

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

NO. : SDRCC 23-0619

CLUB DE SOCCER MONT-ROYAL OUTREMONT
(CSMRO)
(Claimant)

AND

CANADA SOCCER
(Respondent)

AND

SOCCER QUEBEC
(Affected Party)

Presiding:

Roger Bilodeau, K.C. (Arbitrator)

Written submissions filed by:

For the Claimant: Max-Henri Métellus, Representative
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For the Respondent: Earl Cochrane, Representative
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For the Affected Party: Mathieu Chamberland, Representative
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JURISDICTIONAL DECISION WITH REASONS

INTRODUCTION

1. This case arises from a December 12, 2022 Canada Soccer ("CS") decision to deny the *Club de Soccer Mont-Royal Outremont's (« CSMRO »)* application for a National Youth Club Licence ("National Licence") under the CS Club Licensing Program.
2. On January 27, 2023, I issued a short decision granting CS's request to stay this matter pending the determination by the Ontario Superior Court ("Court") of an application by CS in another matter similar to this one. The reasons for my decision are set out below.

BACKGROUND

3. In August 2021, the CSMRO filed an application with CS to obtain a National Licence.
4. CS, the Respondent, is the national sport organization that governs soccer across Canada.
5. Soccer Quebec ("SQ"), the Affected Party, as designated by the CSMRO and SQ, is the body responsible for the organization of soccer in Quebec, keeping in mind that its work can be subject to direction by higher authorities, namely CS.
6. On December 12, 2022, the CSMRO was informed by CS that its application was denied. On the same day, SQ informed the CSMRO that it was instead granted a Provincial Licence for 2023-24.
7. On January 7, 2023, in the SDRCC 22-0616 case, which involves similar facts to the present case and in which the same counsel as in the present case acted as legal representatives for the Claimant, Arbitrator Néron ordered that a National Licence be granted to the *Association de soccer de Brossard*, the Claimant.
8. January 9, 2023 was the deadline identified by SQ for clubs holding a National Licence to register their teams with the *Première Ligue de soccer juvénile du Québec (« PLSJQ »)*.
9. On January 11, 2023, the CSMRO filed an urgent request with the SDRCC to challenge the CS decision in this matter and requested that a National Licence be granted for 2023-24.
10. On January 13, 2023, CS filed an application ("Application") with the Court seeking to set aside the arbitration award in SDRCC 22-0616 in accordance with subsection 46(1) of the *Ontario Arbitration Act*, 1991 ("*Arbitration Act*"). On the same date, CS requested in the Application a stay of this matter pending a decision by the Court.
11. Another concurrent proceeding is currently underway, namely SDRCC 23-0620 involving CS and another soccer club, based on the same basis for dispute as in this case and in which Counsel for CSMRO is also acting as legal representative for the Claimant. CS has also requested a stay of that case for the same reasons as in this case and the Parties have agreed that this jurisdictional decision will equally apply to SDRCC 23-0620.
12. On January 16, 2023, I was appointed from the SDRCC's rotating list as Arbitrator in this case.
13. On January 19, 2023, I held a preliminary meeting with the Parties. The following schedule was established at that meeting:
 - a. January 24, 2023, respective submissions by the Parties on the issues relative to the urgency to proceed and the application for a stay; and
 - b. January 27, 2023, publication of the short decision.

ISSUES AND POSITIONS OF THE PARTIES

14. The issues to be determined in this matter are: (i) whether there is urgency to proceed in this case, and (ii) whether the case should be stayed pending a final decision on the application by the Court.

The CSMRO

15. The CSMRO argued that there is an urgency because the deadline to register a team with the *Première Ligue de Soccer Juvénile du Québec* was January 9, 2023. Despite the expiration of that deadline, the CSMRO wishes to be able to register its teams with this league after obtaining the National Licence which should be issued by CS. According to the CSMRO, any further delay will cause it to suffer additional prejudice since it risks losing players to the detriment of other clubs that have obtained a National Licence.

