

SASKATCHEWAN ATHLETICS

ABUSE & HARASSMENT – QUESTIONS & ANSWERS

▪ **Question:**

What is the legal requirement to report sexual offences against children? Does it differ by Province? By the age of the victim?

▪ **Answer:**

All provinces have child welfare legislation, which sets out the situations in which the authorities may intervene to protect children. Normally, any person who has reasonable grounds for believing that a child is in need of protection must report it to the proper authorities. This duty is higher for those persons who occupy positions of responsibility, authority, or trust with respect to children, and includes teachers, social workers, clergy, health care professionals, recreation workers and coaches. In some jurisdictions, a failure to report a reasonable belief that a child is in need of protection is an offence punishable by a fine and/or imprisonment. Just as this duty is established by provincial legislation, so, too, is the definition of a “child”. Whether one is a “child” will be determined by the age of majority, which varies from province to province.

▪ **Question:**

How does the age of consent differ from the age of majority?

▪ **Answer:**

The age of majority is the age at which individuals become adults for legal purposes such as voting, drinking, getting married, and entering into legal contracts.

The age of consent is the age at which an individual can consent to engage in sexual activity. Under the Criminal Code, this age is 14 years.

An adult who has sexual contact with a person under the age of consent is committing a criminal offence whether or not the young person consents. A person over 14 can consent to sexual contact with an adult; however, the Criminal Code recognises that in certain circumstances this consent can be negated. These circumstances include those where an adult uses a position of trust or authority to induce or convince a young person to engage in sexual activity. This stipulation is a 1992 amendment to the Criminal Code and is critical in those situations involving sexual activity between adults and teenagers aged 14 to 17.

▪ **Question:**

If you become aware that an adult has been sexually assaulted, are you compelled to report it to the police even if the victim chooses not to?

ABUSE AND HARASSMENT

- **Answer:**

Under the Criminal Code, there is no obligation to report sexual assault to the police when the victim chooses not to disclose that such an assault has taken place. However, a person other than the complainant may choose to lay charges if he/she has grounds to believe that an assault has occurred. For example, it is now the practice of police who are called to a domestic violence situation to lay the charges themselves rather than requiring the victim, who may be severely traumatised or intimidated, to lay the charges. Once criminal charges have been laid, only the crown prosecutor or the court may discontinue or withdraw charges.

- **Question:**

If a sport leader is aware that harassment is occurring but the action is outside his/her area of responsibility or authority, does that leader have an obligation to do something about the situation?

- **Answer:**

This situation must be examined in light of previous comments about reporting sexual abuse or sexual assault. The leader has a duty to do something about the situation if he/she has reasonable grounds to believe that a child is in need of protection. Depending on the seriousness of the situation, this might mean approaching the child or child's parents on a confidential basis, confronting the suspected perpetrator, reporting the matter to senior officials of the sport organisation, or to the appropriate social services agency, or even notifying the police.

The sport leader does not have a legal duty if he/she believes an adult has been sexually assaulted. However, the leader should speak with the victim on a confidential basis, refer the victim to resources and services available within the sport organisation and the community, and offer support should charges be laid.

Any individual in a position of leadership has a moral obligation to investigate a matter which he/she believes involves activity which is illegal under Canadian law or which is prohibited by the sport organisation's own bylaws and policies. The harassment policy places an obligation on every member of the sport organisation to play their part in ensuring a harassment-free sport environment by not engaging in, allowing, condoning, or ignoring behaviour which constitutes harassment as defined in the policy. The sport leader who is aware that harassment is occurring should report his/her concerns to the sport organisation's harassment officer.

- **Question:**

Do the Canada Labour Code requirements for harassment policies apply to national sport organisations?

ABUSE AND HARASSMENT

- **Answer:**

No. Only employees under federal jurisdiction (including the federal government, banks and the transportation and telecommunications industries) are required by law to have a sexual harassment policy. Sport organisations are not under federal jurisdiction and are not subject to the Canada Labour Code.

However, sport organisations are subject to the employment standards legislation of each province, as are all other non-federal employers. Employment standards legislation sets out requirements for working conditions and related matters, but does not impose requirements for harassment policies.

- **Question:**

Do sport organisations come under the jurisdiction of human rights legislation and the Charter?

- **Answer:**

The Canadian courts have taken the position that sport organisations do not come within the jurisdiction of either the Charter or the Canadian Human Rights Act. However, in most cases the courts have considered that sport organisation's fall within the jurisdiction of provincial human rights legislation, because they provide services to the public. As such, sport organisation's in every province and territory are prohibited from discriminating in the provision of services or employment, and from ignoring, allowing, or condoning harassment on the basis of any prohibited ground of discrimination.

- **Question:**

If another organisation asks for a reference for a coach/employee who was let go because he/she was a harasser, what can the ex-employer tell the other organisation?

- **Answer:**

The ex-employer can tell the other organisation the truth based on the facts. If the ex-employer has a harassment policy in place with procedures for investigation and discipline, the facts of the harassment can be firmly established. The ex-employer would run into a problem if he/she reports information based solely on suspected or rumoured harassment.

An advantage of an effective harassment policy is precisely that it allows information about harassers and abusers to be made public without the ex-employer running the risk of being accused of slander or defamation.

