

# Hockey Canada



## Investigating Discrimination Complaints

Reference Guide

## Table of Contents

<b>Disclaimer</b> .....	5
<b>SECTION ONE: DEFINITIONS</b> .....	5
1. The <i>Canadian Human Rights Act</i> Definition of Discrimination .....	5
<b>Grounds for Discrimination</b> .....	5
2. Breaking Down the Definition of Discrimination .....	5
<b>Protected Personal Characteristics or Grounds for Discrimination</b> .....	5
<b>Intention Doesn't Matter, Impact Does</b> .....	6
<b>What Isn't Discrimination</b> .....	7
3. Parties Involved.....	7
• <b>Complainant</b> .....	7
• <b>Respondent</b> .....	7
• <b>Witness</b> .....	7
<b>SECTION TWO: UNDERSTANDING DISCRIMINATION</b> .....	8
1. Types of Discrimination.....	8
• <b>Overt vs. Hidden</b> .....	8
• <b>Constructive / Adverse Effect</b> .....	8
• <b>Systemic</b> .....	8
• <b>Discrimination by Association</b> .....	8
• <b>Exceptions to Human Rights Legislation</b> .....	9
<b>SECTION THREE: STANDARDS FOR INVESTIGATIONS</b> .....	10
1. Procedural Fairness When Conducting Investigations.....	10
2. Common Errors in Investigations .....	11
<b>SECTION FOUR: INVESTIGATING COMPLAINTS OF DISCRIMINATION</b> .....	12
1. Objective .....	12
2. Investigative Process.....	12
3. The Investigator's Role.....	13
<b>Responsibilities</b> .....	13
<b>Internal Biases</b> .....	13
• <b>Bias Trap #1: Information Overload</b> .....	14
• <b>Bias Trap #2: Feelings Over Fact</b> .....	14

•	<b>Bias Trap #3: Need for Speed</b> .....	14
	<b>Be Open-Minded</b> .....	15
	<b>Maintaining Neutrality</b> .....	15
4.	Widening the Investigation .....	15
5.	Pre-Investigation Steps .....	15
	<b>Complaint Intake</b> .....	15
	<b>Intervening Measures</b> .....	16
	<b>Investigation Plan</b> .....	16
	<b>Interview Location</b> .....	16
	<b>Virtual Interviews</b> .....	16
6.	Notifying the Parties .....	17
7.	Scheduling Interviews .....	18
8.	Involvement of Other Parties .....	18
	<b>Representatives</b> .....	18
	<b>Police Involvement</b> .....	18
9.	Investigation Documentation .....	19
	<b>Note Taking</b> .....	19
	<b>Evidence Tracking</b> .....	19
	<b>Investigation File</b> .....	19
10.	Confidentiality .....	20
11.	The Interview .....	20
	<b>Interviewing Techniques</b> .....	20
	<b>Introductions</b> .....	22
	<b>Develop Interview Questions</b> .....	22
	<b>Interviewing the Complainant</b> .....	25
	<b>Interviewing the Respondent</b> .....	25
	<b>Interviewing the Witnesses</b> .....	25
	<b>Interview Conclusion</b> .....	26
12.	Post Interview .....	26
	<b>Corroboration or Contradiction</b> .....	26
	<b>Evidence</b> .....	27
	<b>Findings of Facts</b> .....	27

13. Investigation Report.....	27
<b>Guidelines for Report Writing</b> .....	27
<b>Investigative Report Essentials</b> .....	28
14. Summary of the Investigation Report.....	28
<b>SECTION FIVE: THE NEXT STEPS</b> .....	30

## Disclaimer

This Reference Guide is meant to provide general guidance for investigating discrimination complaints on behalf of Associations, Leagues and Members. The Reference Guide sets out best practices in the area of discrimination investigations, although it is not intended as legal advice. Ultimately, each Association, League and Member will be responsible for establishing and following its own investigation procedures.

## SECTION ONE: DEFINITIONS

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### 1. What is Discrimination?

‘Discrimination’ is an action or a decision that treats a person or a group differently or unfairly because of certain protected personal characteristics. These characteristics, also called grounds, are protected under human rights legislation.

#### Grounds for Discrimination

Discriminatory grounds vary by province but generally include the following, without limitation:

- Race, national or ethnic origin, skin colour or language spoken
- Religion, faith or beliefs
- Age
- Sex, sexual orientation or gender identity/expression
- Marital or familial status
- Genetic characteristics
- Disability

Discrimination occurs when the unique merits, capacities and circumstances of a person are not individually assessed. Instead, the party who is guilty of discrimination makes stereotypical assumptions based on a person’s presumed traits and then treats them accordingly. Discrimination often has the impact of excluding persons, denying them benefits or imposing burdens on them.

### 2. Breaking Down the Definition of Discrimination

Provincial and territorial human rights laws are very similar to the *Canadian Human Rights Act* and apply many of the same principles.

#### Protected Personal Characteristics or Grounds for Discrimination

- **Race, National or Ethnic Origin, Skin Colour or Language Spoken and Religion, Faith or Beliefs**  
Race and related grounds include ancestry, place of origin, colour, ethnic origin and citizenship. Racial discrimination is also based on creed (religion, faith or beliefs).

- **Age**  
Age refers to a person who is 18 years of age or older. People under the age of 18 are protected from discrimination based on other grounds. For example, a child could bring forward a complaint relating to sex, disability or race. Parents or guardians can file on their behalf.
- **Sex, Sexual Orientation or Gender Identity/Expression**  
Sex is generally considered to relate to someone's biological sex assigned at birth (male, female or intersex). It also includes a person's gender (expectations and stereotypes about behaviours, actions and roles liked to being a 'man' or a 'woman'). The ground of sex includes pregnancy and breastfeeding.  
  
Sexual orientation includes people who are gay, lesbian, bisexual or heterosexual.  
  
Gender identity is a person's internal sense of being a woman, a man, both, neither or anywhere along the gender spectrum.  
  
