

SPORTS DISPUTE RESOLUTION CENTRE OF CANADA (“SDRCC”)

SDRCC FILE NO. 23-0628

**DAVID SPINNEY**

(Claimant)

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**WRESTLING CANADA LUTTE**

(Respondent)

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**LUCAS O'CEALLACHAIN, ED ZINGER**

(Affected Parties)

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**FRANK FOWLIE, AHMED SHAMIYA, MARIA SCHIAVULLI**

(Intervenors)

**JURISDICTIONAL AWARD**

**Jurisdictional Arbitrator: The Honourable Robert P. Armstrong, K.C.**

**Counsel:**

André Marin, Counsel for the Affected Parties and for Frank Fowlie

Jordan Goldblatt, Counsel for Wrestling Canada Lutte

Michael A Smith, Counsel for David Spinney

## I. INTRODUCTION

1. This is an application made by counsel for Frank Fowlie, to merge Mr. Fowlie's appeal (SDRCC 22-0609) under the Canadian Sport Dispute Resolution Code ("the Code") with an appeal by David Spinney (SDRCC 23-0628) under the same code.

2. The application for merger is brought pursuant to s.5.4(b)(ii) of the Code, which provides:

The Jurisdictional Arbitrator shall have all the necessary powers to decide whether to merge two or more cases filed before the SDRCC that involve most of the same parties and share similar facts and issues, where parties do not agree to merge the disputes.

Both cases involve the sport of wrestling and Wrestling Canada Lutte (WCL) is the respondent in both cases.

3. The cases involve coaches, administrators and wrestlers. They involve a bitter personal intra sport rivalry among the group of individuals, which to a large extent is expressed in the exchange of many harassing e-mails among the people involved.
4. The first case is SDRCC 22-0609. The claimant is Frank Fowlie and the respondent is WCL. Frank Fowlie was the Complaints and Appeal Officer of WCL. The respondent is WCL. There are 3 affected parties: David Spinney, Ahmed Shamiya and Maria Schiavulli. Mr. Spinney was a Senior Wrestling Coach. Ms. Schiavulli is a mother of a female wrestler.
5. The second case is SDRCC 23-0628. The claimant is David Spinney. The respondent is WCL. The affected parties are Lucas O'Ceallachan and Ed Zinger. Mr. O'Ceallachan is a wrestling coach and Mr. Zinger was the head referee for WCL. There are 3 intervenors in this case: Frank Fowlie, Ahmed Shamiya and Maria Schiavulli.

## **II. THE POSITION OF COUNSEL FOR MESSRS. FOWLIE, O'CEALLACHAN AND ZINGER IN RESPECT OF MERGER**

6. Mr. Marin, counsel for Messrs. Fowlie, O'Ceallachan and Zinger, cited the Ontario Rules of Civil Procedure (rule 5.46) relating to the joinder of claims and parties and the consolidation or hearing together of cases. His purpose was to demonstrate that the underlying principles of such rules are applicable to the merger of the cases now before me. He submits that section 5.4(b)(ii) of the Code mimics the rules of Civil Procedure in Ontario. Mr. Marin cites Todd L. Archibald and P. Tamara Sugunasiri who in a note to the Ontario Superior Court Practice publication made the following comments:

Rule 6.01 provides the court with broad powers and a broad discretion in making any order under our present 6.01. The policy behind our present 6.01 is to save expense and avoid a multiplicity of hearings and proceedings.

Mr. Marin submits that the underlying policy of the merger rule under consideration in this case has a similar objective.

7. Counsel submits

Cases 0609 and 0628 share the same pattern of harassment. In both cases, Spinney leads the attack by sending a barrage of vile, defamatory emails copying persons of authority in government and sport with no other purpose than to get Fowlie fired without regard to truth. Joining 0609 with 0628 would produce economies of scale. Why duplicate what are essentially two very similar cases? Case 0609 is still in its infancy. No evidence has been tendered. If the cases are not joined, there is a risk of contradictory decisions. The evidence presented in both cases would be similar if not exactly the same.

