

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

NO: SDRCC 21-0536

CENTRAL SOCCER LEAGUE (CSL)

(Claimant)

AND

THE CANADIAN SOCCER ASSOCIATION INCORPORATED o/a CANADA SOCCER (CS)

AND

ONTARIO SOCCER (OS)

(Respondents)

Before:

The Hon. L. Yves Fortier, QC (Arbitrator)

Appearances and Attendances:

For the Arbitrator: Me Sacha Cannon, Assistant to the Arbitrator

On behalf of the Claimant: Robb Gillies, Representative
James Bunting, Counsel
Carlos Sayao, Counsel
Theodore Milosevic, Counsel

On behalf of CS: Daniel Pazuik, Representative
Michael Leaver, Counsel
Sean Bawden, Counsel

On behalf of OS: Johnny Miskey, Representative
Michelle Kropp, Counsel

DECISION WITH REASONS

I. CONTEXT

- 1) The Claimant, Central Soccer League (“CSL”), is a sanctioned regional soccer league with 36 member clubs and a (former) Associate Member (Non-Voting) of Ontario Soccer (“OS”).
- 2) The Respondent, OS, is a Member Association of Canada Soccer (“CS”) and is the recognized Provincial Sport Organization for soccer in the Province of Ontario.
- 3) The Respondent, CS, is the National Sport Organization that governs the sport of soccer in Canada.
- 4) In early 2020, OS made a strategic decision to implement a pilot project with a view to integrating private academies into its membership (the “IModel Pilot Project”).
- 5) CSL was approached by OS to administer the regional component of the IModel Pilot Project.
- 6) On December 22, 2020, CSL and OS entered into a Letter of Agreement (“LOA”) which set out the principles of CSL’s participation in planning and implementing the IModel Pilot Project.
- 7) On October 9, 2021, five CSL member clubs from the Scarborough District Association sought a Special General Meeting (“SGM”) of the CSL membership to consider the participation of CSL in the IModel Pilot Project.
- 8) The Special Meeting was held on October 30, 2021. Concerns were expressed about the IModel Pilot Project by CSL member clubs.
- 9) Eventually, the CSL membership adopted the following resolution:

A-The Central Soccer league shall not implement the Ontario Soccer Integrated Model Pilot Project at any time.
- 10) On November 11, 2021, the OS’s Board of Directors, after having been informed of this resolution, decided that “the CSL’s membership status as an Associate Member (Non-Voting) with Ontario Soccer for the 2022-2023 operating year will not be granted” (the “OS Decision”) because of the alleged breach of the LOA.
- 11) On November 29, 2021, CSL sought leave from the Canada Soccer Appeals Committee to

appeal the OS Decision.

12) On December 17, 2021, CS's Appeals Committee denied CSL leave to appeal the OS Decision (the "CS Decision").

13) On December 22, 2021, CSL filed a Request for arbitration requesting the SDRCC to set aside the CS Decision and the OS Decision.

14) CSL named as Respondents both OS and CS.

15) In their joint Answer, on December 29, 2021, Respondents submitted that the SDRCC did not have jurisdiction.

16) On December 30, 2021, I was appointed as sole arbitrator.

17) The Parties then filed written submissions with respect to jurisdiction.

18) On January 14, 2022, I issued a short decision concluding that the SDRCC had jurisdiction. My Decision with reasons was issued on January 18, 2022.

19) In accordance with a timetable which was agreed by the Parties, the following written pleadings were submitted:

- i) Claimant's Written Submissions on the Merits, January 12, 2022, (C-04);
- ii) Written Responding Submissions of the Respondent Ontario Soccer, January 19, 2022, (R1-05);
- iii) Claimant's Written Reply Submissions, January 20, 2022, (C-10);

20) The following four witness statements accompanied the Parties' written pleadings:

- i) Witness Statement of Mr. Rob Gillies, President of CSL, January 11, 2022, (C-03);
- ii) Witness Statement of Ms. Alice Strachan, Member of the Board of Directors of OS, Chair of the 3PG and Member of the District President Forum / Ontario Registered Academies ("DP/ORAs") Working Group (now the "IModel Steering Committee"), January 16, 2022, (R1-06);
- iii) Witness Statement of Mr. Johnny Misley, Chief Executive Officer of OS, January 16, 2022, (R1-06);

iv) Witness Statement of Mr. Peter Augruso, President and Chair of the Board of Directors of OS and Chair of the DP/ORA Working Group, January 16, 2022, (R1-06).

