

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

**March 5, 2025**

**N°: SDRCC SAT 24-0002  
(APPEAL TRIBUNAL)**

**DIRECTOR OF SANCTIONS AND OUTCOMES (DSO)  
(APPELLANT)**

**AND**

**[REDACTED]  
(RESPONDENT)**

**AND**

**[REDACTED]  
(INTERESTED PARTY)**

## BACKGROUND

1. This appeal arises from the decision of a Safeguarding Panel<sup>1</sup> (the “Panel” or “First Instance Panel”) constituted under the auspices of the Safeguarding Tribunal (the “Tribunal”) a division of the Sport Dispute Resolution Centre for Canada (the “SDRCC”) in matter number ST 24-0022 issued on 6 August 2024 (the “Decision”).
2. The First Instance Panel by its Decision set aside the findings of the Director of Sanctions and Outcomes (the “DSO”) and corresponding sanctions against the Respondent. The Panel did so on the basis of non-applicability of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the “UCCMS”) to conduct which occurred prior to the UCCMS coming into effect in 2022; or, to conduct which occurred prior to a participant executing a consent form to be bound by the UCCMS (a “Participant Consent Form”). Conduct which occurred prior to the UCCMS or a participant executing a consent form is herein referred to as “historical conduct”.
3. The UCCMS is the foundational document to the Abuse-Free Sport Program of the SDRCC. It is the document which prescribes prohibited behaviours and sanctions. The DSO has appealed the Decision (the “Appeal”) on a question of law to the Safeguarding Appeal Tribunal (“SAT”) pursuant to Article 9 of the Canadian Sport Dispute Resolution Code (“Code”).

---

<sup>1</sup> Capitalised words in this Arbitration Award have the meaning assigned by the Canadian Sport Dispute Resolution Code (1 October 2023); or, the Universal Code of Conduct to Prevent and Address Maltreatment in Sport; or, the various Guidelines of the Office of the Sport Integrity Commissioner. Other words that are capitalised, e.g. *Decision*, have the meaning ascribed to them by this Award or the ordinary English language grammar requirement to be capitalised.

4. The SAT Panel first issued a decision on its jurisdiction to hear this appeal on 31 October 2024 finding that it had jurisdiction pursuant to Section 9.6 of the Code. That ruling triggered this second preliminary matter before the SAT Panel.
5. Further to the SAT Panel ruling on its jurisdiction, the DSO challenged the First Instance Panel's finding that the UCCMS had no retroactive effect (the "Preliminary Issue") in essence because the Decision was grounded on an issue not raised by the Respondent. The DSO and Interested Party both submit that the First Instance Tribunal:
  - acted in excess of its jurisdiction pursuant to section 8.6(f) of the Code, and,
  - erred in its determination that the UCCMS could not be applied retroactively to the Respondent's historical conduct.
6. All Counsels agreed upon the SAT Panel stipulations as to procedure and timing of submissions, The final oral submissions could not be arranged until 25 February 2025.

### **Submissions**

7. The DSO submits that the Decision should be set aside because the First Instance Panel acted outside of its jurisdiction under the Code, that the UCCMS should apply to conduct which occurred prior to its implementation, and that the Findings of the DSO on Violation and Sanctions against the Respondent should be considered on their merits.
8. The DSO submits that the First Instance Panel acted beyond its jurisdiction by imposing relief not expressly sought by the Respondent and argues that:
  - (i) Subsection 8.6(f) of the Code empowers the Tribunal to increase, decrease or remove sanctions imposed by the DSO only where the basis for such relief is requested by the challenging party.
  - (ii) SDRCC SAT 24-0001 [unpublished] found that tribunals cannot apply their discretion without the explicit request of the party challenging the sanctions.
  - (iii) The Respondent did not explicitly challenge the applicability of the UCCMS in their Request for a Safeguarding Hearing dated May 23, 2024 (the "Request Form") or in their initial submissions before the First Instance Panel, instead, acknowledging the

applicability of the UCCMS to the conduct by requesting the First Instance Panel issue a different proportional sanction.

