

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

No: SDRCC 07-0051

**CHARMAINE HOOPER (“Hooper”)
CHRISTINE LATHAM (“Latham”)
SHAROLTA NONEN (“Nonen”)**

(CLAIMANTS)

and

**CANADIAN SOCCER ASSOCIATION
 (“CSA”)**

and

EVEN PELLERUD (“Pellerud”)

(RESPONDENTS)

REASONS FOR AWARD

Panel: John Welbourn, L.L.B., C.Arb., MCI Arb.

Hearing: On May 29, 30, 31, and June 1, 2007 at suite 1600,
144 - 4 Avenue SW, Calgary, Alberta.

Counsel for the Claimants: Alan Ross, Esq.
Agent for the Claimants: Beth Stevenson

Counsel for CSA: Pasquale Santini, Esq.

Counsel for Pellerud: Barry Gibson, Q.C.

Witnesses for the Claimants: Christine Latham
Charmaine Hooper

Witnesses for CSA: None

Witnesses for Pellerud: * Even Pellerud
* Andrea Neil
* Amy Walsh
* Christine Sinclair
* Diana Matheson
* Les Meszaros
** Bob Lenarduzzi

* appeared by video conference from Auckland, New Zealand

** attended by telephone conference from Vancouver, British Columbia

Background:

The Claimants filed a Request for Arbitration with the SDRCC on February 16, 2007. CSA filed its Answer on February 22, 2007 and Pellerud filed his Answer on February 21, 2007.

On March 19, 2007, the Claimants filed a Request with the SDRCC asking that a jurisdictional arbitrator decide whether an arbitration agreement existed between the parties. The jurisdictional arbitrator, Richard W. Pound, Q.C., issued his decision on March 26, 2007 which stated the issue to be submitted to the Arbitrator for determination, as agreed by the parties.

Further clarification of the issue was issued by the resolution facilitator, John P. Sanderson, Q.C., on April 10, 2007.

The Arbitrator was notified of his appointment on April 13, 2007. Preliminary meetings with Counsel were conducted by teleconference on April 17 and May 17, 2007. During these preliminary meetings the following matters were agreed by the parties or determined by the Arbitrator:

1. The dates of the hearing and the city in which the hearing would be conducted;
2. Disclosure and exchange of documents;
3. Disclosure of witnesses, including filing of Affidavits subject to notice of intention to cross-examine on any such Affidavit;
4. All evidence would be given under oath or affirmation at the hearing;
5. Formal transcription of the evidence given at hearing.

Counsel for the Claimants filed the Affidavits of Laura M. Fedrigo, sworn November 28, 2006 and Pasquale Ruta sworn April 10, 2007. On May 17, 2007, Counsel for Pellerud gave notice that Ms. Fedrigo and Mr. Ruta would be required for cross-examination on their respective Affidavits.

Counsel for the CSA filed the Affidavit of Daniel Michelucci sworn May 10, 2007.

Preliminary Matters and Jurisdiction:

On commencing the hearing the parties agreed that:

1. The hearing room was satisfactory;
2. The Arbitrator has jurisdiction to consider the issue stated by jurisdictional arbitrator Pound, as clarified by resolution facilitator Sanderson, and to issue a written decision that will be final and binding on the parties;
3. All evidence will be given under oath or affirmation;
4. Non-party witnesses will be excluded from the hearing until asked to give evidence. The exception of Beth Stevenson was agreed.

The Claimants had attempted to retain a court reporter to record the evidence but were uncertain if one would attend. The proceedings were not recorded.

Issue:

As stated by jurisdictional arbitrator Pound, the issue to be determined is:

Whether the decisions made by Pellerud relating to the membership, carding and funding of the Claimants were affected by any bias, conflict of interest, apparent conflict of interest or improper motive?

The clarification stated by resolution facilitator Sanderson, as agreed by the parties, is that the Arbitrator shall not have jurisdiction to order the reinstatement of the Claimants to the Women's National Team, or the reinstatement of Hooper as captain of the Team.

Exhibits:

As agreed, prior to the hearing each party filed all documents in its possession or control which were relevant to the issue. All documents were agreed to be entered as Exhibits to expedite the hearing, provided that correspondence, email and other communications, while accepted as having been sent and received, were not accepted as proof of the statements contained therein without direct evidence.

The Exhibits are:

<u>Exhibit</u>	<u>Description</u>
1	Claimants' documents - Pages 1 - 233
2	CSA documents - Tabbed 1 -15
3	Pellerud documents - Tabbed 1-202

The Affidavit of Laura M. Fedrigo is pages 223 and 224 of the Claimants' documents. The Affidavit of Pasquale Ruta comprises pages 226 - 231 of the Claimants' documents. Although notice was given of the requirement for both individuals to attend the hearing for cross-examination, neither person appeared. For the purpose of the record, both Affidavits are entirely disregarded.

Facts and Evidence:

At all material times the Claimants were members of the Canadian Women's National Soccer Team (the "Team"). Hooper had been a member since 1986 and Latham since 2000. Nonen was a member of the Team from 1999 to 2004. She played in Denmark in 2005. Nonen was invited to a Team training camp in January, 2006 and again earned a position on the Team.

Pellerud has been a professional soccer coach since 1988. He has been employed since 1999 by the CSA as the head coach of the Team. Initially he carried out his duties from the CSA office in Toronto. In 2004, with the agreement of the CSA, he and

his wife moved to Vancouver in conjunction with the CSA's move of the Team operations to Vancouver.

Pellerud and his wife rent and live in a large home in West Vancouver owned by Greg Kerfoot ("Kerfoot"). Kerfoot is the owner of the Vancouver Whitecaps soccer organization which includes a women's team that competes in the W-League.

In early 2006, Kerfoot agreed to make a substantial financial commitment to the CSA (the "Kerfoot Funding"). The purpose was to allow selected Team players to be paid a monthly salary so that they could train and play full-time without the need to otherwise work. Kerfoot's commitment commenced in approximately April, 2006 and is to continue until the 2008 Beijing Olympics. This allows the players to devote full time and attention to preparation and qualification for the World Cup and the Beijing Olympics.

Pellerud was to select the players, a maximum of 20, who would receive the Kerfoot Funding - \$20,000.00 per year to each player selected. Added to the funding available through the Sport Canada carding program, a player would receive \$38,000.00 to \$40,000.00 per year.

Pellerud's office is in the CSA office in Vancouver. The CSA office and the Whitecaps' office are separate but on the same floor, in the same building. Before the Whitecaps and the CSA each moved to the current location, the CSA sublet or occupied space in the Whitecaps' office.

During a Team tour against NCAA schools in April, 2006, Team players were instructed to read a draft agreement on Les Meszaros' laptop computer. Mr. Meszaros ("Meszaros") is the Team manager. The document, entitled "New Direction - Player Support" (the "Agreement"), had been written by Pellerud and was reviewed by each player selected by Pellerud to receive Kerfoot Funding. Following the players' review and comment, some revisions were made to the Agreement. Shortly thereafter, the selected players were invited to meet, one at a time, with Pellerud and Meszaros in the lobby of the Team hotel. Hooper, Latham and Nonen were among those selected. Each signed a copy of the Agreement on April 4, 2006. Pellerud also signed each copy.

Shortly thereafter, Hooper, Latham and Nonen each began receiving \$1,667.00 per month, before statutory deductions, from the CSA. This was the Kerfoot Funding.

The Agreement includes the following provisions:

You (the player) agree to report to any invitation to attend National team events. This includes formal full camps as well as potential informal local/regional events. The National team program will cover all flight expenses to and from approved training locations.

The player will commit to sign up with a soccer environment/club environment that enables her to maximize her potential as a player - a decision that will be taken in close conjunction with EP. Relocation might be required.....

