

Harassment Policy

- Badminton PEI is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and/or work in an environment which promotes equal opportunities and prohibits discriminatory practices.
- Harassment is a form of discrimination. Harassment is prohibited by the Canadian Charter of Rights and Freedoms and by human legislation in every province and territory in Canada.
- Harassment is offensive, degrading, and threatening. In its most extreme forms, harassment can be an offence under Canada's Criminal Code.
- Whether the harasser is a director, supervisor, employee, coach, official, volunteer, parent or athlete, harassment is an attempt by one person to assert abusive, unwarranted power over another.
- Badminton PEI is committed to providing a sport environment free of harassment on the basis of race, national or ethnic origin, colour, religion, sex, age, sexual orientation, marital status, disability, or pardoned conviction*.

**Note: A special provision in criminal law permits a pardon. An individual must apply for a pardon. A criminal who has served her or his sentence is not considered "pardoned".*

Definitions

1. Harassment takes many forms but can generally be defined as comment, conduct, or gesture directed toward an individual or group of individuals, which is insulting, intimidating, humiliating, malicious, degrading or offensive.
2. For the purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature when:
 - Submitting to or rejecting this conduct is used as the basis for making decisions which affect the individual; or
 - Such conduct has the purpose or effect of interfering with an individual's performance; or
 - Such conduct creates an intimidating, hostile, or offensive environment.
3. Types of behaviours which constitute harassment include but are not unlimited to:
 - Written or verbal abuse or threats;
 - The display of visual material which is offensive or which one ought to know is offensive;
 - Unwelcome remarks, jokes, comments, innuendo, or taunting about a person's looks, body, attire, age, race, religion, sex, or sexual orientation;
 - Leering or other suggestive or obscene gestures;

- Condescending, paternalistic, or patronizing behaviours which undermines self-esteem;
 - Diminishes performance, or adversely affects working conditions;
 - Practical jokes which cause awkwardness or embarrassment, endanger a person's safety, or negatively affect performance;
 - Unwanted physical contact including touching, petting, pinching, or kissing;
 - Unwelcome sexual flirtations, advances, requests, or invitations; or
 - Physical or sexual assault.
4. For the purposes of this policy, retaliation against an individual
- For having filed a complaint under this policy, or
 - For having participated in any procedure under this policy; or
 - For having been associated with a person who filed a complaint or participated in any procedure under this policy, will be treated as harassment, and will not be tolerated.

To File a Complaint

A member of Badminton PEI who wishes to bring forth a charge of harassment shall file written notice with the President, including detailed reasons for the charge.

Composition of Tribunal

Within 10 (ten) days of receiving notice of complaint, the President (or designate) shall set up a Tribunal, comprised of three people: The President, plus one male and female from the membership. No member of the Tribunal shall have a significant personal or professional relationship with either the complainant or respondent.

All members of the Tribunal shall treat all proceedings with the utmost confidentiality.

Steps for Conducting the Hearing

The Tribunal shall govern the Hearing by such procedures as it deems appropriate in the circumstances, provided that:

- i. The Hearing shall be held within 21 days of the Tribunal's appointment;
- ii. The complainant and respondent shall be given 10 days written notice of the day, time and place of the Hearing;
- iii. Members of the panel shall select a chairperson from among themselves;
- iv. A quorum shall be all three panel members;
- v. Decisions shall be by majority vote. If a majority vote decision is not possible, the decision of the chairperson will be the decision of the Tribunal;
- vi. The hearing shall be held in camera;
- vii. Copies of any written documents which either the complainant or respondent wish to have the Tribunal consider shall be provided to all parties at least two (2) days in advance of the Hearing;

- viii. Both the appellant and the respondent may be accompanied by a representative or adviser, including legal counsel;
- ix. The Tribunal may request that any other individual participate and give evidence at the Hearing.

Procedure for the Hearing

- Step 1.** The Chair welcomes the complainant and respondent and asks them to introduce themselves.
- Step 2.** The Chair introduces the members of the Tribunal and asks either party if they have any objection of the Tribunal members hearing and deciding upon the complainant. Objections should be rare. If there is no objection, the hearing can proceed. Should there be an objection, the Chair should ask on what basis and the Tribunal should then recess briefly to determine whether, in its view, there is bias or a conflict of interest. If the Tribunal determines there is not bias, the hearing may proceed. If the Tribunal determines there is bias, the member involved should disqualify him or herself. The Tribunal would then have to adjourn until such time as the disqualified member(s) could be replaced.

To avoid the inconvenience of adjourning and reconvening, Badminton PEI will ask the parties in advance if they object to any of the chosen Tribunal members. However, even if there is no objection in advance, the Chair should still ask the question at the Hearing to ensure that there is no objection.

