

Athletics Ontario

Complaint Hearing Panel Report

March 3, 2020

Panel Members: Sarah Boyle (Chair)

Parties:

[REDACTED], both personally and as a parent on behalf of her minor child, an AO Athlete [REDACTED] (“Complainant”)

Cathy Barry (“Respondent”), an AO member Coach.

Complaints:

#1 - It was alleged that on January 22, 2019, the Respondent sent a text message to the Complainant that included a photograph of a nude male’s body, and a comment about a jacket and necklace.

#2 - It was alleged that on January 23, 2019, the Respondent attended at the home of the Complainant and engaged in a discussion with the Complainant’s minor child (an AO Athlete coached by the Respondent) that involved questioning the AO Athlete about the Complainant’s personal relationship with another party.

#3 - It was alleged that on February 11, 2019, the Respondent contacted the Complainant’s place of work to file an anonymous complaint against her.

The Complainant identified discrimination and/or harassment on the following grounds:

1. Age;
2. Poisoned Environment;
3. Reprisal;
4. Verbal Harassment; and
5. Other/Cyber bullying and emotional distress.

According to Athletics Ontario’s (“AO”) Harassment Policy, Section 5, titled Prohibited Behaviour, some of the above are 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.

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 email 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 this complaint include the Harassment Policy, Membership Policy, General Code of Conduct, Code of Conduct – Coaches. AO's 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". The AO General Code of Conduct 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)."

Section 2 of AO's General Code of Conduct outlines the conduct members must abide by, including those relevant to this review:

a) Policy

- 1) Not knowingly place themselves in a situation that could rise to a conflict between personal interests and the interests of AO;

- 1) 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;
- 4) Abide by the laws of the jurisdiction of the province or country in which the event is taking place;
- 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 (the “Coaches’ Code”) outlines the conduct all coaching members of AO must abide by in Section 2, titled Policy. The specific terms of the Coach’s Code that are relevant to this review include:

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

- 1) Not knowingly place themselves in a situation that could give rise to a conflict between personal interests and the interests of AO;
- 4) Abide by the laws of the jurisdiction of the province or country in which the event is taking place;
- 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;
 - 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 coaches (i.e., Athlete Transfer Policy, Anti-Doping Policy, Harassment Policy, Discipline Policy, etc.)

Finally, the Membership Policy, Section 5, titled 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 Bylaws, 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.

Review Process

Upon receiving the above complaint, the AO Harassment Officer completed a Final Harassment Report dated April 26, 2019 which was submitted to the AO Chair on April 29, 2019. The Harassment Officer found that there was enough evidence which would contravene the Harassment Policy to warrant further investigation.

An independent investigator (the “Investigator”) was appointed on May 6, 2019. The Investigator was provided with the AO Harassment Officer’s report, preliminary evidence from the Parties, and evidence that had been provided/gathered during the course of the AO Harassment Officer’s Report.

The initial Investigator was forced to withdraw due to personal reasons on July 10, 2019 and a new Investigator was appointed July 12, 2019. The replacement Investigator filed a report for this complaint, dated August 18, 2019, which was delivered to the AO Chair on August 19, 2019.

The Investigator reviewed the evidence supporting discrimination or harassment on the grounds set out above: age; poisoned environment; reprisal; verbal harassment; and other/cyber bullying and emotional distress. With respect to each of these grounds the Investigator made the following determinations:

1. **Age:** There was no discrimination on the basis of the AO Athlete’s age as the interaction between the Respondent and the AO Athlete would not likely have been different if the AO Athlete were older.
2. **Poisoned Environment:** While there were no credible witnesses to verify this allegation specifically, the Investigator opined that based on the conduct of the parties in general, it was reasonable to conclude that a poisoned environment did exist. However, the Investigator concluded that based on the other grounds of harassment identified in this complaint, any process of justice would not be affected by determining the evidence on the matter of poisoned environment as inconclusive.
3. **Reprisal:** The Investigator found that the Complainant did not make the case for reprisal in this matter. Again, the Investigator concluded that based on the other grounds of harassment identified in this complaint, any process of justice would not be affected by determining the evidence on the matter of reprisal as inconclusive.
4. **Verbal Harassment:** The Investigator found, as admitted by the Respondent, that there was a breach of AO’s Policy on verbal harassment by engaging a minor in a conversation not related to regular coach/athlete matters, and one that the Respondent knew or ought to have known would not be welcomed.
5. **Other/Cyber bullying and emotional distress:** The Respondent admitted to sending the text messages containing nude photos to the Complainant which was found to be a violation of AO policy. The Investigator did not find that the Complainant experienced emotional distress as a result of receiving these text messages, but it is noted that the

Durham Regional Police laid charges against the Respondent for publishing an intimate image without consent.

