

Hockey Canada



Discrimination Complaint Hearings

Reference Guide

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HEARING COMMITTEE SAFEGUARDS

The Hearing Committee must safeguard the rights of all parties to ensure Maltreatment Rule 11 is respected, specifically related to **discrimination**.

In addition, safeguarding includes:

- **Right to be heard** (opportunity for parties to present their case).
- **Right to representation** (any person interviewed during the investigation has the right to be accompanied by a representative, including legal counsel if desired).
- **Right to call evidence** (Complainant and Respondent have the right to provide names of witnesses or produce evidence).
- **Reasonable notice** (ensure a reasonable window for all parties to prepare to enable them the right to be heard adequately).

HEARING COMMITTEE BEST PRACTICES & PROTOCOLS

Differentiation of the Investigative Versus Hearing Committee Processes

- The **investigative process** is intended to focus on gathering information and objective facts, and seeking clarity and understanding of an alleged situation or violation that occurred at a specific time and place. The details that unfold during this process formulate the final investigative report for the Hearing Committee.
- The **hearing process** is intended to ensure equal and fair opportunity for both parties to convey accuracy in the details and facts and for the Hearing Committee to objectively assess and evaluate the circumstances of the alleged incident and render an unbiased decision. The Hearing Committee has full authority to render a decision in response to the complaint.

Composition of a Hearing Committee – Best Practices

Who should have a seat at the table when a Hearing Committee is called to action?

- Individuals independent of the situation that is the subject of the complaint.
- Individuals who are confident and capable of rendering a decision independent of any consideration to the league or the individuals involved in the complaint.
- Individuals who are unbiased in their approach, opinions, point-of-view and deliberations.
- Individuals who are respectful, professional and credible.
- A maximum of three committee members (including a Chairperson with a vote) to ensure focused conversations is recommended.
- It is recommended to select alternate committee members (4-5) to ensure availability at all times of a committee of three, including a Chairperson to represent the parties in the hearing process.
- Consideration should be given to having a diverse panel reflective of the community.

The Goal of the Hearing Process

The goal of the hearing process is to resolve disputes between parties in a way that:

- Is accessible, timely, inexpensive, informal and flexible.
- Is procedurally fair.
- Applies human rights law and principles.
- Is proportional to the circumstances of each complaint.
- Is supportive of the parties involved in the hearing process.

These considerations should guide the actions and decisions of all people involved in the hearing process.

Parties to the Hearing

The parties to a hearing include:

- The Complainant who filed the claim of discrimination.
- The Respondent(s), i.e., all the person(s) who are alleged to be responsible for the discrimination that is alleged to have taken place.
- The Investigator, in the event that the Hearing Committee has questions regarding their report.
- The Member-appointed Hearing Committee.
- The Chairperson (the individual on the Hearing Committee who guides the hearing).
- Parties are entitled to be represented by a lawyer or to represent themselves.
- Parents/guardians for any minors attending the hearing.

Responsibilities of a Hearing Committee

- Respect confidentiality.
- Lead by example with openness, objectivity and transparency in hearing interactions.
- Demonstrate responsiveness and timeliness in communications leading into the hearing.
- Ensure no delays in scheduling a hearing after the investigation has been completed.
- Stellar preparedness to ensure full appreciation of information, evidence and circumstances.
- Maintain an unbiased presence in dialogue, actions and behaviours.
- Demonstrate strong, active-listening, probing and questioning skills.
- Deliver a timely decision with context that is respectful of the circumstances and all parties.
- Provide fulsome written reasons explaining the rationale behind the Hearing Committee's decision.
- Chairperson role
 - Responsible for keeping the hearing in good order.
 - Conducting the hearing in an orderly manner, free of insulting behaviour or language.

Hearing Room Positioning

- If held in person, a hearing will be held in a room with tables set up in a “U” shape.
- The Hearing Committee usually sits at the head of the table, with the Complainant on one side and the Respondent on the other side.
- Virtual or telephone hearings should also be considered if it is in the interests of safety and expediency to proceed in that manner.

