

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

Citation: Director of Sanctions and Outcomes v. K.L., 2026 CASDRC 28

File No: SDRCC SAT 25-0004

Date: 2026-06-01

**DIRECTOR OF SANCTIONS AND OUTCOMES (“DSO”)
(APPELLANT)**

AND

**K.L.
(RESPONDENT)**

AND

**C.D.
(INTERESTED PARTY)**

Before

**Aaron Ogletree
(Panel Chair)**

**Janie Soublière
(Panel Member)**

**Peter Lawless, KC
(Panel Member)**

Correction Notice:

Decision corrected on June 26, 2026 pursuant to Subsection 5.7(i)
of the 2023 Canadian Sport Dispute Resolution Code.

Appearances:

On behalf of the Respondent: Dylan Jones (counsel)
Victoria Nix (counsel)

On behalf of the DSO: Dasha Peregoudova

**On behalf of the Interested
Party:** Self-Represented

DECISION

Table of Contents

I) BACKGROUND	3
II) ISSUES BEFORE THE APPEAL PANEL	5
1. Does the Appeal Panel Have Jurisdiction to Hear the Appeal Pursuant to Article 9 of the 2023 Code? (the 'Preliminary Issue')	5
a) Respondent's Submissions	6
b) DSO's Submissions.....	8
c) Interested Party's Submissions	10
d) The Appeal Panel's Decision on the Preliminary Issue	11
2. Does the ST Decision Withstand Judicial Review?	12
a) DSO's Submissions.....	12
b) Interested Party's Submissions	20
c) Respondent's Submissions	20
d) The Appeal Panel's Decision Further to Completion of Its Judicial Review	24
3. Should the Appeal Panel Retain Jurisdiction or Return the Matter to the Safeguarding Panel?	29
4. Did the Respondent Consent to Jurisdiction and Retrospective Application of the UCCMS?	30
a) Respondent's Submissions	30
b) DSO's Submissions.....	31
c) Interested Party's Submissions	36
d) The Appeal Panel's Decision on Whether the UCCMS and the OSIC's Abuse-Free Sport Program Apply to the Respondent.....	37
5. Does the Myles Decision Affect the Appeal Panel's Short Decision Dated March 23, 2026?	39
a) DSO's Submissions.....	40
b) Interested Party's Submissions	40
c) Respondent's Submissions	41
d) The Appeal Panel's Decision on the Applicability of the Myles Decision	42
III) ORDER	44

I) BACKGROUND

1. This matter involves an appeal by the Director of Sanctions and Outcomes (the “DSO”), which arose from the decision of a Safeguarding Panel constituted under the auspices of the Safeguarding Tribunal, a division of the Sport Dispute Resolution Centre of Canada (the “SDRCC”), in the matter number ST 24-0037 issued on June 19, 2025 (the “ST Decision”).
2. The ST Decision set aside the DSO’s Report on Violations and Sanctions (the “DSO Decision”) against the Respondent. The Safeguarding Panel did so on the basis that the Respondent did not expressly consent to be bound retrospectively to the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the “UCCMS”). Further, the Safeguarding Panel found that that errors of law occurred under Subsection 8.7(a) of the 2023 Canadian Sport Dispute Resolution Code (the “2023 Code” or “the Code”) because the DSO erred in “*misinterpreting or misapplying the UCCMS or Abuse-Free Sport policies in concluding that OSIC had jurisdiction to investigate allegations against the Respondent*” and that he was bound retrospectively to the UCCMS.
3. As the foundational document to the then Office of the Sport Integrity Commissioner (“OSIC”)¹ and the Abuse-Free Sport Program (and now to Sport Integrity Canada’s Canadian Safe Sport Program), the UCCMS sets out and defines prohibited behaviours and prescribes sanctions deriving from such prohibited behaviours when they are established. In accordance with Abuse-Free Sport policies, further to an investigation report being issued to the OSIC, the DSO proceeds with issuing a decision, which is subject to challenge, to the Safeguarding Tribunal. Here, the Respondent successfully challenged the DSO Decision before the Safeguarding Panel.
4. The DSO then appealed the ST Decision to the Safeguarding Appeal Tribunal (“SAT” or the “Appeal Panel”) pursuant to Article 9 of the 2023 Code on a question of law.
5. The DSO’s July 17, 2025, Notice of Appeal sets out the following requests for relief:

The Appeal Tribunal should set aside the decision of the Arbitrator on the preliminary issue of UCCMS applicability to [the Respondent]’s conduct, find that [the Respondent] consented to the retroactive application of the UCCMS and therefore his conduct fell within the jurisdiction of Abuse-Free Sport, and reinstate the findings of violation of the UCCMS and corresponding sanction against [the Respondent] which are reasonable, consistent with the UCCMS and objectives of Abuse-Free Sport, and are fair, balanced and proportionate to the factual findings made by the independent investigator.

¹ The operation and administration of the UCCMS has since April 2025 moved from the OSIC to Sport Integrity Canada by virtue of the Canadian Safe Sport Program.

In the alternative, the Appeal Tribunal should set aside the decision of the Arbitrator as a result of the errors above, and either remit the matter to the Safeguarding Tribunal or, consider the issue of the UCCMS' applicability and Abuse-Free Sport jurisdiction over [the Respondent]'s conduct.

6. The Appeal Panel was then formed pursuant to Section 9.7 of the Code, with Janie Soublière and Peter Lawless as party-appointed arbitrators, and the chair, Aaron Ogletree, appointed on agreement by the party-appointed arbitrators.
7. On September 28, 2025, further to a challenge raised by the Respondent, the Appeal Panel issued a first short decision finding that it had jurisdiction to hear this appeal.
8. On December 24, 2025, in response to one of the DSO's requests for relief, the Appeal Panel issued another short decision on the question of whether the ST Decision could withstand judicial review, finding that the ST Decision was not reasonable. The Appeal Panel ordered the ST Decision be set aside because of errors of law therein that were not defensible on a view of the facts.
9. Consequently, the Appeal Panel invited the parties to make submissions:
 - a. On the issue of the UCCMS's applicability and Abuse-Free Sport's jurisdiction over the Respondent's alleged conduct (per the DSO's requests for relief).
 - b. On whether the DSO's findings of violations of the UCCMS and corresponding sanctions imposed on the Respondent should be reinstated pending the outcome of the Appeal Panel decision on UCCMS applicability, and/or (in the event that applicability is determined) once/if the matter is remitted back to the Appeal Panel for a judicial review of the DSO's determination on violation and imposition of corresponding sanctions.
10. On January 6, 2026, the Appeal Panel first informed the parties that it would not reinstate the Respondent's sanction pending its ruling.
11. On January 15, 2026, the parties agreed upon a procedural calendar for these additional submissions.
12. The Appeal Panel issued a short decision on issue 'a.' above on March 23, 2026, finding that Abuse-Free Sport did not have jurisdiction over the Respondent at the time of the investigation. As a result, the DSO Decision was set aside.
13. On March 31, 2026, the DSO advised the SDRCC Dispute Resolution Secretariat of the issuance of a decision of the Ontario Superior Court in *Myles v The Sport Dispute Resolution Centre of Canada*, 2026 ONSC 1729 (the "*Myles Decision*") and requested the opportunity to file limited submissions on this recent

jurisprudence. On April 1, 2026, the Respondent objected to the filing of additional submissions. The SDRCC elected not to inform the Interested Party immediately of this request for trauma-informed reasons. The Appeal Panel later invited all the parties to file submissions on the relevance and/or impact of the *Myles* Decision on this appeal.

14. On April 29, 2026, after consideration of the parties' additional submissions on the impact of the *Myles* Decision, the Appeal Panel confirmed its short decision rendered on March 23, 2026.

II) ISSUES BEFORE THE APPEAL PANEL

15. The issues before the Appeal Panel are:
 1. Does the Appeal Panel have jurisdiction to hear the appeal pursuant to Article 9 of the 2023 Code?
 2. Does the Safeguarding Tribunal Decision withstand judicial review?
 3. Should the Appeal Panel retain jurisdiction in this matter or return it to the Safeguarding Tribunal?
 4. Did the Respondent consent to Abuse-Free Sport's jurisdiction and to the retrospective application of the UCCMS?
 5. Does the *Myles* Decision affect the Appeal Panel's short decision of March 23, 2026?
16. The parties' fulsome submissions on each issue were wholly and carefully considered by the Appeal Panel. For the sake of expediency, the parties' submissions strictly material to each issue are summarised below in the order they were tendered, with additional elements included where relevant to frame the Appeal Panel's legal reasoning.
 1. **Does the Appeal Panel Have Jurisdiction to Hear the Appeal Pursuant to Article 9 of the 2023 Code? (the 'Preliminary Issue')**
17. Four days after the DSO filed its Notice of Appeal, the Respondent sent a formal objection to the appeal, submitting that it was not receivable by the Appeal Panel, relying on Section 9.5 of the 2023 Code which states that a Safeguarding Panel decision is appealable only "as it pertains to a sanction". This preliminary challenge on jurisdiction (the 'Preliminary Issue') was thus heard prior to addressing the DSO's grounds for Appeal
18. The parties' submissions on the Preliminary Issue can be summarized as follows.

a) Respondent's Submissions

The DSO's Appeal Is Invalid Under the 2023 Code

19. The Respondent submits that the 2023 Code is applicable to this matter. The 2025 Canadian Sport Dispute Resolution Code (the "2025 Code") provides greater clarity on the mandate of the Appeal Panel, which is to hear appeals only regarding the appropriateness of an imposed sanction. It modified the previous wording of "pertaining to sanctions" to read "only as it pertains to a sanction". The 2025 modification clarifies the intent that only the appropriateness of a sanction is appealable. Further, both the 2023 Code and the 2025 Code state in no uncertain terms that a Safeguarding Panel's decision on a violation shall be final and binding and shall not be appealable to the Appeal Tribunal.
20. The wording within the 2025 Code that an appeal is receivable "only as it pertains to a sanction", combined with the wording in the 2023 and 2025 versions of the Code that decisions on violations are final and binding and not appealable to the Appeal Tribunal, reflects the ongoing intent that appeals only be filed/heard with respect to the appropriateness of a sanction. The language is clear. The Appeal Tribunal has limited jurisdiction and cannot go beyond the "sanction only" provision of the appeal mechanism.

The ST Decision Is Not Appealable

21. The ST Decision concerned the issue of a violation. There can be no violation if the UCCMS was inapplicable to the Respondent's alleged conduct. The Safeguarding Panel ruled that the OSIC lacked jurisdiction from the outset. The Safeguarding Panel found that the Respondent could not be held to have violated the UCCMS for conduct alleged to have occurred before the UCCMS existed and before any consent was given to be bound by it retroactively. It had no retroactive application. This constitutes a fundamental jurisdictional issue, not a dispute over sanctions.
22. Since the DSO Decision was nullified because the Safeguarding Panel found that the OSIC lacked jurisdiction over the allegations, the DSO's findings on violation and the sanctions imposed as a result were voided. Without jurisdiction, there is no sanction, and therefore, the voiding of proceedings cannot be challenged in this Appeal.
23. The language in the 2023 Code is clear, and the updated 2025 Code reflects the intention behind it. The Appeal Tribunal lacks jurisdiction to hear the DSO's Appeal under the 2023 Code because the subject matter of the Appeal does not pertain exclusively to an appeal of a sanction. The Appeal Panel cannot ignore the

SDRCC's intention and the wording in the updated 2025 Code, which states that an appeal can be lodged only as it pertains to a sanction.