Hearing Panel

This Complaint was bifurcated from a larger dispute between additional parties by the AO Chair based on the determination that the matters giving rise to this Complaint were distinct and discrete. As a result, the Complaints set out above were assigned to a one-person panel (the "Panel"), after an assessment for potential conflicts of interest, on August 30, 2019. The Panel was then provided access to all of the evidentiary documentation submitted by the Complainant and Respondents, including the Harassment Officer and Investigator's reports.

The Parties were contacted on September 28, 2019 to initiate the consolation process and to determine the timeline for the submission of additional materials and responses. The following timetable was established:

1. October 11, 2019: Parties provide their respective written submissions with respect to the Investigator's Report;
2. October 12, 2019 – October 18, 2019: Parties review the submission of the other party and provide written rebuttals (if you so choose);
3. October 28, 2019: Parties review rebuttals and provide written arguments; and
4. November 11, 2019: Decision from Panel released to the parties.

On October 31, 2019, the Panel wrote to the parties addressing questions from each party regarding the scope of the dispute, confirmation as to the evidence provided to me from the Investigator and Harassment Officer, and confirmation on the parties to this dispute. A call was held with each Party individually on November 4th and 5th, 2019 to confirm the Panel's position regarding the scope of the dispute, the evidence provided to the Panel, and the parties involved in the dispute. This information was provided to the Chair of AO who provided confirmation that the Panel's interpretation of the scope of this Complaint and the communication of same to the Parties was correct.

On November 15, 2019, the Panel communicated to the Parties that the AO Chair had confirmed the scope of this Complaint and the parties involved with this Complaint. At this time, the Panel requested that the Parties review the evidence that had been provided to the Panel (facilitated by way of a shared drive) and determine if they required additional time to provide the Panel with the information that they perceived to be pertinent to this matter. Both parties provided additional information.

On December 11, 2019, this Panel wrote to the Parties confirming that additional evidence had been provided by both Parties and that each Party had confirmed that there was no further information that they required the Panel to review in order to make a decision.

A considerable amount of information/evidence was provided to this Panel for consideration. Much of the information provided was not relevant to this Complaint. To the Parties' credit,

much of this information had been provided prior to this Panel confirming the scope of this Complaint with the two Parties. The review of the Parties' respective submissions took a considerable amount of time.

After the Panel completed its review it requested a call with each Party individually to address questions arising from the Parties' evidence and to confirm the outcome of a Criminal Court attendance that took place in January 2020 involving the Parties. These calls took place with the Parties, individually, in the first week of February 2020.

Panel Decision

This Panel has independently determined that Complaints #1 and #2 submitted against Cathy Barry are valid. Sending a nude photo via text message to a parent of an AO Athlete, and attending at a minor AO Athlete's home and engaging in discussions with that minor athlete about his mother's relationship with another AO Member violates the AO Coaches Code of Conduct and Prohibited Behaviours and the AO Harassment Policy. Based on the evidence provided relating to Complaint #3, this Panel has not been able to determine whether the Respondent in fact contacted the Complainant's work to launch a confidential complaint.

The Respondent has recognized that her actions were inappropriate and not in line with the expectations of her as a coach with AO. She has been forthcoming in this process, acknowledging her actions from the outset of this Complaint.

This Panel has determined that it is relevant to this decision that the nude photo sent to the Complainant was of a non-party to this complaint with whom the Respondent had a relationship. The non-party is aware of the photo and was involved in discussions with Police that led to the Respondent being charged by Police. As this individual is not a party to this Complaint, the individual should not be named and their confidentiality should be maintained.

While not germane to this Panel's decision, this Panel is particularly concerned by actions of the Parties in this matter that are beyond the scope of this Complaint. These ancillary actions of the Parties and others not involved in this Complaint have resulted in harmful experiences for not only the Complainant and her family, but also the Respondent and her family; both families include minor children. It remains that these ancillary matters and any matters giving rise to the events of January 22 and 23, 2019, or following these events are not part of the scope of this Complaint. In August 2019, there was a decision to bifurcate this matter from a larger complaint. If these other matters were to be considered they would have been consolidated.

While there has been an acknowledgement on the part of the Respondent for her actions, and a determination by this Panel that the Respondent's actions violated AO's Harassment Policy and Codes of Conduct, it remains the task of this Panel to determine what penalty is appropriate for the Respondent's actions.

