

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

**No: SDRCC ST 24-0036
(SAFEGUARDING TRIBUNAL)**

BETWEEN:

TS (Respondent)

And

Deputy Director of Sanctions and Outcomes (DDSO)

And

**AB
(Interested Party)**

ARBITRATOR: Janice Johnston

Representatives for the Parties:

On behalf of the Respondent: KS
TS

On behalf of the DSO David Kellerman
Deputy Director of Sanctions and Outcomes

On behalf of Interested party CD
AB

Decision with Reasons

1. On October 17, 2024, the Respondent filed a request for a Safeguarding Hearing pursuant to Section 8.3 of the 2023 Canadian Sport Dispute Resolution Code (the “Code”), before the Safeguarding Tribunal of the Sport Dispute Resolution Centre of Canada (the “SDRCC”), as defined in Subsection 1.1(vv) of the Code. Abuse-Free Sport is Canada’s independent system for preventing and addressing maltreatment in sport. Canada Soccer, the National Sport Organization in this case (the “NSO”), has adopted the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the “UCCMS”), is a program signatory of Abuse-Free Sport, and as such, has retained the services of the SDRCC to implement its safe sport framework.
2. This request was filed to challenge the determination of a violation of the UCCMS by the Deputy Director of Sanctions and Outcomes (the “DDSO”), dated October 4, 2024.
3. Section 8.6(c) of the Code, provides that a challenge of a DSO or DDSO decision on a violation or a sanction, will be heard by way of documentary review only, except as agreed otherwise by the Safeguarding Panel. I have determined that oral evidence is not required in this case and that it is appropriate to proceed by way of written submissions and documentary review.
4. Section 8.6 of the Code, provides in part:
 - (a) A challenge of a DSO decision on a violation or a sanction can be made by the Respondent or an Interested Party;
 - (b) When assessing a challenge of a DSO decision on a violation or a sanction, the Safeguarding Panel shall apply the standard of reasonableness.
 - ...
 - (f) The Safeguarding Panel shall have the power to increase, decrease or remove any sanction imposed by the DSO, with due consideration being given to the UCCMS. In particular, where the Safeguarding Panel determines that the Respondent has presented or presents a risk to the welfare of Minors or Vulnerable Persons, the Safeguarding Panel shall impose such sanction and/or risk management measures as it deems fair and just.
5. The Respondent challenges the DDSO decision that there was a violation of the UCCMS pursuant to Subsection 8.7(a) of the Code, on the ground that there has been an error of law. Section 8.7 provides in part:

8.7 Grounds for Challenging a Decision on a Violation or a Sanction

A DSO decision on a violation or a sanction may only be challenged on the following grounds:

(a) Error of law, limited to:

- (i) a misinterpretation or misapplication of a section of the UCCMS or applicable Abuse-Free Sport policies;
- (ii) a misapplication of an applicable principle of general law;
- (iii) acting without any evidence;
- (iv) acting on a view of the facts which could not reasonably be entertained; or
- (v) failing to consider all the evidence that is material to the decision being challenged.

6. A formal complaint was filed with the Office of the Sport Integrity Commissioner (the “OSIC”) on May 24, 2023 (the “Complaint”), alleging that TS (the “Respondent”), employed by Canada Soccer (the “NSO”), engaged in conduct consistent with Prohibited Behaviours and/or Maltreatment, as set out in the UCCMS. More particularly, the complaint alleged that the Respondent engaged in conduct that would be consistent with Psychological Maltreatment under Section 5.2. The UCCMS defines Psychological Maltreatment as “Any pattern or a single serious incident of deliberate conduct that has the potential to be harmful to a person’s psychological well-being.” Psychological Maltreatment is further set out in Section 5.2 of the UCCMS, as follows:

5.2 Psychological Maltreatment

5.2.1 Psychological Maltreatment includes, without limitation, verbal conduct, non-assaultive physical conduct, conduct that denies attention or support, and/or a person in authority’s pattern of deliberate non-contact behaviours that have the potential to cause harm.

- a) Verbal Conduct: without limitation, verbally assaulting or attacking someone, including in online forms; unwarranted personal criticisms; implied or expressed body shaming; derogatory comments related to one’s identity (e.g. race, gender identity or expression, ethnicity, Indigeneity, disability); comments that are demeaning, humiliating, belittling, intimidating, insulting or threatening; the use of rumours or false statements about someone to diminish that person’s reputation; using confidential sport and non-sport information inappropriately .
- b) Non-assaultive physical conduct: physical behaviour, or the encouragement of physical behaviour, that has the potential to be harmful or instill fear, including, without limitation:
 - i) body-shaming, such as, without limitation, repeated and unnecessary weigh-ins, setting unreasonable weigh-in goals, inappropriately taking food away from athletes, prescribing inappropriately restrictive diets, inappropriately focusing on the physical appearance of a person’s body, unnecessary or inappropriate emphasis on biometric data; and
 - ii) forms of physically aggressive behaviours such as, without limitation, throwing objects at or in the presence of others without striking

another; damaging another's personal belongings; hitting, striking or punching objects in the presence of others.

c) Conduct that causes denial of attention or support: without limitation, forms of lack of support or isolation such as ignoring psychological needs or socially isolating a person repeatedly or for an extended period of time; abandonment of an athlete as punishment for poor performance; arbitrarily or unreasonably denying feedback, training opportunities, support or attention for extended periods of time and/or asking others to do the same.

d) A person in authority's pattern of deliberate non-contact behaviours that has the objective potential to be harmful.

5.2.2 Psychological Maltreatment is determined by the behaviour viewed objectively, not whether harm is intended or results from the behaviour.

7. The Complaint was filed by AB (the "Complainant") and alleges that the Respondent engaged in prohibited behaviour against the Complainant's child (the "Impacted Person"). The OSIC determined that the Complaint was properly filed and fell within its jurisdiction, following its standard intake process. The OSIC provided the Respondent with a formal Statement of Allegations on July 20, 2023. The Statement of Allegations contained a detailed summary of the factual allegations giving rise to the Complaint, in anticipation of a full investigation by the OSIC into the matter.
8. Pursuant to the OSIC's then applicable Guidelines Regarding Provisional Measures (the "Provisional Measures Guidelines"), the OSIC recommended the application of certain provisional measures by the Director of Sanctions and Outcomes ("DSO"), pending final determination of the Complaint. The DSO assigned the matter to the Deputy Director of Sanctions and Outcomes ("DDSO") for consideration. The DDSO imposed provisional measures (the "Imposed Provisional Measures") on the Respondent pursuant to a Report on Provisional Measures dated August 8, 2023.
9. Pursuant to the OSIC's Guidelines Regarding Investigation of Complaints (the "Investigation Guidelines"), on September 21, 2023, the OSIC retained an Investigator, to conduct an independent investigation into the Complaint. The Investigator concluded his investigation and submitted a final Investigation Report dated July 31, 2024 (the "Investigation Report").
10. The Investigation Report and its Appendices were provided to the DDSO on July 31, 2024. The DDSO provided the Complainant and the Respondent with a copy of the completed Investigation Report and requested that they file any submissions that they wished to make concerning the investigative findings. The Respondent, through legal counsel, provided the DDSO with submissions on August 19, 2024. The Complainant did not make any submissions.

