

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

**NO: SDRCC 19-0434**

**BETWEEN:**

**ALBERTA CRICKET COUNCIL (ACC)  
(Claimant)**

**AND**

**CRICKET CANADA  
(Respondent)**

**AND**

**ALBERTA CRICKET ASSOCIATION (ACA)  
(Affected Party)**

**JANICE JOHNSTON - ARBITRATOR**

**REPRESENTATIVES:**

**FOR THE CLAIMANT: Mr. Shahbaz Saadat**

**FOR THE RESPONDENT: Mr. Rashpal Bajwa  
Mr. Ingleton Liburd**

**FOR THE AFFECTED PARTY: Mr. Salman Khan  
Mr. James Bunting – Counsel  
Mr. Carlos Sayao – Counsel**

## AWARD

1. This is the fifth formal decision I have written in this matter. I have also issued numerous directions to the parties. I can safely say that this is the longest running and most acrimonious dispute I have ever been called upon to arbitrate at the SDRCC.
  
2. The issue in this case is which organization, the Claimant, the Alberta Cricket Council (the “ACC”) or the Affected Party, the Alberta Cricket Association (the “ACA”) exercises effective control over organized competitive cricket within the province of Alberta. The version of Cricket Canada’s By-laws effective in 2019, Section 2.2 states:

2.2 Provincial Member – Any provincial cricket association that demonstrates **effective control** of organized competitive cricket within the province concerned will be considered a Member with voting privileges at any Meeting of the members. (Emphasis added)
  
3. By decision dated March 23, 2021, I directed Cricket Canada to appoint a three-person panel made up of two representatives from other provincial members, both of whom Cricket Canada were satisfied were neutral and were not connected in any way with anyone involved in this dispute and a third person from outside of the cricketing community from another NSO not from the province of Alberta. I stressed that Cricket Canada must ensure that all three will bring a fair and open mind to the review process.
  
4. In that decision, I also provided the criteria to be utilized by the three-person panel in answering the question at issue in this case. I accepted as valid the criteria articulated by Cricket Canada. Those criteria provided:

*“Effective control could probably be best defined in terms of the resulting consequences for the cricketing community at large and, from a purely utilitarian perspective, to ensure that the interest of the majority of the cricketing community is served.”*

Effective control needs to be thus considered a broad view of an organization rather than simply a count of the number of teams or cricketers that are represented. An effective provincial body needs not only to represent a significant number of the cricketers in the province, but also has to have good governance, operate a range of programming that promotes the sport and acts as a catalyst for the sport's development.

Cricket Canada is working on by-law revisions that put in place minimum standards that are expected of a provincial member, as well as a number of criteria that represent an ideal for representing cricket in a province. It is recognised that not all provincial bodies can fulfill all the recommended requirements, due to numbers, geography, finances and other constraints, but a failure to meet the minimum requirements means that the body does not have effective control of cricket in the province. The proposed by-laws, which the membership will have the ultimate authority to approve, would suspend members that do not meet these minimum requirements within a given period.

#### **Minimum requirements**

- Has significant membership within the province it represents;
- Has an established effective governance structure meeting Cricket Canada expectation [sic], and follows this structure in its operations;
  - The organization should be a registered / incorporated not-for-profit in good standing in its home province and meet all provincial requirements.
  - It should have a constitution and by-laws available on its web site or on request, approved by the membership.
  - It should provide annual financial statements to its members.
  - It should have an internal dispute policy available on its web site or on demand
  - It should maintain an accurate record of all registered players, officials, coaches, administrators and other members with adequate basic information.
  - It should maintain an accurate record of all affiliated clubs, leagues and other organizations.
  - Its by-laws and policies should protect the ability of any cricketer in the province to be selected for provincial programmes (for instance by individual membership) irrespective of whether they play in an unaffiliated club or league.
  - Has a comprehensive financial management policy, including financial controls and reporting to members through approved financial statements;
  - Conducts Annual General and Members Meetings;
- Operates provincial development programmes and, if numbers permit, competition for senior and junior men and women accessible to all cricketers in the province;

- Has certified coaches and officials;
- Aligns with Cricket Canada Objectives, Rules, Policies and Programs
- Operates in a safe, inclusive & effective manner

**Other Criteria**

It is recommended that the member has in place policies and procedures that support good governance, in line with the requirements of Sport Canada, and the ICC membership criteria. These should include policies covering conflict of interest, diversity, selection policy, strategic planning and safe sport policy.

It is expected that provincial members will take responsibility at the provincial level for programmes that align with Cricket Canada priorities. These include Senior men's and women's provincial teams, high performance programming, and provincial level tournaments; schools programming and community coach training; official's development and junior development.