During late 2005 and early 2006, a second program was conceived for an extended Team training camp in Vancouver from September to November, 2006 (the "Residential Camp"). The length of the Residential Camp would be significantly longer than any

prior Team camp, and would involve the relocation of players living outside the greater Vancouver area to Vancouver for the duration of the Residential Camp.

The Residential Camp was a topic of discussion and speculation among the players. On August 1, 2006, Meszaros sent each Claimant an email which was copied to Pellerud. The email reads:

You are one of the players invited to attend Residential Camp in Vancouver. At this time we need you to confirm your move and participation in the program leading up to Gold Cup this fall. Please confirm your commitment by August 6. In order to proceed with our working to secure accommodations, etc., we will need to have this in order by this date.

If confirmation **not** received on time, we will ask you to reconfirm (by August 8th) explicitly stating that **you are not attending**.

The evidence regarding the Residential Camp, resulting decisions and events will be reviewed later in these Reasons.

Another Team training camp and friendly matches were scheduled for Newfoundland commencing August 15, 2006 (the "Newfoundland Camp"), following which the Team would travel from Newfoundland to France on a competition tour. The Claimants were invited to attend the Newfoundland Camp and tour. Each accepted the invitation. The CSA arranged and paid for airline travel for each. None attended the Newfoundland Camp or the tour.

The evidence regarding the players' non-attendance will also be reviewed later in these Reasons.

On August 31, 2006, Meszaros sent the following email to each of the Claimants:

In light of your last-second choice not to attend the Newfoundland and France Camp/international games, and your lack of response to our request to you to then attend the camp late, and your lack of commitment to the upcoming residential camp in Vancouver, you have been immediately released from the active player roster for the Women's National Team.

All corresponding funding, directed by the CSA, associated with this program will be discontinued.

None of the three has since been invited to participate in any Team training camp or match. None has received any Kerfoot Funding since August, 2006.

Facts and Evidence particular to Latham:

Prior to 2006, Latham was a striker on the Team. In 2005 and 2006, the Team was strong at the striker position, and Latham sensed that her position on the Team may be in jeopardy. She was not invited to a Team training camp in January, 2006. In an email to her dated December 24, 2005, Pellerud advised her that she had not been invited to the camp due to her unsatisfactory performance level coming off the bench, her

disappointing reaction to his criticism, and that her “high maintenance (sic) factor will no longer be tolerated”.

In a prior email to Pellerud dated October 5, 2005, Latham had suggested that she try moving to the defender position. Pellerud agreed that the move might be a good idea.

In an exchange of emails and a telephone call in January, 2006, Pellerud and Latham further discussed the possibility of her moving to defender and he agreed to give her an opportunity to change positions. Pellerud advised Latham of his expectations of her in practice, games, attitude and work ethic. He advised her that she would be required to train, practise and play exclusively at the defender position while playing for the University of Nebraska where she was attending school.

Pellerud discussed Latham’s move with the Nebraska team coach who confirmed that he would co-operate fully in her transition from striker to defender. In turn, Latham committed fully and without reservation to Pellerud’s expectations of her.

On January 27, 2006, Latham was notified of her selection for the Team for friendly matches in Mexico from February 21 – 26, and Holland from February 26 to March 5, 2006. Latham participated in those Team training camps and games. In an email dated March 22, 2006, Pellerud congratulated her on her excellent performance in camp, games and her new approach.

In a series of emails between February 1 and 8, 2006, Pellerud and Latham discussed her playing for the Atlanta Silverbacks in the W-League where Nonen was an assistant coach and player. In an earlier email Latham had mentioned that she intended to play W-League soccer during the 2006 season. Pellerud had approved her intention.

The W-League was described during the hearing as an amateur or semi-pro league. The players are not paid a salary or wage, but are provided room and board, and travel costs.

In the February 1 – 8 emails, Pellerud advised Latham that he no longer wanted her to play W-League for Atlanta. He wanted her to move to Vancouver to train for her new position as defender and play “W”, a reference to W-League and likely the Vancouver Whitecaps, a W-League franchise. He suggested that she call Bob Lenarduzzi, the Whitecaps President, and make a “good deal”.

Latham advised Pellerud that she had signed a contract to play for Atlanta. Pellerud advised her to break the commitment. Latham discussed the matter with Laura Fedrigo, the executive director of the Silverbacks, and was advised that the Silverbacks would not allow her to do so. Latham so advised Pellerud and asked that he contact Fedrigo. Pellerud and Fedrigo did eventually speak and discussed Latham’s move from striker to defender and the need for her to practise and play full-time as a defender. Pellerud’s evidence was that Fedrigo agreed to co-operate and ensure Latham did so.

Latham had not signed a contract with the Silverbacks. She had completed and submitted a document entitled “2006 W-League Amateur Registration Form” dated January 20, 2006. The document in evidence does not contain any commitment by Latham to play for the Silverbacks or any W-League team. It is a form providing personal information and a liability waiver to the W-League.

In the February 1 – 8 exchange of emails, Pellerud advised Latham that if she did not move to Vancouver as he requested, her eligibility for full-time player funding (Kerfoot Funding) could be in jeopardy. Latham's evidence is that she felt threatened by this statement. Further, she believed Pellerud was trying to recruit her to play for the Whitecaps.

Latham did not move to Vancouver. She played a number of games for Atlanta during the 2006 season. Of the games she played, not all were at the defender position. Pellerud learned of this and spoke with the Silverbacks' coach to inquire why Fedrigo's commitment had not been honoured. The coach advised him that Fedrigo's commitment was not his commitment and that as a coach, he had an obligation to the team and franchise to play Latham where she would best help the team.

During the NCAA tour in April, 2006, Latham reviewed the draft Agreement on Meszaros' laptop computer. She subsequently met with Pellerud and Meszaros in the lobby of the hotel where the Team was staying, and signed the Agreement. Her evidence is that the words, "Relocation might be required....." were added to the document subsequent to her initial review of the draft Agreement.

Meszaros' evidence is that there were a few cosmetic changes to the draft Agreement following review by the players. However, the words "Relocation might be required" were not added and were present when the players reviewed the draft Agreement on the laptop.

Latham began receiving the Kerfoot Funding in April, 2006.

During the Spring 2006 NCAA tour, the players had a Team meeting. According to Latham, the players agreed unanimously that none would commit to attending the Residential Camp until they were satisfied with the arrangements for the Camp including accommodation, transportation and facilities. These points were of particular concern to those players not living in the greater Vancouver area.

By email from Meszaros sent August 1, 2006, the players were notified of the Residential Camp dates. With respect to accommodation, transportation and facilities, the email stated:

Housing and other issues as below:

- Housing: The most realistic plan at the moment is to rent some furnished houses where you can have one room each. This will be either in the downtown area or south in the White Rock/South Surrey.
- Most of the charge will come from our Team budget, so you will contribute with a minor sum, about \$200.00/month or so.
- Meals: You are on your own.
- Transportation: In Vancouver or Surrey, you are on your own – unless we can secure some inexpensive vans. We will try to find solution.
- Health issues/treatments covered by CSA.
- Training facility/fitness centre/field costs and all other camps costs to be covered by budget.

By email from Meszaros sent August 1, 2006, Latham was advised that she had been selected to attend the Residential Camp and notified that she was required to confirm her move to Vancouver and participation in the program by August 6. The email contained the statement, "If confirmation **not** received on time, we will ask you to reconfirm (by August 8th) explicitly stating that **you are not attending.**"

On August 1, 2006, Hooper sent the following email to the Team players:

Hey Team,

It seems as if we are being pressured into committing to do something none of us know about. Please don't feel pressured to do anything before it is time. As we discussed a few weeks ago in Minneapolis, we would not agree to any terms set forth by the coaching staff until a contract was written up. We will then, as a team, along with the coaching staff, agree and all sign the proposed contract. Until we know all the stipulations for the upcoming relocation, we are not prepared to agree to any terms as a team. In a few days, a conference call will be set up and all the info regarding the conference call will be sent out. Remember, the relocation can't go on with only a few people.

