

Finding a way forward: Addressing organizational factors contributing to systemic maltreatment in Canadian sport

(Hilary Findlay & Marcus Mazzucco)

Abstract

A range of investigations and empirical research confirms the scope and depth of maltreatment across sport. Legal liability for maltreatment in social institutions, such as sport organizations, has traditionally focused on the direct actions of the individual wrongdoer who perpetrates abuse and on the indirect or vicarious liability of the organization for its failure to control or mitigate the risk of such harm. The organization was positioned as well-meaning but deceived by the predator who was able to slip through the organizational cracks. A limitation of this traditional framework of liability is that it does not consider the power of the sport organization in shaping the conduct of individuals who are capable of engaging in maltreatment due to their positions of authority. Research shows that organizational factors play a critical role in contributing to maltreatment within sport organizations. In many, if not most cases, these factors are embedded in the structure and operations of sport organizations and are symptomatic of a failed sport system. It is therefore necessary to develop measures to address them in order to combat maltreatment at all levels of Canadian sport. This paper analyzes two avenues of recourse used to address maltreatment in Canadian sport – specifically, an independent national body with contractual authority to receive, investigate and adjudicate violations of a universal code of conduct, and class action lawsuits filed by athletes against sport organizations based on the tort of systemic negligence – and whether these avenues effectively address the systemic organizational factors that contribute to maltreatment. Based on this analysis, the paper examines whether there needs to be a transformative paradigm shift in how sport is regulated in Canada in order to address these systemic organizational factors and whether a public inquiry is the ideal catalyst for such paradigmatic change. The paper concludes with a theoretical framework and suggested options for regulatory reform at the federal and provincial/territorial levels involving governments and administrative authorities, based on examples in other jurisdictions and sectors.