11. The Investigation Guidelines and the OSIC's complaint management process, stipulate that the role of the DDSO is to receive an investigation report and make findings with respect to possible violations of the UCCMS and if appropriate, impose a sanction in accordance with the UCCMS and the DDSO's policies and procedures. The DDSO's role is not to act as an investigator, or as a fact finder. The role of the DDSO is to interpret the investigation findings, the UCCMS and related policies and procedures, to determine whether a violation of the UCCMS has occurred. In the event that the DDSO determines that a violation or violations has occurred, the DDSO then decides on the appropriate consequences.
12. The Complaint contained fourteen allegations that the Respondent had engaged in behavior against the Complainant's child which, if true, might contravene the UCCMS. After conducting an investigation, the Investigator concluded that twelve of the allegations had not been factually substantiated and concluded that two allegations had been factually substantiated in part.
13. The Investigator interviewed eleven people including the Complainant, the Respondent and the Impacted person. The Report is forty-two pages long and reflects that the Investigator was extremely thorough and carefully reviewed the evidence presented with regard to each allegation. In making findings of fact during this investigative process, the Investigator utilized the standard of "balance of probabilities." In his Report he stated "This means that in order for a factual finding to be substantiated, I must be satisfied based upon the information which has been provided to me and which I have gathered, that it is more likely than not that the particular event occurred." In coming to the conclusions that he did, he also assessed the credibility of the individuals he spoke to and referenced *Faryna v. Chorny*, 1951 CanLII 252 (BC CA) as providing the guidelines upon which he relied.
14. I am not going to set out the twelve allegations that were not factually substantiated but will focus on the two that were found to have been factually substantiated in part. The first allegation found to be factually substantiated in part was allegation 5. I am going to set out the portion of the Investigator's Report that addressed Allegation 5. The initial italicized paragraph is the allegation and what follows is the Investigator's findings and conclusions. The conclusions are bolded:

The Respondent disclosed to a group of 8 players at HPA (a class the Canada Soccer Coaches hold at Bill Crothers SS in Markham, ON) that the Impacted Person and another player "know what it is like to be at the 'bottom' because they were both under review. They know there are no guarantees to be in this program and can be replaced at any time".

The Impacted Person explained that they had been put on review despite only playing in one game. On the day in question, the players were in a High-Performance Athlete class at school and were sitting in a circle discussing the team's culture. This group included players who had been with the program for some time. At some point during the conversation, the topic of players being on review was introduced, and the Respondent singled them out in front of the group saying that they knew "what it felt like to be at the bottom."

The Impacted Person said that, while they had passed their probationary review, they had been assured that the process would be confidential, and they felt humiliated by this disclosure. The Impacted Person felt targeted, as two other players, (Player 1 and Player 2), had also been on review, however the Respondent did not mention either of them during this conversation. In the Complainant's complaint, the Complainant claimed that there were two players who had been singled out during this conversation, however other witnesses stated that the Impacted Person was the only person that the Respondent mentioned.

The Respondent said that the Respondent had filled in for Witness E while they were away the week following the May 21, 2023, game. The Respondent was aware of gossiping that was happening between some of the players, and that it was beginning to impact team dynamics. The Respondent wanted to address these issues by bringing in three senior players to facilitate player-led conversations about the culture and expectations of the program. Each of the three senior players had not been able to make the national team but were otherwise successful and were currently playing at the NCAA level.

The Respondent said that they wanted the group discussion to "recognize commonalities of growth." They wanted the players to realize that challenges were normal, and that it was okay to talk about them. They had not intended for the exercise to expose weaknesses, or to isolate any particular player. The Respondent said that they were "thrown back" by this particular allegation, as they felt that the discussion was "a transparent, safe space and everybody was contributing," although they later stated that the Impacted Person was quiet during the discussion and was the only player who was not participating.

The Respondent made it clear that they had first asked the Impacted Person for permission to talk about what they had been through. The Respondent said that the Impacted Person "smiled and nodded" in response to their request. The Respondent proceeded to tell the other players that the Impacted Person had been under review, highlighting the effort that they had made and the improvement that had resulted. The Respondent remembered the group responding supportively, and that one of the senior players had asked the Impacted Person how they felt. The Impacted Person smiled, telling the group that they felt relieved, saying that it had helped their confidence.

The Respondent denied that they had addressed "[the Impacted Person's] situation directly," or that they had used the word "bottom" during this conversation, claiming that it was not part of their vocabulary. They explained that the Impacted Person had passed their review on March 30, 2023, and remarked that they were genuinely proud of the Impacted Person for doing so.

Witness G stated that it was typical to have some of the senior players try to help talk through any issues, however they did not recall this specific conversation. They said that there were never any group discussions about a specific player being under probationary

review, because that was “more of an individual based thing, they would never bring that up. The only way players on the team knew who was under review at the time was because that player specifically told them.” Witness G was aware that the Impacted Person and some other players had been under probationary review but explained that the only reason they knew was because the players had told them directly.

Witness H recalled a “culture talk” that had happened to allow the group to discuss “girl drama.” They said that, during the conversation, the Respondent “used [the Impacted Person] as an example in the wrong way, maybe not intentionally... it hurt [the Impacted Person] because they got outed on being on probation.” Witness H recalled that the Respondent mentioned that the Impacted Person had “experience [being on probation],” but that they had added “something positive by saying, ‘but you’ve worked through it.’” Witness H said that there were other players who had been on probation, but that “if [the Respondent] were to pick on someone, [they] would pick on [the Impacted Person].”

Witness E stated that they would never inform other players whether a particular player was under review. They said that this was necessary in order to “protect the individual’s status within the group... because you know how it is with players, and [you would not] want anybody to think they’re above anyone... want to really keep that culture intact.”

