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

Citation : Gorsline v. Director of Sanctions and Outcomes, 2026 CASDRC 8
File No: SDRCC ST 25-0055
Division: Safeguarding Tribunal
Date: 2026-02-17

Between:

Dayton Gorsline
Respondent

and

Director of Sanctions and Outcomes (DSO)

and

[Redacted]
Interested Party

Before: **Janie Soublière, Arbitrator**

Appearances:

On behalf of the Respondent: Amanda Franker-Shuh (counsel)
Alessia Grossi (counsel)
Isabelle Nazarian (counsel)
Elliott Saccucci (counsel)

On behalf of the DSO: Dasha Peregoudova (DSO)

On behalf of the Interested Party: Rob Talach (counsel)

REASONED DECISION

I. Introduction

1. On June 30, 2025, the Respondent[1] filed a request for a hearing (the Request) to challenge a sanction pursuant to Section 8.6 of the Canadian Sport Dispute Resolution Code 2023 (*Code*) before the SDRCC Safeguarding Tribunal as defined at Section1.1(bbb) of the *Code*.

2. In her June 11, 2025 Report on Violations and Sanctions (the Challenged Decision) in relation to case file number 2024-05-0131, the DSO imposed a lifetime suspension upon the Respondent, an Equestrian Canada (EC) coach.

3. The Respondent challenges the Investigator's process and findings, the Challenged Decision's determination that he violated the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS), and the sanctions imposed as a result thereof.

4. The Respondent requests that a de novo hearing be ordered due to Investigator bias and/or the that the Challenged Decision be set aside, and/or that the DSO's findings on violation and sanction be amended to exclude the finding of Sexual Maltreatment of a Minor and corresponding presumptive sanction of lifetime ineligibility under the UCCMS.

II. The Challenged Decision

5. The Challenged Decision reads inter alia:

> *Having carefully reviewed the Factual Findings, I find that the Respondent engaged in Sexual Maltreatment of a Minor, Physical Maltreatment, Boundary Transgressions and Grooming, in violation of Sections 5.5, 5.3, 5.6, and 5.7 of the UCCMS (the "Findings on Violation").*
>
> *Overview*
> *During the Material Time, the Complainant was between the ages of 12 or 13 years old, and 17 years old. Throughout the Material Time, the Complainant was a Minor as defined in the UCCMS. The Respondent is approximately 15 years senior to the Complainant, and was an adult at all Material Time.*
>
> *During the Material Time, the Respondent was the Complainant's coach. For certain periods of the Material Time, the Respondent and Complainant also lived together, including periods with the Respondent's former partner, and at times just the two of them. The Complainant's family was aware the Complainant living with the Respondent, as the Respondent knew the Complainant's father, who has since passed away.*
>
> *The Investigator found that there was a significant Power Imbalance between the Respondent and the Complainant. I agree. The Respondent was not only the Complainant's coach, but at times was responsible for the Complainant's needs including her lodging for several months, in effect providing a second home to the Complainant due to her family life, driving her to and from school and other engagements, and being an adult figure in the Minor Complainant's life.*

[1] The Arbitrator notes that although the claimant in this challenge, Dayton Gorsline is referred to herein as the Respondent in accordance with the terminology set out in the *Code*.

The Investigator made several Factual Findings regarding the Respondent's conduct towards the Impacted Person. Without repeating each Factual Finding of the Investigator, the Respondent was found to have engaged in a years-long pattern of conduct which includes preferential treatment towards the Complainant, inappropriate touching of the Complainant, including touching of a sexual nature, and slapping and threatening to slap the Complainant.

6. The Challenged Decision then proceeds to make the following findings on sanction:

> *In the event of a finding of a violation of the UCCMS, sanctioning considerations are guided by Section 7.4 of the UCCMS. Section 7.4 indicates that any sanction imposed against a participant must be proportionate and reasonable, relative to the prohibited behaviour or maltreatment that has occurred and provides a non-exhaustive list of factors that are relevant to determining appropriate sanctions.*
>
> *Section 7.3.1(a) of the UCCMS provides that a finding of Sexual Maltreatment involving a Minor shall carry a presumptive sanction of permanent ineligibility. Further, Section 7.3.1(b) of the UCCMS provides that a finding of Sexual Maltreatment, Physical Maltreatment with Contact, or Grooming carry presumptive sanctions of either a period of suspension or eligibility restrictions. These are rebuttable presumptions, which in this instance and for the reasons below, I do not find have been rebutted.*

III. Procedure and Jurisdiction

7. On July 10, 2025, Janie Soublière was chosen on consent of all Parties to act as Arbitrator in the present matter.

8. A Preliminary Conference Call was held on July 17, 2025, during which the Parties confirmed that:
   - The challenge had been filed by the Respondent within the appropriate deadlines.
   - There was no objection to the Safeguarding Tribunal's jurisdiction to hear this challenge.
   - There was no objection to the Arbitrator's appointment to decide the matter.

9. A timetable was then set to decide the preliminary matters. The first was the Respondent's request for Conservatory Measures, which neither the DSO nor the Interested Party objected to during the call (the First Bifurcated Issue). The second was the challenge of Abuse-Free Sport's jurisdiction (the Jurisdictional Challenge). All Parties agreed that a second meeting would be held, if needed, to set another procedural calendar to deal with the rest of the substantive issues.

10. On July 18, 2025, the Respondent communicated with the Parties to raise that Article 8 of the 2023 *Code* does not expressly provide for Conservatory Measures. The Respondent suggested that the Tribunal could nonetheless exercise its discretion with regards to the request for Conservatory Measures under Subsection 5.7e) of the *Code*. He sought out the Parties and Tribunal's position on the same in an expedited matter so to allow the Arbitrator to give directions necessary on this point.

11. The Arbitrator promptly issued the following instructions to the Parties on July 18, 2025:

> *Article 8 of the 2023 Code neither expressly provides for nor contemplates applications for Conservatory Measures.*
>
> *However, no objections were raised by the DSO or the Interested Party with regards to this "First Bifurcated Issue" Conservatory Measures application during the Preliminary Call.*
>
> *Under the circumstances, given the "Second Bifurcated Issue" is a Jurisdictional Objection, the Arbitrator proposed that both Issues be dealt with in the same submissions. But all parties then agreed that it made more sense to separate the two Bifurcated Issues and their respective submissions for the same.*
>
> *The Arbitrator is mindful of the Respondent's position that it should not be put to the cost, effort and time of preparing materials in pursuit of a remedy that cannot be granted.*
>
> *Without having reviewed any submissions in relation to such an application here or knowledge of what these submissions might include or evidence they would rely upon, indeed, for public policy reasons, in Safeguarding cases, it is highly unlikely that such a remedy would be granted. That is why Article 8 is drafted the way it is.*
>
> *However, under the circumstances of this case and in anticipation of presumably overlapping submissions on the Second Bifurcated Issue, applying Article 5.7 of the Code, the Arbitrator is willing to receive review and make a finding on party submissions should the Respondent wish to proceed with the First Bifurcated Issue. The Arbitrator leaves that decision to the Respondent.*
>
> *The Arbitrator is happy to maintain the procedural calendar agreed upon by all or alternatively invites the parties to liaise and come up with an alternative calendar to expedite matters should the Respondent decide not to pursue the First Bifurcated Issue.*

12. On July 21, 2025, the DSO responded as follows:

> *For clarity, I had not understood that substantive arguments were being made with respect to the Respondent's request for Conservatory Measures under the Code during the preliminary meeting, and, had no objection to that issue generally being dealt with first on a bifurcated basis. I can confirm that it is and has been the DSO's intention to object to the Tribunal's ability to impose a stay of the sanction, which was to be outlined in my submissions due in August, in addition to other bases of objection.*
>
> *As has been pointed out, Section 8 of the Code does not contemplate Conservatory Measures in Safeguarding matters. It is the DSO's position that the exclusion of such measures in Article 8, despite express inclusion elsewhere, is intentional. Indeed, the DSO is not aware of any other case or instance where Conservatory Measures were imposed by the Tribunal since the inception of Abuse-Free Sport. This is consistent with the OSIC's Registry policy, which indicates that a sanction remains on the Registry regardless of being subject to challenge […].*

Based on the Arbitrator's instructions, it appears that it is up to the Respondent whether he prefers to move forward with the Conservatory Measures issue in light of the Arbitrator's guidance. […]

13. On July 21, 2025, the Respondent responded as follows:

I would like to thank Arbitrator Soublière for her directions and comments on Friday afternoon.

Having considered them, and mindful of the Interest [sic] Party's expressed interest in seeing this matter move as expeditiously as possible, the Claimant/Respondent is prepared to forego the Conservatory Measures process at this time and to vacate those dates.

[…]

14. An updated procedural calendar was then circulated and agreed to by all Parties.

15. In accordance with the agreed upon calendar, the Respondent filed his submissions on the Jurisdictional Challenge on August 22, 2025, and the DSO and Interested Party filed their response submissions on this issue on September 19, 2025.

16. On October 07, 2025, the Arbitrator issued a Short Decision on the Jurisdictional Challenge which read as follows:

1. *The Appellant's jurisdictional challenge is dismissed.*
2. *Further carefully considering all Parties submissions, the Arbitrator finds that the 2024 Consent Form the Appellant assented to is valid and enforceable. The OSIC and DSO had jurisdiction to apply the UCCMS to the Appellant's prior conduct.*
3. *Full reasons are to follow in the final award.*

17. A second Preliminary Call was convened on October 17, 2025, during which counsel for the Respondent made a request for evidentiary disclosure of the Investigator's full file, including interview notes, recordings, etc. Further to all Parties acknowledging that agreements on the procedural calendar going forward would be difficult without the request being formally filed, submissions being made and an order on the same being issued, the result of which would inform the substance of the Parties' submission on the merits, a timetable for succinct submissions on the evidentiary disclosure requested was agreed upon.

18. Further to receipt of all Parties' submissions, on October 28, 2025, the Arbitrator dismissed the Respondent's request for evidentiary disclosure as follows:

1. *The Respondent's request for additional disclosure is dismissed.*
2. *Further to carefully considering all Parties' submissions and pursuant to Section 8.8 c) of the Canadian Sport Dispute Resolution Code, the Arbitrator finds that the DSO has tendered al documents and /or other material that are within her possession and control.*
3. *Full reasons are to follow in the final award.*

19. On October 30, 2025, after attempting to no avail to obtain some requested documents from the DSO, the Respondent made a second request for evidentiary disclosure to the Arbitrator seeking to obtain a redacted copy of all past DSO/DDSO decisions from the DSO. All Parties

were given the opportunity to provide their respective positions on this second request. The Arbitrator then ruled as follows:

1. *The Respondent's request for disclosure of all past Director or Deputy Director of Sanctions and Outcomes ("DSO/DDSO") decisions is dismissed.*
2. *Reasons are to follow in the final award.*

20. A procedural calendar for written submissions on the merits of the Respondent's challenge of the Investigator's process and the Challenged Decision was then set and agreed upon. All Parties respected their filing deadlines, with a short extension being granted with no objections to the DSO to file her response, and a corresponding extension being granted to the Respondent to file his reply.

21. With the written submissions now closed, the Arbitrator hereby issues her reasoned decision outlining the merits for all the short decisions ordered to date, and her final findings on the Respondent's grounds for contesting the Challenged Decision.

IV. Applicable Law

22. The following are some of the most relevant excerpts of the law applicable to this matter.

23. First, the following are the relevant sections of the UCCMS. Regarding Prohibited Behaviours, the Arbitrator cites only those the Respondent argues he did not violate. Namely, Sexual Maltreatment of a Minor and Grooming.

> *5. Prohibited Behaviours*
>
> *Section 5.5.1(a) defines Sexual Maltreatment as "any non-Consensual touching of a sexual nature and/or the Criminal Code offence of sexual assault".*
>
> *Consent is defined in the UCCMS as "the communicated voluntary agreement to engage in the activity in question, by a person who has the legal capacity to consent. Consent regarding sexual activity is assessed in accordance with the laws of Canada, including the Criminal Code."*
>
> *Section 5.6 Grooming*
>
> *5.6.1 Grooming is defined as conduct that may precede other behaviours defined as Sexual Maltreatment or is carried out in conjunction with other forms of Sexual Maltreatment. Repeated Boundary Transgressions by a Participant toward a Minor or Vulnerable Participant may also be deemed to be Grooming, even in the absence of deliberate intention to facilitate a sexual relationship.*
>
> *5.6.2 In assessing whether Grooming has occurred, the existence of a Power Imbalance should be taken into account.*
>
> *5.6.3 The Grooming process is often gradual and involves building trust and comfort with a person, and sometimes also with the protective adults and peers around the person. It may begin with subtle behaviours that may not appear to be inappropriate but that can serve to sexualize a relationship, reduce sexual inhibitions, or normalize inappropriate behaviour. It may include the testing of boundaries (e.g., seemingly accidental touching)*

that ***gradually escalates to Sexual Maltreatment*** *(e.g. sexualized touching). It is acknowledged that many victims/survivors of sexual abuse do not recognize the Grooming process as it is happening, nor do they recognize that this process of manipulation is part of the overall abuse process.*

24. Also, within the UCCMS, Section 7.3 entitled Presumptive Sanctions reads:

> *7.3.1 The following sanctions are presumed to be fair and appropriate for the listed Maltreatment, but the Respondent may rebut these presumptions:*
>
> *a) Sexual Maltreatment involving a Minor shall carry a presumptive sanction of permanent ineligibility*

25. Finally, Section 7.4 of the UCCMS entitled Sanctioning Considerations reads:

> *Any sanction imposed against a Participant must be proportionate and reasonable, relative to the Maltreatment that has occurred. Factors relevant to determining appropriate sanctions for a Respondent include, without limitation:*
>
> *a. The nature and duration of the Respondent's relationship with the affected individuals, including whether there is a Power Imbalance or position of trust;*
>
> *b. The Respondent's prior history and any pattern of Prohibited Behaviour or other inappropriate conduct, to the extent known to an Independent Investigator or the DSO;*
>
> *c. Any previous disciplinary findings regarding, or sanctions against, the Respondent. This may involve if multiple Complaints were filed against a Respondent, or if there were multiple Impacted Parties to a Complaint concerning Prohibited Behaviour;*
>
> *d. Maltreatment of a Minor or of a vulnerable participant is to be considered an aggravating circumstance;*
>
> *e. The ages of the persons involved, including when the Respondent is a minor, whereby maltreatment by a Minor or a child under the age of 12 or of a vulnerable participant is to be considered an aggravating circumstance;*
>
> *f. Whether the Respondent poses an ongoing and/or potential threat to the safety of others;*
>
> *g. The Respondent's voluntary admission of the violation(s), acceptance of responsibility for the Prohibited Behaviour, and/or cooperation in the applicable UCCMS enforcement process. The Respondent's voluntary admission may be reported to the DSO at any time during the Complaint Management Process, and cooperation with an Investigation and the Respondent's credibility as noted by the Independent Investigator may be noted;*
>
> *h. Real or perceived impact of the incident on the affected individuals, sport organization or the sporting community;*
>
> *i. Deterrent effect on future such conduct;*
>
> *j. Potential impact on the public's confidence in the integrity of the Canadian sport system;*
>
> *k. Aggravating or mitigating circumstances specific to the Respondent being sanctioned (e. g., lack of appropriate knowledge or training regarding the requirements in the UCCMS; addiction; disability; illness; lack of remorse; intent to harm). Complaints that relate to historical instances of Prohibited Behaviours may particularly be considered in light of such contextual circumstances;*
>
> *l. Whether, given the facts and circumstances that have been established, the Respondent's continued participation in the sport community is appropriate.*

m. Whether the Respondent was found to have committed one or more previous UCCMS violation(s);

n. The desired outcomes of the person(s) directly impacted by the Prohibited Behaviour. For example, while an apology may seem like an appropriate sanction in some cases, a Complainant may not be prepared to receive it or accept it. As such, consideration will be given to the most effective and appropriate sanction in the circumstances from a trauma-informed perspective; and/or

o. Other mitigating and aggravating circumstances, as reported by the Independent Investigator and/or as noted by the DSO from the Investigation Report.

Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions.

26. Second are the following relevant excerpts from the Office of the Sport Integrity Commissioner's (OSIC) Guidelines Regarding Investigation of Complaints (the "Investigation Guidelines"):

2. DEFINITIONS & APPLICATION

For purposes of these Guidelines:

[…]

Policies & Procedures means the UCCMS, these Guidelines, applicable policies and procedures of the OSIC and Abuse-Free Sport Program, Section 8 of the Canadian Sport Dispute Resolution Code, and applicable laws.

[…]

4. INVESTIGATION

[…]

h. Investigation Report

After conducting interviews, gathering, and testing the evidence, the Independent Investigator(s) will review all the evidence and make findings of fact based on the "balance of probabilities" standard. In making their review and analysis, the Independent Investigator(s) will consider the following:

- Is there enough evidence to make a finding of fact?

- Is the evidence submitted credible and reliable?

- If the Independent Investigator preferred the evidence of one party or witness, how was that determination made?

- What findings of fact are made?

After making findings of fact, the Independent Investigator(s) may also identify in the report whether any relevant mitigating or aggravating circumstances and/or any systemic or other issues were identified.

i. Review of the Investigation Report

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

27. Third are the following relevant excerpts from the *Code*:

5.7 Procedures of the Panel

[…]

(b) The Panel shall provide a reasonable opportunity to each Party to present its case and respond to the case of opposing Parties […]

(e) 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.

(f) The Panel shall conduct the proceedings to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute, and may impose limitations on the duration of the hearing or the length of submissions.

8.6 Challenge of a Violation and/or Sanction

[…]

(a) When assessing a challenge of a DSO decision on a violation or a sanction, the Safeguarding Panel shall apply the standard of reasonableness.

[…]

(f) The Safeguarding Panel shall have the power to increase, decrease or remove any sanction imposed by the DSO, with due consideration being given to the UCCMS. In particular, where the Safeguarding Panel determines that the Respondent has presented or presents a risk to the welfare of Minors or Vulnerable Persons, the Safeguarding Panel shall impose such sanction and/or risk management measures as it deems fair and just.

V. On the First Preliminary Matter – Jurisdictional Challenge

28. The OSIC 2024 Consent Form's "Prior Conduct Clause", in issue, reads as follows:

1. What am I consenting to and how long is my consent in effect?

(…)

You agree that events which occurred prior to the implementation of the UCCMS, or prior to the signing of an Abuse-Free Sport Participant Consent Form, may also fall within the

jurisdiction of the Agents if such events fall within the scope of the UCCMS and the applicable Policies and Procedures.

