

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA**

No.: SDRCC 16-0311

IN THE MATTER OF AN ARBITRATION

BETWEEN: Bilal Syed (Claimant)

AND

Cricket Canada (Respondent)

AND

Ranjit Saini, Rashpal Bajwa, Zafar Khan,
Manzoor Chaudhary, Mohammed Shaikh
(Affected Parties)

ARBITRATOR: Ross C. Dumoulin

APPEARANCES:

For the Claimant: Louis Browne,
Counsel

For the Respondent: Sharan Sodhi,
Counsel

For the Affected Parties: Ranjit Saini, Manzoor Chaudhary,
Self-represented

ARBITRATION AWARD

March 15, 2017

1. This is an arbitration award rendered pursuant to paragraph 6.21(c) of the Canadian Sport Dispute Resolution Code (2015) (the "Code"). I was appointed as arbitrator by the Sport Dispute Resolution Centre of Canada (SDRCC) to hear and determine the present matter.

THE FACTS

2. The Claimant, Mr. Bilal Syed, lodged a Request dated October 11, 2016 pursuant to section 3.4 of the Code to initiate proceedings offered by the SDRCC in order to resolve a Sports-Related Dispute. In the said Request, where the Claimant is asked to provide a description of the dispute, he writes the following:

Election fraud, failing to follow the procedure as laid out in the bylaws or approved guidelines of CCA. Discrimination and Racism making a decision which was influenced by bias, lack of neutrality, to such an extent that decision-maker is unable to consider others' views. Deliberate concealment exercising its discretion for an improper purpose.

3. In the Request, the Claimant is asked, if he is appealing a decision made by a sport organization, to provide the date of such decision. He indicates May 19, 2016 as the date of the decision he is appealing. Where the Claimant is asked to describe the decision being appealed, he states the following:

Election was illegal and unfair.
Compromised election committee no proper process was adopted.
Unauthorized voter was used.
Discrimination and deliberate concealment.

4. In the said Request, the Claimant indicates the following solution that he is seeking to resolve the dispute:

Find out the election process. Screening, scrutinizing and voter eligibility criteria. Who was eligible for vote in 2016 election and how? Revoke illegal election results May 19, 2016. Fair re-election of Cricket Canada through proper process and under the supervision of neutral body to condemn politics. Forensic audit of Cricket Canada for last ten years to reveal corruption and conspiracy. Equal opportunity to all Canadians to participate in election without discrimination in Cricket Canada.

5. The election that is contested in the Claimant's Request was for positions on the Cricket Canada Board of Directors. It took place on May 19, 2016.

6. On May 25, 2016, an arbitration hearing was held on behalf of the Saskatchewan Cricket Association (SCA) to determine who was the legitimate President of the SCA. Among the facts considered by the Arbitration Panel, which the Panel at hand adopts, are the following:

- on November 21, 2015, an election was held for President of the SCA; it was won by Mr. Prakhar Shrivastava;
- a complaint was subsequently lodged citing election irregularity;
- the SCA Board constituted an Elections Review Committee and advised Mr. Shrivastava that he was recused from all matters relating to the election due to his conflict of interest;
- on December 10, 2015, the Committee determined that there was sufficient validity to the allegations of election irregularity to consider the election process null and void;
- the SCA board called for a January 3, 2016 meeting for the purpose of new elections or for a vote of non-confidence in Mr. Shrivastava's presidency;

- the acting President invited him to the meeting; Mr. Shrivastava was on notice that a motion of non-confidence would be taking place at the said meeting;
- Mr. Shrivastava was on vacation, refused an offer of distance communication for the meeting and refused to acknowledge the process;
- a vote of non-confidence in Mr. Shrivastava's presidency was passed 15-0 with all club Presidents present agreeing to a motion relieving him of his duties as President, Director or Officer of the SCA;
- an election for the President was set for January 24, 2016;
- Mr. Azhar Khan was the only candidate nominated for President;
- at a special AGM held on January 24, 2016, the clubs present unanimously agreed to accept Mr. Khan as the new President of the SCA; the meeting was constituted with proper quorum.

7. After consideration of the evidence presented at the hearing, the above-noted arbitration panel issued its decision on June 8, 2016. It found that the membership had validly brought a motion for non-confidence and that the membership present at the meeting of January 3, 2016 had unanimously voted to remove Mr. Shrivastava from his position as President of the SCA. It also found that Mr. Khan had been duly elected as the President of the SCA on January 24, 2016. The arbitration panel ordered that Mr. Khan be declared the elected President of the SCA effective immediately.

