

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

NO: SDRCC 24-0755

BETWEEN:

Party X

(CLAIMANT)

AND

HOCKEY CANADA (HC)

(RESPONDENT)

AND

MINOR A, MINOR B, MINOR C, MINOR D, MINOR F, MINOR I, DAVE
MERCANTI, GREG WILLIAMS AND BILL WHALEN

(AFFECTED PARTIES)

DECISION

Appearances:

On behalf of the Claimant:

David Pope, Counsel

Giovanni Perri, Counsel

On behalf of the Respondent:

Adam Klevinas, Counsel

Cristy Cooper, Counsel

On behalf of Minor A:

Minor A's Parent

On behalf of Minor B:

Minor B's Parent

On behalf of Minor C:

Minor C's Parent

On behalf of Minor D:

Minor D's Parent

On behalf of Minor F:

Minor F's Parent

On behalf of Minor I:

No one appeared

On behalf of Dave Mercanti:

On his own behalf

On behalf of Greg Williams:

On his own behalf

On behalf of Bill Whalen:

On his own behalf

1. On February 17, 2025, I was selected as the Arbitrator under section 5.3(b) of the *Canadian Sport Dispute Resolution Code* (October 2023) (the “Code”) to hear the Claimant’s (Party X) appeal of nine decisions (the “Decisions”), under section 6.7 of the *Code*.
2. Given the number of parties and the issues in dispute, the mandatory resolution facilitation process prescribed in Section 6.8 of the *Code* was waived. This decision is based on written submissions of the parties.

OVERVIEW

3. Hockey Canada (“HC”) is the national governing body for amateur hockey in Canada. Since the 2022-2023 season, all maltreatment complaints made to HC have been managed by an independent complaint system (the Independent Third Party or “ITP”) in accordance with HC’s *Maltreatment Complaint Management Policy* (the “Policy”).
4. The *Policy* provides that all complaints involving national-level athletes are to be handled by the ITP except where the complaints fall within the jurisdiction of the Office of the Sport Integrity Commissioner (now the Canadian Safe Sport Program). The ITP also takes jurisdiction over complaints which would previously have fallen under the jurisdiction of HC’s provincial and territorial sport organizations in narrow circumstances, including when the complaint alleges “Serious Misconduct” against a “Member Participant.”
5. The Claimant was, at the time of the matters at issue in this appeal, an athlete on an Ontario U14AA Hockey Team (the “Team”).
6. On April 18, 2024, the Claimant made a maltreatment complaint to HC’s ITP against several Team members, coaches and the Team trainer (the “Affected Parties”). The Claimant alleged, among other things, that other Minor players on the Team engaged in ongoing and persistent bullying, sexual misconduct and sexual harassment of other players throughout the 2023-2024 season in the Team dressing room. The incidents included “trash talking,” some Team members exposing their penises, then pulling down other Team members’ pants and underwear exposing their genitals (referred to as “pantsing”), some Team members blocking exit doors to prevent players from leaving while other players were forcibly “pantsing” other Team members. The Claimant also alleged that some Team members took photos and videos of incidents of forced exposure and may have posted the images on the Team SnapChat, among other social media platforms.

