

**IN THE MATTER OF COMPLAINTS
PURSUANT TO THE DISCIPLINE AND COMPLAINTS POLICY OF SOFTBALL ONTARIO**

BETWEEN

Sandra Sinclair

(the “**Complainant**”)

AND

Kyra Funk, President Greater Kingston Softball Association

Nicholas Brunet, Vice President & Head Coach Sydenham Minor Softball Association, Board Member
Frontenac County Minor Softball Association

Hugh VanKoughnet, President and Head Coach Sydenham Minor Softball Association, Board member of
Inter-community Softball Association, Vice-President Frontenac County Minor Softball Association

Brittany Smith, President of Frontenac County Minor Softball Association, Board Member Inter-
Community Softball Association

Tammy VanKoughnet, Vice-President, Sydenham Minor Softball Association

(the “**Respondents**”)

(collectively, the “**Parties**”)

DECISION WITH REASONS OF THE DISCIPLINE PANEL

(the “**Decision**”)

Hearing Dates: October 10 and 11, 2023

Decision Date: October 23, 2023

Discipline Panel: Ann Peel

I OVERVIEW

1. This matter considers four complaints (together, the “Complaints”) brought by the Complainant, Sandra Sinclair (“Sinclair”) in August and September 2023. The Complaints are inter-connected.
2. The first complaint (“Complaint One”) against Kyra Funk (“Funk”) concerns the Complainant’s suspension for the 2023 season from the Provincial Women’s Softball Association (“PWSA”) and its affiliated organizations; the Greater Kingston Softball Association (the “GKSA”), the Inter Community Softball Association (“ICSA”) and the Frontenac County Minor Softball Association (“FCMSA”) for violating PWSA Rule 1.12 Evaluation and Recruiting, of which she was notified by Funk on August 11, 2022. Complaint One includes allegations of wrongful suspension, of violations of Softball Ontario’s Code of Conduct and Ethics (the “Code”), and of behaviours prohibited under the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the “UCCMS”). The Code and the UCCMS are incorporated into the Softball Ontario Safe Sport Policy November 2022 (the “Safe Sport Policy”), which also includes Softball Ontario’s Discipline and Complaints Policy (the “Discipline Policy”). Complaint One was sent to Funk by the Case Manager, together with Appendices A to R, on August 21, 2023 with a reminder of the confidentiality provisions contained in the Discipline Policy.
3. The second complaint (“Complaint Two”) against each of Hugh VanKoughnet (“HVK”), Nicholas Brunet (“Brunet”), Brittany Smith (“Smith”) and Tammy VanKoughnet (“TVK”) concerns allegations of wrongful suspension from the FCMSA, together with alleged violations of the Code and the UCCMS. Complaint Two was sent to HVK, Brunet, Smith and TVK by the Case Manager on August 21, 2023, with a reminder of the confidentiality provisions contained in the Discipline Policy.
4. The third complaint (“Complaint Three”) against each of the Respondents concerns breaches of confidentiality, retaliation and providing false statements during an investigation, further to the UCCMS.
5. The fourth complaint (“Complaint Four”) brought by the Complainant on September 18, 2023 against Hugh VanKoughnet (“HVK”) and Nicholas Brunet (“Brunet”) concerns allegations of behaviours prohibited further to the UCCMS.

II PROCEDURAL HISTORY

6. The Case Manager received the Complaints and determined that Process #2 of the Discipline Policy would apply. None of the Parties has challenged the jurisdiction of Softball Ontario to receive and manage the Complaints.
7. The Case Manager appointed me to act as the Discipline Panel in September, 2023. None of the Parties raised an objection, and I confirm I have no conflict of interest in this matter.
8. The Case Manager attempted to resolve the matters through an alternative dispute resolution process. I was not a part of these discussions, and have no knowledge of what was discussed. On the failure of that process, the Case Manager determined that the hearing would proceed through the exchange of written submissions from the Parties, together with a virtual hearing, pursuant to section 31 of the Discipline Policy. The Case Manager’s decision cannot be appealed.
9. Hearing dates of October 10 and 11, 2023 were agreed to by the Parties. At the hearing the Complainant was self-represented. The Respondents were represented by shared counsel. As the Complainant did not have counsel, I took a more active role in questioning the Parties.