8. Mr. Ranjit Saini, who was then the Director-at-Large of High Performance and Governance for Cricket Canada, testified that Cricket Canada was aware of the non-confidence vote against Mr. Shrivastava. Nevertheless, the Cricket Canada Board of Directors unanimously decided to continue to accept him as the

duly elected President of the SCA and to allow him to vote in the Cricket Canada elections. They encouraged both parties to go to ADR and, in the meantime, continued to recognize Mr. Shrivastava as the Provincial Director for Saskatchewan.

9. On February 2, 2016, a law firm representing the Saskatchewan Cricket Association sent a letter to a law firm representing Cricket Canada which confirmed the removal of Mr. Shrivastava as President of the SCA and the election of Mr. Khan as the new President.

10. In January or February of 2016, Mr. Saini resigned from his position as Director-at-Large of High Performance and Governance because he had decided to no longer be a part of Cricket Canada. His resignation was to take effect at the end of a Cricket Canada AGM scheduled for March 2016.

11. At some point around that time, Mr. Saini decided to run for the position of President of Cricket Canada. (Later, on May 14, 2016, he sent an email to Cricket Canada attaching his nomination acceptance and résumé for the President position.) Under cross-examination, he acknowledged that he "lobbied" for the position of President in that he had conversations with people "who had potential voting power", which would be the Provincial Directors. In his lobbying efforts, Mr. Saini spoke with, and sought the support of, Mr. Rashpal Bajwa, the Provincial Director for British Columbia, and Mr. Mohammed Shaikh, the Provincial Director for Ontario. Mr. Saini has been close friends with Mr. Shaikh for over 10 years. Mr. Saini also testified that he lobbied Mr. Manzoor Chaudhary, the Provincial Director for Alberta, who wanted to be in charge of the "senior program". Mr. Saini's phrasing of the matter was that the two men "had an

understanding". He further testified that he and the three above-named Directors "discussed how Cricket Canada would be run and who would do which portfolios".

12. On March 19 and 20, 2016, the above-noted Cricket Canada Annual General Meeting was held. The meeting pertained in part to the elections of its Board of Directors. Mr. Shrivastava was in attendance for the Saskatchewan Cricket Association. The election was supposed to take place on the second day of the AGM. However, the minutes of the meeting indicate that an attendee pointed out that a Nomination Committee had not been formed as required in the bylaws. A vote was taken on a motion and it was the unanimous decision of the Provincial Directors to postpone the elections for 60 days, to form a Nomination Committee and for the current Board to remain in place for the 60-day period. The Nomination Committee was to collect the nominations and hold the election.

13. The Claimant, Mr. Bilal Syed, testified that he found out from a friend at his cricket club that Cricket Canada was holding elections on March 19, 2016 and he was given their email address. He first applied for the position of President or Vice President of Cricket Canada on March 17, 2016. He emailed them an application along with his résumé. He was "new" to Cricket Canada in that he had never before been part of the organization. The Claimant waited for an acknowledgement and information regarding his application but, despite having sent several reminders to Cricket Canada, he didn't receive anything from them. He asked that the election process be defined, and in a series of emails sent from March 17 to March 24, 2016, he alleged the following: discrimination against him, a conflict of interest, deliberate concealment, illegal and fraudulent elections, a

compromised board, a violation of the bylaws and favouritism of the President in favour of his "buddy". Mr. Vimal Hardat, the President of Cricket Canada, told him he did not want to comment and Mr. Syed received no information regarding the election process.

14. However, on March 24, 2016, Mr. Hardat did send an email to the Claimant informing him that the "elections had been postponed for 60 days as broadcasted at our website and social media." The email went on to say that the Claimant's nomination would be submitted to the Nomination Committee.

15. Mr. Zafar Khan, the General Secretary of Cricket Canada elected in 2016 and one of the Affected Parties in the matter at hand, testified that in May 2016, a Nomination Committee was appointed. The witness testified that the Committee was formed by Mr. Hardat. He recommended a number of people to be on the Committee. During the lunch break at the hearing, Mr. Khan, while under examination-in-chief, received an email indicating that it was Mr. Amit Joshi, and not Mr. Hardat, who took over the nomination process. He then testified that it was Mr. Joshi who formed the Nomination Committee. This evidence does not appear to be in dispute. Mr. Joshi was then the Vice President of Cricket Canada and he ran for the position of President in the May 2016 elections.

