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

Citation : Armstrong v. Hockey Canada, 2025 CASDRC 33

No: SDRCC 25-0768
Date of Decision 2025-09-12

ALEX ARMSTRONG
(Claimant)

and

HOCKEY CANADA
(Respondent)

Before:
Jeffrey J. Palamar (Arbitrator)

Appearances:

For Mr. Armstrong:	Trent Morris
For Hockey Canada:	Adam Klevinas

REASONS FOR DECISION

I. Introduction and Background

1. This is an appeal from the February 17, 2025, decision (the "Decision") of Adjudicator Kathleen Simmons in her capacity as Adjudicator under Hockey Canada's "Discipline and Complaints Policy" (the "Policy") in complaint HC24-0150.

2. Alex Armstong is the owner, general manager and Head Coach of the Pembroke Lumber Kings (the "Team") in the Central Canada Hockey League ("CCHL") and the White Water Kings of the Eastern Ontario Junior Hockey League, both of which operate within Hockey Eastern Ontario ("HEO").

3. Hockey Canada is the national governing body for amateur hockey in Canada, and oversees the management and structure of programs in Canada from entry-level to high performance teams and competitions.

4. On February 23, 2023, an anonymous complainant filed a complaint ("Complaint 1", which ultimately led to SDRCC 25-0767) with allegations of misconduct against Mr. Armstrong, alleging conduct contrary to HEO's bylaws and policies, including that he was:

a) consuming alcohol on team busses and driving home immediately after exiting the bus;

b) drinking alcohol from a flask or mickey while behind the bench;

c) pressuring players to attend “optional” skills development sessions that cost between $1000 and $4000 to attend. When the sessions were flagged to the League (CCHL) officials, Mr. Armstrong allegedly forced players to sign waivers indicating they knew these were optional sessions without giving them their own copies or allowing them to read the documents before they signed. It is also alleged that he has failed to reimburse players for cancelled sessions;

d) telling players he would use the refunded session funds to pay for players’ billet fees, but forcing players to pay their billet fees prior to full refunds being issued;

e) frequently being absent from practices and games;

f) improperly supervising the Team, which led to instances of hazing and other forms of harassment between players;

g) attempting to seek money from players’ parents by intimidating players, such as by threatening to “bury them” or to affect their ice time; and

h) mismanaging and/or mishandling monies paid by players and their families, including misrepresenting amounts paid in respect of player contracts.

5. Hockey Canada’s Independent Third Party (the “ITP”) assumed jurisdiction and on May 16, 2023, appointed Paul Gee of SportSafe Investigations Group to investigate Complaint 1.

6. On January 18, 2024, a parent of a player on the Team (the “Parent”) filed a complaint (“Complaint 2”, which ultimately led to this file) with allegations of misconduct against Mr. Armstrong, including that he was breaching the applicable Codes of Conduct and/or Policies by:

a) repeatedly bullying Team players during the 2022-2023 and 2023-2024 hockey seasons;

b) fostering an unhealthy team environment during the 2022-2023 and 2023-2024 hockey seasons;

c) conducting himself, verbally or otherwise, in ways that caused psychological harm to the Complainant and her son;

d) engaging in the mismanagement of the Team's or League's funds, allegedly using the Team's or League's funds for personal gain or another unapproved purpose.

7. For reasons not relevant here the ITP initially declined jurisdiction but later agreed to manage Complaint 2, and appointed Mr. Gee to investigate it.

8. On June 6, 2024, Mr. Gee issued a final investigation report on Complaint 1. On July 10, 2024, he issued a final investigation report on Complaint 2.

9. The ITP then appointed Adjudicator Kathleen Simmons and on February 17, 2025, Adjudicator Simmons issued separate decisions on each of Complaint 1 and Complaint 2 imposing the same sanctions. Specifically, she sanctioned Mr. Armstrong with:

a) a written warning, to be placed on his disciplinary record and disclosed by the CCHL Commissioner to current and protected Team players, that his treatment of the [Parent's son] and mismanagement of the Team in the 2022-2023 season and 2023-2024 season amounted to a severe violation of the governing Codes;

b) an order that he cease such conduct and act in strict compliance with the Codes henceforth, with any further violations of the Codes to result in additional sanctions, up to and including permanent ineligibility from Hockey Canada sanctioned activities; and

c) a suspension prohibiting him from acting as the Head Coach, Assistant Coach or any member of the coaching/bench staff for the Team for the remainder of the current season and the entirety of the next season. For clarity, this suspension commenced immediately on release of [her] decision and was to continue until the first day of the 2026-2027 season (collectively, the "Sanctions").

10. On March 19, 2025, Mr. Armstrong filed two Requests with the Sport Dispute Resolution Centre of Canada (the "SDRCC") in which he appealed the Adjudicator's decisions (the "Appeals").

11. Mr. Armstrong's Requests detailed 28 grounds of appeal on SDRCC 25-0767 and 32 grounds of appeal on this file. Mr. Armstrong also sought conservatory measures seeking to have the Sanctions lifted pending the outcome of the Appeals.