Retroactivity of the UCCMS

24. The issue before the Safeguarding Panel was the validity of the violation itself. Therefore, the jurisdiction to bring the complaint forward is beyond the scope of the Appeal Panel's mandate for appeals under the Abuse-Free Sport Program.
25. The Appeal Panel's mandate is to assess the appropriateness of sanctions on appeal. It is not to re-litigate findings of violation or, as in this case, the determination that no violation occurred. Nothing in the 2023 and 2025 versions of the Code supports the DSO's proposed overbroad interpretation of the Appeal Panel's power to review Safeguarding Panel decisions. Any reasonable reader of the 2023 or 2025 versions of the Code would understand that no avenue of appeal exists for a retroactivity finding.
26. Allowing the DSO such appeal rights would also be inequitable because of the nature of the proceedings in these matters. Further, allowing appeals of jurisdictional issues and/or contractual interpretation under the pretext that they have a connection to a sanction is to interpret the Code in a manner that is inconsistent with its plain language. The result would be a two-tiered system in which athletes, coaches, and other participants view it as prohibited to appeal jurisdictional/interlocutory decisions, while the DSO alone is granted that privilege.
27. Since the underlying violation is set aside for lack of jurisdiction, there is no valid sanction to appeal. In this case, the entire premise of the OSIC's action was found to lack legal foundation. The ruling is that the entire complaint was not receivable from the outset. The Appeal Panel holds no jurisdiction to interfere with the finality of that ruling.

The Safeguarding Panel's Ruling on the Consent Form

28. The Safeguarding Panel made a finding of fact that neither the Respondent's signature on the 2023 Consent Form (or "2023 Consent" herein) nor the Respondent's signature on the updated consent form (the "2024 Consent Form" or "2024 Consent" herein), executed well after proceedings had commenced, could constitute valid consent to be bound by the UCCMS retroactively. It weighed the surrounding circumstances, objections and documentary evidence. That finding clearly does not "pertain to" a sanction. An appeal "pertaining to sanction" cannot be interpreted to apply to a factual finding that consent was invalid.
29. If the Appeal Panel follows the decision in *Director of Sanctions and Outcomes v. Respondent*, 2024 CASDRC 53 (SAT 24-0002) that the interpretation of the retroactive applicability of the UCCMS is appealable under the existing framework,

the appeal will be specifically limited to that issue alone and not include a review of the Safeguarding Panel's factual findings regarding the 2024 Consent Form. It is a strict question of fact based on the evidence presented to the Arbitrator. Allowing an appeal of the Safeguarding Panel's determination on this issue would be to stretch the appeal rights under Article 9 of the 2023 Code beyond the most generous interpretation.

Relief Requested

30. The Respondent requests for this Appeal Panel to dismiss the DSO's appeal, as it is not receivable under Article 9 of the 2023 Code. Additionally, the DSO's Appeal with respect to the Safeguarding Panel's finding regarding invalid consent is a finding of fact which does not pertain to a sanction and is not appealable under Article 9 of the 2023 Code.

b) DSO's Submissions

Jurisdiction

31. The DSO submits that the Appeal Panel has jurisdiction to hear the entirety of this Appeal. Section 9.5 of the 2023 Code allows the DSO to appeal the ST Decision "only as it pertains to a sanction." Here, the appeal pertains to a sanction. Specifically, the ST Decision had the effect of setting aside the sanction imposed upon the Respondent. The Respondent's interpretation of the 2023 Code is unduly narrow, contrary to the language of the Code, and inconsistent with prior decisions of the Appeal Tribunal. Contrary to the Respondent's position aimed at limiting the scope of the appeal, Subsection 9.8(b) of the 2023 Code provides that an appeal shall take the form of a judicial review, on a standard of reasonableness. There is no basis or authority that limits the Appeal Panel's scope of review to only a question of law or that precludes a question of fact from being subject to review, including when the issues on appeal include the Safeguarding Panel's basis for relying on those facts.

The Appeal Tribunal's Jurisdiction Is Already Established

32. The Appeal Tribunal has addressed this nearly identical issue in SDRCC SAT 24-0001 (a decision subject to non-publication order under the 2023 Code) and SDRCC SAT 24-0002, finding that the Appeal Tribunal has jurisdiction on appeals which "relate to" or are "applicable to" sanction, which is acknowledged by the Respondent. In SAT 24-0001, that Appeal Tribunal panel found that the usage of the word "pertains", which is defined as "related to" or "applicable to", lent itself to an interpretation of the Code which included an instance where an error of law, had it not been committed, would have led to a different view on sanctions. In SAT 24-0002, that Appeal Tribunal panel concurred with the decision in SAT 24-0001, and

held that, in an instance where the applicability of the UCCMS to the conduct of a participant was the subject of the appeal, *“Such an appeal must be within the words of the Code: ‘pertains to a sanction’”* and that *“the addition of the word ‘pertains’ indicates a wider scope than merely the types of sanctions found in Section 7 [of the UCCMS].”* (SDRCC SAT 24-0002, at para. 29).

33. The Respondent attempts to distinguish the SAT 24-0001 and SAT 24-0002 decisions, and to provide a unique interpretation of the Code based on amendments to the Code which came into effect on April 1, 2025 (the “2025 Code”). The Respondent’s position contains fatal errors. First, and as acknowledged by the Respondent, the 2025 Code is explicit in that it does not apply to complaints filed with the OSIC prior to February 1, 2025. The present complaint was filed with the OSIC in October 2023. This itself is determinative. Second, at paragraph 8 of his submissions, the Respondent indicates that it is “clear” that the updates to the Code serve to clarify the intent of the drafters that only the appropriateness of a sanction is appealable. This ignores the fact that on April 1, 2025, the Abuse-Free Sport program was wound down, giving way to the Canadian Safe Sport Program (the ‘CSSP’) and moved from the OSIC to the Canadian Centre for Ethics in Sport (the “CCES” now Sport Integrity Canada), which operates and administers different policies and procedures. This position is entirely contrary to the SDRCC’s own press release dated April 3, 2025, regarding amendments made to the previous version of the Code. Finally, the Respondent points to an inconsequential amendment of Section 9.1 of the 2023 Code in the 2025 Code, wherein the words “pertaining to sanctions” were amended to only “as it pertains to a sanction” under the CSSP.
34. The Respondent’s submissions ignore the stated intent of the changes to the 2025 Code, omit relevant and consequential language in both the 2023 and 2025 Codes, and attempt to create a distinction where there is none through selective inclusions in his submissions. The Respondent’s submission that updates to the Code in 2025 should alter the Appeal Panel’s analysis on jurisdiction must be rejected. The Appeal Tribunal’s previous decisions are correct and should be confirmed in this present instance.

The Appeal Issues Pertain to a Sanction

35. Other than clarifying that provisional measures do not constitute a sanction, Section 9.5 of the 2023 Code does not delineate the specific types of issues pertaining to a sanction that can be raised on appeal. Here, the DSO is challenging the ST Decision with respect to the validity of the Respondent’s consent to be bound by the UCCMS, and corresponding errors of law and fact that are argued to have been made by the Safeguarding Panel. In the DSO Decision dated October 2, 2024, the DSO found that the Respondent had violated the UCCMS with respect

to conduct occurring prior to the publication of the UCCMS. The ST Decision related to, and was applicable to, the sanctions imposed upon the Respondent in the DSO Decision. Should the appeal be admissible, each of the issues on appeal would directly impact and pertain to the sanctions imposed upon the Respondent, given that the issues in question were the direct cause for the sanctions being set aside.

36. In setting aside the sanctions the DSO imposed on the Respondent, the Safeguarding Panel held that the Respondent had “no choice but to sign” the Consent Forms binding him retrospectively to the UCCMS, and thus that his agreement to do so was invalid. The DSO submits that in making this determination which pertains to the sanction she imposed, the Safeguarding Panel:
- i. made an error by misapplying the applicable principles of law with respect to the enforceability of contracts, consent as it applies to a contract, and duress;
 - ii. erred by acting on a view of the facts which were not in evidence, and could not be reasonably entertained; and
 - iii. failed to provide sufficient reasons or explanation for its decision. Each of the named errors pertains to sanction, as each of the errors led to the Safeguarding Panel setting aside the sanction imposed upon the Respondent.
37. Article 9 of the 2023 Code contemplates that the DSO or an Interested Party are able to appeal such errors to the Appeal Tribunal. A review of the reasonableness of a decision encompasses both factual and legal constraints.
38. A review of the ST Decision is necessary, as it had broad implications on the Abuse-Free Sport program and its successors in administering safe sport complaints, and ultimately in imposing sanctions.

c) Interested Party's Submissions

39. The Interested Party does not dispute that the 2023 Code applies and not the 2025 Code, but she disputes the Respondent’s interpretation of the 2023 Code. The improved clarity of the wording in the 2025 Code regarding the appropriateness of an imposed sanction has made the issue indisputable, but that does not mean the previous wording “as it pertains to the sanction” does not imply the same thing. The procedure before the Safeguarding Panel pertained to the sanctions imposed on the Respondent, just as the DSO’s appeal pertains to the sanction in an attempt to reinstate it. To argue otherwise is inaccurate. The lifting of a sanction pertains to the sanction itself.

40. The scope of panel review is governed by Subsection 6.11(a) of the 2023 Code. It provides that the panel can review the facts of the previous decision and use the facts and evidence not reviewed by the previous arbitrator to correctly apply the law and put the sanction back in place. The Respondent argues that “*an award of the Safeguarding panel shall be final and binding and not appealable to the appeal Tribunal*”, but that should not apply when an arbitrator overturns a sanction based on insufficient and inaccurate evidence. The appeal should therefore be heard by the Appeal Panel because it pertains to a sanction.
41. The Interested Party also submits *inter alia* that:
- The Safeguarding Panel deemed the Consent Form invalid based on a false claim.
 - The Appeal Panel should see deficiency in the Respondent’s arguments and apply natural justice to this case, and relies on *Crevier v. Quebec (A.G.)*, [1981] 2 S.C.R. 220 to this end.
 - The Respondent was bound by his National Sport Organization (NSO) and International Federation Codes of Ethics in 2012 and is now bound by the UCCMS because its purpose is to retroactively protect the Canadian sporting community.
 - The SDRCC failed to exercise its jurisdiction in the previous appeal.
 - The ST Decision to lift the ban is not only unreasonable and illogical, but there is substantial evidence proving it was inaccurate, which must be heard and reviewed by the Appeal Panel.

d) The Appeal Panel’s Decision on the Preliminary Issue

42. The Appeal Panel need not provide lengthy reasoning for its finding on this point. It appreciates the parties’ respective positions summarized in detail above. In essence, to the Respondent, the appeal does not “pertain to a sanction” as no sanction was effectively imposed by the Safeguarding Panel. To the DSO, the ST Decision effectively vacated the DSO’s finding on violation and sanction and therefore directly pertains to a sanction; the latter position is supported by the Interested Party.
43. The Appeal Panel agrees with the DSO and Interested Party. Firstly, this appeal certainly pertains to a sanction as it arises out of the ST Decision whose effect was to lift the findings of violations and corresponding sanctions imposed by the DSO.
44. Secondly, it has already been settled by SDRCC Appeal Tribunal jurisprudence that where no sanction is imposed in the first instance as a result of a Safeguarding Panel vacating a sanction on jurisdictional grounds, an appeal still pertains to the

sanctions initially imposed by the DSO and is admissible before the Appeal Tribunal pursuant to Section 9.5 of the Code.

