

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

Nº: SDRCC 22-0568

Between:

Ella Crowle
(Claimant)

and

Karate Canada
(Respondent)

Arbitrator

Robert V. Wickett, Q.C.

Hearing:

via Zoom on June 27, 2022

Appearances:

For the Claimant:	William Hilder (Counsel)
For the Respondent:	Michelle Kropp (Counsel)

Witnesses:

For the Claimant:	Ella Crowle Dr. Tanya Crowle
For the Respondent:	Chris Bright

REASONS FOR DECISION

These Reasons follow the Decision of January 28, 2022 and are delivered as required by Article 6.12 of the *Canadian Sport Dispute Resolution Code*.

Introduction:

1. This appeal arises following the refusal of the respondent, Karate Canada, to provide a religious or medical exemption to the claimant, Ella Crowle, permitting her registration to compete in the Karate Canada National Championships (the "Championship") scheduled to proceed in Newfoundland and Labrador commencing July 1, 2022.

2. The Championship is the first live championship event to be conducted since 2019. The championship tournaments for 2020 and 2021 were not conducted because of Covid-19 pandemic health restrictions.
3. The Championship is conducted pursuant to a National Championships Bulletin and a National Championships Eligibility Policy (collectively the "Policy") issued by Karate Canada. The most recent version of the Policy was issued May 23, 2022.
4. The Policy provides that all registrants for the Championship must be double-vaccinated against Covid-19.
5. Ms. Crowle is 16 years old. Commencing in 2016 she has participated in the sport of karate through her membership in Karate B.C.
6. Ms. Crowle's ranking in karate would qualify her for registration in the Championship.
7. Registration for the Championship is provided by each Provincial Sport Organization ("PSO"), in this case Karate B.C. Karate B.C. submitted its registration of athletes to Karate Canada, as required, however Ms. Crowle was not included in the list of registrants.
8. The reason that Karate B.C. did not include Ms. Crowle's name in the list of registrants for the Championship is that Ms. Crowle is not vaccinated against Covid-19.
9. On June 10, 2022 Ms. Crowle's mother submitted an email with attached letter seeking a religious exemption from the requirement that Ms. Crowle be vaccinated against Covid-19 as a requirement for registration for the Championship. Karate Canada declined to provide Ms. Crowle with a religious exemption from the vaccination requirement.
10. On June 21, 2022, Ms. Crowle filed an appeal with the SDRCC seeking an order that Ms. Crowle be registered for the Championship. I was appointed to arbitrate

the matter on June 22, 2022 and the arbitration was heard on June 27, 2022. The short decision was issued on June 28, 2022 with reasons to follow.

11. This appeal was filed directly with the SDRCC despite the fact that Karate Canada has a written internal appeal process. Karate Canada has consented to the jurisdiction of the SDRCC to adjudicate this appeal despite the fact that Ms. Crowle did not engage the internal Karate Canada appeal process.
12. The statement of claim filed by Ms. Crowle with the SDRCC sought a variety of orders. During the hearing of the arbitration, the orders sought by Ms. Crowle were narrowed to a request for an order requiring Karate Canada to register her for the Championship based on both a religious and medical exemption for the requirement for proof of full Covid-19 vaccination.
13. Although Ms. Crowle did not, in the first instance, seek a medical exemption from Karate Canada from the requirement for proof of Covid-19 vaccination, she tendered a letter from her doctor at the hearing of the arbitration. This letter described the basis on which Ms. Crowle would seek a medical exemption from the requirement for proof a Covid-19 vaccination as a condition of registration for the Championship. Karate Canada consented to the admission of this letter despite the fact that it had not been disclosed prior to the hearing.
14. The parties submitted an agreed statement of facts to me. The facts set out in this document were supplemented by oral evidence heard during the course of the arbitration. Ms. Crowle testified on her own behalf. Mr. Chris Bright, the executive director of Karate Canada testified on behalf of Karate Canada, as did Alfredo Munoz, an articulated student employed by Ms. Kropp's law firm.

Issues:

15. This appeal raises two issues. Firstly, I must identify the nature of the decision under appeal and the standard of review applicable thereto.
16. Secondly, I must determine whether Ms. Crowle is entitled to be registered for the Championship.

