

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

No.: SDRCC 17-0318

IN THE MATTER OF AN ARBITRATION

BETWEEN: Saskatchewan Cricket Association (Claimant)

AND

Cricket Canada (Respondent)

ARBITRATOR: Professor Richard H. McLaren, O.C.

APPEARANCES:

For the Claimant: Azhar (Sam) Khan, Saskatchewan Cricket Association President
Manjeet Singh, Saskatchewan Cricket Association Secretary

For the Respondent: Sharan Sodhi, Counsel
Ranjit Saini, Cricket Canada President
Ingleton Liburd, Cricket Canada General Manager

ARBITRATION AWARD

08 AUGUST 2017

1. The Claimant, the Saskatchewan Cricket Association (“SCA”), is a Provincial Sport Organisation (“PSO”) and, as such, is a not-for-profit corporation. It is incorporated under the *Non-profit Corporations Act*, R.S.S. 1995, c. N-4.2 without share capital and is responsible for organising the sport of cricket within the Province of Saskatchewan. As a PSO, the SCA is currently a “Provincial Member” of the Respondent Cricket Canada (“CC”) under CC’s by-laws of organisation, and had been a “General Member” under the prior set of by-laws. As such, the SCA has voting privileges as set out in CC’s by-laws.
2. The Respondent, CC, is a not-for-profit corporation without share capital incorporated under the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23 (the “NFP Act”). The Respondent is the National Sport Organisation (“NSO”) recognised by the Government of Canada for the sport of cricket within Canada.
3. The federal government of Canada, through Sport Canada as a condition to its recognition and funding of CC, requires that CC submit its “sports related disputes” to arbitration under the auspices of the Sport Dispute Resolution Centre of Canada (“SDRCC”) established under the *Physical Activity and Sport Act*, S.C. 2003, c. 2.
4. The SDRCC rules of procedure are set out in the Canadian Sport Dispute Resolution Code (“the Code”). Section 2.1 of the Code stipulates that the SDRCC will administer the Code to resolve “Sports-Related Disputes.”
5. The Claimant filed a Request under Section 3.4 of the Code for arbitration of a sports related dispute. In that Request, the Claimant provided a description of its dispute with CC, which amounts to:
 - (i) CC 2015 Board of Directors misused their authority;
 - (ii) Financial irregularities of tax payer money for personal gain;
 - (iii) Constitutional violation and exercising its discretion for an improper purpose;
 - (iv) Making a decision which was grossly unreasonable; and,
 - (v) Interferes with other provincial matters.
6. The SCA was represented by its President Mr. Azhar (Sam) Khan along with its Secretary, Mr. Manjeet Singh.
7. The Arbitrator, with the parties, established an order of procedure leading to the arbitration hearing herein.
8. Despite the extreme difficulties of getting the parties to the hearing room, the arbitration finally proceeded on 13 and 14 June 2017 in Toronto, Ontario.

9. The Claimant, as a member of CC, has lodged a complaint against its parent member organisation. However, the President of the SCA seems to have proceeded as if this was his personal complaint against CC.

BACKGROUND

10. Mr. Khan stated that he is launching this claim against CC on behalf of the SCA, and against the following individuals who are associated with CC: Ranjit Saini, Hargulshan Sharma, Mohammed Shaikh, Amit Joshi, Zafar Khan, Ingleton Liburd, Sharan Sodhi (CC's legal counsel), Charles Pais, Vimal Hardat, and Senthil Selvamani.
11. The Request to arbitrate was filed on 31 December 2016 pursuant to Section 3.4 of the Code.
12. Professor Richard H. McLaren, O.C. was appointed by the SDRCC to be the arbitrator of the Claimant's dispute on 13 January 2017.
13. Following various conference calls and directions hearings, the Arbitrator requested that Mr. Khan file a list of issues in dispute in this claim. That filing was made on 2 March 2017. The "Issues List" raised the following:
 1. The CC by-laws were intentionally forged and changed without proper authorization in 2014, 2015 and 2016;
 2. The 2015 CC Board of Directors misused their authorities for personal gains;
 3. The CC Board of Directors engaged in financial frauds and irregularities of tax payer money for personal gain;
 4. The CC Board of Directors are involved in a conspiracy and fraudulent activities by creating fake by-laws and concealment of information to deceive the members on election and financial matters;
 5. CC committed a constitutional violation and exercised its discretion for wrong purposes;
 6. The CC Board of Directors made decisions for mala fide reasons and were grossly unreasonable;
 7. The CC Board of Directors interfered in provincial matters by spending money and lobbying for provincial candidates, and also conspired by fetching bogus legal opinions to support their friends in provincial board;
 8. The CC Board of Directors intentionally prevented Mr. Khan from participating in CC elections knowing that he had an ongoing case against Mr. Prakhar Shrivastava and that Mr. Khan had been elected SCA President in February 2016. Mr. Khan further claims that the CC Board of Directors contacted Mr. Shrivastava personally in March for CC elections to encourage him to cast his vote in their favour;

