

**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

DECISION ON COSTS

April 5, 2017

1. This decision concerns an application made by the Claimant, Mr. Bilal Syed, for costs in the present arbitration. It is issued pursuant to paragraph 6.22 (e) of the Canadian Sport Dispute Resolution Code (2015) (the "Code").
2. The case pertains to a dispute between the Claimant and the Respondent, Cricket Canada, regarding elections held on May 19, 2016 for positions on the Cricket Canada Board of Directors.
3. On January 18, 19, February 7 and March 8, 2017, arbitration hearings by conference call were held pursuant to section 3.12 of the Code.
4. On March 15, 2017, this Panel issued an award on the merits of the case pursuant to paragraph 6.21 (c) of the Code.
5. On March 17, 2017, the Claimant's legal counsel, Mr. Louis Browne, submitted on his behalf a request for costs in the matter pursuant to paragraph 6.22 (b) of the Code.

THE POSITIONS OF THE PARTIES

The Claimant:

6. Mr. Browne indicated that the Claimant seeks full indemnification of the costs incurred to bring this matter to a conclusion. Almost all of his incurred costs are for his legal representation. In the alternative, the Claimant asks the Panel for the maximum allowable reimbursement of his costs.

7. Counsel cited the decision in *Hyacinthe v. Athletics Canada and Sport Canada*, SDRCC 06-0047, where arbitrator Pound held that the outcome of the proceeding is a primary consideration when determining an award for costs. Also relied upon was the case of *Canadian Centre for Ethics in Sport v. Adams*, DT 10-0117, where the arbitrator applied cost expectations and proportionality to the facts and held that a successful party is prima facie entitled to receive a contribution toward his costs. The arbitrator also stated that the paramount objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay.

8. Counsel submitted that with respect to Mr. Syed's case, this was not a mixed result. He is the clear-cut and unequivocal winner pursuant to the decision on the merits rendered by the Panel. This militates in favour of costs being awarded in Mr. Syed's favour.

9. As to the conduct of the parties, Mr. Browne emphasized that Mr. Syed loves the game of cricket and simply wanted to give back to the sport he enjoys so much. He decided he would volunteer his time on the national board and ran

for three elected positions. He was then confronted with the reality that doing so was not going to be a "fair fight". There would be no level playing field for him. Only afterwards did he realize that the process was unfair and had been compromised. He fought back in the only way he knew how and that was via the SDRCC.

10. Counsel acknowledged that Mr. Syed levelled a number of allegations at Cricket Canada which ultimately went beyond the scope of the award. But he was unfamiliar with the SDRCC and lacked the benefit of legal counsel at this stage of the proceedings. He was wrong and fought for fairness throughout the process. He stood up to the Board of Cricket Canada and did the best he could with limited resources.

11. Mr. Browne argued that Cricket Canada, and in particular Mr. Saini, compromised the election from the outset. Mr. Syed never had a chance, as the election was rigged well before any voting occurred. Some of the conduct of Cricket Canada's Board, and of Mr. Saini in particular, were contrary to the fundamental principles of justice and fairness and were objectionable and in bad faith. The conduct of the parties militates in favour of costs being awarded in Mr. Syed's favour. In *Hyacinthe, supra*, arbitrator Pound held that solicitor-client costs would be awarded when the conduct of the other party was unprofessional or where the losing party has otherwise acted objectionably or in bad faith.

12. With respect to the parties' relative financial resources, counsel submitted that this was a case of "David vs. Goliath". When the hearing began, Mr. Syed was only employed on a casual basis. As a result of being unable to accept several

shifts due to this arbitration and preparing for it, he was released by that employer. He is presently unemployed.

13. The gross disparity in resources was reflected in the limited legal retainer for Mr. Syed's counsel. Mr. Browne was only retained shortly before the hearing began and almost exclusively to attend the hearing. He was not authorized to review the various documents or invest anywhere near the normal time to prepare for the hearing. On the other hand, Cricket Canada had nearly unlimited resources to prepare for and conduct the hearing. This criterion strongly militates in favour of solicitor-client costs being awarded in Mr. Syed's favour.