7. The Claimant further alleged that the misconduct occurred in the Team's dressing room before or after games and practices. He alleged that the Team coaches were not present in, or adequately supervising the Team's dressing room, in contravention of HC's policies, enabling the misconduct to occur. The complaint alleged that the dressing room door was frequently closed by players during the alleged bullying and misconduct.
8. The ITP accepted jurisdiction over the complaint and determined that the complaint would be managed through Process 1 of the *Policy*. Process 1 provides for the appointment of an Adjudicator who may seek written or oral submissions and if necessary, interviews or questions the parties before issuing a written decision.
9. On October 17, 2024, an Adjudicator issued separate decisions for each of the parties identified in the complaint.
10. The Adjudicator determined that a number of players, including the six Minor Affected Parties, and three Adult Affected Parties, had engaged in conduct that amounted to a breach of several applicable conduct policies, including the Ontario Hockey Federation ("OHF") *Ontario Dressing Room Policy*, the Hockey Canada *Dressing Room Policy*, the OHF *Respect and Expectation Policy*, the *Universal Code of Conduct to Prevent and Address Maltreatment in Sport* ("UCCMS") and the *Policy*. With respect to the Minor Players, the Adjudicator found that the conduct constituted Psychological, Physical and Sexual Maltreatment as defined in the UCCMS, bullying and harassing behaviour as defined in the OHF *Respect and Expectation Policy* and *Code of Conduct*, Maltreatment as defined in HC's *Policy*, and bullying behaviour as defined in the *Dressing Room Policy*. The Adjudicator determined that the Adult Affected Parties breached the *Dressing Room Policy* in failing to properly supervise the dressing rooms.
11. The Adjudicator assessed sanctions against the Affected Parties which included suspensions of varying lengths, written reprimands and warnings and/or education and training courses relevant to the violations and the Affected Parties' roles on the Team.
12. I have decided to set out the factual findings, sanctions and conclusions on appeal for all the parties in one decision rather than separate Appendices. Although most of the parties are minors and safeguarding matters are to remain confidential, counsel for both parties submitted their primary appeal submissions in one document in which they identified the adults by name and the minor parties by a letter.

13. Additionally, in his concluding remarks in each of the decisions, the Adjudicator expressed “significant concern” that parents and players were corresponding and coordinating their responses to the complaint in contravention of the confidentiality obligations under the *Policy*. The responses to the appeal were also in some cases identical or substantially similar. Consequently, it appears that any attempt to maintain confidentiality as between the parties has long been defeated.
14. Furthermore, I am of the view that, in the interest of transparency, it is important to have a full understanding of the allegations, the responses, and how they were addressed, in context.

The Decisions

15. Although the Adjudicator issued 15 separate decisions (four adults and 11 players), the Claimant appeals only those relating to six players and three coaches (the Affected Parties).
16. Following his appointment, the Adjudicator invited written submissions from the parties. He also interviewed the Claimant and a number of Team players and their parents. All but one of the minor Affected Parties declined to be interviewed. All three adult Affected parties participated in interviews with the Adjudicator.
17. The Complainant and several witnesses, including other players, provided “first-hand testimony” that “there was regular verbal and physical bullying and harassment of players on the Team during the 2023-2024 season,” and that players were regularly held down and “pantsexposed,” exposing either their underwear or having their underwear removed. All the minor player Affected Parties denied any involvement in the alleged conduct and denied that they had violated any *Policies*. The adult Affected Parties also denied any knowledge that the alleged conduct was occurring and asserted that they had complied with all relevant *Policies*.
18. The Adjudicator obtained copies of messages and pictures that had been posted within the Team’s “Snapchat” social media account and found that the content of the account supported the allegations. He noted that the account contained pictures and videos of Team players taken from inside the Team’s dressing room, without the videographer appearing to make any effort to be surreptitious. The account included a video of one player appearing to “be pretending to pin and “hump” another who was lying down in the dressing room while an individual joked off camera about “fucking this guy in the ass.” The Adjudicator noted that while much of the content of the account was anonymous, three posts appeared to have been uploaded by one specific player. Those posts, according to the

Adjudicator, were two videos which zoomed in extensively on one player's groin area while he was in his underwear. Background comments in that video included "[the player's] dick is sticking out" and "he has a boner" as the camera zooms in on the player's groin.

19. The Adjudicator determined that one of the players uploaded a photo showing three individuals, two of whom were on their hands and knees, the third of whom was lying on his back with only their knees and thighs visible. The photo, according to the Adjudicator "appeared to depict the act of the first two players "pantsing" the third player..."

20. The Adjudicator found that the content of the Team Snapchat account was:

...disappointing and disturbing. It is a cesspool of racist and homophobic images and content, slurs, and jokes about sexual assault. So that the individuals associated with the Team understand the scope of the problem, I include several examples of the types of "memes" uploaded by players on the Team over the course of the season, in apparent attempts at irreverence.

[images were included in each of the decisions]

Comments in the Team SnapChat include homophobic jokes and slurs (including the "F" word) comments mocking players' penis sizes, comments calling players "Mexicans" or "lesbians" as well as the use of the "N" word and other racial slurs. The content is appalling. It is reflective of a toxic culture that clearly took root in the Team over the 2023-2024 season.

