This brief is respectfully submitted as a complement to the testimony of Marie-Claude Asselin as a representative of the Sport Dispute Resolution Centre of Canada (SDRCC) at the Committee hearing of December 5, 2022.

It contains (i) supplemental information relating to matters brought forward before the House of Commons Standing Committee on the Status of Women between the period November 21 to this date, as it relates to the SDRCC and the Abuse-Free Sport program, (ii) recommendations from the SDRCC for consideration by the Committee.

Historical Timeline and Response to Matters of Harassment and Abuse

Since 2004

The mandate of the SDRCC is defined under the Physical Activity and Sport Act (the Act) as “to provide to the sport community a) a national alternative dispute resolution service for sport disputes; and b) expertise and assistance regarding alternative dispute resolution.”

In matters pertaining to doping, the SDRCC's authority was derived from the Canadian Anti-Doping Program that designated the SDRCC as the Doping Tribunal and the Doping Appeal Tribunal. In other matters, its authority is limited to being an appeal tribunal for decisions rendered by national-level sport organizations pertaining to certain specific matters. The current contribution agreements by the Government of Canada only mandate federally-funded sport organizations as follows:

5.2 Alternate Dispute Resolution [...]  
5.2.1 The Recipient hereby agrees and commits to providing its athletes the right to appeal any decisions regarding (a) the implementation and delivery of the Recipient's national team programs; or (b) the selection of athletes to a team representing Canada at international multisport events, to the Sport Dispute Resolution Centre of Canada, in accordance with the rules and procedures of the Canadian Sport Dispute Resolution Code, once its internal appeal process has been exhausted.

5.2.2 Carding disputes shall be governed by Sport Canada's Athlete Assistance Program policies and procedures.

5.2.3 The Recipient hereby agrees and commits to providing its national team coaches the right to appeal sport-related decisions to the Sport Dispute Resolution Centre of Canada in accordance with the rules and procedures of the Canadian Sport Dispute Resolution Code, once its internal appeal process has been exhausted.

5.2.4 The Recipient undertakes to amend their bylaws and policies, as may be needed, in a manner consistent with the commitments undertaken in clauses 5.2.1, 5.2.2 and 5.2.3.

Therefore, until recently, the capacity of the SDRCC to address matters related to abuse and discrimination was limited to cases deemed admissible by sport organizations to be investigated and/or adjudicated which had then reached the level of the internal appeal process.
March 2016

The SDRCC endeavoured, on its own prerogative, to look for solutions to tackle abuse of all kinds in the sport system, and formed an advisory committee comprised of experts, including from beyond Canadian borders, to study programs and models that could inspire solutions for Canada. This was before the establishment of the U.S. Center for SafeSport, at a time when there was no known equivalent anywhere else in the world.

March 2017

The SDRCC advisory committee issued its report, six months before the #metoo movement was born, recommending the creation of an ombudsman office for Canadian sport to address fairness and ethical issues in the sport system, such as conflict of interest, corruption, harassment, abuse and other threats to participant safety, and to complement existing services. The Proposal for a Sport Ombuds in Canada report was submitted to the Minister of Sport at the time and, one year later, brought to the attention of newly appointed Minister Kirsty Duncan.

May 2018

In support, the SDRCC stood by athletes, who were victims of sexual abuse at the hands of their alpine ski national team coach. Together, those athletes came forward publicly to advocate for, among other elements, the adoption of universal policies and procedures to prevent abuse and for an independent avenue with appropriate incident management for parties to raise concerns.

June 2018

Minister Kirsty Duncan issued a public statement mandating all federally-funded sport organizations to, among other things, make provisions - within their governance framework - for access to an independent third party to address harassment and abuse cases. In response, the SDRCC Board of Directors adopted the terms of reference of a new ad hoc Committee - Third Party Services to supervise the creation, implementation and the operations of the SDRCC's Investigation Unit.

October 2018

Without funding or a mandate from the Government of Canada, the SDRCC created an independent Investigation Unit as a pilot project, to facilitate access to qualified professionals by sport organizations. Members of the Advisory Committee - Safe Sport Initiatives overseeing the project were external to the SDRCC, including two former national team athletes (one a victim/survivor, one a current criminal prosecutor), an RCMP investigator, and a lawyer specialized in representing victims of sexual abuse.

