

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE REGLEMENT DES DIFFERENDS SPORTIFS DU CANADA (CRDSC)**

SDRCC No: 20-0461

IN THE MATTER OF A JURISDICTIONAL ARBITRATION HEARING BETWEEN:

**MICHAEL GILLIS
(CLAIMANT)**

- and -

**FIELD HOCKEY CANADA (FHC), et al.
Represented by Susan Ahrens, CEO, and Gordon Plottel,
Respondent, FHC Director and Counsel
(RESPONDENTS)**

DECISION WITH REASONS

JURISDICTIONAL ARBITRATOR: GORDON E. PETERSON

APPEARING:

For Claimant: SOTOS LLP – Allan D. J. Dick
For Respondents: Gordon Plottel

Hearing by way of teleconference on August 20th, 2020

I INTRODUCTION AND PRELIMINARY MATTERS

01. Michael Gillis (the “**Claimant**”) filed a Request for Arbitration (“**Request**”) on June 29, 2020 which was acknowledged received by the Sport Dispute Resolution Centre of Canada (“**SDRCC**”) on July 3, 2020. Following a request for extension, Susan Ahrens, on behalf of Field Hockey Canada (“**FHC**”) and its Board of Directors (collectively, the “**Respondents**”) filed an Answer on July 20, 2020 challenging the jurisdiction of the SDRCC and reserving the right to respond to the merits of the Request for Arbitration upon receiving more particulars regarding the Request.
02. I was appointed jurisdictional arbitrator on July 24, 2020 and held a preliminary conference on July 30, 2020 to establish the process for a hearing. At that conference, the process for submitting materials was outlined, and a hearing date and time selected.
03. At the preliminary conference, the Respondents invited a decision to be made on jurisdiction based on the fact that Paragraph 3.4(a)(iii) of the SDRCC Code (“**Code**”) requires the Claimant to include in its Request the reasons why SDRCC has jurisdiction to deal with the dispute. Since the Respondents had submitted their challenges in detail in their Answer, Mr. Plottel, on behalf of the Respondents, suggested that all required information was before the jurisdictional arbitrator and arguments could be presented at the preliminary conference.
04. I reserved on his suggestion and requested additional documentation be filed prior to making any ruling that the matter had possibly come to an end. It was acknowledged that the requirement for including a basis for jurisdiction had been met by the Claimants but there should be an opportunity for the Claimant to address allegations as to why the SDRCC does not have jurisdiction. There is no requirement to assert all of the bases for jurisdiction if one believes the stated reasons are compelling or not challenged. It is not the responsibility of the Claimant to make arguments for the Respondents and that may very well be the outcome if one had to submit all bases and explain why, for example, time had not run out on the submission of a Request to the SDRCC.
05. As acknowledged by the Respondents, the basis of jurisdiction was submitted as part of the Request and it is one of the few areas that SDRCC cannot waive. It is noted that the Respondents arguably also did not include mandatory information provided for in Subsection 3.7(a) of the Code. Despite a general denial of the allegations made by the Claimant, specific responses to the Claimant’s allegations were reserved by the Respondents pending additional information on the broad allegations contained in the Request.

06. The Claimant was provided with an opportunity to submit a Reply to the Respondents' Answer – the jurisdictional issue was raised by the Respondents and it is fair to provide an opportunity to respond. In the same manner, should this matter proceed past the jurisdictional challenge, it would be fair and procedurally sound for the Respondents to have an opportunity to address the allegations made by the Claimant on the merits of the case once more particulars are provided.
07. The evening prior to the jurisdictional hearing, the Claimant requested to file a Sur-reply and submitted extensive materials primarily relating to the merits of the case. Arguments were made at the hearing and the acceptance of the Sur-reply was deferred for a decision of the arbitrator should the Claimant succeed in this jurisdictional challenge.

II JURISDICTIONAL ISSUES TO BE DECIDED

08. Five grounds for the jurisdictional challenge were outlined as follows:
 - (a) Does the SDRCC have jurisdiction under Subsection 2.1(b) of the Code?
 - (b) Has the Claimant exhausted the internal procedures of FHC, as required by Subsection 3.1(b) of the Code, or is there any agreement otherwise to proceed without so doing?
 - (c) Is the filing of the Request time-barred? Was it filed on a timely basis, as required under Section 3.5 of the Code, or is an extension warranted?
 - (d) Is the matter a "Sports-Related Dispute" as defined in Subsection 1.1 (mm) of the Code?
 - (e) Is the relief sought *ultra vires* the jurisdiction of the SDRCC?