16. Mr. Ingleton Liburd has been the General Manager of Cricket Canada since an Annual General Meeting held on April 5 and 6, 2014. His role is to oversee the daily operations of Cricket Canada. He reports to the Board of Directors. Mr. Liburd testified that he coordinated the Nomination Committee for the Cricket Canada elections held in May 2016. He was contacted by Mr. Joshi who gave him

the names of people to ask to be on the Nomination Committee in addition to himself. The role of the Committee was to collect the names of the nominees along with their résumés, to obtain their electronic signatures, to verify their legitimacy as candidates and to forward their names to the election authorities. The Committee also ensured that the nominees accepted their nomination.

17. After a number of persons were contacted, the two persons who formed the Nomination Committee in addition to Mr. Liburd were Mr. David Liverman and Mr. Kantilal Patel. Only Mr. Liburd had access to the nominations and he would forward the names of the nominees to the other two members of the Committee.

18. It was Mr. Liburd's evidence that he did not see any bylaws stating that a person could not be nominated for more than one position. In fact, he verified this matter and was told that there was no bylaw prohibiting this.

19. The witness testified that Mr. Joshi resigned as Vice President before the elections. He added that it would be a conflict of interest for Mr. Joshi to run in the election, as well as choose people for the Nomination Committee.

20. The members of the Nomination Committee discussed all the nominations and agreed that they were valid. Mr. Liburd checked the bylaws and did not come across any violations. The Committee followed the elections process outlined in the bylaws.

21. Mr. David Liverman, one of the three members of the Nomination Committee, is the Director of Cricket Newfoundland and Labrador. He testified

that he was asked by Mr. Liburd if he would sit on the Committee and the latter told him that his role would be to review the nominations for the required format and timeliness. The deadline for nominations was May 14, 2016. The standards for the nominations were based on the September 2015 bylaws that the Nomination Committee members were given. If a nomination was from someone other than the person nominated, the Committee was to verify that the nominee accepted the nomination.

22. Mr. Liverman testified that a notice of nominations was posted on the Cricket Canada website. The preamble of this notice referred to the elections which had been postponed for 60 days and to the three-member Nomination Committee. It also stated that nominations were to be submitted to the Nomination Committee and that nominees were to send their written consent to a specified email address. The notice also enumerated the positions that were up for election.

23. Mr. Liverman stated that there was no consideration given to the idea that candidates who were with provincial bodies should step down, nor was conflict of interest considered to be an issue. The witness indicated that he was an impartial volunteer on the Committee, had never met the candidates and had no interest in the elections. He stated that Mr. Syed's nomination was considered to be in an acceptable format.

24. Mr. Saini testified that new bylaws were created to comply with the Canada Not-for-profit Corporations Act and were approved at an AGM held in Toronto on April 5 and 6, 2014. These were the first set of bylaws that were

compliant with the said Act. There were some amendments to the 2014 bylaws in 2015 that did not pertain to elections and that were not compliant with the Act.

25. Mr. Khan testified that Cricket Canada followed bylaws that were approved at a Board of Directors meeting held on September 11, 2015. These bylaws were later approved at a meeting in March 2016 and are now followed by Cricket Canada. It was his evidence that the normal process that has been followed for amendments to the bylaws is that the proposed amendments are presented at an AGM and at the next meeting, they are voted upon, approved and become effective immediately. They are then filed at the Corporation registry. Mr. Khan is not aware if the bylaws approved in 2016 have been filed. Mr. Liburd testified that the bylaws approved in September 2015 and March 2016 have not yet been filed with Industry Canada.

26. On Friday, May 13, 2016, the Claimant sent three emails to cricket Canada indicating that he was forwarding his name in the Cricket Canada elections for the positions of President, Vice President and Secretary. Mr. Syed attached his résumé which highlighted his professional and personal skill set. His email also outlined his skills and experience in the sport of cricket.

27. On Monday, May 16, 2016, Cricket Canada emailed to the Claimant three automated acknowledgements of receipt of his applications and attachments. The three positions he applied for were included in the ballot.

28. Mr. Liburd confirmed that he received the Claimant's request for nomination and emailed acknowledgements to him. He confirmed that the

Claimant applied for the positions of President, Vice President and Secretary of Cricket Canada.

29. A table bearing the title "Cricket Canada – Elections 2016" confirms that Mr. Syed was nominated for the positions of President, Vice President and Secretary.

