

**TRIATHLON NOVA SCOTIA  
HARASSMENT POLICY**

**Accepted by TNS Board of Directors: (January 27, 2014)**

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## **1 Introduction**

1.1 Triathlon Nova Scotia (TNS) is committed to providing opportunities for every individual involved in the sport of triathlon to enjoy the benefits of this involvement – be they related to recreation, social interaction, physical fitness, competition, volunteerism or employment. Harassment, in its various forms, can interfere with the achievement of this objective.

1.2 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.

## **2 Purpose**

2.1 The purpose of this document is to state the TNS policy on harassment and describe how it will be implemented.

## **3 Definitions**

### **3.1 Harassment**

Harassment takes many forms, but can generally be defined as behaviour – including comments and/or actions – which is insulting, intimidating, humiliating, hurtful, malicious, degrading or otherwise offensive to an individual or to groups of individuals, or which creates an uncomfortable or hostile environment. Harassment pertains in particular to behaviour that discriminates on the grounds of race, ancestry, place or ethnicity of origin, colour, citizenship, creed (religion), gender, sexual orientation, disability, age, marital/family status or record of offence. The existence of harassment is determined by the reasonable perception or reaction of the person or persons who feel harassed, rather than on the intent of the perpetrator. Harassment may include, but is not limited to:

- a. written or verbal abuse or threats;
- b. racial or ethnic slurs;
- c. unwelcome remarks, jokes, innuendoes or taunting about a person's body, attire,
- d. age, marital status, ethnic or racial origin, religion, gender or sexual orientation;
- e. displaying of sexually explicit, racist or other derogatory material which is offensive or which one ought to know is offensive;
- f. unwelcome flirtations, advances, sexual comments or invitations, whether indirect or explicit;
- g. unwanted physical contact such as touching, kissing, patting or pinching;
- h. leering (offensive staring), or other obscene or suggestive gestures;
- i. practical jokes which cause awkwardness or embarrassment, endanger a person's safety or negatively affect performance.

*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 acceptable to the athlete. If the athlete indicates that the touching is unacceptable, it must stop. Otherwise it will be considered harassment.*

### 3.2 Reprisal/retaliation

Reprisal/retaliation is defined as action or behavior directed towards 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 effect 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.

## 4 Authority

Section 11.1 of TNS Bylaws, Appendix 3 (Jan. 01, 2012) provides authority for the Board of Directors to "...set policy to guide the management of the association...".

## 5 Triathlon Nova Scotia Harassment Policy

### 5.1 Application

5.1.1 This policy applies to TNS including:

- a. the President and directors of the TNS Board;
- b. the chairpersons and members of TNS operational committees;
- c. the Executive Director and members of the TNS staff, both salaried and volunteer;
- d. athletes, coaches and technical support staff who are part of the Provincial Triathlon Team program, and is to include those on temporary status for camps and trips;
- e. athletes, coaches, board members and administrators who are part of a TNS Provincial Training Centre
- f. any other individuals who expressly represent TNS or are employed by TNS for specific functions on a temporary basis (e.g. Technical Delegates, Race Directors, while so employed for a tasked event).

5.1.2 All of the individuals identified in 5.1.1, and only these individuals, are defined as "members" for the purposes of this policy.

5.1.3 This policy applies only to allegations of harassment when:

- a. both the complainant and the respondent are members; or
- b. the respondent is a TNS member and the complaint is initiated by an individual who is an individual member of TNS who does not fall within the description in section 5.1.1.

## **5.2 Confidentiality**

5.2.1 TNS 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 both the complainant and respondent, harassment complaint proceedings conducted by TNS will be treated as confidential to the greatest extent possible, consistent with each party's right to a procedurally fair process.

5.2.2 Despite the importance of a high degree of confidentiality in the conduct of the proceedings, due process requires an element of transparency. Accordingly, an annual statistical summary of any final decisions of the Complaint Review Panel will be made public. As this is a statistical review, no names will be included.

## **Complaint Review Process**

### **5.3 Complaint Review Officers**

5.3.1 TNS shall appoint at least two persons, one of each gender, who are members of TNS board of directors to serve as Complaint Review Officers under this policy.

5.3.2 The role of a Complaint Review Officer is to serve in a neutral capacity and bring an informed perspective to bear on the early phases of the harassment complaint procedure. Complaint Review Officers shall provide advice, receive complaints, assist in the informal resolution of complaints and conduct the initial assessment of formal written complaints. Only one Complaint Review Officer will be involved in each case. The complainant may contact the Complaint Review Officer of their choice. Contact information will be available on the TNS website.

5.3.3 Complaint Review Officers are directly responsible to the Executive Director/President. TNS shall ensure that Complaint Review Officers have access to appropriate training and the necessary support for carrying out their responsibilities under this policy.