Gender expression is how a person publicly expresses or presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice.
- **Marital or Family Status**  
Marital status includes being single, married, widowed, divorced, in a common-law relationship and same-or-opposite-sex partnership.  
  
Family status means being in a parent-child type relationship and can include caring for children and older family members.
- **Genetic Characteristics**  
Genetic tests may confirm a diagnosis, indicate that a person is a carrier of a particular genetic mutation or identify an increased risk of developing a certain disease. While this genetic information can help individuals make informed decisions about their health and take preventative action, there is some concern that this information may be used by employers to the disadvantage of individuals.
- **Disability**  
Disability includes temporary and permanent disabilities, and past or present disabilities. These can be physical, learning or developmental, or can be mental health-related or drug and alcohol addictions. Disabilities can be visible, invisible or perceived.

### **Intention Doesn't Matter, Impact Does**

Respondents often wrongly think that discrimination does not exist if the impact was not intended, or if there were other factors that could explain a particular situation. Even the best-intentioned 'compliments' can have an impact that is negatively felt.

A situation could arise in which particular comments or actions might not be intended to offend another person, but which result in a violation of that person's rights under the *Canadian Human Rights Act*. In establishing if an incident is discriminatory, it looks at the **effect or the result of the comments or actions on the recipient, rather than the intent**.

Example: Jim and Nancy are coaching a team together and Jim consistently asks Nancy to lunch to review practice plans. While Jim's intention is not to insult Nancy, Nancy still feels affected by his requests. She feels uncomfortable with his requests to go to lunch.

### What Isn't Discrimination

Teams have the right to fairly evaluate players and discipline them for misconduct or breaking team rules. This is not considered discrimination.

The normal conflict between two individuals (usually short-lived) is not usually considered discrimination; however, if racial slurs are used during the conflict, this type of conduct would be considered discrimination.

## 3. Parties Involved

If an individual has a reasonable basis to believe they have experienced discrimination related to a protected ground, they can bring forward a complaint. Once the complaint is made, an investigation is initiated in an effort to resolve the complaint. The parties included in this process are identified and defined as follows:

- **Complainant**  
A complainant is a person who makes a complaint because they have a reasonable basis to believe someone has discriminated against them.
- **Respondent**  
A respondent is an individual against whom the complainant is making a complaint. This person is believed to be responsible for the discriminatory act(s) alleged in the reported complaint.
- **Witness**  
A witness is an individual who may have knowledge of a reported incident, either from personal observation or experience. Witnesses can be a source of information, having possibly seen the incident, and can offer corroboration or contradiction to the facts presented. Teammates, coaches, spectators or officials could potentially be witnesses to an incident.

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## SECTION TWO: UNDERSTANDING DISCRIMINATION

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### 1. Types of Discrimination

Discrimination in human rights law does not simply mean treating someone differently. In human rights law, it means treating someone differently because of personal characteristics that are based on the grounds of discrimination set out in laws such as the *Canadian Human Rights Act*. Discrimination happens when a person experiences negative treatment or impact.

Discrimination is not always easy to identify. Overt or hidden, constructive or adverse, and systemic are all different types of discrimination. The *Canadian Human Rights Act* also protects against acts of harassment, and discrimination by association.

- **Overt vs. Hidden**

Discrimination can be overt, or it can be subtle or hidden. An example of subtle or hidden discrimination would be a player with good potential who is not chosen for the team because of their sexual orientation. This process is behind the scenes and happens without the knowledge of the affected player. The coach passes their decision off as the player not being skilled enough to move forward in the team selection.

- **Constructive / Adverse Effect**

Discrimination is not always just between people. Rules, policies, procedures, requirements, eligibility criteria or qualifications may seem fair on the surface but lead to discrimination based on discriminatory grounds.

This type of discrimination is called constructive or adverse effect discrimination. For example, height and weight requirements for certain careers have been deemed to be a form of constructive discrimination.

- **Systemic**

Patterns of behaviour, policies or practices that are part of an organization and its culture can negatively affect people based on discriminatory grounds. This is called “systemic discrimination.”

Systemic discrimination can exist inside an organization or within a set of organizations.

- **Discrimination by Association**

Discrimination can happen through association, where someone experiences negative treatment or impact because of their relationship with a person who identifies with a discriminatory ground, such as a family member or friend.



- **Exceptions to Human Rights Legislation**

There are narrow situations where organizations may need to treat individuals differently based on their protected grounds. For example, this may be the case where the nature of a person's disability makes it unsafe for them to participate in certain activities, including hockey. These situations are not considered to be violations of human rights legislation, as there are exceptions for situations where accommodations cannot be made to allow an individual to safely participate in an activity.

In evaluating the seriousness or significance of risk, the following factors may be considered:

- The nature of the risk (what could happen that would be harmful?)
- The severity of the risk (how serious would the harm be if it occurred?)
- The probability of the risk (how likely is it that potential harm will actually occur?)
- Is it a real risk, based on opinion or based on fact? Could it occur often?
- The scope of the risk (who will be affected if it occurs?)

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## SECTION THREE: STANDARDS FOR INVESTIGATIONS

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### 1. Procedural Fairness When Conducting Investigations

An effective investigation:

- Helps to identify and resolve a problem.
- Aids in the assessment of whether a complaint has merit and provides independent corroboration (or lack thereof) of policy violations.
- Protects the individual being discriminated against.
- Protects others from possible discrimination.
- Reinforces the organization's commitment to being free of discrimination.
- Sets the stage for any discipline that must occur.
- May prevent litigation based on the complaint.

Investigations should follow basic principles of fairness. Below are **recommendations of practice** and include **elements of a proper and effective investigation**:

- **Timeliness**
  - An investigation should be completed as expediently as possible, accounting for the unique circumstances surrounding each investigation (e.g. multiple witnesses, multiple complaints, interviewees not being available due to illness).
- **The Investigator**
  - Must not be involved in the alleged incident of discrimination.
  - Must not have close or longstanding relationships with the complainant or respondent.
  - Must be able to conduct an objective investigation and be impartial and unbiased.
- **Confidentiality**
  - Information obtained from a complainant, or any interviews, should be kept confidential, except to the extent that information needs to be disclosed to provide the respondent with a fair chance to answer the claim against them.
  - Complainants, respondents and any witnesses must be reminded to maintain the confidentiality of any information about the complaint they obtain during the course of the investigation.
- **Interviewing**
  - The investigator must appropriately interview the complainant, the respondent and any other material witnesses.
  - The respondent must be given the opportunity to respond to the allegations against them.
  - The investigator must separately interview any relevant witnesses who may be identified by either the complainant or respondent, or who are deemed necessary to conduct a thorough investigation.

