

Athletics Ontario
Complaint Hearing Panel Report
October 9, 2019

Panel Members: Jillian Drouin (Chair), Ian Anderson, Colin Inglis

Summary of Complaints

Complaint #1 – [REDACTED] (Complainant) and Randy Brookes (Respondent)

Received by the Athletics Ontario (AO) Harassment Officer on February 2, 2019.

The Complainant alleges that the Respondent contravened three sections of the AO Harassment Policy [REDACTED]

[REDACTED] These sections are:

- 1) Poisoned Environment,
- 2) Sexual Harassment; and
- 3) Sexual Solicitation or Advances.

Complaint #2 – [REDACTED] (Complainant) and Randy Brookes & [REDACTED] (Respondents)

Received by the AO Harassment Officer on April 2, 2019.

The Complainant alleges that the Respondents contravened three sections of the AO Harassment Policy following her initial complaint. These sections are:

- 1) Reprisal/Retaliation,
- 2) Poisoned Environment; and
- 3) Harassment.

According to the Harassment Policy Section 5 – Prohibited Behaviour, the above can be defined as:

Poisoned Environment - created by comments or conduct (including comments or conduct that are condoned or allowed to continue when brought to the attention of management) that creates a discriminatory work environment. The comments or conduct need not be directed at a specific person, and may be from any person, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

Sexual and gender-based Harassment - action or behaviour resulting in:

- Gender-related comments about a person's physical characteristics or mannerisms

- Paternalism based on gender which a person feels undermines his or her self-respect or position of responsibility
- Unwelcome physical contact of any kind
- Suggestive or offensive remarks or innuendoes about members of a specific gender
- Propositions of physical intimacy
- Gender-related verbal abuse, threats or taunting
- Leering or inappropriate staring
- Bragging about sexual prowess or questions or discussions about sexual activities
- Offensive jokes or comments of a sexual nature about an individual
- Rough and vulgar humour or language related to gender
- Display of sexually offensive pictures, graffiti or other materials including through electronic means
- Demands for dates or sexual favours

Sexual Solicitation – solicitations, exploitation, or advances by any person who is in a position to grant or deny a benefit to the recipient of the solicitation or advance. This includes team managers and coaches, as well as AO co-workers where one person is in a position to grant or deny a benefit to the other. Reprisals for rejecting such advances or solicitations are also not allowed.

Reprisal/Retaliation - action or behaviour directed towards an individual who has complained of being harassed, who has reported witnessing harassment or who has otherwise been involved in a harassment complaint or investigation. Reprisal/retaliation is generally initiated with the intent to intimidate, threaten, humiliate, exact revenge, or adversely affect the performance or working conditions of an individual. Reprisal/retaliation may include, but is not limited to, situations in which an individual involved in a harassment proceeding is:

- a) improperly denied or threatened with the withholding of promotion, advancement, access to training or other related opportunities or benefits (e.g. team selection); or
- b) improperly disciplined or threatened with disciplinary action, or dismissed or threatened with dismissal.

Harassment - any behaviour, including a course of comments or actions that are known, or ought reasonably to be known, to be unwelcome. It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome, based on a ground of discrimination identified by this policy. Harassment can occur based on any of the grounds of discrimination. Examples of Harassment are:

- Epithets, remarks, jokes or innuendos related to a person's race, gender identity, gender expression, sex, disability, sexual orientation, creed, age, or any other ground
- Posting or circulating offensive pictures, graffiti or materials, whether in print form or via e-mail or other electronic means
- Singling out a person for humiliating or demeaning "teasing" or jokes
- Comments ridiculing a person because of characteristics that are related to a ground of discrimination. (i.e., this could include comments about a person's dress, speech or other practices that may be related to their sex, race, gender identity or creed.)

Note: If a person does not explicitly object to harassing behaviour, or appears to be going along with it, this does not mean that the behaviour is okay. The behaviour could still be considered harassment under the *Ontario Human Rights Code*.