Would someone (Andi?) be prepared to relay info to Even regarding this because at this time, I might just say all the wrong things to him out of anger.

On August 5, 2006, Latham sent the following email to the Team players:

Hey guys,

I am writing this as an addition to Charmaine's email that she sent out a couple of days ago regarding the location to Vancouver. As we all know, we agreed as a team not to respond to Even's email concerning the updated relocation information. As of today, I have been informed that no one has responded individually. However, if someone missed on the email, or got the email late and did respond, please email me or Charmaine back immediately and let us know. I am currently setting up a conference call for the team on Monday, and everyone will get an email with information on how to get on that call. So please check your email in the next day. Lastly, the additional information Even sent out was not to the level of what we discussed as a team during the most recent training camp and did not address our concerns. This is regarding everything from the start date of camp, relocation, etc.... This will be addressed in the conference call and we will move forward AS A TEAM in terms of response back to Even. **DO NOT BE PRESSURED TO REPLY INDIVIDUALLY IF HE CONTACTS YOU.** We are a team. We agreed to stayed together and stick to what we had decided as a team. If we are going to get what is fair, and secure the future for the players that will come after us, we must stay together 100%. This isn't about individual players. This is about the Canadian Women's National Team and getting the respect we deserve from our Federation and Even. I hope everyone is doing well.

By email sent August 7, 2006 to Meszaros and copied to the Team players, Hooper wrote:

Just wanted to send an email just explaining why the team has had a bit of a delay in response to your email regarding relocation. I am assuming Andrea has relayed a message to Even stating why the team was delaying. The team met a few weeks ago to discuss some issues pertaining to the relocation. As a team, we thought it would be a good idea to draw up a contract, which the team, along with the coaching staff could come to an agreement on. Until we know all the stipulations for the upcoming relocation, we are not prepared to agree to any terms, as a team. We believe that this will be the best situation for the team and in the end if everyone is happy, the players are able to be at their best mentally and physically and the team can move forward in a positive environment and positive direction. Thanks Les.

Meszaros responded to Hooper's email the same day as follows:

Hi Charmaine,

Thanks for your note, sorry for the late response but I am out of town until tomorrow night.

Not sure about your comments though as we have positive responses from most players. We are just waiting for your response, Izzy, Latham and KK. I am sending an individual email to yourselves tonight in which we will require a response by tomorrow.

By email sent August 7, 2006, Meszaros wrote to Latham stating:

You have chosen not to commit to Residential Camp starting September 11. You will now be asked to confirm your decision by Tuesday, August 8 – noon (PTime). Not responding by that time counts as a confirmation on your decision not to participate.

By deciding not to attend, you have violated the contract you signed with us in April – thus terminating your involvement with the full-time player program.

By email sent August 8, 2006, Latham responded to Meszaros as follows:

there has been a lot of confusion concerning the relocation and that questions have not been answered... i am giving my ok for the relocation however i am not agreeing to the terms as of yet... we will be meeting as a team in newfoundland..... to finalize any unanswered questions. thanks.

Latham's evidence is that she was dissatisfied with the lack of information in Meszaros' email of August 1 regarding housing, transportation and facilities.

An email sent by Pellerud and Meszaros August 9, 2006 to all Team players, coaching and support staff, and CSA representatives, including Anne Pellerud, Pellerud's wife, included the statement:

Unfortunately two players, Hooper and Latham, have failed to commit to this program within time limits. At this point, their lack of full commitment to the residency has also resulted in their release from the Full-Time Program.

At that point, Latham's evidence is she was uncertain of her status on the Team. Notwithstanding, she received an email airline ticket for her flight to the Newfoundland Camp (commencing August 15). Latham did not attend the Camp, and did not notify Meszaros or Pellerud that she would not be attending.

The evidence of Andrea Neil, a player representative, is that when Latham, Hooper and Nonen did not show up in Newfoundland, the Team's four player representatives met with Pellerud and Meszaros. Pellerud left the decision up to the players whether Latham, Hooper and Nonen would remain as Team members. The Team's decision, although angry and disappointed as a group, was to give the three 24 hours to travel to Newfoundland. Three of the player representatives tried to telephone the three non-attendees. Christine Sinclair was able to speak with Latham who, after discussion, advised Sinclair in coarse terms that she would not be attending.

By email from Meszaros sent August 16, 2006, Latham, Hooper and Nonen were advised:

Charmaine, Christine and Sharolta,

Your lack of attendance in Camp is unacceptable. Charmaine, we have arranged for childcare for Charlie.

Please make your way to Camp today. Thanks.

By the previously-mentioned email sent August 31, 2006, Meszaros notified Latham she was released from the Team and her funding discontinued.

Latham has not been invited to attend any Team training camp, game or other event since.

On September 20, 2006, Latham emailed Pellerud advising in part:

I wanted you to know that I do feel bad about everything that has gone on. I know that us not showing up for the trip cost you money and put you in a position that wasn't right. I accept responsibility for that and i apologize to you. I should have come and met with you face to face to let you know if I had any problems, and I realize now that the decision I made was the wrong one...

I also know that I feel that all of us need to get together and come to an agreement on what we should do from here... We know that you have started the camp already and would like to sit to a (sic) least sit down with you and the team to talk all of this out.

Pellerud responded to Latham the following day by email as follows:

Christine,

Thank you for the letter.

I appreciate your apology, but I am not in position right now to say whether this will change anything. Before more comments to your email, please answer this: Is this email with apology and a request to see the team – on your behalf only, or is this on behalf of all three players?

Latham responded the same day, as follows:

I can only apologize for myself... I am not speaking on behalf of the others because I can't do that, I can only admit when I am wrong and say that I am sorry for myself ONLY.

Thanks for the quick reply.

Pellerud did not reply. On September 25, Latham again emailed Pellerud asking that he contact her. Pellerud responded the following day, September 26, as follows:

Christine,

Sorry it took me some time to respond to your email below. I have taken my time to discuss with and involve my staff and player reps in assessing your email.

The team's united response is this:

The team (staff, coaches and player group) is still upset and in disbelief following your decision not to attend camp in NF and France. Lack of communication on your part (until recently) has definitely worsened that situation. While the door to the team is not entirely closed, it is almost certain that nothing will change at this time.

Facts and Evidence particular to Hooper:

Hooper is and was at all material times, married to Chuck Codd. They have a child, Charlie. Until August 8, 2006, Chuck Codd was a coach with the Chicago Sockers Soccer Club.

Since birth, Charlie has apparently accompanied Hooper to each Team camp and match.

Hooper has been a vocal proponent for increased funding for the Team and had been highly supportive of the Residential Camp concept since the fall of 2005.

Hooper played for the New Jersey Wildcats in the W-League for the 2006 season. By May 31, 2006, she knew that Pellerud required her to play in a game against the U.S. team in Cary, North Carolina in late July, 2006 (the "Cary Game"). The Cary Game conflicted with a Wildcats playoff game against the Ottawa Fury also scheduled for the same weekend.

Four or five Team players also played for the Ottawa Fury. Pellerud did not require these players to participate in the Cary Game. In an exchange of emails on May 31, 2006, Hooper repeatedly asked Pellerud why the Ottawa players were to be recalled to

the Team for the Cary Game, while Hooper and another Team player also playing for the Wildcats were required for the Cary Game. Pellerud responded to each of Hooper's emails but did not give Hooper an explanation why the Ottawa players were not recalled for the Cary Game. She also asked to be allowed to remain with the Wildcats for the game against Ottawa.