- **Evidence and Note Taking**
  - The investigator must collect and review any relevant documents and evidence.
  - The investigator must take proper notes and statements during interviews with the complainant, respondent and witnesses. A summary of their notes should be prepared after the interview and sent to the relevant interviewee for their review and approval.
  
- **The Investigation Report:**
  - A written report should be prepared confirming the findings of fact and about what occurred.
  - There is no requirement to make conclusions regarding whether an incident of discrimination occurred or whether a punishment should follow – that will be taken care of by the hearing committee.
  - The report must be provided to the hearing committee to take appropriate action.
  - A brief summary of the report should be prepared and provided to the hearing committee, which will then pass it on to the respondent and complainant. Care should be taken to draft the summary in a way that doesn't reveal identifying information about any witness where possible, while also providing the complainant and respondent with enough information on the findings of the report to make submissions on the investigation's findings before the hearing committee.

## 2. Common Errors in Investigations

Proper preparation and remaining neutral during the investigation will ensure that errors are minimized.

Below are some of the most common mistakes to avoid.

- **Delays in starting the investigation.** Any complaint should be investigated quickly.
- Not focusing on the proper issues because of **lack of awareness of human rights principles** before starting the investigation.
- **Not being impartial or unbiased**, or having pre-conceived notions about what the outcome of the investigation will be.
- **Jumping to conclusions.** Investigations should be conducted with an open mind while being conscious of any biases being held.
- **Not being flexible.** Investigators should be open to all available types of evidence when necessary.
- **Mistakes in preparing the final report.** A report where factual conclusions are not well supported with solid analysis and reasoning would be a serious mistake.

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## SECTION FOUR: INVESTIGATING COMPLAINTS OF DISCRIMINATION

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### 1. Objective

The objective of any discrimination investigation is to provide an opportunity to get to the facts, and to give the parties an opportunity to present their version of the incident and/or explain their conduct, ultimately verifying whether a punishment is warranted. If there is a complaint, there is a problem. An investigation can help resolve the problem, even if discrimination or a violation of Member policies or procedures is not ultimately found.

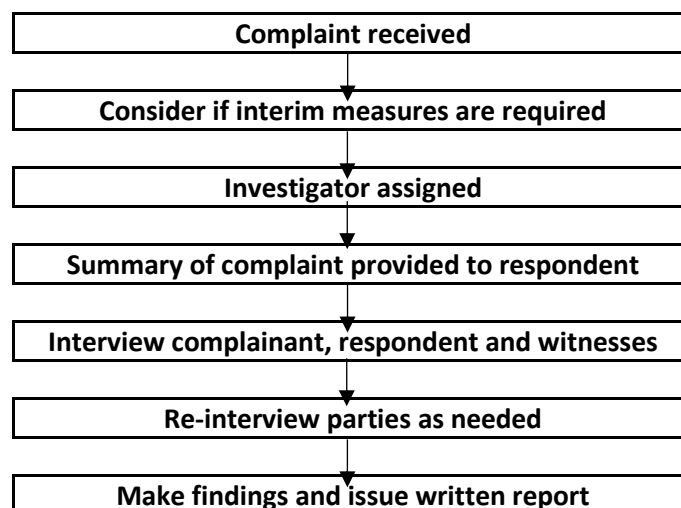
Parties to a complaint may have to continue interacting after the complaint is resolved. For this reason, the investigation conducted should be cautious in its approach and sensitive to the needs of everyone involved, in an effort to not put a greater strain on an already damaged relationship.

### 2. Investigative Process

Both the complainant and respondent are entitled to due process. This process is one that should be:

- Credible
- Objective and neutral
- Consultative
- Sensitive to the parties' needs (i.e. confidentiality, fairness, non-reprisal)

The chart below provides an overview of the steps involved for the investigation:



### 3. The Investigator's Role

The investigator chosen will be accountable for fact-finding. The appropriate investigator should have no stake in the outcome, nor have any personal relationship with the involved parties. The outcome should not directly affect the investigator's position within the organization.

#### Responsibilities

The investigator's responsibilities include:

- Conducting the investigation of an incident or complaint.
- Following the organization's investigation process.
- Interviewing the complainant, respondent and anyone who can provide relevant information regarding the alleged incident(s) of discrimination.
- Maintaining appropriate documentation through the investigation, and keeping the information and documentation confidential.
- Gathering and reviewing all relevant evidence.
- Submitting a report of the findings to the appropriate bodies.
- Providing a summary of the investigation report for the complainant and respondent.

It is important to note that although the responsibilities of an investigator include making a finding of fact, the investigator should not be responsible for determining the recourse, if any, that should be taken against the respondent. Disciplinary decisions will be made by a requisite hearing committee. This will help the investigator maintain a more impartial role in the investigation.

#### Internal Biases

It will be natural that an investigator will bring their own internal biases with them when investigating a complaint. This is particularly true if they know the parties involved, as they will have perceptions about these parties' personalities and behaviours.

Biases are shaped by many factors:

- Our own experiences
- Information we consume through news, social media, stories, books, movies, etc.
- Our education – schools we attend, subjects we study, levels of study we pursue, etc.
- Our context – family, friends, work, where we live, what we do, who we spend time with
- Our culture – spoken and unspoken rules of our community/society
- Innate characteristics – traits we are born with that are highly familiar to us

All these factors shape how we see ourselves and can cause each of us to have our own different set of biases (both conscious and unconscious).