III SUBMISSIONS AND ANALYSIS

A. Does SDRCC Have Jurisdiction to Arbitrate? (Subsection 2.1(b) of the Code)

09. The Respondents submit that the Claimant bears the onus of establishing SDRCC's jurisdiction and has not done so.
10. The Respondents argue the Claimant has not provided any detail on the basis for jurisdiction, only referencing a breach of the definition of a "Sports-Related Dispute" but there is no agreement to arbitrate and no other basis compelling arbitration to occur as required in Subsection 2.1(b) of the Code.

11. The Claimant suggests that procedural formalities should be avoided and that “an arbitrator can infer grounds based upon context.” Although I agree that the SDRCC may be more flexible in its procedural formalities, there are limits to the authority of the SDRCC. The SDRCC either has jurisdiction or it does not, and the basis need be clear.
12. The Respondents submit that there is no inherent jurisdiction and cites SDRCC 15-0272 and the decision of Jurisdictional Arbitrator Décary in *Provincial Taekwondo Society of Nova Scotia and Provincial Taekwondo Society of Newfoundland & Labrador v. Taekwondo Canada Board of Directors* (the “**Taekwondo Case**”) where he states at paragraph 14:

“It is well established that the SDRCC has no inherent jurisdiction, i.e. no jurisdiction other than that which is attributed to it by the Code. The Code defines the meaning of “Sports-Related Disputes” and identifies those “Sports-Related Disputes” with respect to which the SDRCC has jurisdiction.”

13. Jurisdictional Arbitrator Décary succinctly outlined the fundamental threshold to be met in order to appear before the SDRCC in paragraph 20 of the Taekwondo Case:

“However, it is not enough for a dispute to be sports-related within the definition of the Code to be brought before the SDRCC. Only those sports-related disputes which are contemplated by Article 2.1 of the Code may be adjudicated upon by the SDRCC. ...”

14. Section 2.1 states as follows:

“2.1 Administration

- (a) *The SDRCC administers this Code to resolve Sports-Related Disputes.*
- (b) *Subject to Subsection 2.1(c) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:*
 - (i) *in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;*
 - (ii) *that the Parties are required to resolve through the SDRCC; or*
 - (iii) *that the Parties and the SDRCC agree to have resolved using this Code.*
- (c) *This Code shall not apply to any dispute that a Panel determines, in its discretion, is not appropriate to bring before the SDRCC or to a dispute where the Panel determines that the SDRCC does not have jurisdiction to deal with the dispute.”*

15. The Respondents submit that unless the Claimant can point to one of the three grounds in Subsection 2.1(b), the SDRCC does not have jurisdiction. Mr. Plottel reviewed the requirements and submitted that:

- (a) There was no agreement between the parties to proceed to arbitration before the SDRCC and the Respondents confirmed that FHC had refused the Claimants request made by letter dated December 27, 2019. [I note that I do not have direct evidence of such refusal but both parties in this matter have confirmed that it was not agreed to proceed directly to SDRCC.]

- (b) There is no requirement to resolve the matter through SDRCC because the Claimant has no standing with FHC that might require FHC to appear before SDRCC in this matter, nor is there any FHC rule or policy or any other contractual arrangement containing a requirement to proceed to SDRCC.
 - (c) The parties have not agreed to have any dispute resolved using the Code.
16. Counsel for the Claimant argues that Paragraph 2.1(b)(ii) applies and there is a basis for compelling agreement because under its internal process, FHC is compelled to arbitrate if the dispute persists after FHC's internal process has been exhausted. The Claimant suggests that the internal process has been exhausted because FHC has refused to consider the subject matter under such internal process.
 17. The Claimant submits that FHC wrote a letter in response to the Claimant's request, on December 27, 2019, for FHC to waive its internal dispute resolution process in order to permit the Claimant to proceed directly to the SDRCC for the purposes of resolving the issues outlined in its letter. In the response to the complaint by the Claimant, it is alleged "FHC took the specific position that the subject matter of the complaint was not appropriate for [FHC's] internal dispute resolution processes."

Analysis

18. Arbitration is a consensual process and there must be an arbitration agreement between the parties or other basis to compel arbitration, and that fundamental principle is recognized by Subsection 2.1(b) of the Code.
19. I do not have the FHC response before me to which the Claimant makes reference. It was stated to be a response to the letter written to FHC on December 27, 2019 which is one of the Exhibits to the Answer. I think it is reasonable to assume that since the letter was only written to FHC, any response was only from FHC and therefore was not from any of the Respondents other than FHC (collectively, the "**Other Respondents**"). There was no evidence presented to me that would suggest there was any agreement by, or basis for compelling, any of the Other Respondents and for that reason, the matter against the Other Respondents could not proceed in any event for want of jurisdiction under Section 2.1(b) of the Code.
20. Even though the Other Respondents may be "affected parties" in any decision involving FHC, there is no authority for me as jurisdictional arbitrator to require the Other Respondents to consent to a consensual process where they do not wish to do so and, accordingly, I believe that this would be dispositive of the matter with respect to such parties.

