

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

Number 11-0147

ARSENI TIKHOMIROV

(CLAIMANT)

AND

CANADIAN FENCING FEDERATION (CFF)

(RESPONDENT)

AND

LOUISE FOURNIER

EAMONN GOMEZ-PERALES

ALASTAIR KEYES

J. SAM BROUGHTON

SHAUL GORDON

(AFFECTED PARTIES)

BEFORE STEWART MCINNES, ARBITRATOR

March 23, 2011

DECISION ON JURISDICTION

There are two preliminary matters raised by the parties relative to jurisdiction that must be addressed prior to a hearing on the merits going forward. Both the Respondent and Mr. Pierre Fournier, a practicing attorney in the province of Quebec, acting on behalf of his daughter Louise Fournier and of three other Affected Parties, challenge the right of the Claimant to proceed because:

- (a) the complaint is time barred, and
- (b) he lacks interest.

In addition, Mr. Fournier challenges the right of Mr. Igor Tikhomirov, the Complainant's father, to make written and oral representations on behalf of his son. Unlike Mr. Fournier, Mr. Tikhomirov is not a lawyer.

Mr. Fournier cites an Act Respecting the Barreau du Quebec, R.S.Q. Chapter B-1, Section 128 which provides that certain acts relative to the giving of legal advice and representation shall be the exclusive prerogative of a practicing advocate or solicitor and that any person who practices the profession of advocate without being entered on the Roll is guilty of an offence [...]. He also relies on similar provisions contained in the Law Society Act of Ontario, R.S.O. 1990, CHAPTER L.8 at sections 1, (1) and (6), and 26.1. The Canadian Sport Dispute Resolution Code of the SDRCC provides that the laws of Ontario shall apply. Part V of By-Law 4 of the Law Society of Upper Canada, "PROVIDING LEGAL SERVICES WITHOUT A LICENCE", under section 30(1) and starting at page 29, allows for exceptions to the restrictions contained in the Act when:

Acting for friend or neighbor

- 5. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a friend or a neighbour,
 - iii. who provides the legal services in respect of not more than three matters per year, and
 - iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

- 5.1 An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and
 - iii. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

It is readily apparent that Mr. Tikhomirov, the father of the Claimant, is entitled to represent his son in these proceedings.

(a) Is the claim time barred?

The Canadian Fencing Federation 2010-2011 HP Program, Selection Policies, sets out the criteria for appeals. Section K gives a right to appeal to any athlete who is not selected provided, inter alia, that the selection was not made in accordance with published policies procedures, rules and criteria. The appealing athlete must provide written notice to the CFF national office of his request to appeal the selection of the HP selection committee within 7 days following the final selection date with a cheque for \$50.00 which shall be returned to the athlete at the completion of the appeal unless the appeal is found to be frivolous.

On March 10, Steve Symons, the President of the CFF, acknowledged the deposit of \$50.00 and advised that an appeal process can be initiated and further that “an appeal on the same subject matter has been filed with SDRCC. It is therefore not appropriate for the CFF to continue with your appeal. If the SDRCC outcome supports your position, then your deposit will be returned, if the CFF’s position is upheld, your appeal will automatically be deemed frivolous.” At no time did CFF advise the Claimant that his appeal was out of time, nor was the deposit returned. It is apparent that the other appeal before the SDRCC (Lavoie) was discontinued on the 16th day of March, 2011. The CFF later declined to hear the appeal of the Claimant on the basis that there had been no decision involving him on which an appeal could be based.

An appeal of this decision can be made to the SDRCC within 3 days of receipt of the decision of the Appeal Board. See section VII TIME FRAMES: “For reasons of fairness, any of the time frames provided for in this policy and procedure may be relaxed by the Board of Directors at the request of the HP Selection Committee or Appeal Board if it feels, at its discretion, that such a charge is reasonable and appropriate.”

The Claimant filed an appeal on the basis that CFF had not followed its established criteria for selection of athletes to participate in international competition. CFF had published its selection policies for 2010-11 and in its HP program included the requirement that those selected must meet certain minimum standards. These criteria included mandatory tournaments and a detailed description of the results needed to be selected to the national team. The Claimant did not meet the minimum requirements, but now claims prejudice because CFF initiated a development team on February 7, 2011, whose participants would travel to Jordan with the national team and gain invaluable international experience. CFF stated that no further recognition would be given to members of the development team other than their participation. The Claimant says he may have entered different tournaments and changed his training program if he had been aware of the development program. The Claimant says the “ad hoc” team was unfair, unscheduled and untenable in the promulgation of its criteria. The Claimant and his supporters say that an unfortunate precedent was created which challenges the credibility of the whole organization.

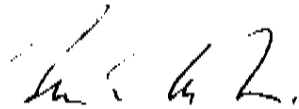
The team was officially announced and published on the website on March 8, 2011. When the Claimant learned of the team's selection, a letter of objection was sent to CFF. There are questions about what events triggered the times for appeal, but I am persuaded that the Claimant acted reasonably in advising CFF of his appeal intentions and the discretion allowed in extending times should be exercised on behalf of the Claimant if that is indeed necessary. The "Lavoie" case complicated the status of the Claimant, but CFF was obviously put on notice of these protests.

In view of the above, I find that the appeal is not time barred.

(b) Does the Claimant lack interest?

This question speaks to the merits of the appeal. A ruling on this is premature; however the Claimant will have the burden of proving that he is an effective party prejudiced by the actions of CFF.

In conclusion, I find that the Claimant can proceed with its appeal on the merits.



Stewart McInnes, Arbitrator