- Step 3.** The Chair will then explain the procedure to be followed in the Hearing. The Chair should emphasize that the purpose of the Hearing is to ensure that all the evidence needed to make the decision is brought forward. The Tribunal will address the parties and each other by first names. All comments shall be directed through the Chair. This will ensure that the two parties avoid debating or arguing with each other.
- Step 4.** The Chair will ask the parties to give evidence under oath or affirmation.
- Step 5.** The complainant will be asked to go first and explain their reasons for the notice of complaint. If the complainant is presenting any written materials at this stage, copies should be given to the Tribunal and to the respondent. The basic principle is that any evidence (whether verbal or written) which the Tribunal is asked to consider must be shared openly with the other party.
- Step 6.** When the complainant's submission is concluded, the Tribunal should ask the respondent if he or she has any questions or comments. This is not an invitation for the respondent to present his or her case or to make a speech - it is only an opportunity to highlight or clarify points arising from the complainant's submission. The respondent's rebuttal should be directed through the Chair, and not directly to the complainant. The Tribunal members may also ask questions of the complainant that this point.

- Step 7.** When the Tribunal is satisfied that the complainant has presented all his or her evidence, and that all questions have been answered, the Hearing should turn to the respondent for his or her evidence.
- Step 8.** When the respondent has concluded, the complainant is given an opportunity for rebuttal, as with Step 6. The Tribunal members may also ask questions of the respondent.
- Step 9.** At this point the Tribunal has heard submissions and rebuttals from both parties, and everyone has had an opportunity to seek answers to questions. The Tribunal should then ask both the complainant and the respondent if they have any further comments. This is to ensure that all of the relevant information has been brought forward for consideration before asking each party to give their closing statements.
- Step 10.** Both parties should make a closing statement before the hearing is adjourned. The respondent should go first, leaving the complainant to have the last word.

Determination of Decision

With fourteen (14) days of the Hearing, the Tribunal shall present its finding in a written report. The report will be distributed to:

- i. the Complainant
 - ii. the Respondent
 - iii. Badminton PEI President (for Badminton PEI files)
- The report will give a determination as to whether the acts complained of constitute harassment as defined in this policy;
 - Recommend disciplinary action against the respondent, if the acts constitute harassment; and
 - Recommend measures to remedy or mitigate the harm or loss suffered by the complainant, if the acts constitute harassment;
 - If the Tribunal determines that the allegations of harassment are false, vexatious, retaliatory, or unfounded, their report shall recommend disciplinary action against the complainant.
 - When determining appropriate disciplinary action and corrective measures, the Tribunal shall consider factors such as:
 - a) The nature of the harassment;
 - b) Whether the harassment involved any physical contact;
 - c) Whether the harassment was an isolated incident or part of an on-going pattern;
 - d) The nature of the relationship between complainant and harasser;
 - e) The age of the complainant;
 - f) Whether the harasser had been involved in previous harassment incidents;
 - g) Whether the harasser admitted responsibility and expressed a willingness to change; and

- h) Whether the harasser retaliated against the complainant.
- In recommending disciplinary sanctions, the Tribunal may consider the following options, singly or in combination, depending on the severity of the harassment:
 - a) A verbal apology;
 - b) A written apology;
 - c) A letter of reprimand from Badminton PEI;
 - d) A fine or levy;
 - e) Referral to counselling
 - f) Removal of certain privileges of membership or employment;
 - g) Demotion of a pay cut;
 - h) Temporary suspension with or without pay;
 - i) Termination of employment or contract; or
 - j) Expulsion from membership.

Conclusion

Where the investigation does not result in a finding of harassment, a copy of the report shall be placed in Badminton PEI's files. These files shall be kept confidential and access to them shall be restricted to the President.

Where the investigation results in a finding of harassment, a copy of the report shall be placed in the personnel or membership file of the respondent. Unless the findings of the panel are overturned upon appeal, this report shall be retained for a period of ten years, unless new circumstances dictate that the report should be kept for a longer period of time.

Appeals

Both the complainant and respondent shall have the right to appeal the decision and recommendations of the Tribunal. A notice of intention to appeal, along with grounds for the appeal, must be provided to the President of Badminton PEI with ten (10) days of the complainant or respondent receiving the Tribunal's report.

Permissible grounds for an appeal are:

- The panel did not follow the procedures laid out in this policy;
- Members of the Tribunal were influenced by bias; or
- The Tribunal reached a decision which was grossly unfair or unreasonable.

Once the appeal has been received by the President of Badminton PEI, the Appeal Process under Badminton PEI Appeal Board Policy shall take effect.