### **5.4 Reporting harassment and submitting a complaint**

5.4.1 A complainant must initiate the process within 30 days of the alleged incident.

5.4.2 Members who believe they are being harassed should seek the advice of a TNS Complaint Review Officer or another trusted person on the TNS Board of Directors. They may immediately report the behaviour in accordance with the complaint procedure described in this policy.

5.4.3 TNS officials (Board/committee members, Executive Director, staff, coach or event officials) who witness behaviour that may constitute harassment or who otherwise become aware that harassment may be taking place are required to report it in accordance with the prescribed complaint procedure.

5.4.4 Members who witness behaviour that may constitute harassment affecting another TNS member, or who otherwise become aware that harassment caused by a member may be taking place, are encouraged to report the behaviour in accordance with the prescribed complaint procedure.

5.4.5 Harassment complaints should be made to a TNS Complaint Review Officer or to any person in a position of authority such as a TNS Board/committee member, TNS Executive Director, staff, coach or event official.

5.4.65 Ultimately, the harassment investigation and review process requires that complaints be filed with a TNS Complaint Review Officer. Therefore, other TNS officials who receive a complaint are to forward it immediately to a Complaint Review Officer.

## 5.5 Review by Complaint Review Officer

5.5.1 When a Complaint Review Officer receives a complaint through a third party, he/she will immediately contact the alleged complainant and initiate the complaint evaluation procedure.

5.5.2 The TNS Complaint Review Officer who receives a complaint will inform the complainant of:

- a. the option of pursuing an informal resolution, such as all-party discussion;
- b. the right to lay a formal written complaint under this policy when informal resolution is inappropriate or when an attempt at informal resolution is unsuccessful;
- c. the confidentiality provisions and limitations of this policy;
- d. the right to be represented/advised by a person of their choice (including legal counsel) at any stage in the complaint process (at the complainant's expense);
- e. the right to withdraw from any further action in connection with the complaint at any stage (even though TNS might continue to investigate the complaint);
- f. the potential consequences of allegations of harassment that are fabricated, frivolous or vexatious; and
- g. any other avenues of recourse, including the right to file a complaint with a human rights commission or, where appropriate, to contact the police to have them lay a formal charge under the Criminal Code.

5.5.3 There are three possible outcomes to the initial meeting between the complainant and the harassment officer:

- a. The complainant and harassment officer agree that the behaviour in question does not constitute harassment. If this occurs, the harassment officer will take no further action and will make no written record.
- b. The complainant brings evidence indicating that harassment may have occurred and chooses to pursue an informal resolution of the complaint:
  - i. The harassment officer will assist the two parties to negotiate a solution acceptable to both parties. If desired by the parties, and if appropriate, the harassment officer may also seek the assistance of a neutral mediator from within the TNS membership in general.
  - ii. If negotiation yields a result that is acceptable to both parties, the harassment officer will make a written record that the complaint was made and subsequently resolved to the satisfaction of both parties. This record will briefly outline the details of the complaint and the resolution. It will be signed by both parties and kept on file in the TNS office for a period of time no less than five years officer. No further action will be taken.
  - iii. If negotiation fails to satisfy the complainant, the complainant may then proceed to lay a formal written complaint.

- c. The complainant brings evidence indicating that harassment may have occurred and decides to lay a formal written complaint:
  - i. The complaint will set out the details of the incident(s) and the names of any witnesses, and will be signed by the complainant and dated. A copy of the signed complaint will be delivered to the respondent without delay.
  - ii. The respondent will be given the opportunity to provide a written response to the complaint. The respondent is not obliged to respond in writing; if preferred, he/she may provide a verbal response to the harassment officer.
  - iii. The harassment officer will advise the respondent about the provisions of the Harassment Policy and of their right to be represented by a person of his/her choice (at the respondent's expense).

## 5.6 Review by TNS Director

5.6.1 As soon as possible after receiving the written complaint, but no more than twenty- one (21) days from that date, the harassment officer shall submit a written Harassment Report to the TNS President, with a copy to the Executive Director. If this timeline cannot be met, the Officer must inform the President and Executive Director in writing indicating the reason for the delay and an amended deadline. The Report shall contain the formal written complaint and either the respondent's written response or the substance of his/her verbal response, together with a recommendation that either:

- a. no further action should be taken because the complaint cannot be substantiated or the conduct cannot be reasonably said to fall within the definition of harassment contained in this policy; or
- b. the complaint appears to have substance and should be investigated further.

5.6.2 The President shall review the Harassment Report to confirm that procedures have been applied correctly in accordance with this policy. If the President finds that there have been procedural errors, he/she will return the file to the harassment officer with instructions for correction.

5.6.3 If the President is satisfied that due process has been followed, he/she will consider the substance of the Report and, at his/her sole discretion, determine whether further action is to be taken:

- a. If the President determines that further action is required, he/she will initiate the Investigation process as outlined in this policy.
- b. If the President determines that no further action is required, he/she will sign the Harassment Report, noting that he/she has reviewed it, and will then forward it to the TNS office for filing in the harassment file.

