

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

No: SDRCC 23-0670

Between:

David Spinney
(Claimant)

and

Coaching Association of Canada
(Respondent)

and

Wrestling Canada Lutte
(Intervenor)

Jurisdictional Arbitrator: David Merrigan

Hearing: September 8, 2023, via videoconference

Appearances:

For the Claimant: Justin Safayeni (counsel) and Karen Bernofsky (counsel)

For the Respondent: Michelle Kropp (counsel),
Isabelle Cayer and Lorraine Lafrenière.

For the Intervenor: Tamara Medwidsky

JURISDICTIONAL AWARD

Background

1. On July 20, 2022, Mr. David Spinney, a wrestling coach affiliated with Wrestling Canada Lutte (WCL) received his Chartered Professional Coach (ChPC) designation from the Coaching Association of Canada (CAC).
2. The ChPC designation is described by the CAC as an “official designation” which “also regulates coaching and protects the public interest by ensuring its coaches abide by the highest standard of professional and ethical conduct.”
3. On July 31, 2022, an Arbitrator appointed to adjudicate complaints against Mr. Spinney within WCL rendered a decision.
4. The merits of that decision are not before me and for the purposes of this hearing are irrelevant except to say that they led to a two-year ban imposed which prohibited Mr. Spinney from participation in any capacity [including coaching of athletes] under the jurisdiction of the WCL.
5. In the same decision, the arbitrator then suspended the “two-year ban” and substituted a “three-year probationary period” in its place; in effect this meant that the two-year ban would only be imposed should he commit a further violation during the probationary period.
6. On September 16, 2022, the CAC wrote to Mr. Spinney and advised him that his ChPC designation was now being suspended for two years because of the WCL arbitration decision.
7. It is important to note that sometime after receiving the unfavourable arbitration decision, Mr. Spinney initiated an appeal of the decision with the WCL.
8. After correspondence between the respective legal counsel for Mr. Spinney and the CAC, occurring during September and October 2022, the CAC modified its original position from a two-year suspension of the ChPC to agreeing to “reconsider and [potentially] modify its decision” in the future.
9. The CAC still suspended the ChPC designation of Mr. Spinney but now would be willing to review this action after two years from September 16, 2022 (the date of the initial letter to him advising of the suspension) or after his appeal with WCL was complete.
10. The CAC communicated this conditional reconsideration decision to Mr. Spinney on October 31, 2022.
11. This would be the last communication between these two parties about this issue until August 23, 2023, when the current Counsel for Mr. Spinney wrote the CAC.

12. The contents of this email were cited by the Claimant as proof that the “final decision” of the CAC had not been reached in this case prior.
13. The upside of this argument, if this Panel accepted it, is that it would allow the instant case to be well within timelines for filing an appeal with the SDRCC.
14. For reasons I will go into later in this decision, I rejected that argument.
15. On August 3, 2023, WCL announced that Mr. Spinney was being nominated as a potential coach for Team Canada for the 2023 Pan American Games to be held in Santiago, Chile from October 20, 2023 – November 5, 2023.
16. However, on August 22, 2023, Mr. Spinney received an email from the Canadian Olympic Committee (COC) which outlined a critical pre-requisite to securing a spot-on Team Canada’s coaching staff: the need to be a Registered or Chartered Professional Coach designated by the CAC by August 25, 2023.
17. As Mr. Spinney’s ChPC designation had been suspended by the CAC as of October 31, 2022, he no longer met this requirement to be a coach for Team Canada for the upcoming Pan American Game.
18. On August 24, 2023, the Claimant, filed a request with the Sport Dispute Resolution Center of Canada (SDRCC) to appeal the suspension of his Chartered Professional Coach Designation (ChPC) by the Respondent, the Coaching Association of Canada (CAC).
19. At the time, a decision on his WCL appeal was still outstanding and Mr. Spinney ultimately sought to have the merits of the CAC’s decision reviewed through the SDRCC ordinary tribunal process.
20. In its response to this request, the Respondent objected to the jurisdiction of the SDRCC to hear this appeal. This notification was received by the SDRCC on August 29, 2023.
21. On August 31, 2023, WCL filed its Intervention form with the SDRCC as an “affected party” with regards to this appeal. It was determined by this Panel that WCL would be most appropriately designated with “intervenor” status to align with the description in the Canadian Sport Dispute Resolution Code (“the Code”).
22. To assist the parties with the timeline, I agreed to render a short decision two days after the hearing held by videoconference on September 8 with my formal, reasoned decision to be issued by Wednesday, September 13, 2023.
23. I issued a short decision on September 10, 2023, which upheld the Respondent’s preliminary objection to the SDRCC’s jurisdiction to hear this matter and dismissed the appeal.

