

# Nordiq Canada Discipline and Complaints Policy

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Policy

**June 2021**





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## NORDIQ CANADA

### DISCIPLINE AND COMPLAINTS POLICY

\* Indicates a section that has been adapted from the Universal Code to Prevent and Address Maltreatment in Sport (“UCCMS”)

**Commented [MB1]:** Please see Appeals policy, which I believe included discipline and complaints – we may need to remove discipline and complaints section from appeals policy.

**Commented [SLSG2R1]:** Yes. They should not be included in the same policy.

### Definitions

1. Terms in this Policy are defined as follows:

- a) **\*Athlete** – An individual who is an Athlete Participant in Nordiq Canada who is subject to the UCCMS and the policies of Nordiq Canada
- b) **Case Manager** – An individual appointed by the Independent Third Party to administer complaints that are assessed under Process #2 of this Policy. This individual must not be in a conflict of interest. The Independent Third Party may serve the Case Manager
- c) **\*Complainant** – A Participant or observer who makes a report of an incident, or a suspected incident, of Maltreatment or other behaviour that is a violation of the standards described in the *Code of Conduct and Ethics*
- d) **Division Member** – a Division Member of Nordiq Canada, as described in the By-laws
- e) **External Discipline Panel** – A Panel of one or three people who are appointed by the Independent Third Party to handle complaints that are assessed under Process #2 of this Policy. Panel members should not be affiliated with Nordiq Canada
- f) **Independent Third Party** – An independent individual (or individuals) appointed by Nordiq Canada to receive and assess complaints
- g) **Internal Discipline Chair** – An individual appointed by Nordiq Canada to handle complaints that are assessed under Process #1 of this Policy. The Internal Discipline Chair may be a Director, head coach, staff member, or other individual affiliated with Nordiq Canada but must not be in a conflict of interest
- h) **\*Maltreatment** – as defined in the UCCMS and also provided in **Appendix A** of the *Code of Conduct and Ethics*



- i) **\*Minor** – as defined in the UCCMS and also provided in **Appendix A** of the *Code of Conduct and Ethics*
- j) **\*Parties** – the groups involved with a dispute
- k) **\*Participants** – Refers to all categories of individual members and/or registrants defined in the By-laws of Nordiq Canada who are subject to the UCCMS and the policies of Nordiq Canada, as well as all people employed by, contracted by, or engaged in activities with, Nordiq Canada including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, and Directors and Officers
- l) **\*Power Imbalance** – as defined in the UCCMS and also provided in **Appendix A** of the *Code of Conduct and Ethics*
- m) **\*Respondent** – The Party responding to the complaint

## Purpose

- 2. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the policies, By-laws, rules and regulations of Nordiq Canada. Non-compliance may result in the imposition of sanctions pursuant to this Policy.

## Principles

- 3. *\*The following principles guide the findings and determinations under this Policy:*
  - a) Any form of Maltreatment violates the integrity of Participants and undermines the values of Canadian sport.
  - b) Sanctions imposed will reflect the seriousness of the Maltreatment and the harm to those affected and the values of Canadian sport.
  - c) This Policy and its procedures will be:
    - i. Harmonized (applied to all Participants across Canada)
    - ii. Fair (procedural and substantive due process for all Participants)

- iii. Comprehensive (all forms of Maltreatment addressed and potential sanctions described)
- iv. Expert-informed (the determination of Maltreatment and impositions of sanctions will be informed by those with expertise in such areas as sport, child abuse, and the law)
- v. Trauma-informed (acknowledgement of the physical, psychological and emotional effects of trauma, and avoidance of re-traumatization)
- vi. Evidence-driven (evidence of Maltreatment required, where Evidence or “proof” of maltreatment may include the words/report of a complainant if found credible by the relevant authorities. Depending upon the nature of the Maltreatment, physical evidence, corroboration or third-party verification may not be needed)
- vii. Independent administration (free from all conflicts of interest)

### **Application of this Policy**

4. This Policy applies to all Participants.
5. This Policy applies to matters that may arise during the business, activities, and events of Nordiq Canada including, but not limited to, competitions, practices and training, treatment or consultations (e.g., massage therapy), camps and clinics, travel associated with the activities of Nordiq Canada, and any meetings.
6. This Policy also applies to Participants’ conduct outside of the business, activities, and events of Nordiq Canada when such conduct adversely affects the relationships (or the work and sport environment) of Nordiq Canada, is detrimental to the image and reputation of Nordiq Canada, or upon the acceptance of Nordiq Canada. Accordingly, applicability of this Policy will be determined by Nordiq Canada upon its sole discretion.
7. \*This Policy applies to alleged breaches of the *Code of Conduct and Ethics* by Participants who have retired from the sport where any claim regarding a potential breach of the *Code*



*of Conduct and Ethics* occurred when the Participant was active in the sport. In addition, this Policy will apply to breaches of the *Code of Conduct and Ethics* that occurred when the Participants involved interacted due to their mutual involvement in the sport or, if the breach occurred outside of the sport environment, if the breach has a serious and detrimental impact on the Participant(s).

