

SPORT
NEW nouveau BRUNSWICK

# New Brunswick Safe Sport Complaint Mechanism

## Dispute Resolution Policies

# DISPUTE RESOLUTION POLICIES

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## PURPOSE

The purpose of this policy is to establish a process for the administration of the *NBSSCM* in alignment with the Program Guidelines.

## DEFINITIONS

**Activity:** Any sanctioned or recognized programs, business, activities, and events of an eligible *PSO/MSO* including, but not limited to competitions, practices, evaluations, treatment, or consultations (e.g., massage therapy), training camps, travel associated with organizational activities, the office environment, and any meetings that are organized and/or sanctioned by an eligible *PSO/MSO*. This includes conduct outside of the programs, business, activities, and events of an eligible *PSO/MSO* when such conduct adversely affects an eligible *PSO/MSO*'s relationships within the broader sport community, the work and sport environment, or is detrimental to the image and reputation of an eligible *PSO/MSO*.

**Affected Parties:** Any individual or entity, as determined by the *Appeal Manager*, who may be affected by a decision rendered under the Appeal Policy and who may have recourse to an appeal in their own right.

**Alternative Dispute Resolution (ADR):** A voluntary and flexible process for addressing disputes outside of formal adjudication, which can include a variety of methods, such as mediation or facilitated conversations. The process may lead to a settlement agreement and is intended to reduce the uncertainty, costs, and other challenges associated with investigations, hearings, and appeals.

**Appeal:** Appeal of a decision of a *Mediator/Arbitrator* under this policy or of a decision of a *PSO/MSO* alleging the failure to follow their Constitution or by-laws, or policies as permitted by the terms of the *NBSSCM* Guidelines and this policy.

**Appeal Manager:** A qualified and independent individual who oversees the management and administration of appeals. The Appeal Manager is appointed by the *ITP*. The Appeal Manager will have responsibilities that include using decision-making authority empowered by the Appeal Policy. This individual must not have had any prior involvement with the matter under appeal or have a direct relationship with any of the *Parties*.

**Appeal Arbitrator:** Individuals who are appointed by the *Appeal Manager* to decide on appeals under the processes of this policy. In circumstances where there are three (3) individuals appointed, references to Appeal Arbitrator will be deemed to be an *Appeal Panel*.

**Appellant:** The party appealing a decision.

**Case Manager:** A qualified and independent individual who oversees the management and administration of a complaint in accordance with this policy and the *NBSSCM* Guidelines. The Case Manager is appointed by the *ITP* and must not be in a conflict of interest or have any direct relationship with the *Parties*.

**CSSP Participant:** An individual affiliated with a *CSSP Sport Organization*, as defined by the CSSP Rules, and is therefore subject to the CSSP Rules, or as otherwise designated by a *CSSP Sport Organization*. CSSP Participants may include an athlete, a coach, a board member, an official, an Athlete Support Personnel, an employee, a worker, an administrator, or a volunteer acting on behalf of, or representing a *CSSP Sport Organization* in any capacity.

**CSSP Sport Organization:** A national level sport organization, national multi-sport service organization, Canadian Sport Centre(s) or Institute(s) that has adopted the *CSSP* and has retained the services of the SIC for the *CSSP*.

**Complainant:** An individual who makes a report of an incident, or a suspected incident, of alleged *Maltreatment*, *Prohibited Behaviour* or other misconduct that may be a violation of the behavioural standards described in their *PSO/MSO*'s policies, by-laws, rules or regulations, including the *UCCMS*.

**Cultural Safety:** The practice of creating an inclusive and culturally informed approach in all matters where an individual identifies as indigenous. It goes beyond cultural competence and requires an active effort to understand and respect the diverse cultural backgrounds of indigenous individuals. Key aspects of *Cultural Safety* include but are not limited to:

i. Acknowledging the existence of a *Power Imbalance*.

ii. Understanding and respecting cultural practices, such as recognizing traditional values and indigenous approaches to sport and conflict resolution;

iii. Ensuring culturally appropriate supports, including Indigenous support workers, Elders, or community liaisons, are made available to Indigenous participants engaged in the *NBSSCM*; and,

iv. Implementing policies and practices that promote *Cultural Safety* that consider specific lived experiences of Indigenous participants, including the effects of intergenerational trauma, the role of community and Elders in dispute resolution, the significance of cultural identity, and barriers to accessing formal reporting mechanisms.

**Day:** A calendar day.

**Independent Third Party (ITP):** An individual or organization that is retained by Sport NB to receive reports related to the *UCCMS* and *Fair Play Complaints*, including alleged violations of the *UCCMS*, and oversee the administration of the *NBSSCM* on behalf of Sport NB, as well as the appeal process.

**Maltreatment**: As defined in the *UCCMS*.

**Med/Arb:** A process conducted by a *Mediator/Arbitrator* that starts as a mediation or facilitated discussion and, if the dispute is not resolved by mutual agreement, concludes by arbitration before the same *Mediator/Arbitrator*. A mediated conversation typically concludes with consent order agreed to by the *Parties*, while an arbitration typically concludes with a decision issued.

**Mediator/Arbitrator:** An individual accepted and recognized by Sport NB, who meets the qualifications determined by Sport NB and is willing to conduct *Med/Arbs* for Sport NB pursuant to this policy and the *NBSSCM* Guidelines.

**Minor:** An individual who is under the age of majority at the time and in the jurisdiction where the alleged violation occurred. At the time of writing this policy, an individual under the age of 18 is a Minor.

**Fair Play Complaint:** An allegation or disagreement between *Participants* that the *Case Manager* determines does not involve *Maltreatment* or *Prohibited Behaviour*, but that may constitute a violation of the Code of Conduct or other conduct standards or policies of the PSO/MSO.[1]

**NBSSCM:** New Brunswick Safe Sport Complaint Mechanism.

**NSO:** The national governing body for a given sport or discipline in Canada.

**PSO/MSO:** A provincial sport organization or multi-sport organization who is a member of Sport NB and is eligible to participate in the *NBSSCM*. This may include associate members of Sport NB.

