

ADR-SPORT-RED PROGRAM

IN THE MATTER OF A REFERRAL TO ABITRATION UNDER THE ADR-SPORT-RED CODE

AND IN THE MATTER OF AN APPEAL FROM A DECISION OF THE EXECUTIVE COMMITTEE OF THE CANADIAN AMATEUR BOXING ASSOCIATION DATED 18 JUNE 2002

B E T W E E N:

WAYNE GORDON

APPELLANT

- and -

CANADIAN AMATEUR BOXING ASSOCIATION

RESPONDENT

AWARD

Hearing conducted by telephone conference on 16 July 2003 before Graeme Mew, arbitrator, Toronto, Ontario

The appellant, Wayne Gordon, was represented by Paul J. Morrison, barrister and solicitor, Dartmouth, Nova Scotia

The respondent, Canadian Amateur Boxing Association, was represented by Hank Summers (President) and Robert Crête (Executive Director)

1. On 18 June 2002, the Executive Committee of the Canadian Amateur Boxing Association (“CABA”) concluded that Wayne Gordon, an individual subject to the jurisdiction of CABA, had engaged in unethical behaviour and suspended him from CABA for a period of four years.

2. Mr. Gordon appeals from the Executive Committee's decision. An internal appeal was, by agreement between Mr. Gordon and CABA, abandoned and the appeal was instead submitted to arbitration under the ADR-Sport-RED Code (the "Code").

3. On 20 March 2003, I was appointed as arbitrator in this matter. Preliminary meetings were conducted by telephone conference on 9 April, 16 May and 23 June 2003 at which the issues on appeal were defined, directions given concerning disclosure and evidence and arrangements made for a hearing.

4. A hearing took place by way of telephone conference on 16 July 2003, following which the parties filed written submissions.

The Parties

5. The appellant is a boxing coach employed with the Citadel Amateur Boxing Club in Halifax, Nova Scotia. He has coached amateur boxers in national and international competitions, including the Olympic Games, and is a Level 5 NCCP certified coach. In addition to his employment with the Citadel club, at the time of his suspension he also held the position of Atlantic Region High-Performance Coach with CABA.

6. CABA is a national sports organization ("NSO") recognized as such by Sport Canada, and has jurisdiction over amateur boxers and coaches, as well as sanctioned national and international competitions in which Canadian amateur boxers participate. The President of CABA is Hank Summers. George Goff is CABA's Treasurer. Both are volunteers. CABA's Executive Director is Robert Crête.

Events Leading to the Appellant's Suspension

7. In April 2002, Mr. Gordon attended the Canadian National Junior Championships and Team Trials in Mount Pearl, Newfoundland. Following reports that

a coach had been “found in bed” with a female athlete, an investigation was undertaken which led to a conclusion that allegations of unethical behaviour by Mr. Gordon and a female athlete, Michelle Nelson “had been established”. This investigation was undertaken by Hank Summers, George Goff and Robert Crête and consisted of interviews which were conducted with Mr. Gordon, Ms. Nelson and a number of other athletes and a coach who had been in Mount Pearl.

8. Following the investigation, Mr. Gordon was notified that the Executive Committee of CABA would consider the allegation against him at its meeting on 18 June 2002. He was told that he would have an opportunity to speak to the allegation.

9. The Executive Committee met at 9:00 a.m. Eastern time by telephone conference call. In attendance were Messrs. Summers and Goff and four other members of the Executive Committee as well as Mr. Crête. The Gordon matter was the first item on the agenda after the President’s introductory remarks. Mr. Gordon joined the conference call at 9:30 a.m. and, according to the minutes of the meeting, “Mr. Gordon did an oral presentation to the Executive regarding the allegation of unethical behavior [*sic*] against him.”

10. It appears to be common ground that Mr. Gordon was not questioned by the persons in attendance at the Executive Committee. It is also clear that Mr. Gordon had not, prior to his participation in the telephone conference, been privy to the results of the investigation (although as a result of having been interviewed by Messrs. Summers and Crête he had some knowledge of what was being alleged against him) and that he did not participate in the portion of the Executive Committee meeting in which the case against Mr. Gordon was presented.

11. After the presentation by Mr. Gordon, there was discussion by the Executive Committee, following which a motion was passed suspending Mr. Gordon from CABA for a period of four years.

