

## Able Sail Toronto Discipline and Complaints Policy

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Initial Approved Date	March 10, 2023
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Archived date	
Replaces and/or amends	
Appendix(-ces) to this Policy	Appendix A – Investigation Procedure

*Note: The Safe Sport Policy Suite Definitions apply to this policy, please refer to that document for term definitions. Our Safe Sport policies follows the legal practice of capitalized defined terms to assist the reader in identifying that the term has a specific meaning within the policy suite.*

### **PURPOSE**

1. Individuals are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with all policies, by-laws, rules, and regulations of Able Sail Toronto, including the Code of Conduct, as updated, and amended from time to time.
2. Non-compliance with any of Able Sail Toronto's policies, by-laws, rules, or regulations, including the Code of Conduct may result in the imposition of sanctions pursuant to this Policy [or the by-laws of Able Sail Toronto.

### **APPLICATION**

#### **Application – General**

3. This Policy applies to all Individuals and to any alleged breaches of Able Sail Toronto's policies, by-laws, rules or regulations, including the Code of Conduct.
4. In addition to being subject to disciplinary action pursuant to this Policy, an employee of Able Sail Toronto who is a Respondent to a complaint may also be subject to consequences in accordance with the employee's employment agreement or the policies for human resources, if applicable.

### **REPORTING**

#### **UCCMS Participants**

5. Incidents that involve alleged Maltreatment or Prohibited Behaviour that occurred or continued as of MARCH 1<sup>ST</sup>, 2023 involving a UCCMS Participant must be reported to the OSIC [[https://osicbcis.formstack.com/forms/osic\\_complaint\\_report](https://osicbcis.formstack.com/forms/osic_complaint_report)] and will be addressed pursuant to the OSIC's policies and procedures.
6. Incidents that involve alleged Maltreatment or Prohibited Behaviour that occurred before MARCH 1<sup>ST</sup>, 2023 may be reported to the OSIC; however, the OSIC shall determine the admissibility of such complaints in accordance with the relevant and applicable OSIC Guidelines regarding the initial review and preliminary assessment, and the matter may only proceed pursuant to the OSIC's procedures with the express consent of the Parties involved where the Parties have not been designated by Sail Canada as a UCCMS Participant.
7. If the Independent Third Party receives a Complaint that they consider would otherwise fall within the above sections, they shall refer the matter to the OSIC and notify the individual(s) that made the Complaint of such action.

#### **Individuals**

8. Any complaints involving alleged breaches of Able Sail Toronto's policies that do not fall within Sections 5 or 6 above may be reported by an Individual to the Independent Third Party (available on the Able Sail Toronto

website) in writing within fourteen (14) days of the occurrence of the incident.<sup>1</sup> For the avoidance of doubt, this includes complaints referred back to the Independent Third Party by the OSIC following a determination made by the OSIC that a complaint initially reported to it does not fall within its jurisdiction.

9. Notwithstanding any provision in this Policy, Able Sail Toronto may, at its discretion, or upon request by the Independent Third Party, act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, Able Sail Toronto will identify an individual to represent the organization.
10. A Complainant who fears retribution or reprisal or who otherwise considers that their identity must remain confidential may file a complaint with the Independent Third Party and request that their identity be kept confidential. If the Independent Third Party considers that the Complainant's identity must remain confidential, the Independent Third Party may ask that Able Sail Toronto take carriage of the complaint and act as the Complainant.<sup>2</sup>
11. In exceptional circumstances, the Independent Third Party may direct a complaint to be managed by Ontario Sailing or Sail Canada if a Member Organization is otherwise unable to manage the complaint for valid and justifiable reasons, such as a conflict of interest, due to a lack of capacity or where the Member Organization does not have policies in place to address the complaint. In such circumstances, Ontario Sailing, or Sail Canada as applicable, shall have the right to request that a cost-sharing agreement be entered into with the Member Organization as a pre-condition to Ontario Sailing or Sail Canada managing the complaint.
12. Where the Independent Third Party refers a matter to be managed by Able Sail Toronto, or where Able Sail Toronto is otherwise responsible for managing a matter (i.e., because they received the matter directly), and Able Sail Toronto fails to conduct disciplinary proceedings within a reasonable timeline, Ontario Sailing may, at its discretion, take jurisdiction of the matter and conduct the necessary proceedings. In such circumstances, if the Internal Discipline Chair or External Discipline Panel decides that Ontario Sailing acted reasonably in taking jurisdiction over the matter, Ontario Sailing's costs to conduct the proceedings, including legal fees, shall be reimbursed by Able Sail Toronto to Ontario Sailing or Sail Canada as appropriate.