The Unit's Investigation Guidelines ensured consistency in the approach of all investigators, and the Remuneration Policy allowed their services to be affordable for not-for-profit sport organizations, imposing very competitive rates. All investigators were mandated, as a condition of being listed, to prove their training and qualifications to investigate, as well as their professional liability insurance coverage. They also attended a full-day mandatory training program on trauma-informed interviewing techniques, the grooming process (from a representative of the Canadian Centre for Child Protection), and a testimonial from an athlete survivor of sexual abuse.

March 2019

The Government of Canada announced retroactive funding for the Investigation Unit pilot project, at the same time as announcing another pilot project by the SDRCC, the Canadian Sport Helpline, intended to offer a cost-free, safe, confidential listening and referral service for victims of harassment and abuse in the Canadian sport system.

The program was established in partnership with the Canadian Centre for Mental Health and Sport, which recruited operators from its pool of mental health professionals, all trained in counselling and/or psychology.
April 2019
Funding agreements between the Government of Canada and national sport organizations included the following clause:

5.1 Harassment and Abuse
For the purposes of this Agreement, “member” includes an athlete, a coach, an official, an athlete support personnel, an employee, a contractual worker, an administrator or a volunteer affiliated with the Recipient.

5.1.1 The Recipient shall provide its members with access to an independent third party to address harassment and abuse allegations.

5.1.2 The Recipient shall provide mandatory training on harassment and abuse to its members no later than March 31, 2020.

April 2020
The term “member” in the funding agreement was changed to “individuals affiliated with the organization” and expanded to include “an employee, a contractual worker, an administrator or a volunteer acting on behalf of, or representing the recipient in any capacity”. It also added the requirement for funding recipients to “have adopted and/or integrated the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) into their organizational policies and procedures.”

Each sport organization was then on its own to find and secure the services of an independent third party, which many sought on the private market, hiring lawyers and workplace harassment experts to manage cases on their behalf.

July 2020
As part of its commitment to offer a safe space for harassment and abuse cases to be heard, the SDRCC Board of Directors adopted the terms of reference of a new Safeguarding Tribunal Working Group to develop rules and processes for the Safeguarding Tribunal, including to recommend selection criteria and design training and orientation content for its panel members.

November 23, 2020
The Government of Canada issued a call for proposals for an organization to establish a safe sport mechanism.

December 2020
The SDRCC Board of Directors adopted the rules of the new Safeguarding Tribunal as part of the revised Canadian Sport Dispute Resolution Code to come into effect on January 1, 2021.

January 2021
The SDRCC responded to the Government of Canada’s call for proposals. Its proposal was informed by its previous work on the March 2017 ombuds office proposal, significant input from victims and their advocates, insight from its pilot projects (members of the Investigation Unit and operators of the Canada Sport Helpline), as well as drawing on researchers, clinicians and experts practising in child protection, criminal law, sexual abuse and trauma.

July 6, 2021
Minister Steven Guilbeault announced that the SDRCC had been selected to establish and deliver/implement a new independent safe sport mechanism, which would provide support and guidance to victims, conduct independent investigations of reported incidents, identify appropriate penalties, and conduct fair and transparent hearings and appeals.
July-October 2021

A nationwide consultation took place to present the key features of the SDRCC's proposal to the Government of Canada and seek feedback and suggestions. A total of 21 focus groups were held, including input from 77 sport organizations at the national level, as well as meetings with representatives of all provinces and territories. A summary report was published in December 2021.

October 2021

A working group was established to draft policies and procedures for the new mechanism, and to draft job descriptions for key staff positions. The independent working group members combined expertise in investigations, victim advocacy, and alternative dispute resolution.

April 2022

The SDRCC announced the appointment of Sarah-Ève Pelletier as first Sport Integrity Commissioner, effective May 2022.

