

**DOCUMENT TITLE:** OSIC GUIDELINES REGARDING INVESTIGATION OF COMPLAINTS

**ISSUANCE DATE:** JUNE 20, 2022

**VERSION REVISED ON:** MARCH 31, 2023

**DOCUMENT DISTRIBUTION:** OSIC WEBSITE

## 1. PURPOSE

The purpose of these Guidelines is to outline the principles observed by the Office of the Sport Integrity Commissioner (“OSIC”) regarding investigations that may be necessary further to complaints concerning alleged violations of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”) under the OSIC and to ensure that its approach is consistent with the OSIC Mandate, the applicable Policies & Procedures (as defined below).

## 2. DEFINITIONS & APPLICATION

For purposes of these Guidelines:

- **Complaint** means a duly completed and submitted complaint intake form, the receipt by the OSIC of information expressly deemed by the OSIC to constitute a complaint, or a complaint initiated by the OSIC in accordance with the Policies & Procedures, in each case regarding an alleged violation of the UCCMS.
- **Investigation** means the investigation of a Complaint, initiated by the OSIC under these Guidelines.
- **Investigation Report** means the written report issued in accordance with section 4h. of these Guidelines.
- **Policies & Procedures** means the UCCMS, these Guidelines, applicable policies and procedures of the OSIC and Abuse-Free Sport Program, Section 8 of the Canadian Sport Dispute Resolution Code, and applicable laws.
- **Preliminary Assessment** means the assessment by the OSIC of a Complaint, in accordance with the OSIC Guidelines Regarding the Initial Review and Preliminary Assessment of Complaints.

These Guidelines apply to any person or organization associated with any Complaint, including, without limitation, any complainant, respondent, witness, sport organization and/or other third party affected by such Complaint.

### 3. ROLES & RESPONSIBILITIES

**OSIC:** The Director of Investigations (and/or their delegate) may initiate an Investigation in relation to any applicable Complaint, in accordance with the Policies & Procedures. The Director of Investigations (and/or their delegate) is responsible to develop the investigation plan, assign an Independent Investigator, oversee the implementation of the Policies & Procedures over the course of the Investigation, and review the Investigation Report to determine applicable next steps regarding the Complaint.

**Independent Investigator(s):** The Independent Investigator(s) is responsible for conducting the Investigation, issuing an Investigation Report, and making findings of fact regarding any alleged violation of the UCCMS pursuant to a Complaint, in each case in accordance with the terms of the Policies & Procedures and the professional obligations of the Independent Investigator(s).

**Any person:** Any person associated with a Complaint, including, without limitation, any complainant, respondent, witness, sport organization and/or other third party affected by an Investigation is responsible to cooperate in good faith with the Independent Investigator.

In exercising their duties under these Guidelines, the OSIC and the Independent Investigator(s) may request documents, materials, or other information. Any person subject to these Guidelines is expected to cooperate in good faith (and all applicable organizations are expected to encourage their staff and constituents to fully cooperate in good faith), including, without limitation, by providing to the OSIC and/or the Independent Investigator(s) (as applicable), in a timely manner, all requested and/or relevant documents, materials or other information, as well as facilitating access to applicable venues or persons to conduct interviews or gather evidence for purposes of an Investigation.

### 4. INVESTIGATION

The following section outlines the key elements of the Investigation, from once a Complaint is assigned to an Independent Investigator until the Investigation Report is communicated.

#### a. Initiation of an Investigation

An Investigation may be initiated by the OSIC as a result of:

- the Preliminary Assessment of a Complaint; and/or
- the mediated outcome of a Complaint.

The OSIC will be responsible to determine/review the scope of the Investigation, to develop the Investigation plan/mandate, and to assign the relevant Independent Investigator(s).

Where additional information comes to light following submission of the Complaint that indicates further possible violation(s) of the UCCMS that are not identified in the Complaint, the OSIC should be advised in order to determine whether the Investigation mandate will be revised.

## **b. Investigation Timeline**

Investigation(s) will be initiated and performed without undue delay, considering the circumstances of the Complaint, the scope and complexity of the Investigation, the availability of the parties and witnesses, and the preparation required for the Investigation to proceed. It is understood that certain factors outside the control of the OSIC or the Independent Investigator may influence the timeline of an Investigation (e.g. volume, schedule, context of the sport environment, etc.). In any event, each of the OSIC and the Independent Investigator will communicate in due course with the affected parties to keep them apprised of the advancement of the Investigation.

