SDRCC 17-0332

DAVID VOLFSON

(Claimant)

v.

TENNIS CANADA

(Respondent)

ORDER AND REASONS FOR ORDER

Richard W. Pound, Q,C., Ad.E.

Sole Arbitrator

Appearances:

Layth Gafoor	for the Claimant
David Outerbridge Aria Laskin	for the Respondent

Introduction

The Claimant is a competitive tennis player. During the period in respect of which this dispute has arisen, he was a minor. Most of the communications with the Respondent, Tennis Canada (TC), regarding the Claimant, in particular with respect to the economic and financial aspects of the relationship with TC, were conducted on his behalf by his father and, in relation to the dispute giving rise to these proceedings, by the Claimant's counsel.

The present proceedings arise by way of a request for arbitration before the SDRCC due to the Claimant's dissatisfaction with the outcome of an internal appeal.

I was appointed by mutual agreement of the parties to act as sole arbitrator.

The Impugned TC Decision

On 17 February 2016, the Claimant, through his counsel, filed an internal appeal with TC. Claimant's counsel seemed to have been of the view that the internal rules for such an appeal were the TC rules applicable to internal disciplinary appeals, of which the Claimant's was not one. No disciplinary proceedings had been commenced with respect to the Claimant.

TC established a Panel to deal with the internal appeal. The Panel was chaired by Jack Graham, Q.C., a past Chair of TC and a current, non-voting, Director Emeritus of TC. He is a member of the Board of Directors of the International Tennis Federation, the international federation which governs the sport of tennis. The other members were Tony Eames, also a past Chair of TC and a member of the Canadian Olympic Committee, and Jennifer Bishop, a current member of the TC Board of Directors. No member of the Panel had been involved in any decisions relating to the Claimant. Claimant's counsel was advised on 23 September 2016 of the appointment of the Panel and of the procedure that would apply in dealing with the Claimant's appeal. Claimant's counsel advised that he could not be available to deal with any hearing until January 2017 at the earliest. A hearing date for the appeal was set for 13 March 2017.

On 27 February 2017, Claimant's counsel requested a copy of the TC by-laws and requested that (in accordance with the TC Discipline Committee and Discipline Appeal Committee Procedures) only one member of the Panel be affiliated with TC or its Board of Directors. He also raised questions regarding fairness, impartiality and natural justice. On 28 February 2017, he was advised that the matter did not fall under the Discipline Committee Appeals Procedure and that the Panel could deal with the appeal in a fair and unbiased manner.

Claimant's counsel advised the Panel on 13 March 2017 that he would not be able to attend the hearing that day, due to injuries sustained in a motor vehicle accident the previous week, and requested an adjournment. The Panel (the members of which had travelled to Toronto for the hearing) met to consider the adjournment request. TC offered Claimant's

counsel the opportunity to participate by telephone conference. No response was received. TC did not object to the adjournment, which was granted.

Both the Claimant and TC had already filed briefs and documents with the Panel. The Panel decided that it could proceed on the basis of written submissions and new timelines were established for the purpose of completing the filing of material and submissions. Claimant's counsel advised that he did not wish to respond to TC's submissions, that he was satisfied with his original submissions and that he had nothing further to add to those initial submissions. The Panel then proceeded with an analysis of the evidence before it and rendered its decision dismissing the appeal on 29 June 2017.

The Claimant's Position in the Internal Appeal

The Claimant's position before the TC Panel, as noted in the Panel's decision, included allegations:

> (a) that as a result of the deterioration in the relationship between Tennis Canada leadership and David Volfson's father, Roman Volfson, Tennis Canada engaged in a course of bias representation, withholding of eligible support and undermining David Volfson;
> (b) Tennis Canada was negligent in its obligation to put in place a clear set of identifiable rules and by-laws that would provide the administrative recourse needed to address systemic organizational subversion and discrimination against a player by the NSO [i.e., TC]. In these submissions, Mr. Gafoor says that the appeal Panel did not establish a fair process or procedures to address these issues;
> (c) Tennis Canada has been indifferent to the legitimate concerns presented to Tennis Canada regarding his client since September 15, 2015.
>
> In support of the submissions set out above, Mr. Gafoor alleges that Tennis Canada's offending conduct included:
>
> (i) consistently omitting David's game results in Tennis Canada newsletters and on-line communications;
> (ii) systemic errors in tabulating David's tournament results and related points earned toward funding. Mr. Gafoor also alleges that this led to questions in relation to his eligibility for Sport Canada funding;
> (iii) systemic organizational bias and general lack of accommodation, stemming from David's decision not to leave home and train out of the National Tennis Centre in Montreal.
>
> […]
>
> Mr. Gafoor argues that Tennis Canada has an obligation arising from access to public funds to behave in an unbiased and transparent manner when dealing with athletes. He says that Tennis Canada exhibited systemic bias against non-National Training Centre athletes, including David Volfson.