One's own personal preferences and experiences, as well as societal expectations and norms, may create biases that will impact objectivity even without the realization of it. For an investigator who has an obligation, overcoming inherent biases can be a challenge but is necessary for a fair investigation.

There are many different types of biases, as well as ‘bias traps’ that we fall into from time to time. These ‘bias traps’ and the type of biases that we have include (but are not limited to):

- **Bias Trap #1: Information Overload**

We may be bombarded by information that our brains automatically filter. However, some of the information that is filtered out may be useful and important. The types of bias this may form include:

- **Confirmation Bias:** We tend to seek out information that supports our existing beliefs. Evidence that doesn’t bolster beliefs and hypotheses is more likely to be minimized and disregarded.
- **Anchoring Bias:** We tend to rely on the first piece of information we see.

- **Bias Trap #2: Feelings Over Fact**

When we have strong feelings about something, we tend to be driven by our beliefs rather than by facts. Our impulses and beliefs can override our logic and thinking processes. The biases from this trap may include:

- **In-Group Bias:** We tend to favour people we like and who are like us, while excluding and judging those who are different.
- **Negativity Bias:** We are more powerfully influenced by negative experiences than positive or neutral experiences.

- **Bias Trap #3: Need for Speed**

We take shortcuts to act quickly. These time-savers are often based on bias and can be simplistic, self-centered and even counterproductive. This forms biases that include:

- **Attribution Bias:** We judge others on their actions, but judge ourselves based on our intent.
- **Sunk-Cost Bias:** We tend to continue things because we’ve invested time, money or resources into them.

Other types of biases include:

- **Conformity Effect**

This happens when our deep-seated need to belong causes us to adapt our behaviours to feel like part of a group. Often, we are likely to believe those with a greater social status. In the context of an investigation, this could mean an investigator with the mandate to investigate a potential discrimination incident by a coach against a player would be more inclined to believe the coach rather than the player based on their social status.

- **Halo Effect**

This is the tendency in which our overall impression of a person influences how we feel and think about their character. For investigators, this could be an assumption that a respondent being interviewed must be truthful because they happen to be attractive, well dressed and well-spoken.

To become more aware of the biases that are held, it is important to be conscious of the reactions held to what each person is discussing. Examples of internal reactions that should alert someone to their own biases include:

- “Who would be interested in sexually harassing her?”
- “He is obviously sensitive to racial issues.”
- “The respondent is a well-respected member of the hockey community. There is no way he could have done what the complainant has said he did.”
- “I don’t know what her problem is. I found that joke funny.”

### **Be Open-Minded**

It is important that you not apply your own judgement as to whether or not the conduct was offensive. What matters is the impact it had on the recipient.

Ensure the **facts presented are objectively assessed**. Ask open-ended questions and take care to not lead the interviewee’s answers. **Do not take sides**. An investigator should remain impartial and not come to any conclusions before the investigation has been completed.

### **Maintaining Neutrality**

Parties to an investigation will commonly ask questions of an investigator, and their answer could compromise the investigator’s neutrality. If after the initial interview the complainant or respondent asks the investigator if they think discrimination has occurred, it is best to state that they are conducting a fact-finding mission and any conclusions on discrimination will be made by the hearing panel.

## **4. Widening the Investigation**

An investigation may uncover other incidents or respondents. It is important not to shy away from expanding the scope of the investigation as required. Should the investigation need to be widened, properly document and provide the complainant and respondent (as well as any new complainants or respondents) with a full opportunity to respond to any new evidence or complaints.

## **5. Pre-Investigation Steps**

### **Complaint Intake**

Ensure a fully documented complaint has been received. A properly documented complaint:

- Helps determine the nature of the complaint or incident.
- Is the starting point for the investigation.
- Helps the respondent understand the allegations against them.
- Contributes to the credibility of the process.
- Helps to identify pertinent documents and relevant witnesses.

See the *Hockey Canada Discrimination Complaint Intake Form* for all of the required information for submitted complaints. A sample is included in the reference materials.

### **Intervening Measures**

Before starting the investigation process, it is good practice to consider how to manage the parties. In some cases with serious allegations, suspensions may result pending the investigation. Should a respondent be suspended during the investigation, it is important to take care to avoid any perceptions of reprisal through these adverse measures.

### **Investigation Plan**

Before commencing the investigation, the investigator will need to make a plan or checklist for the investigation. The purpose of the investigation plan is to keep the investigation focused, organized and thorough. This plan should address the following:

- A full understanding of the nature of the complaint being made.
- Understanding the basics of what constitutes discrimination.
- A set time frame of conducting and completing the investigation.
- Identifying additional documents.
- Setting goals for what information you will obtain from each interview.
- Considering the preliminary facts or information, confirming the questions that will be asked during each interview.

Reviewing the plan throughout the investigation is recommended to ensure all essential evidence is gathered. A sample *investigation plan* is included in the reference materials.

### **Interview Location**

The location and time of the interview should be sensitive to the need for confidentiality. It should be in a place that is conducive to effective information-gathering and protects the fairness of the process. A comfortable setting encourages candid and open dialogue. Public places that are full of distractions should be avoided.

### **Virtual Interviews**

Conducting virtual interviews can be just as effective as in-person interviews. Remote or virtual interviews should include the following considerations to help preserve the integrity of the investigation:

- **Technology**  
Remote interviews may be conducted via video, whether it be for the complainant, respondent or witnesses. There are many platforms available, including Zoom, Microsoft Teams, Skype and FaceTime. Sending directions regarding the use of the app ahead of time can help ensure an on-time, glitch-free start to the interview.

It is important that the investigator take steps to ensure the security of the call. They should use a meeting password or the “waiting room” functionality found in Zoom or Teams to ensure only the appropriate participants are on the call.

Video technology often provides the ability to record. Unless it is your intent to record, you should check that this setting is unchecked within the application to avoid creating a recording.



Any recordings should be authorized, and the investigator should seek permission ahead of recording the meeting.