21. The Adjudicator concluded that a small number of players were the primary instigators. He determined that those players would close and block the doors so that the victim being targeted could not escape and so that the coaches would not be alerted. He also concluded that although four "ringleaders" started the "pantsing" behaviours, the number of players involved expanded over the course of the season where players outside the "inner circle" became targets and perpetrators of the "pantsing."
22. The Adjudicator noted that one video depicting the "pantsing" had been uploaded in December 2023 and another two in February 2024. He found that the "pantsing" conduct occurred more than 20 times over the season.

23. The Adjudicator reviewed the Ontario Hockey Federation's ("OHF") policies, specifically the *Dressing Room Policy*, which prohibits violent conduct, bullying and hazing as well as the use of videos, still photographs or voice recordings in dressing rooms.
24. The Adjudicator also considered the OHF's *Respect and Expectation Policy* which requires registered participants to "abstain from all forms of prohibited behaviours as outlined in the UCCMS," and which states that registered participants "can expect to have an environment free from Maltreatment, Bullying or Harassment." The Adjudicator noted the Policy definition of "serious misconduct" which included sexual misconduct.
25. Finally, the Adjudicator considered the provisions of the *Universal Code of Conduct to Prevent and Address Maltreatment and Abuse in Sport* ("UCCMS") as well as the OHF's *Code of Conduct*.
26. The Adjudicator found that Minor Players A, B, C and D engaged in persistent verbal bullying of at least one player on the Team and were the four "ringleaders" who started the "pantsing" behaviour. He found that Minor Players A, B, C and D assaulted players by holding them down while their clothes were forcibly removed. He found that Minor Players C, D, F and I stood at the door of the Team's dressing room to ensure that coaches or other adults did not enter the room during the "pantsing" conduct. He found Minor Player F made comments that amounted to verbal bullying.
27. The Adjudicator concluded that Minor Player A was responsible for uploading the videos to the Team Snapchat account but was unable, on the evidence, to attribute the other posts to any specific Team player. However, he determined that Minor Players D and I participated in the Team Snapchat account.
28. The Adjudicator found that Minor Players A, B, C and D breached section 3.3 of the OHF *Dressing Room Policy* which prohibited recording in dressing rooms or dressing environments, and that the conduct of Minor Players A, B, C, D, F and I constituted a breach of section 4.1 of the OHF *Respect and Expectation Policy* and *Code of Conduct* which prohibited bullying and harassing behaviour. The Adjudicator also determined that Minor Player A, B, C, D, F and I's conduct constituted Psychological, Physical and Sexual Maltreatment under the UCCMS.

Minor Player Sanction Decisions

29. For each of the minor players, the Adjudicator found that imposing “serious consequences” was necessary in the circumstances. He then determined that the

...conduct likely took place...in jest. [The player] may have assumed that the recipients of this behaviour, and all others on the Team, were in on the joke. But this nonetheless had a significant impact on several players and created an intolerable dressing room and team environment. ...

Moreover, the applicable codes of conduct and policies have made it clear that bullying and harassment of players is entirely unacceptable. This is especially the case where victims’ sexual integrity has the potential to be compromised.

30. The Adjudicator found, for each of the minor players, that due to the player’s age and “the fact that his conduct appears to be borne of immaturity rather than malice” it would not be appropriate for him to apply the presumption of permanent ineligibility set out in section 46 of the *Policy*. He continued:

Ultimately, the central principle guiding my sanctioning powers under the Policy is that any sanction imposed must be appropriate and reasonable in the circumstances. In my view, in light of the factors listed above a suspension is warranted in order to reinforce the importance of the prohibitions against bullying and harassment. This serious conduct, which had the potential and did cause serious harm to players on the Team, cannot simply be condoned as “boys being boys.”

31. The Adjudicator ordered periods of suspension ranging from one to seven of the Team’s games for the Minor Players. Team practices were not included in the suspensions. The Adjudicator also ordered that the minor players take, at their own expense, the Respect in Sport Activity Leader/Coach program, which focuses on bullying and harassment.

