

ACC/2018/C/045

OFFICE OF THE ATHLETICS CANADA COMMISSIONER

IN THE MATTER OF CODE OF CONDUCT COMPLAINTS CONCERNING

**ANDREW (ANDY) MCINNIS**

RECONSIDERATION DECISION

Issued on June 8, 2020

Hugh L. Fraser

Commissioner

Counsel for the Respondent:

Mr. Jason Beitchman  
Rayman Beitchman LLP

## **I. INTRODUCTION**

1. Athletics Canada, the governing body for Track & Field in Canada established an independent office known as the Commissioner's Office to make informed decisions in five areas of Athletics Canada's operations including complaints of violations of Athletics Canada's Code of Conduct and Ethics.

2. In my capacity as an independent Commissioner, I have been asked to reconsider the disposition of complaints brought against Andrew (Andy) McInnis in 2018 alleging violations of the Athletics Canada Code of Conduct and Ethics. These complaints were previously dealt with by a different Commissioner.

## **II. BACKGROUND**

### **(a) Procedural History**

3. Andrew McInnis has a lengthy history as a successful coach in the sport of Track & Field, or Athletics, as it is known throughout the world. He has coached many national and international level athletes, including athletes who have garnered Olympic medals. For a number of years he was head coach and Executive Director of the Ottawa Lions Track & Field Club "(OLTFC)", one of the largest Track & Field clubs in Canada. The OLTFC have membership in Athletics Canada.

4. The OLTFC received complaints regarding Mr. McInnis in August and September of 2018. The Track Club then retained Mr. Andrew Tremayne to conduct an independent workplace investigation into those complaints. Mr. McInnis was suspended with pay by the OLTFC on September 13, 2018 pending the outcome of the Tremayne investigation.

5. On or about January 25, 2019, Athletics Canada Commissioner Frank Fowlie assumed jurisdiction over the complaints and appointed Mr. André Marin to undertake an investigation on behalf of the Commissioner's Office. That investigation was to include Mr. McInnis as well as then OLTFC Board President, Ken Porter, and the OLTFC Board itself.

6. On March 21, 2019 Commissioner Fowlie provisionally suspended Mr. McInnis pending his decision on the complaints. Commissioner Fowlie's decision regarding the complaints was issued on May 5, 2019 and publicly released on May 6, 2019. The decision expelled Mr. McInnis from Athletics Canada and its activities, including membership in the Athletics Canada Hall of Fame, effective immediately. On May 8, 2019, the OLTFC terminated Mr. McInnis' employment for cause, based on the decision of Commissioner Fowlie.

7. On June 4, 2019, Mr. McInnis appealed the decision of Commissioner Fowlie to the Sport Dispute Resolution Centre of Canada (SDRCC). On December 17, 2019, the SDRCC confirmed that the Commissioner's Office had jurisdiction to deal with the complaints against Mr. McInnis; however Commissioner Fowlie's decision was set aside for reasons of bias and breaches of the rules of procedural fairness. SDRCC Arbitrator Bennett then ordered that the complaints be remitted back to Athletics Canada for redetermination before a new Commissioner.

8. On January 21, 2020, Athletics Canada appointed Commissioner Hugh L. Fraser to deal with the complaints that had been remitted back to them for reconsideration following the decision of the SDRCC Arbitrator.

**(b) Procedural Framework**

9. In accordance with Rule 140.05 of Athletics Canada's By-laws, the Commissioner's Office is responsible for determining whether a complaint will be considered as "Harassment" and for appointing an independent Investigator to conduct an investigation under the terms of Athletics Canada's Harassment Policy.

10. In the SDRCC decision, Arbitrator Bennett indicated that in a proceeding of this nature, Mr. McInnis should have been given an opportunity to have an oral hearing at which he could have tested the complaints and cross-examined those providing evidence against him.

11. The option of an oral hearing with viva voce evidence from the complainants was considered in the matter now before me. I also considered whether another independent Investigator should be appointed in this matter. Ultimately I agreed with Mr. McInnis' submission that the most fair, practical, proportionate, and feasible option in these somewhat unique circumstances was to adopt the investigative report of Mr. Andrew Tremayne, dated April 16, 2019 as an alternative to appointing another independent investigator.

12. With the consent of Mr. Tremayne and the current Board of Directors of the OLTF, for which I am grateful, the Tremayne report and exhibits were made available to me and to counsel for Mr. McInnis, for use in this proceeding.

13. I therefore directed that the Tremayne report would be adopted for use as the investigator's report in this reconsideration process. On that basis, Mr. McInnis waived his right to an oral hearing and agreed that the matter could be determined by consideration of the written material which formed the evidentiary record in this proceeding.

14. I contacted the prior complainants to determine if they wished to maintain their complaints for reconsideration. Most of the complainants renewed their complaints. There were additional complaints received during my mandate, some of which covered the period up to and

including 2016. Other additional complaints related to matters not brought forward until after 2016, which dealt with occurrences that allegedly took place prior to 2016.

15. Thus, the complaints brought before this Commissioner generally fell into two categories: (1) those that were previously brought forward in 2016 and dealt with at that time; and (2) those that were brought forward in 2018 which were the subject of an investigation by Mr. Tremayne and a separate investigation by Athletics Canada.

16. As will be detailed later, the 2016 complaints were dealt with by the OLTCF Board and Mr. McInnis was reprimanded as a result of conduct alleged in those complaints. Since those matters were previously investigated and dealt with, my decision will only deal with the second group of complaints which arose in 2018.

17. Those complaints from 2018, along with the Tremayne investigators report, constitute the evidentiary basis for this proceeding.

### **III. THE REGULATORY FRAMEWORK**

18. The complaints that are currently being dealt with were brought to the Commissioner's Office pursuant to Athletics Canada By-law Rule 140 which establishes the Terms of Reference for the Commissioner's Office. Rule 140.08 confirms that the Commissioner's Office has jurisdiction over complaints that contain allegations of Harassment, or any other alleged violation of the Code of Conduct and Ethics and sets out the procedure for the handling of such complaints.

19. One aspect of the mandate of this Office is to determine whether the alleged violations of the Code of Conduct and Ethics are minor or major.

20. Minor infractions are defined in 140.08 (7) as:

- a) Disrespectful, abusive, racist, or sexist comments or behaviour;
- b) Disrespectful conduct;
- c) Conduct contrary to the values of Athletics Canada;
- d) Neglecting attendance at Athletics Canada events and activities for which attendance is expected or required;
- e) Non-compliance with Athletics Canada's policies, procedures, rules, or regulations; or
- f) Minor violations of Athletics Canada's Code of Conduct and Ethics, at the discretion of the Commissioner's Office.