### **MINORS**

13. Complaints may be brought by or against an Individual who is a Minor. Minors must have a parent/guardian or other adult serve as their representative during this process. If the Minor's representative is not their parent/guardian, the representative must have written permission to act in such a capacity from the Minor's parent/guardian.
14. Communication from the Independent Third Party, Internal Discipline Chair or External Discipline Panel (as applicable) must be directed to the Minor's representative, or Parent/Guardian until such a time as a representative is identified.
15. Any Individual who Reports or brings a complaint involving known or suspected abuse, neglect, or Maltreatment of a Minor on behalf of the Minor must Report this to local child welfare services, the applicable provincial social service ministries or departments, or local police.
16. A Minor is not required to attend or participate in an oral hearing, if held, or participate in an investigation if conducted. In such circumstances, no adverse inference can be drawn against the Minor.

### **INDEPENDENT THIRD-PARTY RESPONSIBILITIES**

17. Upon receipt of a complaint, the Independent Third Party has a responsibility to:

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<sup>1</sup> This timeline may be waived at the Independent Third Party's sole discretion if they consider that there were extenuating circumstances that prevented the Individual from Reporting their complaint within fourteen (14) days of the occurrence of the incident. Any such decision by the Independent Third Party is not subject to appeal.

<sup>2</sup> In such circumstances, the Complainant(s) may be required to provide evidence during the disciplinary process.

- a) Determine whether the complaint falls within the jurisdiction of this Policy and whether it has been submitted in accordance with the deadlines indicated herein;
- b) Determine the appropriate jurisdiction to manage the complaint by considering the following:
  - i. whether the incident occurred within the business, activities, or Events of Able Sail Toronto and
  - ii. if Able Sail Toronto is able to manage the complaint process<sup>3</sup>.
- c) Determine whether the complaint is frivolous, vexatious or if it has been made in bad faith<sup>4</sup>;
- d) Determine if the alleged incident should be investigated pursuant to **Appendix A – Investigation Procedure**; and
- e) Choose which process (Process #1 or Process #2, as outlined below) should be followed to hear and adjudicate the matter.

### **Available Process**

There are two different processes that may be used to hear and adjudicate complaints. Subject to Sections 5-7, the Independent Third Party decides which process should be followed at their discretion, and such decision is not appealable.

**Process #1** - the complaint contains allegations involving the following behaviours:

- a) Disrespectful conduct or comments
- b) Minor acts of physical violence, unless the physical violence is between a Person in Authority and a Vulnerable Individual, in which case the matter will be addressed under Process #2
- c) Conduct contrary to the values of Able Sail Toronto
- d) Non-compliance with the policies, procedures, rules, or regulations of Able Sail Toronto
- e) Minor violations of the policies or bylaws of Able Sail Toronto.

\*\*\* The behaviours identified above are examples only and are not a definitive list of behaviours that may be addressed through Process #1.

**Process #2** - the complaint contains allegations involving the following behaviours:

- a) Repeated incidents described in Process #1
- b) Hazing
- c) Abusive, racist, or sexist comments, conduct or behaviour
- d) Incidents that constitute Prohibited Behaviour under the Code of Conduct & Ethics (the Code) or the UCCMS

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<sup>3</sup> In making this assessment, the Independent Third Party may determine that the Member Organization lacks the capacity to manage the complaint (which may include financial and human resource capacity), that the Member Organization is not the appropriate instance to manage the complaint due to its seriousness (for example, clubs may not be expected to manage serious complaints due to the complexity of conducting such a process), or that a real or perceived conflict of interest exists within the Member Organization.