14. As to the factor of intent, Mr. Browne argued that Cricket Canada's intent was not to allow free and fair elections. This criterion also militates in favour of solicitor-client costs being awarded in Mr. Syed's favour.

15. Regarding settlement offers and the parties' willingness to attempt to resolve the dispute, these attempts were without prejudice and cannot be analyzed without violating a sacrosanct principle which all lawyers abide by.

16. Mr. Browne invoked miscellaneous considerations, indicating that his current hourly rate for Mr. Syed is \$300 per hour, considerably lower than what would be typical of a 2003 Ontario or Québec year of call. In the *Adams* decision, *supra*, the arbitrator considered the steps undertaken by the Athlete's counsel, the length of the arbitration hearing (4 days) and submissions as to costs. In that case, \$40,000 was awarded to the Claimant.

17. Counsel submitted that ultimately, the Panel agreed with Mr. Syed and he never should have had to go through this arduous process. The election should have been free and fair in the first place. Having a fair election without the rigging of the results should not require a four-day hearing. It should just happen. Claimants who undertake the effort and expense to expose such sham elections should be encouraged and rewarded. "Whistleblowers" must be compensated for their efforts. Mr. Syed requests full compensation for all the expenses he incurred in this case.

The Respondent:

18. Ms. Sodhi submitted on behalf of Cricket Canada that the application of paragraph 6.22 (a) of the *Code* is that generally, each party shall be responsible for its own expenses.

19. Regarding the factor of "the outcome of the proceedings" in paragraph 6.22 (c), the Panel was urged to find that Mr. Syed was not a "winner" as he claims. Reference was made to the Claimant's Request and to the remedies he sought therein. It was argued that there was no evidence of, or award made regarding, the following allegations listed by Mr. Syed in his Request: election fraud, failure to follow the procedures as laid out in the bylaws, discrimination, racism, making a decision that was influenced by bias, lack of neutrality, deliberate concealment, or exercising discretion for an improper purpose.

20. Counsel pointed out that the Claimant asked to have the election results revoked, however the arbitrator did not do this. The Claimant asked for the

elections to be under the supervision of neutral body, but the arbitrator did not order this in his award. The Claimant asked for a forensic audit of Cricket Canada for the last 10 years, but he did not receive this in the award either.

21. In the event the Panel finds that the Claimant was successful in his claim, the point was made that success at arbitration does not mean that the party is entitled to be awarded costs.

22. Ms. Sodhi emphasized that Cricket Canada was flooded with numerous insulting emails which amounted to harassment. It feared responding as this would perpetuate the aggressive and humiliating accusations contained in the emails. Cricket Canada sought to not perpetuate the demeaning, aggressive and insulting behaviour of the Claimant and acted in good faith in trying to resolve the matter. It has done so throughout the proceedings. Mr. Syed, on the other hand, made many frivolous and vexatious claims against Cricket Canada.

23. Counsel submitted on behalf of the Respondent that Mr. Syed uploaded hundreds of pages of irrelevant information on to the portal in an attempt to waste the SDRCC's time and increase the expense to Cricket Canada. The numerous irrelevant documents posted made referencing relevant documents even more difficult [at the hearing] as all the concerned parties had to sift through the many useless and privileged documents. This added to the length of the arbitration.

24. The Claimant's accusations that went beyond the scope of the award were not due to his lack of legal counsel: he had access to legal counsel and was represented at the second preliminary meeting held on December 9, 2016.

25. Ms. Sodhi argued that Mr. Saini did not compromise the elections from the outset. The Claimant had a chance in the elections as the Nomination Committee forwarded his information to the members.

26. With respect to the factor of the parties' financial resources, it was emphasized that Cricket Canada is a not-for-profit organization. It did not want to retain legal counsel as it had limited resources. Its fundamental purpose is to advance the game of cricket in Canada. Legal counsel was retained at the third Preliminary Meeting.