- (iv) The Respondent's general submissions regarding issues of natural justice are insufficient to be considered an explicit challenge of the applicability of the UCCMS to historic conduct.

9. The DSO submits that the UCCMS should apply retroactively to historical conduct. The DSO argues:

- (i) The First Instance Panel erred in characterising the UCCMS as a contractual relationship when it is in substance a statutory regime designed to ensure the protection of the sporting public.
- (ii) The UCCMS exhibits several elements of a statutory regime as outlined in *Kaplan v Canadian Institute of Actuaries ("Kaplan")*<sup>2</sup>. At the very least it bears the hallmarks of an amalgam of a statutory and contractual regime. The factors which point towards the UCCMS being a statutory regime include:
  - i. *the federal government mandating all federally funded sport organizations implement the UCCMS;*
  - ii. *the compulsory nature of the application of the UCCMS to all individuals affiliated with a UCCMS signatory program;*
  - iii. *Abuse-Free Sport's and the UCCMS's crucial government-mandated role in protecting the sporting public; and*
  - iv. *the complaint mechanism of the UCCMS and the entire Abuse-Free Sport program is open to all to file complaints.*
- (iii) The First Instance Panel erred in failing to even consider whether the UCCMS is a statute or whether it bears the hallmarks of a statutory regime. This position was summarily dismissed by comparing another decision on this point. It appears to the DSO that the First Instance Panel had already made their decision on this point without considering the elements raised in the other parties' submissions.
- (iv) The principles of statutory interpretation, not contractual interpretation, should apply. *Brousseau v Alberta Securities Commission ("Brousseau")*<sup>3</sup> recognizes as a principle of statutory interpretation a rebuttal of the presumption against

---

<sup>2</sup> 1994 CanLII 9065 (ABQB).

<sup>3</sup> [1989] 1 SCR 301.

retrospective application where protection of the public is the primary purpose of the statute.

- (v) The purpose of the UCCMS is the protection of the sporting public and thus falls within the public protection exemption.

10. The DSO further submits that, even if the First Instance Panel was correct in characterizing the UCCMS as a contract:

- The UCCMS should be interpreted according to the purpose and ordinary meaning of the UCCMS text. Abuse Free Sport is a statutory delegate and should not strictly and uniquely be analysed with contractual interpretation because the purpose of the UCCMS is the protection of the sporting public.
- An interpretation which forecloses retrospective application from the date the individuals is bound to the UCCMS (its implementation date) would result in an absurdity as individuals would continue to participate in sport without their past misconduct being scrutinised. Thus, the only reasonable interpretation is that the UCCMS was intended to apply retroactively.
- The *contra proferentem* doctrine, which mandates that ambiguous contracts be construed against the party that drafted them, is not applicable to the UCCMS. The DSO argues the UCCMS does not involve a contract of adhesion; nor does it resemble a commercial transaction. The DSO contends that extending *contra proferentem* to the UCCMS misinterprets its nature and misapplies a legal principle reserved for different contexts.

11. The DSO argues that the SAT Panel should reject the Respondent's narrow reading of SAT 24-0001. The DSO submits there is little difference between Subsections 9.11(b) and 8.6(f) of the Code. Safeguarding Panels and Safeguarding Appeal Panels have the same rights and limitation when granting relief. Therefore, the DSO submits that SAT 24-0001 applies, and that the First Instance Panel erred in imposing relief not explicitly requested by the Respondent.

12. Finally, the DSO submits that the Respondent's submissions about the severity of the breaches and the imposition of the sanctions are irrelevant at this stage, as are any reliance on the Canadian Safe Sport Rules (the "CSSP").