21. Major infractions are defined in 140.08 (8) as:

- a) Repeated minor infractions;
- b) Any incident of hazing;
- c) Incidents of physical abuse;
- d) Behaviour that constitutes Harassment, Sexual Harassment, or sexual misconduct.
- e) Pranks, jokes, or other activities that may or did endanger the safety of others;
- f) Conduct that interferes with a competition or with any athlete's preparation for a competition;
- g) Conduct that damages Athletics Canada's image, credibility, or reputation;
- h) Consistent disregard for Athletics Canada's Code of Conduct and Ethics, at the discretion of the Commissioner's Office;
- i) Major or repeated violations of Athletics Canada's Code of Conduct and Ethics, at the discretion of the Commissioner's Office;
- j) Damaging Athletics Canada property or improperly handling Athletics Canada monies;
- k) Abusive use of alcohol or cannabis, any use or possession of alcohol or cannabis by minors, or use or possession of illegal drugs and narcotics;
- l) A conviction for a Criminal Code offence, or
- m) Any possession or use of banned performance enhancing drugs or methods.

22. Sections 10 to 12 of Rule 140.08 state that:

*In cases where the Commissioner's Office has determined that a major infraction has allegedly occurred, the Respondent will be provided with the content of the complaint and instructed to submit a response to the Commissioner's Office.*

*The Complainant will be provided with the Respondent's response and be permitted to submit a rebuttal to the Commissioner's Office. The rebuttal will be provided to the Respondent.*

*The Commissioner's Office will determine if an in-person hearing or conference call hearing is necessary to hear and consider the evidence in the complaint, or if the complaint can be addressed based on the submitted documents.*

23. The Athletics Canada Code of Conduct and Ethics is found in Rule 129. Harassment is defined in 129.03 d) as:

A course of vexatious comment or conduct against an Individual or group, which is known or ought to reasonably be known to be unwelcome. Types of behaviour that constitute Harassment includes, but are not limited to:

- i. Written or verbal abuse, threats, or outbursts;
- ii. Persistent unwelcome remarks, jokes, comments, innuendo, or taunts;

- iii. Leering or other suggestive or obscene gestures;
- iv. Condescending or patronizing behaviour which is intended to undermine self-esteem, diminish performance or adversely affect working conditions;
- v. Practical jokes which endanger a person's safety, or may negatively affect performance;
- vi. Hazing, which is any form of conduct which exhibits any potentially humiliating, degrading, abusive, or dangerous activity expected of a U20-ranking athlete by a more senior teammate, which does not contribute to either athlete's positive development, but is required to be accepted as part of a team, regardless of the U20-ranking athlete's willingness to participate. This includes, but is not limited to, any activity, no matter how traditional or seemingly benign, that sets apart or alienates any teammate based on class number of years on the team, or athletic ability;
- vii. Unwanted physical contact including, but not limited to touching, petting, pinching, or kissing;
- viii. Deliberately excluding or socially isolating a person from a group or team;
- ix. Persistent sexual flirtations, advances requests, or invitations;
- x. Physical or sexual assault;
- xi. Behaviours such as those described above that are not directed towards a specific person or group but have the same effect of creating a negative or hostile environment; and
- xii. Retaliation or threats of retaliation against a person who reports harassment to Athletics Canada

24. 129.03 e) defines Workplace Harassment as follows:

Vexatious comment or conduct against a worker in a Workplace or against an athlete in an Athlete Workplace that is known or ought reasonably to be known to be unwelcome. Workplace Harassment should not be confused with legitimate, reasonable management or coaching actions that are part of the normal work/training/competition function, including measures to correct performance deficiencies such as placing someone on a performance improvement plan, or imposing discipline for workplace infractions. Types of behaviour that constitute Workplace Harassment include, but are not limited to:

- i. Bullying;
- ii. Workplace pranks, vandalism, bullying or hazing;
- iii. Repeated offensive or intimidating phone calls or emails;
- iv. Inappropriate sexual touching, advances, suggestions or requests;
- v. Displaying or circulating offensive pictures, photographs or materials in printed or electronic form;

- vi. Psychological abuse;
- vii. Excluding or ignoring someone, including persistent exclusion of a particular person from work or team related social gatherings;
- viii. Deliberately withholding information that would enable a person to do his or her job, perform or train;
- ix. Personal harassment;
- x. Sabotaging someone else's work or performance;
- xi. Gossiping or spreading malicious rumours;
- xii. Intimidating words or conduct (offensive jokes or innuendos); and
- xiii. Words or actions which are known or should reasonably be known to be offensive, embarrassing, humiliating, or demeaning.

25. 129.03 f) defines Sexual Harassment as follows:

A course of vexatious comment or conduct against an Individual in a Workplace or Athlete Workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advance to the Individual or Athlete and the person knows or ought reasonably to know that the solicitation or advance is unwelcome. Types of behaviour that constitute sexual harassment include, but are not limited to:

- i. Sexist jokes;
- ii. Threats, punishment, or denial of a benefit for refusing a sexual advance;
- iii. Offering a benefit in exchange for a sexual favour;
- iv. Demanding hugs;
- v. Bragging about sexual ability;
- vi. Leering (persistent sexual staring);
- vii. Sexual assault;
- viii. Display of sexually offensive material;
- ix. Distributing sexually explicit email messages or attachments such as pictures or video files;
- x. Sexually degrading words used to describe an Individual;
- xi. Unwelcome inquiries into or comments about an Individual's gender identity or physical appearance;
- xii. Inquiries or comments about an Individual's sex life;
- xiii. Persistent, unwanted attention after a consensual relationship ends;
- xiv. Persistent unwelcome sexual flirtations, advances, or propositions; and
- xv. Persistent unwanted contact.

#### IV. THE COMPLAINTS

26. Following the announcement that the complaints which were the subject of the appeal to the SDRCC would be reconsidered by a different Commissioner, the Commissioner's Office received complaints from a number of individuals. It was determined that five of these complaints related to issues that formed part of the 2016 complaints which were brought before the OLTFC Board. A brief summary of that process is relevant at this time to indicate why Mr. McInnis should not be further sanctioned for those events.

27. In the fall of 2016 the OLTFC received a number of harassment complaints concerning Mr. McInnis' behaviour. Those complaints were submitted to Maureen Moore, the individual who held the title of Harassment Officer for the club. A three person Disciplinary Committee was struck which was chaired by the Harassment Officer. The Vice Chair of the Board along with an external Human Resources expert were the other members of the Disciplinary Committee.

28. The complaints that the OLTFC Board considered in 2016 can be summarized as follows:

- Telling female athletes what to wear to a banquet - usually something sexy.
- Implying that an athlete was gay because they did not speak openly about their love life.
- Sitting an athlete on his lap and making comments about her sex life.
- Requiring female athletes to model their uniforms for him including having them squat.
- Requiring female athletes to wear bikini bottoms during competition.
- Shaming female athletes about their bodies and commenting on their weight.
- Using the derogatory term "Fat Camp" to describe a Base Fitness Camp.
- Routinely pinching the flesh of female athletes followed by a comment about fat.
- Making derogatory comments such as why don't you "eat an air sandwich" and "it wouldn't hurt you to be bulimic".
- Comparing female athletes to one another in front of a mirror.
- Giving massages to female athletes whether they asked for one or not.
- Slapping female athletes on their bottom.
- Making inappropriate comments and telling off-colour jokes.

