Safe Sport

Key Legal Issues on “Safe Sport” in Canada: Latest Developments on Policy and the Law

Date: March 6, 2024

Executive Summary

Creating and protecting a respectful sport culture is an important priority for governments and public policy-makers in Canada and, increasingly, it is an important legal issue for employers and organizations in the sector as well.

A review of any number of recent news articles makes this point clear. This year, the federal government is planning to initiate a three-person, 18-month commission to investigate systemic abuse and human rights violations in Canadian sport. The commission will produce a preliminary and final report with recommendations on sport governance, as well as government funding and policies to address maltreatment in sport.

Within that context, it is important for organizations to understand the new and emerging playing field and ground rules relating to safe sport in Canada.

UCCMS

The Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) is a key document that prescribes harmonized rules to advance a respectful sport culture. The UCCMS is part of the government of Canada’s “abuse-free sport” initiative and is administered by the Office of the Sport Integrity Commissioner.

The purpose of the UCCMS is to prevent and address maltreatment in sport including psychological, physical and sexual harm, neglect, grooming and discrimination. The most recent version of the UCCMS has been in effect since November 30, 2022.

Sport Canada—a branch of the Federal Department of Canadian Heritage which oversees the development of federal sport policy in Canada—has made the inclusion of the UCCMS into organizational policies and procedures of federally funded sport organizations a condition of funding. These organizations include, but are not limited to, National Sport Organizations, the Canadian Collegiate Athletic Association and U SPORTS.

Scope of Application

The UCCMS applies to a variety of individuals who may be subject to and protected by it. This means participants, as determined by the adopting organization, may include athletes, coaches, officials, volunteers, administrators, directors, employees, trainers and parents/guardians, among others. Participants in positions of trust or authority are responsible for knowing what constitutes a “prohibited behaviour” as defined under the UCCMS.

The UCCMS applies if prohibited behaviour occurs within the adopting organization’s environment and/or when the participant subject to the complaint was engaging in an adopting organization’s activities. However, its application is not limited to physical location. The UCCMS may also apply where involved participants interacted or were known to each other due to their involvement in an adopting organization’s activities and/or outside the adopting organization’s environment, and the prohibited behaviour had a serious/detrimental impact on another person, could undermine the integrity of sport, or bring

the Canadian sport system into disrepute.

Overview of Prohibited Behaviours and Maltreatment

The UCCMS prohibits acts of the following:

- **Boundary Transgressions**: Interactions or communications that breach objectively reasonable boundaries of an individual and are inconsistent with an individual's duties/responsibilities.
- **Discrimination**: Differential practices that have an inappropriate impact on an individual or a class of individuals based on one or more prohibited grounds including race, national or ethnic origin, colour, Indigeneity, religion, age, sex, sexual orientation, gender identity or expression, pregnancy, marital status, family status, language, genetic characteristics or disability, and analogous grounds.

In addition, the UCCMS prohibits the following forms of maltreatment:

- psychological maltreatment
- physical maltreatment
- neglect
- sexual maltreatment
- grooming

The categories of maltreatment, as defined in the UCCMS, are not mutually exclusive and respondents may experience multiple types of prohibited conduct. Note that prohibited behaviours and forms of maltreatment are not limited to the examples provided in the UCCMS.

Reporting Requirements

All adult participants who know or ought to have known of a participant's prohibited behaviour toward another person are required to report the conduct to the independent authority designated by the adopting organization to receive such reports. This reporting obligation is ongoing. The person making the report is not required to determine whether a violation took place.

The UCCMS's reporting requirements contain some exceptions. For example, participants personally subject to prohibited behaviour are not obligated to report the instance. Additionally, where information regarding prohibited behaviour toward another adult is made known to an adult participant through an explicitly confidential disclosure, the adult participant is not required to report that information. However, if an adult participant knew or ought to have known of that prohibited behaviour for reasons other than the explicitly confidential disclosure, the failure to report remains a violation.

It is also a violation of the UCCMS for adult participants to fail to fulfill any applicable legal duty to report (in accordance with applicable provincial and territorial legislation), and to intentionally report a false allegation.

Key Considerations

As organizations continue to understand the emerging playing field and ground rules relating to safe sport, ensuring compliance while simultaneously promoting and fostering a safe sport environment for all athletes is of upmost importance. Among other things, when drafting or revising policies/procedures in light of the language of the UCCMS, adopting organizations may consider the following:

- **Consistent Interpretation and Application**: Organizations have obligations in relation to the UCCMS including the requirement to ensure all of policies and procedures are interpreted and applied in a manner consistent with the UCCMS.

- **Scope of Participants**: The UCCMS applies to all participants as determined by an adopting organization. This may include, without limitation, athletes, coaches, officials, volunteers, administrators, directors, employees, trainers, parents/guardians, etc., according to the policies of the adopting organization.
- **Investigation and Discipline**: Participants alleged to be in violation of the UCCMS are subject to applicable investigation and disciplinary review processes as outlined in the adopting organization's policies.
- **Temporary or Provisional Measures**: Prior to the final resolution of an alleged violation of the UCCMS, temporary or provisional measures may be imposed in accordance with the adopting organization's policies. The UCCMS has described factors to be considered in evaluating such measures.

The UCCMS also anticipates the creation of a searchable database or registry of respondents whose eligibility to participate in sport has in some way been restricted. Adopting organizations are responsible to collaborate with one or more organizations maintaining such a registry.

Conclusion

Creating and protecting a respectful sport culture is as important now as ever, especially in light of the federal government's commitment to examining systemic abuse in sports starting in 2024.

As sports organizations continue to move forward in shifting focus to preventing maltreatment and other prohibited behaviours in sport, ensuring an understanding and alignment with the UCCMS is an important and practical first step.

For organizations looking for assistance with UCCMS alignment, policy drafting, or regarding any questions, please contact Brittany Bates at 416.864.7508, Frank Cesario at 416.864.7355 or Kayley C. Leon at 416.864.7028.