

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

Citation : R.Y. v. Hockey Canada, 2025 CASDRC 43

NO. SDRCC 23-0665
(ORDINARY TRIBUNAL)
DATE OF DECISION: 2025-12-04

R. Y. (Claimant)

AND

Hockey Canada (HC)
(Respondent)

DECISION WITH REASONS

COUNSEL:

For the Claimant: Daniel Babin
Michael Bookman

For the Respondent: Adam Klevinas
Cristy Cooper

ARBITRATOR: Janice D. Johnston

Background

1. On August 22, 2023 the Claimant filed a request pursuant to Section 6.1 of the 2023 Canadian Sport Dispute Resolution Code (the “Code”), before the SDRCC’s Ordinary Tribunal.
2. The Respondent, Hockey Canada, is the national governing body for amateur hockey in Canada. Hockey Canada oversees the management and structure of hockey programs in Canada from entry-level to high performance teams and competitions. At the time of the incidents relevant to this appeal, the Claimant, R. Y., was a player on a U18 hockey team (“Team A”) in the Newfoundland U18 Major Hockey League (“the League”). In the same season, C.A. was a goalie for another hockey team (“Team B”), a League opponent of Team A.
3. On January 8, 2023, C.A.’s parents made a complaint to the Independent Third Party (the “ITP”) for Safe Sport for Hockey Canada due to events which were alleged to have occurred on January 6, 2023. The ITP is responsible for administering Hockey Canada’s *Discipline and Complaints Policy* (the “Policy”).
4. By way of context, the Claimant and C.A. had a history. They had faced each other in a game on October 22, 2022. At one point in this game, the Claimant hit C.A. when he was out of his crease. The hit was a hard one and resulted in C.A. being removed from the game by medical staff and being transported to the hospital. The game ended at this point. C.A. was not seriously hurt but was shaken by the incident.
5. The next time the teams faced each other with the two boys in the line-up was January 6, 2023. C.A.’s parents filed a written complaint pursuant to Section 2, Article 10 of the Policy alleging that the Claimant, three other Team A players and three Team A coaches had violated Hockey Newfoundland & Labrador (“HNL”) policy by, *inter alia*, engaging or encouraging players to engage in bullying, harassment, and intimidation against C.A. during the game that occurred on January 6, 2023 (the

“Complaint”). The Complaint was administered under Process #2 of the Hockey Canada *Discipline and Complaints Policy* in force at the time.

6. The Complaint specifically alleged that during the game on January 6, 2023, the Claimant and other players started making threatening comments to C.A. in the second period of the game and that the Claimant made a further inappropriate comment to C.A. in the third period, while C.A. was on the bench. It was also alleged that three coaches had engaged in inappropriate conduct. After interviewing players, coaches, and the referees that were present, the Investigator, Ryan Steeves, a partner at Gowling WLG (the “Investigator”), determined that there was no evidence of the alleged second period comments, or inappropriate conduct by the coaches, but that the Claimant had made the third period comment
7. On May 10, 2023, the investigation into the Complaint was completed by the Investigator. An Investigation Report of the same date was issued, which made findings of fact in respect of the allegations against the Claimant and which included the Investigator’s position on whether such findings disclosed violations of applicable policy.
8. Pursuant to Article 26 of the Policy, the Investigation Report was delivered to an Adjudicative Panel (Scott McAnsh; referred to hereafter as the “Adjudicator”) for a determination as to whether a violation (or violations) of applicable policy had in fact occurred and, if so, the sanctions to be imposed. On July 13, 2023, the Adjudicator released his Written Decision (the “Decision”). In the Decision, the Adjudicator found that the Claimant violated HNL’s Maltreatment, Bullying and Harassment Protection and Prevention Policy and the HNL Policy Manual.
9. On August 22, 2023, the Claimant filed a Request with the Sport Dispute Resolution Centre of Canada (“SDRCC”). While it initially appeared that the Claimant was filing a complaint against C.A.’s parents (the original Complainants), it was subsequently clarified that the Claimant sought to appeal the Adjudicator’s decision. The grounds for the appeal are that the Decision failed to consider the effects of a breach of

confidentiality on witness reliability and improperly relied on a “deeply flawed” Investigation Report.

