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

NO: SDRCC 24 – 0704
(ORDINARY TRIBUNAL)
JURISDICTIONAL ARBITRATION

B.R.
(Claimant)

AND

HOCKEY CANADA
(Respondent)

Before:
James Minns (Jurisdictional Arbitrator)

Appearances and Attendances:

For the Claimant:	Peter A. Abrametz (Counsel)
For the Respondent:	Nathan Kindrachuk (Representative) Adam Klevinas (Counsel)

This is my decision pursuant to the *2023 Canadian Sport Dispute Resolution Code (October 1, 2023)*.

INTRODUCTION

1. On February 28, 2024, the Claimant filed a Request (the "Appeal") with the Ordinary Tribunal of the Sport Dispute Resolution Centre of Canada (the "SDRCC"), appealing the decision made by the Independent Third Party (the "ITP") adjudicator Joe Jebreen on February 23, 2024 (the "Jebreen Decision").
2. The Jebreen Decision determined that contrary to Hockey Canada's *Maltreatment Complaint Management Policy (the "Policy"), Schedule A, Section 12,* the Claimant B.R. submitted allegations that were malicious, false, not made in good faith, or made for the purpose of retribution, retaliation, or vengeance.

3. The Jebreen Decision ordered the following sanctions:
    a) B.R. shall be suspended until March 31, 2024, from participation, in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of Hockey Canada; and
    b) B.R. shall pay for half of the costs of the investigation of the Original Complaint.
4. On February 28, 2024, the Claimant also filed an Application for Conservatory Measures (the "Conservatory Measures") - Ordinary Tribunal under *Sections 5.4 and 6.7* of the *Canadian Sport Dispute Resolution Code (the "Code")*, asking for a stay of the Jebreen Decision until the Appeal is heard and determined.
5. On February 29, 2024, the SDRCC appointed me from the rotating list as a Jurisdictional Arbitrator.
6. A preliminary conference call was convened with the parties on February 29, 2024.
7. The Claimant submits there is an urgency to the determination of Conservatory Measures to stay the sanctions ordered under the Jebreen Decision as the Claimant's hockey team is scheduled to participate in hockey playoffs commencing March 4, 2024, in British Columbia.
8. During the preliminary conference call, I discussed with the parties how the proceeding would be conducted.
9. The parties agreed that the proceeding format would be a documentary review with written submissions.
10. It was confirmed with the parties that this jurisdictional arbitration proceeding is not a determination on the merits of the substantive issues of the Appeal.
11. The parties agree that the SDRCC has jurisdiction to hear the Appeal as filed. The parties agree this jurisdictional arbitration shall be limited to the Conservatory Measures application under *Section 5.4(b)(iii) and Section 6.7* of the *Code*.
12. The timetable for the parties' submissions was set as follows:
    March 1, 2024, at 4:00 p.m. EST: Submissions of the Claimant;
    March 4, 2024, at 4:00 p.m. EST: Submissions of the Respondent;
    March 5, 2024, at 4:00 p.m. EST: Reply submissions of the Claimant.
13. The Claimant and Respondent's submissions were received in a timely manner. The Claimant did not file a Reply submission.

STATEMENT OF THE FACTS

14. The following is a summary of events leading up to the Jebreen Decision to sanction the Claimant B.R. This summary consists primarily of uncontested facts.
15. The background to this proceeding is a complicated series of events involving the Claimant, the Respondent and other parties. It is noted that the Claimant and several of the others involved are minor-aged hockey players.
16. Hockey Canada and the SDRCC use different nomenclature to refer to the applicant or moving party in their proceedings. Hockey Canada refers to the applicant or moving party as the "Complainant". The SDRCC refers to the applicant or moving party as the "Claimant". Generally, the two terms are interchangeable.
17. The reference to the involved individuals is further complicated by the multiple proceedings and the fact that individuals play different roles in each proceeding.
18. The Claimant B.R., in this proceeding, is a minor hockey player who is a member of the [redacted] hockey club (the "Team").
19. The Respondent Hockey Canada, in this proceeding, is the national governing body for hockey in Canada, working with 13 member branches and local minor hockey associations. The [redacted] hockey club is part of the [redacted] within Hockey [redacted], which is a branch of Hockey Canada.
20. A dispute arose between B.R. and other members of the Team. The dispute led to the [redacted] filing a misconduct complaint against two of B.R.'s fellow teammates, identified as Respondent #1 and Respondent #2, both members of the [redacted] hockey club.
21. The original complaint, referenced as ITP Complaint No. [redacted] (the "Original Complaint"), alleged that Respondent #1 and Respondent #2 (the "Original Respondents") had taken inappropriate photos of teammates while showering in an arena's dressing room.
22. Respondent #1 is alleged to have taken an inappropriate photo of a teammate and circulated it via social media before it was deleted.
23. Respondent #2 is alleged to have taken an inappropriate photo of a teammate and deleted it when he was confronted by the coaching staff. The photo is alleged to have contained nudity; however, was not circulated before it was deleted.