45. Finally, the corresponding provision in the 2025 Code remains substantively unchanged relative to its 2023 version. That no changes to this provision were deemed necessary in the drafting of the 2025 Code further supports Appeal Tribunal jurisprudence and this Appeal Panel's finding. There are no changes to the Code or its corresponding French version that led to the legislative interpretation the Respondent seeks. In any event, the 2023 version applies here.
46. Therefore, the Respondent's challenge of the Appeal Tribunal's jurisdiction on the Preliminary Issue is dismissed. The appeal is admissible before the Appeal Tribunal.

2. Does the ST Decision Withstand Judicial Review?

47. The Panel recalls that in her Notice of Appeal, the DSO submits that:
 - a) The (Safeguarding) Tribunal made errors of both fact and law in finding that the Respondent did not expressly consent to be bound retroactively to the UCCMS and that as such, the OSIC did not have jurisdiction to investigate the Complaint.
 - b) Specifically, the DSO raises the following grounds of appeal:
 - i. The Tribunal made an error by acting on a view of the facts which were not in evidence, and which could not be reasonably entertained; and
 - ii. The Tribunal made an error by misapplying and failing to outline or address the applicable principles of law with respect to the enforceability of contracts, consent as it applies to a contract, and duress.
48. Further to dismissing the Respondent's jurisdictional challenge, the Appeal Panel now turns its attention to conducting a judicial review of the ST Decision to determine if it should be set aside on the basis of "unreasonableness".
49. The following is a summary of the parties' submissions on the grounds of appeal raised by the DSO relating to whether or not the ST Decision should be deemed to be "unreasonable".

a) DSO's Submissions

The Safeguarding Panel Misapprehension of Evidence and Lack of Internal Coherence

50. The DSO submits that the ST Decision is unreasonable and should be set aside. The Safeguarding Panel made unsupported findings which demonstrate its misapprehension of the evidence before it. The Safeguarding Panel also appears to have accepted as fact irreconcilable propositions, making it impossible to

understand the Safeguarding Panel’s reasoning with respect to the timing of critical events, or otherwise revealing an internal incoherence in the ST Decision. The ST Decision states at paragraph 46 that *“Counsel submits, and I accept, that one week after receiving the email, the [Respondent] was travelling and commencing competitions”*. The ST Decision goes on to consider the fact that the Respondent *“was in, or approaching, a competition in which he would not have been permitted to participate in [sic] had he not signed”* the 2024 Consent Form.

51. First, the Safeguarding Panel erred in accepting this submission as fact without any evidence to support it. The Respondent’s submissions did not include dates, locations, the nature of the competitions, or any details whatsoever about the competitions for which the Respondent was purportedly traveling.
52. Second, the Safeguarding Panel’s acceptance of this assertion caused it to draw two irreconcilable conclusions: (1) the Respondent was travelling to compete either one week after the Respondent received the June 3, 2024, email, or (2) one week after the Respondent signed the 2024 Consent on July 1, 2024. The ST Decision does not reconcile these incompatible timeframes.
53. The Safeguarding Panel made a further error as it pertains to the timeline of events. The Safeguarding Panel held that the Respondent’s consent was not free because he felt pressured to sign the 2024 Consent in light of his upcoming competitions. However, the Safeguarding Panel came to this conclusion on the basis of assertions unsupported by any evidence, and by accepting irreconcilable propositions. Furthermore, because the ST Decision references timelines that cannot factually coexist, it is not possible to discern what the Safeguarding Panel’s precise conclusions were about the timing of the impending competitions, the receipt of the 2024 Consent, the signing of the 2024 Consent and the conclusion of the investigation, or the resulting determination that the Respondent did not freely sign the 2024 Consent. In this way, the ST Decision does not make it possible to understand the Safeguarding Panel’s understanding or reasoning with respect to the timing of these key events, or else it simply lacks the requisite internal coherence. The Safeguarding Panel misapprehended and failed to properly account for the evidence that was before it, which jeopardized the reasonableness of its decision.

The Reasons for the Decision are Not Justified in Light of the Legal Constraints

54. The ST Decision is not justified, in that it fails to set out the applicable legal principles regarding consent as it applies to the contract upon which the Safeguarding Panel relied to determine that the Respondent did not freely sign the 2024 Consent. The absence of appropriate legal analysis or sufficiently detailed reasons result in several unanswered questions as to how the Safeguarding Panel

ultimately reached its conclusion. Furthermore, a reasonable application of the relevant legal constraints could not lead to the Safeguarding Panel's conclusion that the 2024 Consent is invalid.

Failure to Properly Analyze the Issue of Duress

55. A critical finding in the ST Decision is that the Respondent had “*no choice but to sign*” the 2024 Consent. The ST Decision failed to set out the required analysis for the finding of duress and to articulate the principles behind the legal concept it was applying. A determination that a party was deprived of choice and therefore entered into an agreement under duress requires a consideration of whether:
- (1) the party protested at the time the contract was entered into;
 - (2) there was an effective alternative course open to the party;
 - (3) the party obtained, or was afforded the opportunity to obtain, independent legal advice;
 - (4) after entering into the agreement, the party took steps to avoid it; and
 - (5) the coercion exerted on the party was illegitimate.
56. Given the facts of this case, the application of these considerations is an involved analysis, and required sufficient discussion by the Safeguarding Panel, which did not occur. The Respondent disliking the choices before him does not mean he had none. There was no alleged pressure to sign the 2024 Consent. He was not required to sign the document “on-the-spot” without legal advice; he had ample opportunity (just under one month) to sign. The Respondent was also represented by capable counsel.
57. The Safeguarding Panel's finding that the 2024 Consent was not valid because the Respondent lacked choice is not among the range of reasonable outcomes that are defensible in light of the facts and law. Even if the Safeguarding Panel could have come to a different conclusion on duress than set out above, it had an obligation to undertake such analysis and articulate its conclusion such that its Decision could be justified, intelligible and transparent to the parties. The ST Decision does not hint at the legal analysis or decision-making process being undertaken; the parties cannot be sure what the Safeguarding Panel considered to be the relevant legal test, or how it applied to the facts before it. The ST Decision ultimately comprises of a summary of the facts (some misapprehended), an overview of the Respondent's arguments, and a conclusion that the Respondent's arguments should succeed, without any supporting analysis to that end.

The Safeguarding Panel Conflated the Issues of Investigation and Sanction

58. After determining that the Respondent had not freely consented to the 2024 Consent, the Safeguarding Panel concluded that the DSO erred in law by *“misinterpreting or misapplying the UCCMS or Abuse-Free Sport policies in concluding that the OSIC had jurisdiction to investigate allegations against the [Respondent].”* This conclusion is troubling for several reasons. The DSO did not assess whether the OSIC had jurisdiction to investigate allegations against the Respondent. This assessment is conducted by the OSIC pursuant to the OSIC Guidelines Regarding Initial Review and Preliminary Assessment of Complaints. Further, there is no basis for the Safeguarding Panel’s conclusion that the OSIC did not have jurisdiction to investigate allegations against the Respondent. The Respondent was a Participant pursuant to the UCCMS at the time of the complaints, due to the 2023 Consent.
59. The issue that was properly before the Safeguarding Panel was whether the DSO had jurisdiction to make findings on violation of the UCCMS, and if so, sanction the Respondent as a result of the factual findings of the investigation report, which concluded the conduct had occurred prior to the UCCMS coming into force. It is only at this juncture that the validity of the 2024 Consent should be considered. The Safeguarding Panel’s finding that the DSO erred in concluding that the OSIC had jurisdiction to investigate allegations against the Respondent concerned a question that was not properly before it and demonstrates a lack of grappling with the issues before it.

The 2024 Consent Provides for Retrospective Application of the UCCMS

60. The Safeguarding Panel held that Participants can only be bound by the UCCMS, including its retrospective application, through their express agreement. It went on to find that the Respondent had not freely consented to be bound by the UCCMS via the 2024 Consent, as discussed above. In light of its preclusive determination that the 2024 Consent was not valid, the Safeguarding Panel specifically declined to decide whether the UCCMS applied to the Respondent’s historical conduct, which is an error.
61. The 2024 Consent contains the following language with respect how Abuse-Free Sport holds jurisdiction over historical conduct (the “Prior Conduct” clause):
1. What am I consenting to and how long is my consent in effect?
[...] You agree that events which occurred prior to the implementation of the UCCMS, or prior to the signing of an Abuse-Free Sport Participant Consent Form, may also fall within the jurisdiction of the Agents if such events fall within the scope of the UCCMS and the applicable Policies and Procedures. Pursuant to the UCCMS and the relevant Policies and Procedures, in determining whether or not such past events fall within the jurisdiction of

Abuse-Free Sport, relevant Agents shall make their determination taking into consideration the following factors:

- (i) relevant rules, norms and policies, including without limitation, social and legal norms, in effect at the time of the alleged event(s);
- (ii) the severity of the allegations;
- (iii) the facts and circumstances of the matter;
- (iv) the safety and wellbeing of participants and the sport community;
- (v) the potential risks and prejudice from action and inaction, with safety being paramount;
- (vi) the ability to identify potential parties and witnesses and to obtain sufficient evidence; and/or
- (vii) the best interest of sport and those who participate in it, including the views of the person(s) directly impacted, when feasible.

62. The above provision plainly states that it is open to the OSIC and DSO to determine, in consideration of the seven factors set out, that Prior Conduct of Participants shall be subject to the application of the UCCMS. On the face of this provision, it is a clear eventuality of this mechanism that the Respondent was subject to having his Prior Conduct assessed for contravention of the UCCMS, and possibly sanctioned. The Prior Conduct clause applies the UCCMS retrospectively - the DSO Decision did not deem the Respondent to have always been liable to a sanction since the time of the alleged conduct (retroactive); rather, the decision applied the UCCMS to impose future or prospective effects for past conduct (retrospective). The 2024 Consent Form is a contract and not a piece of legislation. Therefore, any presumption against retrospectivity that may arise from principles of statutory interpretation do not apply. Participants are free to exercise their contractual freedom to retrospectively bind themselves to the UCCMS via the Prior Conduct clause. Even if a presumption against retrospectivity could apply to the 2024 Consent, the DSO submits that the presumption would be rebutted because the 2024 Consent and the UCCMS are designed to protect the public. Had the Safeguarding Panel not made errors with respect to reliance on facts that were not based in evidence, and if it had properly considered the issues of consent and duress, it would have necessarily needed to grapple with the principles articulated above to reach a conclusion.

The Decision to Investigate Belongs to the OSIC, Not the DSO

63. It was unreasonable for the Safeguarding Panel to conclude that the DSO erred *“by misinterpreting or misapplying the UCCMS or Abuse-Free Sport policies in concluding that OSIC had jurisdiction to investigate allegations against [Respondent].”* The Safeguarding Panel did not conduct any analysis of the 2023 Consent, which was the operative Consent Form at the time of the OSIC’s

November 2023 decision that it had jurisdiction to investigate the underlying complaints. The ST Decision makes no mention of any relevant OSIC policies pertaining to the investigation of complaints, despite concluding that the DSO erred by misinterpreting or misapplying those very policies, and although the DSO was not the party initiating the investigation. The Safeguarding Panel did not consider that the Respondent was a Participant at the time the complaints were made and the investigation was initiated. The Safeguarding Panel's findings on the Consent Forms were limited to an incorrect conclusion that the 2024 Consent Form was not valid. This is separate and apart from the 2023 Consent Form which was operative in November 2023, which subjected the Respondent to the OSIC's investigation.

The ST Decision Is Unreasonable

64. The robust reasonableness framework set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 ("*Vavilov*"), demands that a given decision be justified by the decision-maker himself. Absent a sufficient factual and legal foundation, there is nothing left of the ST Decision to withstand scrutiny. The Safeguarding Panel's entire role as adjudicator is to make findings of fact based on the evidence before it and properly apply the applicable legal principles. Having failed to demonstrate to the parties that it has done either, the ST Decision cannot stand.