29. At the conclusion of their investigation the OLTFC Board sent Mr. McInnis a letter setting out their findings and identifying their expectations going forward. The letter indicated that Mr McInnis was expected to refrain from demeaning, embarrassing or humiliating comments or conduct towards athletes at all times. As part of this letter of reprimand, Mr. McInnis was required to complete the Respect in Sport Program for coaches.

30. It is the Commissioner's opinion that this letter of reprimand addressed the complaints received by the OLTFC in 2016 and confirms that Mr. McInnis was sanctioned for the complaints received at that time. Although he cannot be sanctioned a second time for those



particular violations, the fact that he was previously reprimanded for the conduct described above will be a relevant consideration when dealing with the appropriate sanction for the 2018 complaints, should they be substantiated.

### **The 2018 Complaints**

31. This decision therefore focuses on the complaints received by the OLTFC Harassment Officer in 2018. The OLTFC retained an independent external investigator, the aforementioned Andrew Tremayne, to investigate the new complaints. On September 13, 2018, the OLTFC Board placed Mr. McInnis on a paid leave of absence and prohibited him from attending the Track Club's facilities or having contact with any of the Club's athletes or staff. The OLTFC Board chair was to be his only contact with the Club until the independent investigation was complete and the outcome known.

32. Mr. Tremayne's mandate was to investigate four complaints which were filed in August and September, 2018. Three of these complaints were from the same complainants who have filed similar documents in this proceeding. The fourth complaint that I am considering is from someone who had once served as the harassment officer for the OLTFC and who had been extensively interviewed by Mr. Tremayne.

33. In accordance with the Commissioner's Office procedure, Mr. McInnis was provided with the reinstated complaints that were first submitted in 2018, as well as the one new complaint, and was offered an opportunity to provide a response. Mr. McInnis indicated that he would rely on the responses given to Investigator Tremayne, which were summarized in the Tremayne report and would have no further response to the complaints that were under consideration by me, except for his submissions on the appropriate sanction.

34. It may be helpful at this point to refer to the summary of the complainants allegations as listed in Mr. Tremayne's report. The allegations that were considered by the investigator include the following:

1. Pinching female athletes on their legs, torsos, backs with the stated purpose of determining if they need to lose weight (and never doing so to male athletes);
2. Making inappropriate comments about the bodies and weight of female athletes, both directly to those athletes and to other athletes (and rarely doing so about male athletes);
3. Massaging the legs and hips of female athletes (and never doing so to male athletes);
4. Slapping the buttocks of female athletes (and never doing so to male athletes);

5. Coming into direct body-to-body contact with female athletes from behind, and grasping their arms in order to demonstrate arm movements (and never doing so to male athletes);
  6. Telling female athletes which other athletes they should and should not be friends with; which other athletes they should socialize with; and which other athletes they can trust (and never doing so with respect to male athletes);
  7. Asking female athletes to model their track uniforms in front of him and never doing so for male athletes);
  8. Asking a female athlete who had returned from surgery “what kind of drugs did they put you on” and when she replied that they were too strong and that she was not taking them, saying “can I have them?” to her;
  9. Posting Instagram photos of female athletes in inappropriate, revealing, or sexually suggestive poses;
  10. Posting an Instagram message with a photo of himself and a young female with the caption “CEO with the Bestest Executive ASSistant (sic)” during the National Championships held in Ottawa in 2018;
  11. Consuming alcohol to excess and being intoxicated at a competition in New York City in February 2014; at a team event during a training camp in Florida (December 2015); and at the National Championships (held in Ottawa, July, 2018);
  12. Touching a young female athlete inappropriately when she was competing with the Club at an event in 2012.
35. After being given an opportunity to respond specifically to each of the reinstated complaints and the one new complaint, Mr. McInnis indicated that the responses given to Mr. Tremayne both in writing and during an in-person interview would serve as his responses to the complaints being considered by this Commissioner.
36. I will now deal with those responses in corresponding order to the list of allegations before me.

### **Summary of McInnis response to the Allegations**

Allegation #1            Pinching female athletes to determine if they need to lose weight:

Mr. McInnis responded that this is in reference to what is known as “skin fold measurement” a technique used to determine leanness. He recalled that the track club used to have a pair of special callipers which could be used to conduct such a test but that the callipers were either stolen or borrowed and never returned. Mr. McInnis added that since he completed the Respect in Sport and Respect in the Workplace online training in 2017 he only conducted the skin fold measurement on athletes that he coaches which includes male and female athletes.

Allegation #2            Making inappropriate comments about the bodies and weight of female athletes:

Mr. McInnis replied that if an athlete who he is coaching asked him for his advice or assistance about diet, weight, or nutrition, he would provide it. If an athlete asked him if he thought that they needed to lose weight, he would ask them what they eat, and will have an honest conversation with them about eating habits. He stated that both male and female athletes will ask him about dietary requirements and nutritional supplements and he will offer his advice. For athletes in one of the varsity programs, he would usually direct the person to a nutritionist who is available through the institution if one was available. He added that as far as he was aware no-one had ever complained about anything that he had said in this regard.

Allegation #3            Massaging the legs and hips of female athletes:

Mr. McInnis responded that since the 2016 investigation and after completing the Respect in Sport and Respect in the Workplace training in 2017 he has only touched athletes who come to him with an issue or if another coach tells him that there is a problem with their athlete and asks for his assistance. Mr. McInnis added that he sometimes but not always, asks an athlete for permission before he touches them; and that he sometimes but not always, tells the athlete where he is going to touch them. Generally he would not ask permission of the athletes that he coaches because of an assumption that assessing these athletes for injuries, which may include touching, is part of the coaching process.

Allegation #4            Slapping the buttocks of female athletes:

Mr. McInnis stated that he does not do this and cannot ever remember doing this.

Allegation #5            Coming into direct body-to-body contact with female athletes from behind, and grasping their arms in order to demonstrate arm movements (and never doing so to male athletes):

Mr. McInnis replied that he has done this with his male and female athletes all of his coaching career and that he does it in order to demonstrate the proper movement. He denied any suggestion that his hips come into direct contact with the athletes, stating that from a distance it might appear depending on the angle of the viewer, that he is closer to the athlete than he really is.

Allegation #6 Telling female athletes which athletes they should and should not be friends with or socialize with, or trust:

Mr. McInnis admits that he has done this because part of the job of coaching varsity athletes, both male and female, is to get them to be the best that they can be and some have trouble dealing with the social dynamics or academic demands of post secondary education. He adds that he knows who the “bad apples” are and tries to steer athletes away from those individuals who might party too much or have drug issues.

Allegation #7 Asking female athletes to model their track uniforms in front of him and never doing so for male athletes.