16. On the issue of a stay of proceedings, the CSMRO submitted that the Application is without merit and that the Court's decision in SDRCC 22-0616 will have no impact on the current proceedings. According to the CSMRO, the Application is limited specifically to Arbitrator Néron's conduct towards the Parties involved in the SDRCC 22-0616 matter and no general conclusions applicable to this case can be drawn from the Court's decision in that Application.

17. The CSMRO argued that if the stay is granted in this case and it is thus prevented from obtaining a National Licence before the start of the 2023 season, its players will be deprived of this opportunity to play at that level during the next season, especially since the PLSJQ offers them the opportunity to be recruited by university and professional teams, including those of Major League Soccer.

18. The CMSRO believes that its application is founded in law and deserves the urgent attention of an SDRCC arbitrator in light of the unreasonableness of CS's decision to deny it a National Licence. The CMSRO believes that the uncertainty of waiting for a final and timely decision from the SDRCC in this matter exposes its players and coaches to being recruited by other clubs that already hold a National Licence.

19. By seeking a stay of proceedings in this case based on the Application before the Court, the CMSRO submitted that CS is attempting to deprive other national clubs of their right to challenge any denied application for a National Licence through the remedies available under the Canadian Sport Dispute Resolution Code ("the Code"), the legitimacy of which was acknowledged by the Parties. According to the CMSRO, the Application filed by CS is merely a ploy to render illusory any recourse available to the Parties by way of the Code.

CS

20. For its part, CS asserted that there is no urgency and that, on the contrary, this case must be stayed pending a final decision by the Court. According to CS, the CMSRO invokes Arbitrator Néron's decision in SDRCC 22-0616 to claim a National Licence but in its opinion, that decision is wrong and it is necessary for the Court to rule on that matter before this matter is heard and decided by an SDRCC Arbitrator. According to CS, this is even more important because the two SDRCC cases 23-0619 and 23-0620 are currently pending and, according to CS, other similar cases are likely to surface in the near future.

21. CS added that it was in full agreement with SQ that for the 2023 season, the deadline to register a team with the PLSJQ was January 9, 2023, that this date has expired and that it should not be suspended, postponed, or extended.

22. CS went on to state that the criteria for a stay of proceedings have been met, namely that:

- (i) This case raises a serious question;
- (ii) CS would suffer irreparable harm if the stay were not granted; and
- (iii) The balance of convenience favors CS.

23. CS added that these criteria must be applied in light of the interests of justice.
24. Finally, CS argued that if the stay is not granted, there is a possibility that the CMSRO will obtain a National Licence based on the precedent in SDRCC 22-0616 and proceed to recruit players, with the risk that if the Court finds in favor of CS in the Application, the National Licence would be withdrawn, causing much frustration and confusion for the CMSRO and within CS. CS therefore stated that it is of the utmost importance to obtain a ruling from the Court in its Application as this ruling will have repercussions for all clubs and organizations across the country.

SQ

25. For its part, SQ considers that there is no urgency to proceed in this matter pending the Court's decision in the Application, as put forward by CS.
26. According to SQ, the CMSRO knew or should have known since November 22, 2022 that January 9, 2023 was the deadline for registering a team with the PLSJQ. Furthermore, the CMSRO knew or should have known on or about December 12, 2022, that CS was not granting it a National Licence. Still according to SQ, the CMSRO had almost one (1) month between the refusal of CS and the deadline of SQ (i.e., January 9, 2023) to challenge CS's decision, which it did not do.
27. Even if there was urgency, SQ believes that this proceeding should be suspended pending the Court's decision in the Application, especially because in its view, the CMSRO based its entire application on the decision rendered in SDRCC 22-0616.
28. According to SQ and in such case where the current matter is not suspended, there is a risk that contradictory decisions will be rendered. Furthermore, SQ added that if the arbitration award in SDRCC 22-0616 is set aside by the Court, there may be no reason to proceed in this matter.
29. Lastly, SQ is of the opinion that it is in the interest of the sound administration of justice and the efficient use of resources, both those of the Parties and of the SDRCC, that the current proceedings be suspended.