Adult Affected Party Sanction decisions

32. The Adjudicator obtained written responses from Mercanti, the Team’s head coach, as well as Williams and Whalen, both of whom were assistant coaches. He also interviewed all three in person.

33. Although the 2023-2024 season was the first year of coaching the Team for all three, both Mercanti and Whalen were experienced coaches with many years of coaching at various age groups and levels as well as at hockey schools. All three coaches denied that they had contravened any *Policies* and asserted that they had worked hard during the year to create a culture of respect and inclusivity and to ensure that players understood what was expected of them. The coaches

contended that there was always at least one coach and one adult, either in the dressing room or outside with the door ajar.

34. The Adjudicator accepted the evidence of the Complainant and multiple players and parents that the coaches routinely failed to supervise the dressing room and took no steps to prevent the violence, bullying or any of the other behaviours from occurring in the dressing room. The Adjudicator found that, had the coaches been present in the dressing room as required by the *Policy*, they would have been aware of the misconduct. He concluded that the coaches' supervision of the Dressing Room was "entirely inadequate."
35. The Adjudicator also considered messages and pictures that had been sent on the Team's Snapchat social media page, organized by the players and with the involvement of nearly all of them. He found the activity on the account "fundamentally belied any suggestion of the "inclusive" environment" Mercanti described. While the Adjudicator could not hold any of the coaches responsible for the content of the account, he determined that "the contents make clear that there are fundamental problems within the dynamic of the Team."
36. The Adjudicator concluded that the coaches engaged in an omission, that is, failing to ensure adequate supervision of their athletes to ensure a safe environment, that resulted in harm. He determined that the omission constituted Neglect as defined in the *UCCMS* and constituted Maltreatment and a Violation within the meaning of section 1(6) of the *Policy*.
37. The Adjudicator also determined that the coaches breached section 3.1 and 3.2 of the *OHF Dressing Room Policy*. That *Policy* prohibits violent conduct of any kind in dressing rooms and imposes the responsibility of ensuring that no such violent behaviour occurs, on coaches and team staff. The *OHF Policy* incorporates the *HC Member Dressing Room Supervision Policy* which requires two "trained and screened adults" to either be present in the dressing room or "immediately outside the dressing room with the door propped open to monitor the environment and ensure that it is free of any discrimination, harassment, bullying, or other forms of maltreatment" ("The Rule of Two").
38. The Adjudicator considered the *OHF's Respect and Expectation Policy* (set out in paragraph 24 above).
39. After considering the section 42 factors to determine an appropriate sanction, the Adjudicator concluded that the coaches were negligent in allowing a "toxic

culture to develop and fester in the Dressing Room which caused players to bully and be bullied,” and determined that “a serious consequence is necessary in the circumstances”.

40. The Adjudicator noted that Mercanti “took no acceptance or responsibility for his actions or the actions of the players,” demonstrated contempt for the process and was dismissive of the evidence which demonstrated a basis for the complaint. The Adjudicator further determined that Mercanti had been made aware of problems in the dressing room and had been confronted about his failure to abide by the Rule of Two, despite Mercanti’s denials.
41. The Adjudicator found that a five-game suspension was warranted for Mercanti “in order to reinforce the importance of the Rule of Two...” given that he was the head coach and primarily responsible for ensuring that policies were adhered to. He found that a written reprimand and warning for Williams and Whalen was appropriate given that they were assistant coaches. He further determined that if Whalen failed to abide by the Rule of Two in the future, HC could take into account the sanction in assessing any future sanctions.
42. The Adjudicator further Ordered that the coaches complete, at their own expense, Safe Sport Training and “Understanding the Rule of Two”, both of which were available online, by November 15, 2024, and to provide the ITP with evidence that the programs had been completed.
43. The suspensions for both the Minor and Adult Affected Parties, which were effective from the date of the decision, have all been served.

The Appeal

44. The parties agree that the only issue on appeal is the appropriateness or fitness of the sanctions.
45. The Claimant contends that the ITP followed the incorrect procedure under HC’s policy, and that the seriousness of the allegations, including that of sexual maltreatment, required a “fulsome investigation.”
46. The Claimant contends that the sanctions are “unfit, disproportionate and fall outside the range of penalties for similar offences in similar circumstances” and that they do not fall within a range of reasonable outcomes.
47. The Claimant submits that, in determining appropriate sanctions, the Adjudicator failed to consider the factors outlined in Section 42 of the *Policy* and

the sanctioning considerations identified in section 7.4 of the *UCCMS*. The Claimant argues that both the *Policy* and the *UCCMS* prescribe mandatory presumptive permanent ineligibility sanctions for breaches of conduct related to Sexual Maltreatment involving a Minor.