Mr. McInnis replied that he used to have the athletes try on the uniforms to ensure correct sizing and fit but since the 2016 investigation has asked his staff to do most if not all of this work. He added that since 2017 his only involvement with the uniforms was in management of the inventory.

Allegation #8 Asking a female athlete who had returned from surgery “what kind of drugs did they put you on”, then asking “can I have them?”

Mr. McInnis does not deny that he made these comments, however he states that he was joking when the comments were made and that the athlete in question was not offended at the time and laughed.

Allegation #9 Posting Instagram photos of female athletes in inappropriate, revealing, or sexually suggestive poses.

Mr. McInnis states that the images in question are of the same athletes and they had consented to his use of the videos which were posted on his personal Instagram account under his own name and not the name of the Club. He maintained that some athletes had sent videos to him which he posted because they were proud of their accomplishments, while other pictures or videos were taken by him on his own phone. He added that he took the account down in September 2018 once he became aware that it was a concern to others.

Allegation #10 Posting an Instagram Message with a photo of himself and a young female with the caption “CEO with the Bestest Executive ASSistant”:

Mr. McInnis states that this was his one social media error. He was not sure who took the picture but admits that he wrote the caption that appeared on his Instagram account. He was asked to take the photo down, and did so a day or two later.

Allegation #11 Consuming alcohol to excess and being intoxicated at three different events:

Mr. McInnis replied that he does not drink alcohol at competitions, but that he may go out to dinner after the competition and enjoy beer or wine with his meal. With regard to the specific allegation that he was intoxicated at the 2018 Canadian Championships in Ottawa, he admits to having a few beers or wine with staff at the end of the day, but nothing more. He denies being intoxicated at the 2018 National Championships.

Allegation #12 At the August 2012 Youth National Championships in Charlottetown, PEI, he gave a massage to an injured athlete and while doing so, placed his thumb and forefinger on the cusp of her vagina.

Mr. McInnis in responding to this allegation stated that he had no specific recollection of this competition other than the fact that he was there. He observed that massaging an athlete after a competition if they were injured would only make things worse and that he would not have taken the athlete aside, away from her teammates if she had already finished competing. He specifically denies touching the athlete near her labia, adding that he does not do that and would not have done that.

## **V. THE ISSUES**

37. (1) Do any of the allegations against Mr. McInnis, if substantiated, result in a finding that he has committed a minor or major infraction contrary to Athletics Canada's Code of Conduct and Ethics?

(2) If Mr. McInnis has been found to have violated the Code of Conduct and Ethics, what is the appropriate sanction?

## **VI. ANALYSIS**

38. Mr. McInnis submits that at the conclusion of his report, Mr. Tremayne found that only one of the twelve allegations constituted a breach of any OLTFC or related policy. That was Allegation #10, the Instagram posting that appeared after the National Championships in Ottawa in July 2018.

39. The Commissioner is assisted by the investigator's report and its findings but is not bound to accept those findings. At this point I will once again refer to the list of allegations contained in the Tremayne report and provide my findings on each one in turn.

### **Commissioner's Findings**

#### Allegation #1.

40. I find that Mr. McInnis engaged in this behaviour. There were witnesses to this occurrence and he has admitted that he conducted the "skin fold measurement" on the male and female athletes that he coaches. Given the issues raised during the 2016 investigation one might question the wisdom of Mr. McInnis' willingness to continue with this practice. However, I concur with the investigator's view that there is insufficient evidence that this was an unwelcome practice for the more recent complainants or that it only happened to female athletes.

41. As a result I find that this conduct did not constitute harassment and did not result in a violation of the Athletics Canada's Code of Conduct and Ethics.

#### Allegation #2

42. I find that Mr. McInnis made inappropriate comments about the bodies and weight of female athletes, both directly to those athletes and to other athletes who were in a position to hear those comments. Given the findings following the 2016 investigation, Mr. McInnis would have been well aware that these comments were inappropriate and unwelcome. There was an expectation that he would frame any concerns about body weight in a positive and constructive manner. Complainant B recalled that around Christmas 2017 or early in 2018 a female athlete wearing a sports bra and training shorts approached Mr. McInnis. This complainant then observed Mr. McInnis reach out and pinch the athlete between her bra and her hips on the rib cage, touching her skin and saying something along the lines of "you're thin" or "you've lost weight". The remarks attributed to Mr. McInnis by Complainant C to the effect of "get rid of this" after she observed Mr. McInnis pinching a female athlete on the side of her body, can only be considered as unwelcome and demeaning and an example of disrespectful conduct.

43. Complainant D also recalled overhearing a female athlete coached by Mr. McInnis complain on numerous occasions that she couldn't concentrate as she begged Mr. McInnis for permission to eat. Complainant D once offered a banana to this athlete but the offer was refused. Complainant D recalled that Mr. McInnis pretended not to hear the athlete's pleas for permission to eat and ignored them.

44. It should be noted that some information was presented to me by Complainant C and Complainant D which investigator Tremayne would not have been aware of when he prepared his report. Mr. McInnis did not reply specifically to the additional information contained in this allegation, choosing to rely on his responses as they appeared in the Tremayne report.

45. As a result of these examples of disrespectful conduct, I find that this substantiated allegation constitutes a minor infraction as defined in Rule 140.08(7).

#### Allegation #3

46. Mr. McInnis admits that he has massaged athletes, both male and female throughout his coaching career. The comment was made by several complainants that to their knowledge, Mr. McInnis was not a registered massage therapist. While that may be true, I am aware of the long standing practice of coaches who have experience, if not massage therapist credentials, providing massages to athletes under their care.

47. Complainant A acknowledged that on one occasion, after she complained of groin pain, Mr. McInnis gave her a massage in the weight room connected to the club's office. She fully consented to the massage and does not allege any intentional wrongdoing in that regard. She does however express concern that a coach who may not be a trained massage therapist would massage an athlete at all, especially in a sensitive area of the body and in a private setting with no one else around.

48. While the practice of coaches providing massages when they are not trained as massage therapists carries certain risks as identified by the investigator, I do not find that Mr. McInnis violated the Code of Conduct and Ethics by giving massages to female athletes.

#### Allegation #4

49. Complainant C recalled witnessing Mr. McInnis slap female athletes on the rear end as they got into the starting blocks during practices. Mr. McInnis stated that he had never slapped the buttocks of female athletes and cannot ever remember doing so. Complainant C is a credible witness but in the absence of any other evidence from individuals who might have witnessed this event after 2017, and given Mr. McInnis' denial of ever engaging in this practice, I find that there is insufficient evidence to support the allegation.

#### Allegation #5

50. Mr. McInnis denied the allegation that he does the arm movement demonstration for female athletes only and offered the names of several male athletes who could confirm that this coaching method was also used with them. The complaints related to this allegation came from individuals who witnessed the coaching technique as opposed to those who were being coached in this fashion by Mr. McInnis. The investigator assumed for the purposes of his investigation that the athletes in question had consented to this physical contact from Mr. McInnis and on that basis found that there was insufficient evidence to support the allegation that this conduct constitutes harassment. The investigator also noted that the OLTFC might have been taking a

risk by condoning this conduct in the event that a young athlete at a later time took a different view as to the appropriateness of this technique.