The Respondent confirmed that they did disclose to the group that the Impacted Person had been on probationary review, although they claimed to have first obtained the Impacted Person’s approval. I do not find their explanation plausible, and I do not accept that the Impacted Person agreed to the disclosure. It is apparent from the Respondent’s evidence that they had wanted to involve the Impacted Person in the discussion. While they first stated that everyone in the group was participating in the discussion, they later stated that the Impacted Person had been quiet. Instead of finding ways to encourage the Impacted Person to participate at their own pace and comfort level, the Respondent targeted the Impacted Person, asking them for permission to discuss what they had been through. In doing so, the Respondent obligated the Impacted Person to agree to participate and proceed with the disclosure. The Impacted Person may have smiled and nodded; however, I find that this was an uncomfortable reaction to being put on the spot by the Respondent, and it was not a genuine approval to proceed with such a personal disclosure to the group.

None of the evidence obtained in relation to this allegation related to the Complainant’s claim that this conversation included a discussion about there being “no guarantees” for any player in the program, or that they could be replaced at any time. This aspect of the Complainant’s allegation was not substantiated.

I find that this allegation is factually substantiated in part, specifically that the Respondent did disclose to the group that one player, the Impacted Person, had been under probationary review. The Impacted Person did not consent to this disclosure.

The Respondent did not consider the effect that this disclosure would have on the Impacted Person. It is reasonable that the Impacted Person felt demeaned and humiliated to have to admit in front of their peers that they had participated in the probationary review process. The Impacted Person confirmed that they had been assured that the process would be confidential, and that they felt humiliated by this disclosure. I accept the Impacted Person’s evidence that they believed that the probationary review would be a confidential process, and I note that Witness G and Witness H had a similar understanding

of the probationary review process. Witness E, the Respondent's supervisor, confirmed that it was unacceptable to disclose that any player was under probationary review and acknowledged that this would have negatively impacted that player's perception within the group, as well as the group culture.

The Respondent used their confidential knowledge of the Impacted Person's previous participation in the probationary review process. The Respondent made comments which made the Impacted Person feel obligated to agree to participate in the disclosure of this confidential information to the group involuntarily, which the Impacted Person reported made them feel demeaned and humiliated.

15. The second allegation that was factually substantiated in part, was allegation 10. It was alleged that the Respondent's approach to coaching was inappropriate and that the approach was promoted to other volunteer coaches. The Investigator only concluded that the Respondent did promote their coaching approach to other coaches, however, this was within their mandate as a senior staff member and Acting Director for the program. The other aspect of the allegation was not found to be factually substantiated.
16. As I noted earlier, the role of the DDSO is to receive an investigation report and make findings with respect to possible violations of the UCCMS and if appropriate, impose a sanction in accordance with the UCCMS and the DDSO's policies and procedures. In reviewing the Investigator's report as it pertains to allegation 5, the DDSO concluded as follows:

Allegation 5 concerns [sic] Respondent's disclosure to a group of 8 players that:

- the Impacted Person and another player were under review
- the Impacted Person and another player knew what it is like to be at the bottom because they were both under review
- there were no guarantees to be in the program and the players could be replaced at any time

The Respondent and Impacted Person both agree that the Respondent disclosed to the group of players that they were under review and on probation. However, Respondent and the Impacted Person fundamentally disagree on whether or not Respondent obtained the Impacted Person's consent to disclose this information to the players: Respondent claims the Impacted Person agreed to the disclosure, the Impacted Person denies this.

The Investigator found that the Impacted Person's version was more credible and does not believe Respondent's claim that the Impacted Person agreed to have this confidential information brought to the player's attention. The Investigator believes the Impacted Person when they say they felt humiliated by this public disclosure of sensitive and personal information.

I note here that Respondent's version of the facts calls the notion of Power Imbalance into play. Respondent alleges that they asked for the Impacted Person's permission to reveal this information to the group and the Impacted Person "smiled and nodded", signaling the consent to the disclosure. The Investigator does not find this explanation plausible and

finds that Respondent's method to obtain consent "obligated the Impacted Person to agree to participate and proceed with the disclosure". The smile and nod, according to the Investigator, would have been the manifestation of the Impacted Person's uncomfortable reaction to being put on the spot by the Respondent.

The UCCMS defines the meaning of Power Imbalance at Appendix 1: Definitions:

n) Power Imbalance: A Power Imbalance is presumed to exist where a Participant has authority or control over another person, is in a position to confer, grant or deny a benefit or advancement to the person, or is responsible for the physical or psychological wellbeing of the person. Whether an actual Power Imbalance exists will be determined based on the totality of the circumstances, including the subjective view of the subordinate Participant.

i. Once a coach-athlete relationship is established, a Power Imbalance is presumed to exist throughout the coach-athlete relationship, regardless of the age of the athlete.

ii. Where the coach-athlete relationship began while the athlete was a Minor, the Power Imbalance is presumed to continue even after the coach-athlete relationship terminates, until the athlete reaches 25 years of age.

(...)

The Power Imbalance is presumed to exist by virtue of the Respondent being the Impacted Person's coach. With the authority that the Respondent is presumed to have over the Impacted Person, a minor, it is entirely reasonable to believe that the Impacted Person felt obligated to agree to Respondent's request and that this request was made at the expense of the Impacted Person's psychological safety and expectation that a private probationary review would remain private.

The Investigator addresses the Respondent's near-sightedness in not anticipating the effect the disclosure could have on the Impacted Person who was assured this review would remain private. The Investigator finds that it is reasonable that the Impacted Person felt "demeaned and humiliated". Witness E, the Respondent's supervisor, confirmed that the disclosure could negatively influence the group's opinion of the Impacted Person.

The Investigator therefore found that Respondent did disclose to the group that "one player, the Impacted Person" has been under review. The Investigator found that the remaining allegations were not substantiated.

I find that Allegation 5 is in part substantiated and that Respondent did engage in Psychological Maltreatment by disclosing confidential information about the Impacted Person to 8 players in the group. Furthermore, by asking the Impacted Person if they agreed to the disclosure, which by virtue of the presumed Power Imbalance, could reasonably have pressured the Impacted Person to agree to something they were uncomfortable with, I find that Respondent engaged in prohibited behaviour that amounts to a form of Psychological Maltreatment.