10. The relevant section of the Code reads as follows:

6.11 Scope of Panel's Review

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

11. The parties agree that the applicable standard of review on this appeal is reasonableness and that the appeal should proceed in the fashion of a judicial review. Counsel for the Claimant asserts that:

A reasonableness review is a “robust form of review” of an adjudicator's decision, according to the guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at para 13 (“Vavilov”) To be reasonable, the Adjudicator's decision must be justifiable and justified in the circumstances. The focus is on the reasons, which must be justified, transparent, and intelligible. A decision will not be reasonable if its reasoning is neither rational nor logical, or if the facts and law do not justify the decision. The reviewer must determine if the Adjudicator's decisions express either of these flaws. The decision cannot be reasonable if it was reached on an improper basis.

12. Counsel for the Respondent argued:

38. Hockey Canada agrees with the Claimant that the applicable standard of review is reasonableness, and that the Appeal should proceed akin to a judicial review and in line with the applicable provisions of the 2023 Canadian Sport Dispute Resolution Code (“Code”).

39. The reasonableness standard of review has been consistently applied by SDRCC Panels when considering appeals of decisions made by the ITP, as well as in decisions regarding safe sport complaints generally. SDRCC Panels have also held that, where an appeal is in the nature of a judicial review, it should proceed as a review of the Decision rendered by the Adjudicator to ensure that it is a fair, reasonable and lawful decision.

40. The guidance provided by the Supreme Court of Canada in *Canada in Vavilov* is that a reasonableness review is a “robust form of review” and that, when conducting a reasonableness review, “a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified”.

41. In addition, according to *Vavilov*, “a court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker’s place.”

42. Previous SDRCC tribunals have applied the reasonableness standard from *Vavilov* to ensure that the decision maker demonstrates “that he or she has considered the facts and governing scheme relevant to the decision as well as any past practices.” As such, the Claimant is required to satisfy the present Arbitrator that there are “serious shortcomings” in the Adjudicator’s Decision.

43. For the reasons that follow, Hockey Canada submits that the Claimant has not, and cannot, satisfy his burden that the Decision, or any of the procedures leading up to the Decision, were tainted by any serious shortcoming that would warrant the present Arbitrator’s intervention.

44. Hockey Canada acknowledges and agrees that pursuant to Section 6.1(a) of the Code, the present Panel has discretion to substitute its decision for the decision that gave rise to the dispute, or to substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

45. However, as noted above, it has consistently been the practice of SDRCC Panels to decline to exercise such discretion unless the Claimant can demonstrate that the decision was unreasonable, as not falling within a range of possible, acceptable outcomes.

46. As a preliminary point, Hockey Canada emphasizes that the within Appeal concerns the Decision specifically, and not the Investigation Report as such. The Claimant had the opportunity to challenge the Investigation Report before the Adjudicator. While submissions were made, they were not inclusive of the issues the Claimant purports to advance before the present Panel. Given the Claimant’s acceptance that this matter should proceed as a judicial review and not a hearing *de novo*, Hockey Canada submits that the question properly before the present Panel is whether the Decision was reasonable, not whether the Investigator committed any errors.

13. I agree with the submissions made by both counsel with regard to the applicable standard of review in this case. In particular, I agree with the submission of counsel for the Respondent that “the question properly before the present Panel is whether the *Decision* was reasonable, not whether the *Investigator* committed any errors.” I will come back to this later in the decision. Accordingly, it is my job to assess the decision reached by the Adjudicator to determine if in all the circumstances it is reasonable. For example, if I conclude that the Decision is justifiable and justified in

the circumstances, falls within a range of possible, acceptable outcomes and that the decision as a whole is transparent, intelligible and justified, I will conclude that the decision was reasonable. It is not my role to substitute the decision I might have come to for that reached by the Adjudicator, unless I conclude that the decision of the Adjudicator was unreasonable.

