

Tri-City Youth Basketball Association Harassment Policy and Procedures

Policy Statement

Tri-City Youth Basketball Association (TCYBA), through its Board of Directors, is committed to providing a sport and work environment in which all individuals are treated with respect and dignity. Each individual has the right to participate and work in an environment which promotes equal opportunities and prohibits discriminatory practices.

- Harassment is a form of discrimination. Harassment is prohibited by the Canadian Charter of Rights and Freedoms and by human rights legislation in every province and territory of Canada.
- Harassment is offensive, degrading, and threatening. In its most extreme forms, harassment can be an offence under Canada's Criminal Code.
- Whether the harasser is a director, supervisor, employee, coach, official, volunteer, parent or athlete, harassment is an attempt by one person to assert abusive, unwarranted power over another.
- Tri-City Youth Basketball Association is committed to providing a workplace and, in the case of TCYBA-sanctioned basketball programs or services, a sport place that is free of harassment on the basis of sex, race, ethnic origin, class, age, family status, sexual orientation, religion, or disability.

1. This policy applies to all employees/ volunteers as well as members of Tri-City Youth Basketball Association. TCYBA encourages the reporting of all incidents of harassment, regardless of who the offender may be.

2. This policy applies to harassment which may occur in the TCYBA workplace, in any work-related activity, in any of the employment or recruitment practices of Tri-City Youth Basketball Association or in any TCYBA-sanctioned basketball programs or services.

3. Notwithstanding this policy, every person who experiences harassment continues to have the right to seek assistance from their provincial or territorial human rights commission, even when steps are being taken under this policy.

Definitions

1. Harassment takes many forms but can generally be defined as comment, conduct, or gestures directed toward an individual or group of individuals, which is insulting, intimidating, humiliating, malicious, degrading or offensive.

2. For the purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature when:

- submitting to or rejecting this conduct is used as the basis for making decisions which affect the individual;
- such conduct has the purpose or effect of interfering with an individual's performance; or
- such conduct creates an intimidating, hostile or offensive environment.

3. Types of behaviour which constitute harassment include but are not limited to:

- written or verbal abuse or threats;
- the display of visual material which is offensive or which one ought to know is offensive;
- unwelcome remarks, jokes, comments, innuendo, or taunting about a person's looks, body, attire, age, race, religion, sex, or sexual orientation;
- leering or other suggestive or obscene gestures;
- condescending, paternalistic, or patronizing behaviour which undermines self-esteem, diminishes performance, or adversely affects working conditions;
- practical jokes which cause awkwardness or embarrassment, endanger a person's safety, or negatively affect performance;
- unwanted physical conduct including touching, petting, pinching or kissing;
- unwelcome sexual flirtations, advances, requests, or invitations; or
- physical or sexual assault.

4. Sexual harassment most commonly occurs in the form of behaviour by males towards females; however, sexual harassment can also occur between males, between females, or as behaviour by females towards males.

5. For the purposes of this policy, retaliation against an individual

- for having filed a complaint under this policy;
- for having participated in any procedure under this policy; or
- for having been associated with a person who filed a complaint or participated in any procedure under this policy will be treated as harassment, and will not be tolerated.

Responsibility

1. Tri-City Youth Basketball Association, through the Board of Directors, is responsible for the implementation of this policy. In addition, the above will be responsible for:

- discouraging and preventing harassment within any TCYBA-sanctioned basketball programs and services;
- investigating formal complaints of harassment in a sensitive, responsible and timely manner;
- imposing appropriate disciplinary or corrective measures when a complaint of harassment has been substantiated, regardless of the position or authority of the offender;
- providing advice to persons who experience harassment;
- supporting and assisting any employee or member of TCYBA who experience harassment by someone who is not an employee or member of Tri-City Youth Basketball Association;

- making all members and employees of Tri-City Youth Basketball Association aware of the problem of harassment, and in particular sexual harassment, and of the procedures contained in this policy;
- informing both complainants and respondents of the procedures contained in this policy and their rights under the law;
- annually reviewing the terms of this policy to ensure that they adequately meet the organization's legal obligations and public policy objectives;
- appointing harassment officers and providing the training and resources they need to fulfil their responsibilities under this policy; and
- appointing unbiased case review panels and appeal bodies and providing the resources and support they need to fulfil their responsibilities under this policy.

2. Every member of TCYBA has a responsibility to play a part in ensuring that the basketball environment is free from harassment. This means not engaging in, allowing, condoning, or ignoring behaviour contrary to this policy. In addition, any member of Tri-City Youth Basketball Association who believes that another member has experienced or is experiencing harassment is encouraged to notify a harassment officer appointed under this policy.

3. In the event that an TCYBA Board Member or employee is a party to a complaint which is made under this policy, he/she/they shall be excluded from the procedures in this policy, except as necessary for his/her/their participation as a party to a complaint. For greater certainty, such TCYBA Board Member or employee, who is a party to the complaint made under this policy shall not serve as a Harassment Officer to the complaint, sit as a member of the case review panel or appeal body to the complaint, or participate in or be privy to any Executive Committee or Board of Directors discussion or decisions concerning the complaint.