21. Whether the Request has been properly brought against FHC requires further analysis. For a jurisdictional arbitrator to bring a matter to an end for want of jurisdiction, it should be clear that there is no basis for jurisdiction because that ends a party's rights; whereas if the matter proceeds when it perhaps shouldn't, the arbitrator hearing the merits of the case will still have an opportunity to dismiss the matter on its merits. Counsel for the Claimant has suggested that there is a requirement for FHC to arbitrate under the Code by virtue of its internal process and this requirement will be examined under the next issue.

B. Was the Internal Process Exhausted?

22. If I understood the submission of Counsel for the Claimant correctly, he suggests that had the matter been dealt with under FHC's internal policy, there would have been a requirement for the parties to resolve the dispute using the SDRCC on appeal. Accordingly, Claimant's Counsel suggests that the right to jurisdiction of the SDRCC is provided in Paragraph 2.1(b)(ii) in which the parties are required to resolve a Sports-Related Dispute through the SDRCC.

23. Assuming, for the purposes of evaluating this issue, that the matter is a "Sports-Related Dispute," there is a requirement to exhaust any internal dispute resolution procedures in accordance with Subsection 3.1(b) of the Code.

24. Section 3.1 provides as follows:

3.1 Availability of Dispute Resolution Processes

(a) *The dispute resolution processes of Resolution Facilitation, Mediation, Arbitration or Med/Arb under this Code are available to any Person in connection with the resolution of a Sports-Related Dispute, subject to Subsections 3.1(b), 3.1(c) and 3.1(d) below.*

(b) *Unless otherwise agreed or set out herein, and if the dispute involves a NSO, where a Person applies to the SDRCC for the resolution of a Sports-Related Dispute, the Person must first have exhausted any internal dispute resolution procedures provided by the rules of the applicable NSO. For the avoidance of doubt, a NSO internal dispute resolution procedure is deemed exhausted when:*

- (i) *The NSO has rejected the right of the Person to an internal appeal;*
- (ii) *The NSO or its internal appeal panel has rendered a final decision; or*
- (iii) *The NSO has failed to apply its internal appeal policy within reasonable time limits.*

(c) *Where a Person brings a Sports-Related Dispute to the SDRCC, the SDRCC will ask the Parties to declare whether they prefer to use Mediation, Arbitration or Med/Arb. If, prior to the completion or termination of the Resolution Facilitation process described in Section 4.2 hereof, the Parties do not reach an agreement with respect to which process they will utilize to help resolve their dispute, the Parties will be deemed to have agreed to refer their dispute to Arbitration in accordance with this Code."*

25. The Claimant submits that he has had a long-standing, ongoing dispute with FHC relating to the treatment by FHC of the Women's National Field Hockey Team ("WNT")

and FHC has refused to address the merits of the matter by refusing the Claimant's request to agree to proceed directly to arbitration before the SDRCC.

26. The Claimant further submits that FHC refused the request to proceed directly to SDRCC on the basis that the issues raised in the Claimant Counsel's December 27, 2019 correspondence were not the proper subject matter for FHC's internal process. The Claimant argued that FHC didn't simply refuse to agree to submit the dispute to the SDRCC but responded by letter that the request was not a subject matter to be addressed under its dispute policy.
27. Counsel for the Claimant suggested that FHC could have responded that the issues were not the proper subject matter of dispute to go before the SDRCC but, instead, referred to FHC's internal policy. The Claimant argues that FHC made a decision and therefore it would be an unnecessary step to apply under FHC's internal process.
28. The Claimant suggests that there was no point in the Claimant submitting the matter to FHC to be dealt with under FHC's Dispute Resolution Policy ("**DRP**") because FHC would have refused to hear the matter; FHC had already indicated that it was not the subject matter to come before its internal process.
29. Counsel for the Claimant argues that had the Claimant submitted a request to the internal process and it had been refused on the stated basis, any appeal to the SDRCC would only have been on whether the matter was properly within the jurisdiction of the DRP and not on the merits of the case.
30. Counsel for the Claimant acknowledged that it was possible for an arbitrator to apply the *de novo* authority granted in Section 6.17 of the Code if it were an appeal on whether the matter was the proper subject matter for FHC's internal process, but suggested it was not appropriate to rely upon a possible discretionary remedy. It does not appear, however, that the Claimant would be prejudiced by so doing, other than by a possible delay in the matter being addressed – but that delay may not be any more significant than the delay the Claimant experienced in submitting this matter to the SDRCC.
31. If the decision determined the subject matter was properly brought under the DRP, at a minimum it would either (a) have been directed back to FHC by the SDRCC for a decision and if an inappropriate decision resulted, would have been appealable to the SDRCC on the merits or (b) the matter would have proceeded on a *de novo* basis on the merits in the arbitrator's discretion.
32. Counsel for the Claimant suggests that the effect of this Request is the same as if FHC had heard the matter in its internal process and the Claimant appealed to SDRCC as permitted under the DRP. In such instance, the appeal would have resulted in the merits