The Safeguarding Panel Made Findings Unsupported by the Evidence or Any Reasonable Inference

65. The Respondent contends that a June 3, 2024 email, which was an email from the National Sport Organization to all Participants requesting to complete the updated consent form, a single line in the Respondent's reply submissions to the Safeguarding Panel, which was unsupported by evidence, and the Safeguarding Panel's previous experience as a member of a sporting tribunal, constituted a sufficient basis for the Safeguarding Panel to conclude that the Respondent was facing imminent competitions. This is an insufficient evidentiary basis for the Safeguarding Panel to make the key factual findings underpinning its ultimate conclusion that the 2024 Consent was signed involuntarily.
66. The Respondent says that it was reasonable for the Safeguarding Panel to have inferred that an athlete who is told to "sign now or miss competitions" faces an imminent schedule, even in the absence of specific competition dates and times. There are several issues with such assertion:
- i. the June 3, 2024, email did not implore recipients to "sign now", or employ language to any similar effect; in fact, there was no deadline imposed at all;

- ii. the email was sent to so many recipients that the list of the recipients' emails alone takes over a page. It was not solely sent to the Respondent or even just athletes; and
 - iii. the Respondent did not "sign now" - he signed nearly a month later.
67. In fact, the idea that the Safeguarding Panel took into account "preparation time" in concluding that there were competitions imminent is directly contradicted by its written reasons, which explicitly state that the Respondent would not have been able to "attend the competitions in which he was scheduled to compete in the following week." The Safeguarding Panel accepted the Respondent's direct representation with respect to the circumstances surrounding his signing of the 2024 Consent, which were not founded in evidence. Even if the Safeguarding Panel had made an inference, it must have been a reasonable one, transparent and discernable to the parties.

The Safeguarding Panel Misapprehended the Evidence Concerning the Competition Schedule

68. The ST Decision articulates two factors it considered in finding that the 2024 Consent was invalid:
- i. *"[the Respondent] was in, or approaching a competition in which he would not have been permitted to participate in had he not signed";* and
 - ii. *"he had repeatedly maintained his objection to OSIC's jurisdiction over this complaint."* (para. 52)
69. Despite the Safeguarding Panel's failure to explain how these factors bore on its determination, the Respondent's suggestion that the upcoming competition schedule was only a minimal consideration misconstrues the Safeguarding Panel's reasons.

The Safeguarding Panel Relied on the Incorrect Timeline of Events

70. The Respondent submits that the Safeguarding Panel did not make any finding as to the timeline of events with respect to the close of the investigation and the release of the DSO Decision, and that the ST Decision only summarized the Respondent's position in this respect. However, in repeating the Respondent's position, failing to correct it, and proceeding to make its findings, the Safeguarding Panel can only be understood to have relied on this inaccuracy.

The Reasons are Insufficient and Fail to Justify the Safeguarding Panel's Legal Conclusions

71. The failure to furnish any legal basis for a finding of contractual invalidity is more than a failure to observe formality. The Respondent's submissions appear to

recognize the absence of legal analysis on the finding of duress vitiating consent, and impermissibly seek to bolster or buttress the reasons of the ST Decision under review with his own analysis and application of the law of voluntariness. The Court in *Vavilov* cautioned reviewing decision-makers against undertaking such analysis, which would allow decision-makers below to abdicate their duty to justify their decisions. While there are many things the Safeguarding Panel might have said to try and justify its decision, the reality is that it did not provide that necessary justification. Reasonableness does not focus on the outcome alone, but also the rationale for the decision, which is missing in the Safeguarding Panel's stated reasons. *Vavilov* calls for a reasons first approach, not speculation as to what might have been in the mind of the decision-maker below when they arrived at their conclusion. The ST Decision is unreasonable for its failure to provide any legal foundation whatsoever for the finding of involuntariness. Moreover, a proper application of the law of voluntariness and duress would not have resulted in the invalidation of the 2024 Consent, as set out in the DSO's submissions.

72. The Respondent conducted his own duress analysis in place of what ought to have been done by the Safeguarding Panel. He relies on the test set out in *Song Woon Enterprises Ltd. v. 762138 B.C. Ltd.*, 2014 BCSC 967 ("*Song Woon*"), but discusses only four of the five conjunctive factors to the test, omitting the requirement that there be coercion of the will of the contracting party and that the pressure must be exercised in an unfair, excessive or coercive manner. This is a factor the Respondent cannot, and did not try to meet. Further, if being in a state of preparation for future competition constitutes illegitimate pressure or coercion, any contract or waiver entered into by an athlete, coach, referee, or athletic support staff at a National Sport Organization would be invalidated.

Procedure

73. The Appeal Panel requested brief submissions on the appropriate next step should it find that the Safeguarding Panel erred. Subsection 9.8(b) of the Code provides that an appeal shall take the form of a judicial review, and pursuant to Subsection 9.11(b) of the Code, the Appeal Panel shall have the ability to increase, decrease, or remove a sanction. Given the Appeal Panel's preliminary conclusion that this appeal "pertains to a sanction", and the broad jurisdiction afforded to the Appeal Tribunal, the DSO submits that the Appeal Panel should continue with the determination of the remaining grounds of challenge of the Respondent.
74. Section 5.7 of the Code further provides that proceedings should be conducted in a manner that avoids delay and is fair, speedy, and cost-effective. In the absence of any rules to the contrary, the Code also affords the Appeal Panel to establish its own procedures. The most expedient, cost-effective, and just manner to continue these proceedings would be before the Appeal Panel. In the alternative, should the

Appeal Panel choose to remit the matter to the Safeguarding Tribunal, it should instruct that a new arbitrator be appointed, rather than remit the matter to the Safeguarding Panel who decided the ST Decision, SDRCC ST 24-0037. Given the errors noted above, the DSO is concerned that the first instance Safeguarding Panel may not be in a position to render a decision that is not subject to a predetermined view of the facts.

b) Interested Party's Submissions

75. The Interested Party submits that the Respondent has not been an exemplary member of his relevant NSO because he violated interim measures at an international event in 2024 and refused to fully sign and accept responsibility for the 2024 Consent Form required of the relevant NSO members in July 2024.
76. Further, indicating that the Respondent had caused no harm since his sanction was lifted, while an appeal of the DSO Decision was underway, is by no means a sign that he poses no long-term risk to the sporting community. The sanction applies to competing, coaching, and being present at International Federation events where survivors are present. This is the main reason the sanction should be reinstated, because the initial ST Decision to lift it has now been found to be unreasonable.

c) Respondent's Submissions

77. The Respondent submits that the Safeguarding Panel acted on the facts in evidence, together with a reasonable inference, and rendered a reasonable decision. The evidence supported the Safeguarding Panel's finding, and the Safeguarding Panel is permitted to engage in reasonable inferences. The Safeguarding Panel's conclusion was firmly grounded in the documentary record. The direction that the Respondent received in the June 3, 2024, email was that he must sign the 2024 Consent Form or else be barred from attending events is in evidence and forms part of the documentary record. There is also no dispute that the 2024 Consent Form was presented in an online format that did not allow for alterations, additions, or exceptions, underscoring the inflexibility of the process and the limited choice available to the Respondent is a fact grounded in the evidence.
78. The Safeguarding Panel was entitled to infer, from the evidence and submissions before it, that the Respondent faced imminent repercussions if he did not execute the 2024 Consent Form. It was also entitled to conclude from the evidence before it, being the email itself directing a signature before a specific deadline, the objections by the Respondent to the OSIC's jurisdiction in the case which predated that email, and the accompanying letter from counsel saying that they maintained the jurisdictional challenge, that consent was not freely given. The

Safeguarding Panel did not uniquely rely upon the Respondent's travel and competition schedule.

79. The June 3, 2024 email, clearly part of the evidence, expressly directed the Respondent to sign the 2024 Consent Form and advised that, if he did not, he would be ineligible to participate in competitions. From this, and from counsel's submission, the Safeguarding Panel reasonably inferred that the Respondent faced imminent competitive obligations when he was directed to sign the form.
80. Tribunals operating in the sport context are entitled to draw inferences from the documentary evidence and their understanding of the competitive environment. The Safeguarding Panel's inference that the Respondent was under time pressure to sign was entirely consistent with the evidence and with the practical realities of the sport season. The Respondent was travelling and preparing for upcoming competitions, and it was not necessary to provide exact dates and times to substantiate that reality. The Safeguarding Panel's conclusion was one that could most definitely be "reasonably entertained."
81. Administrative decision makers are permitted, and expected, to draw inferences from context. It is reasonable for an arbitrator to infer that an actively-competing athlete told to "sign now or miss competitions", faced an imminent schedule. The DSO's suggestion that more proof was required to prove the next competition date, or the Respondent's schedule, sets the evidentiary burden unreasonably high for this kind of forum. It also does not come anywhere close to meeting the threshold required for appellate intervention, which is whether the decision maker came to a conclusion that cannot reasonably be entertained.
82. The Safeguarding Panel placed significant weight on the fact that the Respondent had consistently contested the OSIC's jurisdiction, including in a letter sent after signing the 2024 Consent Form. Although the Safeguarding Panel acknowledged references to upcoming travel and competitions, the foundation of its decision was the Respondent's consistent jurisdictional objection, a fact the DSO omits from its submissions.
83. The Safeguarding Panel's reasoning is clear and internally consistent. The salient point, which the Safeguarding Panel expressly accepted, is that the Respondent was already engaged in competition-related travel and activities during the period when the form had to be executed, and that the email said in bold that he would be barred from continuing if he did not sign. The finding that consent was not freely given, due to the nature and circumstances within which it was given, including the accompanying letter from counsel maintaining an ever-present objection to jurisdiction in this case, was open to the Safeguarding Panel on the evidence and is both logical and coherent. The Safeguarding Panel was clearly aware of this consideration when rendering the ST Decision. To ignore this reality while implying

that the decision was rendered solely because of the specter of imminent competition is to take an overly narrow view of the decision and its reasons.

84. Under the SDRCC appeal framework, and consistent with *Vavilov*, an appeal panel reviewing a tribunal's findings of fact or mixed fact and law applies a reasonableness standard. The question is whether the ST Decision is justified, transparent, and intelligible, and whether it falls within a range of acceptable outcomes defensible in light of the evidence and the applicable rules. The Safeguarding Panel's finding that the Respondent's consent was not freely given was justified, transparent, and intelligible, and must be upheld. The SDRCC has repeatedly held that factual inferences supported by the evidentiary record, even if not accompanied by an affidavit, are owed deference. The test is not whether the Safeguarding Panel could have asked for more evidence, but whether the inference was open to the Safeguarding Panel, and it clearly was.

The Outcome and Reasons for the ST Decision Are Justified

85. A review of the ruling clearly demonstrates that the Safeguarding Panel's reasoning is intelligible, justified, and sufficiently detailed. The Safeguarding Panel's task was to determine whether the Respondent freely consented to the Consent Form in the circumstances presented, and whether that 2024 Consent Form gave the OSIC/DSO jurisdiction over the complaint. The Safeguarding Panel conducted a thorough analysis of the contextual circumstances and concluded that the Respondent had no choice but to sign the form as presented, that signing under those circumstances did not constitute valid consent, and that he did not expressly consent to be bound retroactively by the UCCMS in this case. The decision also reflects that, through counsel's July 3rd e-mail to the OSIC, the Respondent expressly stated that he did not consent to any retroactive application of the UCCMS. All of the necessary considerations were clearly addressed by the Safeguarding Panel.
86. The Superior Court in *Song Woon*, explained that courts should examine the following four factors when determining whether a contract was entered into voluntarily:
- i. did the party protest;
 - ii. was an alternate course open to the party when it chose to enter the contract;
 - iii. did the party seek independent advice; and
 - iv. after entering into the contract, did the party take legal steps to avoid it?
87. The Safeguarding Panel addressed all of these factors. All elements regarding lack of consent were considered and included in the Safeguarding Panel's reasoning

process. The fact that the Safeguarding Panel did not use specific legal labels is merely peripheral.