9. CC used legal opinions to threaten and harass Mr. Khan to prevent him from fulfilling his duties as a member of CC;
 10. CC discriminated against players based on their ethnicity. CC selected venues where some players were not allowed to travel to and then chose players according to the venue so that they could make a free trip back home;
 11. CC “bought cheap and bogus” legal opinions from Ms. Sharan Sodhi, Mr. Christopher Van Twest and Mr. Steven Indig to justify their ends. Mr. Khan produced counter legal opinions to prove them wrong but CC chose to ignore all other opinions. CC used legal opinions to harass and scare the membership so that no one could offer any objection to their wrong doings. CC also does not have the authority to replace members’ opinions and genuine by-laws with these legal opinions.
14. Some of these allegations are very serious in nature. They allege fraud and serious personal misconduct amounting to fraudulent and possibly criminal behaviour. Such claims are not to be taken lightly. They caused the arbitration procedure to be very complex, and the Arbitrator to be very cautious in many ways. That caution included requiring transcripts at the hearing because of the serious allegations in the pleadings.
15. In an effort to better focus the case in preparation for the arbitration hearings the Arbitrator requested that Mr. Khan file a list of the remedies sought through this arbitration process. That filing was made on 2 March 2017. The “Remedy List” referred to the following:
1. CC must cover the legal and other administrative expenses that the SCA made or that Mr. Khan personally made to resolve this matter. Mr. Khan submitted that the SCA has spent \$8,000.00 on this dispute, and that his personal costs have amounted to \$35,000.00;
 2. CC must submit to a forensic audit covering the last ten years. Mr. Khan alleged that this is the only way to gauge financial irregularities of the organisation and to satisfy members and the public about the fair use of their tax money;
 3. The existing CC Board of Directors must be dissolved with immediate effect;
 4. By-laws implemented since 24 June 2013 should be declared null and void with immediate effect and the 24 June 2013 by-laws should be restored;
 5. New CC Board of Directors elections must be conducted under the supervision of the SDRCC. Further, a new nomination committee and interim Board of Directors made up of provincial directors should be constituted under SDRCC oversight.
16. The Claimant requested several new remedies in its closing submissions. These new remedies were requested too late, contrary to procedural requirements, and as such were not considered by the Arbitrator.

17. The Respondent requested that the Claimant's claims be dismissed with costs payable to CC.
18. In their written closing submissions, the Respondent submitted that the Claimant had contravened the limitation period in Section 3.5 of the Code. Section 3.5 applies a 30-day time limit to file a request. The Respondent argued that the Claimant had become aware of the existence of the by-law issue in 2014 or, at the latest, in 2015 and so the request made on 31 December 2016 was outside the limitation period. Thus, the Claimant should have been barred from making the claim.
19. The foregoing submission on the limitation period is rejected because it ought to have been made at the outset of the procedure as a preliminary issue affecting the jurisdiction to arbitrate the matter. It is too late to raise the limitation period as a bar to the proceedings when the case is complete and the arguments have already been filed.
20. The Respondent further submitted that the Claimant had presented confidential documents as evidence in this proceeding that Mr. Khan had obtained through illegal means. The Respondent argues that Mr. Khan is not credible and that the many false and frivolous accusations he made against CC amount to an abuse of process.
21. The submission on procuring evidence by illegal means is rejected as it ought to have been raised at the time the evidence was brought forward during the presentation of evidence in the arbitration proceeding. The submission amounts to requiring the evidence to be excluded but, in the format presented, it does not indicate what evidence is so tainted that it ought to be excluded. To the extent there could be any ruling on illegal conduct in obtaining the evidence, it would have to have been cross-claimed in the pleadings and this was not done. Therefore, this submission is rejected.
22. The submission on credibility and abuse of process is taken into account by the Arbitrator in determining what evidence is accepted and how it should be weighed.
23. A two-day in-person hearing was held at Network Reporting and Mediation Centre at 100 King Street West in Toronto. Witnesses participated by video-conference and in-person.