12. On March 24, 2025, Hockey Canada filed its Answers, disputing the Appeals, asking for the Decisions to be upheld, and asserting the SDRCC did not have jurisdiction on the Appeal of the decision in Complaint 2.

13. On April 2, 2025, the request for conservatory measures was denied, as was Hockey Canada's challenge that the SDRCC did not have jurisdiction.

14. On May 16, 2025, the parties agreed to nominate me as Arbitrator to hear the Appeals.

II. Preliminary Issues

15. On May 23, 2025, we held a preliminary meeting during which the parties confirmed they accepted the jurisdiction of both the SDRCC and me on both matters, and confirmed the October 1, 2023, version of the Canadian Sport Dispute Resolution Code (the "Code") applied.

16. Further, three preliminary issues were identified. Those issues were:

    a) Whether SDRCC 25-0767 and this file should be heard jointly or remain separate;

    b) Whether the hearing(s) should be de novo or be reviews pursuant to the Code; and

    c) Whether the anonymity of the complainant in Complaint 1 and certain witnesses should be lifted.

17. The parties provided written submissions on the preliminary issues and the issues on this Appeal. I have summarized and paraphrased their most relevant portions as need be. While I do not refer specifically to everything provided, in making my decisions I have in fact carefully considered it all.

18. On June 20, 2025, I advised the Parties of my decisions that:

    a) SDRCC 25-0767 and 25-0768 should remain separate;

    b) The hearings should be by review pursuant to the Code; and

    c) The anonymity of the complainant in Complaint 1 and certain witnesses should not be lifted.

Whether SDRCC 25-0767 and 25-0768 Should Be Heard Jointly or Remain Separate

19. The Claimant asked for the Requests to be heard jointly.

20. He asserted they were basically the same, except that the specific concerns in Complaint 2 extended the timeframe of the specific concerns in Complaint 2.

21. The Claimant said the two investigations ran concurrently, the same Adjudicator interviewed the parties in both Complaints concurrently, and the Adjudicator's decisions were released on the same day. Ultimately, the

Adjudicator imposed the same sanction for each Complaint, to run concurrently.

22. The Claimant referred to section 5.4(b)(ii) of the Code, which stated in part:

> 5.4 Jurisdictional Arbitrator
>
> (a) Where a Panel has not yet been appointed and a jurisdictional or procedural issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the Rotating List.
>
> (b) The Jurisdictional Arbitrator shall have all the necessary powers to decide:
>
> (i) any challenge raised to the jurisdiction of the SDRCC;
>
> (ii) whether to merge two or more cases filed before the SDRCC that involve most of the same Parties and share similar facts and issues, where Parties do not agree to merge the disputes… (emphasis added)

23. The Claimant asserted the "Parties" are the same, they share similar facts and issues (both cases purported to deal with complaints on behalf of all Team Members), and I ought to draw the inference at this stage that the overlap of witnesses is substantial (the Claimant alone had the same seven witnesses submit declarations in each matter).

24. There is no provision in the Policy empowering the ITP to grant anonymity. The Policy merely states that “[t]he ITP may accept anonymous Complaints” (s. 10).

25. If a complaint is made anonymously, it may be accepted. Once the Complainant becomes a witness, however, there is no anonymity, and no process to grant it. Section G of the Policy continues to read:

> ...
>
> The investigation will adhere to all principles of natural justice, providing procedural and substantive due process for all parties to the investigation.
>
> ...

26. This is corroborated by the provision in the Policy establishing sanctions for false accusations;

> A false accusation of Maltreatment, Bullying or Harassment can be devastating to the Participant who is being accused, both personally and professionally. Any Complainant making a complaint which is found to be clearly unfounded, false, malicious or frivolous, therefore, will be in breach of this Policy, and may be subject to consequences within Hockey Canada and may also be referred to third party authorities. All decisions under this Policy will be final, with no further right of appeal or reconsideration within Hockey Canada’s structure.

27. In both matters, Mr. Armstrong asserted his concern that the Complaints were retaliatory, and by parents who were dissatisfied with playing time and trade status.

28. It is inescapable that the same Adjudicator (in both matters) made credibility findings (in both matters) against Mr. Armstrong after receiving and relying on undisclosed evidence from the anonymous Complainant. This fact alone is fatal to the Decisions and is a gross breach of the principles of natural justice.

29. The requirement that "the investigation will adhere to all principles of natural justice, providing procedural and substantive due process for all parties to the investigation," is part of the internal policy. This was breached repeatedly.

30. Both cases should presumptively be heard together, with me as Arbitrator rendering separate determinations on each case. Alternatively, both cases should presumptively be heard together, with me as Arbitrator retaining the power to separate the cases at a later stage if there is a good reason to do so.

31. Hockey Canada asked for the two Requests to be heard separately.

32. It asserted that even though I am not a jurisdictional arbitrator I should apply section 5.4(b)(ii) of the Code to decide on the issue of merger, otherwise there is a risk different tests could apply to the issue of a merger, depending on the stage at which it is addressed during the proceedings.