**Participant:** All categories of membership, participant or registrant defined in the *PSO/MSO* By-laws, as well as all individuals engaged in activities with the *PSO/MSO* including, but not limited to, athletes, spectators, coaches, referees, officials, volunteers, committee members, medical staff, and directors.[2]

[1] *PSOs/MSOs* must have their own dispute resolution mechanism to address field of play and non *UCCMS Complaints*.

[2] Any individual appointed or organization engaged pursuant to this policy are not considered Participants. This includes but is not limited to the Case Manager, ITP, Sport NB and Mediators/Arbitrators.

**Party or Parties:** The individual(s) or entities involved in a dispute, specifically the *Complainant*(s) and *Respondent*(s) to a complaint or *Appeal*.

**Power Imbalance:** As defined in the *UCCMS*.

**Prohibited Behaviour:** As defined in the *UCCMS*.

**Provisional Measures**: When a *Participant* is barred temporarily from participating in any capacity in any *Activity* of an eligible *PSO/MSO* or is subject to other limitations, requirements or eligibility restrictions, prior to a final resolution through the *Med/Arb* process conducted pursuant to this policy.

**Respondent:** *Participant*(s) or *PSO/MSO* named in a Complaint or *Appeal* and, therefore, will respond to the complaint or an appeal.

**Sport Integrity Canada:** The independent, national, not-for-profit, multi-sport organization with a focus on the integrity issues of safe sport, anti-doping, and competition manipulation, including the *CSSP* for all *CSSP Sport Organizations* at the national level that adopt the *CSSP*.

**UCCMS:** *Universal Code of Conduct to Prevent and Address Maltreatment in Sport*, as amended from time to time.

**UCCMS Complaint:** Complaints related to any allegation of *Maltreatment* or *Prohibited Behaviour*, as defined by the *UCCMS*, by a *Participant* which may potentially involve a sanction involving a period of ineligibility.

## SCOPE OF APPLICATON

1. This policy applies to the conduct of *Participants* during all *Activities*. This includes all communications and interactions between *Participants*, including communication by telephone or electronically.

2. The *NBSSCM* process is independent of any rights and privileges a *PSO/MSO* has as an employer of an employee who is a *Respondent* to a complaint.

3. The *PSO/MSO* may exercise their rights in accordance with the employee's employment agreement or human resources policies, if applicable, while the *NBSSCM* process is underway.

4. This policy will be applied with consideration given to *Cultural Safety*.

## ALIGNMENT

5. It is recognized that *Participants* may also register with *NSO*s that may mandate a different disciplinary process for complaints involving allegations of *Maltreatment* or *Prohibited Behaviour*.

6. If a *PSO/MSO* is informed that sanctions were applied to a *Participant* by an *NSO*, the SIC or other sport body, they will report the information through the designated reporting mechanism.

## REPORTING A COMPLAINT

7. All complaints must be reported directly through the identified reporting mechanism (See Appendix A for reporting mechanism).

8. If a complaint is communicated to Sport NB, the *Complainant* will be immediately redirected to the identified reporting mechanism. Sport NB is not involved in the management of complaints.

9. In the case where a complaint is reported to a *PSO/MSO* directly, if the *PSO/MSO* has designated the process under *NBSSCM* as their dispute resolution process for *UCCMS Complaints*, the *PSO/MSO* will immediately redirect the *Complainant* to the identified reporting mechanism.

10. If the applicable *NSO* has mandated the use of a specific third-party complaints management mechanism for *Participants* involved in a specific sport/discipline, complaints must be submitted to the process as mandated by the *NSO*.

11. Any allegations of *Maltreatment* or *Prohibited Behaviour* against a *Participant* who is a *CSSP Participant* must be reported to the SIC. The *Case Manager* will immediately refer any complaint concerning *CSSP Participant* involving violations of the *UCCMS* to the SIC for review in accordance with the CSSP.

12. Any individual who submits a report regarding a potential breach of the *UCCMS* who fears retribution or reprisal or who otherwise considers that their identity must remain confidential may file a complaint with the *Case Manager* and request that their identity be kept confidential.

a) If the *Case Manager* considers that the *Complainant's* identity must remain confidential during the initial stages, the *Case Manager* may ask that their *PSO/MSO* take carriage of the complaint and act as the *Complainant*.[3] The confidentiality of the *Complainant's* identity is not guaranteed for the duration of the process.

b) A *Complainant's* identity may need to be disclosed if required to ensure procedural fairness, if legally mandated, or if necessary to the effective resolution of the complaint.

c) If disclosure becomes necessary, the *Complainant* will be informed in advance, and reasonable measures will be taken by the *Case Manager* or the *Mediator/Arbitrator* to minimize any potential harm.

13. If, at any stage, it is determined that the *Complainant's* anonymity cannot be maintained or adequately protected, the *Complainant* may elect to withdraw from the disciplinary proceeding without prejudice or adverse consequences.

## TIMELINESS

14. *Participants* are encouraged to report all complaints as soon as possible after experiencing or witnessing the interaction, incident, event, or situation of concern.

15. Any complaints involving alleged breaches of the *UCCMS* that designates the *NBSSCM* as the applicable mechanism and that do not fall within the mandate of the CSSP may be reported by a *Participant* or any other individual to the *Case Manager* in writing within twenty-one (21) *Days* of the occurrence of the incident.[4]

a) If a complaint is filed with the *Case Manager* in writing within twenty-one (21) *Days* of the occurrence of the incident, the *Case Manager* will accept the complaint.

b) If the complaint is submitted after twenty-one (21) *Days* of the occurrence of the incident but within six (6) months after the occurrence of the incident, the *Case Manager* may only accept a complaint if they determine that doing so is warranted based on their assessment of the following non-cumulative factors:

i. the relevant rules, norms and policies, including without limitation, social and legal norms, in effect at the time of the alleged event(s);

ii. the severity of the allegations and the facts and circumstances of the matter;

iii. the safety and well-being of participants and the sport community;

iv. the potential risks and prejudice from action and inaction, with safety being paramount;

[3] In such circumstances, the *Complainant*(s) may be required to provide evidence during the disciplinary process.

