

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

Nº: SDRCC 17-0330

FOOTBALL QUEBEC  
(CLAIMANT)

AND

FOOTBALL CANADA  
(RESPONDENT)

**Tribunal:** Patrice Brunet (Sole Arbitrator)

**Date of Hearing:** July 11<sup>th</sup>, 2017

Appearances:

For the Claimant: Jean-Charles Meffe  
Frederick Verville

For the Respondent: Shannon Donovan  
Robert St-Pierre  
Chris Valardo  
Louie Velocci

## **DECISION WITH REASONS**

### **I. INTRODUCTION**

1. This arbitration was conducted under extraordinary time constraints.
2. On July 10<sup>th</sup>, 2017, the Claimant filed an appeal to the SDRCC regarding the suspension of one of its athletes for 2 quarters (half a game) of the Claimant's following game to be played in the tournament.
3. On July 11<sup>th</sup>, 2017 at 8:45 a.m. (EDT), I accepted the appointment to act as Arbitrator in the present proceedings, under article 6.8 of the Canadian Sport Dispute Resolution Code (the "Code"). There were no objections raised by any of the Parties.
4. The administrative and preliminary conference calls were concurrently held on that same day at 9:00 a.m. (EDT). During this call, it was established by the Parties that a decision would be required by 11:30 a.m. (EDT) on the same day, since the next game was scheduled for that afternoon. Considering the extreme urgency of the case, the SDRCC agreed to exceptionally waive the Resolution Facilitation session requirement.
5. During the preliminary meeting, the Parties agreed that my scope of review would not focus on the actions of the athlete in question on the field of play, but rather on whether due process was followed, leading to the suspension.
6. They also agreed that the proceedings would be held in English. If assistance in French was needed, then it would be facilitated through repetition, rephrasing or translation.
7. The hearing was held via conference call on the same day at 10:30 a.m. (EDT).

8. I rendered my short decision shortly thereafter. I allowed the Claimant's appeal and concluded that the field of play decision should not have been reviewed under the *Protests, Appeals and Disciplinary Action* section of the *Football Canada Cup 2017 Technical Information Package* (the "Technical Information Package") Therefore, I quashed the Football Canada Cup 2017 Governing Committee's (the "FCCGC") decision to suspend Mr. Alexandre Dubois (the "Athlete").
9. The reasons for my decision are set out below.

## **II. THE PARTIES**

10. **Football Quebec** is the governing body for the development of amateur football in the province of Quebec.
11. **Football Canada** is the national governing body of Canadian amateur football.

## **III. JURISDICTION**

12. The Sport Dispute Resolution Centre of Canada (SDRCC) was created by Federal Bill C-12, on March 19<sup>th</sup>, 2003<sup>1</sup>.
13. Under this Act, the SDRCC has exclusive jurisdiction to provide to the sports community, among others, a national alternative dispute resolution service for sport disputes.
14. All Parties have agreed to recognize the SDRCC's jurisdiction in the present matter.

## **IV. BACKGROUND**

15. The Athlete was suspended for 2 quarters based on a video review conducted by the

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<sup>1</sup> The *Physical Activity and Sport Act*, S.C. 2003, c.2

FCCGC under the Technical Information Package.

16. The events under scrutiny happened during a football game at the Football Canada Cup 2017, between Team BC and Team Quebec, where a player from Team Quebec, Alexandre Dubois, was involved. During the game, there were two flags for roughing, involving this player. There were no further recorded infractions towards this player nor any suspensions during the game.
17. There were six (6) or seven (7) referees of Level III on the field of play, which is consistent with the application of the rules.
18. After the game, a protest was filed by Team BC. The protest was reported to request video reviews of the conduct of Alexandre Dubois by the Referee in Chief, for the probable purpose of taking further disciplinary action, in addition to what had been determined on the field of play, and during the game. The full content of the protest has not been provided to the Tribunal nor to the Claimant, although parts of it were reproduced. However, since the appeal focuses on the findings of the FCCGC, the content of the document is not material to my analysis.
19. The suspension of 2 quarters was declared to have been made under the *Protest, Appeals and Disciplinary Action* section of the rules.
20. The video identified the plays on the field and the player number (#15) which turned out to be Alexandre Dubois.
21. Both Parties agreed that upon video review, some calls were missed by the referees regarding Alexandre Dubois and that his vigorous actions on the field of play should have been more severely sanctioned under the rules.
22. The Parties also recognized that, generally, the BC-Quebec game was very rude. They also agreed that the referees who had been appointed for the game were probably not qualified to referee a game of this level, although they were all Level III recognized officials and had the required certification to referee this game.

