked to attend a settlement meeting and a pre-hearing conference. If the parties cannot agree on a settlement, the complaint will go to the next step in the Tribunal process. At a hearing, a member decides whether the complaint is justified and, if so, what the appropriate remedy is. The member may give an oral decision at the end of the hearing and will give a written decision. Appropriate remedies may include a cease and refrain order, a declaratory order, steps to address the discrimination, denial of the complaint, compensation for losses, compensation for injury to dignity, feelings and self-respect, or interest on the amounts ordered. Parties who disagree with a tribunal decision can ask the BC Supreme Court to review the Tribunal's decision.<sup>113</sup>

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<sup>112</sup> BC Human Rights Tribunal, "Guide to the BC Human Rights Code and Tribunal", online: <<http://www.bchrt.bc.ca/law-library/guides-info-sheets/guides/human-rights.htm>> [last accessed: 15 August 2020].

<sup>113</sup> BC Human Rights Tribunal, "What happens after the hearing", online: <<http://www.bchrt.bc.ca/complaint-process/after-hearing/index.htm>> [last accessed: 15 August 2020].



# Chapter 6

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## INTERNATIONAL FRAMEWORKS FOR MALTREATMENT IN SPORT

### 6.1 Introduction

Several international frameworks were examined that provide guidance to the Government of Canada’s obligations as well as those of other organisations with respect to maltreatment in sport and include the following:

- UN General Assembly: Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights (15 June 2020)<sup>114</sup>
- Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework (2011)<sup>115</sup>
- The Council of Europe Guidelines on Sports Integrity: Enlarged Partial Agreement on Sport (EPAS) (6 November 2019)<sup>116</sup>

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<sup>114</sup> United Nations General Assembly, “Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights in Sport” (15 June 2020).

<sup>115</sup> United Nations Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework” (2011).

<sup>116</sup> Council of Europe, “The Council of Europe Guidelines on Sport Integrity: Enlarged Partial Agreement on Sport (EPAS)” (6 November 2019).

- International Olympic Committee Consensus Statement: Harassment and Abuse (non-accidental violence) in sport (2007)<sup>117</sup>
- The International Safeguards for Children in Sport<sup>118</sup>

Canada’s responsibility and obligation to follow the principles within these frameworks were considered in the IRT’s recommended structure of the NIM.

## 6.2 UN General Assembly: Intersection of race and gender discrimination in sport: Report of the United Nations High Commissioner for Human Rights

The report provides *“an overview of relevant international human rights norms and standards, and the corresponding obligations of States and the responsibilities of sporting bodies towards women and girl athletes.”* It also identifies gaps related to protecting the human rights of women and girls in sport as well as recommendations to enhance protections for women and girls in sport. Although this report broadly addresses human rights obligations that extend beyond the mandate of the review by the IRT, the focus is on maltreatment in sport which is the subject of MGSS’ Report.

The report outlines the various international human rights norms, standards, and treaty provisions which place obligations on States related to non-discrimination on the basis of sex, race, and gender. The Convention on the Elimination of All Forms of Discrimination against Women *“requires States to ensure that women have the same opportunities to participate actively in sports and to take all appropriate measures to this end.”* In order to ensure such opportunities, it is necessary for States to more effectively address harassment and other forms of gender-based violence in sport as it is one factor related to lower participation rates amongst girls and women in sport.

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<sup>117</sup> International Olympic Committee, “International Olympic Committee Consensus Statement on Sexual Harassment and Abuse Sport” (2007).

<sup>118</sup> International Safeguarding Children in Sport, “International Safeguards for Children in Sport” (2016).



The report concludes that lower participation rates of girls and women in sport is due to factors that are both external and internal to sport *“including the lack of programmes to create a gender-sensitive and safe sporting environment or to address harassment and other forms of gender-based violence in sport, including sexual exploitation and abuse.”* The report notes *“global awareness of and attention to sexual harassment and abuse in sports have recently intensified”*, however, *“rights-based responses to abuse, both preventative and remedial, are not yet in place at any level.”* Women and girls of colour have an added external factor of discrimination based on race which compounds issues of access and can present even greater obstacles. However, this is a nascent area of analysis that requires more research.

The Guiding Principles on Business and Human Rights, introduced as key *“for understanding the nature and scope of State obligations and non-State actor responsibilities with respect to human rights, including sport,”* promote the implementation of the United Nations *“Protect, Respect, and Remedy Framework.”* In the Canadian context, non-state actors would include NSOs, MSOs, PTSOs, public and private sport clubs and professional sporting organisations.

The obligations of States and non-State actors (also called *“enterprises”*) include *“enabling access to and effective remedy through court systems or other appropriate non-judicial or administrative means. Fulfilling these responsibilities requires enterprises to take specific steps to publicly incorporate this commitment and put in place due diligence monitoring capacity.”* Many NSOs, MSOs, and sport organisations in Canada have made varying levels of commitment towards addressing maltreatment in sport; however, there is currently no integrated national system at present that would ensure consistency related to such commitments and due diligence monitoring capacity. Moreover, there is no single expert entity that is monitoring the implementation and effectiveness of these commitments and is thus a significant gap in the system in Canada.

The report highlights a specific issue related to high performance sport where it is suggested that *“[s]tates largely acquiesce to the regulatory ‘autonomy of sport’”* which is evidenced by the absence of legislation governing national federations. The IRT notes how this is relevant to and illustrative of the Canadian experience. Through the UCCMS consultation process, there emerged a lack of trust and a sense of fear, in many cases amongst high performance athletes, to report abuse within the autonomy of their national sport organisation due to perceptions of bias and conflict of interest. The requirement of NSOs to adopt the UCCMS is a positive first step; however, the creation of an independent mechanism to administer the Universal Code outside the

autonomy of sports bodies is required to ensure impartiality, athlete safeguards, and trust in the system.

The report provides numerous recommendations, not all of which are pertinent to the scope of this Review. However, the following recommendations are particularly salient:

*Article 56. “States should ensure that athletes know their rights. They should also ensure that athletes have access to legal remedy and have legal capacity and social support to act, collectively as well as individually, to protect their rights and seek and receive all the information they need to make decisions at every level of their engagement in sport.”*

*Article 57. “States should consider taking collective action on behalf of athletes, including with the involvement of sporting bodies, to address gaps in accountability arising from the practices and policies of sporting bodies.”*

*Article 58. “States and sporting bodies should establish a process to review rules, regulations, contracts and agreements to ensure their compliance with international human rights norms and standards, paying particular attention to the need to protect from discrimination and to provide adequate remedies, including in respect of arbitration clauses, so that they do not violate the rights of athletes.”*

*Article 60. “States and sporting bodies should ensure that women and girls, and their representative organizations, including athletes’ association and commissions, are consulted on laws and policies, particularly those that have an impact on their rights.”*

*Article 63. “Sport governing bodies should ensure that the heightened protection for athletes under the age of 18 provided by the international framework for child rights are in place in sport governing bodies policies, rules, and regulations.”*

### 6.3 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework (2011)

These guiding principles are framed to provide guidance in three primary areas:

1. **The State duty to protect human rights** – this duty exists within the State’s territory “and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate

*steps to prevent, investigate, punish and redress abuse through effective policies, legislation, regulations, and adjudication.”*

2. **The corporate responsibility to respect human rights** – corporate enterprises have a responsibility to respect human rights which is a global standard of expected conduct, and this exists independently of States’ *“abilities or willingness to fulfill their own human rights obligations.”*
3. **Access to remedy** – *“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”*

The guiding principles outline the appropriate framework that businesses and States should adopt to protect against human rights abuse. The foundation of the framework is the assurance that those affected by maltreatment have access to effective remedies. The guiding principles recommend that this be achieved through judicial, administrative, legislative and other appropriate means. Recommended remedies include apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions.

The guiding principles advise that an effective judicial mechanism must be impartial, be conducted with integrity, and have the ability to accord due process. In particular, the guiding principles recommend that the judicial mechanism be sensitive to procedural and legal barriers that may impede a complainant from accessing the appropriate remedy. Legal barriers include: (i) a division of corporate responsibility among members of a corporate group under domestic law that facilitates the avoidance of appropriate accountability; and (ii) the inability of certain stakeholder groups, such as indigenous peoples and migrants, to access the appropriate remedies due to their exclusion from domestic legal frameworks.

Practical and procedural barriers include: (i) costs of bringing claims that *“go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support”*; and (ii) a lack of resources, expertise and support being granted to State prosecutors.

The guiding principles recommend that States provide *“effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.”* In particular, it is recommended that States consider *“ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.”* The guiding principles stipulate that an effective non-judicial mechanism should have the following characteristics:

- Legitimacy: this will foster trust from the stakeholder groups;
- Accessibility: special attention should be paid to ensuring all stakeholder groups are aware of the mechanism and to providing *“adequate assistance for those who may face particular barriers to access”*;
- Predictability: the mechanism should provide *“a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation”*;
- Equitability: the mechanism should *“ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms”*;
- Transparency: parties to a grievance should be informed about its progress and be provided with sufficient information about the mechanism’s performance to *“build confidence in its effectiveness”* and to meet any public interest at stake;
- Compatibility with human rights;
- The mechanism should be *“[a] source of continuous learning”* by *“drawing on relevant measures to identify lessons for improving the mechanisms and preventing future grievances and harms”*; and
- The mechanism should be *“[b]ased on engagement and dialogue”* with the relevant stakeholder for groups.

The guiding principles recommend that States consider *“ways to facilitate access to effective non-State based grievance mechanisms dealing with business related to human rights harms.”* These

mechanisms may be administered by a business enterprises, stakeholders, industry associations, multi-stakeholder groups, regional human rights bodies and international human rights bodies.

To ensure that grievances can be addressed early and remediated directly, the guiding principles recommend that business enterprises *“participate in effective operation-level grievance mechanisms for individuals and communities who may be adversely impacted.”* They also acknowledge that the mechanism may *“be provided through recourse to a mutually acceptable external expert or body.”* The guiding principles envision the mechanism having two key functions:

- i. The identification of adverse human rights impacts and a channel to raise concerns about those impacts; and
- ii. To enable grievances to be addressed *“and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.”*

An example of a sport federation that has made a commitment to adopting these Guiding Principles is FIFA through Article 3 of the FIFA Statutes. *“FIFA states that it places particular emphasis on identifying and addressing differential impacts based on gender and on promoting gender equality and preventing all forms of harassment, including sexual harassment.”*<sup>119</sup>

## 6.4 The Council of Europe Guidelines on Sport Integrity: Enlarged Partial Agreement on Sport

These guidelines are intended to support European Ministries of Sport to co-ordinate and implement a *“holistic and coherent”* approach to *“integrity”* policies. They are an outcome of UNESCO’s Kazan Action Plan process and will be presented at MINEPS VI, the next global meeting of the world’s sport ministers scheduled for 2021. The guidelines have been coordinated by the Enlarged Partial Agreement on Sport (*“EPAS”*) of the Council of Europe.

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<sup>119</sup> Fédération Internationale de Football Association, *“FIFA Statutes, Article 3”* (June 2019).

They are the product of an extensive multi-stakeholder effort that comprised 25 governments (including representatives from Canada), 15 international organisations, 15 sports organisations and representatives of player and athlete unions led by World Players Association which is the leading voice of organised players in the governance of world sport.

The guidelines contain a significant human rights focus as a “*cross-cutting issue*”, in relation to formulating a holistic definition of integrity and emphasising:

- The applicability of various UN Standards as “*legally-binding standards that are applicable in all sectors of activity – including sport.*”
- The duty States have under the *United Nations Guiding Principles on Business and Human Rights* to ensure “*business enterprises (including sports organisations) respect human rights.*”
- The importance of athletes and player unions in ensuring integrity “*measures developed are legitimate, fair, proportionate and effective.*”

“Integrity” in the sporting context is defined broadly to include various forms of unacceptable behavior including corruption, violence, political exploitation, match-manipulation, and abuse. The concept of “integrity” is entrenched in Article 1 of the Council of Europe’s European Sports Charter (1992):

*“[r]ecognising sport’s contribution to human development, the Charter seeks: to protect and develop the moral and ethical bases of sport, and the human dignity and safety of those involved in sport, sportsmen and women from exploitation from political, commercial and financial gain, and from practices that are abusive or debasing.”<sup>120</sup>*

The ability to achieve integrity in sport in all the facets described is inextricably linked to the governance practises of sports organisations, and the role of public authorities to lead in this area. The concept of integrity as described in this document is comprised of three pillars:

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<sup>120</sup> Council of Europe, “Council of Europe European Sports Charter, Article 1” (1992).

- i. *“The integrity of people, including safeguards from violence and abuse and the safety and security of people.*
- ii. *The integrity of competitions, which refers to the manipulation of competition and to the fight against doping; and,*
- iii. *The integrity of organisations, which includes good governance.”*

The guidelines include five policy areas for public authorities to consider when developing their sport integrity policies and procedures. The most salient policy area for the purposes of the UCCMS is, “[p]reventing and addressing harassment and abuse in sport”. This policy area aims at ensuring “the right to a safe and enjoyable sport environment for all those involved in sport activities”. The guidelines recommend an evidence-based framework that includes tools such as “normative frameworks, policies, strategies, action plans, procedures, monitoring and evaluation”. In implementing the framework, it is recommended that public authorities take the following five actions:

- i. Implement a communication strategy to ensure stakeholders and individuals are aware of the framework;
- ii. Support capacity-building and provide technical assistance to plan and implement the framework;
- iii. Develop contingency plans or management measures for when prohibited behaviours occur;
- iv. Establish an independent body to handle cases of harassment and abuse; and
- v. Initiate and/or support research on harassment and abuse in sport.

The guidelines recognise that sports organisations are largely private, autonomous, not-for-profit and develop their own policies. With this in mind, the guidelines recommend that public authorities “harmonise those internal private standards to ensure an overall coherence in this domain.” In achieving harmonisation, it is recommended that public authorities develop easily adaptable policy templates and prevention programs for sports organisations to adopt. Moreover,

the guidelines recommend that public authorities establish a forum, led by public authorities, where stakeholders can share information and expertise, exchange best practises and collaborate in developing policies and procedures.

The guidelines recommend that a customised national strategy be implemented *“based on the recommendations of and/or support from relevant international platforms”*. In addition to the national strategy, it is recommended that states enact *“effective child protection and safeguarding legislation which is inclusive of the sporting sphere”*, conduct multi-stakeholder meetings that enable *“the sharing of challenges, good practices, the development of new ideas and pilot tests”*, conduct research to develop expertise and support prevention and awareness-raising activities.

The guidelines identify portions of the framework with which difficulties are likely to arise during implementation. They warn that the following policies and procedures may present difficulties:

- Ensuring thorough and on-going monitoring, compliance and evaluation;
- Applying general international principles to local contexts where social welfare capacity may be under-resourced; and
- Establishing effective screening processes for persons dealing with children and youth.

The guidelines also warn that organisations may be reluctant to implement maltreatment policies for the following reasons:

- Implementation may create the perception that sport is unsafe;
- Organisations may not have the capacity and/or resources to implement the required policies and procedures; and
- They may not want to take responsibility for maltreatment occurring within their organisation.



## 6.5 International Olympic Committee Consensus Statement on Sexual Harassment and Abuse in Sport (2007)

The International Olympic Committee Consensus Statement on Sexual Harassment and Abuse in Sport is the result of a consensus meeting of international scientific, clinical and policy experts that reviewed the current body of knowledge and provided recommendations for the prevention and management of non-accidental violence in sport. The statement focuses on non-accidental violence, synonymous with the UCCMS' concept of maltreatment.

The statement lays out a detailed description of the forms and mechanisms of abuse prevalent in sport. The description includes definitions of key terms such as hazing, bullying and neglect. It also identifies particular challenges faced by child and adolescent athletes, para-athletes and LGBT athletes. Moreover, the statement outlines the impacts of non-accidental violence on athletes and sport in general.

The statement makes several recommendations on addressing non-accidental violence in sport, as follows:

- States should take a multi-agency approach to preventing and addressing abuse. This may include cooperation from the state, education services, law enforcement and sport organisations;
- Personnel working with athletes should avoid commodifying those athletes at the expense of their human rights;
- Abuse disclosures should not be handled by unqualified workers and should instead be referred to the relevant experts in social work, counselling or medicine;
- The social factors which underly non-accidental violence should be addressed;
- Sport stakeholders should understand the wider societal risk factors for harassment and abuse, with particular attention being paid to power imbalances;
- There should be an effort to enact cultural change in sport through advocacy and campaigning;

- The structural component of safe sport programs should include clear policies with associated codes of practice, systematic recruitment and background screening, education and training, complaint and support mechanisms and monitoring and evaluation systems;
- Education programs should be established that target all levels of sport, from international sport executives to local volunteers and athletes; and
- Sport organisation leaders must take ownership and responsibility for non-accidental violence within their organisation.

The International Olympic Committee Consensus Statement on Sexual Harassment and Abuse Sport recommends that all sport organisations should:

- i. Develop policies and procedures for the prevention of sexual harassment and abuse;
- ii. Monitor the implementation of these policies and procedures;
- iii. Evaluate the impact of these policies in identifying and reducing sexual harassment and abuse;
- iv. Develop an education and training program on sexual harassment and abuse in their sport(s); and
- v. Promote and exemplify equitable, respectful, and ethical leadership.

## 6.6 The International Safeguards for Children in Sport (“ISCS”)

The ISCS was published in 2014 by the ISCS working group comprised of subject matter experts. The document was prepared by several founding members including Beyond Sport, CPSU (UK), Commonwealth Secretariat, Right to Play, Swiss Academy for Development, and UK Sport, among others.

The IRT’s research and evidence suggests that:

*“[S]port does not always take place with a focus on children’s rights at its centre, or sometimes fails to fully consider the risks to children, leading to organizational cultures that don’t allow for the discussion of harm and abuse (Brackenridge, Kay Rhind, 2012).”*

In fact, some experts who were interviewed for this Review suggested that there was lack of attention to the abuse of children in the UCCMS which is consistent with this research and evidence. This pioneering document outlines policies and practises that should be put in place for organisations involved in children’s sport in order to mitigate *“risks to children and young people which are unique to sport such as the increased risks of all forms of abuse to elite young athletes.”* These safeguarding practises were informed by international declarations, the United Nations Convention on the Rights of the Child and other standards of best practises.

Safeguarding components in this document include the following:

- Policy development
- Procedures for responding to safeguarding concerns
- Minimising risks to children
- Guidelines for behavior
- Recruiting, training and communication
- Working with partners
- Monitoring and evaluating

These safeguards were piloted in 2012 by several organisations *“committed to strengthening their approach to making sport safer for children.”* Follow-up research was conducted at Brunel University with 32 of these organisations and recommendations were made to the original drafters who published a final version of the safeguards at Beyond Sport in 2014.

The document recommends that:

*“[A]ny organization providing or with responsibility for sports activities for children and young people under the age of 18 should have a safeguarding policy. This is a statement of intent that demonstrates a commitment to safeguard children involved in sport from harm, and provides the framework within which procedures are developed.”*

Such a policy should be *“clearly written and easy to understand”* and require that all staff, volunteers, and others in a position of care for children adopt the policy. It is important to note that several individuals who were interviewed by the IRT indicated that the UCCMS is not clearly written nor easy to understand. Indeed, several individuals found the document legalistic and problematic for athletes and other sport stakeholders at all levels to comprehend, including special needs populations such as special Olympians with intellectual impairment who are also subject to the UCCMS.

It is further recommended to develop a system to respond to safeguarding concerns including *“clear procedures in place that provide step-by-step guidance on what action to take if there are concerns about a child’s safety or well-being, both within and external to the organization.”* Moreover, structures should be in place to provide *“support to children, volunteers and staff during and following an incident, allegation or complaint.”* The process for dealing with complaints should be fair and transparent including the obligation to educate stakeholders about their rights and responsibilities. The IRT proposed that the NIM include components that reflect these important recommendations.



# Chapter 7

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## INTERNATIONAL SAFE SPORT MODELS

### 7.1 U.S. Center for Safe Sport

The U.S. Centre for Safe Sport (“USC” or the “Centre”) was established by the U.S. Congress in March 2017 to address the problem of child abuse in sport. *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017*<sup>121</sup> was signed into law by President Trump on 14 February 2018. The Centre operates as a 501(c)(3) non-profit focused on preventing physical, emotional and sexual abuse in the US Olympic and Paralympic Movement.

The Centre is “*the exclusive authority to respond to reports of abuse and misconduct within the United States Olympic and Paralympic Committee (“USOPC”) and their recognized National Governing Bodies (“NGBs”) and High-Performance Management Organizations (“HPMOs”).*”<sup>122</sup> There are approximately 13 to 18 million participants under the Centre’s jurisdiction under the auspices of 50 NGBs and five HPMOS.

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<sup>121</sup> S.534 - Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 <<https://www.congress.gov/bill/115th-congress/senate-bill/534/text>>

<sup>122</sup> U.S. Centre for Safe Sport, “Prevention Starts Here, Annual Report” (2019) online: <[https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf)> [last accessed 4 October 2020].

At the time of writing this Report, legislation titled “*Empowering Olympic and Amateur Athletes Act of 2019*” was in the U.S. Senate for consideration. If passed into law later this year this legislation would amend the *Ted Stevens Olympic and Amateur Sports Act*. Among other things, this legislation would increase resources of the USC and further protect amateur athletes from emotional, physical, and sexual abuse and add to the powers and responsibilities of the USC. The legislation bolsters the civil remedy provision of the “*Child Abuse Victims’ Rights Act of 1986*” which enabled minor victims to sue their perpetrators. It also imposes USC to develop training, oversight practices, policies and procedure for the NGBs and Paralympic sports organisations to prevent abuse of amateur athletes.

The USC is governed by nine independent directors and the majority of the funding is provided by the United States Olympic and Paralympic Committee. A key feature of the Centre is centralising best practises and “*connecting sport organizations with thought leaders on issues common across sport.*”<sup>123</sup> The Centre employs 64 full-time staff organised in six functional areas as summarized below. The Centre has since added a General Counsel and additional investigators within the response and resolution unit to meet growing demand.

The Centre has experienced significant growth since its introduction. The number of reports received by the Centre has grown exponentially from 281 reports in 2017, to 1,848 reports in 2018, to 2,770 reports in 2019.<sup>124</sup> The Centre received an average of 39 reports per month in its first year of operation which rose to approximately 200 reports per month in 2019. As a result, the organisation has had to scale to meet this demand including the quadrupling of its investigation team.

Key features of the Centre are explained in each of the sub-sections below.

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<sup>123</sup> U.S. Centre for Safe Sport, “U.S. Centre for Safe Sport Opens” (24 March 2017) online: <https://www.teamusa.org/USA-Taekwondo/Features/2017/March/24/The-US-Center-for-SafeSport-Opens> [last accessed 4 October 2020].

<sup>124</sup> U.S. Centre for Safe Sport, “Annual Report” (2019) online: <[https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf)> [last accessed 4 October 2020].

### 7.1.1 Funding <sup>125</sup>

In 2019, the Centre’s annual expenses were \$9,479,588, an increase of 59% from the previous year. Total revenue in 2019 was \$11,039,952. The 2020 budget is approximately \$16.5 million and this is expected to grow to more than \$20 million. A recent bill passed by the US Senate entitled “The Empowering Olympic, Paralympic and Amateur Athletes Act” calls for the USOPC to increase its annual funding to \$20 million for the USC.<sup>126</sup> Revenue and support is comprised of three principal sources:

#### Revenue and Support (2019)

Grant Revenue:	\$8,208,168 (\$7.5 million from USOPC)
Partner Fees:	\$2,625,926
Contributions & Other Income:	\$205,858

Partner fees are derived from an extensive network of partnerships with more than 150 youth sports and recreation organisations through training and resources provided by the Centre. The Centre also partners with some professional organisations including Major League Baseball as well as software companies to deliver the Centre’s courses to a wide variety of organisations.

### 7.1.2 Jurisdiction & Enforcement Authority

As noted, the USC has jurisdiction over 50 NGBs and five HPMOs. The Safe Sport Code defines a Covered Individual as someone under the governance of disciplinary jurisdiction of an NGB, and this varies from NGB to NGB. The Centre also has jurisdiction over Local Affiliated Organizations (“LAO”) which are defined as “[a] regional, state or local club or organization that is directly

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<sup>125</sup> U.S. Centre for Safe Sport, “Annual Report” (2019) online: <[https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf)> [last accessed 4 October 2020].

<sup>126</sup> The Washington Post, “Bill aimed at reshaping U.S. Olympic and Paralympic Committee passed by Senate” (4 August, 2020). Online: < <https://www.washingtonpost.com/sports/2020/08/04/bill-aimed-re-shaping-us-olympic-paralympic-committee-passed-by-senate/>> [last accessed 15 August 2020].

affiliated with an NGB or that is affiliated with an NGB by its direct affiliation with a regional or state affiliate of said NGB.”<sup>127</sup>

The Centre has two types of enforcement authority:

- i. **Exclusive Authority** - *“The Office has exclusive authority over (a) actual or suspected sexual misconduct by a Covered Individual; and (b) misconduct that is reasonably related to an underlying allegation of sexual misconduct, as set forth in the Code. Exclusive authority means that (a) only the Office will investigate and manage any related hearings involving sexual misconduct and (b) neither the NGB or USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided.”*<sup>128</sup>
- ii. **Discretionary Authority** – *“On the written request of the NGB or USOC, the Office may, in its discretion, accept authority over alleged violations of any prohibited conduct under the Code.”*<sup>129</sup> The practice of Discretionary Authority is highly nuanced and dealt with on a case-by-case basis working with NSOs and HPMOs.

It is important to note that the Centre’s authority extends only to the conduct of Covered Individuals, and does not regulate, investigate or audit LAOs, NGBs, or United States Olympic Committee (“USOC”) organisational practices. It also does not have the authority to intervene in any employment decisions made by a LAO, NGB or the USOC.

### 7.1.3 Reporting

The primary means for reporting is through an on-line reporting form located on the Centre’s website. Approximately 90% of reports are made through this on-line mechanism. Individuals can also make a report via telephone during regular week-day business hours. The Centre does not operate any form of call centre to receive or respond to complaints. The Centre does however offer a 24/7 Safe Sport Helpline, which is provided in partnership with RAINN, the nation’s largest anti-sexual violence organisation that operates the Safe Sport Helpline. The helpline’s main

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<sup>127</sup> U.S. Centre for Safe Sport, “Safe Sport Code for the U.S. Olympic and Paralympic Movement,” 28 December 2017.

<sup>128</sup> U.S. Centre for Safe Sport, “Safe Sport Practices and Procedures for the U.S. Olympic and Paralympic Movement,” 3 March 2017.

<sup>129</sup> Ibid.



purpose is to “[p]rovide crisis intervention, referrals, and emotional support specifically designed for athletes, staff, and other Safe Sport participants affected by sexual violence. Through this service, support specialists provide live, confidential, one-on-one support. All services are anonymous, secure, and available 24/7.”<sup>130</sup>

In addition to providing access to the 24/7 Safe Sport Helpline, the Centre’s website also encourages complainants to report to local authorities “[i]f you have a reasonable suspicion that child sexual abuse or neglect has occurred. All reports of child abuse or sexual assault of a minor must also be reported to local authorities. Reports of abuse not involving a minor may also be reported to local authorities.” The link is located on their reporting page and it links to the Child Welfare Information Gateway which falls under the auspices of the US Department of Health and Human Services. A link also is provided to contact an NGB “to report other forms of misconduct such as emotional or physical misconduct, bullying, hazing, or harassment.”

Other policy features of reporting include the following:<sup>131</sup>

- There are no criminal or civil statutes of limitations that apply to the Code or the Procedures.
- Anyone who becomes aware of potential sexual misconduct under the Code of a Covered Individual may report to the Centre.
- The Code includes a duty to report that is broad and far reaching. Covered Adults must report to the Centre.
- *“The obligation to report is broader than reporting the criminal arrest of a Covered Individual; it requires reporting to the Office any conduct that comes to the Covered Adult’s attention which, if true, would violate the Code.”*
- *“If the possibility of sexual misconduct under the Code is first disclosed to a Covered Adult at a LAO, NGB, or USOC, that Covered Adult must promptly report the possibility of sexual misconduct, in writing, to the Office.”*

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<sup>130</sup> U.S. Centre for Safe Sport, “Report a Concern” online: < <https://uscenterforsafesport.org/report-a-concern/>> [last accessed 15 August 2020].

<sup>131</sup> U.S. Centre for Safe Sport, “Safe Sport Practices and Procedures for the U.S. Olympic and Paralympic Movement,” 3 March 2017.

- *“The obligation to report is an ongoing one and is not satisfied simply by making an initial report. The obligation includes reporting, on a timely basis, all information about which a Covered Adult becomes aware.”*
- *“Covered adults must report suspicions or allegations of child abuse or neglect to both the Office and appropriate legal authorities. If an allegation reported to the Office involves child abuse or neglect, the Office will also comply with all federal or state reporting requirements.”*
- Reports may be made anonymously. This means *“That the identity of the individual who makes the report is not known to the Office. It does not mean that the information provided will be protected.”*
- *“If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with the USOC’s Athlete Ombudsman’s Office.”*

#### 7.1.4 Resolution Procedures

The Centre has developed a sophisticated internal model to manage response and resolution to reports. This structure includes a Chief Officer for Response and Resolution who oversees two primary functions: (1) intake and (2) investigations. The intake unit is comprised of 15 staff who have some preliminary investigation functions (“Intake Investigators”). The investigations unit is comprised of nine investigators under the direction of a Director of Investigation. A key staffing position within the Centre is a Resource and Process Advisor who provides guidance and support to help people navigate processes.

The first threshold analysis is a determination of whether the Centre has jurisdiction. If the Centre does not have jurisdiction, it makes necessary referrals. If the alleged conduct alleges emotional or physical misconduct, the Centre has the discretionary authority to address the complaint or to refer it to the NGB to manage. If the allegation involves sexual misconduct, the Centre has exclusive jurisdiction and proceeds with an intake process.

The intake process involves gathering preliminary information and initial contact with involved parties. *“Temporary measures may also be imposed as necessary, and if so, Respondent may*

*request an interim measures hearing at any time if it affects the opportunity to participate in the sport.”*<sup>132</sup>

Following the intake process, the matter may be referred to formal resolution, administrative closure (due to insufficient information to move forward), or informal resolution. If a matter is referred to formal resolution, it is assigned a trained investigator who, following the investigation, prepares a formal investigative report for a decision committee. This committee reviews the case and makes a final decision in the matter. A notice of decision is made and if a sanction is assigned, the Respondent may request arbitration. Should the matter proceed to arbitration, the parties in the arbitration are the Respondent and the Centre. The parties present evidence to an independent arbitrator, who issues a final and binding decision.

Arbitration services are outsourced to an independent company called JAMS with a fixed scale of applicable arbitration fees set at \$5,400 for a single arbitrator, \$1,500 for an interim measures hearing, and \$13,400 for a three-person arbitration panel (excluding applicable arbitrator travel costs, and facilities).<sup>133</sup>

### 7.1.5 Audit

Accountability is an important tenet of the Centre who state that *“[h]olding organizations accountable for their actions – and sometimes their inaction – is critical to cultural change.”* The Centre holds every organisation under the Olympic and Paralympic umbrella accountable through an audit process. The audit process uses the Minor Athlete Abuse Prevention Policies (“MAAPP”) as a baseline and it is important to note that the Centre first worked with every NGB *“[t]o help them understand and implement consistent safety policies across their organization. In 2019, the Centre audited all 50 NGBs and the USOPC.”*

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<sup>132</sup> U.S. Centre for Safe Sport, “Prevention Starts Here, Annual Report” (2019) online: <[https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf)> [last accessed 4 October 2020].

<sup>133</sup> U.S. Centre for Safe Sport, “Supplementary Rules for U.S. Olympic and Paralympic Safe Sport Arbitrations,” 3 March 2017.

Key features of the audits include (i) policy implementation; (ii) training; (iii) communication with participants; and (iv) quality control focused on ensuring those who are suspended are not allowed to participate. The primary focus of audits is performance improvement. The Centre plays an important role in helping NGBs identify activities that are according to standard as well as where improvement is needed. In 2019, the budget for the Centre’s audit function was \$447,999 which represented 4.7% of the total budget. The audit unit employs eight staff.

### 7.1.6 Education and Prevention

Education and prevention are a core function of the Centre. It educates “[c]oaches, athletes, and others involved in sport to prevent abuse, recognize signs of grooming, understand appropriate boundaries, and report. We believe prevention, education, and training are critical to cultural change.”<sup>134</sup> To execute this function, it relies on an internal team of subject matter experts to create their educational resources which include a Core “Safe Sport Trained” module and annual refresher courses “[t]o increase knowledge and understanding of abuse, ways to recognize, and how to respond and report.” A total of seven new resources were launched in 2019.

The Centre has trained more than one million people as of December 2019, primarily through online delivery. This core training is supported through educational content delivery through personal in-person training and webinars – although a relatively small number of individuals (6,462) were reached in these way in 2019. Training is mandated for Covered Adults. The Centre also offers training on a fee-for-service basis to individuals involved in amateur sport including athletes, parents, and sport administrators. The impact of their training is evident in the following testimonial from a parent who received training:

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<sup>134</sup> U.S. Centre for Safe Sport, “Prevention Starts Here, Annual Report” (2019) online: <[https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf)> [last accessed 4 October 2020].

- *“If it wasn’t for the U.S. Centre for Safe Sport training videos we watched, we do not believe we would have identified that our daughter’s former coach had been grooming her for the purposes of establishing an intimate relationship with our young athlete.”<sup>135</sup>*

This underscores the importance and impact of training for grassroots stakeholders beyond the compulsory requirements of Covered Adults.

### 7.1.7 Other Features of the U.S. Centre for Safe Sport

The Centre maintains a centralised disciplinary database which lists individuals who have been sanctioned, including those who have received lifetime bans to participate in sport. There are more than 1,200 names in the database. This database is legislated and forms part of the Code. In 2019, the Centre launched the MAAPP. This policy framework:

*“Established consistent training and policy requirements for the U.S. Olympic & Paralympic Committee and more than 50 NGBs and HPMOs – representing a combined 13-15 million participants. The MAAPP is the foundational document that defines the culture within the Movement. With it, we set forth training and education requirements and policies detailing appropriate interactions between adult participants and minor athletes to which NGBs and the USOPC must adhere.”<sup>136</sup>*

## 7.2 The UK Model

The organisational structure of the sport delivery model in the UK is largely decentralised. The responsibility for regulating individual sport is, for the most part, left to the respective NGBs.<sup>137</sup>

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<sup>135</sup> U.S. Centre for Safe Sport, “Prevention Starts Here, Annual Report” (2019) online: [https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf) [last accessed 4 October 2020].

<sup>136</sup> U.S. Centre for Safe Sport, “Prevention Starts Here, Annual Report” (2019) online: [https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019\\_SafeSport\\_AnnualReport.pdf](https://uscenterforsafesport.org/wp-content/uploads/2020/06/2019_SafeSport_AnnualReport.pdf) [last accessed 4 October 2020].

<sup>137</sup> David Bentham, Stuart Baird, Matthew Bennett, & Edward Canty, “Sports Law in the United Kingdom”, online: *Centrefield LLP* < <https://www.lexology.com/library/detail.aspx?g=7cc100e9-382e-4013-b1a0-8499c6889c0e> > [last accessed: 4 September 2020].

Five “Sport Councils”, UK Sport, Sport England, Sport Scotland, Sport Northern Ireland, and Sport Wales, are responsible for recognising sport organisations as NGBs pursuant to the *Sport Councils’ Recognition Policy*.<sup>138</sup> Each Sport Council operates as either a non-executive departmental public body, or a similarly constituted body, and was established via Royal Charter with the exception of Sport Northern Ireland, which was established by the Recreation and Youth Service (Northern Ireland).<sup>139</sup> The Councils’ mandates are largely similar and are as follows:

*“Fostering, supporting and encouraging the development of sport and physical recreation and achievement of excellence therein among the public at large in [England] and the provision of facilities therefor.”*

The focus of UK Sport is on Olympic and Paralympic sport with no involvement in community or school sport, whereas the Home Sport Councils are responsible for all levels of sport, from grassroots to the elite level.<sup>140</sup>

## 7.2.1 Funding

NGBs, other sport organisations, and sport development projects in the UK are financed primarily through a combination of national lottery proceeds and government funding. The *National Lotteries Act*<sup>141</sup> identifies the five Sport Councils as being responsible for distributing lottery proceeds to eligible organisations. In addition, Sport England and UK Sport receive Grant in Aid from the Department for Culture, Media and Sport (“DCMS”) pursuant to the *Physical Training and Recreation Act* (“PTRA”).<sup>142</sup> Sport Northern Ireland, Sport Wales, and Sport Scotland receive

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<sup>138</sup> Sport England, Sport Scotland, UK Sport, Sport Wales, & Sport Northern Ireland, “Sport Councils’ Recognition Policy 2017”, online: <https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/uk-recognition-policy-2017.pdf> [last accessed: 4 September 2020].

<sup>139</sup> Dan Hull, “Governance Models for Sport Across the UK and Ireland” (9 January 2014) online: *Norther Ireland Assembly* <[http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/culture\\_arts\\_leisure/0814.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/culture_arts_leisure/0814.pdf)> [last accessed: 4 September 2020]; 1986 No. 2232.

<sup>140</sup> UK Sport, online: <<https://www.uk sport.gov.uk/>> [last accessed: 4 September 2020].

<sup>141</sup> 1993, c 39 Part II, s 23.

<sup>142</sup> 1937, c 46.

annual funding from their respective devolved government administrations: the Northern Ireland Executive, the Welsh Government, and the Scottish Government.<sup>143</sup>

The funding eligibility requirements that must be met by NGBs varies between the Sport Councils. For example, UK Sport and Sport England developed *A Code for Sports Governance*<sup>144</sup> (“CSG”) which “sets out the levels of transparency, accountability and financial integrity” that is required from those in receipt of funding from either Council. The governance standards under the CSG are proportionate to the level of funding sought; those requesting the largest amount of funding are required to meet the highest standards of governance. To ensure compliance with the CSG, funded organisations submit Governance Action Plans which outline the gaps between their existing governance structure and the requirements under the CSG, as well as their plan to reduce the gaps. UK Sport and Sport England must approve the organisation’s action plan. Organisations in receipt of funding from other Councils are not required to meet these standards.

There is a lack of consistency in terms of requirements for addressing maltreatment. For example, Sport Northern Ireland works in partnership with the CPSU to “encourage Governing Bodies of Sport and clubs to implement the practice outlined in Code of Ethics and Good Practice for Children’s Sport.”<sup>145</sup> This is a different child protection code than the *Standards for Safeguarding and Protecting Children in Sport* that is required by UK Sport and Sport England (discussed in section 5.2).<sup>146</sup> However, the UK Anti-Doping Policy<sup>147</sup> applies to all organisations in receipt of funding from the Sport Councils. UK Anti-Doping (“UKAD”) and the Anti-Doping Policy are explored further below.

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<sup>143</sup> The Sports Council for Northern Ireland, “Annual Reports and Accounts – 2019”, online: <<http://www.sportni.net/sportni/wp-content/uploads/2014/01/Exchequer-2018-19-Final-Accounts-Laid.pdf>> [last accessed: 4 September 2020]; Sport Scotland, “Sport For Life”, online: <https://sportforlife.org.uk/documents/Sport-for-Life-Full-Document.pdf> [last accessed: 4 September 2020]; Sport Wales, “Annual Report & Accounts”, online: <<https://www.sport.wales/files/b95abdd4f31c6a9784c0434492cacda2.pdf>> [last accessed: 4 September 2020].

<sup>144</sup> UK Sport & Sport England, “A Code for Sport Governance”, online: <[https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/a\\_code\\_for\\_sports\\_governance.pdf?qKUYxIN.mAu2ZOBeGifxGGxy54PxZ8ol](https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/a_code_for_sports_governance.pdf?qKUYxIN.mAu2ZOBeGifxGGxy54PxZ8ol)> [last accessed: 4 September 2020].

<sup>145</sup> Sport Northern Ireland, “Safeguarding”, online: <<http://www.sportni.net/about-us/safeguarding/>> [last accessed: 4 September 2020].

<sup>146</sup> Child Protection in Sport Unit, “Standards for safeguarding and protecting children in sport”, online: <[https://thecpsu.org.uk/media/445556/web\\_cpsustandards.pdf](https://thecpsu.org.uk/media/445556/web_cpsustandards.pdf)> [last accessed: 4 September 2020].

<sup>147</sup> United Kingdom Anti-Doping, “UK National Anti-Doping Policy”, online: <[https://www.ukad.org.uk/sites/default/files/2019-05/UK%20National%20Anti-Doping%20Policy\\_0.pdf](https://www.ukad.org.uk/sites/default/files/2019-05/UK%20National%20Anti-Doping%20Policy_0.pdf)> [last accessed: 4 September 2020].

At present, there is no centralised mechanism in the UK to receive, investigate and adjudicate reports of maltreatment nor do the Sport Councils engage in addressing reports of maltreatment.<sup>148</sup> Rather, incidents of maltreatment are handled internally by NGBs. NGBs may refer cases concerning safeguarding in sport to the National Safeguarding Panel (“NSP”).<sup>149</sup> The NSP is operated by Sport Resolutions, an independent, not-for-profit organisation that provides dispute resolution services for sport organisations in the UK. It provides three services:

- i. Independent investigations and reviews into safeguarding complaints and concerns;
- ii. Independent arbitration in place of a NGB’s disciplinary appeals panel; and
- iii. Expert Risk Assessment of an individual’s suitability to work with children and adults at risk.

The NGB is expected to provide all necessary background information, such as the nature of the complaint and the relevant policies, to the NSP for their investigation. The NSP will submit an investigative report to the NGB upon completion of the investigation, who is then responsible for acting on the findings. To use the NSP’s arbitration services, NGBs must confer necessary jurisdiction by either amending their internal procedures or entering into an arbitration agreement on a case-by-case basis. Arbitral decisions may be appealed to the NSP, but any appeal decisions are final and binding.<sup>150</sup>

### 7.2.2 Education, Training, & Prevention

Education and training requirements for stakeholders vary between NGBs and by sport. For example, to be licensed as a coach for UK Athletics, individuals must have completed the *Safeguarding in Athletics* online training course.<sup>151</sup> The course was developed in partnership with

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<sup>148</sup> See for example: UK Sport, “Complaints and Whistleblowing”, online: <<https://www.uk sport.gov.uk/resources/complaints-appeals-and-whistleblowing>> [last accessed: 4 September 2020].

<sup>149</sup> Sport Resolutions, “National Safeguarding Panel”, online: <<https://www.sportresolutions.co.uk/services/national-safeguarding/panel>> [last accessed: 4 September 2020].

<sup>150</sup> Sport Resolutions, “2015 Procedural Rules of the National Safeguarding Panel” online: [https://www.sportresolutions.co.uk/images/uploads/files/NSP Rules 2015 redraft 7 April 2015 - SB approved 17 April 2015 1.pdf](https://www.sportresolutions.co.uk/images/uploads/files/NSP_Rules_2015_redraft_7_April_2015_-_SB_approved_17_April_2015_1.pdf) [last accessed: 4 September 2020].

<sup>151</sup> UK Athletics, “Coaching Qualifications”, online: <https://www.uka.org.uk/grassroots/coach-education/coaching-qualifications/> [last accessed: 5 September 2020].



EduCare, an on-line training provider based in the UK who specialises in safeguarding training.<sup>152</sup> The course consists of two modules and multiple-choice questionnaires and costs €10. Its purpose is to help attendees “understand what safeguarding is and what you need to put in place to help safeguard children and young people, as well as promote a safe environment for everyone involved in athletics.” In addition to the required course, UK Athletics also offers a *Mental Wellbeing in Sport & Physical Activity* course aimed at training individuals on how to recognise warning signs of mental illness and what to do if they have concerns. They also provide a *Preventing Bullying in Sport* online training course to educate individuals on what constitutes bullying and how to prevent it in the sport context. In contrast, Archery GB has many coaching and instructor courses available, but there is minimal training aimed at safeguarding or maltreatment specifically.<sup>153</sup> This is unsurprising considering the nature of the sport compared to athletics.

There are also organisations outside of the NGBs that provide maltreatment related education and training to stakeholders. These include the CPSU, the Sport Councils, UK Coaching, and the National Health Service.

### 7.2.3 UK Child Protection in Sport Unit (“CPSU”)

The CPSU is a partnership between the NSPCC, Sport England, Sport Northern Ireland, and Sport Wales. The CPSU works with a wide range of sporting organisations to help them meet their safeguarding responsibilities.<sup>154</sup> Scotland has a similar partnership between Children 1<sup>st</sup> and Sport Scotland that provides advice and consultancy on child protection policies for sports in the nation.<sup>155</sup>

The NSPCC is the UK’s leading children’s charity who specialises in child protection.<sup>156</sup> They have statutory powers under the *Children Act, 1989* which allows them to take action in preventing and

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<sup>152</sup> EduCare, online: < <https://www.educare.co.uk/>> [last accessed: 5 September 2020].

<sup>153</sup> Archery GB, “Coaching Courses”, online: <<https://www.archerygb.org/coaches-judges-volunteers/coaches/session-coach-level-1/>> [last accessed: 4 September 2020].

<sup>154</sup> Child Protection in Sport Unit, “About Us”, online: <<https://thecpsu.org.uk/about-us/>> [last accessed: 24 August 2020].

<sup>155</sup> Children 1<sup>st</sup>, “About us”, online <<https://www.children1st.org.uk/help-for-families/safeguarding-in-sport/>> [last accessed: 24 August 2020].

<sup>156</sup> National Society for the Prevention of Cruelty to Children, “Our organisation and structure”, online: <<https://www.nspcc.org.uk/about-us/organisation-structure/>> [last accessed: 24 August 2020].

responding to abuse.<sup>157</sup> Only local authorities and the NSPCC may apply to a court for a care, supervision or child assessment order. The CPSU’s mission is “to build the capacity of sports to safeguard children and young people in and through sport and to enable sports organisations to lead the way in keeping children safe from harm.” The CPSU provides expert safeguarding and child protection advice to sport organisations, helping them develop and implement their responses, policies and systems. The CPSU is funded by the Sports Council in England, Wales and Northern Ireland, and by UK Sport.

### *Jurisdiction and Enforcement Authority*

*Working Together to Safeguard Children, 2018* is a “guide to inter-agency working to safeguard and promote the welfare of children.” This guide was created by the Government of the United Kingdom.<sup>158</sup> It applies to all organisations and agencies who have functions relating to children. It outlines the legislative requirements placed on individual services and provides frameworks for local partners to collaborate for safeguarding. Based on this document, the CPSU created “Safeguarding Standards” to maintain and embed safeguarding for children in and through sport. The CPSU helps sport organisations maintain standards of safeguarding and integrate these practises into their organisations. As a condition of funding, Sport England requires that all funded NGBs and Active Partnerships meet and maintain Safeguarding Standards through the CPSU’s “Safeguarding Standards Framework.”<sup>159</sup>

### *Safeguarding Standards Framework*

The Framework provides the standard best practises of safeguarding for sports organisations and reflects the statutory responsibilities described in the *Working Together to Safeguard Children* document. The following diagram is an overview of the framework.

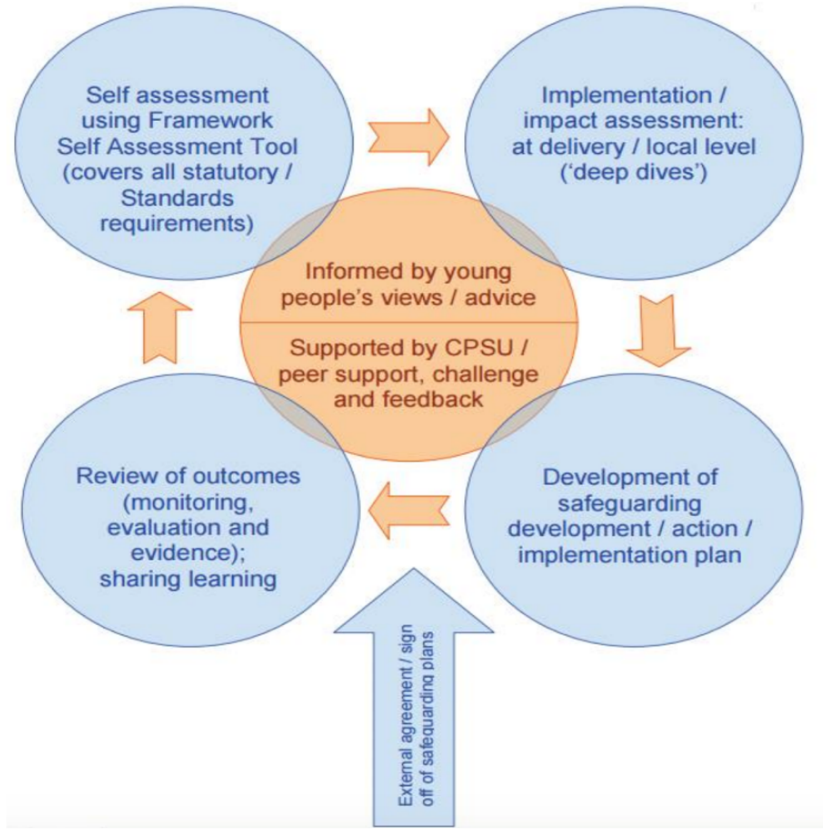
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<sup>157</sup> *Children Act, 1989* (UK), c 41, s 31.

<sup>158</sup> *Working Together to Safeguard Children*, “A guide to inter-agency working to safeguard and promote the welfare of children” (July 2018), online: <<https://www.gov.uk/government/publications/working-together-to-safeguard-children-2>> (last accessed: 3 September 2020).

<sup>159</sup> Child Protection in Sport Unit, “The Framework for maintaining and embedding safeguarding for children in and through sport”, online: <<https://thecpsu.org.uk/media/445697/cpsu-framework-for-maintaining-and-embedding-feb2019.pdf>> [last accessed: 3 September 2020].

**Diagram 1 – The safeguarding framework process**



The Framework consists of four sections: self-assessment, implementation and impact assessment, peer and external review, and monitoring and evaluation. The Self-Assessment Tool (“SAT”) allows organisations to assess their own progress in safeguarding. The SAT questions reflect the requirements necessary as a condition of funding by Sport England. Organisations will at least be at a “Forming” level of safeguarding, with an aim of moving towards “Continually Improving.” The tool is supported by the CPSU through annual one-to-one meetings, steering groups and consultation services.

Organisations are then responsible for assessing the integration and effectiveness of their safeguarding practises throughout all levels of the sport. In response to this assessment, organisations produce implementation plans to address any areas of need. This development is

supported by the CPSU through external feedback, online resources and partnership meetings. The sport organisations are expected to develop their own monitoring and evaluation systems for internal use. Annual meetings with the CPSU will also take place to review the monitoring results and implementation progress. Organisations are required to report their progress to Sport England for funding decisions.<sup>160</sup>

### *Consultations and Assessment of Safeguarding Standards*

The CPSU will advise sport organisations on the implementation of the Safeguarding Standards Framework, and further assess the sport on the efficacy of their policies. The consultants at the CPSU work to bring the sport organisations up to standards and help them with any issues the sport may have. The consultants are also often contacted by the sport organisation in the early stages of serious case management processes. This is to receive guidance on how to manage the complaint effectively. In Northern Ireland, there is one senior consultant. In Wales, there are 1.5 consultants. In England, there are five consultants who are responsible for a mix of major and medium sports. Since the CPSU is a unit of the NSPCC, the consultants have access to and are trained using the resources of the NSPCC training program and online learning for the prevention of cruelty to children.<sup>161</sup>

After the sport organisation has developed their safeguarding standards (often through consultations with the CPSU consultants) the sport will develop a safeguarding portfolio to submit for assessment. There are three levels of assessment: basic, intermediate, and advanced. At the basic level of assessment, the policies and procedures will be assessed and signed off by the director of the CPSU. At the intermediate and advanced levels, an independent assessor will be brought in to evaluate a sport's safeguarding portfolio. The assessor will create a report on what he/she believes the strengths and weaknesses of the portfolio are. The assessor will decide what the organisation needs to present to an independently chaired panel, in order to have their portfolio accepted. The panel consists of the independent assessor who has completed the assessment report, the CPSU consultant working with the organisation, a member of the CPSU who has not been working with the sport organisation, the safeguarding officer or sport attending

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<sup>160</sup> Child Protection in Sport Unit, "Develop and improve standards", online: <<https://thecpsu.org.uk/help-advice/develop-and-improve-standards-and-framework/>> [last accessed: 26 August 2020].

<sup>161</sup> Interview with Anne Tivas (6 August 2020).

at the sport, the chief executive officer and preferably a board member. These panelists will scrutinize the policies and procedures. A decision will be made on whether they have met the safeguarding standards. Very few organisations will be accepted after the first review.

After a sport has met the assessment team's standards (typically a five-year process in England) the organisation will engage in self-audits and an annual review to report on the implementation of safeguarding in their sport. The CPSU checks basic requirements to make sure the organisation is up to date. The sport must demonstrate how they are maintaining, researching, and embedding safeguarding into their organisation. In Ireland, the sports are marked every year on their integration and are assessed against basic criteria. In Wales, there is one set of standards that organisations will be graded against based on different depths of embedding safeguarding standards over a three-phase process. The Wales panel includes young people to engage in the scrutiny of the portfolio.

## *Training*

There are no formal training requirements for safeguarding children in sport. However, the CPSU and other agencies have developed training courses to keep children safe and team members aware of best practises in dealing with claims of maltreatment. The CPSU and NSPCC provide introductory and basic courses, specialist training, and continuing professional development.<sup>162</sup>

The online introductory course is offered to any person who has occasional contact with children in sport. It highlights the signs and symptoms of abuse, how to move forward if there is suspected maltreatment, and prevention methods to make environments safer for children.<sup>163</sup> The basic introductory course is for individuals who work with children in sport on a regular basis. This training is face-to-face and covers the legislative context of safeguarding and recognising, responding, reporting and recording concerns about children.<sup>164</sup> Training is sometimes provided

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<sup>162</sup>Child Protection in Sport Unit, "Choosing the right training – at a glance", online: <<https://thecpsu.org.uk/media/445567/choosing-training-for-safeguarding-children-in-sport-at-a-glance.pdf>> [last accessed: 3 September 2020].

<sup>163</sup>Child Protection in Sport Unit, "Introductory safeguarding training", online: <<https://thecpsu.org.uk/training-events/introductory-safeguarding-training/>> [last accessed: 3 September 2020].

<sup>164</sup> Child Protection in Sport Unit, "Basic safeguarding training" online: <<https://thecpsu.org.uk/training-events/basic-safeguarding-training/>> [last accessed: 3 September 2020].

by the sport organisation themselves, or organisations can access external agency sessions delivered by UK Coaching or Local Safeguarding Children’s Boards. Specialist training is recommended for individuals who have designated safeguarding roles (ex. club welfare officers), are involved in case or event management, or are responsible for the recruitment of positions that work directly with children.<sup>165</sup> This training is offered by the NSPCC, the sport organisations themselves, or a local authority who may have a course available. Continual professional development and refresher workshops provide learning at all levels for sport and coaching-specific issues. This allows individuals to build upon previously developed skills and learn of recent research and legislation that has changed the safeguarding landscape.<sup>166</sup>

## Resources

The CPSU provides safeguarding resources on a variety of topics. The resource library on the CPSU website is up to date with the latest research in maltreatment and child protection in sport. Some practical resources for the development of services include template policy statements, submission forms and codes of conduct. There are also toolkits for standards of safeguarding in sport, positive parenting behaviour, anti-bullying, and organisation self-assessment. The CPSU provides guidance and best practises on unique stakeholder topics including anti-bullying, deaf and disabled children, LGBT+, mental health and well-being, safer recruitment and online safety. The CPSU provides links to video clips, podcasts, reports and webinars that are related to the safeguarding of children in sport.<sup>167</sup>

## Reporting

The CPSU does not directly engage in case management for children in sport. The CPSU directs complainants to report any concerns to their sporting clubs or organisations, law enforcement or

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<sup>165</sup>Child Protection in Sport Unit, “Specialist safeguarding training”, online: <<https://thecpsu.org.uk/training-events/specialist-safeguarding-training/>> [last accessed: 3 September 2020].

<sup>166</sup> Child Protection in Sport Unit, “Continual professional development”, online: <<https://thecpsu.org.uk/training-events/continual-professional-development/>> [last accessed: 3 September 2020].

<sup>167</sup> Child Protection in Sport Unit, “Resource library”, online: <<https://thecpsu.org.uk/resource-library/>> [last accessed: 3 September 2020].

social services.<sup>168</sup> The CPSU does however offer general support for children and adults through a helpline hosted by the NSPCC. This line offers advice 24/7 by phone or online platform. Employees of this helpline are able to contact law enforcement for allegations of abuse. The CPSU has developed recommended guidelines for sports organisations to use when creating internal systems to receive and respond to reported concerns of abuse or poor practise. Each club for example is required to have someone with a designated safeguarding role (ex. club welfare officer) to receive all concerns about children and young people. These systems are required to include contact with statutory agencies such as law enforcement or social services when abuse or criminal behaviour is suspected or alleged. The CPSU has a case management model tool which helps sport organisations complete this development process.<sup>169</sup>

### 7.2.3 Call for Centralisation

Following the publication of *Sporting Future* by the UK Government in 2015, the Minister of Sport asked Baroness Tanni Grey-Thompson to conduct a review into the issues surrounding the “Duty of Care” that sports have toward their participants. “Duty of Care” was defined broadly in the review, including *“everything from personal safety and injury, to mental health issues, to the support given to people at the elite level.”*<sup>170</sup>

The review included several recommendations in the areas of education, transition to and from top-level sport, athlete representation, equality, diversity and inclusion, safeguarding, mental welfare, and safety and medical issues. One of the main recommendations was the creation, by government, of a Sports Ombudsman that has the power to *“hold [NGBs] to account for the Duty of Care they provide to athletes, coaching staff and support staff, providing independent assurance and accountability.”* In regard to safeguarding, it was recommended that sports should collect information about safeguarding in a standardised way, that a national coach licensing scheme should be considered, and that there should be an independent process that is publicly accessible

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<sup>168</sup> Child Protection in Sport Unit, “Deal with a concern”, online: <<https://thecpsu.org.uk/help-advice/deal-with-a-concern/>> [last accessed: 26 August 2020].

<sup>169</sup> Child Protection in Sport Unit, “Putting safeguards in place”, online: <<https://thecpsu.org.uk/help-advice/putting-safeguards-in-place/>> [last accessed: 26 August 2020].

<sup>170</sup> Baroness Tanni Grey-Thompson, “Duty of Care in Sport”, online: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610130/Duty\\_of\\_Care\\_Review\\_-\\_April\\_2017\\_\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610130/Duty_of_Care_Review_-_April_2017__2.pdf)> [last accessed: 4 September 2020].

for consultation and whistleblowing. Since the publication of the review however, there has been no formal government response to its overall recommendations.<sup>171</sup>

More recently, UKAD commissioned a study which aimed to “describe and evaluate existing models and structures, to identify barriers and enablers and form recommendations for the development of sport integrity policy and practice in the UK.”<sup>172</sup> Three key recommendations arising from the study are as follows:

- i. the formation of a UK-wide Sport Integrity Forum to develop and share good practise and to lead development of a national Sport Integrity Plan;
- ii. the establishment of a UK-wide agreement on the operational definition of Sport Integrity; and
- iii. the development of a UK-wide Sport Integrity Education Strategy that seeks to pool resources and encourage networked approaches to delivery.