> Mr. Gafoor also submits that David Volfson made a decision not to train in Montreal and that this decision impacted his "financial, inclusion, opportunity, profile and overall support from Tennis Canada."
>
> […]
>
> Mr. Gafoor states that David Volfson is entitled to his second year performance funding and that funds should immediately be released.

The Internal Appeal Decision

The Panel considered that the Claimant had not made out his case. A few extracts from the Panel's decision are illustrative.

The first relates to the Claimant's alleged right to funding.

> Firstly, the Panel accepts the submissions of Tennis Canada that it has significant discretion when making decisions about funding support for athletes. This discretion should not be interfered with by an appeal Panel unless there is clear evidence that the decisions were made in bad faith, were based on bias, or were contrary to clear, published rules for funding.
>
> The primary remedy requested on behalf of David Volfson was funding for his second year of juniors, under the Performance Standard Fund (PSF).
>
> We conclude that David Volfson continued to receive significant funding and support from Tennis Canada notwithstanding his decision not to attend the Tennis Canada National Training Centre in Montreal. The levels of support are set out in the submissions and affidavits from Tennis Canada. This is un-contradicted evidence. All of the Tennis Canada support he received was completely discretionary.
>
> In addition, for the 2015 fiscal year, there is un-contradicted evidence that David Volfson was eligible for the funding, provided he met the required performance standards in the PSF program. The performance standards were published by Tennis Canada and were also communicated to David Volfson on more than one occasion. There is no evidence that these standards were established in a manner that was either systemically or actually biased against David Volfson. These standards reference performance as a professional or junior player to a recognized and objective world ranking. Although some of the prior support that David Volfson received from Tennis Canada was not based on these performance standards, his eligibility for 2015 clearly was. All other support to David Volfson was discretionary and, based on the evidence before the Panel, we find that these decisions were not biased toward him.
>
> The PSF standards speak for themselves and unfortunately for David Volfson, he was not able to meet these standards to get $20,000 of funding in the 2015 fiscal year. Notwithstanding this, David Volfson continued to receive other form of support from Tennis Canada including, but not limited to, wild cards at Tennis Canada events.

> For the reasons set out above, the Panel concludes that Tennis Canada's decision not to fund David Volfson under the PSF program in 2015 was not only reasonable, but as also made in accordance with specific published criteria set out in the PSF guidelines.

The second addresses the matter of alleged bias:

> Mr. Gafoor also alleges, on behalf of his client, that Tennis Canada was biased against David Volfson largely because of its deteriorating relationship with Roman Volfson, his father.
>
> The Panel has considered this allegation and all of the evidence and has concluded that Tennis Canada was not biased against David Volfson. As indicated above, David Volfson received support at various different times throughout his career, notwithstanding the fact that he did not attend the Tennis Canada National Training Centre. Furthermore, as indicated above, the decision not to provide him with the second year under 18 funding support under the PSF was determined on the basis that he did not meet the clear objective criteria set out in the funding guidelines.
>
> Furthermore, there is no clear evidence that David Volfson was treated differently than other athletes in a similar situation. For these reasons, the Panel concludes that Tennis Canada has not been biased against David Volfson in its decisions in respect to athlete funding support, or the general treatment of him.