27. Counsel submitted that of the more than 100 documents posted to the Portal by the Claimant, the Panel noted that many of these were not useful, were unrelated to his claim and not within its jurisdiction. In order to determine this, Cricket Canada and its counsel, as well as the Panel, had to review the piles of useless documents filed by Mr. Syed, leading to an accumulation of costs to the Respondent. This caused a waste of financial resources in the form of legal fees for reviewing the vast number of irrelevant documents. Cricket Canada should be compensated for the costs it has incurred as a result of Mr. Syed's claim.

Reply of the Claimant:

28. Mr. Browne submitted in reply on behalf of the Claimant that at the very outset, the Panel established which matters would be considered during the arbitration and which matters would not. We can only gauge who won and who lost based on what was actually considered and the related order. Matters not

considered during the arbitration can have no bearing on the determination of costs.

29. Counsel pointed out that Mr. Syed asserted improprieties in the election and Cricket Canada asserted the opposite. The Panel agreed with the Claimant and this suggests that he was the winner. Some of the positions on the Board were not up for election in 2017, but Mr. Syed asked for all positions to be up for election and Cricket Canada resisted this. The Panel agreed with Mr. Syed and this suggests he was the winner.

30. Mr. Browne referred to the nine different parts, or stipulations, of the Panel's order. Many of these stipulations are consistent with what Mr. Syed was asking for, pointing to no other conclusion than he was the clear winner of the arbitration. Nothing in the order goes against him or suggests that he was in the wrong.

DECISION

31. Section 6.22 of the Canadian Sport Dispute Resolution Code (2015) reads in part as follows:

6.22 Costs

- (a) Except for the costs outlined in Subsection 3.9(e) and Section 3.10 hereof and subject to Subsection 6.22(c) hereof, each Party shall be responsible for its own expenses and that of its witnesses.
- (b) Parties wishing to seek costs in an Arbitration shall inform the Panel and the other Parties no more than seven (7) days after the award being rendered.
- (c) The Panel shall determine whether there is to be any award of costs and the extent of any such award. When making its determination, the Panel shall take into account the outcome of the proceedings, the conduct of the Parties and their respective financial resources, intent, settlement offers and each Party's willingness in attempting to resolve the dispute prior to or during Arbitration. Success in an Arbitration does not mean that the Party is entitled to be awarded costs.

[...]

32. The section of the Canadian Sport Dispute Resolution Code (2015) that pertains to costs states in part, under paragraph 6.22 (a), that "... subject to Subsection 6.22 (c) hereof, each Party shall be responsible for its own expenses..." This is the starting point, the general principle. For matters arising under the Code, the parties are to bear their own costs. In the Panel's view, based upon this introductory language, only exceptional circumstances would justify a deviation from this principle. The factors the Panel shall take into account in determining

the existence of such exceptional circumstances are enumerated in paragraph 6.22 (c). The provision stipulates that the Panel shall determine whether there is to be any award of costs and the extent of such award, taking into account the said factors.

33. The first factor to be considered pursuant to paragraph 6.22 (c) in determining any award of costs is the "outcome of the proceedings". However, that paragraph ends with the sentence, "Success in an Arbitration does not mean that the Party is entitled to be awarded costs." It follows that losing parties will not necessarily be ordered to pay the costs of the winner.

34. In the matter at hand, the Claimant was partly successful with respect to the outcome of the proceedings to the extent of the order made by the Panel at paragraph 88 of its decision on the merits. However, an examination of Mr. Syed's Request and the remedies he sought therein reveals that he was unsuccessful in many other respects. There was no evidence of, or remedy given regarding, the following allegations listed in Mr. Syed's Request: election fraud, discrimination, racism, making a decision that was influenced by bias, lack of neutrality, deliberate concealment, or exercising discretion for an improper purpose.

35. Moreover, the Panel did not order the following solutions sought by the Claimant in his Request: to have the election results revoked, to have the elections come under the supervision of a neutral body and a forensic audit of Cricket Canada for the last 10 years.