23. The sanctioning authority for the game of football in Canada that trains and certifies coaches is the Canadian Football Officials Association (the "CFOA"), an independent organization which trains and certifies football officials. Neither Football Canada nor Football Quebec directly regulate officials so they rely on the CFOA to provide the appropriate referees.
24. The purpose of Football Canada's review after the game was to correct the deficient referees' decisions made during the game.
25. When Team BC filed their protest, Parties including Football Quebec and Alexandre Dubois were convened to a meeting with the FCCGC, 33 hours after the game and 18 hours before the following game. The Game Referee was not invited to the meeting, which lasted 24 minutes. Neither Football Quebec nor Alexandre Dubois were provided with a copy of the protest. Also, Alexandre was not invited to speak and offer his version of events.
26. Shortly after, Alexandre Dubois was suspended based on the *Other-Game Related Incidences* section of the Technical Information Package. These are the rules under which the meeting took place which led to the 2-quarter suspension of Alexandre Dubois.

## **V. POSITION OF THE PARTIES**

27. This section summarizes the oral and written submissions of the Parties. Although this is not a detailed record, I carefully examined all submissions presented by the Parties.

### **A) The Claimant**

28. The Claimant submits that the FCCGC's decision to suspend Alexandre Dubois will affect the Athlete. He will have less time to play and shine in front of the national

team recruiters. It will also have an impact on the performance of the team during the tournament.

29. The Claimant also claims that the FCCGC sanctioned the Athlete through means that are not envisioned in the rules of the game. Furthermore, no report was submitted by the referees on the official game sheet.
30. They state that the FCCGC sanctioned Alexandre Dubois without due process: he was not provided with a copy of the protest nor an opportunity to speak and above all, the video review should not be used for this purpose when referees are on the field of play to make those calls.
31. In their opinion, the Athlete cannot be sanctioned after a game for an infraction that was not sanctioned by the referees themselves during the game.
32. Furthermore, the Claimant submits that the meeting convened by the FCCGC was too close in time to the next football game because of the complex pregame preparation required for games of this level.
33. They request that the FCCGC remove Alexandre Dubois' suspension of 2 quarters for the second game of the tournament on July 11<sup>th</sup>, 2017 as a result of a lack of jurisdiction of the FCCGC.

#### **B) The Respondent**

34. The Respondent submits that Alexandre Dubois violated the *Code of Ethics and Conduct*.
35. They explain that the suspension imposed is half a game shorter than what they viewed as a potential outcome for violation.

36. In their view, the actions of the Athlete jeopardized the safety and integrity of the game of football. The overall conduct of the athletes and safety of the players is paramount.
37. The game referee failed in his duty to properly assess penalties, and it was further exposed that he had been suspended for 8 games, for having missed those calls.
38. In the FCCGC's decision, it was determined that it was in the best interest of the integrity of the game and for the safety of the players to sanction Alexandre Dubois. By giving him a half-game suspension, it sends a strong message to all participants in the Football Canada Cup 2017.
39. The Respondent also states that the rules that applied in this instance are found on page 23 of the Technical Information Package regarding game-related incidences.
40. They ask the Tribunal to confirm that the Football Canada Cup 2017 manages itself under the guidelines set forth for this tournament and maintain Alexandre Dubois' suspension.

## **VI. THE APPLICABLE LAW**

### **A) The SDRCC Code**

#### *6.17 Scope of Panel's Review*

*(a) The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:*

*(i) the decision that gave rise to the dispute;*

*[...]*

*(iii) and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.*

*[...]*

B) Technical Information Package

**PROTESTS, APPEALS & DISCIPLINARY ACTION**

**CODE OF ETHICS AND CONDUCT**

*Only the highest standard of sportsmanship and conduct, both on and off the field, are expected of all those participating in or are connected in any way with Football Canada U16 Regional Challenge. Those who do not live up to the Football Canada Cup Code of Conduct will be disciplined in accordance with this policy.*

*In particular, but not limited to, the following conduct shall not be tolerated:*

- *Personal Misconduct of any kind; including harassment and abusive behavior;*
- *Vandalism of any kind; and*
- *Drugs and Alcohol use or possession contrary to declared rules and regulations.*

[...]