24. The ITP determined that the Original Complaint would follow Process #2 in the *Policy*, which involved an investigation followed by adjudication. Respondents #1 and #2 were suspended by the [redacted] Program pending the completion of the investigation.
25. The ITP appointed Paul Gee as the investigator (the "Investigator") on March 15, 2023. The Investigator provided a confidential investigation report to the ITP on May 10, 2023 (the "Report"), additionally making available a second redacted version of the Report (the "Redacted Report").
26. Claimant B.R. in this proceeding was a witness in the Original Complaint, identified as Witness #2 or alternatively as Complainant #2 in the Report, and was interviewed by the Investigator. His evidence was summarized in the redacted version of the Report.
27. The Investigator's findings were that B.R. threatened to have Respondent #2 suspended during an argument on February 5, 2023. To that end, B.R. fabricated an incident from October 2022 accusing Respondent #2 of taking the photograph and used that incident to penalize Respondent #2 by getting him suspended on February 7, 2023.
28. The Original Complaint against Respondent #1 and Respondent #2 was dismissed because the Investigator determined that the alleged conduct did not occur.
29. Respondent #2 in the Original Complaint (also known as T.C.) subsequently brought a complaint against B.R. under ITP Complaint No. [redacted] (the "Second Complaint") alleging that B.R. gave false evidence in the Original Complaint for the improper purpose of getting T.C. suspended from the Team.
30. The Complainant in ITP Complaint No. [redacted] was [redacted] on behalf of T.C., and the Respondent was B.R. The result of this Second Complaint is the February 23, 2024, decision of adjudicator Joe Jebreen (the "Second Adjudicator"), appointed by Hockey Canada's Independent Third Party.

THE ISSUES

31. The issue before me is whether the Jebreen Decision should be stayed by the grant of a Conservatory Measure until the Appeal of the Jebreen Decision is heard and determined.

CODE AND POLICY FRAMEWORK

Applicable provisions of the *Canadian Sport Dispute Resolution Code (the "Code")*

32. The provisions of the *Code* applicable to a jurisdictional arbitration concerning a request for Conservatory Measures are as follows:

> 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.
>
> 6.7 Conservatory Measures
>
> (a) If an application for Conservatory Measure is filed, the Panel will invite all Parties to make submissions within the time limit established by the Panel. After considering all submissions, the Panel shall issue an order. In cases of urgency, the Panel may order Conservatory Measures upon mere presentation of the application, provided that any Parties so wishing shall be heard subsequently.
>
> (b) Conservatory Measures may be made conditional upon the provision of security.

33. A Panel has not yet been appointed, and a jurisdictional issue has arisen between the parties, leading to my appointment from the Rotating List as Jurisdictional Arbitrator with all the necessary powers to decide a *Section 5.4(b)(iii)* time-sensitive request to apply Conservatory Measures pursuant to *Section 6.7*, where a Panel has not yet been appointed.