8. If it is considered appropriate or necessary based on the circumstances, immediate discipline or the imposition of a sanction may be applied, after which further discipline or sanctions may be applied according to this Policy. Any infractions or complaints occurring within competition will be dealt with by the procedures specific to the competition, if applicable. In such situations, disciplinary sanctions may be for the duration of the competition, training, activity, or event only.
9. In addition to being subject to disciplinary action pursuant to this *Discipline and Complaints Policy*, an employee of Nordiq Canada who is a Respondent to a complaint may also be subject to consequences in accordance with the employee's Employment Agreement or policies for human resources, if applicable.
10. Nordiq Canada may, at its discretion, assume jurisdiction of a complaint that was submitted to a Division Member. In such cases, Nordiq Canada's Independent Third Party will determine whether the complaint process should be re-started or resumed pursuant to the applicable section of this Policy.

## **Minors**

11. Complaints may be brought for or against a Participant who is a Minor. Minors must have a parent/guardian or other adult serve as their representative during this process.
12. Communication from the Independent Third Party, Case Manager, Internal Discipline Chair or External Discipline Panel (as applicable) must be directed to the Minor's representative.



13. A Minor is not required to attend an oral hearing, if held.

## Reporting a Complaint

14. Any person may report a complaint to the Independent Third Party:

**Brian Ward**

[brianward@globalserve.net](mailto:brianward@globalserve.net)

15. At its discretion, Nordiq Canada may act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, Nordiq Canada will identify an individual to represent the organization.

16. Complaints or incident reports should be made in writing for the discipline and complaints procedure to be initiated. The Complainant may contact the Independent Third Party for direction regarding the formal submission of a complaint. The Independent Third Party may accept any formal complaint, in writing or not, at their sole discretion.

## Independent Third Party Responsibilities

17. Upon receipt of a complaint, the Independent Third Party has a responsibility to:

- a) Determine the appropriate jurisdiction to manage the complaint and consider the following:
  - i. Whether the complaint should be handled by a Club, Division Member or by Nordiq Canada. In making this decision, the Independent Third Party will consider:
    - a. whether the incident has occurred within the business, activities or events of a Club, Division Member or Nordiq Canada. If the incident has occurred within the business, activities or events of more than one of these organizations, the Independent Third Party will determine which organization's relationships are adversely affected or which organization's affairs are most impacted;

- b. if the Club or Division Member is otherwise unable to manage the complaint for valid and justifiable reasons, such as a conflict of interest or due to a lack of capacity (when Nordiq Canada handles a complaint in this instance, Nordiq Canada and the Division Member or Club (as applicable) will determine how the costs of handling the complaint will be shared; in most cases costs will be attributed based on where the incident occurred).
  - ii. If the Independent Third Party determines that the complaint or incident should be handled by the appropriate Club or Division Member, that Club or Division Member may use its own policies to address the complaint or may adopt this Policy and appoint its own Independent Third Party to fulfil the responsibilities listed below. In such instance where this Policy is adopted by a Club or Division Member, any reference to 'Independent Third Party' below shall be understood to be a reference to the Club's or Division Member's Independent Third Party and any reference to 'Nordiq Canada' shall be understood to be a reference to the Club or Division Member
- b) Determine whether the complaint is frivolous and/or outside of the jurisdiction of this Policy and, if so, the complaint will be dismissed immediately and the Independent Third Party's decision to dismiss the complaint may not be appealed;
- c) Propose the use of alternative dispute resolution techniques;
- d) Determine if the alleged incident should be investigated pursuant to **Appendix A – Investigation Procedure**; and/or
- e) Choose which process (Process #1 or Process #2, as outlined below) should be followed to hear and adjudicate the complaint.

There are two different processes that may be used to hear and adjudicate complaints. The Independent Third Party will decide which process should be followed based on the nature of the complaint.