ANALYSIS AND CONCLUSIONS

30. Even if there is urgency, I find that it is not necessary to decide that issue but rather that this case should be stayed, pending a final determination of the Application by the Court. Indeed, the stay outweighs the urgency and furthermore, the issue of urgency can always be raised again once the Court has ruled on the Application.
31. I have reached that conclusion for the following reasons.

A. Recourse to the SDRCC versus the Courts

32. At the outset, it is true that the Code provides a specific framework for the resolution of sports-related disputes, as set out in Article 5.7 (f), which confers powers on the arbitrator to fulfill this mission:

5.7 (f) The Panel shall conduct the proceedings to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute, and may impose limitations on the duration of the hearing or the length of submissions. (My underlining)

33. One of the purposes of the Code is to avoid litigation in the courts, which is generally more time-consuming and costly than the arbitration proceedings held by the SDRCC. The SDRCC jurisprudence has reiterated this principle on more than one occasion, including for example the following statement by Arbitrator Pound in *Hyacinthe v. Athletics Canada*, SDRCC 06-0047:

The purpose of the Code and the entire system established for mediation and arbitration in relation to sport disputes is to provide athletes with a means to obtain simple and timely resolution of such disputes by experienced mediators and arbitrators without incurring significant costs. All parties to the disputes, especially those in positions of authority, are expected to act in a manner best designed to achieve such objectives.

34. There is, however, an exception to that principle, namely that a party to a matter dealt with by the SDRCC may invoke a remedy based on the relevant provisions of the *Arbitration Act*, as permitted under Section 5.16 of the Code. In my opinion, the English and French versions of Section 5.16 of the Code leave no doubt as to this option. CS therefore chose to exercise this right in the SDRCC 22-0616 case.

35. It is important to note that this is not the first time that a party has proceeded in that manner - see the following cases:

- *Lacrosse (Barrie Lakeshores Lacrosse Club) v Sport Dispute Resolution Centre of Canada*, 2008 CanLII 15766 (ON SC);
- *Cricket Canada v Bilal Syed*, 2017 ONSC 3301;
- *Cricket Canada v Alberta Cricket Council*, 2020 ONSC 3776; and
- *Alberta Cricket Association v Alberta Cricket Council*, 2021 ONSC 845 1 (“*Alberta Cricket Association*”).

36. It must also be noted that in the *Alberta Cricket Association* matter cited above, the Claimant obtained a favourable judgment from the Court.

37. As in the matters mentioned above, it is the Court that will have to decide whether CS's application in SDRCC 22-0616 has merit, or not. As an Arbitrator, it is not my place to prejudge what the Court will decide, as the CSMRO has asked me to do in this case. If I do not grant the stay and the Court quashes the arbitral award in the SDRCC 22-0616 matter, the Court's judgment will impact this matter as well as the 23-0620 case.

38. Lastly, it should also be noted that there is a great deal of similarity between SDRCC 22-0616, which is the subject of the Application, and the present case. This is in fact noted by CMSRO's counsel in its submission as follows:

[Translation]

“...SDRCC 22-0616 which deals with similar facts and Canada Soccer's unreasonable application of its policies and regulations in which we acted as legal representatives.”

39. In other words, if the SDRCC 22-0616 matter is currently the subject of the Application, the same could easily be said of SDRCC 23-0619 and 23-0620, which are the subject of these proceedings. In my view, all three cases should therefore be treated similarly - at least until the Court makes a final determination in the Application.

B. The Three Applicable Criteria for a Stay of Proceedings

40. As noted by CS in its submission, these criteria are drawn from the well-known case of *RJR-*

*MacDonald Inc. v. Canada (Attorney General)*¹, as referred to in numerous cases since.

