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

NO: SDRCC ST 24-0037

BETWEEN:

[redacted]

(APPLICANT/RESPONDENT)

AND

DIRECTOR OF SANCTIONS AND OUTCOMES

(DSO)

AND

C.D.

(INTERESTED PARTY)

DECISION ON PRELIMINARY ISSUE OF JURISDICTION

Appearances:

On behalf of the Applicant:	Dylan Jones, Victoria Nix
On behalf of the DSO:	Dasha Peregoudova
C.D.	on her own behalf

1. On November 22, 2024, I was selected under Subsection 5.3(b) of the *2023 Canadian Sport Dispute Resolution Code* (the "*Code*") to hear the Applicant's

challenge to a Finding on Violation and Sanctions (the "Decision") issued by the Director of Sanctions and Outcomes ("DSO") on October 2, 2024, pursuant to Section 8.3 of the *Code*.

2. During a preliminary conference call held November 29, 2024, the parties agreed to adjourn the proceedings pending the release of a decision by the Appeal Tribunal ("SAT") relating to the issue of the application of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport ("UCCMS") to historical conduct. The SAT's decision (SAT 24-0002) (the "SAT Decision") was issued March 5, 2025. Following the release of the SAT Decision, the parties agreed to bifurcate the issue of jurisdiction from other issues raised in the Applicant's appeal.

3. Section 8.6 of the *Code* provides that a challenge of a DSO decision on a violation or a sanction will be heard by way of documentary review only, except as agreed otherwise by the Safeguarding Panel. The parties did not seek an oral hearing.

4. This appeal addresses the preliminary question of whether the UCCMS applies to the alleged conduct and whether the Applicant agreed to be bound by the UCCMS.

OVERVIEW

5. Abuse-Free Sport is an independent system for preventing and addressing maltreatment in sport in Canada. It covers matters related to the UCCMS.

6. The UCCMS was first published in 2019 by the Canadian Centre for Ethics in Sports. The 2022 version was published by the SDRCC and was effective no later than November 30, 2022.

7. To be eligible for federal funding, all national sport organizations ("NSO's") must adopt the UCCMS through an agreement (the "Program Signatory

Agreement"). Each NSO is responsible for obtaining the consent of participants, including athletes, coaches, volunteers and administrators, to be bound by the UCCMS ("Participant Consent Forms").

8. Complaints about maltreatment in sport are made to the Office of the Sport Integrity Commissioner ("OSIC") which is responsible for commissioning independent investigations. Investigation reports are transferred to the Director of Sanctions and Outcomes ("DSO"), who makes decisions based on the investigation report.

9. The Applicant is an athlete in the sport of [redacted]. Although C.D. was also a participant in that sport, she has neither been a resident of Canada nor a member of a Canadian NSO.

10. On July 22, 2023, OSIC received a complaint from C.D. alleging that on April 21, 2012, the Applicant engaged in conduct, specifically maltreatment, that contravened the UCCMS. On March 23, 2024, OSIC received a second complaint from C.D. alleging that on March 6, 2024, the Applicant engaged in conduct, specifically retaliation, that contravened the UCCMS.

11. A summary of the complaint was provided to the Applicant, who challenged OSIC and the DSO's jurisdiction to investigate and/or issue any sanctions regarding the allegations. The Applicant said that in 2012, neither he nor C.D. were affiliated with Canadian sport, that he was not an athlete with a Canadian NSO, and that he had never represented or participated in any events or activities representing Canada.

12. The Applicant also argued that the DSO had no jurisdiction over the complaint because the UCCMS did not exist at the time the conduct allegedly occurred.

13. On November 23, 2023, OSIC appointed an investigator, who produced a final report on July 9, 2024. The report was submitted to the DSO on July 10, 2024, and to the parties on July 23, 2024. The Applicant made submissions in response to the report on August 8 and 9, 2024.

14. The Applicant signed two Participant Consent Forms regarding the application of the UCCMS, the first on January 12, 2023, and a second, revised form, on July 1, 2024.

15. In the October 2, 2024 Decision, the DSO concluded that

> *…the Complaint was properly filed and fell within its jurisdiction following its standard intake process, that being the OSIC Guidelines Regarding Initial Review & Preliminary Assessment of Complaints.*

16. The Decision contained no further discussion nor analysis addressing the Applicant's objection to OSIC or the DSO's jurisdiction.

The SAT Decision

17. In the March 5, 2025 SAT Decision, the SAT declined to interfere with the conclusion of the First Instance Panel (the "First Instance Panel") in case file no. ST 24-0002 and found that because the Abuse-Free Sport system was based on a series of interlocking contractual agreements rather than a statutory scheme, statutory interpretation principles could not be applied to the UCCMS.

