

Harassment and Discrimination Policy with Complaint Handling and Discipline Procedures (Interim policy)

Preamble

1. Cross Country Ski Ontario (XCSO) is committed to providing opportunities for every individual involved in the sport of cross-country skiing, including para nordic, to enjoy the benefits of participation – be they related to recreation, social interaction, physical fitness, competition, volunteerism or employment. As such, XCSO is committed to providing an environment in which every individual is treated with respect and dignity.
2. Every XCSO member has the right to participate in the sport free from discrimination. XCSO strictly prohibits unlawful discrimination, including discrimination on the basis of race, colour, Provincial place of origin, ancestry, sex (including pregnancy), religious beliefs, age, physical or mental disability, sexual orientation, gender identity or expression, family or marital status, or any other ground or characteristic protected under applicable provincial/territorial human rights legislation (“Protected Characteristics”).
3. Harassment is a type of discrimination. It is prohibited by the Canadian Charter of Rights and Freedoms and by human rights legislation in every province and territory of Canada. In its most extreme forms, harassment can be an offence under Canada’s Criminal Code. Harassment can also be a result of bullying. Cross Country Ski Ontario is committed to a sport and work environment that prohibits discriminatory and bullying practices. Harassment and bullying are unacceptable and will not be tolerated.
4. This policy has been adapted from Nordiq Canada’s [Harassment and Discrimination policy with Complaint Handling and Discipline Procedures \(interim policy\)](#).

Aim

5. The aim of this document is to state the XCSO policy on harassment and describe how it will be implemented. Harassment is offensive, degrading and threatening.
6. The Harassment and Discrimination Policy with Complaint Handling and Discipline Procedures are in place to protect all categories of members from a hostile sport and working environment by creating a process through which individuals can report incidents of alleged harassment and these incidents can be investigated and addressed appropriately.

Definitions

7. Discrimination
 - a. This policy addresses discrimination as contemplated by the applicable provincial/territorial human rights legislation. Under this policy, “discrimination” is differential treatment on the

basis of Protected Characteristics. Discrimination may also be found where a requirement, qualification or factor exists that is not discriminatory on its face but results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination, and cannot be demonstrated to be reasonable and justified in the circumstances.

8. Bullying and Harassment

- a. Harassment may relate to a form of discrimination set out in human rights legislation, but it does not have to. Discriminatory harassment includes harassment related to race, sex, religious creed, colour, Provincial origin, ancestry, disability or medical condition or age.
- b. Bullying and harassment are any behaviour that demeans, embarrasses, humiliates, or verbally abuses a person and that is known or would be expected to be known to be unwelcome. The improper behaviour does not have to be made with the intent to harass or discriminate, to be in violation of this policy.
- c. Prohibited conduct includes but is not limited to the following behaviours:
 - i. written or verbal abuse or threats, including swearing;
 - ii. intimidating conduct or gestures;
 - iii. unwelcome remarks, jokes, taunts;
 - iv. unwelcome physical contact;
 - v. vandalism of personal property;
 - vi. abuse of authority which undermines performance or threatens an individual's career;
 - vii. racial, religious or ethnic slurs;
 - viii. practical jokes which cause awkwardness or embarrassment, endanger a person's safety, or negatively affect performance;
 - ix. physical or sexual assault;
 - x. unwelcome sexual flirtations, advances, requests for sexual favours, or invitations, whether indirect or explicit;
 - xi. unwelcome comments, innuendo, taunting, or questions about a person's looks, body, attire, age, race, religion, sex, sexual orientation, or sex life;
 - xii. displays of pornographic, racist or other offensive or derogatory material;
 - xiii. leering, whistling, or other suggestive or obscene gestures;
 - xiv. condescending, paternalistic or patronizing behaviour which undermines self-esteem, diminishes performance, or adversely affects the environment.
 - xv. sexual harassment may be directed at registrants of the same sex or the opposite sex.