[4] For the avoidance of doubt, this includes complaints referred to the *Case Manager* by the SIC if the SIC determine that a complaint initially reported to the SIC does not fall within its jurisdiction. The SIC is not required to comply with the deadline specified in this section.

v. the ability to identify potential *Parties* and witnesses and to obtain sufficient evidence; and

vi. the best interest of sport and those who participate in it, including the views of the person(s) directly impacted, when feasible.

1. If a complaint submitted within five (5) years after the incident involves allegations, if proven, would trigger a presumptive sanction of permanent ineligibility, the complaint shall be accepted.

c) Complaints of sexual *Maltreatment* may be brought at any time. While all complaints will be given due consideration, the ability to proceed may depend on the availability of evidence, the identification of involved *Parties*, and other necessary factors for a fair and effective process.

16. An adult *Participant* who receives information about or has knowledge of an interaction, incident, event, or situation and reasonably suspects that a child has suffered an incident of child abuse, including sexual abuse, shall immediately make a report of the suspected abuse to the local authorities.

## STANDARD TO APPLY

17. If a *Participant* or other individual makes a complaint involving allegations that would be considered *Maltreatment* or *Prohibited Behaviour* under the *UCCMS* or other conduct standard currently in force that occurred at a time when a different complaint process was in place, the complaint will be addressed using the procedures of this policy, as amended from time to time.

18. If known, the conduct standards in place at the time the incident(s)/event(s) related to the complaint are alleged to have occurred will be applied.

19. The determination of the conduct standard to be applied will be decided by the *Mediator/Arbitrator*, at its sole discretion.

## CASE MANAGER

20. Upon the submission of a complaint through the designated mechanism, a *Case Manager* will be appointed by the ITP to oversee the management and administration of the complaint in accordance with the *NBSSCM* Guidelines. Such an appointment may not be appealed.

21. The *Case Manager* has a responsibility to:

a) determine whether the complaint falls within the jurisdiction of the *NBSSCM* and the scope of this policy;

b) assess and identify whether it is a *UCCMS Complaint* or a *Fair Play Complaint*;

c) determine if the alleged incident must be investigated;

d) assess if the complaint is frivolous, vexatious or if it has been made in bad faith; and

e) determine whether to combine complaints into a single disciplinary process, if there are multiple individuals submitting complaints against the same or multiple *Respondent* for allegations of a similar nature or occurrence in time.

22. The *Case Manager* will determine whether to accept a complaint based on the factors outlined above.

23. If the *Case Manager* dismisses a complaint, the *Case Manager*'s written decision, supported by appropriate reasons, for this dismissal will be provided to the *Complainant*, and the complaint will be dismissed immediately.[5]

24. If the complaint does not meet eligibility criteria, the *Case Manager* may direct or provide the *Complainant* with access to facilitation and relevant supporting resources outside the formal *NBSSCM* process.

25. If the Complaint involves a *Fair Play Complaint*, the *Case Manager* will refer the complaint to the relevant applicable *PSO/MSO*, with the permission of the *Complainant*.

    a) If the *Complainant* does not provide their permission to refer their *Fair Play Complaint* to their *PSO/MSO*, the *Fair Play Complaint* is withdrawn without prejudice.

26. The PSO/MSO will determine whether to accept the *Fair Play Complaint*, in accordance with their applicable policies and procedures.

27. If the complaint is accepted, the decision to accept the complaint will be communicated to the *Complainant*(s) and *Respondent*(s).

28. If a complaint falls within the jurisdiction of the *NBSSCM*, the *Case Manager* will prepare a complaint summary which includes the specific allegations against the *Respondent* and forms the basis of the complaint process moving forward, to be provided to the *Respondent*.

    a) The designated contact person for the applicable *PSO/MSO*(s) and Sport NB will receive notice of the decision of the *Case Manager*. This notification will include a summary and an overview of the process and timeline for completion but will not include any identifying information of the *Complainant*.

29. The *Case Manager*'s decision to accept, dismiss or otherwise direct the complaint may not be appealed.

30. After a complaint is accepted, a *Mediator/Arbitrator* will be appointed for the matter by the *Case*

[5] As indicated in the Sport Dispute Resolution Centre of Canada's Investigation Guidelines, a reported complaint shall not be characterized as vexatious if the evidence demonstrates that there was a reasonable basis for filing and pursuing it. For a complaint to be considered to have been made in bad faith, the *Case Manager* must consider that it was filed consciously for a dishonest purpose or due to the moral underhandedness of the *Complainant* and that there was an intention to mislead.

*Manager* from a list maintained by Sport NB.

31. Any costs associated with the services of the *Mediator/Arbitrator* shall be covered by the *NBSSCM*.

32. If a complaint is not accepted, the *Case Manager* may recommend that the *Parties* to informal conflict resolution resources outside of the *NBSSCM* process, including the programs as set out in Appendix A. Engagement in this informal conflict resolution process is voluntary.

## ALTERNATIVE DISPUTE RESOLUTION

33. Sport NB supports the principles of *ADR* and is committed to the techniques of negotiation, facilitation, and mediation as effective ways to resolve disputes. *ADR* also avoids the uncertainty, costs, and other negative effects associated with lengthy investigation, hearings, and appeals.

34. All *Parties* are encouraged to communicate openly, and to collaborate and use problem-solving and negotiation techniques to resolve their differences.

35. Sport NB's position is that negotiated settlements are the preferred outcome, except where adjudication is required to ensure accountability, or where mediation is not feasible or appropriate.

36. At the sole discretion of the *Mediator/Arbitrator*, various *ADR* techniques may be used during mediation. This includes but is not limited to virtual sessions, separate physical spaces, or the use of an intermediary to ensure a fair and trauma-informed process.

