

# Summary of SDRCC Comments to Draft 2 of the Universal Code of Conduct

(First consultation phase, August 31, 2019)

Section	Comment
1.0	The SDRCC recognizes the time constraints under which the drafters have worked and applauds the amount of work that went into this first draft. We also support the concept that the Code will not be perfect from the first adopted version, and that the sport community will work together after adoption to ensure it is maintained current and relevant and that it is improved through a cyclical Code revision process to allow it to adapt to the ever-changing environment. However, given the amount of feedback, comments and concerns heard from the sport community, thus far since this version was released, the SDRCC is concerned that in order to bring consensus among such a diverse community, a single round of consultation is insufficient.
1.1	We suggest adding to this list the concepts of <i>Collaboration</i> (information-sharing, mutual recognition, etc.) and of <i>Inclusion</i> .
1.1	Regarding the “ <i>Mandatory</i> ” principle: This is not legislation. Organizations may opt out, possibly at the cost of losing some other privileges (such as public funding), but can the Code declare itself mandatory?
1.2	Regarding the use of the term “Independent Body”: If this term will be italicized and used over 30 times in the document, it should be defined in the section Definitions.
1.2 bullet 1	This implies that people who are “protected” by the Code are all Participants. We agree with this, however it would be advisable to make it explicit.
1.2 bullet 1	Regarding the use of the term “fully”: The use of the word "fully" circumscribes the misconduct too narrowly. It is also internally inconsistent with the language of section 2.0 and related subsections where language such as "without limitation" is used.
1.2 bullet 2	Second sentence is a very general statement that we suggest be moved higher up in same section, maybe even be the first sentence of section 1.2.
1.2 bullet 3	Regarding the use of the term “Athletes”: We suggest the term be changed to read “others” or perhaps “other Participants”, or “Athletes and other Vulnerable Participants*”. * see further reference to Vulnerable Participants in sections Definitions and 2.9.1.
Definitions / Athlete	Regarding the use of the verb “is”: Some consideration should be given to the definition of Athlete and whether it can include a former athlete. Not all athletes will come forward immediately and it would not be in keeping with the spirit of the Code to exclude a former athlete who brings allegations to light once no longer an active athlete. Similar concerns apply to the definition of Participant.
Definitions / Athlete & Participant	Regarding “Section X”: We are curious to know at what stage of the drafting process this section X will be shared, given the significant implications it has on the entire document.
Definitions / Participant	We suggest adding to the definition: “For the sake of clarity, a Participant can also be found to be in violation of the UCC if someone else, such as a guardian, parent or family member, acting on behalf of that Participant, engages in behaviors described under Misconduct related to process or Misconduct related to reporting.”

Definitions / Claimant	We are questioning the use of the term “claimant”. Claimant is typically someone who makes a claim. The definition resembles more that of a victim. So why not call them “victims”, since they will likely not act as “claimants”, even if there is a disciplinary hearing or appeal conducted?
Definitions / Third Party Reporter	We do not feel this definition is necessary.
Definitions / Minor	The language could be more precise to indicate that the individual is a minor <u>at the material time or the time of the alleged misconduct</u> . Someone could report the misconduct once they are an adult even though it occurred when they were a minor.
Definitions / Disclosure	Regarding the use of the term “or a pattern”: Misconduct is already described as a pattern, so this would mean a pattern of a pattern. We propose the use of “incident of Misconduct” throughout for more consistency.
Definitions / Reporting	The definition on Reporting is too narrow. Reporting could also come in from a parent and not a Participant, also in reference to ii) it may be another athlete who knows or suspects information, so limiting this solely to an adult Participant is too narrow.
Definitions / Misconduct	We suggest keeping a very general definition of misconduct (first sentence) and referring to Section 2 for details.
Definitions / Misconduct	We suggest moving to Section 2.4 the sentence “The categories of <i>Misconduct</i> in this Section 2.0 are not mutually exclusive [nor exhaustive]. What matters for the assessment of the <i>Misconduct</i> is whether it falls into one or more of the categories, not which category it falls into.”
Definitions	Remove the terms Psychological Misconduct, Physical Misconduct, Sexual Misconduct and Neglect, all of which are defined in more detail in section 2 as prohibited behaviors or misconduct. Although some important wording found here, but absent from section 2, could be exported there so it is not lost.
Definitions / Psychological Misconduct	Regarding the use of the term “and conduct that denies attention or support”: This would fall under the definition of neglect.
Definitions / Psychological Misconduct	In this definition and that of Physical Misconduct, the term “objective behavior” is translated in the French version as being “comportement en soi”, which is inaccurate. It would be better to translate it as “norme objective”, which is when something is evaluated from the perspective of a reasonable person in the same circumstances. This could be clarified in English also, that it is not to be evaluated by the Claimant nor the Respondent.  We strongly recommend that the translation of the final Code version be done by a legal translator to avoid these inaccuracies. The French version has to MEAN THE SAME THING as the English and <u>both should be equally authoritative</u> .
Definitions / Dependency Relationship	This term is only used in the definition of Consent but not in remainder of the Code. We suggest removing it.