- On the issue of sanctions, all parties agreed to address the retrospective applicability of the UCCMS as a preliminary matter. Therefore, the Respondent's conduct and the proportionality of the corresponding sanctions imposed by the DSO are not currently a matter for discussion.
- On the issues of using the CSSP and illustrative to guide this Tribunal's deliberations, the DSO submits that the only rules that apply are the rules that are in place now, the UCCMS and the Code. The CSSP is irrelevant to this dispute.

13. As to the applicable standard of review, the DSO reiterates that the Decision was unreasonable because the First Instance Panel gave inadequate reasons for deciding that statutory interpretation principles do not apply to the UCCMS. Alternatively, the DSO submits that the Decision was unreasonable because the UCCMS' purpose and wording both support the conclusion that the UCCMS applies retroactively. Recent amendments to consent forms and the Abuse-Free Sport program and its documents reinforce the existing intention that the UCCMS applies retroactively. This supports a purposive interpretation of the UCCMS and its purpose to prevent maltreatment in sport in Canada, as well as the possibility for someone to have committed prohibited behaviours in the past to continue to participate in sport.

#### **(ii) The Respondent**

14. The Respondent submits that the Appeal should be dismissed because the Decision was reasonable, and the First Instance Panel did not act outside its jurisdiction by rendering the Decision based on the Preliminary Issue.

15. The Respondent first submits that the First Instance Panel had jurisdiction to issue the Decision based on the applicability of the UCCMS to historical conduct and relies on the following:

- (i) Subsection 8.6(f) does not require the challenging party to explicitly request the basis for their requests for relief.
- (ii) For the additional requirement that the basis for relief to be explicitly requested in Subsection 8.6(f) of the Code would be contrary to the interests of justice. Parties

without legal representation would be disadvantaged and an Arbitrator might be unable to render a fair and just decision if an issue is not raised by an Arbitrator when flagged.

- (iii) An Arbitrator has the authority to raise an issue or seek clarification on its own motion so long as the parties are given an opportunity to address the issue. In this case, the First Instance Panel raised the issue of the UCCMS' retroactive application to historical conduct in a letter to the parties dated 12 July 2024 and that the parties were given an opportunity to provide both oral and written submissions on the matter.
- (iv) The DSO mischaracterized the Arbitrator's reasons in SAT 24-0001. That decision pertains to Subsection 9.11(b) of the Code which governs appeals of a Safeguarding Panel Decision, not Section 8.6 which deals with Decisions of the Safeguarding Tribunal. The proper interpretation of SAT 24-0001 provides that relief will not be granted as a matter of deference if it were not expressly sought in a Notice of Appeal of a Safeguarding Panel Decision.

16. The Respondent submits that so long as there is a rational coherent line of questioning and reasoning within it, the Decision of the First Instance Panel should be granted deference on a reasonableness standard:

- (i) The Panel carefully considered the governing scheme that led to the establishment of the Abuse-Free Sport Program and the Office of the Sport Integrity Commissioner ("OSIC").
- (ii) The Panel referred to the correct documents within its Decision.
- (iii) The Panel examined the language in the Program Signatory Agreements, the purpose and function of the Program Signatory Agreements and the Participant Consent Forms.
- (iv) The Panel considered the DSO's arguments as well as those of the Interested Party and weighed the evidence before it.
- (v) The Panel referred to the past practices and Decisions of the SDRCC.
- (vi) The Panel ultimately concluded that the Respondent's past actions were not clearly bound by the UCCMS.

