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

Citation : Armstrong v. Hockey Canada, 2025 CASDRC 11
NO: SDRCC 25-0768
Date: 2025-04-17

ALEX ARMSTRONG
(CLAIMANT)

AND

HOCKEY CANADA
(RESPONDENT)

REASONED DECISION

Representatives

For the Claimant:	Mr. Trent Morris (counsel)
For the Respondent:	Mr. Adam Klevinas (counsel)

I. INTRODUCTION

1. This is my decision on the jurisdiction of the SDRCC and application for Conservatory Measures related to the appeal by Alex Armstrong (the "Claimant") filed pursuant to Article 6 of the Canadian Sport Dispute Resolution Code (the "**Code**") against the Ruling of the Adjudicative Panel, File Number 24-0150 (the "**Decision**") by Kathleen Simmons (the "**Adjudicator**") issued on February 17, 2025, pursuant to which he was found to have breached several provisions of the Hockey Eastern Ontario ("HEO") By-Laws & Policies.

2. The Claimant was sanctioned with a warning and a suspension from acting as the Head Coach, assistant coach or any member of the coaching/bench staff for the Pembroke Lumber Kings (the "Team"), for the remainder of the current season and for the entirety of the 2025/26 season (the "Sanction").

3. The Claimant seeks dismissal of the complaints or, in the alternative, a *de novo* hearing. The Claimant also seeks to have the Decision stayed until the appeal is heard and determined.

II. THE PARTIES

4. The Claimant, Mr. Alex Armstrong, is the owner, general manager and former head coach of 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 HEO, which is part of Hockey Canada.

5. The Respondent, Hockey Canada ("HC"), is the national governing body for amateur ice hockey in Canada. HC oversees the management and structure of programs in Canada from entry-level to high-performance teams and competitions.

III. BACKGROUND

6. On February 23, 2023, the Independent Third Party ('ITP') received an anonymous complaint ("Complaint No. 1") alleging that the Claimant had harassed and intimidated players on the Team. More specifically, Complaint No. 1 alleges that the Claimant (i) failed to supervise and attend practices and games, leading to instances of hazing and other forms of harassment among Team players, (ii) consumed alcohol during team bus travel and while behind the bench, and (iii) sought money from players' parents for "optional" skills development sessions by intimidating and threatening Team players.

7. The ITP determined that Complaint No. 1 would follow Process #2 of HC's Maltreatment Complaint Management Policy (the "Policy"), which required an investigation followed by adjudication. All maltreatment complaints made to HC are managed by an Independent Third-Party (an "ITP").

8. On May 16, 2023, HC's ITP appointed Paul Gee ("Investigator Gee"), of SportSafe Investigations Group, to investigate Complaint No. 1.

9. On January 18, 2024, A.B., a parent of a Team player, filed a complaint ("Complaint No. 2") alleging that the Claimant had breached applicable codes of conduct and/or policies by (i) mismanaging Team funds, (ii) repeatedly bullying A.B.'s child and other Team players during the 2022-2023 and 2023-2024 hockey seasons, (iii) conducting himself in ways that brought psychological harm to A.B. and her child, and (iv) fostering an unhealthy team environment during the 2022-2023 and 2023-2024 hockey seasons.

10. Investigator Gee finished writing his report ("Report No. 1") on June 6, 2024. The ITP provided a redacted version of Report No. 1 to the parties to Complaint No. 1 on August 13, 2024, and assigned the Adjudicator to adjudicate the matter.

11. In accordance with HC's Investigation Guidelines for Branches and Minor Hockey Associations, the ITP appointed Paul Gee as investigator. The Investigator released on July 10, 2024 a confidential report ("Report No. 2") concluding that the conduct of the Claimant did amount to a violation of the applicable Code(s) of Conduct.

12. By the Decision dated February 17, 2025, the Adjudicator ordered that the Claimant be suspended from coaching the Team for the remainder of the 2024-2025 season and the entire 2025-2026 season, which was a decision related to both HC 23-0661, HC 24-0150.

13. On February 18, 2025, the ITP sent an email to the Parties advising about the closure of the case:

> **Appeal:** If a Party believes there to be an error in the decision, it may be appealed to the Sport Dispute Resolution Centre of Canada (SDRCC) in accordance with s. 48 of Hockey Canada's Maltreatment Complaint Management Policy within 30 days of receipt of the decision.

