



Discipline and Complaints Policy

* Indicates a section that has been adapted from the UCCMS

PURPOSE

1. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with Softball Manitoba's policies, By-laws, rules and regulations, and Code of Conduct and Ethics. Non-compliance may result in sanctions pursuant to this Policy.

PRINCIPLES

2. *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.

APPLICATION OF THIS POLICY

3. This Policy applies to all Participants.
4. This Policy applies to matters that may arise during Softball Manitoba's business, activities, and events including, but not limited to, competitions, practices, tryouts, training camps, travel associated with Softball Manitoba's activities, and any meetings.
5. This Policy also applies to Participants' conduct outside of Softball Manitoba's business, activities, and events when such conduct adversely affects relationships within Softball Manitoba (and its work and sport environment), is detrimental to the image and reputation of Softball Manitoba, or upon the acceptance of Softball Manitoba. Applicability or acceptance will be determined by Softball Manitoba at its sole discretion.
6. *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).
7. This Policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline 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 will be for the duration of the competition, training, activity, or event only.
8. An employee of Softball Manitoba who is a Respondent will be subject to appropriate disciplinary action in accordance with any of Softball Manitoba's applicable policies, as well as the employee's Employment Agreement, if applicable. Violations may result in a warning, reprimand, restrictions, suspension, or other disciplinary actions up to and including termination of employment.

ALIGNMENT

9. Softball Manitoba recognizes that Participants may also be registered with Provincial/Territorial Organizations and/or Local Associations. Softball Manitoba requires that Provincial/Territorial Organizations submit discipline decisions rendered at the Provincial/Territorial level involving Participants to Softball Manitoba.

ADULT REPRESENTATIVE

10. 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.

11. Communication from the Discipline Chair or Case Manager, as applicable, must be directed to the minor's representative.
12. A Minor is not required to attend an oral hearing, if held.

REPORTING A COMPLAINT

13. Any person may report a complaint to Softball Manitoba or to Softball Manitoba's Case Manager (when identified). If a Case Manager has not been previously identified, Softball Manitoba will appoint an independent Case Manager and direct that person to receive the complaint.
14. Softball Manitoba may, in its sole discretion, act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, Softball Manitoba will identify an individual representative of the organization.

CASE MANAGER RESPONSIBILITIES

15. Upon receipt of a complaint, the Case Manager 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 the appropriate Provincial/Territorial Organization or by Softball Manitoba. In making this decision, the Case Manager will consider:
 1. whether the incident has occurred within the business, activities or events of the Provincial/Territorial Organization or Softball Manitoba. If the incident has occurred outside of the business, activities or events of any of these organizations, the Case Manager will determine which organization's relationships are adversely affected or which organization's image or reputation will be detrimentally affected by the incident; and
 2. if the Provincial/Territorial Organization 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
 - ii. If the Case Manager determines that the complaint or incident should be handled by the appropriate Provincial/Territorial Organization, that Provincial/Territorial Organization may use its own policies to resolve the dispute or may adopt this Policy. In such instance, any reference to Case Manager below shall be understood as a reference to the Provincial/Territorial Organization's Case Manager and references to Softball Manitoba shall be understood to be references to the Provincial/Territorial Organization
 - b. Determine whether the complaint is frivolous and/or within the jurisdiction of this Policy and, if so, the complaint will be dismissed immediately and the Case Manager'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 the Investigations Policy; and/or
 - e. Choose which process (Process #1 or Process #2) should be followed, and may use the following examples as a general guideline:
 - a) Process #1 - the Complaint alleges the following incidents:
 - i. Disrespectful, abusive, racist, or sexist comments or behaviour
 - ii. Disrespectful conduct
 - iii. Minor incidents of violence (e.g., tripping, pushing, elbowing)
 - iv. Conduct contrary to the values of Softball Manitoba
 - v. Non-compliance with Softball Manitoba's policies, procedures, rules, or regulations
 - vi. Minor violations of the Code of Conduct and Ethics
 - b) Process #2 - the Complaint alleges the following incidents:
 - i. Repeated minor incidents
 - ii. Any incident of hazing

- iii. Behaviour that constitutes harassment, sexual harassment, or sexual misconduct
- iv. Major incidents of violence (e.g., fighting, attacking, sucker punching)
- v. Pranks, jokes, or other activities that endanger the safety of others
- vi. Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
- vii. Conduct that intentionally damages Softball Manitoba's image, credibility, or reputation
- viii. Consistent disregard for Softball Manitoba's bylaws, policies, rules, and regulations
- ix. Major or repeated violations of the Code of Conduct and Ethics
- x. Intentionally damaging Softball Manitoba's property or improperly handling Softball Manitoba's monies
- xi. Abusive use of alcohol, any use or possession of alcohol by minors, or use or possession of illicit drugs and narcotics
- xii. A conviction for any Criminal Code offense
- xiii. Any possession or use of banned performance enhancing drugs or methods