18. The SAT found that the First Instance Panel's decision to set aside the DSO's findings and sanctions on the basis that the UCCMS did not apply to conduct that occurred prior to the UCCMS coming into effect in 2022 or to conduct which occurred prior to a participant executing a Participant Consent Form (referred to as "historical conduct"), was reasonable.

19. The SAT concluded that the First Instance Panel's decision that it was only upon signing the Participant Consent Form that the UCCMS could apply to a Participant and their conduct, and that a Participant would only be subject to discipline arising from conduct, if that conduct was a breach of the UCCMS, from the date of such consent, was also reasonable.

20. The SAT determined that, despite the laudatory objectives of the UCCMS, it could not be interpreted to create a statutory scheme and form a basis by which to sanction individuals who had not agreed, through the signing of a contract, to be bound by it.

Argument

Applicant

21. The Applicant contends that the SAT Decision finding that the UCCMS cannot be applied retroactively is consistent with the provisions of the Participant Consent Form, which explicitly refers to the consent form as a contract.

22. The Applicant further argues that, as a contract, the consent form cannot operate retroactively. The Applicant further notes that OSIC's website expressly states that participants are only bound, or subject to the terms of the UCCMS, once they have had the opportunity to read and review the UCCMS.

23. The Applicant also argues that his agreement with the NSO clearly states that he will be subject to the UCCMS code of conduct "for conduct occurring after the 'effective date'," which is defined as the date the UCCMS came into effect, which was December 31, 2022.

24. The Applicant contends that he cannot be found to be bound by a maltreatment prevention regime that did not exist at the time of the alleged maltreatment, when he was neither a resident of Canada nor a member of the NSO.

DSO

25. The DSO contends that OSIC (and by extension, the DSO) has jurisdiction in respect of the Applicant's historic conduct. The DSO says that the purpose of the Abuse-Free Sport regime is to protect current and future sport participants from maltreatment, and that retrospective application of the UCCMS to historical conduct is essential to the regime's public protection purpose.

26. The DSO argues that to deny the retrospective application of the UCCMS would frustrate the purpose of the regime. The DSO says the SAT Decision did not comprehensively address the merits of the retrospectivity issues, rather, it simply engaged in a reasonableness review of the First Instance Panel's decision.

27. The DSO contends that the issue of jurisdiction over historic conduct was not settled by the SAT Decision. Rather, the DSO argues, the SAT was bound to show deference to the First Instance Panel's decision, deciding the issue of historic conduct on a reasonableness standard, which limited the precedential value of the decision. The DSO argues that the issue before the SAT was not whether Abuse-Free Sport had jurisdiction to administer complaints in relation to historical conduct, but rather, whether the reasons given in the First Instance Panel's decision were reasonable.

28. The DSO argues that even if the UCCMS is a contract, it was intended to apply retrospectively to historic conduct. The DSO contends that an interpretation of the UCCMS that does not permit its retrospective application is based on a flawed interpretation of the Abuse-Free Sport program that does not give adequate weight to its purpose.

29. The DSO further contends that the Applicant's argument that the UCCMS does not apply because the allegations are "unrelated to sport" are unfounded. The

DSO says that, provided that a participant is currently involved in, or intending to participate with, a national sport organization, the UCCMS has jurisdiction over the participant. The DSO says that the Abuse-Free Sport program governs conduct of participants involved in sport, in order to ensure the protection of the sporting public.

30. The DSO submits that even if the UCCMS is properly characterized as a contract, the principles in *Brosseau v Alberta Securities Commission (*[1989] 1 SCR 301) should apply to the interpretation of that contract. The DSO argues that historical conduct is relevant to the purpose of the UCCMS, which is the protection of the sporting public. The DSO argues that when the Applicant signed the Consent Forms, he intended to be bound by the UCCMS rules and principles and to have his conduct administered accordingly, without immunity for historical conduct. The DSO contends that to read the terms of the UCCMS in a manner that does not capture a participant's historical conduct would not only give inadequate weight to Abuse-Free Sport program's purpose, but would generate an absurdity.

31. Further, the DSO argues that both Consent Forms signed by the Applicant cover historical cases and through those agreements, the Applicant expressly consented to the DSO's jurisdiction. More particularly, the DSO argues that by executing the second Consent Form on July 1, 2024, after he was informed of the complaint, the Applicant agreed to be subject to the application of the UCCMS to historical conduct.