51. I agree with the investigator's findings that there is insufficient evidence to support an allegation that this arm movement technique demonstration constitutes harassment.

Allegation #6

52. Mr. McInnis responded to this allegation by stating that he is often approached by athletes and their parents for guidance about various matters. He added that he has also offered advice proactively and has tried to make his advice helpful from the perspective of doing things correctly because varsity athletes sometimes struggle with the new challenges that they are faced with.

53. Given the general nature of this allegation, and the absence of any specific reference to comments that were made by Mr. McInnis, no finding of harassment is made with regard to this allegation.

Allegation #7

54. There was no valid reason for female athletes to have to try on their uniforms in the Track Club offices. Many of these athletes were University or Collegiate level athletes who were well able to dress themselves without input from anyone else. This was one of the issues brought to the attention of the OLTFC harassment officer in the 2016 complaints. Mr. McInnis informed the investigator that since 2017 he delegated the distribution of the uniforms to staff members while he remained involved with the management of the inventory. He noted that since 2017 there might have been exceptional circumstances when an athlete needed to try on something in a hurry and he was the only person in the office, but apart from that, the uniform fittings were no longer a part of his responsibilities.

55. No evidence was presented to contradict this assertion and on this basis, I find that there is insufficient evidence to support this allegation.

Allegation #8

56. Mr. McInnis stated that he was joking when he made the comment to the athlete about obtaining the pain relief drugs if she wasn't using them. Given the issues around the abuse of pain medication, it was clearly inappropriate for a coach to joke about this subject. The comment was unprofessional but does not constitute harassment.



Allegation #9

57. This allegation involves the posting of Instagram photos of female athletes in inappropriate, revealing or sexually suggestive poses. The photos appeared on Mr. McInnis' "ole\_coach\_andy" Instagram account. One female athlete is shown during a weight training session in which her crotch and buttocks are prominently displayed. Other photos show female athletes in bathing suits, at the beach in a thong, and at a swimming pool.

58. I asked Mr. McInnis to specifically address this allegation in terms of why he believes that it would not constitute a violation of Rule 129.08 of Athletics Canada's By-laws relating to coaches conduct.

59. Mr. McInnis in his supplementary submission, expanded on the explanation given to investigator Tremayne. In response to Mr. Tremayne's queries, Mr. McInnis had stated that most of the images were of the same athletes and they had given him edited videos of themselves because they were proud of their accomplishments and were happy to share them with him. Mr. McInnis added that on occasion he has taken videos of these athletes on his smartphone and sent the videos to the athlete so that they can see what they are doing and how they are doing it. He recalled that there were times when the athlete would view the video and return it to him and ask him to post the result. Mr. McInnis also stated to the investigator that athletes in this sport do not wear a lot of clothing while training or competing.

60. The investigator has pointed out that the evidence strongly suggests that the images and videos were posted on Mr. McInnis' Instagram account at the request of the athletes. Mr. McInnis took the account down in September of 2018 when he became aware that it had become a problem. He stated that before that date, he was unaware that the account had been a cause for concern.

61. In his supplementary submission Mr. McInnis noted that the majority of the photographs that appear in Appendix 15 to Mr. Tremayne's report are not photos that he posted. He observed that most of the photographs (#'s 1-5, and 10-12) were screen captures from two training videos posted to his personal Instagram page. Mr. McInnis recalled that photographs #6, #7, #8 and #9 were provided to him by an athlete who asked him to post them. Mr. McInnis also advised that any images or videos which were posted to Instagram were viewed by the OLTFC's media staff member and no issue was raised by the staff member (also a Club Board Member) or by the Board itself at the time.

62. The Athletics Canada Code of Conduct and Ethics, Rule 129.08 states that:

*The coach-athlete relationship is a privileged one and plays a critical role in the personal, sport, and athletic development of the athlete. Coaches must understand and*

*respect the inherent power imbalance that exists in this relationship and must be extremely careful not to abuse it, consciously or unconsciously. Coaches and IST will:*

*g) Act in the best interest of the athlete's development as a whole person;*

*o) Recognize the power inherent in the position of coach and respect and promote the rights of all participants in sport. This is accomplished by establishing and following procedures for confidentiality (right to privacy), informed participation, and fair and reasonable treatment. Coaches have a special responsibility to respect and promote the rights of participants who are in a vulnerable or dependent position and less able to protect their own rights;*

63. In his findings regarding Allegation #9, Investigator Tremayne stated the following:

*“In order to satisfy the balance of probabilities test, evidence must always be sufficiently clear, convincing and cogent. While the complainants are credible witnesses and objected to the images and videos, it was not possible to determine whether the images and videos were, on their face, inappropriate or offensive. It is also significant that the evidence strongly suggests that the images and videos were posted on Mr. McInnis’ Instagram account at the request of the athletes. As a result, I find that there is insufficient evidence to support the allegation”.<sup>1</sup>*

64. In his summary of the Allegation findings, the investigator found that:

*“Mr. McInnis engaged in this behaviour, however there is insufficient evidence that it was unwelcome or that it happened only to female athletes. As a result, this does not constitute harassment or a breach of any OTTL or related policy, although the allegation is a cause for concern because it is similar to the 2016 allegations and for reasons explained in the report”.<sup>2</sup>*

65. With all due respect to investigator Tremayne, this is a finding that I must disagree with. Mr. McInnis has been coaching for decades. The athletes who appear in these photographs are university aged females. The fact that the athletes may have consented to his posting of the videos and photographs on his personal Instagram account does not absolve Mr. McInnis from his responsibility to determine whether it was appropriate for him to post this material. There are several screen shots which show a female athlete's crotch or buttocks area. Two of the pictures have the following comments beside the handle ole\_coach\_andy: “Then BUILD some more massidoria One of the best pictures”.

---

<sup>1</sup> Tremayne Report, p. 57

<sup>2</sup> Tremayne Report, p. 76

66. The athletes who appear in these videos and screen shots may not have been aware of privacy issues that might arise if this material was going to be widely disseminated. While I agree with the finding of the investigator that this conduct did not amount to harassment, I am nevertheless of the view that in posting these images and videos on his personal Instagram account, Mr. McInnis was not acting in the best interest of the athlete's development as a whole person, and did not show sufficient respect for the athlete's vulnerability or the athlete's privacy rights.

67. For these reasons, I find that Mr. McInnis violated Rule 129.08 of Athletics Canada's Bylaws, and this allegation has been substantiated. Mr. McInnis' conduct in this regard demonstrates a serious disregard for Athletics Canada's Code of Conduct and Ethics. In accordance with Rule 140.08 (8) this conduct amounts to a major infraction.