17. In determining the appropriate sanctions, the DDSO considered the non-exhaustive list of relevant factors to assist in determining the appropriate sanctions found in Section 7.4 of the UCCMS. Section 7.4 provides:

Sanctioning Considerations

Any sanction imposed against a Participant must be proportionate and reasonable, relative to the Maltreatment that has occurred. Factors relevant to determining appropriate sanctions for a Respondent include, without limitation:

- a) The nature and duration of the Respondent's relationship with the affected individuals, including whether there is a Power Imbalance or position of trust;
- b) The Respondent's prior history and any pattern of Prohibited Behaviour or other inappropriate conduct;
- c) Any previous disciplinary findings regarding, or sanctions against, the Respondent;
- d) Maltreatment of a Minor or of a Vulnerable Participant is to be considered an aggravating circumstance;
- e) The ages of the persons involved, including when the Respondent is a Minor, whereby Maltreatment by a Minor of a child under the age of 12 or of a Vulnerable Participant is to be considered an aggravating circumstance;
- f) Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
- g) The Respondent's voluntary admission of the violation(s), acceptance of responsibility for the Prohibited Behaviour, and/or cooperation in the applicable UCCMS enforcement process;
- h) Real or perceived impact of the incident on the affected individuals, sport organization or the sporting community;
- i) Deterrent effect on future such conduct;
- j) Potential impact on the public's confidence in the integrity of the Canadian sport system;
- k) Aggravating or mitigating circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training regarding the requirements in the UCCMS; addiction; disability; illness; lack of remorse; intent to harm);
- l) Whether, given the facts and circumstances that have been established, the Respondent's continued participation in the sport community is appropriate;
- m) Whether the Respondent was found to have committed one or more previous UCCMS violation(s);
- n) The desired outcomes of the person(s) directly impacted by the Prohibited Behaviour; and/or
- o) Other mitigating and aggravating circumstances. Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions.

18. The DDSO applied this list of factors to the situation in this case. He concluded as follows:

In the present matter, I believe the following factors to be particularly relevant:

- 1. The 14 allegations against the Respondent aim to describe a pattern of abusive behaviour by Respondent towards the Impacted Person and within the program at large. The near totality of the Investigator's findings does not support these

allegations. The Investigator found that Respondent did not engage in a pattern of prohibited behaviours that would have amounted to Psychological Maltreatment.

2. The Investigator does prefer the Impacted Person's version of the facts surrounding the events that led to Respondent's disclosure of the Impacted Person's probationary status with the program.
3. The Investigator finds it likely that the Impacted Person had reason to believe that the decision to place them in review program was confidential and that the disclosure of this information made the Impacted Person feel humiliated and belittled.
4. The Impacted Person is a Minor.
5. A Power Imbalance is presumed to exist between the Respondent and the Impacted Person.
6. The evidence collected by the Investigator overwhelmingly supports a perception that Respondent's coaching approach is respected within the program and that Respondent does not pose a threat to the players' psychological safety.

19. Therefore, the DDSO determined, based on the factual conclusions reached by the Investigator, that the "Respondent did engage in Psychological Maltreatment by disclosing confidential information about the Impacted Person to 8 players in the group" and also by pressuring the "Impacted Person to agree to something they were uncomfortable with". As a result of these two conclusions and in applying Section 7.4 of the UCCMS, the DDSO imposed sanctions on the Respondent. The sanctions imposed consisted of a warning and a written apology from the Respondent to the Impacted Person.

20. Which brings us to the Request for a Safeguarding Hearing which is before me. The Respondent challenges the determination of a UCCMS violation by the DDSO. The Grounds for the Request are that the DDSO committed an error of law pursuant to Subsection 8.7 (a)(iv) of the Code which states:

A DSO decision on a violation or a sanction may only be challenged on the following grounds:

(a) Error of law, limited to:

...

(iv) acting on a view of the facts which could not reasonably be entertained

21. At the preliminary meeting we set a timetable for submissions by the parties. The Respondent was to proceed first, followed by the DDSO, then the Interested Party with the final say going

to the Respondent. An issue was raised at the Preliminary meeting with regard to the jurisdiction of the SDRCC in this matter. It is dealt with in this decision.

Summary of the Submissions Filed by the Respondent

22. The representative for the Respondent (the “Representative”) indicated that they are appealing only the finding of violation and sanction by the DDSO regarding Allegation #5. It was suggested that it is not in dispute that the Respondent asked the Impacted Person for their permission to share their story and the Respondent has never disputed disclosing that the Impacted Person had been under review. The Representative agrees with the DDSO and the Investigator, that the only part of Allegation #5 that was found to be substantiated was specifically that the Respondent disclosed to the group of 8 players on May 24, 2023, that one player (the Impacted Person) had been under review.
23. The Representative pointed out that the DDSO has characterized the Respondent’s actions in the single incident as two distinct behaviours of coercion and disclosure, each amounting to forms of Psychological Maltreatment. The DDSO found that Allegation 5 was in part substantiated and that the Respondent did engage in Psychological Maltreatment by disclosing confidential information about the Impacted Person to 8 players in the group. The DDSO then went on to find that by asking the Impacted Person if they agreed to the disclosure, which by virtue of the power imbalance, could reasonably have pressured the Impacted Person to agree to something they were uncomfortable with, that the Respondent engaged in prohibited behaviour that amounts to a form of Psychological Maltreatment. The Respondent suggested that although it can be argued that the two actions presented by the DDSO are inextricably linked as part of a single course of action, seeking consent and subsequently acting upon that consent, and that they are contextually and causally linked and therefore not to be evaluated separately, the DDSO has presented them as two actions, so the appeal will attempt to consider their distinction.
24. The Representative stated that the Respondent asked for permission from the Impacted Person to share their story, and the evidence shows that the Impacted Person smiled and nodded. The Respondent took that to indicate consent and shared the Impacted Person’s story in what was suggested to be a positive light, in a supportive environment, and displaying awareness for a safe space to do so. There is no evidence that that the Impacted Person denied smiling and nodding and there is no evidence that the Impacted Person denied

consent. The evidence given by the Impacted Person is that she said she felt humiliated by the disclosure. The evidence given by the Impacted Person is that they believed that the review process was confidential – but this aligns with the Respondent asking for permission and therefore does not present a conflict.

25. The Representative takes issue with what is referred to as the framing of the method of obtaining consent as coercive and suggests that it is an attempt to establish that the consent was not genuine. The DDSO's coercion narrative is presented as stemming from a fundamental disagreement between the Respondent and Impacted Person, stating that Respondent claims the Impacted Person consented, and the Impacted Person denies this. In fact, the DDSO uses the language "The Investigator found that the Impacted Person's version was more credible" however this is not the Impacted Person's version. The disagreement over whether the consent was genuine is between the Respondent's version which is based on the fact that the Impacted Person smiled and nodded and the Investigator's version which is based on the Investigator's interpretation of the same gesture.
26. Upon reviewing the Investigator's Report, it is clear that no explicit 'Impacted Person's version' exists regarding whether or not the Impacted Person gave consent. There is no evidence that the Impacted Person stated that they explicitly denied consent, or even discussed their understanding of the interaction in detail. The Respondent respects the expressed feelings of the Impacted Person, but they do not address the central issue of consent. The phrase 'the Impacted Person's version' inaccurately attributes the Investigator's interpretation of events to the Impacted Person. The Investigator's interpretation, in the Investigator's Report, reflects the Investigator's subjective assessment and not the Impacted Person's explicit account. It might also be noted that in this particular instance, the credibility assessment can be considered flawed because credibility determinations require a clear conflict between parties' accounts (like the DDSO's language of 'fundamental disagreement' would imply) which is absent in this instance. The DDSO mischaracterized the evidence by labeling the Investigator's conclusions as the Impacted Person's version thereby overstating the clarity and weight of the Impacted Person's testimony.
27. The Representative argued that the DDSO, in their decision process, built on this concept of "fundamental disagreement" by adding the idea of Power Imbalance. It was then asserted that this coupling of factors was enough for the action to meet the threshold for a single serious incident – thus amounting to Psychological Maltreatment. The DDSO concluded