24. These are my reasons for decision.

Relevant Provisions

25. During the preliminary meeting held on September 1, 2023, there was agreement between the parties that, for the appeal to be successful, the Claimant would need to satisfy section 6.2. of the Code:

6.2 Time Limits to File a Request

- (a) Unless set by agreement, statute, regulations or other applicable rules of the relevant SO, the time limit to file a Request shall be thirty (30) days following the later of the date on which:
 - (i) the Claimant becomes aware of the existence of the dispute;
 - (ii) the Claimant becomes aware of the contested decision; and
 - (iii) 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.
- (b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request upon agreement of the Parties or under exceptional circumstances. Any issue pertaining to the waiver of the time limit will be referred to a Panel.

26. Also at the preliminary meeting, the parties accepted WCL as an “Affected Party” in this matter. However, upon further analysis, I was concerned that WCL may be most accurately designated with “Intervenor Status” instead.

27. I gave the parties an opportunity to express their respective position on the participation of WCL as an intervenor. The definitions of each of these is found in Article 1 of the Code reproduced below.

Article 1	Definitions
1.1	<p>For purpose of this Canadian Sport Dispute Resolution Code (“this Code”), capitalized terms have the following meanings:</p> <ul style="list-style-type: none">(a) “Affected Party” « Partie affectée » means a Person who may be tangibly and adversely affected by an award of a Panel of the Ordinary Tribunal, such as being removed from a team or losing funding, and who is either accepted by the Parties or named by the Panel as an Affected Party;(y) “Intervenor” « Intervenant » means a Person, who is not a Party to a proceeding but claims an interest in the Arbitration, and whose presence is useful for the proper adjudication of the dispute, who files an Intervention pursuant to Section 6.6 and is accepted by the Parties or by the Panel as an Intervenor:

28. I did not receive any submissions from the parties.

29. As a result, I exercised my authority under section 6.6. of the Code to designate WCL as an Intervenor and Ms. Tamara Medwidsky represented WCL throughout the proceedings in that role.

6.6 Participation of an Intervenor

- (a) If a Person not already designated by the Parties pursuant to Section 6.5 wishes to participate in the Arbitration as an Intervenor, such Person shall complete and file an Intervention with the SDRCC. The SDRCC shall provide a copy of the Intervention to the Parties and set a time limit for each to express their respective position on the participation of the proposed Intervenor.
- (b) An Intervenor may only participate in an Arbitration if Parties agree in writing or if the Panel determines that the Person should participate.
- (c) In deciding on the participation of an Intervenor, the Panel shall consider whether the Intervention will unduly delay or prejudice the determination of the rights of the Parties.

30. The WCL as Intervenor, was also given an opportunity to make an oral submission at the hearing but declined to do so.

31. The Canadian Olympic Committee was also advised by SDRCC staff of this case but did not apply for intervenor status and did not participate in the hearing.