Process #1: Handled by Discipline Chair

- 16. The Discipline Chair will be a Director of the Board, or an individual appointed by the President of Softball Manitoba to handle the duties of the Discipline Chair. The President may choose to appoint three (3) individuals to serve as Discipline Chair and, in this case, decisions of the Discipline Chair will be by majority vote.
- 17. The Discipline Chair appointed to handle a complaint or incident must be unbiased and not in a conflict of interest situation

SANCTIONS

- 18. Following the determination that the complaint or incident should be handled under Process #1, the Discipline Chair will review the submissions and 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 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 Discipline Chair shall determine if a breach occurred and, if so, if one or more sanctions should be applied (see: Sanctions).
- 20. The Discipline Chair will inform the Parties of the decision, which will take effect immediately.
- 21. Records of all sanctions will be maintained by Softball Manitoba.

Request for Reconsideration

- 22. 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 four (4) 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 penalty or sanction (if any) would be appropriate.
- 23. Upon receiving a Request for Reconsideration, the Discipline Chair may decide to accept or reject the Respondent's suggestion for an appropriate sanction.
- 24. Should the Discipline Chair accept the Respondent's suggestion for an appropriate sanction, that sanction will take effect immediately.
- 25. Should the 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

Case Manager

26. Following the determination that the complaint or incident should be handled under Process #2, the Case Manager has a responsibility to:
- a. Determine whether the complaint is frivolous and/or within the jurisdiction of this Policy
 - b. Propose the use of Softball Manitoba's Dispute Resolution Policy
 - c. Appoint the Discipline Panel, if necessary
 - d. Coordinate all administrative aspects and set timelines
 - e. Provide administrative assistance and logistical support to the Discipline Panel as required
 - f. Provide any other service or support that may be necessary to ensure a fair and timely proceeding

Procedures

27. If the Case Manager determines the complaint is:
- a. Frivolous or outside the jurisdiction of this Policy, the complaint will be dismissed immediately
 - b. Not frivolous and within the jurisdiction of this Policy, the Case Manager will notify the Parties that the complaint is accepted and of the applicable next steps
28. The Case Manager's decision to accept or dismiss the complaint may not be appealed.
29. The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
30. After notifying the Parties that the complaint has been accepted, the Case Manager may propose using Softball Manitoba's Dispute Resolution Policy with the objective of resolving the dispute. If applicable, and if the dispute is not resolved, or if the parties refuse to use the Dispute Resolution Policy, the Case Manager will appoint a Discipline Panel, which shall consist of a single Arbitrator, to hear the complaint. In extraordinary circumstances, and at the discretion of the Case Manager, a Discipline Panel of three persons may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the Discipline Panel's members to serve as the Chair.
31. The Case Manager, in cooperation with the 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. The hearing will be governed by the procedures that the Case Manager and the Discipline Panel deem appropriate in the circumstances, provided that:
- a. The Parties will be given 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
 - b. Copies of any written documents which the parties wish to have the 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 Discipline Panel may request that any other individual participate and give evidence at the hearing
 - e. The 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 Discipline Panel
32. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Discipline Panel will determine the appropriate sanction. The Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
33. The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.
34. If a decision may affect another party to the extent that the other party would have recourse to a complaint or an appeal in their own right, that party will become a Party to the current complaint and will be bound by the decision.

35. In fulfilling its duties, the Discipline Panel may obtain independent advice.

Decision

36. After hearing and/or reviewing the matter, the 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 Discipline Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and Softball Manitoba. In extraordinary circumstances, the 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 Discipline Panel.

Sanctions

37. *Prior to determining sanctions, the Discipline Chair or 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 Softball Manitoba;
- 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 Other mitigating and aggravating circumstances

38. *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.

39. *The Discipline Chair or 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 Softball Manitoba. 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 Softball Manitoba 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 Discipline Chair or 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 Softball Manitoba. Criminal Code offences may include, but are not limited to:
- 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
42. Unless the Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the Discipline Panel will result in an automatic suspension until such time as compliance occurs.
43. Records of all decisions will be maintained by Softball Manitoba.

Appeals

44. The decision of the Discipline Panel may be appealed in accordance with Softball Manitoba's Appeal Policy.

SUSPENSION PENDING A HEARING

45. The Chief Executive Officer and President may, after consultation and at their sole discretion, determine that an alleged incident is of such seriousness as to warrant suspension of a Participant pending completion of a criminal process, the hearing, or a decision of the Discipline Panel. If the complaint is against either the President or Chief Executive Officer, such decision shall be made by Discipline Panel, upon application by the Complainant.

CONFIDENTIALITY

46. The discipline and complaints process is confidential and involves only the Parties, the Case Manager, the Discipline Panel, and any independent advisors to the 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.

TIMELINES

47. 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 Discipline Panel may direct that these timelines be revised.

RECORDS AND DISTRIBUTION OF DECISIONS

48. Other individuals or organizations, including but not limited to, national sport organizations, provincial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this Policy.
49. *Softball Manitoba 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.