

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

NO: SDRCC ST 24-0017

**ONTARIO VOLLEYBALL ASSOCIATION (OVA)
(Interested Party)**

AND

**CARTER WALLS
(Respondent)**

AND

DEPUTY DIRECTOR OF SANCTIONS AND OUTCOMES

Before

**Aaron Ogletree
(Arbitrator)**

DECISION WITH REASONS ON DISCLOSURE

Appearances and Attendances:

On behalf of the Interested Party: Elliot Saccucci (counsel)
Alessia G. Grossi (counsel)
Amanda Franker-Shuh (counsel)

On behalf of the Respondent: Carter Walls

On behalf of the DDSO David Kellerman

PROCEDURAL HISTORY

1. This Request for a Safeguarding Hearing was made by the Ontario Volleyball Association (hereinafter the “Interested Party”), the provincial sport organization governing volleyball in Ontario, pursuant to Section 8.3 of the Canadian Sport Dispute Resolution Code (hereinafter the “Code”). The appeal challenges the decision of the Deputy Director of Sanctions and Outcomes (hereinafter the “DDSO”) and collectively, hereinafter the “DDSO’s decision”) dated April 3, 2024, regarding its findings on violations and imposed sanctions pursuant to the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (hereinafter the “UCCMS”) regarding Mr. Carter Walls (hereinafter the “Respondent”), a volleyball coach.
2. The Interested Party filed a formal complaint with the Office of the Sport Integrity Commissioner (hereinafter the “OSIC”) on February 9, 2023 alleging that the Respondent engaged in Prohibited Behaviours and/or Maltreatment as set out in sections 5.2, 5.3, 5.5, 5.6, 5.7 and 5.13 of the UCCMS.
3. On March 23, 2023, the OSIC prepared a Statement of Allegations outlining the 19 allegations against the Respondent which occurred prior to September 2018.
4. On March 26, 2023, the Director of Sanctions and Outcomes (the hereinafter the “DSO”) referred this matter and the OSIC’s recommendation to the DDSO.
5. On April 4, 2023, the DDSO imposed the following provisional sanctions on the Respondent:
 1. **Eligibility Restriction:** The Respondent is provisionally prohibited from engaging in any Program Signatory coaching activities with vulnerable parties or youth athletes (i.e. U25), including those affiliated with a P/TSO or the NSO.
 2. **Prohibition on Contact:** The Respondent is provisionally prohibited from being in contact (directly or indirectly, whether in person or by any means of communication) in any capacity with youth (i.e. U25) in Program Signatory activities (including in any club, P/TSO, and/or NSO level).
6. On April 18, 2023, the OSIC prepared a Statement of Additional Allegations concerning alleged incidents that occurred between 2020 and 2023 alleging that the Respondent: a) communicated confidential information received from the OSIC, b) enabled a coordinated campaign to express support for him, c) shared confidential information in breach of the OSIC Confidentiality Policy and misrepresented the context of information in the Complaint, and d) communicated one-on-one with Minor athletes.
7. On July 12, 2023, the OSIC prepared another Statement of Additional Allegations concerning incidents that occurred between May and June 2023 alleging that the

Respondent again contravened OSIC Confidentiality by communicating information received from the OSIC.