**GAME-RELATED PROTESTS DURING FCC**

Other Game-Related Incidences

*Game Referee shall submit a written report of the incident to the Referee-in-Chief immediately after the game. The FCCGC will decide if any additional reports are required and if and when the FCCGC will convene.*

*(Any decisions not to request written reports or to convene a meeting must be recorded by the Chairperson and submitted to the Organizing Committee and FC for the record. This record must include the known details of the incident and explain the rationale for the action taken.)*

*The FCCGC may also request additional reports from the field convener and/or any person acting in some official capacity of the tournament who witnessed the events e.g. volunteer, tournament committee member.*

*The Football Canada Cup Football Canada **staff** is responsible for soliciting all of the reports referred to above and seeing that they are submitted to the proper individual.*

*Any actions by participants not covered by game rules but which are contrary to the Code of Ethics and Conduct of the tournament as described above will be treated as follows:*

- *Any player, coach, game official, volunteer, committee member or other participant of the tournament may submit a verbal report of any incident to a member of the FCCGC at any time during the tournament, preferably immediately after the incident.*
- *The FCCGC member will immediately notify the FCCGC who will decide whether or not the Committee should convene. These decisions will be reported to the Chairperson of the Organizing Committee verbally or in writing prior to the end of the tournament.*



- *If the FCCGC decides to convene a meeting, the person(s) who made the initial report will be asked to attend the meeting, to give the details and/or to provide a written report, including the names of the person(s) involved and witnesses to the event, within a prescribed time.*

## **VII. PAST PRECEDENTS**

### Stewart v. Wrestling Canada Lutte, SDRCC 14-0239

41. This decision rendered by Arbitrator Roberts is very enlightening with respect to the role of arbitrators regarding field of play decisions:

*28. "Field of play" decisions are decisions made on the playing field by judges, referees, umpires and other officials who are specifically trained to officiate the particular sport and are best placed, being on site, to settle any questions regarding the application of the rules.*

*29. Arbitrators with both SDRCC and the International Court of Arbitration for Sport (CAS) have declined to interfere with field of play or "rules of the game" decisions to protect the integrity of sports. [...]*

*30. The reasons for the "field of play" doctrine are self-evident. An SDRCC arbitrator is not specifically trained in the rules of any or all sports and does not have advantage of being present to observe the events. [...]*

(Emphasis added)

### Korean Olympic Committee (KOC) v. International Skating Union (ISU), CAS OG 02/007

42. This decision emphasizes the importance for Arbitrators not to review field of play decisions unless the questions in instance fall outside of the field of play doctrine:

11. [...] *The Panel declined to look at the video; it seemed to the Panel that to do so would be to embark on a review of a purely technical “field of play” decision, which would be an illegitimate exercise, absent some evidence of bad faith in the making of the decision.*

[...]

17. *In the Panel’s view, each of those phrases means more than that the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those phrases means that there must be some evidence of preference for, or prejudice against, a particular team or individual. [...]*

(Emphasis added)

## **VIII. DISCUSSION**

43. This case turns on whether the referee’s action, or lack of action on the field of play, can be reviewed absent a specific section in the rules allowing another body to do so.
44. The purpose of the referee, in the game of football, is to make numerous calls, specifically including calls on play roughness.
45. It is entirely within the jurisdiction of the referee to witness, determine and rule on penalties during the game. As in other physical sports, referees have the latitude to call, or not, roughness penalties. Those are subjective in nature, and participants in the game must trust the referee to perform under its certification and experience level. By the same token, participants must accept the referee’s subjective calls, even if they are not in agreement with them, and even if some of those calls are made in error, or *not made* at all. The referee has the right to err, and his error is not subject to review, unless specifically provided in rules of review (for instance, the video review is permitted when a fault is challenged by a player in the sport of tennis).

46. As CAS explained in *Korean Olympic Committee* (“KOC”) cited above, a field of play decision may only be reviewed if elements of bad faith have been demonstrated, which is not the case here. While it is apparent that the referee underperformed in his task, this is not sufficient for me to exercise a review of his field of play decisions. The referee was properly certified, and did referee the game to the best of his abilities. The subjective analysis of his qualitative performance on the field of play are, in my opinion, outside my scope of review. But there is more.
47. The facts of this case are slightly different from the KOC case: I am not asked to review a field of play decision, but rather to review the decision of the FCCGC, which itself reviewed a field of play decision. In my view, this is one and the same, and the principles stand: the FCCGC did not have the authority to review field of play decisions, and this is why I have quashed its decision.
48. In fact, I don’t believe the Technical Information Package allowed the FCCGC to review the decisions of the referee. Indeed, the section *Other-Game Related Incidences*, reads as follows: “[a]ny actions by participants not covered by game rules but which are contrary to the Code of Ethics and Conduct of the tournament [...]” [emphasis added].
49. This is the rule under which the meeting took place which led to the 2 quarter suspension of Alexandre Dubois.
50. *Roughing* during a football game is obviously covered in football game rules. Various sanctions are provided therein as tools for the referee to use, based on his judgement. The actions of Alexandre Dubois which were subsequently reviewed took place during the game. They were therefore entirely covered by the *game rules*.
51. It therefore confirms to me that the writers of the Technical Information Package did not intend to provide the FCCGC with the authority to review field of play decisions. Hypothetically, actions covered by this section could, for instance, include unethical actions such as filming the adversary during their practice or deflating game balls to provide an unfair advantage to a team.