## **III. THE POSITION OF COUNSEL FOR DAVID SPINNEY IN RESPONSE**

8. Counsel for Mr. Spinney opposes merger on a number of grounds set out in the following paragraphs.

9. Counsel submits that SDRC 23-0628 involves “A narrow issue requiring a stringent analysis of the procedural errors in respect of the reasonable apprehension of bias, which led to Arbitrator Ratushny’s decision. SDRCC 22-0609 involves Mr. Fowlie’s appeal of Arbitrator Cullen’s decision, which designated the complaint as a process no.1: the least stringent process.
10. Counsel for Mr. Spinney submits that there were separate and distinct processes in each case. As indicated SDRCC 22-0609 was designated a process no.1 complaint for which there is no right of appeal. It is also submitted that the merging of these two cases could result in oral evidence, when it was originally not permitted.
11. Counsel submits that the merger of the two cases, notwithstanding that Mr. Spinney and WCL are common parties in both cases, would cause further confusion and prejudice to the parties.
12. It is further submitted that merging the cases would prejudice Mr. Spinney by making Mr. Fowlie a party to both cases. It is alleged that Mr. Fowlie has a history of vexatious litigation and personal animosity towards Mr. Spinney, who has commenced several proceedings before the WCL, the SDRCC and the Superior Court. Counsel also makes a number of allegations about the inappropriate conduct of Mr. Fowlie in respect of his conduct in support of Mr. Zinger and Mr. O’Ceallachan.
13. Counsel submits that the merging of the two cases would increase cost, the time it would take to complete the process, and the complexity of dealing with a greater number of parties.

#### **IV. POSITION OF WCL**

14. WCL submits that the only parties in common between 22-0609 and 23-0628 are WCL

and David Spinney, both of whom oppose merger. Counsel for WCL submits that:

- a. the parties are different;
- b. the affected parties are different;
- c. the issues are different;
- d. facts are different; and
- e. the stage of each proceeding is different

15. Counsel for WCL further submits that the two cases arise from different complaints. He points out that 23-0628 is going to proceed as a hearing de novo before Arbitrator Pound in which he will hear viva voce evidence and it is anticipated that a dozen witnesses will be called. Arbitrator Pound has already heard and determined a number of procedural issues and the case is said to be ready to fix a hearing date.

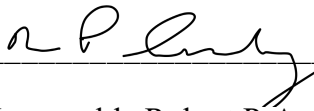
16. Counsel for WCL relies on the definition of “Party” in Article 1.1(jj) of the Code which does not include an intervenor. As a result, in this case the only parties in both proceedings are Mr. Spinney, Mr. Fowlie and WCL. Counsel submits that most of the parties are not involved in each proceeding. Accepting that an intervenor is not a party only Mr. Spinney and WCL are involved as parties in both cases. The parties who are involved in only one of the two cases are Mr. Fowlie, Mr. O’Ceallachan, Mr. Zinger, Mr. Shamiya and Ms. Schiavulli.

#### **V. ANALYSIS AND CONCLUSION**

17. While the facts and issues of each case would appear to have a common thread, I do not believe I can ignore the express language of Article 1.1(jj) in respect of the definition of “Party”. I am therefore not able to conclude that the two cases “involve most of the same parties.” I accept the position of counsel for WCL in this respect.

18. In addition to the above there appears to be another factor, which also gives me pause to grant the merger of the two cases. These two cases are at different stages of proceeding. Case 22-0609 is already in the hands of Mr. Richard Pound, K.C. and it appears ready to go. Case 23-0628 on the other hand is not ready to go. Mr. Marin has described the case as in its infancy. To cite an old aphorism: “Justice delayed is justice denied.”
19. In the result, the application for merger is dismissed.

Dated in Toronto this 16th day of June, 2023.

  
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The Honourable Robert P. Armstrong, K.C