36. In the Panel's view, the success or failure of the Claimant should be evaluated based upon what he alleges and asks for in his Request as well as what

he claims at the hearings. The Request is the Canadian Sport Dispute system's equivalent to a Statement of Claim. The arbitration process begins before the hearings are held. As paragraph 6.16 (a) of the Code specifies, upon appointment, the arbitrator, referred to as "the Panel", has the power to convene a preliminary meeting and to decide procedural matters. Paragraph 6.16 (b) goes on to say that the Panel has the power to establish its own procedures. One of the first functions of the Panel before any hearing is held is a review of the documentary evidence posted by the parties on the Case Management Portal before the hearings begin. This documentation included the Claimant's Request which the Panel considered. In fact, the Panel made it clear to the parties at the outset of the hearings that the scope of the arbitration would be restricted to the issues raised in the Claimant's Request. Therefore, the Request must be considered in assessing the Claimant's success or failure.

37. In its decision, at paragraph 69, the Panel expressed its findings that in some respects, the Cricket Canada elections were improperly conducted and, in other respects, they were conducted in a proper manner.

38. The four improprieties regarding the elections found by the Panel were serious ones. Firstly, the Cricket Canada Board of Directors improperly allowed an ousted President from Saskatchewan to vote and failed to allow the new Saskatchewan President to vote. Secondly, the 10 Provincial Directors who made up the voting members in the elections were improperly allowed to run in those elections without first resigning from their positions. Thirdly, arrangements made between the person who was elected President and three Provincial Directors who were voting members amounted to an improper fixing of the election for the position of President. Fourthly, a person who ran for the position of President in

the elections also selected the three people who would comprise the Nomination Committee.

39. The above-noted findings of improprieties resulted in the Panel ordering that new elections for all positions on the Cricket Canada Board of Directors, including the position of President, be held. The Panel also ordered a number of stipulations regarding the new elections. However, not all of the stipulations arose from findings against Cricket Canada. Rather, they were based on common sense, such as the stipulations that the details of the election be announced well in advance and that all necessary amendments to the bylaws be made to achieve compliance with the legislation and the Panel's award.

40. The Panel also found, contrary to the allegations of the Claimant, that Cricket Canada officials communicated adequately with him and generally provided him with the necessary information regarding the elections. As well, the Panel found that the Nomination Committee fulfilled its function in a proper manner throughout the election process and that the role of the Committee was a reasonable and important one. This also contradicted Mr. Syed's allegations.

41. In summary, with respect to the outcome of the proceedings, the Respondent was found to have acted in an improper fashion in four different instances to the point of prompting the Panel to order that new elections be held. It can therefore be said that the Claimant was successful in this important respect. However, this success was somewhat tempered by the fact that, regardless of Mr. Syed's claims, new elections were going to be held before June 30, 2017, although not for the position of President. As well, Mr. Syed was

unsuccessful in that a number of his allegations and remedies sought were unproven and/or rejected by the Panel.

42. The next factor to consider is "the conduct of the Parties". In the Panel's view, this does not include the parties' conduct with respect to the facts and events surrounding the merits of the case. That conduct is encompassed in the "outcome of the proceedings" and was considered in the preceding paragraphs of this decision.

43. The Panel takes "the conduct of the parties" to mean their conduct from the moment the Claimant's Request was filed to the issuance of the award on the merits of the case. In the Panel's judgment, this is the most important factor regarding the issue of costs because it may go a long way in either reducing or inflating the amount of costs incurred by the parties. A party who is respectful of the arbitration process and cooperative in assisting the Panel to reach a final resolution in an expeditious manner serves to keep costs at a minimum. On the other hand, a party that is disruptive or obstreperous in its conduct may cause undue delay in the proceedings, resulting in increased costs.

44. In the Panel's view, the conduct of the Claimant in this matter has unnecessarily and unduly caused wastages of time and resources, resulting in increased costs to the parties and to the SDRCC. His conduct has been disruptive and has at times amounted to an abuse of process.

45. Firstly, as outlined in paragraph 67 of the Panel's decision on the merits, a substantial portion of the documentation and correspondence filed by the

Claimant (108 documents in total consisting of several hundred pages) pertain to matters that are not relevant to the dispute, or are otherwise inadmissible.

