



# INVESTIGATION UNIT - INVESTIGATION GUIDELINES

Approved by the Board of Directors on December 14, 2018

*Note: In this document, unless the context otherwise requires, words importing a particular gender shall include all genders.*

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## SECTION A - INTRODUCTION

### 1. PURPOSE

The Sport Dispute Resolution Centre of Canada (SDRCC) is committed to assist federally-funded sport organizations in accessing professional and independent third-party investigation services via its Investigation Unit.

These guidelines have been designed to provide a general framework that the members of the Investigation Unit may follow in the conduct of thorough and impartial investigations.

### 2. DEFINITIONS

**“Client”** means a federally-funded Canadian sport organization retaining the services of a member of the Investigation Unit, and includes any individual designated by it to act as the main contact for the Investigator.

**“Complainant”** means the individual person or persons lodging the complaint.

**“Declaration of Independence”** means the document that must be completed by an Investigator to confirm whether any facts or circumstances may give rise to an apprehension of bias or lack of independence from the point of view of the Client or the Parties.

**“Investigator”** means a member in good standing of the Investigation Unit providing independent third-party investigation services to Clients.

**“Respondent”** means the individual person or persons against whom the complaint is raised.

**“Party”** means the Complainant or the Respondent, or both.

**“Preliminary Assessment”** means the initial evaluation conducted to determine the nature and scope of the issues at the origin of the complaint and to allow the Client to understand the necessary measures required to appropriately handle the complaint at hand, including an assessment of required financial, human and other resources.

**“Safe Sport Officer”** means any person designated from time to time by a Client to receive complaints on its behalf and/or to act as the main contact for the Investigator retained by the Client.

**“SDRCC”** means the Sport Dispute Resolution Centre of Canada.

### 3. IMPORTANT CONCEPTS

#### 3.1 Procedural Fairness

When a decision that will have serious consequences for those involved is made, there is a duty to provide procedural protections throughout the process. The more serious the allegations and potential negative repercussions for the Respondent, the more stringent procedural fairness should be.

The extent to which measures are taken to protect these principles will depend on the nature of the allegations and the consequences for the Parties. Adapting to each situation, Investigators are expected to apply the following principles:

##### The Right to be Informed of the Allegation(s) Prior to an Adverse Finding

Prior to an adverse finding, the Respondent has the right to know the totality of the allegation(s) made by the Complainant and must be afforded a reasonable opportunity to respond to them. It is generally the role of the Safe Sport Officer to notify the Respondent of the allegations at the outset by providing him with a copy of the allegations and an opportunity to respond.

##### The Impartiality of the Investigator

The Parties have the right to an impartial Investigator. The safeguards to ensure the independence of the Investigator are defined in section B herein.

##### The Right to be Heard and to Present Evidence

The Parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, recordings, electronic files, photographs, etc.)

The role of the Investigator as fact-finder is to build a body of relevant and admissible evidence that will be useful eventually in confirming or refuting incidents related to the allegations.

##### The Right to be Accompanied

The Parties may designate someone to accompany them during the investigation. The Party may select a legal representative, a spouse, a friend, etc. This person does not speak on behalf of the Party, but is there to lend moral support and/or assist the Party in understanding the situation.

In cases where a Party or a witness is under the age of majority in his province/territory of residence, it is necessary for a parent or legal guardian to be informed prior to an interview being

conducted. The Investigator may consult with this parent or legal guardian to determine whether the Party or witness will be accompanied by a responsible adult during the interview.

#### The Right to Review Statements to Confirm their Accuracy

Every person interviewed in the investigation may request to have access to their own statements to verify their accuracy. The Investigator may ask such witness to attest in writing to the accuracy of his statement, before the Investigation Report is finalized.

### **3.2 Onus of Proof**

The Complainant bears the onus of proof on a “more likely than not” basis. As a final outcome of the investigation, the Investigator may formulate a non-binding opinion as to whether it is more likely than not that inappropriate conduct or behaviour (such as harassment) did take place.

### **3.3 Other Considerations**

#### Sexual Harassment

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain behaviour. For the same reason, the credibility of witnesses is even more critical in sexual harassment cases than in any other type of harassment. The Investigator must be able to make an assessment of the credibility of the Parties and witnesses.