5. I directed the three-person panel to answer the question, "which organization (the ACC or the ACA) can successfully demonstrate compliance, or substantial compliance, with the criteria as set out and thereby demonstrate effective control of organized competitive cricket within the province of Alberta?"
6. I also made it very clear that the time period that the panel should be looking at, for the purposes of the review, was not the situation as it exists today but as it was in 2019. I stated, "The Claimant in this case, the ACC, filed its request to initiate proceedings with the SDRCC on November 22, 2019. As I have noted several times, had Cricket Canada done its due diligence, 2019 would have been the period reviewed. Therefore, the relevant period for the purposes of the current review is 2019."
7. At the end of my decision, I indicated that in the event that either the ACC or the ACA felt that the Review Panel did not review their submissions and/or render a decision in a fair and unbiased manner, I would remain seized. I provided either party thirty days after the decision was released to request that I reconsider the Review Panel's decision.

8. The Review Panel conducted the review and issued a very brief decision which was filed by Cricket Canada with the SDRCC on May 31, 2021. The ACC has requested reconsideration of the decision and the ACA opposes this request. The Respondent, Cricket Canada, chose not to make any submissions. The Claimant was given the opportunity to file its submissions and supporting documentation first. Then the Affected Party filed submissions and documentation setting out its position on the request. The Claimant was then allowed to file reply submissions. Immediately after the reply submissions were filed, the ACA objected to them on the basis that they were not proper reply as new matters were raised which should have been part of the ACC's original submissions. I agree with the position taken by the ACA. The reply submissions are not proper reply. Accordingly, I will not take them into consideration in rendering my final decision in this matter.
9. As the decision of the Review Panel is quite short, I will set it out in its entirety. The decision of the Review Panel provided as follows:

**ALBERT CRICKET ASSOCIATION AND ALBERTA CRICKET  
COUNCIL REVIEW PANEL**

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**PARTICIPANTS:**

- Shah Zafar
- Tazul Riad
- Shannon Donovan

The panel met twice on video calls May 18<sup>th</sup> and May 25<sup>th</sup>, 2021 to review the information provided.

**PURPOSE:**

Determine "Effective Control" within the province of Alberta

**CRICKET CANADA BYLAWS:**

2.2.1 Effective control is determined by the Board; or by any committee or individual delegated this authority by the Board

and is based on the organization demonstrating that it:

- a) Fulfills or continues to fulfill the membership admission criteria listed in bylaw 2.3
- b) Has significant membership within the province it represents;
- c) Has an established effective governance structure meeting Cricket Canada expectation, and follows this structure in its operations;
- d) Conducts Annual General and Members Meetings (Cricket Canada must be notified of all member General Meetings and be given the option of sending an observer);
- e) Has a comprehensive financial management policy, including financial controls and reporting to members through approved financial statements;
- f) Operates provincial development programmes and, if numbers permit, long (40 overs or more) and short (20 overs) format competition for senior and junior men and women accessible to all cricketers in the province;
- g) Has certified coaches and officials;
- h) Aligns with Cricket Canada Objectives, Rules, Policies and Programs
- i) Operates in a safe, inclusive & effective manner

**KEY POINTS PRESENTED:**

**ALBERTA CRICKET COUNCIL**

- Established in 2018
- 2 seasons
- As of May 2021, four confirmed member associations which includes the Women's League
- Seems to be gaining support within the Alberta Cricket Community

**ALBERTA CRICKET ASSOCIATION**

- In operations for 116 years
- Currently have five member associations confirmed plus Alberta Schools program
- Appearance of declining membership
- Operational structure and capacity in place
- Alberta Umpires and Scorers Associations does not provide teams but does provide another member to the association

\*\*Medicine Hat Cricket Association was not clear based off the submissions received on what organization they are currently associated with.

**SUMMARY:**

The review panel discussed both organizations and completed a full review of the current status. It is unfortunate to see the sport of cricket of

Alberta having to choose between two organizations, and a panel was required to determine the organization that possessed effective control of cricket in Alberta. The committee concluded that at the moment the Alberta Cricket Association maintains effective control of cricket in Alberta. It is important to ensure that there is extensive amount of evidence of a lack of effective control to remove a member in good standing with the NSO, if not this could lead to PSOs continuously being challenged across the country pulling individuals away from advancing the sport. We believe both provide great value to cricket in Alberta and a couple recommendations were brought forward for the associations and Cricket Canada to take into considerations.

**RECOMMENDATIONS FOR ALTERNATIVE SOLUTIONS (No order of importance for the list below):**

- 1)
  - Cricket Canada to take on provisional operations of the sport of cricket in Alberta until a PSO can be determined. (Waterpolo Canada and BC Waterpolo could be used as a reference)
  - ACA oversee the Men and Women leagues
  - ACC oversee U20 program, schools' program, athlete, coach and umpire development
  
- 2)
  - If No agreement, CC to create new organization and invite all organization in Alberta to be member, conduct free election and monitor the organization for few years to ensure effective operation.
  
- 3)
  - Cricket Canada to review the recent reduction of membership within the ACA to see if there is a way to ensure the concerns of the ACC are being addressed to help in the communication between the two associations.