The rationale behind these recommendations arose from a variety of issues currently facing sports in the UK. First, the study showed a lack of consistency between NGBs in the development and implementation of mechanisms to deal with sport integrity issues, as well as the lack of consistency in defining sport integrity more generally. Second, the responsibility for sports integrity within organisations was often dispersed across multiple departments/individuals which leads to a lack of accountability. Third, there is a need for greater transparency as many organisations do not publicise their discipline process or specific investigations. Fourth, some offenders simply move across sports once they are caught, which speaks to the need for centralised record-keeping. Fifth, education is often a separate function with sports development and core business functions being prioritised. These are just some of the many issues identified in the study.

Despite their power to withhold funding from non-compliant organisations, the Sport Councils do not see themselves as regulators. Moreover, their processes for employing their funding power are underdeveloped and could “appear to be *ad hoc*”. Thus, there is a need for greater consistency

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<sup>171</sup> Child Protection in Sport Unit, “Duty of Care in Sport Review”, online: < <https://thecpsu.org.uk/resource-library/publications/duty-of-care-in-sport-review/>> [last accessed: 4 September 2020].

<sup>172</sup> Swansea University & UK Anti-Doping, “Integrity in Sport”, online: <<https://www.ukad.org.uk/sites/default/files/2020-08/UKAD%20Integrity%20In%20Sport%20Report.pdf>> [last accessed: 4 September 2020].



both in the development and implementation of sport integrity mechanisms. The study did not conclude which organisation should be responsible for the implementation of the above recommendations. However, they did emphasize the importance of its independence and its ability to command respect. Following the study, the DCMS agreed to establish the forum outlined in the study and will report on its progress annually to the Ministers.<sup>173</sup>

### 7.2.5 IRT Notes

The UKAD's methods of ensuring compliance with its policies are important for the purposes of the IRT's analysis. For example, making the athletes contractually agree to abide by the NGB's Policies upon joining ensures that they are aware of their rights and responsibilities under the Policy. A similar process is recommended to ensure compliance of affiliated individuals with the FSOs' adoption of the UCCMS.

## 7.3 Sports Maltreatment in the Australian Model

Earlier this year, Australia announced that it will be centralising all of its current counter maltreatment functions under the federal government's newly created sport integrity unit, SIA.<sup>174</sup> Prior to the creation of SIA, national sport integrity functions were shared between the National Integrity of Sport Unit ("NISU"), Sport Australia<sup>175</sup> ("SA") and the National Sports Tribunal<sup>176</sup> ("NST").

In its previous incarnation, Australian sport integrity functions paralleled the current Canadian system in many respects. SA, comparable to Sport Canada, was responsible for overseeing the sport sector in Australia; the NST resolved national level sporting disputes similar to the SDRCC;

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<sup>173</sup> UK Anti-Doping, "New Sport Integrity Forum Receives Backing from DCMS Following UKAD Research" [last accessed: 4 September 2020].

<sup>174</sup> Austl, Commonwealth, Sport Integrity Australia, Factsheet (Government statement on the creation of Sport Integrity Australia and its implementation plan).

<sup>175</sup> "Australian Sports Commission", online: *SportAus* < <https://www.sportaus.gov.au/sportaus/about> > [last accessed: 3 September 2020].

<sup>176</sup> *National Sports Tribunal Act, 2019* (Commonwealth), 2019/68.

and the Australian Anti-Doping Agency (“ASADA”) mirrored the same Anti-Doping oversight functions of the CCES.

However, there is a major gap in Australia’s new SIA framework as there appears to be a lack of a centralised reporting, investigation, and adjudication mechanism. As SIA’s consolidation period is occurring under a phased approach, there is little information regarding whether a national independent mechanism, similar to what the IRT is proposing, is being contemplated by Australia.

This section summarises the roles, functions, and structures of the newly created SIA and the plan for bringing SIA into full operation. The sport integrity functions currently existing in other organisations are also examined as they may indicate the future functions of SIA after full implementation.

### 7.3.1 Sport Integrity Australia (“SIA”)<sup>177</sup>

SIA was established on 1 July 2020 in response to the Review of Australia’s Sports Integrity Arrangement<sup>178</sup> (the “Wood Review”). The main function of SIA is to bring together the integrity functions of ASADA, the NISU, and SA to provide “*national coordination and streamlined support to sports.*”<sup>179</sup> With regard to maltreatment, SIA will not take over the current integrity role of sport organisations, but rather, will support their efforts to counter maltreatment in sport. They intend to achieve this by developing national policies, resources, and education platforms to support sporting organisations and individuals in their efforts to provide safe sporting environments.

SIA has a two-stage Implementation Plan to begin operations. Stage one involves absorbing all functions currently performed by ASADA, the NISU, and SA and coordinating a national approach to sport integrity matters. This includes providing a single point of contact on sport integrity issues, providing assistance to athletes and sport organisations, and developing a single, easily identifiable

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<sup>177</sup> “About Us”, online: *Sport Integrity Australia* < <https://www.sportintegrity.gov.au/about-us> > [last accessed: 3 September 2020].

<sup>178</sup> James Wood, David Howman and Ray Murrhiy, “Report of the Review of Australia’s Sports Integrity Arrangements” (3 September 2018), online (pdf): *Australian Government: Department of Health* <[https://www1.health.gov.au/internet/main/publishing.nsf/Content/63F0A5D7BDA5A0B5CA2582CF0005E6F9/\\$File/HEALTH-RASIA-Report-Acc.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/63F0A5D7BDA5A0B5CA2582CF0005E6F9/$File/HEALTH-RASIA-Report-Acc.pdf)> [last accessed: 4 September 2020].

<sup>179</sup> Supra note 178, p. 1.

education and outreach platform. Stage two is focused on developing the anti-match fixing functions of SIA. However, there is also a plan to develop a whistleblower scheme for all sport integrity issues and a related source protection framework.

### 7.3.2 Funding<sup>180</sup>

SIA receives the majority of its funding from the Australian government. The SIA Anti-Doping testing program also generates revenue through user fees; however, this revenue is insufficient to fully support SIA's operations. SIA is currently investigating methods to generate further funding.

### 7.3.3 Jurisdiction and Enforcement

Maltreatment falls under the jurisdiction of sport organisations. NSOs and local sport clubs often have a Member Protection Policy ("MPP") aimed at safeguarding participants from abuse and other sport related harms. These policies are sometimes equipped with procedures to handle complaints and proven misconduct.<sup>181</sup> No government institutions or national organisations have inherent jurisdiction over maltreatment in sport. However, the NST has the legislative authority to acquire jurisdiction over maltreatment disputes from a sport organisation requiring adjudication.

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<sup>180</sup> Personal Communication with Mr. Bill Turner, Chief Operating Officer of Sport Integrity Australia (3 September 2020).

<sup>181</sup> See: "Football Federation Australia National Member Protection Policy" (20 July 2016), online (pdf): *Football Federation of Australia* <<https://www.ffa.com.au/sites/ffa/files/2017-09/National%20Member%20Protection%20Policy.pdf>> [last accessed: 5 September 2020]

### 7.3.4 Reporting<sup>182</sup>

SIA prefers sport organisations to manage maltreatment issues when it is appropriate. However, one of the recommendations of the Wood Review was the development of a whistleblower scheme allowing persons to report all sport integrity matters anonymously. Anonymous reporting is intended to allow whistleblowers to avoid any potential retaliation from those implicated in the report. Moreover, there is a plan to use the investigative capabilities currently focused on Anti-Doping to investigate certain maltreatment matters. However, those that reach the level of criminality, such as child abuse or sexual abuse, will be referred to the appropriate law enforcement agencies. It has yet to be determined which matters will remain with SIA rather than being referred to the sport organisations or law enforcement.

Currently, SIA offers an online and telephone complaint referral service for all sport integrity issues, including maltreatment. These services help the complainant determine the appropriate course of action, but do not accept formal complaints.

### 7.3.5 Resolution Procedures

Sport organisations have sole jurisdiction to resolve sport maltreatment disputes. However, sport organisations may also refer any maltreatment disputes to the NST for resolution. The NST hears disputes concerning sport integrity matters from all levels of sport in Australia. This includes first instance disputes and appeals regarding Anti-Doping, match-fixing, and maltreatment. The NST is organised into three divisions: (i) the Anti-Doping Division; (ii) the General Division and; (iii) the Appeals Division. The General Division hears all matters related to sport integrity outside of doping. To arbitrate, mediate or offer conciliation services for a maltreatment dispute, the General Division and Appeals Division rely on contractual arrangements with the Territorial Sport Organisations, State Sport Organisations, NSOs and sport clubs. All services offered in the General Division and Appeals Division are fee-for-service and those fees are outlined in the tables below:

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<sup>182</sup> Supra, note 186.

### General Division Fees

	Application Fee	Fee to Join an Existing Arbitration	Service Fee
Arbitration	\$500	\$250	Negotiated with the CEO at the preliminary conference. It fluctuates with the complexity of the case, length of hearing and number of NST participants.
Mediation, Conciliation, Case Appraisal	\$750	N/A	Only applies to mediations lasting more than 1 day. In those cases, cost is assessed in the same manner as arbitration service fees.
Case Appraisal Fee for Written Opinion	\$500	N/A	N/A

### Appeals Division Fees

	Application Fee	Application to join an existing arbitration	Service Fee
Appeals outside of antidoping disputes	\$1500	\$250	Negotiated with the CEO at the preliminary conference. It depends on the complexity of the case, length of hearing, number of NST participants and whether it is a re-hearing or limited appeal

Criminal and civil sanctions may apply to individuals who fail to comply with the NST rules of procedure. For example, an NST panel member will give written notice to individuals who may be required to appear before the panel to give evidence. Failure to comply may result in imprisonment for up to 12 months and/or a civil penalty up to \$13,320 under ss. 42 and 43 of the *National Sports Tribunal Act, 2019*. Other offenses which could also carry criminal and/or civil

repercussions under the Act include failing to take an oath, failing to answer a question under oath, giving false or misleading evidence, obstructing the NST or an NST member in the performance of their duties, and intimidating a witness.

The NST has also developed the NST Legal Assistance Panel to provide legal services to those who cannot afford them. This model provides support for the IRT’s recommendation of a Complainant Defence Counsel. The NST CEO is mandated to establish such a panel under s. 52(2)(e) of the *National Sports Tribunal Act, 2019*. Legal practitioners are appointed by the NST CEO through an application process. Once on the panel, they receive requests for representation by parties appearing before the NST. The arrangements between panel members and parties are entirely contractual and the NST does not attract liability for the actions of panel members.

### 7.3.6 Incentive Structures and Vetting Processes

While there is no formal compliance check or maltreatment process audit for NSOs and local sport clubs, there are incentive structures and a vetting process in place to ensure that sport organisations have an adequate maltreatment policy. At the national level, SA requires sport organisations to adopt an MPP that is consistent with the national policy template in order to be recognised as an NSO. Moreover, recognition as an NSO provides that organisation with several benefits including the right to refer to themselves as an NSO, access to the Australian Sport Commission’s grant programs and the opportunity to use the Commonwealth Coat of Arms on playing or dress uniforms. The Australian Capital Territory also makes any funding to sport organisations contingent upon their adoption of an MPP that is consistent with the model policy provided by Play by the Rules, a private sport education provider.<sup>183</sup>

### 7.3.7 Support Frameworks

While NGBs do not have inherent jurisdiction over maltreatment complaints and resolution, they do provide support for NSOs and local clubs that wish to establish a sport maltreatment

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<sup>183</sup> “Play by the Rules”, online: *Australian Capital Territory: Sport and Recreation* <<https://www.sport.act.gov.au/clubs-and-organisations/play-by-the-rules>> [last accessed: 3 September 2020].

framework. SA provides a “Child Safe Sport” framework that may be adopted by NSOs and other sport organisations. The framework includes a six-step process to follow to align the organisation with national child protection standards and a seven-component framework with sample policy documents. There are guidelines available for the NSO, that if adopted, would make their organisation more gender inclusive since the guidelines conform to the Australian Discrimination Act, 1984. Finally, Play by the Rules provides multiple policy templates to assist organisations in developing their own policies and guidelines including an MPP, a Coach Code of Behaviour, Interacting with Children Guidelines and a Disability Inclusion Policy.

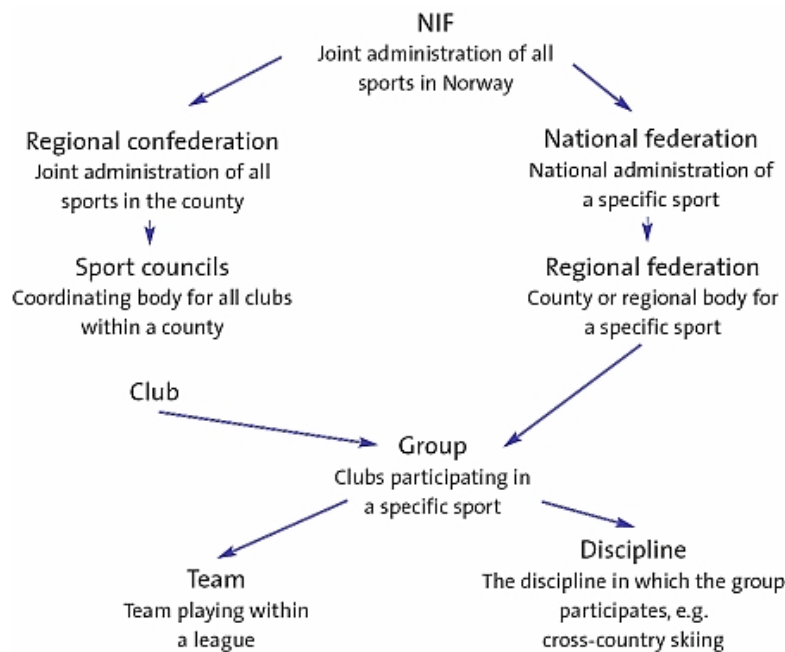
### *Notable Features*

The IRT notes that the SIA is progressing in a similar phased-in approach as proposed by the IRT. Australia has also implemented an incentivised system rather than mandated compliance. It is also focused on providing specialised maltreatment training and training focused on safeguarding for those who work directly with children. The education is centralised and the SIA is providing single and easily identifiable modules rather than pursuing a decentralised approach. Lastly, the SIA will be providing a public defender for those individuals that do not have the financial means to adjudicate.

## 7.4 Norwegian Sport Maltreatment Model

The sport sector in Norway consists of the Norwegian Olympic and Paralympic Committee and Confederation of Sports (shortened as “NIF” in Norwegian) and its network of national sport organisations, district sport organisations, regional special sport organisations, local sport councils and sport clubs. In most other countries, the Olympic and Paralympic teams are separate legal entities, but in Norway all national federations are members of NIF. NIF is an independent organisation and is the facilitator of organised sport activity in the country. It is the highest body consisting of 2,400,000 members spreading over 55 national federations, 17 regional

confederations, 375 sport councils and just under 11,000 sports clubs.<sup>184</sup> The following is an organisational chart of the sports structure in the country:



Some of NIF’s responsibilities include Anti-Doping, match-fixing, research, and e-learning. In relation to Anti-Doping, NIF is responsible for Anti-Doping regulations and dealing with violations of the WADA Code.<sup>185</sup> Violation cases are dealt with by NIF’s adjudication and appeals committees. These decisions can be appealed to the Sports Arbitration Court.

The responsibility of sampling athletes and the prosecution of doping violations is delegated to Anti-Doping Norway. In regard to match-fixing, NIF is responsible for the implementation of measures in the *National Action Plan against Match-Fixing*. This plan was created by NIF, the Football Association of Norway, Norsk Tipping AS (the Norwegian National Lottery), the Norwegian Gaming and Foundation Authority, the Ministry of Justice and Public Security, and the Ministry of Culture. Examples of NIF’s responsibilities for this plan include developing an education program

<sup>184</sup> Norwegian Olympic and Paralympic Committee and Confederation of Sports, “Idrettsforbundet (English)”, online: <<https://www.idrettsforbundet.no/english/>> [last accessed: 27 August 2020].

<sup>185</sup> Norges Idrettsforbund, “Sports anti-doping work”, online: <<https://www.idrettsforbundet.no/tema/juss/antidoping/>> [last accessed: 27 August 2020].



on match-fixing, creating ethical guidelines for use in combating match-fixing, and establishing procedures for athletes who are approached about match-fixing.<sup>186</sup>

NIF also creates educational materials related to children's sports. NIF provides e-learning modules for coaches and trainers. These modules help coaches reach competence goals. Modules for coaches include the coaching role, children's sports values, sports without injuries, age-related training, health sports nutrition and eating disorders, and sports for people with disabilities. There is also an e-learning module for Anti-Doping.<sup>187</sup>

Policy for sport is administered by the Department of Sport Policy and the Ministry of Cultural Affairs. The Ministry of Cultural Affairs has the responsibility of ensuring individuals have access to a broad range of sports and also for the administration of betting profits for investment in sport activities.<sup>188</sup>

#### 7.4.1 Funding

Norsk Tipping AS is Norway's national lottery and gaming provider, the profits of which are channeled into the funding of sports facilities and physical activity (64%), cultural activities (18%) and social and humanitarian agencies not associated with NIF (18%). NIF is the largest grant recipient of those funds. NIF has three types of income: (i) grants from the public sector and other bodies; (ii) income from sponsors; and (iii) income from operations including shared service performance for federations and sports circles.<sup>189</sup>

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<sup>186</sup> Ministry of Culture Norway, "National Action Plan against Match-fixing in Sport 2013-2015", online: <<https://www.idrettsforbundet.no/contentassets/968a314d8279493fad8c03f6cfc5e656/national-action-plan-against-match-fixing-in-sport.pdf>> [last accessed: 3 September 2020].

<sup>187</sup> Norges Idrettsforbund, "E-l ring", online: <<https://www.idrettsforbundet.no/nif/trenerloypa/nyheter/e-laring/>> [last accessed: 27 August 2020].

<sup>188</sup> Ministry of Culture Norway, "Sports policy", online: <<https://www.regjeringen.no/en/topics/culture-sports-and-non-profit-work/innsiktsartikler/sports-policy/id2001187/>> [last accessed: 27 August 2020].

<sup>189</sup> Norges Idrettsforbund, " rsrapport 2019 (Annual Report in Norwegian)", online: <[https://www.idrettsforbundet.no/contentassets/3fa4c97bbabf4446b3867eb04fc8e102/23\\_20\\_nif-arsrapport-2019.pdf](https://www.idrettsforbundet.no/contentassets/3fa4c97bbabf4446b3867eb04fc8e102/23_20_nif-arsrapport-2019.pdf)> [last accessed: 27 August 2020].

## 7.4.2 Children's Rights in Sport

Children's sport in Norway is popular, as 93% of all children in Norway are members of a sport club. NIF has a specialised focus on developing positive sport activities for every child and created a "Children's Rights in Sport" statement in response. The statement was adopted by the General Assembly of NIF and all sports federations in the country voted to adopt and abide by it. Under the statement, children have a right to safety, friendship and enjoyment, competency, influence, choice, competition and suitable activity.

Each individual sports federation is required to create their own rules and sanctions for violations of this statement. If a violation of the statement is serious enough, or there are repeated incidents, the case must be reported to an Adjudication Committee of NIF. A violation of these rules could result in federations and clubs losing access to government grants.<sup>190</sup>

The following is the procedure for a violation that is sent to an Adjudication Committee, found in the NIF Statutes.<sup>191</sup> A committee shall consist of three members during the handling of every case. A chairperson or deputy chairperson will be present. After receiving the violation charge, the committee will consider if the charges were sent to the correct adjudication body. If not, the charges will be redirected with a notice sent to the organisational unit who filed the charge.

If the charges were correctly submitted, the committee will review the violation. The committee may wholly or partially dismiss the charges if the committee finds *"there is no real need for a decision, the charges have no sensible purpose or appears to be manifestly unfounded."* This decision may be appealed. If the committee accepts the charges, the case will be decided as quickly as possible.

A party is entitled to an oral hearing unless the Adjudication Committee unanimously agrees that one is not needed. The decision is based exclusively on the evidence submitted. If the committee has decided on a provisional suspension, decisions regarding the extension or removal of the

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<sup>190</sup> Norges Idrettsforbund, "Children's Rights in Sport: The Provisions on Children's Sport", online: <  
[https://www.idrettsforbundet.no/contentassets/482e66e842fa4979902ecc77f0c05263/36\\_17\\_barneidrettsbestem melsene\\_eng.pdf](https://www.idrettsforbundet.no/contentassets/482e66e842fa4979902ecc77f0c05263/36_17_barneidrettsbestem melsene_eng.pdf) [last accessed: 3 September 2020].

<sup>191</sup> Norwegian Olympic and Paralympic Committee and Confederation of Sports, "Statutes (In-house translation)", Word document provided.

suspension will be managed by a newly created panel. A report of the final reasons will outline the matters deemed to have been proven and which penal provisions have been decided upon. Notification of the decision and reasons shall be sent to the parties with a deadline for appeal.

### 7.4.3 Guidelines to Prevent Sexual Harassment

At the 2007 Confederation of Sports Assembly, a motion named *“Zero tolerance for discrimination and harassment irrespective of gender, ethnic background, religious faith, sexual orientation and disability”* was carried. NIF states that zero tolerance implies sexual harassment and sexual abuse must not take place. Therefore, all organisations in NIF have a responsibility to prevent sexual harassment and sexual abuse. NIF states that it is a prerequisite that employees and volunteers within sports follow a set of guidelines regarding sexual harassment and abuse, and that suspicion of sexual harassment and abuse is notified and/or dealt with if such situation should occur.<sup>192</sup>

NIF created a set of guidelines to prevent sexual harassment and abuse in Norwegian sports. The management of each sport organisation has the main responsibility for publicising and adhering to the guidelines. NIF states that these guidelines should be referred to in employment contracts for coaches and managers. NIF states that although the ethical guidelines of each organisation will vary depending on the discipline and background of the organisation, the boundaries of acceptable behaviour must be clearly apparent within them. Organisations may also decide to include rules for daily interactions between individuals or rules of conduct. These guidelines must also be communicated to non-professional coaches. Since children’s sports in Norway are so popular, many parents themselves are involved in sport. Coaches of clubs are often parent volunteers. Therefore, the guidelines for preventing sexual harassment will not be found in formal job contracts like professional employees will sign. Sport organisations can reach out to an Ombud for help on this matter.

In these guidelines, NIF recommends that those who are subject to sexual harassment or sexual abuse either: (i) get in touch and seek help from a trustworthy person; (ii) contact the management of the club/sports association, sports division, the national sports federation or NIF responsible for

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<sup>192</sup> Norges Idrettsforbund, “Guidelines to Prevent Sexual Harassment and Abuse in Sports”, online: <[https://www.idrettsforbundet.no/contentassets/93046e8a852e4870a84aaa83da65ab2f/637\\_10\\_sexual-harassment\\_eng\\_web.pdf](https://www.idrettsforbundet.no/contentassets/93046e8a852e4870a84aaa83da65ab2f/637_10_sexual-harassment_eng_web.pdf)> [last accessed: 3 September 2020].

the sport; (iii) contact the police or an assault centre; (iv) contact a public health nurse, doctor or abuse line; or (v) contact the Ombud. NIF encourages parents, support networks or athletes who have a suspicion that someone else is subject to sexual harassment to give notice of this allegation to police, the sports club or the Ombud. Everyone has a duty to report allegations to the police if this will prevent new assaults (Penal Code §196).<sup>193</sup>

#### 7.4.4 Reporting

NIF provides guidance on what organisations should do when faced with an allegation of sexual abuse or sexual harassment. In each case, complaints must be handled by the leadership of the main club (either by the club manager or club chairperson). If the action is a violation against an adult, it is encouraged that individuals report to the police themselves. If the action is a violation against a minor, the parents shall be informed and in consultation with them, a report will be made to the police. If it is suspected that the parents themselves have committed sexual abuse to the minor, individuals should contact the police or local child welfare directly.

All matters are to be followed up on irrespective of whether the police are involved, a person is convicted, or a sentence is abandoned. It is up to the management of the club to decide whether follow-up measures should be implemented. These measures could include termination of contract, withdrawal of tasks, or sport-related sanctions. During an interview with the IRT, the Ombud in NIF noted that organisations take every report very seriously and that proof of sexual abuse is not needed for a reaction from the sport organisation. The Ombud stated that a combination of violating guidelines and a report of abuse is enough to impose a sanction. They believe that requiring proof would prove only beneficial to the alleged abuser as abuse is so difficult to approve. The Ombud stated that the system must react to reports, because otherwise no one would trust them.

#### 7.4.5 Sanction and Enforcement

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<sup>193</sup> Norwegian Olympic and Paralympic Committee and Confederation of Sports, “Guide for handling cases related to sexual harassment and abuse (unofficial translation last updated 6 April 2018)”, Word document provided.

The club board should appoint two case officers among the board members who will make the decision on sanctions. If the matter is being run through the judicial or police system, the sports club must assess whether the case should be sent to NIF's Adjudication Committee for suspension, suspending the roles of those involved and considering retrieving a new police certificate. A police certificate is a document that outlines whether the person has been charged, prosecuted, fined or convicted of violating serious offences such as sexual, violent and drug crimes. The certificate is required from all people over the age of 15 who perform tasks that involve a relationship of responsibility or trust towards minors or persons with developmental disabilities. If the matter is not run through the judicial or police system, or it has been completed by the agencies already, the matter should be followed up with by case officers on the club board.

The case officers will conduct their own quasi-investigation by having separate meetings with the parties involved. The officers will make a report to the board with recommendations on the case. In these circumstances, the sports club is encouraged to contact the regional sport confederation for assistance. For each allegation, the sports club must create a case log to list the events, details and contacts in the case. The aim for the log is to have a clear and detailed overview of the club's handling without providing too much personal information.<sup>194</sup>

#### 7.4.6 Ombud

The Ombud in NIF works on sexual harassment and abuse prevention for the country. The Ombud focuses on reaction and prevention by responding to complaints and advising sport bodies on their policies respectively. One role of the Ombud is to direct complainants to the appropriate reporting mechanism. When the potential complaint is a violation of the national penal code for example, the Ombud will direct them to the police. These claims can go through the court system and then the sport court system. The sport court will review the decision from the state court to come to a conclusion and will not complete its own investigation. The Ombud also acts as a consultant to sport organisations on improving their harassment and abuse policies. During funding allocation from the government, sport organisations receive recommendations on what they should work on in regard to maltreatment. Based on the guidelines to prevent sexual assault, the Ombud will

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<sup>194</sup> Norges Idrettsforbund, "Politiattest" online: <<https://www.idrettsforbundet.no/klubbguiden/politiattest/>> [last accessed: 27 August 2020].

work with the sport entity to improve its policies, procedures and education relating to sexual harassment and abuse.<sup>195</sup>

### *Reporting Channels to Ombud*

NIF accepts reports on their website. However, the available channels are not for complaints against organisational sports. The reporting channels state that “*conditions at other organizational levels, e.g. special associations and sports clubs, must be notified directly to the organizational level in question.*” NIF’s Alert Channel is used for reporting situations related to NIF Central, the Olympic Summit or the sports districts. There is also a Whistleblowing Channel required for the reporting of any conduct that may be unethical, illegal, or in other ways in violation of our values or standards by NIF. These reports must involve issues regarding NIF’s employees or the administration of NIF including Olympiatoppen and NIF’s International Development Cooperation work abroad.<sup>196</sup>

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<sup>195</sup> Interview with Havard Ovregerd (31 August 2020).

<sup>196</sup> Norges Idrettsforbund, “Routine for notification in the Norwegian Sports Confederation”, online: <<https://www.idrettsforbundet.no/om-nif/varslinger-i-norges-idrettsforbund/>> [last accessed: 27 August 2020].



# Chapter 8

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## LITERATURE REVIEW

### 8.1 Introduction

A review of key policy documents, reports, and research publications was undertaken to inform the analysis of possible mechanisms to implement and administer the UCCMS. However, the review in its entirety provided useful context for the IRT's understanding of the current maltreatment and safe sport landscape both in Canada and internationally. To guide the review process, relevant information was divided into five key categories:

- i. Barriers to Reporting Maltreatment – A number of the reviewed documents explored the various factors negatively impacting participants' decision to report maltreatment. The Barriers to Reporting Maltreatment section outlines the most prominent barriers and identifies key considerations relevant to the implementation of an independent reporting mechanism.
- ii. Structure & System – The Structure & System section focuses on the need for an independent body outside of athletics to implement and administer the UCCMS based on recommendations made in the reviewed documents.
- iii. ADR – The ADR section outlines recommended possible amendments to the 2021 draft of the *Canadian Sport Dispute Resolution Code* (Version 3) based on the IRT's

recommendation to contract with the SDRCC to provide adjudicative services to those subject to the UCCMS.

- iv. Education & Support – The importance of education, training, and support (including mental health support) was identified in many reviewed documents as a key factor to preventing maltreatment, increasing reporting rates, and increasing stakeholder satisfaction. The Education & Support section provides an overview of the benefits of making improvements in these areas.
- v. Funding – The Funding section considers recommendations from key stakeholders regarding the most appropriate sources of funding for the NIM.

## 8.2 Barriers to Reporting Maltreatment

According to the *Prevalence of Maltreatment Among Current and Former National Team Athletes* (“Prevalence of Maltreatment”) study from the University of Toronto, only 16% of current athletes included in the study who experienced maltreatment made a formal complaint.<sup>197</sup> As AthletesCAN board member, Allison Forsyth, noted, “*Athletes rarely report. Plain and simple.*”<sup>198</sup> Thus, it was important for the purposes of the IRT’s analysis to understand the factors that influence a participant’s decision to report maltreatment. Key factors identified in the documentary review included: i) limited avenues for reporting maltreatment; ii) the culture of sport; and iii) the unique challenges regarding sexual maltreatment. Each of these factors create various barriers to the reporting of maltreatment which will be explored below.

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<sup>197</sup> Gretchen Kerr, Erin Willson, B. KIN, and Ashley Stirling in partnership with AthletesCAN, “Prevalence of Maltreatment Among Current and Former National Team Athletes” (30 April 2019).

<sup>198</sup> AthletesCAN, “More than 1000 Top Canadian Athletes Inform Prevalence Study of Maltreatment in Sport” (7 May 2019), online: < <https://athletescan.com/en/more-1000-top-canadian-athletes-inform-prevalence-study-maltreatment-sport> > [last accessed: 7 September 2020].



## Limited Avenues for Reporting

One of the most frequently cited factors impacting the decision to report was the limited availability of viable reporting avenues, particularly when it comes to athletes. As noted in the Prevalence of Maltreatment study, athletes have expressed concern over the fact that their options are typically limited to their coaches, sports administrators, or their NSO when reporting maltreatment, as this creates a number of issues.

A central issue in the research shows that the perpetrators of maltreatment are most often members of the coaching staff, sports administrators, and/or high-performance directors. This means that athletes are expected/forced to report incidents of maltreatment to the individuals who are most likely the cause of the issue. Moreover, reporting maltreatment committed by individuals in these roles to the NSO was viewed by many athletes as being equally problematic. *“I would never feel comfortable going to my [NSO] if I were harassed in any way and would 100% need an individual body to report the harassment.”*

A review of the research on the barriers to reporting also indicates that there is strong consensus among key stakeholders that asking a sport organisation to investigate incidents of maltreatment creates a conflict of interest as they would necessarily be incriminating themselves. As Allison Forsyth noted, *“[athletes] are not comfortable or feel safe [reporting to] anyone with a vested interest in the outcome.”* Attendees at the P/T Safe Sport Summits (discussed further below) identified a lack of reporting avenues outside the organisation as one of the biggest gaps in regard to safe sport in their respective organisations.<sup>199</sup> The *Centre for Sport Policy Studies Position Paper* (“Position Paper”) outlined the rationale behind a sport organisation’s conflict of interest: a finding of maltreatment could lead to negative publicity, which in turn could affect the organisation’s ability to attract and retain members, volunteers, and other key personnel as well as losing sponsors and thus revenue. Athletes are aware of their organisation’s vested interest in maintaining a positive public image to ensure their continued success, which unsurprisingly affects their willingness to report. In the summer of 2020, the negative impact of sport organisations’ conflict of interest became evident when dozens of current and former gymnasts from all over the

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<sup>199</sup> Coaching Association of Canada, “Pan-Canadian Safe Sport Summits - Jurisdiction Report Summary” (April 2019).

world came forward via social media about their experiences with abusive training culture. Unfortunately, based on their statements it is clear that the abuse was covered up by key sport personnel in an effort to save personal status, public image, and relations.<sup>200</sup>

The final area discussed in barriers to reporting reveals a lack of external reporting avenues which creates the potential for retaliation against athletes and other sport personnel. According to athletes in the *Prevalence of Maltreatment* study, issues of blackmail, intimidation, favouritism, and verbal and mental abuse often arise when athletes decide to report. Moreover, athletes are constantly reminded that they can be easily replaced so they are hesitant to report the behaviours of coaches, sports administrators, and other personnel for fear of jeopardising their careers. As one athlete reported:

*“Knowing we can be replaced and our careers are on the line, you are regularly forced to ignore issues or maltreatment out of fear. I have witnessed blackmail, intimidation, favouritism, experienced verbal and mental abuse personally. We are silenced or put down if u ask questions. I am fearful that after I speak out, I will be punished.”*

Research has shown that this fear of career jeopardisation has extended to the parents of athletes, who as a result sometimes fail to report suspected abuse of their children.<sup>201</sup>

## The Culture of Sport

Another barrier to reporting maltreatment is the culture of sport itself. The *Position Paper and Recommendations* compiled by Donnelly and Kerr indicated that the culture of sport as a “force for good” leads to willful blindness and a code of silence about inappropriate behaviour. Sport is viewed as only having a positive impact on the development of youth and young adults, which can

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<sup>200</sup> International Socio-Cultural Research Group on Women’s Artistic Gymnastics, “The Future of Women’s Artistic Gymnastics: Eight Actions to Protect Gymnasts from Abuse” (8 August 2020).

<sup>201</sup> Peter Donnelly and Gretchen Kerr, “Revising Canada’s Policies on Harassment and Abuse in Sport: A Position Paper and Recommendations” (August 2018).

lead to a “refusal to see or admit to problems”. The *Coaching, Touching, and False Allegations of Sexual Abuse in Canada* (“False Allegations”) study provides an example of this. It states that sports administrators are often hesitant to implement sexual abuse prevention measures as it may suggest there are cases of sexual abuse in their association, even if they believe it is important to prevent sexual abuse.<sup>202</sup> Moreover, when administrators do become aware of maltreatment they frequently fail to respond.

Research also shows that the culture of sport serves to normalise certain forms of harassment and abuse in the sport context, such as psychologically and sexually harmful practices, and body shaming. For example, the *Maltreatment in Canada: A Focus on Para-Athletes* study states that certain forms of maltreatment such as neglect and verbal abuse are viewed as a “motivational strategy.”<sup>203</sup> Related to these issues is the “winning at all costs” and “money for medals” mentality that is common in sport, as well as the fact that athletes are taught about unquestioning obedience at an early age. The normalisation of these behaviours can create a false understanding among athletes and other stakeholders that these behaviours are necessarily a part of the sport. Consequently, athletes are either unaware that the behaviour constitutes abuse, or they are unwilling to report it. As one athlete from the *Prevalence of Maltreatment* study noted, “I just feel the swearing and being frustrated with the athletes is oftentimes normalized. It may be a testament of the culture fostered in this sport; however, it still isn't fun to be on the receiving end of it.”

## Reporting Sexual Maltreatment

There are many factors affecting reporting rates that are specific to sexual abuse and harassment, some of which are specific to sport and some are common to all contexts. According to the *False Allegations* study, it is estimated that approximately 64-96% of victims do not report their experiences of sexual violence. Children are particularly reluctant to report incidents of sexual

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<sup>202</sup> Joannie Pepin-Gagne and Sylvie Parent, “Coaching, Touching and False Allegations of Sexual Abuse in Canada” (23 November 2015).

<sup>203</sup> Gretchen Kerr, Erin Willson, and Ashley Stirling, “Maltreatment in Canada: A Focus on Para-Athletes” online: <[https://paralympic.ca/sites/default/files/2019-11/Report%20of%20Para-Athletes%27%20Experiences%20of%20Maltreatment\\_Oct21\\_2019.pdf](https://paralympic.ca/sites/default/files/2019-11/Report%20of%20Para-Athletes%27%20Experiences%20of%20Maltreatment_Oct21_2019.pdf)> [last accessed: 7 September 2020].

maltreatment, and when they do report, they tend to minimise the frequency and severity of the abuse. The *Child Sexual Abuse* study from the CCCP showed that, even in cases where sexual abuse of a child becomes known, only 53% of these cases were known because the victim came forward; 47% of the time the abuse was discovered by a third party.<sup>204</sup> A common belief among victims is that their complaints will not be taken seriously, or, upon making a report, they will be treated with suspicion. Unfortunately, this belief is grounded in reality.

Research has shown that professionals who typically receive reports of sexual misconduct (e.g., lawyers, police officers) tend to reinforce the notion that many complaints of sexual abuse are false or unfounded. The *False Allegations* study showed that some of these professionals believe that up to 50% of these types of complaints are false. If the complainant is a minor, or the complainant decides to withdraw their complaint, the lack of belief in their report is exacerbated. However, the evidence does not support this lack of belief. Research shows that young people are as likely as adults to accurately recall events, and that there are various reasons why a complainant may withdraw a valid complaint. These include a victim's fear of their abuser, their being ashamed of what happened, and as noted above, a fear of not being believed.

Athletes who experience sexual maltreatment in the sport context face similar challenges. Many athletes hold the view that their sports administrators will not believe their report of maltreatment, and that the coach's version of events is more likely to be accepted as true. Thus, research has shown that unless the athlete has substantive evidence to corroborate their story, they are unlikely to make a report.

Even if they have strong suspicions that abuse has occurred, coaches and sports administrators have reported a fear of making false accusations, particularly when there is a lack of concrete evidence supporting the complaint.

A related issue arises in regard to low-level concerns. A low-level concern is:

*“any concern – no matter how small, and even if no more than a ‘nagging doubt’ – that an adult may have acted in a manner which is not consistent with an organization’s Code of Conduct, and/or relates to their conduct outside of work which, even if not linked to a*

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<sup>204</sup> Canadian Centre for Child Protection, “Child Sexual Abuse by K-12 School Personnel in Canada” (12 June 2018).

*particular act or omission, has a caused a sense of unease about that adult's suitability to work with children.*"<sup>205</sup>

A majority of cases of organisational child sexual misconduct involve preceding grooming behaviours by the offender. Grooming behaviours involve a slow erosion of boundaries whereby the offender progresses through increasingly abusive behaviour. They will seek to gain the trust of the child and their family by favouring particular children (usually those that are isolated) and meeting their emotional and physical needs. Examples of grooming behaviours include providing alcohol to the victim, exposing them to sexually explicit images or videos, and inappropriate physical contact. According to the study conducted by *Farrer & Co.*, organisational policies are often clear about the procedure to be followed when an offender harms a child, or their behaviour poses a significant risk of harm to a child. However, there is far less clarity in regard to these types of low-level grooming behaviours. As a result, it is common for this conduct not to be shared with the relevant authority until substantive abuse takes place.

### 8.3 Structure & System

#### The Current System in Canada

The current sport delivery system in Canada is largely decentralised: each FFSO has its own autonomous governance structure and many organisations at the provincial and community level are not aligned with their associated FFSOs (discussed further in sections 1.5 and 3.3). Moreover, although Sport Canada requires FFSOs to have a policy (or policies) and designated independent harassment officers to deal with maltreatment, the *Position Paper* showed that in many cases these requirements are not being met. According to the study, many organisations did not have abuse and harassment policies available at all (29% of PSOs and 14% of NSOs), and only 27% of the PSOs and 39% of the NSO policies dealing with maltreatment mentioned a harassment officer. None of the policies described the officer as being independent of the organisation. These findings are, for the most part, consistent with those in section "1.4 Canadian Sport Sector Survey" and speak to the need for a more consistent effort to combat maltreatment across all levels of sport.

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<sup>205</sup> Farrer & Co, "Developing and Implementing a Low-Level Concerns Policy: A Guide for Organization Which Work with Children" (2020) Safeguarding Unit.

## Commitment to Change

In recent years there has been an increased focus on promoting safe sport in Canada. The Federal, Provincial, and Territorial Ministers for Sport, Physical Activity, and Recreation solidified the national commitment to addressing maltreatment in sport via the Red Deer Declaration.

*“All Canadians have the right to participate in sport in an environment that is safe, welcoming, inclusive, ethical and respectful...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.”*

Following the release of the Red Deer Declaration, the CAC and its partners in the sport sector held a series of provincial and territorial safe sport summits to identify the current issues regarding maltreatment in sport and to assess the need and desire for the implementation of a universal code of conduct. The findings from these summits were then distributed to attendees of the National Safe Sport Summit held in Kanata.<sup>206</sup>

The support for a universal code and associated sanctions was almost unanimous at the P/T Safe Sport Summits (only 2 of 749 respondents did not support a universal code, and only 6 of 747 respondents did not support universal sanctions), and was strong at the national summit with only 18-20 of the 819 respondents not in support. Moreover, 111 out of the 133 attendees at the National Summit, when asked *“Should the [UCCMS] be administered by an independent body,”* indicated they support the establishment of an independent body to administer the Universal Code, and 18 indicated they “partially support” the concept.

Canada’s top Olympic, Paralympic and high-performance athletes who attended the National Summit also recommended that a NIM be established and responsible for safe sport in Canada. These findings are consistent with those in section 1.4 of this report and indicate a strong desire among key stakeholders for the proposed NIM. As one respondent noted, *“we are on the precipice of an unprecedented culture shift in Canadian sport,”* a sentiment supported by the level of consensus at the summits.<sup>207</sup>

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<sup>206</sup> Coaching Association of Canada, “National Safe Sport Summit Report” (May 2019).

<sup>207</sup> AthletesCAN, “Athlete Leaders Unite to Influence Safe Sport Policy in Canada” (May 2019).

## Implementing and Administering the UCCMS

The reviewed documents not only indicated consensus and support for a universal code, now embodied by the UCCMS, but also the most effective ways to implement it. The most prevalent recommendation was the establishment of an independent body outside of sport responsible for education and training, policy, reporting, investigation and adjudication, and support. The following is a brief overview of some of the recommended characteristics of such a body identified in the documentary review.

### Reporting

An independent and confidential reporting mechanism was repeatedly identified as a key component of any system in place to address maltreatment in sport.<sup>208</sup> Attendees at both the P/T and National Safe Sport Summits noted the need for an independent reporting system to accompany the implementation of the UCCMS. Similarly, according to the IOC's *Safeguarding Toolkit*, any reporting system should be confidential and “*should be operated and managed by someone at arm’s length to the organisation, to reduce the possibility of conflicts of interest.*”<sup>209</sup> Qualitative studies from the University of Toronto also support an independent reporting mechanism. As one respondent noted from the *Prevalence of Maltreatment* study “*I strongly feel that as an athlete, we need a third-party organization to report to, or even someone to talk to for advice. Right now, in my sport, we have no outlet for resolution, and I don't even know who I would approach if I had an issue!*” Similar comments were expressed by respondents in the *Maltreatment in Canada: A Focus on Para-Athletes* study described in the “Unique Stakeholders” section of this report.

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<sup>208</sup> SDRCC, “Proposal for a Safe Sport Compliance System”, [last accessed: 5 September 2020].

<sup>209</sup> International Olympic Committee, “Safeguarding Athletes From Harassment and Abuse in Sport” online: <[https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Promote-Olympism/Women-And-Sport/Boxes%20CTA/IOC\\_Safeguarding\\_Toolkit\\_ENG\\_Screen\\_Full1.pdf#\\_ga=2.214685010.419917051.1599337510-1844816225.1599337510](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Promote-Olympism/Women-And-Sport/Boxes%20CTA/IOC_Safeguarding_Toolkit_ENG_Screen_Full1.pdf#_ga=2.214685010.419917051.1599337510-1844816225.1599337510)> [last accessed: 5 September 2020].

A confidential and independent reporting system would serve to reduce many of the barriers outlined in the above section “Barriers to Reporting Maltreatment.” In addition, standardised reporting through an independent body would allow for the documentation of all received complaints, which may help to prevent individuals from moving to a different area/sport to reoffend and would ensure that FFSOs are aware of abuse at the club level. Moreover, as stated in the *Developing and Implementing a Low-Level Concerns Policy* report, documenting complaints allows for organisations to identify problematic patterned behaviour that often precedes more egregious offences, i.e., grooming.

## Complainant Support

Providing support to the complainant throughout the dispute resolution process was another function frequently identified in the reviewed documents as being important to a national safe sport system. In 2000, a report compiled by a work group appointed by the federal government recommended the establishment of a national ADR program.<sup>210</sup> The report also recommended the implementation of an ombudsperson for amateur sport to complement the ADR model. The work group viewed the ombudsperson “*as a critical component of the ADR program.*”

Although the recommendation for a national ADR program was met through the creation of the SDRCC, an ombudsperson for amateur sport as described in the proposal was never established in Canada.<sup>211</sup> More recently, in the *Closing the Loop* proposal compiled by the SDRCC, 97% of survey respondents indicated support for the creation of an ombudsperson in sport to address issues such as conflicts of interest, harassment, abuse, and other threats to participant safety. The proposed ombudsman would provide confidential reporting, listen to complaints in an impartial

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<sup>210</sup> SDRCC, “A Win-Win Solution: Creating a National Alternate Dispute Resolution System for Amateur Sport in Canada” (May 2000), online: < <http://www.crdsc-sdrcc.ca/eng/documents/Working-Group-Report-e.pdf> > [last accessed: 5 September 2020].

<sup>211</sup> SDRCC, “Closing the Loop: Proposal for a Sport Ombudsman in Canada” (March 2017), online: < [http://www.crdsc-sdrcc.ca/eng/documents/Closing\\_the\\_Loop\\_-\\_A\\_Proposal\\_for\\_a\\_Sport\\_Ombuds\\_in\\_Canada\\_EN\\_final.pdf](http://www.crdsc-sdrcc.ca/eng/documents/Closing_the_Loop_-_A_Proposal_for_a_Sport_Ombuds_in_Canada_EN_final.pdf) > [last accessed: 5 September 2020].



and neutral manner, provide information and offer advice on next steps, facilitate discussions, and other similar services.

The *Position Paper* proposed the establishment of a similar role, although it was termed a “Sport Welfare Officer” rather than ombudsman. The Sport Welfare Officer would provide “social-emotional support and determine next steps, if any, on disclosures, reports and complaints” and would follow up on helpline calls as appropriate.

The IOC’s *Safeguarding Toolkit* also emphasizes the importance of having a Safeguarding Officer/Ombudsman to provide support to victims/complainants.

*“Such person should be trained and experienced in the field of safeguarding from harassment and abuse (e.g. medically and/or legally), and his/her responsibilities should, in particular, include playing a central role in: (i) the reporting and investigation procedures, (ii) determining whether information of a case should be disclosed to the competent local authorities, and (iii) providing support to any concerned persons throughout the reporting and investigation procedures.”.*

The importance of being at “arm’s length” to the FFSOs to maintain impartiality was viewed as an important aspect of the Safeguarding Officer/Ombudsman role. Moreover, given that not all FFSOs have harassment officers and some organisations may not have the resources to employ such an individual, the services provided by the NIM could potentially fill an important organisational gap.

## Investigation and Adjudication

The recent events in US gymnastics and worldwide, involving athletes coming forward about maltreatment that was covered up by their respective sports administrators, illustrate the importance of having impartial investigative and adjudicative bodies so as to reduce any conflict of interest. Indeed, there was general consensus among attendees of both the P/T and National

Safe Sport Summits that independent third-party investigative and adjudicative bodies to handle complaints was an essential component of the implementation of a universal code.

The SDRCC's *Investigation Guidelines* for their Investigation Unit state that parties have a right to an independent and impartial investigator as an element of procedural fairness.<sup>212</sup> Moreover, the SDRCC also provided FFSOs with the *Third-Party Profile and Role* document which outlined the importance of an independent investigator when dealing with harassment, abuse, and discrimination – the document includes a “Declaration of Independence” for the investigator to sign confirming their independence of the relevant sport organisation.<sup>213</sup> Similar conflict-of-interest clauses are included in the arbitration rules of many independent organisations providing ADR services such as the *National Safeguarding Panel* in the UK and the U.S. Centre for Safe Sport.<sup>214</sup> The SDRCC also states that there must be independence even between the Investigation Unit and the arbitrators assigned to a case. These requirements would be met by the proposed NIM, as the investigators of the NIM are independent of any sport organisation and are separate from the arbitration that would be provided by the SDRCC.

However, an issue with the SDRCC's Investigation Unit, which is important to the IRT's analysis is that, although it is independent from any sport organisation, it still refers its findings back to the organisation involved in the dispute. Many respondents in the *Pilot Project Evaluation Report* noted that this undermines the benefits of having an independent reporting and investigative service, as the organisation is ultimately responsible for imposing any sanctions.<sup>215</sup> A similar issue may arise with the proposed NIM in referring cases back to the organisation involved in the dispute. Thus, oversight over the relevant organisation handling the complaint is an important function of the NIM. Indeed, the *Universal Safe Sport Code Lessons*<sup>216</sup> provided by the CCES, the

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<sup>212</sup> SDRCC, “Investigation Unit – Investigation Guidelines” (December 2018) online: < [http://www.crdsc-sdrcc.ca/eng/documents/Investigations-Investigation\\_Guidelines\\_EN\\_Final.pdf](http://www.crdsc-sdrcc.ca/eng/documents/Investigations-Investigation_Guidelines_EN_Final.pdf) > [last accessed: 5 September 2020].

<sup>213</sup> SDRCC, “Third-Party Profile and Role” online: < [http://www.crdsc-sdrcc.ca/eng/documents/Third\\_Party\\_Profile\\_and\\_Role\\_with\\_Declaration\\_EN.pdf](http://www.crdsc-sdrcc.ca/eng/documents/Third_Party_Profile_and_Role_with_Declaration_EN.pdf) > [last accessed: 5 September 2020].

<sup>214</sup> Sport Resolutions, “2015 Procedural Rules of the National Safeguarding Panel”, online: *National Safeguarding Panel* <[https://www.sportresolutions.co.uk/images/uploads/files/NSP\\_Rules\\_2015\\_redraft\\_7\\_April\\_2015\\_-\\_SB\\_approved\\_17\\_April\\_2015\\_1.pdf](https://www.sportresolutions.co.uk/images/uploads/files/NSP_Rules_2015_redraft_7_April_2015_-_SB_approved_17_April_2015_1.pdf)> [last accessed: 5 September 2020]; U.S. Centre for SafeSport, “Supplementary Rules for U.S. Olympic and Paralympic Safesport Arbitrations” [last accessed: 5 September 2020].

<sup>215</sup> SDRCC, “Pilot Project Evaluation Report” (31 March 2020), online: <[http://www.crdsc-sdrcc.ca/eng/documents/Evaluation\\_of\\_Safe\\_Sport\\_Initiatives\\_-\\_Final\\_report\\_31\\_March\\_2020.pdf](http://www.crdsc-sdrcc.ca/eng/documents/Evaluation_of_Safe_Sport_Initiatives_-_Final_report_31_March_2020.pdf)> [last accessed: 5 September 2020].

<sup>216</sup> Canadian Centre for Ethics in Sport, “Building a Universal Safe Sport Code” (9 May 2019), [last accessed: 5 September 2020].

*Closing the Loop* proposal, and the *Win-Win Solution* report, to name a few, all speak to the need for an independent organisation to oversee the handling of complaints by sport organisations to ensure they are being addressed adequately.

## Enforcement and Compliance

The oversight provided by a NIM would not be limited to individual complaints handled by sport organisations but would also include ensuring that sport organisations are meeting organisational policy requirements more generally. Sport Canada has made “*the adoption and integration of the [UCCMS] into organizational policies and procedures*” a mandatory requirement for those in receipt of Sport Canada funding.<sup>217</sup> Currently, sport organisations are still required to have an independent body to receive and manage reports of harassment and abuse if they are to receive funding. However, some sport organisations are unable to meet this requirement due to a lack of resources as outlined in the *Position Paper*. Moreover, having a sport organisation be responsible for reporting compliance with funding requirements creates a conflict of interest. Therefore, as suggested in the *Universal Safe Sport Code Lessons*, the P/T and National Safe Sport Summits, the *Position Paper*, the *Closing the Loop* proposal, and others, an independent organisation responsible for ensuring compliance with organisational policy requirements should accompany the implementation of a national program.

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<sup>217</sup> Email Correspondence from Vicki Walker, DG Sport Canada, to FFSOs (6 May 2020).

## Education and Training

Establishing a mechanism that provides consistent, comprehensive, and mandatory safe sport education to all stakeholders was viewed as another essential component of any national safe sport program. This is discussed further in the section “Education & Support” below.

## Previously Proposed Mechanisms

The CCES and the SDRCC have both proposed similar safe sport mechanisms/processes related to the implementation of a universal code of the conduct, which incorporate some of the characteristics discussed thus far. The SDRCC’s *Proposal for a Safe Sport Compliance System* includes a national toll-free helpline (embodied by the Canadian Sport Helpline) that would act as an initial intake mechanism, which would refer valid complaints to an independent investigation service or to other appropriate resources. An investigation unit would then “triage” the complaint and conduct a preliminary assessment to determine if a full investigation is warranted, or to determine if the complaint should be referred to another organisation (e.g., child protection, police, or back to the sport organisation).

If an investigation is warranted, the investigation unit would appoint an investigator to conduct the investigation. A “Sport Integrity Commissioner” would receive the investigation report and determine if a violation has occurred, and if so, would impose appropriate sanctions. If the respondent challenges the decision of the Sport Integrity Commissioner, an independent safeguarding tribunal managed by the SDRCC would then hear the issue (including challenges to interim measures) and make a decision. This decision could then be appealed to the Appeal Tribunal of the SDRCC.

The CCES proposed the establishment of an organisation called “Safe Sport Canada”(“SSC”) which would be the *“independent, federally incorporated, self-governing body mandated to monitor,*

*administer and implement the [UCCMS] across Canada.*<sup>218</sup> Their responsibilities would include conducting investigations, determining whether a violation has occurred, and imposing sanctions as appropriate. These decisions could then be appealed to an independent arbitration body. The SSC would have the power to impose interim measures depending on “*the severity of the allegations, the evidentiary support for the allegations, and/or the perceived risk to [participants] or the sport community.*” The SSC would also be responsible for providing victim support and developing a comprehensive and mandatory education program for all adopting organisations. In addition, adopting organisations would submit an annual report outlining their education plan to combat maltreatment.

## 8.4 Education, Training, & Support

According to the *Prevalence of Maltreatment in Sport* study, a lack of proper education, training, and support is a major contributing factor to the prevalence and under-reporting of maltreatment in sport. There was consensus among athletes in the study that there is a need for more comprehensive education regarding power imbalances, all forms of maltreatment, mental health, and the role of participants in creating a more inclusive environment. When asked “*Focused on your organization, what are the 1-2 biggest gaps regarding safe sport?*” attendees at the P/T Safe Sport Summits identified four main gaps – two of which were related to education and training.

The first was a lack of education in regard to the necessity of safe sport, and the second was a lack of awareness regarding participants’ responsibilities under existing policies. This is consistent with findings from the *Pilot Project Evaluation* report, where coaches indicated that they need more training in regard to dealing with individuals in crisis, issues involving minors, how to help victims or witnesses navigate difficult meetings related to abuse, and on the available resources for mental health support. It is clear there is an appetite for more comprehensive and consistent education and training among key stakeholders. The following outlines the benefits of making improvements in this area, as well as the support for a standardised mandatory education system.

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<sup>218</sup> Canadian Centre for Ethics in Sport, “Canadian Safe Sport Program – Draft V1” (25 June 2010), [last accessed: 5 September 2020].

## Culture of Sport

As outlined in the “Barriers to Reporting” section, the culture of sport has been the source of a variety of problems relating to maltreatment in sport. The LG believes that changing the culture of sport requires greater education regarding participants’ rights and responsibilities. Findings from the *Prevalence of Maltreatment* study, the *Position Paper*, and the Safe Sport Summits all support this belief. For example, the following sentiment from an athlete in the *Prevalence of Maltreatment* study, which was shared by many athletes, illustrates the need for greater education: *“I didn’t realize the way I was being treated was inappropriate.”* Greater education and training would serve to ‘de-normalise’ forms of maltreatment that have historically been viewed as being part of sport. The recent issues in women’s artistic gymnastics (“WAG”) serves as an important example. In response to the many athletes who came forward about abusive training culture in WAG, the ISCWAG made recommendations to prevent these issues from continuing. These included providing education to gymnasts on *“what abusive treatment and coaching is and where such behaviours and practices can be reported”* and extending coaching education *“with topics beyond the current focus on technical aspects of WAG, including abusive behaviours and practices, child development, training during childhood and youth, and gender ideals.”*

## Sexual Maltreatment

Effectively addressing sexual maltreatment in sport poses unique challenges. The *False Allegations* study indicated that few sport organisations provide training to parents, athletes and coaches related to sexual abuse prevention. There is a documented concern among sports administrators that spreading awareness about sexual maltreatment among participants and family members will lead to an increase in false accusations, which may explain the lack of training provided in the area. This study also showed that coaches are often unclear about what constitutes appropriate and inappropriate physical interaction with athletes. According to the researchers, existing policies relating to the protections of athletes are, *“for the most part, not very concrete about what is*

*acceptable and what is not in terms of touching.*” As a result, many coaches are fearful of any physical interaction with athletes and thus attempt to avoid it where possible. However, studies have shown that athletes do not perceive (appropriate) physical contact with coaches negatively and are often able to distinguish between appropriate and inappropriate contact.

Identifying inappropriate “grooming” behaviours may be more difficult, particularly when the offender has a good reputation in the sport community. From the *Child Sexual Abuse* study, the following quote from a mother of a victim of organisational (school context) sexual abuse is indicative: *“He was extremely well liked, he was an excellent teacher and a lot was overlooked because of his excellent personality.”* The study suggests *“holding people to high standards of expectations in their interactions with children and establishing a common understanding of standards for interactions with students in schools creates a culture that protects children.”* Although referring to the context of education, the IRT notes the applicability of this suggestion to the importance of education on sexual maltreatment in sport for athletes, coaches and other sports administrators, as well as parents or guardians.

As discussed in the “Barriers to Reporting Maltreatment” section above, the credibility of survivors of sexual maltreatment is frequently in question when they decide to come forward about their experience(s). However, according to the *False Allegations* study, false accusations of sexual maltreatment are extremely rare. It is therefore important that all participants are adequately educated on the reality of sexual maltreatment so as to remain unbiased and unprejudicial when athletes or other participants come forward about their experiences.

## Duty to Report

The duty to report incidents of maltreatment involving minors is set out both in provincial legislation and in the UCCMS. A majority of those who work with children (i.e., schoolteachers, camp counsellors) usually receive training on this *duty*, as failing to report is an offense. However, coaches, volunteers, and other sport participants are less likely to have received such training. The *Position Paper* notes that coaches and other sports administrators who perform “*professional or*

*official duties with respect to children*” should be trained on their responsibilities under the relevant legislation. Therefore, providing greater education on the duty to report, including the consequences of failing to report, is a critical component of any education system in sport. A more in-depth discussion of child protection legislation and services can be found in section 3.4 of this report.