PRELIMINARY ISSUES AT HEARING

24. At the outset of the hearing counsel were asked if they had any preliminary issues to be resolved. Five preliminary issues were set out by counsel for CC. The issues, and the ruling on each issue, are as follows:

1. The SCA had called Mr. Steven Indig as a witness in this proceeding. Mr. Indig provided legal advice to CC from 2013 to 2014 with respect to updating its by-laws in compliance with the requirements of the NFP Act. Counsel for CC asserted that any communications between Mr. Indig and the CC Board of Directors regarding the by-laws was subject to solicitor-client privilege and that CC was not prepared to waive privilege. Counsel for CC submitted that Mr. Indig should not be called as a witness in this proceeding. The Arbitrator ruled at the hearing that Mr. Indig was exempt from being a witness as he was the solicitor with respect to the subject matter of this arbitration proceeding regarding CC from 2013-2014. Mr. Indig was, as a consequence, subject to solicitor-client privilege.
 2. Counsel for CC requested that a recording of the 4 and 5 March 2017 Special General Meeting be submitted as evidence as it was relevant to this proceeding. The Arbitrator ruled that the recording of the 4 and 5 March 2017 Special General Meeting was permitted to be filed late as there was no objection about this from the SCA.
 3. Counsel for CC requested that *Cricket Canada v Bilal Syed*, 2017 ONSC 3301 be submitted as evidence in this proceeding. This judicial review set aside several parts of a SDRCC arbitration award ordered by Arbitrator Ross Dumoulin. The arbitration award dealt with a dispute between Bilal Syed and Cricket Canada. Counsel for CC submitted that the judicial review of this award was relevant to these proceedings as it had an impact on the CC by-laws. The Arbitrator had asked the parties to re-read the decision and make submissions on closing arguments. After further consideration, it was generally agreed by both parties that this judicial review decision was irrelevant to the outcome of this proceeding. No order was made by the Arbitrator.
 4. Counsel for CC asserted that the Claimant had not exhausted CC's internal dispute resolution process and, as such, the Claimant should be ordered to seek and use the required process. The Arbitrator ruled that the Claimant had adequately brought notice to the CC Board of Directors, as was required by their internal dispute resolution policy, of issues 1 and 8 in the Issues List set out at paragraph 13. As such, these issues were properly part of this arbitration proceeding. See the heading "Scope of Hearing" below.
 5. Counsel for CC submitted that the SDRCC had no jurisdiction to resolve this dispute as it was not a "Sports-Related Dispute" pursuant to Section 2.1 of the Code. This issue was later withdrawn by Counsel for CC.
25. The Arbitrator raised a sixth preliminary issue. He noted that two of the SCA's witnesses had communicated that they intended to provide testimony via telephone. The Arbitrator had previously instructed both parties that he required all witnesses to appear either in

person or via video-conference so that he would be able to make credibility determinations of witnesses, given the serious allegations and the obvious differences in witness statements of what had gone on. The SCA removed one of the witnesses from its witness list, and its other witness made arrangements to appear via video-conference in order to satisfy the requirements of the procedural orders.

SCOPE OF HEARING

26. The Arbitrator made the following oral rulings at the hearing, thereby narrowing the scope of this proceeding to issues 1 and 8 of the Issues List set out at paragraph 13:
1. Issues 2 through 5 were deferred to be reviewed by the parties when the outcome of this proceeding is known;
 2. The Arbitrator expressed the view that the substance of Issue 11 would be resolved through the resolution of Issues 1 and 8; and,
 3. The parties were instructed that Issues 6, 7, 9, and 10 were to be presented for resolution through CC's internal dispute resolution process.