Coach / Athlete Sexual Relations

1. TCYBA believes that all coaches are in a position of trust and authority to their team members. TCYBA, therefore, takes the position that any sexual relations between a coach who is at least 18 years of age and a team member who is less than 18 years of age is prohibited, and may constitute an offence under the Criminal Code.

2. Tri-City Youth Basketball Association takes the view that intimate sexual relations between coaches and athletes at the age of 18 can have harmful effects on the individual athlete involved, on other athletes and coaches and on Tri-City Youth Basketball Association's public image. Tri-City Youth Basketball Association therefore takes the position that such relationships are unacceptable for coaches coaching in any TCYBA-sanctioned basketball programs or services.

3. Should Tri-City Youth Basketball Association become aware of a sexual relationship that has developed between an athlete and a coach, TCYBA will investigate and take appropriate action.

Disciplinary Action

Employees or members of Tri-City Youth Basketball Association against whom a complaint of harassment is substantiated may be severely disciplined, up to and including employment dismissal or termination of membership in cases where the harassment takes the form of assault, sexual assault, or a related sexual offence.

Confidentiality

1. Tri-City Youth Basketball Association understands that it can be extremely difficult to come forward with a complaint of harassment and that it can be devastating to be wrongly accused or convicted of harassment. TCYBA recognizes the interests of both the complainant and the respondent in keeping the matter confidential.
2. TCYBA shall not disclose to outside parties the name of the complainant, the circumstances giving rise to the complaint, or the name of the respondent unless such disclosure is required by a disciplinary or other remedial process.

Harassment Officers

1. TCYBA shall appoint at least two persons, one male and one female, who are themselves members or employees of TCYBA, to serve as officers under this policy. If more than two officers are appointed, TCYBA shall ensure a gender balance.
2. The role of the harassment officers is to serve in a neutral, unbiased capacity and to receive complaints, assist in informal resolution of complaints and investigate formal written complaints. In carrying out their duties under this policy, officers shall be directly responsible to Tri-City Youth Basketball Association's Board of Directors.
3. Tri-City Youth Basketball Association shall ensure that officers receive appropriate training and support for carrying out their responsibilities under this policy.

Complaint Procedures

1. A person who experiences harassment is encouraged to make it known to the harasser that the behaviour is unwelcome, offensive, and contrary to this policy.
2. If confronting the harasser is not possible, or if after confronting the harasser the harassment continues, the complainant should seek the advice of a harassment officer.
3. The harassment officer shall inform the complainant of:
 - the options for pursuing an informal resolution of his or her complaint;
 - the right to lay a formal written complaint under this policy when an informal resolution is inappropriate or not feasible;
 - the availability of counselling and other support provided by Tri-City Youth Basketball Association;
 - the confidentiality provisions of this policy;

- the right to be represented by a person of choice (including legal counsel) at any stage in the complaint process;
- the external mediation/arbitration mechanisms that may be available;
- the right to withdraw from any further action in connection with the complaint at any stage (even through TCYBA might continue to investigate the complaint); and
- other avenues of resource, 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.

4. There are four possible outcomes to this initial meeting of complainant and harassment officer.

(a) The complainant and harassment officer agree that the conduct does not constitute harassment.

If this occurs, the harassment officer will take no further action and will make a written record.

(b) The complainant brings evidence of harassment and chooses to pursue an informal resolution of the complaint.

If informal resolution yields a result which is acceptable to both parties, the harassment officer will make a written record that a complaint was made and was resolved informally to the satisfaction of both parties and will take no further action.

If the informal resolution fails to satisfy the complainant, the complainant will reserve the option of laying a formal written complaint.

(c) The complainant brings evidence of harassment and decides to lay a formal written complaint.

If this occurs, the harassment officers will assist the complainant in drafting a formal written complaint, to be signed by the complainant, and a copy given to the respondent without delay. The written complaint should set out the details of the incident(s), the names of any witnesses to the incident(s) and should be dated and signed.

The respondent will be given an opportunity to provide a written response to the complaint. The harassment officer may assist the respondent in preparing the response.

(d) The complainant brings evidence of harassment but does not wish to lay a formal complaint.

If this occurs, the harassment officer must decide if the alleged harassment is serious enough to warrant laying a formal written complaint, even if it is against the wishes of the complainant.

When the harassment officer decides that the evidence and surrounding circumstances require a formal written complaint, the harassment officer will issue a formal written complaint and, without delay, provide copies of the complaint to both the complainant and the respondent.

5. As soon as possible after receiving the written complaint, but within 21 days, the harassment officer shall submit a report to Tri-City Youth Basketball Association's Executive Committee containing the documentation filed by both parties along with a recommendation that:

- no further action be taken because the complaint is unfounded or the conduct cannot reasonably be said to fall within this policy's definition of harassment; or
- the complaint should be referred to a case panel.

A copy of this report shall be provided, without delay, to both the complainant and the respondent.