- **Minimize distractions and ensure adequate privacy**

If the interview is being conducted virtually from home, it should be scheduled for a time when the investigator and interviewee will have a private, quiet space available. Although the investigator has little control over the interviewee's home environment, the investigator can start the interview by confirming that the interviewee is comfortable speaking with you in their current location. The interviewee may be sharing sensitive details and should be comfortable doing so with others that may be present in their home.

- **Spend more time establishing rapport**

Establishing rapport can be a bit more of a challenge virtually. Spending some time with "small talk" will help the interviewee talk about the "easy" stuff (i.e. weather), and will help the interviewee feel more comfortable talking about the more difficult issues that need to be explored. It is important, however, to keep the small talk professional so as to not undermine the seriousness of the subject matter.

The investigator should also make sure to set a professional tone during the virtual interview. This includes dressing professionally and ensuring the background of the area where the camera will be pointed is appropriate. Some applications have a generic background setting that can be substituted for the home background.

- **Have a backup plan**

Sometimes, despite good planning beforehand, things can still go wrong, such as a lack of internet bandwidth causing video lag. This can typically be quickly resolved by disconnecting and reconnecting the call or doing a "hard reset" of the computer modem to reestablish a faster connection. It is recommended the investigator ensures others in the household during the time of the scheduled interviews are limiting their use of the internet.

Audio issues can also arise, either from bandwidth issues or hardware issues such as poor microphone quality. If it is hard to hear the interviewee clearly, suggest they try using earbuds with a microphone, or a headset. Alternatively, consider having a dial-in conference number available so the audio can be switched to a phone. Everyone will have to mute their microphones in this case on the video call to avoid any feedback or echoes.

## 6. Notifying the Parties

Notification to the parties that an investigation is being initiated provides the parties with information about the process, including notifying them of their obligations regarding confidentiality. If the person is a minor, a parent/guardian should be notified.

Notices should be sent to all parties regarding the investigation. It may also be useful for the investigator to meet with each of the parties separately to explain how the process works and what the investigator's role will be. This also helps establish rapport with both sides, securing their trust

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and obtaining cooperation. **Maintaining credibility where possible is critical and should be the investigator's goal throughout the investigation.**

Both the complainant and respondent should be allowed to have representation if they choose. This could be a lawyer, friend or family member who can provide moral support. It should **not** be anyone who might be a witness, except for situations where the interviewee is a minor and their parent/guardian is also a relevant witness. In such cases, the parent/guardian may still be present for their child's interview, however the investigator should caution the parent/guardian that they should not be providing evidence on their child's behalf.

Witnesses will also require notice, advising them that they will be questioned in connection with the discrimination complaint and to remind them to keep the matter confidential.

A sample *Notice of Investigation Template* is included in the reference materials.

## 7. Scheduling Interviews

A written complaint does not always convey the tone of communications, or underlying issues or assumptions the complainant may have in respect to the respondent or the events in issue, that can offer relevant context. Therefore, it is important that interviews are scheduled to go through all of the incident details and obtain a thorough account of what happened.

Scheduling enough time for the interview is essential. Interviews of complainants and respondents can be quite lengthy and should allow enough time to speak to them without being rushed. This includes time for them to respond, as well as time to establish rapport. Similarly, allowing enough time between interviews, especially between the complainant and respondent, is important to allow the information to be analyzed or to formulate questions and note any follow-up that is required.

## 8. Involvement of Other Parties

### Representatives

At times, parties to an investigation may want to have representation present during the interview. Representatives must be cautioned that all questions must be answered by the party and not the representative.

### Police Involvement

If a complaint rises to the level of potential criminal misconduct and has been reported to the local child protection agency or local police, it is important that the hockey organization's investigation does not interfere with any ongoing police investigation. If the hockey organization's investigation does interfere, it may need to be paused and may only be able to be resumed after the criminal process has been completed. In such situations, extra consideration should be given to the interim disciplinary measures which may be appropriate.

Any notes and reports from the hockey organization investigation could be admissible in court, so care should be taken that all steps are followed, and procedural fairness is provided.

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## 9. Investigation Documentation

### Note Taking

Appropriate notes and statements should be taken during the investigation. While conducting the interview, making notes of any issues or discrepancies that need to be followed up on should be completed. Note taking should include as much detail as possible to eliminate missing information that may be deemed important to the investigation.

Following the interview, after the investigator has taken a day or so to review their notes for accuracy and to create a summary of the interview, a good practice for documentation is to send a summary to the interviewee to read and sign. Any changes the interviewee makes should be done in the margin or at the end of the statement. This demonstrates that the investigator accurately recorded and understood the information provided and lends credibility to the process.

All notes relating to the investigation should be legible so that no misrepresentations can be made as to what was written. All relevant original notes of the interview should be kept with the investigator's steps taken to get to the truth, including dates and places where the interviews were conducted.

Any documents reviewed should be documented. All documents and notes following the conclusion of an investigation should be kept for a three-year period following the completion of the investigation. However, if the complainant is a minor, the record should be kept for three years after the complainant reaches the age of majority.

### Evidence Tracking

During the scope of the investigation, using an evaluation grid or chart to compare the evidence provided by each party would be useful. The grid can help assess the factual and evidentiary gaps that require further investigation. It may also assist in determining whether the evidence supports one side versus another.

Chronologically setting out the order in which the events unfolded will also assist with assessing and evaluating the evidence presented.

A sample *Evidence Evaluation Grid* is included in the reference materials.

### Investigation File

Maintaining a complete and accurate investigation file would include:

- All notes and documents that were obtained throughout the investigation
- The investigator's report
- Notice to parties of the results of the investigation

All originals of documents should be retained and should not be disclosed to any parties who do not have a legitimate reason to view the documents.

## 10. Confidentiality

While confidentiality needs to be upheld throughout the entire process of receiving the complaint, through the investigation until a finding of fact has been delivered, complete confidentiality may not be possible. At times disclosure may be necessary for the purposes of the investigation, or for protection of an individual as required by law.

It is important to remind those involved in the investigation on the onset that while Hockey Canada or its Member/Member Delegate is committed to ensuring an appropriate investigation, in doing so the organization may be required to share some information provided by the complainant, respondent and various witnesses to other parties in the process of resolving the complaint. At the same time, the investigator should reassure the parties that information shared will be on a need-to-know basis.