DECISION

i) Issue 1

27. CC was incorporated under the *Canada Corporations Act*, R.S.C. 1970, c. C-32. The NFP Act came into force on 17 October 2011, and replaced the *Canada Corporations Act* as the law governing the internal affairs of federal not-for-profit organisations. All of the existing federally incorporated not-for-profit corporations were required to submit Articles of Continuance to obtain a Certificate of Continuance, as well as create and file new by-laws in order to transition to the new legislation. The Articles and by-laws were required to comply with the NFP Act. The deadline for CC's transition was 17 October 2014.
28. The thrust of this issue as presented by the Claimant is that all by-laws after 24 June 2013 ought to be declared null and void for lack of proper legal foundation. If this argument is accepted, it would follow that a declaration be made that all actions by the Board of Directors of CC, purportedly under other subsequent versions of the by-laws, be declared to be of no legal effect. The organisation would have to proceed forward based upon the original by-laws on 24 June 2013 as being the only ones properly in place with a legal foundation.

a) The 2013-2014 by-law amendments

29. The by-laws used prior to the Halifax Annual General Meeting (“Halifax AGM”) held 22 to 24 March 2013 were constituted under the *Canada Corporations Act*. It was known at that time that CC was required to transition to the new legislative regime under the NFP Act. Many of the events that unfolded after the Halifax AGM are a function of the need to carry out this transition to the new statutory regime, and also fulfill the needs of CC as the NSO for the sport of cricket in Canada. The Arbitrator concludes, based upon all of the evidence, that inadequate communications of the transition requirements and the necessary provisions required to be contained in the by-laws by the statute were at the root of the problem. It was not some sinister motive as suggested by Mr. Khan and, if it was such a motive, the evidence does not establish the allegation.
30. At the Halifax AGM, Mr. Indig, as counsel to CC, presented a set of by-law amendments to the Membership. He explained that the by-laws being presented were phase one of a two-step implementation process that, in his professional opinion, met the requirements of the NFP Act. These amendments were necessary to receive the continuance approval required of Industry Canada. The first step amendments reduced the membership category down to one and changed the Board of Directors representation. This phase of the by-laws was approved by the Membership at the Halifax AGM and was registered with Industry Canada on 24 June 2013 by Mr. Indig. The second step in the implementation plan involved further amendments to the organisational structure at a subsequent Annual General Meeting held in Toronto on 5 and 6 April 2014 (“Toronto AGM”). These amendments brought the by-laws into compliance with the NFP Act, and completed the organisation’s transition to the new statutory regime.
31. It is the further amendments after the Halifax AGM that are at issue in this proceeding. Article 8(h) of the by-laws presented at the Halifax AGM, what the Arbitrator would call an “eligibility clause,” stipulated that the President may serve only one term and would then be ineligible to serve on the Board of Directors in any position following his or her term. The Article also included what the Arbitrator would call a “succession clause” that stipulated that the Vice President would then succeed to the position of President at the conclusion of the President’s two-year term.
32. If these two portions of the foregoing clauses in the 2013 by-laws were improperly removed, then any subsequent actions by the Board of Directors would be in violation of the “eligibility” and “succession” clauses (as labeled herein). The actions taken in accordance with the by-laws could mean that people would have voted at meetings of CC who were not legally able to do so according to the alleged missing portions of the by-

laws. Such a conclusion would render subsequent Board actions lacking in legal foundation and authority.

