

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

NO: SDRCC 24-0748

BETWEEN:

JOHN JACKSON

(CLAIMANT)

AND

HOCKEY CANADA (HC)

(RESPONDENT)

**DECISION**

Appearances:

On behalf of the Claimant: John Jackson

On behalf of the Respondent: Adam Klevinas, Counsel

1. On October 2, 2024, the parties selected me as the Mediator/Arbitrator under subsection 5.3(b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to resolve this dispute.
2. Although Mr. Jackson’s request identified five individuals, the West Niagara Minor Hockey Association and the Ontario Minor Hockey Association as Respondents, his appeal is, in fact, of a decision of an independent Adjudicator issued August 15, 2024 (the “Decision”), under section 6.1 of the *Code*. The Decision is in relation to a complaint filed against the five individuals and two Hockey Associations identified by Mr. Jackson in his request.
3. Attempts by the parties to resolve this dispute through the mediation process were unsuccessful, and the matter proceeded to arbitration.

4. This decision is based on written submissions of the parties. Although the Claimant sought an oral hearing, after reviewing the submissions, I determined that an oral hearing was unnecessary.
5. This dispute is about the decision of an independent Adjudicator. There is no witness evidence to be presented. The Claimant's written submissions do not address the reasonableness of the Decision; rather, they focus largely on the process that led to the Decision. To conduct an oral hearing would not, in my view, assist me in deciding the issue of whether the Decision is reasonable and supportable based on all the information before the Adjudicator. I am also of the view that an oral hearing would not be a prudent use of resources, either of the parties or of the SDRCC.

## OVERVIEW

6. Hockey Canada ("HC") is the national governing body for amateur hockey in Canada. Maltreatment complaints made to HC are managed by an Independent Third Party ("ITP") in accordance with HC's *Maltreatment Complaint Management Policy*. (the "*Policy*")
7. The Claimant is the father of a now former hockey player who played on a U13 team in the Grimsby Minor Hockey Association during the 2013-2014 and 2015-2016 seasons. That Association is now the West Niagara Hockey Association.
8. On December 18, 2022, the Claimant filed a complaint against five individuals who were members of the Grimsby Minor Hockey Association as well as the West Niagara Minor Hockey Association ("WNMHA"), (formerly the Grimsby Minor Hockey Association) and the Ontario Minor Hockey Association ("OMHA"), all of which were within the Ontario Hockey Federation ("OHF").
9. Upon receipt of the complaint, on March 21, 2023, the ITP accepted jurisdiction and ordered an investigation into the complaints against the five individual respondents but not the OMHA or the WNMHA. The investigation was conducted by Paul Di Clemente of Certitude Workplace Investigations. According to publicly available information, Mr. Di Clemente is legally trained and has over 10 years' experience conducting harassment investigations.
10. The *Policy* provides that an investigator has discretion over the manner of the investigation, which may include interviews with relevant parties. Upon completion of the investigation, the investigator prepares a report which includes a summary of the evidence and recommendations about whether any violation of the *Policy* has occurred, based on a balance of probabilities. The procedure to be followed by an investigator is set out in an Appendix to the *Policy*.
11. The findings of an investigator are not to be re-litigated before an Adjudicator.

12. In this case, the investigator reviewed the evidence submitted by both Mr. Jackson, the five individuals and the two organizations. The investigator spoke to Mr. Jackson, the five individual respondents, and representatives of the two organizations. He also interviewed four witnesses.
13. The investigator produced a 94-page report, a summary of which was provided to the Claimant. The summary and the full version of the report were provided to the Adjudicator, who described the investigation as “exhaustive” (paragraph 88). I was provided with the summary version.
14. The investigator found that the bulk of the allegations had not been substantiated. While the investigator found that one individual did act inappropriately by yelling at Mr. Jackson’s son, that individual was made to apologize. The investigator found that this matter had been appropriately dealt with and that no further action was warranted.
15. The *Policy* provides that an investigator’s report is presumed to be determinative of the facts, and that, upon completion of the investigation, the ITP will appoint an Adjudicative Panel. After hearing the matter, the Panel is to determine whether an infraction, breach or violation has occurred, and if so, what, if any sanctions are to be imposed. The format of the hearing is established by the Adjudicative Panel and the ITP. The choice of the format is not subject to appeal.
16. The Adjudicative Panel in this matter was a former justice of the Ontario Superior Court. In her Decision, the Adjudicator sets out the specific complaints against each of the individuals and the associations, as well as the findings of the investigator.
17. The Adjudicator dismissed the complaints against the WNMHA and the OMHA because they were not Organizational or Member Participants covered by the *Policy*. However, the Adjudicator determined that the conduct of the individuals and Members of those organizations were subject to the policies and respective codes of conduct.
18. The Adjudicator found that because the Grimsby Minor Hockey Association no longer existed, its policies were no longer applicable, but that the WNMHA Code of Conduct and Ethics, which established standards of behaviour for all participants, was relevant. She also noted that while the OMHA harassment policy was not in effect at the time of the conduct alleged in the complaint, the OHF’s Harassment, Abuse and Misconduct Policy was.
19. The Adjudicator considered the OHF policy’s definition of harassment and bullying, as well as that policy’s references to child and emotional abuse.