48. The Claimant argues that although the imposition of a penalty is inherently discretionary, crafting an appropriate penalty should be guided by proportionality principles and an assessment of the range of appropriate penalties dependent on the facts of each case, guided by penalties imposed in other cases.
49. The Claimant seeks to have the sanctions imposed by the Arbitrator replaced by “further sanctions and measures that are just and equitable in the circumstances and in consideration of the seriousness of the egregious conduct found, including that of sexual maltreatment.” They further submit that the Adjudicator’s comments regarding the apparent breach of confidentiality provisions constitute an aggravating factor that was not properly considered in assessing a sanction.
50. HC submits that the imposition of a penalty is inherently discretionary, and that the Adjudicator’s application of the sanctioning provisions of the *Policy* to the facts and circumstances of the complaint was reasonable and justified in the circumstances.
51. The Affected Parties also contended that the sanctions were reasonable and proportionate. Some of the Affected Parties submitted that the suspensions constituted “an important learning experience.”

Analysis

The Code

52. Section 6.11 of the *Code* provides that the Panel has the power to conduct a hearing *de novo*, or from the beginning. The parties agree that a *de novo* hearing is unnecessary and inappropriate in the circumstances and that the matter should proceed as a review of the decision of the Adjudicator.

What is the standard of review?

53. The Claimant submits that no deference need be given to the ITP Adjudicator’s decisions unless HC can demonstrate the Adjudicator’s relevant expertise (section 6.11 (c) of the *Code*). The Claimant further contends no deference should be granted to the Adjudicator’s decisions because the appeal alleges an error of law, specifically, the Adjudicator’s failure to observe the sanctioning provisions of the *Policy*.
54. Alternatively, the Claimant argues if deference is to be granted, the sanctions do not fall within a reasonable range of possible, acceptable outcomes. The Claimant

argues that the sanctions were unjustly lenient and not reflective of the seriousness of the conduct found.

55. HC contends that the applicable standard of review is reasonableness, not correctness, given that the appeal is pursuant to an internal appeal policy, not a statutory scheme. HC submits that the sanctions, in each case, fell within a range of possible outcomes.
56. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, (2019 SCC 65) the Supreme Court of Canada held that administrative decisions are subject to a reasonableness review unless the legislature expressly indicates a different standard is to apply or where the rule of law requires that the standard of correctness be applied. (paras. 49 and 53)
57. The Claimant relies on *Brotsky v. College of Nurses of Ontario* (2025 ONSC 3422) in support of his argument for a correctness standard of review. The decision in *Brotsky* rested on the Supreme Court of Canada's 2002 decision in *Housen v. Nikolaisen* ([2002] 2 SCR 235) which established standards of review in statutory appeals (in *Brotsky*, it was the *Ontario Regulated Health Professions Act*).
58. Given that the issue on appeal is the application of an internal policy rather than a statutory provision, I find that the standard of review is one of reasonableness, not correctness. This is also the standard that has consistently been applied in SDRCC appeals, including safe sport complaints (see, for example, *Jackson v. Hockey Canada*, SDRCC 24-0748 and *Barch v. Hockey Canada*, SDRCC 23-0680).
59. Consequently, I have applied a reasonableness, or deferential, standard to the sanctions imposed in each of the decisions.
60. As counsel have noted, *Vavilov* prescribes a "robust form of review" which requires a reviewing court to "...consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified." A reasonableness review focuses on the decision actually made, including the justification for it, not on the conclusion a reviewing court would have reached in the administrative decision maker's place. (*Vavilov*, para. 15)

Were the sanctions reasonable?

