

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

NO: SDRCC ST 24-0043

BETWEEN:

A.B.

(INTERESTED PARTY)

AND

DEPUTY DIRECTOR OF SANCTIONS AND OUTCOMES

(DDSO)

AND

C.D.

(RESPONDENT)

DECISION

Appearances:

On behalf of the Interested Party: Appearing on their own behalf

On behalf of the DDSO: David Kellerman

On behalf of C.D.: Arielle Reeves-Breton

1. On December 31, 2024, I was selected under section 5.3(b) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to hear the Interested Party’s appeal of a decision of the Deputy Director of Sanctions and Outcomes (“DDSO”) issued November 25, 2024, pursuant to section 8.6 of the *Code*.

2. Section 8.6 of the *Code* provides that a challenge of a DSO decision on a violation or a sanction will be heard by way of documentary review only, except as agreed otherwise by the Safeguarding Panel. The parties did not seek an oral hearing.
3. On March 21, 2025, I issued my decision to deny the appeal, with reasons to follow. These are my reasons.

OVERVIEW

4. Abuse Free Sport is Canada's independent system for preventing and addressing maltreatment in sport. It covers matters related to the Universal Code of Conduct to Prevent and Address Maltreatment in Sport ("UCCMS") involving individual participants of organizations that have agreed to be bound.
5. Complaints about maltreatment in sport are made to the Office of the Sport Integrity Commissioner ("OSIC") which is responsible for commissioning independent investigations. Investigation reports are transferred to the Director of Sanctions and Outcomes ("DSO"), who makes decisions based on the investigation report.
6. The DSO is an independent office that reports to the Maltreatment in Sport Sanctions Council ("MSSC"). A deputy DSO ("DDSO") is available to fulfil the DSO's responsibilities in circumstances where the DSO is absent, has any real, apparent or perceived conflict of interest or duties, or for other reasons deemed necessary by the MSSC. (Abuse Free sport website)
7. The Interested Party ("A.B.") is an athlete in the sport of weightlifting. C.D. is a participant and parent of an athlete in that sport.
8. On April 11, 2023, OSIC received a complaint from a weightlifting athlete alleging that C.D. engaged in conduct that contravened the UCCMS. On September 4, 2023, the OSIC alleged that C.D. had engaged in Interference with or Manipulation of Process under the UCCMS.
9. On January 24, 2024, the OSIC engaged an independent investigator to investigate the complaints in accordance with its investigation guidelines.
10. The independent investigator submitted a final investigation report to the DDSO on June 26, 2024.
11. On November 25, 2024, following a review of the investigation report, the DDSO issued a Report on Violations and Sanctions. In that report, the DDSO found that C.D. engaged in Psychological Maltreatment, Sexual Maltreatment, and engaged in Prohibited Behaviour, specifically Boundary Transgressions. The DDSO found that C.D. did not engage in Interference with or Manipulation of Process, or Retaliation.

12. The DDSO imposed two sanctions for the violations; the first being a letter to the complainant acknowledging the inappropriate nature of comments made and the impact the comments had on him, and the second requiring C.D. to complete a course on the understanding of the impact of trauma.
13. The Interested Party does not challenge the DDSO's decision on violations. He argues that the DDSO erred in law in failing to consider and apply section 3.2 of the UCCMS in the sanction decision and failed to observe the principles of natural justice.

The Sanction Decision

14. The April 11, 2023 complaint alleged 24 Prohibited Behaviours. The Investigator found the following allegations to be substantiated:
 - C.D. sent three WhatsApp messages in a team group chat that she was taking bets on how many times an athlete would "adjust" his genitalia before each lift, that the closest guess would win a prize and that she was going to take videos for the male members in the group chat to count later.
 - C.D. shared information received from the OSIC, including details of the complaint, but did not share the identity of the complainant.
15. After considering the Investigator's report, the DDSO determined that C.D. engaged in Psychological Maltreatment under section 5.2.2 of the UCCMS. The DDSO wrote:

While I acknowledge that Witness 1, who was the subject of the WhatsApp comments, did not take offense to the group's online conversation, the conversation, objectively, could have caused harm in that it focused on an athlete's genitalia, in the middle of a competition, through multiple comments.