Pursuant to the UCCMS and the relevant Policies and Procedures, in determining whether or not such past events fall within the jurisdiction of Abuse-Free Sport, relevant Agents shall make their determination taking into consideration the following factors: (i) relevant rules, norms and policies, including without limitation, social and legal norms, in effect at the time of the alleged event(s); (ii) the severity of the allegations; (iii) the facts and circumstances of the matter; (iv) the safety and well-being of participants and the sport community; (v) the potential risks and prejudice from action and inaction, with safety being paramount; (vi) the ability to identify potential parties and witnesses and to obtain sufficient evidence; and/or (vii) the best interest of sport and those who participate in it, including the views of the person(s) directly impacted, when feasible.

A. The Parties' submissions on the Jurisdictional Challenge

29. The Parties' fulsome submissions on this issue were carefully considered by the Arbitrator. For the sake of expediency, they can be summarised as follows in the order they were tendered, with additional elements included where relevant to frame the Arbitrator's legal reasoning below.

i. The Respondent

30. The Respondent relies on the "Fruit of the Poison Tree" doctrine he borrows from Criminal Law. He argues that as the OSIC lacked jurisdiction from the start, every action taken: investigation, decision and sanction, is legally void.

31. He submits that for the UCCMS to apply to allegations arising from events alleged to have occurred in the 1980s, the Respondent must have provided his express consent to having the UCCMS apply to historical conduct. He did not. Consequently, the UCCMS does not apply to those events. If the Respondent did not provide his express consent to apply the UCCMS to historical conduct through a valid and binding contract, the UCCMS did not apply and the OSIC never had jurisdiction over this matter.

32. Recalling that previous Safeguarding Tribunal Panels have confirmed that the legal basis for participants to the bound to the UCCMS is contractual, the Respondent argues that the OSIC lacks jurisdiction because:

- He was not bound by the UCCMS at the time the alleged events occurred in the 1980s.
- The 2023 Consent he signed does not include retroactive application.
- The 2024 Consent is invalid due to lack of consideration and ambiguity in terms- basic tenants of contractual law.

33. The Respondent submits the Consent Form that he signed 2023 was far too simple, did not expressly mention retroactive application and was found by an Appeal Panel in matter SDRCC SAT 24-0002, 2025 CASDRC 4, to be insufficient to grant the OSIC jurisdiction over Prior Conduct complaints. He also argues that the 2024 Consent Form lacks essential elements of

a valid contract: consideration and clarity of essential terms, and that given that it is a contract of adhesion, its ambiguous terms regarding retroactive application should be interpreted against the OSIC.

34. The Respondent relies on previous SDRCC decisions (like ST 24-0037, 2025 CASDRC 19, and SAT 24-0002) to argue that other Panels have found that similar consent forms signed by other Participants did not provide jurisdiction and could not bind them to the UCCMS retroactively. He emphasises that consistency and predictability is critical in tribunal rulings. Again, relying on ST 24-0037, he submits that the 2024 Consent Form was signed under duress (viz the threat of losing his coaching role and membership in Equestrian Canada).

35. He submits that there is now a presumption against retroactivity, in that the Safeguarding and Safeguarding Appeal Tribunals have both established that the UCCMS does not apply retroactively unless express, voluntary consent is given. He submits that he neither voluntarily nor clearly consented to being bound retroactively to the UCCMS and therefore that the OSIC lacked jurisdiction to investigate the matter, make findings on violations, and sanction him. The fact remains that the UCCMS does not apply to this historical complaint and that the OSIC never had jurisdiction over it.

36. The Respondent argues that in attempting to establish that the OSIC has jurisdiction where none exists, the DSO and Interested Party significantly mischaracterize his arguments and take liberties with the jurisprudence:

- The Respondent first rebuts the DSO's submission that the UCCMS is akin to delegated legislation, as the Tribunal's own jurisprudence (notably SAT 24-0002) has confirmed that the Abuse-Free Sport program is contractual in nature.
- There was no valid consideration for the 2024 Consent. It lacked fresh consideration of any kind leaving the 2023 Consent undisturbed. No benefit was provided to the Respondent for the 2024 Consent which sought to impose new obligations upon him, specifically the retroactive application of the UCCMS to historical conduct. He relies on *Holland v. Hostopia.com Inc.*, 2015 ONCA 762, where the Ontario Court of Appeal held that a second contract that introduces materially inconsistent terms to an existing agreement requires fresh consideration to be enforceable. There, the Ontario Court of Appeal emphasized that a promise to perform an existing contract is not consideration, and that fairness demands that employees not be bound by new terms absent a new benefit.
- To assist the Tribunal in understanding the interpretive challenges posed by the Prior Conduct Clause, he provides illustrative examples as to how the Prior Conduct Clause might have been drafted: not as proposed amendments to the 2024 Consent, nor an attempt to draft future terms, but to demonstrate how clearer, objectively ascertainable language might have addressed the ambiguity that invalidates the 2024 Consent.
- The distinction between retroactive and retrospective application is a distinction without a difference.
- This Tribunal cannot ignore the OSIC's jurisdictional errors to avoid "frustrating" the objectives of the UCCMS.

- The Respondent is, and all similarly situated stakeholders are, entitled to expect that the regulator of his profession will adhere strictly to its jurisdiction. Instead, the OSIC has taken liberties with its jurisdiction. This erodes a foundational principle: regulated persons must be able to rely on a fair and consistent application of the rules that control their livelihood. Where the consequences are as grave as permanent exclusion from one's profession, strict compliance is not aspirational, it is essential.

37. In summary, the Respondent submits that:

- The 2024 Consent is not a valid contract through which he gave express consent to the retroactive application of the UCCMS to historical conduct;
- The 2023 Consent, while a valid contract, has already been found by the SDRCC Appeal Tribunal not to provide express consent to retroactive or retrospective application of the UCCMS;
- The OSIC never had jurisdiction over the historical complaint; and
- The OSIC process resulting from exceeding its jurisdiction and accepting the historical complaint must be quashed, with the Respondent's membership rights immediately restored, and his immediate removal from all registries resulting from that process.

38. The Respondent thus requests that the Tribunal:

- Declare that the UCCMS does not apply to the historical complaint.
- Declare that the OSIC and DSO lacked jurisdiction in the matter.
- Set aside the investigation, decision, and sanction.
- Remove him from the Abuse-Free Sport Registry.
- Award costs of the proceeding.

ii. The Interested Party

39. The Interested Party submits that the UCCMS applies to her historical complaint and that the OSIC has jurisdiction because the 2024 Consent constitutes a valid and enforceable contract expressly authorizing the application of the UCCMS to prior conduct.

40. She first submits that the OSIC must be recognised as holding jurisdiction to apply the UCCMS, insisting that it is critical for the principles of safe sport to be upheld that historical abuses not be shielded from accountability.

41. The Interested Party recalls that on May 16, 2024, she filed a complaint with the OSIC alleging that the Respondent sexually and physically abused her over a period of five years while serving as her riding coach, and that following a thorough investigation, the OSIC determined that these claims were substantiated.

42. She submits that it is only after the DSO issued her findings that the Respondent argued that the Consent Form he signed in 2024 was not a valid contract and that he had not expressly consented to its terms.

43. In response to the Respondent's allegations, she submits that:

- There is valid consideration because in exchange for signing the consents, the Respondent was granted the privilege of participating with EC. Fresh consideration is not required in the variation of a contract.
- The essential terms of the contract, including the application of the UCCMS to past conduct, were clearly articulated and agreed upon. These terms were deliberately flexible to enable the OSIC to apply the UCCMS appropriately across a range of circumstances and maintain a safe sport environment.
- The Respondent expressly consented to the updated terms. He had a full month to seek clarification or independent legal advice, but chose instead to sign and return the 2024 Consent on the same day it was provided.
- It is in the best interests of safe sport and the protection of all participants that this Tribunal uphold the validity of the 2024 Consent and affirm the OSIC's jurisdiction to apply the UCCMS to Prior Conduct.

44. The Interested Party also submits that for an individual to participate in sports within a national level sport organisation who receives federal funding, and by virtue of the same has become a UCCMS program signatory, the national sport organization must first obtain this individual's executed informed Consent Form. The Consent is a condition precedent to continuing participation and involvement with that national sport organization (the Program Signatory). In this case:

- EC became a Program Signatory by officially adopting the UCCMS on December 1, 2022.
- On or about December 2, 2023, the Respondent signed the 2023 Consent.
- On April 5, 2024, the Respondent received an email directing him to sign the updated 2024 Consent Form, which included a PDF instruction sheet and contact information for questions or clarification. The 2024 Consent included the provision that the UCCMS may apply to Prior Conduct, and was also accompanied by an interactive video explaining each provision, contact information for guidance, and a clause advising the Respondent of his right to seek independent legal advice.
- The Respondent was given until May 1, 2024, to complete the form.
- On April 5, 2024, the same day he received the email, the Respondent signed the 2024 Consent, agreeing to the terms of the UCCMS, including the provision that the UCCMS may apply to Prior Conduct.

45. While the Interested Party accepts that this Tribunal has already ruled that the UCCMS is "*created, based upon, contingent upon and implemented by way of a web of contracts and that the 2023 consent form is not valid to bind participants retroactively*", she submits that the 2024 Consent, which contains a Prior Conduct Clause, is the one that matters. She submits that any analysis in relation to the 2023 Consent is irrelevant to this case.

46. The existence of an offer, acceptance, or an intention to create a legal relationship is not at issue in this appeal. The Interested Party submits that the 2024 Consent is a contract because:

- All elements of a contract are present. Notably, unlike argued by the Respondent, fresh consideration is not in issue because the Respondent was not under duress, the terms of the Consent Form are not unconscionable, and there were no public policy concerns which would render its terms unenforceable.
- There was express consent by the Respondent to enter into the contract. The flexibility afforded by the Prior Conduct Clause does not equate to uncertainty or ambiguousness. Rather, the Prior Conduct Clause defines a framework of seven detailed factors that guide decision-making. The presence of discretion is not ambiguity. It is purposeful, principled flexibility.
- There are no policy reasons that would invalidate the contract. Rather, policy considerations support its enforcement because contra proferentum does not apply to these proceedings, there was no disparity in bargaining power, the Respondent had sought legal advice, and a reasonable person and the public in general would understand that allegations of sexual abuse against children, regardless of when they occurred, fall within the protective scope of the UCCMS.

47. The Interested Party thus submits that the Respondent agreed to the terms of the 2024 Consent, including the Prior Conduct Clause, and his attempts to retroactively challenge these terms are not supported in law or in principle.

48. The Interested Party respectfully requests:

i. A declaration that the UCCMS applies to the Respondent's historical conduct.
ii. A declaration that the OSIC has jurisdiction over the historical conduct by way of the Prior Conduct Clause in the 2024 Consent Form.
iii. An order upholding the DSO's Decision; and,
iv. The Interested Party's costs of this proceeding pursuant to section 8.13 of the UCCMS.

iii. The DSO

49. The DSO at the outset recalls that:

- Abuse-Free Sport aims to ensure accountability and safety in sports.
- The OSIC received a formal complaint against the Respondent on May 16, 2024, after the Respondent had executed the 2024 Consent. The complaint alleged that between 1982 and 1987, the Respondent engaged in Physical Maltreatment, Sexual Maltreatment, Grooming and Boundary Transgressions against the Interested Party, a former equestrian athlete whom he coached and who was a Minor at the time of the alleged events.
- Following an independent investigation completed on April 10, 2025, and for the detailed reasons contained in the Challenged Decision, the DSO found that the Respondent had engaged in Prohibited Behaviour (as defined in the UCCMS), specifically Sexual

Maltreatment involving a Minor among others and imposed a sanction of permanent ineligibility.

50. The DSO insists and argues that the 2024 Consent is valid, enforceable, and allows for retrospective application of the UCCMS. By its express language, the 2024 Consent Form provides for the jurisdiction of the OSIC and DSO to apply the UCCMS retrospectively to Prior Conduct. Any other interpretation is not capable of being supported by the plain words of the Prior Conduct Clause and would furthermore frustrate Abuse-Free Sport's very purpose.

51. While the DSO maintains her position that the principles of statutory interpretation apply to the UCCMS, which is akin to delegated legislation, she submits that this has no bearing on the instant case. The Respondent's challenge concerns the validity, enforceability, and application of the 2024 Consent to the Prior Conduct. The contents of the UCCMS are not at issue. For this reason, the appropriate analysis is one governed by principles of contractual interpretation.

52. The DSO:

- Agrees with the Respondent that the principles of contractual interpretation apply and submits the 2024 Consent expressly provides that the OSIC and DSO, as agents of Abuse-Free Sport, have jurisdiction over Prior Conduct.
- Argues that the Respondent's reliance on the presumption against retroactivity is misplaced. This is a rebuttable presumption arising from principles of statutory interpretation and has no place in the interpretation of the 2024 Consent as a standalone contract.
- Submits that the Respondent wrongly relies on authorities about contracts governing point-in-time transactions, which the 2024 Consent is not; it governs long-term relations or "*going-transactions.*"
- Asserts that the 2024 Consent is a valid contract with no issues of consideration or voluntariness. The Respondent received valid consideration by being allowed to continue his role in EC.
- Submits the 2024 Consent is not an "agreement to agree" and does not lack essential terms. Rather the Respondent's framing of the demands of certainty in contractual relation is overly restrictive. The only definitiveness that was required in the Consent is whether the SDRCC, OSIC and DSO are foreclosed from retrospectively applying the UCCMS. They are clearly not.
- Argues that the Respondent baldly asserts that there was an anticipatory breach but provides no argument or evidence about electing for his contract to end at any time.

53. The DSO submits that the Respondent's participation in sport is not a right – it is, and always has been, an ongoing privilege that may be revoked. His assent to the 2024 Consent in exchange for the privilege of participation in EC constituted valid consideration. Either the Respondent was a party to the 2024 Consent Form, or he has been ineligible for membership or to participate in EC activities since.

54. She submits that the Respondent had the opportunity to seek independent legal advice before signing the Consent. Where a suggestion that the party obtain such advice is voluntarily refused, they *"must bear the consequences of that choice."*[2]

55. The DSO also submits that the Respondent cannot claim duress because consent was voluntarily given. The Respondent had just under a month to sign the Consent Form yet immediately signed it after watching an entire explanatory video. He took no issue with the 2024 Consent Form until it impacted his participation. However, there is no absolute right to participate in sport at the highest level in Canada. The fact that a condition on the Respondent's participation ultimately led to his being subject to the UCCMS does not invalidate his consent to be bound, nor does it render the 2024 Consent unenforceable.

56. The DSO maintains that the language of the 2024 Consent Form clearly reflects the intention to apply the UCCMS retrospectively and thus to apply to Prior Conduct. There is no presumption against retroactivity, or retrospectivity to rebut in this case. The Prior Conduct Clause explicitly states that past events may fall under the jurisdiction of the OSIC and DSO. That the Respondent may have failed to read the 2024 Consent more carefully or seek independent legal advice does not detract from the express language of the agreement that he signed. While the Respondent may be surprised or disappointed that his past conduct has come into question, this is the exact circumstance articulated in the 2024 Consent that he agreed to.

57. Thus, the 2024 Consent is a valid and enforceable agreement that the Respondent voluntarily agreed to and allows for the OSIC and DSO's jurisdiction over the Respondent's prior conduct.

B. Reasons for Decision on the Jurisdictional Challenge

58. The following are the reasons for the Arbitrator's short decision as issued on September 27, 2025 in which she found the 2024 Consent Form to be valid and the Prior Conduct Clause applicable to the Respondent.

59. The Parties' respective positions on the jurisdictional challenge are summarised above. Out of the many arguments raised by the Parties, the ones below were most compelling in guiding the Arbitrator's finding.

60. The core issues considered in the Arbitrator's reasoning below are as follows:

(i) Is the Prior Conduct Clause too ambiguous?
(ii) What is the relevance of the 2023 Consent Form?
(iii) Was the contract entered into under duress?
(iv) Can the Prior Conduct Clause bind parties to the UCCMS?
(v) Was there valid consideration?

[2] Citing *D.H. Estate v. Do.T.*, 2006 CanLII 12310 (ON SC) at para 41.

(i) Is the Prior Conduct Clause too ambiguous?

61. The Respondent argues that the Prior Conduct Clause is too ambiguous to bind him contractually, and that the 2024 Consent Form cannot be upheld.

62. To the Arbitrator, flexibility in the language of the 2024 Consent Form should not be mistaken for ambiguity. The Prior Conduct Clause defines a framework of seven detailed factors that guide decision-making. The presence of discretion is not ambiguity. It is purposeful, principled flexibility. When read in conjunction with the UCCMS, the 2024 Consent clearly supports the overarching objective of safeguarding sport and ensuring accountability for conduct, both prospective and retrospective, and thus prior conduct.

63. While the rules and regulations surrounding safe sport have evolved in recent years, sexual maltreatment today was sexual maltreatment in the 1980s. A wide range of behaviours are covered by the UCCMS and there is no statute of limitation for a victim to report the same. The Prior Conduct Clause has been drafted in a way to keep in mind that there has been an evolution of safe sport concepts over time (there were effectively no safe sport regulations at the time the alleged maltreatment occurred), of what kind of behaviour is considered acceptable, or how this type of behaviour should be disciplined.

64. The Prior Conduct Clause looks to take into consideration all these factors when historical cases occur, so that the discipline imposed is reasonable and proportional to discipline that might have been imposed at the time of the alleged maltreatment, or that should be applicable in the present in the face of the decision-maker's evidence. This – effectively and rightly – favors those who are charged with such maltreatment offence as they may benefit from greater leniency in sanctioning where the behaviours were not necessarily prohibited or even known or recognized to constitute maltreatment at the time (for example emotional abuse or bullying), and where the context, social norms, and historical nature of the allegations impacts both the identification of credible and reliable witnesses and the assessment of the sufficiency of evidence.

65. The Arbitrator agrees that the Respondent's attempts to create objectively ascertainable check box conditions are entirely incompatible with the UCCMS's intent and modern approaches to addressing Prior Conduct, and that the fact a complainant is not currently active in sport is totally irrelevant to the determination of whether abuse occurred in the past, whilst that individual or the person against whom the complaint is filed was active in any capacity in sport.

66. The Arbitrator thus finds the words "may" and "if" are not too ambiguous but rather reflect a deliberate and necessary flexibility in how jurisdiction is determined, consistent with the trauma-informed and safety-first approach of the UCCMS. This same flexible and wide-angle approach is used in safe sport regulations worldwide.

(ii) What is the relevance of the 2023 Consent Form?

67. To the Respondent, the 2024 Consent Form introduces new, material obligations without any fresh benefit and so, is invalid. To him, the 2023 Consent Form remains the operative agreement. It binds him to the UCCMS from its coming into force, but as already held by the SDRCC Appeal Tribunal, provides no jurisdiction over historical complaints that pre-date the UCCMS. The Respondent does not take issue with the 2023 Consent. He does not argue that it suffers from any of the 2024 Consent's alleged deficiencies. He submits that, because of the 2024 Consent's invalidity, the 2023 Consent is *"[a]ll that remains*."