Definitions / Authority-Based Relationship	<p>This term is only used in the definition of Consent but not in remainder of the Code. We suggest removing it.</p> <p>Also, if the definition is kept, regarding the use of the term “judge”: We suggest using “technical official” to refer more broadly to on-the-field ruling authorities such as referees, umpires, judges, etc.</p>
Definitions / Peer-to-Peer Relationship	<p>This term is defined but not used at all in the Code. We suggest removing it.</p>
Definitions / Consent to engage...	<p>We first suggest to define “Consent” (remove the words “to engage in a sexual act”). This section needs to be reviewed very carefully as it refers to the Criminal Code. There is a recent Supreme Court of Canada decision called R. v. Barton which modifies the meaning of consent and clarifies the defense of honest but mistaken belief in consent. If the drafters of this Code are going to rely on Criminal Code and common law definitions, they should review the recent case to make the necessary modifications and ensure consistency.</p> <p>This definition is not clear enough around the ‘Age of Protection’ for minors and sexual consent. Sexual consent should be explicitly differentiated for minors and adults. Most people do not have a clear understanding about this, so it needs to be explained. It is broader than just intoxication, or a person in a position of trust or authority.</p> <p>We suggest a re-vamp of this definition to simplify, including the concept of power imbalance which can be derived from a variety of factors, whether or not it is present in a peer-to-peer, authority-based or dependency relationship.</p> <p>We, at the SDRCC, would be pleased to collaborate to this exercise.</p>
Definitions / Consent to engage...	<p>Regarding the use of the term “in a dependency or authority-based relationship”: There can be no consent with a minor <u>regardless</u> of any authority-based relationship. The latter would be an aggravating factor.</p>
Definitions / Power Imbalance	<p>This term is defined here but not used at all in the Code. However, we suggest the concept be integrated to the definition of Consent to clarify that there can be no consent where a power imbalance exists. Whether the power imbalance arises out of a peer-to-peer, dependency or authority-based relationship then becomes irrelevant.</p>
Definitions	<p>Suggest adding a definition of “Vulnerable Participant” for protections afforded to Minors in the Code, so that they may also be afforded to victims who have a disability or are in a power-imbalance situation vs. the Respondent.</p>
Section 2.3	<p>Regarding the use of the term “responsible for knowing”: This is a strong statement that puts the onus on the drafter to write the Code in accessible language so that it can be understood, especially its definitions of prohibited behaviors, by adults and youth of varying levels of literacy and education.</p>
Section 2.3	<p>We suggest adding “and for reporting when knowing or suspecting Misconduct by another Participant”.</p>