The [Investigation] Report described that the online comments created significant discomfort for the Complainant. The Complainant has a right to expect that online team chat forums be free of this kind of banter, even if expressed in jest, and the Complainant should not apprehend the day where the focus will be on their private areas in the WhatsApp group. Living with this kind of threat and the potential that a team chat can derail towards jokes that draw attention to the genitalia of team members is objectively unwelcome and intimidating. One need not be the target of the joke; being in its orbit can also cause harm. (emphasis in original) (page 9)

16. The DDSO also found that C.D. also engaged in Sexual Maltreatment and Boundary Transgressions under the UCCMS:

By virtue of the reference to Witness 1's genitalia, [C.D.'s] comment had a sexual connotation. Commenting on a (sic) someone's genitalia can objectively intrude on a (sic) one's sense of physical and psychological safety. The Complainant has the absolute right to know that the team's WhatsApp group cannot be the vehicle through which these comments can circulate.

...

The team's WhatsApp group is not a forum the team could reasonably use to post such comments. If the WhatsApp group hosted these types of comments in the past, it should not signal to the Complainant nor to other team members that a threshold has been established by the group and that this threshold should be maintained or accepted going forward. (page 10)

17. The DDSO then considered the appropriate sanction for the violations, noting that sanctioning considerations were guided by section 7.4 of the UCCMS. He considered the following factors to be pertinent to his consideration:

- *C.D. appeared to recognize that it was inappropriate for her to send the WhatsApp messages*
- *C.D. had taken some accountability for having sent the messages*
- *The Investigator found C.D. to be genuine in this regard*
- *The Investigator viewed this as a positive step*
- *C.D. may not fully understand why the WhatsApp messages were inappropriate*
- *C.D. may not have fully understood that the presence or absence of any impact on the subject of the message is not the determining factor nor is the identity of the Complainant*
- *C.D. was voluntarily no longer a part of any wrestling WhatsApp groups because she did not want to be the potential target of a future complaint by being a passive/non-active member of a WhatsApp chat group and*
- *C.D.'s decision reflected her acknowledgement of accountability and the seriousness of the situation.*

(p. 12)

18. The DDSO also considered the following factors under section 7.4 of the UCCMS to be of particular relevance:

- *The existence of a Power Imbalance or that C.D.'s title at the organization placed her in a position of trust in relation to the athletes (section 7.4(a));*
- *C.D. had no prior history or pattern of Prohibited Behaviour or other inappropriate conduct (section 7.4(b));*
- *There had been no previous disciplinary findings regarding, or sanctions against, C.D.;*
- *C.D. did not pose an ongoing and/or potential threat to the safety of others (section 7.4(f));*
- *C.D.'s voluntary admission of the violations, acceptance of responsibility for the Prohibited Behaviour, and/or cooperation in the applicable UCCMS enforcement process (section 7.4(g));*
- *The Investigator's concerns regarding C.D.'s real or perceived impact of the incident on affected individuals, sport organization or the sporting community (section 7.4(h));*
- *The deterrent effect on future such conduct (section 7.4(i)); and*
- *The potential impact on the public's confidence in the integrity of the Canadian Sport System (section 7.4(j))*

(p. 12)

19. After considering the violations and the section 7 factors, the DDSO imposed the sanctions identified above.

Argument

Interested Party

20. A.B. argues that the DDSO failed to consider and apply section 3.2 of the UCCMS, and specifically, failed to acknowledge C.D.'s added responsibilities and her position of power within the sport organization. He contends that the sanctions are unreasonable and disproportionate. He further contends that the requirement that C.D. take a course in addition to the safe sport training she is already required to complete by virtue of her position is an "inconsequential" sanction. He argues that this constitutes an error of law.
21. A.B. also argues that although the DSO's report references section 7.4, the decision does not demonstrate how the factors were applied, which constitutes an error of law. He further submits that the report does not reference section 7.4 (n), which refers to "desired outcomes of the person(s) directly impacted by the Prohibited Behaviours." He argues that he was directly impacted by C.D.'s comments and requested that she be removed from her position. He says that

there needs to be a sanction that is made public, or the individuals included in the WhatsApp chat group “are left with the impression that sexually harassing comments from a person in a position of power is acceptable and not a violation of the UCCMS.”