The AO documents relevant to these complaints include the Harassment Policy, Membership Policy, General Code of Conduct, Code of Conduct – Coaches. Specifically, the General Code of

Conduct (the Code) states that it applies to all members of AO and “their conduct at any AO activities, programs or events and includes conduct in activities in any way related to AO and/or its members”. It defines members as:

“...any entity approved for membership as defined in the AO By-Law (person, group of persons organized and associated for the purpose of athletics and registered as a Member of AO), as well as all individuals engaged in activities with AO (including, but not limited to, athletes; coaches; officials; volunteers; team managers; club administrators, coaches or board members; committee members, directors and officers of AO; employees; spectators at AO sanctioned events; and parents/guardians of athletes).”

The second Section of the Code outlines the conduct members must abide by, including those relevant to this review:

a) Policy

- 2) Comply at all times with the bylaws, policies, rules and regulations of the IAAF, Athletics Canada and Athletics Ontario, as adopted and amended from time to time, including complying with any contracts or agreements executed with or by AO;
- 3) Participate in a spirit of fair play and honesty;
- 6) Be courteous and respectful to other members of the athletic community;
- 8) Refrain from public criticism of other members of the athletics community;
- 9) Respect the dignity of others;
- 11) Act in a manner that will bring credit to the athletics community and themselves;
- 12) Abide by the Athletics Canada - Member Conduct Policy – Expected Standard of Ethical Conduct: <http://athletics.ca/wp-content/uploads/2014/12/Policy-on-Member-Conduct.doc-Nov.-2014.pdf>
- 13) Be aware of the rules and policies which may directly impact you as a member (i.e., Athlete Transfer Policy, Anti-Doping Policy, Harassment Policy, Dispute Resolution Policy, Discipline Policy, etc.)

b) Compliance

By registering with Athletics Ontario a member agrees to abide by all AO’s rules, policies, and procedures. Parents, by registering a child, you also agree to abide by AO rules, policies and procedures.

The AO Code of Conduct – Coaches (Coaches’ Code) outlines the conduct all coaching members of AO must abide by in Section 2 - Policy. The specific points relevant to this review are:

a) As a member of Athletics Ontario a Coach must:

- 2) Comply at all times with the bylaws, policies, rules and regulations of the IAAF, Athletics Canada and Athletics Ontario, as adopted and amended from time to time, including complying with any contracts or agreements executed with or by AO;
- 3) Participate in a spirit of fair play and honesty;
- 6) Be courteous and respectful to other members of the athletic community;
- 8) Refrain from public criticism of other members of the athletics community;
- 9) Respect the dignity of others;

- 11) Act in a manner that will bring credit to the athletics community and themselves;
- 12) Abide by the Athletics Canada - Member Conduct Policy – Expected Standard of Ethical Conduct: <http://athletics.ca/wp-content/uploads/2014/12/Policy-on-Member-Conduct.doc-Nov.-2014.pdf>
- 13) Be aware of the rules and policies which directly impact coaches (i.e., Athlete Transfer Policy, Anti-Doping Policy, Dispute Resolution Policy, Harassment Policy, Discipline Policy, etc.) All current AO by-laws, rules, policies, and procedures are posted on the AO website.

b) All Coaches of ATHLETICS ONTARIO must also:

- 13) At no time become intimately and/or sexually involved with the athletes they coach as per the laws of Canada, the Province of Ontario and the Athletics Ontario Harassment Policy. This includes requests for sexual favours or threats of reprisal for rejection of such requests.

Finally, the Membership Policy, Section 5 – Non Compliance, outlines the consequences for any member found to be in breach of any AO policy:

“If a Club or individual member receives affiliation/membership with Athletics Ontario, the Member shall abide by the AO By-Laws, Rules, Policies and Procedures of Athletics Ontario and, where applicable, those of Athletics Canada and the IAAF.

Any Member Club or individual who is found to have breached or is in violation of the AO By-laws, rules and regulations, policies, contracts or agreements, which may arise during the course of AO business, activities, and events including, but not limited to, competitions, practices, training camps, travel associated with AO activities, and any meetings will be subject to disciplinary action which may result in suspension or termination of membership, in extreme cases.”