Applicable Provisions of the *Maltreatment Complaint Management Policy (the "Policy")*

Schedule A – Investigation Procedures

34. The relevant provisions of the *Policy* applicable to this jurisdictional arbitration concerning a request for Conservatory Measures are as follows:

> 10. The presumption will be that the investigation report is determinative of the facts related to the Complaint. This presumption may be rebutted where a Party who does not agree with the findings of the report can demonstrate that there was a significant flaw in the process followed by the investigator or can establish that the report contains conclusions which are not consistent with the facts as found by the investigator. In situations where the presumption is rebutted, the Adjudicative Panel shall determine to what extent the investigation report will be accepted as evidence and to what extent a witness or Party may be required to give fresh evidence at a hearing. The Adjudicative Panel shall take a trauma-informed approach to all such determinations.
>
> **Reprisal and Retaliation**
> 11. Subject to paragraph 12 of this Schedule "A", anyone who submits a Complaint to Hockey Canada, OSIC, or the ITP or who gives evidence in an investigation shall not be subject to reprisal or retaliation from any individual or group. Any such reprisal or retaliation may be subject to disciplinary proceedings pursuant to the Policy.
>
> **False Allegations**
> 12. An Organizational Participant or Member Participant who submits allegations that the investigator determines to be malicious, false, not made in good faith, or made for the purpose of retribution, retaliation or vengeance may be subject to a Complaint under the terms of the Policy and may be required to pay for the costs of any investigation that comes to this conclusion. Hockey Canada or any Member(s) (as applicable), or the Organizational Participant or Member Participant against whom the allegations were submitted, may act as the Complainant.

35. The ITP appointed Michael Smith as the adjudicator (the "Original Adjudicator") in the Original Complaint, and he provided a decision to the ITP dated September 29, 2023 (the "Original Decision"). I have not been provided with a copy of the Original Decision.
36. The investigative report was commissioned by the ITP and completed by Investigator Gee in relation to the Original Complaint, ITP Complaint No. [redacted].
37. Respondent B.R. in this proceeding was not a party to the Original Complaint. The Original Complainant ([redacted] Program) did not challenge the investigative Report or the Redacted Report. The Original Adjudicator accepted the facts as found by the Investigator and dismissed the Original Complaint against the two Original Respondents.
38. The Complainant in the Second Complaint, ITP Complaint No. [redacted], was [redacted] on behalf of T.C., and the Respondent was B.R. This Second Complaint resulted in the February 23, 2024, Jebreen Decision.
39. Adjudicator Jebreen accepted and adopted the investigative Redacted Report from Complaint No. [redacted], applying it to the Second Complaint No. [redacted]. A second investigation was not commissioned to specifically address the issues raised in the Second Complaint.
40. The Investigator interviewed B.R., and his evidence is summarized in the Redacted Report from the Original Complaint No. [redacted].
41. B.R. was not a party to the Original Complaint, so he was not provided with a copy of the Redacted Report nor given an opportunity to make submissions regarding the Redacted Report to the Original Adjudicator.
42. Recognizing that B.R. was not a party to the Original Complaint, Adjudicator Jebreen, in a Procedural Order, ordered that B.R. be provided with a copy of the Redacted Report and given an opportunity to address it to rebut the presumption described under the *Policy, Schedule A, Section 10* above.
43. The Respondent B.R. unfortunately did not provide specific submissions on how the presumption should be rebutted. As a rebuttal, Adjudicator Jebreen did consider an Affidavit from B.R.'s father, which argued that the Investigator had made errors.

44. Adjudicator Jebreen concluded that Respondent B.R. failed to rebut the presumption. Thus, he accepted the facts as found by the Investigator in the Redacted Report and applied the factual findings to the Second Complaint.
45. Ultimately, Adjudicator Jebreen held that the Respondent had submitted false allegations in breach of the *Policy, Schedule A, Section 12*.
46. In arriving at an order for sanctions, Adjudicator Jebreen considered the factors listed under the *Policy, Schedule A, Section 42.*

APPLICABLE TEST

47. In their submissions, the Claimant and the Respondent have correctly identified the three basic elements to be considered in the context of a request for provisional measures as set out in *RJR McDonald v Canada (Attorney General),* [1994] 1 S.C.R. 311.
48. The three basic elements are:

    i. the existence of a serious issue to be tried;
    ii. the likelihood of irreparable harm to the moving party; and
    iii. the balance of convenience must favour the granting of the relief sought.