It is good practice to stress the importance of confidentiality, and reminding all parties being interviewed of their obligations of confidentiality (i.e. not discussing the complaint or investigation particulars with others). This includes the responsibility of the investigator to only provide information that is absolutely necessary.

## 11. The Interview

### Interviewing Techniques

Due to the complexity and sensitivity of discrimination complaints, it is even more important for an investigator and those involved in managing the investigation to utilize effective listening skills and interviewing techniques. There is a simple rule to follow, which is identified as the 80/20 rule. The investigator is there to acquire knowledge. Therefore, each interviewee should be speaking 80% of the time and the investigator should only speak 20% of the time.

The following are guidelines that will help enhance the interview:

### Active Listening

Effective communication includes active listening and is one of the most important skills an investigator can have. Active listening is the process by which information is secured from others, and it helps with understanding what others are communicating.

Great communication includes actively listening and paying attention to non-verbal responses (i.e. body language). This is essential when interviewing.

Active listening also contributes to the rapport an investigator wants to build with those being interviewed. It is a conscious effort to hear not only the words another person is saying, but, more importantly, the **complete message** being communicated. This involves:

- Giving the speaker undivided attention.
- Being intentional about being engaged in the conversation, which demonstrates respect.
- Looking at the speaker directly.

- Putting aside distracting thoughts.
- Not mentally preparing any rebuttals, instead digesting the information being received and empathizing with what is being said before creating a response.
- Avoiding being distracted by environmental factors.

Active listening also includes demonstrating listening by utilizing body language and gestures to show there is engagement. Posture should be open and interested. The interviewer should also provide encouragement for the speaker to continue by injecting small verbal comments like “I understand” or “I see,” or nodding their head.

Acknowledging a person’s feelings and being empathetic will help maintain neutrality. There is a difference between being empathetic and sympathetic. Consider the following:

- **Empathetic:** “I can see this is difficult for you and is upsetting.”
- **Sympathetic:** “I understand how you must feel; what you have been through is terrible.”

Another tip for actively listening is to **clarify and confirm** the interviewee’s evidence. This involves providing feedback. A listener’s role is to understand what is being said. This requires reflection on what is being said and by asking questions. Making it a habit of restating or rephrasing what the other person has said helps the investigator to confirm understanding and provides the speaker with the feeling of being heard.

- Reflect on what has been said by paraphrasing (e.g. “What I am hearing is ...,” and “Sounds like you are saying ....”).
- Ask questions to clarify points. (e.g. “What do you mean when you said ...?” or “Is this what you meant when you said ...?”).

It is also important to **defer your judgement**. It is best to avoid this natural tendency and to be more accepting and open-minded to what the other person has to say rather than imposing personal interpretation on what’s being said.

Lastly, you want to ensure you are responding appropriately.

- Active listening is designed to encourage respect and understanding. It is important to gain information and perspective by being candid, open and honest in responses.
- Assert opinions respectfully.
- Treat the other person in a way they would want to be treated.
- The questions asked will determine the kind of answer received. Hence, it is important to ask the right questions and use different types of questions depending on what is needed.

Asking effective, open-ended questions will lead to better dialogue and give the chance to continue gaining information for a better context. Active listening, however, provides a higher level of interaction.

For further information on active listening, please watch the video *Communication and Active Listening*.

**Interview, Never Interrogate**

Interviews gather information, including objective facts, by asking open-ended questions. Interrogations, on the other hand, are designed to extract confessions to confirm the evidence that is collected that has an assumption of guilt. Interviewing involves a more collaborative and conversational approach. It is meant to be non-judgmental. The investigator should not have any predeterminations prior to concluding the investigation.

**Introductions**

Investigative interviews should begin with a brief introduction that explains the reason for the interview and includes all appropriate disclosures. In the opening remarks, it is important to be honest about the purpose of the interview while at the same time respecting the need for confidentiality. For example, an investigator might begin an interview by explaining that the hockey association is investigating certain complaints about a racial slur that occurred on the ice during a game.

It is also a good idea to ask the interviewee if they have any questions of their own, addressing any issues up front, as opposed to dealing with them at the end of the interview. Being transparent and taking the time to put an interviewee at ease while addressing any concerns goes a long way towards building trust and rapport.

With introductions underway, it would be a good time to remind the interviewee that reprisals are prohibited as a result of their participation in the investigation.

**Develop Interview Questions**

Questions should be developed ahead of time in the planning stage, although additional questions will be added throughout the investigation as more evidence and information is shared. Flexibility is key to ensure the process is not so stringent that critical information is missed. Closed-ended questions or confirmation questions regarding background information is a good place to begin to set the interviewee at ease. More difficult questions can be discussed later on. Strong questions are relevant and designed to draw out facts without leading the interviewee; they should be open-ended to elicit as much information as possible.

**Types of Questions to Avoid**

- Avoid loaded questions.
- Avoid accusatory questions.
- Avoid leading questions (questions that assume facts to be true).
- Try to limit the use of close-ended questions that are answered with “yes or no” responses.
- In investigations regarding specific events, inquire about all the events that occurred during the relevant time frame in chronological order.
- Be mindful of separating information based on hearsay, rumours or gossip.
- Questions should be simple and direct.

**Asking the Right Questions**

The interviewer will be asking specific questions and actively listening to the answers provided by the interviewee. There are various types of interview questions that the interviewer may use to acquire information from the interviewee. These include:

- Basic questions (setting the stage)
- Open questions (conceptual and have a narrative answer)
- Probing questions ('what' and 'how' questions, often the crux point of the interview, that invite more details)
- Closed questions (have a specific answer, like yes or no).

**Basic Questions**

Before getting to the interview questions that will divulge information surrounding the incident, the investigator should ask some basic questions that are not connected with the incident being investigated. These should be non-threatening questions the investigator would likely already know the answers to. (For example, who was involved, what happened, where did it happen, etc. – all information that has been supplied on the intake form.)