of the case being considered by SDRCC. The Claimant submits that if the SDRCC would have had jurisdiction to hear that matter, then it clearly has jurisdiction to hear this one.

33. There is some attraction to the logic argued by Counsel for the Claimant and I will examine it, even though it was not specifically addressed by argument. If the matter was proper to be heard under the DRP, it would be appropriate for the SDRCC to hear the merits of the dispute, absent an exclusionary provision in the Code.

Analysis

34. In determining jurisdiction, one must consider the nature of the dispute and the status of the person disputing it.

35. The scope and application of the DRP provides as follows:

“2. *This policy applies to disputes with and among members, where the term “Member” refers to all categories of members within FHC, as well as to all individuals engaged in activities with or employed by FHC, including but not limited to: athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators and employees (including contract personnel).*

3. *This policy does not apply to disputes relating to*

- (a) Matters of employment;*
- (b) Infractions for doping offences, which are dealt with pursuant to the Canadian Anti-Doping Program and the Canadian Doping Control Regulations;*
- (c) The rules of field hockey, which may not be appealed; and*
- (d) Discipline matters arising during events organized by entities other than FHC, which are dealt with pursuant to the policies of these other entities.”*

36. Since the matters raised in the Request do not fit within any of the excluded categories of the DRP outlined in Section 3 therein, Section 2 of the DRP would be the determining provision as to whether the matters raised in the Request would fall under the DRP.

37. It is evident that the Claimant and FHC have been discussing the nature of the support provided by FHC for the WNT for some time, as outlined in Claimant Counsel’s letter dated December 27, 2019; so clearly a dispute existed. The relevant question was whether the Claimant fit into the definition of “Member” as defined in the DRP such that he would have recourse to address the dispute through the DRP.

38. The parties focused their submissions on the definition of “Member” under the Code. The Code defines “Member” in Subsection 1.1(x) as follows:

“Member’ « Membre » includes an athlete, coach, official, volunteer, director, employee, any other person affiliated with a National Sport Organization (hereinafter “NSO”) and any participant in an event or activity sanctioned by a NSO;”

39. Under the DRP, there is also a non-exhaustive listing for the definition of “Member” and the argument for inclusion as a Member, whether under the DRP or the SDRCC would appear to be the same.
40. Despite the non-exhaustive definition of Member, it does not permit just anyone to use the DRP to challenge a decision of FHC, whether under the Code or the DRP.
41. It is clear from the evidence that the Claimant does not qualify within the enumerated categories. Is he affiliated with FHC or a participant in an event or activity sanctioned by FHC? He is not a participant in any event and the only “sanctioned” activity the Claimant has participated in would appear to be as a donor or member of a donor group.
42. The Claimant suggests that any decision made by FHC affecting the WNT affects all of its supporters, of which he is one. It is a creative argument and one that cannot be dismissed out of hand. The Claimant, as a supporter and donor for the WNT, is arguably more impacted than the casual fan but is that sufficient to justify using the processes of FHC or the SDRCC to resolve any disputes over FHC decisions with which the Claimant does not agree? Where is the line drawn?
43. With respect to affiliation, the principle of *Ejusdem Generis* assists in the interpretation of the general words relating to affiliation with FHC – they must be confined to things of the same kind as those specifically mentioned. In other words, there has to be some closer connection than someone merely being a fan of the sport. Does someone who has obviously been a supporter, both as a donor and a volunteer in the past qualify?
44. The enumerated categories are defined roles and any additional role would have to be a defined role in which FHC has recognized the role. A person cannot be an athlete, coach, official, volunteer, director, officer, team manager, team captain, medical or paramedical personnel, administrator, employee or contractor, without the express acknowledgement of FHC. Similarly, the requirement for participation is in an event or activity that is sanctioned by FHC which would require even more than acknowledgement - actual approval by FHC.
45. Although possible, the role as a supporter of a team is not something that FHC would likely expressly acknowledge but the role of a donor might be. The fact FHC accepted funds might be sufficient acknowledgement.
46. The Claimant, however, does not appear to have any dispute as donor himself: he specifically indicated in his Request that, although it took several demands, the conditions of his donation were properly met and there are no other suggestions that any other donation by the Claimant was in dispute.