#### Allegation #10

68. There is a consensus that the posting of an Instagram message with a photo of Mr. McInnis and a young female with the caption "CEO with the Bestest Executive ASSistant" was inappropriate. The investigator determined that this post constituted sexual harassment under the Athletics Canada Code of Conduct and Ethics. The investigator also noted that complaints about Mr. McInnis making sexually suggestive and inappropriate jokes and comments were brought to his attention during the 2016 investigation.

69. I concur with this finding that the conduct described in Allegation #10 amounts to sexual harassment and is a clear breach of Athletics Canada's Code of Conduct and Ethics. It is a major infraction as listed in Rule 140.08(8).

#### Allegation #11

70. This allegation relates to the excessive consumption of alcohol on three separate occasions. Abuse of alcohol or drugs is considered a major infraction under Athletics Canada's Code of Conduct and Ethics. As highlighted by the investigator, two of the alleged incidents are somewhat dated, going back to 2014 and 2015 and it would be difficult for the Respondent to provide a recollection of his version of events given the passage of time. The 2018 incident is more recent and observations of possible impairment were made by Complainant B, an individual who is trained to make such observations. The observation that Mr. McInnis stumbled for no apparent reason, was made at approximately 4 p.m. on the Saturday of the Canadian Championships in July 2018.

71. Mr. McInnis has stated that while he might consume alcohol at the end of a competition, he would not consume alcohol during a competition. Although the person making the complaint about Mr. McInnis possible intoxication at the Canadian Championships is very credible, Mr. McInnis would have encountered a number of individuals during that day of competition and

with no other objective evidence of intoxication, I cannot find on a balance of probabilities that allegation #11 has been substantiated.

#### Allegation #12

72. This is the only allegation of this nature from any of the complainants. Mr. McInnis denies that the conduct attributed to him ever took place, although he has no specific recollection of the event which is alleged to have occurred in 2012.

73. Complainant C was quite clear in her recollection of what happened on August 19, 2012 in Prince Edward Island. She recalled that she was crying after her 300m hurdle race had been completed and she was approached by Mr. McInnis who said “you look as though your parents died in a car crash...why are you crying so hard?”

74. Complainant C then recalled that she was taken by Mr. McInnis to the other side of the UPEI grandstand, feeling somewhat distressed because of her torn left hamstring muscle. She also recalled that Mr. McInnis turned her onto her stomach and began to massage her injured upper left leg and that in so doing his thumb and forefinger were “on the cusp of my vagina”.

75. Although there was no digital penetration, Complainant C was upset by the fact that Mr. McInnis had not sought her permission to place his hands in this area.

76. Complainant C was a credible witness who provided valid reasons for not reporting the alleged event until several years had passed. This Complainant was able to refer to a diary entry from that day in which she made mention of the fact that she had injured her leg. The diary entry did not however make any mention of any sexual impropriety or non consensual touching.

77. The passage of time has made it difficult for Mr. McInnis to respond with any particulars of his recollection of the competition other than to provide an outright denial that he ever engaged in such conduct. In order to satisfy the balance of probabilities test, evidence must be sufficiently clear, convincing and cogent. No other witnesses to the alleged event were identified and the absence of a diary entry confirming that the incident took place, results in their being no other objective evidence that Mr. McInnis deliberately touched Complainant C inappropriately. I find therefore that there is insufficient evidence to support this allegation.

#### **VIII. DISPOSITION**

78. On April 8, 2020, I determined that I would adopt the Tremayne Report as the investigator’s report to assist in carrying out my mandate in respect of the complaints. The Complainants were given an opportunity to respond to the findings in the Tremayne Report, however, no further submissions were provided.

### **McInnis Submissions on Sanction**

79. On April 27, 2020, the Commissioner invited Mr. McInnis to make his submissions regarding sanction. Mr. McInnis then made his submissions on May 19, 2020. Those submissions were based on two factors; that the 2016 complaints had been previously dealt with and did not constitute proper subject matter for sanction in my mandate. The second factor on which Mr. McInnis based his submissions was that of the twelve allegations considered by investigator Tremayne, only Allegation #10: posting an Instagram message with a photo of Mr. McInnis and a young female above the caption “CEO with the Bestest Executive ASSistant (sic)” was determined to constitute harassment under the OLTCF Harassment Policy and Procedures as well as the Athletics Ontario and Athletics Canada Codes of Conduct.

80. Mr. McInnis has referenced the Commissioner’s Office Terms of Reference which state that “if a sanction is to be applied, the sanction will correspond with the severity of the offence committed, the age of the offender, the offender’s remorse and any corrective action the offender has already taken.”<sup>3</sup>

81. Mr. McInnis also noted general principles to be applied when determining an appropriate sanction. These principles confirm that fairness and justice require that any penalty must be commensurate with the nature of the misconduct. He adds that the Commissioner must also consider maintenance of the public confidence in the integrity of the sporting community and the ability of supervising bodies to govern Canadian sport in the public interest, specific and general deterrence, and the potential for rehabilitation where appropriate.

82. With regard to the severity of the offence, Mr. McInnis submitted that the individual pictured in the photograph which appears in Allegation #10 was volunteering for the National Championships for work experience and was not there in her capacity as an athlete. Mr. McInnis acknowledged that this was a social media error and he removed the photo from his Instagram account within a day or two. He also acknowledged that he would not do anything like that again. Mr. McInnis further acknowledged that the social media posting was neither professional nor respectful and warranted some form of sanction.

83. In providing guidance to the Commissioner with regard to the level of an appropriate sanction, Mr. McInnis has provided references to three cases involving professionals who were subject to discipline by their disciplinary bodies for conduct relating to harassment. The first case is Ontario (College of Physicians and Surgeons of Ontario) v. Maciver.<sup>4</sup> This case involved a 70 year old physician who in a series of tweets had referred to two other physicians as “whining cork soakers”, accused them of engaging in “histrionic selfishness” and suggested in

---

<sup>3</sup> Athletics Canada, Commissioner’s Office Terms of Reference, Procedures - Complaints, para. 13.

<sup>4</sup> 2020 ONCPSD 10

another tweet that a certain group of physicians should be named “Poor Sluts.” The comments were determined by the disciplinary body to be sexist and lewd and contrary to guidelines on the appropriate use of social media.

84. The College of Physicians and Surgeons of Ontario reprimanded the physician and suspended his license for one month.

85. Mr. McInnis submits that unlike Dr. Maciver who engaged in a repeated and sustained pattern of online abuse, his conduct involved one Instagram post which was removed shortly after posting. He acknowledges that it was inappropriate and an error in judgment. In Mr. McInnis’ view, the principles of the Maciver case would support a base sanction of less than a one-month suspension, subject to adjustment for any aggravating factors.

86. *Ontario (College of Physicians and Surgeons of Ontario) v. Drone*<sup>5</sup> involved a physician who sent a series of inappropriate emails over the course of two months to another physician’s personal email account as well as to an email address that was directed to the target physician’s staff members. There were seven abusive communications sent over the course of one month.

