

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

N°: SDRCC 23-0619

**CLUB DE SOCCER MONT-ROYAL OUTREMONT
(CLAIMANT)**

AND

**CANADA SOCCER
(RESPONDENT)**

AND

**SOCCER QUEBEC
(AFFECTED PARTY)**

Before: Richard W. Pound, K.C. (Arbitrator).

Appearances:

For the Claimant:	Rosalie Caillé-Lévesque	Counsel
	Vincent Dubuc-Cusick	Counsel
	Simon De Andrade	Counsel
	Luc Brutus	Representative
	Max-Henri Métellus	Representative
	Maxime Oliveri	Witness
	Martin Corbeil	Witness
	Catalin Gaita	Witness
For the Respondent:	Danesh Rana	Counsel
	Mathieu Chamberland	Representative
	Dave Nutt	Representative
	Catherine Levasseur	Witness
For the Affected Party:	Andrée-Anne McInnes	Counsel

1. This is an appeal brought by Club de Soccer Mont-Royal Outremont (CSMRO) against Canada Soccer (CS) in respect of CS's decision not to award it a licence having the status of a National Youth Club (NYC) licence.
2. CS is the national organization responsible for soccer in Canada and recognized as such by FIFA, the international federation governing soccer and CONCACAF, the latter being responsible for soccer in the Americas pursuant to delegation by FIFA.
3. Soccer Quebec (SQ), the Affected Party in these proceedings, is a member association of CS as part of a network of provincial and territorial associations responsible, as its name suggests, for soccer participation in Quebec.
4. I was appointed Arbitrator in this matter from the rotating roster of arbitrators recognized as such by the Sport Dispute Resolution Center of Canada (SDRCC). No objection was lodged by any of the parties nor by SQ as the Affected Party in these proceedings.

Background to the NYC Licences Program

5. Dave Nutt, the CS Interim Director of Development, gave evidence regarding the inception of the NYC licences granted by CS. These are the highest ranks of four categories of licences. In general, the three lower categories are accredited and administered by the member associations, but the awarding of NYC licences is reserved to CS.
6. NYC licences are relatively new to CS. Mr. Nutt led the process of surveying analogous systems around the world as part of his duties at CS. Programs of this nature are, in essence, both recognition of good work already accomplished and encouragement to continually improve the game of soccer in Canada. The program started in 2018 and the first assessments were made by CS in 2019. They were led by Mr. Nutt. Prior to this time, there had never been a national recognition program in Canadian soccer. Standardized criteria were developed, all with the objective of making soccer better in Canada. Mr. Nutt created all the related documents, including the regulations, standards, manuals, guides to explain how the system works, the information technology infrastructure and the appraisal process.
7. The CS Board of Directors has approved the regulations for the NYC licences. All the related documents, regulations, manuals and guidelines are published and have been posted on the CS website, where they are available on a 24/7/365 basis. Since there is no dispute regarding the identity, authorship and content of the program documentation, I have not included a document-by-document inventory of them.
8. Retention is an important element of the CS programs. The retention objective is to get kids playing soccer at a very early age and to continue to play, especially female players. In the process, the idea is to help players to improve their skills and, at certain stages, to transition into other roles within soccer, such as coaches, referees, and officials.

9. Some 170 clubs expressed initial interest in the process and some 69 NYC licences have been granted, although one has since been revoked, so there are currently 68 NYC licences.
10. Mr. Nutt explained (contrary to the evidence given by Mr. Brutus) that there were no quotas for NYC licences, since the CS program objective was and remains to award as many such licenses as possible, to develop great coaches and great programs for the sport.
11. Because the NYC licence is the highest level of the four categories of club recognition, the related criteria developed by CS are correspondingly demanding, since the licensees need to deliver at the highest level. At the lower levels of club recognition, the standards of required achievement and performance are less demanding.
12. There are 142 listed criteria for the NYC licence, all of which are required to be met, with a few exceptions such as, for example, when a required course may not be available at the relevant time.
13. The role of the provincial member associations is important, because they have the most direct and regular contacts with the clubs in their jurisdiction. As noted earlier, the provincial associations are involved in the licencing process (particularly in the three lower levels of recognition) and in developing the capacity to support and provide guidelines for the clubs.
14. Principles outlined in the published materials are intended to provide guidance. The context for their application may be different. Mr. Nutt gave an example of the principle of fostering accessible and inclusive involvement, noting that the application of this might be different in, say, Quebec, when compared with the Northwest Territories. The application of the principles in different contexts is preferable, in CS's view, to a series of prescriptive requirements.
15. The Club Licencing Committee is the decision-making body within CS for granting NYC licences. The spreadsheets issued with its decisions are designed to provide feedback to assist clubs if and when further applications may be advanced. When it comes to appraisal of applications, there is both a quantitative and a generalized aspect that figure in the appraisals. Numbers are numbers, but they do not tell the whole "story" and need to be contextualized. Did, for example, a club's good competitive outcome reflect the development and implementation of a club's own programs, or was it the result of targeted recruitment of players from other clubs?
16. Catherine Levasseur, an employee of SQ, is responsible for soccer clubs in Quebec and gave evidence regarding the role of SQ in the context of these proceedings. SQ also recognizes that the NYC licences are important for the development of soccer in Quebec. SQ helps to guide all Quebec clubs which seek to obtain this (and other) recognition, outlining the timelines and steps in the process of obtaining the recognition, while recognizing that SQ does not make the final decision regarding which Quebec clubs (if any) may achieve the NYC licence status. SQ helps, in particular, with issues arising in

