



## AKBA - Harassment, Discipline, and Complaints Policy

Effective date	October 1, 2022
Date last reviewed	July 30, 2022
Scheduled review date	October 2025
Approved by and date	AKBA Board on January 10, 2023
Appendix(-ces) to this Policy	

### Purpose

1. Individuals are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the policies, Bylaws, rules, and regulations of AKBA and their Member Organizations. Non-compliance may result in the imposition of sanctions pursuant to this Policy.

### Application of this Policy

2. This Policy applies to all Individuals and any alleged breaches of the Code of Conduct and Ethics or any AKBA policy.
3. This Policy applies to matters that may arise during the business, activities, and Events of AKBA including, but not limited to, competitions, training, evaluations (including tryouts or any other form of testing), treatment or consultations (i.e., massage therapy), training camps, travel associated with AKBA activities, and any meetings.
4. This Policy also applies to Individuals' conduct outside of the business, activities, and Events of AKBA when such conduct adversely affects AKBA's relationships (and the work and sport environment) or is detrimental to the image and reputation of AKBA, or upon the acceptance of AKBA.
5. Without limiting the generality of the foregoing, this Policy applies to alleged breaches of the *Code of Conduct and Ethics* by Individuals who have retired from the sport of baseball where any claim regarding a potential breach of the *Code of Conduct and Ethics* occurred when the Individual was active in the sport. In addition, this Policy will apply to breaches of the *Code of Conduct and Ethics* that occurred when the Individuals involved interacted due to their mutual involvement in the sport of baseball or, if the breach occurred outside of the sport environment, if the breach has a serious and detrimental impact on the Individual(s).

If an Individual makes a complaint or Reports an incident that occurred at a time during which a different AKBA policy was in force (i.e., Code of Conduct and Ethics, Harassment, Discipline and Complaints Policy), the matter will be governed by the substantive rules in the policy in force at the time that the incident occurred to determine whether an offence or breach of the policy has occurred, unless the panel hearing the matter determines that the principle of *lex mitior* applies to the circumstances of the case; however, for such cases, this *Harassment, Discipline and Complaints Policy* will apply retroactively, prior to its approval date, as it relates to procedural matters.

Applicability of this Policy will be determined by the AKBA Board of Directors by ordinary resolution

at their sole discretion and may be subject to appeal to the York Simcoe Baseball Association [YSBA].

6. If it is considered appropriate or necessary on the basis of the circumstances, immediate discipline or the imposition of an interim suspension or sanction may be applied by AKBA's President after which further discipline or sanctions may be applied according to this Policy. Any infractions occurring within competition will be dealt with by the procedures specific to the competition, if applicable. In such situations, disciplinary sanctions may be for the duration of the competition, training, activity, or Event only.
7. AKBA will adhere to all disclosure and reporting responsibilities required by any government entity, local police force, or child protection agency.

### **Minors**

8. Complaints may be brought for or against an Individual who is a Minor. Minors must have a parent/guardian or other adult serve as their representative during this process. If the Minor's representative is not their parent/guardian, the representative must have written permission to act in such a capacity from the Minor's parent/guardian
9. Any Individual who Reports or brings a complaint involving known or suspected abuse, neglect, or Maltreatment of a Minor on behalf of the Minor must Report this to local child welfare services, the applicable provincial social service ministries or departments, or local police.
10. Communication from the Independent Third Party, Case Manager, Complaint Resolution Officer, or discipline panel, as applicable, must be directed to the Minor's representative, or Parent/Guardian until such a time as a representative is identified.
11. A Minor is not required to attend an oral hearing, if held.