[…]

Confidentiality and Reporting: In accordance with Articles 53 and 54 of the Policy, the Panel states that this decision is to be provided to the CCHL and HEO but is not to be made public beyond those entities, unless for the purposes of obtaining legal advice. In accordance with the ITP's reporting obligations, a copy of this Decision is being provided to the Parties, Hockey Canada and to HEO.

File Closure: The Adjudication is the final step in the complaint process. Accordingly, we will proceed to close our file.

14. On March 19, 2025, the Claimant filed a Request with the Ordinary Tribunal of the SDRCC, to appeal the decision made by the Adjudicator. The Claimant filed an amended Request (the "Appeal") with the Ordinary Tribunal of the SDRCC on March 24, 2025.

15. On March 19, 2025, the Claimant also filed an Application for Conservatory Measures (the "Conservatory Measures") - Ordinary Tribunal under *Section 6.7* of the *Canadian Sport Dispute Resolution Code*, asking to stay the Decision pending hearing of the Appeal.

16. In its answer filed on March 24, 2025, the Respondent challenged the jurisdiction of the Tribunal to hear the Claimant's appeal against the decision rendered in File No. 24-0150. Additionally, the Respondent filed submissions in response to the Claimant's request for Conservatory Measures and requested that the Claimant's request for Conservatory Measures be dismissed.

17. The Claimant filed submissions regarding the SDRCC's jurisdiction on March 26, 2025, arguing that the SDRCC has jurisdiction because (i) the Adjudicator "*de facto*" consolidated Complaint No. 1 and Complaint No. 2 and (ii) the ITP had notified the Claimant that the appeal route in File No. 24-0150 was to the SDRCC.

18. The Respondent received the Claimant's supplementary submissions regarding the SDRCC's jurisdiction on March 28, 2025.

19. In response to these supplementary submissions, on March 31, 2025, the Respondent filed submissions regarding the Claimant's request for Conservatory Measures and the jurisdiction of the Tribunal.

20. On March 31, 2025, the Claimant filed the Satisfaction of Undertaking of Counsel for the Claimant advising that the Pembroke Lumber Kings had been eliminated from the CCHL Playoffs on March 30, 2025, and that the Claimant maintained all of his requests but acknowledged that if the Jurisdictional Arbitrator required a number of more days or weeks to render her decision, such a period would not involve the Claimant missing further competitive games in the coming weeks.

21. On April 2, 2025, the Tribunal issued a short decision related to both the jurisdictional issue and the application for Conservatory Measures.

IV. APPLICABLE RULES

22. The following provisions of the Code apply to a jurisdictional arbitration and request for Conservatory Measures:

2.1 Administration

(a) The SDRCC administers this Code, which may be amended from time to time by its Board of Directors, to resolve Sports-Related Disputes.

(b) This Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:
(i) in relation to which an agreement exists between the Parties to bring the dispute to the SDRCC, whether by virtue of a policy, contract clause or other form of agreement binding the Parties;
(ii) that the Parties are required to resolve through the SDRCC; or
(iii) that the Parties and the SDRCC expressly agree to have resolved using this Code.

(c) This Code shall not apply to any dispute where a Panel or a Jurisdictional Arbitrator has determined that the SDRCC does not have jurisdiction to deal with the dispute.

3.1 Availability of Dispute Resolution Processes

(a) The Dispute Resolution Processes are available to any Person for the resolution of a Sports- Related Dispute, subject to Subsections 3.1(b) and Section 3.1(c).

(b) Unless otherwise agreed or set out in this Code, before a Person applies for the resolution of a Sports-Related Dispute, the Person must first have exhausted all internal dispute resolution procedures provided by the rules of the applicable SO. An SO internal dispute resolution procedure is deemed exhausted when:
(i) the SO or its internal appeal panel has rendered a final decision;
(ii) the SO has failed to apply its internal appeal policy within reasonable time limits or on reasonable grounds; or
(iii) the SO has waived the requirement to exhaust its internal appeal process.