## **c. Provisional Measures**

Prior to and at any stage of the Investigation, Provisional Measures may be considered warranted by the OSIC and recommended to the Director of Sanctions and Outcomes (“DSO”), based on information provided by the Independent Investigator, any other person and/or otherwise in the OSIC’s reasonable knowledge. Any such Provisional Measures will be administered in accordance with the terms of the OSIC Guidelines Regarding Provisional Measures.

## **d. Assignment of Independent Investigator(s)**

The OSIC is responsible to assign the Independent Investigator(s) to perform the Investigation, based on information available to the OSIC and considering factors deemed appropriate in its reasonable discretion, including without limitation:

- Absence of conflict of interest or apprehension of bias
- Availability
- Geographical location
- Official languages
- Area(s) of experience, expertise, and specific skills desired considering the nature and/or circumstances of the Complaint.

The Independent Investigator(s) will, on an ongoing basis, be responsible to disclose in a timely manner to the OSIC any conflict or potential conflict of interest, or any circumstances that could create a reasonable apprehension of bias in connection with the Investigation.

Upon notification by the OSIC of the appointed Independent Investigator(s), each of the complainant and respondent will be entitled to challenge with the OSIC the selection of the Independent Investigator(s) on the grounds of conflict of interest or a reasonable apprehension of bias. Upon such a challenge, if any, the OSIC will determine if the Independent Investigator(s) can carry out the Investigation absent any conflict or reasonable apprehension of bias. If they cannot do so, the OSIC will retain another Independent Investigator to carry out the Investigation.

Once appointment of the Independent Investigator(s) is confirmed, the OSIC shall provide the Independent Investigator(s) with information and documents at its disposal regarding the Complaint, as well as other information and documents necessary for the Investigation to be performed in accordance with the Policies & Procedures.

**e. Gathering of Evidence**

The Independent Investigator(s) will take reasonable steps to investigate the Complaint on a fair and neutral basis, in accordance with the Policies & Procedures. In this regard, the Independent Investigator(s) will:

- determine what process should be used to gather the evidence (e.g. forms of interview(s), written questions, etc), considering in particular the privacy, safety and well-being of the interviewee(s), which witnesses to interview, what evidence is relevant and the weight to give the evidence;
- align with Section 8 of the Canadian Sport Dispute Resolution Code regarding admissibility of evidence provided by minors and vulnerable persons;
- in accordance with the OSIC Confidentiality Policy, provide appropriate details of the allegations to the complainant and to the respondent and provide a reasonable opportunity for the complainant and the respondent to consider and review the allegations before an interview begins;
- take appropriate steps to preserve a record of all interview(s) conducted;
- collect potentially relevant evidence from third parties and other available sources.

**f. Representatives or Other Support Persons**

Parties and witnesses to a Complaint have the right to seek the assistance of a representative (legal counsel, paralegal, HR professional), and/or a support person (a parent, spouse, counsellor, etc.) at any point during the Investigation, and should notify the Independent Investigator(s) of any such representative and/or support person.

In particular, any such party or witness will have the right to have the representative and/or support person attend their respective interview(s) with the Independent Investigator(s), provided that representative and/or support person is not: (i) witness to any of the events referred to in the allegations or Complaint, (ii) attending the interview of another party to the Complaint, or (iii) otherwise in a conflict of interest under the Complaint or the Investigation. The party or witness may also consult in private with their representative or support person during the interview(s).

It is the party or witness - and not the representative or support person - that is to answer questions of the Independent Investigator(s).

A representative or a support person will be bound to maintain confidentiality and will be required to sign the same confidentiality statement as the interviewee.

**g. Review and Analysis**

After conducting interviews, gathering, and testing the evidence, the Independent Investigator(s) will review all the evidence and make findings of fact based on the “balance of probabilities” standard. In making their review and analysis, the Independent Investigator(s) will consider the following:

- Is there enough evidence to make a finding of fact?
- Is the evidence submitted credible and reliable?
- If the Independent Investigator preferred the evidence of one party or witness, how was that determination made?
- What findings of fact are made?