37. Should a negotiated settlement be reached, the settlement shall be reported by the *Case Manager* to all *Parties* involved, as well as the applicable *PSO/MSO* and Sport NB. Following the settlement, any actions and/or sanctions shall be enacted in accordance with the timelines specified by the negotiated decision.

38. Should a tentative negotiated settlement be reached that requires any action to be taken by Sport NB and/or an *PSO/MSO* or may reasonably impact the operations or reputation or Sport NB and/or a *PSO/MSO*, the proposed settlement shall be reported to Sport NB and/or a *PSO/MSO* for approval. Sport NB and/or a *PSO/MSO* may approve, reject, or propose amendments to a proposed settlement within 10 *Days* of the *Parties* arriving at the proposed settlement. Any decision by Sport NB and/or a *PSO/MSO* to approve, reject, or propose amendments to a negotiated settlement may not be appealed.

39. If Sport NB and/or a *PSO/MSO* approves, rejects, or proposes amendments to a negotiated settlement, the *Parties* may continue to engage in negotiations, or proceed to arbitration.

40. Any actions that are to take place because of the proposed settlement shall be completed in accordance with the timelines specified by the negotiated settlement, pending approval.

41. The *Parties* may not withdraw from the proposed settlement pending the approval of any actions to be taken by Sport NB and/or a *PSO/MSO*.

42. Failure to comply with a signed negotiated settlement will result in the suspension of the individual from participating in *Activities*. The lifting of the suspension will be reviewed by the applicable *PSO/MSO* upon the completion of all conditions identified in the signed negotiated settlement.

43. Any negotiated settlement will be final and binding on the *Parties*. Negotiated settlements may not be appealed.

44. A non-disclosure agreement (NDA) or any other confidentiality provision entered as part of a negotiated settlement may not prevent the publication by a *PSO/MSO* or other applicable sport organization of sanctions on registries such as the CSSP Public Registry, the SIC Database, or an *NSO*/PSO database. NDAs may not be entered into if a complaint involves allegations of sexual *Maltreatment*, grooming and boundary transgressions unless such an agreement:

    a) is the expressed wish and preference of the *Complainant*(s);

    b) includes an opportunity for the *Complainant*(s) to decide to waive their own confidentiality in the future and the process for doing so;

    c) aligns with the principles of the *UCCMS*;

    d) is of a set and limited duration; and

    e) does not adversely affect:

        i. the health or safety of a third party, or

        ii. the public interest

45. Any NDA in a complaint involving allegations of sexual *Maltreatment*, grooming and boundary transgressions must be reviewed and approved by the *Mediator/Arbitrator*. The *Mediator/Arbitrator* may, at their sole discretion, approve, reject, or propose amendments to an NDA.

    a) Any decision by the i to approve, reject, or propose amendments to an NDA may not be appealed.

46. Should a negotiated settlement not be reached, the matter will proceed to arbitration.

## MINORS

47. Complaints may be brought by or against a *Participant* who is a *Minor*. *Minors* must have a parent/guardian or other adult serve as their representative during this process. Where appropriate, the *Minor*'s preference regarding their representative should be considered.

48. Communication from the *Case Manager*, *Mediator/Arbitrator* or *Appeal Arbitrator* (as applicable) must be directed to the *Minor*'s representative.

49. If the *Minor*'s representative is not their parent/guardian, the representative must have written permission to act in such a capacity from the *Minor*'s parent/guardian, unless the parent/guardian is implicated in the complaint or is otherwise unable to act in the *Minor*'s best interest.

50. A *Minor* is not required to attend or participate in an oral hearing, if held, or participate in an investigation, if conducted. In such circumstances, no adverse inference can be drawn against a *Minor*.

51. Where a *Minor* participates in a hearing or investigation, appropriate safeguards may be put in place by the *Mediator/Arbitrator* to protect their well-being during their participation.

52. In matters where a *Minor* is the *Respondent,* restorative justice measures and procedures will be prioritized.

## INVESTIGATION

53. In exceptional circumstances where it is impossible to reasonably proceed without the benefit of an investigation, the *Case Manager* may order an investigation by an independent investigator before proceeding to *Med/Arb*.

54. If an investigation by an investigator is required, the *Case Manager* will appoint an investigator that is skilled in investigating cases that align with the nature of the allegations.

55. Investigations must be conducted with sensitivity and respect for the well-being of all parties involved. A trauma-informed approach should be applied consistently to ensure a safe, fair, and respectful process.

56. Provincial legislation related to workplace harassment may apply to the investigation if harassment was directed toward an employee in the workplace. The investigator should review workplace safety legislation, the *PSO/MSO*'s policies for human resources, and/or consult independent experts to determine whether legislation applies to the complaint.

57. The investigator must not be in a conflict-of-interest with the *Parties* and should have no prior involvement with the *Complainant*, *Respondent*, the *PSO/MSO*, or the *NSO*.

58. The appointed investigator will have discretion on the investigation approach and will be considered a neutral third-party with a mandate to seek the truth and make findings based on evidence collected through the investigation process.

59. While conducting the investigation, the investigator will follow current and accepted best practices for investigation, principles of fairness and natural justice, and any applicable provincial legislation.

60. The investigation may take any form as decided by the investigator, guided by any applicable provincial legislation. The investigation may include:

    a) interviews with the *Complainant*;

b) witness interviews;

c) statement of facts (*Complainant*'s perspective) prepared by the investigator, acknowledged by the *Complainant* and provided to the *Respondent*;

d) interviews with the *Respondent*; and

e) statement of facts (*Respondent*'s perspective) prepared by investigator, acknowledged by the *Respondent*, and provided to the *Complainant*.