(c) Where Parties to a Sports-Related Dispute do not agree on the Dispute Resolution Process to be utilized, the Dispute Resolution Process will be Arbitration.

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;
(iii) a time-sensitive request to apply a Conservatory Measure pursuant to Section 6.7, where a Panel has not yet been appointed;
(iv) other issues that prevent the constitution of a Panel;
(v) whether an Arbitrator shall be removed following a challenge of independence pursuant to Subsection 5.5(c); and
(vi) any other matter allowed in this Code to be decided by a Jurisdictional Arbitrator.

(c) The Jurisdictional Arbitrator's written decision with reasons shall be communicated to the Parties within ten (10) days of the last submissions made before the Jurisdictional Arbitrator.

(d) A Jurisdictional Arbitrator shall not render a decision on the main substantive issue or be appointed to a Panel to hear the main substantive issue in dispute between the Parties, unless expressly agreed by all Parties.

6.7 Conservatory Measures

(a) If an application for Conservatory Measure is filed, the Panel will invite all Parties to make submissions within the time limit established by the Panel. After considering all submissions, the Panel shall issue an order. In cases of urgency, the Panel may order Conservatory Measures upon mere presentation of the application, provided that any Parties so wishing shall be heard subsequently.

(b) Conservatory Measures may be made conditional upon the provision of security.

23. The relevant provisions of the Policy applicable to this jurisdictional arbitration regarding a request for Conservatory Measurers are as follows:

10. The presumption will be that the investigation report is determinative of the facts related to the Complaint. This presumption may be rebutted where a Party who does not agree with the findings of the report 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. In situations where the presumption is rebutted, the Adjudicative Panel 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 at a hearing. The Adjudicative Panel shall take a trauma-informed approach to all such determinations.

Reprisal and Retaliation

11. Subject to paragraph 12 of this Schedule "A", anyone who submits a Complaint to Hockey Canada, OSIC, or the ITP or who gives evidence in an investigation shall not be subject to reprisal or retaliation from any individual or group. Any such reprisal or retaliation may be subject to disciplinary proceedings pursuant to the Policy.

False Allegations

12. An Organizational Participant or Member Participant who submits allegations that the investigator determines to be malicious, false, not made in good faith, or made for the purpose of retribution, retaliation or vengeance may be subject to a Complaint under the terms of the Policy and may be required to pay for the costs of any investigation that comes to this conclusion. Hockey Canada or any Member(s) (as applicable), or the Organizational Participant or Member Participant against whom the allegations were submitted, may act as the Complainant.

V. JURISDICTIONAL DECISION

24. The jurisdiction of the SDRCC is disputed in this case by the Respondent. The Parties submit as follows:

CLAIMANT'S SUBMISSIONS

25. The Claimant accepted the jurisdiction of the SDRCC and submitted that the proceedings were *de facto* consolidated by the Adjudicator in the Procedural Order 2 dated November 1, 2024, which reads as follows:

In the interests of efficiency, the ITP requested that this complaint be consolidated with another similar complaint involving the Respondent. The Complainants have consented to consolidation and sharing all the relevant documents, but the Respondent has not yet given full consent. Accordingly, at this time, this complaint shall be considered independently.

26. Further, the Claimant stated in the Submissions on Jurisdiction that "[t]he ITP then notified Mr. Armstrong that both decisions may be appealed to the SDRCC." This statement was made in relation to an email received from HC's ITP in relation to the Decision which read as follows:

    [...]

    Appeal:
    If a Party believes there to be an error in the decision, it may be appealed to the Sport Dispute Resolution Centre of Canada (SDRCC) in accordance with s. 48 of Hockey Canada's Maltreatment Complaint Management Policy within ***30 days of receipt of the decision*** *[emphasis added].*

    Confidentiality and Reporting:
    In accordance with Articles 53 and 54 of the Policy, the Panel states that this decision is to be provided to the CCHL and HEO but is not to be made public beyond those entities, unless for the purposes of obtaining legal advice. In accordance with the ITP's reporting obligations, a copy of this Decision is being provided to ***the Parties, Hockey Canada and to HEO.*** *[emphasis added]*

    File Closure:
    The Adjudication is the ***final step in the complaint process****. Accordingly, we will proceed to close our file [emphasis added.]*