6. The Board Executive shall review the report of the harassment officer and shall, upon the recommendation of the harassment officer in his or her report, appoint a Executive Committee case review panel. Where the report of the harassment officer does not recommend that the complaint be referred to a case review panel, the Executive Committee may, in its sole discretion, appoint a case review panel to consider the complaint and the decision of the Executive Committee shall be final and binding on the parties to the complaint. In this case, the decision of the Executive Committee will be communicated to the parties to the complaint within 7 days of the decision.

7. Within 21 calendar days of its appointment, the case review panel shall convene a hearing. The hearing shall be governed by such procedures as the panel may decide, provided that:

- the complainant and respondent shall be given 14 calendar days notice, in writing, of the day, time and place of the hearing;
- a quorum shall be all three panel members;
- decisions shall be by majority vote. If a majority vote decision is not possible, the decision of the chairperson will be the decision of the panel;
- the hearing shall be held in camera;
- both parties shall be present at the hearing to give evidence and to answer questions of the other party and of the panel. If the complainant does not appear, the matter will be dismissed (unless the complainant decided not to lay a formal complaint, but the evidence and surrounding circumstances were such as to require a formal written complaint). If the respondent does not appear, the hearing will proceed;
- the complainant and respondent may be accompanied by a representative or advisor; and
- the harassment officer may attend the hearing at the request of the panel.

8. Within 14 calendar days of the hearing, the case review panel shall present its findings in a report to Tri-City Youth Basketball Association's Board of Directors which shall contain:

- a summary of the relevant facts;
- a determination as to whether the acts complained of constitute harassment as defined in this policy;
- recommended disciplinary action against the respondent, if the acts constitute harassment; and
- recommended measures to remedy or mitigate the harm or loss suffered by the complainant, if the acts constitute harassment.

9. If the panel determines that the allegations of harassment are false, vexatious, retaliatory, or unfounded, their report shall recommend disciplinary action against the complainant.

10. A copy of the report of the case review panel shall be provided, without delay, to both the complainant and the respondent.

11. When determining appropriate disciplinary action and corrective measures, the case review panel shall consider factors such as:

- the nature of the harassment;
- whether the harassment involved any physical contact;
- whether the harassment was an isolated incident or part of an ongoing pattern;
- the nature of the relationship between complainant and harasser;
- the age of the complainant;
- whether the harasser had been involved in previous harassment incidents;
- whether the harasser admitted responsibility and expressed a willingness to change; and
- whether the harasser retaliated against the complainant.

12. In recommending disciplinary sanctions, the panel may consider the following option, singly or in combination, depending on the severity of the harassment:

- a verbal apology;
- a written apology;
- a letter of reprimand from Tri-City Youth Basketball Association;
- a fine or levy;
- referral to counselling;
- removal of certain privileges of membership or employment;
- demotion or a pay cut;
- temporary suspension with or without pay;
- termination of employment or contract; or
- expulsion from membership.

13. Where the investigation does not result in a finding of harassment, a copy of the report of the case review panel shall be placed in the harassment officers' files. These files shall be kept confidential and access to them shall be restricted by Tri-City Youth Basketball Association's Board of Directors to any person the members of the Board of Directors deem appropriate and necessary.

14. Where the investigation results in a finding of harassment, a copy of the report of the case review panel shall be placed in the personnel or membership file of the respondent. Unless the findings of the panel are overturned upon appeal, this report shall be retained for a minimum of seven (7) years.

Procedure Where a Person Believes a Colleague has Been Harassed

Where a person believes that a colleague has experienced or is experiencing harassment and reports this belief to a harassment officer, the officer shall meet with the person who is said to have experienced harassment and shall then proceed in accordance with Tri-City Youth Basketball Association's Harassment Policy.

Appeals

1. Both the complainant and the respondent shall have the right to appeal the decision and recommendations of the case review panel. A Notice of Appeal, stating the grounds from the appeal, must be provided to the Board of Directors within fourteen (14) calendar days of the complainant or respondent receiving the panel's report.

2. Permissible grounds for an appeal are:

- the panel did not follow the procedures laid out in this policy;
- members of the panel were influenced by bias; or
- the panel reached a decision which was grossly unfair or unreasonable.

3. In the event that a Notice of Appeal is filed, TCYBA's Board of Directors, excluding the members of the case review panel, shall, in application of its Conflict Resolution Policy, appoint a minimum of three (3) members to constitute the appeal body. This appeal body shall consist of at least one female and one male member. These individuals must have no significant personal or professional involvement with either the complainant or respondent, and no prior involvement in the dispute between them.

4. The appeal body shall base its decision solely on a review of the documentation surrounding the complaint, including the complainant's and respondent's statements, the reports of the harassment officer and the case review panel, and the Notice of Appeal.

5. Within ten (10) calendar days of its appointment, the appeal body shall present its findings to TCYBA's Board of Directors. The appeal body shall have the authority to uphold the decision of the panel, to reverse the decision of the panel, and/or to modify any of the panel's recommendations for disciplinary action or remedial measures.

6. A copy of the appeal body's report shall be provided, without delay, to the complainant and respondent.

7. The decision of the appeal body shall be final and binding on the parties to the complaint.

Approval and Review

Approved by the TCYBA Board of Directors November 2020.