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Current Issues in Canadian Safe Sport Investigations

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## **Current Issues in Canadian Safe Sport Investigations**

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### ***Introduction***

It feels as though over the past few years almost every sport in Canada has had allegations of misconduct or human rights violations levelled against it. Whereas previously, certain sports were known to have particular problems, now it seems as though each week a different sport has been revealed as being problematic. Prospective sport participants (or their parents) are looking at safety records first before enrolling in or spending money on a sport that they are interested in.

### ***What is Prompting this Wave of Allegations in Canadian Sport?***

There are a lot of reasons why Canadian sport is currently having their 'Me Too' moment: timing, media attention, increased societal awareness of what constitutes appropriate behaviour, new progressive policies and the access to third party complaint systems that allow complainants to bring forward their concerns to someone outside the local sport association or regional club.

In my lens as a safe sport investigator, the most significant reason for this recent surge is that for a long time we turned a blind eye to human rights violations in sport. Athletic accomplishment and participation in sport is revered in our society. We have been taught for so long that sport is healthy and that high performance in sport is the ultimate achievement. Up until recently, we were willing to accept that there may be some



behaviour transgressions or unsavoury actions in order to put athletes on the podium or to provide athletes with the opportunity to participate. It was all worth it as long as we were winning.

Once the 2017 #MeToo movement became a watershed moment, it was only time before athletes, coaches, sport administrators and parents (past and present) came forward with their own harrowing tales of what was actually going on behind closed doors. As social media has spread the knowledge of what is and what is not appropriate behaviour to the far corners of our country, to the small gyms and arenas in remote communities, individuals have felt empowered to speak up about their own negative sport experiences and how this has impacted their lives.

### ***How are Sports Investigations Different from Regular Workplace Investigations?***

Sports investigations have many similarities to workplace investigations:<sup>1</sup>

- Just like in workplace investigations, the parties and alleged misconduct in sport investigations vary from file to file. The allegations may be from athlete to athlete, from trainer to coach, from coach to athlete, from referee to athlete parent, from coach to team administrator, etc. There may be issues of gender, race, or simply two individuals who cannot get along. There may be serious safe sport allegations of sexual harassment or assault, sexual exploitation or grooming and boundary

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<sup>1</sup> A number of these similarities and differences were discussed in my Association for Workplace Investigators (AWI) paper, *“From the Boardroom to the Locker Room: Why Workplace Investigators Should Get to the Start Line of Sport Investigations,”* AWI Journal, June 2023, page 16.

[https://cdn.ymaws.com/www.awi.org/resource/resmgr/files/awi\\_journal\\_/awi-journal-2023-06.pdf](https://cdn.ymaws.com/www.awi.org/resource/resmgr/files/awi_journal_/awi-journal-2023-06.pdf)

transgressions of minors. This is the same type of variety that is seen in workplace investigations.

- There are complex power imbalances inherent in sport, similar to workplace conflicts, that are difficult to see and untangle.
- Both workplace and sport investigations require a focus on providing procedural fairness to all participants. The relevant policies or legislation do not always provide a scripted process and this means that the investigator is having to make judgment calls along the way that ensure procedural fairness.
- In both workplace and sport investigations, it has usually taken a very long time for the complainant to come forward, and they are dealing with feeling that they had somehow acquiesced to the behaviour by not speaking out right away. Just as many people need a job and will stay in a bad situation to pay the bills, many athletes will stay in a bad sport situation because they really love the sport.

The largest differences that I see in sports investigations compared to workplace investigations are that:

- Many of the sport investigations involve children. This means that there are often parents who are involved (they may be complainants as well) and resulting complexities around interviewing minors and evidentiary concerns.
- Many sport investigations are historical in nature. This may be related to the fact that many recipients of the harassing behaviour are children at the time of the events and don't realize the magnitude or the impact of the behaviour until they are adults. There is often more of an emotional attachment to the sport than there is to a workplace; complainants realize that if they report the behaviour, they will be polarizing themselves with the sport that they are passionate about. An athlete's peak sport career is much shorter than their working career and they may choose to delay reporting the behaviour until they have retired from the sport.

One particularly challenging aspect of the fact that many of the investigations are historical is that while it may have been acceptable for coaches twenty years ago to punish athletes by running sprints or doing public team weigh-ins, these standards are no longer acceptable practices to the next generation of athletes. This means that a coach who has used these tactics, potentially with great performance success and accolades, may now find themselves being investigated for this same behaviour.

