

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

No. SDRCC 23-0628

IN THE MATTER OF WRESTLING CANADA LUTTE'S DISCIPLINE POLICY

BETWEEN:

DAVID SPINNEY

(Claimant)

-and-

WRESTLING CANADA LUTTE

(Respondent)

-and-

LÚCÁS Ó'CEALLACHÁIN and ED ZINGER

(Affected Parties)

BEFORE:

Peter Lawless, KC (Arbitrator)

REPRESENTATIVES:

On behalf of the Claimant: Michael Smith (Counsel)

On behalf of the Respondent: Morgan McKenna (Counsel)

On behalf of the Affected Parties: André Marin (Counsel)

DECISION ON COSTS

Background

1. This matter came before me as an appeal of an arbitrator's decision denying an appeal from a discipline panel's decision wherein the Claimant was found to have violated the Respondent's Discipline Policy and ordered a sanction against the Claimant.
2. In a reasoned decision dated September 6, 2023, I dismissed the Claimant's Appeal.
3. The *Canadian Sport Dispute Resolution Code* (the "Code") allows for costs to be awarded as set out in section 5.14 of that Code:

5.14 Costs

- (a) Except for the costs outlined in Section 3.8 and Subsection 3.7(e), and unless expressly stated otherwise in this Code, each Party shall be responsible for its own expenses and those of its witnesses.*
- (b) Where applicable, Parties seeking costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the final award or decision on merits being rendered.*
- (c) A reasoned decision on costs shall be communicated to the Parties within ten (10) days of the closing of cost submissions.*
- (d) The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.*

4. The Code also notes:

6.13 Costs

- (a) The Panel shall determine whether there is to be any award of costs, including but not limited to legal fees, expert fees and reasonable disbursements, and the amount of any such award. In making its determination, the Panel shall consider the outcome of the proceeding, the conduct of the Parties and abuse of process, their respective financial resources, settlement offers and each Party's good faith efforts in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to costs.*
- (b) A Party may raise with the Panel any alleged breach of this Code by any other Party. The Panel may take such allegation into account in respect of any cost award.*
- (c) Any filing fee charged by the SDRCC can be taken into account by a Panel if any costs are awarded.*

5. The Parties were provided an opportunity to make submissions on costs. The Respondent made no request for costs and did not file any submissions. The Affected Parties and the Claimant both

filed written submissions including a Reply filing submitted by the Affected Party despite such a filing not being contemplated in the submissions schedule I set out.

6. The Claimant responded to the Reply being filed with an email noting that the Reply was not contemplated in the costs submissions schedule, asking that it be struck from the filings and inviting me to draw an adverse inference in relation to the question of costs.
7. I am of the view that given the flexibility arbitrators are granted in proceedings that there is no issue with admitting a Reply. There is no prejudice to the Claimant by its admission.
8. I further find that the criticism of the Reply is yet another example of the focus on “procedural wrangling” that has been seen throughout this matter and which undoubtedly increased the costs of all Parties.

Position of the Parties

9. The Affected Party seeks costs against both the Claimant and the Claimant’s counsel personally in the amount of \$60,000 to “...cover their legal fees, make them whole again, and provide some compensation for the extra psychological stress Spinney and his lawyer have put them through.”
10. The Claimant submits that the parties should each bear their own costs. Further, the Claimant says that there is no jurisdiction for an order of costs to be made against counsel personally.
11. Despite having directed that the Parties confine their respective submissions to four written pages, the Affected Parties’ initial submissions totalled 10 pages and they further submitted a two page “Reply” despite there being no provision for such a filing in the submissions schedule I set out.
12. These Parties have been engaged in a long and torturous path of procedural wrangling and if I have understood them correctly there are other ongoing matters between these same parties. A brief review of the filings of these parties does not do any of them any credit. The purpose of the Sport Dispute Resolution Centre of Canada (the “SDRCC”) is to allow for the just resolution of sports disputes in a fashion that was intended to be quicker, cheaper and less procedural than recourse to the courts.
13. It is regrettable that these Parties have through their own filings and submissions not availed themselves the opportunity to seek that quick, just and speedy resolution.
14. In assessing costs, I am guided by the provisions of section 6.13(a) of the Code as follows:

Outcome of the Proceeding

15. The Affected Parties were successful on all points in this proceeding. This weighs in favour of an award of costs but is not in itself sufficient to award costs.

Conduct of the Parties / Abuse of Process

16. The Claimant, throughout this proceeding, made submissions that were found to be untrue and made submissions that had no basis in fact.

17. In my Reasons I found the Claimant to have approached this matter with a “*casual indifference to the truth.*” The Affected Parties make note of this in their submissions where they point out that they had to spend considerable time in responding to these untruths.

18. I accept that the Affected Parties’ legal costs were significantly increased as a direct result of having to respond to numerous untruths and submissions with no foundation in fact submitted by the Claimant.

19. This type of conduct cannot be condoned and weighs heavily in favour of an award of costs.

Respective Financial Resources

20. Neither Party made submissions on this point. I therefore consider this criterion to be neutral.

Settlement Offers

21. Neither Party made submissions on this point. I therefore consider this criterion to be neutral.

Good Faith Efforts to Resolve the Dispute

22. Neither Party made submissions on this point. I therefore consider this criterion to be neutral.

Conclusion on Costs

23. I find that this is a case where costs are appropriately awarded to the Affected Parties.

24. The Affected Parties submit that their legal costs (not including any costs related to the costs application itself) are in excess of \$36,000. There is no detail whatsoever around the composition of this sum.

25. The Affected Parties also seek the additional amount of \$24,000 to compensate them for additional psychological stress for a total costs award sought of \$60,000.

26. The criteria for an award of costs before the SDRCC is well known and set out at section 6.13 of the Code.

27. While it might be said that authority for an award for costs to compensate for “psychological stress” may be found for in the words “...*including but not limited to legal fees...*” in section

6.13(a), section 5.14(d) provides that “The Panel does not have jurisdiction to award damages, compensatory, punitive or otherwise, to any Party.” (emphasis mine)

28. Accordingly, I am unwilling to order any costs for “psychological stress.”
29. The Affected Party further seeks that the costs award be made against counsel for the Claimant personally alleging that counsel made excessive motions and applications as well as submitted irrelevant and misleading statements and acted in bad faith.
30. Counsel for the Claimant submits that there is no jurisdiction for an award of costs to be made personally against counsel.
31. I disagree and am of the view that there may be circumstances that warrant an award of costs against counsel personally.
32. However, I do not find in this proceeding that Counsel for the Claimant’s conduct has risen to the level that would call for such an unusual award although it came perilously close given the overall approach to the truth.
33. On balance, after careful consideration of the applicable criteria set out and the totality of the circumstances of this proceeding, I find an appropriate costs award is \$24,000 inclusive of the \$20,000 costs award made by the Panel below.
34. To the extent there are any matters arising from this decision I will remain seized of this matter.

Signed at Vancouver, BC this 26th day of September 2023.



Peter Lawless, KC
Arbitrator

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On behalf of the Affected Parties: André Marin (Counsel)

CORRIGENDUM TO DECISION ON COSTS

1. This is a corrigendum to my Decision on Costs issued September 26, 2023. Paragraph 33 is corrected to read as follow:

33. On balance, after careful consideration of the applicable criteria set out and the totality of the circumstances of this proceeding, I find an appropriate costs award is \$14,000 inclusive of the \$10,000 costs award made by the Panel below.

Signed at Toronto, Ontario this 19th day of October, 2023.



Peter Lawless, KC
Arbitrator