

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

NO: SDRCC 23-0694

BETWEEN:

JAMES RANDALL  
(CLAIMANT)

AND

HOCKEY CANADA  
(RESPONDENT)

AND

KERRY HALEY  
(AFFECTED PARTY)

**DECISION**

Appearances/Submissions:

On behalf of the Claimant: James Randall

On behalf of the Respondent: Adam Klevinas, Counsel

On behalf of the Affected Party: Kerry Haley

1. On January 19, 2024, I was selected under Subsection 5.3 (b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to hear James Randall’s appeal of a decision of an Adjudicator appointed pursuant to Hockey Canada’s (“HC”) *Maltreatment Complaint Management Policy*.
2. This dispute began as a Med/Arb proceeding. After an unsuccessful attempt at mediation at which Mr. Randall and Hockey Canada participated, I continued as

the arbitrator. The arbitration was conducted based on the written submissions of the parties in order to comply with the Adjudicator's order that there be no direct or indirect contact between the Claimant and the Affected Party.

## **BACKGROUND**

3. HC is a not-for-profit amateur sports association and is the national governing body for hockey in Canada. It oversees the management and structure of programs in Canada.
4. In furtherance of its commitment to safety and inclusivity, HC has enacted a *Maltreatment Policy* which governs complaints of maltreatment by or against members. The *Policy* defines "Members" broadly, and include players, coaches, officials, team managers and board members. Maltreatment is defined to mean "a volitional act and/or omission that results in harm or has the potential for physical or psychological harm, and includes...physical maltreatment..."
5. Similarly, Hockey Nova Scotia's *Maltreatment, Bullying and Harassment Prevention and Protection Policy* provides that participants in Hockey Nova Scotia's programs "should have the reasonable expectation that Hockey Nova Scotia will provide an environment that is safe, accessible, inclusive and is free from all forms of Maltreatment, Bullying and Harassment."
6. James Randall was the general manager of the South Shore Schooners, which is part of the Nova Scotia Junior Hockey League and a member of Hockey Nova Scotia.
7. On October 22, 2023, HC received an anonymous complaint alleging that, on October 20, 2023, Mr. Randall physically assaulted the former head coach of the South Shore Schooners, Kerry Haley.
8. HC referred the complaint to an Independent Third Party ("ITP") as provided by Hockey Canada's *Maltreatment Policy*. The ITP administers complaints, including reviewing, screening and selecting an Adjudicative Chair or Adjudicative Panel who is responsible for assessing whether a violation has occurred and what the appropriate discipline should be, if any.
9. On December 2, 2023, an Adjudicator determined that Mr. Randall had physically assaulted Mr. Haley and suspended him from "participation in any capacity in any program activity, event or competition sponsored or organized under the auspices of Hockey Canada until the conclusion of the Nova Scotia Junior Hockey League's 2024-2025 season."
10. On December 5, 2023, the Adjudicator issued a clarifying decision, restricting Mr. Randall's attendance at "any hockey facility at which the South Shore Schooners

Junior C Team are known or ought reasonably suspected-to-be-known to be attending” for a period of three months, as well as restricting Mr. Randall from “having any contact or communication, whether in-person or indirectly via any medium, with the former head coach and any member of that former head coach’s immediate family, until the conclusion of the Nova Scotia Junior Hockey League’s 2023-2024 season.”

11. Although Mr. Randall did not dispute that a physical assault had occurred, he contested both the circumstances and the length of the sanction.

**Preliminary issue**

12. At the preliminary hearing in this matter, the parties disagreed on whether there were any Affected Parties to this dispute.
13. HC contended that Mr. Haley was an affected party on the basis that Mr. Haley had a legitimate expectation that he could attend any program, activity, event or competition sponsored or organized under the auspices of Hockey Canada without having to interact with or confront Mr. Randall, and that any changes to the Adjudicator’s sanction could have a tangible and adverse impact on him.
14. Mr. Randall contended that his wife was an affected party, based on his assertion that Mr. Haley made some offensive comments about her.
15. On February 5, 2024, I informed the parties that I had determined that Kerry Haley was an affected party, but Mrs. Randall was not, and that reasons for my determination would be provided in the final decision. These are those reasons.
16. The *Code* defines Affected Party to mean “a Person who may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal, such as being removed from a team or losing funding, and who is either accepted by the parties or named by the Panel as an Affected Party.” (Article 1.1 (a))
17. The sanction imposed by the Adjudicator includes a restriction on Mr. Randall’s ability to have any contact or communication, through any medium, with Mr. Haley or his immediate family. Any lifting or alteration of that sanction could have a tangible or adverse effect on Mr. Haley. Mr. Randall does not dispute physically assaulting Mr. Haley. Although the circumstances and severity of that assault are disputed, Mr. Haley is aware, through the Adjudicator’s decision, that Mr. Randall is prohibited from both communicating and contacting him, as well as attending Hockey Canada sponsored events and competitions. Any changes to the Adjudicator’s order will impact Mr. Haley, potentially adversely. I find that Mr. Haley is an affected party under Article 1.1(a).