30. On May 17, 2016, Cricket Canada posted an election update on its "NEWSWIRE" page on its public website announcing the list of nominated candidates for the election to its Board of Directors. This information was also posted on Facebook and Twitter. The update also indicates that at the 2016 Cricket Canada AGM, it was unanimously agreed by the Directors to postpone the general elections scheduled for March 20, 2016 for 60 days. It specifies that the election would take place on May 19, 2016. The list of candidates indicates that the name of the Claimant was included as a candidate for the positions of President, Vice President and Secretary. The Claimant testified that he found out he was an accepted candidate on May 16 or 17, 2016. Mr. Liburd testified that the Saskatchewan Cricket Association received notice of the election four or five days before it was held. He also stated that an election notice was posted on the Cricket Canada website in early April 2016.

31. Mr. Liburd testified that the voting members in the Cricket Canada May 2016 elections were the 10 Provincial Directors. He forwarded all the nominations along with their résumés to them. The witness stated that the voting members could run in the elections and that he didn't have to verify if they had resigned before the elections because this was not in the bylaws. There is nothing in the

bylaws which states that a Provincial Director must resign before running in the elections.

32. The evidence of Mr. Liburd established the following:

- Mr. M. Chaudhary was the Provincial Director for Alberta at the time of the Cricket Canada elections held in May 2016, did not resign from this position, ran for Director-at-Large and was elected;
- Mr. R. Bajwa was the Provincial Director for British Columbia at the time of the elections, did not resign from this position, ran for Vice President and was elected;
- Mr. M. Shaikh was Provincial Director for Ontario at the time of the elections, did not resign from this position, ran for Director-at-Large and was elected;
- Mr. A. Joshi was Vice President of Cricket Canada at the time of the elections, resigned from his position one day before the elections, ran for President and was not elected.

33. The Cricket Canada elections were held on May 19, 2016. The 10 Provincial Directors cast a total of 21 votes. The number of votes each Provincial Director could cast depended upon the number of cricket teams in their respective provinces. If the province had 75 or more cricket teams, its Provincial Director could cast four votes. The results of this system meant that the Provincial Directors for Ontario, Alberta and British Columbia each cast four votes. Those for Québec and Saskatchewan cast two votes each. Finally, the Provincial Directors for Manitoba, New Brunswick, Newfoundland/Labrador, Nova Scotia and Prince Edward Island each cast one vote.

34. Mr. Prakhar Shrivastava, who had been removed as President, Director or Officer of the Saskatchewan Cricket Association by a unanimous motion, nevertheless cast two votes. Mr. Azhar Khan, the President of the SCA elected on January 24, 2016, did not vote. He testified at the hearing before the present Panel that the day after his election, he sent an email to Cricket Canada informing them that he had been elected as President of the SCA, but that, nevertheless, he was not allowed to vote in the Cricket Canada elections on May 19, 2016. Mr. Khan also testified that the Saskatchewan Cricket Association's Board of Directors informed Cricket Canada by email sent after January 3, 2016 that there had been a non-confidence vote against Mr. Shrivastava, but received no response.

35. Mr. Saini testified that Messrs. Chaudhary, Bajwa and Shaikh all continued to hold their respective Provincial Director positions after the elections. Mr. Bajwa was subsequently replaced upon Mr. Saini's request.

36. Cricket Canada utilizes "Election Runner" to ensure there is secure voting cast at the AGM. The posted information via Election Runner indicates that Mr. Ranjit Saini was the successful candidate for the position of President, garnering 15 of the 21 votes cast, which amounted to 71% of the votes. Two other candidates each received three votes (14%) and the Claimant did not receive any votes. With regard to the position of Vice President, the successful candidate was Mr. Rashpal Bajwa who obtained 20 of the 21 votes, equivalent to 95% of the votes. The Claimant received one vote (5%). Mr. Zafar Khan received 20 of the 21 votes (95%) for the position of Secretary and the Claimant received one vote (5%).

37. The results of the elections were conveyed to the Board of Directors and Provincial Directors and also posted on the Cricket Canada website. The Claimant received the election results on May 20 or 21, 2016 from a friend who forwarded an email to him from the Provincial Director from Alberta.

38. The Claimant testified that he felt that he had been the subject of discrimination, felt hurt and was depressed.

39. Mr. Saini testified that the Claimant was not treated differently than the other candidates in the elections and went on to say that he did not know the Claimant before the elections, had never met him and wasn't aware of where he lived.