88. These findings are logical and thoroughly supported by the evidence and the contextual circumstances. The DSO's appeal focuses mainly on the 2024 Consent Form. It is illogical to suggest that a form signed months after objections to the OSIC's jurisdiction in this case would retroactively expunge the Respondent's valid, legal position. The Safeguarding Panel relied on this logic, the June 3, 2024 email, which instructed the Respondent to sign or risk being barred from participating in upcoming competitions, as well as the Respondent's repeated objections to the OSIC/DSO jurisdiction and his follow-up correspondence sent within two days, emphasizing that any updated consent should not be construed as consenting to jurisdiction in this matter. Taken together, these factors demonstrate that the Respondent's consent was not freely given, which is the very concern that underlies the doctrine of duress, even if the Safeguarding Panel did not use that specific legal label.
89. The Safeguarding Panel's reasoning makes clear that the DSO's appeal argument was thoroughly addressed and properly dismissed at first instance. In the SDRCC context, the Safeguarding Panel is owed deference, and the reasonableness standard governs appellate review. The Safeguarding Panel's analysis is clearly justified, transparent, and intelligible, and falls well within a range of reasonable outcomes. The Safeguarding Panel's reasoning demonstrates careful consideration of the facts, the applicable principles regarding consent, and the practical realities of the sporting context. The appeal on this ground must be dismissed.

Response to Interested Party's Submissions

90. The Interested Party's submissions towards the Safeguarding Panel and the Respondent and his counsel are outside the proper scope of these proceedings, which are focused on the reasonableness of the Safeguarding Panel's ruling.

Procedure

91. If the Appeal Panel overturns the ST Decision, the matter should be remitted to a Safeguarding Tribunal panel for the determination of the remaining grounds of appeal. The DSO's suggestion that the Appeal Panel should continue with the determination of the remaining grounds of challenge is procedurally unfair. This would remove a layer of appellate intervention from a process structured to have three levels. Both the Respondent and the DSO should be entitled to an appellate-level intervention on the other grounds of appeal advanced and yet to be determined due to the bifurcated nature of this process. Avoiding delay and ensuring speediness and cost-effectiveness, as the DSO puts it, should not come

at the expense of due process. The Respondent's entire career is on the line. Courts have routinely determined that when an individual's career is at stake, the level of procedural safeguards to ensure that the process is fair must be very high, mirroring other contexts like criminal procedure.

92. Removing a level within this process simply in the name of speediness is an affront to the standard of procedural protections that the Respondent is entitled to. The Respondent had also challenged the sanction imposed by the DSO, which was an indefinite suspension. The Safeguarding Panel did not address that appeal ground, due to the bifurcated nature of the proceedings which is an important consideration in evaluating the fairness of the proceeding. Treating the remaining issues as though they were properly before the Appeal Panel would effectively collapse a two-level process into one, raising serious fairness concerns.

d) The Appeal Panel's Decision Further to Completion of Its Judicial Review

93. The Appeal Panel first acknowledges that the Respondent consistently denied the OSIC's jurisdiction from the outset, first formally objecting on October 31, 2023, prior to signing his first Consent Form. The Appeal Panel also notes that the OSIC maintained its stance on jurisdiction despite the Respondent's objections, which the Respondent argues were not sufficiently detailed in the DSO Decision. At this juncture of its decision, and before making a second and final jurisdictional determination in this matter per the DSO's requests for relief, namely whether the UCCMS applies to the Respondent, the Appeal Panel must first conduct a judicial review of the ST Decision, as also requested in the DSO's appeal, to either uphold the ST Decision as issued, or set it aside.

Did the Safeguarding Panel err by acting on a view of the facts which were not in evidence, and which could not be reasonably entertained?

94. The Appeal Panel finds that the evidence does not support the conclusion that the Respondent had no choice but to sign the relevant Consent Form. On the evidence, there was no immediate competition; the Respondent was not set to compete for three months. There is no mention of the same in the ST Decision. Had the DSO and Interested Party's evidence been fully considered, it would have become apparent that the allegation that the Respondent was competing imminently was incorrect and not defensible on the evidence. Thus, the facts accepted by the Safeguarding Panel to form the basis of its findings are inaccurate. Further, the ST Decision does not provide a sufficient legal analysis of how or why such a conclusion was reached, given that it does not even summarize or recognize the DSO's or Interested Party's submissions in this regard.

95. The alternative logic that the imminent competition was training for upcoming competition cannot be sustained. Athletes prepare for competition year-round. To conclude that a training phase equates to a competition phase and supports the finding of duress or coercion is an illogical conclusion.
96. The Appeal Panel also finds that the Safeguarding Panel erred in arriving at its finding that the factual circumstances surrounding the Respondent's execution of the second Consent Form on July 1, 2024, resulted in his consent not being freely given. For the Safeguarding Panel to base its reasons on the fact that the signing of the consent was "not freely given" due to imminent competitions amounts to a reviewable error.
97. While it is uncontested that the Respondent signed the Consent Form on two separate occasions, this Appeal Panel finds that, while done in protest, it was ultimately the Respondent's choice to sign the Consent Forms. There was no coercion, as it is defined in law and applicable jurisprudence. The Appeal Panel thus also accepts the DSO's and Interested Party's submissions that in coming to this conclusion, the Safeguarding Panel acted on a view of facts which were not in evidence and could not be reasonably entertained.

Did the Safeguarding Panel err by misapplying and failing to outline or address the applicable principles of law with respect to the enforceability of contracts, consent as it applies to a contract, and duress?

98. An arbitrator has a responsibility to consider the arguments and evidence brought forward by all parties to a dispute and to address all such sides in their reasons. Unlike what the Respondent argues, a reader, an Appeal Panel, or parties, should not have to infer or assume why an arbitrator is reaching a particular conclusion or finding. The rules of natural justice provide that arbitrators should explain their decision with an articulate line of reasoning. The Safeguarding Panel did not present a full view of the parties' respective positions and evidence and did not articulate full reasons for arriving summarily at its conclusion.
99. On this point, the Appeal Panel finds that the Safeguarding Panel erred by not outlining or reasonably addressing the applicable principles of law with respect to the enforceability of contracts, consent as it applies to a contract, and duress; given that that is the basis upon which it set aside the DSO's findings on violations and sanction.
100. For example, if relying on duress or coercion, the Safeguarding Panel might have considered and laid out elements that other courts have considered prior to making such findings. Relying on the principles outlined in the case law brought forward

by both parties, in determining if there was duress during the execution of a contract which deprived a party of choice, courts generally consider²:

- i. whether the party protested at the time the contract was entered into;
 - ii. whether there was an effective alternative course open to the party;
 - iii. whether the party obtained, or was afforded the opportunity to obtain, independent legal advice;
 - iv. whether after entering into the agreement, the party took steps to avoid it; and
 - v. whether the coercion allegedly exerted on the party was illegitimate.
101. In this case, and without needlessly expanding on each respective point which must be cumulatively met for an argument and/or finding of duress or coercion to be successful made:
- i. The Respondent did protest at the time the party was entered into.
 - ii. Participation in sport remains a privilege and thus there was an alternative course for the Respondent, and that was not to participate in sport.
 - iii. The Respondent was represented by counsel throughout.
 - iv. The Respondent took no steps to avoid the agreement once entered into.
 - v. There was no illegitimacy to the OSIC and relevant NSO's requirement for the Respondent to sign the Consent Form. All participants in Canadian sport are bound to the same requirements as a condition of participation, all of which are wholly defensible by public policy.
102. In fact, and in law, executing consent as a condition of participation by way of a legitimate Consent Form after being given a month to agree to do so does not amount to duress and cannot invalidate consent once given; even if under protest. Duress requires illegitimate pressure that removes meaningful choice. The Participant providing their consent to be bound by the 2024 Consent Form has the option to not be bound and not participate on the expected conditions (*See Techform* at paras 32-33 and para. 38; see also *Corre v Valstar Homes (Oakville Sixth Line) Inc*, 2024 ONSC 3616 at para. 71, citing *Kawartha Capital Corp v 17233766 Ontario Ltd*, 2020 ONCA 763 at para. 11.)
103. The Appeal Panel finds that the signing of the 2024 Consent Form was and remained at all times within the control of the Respondent. He clearly did not wish to be bound by the UCCMS retroactively and/or retrospectively. He did however have a choice to make. The Appeal Panel finds that he was neither coerced to do so nor did he sign the Form(s) under duress and that neither the Safeguarding Panel finding in this regard nor its reasons for the same adequately meet the

² See for example: *Techform Products Ltd. v. Wolda*, 2001 CanLII 8604 [*Techform*] at paras 32-33 and para 38.

reasonableness threshold established in *Vavilov*. To wit, the Respondent signed the second Consent Form approximately a month after its receipt. In addition to all the legal requirements set out above, duress implies short timelines. There were none here.

104. The Appeal Panel thus favors the DSO's and Interested Party's submissions over the Respondent's. Based on the above analysis, even if the Respondent did protest upon executing the Consent Form, the Respondent had the choice not to sign the Consent Form. He was represented by counsel. There was no imminent competition. He freely agreed and chose to be bound to the 2024 Consent Form as a condition of legitimate participation in Canadian sport and the relevant NSO's activities. The Safeguarding Panel did not undertake any such analysis yet summarily found that the Respondent had been coerced into signing his Consent Form which was thereby rendered invalid. There was insufficient justification in the Safeguarding Panel's reasons to arrive at such a critical finding.

The Legal Principles Applicable to Judicial Review

105. As provided in *Vavilov*, the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it. As provided in para. 80 of *Vavilov*.

The process of drafting reasons also necessarily encourages administrative decision makers to more carefully examine their own thinking and to better articulate their analysis in the process.

And at para. 83:

It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, **including both the decision maker's reasoning process and the outcome.**

(emphasis added)

106. Applying the same principles, the Appeal Panel finds there is insufficient justification and articulation offered in the Safeguarding Panel's decision to allow the Appeal Panel to conclude that the Safeguarding Panel's analytical process was reasonable and thus that it arrived at the proper or reasonable outcome.
107. The Respondent has argued that inferences can be made in the ST Decision's findings that would allow the Appeal Panel to bridge the proverbial gaps. The Appeal Panel disagrees. A principled approach to the reasonableness review is one which puts a first instance panel's reasons first. The Safeguarding Panel must communicate the rationale for its decision. That is the only way that the Appeal Panel, the body conducting a judicial review of that decision, can properly conduct its review and assess the reasonableness of the same decision. Here, the reasons

as drafted and communicated are deficient. A judicial review cannot be based upon or rely on inference.

108. The Respondent has also argued that deference is owed to the Safeguarding Panel's decision. The Appeal Panel agrees but only to a certain extent and relies on the reasoning found in *Vavilov* below:

[The reasonableness review] finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness".

In 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.**

...