“Furthermore, by asking the Impacted Person if they agreed to the disclosure, which by virtue of the presumed Power Imbalance, could reasonably have pressured the Impacted Person to agree to something they were not comfortable with, I find that the Respondent engaged in prohibited behaviour that amounts to a form of Psychological Maltreatment”.

28. In reviewing the disclosure that was made in this case, the Representative suggested that for a single incident to meet the threshold for psychological maltreatment and potential to cause lasting harm, the context, nature, and impact of the behaviour must still be evaluated to determine if it qualifies as psychological maltreatment. The UCCMS does not specify a fixed standard for determining seriousness. The decision-maker must exercise judgment, often relying on factors such as severity of harm or potential harm caused; recklessness or intent of the Respondent; context and proportionality of the behaviour; and role of intent in determining seriousness. Given Section 5.2.2 of the UCCMS, it should be noted that while intent may not be determinative for the definition of psychological maltreatment, it can become relevant when assessing whether a single incident is serious enough to meet the threshold for a violation. The Respondent’s actions surrounding the disclosure must be examined as part of the broader factual context to determine if the behaviour was truly egregious so as to meet the threshold. Good faith actions, even if misguided, should not automatically constitute psychological maltreatment. There was no intent to humiliate or cause distress and the Respondent’s actions were not reckless or malicious.
29. There is no discussion nor argument provided for why the disclosure meets the threshold for psychological maltreatment. One can see in the UCCMS that “using confidential sport and non-sport information inappropriately” is on the list of behaviours, but as a single incident, the UCCMS requires it be demonstrated to meet the threshold of seriousness, to be considered psychological maltreatment.
30. The Representative pointed out some discrepancies in the DDSO’s Report and the Investigator’s Report. She pointed out a discrepancy in the dates referred to and questioned some of the findings in the DDSO’s Report. In the DDSO’s Report, in Section VII Sanctions, there are listed 6 factors that the DDSO states are particularly relevant. Bullet #3 states “The Investigator finds it likely that the Impacted Person had reason to believe that the decision to place them in review program was confidential and that the disclosure of this information made the Impacted Person feel humiliated and belittled.” However, there is no evidence that the Impacted Person felt ‘belittled’. The Investigator’s findings reference feelings of

humiliation but do not extend to belittlement. The addition of the word ‘belittled’, which does not appear in the Investigator’s Report, appears to introduce an unsubstantiated element to the characterization of the incident, potentially influencing its perceived seriousness.

31. The Representative appeared to challenge the jurisdiction of the OSIC to deal with the Complaint. She agreed that the Safeguarding Tribunal has jurisdiction over matters where there is an agreement in place for arbitration services between the SDRCC and the sport organization responsible for the application of the UCCMS, in this case Canada Soccer. She acknowledged that Canada Soccer as of March 1, 2023, formally adopted the UCCMS and joined the Abuse-Free Sport program and that complaints regarding alleged violations to the UCCMS for those participants that fall under the Canada Soccer Code of Conduct and Ethics should be reported to the OSIC. The Signatory agreement with Canada Soccer states that an Abuse-Free Sport (ABF) participant is an individual participating in the Signatory’s operations, activities and programs who is bound by the Abuse-Free Sport participant consent form. ABF participants may include, without limitation, an athlete, a coach, an official, an athlete support personnel, an employee, a contractual worker, and admin, or a volunteer acting on behalf of, or representing the Signatory in any capacity. Obligation of the Signatory include: requiring all Abuse-Free Sport participants to consent to and abide by the UCCMS and the Abuse-Free Sport participant consent form, as a condition for participation with the Signatory and ensure that all ABF participants sign their ABF consent form in accordance with the ABF participant consent form process, as updated and communicated to Signatories from time to time. The Respondent is an Abuse-Free Sport participant but she has not signed a UCCMS consent form.
32. In conclusion, the Representative respectfully requested that I evaluate the behaviour of the Respondent based on the full context and determine that the behaviour does not meet the threshold for Psychological Maltreatment under the UCCMS. The Respondent asked that the finding of Psychological Maltreatment of a Minor be overturned, as the behaviour, viewed objectively, does not rise to the level required to constitute a breach.

Summary of the Submissions filed by the DDSO

33. The DDSO made the following submissions:

The DDSO respectfully submits the following:

1. The DDSO's Report on Violations and Sanctions does not contain an error of law;
2. The DDSO correctly applied and interpreted the sections of the UCCMS which pertain to Psychological Maltreatment to find that the Respondent had only been in violation of the UCCMS on Allegation 5;
3. The DDSO correctly applied and interpreted the sections of the UCCMS which pertain to Psychological Maltreatment to find that the Respondent had not been in violation of the UCCMS with regards to the thirteen (13) other Allegations which were investigated;
4. The DDSO acted on the basis of a thorough 44-page Investigation Report;
5. The DDSO found no flaws or inconsistencies in law or in fact in the Investigation Report;
6. The Investigation Report diligently investigated the 14 Allegations that were in the Statement of Allegations and contained clear findings on all 14 Allegations;
7. The Investigator gave a detailed account of all 8 witnesses that were interviewed and explained how each witness contributed to the Investigator's findings;
8. The DDSO's sanctions are extremely mild, in that only an apology and an official warning were issued;
9. The DDSO's sanctions are therefore entirely reasonable and proportionate to the findings on violation;
10. The Respondent has not raised a ground in section 8.7 of the SDRCC Code to successfully appeal the DDSO's findings on violations and sanctions;

The Respondent argues that the DDSO erred in law under 8.7(a) of the SDRCC Code. By doing so, the Respondent is attempting in her Submissions of December 5, 2024, to relitigate the issue on which the Investigator made clear findings. Also, the Respondent is arguing that because this could have been a case of a "single incident", it did not rise to the level of Psychological Maltreatment under the UCCMS.