The third addresses the matter of the composition of the Panel in respect of the Internal Appeal Hearing:

> The third issue raised relates to the manner in which Tennis Canada dealt with the concerns raised by Mr. Gafoor and the makeup of the Panel and conduct of the appeal.
>
> The procedures followed by the appeal Panel are carefully set out in this decision. As indicated above, all three members of the Panel have a current or past affiliation with Tennis Canada. However, no member of the Panel was involved in any decisions respecting David Volfson. Mr. Gafoor has not suggested any bias, but has implied that the issue of affiliation is sufficient to lead to an apprehension of bias.
>
> The Panel rejects this submission. National sport organizations have autonomy to establish internal appeal panels to deal with these types of issues. There is no evidence that any member of the Panel was actually biased or that the procedure favoured Tennis Canada.
>
> In addition, the Panel established a procedure that allowed both parties to make full submissions and adduce whatever evidence they felt was appropriate in the circumstances. Mr. Gafoor, on behalf of his client, was given extensions to make written submissions and an adjournment in respect of the oral hearing, notwithstanding the fact that the request for an adjournment was only made to the Panel on the morning of the hearing.
>
> The Appellant was also given an opportunity to make a rebuttal submission in response to extensive evidentiary and legal submissions of Tennis Canada and declined to do so. While the Panel decided not to hold a second in-person hearing, it did not preclude the possibility

> of convening a video conference to hear oral submissions, if required. Since no further submissions were received by [sic] Mr. Gafoor on behalf of his client, the Panel concluded that an oral hearing was unnecessary to deal with any factual dispute.
>
> Based on the foregoing, the Panel has concluded that David Volfson was given a full and fair opportunity to present his case to an unbiased Panel that had no involvement in any decision respecting his funding.

The Current Proceedings

The Claimant was not satisfied with the outcome of the Internal Appeal. He requested arbitration of the matter before the SDRCC.

The request for SDRCC arbitration seeks four outcomes:

1. Immediate full release of David's [the Claimant's] proper allotment of 2015-2016 funding, as he has met all of his 2nd Year Performance Standard obligations under the terms of TC Canada Performance Standards.
2. A finding that TC has an obligation to accommodate David [the Claimant] in his training and opportunities in spite of TC [sic] decision to centralize its performance initiatives to [sic] Montreal.
3. [A finding] That TC has engaged in a targeting effort of [sic] depreciate David's [the Claimant's] value and ranking as a result of him not competing out of [sic] Montreal TC training facility.
4. [A finding that] the internal process [discussed below] was in fact a faulty process and requires a De Nova [sic] hearing before the SDRCC.

Preliminary Issues

In the course of the preliminary hearing held by conference call on 16 August 2017, counsel for TC raised an objection regarding the *de novo* nature of portions of these proceedings as not arising from the TC decision that is under appeal. In the process leading to that decision, counsel submitted, the only conclusion sought had been financial. Issues (2) and (3) had not been raised in the internal appeal. Issue (4) was, essentially, implicit in the context of the current dispute. The matter of issues (2) and (3) was framed by TC's counsel as one of jurisdiction, on the basis that the proper process for bringing them forward to the SDRCC should have been by way of an internal appeal within TC, and that "new" issues should not be heard for the first time in front of the SDRCC. In the circumstances, therefore, the SDRCC had no jurisdiction to entertain such requests.

It is certainly true that every effort should be made to ensure that internal appeal processes are exhausted before appeals come before the SDRCC. Arbitration before the SDRCC should generally be a last resort, not the first step, in a litigious process. TC's counsel suggested that I should hear the "jurisdictional" aspects first and that, with those determined, the arbitration on the appeal from the TC decision could then proceed. In the normal course, that might well have been the most linear procedural outcome. It is clear, however, at least on the

face of the party filings, that there is a contentious history in the relationship between the Claimant (through his father) and TC and that it was unlikely that a satisfactory resolution of the issues could be achieved at the level of TC internal appeals, which would in turn lead to additional appeals before the SDRCC.

It was my view that the parties were now before the SDRCC and that the Claimant could be satisfied that the neutral or impartial hearing about which his counsel had been concerned would now be achieved. In the interests of resolving all of the matters raised in the least expensive and time-consuming manner, I decided that they should all form part of a single proceeding. While TC was less than enthusiastic about such a process, it nevertheless accepted that outcome and a hearing date was set, together with intermediate dates for filing additional documents, witness statements, and points of argument.