87. Dr. Drone was given a reprimand and one month suspension and in Mr. McInnis’ submission, this is an analogous case which supports a base sanction of a less than one month suspension, subject to adjustment for any aggravating factors.

88. The third case referred to by Mr. McInnis was *Ontario (College of Physicians and Surgeons of Ontario) v. Baird*.<sup>6</sup> Dr. Baird was a 74 year old physician who when asked by a female patient when she would be able to ride her motorcycle again after a fall, replied that the male person who had accompanied her to the hospital “looks like a motorcycle, you could ride him.”

89. In a second incident, a year later, after speaking to a group of nurses regarding care of a patient, Doctor Baird patted his knee and said to a nurse, “come and sit on my lap so that I can spank you.” This comment was made in front of the entire nursing staff present as well as two patients. The College of Physicians and Surgeons suspended Dr. Baird for two months as a result of this conduct.

90. Mr. McInnis submits that the conduct described in the Baird case was much more serious than his conduct and should therefore warrant a base sanction of less than the two months given in Baird, subject to appropriate adjustments.

---

<sup>5</sup> 2018 ONCPSD 38

<sup>6</sup> 2017 ONCPSD 45

91. Mr. McInnis provided the case of Ontario (*College of Pharmacists*) v. *Khandwalla*<sup>7</sup> as an illustration of a case with much more egregious conduct than that ascribed to him. The pharmacist who was charged criminally but acquitted of sexual assault, admitted that he had inappropriately touched or attempted to touch a co-worker and patient, engaged in touching of a sexual nature, and made remarks of a sexual nature towards his co-worker and patient. The College of Pharmacists suspended Mr. Khandwalla for six months, along with certain additional conditions which were imposed on him. Mr. McInnis submits that a suspension of six months represents a sanction that would be excessive and not just or fair in his situation.

92. Mr. McInnis is 66 years old and submits that at this time it is his intention to retire from institutional coaching although he does not preclude the possibility of returning to coaching or athletics administration in some capacity. He adds that he is remorseful for his actions and took down the offensive Instagram post in Allegation #10 shortly after being asked to do so.

93. Mr. McInnis acknowledges that complaints of similar conduct were brought to his attention in 2016 and that this is an aggravating factor that should be considered in the assessment of an appropriate sanction. However, he points to other factors which should be considered as mitigating such as the publicity that the Marin investigation and its findings received. He also points to the comments made by the SDRCC Arbitrator who found bias in the previous investigation and report<sup>8</sup>. Mr. McInnis submits that the damage to his reputation caused by the previous proceeding might hinder his return to the coaching profession in any event.

94. In considering all of the aggravating and mitigating factors, Mr. McInnis submits that an appropriate order from the Commissioner would find that his social media posting constituted conduct that meets the definition of harassment contrary to Athletics Canada's Code of Conduct; that his certification to coach should be suspended for one month, retroactively commencing on May 6, 2019 and ending on June 6, 2019; that his certification to coach be immediately reinstated, having completed the one month suspension; that he repeat within six months of the Commissioner's Order, the Respect in Sport and Respect in the Workplace training courses, or complete similar training courses as recommended by Athletics Canada, and that Athletics Canada immediately restore his appointment to the Athletics Canada Hall of Fame.

### **Similarities between the 2016 and 2018 Allegations**

95. In his report the investigator addressed similarities between the 2016 and 2018 allegations. The issues stemming from the 2016 allegations were discussed with Mr. McInnis and Mr. Tremayne reviewed the notes that were made following the meeting between Mr. McInnis, the Chair of the OLTCF Board, and the Club's Harassment Officer. the investigator wrote that:

---

<sup>7</sup> 2019 ONCPDC 18

<sup>8</sup> SDRCC 19-0401

*A review of these notes shows that Mr. McInnis acknowledged that he had made inappropriate sexually suggestive comments and jokes when speaking with the Club's athletes. He agreed that he needed to better communicate to his athletes the correlation between weight and performance, and to reinforce the need for an athlete to speak up if a coach is making them uncomfortable. He also confirmed that an athlete's permission must be obtained before touching them.*

96. After reviewing the 2016 allegations, the notes from the November 16, 2016 meeting, the recommendations that came out of that meeting, and the letter sent by the then President of the OLTC Board to Mr. McInnis, the investigator found that the following allegations in the 2018 complaints raised very similar issues to those raised in the 2016 investigation:

1. pinching female athletes on their legs, torsos, and back with the stated purpose of determining if they need to lose weight (and never doing so to male athletes).
2. making inappropriate comments about the bodies and weight of female athletes, both directly to those athletes and to other athletes (and rarely doing so about male athletes).
7. asking female athletes to model their track uniforms in front of you (and never doing so for male athletes).
9. posting Instagram photos of female athletes in inappropriate, revealing, or sexually suggestive poses).
10. posting an Instagram message with a photo of yourself and a young female with the caption "CEO with the Bestest Executive ASSistant (sic)" during the National Championships (held in Ottawa in the summer of 2018).

97. The discipline cases provided by Mr. McInnis can be distinguished from the facts before me. It is noteworthy that in all but one of the cases provided by Mr. McInnis, the Respondent had no prior disciplinary history. The one exception is the case of *Ontario (College of Physicians and Surgeons of Ontario) v. Baird*, where the Respondent had been disciplined for misconduct in 1990, which was 27 years earlier. In the Khandwalla case, the College of Pharmacists believed that even though the conduct attributed to the Respondent was quite serious, he had no prior disciplinary history and a remediation order would give him an opportunity for rehabilitation.

98. In the matter before me, Mr. McInnis is a repeat offender who, as the investigator found, engaged in behaviour that was similar in many instances to conduct that he had been sanctioned for less than two years earlier. While the investigator did not find harassment in Allegation #8 he nevertheless was satisfied that the comments contained in that allegation were contrary to the



provisions that require a coach to show courtesy, respect and high standards of behaviour that will bring credit to the athletic community.

### **Summary of Findings**

99. I disagreed with the investigator's finding that the Instagram posts referred to in Allegation #9 did not violate any policies or breach any Codes of Conduct. I found instead that some of the pictures displayed in that allegation were paused at a point on the "training video" that was inappropriate, unnecessarily revealing and deliberate, in that they were accompanied by the caption ... "*One of the best pictures*" thus resulting in a breach of the Athletics Canada Code of Conduct and Ethics.

100. With regard to Allegation #10, the investigator found that the photograph and caption together were on their face, suggestive and offensive. He found that the caption in particular was offensive, degrading to women, and at the very least constituted rough and vulgar humour related to gender. I concur with the investigator's determination that posting the photo with the caption constitutes sexual harassment. Sexual harassment is clearly a major infraction of Athletics Canada's Code of Conduct and Ethics.

101. I also found that the conduct described in Allegation #2 relating to comments about body weight, was a minor infraction of Athletics Canada's Code of Conduct and Ethics.