22. A.B. also argues that C.D.’s refusal to admit she committed psychological and sexual maltreatment is not acknowledged in the sanction decision.
23. A.B. also argues that the DSO failed to observe the principles of natural justice. He says that the Investigation report contained a significant amount of blacked out information, particularly with regards to the retaliation complaint, preventing him from knowing the reasons and evidence for which the report and sanctions were imposed. He argues that redacting significant information denies him the opportunity to “present counter evidence, witnesses or even know if any allegations are made against him.”
24. A.B. seeks to have me impose an additional sanction, pursuant to section 8.6(f) of the Code, suspending C.D. from her position for a period of 6 to 12 months, or, in the alternative, a public acknowledgement of her inappropriate comments.
25. In his reply submissions, A.B. repeats the arguments he made in his first request submissions, contending that the DDSO made errors of law, which render the decision unreasonable, and seeks “public accountability.”

DDSO

26. The DDSO contends that the provisions of the UCCMS which pertain to the alleged Maltreatment were correctly applied and interpreted, that there were no inconsistencies in law or fact in the Investigation Report, that the Investigator detailed the evidence of the witnesses and explained how each witness contributed to the Investigator’s findings, and that the sanctions were reasonable and proportionate to the established violations.
27. The DDSO contends that A.B. is attempting to relitigate the issues on which the Investigator made clear findings and has not demonstrated any factual or legal errors in the sanctions decision.
28. The DDSO says that the violations do not rise to a level of harm that would warrant a public sanction, and that the outcomes sought by A.B. are disproportionate given the violations.
29. Finally, the DDSO argues that the Investigation report and 10 Appendices gave the parties a complete and comprehensive picture of the investigation into all the allegations, that the parties were given an opportunity to review the

Investigation Report and make submissions on violations and sanctions, affording A.B. with natural justice.

Respondent

30. C.D. contends that A.B. has not met the burden of demonstrating, on a balance of probabilities, that the DDSO's sanction decision constituted an error of law or that the DDSO failed to comply with the principles of natural justice. C.D. seeks to have the request dismissed and the sanctions upheld.
31. C.D. says that the DDSO considered the factors identified in section 7.4 of the UCCMS and section 9 of the Investigation Report, and did not consider irrelevant ones.
32. C.D. further submits that the DDSO report is sufficiently detailed to comprehend the DDSO's reasoning and his application of the factors based on the factual findings of the Investigation report.
33. Finally, C.D. relies on the DDSO's submissions regarding A.B.'s argument that the DDSO failed to observe the principles of natural justice.

ANALYSIS

The Code

34. Section 8.7 of the *Code* provides that a DDSO decision on a sanction may only be challenged on the following grounds:
 - (a) Error of law, limited to:
 - (i) a misinterpretation or misapplication of a section of the UCCMS or applicable Abuse-Free Sport Policies;
 - (ii) a misapplication of an applicable principle of general law;
 - (iii) acting without any evidence;
 - (iv) acting on a view of the facts which could not reasonably be entertained; or
 - (v) failing to consider all the evidence that is material to the decision being challenged.
 - ...
 - (b) Failure to observe the principles of natural justice. The extent of natural justice rights afforded to a Party will be less than that afforded in criminal proceedings, and may vary depending on the nature of the sanction that may apply.

35. Section 8.6 (b) provides that, when assessing a challenge of a DSO decision on a violation or a sanction, the Safeguarding Panel shall apply the standard of reasonableness.
36. A reasonableness review is a robust but deferential standard of review of the DSO's sanction decision (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.) A review is based not on whether the reviewing court believes the decision is correct, but whether that decision was reasonable in the circumstances.
37. *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, and is it justified in the context of the applicable factual and legal constraints." (at para. 102)
38. Further, a decision may be unreasonable 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).
39. *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:
- a. the governing statutory scheme;
 - b. other relevant statutory or common law;
 - c. the principles of statutory interpretation;
 - d. the evidence before the decision maker;
 - e. the submissions of the parties;
 - f. the past practices and decisions of the administrative body; and
 - g. the potential impact of the decision on the individual to whom it applies.
40. An administrative decision is not to be assessed against a standard of perfection, nor is an assessment to be treated as a line-by-line treasure hunt for an error. (*Vavilov*, paras 91, 102)