12. Neither the minutes of the Executive Committee, or the letter that was subsequently sent to Mr. Gordon informing him of the Executive Committee's decision, give any reasons for the Executive Committee's decision.

Scope of Review in Appeal Proceedings

13. Section RA-20 of the Code provides:

“Where a dispute involves an appeal from a disciplinary tribunal or similar body of a NSO, the Panel shall have full power to review the facts and the law. In particular, the Panel may substitute its decision for the decision which gave rise to the sports-related dispute and may substitute such measures and grant such remedies or relief that it deems just and equitable in the circumstances.”

14. At the conclusion of the hearing I advised the parties that in the event that I found in favour of the appellant to any extent, I had the option of remitting the matter back for the re-hearing, or, given the extensive evidence that was placed before me during the course of the hearing (consisting of the record of proceedings before the Executive Committee, various affidavits and will-say statements filed, answers to interrogatories delivered by the appellant to the respondent and the oral testimony of witnesses including Steve Blanchard, Greta Gordon, Michelle Nelson, the appellant, Hank Somers, Robert Crête and George Goff), I would be prepared to substitute my own judgment for that of the Executive Committee. Both CABA and the appellant have confirmed that they wish this matter to be finally concluded and, accordingly, that I should, if I deem it appropriate to do so, render a decision on the merits.

Issues to be Determined

15. With the concurrence of the parties, I am asked to determine the following matters:

- a) whether the CABA Executive Tribunal sitting as a disciplinary committee was properly constituted;
- b) whether the Executive Committee of CABA acting as a disciplinary committee exceeded its jurisdiction;
- c) whether a fair and impartial investigation and adjudication was precluded because of bias on the part of certain investigators and/or Executive Committee members;
- d) whether the Executive Committee of CABA failed to observe principles of natural justice and/or procedures fairness;
- e) whether the appeal from the decision of the Executive Committee was conducted fairly having regards to alleged abuses of process on the part of CABA in connection with the conduct of the appeal; and
- f) whether, in all the circumstances, the penalty imposed was excessive and disproportionate to any finding of wrong doing which Mr. Gordon may determine to have engaged in.

Background and Evidence Relating to Incident

16. When, in April 2002, Mr. Gordon attended the National Junior Championships and Team Trials in Mount Pearl, Newfoundland (the “Championships”) he was already the subject of a disciplinary order by CABA. An incident had taken place at the Francophone Games in Hull, Québec in 2001. The incident apparently involved two National Team athletes and Mr. Gordon. During an Executive Committee meeting in Ottawa on 25 August 2001, following a review of the incident, a motion was made to “suspend” the three individuals concerned, including Mr. Gordon, for a period of twelve months. However, after representations made by Taylor Gordon, an Executive Committee member (who is the father of Wayne Gordon), the Executive Committee decided, instead, to “curtail” certain privileges that the three concerned individuals

enjoyed. In the case of Mr. Gordon, the practical effects of this curtailment was that Mr. Gordon was precluded from working with the National Team for a period of twelve months effective 1 September 2001 to 31 August 2002.

17. Mr. Gordon asserts that he did not attend the Championships in an official capacity but, rather, accompanied friends to the boxing matches as part of his vacation. Mr. Gordon said that he wanted to watch one of his boxers participate in the Championships. He admits that during the course of the Championships he went into the dressing ring to wish the athlete good luck. He sat ringside and cheered along with the crowd. He acknowledges that he was shouting out instructions. At one point the fight was stopped and Mr. Gordon was asked to move and not to coach from the ringside. Mr. Gordon did not bring his pads with him although he candidly acknowledged that he could not say that he did not help to warm up the athletes.

18. Following the end of the Championships, Mr. Gordon and other athletes were socializing downtown in St. John's. At some point, Mr. Gordon and others then returned to their hotel. There is some divergence in the evidence on timing, but it is clear that the events that are subsequently alleged to have transpired were in the early morning hours. Mr. Gordon says that he met Michelle Nelson in the hallway outside of her hotel room and they began to talk. They continued the conversation inside Ms. Nelson's hotel room which she shared with two other female athletes. Both Mr. Gordon and Ms. Nelson testified that they discussed the suspension of Ms. Nelson's boyfriend from competition, as well as tattoos and body piercing, which were subjects of mutual interest to Mr. Gordon and to Ms. Nelson (who runs a body piercing salon). Mr. Gordon testified that he removed his shirt to show Ms. Nelson his pierced nipple and his Olympic tattoo on his back. Both Mr. Gordon and Ms. Nelson, while acknowledging that the door to the room was closed, asserted that other persons had pass keys to the room and that they recall people entering and leaving the room. They recall one of his Ms. Nelson's roommates entering the room to retrieve something and then the other roommates returning along with their coach, Rob Bourgeois, who asked Mr. Gordon to leave the room because (according to Mr. Gordon) his athletes wanted to go to sleep.

