

# MANITOBA BASEBALL ASSOCIATION

## ANTI- HARASSMENT/ANTI-ABUSE POLICY

### ARTICLE 1 - PREAMBLE

- 1.1 The *Human Rights Code* of Manitoba and the *Canadian Human Rights Act* prohibit certain prescribed acts of discrimination and harassment and various other laws, such as, the *Canadian Criminal Code*, the *Youth Offenders Act* and the *Child and Family Services Act* of Manitoba prohibit abuse of an individual.
- 1.2 It is the policy of the Manitoba Baseball Association (“MBA”) that:
- (a) all persons in its programs including, without restriction, managers, coaches, athletes, officials, volunteers, MBA members, executive and staff shall be entitled to participate in all programs- or activities of the MBA or any of its affiliate organizations in an environment which is free from any form of unacceptable conduct amounting to discrimination, harassment or abuse and where all individuals are treated with respect and dignity and in compliance with all applicable laws regarding discrimination, harassment or abuse;
  - (b) any and all complaints from any individual of discrimination, harassment or abuse will be investigated promptly ,in accordance with the internal procedures of the MBA and appropriate action taken within its constitutional jurisdiction; and
  - (c) it will publish information on its anti-discrimination, harassment and abuse policy to its membership on a regular basis and is committed to the ongoing education of all its members and program participants.
- 1.3 This policy does not remove or diminish in any way the legal rights of the MBA or any of its members or participants to pursue any other available legal remedy.
- 1.4 The MBA is entitled to conduct its own investigation on any complaint in any manner it may see fit and may elect to await the outcome of any other investigation conducted by any other agency or authority.

### ARTICLE 2 - COMPLAINT PROCESS

- 2.1 Any person who is of the belief that he, she or any other person has been the victim of discrimination, harassment or abuse in contravention of the law or prohibited by the MBA may, in addition to any other action that person may take, complain to the Executive Director or Technical Director of the MBA (either of whom shall be called herein the “complaint officer”)
- 2.2 Any complaint made to the MBA shall be made in writing and shall include all relevant

particulars necessary to permit a full investigation of the incident or incidents in question including, without restriction, the date or dates of the incident, names of all persons involved including witnesses, description of the nature of the discrimination, harassment or abuse, and any other facts or information which, in the absolute discretion of the complaint officer, is required.

2.3 The complaint officer will:

- (a) advise both the complainant and the respondent of possible options available for resolution of the complaint;
- (b) advise both the complainant and the respondent of the availability of counseling and other support services if requested to do so by one or both of the parties;
- (c) advise both the complainant and the respondent of the right to be represented at any stage of the process, including the initiation of the complaint and the first interview conducted by the complaint officer, by legal counselor by any other person of each parties' choice;
- (d) advise the complainant he or she has no responsibility to confront the alleged discriminator / harasser / abuser, but may do so if he/she chooses and may, with written confirmation to the MBA, accept the result of the confrontation as resolution of the complaint or may continue pursuit of the complaint with the MBA;
- (e) advise of the right to withdraw from any further action in connection with the complaint, provided however, the complainant must agree in writing to assist any further investigation that the MBA may decide to conduct on its own short of participating in any formal hearing of the complaint;
- (f) advise the complainant that, notwithstanding the resolution of the complaint between the complainant and the respondent, the MBA has sole authority to continue whatever investigation it may deem necessary and impose such discipline or other conditions on the respondent as, in its absolute discretion, the MBA may consider appropriate under all the circumstances; and
- (g) advise of other possible recourse available to the complainant to pursue his or her complaint with any outside agency or authority.

2.4 If the complaint officer is a complainant or respondent the complaint may be made to the President of the MBA.

### ARTICLE 3 - PROCEDURE ON COMPLAINT

3.1 At the initial interview before the complaint officer the complainant shall elect to have his or her complaint proceeded with either informally or formally.