In an interview with a Canadian Press reporter while she was in Cary, Hooper criticized the Ottawa players for not joining the Team for the Cary Game. Hooper's evidence was that the reporter had advised her that Pellerud had advised him that injury problems precluded the Ottawa players from participating in the Cary Game. Pellerud's evidence is that he did not speak with the CP reporter until after Hooper's interview when he was asked to respond to Hooper's comments.

At that time, Ottawa and New Jersey were both in the W-League playoffs. If both teams won their semi-final matches, the two teams would then play each other with the winner advancing to the W-League finals in Vancouver to be hosted by the Whitecaps. The Whitecaps, as the host organization, had a bye directly to the finals.

Hooper's evidence is that the Ottawa team was weaker than the New Jersey team. By not allowing Hooper and her Wildcat team mate, Karina LeBlanc, to play for the Wildcats, the Wildcats would be considerably weakened. In fact, the Fury defeated the Wildcats and advanced to the W-League final in Vancouver.

Hooper alleges that Pellerud deliberately manipulated the outcome of the game by recalling Hooper and LeBlanc from the Wildcats while not recalling the Fury players to the Team for the Cary Game. Ottawa, a weaker team in Hooper's view, won the game and advanced to the W-League final in Vancouver which was ultimately won by the Vancouver Whitecaps.

The Canadian Press article, published July 28, 2006, quotes Hooper as follows:

We (Hooper and LeBlanc) are not allowed to play in that game. The Ottawa players are allowed to play in that game. You explain that.

Although unstated, an inference of match-fixing is made.

Pellerud's evidence is that Team camps and matches have a profound effect on both Vancouver and Ottawa, the two Canadian W-League franchises. Generally, these two teams have the greatest number of Team players on their respective rosters. Recalling players from both teams for Team camps and games, significantly reduces the competitive strength of each team. In 2006, 12 - 14 Team members also played for the Whitecaps, and 4 or 5 players for the Fury.

In Pellerud's view, it is important that the Team maintain a good relationship with both the Vancouver and Ottawa W-League organizations. In the fall of 2005, he asked both how the Team could best work with them. Both advised that the greatest help would be to not recall players to the Team when W-League games were scheduled. Pellerud's evidence is that he committed to both organizations that he would not recall players from either W-League team to the Team when a conflicting W-League game was scheduled. After receiving the W-League game schedule in late 2005, Pellerud then

scheduled Team camps and friendly matches around the W-League schedule so that there would be no conflicts.

The Cary Game was arranged at a later date which did conflict with W-League playoff dates. However, at that time neither Ottawa nor New Jersey knew whether it would be involved in the W-League playoffs. By not recalling Ottawa players to the Cary Game, Pellerud's evidence is that he was honouring his commitment to the Ottawa organization. He had not made any such commitment to the New Jersey organization and had no obligation to allow Hooper and Karina LeBlanc to remain with the Wildcats for the W-League playoff game against Ottawa.

Recalling Whitecaps players to the Team for the Cary Game was inconsequential. The Whitecaps were hosting the W-League finals and had a bye to that tournament. Accordingly, the removal of Team players from the Whitecaps' roster for the Cary Game could not have any impact on the Whitecaps' participation in the W-League finals.

Pellerud absolutely denies any intent or attempt to manipulate the New Jersey – Ottawa game. His evidence is that he had no interest in doing so and would not derive any benefit in doing so.

Following the Cary Game, Hooper returned to her home in Chicago. On August 1, she received Meszaros' email of the same date regarding the Residential Camp. She acknowledges sending the email to the Team dated August 1, 2006 urging unity among the Team members. She acknowledges sending Meszaros the email dated August 5, 2006 and receiving his reply the same day.

Concurrently, Hooper, her husband and Charlie were scheduled to fly to Vancouver on August 9, 2006. The purpose of the trip was to allow her husband, Chuck Codd, to meet with the Vancouver Whitecaps. Hooper's evidence is that to facilitate and accommodate Hooper's relocation to Vancouver for Residential Camp, Pellerud had arranged a job for her husband with the Whitecaps organization.

Hooper's evidence is that on the morning of August 9, 2006, she received five cell phone calls from Meszaros. The initial call came while Hooper and her family were on their way to the Chicago airport to catch their flight to Vancouver. Her evidence is that Meszaros advised her that the Whitecaps organization was upset with her published comments to the Canadian Press reporter and the inference that the Whitecaps through Pellerud were engaged or complicit in manipulating W-League games to favour the Ottawa team and ultimately the Whitecaps. The Whitecaps organization wanted an apology from Hooper. Hooper refused to agree to make the apology and she advised Meszaros that the matter could be addressed when she arrived in Vancouver. She received four subsequent calls from Meszaros, each advising her that her apology was required. The fourth came immediately before Hooper and her husband boarded the plane. The fifth came when she and her family were seated on the plane, the doors sealed and the plane apparently pushing back from the gate. In the final call, Meszaros again advised her of the necessity for an apology. Hooper again declined at which point Meszaros advised her not to come to Vancouver. As a result, Hooper had the plane return to the gate and disembarked from the aircraft with her family. She and her family were detained by airport security officials for an hour or more while their luggage was removed from the aircraft. Hooper was upset and embarrassed by the situation.

Hooper believes Meszaros must have been communicating with the Whitecaps between his calls to her.

Meszaros' evidence is that he made four cell phone calls to Hooper that day. He believed the Whitecaps organization was upset by Hooper's statements to the Canadian Press reporter. The same Whitecaps organization had earlier agreed to consider her husband, Chuck Codd, for a coaching position. Hooper had created a difficult situation.

When Meszaros made the first call, he was surprised to learn that Hooper and her family were just leaving their Chicago home on their way to the airport to travel to Vancouver. He advised her that due to her media comments and the Whitecaps state of mind, she should not come to Vancouver but defer the trip until after she returned from the Newfoundland Camp and France tour. The call was short and ended with Hooper asking him to call her back shortly.

He did so and the second call was quite a bit longer, during which he tried to help Hooper understand that her media comments had created a difficult situation. Hooper told him that both her mother and husband had also told her that the trip to Vancouver was not a good idea at that time. Meszaros asked her whether she was coming to Vancouver to apologize. She advised that she was not and again ended the call asking Meszaros to call her back in a short while.

Meszaros called Hooper the third time and was surprised to learn that she and her family were still on their way to the airport. Hooper once again ended the call asking Meszaros to call back again.

When Meszaros called the fourth time he discovered that Hooper and her family were sitting on the plane. He said, "So that means you're going to apologize," or words to that effect. She replied "No". At that point, Meszaros said to her, "Charmaine, get off the plane." At this point, the final call terminated.

Meszaros' evidence is that he was not in contact with the Whitecaps before or during this series of calls.

Pellerud's evidence is that to facilitate Hooper's move to Vancouver for the Residential Camp, he had asked the Whitecaps organization about the possibility of a position for Chuck Codd with the Whitecaps. The Whitecaps were open to the idea but were not familiar with Mr. Codd, his experience or coaching abilities. Pellerud did not tell or promise Hooper that her husband was guaranteed a job with the Whitecaps organization if he came to Vancouver.

Pellerud arranged, at Team expense, for Codd, Hooper and Charlie to come to Vancouver. The purpose was to provide an opportunity for the Whitecaps to interview Codd and to observe his performance as coach during a number of Whitecaps practice sessions specifically arranged for Codd. This is corroborated by an email dated August 1, 2006 from Pellerud to Dan Lenarduzzi and by the evidence of Bob Lenarduzzi.