9. Provincial Member refers to:

- i. the Chair and Directors of the XCSCS Board;

- ii. the Chairpersons and members of XC SO operational committees;
 - iii. the Executive Director (ED) and members of the XC SO staff, including contracted personnel, salaried staff and volunteers;
 - iv. athletes, coaches and technical and other support staff who are part of the Provincial Ski Team programs, to include those on temporary status for camps and trips;
 - v. any other individuals who expressly represent XC SO or are employed by XC SO for specific functions on a temporary basis (e.g. Technical Delegates, while so employed for a tasked event).
10. Individual Member refers to an individual who is a member of XC SO through their club and/or District.

Note:

It is recognized that there may be a certain amount of physical contact inherent in coaching athletes. Such contact may be related to teaching a new skill, spotting or other safety issues. This type of physical contact is not considered to be harassment, providing that it is welcomed by the athlete. If the athlete indicates that the contact is unwelcome, it must stop; otherwise, it will be considered harassment.

Supervisors have the right to manage the workplace in accordance with governing legislation, employment agreements and policies. Similarly, in sport, coaches have the right to manage their team in accordance with governing athlete agreements and policies. This includes imposing corrective and/or disciplinary measures, evaluating and managing performance, managing attendance, approving absence requests, among other things. However, the authority conferred upon those designated to manage the workplace or the team is not limitless and supervisors must exercise their authority legitimately and in good faith.

Reprisal/Retaliation

11. Reprisal/retaliation is defined as action or behaviour directed toward an individual who has complained of being harassed, who has reported witnessing harassment or who has otherwise been involved in a harassment complaint or investigation. Reprisal/retaliation is generally initiated with the intent to intimidate, threaten, humiliate, exact revenge or adversely affect the performance or working conditions of an individual.

Reprisal/retaliation may include, but is not limited to, situations in which an individual involved in a harassment proceeding is:

- a. improperly denied or threatened with the withholding of promotion, advancement, training or other related opportunities or benefits (e.g. team selection); or
- b. improperly disciplined or threatened with disciplinary action, or dismissed or threatened with dismissal.

General Policy Regarding Harassment

12. XCSO will not tolerate or condone any form of harassment, including reprisal/retaliation.
13. XCSO will take proactive measures to prevent or discourage harassment within the Association and more broadly amongst all members of the organization involved in cross-country skiing, including:
 - a. communicating, publicizing, and emphasizing the principles contained in this policy;
 - b. incorporating harassment and abuse prevention awareness into the orientation (or, in the case of coaches, athletes, and technical support staff, training) provided to all persons occupying positions of authority within the Association; and
 - c. developing and implementing a formal harassment complaint handling and investigation procedure for application at the Provincial level of XCSO.
14. Individual members of XCSO who perceive that they have been harassed will be provided with assistance and have the right to seek redress within the Association without fear of reprisal/retaliation. Members who perceive that they have been harassed retain the right to seek assistance externally, including recourse to provincial or territorial human rights commissions, even when action has been initiated within the Association.
15. Complaints will be addressed in a sensitive, responsible and timely fashion, with due regard to confidentiality.

Policy Jurisdiction and Application

16. Harassment complaints shall be addressed at the level of the Association where the harassment is reported (e.g Provincial, District or member club). Should a member club not have an adequate policy in place or capacity to address a complaint, the complaint will be immediately passed on to the club's division. Should the District and/or club not have an adequate policy in place or capacity to address a complaint, the complaint will be immediately passed on to XCSO.*
17. This XCSO policy is to be given effect at the Provincial level through the implementation of the harassment complaint procedure.
18. Member District and clubs of XCSO are required to implement this policy by establishing similar and consistent policies at the District and club level. These District and club level policies are to be substantially similar to and consistent with this policy, ensuring they meet the requirements identified by Sport Canada for independent third party complaint receiving, and independent third party investigation of complaints, among other requirements. District and clubs may choose to adopt this as their policy. Should a Member club or District not have an adequate policy in place, in the case of a harassment or bullying complaint, the Member club or District will be obliged to use the XCSO policy.¹

¹ Note that in cases where a club/District does not have capacity to immediately handle a bullying or harassment complaint, the Club/District may refer the complaint to XCSO. In this instance, the member club/District will be

19. Members, including XC SO Board, committee members, ED, staff, coach, event officials or other persons in authority who witness behaviour that may constitute harassment, or who otherwise become aware that harassment may be taking place, are required to report the behaviour in accordance with the prescribed complaint procedure below. XC SO encourages the reporting of all incidents of harassment and bullying.