52. While I am satisfied that the FCCGC did not have the authority to review field of play decisions, there are other issues which have raised my eyebrows through the process.
53. The rules read that the “Game Referee shall submit a written report of the incident to the Referee-in-Chief immediately after the game.” Based on the evidence before me, not only did the Game Referee not submit a report, but he was not invited to the meeting to explain himself. The use of the word “shall” should be interpreted as narrowly as possible. There was no written report, therefore the FCCGC review contained its self-defeating seed right from the beginning.
54. The fact that the game referee was suspended for a period of eight (8) games may be indicative of his failure to referee the game properly but it is not determinative regarding the process that should have been followed under the Technical Information Package rules.
55. Further, the conduct of the FCCGC hearing did not meet the minimum standard of the principle of *audi alteram partem*.
56. The process that is delineated in the Technical Information Package is concise, but needs to be respected. It reads as follows:

[...]

*The meeting will be conducted in the following manner:*

- *Introductions.*
- *A review of the hearing process and the hearing committee's role/authority.*
- *The reason for the particular hearing i.e. the reason for the protest etc.*
- *Representation by the protesting party.*
- *Rebuttal by the defending party.*
- *Account of facts from key individuals.*
- *Final words from each party.*
- *Final questions from hearing committee.*
- *Parties dismissed after method of communicating decision is arranged.*

[...]

57. Point 6 requires that an *account of facts from key individuals* be presented during the

meeting. In this particular case, in my view, there were no more important key individuals than the Game Referee and Alexandre Dubois. However, no facts were collected from those two key individuals. The game referee was not present, and while Alexandre Dubois was, he was not invited to speak.

58. Therefore, the conduct of the hearing did not respect the simple procedure that is described and transgressed the right of Parties to be heard.
59. It was argued by the Respondent that, in any case, the general ethical obligations contained in the preamble of the section apply. It reads as follows:

***CODE OF ETHICS AND CONDUCT***

*Only the highest standard of sportsmanship and conduct, both on and off the field, are expected of all those participating in or are connected in any way with Football Canada U16 Regional Challenge. Those who do not live up to the Football Canada Canada Cup Code of Conduct will be disciplined in accordance with this policy.*

*In particular, but not limited to, the following conduct shall not be tolerated:*

- *Personal Misconduct of any kind; including harassment and abusive behavior;*
- *Vandalism of any kind; and*
- *Drugs and Alcohol use or possession contrary to declared rules and regulations.*

60. Respectfully, I do not agree with the Respondent's position. While the preamble may have authoritative value to discipline players, I find here that the principle of *Specialia generalibus derogant* finds its application. Since the Technical Information Package already addresses game-related decisions, the general rule contained in the preamble is superseded by the specific rule.
61. As stated in *Stewart* and *KOC*, an Arbitrator cannot interfere in the field of play decisions unless elements of bad faith are found, which is not the case in instance.
62. Finally, at the beginning of the SDRCC hearing, the Respondent objected to a Facebook post that was published by the Claimant, regarding the suspension of Alexandre Dubois. During the hearing, Football Quebec apologized for the post that, they say, had been programmed to be posted prior to the launch of the SDRCC

proceedings. As soon as they were informed of the posting, they removed it. It remained live for about an hour.

63. I read the post, which was introduced as evidence, and take note of Football Quebec's explanations. I did not find the post to be particularly inflammatory, insulting nor derogatory towards Football Canada. It expressed Football Quebec's frustrated opinion on the matter, as they have a right under well-known freedom of expression principles. In the end, no weight was given to the posting in my decision.

## **IX. CONCLUSION**

64. Among other reasons, there is no authority for field of play decisions to be reviewed under the *Protests, Appeals & Disciplinary Action* section of the Technical Information Package.
65. Therefore, the Football Canada Cup 2017 Governing Committee decision to suspend Alexandre Dubois from the next half game of the Claimant is quashed.

Signed in Montreal, this 22<sup>nd</sup> day of July 2017.



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Patrice Brunet, Arbitrator