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CONFLICT RESOLUTION IN HOCKEY: It is possible!

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OUTLINE

Who I am

General Rules / Fundamental Principles

Sources of Conflict / Where to Start

New Harassment Complaint Policy

Questions

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WHO AM I? - LAWYER

- I act for athletes, coaches and organizations in respect of harassment complaints, employment matters and selection disputes.
- I act on a diverse range of matters ranging from reviewing facilities agreements to recently taking a matter to the Ontario Court of Appeal regarding a coach that has been given a lifetime ban from sport.
- I am Counsel for CCES in anti-doping matters including a recent Appeal to the Court of Arbitration for Sport in Switzerland where we were successful
- I am the legal “expert” with the Coaches Association of BC and provide coaches with pro bono legal advice through that organization.
- I am on the List of Legal Advisors for the Sport Dispute Resolution Centre of Canada.
- Member of the Sports Lawyers Association.

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WHO AM I? - Sport

- NCCP level 4 Track & Field coach
- A graduate of the National Coaching Institute
- Have coached athletes from entry to sport to breaking World Records. (Including 2 gold medals in Beijing a few months ago)
- Former Chair of PacificSport – Vancouver Island and Board member of PacificSport BC.
- Teach Sport & Law at Camosun College.

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YOUR STARTING POINT WHEN CONFLICT ARISES

*SOME GENERAL RULES AND
FUNDAMENTAL PRINCIPLES*

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SOURCES OF CONFLICT

- Team selection
- Decision maker without proper authority
- Failure to follow policies
- Abuse of discretion
- Decisions based on irrelevant information
- Unreasonable decisions
- Conduct

GENERALLY SPEAKING

Typically, sport organizations pay too little attention to their governing documents and only realize their importance when the deficiencies in these documents land them squarely in the middle of a dispute with a member, such as an athlete

The courts are very reluctant to interfere with the internal matters of private tribunals, and will not rewrite the governing documents and policies of private organizations.

However, an individual such as an athlete, may apply to the court and the court may intervene if these policies are ignored, not followed, improperly interpreted or wrongly applied.

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GOVERNANCE

- Club is Governed by:
 - Constitution & Bylaws
 - Statutes like Business Corporations Act, BC Human Rights Act, Employment Standards Act
 - Case law
 - Overarching obligation to meet the requirements of procedural fairness in all of their decisions and actions as they relate to members.



PROCEDURAL FAIRNESS

Being fair means following a minimum of two basic rules:

- the decision-maker has a duty to give persons affected by the decision a reasonable opportunity to present their case (commonly known as the “right to a hearing”); and
- the decision-maker has a duty to listen fairly to both sides and to reach a decision untainted by bias (commonly known as the “rule against bias”)

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RIGHT TO A HEARING

- before a decision can be made against a person you **MUST**:
 - Inform person of complaint (they get to see it all!)
 - Give them a reasonable chance to respond
- Two obvious purposes for this rule:
 - 1) Gives a person a chance to defend themselves; and
 - 2) Allows the decision-maker to make a more rational and informed decision.
- **Sliding scale.** From just written submissions to full blown oral hearing depending on circumstances.

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WHERE ON THE SCALE?

- Granting vs. withdrawing privileges
- Effect of the decision (proportionality to consequences)
- Nature of Decision (how final is it?)

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RULE AGAINST BIAS

- Actual Bias
 - A closed mind is a dangerous thing!
- Apprehended Bias
 - Appearances can be a problem

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6 CATEGORIES OF BIAS

- Personal relationship (friends or enemies)
- Non-personal relationship (\$\$\$)
- Informational (prior involvement with parties)
- Attitudinal (pre-disposed to a particular view)
- Institutional (Board decision appealed to Executive Committee)
- Operational (conduct of hearing)

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CONFLICT MANAGEMENT

The most effective way for dealing with disputes in sport organizations is to prevent them from occurring in the first place.

Old adage – An ounce of prevention is worth a pound of cure

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3 Easy Rules

1. Plan ahead – no surprises;
2. Ensure governing documents and key policies are sound;
3. Ensure elected boards, committees, volunteers and staff implement policies properly.



IF A DISPUTE ARISES

- Follow the internal policies of your organization:
 - hear BOTH sides of the dispute THEN make a decision (refer back to Bias & Procedural Fairness)
- Where internal appeal policies are lacking, look to BC Hockey's policies
- As a last resort, seek recourse to the courts.

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6 keys to staying out of trouble

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STAY OUT OF TROUBLE BY...

1. Having Bylaws that:

- give the Board explicit power to implement policies for dispute resolution
- Specifically state that all disputes will be dealt with accord to the published policies

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STAY OUT OF TROUBLE BY...