Quebec soccer clubs that may not be comfortable working in English. As to NYC licence outcomes, SQ makes recommendations, but not decisions.

17. In the case of the CSMRO application giving rise to these proceedings, the SQ recommendation was that CSMRO be granted a provincial licence, not a NYC licence, which was the same as the decision taken by the CS Club Licencing Committee.

The CSMRO Application

18. Luc Brutus, president of CSMRO, is familiar with and described the general activities within the club and its organizational structure. He stated that the club, the origins of which go back to 1965, has a good reputation in Quebec, that its coaching and training activities for the development of players are well organized and its tournaments well run. Its annual revenues are in the order of \$1.6 million.
19. The CS decision in December 2022 was very disappointing. Mr. Brutus considered that CSMRO had met a significant majority of the 142 requirements and that those which had not yet been achieved could easily be accomplished. Apart from some fluctuation due to the COVID-19 pandemic, the club has continued to grow. He acknowledged that some 28 of the 142 criteria had not been regarded by CS as satisfactory or having been completed. He had not seen the spreadsheet that accompanied the CS decision until the club had received the CS decision and did not know what weighting had been given to each element. His position was that the club had followed the advice from SQ and that it had received the “green” CS approval rating in some 90% of the applicable criteria. That, he believed, should be sufficient for CSMRO to qualify for the NYC licence.
20. Max-Henri Métellus, Director General of CSMRO, shared the surprise and disappointment of Mr. Brutus with the decision not to grant the NYC licence. There had been no negative indications given by CS during the application process, nor any “red flags” brought to the club’s attention, notwithstanding CS’s statements that work remained to be done prior to the final decision to be taken by CS. The club has nevertheless continued to grow. He acknowledged in cross-examination that several of the 142 criteria had not been met or accomplished until after the December 12, 2022 licencing decision had been made by CS.
21. Maxime Oliveri, Technical Director of CSMRO, was clearly alert to the fact that CS had identified that additional work would be required prior to the final CS decision, and the outdoor season had not yet commenced, although he did not regard any of the remaining work as major. The ongoing meetings following the spring 2022 CS indication of additional work to be done were held with SQ.
22. Catalin Gaita, the father of a U-16 athlete had chosen CSMRO due to its closeness and the presence of a particular coach, who was regarded as good for player development. His son, however, wanted to go to a NYC team and chose SC Laval in January 2023, after the CS decision in December 2022, even though the coach he liked at CSMRO was still there.

23. Martin Corbeil's daughter is 11 years old and CSMRO had been chosen as a serious club with good coaches. She was doing very well and was ambitious to progress further. He said that she was going to change clubs, even though this change would likely lead to some uncertainty.

Analysis

24. My first observation relates to the witnesses who testified. Their evidence does not require me to make any adverse findings regarding their general credibility. I found all of them to be sincere and to be interested in the development of soccer, whether organizationally or with respect to the development of their children. Their various perspectives and roles affect only the weight to be given to their evidence in the context of these proceedings.
25. My second observation goes to the fact that there has been no allegation, let alone evidence, of bias or bad faith on the part of CS in its decision not to grant the requested NYC licence to CSMRO.
26. There is, however, a difference of opinion as to whether the requested licence should have been granted. CSMRO believes that its conduct and achievements qualify it to be entitled to receive the NYC licence. CS believes otherwise, as does SQ, which made its recommendation accordingly to CS. Hence the current proceedings.
27. My third observation goes to the issue of whether the CS decision was arbitrary and not based on any principled context. The evidence before me is replete with uncontested and documented criteria and testimony from CS witnesses (principally Dave Nutt, who designed the program and wrote up the related documentation) regarding the underlying policy considerations pertaining to the NYC program, including its purpose and objectives and the fact that it is a new national, rather than member association, program.
28. Of the four categories of programs (five, if one includes clubs that belong to no listed category), the member associations make the relevant category decisions regarding club licences. The NYC program, however, is specifically reserved to CS although CS invites and considers recommendations from the relevant member association. In this case, the overall numerical assessment by SQ, having considered all relevant issues that covered much of the same ground as the NYC program requirements (albeit with different vocabularies) was considerably lower (73%) than the 90% figure advanced by CSMRO witnesses. Nothing turns on this "scoring" other than to note that two different organizations (CS and SQ) came to the same conclusion regarding the category of licence that should be granted to CSMRO.
29. My fourth observation goes to the "life and death" issue. CS licencing decisions, whether positive or negative, are not forever, and applications for NYC licences can be submitted on a regular cyclical basis. CSMRO had submitted an earlier, unsuccessful, application in