68. The Interested Party and DSO have vehemently argued that the Respondent's reliance on the 2023 Consent Form is irrelevant to this dispute. The Arbitrator agrees with the DSO and Interested Party that the Respondent's position is untenable and inconsistent. Either the Respondent was a party to the 2024 Consent Form, or he has been ineligible for membership or to participate in EC activities since the 2024 Consent Form replaced the 2023 Form – which is evidently not the case.

69. The 2023 Consent Form has no bearing on this dispute.

(iii) Was the contract entered into under duress?

70. Although not raised prior to filing his challenge with the Tribunal, the Arbitrator acknowledges the Respondent's submission that he *"felt like [he] did not have a choice but to sign right away, [he] was not provided with any real opportunity to seek legal advice… and did not have an opportunity to negotiate any of the terms of the 2024 Consent*." The Respondent cites SDRCC ST 24-0037 in support of this position. However, this matter is distinguishable from the case he relies upon:

- The email the Respondent received on April 5, 2024 contained contact information to direct any questions concerning the consent and a PDF attachment containing in-depth instructions and explanations. Section 8 of the instructions reads: *"please pay attention to the content present as it includes important information regarding participation to the Abuse-Free Sport program."* At the bottom of the instructions, it reads: "*if you have any questions regarding the content of the consent form, please reach out to [OSIC email address]*."
- A copy of the long-form 2024 Consent Form contains inter alia (i) contact information where questions may be directed, (ii) a provision advising the reader (here the Respondent) to avail themselves of the opportunity to obtain independent legal advice, and (iii) a signature line, date, and legal name of the participant.
- The Respondent had about a month to review the Consent Form, obtain independent legal advice to review the Consent Form with him and answer any questions or concerns that he may have had, and contact the OSIC if he had any other questions.

- The Respondent has not provided any persuasive evidence that he did not understand the content of the 2024 Consent Form. He also did not contact anyone seeking clarifications on the contents of that Consent Form.
- Critically, unlike in ST 24-0037 where the Arbitrator found there was an upcoming event that increased the urgency for the applicant to fill out the Consent (a decision which is currently under appeal), the Respondent did not provide any persuasive evidence that there was anything forcing him to sign the consent when he did, or that he forfeited his opportunity to review its terms.

71. The Interested Party and DSO submit that the Respondent has failed to demonstrate that he did anything other than indicate that he had agreed to the terms and conditions of the UCCMS at the time. The Arbitrator agrees.

72. Nonetheless, the Arbitrator has given due legal consideration to the Respondent's argument that he executed his form under duress. In determining if there was duress which deprived a party of choice, courts consider in cumulative order whether: (1) the party protested at the time the contract was entered into; (2) there was an effective alternative course open to the party; (3) the party obtained, or was afforded the opportunity to obtain, independent legal advice; (4) after entering into the agreement, the party took steps to avoid it; and (5) the coercion exerted on the party was illegitimate.

73. Here, there is no compelling evidence that the Respondent protested the 2024 Consent Form at any point, until now. As evidenced by the UCCMS video preceding the execution of the 2024 Consent, the Respondent would have had to click "Continue" and then would have had the option to either execute the 2024 Consent online or download an unsigned version of the 2024 Consent and mail it to the SDRCC. He had ample opportunity to protest. But the issue of his lack of voluntariness never arose until his submissions in the present proceeding. Additionally, courts have generally held that *failure to repudiate promptly is fatal to a duress claim* (see *Greater Fredericton Airport Authority Inc. v. NAV Canada,* 2008 NBCA 28). Here, the Respondent did not repudiate the 2024 Consent Form promptly or at any time with EC. He only now is alleging that he was coerced or felt forced to sign the 2024 Consent.

74. Without needing to go into detail on the other mandatory cumulative elements of the duress test which the Respondent also fails to fulfill: (ii) he simply could have chosen not to sign the 2024 Consent, (iii) he had legal counsel, (iv) he did not take steps to avoid the contract, and (v) there was no illegitimate coercion involved. Indeed, executing a consent form as a condition of participation in sport does not invalidate consent or amount to duress. Duress requires illegitimate pressure that removes meaningful choice. But the Respondent, like all OSIC Participants, prior to and when providing his consent to be bound by the 2024 Consent Form, always has the option to not sign, not be bound, and not participate on the expected conditions.

75. The Respondent had choices and freely agreed and chose to be bound to the 2024 Consent Form. Thus, to the extent that the Respondent is arguing duress, his argument fails.

(iv) Can the Prior Conduct Clause bind parties to the UCCMS?

76. The 2024 Consent Form, taken alone, is a private agreement that the SDRCC and OSIC, via the Abuse-Free Sport program, entered into with the Respondent as with all Participants. When looking at the validity, enforceability, and express language of this document in isolation, the only applicable interpretive principles arise from contract law.

77. On the one hand, the Respondent argues that this Tribunal *"presumes that the UCCMS does not apply to conduct that occurred prior to its coming into force in 2022*" and that the OSIC and DSO bear *"the burden of displacing this presumption by proving that a respondent expressly consented, by contract, to the retroactive application of the UCCMS*."

78. On the other hand, the DSO argues that such assertions are wrong in law and overstate this Tribunal's prior decisions. The DSO submits that the Respondent cannot borrow a presumption against retroactivity from the realm of statutory interpretation on the one hand and simultaneously rely on contractual arguments to undermine the 2024 Consent's validity and enforceability on the other. The Arbitrator agrees. And, the DSO also submits, in any case, the Prior Conduct Clause applies the UCCMS retrospectively, and not retroactively, because as held in *Brosseau v. Alberta Securities Commission*, 1989 CanLII 121 (SCC) at 318-319, *"any presumption against retrospectivity can rebutted where the law in question is designed to protect the public".*

79. The Arbitrator thus finds that the 2024 Consent Form and its Prior Conduct Clause supply the necessary, clear and express language reflecting the intention of the parties to apply the UCCMS retrospectively, and thus of the OSIC and DSO's jurisdiction to apply the UCCMS retrospectively (as explained below).

80. The Respondent was given a choice to bind himself to the retrospective enforcement of the UCCMS and jurisdiction of Abuse-Free Sport via the 2024 Consent Form and chose to do so, thereby freely providing his express consent to be bound to the Prior Conduct Clause

81. The issue left to determine is whether this new contract is binding based on valid consideration.

(v) Was there valid consideration?

82. At the outset, as had already been established in SDRCC SAT 24-0002, the Arbitrator confirms that the doctrine of Contra Proferentem has no place in this discussion or in any safe sport discussion where contractual interpretation occurs.

83. The DSO also recalls that in his affidavit on this proceeding, the Respondent clearly stated he understood *"that if [he] did not sign the 2024 Consent before May 1, 2024, [he] would not be able to continue in [his] roles*." This, she says, is the consideration the Respondent received for executing the 2024 Consent. The Arbitrator agrees with the DSO that the consideration the Respondent received for signing the 2024 Consent was continued ability to act in these roles as a participant in good standing with the SDRCC, Abuse-Free Sport and EC.

84. The DSO and Interested Party submit that the Respondent's participation in sport is not a right – it is, and always has been, an ongoing privilege that may be revoked. When the SDRCC updated the Abuse-Free Sport Consent Forms, it, along with EC, forbore from their ability to revoke the Respondent's privilege of participation in exchange for his assent to the 2024 Consent. This constituted valid consideration. The Respondent argues that the same act of forbearance – allowing the Respondent to continue his employment and retain his membership rights – was offered for both the 2023 Consent and only four months later for the 2024 Consent. While that act of forbearance can constitute valid consideration in 2023, it cannot do so again in 2024.

85. The law appears split in Canada. There are clearly different schools of thought on the issue and all parties have argued that their respective position is more compelling to the factual circumstances of this case.

86. The Respondent relies inter alia on *Adams v. Thinkific Labs Inc.*, 2024 BCSC 1129, where the Court held that a second agreement containing new restrictive terms—such as termination and non-competition clauses—was unenforceable due to lack of fresh consideration. Justice Caldwell found that the second agreement *"consisted almost entirely of new restrictive terms"* (para 28) and that the only possible consideration was the employee's continued employment, which had already been promised under the original agreement. The Court emphasized that: "*continuing employment alone is not enough… [t]here must be forbearance or some other incentive to constitute good consideration"* and that *"a modification to a pre-existing employment contract will not be enforced unless there is a further benefit to both parties."* (para 30, citing *Krieser v. Active Chemicals Ltd.,* 2005 BCSC 1370)

87. An article filed by the DSO was enlightening as it highlights the different approaches used by different courts when assessing whether consideration exists[3].

88. Having considered the contents of that article vis a vis the Parties' submissions in relation to the facts in issue here, the Arbitrator is persuaded by:

- the court's reasoning in *Williams v. Roffey Bros & Nicholls (Contractors) Ltd.*, [1991] 1 Q.B. 1, [1990] 1 All E.R. 512, [1990] 2 W.L.R. 1153 (C.A.), which was also relied upon by the New Brunswick Court of Appeal in *Greater Fredericton Airport Authority Inc. v. NAV Canada*, 2008 NBCA 28, which preferred a less rigid approach to the doctrine of consideration; and,

- the Ontario Court of Appeal's reasoning in *Techform Products Ltd. v. Wolda,* (2001) 56 O.R. (3d) 1, 206 D.L.R. (4th) 171, [2001] O.J. No. 3822 (Ont. C.A.). (hereinafter *Techform*) which held there is consideration if the employer has refrained from

[3] Angela Swan, Jakub Adamski & Annie Y Na, *Canadian Contract Law*, 4th ed (Markham: LexisNexis Canada, 2018) ch 2 at 2.2.5 ("Modifying Promises, Pre-Existing Duty or Ongoing Transaction Adjustments").

terminating the employment relation in consideration of the employee's acceptance of the terms of the new agreement.

89. *Techform* and the Supreme Court decision *Maguire v. Northland Drug Co.*, [1935] S.C.R. 412, [1935] 3 D.L.R. 521, [1935] S.C.J. No. 11 (S.C.C.), reflect the Respondent's contractual relationships with EC and the effect of the 2024 Consent Form:

> *"rather than being caught by surprise by being held to the modified terms of their employment contracts, it is much more likely that the employees regarded themselves, to the extent that they thought about it at all, as bound by a kind of generalized employment relation that could and would be altered by the employer (or perhaps by them) from time to time, the terms of which they accepted as much as they accepted their offices, their desks, their telephones, their vacation entitlements and their paycheques*."[4]

90. As in *Ciric v. Raytheon Canada Ltd.,* 2008 BCCA 241, here, the Arbitrator is persuaded and finds it preferable to follow the approach of the Ontario Court of Appeal in *Techform* and find it permissible for EC to change the terms of the relation (here by way of the 2024 Consent Form) and to hold the Respondent to those terms without seeking to find reasons to upset what both Parties probably expected the terms of their relation to be, which is an ongoing contractual relationship where both Parties received consideration for the renewed consent: EC in the form of the Respondent's coaching abilities, and the Respondent in the form of continued privilege of participating in sport.

91. In summary:

- As a result of giving his renewed promise to abide by the UCCMS in 2024, the Respondent obtains a benefit from EC: the privilege of continuing to partake in his sport.
- The act of agreeing to the 2024 Consent obviates a disbenefit and an agreement to change the terms of their relation.
- Because the Respondent's promise to EC to abide by and consent to the 2024 Form was not coerced or given under of economic duress or fraud, then the benefit to the Respondent's renewed consent was his continued participation in EC, so that the promise he made by signing the Consent Form is legally binding.

92. The Arbitrator thus finds there was valid consideration for the execution of the 2024 Consent Form and that it is valid and enforceable, including its Prior Conduct Clause.

Conclusion

93. Because the 2024 Consent Form is a contract and not a piece of legislation, any presumption against retrospectivity that may arise from principles of statutory interpretation do not apply. Participants are free to exercise their contractual freedom to retrospectively bind themselves to the UCCMS via the Prior Conduct Clause.

---

[4] *Ibid*.

94. There is no ambiguity in the Prior Conduct Clause that could warrant rendering it so vague as to being unenforceable, and the renewed consideration was neither given under duress or for illegitimate or unconscionable purposes (quite the opposite). The Prior Conduct Clause provides a flexible, criteria-based approach to determining jurisdiction, one that is well-suited to the sensitive and varied nature of abuse allegations. The Respondent willingly signed the 2024 Consent, which is found to be a valid and enforceable contract. This is so because in consideration for willingly freely and signing the consent "eyes wide open", the Respondent was granted the renewed continued privilege of participating in EC-sanctioned activities.

95. Therefore, the 2024 Consent Form is valid and enforceable, as is the Prior Conduct Clause therein, and the OSIC and by extension the DSO, hold the jurisdiction to apply the UCCMS retrospectively to the Respondent's Prior Conduct.

96. The Respondent's jurisdictional challenge is dismissed.

VI. On the Second Preliminary Issue – The First Request for Evidentiary Disclosure

97. The Parties' submissions on the Respondent's first request for evidentiary disclosure can be summarized as follows:

A. Submissions on Evidentiary Disclosure

i. Respondent

98. The Respondent requests disclosure of the following materials from the file of the Investigator:

i. The Investigator's notes.
ii. Any transcripts, notes, and/or video or audio recordings of witness interviews.
iii. Any written witness statements; and
iv. Any documents or other evidence submitted by witnesses to the Investigator that they wished to have considered by the Investigator, to the extent that such documents or other evidence is not captured in the Exhibits to the Investigation Report and/or presently filed with the Tribunal (the "Investigator's File").

99. In his Request, the Respondent raised the conduct of the investigation as grounds of appeal, including at:

i. Paragraph 12(iii) of the Request, which contemplates the Investigator having acted on a view of the facts which cannot be reasonably entertained; and
ii. Paragraph 12(iv) of the Request, which contemplates procedural and other reviewable errors during the investigation.

100. The Respondent has reason to believe, among other things, that:

- Witnesses interviewed by the Investigator were not given an opportunity to review the Investigator's summary of their evidence, either at the conclusion of the interview or at

any time thereafter, and there are concerns about the accuracy of the evidence summarized in the Investigation Report.

- The Investigator asked opaque questions which denied witnesses the opportunity to provide a meaningful response. These witnesses have offered that if a specific allegation had been put to them, they would have categorically denied it.
- A material witness known to the Interested Party, and with highly relevant evidence, was inexplicably never contacted by the Investigator at all; and
- The Investigator approached the investigation as though the Respondent was, in fact, guilty from the outset.

101. The Respondent relies on decision SDRCC ST 24-0017, 2024 CASDRC 35, where the arbitrator held at para 66 that:

> "*the Investigator's notes, written statements and video statements, and other documents presented by witnesses are relevant because based on the Interested Party's grounds for appeal, it has a tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the matter. […]*"

102. Failing voluntary agreement from the DSO, the Respondent seeks an order pursuant to Subsection 8.8(c) of the *Code*, requiring the DSO to produce the Investigator's File. Subsection 8.8(c) of the *Code* grants the Tribunal jurisdiction and authority to order disclosure of relevant materials.

103. The Respondent relies on the Investigation Guidelines which he submits require the DSO, in addition to the OSIC, to independently maintain records of all investigations. The Respondent submits that the Investigator's File, which the Investigator distinguishes as being separate from the Investigation Report, should already be in the possession of the DSO, is inarguably within her control and should be disclosed.

ii. The DSO

104. The DSO explains that all the documents in her possession have been shared with the Parties. She explains that the Investigator did not share any additional information to her and therefore, she has already disclosed all material and documents in her possession and control.

105. She refers to the Respondent's reliance on the SDRCC ST 24-0017 decision as disingenuous because ultimately, in that matter, although the Arbitrator had initially granted disclosure of materials, upon the Deputy Director of Sanctions and Outcomes' (DDSO) request for clarification, the Arbitrator then dismissed the request for disclosure and strictly ordered access to materials or a copy of materials *if within the possession or control of the DSO and DDSO* .

106. The DSO recalls that per the policies and procedures of Abuse-Free Sport, including the Investigation Guidelines and the Violations and Sanctions Policy, the DSO must rely on the investigative findings provided to it in support of its decision. The DSO is not an investigator, nor a finder of fact. She submits that the Respondent appears to blur the distinction between

the investigator's conclusions made during investigation and corresponding evidence relied upon, and the DSO's decision making on the basis of those investigative findings.

107. She submits that the Respondent's reliance and reference to the Investigative File, to the extent that it may be different from the material already provided, was and remains neither in her possession nor her control.

108. In any event, the DSO submits that the Respondent's ground for challenge has not appropriately referred to challenging the Investigator's process, and that the grounds for the challenge listed at Section 8.7 of the *Code*, do not refer to reviewable errors made by an investigator. The DSO submits that it is improper for a party to challenge a decision on a ground and then seek confirmation or validation that the ground asserted exists after the fact. She submits that all the Respondent provides are speculative assertions concerning the Investigator's errors, and that speculative beliefs that an issue may exist are circular and not compelling.

109. In conclusion, the DSO submits that the disclosure of the Investigator's "file" or additional work product which was not provided to the DSO or DDSO through the OSIC at the conclusion of the investigation in this matter is not supported by the process and policies contemplated by Abuse-Free Sport, the *Code*, or the prior decisions of this Tribunal.

iii. The Interested Party

110. The Interested Party submits that the contents of the Investigator's File are irrelevant to this matter because the documents are inconsequential to determining the matter, and much of what occurred here is not in dispute. The Respondent's allegations that the Investigator acted on a view of the facts which could not be reasonably entertained and that procedural and other reviewable errors occurred during the investigation are irrelevant, baseless, and amount to nothing more than a fishing expedition.

111. The Interested Party submits that the Investigator's conclusion that the Respondent groomed and sexually abused the Interested Party rested primarily on findings derived from the Respondent's own statements. The Respondent's reliance on the SDRCC ST 24-0017 decision is of no help to him here as the issues in that challenge related to witness statements. Here, the Investigator's findings relied primarily on the Respondent's admissions and a credibility assessment of the Respondent and Interested Party, with witness statements serving only a minor and supplementary role. Accordingly, she submits that disclosure of witness statements will not impact this appeal.

112. Finally, the Interested Party submits that the Respondent's bald allegation that the Investigator approached the investigation with a presumption of guilt from the outset is unsupported and cannot justify an order for disclosure. On this point, the Interested Party relies on:

i. *Humane Society of Canada Foundation v Canada* (*National Revenue),* 2018 FCA 66 (hereinafter *Human Society of Canada*), where the appellant alleged bias and a breach

of procedural fairness to justify disclosure. There, Justice Webb held that while additional disclosure may be warranted where there is apprehension of bias or procedural unfairness, it cannot be used for a fishing expedition. It was therefore concluded that the unsupported allegations could not justify an order for production.

ii. *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue),* 2013 FCA 250. There, Stratas J.A. held that grounds for review must be supported by some evidence and stated with particularity. Bald assertions are insufficient.

113. The Interested Party also submits that production and review of the Investigator's File would be a time-consuming and resource-intensive process that offers no material benefit to the outcome of the challenge. Ordering disclosure would undermine the efficiency, focus, and participant well-being that trauma-informed processes are designed to protect.