20. The Adjudicator carefully reviewed the investigator's report into the complaint, which included 14 tabs of documentary material. Those materials included OMHA files in relation to the Claimant's appeal of a denial of a release of residency from Grimsby MHA, the OMHA appeal file relating to the Claimant's complaint about the coach, email chains relating to the Claimant's requests that his son be switched from the line on which he was playing and allegations that an individual had yelled at the Claimant's son, along with materials submitted in the appeals of the complaint.
21. The Adjudicator considered the allegations against each of the named parties, their responses and additional information provided by the Claimant to the investigator in some detail, as well as the factual findings of the investigator. (paragraphs 32-77)
22. The Adjudicator concluded (at paragraph 82) that while one of the individuals may have uttered words at a volume that was "mildly disrespectful," the words themselves "were not disrespectful, offensive, abusive, racist or sexist." The Adjudicator noted that the investigator had not found that any of the other allegations had been substantiated. (paragraph 83)
23. The Adjudicator concluded that the individual who had uttered words that were mildly disrespectful should not be sanctioned. The Adjudicator determined that sufficient sanction had long since been imposed and served, and further, that the appropriateness of the sanction had twice been subject to appellate review. She declined to impose a further sanction on the basis that to do so would, in all the circumstances, be unjust and improper. (paragraph 87)
24. The Adjudicator dismissed the complaint, concluding that "the findings of fact of the investigator clearly demonstrates, in my view, that the *Discipline and Complaints Policy* of Hockey Canada has here been used in service of an abuse of process at the instigation of this [Claimant]." (paragraph 88)

### **Arguments**

25. In summary, Mr. Jackson argues that the Decision was based on a "flawed" investigation report, as that report "relied on information from the respondents, which appears to be inaccurate or misleading." The Claimant contends that the evidence of the five named individuals was not subjected to cross-examination. He further argues that the "testimony" provided by those individuals conflicted with the documentary evidence presented and that additional questions "could have altered the overall outcome" arrived at by the Adjudicator.

26. Hockey Canada submits that the Claimant is simply attempting to “relitigate a wide array of issues that have already been addressed in various processes before the OMHA, the OHF and Hockey Canada.”
27. Hockey Canada also argues that the procedures followed, and the decisions made, by the OMHA, the OHF and Hockey Canada are not subject to scrutiny in this appeal, on the basis that they have been already decided (the principle of *res judicata*).
28. Hockey Canada further submits that the Claimant raises very few alleged flaws in the Decision or the summary investigation report, and that nothing in the Claimant’s submissions warrants intervention in the Decision.

### Analysis

#### *The Code*

29. Section 6.11 of the *Code* provides that the Panel has the power to conduct a hearing *de novo*, and that the hearing must be *de novo* where the sport organization did not conduct its internal appeal process.
30. As Hockey Canada did apply its own internal appeal process, I am not required to conduct this arbitration as a *de novo* hearing. Whether I do so is a matter of discretion. I am not persuaded, considering the procedure below, that a *de novo* hearing is required. I found Hockey Canada’s process to be both thorough and fair.
31. Consequently, this appeal will proceed as a review of the decision of the Adjudicator, applying a reasonableness, or deferential, standard. (see also *Barch v. Hockey Canada*, SDRCC 23-0680)
32. A reasonableness review is a “robust form of review” of the Adjudicator’s decision, according to the guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The review must “focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker’s place.” (para. 15) In other words, provided the decision falls within a range of reasonable outcomes, it will not be disturbed, even if I may not have arrived at a different conclusion.
33. This appeal is against the August 15, 2024, Decision of the Adjudicator. It is NOT a “do over,” or a reconsideration of any of the arguments or processes that led to that Decision simply because the Claimant is dissatisfied with the result. An appellant must provide compelling evidence that there were “serious shortcomings” in the Decision appealed.

34. The Claimant has not advanced any arguments regarding any shortcomings in the Decision. Rather, his arguments are focused on the process prior to the ITP's decision to refer the complaint to an investigator as well as on the investigator's Report. A reasonableness review does not include a re-argument of the merits of a decision.
35. I am not persuaded that there are any shortcomings in the Decision. I find that the Adjudicator fully considered the factual findings in the investigation report and came to intelligible and justified conclusions that were supportable on the evidence before her. Mr. Jackson has provided no basis for me to conclude it should be interfered with.
36. Much of the Claimant's submission repeats arguments that he has made through the myriad processes he has been involved in, beginning in 2016. I have reviewed a summary of the investigation report and note the following comments of the investigator, as set out in the Decision:

The substance of the Complainant's complaints of harassment were the subject of an appeal to the OMHA in 2017 for an outright release from the residency requirement for his son from the GMHA on the basis that his son was being subjected to harassment and abuse by Respondent 1. That appeal led to further appeals in 2017 to the Ontario Hockey Federation and Hockey Canada. None of the Complainant's appeals were successful and all levels ruled that the matters raised by the Complainant about Respondent 1 had been appropriately dealt with by the GMHA.