27. The Claimant also argued in paragraph 7 of the Submission on Jurisdiction that:

    a. *The ITP confirmed that the matters related to the same issues;*
    b. The ITP was the same;
    c. The Investigator was the same;
    d. The Adjudicator was the same;
    e. The sanctions were the same;
    f. Mr. Armstrong does not know if the complainants or the witnesses were the same;
    g. Mr. Armstrong consented to consolidation but wanted anonymity removed if documents were to be shared;
    h. The Adjudicator had the Investigation Reports in both matters before the request for consolidation was made; and
    i. The Adjudicator then effectively consolidated the issues by interviewing Mr. Armstrong at the same time for both complaints (see the Final Decisions).

28. The Claimant expanded on his arguments and in the Supplementary Submissions on Jurisdiction, argued that "*what has occurred in HC-24-0150 (this matter below), is that the ITP assumed the role of the Appeals Committee under the HEO Policy and Protocol, and then applied its own procedures under the HC Policy*."

29. The full statement on this point is in paragraphs 13-16 of the Supplementary Submissions on Jurisdictions and reads as follows:

    13. There are fewer safeguards for Mr. Armstrong under the Hockey Canada Policy. It is not clear that the Investigation is presumptively true, for example.

    14. There is apparently an HEO Policy regarding investigations where the respondent to a complaint is already under investigation respecting similar matters but, if in effect, it does not appear to be accessible on the HEO website.

    15. The ITP appears to have abandoned the HEO process in its investigation and appointed a single adjudicator, who relied on the Hockey Canada presumption that the Investigation Report was presumptively true and then heard the matter by way of a single adjudicator witness interview

and in writing. It then instructed Mr. Armstrong that an appeal was to the SDRCC (the HEO Policy requires that such advice be given). Ignoring for the purpose of these submissions whether even the Hockey Canada Policy permits a hearing in this manner, and ignoring for the purpose of these submissions whether the HEO Appeals Panel's authority is delegable, the EO Policy clearly does not permit this form of hearing.

16. This submission is being made because Hockey Canada may be aware of an unpublished policy where the ITP effectively assumes jurisdiction in this manner, and such a policy may indicate whether the two complaints below, HC23-0661 and HC24-0150 were consolidated by the ITP de facto, if not de jure, thereby giving the SDRCC jurisdiction over requests in both.

RESPONDENT'S SUBMISSIONS

30. On March 24, 2025, the Respondent filed with the SDRCC its Answer objecting to SDRCC's jurisdiction:

[...]ITP 24-0150 was managed under Hockey Eastern Ontario's Maltreatment, Bullying and Harassment Protection and Prevention Policy (enclosed for reference). Any appeals under the aforementioned Policy are to be made to Hockey Canada's National Appeals Committee, not the SDRCC. ITP 24-0150 was not managed under Hockey Canada's Maltreatment Complaint Management Policy, which grounds the SDRCC's jurisdiction for appeals in relation to decisions rendered under that Policy.

31. The Respondent, in its Submissions on Jurisdiction ("HC Jurisdictional Submission"), stated that the SDRCC does not have jurisdiction and only HC's National Appeals Committee ("NAC") can hear the appeal related to the Decision, since the Decision did not proceed under the HC Maltreatment Complaint Management Policy (or its predecessor), which is the only Policy that would provide for the appeal to this Tribunal. The Respondent stated in paragraphs 61- 63:

61. Instead, paragraph 2 of the Decision in HC 24-0150 indicates as follows:
On request from HEO, Plaintes Sport Complaints was retained as the Independent Third Party (the "ITP") to act on behalf of the HEO Standards Committee in respect of this matter. The complaint is being administered by the HEO Procedures for Analysis and Investigation of Maltreatment, Bullying and Harassment Reports (the "HEO Procedures") and the HEO Maltreatment, Bullying and Harassment Protection and Prevention Policy (the "HEO Policy").

62. Based on the above, two things are clear: 1) the ITP merely stood in the place of the HEO Standards Committee; and 2) the complaint was administered under the HEO Procedures and HEO Policy.