If the Independent Third Party determines that the Complaint or Report should be handled by a Member Organization, that organization may adopt this Policy and appoint its own Independent Third Party to fulfil the responsibilities listed herein. Where this Policy is adopted by a Member organization or affiliated organization, any reference to Independent Third Party below shall be understood as a reference to the Independent Third Party of the Member Organization or affiliated organization.

<sup>4</sup> As indicated in the Sport Dispute Resolution Centre of Canada's Investigation Guidelines, a Reported complaint shall not be characterized as vexatious if the evidence demonstrates that there was a reasonable basis for filing and pursuing it. For a complaint to be considered to have been made in bad faith, the Independent Third Party must consider that it was filed consciously for a dishonest purpose or due to the moral underhandedness of the Complainant and that there was an intention to mislead.

- e) Major incidents of violence (e.g., fighting, attacking)
- f) Pranks, jokes, or other activities that endanger the safety of others
- g) Conduct that intentionally interferes with a competition or with any athlete's preparation for a competition
- h) Conduct that intentionally damages the image, credibility, or reputation of Able Sail Toronto
- i) Consistent disregard for the by-laws, policies, rules, and regulations of Able Sail Toronto
- j) Major or repeated violations of the Code or any other policies, by-laws, rules or regulations that designate this *Discipline and Complaints Policy* as applicable to address such alleged breaches
- k) Intentionally damaging the property of Able Sail Toronto or improperly handling any of the aforementioned organizations' monies
- l) Abusive use of alcohol, any use or possession of alcohol by Minors, or use or possession of illicit drugs and narcotics
- m) A conviction for any *Criminal Code* offense

\*\*\*The behaviours identified above are examples only and are not a definitive list of behaviours that may be addressed through Process #2.

### **PROVISIONAL SUSPENSIONS**

18. If it is considered appropriate or necessary on the basis of the circumstances, immediate discipline or the imposition of a Provisional Suspension or interim measures may be imposed against any Individual by the Independent Third Party, or Able Sail Toronto senior staff member, after which further discipline or sanctions may be applied according to this Policy.
19. If an infraction occurs at a competition, it will be dealt with by the procedures specific to the competition, if applicable. Provisional Suspensions or interim measures may be imposed for the duration of the competition, training, activity, or Event only, or as otherwise determined appropriate by the Independent Third Party, or Able Sail Toronto senior staff member.
20. Notwithstanding the above, Able Sail Toronto and/or Independent Third Party may determine that an alleged incident is of such seriousness as to warrant the imposition of a Provisional Suspension of a Respondent pending completion of an investigation, assessment and/investigation by the OSIC, criminal process, the hearing, or a decision of the External Discipline Panel.
21. Any Respondent against whom a Provisional Suspension or interim measure is imposed may make a request to the Independent Third Party or External Discipline Panel (if appointed) to have the Provisional Suspension or interim measure lifted. In such circumstances, Able Sail Toronto shall be provided with an opportunity to make submissions, orally or in writing, regarding the Respondent's request to have their Provisional Suspension lifted. Provisional Suspensions or interim measures shall only be lifted in circumstances where the Respondent establishes that it would be manifestly unfair to maintain the Provisional Suspension or interim measures against them.
22. Any decision not to lift a Provisional Suspension or interim measure shall not be subject to appeal.

### **Procedural Steps**

#### **PROCESS #1: Handled by Internal Discipline Chair**

##### **Internal Discipline Chair**

23. Following the determination that the complaint or incident should be handled under Process #1, the Independent Third Party will ensure an Internal Discipline Chair<sup>5</sup> is appointed who may:
  - a) Propose alternative dispute resolution techniques, if appropriate; and/or

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<sup>5</sup> The appointed Internal Discipline Chair must be unbiased and not in a conflict-of-interest situation.