19. Others provide a different account of what happened that evening. Mike Walchuk, a male athlete, stated that one of Michelle Nelson's roommates, Debbie Richards, wanted something in her room. When she came back to another room that athletes were congregating in, she said that there was a man in her room with Michelle. Mr. Walchuk and others went to the room and found Michelle Nelson in bed with Wayne Gordon. Mr. Walchuk says that he was furious because Ms. Nelson's boyfriend is a good friend of his. He claims that he asked her "what are you doing in bed with Wayne?". She did not reply.

20. Ryan Savage, who is also a male athlete, is reported as stating that he saw Wayne Gordon and Michelle Nelson in bed. They were under the covers and Wayne Gordon did not have a shirt on. It is to be noted that Mr. Savage did not sign his "statement" and subsequently denied making any "incriminating statements" against Mr. Gordon.

21. Debbie Richards states that when she tried to return to her bedroom (which she shared with Ms. Nelson) the door was locked with the metal clamp. Ms. Richards knocked on the door and Michelle Nelson opened the door with only a sheet around her. Ms. Richards then informed Mr. Bourgeois of the situation. Mr. Bourgeois went to the room shared by Ms. Nelson and Ms. Richards and "ordered Wayne to get dressed and leave at once".

22. Mr. Bourgeois' evidence is that when he entered the bedroom, Wayne Gordon was sitting on the bed with his shirt off. Jennifer Smith, a female athlete, gives a similar account. She apparently entered the room with Rob Bourgeois and saw Mr. Gordon on the bed with no shirt on.

23. Both Ms. Nelson and Mr. Gordon emphatically deny that they were in bed together. No allegation is made by CABA or any of the witnesses who were interviewed that Mr. Gordon and Ms. Nelson were engaged in sexual conduct with each other.

24. According to Mr. Gordon, Mr. Bourgeois told him that the female athletes wanted to go to sleep and that he should leave. Mr. Gordon said that he did not feel that

he had been found in a compromising position. He wished everyone goodnight and left. He says that he thought nothing more of the incident at the time.

25. CABA claims that, following the Championships, CABA's head office in Ottawa received "numerous" phone calls concerning the conduct of CABA's athletes at the Championships. Parents of young athletes who had participated at the Championships informed Mr. Crête that their children had told them that a male coach of the National Team was found in bed with a female athlete.

26. As previously noted, an investigation was undertaken by three individuals on behalf of CABA. Mr. Gordon claims that one of those individuals, George Goff, was "biased" against him. Mr. Gordon indicated that there was a history of dealings between himself and Mr. Goff. Among a number of incidents that had occurred in the past, Mr. Gordon noted that Mr. Goff had been involved in the events that had led to the curtailment of Mr. Gordon's National Team activities the previous year. He felt that Mr. Goff had been very aggressive towards him.

27. Mr. Gordon claims that the first he knew of any investigation was when, approximately a week after the Championships, he received a call from a coach in Ontario who also had Rob Bourgeois on the line. Mr. Gordon was told that Mr. Goff had made many calls about an incident involving Mr. Gordon and Ms. Nelson. According to Mr. Gordon, Mr. Bourgeois said that he had been pressured by Mr. Goff to make a statement about what had occurred. Mr. Bourgeois allegedly told Mr. Gordon that he had not seen anything untoward and that he had been reluctant to put anything in writing.

28. Ms. Nelson said that she was contacted initially by Donna Mancuso on behalf of CABA. Ms. Mancuso told Ms. Nelson that Mr. Summers had asked her to call Ms. Nelson to discuss what had occurred. Ms. Nelson was asked by Ms. Mancuso whether Mr. Gordon had put her under any pressure. It was suggested to Ms. Nelson that it might help her situation if she had been put under pressure. Ms. Nelson understood the comments that were made to her as suggesting that she might be dealt with more leniently if she said that Mr. Gordon had put her under pressure. Ms. Nelson was then contacted by Mr. Goff. She claims that Mr. Goff told her she had jeopardized her

chances to go to the World Championships. While Ms. Nelson acknowledged that Mr. Goff was not specific about what he was accusing Ms. Nelson of, she says that he did tell her that other athletes had said that Wayne Gordon had been in her room.

