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

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SUMMARY OF PAPER

A range of investigations and empirical research confirms the scope and depth of maltreatment across sport. For example, in a 2021 study of Canadian national team athletes, 69% reported experiencing neglect, 60% reported psychological maltreatment, 21% reported sexual maltreatment, and 14% reported physical maltreatment (Willson et al., 2022). These findings are consistent with other national scale studies conducted in European countries (see Hartill et al., 2023; Vertommen et al., 2016).

Understanding how maltreatment occurs across sport is challenging – no single explanation is sufficient, and no single factor is conclusive. Past focus has largely been on the individual perpetrator, or 'bad apple', who infiltrates the sport organization and is responsible for the maltreatment. Increasingly, however, attention has turned to the sport organization itself as it becomes clear that certain characteristics of an organization cannot only create an environment prone to maltreatment but can actively enable and perpetuate the maltreatment. According to the research, these organizational factors include power imbalances due to relational hierarchies within organizations, a lack of standards for acceptable conduct and their enforcement, poor governance (such as a lack of athlete representation, conflicts of interest, and unqualified and non-diverse directors), and ideologies that prioritize performance over athlete well-being, such as a winning-at-all-costs ethos (Roberts et al., 2020; Krieger & Pieper, 2023; Nite & Nauright, 2020) .

In many, if not most cases, these organizational flaws are embedded in the structure and processes of sport organizations and are symptomatic of a failed sport system.

In Canada, two main mechanisms have emerged to address and prevent maltreatment in sport: (1) the Office of the Sport Integrity Commissioner (OSIC), which manages complaints about violations of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) through the Abuse-Free Sport Program, and (2) class action lawsuits filed by athletes based on the tort of systemic negligence. Each mechanism can be evaluated based on its potential to promote organizational change. However, before evaluating each mechanism, it is necessary to briefly discuss two key features of Canada's sport system.

First, the Canadian sport system is largely self-regulating. It is comprised of a pyramid of private organizations. At the top, are national sport organizations (NSOs) that are members of an international sport federation. In the middle, are provincial and territorial sport organizations (PTSOs) that are members of the NSO. And, at the bottom, are local clubs that are members of PTSOs. In theory, this pyramid structure allows a higher-level organization to exercise authority over lower-level organizations, directly or

indirectly. However, in practice, NSOs rarely exercise this authority over lower-level organizations, including in matters of safeguarding (see McLaren Global Sport Solutions, 2020; Cromwell, 2022). This has led to a situation whereby autonomous sport organizations have not been motivated to address organizational factors contributing to maltreatment without compulsion from external sources, such as governments.

Second, Canadian governments are not involved in the day-to-day administration of sport or the operation of sport organizations. Instead, the role of governments is largely limited to providing funding to sport organizations. For example, the federal government provides funding to NSOs, and makes that funding conditional on the NSOs complying with certain conditions. These conditions require NSOs to adopt the UCCMS, become signatories of OSIC's Abuse-Free Sport Program and, by April 2025, respect the principles in the Canadian Sport Governance Code (Government of Canada, 2023). At the provincial and territorial level, governments provide funding to PTSOs. However, the conditions attached to this funding are not uniform across provinces and territories and are not aligned with the federal government's funding conditions.

These two key features of the Canadian sport system intersect and have a resulting compounding effect. The federal government's funding conditions related to safe sport are stuck at the NSO level and do not trickle down to the sub-national levels of sport due to the lack of authority exercised by NSOs over lower-level sport organizations and public policy misalignment with provincial and territorial governments. This leaves a gap in safe sport measures at the provincial, territorial, and local levels of sport, where maltreatment is typically more prevalent due to the greater number of athletes participating at those levels.

OSIC

OSIC was established by the federal government to receive, investigate, and adjudicate complaints about violations of the UCCMS under the Abuse-Free Sport Program. OISC also conducts audits to assess the operational management and policies of sport organizations for the purpose of providing them with findings and non-binding recommendations (known as "sport environment assessments"). Importantly, OSIC was not created by legislation and therefore it only derives authority from its contracts with individual sport organizations. NSOs are required to enter into contracts with OSIC, as a condition of receiving funding from the federal government. However, lower-level sport organizations are under no similar obligation.

