

A Reason for Coaches to Know the Rules and Stay Engaged

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It is not often that a case comes from the Canadian courts dealing explicitly with coach employment, so when there is one, it is important that we report on it. Although it is unfortunate that this case occurred at all, lessons can be drawn from it. The initial incident, while serious in and of itself, was compounded further by the actions of many parties. This case need not have ended up in litigation, but it did.

The case is *McGarrigle v. Canadian Interuniversity Sport* (CIS)*. McGarrigle, the coach, lost his job as a result.

Tim McGarrigle had been the men's basketball coach at Dalhousie University for eight years. He was suspended by a disciplinary committee of the CIS for "knowingly" playing an ineligible athlete. Apparently, one of his players showed McGarrigle a copy of his transcripts. It had an "F" and a notation "academically dismissed". The player said it was all a mistake. McGarrigle told him to get the error corrected. When the athlete showed up ready to play two days later, the matter was never discussed, and McGarrigle assumed that the athlete had corrected the error and went ahead and played him. In fact, the athlete had not corrected the transcript, and the result was that an ineligible athlete competed.

The Discipline Committee of the CIS subsequently found that the coach had breached CIS eligibility rules, and McGarrigle was suspended for the rest of the season from participation, in any capacity, in men's CIS basketball. The decision was substantially based on the report of the athletic director (AD) to the CIS that stated that McGarrigle was fully aware of the student's academic status.

McGarrigle appealed the decision. In a joint statement of facts by the two parties (McGarrigle and the CIS), the parties agreed that McGarrigle had never received a copy of the AD's report to the CIS. Further, the AD had waived the 14-day notice period for the disciplinary hearing on behalf of McGarrigle without his knowledge or consent. (No doubt the parties thought that this was a fairly straightforward matter and did not pay particular attention to the process.) The parties also agreed that the privacy policy of the university dictated that those authorized to access student information, including academic records, could not share such information with unauthorized persons such as McGarrigle.

The Appeal Committee of the CIS heard and dismissed the appeal. The original penalty stood, and McGarrigle was suspended for the rest of the season and from any involvement in the university basketball program. In addition, by this time, the university had already taken steps not to renew his contract.

McGarrigle took the matter to his final level of hearing and sought judicial review of the decision at the Ontario Superior Court of Justice. The Court found numerous errors — errors in the procedures used, errors in the interpretation of the organization's own policies, and, finally, breaches of the rules of natural justice. These errors started right at the beginning and were supplemented at each level of the disciplinary process. In its decision, the Court noted that as McGarrigle's

livelihood and reputation were at stake, the CIS had a high onus to “get it right”, which they did not do.

First, the Court found that the CIS did not make clear the case against McGarrigle. Its own rules stated that any charge must be set out in writing, including all pertinent details and the rule, policy, section, or practice of the CIS Operations Manual that has been breached. The AD had written that McGarrigle was aware of the academic status of the athlete. From that statement, the Discipline Panel found that McGarrigle “knowingly” played an ineligible player.

The second problem the Court found was that the Discipline Committee had expanded the charge against McGarrigle. It had no jurisdiction to do so. It could hear only the complaint as referred to it by the Complaints and Investigations Committee of the CIS, not some other charge or expanded charge. The Court found that the Appeal Panel did the same thing, enlarging the charges from those heard by the Discipline Committee. An appeal panel can review only what the previous level of decision-makers has heard. They cannot add other matters. By looking at the ethical conduct and responsibilities of the coach, the Appeal Panel moved beyond whether there had been a breach of the eligibility rules.

Third, McGarrigle originally appealed the Discipline Committee’s decision on the basis that they had made certain procedural errors. In the joint statement of facts for the appeal, the CIS agreed that there had been such errors (first, McGarrigle had not received the reporting letter from the AD and thus did not know what the AD had written and, second, McGarrigle had not known of, and thus could not have consented to, the waiving of notice for the hearing). Based on these acknowledged procedural errors, the Court said that the Appeal Panel should have immediately granted the appeal.

Knowledge of the AD’s report was particularly important because the Discipline Committee made its findings against McGarrigle on the basis of comments in the report without McGarrigle’s knowledge or further input. Further, it is quite clear that the interests of the university and the AD were not the same as those of the coach, particularly in light of the fact that CIS rules made it the responsibility of the AD to confirm eligibility. As well, the privacy policies of the university precluded access to student records by the coach.

Fourth, the Court found that on the expanded grounds heard by the Appeal Panel, there was no evidence before the Panel. To make its decision, the Panel had to have inferred evidence not in front of it. Decisions can be made only on the information before a Panel. Sometimes that evidence is incomplete, but this lack does not permit a Panel to rely upon its own knowledge nor to “read in” to the proceedings information not presented by the parties.

Last, the Court found that the CIS misinterpreted its own rules when it found against McGarrigle. The rules of the CIS make it the responsibility of the AD to ensure the eligibility of the players. In reality, the AD, not McGarrigle, should have been the subject of this disciplinary proceeding.

This case is instructive for anyone involved in managing a hearing or, more to the point, sitting as a decision maker in a hearing. Staying within one’s jurisdiction, interpreting one’s rules properly, and ensuring that individuals, in their own right, have proper notice and information can be tricky. Through a sense of familiarity, we are sometimes lulled into the belief that information will be passed along or conveyed. In fact, particularly where a person’s livelihood and reputation are at

stake, the whole process must be carried out formally and meticulously.

The coach is not without blame here. He could have saved himself from the disciplinary and judicial hearings by being more diligent and not simply assuming matters would be taken care of. He could have confirmed that the athlete's transcript had been corrected, and he could have taken steps to watch out for his own interests and be actively engaged in the disciplinary process right from the beginning.

This is the second time within a very short period that we have been aware of situations in which parties have not been familiar with the rules (in particular eligibility rules) under which they work. Rules of eligibility are fundamental to the sport system and particularly to varsity sport, and those who are tasked with enforcing these rules must know them thoroughly. The consequences of not knowing the rules can be huge, as demonstrated by this case.

EDITOR'S NOTE: On August 5, 2003, Tim McGarrigle filed a lawsuit with the Supreme Court of Nova Scotia against both Dalhousie University and its athletic director, alleging defamation.

* McGarrigle v. Canadian Interuniversity Sport, [2003] O.J. 1842 (O.S.C.).