61. Section 5 of the *Policy* sets out how sanctions will be determined:

42. Prior to determining sanctions, the Adjudicative Chair or the Adjudicative Panel, as the case may be, will consider factors relevant to determining appropriate sanctions which may include:

- a. The severity of the Violation;

- b. Where applicable, the nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;
- c. The Respondent's prior history and any pattern of inappropriate behaviour;
- d. The respective age of the individuals involved;
- e. Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
- f. The Respondent's voluntary admission of the offense(s), acceptance of responsibility, and/or cooperation in the investigative and/or disciplinary process of Hockey Canada;
- g. Real or perceived impact of the incident on the Complainant, Hockey Canada and/or its Members or the sporting community;
- h. Circumstances specific to the Respondent being sanctioned (e.g. addiction; disability; illness);
- i. Whether, given the facts and circumstances that have been established, continued participation in Hockey Canada-sanctioned programming is appropriate;
- j. A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
- k. Other mitigating and aggravating circumstances.

43. Any sanction imposed must be proportionate and reasonable. Progressive discipline may be appropriate but is not required. A single incident may justify elevated or combined sanctions.

44. After considering the factors listed in paragraph 42 above, the Adjudicative Chair or Adjudicative Panel may apply the following sanctions, singularly or in combination:

- a. **Verbal or Written Warning** – A verbal reprimand or an official, written notice that an Organizational or Member Participant has committed a Violation and that more severe sanctions will result should the Organizational or Member Participant be involved in other Violations;
- b. **Education** – The requirement that an Organizational or Member Participant undertake specified educational or similar remedial measures to address the Violation(s);
- c. **Probation** – The requirement that an Organizational or Member Participant be placed under some form of supervision or monitoring for a certain period of time while participating in any program, activity,

event, or competition sponsored by, organized by, or under the auspices of Hockey Canada. Should any further Violations occur during the probationary period, this will result in additional disciplinary measures, likely including a period of suspension or permanent ineligibility. This sanction can also include loss of privileges or other conditions, restrictions, or requirements for a specified period;

d. **Suspension** – Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of Hockey Canada. The reinstatement of a suspended Organizational or Member Participant may be subject to certain restrictions or contingent upon the Organizational or Member Participant satisfying specific conditions imposed by the Adjudicative Chair or Adjudicative Panel and noted at the time of suspension;

e. **Eligibility Restrictions** – Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions;

f. **Permanent Ineligibility** – Ineligibility to participate in any capacity in any program, activity, event, or competition sponsored by, organized by, or under the auspices of Hockey Canada for the remainder of the Organizational or Member Participant's life;

g. **Other Discretionary Sanctions** – Other sanctions may be imposed, including, but not limited to, other loss of privileges, no contact directives, or other restrictions or conditions as deemed necessary or appropriate.

45. Sexual Maltreatment involving a Minor shall carry a presumptive sanction of permanent ineligibility.

62. Section 7 of the *UCCMS*, which was adopted by the OHF in November 2022, sets out the sanctioning regime, including factors to be considered. Section 7.3.1 (a) also provides that Sexual Maltreatment involving a Minor is to carry a presumptive sanction of permanent ineligibility, a presumption which may be rebutted by the Respondent.

63. I find that the Adjudicator's sanction decisions cannot withstand the robust review demanded by *Vavilov*.

64. Section 42 of the *Policy* provides that the Adjudicator “will consider factors relevant to determining appropriate sanctions which may include...”. (my emphasis)
65. Although the imposition of sanction is inherently discretionary, the decision maker must consider only relevant factors. Further, any exercise of discretion is constrained by the provisions of section 45 if a finding of Sexual Maltreatment involving a Minor has been made. A decision maker is not required to expressly consider each of the factors. However, a failure to address relevant factors, or a consideration of irrelevant factors is an improper exercise of discretion and cannot be reasonable.
66. I conclude that the Adjudicator improperly inferred a lack of intent as a mitigating factor in assessing the sanctions for the minor Affected Parties. I also conclude that the Adjudicator improperly considered the fact that two coaches were “volunteer” coaches constituted mitigating factors in assessing sanctions for the adult Affected Parties. I also find that the Adjudicator failed to properly consider the section 42 factors in determining appropriate sanctions for each of the Affected Parties. Finally, I find that the Adjudicator failed to fully consider section 46 of the *Policy* and section 7.3.1 as well as the intent and purpose of the UCCMS, in particular, in arriving at his sanction decisions.