With respect to the Residential Camp and Hooper's commitment to attend, Hooper received the same email invitation dated August 1, 2006 from Meszaros as Latham received. She acknowledges sending the August 5 email.

In evidence are a series of emails sent August 7 and 8, 2006 between Meszaros and Hooper. Two of those emails have been set out earlier in these Reasons. Hooper received the same email dated August 7, 2006 from Meszaros as Latham received and which is noted previously.

Hooper responded on August 8, 2006, as follows:

Hi Les,

As I had emailed before, I am not committing to anything until Chuck and I have been to Vancouver. Until then, the answer is no. If not committing by Aug. 8 terminates my involvement in the program, then that is the way it will be.

charmaine

Meszaros responded later that day as follows:

Charmaine,

We have two distinct issues. One, will you commit to coming here for residency and train for the Gold Cup. The second is we are trying to see if we can get the whole family out here, to make it the most comfortable for you.

I understand not responding to the second one.

We are asking you to commit to the following timelines:

- Phase 1: September 11 through October 5, the weekend of September 23 and 24 is free
- October 6 through 15 are free days, with individual training programs
- Phase 2: Camp resumes October 16 and goes through November 5. The weekend of October 28 and 29 is free. November 4 through 12 are free days, with individual training programs
- Phase 3: Camp resumes November 13 through 16
- Phase 4: Team building activities November 16 through 19 (open for ideas)
- Phase 5: Gold Cup in California - 19 through 26

During this timeline we will look after your housing and ask that you contribute \$200.00/month towards this. You will look after your own meals and transportation.

You also have our commitment that if we can do more, we will.

Thanks, Les.

Hooper responded to Meszaros later that day as follows:

Should things work out I will move out to Vancouver to train for Gold Cup.
Thanks Les.
Charmaine.

The final email is from Meszaros to Hooper sent August 8, 2006 which states:

Charmaine,

Not sure what you mean by "should things work out". Can you please be clear in your response, I need your clear commitment. It's important for our planning and for the team to have you do that.

Thanks, Les.

To which Hooper replied:

Should the proposal be suitable, I will move to Vancouver.

Charmaine.

The following day, August 9, 2006, Hooper received the same email from Meszaros as Latham received, and which was copied to the Team players, coaching and support staff, and CSA personnel.

With respect to the Newfoundland Camp, Hooper received an email airline ticket for her airline transportation to Newfoundland, but did not attend the Newfoundland Camp. She received the same email dated August 16, 2006 from Meszaros as Latham received.

Diana Matheson, one of the Team player representatives, also played for the Ottawa Fury during the 2006 season. She was one of the Ottawa players not recalled by Pellerud to the Team for the Cary Game. Her evidence is that a day or two before Hooper's comments to the Canadian Press reporter, she had been told by her Ottawa coach that there was an agreement between Pellerud and the Fury owner, made many months before, not to recall Fury players to the Team from conflicting Fury games.

Andrea Neil in her evidence confirmed that the phrase "Relocation might be required.....", was in the draft Agreement when she reviewed it on the laptop computer. She also confirmed the meeting of the player representatives with Pellerud and Meszaros when the Claimants didn't attend the Newfoundland Camp, and the player meeting and the Team's decision to give the three a final chance to attend. Neil attempted to contact Hooper by telephone and left a message for her to call which Hooper did not return.

Hooper subsequently received an identical August 31 email from Meszaros as Latham received advising that she had been released from the active player roster and the reasons for that release.

By email dated September 5, 2006, Hooper confirmed to Pellerud that she had received the email from Meszaros of August 31. She asked where Pellerud, as coach, stood on the decision and requested his official response as to whether she was on the Team or released. Pellerud responded by email the following day as follows:

Charmaine,

This is the feedback from the player reps at this time:

No decision will be taken until the whole team comes together next week here in residency camp. We will let you know when a discussion has taken place and a team decision is called.

At some time subsequent to Pellerud's email of September 6, he and Hooper spoke by telephone. They discussed the events leading to the August 31, 2006 email advising of her release from the Team. Hooper wanted to know what she needed to do to be reinstated to the Team. Pellerud advised her that the process would start with her making an apology to the Team. She then composed and sent an email on September 26, 2006 to Pellerud and Andrea Neil, one of the player representatives. On September 28, Andrea Neil forwarded Hooper's email to the Team, as follows:

To The Team

You guys are probably wondering why I'm sending this email at this time. Well, from since back at the beginning of the month when Even returned from his trip, we had come to a decision that we would come to meet with the team and apologize. I assumed that was the plan but obviously that is not the way it seems to be going so I just wanted to send this message to try to touch base with the team.

All along, I have been in touch with Even, discussing the events and actions of the past. Events and actions that if could have been changed would have been changed. I am deeply sorry at my decision not to attend the last trips. At the time, I was very, very hurt and angry at the way me and my family were treated when told we would travel to Vancouver to look at the situation for Chuck. We were actually sitting on the plane to fly out to Vancouver when I got a call saying not to come at the time. We got off the plane only to be detained by security. What made the situation even worse was the receiving an email saying that I was off the full time player program because of not committing. I think that the timing all around was not the best and unfortunately the trip was a few days later and I was still very upset about the way the situation was handled. Unfortunately, for every action there is a reaction and my reaction was not to attend.

I feel very badly for Christine and Sharolta who actually felt badly for me and the situation with me and my family and also the situation whereby I had sent the email to Les on behalf of the team but got no response from anyone. Because Christine and Sharolta were upset for me and my scenario, they reacted the way they did. Again, that obviously was not the best decision for them, not to attend, in the end.

Since the smoke has cleared, I have realized that obviously not attending the trip was not the correct decision and if I could have gone back to do it again, I most definitely would have listened to my husband and attended the bloody trip. At this time, what's done is done and again, I understand I let you guys down and I would like to make the biggest effort to regain the team's trust.

At the same time, please realize that there is so much more to life than this event that has soured the team. Everyone of us is very privileged to have their health (for the most part at least), we are able to wake up everyday and enjoy what life has to offer, we are able to enjoy the sport we love and enjoy the camaraderie we develop along the way. I know over the years we all have developed relationships as team mates. For myself it has been very good relationships for the most part. I would hate for an incident or reaction, which turned out to be wrong, to squash what we as comrades and team mates have fought and sweated for over the years.

I'm sure we have all made mistakes at some point in our lives, as we are all human. I feel badly that the team feels the way they do but we all have to find some way to feel better about the situation. I fully understand that everyone is upset about what has gone on but I feel there has to be a healing point so if it is going to take everyone venting their anger and frustrations at us, then so be it. Maybe we would have to go butts up in the goal and carry the equipment everyday for two months. I am definitely open to whatever it is going to take for the team to feel better about the events of the past.

Sorry that this has been a little long winded. I would appreciate it if you could just relay this message to the team.

Charmaine

On October 1, 2006, Pellerud sent the following email to Hooper:

Dear Charmaine,

Your letter of apology has been read and discussed here in camp – players as well as staff has been made aware of this process. Nothing is hidden, and all questions linked to your email are answered within the team environment here in camp. The team appreciates your apology.

Although emotions and feelings of bitterness is scaling down among team members, the team here in Residency camp has created a team environment and team chemistry which to some extent has been reinforced by the events that took place in August and also earlier this year.

The team has taken the decision that the current group of athletes will stay together and maintain its focus on the daily training sessions and the upcoming events leading up to Gold cup, rather than restart an energy tapping process which could be the case if your proposal came through.

Thus, the decision I sent on behalf of the team earlier, remains in effect. For now, the team will focus on its performance in camp and Gold cup only.

As always, I am always ready to answer your questions and your concerns (sic).

On October 2, 2006, Hooper responded to Pellerud by email as follows:

Even, well, at this time, I am a little surprised at the reactions and find it hard to believe the team is willing to go on like this from here. Anyway, let me know if anything changes from here.