61. If the investigator has reasonable suspicion or becomes aware of credible evidence of criminal conduct, the investigator shall report this concern to the *Case Manager*. The *Case Manager* may decide whether to report such findings to the police but is required to inform police if there are findings related to the trafficking of prohibited substances or methods (as indicated in the version of the World Anti-Doping Agency's Prohibited List currently in force), any crime of abuse or neglect against a child (under 16), fraud against a *PSO/MSO* (as applicable), or other offences where the lack of reporting would bring Sport NB and/or the *PSO/MSO* into disrepute.

62. Prior to reporting to the police, the *Case Manager* must consider the safety and well-being of the identified *Parties*. Where reporting is not legally required, the *Case Manager* must consider whether reporting would put a *Participant* at risk and prioritize their safety. Where possible, the *Participant* should be involved in the decision-making process, as reporting abuse may cause further harm and disempower the *Participant*.

63. Upon completion of their investigation, the investigator shall prepare a report that will include a summary of evidence gathered from the *Parties* to the investigation, any witnesses interviewed, and documentary information. The investigator will identify the conduct standard considered, provide an analysis of the relevant information gathered and make findings based on the evidence gathered, including a rationale for the findings made. Findings by the investigator shall be based on a balance of probabilities.

64. All *Parties* are expected to cooperate fully in the investigation.

65. If a *Respondent* attempts to circumvent the process by failing to respond to a complaint in a thorough or timely fashion or at all, or if the *Complainant* and/or the *Respondent* refuse(s) to participate in the review or third-party investigation process, the investigator may proceed based on the information made available to them by the *Complainant* and any witnesses interviewed/investigated as part of the process.

66. The *Case Manager* retains the discretion of whether to share the full investigation report with the *Parties* or an anonymized or redacted version to protect the identity of witnesses. This decision may not be appealed.

## PROVISIONAL MEASURES

67. *Provisional Measures* may be imposed in a reasonable and proportionate manner, without

limitation, having regard to a consideration of the following factors:

a) The safety or well-being of any *Participant* and the provincial sport community;

b) The seriousness of the allegations and the facts and circumstances of the case;

c) Potential risks and prejudice from action and inaction;

d) The best interest of sport and those who participate in it;

e) The impact of the measures on the *Respondent*; and

f) The integrity of the process.

68. If it is considered appropriate or necessary on the basis of the circumstances, the imposition of an immediate *Provisional Measure*, including an interim suspension, may be imposed against any *Participant* by a *PSO/MSO* to which a *Respondent* belongs, after which further discipline or sanctions may be applied according to this policy.

69. The *PSO/MSO* may determine that an alleged incident is of such severity as to warrant the imposition of *Provisional Measures* on a *Respondent* pending completion of an investigation, criminal process, or the *Med/Arb* process.

70. The *Case Manager*, upon the receipt and acceptance of a complaint, may make non-binding recommendations to a *PSO/MSO* in the complaint summary regarding immediate *Provisional Measures* for a *Respondent* who belongs to the *PSO/MSO* if no such restrictions have already been imposed by the *PSO/MSO*.

a) Any such recommendations are not subject to appeal.

b) A *PSO/MSO* is not required to follow the recommendations of the *Case Manager* regarding the implementation of *Provisional Measures*.

71. Any *Respondent* against whom a *Provisional Measure* is imposed may make a preliminary request to the *Mediator/Arbitrator* (once appointed) to have the *Provisional Measure* lifted. In such circumstances, the applicable *PSO/MSO* shall be provided with an opportunity to make submissions, orally or in writing, regarding the *Respondent's* request to have the *Provisional Measure* lifted. *Provisional Measures* shall only be lifted or revised in circumstances where the *Respondent* establishes that it would be manifestly unfair to maintain the *Provisional Measures* against them.

72. The decision by the *Mediator/Arbitrator*, which shall be in writing with appropriate reasons, whether to lift a *Provisional Measure* shall not be subject to appeal.

## HEARING PROCESS

73. The *Case Manager* will appoint a *Mediator/Arbitrator* from a roster maintained by Sport NB. Once

appointed, the *Mediator/Arbitrator* will be the primary point of contact for the *Parties*, unless otherwise indicated.

74. The complaint process will comply with the requirements of the *NBSSCM* Guidelines.

    a) The hearing will be governed by a process determined by the *Mediator/Arbitrator*, as they deem appropriate in the circumstances, provided that:

        i. within five (5) *Days* of their appointment, the *Mediator/Arbitrator* shall contact the *Complainant*(s) and the *Respondent*(s) to initiate the process;

        ii. all matters under this policy, including investigations, interviews, administrative meetings and hearings, may held virtually or in person;

        iii. the process must commence within three (3) to five (5) *Days* from the *Mediator/Arbitrator*'s first contact with the *Parties*, unless there are extenuating circumstances or scheduling considerations which reasonably delay the start of the hearing;

        iv. the *Mediator/Arbitrator* will determine whether it is appropriate for the matter to proceed to mediation first. If the *Mediator/Arbitrator* does not believe that the matter should proceed to mediation or any of the *Parties* refuse to go to mediation, the matter will move directly to arbitration;

        v. the *Mediator/Arbitrator* shall ensure that all *Parties* are given the opportunity to present evidence in a manner which complies with fundamental administrative law requirements, including the rules of natural justice and procedural fairness. This includes, but is not limited to the sensitive needs of *Minors*, survivors of trauma, and other vulnerable individuals, as well as ensuring that appropriate measures to respect *Cultural Safety* are implemented;

        vi. the *Mediator/Arbitrator* shall recognize the need to ensure a trauma informed approach and *Cultural Safety*;

        vii. nothing is admissible in evidence at a hearing that would be inadmissible in a court because of any privilege under the law of evidence or is inadmissible by any statute;

        viii. if the *Mediator/Arbitrator* grants a request from either party for additional time, the *Mediator/Arbitrator* has the authority to impose interim conditions, in addition to any *Provisional Measures* in place;

        ix. the *Parties* must be given:

            a. appropriate notice of the day, time, and place of the hearing, in the case of an oral in-person hearing or an oral hearing by telephone or other communication medium, and