33. Given that an arbitrator's powers to merge under section 5.4.1(b)(ii) of the Code are to be exercised where such cases "involve most of the same Parties", the fact is the complainants here are not the same, and the Affected Parties are not the same. This particularly is important here because the original complainant wished to remain anonymous and should remain anonymous. Merging would compromise or, at the very least, carry a risk of compromising the original complainant's anonymity.

34. That the Affected Parties are not the same should be given significant weight. A lack of common Affected Parties was one of the determining factors in Arbitrator Armstrong's rejection of a merger request in Spinney v. Wrestling Canada Lutte, SDRCC 23-0628.

35. In Carruthers v. Speed Skating Canada, SDRCC 16-0309 and Goplen v. Speed Skating Canada, SDRCC 16-0310, Arbitrator Brunet was faced with a consolidation request by the Claimants in both matters. When deciding this, he stated:

> Consolidations in arbitration matters need to be addressed somewhat differently from those in regular court proceedings, if only for the fundamental principle of

> confidentiality. While proceedings before common courts are public unless ordered otherwise, sport arbitration disputes are confidential by default.

36. Hockey Canada argued that as Arbitrator Brunet considered confidentiality was a fundamental principle in a team selection dispute, this principle should be given even more protection in safe sport matters that involve different complainants and different allegations, particularly where a complainant wishes to remain anonymous (and was provided such protection during the first instance disciplinary proceedings). Compromising these principles would have a chilling effect on future complainants who wished to remain anonymous and have the confidentiality of their complaints respected.

37. Hockey Canada acknowledged that "judicial economy" is an important value that could be respected by merger, but noted that it cannot override the procedural rights of a litigant, particularly the need to respect confidentiality between proceedings and the need to maintain the anonymity of a complainant who came forth on that basis.

38. Hockey Canada emphasized that Arbitrator Brunet's solutions in Carruthers and Goplen to have the Claimant in each matter become an intervenor in the other matter was not a viable solution here. Such an approach would compromise the identity of the anonymous complainant and confidentiality of both matters.

39. Hockey Canada asserted the Claimant's grounds of appeal on the two files were similar, but not the same. To the extent there was overlap, as the same Arbitrator has been appointed to hear both matters there was little risk of contradictory decisions on those grounds of appeal and so the cases can and should remain separate.

40. Hockey Canada said the Complaints were made almost one year apart, and involve significantly different allegations.

41. In a broad sense, the allegations in Complaint 1 are that the Claimant consumed alcohol during and after Team activities, was frequently absent from practices and games, provided improper supervision, and as well there was financial mismanagement. In Complaint 2 the majority of the allegations involve specific allegations of the Claimant's management of the Parent's son's injuries, the psychological harm suffered by the Parent and their son, bullying, as well as financial mismanagement.

42. Further, the findings made by the Adjudicator in the two Complaints are different.

43. In addition to the Appeals not sharing the same issues, they do not share similar facts and are not "basically the same". It is not the case that Complaint 2 simply "extends the timeframe" of the complaints.

44. Hockey Canada argued that the Claimant's position that both cases should presumptively be heard together, with me as Arbitrator rendering separate determinations on each case, does not address the fundamental issue of maintaining confidentiality between the proceedings, parties and witnesses.

45. Hockey Canada asserted that if I were to grant the Claimant's request to merge the cases and have all the evidence heard together and then separate the cases at a later stage if there were a "good reason" to do so, this would compromise the confidentiality of the proceedings and, potentially, the anonymity of the parties and certain witnesses, for no valid or justifiable purpose.

46. Hockey Canada said that the use of a common Investigator and Adjudicator simply prevented contradictory or inconsistent decisions from being rendered in the Claimant's first instance disciplinary proceedings after separate investigations and separate disciplinary proceedings were conducted, while maintaining confidentiality and anonymity.

47. Hockey Canada noted that a careful review of both of Adjudicator Simmons's decisions did not suggest that she had considered evidence (including that of Mr. Armstrong) obtained in one file on the other. The same can be said regarding all of Adjudicator Simmons's credibility assessments.

48. Finally, Hockey Canada noted it was undeniable there had been two complaints, and that to this point they been dealt with separately. This appeared to be at least partly related to the Claimant's decision not to consolidate them when Adjudicator Simmons offered him this possibility. The Claimant should not now be permitted to correct his procedural and strategic decisions from the first instance proceedings on appeal, particularly when he made those while represented by counsel.

49. I agree I have discretion on whether or not to merge, and that it makes sense to consider the same factors as would a jurisdictional arbitrator under section 5.4(b)(ii) of the Code. This would cause me to consider if the matters involved "most" of the same Parties, and not necessarily all of the same Parties. Further, I should consider whether the matters involve "similar" facts and issues, not necessarily identical ones.

50. If the matters do not involve "most" of the same Parties and "similar" facts or issues, I should likely not merge, particularly if the Parties have not agreed to merge. On the other hand, even if the matters do involve "most" of the same Parties and "similar" facts or issues, I am not obliged to merge.

51. Here, I decline the request to merge and order that the Requests proceed separately.

52. To this point they have advanced separately. There are important differences in Parties and issues. Anonymity and confidentiality are of significant concern

and I think we need to be extremely cautious in doing anything (in the context of safe sport issues in particular) which might needlessly compromise those principles.