Although OSIC somewhat addresses the organizational factor of *enforcing* standards of acceptable conduct, it has five key limitations, the first three of which are due to the contractual basis of its authority. First, OSIC has no jurisdiction to investigate complaints about maltreatment at the sub-national levels of sport due to its lack of contracts with sport organizations at those levels. For example, of the 193 complaints received by OSIC in its first year of operation, 127, or two thirds, were not within its jurisdiction (SDRCC, 2023). Second, because OSIC does not have contracts with *individuals* affiliated with a sport organization, it has no authority to compel these

individuals to participate in an investigation. In order to compel participation in an investigation, OSIC must rely on the sport organization to exercise any contractual powers it has over individual members to demand the participation of such individuals. The needed cooperation of the sport organization in the investigative process weakens OSIC's independence. Third, OSIC has no authority to penalize organizations that fail to comply with sanctions issued under the UCCMS. For example, if a coach is suspended from sport due to maltreatment, but a NSO continues to work with them, then OSIC must refer the matter to the federal government to take appropriate action, such as withholding the NSO's public funding. Fourth, because OSIC's primary mandate is to enforce the UCCMS (which is focused on individual misconduct), OSIC does not have authority to address organizational misconduct contributing to maltreatment. While OSIC can conduct sport environment assessments that examine organizational culture, such assessments are voluntary and do not result in binding recommendations that must be implemented by sport organizations. Fifth, and finally, because OSIC is partially funded by the sport organizations that use its services, it is not financially independent of the sport system. This can raise issues of conflicts of interest and bias in OSIC's investigation and adjudication processes, have a chilling effect on the reporting of maltreatment complaints to OSIC, and lead to perceptions that OSIC is not a legitimate regulator.

Class Action Lawsuits

In response to widespread incidents of maltreatment involving a number of Canadian sport organizations, several class action lawsuits have been filed by Canadian athletes in hockey, artistic swimming, and gymnastics (see Carcillo v. Canadian Hockey League; Isaac et al. v. Canada Artistic Swimming; Cline v. Gymnastics Canada).

The class action lawsuits seek to impose direct liability not on individual perpetrators of maltreatment, but rather on sport organizations for their role in creating an environment where maltreatment was able to occur and persist. The direct liability of the sport organization is theorized using the tort of systemic negligence. This tort seeks to distinguish organizational operations from individual conduct. It positions individual perpetrators not necessarily as rogues, or 'bad apples', who have infiltrated the organization, but as a *product* of the organization. In other words, the tort recognizes the direct role of the organization in creating and promoting a culture in which maltreatment becomes normalized.

While the lawsuits have the potential to address all of the organizational factors that contribute to maltreatment, they have several potential limitations. First, they have not progressed to the trial phase of the action, so their likelihood of success is uncertain. Second, the lawsuits only target *specific* sports, and not the entire sport system. And finally, if the lawsuits are settled before going to trial, the settlements may prioritize the financial compensation of plaintiffs and not the changing of organizational norms and practices in a sport.

Regulatory Reform

Bold regulatory reform is needed to disrupt the organizational autonomy that has allowed maltreatment to become part of the culture of Canadian sport. Options for such reform can be informed by regulatory scholarship and examples of regulatory systems in other sectors and jurisdictions. These options include:

1. Enacting federal, provincial and territorial statutes that, while recognizing the self-regulating status of NSOs and PTSOs, make them subject to certain legislative conditions intended to protect the public interest;

2. Enhancing the role of NSOs and PTSOs as non-arm's length regulators of lower-level sport organizations (similar to what occurs in the anti-doping system with the roles of international sport federations and national Olympic Committees); and

3. Establishing independent regulators of sport organizations at federal, provincial and territorial levels with statutory powers that support their mandates.

These options are not mutually exclusive and may be used in combination to produce a hybrid regulatory system involving an integrated network of regulatory actors.

Many options for regulatory reform necessitate coordinated federal, provincial, and territorial government action, which could be achieved through a shared-cost program established under the *Physical Activity and Sport Act*. Such a shared cost program could be similar to the "Canada Health Transfer" and the "Canada Social Transfer" that are used to provide federal financial support to provincial and territorial governments for their health insurance and social assistance programs. This new shared cost program (i.e., a so-called Canada *Sport* Transfer) would require provincial and territorial governments to comply with certain stipulations as a condition of receiving funding from the federal government. The stipulations would enable a pan-Canadian approach to safe sport that is cohesive, harmonious, and holds organizations accountable for their role in safeguarding sport.

Ideally, such options for regulatory reform would be considered in a joint federal-provincial and territorial public inquiry. At this point, the federal government has decided to retain a third party panel to review the Canadian sport. It is essential that this third party panel consider options for regulatory reform in Canadian sport as part of its review.

Read the full paper here <insert link>.