2. Having unambiguous, clearly written policies to guide all decision-making about granting and revoking of rights and privileges of sport (i.e. eligibility, selection, conduct, discipline, harassment and conflict of interest)

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STAY OUT OF TROUBLE BY...

- 3. Having an appeal policy to review decision-making where and when procedural errors may have occurred

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STAY OUT OF TROUBLE BY...

4. Having a policy which indicates that at any time any dispute may be referred to mediation, where suitable for the issue in dispute and where the disputing parties consent.

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STAY OUT OF TROUBLE BY...

5. Having a policy which states that beyond the appeal level, all disputes will be referred to independent, binding arbitration (try to avoid the Courts).

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STAY OUT OF TROUBLE BY...

6. Having a policy that prohibits any member from pursuing a dispute in Court until all other internal and independent remedies have been exhausted.

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WORDS OF WARNING

- Athletes today have a greater understanding and awareness of their rights
- Athletes today have more to lose financially by not protecting their rights (future sponsorship income, future scholarship opportunities, future employment income and opportunities)
- There is strong public support, and growing political support for a sport system that is more “athlete-friendly”
- An overall societal trend towards greater litigation.

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THE NEW HARASSMENT POLICY

Where is it?

What is it?

How does it work?

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ONE POLICY FOR EVERYONE

Found in Section 8 of the Policy Manual

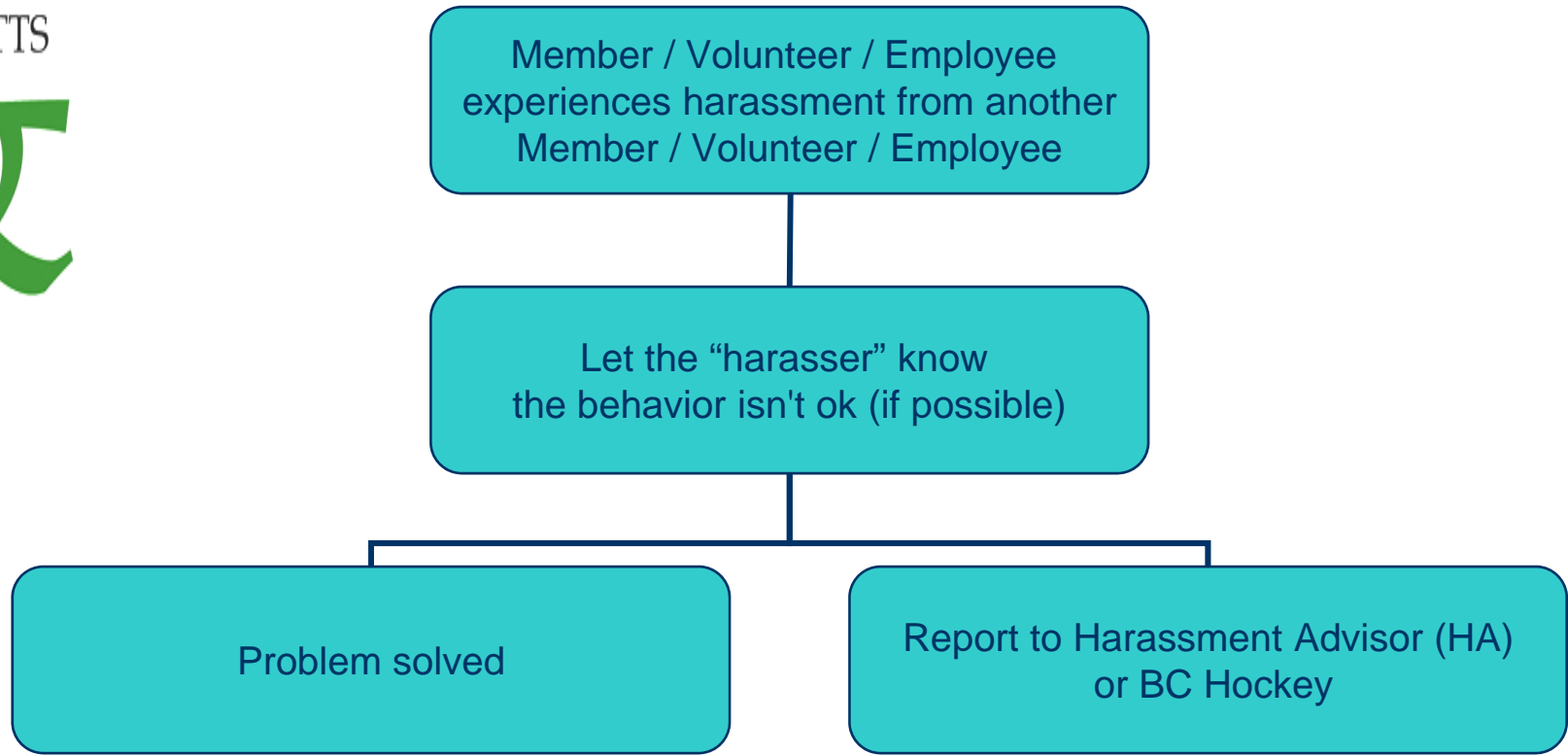
Contains both a formal and an informal procedure

