

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

NO: SDRCC 23-0692

BETWEEN:

PARTY A

(CLAIMANT)

AND

HOCKEY CANADA (HC)

(RESPONDENT)

AND

MARC SLAWSON

(AFFECTED PARTY)

ORDER ON CONSERVATORY MEASURES

Appearances:

On behalf of the Claimant: On their own behalf

On behalf of the Respondent: Adam Klevinas, Counsel
 Nathan Kindrachuk, High Performance Director

Karen McArthur On behalf of the Affected Party

1. On December 26, 2023, I was appointed under Section 5.4(a) of the *Canadian Sport Dispute Resolution Code* (the “Code”) to hear Party A’s (the “Claimant”) application for Conservatory Measures under section 6.7 of the *Code*.
2. This decision is based on the written submissions of the parties.

3. On December 27, 2023, I issued my decision to deny the application, with reasons to follow. These are those reasons.

OVERVIEW

4. Hockey Canada (“HC”) is the national governing body for amateur hockey in Canada. The Affected Party is the head coach of the Toronto Titans U15 AAA hockey Team (the “Team”).
5. In the fall of 2023, the Affected Party was the subject of two complaints of maltreatment made anonymously to HC’s Independent Third Party (“ITP”). The ITP accepted the complaints and referred the matter to adjudication.
6. On November 24, 2023, an adjudicator issued a decision finding that the Affected Party violated the Ontario Hockey Federation *Code of Conduct*, the Greater Toronto Hockey League *Code of Conduct* and Rules as well as the *Universal Code of Conduct to Prevent and Address Maltreatment in Sport* (“UCCMS”) (collectively, the “Policies”) by isolating and singling out players in a grossly negative way in front of their peers, swearing and expressing frustration with his players in such a way that could have humiliated them and/or impacted their self-esteem. (the “Decision”)
7. The Affected Party was suspended from all HC sanctioned activities for one month from November 24, 2023 until December 24, 2023 and put on probation from December 25, 2023 until December 25, 2024. The adjudicator recommended permanent suspension of the Affected Party if there were further incidents of this nature during his probationary year that may seriously impact the psychological well-being of minor hockey players.
8. The Claimant (who has remained anonymous throughout the process) is the parent of a player on the Team. The Claimant appealed the Decision, contending that the adjudicator was “far too lenient” with the Affected Party in affording him extra time to reply to the allegations and in accepting submissions that exceeded a limitation on length. The Claimant also contended that in imposing the sanction, the adjudicator failed to give sufficient weight to evidence, specifically seven videos, that she gave insufficient weight to HC’s *Maltreatment Complaint Management Policy* sanction factors, and that she failed to give sufficient weight to the aggravating factors.
9. The Claimant further asserts that although the Affected Party was suspended from participation in any capacity including communication, immediately following the sanction, he engaged in public intimidation of the complainants, causing others to become fearful and discourage them from coming forward with their own complaints.

10. The Claimant seeks immediate suspension of the Affected Party until the appeal is decided. The Claimant argues that without conservatory measures, the athletes on the Team are at imminent risk of further psychological abuse.
11. HC asks that the request be dismissed.
12. The Affected Party opposes the granting of any Conservatory Measures, arguing that Party A seeks, in effect, to re-litigate a matter that has been investigated and adjudicated.

ANALYSIS

13. Conservatory Measures may be ordered to *prevent irreversible consequences or to stay a decision under appeal pending a final award* (Code Section 1.1 (n) and 6.7).
14. Conservatory Measures are an extraordinary remedy, granted only in exceptional circumstances and only where the rights of a party may otherwise expire (*Gagnon v. Racquetball Canada* SDRCC 04-0016).
15. My task at this stage of the proceedings is not to determine the appropriateness of the sanction imposed on the Affected Party. While I understand the Claimant feels strongly that the sanction imposed by the adjudicator was grossly inadequate, my task is to decide whether to impose provisional or conservatory measures until the Tribunal has decided on the merits of the appeal.
16. The Tribunal has consistently applied the principles outlined by the Supreme Court of *Canada in RJR Macdonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 in the context of a provisional measures application:
 - (a) The existence of a serious issue to be tried on the underlying appeal;
 - (b) The likelihood of irreparable harm to the moving party; and
 - (c) The balance of convenience must favour the granting of the relief sought.

(see, for example, *Smirnova v Skate Canada* (SDRCC 16-0291) and *Foucher, Ives and Park v. Taekwondo Canada* (SDRCC 15-0251))

Serious Issue

17. This part of the test is not a stringent one. The Claimant need only show a *prima facie* case.
18. Given the nature of the complaint, only a very brief summary of the decision has been made public. However, I have been provided with a full reasoned decision. It consists of 19 pages. Following a determination that the Affected

Party had contravened the *Policies*, the adjudicator imposed the sanction after analyzing the facts in light of the factors outlined in HC's *Policy*.

19. While I will not express an opinion on how the Tribunal may ultimately regard the adequacy of the sanction, I am not persuaded that it is presumptively grossly inadequate or obviously incorrect. In other words, I am satisfied that the Claimant has demonstrated a *prima facie* case.

Irreparable Harm

20. From the date of the complaint on September 18, 2023 until the date of the decision, there were no additional complaints made against the Affected Party. He was suspended for one month. His conduct will be closely monitored for an additional year. The adjudicator ordered that he undertake anger management counseling. While the Claimant contends that one month of counseling is insufficient, they provide no evidence to support this assertion. I find, based on the evidence submitted in this application, that the Affected Party started receiving counseling upon receipt of the complaint (September 18, 2023) and he has made a commitment to continue to do. Therefore, I accept that he has had at least three months of counseling prior to the end of the period of suspension.
21. I am not persuaded that the athletes on the Team will suffer irreparable harm if the Affected Party is allowed back coaching in accordance with the conditions imposed in the decision under appeal, until the merits have been decided. While the Complainant contends that the athletes will be at risk of further psychological abuse if Conservatory Measures are not imposed, they provide no evidence in support of that assertion.
22. The Claimant's right to pursue an appeal of the sanction will not expire if Conservatory Measures are not imposed.
23. While protecting athletes from maltreatment and ongoing harm is an important issue to be considered, the allegations have been fully considered by an independent adjudicator. There is no suggestion that the adjudicator was not independent or that the process was unfair. That the Claimant disagrees with the sanction does not, in itself, amount to a conclusion that any of the parties will suffer irreparable harm.

Balance of Convenience

24. HC has an obligation to provide an athletic environment free from any form of maltreatment. In response to the complaints, it initiated a thorough process with a third-party adjudicator. There is no suggestion, or evidence, that the parties did not have a full and fair hearing. The Affected Party has complied with the terms of the sanction.
25. The Affected Party remained the Head Coach of the Team for a minimum of three practices and at least three games per week between September 18, 2023 until November 24, 2023 (the date of the Decision) without any further complaints being made against him. Although the Claimant asserts that the remaining Team members will suffer negative effects if Conservatory Measures are not imposed, there is no evidence that is the case.
26. I am not persuaded that allowing the Affected Party to return to coaching, on a probationary basis, will cause irreversible consequences to the athletes on the Team pending a full hearing of the merits of the appeal.

CONCLUSION

27. The request is denied.

DATED: January 2, 2024, Vancouver, British Columbia

A handwritten signature in black ink, appearing to read "Carol Roberts". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the left.

Carol Roberts, Arbitrator