Interested Party

32. C.D.'s submission addresses several issues that are not before me in this preliminary application, including her knowledge of and ability to participate in the appeal process, the impact of the alleged maltreatment on her, as well as

challenging certain facts pertaining to the Applicant's status as a "participant" of an NSO. I have not considered those submissions in this decision.

33. While C.D. supports the DSO's argument, she argues, in essence, that if OSIC has no jurisdiction over the complaint, the complaint ought to have been referred to an appropriate body that did have jurisdiction over the matter.

34. C.D. further argues that although the UCCMS was not in force in 2012, the Applicant was subject to a number of other codes of conduct and related policies at the time.

35. C.D. contends that if it is determined that the UCCMS does not apply retroactively, it would "open the floodgates for other historical cases of abuse and mistreatment to be dismissed *prima facie*," particularly where a sport organization did not enforce its own codes of conduct or policies, jeopardizing the safety and wellbeing of athletes across the country.

ANALYSIS

The Code

36. Section 8.7 of the *Code* provides that a DSO decision on a sanction may only be challenged on the following grounds:

(a) Error of law, limited to:

(i) a misinterpretation or misapplication of a section of the UCCMS or applicable Abuse-Free Sport Policies;

(ii) a misapplication of an applicable principle of general law;

(iii) acting without any evidence;

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

(v) failing to consider all the evidence that is material to the decision being challenged.

…

37. The SAT Decision was a review of the First Instance Panel decision based on a reasonableness standard (Subsection 9.8(b)). In *Canada (Minister of Citizenship and Immigration v. Vavilov* (2019 SCC 65), the Supreme Court held that a decision will be unreasonable where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency, and is it justified in the context of the applicable factual and legal constraints." (para. 102)

38. Further, a decision may be unreasonable if it is not "justified in relation to the constellation of law and facts that are relevant to the decision" (para. 105). In other words, a decision that is wrong in law, or applies an incorrect legal test, cannot be reasonable.

39. The SAT Decision determined that the First Instance Panel's conclusion that the application of the UCCMS was a matter of consent and therefore, a matter of contractual rather than statutory interpretation and had no retrospective application absent any contractual provision expressly providing for that, was reasonable. That means that the First Instance decision was legally justified. The SAT Decision considered the conflicting decisions issued by two First Instance Panels, as well as the cases now relied on by the DSO and concluded (at para 50) that the presumption against retrospective application had not been displaced.

40. After reproducing a large part of the First Instance Panel's decision regarding the proper interpretation of the UCCMS application to historical conduct, the SAT concluded:

> *The Decision was rational and logical in light of the legal and factual circumstances. The First Instance Panel justified its interpretation of the UCCMS as a contractual relationship rather than one governed by statute considering the intent, purpose and wording of the UCCMS, Abuse-Free Sport Program, the OSIC and the DSO, and the constraints imposed by the text of the UCCMS, the Participant Consent Form and the Abuse Free Sport Regime as a whole. In applying the principles of contractual interpretation, the First Instance Panel set out a clear and logical analysis of the relevant facts and law and found that the UCCMS did not apply at the time of the Respondent's conduct. … An individual should not be subject to discipline under a Disciplinary Code that he or she never expressly consented to be bound to retroactively – as desirable under public order and safe sport principles, that this should be the case.* (para. 53)

41. The *Code* identifies decision makers at the SDRCC as arbitrators. Although arbitrators are, arguably, not bound by decisions of other arbitrators, not only does fairness require consistency and predictability in decision making, but the *Code* also expressly provides for appeals from certain first instance decisions, presumably to bring certainty to parties before the SDRCC in addition to clarifying or correcting any serious shortcomings in the first instance decision. (*Vavilov*)

42. Consequently, I find that the SAT Decision, which was decided by a Panel of three arbitrators sitting in an appeal capacity, is, if not binding on me, highly persuasive. I find that many of the DSO's arguments in this matter have been finally decided by the SAT Decision. I conclude that the application of the

UCCMS is a matter of consent and is to be interpreted according to contract rather than statutory interpretation principles.

43. I further find that parties can only be bound by the UCCMS by express agreement; that is, through the enforcement of contracts entered into between the parties, and that participants cannot be sanctioned for conduct under the UCCMS that occurred prior to the entering into of such a contract unless there is express agreement to be bound by it.

Did the Applicant agree to be bound by the UCCMS?

44. On June 3, 2024, the Applicant was one of a long list of participants who received an email from his NSO. The email directed the recipients to sign the Abuse-Free Sport Consent Agreement. The email stated, in part:

> **Please note that you will not be permitted to attend any sanctioned […] event domestically or internationally unless we have received notice that you have completed this process.** (emphasis in original)

45. The Consent Agreement contained the following provisions:

…

Document Part 2: Abuse-Free Sport Participant Consent Form ("Consent Form")

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

   I hereby consent to being subject to the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the "UCCMS" …)

   …

As a Participant, you agree to be subject to the terms of the UCCMS for the duration of time that you are a Participant.