THE POSITIONS OF THE PARTIES

The Claimant:

40. Mr. Syed submitted that his complaint raises two issues. Firstly, election fraud and failure to follow the proper procedures as laid out in the bylaws and, secondly, improper bylaw amendments. He alleges bias, discrimination, deliberate concealment and conflict of interest. He claims that Cricket Canada made decisions that were grossly unreasonable and influenced by bias and that it exercised its discretion for an improper purpose.

41. The Claimant emphasized that he wants fairness and justice. He believes that he has been treated unfairly. He was new to Cricket Canada, a member of

the general public, and no one responded to him. Cricket Canada failed to inform him of the election process.

42. Mr. Syed alleged that there has been a pattern of behaviour on the part of Cricket Canada involving violations of its bylaws and of the proper process to be followed. This pattern included deliberate concealment of important documents regarding the bylaws until January of this year. It was his position that the bylaws of 2014 were "fake bylaws" which were fabricated to favour the Board of Directors.

43. The Claimant pointed out that the Nomination Committee was formed by only one person, which he characterized as bizarre.

44. The Claimant referred to the fact that Mr. Mohammed Shaikh did not resign his position as Provincial Director for Ontario before the elections or after he was elected as Director-at-Large, which put him in a conflict of interest. The bylaws state that a person cannot hold two positions at the same time.

45. Mr. Syed argued that the election update that was posted on May 17, 2016 by Cricket Canada on its website was only two days before the elections, which did not give members of the public an opportunity to apply.

46. It was further submitted by the Claimant that Cricket Canada was made aware of the non-confidence vote regarding the presidency of Mr. Shrivastava, therefore it should have stopped approving him as President. Mr. Khan was elected as the new President of the SCA on January 24, 2016, yet Cricket Canada kept endorsing Mr. Shrivastava as the President. This persisted in spite of the fact

that the SCA's legal counsel advised Cricket Canada's legal counsel that Mr. Shrivastava had been removed from his position as President and that Mr. Khan was the new rightful President. Cricket Canada deliberately ignored this.

47. By way of remedy, the Claimant seeks a fair election with a neutral Nomination Committee. He requests that an interim Board of Directors be chosen by the Provincial Directors. He would like the opportunity to run only for President in those elections.

48. Mr. Louis Browne, counsel for the Claimant, also asked for free and fair elections.

49. Counsel emphasized the fiduciary duty of elected officials and submitted that a conflict of interest arises as soon as a Provincial Director nominates himself to run in the elections. A Director could then abuse his position and his power to advance his own interests. There would be an appearance of a conflict of interest.

50. Mr. Browne argued that if there was a deliberate attempt to sideline the Claimant's campaign efforts, or even if he suffered an unintended disadvantage with respect to his campaign, this would be sufficient to conclude that he was prejudiced. He was not informed of the process and his interests were thereby compromised. Lobbying would have increased the likelihood of success for Mr. Syed and he was not given the opportunity. This was unfair.

51. Mr. Browne submitted that the bylaws, which he understands are now being amended, must be clear and known in advance as part of a free and fair election.

Cricket Canada:

52. Ms. Sharan Sodhi, counsel for Cricket Canada, submitted that since the Claimant is not a member of Cricket Canada, the bylaws have no effect on his election because they govern the members only.

53. Counsel argued that the only relevant documents submitted by the Claimant are those concerning the elections. There were other confidential documents and their inclusion on the CMP was an abuse of process.

54. The bylaws were amended a number of times starting in 2014 in order to comply with the Canada Not-for-profit Corporations Act. The documentation submitted by Cricket Canada shows that the current bylaws were certified.

55. Ms. Sodhi relied upon the definition of conflict of interest found in section 7.1 of the current bylaws which states in part that a Director or Officer who has an interest, or who may be perceived as having an interest, "in a proposed contract or transaction" will comply with the Canada Not-for-profit Corporations Act, will disclose the nature and extent of such interest to the Board, will refrain from voting or speaking in debate and will refrain from influencing the decision on such contract or transaction. There was no such conflict of interest in the matter at hand.

56. Counsel referred to section 1.5 of the bylaws which states in part that meetings of the members and of the Board will be conducted according to Robert's Rules of Order. Section 46 of these rules states in part that the general rule that no one can vote on a question in which he has a direct personal or

pecuniary interest "does not prevent a member from voting for himself for any office or other position..." Provincial Directors can therefore vote for themselves in the elections.