General tips for virtual hearings

- Confirm the platform that will be used for video conferencing (i.e. Zoom, Teams, etc.).
- Provide directions to the hearing participants with instructions on how to log into the video conference platform and offer test runs ahead of time to ensure everyone is comfortable with the technology. Include tips for technological requirements and expectations for the hearing process.
- Should there be any technical issues or issues with the video conferencing, an adjournment should be provided.
- Participants should have access to a computer with video camera capability and a strong internet connection with sufficient internet speed and stability to support the video conferencing platform.
- Direct participants to keep their microphones on mute and wait for direction from the Hearing Committee to unmute their microphones to begin speaking.
- All documents/evidence should be provided in electronic format to have on hand and to share during the hearing.

Setting the Stage for a Hearing Committee

- All parties are to be notified of the date, time, location and expectations of the hearing, along with where to send communications of any special requests or accommodations required.
- The Chairperson shall arrange the hearing notification containing the date, time, and place of the hearing to be communicated to the Complainant, Respondent, and all relevant persons.
- Clarify and confirm in advance who the parties are that may be present at the hearing, no gallery or observers.
- The Hearing Committee reserves the right to set time limits to ensure parity in hearing time.
- Full disclosure in advance of a hearing is required to allow both parties a reasonable amount of time to prepare.
- The Chairperson can declare ‘new information to be out of order’ unless accepted by the parties or unless the Hearing Committee deems it to be relevant to the issues, and there is a good explanation as to why it was not submitted earlier.

Hearing Process

The key to a fair hearing is a professional and properly run hearing. The Chairperson is tasked with ensuring the hearing is conducted equitably. The following are guidelines for the Chairperson to steer the issues presented in the hearing that need to be considered.

Introductions

The Chairperson will ask the parties to introduce themselves. Introductions are made for all participants unknown to each other.

Preliminary matters

The Chairperson will deal with any preliminary or procedural matters the parties raise. They will also state the purpose of the hearing. If the hearing is being recorded, all participants should be informed.

Explanation of the hearing procedure (setting the rules before the hearing begins)

- Disorderly conduct is not permitted.
- Direction on the order of statements and evidence being presented.
- A party is not to be interrupted while making their submissions.
- The Hearing Committee will have the opportunity to ask clarifying questions to all parties present.
- Once the procedure has been explained and before the next steps are taken, ask if everyone understands the procedure.

Summary of findings

The Chairperson reads the summary of findings from the investigation report, which should be prepared by the investigator. Care should be taken so as to not reveal any confidential information unless absolutely necessary to allow the Respondent a right to respond to the allegations against them.

The summary of findings should be distributed to the Complainant and Respondent well in advance of the hearing, and the parties should be prepared with any documents or evidence they may want to show the Hearing Committee to challenge the findings of the summary report.

Statements and hearing questioning

The Hearing Committee has an opportunity to ask any questions it may have of the investigator regarding the full report or the summary. The goal should be identifying anything it needs to know to determine whether discrimination occurred.

The Complainant is then given the opportunity to make arguments on why they believe the investigator's findings are correct or incorrect. Respondents are given the same opportunity to make such submissions.

The Complainant is then given a final brief right of reply to address only the new issues raised by the Respondent in their submissions.

The Hearing Committee may ask any questions that it has of the Complainant or the Respondent at any time it sees fit. It also has the right to recall the investigator to clarify anything that needs clarifying after the submissions of the two parties.

Effective questioning by the Hearing Committee

- Keep the hearing dynamics and questions professional.
- Avoid hostility or asking a question in an aggressive manner, or improper tone or inflection.
- Remain objective, ensure the hearing stays on track and relevant materials are kept in focus and discussed.
- The majority of the questions should be open-ended, for instance, 'Could you explain...' or 'Tell us more about...' rather than asking for a simple 'yes or no' response.
- Listen actively and carefully as responses may lead to a Hearing Committee member offering a follow-up question to explore a response in more detail.

When in deliberation

- Concluding all statements and questioning, the Hearing Committee adjourns the hearing.
- Immediately following the hearing, all parties will depart and the Hearing Committee will remain in private to enter deliberations that will lead to its final decision.
- After rendering its decision (using the Decision-Making Criteria outlined below), the Hearing Committee shall provide written reasons for its decisions and how it arrived at it.

Decision-Making Criteria

- The standard of proof required of the case is based on the balance of probabilities, taking into consideration the investigation report and the submissions made on the report by the parties. Does the Hearing Committee believe it is more likely than not that an incident of discrimination occurred?
- In reviewing the evidence, is there a connection between the allegation that is the subject of the complaint to a protected characteristic under the *Human Rights Act*? The following questions can help determine if discrimination has been proven:
 - Does the Complainant have a personal characteristic that is listed as a prohibited ground of discrimination under the *Human Rights Act*?
 - Was the Complainant treated differently from others?
 - Did this treatment have a negative impact on the Complainant (or put them at a disadvantage compared to others)?
 - Is there evidence to show a link between the negative treatment or the negative impact that was experienced because of the personal characteristic?