46. In Mr. Syed's own words as expressed in his Request (the space for the name of his representative was left blank), the dispute at hand clearly centers upon the Cricket Canada elections held in May 2016. Yet, many of the documents he filed 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. As well, he filed a number of documents twice.

47. The above-described "shotgun" approach to the filing of documents has resulted in their exceptionally time-consuming examination via the Case Management Portal by legal counsel for Cricket Canada and also by this Panel. As submitted by Cricket Canada, the numerous irrelevant documents posted by Mr. Syed made referencing relevant documents more difficult at the hearing as all the parties had to sift through many useless documents. This added to the length of the arbitration.

48. Although Mr. Syed may not have initially had the benefit of a legal counsel, he chose to restrict the numerous allegations detailed in his Request to the subject of the May 2016 elections and he should have and could have easily followed the same path in the filing of his supporting documentation. Moreover, the Claimant did have legal representation at the second preliminary conference

call held on December 7, 2016. This would have continued to be the case until December 16, 2016 when the SDRCC posted a notice of removal of the Claimant's legal counsel. As well, the Claimant served notice in correspondence dated January 4, 2017 that his legal counsel "is not available for further mediation" which was to be held the next day. Therefore, his counsel was presumably available up to that date.

49. Secondly, on or before December 16, 2016, Mr. Syed began engaging in a series of accusations levelled at the law firm representing Cricket Canada. The minutes of the third preliminary conference call held on December 16, 2016 state that, in response to an inquiry from Mr. Syed, Ms. Sodhi, legal counsel for Cricket Canada, "advises that she has no conflicts representing Cricket Canada". This should have put an end to that subject. However, in an email dated December 22, 2016 to the SDRCC, Mr. Syed declared that if the Cricket Canada law firm did not furnish an indication from the Canadian Bar Association of no professional misconduct, the law firm "can't represent CC as a legal counsel in this arbitration". And, the Claimant persisted further with his spurious allegations, which necessitated the following directive from the Panel issued on January 6, 2017:

The Claimant has expressed allegations of professional misconduct, and more particularly of conflict of interest, with respect to the law firm representing the Respondent. It is not the mandate of this arbitration panel to investigate and make determinations regarding allegations of professional misconduct with respect to legal counsel retained by the parties. Such matters are completely outside the arbitration panel's scope of review. Furthermore, there is no evidence of any finding of professional misconduct from the Law Society of Upper Canada, the governing body for lawyers practising in Ontario.

The Claimant asked the Respondent's law firm to "get clarification from Canadian Bar association" and claimed it was necessary for the law firm to "bring no objection from Canadian Bar association for NO professional

misconduct (conflict of interest)". This morning, the Claimant referred to Cricket Canada providing "all the required documents for verification" which he has "demanded". The Respondent's law firm is under no such duty to furnish clarification from the Canadian Bar Association, or from any other organization. The Respondent's law firm has been retained to represent Cricket Canada and has full standing before this arbitration panel.

In its response to the Respondent's request for an extension of its filing deadline, the Claimant stated that the Respondent's law firm "cannot represent CC in this matter, until declare with proof the clearance of conflict of interest" and added that Cricket Canada "may find another legal counsel" or directly request an extension which he would accept. For the Claimant to declare that the Respondent's law firm cannot represent Cricket Canada and to take the position it has with regard to the extension only serve to waste time and resources in this matter and constitute an abuse of process. The Claimant is hereby ordered to cease such behaviour.

50. The content of the above-noted directive speaks for itself as to the disruptive and inappropriate conduct of the Claimant in this matter. Whether a party has the benefit of legal advice or not, there is no justification for such unsubstantiated and misplaced attacks against the other side's law firm. Mr. Syed's brash statement that the Sodhi law firm could not represent Cricket Canada until proof of the clearance of conflict of interest was contained in an email he sent to the SDRCC on January 5, 2017. That statement, along with his disdainful suggestion that Cricket Canada find another legal counsel or request an extension directly to him for acceptance, prompted Ms. Sodhi to request directions from the SDRCC prior to uploading the Respondent's submissions. This illustrates the disruptive effect of the Claimant's conduct.