Submissions and Decision

14. I am going to summarize the submissions made by counsel and do not intend to set out all of the detailed and lengthy submissions made in this case. I have carefully read and considered them and will address the ones I feel are relevant. I will deal with the submissions and set out my conclusions as I go along.
15. Counsel for the Claimant takes the position that the Adjudicator's decision failed to consider the effects of a breach of confidentiality on witness reliability and improperly relied on a deeply flawed investigation report. Counsel cites numerous examples as to why the investigation report was flawed, such as the Investigator failed to consider exculpatory evidence, failed to address a breach of confidentiality and its potential to taint the evidence given by witnesses relied upon by the Investigator, and did not mention the breach of confidentiality in his report to the Adjudicator.
16. Counsel for the Respondent, in his submissions, pointed out that in a Procedural Order issued May 29, 2023, the Adjudicator specifically advised the parties that the *Discipline and Complaints Policy* creates a presumption that the Investigation Report is determinative of the facts and that this presumption can only be rebutted if a party 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".
17. Specifically, where an investigation has occurred, Article 10 of Appendix A of the Respondent's Investigative Procedure places the onus on the party challenging the investigation's findings to demonstrate that the Investigator committed an error:

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.

18. In the Procedural Order issued May 29, 2023, the Adjudicator reviewed the fact that an Investigator had been appointed, had conducted an investigation which included interviewing witnesses and provided the parties with a copy of the redacted report. He reviewed the Investigator's factual findings and the conclusion reached by the Investigator, that the conduct of the Claimant *likely* violated a number of policies. The Adjudicator advised the parties that it was his job to determine whether an infraction, breach or violation of a governing policy or code had occurred. He made it very clear in the Procedural Order that the Hockey Canada Policy creates a presumption that the Redacted Report was determinative of the facts and that the presumption could only be rebutted as set out above.
19. The Adjudicator advised the parties that the hearing would be in writing with written submissions. The Adjudicator invited the parties to provide submissions on four specific questions:
 - a) Was there a significant flaw in the process followed by the Investigator?
 - b) Does the Redacted Report contain conclusions which are not consistent with the facts found by the Investigator?
 - c) Has an infraction, breach or violation of a governing policy or code occurred?
 - d) In the event that an infraction, breach or violation is found by the Adjudicator, what are the appropriate sanctions to be imposed?
20. He advised the parties that they could choose to address none, any or all of these questions in their submissions and provided a schedule for the filing of submissions.

21. The Complainants in the original case, C.A.'s parents, did not make any submissions. In his decision the Adjudicator indicates:

18. In the May 29, 2023 Procedural Order, I set out the presumption, in Article 10 of Appendix A of the Policy, that the facts in the Report are presumed to be determinative. That presumption can only be rebutted if a party 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."

19. I asked for submissions addressing those two factors, as well as submissions on if there was a breach of any policy and what sanctions ought to be imposed.

20. As noted above, the only submissions I received for this hearing was the June 7, 2023 submission from the Parents. That submission does not allege any flaws in the process followed by the Investigator. It also does not address any policies, or how the facts found in the Report would relate to those policies. Nor does it address sanctions in any way.

21. The Parents' submission addresses two main issues:

(a) It challenges the credibility findings made in the Report respecting the Respondent; and

(b) It states that there were breaches of the confidential nature of the investigation that have had negative consequences on the Respondent.

The Parents referred to are the parents of R.Y., the Claimant in this case. As was noted by the Adjudicator, the parents' submissions addressed two main issues: (1) the credibility finding made in the Investigation Report respecting the Claimant, and (2) breaches of the confidential nature of the investigation that had negative consequences on the Claimant.

22. I have carefully reviewed the submissions referred to above, which were made to the Adjudicator in June, 2023, by the parents of the Claimant in the case before me. As noted, the Claimant's parents provided submissions, but they did not reference or respond to the questions that had been posed by the Adjudicator. I agree with the conclusion reached by the Adjudicator, that the submissions did not allege any flaws in the process followed by the Investigator. They did not assert that the Redacted Report contained conclusions which were not consistent with the facts found by the Investigator. The submissions did not reference any policies, or in the event that an infraction, breach or violation of a policy is found by the Adjudicator, address the appropriate sanctions to be imposed.

23. In dealing with the credibility issue, the Adjudicator reviewed the submissions made by the parents, the evidence summarized in the Investigator's report and concluded that there was no basis to question the credibility findings made by the Investigator. The decision on this point reads:

22. The Parents' submission challenges the finding made on page 19 of the Report, which states:

Regarding [the Respondent], in particular, I appreciate that he admitted to telling [the Son] to "go back to the net" at one point during the second period; however, I take note of the fact that [the Respondent] did not admit to saying anything towards [the Son] during the third period, as discussed above. Generally, this causes me to question the honesty and reliability of [the Respondent's] evidence as a whole, and apply it less weight where it differs from evidence offered by others.