29. It was Ms. Nelson's perception that Mr. Goff is not well disposed towards her. He coaches one of Ms. Nelson's rivals. Ms. Nelson felt that Mr. Goff should not have been involved in the investigation into the conduct of herself and Mr. Gordon.

30. Ms. Nelson was also suspended for four years as a result of the Executive Committee's deliberations on 18 June 2002. CABA told me that her appeal was being held in abeyance pending disposition of Mr. Gordon's appeal.

31. Mr. Gordon received a telephone call from Mr. Crête and was asked to meet with Mr. Crête to discuss events that had occurred at the Championships. Mr. Gordon understood Mr. Crête's interests to center around two events:

- (1) Some fighting that had broken out in downtown St. John's involving some boxing people; and
- (2) The incident involving Mr. Gordon and Ms. Nelson.

During the course of the phone call which Mr. Crête informed Mr. Gordon that he wished to meet with him, Mr. Gordon allegedly asked Mr. Crête whether he needed to have a lawyer at the meeting. According to Mr. Gordon, Crête said that he did not need a lawyer and that there was nothing for Mr. Gordon to worry about.

32. Mr. Gordon subsequently attended at the Holiday Inn in Halifax to meet with Mr. Crête and was surprised to see Hank Summers there too. They did not ask about the downtown incidents. They were only interested in what had happened with Ms. Nelson. Mr. Gordon said that he understood that the purpose of the meeting with Mr. Crête and Mr. Summers was to get the story straight so that a report could be made to CABA. At the meeting in Halifax they told Mr. Gordon that head office had received a phone call from a concerned parent about a coach being in a bedroom with an athlete.

Mr. Gordon says that he answered the questions put to him by Mr. Summers and Mr. Crête. He was told that he would receive a written communication within two weeks.

33. Mr. Gordon subsequently received a letter from Boxing Canada dated 3 June 2002 which advised him that the Executive Committee would be meeting to discuss whether Mr. Gordon had engaged in “unethical behaviour” in relation to his dealings with Ms. Nelson.

34. Mr. Gordon claims that, at no time, other than the discussion related above, was he given any indication of the case against him, nor was he advised of the potential seriousness of the proceeding before the Executive Committee on 18 June 2002. Specifically, he was not warned that he ran the risk of suspension or other severe disciplinary measures if he was found to have engaged in unethical behaviour.

35. During the course of the telephone conference Executive Committee meeting on 18 June 2002, Mr. Gordon states that he read from a prepared summary in which he stated that he had done nothing improper. No questions were asked. Later the same day he received, by fax, notification of his suspension.

36. I now turn to consider, against this general factual backdrop, the specific issues which I am asked to deal with.

Was the CABA Executive Tribunal Sitting as a Disciplinary Committee Properly Constituted?

37. The issue raised here by Mr. Gordon is that members of the Executive Committee of CABA were in breach of the constitution of the CABA in that they had missed more than the maximum permitted number of consecutive meetings. Mr. Crête, however, noted that the process of providing written notice to Executive Committee members of meetings in accordance with the constitution was not always followed.

38. In my view, nothing turns on the fact that some of the Executive Committee members may have missed a number of previous meetings. In any event, the matter was not raised in a contemporaneous fashion.

39. Mr. Gordon also submits that the CABA Executive Committee was improperly constituted because of the bias of Mr. Goff based on his previous dealings with Mr. Gordon as well as the investigatory role played by Messrs. Summers, Crête and Goff.

40. In my view, the conduct of Mr. Goff was borderline. He does appear to have undertaken the investigation with a degree of zeal which Mr. Gordon interpreted as a manifestation of Mr. Goff's antipathy towards Mr. Gordon. It is important that disciplinary tribunals are seen to be justly constituted. It would have been preferable if Mr. Goff had not been involved in the Executive Committee's decision. However, in my view Mr. Goff's alleged disposition towards Mr. Gordon is not, in and of itself, grounds for invalidating the Disciplinary Committee's decision. As will be seen, though, there are other concerns which emanate from Mr. Goff's participation.