HARASSMENT COMPLAINT AND INVESTIGATION PROCEDURES - PROVINCIAL LEVEL

Policy Application

20. The procedures and process contained in this policy apply at the Provincial level of XC SO, and extend only to Provincial Members, as defined in section 8.

These Complaint Handling Procedures only applies to allegations of harassment when:

- a. both the complainant and the respondent are Provincial members of XC SO; or
- b. the respondent is a Provincial member of XC SO and the complaint is lodged by an individual member.

Confidentiality

21. XC SO recognizes that it can be extremely difficult to come forward with a complaint of harassment, and that it can be devastating to be wrongly accused of harassment. Therefore, in the interests of procedural fairness for both the complainant and respondent, harassment complaint proceedings as described in this policy will be treated as confidential to the greatest extent possible, consistent with each party's right to a procedurally fair process.
22. Despite the importance of a high degree of confidentiality in the conduct of the proceedings, due process requires an element of transparency. Accordingly, the final decision of the Hearing Panel that has been convened to address a formal complaint of harassment must be made public. When publishing the hearing panel findings, every effort will be made to do so sensitively, including redacting names where appropriate. However, XC SO cannot commit to protecting the identity of complainants once a formal complaint is received.

Complaint Procedure

23. A person who experiences harassment is encouraged to make it known to the harasser that the behaviour is unwelcome, offensive and contrary to XC SO policy.
24. If the behaviour being reported is perceived as discrimination, the complainant may also make a complaint directly to the provincial Human Rights Commission (or related body).

responsible for reimbursing XC SO for the costs of managing the complaint and external investigation to handle the complaint.

25. If confronting the harasser is not possible, or if after confronting the harasser, the harassment continues, the complainant or third party who is reporting an incident, should contact the Independent Third Party (ITP) complaint receiver to report the complaint and understand the investigation process. Contact information for XCSC's current ITP is provided in Appendix 1.
26. Should the complainant be a person under 18 or their parent / guardian, and complaining of harassment as defined in 7c ix - xiii, the complainant will be referred directly to, 27-3.
27. Should the complainant be a person under 18 or their parent / guardian, and complaining of a sexual assault or other criminal sexual offence, the complaint will be referred to the local police – or police of jurisdiction, in addition to following the steps outlined in this complaint procedure.
28. Once contacted by a complainant, the role of the ITP is to serve in a neutral, unbiased capacity in receiving the complaint and assisting in its informal resolution. If the designated ITP considers that he/she is unable to act in this capacity, the complainant shall be referred to another ITP. There are three possible outcomes to the initial report of the complainant to the ITP:
 1. It may be determined that the conduct does not constitute harassment as defined in this Policy, in which case the matter will be documented and closed;
 2. The complainant may decide to pursue an informal resolution of the complaint, in which case the ITP can recommend that XCSC supports the parties in negotiating an acceptable resolution of the complaint; or
 3. The complainant may decide to submit a formal written complaint to the ITP, in which case the ITP will inform Cross Country Ski Ontario's ED; the ED shall immediately advise the Chair of Cross Country Ski Ontario's Board of Directors. The Board Chair will authorize Cross Country Ski Ontario's ITP to appoint an independent individual to investigate the complaint within 7 days of receiving the complaint. The Board Chair will act as the designated point of contact at Cross Country Ski Ontario for the ITP through to the end of the investigation and follow-up proceedings, as they may occur.
29. The ED may determine that the alleged conduct in a complaint is of such seriousness as to warrant suspension of the respondent member from XCSC pending the hearing and decision of the Hearing Panel (see 33).
30. This Policy shall not prevent a person in authority taking immediate, informal corrective disciplinary action in response to behaviour that, in their view, constitutes a minor incidence of harassment, provided the individual being disciplined is informed about the nature of the infraction and has an opportunity to provide information concerning the incident. In such situations, sanctions shall be made for short-term duration only (such as during a competition). The person in authority must inform the ED in writing of the circumstances, the parties involved, and the outcome within three (3) days. Further sanctions may be applied after review of the matter in accordance with the procedures set out in the harassment, complaint and investigation procedures in this policy.