21) The hearing was held by videoconference on January 27, 2022.

22) During the hearing, I heard the evidence of these four witnesses.

23) A brief summary of their evidence follows:

i) Mr. Robb Gillies is the President of CSL since 2013. In late 2020, Mr. Gillies had discussions with OS with respect to CSL becoming involved in the development of the IModel. These discussions led to the execution of the LOA on December 22, 2020. Mr. Gillies saw this as an opportunity to shape the IModel and its design according to the concerns that had been expressed by CSL member clubs. The key feature of the LOA, according to Mr. Gillies, was CSL's participation in the 3PG. He relied on OS's assurance that CSL would be "meaningfully consulted" as a partner of OS on the development of the IModel. In fact, he testified, CSL was not consulted with respect to the design and substance of the IModel. During the SGM of October 30, 2021, numerous member clubs raised concerns about the IModel Pilot Project. Ultimately, the resolution not to implement the Pilot Project was adopted. Mr. Gillies testified that he was shocked when he received the OS Decision. According to him, CSL's continued membership in OS was never made dependent on the implementation of the LOA.

ii) Ms. Alice Strachan joined the OS Board as a director in October 2018. She chairs the 3PG and is a member of the DP/ORA Working Group, whose remit was the plan to integrate private academies into the OS membership structure. Ms. Strachan testified that the decisions regarding the development and implementation of the IModel are made by the DP/ORA Working Group or the OS Board of Directors. Ms. Strachan participated in discussions which led to the execution of the LOA. She testified that CSL representatives participated in the 3PG meetings. She attended the Special General Meeting on October 30, 2021. She recalls that there was a question to the CSL Board as to "whether there was any risk to CSL if they were to pull out of their involvement in the IModel". She says that she referred to the LOA and warned of "ramifications" if CSL did not respect the LOA. According to Ms. Strachan, the CSL clubs did not have all the relevant information about the IModel before their vote on CSL's participation in the IModel.

ii) Mr. Johnny Misley is the Chief Executive Officer of OS since January 2015. He is responsible for the development and execution of strategic planning. OS, he testified, “is committed to being inclusive in accordance with its purposes and values”. This is why OS sought the inclusion of Private Academies within the membership of OS. This was the purpose of IModel Pilot Project which was approved by the OS Board in 2020. Mr. Misley testified that the CSL was approached to run the regional facet of the IModel. After many meetings, the LOA with CSL was executed. The LOA is essentially an agreement to protect the integrity of the Pilot Project. According to him, no parallel league play should be permitted if valid and reliable data from the IModel was to be obtained. Mr. Misley testified that, in his opinion, the CSL member clubs were not informed about the existence and the purpose of the IModel Pilot Project. After CSL “breached the LOA”, the integrity of the IModel was threatened and the non-renewal of CSL membership in OS was the result of this breach.

iii) Peter Augruso is the President and Chair of the Board of Directors of OS since October 2018. He has been a member of the Board since 2013. He is also the Chair of the DP/ORR Working Group. Mr. Augruso testified that he was directly involved in the negotiation of the LOA and that there was a lot of “back and forth” during the negotiations. He states that many amendments proposed by CSL were incorporated in the LOA. He denies that anyone at OS “induced” CSL to execute the LOA. Prior to the October 30, 2021 SGM of CSL’s members, Mr. Augruso testified that he told Mr. Gillies that CSL “were boxing themselves in” if an amendment to the motion was not made. He also reminded Mr. Gillies of the LOA and warned that, if the motion was adopted, the league operations of CSL for the following year would not be approved by OS as the IModel Pilot Project would be running and no parallel league would be allowed. During his cross-examination, Mr. Augruso acknowledged that the November 11, 2021 letter informing CSL that its membership would not be renewed was not strictly in accordance with OS’s dispute resolution mechanism.