#### Abuse of Authority

Abuse of authority is a form of harassment. It occurs when an individual misuses the power and authority inherent in his position to endanger a subordinate person’s well-being or position, undermine the person’s performance in that position, threaten the person’s economic livelihood, or influence the person’s career. It includes intimidation, threats, blackmail or coercion. In sports for example, authority may be exercised by coaches over athletes, officials over athletes, officials over coaches, support personnel (e.g. medical staff) over athletes, or athletes over other athletes. Any interaction between two sport participants that may cause for one Party to have sufficient influence on the other to cause harm, whether emotional or physical or to one’s career, can be construed as a position of authority.

Abuse of authority should not be confused with the legitimate exercise of managerial responsibilities, even when it involves actions which may be perceived by the subordinate as

offensive or improper. It is more than just a flawed administrative decision and even mere errors or omissions would not generally meet the threshold of harassment.

Supervisors have the right to manage the workplace in accordance with governing legislation, employment agreements and policies. Similarly in sport, coaches have the right to manage their team in accordance with governing athlete agreements and policies. This includes imposing corrective and/or disciplinary measures, evaluating and managing performance, managing attendance, approving absence requests, among other things. However, the authority conferred upon those designated to manage the workplace or the team is not limitless and supervisors must exercise their authority legitimately and in good faith.

The facts gathered during the investigation process must allow an assessment of whether allegations of abuse of authority are founded, whether the behaviour meets the definition of harassment, or whether there is evidence of improper intent on the part of the Respondent.

#### Grooming Behaviour

Investigators must be knowledgeable about what constitutes grooming behaviour by the Respondent in harassment and abuse cases, in order to recognize the type of evidence that may become relevant to support allegations of inappropriate behaviour.

## **4. INITIATION OF AN INVESTIGATION PROCESS**

The Complainant files the complaint pursuant to the Client's code of conduct, anti-harassment policy or other applicable policy.

The Safe Sport Officer collects the relevant information and, if it is determined that:

- (1) The complaint concerns an individual to whom the organizations' policies apply;
- (2) The complaint is not frivolous; and
- (3) The complaint warrants an investigation,

then the Safe Sport Officer will notify the Client that the complaint requires an investigation.

Based on the information collected by the Safe Sport Officer, an assessment of the urgency shall be made immediately to determine if the complaint requires urgent action (i.e. the Complainant is reasonably fearful for his safety or emotional well-being and is at risk of coming in contact with the Respondent).

## SECTION B - APPOINTMENT PROCESS

### 5. APPOINTMENT PRINCIPLES

Parties involved in the complaint will not take part in the selection of the Investigator.

When selecting an Investigator, the Client is encouraged to consider the particular circumstances of the case, if any. This may include, but is not limited to, the following considerations:

- Affiliations declared in advance by the Investigator which may give rise to a perception of bias or a conflict of interest;
- Preferred language of the Parties;
- Sensitive nature of the case (e.g. sexual harassment);
- Specific request from the Complainant on general profile;
- In time-sensitive matters, capacity of the Investigator to attend to the case in a timely fashion.

#### 5.1 Preliminary Assessment of the Complaint

When in receipt of a complaint under its code of conduct, anti-harassment policy or other applicable policy, the Client may request that the SDRCC designate an Investigator by rotation or select at its own discretion any member of the Investigation Unit to conduct the Preliminary Assessment.

#### 5.2 Investigation of the Complaint

Once the Preliminary Assessment is completed, the Client has full authority to entrust the investigation process into the hands of any investigator of its choice, including where the Preliminary Assessment concluded that a full investigation was not necessary.

Once the Client wishes to pursue an investigation, it has three (3) options in order to designate the Investigator responsible to carry out such plan:

- 1) Retain the services of the Investigator who conducted the Preliminary Assessment;
- 2) Retain the services of another member of the Investigation Unit of its choice or one designated by rotation by the SDRCC; or
- 3) Opt to hire an independent investigator who is not part of the Investigation Unit.

The guidelines and policies of the Investigation Unit shall only apply if the Investigator retained by the Client to conduct the investigation process is an active member of the Investigation Unit on the date that the retainer is signed.

