

The “Independent Third Party”: The New Structure for Hockey Canada Complaints

Complaints | Discrimination | Harassment | Hockey | Litigation | Litigation & Dispute Resolution

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Sport organizations have received a significant amount of publicity in recent years regarding maltreatment by and against both players and coaches. As a result, some of these organizations, including Hockey Canada, have implemented new policies and procedures to handle complaints of sexual assault, harassment, abuse, and discrimination. On October 27, 2022, Hockey Canada announced that they became a full signatory to Abuse-Free Sport, the independent program intended to address and prevent maltreatment in sport. This meant that all complaints of maltreatment at the national level would go directly to the Office of the Sport Integrity Commissioner (OSIC), while for alleged incidents of maltreatment involving other levels of Hockey Canada-sanctioned programming, such as minor hockey and non-national teams, an Independent Third Party (ITP) reporting mechanism was established.

Overview of the ITP Complaints Structure

The ITP is a body that operates completely independently from Hockey Canada and has the sole jurisdiction to handle complaints of sexual abuse, sexual maltreatment, distribution of child pornography, physical assault, bullying, harassment, discrimination, and any other forms of severe maltreatment as determined by the ITP. The ITP has the discretion to determine whether allegations constitute a severe form of maltreatment – however, it is important to note that any complaint which primarily advances allegations of sexual maltreatment, grooming, or any conduct that constitutes child abuse under the relevant child protection legislation will be considered severe misconduct and the ITP will assume jurisdiction. The ITP is not an investigative body; it operates solely to ensure that complaints are processed in a confidential, neutral, and procedurally fair manner.

If an individual would like to file a complaint about anyone who is affiliated with Hockey Canada, other than at a national programming level, they can send it via email to the ITP or by filling out the complaint form at sportcomplaints.ca.

Once they have received a complaint, the ITP will analyze the complaint to determine the appropriate jurisdiction and process. It may determine that the complaint is best suited for either a summary procedure (Process 1) or a more comprehensive procedure (Process 2) depending on the complexity of the legal or quasi-legal issues in dispute, the importance of resolving the complaint in a timely and efficient manner, and the impact of a lengthy investigation on a minor involved in a dispute. Once this step is completed, the ITP may determine that they need to report matters to law enforcement, child protection services and/or Hockey Canada's insurers.

If the complaint is determined to be within the ITP's jurisdiction, it may retain mediators, investigators, and/or adjudicators to process the complaint and render a final determination. The ITP will not report any matters to Hockey Canada unless the complaint is determined to be within the ITP's jurisdiction and a final adjudication decision has been made.

There are some limitations to the ITP:

- it will not process any appeals for matters outside its jurisdiction;
- it will not address complaints related to conflicting personalities and differences of opinion that do not constitute a form of maltreatment;
- it will not address transfer requests or appeals;
- it will not address complaints about operational or administrative matters such as fees and refunds;

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- it will not provide legal advice to any parties of a complaint; and
- it will not overturn any decisions made by on-ice officials.

Main Facets of the ITP Process: Confidentiality and Independence

The two main features of the ITP are confidentiality and independence. The entire disciplinary process by the ITP is confidential and involves only the parties involved in the complaint, the ITP, the Adjudicative Chair and any independent advisors to the adjudicative panel. Hockey Canada will not be involved in the complaints process unless the complaint was initially submitted to the organization itself. Once the complaint is made, it is forbidden for any party to disclose any information related to the proceeding to a third party until the final decision is released.

There may be certain situations where the ITP is required to break confidentiality and notify an international federation, law enforcement, Sport Canada, or other agencies as required by law when there is a complaint alleging a breach of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS). However, even in these scenarios, the complaint will still be managed entirely by the ITP. Failure to maintain confidentiality may result in sanctions by the Adjudicative Panel.

The second main feature of the ITP is its independence from Hockey Canada. This independence allows all complainants to have their identities protected and prevents anyone from exercising undue influence on the ITP.