The UCCMS

41. Section 2.4 of the UCCMS sets out the principles to guide the determination of Prohibited Behaviour and the imposition of sanctions:

- Harmonized;
 - Comprehensive;
 - Fair;
 - Trauma Informed;
 - Evidence-driven;
 - Independently administered;
 - Proportionate; and
 - Expert Informed
42. Section 7.2 establishes the types of sanctions that may be imposed. It provides that if Prohibited Behavior is confirmed, one or more of the following sanctions may be imposed:
- Verbal or Written Apology (7.2.1)
 - Education (7.2.3)
43. Section 7.4 provides that sanctions must be proportionate and reasonable relative to the Maltreatment and sets out non-exclusive factors relevant to the determination of appropriate sanctions. They include the nature and duration of the respondent's relationship with the affected individuals, including whether there is a power imbalance, any previous disciplinary findings, maltreatment of minor or vulnerable participants, whether there is an ongoing and/or potential threat to the safety of others as well as the respondent's voluntary admission of the violation or responsibility for the prohibited behaviour.

Decision

Did the DDSO err in law?

44. I am not persuaded that the DDSO's decision was unreasonable, or that he committed an error of law in determining the appropriate sanction for C.D.
45. The evidence demonstrates that the DDSO considered several sections of the UCCMS, including 2.4, 7.3 and 7.4. He considered the factual findings (which are unchallenged) in the Investigation report and applied the sanctioning principles to those facts.
46. It is not necessary for the DDSO to set out each of the principles separately. He identified those that were relevant to his overall conclusion, and his failure to expressly set out each of the factors does not constitute an error of law or a misinterpretation or misapplication of the UCCMS. I find that the DDSO's decision is, overall, intelligible and transparent.

47. While A.B. contends that the DDSO failed to “consider and apply” section 3.2, that section sets out the overall objectives of the Abuse-Free sport system. Section 7.4 establishes the sanctioning considerations, not section 3.2. I find no legal error in the DDSO’s consideration of the principles or factors that would guide his sanction decision. I am not persuaded that the DDSO misinterpreted or misapplied the UCCMS.
48. While A.B. disagrees with the DDSO’s sanction decision, that disagreement does not demonstrate that the DDSO’s decision was unreasonable. While I may have arrived at a different conclusion had I been the decision maker, I have no basis to interfere the decision provided I am satisfied that the DDSO considered all the appropriate factors and applied them to the factual findings. I find that he did so.

Did the DDSO fail to observe the principles of natural justice?

49. Natural justice is a procedural right, the content of which will vary depending on circumstances. At its most basic, it includes the requirement of notice, the opportunity to respond, and the right to an unbiased decision maker.
50. The Abuse-Free Sport Policy Regarding Violations and Sanctions (effective June 19, 2024) provides that the DSO is responsible for reviewing the final Investigation Report and providing it to the parties to the Complaint “and to any Interested Party where appropriate” in accordance with that policy, subject to redactions that are deemed appropriate in accordance with the Policies and Procedures. The DSO provides the parties with an opportunity to make submissions regarding both the investigative findings as well as appropriate sanctions.
51. Although A.B. received a redacted copy of the Investigation Report along with 10 Appendices, there is no requirement under the UCCMS or OSIC guidelines that he was entitled to receive a full, unredacted copy. The OSIC Confidentiality Policy is designed to ensure that the information gathered during a complaint remains confidential and is disclosed by OSIC only “to individuals who are appropriately involved in the process” (including witnesses) on an “as needed” basis. (OSIC Confidentiality Policy effective June 20, 2022)
52. I am not persuaded that A.B. was entitled to a full, unredacted copy of the Investigation report. I am satisfied that the information he received was sufficient for him to make meaningful submissions, and that he did so.
53. I am unable to conclude that A.B. was denied natural justice or an opportunity to be heard on the issue of sanctions.

CONCLUSION

54. The appeal is denied.

DATED: March 27, 2025, Vancouver, British Columbia

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

Carol Roberts, Arbitrator