47. The Claimant has concerns about certain funds raised for the WNT, however, and the question is whether FHC has acknowledged a role for the Claimant with respect to other donors. The Claimant focused on the “Business Club” and the role played by the Claimant in that regard but the Respondents argued the Business Club was formed by the supporters, not by FHC, and the only acknowledgement of the Business Club by FHC was a policy to ensure appropriate steps were taken to maintain the status of FHC as a Registered Canadian Amateur Athletic Association for the purposes of the *Income Tax Act* (Canada). The policy, however, was not to acknowledge a role for the Business Club but to ensure donors did not jeopardize the status of FHC to provide charitable receipts to donors.
48. There was no conclusive evidence before me that demonstrates a role of the Claimant with respect to the funds of others. The Claimant may have taken on a role himself but was that acknowledged by FHC? It appears by the correspondence in March 2019 that any role the Claimant may have had was at an end and even if there had been an affiliation, there was no such affiliation at the time of the Request.
49. Accordingly, the Claimant does not appear to fall within the non-exclusive definition of “Member” set out in the DRP. Many of the Claimant’s disputes with FHC appear to have a far greater impact on those who are specifically enumerated in the definition of “Member” and yet they have not surfaced them with FHC, nor provided any evidence in support of the claims made by the Claimant in this matter.
50. I do not suggest that the Claimant would be unable to dispute a decision because he is not the “most affected person” but I do believe more than a tangential connection needs to be established for the resources of a national sports organization to be diverted from the needs of the athletes to address such connection and there must be evidence supporting the contention that those directly impacted were in a dispute with FHC. It is possible that the concerns identified by the Claimant have been dismissed by those impacted directly for valid reasons and it would not be appropriate for a third party arbitrator to interfere with decisions that are not in dispute by those directly affected, since the Claimant has suggested that he draws his status only if the WNT is affected. If the WNT is not affected, the Claimant would therefore also not be affected.
51. I do not know whether the members of the WNT support the position of the Claimant. I do not know the reason FHC offered additional language on its refusal to waive the requirement to proceed through its internal process and do not have a copy of FHC’s letter before me to draw my own conclusions. I cannot say definitively that FHC would have refused to hear the matter and, given the delay in filing with SDRCC in any event, I do not understand why the Claimant would not simply have filed under the DRP as it would have eliminated any need for speculation.

52. Although I understand the argument of the Claimant and might be favourably inclined to accept it for the purposes of addressing jurisdiction, I cannot do so based on the evidence before me.

C. Is Claimant's Request Time-Barred?

53. The applicable provisions of the Code are set out in Section 3.5 as follows:

"3.5 Time Limits

(a) *All days are included in the calculation of time limits hereunder, including weekends and holidays.*

(b) *In the absence of a time limit set by agreement or by statute, regulations or other applicable rules of a NSO, the time limit to file a Request shall be thirty (30) days following the later of:*

(i) *the date on which the Claimant becomes aware of the existence of the dispute;*

(ii) *the date on which the Claimant becomes aware of the decision being appealed; and*

(iii) *the date on which the last step in attempting to resolve the dispute occurred, as determined by the SDRCC. The SDRCC may, in its discretion, refer this issue to a Panel.*

(c) *Other than the time limit set out in Subsection 3.5(b) hereof, all time limits will have expired if the communication by a Party is not received before four (4) p.m., Eastern Time.*

(d) *Subject to the rules of the Anti-Doping Program applicable hereunder, upon application on justified grounds, the SDRCC may extend or reduce the time limits. The SDRCC may, in its discretion, refer this issue to be decided by a Panel."*

54. The Claimant argues that "corporate governance issues" outlined in his Request are ongoing and the Request "involves a systemic complaint" about the way in which FHC and its Board have operated. Counsel for the Claimant suggests that there is no need for finality because there are ongoing decisions that contribute to the dispute.

55. If I understand correctly, Counsel for the Claimant further suggests that the systemic bias against the WNT, as evidenced by numerous differences between the men's and women's team, justify a change to the governance of FHC because matters continue to arise and they can only be addressed by changing the governance.

56. The Respondents argue that even where a dispute involves ongoing or systemic conduct, the relevant time limit for filing is thirty days from the Claimant's initial awareness of the dispute; otherwise, there would never be a time limitation and no finality would be reached as to when a dispute would have to be resolved.

57. The Respondents submit that the Claimant was aware of all relevant elements of the dispute no later than his counsel's letter of December 27, 2019. Further, the FHC Treasurer's letter of March 27, 2019 evidenced that the Claimant had expressed nine

months earlier a “total loss of faith in the FHC board and new CEO” and an intention to seek the very relief being sought in the Request.