After making findings of fact, the Independent Investigator(s) may also identify in the report whether any relevant mitigating or aggravating circumstances and/or any systemic or other issues were identified.

**h. Investigation Report**

Following their review and analysis, the Independent Investigator will provide a written Investigation Report to the OSIC that should include in particular:

- The mandate of the Independent Investigator;
- An overview of the process used to investigate the allegations;
- A summary of the evidence obtained – and the resulting findings of facts;
- If applicable, identification of relevant mitigating or aggravating circumstances; and
- If applicable, identification of any systemic or other issues identified.

A summary Investigation Report shall also be produced by the Independent Investigator.

**i. Review of the Investigation Report**

The OSIC shall review the Investigation Report to validate that it contains the elements required under section 4.h. above and that the Investigation was completed in accordance with the Policies & Procedures. The OSIC may take further steps as required to address any procedural concerns with the Investigation. However, the OSIC will not review or make an assessment on the merits of the findings, observations and/or conclusions, as applicable, of the Independent Investigator(s).

#### **j. Communication of the Investigation Report**

The finalized Investigation Report will be provided to the DSO by the OSIC.

Each of the parties to the Complaint shall be provided a copy of the final Investigation Report by the DSO, subject to any redactions that are deemed appropriate in accordance with the Policies & Procedures and other applicable policies and procedures of the DSO.

If considered appropriate in the circumstances, the relevant Sport Organization may be provided with a summary Investigation Report by the DSO, which may also be subject to any redactions that are deemed appropriate in accordance with the Policies & Procedures and other applicable policies and procedures of the DSO.

Any party authorized to receive the Investigation Report shall strictly abide by all applicable confidentiality provisions.

Each of the complainant and respondent will be informed, by either the OSIC or the DSO, as applicable, of next steps regarding the Complaint, in accordance with the Investigation Report and the Policies & Procedures.

#### **k. Challenge of a Finding**

Any party who objects, during an ongoing Investigation, to an Investigation step or procedure, should promptly advise the OSIC of their objection, and may also advise the Independent Investigator. Such objection during the Investigation does not constitute independent grounds for challenge before the Safeguarding Tribunal. Any challenge to the Investigation step or procedure must be made as part of a challenge to the Safeguarding Tribunal pursuant to Sections 8.6 and 8.7 of the Canadian Sport Dispute Resolution Code on the decision regarding whether a violation of the UCCMS and/or other relevant code/policy is substantiated once this is communicated to the party by the DSO. The Safeguarding Tribunal shall make no award of costs.

#### **l. Outcome of the Investigation**

In the absence of a challenge of a finding as outlined in section 4.k. above, other possible outcomes of an Investigation, following communication of the Investigation Report pursuant to section 4j., may include the following:

- By agreement of the parties, mediation;
- In the event of a decision that a violation of the UCCMS and/or other relevant code/policy is substantiated, imposition of a sanction by the DSO;
- In the event of a decision that a violation of the UCCMS and/or other relevant code/policy is unsubstantiated, closure of the Complaint by the OSIC; and/or
- Initiation of other applicable procedures by the parties and/or the OSIC (e.g., Sport Environment Assessment).

Any such applicable outcome will be determined and will proceed in accordance with the Policies and Procedures and the applicable policies and procedures of the DSO.

## **5. RECORD KEEPING**

The Independent Investigator(s) must provide a copy of the Investigation records to the OSIC. Records of all Investigations will be maintained by the OSIC indefinitely, and will be maintained by the Independent Investigator(s), in accordance with applicable professional regulations, and by the DSO, in accordance with applicable policies and procedures of the DSO. All records will be kept confidential to the extent possible, subject to the Policies and Procedures, and as required by law. The records will not be disclosed unless necessary to administer the Complaint, take other action in accordance with OSIC policies and procedures, or otherwise as required by law.

## **6. CONFIDENTIALITY**

These Guidelines will be applied in a manner consistent with the OSIC Confidentiality Policy.

## **7. DOCUMENT REVIEW & DISCLAIMER**

These Guidelines may be amended and updated from time to time at the discretion of the OSIC. These Guidelines shall be applied and interpreted by the OSIC in its reasonable discretion.