**Process #1** - the Complainant alleges the following incidents:

- a) Disrespectful conduct or comments
- b) Minor incidents of physical violence (e.g., tripping, pushing, elbowing)



- c) Conduct contrary to the values of Nordiq Canada
- d) Non-compliance with the organization's policies, procedures, rules, or regulations
- e) Minor violations of the *Code of Conduct and Ethics*

**Process #2** - the Complainant alleges the following incidents:

- a) Repeated minor incidents
- b) Hazing
- c) Abusive, racist, or sexist comments or behaviour
- d) Behaviour that constitutes harassment, sexual harassment, or sexual misconduct
- e) Major incidents of violence (e.g., fighting, attacking, sucker punching)
- f) Pranks, jokes, or other activities that endanger the safety of others
- g) Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
- h) Conduct that intentionally damages the organization's image, credibility, or reputation
- i) Consistent disregard for the by-laws, policies, rules, and regulations
- j) Major or repeated violations of the *Code of Conduct and Ethics*
- k) Intentionally damaging the organization's property or improperly handling the organization's monies
- l) Abusive use of alcohol or cannabis, any use or possession of alcohol or cannabis by Minors, or use or possession of illicit drugs and narcotics
- m) A conviction for any *Criminal Code* offense
- n) Any possession or use of banned performance enhancing drugs or methods

## **PROCESS #1: Handled by Internal Discipline Chair**

### **Internal Discipline Chair**

18. Following the determination that the complaint or incident should be handled under Process #1, the Independent Third Party will appoint an Internal Discipline Chair who may:

- a) Recommend mediation;
- b) Make a decision;
- c) Ask the Complainant and the Respondent for either written or oral submissions regarding the complaint or incident; or
- d) Convene the parties to a meeting, either in person or by way of video or teleconference in order to ask the parties questions.

19. Thereafter, the Internal Discipline Chair shall determine if a breach occurred and if sanctions should be applied (see: **Sanctions**).

20. The Internal Discipline Chair will inform the Parties of the decision, which will take effect immediately, pending the submission of Request for Reconsideration. Failure to comply with a sanction will result in an automatic suspension until such time as compliance occurs.

21. Records of all sanctions will be maintained by Nordiq Canada.

### **Request for Reconsideration**

22. If there is no sanction, the Complainant may contest the non-sanction by informing the Internal Discipline Chair, within five (5) days of receiving the decision, that the Complainant is not satisfied with the decision. The initial complaint or incident will then be handled under Process #2 of this Policy.

23. If there is a sanction, the sanction may not be appealed until the completion of a Request for Reconsideration. However, the Respondent may contest the sanction by submitting a Request for Reconsideration within five (5) days of receiving the sanction. In the Request for Reconsideration, the Respondent must indicate:

- a) Why the sanction is inappropriate;
- b) Summary of evidence that the Respondent will provide to support the Respondent's position; and
- c) What alternative penalty or sanction (if any) would be appropriate.



24. Upon receiving a request for reconsideration, the Internal Discipline Chair may decide to accept or reject the Respondent's suggestion for an alternative sanction.
25. Should the Internal Discipline Chair accept the Respondent's suggestion for an appropriate sanction, that sanction will take effect immediately. Failure to comply with a sanction will result in an automatic suspension until such time as compliance occurs.
26. Should the Internal Discipline Chair not accept the Respondent's suggestion for an appropriate sanction, the initial complaint or incident will be handled under Process #2 of this Policy.

## **PROCESS #2: Handled by Case Manager and External Discipline Panel**

### **Case Manager**

27. Following the determination that the complaint or incident should be handled under Process #2, the Independent Third Party will appoint a Case Manager (who may or may not be the Independent Third Party themselves) who has a responsibility to:
  - a) Propose the use of alternative dispute resolution techniques
  - b) Appoint the External Discipline Panel, if necessary
  - c) Coordinate all administrative aspects of the process and set reasonable timelines
  - d) Provide administrative assistance and logistical support to the External Discipline Panel as required
  - e) Provide any other service or support that may be necessary to ensure a fair and timely proceeding
28. The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
29. The Case Manager may propose using alternative dispute resolution methods, such as mediation or negotiated settlement.