53. With a single Arbitrator dealing with both Requests there is no risk of contradictory or inconsistent decisions. Judicial economy could apply in a situation where there were hearings including testimony from witnesses that for the most part was the same but repeated in two separate hearings, but as the Appeals are proceeding by way of review (as opposed to as de novo hearings; see below) that is not an issue here.

Whether the Hearing(s) Should be De Novo or be by Review

54. The Claimant asked for the hearings to be de novo.

55. He referred to section 6.11 of the Code;

> 6.11 Scope of Panel's Review
>
> (a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.
>
> (b) The Panel shall have the full power to conduct a hearing de novo. The hearing must be de novo where:
>
> i. the SO did not conduct its internal appeal process or denied Mr. Armstrong a right of appeal without having heard the case on its merits; or
>
> ii. if the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.
>
> (c) No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Party seeking such deference can demonstrate that Person's relevant expertise.

56. The Claimant noted that in the Decision in Complaint 2, the Adjudicator made the following finding at para. 27:

> The Complainant in this case is anonymous. I did speak to the Complainant, and they provided me with context for the complaint that was not previously available to me. In the interest of preserving the anonymity of the Complainant, I will not describe it in detail in this decision. I found this context helpful in assessing the credibility of both the Complainant and Hockey Canada. I found the Complainant to be honest and forthright, and I accept that they believed they were acting in the best interests of the players. I also found the Complainant may have had motivation to act against the interests of Hockey Canada, but for reasons that are

not disclosed herein as they go to the identity of the Complainant, I find that this motivation does not undermine the complaint.

57. The Claimant argued that the June 5, 2025, decision of the Acting Appeals Chair of Hockey Canada in Re: JW and the OHF determined that at least where critical evidence is concerned, that evidence either must be shared with the adverse party or otherwise excluded or ignored. This comes from basic principles of natural justice and fairness.

58. The Claimant asserted there were clear breaches of natural justice and fairness here, and so a hearing de novo was required. He said the decision to rely on undisclosed evidence from someone in making a credibility finding regarding the Complainant and himself was fatal to the decisions in both cases. He argued the breaches of natural justice in these cases were "legion", and this is but one of the most extreme examples.

59. Hockey Canada asked for the hearings to be by review.

60. It argued the scope of review of any matter proceeding before the Ordinary Tribunal is as set out in Section 6.11(a) of the Code. As Arbitrator I have the full power to review the facts and apply the law, and substitute my decision for the decision that gave rise to the dispute, or substitute such measures and grant such remedies or relief that I deem just and equitable in the circumstances.

61. A hearing de novo is only mandatory in two specific scenarios. By Article 6.11(b) of the Code, a hearing will be de novo where:

    a) the sport organization did not conduct its internal appeal process or denied the Claimant a right of appeal without having heard the case on its merits; or

    b) if the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.

62. Hockey Canada argued it had not failed to conduct its internal appeal process, and the Claimant had not been denied a right of appeal, so plainly section 6.11(b)(i) of the Code had no application.

63. Hockey Canada stated that on a plain reading of section 6.11(b)(ii) of the Code, a hearing de novo can only be conducted if the case is deemed urgent. To date, the Claimant had not contended that his case was urgent. For this reason alone, the Claimant’s reliance on alleged breaches of natural justice to justify a hearing de novo did not allow this argument to get off the ground.

64. It also argued I cannot at this stage of the proceedings and based solely on the Claimant’s various submissions, "determine" whether breaches of natural

justice occurred. It is insufficient for the Claimant simply to allege such breaches or even to make out a prima facie case., Instead, I must "determine" there was an actual breach of natural justice to order a de novo hearing.

65. Hockey Canada asserted that despite the Claimant arguing the breaches of natural justices in his cases were “legion” he had provided but a single example of an alleged breach, and that position simply was insufficient for me to legitimately "determine" that a hearing de novo is required in the circumstances.

66. Hockey Canada argued that Adjudicator Simmons’s justification for not disclosing “context” (as opposed to “evidence”) regarding her credibility assessments was that to disclose would compromise the anonymity of the Complainant.

67. It said it would not speculate as to why the Complainant wished to remain anonymous but Adjudicator Simmons's decision supported that anonymity.

68. Adjudicator Simmons took deliberate steps to not disclose any information that could reveal the identity of the Complainant. Logically then, Adjudicator Simmons did not conclude it necessary to waive protection of the Complainant’s identity. Hockey Canada submitted there was no justification to take a different approach here.

69. Hockey Canada noted Mr. Armstrong had not identified any specific “evidence” that was relied upon by Adjudicator Simmons in making her decision in Complaint 1, that had not been disclosed to Mr. Armstrong. This was very different than the situation in Re: JW and the OHF;

> This was not a situation where the text messages merely corroborated other evidence that was presented at the hearing – they were, in essence, the entire basis for the case against the Appellant…[the decision] was based entirely on evidence [the appellant had] not seen.