32. Section 5.4 of the Code sets out the Panel's powers and limitations in hearing this appeal:

5.4 Jurisdictional Arbitrator

- (a) Where a Panel has not yet been appointed and a jurisdictional or procedural issue arises between the Parties which they cannot resolve, the SDRCC may appoint a Jurisdictional Arbitrator from the Rotating List.
- (b) The Jurisdictional Arbitrator shall have all the necessary powers to decide:
 - (i) any challenge raised to the jurisdiction of the SDRCC;
 - (ii) whether to merge two or more cases filed before the SDRCC that involve most of the same Parties and share similar facts and issues, where Parties do not agree to merge the disputes;
 - (iii) a time-sensitive request to apply a Conservatory Measure pursuant to Section 6.7, where a Panel has not yet been appointed;
 - (iv) other issues that prevent the constitution of a Panel;
- (v) whether an Arbitrator shall be removed following a challenge of independence pursuant to Subsection 5.5(c); and
- (vi) any other matter allowed in this Code to be decided by a Jurisdictional Arbitrator.
- (c) The Jurisdictional Arbitrator's written decision with reasons shall be communicated to the Parties within ten (10) days of the last submissions made before the Jurisdictional Arbitrator.
- (d) A Jurisdictional Arbitrator shall not render a decision on the main substantive issue or be appointed to a Panel to hear the main substantive issue in dispute between the Parties, unless expressly agreed by all Parties.

Submissions of the Respondent

33. The Respondent takes the position that "SDRCC does not have jurisdiction to hear this Request, as the Claimant is well beyond the 30 days of receipt of the Decision within which he must file a request in accordance with the SDRCC Code. The Decision was made on October 31, 2022."

34. The Respondent also argues that the Claimant did not follow the CAC's internal appeal procedure, and this also prevents the appeal proceeding to the SDRCC.
35. Finally, the Respondent argues that there are no "exceptional circumstances" that would warrant this Panel in waiving the time limit as outlined in section 6.2(b) of the Code.
36. In support of its position, the Respondent provided the Panel with an initial written submission, a submission on the jurisdictional issue, and was given an opportunity to make oral arguments and reply to the oral arguments of the Claimant's counsel at a hearing.
37. The following authorities were cited by the Respondent: *Brookes v. Athletics Ontario* (SDRCC 22-0606); *Alberta Table Tennis Association v. Table Tennis Canada* (SDRCC 21-0529); *Tuckey v. Softball Canada* (SDRCC 08-0071); *Gerhart v. Canadian Centre for Ethics in Sport* (SDRCC DAT 13-0002); *Wachowich v. Shooting Federation of Canada* (SDRCC 13-0213); *Borsa v. Canadian Centre for Ethics in Sport* (SDRCC DAT 19-0014); *Österreichischer Pferdesportverband v. Fédération Equestre Internationale (FEI), CAS 2022/A/9284*;

Submissions of the Claimant

38. The Claimant argues that the email correspondence sent by counsel to the CAC dated August 23, 2023, is sufficient to establish that there were ongoing discussions between the parties to settle this dispute and this indicates that no final decision had been made by the CAC prior.
39. Should I accept this premise, the Claimant contends that the appeal they filed with the SDRCC on August 24, 2023, is well within the Code's time limits and the SDRCC should accept jurisdiction.
40. The Claimant's alternative position is that there are "exceptional circumstances" which warrant this Panel to waive the timelines in the Code and exercise discretion under section 6.2(b) to accept jurisdiction of this appeal.
41. The exceptional circumstances the Claimant wants the Panel to consider include:
 - a. The October 31, 2022, letter from CAC's counsel was ambiguous.
 - b. The CAC decision adopted the decision from a completely different sport organization.
 - c. The CAC decision was not subject to internal appeal.
 - d. The Claimant did not know the severe consequences of the suspension until later.

