

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

No. SDRCC 22-0609

FRANK FOWLIE

Claimant

and

WRESTLING CANADA LUTTE

Respondent

and

DAVID SPINNEY

MARA SCHIAVULLI

AHMED SHAMIYA

Affected Parties

AWARD ON COSTS

1. At the time of writing this, I am aware that the Affected Parties have filed a Notice of Application to the Superior Court of Ontario to have my decision on the merits in this matter set aside, as well as any costs award against them. In the week preceding the due date for me to render this award on costs, I asked all parties whether they were in agreement that my decision be stayed until the court rules on the Application.
2. In the absence of the express consent of all parties, I determined that I had no discretion to deviate from the procedural rules applicable to this case, found in the Canadian Sport Dispute Resolution Code.
3. Following the release of my Reasoned Decision on the merits of the appeal in this matter (the "Decision"), submissions relating to costs were filed by the Claimant, the Respondent, David Spinney ("AP Spinney") and Ahmed Shamiya ("AP Shamiya"). No submission was received from Mara Schiavulli ("AP Schiavulli").
4. As to the Claimant, the only sworn evidence regarding costs was a statement by the Claimant that his costs exceeded \$100,000. His counsel was present when that evidence was tendered, and no follow-up occurred to put me on notice that the costs to be claimed would be more.

5. I am precluded by Subsection 5.14(d) of the Canadian Sport Dispute Resolution Code (Code) from awarding damages, compensatory, punitive, or otherwise to any Party.
6. The Respondent continued to advance its position that no Party had made any claims against Wrestling Canada Lutte (“WCL”) and maintained that no costs should be awarded against it, all this despite the uncontested evidence that the Claimant had sent seven unacknowledged complaints of harassment to WCL, which had led to the filing of the harassment claims before the SDRCC.
7. That said, however, the Claimant did not call any witness representing WCL to testify regarding its treatment of the harassment complaints brought to its attention by its own appointed official.
8. For their part, all the Affected Parties refused to provide any evidence and allowed the delays in the scheduled process (allowing for cross examination of the Claimant and witnesses called by the Claimant, together with the opportunity to present evidence on their own behalf) to expire. In the result, the only evidence before me is the testimony of the Claimant and the witnesses called by him, together with the documentary evidence filed by the Claimant.
9. I am, therefore, entitled to draw the inference that the Affected Parties had no evidence to offer.
10. I am also entitled to draw the inference that the Affected Parties had come to realize that they had, indeed, gone too far in their harassment and vilification of the Claimant and that their conduct was very likely to be characterized as harassment within the meaning of that term in the WCL Code.
11. My inference in the latter respect is supported by the decisions of the two jurisdictional arbitrators appointed to deal with the two challenges brought by AP Spinney, including a specific finding by Arbitrator Bilodeau in his decision of April 18, 2024, that AP Spinney’s second challenge regarding a reasonable apprehension of bias was an abuse of process.
12. As recounted in the Decision, AP Spinney’s then counsel reported that his client had specifically insisted that a jurisdictional arbitrator be appointed. It was the SDRCC-appointed Arbitrator Bilodeau who dismissed the challenge.
13. It was then the turn of APs Schiavulli and Shamiya to file the next round of challenges, also alleging reasonable apprehension of bias.
14. As described in the Decision, the SDRCC, citing its statutory mission and its duty to spend Canadian taxpayers judiciously, decided not to appoint yet another jurisdictional arbitrator to deal with yet another complaint of reasonable apprehension of bias. The parties did not avail themselves of s. 13(6) of the *Arbitration Act* of Ontario (1991, S.O. 1991,