The Sanction Decisions for Minor Affected Parties

67. The Adjudicator found that the conduct was “disturbing,” “serious,” “unacceptable,” all of which he appears to have considered as aggravating factors under section 42(a). He appropriately considered the age of the minor players which I understand he considered a mitigating factor under 42(d). He also found that the conduct had caused harm, which I infer he determined to be an aggravating factor under 42(g). He did not expressly consider the factors identified in section 42(b), (c), (e), (h) or (i).
68. The Adjudicator failed, in my view, to properly consider the minor players’ refusal to admit responsibility for any of the alleged conduct, despite there being clear evidence of it occurring, under section 42(f). He also made no reference to all but one of the minor Players’ refusal to participate in an interview or their categorical denials of any participation in the alleged conduct. These are aggravating factors.
69. Additionally, but most concerning in my view, was the Adjudicator’s conclusion that conduct “likely took place in jest.” There was no evidence before the Adjudicator that could have led to that inference, particularly when the minor Affected Parties denied their involvement and refused to be interviewed.

70. This erroneous inference led, in turn, to the Adjudicator's conclusion that, because the minor players were young, their conduct "appear[ed] to be borne of immaturity rather than malice," and the basis for his decision not to consider the imposition of a permanent ineligibility sanction. I find that the Adjudicator erred in applying his own unsupportable inference regarding a lack of intent as a basis to conclude, at least in part, that the presumption of permanent ineligibility had been rebutted.
71. I conclude that the rationale for the Adjudicator's sanction decisions cannot be justified and does not fall within a range of reasonable and acceptable outcomes.
72. As this appeal proceeded as a judicial review, I would normally refer the issue of sanctions back to the Adjudicator to reconsider. However, the initial complaint was made in April 2024, over 15 months ago. This passage of time is particularly important given that minors are involved and are entering a new hockey season. The purpose of arbitration is to provide efficient and effective resolution to disputes, and in sport disputes in particular. For these reasons, I find it appropriate to arrive at my own assessment of an appropriate sanction for each of the parties.
73. In addition to the factors considered by the Adjudicator, I find two other factors to be relevant to the assessment of a sanction. The first is the frequency and duration of the conduct. The Adjudicator determined that there were at least 20 incidents of "pantsing" during the season. The Snapchat videos were uploaded in December 2023 and February 2024. While that is not evidence of the dates the images were taken, it suggests that the conduct occurred over several months. In my view, this is an aggravating factor.
74. The second relevant factor is the Adjudicator's conclusion that the dressing rooms were inadequately supervised as the coaches failed to observe the "Rule of Two". While there is no doubt that, in the Adjudicator's words, there will be some element of "boys will be boys," the rationale behind the "Rule of Two" is to curtail the conduct specifically complained of at an early stage. In my view, this is a highly mitigating factor.
75. I conclude that the age of the Minor Affected Parties, the fact they were inadequately supervised, the absence of any power imbalance, and the nature of the sexual maltreatment displace the presumption of permanent ineligibility.
76. I have also considered the fact that the sanctions were imposed in October 2024, and the sanctions have been served. There is no evidence before me whether the Affected Parties are still playing hockey, or if they are, whether they are playing

on the same team. There is also no evidence as to whether the conduct complained of continued after the suspensions were served.

77. For these reasons, it is my view that it would be both unfair and inappropriate to impose new game and/or practice suspensions at this time, approximately 10 months after the initial suspensions were issued. However, I find it appropriate to impose a two-year period of probation for each of the minor Affected Parties, if they continue to participate in HC sanctioned activities, commencing from the start of the 2025-2026 regular season. As section 44 (c) provides, should the Minor Affected Parties be found to have committed further Violations during the probationary period, additional disciplinary measures, likely including a period of suspension or permanent ineligibility, will follow.