- 3.2 Informal resolution may include mediation, conciliation, counseling of one or both of the parties to the complaint or some other form of resolution agreed to in writing by the complainant.
- 3.3 If, through either the informal or formal process, an acceptable resolution of the complaint is reached, which may include a dismissal of the complaint or a finding of responsibility either in whole or in part and the imposition of conditions of training or discipline on the respondent, the complaint officer shall prepare a Record of Resolution which shall be signed by all the parties to the complaint and the complaint officer and a copy of same shall be given to each of the parties and a copy kept in the appropriate files of the MBA.
- 3.4 In either an informal or formal process the respondent shall receive from the complaint officer a copy of the complaint and shall be advised by the complaint officer that he/she has seven working days in which to respond in writing to the complaint including agreement or disagreement to having the complaint resolved informally or formally failing which the complaint officer shall proceed with the investigation of the complaint and the failure of the respondent to respond may be duly noted for the imposition of any resulting discipline in addition to any discipline which may be assessed as a result of the complaint itself.
- 3.5 At any time an informal process may become a formal process or a formal process may become an informal process with the consent of both parties, provided however, if there is no agreement by the parties as to the process, the formal process shall be the process to resolve the complaint.
- 3.6 Should the parties agree to a formal process to resolve the complaint or there be no agreement to the process, the complaint officer shall, as expeditiously as possible, conduct such investigation as is necessary, including the conducting of such interviews, the taking of statements and the gathering of such evidence as the complaint officer may, in consultation with the responsible officer of the Management Committee of the MBA, consider appropriate.
- 3.7 Upon completion of the investigation described in paragraph herein, the complaint officer shall prepare a report describing the steps taken from the time of the receipt of the complaint, including any interviews of either or both of the parties, and including copies of any statements or other documentation obtained together with:
- (a) a summary of all the relevant facts;
  - (b) identification of those facts which may support the alleged discrimination, harassment or abuse;
  - (c) if there are no facts which may support the alleged discrimination, harassment or abuse a recommendation of a finding the complaint is frivolous or malicious, in which case the complaint officer may also recommend and specify disciplinary action against the complainant;
  - (d) if supported by the facts, the complaint officer may state in his opinion the

complaint arose as a result of a misunderstanding or some other basis not attributable wholly or in part to the intentional action of the respondent;

and the report may also contain:

(e) a recommendation of the complaint officer on resolution of the complaint and the parties may, in writing, agree with the recommendation, in which case the resolution of the complaint shall be recorded as is provided in paragraph 3.3 herein; and

(f) a recommendation of the complaint officer as to the imposition of any discipline or other conditions if, on the hearing of the matter, the complaint is upheld.

- 3.8 A copy of the report shall be given to each party seven working days before the holding of a formal hearing.
- 3.9 If the complaint is not resolved before the end of the period of seven days following the issuing of the report a formal hearing shall be held before three members of the Management Committee of the MBA, one of whom shall be the responsible officer of the Management Committee who shall also act as Chairman of the three member panel (the "panel") and who shall appoint the time and place for the hearing and direct all procedures as may be appropriate to the proceedings.
- 3.10 Upon conclusion of the hearing the panel shall render its decision, based upon the finding of the majority of the panelists, and such decision shall be forwarded to all the parties and the complaint officer in a Record of Decision, copies of which shall be kept in the files of the complainant and respondent in the offices of the MBA.
- 3.11 The Record of Decision shall set forth the facts of the complaint, the investigation conducted, the hearing process conducted, the witnesses heard and their evidence, the specific complaint and the finding of the panel.
- 3.12 In the event any disciplinary action is to be taken the following factors shall be considered:
- (a) the nature of the act;
  - (b) whether any unacceptable or inappropriate physical contact was involved;
  - (c) whether the act was an isolated incident or part on ongoing pattern;
  - (d) the nature of the relationship between the complainant and the respondent;
  - (e) the relative ages of the complainant and the respondent;
  - (f) whether the respondent had been involved in previous similar acts of discrimination, harassment or abuse;

- (g) whether the respondent retaliated against the complainant; and
  - (h) whether any responsibility for the act can be attributed to the conduct of the complainant.
- 3.13 Notification of any disciplinary action shall be given to any area association president, community club or other organization within the MBA who is directly responsible for the involvement of the respondent in any area of the baseball program and it shall be the responsibility of such person to confirm to the complaint officer the fulfillment of any disciplinary action.
- 3.14 There is no appeal on any matter whatsoever once a Record of Resolution is signed by the parties, nor is there any appeal or any other form of review from the decision of the panel.

#### ARTICLE 4 - GENERAL MATTERS

##### 4.1 NATURE OF COMPLAINTS

###### (a) Frivolous and/or Malicious Complaints

A frivolous and/or malicious complaint is a complaint that is made when the complainant knows or ought to know the complaint is false and makes the complaint in any event whether or not it causes the respondent harm. Such complaint constitutes harassment for which the respondent may take complaint proceedings or the complaint officer may take disciplinary action.

###### (b) Misunderstandings

Complaints that are made, but are determined by the complaint officer or the panel to be based upon a misunderstanding are not frivolous and/or malicious complaints, nor will any discipline be imposed on the complainant.

###### (c) Unfounded Complaints

A complaint, which is made in good faith, but cannot be proved, is not a frivolous or malicious complaint, nor will any discipline be imposed on the complainant.

##### 4.2 CONSENSUAL RELATIONS

No one in a position of authority, responsibility, supervision, control or management over another, such as a coach, trainer, manager, teacher or therapist, shall have an amorous relationship with a person who is subordinate, such as an athlete since such relationships greatly increase the chances that the person in the position of power or control will abuse his/her power and sexually exploit the subordinate. In the event such relationship is proved upon complaint it shall be deemed to be sexual harassment committed against the subordinate person and the respondent shall be subject to discipline.