- b) Ask the Complainant and the Respondent for either written or oral submissions regarding the complaint or incident. Both Parties shall also have the right to submit to the Internal Discipline Chair any relevant evidence, including, but not limited to witness statements, documentary evidence or evidence from other media (i.e., photos, screenshots, videos or other recordings). Each party shall have the right to receive the other party's submissions and evidence, including the Complainant's complaint. In the case of oral submissions, each party shall be present when such submissions are made; and/or
  - c) Following receipt of the Parties' submissions, the Internal Discipline Chair may convene the Parties to a meeting, either in person or by way of video or teleconference in order to ask the Parties questions and to allow the Parties to ask questions of one another.
24. Following their review of the submissions and evidence related to the Complaint, the Internal Discipline Chair shall determine if any of the alleged incidents have occurred and, if so, determine the appropriate sanction (see: **Sanctions**). If, after hearing the Parties and reviewing their submissions, the Internal Discipline Chair considers that none of the alleged incidents have occurred, they shall dismiss the Complaint.
25. The Internal Discipline Chair will inform the Parties of the decision, which shall be in writing and include reasons. The Internal Discipline Chair's decision will take effect immediately, unless specified otherwise by the Internal Discipline Chair. Should the circumstances require a decision to be rendered immediately or within a short timeline, the Internal Discipline Chair may render a short, written decision, either orally or in writing, followed by a written reasoned decision.
26. Any decision rendered by the Internal Discipline Chair shall be provided to and maintained in the records of Able Sail Toronto, Ontario Sailing, and Sail Canada as applicable. Decisions will be kept confidential by the parties and the aforementioned organizations and shall be retained and discarded in accordance with the relevant and applicable privacy legislation.
27. In fulfilling its duties, the Internal Discipline Panel may obtain independent advice.

**PROCESS #2: Handled by Independent Third Party and External Discipline Panel**  
**Independent Third Party**

28. Following the determination that the complaint should be handled under Process #2, the Independent Third Party will propose the use of alternative dispute resolution methods, if appropriate. If the dispute is not resolved using alternative dispute resolution methods, the Independent Third Party will appoint an External Discipline Panel of one (1) person to hear the complaint. Thereafter, the Independent Third Party shall have the following responsibilities:
- a) Coordinate all administrative aspects of the process and set reasonable timelines
  - b) Provide administrative assistance and logistical support to the External Discipline Panel as required, including providing the External Discipline Panel with any information related to previously imposed disciplinary sanctions against the Respondent(s) of the policies of Sail Canada, Ontario Sailing, Able Sail Toronto or any other sport organization that had authority over the Respondent
  - c) Provide any other service or support that may be necessary to ensure a fair and timely proceeding
29. The Independent Third Party will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
30. If warranted based on the nature of the case, the Independent Third Party may, in their sole discretion, appoint an External Discipline Panel of three (3) people. When a three-person External Discipline Panel is appointed, the Independent Third Party will appoint one of the External Discipline Panel's members to serve as the Chair.
31. The Independent Third Party, in cooperation with the External Discipline Panel, will then decide the format under which the complaint will be heard. This decision may not be appealed. The format of the hearing may

be an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods.