The Trauma-Informed Approach

A significant aspect of the ITP is that it utilizes a trauma-informed process in its complaints structure. This means that, in recognition of the difficulty individuals often face when reporting abuse or harassment, the ITP has committed to keeping reports completely confidential, following up on all reports in a timely manner, referring survivors to additional resources, answering any questions about the complaint process, ensuring all complaints are taken seriously and examined rigorously and ensuring it maintains a staff that reflects gender and racial diversity. The goal is to ensure the ITP is easily accessible to all individuals.

Possible Sanctions

Once the ITP analyzes a complaint and determines the best process for handling the complaint, they will appoint an Adjudicative Chair, who does not have any real or perceived conflict with the complainant, respondent, or any other individual or organization who may be impacted by the decision. The Adjudicative Chair has the authority to manage the rest of the process and may: propose alternative dispute resolution techniques to attempt to resolve the complaint; ask the parties for written or oral submissions; conduct interviews of witnesses or parties to gather relevant facts; and/or convene the parties to a meeting to ask questions. The Adjudicative Chair will then determine whether the respondent has engaged in maltreatment and, if so, what sanctions will apply.

The following is a list of factors the Adjudicative Chair will consider when making a determination regarding sanctions:

- the severity of the maltreatment;
- the nature of the relationship between parties, including whether there is a power imbalance;
- the respondent's prior history or pattern of inappropriate behaviour;
- the respective ages of the individuals involved;
- whether the respondent poses an ongoing threat to the safety of others;
- the respondent's voluntary admission of the offence, acceptance of responsibility and cooperation in the investigation;
- real or perceived impact of the incident on the complainant, Hockey Canada and/or its members and community;
- circumstances specific to the respondent being sanctioned;
- whether continued participation in Hockey Canada-sanctioned programming is appropriate;
- a respondent who is in a position of trust, intimate contact or high-impact decision making may face more serious sanctions; and
- other mitigating or aggravating factors.

The Adjudicative Chair may ultimately impose one of the following sanctions, alone or in combination:

- a verbal or written warning;
- education;
- probation;
- suspension;
- eligibility restrictions;



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- permanent ineligibility; and,
- other discretionary sanctions.

Once they have made their decision, the Adjudicative Chair will provide a short decision explaining how they arrived at their conclusions to the ITP. The ITP will then provide the decision to the parties and Hockey Canada’s Vice President of Sport Safety. The ITP then has discretion to determine if the Administrative Chair’s decision should be shared with other organizations.

Other Sports Utilizing the ITP

The ITP reporting mechanism has been implemented in other sport organizations in addition to Hockey Canada. Tennis Canada, Ringette Canada, Curling Canada, Wrestling Canada Lutte and the Canadian Fencing Federation all use a similar ITP system to report complaints of abuse, harassment and discrimination. They all are confidential and operate in addition to the OSIC reporting system.

Takeaways

As the implementation of the ITP is quite recent, it remains to be seen how effective it will be at handling complaints of maltreatment. There are significant potential consequences involved with any complaints of sexual assault, harassment, abuse and discrimination and as a result, it is strongly recommended that individuals facing a complaint obtain advice from experienced legal counsel to ensure their interests are being protected.

The authors would like to thank **Christina Tassopoulos**, student-at-law, for her assistance in preparing this article. A PDF version is available to download [here](#).

If you require any litigation assistance, our **Dispute Resolution Group** lawyers are available to assist you.

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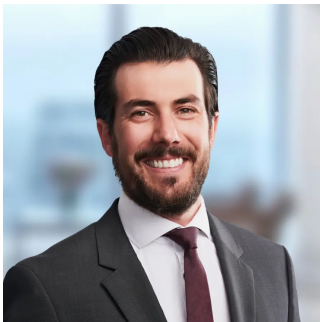


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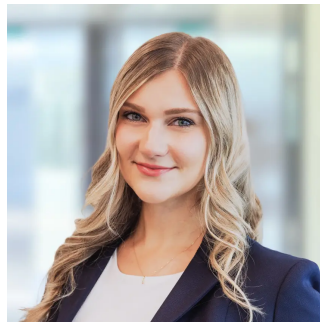


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