24) After the hearing, I received the following written submissions:

- i) Claimant’s Written Closing Submission, February 7, 2022, (C-14);
- ii) Written Closing Submissions of the Respondent Ontario Soccer, February 7, 2022, (R1-16);

iii) Closing Submissions of Canada Soccer, February 7, 2022, (R2-02).

II. POSITION OF THE PARTIES

CLAIMANT

- 25) Claimant requests an order setting aside the Canada Soccer Decision and the Ontario Soccer Decision.
- 26) Claimant submits that the Ontario Soccer Decision was *ultra vires* the OS authority. It maintains that “the decision was made in direct contravention of OS’s mandatory and automatic membership renewal criteria and the mandatory membership termination provisions set out in its governing documents”. Claimant avers that these Governing Documents “create binding legal obligations amongst Ontario Soccer and its members, including CSL”.
- 27) According to Claimant, the OS Board of Directors did not follow the binding provisions of OS’s Governing Documents when it issued the OS Decision which had the effect of terminating the CSL membership.
- 28) In support of its request, Claimant submits that the *Lex Sportiva* “prohibits OS’s disregard” of its own internal Governing Documents.
- 29) Claimant argues that “the LOA does not impose additional membership conditions over and above those set out in OS's governing documents, nor does it supplant the clear, mandatory, and established terms for membership renewal or termination set out in OS’s bylaws and other governing documents.”
- 30) Properly construed, submits Claimant, section 2.1 of the LOA did not give OS the right to end CSL’s membership.
- 31) Claimant avers that OS’s interpretation of the LOA is “not fair or reasonable as it disregards entirely the knowledge of the parties at the time of entering into the LOA and relies on the notion that Ontario Soccer actively entered into an agreement that it knew circumvented both its own Governing documents and the democratic right of CSL’s member clubs to vote on CSL’s participation in the IModel Project”.
- 32) As this is a “de novo” hearing affirms Claimant, the scope of the Panel’s review is broad and no deference is due to the Canada Soccer Appeals Committee.

- 33) The OS Decision is also null and void as it is prohibited by the Ontario's Not-For Profit Corporations Act¹ (the "Act").
- 34) The By-laws and Operational Procedures of OS impose a mandatory obligation on Ontario Soccer to renew CSL's membership automatically concludes Claimant.
- 35) In the alternative, Claimant submits the following:
- i) The LOA should be rescinded and declared void "*ab initio*" on grounds of misrepresentations made by Ontario Soccer.
 - ii) Ontario Soccer acted in bad faith and dishonestly in performing the LOA.

RESPONDENTS

ONTARIO SOCCER

- 36) It is the position of OS "that the Claimant's Request should be entirely dismissed". It submits that "CSL has simply not proven that OS erred in its decision nor that CS erred in dismissing the appeal of OS's decision".
- 37) OS contends that it always "acted in good faith, with due diligence, and in the best interests of soccer in Ontario at all times and in accordance with its fiduciary duties to OS".
- 38) OS, in planning for the IModel Pilot Project, "followed all proper protocols".
- 39) There is a distinction, argues Respondent OS, between membership issues and "the right of OS to make governance decisions regarding creation and implementation of a new league structure". Deference is owed to these types of policy decisions, says OS.
- 40) OS also submits that "a valid and binding contract (the LOA) was entered into by OS and CSL and improperly breached by CSL."
- 41) By unilaterally violating the terms of the LOA, submits Respondent OS, "CSL has willingly given up its right to membership in OS for 2022-2023".
- 42) OS argues that "CSL did not enter into the LOA with clean hands and is not entitled to benefit

¹ Not-for-Profit Corporations Act, 2010, S.O. 2010, c. 15

from its own dishonesty vis à vis its member clubs.”

43) The LOA, submits Respondent OS, imposed other obligations on CSL for membership renewal, “in addition to the requirements in OS Governing Documents”. This is was accepted by CSL.

44) In accordance with its Governing Documents, OS controls the membership renewal application process. There is no automatic renewal of membership, argues OS.