B. Order on First request for Evidentiary Disclosure

114. Though the allegation of bias was not expressly raised in the Request before this Tribunal, the Arbitrator appreciates the Respondent's efforts to search for flaws in the Investigator's work as one of the limited means of overturning the Challenged Decision.

115. On review of the submissions, it appears that the DSO has in fact tendered all the evidence in her possession and control, which is all the *Code* provides for.

116. The Investigator is not a party to these proceedings and has already provided a fulsome Investigation Report with multiple appendices which refer in detail to all her interviews including providing direct quotes from each or paraphrasing them.

117. The Respondent was given an opportunity to review, comment or propose corrections to the Investigator's notes from their meeting to confirm the accuracy his statements and declined. The fact is that he neither raised objections to her notes nor proposed any revisions to the same until now. While the Arbitrator acknowledges that the Respondent was represented by different counsel at the time, it does not change the fact that the Respondent then confirmed the accuracy of the interview notes.

118. The expansive "Investigator's File", including the 90-page Investigation Report and 11 appendices, provide ample information and documentation. The Investigator expressly notes in numerous passages in her Report that her findings rested primarily on her assessment of the Respondent and Interested Party's credibility in addition to their respective assessment and recollection of the events. Under the circumstances, the Arbitrator therefore agrees with the Interested Party that production and review of the Investigator's File would be a time-consuming and resource-intensive process that would likely offer no material benefit to the outcome of the challenge.

119. As rightly submitted by the Interested Party, principles of procedural fairness include the right to know and comment on material relevant to the decision, have notice of the grounds on which

the decision may be based, and be given the opportunity to make representations accordingly. The Arbitrator finds that the Respondent has been afforded such procedural fairness at all stages of the investigatory and adjudicatory processes to date and that he continues to benefit from such fairness before this Tribunal.

120. Disclosure of all materials relevant to an investigation is not provided for in the *Code* or the Investigation Guidelines. The *Code* simply provides that the Tribunal may order disclosure of materials that are within the Parties' control and possession. The DSO has submitted that she has shared with all Parties and the Tribunal the entirety of the Investigator's File submitted to her by the OSIC. There is nothing that suggests to the Arbitrator that the DSO is withholding information within her control or possession.

121. The request for disclosure is therefore dismissed.

VII. On the Third Preliminary Issue – The Second Request for Disclosure

122. In anticipation of the Arbitrator's decision on his first request for disclosure, the Respondent made a second request for disclosure related to receipt of all past DSO/DDSO decisions, which the DSO objected to.

123. Given the lengthy email exchange between the Respondent and the DSO on this point, formal submissions were not sought out on this point other than from the Interested Party. The following is a summary of the Parties' respective positions in relation to the Respondent's second request for disclosure.

A. Submissions of the Parties

i. The Respondent

124. To the Respondent, any review of the sanction and any argument that the sanction is or is not reasonable must be grounded in *stare decisis* and similar decisions. As those similar decisions (i.e. decisions addressing some combination of findings of grooming, boundary transgressions, sexual maltreatment) are only available to the DSO and DDSO, fairness dictates that disclosure be made to the Parties.

125. The unparticularized sanction list on the Abuse-Free Sport registry, and the relatively scant number of Safeguarding Tribunal decisions (i.e. challenges of DSO and DDSO decisions) does not provide sufficient jurisprudence to assess reasonableness of the DSO's Decision in this matter. Even the Safeguarding Tribunal website decisions are not up to date and are only fully known to the DSO and DDSO as Parties to all decisions. To wit, the Respondent refers to two decisions from last year that are still not uploaded to the website and were only available to his counsel by virtue of having represented a party in those cases.

126. The Respondent thus seeks appropriate disclosure so as not to delay the argument of this matter on the merits and submits that such disclosure is necessary to proceed on the merits.

ii. The DSO

127. The DSO first notes that this is the second time when a significant request is made by the Respondent outside the context of the preliminary meeting scheduled specifically to address such issues and questions. She explains that, substantively, the request the Respondent makes is unprecedented and there is no authority supporting it.

128. As the Respondent notes, decisions of the DSO and DDSO are not published, nor has the Abuse-Free Sport program or process ever provided for the publication or disclosure of same to outside parties. While the DSO submits that not having immediate access to full Tribunal jurisprudence may be of frustration to parties, that is not within the control of the DSO, similar to counsel not having control of when doping or selection-related decisions of the Ordinary or Doping Tribunal are published.

129. While the DSO agrees that the *Code* provides for a standard of reasonableness, it does not specifically speak to a review of the DSO's prior decisions. The specific grounds for challenge are articulated in Section 8.7, which speak to, inter alia, a misinterpretation or misapplication of a section of the UCCMS or applicable policies, or a misapplication of an applicable principle of general law. This is consistent with the UCCMS, which requires the DSO to have regard for the sanctioning considerations in Section 7.4 of the UCCMS when determining an appropriate sanction. The reasonableness of a decision on violation and sanction is evaluated having regard to the UCCMS and its principles, as well as applicable policies and where appropriate, general principles of law.

130. The DSO and DDSO have collectively been involved in approximately 190 cases. Each case is unique with respect to both its facts and sanctioning considerations and is confidential by virtue of the process contemplated by Abuse-Free Sport. Redacting final reports on violations and sanctions for any identifying or confidential information would be an enormous undertaking, and unsupported by guiding documents and principles.

131. Finally, the DSO submits that the Respondent has already argued that the DSO Decision is unreasonable, but now appears to indicate that he needs access to the DSO's prior decisions to prove that this ground for challenge has merit, like his circular logic when requesting disclosure of the Investigator's File.

132. The DSO therefore cannot agree to a protocol for sharing decisions with the Respondent's counsel, absent direction from the Tribunal that it is required to do so.

iii. The Interested Party

133. The Interested Party echoes the DSO's submissions that the Respondent's repeated last-minute requests have caused unnecessary delay and have not made productive use of adjudicative resources.

134. The Interested Party submits that the Respondent's continued pattern of making eleventh-hour requests and levelling thinly veiled allegations of bias against the DSO under the guise of "procedural fairness" undermines the efficiency and integrity of these proceedings and should be considered by the Tribunal when assessing costs.

135. On the merits of the request for disclosure, the Interested Party submits that the Respondent's submission that principles of *stare decisis* and procedural fairness require these decisions to be made available is incorrect. Relying on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (hereinafter *Vavilov*) at para 129; and *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC) at para 14, the Interested Party submits that although tribunals should strive for consistency, they are not bound by *stare decisis* in the same manner as courts.

136. The Interested Party also submits that the Respondent's assertion that other administrative bodies make their decisions publicly available is irrelevant to the analysis of procedural fairness. While not determinative, the procedures of the decision-making body itself are afforded important weight when determining what procedures the duty of fairness requires.

137. The Interested Party recalls that Subsection 5.13(e) of the *Code* states that "*each case must be determined on its facts and the Panel shall not be bound by previous awards or decisions, including those of the SDRCC*" and respectfully submits that the Respondent's request for disclosure of other DSO decisions be denied.

B. Order on the Second Request for Disclosure

138. The Arbitrator finds the DSO and Interested Party's submissions on the Respondent's repeated disclosure requests to be well grounded. The Arbitrator fully respects and abides by the importance of procedural fairness to preserve the integrity of the adjudicative process. Here, both of the Respondent's last minute disclosure requests could have and should have been raised, if not formulated, long ago. As a result, the requests have unnecessarily delayed these proceedings.

139. The Respondent's right to procedural fairness continues to be respected in these procedures even if both of this disclosure requests have been denied.

140. The Arbitrator recalls that:

- Subsection 5.13 (e) of the *Code* provides that arbitrators are not bound by prior jurisprudence.
- Every case must be determined on its merits, keeping in mind the facts and circumstances and law applicable to the same.

141. The Respondent fails to convince the Arbitrator how the production of 190 redacted DSO or DDSO decisions, not to mention the undertaking required to redact the same, is justified or should be granted at this late hour.

142. The Arbitrator relies by analogy to the Interested Party's submissions in relation to the first request for evidentiary disclosure in which she submitted that in *Humane Society of Canada*, where the appellant alleged bias and a breach of procedural fairness to justify disclosure, Justice Webb held that *"while additional disclosure may be warranted where there is apprehension of bias or procedural unfairness, it cannot be used for a fishing expedition[…]"* (para 8) It was therefore concluded that the unsupported allegations could not justify an order for production.

143. While maintaining her utmost respect for the integrity of this adjudicative process and seeking to ensure all Parties are afforded procedural fairness throughout, the Arbitrator denies the Respondent's second request for evidentiary disclosure.

VIII. The Challenge

144. The last round of fulsome written submissions from each Party focused on the merits of the Respondent's challenge before this Tribunal.

145. To facilitate her assessment and findings of the topics and submissions elaborated, the Arbitrator has separate them in 3 intuitive sections.

i. The Respondent's attempt to file new evidence
ii. The Request for a de novo hearing due to Investigator bias
iii. The judicial review of the Challenged Decision

146. As above, each section first summarises the Parties respective submissions in order of receipt, then concludes with the Arbitrator's reasoned decision on the particular issue.

147. Also as above, the Parties' submissions have been carefully considered, then summarised with reference to specific arguments where relevant to the legal discussion in the Arbitrator's reasons that follows.

IX. On the Request to file New Evidence

148. In support of his challenge before this Tribunal, and directly relevant to the considerations contained in Section 7.4 of the UCCMS, along with his final written submissions, the Respondent sought to introduce the following new evidence on review:

The Additional Evidence Affidavits:

- Affidavit of Dayton Gorsline, sworn December 12, 2025
- Affidavit of Witness 2, sworn December 10, 2025
- Affidavit of Witness 7, sworn November 21, 2025
- Affidavit of YZ, sworn November 19, 2025

and

The Athlete Affidavits: 12 different athletes providing character evidence.

149. The DSO and Interested Party objected to the filing of all this new evidence.

150. Below is a summary of the Parties' arguments and the Arbitrator's reasoned findings with regards to the same.

A. Submissions of the Parties

i. Respondent

151. The Respondent submits that the Investigator unreasonably failed to consider or even collect material evidence that disproves the Interested Party's, account, failed to make genuine efforts to interview a highly material witness who tends to disprove the hypothesis, and that on the whole there is no reasonable excuse for this evidence not having been collected, or a line of questioning not examined further.

The Athlete Affidavits

152. The Respondent submits the evidence provided in the Athlete Affidavits satisfies the requirements outlined in Subsection 8.7(c) of the *Code*, as they:

i. Could not have been presented prior to the rendering of the Challenged Decision because the process was confidential, the athletes in question were not involved in the investigation process, had no knowledge of any investigation process until a decision was ultimately rendered, and most critically had no ability to speak to the impact on them of a decision that had not yet been made;
ii. Are relevant to material issues arising from the allegations – the considerations for sanction under Section 7.4 of the UCCMS;
iii. Are credible and reasonably capable of belief – they are sworn affidavit testimony; and
iv. Have high probative value in that they alone could materially change the sanction decision and resulting sanction.

153. He submits that the Athlete Affidavits also confirm that the Respondent does not pose an ongoing risk, and clearly and consistently state the serious impact and serious harm that the Respondent's inability to coach has already had and will continue to have on these athletes, their future in sport, and the wider equestrian community.

154. He relies on the decision in matter SDRCC ST 24-0024, 2024 CASDRC 40, where he says the Tribunal found that this type of evidence, comprising twelve letters and emails of support submitted by the respondent from impacted athletes, satisfied the requirements of Subsection 8.7(c) of the *Code* and was admissible despite, and over, the objections of the DSO.

155. In reply to the DSO and Interested Party taking issue with the timing of the submission of the Athlete Affidavits, the Respondent submits that the persons who swore these affidavits could not have known the impact that his permanent suspension from all Canadian sport would have

on them as it had not yet happened. The Athlete Affidavits were introduced to address this impact because the issues raised in the Athlete Affidavits are enumerated by, and relevant to, Section 7.4 of the UCCMS and must be considered when assessing the reasonableness of the Sanction Decision.

The Additional Evidence Affidavits

156. With regards to the other affidavits, the Respondent argues the Investigator's bias towards him justifies admitting all the new evidence in the case by her:

i. Failing to collect the most relevant evidence of Witness 7 who was in the vehicle when one of the instances of sexual maltreatment allegedly occurred (the Bronco Incident). He argues that Witness 7's eyewitness evidence about the Bronco ride directly contradicts the Interested Party's account and supports the Respondent's account.

ii. Refusing to make bona fide efforts to contact YZ who was never interviewed. The Respondent submits that YZ has instrumental evidence to share including the Interested Party's 2018 admission to her that no sexual maltreatment had occurred. He says that YZ was never interviewed as part of the investigation, despite another witness identifying her to the Investigator as a relevant witness. He submits that the Investigator chose to complete her investigation without YZ evidence.

157. The Respondent thus seeks to admit affidavits from Witness 7 and YZ and argues that a reasonably diligent investigator would have been more thorough in collecting evidence before concluding the investigation, and relies on the decision in matter SDRCC ST 25-0054, 2025 CASDRC 35, at para 153, which held that *"[i]n instances where an investigator fails to call witnesses a party has identified as being relevant to their position, investigators open themselves to criticisms of unfairness and bias and make themselves subject to challenge."*

158. He also seeks to admit additional evidence from himself in the form of a supplementary affidavit, as well as from Witness 2. He says Witness 2 had more to say to the Investigator and was not given sufficient credibility by the Investigator notwithstanding her firsthand knowledge of the Respondent and Interested Party.

159. The Respondent submits that all the evidence he seeks to admit is (i) admissible to cure all the Investigator's biased shortcomings and (ii) critical to the Tribunal's assessment of the reasonableness of the Challenged Decision.

ii. Interested Party

160. The Interested Party relies on the criteria outlined in Section 8.7 c) of the *Code* and on the *Palmer*[5] test, according to which failure to meet the due diligence requirement is not always fatal but fulfillment of the final three criteria are conditions precedent. If any of these elements are absent, the new evidence cannot be admitted

[5] *Palmer v. The Queen, 1979 CanLII 8 (SCC), [1980] 1 SCR 759.*

161. She submits that the Respondent has repeatedly and incorrectly assigned the burden of due diligence on the Investigator but that according to the *Palmer* framework, it is the conduct of the party seeking to adduce the evidence that is relevant. According to the Interested Party, this requirement ensures that *"litigants put their best forward when first called upon to do so."* To the Interested Party, the Respondent failed to do so and did not exercise due diligence when prompted to both by the Investigator and the DSO. The Interested Party submits that the Respondent's failure to present his case fully at first instance should not entitle him to relitigate this matter.

162. As to the evidence itself, the Interested Party submits that to be admitted, the evidence must be relevant, credible, and have high probative value in the sense that, if believed, it could, on its own or when considered with other evidence, have led to a different conclusion on the material issue. All three criteria must be met and to the Interested Party, none of the proposed evidence satisfies this test.

163. The Interested Party also raises significant concerns of her own regarding the new evidence possessing bias and credibility deficiencies, inter alia:

- Witness 2's bias is evident, as addressed in the Investigation Report. She expressed intense favorability to the Respondent, provided him with information throughout the ongoing investigation, and made dismissive statements about historical allegations, including that it was "crazy" to accept accusations from decades earlier "with no proof".
- Witness 7's evidence is also undermined by his apparent bias in favour of the Respondent and his evidence lacks probative value. Witness 7 cannot testify as to whether the touching occurred, only whether he observed it. He has provided no evidence demonstrating that he was in a superior position to observe the interaction in the Bronco beyond speculative assumptions regarding its duration.
- YZ's evidence is contradicted by the record, internally inconsistent, and lacks an air of reality. Her stated positions are factually incompatible. Even if accepted, it would not alter the analysis of any material issue, as required. No weight should be given to her affidavit as there is a vein of credibility poison which runs through it, likely based upon a longstanding jealousy of the Interested Party.

164. As for the Athlete Affidavits, the Interested Party submits that they consist entirely of character evidence and are therefore inappropriate and inadmissible in this proceeding. As such, their probative value is negligible, if not entirely absent. Each athlete has a direct and professional interest in the outcome of this matter, as a finding of permanent ineligibility would result in the loss of their coach. Additionally, they are incapable of providing any relevant or reliable evidence concerning whether the Respondent engaged in Sexual Maltreatment in the 1980s, a period in which none of them had any involvement or firsthand knowledge. As character evidence they lack both credibility and relevance.

165. In summary, the Interested Party submits the new evidence fails to meet the criteria under Subsection 8.7(c) of the *Code*. The Respondent did not exercise due diligence, and the

evidence is not sufficiently credible nor probative to have led to a different outcome. Allowing its admission now would undermine the finality of the adjudicative process.

iii. DSO

166. The DSO submits that the new evidence presented by the Respondent does not meet the requirements set out by the *Code* to be considered as a ground of challenge to the Challenged Decision.

167. The DSO then proceeds by going through element of *Code* Subsection 8.7 c) to the matter at hand to demonstrate that the request does not meet the found conjunctive requirements to be admitted and being capable of impugning the Challenged Decision.

168. The DSO submits the Additional Evidence Affidavits were obtained from witnesses who were interviewed or contacted to this end by the Investigator. As such, the evidence contained in the Additional Evidence Affidavits could have been discovered and presented during the investigation when the affiants were interviewed, or, in the alternative, by the Respondent following his receipt of the Report. The Respondent is not permitted to now supplant the affiants' previous evidence or add what he views as necessary evidence after being informed of an unfavorable outcome.

169. The DSO submits that the fact that YZ did not respond to the Investigator's request for interview cannot be attributed to the Investigator. The Respondent's attempt to admit her evidence now must fail.

170. Finally, the Respondent tries to include character evidence from several athletes, including all but one who were not even born at the time of the conduct in question. No reason has been provided as to why the Athlete Affidavits, if only to provide the character evidence they now seek to adduce, were not provided at the time when the DSO specifically asked the Respondent for submissions to assist in the determination of violation and sanction. In any event, the Athlete Affidavits should not be admitted as they are not relevant to the material issue at hand, whether the Respondent engaged in the conduct as alleged in the 1980s. The Athlete Affidavits do not contain any evidence which goes to the Respondent's conduct in the 1980s. None of the affiants to the Athlete Affidavits knew the Respondent at the time, or know the Interested Party now, and the vast majority were not even born in the 1980s.

171. In short, the DSO submits that none of the new evidence, even if accepted and considered for its limited probative value (if any), has any reasonable prospect of changing the Investigator's conclusions or the DSO's findings on violation. These incidents were either acknowledged as having occurred by the Respondent himself (i.e. having slapped the Interested Party, and the Bronco Incident) or having occurred in private settings.

B. Decision on the Request to admit New Evidence

172. Both the DSO and Interested Party submit that the Respondent's "new" evidence does not satisfy the requirements of the *Code* and should not be admitted. The Respondent seeks to admit it citing inter alia procedural fairness and investigative shortcomings.