You agree to be subject to the Policies and Procedures and to the jurisdiction of the SDRCC, OSIC, their respective agents, functionally independent divisions, professionals…and/or external bodies (including in particular, the Director of Sanctions and Outcomes ("DSO")… responsible for the administration and enforcement of the UCCMS and Abuse-Free Sport during the period that you are or have been a Participant and for any longer period as required for purposes of the administration and enforcement of the UCCMS.

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.

…

7. You have had the opportunity to seek independent legal advice before signing this Consent Form and thereby giving your consent.

You understand, agree and freely consent to the terms set out in this Consent Form.

By signing this agreement, you understand and agree to be bound by the UCCMS and expressly consent to abide by the requirements of the OSIC Abuse-Free Sport process until you are removed as a program signatory.

46. The Applicant signed the agreement on July 1, 2024. Counsel submits, and I accept, that one week after receiving the email, the Applicant was travelling and commencing competitions, and that the form was to be completed in an online format that did not permit any alterations, additions or exceptions.

47. The Applicant contends that this agreement, which was signed after the completion of the investigation of this complaint, does not apply to this matter. Counsel says that when the Consent Agreement was signed, the Interested

Party's complaint had been accepted and administered by OSIC, the Applicant had already challenged OSIC's jurisdiction over the complaint, and the investigation had been completed. Counsel for the Applicant also says that, critically, after 'clicking' the online form, they wrote to OSIC maintaining their objection to OSIC's lack of jurisdiction over this matter.

48. Counsel's July 3, 2024 letter to the Director of Investigations and Assessments at OSIC states, in part, as follows:

> *…we would like to make it expressly clear that we maintain our position that the OSIC does not have jurisdiction to sanction [the Applicant] for the alleged events in case# […] The Applicant's signature of the Long-Form Informed Consent document should not be interpreted as a tacit acceptance that OSIC has jurisdiction in case #[...] or that our position on this issue has changed.*

49. Counsel for the Applicant says that because the Applicant was in the midst of this case and attending competitions, he signed the form so he could continue competing and did not want to waive his objections to OSIC's jurisdiction.

50. Counsel argues that the July 1, 2024 consent form cannot now retroactively provide jurisdiction for OSIC and the DSO's prior actions, particularly when the Applicant had contested their jurisdiction from the outset. I agree. Although the Applicant signed the form in which he acknowledged he had the opportunity to seek legal advice and "freely consented" to being bound by the UCCMS, he had already objected to OSIC's jurisdiction over this matter. The Consent Form was accompanied by counsel's correspondence repeating that objection.

51. The Applicant was told that if he did not provide his consent, he could not attend the competitions in which he was scheduled to compete in the following week.

52. I find that the Applicant had no choice but to sign the form as presented. Consent in such circumstances is not a valid consent. It was not freely given, despite the wording of the agreement. He was in, or approaching, a competition in which he would not have been permitted to participate in had he not signed. Through his counsel, he had repeatedly maintained his objection to OSIC's jurisdiction over this complaint. I find that the Applicant did not expressly consent to be bound retroactively to the UCCMS.

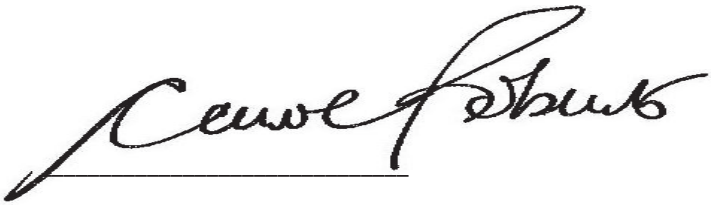
53. In light of my conclusion, it is not necessary for me to decide whether the UCCMS applies to conduct that not only pre-dates the effective date of the UCCMS by approximately 10 years but was alleged to have occurred in a foreign jurisdiction involving parties who were, at that time, not "participants" in a Canadian national sport organization.

54. I conclude that the DSO erred in law under Subsection 8.7 (a) of the *Code* by misinterpreting or misapplying the UCCMS or Abuse-Free Sport policies in concluding that OSIC had jurisdiction to investigate allegations against the Applicant.

CONCLUSION

55. The appeal is allowed. I Order that the findings of the DSO that the Applicant violated the UCCMS, and any corresponding sanctions, be set aside.

DATED: June 19, 2025, Vancouver, British Columbia



Carol Roberts, Arbitrator