### **Reporting a Complaint**

12. All complaints must be Reported in writing by an Individual (or Individuals) to AKBA's Independent Third Party within fourteen (14) days of the occurrence of the incident. This timeline may be waived at the Independent Third Party's sole discretion if they consider that there were extenuating circumstances that prevented the Individual from Reporting their complaint within fourteen (14) days of the occurrence of the incident.
13. A Complainant who fears retribution or reprisal or who otherwise considers that their identity must remain confidential may Report a complaint to the Independent Third Party and request that their identity be kept confidential. If the Independent Third Party considers that the Complainant's identity must remain confidential, the Independent Third Party may ask that AKBA act as the Complainant as laid out below.
14. If the Independent Third Party considers that it is unnecessary to keep the Complainant's identity confidential, they shall inform the Complainant, who may decide whether or not to pursue the Reported complaint. However, the Independent Third Party may not reveal the identity of the Complainant unless the Complainant expressly informs them of their desire to pursue the complaint and has indicated, in writing, their approval to have their identity divulged.

### **Independent Third Party Responsibilities**

15. Upon receipt of a Reported complaint from an Individual (or Individuals), the Independent Third Party shall: determine
  - a) whether the complaint falls within the jurisdiction of this Policy;
  - b) if it can be accepted pursuant to procedures for reporting a complaint above; and
  - c) whether it is either a frivolous or vexatious complaint, or if it has been made in bad faith.<sup>1</sup>

If the Reported complaint is not accepted by the Independent Third Party for any of the aforementioned reasons, the Independent Third Party shall inform the Complainant and provide the reasons for which the complaint was not accepted. If the Reported complaint is accepted by the Independent Third Party, the Independent Third Party shall proceed to make the determinations indicated below and notify the Parties accordingly that the Reported complaint has been accepted.

16. In cases where the Independent Third Party receives a complaint or Report involving known or suspected abuse, neglect, or Maltreatment of a Minor, they shall Report this to local child welfare services, the applicable provincial or territorial social service ministries or departments, or local police. The Independent Third Party shall not be responsible for fulfilling the aforementioned obligation if the Individual making the complaint or filing the Report confirms in writing that they have already Reported to any such authorities.
17. If a Reported complaint has been accepted by the Independent Third Party, the Independent Third Party shall determine whether the Reported incident has occurred within the business, activities, or Events of AKBA. If the incident has occurred outside of the business, activities, or Events of AKBA, the Independent Third Party will determine which organization's relationships are adversely affected or which organization's image or reputation will be detrimentally affected by the incident, or if the breach has had a serious and detrimental impact on the Individual(s).
18. The Independent Third Party shall direct a Reported complaint to be managed by the Complaint Resolution Officer of AKBA if the Complainant alleges that any of the following incidents have occurred:
  - i. Disrespectful conduct or behaviour
  - ii. Minor acts of physical violence, unless the physical violence is between a Person in Authority and a Vulnerable Individual, in which case the matter will fall under Section 20 below
  - iii. Conduct contrary to the values of AKBA
  - iv. Non-compliance with AKBA's policies, procedures, rules, or regulations
  - v. Minor violations of the *Code of Conduct and Ethics, Social Media Policy, Athlete Protection Policy*, or the Rules of Racing
19. The Independent Third Party shall direct a Reported complaint to be managed by the Case Manager appointed by AKBA if the Complainant alleges that any of the following incidents have occurred:
  - i. Repeated incidents pursuant to Section 18
  - ii. Abusive, racist, or sexist comments, conduct or behaviour
  - iii. Any incident of hazing
  - iv. Behaviour that constitutes abuse, Maltreatment, Harassment, Sexual Harassment, or Sexual Misconduct
  - v. Major incidents of physical violence (e.g., fighting, attacking)
  - vi. Pranks, jokes, or other activities that endanger the safety of others
  - vii. Conduct that intentionally interferes with a competition or with any Athlete's preparation for a competition
  - viii. Conduct that intentionally damages AKBA's image, credibility, or reputation
  - ix. Consistent disregard for AKBA's bylaws, policies, rules, and regulations
  - x. Major or repeated violations of the *Code of Conduct and Ethics, Social Media Policy, Athlete Protection Policy*, or the Rules of Racing
  - xi. Intentionally damaging AKBA's property or improperly handling the organization's monies
  - xii. Abusive use of alcohol or any other intoxicating substance, any use or possession of alcohol or any other intoxicating substance by Minors, or use or possession of illicit drugs and narcotics
  - xiii. A conviction for any *Criminal Code* offence
20. Notwithstanding any provision in this Policy, AKBA may, at its discretion, or upon request by the Independent Third Party, act as the Complainant and initiate the complaint Reporting process under the terms of this Policy. In such cases, AKBA will identify an individual to represent the organization.