- c. 17) to have me removed. Accordingly, my role as Arbitrator in these proceedings continued.
15. AP Shamiya adopted AP Spinney's cost submissions. He also added allegations that are not included in the evidence before me and which I am therefore unable to consider. I do note, however, that in the Decision, I made it entirely clear that no part of my Decision was directed to the employment relationships of any of the Affected Parties.
 16. Regarding the matter of costs, I am entitled to award costs pursuant to Code Section 6.13, which may include legal fees and disbursements. Factors to be considered include: the outcome of the proceeding, conduct of the Parties and abuse of process, respective financial resources of the Parties, settlement offers, each Party's good faith efforts to resolve the dispute prior to or during the process. I am aware that mere success in the proceedings does not result in an entitlement to costs.
 17. In the circumstances, I consider that an award of costs in favour of the Claimant is warranted.
 18. I begin with costs incurred. These include legal fees and disbursements. I refer to the Claimant's uncontested evidence under oath that the amount involved in this proceeding exceeded \$100,000 and prefer that amount to the detailed accounts submitted by the Claimant's counsel. For purposes of this award, I shall assume the costs of the proceedings in this matter to the Claimant are \$100,000.
 19. The Claimant was completely successful in the proceedings and, as noted in the Decision, established to my satisfaction that he had been harassed, and harassed by all three Affected Parties. The two Affected Parties who made cost submissions do not acknowledge that harassment occurred (other, perhaps, than mild harassment, rather than the severe harassment that I found) and acknowledged only that the language they used had been stronger than was necessary.
 20. Harassment, however, is harassment, a course of conduct which is neither justified nor mitigated by an after-the-fact self-asserted (but not demonstrated) benevolent motivation.
 21. The conduct of the Parties and abuse of process are also key considerations for this part of the exercise.
 22. These proceedings have taken far too long. Proceedings before the SDRCC are meant to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute. That provision of the Code [Subsection 5.7(f)] applies to all Parties and Affected Parties involved in the dispute, who are expected to act accordingly. Unfortunately, that has not happened and the overwhelming responsibility for this is attributable to the conduct of the Affected Parties.
 23. AP Spinney has brought two separate formal challenges regarding a reasonable apprehension of bias on my part. In respect of each such challenge, a jurisdictional

arbitrator was appointed. In each case the challenge was dismissed. In respect of each challenge, the Claimant was put to additional expense and was subject to significant delays. Hearing dates established by the Panel were ignored by AP Spinney's counsel for personal reasons, stated to be in relation to a celebration of life of a friend (which he stated that his client understood). He nevertheless managed, despite refusing to participate in the hearing for the reason given, to prepare a new written complaint of reasonable apprehension of bias on my part, which he delivered at the commencement of the first hearing date he did attend. Having been provided with recordings and unofficial transcripts of the proceedings on the first scheduled date (the day before), he nevertheless refused to cross-examine the witnesses who had testified. More delays and further costs were incurred while the jurisdictional arbitrator Bilodeau dealt with the challenge, which he dismissed and characterized as an abuse of process.

24. AP Shamiya proceeded, throughout the proceedings, without legal representation. He was nevertheless both a prolific and articulate participant in the harassment of the Claimant. It was AP Shamiya who organized the contacts with and distributed communications to government and other officials. He threatened to pressure the federal Minister having responsibility for refugees for which the Claimant had responsibility in the ordinary course of his employment. He knew exactly what he was doing while seeking to destroy the Claimant's reputation and professional career. He made supportive submissions with respect to AP Spinney's initial challenge for reasonable apprehension of bias and enthusiastically joined in AP Schiavulli's challenge for reasonable apprehension of bias, noted below.
25. AP Schiavulli made no cost submission but was nevertheless active in the harassment campaign directed at the Claimant. She also made a challenge to have me removed as arbitrator based on alleged reasonable apprehension of bias, which was dismissed by me. It was the challenge for which the SDRCC declined to appoint a jurisdictional arbitrator.
26. That decision led to the amended and time-sensitive procedure I established, which has now expired. My Decision has been rendered and only this matter of costs remains to be decided and communicated to the Parties.
27. I believe it is important to recognize that the Claimant would have incurred costs in bringing his action before the SDRCC even without the delaying tactics adopted by the Affected Parties. It is also important that parties to litigation before the SDRCC understand that they have obligations not to use procedural tactics to delay resolution of the dispute in cases in which they participate. Where there is deliberate abuse of process, as there was in this proceeding, the consequences should be significant, both to deal with the offending conduct and to serve as a deterrent for future cases.
28. Accordingly, I award the Claimant costs of \$70,000, to be paid as follows: by AP Spinney: \$50,000; by AP Shamiya: \$15,000; and by AP Schiavulli: \$5,000.

29. As noted in the Decision, the suspensions of the Affected Parties shall be extended until WCL certifies that such cost awards have been paid in full and files confirmation(s) accordingly with the SDRCC.

MONTREAL, this 16th day of December 2024

A handwritten signature in black ink, appearing to read "Richard W. Pound", written over a horizontal line.

Richard. W. Pound, K.C.

Arbitrator