58. In the Reply, the Claimant did attempt to present additional matters arising since his Request, but the Respondents appropriately pointed out that the Request was not amended, and no evidence was provided in support of those matters. Accordingly, the Respondents submit appropriately that new matters may not be used to justify the late filing of the Request and alternatively, that the description of the matters indicate the Claimant’s awareness of the new matters more than thirty days prior to the filing of the Reply.
59. The Respondents cite Jurisdictional Arbitrator Pound in SDRCC 13-0213 *Wachowich v Shooting Federation of Canada* regarding the importance of limitation periods for “bringing closure to any period during which a matter may be uncertain or unfinished” and that exceptions should be made only in very limited circumstances, akin to *force majeure*.
60. The Claimant acknowledges that much of the content of the dispute was known in December but suggests there were things ongoing that were unknown such as the WNT program hiatus and that the return would occur at a different time from the men’s national team. Claimant’s Counsel further suggested that there are some financial issues and that time limits cannot exhaust those matters because they are ongoing.
61. The Respondents argue that even with ongoing matters, Subsection 3.5(b) still applies, and the Claimant was required to file his Request within 30 days of becoming aware of the issues relating to the WNT. Absent a specific exclusion in the Code for a Request pertaining to ongoing matters, I find this submission appealing. It does not seem reasonable that a disputant who is impacted by ongoing issues could simply pick and choose the time to commence matters or to “lie in the weeds” until the other party is at its most vulnerable. Time limits for initiating processes are established to force matters to be addressed soon after they first arise, hopefully reducing costs and waste.
62. The Claimant suggests, without authority, that although the time limits in Section 3.5 are exhaustive, they do not apply to all Sports-Related Disputes. He suggests that matters in which discrete decisions are not made - such as corporate governance issues which are ongoing and affect the ongoing participation of people such as the WNT, its volunteers and donors - are not subject to the time limits because that would require a dispute to continually arise every time another action or inaction occurred.
63. I cannot accept that premise. Many disputes have ongoing features, particularly when team sports are involved. Absent a provision that specifically excludes ongoing disputes from Section 3.5, the Code applies. It is possible that some disputes may be better

resolved elsewhere but for use of the Code to resolve a dispute, it must meet the requirements set out therein, including Section 3.5, as there is a desire to bring closure to any dispute, not to have it linger and draw attention and resources away from the needs of the athletes.

64. For ongoing corporate governance issues, there would not necessarily be “... *a decision being appealed*” (para. 3.5(b)(ii)). Further, “*the date on which the last step in attempting to resolve [this] dispute ...*” (para. 3.5(b)(iii)) must have occurred no later than the email of March 27, 2019 when it was clear there was to be no more communication between FHC and the Claimant because of the Claimant’s stated intention to take action against the Board. Thus, if as the Claimant has acknowledged, Section 3.5 is exhaustive, that only leaves Paragraph 3.5(b)(i) “*the date on which the Claimant becomes aware of the existence of the dispute.*” Since the Claimant was expressing concerns regarding FHC treatment of the WNT at least two years earlier and outlined them in a letter dated December 27, 2019, the Claimant is out of time with respect to filing the Request unless there is an exception to permit the matter to proceed.
65. Subsection 3.4(d) does provide an exception. It states “*Under exceptional circumstances or if all Parties agree, the SDRCC may accept a Request that is not filed within the time limit or that is not completed pursuant to Sections 3.4 or 3.5 hereof. The SDRCC may, in its discretion, refer this issue to a Panel.*”
66. The Respondents have not agreed to any extension. The Claimant suggests that governance matters, including issues like ongoing systemic discrimination, provide for the necessary exceptional circumstances because finality does not apply as it would to most sport disputes. “The issues of governance address the manner in which the FHC is to be constituted and governed affecting the future determinations of FHC affecting the WNT.”
67. I cannot agree that governance issues would constitute exceptional circumstances in this case. The disputes raised by the Claimant are not unusual. A person passionate about a sport may view the decisions made by the people managing the sport as wrong and contest whether they are acting in the interests of all or a subset of the people involved in the sport. That appears to be the case here. There is no special connection between the Claimant and FHC. There are no extraordinary circumstances that justify extending the time limit from when the dispute crystallized and the Claimant first became aware of the issues. There is also no doubt as to when the Claimant became aware of the matters in dispute. Consequently, the Claimant has not discharged his onus to show that SDRCC has jurisdiction in this matter. Although it is not necessary for me to review the remaining issues, I will briefly review the two remaining issues for completeness.