33. The Membership at the Halifax AGM unanimously passed a motion to approve the suggested changes to the CC by-laws as discussed and amended in the meeting to comply with the NFP Act. Mr. Indig was directed to have the by-laws corrected as per the amendments made, and to prepare them for submission to Industry Canada for approval. Mr. Doug Hannum, the CEO of CC in 2013, and Mr. Indig were to communicate with the Board of Directors concerning the transition.
34. Mr. Indig submitted the by-laws that had been approved by the Membership at the Halifax AGM, with the exception of the “eligibility” and “succession” clauses, to Industry Canada for approval on 20 June 2013. Industry Canada acknowledged receipt of the by-laws and issued Ministerial approval on 24 June 2013.
35. In his testimony, Mr. Ravin Moorthy submitted that the purpose of the 24 June 2013 by-laws was to change the content of the Board of Directors and to change the membership criteria. A new Board of Directors was elected and implemented. It was not the will of the new Board of Directors to proceed with all of the additional changes presented to the Membership at the Halifax AGM. In response to this change, the version of the by-laws presented for ratification at the Toronto AGM held 5 and 6 April 2014 contained only the provisions that were most likely to be passed by the new Board of Directors. The “eligibility” and “succession” clauses no longer had the support of the Board of Directors and, for this reason, they were dropped.
36. In Amit Joshi’s witness statement, he submitted that, after the Halifax AGM, Mr. Indig informed CC that the organisation was restricting itself by including the “eligibility” and “succession” clauses in its by-laws. Mr. Indig advised that these clauses did not need to be included in the by-laws but, rather, could be included in an internal guideline policy of the organisation. The CC Board of Directors followed Mr. Indig’s professional advice by excluding the “eligibility” and “succession” clauses in the by-laws that were submitted to the Membership for step two approval at the Toronto AGM in 2014.
37. On 3 April 2014, Mr. Moorthy emailed an updated version of the by-laws, titled “CC Revised By-Laws – Step 2 – August 15 2013”, to allow the Membership to review the document prior to the Toronto AGM held 5 and 6 April 2014. This email included the exact same version of the by-laws as was ratified by the Membership at the Toronto AGM. The re-formatted step two version of the by-laws added multiple clauses, adopted different wording and removed several clauses from the 24 June 2013 version. Notably, this new version submitted to the Membership for approval did not include either the “eligibility” or “succession” clauses.

38. A motion to approve the “new” by-laws as approved by Industry Canada and circulated to the Membership, excluding the “eligibility” and “succession” clauses, was passed at the Toronto AGM. The Respondent is correct in pointing out in its closing submissions that the approval of the by-laws at the Toronto AGM in 2014 brought about the completion of the transition to the requirements of the NFP Act.
39. As Mr. Moorthy’s testimony confirms, removal of the “eligibility” and “succession” clauses was not motivated by personal or political interests. Rather, it was motivated by the practical recognition that it was no longer the will of the Board of Directors to proceed with some of the changes included in the 2013 by-laws regarding the composition of the Board of Directors and the membership criteria.
40. Regardless of the motivation behind the removal of the “eligibility” and “succession” clauses, the 2014 by-laws were approved by the Membership at the Toronto AGM according to CC’s procedural requirements. As such, these by-laws are legally valid.
41. The Respondent submitted that the Arbitrator should show deference to the CC Board of Directors and should not interfere with the inner workings of CC due to its not-for-profit corporation status.
42. The Board of Directors of CC has a degree of autonomy in its actions, as does any not-for-profit organisation. This principle is supported by the sport’s jurisprudence, and such autonomy is sometimes described as deference to the sport organisation. However, this autonomy is more properly characterized as the traditional approach of the judiciary with respect to interference in the internal affairs of the corporate governance of a NSO. This is one ground for rejecting the requested claims by the Claimant. The second ground is based on the actions of the Board of Directors of CC after the Halifax AGM.
43. After proper notification and advice, the Membership voted to ratify the by-laws put before it at the Toronto AGM. Given that the by-laws, excluding the “eligibility” and “succession” clauses, were properly ratified at this meeting, they are legally valid and provide the foundation to all subsequent amendments made in the years that followed thereafter. This is the second, and legal, reason for dismissing the claims of the Claimant on Issue 1.

b) Subsequent by-law issues after 2014

44. Following CC’s transition to the NFP Act completed at the Toronto AGM in 2014, Mr. Khan alleges that further illegal amendments were made to the by-laws in 2015 and 2016.

The decision made above on Issue 1 renders these submissions irrelevant, for they depend on a finding that the 2014 by-laws lack a proper legal foundation.

45. Throughout its submissions the Claimant asserted that these subsequent by-law amendments were made fraudulently and with the intention of deceiving the Membership by creating confusion. The Claimant has not presented sufficient evidence to support these serious allegations. Further, deference must be given to the Board of Directors and the Membership when making their own internal by-law amendments.
46. For all of the foregoing reasons, the claims made by the Claimant under Issue 1 are dismissed.