32. The hearing will be governed by the procedures that the Independent Third Party and the External Discipline Panel deem appropriate for the circumstances. The following procedural directions will apply:
- a) The determination of procedures and timelines, as well as a hearing duration, shall be as expedient and cost-efficient as possible in order to ensure that costs to the Parties and Sail Canada, Ontario Sailing, and/or Able Sail Toronto are reasonable
  - b) The Parties will be given appropriate notice of the day, time, and place of the hearing
  - c) Copies of any written documents which any of the Parties wishes to have the External Discipline Panel consider will be provided to all Parties, through the Independent Third Party, in advance of the hearing and in accordance with the timelines set by the Independent Third Party.
  - d) The Parties may engage a representative, advisor, translator, transcription services or legal counsel at their own expense
  - e) The External Discipline Panel may request that any other individual participate and give evidence at the hearing
  - f) If not a Party, Able Sail Toronto and/or Ontario Sailing shall be allowed to attend the hearing as an observer and will be provided with access to any documents submitted. With the permission of the External Discipline Panel, Able Sail Toronto and/or Ontario Sailing may make submissions at the hearing or may provide the discipline panel with clarifying information that may be required for the External Discipline Panel to render its decision<sup>6</sup>
  - g) The External Discipline Panel shall allow any evidence at the hearing filed by the parties and may exclude any evidence is unduly repetitious or otherwise an abuse of process. The External Discipline Panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to evidence filed by the parties
  - h) Nothing is admissible in evidence at a hearing that:
    - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
    - ii. is inadmissible by any statute.
  - i) The decision will be by a majority vote of the External Discipline Panel, when the Panel consists of three people
33. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the External Discipline Panel will determine the appropriate sanction. The External Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
34. The process will proceed if a Party chooses not to participate in the hearing.
35. If a decision may affect another Party to the extent that the other Party would have recourse to a complaint or an appeal in their own right, that Party will become a Party to the complaint, shall be permitted to participate in the proceedings as determined by the External Discipline Panel, and will be bound by the decision.
36. In fulfilling its duties, the External Discipline Panel may obtain independent advice.

## **DECISION**

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<sup>6</sup> The purpose of this provision is not to provide Sail Canada or a Member Organization with the possibility to try to influence whether a sanction is imposed and, if so, the duration or nature of the sanction. Instead, this provision is intended to provide Sail Canada or a Member Organization with the possibility to provide the discipline panel with clarifying information when the parties have sought a particular sanction against an Individual, but they have misunderstood or misrepresented fundamental elements of the programming or membership structure (or other similar issues) and, if left unaddressed, could result in the discipline panel imposing a sanction that is unenforceable.

37. After hearing the matter, the External Discipline Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. If the External Discipline Panel considers that an infraction has not occurred, the Reported complaint will be dismissed.
38. Within fourteen (14) days of the hearing's conclusion, the External Discipline Panel's written decision, with reasons, will be distributed to all parties by the Independent Third Party, including and, Able Sail Toronto and if applicable, Sail Canada and Ontario Sailing.
39. In extraordinary circumstances, the External Discipline Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the fourteen (14) day period.
40. The External Discipline Panel's decision will come into effect as of the date that it is rendered, unless decided otherwise by the External Discipline Panel. The External Discipline Panel's decision will apply automatically to Sail Canada and all of its Member Organizations.
41. Unless the matter involves a Vulnerable Individual, once the appeal deadline in the *Appeal Policy* has expired, Sail Canada, Ontario Sailing, or Able Sail Toronto shall publish on their website the outcome of the case, the provision(s) of the relevant policies that have been violated, the name(s) of the Individual(s) involved and the sanction(s) imposed, if any. If the matter is appealed, the publication provisions in the *Appeal Policy* shall apply. Identifying information regarding Minors or Vulnerable Individuals will never be published.
42. If the External Discipline Panel dismisses the Reported complaint, the information referred to in Section 41 above may only be published with the Respondent's consent. If the Respondent does not provide such consent, the information referred to in Section 41 above will be kept confidential by the Parties, the independent Third Party, Ontario Sailing, Sail Canada and the Member Organization (including the Respondent's organization) and shall be retained and discarded in accordance with the relevant and applicable privacy legislation. Failure to respect this provision may result in disciplinary action being taken pursuant to this *Discipline and Complaints Policy*.
43. Other relevant individuals or organizations, including but not limited to, Sail Canada, affiliate organizations, etc., may be advised of any decisions rendered in accordance with this Policy.
44. Records of all decisions will be maintained by Able Sail Toronto in accordance with their Privacy Policy.
45. When the External Discipline Panel imposes a sanction, the decision shall include, at a minimum, the following details:
  - a) Jurisdiction;
  - b) Summary of the facts and relevant evidence;
  - c) The specific provision(s) of Able Sail Toronto's policies, bylaws, rules or regulations that have been breached;
  - d) Which Party is responsible for the costs of implementing any sanction;
  - e) Which organization is responsible for monitoring that the sanctioned individual respects the terms of the sanction;
  - f) Any reinstatement conditions that the Respondent must satisfy (if any);
  - g) Which organization is responsible for ensuring that the conditions have been satisfied; and,
  - h) Any other guidance that will assist the Parties to implement the External Discipline Panel's decision.