- The athlete and sport performance-cycle often adds a different consideration to sport investigations. There are often critical annual or seasonal competitions and of course the four-year Olympic or Paralympic cycle. Often, when there is an upcoming important sporting event, harassing or inappropriate behaviour will be tolerated so that the complainant can make it through to the next event without having the investigation taking up mental performance space. It also means that if a sport or a team does well at an event, the preceding poor behaviour is overlooked or forgotten; the ends (the wins) justify the means (the harassing behaviour). This means that complaints are often delayed, the behaviour is seemingly condoned and the impact to the complainant is compounded.
- The administrative regime in sport is only recently getting up to speed on how to deal with harassment in their sector. Whereas workplaces and human resource professionals have many years of legislated requirements relating to harassment (it's been fourteen years since Bill 168 came into play in Ontario), this is still relatively new in the sport sector. Certainly, sport administrations relies largely on a volunteer workforce who may not understand the fiduciary responsibilities of their roles. In my view, this means that they do not always understand the importance a true, third-party investigation and are reluctant to pay for a thorough and professional independent investigator. The policies in sport are often weaker than employment policies in terms of penalty or process, although the impact of harassing behaviour is equally, if not more, devastating.



The [US Safesport Code](#) (with limited application to US Olympians and Paralympians) first came into play in 2017 and the first run of the Canadian policy, [the Universal Code to Prevent and Address Maltreatment in Sport](#) (the “UCCMS”), was first published only four years ago, in 2019.

### ***What are Some Practical Tips for Conducting Sport Investigations?***

- You will likely have to explain the process over and over to participants and administrators. The sport system in Canada is complex and participants are likely unfamiliar with how the policies or sport administration hierarchy applies to them. When somebody signed up for a sport as a participant or volunteer, they are likely unaware of the complex sport infrastructure and reporting lines that they are a part of: there can be university, club, sport district, provincial, national, international and universal codes of conduct or policies that apply. Investigators need to understand the process and policies themselves so that they can explain it clearly to participants.
- You will likely have to find witness contact information on your own. The sporting network is a much less formal than a work environment; there is no human resources department that can provide tombstone employee information. Interactions are more likely to have been in person and things like email addresses are not known. Sometimes, witnesses are only known by their first name. This means that the only way to find people is through social media or word of mouth.

- Be prepared to have to sell the process to participants. There is usually no obligation for people to participate in sport investigations. Many sport participants are afraid to participate as they worry that it will affect their season or relationships with coaches or local associations. Many prospective witnesses have moved on from the sport and may not want to be brought back into the fold. Many of the administrative roles in sport are volunteer and they can easily walk away if they are uncomfortable with an intervention.
- Complainants will often waver on whether to continue participating. Many safe sport complaints are filed with very little information and participants are surprised that they will have to provide much more to an investigator. Complainants may change their minds about participating when it becomes clear that more evidence is required. Ensuring that you provide a trauma-informed process of retrieving this information will contribute to their willingness to continue participating.
- Be prepared to conduct interviews outside of regular work hours. For obvious reasons, participation in a sport process falls down the time priority list after people's work and family commitments.
- Your written report is the most important part of the process. This last tip is not unique to sport investigations, but it is critical that the investigator's report is clear in what the findings are as well as what the process was to get there. There may be many eyes on this report and it is critical that the investigator writes the report so that anyone who picks up the report understands the steps taken and how the decision was made. Investigators need to understand at the outset who will get



copies of the report (parties? local sport association? regional sport association?) but should always write the report presuming that it may at some point end up in the public domain. Do not allow a poorly written report to overshadow an otherwise excellent and procedurally fair investigation process.

### ***Where Do We Go From Here?***

Current human rights investigations can prompt significant change to the future of Canadian sport. We can use the findings in these investigations to develop policies and standards for acceptable treatment in sport at the international, collegiate, national and local levels. We can shift prioritizing a podium win at all costs to a win that is in line with human rights expectations and acceptable behaviours.

In my view, local amateur sport is where the biggest need for independent, third-party investigations is needed. As the saying goes, “there are a lot of dark corners” in local sport organizations, where maltreatment often goes unnoticed or unchecked. Amateur sport organizations are often running on shoestring budgets by volunteers who may not understand the fiduciary or ethical responsibilities of their roles and whose primary focus is building the club membership and advancing the sport that they love.

Canadians’ love for our athletes and sport at all levels will endure. With the right policies and procedures in play we can ensure that every sport participant’s path, whether it be to the top of the podium, or to a local facility to join in a sport that they love, has been taken with our human rights in check.

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