57. Ms. Sodhi emphasized that the results of the voting in the elections would have been the same had Mr. Shrivastava not voted. The Claimant was therefore not affected by the fact that he did vote. There was confusion on the part of Cricket Canada as to who was the President of the SCA.

58. Counsel submitted that the Claimant received an email indicating that his nomination had been received and this is all that was required.

59. With regard to any remedy, Ms. Sodhi indicated that there will be new Cricket Canada elections and an AGM sometime before June 30, 2017 as mandated in the bylaws. However, these elections will not be for a new President because the term of that position is two years.

The Affected Parties:

Mr. Manzoor Chaudhary:

60. Mr. Chaudhary stated that he has been with Cricket Canada for six years and has attended every meeting since 2013.

61. Mr. Chaudhary submitted that it was unfair that the Claimant was not told of the election date.

62. With regard to the remedy, Mr. Chaudhary suggested that there should be new elections for every position, that the process should be started all over. The bylaws that were duly passed in 2013 should be amended. The elections should be advertised to the public.

Mr. Ranjit Saini:

63. Mr. Saini submitted that the "mother" of the bylaws were those approved in 2013. Bylaws were later approved in 2014 and 2015.

64. Mr. Saini pointed out that the elections and results were posted publicly.

65. It was also argued that the Claimant had links to the Provincial Directors.

DECISION

66. The Request of the Claimant to initiate proceedings in this matter is clearly centered upon the Cricket Canada elections that were held on May 19, 2016. The allegations of the Claimant revolve around these elections. They include election fraud, failing to follow the proper procedure as laid out in the bylaws, discrimination, racism, bias, improper exercise of discretion, election illegality and unfairness and the use of an unauthorized voter. The solution sought by the Claimant also relates to the said elections: "Revoke illegal election results May 19, 2016. Fair re-election of Cricket Canada through proper process..."

67. Considering that the SDRCC would have offered its dispute resolution services based upon the Claimant's Request which centers upon the elections, this Panel indicated to the parties at the outset of the hearings that it would consider only the evidence relating to the elections as relevant to the dispute. This was necessary because a substantial portion of the documentation and correspondence filed by the Claimant (108 documents consisting of several hundred pages have been filed by the Claimant and added to the CMP) pertain to matters that are not relevant to the dispute, or are otherwise inadmissible.

68. More specifically, many of the documents filed by Claimant relate to allegations of financial irregularities, including expenditures, dues, transactions, grants, funding issues, as well as the handling of cricket players and teams and media reports on this. The Claimant has also attempted to bring forth documentation detailing the parties' efforts at mediating the dispute at hand, and has filed numerous confidential written legal opinions by solicitors addressed to their client, Cricket Canada.

69. This Panel has examined and considered the relevant documentary evidence, the testimonies of witnesses and the submissions made by the parties over the four days of hearings in the matter at hand. This analysis leads the Panel to find that, in some respects, the Cricket Canada elections held on May 19, 2016 were improperly conducted. In other respects, the elections were conducted in a proper manner. The elements of the evidence that constitute the basis for the finding of impropriety are as follows.

70. Firstly, the evidence established that the Saskatchewan Cricket Association membership unanimously voted to remove Mr. Prakhar Shrivastava from his

position as President of the SCA pursuant to a motion for non-confidence in a meeting held on January 3, 2016. The evidence also established that Mr. Azhar Khan was duly elected as the new President of the SCA on January 24, 2016.

71. Cricket Canada soon became aware of the non-confidence vote, the removal of Mr. Shrivastava as the President of the SCA and the election of Mr. Khan as the new President. More specifically, after January 3, 2016, the SCA's Board of Directors informed Cricket Canada by email that there had been a non-confidence vote against Mr. Shrivastava. As well, the day after his election, Mr. Khan sent an email to Cricket Canada informing them that he had been elected as President of the SCA. Furthermore, in a letter dated February 2, 2016, a law firm acting for the SCA confirmed to a law firm acting for Cricket Canada that Mr. Shrivastava had been removed as President of the SCA and that Mr. Khan had been elected as the new President.