8. Ms. Paula Butler of Southern Butler Price LLP was appointed as the Investigator and conducted interviews with 11 individuals between August 23, 2023 to March 5, 2024.
9. On April 2, 2024, Ms. Butler submitted the Investigation Report to the OSIC. The Investigation Report outlines the investigation process regarding the 24 allegations of UCCMS made against the Respondent. The Investigator's Report found 2 violations of the UCCMS were substantiated and provided reasons.
10. On April 3, 2024, the DDSO rendered the DDSO's Decision finding that the Respondent committed Boundary Transgressions and Interference with or Manipulation of Process, but the Respondent did not commit Psychological Maltreatment, Physical Maltreatment, Sexual Maltreatment or Grooming. The DDSO's Decision was based on the Investigation Report, Statement of Allegations dated March 23, 2023, Statement of Additional Allegation dated April 18, 2023 and July 12, 2023, the UCCMS, Investigation Guidelines, and materials he considered appropriate to understand the context of the framework and matters related to the Complaint.
11. The DDSO's Decision also immediately lifted the provisional measures, but it required that Respondent to complete an accredited Ethics and Boundaries program within three (3) months of receipt of the DDSO's Decision.
12. On April 24, 2024, the Interested Party submitted an Appeal of the DDSO's Decision dated April 3, 2024 challenging the findings on violations under the UCCMS and sanctions contained in the DDSO's Decision.
13. On May 6, 2024, the SDRCC appointed me from its rotating list of arbitrators to make a determination on the Interested Party's appeal.
14. On May 7, 2024, a preliminary conference call was held in which the Interested Party indicated that it intended to bring an application for a Disclosure Order in order to obtain a copy the Investigator's file. The parties all agreed to a timetable for the Application for Disclosure.
15. On June 3, 2024, the Interested Party filed its submissions for its Application for Disclosure.
16. On June 10, 2024, the DDSO filed its submissions on the Interested Party's Application for the Disclosure of the Investigator's file.
17. On June 14, 2024, the Respondent filed its submission on the Interested Party's Application for the Disclosure of the Investigator's file.

Relevant Provisions

OSIC Guidelines

18. Section 4.e. of the Office of the Sport Integrity Commissioner Guidelines Regarding Investigation of Complaints (hereinafter the “OSIC Guidelines”) governs gathering of evidence and states:

The Independent Investigator(s) will take reasonable steps to investigate the Complaint on a fair and neutral basis, in accordance with the Policies & Procedures. In this regard, the Independent Investigator(s) will:

- determine what process should be used to gather the evidence (e.g. forms of interview(s), written questions, etc), considering in particular the privacy, safety and well-being of the interviewee(s), which witnesses to interview, what evidence is relevant and the weight to give the evidence;
- align with Section 8 of the Canadian Sport Dispute Resolution Code regarding admissibility of evidence provided by minors and vulnerable persons;
- in accordance with the OSIC Confidentiality Policy, provide appropriate details of the allegations to the complainant and to the respondent and provide a reasonable opportunity for the complainant and the respondent to consider and review the allegations before an interview begins;
- take appropriate steps to preserve a record of all interview(s) conducted;
- collect potentially relevant evidence from third parties and other available sources.

19. Section 4.h. of the OSIC Guidelines governing an Investigation Report provides:

Following their review and analysis, the Independent Investigator will provide a written Investigation Report to the OSIC that should include in particular:

- The mandate of the Independent Investigator;
- An overview of the process used to investigate the allegations;
- A summary of the evidence obtained – and the resulting findings of facts;
- If applicable, identification of relevant mitigating or aggravating circumstances; and
- If applicable, identification of any systemic or other issues identified.

A summary Investigation Report shall also be produced by the Independent Investigator.

20. Section 4.i. of the OSIC Guidelines governing the review of the Investigation Report provides as follows:

The OSIC shall review the Investigation Report to validate that it contains the elements required under section 4.h. above and that the Investigation was completed in accordance with the Policies & Procedures. The OSIC may take further steps as required to address any procedural concerns with the Investigation. However, the OSIC will not review or make an assessment on the merits of the findings, observations and/or conclusions, as applicable, of the Independent Investigator(s).

21. Section 4.k. of the OSIC Guidelines outlines the challenge of a finding in an Investigation Report as follows:

Any party who objects, during an ongoing Investigation, to an Investigation step or procedure, should promptly advise the OSIC of their objection, and may also advise the Independent Investigator. Such objection during the Investigation does not constitute independent grounds for challenge before the Safeguarding Tribunal. Any challenge to the Investigation step or procedure must be made as part of a challenge to the Safeguarding Tribunal pursuant to Sections 8.6 and 8.7 of the Canadian Sport Dispute Resolution Code on the decision regarding whether a violation of the UCCMS and/or other relevant code/policy is substantiated once this is communicated to the party by the DSO. The Safeguarding Tribunal shall make no award of costs.