Notwithstanding that the Complainant filed unsuccessful appeals in 2017, the Complainant filed a second appeal to the OMHA, seeking the same remedy, on the same grounds, with almost identical information in 2018. Despite already ruling on the substance of the Complainant's appeal in 2017, the OMHA heard the 2018 appeal and again denied the Complainant's appeal. The Complainant then appealed the matter to the OHF who again upheld the OMHA decision.

The bulk of the Complainant's allegations in this matter are identical to the complaints raised and adjudicated in the 2017 and 2018 appeals with the exception that the Complainant is now alleging acts of reprisal and retaliation by a number of Respondents for having filed those appeals.

37. I also note that, as recounted in the Decision, during the investigation, the Claimant took the view that the respondents were, collectively, part of a conspiracy to disadvantage him and cover-up the conduct of one of the

individual respondents and the GMHA. The Claimant also accused the investigator of being part of the “cover-up” even before speaking to him.

38. The investigator continued:

The investigator finds that the continuous adjudications of these matters over a span of seven years in multiple jurisdictions may in fact have had the effect of harassing the Respondent’s (sic) themselves – none of whom were found to be culpable of any serious misconduct. The Investigator recommends that this matter be closed and that the Complainant be barred from attempting to raise these same claims in another forum at a later date.

39. Despite these strong comments, the Claimant’s submissions constitute yet another attempt to reargue these matters. He seeks a new hearing where the evidence of the “respondents” is subjected to cross examination. Included with the Claimant’s appeal is a significant amount of information, most, if not all, which I infer has been previously submitted on his many appeals.

40. While I appreciate the Claimant, who is not legally trained, may not fully appreciate the principles of administrative law, I am unable to discern any basis for his appeal other than the fact that he feels he has been denied the opportunity to “cross-examine” officials who were involved in coaching his son almost ten years ago in order to “determine the truth” as he believes it to be.

41. I will not consider the Claimant’s arguments regarding the alleged flaws in the processes leading up to the complaint to Hockey Canada in 2022 nor any alleged flaws in the investigation report. There is no evidence the investigator was biased or denied him the opportunity to provide any evidence and arguments he wished to make.

42. Furthermore, while this appeal is of the Decision of the independent Adjudicator rather than the factual findings of the investigator, I note that while there may be differences of opinion or inconclusive evidence to make findings of fact on a balance of probabilities, such differences do not equate to “flaws.”

43. As the Federal Court of Appeal recently held:

...although the Applicant may have preferred that the HRO [human rights officer] ask different questions in the interview, investigators have a wide latitude regarding how they conduct their investigation; they are not required to turn over every stone nor can they be held to a standard of perfection: *Holm v. Canada (Attorney General)*, 2006 FC 1170 at paras 40-41. In other words, the Court generally will not order a new proceeding just because an applicant can think of a fairer or different process: *Olienik v Canada (Privacy Commissioner)*, 2011 FC 1266 at para 10. (*Shelly Whitelaw v.*

*Attorney General of Canada and Royal Canadian Mounted Police, 2024 FC 1115, at para. 23)*

44. Although the investigator's findings are not subject to review in this process, there is no evidence before me to conclude that they were "flawed." There is no provision in the *Policy* for Mr. Jackson to have the right to "cross-examine" any of the respondents.

## CONCLUSION

45. The appeal is denied.
46. The Claimant has availed himself of every process offered by Hockey Canada or its affiliated organizations to advance his argument that his son was treated unfairly and that the various individuals responsible for that unfair treatment have been dishonest and malicious and have retaliated against members of his family. His allegations have repeatedly been found to be unmeritorious.
47. Despite the findings of independent adjudication processes and the strong comments of the investigator and Adjudicator in the current appeal, Mr. Jackson continues to believe that the truth of these events, as he perceives it, has not been exposed.
48. I accept that Mr. Jackson's son experienced events that caused him serious distress which required medical attention, and that the consequences of those events affected, and continue to affect, his entire family.
49. It is, nevertheless, my sincere hope that Mr. Jackson and his family can put these events behind them and pursue positive endeavours.
50. If Mr. Jackson persists with his challenges against these respondents, he risks being found to be abusing the processes available to him and facing an award of costs.

DATED: December 23, 2024, Vancouver, British Columbia



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Carol Roberts, Arbitrator