#### 4.3 KEEPING OF RECORDS

All records of any complaint, including the Record of Resolution or Record of Decision or any Disciplinary Notification shall be kept in the files of both the complainant and the respondent in the offices of the MBA.

#### 4.4 CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

While it is understood there is a natural reluctance on the part of a complainant to make a complaint for fear of public embarrassment or inconvenience, the MBA, although not able to guarantee confidentiality;

- (a) will maintain confidentiality in the conduct of all investigation and inquiries to the extent practicable and appropriate under the circumstances;
- (b) will not investigate anonymous complaints or complaints which are lacking in any significant detail or fact which would deprive the respondent from the opportunity to make full answer to the complaint in question; and
- (c) will keep confidential all records, notes, documents, files, memoranda, Record of Resolution, Record of Decision, any notifications or any other relevant document except where disclosure is permitted under the proceedings herein or as is required by law.

#### 4.5 DISCIPLINARY ACTION

- (a) If disciplinary action is imposed, it shall be the responsibility of the complaint officer to take the action necessary to confirm that such action has been taken and the terms of such discipline fulfilled.
- (b) Disciplinary action may include anyone or more of the following:
  - (i) a written apology;
  - (ii) a written reprimand;
  - (iii) referral to professional counseling;
  - (iv) transfer or reassignment;
  - (v) withholding of promotion;
  - (vi) demotion;
  - (vii) suspension with or without pay;
  - (viii) dismissal/expulsion;
  - (ix) responsibility to the MBA for all or part of the costs of the investigation;
  - (x) successful completion of any training courses specified by the MBA; and
  - (xi) any conditions to continuing in the position or function out of which arose the complaint, such as the requirement of additional

supervision.

#### 4.6 PROTECTION AGAINST RETALIATION

- (a) MBA will not tolerate any act of any individual, which may be considered by the complaint officer or panel as retaliation.
- (b) Any retaliation against any individual involved in a complaint will, if proved, be deemed harassment and subject to discipline.

#### 4.7 TIME LIMITATION

- (a) A complaint made pursuant to this policy must be made, ordinarily, within six months of the most recent alleged incident.
- (b) The time limitation herein may be waived, in the discretion of the panel, as long as neither the complainant nor the respondent would be prejudiced by the waiving of the limitation period.

#### 4.8 DEFINITIONS

- (a) Complainant: an employee, athlete, coach, manager, official, volunteer or other participant of a sports activity, who alleges discrimination, harassment or abuse in a complaint to the complaint officer;
- (b) Respondent: a person accused of committing an act of discrimination, harassment or abuse on a complaint;
- (c) Complaint Officer: either the Executive Director or the Technical Director of the MBA or such other person who may, from time to time, be appointed by the Management Committee of the MEA and who receives a complaint of discrimination, harassment or abuse and such complaint officer, upon appointment, possesses the following responsibilities:
  - (i) the implementation of this policy;
  - (ii) acts impartially in the handling of any complaint;
  - (iii) acts as an advocate for the elimination and prevention of discrimination, harassment and abuse;
  - (iv) receives and investigates all complaints pursuant to the procedures of this policy;
  - (v) maintains confidential records, documents, files and statistics on all matters of alleged discrimination, harassment and abuse;
  - (vi) reports monthly to the Management Committee of the MBA on the status of all complaints made pursuant to this policy, without names or other identification;
  - (vii) acts as an education officer in the education of members of the MBA and participants in its programs in identification of and prevention of discrimination, harassment and abuse; and

- (viii) provides an annual report to the Management Committee of the MBA respecting the number of complaints and their disposition;
- (d) Discrimination: differential treatment on the basis of an individual's ancestry, colour, perceived race, nationality, national origin, ethnic background or origin, religion, creed or religious belief, religious association or activities, age, sex, gender, physical characteristics, pregnancy, sexual orientation, marital or family status, source of income, political belief, association or activity, physical or mental disability (save and except where such differential treatment is permitted by law). Discrimination can be constituted by the effect of action or omission and intent is not a prerequisite to a finding of discrimination. Provided however, discrimination does not include any special programs designed to relieve the disadvantaged for individuals or groups identified on the basis of any of the grounds noted herein, nor does discrimination include the bona fide placement of persons in any area of participation on the basis of qualification through ability;
- (e) Discriminatory harassment: any unwelcome or abusive comment or conduct concerning an individual's ancestry, colour, perceived race, nationality, national origin, ethnic background or origin, religion, creed or religious belief, religious association or activities, age, sex, gender, physical characteristics, pregnancy, sexual orientation, marital or family status, source of income, political belief, association or activity, physical or mental disability;
- (f) Abuse of Authority: a form of harassment which occurs when an individual improperly uses the power and authority inherent in his/her position, to endanger or undermine a person's job, status or position and includes such acts or misuses as intimidation, threats, blackmail or coercion;
- (g) Personal Harassment: any improper behavior by any person that is directed at and offensive to any other person and which the offending person knew or ought to have known would be unwelcome and such behavior, which can be objectionable conduct, comment or display on a one-time or continuous basis, demeans, belittles or causes personal humiliation or embarrassment to the offended person;
- (h) Sexual Harassment:
  - (1) one incident or a series of incidents involving unwelcome sexual advances, request for sexual favours, or other verbal or physical conduct of a sexual nature:
    - (A) when such conduct might reasonably be expected to cause insecurity, discomfort, offense or humiliation to another person or group; or
    - (B) when submission to such conduct is made implicitly or explicitly a condition for the provision of benefits of any kind; or

