

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

NO. SDRCC 24-0716

ADRIAN GRECO

Claimant

AND

HOCKEY CANADA

Respondent

AND

KERRY AND JENNIFER JACKSON

Affected Parties

Appearances/Submissions:

Adrian Greco	Claimant
Adam Klevinas	Counsel for the Respondent
Nathan Kindrachuk	Representative for Hockey Canada
Kerry and Jennifer Jackson	Affected Parties

1. On May 28, 2024 I was appointed under Section 5.3 (b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to act as the Med-Arb Neutral to hear Adrian Greco’s appeal of the decision issued by an Adjudicator appointed pursuant to Hockey Canada’s *Maltreatment Complaint Management Policy*.
2. The Parties were invited to make submissions regarding their interests and positions on the appeal. All submissions were received in a timely manner.
3. On July 11, 2024, I convened a mediation session with the Parties. The mediation session was not successful in resolving the matter and I advised the Parties that I would render a decision as the Arbitrator. All Parties agreed that I could use as the basis for the arbitration their written submissions. They were provided the opportunity to make additional submissions by July 18, 2024. The Claimant and the Affected Parties made additional submissions in a timely manner.

Background

4. Hockey Canada is a not-for-profit amateur sports organization. It is the national governing body of Hockey in Canada and oversees the management and structure of hockey programs.
5. Hockey Canada has implemented a *Maltreatment Complaint Management Policy* (the “Maltreatment Policy”) governs complaints of maltreatment by or against members. “Members” is broadly defined and includes players, coaches, team managers, officials and board members. Maltreatment is defined as “...a volitional act and/or omission that results in harm or has the potential for physical or psychological harm...”
6. Adrian Greco was the head coach of the Toronto East Enders U13 AA Hockey team. The team is part of the Greater Toronto Hockey League (the “GTHL”) which is a member of the Ontario Hockey Federation (the “OHF”).
7. On December 13, 2023 Kerry and Jennifer Jackson (the “Affected Parties”) submitted a maltreatment complaint to Hockey Canada. Hockey Canada referred the complaint to an Independent Third Party (ITP) as provided in the Policy. The ITP assumed jurisdiction of

the complaint and appointed an Adjudicative Chair to determine whether Mr. Greco (the “Claimant”) had engaged in maltreatment and if so, what sanctions should be applied.

8. As set forth in the Policy the Adjudicator held a hearing pursuant to the Policy under the process set out as Process #1. He interviewed witnesses and assessed their credibility. He gathered evidence regarding specific incidents in the complaints. He interviewed the Claimant.
9. The Adjudicator found that the Claimant had failed to adequately supervise the change room and had thereby breached the GTHL Dressing Room Policy (the “GTHL Policy”), the OHF Policy on Dressing Room Supervision (the “OHF Policy”) and the Neglect provision of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS).
10. The Adjudicator imposed the following sanctions on the Claimant: suspension from all Hockey Canada sanctioned activities, including but not limited to games, practices, and events, for the first two weeks of his next registered Hockey Canada season; and completion of a course on coaching responsibilities to be determined by Hockey Canada.
11. The Claimant is appealing the Adjudicator’s decision.

Facts

12. The complaint by the Affected Parties alleged that the Claimant had taken inadequate steps to protect their son, a player on the team, from bullying incidents. The incidents deeply impacted their son and their family.
13. The Adjudicator found that the evidence provided by the coaching staff was fairly consistent. The change room doors were propped open but there were not always coaches present and there was not a consistent practice of having two coaches posted outside of the change rooms. Furthermore, players would on occasion arrive before any coaches meaning that they would be in the change room without any supervision. Additionally, it was unclear if the propping open of the doors was sufficient to monitor the environment of the change room.

14. The Adjudicator found that on October 15, 2023 inappropriate photographs of the Affected Parties' son were taken by other team members.
15. The Adjudicator noted that during his interviews with several of the team members they were forthcoming about various interactions among the team members. The interviews surfaced comments regarding a "toxic environment" and "bullying".
16. The photographs referenced in paragraph 14 were sexually suggestive and were widely shared not only with other team members but also with classmates and on social media.
17. The Adjudicator concluded that it was appropriate to impose the sanctions noted in paragraph 10 above.

Arguments

18. The Claimant filed several documents in which he maintains that the Adjudicator did not collect enough information regarding the supervision responsibilities and applications. The Adjudicator primarily collected information regarding the minors. The Claimant believes that not enough time was spent on the supervision components by the Adjudicator in his investigation. To support his claims, he provided a seventeen-page Summary of Events including a detailed journal of events as they occurred.
19. The Claimant further contends that the Adjudicator made assumptions with limited information. The Claimant asserts that the coaches fulfilled their supervision duties and emphasizes that his Summary of Events illustrates that the coaches did not take their responsibilities lightly.
20. The Affected Parties maintain that the sanctions that had been administered to the Claimant are already too lenient. The Claimant is unwilling to accept responsibility or acknowledge the very rules that were put in place to prevent the behaviours exhibited in this matter. Sexually suggestive photos were taken without consent. The photos were posted on social media sites. There was ongoing verbal and physical bullying by a select group of teammates that took place in an unsupervised hockey dressing room. It was an unsafe environment that caused harm to their son's mental health. If the sanctions are

reduced it will not only undermine the complaint process but also will dismiss the positive changes to the hockey culture that Hockey Canada is trying to bring about.