70. It cannot be said that the “context”, even if properly considered evidence, is the “entire basis for the case” (or cases), nor that the decisions and sanctions applied by Arbitrator Simmons were “based entirely” on this limited contextual assessment.

71. Hockey Canada stated it was not mandatory to hold a hearing de novo, and while I had discretion under section 6.11(b) of the Code to make such decision, I should not do so.

72. It referred me to McInnis v. Athletics Canada, SDRCC 19-0401, where Arbitrator Bennett issued a Preliminary Decision on the issue of whether the matter should proceed by hearing de novo or judicial review.

73. Hockey Canada argued that similar to here, the decision at issue in McInnis involved a disciplinary matter in which the claimant there asserted the matter should be heard de novo because he was denied natural justice and procedural fairness, and alleged flaws with the investigation process on which an Athletics Canada Commissioner relied to render a decision.

74. Arbitrator Bennett determined the matter would proceed by judicial review, noting that then-section 6.17 of the Code (6.11 in the 2023 Code) had to be read together with then-section 6.16 of the Code, which provided that arbitrators had powers to control their own procedures. While then-section 6.16 no longer existed, similar language affirming discretion has been maintained at section 5.7(e) of the Code, which states that "Where a matter arises that is not otherwise set out in this Code, the Panel shall have the power to establish its own procedures provided each Party is treated equally and fairly".

75. Hockey Canada noted how Arbitrator Bennett opined that even if the conditions listed in then-section 6.17 of the Code were present, the circumstances of the case did not support a hearing de novo. Those circumstances (a lack of agreement between the parties to proceed with a hearing de novo and a lack of urgency) also existed here. As a result, none of the conditions in the Code or in the relevant jurisprudence that justify a hearing de novo.

76. Hockey Canada argued that conducting a hearing de novo in a case where none of the mandatory or discretionary factors are present would needlessly and considerably increase the costs of the proceedings here. In the words of Arbitrator Bennett in McInnis "imposing a de novo hearing would defeat the object and intention of an SDRCC appeal, which is, as s. 6.16 makes clear: "to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute."

77. Hockey Canada suggested that one of the reasons the Claimant sought a hearing de novo was to allow him to cross-examine the original complainants. This was improper as permitting him to cross-examine would amount to providing him with a right he had effectively waived during the earlier proceedings.

78. Hockey Canada argued that In both cases, the Claimant had "made vociferous requests to question his accusers." However, in lieu of cross-examination, the Adjudicator had provided the parties with the opportunity to submit questions they wished the Adjudicator to ask. Since the Claimant did not avail himself of this opportunity, he should not be permitted to now correct a procedural and strategic decision he had already made, while represented by counsel.

79. Further, permitting a hearing de novo and so allowing a cross-examination of the anonymous Complainant would significantly undermine the trauma-informed approach taken in the ITP process. Subjecting parties in safe sport matters to cross-examination would set a risky precedent for future safe sport cases and would have a chilling effect on potential complainants.

80. Hockey Canada argued that the Claimant should not be permitted a hearing de novo to challenge the Sanctions. In both Complaints, despite being provided with an opportunity to make submissions regarding the appropriate sanctions (again, while represented by counsel) he did not make any such submissions. He should not now be permitted to correct a procedural and strategic decision he had made, while represented by counsel.

81. Hockey Canada's position on these types of "corrections" is consistent with the decision made by Arbitrator Roberts in B.R. v. Hockey Canada, SDRCC 24-0704, where she held it was not open to the claimant to make arguments (on appeal before the SDRCC) that were not made before the original adjudicator (and where the claimant in that matter was also represented by counsel).

82. I accept the mandatory requirements for a hearing de novo do not exist. In particular there is no urgency and no breach of natural justice.

83. While I have discretion to order a hearing de novo, I decline to exercise that discretion. It is clear that a hearing de novo would both lead to considerable delay and come at remarkable cost, and so be the diametric opposite of a just, speedy and cost-effective resolution of the dispute. Beyond that, it would be unnecessary in this context as there is no reason at all a fair result would not be achieved through a review.

Whether the Anonymity of the Complainant and Certain Witnesses Should be Lifted

84. The Claimant asked for the anonymity of the Complainant and certain witnesses to be lifted.

85. The Claimant asserted that while the ITP process affords the ability to complain anonymously, once a complainant becomes a witness, their identity must be revealed unless there is a compelling reason to withhold their identity.

86. The Claimant said there was no evidence of any reprisal or retaliation by him, and the players and parents in question had all "aged out" of the Team. The allegations involve “harsh language” and failure to reimburse monies in a timely fashion. The idea that players of this age and their parents required anonymity in giving evidence in a matter with such serious consequences to the Claimant skewed the balance between the ability to fully and fairly answer

the allegations and a desire for anonymity, and opened the process up to abuse by parents and players.

87. The Claimant noted how anonymity to witnesses was granted by the Investigator "for the asking", and with the application of no factors or reasons. That determination was neither questioned nor reviewed by the Adjudicator, despite the Claimant's objection. Neither the Investigator nor the Adjudicator had any expertise in the area of psychology that would put them in a better position than me as Arbitrator to determine issues of anonymity.