17. Echoing the Panel's findings and relying on *Kaplan*, the Respondent submits that a code of conduct cannot be applied retroactively without explicit consent and that neither the Participant Consent Form nor the UCCMS contain express language regarding retroactive application of the UCCMS to historical conduct. Retrospective application of the UCCMS cannot be implied as the UCCMS is a code of conduct that binds participants via contract. It would be incorrect for a contract to imply retroactivity to past behaviour without taking into account the date the contract (or in this case, the Program Signatory Agreement) was signed.
18. The Respondent accepts that OSIC has jurisdiction over historical conduct per the Program Signatory Agreement between OSIC and the National Sport Organization ("NSO"). However, the Agreement specifically establishes that the Program Signatory's specific rules and processes apply to conduct that occurred prior to the UCCMS's implementation.
19. Therefore, the Respondent submits that the applicable code of conduct in this matter is [the NSO's] code of conduct in effect at the time of the impugned behaviours and that the DSO relied on the incorrect Code of conduct policy. The DSO cannot now try to circumvent this mistake by asserting that the overall importance of abuse free sport justifies imposing the UCCMS retroactively.
20. The Respondent also raises a comparative illustrative argument in relation to the soon to be implemented Canadian Safe Sport Program ("the CSSP") and invites the Panel to use the new express language in the CSSP as illustrative of explicit language which would have been necessary for the UCCMS to apply to historical conduct. The express language in the CSSP highlights that the lack of express retroactive application in the UCCMS. The UCCMS does not allow for retroactive application if the Respondent did not explicitly agree to be bound to the UCCMS historically, or prior to the date the UCCMS was implemented, or that he was bound by the Program Signatory Agreement.
21. Finally, the Respondent submits that, even if the SAT Panel deems the Decision to be unreasonable, additional sanctions should not be imposed, nor should the initial violations and sanctions be reinstated, as the sanctions have already been purged. The Respondent has

already completed the mandatory training, missed significant career opportunities, and had his name publicly disclosed on the OSIC Registry causing reputational harm. The reimposition of a Violation or any further imposition of Sanctions would be unduly harsh given the personal and professional consequences the Respondent has already faced.

**(iii) The Interested Party**

22. The Interested Party agrees with, echoes, and supports the DSO's submissions that the First Instance Panel acted beyond its jurisdiction, granted to it in subsection 8.6(f) of the Code, by issuing the Decision based on an issue not expressly raised by the Respondent in its request for relief.
23. In the alternative, the Interested Party submits that the Decision should be set aside because it is unreasonable pursuant to the *Canada (Citizenship and Immigration) v. Vavilov* (2019 SCC 65) ("Vavilov") framework. Paraphrasing *Vavilov*, the Decision cannot stand as it is at odds with the legal and factual context because it ignores and contradicts the central purpose of the Abuse-Free Sport Regime.
24. The Interested Party supports the DSO's submissions:
- (i) That the UCCMS is in substance a statutory regime and the principles of statutory interpretation apply.
  - (ii) That the UCCMS is made up of a series of contractual relationships which together are analogous to a statutory scheme.
  - (iii) That even if the principles of contractual interpretation apply, the Decision is still unreasonable, and,
  - (iv) That the First Instance Panel erred in applying the doctrine of *contra proferentem*.

25. The Interested Party submits that decision SDRCC ST 24-0013 [unpublished], which concluded the UCCMS does apply to historical conduct, is correct and should be applied because SDRCC ST 24-0013 carefully considered the purpose of the UCCMS and concluded that as a result, it had to apply to historical conduct to effectively meet its statutory and public purpose.

## DECISION

26. The issues before the SAT Panel are two-fold:

- (i) *Did the First Instance Panel exceed their jurisdiction under section 8.6(f) of the Code in ruling on the retroactivity of the UCCMS?*
- (ii) *If the Decision was within the scope of the Safeguarding Panel's jurisdiction, was the First Instance Panel's finding that the UCCMS did not apply retroactively to historical conduct reasonable given the legal and factual context of the case?*

### ***i. The Scope of a Safeguarding Panel's Jurisdiction***

27. The first issue is principally a factual one: Was the issue of the applicability of the UCCMS to historical conduct properly brought before the First Instance Panel?

28. There is no qualifying language in Subsection 8.6(f) asserting that the basis for relief must be requested by the challenging party. Subsection 8.6(f) grants a Safeguarding Panel the jurisdiction to "increase, decrease, or remove any sanction imposed by the DSO, with due consideration being given to the UCCMS." There is no language to suggest an Arbitrator is precluded from making a Decision based on an issue not raised by any party to the proceeding. In any event the issue of historical conduct was raised even if it was indirectly or as an alternative argument.