22. Section 5. of the OSIC Guidelines governing record keeping states that:

The Independent Investigator(s) must provide a copy of the Investigation records to the OSIC. Records of all Investigations will be maintained by the OSIC indefinitely, and will be maintained by the Independent Investigator(s), in accordance with applicable professional regulations, and by the DSO, in accordance with applicable policies and procedures of the DSO. All records will be kept confidential to the extent possible, subject to the Policies and Procedures, and as required by law. The records will not be disclosed unless necessary to administer the Complaint, take other action in accordance with OSIC policies and procedures, or otherwise as required by law.

SDRCC Code Sections

23. Subsection 1.1(kk) of the Code defines the meaning of term, Party, as follows:

(kk) “Party” « Partie » means:

- (i) any Person or SO participating in a Resolution Facilitation, Mediation, Arbitration or Med/Arb;
- (ii) any Affected Party;
- (iii) any Person designated as a Party in the CADP;
- (iv) any Person designated as a Party entitled to make submissions before the Safeguarding Tribunal or before the Appeal Tribunal as it pertains to a Safeguarding Panel decision; or
- (v) the Government of Canada, in a dispute related to a decision of Sport Canada in the application of its Athlete Assistance Program (“AAP”).

24. Subsection 1.1(ll) of the Code defines the meaning of term, Person, as follows:

(ll) “Person” « Personne » means a natural person or an organization or other entity.

25. Section 8.4 of the Code governs the submission by Parties before the Safeguarding Tribunal and states:

The Parties entitled to make submissions before the Safeguarding Tribunal are:

- (a) On a challenge of a DSO decision on a violation or a sanction pursuant to Section 8.6 of this Code, the Respondent; an Interested Party and the DSO;
- (b) On a challenge of a DSO decision on Provisional Measures pursuant to Section 8.5 of this Code, the Respondent and the DSO. An Interested Party may observe the hearing if they elect to do so and may only provide, pursuant to Subsection 8.8(f), a written impact statement.

26. Section 8.6 of the Code governing the challenge of a violation and/or sanction provides:

- (a) A challenge of a DSO decision on a violation or a sanction can be made by the Respondent or an Interested Party;
- (b) When assessing a challenge of a DSO decision on a violation or a sanction, the Safeguarding Panel shall apply the standard of reasonableness.
- (c) Notwithstanding Section 3.10, 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.
- (d) In the event the Party challenging a violation establishes bias on the part of the Person having investigated the allegation or the Person having decided on the violation, a hearing *de novo* must be held before the Safeguarding Panel on the matter of the violation.
- (e) A decision of the Safeguarding Panel on a violation shall be final and binding and shall not be appealable to the Appeal Tribunal.
- (f) The Safeguarding Panel shall have the power to increase, decrease or remove any sanction imposed by the DSO, with due consideration being given to the UCCMS. In particular, where the Safeguarding Panel determines that the Respondent has presented or presents a risk to the welfare of Minors or Vulnerable Persons, the Safeguarding Panel shall impose such sanction and/or risk management measures as it deems fair and just.

27. Section 8.7 of the Code governs the application of the challenge of a provisional measure, as follows:

A DSO decision on a violation or 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. Where a sanction involves the loss of the opportunity to volunteer in sport, the extent of those rights shall be even lower, as determined by the Safeguarding Panel; and
- (c) New evidence, limited to instances when such evidence:
 - (i) could not, with the exercise of due diligence, have been discovered and presented during the investigation or adjudication of the allegations and prior to the decision being made;
 - (ii) is relevant to a material issue arising from the allegations;
 - (iii) is credible in the sense that it is reasonably capable of belief; and
 - (iv) has high probative value, in the sense that, if believed, it could, on its own, or when considered with other evidence, have led to a different conclusion on the material issue.