### **5.3 Additional Investigator**

Once appointed to a case, a single Investigator from the Investigation Unit may, upon approval by the Client, solicit assistance from other members of the Investigation Unit to conduct a portion of the investigation on his behalf. This may occur, for example but not limited to, where the need arises during the investigation to interview a witness in another language than that of the Investigator, or where it is deemed preferable that an interview be conducted in person by another Investigator geographically closer to the witness in question. In such cases, the additional Investigator shall complete a Declaration of Independence as per subsection 6.2 herein.

### **5.4 Investigation Team**

During the Preliminary Assessment, if the Investigator feels it is necessary based on the complexity of the case, the volume of witnesses to be interviewed, or any requirement to conduct interviews in different languages or other relevant criterion, he may recommend to the Client to hire a team of two (2) or more Investigators.

In such case, the Client will appoint a lead Investigator. This lead Investigator will then recommend the names of the other Investigators to form part of the team. The Client will have the final say as to which and how many Investigators will eventually be retained as part of the investigation team.

All Investigators forming part of a team under this section shall complete a Declaration of Independence as per subsection 6.2 herein.

### **5.5 Multiple Cases for a Client**

In order to preserve the independence of its Investigation Unit, the SDRCC discourages the use of the same Investigators too often to deal with cases arising from the same Client.

The following guidelines are strongly recommended to a Client when hiring investigators, whether from the Investigation Unit or not:

- 1) A Client should avoid retaining the same investigator for two (2) consecutive complaints arising from its sport, unless they are clearly unrelated;

- 2) A Client should avoid retaining the same investigator for more than three (3) investigation mandates in any period of 12 consecutive months;
- 3) An investigator should avoid conducting two (2) or more ongoing investigations at the same time for the same Client;
- 4) Where a team of investigators is to be retained, a Client should avoid retaining the same lead investigator in two (2) consecutive complaints arising from its sport.

Exceptions to the above guidelines may be justified in circumstances such as, but not limited to:

- No other Investigator is available or qualified to conduct the subsequent investigations (lack of time, not bilingual, etc.);
- In the interest of time and efficiency, it is logical and acceptable to all Parties that a given Investigator be retained because of his prior knowledge and understanding of the issues at stake in a specific investigation.

## 6. INDEPENDENCE OF THE INVESTIGATOR

### 6.1 Initial Disclosure of Facts and Circumstances

Upon joining the Investigation Unit, the Investigators will be required to disclose any facts or circumstances (affiliations, relatives, commercial or other interests, etc.) that could prevent them from accepting certain cases from certain sports or locales which could potentially raise an apprehension of bias or lack of independence from the part of a Client or one or more Parties. Such disclosure will inform the SDRCC designation process when a Client requests that an Investigator be named by rotation.

### 6.2 Declaration of Independence

Upon accepting a mandate, the Investigator must sign a Declaration of Independence provided by the SDRCC, in which Investigators declare that they will exercise their functions personally with impartiality and in conformity with the *Code of Conduct for Members of the Investigation Unit* and with the other relevant policies governing the operations of the Investigation Unit.

Notwithstanding subsection 6.1 above, before accepting an appointment, a member of the Investigation Unit will be provided by the Client with summary information about the case including, but not limited to the names of the known Parties and witnesses, their representatives, the nature of the complaint and the name and contact information of the Client's Safe Sport Officer or official representative. After conducting a conflict check, the Investigator will complete a Declaration of Independence to confirm whether any facts or circumstances may give rise to an apprehension of bias or lack of independence from the point of view of the Client or the Parties.

If the Investigator declares having no facts and circumstances to disclose, his appointment will be confirmed. If facts and circumstances are declared, a copy of the Investigator's declaration shall be communicated to the Client and the Parties, who will be required to expressly consent to the Investigator being appointed. In cases where the Client or any of the Parties raise a concern about the independence of the Investigator on the basis of such declaration, the latter will step down.

### **6.3 Resignation of an Investigator During an Investigation**

Where the Investigator declared independence at the outset of an appointment, and further information is obtained during the course of the investigation that affects or may affect the perception of independence of the Investigator, the latter must immediately disclose to the Client and the Parties the facts and circumstances in question. The Investigator may then resign from the case or, if comfortable continuing to act as Investigator, seek express approval from the Client and the Parties prior to doing so.