It seems to me that proceeding in this manner is authorized within the scope of Article 6.16 of the Canadian Sport Dispute Resolution Code ("Code"), which provides, *inter alia*,

> […]
> (b) Subject to the specific provisions set out in this Article, the Panel shall have the power to establish its own procedures so long as the Parties are treated equally and fairly and given a reasonable opportunity to present their case or to respond to the case of another Party as provided for by this Code and applicable law. The Panel may take such steps and conduct the proceedings as considered necessary or desirable by the Panel to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute.
> […]

The Claimant's counsel stated, during the preliminary hearing, that he had no additional issues to raise, although he felt strongly that I should be presented with and consider contextual evidence to inform my conclusions on the matters to be decided in the proceedings.

The Full Power to Review the Facts

Pursuant to Article 6.17 of the Code, a Panel established by the SDRCC shall have full power to review the facts and apply the law.

I am conscious of the fact that, having the power to fully review the facts in this matter, I may be in a position to consider certain facts that might not have been before the TC Appeal Panel whose decision is presently under appeal. On the other hand, I am also in possession of the TC Appeal Panel's decision and the facts on which it relied in reaching that decision.

The internal appeal was a process in which the Claimant, through his counsel, had a full opportunity to present to the Appeal Panel whatever evidence and submissions he considered advisable, for purposes of assisting the Appeal Panel in reaching its conclusions on the appeal that he had instituted. The onus to establish the basis for his claim and the relief he sought, namely an entitlement of the Claimant to certain funding, was his to discharge.

The right to what Claimant's counsel refers to as a *de novo* hearing in circumstances in which the Claimant has fully participated in the process leading to the decision under appeal falls short of completely eliminating what has preceded this appeal to the SDRCC. This is not a case in which TC has refused to follow or comply with its internal rules or refused to grant the Claimant a right to an internal appeal. Institution of the present proceedings does not automatically cause what occurred in the course of events leading to the decision under appeal simply to disappear. It is true that the SDRCC Panel has the full power to review the facts and apply the law, but the facts established in the previous process, in which the Claimant had participated, do not just vanish as if they had never existed, leaving the SDRCC Panel faced with a *tabula rasa* or completely clean slate.[1]

The Claimant must be taken to have been completely aware of the facts, some of which were supported by affidavits, which he had not contested in the course of the internal appeal. Nor were any additional facts put forward by the Claimant, by way of rebuttal, in the course of that appeal. The current proceedings permit the Claimant to adduce additional facts that he may consider important and relevant, to challenge the correctness of the facts, to fill in material gaps in the facts, to submit alternative interpretations and to challenge the reasoning of the underlying panel decision. Mere disagreement with or non-satisfaction with the outcome or reasoning is not, however, sufficient to discharge the Claimant's burden of proof in the matter.

The Panel hearing this appeal is, of course, not bound by the decision under appeal, not only as a matter of general principle, but also because it may hear new facts and submissions that the underlying panel may not have heard. In this respect, the SDRCC process is somewhat different from the usual process of judicial review, in which only the facts that were before the original decision-maker are considered by the reviewing body. As a matter of course in this appeal, I should consider such factors as:

- the formation and composition of the appeal Panel
- the internal rules of the organization establishing the appeal Panel
- the mandate assigned to the appeal Panel and the framing of the issues before it
- the process determined to carry out the mandate of the appeal Panel
- the record before the appeal Panel
- accessibility of all parties to the particular appeal
- procedural fairness afforded to the parties
- any evidence of bias
- the decision from which the appeal has been taken
- the reasons for that decision
- the applicable standard of review (correctness or reasonableness)

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[11] In this regard, I am reminded of the statement made in the Supreme Court of Canada's decision in *Attorney General of Canada v. Fairmont Hotels Inc.*, [2016] 2 S.C.R. 720, (albeit in the context of rectification) that "Rectification is not equity's version of a mulligan. Courts rectify instruments which do not correctly record agreements. Courts do not rectify agreements where their faithful recording in an instrument has led to an undesirable or otherwise unexpected outcome."

That said, having reviewed these matters, I have found nothing on the face of the appeal Panel decision, nor on the evidence before it, which indicates anything other than a careful and balanced consideration of the materials and evidence presented by both parties to a validly established internal appeal Panel. I find, on the facts and issues before it, no palpable and overriding error in the appreciation of those facts and no error of law in applying the funding criteria applicable to the Claimant. Nor was there any lack of procedural fairness. I found no evidence of any bias and no basis for any reasonable apprehension of bias on the part of the appeal Panel. It remains to be seen, however, whether in the present proceedings there are new facts and arguments brought forward that might lead to a different conclusion.