Did the Executive Committee Acting as a Disciplinary Committee Exceed Its Jurisdiction?

41. Article 6 of the Articles and Rules Governing Amateur Boxing in Canada deals with suspension, reinstatements and disqualifications. Section 6.2 provides:

“The Executive Committee of the Canadian Amateur Boxing Association shall have the power at any time to disqualify or suspend for such period of time as it sees fit a Boxer, Coach, Second or Official who at any International, Canadian or Inter-Regional Championships, other sanctioned Inter-Regional Tournaments, or at any time conducts himself or herself in a manner considered detrimental to the credit interest of the Canadian Amateur Boxing Association.”

42. It is pursuant to Article 6.2 that CABA purported to discipline Mr. Gordon for “unethical behaviour”. It would appear that the language of section 6.2 is sufficiently broad (conduct “in a manner considered detrimental to the credit interest” of CABA) to include unethical behaviour. It would have been preferable, however, if in framing its charge against Mr. Gordon, CABA had tracked the language of its Rules.

43. Accordingly, I conclude that Article 6.2 of the Rules provides the Executive Committee with *prima facie* jurisdiction to deal with matters of a disciplinary nature which involve conduct which is allegedly detrimental to the credit interest of the CABA.

Was the Investigation Fair and Impartial and was a Fair and Impartial Adjudication Precluded Because of Bias on the Part of Certain Investigators and/or Executive Committee Members?

44. The Executive Committee held the power to deprive Mr. Gordon not only of the privilege of participating in the sport of amateur boxing but, also, of his livelihood. Under such circumstances, I am concerned that the involvement of both Mr. Summers and Mr. Goff in the investigation and adjudication of the complaints against Mr. Gordon could be seen to have impaired their ability to act impartially, thus giving rise to a reasonable apprehension of bias. The role of Mr. Crête was different in that, as the Executive Director of CABA, he was in attendance at the Executive Committee meeting but did not have a vote at that meeting. Setting to one side the reports of pressure being brought to bear on certain participants in the investigation process, upon which I make no finding, I do have concerns about a process in which two individuals effectively act as investigating officers and judges in respect of the same matter. This is especially so when so much was at stake for Mr. Gordon. I am not, accordingly, satisfied that the hearing met the requisite standards of fairness and impartiality.

Did the Executive Committee of CABA Fail to Observe the Principles of Natural Justice and/or Procedural Fairness?

45. In my view, there was a breach of the rules of natural justice and/or procedural fairness. It is well established that, although organizations such as CABA are, in many respects, private organizations, the principles of natural justice and procedural fairness are nevertheless applicable: *Lee v. Showmen's Guild of Great Britain*, [1952] 1 All E.R. 1175 (C.A.); *Ripley v. Investment Dealers Association* (1991), 108 N.S.R. (2d) 38 (A.D.).

46. Although I do not find that CABA wrongly applied its own Rules, a tribunal, including the Executive Committee, sitting as a disciplinary tribunal, exceeds its jurisdiction if it fails to comply with the principles of natural justice and procedural fairness. As submitted by the appellant, the standard of review in determining whether a tribunal has exceeded its jurisdiction is one of correctness.

47. In addition to my concerns about the role of Messrs. Goff and Summers, the evidence satisfies me that Mr. Gordon was not given adequate disclosure of the case against him. It does not appear that full disclosure of the statements made by others was provided to Mr. Gordon either at his meeting with Messrs. Summers and Crête in Halifax or before or during the course of the 18 June 2002 Executive Committee meeting. He was not warned of the potentially serious consequences that he faced. Indeed, the uncontradicted evidence of Mr. Gordon is that he was told that it was not necessary for him to have a lawyer when he agreed to meet with Mr. Crête. The Supreme Court of Canada in *Kane v. Board of Governors of U.B.C.*, [1980] 1 S.C.R. 1105 noted that a higher standard of justice is required when the right to continue in one's profession or employment is at stake.

48. As a result of the foregoing, it is my opinion that the procedures adopted by the Executive Tribunal in respect of the allegations against Mr. Gordon failed to meet the necessary standard of fairness and, as a result, the Executive Committee exceeded its jurisdiction when it then purported to pass judgment on Mr. Gordon and suspend him for a period of four years.