42. In support of its position, the Claimant provided an initial written submission, a submission on the jurisdictional issue, and was given an opportunity to make oral arguments and reply to the oral arguments of the Respondent's counsel at a hearing.
43. The Claimant provided the Panel with the following authorities in support of its arguments: *MacDonald v. Canadian Amateur Wrestling Association* (SDRCC 14-0234); *Rizzo & Rizzo Shoes Ltd. (Re)* (1998 CanLII 837 (SCC)); *Sattva Capital Corp. v. Creston Moly Corp.* (2014 SCC 53); *Tuckey v. Softball Canada* (SDRCC 08-0071); *Numainville et al. v. Cycling Canada* (SDRCC 16-0317); *Canadian Centre for Ethics in Sport v. Waselenchuk* (SDRCC DT 06-0038).
44. The Claimant also argued that the authorities provided by the Respondent are readily distinguishable from the instant case. The Panel agrees that several of the cases are distinguishable and will only refer to cases that are instructive to the case at hand.
45. The WCL disciplinary arbitration decision of Mr. Spinney was also provided by the Claimant.
46. The Panel considered this only as context as its role as jurisdictional arbitrator is to determine if the conditions exist for the appeal to be accepted by the SDRCC.
47. The merits of the case are not before this Panel.

Analysis

48. As jurisdictional arbitrator, I am not to render any decision on the main substantive issue between the parties. This is stated in section 5.4(d) of the Code.
49. The issues which the parties have agreed that I am to decide on are narrow:
- i.) Is the Appeal filed by the Claimant within the time limits of the Code?
 - ii.) If not, do "exceptional circumstances" exist (as per section 6.2(b) of the Code) which would persuade this Panel to waive the time limits and accept jurisdiction.
50. I have read and considered all the submissions and authorities provided to me by the parties but will reference only those that are applicable to the instant case.

Correspondence between counsel for Mr. Spinney and Counsel for CAC

51. In their submission, the Claimant's counsel writes that "on August 22, 2023, the discussions between Dave and CAC that had been placed on hold pending the outcome of the WCL appeal restarted."
52. I have reviewed the correspondence between Mr. Spinney's counsel to CAC's counsel (at the time) on October 6, 2022, and the reply dated October 31, 2022, determine if there was any agreement or understanding between the parties to pause ongoing discussions of a resolution acceptable to Mr. Spinney.
53. The October 31, 2022, letter from CAC's Counsel to Mr. Spinney's Counsel (at the time) is reproduced here:



Ottawa | Montreal | Toronto
T: 226.666.0829
C: 519-568-1281
mkropp@sportlaw.ca

LMS Lawyers
190 O'Connor St., 9th floor
Ottawa ON K2P 2R3
Attention: Yael Kogan

Sent via email

October 31, 2022

Dear Yael Kogan,

RE: Mr. David Spinney; ChPC Designation Suspension

I am writing on behalf of Coaching Association of Canada ("CAC") and in response to your letter regarding the above dated October 6, 2022.

It is expected that, pursuant to the CAC Code of Conduct and Ethics, that any findings of an investigator or discipline panel of a member of CAC will be shared with CAC. This requirement is part of the obligations of the ChPC Coach, in addition to the expectation of the Employer. However, once this has been done, CAC reserves the right to accept or reject the findings of such investigation or discipline panel.

You have stated that "The WCL Discipline & Complaints Policy provides that the discipline and complaints process is confidential. It further states that, until a decision is released, the parties are not allowed to disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings. Since it has not been released to the public, we are unable to provide you with a copy of the decision and/or any details of the decision."

CAC has in fact received the decision of Daniel Ratushny dated July 31, 2022. It appears as though a decision has been released, which would end the confidentiality of the complaints process. We also note that the decision contains no requirement of confidentiality.

To Elevate Sport.
sportlaw.ca

53 Evanston Drive
Toronto ON
M3H 5P4

54. In their October 31, 2022, the letter from CAC counsel reads, in part:

“... CAC will not be setting aside its decision to suspend Mr. Spinney’s ChPC designation.”

55. The reply also includes a caveat (emphasis added):

“CAC does agree to reconsider and modify its decision to suspend your client’s ChPC designation until the earliest of two years from September 16, 2022, or the disposition of your client’s appeal, if the appeal does not uphold the [discipline decision of the WCL arbitration].”