The forum provided on appeal does not afford the parties the opportunity to argue the facts presented before the Investigator unless the Investigator and the DDSO clearly misunderstood the facts presented by the parties and witnesses. The Respondent has failed to reveal any error in the interpretation of the facts. The error in law would simply be that the DDSO could not have found that the Respondent breached the sections pertaining to Psychological Maltreatment in the UCCMS, or that the Respondent's behaviour, simply put, was not a violation of the UCCMS and did not rise to the level of Psychological Maltreatment.

34. The DDSO requested that I maintain the DDSO's findings on violations and sanctions and dismiss the Respondent's Appeal.

Summary of the Interested Party's Submissions

35. The Interested Party argued that in this case the important things to consider in determining whether these sanctions should remain in place, are straight forward. There is no “burden of proof” test to litigate an outcome, or presumption of innocence based on any lack of knowledge of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS), which Canada Soccer (and consequently, its employees), are signatories. At minimum, treating a minor with respect and dignity are the only ingredients needed as oversight.
36. It was suggested that there has been a complete lack of remorse displayed by the Respondent. No concern for the Impacted Person’s wellbeing and no apology have ever been expressed. No attempt to reach out now, or when these situations took place, has occurred. In fact, there has been either complete denial that any of these situations took place, or accountability simply deflected onto others. These are all extra mitigating factors that need to be considered in weighing the balance of probability, that these allegations are true and potentially will be repeated in the future.
37. The power imbalance between the Respondent and the Impacted Person, her teammates, parents and other coaches was clearly in play and without doubt, factored into the allegations being found unsubstantiated by the Investigator. Those who made the parents of the Impacted Person aware of the harassment, chose not to come forward in fear of retribution, knowing the Respondent held a position of authority and control over their daughter’s future.
38. The Interested Party took the position that as parents, they trusted that their daughter would be treated with dignity, in a safe environment, that did not undermine her health, well-being and performance. They expected a level of responsibility and a reasonable level of moral and ethical standards. Unfortunately, this type of behavior is all too consistent with the recently investigated and publicly reported coaching culture of the Women’s National Team program, which the Respondent was a member of.
39. In conclusion, it was requested that the Safeguarding Tribunal maintain the DDSO’s findings on violations and sanctions and that the Respondent’s appeal should be dismissed.

Summary of the Respondent's Reply Submissions

40. The Respondent's Representative filed extremely lengthy reply submissions, which to a large extent were inappropriate. Reply submissions are intended to be a targeted response to the submissions of the other parties. It is not intended to be a second chance to present your main case. Appropriate reply submissions are focused responses that only address new points raised by the opposing party in their submissions. It is not appropriate to repeat and expand upon previously stated arguments. Reply submissions are an opportunity to clarify or directly counter specific issues brought up in the opposing party's arguments, not to introduce entirely new issues and significantly broaden the scope of the dispute.
41. In this case the Respondent's Representative repeated many of the original submissions, attempted to expand upon submissions already made and attempted to raise new allegations which did not form part of her original submissions.
42. The Representative argued again at length that there had been a mischaracterization of the evidence regarding the issue of whether or not the Impacted Person had consented to the disclosure. She asserted that the DDSO had made an error in law by mischaracterizing the evidence and drawing an unsupported conclusion. In her view, this constitutes a failure to base the decision on the available evidence, leading to an unreasonable and legally flawed conclusion. She suggested that the DDSO's decision mischaracterizes the Impacted Person's statements by asserting that she denied giving consent, despite the absence of any such statement in the Investigator's Report.
43. The Representative asserted that as the decision maker, the DDSO committed an error of law by inaccurately attributing the Investigator's interpretation of events to the Impacted Person, labeling it as the 'Impacted Person's version' when no such version of events was given by the Impacted Person. This mischaracterization constitutes a fundamental factual error, as it conflates the Investigator's inference with direct testimony, leading to an unreasonable conclusion. By basing the decision on a misrepresentation of the evidence, the DDSO has failed to meet the required standard of reasonableness and impartiality, thereby rendering the decision legally flawed.
44. In her Reply submission, it appears that the Representative attempted to bring up an entirely new allegation pertaining to a claim, that the DDSO did not provide a copy of the Investigator's Interview Transcript with the Respondent, in a timely fashion. No reason was given as to why this was not raised in the Respondent's original submissions. This is not an appropriate reply

submission, as it could have been raised earlier and there is now no opportunity for the DDSO to respond to it. I will therefore not consider it.

45. In her Reply submission, it appears that the Representative attempted to bring up a second entirely new allegation, when she asserted that in the DDSO's final Report on Violations and Sanctions, the Respondent was incorrectly identified as the "Assistant Director of the Canada Soccer National Development Centre – Ontario, (the "NDC-O"), affiliated with Ontario Soccer (the "PSO"), both of which are affiliated with Canada Soccer (the "NSO")...". She suggested that the DDSO rendered his decision based on the Respondent being an Assistant Director of the NDC-O, which is entirely inaccurate. He did not even report that she was a coach, only an Assistant Director. Again, no reason is given as to why this was not raised in the Respondent's original submissions. This is not an appropriate reply submission as it could have been raised earlier and there is now no opportunity for the DDSO to respond to it. Again I will not consider it.
46. Another new allegation, is that the DDSO's failure to inquire about the Respondent's training, despite it being a policy requirement, constituted a procedural oversight that is an error of law and which reasonably could have impacted the outcome of the case. Again, not proper Reply submissions.
47. The Representative repeated her submissions with regard to the jurisdictional issue and pointed out that the DDSO was clearly informed, through her initial appeal submission, that he lacked jurisdiction to make a determination against TS, as she is not a consenting UCCMS participant. She suggested that despite this, the DDSO has chosen to maintain their decision, disregarding the fundamental jurisdictional requirement that a participant must have provided informed consent through a signed agreement. In her view, this constitutes a significant error in law, as a decision rendered without proper jurisdiction is invalid and unenforceable and exceeds the scope of the authority of the DDSO.
48. The Representative argued that:

Mr. Kellerman has failed to give valid reasons to explain how [TS]'s sharing of the Impacted Person's accomplishments in working hard to become a better and stronger teammate during a review period and thus disclosing she had been under review, after obtaining her visual consent by the Impacted Person's smile and nod, meets the threshold for an egregious single serious incident such that she is found to have psychologically maltreated a minor. In arriving at this decision, he has stripped the incident of its essential context, including the positive framing of the impacted person's accomplishments (evidence that was corroborated) and the Impacted Person's accomplishments and [TS]'s intent to highlight resilience. By

neglecting to consider the full circumstances surrounding the disclosure, the DDSO decision maker has failed to conduct a proper assessment of whether the incident meets the required threshold for a serious incident under the UCCMS, thereby rendering the decision unreasonable and unsupported by a comprehensive analysis of the evidence. The UCCMS clearly distinguishes between prohibitive conduct and maltreatment but the DDSO has not made the case for why the prohibitive behaviour of disclosing that the Impacted Person had been under review then amounted to psychological maltreatment. Falsely claiming that the Impacted Person denied having given consent, and simply pointing to an inherent power imbalance is not sufficient. Moreover, the former is an error in law, and the latter sets an unrealistic precedent for all coaches and players under the UCCMS.