D. Is this a “Sports-Related Dispute”?

68. A considerable number of submissions were made by each of the Claimant and the Respondents regarding the meaning of “Sports-Related Dispute.” The Respondents submit that Subsection 1.1(mm) sets out the definition of a “Sports-Related Dispute” and for Claimant to successfully establish the necessary consensual or fundamental basis for an arbitration to proceed, it is incumbent upon the Claimant to demonstrate that the matter is a “Sports-Related Dispute” in order for the SDRCC to have jurisdiction.
69. Section 1.1.(mm) provides as follows:
- “Sports-Related Dispute” « Différend sportif » means a dispute affecting participation of a Person in a sport program or a sport organization. Such disputes may include (but are not limited to) those related to:*
- (i) team selection;*
 - (ii) a decision made by a NSO board of directors, a committee thereof or an individual delegated with authority to make a decision on behalf of a NSO or its board of directors, which affects any Member of a NSO;*
 - (iii) any dispute affecting participation of a Person in a sport program or a sport organization, for which an agreement to conduct an SDRCC Mediation, Arbitration or Med/Arb or use the services of the Resolution Facilitator of the SDRCC has been entered into by the Parties; and*
 - (iv) any dispute arising out of the application of the Anti-Doping Program;”*
70. The Claimant’s Reply focuses on paragraph 1.1(mm)(ii) and then refers to the “non-exhaustive list of what constitutes a Sports-Related Dispute in section 1.1(mm) and the Request is to be amended accordingly.” Thus, paragraphs 1.1(mm)(i) and (iii) would still be captured as part of the non-exhaustive list.
71. The Respondents submit that Subsection 1.1(mm) requires the dispute to affect the participation of a Person in a sport program or sport organization. The Respondents further suggest that the Claimant in his Request, states that the arbitration is to address issues relating to “team members and their supporters and other FHC Members such as Mr. Gillis ...” and dispute that the Claimant has such status.
72. The Claimant suggests that he is a member of a PSO but provides no evidence in support. If the PSO is a member of FHC, the Claimant would be affiliated to FHC in accordance with the definition of Member under Subsection 1.1(x) of the Code.
73. The Respondents argue that the Claimant cannot be the person whose participation was impacted:
- (a) he is not an athlete, coach, official, volunteer, director or employee of FHC.

- (b) any role of volunteer by the Claimant was definitively removed by the Claimant's correspondence in 2018 in which his conditional offer to volunteer was not accepted.
 - (c) the Claimant's Request only mentions one dispute relating to his activities as a donor and it was resolved as stated in the Request.
 - (d) Any other affiliation with FHC also ceased in 2018 and was clearly completed by March 2019 when the FHC Treasurer indicated that "board members and staff should no longer have any further direct communication [with the Claimant]."
74. The Claimant submits that the participation does not have to be his own participation - the use of Person in Subsection 1.1(mm) means that it does not have to be the Claimant whose participation is impacted. The Claimant submits in his Reply that he has also been "a volunteer, a donor and a person affiliated with an NSO." Counsel for the Claimant suggests that any matter impacting the WNT would also impact its supporters. The members of the WNT are clearly impacted by the decisions of FHC and the Claimant, as a supporter, is therefore impacted.
75. The Respondents respond that a Person may be the test to qualify as a Sports-Related Dispute but for the matter to fall within the jurisdiction of the SDRCC under Subsection 2.1(b), the Sports-Related Dispute must be related to the parties as specifically required therein. [See para. 14 above.]
76. The Respondents further argue that the Claimant has acknowledged his participation was not affected by any decision alleged in the dispute and suggest that the Claimant is attempting to act on behalf of members of the WNT, who are all adults, and for whom he has no legal authority.
77. If I understood the Claimant's submissions correctly, all of the matters in dispute relate to the ability of the WNT to function and the fact that he is a supporter of the WNT is why his participation is impacted. Anything that affects the WNT also affects their supporters who are working for the best result for the WNT.
78. Counsel for the Claimant suggested the legal framework is simple: would a team member or a donor have a right to complain if FHC acted in a discriminatory manner towards them? He suggested it is a Board requirement to govern the organization in a proper fashion, including acting in a non-discriminatory manner, creating policies and procedures that are not discriminatory to the WNT, properly accounting for use of funds and establishing an appropriate culture for the organization. That is sound logic but if

none of the WNT dispute the way they have been treated, does anyone who draws status from their affiliation with the WNT have a right to complain?