## Investigations

21. In exceptional circumstances, and only when the Independent Third Party considers that the conditions indicated in this section have been satisfied, the Independent Third Party may determine that a Reported incident requires further investigation by an independent third-party investigator. The Independent Third Party will direct that an investigation be conducted:
- a) only if the Reported incident falls within Section 19 above,
  - b) in accordance with and by an independent investigator appointed pursuant to the *Investigations Policy – Discrimination, Harassment and Maltreatment*,
  - c) where the Independent Third Party considers that there is a need for an independent assessment to determine whether an allegation or, where there are several allegations, which allegations, should be heard by a discipline panel pursuant to this Policy because they constitute a likely breach of the *Code of Conduct and Ethics*, the *Social Media Policy*, the *Athlete Protection Policy*, or any other relevant and applicable AKBA policy, or whether the allegations frivolous, vexatious or made in bad faith, and
  - d) for the purpose of making non-binding recommendations to the Independent Third Party so that they may discharge their responsibilities pursuant to this Policy.

If the Independent Third Party considers that an independent investigation must be conducted for the reasons mentioned above, the investigation shall be conducted before any disciplinary procedures are commenced pursuant to this Policy; however, when an investigation is conducted and where it is necessary in the circumstances, interim measures may be imposed in accordance with Section 6 above.

Upon receipt of the investigator's report, the Independent Third Party shall determine whether the matter will proceed pursuant procedures for cases handled by Discipline Panel and Case Manager below and shall inform the Parties and AKBA.

If the Independent Third Party does not consider that an independent investigation is necessary and the Reported complaint has been accepted in accordance with the conditions indicated above, the matter shall proceed pursuant to procedures below.

### **Complaint Handled by Complaints Resolution Officer**

22. Following the Independent Third Party's determination that the Reported complaint or incident shall be managed by a Complaint Resolution Officer, AKBA will appoint a Complaint Resolution Officer. The Complaint Resolution Officer appointed to handle a Reported complaint or incident must be unbiased and not in a conflict of interest situation.
23. The Complaint Resolution Officer will ask the Complainant and the Respondent for either written or oral submissions regarding the Reported complaint or incident. Both Parties shall also have the right to submit to the Complaint Resolution Officer any relevant evidence, including, but not limited to witness statements, documentary evidence or evidence from other media (i.e., photos, screenshots, videos, or other recordings).
24. Each party shall have the right to receive the other party's submissions and evidence, including the Complainant's complaint. In the case of oral submissions, each party shall be present when such submissions are made.
25. Following receipt of the Parties' submissions, the Complaint Resolution Officer may convene the Parties to a meeting, either in person or by way of video or teleconference in order to ask the Parties questions and to allow the Parties to ask questions of one another.
26. Following their review of the submissions and evidence related to the Reported complaint or incident, the Complaint Resolution Officer shall determine if any of the incidents listed in Section 20 above have occurred and, if so, if one or more of the following sanctions should be applied:

- a) Verbal or written reprimand
- b) Verbal or written apology
- c) Service or other contribution to AKBA
- d) Removal of certain privileges
- e) Suspension from certain teams, Events, and/or activities
- f) Suspension from certain activities for a designated period
- g) Any other sanction considered appropriate for the offence
- h) Education or training opportunities

If, after hearing the Parties and reviewing their submissions, the Complaint Resolution Officer considers that none of the incidents listed in Section 20 above have occurred, they shall dismiss the Reported complaint.