## Mental Health Support

The *Prevalence of Maltreatment* study revealed that only one third of the athletes surveyed sought help for their mental health challenges, and only 19% felt supported by their organisations while doing so. This finding is particularly alarming considering that, out of the 764 current athletes surveyed, approximately 122 have engaged in disordered eating behaviours, 38 have engaged in self-harm behaviours (e.g., burning and cutting), and 99 have had suicidal thoughts. Many athletes reported a fear of being stigmatised which caused them to remain silent about their mental health concerns. According to Thomas Hall, Senior Manager of *Game Plan*,<sup>219</sup> “*we need to continue to reduce the stigma around asking for help, raise awareness about what being mentally healthy actually means, and increase the options for athletes seeking help.*” The IRT notes the importance of education and training relating to mental health and support, as well as spreading awareness of the resources available to athletes dealing with these types of issues.

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<sup>219</sup> Game Plan is a “collaboration between the Canadian Olympic Committee (COC), Canadian Paralympic Committee (CPC), Sport Canada, and Canadian Olympic and Paralympic Sport Institute Network (COPSIN).” It provides resources to athletes regarding health, education, well-being, skill development, among others. See online: < <https://www.mygameplan.ca/>>.



## Unique Athlete Stakeholders

Unique athlete stakeholders such as the Aboriginal and LGBTQ Communities, ethnic minorities, and those with disabilities experience a higher risk of victimisation in sport. However, according to the survey a majority of FFSOs do not provide specific training regarding the maltreatment of these individuals, despite research indicating its importance. For example, the following reviewed documents all spoke to the need for education specific to LGBTQ individuals: *Creating Inclusive Environments for Trans Participants in Canadian Sport*; *Actively Engaging Women and Girls*; *Lesbian, Gay, Bisexual and Transgender Athletes in Sport*; and *viaSport's LGBTQI2S Resources*.<sup>220</sup> Similarly, research also indicated a need for specialised education for coaches and other sports administrators to understand the needs of those in the Aboriginal Community and those with disabilities. *Indigenous Sport for Life* developed by Sport for Life and the Aboriginal Sports Circle, and the *Maltreatment in Canada: A Focus on Para-Athletes* study serve as two prime examples.<sup>221</sup>

Research has also indicated that access to resources such as training and education are limited for unique athlete stakeholders. For example, according to the *Re-Imagining Sport Policy: A Document for Discussion*, which included a review of 143 sport policies from various organisations, found that a majority of the policies stated that the organisation will provide equal access to education and training for different genders, races, persons with disabilities. However, a limited number take specific steps in policy implementation to address these inequalities. A more in-depth discussion of this study can be found in the “Unique Stakeholders” Chapter of this report.

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<sup>220</sup> Canadian Centre for Ethics in Sport, “Creating Inclusive Environments for Trans Participants in Canadian Sport”, online: < <https://cces.ca/sites/default/files/content/docs/pdf/cces-transinclusionpolicyguidance-e.pdf> > [last accessed: 7 September 2020]; Canadian Association for the Advancement of Women and Sport and Physical Activity, “Actively Engaging Women and Girls”, online: < [https://womenandsport.ca/wp-content/uploads/2020/03/Actively-Engaging-Women-and-Girls\\_Canadian-Women-Sport.pdf](https://womenandsport.ca/wp-content/uploads/2020/03/Actively-Engaging-Women-and-Girls_Canadian-Women-Sport.pdf) > [last accessed: 7 September 2020]; Melanie Sartore-Baldwin, “Lesbian, Gay, Bisexual, and Transgender Athletes in Sport” (19 July 2013), online: < [https://www.tandfonline.com/doi/pdf/10.1179/ssa.2012.6.1.141?casa\\_token=hCKMZZO3KMkAAAAA:3c0xXqdjprpgJscYxR9i4M1YZD\\_OdwyycKfEj1GqDdDV0lfmsDSUqrhZSvqrASVv9CqdQ4z3\\_nc](https://www.tandfonline.com/doi/pdf/10.1179/ssa.2012.6.1.141?casa_token=hCKMZZO3KMkAAAAA:3c0xXqdjprpgJscYxR9i4M1YZD_OdwyycKfEj1GqDdDV0lfmsDSUqrhZSvqrASVv9CqdQ4z3_nc) > [last accessed: 7 September 2020]; viaSport, “LGBTQI2S Resources”, online: < <https://www.viasport.ca/sites/default/files/Documents/LGBTQI2S%20Resources.pdf> > [last accessed: 7 September 2020].

<sup>221</sup> Aboriginal Sports Circle & Sport for Life, “Indigenous Sport for Life” online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/iltpd\\_sept2019\\_en\\_web.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/iltpd_sept2019_en_web.pdf) > [last accessed: 7 September 2020].

There is strong consensus among key stakeholders, as evidenced in the reviewed documents, for the implementation of mandatory training requirements for all stakeholders. Top Canadian athletes who had participated in the Safe Sport Summits released five consensus recommendations following the summits, one of which was *“that there be mandatory education on Safe Sport for all stakeholders driven by minimum and harmonized standards to ensure good standing.”* Athletes included in the *Prevalence of Maltreatment* study also called for mandatory education for stakeholders that covered issues related to maltreatment. The *Position Paper* expressed similar views.

There is also support for having a centralised independent body responsible for administering education and training resources. Another consensus recommendation from athletes at the summit was that a Safe Sport Canada body be established who would be responsible for overseeing the education and training of stakeholders. As one attendee from the National Summit noted, *“education needs to be uniform, consistent, and fair.”* Another noted that members of the sport community *“need to be sure that education is available on what to report and to whom we report...this must be handled by an independent expert association that covers all sports to ensure consistency for all concerned.”* The IOC’s *Safeguarding Toolkit* notes that if education is made mandatory there must be a *“monitoring mechanism to ensure that all who are required to complete the education have done so”*. These findings are consistent with the findings from the Canadian Sport Sector Survey in section 1.4, which support the establishment of a NIM responsible for ensuring uniform and comprehensive education and training to stakeholders.

*A Critical Examination of Child Protection Initiatives in Sport Contexts* outlines the importance of grounding any child protection initiative/organisation in up-to-date research and allowing for it to be empirically evaluated.<sup>222</sup> The IRT notes the importance of this not only in child protection but in any program aimed at promoting safe sport. Indeed, centralising education and training under

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<sup>222</sup> Gretchen Kerr, Ashley Stirling, and Ellen MacPherson, “A Critical Examination of Child Protection Initiatives in Sport Contexts” (14 October 2014).

an independent body would allow for comprehensive empirical evaluation and would make the incorporation of research into the program consistent across all sports and levels.

## 8.5 Funding

Funding from the federal government was a common recommendation made in the reviewed documents. The main benefit of this option is the preservation of independence from sport organisations. However, survey respondents in the *Closing the Loop* report acknowledged that more diverse funding sources are required for a national program to be implemented at all levels of sport. The report proposes the option of having the federal government provide funding for services to all national-level organisations, while provinces and territories would pay service fees. Although it may be preferable to have all levels of sport contribute service fees, sport organisations have shown a willingness to introduce modest service fees if it means saving them money, as evidenced in section 1.5.6. This is in line with Sport Canada's statement: that the body should operate according to a not-for-profit model with sustainable revenues outside of government. Therefore, while government funding is a viable option, other sources of revenue are necessary, particularly when the NIM is scaled to all levels of sport.



# Chapter 9

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## UNIQUE STAKEHOLDERS

### 9.1 Introduction

The IRT believes the determination of the most appropriate mechanism to implement and administer the UCCMS requires considering the unique challenges faced by individuals belonging to unique stakeholder groups such as the Aboriginal and LGBTQ communities, and persons with disabilities. The sections below explore key organisations, initiatives, and research related to each of these unique stakeholder groups.

However, as outlined in the *Re-Imagining Sport Policy: A Document for Discussion* study, there are certain issues with the current system of sport in Canada that affect unique stakeholder groups generally.<sup>223</sup> This study involved an examination of 143 policies from various sport organisations in Canada. Based on this review, the researchers concluded that a majority of sport policies automatically include dominant groups (i.e., white, able-bodied men and sometimes women) at the exclusion “others”, who are only included if they are willing to meet the requirements of the dominant group. Moreover, the “inclusion” of others is sometimes justified based on the view

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<sup>223</sup> The Re-Creation Collective, “Re-Imagining Sport Policy: A Document for Discussion” (January 2020).

that certain populations are “damaged” and in need of fixing. This is consistent with the views expressed in *How a Framework for recreation in Canada 2015: Pathways to Wellbeing Reinscribes Exclusion* report, which states that “recreation professionals” contribute to exclusive practices by reinforcing the inclusion/exclusion binary through their perception of certain individuals as being “at-risk,” “vulnerable,” or “disadvantaged.”<sup>224</sup> It is therefore important, when attempting to make sport more inclusive for all, to consider how the sport system in Canada contributes to these exclusionary practices and the ways in which to reduce their impact.

## 9.1 Indigenous Community

### 9.1.1 Aboriginal Sport Circle (“ASC”)

The ASC is a member-based, not-for-profit organisation that aims to be “*Canada’s national voice for Aboriginal sport, physical activity and recreation bringing together the interests of First Nations, Inuit & Metis peoples.*”<sup>225</sup> A need for greater access and equitable sport and recreation opportunities for Aboriginal peoples led to the creation of the ASC in 1995. Its member organisations consist of the 13 Provincial/Territorial Aboriginal Sporting Bodies who, as a condition of membership, have agreed to abide by its by-laws, policies, procedures, rules, and regulations. Some of these policies and procedures include the following:

- **Abuse Policy** – provides comprehensive definitions of various forms of abuse and maltreatment and indicators to determine if an individual has experienced abuse. Also includes a duty to report instances of abuse or suspected abuse.<sup>226</sup>
- **Appeal Policy** – outlines various grounds for appeal. Notes that only decisions made by the ASC can be appealed under this policy. Independent Safe Sport Officer is responsible for

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<sup>224</sup> Lisa N. Tink , Danielle Peers , Candace I. J. Nykiforuk and Bethan C. Kingsley, “Vulnerable,” “At-risk,” “Disadvantaged”: How a Framework for Recreation in Canada 2015: Pathways to Wellbeing Reinscribes Exclusion” (1 June 2020).

<sup>225</sup> Aboriginal Sport Circle, online: <https://www.aboriginalsportcircle.ca/> [last accessed: 4 September 2020].

<sup>226</sup> Aboriginal Sport Circle, “Abuse Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_abuse\\_policy\\_july\\_15\\_2019\\_final.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_abuse_policy_july_15_2019_final.pdf)> [last accessed: 4 September 2020].

determining validity of appeal applications and appointing the hearing board if necessary.<sup>227</sup>

- **Code of Conduct** – provides comprehensive definitions of harassment, sexual abuse, discrimination and workplace violence with numerous examples of each. Outlines rights and responsibilities of Individuals. Violations are subject to the *Discipline and Complaints Policy*.<sup>228</sup>
- **Discipline and Complaints Policy** – complaints sent to Independent Safe Sport Officer who determines, based on the categorization of the offence, the appropriate sanctions. More serious offences may be heard by a Discipline Panel appointed by the Safe Sport Officer who, following the hearing, impose appropriate sanctions.<sup>229</sup>
- **Dispute Resolution Policy** – states that “*the dispute is first referred to the ASC’s Executive Director for review, with the objective of resolving the dispute via Alternate Dispute Resolution and/or mediation.*” Both parties must consent to ADR. Dispute may be referred to a resolution facilitator from the SDRCC. Resolutions are approved by ASC and are final.<sup>230</sup>
- **Screening Policy** – level of risk (e.g., access to vulnerable individuals) determines the requirements necessary before individuals can take their position. Provides examples of individuals at each level of risk and associated requirements for those positions (including training and background checks).<sup>231</sup>
- **Whistle-blower Policy** – “*only applies to Workers who observe or experience incidents of wrongdoing committed by Directors or by other Workers.*” Complaints under this policy submitted to Independent Safe Sport Officer who, if necessary, conducts an investigation and submits report to the ASC’s Chairperson and/or CEO, who then imposes sanctions.<sup>232</sup>

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<sup>227</sup> Aboriginal Sport Circle, “Appeal Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_appeal\\_policy\\_final\\_july\\_15\\_2019.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_appeal_policy_final_july_15_2019.pdf) > [last accessed: 4 September 2020].

<sup>228</sup> Aboriginal Sport Circle, “Code of Conduct”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_code\\_of\\_conduct\\_july\\_15\\_2019\\_final.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_code_of_conduct_july_15_2019_final.pdf) > [last accessed: 4 September 2020].

<sup>229</sup> Aboriginal Sport Circle, “Discipline and Complaints Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_discipline\\_and\\_complaints\\_policy\\_july\\_15\\_2019\\_final.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_discipline_and_complaints_policy_july_15_2019_final.pdf) > [last accessed: 4 September 2020].

<sup>230</sup> Aboriginal Sport Circle, “Dispute Resolution Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_dispute\\_resolution\\_policy\\_final\\_july\\_15\\_2019.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_dispute_resolution_policy_final_july_15_2019.pdf) > [last accessed: 4 September 2020].

<sup>231</sup> Aboriginal Sport Circle, “Screening Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_screening\\_policy\\_july\\_15\\_2019\\_final.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_screening_policy_july_15_2019_final.pdf) > [last accessed: 4 September 2020].

<sup>232</sup> Aboriginal Sport Circle, “Whistle-blower Policy”, online: < [https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc\\_whistleblower\\_policy\\_july\\_15\\_2019\\_final.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/policies/asc_whistleblower_policy_july_15_2019_final.pdf) > [last accessed: 4 September 2020].

These policies generally apply to all member organisations as defined in ASC’s bylaws, as well as “Individuals” as defined in the above policies, which includes those engaged in activities with the ASC such as coaches, athletes, convenors, and officials. The ASC recognises that certain Individuals may be subject to the policies and procedures of the P/T organisation to which they are registered. However, the ASC requires that the P/T organisations submit discipline decisions involving Individuals to the ASC, who may take further actions at its discretion. The Independent Safe Sport Officer has significant responsibilities in the ASC’s policy framework which provides a useful model for the IRT’s analysis as his/her responsibilities closely resemble those of the proposed role of the NSSO:

- Receives complaints regarding infractions of the *Code of Conduct* and determines jurisdiction and whether the complaint is valid.
- Receives complaints under the *Whistleblower Policy* and determines whether an investigation is appropriate, and if so, is responsible for conducting the investigation.
- Decides on the disciplinary process to be followed as outlined in the *Discipline and Complaints Policy*.
- Work with complainants as they navigate the complaints process.
- Decides on whether an appeal application is valid, and if so, appoints the appeal panel.

The ASC has also been actively involved in Aboriginal Sport Development in regard to coaches, athletes, and the community. Over a number of years, the ASC developed supplemental training for Aboriginal coaches taking NCCP workshops called the Aboriginal Coaching Modules (“ACM”) which are briefly summarised in the table below. Working with the CAC, the ASC has also developed a program designed to train “Learning Facilitators” who are given the tools to lead coaching workshops that incorporate Aboriginal perspectives and culture.<sup>233</sup> Lastly, there is also the Aboriginal Apprentice Coach Program (“AACP”), which is a partnership between the ASC, the P/T Aboriginal Sport Bodies, the P/T Coaching Representatives, the Canada Games Council, and the CAC. The program allows for each province and territory to send two Aboriginal coaches to the Canada games in apprenticeship roles.

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<sup>233</sup> Coaching Association of Canada, “Aboriginal Coaching Module Facilitator Training”, online: <<https://coach.ca/aboriginal-coaching-module-facilitator-training>> [last accessed: 4 September 2020].

Through a partnership with Sport for Life, the ASC developed a resource both for athletes and those working with athletes, called the *Indigenous Long-term Participant Development Pathway*.<sup>234</sup> It focuses on increasing physical literacy among Aboriginal peoples, facilitating their athletic development so they can participate in high-performance sport, and increasing their participation in sport more generally. It also provides useful tips for coaches on how to incorporate Aboriginal perspectives into their process.

In regard to the community more generally, the ASC developed the *Indigenous Communities: Active for Life* resource with an associated full-day workshop. The resource provides information for coaches, athletes, and others looking to develop sport in their community, and includes a step-by-step process to follow to reach that goal.<sup>235</sup> Upon completion of the workshop, participants should have:

- *“Ideas on how to create quality experiences in their sport, physical activity, and recreation programs”*
- *“An understanding of physical literacy, which is the development of movement skills, confidence, and motivation to be active for life”*
- *“A certificate of workshop completion and 3 NCCP Professional Development points (if applicable)”*

### 9.1.2 Sask Sport - Initiatives

Sask Sport is the provincial federation for sport in Saskatchewan. The Sask Sport model provides a useful test case for the implementation of the UCCMS. In addition, Sask Sport’s involvement with the Aboriginal community provides important insights into how to ensure the unique needs of Aboriginal persons are being met through policy development and implementation. Sask Sport enlists the help of the Aboriginal Sport Leadership Council (“Council”) in Saskatchewan to provide advice and recommendations on Aboriginal sport development, including the distribution of funds

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<sup>234</sup> Aboriginal Sport Circle, “Indigenous Sport for Life”, online: <[https://www.aboriginalsportcircle.ca/wcm-docs/docs/iltpd\\_sept2019\\_en\\_web.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/iltpd_sept2019_en_web.pdf)> [last accessed: 4 September 2020].

<sup>235</sup> Aboriginal Sport Circle, “Indigenous Communities: Active For Life”, online: <[https://www.aboriginalsportcircle.ca/wcm-docs/docs/indigenous-communities-active-for-life\\_web\\_mar2019.pdf](https://www.aboriginalsportcircle.ca/wcm-docs/docs/indigenous-communities-active-for-life_web_mar2019.pdf)> [last accessed: 4 September 2020].



to various organisations and projects that support the needs of the Aboriginal community in sport. The Council helps to facilitate relationships with other interest groups, seeks opportunities for collaboration in related sectors that affect Aboriginal sport development (e.g., health, education), and guides Sask Sport’s policy development by providing an Aboriginal perspective.<sup>236</sup>

Sask Sport is also involved in a number of programs aimed at Aboriginal sport development. The Coaching Association of Saskatchewan is a member of Sask Sport, and together they have developed the Indigenous Coaches and Officials Program (“ICOP”), which is funded primarily through the Sask Lotteries Trust Fund.<sup>237</sup> The ICOP aims to facilitate *“training and developmental opportunities across the province for Indigenous peoples to become involved in sport as a coach or an official.”*

The following, which are funded by the ICOP, are included in the program<sup>238</sup>:

<p><b>NCCP Community Sport, Competition and Instruction Streams</b></p>	<p><u>Community stream</u> – <i>“Participants in this stream are typically playing for their own enjoyment. Beginner coaches often start here.”</i></p> <p><u>Competition stream</u> – <i>“helps participants develop competitive abilities in their sport over the long term. Former athletes and experienced coaches at regional levels often work in this stream.”</i></p> <p><u>Instruction stream</u> – <i>“enables former participants to pass on the skills they’ve developed over their careers to a new generation of coaches.”</i></p>
<p><b>NCCP Aboriginal Coaching Modules<sup>239</sup></b></p>	<p><u>Module 1: Holistic Approach to Coaching</u> – 1-hour, in-class workshop. Topics include creating a positive environment, the Medicine Wheel, a coaching perspective (physical, mental, emotional, intellectual, cultural, and spiritual needs)</p>

<sup>236</sup> Sask Sport Volunteer Board, “2019/2020 Annual Report”, online: Sask Sport <<https://sasksport.ca/pdf/AnnualReport/1920AnnualReport.pdf>> [last accessed: 4 September 2020].

<sup>237</sup> Coaches Association of Saskatchewan, “18/109 Annual Report”, online: <<https://saskcoach.ca/isl/uploads/2020/01/CASAnnualReport1819.pdf>> [last accessed: 4 September 2020].

<sup>238</sup> Coaching Association of Canada, “NCCP Streams and Contexts”, online: <<https://coach.ca/nccp-streams-and-contexts>> [last accessed: 4 September 2020]; Coaches Association of Saskatchewan, “Indigenous Coaching”, online: <<https://saskcoach.ca/programs-grants/indigenous-coaching/>> [last accessed: 4 September 2020].

<sup>239</sup> Coaching Association of Canada, “Aboriginal Coaching Modules”, online: <<https://coach.ca/aboriginal-coaching-modules>> [last accessed: 4 September 2020].

	<p><u>Module 2: Dealing with Racism in Sport</u> – 3-hour, in-class workshop. Provides important definitions that <i>“may be useful in the discussion of racism and knowing when to use the right word to describe what is happening in a certain situation.”</i></p> <p><u>Module 3: Individual and Community Health and Wellness</u> – 2-hour, in-class workshop. Covers topics such as <i>“lifestyle, health, and nutrition, and how to be familiar with the unique lifestyle, health situations and challenges that Aboriginal youth may face.”</i></p>
<b>NCCP Sport-Specific Clinics</b>	Provides education on the fundamentals of the sports included, as well as more advanced training for coaches of competitive athletes.
<b>Officials Clinics</b>	Aimed at increasing the number of trained Aboriginal Officials in sport.

The programs/modules, with the exception of the officials' clinics, are provided to the Coaching Association of Saskatchewan through a partnership with the Coaching Association of Canada. Participation in the ICOP is free. In the 2018-2019 year a total of 385 Indigenous coaches were trained in a NCCP Sport-Specific workshop, 71 participated in a NCCP Multi-Sport workshop, and 43 Indigenous officials were certified in Softball and Volleyball.

Other programs in which Sask Sport is involved include the *Community Sport Development Grant Program*, the *Indigenous Sport Enhancement Program*, and the *Tribal Council and First Nations Coordinator Program*. These programs are aimed mainly at increasing the Aboriginal Community's access to and participation in sport.<sup>240</sup> For example, the *Community Sport Development Grant Program* provides *“community-based sport participation and development opportunities for Indigenous and children and youth”*. This includes supporting the implementation of organised community sport programs, and providing equipment or league fees, facility access, or volunteer development.

9.1.3 ADR Chambers – Hybrid Approach to ADR

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<sup>240</sup> Sask Sport, “Saskatchewan’s Federation for Amateur Sport”, online: <[http://sasksport.sk.ca/pdf/19July\\_ProgramsResources.pdf](http://sasksport.sk.ca/pdf/19July_ProgramsResources.pdf)> [last accessed: 4 September 2020].



ADR Chambers provides conflict resolution services such as mediation, arbitration, Ombud's services, and investigation, both across Canada and internationally. The focus of their work is mainly within the workplace context. They developed the *Anishnabe N'oon DA Gaaziiwin: an Indigenous Peacemaking Mediation Nexus*, a hybrid process that incorporates Aboriginal practices into ADR.<sup>241</sup> The hybrid process was developed in response to the inadequacy of traditional Western ADR practices in accommodating the needs of the Aboriginal Community. The process has five stages:

- i. **Information Gathering** – involves series of conference calls, meetings, and group observations to identify key issues.
- ii. **Confidential Sharing Circles** – formal process begins here. Each round focuses on a question that the facilitators have designed specifically to bring out the needs and interest of the group. Only those holding the “talking stick” may speak.
- iii. **Brush-Off Ceremony** – prior to questions being asked for each circle there is a smudging ceremony – lighting sacred medicine like sage to cleanse the body and calm the spirit. The circle keeper then brushes an eagle feather over the participant to remove prejudices.
- iv. **Summary of Information and Prayer** – the second facilitator summarises the information produced during the sharing circles then closes in prayer.
- v. **Caucusing Stage** – facilitators design caucus groups and topics of focus based on information gathered. Once all issues and topics are discussed, everyone is brought together for a brainstorming session on how to move forward. The final resolution is written out to ensure parties feel accountable to the agreement.

Although this process is unique and represents a positive step forward in terms of including Aboriginal culture and practice into traditional ADR processes, it was designed for “nation-to-nation” building and disputes between communities. With respect to the UCCMS and dispute resolution in sport, this form of ADR has limitations. First, resolving certain forms of maltreatment such as sexual abuse via this process would be inappropriate. Second, it may not be equitable to have one group of stakeholders with access to certain forms of dispute resolution that others do

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<sup>241</sup> ADR Chambers, “Anishnabe N'oon DA Gaaziiwin: an Indigenous Peacemaking Mediation Nexus”, online: <<https://adrchambers.com/news-articles/uncategorized/anishnabe-noon-da-gaaziiwin-an-indigenous-peacemaking-mediation-nexus/>> [last accessed: 4 September 2020].

not. Lastly, there is no organisation in the sport context offering this type of ADR, and it would likely be too costly to develop and scale to all levels of sport.

#### 9.1.4 Reports, Policies, & Best Practices

##### *Alternative Dispute Resolution (“ADR”) in Aboriginal Contexts: A Critical Review*

The purpose of the report was to “*examine several common challenges applicable to both Aboriginal and Non-Aboriginal ADR processes as they pertain to disputes involving Aboriginal Peoples.*”<sup>242</sup> Although it is very difficult to incorporate Aboriginal ADR practices into a national ADR program applicable to all levels of sport as discussed above, it is still important to consider the following challenges outlined in this report related to ADR involving Aboriginal individuals. Some of these challenges include:

- **Issues of Power** – Power imbalances inherent to disputes involving Aboriginal people are firmly rooted in most Western ideologies and institutions. Moreover, the “strings” attached to government funding often force Aboriginal communities to mirror Western forums and institutions or administer “Western” justice through Indigenous cultures.
- **Language Barriers** – “*There are key differences between the English language and many Indigenous languages, which have a direct impact on how disputes are perceived, defined, and resolved.*” For example, certain English words do not have meaning in some Aboriginal languages, such as lying, punish blame, and possessive terms like mine and yours.
- **Cultural Exploitation** – occurs when non-Aboriginal processes attempt to incorporate Aboriginal practices without proper consultation and consent from the Aboriginal people. This is an important consideration for the implementation of the UCCMS when trying to accommodate the needs and culture of the Aboriginal community.
- **Differences Between Aboriginal and non-Aboriginal Cultures** – these include: the concept of time, principle of reciprocity, leadership, concept of individuality, and the importance of spirituality, emotion, and experience.

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<sup>242</sup> Canadian Human Rights Commission, “Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review” (April 2007), [last accessed: 4 September 2020].

In addition, the impartiality and independence that is often the cornerstone of ADR mechanisms in Western practices are in contradiction to Aboriginal culture, which emphasises personal involvement and first-hand knowledge of the dispute. The report recommends having a trained Aboriginal mediator who is capable of incorporating Aboriginal practice into the process. Although it may not always be possible to have an Aboriginal mediator in the ADR process, this review does provide support for the NIM's NSSOs who would aid the complainant during the dispute resolution process.

### *Sport Canada's Policy on Aboriginal Peoples' Participation in Sport*

Sport Canada's *Policy on Aboriginal Peoples' Participation in Sport* was developed in response to the *Canadian Sport Policy* ("CSP").<sup>243</sup> The CSP acts as the "common thread between the governments, institutions and organizations that are a part of our sport system."<sup>244</sup> The aim of the CSP is to "create a dynamic and leading-edge sport environment that enables all Canadians to experience and enjoy involvement in sport..."

The goal of the *Policy on Aboriginal Peoples' Participation in Sport* was to ensure that the CSP remained inclusive and that it has the power to make sport more accessible and positive for the Aboriginal community in Canada.<sup>245</sup> In doing so, the report outlined various barriers to Aboriginal participation in sport, including the following:

- **Awareness** – "There is a general lack of awareness, understanding and information among Aboriginal Peoples about the benefits of being active in sport and the health risks associated with inactivity."
- **Economic circumstance** – "The majority of Aboriginal Peoples in Canada face economic difficulties, and many families simply cannot afford the cost of registration fees, equipment and competition travel associated with sport."

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<sup>243</sup> Public Policy Forum, "The Canadian Sport Policy: Toward. More Comprehensive Vision", online: <<http://www.mtc.gov.on.ca/en/sport/sport/CSP-ComprehensiveVisionEN.pdf>> [last accessed: 4 September 2020].

<sup>244</sup> Government of Canada, "Sport in Canada", online: <<https://www.canada.ca/en/canadian-heritage/services/sport-canada.html#a2>> [last accessed: 4 September 2020].

<sup>245</sup> Canadian Heritage, "Sport Canada's Policy on Aboriginal Peoples' in Participation in Sport" (May 2005), online: [https://www.canada.ca/content/dam/pch/documents/services/sport-policies-acts-regulations/aboriginal\\_v4-eng.pdf](https://www.canada.ca/content/dam/pch/documents/services/sport-policies-acts-regulations/aboriginal_v4-eng.pdf) [last accessed: 4 September 2020].

- **Cultural insensitivity** – *“Sport must provide a positive and welcoming environment to attract and maintain its participants. Programs and activities that are insensitive to the cultures and traditions of Aboriginal Peoples discourage their participation.”*
- **Coaching capacity** – *“Aboriginal participation in sport is hindered by a lack of Aboriginal coaches and coaches who are sensitive to Aboriginal cultures. Aboriginal coaching development is hindered by the lack of access to coaching certification courses and appropriate training materials.”*
- **Racism** – *“Racism is an ongoing problem in Canadian society manifesting itself in sport practice as it does in all socio-cultural practices. Racism is a socially constructed idea that alienates many Aboriginal Peoples by causing fear, anxiety and distrust, ultimately serving as a barrier to their full participation in Canadian society, including sport.”*
- **Sport Infrastructure** – *“Aboriginal communities (on-reserve) across Canada do not have adequate sport or recreation infrastructure. Capital projects such as schools, roads and housing take precedence over sport or recreation facilities. This lack of facilities limits community access to daily recreation or physical activity programs, including sport.”*

The Policy went on to note various ways in which to reduce the impact of some of these barriers. A majority of these solutions centered on identifying the unique needs of Aboriginal Peoples and incorporating and accommodating these needs into the sport context, as well as consulting the Aboriginal Community in the development of sport policy.

## 9.2 Athletes with Disabilities

### 9.2.1 Canadian Paralympic Committee (“CPC”)

The CPC is *“a non-profit, private organization with 25 member sport organizations dedicated to strengthening the Paralympic Movement.”*<sup>246</sup> Awareness of the CPC and its mandate, as well as Paralympic sports more generally, has been increasing over recent years. 80% of Canadians now agree that Paralympics is a highly competitive sport competition, and awareness thereof among the Canadian population increased from 65% to 87% from 2014 to 2018.

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<sup>246</sup> Canadian Paralympic Committee, “2018-19 Annual Report”, online: <[https://paralympic.ca/sites/default/files/2019-11/Annual%20Report%202018-19\\_EN.pdf](https://paralympic.ca/sites/default/files/2019-11/Annual%20Report%202018-19_EN.pdf)> [last accessed: 4 September 2020].

The CPC is funded primarily through government contributions and corporate sponsorships, which together totalled \$7,246,189 in the 2018-2019 year. All categories of membership defined in CPC's bylaws are subject to CPC's organisational policy framework, as well as anyone engaged in activities with the CPC (including coaches, athletes, officials, etc.).<sup>247</sup> The framework includes a *Code of Conduct, Discrimination and Harassment Policy, Appeals Policy, Discipline Policy, Equity Policy, Official Languages Policy, Alternative Dispute Resolution, Whistleblowing Policy, and a Policy on Personal Information Management*.<sup>248</sup>

Infractions of the *Code of Conduct* and the *Discrimination and Harassment Policy* are, pursuant to the *Discipline Policy*, submitted in writing to the CEO, Executive Director, or Corporate Services. Submitting complaints anonymously is not permitted. The CEO or Executive Director then appoints an independent case manager to oversee the resolution of the complaint, who categorises the complaint as a minor or major infraction. Procedures for dealing with minor infractions are informal, while major infractions can include a disciplinary hearing and more severe sanctions. In the case of discrimination or harassment, an investigator may be appointed to conduct an investigation and submit a report to the disciplinary panel (or other person in authority).<sup>249</sup> Failure to comply with any imposed sanctions results in a suspension of the Respondent from all CPC activities until compliance occurs. In addition, under the *Whistleblowing Policy* there is a duty to report any violation of the law or of CPC policies.<sup>250</sup> Decisions may be appealed on grounds outlined in the *Appeals Policy*. The Case Manager will appoint an appeal panel if appropriate, whose decision may only be appealed to the SDRCC.

The CPC is also involved in a number of initiatives targeted at making sport more accessible and inclusive for those with disabilities. They provide grants to NSOs, provincial organisations as well as community and club level programs.

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<sup>247</sup> Canadian Paralympic Committee, "Code of Conduct", [last accessed: 4 September 2020].

<sup>248</sup> Canadian Paralympic Committee, "Reports and Publications", online <<https://paralympic.ca/reports-and-publications>> [last accessed: 4 September 2020].

<sup>249</sup> Canadian Paralympic Committee, "Discipline Policy", [last accessed: 4 September 2020].

<sup>250</sup> Canadian Paralympic Committee, "Whistleblowing policy", [last accessed: 4 September 2020].

## 9.2.2 Reports, Policies & Best Practices

### *Maltreatment in Canada: A Focus on Para-Athletes*

The focus of this study was to assess “*the prevalence of various forms of maltreatment, including psychological, physical and sexual harm and neglect, amongst those who identified as an athlete with a disability.*”<sup>251</sup> The study included 110 Canadian National Team athletes, both current and former, who identified as having a disability, and 891 Canadian able-bodied athletes.

Two findings from the study are particularly striking. First, 20% of athletes who identified as having a disability reported having inadequate support for basic needs (e.g., foods, fluids, sleep, shelter, bathroom use, etc.), compared to only 9% of able-bodied athletes. Second, 26% of para-athletes experienced discrimination based on their disability – the next closest basis for discrimination was gender at 10%. In addition, ableism was identified as another common form of maltreatment.

*“So much in [the parasport] community is about training as hard as able-bodied athletes..., certain disabilities are routinely mocked, anyone whose disability contributes to inconsistent performance (fatigue/pain-based) is told that its all their fault, they need to get stronger mentally...”*

In the qualitative portion of the study athletes called for an increase in education for all stakeholders to combat these forms of maltreatment, as well as an independent mechanism to receive reports and investigate concerns. These recommendations are consistent with the proposed model.

### *Understanding the Factors that Contribute to Positive and Negative Experiences in Parasport*

This report was prepared by the Canadian Disability Participation Project for the CPC. It focuses on the concept of “quality participation” and the factors that impact the experiences of athletes

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<sup>251</sup> Gretchen Kerr, Erin Willson, and Ashley Stirling, “Maltreatment in Canada: A Focus on Para-Athletes”, online: <[https://paralympic.ca/sites/default/files/2019-11/Report%20of%20Para-Athletes%27%20Experiences%20of%20Maltreatment\\_Oct21\\_2019.pdf](https://paralympic.ca/sites/default/files/2019-11/Report%20of%20Para-Athletes%27%20Experiences%20of%20Maltreatment_Oct21_2019.pdf)> [last accessed: 4 September 2020].



with disabilities in sport. Quality participation is *“an athlete’s broad subjective evaluation that his or her sport involvement is satisfying, enjoyable, and generates personally-valued outcomes.”*<sup>252</sup>

When asked what factors contribute to positive and negative experiences in sport, a number of participants used variations of the words “safe” (26%), “welcoming” (26%), or “inclusive” (33%). The term “safe” referred to both physical and psychological safety and included such factors as having proper equipment (e.g., necessary safety devices, fitted properly), supervision (e.g., coaches and instructors trained in first aid), and an environment where they felt safe expressing concerns or issues. The term “welcoming” was used by participants to include the social environment as well as the accessibility of the physical environment. One participant stated she felt welcomed when the difficulty of the activities progressed at an appropriate pace; if she was confident in her abilities, she felt welcomed. The term “inclusive” was used to emphasise the importance of integration and equality between able-bodied athletes and athletes with disabilities. According to the participants, inclusion involved having the ability to participate to the greatest extent possible even if it means extra accommodations, having the ability to participate with able-bodied athletes, and feeling like part of a team.

As outlined below, there are gaps in the UCCMS in relation to athletes with disabilities. Some of the factors outlined above are not adequately covered in the UCCMS (e.g., having sport-specific equipment that properly fits the athlete).

### 9.2.3 Gaps in UCCMS

During the consultation process with key stakeholders there were certain gaps identified within the UCCMS relating to parasport participants. It was noted that the UCCMS focuses mostly on types of abuse that occur in the regular sport system, but the types of abuse and other issues that can occur in parasport are not adequately addressed. The following examples were used to illustrate this point. First, forcing athletes to train in environments not conducive to their abilities, e.g., doing warm up drills on staircases without railings, would constitute abuse which is not covered under the UCCMS. Second, the UCCMS creates the possibility of disciplining people for

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<sup>252</sup> Veronica Allan, Marlee Konikoff, and Amy Latimer-Cheung, “Understanding the factors that contribute to positive and negative experiences in parasport”, [last accessed: 4 September 2020].

completing their required duties. For example, some athletes who cannot bathe themselves require athlete support personnel to help them do so. However, this type of touching is technically prohibited under the UCCMS. Third, coaching staff and other caregivers often access medical information without permission, which is not covered under the UCCMS. Although these types of abuse may fall under the definitions of “neglect” or “physical maltreatment” in the UCCMS, it may be useful to provide examples of maltreatment specific to parasport athletes in order to create greater awareness of the different forms of maltreatment.

### 9.3 Special Olympics Canada – Intellectual Disability

Special Olympics Canada is a multi-service organisation who, for decades, *“has optimized the benefits of a healthy and active lifestyle through sport to improve the well-being of individuals with an intellectual disability.”*<sup>253</sup> Special Olympics Canada is structured on a model of chapters that are offered through provinces and territories in Canada.

*“Each Chapter offers multiple kinds of programming and opportunities for participation across the province or territory including: local community activities and sport clubs, regional and provincial athletic competitions, and fundraising events that help support programming.”*

Athletes in the system can progress from local competition to national games and world games through the national team program.

There are 49,626 athletes who participated in Special Olympics at all levels in Canada in 2019, led by 21,953 volunteers including 14,153 coaches (Special Olympics Year in Review 2018-2019). At the 2019 World Games in Abu Dhabi and Dubai Special Olympics, Team Canada’s roster included 109 athletes, 54 coaches and mission staff. The team represented Canada with distinction winning 155 medals, including 90 gold – “the highest gold medal count of any other competing country.”

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<sup>253</sup> Special Olympics Canada, online: <<https://www.specialolympics.ca/learn/about-special-olympics-canada/our-mission>> [last accessed: 4 September 2020].

### 9.3.1 Gaps in UCCMS

Special Olympics Canada is subject to the UCCMS given its status as a federally funded MSO. However, similar to para-sport athletes, during the consultation process with key stakeholders there were certain gaps identified within the UCCMS relating to Special Olympians. Because of intellectual disabilities, Special Olympians require unique consideration at it relates to the UCCMS, including how to access and navigate the system, education about maltreatment, and potential issues regarding disclosure or reporting.

The IRT notes that athletes with intellectual disabilities will often raise concerns that do not warrant making a complaint, or they will make false complaints as they have difficulty contextualising information and understanding what constitutes maltreatment. Thus, the individual(s) in receipt of the complaint and those conducting the preliminary assessment require specific training on how to assess the validity of these complaints.

The role of the NSSO and the Director of Complainant Support and User Support in the dispute resolution process are critical for athletes with intellectual disabilities, as they need someone outside of their caregivers, parents, or coaches to help guide them through the process. It is also important to note that athletes with intellectual disabilities require certain accommodations with regard to education on their rights and responsibilities under the UCCMS. As an example, one stakeholder noted that providing these athletes with a simple guide or list of what they can call about under the UCCMS would be helpful for them in determining what constitutes maltreatment. In addition, in-class or live virtual (e.g., zoom) learning is more effective for these athletes compared to online courses. The IRT notes the importance of tailoring the education resources associated with the UCCMS so as to accommodate the needs of athletes with intellectual disabilities.

## 9.5 LGBTQ2+ Community

### 9.5.1 You can Play

You Can Play is an international organisation that works to “ensure the safety and inclusion for all who participate in sports, including LGBTQ+ athletes, coaches, and fans.” Its partners include the National Football League, National Hockey League, Major League Soccer, and other prominent organisations.<sup>254</sup> To achieve its mandate, You Can Play provides consultation services for sport organisations looking to develop and implement inclusion policies within their organisation. It also offers in-person or virtual training sessions for teams, coaching organisations, club administration, and corporations. In addition to the resources that You Can Play created, such as *LGBTQ Inclusion 101 Terminology*, *Pronouns – Basic Guide to Using Pronouns Effectively* and *Tips to Creating an Inclusive Locker Room*, it also provides links to various other organisations and publications with shared values, including *Egale*, *Equality Coaching Alliance*, and *Get REAL*. Although You Can Play does not directly receive reports of harassment and discrimination, it provides links to the following helplines:

- National Suicide Prevention Hotline – “24-hour, toll-free, confidential suicide prevention hotline available to anyone in suicidal crisis or emotional distress.”
- Trans Lifeline – “organization focused on providing front line intervention for trans people in crisis.”
- Kids Help Phone – “Canada’s only free, national, bilingual, confidential and anonymous, 24-hour telephone and online counselling service for young people ages 5-20.”
- The Trevor Project – “provides life-saving and life-affirming services to LGBTQ youth.”

### 9.5.2 Canadian Women & Sport (“CWS”)

CWS was established in 1981 with the goal of enhancing the participation of girls and women at all levels and in all positions in sport.<sup>255</sup> Although CWS is mainly focused on gender equity, they

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<sup>254</sup> You Can Play, online: <<https://www.youcanplayproject.org>> [last accessed: 4 September 2020].

<sup>255</sup> Canadian Women in Sport, online: <<https://womenandsport.ca/about/our-story/>> [last accessed: 4 September 2020].

also play a role in the LGBTQ community by offering various resources focused on LGBTQ inclusion in sport.

CWS published a report *Leading the Way: Working with LGBTQ Athletes and Coaches*<sup>256</sup> as a guide for coaches and other stakeholders to understand issues facing LGBTQ persons and provides tips and considerations for creating a more inclusive environment. These include asking whether the readers' organisation/team has clear policies that prohibit discrimination based on sexual orientation, ensuring that these policies are shared with all participants, ensuring that it is clearly understood that the use of sexist or homophobic language by participants is unacceptable, and so on. This speaks to the importance of education around these issues to ensure participants are aware of their rights and responsibilities. Discrimination based on gender or sexual identity is not covered extensively in the UCCMS (section 2.2.1.2.1). It is therefore important that the national education program associated with the implementation of the UCCMS adequately cover issues specific to discrimination based on LGBTQ status as they relate to maltreatment under the UCCMS.

CWS has also created various workshops and webinars for sport administrators, coaches, athletes, officials, etc., targeted at understanding LGBTQ-phobia and its impact on sports organisations. The *LGBTQI2S Inclusion in Sport* workshop includes topics such as appropriate LGBTQI2S language, dealing with issues such as same-sex relationships amongst participants, and reviewing organizational policies to ensure they are equitable. CWS has also partnered with She's4Sports to develop a webinar called *We Are Sport: LGBTQI2S Inclusion*, which involves a discussion with athletes and other sport leaders from the LGBTQI2S community about inclusion and allyship, and what actions organisations can take to be more inclusive.

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<sup>256</sup> Canadian Women in Sport, "Leading the Way: Working with LGBTQ Athletes and Coaches", online: < [https://womenandsport.ca/wp-content/uploads/2020/03/Leading-the-Way\\_Full-Resource\\_Canadian-Women-Sport.pdf](https://womenandsport.ca/wp-content/uploads/2020/03/Leading-the-Way_Full-Resource_Canadian-Women-Sport.pdf) > [last accessed: 4 September 2020].

### 9.5.3 Lesbian, Gay, Bisexual and Transgender Athletes in Sport

This report details an interview with Dr. Pat Griffin, a prominent advocate for LGBTQ+ persons in the sport context.<sup>257</sup> Griffin outlines a number of important considerations regarding LGBTQ persons in the sport context, as well as ways to best educate athletes and other stakeholders on LGBTQ issues. Griffin notes that, although this is changing slowly, young people are far more supportive of LGBTQ persons than coaches. This creates issues because coaches are responsible for setting the tone for the team. This also likely influences an athlete's willingness to come forward to coaches regarding their challenges related to being LGBTQ.

In the past, coaches, or athletes who have been discriminated against based on their LGBTQ status have left their sport programs and attempted to participate elsewhere, i.e., another school or program. However, Griffin notes an increased willingness of coaches and athletes to address harassment and discrimination: *“the perception that one can do something about injustice is a really important motivator for change.”* This quote captures the importance of having an effective independent mechanism in place to address this type of discrimination; it will serve to increase stakeholder confidence in their ability to create change within their sport/organisation.

In regard to educating stakeholders, Griffin outlined some of the benefits to various approaches. A focus on the personal experience of LGBTQ persons allows non-LGBTQ persons to try and empathise with these individuals and imagine what it's like for them in sport. This creates the opportunity to think about what they can do to make sport more inclusive. Education that takes an action-oriented approach focuses on identifying key issues based on feedback from stakeholders, then tailoring the training to address these issues. Griffin also touched on the need for more consistent, systemised education to ensure LGBTQ issues are adequately addressed in all sport organisations. Although she was talking in reference to collegiate-level sports in the US, her recommendation is consistent with those of the key stakeholders as outlined in the Chapter on the Literature Review.

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<sup>257</sup> Melanie Sartore-Baldwin, “Lesbian, Gay, Bisexual, and Transgender Athletes in Sport”, online: <[https://www.tandfonline.com/doi/pdf/10.1179/ssa.2012.6.1.141?casa\\_token=RvxPav3HVmYAAAAA:Eo4awvHnfAlf oiE\\_Eub9Xa7ZldP4rcgwdmU3Ks8EkKh1sVMHiqa6hVM\\_oDuQNvj2GTiGsYptxZsJjQ\\_](https://www.tandfonline.com/doi/pdf/10.1179/ssa.2012.6.1.141?casa_token=RvxPav3HVmYAAAAA:Eo4awvHnfAlf oiE_Eub9Xa7ZldP4rcgwdmU3Ks8EkKh1sVMHiqa6hVM_oDuQNvj2GTiGsYptxZsJjQ_) [last accessed: 4 September 2020].

#### 9.5.4 CCES – Creating Inclusive Environments for Trans Participants in Canadian Sport

The CCES and the Trans Inclusion Sport Expert Working Group created this report to provide guidance for sport organisations in regard to trans participants. It provides comprehensive definitions of various terminologies regarding sex and gender, i.e., cisgender, gender binary, gender norms, as well as “best practises” for creating a positive verbal and emotional environment for all. Some of these practises include:

- Having a clear and documented organisational process in place that responds to participants’ individual needs
- Maintaining information and records in a way that respect an individual’s right to privacy and confidentiality – no information should be released regarding gender identity or stage of transition status
- Ensuring all written materials and websites use inclusive language and images
- Avoiding forms of documentation that captures unnecessary information such as gender

These are helpful considerations for the establishment of the NIB and the implementation of the UCCMS and its associated reporting and dispute resolution procedures. Moreover, recommendations made by the *Victorian Equal Opportunity & Human Rights Commission* in Australia as outlined in the report are consistent with the proposed model. For example, in regard to dealing with complaints about harassment and discrimination, it is recommended that the person hearing the complaint is impartial and independent, that confidentiality is maintained to the extent possible, that progress of the complaint is communicated to the complainant, and that there is no retaliation against those making the complaint. In addition, the importance of education relating to trans issues in creating inclusive environments was emphasised: “*Ensure athletes/players and staff members are trained and aware about discrimination including discrimination on the basis of gender identity.*”

Implementing a national safe sport education program associated with the UCCMS provides an opportunity to ensure that all stakeholders receive proper education and training with regard to gender and sexual diversity. The needs of these unique stakeholders should be considered by those responsible for developing the national safe sport education strategy.

## 9.6 Racial and Ethnic Minorities

Racial and ethnic minorities may be subject to harassment or discriminatory abuse throughout their sporting career. Racial Harassment has been defined in the literature as *“Racial abuse; Reference to someone’s race in a negative way; Vulgar or derogatory terms related to race; Exclusion of an individual based on race. Threatening verbal or exclusionary behaviour that has an ethnic component and is directed at a target individual because of their ethnicity.”*<sup>258</sup>

Some racial minorities who were interviewed by the IRT acknowledged that forms of racial harassment continue to exist in Canadian amateur sport. While there has been a push for diversity education in the sport sector, one individual commented that *“diversity does not equal inclusion.”* This comment suggests that although there may be many structural efforts to achieve diversity, this may not always translate into inclusion for some. These observations are further supported in the literature, including the following excerpt:

*“Race, nationality, and social inequality in Canada are materially and discursively connected. Despite claims of idyllic multiculturalism, tensions and inconsistencies remain between the benign, tolerant, and celebratory approach to difference in Canada and the privileging, centring, and “exalting” (Thobani, 2007) of dominant groups through race and its intersections with gender, class, sexuality, and ability.”*<sup>259</sup>

Derogatory comments related to one’s identity (including race or ethnicity) are a form of Psychological Maltreatment as defined in the UCCMS (Section 2.2.1.2.1). The recent attention paid to racial discrimination through the Black Lives Matter movement in the United States and globally, has stimulated similar introspection in Canada. Many in Canadian sport have commented on their personal experiences – including conduct that may be considered maltreatment according to the UCCMS.

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<sup>258</sup> Emma J Kavanagh, “The Dark Side of Sport: Athlete Narratives of Maltreatment in High Performance Environments” (August 2014), online: <http://eprints.bournemouth.ac.uk/21488/1/PhD%20EK%20Final%20%282%29.pdf> [last accessed: 21 September 2020].

<sup>259</sup> *Race and Sport in Canada: Intersecting Inequalities* ed by Simon Darnell, Janelle Joseph and Yuka Nakamura (2012).



Thus, this issue warrants specific attention and education as it relates to the UCCMS. Examples of racial harassment can be found in all sports. A recent example in hockey is provided by NHL player, Georges Laraque, a black French-Canadian player who has spoken out against racism in Canada. Laraque has been vocal in speaking out about his experiences as a young hockey player in Canada, including many instances of what would constitute maltreatment under the UCCMS. Laraque has *“recounted stories of his youth hockey career when opposing players called him “n\*\*\*\*\*” and told him hockey was not his sport (Laraque, 2011). Laraque’s description of hockey show the game to be a site where racism can be experienced and where resistance may be mobilized.”*<sup>260</sup>

The need for further attention paid to racial harassment is supported by results from the recent study in *Prevalence of Maltreatment*. A total of 16 current athletes and five retired athletes reported experiences of discrimination based on race. The study further illustrates the relationship between types of harm and health outcomes. Psychological harm (such as may be experienced through racial harassment) was found to have a statistically significant correlation with several health outcomes including self-harm, disordered eating, suicidal thoughts, and those seeking help for mental health issues.

The IRT’s Survey of sport organisations revealed that only a minority of FFSOs provide specialised training or education as it concerns issues of maltreatment for stakeholder groups including parasport, indigenous, LGBTQI2S+, and ethnic minorities. Only three of 110 respondents (2.9%) indicated that they provide specialized education, training, or other services for ethnic minorities, suggesting the need for more education and awareness concerning the issues related to racial and ethnic maltreatment that some Canadian athletes and others, such as coaches, officials, and administrators, may be facing.

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<sup>260</sup> *Race and Sport in Canada: Intersecting Inequalities* ed by Simon Darnell, Janelle Joseph and Yuka Nakamura (2012).



# Chapter 10

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## STAKEHOLDER CONSULTATION

### 10.1 Canadian Sport Sector Survey

Members of Canada’s NSOs, MSOs, COPSIN, and PPTSOs communities were invited to participate in a Survey to gauge feedback about the UCCMS and structures related to its implementation. The Survey generally examined two broad topic areas: (i) existing sports structures to address maltreatment, and (ii) the alignment and acceptance for a national system to address maltreatment and what its roles or responsibilities should be. A total of 104 responses were received from the following groups: NSOs (61), MSOs (17), COPSIN (4), and PPTSOs (20). Based on these results, the Survey is representative of NSOs and MSOs. However, given the low representation of PPTSOs, representing roughly 3% of PPTSOs in Canada, it is impossible to provide any valuable analysis from a PPTSO perspective and will therefore not be included in the below discussion.<sup>261</sup>

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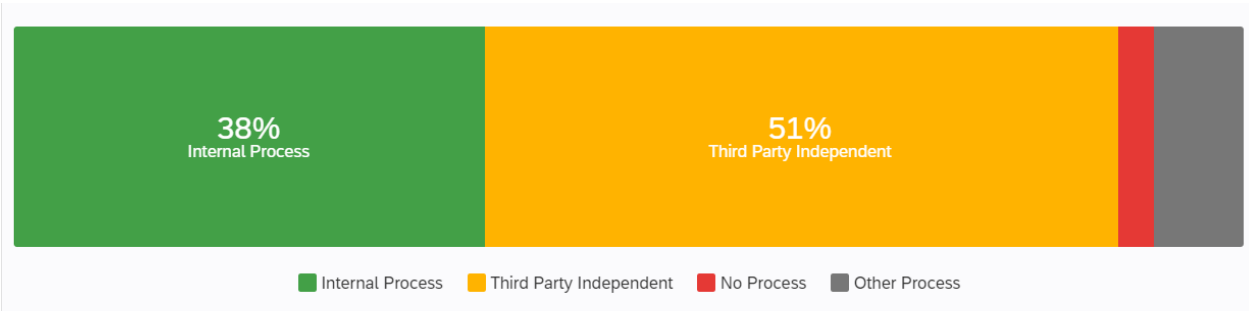
<sup>261</sup> A complete summary of responses is provided in Annex B.

### 10.1.2 Structures to Manage Maltreatment

The Survey revealed that there are currently significant gaps in the structures available to address maltreatment. Most sport organisations (56%) do not have dedicated positions for managing issues related to maltreatment. Over 55% of NSOs and half of MSOs indicated they have dedicated positions.

Amongst those who have dedicated positions to manage maltreatment, few (21%) are full-time. Approximately 34% are part-time and 15% are volunteer positions. More than 91% of NSOs reported a dedicated position, however only 29% of these were reported as full-time. This indicates a lack of capacity within the system to manage such issues. This dedicated position differs across sport organisations. Where some organisations have engaged an independent third party to manage maltreatment, others have internal positions embedded within their organisational structure.

### 10.1.3 Reporting Mechanisms for Maltreatment



Respondents were asked to describe their organisation’s current process(es) for receiving complaints related to maltreatment. More than two-thirds of organisations that responded have independent third party mechanisms to receive maltreatment complaints which is likely reflective of the mandate by Sport Canada to implement such processes at the NSO, MSO, and COPSIN levels. However, more than 20% of NSOs currently do not provide an independent reporting mechanism and two NSOs indicated no reporting mechanism whatsoever. Several organisations indicated other processes for managing maltreatment ranging from whistleblower policies to “an informal

process through our Board.” Several organisations are in the process of reviewing and revising their policies as part of the UCCMS requirements.

Half of the organisations reported internal processes to manage complaints, suggesting that several organisations may offer multiple (internal and external) mechanisms to receive complaints. Internal reporting as it relates to maltreatment has been identified as problematic by most stakeholders interviewed and by athletes, as indicated in a survey recently conducted by AthletesCAN and the University of Toronto.

Few organisations (33%) compile statistics about complaints/reports related to maltreatment. This runs counter to international recommendations and best practises in order to better understand and respond to trends in maltreatment in sport.

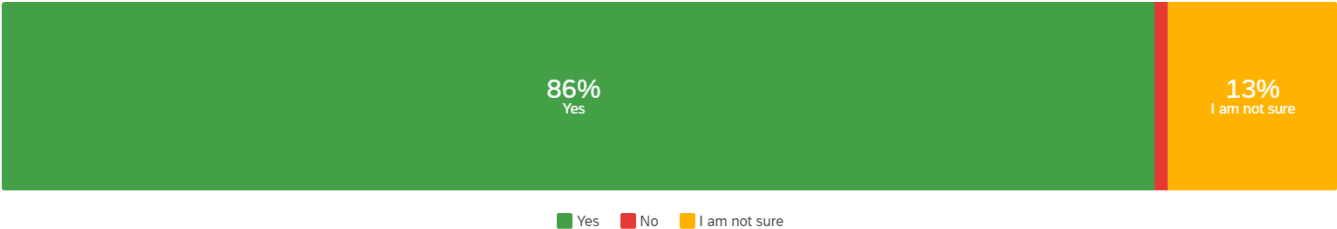
#### 10.1.4 Maltreatment Expenditures

The amount of money that organisations currently budget annually to manage issues related to maltreatment varies widely, from \$0 to \$500,000. A total of 18 organisations reported an annual budget of more than \$100,000, with an average budget of \$201,000 dedicated to managing maltreatment. Another 39 organisations reported an annual expenditure of less than \$100,000, with an average budget of \$34,205. Together, this represents an annual expenditure of more than \$4.9M amongst only 57 organisations surveyed.

#### 10.1.5 National Independent Administrative Structure to Manage the UCCMS

Respondents were asked if they supported, in principle, developing a national system for the administration of maltreatment that includes the participation of PTSOs in addition to national organisations (NSOs, MSOs, and COPSIN). More than 84% of organisations support such a national system. Out of the 104 responses, only one respondent opposed a national system.

# Do you Support a National System to Administer the UCCMS including PTSOs?



Representative statements in support of a national system including PTSOs include the following:

- *“‘Universal’ means that the code should apply to all levels of sport regardless of jurisdiction.”*
- *“A nationwide policy would make everything congruent and ensure everyone is to follow these practices.”*
- *“Because it will be ‘toothless’ if only applicable at the National level – the majority of sport happens at the PTSO and grassroots level. If the intent is to reduce/eliminate maltreatment of all kinds in sport – it needs to apply across the full sport spectrum.”*
- *“Aligning the system will we get the best use of resources and consistent application. It will be important that issues are triaged appropriately.”*
- *“PTSOs and community level organisations have even less capacity, resources and expertise to be able to manage safe sport and to manage complaints against the UCCMS...”*
- *“Although our system is decentralised in that provincial and territorial sport organisations have autonomous governance structures, consistency is needed on this issue.”*
- *“Athletes and participants of sport in Canada at all levels should feel safe from maltreatment. We speak about the importance of alignment in the sport system, which includes between National and PTSOs – if the rules on the field of play for sport are consistent between levels, so too should be the protection and management against maltreatment. The system should be flexible and scalable to accommodate, grow, and welcome new sports, regions, and cultures.”*

### 10.1.6 Roles and Responsibilities of National Independent Body

There was strong support for the following roles and responsibilities to be provided by an independent national administrative body to administer the UCCMS.