21. Hockey Canada emphasizes that the Adjudicator found that none of the team's coaches were immediately outside the dressing room door and in a position to monitor the environment. Had they been in such a position they would have observed the incidents that occurred and that are the subject of this dispute.
22. Hockey Canada further submits that the standard of review of the decision is that of reasonableness and under that standard the decision was justified.
23. Hockey Canada seeks to have the Adjudicator's decision confirmed and the complaint dismissed.

ANALYSIS

24. Subsection 6.11 (a) of the Code provides that the Tribunal has the power to review the facts and apply the law.
25. Subsection 6.11 (b) of the *Code* provides me with the power to conduct a hearing *de novo* and requires me to conduct a new hearing where the relevant sports 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."
26. Hockey Canada's *Maltreatment Policy* provides for an external, independent process to manage maltreatment complaints. Complaints are referred to an independent Adjudicator. In this case the Affected Parties' complaint was referred to an experienced lawyer. The Adjudicator conducted the proceeding pursuant to the Policy under the process set out as Process #1. He arrived at his reasoned decision based on the information gathered through the Process. Given the fact that the sports organization provided for a process that was judicial in its nature there is no reason for me to conduct a new hearing and I therefore decline to exercise my discretion to do so.

27. The Claimant's appeal is therefore proceeding as a judicial review. Judicial reviews are not opportunities to re-argue a case or, absent unusual circumstances, introduce new evidence.
28. The question before me is not whether the Adjudicator's decision was correct but rather whether it was reasonable and falls within a range of possible, acceptable outcomes.
29. The Supreme Court of Canada has held that a reasonableness review is a "robust form of review" in which the reasons of the decision maker demonstrate that consideration has been given to the facts and the governing scheme relevant to the decision as well as any past practices. When conducting a reasonableness review "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified." Further, "a court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justifications offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place." *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019 SCC 65) at paras. 13 and 15.
30. The Adjudicator held a hearing pursuant to the *Maltreatment Policy* under the process set out as Process #1. He interviewed eleven witnesses including the assistant coaches, the team manager and the Claimant. He assessed the credibility of the witnesses. He gathered evidence regarding specific incidents in the complaints. He determined that he had sufficient evidence to make factual determinations.
31. The evidence collected by the Adjudicator supported the conclusion that coaches were not present in the dressing room when the incidents occurred. The evidence further supported the conclusion that there were not two properly screened adults immediately outside of the dressing room with the door propped open when the incidents occurred.
32. The GTHL Policy requires that two properly screened adults are to be immediately outside the dressing room with the door propped open to monitor the environment and

ensure it is free from any discrimination, harassments, bullying, or other forms of harassment:

To best ensure safety for all participants, all minor hockey programs sanctioned by the Greater Toronto Hockey League (“GTHL”) and its Members are required to implement the ‘Rule of Two’ for all dressing rooms. The ‘Rule of Two’ requires that when any player under the age of 18 is in the Team dressing room(s) before, during and after a game or practice or other on-ice activity, two properly screened adults are to be present in the dressing room or immediately outside the dressing room with the door propped open to monitor the environment and ensure it is free of any discrimination, harassment, bullying, or other forms of maltreatment. The ‘Rule of Two’ remains in place when showers are in use.

33. The OHF Policy has a similar clause that provides:

...that, when a player under the age of 18 is in the team dressing room(s) before, during and after a game or practice, a minimum of two of the following shall be present in the dressing room(s) or immediately outside the dressing room(s) with the door ajar: two team or club/association officials, properly screened or one such official and an adult person associated with the team.

34. The Claimant challenges the reasonableness of the GTHL and OHF Policies contending that it was difficult to monitor the environment, particularly when there is more than one dressing room. The Claimant however has been aware of the Policies and the requirements that they had to be met.

35. The Claimant’s failure to adhere to these Policies led to incidents of harassment and bullying within the dressing rooms that affected the Affected Parties’ son. The Claimant’s failure, and the behaviours resulting from his failure, defy the expectation that minors who engage in sporting activities will be treated with respect as well as the expectation that the interests of the players will be put first. The Claimant took inadequate steps to protect the son of the Affected Parties.

36. The Adjudicator concluded that the Claimant’s failure to adequately supervise the change room breached the GTHL Policy and the OHF Policy and the Neglect provision of the UCCMS. The breaches amount to maltreatment as defined in the *Maltreatment Policy* “...a volitional act and/or omission that results in harm or has the potential for

physical or psychological harm...” I do not disagree. The Adjudicator’s conclusion was reasonable and represents a fair and correct application of the policies.

37. The Adjudicator weighed the aggravating and mitigating factors in making his determination as to the applicable sanctions.

38. The Adjudicator properly analyzed and applied the sanctions set forth at paragraphs 42-44 of the *Maltreatment Policy*. His decision to impose a suspension for all Hockey Canada sanctioned activities, including but not limited to games, practices, and events, for the first two weeks of his next registered Hockey Canada season and a requirement that the Claimant complete a course on coaching responsibilities is justified and falls within a range of possible, acceptable outcomes. I decline to interfere.

CONCLUSION

The appeal is denied.

Dated: August 6, 2024, Tsawwassen, British Columbia

A handwritten signature in black ink, appearing to read "Sylvia P. Skratek", with a long horizontal line extending to the right.

Sylvia P. Skratek, Arbitrator