b. copies of any written documents which the *Parties* wish to have the *Mediator/Arbitrator* consider will be provided to all *Parties*, through the *Case Manager*, in advance of the hearing;

x. the *Parties* may engage a representative, advisor, or legal counsel at their own expense;

xi. if the *Respondent* acknowledges the facts of the incident(s), the *Respondent* may waive the hearing, in which case the *Mediator/Arbitrator* will determine the appropriate sanction. The *Mediator/Arbitrator* may still hold a hearing for the purpose of determining an appropriate sanction;

xii. the process will proceed if a *Party* chooses not to participate in the hearing;

xiii. the *Mediator/Arbitrator* may request that any other individual or organization participate and give evidence at the hearing, including a *PSO/MSO*, provided such participation is reasonably required to effectively conduct the proceedings and is not prejudicial to the interest of the *Parties*; and

xiv. the *Mediator/Arbitrator* may intervene in a line of questioning if questions are inappropriate or risk causing unnecessary distress to *Participants* or witnesses.

75. The *Mediator/Arbitrator* has the power to modify a *Provisional Measure* and relieve against non-compliance with time limits, or any other technicality or irregularity as set out in this policy.

## DECISION

76. After hearing the matter, the *Mediator/Arbitrator* will determine, on a balance of probabilities, whether an infraction has occurred and, if so, the sanctions to be imposed.

77. Within seven (7) *Days* of the conclusion of the hearing, the *Mediator/Arbitrator*'s written decision, with reasons, will be distributed to all *Parties* by the *Case Manager*, including to the relevant *PSO/MSO*.

78. In extraordinary circumstances, the *Mediator/Arbitrator* may first issue a verbal or summary decision soon after the conclusion of the hearing, with the full written decision to be issued before the end of the seven (7) *Day* period.

79. The *Mediator/Arbitrator* may uphold or dismiss the complaint.

a) If the complaint is upheld, the *Mediator/Arbitrator* may impose any sanction deemed appropriate including, but not limited to, those referred to in the *UCCMS*, or other such measures that the *Mediator/Arbitrator*, at their sole discretion, deems appropriate in the circumstances.

b) If the *Mediator/Arbitrator* considers that an infraction has not occurred, the complaint will be dismissed.

80. The decision of the *Mediator/Arbitrator* is final and binding and is subject to appeal only on the terms of the *Appeal* section, set out below.

81. The *Mediator/Arbitrator*'s decision will come into effect as of the date on which it is rendered, unless decided otherwise by the *Mediator/Arbitrator*. The *Mediator/Arbitrator*'s decision will apply automatically to the *Respondent*, unless otherwise directed by the *Mediator/Arbitrator*.

82. The *PSOs/MSOs* to which the *Participant* belongs will be notified in writing of decisions and sanctions imposed under the policy.

83. The *Mediator/Arbitrator*'s decision shall include, at a minimum, the following details:

    a) jurisdiction;

    b) summary of the facts and relevant evidence;

    c) where applicable, the specific provision(s) of the *UCCMS* or applicable conduct standard, rules or regulations that have been breached;

    d) which *Party* or organization, including a *PSO/MSO*, is responsible for the costs of implementing any sanction;

    e) which *PSO/MSO* is responsible for monitoring whether the sanctioned individual respects the terms of the sanction;

    f) any reinstatement conditions that the *Respondent* must satisfy, if any;

    g) which *PSO/MSO* is responsible for ensuring that the conditions have been satisfied; and

    h) any other guidance that will assist the *Parties* to implement the *Mediator/Arbitrator*'s decision.

84. If necessary, a *Party*, organization or a *PSO/MSO* that is responsible for implementing or monitoring a sanction may seek clarification from the *Mediator/Arbitrator* regarding the order so that it can be implemented or monitored appropriately.

## SANCTIONS

85. Prior to determining sanctions, the *Mediator/Arbitrator* will evaluate the sanctioning considerations as set out at Section 7.4 of the *UCCMS*.

86. Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions.

87. The *Mediator/Arbitrator* may apply the disciplinary sanctions, singularly or in combination, as set out at Section 7.2 of the *UCCMS*, they deem appropriate.

88. The sanctions identified in the *UCCMS* are representative penalties only. They may be modified to fit the circumstances.

89. Unless the *Mediator/Arbitrator* decides otherwise, any disciplinary sanctions (such as a period of ineligibility) will begin immediately and timelines will be provided for fulfillment of other sanctions, such as a written apology.

90. Failure to comply with a sanction as determined by the *Mediator/Arbitrator* will result in an automatic suspension until such time as compliance occurs.

91. A *Participant*'s criminal conviction, at any time, for Criminal Code offenses considered to be *Maltreatment* or *Prohibited Behaviour* under the *UCCMS*, shall be automatically sanctioned, as identified under Section 6.2 of the *UCCMS*.

92. Findings of *Maltreatment* or *Prohibited Behaviour* as identified under Section 7.3 of the *UCCMS* carry presumptive sanctions which may be rebutted by a *Respondent*.

## OTHER CONSIDERATIONS

93. The complaint process is confidential and involves only the *Parties*, the *Case Manager*, the *Mediator/Arbitrator*, the relevant *PSO/MSO* and any independent advisors engaged by the *Case Manager* or *Mediator/Arbitrator*. Once initiated and until a decision is released, none of the *Parties* (or their representatives or witnesses) will disclose confidential information relating to the appeal to any person not involved in the proceedings, unless a *Party* is required to notify an organization such as an international or national federation, Sport Canada or other sport organization (i.e., where a Provisional Suspension or interim measures have been imposed and communication is required to ensure that they may be enforced), or notification is otherwise required by law.

94. The *Case Manager* and *PSO/MSO* may be required to share relevant information with child protection authorities and law enforcement.

95. *PSO/MSO*s will keep and retain all relevant records in accordance with the applicable legislation. Such records will be stored in a confidential file maintained and accessed only by those that are authorized to have access to confidential information.