## What roles and responsibilities should an independent national administrative body include?

#	Field	Choice Count
1	Receiving and triaging of complaints of maltreatment	17.12% 89
2	Investigating complaints of maltreatment	18.65% 97
3	Managing the dispute resolution process related to complaints	16.54% 86
4	Imposing sanctions related to maltreatment	13.08% 68
5	Developing education and training resources about maltreatment	17.12% 89
6	Enforcing compliance related to the UCCMS	14.42% 75
7	Other responsibilities? Please specific:	3.08% 16

### 10.1.7 Pressing Questions or Concerns about the UCCMS?

Organisations were asked to identify the most pressing questions or concerns about the implementation of the UCCMS. The following theme areas emerged: cost, resources, capacity to implement, enforcement, educational resources, integration, and alignment (NSOs, PTSOs, etc.) Open-ended responses are provided in these theme areas in Annex B.

### 10.1.8 Advice Related to Implementation of the UCCMS?

Organisations were asked what advice they have for the administration of the UCCMS. The following theme areas emerged: need for independence/independent body, specialised experience and knowledge to administer the program – not just an “add-on” to someone else’s job, fairness and equity, alignment, simplicity/clear pathways, triage misconduct – do not overburden the system with minor misconduct, and compliance. Open-ended responses are provided in these theme areas in Annex B.

## 10.2 Leadership Group Themes

Structured interviews were conducted with 19 members of the UCCMS Leadership Group (“LG”). A conceptual framework for an independent mechanism to administer the UCCMS was developed by the IRT as a hypothesis to test throughout the consultation period. The conceptual framework was presented to the interviewees and they were asked to evaluate its applicability to the Canadian sport sector, suggest gaps, and improvements. This formed the basis for the interviews. Other areas of inquiry included: (i) support in principle for conceptual framework; (ii) jurisdiction and reporting; (iii) confidentiality and public disclosure of sanctions; (iv) compliance; (v) education; and (vi) funding.

### 10.2.1 Support for Conceptual Framework

There is strong support for an independent mechanism to administer the UCCMS. Several LG members stressed the importance of safe sport ‘thought leadership’ to guide an independent mechanism, including a CEO who could function as the public face of safe sport in Canada.

*“I want someone running this to be thinking about this every day. This body needs to exhibit thought leadership. A consortium model is acceptable but only if the thought leadership is there, then you have the groups in the tent under this leadership.”*

The current landscape for reporting maltreatment in Canadian amateur sport was described as convoluted and confusing for athletes and other stakeholders. A national mechanism, with an

independent leadership structure, would provide clarity and consistent processes for stakeholders and help restore trust amongst those stakeholders who were failed by existing processes in some cases. *“In order for the athletes to trust the system, it needs to be new and fresh.”*

Although Sport Canada has required FFSOs to engage an ITP to receive complaints of maltreatment, the LG generally expressed that a single independent national mechanism would offer greater advantages. Large NSOs have the capacity and will to develop robust independent mechanisms within their sports, however, most NSOs, MSOs, and PTOs do not. A single NIM would provide equal access to a consistent, expert driven set of processes. This feedback is strongly supported by most representatives of the national and provincial sport community who were interviewed and surveyed. According to the LG, the NIM would provide much needed support to organisations who are currently struggling with responding to allegations of maltreatment.

Some LG members expressed concerns about the capacity of a national mechanism to effectively respond to all forms of maltreatment defined in the Universal Code. Given the broad nature of what constitutes maltreatment in the Universal Code, many in the LG commented on the need to carefully define the scope of the NIM with respect to the nature and severity of complaints to be heard. Otherwise, the system could be overwhelmed. *“This (the NIM managing every complaint) could paralyse the system if the body is dealing with these lower level complaints.”* Canada can learn from the U.S. Centre for Safe Sport who experienced far greater demand than was anticipated when it became operational in 2017. Although a recent study by AthletesCAN and the University of Toronto indicated only a small percentage of athletes reported abuse, several LG members commented that the system could be overwhelmed with complaints once the NIM is launched.

There is consensus amongst the LG that the independent mechanism should, where possible, leverage existing capacity and expertise in the Canadian sport system and specifically referenced education, mental health support, and dispute resolution.

*“To have all the services under the IB would be a recipe for failure.”*

*“Look to what functions might currently exist in the sector that would support the body.”*

Given the short timelines to implement a national system, several commented that trying to develop a “one-stop shop” to administer all these services internally is neither practical nor possible.



In the case of investigation and adjudication roles, some suggested that it would be an advantage to separate these functions so both are not within the control of the independent mechanism. *“When investigation and adjudication are housed under the same roof, then there is not trust.”*

The LG suggests that the relationship with contracted service providers needs to be directed by the independent mechanism with accountability to the national body. Furthermore, contracted service providers must demonstrate specific expertise in the areas identified and must develop completely firewalled services and processes that reflect the requirements of the NIM. It cannot simply adopt an existing system or process that a contractor may offer.

*“Any involvement of third-party services needs to be carefully communicated and integrated within the IB’s model to ensure clarity of roles, responsibilities, and to ensure trust in the system amongst stakeholders.”*

It is essential that third-party service providers seamlessly integrate into a national approach so that stakeholders only have to navigate through the independent mechanism.

According to the LG, the core services of the independent mechanism should include: (i) receiving complaints; (ii) triaging and assigning complaints; and (iii) investigating complaints – as well as oversight and direction of all third-party contracted services.

*“Determine what functions that are pure to the (IB), and what other functions that can be delivered through other agencies to make it more efficient.”*

*“The Independent Body should be the lead investigator and determine the sanctions.”*

Some suggest that the independent body should also have the ability to initiate its own investigations based upon a pattern of complaints that emerge, but singularly may not meet an initial threshold analysis.

Other services suggested by the LG include compliance (audits), and activities including gathering and reporting statistics, research, and responsibility for recommending any updates to the Universal Code and the associated rules of the independent mechanism.

*“Optimal approaches are probably not one single organisation to deliver this, but some of the national organisations can deliver parts of this that can comply with the Code.”*

## 10.2.2 Jurisdiction & Reporting

Given the complexity of developing and introducing an independent mechanism, most LG members agreed that initial jurisdiction should be limited to NSOs, MSOs, and COPSIN and that the involvement of PTSOs should be phased in. There is strong support amongst the LG and other experts interviewed that the independent mechanism should scale to include provincial, territorial, and club level access.

*“There should be a minimum baseline standard nationally. It should be accessible to everyone at all levels.” “A lot more of (maltreatment) issues are deeper in the system than at the national level. Provinces and territories will have to get involved and cooperation needs to be between the feds and provinces.”*

Issues of jurisdiction are complex and require further consultation amongst local, provincial, territorial, and national sport and governmental organisations. There appears to be a will amongst most stakeholders to offer an integrated national approach that also recognises many nuances of provincial and territorial jurisdiction.

There is support amongst the LG that all initial reports concerning maltreatment be made through the independent national mechanism to evaluate.

*“A triage model is good (starting with the IB), and all complaints should be triaged through the IB.”*

*“AthletesCAN feels strongly that every complaint should be reviewed by the body.”*

Such a process would ensure consistency in how complaints are evaluated as well as provide clarity to athletes and others as to where allegations of maltreatment should be directed to.

It was suggested that the independent mechanism should be focussed on dealing with only the most serious allegations in order to not overburden the system. *“There should be narrowness of the IB to deal with absolutely clear instances of maltreatment.”* Other complaints, including issues of maltreatment that can be informally resolved at the sport level through education and remediation, should be referred to the sport body.

This approach would require the development of a systematic threshold analysis for complaints that are made to the national independent mechanism. *“There needs to be a threshold of severity that triggers when the IB can be engaged.”* Because of the new requirements for FFSOs to have an independent third party harassment and abuse officer, these organisations should be equipped to manage certain complaints that may be deemed to be outside the scope or jurisdiction of a national mechanism. *“The IB needs to be able to push non threshold meeting conduct back to NSO, and NSO should be able to push conduct to the IB.”*

Some LG members, however, expressed caution about referring complaints back to sport bodies.

*“It is tempting to kick it to NSOs or PSOs and for a determination of appropriate redress, but this hands back the power to NSOs and PSOs to undermine work of tribunal by giving NSO the ability to issue a non-existent penalty.” “The independent body cannot be just responsible for half the process then send it back to the NSO. There is a lack of trust, and still potential conflicts of interest.”*

However, it is possible to ensure safeguards and reporting mechanisms between the independent mechanism and the sport organisation to allay such concerns. *“To eliminate any fear that (complaints referred by the IB to an NSO) is not independent, consider final oversight of the independent body to see where they landed.”*

The approach of threshold analysis and referring certain complaints back to a sport body is similar to the mechanism in use by the U.S. Centre for Safe Sport who has exclusive authority over certain matters including sexual abuse, but discretionary authority over other matters that may rest with national governing bodies for resolution. This approach is supported by most stakeholders and experts who were interviewed but note that referring matter would have to be done with careful consideration.

The caveats to such an approach include: (i) clear guidelines related to the threshold analysis and jurisdiction. *“I need to know where are the baton points with respect to jurisdiction and reporting.”*; (ii) discretionary authority of the independent mechanism to investigate and prosecute any case related to maltreatment; (iii) communication and reporting frameworks between the independent mechanism and the sport body related to complaints that are directed to the sport body; and, (iv) support and reassurance to the athlete or other complainant of the independence of the process when directed to the sport body.

The approach of referring complaints to a sport body for resolution provides a two-step independent process to verify allegations. It would take pressure off both the independent mechanism (for minor or unfounded complaints), as well as the sport organisation (for complex, serious cases). Staff of the independent mechanism would provide direction and support to the sport organisation as well as the complainant throughout this process and would also ensure accountability of the sport organisation in resolving the complaint. *“I really like the triage solution (through the IB referred to NSO, others where applicable), keeping the IB for the most serious issues.”*

### 10.2.3 Confidentiality and Public Disclosure

There is a lack of consensus on issues related to confidentiality and public disclosure. There is consensus that confidentiality should support the interests of the alleged victim. Many high-performance athletes may be reticent to come forward publicly for fear of retribution. *“A lot of the reasons the athletes don’t want to step forward is because they don’t want their name out there to affect their possibility to progress.”* Mechanisms need to be established to support athletes who come forward so that such retribution does not take place, however this is a very difficult and nuanced area to police.

The ability to prosecute a case may be hindered without disclosure of the complainant to the alleged perpetrator.

*“Confidentiality gets in the way when people make a formal complaint. The only thing you can do is tell them that confidentiality will get them so far.” “If there is a risk of further*

*violations that will put participants at risk in the system then confidentiality should be revisited.*

Support for public disclosure of sanctions through a national registry is mixed and is also subject to privacy limitations in Canada. Those who support such disclosure argue it is necessary to protect athletes and improve the system.

*“Decisions should be public – it makes us better, helps us understand where we may need to provide more education, risk points. If we see repeated behaviours then we can increase education surrounding those behaviours.”*

Many LG members support the concept of a national registry, but not necessarily for all sanctions that may be imposed. *“It is a privilege to be involved in sport in Canada, and you should be accountable for your behaviour, but there needs to be a threshold of severity.”*

#### 10.2.4 Compliance with UCCMS

Adoption of the UCCMS amongst NSOs, MSOs, and COPSIN is achieved through their Contribution Agreement with Sport Canada. *“This is not mandatory – Feds hope everyone will buy-in.”* This is a sufficient motivating factor for NSOs to comply with the UCCMS. However, there are no similar requirements that would compel PTSOs or local Clubs to comply with the UCCMS. And unlike the U.S. Centre for Safe Sport, Sport Canada has no federal legislative authority to ensure compliance with the UCCMS at any level.

As a result of these limitations, LG members agree that is necessary to build a system in Canada that encourages sport organisations at the national, provincial, territorial, and local level to participate through value creation for their organisations and members. Many LG members believe that there is latent demand for an independent system due to a lack of capacity and expertise to manage maltreatment amongst sport organisations. *“75% of sports will buy-in to this because they don’t have anything.”*

Many LG members cited the Red Deer Declaration as a promising development. This Declaration was the outcome of the 2109 Conference of Federal-Provincial-Territorial Ministers Responsible for

Sport, Physical Activity and Recreation. It sets forth a common set of principles and actions including the following:

- *“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.”*

Additional consultation amongst federal, provincial, and territorial ministers will be required to advance pan-Canadian adoption of the UCCMS according to the LG.

Once the UCCMS is adopted, initially at the national level, the compliance with the Universal Code must be monitored. LG members described that current compliance mechanisms are weak, and rely on FFSOs self-reporting to Sport Canada. Several LG members cited failures in accountability of NSOs to Sport Canada that could eventually lead to ineffective compliance with UCCMS requirements. *“Sport Canada has in the past said certain things are mandatory, but they are not enforced.”* Research from the Centre for Sport Policy Studies at the University of Toronto supports these observations.

The LG considers it vital that NSOs are held accountable for implementing the requirements of the UCCMS (including any administrative framework and reporting mechanism that may be implemented) for the Universal Code to be effective in preventing and addressing maltreatment. While the NSO/MSO/COPSIN are ultimately responsible for complying with the requirements of the UCCMS, many LG members believe an independent mechanism should play an oversight role.

*“As long as the Independent Body issues a decision that is binding, and hands it to the NSO for enforcement, it is understood that the NSO has ultimate responsibility.” “Audits should be taken via the IB. There needs to be both accountability and consequences.”*

The use of audits to monitor compliance is a standard operating procedure applied by several international organisations including the U.S. Centre for Safe Sport and U.K.’s CPSU. Audits serve a

larger purpose of assisting and educating sport organisations on code requirements and best practises; therefore, audits can be positioned as a function to promote organisational excellence.

LG members support a system of accountability to an independent mechanism who will perform audits and provide results thereof to Sport Canada who would address any non-compliance. *“We have lots of accountability, but no enforceability.” “The NSO should provide a report back to the independent body as to whether they have addressed the issues and completed the changes required to be compliant.”*

If and when the UCCMS is scaled to the PTSO and local level, NSOs also must play an important role in ensuring that their members are compliant as a condition of their membership. *“The best way to enforce this is the club system (in our sport), but our sport is unique in that it trickles down from the NSO.”* The Survey that was conducted for this Review indicates that more than half of NSOs have reporting and disciplinary jurisdiction related to maltreatment that may also apply to individuals associated with their organisations including those at the PTSO and Cub level in some cases.

However, many NSOs do not have jurisdiction or authority related to issues of maltreatment that may emerge at the PTSO or local level. *“The issue with jurisdiction is our (NSO) scope is wide (responsible for our sports), but our jurisdiction is narrow. We need PTSOs, ministries to mandate the adoption of the UCCMS.”*

The importance of enforcement of UCCMS requirements is vital to ensure protection of athletes and other stakeholders from maltreatment, as well as to foster trust in the system. Some LG members commented that the lack of trust that exists from some athletes is because of poor follow-up related to reports of maltreatment, among other factors. *“Enforcement is important – it needs to have consistency and follow-up from the athlete perspective.”*

## 10.2.5 Education

There is consensus amongst the LG for both standardised education about the UCCMS (definitions, requirements) and general maltreatment training combined with opportunities for sport organisations to tailor and contextualise this education to the specific requirements of their sport.

*“Educating to skating coaching and wrestling is different – we need to have skin in the game. Coach education is lacking about behavioural norms (many sport-specific norms that NSOs where NSOs need to be involved in the education).” “There is an opportunity for education at the general level, i.e. what is grooming behaviour, etc.; But, not sport specific. Have the IB farm out the general stuff.”*

Many cited the current Safe Sport Education developed by the CAC as an example of core training that many sport organisations supplement through other educational programs delivered by agencies, such as the Respect Group (“Respect in Sport”) and the CCCP. *“CAC is trying to tackle the issue from a coaching perspective.”* However, some have noted overlap between educational programs that should be addressed going forward as the UCCMS administrative processes mature.

One area of uncertainty for some coaches is acceptable standards of behaviour as it relates to coaching norms with their sport. There is a need to align norms of behaviour (irrespective of sport) with the standards of the UCCMS.

*“HP sport is sometimes about a coach raising their voice or doing something that an athlete may consider maltreatment to inspire or motivate an athlete to get to a certain point. So, one part is giving coaches the resources to deal with it. We need to deal with norms of behaviour that are acceptable beforehand (i.e. agreed upon norms established between athletes and coaches of what is acceptable and unacceptable behaviour, that aligns with the Code).”*

As a result, it would be beneficial to publish guidelines and provide contextual examples by sport of what the acceptable and unacceptable coaching behaviour is.

According to the LG, in order to “change the culture”, education is vital for all participants in the system including athletes, coaches, staff, and parents, and others. *“We need athletes to understand the process and how they can use it and how it is important for them to participate.”* At the national level, there is support to include athletes’ rights and responsibilities under the UCCMS in athlete



agreements. This approach can also be built into employment agreements for staff of sport organisations.

Scaling the UCCMS to PTSOs and local sport organisations presents additional challenges and opportunities for education that must be addressed. There is support for the independent body to direct national education strategies through a highly consultative and expert driven approach. *“A strong public education campaign is needed, like we had with Hal and Joanne (Participaction). We need to illustrate what good behaviour looks like.”*

While there is support to centralise and direct education through the national independent body, there is strong consensus that this should be done by leveraging existing capacity, expertise, and infrastructure in the system such as the CAC, Commit to Kids, Respect Group, amongst other providers. *“You can carve out education, but the further you spread things the harder it is for athletes to know where to get support.”*

Some LG members stressed the importance of education about - and for - specialised groups of athletes which research has shown are at higher risk of victimisation. For example, aboriginal, Special Olympians (as well as athlete aides), LGBTQI2S+, and ethnic minorities.

*“Athletes of diversity (minority, para, LGBTQ) this is where the education part is more important on the para side. The standard legal systems are not something they might be used to. They need help to understand the process and how they can be active in it.”*

For example, Special Olympians (and in some cases their caregivers or support persons) require tailored education and resources about what constitutes maltreatment, as well as how to access the system to report concerns. Coaches and staff who work with athletes in any of these specialised groups need to be educated about the higher prevalence of maltreatment, and how to safeguard these athletes.

Despite these observations by the LG about the need for specialised education to address the unique needs of these groups, most sport organisations surveyed (73%) do not provide any specialised training as it relates to issues of maltreatment amongst these groups. This is a significant gap.

## 10.2.6 Funding

There are strong opinions and general concern about funding an independent national mechanism and services related to the UCCMS. *“The ability to finance this is a concern. There is a responsibility as a system to fund it. The more skin everyone has in the game the effective it will be and with greater buy-in.”*

Many believe this should be a government responsibility with the potential for funding from different government agencies given the health and safety components of the UCCMS that transcend sport.

*“There should be a federal component because it is for the well-being of society.” “Should be a federally funded entity because it is about systemic change in the sector.”*

Others believe that there is no a single solution for funding the system, and it will need to include multiple sources of funding. A recurring theme is the importance of requiring users of the system (sport organisations) have *“skin in the game.”*

Many acknowledge the funding limitations of NSOs. *“This cannot come from the NSOs (from existing budget sources).”* However, some LG members suggested that if the independent mechanism is structured in a way that saves an NSO’s money, they would be in a better position to possibly contribute. *“Our NSO would give money (from existing budget for safe sport) if you took some of maltreatment part out of our hands (i.e. “the big stuff”).* As noted in the Survey results, 18 organisations reported an annual budget of more than \$100,000 for safe sport expenditures. A total of 57 sport organisations are budgeting almost \$5M annually for safe sport.

The concept of charging a modest “safe sport fee” to participants was supported by many LG members as a way of funding the system, particularly in scaling it to millions of potential participants at the grassroots level. This approach would offer other benefits beyond financial.

*“I really like the idea of charging a dollar to members (participants). This would open up opportunities with respect to awareness of Safe Sport at grassroots level. It will trigger parents and people to examine behaviours that are risky.”*

Some NSOs are currently charging a safe sport fee to offset these costs, ranging from \$3-\$15.

# ANNEX A

INTERVIEWS CONDUCTED BY IRT

<b>UCCMS Leadership Group</b>	<b>Title/Organization</b>	<b>Date</b>
1. Debra Gassewitz 2. Sydney Millar	President & CEO, Sport Information Resource Centre Manager, Content Strategy	Multiple Calls
3. Anne Merklinger	CEO, Own The Podium	July 13
4. Rosalind Groenewoud	COC Athletes Commission	July 13
5. Debra Armstrong	CEO, Skate Canada	July 13
6. Jennifer Brown	Canadian Paralympic Committee	July 13
7. Daphne Gilbert	Professor, University of Ottawa	July 15
8. Dasha Peregoudova	President, AthletesCAN	July 15
9. Marg McGregor 10. Marianne Bolhuis	Director, Sport System Excellence, Canadian Olympic Ctte. General Counsel & Corporate Secretary, COC	July 15
11. Karen O'Neil	CEO, Canadian Paralympic Committee	July 16 Sept.25
12. Todd Jackson	Director, Insurance & Risk Management Hockey Canada	July 16
13. Dale Henwood	President & CEO, Canadian Sport Institute Calgary	July 16
14. Jasmine Northcott	CEO, Water Ski & Wakeboard Canada	July 16
15. Dan Wilcock 16. Aaron Brown	CEO, Canada Games Council VP, Sport, Canada Games Council	July 17
17. Katherine Henderson	CEO, Curling Canada	July 17
18. Ian Moss	CEO, Gymnastics Canada	July 21 Aug.5
19. Steven Parker 20. Alan Zimmerman 21. Jocelyn East	Senior Policy and Program Analyst, Sport Canada Deputy Director General, Sport Canada Jocelyn East, Manager, International, Safety & Integrity in Sport	July 23
22. Ian Mortimer	Director of Development, Canoe Kayak Canada	July 28 Sept.18
23. Allison Forsyth	Board Member, AthletesCAN; Chair of Safe Sport Working Group	July 31
24. Lorraine Lafreniere	CEO, Coaching Association of Canada	Aug.11 Aug.19 Sept.18
<b>Canada</b>		
1. Paul Melia 2. Jeremy Luke 3. Doug MacQuarrie	CEO, Canadian Centre for Ethics in Sport Senior Director, Sport Integrity, CCES Chief Operating Officer, CCES	July 20

4. Bruce Kidd 5. Gretchen Kerr 6. Peter Donnelly	Professor, Sport and Public Policy University of Toronto Professor, Athlete Maltreatment, University of Toronto Professor, Sport Policy and Politics, University of Toronto	July 23
7. Adam Klevinas	Sport Lawyer	July 23
8. Jeff Harris	Senior Manager & Head of Sports Practice, Deloitte Canada	July 28
9. Sandra Kirby	Professor, University of Manitoba; Safe Sport International	July 29
10. Lisa Beatty	Chief Operating Officer, USPORTS	July 29
11. Marilou McPhedran	Canadian Senator	July 29
12. Marie-Claude Asselin	CEO, Sport Dispute Resolution Centre of Canada	July 30
13. Katrina Monton 14. Jasmine Mian 15. Neville Wright 16. Jennifer Brown 17. Kelly Fitzsimmons	AthletesCAN Athlete Focus Group	July 30
18. Rowan Barrett 19. Mike Slipchuk 20. Graham Barton 21. Jennifer Cotton 22. Gerry Peckham 23. Eugene Liang 24. John Atkinson 25. Matt Hallat	High Performance Director's Advisory Council	July 30
26. Ilan Yampolsky	Director, Safe Sport and Integrity Tennis Canada	July 30 Aug.11
27. Krista Van Slingerland	Executive Director & Founder, Canadian Centre for Mental Health and Sport	July 31 Sept.18
28. Mike Johnson	CEO, Sideline Learning	Aug.4
29. Jennifer Heil	Special Advisor, viaSport British Columbia; Co-Founder B2ten	Aug.5
30. Martin Goulet	CEO, Water Polo Canada; Co-Chair, Summer Sport Council	Aug. 6
31. Josh Vander Vies	Past Chair, Canadian Paralympic Committee Athlete's Counsel; Past President, AthletesCAN	Aug.6 Aug.24
32. Émilie Robitaille	Athlete representative (AthletesCAN)	Aug.6
33. Bob Fenton	Director, Canadian Paralympic Committee Vice President, International Blind Sports Federation Lawyer, City of Calgary Police	Aug.6 Sept.3 Sept.25
34. Kelsey Dayler	Aboriginal Sport Circle	Aug.6
35. Wayne McNeil 36. Mark Allen	CEO, The Respect Group Director for Safe Sport, The Respect Group	Aug.6 Aug.21

37. Blair McIntosh	Vice-President, Sport, Special Olympics Canada	Aug.7
38. Tom Davies	Director, Coach and Athlete Development	
39. Kendra Isaak	Director of Sport and Competition	
40. Noni Claussen	Director of Education, Canadian Centre for Child Protection	Aug.10
41. Ron Ensom	Ensom & Associates, Child Protection Consultant	Aug.11
42. Natalie Jacyk	Senior investigator, Toronto District School Board Human Rights Office	Aug.12
43. Tricia Smith	President, Canadian Olympic Committee	Aug.12
44. Peter Lawless	Board Member	
45. Gordon Peterson	Board Member	
46. David de Vlieger	Board Member	
47. Elana Liberman	Safe Sport Lead, Sport Nova Scotia	Aug.17
48. Sylvia Parent	Professor, Laval University	Aug.20
49. Rob Kennedy	Manager, Provincial Sport Development, Sask Sport	Aug.24
50. Jeff Hnatiuk	President and CEO, Sport Manitoba	Aug.25
51. Ciaran Buggle	Director of Investigations and Conflict Resolution, Ombudsman Toronto	Aug.31
52. Alisa Simon	Senior VP, Innovation & Chief Youth Officer, KidsHelpPhone	Sept.1
53. Jenny Yuen	Vice President, National Partnerships & Chief Community Officer	
54. Spider Jones	Community & Sport Development, SportNorth	Sept.8
55. Richard Pound, O.C.	Member, International Olympic Committee	Sept.8
56. Sylvain Croteau	Director General, Sport'aide	Invited
<b>International</b>		
1. Travis Tygart	CEO, United States Anti-Doping Agency	July 23
2. Dr. Margo Mountjoy	IOC Medical Commission; Associate Clinical Professor, Department of Family Medicine, McMaster University	July 22
3. Matthew Graham	World Players Association	July 28
4. Brendan Schwab		
5. Andrea Florence		
6. Anne Tiivas	President, Safe Sport International Past Director, UK Child Protection in Sport Unit	Aug.6
7. Havard Ovregerd	Senior Advisor (Safe Sport), The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)	Aug.7
8. Ju'Riese Colon	CEO, U.S. Centre for Safe Sport	Aug.10
9. Katie Hanna	Chief Programs Officer	
10. Bill Turner	Chief Operating Officer, Sport Integrity Australia	Sept.3
11. David Howman	Chair, Athletics Integrity Unit; Chair, Independent Review of Gymnastics New Zealand	Sept.18

## ANNEX B

### IRT SPORT SECTOR SURVEY



## **IRT SURVEY RESULTS**

Results compiled by Dr. Wade Wilson, Ph.D.

Senior Research Associate, McLaren Global Sport Solutions Inc.

## Q1. Title of Respondents

Responses
CEO
CEO/HPD
Chair COC Safe Sport Working Group & Director System Excellence
Chef de direction
Chief Executive Officer
Chief Operating Officer
COC rep
Complaints Officer
Consultant
COO
Coordinator, Executive Services
Director of Development
Director of Partnerships and Operations
Director of Safe Sport and Integrity
Director, System Enhancement
Executive Director
General Manager
Head of Development and Operations
High Performance Director
Lead, Coach Development
Manager of High-Performance Sport
Manager, Athlete Relations and Operations
Outgoing Chair of the Board
President
President & CEO
President and CEO
Program Director
Project Coordinator, Domestic Development
Risk Management
SAFE Sport Lead
Safety Officer
Senior Manager, Coach Education
Sr. Director of Operations
Strategy and Development Officer
System Alignment Senior Coordinator
Technical Advisor
Technical Director
Vice President
VP Sport

**Q2. Organization**

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Responses
ACAC - Alberta Colleges Athletic Conference
Alberta Amateur Boxing Association
Alberta Amateur Wrestling Association
Alpine Canada
Archery Canada
AthletesCAN
Athletics Canada
Badminton Canada
Ballon sur glace Broomball Canada
Baseball Canada
BC Archery Association
BC Wrestling Association
Biathlon Canada
Bowls Canada
Boxing Canada
Canada Artistic Swimming
Canada Basketball
Canada DanceSport
Canada Games Council
Canada Snowboard
Canada Soccer
Canadian 5 Pin Bowlers' Association
Canadian Blind Sports Association
Canadian Broomball Federation
Canadian Centre for Ethics in Sport (CCES)
Canadian Cerebral Palsy Sports Association
Canadian Fencing Federation
Canadian Olympic Committee
Canadian Sport Centre Saskatchewan
Canadian Sport Institute Calgary
Canadian Sport Institute Ontario
Canadian Sport Parachuting Association
Canadian Team Handball Federation
Canadian Tenpin Federation
Canadian Weightlifting Federation
Canadian Women & Sport
Canoe Kayak Canada

CCAA  
Cheer Canada  
Chess Federation of Canada  
Climbing Escalade Canada  
Coaching Association of Canada  
CSI Pacific  
Curling Canada  
Cycling Canada (NSO)  
Diving Plongeon Canada  
Equestre Canada  
Field Hockey Canada  
Gymnastics BC  
Hockey Canada  
Judo Canada  
Karate Canada  
Karate Nova Scotia  
Luge Canada  
Manitoba Water Polo Association  
New Brunswick Gymnastics Association  
Nordic Combined Ski Canada  
Northern Ontario 5 Pin Bowlers Assoc.  
NSAWA  
NWT Amateur Softball Association  
NWT Squash Racquets Association  
Ontario Water Polo  
Own the Podium  
ParticipACTION  
PWSA  
Racquetball Canada  
Ringette Canada  
Rollersports canada  
Row Nova Scotia  
Row Ontario  
Rowing Canada Aviron  
Rugby Canada  
Sail Canada  
Saskatchewan Rowing Association  
Saskatchewan Squash Inc  
Shooting Federation of Canada  
Skate Canada  
Ski Jumping Canada  
Softball BC

Softball Canada  
 Softball New Brunswick  
 Softball Nova Scotia  
 Special Olympics Canada  
 Sport Dispute Resolution Centre of Canada  
 Sport for Life Society  
 Sport Information Resource Centre (SIRC)  
 Squash Alberta  
 Squash Canada  
 Surf Canada  
 Swimming Canada  
 Table Tennis Canada  
 Taekwondo Canada  
 Tennis Canada  
 Triathlon Canada  
 U SPORTS  
 Volleyball Canada  
 Water Polo Canada  
 Water Ski & Wakeboard Canada  
 Waterski and Wakeboard Saskatchewan  
 Wheelchair Basketball Canada  
 Wheelchair Rugby Canada (WRC)  
 Wrestling Canada Lutte

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N= 104

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**Q3. Responding on Behalf of an NSO, MSO, COPSIN Member, or PTSO**

Responses	<i>Frequency</i>	<i>Percent</i>
I am responding on behalf of an NSO	61	58.70
I am responding on behalf of an MSO	17	16.40
I am responding on behalf of a COPSIN member	4	3.80
I am responding on behalf of a PTSO	20	19.20
Other	2	1.90

N= 104

Other: Provincial Association, PSO

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**Q4. Province or Territory (PTSO responses only)**

Responses	<i>Frequency</i>	<i>Percent</i>
Alberta	3	15.00
British Columbia	3	15.00
New Brunswick	2	10.00

Nova Scotia	3	15.00
Ontario	3	15.00
Northwest Territories	2	10.00
Saskatchewan	3	15.00
Manitoba	1	5.00
<hr/>		
N= 20		
<hr/>		

**Q5. Are Athletes/Members Required to Pay an Annual Membership Fee/Dues?**

Required to Pay Fees?	NSO	MSO	COPSIN	PTSO	Other
Yes	46	--	--	13	--
No	8	--	--	1	--
Not Directly	1	--	--	--	--
To PSO Not NSO	4	--	--	--	--
Mixed	1	--	--	--	--
<hr/>					
N= 74					
<hr/>					

**Q6. Comments Regarding Membership Fees**

Responses
\$25 for Youth/Adults/Seniors and \$10 for Juvenile/Junior.
\$5.00 for Elite and Rep Level and \$2.50 for grassroots + \$5 for officials. NSO membership # is based on the aggregate membership numbers submitted to us by each of the PTSOs. While this includes participants registered under each PTSOs, it does not include school (high school, U Sport, CCAA) athletes and does not represent total number of participants playing the sport across Canada.
A small member fee is paid to the PSO. The PSO pays the NSO an annual member fee of \$500.00.
Annual License fee will be updated due to the impact of COVID. It was \$140 in 2019-2020.
Annual registration fee paid to the NSO ranges from \$10 to \$117.50.
Annual registration is being implemented in the coming year, previously only members of the National Team (\$100pp), plus we had each provincial federation had an annual registration (\$1000)
Athletes are members of the clubs - fees paid by Clubs at \$14 a member.
Athletes pay a registration fee to their Provincial/Territorial Association The P/T's then pay a set fee to the national body, which is \$210,000. While this equals \$1 a player the fee structure is not solely based on a per player registration.
Athletes/participants join their respective provincial/territorial association. Our Members are 2 structures: (1) PTSOs, and (2) National Team Athletes.
Coaches: \$10 each, U6-U8 athletes: \$10 each, U10-U19 athletes: \$20 each.
Fees vary by age group and category.
Fees vary from province to province /territories.
For the question just above, it varies based on membership category but in average it is \$20.

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Increasing to \$105 as of December 1st. Number of Registered participants fluctuates between 2900 to 3500. we're at a low point because of COVID now.

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Juniors pay \$24. Elite players with titles do not pay anything. Juniors who only play against other juniors are also free.

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Not all registrants pay a fee. Fees depend on competitive level, fees are collected via memberships sold by PSOs.

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Do not have a territorial membership process in place as yet.

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Officials \$16; Coaches \$9.

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Prov. and Territories pay an annual fee of \$1000.

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Provinces pay the annual membership fee (\$250.00)/yr.

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PTSOs are currently charged a membership fee of \$18.50/registered athlete in their province.

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Registration fees vary across the country. We have a top-down approach where our NSO collects \$24,000 in total fees from the provinces. The fee per province is based on the number of athletes per province participating in national championship the previous year. The provinces then invoice the clubs for membership.

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The fee is dependent on level of participation (recreational versus competitive).

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The number of athletes with all levels is an estimated number that we rely on the provinces to provide to us. The membership fee is actually paid to the provincial office and then a portion is sent to NSO to cover competition license fees and insurance coverage. The amount varies depending on the level of the athlete from 100.00 to 900.00 per year, but NSO only receives a portion to cover the cost of membership services and insurance provided to the PTSOs, Clubs and coaches.

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The registration fee is divided equally with the PSO. A separate Safe Sport Fee of \$3.00 is also paid.

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Four membership levels - Family Membership (up to 5 persons), General (5 years), General Member, Junior Member.

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Under the present NSO governance structure, the PTSOs are members of the NSO. Registered participants are members of their respective PTSO. Annual fees are assessed to the PTSO by the NSO, and vary annually.

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**Q7. Does your Organization have any Dedicated Positions for Managing Issues Related to Maltreatment?**

Responses	<i>Frequency</i>	<i>Percent</i>
Yes	44	42.30
No	59	56.70
Missing	1	1.00
<i>N= 104</i>		

**Q8. Does your Organization have any Dedicated Positions for Managing Issues Related to Maltreatment (by organizational level)?**

Response	Yes	No	N
Responding on behalf of an NSO	34	27	61
Responding on behalf of an MSO	8	8	16
Responding on behalf of a COPSIN Member	0	4	4
Responding on behalf of a PTSO	2	18	20
Other	0	2	2
N	44	59	103

**Q9. Is the Dedicated Position for Managing Issues Related to Maltreatment Full-Time, Part-Time, or Volunteer?**

Responses	Frequency	Percent
Full-Time	22	29.70
Part-Time	36	48.70
Volunteer	16	21.60

N= 74

\*Various Titles were reported for these positions:

Case Manager

Chair

Commissioner

General Counsel

Independent 3rd Party Reporting Officer

Safe Sport Committee Chair

Safe Sport Officer/Independent Lawyer

Senior Manager, Coach Education

Director Ins and Risk Management

Discipline Chair

Executive Director

External Ombudsperson

External Safe Sport Triage Officer (Receives complaints independently)

Independent 3rd Party Referral

Independent Third Party

President

Safe Sport Consultant

Safe Sport Support Officer

Screen Committee Chair

Senior Manager, Operations

Sport and Community Development Coordinator

Internal Safe Sport Manager

Manager Athlete Relations and Operations



Manager of Safe Sport and Events
Manager, Coaching Services
Ombudsperson
Safe Sport Director (Board Appt.)
Safe Sport Liaison

**Q10. Is the Dedicated Position for Managing Issues Related to Maltreatment Full-Time, Part-Time, or Volunteer?(Results by organizational level)**

Response	FT	PT	VOL	N
Responding on behalf of an NSO	16	30	10	56
Responding on behalf of an MSO	4	6	5	15
Responding on behalf of a COPSIN Member	0	0	0	0
Responding on behalf of a PTSO	2	0	1	3
N	22	36	16	74

**Q11. Which of the following Describes your Organization's Current Process(es) for Receiving Complaints Related to Maltreatment?**

Responses	Frequency	Percent
We have an internal process to report complaints within our organization as they relate to maltreatment	52	50.00
We have a third-party independent mechanism to receive complaints as they relate to maltreatment	70	67.30
We have no process to receive complaints as they relate to maltreatment	4	3.80
Other Process	10	9.60

N= 104

Note: Each item is independent. Percent and Frequency will not sum to 100.

Other Processes: Complainant can choose either; Complaints are usually made to the board or president or youth coordinator; Third Party is an Alternate Liaison under our Whistleblower Policy; We are currently developing our process that will include internal process as well as third-party independent mechanism; We are currently revising our policy on abuse and harassment to include maltreatment and acquiring the services of a third party to deal with issues as part of the Universal Code requirements; We are in the process of reviewing and revising our internal and external processes as they relate to maltreatment complaints. Additionally, we have a third-party independent mechanism, however we are in the process of putting together an official agreement with said provider in accordance with UCCMS and Sport Canada's regulations on this matter; We have a Whistleblower Policy which provides a process for a staff member may file a complaint or corruption allegation against a Board member; We have an informal process through our Board.

**Q12. Which of the following Describes your Organization's Current Process(es) for Receiving Complaints Related to Maltreatment (by organizational level)?**

Response	Internal	3 <sup>rd</sup> Party	None	Other
Responding on behalf of an NSO	22	48	2	6
Responding on behalf of an MSO	12	13	0	3
Responding on behalf of a COPSIN Member	2	3	1	0
Responding on behalf of a PTSO	15	6	0	1
Other	1	0	1	0
N	52	70	4	10

**Q13. To Whom are Complaints Related to Maltreatment Directed?**

Responses
To a 3 <sup>rd</sup> party officer (Multiple responses, N = 40).
Executive Director or President (Multiple responses, N = 25).
All complaints are sent to the Independent Chair of the Ethics Committee who manages complaints to determine jurisdiction (National / Provincial / Criminal (police) and validity.
At this point complaints are directed to the senior person within the portfolio of the complaint or the VP of HR. However, we will be acquiring the services of a third party as per the requirements of the Universal Code.
Case Manager who may proceed internally or appoint an independent investigator.
Case Manager with Sasksport: see <a href="http://www.sasksport.sk.ca/dispute.php">http://www.sasksport.sk.ca/dispute.php</a> Discipline and Complaints Policy and flowchart.
CEO - Complaints are typically sent to the CEO first for a decision or delegation. Employ a Commissioner to deal with disciplinary matters and/or violations of the Operating Code which could include Harassment complaints.
CEO / HR manager. Also ombudsperson / third party could receive any complaints directly (outside legal counsel).
Chief Executive Officer or a member of the Executive Committee, or if the Complainant prefers, to the Safety Officer directly.
Clearview (external) Chair of Governance Committee (internal).
Complaints are directed through a process identified on the Safe Sport section of our website to an Independent Safe Sport Officer who is outside of our organization.
Complaints can be brought to the attention of one or more of the following individuals: • Issues Manager (third-party) • Board Chair • CEO • Sr. Manager of Operations • Employee Respondent's Supervisor.
Currently, complaints are mostly internal and are submitted to the CEO. The CEO may involve our HR consultant who then determines the nature of the complaint and if it is internal or needs to go to a third party via Sport BC is working on a third-party reporting procedure in the province and we would hope to use this in the future.
Director of Community & Development & Chief Executive Officer.

Director of Partnerships and Operations (or CEO if Dir. of Partnerships and Operations is involved in complaint).
Harassment and Abuse office at the University.
Ideally, they could come through me as president, but any Director could receive them.
If reporting directly to the sport it is the Executive Director.
Initial reporting to the Executive Director. Exec Dir passes it to a Case Manager, who may or may not convene a panel. Case Mgr. or panel may defer to a Mediator/Facilitator.
Program Director, Finance Manager, President.
Senior staff person or Board of Directors at the complainant's discretion.
Senior VP. Insurance and Risk Management Director Insurance Risk Management.
Steps - report behaviour to Manager HR and/or COO - if unresolved then 1. Report documented with HR/COO if unresolved 2. Report to CEO or CCES Board Chair if unresolved or if desired 3. Confidentially report to Gotethics web-based complaint process.
The entire executive and board of directors.
The internal mechanism is to Dispute Resolution Officer.
The policy sets the COO up as the first option, then the CEO if there is COI, then the Chair of the Board if there is COI. We also have an independent 3rd party agreement should anyone fear the internal process.
Through the Sport Dispute Resolution Centre of Canada (SDRCC).
To the Board of Directors, in case the complaint is against a Board member, then to the Chair of the Members Council, and vice-versa.
Whistleblower Security.

**Q14. Does your Organization Compile any Statistics about Complaints/Reports Concerning Maltreatment?**

Responses	Frequency	Percent
Yes	35	33.70
No	68	65.30
No Response	1	1.00
<i>N</i> = 104		

**Q15. Does your Organization compile any Statistics about Complaints/Reports Concerning Maltreatment (by organizational level)?**

Response	Yes	No	N
Responding on behalf of an NSO	24	26	60
Responding on behalf of an MSO	6	11	17
Responding on behalf of a COPSIN Member	2	2	4
Responding on behalf of a PTSO	3	17	20
Other	0	2	2
<i>N</i>	35	68	103

**Q16. Approximately, how many Complaints/Reports of Maltreatment are Received Annually by your Organization (or Third-Party)?**

Approx. # of Complaints/Annually	NSO	MSO	COPSIN	PTSO	Other
0-2	40	13	3	16	--
3-5	6	1	--	--	--
6-10	1	--	--	1	--
11-20	5	--	--	--	--
41-60	1	--	--	--	--
Unknown/Not Recorded/Confidential	2	1	1	1	1
	55	15	4	18	1

**Q17. Which of the following Resources are used to Educate or Train your Stakeholders about Issues related to Maltreatment?**

Responses	Frequency	Percent
Respect in Sport Activity/Leader Program	77	74.00
Coaching Association of Canada – Safe Sport Training	78	75.00
Commit to Kids for Coaches	17	16.30
We have developed our own Internal Education & Training Programs	10	9.60
Other	26	25.00
We Currently Do Not provide any Education or Training	7	6.70

N= 104

\*Selected Choice – All that Applies

Other Responses Included:

CAC - MED / annual harassment training including safe sport concepts.

Commit to kids was made mandatory in 2019-20 and we will have no choice but to make the CAC training mandatory this year.

In person training at events.

Make Ethical Decisions (Coaching Association of Canada) (Multiple Responses, N = 6).

Respect Keeping Girls in Sport.

New SV Education Program for Student-Athletes launching this September.

Programs are currently being developed and deployed.

Respect in Sport - Respect in the Workplace (Multiple Responses, N = 8).

Ontario Ministry of Labour Workplace Violence and Workplace Harassment Training.

Since February we have been training staff and athletes on safe sport issues via in-person training sessions.

Thomlinson Training, IOC on-line training, LGBTQ101 on-line training.

We currently follow all guidelines set forward by WPC and their requirements for various leagues and training platforms.

We have a Code of Conduct and associated waiver.

We will likely start adoption CAC safe sport training for all staff in the future.

WE have also brought in legal counsel to present and train staff.

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We have been running a Safe Sport webinar/presentation for our PSOs to help them understand Safe Sport implementation.

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We will be doing our own education and training program.

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We've plans to formally institute CAC Safe Sport Training and Commit to Kids, possibly Respect in Sport though I understand RIS may not 'conform' to Sport Canada's new Code of Conduct.

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**Q18. Who is Required to Complete Training or Education about Issues related to Maltreatment in Sport?**

Responses	Frequency	Percent
Athletes who are registered participants of our organization	34	32.70
Athlete support staff within our organization (e.g. members of an integrated support team including medical/healthcare professionals, athlete aides, etc.)	61	58.70
Coaches within our organization	79	76.00
Staff within our organization	91	87.50
Board members	88	84.60
Affiliated members of our organization	17	16.30
Officials	55	52.90
Consultants/contractors associated with our organization	28	26.90
Parents or Guardians	6	5.80
Other. Please specify:	24	23.10
We do not require anyone to complete education or training	4	3.80

N= 104

**Additional Comments:**

\* Athletes registered in our national team pool or participating at a national team activity.

\*Athletes - only National Team Athletes; not all 32,000.

All coaches and staff on a roster participating at national Championships and parents of Youth national team athletes and all National Team Athletes.

Anyone who has direct access to athletes in training or competitions.

At this time the athletes are in the elite stream. It is not the Age Group/Masters athletes.

Athletes who go on an international tour. We are currently working to align with our PTSOs to have more people trained.

Athletic Directors.

Chartered and Registered Coaches with the CAC will be obligated to complete our Safe Sport Training as of September 2020.

National Team Athletes.

Only high-performance athletes.

Only our national team is in our care and control so about 74 athletes.

Other volunteers and external committee members.

Sport Assistants.

Staff and board were a voluntary training not required.

Volunteers on our operational committees and volunteers at national competitions.

We don't require anyone to complete education or training, yet (soon I hope).

We don't require it, but we are required by our gov't funding for any policy makers to have it.

**Q19. Do you Provide any Specialized Education, Training, or Other Services as it Concerns Issues of Maltreatment related to the following Stakeholder Groups?**

Responses	Frequency	Percent
Parasport	10	9.60
Indigenous	8	7.70
LGBTQI2S+	13	12.50
Ethnic Minorities	3	2.90
Other	14	13.50
We Do Not Provide any Specialized Training	76	73.10
N= 110		

**Q20. Briefly explain the Type of Specialized Training/Education Provided**

Responses

Ad hoc, but not yet systematically.

Not at this time - but plans are in place to address gender equity, inclusion and diversity programs.

Courses are available on a volunteer basis.

Material about inclusion, barrier free programming.

Staff have done unconscious bias training. A standardized training on inclusion and diversity would be excellent.

Staff is required to do inclusion training. We had seminars at our annual congress on LGBTQ.

This is touched upon in our Respect in the Workplace training module, however no additional measures specific to these groups are currently undertaken.

We have made Keeping Girls in Sport and LENS training mandatory for our staff and board. We have extensive other education opportunities listed on our website and encouraged but not mandated.

We have recently updated our EDI policy and Code of Conduct modeled it on the UCCMS.

We service people with intellectual disabilities and have developed some internal resources but will be working on more specialized training in the near future.

In 2014, the COC introduced steps to protect and support LGBTQ athletes, youth and coaches in sport and schools. This included entering into a partnership with leading LGBTQ organizations, participating in pride parades, updating anti-discrimination language within COC documents and introducing LGBTQ-specific educational resources for the COC's national in-school program which are promoted across the country by Team Canada athlete ambassadors. On-Line educational module developed with Deloitte to education COC staff about LGBTQ inclusion.

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Included in training about different cases (Respect in Sport).

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Inclusion, bullying prevention, parasport.

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Indigenous Coach Development training for Provincial coaches.

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Intercultural competency modules have been developed, and use of the Coaches Association of Canada materials on coaching athletes with a disability for awareness.

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Module in DCO Certification Training.

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Our website has a large section on Education for various groups that were listed. We also make LENS training and Keeping Girls in Sport Mandatory for our staff and board members.

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Plans are in place to develop three committees (and learning platforms) to address gender equity, inclusion, and diversity (incl all members) to address the 4 I's - Ideological / Institutional / Internalized / Interpersonal - of oppression and how they MAY be affecting our sport in Canada.

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Seminar / webinar at annual congress diversity inclusion training.

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Subject area experts provide workshops for staff/contractors.

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This is not applicable to our organization. Specialized training is limited to the Respect in the Workplace training module by Respect Group. Beyond that, some of our staff have taken the CAC's Safe Sport module for coaches and administrators. We're currently working to redefine what our requirements will be of our staff and contractors going forward.

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Training is provided as part of our broader Coach Education Training Modules Training and Education is provided as part of our Annual Conference for Members.

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Training on inclusion, specialized populations, barrier free approach to programming.

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We have a transgender policy - allowing members to participate in category they identify as We also have adopted from NSO Long Term Player Development specified for indigenous populations.

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We have brought in Safety Officers for training on Abuse, Harassment, bullying and for EDI. We provide training in the NCCP on each topic. We provide specific training for our Coach Developers (Coach of the coach). We commissioned the Commit To Kids for coaching in addition to the provision of the Mandated Safe Sport Training.

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We have engaged a consultant to provide us with training in Spring 2020 on LGBTQ+, with particular focus on trans and non-binary people in sport. It was a one-time engagement (so far), leading towards a to-be-developed action plan for our organization.

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We have had sessions at our annual conferences to raise awareness about marginalized groups and how to accommodate approaches in the context of dispute resolution. It's not by lack of trying, the most difficult thing is to find qualified speakers.

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We have included parasport and LGBTQ+2 awareness training into some of our sport specific coach education modules. Just starting to review ways to integrate Indigenous awareness material with Sport for Life and Quality Sport Programming leads.

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**Q21. Does your Organization provide any Support Services for Athletes or Other Individuals related to Mental Health Issues?**

Responses	Frequency	Percent
Yes	49	47.10
No	54	51.90
Missing Data	1	1.00
<i>N</i> = 104		

**Q22. Does your Organization provide any Support Services for Athletes or Other Individuals related to Mental Health Issues (by organizational level)?**

Response	Yes	No	N
Responding on behalf of an NSO	36	24	60
Responding on behalf of an MSO	10	7	17
Responding on behalf of a COPSIN Member	3	1	4
Responding on behalf of a PTSO	0	20	20
Other	0	2	2
<i>N</i>	49	54	103

**Q23. Please briefly describe these Mental Health Support Services**

Responses
24/7 Health Support Services available to all staff and their family members covered by our group benefits plan.
All National teams have access to mental trainers and sport psychologists through INS plus use Game Plan and other similar professional resources when appropriate.
Carded athletes have access to Institute National du Sport professionals.
CCAA Make some Noise for Mental Health campaign that links Student-athletes to the resources at their institutions.
CKC Mental Health Resource Mental health reminders and contacts in key communication.
Integration of Mental Health into Sport Science and Medic Support.
Depending on the level of athlete different services may apply from private Psychiatry and or counseling to a benefits program that allows athletes to access these services independently.
Each team has access to a mental health performance consultant. Some services are provided and supported by us and others are user fee based. Recent integration and use of Game Plan programming as well.
For athletes in our national team pool, they have access to specialized services via our IST lead. We have qualified practitioners that can do an assessment and direct our athletes to the right resources.
Game Plan access for national team AAP carded athletes include access to Morneau Shepell services, paid for individual counselling for individual athletes who have an established relationship with psychologists or other counsellors. Access to Sport Mental trainers through the



partnership with Sport Medicine and Science Council of Saskatchewan who can assist in referrals for athletes in need.

Mental Performance (sports psychology) coaching (virtual and live one-on-one sessions and some group sessions at events) made available to Carded and Team 2020 (OTP) targeted athletes only (group of 6 athletes).

Morneau/Shepell Employee and Family Assistance Program.

Not our own program but rather in collaboration with Game Plan and the Institute national du sport du Québec (where our National Training Center is based).

Our National Team Athletes have access support for Mental Health through Canadian Sports Institute Pacific and/or referral by our Chief Medical Officer. Staff and Coaches have access to support for Mental Health issues through a purchased service (Homewood Health) and/or referral by our Chief Medical Officer.

Promote Canadian Sport Helpline. National Team members (athletes, sport assistants and coaches) have access to Sport Psych/Mental Performance Coach.

The NSO does not directly provide mental health support services, however, a certain tier of athletes is eligible for support through COC's Game plan program.

We have a section on our website for mental health, we have a section on our COVID-19 webpage on mental health, our athletes have access to Game Plan, we send them resources frequently on mental health and we have an IST team member specifically hired for mental health.

We provide mental health education and training through many of our on-line courses as well as through medical professionals in the mental health field such as CAMH. During COVID we provided virtual sessions on mental health and mindfulness.

**Q24. Does your Organization Charge a Separate “Safe Sport” (or otherwise named) fee to Registered Participants or Members as part of their Annual Dues to Help Offset the costs of providing services related to Maltreatment?**

Separate Safe Sport Fee?	NSO	MSO	COPSIN	PTSO	Other
Yes	2	0	0	1	0
No	58	16	4	19	2
	60	16	4	20	2

**Q25. What is the Amount of the Annual “Safe Sport” fee that is charged annually to registrants of your Organization?**

Annual Amount for Safe Sport Fee	NSO	MSO	COPSIN	PTSO	Other
\$3.00	1	0	0	0	0
\$15.00	1	0	0	0	0
Varies per Membership Category & is sent directly to NSO	0	0	0	1	0
	2	0	0	1	0

**Q26. What is the jurisdiction of your maltreatment policy(ies) as it relates to reporting requirements and disciplinary procedures? Which of the following best describes the jurisdiction of your policy.**

Responses	Frequency	Percent
A. Our reporting and disciplinary jurisdiction is limited to maltreatment that may occur during the course of all of our organization's business, activities, and events - but EXCLUDES maltreatment that may occur under the jurisdiction of Branches, Clubs.	43	41.30
B. Our reporting and disciplinary jurisdiction applies to maltreatment that may occur during the course of all of our organization's business, activities, and events - AND MAY ALSO APPLY to maltreatment between individuals associated with our organization.	54	51.90
C. Other form of jurisdiction.	4	3.80
Missing Data	3	2.90

N = 104

**Q27. What is the jurisdiction of your maltreatment policy(ies) as it relates to reporting requirements and disciplinary procedures? (By organizational level)**

Response	Statement A	Statement B	Other	N
Responding on behalf of an NSO	26	34	0	60
Responding on behalf of an MSO	8	5	4	17
Responding on behalf of a COPSIN Member	2	2	0	4
Responding on behalf of a PTSO	6	12	0	18
Other	1	1	0	2
N	43	54	4	101

**Q28. What is the jurisdiction of your maltreatment policy(ies) as it relates to reporting requirements and disciplinary procedures? Which of the following best describes the jurisdiction of your policy?**

Our reporting and disciplinary jurisdiction is limited to maltreatment that may occur during the course of all of our organization's business, activities, and events - but **EXCLUDES** maltreatment that may occur under the jurisdiction of Branches, Clubs. (N=26)

Archery Canada
Baseball Canada
Boxing Canada
Canada Basketball
Canada Snowboard
Canadian 5 Pin Bowlers' Association
Canadian Cerebral Palsy Sports Association
Canadian Team Handball Federation
CCAA
Chess Federation of Canada
Climbing Escalade Canada
Climbing Escalade Canada
Curling Canada

Cycling Canada (NSO)
Hockey Canada
Judo Canada
Karate Canada
Nordic Combined Ski Canada
Racquetball Canada
Sail Canada
Softball Canada
Squash Canada
Surf Canada
Table Tennis Canada
Water Ski & Wakeboard Canada
Wheelchair Basketball Canada

**Q29.** Our reporting and disciplinary jurisdiction applies to maltreatment that may occur during the course of all of our organization's business, activities, and events - **AND MAY ALSO APPLY** to maltreatment between individuals associated with our organization. (N=34)

Alpine Canada
Athletics Canada
Badminton Canada
Ballon sur glace Broomball Canada
Biathlon Canada
Bowls Canada
Canada Artistic Swimming
Canada Dance Sport
Canada Soccer
Canadian Blind Sports Association
Canadian Fencing Federation
Canadian Sport Parachuting Association
Canadian Tenpin Federation
Canadian Weightlifting Federation
Canoe Kayak Canada
Cheer Canada
Diving Plongeon Canada
Equestrian Canada
Field Hockey Canada
Luge Canada
Ringette Canada
Rowing Canada Aviron
Rugby Canada
Shooting Federation of Canada
Skate Canada
Ski Jumping Canada
Swimming Canada

Taekwondo Canada
Tennis Canada
Triathlon Canada
Volleyball Canada
Water Polo Canada
Wheelchair Rugby Canada (WRC)
Wrestling Canada Lutte

**Q30. Are any of the following organizations required to report cases of maltreatment to your organization (that is, any reports, investigations, and/or disciplinary decisions related to maltreatment within their organization's jurisdiction)? (Question asked of NSOs only)**

Responses	Frequency	Percent
Provincial & Territorial SO's	32	43.80
Local Associations/Clubs	14	19.20
Other Affiliated Organizations	2	2.70
None are Required to Report to our Organization	25	34.20
<i>N= 73</i>		
Note: All recorded responses were from NSO respondents; Select all that apply		

**Q31. If you would like to add any additional information as it pertains to these reporting procedures, please do so in the space below.**

Responses
At this point we don't formally require them to report unless it involves a member who is affiliated with our NT programs or other that we would be working/associated with. This is something we are looking into with our provincial members and working with them on.
At this time, we are in the process of gaining alignment with our PTSOs and clubs. We do have a reciprocation policy that states clubs/PTSOs will report discipline to the NSO and vice versa.
Depends on the case in regards to Provincial and Territorial Sport Organizations and Member Clubs as to what the level of maltreatment is and who it involves with the PTSA / Club. E.g. if it is to do with a Coach, because all the member coaches come under our Coaching Program, we would like to be made aware of the case and will assist where required.
For now, none of these organizations are required to report to us, but we will vote next weekend Aug.9th 2020 at our General Meeting our new Safe Sport and Equity Policies.
Here is an excerpt from our draft policy: "Records of all decisions will be maintained by the Organization and the Participating Member (as applicable). Participating Members will submit all records to the Organization." * note participating members include provincial / territorial sporting organizations.
If a provincial federation ruling on a matter is appealed, the province has occasionally requested the NSO to evaluate, for a final decision.
It currently is not required, but it is preferred. This is being reviewed in current policy update.

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It is encouraged to share cases, but it is not currently mandatory only in case of formal suspension it is than share with us.

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Note that more serious complaints are reported by the PSO for insurance purposes.

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Only conference or institution sanctions that impact of the individual eligibility at nationals need to be reported.

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Our PTSOs do not want to report to us. Clubs are independent organizations and are members of the PTSOs and not the national body. We are being told we have accountability but as an NSO have zero authority to implement beyond our own organization.

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Our NSO's third-party, external Safe Sport Officer has been used by all our PTSOs and Clubs thus far. Some provincial sport organizations are implementing provincial safe sport reporting agencies and programs for all provincial sports thus BC and Quebec in particular are beginning to use their own provincial services now.

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We are currently working on a reporting policy. Discussions coming up with our Provincial Sport Orgs (has been delayed by COVID-19).

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We are in the process of finalizing our safe sport policies in partnership with our provinces so that everyone is working from one harmonized policy.

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We are in the process to make it mandatory for PSO to report cases.