49. The Respondent has referenced and relied upon the following three leading cases on the subject of Conservatory Measures as previously decided by SDRCC arbitrators:
50. The Respondent notes that in *Smirnova v. Skate Canada (SDRCC 16-0291)*, Arbitrator Pound endorsed the application of the above-referenced *RJR McDonald* elements when assessing a request for conservatory measures and recognized that they are not watertight compartments and that the weighting of each element may vary in the circumstances.
51. Further, in *Gagnon v. Racquetball Canada (SDRCC 04-0016),* Arbitrator Patrice Brunet found that conservatory measures may only be granted in exceptional circumstances where the rights of a party may expire should these measures not be immediately ordered.
52. Arbitrator Richard H. McLaren provided the following guidance in *University of Regina v. Canadian Interuniversity Sport (SDRCC 06-0039)*

    > In exercising power to rule on an application for conservatory measures, an arbitrator is to consider three factors: 1) Is a stay useful to protect the athlete from irreparable harm? 2) What is the likelihood of success on

the merits? While not to rule on the merits, the arbitrator must assess whether or not it is a highly arguable case. 3) Do the interests of the applicant outweigh that of the Respondent?

53. In reviewing the parties' positions, I am mindful of the three basic elements to be considered based on the *RJR McDonald* test and the guidance of the prior SDRCC Tribunal decisions referenced by the Respondent.

ANALYSIS OF THE POSITION OF THE PARTIES

Each party to this dispute has submitted submissions on whether the Conservatory Measures should be granted.

The Claimant's Position

54. The Claimant argues that he did not file the formal complaint that initiated the investigation in the Original Complaint. The Original Complaint is attributed to an undated, unsigned complaint from the "[redacted] Program General Manager."
55. The Claimant asserts that the Investigator was unable to find any physical evidence to support the allegation that nude photos were taken. The Investigator as a result then concluded that B.R. made up the allegations of taking inappropriate photos in the dressing room and being placed on social media in order to get some other players suspended.
56. The Claimant denies any mischief or malice. The Claimant filed an Affidavit from the Claimant's father indicating that the Investigator was told in a video interview that the photographs existed. The Investigator indicated he did not need the photographs. The Claimant requests access to the video/statements given to the Investigator by B.R. and his father.
57. In February 2024, the Claimant's father disclosed two screenshots of redacted photographs alleged to have been taken in the dressing room of B.R.'s team. The redacted photographs were provided to Adjudicator Jebreen.
58. The Claimant states that the *Policy Schedule A, Section 10* presumption has been rebutted by the evidence of the photographs and by the Affidavit of [redacted].

59. The Claimant denies he made any malicious statements to the Investigator and believes his evidence supports his position that evidence was disclosed to the Investigator to rebut the presumption.
60. The Respondent submits that the foregoing Claimant submissions are based on the Claimant's position on the merits of the Appeal and are not germane to the Conservatory Measures application. I am inclined to agree with the Respondent on this point.
61. In addressing the first element of the *RJR McDonald* test, the Claimant argues that ignoring nude photos taken in a dressing room and posted on social media is a serious issue. A boy reporting this type of behaviour and then being labelled as mischievous is also a serious issue.
62. The Claimant addresses the second element of the test of the likelihood of irreparable harm subjectively from the point of view of the Claimant as a 13-year-old boy. Being labelled as malicious or mischievous at a young age may cause harm to one's reputation that may last. It is a traumatic injustice to a young Claimant.
63. The Claimant's hockey team is travelling to British Columbia for playoffs beginning during the week of March 4, 2024. The Claimant submits that irreparable harm will be caused to the Claimant if the suspension is not lifted.
64. The Claimant argues that Hockey Canada will not be prejudiced if the suspension is stayed pending the outcome of the Appeal, whereas the suspension can be devastating to a 13-year-old boy in the circumstances.

The Respondent's Position

65. The Respondent takes the position that there are no exceptional circumstances in the present matter that would warrant the grant of Conservatory Measures. There is nothing exceptional about a party disagreeing with and appealing an adjudicator's decision and disagreeing with the disciplinary process or sanction. This does not constitute exceptional circumstances on its own. The Claimant's due process rights have been respected.
66. The Respondent submits that this matter does not involve a situation in which the Claimant's rights will expire if the request for Conservatory Measures is not granted; hence, there are no exceptional circumstances.