88. The Claimant asserted that the person seeking anonymity bears the onus to establish anonymity is required. Here, no attempt was made to provide a reason for anonymity. Re: JW and the OHF supported the argument that general concerns regarding reprisal or retaliation are insufficient to grant sweeping anonymity.

89. Hockey Canada opposed lifting the anonymity of the Complainant and certain witnesses.

90. It said the anonymous complainant in Complaint 1 is not the same complainant as in Complaint 2.

91. Although the Code is silent on the issue of the anonymity of the parties, the start and end of this should be the clear and unambiguous wording in section 10 of the Policy, which says “The ITP will accept anonymous complaints.”

92. Section 10 of the Policy was the rule that was in force when the ITP accepted the anonymous Complainant’s complaint in February 2023 and there was no exemption foreseen in the rule that would allow the ITP or anyone to lift a complainant’s anonymity. To do so now would be tantamount to re-writing the Policy, which would be both unjustified and inappropriate in the circumstances.

93. As SDRCC panels have expressed strong reluctance to re-write National Sport Organization selection policies, they should have an equal or even greater degree of reluctance to re-write a National Sport Organization policy which reflects a deliberate choice to protect the anonymity of complainants who do not want their identities revealed. There is nothing patently unfair, arbitrary or unreasonable about such a decision that would justify any arbitral intervention.

94. Further, such a re-write would create a chilling effect amongst would-be complainants who wish to remain anonymous, perhaps due to concerns over possible retribution or reprisal from a respondent or anyone else in the hockey community. A complainant whose identity was anonymous during first instance proceedings has a reasonable expectation of remaining anonymous during subsequent appeal proceedings.

95. The Policy permits anonymous complaints. There is nothing in it which suggests such anonymity will be waived should a complainant provide evidence in support of their complaint. Respectfully, any distinction between an individual in their “complainant” and “witness” capacity is artificial.

96. With respect to non-complainant witnesses, Hockey Canada argued there was no rational connection between knowing their identity, and both understanding and responding to their evidence. As long as the Claimant had been made aware of the evidence in the Complaints (which he had been) there was no reason for him to be informed of the identity of any witness.

97. Further, if Hockey Canada’s position that the hearing(s) should not be conducted de novo were accepted, there would be no reason for the anonymity of the Complainant or any witness to be lifted since they would not testify in these proceedings.

98. I accept that for valid policy considerations a complainant may be anonymous, and it would be quite inconsistent with those policy considerations to lift that anonymity should the complainant also be a witness (as of course they will in virtually every instance). This is not just due to fear of reprisal or retaliation from a respondent (and here, I accept there is no suggestion of any fear of reprisal or retaliation from the Complainant). It is a larger issue, important in the context of a systemic desire to promote safe sport while still allowing due process and a reasonable opportunity to be fully aware of and respond to allegations of wrongdoing.

99. Further, and also in light of the fact these Appeals will proceed by review (and not in a hearing de novo) there is no need to lift the anonymity of the complainant or any witnesses.

III. The Merits

Standard of Review

100. According to the Supreme Court of Canada in Canada (Minister of Citizenship and Immigration) v. Vavilov 2019 SCC 65:

a) this is not to be a redetermination of things and should proceed as would a judicial review;

b) this is to be a ”reasonableness review”, to so ensure the Decision was “fair, reasonable and lawful”;

c) a reasonableness review is a “robust” form of review and I must consider the Decision’s outcome in light of its underlying rationale to ensure that as a whole, it is “transparent, intelligible and justified”; and

d) if the Decision falls within a range of reasonable outcomes, I ought not to disturb it even if I would have arrived at a different conclusion.

101. According to Arbitrator Peterson in Barch v. Hockey Canada, SDRCC 23-0680, the applicable standard of reasonableness does not mean I must agree with the Decision but I must determine whether the outcome and reasons outlined by the Panel are justifiable in the circumstances. An otherwise reasonable outcome cannot stand if reached on an improper basis. The onus lies on the Claimant to show that any shortcomings or flaws are "sufficiently central or significant to render the decision unreasonable."

102. According to Arbitrator Roberts in Bui v. Tennis Canada, SDRCC 20-0457, the Panel must have "considered the facts and governing scheme relevant to the decision as well as any past practices". As such, the Claimant must satisfy me there are "serious shortcomings" in the Panel's decision.

103. According to Arbitrator Roberts in Jackson v. Hockey Canada SDRCC 24-0748, this is not a "do over". It is not to be a reconsideration of the arguments or processes that led to that Decision, simply because the Claimant is dissatisfied.