18. The Adjudicator's decision does not impose any restrictions on Mrs. Randall. Therefore, whether the Adjudicator's decision is upheld or set aside, it will have no impact on Mrs. Randall, apart from any incidental impact through restrictions on her husband. I find Mrs. Randall is not an affected party as that is defined in the *Code*.

## **Merits**

### Facts

19. According to the December 2, 2023 Final Decision and Sanction Order (the "Decision"), the anonymous complainant alleged that Mr. Randall physically assaulted Mr. Haley, resulting in injuries to Mr. Haley. The complainant indicated that the assault was witnessed by members of the hockey community, including players and their parents.
20. The complainant alleged that Mr. Haley suffered scrapes, bruises, and an injured back. The complainant further alleged that, because of the assault, Mr. Haley avoids going to the community rink and had quit as the coach of the Junior C team.
21. Mr. Randall did not dispute that there was an altercation between himself and Mr. Haley. According to the Decision, Mr. Randall responded emotionally after hearing comments Mr. Haley allegedly made about Mr. Randall's wife and confronted Mr. Haley. Mr. Randall conceded that he yelled at Mr. Haley, aggressively approached him and shoved him. This encounter caused Mr. Haley to stumble backwards and fall over some bleacher steps. The Adjudicator accepted that Mr. Randall did not intend to cause Mr. Haley to fall over the steps but determined that it was reasonably foreseeable that he would do so because of Mr. Randall's actions. While Mr. Haley was attempting to get up, Mr. Randall made an offensive comment to him, including an expletive.
22. The Adjudicator found that the incident occurred in front of several people, including a number of children.
23. The Adjudicator found, on a balance of probabilities, that a serious violation of the *Policy* had occurred and that, as a person in authority, Mr. Randall was expected to be "held to a higher standard as a role model for those under his charge. More is expected of adults," and that Mr. Randall had failed to meet those expectations.
24. The Adjudicator noted that the complainant wanted Mr. Randall barred from the rink for an indefinite period, and that the complainant also advised that the team owner failed to take any action against Mr. Randall for two weeks.

25. The Adjudicator took into account Mr. Randall's view that the process was "one-sided" but also noted Mr. Randall's acknowledgement that the incident should not have occurred. Mr. Randall's position before the Adjudicator was that, in essence, he had made a mistake, that he intended to seek emotional counseling and become an advocate for anti-abuse systems in hockey communities, and that he had stepped down from his position as general manager after the complaint was made. Mr. Randall contended that it was unjust that "all physical maltreatments are treated under the same conditions."
26. After considering the principle of proportionality and Article 42 of the *Policy*, the Adjudicator determined it was appropriate to impose the sanction noted in paragraphs 9 and 10 above.

*Argument*

27. Mr. Randall continues to assert that the dispute was "one-sided." He contends that that no witnesses were questioned, and the Adjudicator made factual findings without any evidence. Mr. Randall argues that the Affected Party did not fall down any steps, that no children were present at the rink, and that no players observed the incident.
28. Mr. Randall also argues that the Adjudicator failed to consider his position that the Affected Party verbally assaulted his spouse. He asks, rhetorically, whether Mr. Haley's conduct should also be sanctioned.
29. Mr. Randall seeks a variation of the sanction imposed by the Adjudicator so that he is able to attend the rink to see what may be his son's final hockey game.
30. Mr. Haley submits that the Policy was appropriately followed. He says that if the sanction is not upheld, young people involved in the sport will be led to believe that it is appropriate to assault someone they disagree with. Mr. Haley said that the assault had affected him by taking something away from him that he enjoyed, and that Mr. Randall's arguments have already been addressed by the Adjudicator.
31. HC seeks to have the Adjudicator's decision confirmed and the complaint dismissed.
32. HC submits that this appeal should proceed by way of a review rather than a *de novo* hearing. HC further submits that the appropriate standard of review of the Adjudicator's decision is that of reasonableness, and that, applying that standard, the Adjudicator's decision was transparent, intelligible, and justified.

## ANALYSIS

33. Section 6.11 of the *Code* provides that the Tribunal has the power, but is not required, to review the facts and apply the law, and to conduct a *de novo*, or new hearing.
34. Subsection 6.11 (b) provides that I must conduct a new hearing where the relevant sport organization did not conduct its own internal appeal process or denied the claimant a right of appeal without having heard the case on its merits. Given that neither of the circumstances identified in Subsection 6.11 (b) exist in this appeal, I find that I have the discretion to decide whether to hold a new hearing.
35. HC's *Maltreatment Policy* provides for an external, independent process (the ITP) to manage maltreatment complaints. Complaints that, if proven, would constitute a severe form of maltreatment, are referred to an adjudicative panel. Given that the allegations in this case, if proven, would constitute a serious form of maltreatment, the ITP referred the complaint to an Adjudicator who I understand to be an experienced lawyer. The Adjudicator received the complaint, sought submissions from Mr. Randall and the complainant, and arrived at a reasoned decision based on the information before him. Given the judicial nature of the process adopted by the ITP, I find a *de novo* hearing to be inappropriate and decline to exercise my discretion to hold one.
36. Having found that this appeal should proceed as akin to a judicial review, I am of the view that the standard of review of the Adjudicator's decision is one of reasonableness.
37. In *Canada (Minister of Citizenship and Immigration) v Vavilov* (2019 SCC 65) the Supreme Court of Canada held that a reasonableness review is a "robust form of review" in which the reasons of the decision maker must demonstrate that he or she has considered the facts and governing scheme relevant to the decision as well as any past practices.
38. As noted by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1. S.C.R. 339, a reasonableness standard requires deference:

Reviewing courts cannot substitute their own appreciation of the appropriate solution but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47) There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and

intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome. (para. 59)

39. Therefore, the issue before me is not whether the Adjudicator's decision to impose a sanction, or the length of sanction, was "correct." Rather, the issue is whether the Adjudicator's sanction fell within a range of possible, acceptable outcomes.
40. I am satisfied that Mr. Randall was afforded a fair hearing. He was informed about the complaint and given every opportunity to respond to it. The Adjudicator clearly "heard" him and considered his responses in making his decision.
41. Although the Adjudicator considered allegations made by an anonymous complainant, many of the facts alleged were confirmed by Mr. Randall. That is, Mr. Randall conceded that he shouted at Mr. Haley using expletives and that he shoved him. Mr. Randall also agreed that, after shoving Mr. Haley, Mr. Haley stumbled backwards and fell over some bleacher steps. I find that the Adjudicator's finding that a physical assault occurred to be well grounded on the information before him.
42. The Adjudicator then considered several factors in assessing an appropriate sanction in accordance with Article 42 of Hockey Nova Scotia's *Maltreatment, Bullying and Harassment Prevention and Protection Policy*.
43. Those factors included the fact that, at the time of the incident, Mr. Randall was 44 years of age and Mr. Haley was 61, that this was Mr. Randall's first "offence" and he had no prior history or pattern of inappropriate behaviour, that he cooperated in the complaint process and that he expressed regret for his actions. The Adjudicator also considered Mr. Randall's suggestion that he should not face any sanction because the incident was not as serious as the complaint had made out and that, in essence, he was "provoked" into taking the action he did.
44. The Adjudicator determined that the incident occurred in the arena, a public area where there were a number of witnesses, including parents, children and fans.
45. I accept Mr. Randall's argument that because the Adjudicator did not interview any witnesses, he erred in concluding that the incident occurred in front of players. Although the Adjudicator had some evidence before him in the form of the complaint, he did not assess the credibility of the assertion that the assault occurred in front of children, which Mr. Randall disputed. However, I note Mr. Haley's submission that the assault was viewed by at least two officials.

46. Apart from that factual finding, I find no basis to conclude that the Adjudicator acted on a view of the facts that cannot be entertained. Mr. Randall did not dispute the essence of the complaint, which was that he physically assaulted a now-former coach.

47. The Adjudicator also fully considered Mr. Randall's argument that that he was, in essence, 'provoked' into assaulting Mr. Haley:

The Respondent also continuously blames the way the former head coach spoke to the Respondent's wife as the reason for his actions. While the former head coach's actions in the dressing room may or may not have been appropriate, that is not the issue in front of me and, even if it were I cannot find the Respondent's actions to be proportionate to the alleged behaviour by the former head coach. (paragraph 64)

48. The Adjudicator concluded:

Shoving another member of the hockey community, no matter the intention of the degree of harm, is a very serious violation. Telling that person, while still splayed out on the bleachers to "go cry" and calling him a "big fucking baby" is serious. Both are acts of disrespect for the integrity, physical and psychological well-being of another. ... (paragraph 73)

49. It appears from these comments that the Adjudicator considered Mr. Randall's comments to Mr. Haley after he had fallen to constitute aggravating factors when considering the length of the sanction.

50. I find that the Adjudicator appropriately considered principles of proportionality in arriving at his decision to impose on Mr. Randall a three-month suspension from the rink, a no contact order and the suspension from participation in Hockey Canada events until the end of the 2024-2025 season.

51. Even if I may have decided on a different sanction, I find the Adjudicator's decision to be transparent, intelligible, and justified and to fall within a range of possible, acceptable outcomes. In short, I find it to be reasonable and I decline to interfere with it.

## CONCLUSION

52. The appeal is denied.

53. In closing, I note that Mr. Randall expressed some remorse to the Adjudicator and a willingness to make "amends." The Adjudicator offered his assistance for



Mr. Randall to do so outside the Adjudication process. Once the no-contact order period is over, Mr. Randall is free to pursue appropriate solutions to attempt to repair his relationship with Mr. Haley.

DATED: February 26, 2024, Vancouver, British Columbia

A handwritten signature in black ink, appearing to read "Carol Roberts". The signature is written in a cursive style with a large initial "C" and "R".

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Carol Roberts, Arbitrator