56. There is no further communication between the Claimant and the Respondent for 298 days.

57. Mr. Spinney’s counsel eventually writes CAC’s counsel at 9:34 p.m. on August 22, 2023, stating that he is trying to understand a portion of the October 31, 2022, emailed letter:

From: Justin Safayeni <JustinS@stockwoods.ca>
Sent: Tuesday, August 22, 2023 9:34 PM
To: Michelle Kropp <mkropp@sportlaw.ca>
Subject: Urgent Q
Importance: High

Hi Michelle,

I’m writing to you on a different matter. I’m assisting David Spinney with a matter involving the CAC and just this evening was provided with your letter (attached).

I’m trying to understand the very last paragraph and, in particular, the phrase that the “CAC does agree to reconsider and modify its decision to suspend your client’s ChPC designation until the earliest of two years...” (emphasis added).

Am I correct that it says that the CAC will “stay” the suspension decision (i.e. effectively giving Mr. Spinney the coaching designation back, at least on an interim basis) on an undertaking from Mr. Spinney and/or the WCL to provide the CAC with the appeal decision once it is released?

With apologies for the urgent request, I really do need to understand this as soon as possible (ideally by sometime tomorrow AM), as Mr. Spinney has been nominated by WCL to Team Canada as a coach for the Pan Am Games, which makes the coaching designation a potentially serious issue.

In the event my interpretation is wrong, then I expect I will have some additional questions about the basis for this suspension, but we can cross that bridge if/when we get to it.

Justin

Justin Safayeni
(He/Him)
Partner



Direct: [416-593-3494](tel:416-593-3494)
Fax: [416-593-9345](tel:416-593-9345)
Mobile: [647-963-5486](tel:647-963-5486)

58. I have difficulty accepting from the Claimant that there is ambiguity in the October 31, 2022, communication when viewed in the context of the complete record of email exchanges provided by the parties.
59. Even if I agreed with the Claimant that there is ambiguity in the paragraph cited by his counsel (and I do not), this would not persuade me that the decision to suspend his designation was likewise ambiguously communicated.
60. Throughout the material time, the Claimant was aware that his ChPC was suspended by CAC, and this is at the heart of the merits of his current appeal. It is the element he ultimately wants the SDRCC to remedy.
61. I have further difficulty in being persuaded that there is anything in this communication which points to an ongoing agreement to pause negotiations.
62. There is no evidence in this correspondence that the Claimant sought to protect his access to either the CAC's internal dispute appeal process or consent to appeal directly to the SDRCC.
63. In response to the Claimant's email of August 22, 2023, the Respondent did not issue a new decision in their response on August 23, 2023.
64. They clarified but did not change their decision: Mr. Spinney's ChPC would remain suspended per the conditions for reconsideration set out in the October 31, 2022, email.
65. As the decision by the CAC was communicated on October 31, 2022, and it remains as the decision to the writing of this Award, I accept that the final decision was received by Mr. Spinney's counsel on October 31, 2022.
66. With the date of the final decision now determined, the Claimant would have to have initiated the internal appeal with CAC within seven days of October 31, 2022, or commenced an appeal with SDRCC within 30 days.
67. The Claimant did neither.
68. I therefore must conclude that the application to the SDRCC in the instant case, is well outside the time limits outlined in the Code.
69. Additionally, Mr. Spinney's appeal which was made to the SDRCC 298 days after the October 31, 2022, decision by CAC is outside the statutory 30-day time limit to file such a request according to section 6.2(a) of the Code.
70. I have also found that at no time did the Claimant initiate the internal appeal process of the CAC.

71. The Claimant has provided an explanation why they did not, which I will address later in this Award

72. In *Wachowich*, Arbitrator Pound wrote:

Sport-related disputes are generally regarded as requiring relatively quick resolution. The Code and related processes reflect that objective and are specifically designed to provide for speedy resolution of any disputes. Events must proceed, eligibility be determined, sporting outcomes be decided, sanctions be imposed, and teams be selected in as close to “real” time as possible. Limitation periods in these circumstances are not mere guidelines. They are sport rules, which govern the rights of the parties involved. Minimal flexibility [such as that contained in Code Article 3.4(e)] to deal with unusual and unforeseen circumstances is, nevertheless, built into enforcement of such limitation periods, but that flexibility is clearly an exception to the general principle and rule, and must be interpreted accordingly.