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We are working on building a reciprocity agreement between all levels.

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We are working on having the PSO's report, but it is all very new and they have not as yet done so formally. If we hear of any cases it's more because of informal reporting or they are reaching out to us to ask for advice.

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We have asked all our P/Ts to report to us, use our third party and adopt our policy suite but we have no jurisdiction over mandating them to do so. Some provinces have and others have not.

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We have recently extended the services Independent 3rd Party Officer to include PTSO and grassroots. Our coaching policies include all levels of coaches from grassroots to national team.

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**Q32. Do you support in principle developing a national system for the administration of maltreatment that includes the participation of PTSOs in addition to national organizations (NSOs, MSOs, COPSIN)?**

	Responses	Frequency	Percent
Yes		88	84.60
No		1	1.00
Not Sure		13	12.50
Missing Data		2	1.90
<hr/> <i>N</i> = 104 <hr/>			

**Q33. Please briefly explain why you support a national system that includes PTSOs.**

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Responses

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"Universal" means that the code should apply to all levels of sport regardless on jurisdiction.

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A centralized program will ensure an aligned approach across individual sports and sport collectively and provide or more robust education and development of tools and resources.

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A coherent, consistent system helps to reduce the complexity and variances in experiences for participants in different parts of the country. Sports need help managing the burden of the administration. Different programs at different levels is confusing for athletes who move between the spaces and creates opportunities for people to fall through the cracks. Investment will be more efficient and build capacity that will be enjoyed by all.

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A cohesive and consistent approach will better serve the community. However, it must be fair, unbiased and transparent in delivery, respecting the varying needs of the community.

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A harmonized approach would provide the opportunity for

- \*Common principles and a shared philosophy
- \*Equity of application of code and sanction
- \*Allow for comprehensive tracking of incidences across jurisdictions
- \*True independence from the NSO
- \*Save money
- \*Simpler to communicate the approach.

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A national system will allow for a uniform procedure across the country. This allows everyone to be able to follow and stick to one set of guidelines.

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A nationwide policy would make everything congruent and to ensure everyone is to follow these practices.

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Aligning this system will ensure we get the best use of resources and consistent application. It will be important that issues are triaged appropriately.

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Alignment across all levels from grassroots to National would make the most sense for reporting and system alignment. Also, if we all are required to do the same thing, one system that we all adhere to would make the most sense. Why have each sport developed their own? Make one that we all sign on to.

---

Alignment creates a safer system for athletes, reduces burden on staff and treat lines education. Many cases end up dealing with jurisdiction as a major issue which causes delay and can lead to a lack of trust in the system. Key personnel in the role of triage and complaint reception who can work worth PT leads to collaborate in a framework to ensure cases are independently dealt with at the proper level, is the best solution for the sector.

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Alignment is essential to success. Stakeholders at the local level do not understand the governance of the sport model. Sport is sport, and in order to ensure consistency and alignment this is an important step.

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Alignment, consistency, many NSO affiliated participants also work within the PTSO environment in some way as well to create a consistent safe environment no matter how the participants are working with the sport system.

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All organizations must be part of a national system which teaches and prevents maltreatment at all levels to all groups within the country.

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Although our system is decentralized in that provincial and territorial sport organizations have autonomous governance structures, consistency is needed on this issue.

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As a multisport service organization, we aim to serve all individuals living within Canada's borders with our programs and services and as such, we support the concept of system change to the sport sector as a whole, at all levels in order to better serve all participants.

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Athletes and participants of sport in Canada at all levels should feel safe from maltreatment. We speak about the importance of alignment within the sport system, which includes between National and PTSOs - if the rules on the field of play for sport are consistent between levels, so too should be the protection and management against maltreatment. The system should be flexible and scalable to accommodate, grow and welcome new sports, regions, cultures.

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Athletes don't differentiate 'jurisdictions' in sport. They compete in sport and they assume already the NSO/PSO's are working together (or should be). If they've been maltreated, they are likely to want to go 'to the top'. The sport is the sport--if maltreatment occurs at any level in a sport, it's going to affect every province and national organization because people don't see 'borders'. They

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just see the sport. And, as the governing body for the sport in Canada, we should be expected to have more formal ties to what happens provincially.

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Because it will be "toothless" if only applicable at the National level - the majority of sport happens at the PTSO and grassroots level. If the intent is to reduce / eliminate maltreatment of all kinds in sport - it needs to apply across the full sport sector / spectrum.

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Our NSO is continually striving towards continued alignment between the NSO and our PSOs - this national system would help us to continue to do this. A current project our NSO is embarking on is working on the alignment between NSO and PSO policies and procedures so encompassed in this would be the recommendation for the adoption of the UCCMS and other related policies. The more federal support/mandating we have to do this the easier it would be for us to implement.

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Canada-wide consistency would be ideal, so that an individual who is sanctioned by any club, PTSO, or NSO cannot move to another sport or another province and make more victims. Plus, most PTSOs do not have capacity (yet alone expertise) to handle these situations properly. The lower down you go, into affiliated leagues and clubs, these organizations are riddled with conflicts of interest with parents coaching, officiating and sitting on boards. The only way the system might work without PTSOs is if you can get the multisport organizations in each P/T (Sport Yukon, Sport Manitoba, etc.) to run their own program in their respective jurisdictions in a way that complies with the principles of the UCCMS. Also, what many NSO leaders forget is that their members are often also members of another NSO (coaching soccer in the summer, officiating basketball and playing hockey in the winter, etc.) If it is managed in a sport-specific context, some perpetrators will slip through the cracks and continue to be involved elsewhere in the sport system.

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Clear, consistent guidelines that represent universal Canadian values. Reduce ambiguity. Alleviate capacity issues with NSO & PSO's to deal with. A lot of duplication right now of activities i.e. policy development, 3rd party complaints officers.

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Consistency across the country is significant to education and enforcement, as we have members that are or may come from different regions of the country.

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Consistency and scale of economies. 1. The rules and application of said rules/procedures/policies should be consistent right across the Canadian sport spectrum. 2. Cost-saving in the implementation and administration of the policy - This is another initiative that will draw limited resources away from the sport sector. Anything we can do to reduce the expenditure but effectively implement an important policy will be welcome and encouraged. (as opposed to several different sport entities doing the same work).

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Consistency and universal policies keep the organizations on the same page. Having multiple different documents adds complexity to the process. During the advancement of athletes into HP sport delivery, the terms of the policy will be better understood.

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Consistency from sport to sport is important.

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Consistency is critical for education and enforcement. Particularly for the Canada Games, where each Games brings together up to 18 NSOs and all 13 P/Ts.

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Consistent, fair & equitable approach for addressing & managing complaints. Also ensuring a uniform application across all sport.

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Creates a central reporting system for all participants in sport that can be tracked nation-wide and as participants move through different sports.

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Ensures every level of sport is adhering to the same standards and provides support to smaller organizations that may have difficulty administering some aspects of the process.

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Ensuring follow up of issues, limiting risk of "moving the problem over".

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For consistency and full coverage.

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For full coverage of issues outside the jurisdiction of the MSO but within the national structure of university sport.

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Helps to close loopholes in the system and better protect our athletes, volunteers and staff while providing experienced and professional support to PSTOs when dealing with very sensitive and complicated situations that their staff and volunteers are not equipped to deal with - nor should they be expected to handle.

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I believe alignment is key; alignment across jurisdictions and across sports, making it clear for all individuals the behaviour that is expected of them at all times in the sport environment.

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I believe in the importance of ensuring all sports are treated on equal footing when it comes to these matters and many smaller sports don't have the resources to develop their own procedures, so having a baseline for sports to build their own is important.

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I believe that a consistent standard of care for athletes, and consistent standards for the professional behavior of the sport sector's stakeholders is critically important to reduce the frequency of maltreatment and improve collaboration in the Canadian Sport System. Further, in my roles I have observed extremely variable responses to incidents of maltreatment at the local, provincial, and national level. In other words, I believe we all need to work together to professionalize the Canadian Sport System.

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I believe that an integrated and united system is the only way to truly address maltreatment in sport. As long as there are different systems, different implementations and different standards, there will be gaps and inconsistencies that will result in maltreatment situations that fall through the cracks. I also believe that a united system will be far more cost effective than each NSO, 13 P/T sport associations and hundreds of PTSOs all recreating their own versions of what is supposed to be the same wheel.

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I believe there needs to be consistency within the system in order for it to be effective.

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I sit on the safesport working group in BC which is lead by via Sport. We also have funding contributions provincially and need to uphold government standards. For example, the BC government has mandated Commit to Kids training for Board members and key leadership staff.

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I support a limited national system that allows for certain behaviors to be communicated between sports to prevent people moving from sport to sport and abusing.

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I think a national system diminishes the chances for bad actors to move among sports, among provinces, and among clubs -- without notice or consequence.

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I think all levels of sport should be required to adhere to this policy. It would be in the PTO's that the younger children will be involved.

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Important to have 1 universal code administered by an independent body at all levels of sport in Canada.

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In a functional and aligned system information, policy and procedure should be shared to ensure consistency and avoid anyone falling between the cracks in the system. For us as an NSO, within the constructs of the current by-laws, our members are the PSO's, not individual registered participants. To have leadership, responsibility and accountability for all those actively involved in our sport, we therefore need to have a system which includes PSOs.

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In Saskatchewan the Canadian Sport Centre is integrated within the Provincial Sport System and Sask Sport Inc. For us it makes perfect sense a common language and process is in place to deal with all issues. The clarity helps the PSO and the MSOs deal with matters in a clear and transparent manner. The access to an impartial third party to assist with resolution has been one of the greatest strengths of the program first initiated by Sask Sport Inc. and its membership.

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In theory, having one system for the whole country would create uniformity.

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It is critical to have a consistent approach to managing these risks across country.

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It is important that there is a consistent service across all sport in the country. If there was 1 system across the sport system, it would make it a lot easier to understand the procedures that must be taken when dealing with these issues. Also, if there is a person involved in several sports causing maltreatment, then it would be easier for sports to coordinate with others if a coach for example was put in bad standing.

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It juts makes sense, and would ensure alignment and proper handling of complaints at every level.

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It must be a system wide approach to ensure the safety of athletes at all levels of sport.

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It provides for a national standard regardless of jurisdiction. As many sports travel, compete, across municipal, provincial and international borders. The code would be applicable at anytime for anyone, even if actions occurred across provincial or international borders.

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Le développement de telle pratique permet d'appliquer des principes uniformément à travers le pays et simplifie la compréhension pour les participants / parents d'une discipline sportive à l'autre.

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Maltreatment happens at all levels, we need to include and protect the whole sport system.

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more resources available, one strong national policy and criteria which applied to everyone.

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National standards bring consistency in practice and principle.

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National system would bring consistency to the process and provide an independent body.

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Need to educate those 'deeper down the system'.

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NSOs do not have the capacity to do themselves, so national mechanism important.

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PTSOs and community level sport organizations have even less capacity, resources and expertise to be able manage safe sport and to manage complaints against the UCCMS. If I recall correctly last year's CBC expose on abuse in Canadian Sport found that 80% of cases occurred at the community sport level. It is also important to have consistency in defining what is unacceptable behaviours, reporting processes, investigative processes, case management & expertise, adjudication, and lastly, for reporting so that a national registry can be created and serve as a step-in safe sport's screening processes.

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Quebec already provided us with their refusal to join. It will be a challenge to get all jurisdiction on board. This type of system FUNDED by all Provincial and the Federal governments would be ideal.

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Registered participants need to be able to know the measures in place and the supports, it should never by region.

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Safe sport issues exist at all levels of the sporting community, not just at the national level.

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Because a large majority of sport delivery occurs at the PTSO level and below, it is imperative that there be an aligned systemic approach which includes the PTSOs.

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The need for consistency in code and application is critical to allow the NSO to monitor a fair process amongst the varying codes of conduct and capabilities of the PTSOs. The concerns for all NSOs is the financial uncertainty to sustain the code and process.

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The NSO, PTSO or Club confers authority to organizations/activities under its jurisdiction. This by its very nature confers a certain authority in endorsing the actions of the other organization. This is complex because of governance but ultimately the net of codes of conduct should be aligned.

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The system is far too fractured. Leads to inconsistent decision making and sanctions, not only across sports by within sports. Also leads to dramatically increased costs. And as we found, the potential for error when other affiliated bodies do not 'handle' issues as they arise.

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The system needs to be consistent through all sport. In our organization, we quickly made the decision that all PTSOs were obligated to participate in our safe sport program if they were not mandated to use their provincial service. There needs to be consistency in definitions, training, complaint process and sanctions in order for the safe sport program to work globally. We have

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already implemented this nationally in our own sport. This way, PTSO Members who do not have the financial resources to pay for investigations etc., must still follow the process and the NSO is paying the cost. At some point, it will likely be necessary to implement a member fee for this service, but so far, we have been able to cover the costs nationally without an additional per Member fee.

The vast majority of sport occurs at this level. A uniform system will add great value.

There are not enough SME's on a national, provincial, or grass roots of the organization to address those critical issues.

This ensures a seamless system to ensure a consistent application of safe sport policies.

This is currently the main gap / challenge within the Canadian sport system. When it comes to athlete's safety, we have the responsibility to remove as many barriers as possible to protect participants in the sport system. Aligned policies not only protect participants but also help the sport system to focus on our core business (delivering programs and activities).

This will protect better the registrants, will ensure alignment and will be much more effective globally (including cost effective).

This would provide for consistency and collaboration between all members.

To be the same at each level. Buy in would depend on what it was. Our PSOs would value the opportunity to have something put in place and not have to develop it themselves.

Vertical integration and consistency.

We are a small sport and with strong relationships between national and provincial organizations. We all agree that one policy for everyone (with minor adjustments made by each province, as required) will be the most efficient and effective way to deal with this issue.

We are only reaching a small % of people at the National level.

We can and all need to play an active role in preventing / addressing and reporting maltreatment in Sport. PSTO's should be advised how best they can live this initiative ... from what's obliged by Sport Canada, their NSO, to what's encouraged of a PTSO.

We need to all be speaking the same language and dealing with issues together. A united front is a much more productive solution.

We need to have consistency and a strong policy for the safety of all.

We need to protect our most vulnerable athletes from any type of harassment and maltreatment.

We often travel from province to province to train and/or compete. A universal system would ensure that our members are confident that their well-being will be taken seriously and looked after in all corners of the country. That is important.

**Q.34 What role(s) and responsibilities should an independent national administrative body/organization include as it relates to preventing and addressing maltreatment Canadian amateur sport?**

Responses	Frequency	Percent
Receiving and triaging of complaints of maltreatment	89	85.60
Investigating complaints of maltreatment	97	93.30
Managing the dispute resolution process related to complaints	86	82.70
Imposing sanctions related to maltreatment	68	65.40
Developing education and training resources about maltreatment	89	85.60
Enforcing compliance related to the UCCMS	75	72.10

Other responsibilities?	16	15.40
N= 104		
<b>*Other Responsibilities:</b>		
Cannot leave NSO out of the process and has to take into consideration size, scope, capacity of NSO - meaning the dispute resolution process cannot bankrupt and NSO.		
Confidential reporting mechanism for complaints...share management of dispute with SDRCC...victim support service...registry of offenders and sanctions...public disclosure of sanctions.		
Funded so as to remove/lessen financial burden on NSO's.		
I think there may be a need for NSOs to manage complaints of a certain severity and the more serious/egregious issues need to be handled by a national body.		
It should be come a multisport one stop shop. Similar to what we are doing for anti-doping.		
Independent from the NSOs.		
Maintaining a database of individuals that were disciplined.		
Management of future iterations of the UCCMS.		
Record keeping and reporting.		
Reporting sanctions (creating a national registry which can be referenced by all level of sport and other sectors of society.		
The independent administrative body should be responsible to develop the education tools, while the sports body should administer/mandate the training. The sports body should be the one enforcing compliance to the UCCMS.		
These functions do not necessarily need to be fulfilled by the same organization.		
This could all be done through partnerships with other bodies in place, but one board and senior group of staff should be ultimately responsible Sector implementation.		
Tracking and reporting on data and trends.		
Updating the UCCMS?		
We checked all boxes that we consider require independence but we do not consider all these functions needs to be administered by the same body. We also think there has to be a service to offer victim support.		

**Q.35 How (by whom) should complaints of maltreatment be received, if not by an independent national body?**

Responses
Complaints should still be received by the appropriate position with in the PSO and forwarded on to the independent body.
Depending on the type (abuse for example) and severity of the complaint to the police authorities or internally by the sport organization.
I believe that complaints could be received by the individual P/TSO; however, I think it is important to have a department that sport groups may utilize if they feel complaint may be larger than they are equipped to handle.

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I think it can be either an independent national body, or an independent third-party for the NSOs. (The more independent, the better.)

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I think it should be PTSO then escalate from there.

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Sport specific independent safe sport triage officers who are endorsed and work in conjunction with the independent national body is essential.

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The first review should be internal to the NSO and their independent third party.

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They need to be initially received by an independent sport organization in the jurisdiction in order to minimize the number of false complaints as well as the amount of work required to work through the process.

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Third Party group or individual identified and paid for by the NSO or MSO. Based on scope of UCCMS currently only specifically NSO activities, those that are member specific are redirected to the members internal mechanisms. Some NSO maltreatment for example damage to property, foul or abusive language would be directed to the NSOs internal processes, only those that are NSO specific and on a scale more violent, threatening or encompass members of the NSO governance body would be directed to third party investigative group. Important the Complaints officer is knowledgeable about the organization's structure and where to direct each Maltreatment based on the structure and scope of the Maltreatment policy. An independent National Body that has to triage would be over burdened with jurisdictional issues. Could be used as a second step once member or NSO internal process are exhausted or if parties wanted to waive the internal process and direct allegations right to the independent national body.

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**Q.36 How (by whom) should complaints of maltreatment be investigated, if not by an independent national body?**

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Responses

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By an independent panel appointed by the organization who receives the complaint.

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The complaints should be investigated by the provincial or territorial body.

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The president and secretary.

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**Q.37 How (by whom) should the dispute resolutions be managed, if not by an independent national body?**

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Responses

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A body with judicial knowledge and proper and validated investigation procedures with clear standards and records kept of how decisions were made. Tested procedural integrity and qualifications to manage highly fraught situations. A body that does not involve itself in the inevitable trivia that will show up to complain and actually focus on real maltreatment and serious cases where there is danger and damage.

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Board members.

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By the NSO itself.

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CCES? CAC? Sport Canada?

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Each NSO would be responsible for managing their own dispute resolution.

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Initial review should be accepted by the PSO/NSO and then forwarded to the Independent body. Give the PSO/NSO the opportunity to address the issue, or at least have knowledge of it.

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Sanctions should be imposed by the independent panel and either side should have the right to appeal that decision to a higher authority of the sport organization.

---

The dispute resolution process could be managed by the sport organizations themselves. In other words, while an independent 3rd party could triage and investigate, the actual dispute resolution could occur at the level of the sport organizations. Sport organizations could impose their own sanctions when necessary. I suppose you could have an appeal process going right up to the independent national organization.

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The dispute resolution should be managed by the provincial or territorial body.

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This is tricky. I don't think that the investigative body can also have jurisdiction over dispute resolution. It may also depend on the nature of the complaint. If the complaint is made against a coach, could the coach's professional body or designate be involved in any dispute resolution. Or perhaps all dispute can be handled through the SDRCC.

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**Q.38 Who should be responsible for imposing sanctions, if not an independent national body?**

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Responses

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All sports would have a responsibility along with the independent body to ensure the sanction is enforced.

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Board members.

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Each NSO independently.

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I think sanctions depend on the role of the person being sanctioned -- if it's a club coach, I would hope the CAC would rescind their certification.

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NSO, but only with a National standardized guideline for sanctions.

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NSO, in general, having a disciplinary board and define penalty and fine structure.

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That should be done by the governing body. The independent body can make recommendations, but it should be up to the governing body to accept/reject/implement.

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The Independent National Body should provide a template of sanctions based on scale of Maltreatment that has been developed based on precedent and current NSO scales and sanctions. NSOs would lay the sanctions. Independent body could provide potential recommendations but NSOs need to win the sanction.

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The NSO and/or PTSO would need to be part of the imposing of sanctions.

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The NSO based on their policies.

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The NSO in conjunction with the independent body, in certain cases, or at least in consult.

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The NSO should be responsible for sanctions. They know the sport best. I would be afraid the independent body would not understand our sport enough to impose a suitable (harder) sanction.

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The sanctions should be imposed by the body who receives the complaint following appropriate investigation and dispute resolution.

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Tribunal - SDRCC, however it would be important that knowledge of the NSO / sport was included.

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**Q.39 Who should be responsible for developing education and training resources about maltreatment in sport, if not an independent national body?**

Responses
An independent national body can do a good job in developing education and training, but it is important to consider what is being done at a community or provincial level too in referencing materials and support.
CCES, CAC, IOC.
Existing resources currently exist, duplication of services and another MSO is not what the system needs.
Generic material - OK, we need to be able to modify it though. Current generic material is very poor quality, too general, not appropriate for all levels. Could be related to the role - SIRC for boards, CAC for coaches.
Give this to the Coaching Association of Canada.
I think the Coaching Association of Canada is an appropriate holder of this responsibility, given that it is the only national body that carries out education as its flagship program (National Coaching Certification Program) and it already had significant education programming for sport managers as well through its annual Sport Leadership Conference. CAC has excellent expertise in curriculum design, recognized around the world. Include other participants for one topic isn't that much of a stretch.
Safe Sport Training - for Coaches/administrators and personnel has already been developed but should be updated regularly and institutions to be mandatory annually. Currently no specific training for Athletes - CCAA has just finalized some specific student-athlete training that address sexual violence, consent and how to address it. "Creating a Campus Community Free of Sexual Violence" customized for the Canadian Collegiate Athletic Association.
There are already agencies doing this. I don't think we have to re-invent something that is already being well run in this space.
There are organizations that exist today with best practices already and long-term plans with vision and investment. It would be worth evaluating those prior developing new tools and education.
There are great resources out there and I feel that the coaching association can certainly be part of the solution.

**Q40. Who should be responsible for ensuring compliance with the requirements of the UCCMS, if not an independent national body?**

Responses
Board members.
Could be funder, Sport Canada.
Funders need to keep recipients accountable base on the code. The national body should do the investigations, manage the process, impose standardized sanctions and conduct education.
Funding partners NSO - Sport-Canada, PSO provincial governments.

I would say that responsibility should be connected to the principal non-profit funder, so in the case of NSOs and MSOs, that would be Sport Canada. However, if Sport Canada chose to enlist the independent national body in performing an audit on UCCMS compliance in reference to funding being approved, that would make sense to me. Ultimately, we're not opposed to that responsibility residing with the independent national body.

It is an accountability of all Federally funded sport organisations.

Sport Canada.

The NSO and/or PTSO should be responsible for ensuring compliance, though there may be a reporting mechanism in place to provide checks and measures.

Well, I think that our existing structure of a third-party insurer is an effective way to ensure compliance. So, a club that protected a bad coach, for instance, could have their insurance revoked.

**Q.41 How might a system to implement the UCCMS might be funded? (What % of the Total Funding required to implement the UCCMS should come from each of the following sources?)**

Responses	Mean	SD
Sport Canada/Federal	52.57	22.52
Provincial/Territorial Governments	24.00	14.71
NSO Contributions	5.56	6.64
MSO Contributions	2.68	4.14
PTSO Contributions	4.09	5.85
Self-Funded: Fees/Charges	6.98	14.15
Should come from each of these sources	2.56	10.88
Other	1.50	10.36
<i>N</i> = 104		
Other: Licensing Fees; Pro Sport; Insurance; Major Games; Doctors; Race Organizers		

**Q.42 Any additional comments about funding the system?**

Responses
As an MSO without a direct membership, I can't foresee how we could be able to self-fund or contribute. While I don't know that it should reside entirely with Sport Canada, I think it should be government funded.
Corporations could take a large piece of this as part of their corporate responsibility programs. Especially those who generate large profits and revenues off athletes and sport in general.
Federal support can cover the overall infrastructure and users could contribute based on the cases.
Feds/province need to demand data collection and funding from all participants even if in a rental league if they will be using the system.
Funding is the key of success. If the Federal and Provincial government does not intend to fund this project, we are all wasting time as far as I am concerned.

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Given that the Canadian Sport System has been developed with the goal of 'sport development' as a primary focus - there is very little flexibility in how money is spent within this system. New priorities like Safe Sport, complaint management, and risk management are diverting resources from sport development programs. I also strongly believe that preventing and responding to the maltreatment of athletes must be a priority for our society. Collaborations between provincial and federal governments is, in my opinion, the most secure strategy to ensure that a third-party organization should be funded.

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I believe a shared model ensures awareness, buy in and compliance from all stakeholders.

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I believe Sport Canada in conjunction with sponsors should be funding this, there just isn't enough finances within the sport system for NSOs to fund this. Furthermore, there are additional restrictions for sports, like us, who are not funded by Sport Canada and are already struggling financially.

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I believe this should be government funded and completely independent.

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If everyone shares the investment and it's not just a service it may have greater impact, however having a sponsorship is always the best.

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If there is harmonization of policies with the NSOs and the PTSOs, then both the federal and provincial governments should contribute to funding. A safe sport "tax" for participants may also be appropriate.

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It will be important to future-proof this. Too much from the Federal Government creates the risk that it will be defunded and destabilize the whole thing. Sports could fund it directly or pass on a user-fee to their participants.

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NSO and PTSO contributions would be spread across many organizations, so the contribution from each would not be material relative to the cost of doing the work themselves. It could be pro-rated based on membership size. MSOs do not have many participants (typically), so should take on less of the cost but should still contribute.

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It would be great to get sponsorship if possible.

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Absolutely not sponsors.

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Most NSOs and PTSOs are already underfunded and struggling with capacity as it is. It's unreasonable to expect them to additionally manage the growing demands attached to UCCMS implementation. The financial risks to NSOs and PTSOs would be immense, and would hold the potential to significantly or permanently threaten or jeopardize the sustainability of these organizations.

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MSO contribution is a bit lower as athletes and coaches are third parties to these organizations and membership fees are not collected by these organizations for the participants.

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Nothing from the NSO or PSO as they ultimately get their funding from Federal or Provincial funds anyway. Also, charge an extra fee to the participants since they would ultimately be charged by the NSO or PSO anyway in order to cover the costs.

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PTSO have an individual contribution, unless already contributing to cost thru the NSO, then the NSO and MSO can increase contribution %.

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Realistically, for sustainability it should be predominantly 'all-user' pay, an isolated annual fee deemed separate from membership or registration fee for all sports, so no one sport less or more impacted by increased cost of participation.

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Sponsorship would be amazing. I also think it would be great to add funds from the PTSO or NSO, but \$\$ are limited already.

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Sport Canada gives us our money so it would be great if they could just fund it as another MSO. I don't disagree with the self-funded approach either. NSOs and PSOs don't have the money for this - although important. We need to find money elsewhere.

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The current funding available to sports is simply not enough for NSOs and PTSOs to be able to fully fund an integrated system.

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The self-funded option is interesting, but it should be up to each NSO, MSO or PTSO if they want/need to "fund" their portion by taxing their participants. Also, all organizations should be mandated to contribute on a pro-rated basis of their membership size at first, and an algorithm should be built so that gradually, the organizations from which most cases arise end up paying a bigger share. Also, in order to "sell" this at all levels of the sport system, the Government of Canada has to step up, even though most complaints are likely to arise from provincial and club levels. We need to do better in terms of cost-efficiency than the US model, that's for sure.

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There also needs to be a cap on the organization. This new agency can lead to an uncontrolled upward spiral of costs; if not managed properly.

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This needs to be funded by the Fed & PT Governments for this to be truly effective.

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To get thing going, the provincial and federal government may need to seed initiatives. Once established, and mandated by provincial legislation, there could be a licensing fee that maintains operation of safe sport. The license fee may collect from stakeholders who are involved in delivery of sport (e.g. Graded coach license, club license, rec sport license).

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While there should be a core component of contribution that everyone contributes to, there should also be a recognition that high risk and very large sports have a much greater cost for administration than small lower risk sports.

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**Q.43 What are the most pressing questions or concerns that your organization has right now as it relates to implementation of the UCCMS?**

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Responses (Organized by Theme Areas)

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**A. Cost, Resources, Capacity to Implement**

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Controlling costs for subject organization.

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Cost - how will this impact everyone's bottom line at a time when financial resources are already scarce?

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The vast majority of PTSOs do NOT have the resources (financial, human, time, etc.) to properly address accusations of maltreatment within their sport context. They are mostly volunteer-based or may have one staff member in an Executive Director role. They cannot deal with these things internally (lack of expertise, conflict of interest and confidentiality issues within a small organization) and they cannot afford to turn to an external third-party. We would gladly pay a small fee if it means this could be taken off our hands and dealt with through a professional body.

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Expectation from Sport Canada are unclear at this point. Cost of operating a UCCMS are way above our capacity.

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How can we create a UCCMS that can actually be implemented across all jurisdictions without creating another heavy structure that we (collectively) don't have the capacity to support?

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How will this be paid for? Have a financial feasibility study based on the business model been conducted to determine whether this is viable and can be funded accordingly, for the long term?

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Concerns over US model regarding issues with capacity.

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It is a very big task for a small NSO to take on! We do not have the expertise, nor the Human resources to do so! Please HELP.

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Most pressing concern is the requirement to update all of our processes and policies to integrate/refer to the UCCMS by March 2021 when it is still not in a final state and administration is still an unknown.

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How will we handle related costs?

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How will we staff the process? Highly trained individuals are needed even to triage the cases.

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No immediate concerns other than the cost of these efforts to an NSO that has limited funding and resources. Without Sport Canada support, the SFC would not have been able to comply with mandated requirements and/or deadlines.

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Our capacity to implement: HR capacity, system capacity (implementing with all registered participants) and financial capacity.

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What kind of funding will be attached to this at all levels? All sporting organizations are already very stretched for funding, to make this work, will there be any additional resources?

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What is the impact going to be on running safe sport activities in very small communities in northern Canada?

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Will there be sufficient capacity to support the volume of activity - the SDRCC list of MED/ARB and Investigators is already close to capacity. We need a system that support the efficient resolution of complaints - at the moment it can take years to see complaints heard/resolved.

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## B. Alignment of System & Jurisdiction

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Must eventually be integrated nationally, provincially/territorially and locally.

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What is the linkage between the PSO and NSO when it comes to UCCMS, and who is responsible for what elements that contribute to it?

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Alignment with whatever is happening at the provincial level That delivery is consistent across all sport partners and participants.

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Alignment of policies across the province and national system and ensuring all policies contain the same language and process.

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Our biggest issue in the past has been complaints are not received at the PTSO level. They are sent to every level above us. In some cases, we are not involved at all and aren't even told when complaints are received or the matter has been investigated and/or concluded. We are quick to act on any complaint received, but this is obviously an issue if we aren't involved in the process.

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There needs to be a clear pathway or direction between the jurisdictions. (i.e. mandatory reporting from PSO to NSO). Also, a defined structure as to who's paying into this so there isn't 58 different models depending on the sport.

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This is an opportunity for system alignment and data collection -- Sport Canada must mandate this for all participants if we are going to collect fees from them -- including non-member participants.

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Concerned that sports are self-regulating the implementation of the UCCMS - sports are bringing the UCCMS into their policies before the independent administrative body is established. This creates administrative redundancy in each sport that will need to be re-established under the independent body. It will make it difficult for the independent body to harmonize all sports under one system now that 50 plus sports have been told to administer the UCCMS in their sport organization.

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What is encouraged role of a PTSO? Note what is law, what is recommended, what is best practice Would be useful to have strategies / resources to present at the PTSO board level to garner group support and subsequent compliance.

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Where does UCCMS overlap and/or how it differs from policies on Harassment, Abuse and Discrimination prevention?

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Alignment and the fact that each NSOs is trying to reinvent the wheel each one of their side.

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How is UCCMS integrated with provincial work safe BC standards around harassment and abuse? Does the UCCMS cover work safe standards. What are the provincial jurisdictions for third party reporting? Can we use one third party reporting hub in the province for all complaints?

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How to align all of our policies to ensure no duplication/contradictions. Lawyers will be the biggest benefactors of misaligned policies. A national template resource is needed so every organization is not independently developing their own policies.

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Integrating it into our existing policies that we just updated and now need to update again. Will need to get legal expertise to ensure we are integrating properly. Seems all NSOs are now dealing with this and such an inefficient way to do this as we are all doing the same thing and everyone is paying to have it done. Not efficient at all.

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The need to clarify the jurisdictional issues and differences that exist between NSO and PTSO (AND jurisdictional issues with schools and universities).

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Regarding complaint management and abuse prevention, to our accountability as a PSO is to our NSO, our provincial government (that has specific funding requirements), to our insurance company (as it pertains to abuse coverage), and to our membership. All of these groups have varied priorities - some of which align (in detail) with the UCCMS, and some that do not. In general, all stakeholders and organizations support more action to prevent the maltreatment of individuals in our community. Alignment in managing our relationships with all of these stakeholders when implementing the UCCMS is the more pressing concern when implementing the UCCMS. The next greatest concern is the cost to implement the UCCMS.

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Sport as a whole need to move this across the finish line and be able to demonstrate the protections to ensure an environment our athletes deserve. Alignment, collaboration and leadership through accountability is the path to this goal.

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### C. Compliance and Enforcement

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The applicability & enforce-ability at the PTSO & Community/Club level. 2- Oversight of the UCCMS at a National level.

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How to ensure our clubs are compliant and how we educate the entire membership of a process. Fear is, even if there is an aligned system, people will still report to clubs and the PTSO, NSO will not know.

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As an MSO whose mandate indirectly supports sport participation through national campaigns and initiatives, and in the absence of working with athletes, coaches etc. - how can we best comply with UCCMS in a way that makes sense for our organization. 3) Will there be support or education for organizations to understand how best to administer UCCMS?

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Concerns about compliance / conflict with privacy laws when considering reporting and tracking of incidents of maltreatment the cost of implementation at an NSO level.

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#### D. Education

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Education of staff, athletes, BoD around UCCMS and policies.

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What is the best way to continue to educate members on the UCCMS and its content and how regularly (annually, or once every 3 years etc.?). There are great resources out there, in particular the CAC Learning module which relates directly the UCCMS, but it is a long module for athletes in particular to go through. We also always have the discussion around how far through the athlete pathway/LTAD stages we should mandate training of members around the UCCMS and maltreatment training and how to provide our PTSAs with the resources they need to provide this training in the future. This could well come out when decisions are made around to what levels (e.g. PSOs/Clubs) the UCCMS should be mandated and how to achieve this.

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Access to educated professionals to support the process and make sure we have the correct steps in place to handle things correctly.

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What role can an administrative body play in providing / supporting preventative measures and education pertaining to how to make sport safer in Canada?

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A simplified "how to" or guideline on implementation, minimum requirements, best practices, training and education would be beneficial.

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How can we make it understandable? Palatable? Easy to follow?

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Implementing a mandatory global policy should come with proper training and resources and be available to volunteers/staff/boards at all levels of sport--not just the NSO, but everyone right down to the groups that operate in public parks and school groups. Provide easy to understand, accessible information so that volunteers don't quit volunteering because of "one more thing". Is there any way to only require one method of training? RIS, Commit to Kids, CAC Safe Sport-- everyone requires something different and it pushing away our volunteers because every time they turn around they are expected to take training in yet "one more thing".

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Inconsistency in education programs across the country, in terms of both content and delivery mechanisms.

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It could be helpful to have access to a central resource repository: tool kits, training materials etc.

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## E. Other

The application of the UCCMS to an MSO with no athletes, coaches, etc. is very confusing. The principles are transferrable, but a lot of the specifics assume a coaching relationship with emphasis on minor athletes.

Once approved, will this become the dominant time-consuming matter that will interfere with the actual function of operating a sport system. I am discounting the importance of this subject but will administrators be preoccupied dealing with investigations and resolutions for a small minority, and taking time away from conducting sport program from the large majority.

A lot of confusion around implementation and with/when it can be shared. We adopted it before we were actually allowed to share it.

Will we be able to personalize things for our own organization and stakeholders? How will this all match with things like employment law and ability to supervise and discipline employees.

Given the nature of our operations, our concerns at this point are less for our organization and more for others. Many NSOs are insisting on keeping their safe sport program "in-house". Maybe if they have a system that works, the money to fund it, and their members trust it, why not let them have it? But a funded sport organization would have to be mandated to accept and recognize the national program as soon as a member does not want to go through that sport's internal process.

How to communicate processes and reporting to our membership.

How will it will be administered? How education, delivery, understanding and accountability are delivered to all participants throughout the pathway of participation. Who is accountable within the organization? How is the organization included as part of the process?

The timelines for implementation especially if we need to pivot to accommodate any changes in NSO/PTSO expectations as a result of a new body to implement the Code.

We just want to be sure that we cover all the UCCMS components within our existing guidelines. A body to audit NSO compliance, in advance of March 31/21, would be of assistance on this.

Who would make up the National independent body? How are members of this body appointed? Relationship between the National independent body and the PTSO and NSO? Who would this National independent body either report to? Who over sees the National Independent body?

### **Q.44 What advice do you have as it relates to administration of the UCCMS that has not been addressed through the previous questions?**

#### Responses

A business model will need to be deployed to nationalize this system. A full evaluation of the business model, budget, HR, Cashflow should be fully evaluated and the viability be determined prior to a launch. I would suspect a 15-20-year plan in plan for viability purposes. The main concern is that the concept is fantastic but to operationalize it is more complicated than it appears.

The body administering it will need to be able to support organizations to interpret and align it to their context.

As eluded to in other parts of the survey, I think some additional time and consideration should be devoted to how the UCCMS relates specifically to MSOs who don't have direct, regular contact with athletes/participants. We certainly want to address maltreatment as it pertains to the

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workplace and as it pertains to our contractors and those we deliver knowledge mobilization services to, however much of the current UCCMS is worded as it pertains to the protection of athletes. We want to ensure as we make adaptations to our policies in accordance with our stakeholders that we're in compliance with the code.

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Consider unique needs of specialized populations. Consider need for employer to properly supervise and work with an employee.

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Consult the PTSO for full input.

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Essential that the independent body be independently constituted in its governance and operational structures.

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It's a large role and administrative process that grows once all stakeholders are held accountable (grassroots to NSO).

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I believe there needs to be a tiered system. Sport-specific or more minor complaints could be dealt with by the sport's own third-party system (or perhaps groups of like sports using the same Safe Sport Officer). Complaints that transcend a sport's rules and procedures and those that are potentially criminal should be dealt with by a national regulatory body. The challenge is determining the severity of each complaint and knowing who has best jurisdiction. Otherwise the number of complaints to be addressed by the National body will be resource-prohibitive. Additionally, the vast majority of our complaints are addressed with education and an apology. These are fairly simple and will clog up the national system unnecessarily if all complaints are directed to the one agency.

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It would be great to have an organization that helped to run this for all sports - we don't really have the capacity or the finances to do it properly.

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It would be interesting if the UCCMS becomes a standard for sport delivery in each province. Hence each province can update provincial child protection legislation to include UCCMS as a standard. Once included in legislation, it may be possible to have a license for sport at various levels which would then regulates standards (i.e. coaching license, club license, rec-sport license).

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Right now, it is a dogmatic code that requires interpretation as the situation presents itself. Much like the legal code. There are many black and white statements in there that will require judicious thinking and reflection and interpretation.

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The system should be "outside" the NSOs structure, and funded independently of the NSOs.

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The triage process is critical for buy in of those organizations who have spent considerable time and effort on their overall complaint programs as maltreatment is only a piece of that program.

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The vast majority of complaints received are relating to minor misconduct of athletes, bullying and harassment between adults in volunteer or employment capacities, and other bullying type issues. The resolution of these issues is extremely time consuming, expensive, and emotional for all of the parties involved. The definitions and process in the UCCMS are focused on severe types of maltreatment (which are very important), but does not address systemic issues related to minor complaint management.

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This has to happen NOW. Sport organizations NEED an external body that can address complaints of maltreatment in sport. I am very concerned that our small PSO is completely unprepared to deal with a serious incident. With just one staff member trying to modernize and align our policies

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on top of the day-to-day administrative work, it's a slow process and I worry we could be caught up in this at any time.

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Willingness of PTSO's to adhere to this. Must be mandated.

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Work in cooperation with provincial and national partners. All associations have a common interest in ensuring sport is safe for all participants, but how we get there together will be a process depending on the complexity of the organization, funding levels and knowledge of volunteers and staff involved in programming.

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## ANNEX C

### CANADIAN AND INTERNATIONAL HEALTH, EDUCATION , LAW ENFORCEMENT AND CHILD PROTECTION MODELS



## ANNEX C

### Canadian and International Health, Education, Law Enforcement and Child Protection Models

#### C.1 Healthcare

Research on the Canadian and international healthcare sectors helped inform recommendations for the NIM. The IRT notes however, that the healthcare sector accepts and encourages complaints in a distinct manner to sport. In particular, the power dynamic between complainants and respondents is of significance. In sport, complaints are often brought forward by athletes against a team personnel. One of the main challenges with these complaints is the power of authority that team personnel have over athletes. Athletes may feel discouraged in complaining due to the possible retaliation a team personnel may take. They may prevent athletes from competing, create a toxic or uncomfortable environment for the athlete or they may escalate the maltreatment actions without oversight. Therefore, the consequences of initiating a complaint could have a serious impact on the complainant.

Conversely, the power dynamic between patients and healthcare professionals does not effect the same type of discouragement. Dispute resolution systems in the healthcare sector are often arranged in a fashion that provide more protection for complainant. Proper healthcare is viewed as a right and patients are encouraged to complain through regulated mechanisms. Healthcare professionals are not able to retaliate against a patient in a manner akin to the sport environment. Healthcare professionals will be disciplined for escalated mistreatment, they cannot completely prevent complainants from receiving care and there is oversight of their actions. Therefore, the following healthcare systems illuminate many features of note for the NIM, but they may not apply or function in the same manner.

##### C.1.1 Canadian Healthcare Sector: The Professional Colleges

Healthcare professions in Canada are self-governed by provincially based professional colleges (the “Colleges”). The following colleges were surveyed as part of the IRT mandate:

- The College of Physicians and Surgeons of Ontario (“CPSO”)<sup>262</sup>
- The College of Physicians and Surgeons of British Columbia (“CPSBC”)<sup>263</sup>
- The College of Physicians and Surgeons of Quebec (“CPSQ”)<sup>264</sup>
- The College of Physicians and Surgeons of Nova Scotia (“CPSNS”)<sup>265</sup>
- The College of Nurses of Ontario (“CNO”)<sup>266</sup>
- The British Columbia College of Nursing Professionals (“BCCNP”)<sup>267</sup> and
- L’Ordre des infirmières et infirmiers du Québec (“OIIQ”)<sup>268</sup>

This section outlines the standard structure and procedures of the Colleges. Individual Colleges are only referenced where they diverge from the standard approach in a way that is of note to the NIM.

The Colleges regulate their respective profession and have jurisdiction over the professional conduct of their members. Their powers are derived from provincial legislation and associated regulations (the “governing legislation”).<sup>269</sup> The governing legislation provides the governance structure, codes of conduct and enforcement mechanisms for the standards of practice. Each College has their own internal complaint intake and resolution system provided for in their governing legislation. The number of complaints received yearly varies considerably across the Colleges, from 257 to 3764 in 2019.<sup>270</sup>

<sup>262</sup> “About” (n.d.) accessed 31 August 2020, online: *CPSO* <<https://www.cpso.on.ca/About>>.

<sup>263</sup> “About us” (n.d.) accessed 31 August 2020, online: *College of Physicians and Surgeons of British Columbia* <<https://www.cpsbc.ca/about-us>>.

<sup>264</sup> “About the Collège” (n.d.) accessed 1 September 2020, online: *Collège des Médecins du Québec* <<http://www.cmq.org/hub/en/a-propos-du-college.aspx>>.

<sup>265</sup> “About Us” (n.d.) accessed 31 August 2020, online: *College of Physicians & Surgeons of Nova Scotia* <<https://cpsns.ns.ca/about-us/>>.

<sup>266</sup> “About the College of Nurses of Ontario” (n.d.) accessed 2 September 2020, online: *College of Nurses of Ontario* <<https://www.cno.org/>>

<sup>267</sup> “About BCCNP” (n.d.) accessed 2 September 2020, online: *British Columbia College of Nursing Professionals* <<https://www.bccnp.ca/bccnp/Pages/Default.aspx>>.

<sup>268</sup> “Qui sommes-nouse?” (n.d.) accessed 2 September 2020, online: *Ordre des infirmières et infirmiers du Québec* <<https://www.oiiq.org/en/l-ordre/qui-sommes-nous->>.

<sup>269</sup> For Ontario Colleges see: *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.; *Medicine Act, 1991*, S.O. 1991, c. 30.; *Nursing Act, 1991*, S.O. 1991, c. 32. For British Columbia Colleges see: *Health Professions Act, 1996* R.S.B.C., c. 183. For Québec Colleges see: *The Professional Code*, C.C.Q. 1973, c. 43.; *Medical Act*, C.C.Q. 1973, c. 46.; *Nurses Act*, C.C.Q. 1973, c. 48. For Nova Scotia Colleges see: *Medical Act*, R.S.N.S. 2011, c.38, s. 1.

<sup>270</sup> “Annual Report 2019” (n.d.) accessed 5 September 2020, online (pdf): *CPSO* <<https://view.joomag.com/annual-report-2019/0540650001597960535?short&>>; “2019-20 Annual Report” (n.d.) accessed 5 September 2020, online (pdf): *College of Physicians of British Columbia* <<https://www.cpsbc.ca/files/pdf/2019-20-Annual-Report.pdf>>; “18-10 Rapport annuel” (n.d.) accessed 5 September 2020, online (pdf): *Collège des Médecins du Québec* <<http://www.cmq.org/publications-pdf/p-4-2019-11-19-fr-rapport-annuel-2018-2019.pdf?t=1598217587139>>; “Annual Report 2019-2020” (n.d.) accessed 5 September 2020, online: *College of Physicians & Surgeons of Nova*

The Colleges are each governed by their own respective board of directors. These boards develop policy and provide strategic oversight. Pursuant to the governing statutes, they are comprised of elected members of the College and members of the public that are appointed by the provincial government. Most of these boards are also accompanied by an executive branch that exercises the powers of the board between board meetings.

### *(i) Funding*

The Colleges are primarily funded through membership fees and fees associated with licensing such as examinations and applications. Other sources of income include revenue from investments and government funding.<sup>271</sup>

### *(ii) Jurisdiction and Enforcement Authority*

The Colleges are the regulatory bodies for their respective professions. In order to practice in the profession, one must be a member of the college in their respective province. As part of registration, members agree to abide by the College's regulations and bylaws. Included in the regulations and bylaws are ethical standards of practice, all of which have implications for maltreatment. The Colleges are statutorily empowered to enforce their bylaws and regulations.

### *(iii) Reporting Structure*

The Colleges require complaints to be filed in recorded form to a complaint intake office or agent (the "registrar"). Most Colleges require complaints to be in writing and some will take other sources of permanent recording such as voice recordings. In addition to the complaint filing system, many of the Colleges also offer a phone service to support complainants in properly filing their complaint and understanding the complaint process.<sup>272</sup>

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Scotia <<https://annualreport.cpsns.ca/our-work/investigating-physician-related-complaints/>>; "2019 Annual Report" (n.d.) accessed 5 September 2020, online (pdf): <[https://www.bccnp.ca/bccnp/Documents/BCCNP\\_Annual\\_Report\\_2019\\_with%20financial%20statements.pdf](https://www.bccnp.ca/bccnp/Documents/BCCNP_Annual_Report_2019_with%20financial%20statements.pdf)>; "Rapport Annuel 2018-2019" (n.d.) accessed 5 September 2020, online (pdf): <<https://www.oiiq.org/documents/20147/237836/oiiq-ra-18-19.pdf>>.

<sup>271</sup> *Supra*, note 9.

<sup>272</sup> The CPSNS, CPSO, CNO and OIIQ offer phone support lines while the other Colleges examined by the IRT do not.

#### *(iv) Unique Features in Complaint Intake*

In Ontario, the CNO files information received from members of the public and members of the College concerning inadequate treatment by a member of the College separately. Information received from a member of the college is considered a “report” and information from a member of the public is considered a “complaint”. Different resolution procedures follow from each.<sup>273</sup>

In BC, the BCCNP recommends that complainants go through a regional “Patient Care Quality Office” before filing a complaint with the college. These offices deal with systemic issues in health care facilities rather than issues with a single healthcare professional.<sup>274</sup>

#### *(v) Resolution Procedures*

Once the complaint is filed and received by the registrar it is typically sent to investigation. Some registrars have their own investigative powers, while others appoint investigators. The investigative body or agent then gathers more information through witness interviews and document review. At this stage the member of the college is given an opportunity to respond to the complaint. The investigator then compiles his or her findings, including the member’s response, and submits a report to the College’s inquiry committee or equivalent. The registrars also have the ability to resolve the dispute through several alternative dispute resolution techniques subject to certain conditions. Notable is an ADR mechanism called an “undertaking” wherein the member agrees to restrict or improve their practice in lieu of going through the full resolution procedure.

The inquiry committee receives the investigator’s report and may investigate further if needed. At this stage most inquiry committees have the ability to order provisional measures when it is in the public interest to do so. Once the inquiry committee is satisfied with the amount of information pertaining to the complaint, they come to a decision. This may include: (i) requiring the member to appear before a panel of the inquiry committee to be cautioned; (ii) advising the member on

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<sup>273</sup> The Honourable Eileen E. Gillese, “Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System” (31 July 2019) accessed 5 September 2020, online (pdf): <[http://longtermcareinquiry.ca/wp-content/uploads/LTCI\\_Final\\_Report\\_Volume2\\_e.pdf](http://longtermcareinquiry.ca/wp-content/uploads/LTCI_Final_Report_Volume2_e.pdf)>.

<sup>274</sup> “Patient Care Quality Office” (n.d.) accessed 5 September 2020, online (pdf): <<http://www.vch.ca/about-us/contact-us/compliments-complaints/patient-care-quality-office>>.

how to improve their practice or conduct; (iii) mandating remedial self-study; (iv) an undertaking; (v) ordering a professional inspection of the member's practice<sup>275</sup>; and (vi) referring the concerns to a disciplinary tribunal.

Decisions made by the inquiry committees are appealable to provincial or college review boards. These boards are statutorily mandated by the governing legislation to hear appeals from the inquiry committees of all the province's professional colleges.

If the issue is referred by the inquiry committee to the disciplinary committee, a formal hearing takes place. The disciplinary committee comes to a decision which may include mandatory remedial education, a reprimand, a fine payable to the provincial government, conditions being placed on the member's practice, suspension of the member's license for a specified period of time or revocation of membership in the College. Decisions by the disciplinary committees are appealable to either the courts, a review board or an external tribunal.

#### *(vi) Unique Features*

In Nova Scotia, the registrar of the CPSNS is granted greater powers than registrars in other provinces.<sup>276</sup> In particular it has the discretionary power to dismiss a complaint as unfounded or to refer it to an investigation committee. Dismissals may be accompanied by advice to the physician on how best to improve their practice or conduct. The ability to dismiss a complaint is normally reserved for a college's inquiry committee. It also has the ability to refer the physician for medical assessment if there are concerns related to that physician's health that would impair his or her ability to practice.

In Québec the board of directors for each professional college elects a "syndic" to oversee the complaint intake and resolution procedure. The syndic is mandated by the *Professional Code* to perform all functions involved in the resolution procedure stated above, up to the formal hearing process. This includes the discretionary ability to dismiss or investigate a complaint. All decisions made by the syndic are appealable to the review committee of that particular college. The syndic may not be a member of the college with whom he or she works.

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<sup>275</sup> This is only available in the CPSQ and CPSBC.

<sup>276</sup> "Complaints & Investigations" (n.d.) accessed 5 September 2020, online: *College of Physicians & Surgeons of Nova Scotia* <<https://cpsns.ns.ca/complaints-investigations/>>.

In Ontario, the CNO employs two steps in their resolution procedure that do not exist in other colleges. First, the CNO responds to complainants in writing to acknowledge the receipt of their complaint and explain the complaint process. They may also ask follow-up questions at this point to aid in the investigation. Second, the CNO must attempt to resolve the issue informally before it may initiate a formal investigation through the inquiry committee.<sup>277</sup>

In BC, the resolution procedure of the CPSBC includes two features not found in other Colleges.<sup>278</sup> First, the member's response to the complaint is sent to the complainant. The complainant is then given an opportunity to respond to the member's statement. Second, the CPSBC employs physicians at the College to summarize all of the information in the complaint, including the statements from both parties and all documentary review and witness statements compiled by the initial investigator. The summary is sent to the inquiry committee.

### *(vii) Professional Standards Compliance*

All of the Colleges surveyed used practice assessment tools. These are mandatory holistic assessments of the member's practice that involve compliance with ethical standards. The method of assessment varies across the Colleges. Methods include peer review, self-assessment, third party assessment and combinations of those three tools. All members are subject to random assessments; however, the OIIQ in Quebec may also target members whose health, ethics or competencies have come into question.<sup>279</sup>

### *(vii) IRT Notes*

The IRT took note of two features found in the complaint resolution mechanisms of the Colleges. First is the use of a complaint intake officer. This provides support for the recommendation that the NIM should include a complaint intake team separate from formal investigators and disciplinary decision makers. Second is the use of undertakings as an instrument for informal

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<sup>277</sup> "Addressing Complaints" (n.d.) accessed 5 September 2020, online (pdf): *College of Nurses of Ontario* <[https://www.cno.org/globalassets/docs/ih/42017\\_resolvingcomplaints.pdf](https://www.cno.org/globalassets/docs/ih/42017_resolvingcomplaints.pdf)>.

<sup>278</sup> "File a Complaint" (n.d.) accessed 5 September 2020, online (pdf): *College of Physicians and Surgeons of British Columbia* <<https://www.cpsbc.ca/for-public/file-complaint>>.

<sup>279</sup> "Processus d'inspection professionnelle" (n.d.) accessed 4 September 2020, online: *Ordre des infirmières et infirmiers du Québec* <<https://www.oiiq.org/en/pratique-professionnelle/inspection-professionnelle/processus>>.

dispute resolution. A similar tool in the NIM would be helpful in conserving the time and resources of the NIM, athletes and implicated sport bodies.

### *(viii) The Gillese Report<sup>280</sup>*

The findings of the Long-Term Care Inquiry, headed by the Honourable Justice Eileen Gillese, were published in 2019. The enquiry concerned Canada's first known healthcare serial killer ("HCSK"), Elizabeth Wettlaufer. In June 2017, Wettlaufer was convicted of 8 counts of first-degree murder, four counts of attempted murder and 2 counts of aggravated assault. The offences were committed between 2007 and 2016 in the course of work as a registered nurse. Wettlaufer intentionally injected her victims with overdoses of insulin. She pled guilty and was sentenced to life in prison with no chance for parole for 25 years.

### *(ix) Justice Gillese's Recommendations*

Justice Gillese found several failures by the CNO that allowed Wettlaufer to commit offences for nearly a decade. The lack of understanding on the phenomenon of HCSKs in Canada contributed significantly to the problem. At the time, nurses were not educated on the phenomenon and were unable to identify signs that may indicate that a nurse is intentionally harming her patients. Moreover, there was significant evidence that CNO registered nurses did not fully understand their reporting obligations or the relevant information to be reported. In addition to the lack of education on nurse misconduct and reporting obligations, the system itself had gaps that allowed important information to fall through the cracks. The reporting template through the CNO at the time had a character limit and did not allow for all relevant information from the termination report to be included. Based on her findings, Justice Gillese made several recommendations; the following are summations of those relevant to the NIM:

**Recommendation 40:** The CNO must educate its membership and staff on the possibility that a nurse or other healthcare provider might intentionally harm those for whom they provide care. Moreover, this should be delivered as a component of topics such as professional responsibility and patient risk management.

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<sup>280</sup> *Supra*, note 13.

**Recommendation 41:** the CNO should strengthen its intake investigation process by training investigators: (i) on the healthcare serial killer phenomenon and how it should inform their inquiries; (ii) to explain the purpose of their inquiries to those they interview; (iii) to identify and interview, not only the contact person listed in the report, but also other relevant persons at the member’s place of employment; and (iv) to identify, before the interview, the information that the interviewee should review before speaking to the investigator, to ask the interviewee to review that information prior to the interview and to ask the interviewee to have the information available to him or her during the interview. The CNO did not review Wettlaufer’s full personnel file at Caressant Care at the time it investigated the termination report that led to her eventual criminal conviction. Doing so would have triggered further investigation and expedited the process in uncovering Wettlaufer’s crimes.

**Recommendation 44:** The CNO should regularly review its approved nursing programs to ensure that they include adequate education and training on nursing care for an aging population and the possibility that a healthcare provider might intentionally harm those for whom they provide care.

### *(x) Hospital Complaint Bodies*

The IRT examined the Ontario Patient’s Ombudsman and the British Columbia Patient Quality Care Offices. These agencies do not deal with individual instances of misconduct, but rather manage complaints regarding the general care provided by hospitals. The IRT determined that these procedures are not relevant for inclusion into this report as the UCCMS addresses incidents of maltreatment occurring between Participants.

### *C.1.2 Healthcare in Norway*

The Norwegian Government is responsible for providing healthcare to its population. The Ministry of Health and Care Services, led by the Minister of Health, has authority over the healthcare administration system, the municipalities and the four regional healthcare authorities (“RHAs”).<sup>281</sup> The Central Government sets the overall annual health budget and the healthcare system is

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<sup>281</sup> Anne Lindahl, “International Profiles of Health Care Systems – The Norwegian Health Care System” (Last Accessed: 09 04 2020) online: <[https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_2017\\_may\\_mossialos\\_intl\\_profiles\\_v5.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2017_may_mossialos_intl_profiles_v5.pdf)>.



publicly financed through national and municipal taxes. The municipalities and the RHAs are responsible for adhering to their respective budgets.

Each municipality is responsible for providing primary health and social care in accordance with the legislative and quality requirements set by the Directorate for Health, who is directly subordinate to the Ministry. A majority of the population (99.6%) registers with one general practitioner (GP). Municipalities contract with individual GPs, who are financed through the municipalities (35%), fee-for-service from the Norwegian Health Economics Administration (35%), and out-of-pocket payments from patients (30%).

The RHA's are owned by the Ministry of Health, who guides the RHAs aims and priorities.<sup>282</sup> The RHAs are responsible for the supervision of specialist care and for distributing public funding to public hospitals. The RHAs have discretion over how funds are distributed but generally adhere to the same model.

### Complaints System

Complaints regarding healthcare services and/or personnel must first be addressed to the healthcare service provider.<sup>283</sup> If the healthcare service disagrees with the complaint or refuses to change their position on the matter, complaints are referred to the County Governor.<sup>284</sup> The County Governor is *“the state's representative in local counties and is responsible for monitoring the decisions, objectives and guidelines set out by the Storting (Norwegian Parliament) and government.”*<sup>285</sup> Approximately 3000-4000 cases are investigated annually by the County Governors' Office to determine whether there has been a breach of acts or regulations. Any decision made by the county governor is final and must be adhered to by all parties, except in cases where the Norwegian Board of Health becomes aware that the County Governor's decision was incorrect.