173. The new evidence is particularly important for the Respondent's claim of bias. The supplementary affidavit he seeks to admit alleges the Investigator told him during the investigation that *"if he would simply admit his guilt, he could bring this all to an end"*. He says this is clear indication that the Investigator had prejudged the matter. The Interested Party and the DSO submit the Tribunal should be cautious about accepting this wholly untested and isolated characterization, which the DSO notes would be highly unusual on the part of a professional investigator, and which could easily be misleading. Specifically, to the DSO, it is possible that the Respondent is confusing being advised of this procedural option with something more nefarious. The Arbitrator favours the DSO's submission on this point. It is highly unlikely for an experienced investigator to have suggested that the Respondent admit the violation to make this all go away, and that the suggested formulation of what was said, if it was said at all, was likely less nefarious than how the Respondent now portrays it. In any event, if such a declaration was indeed made by the Investigator, the Respondent should have brought it to light far earlier. This was information that was available to him months ago. By failing to raise this concern in a timely manner, specifically that it was missing from the meeting notes upon being given the opportunity to review them, the Respondent does not satisfy the requirement of Subsection 8.7 (c). of the *Code* for this new evidence to be admitted.

174. Subsection 8.7 c) of the *Code* has been cited and relied upon by each Party to admit the evidence (the Respondent) or not (Interested Party and DSO).

175. The Arbitrator finds that all the Additional Evidence Affidavits the Respondent seeks to admit into the case file do not satisfy the four conjunctive requirements of the *Code* that would exceptionally justify allowing the evidence to be admitted.

176. Pursuant to Subsection 8.7 c), new evidence can only be considered if it:

i. could not, with the exercise of due diligence, have been discovered and presented during the investigation or adjudication of the allegations and prior to the decision being made;
ii. is relevant to a material issue arising from the allegations;
iii. is credible in the sense that it is reasonably capable of belief; and
iv. has high probative value, in the sense that, if believed, it could, on its own, or when considered with other evidence, have led to a different conclusion on the material issue.

177. In relation to his own affidavit, the Arbitrator finds that the Respondent was afforded opportunity to make submissions and file evidence during the investigation, upon receipt of the Investigation Report and then by the DSO prior to her making her determinations. The Respondent's evidence is not new evidence and therefore does not meet the threshold of the first criteria. It certainly could/should have been submitted at first instance when it could have been relevant to a material issue arising from the allegations. The evidence also does not

satisfy the remaining criteria. Succinctly, the Arbitrator does not find that its content could materially alter the outcome of this matter as it is not high in probative value, and while it may be capable of belief, it is clearly drafted in the Respondent's own interest to support the merits of his challenge.

178. The same applies generally to the affidavits of Witness 2 and Witness 7. These witnesses have been interviewed and were given an opportunity to answer questions. Their evidence could and should have been presented earlier. It does not meet the first critical criterion. As to the remaining criteria, the Arbitrator deals with them concurrently for the sake of succinctness:

- Witness 2 and Witness 7's evidence was considered by the Investigator as not being probative and holding little weight. Notably with regards to Witness 7, ultimately his evidence was of no value in the sense that he did not observe anything at all while driving the Bronco whereas both Parties admit the Bronco Incident occurred, with the only issues being who initiated the contact.
- That YZ was not interviewed cannot be attributed to the Investigator's alleged ineptitude. After trying other ways to reach YZ, the Investigator contacted her via social media, which was the only means left and YZ failed to respond.

179. Whether individual or on the whole, the Athlete Affidavits are not material to the Challenged Decision in the sense that their contents would probably not have led the Investigator to make different findings on the facts before her, and would probably not have led the DSO to make different findings on violation or impose different sanctions, as she had already considered the Respondent's current reputation in the equine community as a mitigating factor.

180. However, because the Athlete Affidavits were prepared as a repercussion to the Challenged Decision, the Arbitrator is satisfied that they *could not, with the exercise of due diligence, have been discovered and presented during the investigation or adjudication of the allegations and prior to the decision being made.* They could have been and are also relevant to the considerations at Section 7.4 of the UCCMS and thus are probative in nature.

181. Therefore, pursuant to Subsection 8.7 c) of the *Code*:

i. The Athlete Affidavits are admitted into the record as relevant and sworn evidence that has been properly filed before this Tribunal.
ii. The Additional Evidence Affidavits are not admitted into the record as they do not satisfy the mandatory criteria.

X. On the Issue of the Challenge Alleging Bias and Seeking a De Novo Hearing

182. The Respondent has challenged both the Investigator's findings and the DSO's Decision on violations and sanctions arising out of the Investigation Report. He argues this Tribunal must exercise its jurisdiction under Section 8.6 of the *Code* to intervene and restore public confidence, either by ordering a de novo hearing, or by setting aside the findings of fact that

resulted from the Investigator's errors, and the Challenged Decision as the fruit of that poison tree.

183. The DSO and Interested Party have opposite views and submit that both the investigation and the Challenged Decision arising out of the same were not biased, that the Respondent's challenge and request for a de novo hearing must be dismissed, and that the Tribunal's task is solely to assess if the DSO Decision withstands a judicial review on the basis of reasonableness.

184. The Parties' fulsome submissions are summarized below. While the Arbitrator has carefully considered them all, she refers mostly to the ones that are relevant to her legal discussion.

A. Submissions of the Parties

i. Respondent

185. Drawing a parallel between *R. v McLeod*, 2025 ONSC 4319, and his own case, the Respondent submits that even if this matter is not being adjudicated by a court, given that his livelihood is at stake, he was entitled to expect a process close to the rigors of a court, to an investigation that met the standards expected and to a competent investigator. He relies on Chairperson's Final Report Concerning the Fortin Public Interest Investigation (hereinafter *Fortin*)[6] where it was found that the investigation had been plagued inter alia by investigatory bias.

186. The Respondent submits that like in *Fortin*, here, the Investigator failed to meet the standard reasonably expected of her. The Respondent submits that this Tribunal's task is the same as that of the Fortin Commission and that this Tribunal must determine that it has all the evidence necessary to find that the OSIC conducted a closed-minded investigation that was compromised by tunnel vision and unconscious bias, while making demonstrable errors of law in treatment of evidence in service to that unconscious bias.

187. The Respondent submits that once satisfied that the Investigator approached her task with a closed mind, this Tribunal must apply Subsection 8.6 d) of the *Code* and is required to order a de novo hearing. So too must the Challenged Decision and resulting sanction be set aside.

188. He additionally argues on a review of the totality of the evidence in the case file and the treatment of that evidence, that the Investigator lacked the objectivity required in undertaking a neutral, third-party investigation. Her unreasonable failure to collect all relevant and material evidence from witnesses, including by failing to collect the most relevant evidence of Witness 7 and refusing to make bona fide efforts to even contact YZ results in an outcome that is uncapable of justification.

[6] Final Report Following a Public Interest Investigation, Pursuant to Section 250.53 of the *National Defence Act*, of a Conduct Complaint by MGen (retired) Dany Fortin (dated November 27, 2025), MPCC 2023-006.

189. He submits that the Investigator:

- Conducted an investigation that assumed the truth of the allegations and then selectively chose and relied only on the evidence that would tend to support those allegations.
- Misused evidence in ways that are clearly contrary to the law of evidence to confirm her unshakeable hypothesis that the Interested Party's account was true and proven on a balance of probabilities. She did this while simultaneously ignoring, or in some cases failing to even try to collect highly material evidence that simply did not support this hypothesis.
- Put the Respondent in the position of having to prove his innocence rather than requiring the Interested Party prove the allegations on a balance of probabilities.
- Made multiple fundamental errors in service to her tunnel vision which led to a miscarriage of justice.

With regards to the evidence

190. The Respondent submits that most of the allegations in this case are supposed to have happened when the Respondent and Interested Party were alone. The veracity of the Interested Party's allegations is therefore a matter of credibility to be weighed in light of all the evidence, and not only the evidence that tends to support the conclusion that she was telling the truth. The Investigator found the Interested Party and her version of events to be more credible than the Respondent's and so substantiated the allegations on a balance of probabilities.

191. He submits that the Investigator built a wall of credibility around the Interested Party and that the problem with the wall is that each brick in it was forged by legal error because it was made by: relying on evidence in ways not permitted by law; ignoring what the evidence actually was (the Interested Party's numerous prior inconsistent statements); or else completely overlooking material evidence that created cognitive dissonance to the Investigator's tunnel vision and unconscious bias.

192. To the Respondent, the Investigator's reliance on hearsay for its truth on the one hand, and prior consistent statements on the other, were both errors of law that were prejudicial to him.

193. He submits that the Investigator's heavy reliance on untested second-hand statements violated a basic evidentiary safeguard and is an error of law. Canadian courts warn that a witness simply repeating what the Interested Party said does not amount to independent corroboration.

194. He also submits that the Investigator reliance on the Interested Party's "prior consistent statements" (i) in a college paper; (ii) to a psychologist; and (iii) to several witnesses (Witnesses 2, 4, 5, and 8) – as proof of the Interested Party's truthfulness and credibility all amount to an error of law. These statements are inadmissible for that purpose and carry no weight in the credibility analysis of the Interested Party versus the Respondent.

Alleged errors in relation to the interviewing of witnesses

195. The Respondent raises various concerns regarding the Investigator's treatment of witness evidence, including:

- Obvious questions about the credibility and reliability of the Interested Party's testimony are raised by a non-party witness telling the Investigator that the Interested Party's version of events was not true.
- The Investigator accepting prior consistent statements for an impermissible purpose in building the Interested Party's credibility without explanation or justifying how that was possible when based on the evidence of other witnesses that it was a prior inconsistent statement.
- Using the evidence of Witnesses 4 and 5 to further bolster her assessment of the Interested Party's credibility because the Interested Party reported that she told these witnesses about the maltreatment towards her even if they were never present for any of the alleged incidents. Such testimony cannot prove the truth of the abuse allegations that were discussed, nor does it provide any support in the analysis of the Interested Party's truthfulness and credibility. Still, this evidence was accepted without scrutiny as corroborating the Interested Party's evidence.

196. To the Respondent, the law of evidence requires that statements from witnesses who cannot recall what was told to them or when should be given little to no weight in any manner because they tend to improperly prejudice the Respondent by conveying a false impression of corroboration where none truly exists. Evidence full of internal contradictions and inconsistencies should undermine the Interested Party's credibility, not the Respondent's.

197. The Respondent submits that the evidence from Witnesses 4, 5, and 8 was incapable of supporting the conclusion that the Interested Party was telling the truth. In fact, the evidence of Witnesses 2, 4, and 5 were prior inconsistent statements that should have damaged the Interested Party's credibility. And yet each was used – without intelligible explanation or justification – to corroborate the Interested Party's version of events.

Use of hearsay evidence as corroboration

198. The Respondent submits the Investigator relied on hearsay evidence to support her assessment of the truth of the Interested Party's account when even a basic examination of that same evidence as described in her own report shows that the evidence was in fact prior inconsistent statements that ought to have damaged the Interested Party's credibility.

199. He submits that:

- Under a principled approach, hearsay evidence must be necessary and must have sufficient circumstantial guarantees of trustworthiness (or reliability) to be admissible. The evidence the Investigator accepted from some witnesses does not approach the reliability threshold required to admit hearsay evidence.

- It is a fundamental investigative failure to pick and choose bits of evidence that support a hypothesis while ignoring evidence, or issues with evidence, that contradict the hypothesis. The Investigator was required to consider all the evidence and what it suggested. She made fundamental investigative errors by treating this "evidence" as "corroborative" when it was not capable of being so.

The credibility treatment of evidence

200. The Respondent submits that the Investigator noted that some of his evidence was contradicted by witness evidence. Where the Investigator was faced with "conflicting" evidence between his and that of a witness, she preferred the witnesses' evidence, finding it more credible and the Respondent's. On the other hand, when faced with actual, material conflicts between the Interested Party and witnesses, the Investigator found both the witness and the Interested Party credible and simply preferred the Interested Party's version.

201. Additionally, when the Interested Party could not remember specifics after 40 years, the Investigator forgave her memory gaps as "not material", even though the Interested Party had ample time to collect her thoughts, and based on the Investigator's own findings, clearly had numerous conversations with people in the lead-up to filing her complaint with which to refine her recitation of the "facts". On the other hand, when the Respondent had similar memory gaps or could not recall events having occurred – after being blindsided by an investigation into allegations that were 40 years old and that in large part he denies happened – the Investigator treated those lapses as material inconsistencies that damaged his credibility.

202. To the Respondent, the Investigator's asymmetry proves she had a closed mind.

The dismissal of some evidence in favor of the Interested Party

203. Witness 2 also gave the Investigator evidence that provided context for some of the allegations and highlighted what she says was considered normal behaviour in the 1980s, which tended to support the Respondent in demonstrating that his relationship with the Interested Party was typical of the time in equestrian. All this evidence was discounted by the Investigator ostensibly and solely because Witness 2 was found to have been in contact with the Respondent during the investigation and thus biased.

204. Conversely in the face of equally compelling reasons to make such a finding, the Investigator does not even address the prospect of the bias of Witnesses 4 and 5 towards the Interested Party.

205. Again, to the Respondent the asymmetry demonstrates the Investigator's tunnel vision and closed mind.

206. He also notes that the Investigator gave little attention to the evidence of Witness 6. He argues that this witness, unlike Witness 8 who to him is not a witness at all, was a real person, with real things to say, but her evidence is inexplicably subjected to little or no analysis. The Respondent submits that rather than testing Witness 6's evidence, the Investigator ignored it

completely and simply relied on the Interested Party's account as self-perpetuating proof of its own truthfulness.

Failure to collect evidence that disproves the Interested Party's account

207. Witness 7 was present during the ride in the Bronco where one of the instances of alleged sexual maltreatment occurred. While Witness 7 was briefly interviewed as a part of this investigation, the Respondent submits the Investigator failed to collect the most material and dispositive evidence that he had to give:

- Much of the evidence Witness 7 has to offer does not appear in the Investigation Report. The Investigator either failed to adduce this evidence from him or left this evidence out of her report.
- Witness 7 was not given the opportunity to answer questions about this incident, nor provide his first-hand evidence to the Investigator because she did not give him that opportunity. She also did not provide him with any notes or summaries of their meeting, so he had no opportunity to correct or clarify the treatment of his evidence by the Investigator and was denied any opportunity to correct it or expand on it.

208. The Respondent also submits that YZ had evidence to offer which speaks directly to the likelihood of the allegations made by, and the credibility assessment of, the Interested Party. But this evidence was not collected by the Investigator likely because she anticipated that YZ's evidence would not be favorable to her hypothesis.

209. On the basis of the above summarized submissions, the Respondent argues that the Tribunal has all that it needs to find bias on the part of the Investigator because throughout her investigation, the Respondent was put to the impossible task of proving his innocence, and evidence that was directly relevant to that innocence was unreasonably ignored by the Investigator.

210. The Respondent urges the Tribunal to fight the temptation not to order a de novo hearing. To him, the investigation and everything that flows from it – the Investigation Report and the Decision – must be quashed and a de novo hearing ordered.

ii. Interested Party

211. The Interested Party submits that the Respondent's allegations of Investigator bias, legal errors, and an unreasonable outcome are without merit. The investigation was conducted in accordance with the Investigation Guidelines, the findings were supported by the evidence, and the DSO's reliance on those findings was reasonable.

212. The "legal errors" alleged by the Respondent to justify his request for a de novo hearing – including the use of hearsay, prior consistent statements, and alleged inconsistencies in credibility assessments – mischaracterize the nature of administrative proceedings.

213. First, the Interested Party submits that Subsection 8.12 (c) of the *Code* permits the Panel to consider any evidence, regardless of whether it would be admissible in a court of law. The rules of evidence are relaxed in this context and the Investigator's decision to consider the totality of the evidence was not only permissible, but appropriate.

214. In this regard, the Interested Party submits that the Investigator provided detailed, transparent, and well-reasoned credibility findings. For her to have applied trauma-informed principles does not demonstrate bias, it reflects an understanding of how survivors of sexual abuse may recount their experiences. Therefore, based on the evidence, it was reasonable for the Investigator to prefer the Interested Party's evidence over that of the Respondent.

215. Second, the Interested Party submits that the Respondent's assertion that the investigation itself was inadequate is unsupportable. She recalls that the Investigator interviewed nine witnesses (including the Interested Party and the Respondent) and made reasonable efforts to contact four additional witnesses. The standard of investigations is reasonableness, not perfection. The investigation was thorough, impartial, and conducted with care. The Investigator asked appropriate questions and reached conclusions supported by the evidence

216. In response to the Respondent's numerous allegations of Investigator bias and inadequacy, she submits inter alia that:

- The Respondent also had an opportunity to challenge the evidence and credibility of witnesses upon receipt of the Investigation Report. Despite being in regular contact with Witness 2, even at times during the investigation when such contact was prohibited, he took no steps to obtain a statement from her until after the decision was rendered
- The Respondent knew that four witnesses could not be contacted despite reasonable efforts by the Investigator and raised no concern with the DSO and made no attempt to contact YZ until recently.
- The Respondent's allegation that the Investigator acted unprofessionally by contacting YZ through Facebook is overstated and meritless. Courts have recognized that, in the modern technological age, significant procedural steps, such as service of documents, can be properly substituted through social media. The use of social media for a practical purpose does not equate to unprofessionalism.
- With regards to the Bronco Incident, because there is not dispute that the touching occurred, the sole issue is who initiated it. It was ultimately a credibility assessment irrespective of Witness 7's testimony that he would have noticed it had it lasted longer.

217. Regarding the Investigator's credibility assessment, the Interested Party submits that credibility concerns a witness' sincerity and honesty. Triers of fact are entitled to rely on common sense and their accumulated knowledge of human behaviour when assessing credibility and reliability. She submits that in this case, the Investigator's conclusions on credibility and reliability were detailed, balanced, and grounded in a proper application of the law and evidence.

218. The Interested Party submits that in her Report, the Investigator's finding that she was credible and reliable was based on the following:

- Her evidence was presented in a way that was clear, direct, honest, consistent, detailed, and forthright.
- Her evidence contained an "air of reality" that would reasonably be expected to occur in a specific situation
- She had no apparent gain or external motivation outside of her stated intention to prevent any abuse from happening to others.
- Her evidence was more often corroborated by other witnesses and documentary evidence.

219. The Interested Party submits that the Respondent's assertion that the Investigator erected a "wall of credibility" around her and relied on evidence "in ways not permitted by law," and "completely overlooking material that creative cognitive dissonance" due to "tunnel vision and bias" are unfounded, both in law and principle.