49. I will expand upon this shortly, but in my view the DDSO rendered a decision based on the facts as found by the Investigator and the conclusions reached by the Investigator. The submission set out above appears to be an attempt to either give evidence or question the Investigator's factual conclusions. Neither is appropriate.
50. The Respondent's representative, was correct in her assertion that the DDSO had failed to respond to her submissions on jurisdiction. Although to be fair, her submission was ambiguous as at one point she states with regard to the issue of jurisdiction, "the Respondent is adding this item solely in the interest of engaging in this process with good faith, openness, and transparency and not as a means to challenge jurisdiction." Is she, or is she not challenging jurisdiction? It is difficult to ascertain. In any event, as an issue going to jurisdiction is a fundamental issue, I wanted to hear from the DDSO and provided him with an opportunity to provide submissions on this very narrow issue. I also gave the Respondent a limited right of reply on this issue.
51. The DDSO in his submissions on this issue of jurisdiction, pointed out that on December 5, 2024, the Respondent filed submissions in support of their challenge of the DDSO's decision on violation and sanction, under section 8.4 of the Code. These submissions contained an Appendix on the issue of jurisdiction which is entitled: "Notes on Jurisdiction that the Arbitrator instructed the Respondent to submit along with the appeal written submissions." In this "Appendix", the Respondent states that the purpose of these notes is "not meant as a means to challenge jurisdiction" but rather "in the interest of engaging in this process with good faith, openness, and transparency".
52. The DDSO argued that if the Respondent had wished to argue that the OSIC did not have jurisdiction, they were free to raise the issue formally, both at the appeal level and further at the time of the Report on Provisional Measures, which was issued on August 8, 2023. The

Report on Provisional Measures, confirmed at page 2, that the “OSIC has determined that the Complaint was properly filed and fell within its jurisdiction following its standard intake process, being the OSIC Guidelines Regarding the Initial Review & Preliminary Assessment of Complaints”. This was not challenged.

53. The DDSO pointed out that the Respondent did not raise the issue of jurisdiction until their submissions of December 5, 2024 and that these submissions do not make the Respondent’s intentions on the matter clear. The Respondent concluded their submissions on jurisdiction by claiming that they did not sign a UCCMS consent form. When first receiving a complaint, OSIC contacts the NSO to confirm whether or not the Respondent affiliated to the NSO is in fact a Participant under the UCCMS. On May 24, 2023, the OSIC therefore contacted Canada Soccer to ask if the Respondent was “currently a UCCMS Participant, as set out at Appendix A of Canada Soccer’s service agreement with the SDRCC”. On May 25, 2023, Canada Soccer replied: “Yes she’s (sic) UCCMS participant.”
54. In conclusion the DDSO urged me to conclude that the Respondent is a Participant and governed by the UCCMS and Abuse-Free Sport program. He also reiterated that the Respondent has stated that they are not challenging the question of jurisdiction.
55. The Representative for the Respondent argued that she has presented the jurisdictional issue not as a separate challenge (i.e. a separate formal process that she understood would precede an appeal of a decision) but as a fundamental legal flaw. Jurisdiction is a legal prerequisite. It is a fundamental legal requirement. She argued that her submissions make it clear that the issue of jurisdiction was raised as a significant legal concern.
56. The Representative suggested that the timing of when jurisdiction was raised or might have been raised, does not change the legal reality. The DDSO never had jurisdiction to make a final decision. His argument does not address this fundamental fact, nor does it relieve him of his obligation to prove that he had authorization. Since no signed consent form exists, the only legally appropriate conclusion, is that the DDSO’s decision is invalid.
57. Without a signed consent form, the Representative argued that the DDSO had no legal authority to issue a decision. As such, she suggested that the only legally appropriate ruling is that the DDSO’s decision is invalid and that the Respondent cannot be found guilty of psychological maltreatment, as the authority to reach that conclusion never legally existed. As her other submissions have documented, a review of the evidence makes clear that the conclusion reached was flawed, based on mischaracterizations and misinterpretations. With

the decision now proven to be without jurisdiction, there must be no lingering doubt about the Respondent's innocence.

Decision

58. I would like to deal first with the issue of jurisdiction. Canada Soccer has formally adopted the UCCMS and joined the Abuse-Free Sport program. Complaints regarding alleged violations of the UCCMS for those participants that fall under the Canada Soccer Code of Conduct and Ethics, are reported to the OSIC. The SDRCC is responsible for implementing this safe sport framework. On May 24, 2023, the OSIC contacted Canada Soccer to ask if the Respondent was currently a UCCMS Participant, as set out at Appendix A of Canada Soccer's service agreement with the SDRCC. On May 25, 2023, Canada Soccer confirmed that the Respondent was a UCCMS participant. It appears that the Representative for the Respondent is asserting that this is not true, as the Respondent did not sign a consent form of some sort. The Respondent is an individual participating in the Signatory's operations as a coach and is therefore a UCCMS participant by virtue of the actions of Canada Soccer in this case. The issue of a consent form, does not negate the fact, that by definition, the Respondent is a participant and bound. OSIC and the SDRCC have jurisdiction over this case.
59. Turning to the merits, what is at issue in this case is whether or not the DDSO made an error in law by "acting on a view of the facts which could not be reasonably entertained" pursuant to Subsection 8.7(a)(iv) of the Code. That is the basis upon which the Respondent has challenged the finding by the DDSO of a UCMMS violation.
60. I have carefully reviewed the Investigator's report. I find it to be very thorough, fair, balanced and reasonable. Many individuals were interviewed including the Respondent and the Impacted Person. It is the role of the Investigator to "investigate" and based on the information obtained come to factual conclusions. Th Respondent does not agree with the conclusions reached with regard to the one allegation that the Investigator did not find in her favour.
61. Pursuant to Subsection 8.7(c), a DSO decision on a violation or a sanction may only be challenged with new evidence when such evidence "could not, with the exercise of due diligence, have been discovered and presented during the investigation or adjudication of the allegations and prior to the decision being made". A significant portion of the submissions filed by the Respondent attempt to provide new evidence. Or twist the evidentiary findings of

the Investigator. This “new evidence” does not meet the test set out in Subsection 8.7(c) and will not be considered.