Due to the close and intertwined relationship of the above complaints, the hearing panel has decided to consider the two in conjunction. Therefore, the contents and recommendations within this report apply to both.

Review Process

Upon receiving the above complaints, the AO Harassment Officer completed his preliminary reports dated April 26, 2019 (Complaint #1) and April 28, 2019 (Complaint #2), both submitted to the AO Chair on April 29, 2019. In summary, his key findings in the first report were that enough evidence of a sexual relationship which would contravene the Harassment Policy was presented to warrant further investigation. In the second report, he found that both parties were making claims against the other of actions of reprisal, retaliation or harassment that breach the Harassment Policy and thus should be reviewed in conjunction with the first complaint.

An independent Investigator was then appointed on May 6, 2019 to look into both matters. The investigator was provided with the Harassment Officer’s reports, responses from all parties and

the submitted pieces of evidence to that date. This initial Investigator was forced to withdraw due to personal reason on July 10, 2019 and a new Investigator was appointed July 12, 2019. The investigator filed a separate report for each complaint, both dated August 18, 2019 and sent to the AO Chair the following day.

On the first complaint, the Investigator found the evidence of a poisoned environment was inconclusive, but given the conduct of both parties, it would be reasonable to conclude a poisoned environment existed. In the matters of sexual harassment and sexual solicitation or advances, the Investigator concluded that the evidence, including the Respondents' admission to the existence of a sexual relationship, demonstrates a breach of the Harassment Policy and Code of Conduct.

On the second complaint, in his review of the evidence and speaking to witnesses, the Investigator found there to be actions of reprisal and retaliation committed by the respondents and because those are included in the Policy under harassment, the claim of harassment is also founded. He indicated he did not believe there was a need to further investigate the claim of poisoned environment beyond that conducted for the first complaint and thus his conclusions from the first complaint stand in this complaint as well.

Hearing Panel

As per AO's Dispute Resolution Policy: Appendix A – Dispute Resolution Process, a three-person panel was compiled on August 30, 2019, within 14 days of receiving the Investigator's Report on August 19, 2019. Upon assessing for potential conflicts of interest, one panel member was excused and the spot filled by an individual without conflict on September 5, 2019. The panel was then provided with all the evidentiary documentation submitted by the Complainant and Respondents, including the Harassment Officer and Investigator's reports, to review. During the preliminary consultation it was determined that an oral in-person hearing would be conducted.

The hearing took place on September 25, 2019 in London, Ontario and involved participation by the Complainant and both Respondents, including Mr. Brookes' lawyer. During independent sessions, each party was allocated equal time to provide additional evidence pertaining to the complaint and answer questions from the panel.

Panel Decision

In light of the evidence provided for both complaints, this hearing panel has decided the submitted complaints against Randy Brookes (Male Respondent) are valid. We feel that by participating in a sexual relationship with an adult athlete while acting as that athlete's coach violates the AO Coaches Code of Conduct and Prohibited Behaviours, specifically the sexual harassment and sexual solicitation sections of the Harassment Policy. There was also evidence of manipulative behaviours by the Male Respondent against the Complainant throughout this time

period which are often referred to as grooming and gaslighting. The Male Respondent has admitted to being unaware of the sections within the Coaches' Code that bans coach/athlete sexual relationships and did not seem to recognize fault in his behaviour. He also does not seem to recognize that his actions and continued participation in certain intimate relationships is bringing harm and disrepute to his athletes, club and Athletics Ontario. Additionally, there is evidence in the form of witness statements of retaliation committed by the Male Respondent against the Complainant following her initial complaint and this is reinforced by the Male Respondent's actions throughout this hearing, such as coercing at least one witness statement against the Complainant and continuing to blame the Complainant for an action for which there was no evidence against her according to the Police Review of the matter.

Therefore, this panel concludes that for a time period of no less than two (2) years beginning immediately upon the publication of this report, Randy Brookes shall be banned from participation in any role at any competition, practice, camp, event or activity that is organized, convened or sanctioned by AO or by a member of AO (including any affiliated club or association) and have his AO Coach Membership suspended. The Male Respondent is also instructed to cease any further actions of retaliation against the Complainant which would violate the Harassment Policy.