63. Section H of the HEO Policy explicitly states the appeal route against decisions made pursuant to HEO investigations or hearings. It reads: "Appeals of HEO investigation/hearing decisions may be made to Hockey Canada's National Appeals Committee."

32. The Respondent objected to the ITP informing the Parties that the appeal route for the Decision was to the SDRCC in paragraphs 68 and 70 of its Submission on Jurisdiction, on the basis that "the *ITP's error in their February 18, 2025 email does not displace the clear rule in the HEO Policy that directs that matters heard under that Policy are appealable before the NAC"* and that "*the error did not create a substantive appeal right to the SDRCC, nor did it create a legitimate expectation on the part of the Claimant that estops Hockey Canada from contesting the SDRCC's jurisdiction to hear the appeal in HC 24-0150."*

33. Relying on the "collateral attack doctrine," the Respondent submitted that "*it was incumbent on the Claimant to file his appeal in the correct forum – i.e., the NAC – in a timely manner. His failure*

to do so should not permit him to make a collateral attack on the Decision rendered in HC 24-0150" (paragraph 74, HC Submission on Jurisdiction).

34. The Respondent also did not agree with the Claimant that the cases were "de-facto consolidated" and that both cases (HC 23-0661 and HC 24-0150) provided the right of appeal to the SDRCC, stating in paragraphs 75 and 80 of the HC Submission on Jurisdiction, in part as follows:

> *75. For starters, as mentioned above, the complaint process was conducted and the Decision in HC 24-0150 was rendered under the HEO Procedures and the HEO Policy, whereas the complaint process was conducted and the Decision in HC 23-0661 was rendered under Hockey Canada's Discipline and Complaints Policy. This distinction alone set both matters on separate paths, including having distinct appeal routes. […]*
>
> *80. […] While some of the matters between HC 23-0661 and HC 24-0150 may have overlapped, they were not identical;*
> *- As a function of the system set up by Hockey Canada, the ITP is necessarily the same for all matters processed by Hockey Canada; however, it is clear from the Decision in HC 24-0150 that the ITP was acting as a delegate of the HEO Standards Committee […]*

35. Additionally, the Respondent submitted that there was no need to provide the Claimant with instructions on how to appeal to NAC and disagreed *that the Adjudicator applied her own procedures under a HC Policy specifying in paragraphs 86 and 87:*

> *86. At best, the Adjudicator filled a gap as a matter of procedural fairness to the Claimant by allowing him to make submissions regarding whether the investigation report should be considered determinative of the facts (i.e., because he had "inconsistently participated" in the complaint process, and because the HEO Policy did not provide any party with a right to make submissions regarding the validity of the facts in the investigation report).*
>
> *87. With respect, the Adjudicator's attempt to fill a procedural gap, and to act in a procedurally fair manner toward the Claimant by putting in place safeguards that happen to exist under Hockey Canada's policies does not amount to the substitution of any Hockey Canada policy in place of the HEO Policy, and it certainly does not give rise to a right of appeal that does not otherwise exist in the HEO Policy.*

THE DECISION

36. This case has a complex procedural history. In the initial stage, there was a setback when on January 22, 2024, the ITP issued a Jurisdictional Order declining the jurisdiction and directing the matter back to the HEO. The case ended with the ITP's email dated February 18, 2025, stating that the adjudication was the final step in the complaint process and directing the Parties to the SDRCC for their appeal– the direction which is challenged by the Respondent in this case.

37. Although the ITP eventually changed its position and accepted the jurisdiction, the case was fraught with difficulties, which included, on October 29, 2024, Mr. Armstrong seeking injunctive relief against the ITP in the Superior Court of Ontario, and ongoing attempts to consolidate this case HC 24-0150 with File HC 23-0661. These attempts started when the ITP reached out to the Parties in September 2024 for their consent to consolidate this matter with the other case, a process that proved difficult.

38. Later in the process, on November 1, 2024, Procedural Order 2 was issued by the Adjudicator. In the Tribunal's view, Procedural Order 2 made it clear that a formal merger of cases was not going to happen, and that the cases (File No. 24-0150 and File No. 23-0661) were not formally

consolidated. At the same time, the Tribunal notes the efforts made to simplify the process and its management in an attempt to achieve a timely resolution, and that the Parties agreed to follow the process.