5.6.4 The President shall complete the review within five (5) days of the receipt of the Report.

5.6.5 A copy of the Harassment Report shall be provided to the complainant and respondent.

## 5.7 Investigation

5.7.1 The President determines whether further investigation is warranted prior to convening a Complaint Review Panel. Depending upon the nature of the complaint and the information provided in the Harassment Report, the President may, in the exercise of his/her sole discretion, appoint an independent individual to conduct an investigation in order to confirm the background and context of the complaint and to ascertain the relevant facts. If an investigation is ordered, the investigator shall carry out the task in a timely manner and at the conclusion shall submit a written report to the President.

## 5.8 Hearing

5.8.1 On receipt of the investigator's report, the President shall, within 14 days, establish and provide instruction, including the Harassment Report and the investigator's report, to a Review Panel. The Complaint Review Panel shall be established and will proceed in accordance with the procedures outlined in the TNS Harassment Policy. The Complaint Review Panel shall consist of two persons from the TNS membership, one of which is a board member.

## 5.9 Decision

5.9.1 Within 14 days of concluding the hearing, the Complaint Review Panel shall present its written decision, with copies provided without delay to the President, the Executive Director, the complainant, the respondent and the harassment officer to whom the complaint was originally submitted. The decision shall contain:

- 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 complaint is found to be valid:
  - i. a determination of disciplinary action, if any, to be taken against the respondent; and
  - ii. if appropriate, measures to remedy or mitigate any harm or loss suffered by the complainant; and
- d. if appropriate, a recommendation for any action which might prevent similar situations in the future.

5.9.2 If the Complaint Review Panel determines that the allegations of harassment are fabricated, frivolous or vexatious, it may determine that disciplinary action shall be taken against the complainant. It is emphasized that a finding that the behaviour in question does not constitute harassment is not sufficient grounds of itself for such action against the complainant.

5.9.3 In the event that the Complaint Review Panel finds that harassment has occurred, the Complaint Review Panel shall, when making determinations for 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 complaint.

5.9.4 In the event that the Complaint Review Panel finds that harassment has occurred, when determining disciplinary sanctions the Complaint Review 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 TNS;
- d. a fine or levy;
- e. referral to counseling;
- f. removal of certain privileges of employment;
- g. demotion or reduction in pay;
- h. temporary suspension from employment, 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 of TNS membership for a specified period of time.

5.9.5 In the event that the Complaint Review Panel finds that harassment has not occurred, that the complaint of harassment was fabricated, frivolous or vexatious, and that disciplinary action should be taken against the complainant, the Complaint Review Panel may consider any of the sanctions listed in section 5.9.4 or such other measures as the Complaint Review Panel may deem appropriate to the circumstances.

5.9.6 Where the Complaint Review Panel concludes that harassment has not occurred, a copy of the Complaint Review Panel's decision shall be filed in the TNS office in the harassment file. Where the Complaint Review Panel finds that the allegations of harassment were fabricated, frivolous, or vexatious, a copy of the Complaint Review Panel's decision together with the investigator's report and any documentary evidence shall be filed in the personnel file of the complainant only.

5.9.7 Where the Complaint Review Panel finds that harassment has occurred, a copy of the Complaint Review Panel's decision, together with the investigator's report and any documentary evidence, shall be filed in the TNS office in the harassment file. Unless the findings of the Complaint Review 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.

## **5.10 Appeal Process**

5.10.1 Both the complainant and the respondent have the right to appeal the finding of the Complaint Review Panel.

5.10.2 If a party believes the decision of the Complaint Review Panel was procedurally unfair, the decision of the Complaint Review Panel may be appealed. If this option is elected, the decision reached through the Appeal Process will be final and binding on all parties and there shall be no recourse to any further appeal.

5.10.3 If both affected parties agree to take part in an appeal process, and if all parties sign an arbitration agreement confirming their intent to submit to binding arbitration, the appeal may be referred to arbitration.

5.10.4 Any such appeal must be initiated by notification to the President in writing within five days of the decision of the Complaint Review Panel.

5.10.5 The TNS President will appoint a second Complaint Review Officer to undertake the appeal process according to the procedure outlined in the Hearing and Decision sections of this policy.

5.10.6 The decision of the arbitration process will be binding on all parties and not subject to further appeal.

## **6 Document preparation**

This document was prepared by a committee of TriNS Board of Directors members with input from:

- Cross Country Canada Dispute Resolution and Appeal Policy, revised Oct. 8, 2013.
- Triathlon BC Harassment Policy
- Triathlon Ontario Risk Management Policy
- Triathlon Nova Scotia Executive Director
- Triathlon Nova Scotia Board of Directors