Decision Under Appeal and Standard of Review

17. The nature of the decision under review is not as straight forward as it might appear. At the outset of the arbitration Ms. Crowle's counsel described the decision under appeal as the decision of Karate Canada to implement a Covid-19 vaccination requirement in the Policy. He submitted that this requirement should be set aside in its entirety for a variety of fairness reasons, the most important of which was that Karate Canada had failed to include a mechanism in the Policy whereby an athlete could apply for a medical or religious exemption from the vaccination requirement.
18. Counsel submitted that the availability to Ms. Crowle of a religious or medical exemption should be considered by me as illustrative of the evidence that Ms. Crowle would have tendered had there been an religious or medical exemption provision included in the Policy.
19. During the course of the arbitration, Ms. Crowle's position evolved. In concluding submissions, Ms. Crowle abandoned the position that the Covid-19 vaccination policy should be "set aside" and submitted instead that I should grant Ms. Crowle a medical or religious exemption from the Policy and that I should further direct that she be registered to participate in the Championship.
20. Karate Canada conceded (honourably, in my view) that it would not rest its defence to the appeal on the basis that the decision to exclude Ms. Crowle from registration for the Championship was a decision made by Karate B.C. and not by Karate Canada.
21. The upshot of all of this is that I conclude that the decision under appeal is the decision of Karate Canada not to grant Ms. Crowle a religious or medical exemption from the vaccination requirement of the Policy.
22. Section 6.11 (c) of the Canadian Sport Dispute Resolution Code (which governs this arbitration) provides that I am to hear the appeal *de novo* in circumstances where, as in this case, the sport organization did not conduct its own internal

appeal process on the merits. This means that I am to hear Ms. Crowle's application for an exemption to the vaccination requirement of the Policy afresh and that I am entitled to consider the application based on the evidence before me, even if that evidence was not before Karate Canada when it declined to grant Ms. Crowle a religious exemption to the Policy.

The Religious Exemption:

23. Ms. Crowle testified at the arbitration as to her religious beliefs relating to vaccinations and she tendered a letter from J.D. Farag, senior pastor of the Calvary Chapel based in Kaneohe, Hawaii.
24. This letter, dated June 10, 2022 and addressed to Ms. Crowle's mother, states that Ms. Crowle is a member of the chapel's online congregation. Pastor Farag states that the chapel is not anti-vaccine or anti-science but that it supports congregants who refuse to comply with mandatory vaccination policies. Pastor Farag states further that the nature of "many other contaminants" within vaccines should be a reason to grant vaccine exemptions to believers. Scriptural citations are provided by Pastor Farag as the source of this belief.
25. The letter does not make any reference to Ms. Crowle or to her beliefs.
26. Ms. Crowle testified that she believes in God and that her body should remain pure and uncontaminated by injection of foreign substances. I took this to mean that she did not believe that she should be compelled to take the Covid-19 vaccine. At no point in her testimony did Ms. Crowle cite the teachings of the Calvary Chapel as the source of her belief nor did she testify that the taking of a vaccine would contradict the teachings of her religion.
27. In response to this evidence, Karate Canada tendered Mr. Alfredo Munoz to give evidence. Mr. Munoz is an articulated student employed in the law office of counsel for Karate Canada. Mr. Munoz testified that, on the instructions of counsel for Karate Canada, he connected with the Calvary Chapel and asked for a religious vaccine exemption letter in the name of a pseudonym that he had invented. Mr.

Munoz testified that he was not asked by anyone at Calvary Chapel whether he was a member of the Chapel nor was he asked about his identify or beliefs.