220. First, the Interested Party submits that the Respondent incorrectly characterizes the evidence related to disclosures she made in a college paper, to a psychologist and to several witnesses as having been treated as "proof" of the truth of the allegations for the following reasons:

- First, the Investigator did not accept the existence of the college paper as proof that the abuse occurred. Rather, the Investigator accepted that it was credible that the Interested Party had written the paper. By identifying the professor, the Interested Party exposed her account to potential verification or contradiction. This reasonably supported the Investigator's conclusion that the Interested party had disclosed the abuse over time. Regardless, the Investigator clearly states that she *"did not place great weight on this evidence."*
- Second, and applying the same reasoning to the allegation that the Interested Party had discussed her abuse with a psychologist, the Investigator merely stated that this enhanced her credibility in the limited sense that she had reported the alleged abuse to others over the years. In fact, the Interested Party recalls that the Investigator was explicit that none of this corroborative evidence was determinative of whether the abuse occurred. It was instead relied upon solely because it "*positively impacted [the Interested Party's] credibility regarding her allegations that she disclosed [the Respondent's] conduct to certain people over the years."*

221. Second, regarding the allegation that the Investigator ignored "what the evidence actually was" and shaped the evidence to fit her pre-conceived agenda. A careful review of the Investigator's treatment of each witness demonstrates the opposite: the credibility analysis was grounded in a balanced, contextual, and principled assessment of the evidence. Notably the Interested Party submits that:

- It was reasonable for the Investigator to prefer the evidence of the Interested Party over that of the Respondent where their accounts conflicted.

- The Investigator's trauma-informed approach of assessing evidence is consistent with established law and with trauma-informed practice.
- The Investigator is also afforded discretion, and "*is not required to find [a witness] uncredible and/or unreliable because when looking at the totality of the evidence, she prefers the evidence over another witness, or that the evidence of a witness with respect to an allegation is inaccurate.*"

222. With specific regard of the Investigator's treatment and analysis of each Parties' evidence the Interested Party submits that the Investigator's analysis is reflective of a trauma-informed, contextual approach.

- The Interested Party's inconsistencies were limited and infrequent. Where she was uncertain, such as with precise timelines, she was forthright about her lack of clarity. Given the traumatic nature of the events and the fact that the abuse occurred decades ago, it was reasonable to conclude that this lack of precision was immaterial.
- The Respondent's evidence contained inconsistencies of a different character and significance, including:
    i. Providing evidence that was directly contradicted by other witnesses, including Witness 1 and Witness 3;
    ii. Initially denying hugging, kissing, or "touchy-feely" conduct with the Interested Party, but later conceding specific instances of hugging, acknowledging that he may have kissed her on the cheek at Christmas, and stating that he would put his arm around her or hold her hand, only when confronted with this evidence;
    iii. Being untruthful with the Investigator about his communications with Witness 2, despite text messages demonstrating ongoing contact after he was advised not to communicate; and
    iv. Providing answers that the Investigator reasonably found to be evasive.
- The Interested Party also importantly recalls that the Investigator credited the Respondent where appropriate, including when he made admissions which were adverse to his interests. To the Interested Party, this demonstrates a balanced assessment of the evidence and directly undermines the Respondent's allegation that the Investigator approached the investigation with a closed mind.

223. On the issue of specific witness testimony which the Respondent argues was biasedly afforded less weight or credibility than others, the Interested Party submits the Investigator conducted a balanced investigation and credibility assessment.

224. With regards to Witness 2, the IP submits that:

- It was reasonable for the Investigator to conclude that Witness 2 was a biased and unreliable witness and to therefore assign little weight to her evidence.
- It is incorrect for the Respondent to state that the Investigator did not "grapple with" Witness 2's evidence at all. After a detailed analysis, the Investigator explained why she preferred the Interested Party's account.

- Witness 2 also acknowledged that she "could not know what happened when the parties were alone together," which the Interested Party submits further limits the probative value of her evidence.

225. Regarding Witness 3, the Interested Party submits that:

- That testimony was central to the investigation. Witness 3 provided evidence in a clear, detailed, and balanced manner. It was therefore reasonable for the Investigator to accept their evidence and give it considerable weight.
- Witness 3 credibly described the Respondent's preferential treatment of the Interested Party, including that he was more "touchy-feely" with the Interested Party, and that the relationship between the Respondent and the Interested Party deteriorated over time, as evidenced by her witnessing fights between them.

226. With regards to Witnesses 4 and 5, the Interested Party submits that the Respondent takes significant and unfounded liberties with their evidence to exaggerate alleged inconsistencies and portray the Investigator as biased. But:

- The Report states that the evidence of these witnesses was "*not determinative of whether or not abuse occurred*," but rather it supported the Interested Party's credibility with respect to her disclosure of the Respondent's conduct to others over the years
- Their evidence does not contradict the Interested Party's or the Respondent's evidence.

227. With regards to Witness 8, unlike argued by the Respondent, the Interested Party submits that:

- The Investigator's reliance on the Interested Party's text messages with Witness 8 to show that the abuse was reported is supported by law.
- The purpose of the text messages involving Witness 8 was not to establish the truth of their contents in isolation, but to demonstrate that the Interested Party reported the abuse to multiple witnesses over time. This use of the evidence properly bolsters credibility, as it shows consistent reporting to different people years before the investigation commenced.

228. In final response to the Respondent's allegation that the Investigator was biased, the Interested Party submits that this matter arises in an administrative, not criminal, context. The Respondent's liberty was not at stake, and the investigation was conducted under a legislative scheme that relaxes the rules of evidence.

229. The Interested Party thus submits that the Investigator adopted a balanced and thorough approach, interviewed multiple witnesses, considered conflicting accounts, and provided detailed and reasoned findings on credibility and the weighing of the evidence. An informed person, viewing the matter realistically and practically, would not conclude that there is a reasonable apprehension of bias. The request for a de novo hearing should therefore be denied.

iii. DSO Submissions

230. The DSO submits that the Respondent's submissions misconceive the law they purport to apply, particularly with respect to bias and the admissibility or treatment of evidence and further fail to recognize the proper burdens and thresholds that apply to this challenge. This is clear even at the outset of the Respondent's submissions, which refer to and attempt to draw analogies between the present challenge and a criminal sexual assault trial, as well as a public interest investigation under the National Defence Act.

231. The DSO recalls that the Respondent's challenge is governed by Article 8 of the *Code* entitled "Specific Arbitration Rules for the Safeguarding Tribunal". The DSO's submissions apply these rules. She submits that the Respondent cannot supplement Article 8 of the *Code* by borrowing from the criminal law at-will; those legal requirements and principles are particular to the allegations, forums, and consequences that surround and follow from the specific nature of criminal proceedings.

232. The DSO also submits that the Respondent's submissions betray a clear attempt to build an entirely new record before this Tribunal and have the Tribunal assume the roles of trier of fact and decision-maker below, rather than undertake the reviewing function it is required and limited to performing in this challenge.

233. She submits that the balance of the Respondent's submissions discuss his request for a hearing de novo of the complaint made against him on the basis that the independent Investigator who investigated the complaint against him was biased. In the Respondent's estimation, this alleged bias is proven by the way the Investigator collected and considered the evidence upon which she made her findings of fact. The DSO submits this is a deeply misguided analysis that the Tribunal should not rely on for the following reasons:

    i. First, the Respondent identifies and applies the wrong test for establishing bias or a reasonable apprehension of bias by someone performing an investigative function – he relies on the adjudicative standard that applies to judges of a court of law, and not the lower standard that the courts have said apply to those performing investigative functions.
    ii. Second, the Respondent failed to allege bias, which is an issue of procedural fairness, at the earliest opportunity, and so is deemed to have waived his right to object to it on this challenge.
    iii. Third, even if the Respondent had identified the proper test for bias, he takes a confusing and inappropriate approach to trying to establish that such bias exists. Bias arises where there is some indication that an investigator failed to maintain an open mind and pre-determined an issue, not simply that the balance of the credible evidence was unfavourable to the Respondent.
    iv. Fourth, and in any case, when considered on their merits, the issues that the Respondent takes with the Investigator's treatment of the evidence reflect his misunderstanding of the law of evidence, and not any valid concern with the Investigator's approach or consideration of the evidence.

Framework for the Complaint Investigation, Adjudication and Challenge

234. The DSO submits that the Respondent's submissions conflate the roles of the Investigator, the OSIC and the DSO, as well as betray his confusion about the basis upon which he may impugn the DSO's Decision before this Tribunal. This section of the DSO's submissions clarifies the mandated procedures under the Investigation Guidelines, the Violations and Sanctions Policy, and the *Code* pursuant to which the investigation was conducted and the DSO's Decision rendered. It also outlines the provisions of the *Code* which dictate the grounds upon which a challenge may be brought to this Tribunal from a decision of the DSO, and the way this Tribunal is required to assess such decisions.

235. The DSO submits that the Investigation Guidelines govern how an investigation into a complaint is to be handled, including the distinct roles of an investigator, the OSIC, and the DSO, and recounts all the steps that occurred in this matter, which she submits wholly respected Section 4 of the Investigation Guidelines and its subsections (reproduced above) as follows:

- The complaint against the Respondent was received by the OSIC on May 16, 2024.
- The OSIC prepared a formal Statement of Allegations dated May 17, 2024 (the "Statement of Allegations"), which was provided to the Respondent.
- On or around June 28, 2024, the OSIC retained an independent Investigator to conduct an investigation against the Respondent. (Guidelines 4 (a) and (d))
- On July 12, 2024, the Respondent provided his initial written response to the allegations.
- On July 22, 2024, the Investigator prepared and provided to the Respondent additional particulars to the Statement of Allegations (the "Particulars") and offered the Respondent an opportunity to respond to the Particulars. The Respondent provided a written response to the Particulars on August 21, 2024.
- The Investigator took reasonable steps to investigate the complaint. This provision explicitly recognizes that it is for the investigator to "determine what process should be used to gather the evidence (e.g., forms of interview(s), written questions, etc.), what evidence is relevant and the weight to give the evidence." (Guidelines 4 (d))
- The Investigation Report dated April 10, 2025 (the "Report") explains that the Investigator met with the Respondent on multiple occasions and separately, with the Interested Party, and conducted interviews with seven additional witnesses. The Respondent was further afforded the opportunity to review the transcripts of his meetings with the Investigator. The Respondent's legal counsel accompanied him during all meetings. The Investigator attempted to contact four additional potential witnesses, who did not respond to the Investigator's attempts to contact them.
- After conducting interviews, gathering, and testing the evidence, the Investigator reviewed the evidence and made findings of fact based on the "balance of probabilities standard", concluded her investigation and submitted the Report to the OSIC. (Guidelines 4 (g) and (h))
- The OSIC then validated the Report and provided it to the DSO on April 10, 2025. (Guidelines 4 (j))

- Pursuant to Section 4 of the Abuse-Free Sport Policy Regarding Violations and Sanctions (the "Violations and Sanctions Policy"), the Respondent was afforded the opportunity to provide the DSO with submissions concerning, inter alia, the Investigator's findings, and possible findings of violation and sanction. The Respondent chose only to provide a short email response to the DSO on May 5, 2025, saying: *"In regards to copy of investigation report. I feel reading this report and the findings there is a leaning toward the complainant. I as the accused have answered all that was asked of me."*
- On June 11, 2025, the DSO rendered the Decision finding that the Respondent had engaged in Prohibited Behaviours and Maltreatment, and specifically, Physical Maltreatment, Sexual Maltreatment of a Minor, Grooming, and Boundary Transgressions, in violation of Sections 5.3, 5.5, 5.6, and 5.7 of the UCCMS.
- The UCCMS provides, at Section 7.3.1(a), that a finding of Sexual Maltreatment involving a Minor carries a presumptive sanction of permanent ineligibility.
- Ultimately, for the detailed reasons in her Decision, the DSO imposed the presumptive sanction on the Respondent, rendering him permanently ineligible to participate in any program, activity, event, or competition organized or sanctioned by any UCCMS Adopting Organization and/or its members.

236. The DSO thus submits that the procedure set out in the Investigation Guidelines was rightly followed by the Investigator, the OSIC and the DSO with no bias whatsoever.

The proper scope of the challenge of bias before the Tribunal

237. The DSO first recalls pursuant to *Code* Subsection 8.6(d) that a party may be granted a de novo hearing only if it succeeds in establishing bias against *the Person having investigated the allegation* - here the Investigator- or *the Person having decided on the violation* - here the DSO.

238. The DSO then recalls the restricted grounds upon which a DSO decision may be challenged before the Tribunal and specifically provides at Subsection 8.7 (b) *that the extent of natural justice rights afforded to a party to a complaint adjudicated by the DSO will be less than that afforded in criminal proceedings*. She submits the applicable law refutes the suggestions and parallels the Respondent's submissions repeatedly attempt to draw between the instant challenge and the criminal proceedings and public inquiries he relies on.

239. She submits that the Respondent does not appropriately differentiate between the two distinct types of challenges outlined above. For example, the Respondent's submissions state: *"The Investigator misapplied general principles of the law of evidence. The Investigator also acted on a view of the facts that could not be entertained while relatedly failing to consider – or even make genuine efforts to gather – obviously relevant evidence that is material to the violation decisions being challenged.* But, the DSO submits that in making the foregoing assertion, the Respondent attempts to apply the grounds to challenge a decision of the DSO for unreasonableness, set out at Section 8.7, to the findings of the Investigator. While Subsection 8.6(d) of the *Code* provides that an allegation of bias may be made against the Investigator, it does not allow for a reasonableness assessment of their findings in the same way as a decision of the DSO may be assessed for error.

240. The DSO submits that the Respondent has failed in substantiating his allegation of bias because:

i. He applies the wrong test for bias against an investigator. On this she submits that the Respondent has cited and relied upon the test which applies to adjudicators. She submits that in *Chiarelli v. Ottawa (City of),* 2021 ONSC 8256, the Ontario Divisional Court explicitly acknowledged that:

"The standard of conduct which is applicable to those performing an adjudicative function is different from those performing a purely administrative or investigative function. In the case of an administrative or investigate function, the standard is not whether there is a reasonable apprehension of bias on the part of the investigator, but rather whether the investigator maintained an open mind, that is whether the investigator has not predetermined the issue."

ii. He previously waived his right to assert that the Investigator was biased by failing to raise it at any point prior to his submissions in this present challenge; bias is a component of procedural fairness. It is well-established that allegations of bias must be put to the decision-maker at the earliest possible moment, or else the alleging party is deemed to have waived their right to assert it on a review of the decision-maker's decision.

iii. He does not identify any source or indication of the Investigator's bias which suggested that she predetermined the outcome of the complaint, and instead simply speculates that the errors he alleges the Investigator made in assessing, collecting, and weighing the evidence were a result of her bias against him.

iv. His concerns with the Investigator's collection and treatment of the evidence are ultimately unfounded. The DSO relies on specific passages of the Investigation Report to support this submission and submits the Respondent has simply misunderstood the Investigator's analysis or misunderstands what constitutes "hearsay" or a "prior inconsistent statement". There was no improper application of the law of evidence.

241. In refuting each of the Respondent's arguments claiming bias on the part of the Investigator, which she says are based on individual sentences taken out of their full context and thus without merit, the DSO expressly cites complete passages from the Report which she submits refutes all of the Respondent's arguments in relation to the Investigator's treatment of Witnesses 2, 4 and 5, 6, and 8. Notably:

- With regards to Witness 2, the Investigator found her not to be credible because of her bias.
- Regarding Witnesses 4.and 5, the Investigator did not ignore contradictory evidence but highlighted it and found it did not impact their credibility but was also not truly material.
- Witness 6's evidence was not ignored. It was summarized and perhaps not later re-emphasized. But nowhere in the Report does the Investigator say that Witness 6's evidence was given less weight.
- Witness 7's evidence was that he did not notice anything unusual occurring in the Bronco and this is sufficient to deduce that, whether the touching was for a minute or for 15-20

minutes, he had nothing further to add. His evidence does not support either party's version of the events.

- Not only does Witness 8 exist, but the Report makes clear that the Respondent knows Witness 8 and gave evidence about his relationship with them.

242. Finally, regarding the evidence that was allegedly not collected from YZ because "*the Investigator was engaged in the process of supporting her hypothesis rather than following the evidence to its natural conclusion*", the DSO submits that the Investigator did reach out to YZ during the investigation, which YZ's affidavit acknowledges. There is no reasonable basis for impugning the Investigator with allegations of bias because she reached out to a witness whose evidence was unknown to her, and that witness failed to respond.

243. While the Respondent otherwise argues that the Investigator was more forgiving to the Interested Party's fading memory than his own, the DSO submits that the instances where the parties' fading memories are discussed in the Report supply their own explanations for why certain evidence was accepted despite its frailties. The Investigator openly notes that the Interested Party's memory was not perfect but explains why she felt the Interested Party was reliable. To wit the DSO relies on this passage of the report:

> *It is important to note that the Complainant provided inconsistent evidence at times. However, the inconsistencies were infrequent and not material. Further, in the times of inconsistency, the Complainant's evidence was often also that she claimed to be unclear or had "foggy" memory on that particular topic. The Complainant was forthright about the lack of memory of some details of her allegations and the timeline in her relationship with the Respondent and she did not appear to fill in gaps where she did not have memory. For instance, she was forthcoming in stating that the timeline of when the Respondent's conduct went from holding her hand and cuddling to touching her breasts was "foggy", noting that it all "blurs together" because it happened "regularly for a few years*".

244. The DSO submits that the Investigator also gave reasons for being more concerned about the Respondent's evidence, namely that: he was sometimes contradicted by witnesses she found to be credible; he was contradicted by text message evidence; more often than the Interested Party, when he did report recalling an event of some kind, he reported that he did not have full recollection of events or was vague on details; and finally, that he was at times evasive in the manner he responded to the Investigator's questions.

245. Overall, the DSO submits that bias on the part of the Investigator has not been established by the Respondent. There is no avenue for the Tribunal to order a de novo hearing.

B. Decision on the Request for a De Novo Hearing

246. Subsection 8.6 d) of the *Code* speaks to both Investigator and DSO bias which would warrant a de novo hearing. The Respondent has focused his attention on the Investigator's alleged bias arguing that the DSO's decision arose from her eating fruit from the proverbial poisoned tree. To this end, the Respondent has raised numerous legal deficiencies in the Investigator's

Report, often grounded in criminal law principles rather than administrative law principles which apply here.

247. A careful review of all submissions, but most importantly of the actual Investigation Report as plainly and expressly written does not lead to the conclusion that the Investigator was biased or approached the matter with tunnel vision.

248. Where an investigation is conducted by an impartial investigator and in a procedurally fair manner, and that findings of fact arise out of the same, there is no basis for the DSO, a Safeguarding Tribunal or an appellate body to interfere merely because alternative conclusions might have been available or because the conclusions were not favourable to a Respondent. As found in matter SDRCC 24-0748, 2024 CASDRC 59, this is not a "do over." Bias is required for a de novo hearing to be ordered, and the Arbitrator does not find the Respondent succeeds in establishing the same here.

249. The Arbitrator finds that where the Respondent raises shortcomings in the Investigator's treatment of witnesses or evidence, the arguments are either misconstrued or incorrectly apply the rules of evidence that apply before this Tribunal, and which are set out at *Code* Section 8.8.