The Hockey Canada Process to Address and Determine Complaints

104. This is set out in the Policy and provides:

a) Hockey Canada offers an independent and fair administration of complaints through the office of an Independent Third Party (the "ITP") who screens complaints and may accept anonymous complaints.

b) If the ITP determines that a complaint falls within the jurisdiction of the Policy, it will then determine whether the complaint should follow Process #1 (allegations not appearing to be Serious Misconduct, as defined, and so warranting a streamlined procedure) or Process #2 (allegations appearing to be Serious Misconduct, and so warranting a more rigorous process, including possibly investigation).

c) If referred to investigation, that is to be completed by an independent third-party skilled in investigating, and having no conflict of interest. The investigation is conducted according to Appendix A to the Policy. It may take any form, such as interviews with the parties and witnesses but must adhere to all principles of natural justice, providing procedural and substantive due process for all parties to it. Investigators must evaluate the evidence, and assess the credibility of the evidence.

d) Upon completion of the investigation, the investigator prepares a report which is to include a summary of evidence from the parties and recommendations from the investigator whether, on a balance of probabilities, a violation has occurred.

e) The report is then provided to the ITP-appointed adjudicator, who are not to have any real or perceived conflict of interest.

f) The ITP may also disclose the report – or a redacted version to protect the identity of witnesses – to the parties, at the discretion of the ITP.

g) The presumption is that the report is determinative of the facts related to the complaint. This presumption may be rebutted where a party can demonstrate that there was a significant flaw in the process followed by the investigator. or can establish that the report contains conclusions which are not consistent with the facts as found by the investigator.

h) In situations where the presumption is rebutted, the adjudicator shall determine to what extent the investigation report will be accepted as evidence and to what extent a witness or party may be required to give fresh evidence.

i) The format for the hearing is determined by the ITP in consultation with the adjudicator. This may be an oral hearing, or a hearing based on a review of the report with written or oral submissions, or a combination of these methods. The format selected should avoid requiring the complainant to retell their version of events multiple times throughout the process, unless absolutely necessary as a matter of procedural fairness. It is stated expressly in the Policy that the decision on the format may not be appealed.

j) After a hearing, the adjudicator is to determine whether a violation has occurred and if so, what if any sanctions ought to be imposed.

k) The available sanctions in the Policy range in severity from verbal or written warning all the way through to “permanent ineligibility”, along with “other discretionary sanctions”.

l) Permanent ineligibility is described as ineligible 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 participant’s life.

m) Other discretionary sanctions include but are not limited to other loss of privileges, no contact directives, or other restrictions or conditions as deemed necessary or appropriate.

n) The sanctions are required to be proportionate and reasonable. The adjudicator is required to consider various factors relevant to determining appropriate sanctions which may include:

    i. The severity of the Violation;

ii. Where applicable, the nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;

iii. The Respondent's prior history and any pattern of inappropriate behaviour;

iv. The respective age of the individuals involved;

v. Whether the Respondent poses an ongoing and/or potential threat to the safety of others;

vi. 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;

vii. Real or perceived impact of the incident on the Complainant, Hockey Canada and/or its Members or the sporting community;

viii. Circumstances specific to the Respondent being sanctioned (e.g. addiction; disability; illness);

ix. Whether, given the facts and circumstances that have been established, continued participation in Hockey Canada-sanctioned programming is appropriate;

x. A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or

xi. Other mitigating and aggravating circumstances.

o) The decision of the Adjudicator may be appealed to the SDRCC.

<u>This Appeal And What Will be Considered</u>

105. The Claimant's Request and submission detailed approximately 32 grounds of appeal (with some overlap). Of those, three concern the Claimant's position that these matters have already been addressed in another forum and only six actually address the actions of Adjudicator Simmons and her Decision on the Sanctions. The other grounds of appeal are criticisms of the ITP and the Investigator, whose actions are not before me in this Appeal.

106. Accordingly, I will consider in any detail only grounds of appeal concerning the Claimant's position that these matters have already been addressed in another forum, and those which address the actions of Adjudicator Simmons and her Decision on the Sanctions.

107. As to the grounds of appeal I will not consider in detail here, I do emphasize that I still have reviewed them in detail. Respectfully, these criticisms are not proper grounds for appeal here but rather requests for a “do over” arising I assume from the Claimant’s dissatisfaction with the Decision and a dedicated attempt to be as thorough as possible.

108. The Claimant argued the matters at issue here had already been addressed by the CCHL and produced a recording of the meeting in fact where at least generally he had discussed some of these matters with representatives of the CCHL.

109. Respectfully, and as also found by the Adjudicator, the representatives of the CCHL made it clear at the time that was an “off the record” discussion, they were there to help the Claimant if he had anything he wanted to share, they were there to listen, and they wanted to make sure he was OK. In other words, this was not a resolution of the matters being addressed under the Policy and in issue here.

110. The Claimant argued the Adjudicator erred by accepting hearsay evidence. He asserted that the Adjudicator interviewed only the Complainant, and “[t]he rest of the evidence she received from the Complainant and the Investigator is hearsay under the HEO Policy, and inadmissible without a hearing”.

111. Respectfully, this simply is incorrect.

112. As is clear from the Decision, the Adjudicator interviewed both the Complainant and the Claimant. She also made it clear in the Decision she was relying only on direct evidence and not hearsay.

113. The Claimant argued the Adjudicator erred by failing to provide the Investigator with some new, solicited evidence and submissions the Claimant had provided to her.

114. The Adjudicator was appointed after the Investigation Report was completed. After allowing the Claimant the opportunity to try and rebut the presumptions as to the Investigator's findings, she also allowed the Claimant to provide additional information to the Adjudicator for her review in the context of the hearing. There would be no reason to provide anything back to the Investigator, and have the investigation reopened.