67. The Respondent's submissions ignore the timing of the sanctioned suspension and the logistics of an appeal. The suspension takes immediate effect upon the February 23, 2024, release of the Jebreen Decision and continues until March 31, 2024. Realistically, by the time the Jurisdictional Arbitration and the arbitration of the Appeal on the merits are concluded, the suspension will have run its course. The Appeal of the suspension will be moot.
68. Is there a serious issue to be decided? The Respondent restates the issue as "whether Investigator Gee and the Adjudicator Jebreen erred in concluding that the Claimant gave false evidence in the Original Complaint for the purpose of getting a teammate suspended".
69. The Respondent concedes that the issue, as stated above, may be serious in relation to the Claimant's appeal on the merits. However, it is irrelevant in the context of an application for Conservatory Measures.
70. The Respondent does respond to the Claimant's discussion, alleging that Investigator Gee's report is flawed as part of the Claimant's effort to rebut the presumption.
71. I find this line of submissions from the Claimant and the Respondent irrelevant to the Conservatory Measures application.
72. The Respondent disputes the Claimant's subjective submission that the consequences of the sanction are serious. The seriousness of the issue should not be considered solely from the Claimant's perspective. It should also be considered from the standpoint of Hockey Canada and for the overall integrity of the Canadian Safe Sport system.
73. The Respondent submits that irreparable harm analysis must be objective, not subjective. The harm itself must not be evaluated or measured under this element of the test. The court has held that:

> "At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application."

74. The Respondent holds that an assessment of the irreparable harm should not assess the magnitude of the harm from the Claimant's perspective but rather the nature of the harm.

75. The Respondent considers the actual nature of the harm to be limited to the Claimant's ineligibility to play hockey until March 31, 2024.
76. The Respondent also disputes that the irreparable harm analysis should concern whether the Claimant will be labelled malicious or mischievous at a young age. There is no short-term risk as the Adjudicator did not order that the Jebreen Decision was to be published.
77. The Respondent argues that the only relevant consideration is whether the Claimant is permitted to return to play hockey pending the outcome of his appeal. Not allowing the Claimant to return to play hockey with his team during the playoffs or earlier if his appeal is successfully resolved is not irreparable harm.
78. Addressing Arbitrator Brunet's remarks in *Gagnon*, supra, to the effect that conservatory measures can only be granted in exceptional circumstances where the rights of a party may expire if the measures are not immediately ordered, the Respondent contends that the Claimant will not lose a right that will never be reinstated. The Claimant has not asserted that the sanction will have a detrimental impact on his hockey career or his ability to progress in the sport and play at a higher level.
79. Regarding the balance of convenience element of the *RJR MacDonald* test, the Respondent asserts that Arbitrator McLaren's guidance in *University of Regina* gives rise to a need to assess the likelihood of success on the merits of the appeal. The Arbitrator must assess whether the Claimant has raised a highly arguable case.
80. The Respondent submits that "highly arguable" is a relatively high threshold. The Claimant's argument on appeal amounts to a disagreement with the sanction imposed and reiterates arguments that were not accepted by the Adjudicator Jebreen.

DISCUSSION

81. After carefully considering the documents and the parties' submissions, I find that the Claimant has not satisfied the test for applying Conservatory Measures.

Exceptional Circumstances

82. I agree with Arbitrator Patrice Brunet's commentary in *Gagnon* that conservatory measures may only be granted in exceptional circumstances where the rights of a party may expire should the measure not be immediately ordered.

83. Here, the only “right” of the Claimant that may be said to expire is the right to play hockey during the relatively brief interval between the release of the Jebreen Decision on February 23, 2024, and the expiration of the suspension sanction on March 31, 2024.
84. Given the logistics of the suspension's timing and the time to conclude a Jurisdictional Arbitration and an Appeal on the merits, the appeal of the suspension may indeed be moot.
85. Nonetheless, the Claimant retains the right to continue the Appeal to clear his name from being labelled as malicious and mischievous and to seek relief from the costs sanction.
86. Is this situation much different from the suspension of the Original Respondents upon the filing of the Original Complaint? That suspension took immediate effect and continued until Adjudicator Smith released the Original Decision dismissing the complaint as unfounded.
87. The Claimant retains the right to continue his hockey career. If the conservatory measures are not granted, the Claimant will not lose a right that will never be reinstated. As the Respondent has noted the imposition of the sanction will not have a detrimental effect on the Claimant’s career aspirations or his ability to progress in the sport of hockey and to play at a higher level.
88. There are no exceptional circumstances that would warrant lifting the Claimant’s suspension pending the outcome of the Appeal.