250. The Arbitrator equally finds that the Respondent mistakenly focuses on a far too narrow appreciation of the Report and carefully selected sections of sentences and paragraphs which, when read as a whole, lead to a different conclusion. To wit:

- On a plain and neutral reading and assessment of the Investigation Report, it contains all required elements and the investigation was completed in accordance with the OSIC Policies & Procedures, the Investigation Guidelines, all applicable policies and procedures of the OSIC and Abuse-Free Sport Program and Article 8 of the Canadian Sport Dispute Resolution Code (together the "applicable laws").
- The process was neither flawed nor unbalanced. The Investigator's treatment of all witnesses' evidence was fair and reasoned and grounded in all applicable laws.
- The Investigator's conclusions on witness credibility and reliability were detailed and balanced. For example:

  Of particular note about the Complainant's credibility in respect of the allegations of sexual behaviour by the Respondent is the Complainant's consistent statements in reporting that she was sexually abused to others. As outlined above in the Credibility section, I accept that the Complainant wrote a paper for college disclosing the abuse and identified the professor of the class she submitted the paper for, Witnesses 4 and 5 corroborated the Complainant's disclosure to them of the Respondent's abuse, I accept that the Complainant reported the Respondent's abuse to Witness 8 via Facebook messenger on January 24, 2021 (see Appendix 5), I accept that she reported abuse to Witness 2, which is supported by her message on Facebook to Witness 8, and I accept that the Complainant reported he abuse by the Respondent to her psychologist. As outlined in the Credibility section, in terms of the positive impact on the Complainant's credibility by the corroborations of her reporting abuse to others, the greatest weight of these corroborations is placed on the evidence of Witnesses 4 and 5.

However, these pieces of evidence are not determinative of whether or not abuse occurred, rather, they positively impacted the Complainant's credibility regarding her allegations that she disclosed the Respondent's conduct to certain people over the years.

- The Investigator did what was necessary to contact all witnesses, including YZ and asked sufficient questions. Perfection in this regard is not required. To expect an arbitrator to draw a conclusion that an independent investigator is biased because they did not contact a witness on an alleged presumption that the investigator knew what that witness' evidence was going to be, is preposterous. This would put the whole system as it is designed in jeopardy. This is notably so in the circumstances of this case, when a careful investigation was conducted and an extensive Investigation Report was produced.

- There is no asymmetry in the Report. The Investigator carefully weighed witness testimony and evidence, explained how and why she attributed more or less credibility to some, and recognized the inconsistent evidence of various witnesses, including both parties. For example:

  Both parties often had trouble recalling specific dates and timeframes, which is reasonable given the passage of time since the allegations took place in the 1980s. I do not find this impacted either of their credibility. However, on the whole, I found the Complainant able to recall information more often and in a more detailed manner than the Respondent. The Respondent never raised any mental or medical incapacity issues regarding his memory.

- The Investigator recognized and credited the Respondent for his admissions, notably regarding the Bronco incident and his disclosure of text messages. For example:

  After my request for full disclosure of the written correspondence he had with Witness 2, he provided a copy of same. This too positively impacted his credibility.

251. In his reply submissions, the Respondent relies heavily on decision SDRCC ST 25-0054, 2025 CASDRC 35, a recent case issued by the SDRCC where the arbitrator ordered a hearing de novo based on the inadequacy of the investigator's process. The Tribunal rightly sent the matter back to be re-adjudicated as the process lacked fairness and the decision was found to be unreasonable. Having read that decision, the Arbitrator finds there to be no similarity between the work and investigation completed by the adjudicative chair in that case, and the thoroughness of the balanced investigation conducted here. For example, in ST 25-0054:

   i. The adjudicative chair did not assess the credibility of the parties or the reliability of their evidence.
      - Here, the Investigator assessed the credibility of the Parties and all witnesses on numerous occasions as expressly provided in numerous sections of her Report. She extensively assessed and discussed the reliability and weight she was attributing to the evidence of all witnesses including the Parties, notably explaining why she attributed more weight to some than others.

   ii. Numerous fatal gaps were found in the adjudicative chair's decision making, which rendered the decision unreasonable, notably his failure to connect his findings to a breach of the applicable code of conduct.

- The Arbitrator identifies no such gaps here whether in the Investigator's fact finding, nor in the DSO's decision making. The Investigator explained at length how she arrived at her findings and how they related to the UCCMS, as did the DSO when making her determinations on violations and sanctions. There is no failure to connect the Investigator's findings to the UCCMS in this case.

iii. In finding without basis that the claimant was less credible than the affected party and two anonymous witnesses, the adjudicative chair generically concluded that the claimant engaged in conduct by saying "things to players that could constitute Maltreatment" without specifying what "things" were said and how they amounted to maltreatment.

- Here, all the Respondent's violations were specified in the Investigation Report and all the evidence sought out, assessed and weighed by the Investigator was expressly set out in detail in her Report. Her investigation was thorough and balanced, and her Report was intelligible, detailed and logical. Nothing the Investigator did here can be considered generic, summary or inadequate.
- Importantly, unlike raised in the Respondent's reply submissions when relying on ST 25-0054, the Arbitrator does not find that the Investigator excluded witnesses. The evidentiary record is complete. The evidence was treated properly by the Investigator and continues to be treated properly before this administrative tribunal in accordance with the *Code*.

252. Reliance on ST 25-0054 is thus, in fact and in law, of no assistance to the Respondent.

253. The Respondent has vociferously and extensively challenged the Investigator's work, Report and findings, and the Challenged Decision arising out of the same, and whilst urging the Arbitrator to avoid the temptation of applying the *Code* and the Report as they are plainly written, has advanced numerous arguments on how Section 8.7 of the *Code* should will the Arbitrator to overturn and quash the Challenged Decision because of bias.

254. The Arbitrator nonetheless finds that the Respondent falls short of his evidentiary burden of establishing that either Investigator or the DSO approached their work with bias or a biased perception of the outcome, as required by *Code* Subsection 8.6 c) to order a de novo hearing. Therefore, his request is denied.

XI. The Tribunal's Judicial Review of the DSO's Decision

255. The Arbitrator's final task before this Tribunal is to carefully consider and assess the Parties' submissions in relation to the Respondent's allegation that the DSO's Decision was unreasonable. The *Code* provides that such a challenge will take the form a judicial review.

256. The Parties' fulsome submissions in this regard are summarized below with additional references where relevant in the Arbitrator's legal discussion as it relates to the merits of this final determination.

A. Submissions of the Parties

i. Respondent

257. The Respondent argues that the Investigator made general errors of law by twisting evidence to support a view of the facts which cannot be reasonably entertained, while failing to consider all the material evidence that was readily available to her. These alleged breaches of the *Code* require this Tribunal to exercise its jurisdiction under Subsection 8.6(f) and find the Challenged Decision incapable of justification and thus unreasonable. In view of the myriad errors that plague the Challenged Decision, the Tribunal must make its own decision on violations pursuant to Section 8.6 of the *Code*.

258. The Respondent submits that considering the evidence, the Tribunal is left to wrestle solely with the evidence of the Interested Party and Respondent. After reviewing the evidence on the record in context, including the demonstrable lies, omissions, and prior inconsistent statements of the Interested Party contained in the Investigation Report, the Respondent submits the Tribunal should find his version of events more consistent with the account of witnesses and preferable to the Interested Party's. He argues that save for those admitted, the findings of violation are incapable of being proven on a balance of probabilities.

259. The Respondent's admissions are that:

i. He hit the Interested Party at a horse show one time and was immediately remorseful, spoke to her father about it at the time, but he identified that at that moment he felt that he had no other choice for her safety and the safety of the horse;
ii. In his Bronco, while Witness 7 was driving, the Interested Party pulled his hand into her vaginal region for a quick second, and he immediately recoiled. He did not fondle her for 15-20 minutes. He also expressed extreme remorse for this incident stating that he has been "disgusted by it" since;
iii. He may have given her a gift for Christmas or a hug here and there for doing well in a competition but that was no different from the way he would treat any other student; and
iv. He was more observant of the Interested Party at the request of her father, and because he was concerned for her well-being as a result of her difficult home life.

260. To the extent that these facts still give rise to violations under the UCCMS, he submits they are not violations capable of giving rise to a lifetime ban from all Canadian sport.

261. With regards to the Bronco Incident in particular, the Respondent's evidence is that he did not intend the Incident to occur. He did not initiate it nor perpetuate it. He did not allow it to continue. To him, the Bronco Incident does not meet the definition of Sexual Maltreatment within the meaning of the UCCMS.

262. Thus, should this Tribunal determine that a sanction is required in this case, that sanction must be based on UCCMS violations capable of being proven on a balance of probabilities, which could only reasonably include Physical Maltreatment with Contact and Boundary Transgressions.

263. The Respondent recalls that he is currently serving the sanction of permanent ineligibility to participate, in any sport, in any capacity, in any program, activity, event, or competition organized or sanctioned by any UCCMS Adopting Organization and/or its preventing him from participation, in any capacity, in all sanctioned sport, despite no finding at any time that he poses a risk to anyone, in any sport.

264. The Challenged Decision adopts the findings of fact in the Investigator's Report. In so doing it also adopts all the errors made during the Investigation rendering it unreasonable. The Respondent also notes that to be reasonable, a decision *"must be justified in relation to the constellation of law and facts that are relevant to the decision."* (*Vavilov,* para. 105) In this regard, he argues that the findings of fact made by the Investigator and adopted by the DSO are not justified in the constellation of law and facts relevant to the decision and that the Tribunal must set aside all the violations except Boundary Transgressions and Physical Maltreatment with Contact. None of the other violations are capable of substantiation. Therefoe, the Tribunal should find that no Sexual Maltreatment with a Minor is established, such that the presumption sanction of a lifetime ban does not apply here.

265. He also submits that this Tribunal is constrained by the requirement to ensure consistency with past decisions, and consistency is considered when determining whether a decision is reasonable. Given that the DSO has declined to disclose its body of past decisions of either the DSO or the DDSO and the Tribunal has also declined to order the disclosure of these decisions, the Tribunal is left with a small number of decisions of the DSO and DDSO (and of the Tribunal) with which to assess consistency with past decisions and, therefore, to conduct its reasonableness review. He relies on the facts of the decision in SDRCC ST 23-0005, 2023 CASDRC 38, which he says are analogous to the violations here. He argues that since there was essentially no ban imposed by the DSO in that case, then the ban imposed on him (the most severe possible) is not reasonable. In addition to SDRCC ST 23-0005, he also relies on various other cases from other jurisdictions where the sanctions imposed were far less that those imposed upon him and that should allow this Tribunal to conclude that the DSO's decision on sanction is not reasonable.

266. With regards to the sanction imposed, the Respondent relies on Section 7.4 of the UCCMS, which expressly provides that any sanction imposed must be proportionate and reasonable, and outlines the factors relevant to determining appropriate sanctions. Specifically, he relies on the mitigating elements set out in Section 7.4 and that various UCCMS considerations, when applied to his circumstances and the facts of this case, require this Tribunal to allow him to rebut the presumptive sanction and reduce his sanction including:

- No prior history or pattern of Prohibited Behaviour
- No previous disciplinary findings
- No ongoing or potential threat to others including the Interested Party
- Taking responsibility for actions
- Cooperation
- The negative impact of his suspension on the sporting community

- The negative impact that his suspension has on the public confidence in the integrity of Canadian sport system.
- Various other mitigating circumstances like the impact of his suspension on the athletes he currently coaches.

267. He submits that even without a de novo hearing the Tribunal can still take steps to restore public confidence in the national sports regulator by holding the system accountable. All that is required of the Tribunal to do that is to carry-out the task already required of it by Section 8.6 of the *Code* and by *Vavilov*. By properly applying the law to the record before it, this Tribunal can set aside violations that have no reasonable legal or factual basis, quash the unreasonable sanction, and in so doing demonstrate that the Tribunal lives up to its name and will not tolerate a process as flawed as this one allegedly was.

ii. Interested Party

268. Given that the investigation in this case was conducted reasonably and without procedural flaw, the question then becomes whether the DSO's conclusions were reasonable. To the Interested Party, the record demonstrates that they were.

269. The Interested Party submits that the DSO reasonably concluded that the Respondent engaged in Sexual Maltreatment of a Minor, Physical Maltreatment, and Grooming, contrary to Sections 5.3, 5.5, 5.6, and 5.7 of the UCCMS.

270. The Interested Party recalls that the Respondent does not dispute the findings of Physical Maltreatment or Boundary Transgressions, only the Grooming and Sexual Maltreatment violations. The Interested Party submits that the Challenged Decision findings in relation to these violations was reasonable. The Interested Party deals with these in turn.

The Grooming violation

271. Section 5.6 of the UCCMS sets out the framework for determining whether conduct constitutes Grooming. The process is defined as:

> *…often gradual and involves building* ***trust and comfort*** *with a person, and sometimes also with the protective adults and peers around the person. It may begin with* ***subtle behaviours*** *that may not appear to be inappropriate but that can serve to sexualize a relationship, reduce sexual inhibitions, or* ***normalize inappropriate behaviour****. It may include the testing of boundaries (e.g., seemingly accidental touching) that gradually escalates to Sexual Maltreatment (e.g. sexualized touching). It is acknowledged that many victims/survivors of sexual abuse do not recognize the Grooming process as it is happening, nor do they recognize that this process of manipulation is part of the overall abuse process*. [emphasis added]

272. The existence of a power imbalance is important in this analysis, and repeated boundary transgressions may also be deemed to be Grooming, "*even in the absence of a deliberate attempt to facilitate a sexual relationship".*

273. The Interested Party submits that all material times, she was a Minor between the ages of 12 and 17. The Respondent was an adult and her coach. This created a clear and ongoing power imbalance. Given the age, and the power imbalance, the Interested Party was incapable of consenting to any sexual act.

274. The Respondent's reliance on SDRCC ST 23-0005 is misplaced. There, the prohibited conduct at issue consisted of a single incident in which a coach brought an athlete to his home, unsupervised, during which he tickled the athlete's feet.

275. In the present case, after discussing all the incidents, the DSO's Decision ultimately concludes that "*when viewed objectively and in its totality, the [Respondent's] conduct, notably his hand holding, hugging, cuddling and spooning with, kissing the cheek of, and special treatment towards [the Interested Party] would all raise concern in the eyes of a reasonable observer.*"

276. The Boundary Transgressions occurred repeatedly over an extended period and within a clear power-imbalanced relationship. When considering the totality of the evidence, it was reasonable for the DSO to find that the Respondent engaged in Boundary Transgressions and Grooming. Given the deference owed to decision-makers under a reasonableness standard of review, there is no basis to interfere with the DSO's findings.

The Sexual Maltreatment Violation

277. Section 5.5 of the UCCMS defines Maltreatment broadly. It captures conduct such as non-consensual touching, sexualized attention, and unwelcome derogatory comments based on gender. Additionally, at Section 5.5.6, the UCCMS prohibits any sexual act or sexualized communication where there is a Power Imbalance.

278. The Interested Party submits that her age and the relationship she had with the Respondent rendered her incapable of providing consent to any sexual conduct at the time.

279. In the present case, it was found that the Respondent:

- Held the Interested Party's hands.
- Regularly hugged the Interested Party in private settings.
- Spooned the Interested Party on the couch.
- Repeatedly cuddled the Interested Party.
- Made comments about, and on one occasion slapped, the Interested Party's buttocks.
- Kissed the Interested Party on the cheek.
- Regularly touched the Interested Party's breasts over her bra; and
- Stimulated the Interested Party's genitals under her clothes on two occasions.

280. Given the extent, duration, and severity of the abuse, and noting that comparable conduct has attracted significant sanctions in the criminal context, it was reasonable for the DSO to conclude that the Respondent engaged in Sexual Maltreatment of a Minor.

281. Upon finding that the Respondent engaged in Sexual Maltreatment of a Minor, Section 7.3.1. (a) of the UCCMS establishes a presumptive sanction of permanent ineligibility.

282. While the UCCMS does provide a list of mitigating elements to consider when arriving at a proportional and reasonable sanction, unlike the Respondent argues, the Interested Party submits that attestations of good character carry little to no probative value in cases involving sexual abuse. A person's public reputation provides no insight into misconduct that occurs in private, and the affiants cannot comment on whether the Respondent committed the acts in question.

283. The Interested Party also rebuts the Respondent's efforts to argue permanent ineligibility is unreasonable because he relies on a series of media articles from other jurisdictions, none of which provide sufficient detail regarding the underlying allegations and because the only jurisprudence cited (*Wayne Gordon v. Canadian Amateur Boxing Association*, ADR 02-0013 dated August 25, 2003) involved markedly different, and less severe conduct that did not involve a minor.

284. The Interested Party was a vulnerable child who experienced a difficult home life. She was then placed under the care of the Respondent, her riding coach, who she looked to as a parental figure and as a person of extreme trust. The Respondent abused this position of trust and authority to sexually abuse her. There is no place in sport for coaches who abuse the athletes entrusted to them.

285. The UCCMS clearly provides that Sexual Maltreatment of a Minor warrants permanent ineligibility. The fact that the Respondent may be a skilled riding coach does not render the prescribed sanction unreasonable. Given that the sanction is proportionate, reasonable, and reflective of the severity of the Respondent's conduct, it must be upheld.

iii. DSO

286. The DSO submits that the *Code* is clear that the standard of review is the standard of reasonableness and that a reasonableness review does not include a re-argument of the merits of a decision. A reasonableness review must *"focus on the decision of the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place."* (*Vavilov*, para 15)

287. The DSO submits that her Decision was made after having reviewed the Report, its appendices, after affording the Parties with the opportunity to provide submissions and contains detailed reasons for its ultimate determination.

288. The DSO submits that the Tribunal must respect the distinct role of the DSO as a decision-maker and not interfere with her Decision insofar as it falls within a range of possible, acceptable outcomes and that in any event, the Respondent's submissions make no allegation that the DSO's reasoning in the Decision was flawed; they simply continue to dispute the

findings of fact by the Investigator in an attempt to re-argue the case, and the admissibility of evidence, neither of which were within the scope of the DSO or the Decision.

289. The Challenged Decision found that the Respondent had engaged in Sexual Maltreatment of a Minor. Given the express wording of the UCCMS, a sanction of permanent ineligibility falls squarely within the reasonable range that was available to the DSO. The DSO concedes that the presumptive sanction is rebuttable by a Respondent and that her Decision articulates as much, but that here, the Respondent failed to do so. Accordingly, she was required by the UCCMS to impose the presumptive sanction.

290. Nonetheless, she submits that her Decision also goes on to consider the UCCMS Section 7.4 sanctioning considerations. She submits that her Decision appropriately considered, among other things, the relationship of the parties, the inherent power imbalance between them considering their respective roles and ages, the severity of the conduct, the fact she could not conclude that the Respondent poses an obvious risk the safety of others on an ongoing basis, the historical nature of the incidents, the pattern of conduct established by the findings of fact, and the Respondent's limited submissions with respect to violation and sanction. On this last point, she further notes that she sought submissions from the Respondent on violation and sanction when she notified him and his counsel of the UCCMS presumptive sanctions.