### **6.4 Challenge of the Appointed Investigator During an Investigation**

If information comes to the attention of any or all of the Parties during the conduct of the investigation suggesting that they have grounds to believe the appointed Investigator is not independent, the concerned Party shall immediately request in writing to the Client that the Investigator resign from the case. A Party who fails to challenge an appointed Investigator as soon as the information is discovered will be deemed to have waived his right to object to the Investigator's appointment.

If a Party wishes to challenge the independence of an Investigator during a case, a written request must explain how the information in question causes a real or reasonable apprehension of bias. The standard to be applied is whether the circumstances could give a reasonable person grounds to believe that the Investigator has an interest in favouring one Party over another or that the Investigator demonstrates bias towards one of the Parties. If the Investigator does not resign after the challenge is raised, the Client shall decide whether it would be appropriate to hire the services of a different Investigator to maintain the integrity of the process<sup>1</sup>.

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<sup>1</sup> Source: Treasury Board of Canada, <https://www.canada.ca/en/treasury-board-secretariat/services/healthy-workplace/prevention-resolution-harassment/investigation-guide-policy-harassment-prevention-resolution-directive-harassment-complaint-process.html#sta3>, last consulted on December 10, 2018.

## SECTION C - PRELIMINARY ASSESSMENT

### 7. PURPOSE OF THE PRELIMINARY ASSESSMENT

The Preliminary Assessment phase is a crucial step to determine the nature and scope of the issues at the origin of the complaint. It is recognized that not all complaints will necessitate the launch of a complete investigation process. The outcome of the Preliminary Assessment is to ensure the Client seeking assistance under the Investigation Unit understands the necessary measures required to appropriately handle the complaint at hand, including an assessment of required financial, human and other resources.

The appointment of the Investigator to conduct the Preliminary Assessment and the protocol to confirm the Investigator's independence are done in accordance with Section B herein.

### 8. MANDATE AND REMUNERATION OF THE INVESTIGATOR

Once retained by a Client under the regime of the Investigation Unit, the Investigator will conduct the Preliminary Assessment in accordance with the present Section C. The Investigator's remuneration, if any, for the Preliminary Assessment, is governed by section 2.2.1 of the *Investigation Unit Remuneration Policy*.

### 9. PRELIMINARY ASSESSMENT PROCESS

#### 9.1 Review of Applicable Policies

The Client is responsible for providing to the Investigator a copy of all the policies relevant to the complaint. The Investigator will review all applicable policies and seek clarification from the Client where policies are incomplete, ambiguous, contradictory or otherwise unsound.

Where the Client's applicable policies are silent as to the proper process to follow to address the complaint, the Investigator may invite the Client to obtain independent legal advice on that question or, at his own discretion, formulate recommendations to form part of the Investigation Plan or the Preliminary Assessment Report.

#### 9.2 Defining the Allegations

The Investigator reviews the complaint. Ideally, the allegations contain a detailed explanation of the alleged incidents, the name of the Respondent, the relationship between the Parties, a

description of the alleged incidents including the date, time and location and the names of witnesses, if applicable. Whether or not the written complaint appears complete, the Investigator may also confer with the Client to obtain the necessary information or additional documentation to get a better understanding of the issues and the context in which they arose.

### **9.3 Parties and Witnesses**

The Preliminary Assessment is not a fact-finding exercise. The Investigator at this stage is not expected to speak with the Complainant, the Respondent, nor any witness.

## **10. POTENTIAL OUTCOMES OF A PRELIMINARY ASSESSMENT**

### **10.1 Preliminary Assessment Report**

Having conducted the Preliminary Assessment, the Investigator may be of the professional opinion that an independent investigation is not warranted. In such cases, the Investigator will provide a written explanation with reasons and communicate such conclusions in the form of a Preliminary Assessment Report. In doing so, the Investigator may invite the Client to seek alternative avenues to resolve the issues at the origin of the complaint as part of the Preliminary Assessment Report.

The Investigator may also formulate recommendations as to what other steps may be taken to otherwise address the complaint. For example, alternative courses of action to independent investigations may include, alone or in combination:

- a) To address the complaint internally;
- b) To consider improved communication approaches or other forms of redress;
- c) To conduct a formal disciplinary process;
- d) To consider appropriate training or education for prevention;
- e) To consider mediation or other informal dispute resolution processes.