The responses to this type of questioning helps establish a baseline which can be used to measure the interviewee's subsequent behaviour. When asking these questions, notice the interviewee's speech patterns, gestures and degree of eye contact. This will help assess any differences in the behaviour when questions are asked relating to the incident itself.

**Open-Ended Questions**

Again, the interview itself is the best way to leverage the gathering of objective facts surrounding a reported complaint of discrimination. The statements obtained are a critical part of understanding what was said and what occurred. Therefore, the interview should elicit as much information as possible. The more information that can be gathered, including the who, what, where, when, why and how, the easier it will make it to determine and confirm the particulars. Open-ended questions will be the guide to eliciting full details.

Open-ended questions allow for an unlimited, narrative response, and the interviewee feels more in control. They also generate a greater amount of unsolicited information. Responses to open-ended questions tend to be more accurate and promote more effective listening on the part of the interviewer. The interviewer also is less likely to lead the witness when framing questions in this manner. The interviewee should be encouraged to volunteer information without prompting. Ideally, information should be gathered using primarily open-ended questions. More specific, closed-ended questions should be used only when the interviewee fails to provide a clear or complete response.

Avoid any interruptions. Let the interviewee tell their version of the incident without interruption. If the investigator interjects with detailed questions too quickly, it interrupts the flow and the interviewee may forget important pieces of information related to the incident. Once the full story has been disclosed, the investigator can circle back and clarify any issues that were not understood or require further information.

It is important to allow for pauses after the interviewee stops speaking and before continuing to the next question. Periods of silence allows the individual to collect their thoughts and to continue responding, thereby providing a greater amount of information.

Some examples of open-ended questions are:

- What happened?
- Where did it happen?
- Did anyone else see it happen? Who? What did they say? What did they do?
- What did the respondent say or do?
- Was this a single incident or part of a pattern?

### **Probing Questions**

This is direct questioning that is a follow-up to what has been said. The interviewer directs the conversation towards providing further details about something that has been said. Specifically, probing questions are useful for finding out more details. An interview should never begin with these types of questions. Rather, the best time to use them is in the middle of the interaction. These types of questions prove useful when you want to keep the interviewee talking. Questions like “Could you tell me more about that,” or “You talked earlier about XYZ, could you elaborate on why that is?”

Another useful probing question is one that will clarify by getting examples (i.e. “Can you give me an example?”) This proves useful when the interviewee hasn’t explained something clearly enough. Examples alleviate any blocks in communication and guide the interviewee towards explaining the information in a different way.

Probing questions are also a great way to gauge expectations. Asking a question like “What would be your ideal outcome for this situation?” will help understand what expectations the interviewees have.

Other examples of probing questions include:

- What was the outcome?
- What was the situation?
- What else can you remember about the situation?
- Can you give me more detail about what you did?
- What exactly did you say?

### **Closed-Ended Questions**

These types of questions provoke a simple response from the interviewee, typically with a one-word answer like “yes” or “no.” They are designed so there is not much thought into the single-word answers. These questions target specific information. In an interview, closed-ended questions are often asked to collect fast facts about the interviewee. They usually take less time to answer. Closed-ended questions prove helpful in directing the interviewee’s attention towards relevant information and establishing facts, as well as being used to pinpoint critical information. These should only be used when looking for a specific answer.



Not all closed-ended questions have to be answered with a “yes” or “no.” Any question that is worded to be answered with a simple, direct response of one to a few words is considered a closed-ended question.

Examples of closed-ended questions include:

- What date and time did this incident take place?
- How many times did this occur?
- Where did it happen?
- Did anyone else see it happen? Who?
- Was there physical contact?

### **Interviewing the Complainant**

The complainant is usually the first person interviewed in the investigation. Again, the interview will begin with neutral background questions and then ease into any incident-specific questions. The interview, as much as possible, should resemble a conversation about the incident between the investigator and the complainant. The investigator should explain clearly to the complainant that the intent is to conduct a thorough investigation.

### **Interviewing the Respondent**

In most cases, the respondent will be interviewed after the complainant has provided a detailed statement of what is alleged to have happened. It is natural for the respondent to become defensive with allegations before them. Reassuring the respondent of the organization’s commitment to a fair, accurate and due process will help control some of these defensive emotions. The respondent should be reminded of the organization’s obligation to investigate. Easing into the interview with non-confrontational questions will assist with the respondent being more cooperative with the interview. The message the investigator should convey is that this is strictly fact-finding and that no determinations have been made.

### **Interviewing the Witnesses**

The process of interviewing witnesses is similar to that of complainant or respondent interviews. Initiate the interview with the purpose of the meeting and the questions should be tailored to this purpose. Preserving confidentiality is a priority, so an investigator should limit the amount of information shared with witnesses to incident-specific information. The investigator should encourage the witness to reach out with any further recollections, or if they come across any further details that might be relevant. A reminder should be made to the witness of the importance of confidentiality.

In cases where both a minor and their parent/guardian are giving evidence, this can be done simultaneously; however, the investigator should take care in their assessment of the information provided. If it looks like the parent/guardian is providing evidence for their child on events where the parent/guardian was not present, that should be noted in the report and may impact the minor’s credibility depending on the situation.

For examples of open-ended or other types of questions, refer to the *Investigative Interview Sample Questions* in the reference materials.

### **Interview Conclusion**

The interviewee should be encouraged to contact the investigator or interviewer with any additional information that is recalled. In some cases, additional information may be remembered after the interview, and no matter how trivial this information may seem to the individual, it could prove important to the investigation. A best practice is for the investigator to take a few minutes following each interview to review the responses received and seek clarification for anything that remains unclear or ambiguous. If there is a written record of the interview, the interviewee should be given the opportunity to review the notes and sign the document.

If the interview is recorded in another way, the interviewee should be advised that they will be provided with a copy and will be required to confirm its accuracy.

Welcome any questions the interviewee may have and advise of the next steps.