45) Respondent OS argues that “courts are loath to interfere with corporate governance matters, particularly in sport-related matters.”

46) Therefore, submits OS the key issue in this arbitration “is whether the parties were prohibited from entering into a contract that imposed obligations not mandated in the By-laws and other governing documents.” OS maintains that CSL entered into a binding agreement, willingly and voluntarily, and it was aware that it imposed further obligations than was set out in OS’s Governing Documents. OS concludes that “allowing organizations to enter into binding agreement and then breach them by stating that only the By-laws applied all along sets a very bad precedent.”

47) As far as the contractual interpretation of the LOA is concerned contends OS, there is no ambiguity and “any reasonable person reading this clause would understand that membership was contingent on participating in the IModel Pilot Project.”

48) In response to Claimant’s allegations that provisions of the LOA are *ultra vires* OS’s authority, OS contends that there is nothing in its Governing Documents that prevents it from entering into such provisions and that OS did so with full authority.

CANADA SOCCER

49) Respondent CS asks the Panel not to set aside CS’s Decision.

50) CS contends it should not be a party to this arbitration as “the substance of the matter at issue concerns a membership dispute between Claimant, Central Soccer League, and Co-Respondent, Ontario Soccer.”

- 51) Respondent CS writes that “Mr. Peter Augruso, President of the Board of Directors and Chair, DP/ORR Working Group of OS erroneously provided Claimant with Canada Soccer’s appeal forms when advising it of its right to appeal the decision of the Ontario Soccer Board.”
- 52) Claimant’s request that the Panel should “set aside Canada Soccer’s decision denying leave to appeal the Ontario Soccer Decision is both misplaced and unnecessary” concludes Respondent CS.
- 53) CS’s Appeal Committee only has jurisdiction to hear appeals in three limited scenarios pursuant to CS’s By-laws explains Respondent CS:
- i) Decisions from its own Disciplinary Committee;
 - ii) Decisions from its own Ethics Committee, and
 - iii) Decisions of appeal bodies of Member Associations.
- 54) Accordingly, submits Respondent CS, its Appeals Committee, “properly denied leave to appeal the decision of the Board of Directors of Ontario Soccer because it lacked jurisdiction to hear the dispute.”
- 55) Finally, according to CS, if the OS Decision was set aside, “then the decision of the Canada Soccer Appeals Committee is rendered moot in any event.”

III. ANALYSIS

- 56) I recall that, on January 18, 2022, I issued a decision in the present case concluding that the SDRCC had jurisdiction to hear and decide the request of CSL that I set aside the CS Decision of 17 December 2021 denying CSL’s leave to appeal the 11 November 2021 Decision of OS “not to renew CSL’s membership status as an Associate Member (Non-Voting) with OS for their 2022-2023 operating year”.
- 57) While, as seen above, the written and oral submissions of the Parties have been extensive and the evidence, which I have reviewed carefully, considerable, I have formed the view that I can decide this case on relatively narrow grounds.
- 58) The following is a summary of the essential background and procedural history of the case:

- i) CSL is a regional soccer league which includes soccer teams and players in Ontario's central region.
- ii) CSL is a not-for-profit corporation governed by the Ontario Not-for-Profit Corporations Act 2010 (the "Act").
- iii) OS is the Provincial Sport Organization that governs soccer in Ontario. It is also a not-for-profit corporation governed by its By-laws, Policies and Operational Procedures ("Governing Documents") and the Act.
- iv) CS is the National Sport Organization that governs the sport of soccer in Canada.
- v) OS has two classes of membership:
 - a) District Associations, which are Voting members; and
 - b) Associate Members, (Non-voting) comprised of regional leagues such as CSL.
- vi) Soccer is played in Ontario through Community-based soccer clubs which are member clubs of OS's District Associations and private soccer academies.
- vii) Private soccer academies are not member clubs of OS's District Associations.
- viii) In the fall of 2019, OS developed a plan to integrate academies and clubs within the OS competition structure.
- ix) In order to implement this plan, OS set up an integrated Pilot Program (the "IModel Pilot Project").
- x) In brief, the IModel Pilot Project is a league restructuring initiative which would integrate clubs whose team play in regional leagues and academies.
- xi) On 22 December 2020, OS and CSL entered into a letter of Agreement regarding CSL's participation in planning and implementing the IModel Pilot Project (the "LOA").
- xii) On 30 October 2021, at a special meeting of CSL members, the following resolution was approved: "CSL shall not implement the Ontario Soccer Integrated Model Pilot Project at any time".