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<sup>282</sup> Ministry of Health and Care Services, “The Department of Hospital Ownership” (Last Accessed: 09 04 2020) online: <<https://www.regjeringen.no/en/dep/hod/organisation-and-management-of-the-ministry-of-health-and-care-services/Departments/the-department-of-hospital-ownership/id1413/>>.

<sup>283</sup> The Norwegian Board of Health Supervision, (Last Accessed: 09 04 2020) online <<https://www.helsetilsynet.no/rettigheter-klagemuligheter/helse--og-omsorgstjenester/kan-jeg-klage-og-hvordan/hvor-skal-en-klage-sendes-og-hva-skal-vaere-med-i-en-klage/>>.

<sup>284</sup> County Governor, “Health Services” (Last Accessed: 09 04 2020) online: <<https://www.fylkesmannen.no/en/Health-care-and-social-services/Health-services/>>.

<sup>285</sup> County Governor, (Last Accessed: 09 04 2020) online: <<https://www.fylkesmannen.no/en/About-us/>>.

The Norwegian Board of Health (Board) is a national public institution subordinate to the Ministry of Health and Care Services.<sup>286</sup> The Board, along with the County Governors, are responsible for overseeing the primary and specialist health services. The Board has the power to overturn incorrect decisions made by the County Governor. However, complainants do not have a right to appeal decisions made by County Governors to the Board, except where the County Governor has refused to process the complaint. Under the *Health Personnel Act*<sup>287</sup>, the Board has the power to revoke authorization, licenses, or the right to requisition certain medicines.

The specialist health services have a duty to notify the Board of incidents causing death or very serious injuries. The Department for Operational Health Supervision within the Board receives these notifications. The Board then contacts those affected by the event within a couple days. All reports are investigated to determine if there are any serious deficiencies in patient care. The Board works with the County Governor responsible for the region where the incident took place and determines if further supervisory activity is necessary. This can include on-site inspections and discussions with the personnel involved in the incident. From 2010-2018, the Board received 3636 reports concerning adverse medical events, and has carried out 117 on-site inspections.

### *IRT Notes*

To ensure compliance with legislation and regulations, the Board conducts regular system audits of organizations that provide child welfare and health and social services. These audits include a review of documents, carrying out interviews, reviewing the organization itself, and carrying out sample tests. A report is compiled of all the conditions or factors that are not in accordance with laws and regulations.

The Board will follow up with the organization until all the identified requirements are met. Each year the Board selects 2-3 areas that will be subject to auditing. Approximately 200-400 audits are conducted each year. The Board's auditing function as a method of ensuring compliance with policy requirements is an important feature for consideration in regard to the possible ways in which the NIB can ensure sport organizations are meeting their obligations under the UCCMS.

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<sup>286</sup> Norwegian Board of Health Supervision, "Introduction to the supervisory authorities and the supervision of child welfare services, social services and health and care services in Norway" (Last Accessed: 09 04 2020) online: <<https://www.helsetilsynet.no/en/introduction-to-the-supervisory-authorities-and-the-supervision-of-child-welfare-services-social-services-and-health-and-care-services-in-norway/>>.

<sup>287</sup> 1999 No. 64.

### C.1.3 Healthcare in Sweden

Each level of government in Sweden plays a role in the administration of healthcare services. At the national level, the Ministry of Health and Social Affairs is responsible for overall health and healthcare policy. At the regional level there are 12 county councils and nine regional bodies that are responsible for financing and delivering health services to the population. There is a total of 290 municipalities that are responsible for the care of the elderly and persons with disabilities. The county councils and the municipalities are funded primarily through income taxes levied on their populations. Additional government funding is issued via grants based on need.<sup>288</sup>

The supervision of health care, social services, and support and services for those with disabilities is the responsibility of the Health and Social Care Inspectorate (“Inspectorate”). The Inspectorate is a government agency under the Ministry of Health and Social Affairs. It has a staff of approximately 700 individuals located at two agency-wide divisions and six regional offices. It is funded through government appropriations (annual budget is approximately SEK 690 million).

#### Complaints System

Complaints regarding healthcare services must first be made to the healthcare staff who provided the service. If the response is unsatisfactory, the complaint may be made to the head of the unit. Once the internal complaint procedures have been exhausted, complaints can be addressed to the Inspectorate. The Inspectorate has regional offices who are responsible for the supervision of services in healthcare and social services, the supervision of licensed professionals, and hearing complaints by individuals about health care and social services. The regional offices will conduct an investigation into the complaint and submit written decisions to the parties. Under the *Patient Safety Act* (ss. 20A-30), the Inspectorate has the authority to impose injunctions, fines, and/or revoke medical licenses.

Each region also has its own Patient Board/Advisory Committee that aids the complainant in the complaint process. The Patient Boards’ main roles include listening to and investigating the

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<sup>288</sup>Anna Glenngard, “International Profiles of Health Care Systems – The Swedish Health Care System” (Last Accessed: 09 04 2020) online:  
<[https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_2017\\_may\\_mossialos\\_intl\\_profiles\\_v5.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2017_may_mossialos_intl_profiles_v5.pdf)>.

complaint, facilitating the relationship between the patient and the respondent, providing information to the complainant on their rights and the services available, and compiling information and sending it to healthcare services.<sup>289</sup> However, the Patient Advisory Boards cannot order damages or disciplinary measures. Complaints do not have to be sent to the Patient Advisory Boards within a certain timeframe. Once a complaint is submitted, the complainant receives confirmation with information about who is handling their case. With the complainant's consent the Board will contact the healthcare provider to get their position on the issue. Their response is then sent to the complainant. The Patient Advisory Boards do not make their own medical assessments or decisions regarding whether the care provider was right or wrong.

### *IRT Notes*

Under the *Patient Safety Act* (s. 19) the Inspectorate has the authority to self-initiate investigations into healthcare providers suspected of breaching laws or regulations. Those involved with the investigation must be given the opportunity to submit an opinion relating to the alleged violation(s). Similarly, before the case is decided the subject of the investigation must be given the opportunity to comment unless it is "clearly unnecessary." However, the patient with whom the investigation relates does not need to be contacted unless there is a reason. This model provides support for an independent body like the NIM having the ability to self-initiate investigations, and the notification requirements that accompany this ability are important considerations.

#### C.1.4 Healthcare in the United Kingdom

The Department of Health and the Secretary of State for Health are responsible for the National Health Service ("NHS") which is the overall healthcare system in the UK.<sup>290</sup> A majority of funding for the NHS comes from general taxation, with a smaller portion coming from national insurance. The NHS budget is set at the national level (approximately 80 billion pounds) which is controlled by NHS England pursuant to the *Health and Social Care Act*.<sup>291</sup> The administration of the healthcare system in each of the four countries that make up the UK varies slightly.

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<sup>289</sup> The Health and Social Care Inspectorate, "About the Patient Board" (Last Accessed: 09 04 2020) online: <<https://www.ivo.se/for-privatpersoner/om-patientnamnden/>>.

<sup>290</sup> Ruth Thorlby & Sandeepa Arora, "International Profiles of Health Care Systems – The English Health Care System" (Last Accessed: 09 04 2020) online: <[https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_2017\\_may\\_mossialos\\_intl\\_profiles\\_v5.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2017_may_mossialos_intl_profiles_v5.pdf)>.

<sup>291</sup> 2012 c.7.

The NHS provides healthcare services through NHS trusts (a legal entity to provide goods and services for the purposes of health services), foundation trusts (including mental health and ambulance trusts), as well as charities and local enterprises. Publicly owned hospitals in England are organized as either NHS trusts or foundation trusts. All general practitioners in England are part of a clinical commissioning group (“CCG”) which is responsible for planning and commissioning healthcare services. NHS England is responsible for overseeing CCGs, and are also responsible commissioning dental services, pharmacy, and some optical services.<sup>292</sup>

The three devolved administrations, Scotland, Northern Ireland, and Wales, receive block grants from the UK Government which is then distributed to their respective healthcare service departments. Health services in Wales are delivered through seven health boards and three NHS trusts, each of which are responsible for delivering services within a particular geographical area. In Scotland, there are 14 NHS Boards which are responsible planning and commissioning hospital and community health services including services provided by GPs, dentists, and others.<sup>293</sup> The Department of Health, Social Services and Public Safety (DHSSPS) for Northern Ireland has the overall responsibility for providing health and social care services in Northern Ireland. The Health and Social Care Board works under the DHSSPS and is responsible for commissioning healthcare services, resource management, performance management, and service improvement.

## *Complaints System*

### England

Complainants are first encouraged to solve the issue informally by speaking with their healthcare provider. If the outcome is unsatisfactory, the NHS complaints procedure can be used.<sup>294</sup> Complaints are then addressed to either the body that provides the service or the body responsible for commissioning the service. However, if the complaint is about a service commissioned by a clinical commissioning group (“CCG”) and it is first directed to the service provider. The complainant cannot then complain to the CCG about the same issue. Complaints

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<sup>292</sup> National Health Service, “UK Health Systems” (Last Accessed: 09 04 2020) online: <<https://www.healthcareers.nhs.uk/working-health/uk-health-systems>>.

<sup>293</sup> NHS Scotland, “How it Works” (Last Accessed: 04 09 2020) online: <<http://www.ournhsscotland.com/our-nhs/nhsscotland-how-it-works>>.

<sup>294</sup> Citizens Advice, “NHS and Social Care Complaints” (Last Accessed: 09 04 2020) online: <<https://www.citizensadvice.org.uk/health/nhs-and-social-care-complaints/>>.

would then be forward to the Parliamentary and Health Service Ombudsman whose procedure is described below. General practitioner service complaints are sent to NHS England.

For complaints regarding dentists, complainants can use the specific dentist's complaints procedure, NHS England's complaint procedure, the Care Quality Commission, or the General Dental Council (dental regulatory body). Complaints regarding hospitals can be addressed to NHS England, the regulatory body ("GMC"), or the local clinical commissioning group ("CCG"). Complaints under the NHS England Complaints Policy must be made within 12 months of incident or when complainant was made aware of incident. Complaints will be acknowledged within three days. The Case Officer will "*capture relevant information*"<sup>295</sup> during their investigation into the complaint, and, upon completion of the investigation, will issue a response to the complainant regarding actions that will be taken to solve the issue, if any.

### Scotland

Complainants in Scotland are encouraged to address their complaints to the healthcare service provider, however complainants have the option of using the NHS complaints procedure for complaints regarding any service provided or funded by the NHS. A majority of the 14 Boards have their own complaints procedure but they are quite similar.<sup>296</sup> The first stage of the complaints process is termed "local resolution" and involves the NHS Board attempting to solve the problem within five working days. If the outcome at the first stage is unsatisfactory, or the issue is complex and requires immediate investigation, the process moves to stage two: "investigation." The complaint at this stage will be acknowledged within three working days and a decision is made typically within 20 working days unless more time is needed for the investigation. The following illustrates the typical complaints process in Scotland.

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<sup>295</sup> NHS England, "Complaints Policy" (Last Accessed: 09 04 2020) online: <<https://www.england.nhs.uk/wp-content/uploads/2016/07/nhse-complaints-policy-june-2017.pdf>>.

<sup>296</sup> See for example: NHS Borders, "Complaints Procedure" (Last Accessed: 09 04 2020) online: <<http://www.nhsborders.scot.nhs.uk/feedback-and-complaints/complaints-procedure/>>; NHS Highland, "Making a Complaint" (Last Accessed: 09 04 2020) online: <<https://www.nhshighland.scot.nhs.uk/Feedback/Pages/ComplaintsProcedure.aspx>>; NHS Dumfries & Galloway, "The NHS Dumfries and Galloway Public Facing Complaints Handling Procedure" (Last Accessed: 09 04 2020) online: <<https://www.nhsdg.co.uk/wp-content/uploads/2020/06/NHS-Dumfries-and-Galloway-Public-Facing-Complaints-Handling-Procedure-1.pdf>>.



Similar to Scotland, complaints in Wales should first be addressed to the healthcare service provider involved in the incident.<sup>297</sup> However, if the complainant is uncomfortable speaking with the service provider, each local Health Board and NHS Wales Trusts has their own complaints procedure. These procedures vary slightly between each Board/Trust but typically involve an investigation by the Board/Trust into the incident with a decision provided to the complainant within a set period of time (e.g., 30 working days).<sup>298</sup> The Public Services Ombudsman for Wales can be contacted if complainants remain dissatisfied. They will produce a final report, recommendations for the organization and will follow-up to ensure these are implemented.<sup>299</sup>

### Northern Ireland

The complaints process in Northern Ireland is similar to the other countries above. It begins by informing the healthcare service provider of the issue and allowing them to attempt to resolve it. The complainant can then contact the Complaints Manager at their local health and social care Trust, who will attempt to resolve the issue within 10-20 days depending on the nature of the complaint. For complaints regarding family practitioner services, the Health and Social Care Board's complaints manager can be contacted for help in making the complaint. In addition, the Patient and Client Council also offers free support service for those with questions about making complaints.<sup>300</sup>

### Parliamentary Ombudsman Reporting Process (NHS England)

The Parliamentary Ombudsman is unlikely to carry out a review unless all local-level options have been exhausted. The request for a review should be made within 12 months. The powers of the Parliamentary Ombudsman include asking the organization to issue an apology, a "Call" for changes to prevent the same issue from arising again, a review of the organizations policies and procedures and reimbursement of the complainant for services paid for out of pocket

Within 5 days, the Parliamentary Ombudsman will inform the complainant of who their contact person is. The first step involves looking into the organization and ensuring the complainant has used their complaint procedure first. The second step involves deciding whether they will

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<sup>297</sup> NHS Wales (Last Accessed: 09 04 2020) online: <<http://www.wales.nhs.uk>>.

<sup>298</sup> Welsh Ambulance Services, "Putting Things Right" (Last Accessed: 09 04 2020) online: <<https://www.ambulance.wales.nhs.uk/Default.aspx?pageId=20&lan=en>>.

<sup>299</sup> Public Services Ombudsman For Wales, "What We Do When We Get Your Complaint About a Public Body in Wales" (Last Accessed: 09 04 2020) online: < <https://www.ombudsman.wales/fact-sheets/complaints-against-public-bodies-our-procedure/>>.

<sup>300</sup> NI Direct Government Services, "Raising a Concern or Making a Complaint About Health Services" (Last Accessed: 09 04 2020) online: <<https://www.nidirect.gov.uk/articles/raising-concern-or-making-complaint-about-health-services#:~:text=If%20you%20are%20not%20happy,whether%20they%20should%20investigate%20it.>>>.



investigate the complaint (response typically given to complainant within 20 days). The third step involves the collection and evaluation of evidence and communicating the final decision to all parties involved in the complaint.<sup>301</sup>

#### Additional Roles in the NHS England Framework

The NHS England Safeguarding Policy and the Safeguarding Accountability and Assurance Framework outlines the roles and responsibilities of the various individuals and organizations in the NHS in England.<sup>302</sup>

According to the Safeguarding Policy, there is senior clinical leadership at all levels of NHS England. The national leadership team includes the Chief Nursing Officer (“CNO”) who is responsible to the Ministers and the NHS England’s Board for ensuring that NHS England is meeting their statutory requirements. Each NHS England region also has a Regional Chief Nurse (“RCN”) whose role includes ensuring that adequate safeguard mechanisms are in place in the region, ensuring that staff in the region are properly trained on safeguarding role, disseminating national policy on behalf of the NHS, and other similar responsibilities. The Head of Safeguarding works with the RCNs to ensure safeguarding leadership is present at every level of NHS England. The RCNs and the Head of Safeguarding produce an annual report to provide assurance to the National Safeguarding Steering Group (joint committee that feeds into the NHS Board) that all requirements are being met in each region. Safeguarding legislation for adults and children impose different responsibilities on local authorities. However, both have similar requirements involving having a board or panel in each region to ensure safeguarding of the particular group.

The Safeguarding Accountability and Assurance Framework notes that health and care providers are required under statute and regulation to have effective arrangements in place to safeguard and promote the welfare of children and adults at risk of harm and abuse in every service that they deliver. These include identifying a nurse and a doctor for safeguarding children and for adults, mechanisms for dealing with allegations against staff, mandatory safeguarding training in induction programs, the development of an organisational culture where all staff are aware of their personal responsibilities for safeguarding and information sharing.

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<sup>301</sup> Parliamentary and Health Services Ombudsman, “How We Deal With Complaints” (Last Accessed: 09 04 2020) online: <<https://www.ombudsman.org.uk/making-complaint/how-we-deal-complaints>>.

<sup>302</sup> NHS England, “Safeguarding Policy” (Last Accessed: 09 04 2020) online: < <https://www.england.nhs.uk/wp-content/uploads/2019/09/safeguarding-policy.pdf>>; NHS England, “Safeguarding Children, Young People and Adults at Risk in the NHS: Safeguarding Accountability and Assurance Framework” (Last Accessed: 09 04 2020) online: < <https://www.england.nhs.uk/wp-content/uploads/2015/07/safeguarding-children-young-people-adults-at-risk-saaf-1.pdf>>.

The CCGs are responsible in law for safeguarding in the services they provide. Safeguarding forms part of the NHS Standard Contract and CCGs can negotiate with local providers to determine how they will show compliance with the standards. Additional supervision is provided by the professional regulatory bodies and by the Care Quality Commission.

The *Local Authority Social Services and National Health Service Complaints (England) Regulations* sets the requirements for all “responsible bodies” – local authorities, NHS bodies, primary care provider or independent providers – in regard to complaint mechanisms. It includes the procedure before investigation, a brief outline of the investigative process, and information on record keeping.<sup>303</sup>

NHS England has also established safeguarding peer-groups and forums, with access to an online community of practice to support system leaders. It is similar to the “Sport Integrity Forum” proposed in the UKAD research study. The goal of the groups and forums is to share good practices, underpin system accountability, lessons from serious incidents, and ensure proper education.

### **IRT Notes**

The NHS England model does not allow a complainant to take their complaint to the CCG if they are disappointed with the outcome from the service provider. This caveat prevents complainant’s from “venue shopping” and backlogging the system with complaints that have already been dealt with. Another takeaway from the UK is the clear and relatively quick timeframes at each step in the complaints process in Scotland. This ensures a level of predictability for the parties involved in the dispute and helps to prevent the resolution process from taking an unnecessary amount of time.

### **C.1.5 Healthcare in Germany**

There is a devolution of power from the federal government to the chamber of physicians (the “Chambers”) for each Lander (German regional governments) in the regulation of the medical profession in Germany. The Federal Ministry of Health develops guidelines for the Landers and Chambers to follow. An example of such a guideline is the Law to improve the rights of patients. This is a human right’s code for patients that the Chambers may follow in developing their codes

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<sup>303</sup> 2009 No. 309.

of conduct.<sup>304</sup> The Joint Federal Committee controls the statutory medical insurance scheme and health care quality insurance, while the Lander supervise the health professions and health institutions such as hospitals. The Chambers within each Lander are charged with the immediate regulation of physicians in their jurisdiction. The Chambers are supervised by the German Medical Association, which provides guidance on how to best meet expected national standards of professionalism, conduct and care. This section outlines the complaint intake and resolution mechanism of the Berlin Chamber of Physicians as a representation of the systems existing in each Lander.<sup>305</sup>

## Complaints System

### Complaint Intake at the Berlin Chamber of Physicians

The Berlin Chamber of Physicians (“BCP”) accepts complaints in writing by post or electronically with a qualified electronic signature.<sup>306</sup> They also offer a standardized complaint form to facilitate complaint intake. The BCP website offers guidance on when to file a formal complaint. The Independent Patient Advice Service Germany offers a support phone line to assist complainants in navigating the Chambers complaint services.<sup>307</sup>

### *Complaint Resolution at the Berlin Chamber of Physicians*

Upon receipt of a complaint, the BCP assesses whether the complaint involves an allegation of a violation of medical professional obligations. If it does, the BCP initiates an investigation. During the investigation, responses are solicited from the parties involved. If results of the investigation evidence a “low-level” violation of professional law, the BCP can issue a sanction including mandatory training and/or a fine of up to 10,000 euros. If a serious breach is found, the BCP can request the German Medical Association to initiate a professional judicial process. The proceedings are then brought to the Administrative Court in Berlin. The Administrative Court may issue several penalties including fines of up to €100,000, mandatory training, a removal of voting rights and a removal of a physician’s license to practice.

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<sup>304</sup> Gesetz zur Verbesserung der Rechte von Patientinnen und Patienten, Bundesgesetzblatt [BGBl] I at 277.

<sup>305</sup> “Health care in Germany: the German Health Care System” (8 February 2018) accessed 6 September 2020, online: *NCBI* < <https://www.ncbi.nlm.nih.gov/books/NBK298834/>>; “Health Care Systems in Transition: Germany” (2000) accessed 6 September 2020, online (pdf): *European Observatory on Health Care Systems* < [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0010/80776/E68952.pdf](https://www.euro.who.int/__data/assets/pdf_file/0010/80776/E68952.pdf)>.

<sup>306</sup> “Medical treatment – your right” (n.d.) accessed 5 September 2020, online: *aerztekammer-berlin* < [https://www.aerztekammer-berlin.de/30buerger/10\\_Aerztliche\\_Behandlung\\_gutes\\_Recht/index.html](https://www.aerztekammer-berlin.de/30buerger/10_Aerztliche_Behandlung_gutes_Recht/index.html)>.

<sup>307</sup> “Patient advice” (n.d.) accessed 5 September 2020, online: *Die Beauftragte der Bundesregierung für die Belange der Patientinnen und Patienten* < <https://www.patientenbeauftragte.de/patientenberatung-2/>>.

### *Other Features*

The German Medical Association initiates and organizes the annual German Medical Assembly. This is a meeting of the Chambers involving approximately 250 delegates. The delegates discuss and adopt cross-state professional regulations and share best practices.<sup>308</sup>

Patients may also apply to the Administrative Courts for rights infringements under the Law to improve the rights of patients. Decisions of the Administrative Courts may be appealed to higher courts.<sup>309</sup>

### C.1.6 Healthcare in the Netherlands

The Netherlands has a primary healthcare system where patients receive the majority of their medical care through family physicians. The national government is responsible for setting health care priorities, enacting legislation and monitoring access to healthcare in the country. Municipalities are responsible for most outpatient long-term services and youth care.<sup>310</sup>

### *Complaints System*

The *Healthcare Quality, Complaints and Disputes Act*,<sup>311</sup> requires every health care provider to have a complaints officer available to patients, a complaints mechanism and procedure and to be affiliated with a recognized dispute resolution body. These functions work together to provide

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<sup>308</sup> “Germany Medical Assembly” (n.d.) accessed 5 September 2020, online: *Bunderz Arztekammer* <<https://www.bundesaerztekammer.de/weitere-sprachen/english/german-medical-assembly/>>.

<sup>309</sup> “Structure of the Administrative Jurisdiction” (n.d.) accessed 5 September 2020, online: *Federal Administrative Court* <<https://www.bverwg.de/en/rechtsprechung/verwaltungsgerichtsbarkeit/aufbau-der-verwaltungsgerichtsbarkeit>>.

<sup>310</sup> The Commonwealth Fund, “*International Profiles of Health Care Systems*” online: <[https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_2017\\_may\\_mossialos\\_intl\\_profiles\\_v5.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2017_may_mossialos_intl_profiles_v5.pdf)> (last accessed Aug 15 2020).

<sup>311</sup> Government of the Netherlands, “*Healthcare Quality, Complaints and Disputes Act (WKKGZ)*” online: <<https://www.government.nl/topics/quality-of-healthcare/healthcare-quality-complaints-and-disputes-act-wkkgz>> (last accessed Aug 15 2020).

patients the opportunity to dispute medical mistreatment without going through the formal legal system.

### Complaints Officer

All care providers are required to employ a complaints officer that is free of charge for patients to access. The officer can inform the complainant about submitting a formal complaint and can attempt to mediate the emerging dispute. If contact with the complaints officer fails to resolve the complaint, the complainant may ask for a formal evaluation. An evaluation is an official written response from the care provider to the alleged complaint. The evaluation is completed through either the care provider, the complaints officer, a complaints committee or the Board of Directors. A complainant may disagree with the decision or the position of the care provider and can then take a variety of steps. They may submit a complaint to the affiliated independent dispute resolution body, report to the Dutch Health and Youth Care Inspectorate, submit a complaint to the Disciplinary Tribunal for Healthcare and/or submit a complaint to the civil court system.<sup>312</sup>

### Independent Dispute Resolution Body

Every healthcare provider must be partnered with a Minister approved dispute resolution body that adjudicates complaints in an independent manner.<sup>313</sup> Healthcare providers may decide to use a dispute resolution agency who is pre-approved by the Minister or they may submit an agency for approval. For example, the Netherlands Institute for the Promotion of Integrated Health Care (the “NIBIG”) handles and addresses complaints that have not been resolved by the complaints officer at the organisation. The independent complaints process is usually free of charge to the complainant, however there is an administrative court fee. The fee is €50 when submitting a complaint without claim for compensation and €100 when submitting the dispute with a claim for compensation. The patient is able to ask the NIBIG to reduce the court fee if necessary. The fee is not refunded to the patient regardless of the decision. Moreover, the healthcare provider is required to pay handling fees of €500 for a written decision by the chairman without session, €1400 for a decision by the chairman of the NIBIG Committee and €2200 for a decision by the full NIBIG Committee. The care provider is usually able to recover the costs of handling the complaint

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<sup>312</sup> Government of the Netherlands, “*National Healthcare Report Centre*” online: <<https://english.igj.nl/documents/publication/2018/03/20/national-healthcare-report-centre---lmz>> (last accessed Aug 15 2020).

<sup>313</sup> Government of the Netherlands, “*What do I have to arrange as a healthcare provider to comply with the Healthcare Quality, Complaints and Disputes Act (Wkkgz)?*” online: <<https://www.rijksoverheid.nl/onderwerpen/kwaliteit-van-de-zorg/vraag-en-antwoord/voorschriften-zorgaanbieders-wet-kwaliteit-klachten-en-geschillen-zorg>> (last accessed Aug 15 2020).

with professional liability insurance. They can also ask the board of the NIBIG for a contribution towards the cost.<sup>314</sup>

The client submits a complaint to the NIBIG Service Desk which ensures that the complaint is transferred to the NIBIG Healthcare Complaint and Dispute Committee. The Healthcare Complaint and Dispute Committee first assesses the admissibility of the complaint. If it is admissible, the chairperson can make a written statement in response to a simple complaint. In more complex cases, an oral hearing is given by the Committee, during which the client and the accused healthcare provider are heard.<sup>315</sup> The NIBIG Disputes Body has the power granted by law to make a binding decision and, if applicable, to award damages to a client of up to €25,000.

### The Dutch Health and Youth Care Inspectorate

The Dutch Health and Youth Care Inspectorate is a government agency that promotes public health through effective enforcement of the quality of health services, prevention measures and medical products. It oversees investigations of incidents by providers of care and/or medical products and performs independent investigations. Based on their investigations, the Inspectorate may decide to take measures against the care provider. Care providers are required to report all forms of violence and any serious employee dismissals to the Dutch Healthcare Inspectorate. The Inspectorate also runs the National Healthcare Report Centre which informs and advises complainants about the different options available to address the quality of care they received.<sup>316</sup>

### Disciplinary Tribunal for Healthcare

The Disciplinary Tribunal for Healthcare applies to care providers with a legally protected title that is registered in the BIG register. This include doctors, dentists, nurses and psychotherapists. The tribunal does not make a judgement about the complaint, but rather assesses whether the care provider has done their due diligence according to the rules of the profession. Potential complaints may involve a doctor making an error during surgery or providing insufficient information about a treatment. The disciplinary tribunal can take measures against the care provider and the decisions of the disciplinary judge are binding.<sup>317</sup>

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<sup>314</sup> NIBIG Disputes Body, “Cost” online: <<https://nibig-geschillencommissie.nl/kosten/>> (last accessed Sept 1 2020).

<sup>315</sup> NIBIG Disputes Body, “To file a complaint” online: <<https://nibig-geschillencommissie.nl/klacht/>> (last accessed Sept 1 2020).

<sup>316</sup> Health and Youth Care Inspectorate Ministry of Health, Welfare and Sport, “Who are we?” online: <<https://english.igj.nl/about-us>> (last accessed Aug 14 2020).

<sup>317</sup> Gaal, S., Hartman, C., Giesen, P., van Weel, C., Verstappen, W., & Wensing, M, “Complaints against family physicians submitted to disciplinary tribunals in the Netherlands: lessons for patient safety” (Nov 9 2011), online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3252193/>>.

## IRT Notes

The IRT notes some features of interest from the Netherlands model. First is the complaint officer's role in early resolution as well as aiding in the submission of a formal complaint. The early resolution officer is able to mediate and negotiate with the care provider before it goes through a formal resolution. Second is the independent dispute resolution body that each healthcare provider must be partnered with to adjudicate formal complaints. Third is the Inspectorate and its role in reviewing the most serious complaints involving violence or serious employee dismissal. Lastly, the IRT takes note of the administrative court fees that patients must pay and the handling fees that healthcare providers must pay for in this model.

### C.1.7 Healthcare in Finland

The Finnish national government defines general health policy guidelines and directs the health care system at the state level. The ministry sets broad development goals, prepares legislation and oversees their implementation and engages in dialogue with political decision-makers. The majority of Finnish healthcare services are organized and provided by the municipal healthcare system as municipalities are legally required to organize adequate health services for their residents.<sup>318</sup>

## Complaints System

If a patient or next of kin is unsatisfied with a patient's medical care or treatment, they can complain to authorities responsible for healthcare supervision in Finland. This procedure is available to all patients in Finland regardless of citizenship. Complaints are encouraged to be resolved by discussion with the health care unit. If this proves unsatisfactory or impossible, a formal complaint process can be initiated. Complaints are handled by municipalities, Regional

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<sup>318</sup> Finnish Medical Association, "Overview of the Healthcare System in Finland" online: <<https://healthmanagement.org/c/imaging/issuearticle/overview-of-the-healthcare-system-in-finland>> (last accessed Aug 15 2020).

State Administrative Agencies, the National Supervisory Authority for Welfare and Health (Valvira), the Parliamentary Ombudsman and the Chancellor of Justice of the Government.<sup>319</sup>

### Objections and Patient Ombudsman

The *Act on the Status and Rights of Patients* requires healthcare providers to provide access to rights that lead to good health and medical care. Section 10 of the Act provides dissatisfied patients with the right to submit a written objection to a healthcare director. The objection is the first step of the formal complaints process. It outlines any allegations of mistreatment during healthcare provision and what the patient expects the healthcare provider to do to correct the situation. This is a legal procedure that binds the executive to clear the matter and respond to the complainant in a reasonable amount of time. Submitting an objection does not restrict the right of a patient to appeal to the authorities controlling healthcare or medical care. After submitting an objection, or during the process, the patient may still be unsatisfied with the discussion and decide to move forward with a formal complaint. Patients file complaints with the regional administration, or in serious cases, with Valvira.

Section 11 of the Act requires healthcare providers to appoint a patient ombudsman who is responsible for advising and assisting patients in submitting an objection, as well as providing guidance on submissions of an appeal or notification of patient injury to a patient insurance centre.<sup>320</sup> The duty of the patient ombudsman is to inform the patient of their rights and advance and promote their interests more generally. They understand the legal status of patients and are familiar with the healthcare system. The ombudsman informs patients about their rights and can give impartial advice to patients, their relatives and healthcare professionals. The ombudsman is not allowed to comment on medical decisions, assess the possibility of patient injury or interpret patient documents.<sup>321</sup>

### Valvira and Regional Administrations

Valvira is the National Supervisor Authority for Welfare and Health in Finland. It guides, monitors and manages the administration of healthcare licenses, alcohol administration, social welfare and environmental health and protection. Valvira is responsible for handling complaints that relate to treatment of a severely and permanently injured patients or a patient who have died after a suspected medical error or medical malpractice. A complainant may submit a complaint to Valvira

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<sup>319</sup> Valvira National Supervisory Authority for Welfare and Health, "*Complaints procedure*" online: <[https://www.valvira.fi/web/en/healthcare/complaints\\_procedure#:~:text=To%20file%20a%20complaint%20on,following%20a%20suspected%20patient%20injury.](https://www.valvira.fi/web/en/healthcare/complaints_procedure#:~:text=To%20file%20a%20complaint%20on,following%20a%20suspected%20patient%20injury.)> (last accessed Aug 15 2020).

<sup>320</sup> *Act on The Status and Rights Of Patients* 1992 (Finland), No. 785/1992.

<sup>321</sup> Helsinki University Hospital, "*Patient ombudsman*" online: <<https://www.hus.fi/en/patients/patients-rights/patient-ombudsman/Pages/default.aspx>> (last accessed: Aug 15 2020).



even if they have already submitted an objection with the health care unit. Usually a complaint will not be processed if the reason for complaint became evident more than two years ago. Regional State Administrative Agencies process all other complaints during or after the submission of an objection.

#### Chancellor of Justice and Parliamentary Ombudsman

The Chancellors of Justice and Parliamentary Ombudsman are Finnish government officials who monitor the legal compliance of authorities, civil servants and public employees; including healthcare providers. The duties and power of the officials are largely the same; however, the Ombudsman has the additional responsibility of investigating complaints for Defense Forces, the Prison service and other closed institutions. Both officials have wide ranging oversight and investigative and prosecutorial powers. Patients are able to complain to either official; however, they will not simultaneously investigate the same matter.<sup>322</sup>

### *IRT Notes*

The IRT notes the feature of the patient ombudsman who is responsible for advising and assisting patients in the complaints process.

#### C.1.8 Healthcare in Australia

The federal, state and territory and local levels of government are collectively responsible for providing healthcare in the country. The federal government provides funding and indirect support to the states and their healthcare professionals. The states are responsible for public hospitals, community health services, mental health services and dental care. Local governments play a role in the delivery of health programs and prevention efforts through immunization and food standard regulation.<sup>323</sup>

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<sup>322</sup> Parliamentary Ombudsman of Finland “*Frequently asked questions*” online: <[https://www.oikeusasiamies.fi/en\\_GB/web/guest/frequently-asked-questions](https://www.oikeusasiamies.fi/en_GB/web/guest/frequently-asked-questions)> (last accessed: Aug 15 2020).

<sup>323</sup> The Commonwealth Fund, “*International Profiles of Health Care Systems*” online: <[https://www.commonwealthfund.org/sites/default/files/documents/\\_\\_\\_media\\_files\\_publications\\_fund\\_report\\_2017\\_may\\_mossialos\\_intl\\_profiles\\_v5.pdf](https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2017_may_mossialos_intl_profiles_v5.pdf)> (last accessed Aug 15 2020).

## Complaints System

Complaints are encouraged to be resolved through discussion with the healthcare provider. If this is inappropriate, complainants can make notify a National Board or Healthcare Complaint Organisation. National Boards (including Ahpra, which is the explained further below) and Healthcare Complaint Organisations are responsible for dealing with mistreatment in healthcare. These agencies have different scopes for resolving complaints. Ahpra and the Boards can only accept reports regarding registered healthcare practitioners if there may be a risk to the public. Complaints Organisations may accept reports regarding healthcare practitioners, other people working in healthcare not registered as a healthcare practitioners and healthcare service providers. Ahpra and the Boards work with Complaints Organisations to decide which agency should take responsibility for the complaint. Depending on the scope of the concern, it may be the case that both agencies deal with the same complaint. The organisations will be in discussion and will either simultaneously deal with the complaint or they will decide who will manage the concern.<sup>324</sup>

### Ahpra and National Boards

Ahpra is a national organisation that works with the National Boards to decide whether a Board or a Complaints Organisation should manage a concern. A National Board cannot award any financial compensation or arrange for dispute resolution between a patient and a health practitioner. Ahpra conducts preliminary investigations for 15 National Boards in Australia. Ahpra does not investigate any complaints regarding practitioner conduct in New South Wales and also does not investigate in Queensland unless those managing these notifications explicitly refers it to them.<sup>325</sup> Ahpra will receive notification of a complaint and an investigator will gather relevant information. They will assess whether sufficient information has been raised to identify a practitioner and jurisdiction. At the end of the assessment stage, the investigator will present this information to the proposed National Board who will consider how to handle the complaint. The National Board may decide to close the concern, refer the matter to investigation or refer the healthcare practitioner for a health or performance assessment. Ahpra may decide to inform a Health Complaints Organisation about the complaint and can also refer matters to a Tribunal if it is deemed appropriate.

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<sup>324</sup>Australian Health Practitioner Regulation Agency, "*Find out about the notifications process*" online: <<https://www.ahpra.gov.au/Notifications/Find-out-about-the-complaints-process.aspx>> (last accessed Aug 15 2020).

<sup>325</sup>Australian Health Practitioner Regulation Agency, "*A guide for practitioners: Notifications in the National Scheme*" online: <<http://www.ahpra.gov.au/documents/default.aspx?record=WD13%2F10669&dbid=AP&chksum=pDOQEA5grtYh1Jhhd6%2Fh0A%3D%3D>> (last accessed Aug 15 2020).

### Health Complaints Organisations

Healthcare Complaints Organisations are set up to resolve disputes between parties. Each state and territory have a variation of a complaint organisations enacted under legislation. There is one national complaints commissioner who deals with aged care services in all of Australia. New South Wales for example operates the Health Care Complaints Commission (the “HCCC”). Complaints will be sent to an HCCC Assessment Officer who will gather information and can explain the complaints procedure to the complainant. The officer will often contact the healthcare provider for a response to the complaint and may request records, clinical advice or other information. An Assessment Committee will then consider all the information obtained during the assessment process and decide the most appropriate outcome. The Commission may decide to prosecute a complaint against a registered health practitioner before the Occupational Division of the NSW Civil and Administrative Tribunal. The Tribunal is legally separate from and independent of the relevant health professional governing body. Tribunal referrals only occur for the most serious allegations. Examples include when a practitioner's behaviour constitutes professional misconduct or the practitioner's registration was improperly obtained. A practitioner can ask a panel to refer a matter to the tribunal instead of having the Assessment panel decide the matter.<sup>326</sup>

### National Health Practitioner Ombudsman and Privacy Commissioner

The Commissioner monitors the privacy and freedom of information of national health practitioners, particularly in relation to Ahpra and the 15 National Boards. Administrative actions that are commonly the subject of complaints include the actions of Ahpra when assessing complaints and the actions of Ahpra when deciding how to further proceed with the complaint. After receiving the complaint, the Commissioner may proceed to investigate the complaint, transfer the complaint directly to Ahpra for management (a ‘warm transfer’) or decide not to investigate the complaint. If a complaint proceeds to an investigation, the Commissioner determines whether the relevant administrative action was reasonable, whether applicable policies and procedures have been followed and whether all relevant considerations have been taken into account.<sup>327</sup>

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<sup>326</sup> The Health Care Complaints Commission, “*About us*” online: <<https://www.hccc.nsw.gov.au/About-Us>> (last accessed Aug 15 2020).

<sup>327</sup> National Health Practitioner Ombudsman and Privacy Commissioner, “*Frequently Asked Questions*” online: <<https://nhpopc.gov.au/faq/>> (last accessed Aug 15 2020).

## *IRT Notes*

The IRT notes that complaints can go to Ahpra as a centralised body and they will re-direct the complaint depending on the scope of the matter. It also notes that a complaint may not be dealt with by both Ahpra/the National Boards and a Healthcare Complaints Commission unless it falls into both scopes and the situation necessitates it. There are separate avenues for complaints. This provides support for the IRT recommendation that all complaints be filed with the NIM and that the NIM have the discretionary authority to refer low level complaints back to the NSOs.

### C.2 Education Sector

The Education sector is of particular importance to the NIM and to maltreatment in sport due to the similarities in power differentials between persons in these organizations. In particular, the power dynamic between teachers and students is very similar to that between coaches and athletes. Moreover, similar issues arise between students as between athletes with regard to bullying. The IRT took note of these similarities in conducting its research.

#### C.2.1. Canadian Education Sector

The maltreatment mechanisms in the Canadian Education sector are dispersed through various organisations: the education sector is governed provincially, there is no national independent body responsible for administering a standard maltreatment code in the Canadian education sector. Moreover, the jurisdiction over maltreatment in schools is often shared by the teacher unions, school boards and schools. To give a holistic representation of the education sector, this section outlines procedures from a teacher union (the Ontario College of Teachers), three school boards and a unique provincial independent agency for teacher misconduct. The general organizational structure, complaint intake and resolution procedures and finances of these organizations are outlined where that information is available. Those features of particular interest to the IRT are also noted at the end of each section.

### *(i) Ontario College of Teachers<sup>328</sup>*

The Ontario College of Teachers (the “OCT”) is a professional college created and governed by the *Ontario College of Teacher’s Act, 1996* (the “OCT Act”).<sup>329</sup> The OCT regulates the standards of practice for the teaching profession in Ontario and the professional conduct of its members. It has jurisdiction over all public school teachers and administrators in Ontario. The statutory framework includes Ontario Regulation 437/97: Professional Misconduct, which governs the professional behaviour and standards for public school teachers in Ontario. The OCT is mandated by the OCT Act to enforce this regulation and does so by receiving and resolving complaints of professional misconduct. In 2018, the OCT received 722 complaints.<sup>3</sup>

The OCT is governed by a board of directors called the “Council”. The Council is comprised of 37 members, 23 of whom are elected by members of the college and 14 of whom are appointed by the Government of Ontario. The Council is accompanied by an executive team including a CEO, Registrar, Deputy Registrar and four directors. Section 16 of the OCT Act allows these executives to exercise any power of the Council other than the power to make, amend or revoke a regulation or bylaw.

The OCT has exclusive jurisdiction over the enforcement of professional standards and conduct of public-school teachers and administrators in Ontario. However, it may not investigate into the conduct of a member if, in the opinion of the OCT (i) the complaint does not relate to professional misconduct, incompetence or incapacity; (ii) the complaint is frivolous, vexatious, an abuse of process, manifestly without substance or made for an improper purpose; or (iii) the complaint does not warrant further investigation, or it is not in the public interest to investigate the complaint further and that determination was made in accordance with the regulations.

### *Funding<sup>330</sup>*

The OCT is predominantly funded by membership fees. In 2018 they collected \$35,209,000, constituting 91.4% of its total revenue. In 2018 it spent \$4,132,000 on investigations and hearings, representing 10.6% of total expenses and 11.7% of total revenues.

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<sup>328</sup>“About the College” (n.d.) accessed 4 September 2020, online: *Ontario College of Teachers* <<https://www.oct.ca/about-the-college>>.

<sup>329</sup> *Ontario College of Teachers Act, 1996*, S.O. 1996, c. 12.

<sup>330</sup> “2018 Annual Report” (2018) accessed 4 September 2020, online (pdf): *Ontario College of Teachers* <[https://www.oct.ca/-/media/PDF/Annual%20Report%202018/2018AnnualReport\\_complete\\_EN\\_web.pdf](https://www.oct.ca/-/media/PDF/Annual%20Report%202018/2018AnnualReport_complete_EN_web.pdf)>.

## Complaints System<sup>331</sup>

The OCT accepts complaints through their online complaint system or by mail regarding member professional misconduct, incompetence or incapacity. It also offers a phone support service that helps complainants navigate the complaints process. Anonymous complaints are not normally investigated. The OCT also encourages issues to be dealt with at the school level before being referred to the College.

In 2018 the OCT received 722 complaints regarding teacher misconduct. The majority (393) of those complaints came through the relevant school boards to the registrar, the second largest group of referrals came from members of the public at 260 and 69 came from OCT members.

Once the OCT receives a complaint, it notifies the member (respondent) and the member has an opportunity to respond. The College may also share the member's response with the complainant. The OCT then asks the complainant and the member for details of the incident(s) and names and addresses of any witnesses or persons of interest. The internal OCT investigator may contact these individuals during his or her investigation.

Once the investigation is complete the OCT investigator sends his or her findings to the Investigation Committee of the OCT Council. The Investigation Committee then meets to consider the relevant information collected during the investigation; neither party to the complaint is present for this meeting. The Investigation Committee makes a decision at this stage to (i) dismiss the complaint; (ii) suggest a voluntary dispute resolution to be agreed upon by the parties; (iii) caution or admonish the member in writing or in person if issues need to be addressed but do not warrant discipline; (iv) refer the matter to the Discipline Committee for a hearing if the information alleges professional misconduct or incompetence; (v) refer the matter to the Fitness to Practise Committee for a hearing if the information suggests that there may be health related issues affecting the member's ability to teach; or (vi) take any other action which the committee views to be appropriate in the circumstances and is within the bounds of the governing legislation, regulations and bylaws. Once a decision is reached, a written copy of the decision is sent by mail to the complainant and to the OCT member. In 2018, 85.3% of complaints that were resolved by the Investigation Committee were done so without the need for a hearing.

If the Investigation Committee refers the complaint to the Discipline Committee a hearing will take place. Generally, these hearings are public, but the Discipline Committee may exclude the public at their discretion. The Discipline Committee may decide to (i) direct the register to revoke, suspend for up to 24 months or impose terms, conditions or limitations on a member's certificate; (ii) fix a period during which a member is ineligible for reinstatement; (iii) require that a member be reprimanded, admonished or counselled; (iv) impose a fine of up to \$5,000; (v) fix costs to be paid by the member to the College; and (vi) if the act of professional misconduct involves sexual abuse or a prohibited act involving child pornography, require the member to reimburse the College for funding provided under the OCT therapy/counselling program and to post security for those costs. Pursuant to s. 35(1) of the OCT Act, decisions of the Discipline Committee are appealable to the Ontario Divisional Court.

### *IRT Notes*

The IRT took note of the explicit criteria outlined at each stage of the process to determine the appropriate action. Criteria such as this would be of use to the NIM in ensuring that complaints are dealt with consistently regardless of which investigator or safeguarding officer is handling the issue.

The IRT also noted the structure of the OCT complaint intake mechanism, which only accepts written complaints, but also offers a telephone support line to assist in filing complaints. This provides support for the similar system recommended by the IRT.

### *(ii) Toronto District School Board*

The Toronto District School Board ("TDSB") is an incorporated entity with powers under the Ontario *Education Act*.<sup>332</sup> The primary function of the TDSB is to operate publicly funded schools and administer public funding. It is governed by a 22-member Board of Trustees. There is also an executive committee headed by the Director of education responsible for administering the

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<sup>332</sup> *Education Act*, R.S.O. 1990, c. E.2.

policies, programs and strategies established by the Board of Trustees.<sup>333</sup> The TDSB is primarily funded by the Ontario Ministry of Education. It generates revenue from international student tuition fees, rental and permit income, cafeteria income and interest income. The annual budget of the TDSB is \$3.4 billion, most of which is dedicated to staffing expenses.<sup>334</sup> The TDSB has a complaint intake and resolution procedure called “Operation Procedure PR710: Reporting of Suspected Wrongdoing (Whistleblowing)”.<sup>335</sup>

The TDSB is authorized to receive complaints of suspected wrongdoing with regard to TDSB employees. Wrongdoing relevant to maltreatment includes (i) the contravention of a federal or provincial act or regulation, including offences under the *Criminal Code*; (ii) acts or omissions that endanger the life, physical or mental health or safety of persons or presents a danger to the environment; and (iii) directing or counselling a person to commit any of the aforementioned acts.

The “Party Overseeing the Investigation” has the discretionary power to refuse to proceed with an investigation based on the following: if the matter would more appropriately be dealt with through another existing TDSB process or protocol, is already being dealt with through another statutory process, is subject to litigation or other court proceedings or is related to an employment or labour relations matter and should be dealt with through a separate procedure.

### Complaints System

Reporting of “suspected wrongdoing” by a TDSB employee is reported to the “External Third Party” by phone, email or direct mail. Reporting is confidential. The TDSB also offers an anonymous online reporting form for students experiencing maltreatment.

Once the complaint is received, the External Third Party refers the complaint to either the Executive Superintendent, Employee Services, the Director of Education or the Chair of the Board

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<sup>333</sup>“About us” (n.d.) accessed 5 September 2020, online: *Toronto District School Board* <<https://www.tdsb.on.ca/About-Us>>.

<sup>334</sup> “Financial Facts: Revenue & Expenditure Trends” (February 2020) accessed 4 September 2020, online (pdf): *Toronto District School Board* <[https://www.tdsb.on.ca/Portals/0/aboutus/docs/Financial%20Facts\\_Feb%202019\\_2020\\_FINAL\\_2020\\_03\\_09.pdf](https://www.tdsb.on.ca/Portals/0/aboutus/docs/Financial%20Facts_Feb%202019_2020_FINAL_2020_03_09.pdf)>.

<sup>335</sup>“Reporting of Suspected Wrongdoing (Whistleblowing) (22 August 2016) accessed 5 September 2020, online (pdf): <<http://ppf.tdsb.on.ca/uploads/files/live/93/1984.pdf>>.



depending on the nature of the complaint. The designated authority then determines whether it is appropriate to initiate an investigation. If the complaint involves Board employees or Senior Team members an internal staff member and/or external resources are engaged to investigate the alleged misconduct. If the complaint involves Executive members, the Chair of the Board or the Director of Education, an external independent investigator may be engaged.

If the investigation confirms wrongdoing on behalf of the TDSB employee, appropriate disciplinary action is taken, up to and including termination of employment. If criminal conduct is uncovered, the police are notified immediately. The TDSB also takes disciplinary action against those who interfere with investigations and against those who retaliate against a complainant for reporting in good faith. TDSB disciplinary decisions are not appealable per se; however, the TDSB does not have exclusive jurisdiction over the behavioural regulation of its employees. Complaints may also be referred to the Ontario College of Teachers or the Ontario Ombudsman.

### *IRT Notes*

The discretionary ability of the party overseeing investigation to refuse to investigate in certain circumstances provides support for the ability of the NIM to refer low level complaints to the NSOs. This discretionary triaging system will prevent the NIM from being overburdened by low level complaints.

### *(iii) The British Columbia Commissioner for Teacher Regulation<sup>336</sup>*

The British Columbia Commissioner for Teacher Regulation (“BCCTR”) is an independent officer appointed for a five-year term under s. 2 the British Columbia *Teachers Act*<sup>337</sup> (The “BC Teacher’s Act”) by the Lieutenant Governor in Council based on the recommendations of the Minister of Education. The BCCTR is statutorily mandated to review the conduct and competence of educators in British Columbia and helps to enforce the standards for educators. He or she is assisted by the professional conduct unit (“PCU”). Moreover, the BCCTR is able to develop rules and procedures regarding the intake and adjudication of complaints towards teachers. As an independent officer, the BCCTR is not answerable to any other authority but does submit an annual report to the

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<sup>336</sup>“Commissioner for Teacher Regulation” (n.d.) accessed 5 September 2020, online: *British Columbia* <<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/commissioner-for-teacher-regulation>>.

<sup>337</sup> *Teachers Act*, S.B.C. 2011, c. 19.

Minister of Education. According to its 2018-2019 annual report, the BCCTR received 247 reports/complaints that year, 209 of which were resolved.<sup>338</sup>

The BCCTR does not have exclusive authority over the professional conduct of teachers in B.C. - school boards and independent school councils are also able to discipline their teachers. However, all disciplinary decisions must be sent to the BCCTR. He or she is not able to overturn sanctions by school boards or independent schools but is able to take additional measures. In particular, the BCCTR has the authority to close a complaint file, investigate complaints, offer consent resolution agreements and refer complaints to disciplinary hearings. He or she does not have the authority to unilaterally administer sanctions.

### *Complaints System*

When complaints are filed with the BCCTR they are received by the intake officers in the PCU. These officers create a file for each matter and ensure that all the necessary documentation is available to allow the Commissioner to conduct a preliminary review of the complaint. They also assist individuals through the complaint process.

Once received, the BCCTR, with the assistance of the PCU staff, reviews the material in the report and determines whether to proceed with the investigative process. The BCCTR does not continue if the matter is not within the BCCTR's jurisdiction, the matter is frivolous or made in bad faith, the matter has no reasonable prospect of resulting in a finding of misconduct by a hearing panel, it is against the public interest to take further action or the matter has not been pursued in a timely manner. In 2018-2019 28% of cases were resolved without any further action. The BCCTR may also defer cases while the complaint is being resolved through other proceedings such as criminal proceedings.

If the complaint does not fall into any of the above categories, the BCCTR may initiate an investigation, issue a citation, propose a consent resolution agreement or refer the matter to a disciplinary hearing. In 2018-2019 61% of cases were closed with no further action after a full investigation.

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<sup>338</sup>“Annual Report 2018/2019” (30 September 2019) accessed 5 September 2020, online (pdf): <[https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/commissioner-for-teacher-regulation/ctr\\_annual\\_rpt\\_2018\\_2019.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/commissioner-for-teacher-regulation/ctr_annual_rpt_2018_2019.pdf)>

Consent resolution agreements are voluntary agreements between the complainant and the teacher to resolve the dispute subject to certain conditions. They may be offered or accepted by the BCCTR any time after the preliminary review of the file or before the hearing. Consent resolution agreements typically contain (i) the terms agreed upon by the Commissioner, the teacher and the complainant; (ii) one or more admissions of professional misconduct or incompetence related to the matter; and (iii) the disciplinary consequences, which may range from a reprimand to a cancellation of the teacher’s teaching certificate. In 2018-2019 only 10% of cases were resolved through consent resolution agreements.

If the BCCTR elects to proceed with a hearing, he or she is mandated by the BC Teachers Act to establish a panel consisting of three members. Two are selected from a pool of nine Disciplinary and Professional Conduct Board members and one individual is selected from a pool of lay people with legal experience and/or experience participating in administrative hearings. If the panel finds that the teacher engaged in professional misconduct, the consequences can include a reprimand, a suspension from teaching, limitations or conditions on a teaching certificate or the cancellation or non-reissuance of a teaching certificate. The panel must provide written reasons for its decision. The BC Teachers Act does not allow parties to appeal decisions made by the panel. Only 1% of cases proceeded to a hearing in 2018-2019.

### *IRT Notes*

The IRT noted the ability of the BCCTR to facilitate consent resolution agreements at any point during the complaint resolution procedure prior to a hearing. The benefit of this feature is that, as the resolution process progresses, the alleged perpetrator may be more willing to resolve the problem if there is a possibility that they will be subject to sanctions if the process continues. However, for that system to work the sanction would have to be known ahead of the hearing, which is not always possible.

### *(iv) The English Montreal School Board<sup>339</sup>*

The English Montreal School Board (“EMSB”) is an incorporated entity established by the Québec *Education Act* (the “QC Education Act”).<sup>340</sup> Pursuant to its statutory requirement to develop

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<sup>339</sup> “Home” (n.d.) accessed 4 September 2020, online: *English Montreal School Board*, online: <<https://www.emsb.qc.ca/>>.

<sup>340</sup> *Education Act*, C.C.Q. 1988, c.I-13.3.

policies and procedures to handle maltreatment, the EMSB established the “By-Law Establishing the Complaint Examination Procedure for Students or Their Parents or Guardians” (the “Code of Conduct”) in 2010.<sup>341</sup> Section 220.2 of the QC Education Act requires the establishment of a Student Ombudsman as an independent complaint intake and resolution officer. According to the 2018-2019 annual report, it received 10 maltreatment complaints in that year.<sup>342</sup>

The EMSB is governed by the Council of Commissioners. It develops strategies, policies and sets organizational objectives. The Council is comprised of 10 publicly elected commissioners and 4 parent commissioners.<sup>31</sup> The EMSB is primarily funded by the Ministère de l’Éducation et de l’Enseignement supérieur and also generates revenue from other sources such as school taxes and tuition fees.<sup>32</sup>

Pursuant to s. 9 of the QC Education Act, the EMSB has the authority to address complaints from a student or parent of a student affected by decisions of the Council of Commissioners, the Executive Committee or an officer or employee of the school board including teachers. However, under s. 220.2 of the same Act it cannot address a matter that has been filed with the Minister of Education. Moreover, the Minister may receive complaints concerning serious teacher misconduct that brings the teaching profession into disrepute pursuant to s. 26 and may commence his or her own discipline procedure under the QC Education Act.

### *Complaints System*

The EMSB receives complaints regarding all issues students or parents may have concerning the services of the school board, including maltreatment. Complaints must first be filed with the school principal when the decision is made by the staff of a school or centre. It can then be referred to the Regional Director and then to the Deputy Director General or Director General.

Once the complaint is escalated to the Director General, he or she may decide to establish a Review Committee composed of three people to examine the complaint. The Review Committee engages with the parties to the complaint to collect all relevant information. It then delivers its

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<sup>341</sup>“By-law Establishing the Complaint Examination Procedure for Students or Their Parents or Guardians” (2010) accessed 5 September 2020, online (pdf): <<https://az184419.vo.msecnd.net/emsb/emsb-website/en/docs/governance/by-laws/by-law-no.-8.pdf>>.

<sup>342</sup>“Annual Report 2018-2019” (n.d.) accessed 5 September 2020, online (pdf): <<https://az184419.vo.msecnd.net/emsb/emsb-website/en/docs/annual-reports/2018-2019-annual-report-en-2019-20-12.pdf>>.

findings in a written report to the Director General. The Director General comes to an initial decision at this point to either take action or dismiss the complaint.

If the complainant is unsatisfied with the decision of the Director General, he or she may appeal the matter to the Secretary General. The Secretary General receives the complaint and if it is within the EMSB's jurisdiction, allows the complainant to elect whether to have the complaint reconsidered by the Council of Commissioners or forwarded to the independent Student Ombudsman for final determination. If the matter is decided by the Council of Commissioners, it may still be appealed to the Student Ombudsman

The Student Ombudsman is able to intervene at any point during the resolution process at the request of the complainant. He or she has discretion as to whether to intervene and may dismiss the complaint if it is frivolous, vexatious or made in bad faith. Within the 30 days of the complaint referral the Student Ombudsman must deliver an opinion on the merits of the complaint and recommend appropriate and/or necessary action to the Council of Commissioners and the Secretary General. A copy of these findings and recommendations is also delivered to the complainant. The Council of Commissioners comes to a final decision at this stage.

#### *(v) The Halifax Regional School Board*

The Halifax Regional School Board ("HRSB") is an organization incorporated under s. 54 of the Nova Scotia *Education Act* (the "NS Education Act").<sup>343</sup> The HRSB is headed by a Regional Executive Director appointed by the Minister of Education. He or she is responsible for maintaining a safe learning environment in all schools, establishing performance standards, as well as a supervisory and evaluation mechanism for staff. The HRSB is primarily funded by the Province of Nova Scotia but also generates revenue through the Halifax Regional Municipality, the Government of Canada and through its own operations.

Pursuant to s. 90 of the NS Education Act, the HRSB is able to discipline and dismiss staff of the regional centre including teachers. However, it shares this power with school principals under s. 39 of that same Act. Moreover, the Nova Scotia Teacher's Union also has its own professional standards for teachers in the province and is able to discipline its members.<sup>344</sup>

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<sup>343</sup> *Education Act*, S.N.S. 2018, c. 1, Sch. A.

<sup>344</sup> "NTSU Guidebook" (June 2019) accessed 4 September 2020, online (pdf): <https://nstu.blob.core.windows.net/nstuwebsite/data/guidebook/Guidebook%202019%20web.pdf>.

## Complaints System

The complaint and resolution procedure is found in the “Parent/Guardian Concern Policy”.<sup>345</sup> Under this policy, a complainant must first file a report in writing with the person at the school most connected with the complaint. If this is the teacher, they may try to informally resolve the issue at that stage. The complainant must then continually escalate the complaint themselves through the school to the principal and then to the school administrative supervisor. If the matter remains unresolved after being filed with the school administrative supervisor, the complainant can file a complaint with the HRSB.