29. While the legal issue regarding UCCMS retroactivity might not have been explicitly raised by the Respondent in their Request for Hearing or in their Initial Submissions, the SAT Panel finds that the Respondent did state at para. 70 of his submissions before the First Instance Panel:

*70. Further, since [the Respondent] was not a signatory of the Code and its provisions were not in force at the time of the conduct at issue, an extra measure of procedural fairness must be applied in this case to balance the inherent unfairness of sanctioning a coach to whom the Code did not even apply at the time of the conduct.*

30. Therefore, at least indirectly, the Respondent did raise the issue of the UCCMS not applying to his historical conduct.
31. Furthermore, regardless of the explicitness of the pleadings and submissions, a First Instance Arbitrator can raise and make a determination on legal issues on its own motion so long as the parties are given the opportunity to make submissions prior to a determination on the issue being made. Part of an Arbitrator's role is to ensure a fair and comprehensive hearing. Arbitrators can proactively identify relevant points that generally and naturally arise out of parties' submissions and might not have been expressly brought up by the parties, and seek additional submissions on these points to ensure that justice is served. See *Wiebe v Olsen*, 2019 BCSC 1740 at para. 65, citing *Godfrey v Ontario Police Commission*, 1991 Carswell Ont 954 (Div. Ct.).
32. On 12 July 2024, the Arbitrator sent a letter to the parties setting out a series of questions. Bullet point #1 of that letter indicates that the Arbitrator desired to hear from the parties on *"how and why the UCCMS is applicable to events that occurred prior to its effective date."* That correspondence effectively raised the issue of the application of UCCMS to historical conduct and gave the parties the opportunity to respond.
33. The Preliminary Issue herein was put to the parties by the First Instance Panel Arbitrator. Regardless of whether the Respondent explicitly raised the issue in its submissions, both parties had the opportunity to make submissions. Then it is within a party's discretion to determine whether it will make submissions on the issue and all parties exercised their right to do so in the case at hand.

34. In addition, the SAT Panel finds that Arbitrator Soublière’s reasoning in SAT-24-0001 does not prevent a First Instance Panel from deciding an issue which had not been expressly identified as an object of an appeal. Paragraph 70(i) specifically refers to “sanctions which have not been identified as an object of [an] appeal” to a SAT Panel. It does not prohibit a First Instance Panel from raising relevant issues with respect to the matter before them.
35. The SAT Panel finds, that for all the foregoing reasons, it cannot be said that the First Instance Panel acted beyond their jurisdiction in Subsection 8.6(f) of the Code.
36. The Decision therefore was within the First Instance Panel’s authority under the Code and did not constitute an error of law. The DSO’s appeal on the first issue is dismissed.

**ii. Reasonableness of the Decision**

37. Subsection 9.8(b) of the Code states that “*unless the Appeal Panel determines otherwise, an appeal of a Safeguarding Panel Decision on sanction shall take the form of a judicial review. The Appeal Panel shall apply the standard of reasonableness.*”
38. The parties agree that reasonableness standard of review established by the Supreme Court of Canada’s decision in *Vavilov*, is the appropriate analytical framework for analyzing the Decision of the First Instance Panel. This SAT Panel concurs.
39. *Vavilov* determined that a Decision will be unreasonable where “there are sufficiently serious shortcomings in the Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency.” (at para. 102)