xiii) On 11 November 2021, after having been notified by CSL of this resolution, the Board of Directors of OS decided that “the CSL’s membership status as an Associate Member (Non-Voting) with Ontario soccer for the 2022-2023 operating year will not be granted because it had “placed itself in breach of the LOA” (the “OS Decision”).”

xiv) On 24 November 2021, CSL filed an application for leave to appeal the OS Decision to the CS Appeals Committee.

xv) On 17 December 2021, the CS Appeals Committee denied CSL leave to appeal the OS Decision (the “CS Decision”).

59) It is against this background that I now set out the key provisions of the LOA and of the OS Decision.

60) The key provisions of the LOA are:

1.0 Term

[...]

1.2 Either Party may terminate this Agreement if there is a breach of the terms of this Agreement. In such case, written notice must be given to specify the breach and the Party receiving the notice will have seven (7) days to remedy the matter.

2.0 Membership and Governance

[...]

2.1 CSL will remain as an Associate (Non-Voting) member for the 2022-2023 Ontario Soccer membership year by participating in the IModel Pilot Project subject to meeting the standard membership renewal compliance requirements.

2.2 CSL will abide by both the terms and conditions of this LOA as well as the governing documents of Ontario Soccer as an approved Associate (Non-Voting) Member of Ontario Soccer.

61) The following paragraphs of the OS Decision convey the dominant reasons of the decision of its Board of Directors:

[...]

On behalf of the Board of Directors of Ontario Soccer, I am writing in response to your official email correspondence of November 3, 2021, confirming the Central Soccer League (“CSL”) has withdrawn your participation from Ontario Soccer’s 2022 Pilot Project, “The IModel” effective November 10, 2021.

Based on your official confirmation, the CSL has now placed itself in breach of our CSL-Ontario Soccer Letter of Agreement (LOA) signed on December 22, 2020. At a minimum, the following sections are in breach:

2.1 CSL will remain as an Associate (Non-Voting) member for the 2022-2023 Ontario Soccer membership year by participating in the IModel Pilot Project subject to meeting the standard membership renewal compliance requirements.

2.2 CSL will abide by both the terms and conditions of this LOA as well as the governing documents of Ontario Soccer as an approved Associate (Non-Voting) Member of Ontario Soccer.

Given the outcome of your recent Special General Meeting and the information provided above, I am hereby confirming that the CSL’s membership status as an Associate Member (Non-Voting) with Ontario Soccer for the 2022-2023 operating year will not be granted. This decision by the Board, means the CSL will not be classified or registered as a sanctioned “regional league” as per our governing structure in 2022.

62) Claimant contends that, properly construed, the LOA did not give OS the right to terminate CSL’s membership for non-participation in the IModel Pilot Project.

63) Claimant also submits that, in issuing its Decision, the OS’s Board of Directors failed to follow the binding provisions of its Governing Documents which “set out a clear and mandatory process for membership renewal and for membership termination”.

64) The relevant provisions of OS’s Governing Documents are:

i) Article 3 (e) of its Bylaws:

Article 3 - Membership

[...]

e) Subject to meeting full compliance with the “Criteria for Renewal of Membership”, Membership shall be renewed automatically on an annual basis and be administered by staff.

ii) Section 2, Procedure 4.2 of its Operational Procedures:

4.2 Renewal of Membership

4.2.1 Each voting and non-voting Member of Ontario Soccer shall be required to apply to renew its membership by February 1 for the upcoming Membership year.