62. There is no dispute that in this case, on the day in question, a group of players were in a High-Performance Athlete class and were sitting in a circle discussing the team’s culture. The topic of players being on review was introduced. In front of her teammates and other players, the Respondent asked for permission from the Impacted Person to talk about what she had been through. The Impacted Person “smiled and nodded”. There is no dispute that the Impacted Person did smile and nod. The Respondent asserts that this was a valid consent, but as noted below, the Investigator concluded that it was not.

63. The submissions filed by the Respondent, focus extensively on the issue of consent. For ease of reference, I will set out again that on this point the Investigator concluded:

The Respondent confirmed that they did disclose to the group that the Impacted Person had been on probationary review, although they claimed to have first obtained the Impacted Person’s approval. I do not find their explanation plausible, and I do not accept that the Impacted Person agreed to the disclosure. It is apparent from the Respondent’s evidence that they had wanted to involve the Impacted Person in the discussion. While they first stated that everyone in the group was participating in the discussion, they later stated that the Impacted Person had been quiet. Instead of finding ways to encourage the Impacted Person to participate at their own pace and comfort level, the Respondent targeted the Impacted Person, asking them for permission to discuss what they had been through. In doing so, the Respondent obligated the Impacted Person to agree to participate and proceed with the disclosure. The Impacted Person may have smiled and nodded; however, I find that this was an uncomfortable reaction to being put on the spot by the Respondent, and it was not a genuine approval to proceed with such a personal disclosure to the group.

64. The Representative for the Respondent at one point in her reply submissions, in dealing with the issue of consent, states:

The Investigator does not state that the Impacted Person denied consent. The Investigator states that it is he who does not accept that the Impacted Person agreed to the disclosure by her smile and nod in response to [TS]. It is the Investigator who interpreted the smile and nod as an uncomfortable reaction to being put on the spot and not a genuine consent.

To be clear, it is NOT the Investigator who claims the Impacted Person denies consent and it is NOT the Investigator who declares a fundamental disagreement between the Respondent and the Impacted Person on the issue of consent. It is the DDSO who makes these statements and claims.

65. The Representative for the Respondent starts with a completely false statement, when she asserts that “The Investigator does not state that the Impacted Person denied consent”. While

those exact words may not have been used, there can be no doubt that the Investigator concluded that “it was not a genuine approval to proceed”. I find the Respondent’s submissions to be an attempt to twist the Investigator’s findings. As is noted above, the Investigator found that the consent was not a genuine consent. If the consent is not genuine, then it is not a valid consent. The DDSO in saying that the Impacted Person denied consent, is simply phrasing the conclusions reached by the Investigator in another way. However you want to describe it, the Investigator concluded that there was no valid consent to the disclosure of the confidential information. Based on this the DDSO came to the conclusions he did.

66. The Respondent also challenged the finding by the DDSO that a single incident such as the one in this case amounted to Psychological Maltreatment. She suggested that it was inappropriate to “couple” the notion of a power imbalance to the incident. By coupling the two factors, it was enough for the DDSO to improperly conclude that the action met the threshold for a single serious incident – thus amounting to Psychological Maltreatment. The UCCMS defines the term Power Imbalance in Appendix 1: Definitions:

n) Power Imbalance: A Power Imbalance is presumed to exist where a Participant has authority or control over another person, is in a position to confer, grant or deny a benefit or advancement to the person, or is responsible for the physical or psychological wellbeing of the person. Whether an actual Power Imbalance exists will be determined based on the totality of the circumstances, including the subjective view of the subordinate Participant.

i. Once a coach-athlete relationship is established, a Power Imbalance is presumed to exist throughout the coach-athlete relationship, regardless of the age of the athlete.

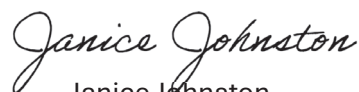
67. In this case the Impacted person was a minor and the Respondent was her coach. I completely agree that in the circumstances of this case, that there was a Power Imbalance. The DDSO in his submissions, reiterated that the Respondent should not have asked the Impacted Person, a minor, to waive her right to confidentiality. The Respondent should not then have disclosed the information to the rest of the team.

68. The DDSO did not assert that the Respondent’s behaviour was coercive, but the power imbalance, by definition, has an impact on the Respondent’s request and the Impacted Person’s response to the request. He concluded, based on the Investigation Report, that the humiliation felt by the Impacted Person was further evidence of why the Respondent erred in judgment when asking the Minor to disclose personal and confidential information (the review process) to the rest of the team. The DDSO argued that a single incident can meet the

threshold of Psychological Maltreatment, even absent an intent to harm. I agree with these conclusions. And I agree with the conclusions reached by the DDSO that the “Respondent did engage in Psychological Maltreatment by disclosing confidential information about the Impacted Person to 8 players in the group” and also by pressuring the “Impacted Person to agree to something they were uncomfortable with”.

69. As noted at the outset, my role pursuant to Subsection 8.6(f) of the Code, is to determine if it is appropriate to increase, decrease or remove any sanction imposed by the DDSO. I can also maintain the DDSO’s findings on violations and sanctions and dismiss the Respondent’s challenge.
70. In my view it is appropriate to dismiss the Respondent’s challenge. There has been no error in law in this case. There is no basis for me to conclude that the DDSO in reaching the conclusions he did was “acting on a view of the facts which could not reasonably be entertained”. The DDSO referred to and relied upon the Investigator’s Report.
71. As I noted earlier in this decision, the role of the DDSO is to receive an Investigation Report and make findings with respect to possible violations of the UCCMS and if appropriate, impose a sanction in accordance with the UCCMS and the DDSO’s policies and procedures. The DDSO’s role is not to act as an investigator, or as a fact finder. The role of the DDSO is to interpret the investigation findings and the UCCMS and related policies and procedures, to determine whether a violation of the UCCMS has occurred and in the event of a violation or violations, decide on the appropriate consequences. That is exactly what the DDSO did in this case. The DDSO appropriately took the facts as found by the Investigator, concluded that a violation of the UCCMS had occurred and imposed a sanction which consisted of a warning and a written apology. The DDSO’s sanctions are extremely mild, in that only an apology and an official warning were issued. The DDSO’s sanctions are therefore entirely reasonable and proportionate to the findings on violation.
72. Accordingly, for all of the reasons set out in this decision, I maintain the DDSO’s findings on violations and sanctions and dismiss the Respondent’s challenge.

Dated in Toronto this 28th day of February, 2025



Janice Johnston

Arbitrator