- 27. The Complaint Resolution Officer will inform the Parties of their decision, in writing and with reasons. Any sanction imposed shall take effect upon the Parties' receipt of the decision. Should the circumstances require a decision to be rendered immediately or within a short timeline, the Complaint Resolution Officer may render a short, written decision, either orally or in writing, followed by a written reasoned decision.
- 28. Any decision rendered by the Complaint Resolution Officer shall be maintained in the records of AKBA. Decisions will be kept confidential by the parties and shall be retained and discarded in accordance with the relevant and applicable privacy legislation.

### **Request for Reconsideration**

- 29. If the Complaint Resolution Officer decides not to impose a sanction on the Respondent, the Complainant may request a reconsideration from the Complaint Resolution Officer by informing them in writing, within seven (7) days of receiving the decision, that they are not satisfied with the decision and explain why.
- 30. If the Complaint Resolution Officer imposes a sanction, the Respondent may request, in writing, a reconsideration from the Complaint Resolution Officer by informing them, within seven (7) days of receiving the decision, that they are not satisfied with the decision. In their request for reconsideration, the Respondent must indicate:
  - a) Why the sanction is inappropriate;
  - b) Any evidence to support the Respondent's position; and
  - c) What penalty or sanction (if any) would be appropriate.
- 31. Upon receiving a request for reconsideration, the Complaint Resolution Officer shall render a decision within seven (7) days explaining whether they have accepted the request for reconsideration and, if so, their new decision.
- 32. The Complaint Resolution Officer's new decision may be appealed in accordance with the *Appeal Policy*; however, no party shall have a right to appeal unless they have exhausted their right to request a reconsideration.

### **Handled by Discipline Panel and Case Manager**

- 33. If the Independent Third Party determines that the Reported complaint or incident should be handled by AKBA pursuant to Section 19 above, AKBA shall appoint a Case Manager to fulfil the responsibilities listed immediately below.
- 34. Following the Independent Third Party's determination that the Reported complaint or incident should be handled by AKBA pursuant to Section 19 above, the appointed Case Manager will have the responsibility to:
  - a) Propose the use of the *Dispute Resolution Policy* (if considered appropriate in the circumstances)

- b) Appoint the discipline panel, if necessary
- c) Coordinate all administrative aspects and set timelines
- d) Provide administrative assistance and logistical support to the discipline panel as required, including providing the discipline panel with any information related to previously established infractions committed by the Respondent(s) of the policies of AKBA or a Member Organization or any other sport organization that had authority over the Respondent (as the Case Manager may be aware).
- e) Provide any other service or support that may be necessary to ensure a fair and timely proceeding

## **Procedures**

- 35. The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
- 36. If appropriate in the circumstances, the Case Manager will propose that the Parties use the *Dispute Resolution Policy* with the objective of resolving the dispute. If applicable, and if the dispute is not resolved, or if the Parties refuse to use the *Dispute Resolution Policy*, the Case Manager will appoint a discipline panel, which shall consist of a single Arbitrator, to hear the Reported complaint. In extraordinary circumstances, and at the discretion of the Case Manager, a discipline panel of three persons may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the discipline panel's members to serve as the Chair.
- 37. The Case Manager, in cooperation with the discipline panel, will then decide the format under which the Reported complaint will be heard. This decision may not be appealed.
- 38. The format of the hearing may be an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the discipline panel deem appropriate in the circumstances, provided that:
  - a) The discipline panel determines procedures and timelines, as well as a hearing duration, that is as expedient and cost-efficient as possible to ensure that costs to the Parties and AKBA are reasonable.
  - b) The Parties will be given appropriate notice of the day, time, and place of the hearing, in the case of an oral in-person hearing or an oral hearing by telephone or other communication medium.
  - c) Copies of any written documents which the Parties wish to have the discipline panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing.
  - d) The Parties may engage a representative, advisor, translator, transcription services, or legal counsel at their own expense.
  - e) The discipline panel may request that any other individual participate and give evidence at the hearing.
  - f) If not a Party, AKBA shall be allowed to attend the hearing as an observer and will be provided with access to any documents submitted. With the permission of the discipline panel, AKBA may make submissions at the hearing or may provide the discipline panel with clarifying information that may be required for the panel to render its decision<sup>2</sup>.
  - g) The discipline panel may allow as evidence at the hearing any oral evidence and document or item relevant to the subject matter of the Reported complaint, but may exclude such evidence that is unduly repetitious, and shall place such weight on the evidence as it deems appropriate.
  - h) Where a discipline panel composed of three members is appointed, the decision will be by a majority vote.
- 39. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the discipline panel will determine the appropriate sanction. The discipline panel may still hold a hearing for the purpose of determining an appropriate sanction.
- 40. The hearing may proceed even if a Party chooses not to participate in the hearing.