May 31, 2022

Part of the mandate granted in July 2021 included the responsibility to revise the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS), which the SDRCC did in consultation with the sport community and external advisors and experts. The new version (6.0) was adopted in May 2022. Changes from the 2019 version included, among others:

- stronger and more detailed definitions of forms of maltreatment and of discrimination;
- a better definition of grooming;
- inclusion of the concept of “boundary transgression” to address problematic behaviour that may be a precursor to grooming;
- clarification of the concepts of consent and power imbalance, including an expansion of the wide variety of sources of power imbalance;
- an obligation to report which, if failed, constitutes a violation; and
- recognition of facts and outcomes from criminal and other regulatory proceedings.

June 20, 2022

The Office of the Sport Integrity Commissioner (OSIC) and the Abuse-Free Sport program, funded by the Government of Canada, were launched as the first not-for-profit initiative of its kind to prevent and address maltreatment and discrimination in Canadian sport.

Since June 20, 2022

The OSIC’s jurisdiction to address complaints comes from a contractual service agreement entered into between the SDRCC and the sport organizations (program signatories) in question. A summary of this service agreement is available here.

The OSIC published its first quarterly activity report in September 2022, summarizing its key achievements and providing some statistics on complaints received.

As of December 15, 2022, 30 sport organizations (out of 93 federally funded organizations) have signed their agreements, including 22 with a transition period of three months or less before the services are effective.

The SDRCC expects that at least another dozen national sport organizations will become signatories by January 1, 2023, and the vast majority of federally-funded sport organizations will become signatories before March 31, 2023.
**Input from Child Protection Experts**

SDRCC has been working closely with the Canadian Centre for Child Protection (C3P) since 2018. All SDRCC employees, Board members, investigators, mediators and arbitrators are required to follow C3P’s [Commit to Kids online training](#) as a condition of involvement.

Experts from C3P collaborated in the mandatory in-person training for all three cohorts of the SDRCC Investigation Unit pilot project. C3P’s legal counsel also provided substantial assistance in the creation of the revised version of the UCCMS, published on May 31, 2022.

C3P also offers the [Kids in the Know program](#), a series of age-appropriate educational resources on sexual abuse prevention for parents and teachers, which the SDRCC Resource Centre will promote as part of its prevention and education strategy.

**Measures to Preserve Independence**

**SDRCC Board of Directors**

The Act, that created the SDRCC, requires Board members to be named by the federal Minister responsible for sport. When the SDRCC was created, the sport community recommended that it have three athlete representatives (25%), one coach representative, one representative of national sport organizations, one representative of multisport games organizations, and six individuals combining expertise in sport, alternative dispute resolution or law. According to the Act, the role of the SDRCC Board members is to provide strategic direction, to approve the policies necessary for its implementation, and to ensure that the SDRCC management has the necessary resources to deliver on its mandate and performance objectives.

SDRCC Board members, officers and employees are all subject to section 120, on conflict of interest, of the [Canada Business Corporations Act](#) as well as to the [SDRCC Conflict of Interest Policy](#).

For the sake of clarity, Board members are not privy to matters before the Dispute Resolution Secretariat nor to those before the OSIC. They find out about nature and results of cases at the same time as the general population, when OSIC sport environment assessment reports, OSIC quarterly reports or SDRCC arbitral decisions are published.

**Functional Independence of the Abuse-Free Sport Components as part of the Complaint Management process**

The [Abuse-Free Sport complaint management process](#) involves distinct components at different stages, to maximize functional decision-making independence and to offer multiple procedural safeguarding layers, all to ensure integrity, impartiality, confidentiality, respect for people and procedural excellence. The core components that play a role throughout this process are:

- OSIC receives complaint/report, performs an initial review and preliminary assessment, formulates recommendations for provisional measures and sanctions, and oversees the proper implementation of the process, including investigation as applicable;
- Independent investigator performs an investigation and issues an investigation report;
- Director of Sanctions and Outcomes makes decision about provisional measures, findings of violation and sanctions;
- Dispute Resolution Secretariat arbitrator hears challenges, if any, of the Director of Sanctions and Outcomes’ decisions and issues a final and binding award.
- Mediation is also available to parties, at any stage of the complaint management process, if they so wish.