Charmaine.

Facts and Evidence particular to Nonen:

Nonen did not give evidence and was not called upon to do so.

In addition to the general facts previously stated relating to her, Nonen did not attend the Newfoundland Camp, although invited.

Amy Walsh attempted to contact Nonen by telephone from the Newfoundland Camp. She left a message for Nonen to call. Nonen did not. Nonen was sent the same emails from Meszaros as Latham and Hooper received, advising her that she had been terminated from the full-time player funding (Kerfoot Funding) and later released from the Team for failure to commit to the Residential Camp and failure to attend the Newfoundland Camp.

Pellerud's evidence, in addition to that previously noted, dealt with his relationship with Kerfoot and the Whitecaps organization. He states that he does not have a close relationship with Kerfoot. He pays monthly rent to Kerfoot of \$1,500.00. The home is substantial and located in West Vancouver. When Pellerud and his wife originally moved to Vancouver, Kerfoot offered to rent them the home for one year. The understanding was that Kerfoot intended to build a new home on that property thereafter. Subsequently, Kerfoot changed his mind about building a new home. As a result, Pellerud and his wife continued to reside there.

Pellerud does not consider Kerfoot a friend, rather a business acquaintance, someone he sees infrequently. He knows Kerfoot to be a generous man, passionate about soccer. Although Kerfoot's current residence is only a few doors down from Pellerud's, he cannot recall any instance when Kerfoot has come into his home.

With respect to the Vancouver Whitecaps organization, Pellerud's evidence is that the close relationship he has with the Whitecaps and staff is entirely natural. Many of the Team players also play for the Whitecaps, specific Whitecaps coaches are assistant Team coaches and the team office is located on the same floor in the same building in Vancouver at the Whitecaps' office. Further, he and the Whitecaps share a common goal to promote and develop soccer not only in Vancouver but throughout Canada.

In cross-examination, Pellerud acknowledged that he has publicly promoted and supported the Whitecaps' proposal of the development of a championship soccer facility on land controlled by Kerfoot on or close to the Vancouver waterfront. He added that he has and will always promote and support the development of elite soccer venues in Canada. Pellerud was not aware of a condominium complex to be developed adjacent to the proposed new soccer facility, also proposed for development by Kerfoot or through a Kerfoot-related venture.

Pellerud's evidence is that he is not affiliated with the Whitecaps organization formally or informally and does not receive any remuneration, compensation or benefit of any type or description from the Vancouver Whitecaps.

When shown a photograph of himself with a medal around his neck with the Whitecaps team, apparently taken immediately following the Whitecaps' win in the 2006 W-League finals, his evidence was that he does not recall the photograph having been taken. He further stated that he does not believe that he has ever refused when asked to have a photograph taken.

Pellerud categorically denies any pressure or contact from any person in the Whitecaps to take action against Hooper for her comments.

Bob Lenarduzzi confirmed that Pellerud does not have any official or unofficial position with, or duties to the Whitecaps organization, nor does Pellerud receive any compensation, remuneration or benefit of any description from the Vancouver Whitecaps. He also categorically denies that the Whitecaps in any fashion encouraged Pellerud to deal with Hooper in any way. He acknowledged that the Whitecaps were "not happy" with Hooper's media comments.

Mr. Lenarduzzi confirmed that the number of Team players also playing for the Whitecaps has been a considerable problem for the Whitecaps. When players are fulfilling their Team play and travel commitments, those players are not available to the Whitecaps. This substantially reduces the Whitecaps strength and competitiveness. As a result, the Whitecaps are required to carry significantly more players on their roster than other teams. Further, these facts are equally applicable to the Ottawa Fury organization, although to a lesser degree because the Fury has fewer Team players on its roster.

Finally, Mr. Lenarduzzi confirmed that Pellerud is as fully supportive of the Whitecaps' proposed new soccer venue in Vancouver as he is of any championship soccer venue in Canada, including the new facility in Toronto.

In a passing comment in cross-examination, Mr. Lenarduzzi was not certain that he had seen the photograph of Pellerud wearing a medal with the Whitecaps W-League championship team. His comment was that had the Ottawa Fury won the championship, he would not have been surprised to see Pellerud wearing a medal in a photograph with the Ottawa team.

Argument:

The Claimants submit that Pellerud's decisions that affected them were not fair. Those decisions were prompted by Pellerud's bias, conflict of interest, apparent conflict of interest or improper motive.

With respect to bias, Counsel made reference to Administrative Law, Jones & de Villars, 2004, at page 366 where it is stated:

The second principle of natural justice is sometimes referred to as the rule against bias. The rule, in its simplest form, is that decision-makers must base

their decisions and must be seen to be basing their decisions, on nothing but the relevant law and the evidence that is properly before them. The integrity of our system of administrative adjudication depends on the exclusion of extraneous factors such as the self-interest or the prejudices of decision-makers from the considerations that are brought to bear on decisions and the rule is designed to preserve public confidence in the system's impartiality.

From page 371 of the same text, the following words of Justice de Grandpré are noted:

The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would a (sic) informed person, viewing the matter realistically and practically – in having thought the matter through – conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

That is to say, the question of whether Pellerud was biased in his decisions must be viewed and determined objectively based upon the proper evidence available. Those decisions viewed subjectively from each Claimant's individual perspective, are not relevant.

Further, at page 381 of the text, the authors state that:

Comments or other behaviour on the part of the decision-maker that are inconsistent with that individual as being perceived by reasonable people as impartial will result in the disqualification of the decision-maker.

Finally, the Claimants submit a unnamed dictionary definition of "bias" which apparently states that, "bias is a partiality that prevents objective consideration of an issue or situation and is dealt with in an unfair way."

Counsel for the Claimants submits that Pellerud was a decision-maker. He drafted the Agreement between himself and the players. In so doing he assumed a new role, that of administrator. Four months later he became the adjudicator of the Agreement when he terminated each of the Claimants from the Kerfoot Funding program. In doing so, he was automatically biased and therefore should have deferred to an outside party, the decision on each of the Claimant's continuing to receive Kerfoot Funding.

With respect to the submission of conflict of interest or apparent conflict of interest, the Claimants refer to section 6(3) of the CSA Constitution which states:

Private interests shall not provide the potential for or the appearance of an opportunity to benefit, wrongdoing or unethical conduct. It is important to emphasis (sic) that conflict of interest relates to the potential of wrongdoing as well as to actual or intended wrongdoing.

Reference is also made to an article entitled "Ethics and Conflict of Interest" by Michael MacDonald in a publication of the W. Maurice Young Centre for Applied Ethics of the

University of British Columbia. The author defines a conflict of interest as “a situation in which a person, such as a public official, employee, or professional has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.”

The Claimants point to the following facts as indicia of Pellerud’s conflict, actual or apparent, of interest, namely:

1. The monthly rent of \$1,500.00 Pellerud pays Kerfoot for the West Vancouver home;
2. Pellerud’s support for the championship soccer facility proposed to be built by Kerfoot in Vancouver;
3. The close proximity of the CSA and Whitecaps’ offices on the same floor, in the same building, in Vancouver;
4. Kerfoot’s ownership of the Vancouver Whitecaps organization.

The Claimants believe that Pellerud is morally or otherwise indebted or obligated to Kerfoot and/or the Vancouver Whitecaps. They believe Pellerud, notwithstanding his position as Team head coach, has at least an unofficial relationship with Kerfoot and/or the Vancouver Whitecaps from which he derives some form of personal benefit. Such benefit puts Pellerud’s private or personal interest in conflict, apparent or real, with his official duties and responsibilities to the Team and the CSA, his employer.