79. Counsel for the Claimant indicated that members of the WNT were not included as claimants as that would expose them to costs and there is no requirement in the Code to include those directly impacted if others qualify or even to show that those most directly affected want the dispute to be resolved. The Code contemplates that a complaint qualifies as a Sports-Related Dispute when it impacts others.
80. It is evident that the express provisions of Subsection 1.1(mm) do not support the Claimant's contention that his is a Sports-Related Dispute. However, Counsel for the Claimant's creative argument that FHC's decisions (such as discriminatory decisions that may negatively impact the WNT) affect the Claimant and other supporters of the WNT who are impacted if the WNT is impacted, may have some merit provided the WNT is negatively impacted. I do not have any evidence to that effect before me but I would be inclined to characterize the issue as a "Sports-Related Dispute" if I did. In view of my other findings, I do not need to make a determination on this specific issue, but it would appear reasonable that some supporters could have a "Sports-Related Dispute" with a sport organization.

E. Can the SDRCC Grant Relief Requested?

81. In its Request, the Claimant seeks "to have the entire FHC Board and its Executive replaced, for a complete forensic investigation to be made of FHC's financial and operational activities relating to WNT for the past 8 years, for an interim Board and executive to be appointed and for all necessary ancillary relief to permit FHC to receive proper donations and to allow the WNT program to continue."
82. The Respondents submit that dissolving the Board and replacing them would usurp the authority of the Members under the *Canada Not-for-profit Corporations Act*. The Respondents further suggest that this is the only relief sought other than a forensic audit and that it would not be within the authority of an arbitrator, even with the wide latitude provided in Section 6.17 of the Code which only permits the arbitrator to "... apply the law." The Respondents further suggest that there are limitations on an arbitrator's powers under the Code and the relief cannot be awarded.
83. I would agree that a jurisdictional arbitrator has limitation on the relief that can be awarded. There is no ability to remove directors and replace them as requested. As Counsel for the Claimant submitted, however, there is more relief being sought than simply removal of the Board and a forensic audit, and it is up to the arbitrator to determine the appropriate relief within his or her authority.

IV CONCLUSION

84. Although I do not refer in this Decision to every aspect of the parties' submissions and evidence, in reaching my conclusions and in making my decision I have considered all of the evidence and arguments presented by them in this proceeding.
85. Generally, some latitude should be given in determining whether to accept jurisdiction in a dispute, with the benefit of the doubt going to the Claimant. Determining no jurisdiction exists could have the undesired impact of a participant in a sport having no means to address mis-treatment. At the same time, jurisdictional arbitrators must balance ensuring a mechanism to address mis-treatment with ensuring the resources of the parties are not consumed without reason.
86. The Claimant has not discharged his onus to show the SDRCC has jurisdiction for the following reasons:
- (a) First, there is no agreement or basis for compelling agreement to submit the dispute to arbitration. Counsel for the Claimant is asking me to assume some things that are not in evidence (e.g. the letter refusing the matter under the DRP) in order to determine the matter falls within the scope of Subsection 2.1(b).
 - (b) Second, the Claimant did not submit his complaint to FHC's internal process and has no evidence that the internal process was exhausted as required under Subsection 3.1(b) of the Code.
 - (c) Third, the Claimant did not bring the matter promptly before the SDRCC, as required under Section 3.5, but waited over six months before bringing the very claim to the SDRCC he evidenced in his letter of December 27, 2019 and seeking the relief he had communicated a further nine months earlier.
87. Finally, when the *Canada Not-for-Profit Corporations Act* was introduced in substitution for the *Canada Corporations Act*, one of the stated reasons was to ensure that the Board of Directors had accountability to the members of the organization. Accordingly, it would not appear that the best approach to address concerns of governance would be through a dispute resolution mechanism. People may have justified concerns with the governing of an organization or even a province, state (or united states, for that matter), or other constituent body, but most governance issues may best be dealt with through the electoral process, not through a dispute resolution system.
88. I want to make special mention of the quality of the articulate submissions made by counsel for each of the Claimant and the Respondents. The comportment of all parties

was excellent, their arguments well thought out and well presented, and I appreciated the professional manner in which the submissions were made. Thank you both.

V JUDGEMENT

89. The Request by the Claimant is dismissed by reason of lack of jurisdiction. The SDRCC does not have jurisdiction to deal with the matter because it was filed after the time limit required in Subsection 3.5(b) and it does not meet the requirements of Subsections 2.1(b) or 3.1(b) of the Code.

VI THE COSTS

90. As argument on jurisdiction had greatly exceeded the estimated time, no submissions were made during the hearing regarding costs. There was a request made by the Respondents in their written submissions for significant costs to be awarded to the Respondents and that was reiterated in the wrap-up of the hearing. The parties are asked to make brief written submissions on the subject, should they choose to do so in accordance with Section 6.22 of the Code.

VII RESERVATION OF RIGHTS

91. I reserve the right to deal with any matter arising from this decision and its interpretation.

DATED: August 27, 2020



Gordon E. Peterson, Arbitrator