[J]udicial review is concerned with both outcome and process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.³

109. (emphasis added) This Appeal Panel finds that no deference is owed to a decision that fails to provide sufficient intelligible reasons, transparency and logic as such a decision is not defensible in fact or law.
110. Consequently, the Appeal Panel finds that the ST Decision and reasoning process therein does not meet the threshold required in *Vavilov* of being *inter alia* (i) justified on a whole view of the relevant facts and evidence, (ii) intelligible and logical, and (iii) transparent.
111. Therefore, and for the above reasons, the Appeal Panel finds that the ST Decision does not withstand judicial review. The ST Decision does not meet the criteria of reasonableness and the Safeguarding Panel made errors of fact and law in its decision that must result in the decision being set aside.

³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paras. 13-15, 87 [citations omitted].

3. Should the Appeal Panel Retain Jurisdiction or Return the Matter to the Safeguarding Panel?

112. On 24 December 2025, further to issuing its Short Decision setting aside the ST Decision, the Appeal Panel directed that the parties (i) make submissions on the final jurisdictional issue of whether the UCCMS applies to the Respondent retrospectively, and (ii) that the Parties also make succinct submissions as to whether, depending on the outcome of that issue, the Appeal Panel should eventually retain jurisdiction to hear the Respondent's challenge of the DSO Decision on its merits or send it back to another Safeguarding Tribunal panel at first instance.
113. The Appeal Panel applies Subsection 5.7 e) of the Code and decides that it shall retain jurisdiction to decide on the matter of the applicability of the UCCMS and Abuse-Free Sport policies to the Respondent. This issue must be resolved definitively and should not be returned to the Safeguarding Tribunal.
114. However, should the Appeal Panel find that the Respondent is bound to the UCCMS and the Abuse-Free Sport program, the Appeal Panel will refer the matter back to another Safeguarding Tribunal panel to (re)hear the Respondent's initial challenge of the DSO Decision.
115. The Appeal Panel agrees that the Respondent has the right to challenge a Safeguarding Tribunal decision on whether the DSO Decision was reasonable on the merits, and was never given that opportunity by virtue of the Safeguarding Panel not proceeding to the review of the DSO's actual findings.
116. As the Appeal Panel has now decided the ST Decision was not reasonable and set it aside, if the Appeal Panel were to find the Respondent to be bound by the UCCMS at the time of the alleged violations, and to grant itself jurisdiction to review the merits of the DSO Decision, the Respondent would effectively lose the appellate rights he could exercise if a Safeguarding Tribunal panel confirmed the DSO Decision.
117. Therefore, notwithstanding the DSO and Interested Party's desire for expediency, should this Appeal Panel find: (i) that the UCCMS was applicable to the Respondent and that he was bound by the UCCMS at the time of the alleged violations, and (ii) that the OSIC and DSO had jurisdiction to respectively investigate and make findings of violation and sanctions on the Respondent as a result of these established UCCMS violations at all material times, the DSO Decision would be reinstated by the Appeal Panel and the matter would be remitted to the Safeguarding Tribunal to hear the Respondent's challenge of the DSO Decision.

118. Conversely, if this Appeal Panel finds that neither the Abuse-Free Sport Program nor the UCCMS applied to the Respondent at the time the OSIC commenced its investigation and/or at the time the DSO issued her Decision, and that the Respondent was not effectively bound by either of those regulatory documents, the matter shall not be referred back to the Safeguarding Tribunal and the DSO Decision will remain vacated.
119. In any event, the Appeal Panel retains jurisdiction over the matter in terms of the final jurisdictional issue to bring finality to the same.

4. Did the Respondent Consent to Jurisdiction and Retrospective Application of the UCCMS?

120. The second and final jurisdictional issue the Panel had to determine as raised in the DSO's Notice of Appeal is whether the Respondent had consented to being bound by the UCCMS at all material times, and whether the UCCMS, and all OSIC and Abuse-Free Sport processes related to and flowing from the same applied to his conduct retrospectively.
121. The following is a summary of the parties' material submissions on this point.

a) Respondent's Submissions

The 2024 Consent Form

122. The Respondent submits that the Appeal Panel must reject the DSO's position that a 2024 Consent Form signed by the Respondent on July 1, 2024, provided the OSIC with jurisdiction over the Interested Party's complaint. The Respondent received a mass email on June 3, 2024, after the investigation in his case was complete and the investigator's investigation report was issued to the OSIC.
123. The investigator identifies the final investigative correspondence as having taken place on May 17, 2024, which was correspondence with the Respondent's counsel. The investigation report makes it clear that no further investigative action was taken after that date. The only reasonable inference is that between May 17, 2024, and July 9, 2024, the investigator was drafting the investigation report. The date of the report supports the proposition that the entirety of the investigation was completed prior to the Respondent signing the 2024 Consent Form. No investigatory steps were taken after May 17, 2024. The only remaining task was the drafting and submitting of the report to the DSO.
124. All investigative steps taken in relation to this complaint were carried out under the 2023 Consent Form, which, as has already been held in SDRCC SAT 24-0002, could not bind the Respondent (or any other Participant) retroactively, as the 2023

Consent Form could not provide for express consent being freely given by Participants.

125. The 2024 Consent Form, which rightfully replaced the 2023 Consent Form, and which the Respondent duly executed by choice, was operative for only seven days before the investigator transmitted the investigation report to the DSO. The Respondent accompanied his 2024 Consent Form signature with a repeated contestation regarding the pending case. The contestation letter, along with the Respondent's consistent position throughout the process, confirms the conclusion that there is no retroactive application for this allegation to fall within the OSIC's jurisdiction. The OSIC's failure to respond to this letter further supports that conclusion. The entire investigation was conducted improperly because the OSIC had no right to conduct it.
126. An ex post facto justification based on the valid 2024 Consent Form cannot cure a lack of jurisdiction at the outset of an investigation which was undertaken under the invalid 2023 Consent Form. The Respondent's signing a new Consent Form in 2024 does not confer retroactive jurisdiction on the OSIC. The OSIC, therefore, lacked the authority to accept this complaint from the outset. The updated Consent Form signed in July 2024 cannot retroactively confer jurisdiction over historical allegations that were already investigated and advanced in 2023 under a prior, non-retroactive framework. This is true given that the consent was accompanied by an express, unanswered letter stating that it was not intended to waive the jurisdictional objection. On a de novo review, the Appeal Panel should conclude that the OSIC lacked jurisdiction from the outset and that the complaint cannot stand.

b) DSO's Submissions

The OSIC Had the Jurisdiction to Investigate, and the DSO Had the Jurisdiction to Render its Decision

127. The DSO submits and explains that when a complaint is made to the OSIC, the OSIC conducts a preliminary assessment, including assessing jurisdiction over the complaint. If the complaint proceeds following the preliminary assessment, an investigation is conducted in the ordinary course to make factual determinations.
128. If the conduct complained of does not engage the UCCMS, the OSIC will not investigate it. The preliminary assessment, as set out in the OSIC Guidelines Regarding Initial Review & Preliminary Assessment of Complaints (the "Preliminary Assessment Guidelines"), is described as a gatekeeper function to determine "whether, on its face, information in the Complaint indicates a potential violation of the UCCMS by a respondent over whom the OSIC has jurisdiction."

129. The considerations to be addressed in the preliminary assessment by the OSIC include the completeness of the complaint, whether a potential breach of the UCCMS is disclosed, duplications of proceedings, and whether the complaint is frivolous, vexatious, or made in bad faith, and notably, whether there is jurisdiction for the OSIC to deal with the complaint.
130. The jurisdiction for the OSIC to deal with the complaint is determined by the following in the Preliminary Assessment Guidelines: Is there jurisdiction for OSIC to deal with the Complaint.
131. There is no question that an OSIC program signatory organization, being the NSO, was involved. Further, there is no question that the Respondent was a Participant under the UCCMS when the Complaints were made to the OSIC.
132. The reference to “historical case considerations” reflects that the Preliminary Assessment Guidelines contemplate that such historical cases will be within the jurisdiction of the OSIC. Relevant considerations for historical cases include whether the conduct was, at the time of its occurrence, viewed as prohibited behaviour or inappropriate. The provision refers to specific considerations for such cases; by necessity, they cannot all be beyond the OSIC’s jurisdiction. If this were the case, there would be no “considerations” to account for.
133. Accompanying the Preliminary Assessment Guidelines is the 2023 Consent, which the Respondent signed prior to the Complaints being made to the OSIC. The Respondent acknowledged that if a complaint was made in relation to him, the OSIC “will receive, process and adjudicate such complaint” pursuant to the 2023 Consent. The language is prescriptive. The Respondent also acknowledged in the 2023 Consent that he would be subject to the OSIC’s jurisdiction, and that the OSIC will receive and investigate complaints 2023 Consent brought to its attention while the Respondent remained a Participant. Therefore, the Complaints and the Respondent were properly within the OSIC’s jurisdiction insofar as investigating the matter was concerned. Moreover, the DSO had the jurisdiction to render a decision as the Respondent was at all material times a Participant.

The 2024 Consent is a Valid Contract, and the Parties are Free to Bind Themselves to Retrospective Application of the UCCMS

134. The 2024 Consent is a valid contract to which the Respondent agreed to the retrospective application of the UCCMS. In *Respondent v. Director of Sanctions and Outcomes*, 2024 CASDRC 43 (ST 24-0022), Arbitrator Hopkins noted that the question of the UCCMS’ retroactive or retrospective application is a matter of the signed consents and contractual interpretation. The starting point for the analysis is the language of the 2024 Consent to determine its meaning as a matter of contractual interpretation. On appeal from ST 24-0022, this Tribunal confirmed that

the Abuse-Free Sport regime is based on “web of contracts”, such that an individual must consent to be bound retrospectively or retroactively.

135. The Tribunal held in *Gorsline v. Director of Sanctions and Outcomes*, 2026 CASDRC 8 (ST 25-0055) that the 2024 Consent is a private agreement that the SDRCC and the OSIC, via the Abuse-Free Sport Program, enter into with all Participants, and that the only applicable interpretive principles for determining its validity, enforceability and express language arise from contract law.

136. The relevant language in the 2024 Consent reads as follows (the “Prior Conduct” clause):

1. What am I consenting to and how long is my consent in effect?

[...]

You agree that events which occurred prior to the implementation of the UCCMS, or prior to the signing of an Abuse-Free Sport Participant Consent Form, may also fall within the jurisdiction of the Agents if such events fall within the scope of the UCCMS and the applicable Policies and Procedures.

Pursuant to the UCCMS and the relevant Policies and Procedures, in determining whether or not such past events fall within the jurisdiction of Abuse-Free Sport, relevant Agents shall make their determination taking into consideration the following factors:

- (i) relevant rules, norms and policies, including without limitation, social and legal norms, in effect at the time of the alleged event(s);
- (ii) the severity of the allegations;
- (iii) the facts and circumstances of the matter;
- (iv) the safety and wellbeing of participants and the sport community;
- (v) the potential risks and prejudice from action and inaction, with safety being paramount;
- (vi) the ability to identify potential parties and witnesses and to obtain sufficient evidence; and/or
- (vii) the best interest of sport and those who participate in it, including the views of the person(s) directly impacted, when feasible.

137. The language of the 2024 Consent expressly provides for the retrospective application of the UCCMS. The Prior Conduct clause states that it is open to the OSIC and DSO to determine, in consideration of the above seven factors, that the conduct of participants prior to the UCCMS’ effective date shall be subject to the application of the UCCMS. On the face of this provision, it is an eventuality of this mechanism that the Respondent was subject to having his conduct prior to the UCCMS’ effective date assessed for contravention of the UCCMS, and possible sanction.