Further, Pellerud also has a duty to the Team players. Pellerud’s interest, real or apparent, in the Vancouver Whitecaps is in conflict with his duties and obligations to the Team players.

With respect to improper motive, the Claimants submit there is no significant evidence that the players were released from the Team or lost their Kerfoot Funding as a result of poor play. The Claimants submit that there must have been pressure from the Vancouver Whitecaps applied to Pellerud that he make the decisions he took affecting the three Claimants.

With respect to Latham, Counsel submits her decision to play for the Silverbacks, notwithstanding Pellerud’s express disagreement, must have angered him. His email that her selection for Kerfoot Funding may be in jeopardy as a result, was inappropriate and evidence of his strong feelings against her.

With respect to Hooper, the Claimants submit Meszaros’ email of August 1, 2006 providing the Residential Camp training schedule and briefly outlining accommodation, transportation and training facilities plans as further evidence of Pellerud’s improper motive. Andrea Neil gave evidence that she did not receive that email. The email, sent two days after the Cary Game and three or four days after Hooper’s media comments, was sent at a time when Pellerud, the Whitecaps and by analogy, Kerfoot, must have been angry at Hooper.

Further, the email’s requirement that the players commit to the Residential Camp within six days was unreasonable. The notice was short and contained no details of housing,

transportation or training facilities plans. Pellerud knew Hooper and her family were coming to Vancouver on August 9. It therefore made no sense that Hooper be required to commit to the Residential Camp the day before she was to arrive in Vancouver. The Claimants submit Pellerud's decision to terminate Hooper's Kerfoot Funding resulted from her media comments and his intention to punish her for embarrassing him and the Whitecaps organization.

Further, the Claimants submit that Pellerud must have been extremely concerned about the ability of the Whitecaps to interrupt or affect the Kerfoot Funding to the CSA.

Meszaros gave evidence that an apology from Hooper may have reinstated her Kerfoot Funding. The Claimants reason that Meszaros must have received instructions from the Whitecaps to require an apology from Hooper. Meszaros' evidence was that he had not had any contact with the Whitecaps regarding the requirement for Hooper's apology.

In summary, it is argued that Pellerud terminated Hooper's Kerfoot Funding improperly. This was due to the demands of the Whitecaps and the interest of Kerfoot. The termination of Latham's Kerfoot Funding resulted from Pellerud's anger and embarrassment arising from Latham's decision to play the 2006 W-League season with the Atlanta Silverbacks and her refusal to play with the Vancouver Whitecaps.

No submissions were made with respect to any bias, conflict of interest, or improper motive related to Nonen.

Pellerud submits that the Claimants' allegations and arguments on all points are based upon speculation and completely unsupported by any evidence. Pellerud's decisions to be reviewed are:

1. The 2005 decision to remove Nonen's carding;
2. The decisions to terminate the Kerfoot Funding for the Claimants;
3. The decision to suspend the Claimants from the Team.

With respect to the allegations of Pellerud's conflict of interest, Pellerud submits that the Claimants rely upon three points:

1. Pellerud holds a position with the Vancouver Whitecaps;
2. Pellerud accepted and controls Kerfoot Funding;
3. Pellerud rents his residence from Kerfoot.

These three factors induced Pellerud to recruit players to play for the Whitecaps and further induced Pellerud to attempt to manipulate the game between New Jersey and Ottawa which conflicted with the Cary Game.

Pellerud answers that he does not hold any position, formal or informal, with the Whitecaps and there is no evidence to support the allegation. The CSA, not Pellerud, accepted and administers the Kerfoot Funding. He does rent from Kerfoot.

Pellerud submits that the sole reason for terminating the Claimants' Kerfoot Funding was due their individual failures to unconditionally commit to the Residential Camp. The reason for suspending the players from the Team was their failure to report initially to the Newfoundland Camp, and then failing to do so after being given a further 24 hours'

notice to attend. The Claimants' suspension from the Team is analogous to an employer's termination or suspension of an employee for deliberate refusal to carry out a proper direction or command.

With reference to Latham specifically, Counsel points out that if Pellerud was upset with her for playing for the Silverbacks and not moving to Vancouver to train under his guidance and that of his coaching staff, he had ample opportunity to display his displeasure but did not. The events regarding Latham playing for the Silverbacks took place in late January and early February, 2006. Notwithstanding, Latham was invited in January, 2006 to the Team camps and friendly matches with Mexico and Holland. She was part of the NCAA tour in the Spring and played in the Cary Game in July. In addition, and more importantly, he selected Latham in April, 2006 to receive Kerfoot Funding.

In Pellerud's submission, the Claimants were terminated from the Kerfoot Funding because they failed to unconditionally commit to the Residential Camp within the time required.

The suggestion that Pellerud failed in his promise to Hooper to ensure her husband would have a job with the Whitecaps is unfounded. There was no such promise made. Further, following Hooper's suggestion of Pellerud's attempt at match manipulation and the Whitecaps' role or complicity in such, it strains reasonable imagination that the Whitecaps would continue to consider Chuck Codd as a prospective candidate for employment when his spouse, Hooper, had very recently made negative remarks in the press involving the same organization.

The Claimants were suspended from the national Team solely as a result of their refusal to attend the Newfoundland Camp without notice. This after each had confirmed attendance at the Camp and airline transportation had been arranged for each and paid for by the Team.

Counsel points out inconsistencies in Hooper's evidence why she did not attend the Newfoundland Camp. In direct examination, Hooper's evidence was that she did not attend because she could not bring Charlie as there was no child care arranged. To the contrary, Meszaros' email of August 15, 2006 states that child care had been arranged.

In her September 26 email apology to the Team, Hooper stated that she did not attend because of the events of August 9, 2006 regarding her failed flight to Vancouver with her husband and Charlie. Hooper on cross-examination admitted that much of the substance of her apology email to the Team was not true and that she wrote the email only to regain her position on the Team.

Finally, an email from Shane Henry, a University of Western Ontario law student that Hooper consulted, stated on August 7, 2006 that the three Claimants had already decided not to attend the Newfoundland Camp.

With respect to Nonen, Counsel for Pellerud points out that there is no evidence to contrary to that advanced on behalf of Pellerud.

Counsel for the CSA asserts that it is neutral in the dispute. He points out that neither the CSA nor Pellerud has objective criteria for the selection of Team players. The

selection of players to the Team was and has always been the decision of the Team coaching staff. The Athlete Agreement developed by the CSA requires the Athlete to:

1. participate at all mandatory training camps and competitions;
2. notify the CSA immediately in writing of any injury or other reason that will prevent them from participating in any event.

Each athlete receives consideration for fulfilling their duties and obligations under the Agreement in the form of the financial assistance provided by the Athlete Assistance Program funded by Sport Canada (carding money). The coaching staff nominates players for the Athlete Assistance Program. The approval of such nominations is the responsibility of Sport Canada.

The Agreement for the Kerfoot Funding provided that a player signing the Agreement was free to withdraw from the program “at any time”. In turn, the player agreed to “report to any invitation to attend national team events” including camps. The Agreement also provided that the player might be required to relocate. Any suggestion by the Claimants that the Agreement is void because they were not afforded an opportunity to obtain independent legal advice is incredulous. The document was drafted by a layman, Pellerud, in layman’s terms and sets out the expectations the players were to fulfill in consideration of receiving the Kerfoot Funding.

Each Claimant lost her Kerfoot Funding solely as a result of her failure to unconditionally commit to the Residential Camp, a consequence that was known or ought to have been known to each player.

Each player was suspended from the Team for her failure to attend the Newfoundland Camp despite earlier confirmation given by each that she would attend. None provided an excuse, legitimate or otherwise, for her failure to attend, or provided any advance notice that she would not be attending.