**Independent Professionals**

The specific investigation, assessment, mediation and arbitration services of the SDRCC and OSIC are rendered by qualified and independent professionals who are not employees but rather appointed to act on a case-by-case basis.
The various mechanisms in place at all relevant times to ensure the independence of professionals include:

- Upon being selected to a roster, the completion of a declaration of involvement/affiliation with sport organizations, in Canada and internationally, which is recorded on the internal listing to avoid their appointment to a case arising from the same sport(s);

- For OSIC investigators and assessors or SDRCC mediators and arbitrators, whether jointly selected by the parties to act in a case or assigned by rotation or appointment, the signing of a declaration of independence that lists the names of all organizations and individuals involved in the specific case, including legal counsel;

- The right of any party to a case to challenge, on the grounds of conflict of interest or a reasonable apprehension of bias, the appointment of an investigator, assessor, mediator or arbitrator to their case.

In addition to this, specialized rosters created specifically for the Abuse-Free Sport program were carefully populated not to create an apprehension of bias: investigators and assessors, safe sport mediators and Safeguarding Tribunal arbitrators do not hold decision-making positions in sport organizations under the jurisdiction of the SDRCC or the OSIC.

The SDRCC Conflict of Interest Policy, which also addresses conflict of duties, as well as rigorous codes of conduct have been adopted for all independent professionals, and none of them can be involved in any capacity whatsoever in an advisory or decision-making capacity on behalf of a sport organization under the jurisdiction of the SDRCC and/or OSIC.

**Sources of Funding**

The SDRCC has, from the very beginning, adopted a very conservative approach to revenue-generation, avoiding the solicitation of private and corporate sponsorship which could, at any given time, create a conflict with an athlete’s or a sport organization’s own sponsors. Apart from minimal filing fees in its Ordinary Tribunal and the registration fees to its annual conferences, the SDRCC has very minimum revenue-generating capabilities. As such, it is highly dependent on the funding from the Government of Canada, a situation highlighted consistently by external auditors as a financial risk. The Government of Canada opts to fund sport through Sport Canada, as a branch of the Ministry of Canadian Heritage. SDRCC’s accountability to Sport Canada is on how carefully it spends public funds.

The Abuse-Free Sport program is not fully funded by the Government of Canada, which required as part of its call for proposals that the mechanism be a cost-sharing model. This situation causes the SDRCC to have to collect funds from program signatories. Even though none of the funds contributed by the program signatories are used to subsidize the operations of the SDRCC, but rather serve to build a pool of funds to pay external professionals’ honoraria, this constitutes a departure from the way in which the SDRCC has attempted for decades to remain independent from sport organizations.

The SDRCC Board of Directors and management agree that true (as well as perceived) independence from sport organizations can only be achieved if the totality of the program is funded by government, and not in a cost-sharing model such as the current structure described above.

**Solutions to Address Systemic Issues**

According to its mandate, the OSIC has the authority to independently address systemic issues related to maltreatment, discrimination and other prohibited behaviour under the UCCMS. This role is fulfilled primarily through the sport environment assessment process performed in accordance with the OSIC Guidelines regarding Sport Environment Assessments.
Sport environment assessments serve a dual function in both *addressing* and *preventing* maltreatment, discrimination and other prohibited behaviour related to the UCCMS. These assessments are designed to identify and remedy alleged *systemic* issues with the goal of improving the sport environment for both current and future participants.

Each assessment is primarily designed to address the specific needs and concerns identified in the relevant sport environment subject to the assessment. That said, each assessment is meant to also identify applicable root causes and/or risk factors pertaining to the identified issues, as well as other preventative and/or remedial recommendations for implementation, that could benefit other similar sport environments and/or in certain cases, the sport system more broadly.

### The Safeguarding Tribunal

**Balancing Due Process While Protecting the Vulnerable**

The rules of the Safeguarding Tribunal were drafted by a working group comprised of a crown prosecutor, a superior court judge, a criminal defense lawyer, and two arbitrators with experience in residential school adjudications. The Safeguarding Tribunal rules go further than any known entity to reduce the chances that the process will be re-traumatizing for victims/survivors or vulnerable witnesses. Victim protection has often been equated to guaranteeing physical safety, such as witness protection programs which relocate witnesses and change their identities. The Safeguarding Tribunal rules are intended to limit the emotional and psychological stress of testifying.

For example, the panel has the right to question a witness and control the questioning of witnesses by a party and must ensure that all those who appear at a hearing, minors and vulnerable persons in particular, are questioned with sensitivity and respect.