REMEDIES

Remedies and final decisions on actions that should be taken following the conclusion of the hearing will be left with the appointed Hearing Committee.

Remedies Under the Human Rights Act

All organizations are responsible for dealing effectively, quickly, and fairly with situations involving claims of discrimination. At a minimum, an organization must respond to internal discrimination complaints by:

- Having a complaint mechanism in place.
- Having an organizational awareness of what constitutes discrimination.
- Taking the matter seriously once an internal complaint is received.
- Acting promptly (including investigating the internal complaint).
- Providing the Complainant and the Respondent with a healthy environment.
- Communicating to the Complainant its actions in response to the complaint.

Based on the findings of the investigation and human rights law and policy, a decision must be made about whether the complaint is well-founded. If the complaint is well-founded, the organization must take steps to address the human rights violations and prevent future occurrences.

How are Remedies Determined?

The specific factors of each complaint will be considered when determining a remedy including:

- The severity of the discrimination.
- The frequency and intensity of the discrimination.
- The vulnerability of the Complainant.
- The Respondent's prior history and any pattern of discrimination.
- Whether the Respondent poses an ongoing and/or potential threat to others.
- The impact on the Complainant.

During the complaint process, Complainants are welcome to find a resolution with the Respondent that is agreeable to both parties. However, they are under no obligation whatsoever to do so, and can insist that a complaint proceed through an investigation and a hearing if they prefer.

Remedies/Sanctions Imposed

Hockey Canada recognizes the negative impact of discrimination on personal dignity, individual and group development and performance, enjoyment of the game and, in some cases, personal safety.

Any sanction imposed against a participant must be proportionate and reasonable, relative to the discrimination that has occurred, considering previous disciplinary actions. However, progressive discipline is not required as a single occurrence of a prohibited activity and can lead to a very significant sanction.

If the act of discrimination is proven, one or more of the following sanctions can be imposed:

- **Verbal or written warning** – A verbal reprimand or an official, written notice that a participant has violated or engaged in discrimination and that more severe sanctions will result should the participant be involved in other violations.
- **Education** – The requirement that a participant undertake specified educational or similar remedial measures to address the violation.
- **Probation** – A period can be set wherein, the participant is found to have engaged in any prohibited behaviour, will be subject to loss of privileges or other conditions, restrictions or requirements for a specific period of time.
- **Suspension** – Suspension, either for a set time or until further notice, from participation, in any capacity, in any Hockey Canada Member-sanctioned activity. Reinstatement may also be made subject to certain restrictions or contingent upon the participant satisfying specific conditions noted at the time of suspension.
- **Eligibility restrictions** – Restrictions or prohibitions from some types of participation, but allowing participation in other capacities under strict conditions.
- **Permanent ineligibility** – Permanent ineligibility to participate in any Hockey Canada-sanctioned programming.
- **Other discretionary sanctions** – Other sanctions for discrimination may be imposed, including, but not limited to, other loss of privileges, non-contact directives, a fine or other restrictions or conditions as deemed necessary or appropriate.

FOLLOW UP TO HEARING COMMITTEE DECISION

- Both the decision and communication of the decision should be done in a timely manner.
- Both parties (Complainant and Respondent) should be notified of the outcome, and both should be provided with a copy of the Hearing Committee's written reasons. It is important to let the Complainant know the organization took the complaint seriously and took the appropriate action. The organization must ensure the Complainant has been given an opportunity to be properly heard and understood, even if they are not in agreement with the results.
- The Chairperson notifies the Complainant of the findings of the panel, as well as the accused, with the appropriate discipline deemed for the situation.
- If a conclusive finding is unable to be made, the Complainant should be notified of this as well. Extra care should be taken in the written reasons to ensure that the Complainant understands why a finding could not be made.
- Setting a time frame to follow-up with the Complainant is important to ensure there are no other issues. A reminder of preserving confidentiality should be advised.
- Parties should be advised of their ability to appeal the matter to their Member or Hockey Canada's National Appeals Committee, where appropriate.