At the conclusion of this two-year suspension period, the Male Respondent's coaching membership may be reinstated if he has not violated the terms of the above sanction and contingent upon compliance to the following requirements. He must:

- 1) Complete the Respect Group's Respect in Sport for Activity Leader's course and provide proof of completion to Athletics Ontario
- 2) Complete or renew the NCCP's Make Ethical Decisions course and provide proof of completion to Athletics Ontario
- 3) Be able to demonstrate an understanding of the wrong doing and consequences of this misconduct, as well as a full understanding of the Athletics Ontario Code of Conduct and Harassment Policy (may be accomplished through a letter of contrition directed to Athletics Ontario Chair and CEO)
- 4) Be able to demonstrate a change in behavior which complies with the Athletics Ontario Code of Conduct and Code of Conduct – Coaches, and which does not risk bringing disrepute or harm to himself, his athletes or Athletics Ontario (may be accomplished by a written document outlining the steps taken to rectify his behaviour and with character witness letters, to be vetted by Athletics Ontario)

The length of the Male Respondent's suspension may be extended in the event of any of the following circumstances:

- 1) Should any reliable evidence arise of violations of the above terms, or
- 2) Should the Male Respondent fail to complete any of the above listed requirements for membership reinstatement, or
- 3) Should additional founded complaints be filed against the Male Respondent based on new or previous incidents.

It is the panel's opinion that while [REDACTED] (Female Respondent) is not a registered member of Athletics Ontario, she falls under the definition of "member" (outlined above in the Code) as she is the parent of a minor AO Member, a spectator at AO sanctioned events and a volunteer for an AO affiliated club. Therefore, she is subject to same policies and expected to maintain the conduct outlined in the Code as any other AO Member. However, the panel does not believe AO holds the power to sanction the Female Respondent in this complaint without punishing her child who is an AO athlete member. Even so, the Female Respondent is instructed to refrain from participating in or enabling any further acts of retaliation against the Complainant (as outlined above) and maintain compliance with the Code during any further activities associated with AO. Failure to do so could result in future disciplinary actions, including being barred from participating in or spectating at AO affiliated activities and events.

While we acknowledge that [REDACTED] conduct throughout the time period described in these complaints may have also constituted minor violations of the Code and Harassment Policy, there has been a separate complaint filed against her by one of the above Respondents which focuses on the evidence of alleged misconduct by the Complainant. We feel the panel in that complaint hearing will propose any adequate disciplinary actions they feel necessary, and thus it is not the role of this panel to impose additional penalties on the Respondent in another complaint. We also feel it necessary to stress that the conduct of the Complainant, part of which is also a matter being assessed by the Criminal Courts, was not a breach of the sexual harassment policy involving a minor, as has been alluded to throughout the time period described in this complaint. However, we feel the need to express that the behaviour by the Complainant that was in breach of the Code and retaliatory in nature must cease and that further complaints of misconduct against her could result in harsher penalties in the future.

Appeal Process

If a party believes the decision rendered by the Panel, after completing this Process, was procedurally unfair, the decision of the Panel may be appealed under the AO Appeal Process (see Appendix C of the Athletics Ontario Dispute Resolution Policy). If this is a viable option, the decision reached through the AO Appeal Process will be final and binding on all parties. There shall be no further recourse to any appeal to a Court on any matter of fact or law.

Alternatively and under limited circumstances, if the Appellant and the Respondent and all affected parties mutually agree to take part in an alternative appeal process, and if all parties sign an arbitration agreement confirming their intent to submit to binding arbitration, the appeal may be referred to arbitration under the policies of the Sport Dispute Resolution Centre of Canada (SDRCC). Any such appeal must be initiated by notification to the Board Chair in writing within five days of the decision of the Panel being provided to parties.

For more information on the SDRCC appeal process, please see the Appeal Policies section of SDRCC's website at www.crdsc-sdrcc.ca