the first cycle of considerations for the NYC licencing program. Presumably, it will continue to press for the desired outcome, based at least in part on the reasons for the lack of success noted in respect of the 2022 application. There is now a roadmap available to CSMRO for a subsequent application.

30. CS was not prepared to undertake a mentoring approach to applications submitted to it regarding NYC licences. Mr. Nutt was firm in his view that the applicant was aware (or should have been aware) of the criteria and that it bore the onus to address all of them in its application. CSMRO was on written notice that there was more work to be done before CS made its final decision. This notice may have been expressed in reasonably positive fashion, at least in part to encourage positive responses to a rigorous set of criteria for the highest category of licencing. If CSMRO had questions, it was its responsibility to ask them directly or to engage with SQ for any necessary assistance. It is also undisputed that the program requirement was that the failure to satisfactorily complete any one of the 142 criteria could be fatal to the application. In that sense, it answers the CSMRO complaint that it was not aware of the weighting of each criterion in the CS appraisal process.
31. The written submissions on behalf of CSMRO were directed in considerable measure at what CS might or should have done and what SQ might or should have done with respect to the application. With respect, however, the responsibility for the NYC application was CSMRO's and not one which could be shifted to CS or SQ. There is no escaping the fact that the application was short of complete, nor that all the applicable criteria had not been satisfied and communicated at the time CS made its decision. I am not clear why CSMRO complains about delegation of certain matters by CS, in the face of clear program authority for CS to do so. Whatever delegation may have occurred, however, did not impact its decision regarding the NYC licence.
32. Due process was followed by CS in its consideration of the CSMRO application. CSMRO was on notice and aware that a decision would be reached and communicated by December 2022. CSMRO had every opportunity to provide whatever information and make whatever submissions it wished. There was no failure of due process.
33. Much was made by CSMRO counsel of the SDRCC decision in *Brossard*¹ and I was urged to apply that decision in the current matter. First, *stare decisis* is not a doctrine that applies in arbitral proceedings, so I am not bound in any way to follow the decision. Second, unlike the present appeal, there was no evidentiary hearing that might have shed some light on the factual background. Third, I have not heard the arguments that were put to the arbitrator in the appeal. I therefore decline to apply that decision.
34. CS is uniquely placed to develop national criteria for such purpose and to assess the performance of Canadian clubs seeking NYC licences. There has been no credible evidence that its conduct has been other than even-handed.

¹ Association de Soccer de Brossard v. Canada Soccer, SDRCC 22-0016.

35. In the circumstances, having reviewed the evidence and considered the submissions of the parties, I am satisfied that the *Vavilov*² tests of reasonableness have been easily met and that the same outcome would have resulted under the earlier decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*.³
36. In the circumstances, therefore, there is no principled basis for interfering with the decision of CS not to grant the NYC licence for which CSMRO applied on this occasion.
37. In addition, it is worth repeating that it is not the role of an arbitrator in proceedings of this nature to substitute his view of what the CS licencing decision might or should have been. This is especially true where there is no alleged bias and where there has been an explanation regarding the criteria that were not met, all in the context of a program the incentive of which is to make soccer in Canada “better.” Considerable, but not absolute, deference should be accorded to CS policy and implementation thereof in these circumstances.

Conclusion and Order

38. I am indebted to the excellent management of these proceedings by the SDRCC staff and interpreters and also to counsel for the parties, who conducted themselves professionally, both during the hearing and in their written submissions.⁴
39. The appeal by CSMRO is dismissed.

MONTREAL, this 24 day of August 2023

A handwritten signature in black ink, appearing to read "Michael A. ...", is written above a horizontal line.

Arbitrator

² Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65.

³ Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190.

⁴ The Affected Party, Soccer Quebec, did not make written submissions.