The existence of a serious issue to be tried

89. The Claimant has described the *serious issue to be tried* as ignoring nude photos taken in a dressing room and posted on social media. A boy reporting this type of behaviour and then being labelled as mischievous is also a serious issue.
90. The Respondent characterizes a serious issue as “whether Investigator Gee and the Adjudicator Jebreen erred in concluding that the Claimant gave false evidence in the Original Complaint for the purpose of getting a teammate suspended.”
91. The Respondent concedes that the issue(s) as stated above may be serious in relation to the Claimant’s appeal on the merits. However, the Respondent submits that the Claimant’s issues are irrelevant in the context of an application for Conservatory Measures.

92. I agree with the Claimant and the Respondent that there are serious issues to be tried. I would disagree with the Respondent's assertion that the serious issues are irrelevant to the application for Conservatory Measures. Rather, I take comfort in Arbitrator Pound's remarks in *Smirnova* that "the weighing of each element may vary in the circumstances". I would expect that, in most cases, there will be a serious issue(s) to be tried. Cases that are inflammatory, frivolous, vexatious, a nuisance or an abuse of the process would be more of an exception to the norm.
93. I find that the serious issue(s) to be tried should be given limited weight in the circumstances of this case. It is not a question of a value judgment as to the degree or magnitude of the "seriousness" of the issue. The question is whether there is a substantive or serious issue(s) to be tried. The simple answer here is "yes".

The likelihood of irreparable harm to the moving party

94. The Claimant describes the irreparable harm of being labelled as malicious or mischievous at a young age and the disappointment stemming from not being allowed to attend the playoffs with his team in British Columbia.
95. The Respondent dismisses the Claimant's subjective complaints of irreparable harm. The Respondent would take an objective approach by describing the actual nature of the harm as limited to the Claimant's ineligibility to play hockey until March 31, 2024.
96. Both subjective and objective considerations are relevant in gauging the likelihood of irreparable harm. Here, we are dealing with minor-aged hockey players said to have been 13 years of age at the relevant time. They are barely over the threshold of the age at which our courts consider children capable of negligence, or under the Youth Criminal Justice Act, the age of criminal responsibility is 12 years old.
97. In applying the element of the likelihood of irreparable harm to the moving party, a measure of proportionality should be adopted. In this instance, the investigative Report has been redacted. The involved parties have been anatomized through the use of initials and labels such as Respondent #1 or Complainant #2. Adjudicator Jebreen has not allowed for publication of the Jebreen Decision. The Claimant may feel he has been unfairly labelled as malicious or mischievous, but the circle of those with knowledge of the situation has been mitigated to the greatest extent possible.

98. I do not accept that sitting out and not participating in hockey with his teammates for 30+ days, even during the playoffs, will have a lasting harmful effect on the Claimant.
99. I find that the Claimant has not established that he will suffer irreparable harm if the request for Conservatory Measures is not granted.

The balance of convenience

100. The third element of the *RJR McDonald* test is the balance of convenience, which indicates that the balance of convenience must favour the granting of the relief sought.
101. The Claimant has not addressed this element of the test in his submissions.
102. The assessment of the balance of convenience does not entail an assessment of the appeal's merits. According to the guidance of Arbitrator McLaren in *University of Regina*, the Jurisdictional Arbitrator must assess whether the Claimant has raised a highly arguable case.
103. In the Claimant's submissions, when addressing the merits of the case, the Claimant reiterated the same arguments raised before the Investigator and Adjudicator Jebreen, which were not persuasive. The Claimant has not raised any new arguments to challenge the reasoning involved in reaching a decision and in determining the sanction as imposed by Adjudicator Jebreen.
104. The Respondent argues that the balance of convenience in this instance should be to maintain the integrity of the Independent Third Party complaint management process and to and to support a robust Safe Sport program.
105. I find that the balance of convenience factor favours the dismissal of the Claimant's request for Conservatory Measures.

CONCLUSION

106. For the foregoing reasons, pursuant to Sections 5.4 and 6.7 of the Code, I find in favour of the Respondent. I have, therefore, denied the Claimant's application for Conservatory Measures.

Signed this 6th day of March 2024.

James Minns, Jurisdictional Arbitrator