30. If the dispute is not resolved using alternative methods, the Case Manager will appoint an External Discipline Panel of one (1) person to hear the complaint. Depending on the severity of the allegations and at the Case Manager's discretion, an External Discipline Panel of three (3) people may be appointed. When a three-person External Discipline Panel is appointed, the Case Manager will appoint one of the External Discipline Panel's members to serve as the Chair.
31. The Case Manager, in cooperation with the External Discipline Panel, will then decide the format under which the complaint will be heard. This decision may not be appealed. The format of the hearing may be an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods.
32. The hearing will be governed by the procedures that the Case Manager and the External Discipline Panel deem appropriate for the circumstances. The following guidelines will apply to the hearing:
- a) The Parties will be given appropriate notice of the day, time, and place of the hearing
  - b) Copies of any written documents which any of the Parties wishes to have the External Discipline Panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing
  - c) The Parties may engage a representative, advisor, or legal counsel at their own expense
  - d) The External Discipline Panel may request that any other individual participate and give evidence at the hearing
  - e) The External Discipline Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the complaint, but may exclude such evidence that is unduly repetitious, and shall place such weight on the evidence as it deems appropriate
  - f) The decision will be by a majority vote of the External Discipline Panel, when the Panel consists of three people



33. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the External Discipline Panel will determine the appropriate sanction. The External Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
34. The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.
35. In fulfilling its duties, the External Discipline Panel may obtain independent advice.

### **Decision**

36. After hearing the matter, the External Discipline Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. Within fourteen (14) days of the hearing's conclusion, the External Discipline Panel's written decision, with reasons, will be distributed to all parties, the Case Manager, and to Nordiq Canada. In extraordinary circumstances, the External Discipline Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the fourteen (14) day period. The decision will be considered a matter of public record unless decided otherwise by the External Discipline Panel.

### **Sanctions**

37. \*Prior to determining sanctions, the Internal Discipline Chair or External Discipline Panel, as applicable, will consider factors relevant to determining appropriate sanctions which include:
  - a) The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;
  - b) The Respondent's prior history and any pattern of inappropriate behaviour or Maltreatment;
  - c) The ages of the individuals involved;

- d) Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
- e) The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the Maltreatment, and/or cooperation in the process of Nordiq Canada;
- f) Real or perceived impact of the incident on the Complainant, sport organization or the sporting community;
- g) Circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training regarding the requirements in the *Code of Conduct and Ethics*; addiction; disability; illness);
- h) Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate;
- i) A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
- j) Other mitigating and aggravating circumstances.

38. \*Any sanction imposed must be proportionate and reasonable. However, progressive discipline is not required and a single incident of Maltreatment or other prohibited behaviour may justify elevated or combined sanctions.

39. \*The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following disciplinary sanctions, singularly or in combination:

- a) **Verbal or Written Warning** - A verbal reprimand or an official, written notice and formal admonition that a Participant has violated the *Code of Conduct and Ethics* and that more severe sanctions will result should the Participant be involved in other violations
- b) **Education** - The requirement that a Participant undertake specified educational or similar remedial measures to address the violation(s) of the *Code of Conduct and Ethics*
- c) **Probation** - Should any further violations of the *Code of Conduct and Ethics* occur during the probationary period, will result in additional disciplinary measures, likely

including a period of suspension or permanent ineligibility. This sanction can also include loss of privileges or other conditions, restrictions, or requirements for a specified period of time

- d) **Suspension** - Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of Nordiq Canada. A suspended Participant is eligible to return to participation, but reinstatement may be subject to certain restrictions or contingent upon the Participant satisfying specific conditions noted at the time of suspension
- e) **Eligibility Restrictions** - Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions
- f) **Permanent Ineligibility** - Permanent ineligibility to participate, in any sport, in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of Nordiq Canada and/or any sport organization subject to the UCCMS
- g) **Other Discretionary Sanctions** - Other sanctions may be imposed, including, but not limited to, other loss of privileges, no contact directives, a fine or a monetary payment to compensate for direct losses, or other restrictions or conditions as deemed necessary or appropriate

40. \*The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following presumptive sanctions which are presumed to be fair and appropriate for the listed Maltreatment:

- a) Sexual Maltreatment involving a Minor Complainant shall carry a presumptive sanction of permanent ineligibility;
- b) Sexual Maltreatment, Physical Maltreatment with contact, and Maltreatment related to interference or manipulation of process shall carry a presumptive sanction of either a period of suspension or eligibility restrictions.
- c) While a Respondent has pending charges or dispositions in violation of the criminal law, the presumptive sanction shall be a period of suspension



41. A Participant's conviction for a *Criminal Code* offense shall carry a presumptive sanction of permanent ineligibility from participating with Nordiq Canada. *Criminal Code* offences may include, but are not limited to:

- a) Any child pornography offences
- b) Any sexual offences
- c) Any offence of physical violence
- d) Any offence of assault
- e) Any offence involving trafficking of illegal drugs

42. Unless the External Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the External Discipline Panel will result in an automatic suspension until such time as compliance occurs.