If the Investigator recommends that the complaint be processed internally, without the need to hire an independent third-party investigator, he must also provide detailed reasons supporting such recommendation. Such option must not be taken lightly and is not recommended for cases involving sexual harassment allegations.

## 10.2 Investigation Plan

If the Investigator determines that a more fulsome independent investigation process should be conducted, he may prepare for the Client an Investigation Plan that will define the anticipated parameters of the investigation process required to appropriately address the complaint. Such plan will serve to assist the Client in securing the necessary resources to launch a full investigation, if warranted, and also to put in place any temporary measure(s) while the Investigation Plan is being implemented.

The Investigation Plan must be transmitted only to the Client. The Complainant, the Respondent, the witnesses, and their representatives are not privy to the Investigation Plan.

### Possible Content of an Investigation Plan

If a complete investigation is recommended, the Investigation Plan may include the following elements:

- a) Definition of the Subject(s)/Issues
  - Who is the Complainant, who is the Respondent, and in what context do they interact?
  - What are the allegations?
  - Are there any other questions or points that require clarification?
- b) Information Critical to the Investigation
  - What are the applicable policies and/or directives to be considered?
  - What documents or records need to be examined by the Investigator?
  - Which witnesses or experts may need to be questioned and what their relevance may be to the allegations?
  - Are there other issues that are not within the scope of a Preliminary Assessment that could be further examined as part of an investigation?
- c) Considerations for the Information Gathering
  - Are the Parties and witnesses concentrated in a specific geographical area?
  - Is there a possibility for the need for accommodations (e.g. language of interviews, persons with disabilities or minors to be interviewed)?
  - Are there certain facts needing validation earlier in the investigation process?

d) Timelines and Costs of the Investigation

- Estimated timelines (is there any urgency? what is a reasonable timeframe for the investigation to be completed?)
- Estimated costs (based on number of witnesses, need for travel, etc.)

Additional Considerations

The Preliminary Assessment may also suggest that other measures be considered by the Client. The Investigator may formulate recommendations for the Client with regards to other potential avenues or provisional measures for the management and/or resolution of the complaint at hand.

These may include:

- a) Recommended referral to appropriate authorities, for example where the alleged behaviour may be criminal;
- b) Safeguarding measures such as restricting interaction between the Respondent and the Complainant or other potential victims;
- c) Hire a team of two (2) or more Investigators;
- d) Other approaches suitable to the issues brought to light by the complaint.

### **10.3 End of the Preliminary Assessment**

The Preliminary Assessment Report or the Investigation Plan, as deemed appropriate depending on each case, is delivered directly to the Client. The Preliminary Assessment phase ends with such delivery. Other than answering questions or providing clarification to the Client on his recommendations, the Investigator is functus and may no longer intervene in the case, unless retained by the Client under a separate mandate agreement to conduct the investigation.

### **10.4 Outcome of the Preliminary Assessment not Binding**

Neither the Investigation Plan nor the Preliminary Assessment Report is binding upon the Client. Once in possession of a Preliminary Assessment Report and/or an Investigation Plan, the Client may, at its own discretion, turn to another Investigator to conduct the complete investigation or another Preliminary Assessment. The Client may also, in agreement with the Investigator retained to conduct the complete investigation, vary from the recommendations contained in the Investigation Plan.

## SECTION D - INVESTIGATIONS

### 11. MANDATE AND REMUNERATION OF THE INVESTIGATOR

When retaining the services of a member of the Investigation Unit to conduct an investigation, the Client may do so through the execution of a standard form agreement. At the sole discretion of the Client, different remuneration terms may be negotiated with the Investigator. An Investigator may not refuse a case on the sole basis that the Client is not willing to pay him more than the professional fees and conditions as defined in the *Remuneration Policy*.

The Declaration of Independence signed by the Investigator in accordance with Section B herein is to be shared by the Client with the Complainant and the Respondent.

### 12. INVESTIGATION PROCESS

The Investigator has full discretion to conduct the investigation as he deems it appropriate, as long as it respects the applicable laws and best industry practices, and is consistent with their investigation mandate.

The Investigator gathers information with respect to each allegation to ascertain the relevant facts relating to the complaint. The information may be obtained through, but not limited to, all of the Client's applicable policies, interviews of the Complainant, of the Respondent and of pertinent witnesses, and a review of relevant files and documents.