40. Further, a Decision may be found to be unreasonable upon judicial review if there is an absence of rational and logical reasoning or if it is not “justified in relation to the constellation of law and facts that are relevant to the Decision” (at para. 105).
41. *Vavilov* requires that a Decision be assessed “in light of its underlying rationale in order to ensure that the Decision as a whole is transparent, intelligible, and justified.” Factors to be considered include:
- (i) the governing statutory scheme;
  - (ii) other relevant statutory or common law;
  - (iii) the principles of statutory interpretation;
  - (iv) the evidence before the decision maker;
  - (v) the submissions of the parties;
  - (vi) the past practices and Decisions of the administrative body; and
  - (vii) the potential impact of the decision on the individual to whom it applies.
42. *Vavilov* establishes a robust but deferential standard of review based not on whether the reviewing court believes the Decision is correct, but whether that Decision was reasonable in the circumstances.
43. As identified by the First Instance Panel and in the parties’ submissions, whether the UCCMS applies to historical conduct hinges on whether principles of contractual interpretation or the principles of statutory interpretation are applicable to it. Accordingly, one of the key determinations before the First Instance Panel was whether the Abuse-Free Sport Program is contractual or statutory (or quasi-statutory) in nature.
44. Abuse-Free Sport is Canada’s independent system for preventing and addressing maltreatment in sport. The safe sport framework is currently administered by the SDRCC.

The challenge and appeal mechanisms are described in Articles 8 and 9 of the Code which is also administered by the SDRCC.

45. The First Instance Panel held that the Abuse-Free Sport Program — which includes the UCCMS — is contractual in nature. The Abuse-Free Sport structure is built upon a series of interlocking contractual agreements. The First Instance Decision contains an excellent and comprehensive review of the Abuse-Free Sport Program which the SAT Panel finds helpful to reproduce in its entirety:

*Implementation of the UCCMS*

**(a) UCCMS, Abuse Free Sport Program and the Role of the OSIC and the DSO**

1. On July 6, 2021, the Sport Dispute Resolution Centre of Canada (the “SDRCC”) was selected by the Government of Canada to implement the UCCMS for federally funded sport organizations.<sup>1</sup>

2. A draft of the UCCMS had been first published in 2019 by the Canadian Centre for Ethics in Sport. On May 31, 2022, the SDRCC published the current version of the UCCMS. This followed a review process, which it led, that included consultations with stakeholders in the sport community and further revision by an expert working group.<sup>2</sup>

3. The UCCMS states the following on its cover page:

*The Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS) is the core document that sets harmonized rules to be adopted by sport organizations that receive funding from the Government of Canada to advance a respectful sport culture that delivers quality, inclusive, accessible, welcoming, and safe sport experiences.*

*The UCCMS was first published in 2019 (version 5.1) by the Canadian Centre for Ethics in Sport. Version 2022 (6.0) was published on May 31, 2022, by the Sport Dispute Resolution Centre of Canada (SDRCC) and is effective no later than November 30, 2022. [Emphasis added].*

4. In argument, the DSO confirmed that this is the only version of the UCCMS that had been in force.

5. Additionally, as a result of its mandate from the Government of Canada, the SDRCC established the Abuse Free Sport Program aimed at preventing and addressing violations of the UCCMS. It included a complaint management and dispute resolution process.<sup>3</sup>

6. As part of this process, the SDRCC established the OSIC as an independent division of the SDRCC. The OSIC's role, among other things, is to receive complaints about alleged violations of the UCCMS, conduct preliminary assessments and commission independent investigations, if it determines them to be necessary.<sup>4</sup>

7. If an investigation is commissioned, the OSIC provides the investigatory report to the DSO<sup>5</sup> and the DSO determines whether there have been violations of the UCCMS and what sanctions, if any, should be imposed. The DSO is functionally independent from the OSIC.

8. A decision of the DSO can be challenged to the Safeguarding Tribunal pursuant to Article 8 of the Code and the Tribunal's Decision, in turn, may be subject to appeal pursuant to Article 9 of the Code.

**(b) Implementation - Program Signatory Agreements and Participant Consent Forms**

9. To be eligible for federal funding, all national-level sport organizations must adopt the UCCMS and become a "Program Signatory" by signing a "Program Signatory Agreement" with the SDRCC.