## PROCEDURAL VIOLATIONS

96. All *Parties*, including *Participants,* are prohibited from:

    a) intentionally making false reports, as set out in Section 5.12 of the *UCCMS*;

    b) interfering or manipulating a process under the *NBSSCM* or this policy, as set out in Section 5.12 of the *UCCMS*; and

    c) retaliating against anyone who makes a good faith complaint or appeal under the *NBSSCM* or this policy, as set out in Section 5.14 of the *UCCMS*.

97. If it is determined that a *Participant* committed any of the above violations, they will be subject to disciplinary action, up to and including permanent ineligibility.

## Appeals

1. This section relates to appeals within the jurisdiction of the *NBSSCM*.

2. It provides *Participants* and *PSOs/MSOs* with a fair and expedient appeal process that aligns with the requirements of the *NBSSCM* Guidelines.

## SCOPE AND APPLICATION OF THE APPEAL SECTION

3. This *Appeal* section applies to all *Participants* and *PSOs/MSOs* that are members of Sport NB who are eligible to participate in the *NBSSCM*. *Appeals* may be submitted on two bases:

   a) Any *Participant* or *PSOs/MSOs* who is directly affected by a final decision made by a *Mediator/Arbitrator* appointed under the *NBSSCM* Guidelines and the accompanying policies may appeal that final decision, if permitted by the applicable policy and there are sufficient grounds for the appeal under the **Grounds for Appeal** as set out below.

   b) Any *Participant* who is directly affected by a decision made by a *PSO/MSO* shall have the right to appeal that decision where there is an alleged failure of a *PSO/MSO* to follow its Constitution or by-laws or policies, if there are sufficient grounds for the appeal under the **Grounds for Appeal** as set out below.

4. This policy **will not apply** to decisions relating to:

   a) employment;

   b) infractions for doping offenses;

   c) the rules of the applicable sport;

   d) selection criteria, quotas, policies, and procedures established by entities other than a *PSO/MSO*;

   e) substance, content and establishment of team selection or carding criteria;

   f) volunteer/coach appointments and the withdrawal or termination of those appointments;

   g) budgeting and budget implementation;

   h) a *PSO/MSO*'s operational structure and committee appointments;

   i) decisions or discipline arising within the business, activities, or events organized by entities other than a *PSO/MSO*;

   j) commercial matters for which another *Appeal* process exists under a contract or applicable law; or

   k) decisions made under the *Appeal* section of this policy.

## DESIGNATED APPEAL MANAGER

5. An *Appeal Manager* will be appointed by the ITP to oversee the *Appeal* process as set out in the policy.

6. The *Appeal Manager* must not be in a conflict of interest or have any direct relationship with the *Parties*, including any past involvement in any capacity in the matter under appeal.

## TIMING OF APPEAL

7. *Participants* or *PSOs/MSOs* who wish to *Appeal* a final decision have fourteen (14) *Days*, from the date on which they received notice of the final decision under appeal, to submit the following, in writing, through the designated reporting mechanism:

    a) notice of the intention to *Appeal*;

    b) their contact information;

    c) name and contact information of the *Respondent* and any *Affected Parties*, when known to the *Appellant*;

    d) date the *Appellant* was advised of the decision being appealed;

    e) a copy of the decision being appealed, or description of decision, if written document is not available;

    f) grounds for the *Appeal*;

    g) detailed reasons for the *Appeal*;

    h) all evidence that supports these grounds; and

    i) requested remedy or remedies.

8. A *Participant* who wishes to initiate an *Appeal* beyond the fourteen (14) *Day* period must provide a written request stating the reasons for an exemption. The decision to allow or not allow an *Appeal* outside of the fourteen (14) working *Day* period will be at the sole discretion of the *Appeal Manager* and may not be appealed.

## GROUNDS FOR APPEAL

9. A decision cannot be appealed on its merits alone. An *Appeal* may only be heard if there are sufficient grounds for appeal. Sufficient grounds include that the *PSO/MSO*, their designate or the *Mediator/Arbitrator*:

    a) made a decision that it did not have the authority or jurisdiction (as set out in the applicable governing documents) to make;

b) failed to follow its own procedures (as set out in the applicable governing documents, including the *NBSSCM* Guidelines);

c) made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views); or

d) made a decision that was unreasonable.

## SCREENING OF APPEAL

10. The *Appeal Manager* has the following responsibilities:

a) to determine if the *Appeal* falls under the scope of the *Appeal* section;

b) to determine if the *Appeal* was submitted in a timely manner;

c) to decide whether there are sufficient grounds for the *Appeal*.

11. In the case of an *Appeal* based on the alleged failure of a *PSO/MSO* to follow its Constitution, by-laws, or policies, the *Appeal Manager* must determine if the *Appellant* has exhausted all internal dispute resolution procedures provided by the policies and by-laws of the *PSO/MSO*.

12. A *PSO/MSO* internal dispute resolution procedure is deemed exhausted when:

a) the *PSO/MSO* or its internal appeal process has rendered a final decision;

b) the *PSO/MSO* has failed to apply its internal appeal policy within reasonable time limits or on reasonable grounds; or

c) the *PSO/MSO* has waived the requirement to exhaust its internal appeal process.

13. If the *Appeal Manager* denies the *Appeal* because of insufficient grounds or it was not submitted in a timely manner, or because it did not fall under the scope of this policy, the *Appellant* will be notified, in writing, of the reasons for this decision.

14. This decision may not be appealed.

15. If the *Appeal Manager* is satisfied there are sufficient grounds for an *Appeal*, the *Appeal Manager* will appoint a single *Appeal Arbitrator* to hear the *Appeal*.

16. If warranted, based on the extraordinary nature of the case, the *Appeal Manager* may, in their sole discretion, appoint three (3) *Appeal Arbitrators* to hear the matter on an *Appeal Panel*. When three *Appeal Arbitrators* are appointed, the *Appeal Manager* will appoint one of the *Appeal Arbitrators* to serve as the Chair.

a) In such circumstances, all references to *Appeal Arbitrator* shall be deemed to be an *Appeal Panel*.