Section 2.4	We suggest importing into 2.4 the sentence deleted from the definition of Misconduct and adding “nor exhaustive”. I would read: “The categories of <i>Misconduct</i> in this Section 2.0 are not mutually exclusive nor exhaustive. What matters for the assessment of the <i>Misconduct</i> is whether it falls into one or more of the categories, not which category it falls into. Similarly, the terms abuse, assault, harassment, bullying, and hazing are not mutually exclusive and they can be found in more than one category of <i>Misconduct</i> . <i>Misconduct</i> includes any of the following”.
Section 2.4	As a result of importing 2.4, the numbering of the following sections would be altered. The present comments refer to the original section numbering in the draft version.
Sections 2.4.1, 2.5.1, 2.6.1 and 2.7.1	<p>The expression “reasonably related to sport” needs to be more precisely defined. If the behavior takes place outside of the sport environment but negatively affects the sport environment, does it qualify as “reasonably related to sport”? Most grooming tactics take place outside of the sport arena (which is in part what makes it problematic) so the definition of the scope needs to encompass these other contexts where participants interact (while traveling to a sport event, in the change rooms, in the parking lot of the venue, at a team social event, etc.) A suggestion may be “while individuals interact by virtue of their participation in sport”.</p> <p>Also, since it applies to all forms of Misconduct in this Code, instead of repeating under each type of Misconduct, couldn’t it be moved above in the introductory clauses of section 2 or in the form a definition of the “scope of application” of the Code?</p>
Section 2.5.2.1	<p>We suggest, rather than a closed list of examples, to defined this as:</p> <p>"A person commits Physical Misconduct when, without the consent of another person, that person applies force intentionally to that other person, directly or indirectly."</p> <p>Given the drafter's use of Criminal Code wording, they may want to review section 265 of the Criminal Code for guidance.</p>
Section 2.5.2.2	To make the text easier to understand, we suggest moving the long listing of examples in a commentary section immediately below the section, like in anti-doping rules.
Section 2.5.2.2	Regarding the listing of the behaviors “withholding, recommending against, or denying adequate hydration, nutrition, medical attention or sleep; denying access to a toilet”: Some of these fall under Neglect. Based on the stated premise in the Code that “categories are not mutually exclusive [nor exhaustive]”, we recommend that everything that is repetitive from one section to the other be removed.
Section 2.5.2.2	Regarding the description: “encouraging an athlete to perform a skill for which he/she is <i>known to</i> not <i>be</i> developmentally ready”. We propose precisizing the language here or consider whether this may fall within “professionally-accepted coaching methods”.
Section 2.6.3.1	If wishing to go to that amount of detail, we suggest that specific examples form part of commentary to this section of the Code, as is done in anti-doping rules. The general descriptions “Penetration of any part of a person’s body, however slight, with any object or body part by another person” and “Any intentional touching of a sexual nature of any part of a person’s body, however slight, with any object or body part by another person” would suffice.

Section 2.6.3.2	Regarding everything that follows the general description: "Any sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome": The explicit listing that follows could also be moved to a commentary inserted just below that section, as seen in anti-doping rules.
Section 2.6.3.3	Same as above for everything in that section after "Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or live-streaming of images) without Consent of all parties involved in the sexual activity".
Section 2.7	The definition of Neglect should include instances of endangerment, where decision-makers place potential victims in vulnerable situations for administrative reasons (most of the time, money saving, such as having athletes share hotel rooms with coaches). To make all Participants accountable, these decision-makers should also face sanctions under this Code, whether or not misconduct was actually reported as a result of the situation. If the drafters think this does not belong under Neglect, then a new form of Misconduct called "Endangerment" could be created and inserted below Neglect and before Misconduct Related to Process.
Section 2.7.2	Listing examples in a new subsection is inconsistent with the previous format adopted in previous sections. Again, we strongly suggest that these listings be moved into a commentary to the section, as seen in anti-doping rules.
Section 2.8.1	Everything after "The behaviors identified below also constitute <i>Misconduct</i> and may give rise to a sanction", we suggest moving to the definition of Participant.
Section 2.8.1.1 d)	We feel this subsection belongs under retaliation more than under Abuse of Process.
Section 2.8.1.1 e)	We suggest adding "against the Claimant's will" - some Claimants will want their story told on the public place and you cannot impose consequences on those who will help them achieve that.
Section 2.8.1.1	We suggest adding a bullet point "refusing to cooperate with the <i>Independent Body's</i> process."
Section 2.8.1.3	The use of the word "knowingly" imports a high standard that may be difficult to prove. Additional wording may assist, such as "recklessly or wilfully blind". The reason in this context "knowingly" brings a high standard is because the following subsections indicate a person is only aiding or abetting if they actually know a person has been identified as suspended or is otherwise ineligible.
Section 2.8.1.3 a)	We suggest adding a sub-bullet "coach or instruct Participants" and eliminate 2.8.1.3.b) addressing same.
2.8.1.3 after c)	We suggest removing this entirely if our suggestion to address this issue under the definition of Participant is accepted.
Section 2.9.1	Add "or Vulnerable Participants" after "Minor Participant", to include participants who are not minors but maybe in a dependency-based (e.g. disability) or authority-based relationship (subalternate) with the Respondent.