72. In spite of this seemingly reliable and clear information from various sources, the Cricket Canada Board of Directors unanimously decided to continue to accept Mr. Shrivastava as the President and to allow him to vote in the elections. This should not have occurred. Mr. Khan should have been allowed to vote as the newly-elected President of the SCA, and not Mr. Shrivastava. The Panel does not accept the contention that Cricket Canada was so confused about the state of affairs in Saskatchewan that it didn't realize that a newly-elected President had replaced an ousted one. If Mr. Shrivastava continued to act as if he were still the President, Cricket Canada should have asserted its authority and informed him that he would not be voting in the elections and it should have confirmed to Mr. Khan that he would be casting his votes as President. The two votes cast by Mr. Shrivastava represented 9.5% of the total number of votes and

could potentially have made a difference in the outcome. The fact that it didn't doesn't legitimize the voting flaw.

73. The second evidentiary basis for the Panel's finding of impropriety is the fact that the 10 Provincial Directors who made up the voting members in the Cricket Canada elections were allowed to run in the elections without first resigning from their positions.

74. Among the 10 Provincial Directors, Mr. Chaudhary, the Provincial Director for Alberta, did not resign from his position, ran for Director-at-Large and was elected; Mr. Bajwa, the Provincial Director for British Columbia, did not resign from his position, ran for Vice President and was elected; Mr. Shaikh was Provincial Director for Ontario, did not resign from his position, ran for Director-at-Large and was elected. Moreover, Mr. Saini testified that all three men continued to hold their respective Provincial Director positions after the elections.

75. The three above-noted Provincial Directors who did not resign and successfully ran for office in the elections had the ability and the potential to vote for themselves when they each cast 4 of the 21 available votes, which amounted to 19% of the votes. In the Panel's view, this was improper because their four votes each could be potentially cast only to help themselves get elected and not be based upon the relative merit of the candidates. Someone running for office in competition with other candidates is naturally biased in their own favour. And it was all the more improper in the case of the three above-named Directors because of the high percentage of votes that could be cast for oneself. 19% of the votes can often be the difference between winning and losing. The fact that the Robert's Rules of Order referenced in the bylaws state that a member is not

prevented from voting for himself for any office is all the more reason to make sure that the Provincial Directors do not get into the position of being able to run in the elections while retaining their substantial voting power by not resigning.

76. The fact that the three successful Provincial Directors continued to hold their positions after the elections means they could then potentially abuse their position and power as elected officials for Cricket Canada by advancing their own provincial agendas and interests. This created at least the appearance of a conflict of interest.

77. The third element of impropriety in the conduct of the elections established in evidence lies in the nature of the arrangements made between Mr. Saini, who was elected President, and three Provincial Directors who were also voting members. Mr. Saini acknowledged under cross-examination that he not only sought the support of the three Directors, but that he reached an "understanding" in seeking the support of Mr. Chaudhary, the Provincial Director for Alberta, who wanted to be in charge of the "senior program". The Panel takes this to mean that Mr. Saini promised Mr. Chaudhary he would get the portfolio he desired if the latter voted for him as President. This finding is reinforced by Mr. Saini's testimony that he and the three directors "discussed how Cricket Canada would be run and who would do which portfolios". In the Panel's view, this arrangement goes far beyond mere lobbying and amounts to an improper fixing of the election for the position of President. By this arrangement, Mr. Saini would receive 12 of the 21 votes, which would guarantee him the position of President. The deal meant that the voting for President was based on an exchange of favours, as opposed to an assessment of the relative merits of the candidates and it made a sham of that part of the elections.

78. The fourth element of impropriety revealed in the evidence is that Mr. Joshi, who ran for the position of President in the elections, also selected the three people who would comprise the Nomination Committee. Mr. Joshi first selected Mr. Liburd to be on the Committee, contacted him and gave him the names of other people to ask to be on the Committee. In the Panel's view, this put Mr. Joshi in a potential conflict of interest, or at least created the appearance of one. The two potentially competing interests of Mr. Joshi were his desire to become President on the one hand and the proper selection of the members of the Nomination Committee on the other. The Nomination Committee performed the crucial task of collecting the names of the nominees, verifying their legitimacy as candidates and forwarding those names to the voting members. If the person selecting the members of the Committee is also running in the elections, the perception is created that this person could influence the Committee in a manner that favours his candidacy. There was no evidence of this actually happening, but the perception is there.

79. With regard to the aspects of the elections that were conducted in a proper manner, the Panel finds that Cricket Canada officials communicated adequately with the Claimant and generally provided him with the necessary information. Their only shortcoming was failing to acknowledge the receipt of his application which he emailed on March 17, 2016 in relation to elections that were supposed to be held three days later. It was understandable that Mr. Hardat told the Claimant that he didn't want to comment after the latter had sent a series of emails containing unproven inflammatory accusations, some of which were false.