4.2.2 Application for renewal of membership in Ontario Soccer shall be made annually on a Membership Renewal Application Form provided by Ontario Soccer. The application must be accompanied by all required documents as stipulated on the form and including:

a) List of all new By-Law amendments since last application for renewal of membership

b) For a Not-For-Profit Organization, the Audited Financial Statement presented at the last AGM of the Member Organization.

c) For a For-Profit Organization, a Financial Review Statement completed by an independent auditor

d) Current List of Member Organization’s Board of Directors

e) Current List of Member Organization’s Membership

f) For Associate Members, the applicable associate membership levy in addition to a league fee for any Associate Member which is also a league

4.2.3 Staff will review the renewal applications and ensure that the application forms are complete and that all the required documents and fees have been submitted.

4.2.4 If the application form is complete and all required documents and applicable fees have been submitted, the membership of:

a) A voting or non-voting Member, shall automatically be renewed and staff shall notify the Member Organization that its membership is renewed for the next Membership Year.

65) The relevant provisions of OS's Governing Documents with respect to membership termination are:

i) Article 3 (f) of its Bylaws:

Article 3 – Membership

f) A member may have their membership revoked by the Voting Members at a Members' Meeting in accordance with the "Criteria for Removal of Membership".

ii) Section 22 of its Policies:

22.0 Suspension or Termination of Membership in Ontario Soccer

22.1 Termination of Membership in Ontario Soccer Membership in Ontario Soccer will terminate immediately upon:

a) Resignation by the Member by giving written notice to Ontario Soccer; or

b) Dissolution of the Member Organization as a Corporation; or

c) In accordance with this Policy.

66) OS acknowledges that "the membership issue is a threshold issue" and maintains that "CSL willingly and voluntarily entered into a binding agreement that it was fully aware imposed further obligations than was set out in the By-laws" (my emphasis).

67) OS also affirms that: "This is ultimately a question about whether the LOA was a valid contract, imposing obligations on CSL for membership renewal by OS for the 2022-2023 season in addition to the requirements in the OS governing documents" (my emphasis).

68) Clearly, concludes OS, its By-laws and Procedures do not prohibit this and, since CSL breached the LOA, "OS has properly refused to renew the membership of CSL".

69) I will now analyze and interpret the LOA.

70) As this is a hearing "de novo", the Parties accept that, while it is the decision of CS to deny CSL leave to appeal the OS Decision that is being reviewed "de novo", it necessarily involves the review of the OS Decision not to renew CSL's membership for the 2022-2023 season.

71) The scope of a Panel's review in an SDRCC arbitration (the "de novo" rule") is set out in

Section 6.11 of the SDRCC Code. It reads as follows:

Section 6.11 Scope of Panel's Review

(a) The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

(b) The Panel shall have the full power to conduct a hearing de novo. The hearing must be de novo where:

(i) the SO did not conduct its internal appeal process or denied the Claimant a right of appeal without having heard the case on its merits; or

(ii) if the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.

(c) No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Party seeking such deference can demonstrate that Person's relevant expertise.

72) As specifically mentioned in Subsection 6.11(c) above, no deference is owed to the decision maker unless he/she has any particular advantage, such as specialized knowledge or expertise relevant to the determination of the issue.²

73) The impugned decision of the Canada Soccer Appeals Committee only relates to the denial for CSL of leave to appeal the OS Decision. I do not believe that the Appeals Committee possesses any particular advantage in making this determination which would warrant any deference.

74) Accordingly, I decide that I owe no deference to the Canada Soccer Appeals Committee that reviewed and denied the application of CSL.

75) The issues before me, and they are intertwined, are whether the LOA can be relied upon to justify OS's refusal to renew CSL membership in OS for the 2022-2023 season and, if not,

² *Adham Sharara v. Table Tennis Canada (TTCAN)*, SDRCC 18-0376 (Banack).

whether the OS Decision should be set aside in view of OS's failure to follow its own Governing Documents.

76) I will first analyze carefully the LOA in order to determine, as Claimant contends, whether, properly construed, it does give OS the right to terminate CSL's membership for non-participation in the IModel Pilot Project.

77) For the reasons that follow, I have concluded that it does not.

78) I agree with Claimant that, as a matter of contractual interpretation, having regard to the factual matrix, section 2.1 of the LOA provides a condition, CSL's participation in the IModel Pilot Project, that, if met, will result in CSL remaining a member of OS.