28. In response to this request, Pastor Farag sent a letter to Mr. Munoz that is identical in wording to the letter sent to Ms. Crowle's mother. Of particular note, the letter sent to Mr. Munoz states that the pseudonym given by Mr. Munoz is an online member of the Calvary Chapel congregation.
29. The inescapable conclusion from this evidence is that Calvary Chapel will send a religious exemption letter to anyone who asks and irrespective of whether the person is a member of the congregation. Ms. Crowle did testify that she is a member of the Calvary Chapel congregation. I accept that testimony as true but the fact that the religious exemption letter appears to be a form letter sent to anyone who asks raises doubts about the core religious beliefs of the congregants of Calvary Chapel in general and Ms. Crowle in particular.
30. To establish discrimination on religious grounds that would ground an exemption to a vaccine requirement requires that Ms. Crowle establish that she sincerely believes that the taking of a vaccine contradicts her religion. This belief must be held in good faith and Ms. Crowle must demonstrate that the belief is not "fictitious, capricious or an artifice". *Multani v. Commision scolaire Marguerite-Bourgeoys* 2006 SCC 6 at paras 34 and 35
31. If this sincerely held religious belief is established on the evidence, then there must be a balancing of the rights of the individual to participate in society in accordance with this deeply held religious belief as against the rights of others to go about their business as free as possible from the risk of infection from a serious, potentially life-threatening virus.
32. I conclude that I do not have to engage in this balancing of rights because Ms. Crowle has failed to persuade me that her objection to a Covid-19 vaccination is objectively grounded in a sincerely held religious belief. Ms. Crowle's evidence that she believes in God and that she believes that her body should be "kept pure" from vaccines is insufficient to prove a sincerely held religious belief as distinct

from a sincerely held personal belief. Further, the letter from Pastor Farag does not state that the taking of vaccines is contrary to the church's religious teaching but rather only that the church supports congregants in receiving vaccine exemptions and that there are scriptural supports for such exemptions.

33. Having failed to establish that her decision to decline a Covid-19 vaccine was based upon a sincerely held religious belief or that the teachings of her church compelled her to refuse vaccination, Ms. Crowle's appeal on the basis of a religious exemption must be dismissed.

The Medical Exemption

34. Ms. Crowle provided an unredacted copy of a letter from her doctor at the hearing of the arbitration. This letter, dated June 15, 2022, is authored by Dr. Karin Down. Dr. Down's area of medical practice is not stated and Ms. Crowle did not attempt to have the letter entered into evidence as an expert report.
35. Dr. Down states that Ms. Crowle has researched the risks and benefits of vaccination and that she does not consent to receive the vaccine "for the following medical reasons:"
- a. That Ms. Crowle has a severe needle phobia that would cause her undue psychological trauma.
 - b. That Ms. Crowle has a significant family history of reactions to vaccines. Dr. Down gives examples of various members of Ms. Crowle's family who developed adverse reactions following receipt of flu vaccines.
 - c. That Ms. Crowle was infected by the Alpha strain of Covid-19 in March of 2020 and that she has natural immunity.
36. Dr. Down states that she supports Ms. Crowle's decision not to "vaccinate with the experimental Covid-19 vaccine..." and she asks that Ms. Crowle be allowed to compete unvaccinated. Dr. Down concludes her letter by stating that "I feel that if she is physically well the day of competition, she poses no risk to the other participants."
37. Ms. Crowle testified that she suffers from a needle phobia. She stated that she experiences serious anxiety if asked to receive an injection. That said, she

conceded that when having her wisdom teeth removed she did receive an anaesthetic by injection. She stated that she did everything she could to avoid the injection but that, in the end, it had to be done so that her wisdom teeth could be removed. She consented to the procedure.

38. Ms. Crowle further testified as to the allergic reactions of various of her relatives to vaccinations they had received. She also testified that she had not been tested for any allergies related to Covid vaccines.
39. There is nothing in the evidence from Dr. Down or from Ms. Crowle that could support an exemption from the vaccine policy of Karate Canada on medical grounds. Her fear of needles is not so serious that she acted to decline a needle when medically necessary and the allergic reactions of her relatives is of no probative value in assessing Ms. Crowle's probable reaction to a Covid vaccine.
40. Dr. Down does not state that Ms. Crowle would suffer any adverse medical impacts from taking a vaccine. She states only that she supports a medical exemption for Ms. Crowle based upon her and her mother's research into the adverse affects of vaccination.
41. The appeal on the basis of a medical exemption is dismissed.

Decision

42. The appeal is dismissed.

Dated at Vancouver, British Columbia on July 11, 2022.



Robert V. Wickett, Q.C., Arbitrator