HA is a resource for all parties (club, athlete, parent, coach etc)

Furthers BC Hockey's commitment to creating and maintaining a harassment free sport environment

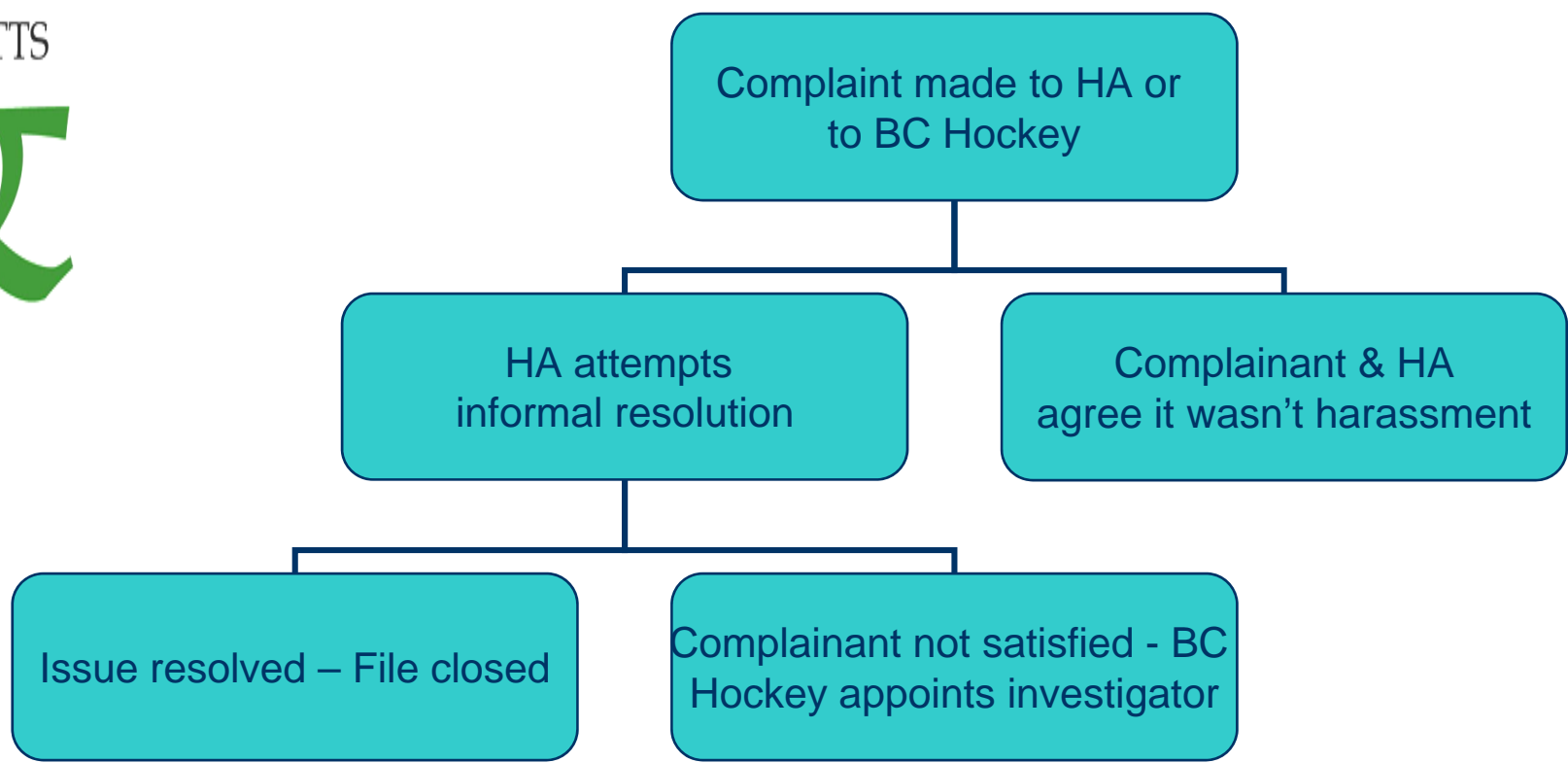


THE STARTING POINT



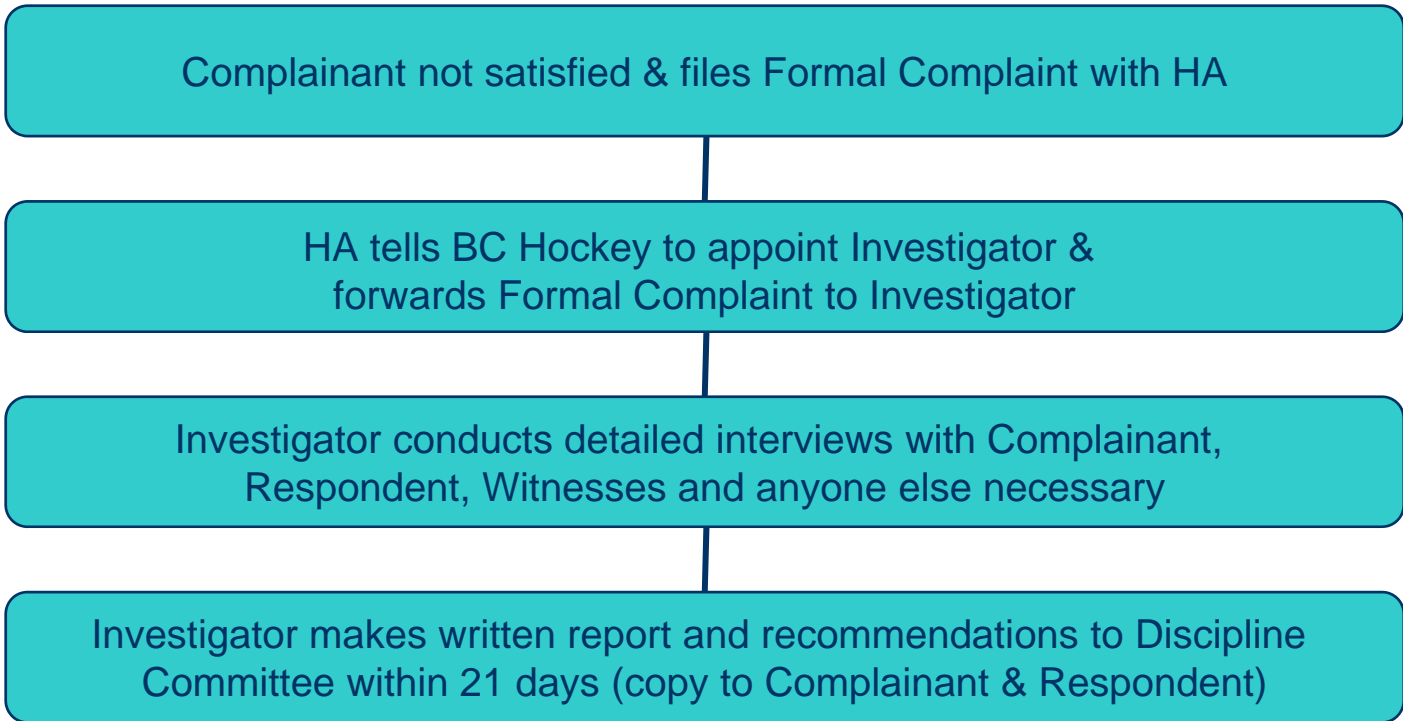


INFORMAL COMPLAINT POLICY





FORMAL COMPLAINT POLICY



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THE REPORT

Contains all filed documents

Must include recommendations:

- Verbal apology
- Written apology
- Letter of reprimand
- Removal of membership/employment privileges
- Suspension
- Termination / Expulsion

Goes directly to Discipline Committee

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DISCIPLINE COMMITTEE

Appointed annually by the President

Must be unbiased

May accept, reject or modify recommendations

May refer to Codes of Conduct in Policy Manual

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APPEALS

- Procedure governed by Bylaw 10
- Specific grounds include:
 - Policy wasn't followed
 - Bias
 - Decision unfair or unreasonable

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CONFIDENTIALITY



NO HARASSMENT

- Written report of HA to Executive Director
- Kept in secure location
- Accessed only by HA & Exec Director

HARRASSMENT

- Written report of HA to Executive Director
- Kept in secure location
- Accessed only by HA & Exec Director
- Placed in Respondent's personnel or membership file

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ADVICE

1. Get a good policy and follow it
2. Model your policy off BC Hockey's policy.
 - There is real value in consistency but allow for changes that reflect who you are
3. Don't ignore problems – they don't go away
4. Ask for help

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REMEMBER:

**YOU CANT MAKE
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DECISION THE
WRONG WAY!**

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QUESTIONS?

don't be shy!