79) Section 2.1 does not provide that CSL will cease to be a member if that condition is not met. Specifically, section 2.1 states very clearly that "CSL will remain as an Associate (Non-Voting) member [...] by participating in the IModel Pilot Project" (my emphasis)

80) Interestingly, the last leg of section 2.1, "subject to meeting the standard membership renewal compliance agreement", is a direct, almost verbatim, reference to Article 3 (e) of the OS By-laws. It demonstrates the understanding of both parties to the LOA that CSL would remain a member of OS while it participated in IModel Project.

81) This interpretation of section 2.1 of the LOA is confirmed by looking at the section in the context of the entire LOA. In section 1.2, it is manifest that the Parties considered both procedure and outcome in relation to a possible breach of the LOA. For ease of reference, I recall that the section reads as follows:

1.2 Either Party may terminate this Agreement if there is a breach of the terms of this Agreement. In such case, written notice must be given to specify the breach and the Party receiving the notice will have seven (7) days to remedy the matter.

82) In fact, OS did not provide CSL with a seven day cure period.

83) If OS believed that CSL had breached the LOA, it had to give it notice pursuant section 1.2 and, if CSL did not remedy the breach within 7 days, it could terminate the LOA or sue CSL for breach of contract.

- 84) Accordingly, I conclude that the LOA, properly interpreted in its commercial context, does not give OS the right to terminate CSL's membership because it elected not to participate in the IModel Pilot Project.
- 85) I could end my decision with this conclusion. However, as the evidence adduced by both parties and their submissions dealt at length with the issues that I summarized earlier in paragraph 75, I will now address these issues.
- 86) However, I must first consider and discuss a proffering of Respondent OS in its written closing submissions.
- 87) Respondent OS now argues, relying on the testimony of MM Misley and Augruso, that the OS Decision did not actually terminate CSL's membership for the 2022-2023 season but only suspended it for that season.
- 88) Counsel for OS submits that "although it may seem a fine distinction, it is an important one, as an administrative and contractual non-renewal is subject to different requirements and procedures than a termination of rights".
- 89) With respect, I cannot accept that distinction. The effect of the OS Decision is the same as terminating CSL's membership. Indeed, this was acknowledged by MM Misley and Augruso during their cross-examination.
- 90) CSL remains a member of OS for the current season (2021-2022). As result of the Decision of the OS Board of Directors, the CSL membership for the 2022-2023 season will not be renewed. In my opinion, this is without doubt a termination of CSL's membership for that season as of 28 February 2022.
- 91) I can now turn to the issues I summarized above in paragraph 75.
- 92) Assuming that OS, in Section 2.1 of the LOA, did add a criterion for renewing or terminating CSL as a member of OS, is such a criterion valid and can OS invoke its breach to justify its refusal to renew CSL membership in OS for the 2022-2023 season?
- 93) As noted earlier, Article 3 (e) of Ontario Soccer's Bylaws states very clearly that membership of a member "shall be renewed automatically" upon compliance with the "Criteria for Renewal

of Membership” (my emphasis). And, as we saw, these criteria are set out in Section 2, Procedure 4.2 of OS’s Operational Procedures, entitled “Renewal of Membership”.

94) In addition, as also noted earlier, the OS’s Governing Documents with respect to membership termination, to wit Article 3 (f) of its By-laws and Section 22 of its Policies, set out the process which must precede a decision to terminate a member.

95) As a non-profit corporation governed under the Act, OS’s Governing Documents create binding legal obligations as between the corporation (Ontario Soccer) and its members, including CSL.³

96) There can be no doubt that these provisions of OS’s Governing Documents were not followed in the instant case. CSL’s membership in OS was not renewed because of its alleged breach of the LOA.

97) In other words, the LOA, properly construed, imposed an additional membership condition on CSL over and above those set out in OS’s Governing Documents.

98) Prior to signing the LOA on December 22, 2020, the parties negotiated during three weeks. There were several revisions and amendments to the draft sent by OS to CSL on 1 December 2020.