In gathering facts, the Investigator may consider the questions such as, but not limited to:

- Is there information to support or refute the allegations? If yes, what is it?
- What was the period of time over which the conduct took place?
- Is there information available to suggest that the conduct was intentional?
- Does it appear that the conduct was persistent, pervasive?
- What have the repercussions and impact of the situation been for the Parties?

Should additional allegations be made during the course of the investigation, such allegations are to be brought to the attention of the Client to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation upon which a report is to be made, they are to be presented in writing to the Respondent.

When opportunities arise to use of informal resolution processes (e.g. mediation session) during the investigation process, this should be discussed with the Safe Sport Officer who may suspend the investigation pending the outcome of the informal process.

### Information Collection

As a cost containment measure, Investigators are strongly encouraged, to the fullest extent possible, to use virtual meeting methods for the conduct of interviews, subject to the nature and complexity of each case. The SDRCC is available, upon request and subject to a service fee which is payable by the Client, to offer clerical support to the Investigator for the planning and conduct of interviews (e.g. scheduling, setting up conference calls or videoconference for interviews, recommending suitable meeting facilities for in-person interviews, etc.)

Based on the results of the previous steps and before conducting each interview, the Investigator will define the issues that need to be pursued for questioning, bearing in mind the objective of obtaining information that is pertinent to the allegation(s) and the Complainant's burden of proof.

The Investigator is free to determine the order in which the interviews will be conducted, and may, at its own discretion, interview the same person more than once as deemed necessary to address contradictory evidence and assess the credibility of individuals interviewed. To ensure that the investigation is fair and thorough, the Investigator should weigh the Parties' explanations for each allegation which include aggravating and mitigating circumstances. Without excusing the behaviour, the circumstances may help to explain it and this analysis may impact the lens through which the situation is viewed.

Where there are no witnesses or documentary evidence to corroborate an allegation, as may be the case for an alleged incident that took place in private or behind "closed doors", if the Investigator is unable to know whether or not the alleged incidents took place, the Investigator may find that the standard of proof has not been met.

To determine the likelihood of the allegations, the Investigator may consider the following questions:

- Are the facts plausible?
- Do the facts flow logically?
- Are the facts well explained?
- Are the facts sufficiently detailed?
- How credible is the source (Complainant and/or Respondent)?

Upon completion of the information collection phase, the Investigator should have gathered information that will permit the formulation of a statement of facts as they relate to each allegation and any other requirements of the mandate.

The following questions may be useful in assessing the completeness of the information collected:

- Are all of the key investigative issues which were identified in the planning phase adequately addressed?
- For each allegation, does the file contain each Party's version of what happened?
- Have all the key relevant witnesses been interviewed and their testimony recorded?
- Have all key relevant supporting documents been reviewed?
- Is there enough information to begin an analysis?
- Is there a need to go back and collect or verify additional information?
- Have new important questions emerged?

The Investigator is expected to collate and organize the relevant data in a manner that enables the Client to make a finding as to whether the allegations are founded or not.

### **13. INVESTIGATION OUTCOMES AND REPORTS**

The Investigator will provide the outcomes of the investigation in the form of an Investigation Report. At his own discretion, the Investigator may also issue a set of recommendations to the Client under separate cover.

#### **13.1 Investigation Report**

The Investigation Report will consist of a complete document setting out, objectively and logically, the body of evidence gathered by the Investigator. Such report will contain an Executive Summary of Facts, which constitutes a short and redacted version of the full report, for the Client to extract and share separately from the full report at its own discretion with the Parties or others.

Such report may also include, but not limited to:

- The exact nature of the allegations;
- A logical description of the facts;
- Interview reports for the Complainant, the Respondent and each relevant witness interviewed;
- An analysis of each incident; and
- A conclusion, which may contain non-binding recommendations.

It is not recommended that the Investigation Report include the following type of data, unless it has a direct bearing on the outcome of the investigation:

- Private family, financial or medical data related to the Parties involved in the allegations;
- The use of counseling services;
- Financial or other medical repercussions;
- Personal details that witnesses request remain private that are irrelevant to the investigation;
- Personal identifiers (Social Insurance Numbers, Personnel Record Identifiers);
- Home addresses or phone numbers; and
- Any other personal data that has no bearing on the outcome of the investigation.