There has been no guidance provided to this Panel in terms of comparable decisions or disciplinary actions for similar complaints. There is a notable lack of published precedence and

guidance on the appropriate types of sanctions/punishments for these types of incidents. AO's Policies do not set out mandatory or minimum punishments for contraventions to its Codes of Conduct or Policies.

The Complainant has requested that the Respondent be suspended indefinitely from AO's Membership. It is the Panel's determination that the request on the part of the Complainant is not in line with the Respondent's actions.

The penalty recommendations of the Investigator were that the Respondent be suspended from AO's membership until she has completed anger management therapy and pending the outcome of the criminal investigation. Prior to the release of the Investigator's Report, the Respondent had taken it upon herself to complete the following courses and attend the following sessions:

1. Anger Management Course through the John Howard Society;
2. Nine Counselling Sessions (from February 2, 2019 to April 16, 2019);
3. Prayer Clinic Sessions through her Church, attended on a weekly basis;
4. The Respect Group's Respect in Sport for Activity Leader's course; and
5. National Coaching Certification Program's Make Ethical Decisions course.

Given that the Respondent's next criminal attendance was set for January 15, 2020, the Panel requested the outcome of this attendance. The Respondent has provided confirmation that the criminal charges for the distribution of the nude photo without consent have been withdrawn. The Respondent has entered into a peace bond with the Complainant and the AO Member who was the subject of the photo. The Peace Bond is effective for a period of one year.

While the Respondent and the minor AO Athlete engaged in a conversation regarding the child's mother's relationship status with another AO Member, the tone of this conversation and the content of this conversation cannot be determined based on the conflicting evidence provided. The minor AO Athlete provided a statement detailing the impact that his conversation had on him. This Panel has not been provided evidence that this conversation resulted in serious damage to the AO Athlete's mental or physical wellbeing; the child is still participating in the sport based on the information presented to this Panel. The fact remains that this AO Athlete is a minor and that he is entitled as an AO Athlete to have his best interests as both an athlete and as a child be at the forefront of every decision that is made with respect to interactions with him – both on and off the track.

With respect to the text message sent to the Complainant by the Respondent, this Panel has determined that it is relevant to this decision to note the following: first, that the text message consisted of a screen shot of a conversation between the Respondent and the non-party, which included a nude photo of the non-party; second, that the Respondent and the non-party were previously involved in an intimate relationship; and third, that the intent of the text message sent from the Respondent to the Complainant was to address a suspicion held by the Respondent that the Complainant and the non-party were involved in a relationship, which has since been confirmed. These facts do not impact this Panel's decision, but they are certainly relevant in order to give any reader of this Decision context to this Complaint.

This Panel finds that the Respondent had an obligation to recognize her role as an AO Coach and to govern herself accordingly, particularly when interacting with other members of the Organization. The Respondent has openly recognized this in her materials and has demonstrated through her participation in courses, training and counselling that she is willing to take accountability for her actions.

Per section 10 (c) of AO's Dispute Resolution Policy, the following remedies will apply:

1. the Respondent's AO Coach Membership shall be suspended until such time that she completes the following courses and obligations:
 - a. the NCCP's Managing Conflict Course and provides proof of completion to AO;
 - b. the NCCP's Mentorship Course and provides proof of completion to AO;
 - c. the Respondent provides a letter to AO setting out her obligations as a coach as set out under AO's Code of Conduct and Harassment Policy, the skills she has gained as a result of her counselling and courses that she has completed (including those courses set out in paragraphs (a) and (b) above), and how these skills will facilitate her ability to meet her obligations under AO's Codes and Policies; and
2. the Respondent shall receive a letter of reprimand from AO which must be placed in her file. The letter will remind the Respondent that she must model behavior befitting a coach, youth mentor, and member of AO.

Beginning immediately upon the publication of this report, the Respondent, Cathy Barry, 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 her membership suspended. The Respondent's coaching membership will be reinstated if she has completed the requirements set out above, at AO's sole discretion, and she remains in compliance with the terms of her Peace Bond. If at any point the Respondent is found to have violated the terms of her Peace Bond in the next year her membership shall be suspended until further investigation.

The Complainant, and any AO members tangentially involved in this matter, are also instructed to cease any further actions of retaliation against the Respondent. It is the Panel's opinion that while the Complainant is not a registered member of AO, 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.

The length of the Respondent's suspension may be extended in the event that additional founded complaints are filed against the Respondent based on new or previous incidents.

The parties are reminded of the confidentiality provisions described in Section 12 of the *Dispute Resolution Policy*.

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 SRDCC's website at www.crdsc-sdrcc.ca