138. The Tribunal in ST 25-0055 held that “the 2024 Consent and its Prior Conduct Clause supply the necessary, clear and express language reflecting the intention of the parties to apply the UCCMS retrospectively, and thus of the OSIC and DSO’s jurisdiction to apply the UCCMS retrospectively” when considering the same question of whether the express words of the Prior Conduct Clause in the 2024 Consent can retrospectively or retroactively bind Participants to the UCCMS. The Tribunal held that the Respondent in that case was given a choice to bind himself to the retrospective enforcement to the UCCMS and jurisdiction of Abuse Free Sport via the 2024 Consent and chose to do so. In this case, the same is true.
139. The 2024 Consent sits within a system or regime of contracts which also contain language indicating an intention to apply retrospectively; specifically, the UCCMS, Program Signatory Agreements, and the Athlete Agreements. The Respondent had been and was aware of the intended retrospective application. Because the 2024 Consent is a contract, any presumption against retrospectivity or retroactivity that may arise from principles of statutory interpretation do not apply. Participants are free to exercise their contractual freedom to retrospectively bind themselves to the UCCMS via the Prior Conduct clause in the 2024 Consent.
140. The distinction between retrospective and retroactive application is not material for the purpose of determining the validity of the 2024 Consent, and the Prior Conduct clause, as a matter of contract. The 2024 Consent binds the Respondent to the retrospective, and not retroactive, application of the UCCMS. The DSO’s Report did not find the Respondent to have always been liable to a sanction since the time of the alleged conduct; rather, the Report applied the UCCMS to impose future or prospective effects for past conduct.
141. Even if a presumption against retrospectivity could arise in matters of contract rather than statute, the presumption would be rebutted because the 2024 Consent and the UCCMS are designed to protect the public. Specifically, they protect participants in sport from harassment, abuse and discrimination.

There Was No Duress for the Respondent

142. The Respondent argues duress to state that the 2024 Consent was not valid because he was faced with two options: (1) sign the consent form; or (2) not sign the consent form, in which case he would be removed from the NSO. Having the choice not to participate to avoid the Prior Conduct clause in the 2024 Consent does not amount to duress. One does not lack volition because they would prefer a choice instead of the options before him.
143. To establish duress, a party must show that:
 - (1) the party protested at the time the contract was entered into;

- (2) there was no effective alternative course open to the party;
- (3) the party was not afforded the opportunity to obtain independent legal advice;
- (4) after entering into the agreement, the party took steps to avoid it; and
- (5) the coercion exerted on the party was illegitimate.⁴

- 144. The Respondent cannot meet the second branch of the test. The Respondent had the choice not to bind himself to the retrospective application of the UCCMS by declining to sign the 2024 Consent. The Respondent's participation in sport is an ongoing privilege conferred to him by the SDRCC and his NSO. The Respondent had the choice not to sign the 2024 Consent but freely decided to sign it because he decided this option to be preferable to exclusion from participation.
- 145. The Respondent is unable to meet the fifth branch of the test. There was never any illegitimate coercion on the Respondent to sign the 2024 Consent. He was represented by legal counsel and took almost a month to sign the 2024 Consent.
- 146. The Respondent does not cite any law to support his argument on duress, he appears to argue that he meets branches one and four of the test for duress. He relies on an email sent by his legal counsel to the OSIC on July 3, 2024, two days after he signed the 2024 Consent, in which he "objects" to its jurisdiction to sanction him for the Prior Conduct he already knew was under investigation when he signed the 2024 Consent.
- 147. The Respondent signing the 2024 Consent and making his objection almost simultaneously is not a sign of a party without choice or under duress. Instead, it shows that the Respondent wanted to benefit from the privilege of participation which the 2024 Consent grants him, without any of the obligations.
- 148. The Appeal Panel must look at the Respondent's actions to determine whether he considered himself to be operating under the 2024 Consent. By participating in sport, knowing that his being bound by the 2024 Consent was a pre-condition to participation, the Respondent must be taken to have understood himself subject to the contract. It would be untenable if parties were permitted to sign contracts and then unilaterally withdraw from the obligation thereunder that they did not want to have applied to them.
- 149. The Respondent's execution of the 2024 Consent and the delivery of the Investigation Report occurred in quick succession due to the Respondent's almost month-long delay in signing the consent. Neither the OSIC, the DSO, nor the NSO had any knowledge of the status of the pending Investigation Report, or when it would be delivered.

⁴ *Techform Products Ltd. v. Wolda*, 2001 CanLII 8604 [Techform] at paras 32-33 and para. 38.

150. For the reasons above, the DSO asks the Appeal Panel to find that the Respondent consented to the jurisdiction and retrospective application of the UCCMS at all material times.

c) Interested Party's Submissions

The ST Decision was Unreasonable, Unsupported by the UCCMS, and Undermines the Federal Safe Sport Program

151. The Interested Party submits that this appeal relates to a wholly technical and unsupportable interpretation of the UCCMS. To decide that the OSIC does not have jurisdiction to punish perpetrators runs contrary to the words, spirit, and intent of the UCCMS by undermining its purpose: to protect sport participants playing and competing in and for Canada. As a result, upholding the ST Decision would undermine the safe sport structure set up by the UCCMS/OSIC. The ST Decision undermines the purpose of UCCMS, places all survivors of maltreatment and abuse at risk, discourages reporting, renders sanctioning meaningless, and runs contrary to common sense and basic contract law.
152. The Appeal Panel correctly set aside the unreasonable decision by the Safeguarding Panel because the Safeguarding Panel failed to properly analyze whether the 2024 Abuse-Free Sport Consent Form had a retroactive binding effect (or implied consent through ongoing participation). It also erred in concluding no jurisdiction over pre-UCCMS conduct without adequate legal reasoning or consideration of precedents/complexity (e.g., the decision in SDRCC case file number ST 25-0055). It should be noted that the most recent updates to the policy include whether the accused is a member of the Canadian sporting environment, which includes international athletes training in Canada and Canadian athletes. The Respondent moved to Canada full-time in 2010 and was training, living, and working there in 2012. The Safeguarding Panel ignored or misstated evidence of the Respondent's status/connections to the relevant NSO in and around 2012. Even if this were not the case, he was certainly a member of the Canadian sporting environment when living, training and coaching in Canada throughout 2012 and for years both before and after. Further, it is clear that signing the 2024 Consent Form binds the Respondent to the retroactivity aspect of the code, regardless of his 2012 status. It is also clear that he was, in fact, a Canadian athlete, coach, and resident at the time of the incident.

UCCMS Applicability and Jurisdiction

153. The Respondent signed the 2024 Consent Form with legal counsel and without duress, binding himself to the process for all matters, including historical ones. He continued to participate as a signatory to the relevant NSO after the UCCMS came into force, implying acceptance. Public policy and safeguarding considerations

demand jurisdiction over serious historical sexual misconduct to protect current athletes and future students. The SDRCC is putting fellow athletes, students of the accused, officials, spectators and volunteers at risk both at home in Canada and abroad without the sanction in place. The Respondent's objections to jurisdiction throughout the investigation do not mean he can retroactively seek to exempt himself from a portion of the contract he signed solely because he raised prior objections.

154. The Respondent was not forced to sign the 2024 Consent Form, nor to be a Canadian-funded athlete. He did, however, sign the form for self-serving purposes of taking advantage of being an athlete and bound himself by it fully, and clearly had the intent to continue being a UCCMS signatory in 2024. It should also be noted that the OSIC conducted extensive checks to ensure jurisdiction before accepting the case. By not participating openly and honestly in the investigation, the Respondent is further violating the UCCMS and proves he is not eligible for the privilege of being a Canadian athlete or coach. His actions, and those of his supporters, demonstrate his disdain for the UCCMS, his refusal to take accountability for his actions, and, as a result, demonstrate that he is an ongoing threat to others.
155. The Interested Party also raised a additional arguments that the Appeal Panel did not consider it appropriate to address in determining this issue, including the following:
- The Respondent's submissions are inaccurate about his status at the time of the alleged violations.
 - Due to numerous aggravating circumstances, the Respondent's sanction should be reinstated and also increased to a lifetime ban:

d) The Appeal Panel's Decision on Whether the UCCMS and the OSIC's Abuse-Free Sport Program Apply to the Respondent

156. Relying on the reasoning provided in SDRCC decisions SAT 24-0002 and ST 25-0055, the Appeal Panel finds the Respondent is bound retrospectively by the 2024 Consent Form and that he is currently bound to the UCCMS. While the Respondent argues that contesting the binding applicability of the 2024 Consent Form further to executing the same should allow this Appeal Panel to make a finding of duress, the Panel disagrees. The test to establish duress is conjunctive. As set out at paragraph 72 of ST 25-0055 and as already set out above, in determining if there was duress which deprived a party of choice, courts consider in cumulative order whether:
- i. the party protested at the time the contract was entered into;
 - ii. there was an effective alternative course open to the party;

- iii. the party obtained, or was afforded the opportunity to obtain, independent legal advice;
 - iv. after entering into the agreement, the party took steps to avoid it; and
 - v. the coercion exerted on the party was illegitimate.
157. Here, the Appeal Panel finds that the only criteria the Respondent satisfies is the first. However, it would be nonsensical for protestations alone to be sufficient not to bind him to the UCCMS or for mere protestations alone not to bind any individual to any particular contract.
158. On the evidence, and unlike found at first instance, the Respondent was given sufficient time to consider signing the 2024 Consent Form and could simply have chosen not to do so. He had legal counsel at all times. He did not take steps to avoid being bound by the Consent or to other relevant NSO eligibility requirement other than contesting the Consent Form applied to him; and there was certainly no illegitimate coercion involved given the very purpose of the OSIC. As provided in para. 74 of ST 25-0055 which the Appeal Panel also applies to the facts before it:
- Indeed, executing a consent form as a condition of participation in sport does not invalidate consent or amount to duress. Duress requires illegitimate pressure that removes meaningful choice. But the Respondent, like all OSIC Participants, prior to and when providing his consent to be bound by the 2024 Consent Form, always has the option to not sign, not be bound, and not participate on the expected conditions.
159. The Respondent had choices. He agreed and chose to be bound to the 2024 Consent Form to maintain the continued privilege to participate in Canadian sport in an environment free from maltreatment. Thus, to the extent that the Respondent is arguing duress solely on the basis that he “contested or protested” the contents of the 2024 Consent Form, his argument fails.
160. As submitted by the DSO and held in ST 25-0055, to which this Panel assents, the 2024 Consent Form and its Prior Conduct clause supply the necessary, clear and express language reflecting the intention of the parties to apply the UCCMS retrospectively, and thus of the OSIC and DSO’s jurisdiction to apply the UCCMS retrospectively. The Respondent was given a choice to bind himself to the retrospective enforcement of the UCCMS and jurisdiction of Abuse-Free Sport via the 2024 Consent Form and chose to do so. Thus, from the moment he executed the 2024 Consent Form, the Respondent was considered a Participant under the UCCMS. He was from that moment, and still now, retrospectively and prospectively bound by the UCCMS.
161. That said, the complaint against the Respondent was filed in 2023 not 2024. The OSIC investigation was commenced in 2023 on the basis that the OSIC held jurisdiction to proceed at that time.