If necessary, a Party, - or the organization that is responsible for implementing or monitoring a sanction- may seek clarifications from the External Discipline Panel regarding the order so that it can be implemented or monitored appropriately.

## **SANCTIONS**

46. When determining the appropriate sanction, the Internal Discipline Chair or External Discipline Panel, as applicable, will consider the following factors (where applicable):

- a) The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;
  - b) The Respondent's prior history and any pattern of misconduct, Prohibited Behaviour or Maltreatment;
  - c) The respective ages of the Individuals involved;
  - d) Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
  - e) The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the misconduct, Prohibited Behaviour or Maltreatment, and/or cooperation in the investigative and/or disciplinary process of Able Sail Toronto;
  - f) Real or perceived impact of the incident on the Complainant, sailing organization or the sport of sailing;
  - g) Circumstances specific to the Respondent being sanctioned (e.g., lack of appropriate knowledge or training regarding the requirements in the *Code*; addiction; disability; illness);
  - h) Whether, given the facts and circumstances that have been established, continued participation in the sailing and broader sport community is appropriate;
  - i) A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
  - j) Other mitigating or aggravating circumstances.
47. Any sanction imposed must be proportionate and reasonable. However, progressive discipline is not required, and a single incident of Prohibited Behaviour/Maltreatment or other misconduct may justify elevated or combined sanctions.
48. The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following disciplinary sanctions, singularly or in combination:
- a) **Verbal or Written Warning** - A verbal reprimand or an official, written notice and formal admonition that an Individual has violated the *Code* and that more severe sanctions will result should the Individual be involved in other violations
  - b) **Education** - The requirement that an Individual undertake specified educational or similar remedial measures to address the violation(s) of the *Code* or the UCCMS
  - c) **Probation** - Should any further violations of the *Code* or the UCCMS occur during the probationary period, this may result in additional disciplinary measures, including, without limitation, a period of suspension or permanent ineligibility. This sanction can also include loss of privileges or other conditions, restrictions, or requirements for a specified period
  - d) **Suspension** - Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, activity, Event, or competition sponsored by, organized by, or under the auspices of Ontario Sailing, Sail Canada or any Member Organization. A suspended Individual may be eligible to return to participation, but reinstatement may be subject to certain restrictions or contingent upon the Individual satisfying specific conditions noted at the time of suspension
  - e) **Eligibility Restrictions** - Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions
  - f) **Permanent Ineligibility** - Ineligibility to participate in any capacity in any program, activity, Event, or competition sponsored by, organized by, or under the auspices of Sail Canada, Ontario Sailing, or any Member Organization.
  - g) **Other Discretionary Sanctions** - Other sanctions may be imposed, including, but not limited to, other loss of privileges, no contact directives, a fine or a monetary payment to compensate for direct losses, or other restrictions or conditions as deemed necessary or appropriate
49. The Internal Discipline Chair or External Discipline Panel, as applicable, may apply the following presumptive sanctions which are presumed to be fair and appropriate for the listed Maltreatment:



- a) Sexual Maltreatment involving a Minor Complainant, or a Complainant who was a Minor at the time of the incidents complained of, shall carry a presumptive sanction of permanent ineligibility
  - b) Sexual Maltreatment, Physical Maltreatment with contact, and Maltreatment related to interference or manipulation of process shall carry a presumptive sanction of either a period of suspension or eligibility restrictions
  - c) While a Respondent has pending charges allegations of a crime against a person, if justified by the seriousness of the offence, the presumptive sanction shall be a period of Provisional Suspension until a final determination is made by the applicable process.
50. An Individual's conviction for certain *Criminal Code* offenses involving harmful conduct shall carry a presumptive sanction of permanent ineligibility from participating with Sail Canada or its Member Organizations. Such *Criminal Code* offences may include, but are not limited to:
- a) Any child pornography offences
  - b) Any sexual offences
  - c) Any offence of physical violence
51. Unless the External Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal.
52. Failure to comply with a sanction as determined by the External Discipline Panel will result in an automatic suspension until such time as compliance occurs.