28. Subsection 8.8(c) of the Code governs the conduct of the proceedings and provides:

- (c) The Safeguarding Panel shall make such order as it deems appropriate in relation to the disclosure of relevant documents and/or other materials in the possession or control of any of the Parties.

ARGUMENTS

Interested Party's Position:

29. The Investigation and resulting Investigation Report made a number of reviewable errors in reaching its determinations on violations of the UCCMS, including:

- i. Misinterpreting and misapplying sections of the UCCMS, including those on Grooming;
- ii. Misapplication of general principles of law, including treatment of evidence;
- iii. Acting on view of facts which could not be reasonably entertained, including in light of the investigator's own contradictory findings;
- iv. failing to consider all the evidence that is material to the decision, including by failing to give material eye-witnesses notice of, and an opportunity to respond to material evidence; and
- v. failing to observe principles of natural justice by denying material eye-witnesses notice of, and opportunity to respond to, material evidence. The Safeguarding Panel's has the jurisdiction and authority to order the disclosure Investigator's file sought by the Interested Party.

30. The DDSO's Decision merely adopts the Investigation Report in making its determinations on violations of the UCCMS. The DDSO Decision is therefore plagued with all of the foregoing reviewable errors. Even if the errors in the Investigation Report did not make the DDSO's Decision reviewable by the Tribunal, the DDSO's Decision on sanction is unreasonable.

31. The DDSO erred in principle and made an unreasonable decision when it failed to impose any sanctions on the Respondent, despite finding, based on the Investigation Report, that the Respondent had breached the UCCMS and committed Boundary Transgressions and Interference with or Manipulation of Process.

32. The DDSO failed to provide adequate reasons to support the DDSO's Decision not to sanction the Respondent.

33. The Safeguarding Panel must order the disclosure of the Investigator's file to ensure that principles of natural justice and procedural fairness are upheld, and that a meaningful appeal process is available.

34. It is established that even in organizations that are, in many respects private organizations, the principles of natural justice and procedural fairness nevertheless apply, including the Safeguarding Panel.

35. Tribunals and adjudicative bodies have an obligation to ensure fairness of their own processes. The failure to make proper disclosure impacts significantly on the appearance of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure.
36. Principles of procedural fairness, which includes parties' participatory rights, were articulated by the Federal Court of Appeal in *Re: Sound v. Fitness Industry Council of Canada 2014 FCA 48*, and include the right:
- (a) To know and to comment on material relevant to the decision;
 - (b) To have notice of the grounds on which the decision may be based; and
 - (c) To have an opportunity to make representations accordingly.
37. It is a significant and prejudicial error for a party to not be provided the opportunity to know, comment, and make representations on material evidence relied upon by the investigator, which the Interested Party believes occurred in this case, and which can only be substantiated upon a review of the Investigator's file.
38. The Interested Party requires the Investigator's file because the Investigation Report provides no more than a summary of evidence obtained in the investigation to scrutinize the Investigation Report. The same errors made in collecting evidence, or failing to put evidence to a party, will likely result in the failure to document that error in the first place.
39. The Interested Party will not be able to determine, let alone demonstrate, that the DDSO erred in adopting the findings of the violations as set out in the in the Investigation Report without the Investigator's file and the Interested Party will lose the right to test any of the evidence provided to the Investigator, even though the right to "correct or controvert" such statements is fundamental to natural justice
40. Where the evidence and documents relied on by an investigator are not disclosed, a party is denied its right to respond to these documents and, by extension, denied the right to respond to any subsequent adoptions of an investigator's findings.
41. The Code empowers the Safeguarding Panel to order disclosure of all information the Investigator has collected during the investigation, whatever the source may be, and that the Safeguarding Panel is required to do so pursuant to the rules of natural justice.
42. The Code expressly grants the Safeguarding Panel the jurisdiction and authority to order disclosure from the DSO as a party to this appeal, pursuant to Sections 8.4 and 8.8 of the Code.