The New Facts and Arguments in the SDRCC Hearing

In order to focus on the matters to be presented during the hearing, I requested the parties to provide witness statements and points of argument prior to the hearing. I have commented, where appropriate, upon the matters raised (or not raised) during the hearing.

The Claimant's counsel filed a statement of anticipated evidence from the Claimant. The Claimant provided evidence and was cross-examined. TC presented Debbie Kirkwood, its High Performance Director, who also provided affidavit evidence and was cross-examined.

The Claimant's Evidence

Relevant portions of the Claimant's statement of anticipated evidence include the matters set forth below. Where appropriate, I have included comments on relevant aspects of the statement.

> […]
> 3. *I have been involved in playing competitive tennis since I was a very young child.*

This was established. The Claimant's first international event occurred when he was 9 years old.

> 4. *Over my time as a competitive tennis player, I have had a number of unfortunate problems and encounters with representative [sic] of Tennis Canada.*

This was not established. By and large, on both the evidence produced at the internal appeal and in the evidence produced before me, the Claimant was treated fairly and equitably by TC. It was only in the transition into his second Under-18 year and the lack of funding on that occasion that a problem occurred.

> 5. *There are numerous examples in which I have felt targeted by Tennis Canada representatives both in terms of the way in which I was treated publically [sic] as well as, indirect [sic] being targeted, as a result of a breakdown in relationship between Tennis Canada and my father.*

This was not established. The elephant in the room was the relationship between the Claimant's father and TC, which everyone seemed to assume was bad, although no specific evidence of deterioration of the relationship was provided to me. Similarly, no evidence of public mistreatment or indirect "targeting" of the Claimant by TC representatives was provided.

> 6. *During my hearing, I will share details about being targeted by officials, tournament representatives, members of the Tennis Canada leadership and those they hold influence over.*

This was not established. No evidence was offered in support of the allegations.

> 7. *As a result of this behavior, I have felt emotionally and psychologically distressed. I have also felt unfairly scrutinized, singled out for the actions of others as well as having my accomplishments diminished by the organization.*

This was not established as expressed. It was clear that the Claimant was distressed as a result of the limitation of financial support that he received from TC in respect of the second year Under-18, but there was no evidence of unfair scrutiny, of having been singled out for the actions of others, or of his accomplishments being diminished.

> 8. *During the 2014-2015 season, I was working with Bruno Agostinelli Jr, a member of Tennis Canada's coaching team. I was also working with coach Bob Brett, who is also a Tennis Canada coach.*

This was established.

> 9. *As a young player, I relied heavily on their many years of collective experience in forging other players, who have been able to achieve world-class results and succeeded at the highest levels within tennis.*

This was established. By all accounts, both coaches were effectual and influential in the development of the Claimant's tennis career.

> 10. *It was under their advisement and [sic] undertook to compete at a higher level of competition and away from the junior circuit. At the time I believed that my coaches were working towards putting me on the best path in relation to my ultimate development.*

This was established.

> 11. *This path meant that I was competing against players who were at a higher level than others my age. Further, that I would not achieve the same level of success in terms of wins but that in the end, I would be further ahead in my development by taking on a superior class of opponent.*

This was established. The Claimant appears to have been content to follow their advice that he play better players in order to progress faster and was satisfied that such progress was proving successful.

12. *My coaches were also aware that I was under the U18 Performance Standards in terms of my Tennis Canada funding and that I desired to have that continue into year two of the allocation.*

This was not established. I accept that the coaches would have known the minimum standards to be achieved in order to qualify for the second-year PSF funding and that the Claimant was similarly aware. In the longer-term development of the Claimant's tennis career, the coaches and the Claimant determined that the best path was for him to play ATP players. Evidently the coaches and the Claimant were satisfied with that decision. PSF funding was only one portion of the potential support package available through TC. The Sport Canada Athlete Assistance Program (AAP) was another, as were wild cards, access to coaches and health programs, etc.