41. If a decision may affect another Party to the extent that the other Party would have recourse to a complaint or an appeal in their own right, that Party will become a Party to the complaint and will be bound by the decision.
42. In fulfilling its duties, the discipline panel may obtain independent advice.

### **Decision**

43. After hearing and/or reviewing the matter, the discipline panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. If the discipline panel considers that an infraction has not occurred, the Reported complaint will be dismissed.
44. Within fourteen (14) days of the hearing's conclusion, the discipline panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, to RCA and AKBA (including the Respondent's Member Organization). In extraordinary circumstances, the discipline panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the fourteen (14) day period.
45. Subject to the confidentiality provisions below, the discipline panel's decision will be considered a matter of public record unless decided otherwise by the discipline panel. However, the Parties may request that the discipline panel redact all or part of the decision. This decision shall be at the discipline panel's sole discretion and may not be appealed.
46. If the discipline panel dismisses the Reported complaint, its decision may only be published with the Respondent's consent. If the Respondent does not provide such consent, the decision will be kept confidential by the parties, the Case Manager, RCA, and AKBA (including the Respondent's Member Organization) and shall be retained and discarded in accordance with the relevant and applicable privacy legislation.

### **Sanctions**

47. The discipline panel may apply the following disciplinary sanctions, singularly or in combination:
  - a) Verbal or written reprimand
  - b) Verbal or written apology
  - c) Service or other contribution to AKBA
  - d) Removal of certain privileges
  - e) Suspension from certain teams, Events, and/or activities
  - f) Payment of the cost of repairs for property damage
  - g) Suspension of funding from the organization or from other sources
  - h) Expulsion from AKBA
  - i) Any other sanction considered appropriate for the offence

When the discipline panel imposes a sanction, its order shall include, at a minimum, the following details:

- which Party is responsible for the costs of implementing any sanction,
- which organization is responsible for monitoring that the sanctioned Individual respects the terms of the sanction imposed against them,
- if applicable, any reinstatement conditions that the sanctioned Individual must satisfy, and which organization is responsible for ensuring that the conditions have been satisfied, and
- any other guidance that will assist the Parties to implement the panel's decision.

If necessary, a Party – or the organization that is responsible for implementing or monitoring a sanction

– may seek clarifications from the panel regarding the order so that it can be implemented or monitored appropriately.

48. The following sanctions are presumed to be fair and appropriate for the Maltreatment listed below, although the Respondent may rebut these presumptions:
- a) sexual Maltreatment involving a Minor shall carry a presumptive sanction of a lifetime suspension,
  - b) sexual Maltreatment, Physical Maltreatment with contact and Maltreatment related to Process shall carry a presumptive sanction of either a suspension or eligibility restrictions,
  - c) while a Respondent has pending charges or dispositions in violation of criminal law, the presumptive sanction shall be a period of suspension.
49. When determining an appropriate sanction in cases of Maltreatment, the discipline panel may consider the following factors:
- a) The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance,
  - b) The Respondent's prior history and any pattern of inappropriate behaviour or Maltreatment,
  - c) The ages of the individuals involved,
  - d) Whether the Respondent poses an ongoing and/or potential threat to the safety of others,
  - e) The Respondent's voluntary admission of the offence(s), acceptance of responsibility for the Maltreatment and/or cooperation in the investigation and disciplinary process, f) Real or perceived impact of the incident on the Complainant, or AKBA or the rowing community,
  - g) Circumstances specific to the Respondent being sanctioned (i.e., lack of appropriate knowledge or training regarding the requirements in AKBA's policies, addiction, illness, disability),
  - h) Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate,
  - i) A Respondent who is in a position of trust, intimate contact or high-impact decision making may face more serious sanctions,
  - j) Other mitigating or aggravating circumstances.

Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions.

50. When imposing sanctions under this Policy, the discipline panel may consider any previously established infractions committed by the Respondent(s) of the disciplinary policies of RCA, AKBA or a Member Organization or any other sport organization that had authority over the Respondent.
51. Unless the discipline panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the disciplinary panel will result in an automatic suspension from participation in the activities of RCA, AKBA and all Member Organizations until such time as compliance occurs.
52. Records of all decisions will be maintained by RCA and AKBA. AKBA will submit all records to RCA. Such records shall be retained and discarded in accordance with the relevant and applicable privacy legislation.

## **Appeals**

53. The decision of the discipline panel may be appealed in accordance with the *Appeal Policy*.



## **Suspension Pending a Hearing**

54. AKBA may determine that an alleged incident is of such seriousness as to warrant suspension of an Individual pending completion of an investigation, criminal process, the hearing, or a decision of the discipline panel.

## **Criminal Convictions**

55. An Individual's conviction for a *Criminal Code* offence will be deemed an infraction under this Policy and may, if justified by the seriousness of the criminal conviction, result in a suspension from the sport of rowing at all levels in Canada.

## **Confidentiality**

56. The discipline and complaints process is confidential and involves only the AKBA Board, the Parties, the Case Manager, the Complaint Resolution Officer, the discipline panel, and any independent advisors to the discipline panel. Once initiated and until a decision is rendered, none of the Parties will disclose confidential information relating to the discipline or Reported complaint to any person not involved in the proceedings.

57. Any failure to respect the aforementioned confidentiality requirement may result in further sanctions or discipline by the Complaint Resolution Officer or discipline panel (as applicable) against the Party(ies) in breach.

## **Timelines**

58. If the circumstances of the Reported complaint are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the complaint, the discipline panel may direct that these timelines be revised.

## **Records and Distribution of Decisions**

59. Other individuals or organizations, including but not limited to, Baseball Ontario, York Simcoe Baseball Association, local sport organizations, etc., may be advised by AKBA of any decisions rendered in accordance with this Policy.

## **Privacy**

60. The collection, use and disclosure of any personal information pursuant to this Policy is subject to AKBA's Privacy Policy.

61. The Independent Third Party, AKBA, or any of its delegates pursuant to this Policy (i.e., Complaints Resolution Officer, Case Manager, discipline panel), shall comply with AKBA's Privacy Policy in the performance of their services under this Policy.

<sup>1</sup>The Sport Dispute Resolution Centre of Canada's Investigation Guidelines suggests that a Reported complaint shall not be characterized as vexatious if the evidence demonstrates that there was a reasonable basis for filing and pursuing it. For a complaint to be considered to have been made in bad faith, the Independent Third Party must consider that it was filed consciously for a dishonest purpose or due to the moral underhandedness of the Complainant and that there was an intention to mislead.

<sup>2</sup>The purpose of this provision is not to provide AKBA with the possibility to try to influence whether a sanction is imposed and, if so, the duration or nature of the sanction. Instead, this provision is intended to provide AKBA with the possibility to provide the discipline panel with clarifying information when the parties have sought a particular sanction against an Individual, but they have misunderstood or misrepresented fundamental elements of the programming or membership structure (or other similar issues) and, if left unaddressed, could result in the discipline panel imposing a sanction that is unenforceable.