It is also important to instruct those interviewed to avoid discussing details of the incident with other potential witnesses. The independence of witnesses is important for corroboration of the information they have provided with other witness statements and other evidence in the investigation. Reminders regarding reprisal protections should also be reiterated.

After the investigation concludes, thank the interviewee for their cooperation. This reinforces the rapport that has been developed and the interviewer's commitment and encourages the interviewee's continued cooperation.

## **12. Post Interview**

The investigator will need to assimilate all notes and materials into an orderly summary of findings for any required hearings and final determinations to be conducted. The hearing process will look to prompt remedial actions that should be taken as a result of the investigation findings.

### **Corroboration or Contradiction**

Often in discrimination complaints, the complainant and respondent will offer different versions of incidents, leaving conflicting stories. The issue is very personal to those involved. Individual perceptions of what happened may be clouded by personal interests. Witnesses, teammates, coaches, spectators or officials may be a source of information, having seen the incident, and can offer corroboration or contradiction to the facts presented.

Credibility determination or assessments are required once the interviews have concluded. These assessments can be critical in determining whether the alleged incident occurred. Assessing credibility considers if there is any self-interest in the outcome of the investigation or if the versions of the incident have been consistently offered, while also looking at memory recall along with how forthcoming the person has been. The investigator should also note the body language of those interviewed.

Refer to *Credibility Determinations* in the reference materials for further information.

## Evidence

Part of the post-interview process, in addition to doing credibility assessments on those interviewed, is examining any documentary evidence that has been provided. This type of evidence can come from unlimited sources, such as emails, text messages, Facebook entries, blogs and memos, all relevant to a reported complaint. Obtaining these documents will prove useful to the investigation, as it can reveal any inconsistencies or corroborate the statements provided. Documentary evidence can also provide further insight and context into the incident. Precautions should be taken when handling documents in an investigation. Original documents should not be marked or altered in any way. Take a copy of any documents should any markings or alterations be required. Any documents received are considered originals.

## Findings of Facts

The findings of facts concluding an investigation would be a consideration that an investigator would provide in their final report. The information offered would be on the basis of the **balance of probabilities** as a measurement to consider if there is enough evidence to substantiate the complaint of discrimination. A balance of probabilities means it is more likely than not that a violation has occurred. The credibility evaluation will assist in this process and can be considered a valid basis for a finding, as long as it is supported in the assessment.

The investigator will not make the final decision as to whether or not discrimination occurred. The investigator should not make recommendations on remedial actions. Both those matters will be handled by the hearing committee.

Possible findings could include:

- An incident occurred as alleged (substantiated)
- An incident did not occur as alleged (not substantiated)
- No findings of fact could be made based on the evidence (inconclusive)

## 13. Investigation Report

Once all of the questions are addressed and the investigation concludes, the final report is prepared. The report will conclude the investigation and should be written with all information necessary to provide a hearing committee with the means to resolve the complaint and make any required remedial decisions. This should be the goal of the report. The report may also become part of any legal proceedings and should have this mind when being finalized.

The report should be displayed in chronological order for effect. The scope of the investigation should clearly be specified in the report. It should set out what evidence was obtained, any further evidence needed and an analysis of the evidence.

### Guidelines for Report Writing

- Include an overview of the process and timeline of the investigation.
- Clearly enumerate the complaint with links to evidence that has surfaced during the investigation.

- Be comprehensive and concise with short sentences or paragraphs. Language should be simple and easy to understand.
- Be neutral and unbiased, avoiding any judgements. Comments about character should not be part of the report.
- Proofread the report to ensure grammar and spelling accuracy.

### **Investigative Report Essentials**

- In the first section, the report should include specific information (i.e. investigator's name, date and other details of this nature).
- The report should begin with a report summary of the investigation process. This would include details on the following:
  - Nature of the complaint or scope of the investigation
  - Background information
  - A brief description of tasks assigned; actions taken throughout the investigation
  - Parties involved
  - Documents reviewed
  - Interview summaries (in chronological order).
  - Positions of both the complainant and respondent
- The report should detail the evidence collected, including statements from witnesses and documentary evidence. This would include the type of evidence, who presented the evidence and the date of the evidence.
- Applicable laws and policies, and the credibility assessment that was completed following the interviews should be noted, all of which will be used by the hearing committee to provide complaint resolution.
- The report will conclude with the findings of facts, as well as any recommendations.

All of this documentation demonstrates the situation was taken seriously, responded to immediately and appropriately, and was documented on a good-faith basis for any actions to be taken as a result of the investigation.

A sample report can be found in the reference materials and is titled *Investigation Report Template*.

## **14. Summary of the Investigation Report**

In addition to an investigation report, the investigator will be required to prepare a brief summary of the investigation report, which will be given to the complainant and respondent before their hearing with the hearing committee. This is because the full investigation report will contain confidential information provided by witnesses, and it would undermine their faith in the process and their likelihood to provide frank evidence if they knew their information was going to be provided directly to the respondent or complainant.

The summary should condense all the information and address the following subjects:

- Explain the nature of the allegations made by the complainant, referencing any documentary evidence to support the allegations.
- Provide a high-level description of any other evidence or testimony provided which supported the complainant's version of the events, without revealing who provided that information wherever possible.
- State the respondent's position on the allegations, referencing any documentary evidence to support that position.
- Provide a high-level description of any other evidence or testimony provided that supported the respondent's position, without revealing who provided that information wherever possible.
- Provide the investigator's findings of fact. If applicable, the investigator should state why they preferred one party's evidence over the other (i.e. one party was more credible in how they gave evidence, or their position was more supported by the other evidence).

## SECTION FIVE: THE NEXT STEPS

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Remedies and final decisions on actions that should be taken following the conclusion of the investigation will be left with an appointed hearing committee. Once the investigator has finalized their investigation report, it would then be passed on to a separate body, which would conduct a hearing. Both the complainant and respondent would receive a summary of the investigation report and be able to make submissions to the hearing committee before a final decision is produced.

The next steps taken by the hearing committee will be focused on identifying the inappropriate behaviour and providing sanctions to the offending parties where appropriate, which will hopefully improve the experience for the complainant.