## DETERMINATION OF AFFECTED PARTIES

17. To confirm the identification of any *Affected Parties*, the *Appeal Manager* will engage the *PSO/MSO*.

18. The *Appeal Manager* may determine whether a *Participant* or *PSO/MSO* is an *Affected Party*, in their sole discretion.

## PROCEDURE FOR APPEAL HEARING

19. The *Appeal Manager* shall notify the *Parties* that the *Appeal* will be heard.

20. The *Appeal Arbitrator* shall then decide the format under which the *Appeal* will be heard.

21. This decision is at the sole discretion of the *Appeal Arbitrator* and may not be appealed.

22. If a *Party* chooses not to participate in the hearing, the hearing will proceed.

23. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the *Appeal Manager* and the *Appeal Arbitrator* deem appropriate in the circumstances. The following guidelines will apply to the hearing:

    a) The hearing will be held within a timeline determined by the *Appeal Arbitrator*.

    b) The *Parties* will be given reasonable notice of the date, time, and place of an oral, in-person hearing or oral hearing by telephone or electronic communications.

    c) Copies of any written documents which any of the *Parties* wish to have the *Appeal Arbitrator* consider will be provided to all *Parties* in advance of the hearing.

    d) The *Parties* may be accompanied by a representative, advisor, or legal counsel at their own expense.

    e) The *Appeal Arbitrator* may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.

    f) The *Appeal Arbitrator* may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the *Appeal* but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate.

    g) If a decision in the *Appeal* may affect another *Party* to the extent that the other *Party* would have recourse to an *Appeal* in their own right, that *Party* will become an *Affected Party* to the *Appeal* in question and will be bound by its outcome.

24. In fulfilling its duties, the *Appeal Arbitrator* may obtain independent advice.

## MED/ARB PROCESS

25. The *Appeal Manager*, if appropriate, may confirm whether the *Parties* wish to proceed under a *Med/Arb* process.

26. The *Parties* may agree, in writing, to proceed under the *Med/Arb* process as set out above, to attempt to resolve the *Appeal*.

27. The *Appeal Arbitrator* will determine the appropriate steps to follow under the *Med/Arb* process.

## APPEAL DECISION

28. The *Appellant* must demonstrate, on a balance of probabilities, that the *PSO/MSO* or the *Mediator/Arbitrator*, as applicable, made an error as described in the Grounds for Appeal section of this policy and that this error had a material effect on the decision or decision-maker.

29. The *Appeal Arbitrator* shall issue its decision, in writing and with reasons, within fourteen (14) *Days* after the hearing's conclusion. In making its decision, the *Appeal Arbitrator* will have no greater authority than that of the original decision-maker.

30. The *Appeal Arbitrator* may decide to:

    a) reject the *Appeal* and confirm the decision being appealed;

    b) uphold the *Appeal* and refer the matter back to the initial decision-maker for a new decision; or

    c) uphold the appeal and vary the decision.

31. In extraordinary circumstances, the *Appeal Arbitrator* may also determine whether costs of the *Appeal* will be assessed against any *Party*. In assessing costs, the *Appeal Arbitrator* will consider the outcome of the *Appeal*, the conduct of the *Parties*, and the *Parties*' respective financial resources.

32. The *Appeal Arbitrator*'s written decision, with reasons, will be distributed to all *Parties*, the *Appeal Manager*, and the *PSO/MSO*, as applicable, within fourteen (14) *Days* of the conclusion of the hearing.

33. In extraordinary circumstances, the *Appeal Arbitrator* may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued within fourteen (14) *Days* of the conclusion of the hearing.

## TIMELINES

34. If the circumstances of the *Appeal* are such that adhering to the timelines outlined by this policy will not allow a timely resolution to the *Appeal*, the *Appeal Manager* and/or *Appeal Arbitrator* may direct that these timelines be revised.

## CONFIDENTIALITY

35. The *Appeal* process is confidential and involves only the *Parties*, the *PSO/MSO*, the *Appeal Manager*, the *Appeal Arbitrator*, and any independent advisors to the *Appeal Arbitrator*. Once initiated and until a final *Appeal* decision is released, none of the *Parties* (or their representatives or witnesses) will disclose confidential information relating to the *Appeal* to any person not involved in the proceedings, unless the *PSO/MSO* is required to notify an organization such as an international federation, Sport Canada or other sport organization or notification is otherwise required by law.

36. None of the *Parties* (or their representatives or witnesses) or organizations will disclose confidential information relating to the *Appeal* to any person not involved in the proceedings, unless the *PSO/MSO* is required to notify an organization such as an *NSO* or other sport organization, or notification is otherwise required by law.

37. Any failure to respect the confidentiality requirement may result in further sanctions or discipline by the *Appeal Arbitrator*.

## APPENDIX A – REPORTING MECHANISM

All complaints and appeals must be reported through ITP Sport's secure online portal, available in multiple languages 24 hours a day, every day:

https://nb.itpsport.ca

Once a complaint or appeal is submitted, a phone call with a Case Manager or Appeal Manager can be arranged if needed.

## APPENDIX B – SAFEZONE

1. SafeZone is a resource designed to help participants, leadership and representatives navigate concerns, conflicts, and the complaint process.

2. SafeZone provides a confidential, welcoming space for individuals. Individuals can receive guidance on issues such as *Harassment*, *Bullying*, abuse, or other forms of *Maltreatment*.

3. SafeZone helps *Participants* understand the pathways and options prior to filing a complaint under the *NBSSCM*.

4. To submit a SafeZone inquiry, please use ITP Sport's secure online portal: https://nb.itpsport.ca. Once an inquiry is submitted, a phone call with a SafeZone specialist can be arranged if needed.

5. For further information regarding SafeZone, please see the webpage here.