Sanctions for Adult Affected Parties

78. The Adjudicator considered the fact that Mercanti took no responsibility for his actions, was contemptuous of the process and was dismissive of the evidence against him in imposing a five-game suspension. He considered the fact that Williams and Whalen were “volunteer assistant coaches” in sanctioning them with written reprimands and warnings.
79. Although the Adjudicator wrote that he considered the purpose of the *Policies* and the *UCCMS*, he did not expressly consider any other factors. While this is not in itself an error, I find that he gave insufficient weight to the guiding principles of the policy documents, which is that individuals should have the reasonable expectation that they will be in an environment free from all forms of maltreatment when they participate in sport.
80. Additionally, I find that the Adjudicator’s consideration of the “volunteer” aspect of Williams and Whalen’s involvement as a mitigating factor to be in error. As the claimant rightly notes, to allow volunteer status to diminish culpability sets a dangerous precedent. The coaches were in a position of authority over the players. They had a duty to demonstrate both leadership skills as well as to ensure all *Policies* were being complied with, whether or not they were volunteers. The conduct of the Minor Affected Parties, including the sexual maltreatment, was enabled by the coaching staff’s failure to adequately supervise them. Furthermore, the obligation to comply with the “Rule of Two” applies to all coaches, regardless of any volunteer status. I consider the violation of this *Policy* to be serious as it undermines the right of the players to a safe sporting environment.

81. There was no evidence that any of the coaches had any prior history or pattern of inappropriate behaviour. However, I find that, without an effective sanction, Mercanti, in particular, poses an ongoing potential threat to the safety of others.
82. While the coaches participated in the ITP process, they denied any responsibility for the conduct. They denied any knowledge of the conduct even though a parent raised concerns about it early in the season. The collective failure of the coaches to properly supervise the dressing room in contravention of the *Policies* had an impact not only on the Claimant, but other members of the Team, Hockey Canada and the broader sporting community.
83. Rather than appreciating the impact the conduct had on the complainant, Mercanti was of the view that it had been brought in bad faith. I consider this to be a highly aggravating factor.
84. The Complainant relies primarily on the decision of Arbitrator Skratek in *Greco v. Hockey Canada* (SDRCC 24-0716) in his request that I set aside the Adjudicator's sanctions for the coaches and replace them with a 12-to-24-month suspension followed by a 12-to-24-month period of probation for Mercanti, and a 12-month period of probation for Whalen and Williams. HC contends that the suspension range sought by the Claimant for Mercanti is "patently disproportionate" and that the Claimant "has not identified any factors which would warrant such a significant difference in sanction duration" and that the Adjudicator's decision with respect to Williams and Whalen falls within a range of reasonable outcomes.
85. In *Greco*, parents of a player alleged that their son had been physically and verbally bullied, and that sexually suggestive photos had been taken of their son by other teammates without his consent and posted to social media sites. They alleged that the conduct occurred because the coach had failed to properly supervise the dressing room, in contravention of the "Rule of Two" policy. The Adjudicator found that coaches were not present in the dressing room when the incidents occurred, nor were two properly screened adults immediately outside of the dressing room with the door propped open when the incidents occurred. The Adjudicator determined that the coach's failure to adhere to the Rule of Two led to the harassment and bullying. The Adjudicator imposed a two-week suspension from games, practices and events and complete a course on coaching responsibilities. Arbitrator Skratek dismissed the coach's appeal, finding that the sanction was justified.
86. I have concluded that the sanction imposed on the coaches by the Adjudicator was neither proportionate nor justifiable, considering the serious consequences of the *Policy* violations, their denials that they had contravened any *Policies*, the number of incidents, the fact that two of the coaches were highly experienced,

their denials of any knowledge that the conduct occurred despite acknowledging that at least one parent had raised concerns about inappropriate conduct early in the season, and in Mercanti's case, his contempt for the process and his claim that the complaint was made in bad faith. In my view, these factors distinguish the facts of this case from those in *Greco*.

87. I Order that the sanctions imposed by the Adjudicator be substituted with a six-month suspension for Mercanti from Hockey Canada games, practices and events, followed by a one-year period of probation, and a one-year period of probation for Whalen and Williams, commencing at the start of the 2025-2026 regular season. I would not disturb the Adjudicator's order that the coaches satisfactorily complete online training, which I understand has been completed.

CONCLUSION

88. The appeal is allowed.

DATED: September 2, 2025, Vancouver, British Columbia

Carol Roberts, Arbitrator