51. Finally, throughout the hearings, Mr. Syed and his two representatives did multiple, or segmented, examinations-in-chief, cross-examinations and re-examinations of the same witnesses. This method of proceeding considerably

lengthened the witnesses' testimonies, while only occasionally contributing relevant evidence. The most glaring example of this occurred during the cross-examination of Mr. Saini, a witness called by Cricket Canada. The Panel's notes indicate that the witness was cross-examined a total of eight times, or in eight segments, starting with questions by Mr. Syed, then by Mr. Manjeet Singh, one of the Claimant's representatives, followed by Mr. Browne, by Mr. Syed a second time, by Mr. Singh a second time, by Mr. Browne a second time, by Mr. Singh with his third round of questions and finally by Mr. Syed with his third try at the witness. It seemed that when one of the Claimant's representatives was questioning the witness, new questions would occur to the other two and on it went. The Panel warned Mr. Syed that such questioning was abusive towards the witness.

52. The Panel's notes also reveal the following pattern of witness examination during the hearings: one witness was re-examined three times by the Claimant and his representatives; another was examined in chief four times and re-examined twice; yet another witness was examined in chief seven times by Mr. Syed and his representatives and re-examined three times; finally, a witness was examined in chief three times.

53. The repeated examinations-by-committee described above served to unnecessarily lengthen the proceedings with little benefit and thereby increased the costs of the case to all concerned.

54. The Panel does note that the examinations of the witnesses by Mr. Browne, counsel for the Claimant, tended to be briefer, were more to the point

and resulted in evidence that was often helpful to the determination of the case. Mr. Browne acted in a respectful fashion throughout the process.

55. The Panel observed that the conduct of Cricket Canada and its legal counsel was also respectful of the arbitration process. Both counsel thus contributed to a final resolution of the case in as expeditious a manner as possible under the circumstances. In fact, the Panel found that Ms. Sodhi remained remarkably composed, and even understated, given the above-described conduct of Mr. Syed. Her manner of handling of the case for Cricket Canada certainly did not financially prejudice the Claimant.

56. The next factor to be considered pursuant to paragraph 6.22 (c) in determining any award of costs is the parties' "respective financial resources". The Panel understands that Mr. Syed has relatively limited financial resources. But this alone is not a reason to award costs against Cricket Canada.

57. Although Canadian national sport federations would be expected to have greater financial resources than individual Claimants, they are not affluent entities. They should not be discouraged from carrying out their responsibilities for fear of potentially debilitating costs awards against them. They are staffed by people who are highly dedicated to their sport, as is Mr. Syed, and Cricket Canada does not appear to be an exception. Its fundamental purpose is to advance the game of cricket in Canada. Its executive members are unpaid volunteers. Cricket Canada is a not-for-profit organization. It did not want to retain legal counsel as it had limited resources. Legal counsel was retained at the second preliminary meeting. Given that its conduct has been respectful of the

process, the Panel is loath to burden Cricket Canada with the payment of the Claimant's legal expenses unless the other factors call for such an order.

58. There was insufficient evidence with respect to the other two factors mentioned in paragraph 6.22 (c) to be of assistance on the issue of costs.

59. The general principle enunciated in paragraph 6.22 (c) of the Code is that each party shall be responsible for its own expenses. In light of the findings described above, the factors that the Panel is to take into account regarding costs, taken as a whole, do not persuade it to deviate from that principle. Although Mr. Syed achieved mitigated success in one important measure, paragraph 6.22 (c) specifies that success does not mean that the party is entitled to be awarded costs. In the Panel's judgment, this stipulation should be applied in the matter at hand because the Claimant's time-wasting, disruptive and inappropriate conduct precludes an award of costs in his favour. In fact, were it not for Mr. Syed's measure of success at arbitration, the Panel would have awarded costs against him.

In the result, there will be no award of costs in this matter.

Dated at Ottawa this 5th day of April, 2017.



Ross C. Dumoulin
Arbitrator