291. The DSO submits the Respondent knew, or ought to have known that a finding of Sexual Maltreatment of a Minor was possible, if not likely, and what the sanction was likely to be given the express language of the UCCMS. That the Respondent, armed with this information, chose only to provide a three-line submission which contained nothing of substance insofar as potential sanctioning was concerned cannot render her Decision unreasonable. The DSO submits that it is inappropriate for the Respondent to now claim that the sanction is unreasonable after being made aware of the possible sanction and declining to meaningfully engage with that potential eventuality at the opportune time.

292. The DSO submits the cases relied upon by the Respondent which he says are comparable to his and help demonstrate that the sanction is unreasonable are irrelevant to the present exercise and wholly distinguishable from the case at hand because.

- All but one are from jurisdictions outside of Canada.
- None concerned a sustained pattern of prohibited conduct like the Respondent's. In fact, the majority of the cases lack particulars of the facts involved; and
- Several of the cases do not include an impacted person who was a Minor for the purposes of the relevant code of conduct.

293. Finally, the DSO submits that in any event, she is not bound by any previous decision, especially not from other, distinct administrative bodies in separate jurisdictions. Furthermore, when reviewing the OSIC's public registry, it becomes evident that permanent ineligibility from sport, while rare, is imposed in cases involving Sexual Maltreatment.

294. The DSO finally submits that the Respondent inappropriately engages in an attempt to re-argue or re-weigh the findings of fact and sanctioning considerations. Noticeably, the Respondent does not demonstrate that the DSO's Decision was unreasonable but rather tries to argue that an alternate conclusion should have been reached on his version of the evidence presented, in the absence of a de novo hearing. This is not the task before the Tribunal.

295. For the foregoing reasons, the DSO submits that a judicial review conducted on the basis of reasonableness should result in the Tribunal dismissing the Respondent's challenge and upholding the DSO's Decision.

B. The Judicial Review of the Challenged Decision

296. By reference to the process set out in the Investigation Guidelines and all procedural safeguards provided therein, and further to careful consideration of all submissions and more importantly the contents of the Report itself, the Arbitrator has found *infra* that the Investigator was neither biased nor partial in conducting her investigation, coming to her findings, or drafting her Report, and therefore that the Respondent has failed to established his entitlement to a de novo hearing. The bias allegation having been firmly set aside, the final step in this matter, and the Arbitrator's role within the same is to now conduct a judicial review of the Challenged Decision itself.

297. The Respondent has argued that he is entitled by law to expect a process close to the rigors of a court and that this final step in the process should proceed as such. The Arbitrator agrees that the Respondent is entitled to a process which respects the applicable laws and procedures set out therein, and that he is entitled to due process, particularly given that his livelihood is at stake.

298. The Arbitrator recalls however, as did the DSO and Interested Party, that this is an administrative tribunal, not a criminal court. Therefore, among others, here, the rules of evidence are not as stringent, the standard of proof is not the same, and a challenge of a first instance decision takes the form of a judicial review. The *Code* expressly provides that the applicable standard of review is reasonableness and the oft-cited *Vavilov* sets out various immutable principles in this regard.

299. The Tribunal must therefore determine whether, on the record, the DSO's Decision on Violation and Sanction under the UCCMS was reasonable.

300. Paraphrasing my esteemed colleague at the outset of his reasons in ST 23-0005 at paragraphs 109 and 110.

> *I am limited to the powers and jurisdiction granted to me by the Code. I have no power simply to substitute my own judgment for that of the Investigator or the DSO, based on what I think should happen. I can only act if authorized by the Code to do so.*

301. To be clear, unanimous satisfaction and agreement with the decision is not required to arrive at a finding that said decision was reasonable. As noted above, *Vavilov* expressly provides that

the Tribunal must indeed "*focus on the decision of the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place."* A reasonableness review does not include a re-argument of the merits of a challenged decision. So long as the decision is logical, intelligible, and transparent, it will be deemed reasonable.

302. The Tribunal does not merely rubber-stamp the work done at first instance. The Arbitrator reviews the matter and the record in its entirety. Attention must be given to all the procedural steps that occurred, ensuring the Challenged Decision articulates them logically. Careful consideration is also given to the Challenged Decision's reasons and justification for the outcome to ensure that they are sufficiently robust, coherent and reasoned to meet the test of reasonableness in fact and in law.

The Violation Findings

303. On the one hand, the DSO submits that her Decision clearly, logically and impartially sets out what has occurred and provides reasoned legal rationale for her finding that, on a balance of probability, the Respondent has violated Sections 5.5, 5.3, 5.6, and 5.7 of the UCCMS. The DSO's findings in law are that the violations of Grooming and Sexual Maltreatment involving a Minor have been established. Citing the Policy, she recalls that:

> *the DSO's role in this respect is not as an investigator or a finder of fact, but is rather to apply the UCCMS and Policies and Procedures, and to determine whether there was a violation and (then) to impose the appropriate sanctions in accordance with the principles specified in this Policy and the UCCMS.*

304. On the other hand, the Respondent submits that the Challenged Decision, as it pertains to violation, cannot stand on the facts. The Sexual Maltreatment and Grooming violations should be excluded and the findings of Physical Maltreatment with Contact and Boundary Transgressions should be the only sanctionable violations.

305. The Arbitrator does not, cannot, and will not rewrite the Investigation Report or conduct its own credibility assessment of the witnesses and parties anew in lieu of the Investigator as the Respondent requests; that is quite simply not what the *Code* provides on judicial review.

306. And, even if the Arbitrator was to exclude the Bronco Incident as an established incident of Sexual Maltreatment (as the Respondent requests), the outcome remains unchanged because other incidents which amount to Sexual Maltreatment involving a Minor are found to have occurred on a balance of probability. Based on a plain reading of UCCMS definitions and an appreciation of the findings of fact of the Report, here, the Grooming violation both led to and arose out of the Sexual Maltreatment Violation. They are inextricably linked. Therefore, the Arbitrator cannot simply exclude either of those established violations.

307. It bears mention that upon initial review of the Investigation Report, the factual circumstances of the Bronco incident did to the Arbitrator seem prima facie hard to entertain, if only spatially. However, as both Parties admitted the incident occurred, inconceivably without any reaction

from any individual in the car at the time, the Arbitrator's inability to reasonably comprehend how, again if only spatially, this incident might have occurred is not strong enough to justify substituting her own judgement for that of the Investigator, or the Parties themselves, neither of whom denied the incident occurred.

308. In any event, as stated above, even if the Bronco incident was discarded as unproven on the facts to the required standard, the Respondent is still liable and accountable for other incidents of Sexual Maltreatment involving a Minor which have been deemed established on a preponderance of the evidence. For the Respondent to persistently attack the DSO's findings on violation does not disprove them.

309. The Arbitrator recalls that judicial review is concerned with both the outcome of the decision and the reasoning process that led to that outcome in conducting reasonableness review and that this Tribunal *"must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision as a whole is transparent, intelligible and justified."* (*Vavilov*, para 15) To do otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker. Here, the Challenged Decision is indeed transparent, intelligible, defensible on the facts and justified.

310. The UCCMS violations have been established, on a balance of probability further to the Investigator's and DSO's thorough and unbiased work. These findings were arrived at intelligibly, logically and in a transparent manner – as required by *Vavilov*. The DSO's determination that the Respondent committed violations of Sexual Maltreatment involving a Minor and Grooming Violation was therefore reasonable.

The Imposed Sanction

311. The Respondent also disputes the sanction imposed in the Challenged Decision and argues that it is not proportional or reasonable. He submits that the historical nature and context in which the allegations occurred should be far greater mitigating elements than attributed to them in the Challenged Decision.

312. He submits that he has had a long successful career. And, as exemplified by the Athlete Affidavits he filed before this Tribunal, he is beloved by the equine community. He has advocated on his behalf for lenience and argues that a lifetime ban is disproportionate to his violations *quod non.* It is the most severe sanction possible and effectively bars him from earning a livelihood.

313. The DSO and Interested Party submit that the Challenged Decision properly considered and elaborated on what the Investigator determined had occurred, rightly determined those facts constituted Violations of the UCCMS, and then properly assessed what sanctions were appropriate to impose. Based on those considerations and multiple others including the historical nature of the allegations, the fact the Respondent had no subsequent report of Prohibited Behaviour and that he did not pose an obvious risk to the safety of others on an ongoing basis, the DSO determined that to allow the Respondent to continue to participate in

the face of such serious findings would put the integrity of the Canadian safe sport system into question.

314. The Arbitrator finds that the DSO respected her role and responsibilities as set out in the OSIC Policies and Procedures when imposing the sanctions. She considered all the factors outlined at Section 7.4 of the UCCMS to arrive at her sanction and ascribed aggravating, neutral and mitigating elements to these considerations, transparently setting out why she found them to be so on the facts and the evidence before her in accordance with all applicable laws. The Arbitrator finds the Challenged Decision intelligently exhibits the DSO's logic in making her determination on sanction.

315. Crucially, Section 7.3.1 of the UCCMS provides in a nutshell that:

- Sexual Maltreatment involving a Minor shall carry a presumptive sanction of permanent ineligibility.
- That sanction is presumed to be fair and appropriate.
- A Respondent may rebut these presumptions.

In the absence of an acceptable rebuttal, the DSO will be expected to impose the lifetime ban.

316. And, when confronted with the DSO's anticipated findings prior to the Challenged Decision being issued, the Respondent did not attempt to rebut the presumptions of Section 7.3.

317. In the absence of an acceptable rebuttal, the DSO imposed the presumptive lifetime ban, as expected by the UCCMS. The Arbitrator thus also finds that the DSO's Decision on sanction was reasonable.

318. The Arbitrator's work, however, does not end here.

The Presumption Rebuttal

319. The Respondent now challenges the DSO Decision on sanction as being overly harsh and disproportionate and submits that he should be entitled to exercise his right to rebut the presumptions of Section 7.3. He relies on an alternative application of the considerations of Section 7.4 of the UCCMS than the DSO's.

320. He also argues that the DSO failed to bring forward comparable cases that could allow the Arbitrator to impose a sanction consistent with those imposed in similar cases and that pursuant to *Vavilov*, he has the reasonable expectation that any sanction imposed is consistent to those imposed in the past in similar cases.

321. As cited above, pursuant to Section 7.3.1 of the UCCMS, the Respondent may rebut the presumption of lifetime ineligibility. The DSO argues that it was up to the Respondent to raise his rebuttal at an earlier time in the procedure when given the opportunity to do so and submits

that because he did not try to rebut that presumption when the DSO communicated with him prior to issuing her Challenged Decision, he should now be precluded from doing so.

322. For the reasons expressed below, the Arbitrator does not agree with the DSO notably because Subsection 8.6 (f) of the *Code* expressly grants "*the Safeguarding Panel the power to increase, decrease or remove any sanction imposed by the DSO, with due consideration being given to the UCCMS*."

323. The Arbitrator finds that even if he did not exercise this right prior to the issuance of the Challenged Decision, given the length of the sanction imposed and its impact on the Respondent's livelihood, a protected human right, the Respondent should not be barred from presenting arguments that could successfully rebut the UCCMS Section 7.3 presumptions. Precluding him from doing so could effectively result in a breach of Subsection 8.7 (b) of the *Code* which safeguards the Respondent's rights to natural justice.

324. The DSO did not err in issuing her Challenged Decision because the Respondent had not presented rebuttal arguments at that time. But the Arbitrator finds that it would be a breach of his procedural rights not to be given the opportunity to do so now. In support of this position, the Arbitrator also relies on Subsection 5.7 (b) of the *Code* pursuant to which "*the Panel shall provide a reasonable opportunity to each Party to present its case and respond to the case of opposing Parties*."

325. Accordingly, as anticipated by the *Code*, the Arbitrator exercises her discretion under Subsection 8.6 (f) of the *Code* with due consideration to the UCCMS, protected human rights, and immutable rights to natural justice.

326. The Arbitrator finds the Respondent's rebuttal submissions to be persuasive for the following reasons.

327. The DSO and the Interested Party have submitted that the character evidence offered in the Athlete Affidavits should have little impact on the sanction because the affiants had no knowledge of the Respondent at the time the incidents and prohibited conduct took place. This is true. Conversely, the Athlete Affidavits do speak to the man the Respondent is now and the positive impact he has on athletes and the sport now. This cannot be overlooked.

328. The Respondent is clearly loved and respected by the equine community and relied upon by the Athletes he coaches. He does not have any other violations or disciplinary findings cited against him. He does not appear to pose any risk to anyone in the equestrian community, much the opposite when one considers the contents of the Athlete Affidavits. All mitigating elements.

329. The stakes in this case are quite high given that the Respondent's livelihood is on the line and has effectively been taken away. The Tribunal must recognize and balance (i) the importance of the Respondent's accountability to retrospectively regulated ethical standards. and (ii) applicable international standards of human rights, specifically the Respondent's fundamental right to freely exercise his profession, which he will effectively be stripped off if his suspension

is upheld for life. Coaching equestrian sport is the only means of employment the Respondent has had for the greater part of his adult life.

330. The Respondent's age was not considered, but it is relevant. Even the imposition of a 5-year ban on an individual of the Respondent's age would be akin to imposing a 40-year ban on an individual in their 30s. As he appears to have only ever coached equestrian sport, given his age, it is hard to contemplate what other meaningful work the Respondent might be able to find if banned for an excessive period.

331. The Interested Party's evidence is that it is upon starting to process her trauma as a grown adult, that she found out through the media in 2024 that the Respondent was in charge of young riders in Canada and felt she had a responsibility to speak up about what the Respondent had done to her. She understood that the Respondent was to be coaching as Chef d'Équipe for an EC team, and she decided to file her complaint to ensure that he could not treat other young girls as he did her. A significant outcome desired by the Interested Party was therefore achieved when the Respondent lost his position as the Team Lead for the relevant EC team upon being suspended. While the Interested Party endorses the Challenged Decision, there is nothing before the Arbitrator to conclude that the imposition of a lifetime period of ineligibility was the outcome the Interested Party was seeking when she filed her complaint.

332. Almost 40 years have gone by since the prohibited conduct occurred. Disturbingly, although it appears that it was not contextually abnormal in equestrian sport at that time, the Interested Party was placed in the care of the Respondent in problematic circumstances that were enabled by her own parents. There is no doubt that trust was broken. There is no doubt that lines, some blurry, were crossed, but so too is all the witnesses' and Parties' recollection of what occurred at the time blurry. There is also no doubt that the passage of time gives rise to a difficult factual and evidentiary assessment for all decision makers. The Arbitrator recalls that the Prior Conduct Clause anticipates the same.

333. The Arbitrator is inclined to view the historical nature of the misconduct as significantly mitigating here given the legal standard of proof that applies in these proceedings. The Interested Party's trauma is real. The Respondent was found on a balance of probabilities to have committed violations of Sections 5.5, 5.3, 5.6, and 5.7 of the UCCMS in the 1980's. Yet, as is often the case, the Arbitrator cannot overlook that these findings were not without credibility issues, memory lapses, evidentiary weight consideration and contradictions. Even if the investigation was carefully and properly undertaken, ultimately, the findings in the Report relied on a credibility and reliability assessment of the Interested Party and the Respondent and rested upon varying and conflicting accounts and recollections of incidents that happened roughly 40 years ago. This is not a clear-cut case.

334. To be clear, the Respondent's prolonged relationship, conduct and behaviour towards the Interested Party within a definite power imbalance, when she was a vulnerable Minor and he in a position of trust, must not and is not being excused or condoned. The need for discipline, deterrence and ideally abolishment of abusive behaviour notably in relation to Minors is clear. To leave no stones unturned, the Arbitrator deems it imperative to state that had any sexual

relations (sexual intercourse or oral sex) occurred between the parties, a successful rebuttal of the presumptive sanction, at any juncture of a proceeding, would have been extremely unlikely if not impossible, whether the allegation was historical or not.

335. Finally, given the historical nature of this case, the evidence upon which the Challenged Decision was issued, and the findings of facts before the Arbitrator which are serious to be sure but not egregiously so, the Arbitrator notes that other than a lifetime ban, there was no alternative reasonable range of sanctions contemplated in the Challenged Decision or in the DSO's submissions before this Tribunal. This fails to meet the general consistency requirements outlined in *Vavilov* at para 129:

> *Administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker – expectations that do not evaporate simply because the parties are not before a judge.*

336. Even if the *Code* expressly provides that Arbitrators are not bound by precedent and must assess each case on its facts, reference to other cases and legal precedent, as the Parties extensively did with regards to all other legal issues in this dispute, would have assisted the Arbitrator in determining if the imposed sanction fell within a range of defensible outcomes. The findings in the only two cases of Sexual Maltreatment involving a Minor referred to here (and admittedly factually different) resulted in (i) a finding no sanction effectively being imposed and (ii) the matter being sent back to the first instance. In addition to all the considerations above and the Respondent's admissions, without reference to cases with comparable factual, historical and contextual circumstances, the Arbitrator is unable to comfortably find that the imposed sanction here falls within a range of acceptable outcomes.

337. Overall, the Arbitrator finds that, while the Challenged Decision was reasonable when taken by the DSO, now that he has exercised his right to do so, the Respondent has succeeded in rebutting the presumption of the imposition of a lifetime ban.

338. Without substituting findings of fact and determinations of violations that have been found to have been made impartially, intelligibly and reasonably by the Investigator and the DSO, and whilst acutely aware of the many aggravating circumstances set out in the Challenged Decision, the Arbitrator finds that an alternative more proportional sanction should be imposed upon the Respondent as a result of his UCCMS violations.

339. Keeping in mind her reasons above, the content and purpose of the Prior Conduct Clause, the considerations set out in Section 7.4 of the UCCMS, and the facts and circumstances of this historical case, the Arbitrator finds that at lifetime ban does not fall within a range of outcomes that she is comfortable upholding.

340. In accordance with the powers and discretion afforded to her under Subsection 8.6 (f) of the *Code*, the Arbitrator thus reduces the lifetime ban imposed upon the Respondent to a 4-year

ban (inclusive of time already served), with the opportunity for the Respondent to apply in 2 years (inclusive of the time already served) with EC for early reinstatement to participate in some or full capacity in EC sport community activities, events or programs - at EC's sole discretion as to what conditions of reinstatement are appropriate.

ORDER

i. The Respondent's challenge of the Challenged Decision is partially upheld.

ii. The DSO Decision on violation is upheld.

iii. The DSO Decision on sanction is modified by reducing the lifetime ban to a 4-year ban.

iv. The Arbitrator retains jurisdiction to deal with matters ancillary to this dispute.

All of which is ordered on this 17th day of February, 2026.

Janie Soublière, Arbitrator. C Arb.