13. *I was shocked to learn later that although I was following the Tennis Canada approved strategy, I was deemed ineligible for funding support based on the year two criteria.*

This was not established. The Claimant was already on a different program of development, even though he knew (as would his coaches) the criteria required to be met for Performance Standards funding to be available. These criteria were based on objective rankings determined by external authorities, over which TC had no control. It is not correct to say that he was following a TC-approved strategy. The strategy was one developed between the coaches, the Claimant and his family. TC, as an organization, played no role in those decisions. How (and whether) the Claimant managed to qualify for PSF funding was not a matter determined by TC.

14. *Had I know [sic] this information; I would have at least been able to make an informed decision about this impact to my funding.*

This was not established. The Claimant, his coaches and his family made the informed decisions regarding his development.

15. *Although I had followed this course of action and was seeing positive results, even at that early stage, when I learned of the withdrawal of my year two funding result in 2015, I once again became dejected and felt like I was being made to feel like an outsider by the very organization that was supposed to be nurturing and supporting my bourgeoning career.*

There is no doubt that the Claimant was disappointed by the failure to qualify for the Performance Standards funding. That disappointment, however, cannot be attributed to any culpable conduct on the part of TC.

16. *Although I was told in words that they supported me and I was no different than others in my stream, their actions time and time again reflected their feeling towards my career.*

The Claimant was supported by TC through entirely discretionary funding mechanisms and was not supported pursuant to the PSF, since he did not meet the published criteria for such

support. The TC feelings regarding his potential and the support that could be managed on his behalf did not change.

> *17. I believe that they used their conflict with my father to exact retribution again [sic] me personally.*
> […]

This was not established. There was no evidence presented to me regarding the nature and extent of any conflict between the father and TC and no evidence whatsoever that TC was exacting retribution against the Claimant in respect of whatever conflict may have existed. The evidence showed that TC considered the Claimant to be an excellent player and that it did what it could to support him within the policy and budgetary limitations that applied.

The Claimant's Points of Argument

I also reproduce the Points of Argument submitted by Claimant's counsel, together with my observations.

> ***Theory:*** *During our hearing, I plan to provide evidence that throughout the course of dealings, as [sic] some point there was a breakdown in relationship between Roman Volfson (father of the claimant) and executives within Tennis Canada. As a result of this breakdown, Tennis Canada engaged in a course of conduct that included: omissions, errors and bias against the claimant.*

This was not established. Whatever the breakdown may have been, there is no evidence of any consequential course of conduct on the part of TC or its executives. Similarly, there is no evidence of any course of conduct on the part of TC involving omissions, errors or bias against the Claimant.

> *I will also lead evidence to show that the CEO of Tennis Canada failed to respond or grant a hearing on this manner in a timely manner.*

This was not established. The Claimant refused to approach the TC High Performance personnel identified by the TC Chief Executive Officer. Any delays in response and in relation to the internal hearing are attributable solely to the Claimant and his attorney.

> *I will show that Tennis Canada entered into unfair dealings with regard to a request for payments from the claimant in satisfaction of monies the respondent say were owed.*

This is simply incorrect. An agreement had been reached between the Claimant's father and TC as to their respective contributions pertaining to financial assistance to the Claimant. TC merely attempted to ensure that the amount agreed to by the Claimant's father was paid. There was nothing unfair or improper about such a request.

> *Through evidence given by the claimant, I will show the emotional, psychological and financial impact on the claimant brought on as a result of the respondents [sic] conduct.*

As indicated above, there is no doubt regarding the Claimant's disappointment with the level of financial support granted by TC. Some of that may well have reflected itself in his psychological approach to his tennis. He was, however, still supported by TC, not the least through access to the financial support obtained through the AAP. None of the alleged impact was the result of any culpable conduct on the part of TC.

> *I will also lead evidence as to the impact on the claimant of not training at the national training centre in Montreal on his opportunities and support from the respondent.*

It is entirely within the competence of TC to determine whether or not the development of world-level players is best achieved in national or regional training centres, where critical masses of players, facilities, coaches and medical personnel can be congregated. Access to the Montreal national training centre was offered to the Claimant, who chose not to accept that invitation. He was entirely free to make such a choice. TC did what it could to assist the Claimant, within its means and in the context of the availability of discretionary funding. In an organization like TC, with limited funding, there are many competing priorities for the application of funds.