- (C) when submission to such conduct is made implicitly or explicitly a condition of sport participation or employment; or
  - (D) when submission to or rejection of such conduct is used as a basis for any decision made with respect to employment or sport participation; or
  - (E) where such conduct has the purpose or the effect of interfering with a person's work or sport performance or creating an intimidating, hostile or offensive work or sport environment;
- (2) may include, but is not limited to the following:
- (A) sexist jokes causing embarrassment or offense;
  - (B) leering;
  - (C) the display of sexually offensive material;
  - (D) sexually degrading words used to describe a person;
  - (E) derogatory or degrading remarks directed towards members of one sex or one sexual orientation;
  - (F) sexually suggestive or obscene comments or gestures;
  - (G) unwelcome inquiries or comments about a person's sex life;
  - (H) unwelcome sexual flirtations, advances, or propositions;
  - (I) persistent unwanted contact or attention after the end of a consensual relationship;
  - (J) requests for sexual favours;
  - (K) unwanted touching;
  - (L) verbal abuse or threats;
  - (M) sexual assault;
- (3) although sexual harassment typically involves a female complainant, both males and females can be subjected to sexual harassment by members of either sex and although sexual harassment is typically committed by a person in a superior position against a person in a subordinate position, people in subordinate or equal positions may also commit sexual harassment; and
- (4) pursuant to Section 17 of *The Child and Family Services Act* of Manitoba the same definition of sexual harassment provided herein applies to minors;
- (i) Off-Premises Harassment and Abuse: work or sport related discrimination, harassment or abuse can occur in places other than the work-place or sport-place, including, without restriction, at work or sport related social functions, conferences, travel, competitions, training sessions, over the telephone, fax, e-mail, computer or any other communication equipment, or at meetings or workshops, and the MEA policy against all acts of harassment extends to any incidents occurring at or away from the work-place or sport venue and during or

outside normal working or sport participation hours, provided such acts are committed within the course of employment or participation in the sport, or the provision of goods, services, facilities or accommodation or where the individuals involved have a work or sport related relationship;

- (j) Child Abuse: *The Child and Family Services Act* of Manitoba defines abuse as an act or omission of a parent or guardian of a child or of a person having care, custody, control or charge of a child where the act or omission results in:
  - (A) physical injury to the child;
  - (B) emotional disability of a permanent nature in the child or is likely to result in such a disability, or
  - (C) sexual exploitation of the child with or without the child's consent.

The focus of the legislation includes situations involving a parent, guardian, teacher, baby-sitter, day care worker, coach, group leader or anyone in a position of trust with the child.

Any allegation or suspicion of physical or sexual abuse also gives rise to requirements of notification to Child and Family Services and to the Police and any failure to do so could lead to criminal charges against the individuals who failed to report the incident. In the case of any suspected child abuse the reporting individual should also consult with those outside authorities;

- (k) Neglect: occurs when a primary caregiver endangers a child's welfare by failing to provide for physical, emotional or medical needs;
- (l) Physical Abuse: is any intentional non-accidental injury of a child;
- (m) Emotional Abuse: is the damaging, by whatever means, of a child's self-image by an adult responsible for the child's nurturing or learning, resulting in a decrease in the child's feeling of personal worth, and thus in his/her ability to love, to trust and to feel at one with the human race;
- (n) Sexual Abuse: is the use of a child for sexual purposes by an adult, or the allowing of such use of a child by a parent, caretaker, or legal guardian. It includes any manual, oral or genital sexual contact or the use of an object for sexual touching or penetration or any other explicitly sexual behavior that an adult imposes on a child by exploiting the child's vulnerability and powerlessness. Sexual abuse is both a child welfare and criminal offense.

APPROVED BY RESOLUTION OF THE MANAGEMENT COMMITTEE OF THE MBA this 13<sup>th</sup> day of May, 1998.

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President

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Vice-President, Policy

Reviewed by Executive Committee – November, 2007 – no amendments or additions.