#### **OSIC SANCTION**

53. As a Program Signatory to the OSIC, Sail Canada will ensure that any sanctions or measures imposed by the OSIC's Director of Sanctions and Outcomes ("DSO") will be implemented and respected within Sail Canada's jurisdiction (including at all Member Organizations), once Sail Canada receives appropriate notice of any sanction or measure from the OSIC. Able Sail Toronto is committed to supporting and enforcing these sanctions.

#### **APPEALS**

54. The decision of an Internal Discipline Chair or External Discipline Panel, as applicable, may be appealed in accordance with the *Appeal Policy*.

#### **CONFIDENTIALITY**

55. The disciplinary process is confidential and involves only Able Sail Toronto, Ontario Sailing and Sail Canada and/or the Member Organizations (where applicable), the Parties, the Independent Third Party, the Internal Discipline Chair, the External Discipline Panel (as appropriate), and any independent advisors to the Internal Discipline Panel and External Discipline Panel.
56. None of the Parties (or their representatives or witnesses) or organizations referred to in Section 55 will disclose confidential information relating to the discipline or Complaint to any person not involved in the proceedings, unless Sail Canada, Ontario Sailing or Able Sail Toronto is required to notify an organization such as an international federation, Sport Canada or other sport organization including Member Organizations (i.e., where a Provisional Suspension or interim measures have been imposed and communication is required to ensure that they may be enforced), or notification is otherwise required by law.
57. Any failure to respect the confidentiality requirement may result in further sanctions or discipline by the Internal Discipline Chair or External Discipline Panel (as applicable).

#### **TIMELINES**

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

#### **Statistical Reporting Optional**

59. Sail Canada and Ontario Sailing shall, at least annually, publish a general statistical report of the activity that has been conducted pursuant to this *Discipline and Complaints Policy*. This report shall not include any information that is confidential under this Policy, or that has been ordered to be kept confidential by a discipline or appeal panel, but may include the number of complaints Reported to the Independent Third Party (for Sail Canada and Member Organizations), and statistics regarding the number of cases that were resolved through alternate dispute resolution, the Internal Discipline Chair process, the External Discipline Panel process, and the number of appeals filed pursuant to the *Appeal Policy* and whether the appeals were upheld, partially upheld or dismissed.

#### **Privacy**

60. The collection, use and disclosure of any personal information pursuant to this Policy is subject to Able Sail Toronto's Privacy Policy.
61. Able Sail Toronto, Sail Canada, its Member Organizations, or any of their delegates pursuant to this Policy (e.g., Independent Third Party, Internal Discipline Chair, Case Manager, External Discipline Panel), shall comply with Able Sail Toronto's Privacy Policy (or, the Member Organization's Privacy Policy) in the performance of their services under this Policy.

## **Appendix A – Investigation Procedure**

### **Determination**

1. When a complaint is submitted pursuant to the *Policy* and is accepted by the Independent Third Party, the Independent Third Party will determine if the incident(s) should be investigated.