As a general rule, procedural accommodations for minors and vulnerable persons will be granted, unless the panel is of the opinion that they would interfere with the proper administration of justice. There is a presumption that the accommodations are necessary, and examples of such accommodations include, but are not limited to:

- allowing a support person to be present or to participate at the hearing;
- allowing the presence of a specially trained animal for emotional support;
- testifying by way of affidavits, via videoconference or closed-circuit camera, behind a screen, or via recorded statement;
- advance approval by the Panel of any questions proposed to be put to the witness;
- the questioning being conducted by the Panel or neutral counsel;
- allowing the Minor or Vulnerable Person to see their interview and/or their existing evidence before giving evidence for the purpose of memory refreshing; and additional safeguards also exist for underaged witnesses.

### Confidentiality

The confidentiality parameters of the OSIC complaint management process and information received in the context of this process are established in the OSIC Confidentiality Policy. These parameters balance protecting the identity of those involved (in particular victims and vulnerable persons) with the need to ensure procedural fairness. These confidentiality rules apply to information that a person receives through their participation in the process and do not extend to pre-existing knowledge, such as personal or lived experiences.

Under the OSIC complaint management process, concerns can be raised to the OSIC, either anonymously (in the form of a report) or by providing name and contact information (in the form
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of a report or complaint\[xxiv\]. Both complaints and reports can be filed with the OSIC by submitting a secure, interactive online intake form\[xxv\].

Under the OSIC Guidelines regarding Sport Environment Assessments\[xxi\] (section 8), victims, survivors and other impacted persons can also anonymously request and/or participate in an assessment if they prefer.

The SDRCC may publish a summary of the Safeguarding Tribunal decisions, provided that what is disclosed does not enable the public to identify any minor. The parties may make representations to the effect that a decision should not be publicly disclosed, which the Safeguarding Tribunal arbitrator shall consider prior to determining whether a decision will be disclosed.

**Limited Mandate and Provincial/Territorial Jurisdiction**

**Regulatory Body vs Criminal and Penal System**

The Abuse-Free Sport program does not seek to replace the criminal and penal systems in Canada, nor the civil courts. The imposition of sanctions under this program is to keep sport participants safe by, among others, removing from sport environments the individuals who, based on their behaviour, are not suitable in this role. In this sense, it operates similarly to a regulatory body for a profession, such as law societies, colleges of physicians, etc. The features of this system compared to the criminal and penal system include:

- Lower standard of proof (on a balance of probabilities, rather than “beyond a reasonable doubt”);
- Quicker access to specialized professionals to conduct investigations and hearings, so that a person’s journey in sport is not held up by delays in court proceedings;

As contemplated under the UCCMS, sanctions can be imposed on individuals ranging from a reprimand to permanent ineligibility from sport. Sanctions may also apply for the following prohibited behaviours: enabling, subjecting a participant to the risk of maltreatment, aiding and abetting, failure to report, interference with or manipulation of process (knowingly destroying, falsifying, distorting, concealing, or misrepresenting information), intentionally reporting a false allegation, as well as retaliation.

**Sport of Provincial/Territorial Jurisdiction**

The federal government describes its role\[xxvi\] as to “support our sport system at the national level, provide financial assistance to our high-performance athletes, advance the objectives of the Canadian Sport Policy, and help Canadian organizations host sport events that create opportunities for Canadians to compete at the national and international level.”

As sport and education are under provincial/territorial jurisdiction, these counterparts need to be part of the solution. The SDRCC is committed to assisting the sport community at all levels with education resources targeting young athletes and their parents, as well as with policy support for sport organizations to prevent maltreatment and provide safe environments for all, especially vulnerable participants. When it comes to addressing complaints, the SDRCC enables the Abuse-Free Sport program on a federal mandate and on the limited basis of contractual jurisdiction. It can only do what it is funded to do and can only carry out the mandate it has been given at this time.