On Behalf of the Review Panel  
Shannon Donovan

10. A few things in this decision literally jump off the page. The first couple pertain to the fact that the Review Panel did not follow my direction in terms of the relevant time period for the assessment of which organization (the ACC or the ACA) could successfully demonstrate effective control of organized competitive cricket within the province of Alberta. I was very

- clear that the relevant time period for the review was 2019 as that was when the Claim was filed and Cricket Canada should have acted but did not.
11. In the body of the decision under the heading Key Points Presented, it is noted that as of **May 2021**, the ACC had four member associations. The Review Panel was supposed to be looking at 2019 not 2021.
  12. Under the heading “Summary” the Review Panel notes that it completed a full review of the **current** status of both organizations. Again, not what it was supposed to have done. It was supposed to review the status of both organizations as of 2019. The Review Panel goes on to say, “The committee concluded that **at the moment** the Alberta Cricket Association maintains effective control of cricket in Alberta.” It is apparent from this statement that the Review Panel answered the wrong question. The question it was supposed to answer was, as of 2019, which organization maintained effective control of organized cricket in Alberta.
  13. Although it is not apparent from the decision, the submissions and supporting documents filed by the parties make it clear that the Review Panel at one point in the process asked for information for the time period 2018-2021 pertaining to, for example, player development programs and membership lists.
  14. Another concern I have is that the by-law referenced at the outset is not the one that was filed with the SDRCC in 2019 when this case began. It is very different and sets out that, “[e]ffective control is determined by the Board; or by any committee or individual delegated this authority by the Board and is based on the organization demonstrating that it [...]” The by-law then proceeds to enumerate the criteria to be considered. This clearly is a revised by-law and is not the relevant one for the purposes of the



review. The by-law quoted at the outset of this decision is the one which should have been utilized by the Review Panel, but it appears was not.

15. In my award, in which I instructed the process to be followed, I indicated that if either the ACC or the ACA felt that the Review Panel did not review their submissions and/or render a decision in a **fair** and unbiased manner, I would remain seized. I have absolutely no hesitation in concluding that by not following my specific instructions regarding the time for the review, which were intended to ensure a fair process, that the decision rendered based on the utilization of an erroneous time frame, is in fact not fair.
  
16. In addition, in the Review Panel's decision it is noted that, "It is important to ensure that there is extensive amount of evidence of a lack of effective control to remove a member in good standing with the NSO, if not this could lead to PSOs continuously being challenged across the country pulling individuals away from advancing the sport." I am puzzled as to where this came from. With all due respect, that was not the question before the Review Panel. The role of the Review Panel was **not** to *ensure that there is extensive amount of evidence of a lack of effective control* on the part of the ACA but to simply evaluate based on evidence pertaining to the year 2019, which organization (the ACA or the ACC), maintained effective control of organized cricket in Alberta.
  
17. While I agree completely with the sentiment that litigation is very unfortunate and does in fact pull money away from the sport, I do not agree that in a case of this nature there should be some sort of presumption in favour of the existing PSO. The fact that the Review Panel felt this way is another taint on the process that was utilized.

18. Therefore, the decision of the Review Panel cannot stand. I am very sorry to come to this conclusion as it renders all of the work by the Review Panel done in vain.
19. Under Section 6.17 of the 2015 Canadian Sport Dispute Resolution Code, I have the jurisdiction to determine this matter. Both parties in their submissions have acknowledged my jurisdiction to determine this matter. The parties also agreed very early on in this process, that the matter could be determined based on the written submissions filed by the parties
20. The parties in this case have filed 573 pages of documents, correspondence and submissions. I have reviewed them all and the level of detail submitted required and resulted in hours and hours of review on my part. The pleadings are very acrimonious and both sides repeatedly accuse the other of falsehoods and misstatements. I am not going to set out at this point the volumes and volumes of evidence I have repeatedly been called upon to review while making this decision and the four decisions that preceded it. In my view it would be a disservice to cricket in Alberta were I to do so. My decision is a public document and setting out the accusations and unpleasantness that form a significant part of the pleadings in this case would not assist in the mending of relationships that needs to occur.
21. Both the ACC and the ACA have supporters and to a greater or lesser extent meet the criteria set out in paragraph four of this decision. They could likely both be an effective PSO in Alberta for the sport of cricket. However, only one of them can be named the PSO.
22. At this point in time, the sport of Cricket in the province of Alberta is very polarized and dysfunctional. This occurred under the stewardship of the ACA. Initially and before these proceedings even commenced, the group

of individuals who ultimately formed the ACC brought concerns forward to the ACA. They were not appropriately dealt with and the saga with which I have been dealing began. Accordingly, after long and careful consideration I have come to the conclusion that it is time for fresh leadership in the sport of cricket in Alberta. I do not reach this decision lightly but I am satisfied that it is the correct decision after having been involved in this case for more than a year and having spent countless hours reviewing the submissions and multitudinous documents filed in this case. I am satisfied that, pursuant to By-law 2.2, the ACC has demonstrated effective control of organized competitive cricket within the province of Alberta and should henceforth be considered a Member with voting privileges at any meeting of the members.

23. To be very clear, I therefore award PSO status for the province of Alberta to the ACC.

24. In the event that there are any difficulties with regard to the interpretation or implementation of this award, I shall remain seized.

Dated in Toronto this 13th day of July, 2021

  
Janice Johnston  
Arbitrator