31. The independent investigator, appointed by the ITP under 27.3, should be a person experienced in harassment matters and investigation techniques, and will be an external professional. The ITP will appoint an investigator through the Sport Dispute Resolution Centre of Canada's Investigation Unit (if unavailable, an equivalent professional will be appointed). The selected investigator shall carry out the investigation in a timely manner, and at the conclusion of the investigation, shall submit a written report to the ITP and to the Board Chair of XCSO.
32. The next step is for the ITP to convene a Hearing Panel. Upon receipt of the investigator's report, the ITP shall within 7 days establish and provide instruction to a Hearing Panel. The Hearing Panel shall be established as follows: (Note: If there is divergence from the XCSO Dispute Resolution Process Annex A, this Policy shall prevail.)
 - a. The Panel shall be comprised of either one or three individuals who shall have no significant relationship with the affected parties, shall have had no involvement with the complaint or the dispute, and shall be free from any other actual or perceived bias or conflict. The decision regarding the size of the Panel shall be at the sole discretion of the ITP who must, in coming to the decision, ensure that the hearing process complies with the principles of natural justice and provides procedural fairness to all parties. The decision regarding Panel size may not be appealed.
 - b. If the Panel consists of three persons, the Panel members shall select a Chairperson.
 - c. At least one of the Panel members shall have recent relevant experience in conducting adjudications / hearings and familiarity with harassment, discrimination, and/or human resources practices.

Hearing

33. The Panel will conclude the hearing within 7 days of being established.
34. The hearing procedures and decision shall be conducted respecting basic principles and rules of natural justice and in accordance with the XCSO's Dispute Resolution Policy. (In case of a conflict between this Policy and XCSO's Dispute Resolution Policy and Appeal Policy, this Policy shall prevail). In addition:
 - a. Both the complainant and the respondent shall be given proper advance notice of the infraction alleged to have been committed and the procedures to deal with the matter.
 - b. Both the complainant and the respondent can choose their own representative (at their own cost).
 - c. The complainant and respondent shall each receive a summary of the Investigator's report.
 - d. Both the complainant and the respondent shall have the right to a fair hearing including submitting evidence and making submissions before the Panel.

- e. Unless determined otherwise by the Panel, the complainant shall be present at the hearing to respond to the Investigator's report, give evidence and to answer questions from the Panel.
 - f. If after being provided a reasonable opportunity to participate in the hearing, if the complainant or the respondent refuses to participate, the Panel may still proceed in absence of either the complainant and/or the respondent. If at any point in the proceedings, the complainant becomes reluctant to continue, it shall be at the sole discretion of the ED to continue the review of the complaint in accordance with this Policy. In such instances, XCSO may decide to act on behalf of the complainant and become the complainant. In a case where the ED is the respondent to the complaint, the Board Chair will determine whether to pursue the complaint on behalf of XCSO.
 - g. The investigator may attend the hearing at the request of the Panel but will not be considered a witness.
35. As soon as possible, but not more than 7 days after concluding the hearing, the Panel will present its written decision, with copies provided without delay to the ITP, Board Chair, the ED, the complainant, and the respondent. The decision will include:
- a. a summary of the relevant facts;
 - b. a determination as to whether the behaviour in question constitutes harassment as defined in this policy;
 - c. if the acts are found to constitute harassment, recommend disciplinary action to be taken against the respondent; and
 - d. if the acts are found to constitute harassment, recommended measures to remedy or mitigate any harm or loss suffered by the complainant; and
 - e. if appropriate, a non-binding recommendation for any action that might prevent similar situations in the future.
36. If the Panel determines that the allegations of harassment are fabricated, frivolous or vexatious, it may determine that disciplinary action shall be taken against the complainant. (A finding that the behaviour in question does not constitute harassment is not sufficient grounds for such action against the complainant.)

