

IMPORTANT NOTE: This version is a translation of the original French version

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

No: SDRCC 10-0124

BETWEEN

**FÉDÉRATION DE SOCCER DU QUÉBEC (FQSF)
(CLAIMANT)**

AND

**CANADIAN SOCCER ASSOCIATION (CSA)
(RESPONDENT)**

JURISDICTIONAL ARBITRATOR: PATRICE M. BRUNET

Appearances:

For **FQSF**: Marc Legros

For **CSA**: Pasquale Santini

Translator: Pierre Archambault

1. The CSA Appeals Committee issued a final internal decision on April 28, 2010 confirming the inter-provincial transfer from Quebec to Ontario of 11 players named in the initiating proceedings.
2. The FQSF challenged the decision with the intent of forcing the players to continue the 2010 season in Quebec.
3. On May 26, 2010, the FQSF turned to the SDRCC to appeal the CSA's decision.
4. On June 2, 2010, the CSA disputed the SDRCC's jurisdiction.
5. On June 9, 2010, the parties attended an administrative hearing with SDRCC administrators and the undersigned arbitrator. A hearing on the SDRCC's jurisdiction was scheduled for June 17, 2010 and such hearing took place.
6. None of the potentially affected parties were summoned because the object of the hearing was an issue of law which involved only the parties subject to the arbitration.
7. The players at the heart of the dispute are not national-level or world-level athletes. During the 2010 season, they all compete in U10 to U18 leagues.

POSITION OF PARTIES

THE FQSF POSITION

8. The FQSF recognizes the SDRCC's jurisdiction regarding the appeal because the CSA is subject to the *Physical Activity and Sport Act*, namely Section 10 (2) which states: "*For the purposes of subsection (1), a sport dispute includes disputes among sport organizations and disputes between a sport organization and persons affiliated with it, including its members.*"

9. Sport Canada upholds contribution guidelines for National Sport Organizations (NSO) receiving public financing under a contribution agreement. The guidelines state: *“(...) Sport Canada has made it a condition of funding that the appeal policies of all funded NSOs, MSOs and CSCs provide for an appeal to the SDRCC (...). This requirement applies, once the organization’s own internal appeal process has been exhausted (or when both parties agree to bypass such internal appeal process).”*
10. The FQSF submits that Sections 51 and 52 of the CSA’s By-laws complete the SDRCC’s jurisdiction:

51. Arbitration

The Sport Dispute Resolution Centre (SDRC) (sic) shall deal with all internal national disputes between the CSA, its Members, players, officials and match and players’ agents that do not fall under the jurisdiction of its judicial bodies. The Board of Directors shall draw up regulations regarding the jurisdiction of the Arbitration Tribunal.

52. Jurisdiction

52.2 The SDRC (sic) shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to the CSA (...)

CSA POSITION

11. The CSA submits that assignment of jurisdiction to an arbitration tribunal should be interpreted in a restrictive manner.
12. Section 51 of the CSA’s By-laws states that disputes subject to arbitration are limited to disputes that do not fall under the jurisdiction of the CSA’s internal appeals tribunal.

13. Since the decision under dispute was issued by the CSA's Appeals Committee – an Appeals Committee in due form under the terms of Section 47.1 (b) of the By-laws – such decision falls outside the competence of the SDRCC and is therefore final and without appeal.
14. In addition, Section 13 (f) of the CSA's By-laws and 2008 Rules, Regulations and Administrative Guide states that "*The decision of the Appeals Committee shall be final and binding.*"

DISCUSSION

15. An arbitration tribunal's jurisdiction is fundamental and should be considered in a restrictive manner.
16. Such jurisdiction must be clear and precise. It cannot be presumed or inferred from general wording. Any inaccuracy in the interpretation of its application shall be sanctioned *ab initio* by an absence of jurisdiction and the parties may elect to bring the dispute to regular courts of law.
17. Arbitration clauses may be specific or universal. A *universal* clause provides that parties may accept to undergo arbitration in order to settle any given dispute affecting them. A *specific* clause will detail the nature of disputes that may be subject to arbitration between parties.
18. I do not agree with the FQSF's position supporting the SDRCC's jurisdiction under the *Physical Activity and Sport Act*, in that it constitutes a universal clause.
19. I further disagree with the CSA's position which argues that, through its internal rules, it may exclude the SDRCC's jurisdiction over disputes that have been settled by its internal appeals organizations.
20. The SDRCC's competence is clearly established in the Contribution Agreement entered into by the Government of Canada and the CSA on November 23, 2009.
21. Under the terms of the contract, the CSA receives funding of \$1,830,000, subject to various conditions, including conditions stated in Appendix A.
22. Under Appendix A, those specific funding conditions, include:

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

23. In this case, it was clearly demonstrated that none of the appealing players are national-level or world-level athletes. The matter pertains to the transfer of players from one province to another.
24. It is true that FQSF is a National Sport Organization and could be deemed a *member* under the *Physical Activity and Sport Act*. However, the Act is not determinative in the application of the arbitration jurisdiction. If a party disputes Sport Canada's restrictive application when it contracts with NSOs, then the argument must be brought before a different forum than this one.
25. The wording of Section 3.1.1. in Appendix A binding the CSA to Sport Canada is clear and constitutes a restrictive arbitration clause. It applies to all national-level athletes with respect to their nomination, or lack thereof, to the national soccer team.
26. None of the players involved in this dispute are national-level athletes, although we certainly hope they will eventually achieve this status during their career.
27. It is reasonable to assume that the CSA does not wish to grant jurisdiction to the SDRCC on the management of internal disputes between players with respect to provincial and sub-provincial activities.
28. It is also reasonable to assume that, at this moment, Sport Canada does not wish to offer the SDRCC's free services to athletes/players that are not of national level.

DECISION

WHEREAS the dispute involves players who are not national-level athletes;

WHEREAS no provisions extend the SDRCC's jurisdiction to players who are not national-level athletes;

WHEREAS Section 3.1.1. of the financing agreement Appendix binding the Government of Canada and the CSA clearly limits the competence of the SDRCC to national-level athletes;

WHEREAS the jurisdiction of the arbitration tribunal must be clearly established, failing which it must decline jurisdiction;

THE TRIBUNAL DECLARES THAT IT DOES NOT HAVE JURIDICION TO HEAR THE DISPUTE submitted by FQSF involving the inter-provincial transfer of players stated in the initiating proceedings.

I retain jurisdiction with respect of any issue which may arise concerning from this decision.

The whole without cost.

Montréal, June 21, 2010

Patrice M. Brunet, jurisdictional arbitrator