73. I note that the Code has changed since Arbitrator Pound wrote this decision, for clarity, I continue to apply the current 6.2(b) language in the instant case.

74. This appeal with the SDRCC was initiated over nine months after the Claimant received the decision from the CAC.

75. Nine months is a significant amount of time in this case, and the Respondent should reasonably be able to expect (barring exceptional circumstances) that such a period without any communication from the Claimant would be an indication of the Claimant of abandoning any intention to launch an internal appeal.

76. For comparison, the *Tuckey* and *Numainville* cases considered a delay of only a couple of weeks past time limits in the Code.

77. The *Numainville* case is further distinguished from the case at hand as the Claimant in that case had advised the Cycling Canada (CC) that they intended to appeal internally, and CC denied this request on it being out of time by their calculations.

78. In the instant case, the Claimant provided several explanations on why they did not file an internal appeal with CAC:

No Internal CAC Appeal Commenced

79. The Claimant's reasons for not commencing an internal appeal with the CAC prior to his application to the SDRCC include:
- a. The internal appeal process with CAC was not clear.
 - b. Counsel for CAC did not advise the Claimant of their right to appeal in correspondence with his legal representatives at the time.
 - c. The Claimant was under no requirement to commence parallel appeals (as he had intended to file an appeal about the WCL disciplinary arbitration).
 - d. The CAC had already made up its mind and going through the internal appeals process would be moot.
 - e. He did not realize the impact of the suspension of his ChPC until receiving notice from the COC that it was required for coaches at the Pan American Games.
80. In arguing that the CAC internal appeal process was not clear, Counsel asks me to compare the language in the CAC Code of Ethics with the language related to the CAC's internal appeal policy.
81. The Claimant wants the Panel to conclude that the resulting perceived ambiguity somehow critically weakens the credibility of the CAC's internal appeal process enough to disregard it.
82. I have reviewed the language of both documents and do not come to the same conclusion as the Claimant on this point.
83. An invitation or notification of the availability of CAC's internal appeal process via Counsel was not required in this case – Mr. Spinney, as part of his ChPC designation, had previously agreed to be bound by the policies and procedures of the CAC.
84. The evidence before the Panel in no way supports the Claimant's proposition that the CAC had already made up its mind and the internal appeal process was tainted.
85. Furthermore, the Claimant admits that the primary reason for not commencing an internal appeal is that he was planning to appeal the WCL arbitration decision directly; ostensibly with the hope that if he was successful there, it would also influence the CAC to reconsider their suspension of his ChPC.
86. In effect, the Claimant made a cost benefit analysis of his situation and had the benefit of legal representation while doing so.

87. While there is a certain logic and efficiency to the Claimant's actions, the path ultimately chosen did not entitle him to alter the time limit requirements of the Code as they apply to the SDRCC appeal process.

88. As a result, I find the Claimant did not exhaust all internal dispute resolution procedures provided by the rules of the CAC as required in section 3.1(b) of the Code.

Exceptional Circumstances

89. The Claimant has advanced several arguments to support the premise that "exceptional circumstances" exist in this case which warrant this Panel waiving the time limit as permitted in section 6.2(b) of the Code:

(b) Notwithstanding Section 3.5(c), the time limit may be waived with respect to a Request upon agreement of the Parties or under exceptional circumstances. Any issue pertaining to the waiver of the time limit will be referred to a Panel.

90. The Claimant argues that the October 31, 2022, letter from CAC's counsel was "ambiguous" and leaves the door open for the decision to suspend the ChPC be reconsidered and modified.

91. I rejected that argument earlier in this decision. I will add that even if I had agreed with the Claimant on this point, I would still have difficulty with the over nine-month period between the October 31, 2022, letter and when Counsel for the Claimant sought clarification from CAC August 23, 2023.

92. The clarification sought by the Claimant at this juncture appears to be an attempt to restart negotiations (and thus, breath new life into the now stale timelines of the Code).