Sanction

37. In the event that the Panel finds that acts constitute harassment, the Panel shall, when directing appropriate disciplinary action and/or corrective measures, 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 ongoing pattern;
 - d. the nature of the relationship between the complainant and respondent;
 - e. the age of the complainant;
 - f. whether the harasser has 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.
38. In the event that the Panel finds that harassment has occurred, when determining disciplinary sanctions, the Panel 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 XCSC;
 - d. a fine or levy;
 - e. referral to counselling;
 - f. removal of certain privileges of employment or membership;
 - g. demotion or reduction in pay for an employee or contractor;
 - h. temporary suspension from employment or contract, with or without pay;
 - i. termination of employment or contract;
 - j. suspension of accreditation (e.g. officials, technical delegates) for a specified period of time;
 - k. suspension from competition for a specified period of time.
 - l. expulsion from membership
 - m. publication of the decision
39. As a general rule, the decision of the Panel shall become a matter of public record, but all other information pertaining to the complaint and investigation shall remain confidential.
40. Where the Panel concludes that harassment has not occurred, a copy of the Panel's decision shall be filed in the Provincial Office in the harassment file. Where the Panel finds that the allegations of harassment were fabricated, frivolous or vexatious, a copy of the Panel's decision together with the investigator's report and any documentary evidence shall be filed in the personnel file of the complainant only, with all references to the identity of the respondent deleted if they so request.

41. Where the Panel finds that harassment has occurred, a copy of the Panel's decision, together with the investigator's report and any documentary evidence, shall be filed in the Provincial Office in the harassment file. The Panel's decision shall also be filed on the personnel file of both the complainant and respondent. Unless the findings of the Panel are overturned upon appeal, the decision and supporting material shall be retained on file for a period of ten years. This period could be extended if new and related developments indicate such action is warranted.
42. Failure to comply with a sanction as determined by the Panel shall result in automatic suspension in membership from XC SO until the sanction is fulfilled.
43. Notwithstanding the procedures set out in this Policy, any member of XC SO who is convicted of a criminal offence involving sexual exploitation, invitation to sexual touching, sexual interference, sexual assault, shall face automatic suspension from participating in any activities of XC SO for a period of time corresponding to the length of the criminal sentence imposed by the Court, and may face further disciplinary action by XC SO in accordance with this Policy.

Appeal Procedure

44. Both the complainant and the respondent have the right to appeal the finding of the Hearing Panel. The appeal options are explained in paragraph 18 and Annex C of the XC SO Dispute Resolution Process.

Timelines

45. Timelines referred to in sections 27, 29, 31, 32 and 34 are important. However, in exceptional circumstances, should more time be required to ensure procedural fairness, the ITP may make a request to the Board chair to extend a timeline.

Appendix 1: Contact Information

Independent Third Party Complaint Receiver's Role

- To receive and acknowledge all complaints under this policy;
- To determine if the complaint is admissible as per the application of this policy;
- To preserve the confidentiality of the complaints to the greatest extent possible;
- To report about the complaint, allegation or concern to the ED and Board Chair of Cross Country Ski Ontario;
- To oversee appointing and arranging an independent investigator where warranted under this policy, to receive the investigation report, and where appropriate, convene the Panel as referenced within this policy;
- To ensure the matter is reviewed in accordance with the principles of procedural fairness;
- To take every reasonable precaution to ensure that the investigative process and complaint process is carried out with due diligence and respect for the rights of those involved.

Mr. Brian Ward – brianward@globalserve.net

Canadian Sport Helpline

Phone and Text Message

1-888-83SPORT

1-888-837-7678

Email

info@abuse-free-sport.ca

Website

<http://abuse-free-sport.ca/en>