41. Firstly, there is a serious issue to be decided. The Application is not a frivolous matter. Other cases demonstrate that such an application is permitted following an arbitral award and can indeed lead to the setting aside of an arbitral award.
42. Secondly, SDRCC 22-0616 involves CS's National Licensing Program. CS's *modus operandi* with respect to this national program is challenged, which could have an incalculable effect on the many similar cases already dealt with and those in the queue. There is no doubt that the Application must be decided to clarify for CS - and all Parties such as the CSMRO - the rules and regulations applicable to obtaining a National Licence. In the circumstances of this case, the public interest favours CS and it is certain that CS could suffer irreparable harm in the absence of clarification by the Court as to the implementation of its National Licensing Program.
43. Thirdly, the balance of convenience favours CS. The challenge to its National Licensing Program impacts parties such as the CSMRO across Canada, including of course any National Licence applications that are already pending.
44. Finally, case law has shown that these criteria are not watertight compartments. The strength of the case with respect to one of the criteria may reinforce a weakness with respect to one of the other two criteria, as may be the case.²

C. The Administration of Justice

45. We must also note that the criteria for a stay of proceedings must be considered in light of the interests of justice, as emphasized by the Ontario Court of Appeal:

The test for a stay pending appeal, including a motion for leave to appeal to the Supreme Court of Canada, is well established. The moving party, here LBIE, must show that it has raised a serious issue to be adjudicated, that it will suffer irreparable harm if a stay is not granted, and that the balance of convenience favours a stay. These three components of the test are interrelated in the sense that the overriding question is whether the moving party has shown that it is in the interests of justice to grant a stay³

46. As argued by SQ in its submission, it is precisely with a view to the sound administration of justice and the efficient use of resources, both those of the Parties and those of the SDRCC, that the current proceedings should be stayed. I would add that, as provided for by law⁴ and the jurisprudence in at least some jurisdictions, the SDRCC also has an interest in avoiding numerous proceedings that involve identical issues, to the extent possible and considering all relevant factors. Thus, a stay of proceedings is desirable in the circumstances of this case to avoid duplication of proceedings on similar, albeit identical issues.
47. In conclusion, I find the submissions of CS and SQ compelling. Accordingly, I order a stay of proceedings in this matter pending the Court's final decision in the Application in SDRCC 22-0616. Once the Court has ruled in that matter, the current proceedings may be dealt with on the merits by a duly appointed Arbitrator, as deemed appropriate.

1. [1994] 1 S.C.R. 311.

2. *Circuit World Corp. v. Lesperance*, 1997 CarswellOnt 1840, [1997] O.J. No. 2081, Paragraph 8.

3. *BTR Global Opportunity Trading Ltd. v RBC Dexia Investor Services Trust*, 2011 CarswellOnt 10330, 2011 ONCA 620, Paragraph 16.

4. See for example: *Courts of Justice Act, R.S.O. 1990, c C.43 article 138*.

48. The CSMRO had also requested provisional measures. In light of my decision in regard to the stay of proceedings, the issue of provisional measures may be reactivated, as the case may be, when the Court rules on the Application in SDRCC 22-0616.
49. Before concluding, I wish to emphasize that I fully understand the importance and scope of the issues raised by the CSMRO. It is therefore desirable that CS should hasten to take all means at its disposal to ensure that the Application is decided upon by the Court as soon as possible, subject only to the constraints and direction of the Court.
50. In conclusion, I wish to thank counsel for the quality of their respective submissions and their professionalism.

DECISION

51. For the reasons set forth above, I order a stay of this matter pending the Court's final decision in the Application in SDRCC 22-0616.
52. While CS has requested costs in these proceedings, I find that the CSMRO has raised important issues in an unusual context and that costs should therefore not be awarded in the circumstances of this matter.

Signed at Ottawa, Ontario, this 14th day of February 2023.



Roger Bilodeau, K.C., Arbitrator