102. The fact that Mr. McInnis was the subject of a series of complaints which were very similar to complaints received in 2016 is a significant aggravating factor. Following the conclusion of that investigation, he was advised by the OLTFC Board that he was to refrain from demeaning, embarrassing or humiliating comments or conduct towards athletes at all times. He was warned that if he fell short of this commitment, his employment with the Track Club would be in jeopardy.

103. Mr. McInnis cannot be sanctioned again for his conduct relating to the 2016 investigation. But there can be no doubt that the aggravating factor of conduct so similar to previously sanctioned conduct is a prominent consideration in the determination of the appropriate sanction for the more current allegations.

104. Mr. McInnis has indicated that he is remorseful for the conduct that he has admitted to in Allegation #10. Remorse is a factor that I must consider in determining sanction. However, Mr. McInnis' level of remorse can be questioned when one considers his actions following his suspension by the OLTFC in the fall of 2018.

105. In the fall of 2018 the OLTFC Board was twice presented with requests from Mr. McInnis' then legal counsel to modify or loosen the conditions of his paid suspension in order to allow him to coach Club athletes and to use the Club facilities. In both instances the Board refused the request and confirmed with his counsel that the conditions would remain in place

until the independent investigation being conducted by Mr. Tremayne was complete and the outcome known. The investigation report was released in April, 2019.

106. In early January, 2019, the OLTFC harassment officer was advised by two athletes that Mr. McInnis had been seen in California coaching the club's athletes at the Club's Christmas training camp there. Video clips were provided on which Mr. McInnis could be heard coaching Club athletes. His attendance at the camp in California and his communication with the athletes while there, were in clear violation of the conditions of his paid suspension which he had agreed to with the assistance of his own legal counsel.

### **Sanction**

107. Rule 140.08 (14) prescribes the available sanctions. This section reads as follows:

If a sanction is to be applied, the sanction will correspond with the severity of the offence committed, the age of the offender, the offender's remorse, a public or private written or verbal apology, and any corrective action the offender has already taken. The Commissioner's Office may apply the following disciplinary sanctions, singularly or in combination:

- a) Verbal or written reprimand from Athletics Canada to the Respondent;
- b) Verbal or written apology from the Respondent to the Complainant;
- c) Expulsion from Athletics Canada and its activities;
- d) Removal of privileges accorded to members or associates;
- e) Suspension from relevant teams, events and/or activities;
- f) Suspension from all Athletics Canada's activities for a designated period of time, including indefinitely with conditions for return;
- g) Payment of the cost of repairs for property damage;
- h) Suspension of funding from Athletics Canada or from other sources; and/or
- i) Any other sanction considered by the Commissioner's Office to be reasonable.

108. What then is the appropriate sanction in these circumstances? Mr. McInnis is 66 years old. He has been a successful coach at the club level, collegiate level, national and international level. He has indicated an intention to retire from institutional coaching but has not precluded the possibility of returning to coaching or athletics administration in a part-time, or full-time capacity. As an administrator, Mr. McInnis was responsible for all aspects of the Ottawa Lions Track and Field Club's financial and administrative affairs. He was also responsible for managing any events in which the Club was involved as well as all aspects of human resources for the Club.

109. Mr. McInnis has expressed remorse for his actions but that remorse is primarily directed at the social media post in Allegation #10. He maintains that he has had to endure the

consequences of the adverse publicity that resulted from the prior Commissioner's Office decision and has had to incur significant legal expenses. Mr. McInnis has also pointed to the loss of his employment with the OLTFC, and since March 2019, the cessation of his income.

110. Mr. McInnis has submitted that a sanction consisting of a one month suspension retroactive to May 6, 2019, and an Order from the Commissioner to take the Respect in Sport and Respect in the Workplace or other similar training courses within six months of the date of this Order, would be appropriate for these Code of Conduct breaches.

111. Such a disposition would in my view be wholly inadequate to address the serious violations of the Athletics Canada Code of Conduct and Ethics that I have found. As stated in Rule 129.04 of the Athletics Canada Bylaws,

*The purpose of this Code of Conduct and Ethics is to ensure a safe and positive environment within Athletics Canada's programs, activities, and events by making Individuals aware that there is an expectation, at all times, of appropriate and respectful behaviour consistent with Athletics Canada's core values of physical and emotional health and fitness, individual excellence and personal growth, individual development beyond sport, inclusiveness, and integrity.*

*Athletics Canada supports equal opportunity, prohibits discriminatory practices, and is committed to providing an environment in which all individuals are treated with respect and fairness.*

112. Mr. McInnis had a duty to treat the people who had placed their trust in him with respect and fairness. He had an obligation to protect their dignity. The individuals affected by his conduct are young and vulnerable. As Mr. McInnis himself indicated, some of the athletes in his care were university students experiencing independence for the first time.

113. While a suspension from Athletics Canada's activities for a designated period of time with conditions for return, might have been a sanction worthy of consideration had Mr. McInnis been facing allegations of this nature for the first time, the fact that he is a repeat offender dealing with accusations that are remarkably similar to those which he faced less than two years earlier, greatly diminishes the viability of such a sanction.

114. Maintenance of the public confidence in the integrity of the sporting community is an important consideration in this case. What meaningful conditions could the Commissioner impose that would offer a satisfactory level of protection for the athletes that Mr. McInnis would come into contact with in the future. After the 2016 allegations and the subsequent report to the OLTFC Board, Mr. McInnis was required to take the Respect in Sport and Respect in the Workplace courses. He completed the former module in February 2017 and the latter module in November 2017.

115. Within ten months of the completion of the Respect in the Workplace course, the four new complaints involving Mr. McInnis, which are the subject of this review, were received by the OLTFC. Mr. McInnis' offer to repeat those courses would in my view offer little protection against the potential for recidivism. The letter of reprimand which his then employer, the OLTFC, had placed on his file in 2016, made it clear to him that his continued employment with the Club was in jeopardy if he did not change his behaviour. That warning clearly did not serve as a sufficient deterrent to Mr. McInnis.

116. For these reasons, having thoroughly considered all of the documentary evidence presented to me in this proceeding, I am of the view that expulsion from Athletics Canada and its activities is the only appropriate sanction in these circumstances.

### **Order**

117. I hereby Order that Andrew (Andy) McInnis be expelled from Athletics Canada and all its activities including involvement with any of its member branches and Track & Field Clubs. I also order that Andrew (Andy) McInnis be removed from the Athletics Canada Hall of Fame.

118. I direct Athletics Canada to publish this decision on its website and to list the name of Andrew (Andy) McInnis as a permanently suspended individual on its Safe Sport Webpage.

119. Pursuant to Rule 140.15, the decision of the Commissioner's Office will be final and binding subject to the right of any party to seek a review of the decision pursuant to the rules of the Sport Dispute Resolution Centre of Canada (SDRCC) as amended from time to time.

Dated at Ottawa, this 8th day of June, 2020

*Hugh L. Fraser*

Hugh L. Fraser, FCI Arb, FCCA, OLY  
Athletics Canada Commissioner