23. The Parents submit that the Respondent "at the time couldn't recall what happened step by step during that game, since so much time had past." It also challenges the above finding in the Report, citing part of the quote above and stating "How is this the case when [the Respondent] admitted to the investigator what he had said during the third period. Especially given the fact that [the Son] and his coach made the decision to not return to the game during the second intermission."

24. That submission misstates the facts in the Report. The Respondent's evidence is summarized starting at page 9 of the Report. The Report states that he "denied all of the allegations made by [the Son], with one clarification: [He] admitted that during the second period, he said to [the Son] during a stoppage in play to "go back to the net" while [the Son] was skating away from a scrum." That is an admission of a statement in the second period of play. The conclusion of the Report, based on a number of interviews, was that the Respondent made an inappropriate comment to the Son while he was on the bench in the third period.

25. The allegation that such a comment was made from the ice to the bench was flatly denied by the Respondent. It was reported by three other witnesses to the Investigator. I do not find that the conclusion that such a comment was said is inconsistent with the evidence summarized in the Report. Nor do I find that there is any basis to question the credibility findings made by the investigator.

24. In the Decision, the Adjudicator set out the recollections of C.A. and two witnesses regarding what was said by the Claimant and referred to in paragraph 25 of the Decision. He notes that:

"...each recalled it slightly differently. [C.A.] recalled the comment as "get back in the net so I can run you again!". Another [Team B] player recalled the comment as "good thing you left the game, I would have hit you; I'll get you next time".

Finally, a [Team B] coach recalled the comment as “get back into the net you pussy so I can fucking do it again!”.

I have carefully reviewed the Investigator’s Report and the Decision. Not only do I think that it was reasonable for the Adjudicator to have concluded that there was no basis to question the credibility findings made by the Investigator, I completely agree with his conclusions on the issue of credibility.

25. The Adjudicator then dealt with the confidentiality issue. He states:

26. The main complaint in the Parents’ submission is that confidentiality was breached. The submission states that players and parents from [Team B] were openly discussing the allegations and were shouting “vulgar comments” at the Respondent at a game [Team A] played against another team in late January. The submission states that the community discussing the allegation has had negative impacts on the Respondent and I accept that it likely has.

27. Article 48 of the Policy is clear that the “disciplinary process is confidential.” That is for good reasons. Allegations are just that until investigated and adjudicated. Those accused of wrongdoing should be protected from misplaced efforts at community justice. It is not acceptable that [Team B] players and parents were openly discussing this investigation before it is complete.

28. Article 50 permits me to impose further sanctions if confidentiality is breached. However, I do not know who breached confidentiality here so cannot impose any sanctions for breach of confidentiality. I find it unacceptable that the confidence of this process was breached but cannot sanction unknown persons.

Again, I agree with these conclusions and find them to be entirely reasonable.

26. The Adjudicator goes on to conclude that the facts in the Investigators report were not rebutted and that the Report is determinative of the facts.

27. As I noted earlier the question properly before me is whether the decision of the Adjudicator was reasonable. The parties agreed at the outset that the appeal should proceed in the fashion of a judicial review. The parents of the Claimant were given the opportunity to make submissions and were asked to respond to certain questions by the Adjudicator prior to any decision being made. The parents made submissions but did not answer the questions put to them. The challenges they did raise in their submissions, were specifically addressed and dealt with by the Adjudicator in his decision.

28. Counsel for the Claimant now seeks to challenge the Investigator's Report for other reasons and alleges that it is "deeply flawed". With all due respect, the opportunity to challenge the Report of the Investigator was provided to the parents of the Claimant and they did so. The allegations they raised were addressed by the Adjudicator in his decision and he concluded that the facts in the Report had not been rebutted and that the Report was determinative of the facts.