43. Records of all decisions will be maintained by Nordiq Canada.

### **Appeals**

44. The decision of the External Discipline Panel may be appealed in accordance with the *Appeal Policy*.

### **Suspension Pending a Hearing**

45. Nordiq Canada may determine that an alleged incident is of such seriousness as to warrant suspension of a Participant pending completion of an investigation, criminal process, the hearing, or a decision of the External Discipline Panel.

### **Confidentiality**

46. The discipline and complaints process is confidential and involves only Nordiq Canada, the parties, the Independent Third Party, the Case Manager, the Internal Discipline Chair, the External Discipline Panel, and any independent advisors to the External Discipline Panel.



Once initiated and until a decision is released, none of the parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

47. Any failure to respect the aforementioned confidentiality requirement may result in further sanctions or discipline by the Internal Discipline Chair or External Discipline Panel (as applicable).

### **Timelines**

48. If the circumstances of the complaint are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the complaint, the Independent Third Party or Case Manager (as applicable) may direct that these timelines be revised.

### **Records and Distribution of Decisions**

49. Other individuals or organizations, including but not limited to, national sport organizations, Provincial/Territorial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this Policy.
50. \*Nordiq Canada recognizes that a publicly-available searchable database or registry of Respondents who have been sanctioned, or whose eligibility to participate in sport has in some way been restricted, may be maintained and may be subject to provisions in the UCCMS.

## Appendix A – Investigation Procedure

\* Indicates a section that has been adapted from the UCCMS

### Determination

1. When a complaint is submitted pursuant to the *Discipline and Complaints Policy*, the Independent Third Party will determine if the incident should be investigated.

### Investigation

2. The Case Manager will appoint an Investigator. The Investigator must be an independent third-party skilled in investigating. The Investigator must not be in a conflict of interest situation and should have no connection to either party.
3. Federal and/or Provincial/Territorial legislation related to Workplace Harassment may apply to the investigation if Harassment was directed toward a worker in a Workplace. The Investigator should review workplace safety legislation, the organization's policies for human resources, and/or consult independent experts to determine whether legislation applies to the complaint.
4. The investigation may take any form as decided by the Investigator, guided by any applicable Federal and/or Provincial/Territorial legislation. The investigation may include:
  - a) Interviews with the Complainant
  - b) Witness interviews
  - c) Statement of facts (Complainant's perspective) prepared by Investigator, acknowledged by the Complainant and provided to the Respondent
  - d) Interviews with the Respondent
  - e) Statement of facts (Respondent's perspective) prepared by Investigator, acknowledged by the Respondent and provided to the Complainant

## Investigator's Report

5. Upon completion of their investigation, the Investigator shall prepare a report that should include a summary of evidence from the parties (including both statements of facts, if applicable) and recommendations from the Investigator of whether, on a balance of probabilities, a breach of the *Code of Conduct and Ethics* occurred.
6. \*The Investigator must be aware that sport-specific differences exist with respect to such aspects as acceptable levels of touch, physical contact, and aggression during training or competition and will consider such differences during the investigative process.
7. The Investigator's Report will be provided to the Case Manager who will disclose it, at their discretion, to Nordiq Canada and the relevant Division Member (if applicable).
8. Should the Investigator find that there are possible instances of offence under the *Criminal Code*, particularly related to Criminal Harassment (or Stalking), Uttering Threats, Assault, Sexual Interference, or Sexual Exploitation, the Investigator shall advise the Complainant and Nordiq Canada to refer the matter to police.
9. The Investigator must also inform Nordiq Canada of any findings of criminal activity. Nordiq Canada may decide whether to report such findings to 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 sexual crime involving Minors, fraud against Nordiq Canada, or other offences where the lack of reporting would bring Nordiq Canada into disrepute.

## Reprisal and Retaliation

10. \*A Participant who submits a complaint to Nordiq Canada or who gives evidence in an investigation may not be subject to reprisal or retaliation. Any such conduct may constitute Maltreatment and will be subject to disciplinary proceedings pursuant to the *Discipline and Complaints Policy*.



## **False Allegations**

11. A Participant who submits allegations that the Investigator determines to be malicious, false, or for the purpose of retribution, retaliation or vengeance (or that otherwise fall within the definition of Maltreatment) may be subject to a complaint under the terms of the *Discipline and Complaints Policy* and may be required to pay for the costs of any investigation that comes to this conclusion. Nordiq Canada or the Participant against whom the allegations were submitted, may act as the Complainant.

## **Confidentiality**

12. The Investigator will make reasonable efforts to preserve the anonymity of the complainant, respondent, and any other party. However, Nordiq Canada recognizes that maintaining full anonymity during an investigation may not be feasible.