DDSO's Position

43. The DSO and DDSO relied on the Investigation Report to determine whether a violation occurred and if sanctions under the UCCMS are warranted.
44. The appeal of the DDSO's Decision on Violations and Sanctions does not afford a party to request that the Investigator disclose their entire file.
45. If an appeal is brought to the Safeguarding Tribunal because the conclusions of the Investigation Report are challenged, the appeal must point to the DDSO's erroneous interpretation, in fact or in law, of the Investigation Report or to flaws in the Report itself, either in law or in fact.
46. If the Interested Party's position were tenable, then nothing would prevent a party from requesting that the DSO and DDSO disclose their entire file, including notes, research, memos etc.
47. An appellant cannot appeal a decision made by the DSO and DDSO without legal grounds and then ask for disclosure of the Investigator's file to validate the appeal or confirm whether the grounds for appeal really exist.
48. The grounds for appeal must exist on their own.
49. Also, the investigation process may lead the investigator to document very sensitive data that, in a trauma-informed program, must be protected.
50. The integrity of the investigative process would be undermined if the investigators were obligated to disclose their entire file, regardless of what that file may hold.
51. The Interested Party's request is too broad and borders on an intrusion on the investigator's important work in the Abuse-Free Sport program.
52. The Investigation Report itself, with its appendices, is the result and product of the entire investigative process. That process is fully and rigorously documented in the Investigation Report and lends credence to its reliability and probative value.
53. Disagreeing with the content of the Investigation Report does not justify an appeal or afford a party the right to look into the pathways that led to the Investigation Report.
54. The contents of the Investigator's file, aside from the Report itself, are not relevant.

Respondent's Position:

55. The Interested Party's request for the disclosure of the Investigator's file should be denied. The DDSO provided a plethora of compelling reasons why the Interested Party's request should be denied. The DDSO's reasoning is consistent with the integrity, spirit and lawfulness of the process.

DECISION

56. The validity of the Interested Party's request for the Investigator's file depends on: a) does the Safeguarding Panel have the power to order disclosure of the Investigator's file and b) whether procedural fairness requires disclosure of the Investigator's file.

A. Does the Safeguarding Panel have the power to order disclosure in this matter?

57. The Safeguarding Panel has the power to order disclosure in this matter pursuant to Subsections 1.1(kk), 1.1(ll), Sections 8.4, 8.6, 8.7 and Subsection 8.8(c) of the Code. The DDSO challenges the jurisdiction of the Interested Party's appeal stating that: 1) the grounds for an appeal must exist on their own; 2) an appellant cannot appeal a decision made by the DSO and DDSO without legal grounds and then ask for disclosure of the Investigator's file to validate the appeal or confirm whether the grounds for appeal really exist. The DDSO added that the Investigator's file beyond the Investigation Report is irrelevant.
58. The DDSO has not filed or requested to file an application to challenge the jurisdiction of the appeal in this matter. As a result, it is premature to argue that the Interested Party has no legal grounds to appeal and by extension that this Safeguarding Panel lacks jurisdiction in disclosure phase of this matter.
59. Further, the DSO, DDSO and the Interested Party are parties to this matter pursuant to Subsection 1.1(kk) and 1.1(ll) of the Code because the DSO, DDSO and Interested Party are an organization or other entity entitled to make submissions before this Safeguarding Panel. Specifically, the DDSO and the Interested Party made submissions regarding the violations and sanctions in this matter. Further, Subsection 8.8(c) of the Code provides this Safeguarding Panel with the discretion to order disclosure of documents and other materials in the possession or control of any of the Parties. Moreover, the contents of the Investigator's file are relevant because they bear directly on the Interested Party's appeal which alleges that the investigation and resulting Investigation Report made a number of reviewable errors in reaching its determinations on violations of the UCCMS. As a result, the Safeguarding Panel has the power to order disclosure of the Investigator's file if in the possession or control of the DSO and DDSO.