39. On February 17, 2025, the Adjudicator issued two decisions, one having a cover page indicating that the complaint was submitted under "Hockey Canada's Discipline and Complaints Policy" (File No. 23-0661), and the other submitted under the "Hockey Eastern Ontario Maltreatment, Bullying and Harassment Protection and Prevention Policy". The Parties did not dispute there were two different cover pages, but disagreed on the applicable appeal rights resulting from the actual process that was followed.

The role of the ITP

40. The role of the ITP is to administer maltreatment complaints within the Hockey Canada system. In this case, the ITP initially declined jurisdiction. As already was noted, throughout the process, the Respondent challenged the ITP, including filing a claim to the Superior Court of Ontario (which was withdrawn).

41. The role of the ITP is not specifically provided in the HEO rules and policies. It is described in Section 4 of HC Policy as follows:

> *Hockey Canada has engaged an Independent Third-Party ("ITP") to oversee its complaint mechanism. The ITP will be responsible for the administration of all Complaints, which will include accepting and screening Complaints, determining jurisdiction over the Complaints, determining the procedure that will be followed with respect to each Complaint, and selecting the Adjudicative Chair or Adjudicative Panel who will be responsible for assessing whether a Violation has occurred and what the appropriate discipline should be, if any.*

42. According to the Respondent, "*the ITP merely stood in the place of the HEO Standards Committee".* As outlined in the procedural history, the role of the ITP in the proceedings which were filed under HEO Policies, was challenged by the Claimant but ultimately accepted by both Parties. As to whether the ITP followed the HEO process, the Claimant submitted that the "*ITP appears to have abandoned the HEO process in its investigation and appointed a single adjudicator"*.

43. In the HEO Standards Committee Guidelines, where the investigations are found to have merit, they proceed to the HEO Appeals Committee. Section 5.1.3 reads as follows:

> *The investigation finds the report to have merit, and therefore the case shall proceed to HEO's Appeals Committee for a hearing, in keeping with HEO Policy 6.22 HEO Appeals Committee Procedures/Protocol.*

44. There is no HEO Appeals Committee ruling in this case. On August 20, 2024, the Adjudicator was appointed by the ITP (the same adjudicator as in case No. 23-0661) while in the background, there were ongoing good faith attempts to formally consolidate the cases.

The Role of the Adjudicator

45. As with the ITP, the role of the Adjudicator is not provided in the HEO rules and policies. It is provided in the HC Policy. The ITP appointed a single adjudicator for this case.

46. In her Decision, the Adjudicator writes in paragraph 9:

As part of the independent review, the ITP takes the step of conducting an adjudication following the completion of an Investigation Report. I was appointed as the single member Adjudicative Panel on August 29, 2024, after confirming that I had no conflict of interest. The adjudication process is guided by the Hockey Canada Discipline and Complaints Policy (the "HC Policy") [emphasis added]

47. Additionally, in paragraph 46 of the Decision, the HC Policy is identified by the Adjudicator as the "*governing policy for this adjudication process for this complaint*. The HC Policy identifies the SDRCC as the appeal Tribunal in Section 6:

Section 6 – Can A Decision Be Appealed? 47. The decision of an Adjudicative Chair or Adjudicative Panel, as applicable, may be appealed to the SDRCC […]

48. The Respondent, in its Submission on Jurisdiction, argued "*that the HC Policy does not give rise to a right of appeal which does not otherwise exist in the HEO Policy*."

49. In this case, the Adjudicator was not appointed under HEO policies but under the HC Policy. The adjudication of the process does not end with the decision. Natural justice provides Parties with the right of appeal. The Tribunal finds on the balance of probabilities that the HC Policy was not used for "gap-filling". The HEO process (which started under the provincial rules – the HEO Policy) was abandoned and the HC Policy became the new governing policy for the adjudication process, which included applicable rights.

50. Consequently, when the ITP announced on February 18, 2025 that adjudication was the final step in the process and that the file would be provided to HC and HEO, this announcement was not an oversight (as the Respondent submitted) but, on the balance of probabilities, the last step in announcing the closure of this file.