- **Question:**

What about the situation where an organisation lets an employee go because of harassment but will not disclose this information?

ABUSE AND HARASSMENT

- **Answer:**

In return for an unwanted employee leaving voluntarily, and to avoid negative publicity, some organisations will promise to maintain confidentiality. Typically, such situations involve rumours or allegations of harassment, but no investigation or proof. The recruiting organisation cannot force this information from the ex-employer, but in reviewing candidates for new positions, they can include interview questions about the candidate's reasons for leaving previous employment.

- **Question:**

Is harassment grounds for dismissal with cause?

- **Answer:**

Yes. As described above, sport organisations come under the jurisdiction of provincial employment standards legislation which addresses the issue of employment dismissal.

If an employee has been found guilty of wilful misconduct, disobedience, or wilful neglect of duty that has not been condoned by the employer, then an employee may be terminated immediately "with cause". If cause can be shown, then the employee would receive neither notice nor pay in lieu of notice.

A harassment policy, which specifies disciplinary sanctions, including dismissal where justifiable, provides the employer with the authority to fire an employee who has been found guilty of harassment. As a further step, the organisation may wish its by-laws to spell out possible grounds for dismissal of employees, including harassment. However, any decision about dismissal with cause on the basis of harassment must be based on a finding of fact through an investigation, and not on rumour or suspicion. The harasser must also be provided with the opportunity to appeal this finding.

If the harassment is neither investigated nor documented, the sport organisation can nonetheless dismiss the employee, but would have to do so "without cause" following proper procedures; that is, with entitlement to the provisions outlined in the provincial employment standards legislation, in accordance with any conditions laid out in any existing employment contract, and additional severance provisions under common law.

As a precaution, the sport organisation may also wish to consult a lawyer before terminating an employee, to ensure that all these bases have been covered.

ABUSE AND HARASSMENT

- **Question:**

If a national team coach harasses a national team athlete in British Columbia, does that province's law apply? Or does Ontario law apply because the head office of the national sport organisation is in Ontario?

- **Answer:**

If the behaviour comes within the definition of sexual interference, invitation to sexual touching, sexual exploitation, criminal harassment, assault, or sexual assault within the Criminal Code, then the matter is dealt with in the province where the criminal offence took place.

Likewise, if the behaviour falls within the definition of harassment as defined in provincial human rights legislation, the complaint would likely be taken to the human rights body in the province where the harassment occurred.

If the complainant wishes to bring a civil suit against the coach, then he/she has a number of options. The complainant can bring the suit in the province where he/she lives, in the province where the harassment occurred, or in the province where the national sport organisation has its headquarters. The complainant would likely choose to bring the suit in the province of his/her residence for reasons of convenience and cost-effectiveness. The respondent (the coach and/or the sport organisation) might argue for a different jurisdiction. A court would then decide which forum or jurisdiction best meets the interests of the disputing parties and the public.

- **Question:**

Could a national sport organisation make having a harassment policy a condition of membership (where members are provincial, territorial or regional organisations or clubs)?

- **Answer:**

Yes. The private sport organisation can establish whatever criteria for membership it chooses, so long as it follows all of its own rules for doing so. To establish such a policy, the sport organisation would have to amend its by-laws, being sure to follow the strict requirements that are laid out in those by-laws for making such an amendment. Once approved, members would need a certain lead time and assistance in developing and implementing their harassment policies.

- **Question:**

A coach and an athlete, who is over 18, are having a consensual sexual relationship. Is this harassment or sexual assault?

- **Answer:**

Strictly speaking, it is neither. In the eyes of the law, a person 18 years of age or over is an adult and is entitled to all the rights and privileges which come with adulthood, including the right to consent to sexual activity or a sexual relationship. However, the law also recognises that this matter of "consent" is not so straightforward in situations where there is a power or authority

ABUSE AND HARASSMENT

relationship, such as exists between a coach and an athlete. For this reason alone, such relationships should be strongly discouraged.

Another reason for discouraging these relationships, particularly at the high performance level, is that they can lead to bias and the perception of bias on the part of the coach. They also can have harmful effects on other members of the team. Some sport organisations have recognised these problems and have addressed them by establishing policies, which explicitly prohibit intimate relationships between coaches and athletes. Alpine Canada, for example, takes the view that a sexual relationship between a coach and an athlete is unacceptable; if a relationship develops, the coach is asked to resign.

At the community or club level, it may not be necessary or practical to adopt this position. The issue of coach/athlete relationships is a tricky one, raising many questions. The important factor is for the sport organisation to discuss the issue openly and then determine which approach is consistent with the organisation's values.

If the sport organisation decides that intimate sexual relationships between coaches and adult athletes are inappropriate, the following statement can be included in the harassment policy, and in personnel contracts with coaches if they exist:

Saskatchewan Athletics takes the view that intimate sexual relationships between coaches and adult athletes, while not against the law, can have harmful effects on the individual athlete involved, on other athletes and coaches and on Saskatchewan Athletics public image. Saskatchewan Athletics therefore takes the position that such relationships are unacceptable for coaches coaching at the following levels:

(to be filled in by Saskatchewan Athletics). Should a sexual relationship develop between athlete and coach, Saskatchewan Athletics will investigate and take action, which could include reassignment, or if this is not feasible, a request for resignation, or dismissal from employment.