The Director of School Administration (“DSA”) receives the complaint and informs the principal of the school from which the complaint originated about the complaint. The DSA then asks the principal for a written response. The DSA may then initiate an investigation if it is warranted based on the information provided. The DSA is responsible for resolving the complaint. If the complainant is dissatisfied, he or she can appeal the issue to the Superintendent. The Superintendent’s decision on the matter is final. However, since the HRSB does not have exclusive jurisdiction over the enforcement of professional standards in the teaching profession, the complainant may file the complaint through a different organization such as the Nova Scotia Teacher’s Union.

### C.2.1 International Education Models

#### England

State schools (the equivalent of Canadian public schools) in England are regulated by the Department of Education (“DfE”).<sup>346</sup> There are no school boards or equivalent organizations between the schools themselves and the DfE. The DfE delegates its powers to 18 executive agencies and public organizations.

The education sector’s maltreatment regime is established through various pieces of legislation and regulations including the *Education Act 2002*,<sup>347</sup> *The Education and Inspections Act 2006* and

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<sup>345</sup> “Parent/Guardian Concern Policy” (28 November 2000) accessed 4 September 2020, online (pdf): <<https://www.hrce.ca/sites/default/files/hrsb/b.017-parent-guardian-concern.pdf>>

<sup>346</sup> “About Us” (n.d.), accessed 3 September 2020, online: *Gov.uk* <<https://www.gov.uk/government/organisations/department-for-education/about>>.

<sup>347</sup> *Education Act 2011* (UK), 2011.

“Teacher misconduct: Disciplinary procedures for the teaching profession May 2020”.<sup>348</sup> These result in two frameworks related to maltreatment in England; one pertaining to bullying between students and another pertaining to teacher misconduct.

The regulation of bullying is shared by the schools and the DfE. The *Education and Inspections Act, 2006*, requires schools to operate a complaints and discipline system pertaining to bullying. The DfE provides oversight to these systems but cannot force disciplinary measures upon students themselves. However, under the same act, the DfE has the jurisdiction to investigate underperforming schools and the Secretary of State may intervene if school performance is causing concern for student safety. Unlike bullying, Teacher misconduct in England is regulated directly by the Teaching Regulation Agency (“TRA”), an executive agency of the DfE.<sup>349</sup>

This section outlines the bullying and teacher misconduct reporting and resolution processes in England. It then goes on to examine the school auditing procedure and contemplates the implications auditing may have on the bullying complaint system.

## Complaints System

### *Bullying*

In most circumstances, bullying issues must be reported to the school before being filed with the DfE. If the matter involves a crime, complainants are required to report the issue to the police. If the issue remains unresolved after being dealt with at the school, the complainant may file a complaint to the DfE online or by phone. Complainants may also file complaints directly with the DfE if a child is at risk, missing from school or the school is preventing the complainant from following its complaint procedure.

If the DfE determines the complaint warrants investigation, it refers the complaint to “*an appropriate staff member who will then carry out an investigation.*”<sup>350</sup> The DfE then replies to the complainant 15 working days from when it received the complaint with the result of the investigation and the resolution. The DfE does not have the statutory power to discipline students

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<sup>348</sup>“Teacher misconduct: disciplinary procedures” (last modified 20 May 2020), accessed 3 September 2020, online: *Gov.uk* < <https://www.gov.uk/government/publications/teacher-misconduct-disciplinary-procedures>>.

<sup>349</sup>“Teacher Misconduct” (1 April 2012) Accessed 2 September 2020, online: *Gov.uk* <<https://www.gov.uk/government/organisations/teaching-regulation-agency>>.

<sup>350</sup> “Department for Education: Complaints procedure” (n.d.) accessed 2 September 2020, online: *Gov.uk* <<https://www.gov.uk/government/organisations/department-for-education/about/complaints-procedure>>.

or direct the school to administer disciplinary measures. Therefore, it is likely that the resolution must be decided through an agreement between the DfE and the school. If the complainant is not satisfied, they may refer the complaint to the Parliamentary and Health Service Ombudsman through their local Member of Parliament.

### *Teacher Misconduct*

The TRA receives allegations of teacher misconduct from independent schools, sixth form colleges, public schools, youth accommodation and children's homes. Cases may be referred by a teacher's employer, members of the public, the police and other regulators who are aware of relevant information. Complaints must be filed in writing. The TRA also operates a phone line to assist complainants with the complaint process.

If, upon receipt of the complaint, the TRA determines that the teacher may be guilty of professional misconduct, may be guilty of conduct bringing the teaching profession into disrepute, or may have been convicted of a relevant criminal offence, then it may order an investigation.<sup>11</sup> The teacher, complainant and the teacher's employer are given notice of the investigation. The teacher is also given a copy of the complaint.

At this stage, the TRA must determine whether an interim prohibition order ("IPO") should be issued while the investigation process is ongoing. IPOs prevent teachers from practicing until the issue is resolved. If the TRA decides to consider issuing an IPO, the teacher is given an opportunity to deliver additional representations and evidence in writing. The TRA then considers all the evidence before it and comes to a decision. There is no right to appeal an IPO; however, the teacher may apply to the TRA for an internal review.

The TRA investigates cases by considering the evidence against the criteria found in "Teacher misconduct: the prohibition of teachers".<sup>351</sup> During the investigation process the TRA engages with all relevant parties to collect information. This includes inviting the teacher to make a written statement regarding the allegation. If the TRA determines that there is merit to the allegation, the matter is referred to a panel - if not, the case is closed.

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<sup>351</sup>"Teacher misconduct: the prohibition of teachers" (October 2018) accessed 3 September 2020, online (pdf): *Teaching Regulation Agency* <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752668/Teacher\\_misconduct-the\\_prohibition\\_of\\_teachers\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752668/Teacher_misconduct-the_prohibition_of_teachers_.pdf)>.



Professional conduct panels consist of three members recruited through a public appointments process. The panel must include at least one member who is or was a teacher within the 5 years prior to appointment and at least one member who has never worked as a teacher. The panel then comes to a decision and makes a recommendation to the Secretary of State. The Secretary of State decides whether to make a prohibition order and whether the teacher may apply for a review of the order. Teachers may appeal against a prohibition order to the Queen’s Bench Division of the High Court.

### *Compliance and Monitoring*<sup>352</sup>

Under the *Education and Inspections Act 2006*, The Office for Standards in Education, Children’s Services and Skills (“Ofsted”) conducts investigations to determine whether schools are meeting nationally mandated education standards. Ensuring the safety of students is part of these standards. Inspections are conducted on a regular basis and may also be initiated through parent complaints. The Ofsted reports his or her findings to the Secretary of State who may require underperforming schools to make certain changes. Schools who are unable to make these changes may be closed by the Secretary of State.

The compliance and monitoring process may facilitate the DfE’s control over disciplinary action within schools. As outlined above, the DfE may only suggest disciplinary measures regarding individual bullying incidents and the implementation of disciplinary measures ultimately rests with the school administration. However, the prospect of a parent-initiated Ofsted investigation may persuade schools to adopt the DfE’s recommended disciplinary measures. This would give the DfE greater control over the bullying complaint procedure than is suggested by the complaint procedure itself.

#### **IRT Notes**

The IRT took note of two important features in the English education model. First was the distinction between teacher misconduct and bullying between students. This is similar to the difference between coaches abusing athletes and athletes abusing each other. There is often a different power dynamic at play when abuse occurs between peers and this is of interest to the IRT in developing the NIM. Second is the ability of TRA to issue interim prohibition orders. A similar tool is considered for the NIM to promote public safety.

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<sup>352</sup> “Ofsted: About us” (n.d.) accessed 3 September 2020, online: *Gov.uk* <<https://www.gov.uk/government/organisations/ofsted/about>>.

## Australia

Education is the jurisdiction of the states and territories in Australia. Teacher misconduct is managed through the teacher regulation organization in each state. For example, the Victorian Institute for Teaching<sup>353</sup> regulates the teaching profession in Victoria pursuant to the *Education and Training Reform Act, 2006*.<sup>354</sup> Bullying is typically the responsibility of the schools themselves.

This section outlines the complaint intake and resolution procedures of the Victorian Institute for Teaching and a sample Australian public school. It then outlines important recommendations from the *Review of the Employee Performance and Conduct Directorate Within the New South Wales Department of Education*.

### Complaints System

#### *Teacher Misconduct*

In Victoria, complaints are lodged with the principal of the school in which the alleged misconduct took place. The principal then decides on the appropriate procedure based on the nature of the complaint. If the complaint alleges teacher misconduct, then the misconduct procedure will be followed. Moreover, some matters, such as those involving sexual abuse or other suspected criminal offences, must be brought to the Employee Conduct Branch of the Victorian Institute for Teaching as soon as the principal becomes aware.

If the school principal elects to follow the teacher misconduct procedure, he or she must recommend the procedure be initiated to the Secretary and the Secretary, or a delegated authority such as a regional director, must initiate the enquiry.<sup>355</sup> The Secretary or delegate then nominates an investigator to conduct a formal investigation. This involves the solicitation of a written response to the allegations from the accused. The Investigator reports his or her findings to the Secretary who forms a preliminary view of the facts. Based on this view, the secretary will

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<sup>353</sup> “Who we are” (n.d.) accessed 2 September 2020, online: *Victorian Institute of Teaching* <<https://www.vit.vic.edu.au/>>.

<sup>354</sup> *Education and Training Reform Act 2006* (Vic), 2006/24.

<sup>355</sup> “Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance in the Teaching Service” (Last modified 7 January 2020) accessed 3 September 2020, online (pdf): *Victoria State Government* <[https://www.education.vic.gov.au/hrweb/Documents/Complaints\\_Misconduct\\_and\\_Unsatisfactory\\_Performance\\_TS.pdf](https://www.education.vic.gov.au/hrweb/Documents/Complaints_Misconduct_and_Unsatisfactory_Performance_TS.pdf)>.

either write to the employee and advise him or her that it is possible to take action against the employee or close the matter.

If the Secretary considers the allegation to be with merit, he or she will solicit a further response from the accused. If, after considering all of the evidence, the Secretary finds that there has been misconduct on the part of the teacher, he or she may issue a sanction. Possible sanctions include termination of employment, a demotion, a fine and/or a reprimand. The employee has the right of appeal to a Disciplinary Appeals Board.

### *Bullying*<sup>356</sup>

In schools the complaints are filed with school administration. Teachers are also required to report suspected bullying or inappropriate conduct. School administration may refer serious incidents to the internal Student Critical Incident Advisory Unit and/or the internal Emergency and Security Management Unit.

If the school administration considers the complaint to allege “serious” misconduct, the matter is investigated and may be reported to the internal Student Critical Incident Advisory Unit and the internal Emergency and Security Management Unit.<sup>18</sup> Both parties involved are informed of the allegations and are offered counselling at this stage.

If the information collected during investigation evidences serious or repetitive incidents the school may refer the matter to the police, suspend the bully, expel the bully, remove privileges, offer counselling or attempt conciliation between the parties. Schools also list post-incident strategies to help improve the school and classroom environment including conciliation, ongoing monitoring of the students involved, follow-up meetings regarding each child’s management strategy, ongoing communication with parents and/or counselling for the parties.

### *Other Features*

Although the federal government does not have jurisdiction over the complaint intake and resolution process in the Australian education system, they may withhold funding if the states do not implement the national policy initiatives and agreements relating to school education.

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<sup>356</sup> “Anti-bullying Policy” (April 2017) accessed 3 September 2020, online: *Kingswood Primary School* <<http://kingswood.vic.edu.au/assets/uploads/2016/09/Anti-bullyingPolicy.pdf>>.

Moreover, the Australian Government is currently working on a National Education Initiative that addresses bullying in schools.

*Review of the Employee Performance and Conduct Directorate Within the New South Wales Department of Education<sup>357</sup>*

In 2019, the New South Wales Department of education commissioned Mark Tedeschi AM, QC, former Senior Crown Prosecutor for the State of New South Wales, to conduct a systematic review of the Employee Performance and Conduct Directorate (“EPAC”). The review involved a detailed analysis of EPAC’s complaint intake and resolution procedures. The following are the recommendations found in the report but are not necessarily the recommendations of the IRT for the purposes of the NIM.

1. EPAC should employ sufficient human resources in order to facilitate the average completion times of misconduct investigations to: (i) 90 days for simple cases; (ii) 180 days for median cases and; (iii) 270 days for complex cases. To reach these goals, the review recommended that the average case load per investigator be 5-10 at any given time.
2. It was recommended that members of the preliminary intake team be permanently deployed or at least deployed for a period of 6-12 months. EPAC utilized investigators that worked on a rotating basis and this resulted in cases remaining at the preliminary intake stage for an average of 10 days.
3. It was recommended that EPAC recruit applicants on the basis of suitable skills in communication, location and analysis of evidence and reporting skills rather than on the basis of previous experience in child protective services. The review found that the latter practice unnecessarily limited the pool of available applicants.
4. The review recommended against the use of private contractors to conduct investigations. It was found that the quality of their work varied and the investigation unit should strive for a standardized quality of work.

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<sup>357</sup> New South Wales Department of Education, *Review into the Functions and Operations of the Employee Performance and Conduct Directorate (EPAC) within the New South Wales Department of Education* by Mark Tedeschi A.M. Q.C. and Christine Melis, June 2019.

5. A preliminary case rating system was recommended wherein complaints are assessed based on the complexity of the matter and the scale of the required investigation. This will allow for a more equitable allocation of cases across investigators increasing efficiency and effectiveness.
6. It was recommended that all information obtained by EPAC during the intake and investigation process be recorded in a single, user-friendly database.
7. The review recommended more frequent and intense monitoring of investigations by senior staff members. In particular it was recommended that managers review cases on a monthly basis.
8. It was recommended that EPAC management insist that there be a communicated update to all interested parties once per school term.
9. It was recommended that the decision to initiate an investigation should be made through an agreement between the preliminary intake officer and the principal investigator in the preliminary intake team. Disagreements between these officers are to be resolved by the Director of the preliminary intake team. Moreover, it was recommended that school representatives should not play a role in the assessment of new matters.
10. The review encouraged EPAC to develop an interact online “Decision Tree” to help complainants identify the relevant information that needs to be reported.
11. It was recommended that complainants be invited to nominate witnesses for the investigator to interview and that these witnesses should generally be interviewed. The investigator should only refrain from interviewing a nominated witness when there are compelling reasons for doing so, and those reasons should be stated in the investigator’s report.
12. It was recommended that all EPAC team Directors be required to read the underlying evidence prior to the formulation of letters of allegation being sent to the accused. This would ensure that the Directors are required to take responsibility for the proper formulation of allegations and recommendations. Moreover, this will make it less likely that allegations will be made that are not supported by the evidence.

13. It was recommended that serious sanctions, such as termination of employment or demotion, be issued only after extensive consultation within a panel consisting of several EPAC executives.
14. It was recommended that EPAC establish a database of decisions in previous cases to assist investigators and intake officers in assessing evidence and complaints.
15. The recorded reasons for discontinuing a complaint procedure should be more narrowly defined than simply “discontinued”. The categorisation should indicate the reason for discontinuing the complaint, such as “*No sufficient supporting evidence*” or “*Alleged victim uncooperative*”.
16. The most serious interim risk measures, such as a suspension without pay, should only be taken in circumstances where there is no other way to avoid an unacceptable risk to students or staff.
17. The system of discretionary internal review of EPAC decisions should be abolished. EPAC was advised that it should focus on getting decisions right the first time. Any appeals should be directed to an external independent tribunal.
18. EPAC should conduct induction training for new staff at least once each year. It was also noted that new investigators would benefit from spending time in classrooms at various educational institutions to develop a first-hand understanding of the culture.
19. EPAC staff should have the opportunity to receive continuing professional development in the areas of interviewing, investigation, evidence gathering and analysis, report writing and the threshold for misconduct.
20. EPAC team Directors and the Principal Investigators should be required to engage in genuine case management with their team members at least once each term. This serves as an effective management tool and will aide in training and development for investigators.
21. EPAC should establish a high-level Education Officer to develop appropriate induction courses for new staff and continuing professional development for existing staff.

22. EPAC should publish anonymized accounts of cases of misconduct that were investigated and resolved.

### IRT Notes

The IRT found the practice of withholding funds from states and territories who do not implement national policy initiatives to be of great interest. Since the NIM will not have inherent jurisdiction over maltreatment in sport, it will have to utilize other means to establish a national sport maltreatment mechanism. The IRT also seriously considered the recommendations from the EPAC review. In particular recommendation 12 provides strong support for our COP model to head NIM operations. Additionally, recommendation 17 supports the IRT's vision of an external tribunal to hear disputes and appeals.

### Germany

The IRT examined the German education system in detail and found that it does not handle child maltreatment issues. Schools essentially act as referral bodies by directing issues to other sectors such as child services. Moreover, Germany has recognized that their child protection system requires an update and are working on re-creating the system to increase effectiveness.<sup>358</sup> For these reasons the German education sector is not expanded upon in the report.

### Sweden: The Swedish Schools Inspectorate<sup>359</sup>

Sweden operates a decentralized education system. The Swedish *Education Act*<sup>360</sup> specifies the broad responsibilities of municipalities and schools through a set of national standards. The municipalities themselves are responsible for all school activities. The national standards are monitored and enforced by the Swedish Government through the Swedish Schools Inspectorate (the "SSI"). The SSI is a government agency independent of the Ministry of Education and

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<sup>358</sup> Mark Hallam and Peter Hille, "Child sex abuse in Germany: Uptick in cases, or more online policing?" (1 July 2020) accessed September 3 2020, online: *DW* <<https://www.dw.com/en/child-sex-abuse-in-germany-uptick-in-cases-or-more-online-policing/a-54004410>>.

<sup>359</sup> "The Swedish Schools Inspectorate for international audiences" (10 November 2015), online: *Skolinspektionen* <<https://www.skolinspektionen.se/globalassets/0-sj/09-sprak/the-swedish-schools-inspectorate.pdf>>.

<sup>360</sup> SFS 2010:800, *Skollag*, Ministry of Education, 23 June 2010.

Research. The SSI also intakes and resolves maltreatment complaints. This section outlines the reporting, complaint resolution and auditing systems operated by the SSI.

### Complaints System

The SSI receives written complaints from students and parents who are not satisfied with school performance. This may involve offensive treatment by staff members or other students. Upon receipt, complaints are referred directly to the Child and School Student Representative, an agency of the SSI.

Once the complaint is received the SSI investigates the issue. During the investigation the school authority is asked to make a statement regarding their position on the matter. Upon completion of the investigation, the SSI writes a report indicating what the school must do to rectify any problems. These reports also serve as guides to other schools on how to improve their practices. Moreover, the SSI can impose an injunction and/or a penalty requiring the school authority to correct the conditions discovered through the complaints. If the matter involves teacher misconduct, the SSI may refer the teacher to the Teachers' Disciplinary Board for a decision, which may in turn issue a warning or revoke the teacher's registration.

If the matter is referred to the Child and School Student Representative the same procedure is followed. He or she is also able to lodge a compensation claim on behalf of the student and represent them in court if the authority refuses to pay compensation.<sup>32</sup>

### *Compliance and Monitoring*

The SSI conducts compliance checks to ensure that schools are meeting the mandated national standards. These checks identify any shortcomings in school performance and set out the required improvements. There is a defined period of time to rectify shortcomings. The SSI then follows up 3 months subsequent to the improvement order. If the school authority has not made the improvements the SSI may issue more severe sanctions including an injunction specifying the required improvements, a penalty and/or a reprimand. If an injunction is ordered it may involve a temporary operating ban or the revocation of the permit to operate an independent (private) school.



## The Netherlands

The Netherlands operates a decentralized education system. The Dutch Government sets broad guidelines for the school boards and schools to follow in the *Primary Education Act*.<sup>361</sup> In particular, the relevant authorities in schools and school boards must establish a security policy, monitor the safety of schools with a mechanism that regularly updates information and ensure that an officer is appointed to coordinate anti-bullying policies and act as a point of contact for those issues. The schools and school boards develop specific policy based on those guidelines. To ensure compliance with national standards, the Government established the Inspectorate of Education (the “Inspectorate”) to conduct performance audits.<sup>362</sup>

This section outlines the reporting, complaint resolution and auditing systems related to maltreatment in the Dutch education system. Those features found relevant to the NIM are also noted by the IRT.

### Complaints System

The education system only manages low level complaints and those are dealt with at the school level. Complainants may also file education-related complaints to the Dutch Foundation for Consumer Complaints Board and directly to the Inspectorate if the complaints are more serious.

#### *Sample Dutch Public School*<sup>363</sup>

The schools and school boards only handle low level complaints. The following is an example from a public school in Amsterdam:

1. The complaint is reported to the teacher or person involved. The parties attempt an informal resolution.
2. If unresolved, the complainant is able to refer the complaint to the school administrative body, an internal contact person or the Care and Advice Team. The administrative board at each school is to appoint a Care and Advice Team to attempt informal resolution and support complainants through the complaints process.

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<sup>361</sup> *Wet op het primair onderwijs* (Netherlands), 2017.

<sup>362</sup> “Netherlands: Governance and Accountability” (n.d.) accessed 3 September 2020, online: *NCCE: National Center on Education and the Economy* <<https://ncee.org/netherlands-governance-and-accountability/>>.

<sup>363</sup> “Klachtenregeling” (n.d.) accessed 3 September 2020, online: *Christelijk basisonderwijs Morgenster Jenaplan* <<https://www.demorgenstergeldermalsen.nl/ouders/klachtenregeling/>>.

3. The complainant is able to call an external independent confidential adviser available through the Youth Health Care department to assist with the complaint process.
4. The external independent confidential adviser may refer the complaint to the Dutch Foundation for Consumer Complaints Boards (“DFCCB”).

#### *The Dutch Foundation for Consumer Complaints Boards<sup>364</sup>*

The DFCCB is an independent tribunal that can hear consumer complaint disputes and education related disputes. Once a complaint is filed with the DFCCB a complaint fee is charged. If the DFCCB is able to adjudicate the dispute, the opposing party will be asked to respond. Informal resolution is attempted at this stage. If unresolved, an expert investigator is hired. Once the investigation is completed, he or she reports the findings to the DFCCB. A decision is then issued with no right of appeal.

#### *The Inspectorate of Education*

The Inspectorate only receives complaints concerning sexual harassment, abuse, psychological and physical violence, discrimination and radicalization. The Inspectorate does not resolve disputes, but instead advises on appropriate actions and may submit a formal complaint to the relevant office including law enforcement.

### *Auditing system*

The Inspectorate conducts a comprehensive audit of every school and education governing body in the Netherlands. These ensure that the school is providing adequate educational services to its students and to ensure that its operations are financially viable. Part of these services is the requirement that schools provide a safe environment for students. The Inspectorate also conducts an annual performance analysis of every school or institution. This is based on the information available to the Inspectorate without the need for a full audit.

There is an incentive structure in place to encourage compliance with the national standards. High performing schools are given the designation of an “Excellent School”. Low performing schools are identified and their designation as low performing is published publicly. They are given six weeks to publicly release an improvement plan with the help of councils representing school boards, such as the Council for Primary Education. If the school is unable to improve, they merge with a high

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<sup>364</sup> “Klacht indienen” (n.d.) accessed 3 September 2020, online: *de geschillencommissie* <<https://www.degeschillencommissie.nl/komt-u-niet-tot-een-oplossing/>>.

performing school. If, after two years, they are still low-performing, they lose all government funding.

### IRT Notes

The IRT took note of the Inspectorate's auditing process. In that the power to enforce sanctions will remain with the FFSOs and, after the NIM is scaled, the PTSOs and perhaps clubs, the NIM will require a means of monitoring compliance with those sanctions. An audit is a possible mechanism through which to achieve that goal.

### Norway

The Norwegian education system is decentralized. The national government sets broad standards through the *Education Act*<sup>365</sup> and the municipalities, schools and school boards create specific policies and procedures. In particular, schools are required to make ongoing and systematic efforts to promote the health, environment and safety of its students. Under the *Education Act*, employees of the education sector are also required to report bullying and harassment to the relevant County Governor.

This section outlines the reporting and complaint resolution functions of County Governors in Norway.

#### County Governors<sup>366</sup>

County Governors represent the King and the Government in their respective counties by ensuring that the goals, guidelines and actions of the Norwegian legislature are being followed. The County Governors hear appeals from the disciplinary decisions of schools and oversee school compliance through audits.

Complainants must refer their complaints to the school before they can be heard by the County Governor. Complaints can be made in writing or verbally; however, they are advised to submit complaints in writing. The school investigates and comes to a decision, outlining which actions will be taken. If the complainant is not satisfied with the resolution, he or she may report the complaint

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<sup>365</sup>*Education Act* 17 July 1998 no. 35.

<sup>366</sup> "Primary and lower and upper secondary education" (27 March 2017) accessed 3 September 2020, online: *County Governor – Fylkesmannen.no* < <https://www.fylkesmannen.no/en/Nursery-schools-and-education/Primary-and-lower-and-upper-secondary-education/>>.

to the school's headmaster or headmistress. If they uphold the decision the school is obliged to raise the matter with the County Governor. He or she has the authority to determine whether the student's right to a good environment has been infringed. The County Governor has the power to overturn or alter any decision made at the school level.

## C.3 Law Enforcement

### C.3.1 Canadian Law Enforcement

The IRT examined the complaint intake and resolution process of several independent police review agencies in Canada including:

- The Office of the Independent Police Review Director (Ontario);
- The Civilian Review and Complaints Commission for the RCMP;
- The Commissaire à la Déontologie Policière (Québec); and
- The Alberta Serious Incident Response Team.

Although the law enforcement sector is not analogous to the sport sector for the reasons outlined in the preamble to this section, the IRT noted and highlighted several notable features found in these organizations.

#### *(i) Office of the Independent Police Review Director<sup>367</sup>*

The Office of the Independent Police Review Director ("OIPRD") is the independent office responsible for receiving, managing and overseeing all complaints concerning municipal, regional and provincial police in Ontario. It was established by the Ontario legislature in 2007 through the *Independent Police Review Act*<sup>368</sup> which amended the *Police Services Act*.<sup>369</sup> The OIPRD is also subject to the *Comprehensive Ontario Police Service Act, 2019*.<sup>370</sup> The OIPRD is led by the Independent Police Review Director who is appointed by the Lieutenant Governor in Council on recommendation of the Attorney General. The OIPRD received 3500 complains in 2018-2019 and managed 4,567 complaints in that same year, which included complaints received from the prior fiscal year. The OIPRD is funded by the provincial government and in 2018-2019 had a budget of \$8,370,800.

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<sup>367</sup> "About us" (n.d.) accessed 1 September 2020, online: *OIPRD* <<https://www.oiprd.on.ca/about-us/>>.

<sup>368</sup> *Independent Police Review Act, 2007*, S.O. 2007, c.5.

<sup>369</sup> *Police Services Act*, R.S.O. 1990, c. P.15.

<sup>370</sup> *Comprehensive Ontario Police Services Act, 2019*, S.O. 2019, c-1.

The OIPRD has exclusive jurisdiction over the intake and review of all complaints concerning police officers in Ontario. It also has the ability to delegate to the Commissioner of the OPP or the chief of police for municipal and regional police forces.

### Complaints System

Under the *Police Services Act*, any member of the public may file a complaint to the OIPRD concerning the policies of or services provided by a police force or the conduct of a police officer. Complainants may also file a complaint with the relevant regional or municipal police force; however, these complaints are forwarded to the OIPRD.

The OIPRD reviews every complaint and determines the appropriate procedure to follow. It will not deal with the complaint if it is frivolous, vexatious, made in bad faith, could be more appropriately dealt with under another legal instrument, or if dealing with the complaint is not in the public interest. Sections 59 and 60 of the *Police Services Act* also allows the OIPRD to refer complaints concerning the policies or services provided by a municipal police force, regional police force or OPP to the relevant officer in those organizations. If the allegation is substantiated and “less serious” it is also referred to the leadership officer at the relevant police unit.

If the OIPRD determines that the allegation is substantiated and “more serious” the complaint is sent to the chief of police at the relevant police unit for a disciplinary hearing and decision. The OIPRD then reviews the investigation report and the chief’s decision. The complainant has the ability to appeal the decision of the chief to the OIPRD who either confirms the decision of the chief or substitutes his or her own decision.

### Audit

The OIPRD is mandated under s. 61 of the *Police Services Act* to monitor police service performance through an auditing system. There are two types of audits performed by the OIPRD. The first are audits initiated by the police force itself wherein it engages the services of an independent auditor. These audits are overseen by the OIPRD. The board then submits the results of the audit to the OIPRD.

The second is an audit of any aspect of the administration of public complaints by boards or services under the *Police Services Act*. The OIPRD makes the results of these types of audits available to the public.

### *IRT Notes*

The IRT found the two-way complaint triaging system of interest. The ability of complaints to be referred down to the FFSOs by the NIM and up to the NIM from the FFSOs will ensure greater alignment and coordination between these organizations.

#### *(ii) The Civilian Review and Complaints Commission for the RCMP<sup>371</sup>*

The Civilian Review and Complaints Commission (“CRCC”) is a federal government agency that is distinct and independent from the RCMP. It is mandated by the *Royal Canadian Mounted Police Act*<sup>372</sup> (the “RCMP Act”) to (i) receive complaints from the public concerning the conduct of RCMP members; (ii) conduct reviews of RCMP complaint investigations; (iii) initiate complaints and investigations into RCMP member conduct when it is in the public interest to do so; and (iv) promote public awareness of this complaint process.

The CRCC is led by a Chairperson, Vice-Chairperson and Executive Assistant to the Chairperson. They are assisted by several executive officers such as the Director of Complaint Intake and Director of Research, Policy and Strategic Investigation. In 2018-2019 it received 2,988 complaints, 2,352 of which met the criteria for consideration by the RCMP stated in s. 45.53 of the RCMP Act. The CRCC is funded entirely by the federal government.

The CRCC has jurisdiction over the complaint intake and resolution process concerning the conduct of RCMP members while performing a duty or function under the RCMP Act or the *Witness Protection Program Act*.<sup>373</sup> However, to exercise this jurisdiction (i) the accused must have been an RCMP member at the time of the alleged misconduct; (ii) the complaint must be filed within one year of the alleged misconduct unless an extension is granted by the CRCC; and (iii) the alleged conduct must not have already been addressed under this complaint process.

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<sup>371</sup>“Civilian Review and Complaints Commission for the RCMP” (n.d.) accessed 5 September 2020, online: *Government of Canada* <<https://www.crcc-ccetp.gc.ca/>>.

<sup>372</sup> *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10.

<sup>373</sup> *Witness Protection Program Act*, S.C. 1996, c. 15.

## *Complaints System*

The CRCC only accepts complaints from individuals who were directly involved in the alleged misconduct, who witnessed the alleged misconduct, or who are authorized to act on behalf of the complainant. The CRCC Chairperson may also initiate his or her own complaint process in the same manner as a complaint from the public. Moreover, complaints can be filed with any RCMP member or the provincial authority for receiving complaints concerning police in the province in which the subject of the complaint took place. Those authorities will refer the complaint to the CRCC.

Once the complaint is received by any of the appropriate offices it is sent to the RCMP for an initial investigation. The RCMP then reports their findings and proposed resolution to the complainant. If the complainant is not satisfied with that resolution, he or she may request a review by the CRCC. The RCMP then sends all relevant investigative material to the CRCC.

If the CRCC is satisfied with the RCMP's report, the Chair sends a "satisfied report" to the RCMP Commissioner, the Minister of Public Safety, the complainant and the member of the RCMP involved. This is the end of the process.

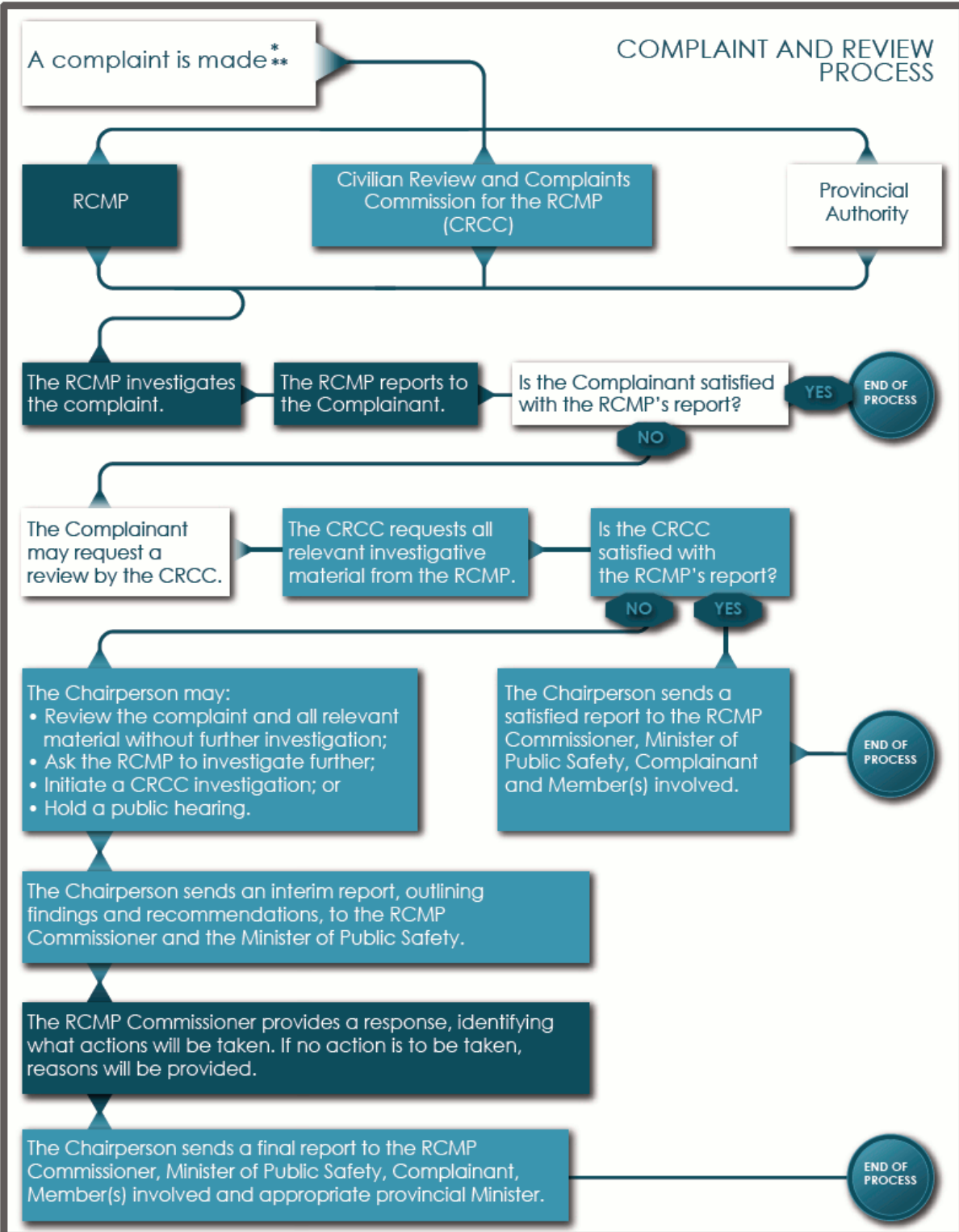
If the CRCC is not satisfied with the RCMP's handling of the complaint, the Chair may elect to (i) review the complaint and all relevant material without further investigation; (ii) ask the RCMP to investigate further; (iii) initiate a CRCC investigation; or (iv) hold a public hearing.

If the complaint is sent back to the RCMP for further investigation, the RCMP must investigate and send a report to the CRCC of the results of its second investigation. If the CRCC Chairperson is satisfied he or she will issue an "interim report" outlining various findings and recommendations for the RCMP, which is sent to the RCMP Commissioner and the Minister of Public Safety. The RCMP Commissioner then gives notice to the CRCC, identifying what actions will be taken. If no actions are required, reasons must be provided. The Chairperson then sends a final report to the RCMP Commissioner, the Minister of Public Safety, the complainant, the RCMP member(s) involved and, if relevant, the appropriate provincial Minister. This is the end of the process.

If the CRCC elects to hold a hearing, the Chairperson assigns one or more members of the CRCC to conduct the hearing and sends a notice in writing of the decision to the Minister of Public Safety, the RCMP Commissioner, the complainant and the RCMP member(s).

Decisions made by the RCMP, the CRCC or a hearing panel are appealable to the RCMP Commissioner under s. 45.11 of the RCMP Act. Below is a chart demonstrating the complaint and review process:





\* The Chairperson can initiate a complaint. In addition, at any stage of the process, the Chairperson may institute an investigation or a hearing where it is considered in the public interest to do so.

\*\* The CRCC refers complaints it determines are closely related to national security to the National Security and Intelligence Review Agency (NSIRA) and the CRCC has no further involvement in these complaints.

## Public Engagement

The CRCC is mandated by the RCMP Act to promote public awareness of the complaints process. It does so by engaging with municipal associations, police boards, provincial oversight bodies, aboriginal groups and front-line service providers. The goal of these engagements is to inform key community service providers who are most likely to be a point of contact for individuals seeking support, assistance and/or searching for information concerning the police complaint process. The CRCC also initiates and organizes an annual meeting of civilian police review bodies to share best practices, identify emerging issues and enhance working relationships.

### *(iii) Commissaire à la Déontologie Policière<sup>374</sup>*

The Commissaire à la Déontologie Policière (“CDP”) is appointed by the Government of Québec and is mandated by s. 128 of the Québec *Police Act*<sup>375</sup> to receive and examine complaints regarding police officers, special constables, highway controllers and UPAC investigators alleging violations of the Code of Ethics of Québec police officers (the “Code of Ethics”).<sup>376</sup> Its services include complaint intake, preliminary assessment, conciliation and formal investigations. The agency is headed by the Commissioner who is assisted by the Deputy Commissioner and employees in its Montréal office and Québec City office. The CDP is funded by the Québec government; however, ss. 77 and 82 of the *Police Act* also requires municipalities that receive its services to pay a fixed sum in return for those services. In 2018-2019, 1867 complaints were filed with the CDP.

The CDP has jurisdiction over the complaint intake and assessment process for all police officers in Québec, certain Québec officers performing police duties in other provinces and certain officers from other provinces authorized to perform police activities in Québec under s. 128 of the *Police Act*. The CDP does not have the ability to sanction officers who violate the Code of Ethics; that power is held by the Comité de déontologie policière (the “Committee”) pursuant to s. 128 of the *Police Act*.

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<sup>374</sup> “Composition and Organization of the Commissaire à la déontologie policière” (n.d.) accessed 5 September 2020, online: *Commissaire à la déontologie policière* < <https://deontologie-policiere.gouv.qc.ca/en/le-commissaire/notre-organisation/composition-et-organisation.html>>.

<sup>375</sup> *Police Act*, C.C.Q.2020, chapter P-13.1.

<sup>376</sup> *Code of ethics of Québec police officers*, C.C.Q. 2020, chapter P-13.1, r. 1.

## Complaints System

The CDP's reporting structure is provided for in the *Police Act*. Under s. 143, any person may lodge a complaint in writing with the CDP or with any police force against a police officer for alleged violation of the Code of Ethics during the performance of his or her policing activities. Moreover, s. 143.1 requires complaints filed with a police force in another province concerning the conduct of a Québec officer to be referred to the CDP. In 2018-2019 initial reception of complaints took an average of 3 days. The CDP also operates a support line to help complainants navigate the complaint process.

After the complaint is received, the CDP conducts an initial assessment of the complaint and elects the appropriate procedure including: (i) dismissal of the complaint as unfounded, vexatious or outside of CDP jurisdiction; (ii) referral to conciliation; and (iii) initiation of a formal investigation. In 2018-2019 initial assessments took an average of 58 days.

The CDP attempts to resolve all issues in conciliation before initiating a formal investigation except those that involve violent acts. Most complaints that are not dismissed are resolved through conciliation. This is an alternative dispute resolution mechanism that aims to reach an agreement between the parties concerning the appropriate resolution. The complainant may refuse conciliation; however, refusal to attempt conciliation provides the CDP with grounds for dismissing the complaint. In 2018-2019 the average time spent in the conciliation process was 56 days.

If conciliation fails, or if the complaint alleges violence on the part of the accused, the CDP initiates an investigation. The CDP appoints an internal investigator to assess the merits of the complaint and collect evidence. Investigations took an average of 196 days in 2018-2019. The investigator then compiles a report of his or her findings and submits the report to the CDP. If the report reveals a breach of the Code of Ethics, the CDP may compel the officer to go before the Committee for a formal hearing. If the report evidences a criminal act by the police officer, the CDP must refer the report to the Director of Criminal and Penal Prosecutions and ask the Director to formally accuse the police officer of a crime. If the complaint involves a death, serious injury or injury through firearm use, the CDP sends the report to the Bureau des enquêtes indépendentes for an independent investigation. The complainant may request that any decision made by the CDP be reviewed by the Committee under s. 181 of the *Police Act*.

If the Committee determines that the officer is guilty of misconduct, they are able to issue a sanction which may include a warning, a reprimand, a suspension without pay for up to 60 working days, a demotion or termination of employment.

An officer may request a remission of the sanction after 2 to 3 of the decision. This prohibits the penalty from being used against the officer going forward. Remissions are typically issued if the penalty was a first warning or reprimand. Decisions of the Committee are appealable to the Court of Québec under s. 241 of the *Police Act*.

### *IRT Notes*

The IRT took notice of the requirement that conciliation be attempted before initiating a full investigation. This practice would conserve time and resources if implemented in the NIM.

### *(iv) Alberta Serious Incident Response Team<sup>377</sup>*

The Alberta Serious Incident Response Team (“ASIRT”) is an independent agency created under the Alberta *Police Act*<sup>378</sup> to investigate allegations of police misconduct. It is led by a civilian executive director who must be a lawyer. The organization includes a blend of civilian investigators and seconded police officers from various police agencies. This section outlines the complaint reporting and resolution process in Alberta and the role of ASIRT in that process.

### *Complaints System<sup>379</sup>*

In Alberta complaints concerning the conduct of a police officer while on duty are filed to either the public complaint director or the chief of police of the relevant municipal police service. Public complaint directors forward complaints to the chief of police. All complaints must be filed in writing within one year of the events upon which it is based or within one year of when the conduct was first discovered or ought to have been discovered. Written complaints must contain the reasons for the complaint, details of the incident and all relevant contact information.

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<sup>377</sup> “About ASIR” (n.d.) accessed 5 September 2020, online: *Alberta* <<https://www.alberta.ca/about-asirt.aspx>>

<sup>378</sup> *Police Act*, R.S.A. 2000, c. P-17.

<sup>379</sup> “How to Resolve a Complaint About the Conduct of a Municipal Police Officer” (July 2015) accessed 5 September 2020, online (pdf): *Alberta Justice and Solicitor General* <<https://www.alberta.ca/assets/documents/jsig-municipal-police-officer-complaint-process.pdf>>.

If the complaint alleges an incident involving serious injury or death of any person due to the actions of a police officer, the chief of police must immediately notify the Justice Minister pursuant to s. 46.1 of the *Police Act*. The Justice Minister may, at his or her discretion, then refer that complaint to ASIRT.

If the complaint remains with the chief of police, he or she may assign a member of the police service to investigate. Investigators may require the complainant to submit to an interview or submit a written statement. Complainants are issued a written progress report every 45 days. Once the investigation is complete, the chief of police reviews the findings, conducts a hearing and decides on a resolution. The complainant may appeal the decision of a chief of police to the Law Enforcement Review Board within 30 days of the decision being issued. Decision of the Law Enforcement Review Board are appealable to the Court of Appeal of Alberta under s. 18 of the *Police Act*.

If the complaint is referred to ASIRT, it conducts an independent investigation into the matter. ASIRT is able to lay criminal charges against a police officer if the investigation evidences that he or she committed a criminal offence. The executive director of ASIRT then reports their decision to the provincial director of law enforcement, the chief of the involved police agency, the police commission for the involved police agency, the police officer that was the subject of the investigation, the victim and the family of the victim.

## C.4 International Law Enforcement

The IRT recognizes at the outset of this section that mechanisms in place to receive and adjudicate complaints in the law enforcement context are not entirely transferable to the sport context. The paramilitary culture in law enforcement organizations has an impact on their complaints and dispute resolution procedures, as the notion of “police regulating police” and respect for the chain of command often result in a lack of external intervention and oversight. However, not all aspects of the international models explored below are captured by this generalization. Moreover, each model has unique features that are relevant to the IRT’s analysis. This section outlines the complaint intake and resolution procedures for law enforcement agencies in Norway, Australia, the Netherlands and the United Kingdom. The IRT also notes certain interesting features at the end of each country section.

### C.4.1 Law Enforcement in Norway

The National Police Directorate (the “Directorate”) is the highest police authority in Norway. It is part of the government administration under the Ministry of Justice and Public Security.<sup>380</sup> Its functions include implementing the government’s law enforcement policies, managing law enforcement regulations and funding, and advising other public sector organizations on law enforcement issues. There are 27 local police districts, each under the command of a Chief of Police who has full responsibility for all policing in his or her district. Each police district has its own headquarters, as well as several police stations, of which there are 71 in total. The districts are divided into 303 sub-districts under the command of a Police Chief Superintendent.<sup>381</sup>

#### Complaints System

The complainant is directed to their local police district for complaints about police behaviour that does not constitute a violation of the law. The complaint is decided by the Commissioner of Police in the respective police district. The Police Commissioner then sends a reply to the complainant containing their decision on whether the police acted wrongly and includes the reasons for their decision. If the complainant is dissatisfied with the assessment or decision, the Commissioner can be asked to forward the complaint to the Directorate for review.

Complaints regarding alleged criminal activity on the part of a member of a police service or prosecuting authority are directed to the Norwegian Bureau for the Investigation of Police Affairs (the “Bureau”). The Bureau is a national investigation and prosecution agency whose purpose is to “investigate cases where employees of the police or prosecuting authority are suspected of committing criminal offences in the course of duty.”<sup>382</sup> The *Criminal Procedures Act*<sup>383</sup> gives the Bureau its statutory power and many of its functions are outlined in the *Regulations on the System of the Prosecuting Authority*.<sup>384</sup>

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<sup>380</sup>Politiet (Last Accessed: 09 04 2020) online: < <https://www.politiet.no/en/>>.

<sup>381</sup> OSCE Polis, “Country Profiles – Norway” (Last Accessed: 09 04 2020) online: <<https://polis.osce.org/country-profiles/norway>>.

<sup>382</sup> Independent Police Complaints Authorities’ Network, “The Norwegian Bureau for the Investigation of Police Affairs” (Last Accessed: 09 04 2020) online: < <https://ipcan.org/members/the-norwegian-bureau-for-the-investigation-of-police-affairs>>.

<sup>383</sup> 1981 No. 25.

<sup>384</sup> 1986, No. 28 s 34.

Complaints are filed with the Special Unit within the Bureau or the Unit is notified immediately of the incident when the local police or prosecuting authority first receive the complaint. The Head of the Bureau distributes the cases to the individual investigation departments (located based on region). The Department then decides if an investigation will be carried out. An investigation is always carried out if someone is killed or seriously injured. If an official or police officer believes another employee has committed a criminal act there is a duty to report to the Bureau. Investigation is carried out by an investigation leader from the relevant Department. The number of investigators on the case depends on the complexity or seriousness. Two investigators are employed if the issue is sufficiently complex or serious. The Head of the Investigation then submits recommendations to the Head of the Bureau on how the prosecution issue should be decided. Any decisions made by the Bureau can be appealed to the Attorney General. When punishment is required, the Bureau prosecutes cases in court and can issue fines or penalty notices.

### *IRT Notes*

The IRT identified two notable features from the law enforcement system in Norway. First, the investigator assigned to carry out an investigation must not have been employed in the previous two years by the police or prosecuting authority involved in the complaint, which speaks to the importance of protecting against a conflict of interest. Second, the Attorney General is notified automatically of any investigations initiated by the Bureau and has authority to order the Bureau to initiate, continue or stop investigations.

#### C.4.2 Law Enforcement in Australia

The structure of the police service in Australia is divided based on the states and territories. The state and territory police services have the responsibility for community safety and protection in their respective regions.<sup>385</sup> These include the New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and the Western Australia police forces. The Australian Federal Police serves as the national policing agency and also serves as the police service for certain territories.<sup>386</sup> Its roles include investigating transnational organized crime, combating terrorism and representing Australian police on an international level.

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<sup>385</sup> Australia.gov.au “Police services – states and territories” (Last Accessed: 09 04 2020) online: <<https://info.australia.gov.au/information-and-services/public-safety-and-law/police-and-crime-prevention/police-services-states>>.

<sup>386</sup> Australian Federal Police (Last Accessed: 09 04 2020) online: <<https://www.afp.gov.au>>.

## Complaints System

Each state and territory police organization has its own complaints procedure to manage complaints regarding members of the organization or the organization itself.<sup>387</sup> However, each state and territory with a police organization also has an independent body that is capable of receiving complaints of police misconduct and conducting investigations. Complainants can typically complain to either the police organization or directly to the relevant independent body. A brief description of each independent body is provided below.

### Tasmania – Integrity Commission

The Integrity Commission (the “Commission”) was established in 2010 with the goal of enhancing public trust in the government authorities in Tasmania.<sup>388</sup> Its statutory powers arise from the *Integrity Commission Act*.<sup>389</sup> Upon receiving a complaint, the Commission “triages” the complaint resulting in the complaint being dismissed, referred or assessed. If the complaint is dismissed the complainant is informed with reasons. If the complaint is referred to another organization the Commission has the power to monitor and audit how the complaint is dealt with and can require the referral body to report on any action it plans to take.

During the assessment, the Commission conducts preliminary enquiries to better understand the matter, with a focus on publicly available information. The assessment stage should be completed within 40 business days and will result in the matter being dismissed, referred or investigated by the Commission.

The Commission has the power to direct individuals or organizations to attend and give evidence, to enter, search and seize, and to use surveillance devices. Upon completion of the investigation,

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<sup>387</sup> See: “Complaints About WA Police Force Personnel” (Last Accessed: 09 04 2020) online: *Western Australia Police Force* <<https://www.police.wa.gov.au/Police-Direct/Commendations-and-complaints/Complaints-About-WA-Police-Personnel>>; “Complaints” (Last Accessed: 09 04 2020) online *Victoria Police* <<https://www.police.vic.gov.au/complaints>>; “Compliments and Complaints” (Last Accessed: 09 04 2020) online: *Tasmania Police* <<https://www.police.tas.gov.au/about-us/compliments-and-complaints/>>; “Key Contacts” (Last Accessed: 09 04 2020) online *South Australia Police* <<https://www.police.sa.gov.au/about-us/key-contacts>>; “QPS Feedback” (Last Accessed: 09 04 2020) online *Queensland Police* <<https://forms.police.qld.gov.au/launch/feedback>>; “How to Lodge a Complaint” (Last Accessed: 09 04 2020) online: *NSW Police Force* <[https://www.police.nsw.gov.au/online\\_services/providing\\_feedback/feedback\\_compliments\\_complaints\\_and\\_suggestions/feedback/how\\_to\\_lodge\\_a\\_complaint](https://www.police.nsw.gov.au/online_services/providing_feedback/feedback_compliments_complaints_and_suggestions/feedback/how_to_lodge_a_complaint)>; “Compliments and Complaints” (Last Accessed: 09 04 2020) online: *NT Police, Fire & Emergency Services* <<https://pfes.nt.gov.au/contact-us/compliments-and-complaints>>.

<sup>388</sup> Integrity Commission (TAS) (Last Accessed: 09 04 2020) online: <<https://www.integrity.tas.gov.au>>.

<sup>389</sup> 2009 (TAS) No. 67.



the investigator submits a report to the CEO, who can seek additional comments or information from those named in the report. The CEO then submits the report to the Board of the Integrity Commission who determines the investigation outcome. Outcomes can include the complaint being dismissed, the report being referred to the Commissioner of Police, Director of Public Prosecutions, or the responsible Minister for action, the report being tabled in Parliament and released publicly or other similar outcomes.

#### Western Australia – Corruption and Crime Commission

The Commission was established in 2004 via the *Corruption and Crime Commission Act*.<sup>390</sup> In 2015, a proclamation of the Act focused the Commission’s activities on more serious misconduct, as well as criminal behaviour.<sup>391</sup> The Commission “*assesses, investigates, and exposes serious misconduct in the Western Australian public sector and misconduct and reviewable police action in the Western Australian Police Force.*”

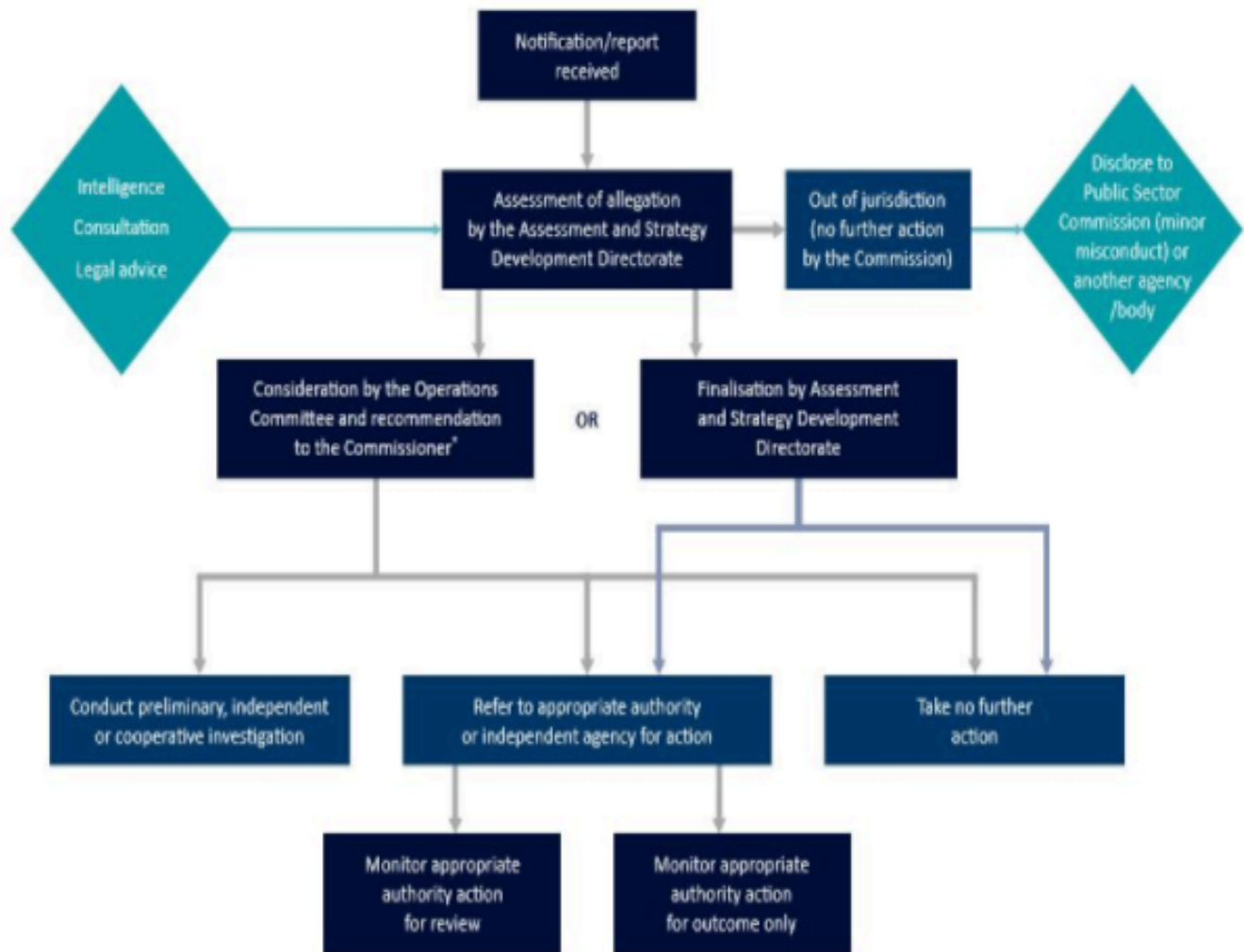
Reports are initially assessed to determine what action will be taken. Factors considered in this process include the seriousness of the conduct, whether the allegation was made in good faith, whether the allegation has already been investigated, whether further action is needed and whether it is in the public interest to investigate. The following outlines the assessment process<sup>392</sup>:

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<sup>390</sup> 2003 (WA) No. 48.

<sup>391</sup> Corruption and Crime Commission (WA) (Last Accessed: 09 04 2020) online: <<https://www.ccc.wa.gov.au>>.

<sup>392</sup> “How we assess corruption” (Last Accessed: 09 04 2020) online: *Corruption and Crime Commission* <[https://www.ccc.wa.gov.au/complain\\_about](https://www.ccc.wa.gov.au/complain_about)>.



Upon completion of the investigation the Commission will decide whether to recommend consideration of criminal or disciplinary action. The Commission does not determine the guilt or innocence of individuals.

### New South Wales – Law Enforcement Conduct Commission

In 2015, the Minister of Police announced the establishment of the Law Enforcement Conduct Commission following a review of the ways in which to oversight of law enforcement in New South Wales could be streamlined.<sup>393</sup> The *Law Enforcement Conduct Commission Act*<sup>394</sup> describes the Commission’s functions and outlines its statutory powers. Individuals can address complaints to the Commission or simply provide information that could help them better deliver their services.

<sup>393</sup> Law Enforcement Conduct Commission (NSW) (Last Accessed: 09 04 2020) online: <<https://www.lecc.nsw.gov.au>>.

<sup>394</sup> 2016 (NSW) No. 61.

### Queensland – Crime and Corruption Commission

The Crime and Corruption Commission (the “CCC”) is an “[i]ndependent statutory body set up to combat and reduce the incidence of major crime and corruption in the public sector in Queensland.”<sup>395</sup> The CCC’s primary functions and powers come from various pieces of legislation including the *Crime and Corruption Act*,<sup>396</sup> the *Criminal Proceeds Confiscation Act*,<sup>397</sup> and the *Witness Protection Act (2000)*.<sup>398</sup>

Complaints are initially assessed to determine if they were made in good faith and if they fall under the jurisdiction of the CCC. Possible outcomes of the assessment process include dismissing the complaint, investigating the complaint, referring the complaint to another agency, conducting a joint investigation with the agency, or referring possible criminal activity to the police. The CCC also allows for the submission of anonymous complaints and public interest disclosures (whistleblowing). Upon completion of the investigation, a report is sent to a prosecuting body to consider any appropriate action, or to the agency involved so it can consider any appropriate disciplinary action or so it can modify its processes as required.

The Parliamentary Crime and Corruption Committee oversees CCC activity and can receive complaints regarding any grievance related to the CCC.

### South Australia – Independent Commissioner Against Corruption

The Independent Commissioner Against Corruption (the “ICAC”) was established in 2013 by the *Independent Commissioner Against Corruption Act*.<sup>399</sup> Its purpose is to “*preserve and promote integrity in public administration through proactive prevention and educational initiatives, the investigation of corruption in public administration, and the investigation or referral of misconduct or maladministration in public administration.*”<sup>400</sup> The Officer for Public Integrity ( the “OPI”), established through the same Act as the ICAC, works with the ICAC to achieve its mandate and plays an important role in the complaints process.