Section 2.9.1	Remove “and may also be subject to federal or provincial penalties”. It is irrelevant for this Code to address this, it is not the duty of the drafters of this Code to educate people about the Criminal Code.
Section 2.9.1.1	Regarding the use of the term: “third-party reporters”. It is redundant. When you are the one reporting, third-party reporters would simply be witnesses.
Section 2.9.1.2	The second sentence is redundant and not necessary.
Section 2.10	Change from “Abuse Prevention” to “Grooming”. We are of the opinion that if grooming behaviors do not constitute a form of Misconduct which can be penalized under this Code, this Code will never be able to protect athletes like the victims of Bertrand Charest <u>until severe damage has been done</u> .
Section 2.10	This is where we recommend calling this section Grooming and listing the forms of behavior that are prohibited, including boundary violations. Like for any other forms of misconduct defined in this Code, any “pattern” of such behaviors in any combination would constitute a violation. The Sanctions section could then deal with the way in which grooming behavior may be addressed on an incremental disciplinary scale (gradation of consequences) for repeat offenders. We are happy to contribute to developing this section with the assistance of experts from the Canadian Centre for Child Protection.
Section 2.10	Replace this by a clear definition of Grooming and related prohibited behaviors - some of which are referred to in the “Comment to 2.10”.
Comment to Section 2.10	Begin paragraph with “Grooming is the misuse of a legitimate relationship with a child by violating the child’s trust and sexualizing the relationship.” and move this paragraph out of the “Comment” into section 2.10. Will need some re-thinking and re-writing, as mentioned above.
Comment to Section 2.10	The listing of examples in the second paragraph of the comment can be left under comment.
Section 3.0	The SDRCC strongly opposes the imposition of sanctions by any organization without the right to a hearing or appeal, whether such process is internal or external to the adopting organizations; this would be in breach of natural justice and could be challenged in higher courts. Where temporary measures are imposed to alleviate risks of aggravation for the victim(s) or other participant(s), the SDRCC advocates for the right of the Respondent to an expedited hearing procedure to deal exclusively with the temporary measure. These two suggestions are not intended to empower aggressors, but rather to be fair for victims of false allegations.
Section 3.0	Given that this Code will be implemented in various jurisdictions by many adopting organizations, we favor the determination of more specific sanctions (or ranges) for certain types of misconduct, where mitigating circumstances can lead to sanctions on the lower end (e.g. where the Respondent is a Minor or has a diagnosed mental disability) and aggravating factors lead to sanctions on the higher end (e.g. where the victim is a Minor or other Vulnerable Participant, or when dealing with second or multiple violations by the same Respondent).

Section 3.0	In addition to suggested re-wording of the first paragraph (shared separately with the drafters), we recommend inserting a second paragraph which would read: “No final sanction may be imposed without the right to a fair disciplinary process allowing the Respondent to dispute the allegations and be heard by a panel of independent adjudicators. The imposition of temporary measures may be appealed before a panel of independent adjudicators by the Respondent, who will be entitled to an expedited hearing process.”
Section 3.1	The expressions “one or more” and “singularly or in combination” are redundant. We suggest rewording the first sentence: “A proven Misconduct may result in one or more of the following sanctions”.  Also, it needs to be made clear that this section is not to be construed as a listing of progressive discipline and that some findings of Misconduct could lead, from the very first offense by a Respondent, to the harshest sanctions possible.
Section 3.1.3	Suspension and eligibility restrictions are not the same. Suspension is a temporary ineligibility (from doing anything whatsoever), whereas Eligibility Restrictions allow participation but maybe barred from certain activities or allowed under certain strict conditions. They should be under separate headings.
Section 3.1.4	As per previous comment, Eligibility Restrictions to become its own subparagraph 3.1.4, and Ineligibility (formerly 3.1.4) to be merged with Suspension (under 3.1.3)
Section 3.1.6	This section provides a good opportunity to add the concept of incremental sanctions (verbal warning, reprimand, written warning, mandatory education, letters of apologies, etc.) which may result from a negotiation or mediation process, but that would need to be well recorded so that patterns of behavior can form part of the body of evidence against multiple offenders (especially if that person is transient and moves from jurisdictions or sports).
Section 3.3	There needs to be an explanation of privacy considerations for all participants who are found to have committed misconduct, especially those who are under 18.  Also, there should be some consideration to the use of publication bans to protect the identity of the Claimant in circumstances where the publication may allow to identify that person, further re-victimizing the Claimant and causing undue stress.
Section 3.3	In reference to “Section Y”: The SDRCC offers it expertise in dispute resolution and hearing processes to help drafters develop section Y.