162. The OSIC Guidelines Regarding Initial Review and Preliminary Assessment of Complaints provide at Section 4.b. that as part of its preliminary assessment the OSIC has to consider if there is jurisdiction for it to deal with the complaint. While the OSIC clearly undertook this assessment and, as the DSO submits, determined that it did have jurisdiction, this Appeal Tribunal has now firmly established in SAT 24-0002, and ST 25-0055 for the reasons outlined therein which this Appeal Panel accedes to, that the 2023 Consent Form provides no jurisdiction over historical complaints that pre-date the UCCMS. Therefore, in law and thus in fact, the OSIC did not have jurisdiction to investigate the matter at the time of its investigation.
163. Consequently, because Section 3(c) of the Abuse-Free Sport Policy Regarding Violations and Sanctions provides that the DSO is responsible to decide “*whether there was a violation of the UCCMS based on the Investigation Report and, if so, to impose the appropriate sanctions, as applicable,*” (emphasis added), and since the DSO Decision was based and arose out of an investigation report from an investigation for which the OSIC did not have jurisdiction, it follows that even if the 2024 Consent Form, which does bind the Respondent retrospectively, had been executed at the time the DSO Decision was issued, the DSO Decision must still be set aside. The investigation report upon which the DSO Decision is based derived from an investigation for which the OSIC did not have jurisdiction.

5. Does the *Myles* Decision Affect the Appeal Panel’s Short Decision Dated March 23, 2026?

164. On March 23, 2026, the Appeal Panel issued the following short decision:
- This is the panel's decision pursuant to the Canadian Sport Dispute Resolution Code.
- Abuse Free Sport did not have jurisdiction over the Respondent at the time of the investigation. Therefore, DSO's decision must be set aside.
- Written reasons for the decision will follow within the timelines prescribed by the Canadian Sport Dispute Resolution Code.
165. On March 27, 2026, the Ontario Superior Court of Justice issued the *Myles* Decision wherein the Court, on judicial review, upheld an SDRCC decision allowing the UCMSS to be applied to prior conduct.
166. The Appeal Panel directed the parties to make submissions on any impact the *Myles* Decision should have on this case.
167. The following offers a summary of the parties’ material submissions on the last issue to be determined, namely whether the *Myles* Decision is relevant and/or should impact the Appeal Panel’s previously issued short decision.

a) DSO's Submissions

168. The DSO submits that the *Myles* Decision bears on the issues that the parties put before this Appeal Panel, contrary to the Respondent's assertion. The doctrine of *functus officio* does not bar the Appeal Panel from considering the *Myles* Decision. The Supreme Court in *Chandler v. Alberta Association of Architects* [1989] 2 SCR 848⁵ ("*Chandler*") found that, to the extent the principle of *functus officio* applies to administrative tribunals, it must be "more flexible and less formalistic". A more flexible application of the doctrine of *functus officio* is warranted in the instant administrative proceeding, as the Code does not grant any further rights of appeal from the decisions of this Appeal Tribunal. Further, the transposition of the strictest requirements of *functus officio* would be inappropriate.
169. The Appeal Tribunal has not exhausted its role until it has performed all functions required by the Code, including delivering a reasoned decision. Consideration of the *Myles* Decision would not threaten the finality of the Appeal Panel's decisions where it has not performed all of its duties under the Code. The *functus officio* doctrine cannot be adopted and applied without recognition of the procedural distinctions between this administrative process and court proceedings.
170. The Appeal Panel has not fully performed or disposed of its entire function in this appeal because no reasoned decision has been delivered. In the absence of the Appeal Panel's reasoned decision, the key principles which are sound in law and relevant to the Appeal Panel's task are:
- i. the public protection exception to the general presumption against the retroactive application of codes of conduct, as set out in *Brosseau*, applies to the UCCMS, which can apply to events occurring before its enactment;
 - ii. the consents which Participants sign may apply to retrospectively bind the parties to the UCCMS; and
 - iii. "when taken together, the Signatory Agreement, the consent the Applicant signed, the UCCMS, and Abuse-Free Sport's policies, it is clear that Abuse-Free Sport has jurisdiction over actions predating the adoption of the UCCMS. In the court's view, the Arbitrator made no error of law and acted reasonably in accepting this argument." (*Myles* Decision at para. 42)

b) Interested Party's Submissions

171. The Interested Party submits that the *Myles* Decision affects the Respondent's case regarding the application of the UCCMS in historical cases that predate the

⁵ [1989] 2 SCR 848

2024 Consent Form language. She argues the outcome of the *Myles* case should have been required before deciding on this case. In July 2023, the Interested Party filed her complaint with the OSIC with the assurance that the UCCMS applied to historical cases involving Canadian Olympic athletes, as posted on the OSIC website at the time. To rescind those rights after putting her through the investigation process is incorrect.

172. Even if the Appeal Panel treats this case as a contractual rather than statutory issue (the approach taken in the conflicting SDRCC ST 24-0022 decision), the *Myles* Decision still defeats that argument.
173. The Interested Party also submits that the Respondent sought to interfere with the proceedings by submitting inaccurate evidence in an attempt to be exempted from his 2024 Consent Form obligation. That act, along with the violent nature of the sexual maltreatment and breaking his interim measures multiple times during the investigation process, should result in the Respondent receiving the same permanent ineligibility sanction as in the *Myles* Decision.

c) Respondent's Submissions

174. The Respondent submits that the fact that full written reasons were to follow its short decision does not alter the finality of the Appeal Panel's disposition. The Appeal Panel has already performed its adjudicative function by deciding the appeal. The remaining task, providing reasons, is explanatory, not adjudicative. The doctrine of *functus officio* therefore applies. While the Supreme Court of Canada in *Chandler* recognized that the doctrine may be applied more flexibly in administrative contexts, the Court clearly stated that this flexibility applied only to narrow exceptions, such as correcting clerical errors, or addressing slips or ambiguities in expressing the decision.
175. The Code does not authorize the Appeal Panel to vary, rescind, amend, or reconsider its decision. There is no suggestion within the Code that this would be permitted. The issue of jurisdiction in this case has been fully heard on its merits and decided. The DSO seeks to reopen the merits of the appeal based on a subsequent judicial decision. That is precisely what *functus officio* prohibits.
176. Flexibility does not permit a tribunal to reverse or materially alter a final disposition simply because a new decision has emerged after the decision was rendered. To accept such a proposition would entirely undermine finality. To allow a case to be reopened following a new decision would open the door to any decision being revisited whenever the law evolves, as it inevitably will.
177. The DSO's reference to the fact that a further right to appeal does not exist under the Code does not expand the Appeal Panel's jurisdiction. As confirmed in

Chandler, flexibility exists to prevent injustice within the bounds of finality, not to create a de facto appeal mechanism where none exists.

178. The DSO's submission is further undermined by the fact that the *Myles* Decision upon which she relies arose through a quasi-appellate process before a reviewing court. It is inconsistent to suggest that no meaningful recourse exists while simultaneously invoking a case that demonstrates such recourse in practice.
179. The Appeal Panel is functus officio and lacks jurisdiction to reopen or reconsider its decision. Even if the Appeal Panel retained residual jurisdiction which the Respondent denies, the *Myles* Decision does not justify reopening this matter. First, the *Myles* Decision was released after the Appeal Panel rendered its decision. It is established that parties are not entitled to reopen concluded proceedings to introduce new legal authorities that could not have been argued at the time. Litigation must come to an end.
180. If the DSO considered the pending *Myles* case potentially determinative, the appropriate course would have been to seek a postponement or suspension of this appeal before a final decision was rendered. No such request was made. It is not appropriate to forego that request before judgment and then seek to reopen the matter once the outcome of another case is known. The DSO's submissions are speculative. The *Myles* Decision is fact-specific and does not mandate any particular outcome in this case. The DSO's position would create significant unfairness. Finality is a foundational principle of adjudication.
181. The Respondent requests that the Appeal Panel:
 - i. Decline to reopen or reconsider its March 23, 2026 decision;
 - ii. Proceed to issue its written reasons based solely on the record and submissions before it at the time of the decision; and
 - iii. Confirm that the Appeal Panel is functus officio with respect to the DSO's request.

d) *The Appeal Panel's Decision on the Applicability of the Myles Decision*

182. The Appeal Panel agrees that in cases of administrative decision-making, there is more flexibility permitted to a panel in determining when it is functus as established in *Chandler*.
183. In this matter, the Appeal Panel had issued only its short decision; a decision bereft of any reasons. In circumstances where a decision is issued by a court of competent decision-making that may have a direct impact on a decision of an administrative tribunal such as the Appeal Tribunal, prior to the Appeal Panel issuing reasons, it is most appropriate to allow the parties to make submissions

and for the Appeal Panel to consider if the new authority will impact the decision of the Appeal Panel. To do otherwise would risk issuing a decision that could be knowingly wrong and lead to further judicial review - a circumstance in no parties' interest.

184. On balance therefore, in due consideration of all the parties' submissions, the Appeal Panel finds that it is not functus officio until it has issued its full reasons for its decision. Here, the Appeal Panel may consider if the *Myles* Decision should have an impact on its decision, despite the *Myles* Decision being issued by the Court subsequent to the issuance of the Appeal Panel's short decision.
185. As a result, the Appeal Panel sought out submissions from all parties on the impact of the *Myles* Decision on its own decision in this matter. After consideration of those submissions and the *Myles* Decision, as already confirmed above, the Appeal Panel issued a second short decision confirming the initial short decision.
186. Simply put, the *Myles* Decision confirms that when parties agree to be bound by the UCCMS, the UCCMS provides that their historical conduct may retroactively or retrospectively establish grounds for a prospective sanction.
187. The *Myles* Decision thus has limited applicability to the case presently before the Appeal Panel, and no impact on its outcome because *Myles* stands for the proposition that the UCCMS may be applied retrospectively. This Panel agrees; but this does not impact its findings.
188. This present matter turns on whether the Respondent had consented for his Prior Conduct to be bound retrospectively to the UCCMS in 2023 (at the time the OSIC investigation began) and not on whether, as in *Myles*, past conduct could form the basis of a prospective sanction under the UCCMS against a person who had expressly consented to the application of the UCCMS.
189. Here, as noted above, on the basis of what has been found to be an invalid Consent Form by prior Safeguarding and Appeal panels including this Panel, the Respondent did not expressly or properly consent to the retrospective application of the UCCMS to his historical conduct at the time the investigation was initiated in 2023. Accordingly, the investigation, and the investigation report arising from the same, cannot be used to support the DSO Decision against the Respondent, even if the former was issued after the Respondent had executed the valid 2024 Consent Form. The investigation was undertaken at a time when the Respondent was not bound by the UCCMS. The OSIC and Abuse-Free Sport should not have asserted retroactive jurisdiction and cannot claim to do so now by relying on the *Myles* Decision.
190. On the other hand, and to clarify any misunderstanding arising from the parties' conflicting submissions on this point, the Respondent signed the 2024 Consent

Form and may have signed other valid Consent Forms thereafter, by which he would have expressly consented to be bound retrospectively by the UCCMS. As a result, jurisdiction for the relevant investigatory body to investigate historical conduct would then have been legally conferred as of the date on which the relevant valid Consent Form was executed. An investigation undertaken now, in accordance with the applicable rules, could therefore lead to sanctions under the UCCMS.

III) ORDER

191. For all of the foregoing reasons,
- i. The DSO's appeal is dismissed.
 - ii. The DSO Decision remains vacated.
192. The Appeal Panel retains jurisdiction to deal with any matter ancillary to this dispute.
193. All parties are advised as follows:
- i. This decision has been anonymized in accordance with Sections 8.14 and 9.14 of the 2023 Canadian Sport Dispute Resolution Code.
 - ii. This decision is to remain strictly confidential and is subject to a publication ban until the SDRCC confirms that the matter is closed.
194. Pursuant to the 2023 Code, this decision is final and binding on all parties.

SIGNED THIS 1ST DAY OF JUNE 2026.



Aaron Ogletree
Chair
Detroit, MI, USA



Janie Soublière
Member
Beaconsfield, QC



Peter Lawless, KC
Member
Victoria, BC