> *Through the claimant, I will also show the impact of Tennis Canada's officials in devising a development strategy that ultimately led to his lack of year two funding. And further, how the application of the standard was flawed when evaluated within the context of the overall relationship with Tennis Canada.*

The design of the high performance model was a policy decision that TC, as the national federation governing tennis in Canada, was free to make. It was not a policy designed to prejudice anyone, including the Claimant. The application of the PSF funding criteria was determined in accordance with published guidelines and independently-established measurement tools.

> *I will also show that others connected to Tennis Canada have targeted the claimant, in some cases when he was on the court as a result of the breakdown in relations.*

This was neither shown, nor even argued, during the hearing.

> *Finally, that pressure was placed on the claimant's father to render payment of what was seen as monies owing by the claimant before he would be permitted to receive year one funding.*

This is essentially a repetition of an earlier point. There had been an agreement reached regarding the amount to be paid by the Claimant's father in respect of the training expenses of the Claimant. The agreed amount had not been paid. TC was entirely within its rights to insist that the amount be paid before it entered into a new cycle of financial support. This point of argument, apart from being irrelevant, is entirely without merit.

> *I plan to demonstrate that as a result of the conduct and through a proper evaluation David should have been allocated his year two funding.*

This was not established. The Claimant did not qualify for the Performance Standard funding and did not argue that he had qualified. The matter of the Claimant's dissatisfaction with policy design adopted by TC is not something that can, or should, be cured through arbitration.

The Matter of Bias

Allegations of bias are serious accusations in relation to personal or organizational misconduct. They are not simply allegations that an error has occurred or been made. Such allegations must be supported by reliable evidence, especially when those allegations are made by counsel, who must be taken to be fully aware of the seriousness of such claims. A Panel, in these circumstances, is not required to make findings regarding the motivation for allegations of bias, nor to consider recourses that may be available to those accused of bias. It is sufficient, for purposes of these proceedings, to determine whether, on the basis of a balance of probabilities, the claim of bias has been established.

The Claimant has made the allegations of bias and has pleaded them in the proceedings. I have, however, found no evidence whatsoever of bias on the part of TC or those involved with funding decisions affecting the Claimant. Notwithstanding its policy decision to achieve high performance tennis outcomes in Canada through national and regional tennis centres, TC nevertheless bent over backwards to try to assist the Claimant (who eschewed the concept, choosing instead a different path to high performance) through significant discretionary assistance tailored to the particular needs of the Claimant. This finding is sufficient to dispose of the third conclusion sought in these proceedings, namely that TC has engaged in a targeted effort to deprecate the value of the Claimant and his ranking as a result of him not competing out of the Montreal training centre facility.

As to the financial conclusion sought through these proceedings, the funding decisions regarding Performance Standards were based on established and published objective criteria, of which the Claimant had been informed on several occasions. No special or targeted factors pertaining to the Claimant as an individual were present or applicable. It was quite clear that the Claimant did not meet even the lowest level of minimum criteria for PSF funding and was, accordingly, not entitled to the financial support that he claimed.

On the larger question of entitlement to financial support (the second conclusion sought by the Claimant), I find that TC has no obligation to "accommodate" the Claimant. Its programs and policies were determined by its appropriate governance organs and applied in accordance with their terms.

Finally, as indicated above, I find that the internal process was not a faulty process which required a *de novo* hearing before the SDRCC.

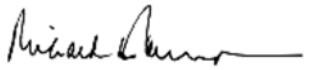
ORDER

The Claimant's appeal in this matter is dismissed. In particular:

(1) No release of the Claimant's proper allotment of 2015-2016 funding is authorized, since the Claimant has not met all of his 2nd year Performance Standard obligations under the terms of TC Canada Performance Standards.
(2) TC has no obligation to accommodate the Claimant in his training and opportunities in spite of the TC decision to centralize its performance initiatives in Montreal.
(3) TC has not engaged in a targeted effort to depreciate the Claimant's value and ranking as a result of him not competing out of the Montreal TC training facility.
(4) The internal process was not a faulty process requiring a *de novo* hearing before the SDRCC.

TC has reserved its right to raise the matter of costs. Should it wish to do so, it shall provide a maximum of four (4) pages in support of its claim within ten (10) days of the posting of this decision on the SDRCC portal. The Claimant shall respond within five (5) days thereafter with a maximum of four (4) pages.

MONTREAL, this 3rd day of October, 2017



Richard W. Pound, Q.C., Ad.E.
Sole Arbitrator