10. The relevant national sport organization in this case is [redacted]. It signed a Program Signatory Agreement with the SDRCC effective January 12, 2023 and has adopted the UCCMS.

11. Pursuant to the Program Signatory Agreement, [the NSO] retained the services of the SDRCC including the OSIC's complaint management process and the dispute resolution services offered by the SDRCC for sport related disputes pursuant to the Code. The intended effect of the agreement is that any UCCMS-related incident or complaint will be reported to and administered by the OSIC.<sup>6</sup>

12. Also pursuant to the Program Signatory Agreement, [the NSO] is responsible for obtaining the consent of affiliated persons (such as coaches, athletes, and volunteers) to be bound by the UCCMS and the administration and enforcement.

The form of consent required to be obtained is prescribed in the Program Signatory Agreement at Appendix 'E'.

13. On December 28, 2022, the Respondent signed the form of consent prescribed in Appendix 'E' (the "**Consent**").

---

<sup>1</sup><https://www.canada.ca/en/canadian-heritage/news/2021/07/minister-quilbeault-announces-new-independent-safe-sport-mechanism.html>

<sup>2</sup> <https://sportintegritycommissioner.ca/uccms>

<sup>3</sup> <https://abuse-free-sport.ca/>

<sup>4</sup> <https://sportintegritycommissioner.ca/files/GUIDELINES-INITIAL-REVIEW-PRELIMINARY-ASSESSMENT-COMPLAINTS-2022-06-20.pdf>;

<https://sportintegritycommissioner.ca/files/ABUSE-FREE SPORT POLICY REGARDING VIOLATIONS AND SANCTIONS.pdf>

<sup>5</sup> <https://sportintegritycommissioner.ca/files/ABUSE-FREE SPORT POLICY REGARDING VIOLATIONS AND SANCTIONS.pdf>: Under the Code, the DSO is defined as: the function of Abuse-Free Sport that is responsible for making Decisions regarding Provisional Measures and violations of the UCCMS, imposing sanctions where relevant, appearing before the Safeguarding Tribunal or the Appeal Tribunal when Decisions are challenged, and reviewing and approving mediated outcomes to ensure that they align with the objectives of the Abuse-Free Sport program..."

46. In summary, for the UCCMS to apply to a Participant, an NSO must first contract with the SDRCC to become a "Program Signatory". An NSO, then must obtain the consent of each Participant (like the Respondent) to be bound by the UCCMS by having them sign a Participant Consent Form.

47. The First Instance Panel therefore decided to apply principles of contractual interpretation to determine whether the UCCMS applies to historical conduct. The starting point for contractual analysis is the plain and ordinary meaning of the words. The First Instance Panel concluded that: "*Neither the [Participant] Consent document or the UCCMS expressly state that the UCCMS applies to conduct that occurred prior to the signing of the Consent or the effective date of the UCCMS*" (paragraph 35). Therefore the First Instance Panel found that it is only upon signing the Participant Consent Form that the UCCMS can and will be found to apply to a Participant and their conduct, and that a Participant can and will only be bound by discipline arising out of their conduct, should breaches of the UCCMS be found to have occurred, from the date of such consent, if expressly given.