99) As CSL submits, if the LOA was intended to change in a fundamental way the process and procedure for renewing or terminating CSL as a member of OS, “the parties would have stated expressly that non-participation in the LOA would result in the non-renewal and termination of CSL as a member, notwithstanding any provision in its Governing Documents to the contrary”.⁴

100) In accordance with a well-established line of SDRCC decisions⁵, this additional criterion is invalid. Sports Organizations cannot adopt procedures which are inconsistent with their governing documents.

³ *Chu v. Scarborough Hospital Corporation* (2007), 35 BLR (4th) 254 (Ont. Div. Ct).

⁴ Para. 64 of Claimant’s Written Submissions on the Merits.

⁵ See: *Weicker v. Wrestling Canada Lutte*, SDRCC 20-0445 (Soublière); *Longpré v. Canadian Amateur Boxing Association*, SDRCC 06-0041 (Pound); *Green v. Canadian Colleges Athletic Association*, SDRCC 07-0063 (Banack).

101) It follows therefore that the OS Decision of November 11, 2021, not to renew CSL's membership status as an Associate Member (Non-Voting) with Ontario Soccer for the 2022-2023 operating year must be set aside.

102) As for the Canada Soccer Decision of 17 December 2021, it is manifest, on its face, that it denied the Claimant leave to appeal the OS Decision by relying on section 2.1 of the LOA.

103) After quoting section 2.1, it wrote:

5. The implication being that by not participating in the IModel Pilot Project the CSL would be forfeiting their membership in OS as an Associate (Non-Voting) member for the 2022-2023 OS membership year.

6. Despite this, and with the full knowledge of both the CSL's President and Vice President as signatories to the LOA, the Member Clubs of the CSL exercised their democratic right and voted not to participate in the OS IModel Pilot Project during a Special Meeting of the CSL held on October 30, 2021.

7. The CSL is now seeking, through the appellant process, to nullify the LOA as duly agreed to and signed by their own executive officers.

8. Accordingly, leave to appeal the November 11, 2021 decision of OS is denied.

104) There is no doubt in my mind that the Canada Soccer Appeals Committee thus denied CSL leave to appeal by deciding the merits of the appeal.

105) This is a flagrant case of a decision which, in a hearing "de novo" such as the present one, must also be set aside.

106) Leave to appeal the OS Decision should have been granted at least on the following ground invoked by CSL:

"ii. In making the decision, Ontario Soccer failed to follow the procedures laid out in its governing documents."

107) In the circumstances, it is not necessary for me to deal with the other grounds invoked by Claimant to set aside the Ontario Soccer Decision.

108) However, before issuing my Decision, I consider it very important to add two comments which are not directly related to the Decision.

109) Firstly, in the course of this arbitration, I have learned a great deal about the IModel Pilot Project. It appears to me that the decision of OS to implement this project with a view to integrating private academies into its membership, as Mr. Misley testified, is very commendable.

110) Secondly, I wish to emphasize that, having looked carefully at the totality of the record, I have seen no evidence of misrepresentation made by Ontario Soccer in the course of its relationship with CSL. I have seen no evidence either that OS “acted in bad faith and dishonesty” in performing the LOA, as alleged by CSL.

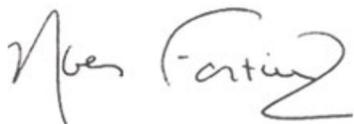
IV. DECISION

111) For the foregoing reasons, I decide the following:

- 1) The Canada Soccer Decision of 17 December 2021 is set aside.
- 2) The Ontario Soccer Decision of 11 November 2021 is set aside.

112) Having regard to the fact that Mr. Johnny Misley, President of Ontario Soccer, confirmed during the Conference call on 22 January 2022 that the deadline for any application by Central Soccer League to renew its membership for the 2022-2023 membership year had been extended to 14 February 2022, I have decided, as I foreshadowed during that Conference call, that I will remain seized of this case until such application has been processed in accordance with Articles 3 and 4.2 of the Ontario Soccer By-laws.

Signed in Montreal on February 16, 2022

A handwritten signature in black ink, appearing to read "Yves Fortier". The signature is written in a cursive, flowing style.

The Honourable L. Yves Fortier, QC, arbitrator