93. How else is there to explain the 298 days between replying to the October 31, 2022, letter?

94. The Claimant made a strategic choice which he believed would bring him the best chance of success of modifying the disciplinary decision with the WCL, and subsequently the suspension of his ChPC.

95. For further clarity, the Claimant requires a ChPC designation to *potentially* be appointed. He is not guaranteed to be appointed, even if his ChPC was restored in time to satisfy the COC's standard.

96. Unfortunately for the Claimant, this Panel was advised by his Counsel at the hearing on September 8, 2023, that they had received the WCL appeal decision on September 6, 2023, and it was “denied”.
97. The Claimant also argues that the CAC decision was based on the decision of a completely different Sports Organization, the CAC, which imposed a penalty without a hearing or a chance for Mr. Spinney to contest it.
98. The Claimant wants the Panel to accept the appeal despite him not having gone through the CAC’s internal appeal process first, before applying to the SDRCC.
99. The Claimant’s counsel submits that there was little use in availing of CAC’s internal appeal process as the organization had already made up its mind.
100. No evidence on this issue was presented which would, in any way, impugn CAC’s internal appeal process.
101. A significant evidentiary record would be necessary to for this Panel to accept this argument and none was presented.
102. The Claimant also argues that he was unaware of the severe consequences of the suspension of his ChPC until he was nominated as a possible candidate for a Team Canada coaching appointment by the WCL.
103. He asks the Panel to view this as an exceptional circumstance and accept jurisdiction of his appeal.
104. While I sympathize with the Claimant that the loss of his ChPC designation has affected his eligibility to potentially be selected as a Team Canada Coach for a prestigious international sport competition, this is not a sufficient reason to accept jurisdiction of this case.
105. This may be a frustrating and unanticipated consequence which revealed itself months after the Claimant had focused on his WCL appeal.
106. Frankly, this argument would require the Panel to accept the logical fallacy of “post hoc, ergo propter hoc” and it is unwilling to do so. There is no causal relationship between the decision of the COC requirement and this dispute. It is merely a sequential relationship.
106. The requirement of the ChPC designation requirement to be a Team Canada coach may be an unforeseen consequence of a series of decisions based on the Claimant’s assessment of the best litigation strategy he had at the time; but that does not convince the Panel that an exceptional circumstance has been constituted.

107. In attributing the uniqueness of the opportunity to be potentially named to be a Team Canada Coach for the Pan American Games, I also considered whether this specific opportunity amounted to an exceptional circumstance.
108. Arbitrator Devlin in *Tuckey* categorized a situation of a Claimant who challenged the nomination of officials for the 2008 Olympics as [involving] a “significant matter” (Tuckey, SDRCC 08-0071 at para 24).
109. However, Arbitrator Devlin dismissed the appeal citing nonadherence to the time limit for filing an appeal with the SDRCC in the Code.
110. I also take the view that a significant matter (such as potentially being named to a National Sport Team) does not necessarily constitute “exceptional circumstances” as contemplated by the Code.

Decision

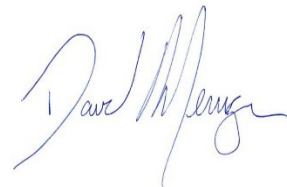
111. For all the foregoing reasons:

- a. The Claimant did not initiate any internal appeal with the CAC which is required by section 3.1 of the Code before they applied to the SDRCC to be heard on the merits.
- b. The Claimant did not file a Request for an appeal with the SDRCC in the time limit specified in section 6.2(a) of the Code.
- c. The Claimant has not persuaded me that “exceptional circumstances” exist for this Panel to waive the time limit as permitted in section 6.2(b) of the Code.

112. As a result, the SDRCC does not have jurisdiction to proceed with this appeal.

113. I shall remain seized on the issue of costs. Either party seeking costs can make their claim in writing by September 20, 2023, and the other party will be given one week to reply to a submission.

Dated at Halifax, this 13th day of September 2023



David Merrigan
Jurisdictional Arbitrator