Should any such information be required to be included in the report, it is strongly suggested to also issue a redacted version of the report.

In the Investigation Report, the Investigator may formulate a professional opinion, which is not binding, as to whether the behaviour of a Party on the balance of probability amounts to a breach of the Client's code of conduct, anti-harassment policy or other applicable policies, or whether the allegations are unfounded, vexatious or made in bad faith.

A complaint should not be characterized as vexatious if the evidence demonstrates a reasonable basis for filing and pursuing it. The standard for establishing that a complaint was made in bad faith is high. It entails more than just poor judgment or negligence. It implies the conscious doing of a wrong for a dishonest purpose or due to moral underhandedness on the part of the Complainant. It is characterized by an intention to mislead.

The Investigation Report is delivered only to the Client and may, as deemed appropriate by the Client, be shared with the Complainant and the Respondent as part of the evidentiary record.

## **13.2 Recommendations**

If the conclusions of the Investigation Report point to a likely breach of the Client's code of conduct, anti-harassment or other applicable policy, the Investigator may formulate recommendations as to the appropriate next steps. In compliance with the Client's policies and procedures, such recommendations may include administrative, corrective/restorative, and/or disciplinary measures the Client may consider as a result of the conclusions of the report. For example, the Investigator could also encourage the Client to retain the services of a mediator to mend strained relationships or restore climate within a group after the complaint is resolved.

Other recommendations formulated by the Investigator may include the need to conduct further review and/or investigation of the circumstances that allowed the alleged behaviour to take place in the Client's work or team environment, as well as considerations for review and amendments to the Client's applicable policies in order to avoid recurrence, improve their clarity and rectify any inconsistencies and/or gaps.

The Investigator's recommendations are not binding on the Client nor on the Parties, and unless specified otherwise by the Investigator shall not constitute legal advice.

The Report must be signed by the Investigator and can be submitted to the Client via email, fax or mail. It is not the responsibility of the Investigator to share the Investigation Report with anyone other than the Client.

Once the Investigation Report is delivered to the Client, the mandate of the Investigator is completed.

### **13.3 Following the Investigation Report**

Further to reviewing the contents of the Investigation Report and, if applicable, the recommendations of the Investigator, the Client is fully responsible for the implementation of the proper course of action, as contemplated in its own rules.

The Investigator will submit its final invoice to the Client. Should the invoice be deemed to not be in compliance with the *Investigation Unit Remuneration Policy* and in the absence of another agreement between the Investigator and the Client to depart from such policy, the Client is encouraged to discuss the concerns directly with the Investigator. Should the Client's concerns not be addressed to its satisfaction, a challenge may be filed with the SDRCC pursuant to the relevant provision of the *Investigation Unit Remuneration Policy*.

If the Client, the Complainant, the Respondent, any witness and/or its representative(s) believe that the Investigator acted contrary to the *Code of Conduct of the Members of the Investigation Unit*, they may file a complaint pursuant to the *SDRCC Complaint Process Policy*. Such complaint process is intended as an administrative procedure to improve, as required, the investigation services and to review any alleged breaches by the members of the Investigation Unit of the *Code of Conduct of the Members of the Investigation Unit*. It is not intended to review, change or overturn the conclusions and/or recommendations of the Investigators.

## SECTION E - LIMITATIONS OF LIABILITY

Members of the Investigation Unit are not agents, representatives or employees of the SDRCC. They have been selected to be part of the Investigation Unit on the basis of self-declared experience and expertise. They conduct investigations in their own names and the use of their services is not compulsory for any potential client.

Members of the Investigation Unit are required to possess and maintain a professional liability insurance covering their investigation work. Credentials and permits to conduct investigations are granted pursuant to provincial and territorial laws. It is the joint responsibility of the Client and of the Investigator(s) retained to validate that the Investigator is qualified to deliver on the scope of the investigation mandate to be agreed upon, in compliance with applicable laws in their respective jurisdictions.

Clients are responsible for securing liability insurance to cover their operations in dealing with the conduct and safety of their participants, members and constituents.

The SDRCC shall not be held liable for any damages, losses or causes of action whatsoever arising from any action, error or omission, advice, counsel or service by any of the members of its Investigation Unit.