B. Whether procedural fairness requires disclosure of the Investigator's file?

60. The redacted versions of the Investigator's notes, witnesses' written and video statements, and documents submitted by witnesses that they wished to have considered from the Investigator's file are required pursuant to procedural fairness and Subsection 8.8(c) of the Code.
61. Procedural fairness requires a party to know and to comment on material relevant to the decision, to have notice of the grounds on which the decision may be based, and to have an opportunity to make representations. *Davidson v. Canada* (Attorney General), 2019 FC 997 at paragraph 32, citing *Re: Sound v. Fitness Industry Council of Canada*, 2014 FCA 48 at paragraph 54; *Singh v. Minister of Employment and Immigration*, 1985 1 S.C.R. 177 at paragraph 103, citing *Attorney General of Canada v. Inuit Tapirisat of Canada et al.*, 1980 2 S.C.R. 735, at p. 747-748, quoting *Selvarajan v. Race Relations Board*, 1976 1 All E.R. 12 (C.A.), at p. 19.
62. It is undisputed that the DDSO based its decision in this matter on the Investigation Report.
63. The DDSO argues that the Interested Party's request for disclosure of the Investigator's file risks both the integrity of the Investigator's work and the trauma-informed approach in the Abuse-Free Sport program. Further, the DDSO argues that the Interested Party's request for the entire Investigator's file is too broad. The DDSO also argues that the Investigator's file is irrelevant because the DDSO saw no issues with regards to the process explained in the Report or the substance of the Report itself. The Respondent adds that this DDSO's reasoning is consistent with the integrity, spirit and lawfulness of the process.
64. The DDSO is correct that this is matter utilizing a trauma-informed approach. The procedural rules of this approach consider the distinctive and sensitive nature of the complaints, including provisions to protect and accommodate vulnerable parties and witnesses. However, it does not serve as a bar to parties attempting to receive disclosure beyond a summary or findings of the investigation process. Instead, it means when disclosure is required by a party to advocate for its position and it is appropriate to be provided pursuant to procedural fairness and natural justice that efforts be made to protect and accommodate both vulnerable parties and witnesses. This may be effectively done by providing the disclosure with the redaction of the confidential personal information of vulnerable parties and witnesses.
65. In this matter, the Investigator's notes that her investigation process includes interviews, signed confidentiality acknowledgement forms, and documents provided by witnesses. The fact that the DDSO saw no issues with the investigation process or the Investigation Report does not render the Investigator's file irrelevant. Further, it does not prima facially risk or undermine the integrity of the Investigator's work because another party has an opportunity to review and scrutinize the quality of the

Investigator's work. Even so, the Investigator's work may be able to withstand the scrutiny and create more trust in the investigation process.

66. The Investigator's notes, written statements and video statements, and other documents presented by witnesses are relevant because based on the Interested Party's grounds for appeal, it has a tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the matter. However, signed confidentiality forms, references in witness statements and documents to other matters and other contents of the Investigator's file are irrelevant because they do neither.

AWARD

67. The Interested Party's request for the entire Investigator's file is denied, but the Interested Party shall receive access to or a copy of the following in the Investigator's file if within the possession or control of the DSO and DDSO:
- a. The Investigator's notes with redactions of notes regarding the confidential personal information of witnesses and matters other than this one,
 - b. Documents submitted by witnesses that they wished to have considered with a redaction regarding confidential personal information of witnesses, and
 - c. Written or video recorded witness statements with a redaction of confidential personal information.

Signed in Detroit, Michigan, United States of America this 2nd of July, 2024.

Aaron Ogletree, Arbitrator