(ii) Issue 8

47. On 21 November 2015 Mr. Prakhar Shrivastava was elected President of the SCA. A complaint was subsequently lodged citing election irregularity and requesting a re-election.
48. On 10 December 2015, an Elections Review Committee established by the SCA reported and declared that the election process was null and void as there was validity to the allegations of elections fraud. The SCA Board of Directors called a meeting for 3 January 2016 in order to hold a vote of non-confidence in Mr. Shrivastava's presidency. The vote was passed unanimously, and an election for the position of President was set for 24 January 2016. During this election, Mr. Khan was acclaimed President.
49. The SCA, as a PSO member of CC, may cast two votes in the CC Board of Directors elections. These votes are cast by the SCA President. As such, CC sought legal advice from Ms. Sharan Sodhi with respect to whether Mr. Khan or Mr. Shrivastava should be allowed to vote in the May 2016 CC Board of Directors elections on behalf of the SCA.
50. The minutes of a CC Board of Directors and Provincial Directors meeting held via teleconference on 13 February 2016 indicate that the Board of Directors unanimously decided to accept Mr. Shrivastava as President. This decision was reached based on Ms. Sodhi's legal opinion.
51. In light of its recognition of Mr. Shrivastava as the SCA President, the CC Board of Directors allowed Mr. Shrivastava to cast two votes on behalf of the SCA in the 19 May 2016 Cricket Canada Board of Directors elections. Mr. Khan did not vote in this election.

52. On 11 October 2016, Mr. Bilal Syed lodged a Request to the SDRCC to resolve a dispute that he had with CC over the Board of Directors elections held on 19 May 2016, in which he was a candidate for various positions. In his Request, Mr. Syed claimed that CC was aware of the non-confidence vote regarding the presidency of Mr. Shrivastava, and failed to stop him from voting in the Board of Directors election on behalf of the SCA.
53. In his 15 March 2017 decision on this matter, Arbitrator Ross Dumoulin held that Mr. Khan should have been allowed to vote on behalf of the SCA in the election as the validly-elected SCA President. He further commented that CC should have used its authority to prevent Mr. Shrivastava from voting.
54. Given this impropriety, along with several other findings of irregularities in the 19 May 2016 election, Arbitrator Dumoulin ordered new elections for all positions on the CC Board of Directors, including the position of President. These new elections were held on 13 May 2017 at CC's most recent Annual General Meeting in Toronto. Arbitrator Dumoulin ordered CC to recognize Mr. Khan's voting privileges with respect to these elections. These two orders were left intact by the Ontario Superior Court of Justice in the judicial review of this award.
55. Therefore, Issue 8 has already been adjudicated by Arbitrator Dumoulin, and as per the principle of *res judicata* it may not be pursued further by the same parties in this arbitration.

CONCLUSION

56. For all of the foregoing reasons and in consideration of all of the evidence filed by the parties to this arbitration, it is found that there is no improper result in the creation and establishing of the by-laws of CC. Therefore, the first issue is dismissed as not being substantiated nor proven on the evidence submitted. Issue 8 involving the election to the CC Board of Directors is found to be *res judicata*. It is, therefore, not for this Arbitrator or this arbitration proceeding to review that which has already been adjudicated by arbitration. For this reason that issue is dismissed.
57. For all the foregoing reasons it is ordered that the requests for relief by the SCA are rejected. It is further ordered that the arbitration claim be dismissed.
58. Both parties have requested costs. In view of the fact that the SCA failed to establish its case, the usual order of costs to follow the event ought to apply. However, costs are always in the discretion of the Arbitrator. I have found that there is considerable lack of communication and explanation between the parties at the time that the various events

unfolded. This communication failure contributed to the misunderstandings that have triggered this arbitration procedure. In light of that conduct, I will fix the costs at a minimal level. Costs of \$5,000 are ordered to be paid within 30 days by the SCA to CC.

DATED at London, Ontario this 8th day of August 2017.

A handwritten signature in black ink, reading "Richard H. McLaren", enclosed within a thin black rectangular border.

Richard H. McLaren
Arbitrator