Harmonized actions are required at all levels of government that oversee sport, to protect our athletes in school sports as well as at the provincial/territorial and grassroots levels. A key element of this is that all stakeholders agree to share relevant information to ensure consistent application of sanctions. The SDRCC is prepared and actively engaged in dialogue to achieve harmonisation.
Strengthening the New System

As a new system created only six months ago, within the limitations outlined above, the leadership of the SDRCC firmly believes that there are three features required to improve the effectiveness of the Abuse-Free Sport program, all of which would alleviate concerns expressed by victims and survivors to this Committee:

1) **Power of Subpoena**: Arbitrators at the SDRCC already have the power to subpoena, by virtue of operating under the *Arbitration Act of Ontario*. In their independent fact-finding responsibilities, investigators and assessors of the OSIC would need to also be granted this power to compel witness testimony as well as the production of documents;

2) **Right to Maintain a Public Registry of Sanctions**: there are too many examples of perpetrators who evaded sanctions by moving from one jurisdiction to another, by moving from grassroots to national level or vice versa, changing sports or sector. In accordance with its mandate, the OSIC will maintain a sanctions registry which currently, in order to address potential privacy-related issues, can be accessed only by a limited number of individuals from program signatories. The OSIC needs to have the capacity to make this sanctions registry publicly searchable, like that of the *U.S. Center for SafeSport*xxvii. This is a matter of public interest; the absence of such a registry puts the safety of children at risk.

3) **Immunity for its Professionals**: While independence safeguards have always been top-of-mind at the SDRCC, one way to guarantee independence in the same way the statutory tribunals do is to grant immunity to its professionals: the investigators, assessors, mediators and arbitrators. For enhanced independence, professionals working in this field have to be able to make the necessary determinations and the right decisions without fear of being personally sued.

These three enhancements could potentially be addressed by amendments to the Physical Activity and Sport Act.

**Final Recommendations**

The SDRCC has learned a lot from victims and survivors in the past few months and years and believes that the concerns they expressed with the Abuse-Free Sport program can be addressed with the following improvements:

1) That the Physical Activity and Sport Act be amended to:
   - grant the power to subpoena to all SDRCC/OSIC professionals;
   - mandate the SDRCC, via the OSIC, to maintain a public registry of individuals who are prohibited or otherwise restricted from participation in sport, based on prohibited behaviours under the UCCMS;
   - grant immunity to all SDRCC/OSIC professionals.

2) That the requirement for the Abuse-Free Sport program to be a cost-sharing model be removed, so that it can be fully funded by the Government of Canada for matters arising from the national level of sport.

3) That the federal government work closely with provinces and territories to ensure that sport programs delivered under their respective jurisdictions provide harmonized rules, processes and services to equitably protect all sport participants.

Respectfully submitted.
List of Complete Hyperlinks

i  Canadian Anti-Doping Program: https://www.cces.ca/sites/default/files/content/docs/pdf/2021-cces-policy-cadp-2021-final-draft-e.pdf


iii  Canadian Sport Helpline: https://abuse-free-sport.ca/helpline

iv  Canadian Centre for Mental Health and Sport: https://www.ccmhs-ccsms.ca/


viii  Announcement of Sarah-Ève Pelletier as Commissioner: http://www.crdsc-sdrcc.ca/eng/documents/2022-04-05_Sport_Integrity_Commissioner_Announced_Final_EN.pdf


x  Office of the Sport Integrity Commissioner website: https://sportintegritycommissioner.ca/

xi  Abuse-Free Sport website: https://abuse-free-sport.ca/

xii OSIC’s jurisdiction: https://sportintegritycommissioner.ca/jurisdiction

xiii Summary of Abuse-Free Sport service agreement: https://sportintegritycommissioner.ca/files/Summary_of_Program_Sig_Agreement_-_Final_-_EN.pdf

xiv First OSIC quarterly activity report: https://sportintegritycommissioner.ca/statistics

xv Commit to Kids online training: https://protectchildren.ca/en/get-involved/online-training/commit-to-kids/

xvi Kids in the Know program: https://kidsintheknow.ca/app/en/about


xix Abuse-Free Sport complaint management process: https://abuse-free-sport.ca/complaint-process


xxii OSIC Complaint Management Process: https://sportintegritycommissioner.ca/process/overview


xxiv Definition of Report under OSIC: https://sportintegritycommissioner.ca/report

xxv OSIC Intake Form: https://osic-bcis.i-sight.com/portal