80. In spite of these accusations, Mr. Hardat did inform the Claimant on March 24, 2016, the same date as one of the accusations, that the elections had been

postponed for 60 days and pointed out that this had been broadcast on the Cricket Canada website and on social media. The email also informed the Claimant that his nomination would be submitted to the Nomination Committee. The Claimant knew that the elections were supposed to have been held on March 20, 2016. He also was now aware that they were being postponed for 60 days. Therefore, he could easily deduce at that point that the elections would be held on or about May 19, 2016.

81. With respect to the elections held on May 19, 2016, Mr. Liburd testified that an election notice was posted on the Cricket Canada website in early April 2016.

82. Mr. David Liverman, a member of the Nomination Committee, testified that a notice of nominations was posted on the Cricket Canada website. The notice referred to the elections that had been postponed for 60 days and to the three-member Nomination Committee and stated that nominations were to be submitted to the said Committee and that nominees were to send their written consent to a special email address. The notice also enumerated the positions that were up for election. The Claimant had already been advised by Mr. Hardat that the Cricket Canada website contained election information, so all he had to do was consult it to get all the information he needed. In any event, he had no trouble submitting his nominations before the deadline.

83. On Monday, May 16, 2016, the very next work day following the day the Claimant had sent three emails forwarding his name for the elections, Cricket Canada emailed to him three automated acknowledgements of receipt of his applications and attachments. The next day, Cricket Canada posted an election

update on its website, on Facebook and on Twitter announcing the list of nominated candidates for the election which included the Claimant's name for the three positions he was seeking.

84. The results of the elections were posted on the Cricket Canada website, yet the Claimant received the results from a friend. Apparently, he wasn't inclined to rely on the website, although he was advised to go there for information.

85. The Panel finds that the Nomination Committee fulfilled its function in a proper manner throughout the election process. The testimony of Mr. Liburd established that the role of the Committee was a reasonable and important one. He verified the bylaws and did not come across any violations. His evidence was that the Committee followed the election process outlined in the bylaws. Mr. Liverman testified that he was an impartial volunteer on the Committee, had never met the candidates and had no interest in the elections.

86. The Claimant alleges that he was the victim of discrimination. However, he presented no evidence of discrimination on the prohibited grounds contained in the Canadian Charter of Rights and Freedoms. These grounds are race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Nor was there any evidence of any other type of discrimination against the Claimant. He was at a disadvantage coming from outside of Cricket Canada: he was unfamiliar with the workings of the organization and unknown to Cricket Canada officials. But this does not amount to discrimination. He could have consulted with Mr. Shrivastava or with Mr. Khan, both presidents of the SCA at different times, to obtain more information on the election process.

87. The Panel does not consider that the Claimant lost any lobbying opportunities by virtue of discrimination. The only evidence of "lobbying" presented at the hearings was the shady exchange of promises and favours engaged in by Mr. Saini and three Provincial Directors. It's a good thing that the Claimant did not partake in such activity. Even if he had tried, it is highly unlikely that, as an outsider, he would have been very successful.

88. In the result, in light of the improprieties in the conducting in the May 19, 2016 elections described above, the Panel hereby orders as follows:

- new elections for all positions on the Cricket Canada Board of Directors, including the position of President, shall be held as soon as practicable;
- the elections shall be open to the general public and conducted in a fair manner;
- the details of the elections and of the election process shall be announced well in advance of the elections by means of the Cricket Canada website, Facebook, Twitter and/or other social media or other means;
- Mr. Azhar Khan shall be recognized as the President of the Saskatchewan Cricket Association with respect to the elections unless his presidency ends before that time;
- any person having a role in the selection of the members of the Nomination Committee shall be prohibited from running in the elections;
- any Provincial Director, or any other person with voting rights by virtue of their position, who intends to run in the elections must resign from his or her position before the elections are held;
- considering the parties have indicated that new elections must be held before June 30, 2017, a period of only three months or less from the date of this award, the members of the Board of Directors who were elected on

May 19, 2016 will be permitted to remain in place and fulfill their functions until the holding of the new elections;

- all necessary amendments to the bylaws shall be made to achieve complete compliance with the Canada Not-for-profit Corporations Act and with the findings of this award;
- any offer, suggestion or promise of a benefit by a person running in the elections to a voter in the election is prohibited.

Dated at Ottawa this 15th day of March, 2017.



Ross C. Dumoulin
Arbitrator