The CSA has not played any role in the decisions taken by Pellerud. Notwithstanding, the CSA submits that it is a coach’s discretion to determine Team membership, a decision that will not be interfered with by the CSA.

Findings:

The evidence of Pellerud and Meszaros is preferred to that of Hooper and Latham. Both Pellerud and Meszaros were prompt, direct and forthcoming in their responses. Their individual recollection of events was good and detailed. Each appeared to be stating the facts as recalled, without adding any particular emphasis.

Hooper’s answers were frequently not responsive to the questions put to her. Inconsistencies were apparent in her evidence when compared to her emails. Further, her acknowledgement that much of the substance of her email apology of September 26, 2006 was not true, adversely impacts her credibility.

Much of Latham’s evidence seemed to be somewhat embellished.

Nonen did not testify.

The Claimants must prove their allegations against Pellerud and the CSA on the balance of probabilities. To that standard, the Claimants must establish that when considered objectively, Pellerud's decisions were affected by bias, conflict of interest, apparent conflict of interest or improper motive. The Claimants have not done so.

The Claimants argue that Pellerud's interests as Team coach conflict with those interests he has or must have with Kerfoot and the Whitecaps, which are demonstrated by:

1. He lives in a home owned by Kerfoot;
2. Kerfoot owns the Whitecaps;
3. His office is on the same floor as the Whitecaps' office;
4. The championship photograph of him with the Whitecaps;
5. He has promoted a new soccer venue proposed to be built by the Whitecaps.

Pellerud acknowledges each point.

He pays \$1,500.00 per month rent to Kerfoot to live in the home. The Claimants initially suggested that Pellerud and his wife lived in the home rent-free. There is no evidence before this Panel of the fair market rent for the home. There is no evidence to suggest that the rent paid is not reasonable and entirely satisfactory to Kerfoot.

Pellerud's promotion of a new championship soccer venue in Vancouver cannot be surprising to any person. One would expect, perhaps demand, that the head coach of a national soccer team would promote the sport and development of high-level facilities anywhere in the nation, particularly in the city where the Team is based. Failure to do so could be viewed unsympathetically by some.

The proximity of the CSA and Whitecaps offices is not an indicator of a conflict or apparent conflict.

The photograph cannot be considered as strong evidence of any conflict, real or perceived, without more.

Finally, the Claimants submit that Pellerud's acceptance and control of the Kerfoot Funding is evidence of his conflicting interest. The evidence is certain that the Kerfoot Funding arrangement is between the Kerfoot Foundation and the CSA. The Foundation provides the money, the CSA receives the funds and pays the selected players a monthly stipend. Pellerud does not receive or administer the funds. There is no evidence that he receives any portion of the funds. He, as head coach, determines which players receive funding. Such is not a conflict.

The following submissions made by the Claimants are pure speculation and unsupported by any evidence. Each is denied by Pellerud as corroborated by Bob Lenarduzzi:

1. Pellerud has a formal or informal relationship or role with the Whitecaps;
2. Pellerud receives some manner of remuneration, compensation or other personal benefit from the Whitecaps;

3. Pellerud recruits players for the Whitecaps;
4. Pellerud is in some undefined manner indebted or obligated to the Whitecaps.

I accept Pellerud's evidence that none of these four submissions has any truth.

With reference to the recruiting of players for the Whitecaps, the only evidence is that of Latham. She felt Pellerud was trying to recruit her to the Whitecaps. Pellerud's explanation, which is accepted, is that he wanted Latham to succeed in her transition to defender. To do so, he believed her best move would be for her to move to Vancouver and train full-time with him and the team coaches. Playing for the Whitecaps was not a consideration, but could be a natural result because there would have been no other high level of competition available for Latham otherwise.

There isn't any evidence of any conflict of interest. There is insufficient objective evidence of any appearance of any conflict of interest.

With respect to bias, the authorities noted by Counsel for the Claimants pertain to administrative tribunals, and so are not relevant to this matter. Notwithstanding, there is no evidence of bias in Pellerud's decisions. The above findings regarding conflict of interest are equally applicable to bias and need not be repeated.

Finally, the Claimants submit that Pellerud's decisions were based on improper motive(s).

Pellerud's sole reason for terminating the Claimants' Kerfoot Funding was that each did not unconditionally commit to the Residential Camp within the time required. This is not an improper motive.

The Kerfoot Funding was not something to which any Claimant was entitled. It was a stipend each Claimant could receive on specific terms. Each Claimant was free to withdraw from the Kerfoot Funding program at any time. The Kerfoot Funding could be withdrawn from each Claimant on thirty days' notice. The Claimants knew and understood what was expected of them in consideration of receiving the Kerfoot Funding. Any suggestion to the contrary is incredulous.

The suggestion that each player's Agreement is void for lack of independent legal advice is devoid of merit.

The length of notice given to commit to the Residential Camp was short but not immediate. I do not accept Latham's evidence that she was deeply concerned by the lack of Residential Camp details and therefore did not fully commit. Her primary aim was probably to support Hooper, her team captain, in the latter's effort to have the Team boycott the Residential Camp until unstated demands were met.

Hooper had a husband and child to consider. But her husband, Chuck Codd, had already resigned his position with the Chicago Sockers and had the prospect of a job with the Whitecaps. The family was scheduled to travel to Vancouver.

Hooper didn't fully commit to the Residential Camp because:

1. She believed she had the agreement of the Team to delay committing until certain unspecified terms were satisfied;
2. She likely realized the impact of her media comments might adversely affect Chuck Codd's job possibility with the Whitecaps. Therefore, she did not know if her family would be able to join her for the duration of the Residential Camp.

Latham suggests Pellerud bore her ill-will with respect to her decision to play for the Atlanta Silverbacks and not move to Vancouver to train with him. The facts establish otherwise. If Pellerud harboured any ill-will, he likely would have revoked her invitation to the Mexico and Holland friendlies, and not invited her to the NCAA tour and the Cary Game. He would not have selected her to receive Kerfoot Funding. Finally, he would not have continued to encourage and support her transition to defender.

Hooper suggests that her media comments before the Cary Game caused Pellerud to bear her ill-will. The evidence is clear that Pellerud was always a Hooper supporter, contrary to advice given him by others. His support continued after Charlie's birth. There is nothing in evidence of any incident or series of events that would diminish that support prior to Hooper's comments. Although the media comments likely rankled Pellerud, his professionalism prevailed.

Hooper was invited to Residential Camp. She received the same invitation as Latham. She did not commit fully to attend and therefore lost her Kerfoot Funding.

Latham, Hooper and Nonen were suspended from the Team because they didn't attend the Newfoundland Camp contrary to their prior commitment to attend. Immediately following their "no show", they were each asked to attend late, but did not. Hooper and Nonen did not respond to the last request. Latham responded negatively.

There is no evidence that Pellerud's decision to suspend each was affected by any improper motive. Notably his decision appears to have been taken only after receiving the input of the Claimants' Team mates and the Team coaching staff.

Decision:

The decisions made by Pellerud relating to membership, carding and funding of the Claimants were not affected by any bias, conflict of interest, apparent conflict of interest or improper motive.

Costs:

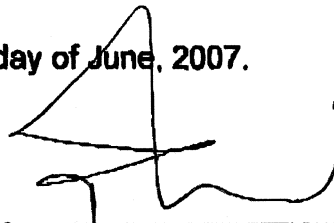
No party made any submission for costs. Accordingly, each party will bear their own costs.

Conclusion:

1. This Award is final and binding upon the Parties;

2. I do not have any conflict of interest with any of the Parties, Counsel, or witnesses in this proceeding.

DATED at Toronto, Ontario, Alberta, this 15 day of June, 2007.



JOHN WELBOURN, Arbitrator