The Conduct of the Appeal from the Executive Committee's Decision

49. As previously noted, there were aborted proceedings before a CABA appeal arbitrator. In light of my finding on the issue of natural justice, it is not necessary for me to consider this aspect of the appeal further.

Was the Penalty Imposed Excessive and Disproportionate?

50. Even if I was satisfied that the process under which the investigation and adjudication of the allegations against Mr. Gordon took place was fair, I would conclude that the imposition of a four-year suspension was patently unreasonable. Although I was not provided with any guidelines concerning disciplinary matters, I note that such serious disciplinary offences in amateur sport as doping are subject to a maximum penalty of four years (soon to be reduced to two years). Absent any complaint of sexual misconduct on the part of Mr. Gordon, it is difficult to see how such a severe penalty can be justified.

Decision

51. Having decided that the Executive Committee exceeded its jurisdiction I therefore set aside the decision of the Executive Committee dated 18 June 2002. As requested by the parties, I therefore move on to consider the matter *de novo*.

52. Although there is disagreement on many points of the evidence concerning the events in Mount Pearl, it is clear that Mr. Gordon, a 40 year old male coach, was alone with a much younger female athlete in her bedroom in the early hours of the morning.

53. The Canadian Professional Coaches Association has a Coaching Code of Ethics. That document states that “responsible coaching” means that coaches recognize the power inherent in the position of coaching and are aware of their potential value and how these effect their practice as coaches. Responsible coaches should be “acutely aware of power in coaching relationships” and, therefore, avoid sexual intimacy with athletes, both during coaching and during that period following coaching during which imbalance in power could jeopardize effective decision making. Responsible coaches also abstain from and refuse to tolerate in others all forms of harassment including sexual harassment.

54. I do not find that the conduct of Mr. Gordon amounted to sexual harassment and there is no evidence that he and Ms. Nelson were sexually intimate. Nevertheless his presence in Ms. Nelson’s room, alone, shirtless and on if not in her bed

was a serious error of judgment on Mr. Gordon's part. In giving evidence at the hearing, Mr. Gordon's fellow coach, Steve Blanchard, said that if a coach is going into an athlete's bedroom he or she should have someone else with him or her. This is especially so in the case of a male coach and a younger female athlete. It does appear that word of what had occurred in Mount Pearl (perhaps an embellished version of what had actually occurred) spread sufficiently far and wide that CABA received a telephone call or calls from parents of young boxers. Thus Mr. Gordon's conduct clearly had an effect that was detrimental to the credit interest of the CABA.

55. I do not attach a great deal of importance to the fact that Mr. Gordon was attending the Championships on his own time. The fact of the matter is that he was at the time of his attendance a National High Performance Coach of CABA. Furthermore, one of his athletes was participating.

56. Having concluded that Mr. Gordon conducted himself in a manner detrimental to the credit interest of CABA, I turn to the issue of penalty.

57. As previously noted, I have not been given any guidance in terms of comparable decisions or a disciplinary tariff for the sport of amateur boxing. I therefore apply principles generally applicable to sport in considering the matter of an appropriate sanction for Mr. Gordon's conduct.

58. The relationship between coaches and athletes is a close one. Even though Mr. Gordon was not Ms. Nelson's coach, he held a position of authority and influence within CABA. Coaches are, amongst other things, role models, teachers, advisers and guides. Organizations such as CABA are entitled, in considering an appropriate penalty for someone in Mr. Gordon's position, to take into account the need to educate coaches about ethical conduct and to deter conduct that is detrimental to the interests of the sport.

59. Having regard to all of these factors, it is my opinion that a period of complete suspension from participation in boxing in any capacity for a period of six months would have been an appropriate penalty. As Mr. Gordon has already undergone a period of suspension exceeding six months, he should be immediately re-instated. In this

regard I note that Mr. Gordon's suspension ran concurrently, for approximately two and a half months, with the Executive Committee's order of "curtailment" arising from the incident at the Francophone Games. That penalty should also now be regarded as spent.

Costs

60. Article RA-23 of the Rules provides me with discretion to determine if there should be an award of costs and the extent of those costs. The general rule is that the prevailing party should receive a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In doing so, account should be taken of the outcome of the proceedings, the conduct of the parties and their respective financial resources.

61. Having regard to the divided success in terms of the proceeding as a whole and the conduct of the parties, I make no order as to costs.

Graeme Mew, Adjudicator
Toronto
25 August 2003