### **Investigation**

2. If the Independent Third Party considers that an investigation is necessary, they will appoint an investigator. The investigator must be an independent third-party with experience in investigating. The investigator must not be in a conflict-of-interest situation and should have no connection to either party.
3. Federal and/or Provincial/Territorial legislation related to Workplace Harassment may apply to the investigation if Harassment was directed toward an employee in a Workplace. The investigator should review workplace safety legislation, the organization's policies for human resources, and/or consult independent experts to determine whether legislation applies to the complaint.
4. The investigation may take any form as decided by the investigator, guided by any applicable Federal and/or Provincial/Territorial legislation. The investigation may include:
  - a) Interviews with the Complainant
  - b) Witness interviews
  - c) Statement of facts (Complainant's perspective) prepared by investigator, acknowledged by the Complainant and provided to the Respondent
  - d) Interviews with the Respondent
  - e) Statement of facts (Respondent's perspective) prepared by investigator, acknowledged by the Respondent and provided to the Complainant

### **Investigator's Report**

5. Upon completion of their investigation, the investigator shall prepare a written report that shall include a summary of evidence from the Parties and any witnesses interviewed. The report shall also include a non-binding recommendation from the investigator regarding whether an allegation or, where there are several allegations, which allegations, should be heard by an External Discipline Panel pursuant to the *Discipline and Complaints Policy* because they constitute a likely breach of the Code of Conduct, the UCCMS or any other relevant and applicable NSO or Member Organization policy. The investigator may also make non-binding recommendations regarding the appropriate next steps (i.e., mediation, disciplinary procedures, further review, or investigation).
6. The investigator's Report will be provided to the Independent Third Party who will disclose it, at their discretion, all or part of the investigation to Able Sail Toronto and any relevant Sail Canada Organizations (if applicable). The Independent Third Party may also disclose the investigator's Report – or a redacted version to protect the identity of witnesses – to the Parties, at their discretion, with any necessary redactions. Alternatively, and only, if necessary, other relevant Parties may be provided with an executive summary of the investigator's findings by the Independent Third Party.
7. Should the investigator find that there are possible instances of *Criminal Code* offences, the investigator shall advise the Parties, Able Sail Toronto and, where applicable, Sail Canada and/or Ontario Sailing, and the matter shall be referred by the Independent Third Party to the police.
8. The investigator must also inform Able Sail Toronto or Sail Canada and/or Ontario Sailing (as applicable) of any findings of criminal activity. Able Sail Toronto or Sail Canada and/or Ontario Sailing (as applicable) may decide whether to report such findings to police but is required to inform police if there are findings related to the trafficking of prohibited substances or methods (as indicated in the version of the World Anti-Doping Agency's Prohibited List currently in force), any sexual crime involving Minors, fraud against Able Sail Toronto, Sail Canada or Ontario Sailing (as applicable), or other offences where the lack of reporting would bring Able Sail Toronto, Sail Canada or Ontario Sailing or the sport of sailing (as applicable) into disrepute.

### **Reprisal and Retaliation**

9. An Individual who submits a complaint to the independent Third Party or who gives evidence in an investigation may not be subject to reprisal or retaliation from any individual or group or organization provided that the complaint and/or evidence was provided in good faith. Any such conduct may constitute Prohibited Behaviour and be subject to disciplinary proceedings pursuant to the *Discipline and Complaints Policy* or, as applicable, the policies and procedures of the OSIC.

### **False Allegations**

10. An Individual who submits allegations that the investigator determines to be malicious, false, or for the purpose of retribution, retaliation or vengeance may be subject to a complaint under the terms of the Discipline and Complaints Policy and may be required to pay for the costs of any investigation that comes to this conclusion. The investigator may recommend to Able Sail Toronto, Sail Canada or Ontario Sailing (as applicable) that the Individual be required to pay for the costs of any investigation that comes to this conclusion. Any Individual who is liable to pay for such costs shall be automatically deemed to be not in good standing until the costs are paid in full and shall be prohibited from participating in any Able Sail Toronto, Sail Canada or Ontario Sailing Events, activities, or business. Able Sail Toronto, Sail Canada or Ontario Sailing (as applicable), or the Individual against whom the allegations were submitted, may act as the Complainant with respect to making a complaint pursuant to this Section.

### **Confidentiality**

11. The investigator will make reasonable efforts to preserve the anonymity of the Complainant, Respondent, and any other party. However, Able Sail Toronto, Sail Canada and Ontario Sailing recognizes that maintaining full anonymity during an investigation may not be feasible.