51. The Respondent contended that "*it was incumbent on the Claimant to file his appeal in the correct forum – i.e., the NAC – in a timely manner. His failure to do so should not permit him to make a collateral attack on the Decision rendered in HC 24-0150*." In *British Columbia (Workers' Compensation Board) v Figliola* 2011 SCC 52 at paras. 28 and 30, SCJ Abella J. wrote:

> *The rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route: see Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62, [2010] 3 S.C.R. 585, and Garland v. Consumers' Gas Co., 2004 SCC 25, [2004] 1 S.C.R. 629."*
>
> *[…]*
>
> *[30] In other words, the harm to the justice system lies not in challenging the correctness or fairness of a judicial or administrative decision in the proper forums, it comes from inappropriately circumventing them (Toronto (City) v. C.U.P.E., Local 79, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 46).*

52. Subsection 2.1(b) of the Code provides that "*the Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore only apply to a Sports-Related Dispute:*

> *(i) in relation to which an agreement exists between the Parties to bring the dispute to the SDRCC, whether by virtue of a policy, contract clause or other form of agreement binding the Parties;*

(ii) that the Parties are required to resolve through the SDRCC […]"

53. Subsection 3.1(b) of the Code provides that a Sport Organization's ("SO") internal dispute resolution process is deemed to be exhausted when:

> *(i) the SO or its internal appeal panel has rendered a final decision;*
> *(ii) the SO has failed to apply its internal appeal policy within reasonable time limits or on reasonable grounds […]*

54. For the foregoing reasons, the Tribunal finds that the SDRCC has jurisdiction by virtue of policy and the SO has been deemed to have exhausted its process when the SO rendered its final decision and outlined the right of appeal to the SDRCC. On the balance of probabilities, there was no circumvention or institutional detour present in this case.

55. The maltreatment policies provide for the protection of complainants and the timely resolution of cases. When the ITP closed the file, the Parties were invited by the ITP to file an appeal if they believed there to be any errors (see email of February 18, 2025). The Claimant subsequently filed an appeal and application for Conservatory Measures, and the Respondent asserted its rights for a jurisdictional challenge. Based on the specific circumstances of this case, the Tribunal finds that the SDRCC has jurisdiction. Keeping in mind the objectives of the maltreatment policies, the Parties can now focus on the merits of the appeal, bringing an expedient resolution to this case.

VI. APPLICATION FOR CONSERVATORY MEASURES

56. Having determined that the SDRCC has jurisdiction in this case, the Tribunal will now turn to the Application for Conservatory Measures, which was filed by the Claimant.

57. Each party to this dispute has delivered submissions on whether the Conservatory Measures should be granted.

58. The Claimant contended that the Sanction harms his livelihood because coaching and hockey operations are his principal sources of income.

59. The Claimant also argued that the Sanction affected the Team's success because at the time of the Decision, the Team was involved in the CCHL playoffs. Due to the Sanction, the Claimant missed at least eleven games (later, the Claimant filed a satisfaction of undertaking advising that the Pembroke Lumber Kings were eliminated from the CCHL Playoffs on March 30, 2025).

60. The Respondent noted that the Claimant did not address the applicable legal tests that tribunals consistently use to evaluate requests for Conservatory Measures. The Respondent contended that the applicable test is outlined in *RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1. S.C.R. 311*.

Analysis

61. The Tribunal will apply *RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1. S.C.R. 311*. As set out in this case, there are three basic elements to be considered in the context of a request for Conservatory Measures:

    a. the existence of a serious issue to be tried;
    b. the likelihood of irreparable harm to the moving party; and

c. the balance of convenience must favour the granting of the relief sought.

62. The Tribunal will deal with each in turn, bearing in mind that (i) the elements are not watertight compartments and (ii) the weighing of each element may vary in the circumstances (*see Smirnova v. Skate Canada (SDRCC 16-0291)*).

Existence of a Serious Issue

63. The Respondent conceded that there are serious issues to be decided in this matter. However, the Respondent argued that under *Smirnova*, this portion of the MacDonald test must take the likelihood of success into account. Considering *Smirnova*'s "reasonableness review", the Respondent argued that the Claimant is unlikely to satisfy his burden of proof to set aside the Decision, suggesting that the likelihood of success is low.