115. Respectfully, the Adjudicator did nothing wrong here.

116. The Claimant argued the Adjudicator erred as her credibility findings were “unsupportable”, and erred in failing to attempt to correct the Investigator’s mistakes, accepting his Investigation Report, and not holding a hearing as requested by the Claimant.

117. I note the Claimant did successfully challenge some of the findings made by the Investigator.

118. The Adjudicator allowed the parties the opportunity to review the Investigation Report and make submissions on it. She accepted certain submissions from the Claimant as rebutting some of the Investigator's findings and so conducted her own interview with the Claimant to afford him an opportunity to provide her with all information he considered relevant.

119. The Adjudicator undertook her own analysis (including as to credibility and reliability) of all the evidence detailed in the Investigation Report and obtained through her own interviews with the Complainant, the Person Affected and the Claimant.

120. The Adjudicator made it clear in the Decision she was relying only on direct evidence and not hearsay. She made it clear she was not accepting all of the findings made by the Investigator, and had addressed that by hearing directly from both the Complainant and the Claimant.

121. The Adjudicator expressly rejected certain factual findings made by the Investigator, and did substitute her own where she felt it appropriate to do so.

122. The Adjudicator made her own findings of credibility and reliability;

> 29. The Complainants in this case are the Affected Party's parents. I spoke to the Affected Party's mother. I found her to be earnest in her pursuit of this complaint. She appeared to have detailed records and recollections of the allegations her complaint. She expressed sincere concern for the Affected Party's wellbeing, and clear suspicion of the Respondent's ability to provide a safe and supportive environment for her son. The Complainant provided a serious but unsubstantiated subjective assessment of the Respondent that demonstrated questionable judgment on her part. She appeared motivated by protecting her son's wellbeing first and advancing his hockey career second. She demonstrated a clear bias in favour of her son that is expected from a parent, but on balance was not sufficiently strong to undermine her credibility. Overall, I found the Complainant to be organized, forthcoming, and highly cooperative with the process, despite the length of time it has been ongoing and the negative impact this participation has had on her son and her family. The fact that the Complainant has maintained her complaint despite the fact that Affected Party no longer plays for the Respondent indicated that she felt the allegations were worth pursuing.
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> 30. The Investigator assessed the credibility of the Affected Party. He found the Affected Party to be credible as he presented himself as honest and truthful when responding to questions and providing his account of the 2022-2023 and 2023-2024 hockey seasons with the PLK. The Investigator noted that the Affected Party was forthcoming with details and did not appear to seek to embellish his story. The Affected Party was consistent in his detail, which mostly corroborated the Complainants' evidence.

> 31. The Respondent has been a challenge throughout this process. As noted in the Procedural History above, the Respondent has been difficult to reach, has caused delay and confusion, and has recently threatened litigation against the ITP. The Respondent has also made procedural demands and then failed to participate when solutions were offered. The Respondent has articulated that this Team is his entire livelihood and that his family's financial security rests on his continuing operation of the Team. Flowing from this logic, he has a clear motivation to deceive, to protect himself and his family. In my interview with the Respondent, he offered an explanation for the complaints that indicated he took no responsibility for any wrongdoing, and that he was willing to do what it takes to maintain the viability of the Team…
>
> 34. I found the Respondent to be dismissive of the seriousness of the allegations, unwilling to cooperate with the disciplinary process, disorganized, lacking in detail in his submissions, and highly defensive. Overall, the Respondent was not found to be credible or reliable.

123. The Adjudicator had discretion on the type of hearing to conduct. There was no requirement under the policy to hold an oral hearing, and it was up to the ITP and the Adjudicator to decide that. The Policy is clear that such a decision cannot be appealed.

124. Beyond all that, the Adjudicator provided the Parties with the opportunity to submit questions they wished her to ask of the opposing Party on their behalf. Despite "vociferous requests" from the Claimant's counsel for an opportunity to question the Claimant's accusers, the Claimant did not take advantage of the opportunity offered.

125. Overall, the Adjudicator provided a reasonable and fair process, and undertook a transparent, reasonable and logical assessment of the evidence and in drawing her conclusions. Respectfully, there seems to be no "serious shortcomings" with her actions in this respect.

126. The Claimant argued the Adjudicator erred by imposing Sanctions which were excessive.

127. Respectfully, the Adjudicator did in fact undertake a thorough and reasonable review of all the considerations cited in the Policy as relevant to sanctioning, and applied them when making her decision. Her reasoning and ultimate decision on the Sanctions stand up to the required "robust review", and are transparent, intelligible and justified.

128. Overall, the Claimant has not established the Decision is unreasonable and fails to fall within a range of possible, acceptable outcomes.

129. For the above reasons, I conclude that the Decision (including the Sanctions) is reasonable. I deny the Appeal.

130. I sincerely thank the parties for the thorough and helpful manner in which they presented their cases.

Signed in Winnipeg, Manitoba, this 12th day of September, 2025.

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Jeffrey J. Palamar, Arbitrator