48. The First Instance Panel finding that consent is a contractual matter relied primarily on the Decisions in *Kaplan* and *Sattva Capital Corp. v Creston Moly Corp.* ("*Sattva*")<sup>4</sup>, and distinguished the other SDRCC Safeguarding Tribunal case which appeared to conclude that principles of statutory interpretation governed the interpretation of the UCCMS. The latter was based mostly on *Brousseau* and relied upon the protection of the public argument.
49. The Respondent concedes, as argued by the DSO and Interested Party, that the First Instance Decision overly relied on the *contra proferentum* doctrine. This SAT Panel agrees. The *contra proferentum doctrine* has no place in this discussion or in any discussion related to the UCCMS Program Signatory Agreements. Ultimately, however, this is not determinative to our Decision and not sufficient to render the Decision unreasonable as explained below.
50. Indeed, the SAT Panel finds that the case authority supports the First Instance Panel's Decision. The DSO submission which seeks a quasi-statutory characterisation of the UCCMS is not sufficiently supported by persuasive legal authority. Specifically, the Panel does not find that a parallel can truly be drawn between *Kaplan* (re Canadian Actuaries) and Canada's Abuse-Free Sport Program and also finds that the analysis offered in *Brousseau* better supports the Respondent's submissions that the presumption against retrospective application is not rebutted in this case.
51. The First Instance Panel did examine the intent behind the Participant Consent Form and UCCMS to determine if it was nonetheless intended to apply, implicitly, to historical conduct. It determined that the language of the Participant Consent Form, and its Appendices, all demonstrate an intent that the Respondent be bound by the UCCMS from the date the Participant Consent Form was signed and not prior. In other words, there was no explicit or implicit intent or understanding at the time the Respondent signed his Participant Consent

---

<sup>4</sup> 2014 SCC 53.

Form that his historical conduct was to be subject to the UCCMS. This interpretation was found to be consistent with the forward-looking language in the UCCMS and was supported by the fact that [the NSO] did have a Code of Conduct in place to address the Respondent's historical conduct. The Respondent was bound to the [NSO] Code of conduct at the time the prohibited conduct allegedly occurred and had consented to it, not the UCCMS. The First Instance Panel therefore found that the Respondent could not be subject to discipline for historical conduct that occurred prior to the date of express consent to be bound by the UCCMS.

52. Whilst the SAT Panel appreciates, considering the importance of the protection of the sport public, that it might be desirable for Participants to the UCCMS to be bound historically given the UCCMS's mandate and purpose and the Red Deer Declaration's statutory guidance, this is not sufficient to render the UCCMS a statutory regime when it is clearly created, based upon, contingent upon and implemented by way of a web of contracts. Nor therefore is the protection of public argument sufficient to render the First Instance Panel's decision unreasonable.
53. The Decision was rational and logical in light of the legal and factual circumstances. The First Instance Panel justified its interpretation of the UCCMS as a contractual relationship rather than one governed by statute considering the intent, purpose and wording of the UCCMS, Abuse-Free Sport Program, the OSIC and the DSO, and the constraints imposed by the text of the UCCMS, the Participant Consent Form and the Abuse Free Sport regime as a whole. In applying the principles of contractual interpretation, the First Instance Panel set out a clear and logical analysis of the relevant facts and law and found that the UCCMS did not apply at the time of the Respondent's conduct. That Decision is in no way untenable based on irrationality or contextual considerations. An individual should not be subject to discipline under a Disciplinary Code that he or she never expressly consented to be bound to

retroactively - as desirable under public order and safe sport principles, that this should be the case.

54. The SAT Panel thus concludes that the First Instance Panel's characterisation of the UCCMS as a contractual instrument and its finding that the UCCMS is inapplicable to the Respondent's historical conduct, were reasonable.

55. For the sake of good order, this Panel also finds that any further imposition of sanctions would have been unduly harsh given the personal and professional consequences the Respondent has already faced.

**Conclusion**

56. For all of the foregoing reasons the DSO's preliminary objection, and appeal, are dismissed.

**Representatives for the Parties**

Director of Sanctions and Outcomes: For the Respondent:	Dasha Peregoudova Alexandre Maltas, Elizabeth Cordonier, Jill Wiberg
For the Interested Party:	Anna Matas

DATED AT LONDON, ONTARIO CANADA THIS 5<sup>th</sup> DAY OF MARCH, 2025.

---



Professor Richard H. McLaren, O.C.  
President

Dated at Vancouver, BC this 5<sup>th</sup> day of March & at Beaconsfield, Quebec this 5<sup>th</sup> day of March, 2025.



---

Carol Roberts  
Co-Arbitrator



---

Janie Soublière  
Co-Arbitrator