64. The Respondent argued that following the guidance provided in *Gagnon v. Racquetball Canada* (SDRCC 04-0016), there are no exceptional circumstances present in this matter to warrant a grant of Conservatory Measures. The Respondent contended that where due process rights were respected and where investigations appeared to be reasonable, an appeal does not constitute exceptional circumstances. Even further, the Respondent argued that there is nothing exceptional about a party disagreeing with the outcome of a disciplinary process or appealing a first instance decision.

65. The Tribunal finds there is a serious issue to be tried, but there is no strong *prima-facie case* - exceptional circumstances that would warrant granting the Conservatory Measures at this time.

Irreparable Harm

66. The Claimant contended that the Sanction harms his livelihood because coaching and hockey operations are his principal sources of income.

67. The Claimant also argued that the Sanction affected the Team's success because at the time of the Decision, the Team was involved in the CCHL playoffs. Due to the Sanction, the Claimant missed at least eleven games (later, the Claimant filed a satisfaction of undertaking advising that the Pembroke Lumber Kings were eliminated from the CCHL Playoffs on March 30, 2025). The Claimant further submitted that he was able to continue all his ownership and coaching duties without incident pending the outcome of the investigation with respect to the complaints. He also noted that the Team's current players did not play for the Team at the time that the complaints were issued. Additionally, the Claimant contended that failures of natural justice and jurisdictional errors undermined his ability to defend against the complaints.

68. The Respondent argued that the Claimant would not suffer irreparable harm if the Sanction remained in place pending the outcome of the Appeal. The Respondent contended that under *MacDonald*, the Claimant must show that he himself, not the Team, will suffer irreparable harm. The Respondent asserted that the Claimant had not submitted evidence that he would incur financial losses by not acting as the Team's Head Coach, nor had he shown that his ownership of the Team was at risk. Moreover, the Respondent also argued that the Team had other coaches and was therefore adequately staffed to play in the CCHL playoffs without the Claimant. The Respondent submitted that it would be pure speculation to infer that the Claimant's presence would have made a difference in the outcome of any of the Team's games that he missed. Even further, the Respondent argued that the Claimant waited a month to file his Appeal before the Tribunal and that waiting that long was inconsistent with the Claimant's contention that he would suffer irreparable harm if the Sanction remained in force.

69. The Tribunal agrees with the Respondent; while the Claimant was removed from his hockey coaching position, his team administration role was not subject to sanctions and on the balance of probabilities, based on the evidence submitted, neither he nor the team will suffer irreparable harm.

Balance of Convenience

70. The Respondent argued that the assessment of balance of convenience entails an examination of whether the Claimant has raised an arguable case. From the Respondent's viewpoint, many of the Claimant's grounds of appeal are attempts to remedy the Claimant's procedural failures during the investigation (e.g., not responding to Investigator Gee, not providing the Adjudicator with questions for cross-examination, failing to provide submissions on the Sanction, etc.). As such, the Respondent contended that the Claimant had not raised a highly arguable case and that the balance of convenience should tilt away from the Claimant.

71. The Respondent also contended that the balance of convenience should favor protecting the current Team members rather than the Claimant's interest in returning to serve as the Team's Head Coach. Although none of the current Team members were involved in the 2022-2023 incidents that were the subject of the complaints, the Respondent argued that this fact does not justify putting the Team at risk of being subject to the Claimant's inappropriate conduct. Further, the Respondent noted that its interest in protecting the hockey community at large should outweigh the Claimant's interest in returning as the Team's Head Coach for a short duration.

72. The Tribunal, while also considering the maltreatment policy objectives, agrees and finds that on the balance of probabilities, the balance of convenience test has not been met.

Conclusion

73. For the foregoing reasons, the requirements set out in *RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1. S.C.R. 311* to grant Conservatory Measures are not met. The Claimant's application for Conservatory Measures is denied.

VII. DECISION

FOR ALL OF THESE REASONS, the Tribunal decides as follows:

1) The Jurisdiction of the SDRCC is upheld.

2) The Application for Conservatory Measures is denied.

Signed in Sainte-Anne-des-Lacs, Quebec, this 17th day of April 2025.

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Andrea Carska-Sheppard, Arbitrator