29. As previously indicated, I agreed with the submission of counsel for the Respondent that the question properly before the present Panel is whether the Decision made by the Adjudicator was reasonable, not whether the Investigator committed any errors. However, let us say for the sake of argument that I am wrong. Let us say that it *is* appropriate for me to re-open the Investigator's Report with a view to determining as to whether the Claimant, who does not agree with the findings of the report, has "demonstrated that there was a significant flaw in the process followed by the Investigator or had established that the report contains conclusions which are not consistent with the facts as found by the Investigator". Were I to engage in this process, I would dismiss the Claimant's allegations. I am satisfied that the Investigator specifically considered the reliability and credibility of the various individuals interviewed and the video evidence in coming to his conclusions. I do not find the Report to be "deeply flawed" as alleged by counsel for the Claimant, nor do I agree that there was a significant flaw in the process followed by the Investigator. I agree with the Adjudicator's finding at the time that the facts in the Report had not been rebutted and that the Report was determinative of the facts.

30. The other ground raised for the appeal is that the Decision failed to consider the effects of a breach of confidentiality on witness reliability. I do not think it is appropriate to allow the Claimant at this point to raise for the first time an issue that was not raised before the Adjudicator. However again, were I to conclude that it is appropriate to allow counsel for the Claimant to raise this new allegation, I would address it in the following manner.

31. As noted earlier, the allegation that was substantiated by the Investigator and found to have occurred by the Adjudicator was the inappropriate comment made by the Claimant to C.A. while he was on the bench in the third period. The Decision sets out the recollections of C.A. and two other witnesses as to what was said:

“...each recalled it slightly differently. [C.A.] recalled the comment as “get back in the net so I can run you again!”. Another [Team B] player recalled the comment as “good thing you left the game, I would have hit you; I’ll get you next time”. Finally, a [Team B] coach recalled the comment as “get back into the net you pussy so I can fucking do it again!”.

32. In response to the assertion that the Decision failed to consider the effects of a breach of confidentiality on witness reliability, counsel for the Respondent argued:

51. ...the Investigator specifically considered the credibility and reliability of each of the individuals he interviewed. Although he did not specifically comment on the effect or potential effect that a breach of confidentiality may have had on the witnesses, it is clear from the case law he cited that the Investigator was alive to the notion that he should have regard for “cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness’ perception, memory, and ultimately testimonial recitation”.

52. The only comment that the Investigator substantiated was the 3rd Period Comment. Importantly, he did so while explicitly recognizing that the witnesses’ recollection of the exact words used by the Claimant differed. This is not indicative of individuals who colluded to get their stories straight, such that their evidence was “tainted” as alleged by the Claimant. Instead, it speaks to witnesses whose memories were predictably impacted by the types of factors cited by the Investigator above. In the circumstances, the Investigator determined that there was nonetheless sufficient support to substantiate the allegation, owing to the fact that all of the witnesses’ relayed “a comment towards [C.A.] referencing [the Claimant’s] prior hit on [C.A.]”.

33. I agree with this submission. While it appears that there is no question that there was a breach of confidentiality, I don’t agree with the assertion by counsel for the Claimant that it somehow had an effect on witness credibility or reliability. If that was true, as demonstrated above, clearly the witnesses did not get their stories straight.

34. Counsel for the Claimant points out that the Adjudicator acknowledged in his decision that the breach of confidentiality had amounted to additional sanctions on

the Claimant. I agree with this observation and would note that as a result, the breach of confidentiality was a factor in his determination that the “Respondent has already been adequately sanctioned” and that therefore the Adjudicator did not impose any additional sanctions on the Claimant in this case. It is unfortunate that at the time the breach was raised, the allegations of a breach of confidentiality lacked any details as to who specifically was alleged to have breached confidentiality, which could have led to sanctions on the individuals who were openly discussing the investigation before it was complete.

35. Both counsel in their submissions made reference to SDRCC jurisprudence. I have carefully reviewed the cases but again, do not feel that it is necessary to set them out. Every case is unique, turns on its own facts and that is true in this case as well.
36. Accordingly, I am satisfied that the Decision reached by the Adjudicator was reasonable in all aspects. It was appropriate for him to have relied upon the Investigative Report as determinative of the facts. In addition, it was appropriate in the circumstances for him to have concluded that no further sanctions were appropriate in the circumstances.
37. The appeal is dismissed and the decision of the Adjudicator is upheld.

Dated in Toronto this 4th day of December, 2025

Janice Johnston
Arbitrator