Once the OPI receives the complaint it will send acknowledgment to the complainant within two working days. Complaints about the police are not directly assessed by the OPI, but the OPI will oversee the assessments made by the South Australian Police. However, the ICAC can investigate

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<sup>395</sup> Crime and Corruption Commission (Last Accessed: 09 04 2020) online: <<https://www.ccc.qld.gov.au/>>.

<sup>396</sup> 2001 (QLD) No 69.

<sup>397</sup> 2002 (QLD) No. 68.

<sup>398</sup> 2000 (QLD) No. 56.

<sup>399</sup> 2012 (SA) No 52.

<sup>400</sup> Independent Commissioner Against Corruption (Last Accessed: 09 04 2020) online <<https://icac.sa.gov.au/>>.

the conduct of the South Australia Police. The complaint will be referred back to the South Australia police unless it is sufficiently serious or complex. The ICAC has various powers when conducting investigations including, but not limited to, requiring an agency, public authority or public officer to produce a written statement, to compel individuals to produce documents and to examine witnesses. Any criminal activity is referred to the Director of Public Prosecutions for further action. Results of investigations can also be published by the ICAC.

#### Victoria – Independent Broad-Based Anti-Corruption Commission

The Independent Broad-Based Anti-Corruption Commission (the “IBAC”) is “*Victoria’s agency responsible for preventing and exposing public sector corruption and police misconduct.*”<sup>401</sup> The *Independent Broad-Based Anti-Corruption Commission Act (2011)*<sup>402</sup> outlines its statutory powers and functions.

The IBAC accepts complaints regarding public sector corruption and police misconduct in Victoria. Complaints are assessed and can be referred to another agency, dismissed, referred to a preliminary inquiry for additional information, investigated, or deferred based on factors such as whether it is being investigated by another agency. The preliminary inquiry often includes a request for further information from the parties, obliging a party to produce certain documents and issuing confidentiality notices (discussed further in the section below). If there is evidence of corruption or police misconduct following an investigation, the IBAC can bring criminal proceedings, refer the matter to the Office of Public Prosecutions, refer the matter to the agency to impose disciplinary action, make recommendations to the agency or individual, and/or publish the investigation report.

#### Northern Territories – Ombudsman NT

The statutory functions and powers of the Ombudsman NT are outlined in the *Ombudsman Act*<sup>403</sup> and the *Ombudsman Regulations*.<sup>404</sup> Complaints concerning the Northern Territory Police are automatically sent to the Ombudsman if received by the Police and complaints first received by the Ombudsman are sent to the Police.<sup>405</sup> The Ombudsman has the power to compel information from parties involved in the incident, to attend hearings for the investigation, enter premises of organizations being investigated, and other similar powers. Upon completion of the

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<sup>401</sup> Independent Broad-Based Anti-Corruption Commission (VIC) (Last Accessed: 09 04 2020) online <<https://www.ibac.vic.gov.au/about-us>>.

<sup>402</sup> 2011 (VIC) No. 66.

<sup>403</sup> 2009 (NT) No. 05.

<sup>404</sup> 2009 (NT) No. 08.

<sup>405</sup> Ombudsman Northern Territories (Last Accessed: 09 04 2020) online: <<https://www.ombudsman.nt.gov.au/>>.

investigation, the Ombudsman will submit a report to the Police including recommendations to improve their services. The Police are not required to follow the recommendations. However, if they choose not to follow the recommendations, they must inform the Ombudsman.

#### Australian Federal Police Force

A majority of the details regarding the complaints process for the Australian Police Force (the “APF”) are outlined in the *Australian Federal Police Act*.<sup>406</sup> Complaints may be submitted orally or in writing to the Commissioner of Police (AFP), who is responsible for keeping the complainant informed of the status of the investigation. Complaints are categorized based on level of seriousness; category 1 complaints being the least serious and category 3 complaints being the most serious. For category 1 and 2 complaints, the Commissioner will appoint a “manager” to handle the complaint. Informal resolution may be recommended by a manager to solve category 1 complaints. Remedial action for category 1 and 2 complaints include counselling the respondent, changing their shifts and training or development. Upon receipt of a category 3 complaint, the Commonwealth Ombudsman must be notified. These complaints can be dealt with jointly by the Ombudsman and the AFP if considered necessary by the AFP or the Ombudsman and require a more formal investigation. An investigative report is submitted to the Commissioner with recommendations for sanctions. The Commissioner then decides on the appropriate sanction which can include termination of employment.

#### Commonwealth Ombudsman

The Commonwealth Ombudsman was created through the *Ombudsman Act*.<sup>407</sup> The Ombudsman can investigate complaints about the actions of AFP members and about their policies, practices and procedures.<sup>408</sup> Complainants are encouraged to first make the complaint with the AFP and the Ombudsman can decline to investigate until the AFP’s internal processes have been exhausted. The Ombudsman cannot override decisions made by agencies or compel them to comply with the recommendations. However, typically recommendations are followed and the Ombudsman can write a report to Parliament about a lack of cooperation if it is in the public interest.

#### *IRT Notes*

There are a number of useful features from the policing system in Australia relevant to the implementation of the NIB. The complaint referral system conducted by Tasmania’s Integrity

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<sup>406</sup> 1979 (AUS) No. 58.

<sup>407</sup> 1976 No. 181.

<sup>408</sup> Commonwealth Ombudsman (Last Accessed: 09 04 2020) online: <<https://www.ombudsman.gov.au/>>.

Commission and the various associated outcomes, as well as their ability to audit to monitor compliance with recommendations are potential responsibilities of the NIM. The IRT also notes the importance of the ability of the CEO of the Integrity Commission to request more information from the investigator or those involved in the investigation after the investigator completes her or his report. With regard to confidentiality, the IRT notes the possibility of issuing confidentiality notices during the NIM investigation process similar to the IBAC. However, these notices are typically hard to enforce. Therefore, confidentiality notices should likely be used at the discretion of the investigator and only in certain circumstances.

Moreover, the associated sanction should be included in the notice. With regard to ensuring recommendation compliance, the Integrity Commission's authority in Tasmania is comparable to the proposed NIM in that it cannot impose and enforce sanctions. However, just as the Integrity Commission can table a report in Parliament outlining the organization's noncompliance, the NIB could potentially write a similar report outlining the relevant NSO's or PSO's noncompliance to the Minister of Sport, which would then be filed in the House of Commons. Lastly, the Commonwealth Ombudsman and the IBAC provide support for the concept of an independent body with the ability to self-initiate investigations.

### C.4.3 Law Enforcement in the Netherlands

Law enforcement in the Netherlands is centralized under the National Police Force, whose statutory functions are outlined in the *Police Act*.<sup>409</sup> Supervision of the National Police Force is headed by the Commissioner and the Minister of Security and Justice is responsible for ensuring the police functions properly.<sup>410</sup> The National Police Force consists of 10 regional units, the National Unit and the Police Services Center.<sup>411</sup> Each Regional Unit is managed by a Chief Constable and consists of districts that are divided into "robust base teams". These robust base teams serve an entire municipality and the districts "bridge the gap" between the regional level of the unit and the local municipalities.

### Complaints System

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<sup>409</sup> 1993.

<sup>410</sup> Government of the Netherlands, "Organisation of the Dutch Police" (Last Accessed: 09 04 2020) online: <<https://www.government.nl/topics/police/organisation-of-the-dutch-police>>.

<sup>411</sup> Politie (Last Accessed: 09 04 2020) online: <<https://www.politie.nl/>>.

The law in the Netherlands states that complainants must first address their complaint to the organization that caused the issue.<sup>412</sup> Complaints may be submitted electronically via the online complaints form, by sending a letter, or by phone and must be made within 12 months of the incident. The police organization will contact the complainant within 5 working days of receiving the complaint. The “complaints handler” – a staff member of the organization – will then contact the complainant and inform them whether the complaint is within their jurisdiction. The complaints handler will then determine if mediation is appropriate given the circumstances and if so, will act as the facilitator during mediation if both parties consent to mediation. If the complainant remains dissatisfied, the process moves to the second phase. In this stage, the complaint is put before the Commissioner of Police for review. The Commissioner obtains advice from an independent complaints committee, who provides the Commissioner with advice and organizes a hearing. During the hearing both parties are given the opportunity to explain their perspective. The complaints committee delivers the results of the hearing to the Commissioner who then makes a final decision on the matter.

Decisions regarding complaints made by the Commissioner may be reviewed by the National Ombudsman of the Netherlands.<sup>413</sup> The *National Ombudsman Act*<sup>414</sup> and the *General Administrative Law Act*<sup>415</sup> outlines the statutory functions and powers of the National Ombudsman. The Minister of the Interior Kingdom Relations manages the budget of the National Ombudsman. Complaints can be sent to the National Ombudsman by mail, by filling out the online complaint form, or by phone. The National Ombudsman handles complaints in three ways. First, they may contact the government agency to determine if the matter can be solved quickly via informal resolution. Second, they may facilitate conversations between the agency and the complainant with the hope of coming to a resolution. Third, they may conduct an investigation and produce a report summarizing their conclusions. The National Ombudsman also has the power to self-initiate investigations and compel agencies to cooperate with these investigations. These recommendations are not legally binding on the agency. However, agencies almost always adopt their recommendations.

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<sup>412</sup> Politie, “Dissatisfied about police action?” (Last Accessed: 09 04 2020) online: <<https://www.politie.nl/binaries/content/assets/politie/algemeen/onderwerpteksten/klachten/klachtenfolder-engels---september-2015.pdf>>.

<sup>413</sup> Nationale Ombudsman (Last Accessed: 09 04 2020) online: <<https://www.nationaleombudsman.nl/>>.

<sup>414</sup> (Bulletin of Acts, Orders and Decrees, 1981 No. 35).

<sup>415</sup> (Bulletin of Acts, Orders and Decrees 1993, No. 690).

## IRT Notes

The defining feature of the law enforcement model in the Netherlands is its level of centralization. The Government did this with the goal of reducing “*police bureaucracy so that officers have more time for primary policing.*” All complaints are dealt with by the Commissioner (if not satisfactorily handled by the local organization) through the same process, which gives a level of predictability and accountability to the complainant.

### C.4.4 Law Enforcement in the UK

Policing in England and Wales is the responsibility of the Home Secretary, who is accountable to Parliament for the “*provision of an efficient and effective Police Service.*”<sup>416</sup> There are a total of 43 police forces in England and Wales, each responsible for its own geographic region. The Chief Constable or Commissioner of a force is responsible for delivering police services in the region. Policing in Scotland is the responsibility of Police Scotland, which is made up of 13 local policing divisions, each headed by a Chief Superintendent who is responsible for delivering police services in their area.<sup>417</sup> Police Scotland itself is led by a Chief Constable who is supported by three Deputy Chief Constables, a Deputy Chief Officer, Assistant Chief Constables and Directors. The Police Service of Northern Ireland oversees policing in Northern Ireland. There is a total of 11 districts in Northern Ireland that require policing, each with its own Local Policing Teams (“LPTs”). There is a total of 26 LPTs who are responsible for responding to calls, conducting investigations and dealing with community problems.<sup>418</sup>

## Complaints System

### England and Wales

The Independent Office for Police Conduct (the “IOPC”) is responsible for overseeing the law enforcement complaints system in England and Wales. Complaints must be made to the police force involved in the incident prior to utilizing the IOPC process. Each police force has its own department that is responsible for receiving complaints called professional standards departments (“PSDs”). If a complaint is sent directly to the IOPC it will be referred back to the relevant police

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<sup>416</sup> Health and Safety Executive “Organisation of Police Services” (Last Accessed: 09 04 2020) online: <<https://www.hse.gov.uk/services/police/organisation.htm>>.

<sup>417</sup> Police Scotland (Last Accessed: 09 04 2020) online: <<https://www.scotland.police.uk>>.

<sup>418</sup> Police Service of Northern Ireland, “District policing Command” (Last Accessed: 09 04 2020) online: <<https://www.psn.police.uk/inside-psni/our-departments/district-policing-command/>>.



organization.<sup>419</sup> However, police forces must refer certain serious allegations and incidents to the IOCP such as a death or serious injury following police contact, or criminal misconduct.<sup>420</sup>

IOPC investigations are separated into three categories: (i) independent, involving IOPC's investigators; (ii) directed, involving the direction and control by the IOPC of police resources to conduct the investigation; (iii) and local, where the PSD from the local force conducts the investigation. Investigations involve taking witness statements, interviewing police officers, reviewing policies and obtaining documents and records. An investigative report is compiled and sent to the police force. However, the IOPC has authority to decide on the appropriate disciplinary action. The IOPC considers any input from the police force regarding the imposed sanction but maintains ultimate authority over deciding sanctions. Sanctions can include a written warning, reduction on rank, or dismissal without notice. The police force can take non-disciplinary action for low-level concerns. The IOCP can also make recommendations for improvement to the relevant force or all forces if appropriate.

### Scotland

Police Scotland provides an online form for the submission of complaints. Upon receiving a complaint, a senior officer will attempt to contact the complainant to take an initial report outlining the nature of the complaint. Complaints not involving criminal conduct are dealt with at the local level by a supervisor or senior officer. If the complaint involves alleged criminal activity, by law, the complaint must be referred to the Procurator Fiscal (the "PF"). The decision to prosecute an officer rests with the PF and the Crown Office. If prosecution does not take place, the Deputy Chief Constable then considers whether disciplinary action is warranted.

If complainants are unsatisfied with the outcome of their complaint, they can contact the Police Investigations and Review Commissioner (the "PIRC"). The PIRC has three main roles: (i) to conduct independent investigations into certain incidents involving the police; (ii) to review how policing bodies in Scotland have handled complaints; and (iii) ensures Police Scotland and the Scottish Police Authority (the "SPA") have adequate complaint mechanisms in place.<sup>421</sup> The PIRC is led by

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<sup>419</sup> Independent Office for Police Conduct, "How to Make a Complaint – A guide to the police complaints system"

(Last Accessed: 09 04 2020) online:

<[https://policeconduct.gov.uk/sites/default/files/Documents/Complaint\\_forms/IOPC\\_A\\_guide\\_to\\_complaint\\_system\\_2020.pdf](https://policeconduct.gov.uk/sites/default/files/Documents/Complaint_forms/IOPC_A_guide_to_complaint_system_2020.pdf)>.

<sup>420</sup> Independent Office for Police Conduct (Last Accessed: 09 04 2020) online:

<<https://policeconduct.gov.uk/investigations/what-we-investigate-and-next-steps>>.

<sup>421</sup> Police Investigations Review Commissioner, "A guide for the public on the role of the PIRC" (Last Accessed: 04 09 2020) online: <[https://pirc.scot/media/4905/pirc\\_a\\_guide\\_for\\_the\\_public\\_web.pdf](https://pirc.scot/media/4905/pirc_a_guide_for_the_public_web.pdf)>.

the Commissioner who personally reviews only the most serious complaints. Other complaints are delegated to senior staff at the PIRC. The PIRC can investigate complaints involving the police as directed by the Crown Office and PF, serious incidents involving the police, relevant matters which the Commissioner considers to be in the public interest and certain incidents involving the SPA. The PIRC can review complaints that the complainant believes was not handled properly by the police force, complaints about the actions of officers and civilian police staff, or how the policing bodies handle complaints more generally. More detailed duties and powers of the PIRC are outlined in the *Police, Public Order and Criminal Justice (Scotland) Act*<sup>422</sup> and the *Police Service of Scotland (Senior Officers Conduct) Regulations*.<sup>423</sup>

The final stage for complaints regarding police misconduct (non-criminal) is the Scottish Ombudsperson.<sup>424</sup> The Ombudsman will first determine whether they have jurisdiction over the body being complained about, whose internal processes must be exhausted prior to contacting the Ombudsman. In addition, the complaints must be made within 12 months of the incident. A complaint reviewer will then contact the complainant and collect relevant information. A draft decision on the complaint is sent to both parties, who are provided the opportunity to respond prior to the decision being published. If the relevant organization does not abide by the recommendations issued by the Ombudsman, the Ombudsman can submit a report to the Scottish Parliament.

### Northern Ireland

Complaints about the Police Service of Northern Ireland are addressed directly to the Police Ombudsman's Office via their online form or by email. The Police Ombudsman's Office "*independent and impartial service for dealing with complaints about the police.*"<sup>425</sup> If the complaint involves a less-serious concern it may be referred back to the police service at the consent of the complainant. The Ombudsman will ensure the complaint is appropriately dealt with by the police force. The Ombudsman can only make recommendations regarding the decision to prosecute or to impose disciplinary action and does not have the power to impose sanctions. Recommendations to prosecute are made to the Public Prosecution Service and recommendations for disciplinary action are made to the Chief Constable. The complainant is kept informed of the status and outcome of their complaint.

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<sup>422</sup> 2006 (asp 10).

<sup>423</sup> 2013 No. 62.

<sup>424</sup> Scottish Public Services Ombudsman (Last Accessed: 04 09 2020) online: <<https://www.spsso.org.uk/spso>>.

<sup>425</sup> Police Ombudsman for Northern Ireland (Last Accessed: 09 04 2020) online: <<https://www.policeombudsman.org/>>.

## IRT Notes

The IRT notes the categorization of investigations by the IOCP and its applicability to the role of the NIM in relation to complaints that are referred back to the relevant sport organization. Namely, the oversight it will provide to sport organizations once complaints are referred back to them following the NIB's preliminary assessment. The Police Ombudsman's Office in Northern Ireland plays a similar role. However, in its process the complainants must give consent prior to the complaint being sent back to the local level. Another notable feature of the UK law enforcement models is the use of online complaint forms by Police Scotland and the follow-up conducted by the senior officer to gather additional information.

## C.5 Child Protection

### C.5.1 The UK

The UK's four nations (England, Northern Ireland, Scotland and Wales) each have their own child welfare system and laws to protect children from abuse and neglect. Each nation has a framework of legislation, guidance and practice to identify children who are at risk of harm, take action to protect those children and prevent further abuse from occurring.

The National Society for the Prevention of Cruelty to Children (the "NSPCC") is the UK's leading children's charity specializing in child protection. They have statutory powers under the *Children Act, 1989* which allows the NSPCC to apply to a court for a care, supervision or child assessment order. The NSPCC provides training courses, completes safeguarding assessments, provides teaching resources and offers consultancies to different organisations.

The NSPCC provides some national helplines to the public. First, the NSPCC runs a general helpline that provides guidance and support to all concerned individuals including children, parents, carers and professionals. Anyone can call, email or submit an online form to report abuse and receive advice on further actions. They also staff the Childline, a 24/7 phone and online support service for those under the age of 19. The Childline staff members include trained professionals and volunteers. It also supports deaf children with SignVideo, a service which allows children to contact

a counsellor via an interpreter. Further, the NSPCC operates dedicated helplines to discuss tailored concerns regarding a variety of topics. They include online safety, gangs, modern slavery, the Church of England, footballers who have been abused as youth, radicalisation, whistleblowing advice and female genital mutilation. Finally, the NSPCC have established partnerships with three organisations to be the dedicated helpline in their agencies' safeguarding procedures. This includes the Football Association, callers from the Falkland Islands and Girlguides.

## England

The Department for Education is responsible for child protection in England. The Department sets out legislation and statutory guidance on the system. Local child protection agencies and the police coordinate to protect and promote the welfare of children. If individuals are concerned about a child's wellbeing, they are encouraged to follow their organisational child protection procedures, to contact the NSPCC helpline where trained professionals talk through the concerns and give expert advice, to contact local child protection services or to contact the police.<sup>426</sup>

### *Complaints System*

After contacting a child protection agency, or after a complaint is referred there, an enquiry of the situation and an assessment of the child's needs takes place. Social workers determine whether the child requires immediate protection, special services or further assessment. After the assessment, if information suggests that a child is suffering or is likely to suffer significant harm, the local authority has a strategy discussion with social workers, the child, family and other relevant professionals to determine interventions.

The Child Safeguarding Practice Review Panel is an independent panel commission that reviews the most serious child safeguarding cases. Local authorities should notify the national panel when: (i) a child dies or is seriously harmed and abuse or neglect is known or suspect; or (ii) to report the death of a child looked after by a local authority whether or not abuse or neglect is known or suspected. The panel is independent of the government and has its own statutory powers to make

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<sup>426</sup> National Society for the Prevention of Cruelty to Children, "*Child protection system in England*" online: <<https://learning.nspcc.org.uk/child-protection-system/england#article-top>> (last accessed Aug 31 2020).

decisions. Decisions are based on the possibility of identifying improvements from complex cases.

427

## Northern Ireland

The Department of Health is responsible for child protection in Northern Ireland. They are responsible for setting out policy, legislation and statutory guidance.

### *Complaints System*

In non-emergency situations, a local Health and Social Care Trust Gateways Services Team (“HSCT”) is the first point of contact. Social workers within HSCTs are the lead professionals for safeguarding children and young people. The HSCT carries out an initial assessment for which they consider whether a Joint Protocol should be implemented. A Joint Protocol is a framework for joint investigative collaboration between police and social workers. Following the result of the initial assessment, the HSCT may take further steps, which could include no further action, assigning the child as a “child in need”, meaning their family is entitled to receive extra support, providing social work support to the child and their family or provide a time-limited intervention.

Where there are allegations of abuse and neglect, or there is suspicion of a crime occurring, the HSCT must report the referral to the Police and a strategy discussion takes place to decide how to proceed. Potential actions include an emergency protection order, a child assessment order or removal by police. If the child is at risk of significant harm, a Case Conference may occur which brings together relevant professionals who identify risks and outline what needs to be done to protect the child. If professionals at the initial case conference decide that the child is at significant risk of harm, they create a child protection plan. The case conferences continue at regular intervals until the harm has been significantly reduced or the child is taken into care.

### *Audit*

The Safeguarding Board for Northern Ireland (the “SBNI”) is responsible for developing policies and procedures to improve how separate agencies collaborate to achieve the safeguarding of

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<sup>427</sup> Government of the UK, “*Child Safeguarding Practice Review Panel About us*” online: <<https://www.gov.uk/government/organisations/child-safeguarding-practice-review-panel/about>> (last accessed Aug 31 2020).

children.<sup>428</sup> This board includes representatives of health and social care, the police, youth justice, probation services, education, district councils and the NSPCC. The Board completes Case Management Reviews that examine organisational procedures and decision-making processes regarding child safeguarding. A review is always undertaken by the SBNI when a child has been harmed, when either abuse or neglect of the child is known or suspected, when the child or sibling has been on a child protection register or when the child or sibling of the child has been looked after by an authority. The Board also completes a review when agencies demonstrate effective collaboration and when there is positive learning to be gained from the case that leads to improved safeguarding practice in the nation.<sup>429</sup>

### Other Features

There is a focus on integrating services and sharing information between different bodies and agencies in Northern Ireland. The *Co-operating to Safeguard Child and Young People in Northern Ireland* policy was created by the Department of Health to provide an overarching framework for safeguarding children and young people in statutory, private, independent, community, voluntary and faith sectors.<sup>430</sup> The policy outlines how communities, organisations and individuals must work both individually and in partnership to ensure children and young people are safeguarded as effectively as possible.

### Scotland

The Scottish Government is responsible for child protection in Scotland. It sets out policy, legislation and statutory guidance on the child protection system. Every local authority and its relevant healthcare board are required to jointly prepare a “Children’s Services Plan’ for each 3-year period. This plan sets out the provision of all child and related services. The Plan must reflect

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<sup>428</sup> Safeguarding Board of Northern Ireland, “*Role of SBNI*” online: <<https://www.safeguardingni.org/role-sbni#:~:text=The%20objective%20of%20the%20SBNI,body%20represented%20on%20the%20Board.>> (last accessed Aug 31 2020).

<sup>429</sup> National Society for the Prevention of Cruelty to Children, “*Child protection system in Northern Ireland*” online: <<https://learning.nspcc.org.uk/child-protection-system/northern-ireland#article-top>> (last accessed Aug 31 2020).

<sup>430</sup> Department of Health, “*Co-operating to Safeguard Children and Young People in Northern Ireland*” online: <<https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>> (last accessed Aug 31 2020).

statutory guidance and the national approach to safeguarding children and improving outcomes for children and their families.<sup>431</sup>

### Complaints System

The “Children’s Reporter” in Scotland is the first point of contact or referral for child welfare. The reporter completes an initial investigation by gathering information regarding the child in question from a number of sources. This includes professionals, social workers and teachers. Following their investigation, the reporter can take action, which could include referring a child or young person to a hearing. Where there is no requirement for compulsory measures of supervision, children and young people can be dealt with by a variety of options, including restorative justice, voluntary measures and tailored programmes to tackle their behaviour.<sup>432</sup>

In Scotland, a “Safeguarder” is appointed in child protection cases in order to ensure that a child or young person’s interests are looked after. Safeguarders may be appointed by children’s hearings or sheriffs when they think it is required to safeguard the interests of the child in the proceedings. A safeguarder is not appointed for every case. The focus of the “Safeguarder” is on the best interests of the child. They are separate from the social worker, children’s reporter and panel members and they speak to the child to ensure they understand their rights and the situation at hand. The role of the appointed Safeguarder in each child’s case depends on the particular needs and circumstances of the child. It is up to the Safeguarder to participate in and complete as much as they feel is relevant and proportionate to safeguard the child’s interests. This could include interviewing relevant people to the case, giving the child an opportunity to say what they think or want, providing a written or verbal report, or simply attending hearings and court to be part of the consideration of what’s best for the child. Safeguarders are not representatives for the child.<sup>433</sup>

All local authorities have a duty to maintain a panel of safeguarders so that a sufficient number are available to meet the need. A 2002 study in Scotland found that the total number of safeguarders in the country was estimated to be about 200. However, some safeguarders in the

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<sup>431</sup> National Society for the Prevention of Cruelty to Children, “*Child protection system in Scotland*” online: <<https://learning.nspcc.org.uk/child-protection-system/scotland>> (last accessed Aug 31 2020).

<sup>432</sup> Scottish Children’s Reporter Administration, “*Questions and Answers*” online: <[https://www.scra.gov.uk/parent\\_carer/questions-and-answers/](https://www.scra.gov.uk/parent_carer/questions-and-answers/)> (last accessed Aug 31 2020).

<sup>433</sup> Children 1st, “*Becoming a Safeguarder*” online: <<https://www.children1st.org.uk/help-for-families/safeguarders-panel/becoming-a-safeguarder/>> (last accessed Aug 31 2020).

study worked for more than one local authority, meaning that there were approximately 300 safeguarder positions. The study found that safeguarders usually had considerable previous knowledge of the children’s hearing system before hiring. Most respondents of the survey felt that safeguarders should have access to more extensive and standardised training. Proposed improvements for the management of the safeguarding service included the need for a dedicated core training programme universally available for safeguarders, the availability of standard information about both hearings and court appointments and an increase in remuneration.<sup>434</sup>

### IRT Notes

The IRT notes the NSPCC’s diverse range of helpline services and its ability to consult with organisations on their safeguarding practises. The IRT also notes the Child Safeguarding Practice Review Panel in England who reviews the most serious child safeguarding cases and uses the complexity of the matter to identify improvements as a whole of the system. The IRT further notes the role of the Safeguarder in Scotland, their responsibilities that depend on the particular needs and circumstances of the child and the discretion that a sheriff or panel have in assigning a safeguarding when they think it is required to do so.

### C.5.2 Netherlands

Dutch child protection policy is determined by national and international laws. The UN Commission on the Rights of Children has played a key part in the legislation and policy on child protection in the country. All agencies and professionals involved in the chain of child protection must cooperate in order to fulfil the basic principle of ‘*one family, one plan and one director*’.<sup>435</sup>

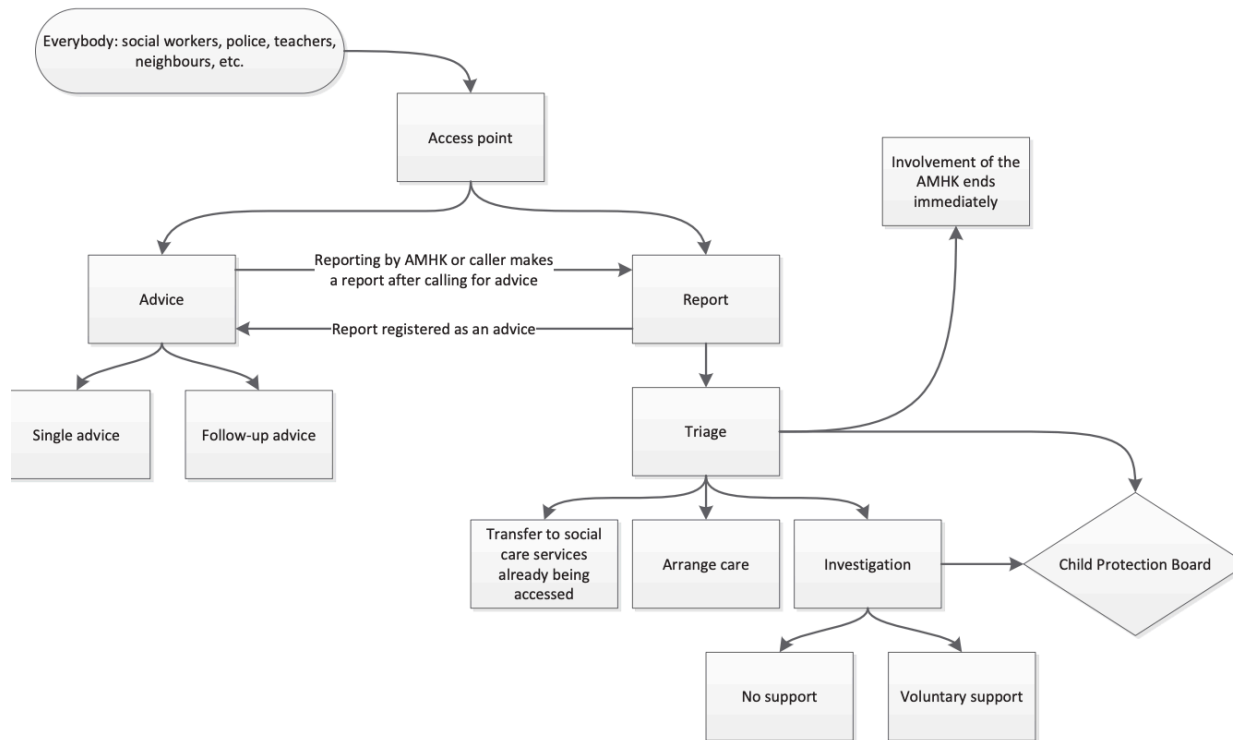
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<sup>434</sup> Department of Politics University of Glasgow, “*The Role of Safeguarders in Scotland (2002)*” online: <<https://lx.iriss.org.uk/sites/default/files/resources/121.%20The%20Role%20of%20Safeguarders%20in%20Scotland%20-%20Full%20Report.pdf>> (last accessed Aug 31 2020).

<sup>435</sup> Hestia, “*Briefing on the Dutch Child Protection System*” online: <<https://welfarestatefutures.files.wordpress.com/2016/09/hestia-whitepaper-dutch-child-protection-system-sept2016.pdf>> (last accessed Sept 3 2020).



## Complaints System



The Advice and Reporting Centre Domestic Violence and Child Maltreatment (the “AMHK”) receives reports of child maltreatment and deals with domestic violence between adults. The integration between domestic violence and child maltreatment aims to make it clear to citizens where they can ask for advice or report cases of violence in family situations. Everyone who has concerns can contact the AMHK for advice or to report a case. After a report is made, the AMHK decides whether to refer the case to social care services already being accessed, to arrange new social care services or to start an AMHK investigation. Some criteria considered by the AMHK when deciding on a next step includes whether there is a direct threat of safety or a serious threat of development, whether the child is willing to accept help and the adults involved.

The police and Public Prosecution Department can be involved in cases of child maltreatment. There is an emphasis on cooperation between the AMHK and the police. The AMHK always requests information from the police about the persons involved in a report. The police can also get involved during the complaint referral and investigation stages in order to improve the safety of the child.

The Child Protection Board administers child protection investigations and is also involved in custody, juvenile justice and adoption. Whereas everyone can report to the AMHK, only certified agencies and local authorities are authorised to report to the Board. In exceptional and seriously threatening situations anyone can make a report to the Board; however, these cases must be substantiated with documents and reasons explaining why previous support has been ineffective. Reports to the Board are assessed by an Advice Team who decides whether to start an investigation. The Team focuses on the best interests of the child, physical safety and development. The Board also has a supervising role in juvenile court. When the court enforces a child protection measure, agencies may request that the court ends or extends a child protection measure. The Board is invited to assess these requests. In making its decision, the juvenile court uses the advice of the Board; however, the juvenile court is not required to follow it.

Intervention and child protection measures are performed by Certified Agencies. Following the decision of the juvenile court, the Board transfers the case to the certified agency where a guardian is appointed. The guardian decides what type of youth care is necessary and gives the family the opportunity to set up a plan to ensure and improve the safety and development of the child. A strategy is then determined. Guardians of certified agencies are case directors rather than social care providers. Guardians are not able to offer regular youth care themselves.

The task of the Ombudsman for Children in the Netherlands is to monitor compliance with the rights of children in the Netherlands. They deal with complaints about the actions of both public and private-sector bodies in the fields of education, organized childcare, youth care and health care. The Ombudsman's aim is to find structural solutions to problems relating to children's rights.<sup>436</sup>

### *IRT Notes*

The IRT notes the centralised reporting centre of the AMHK and its purpose for centralisation to make it clear to citizens that they can contact one place, the Centre, for any cases of violence in family situations. This provides support for the IRT recommendation that the NIM act as a central reporting mechanism for all maltreatment complaints in sport.

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<sup>436</sup> De Kinderombudsman, "*Dutch Ombudsman for Children*" online: <[https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_NGO\\_NLD\\_17975\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_NGO_NLD_17975_E.pdf)> (last accessed Sept 3 2020).

### C.5.3 Germany

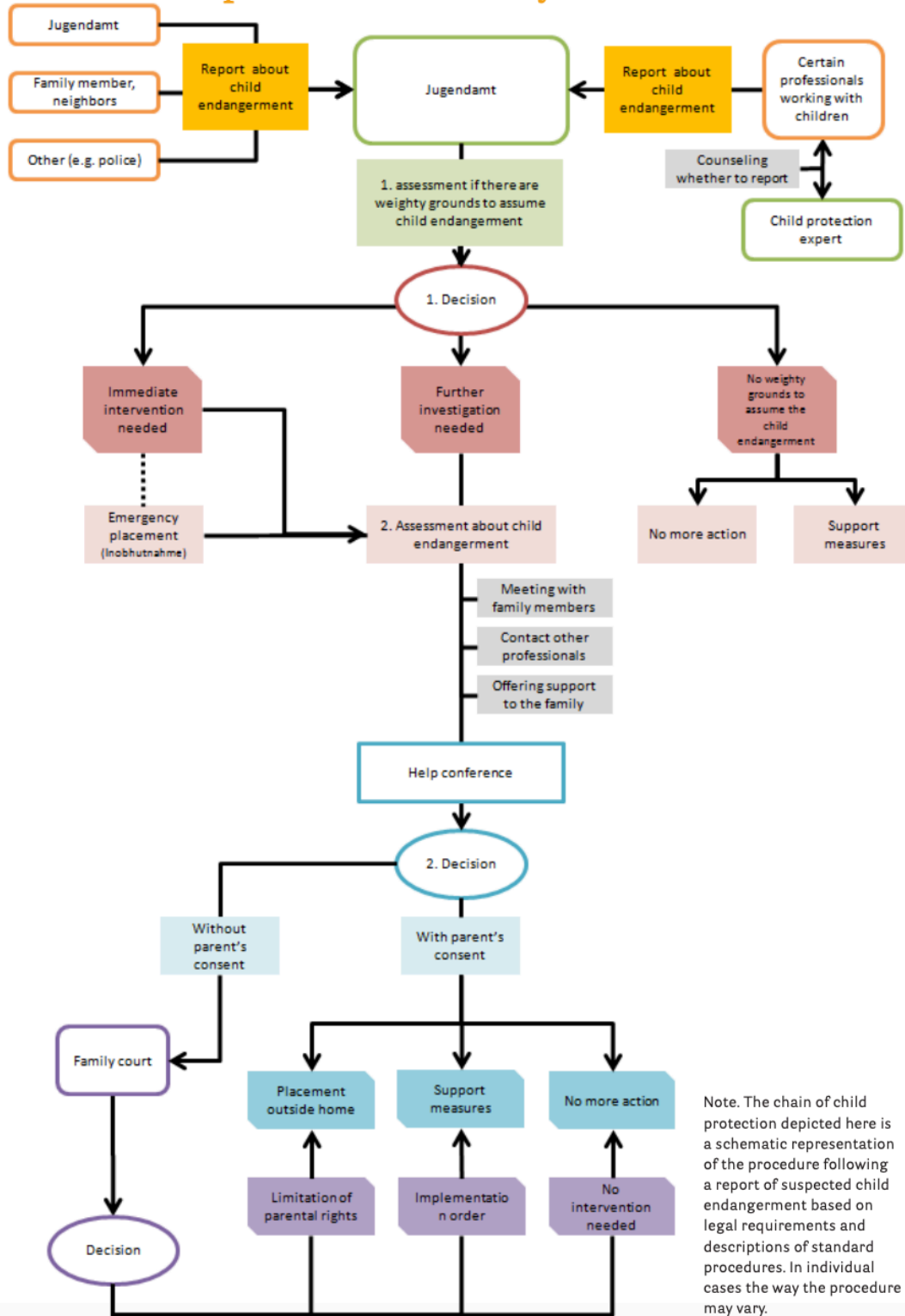
Many institutions have a legal obligation to protect children and adolescents from maltreatment in Germany. The federal law sets the overall framework for key legal concerns in child protection, such as intervention in parental rights and data protection. The states create the organisational structures and procedures for child protection. Within each state, child and youth welfare offices (called “Jugendämter”) are organised by the municipalities, who decide on the structure and support offered by the local child and youth welfare agencies. There are 580 youth welfare offices in total across all cities and districts.<sup>437</sup>

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<sup>437</sup> Handbook Germany, “*Youth Welfare Office*” online: < <https://handbookgermany.de/en/rights-laws/youth-welfare-office.html> > (last accessed Aug 14 2020).

## Complaints System

### Chain of child protection in Germany



Note. The chain of child protection depicted here is a schematic representation of the procedure following a report of suspected child endangerment based on legal requirements and descriptions of standard procedures. In individual cases the way the procedure may vary.

If a child is neglected or abused, the youth welfare office gets involved and looks after the child. Three criteria must be met for there to be child endangerment: (i) weighty grounds to assume current endangerment; (ii) significant impact of the endangerment on the child's current or future wellbeing; and (iii) certainty of the prognosis of the impact. Immediately after the report, a first risk assessment of child endangerment takes place. In severe cases involving an immediate danger to the child, an emergency placement is arranged. In order for the office to intervene, four standards must be met: (i) the parents must be included in the process unless their participation puts the child's wellbeing at risk; (ii) the investigation must be carried out by more than one professional; (iii) the child must be seen during a home visit; and (iv) support services must be offered to the family. In cases in which the child is not in immediate danger, there is further investigation. In some cases, there may be no further investigation as there are no weighty grounds to assume child endangerment. At the end of an investigation a support plan is developed. Options are discussed and parents have a right to choose between support measures. The most common support measures are offered by Freie Träger.

Freie Träger are non-governmental organisations which are financially supported by the government in order to provide social services and support measures to families and children. The youth welfare offices grant funding to Freie Träger and are responsible for ensuring that the demands of children and families are met. An example of a Freie Träger is the Kinderschutzzentren. It provides counseling, therapy and crisis intervention for parents and children. It also provides training and workshops for professionals and counseling of professionals working on child protection cases. The agencies work closely with the youth welfare offices.

### *IRT Notes*

The IRT notes the distinct criteria to follow for initial assessments and intervention and that the criteria include a review of both past behaviour and future risk and impact. This is a feature considered for the NSO referral threshold within the NIM.

The following countries were also reviewed with respect to international child protection legislation: Australia, Finland, Norway and Sweden. After an initial review and analysis, the IRT

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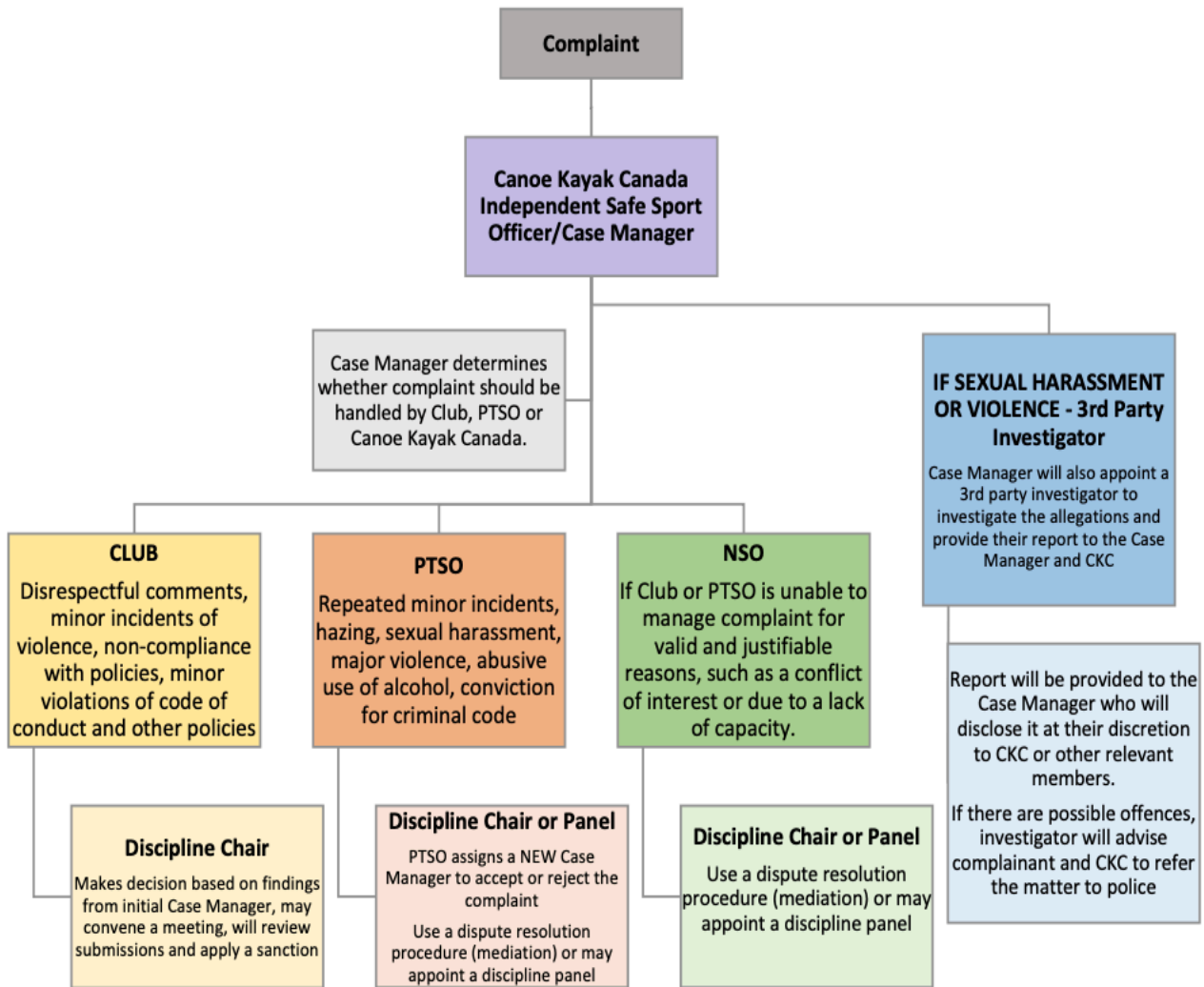
<sup>438</sup> Hestia, "*Briefing on the Dutch Child Protection System*" online: <[https://www.researchgate.net/publication/311065279\\_Briefing\\_on\\_the\\_German\\_Child\\_Protection\\_System](https://www.researchgate.net/publication/311065279_Briefing_on_the_German_Child_Protection_System)> (last accessed Sept 3 2020).

determined that they did not have unique features or were not informative enough for inclusion into this report.

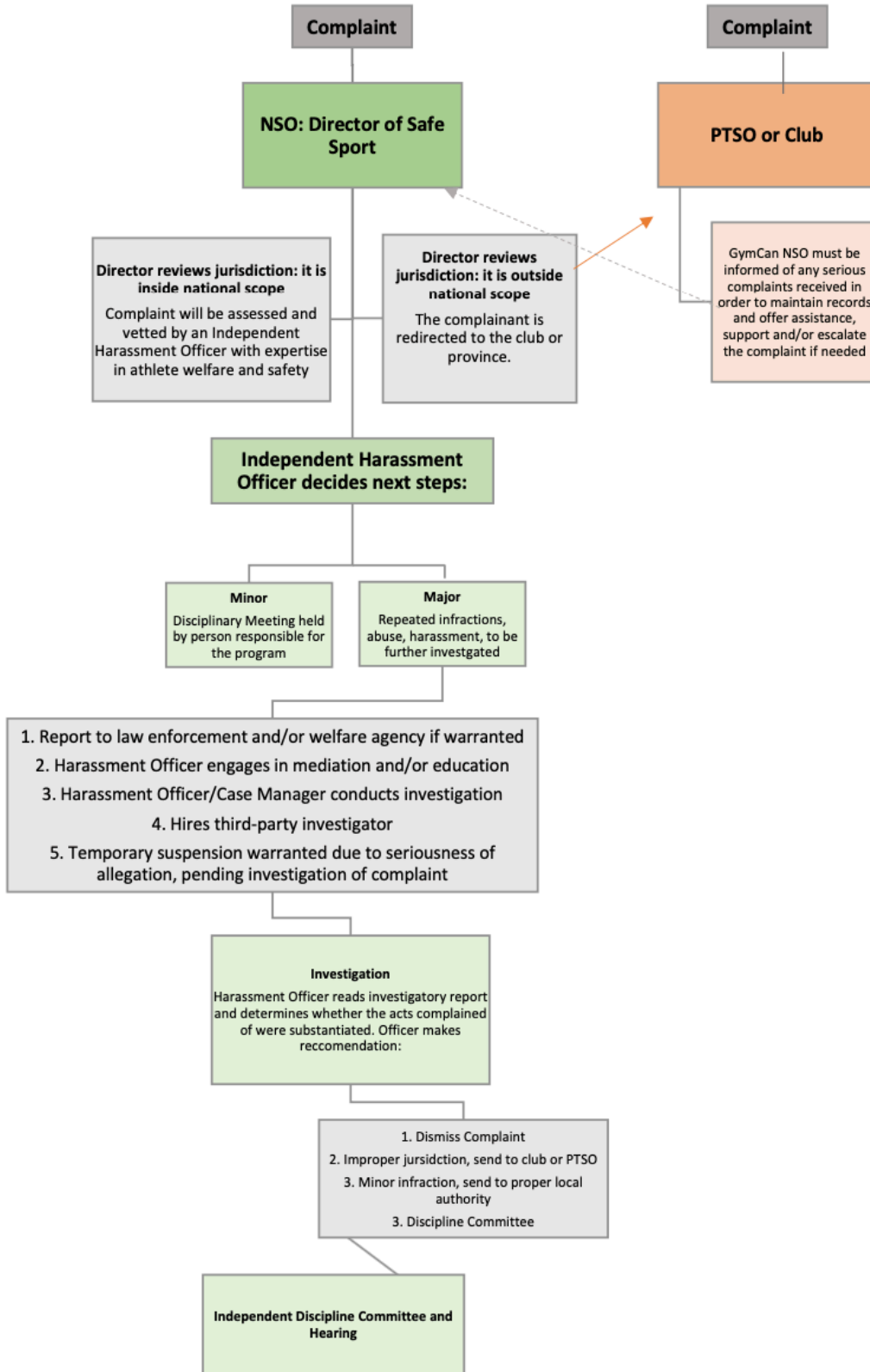
## ANNEX D

### NSO COMPLAINT STRUCTURES

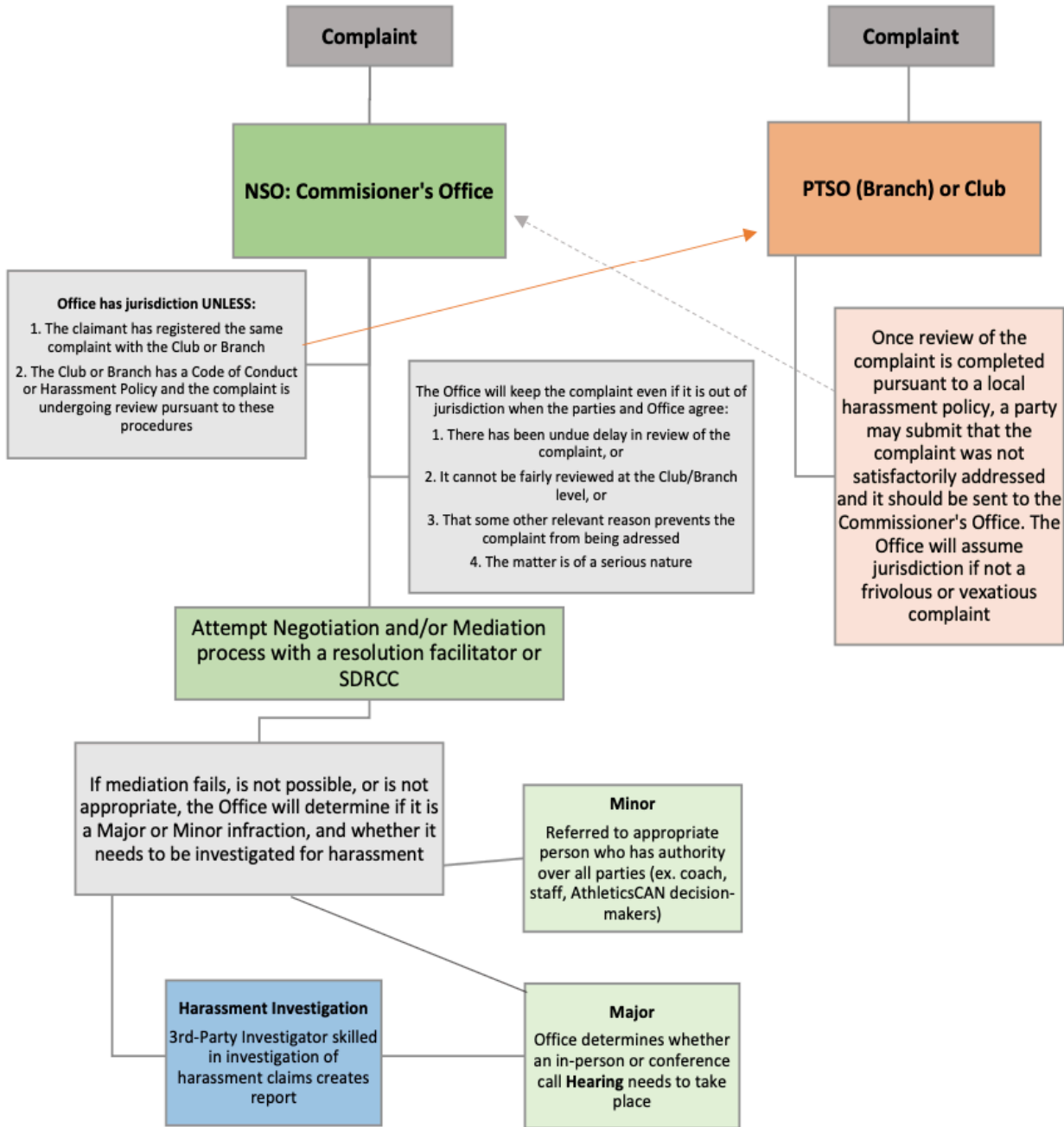
Canoe Kayak Canada



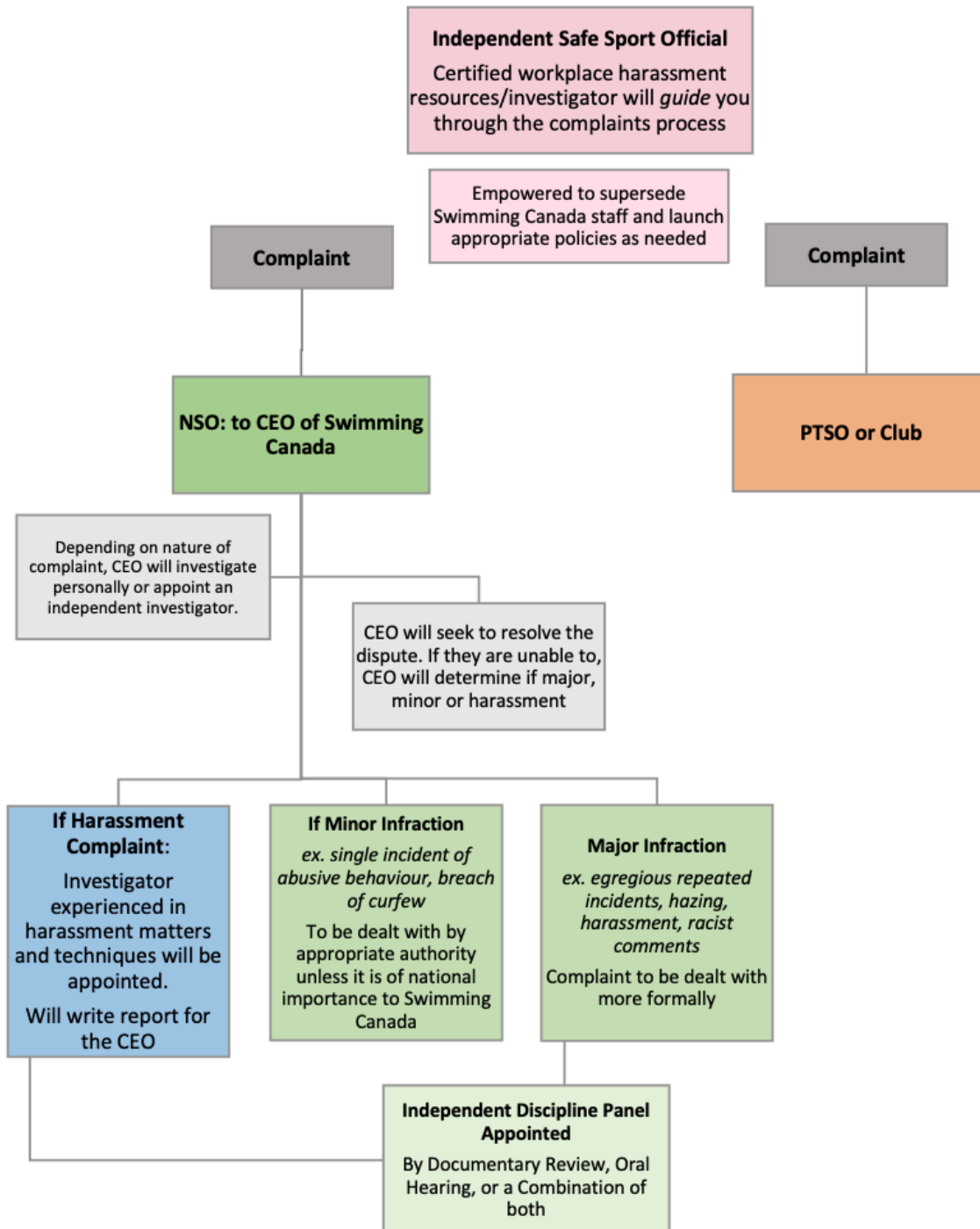




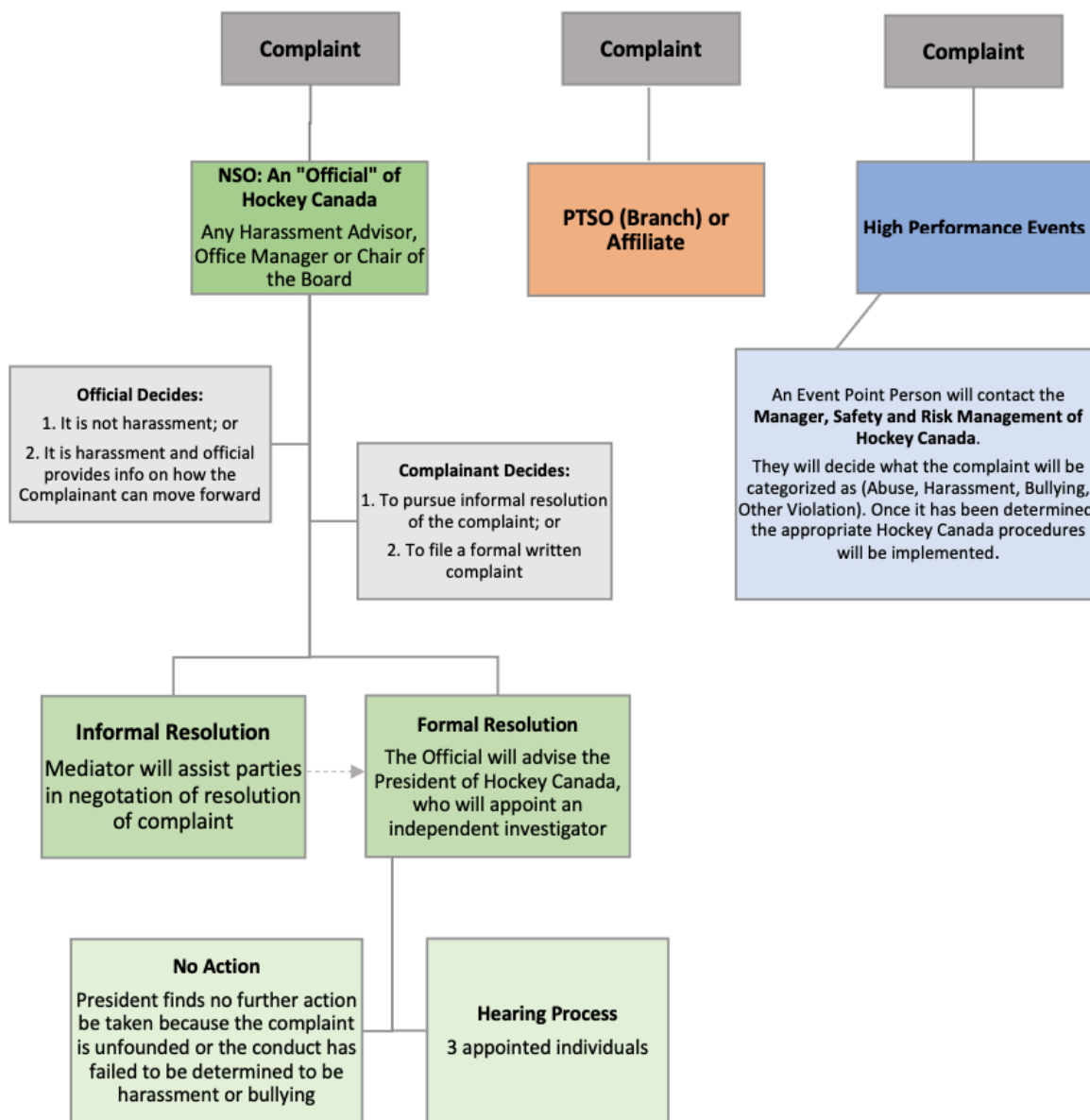
Athletics Canada



Swimming



Hockey Canada



Note: Hockey Canada is in the process of updating this complaints procedure.

Curling