III NATURE OF THE COMPLAINTS

10. Complaint One alleges that Funk breached sub-sections 5.2, 5.4, 5.5, 5.8, and 5.9 through 5.14 of the UCCMS. In addition, sub-sections 10(a) and (b) of the Softball Ontario Code of Ethics (the “Code”) apply.
11. Complaint Two alleges that HVK, Brunet, Smith and TVK breached sub-sections 5.2, 5.4, 5.8, 5.9, 5.10, 5.12, 5.13, 5.14 of the UCCMS, together with section 10 of the Code. In addition, Complaint Two alleges breaches of the Softball Canada Conflict of Interest, Abuse, Inclusion Diversity and Access, Electronic Device and Social Media, Whistle Blower, Code of Conduct and Ethics, and Athlete Protection Policies.
12. Complaint Three alleges that the Respondents breached sub-sections 5.12, 5.13 and 5.14 of the UCCMS.
13. Complaint Four alleges that HVK and Brunet violated sub-sections 5.2.1, 5.7, 5.9, 5.13 and 5.14 of the UCCMS.

Softball Ontario Definitions for Policy Purposes

14. Section 7 of the Safe Sport Policy Definitions defines **Harassment** as “[A] course of vexatious comment or conduct against a Participant or group, which is known or ought reasonably to be known to be unwelcome. Types of behaviour that constitute Harassment include, but are not limited to:
 - a) Written or verbal abuse, threats, or outbursts;
 - b) Persistent unwelcome remarks, jokes, comments, innuendo, or taunts;
 - d) Leering or other suggestive or obscene gestures;
 - e) Condescending or patronizing behaviour which is intended to undermine self-esteem, diminish performance or adversely affect working conditions;
 - j) Persistent sexual flirtations, advances, requests, or invitations;
 - l) Contributing to a *poisoned sport environment*, which can include:
 1. Locations where material that is discriminatory is displayed (e.g., sexually explicit posters and racial/racist cartoons)
 2. Groups where harassing behaviour is part of the normal course of activities
 3. Behaviour that causes embarrassment, awkwardness, endangers a person’s safety or negatively affects performance.
 - m) Behaviours such as those described above that are not directed towards a specific person or group but have the same effect of creating a negative or hostile environment; and
 - n) Retaliation or threats of retaliation against a person who reports harassment to [an organization].
15. Section 11 defines ***Power Imbalance** – A Power Imbalance may exist where, based on the totality of the circumstances, a Participant has supervisory, evaluative, a duty of care, or other authority over another Participant....Maltreatment occurs when this power is misused...A Power Imbalance may exist, but is not presumed, where an intimate relationship existed before the sport relationship commenced (e.g., a relationship between two spouses or life partners, or a sexual relationship between consenting adults that preceded the sport relationship).

Softball Ontario Code of Ethics

16. The relevant sub-sections of section 10 of the Code state that Participants have a responsibility to:

a) Maintain and enhance the dignity and self-esteem of Softball Ontario's members and other individuals by:

- i. Treating each other with the highest standards of respect and integrity;
- ii. Focusing comments or criticism appropriately and avoiding public criticism of athletes, coaches, officials, organizers, volunteers, employees, or members;
- iii. Consistently demonstrating the spirit of sportsmanship, sport leadership, and ethical conduct;
- iv. Acting, when appropriate, to correct or prevent practices that are unjustly discriminatory;
- v. Consistently treating individuals fairly and reasonably; and
- vi. Ensuring adherence to the rules of the sport and the spirit of those rules.

b) *Refrain from any behaviour that constitutes Harassment, Workplace Harassment, Maltreatment, Workplace Violence, or Discrimination.

* Indicates a definition adapted from the UCCMS (which is incorporated into Softball Ontario's Safe Sport Policy per the Statement on Safe Sport on page 1 of the Safe Sport Policy)

[UCCMS](#)

17. The relevant sections of the UCCMS are as follows:

5.2 Psychological Maltreatment

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

a) Verbal Conduct: without limitation, verbally assaulting or attacking someone, including in online forms; unwarranted personal criticisms; implied or expressed body shaming; derogatory comments related to one's identity (e.g. race, gender identity or expression, ethnicity, Indigeneity, disability); comments that are demeaning, humiliating, belittling, intimidating, insulting or threatening; the use of rumours or false statements about someone to diminish that person's reputation; using confidential sport and non-sport information inappropriately.

b) Non-assaultive physical conduct: physical behaviour, or the encouragement of physical behaviour, that has the potential to be harmful or instil fear, including, without limitation:

ii) forms of physically aggressive behaviours such as, without limitation, throwing objects at or in the presence of others without striking another; damaging another's personal belongings; hitting, striking or punching objects in the presence of others.

c) Conduct that causes denial of attention or support: without limitation, forms of lack of support or isolation such as ignoring psychological needs or socially isolating a person repeatedly or for an extended period of time; abandonment of an athlete as punishment for poor performance;

arbitrarily or unreasonably denying feedback, training opportunities, support or attention for extended periods of time and/or asking others to do the same.

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

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

5.4 Neglect

5.4.1 Neglect refers to the omission of adequate care and attention and is evaluated with consideration given to the Participant's needs and requirements. Examples of Neglect include without limitation: not allowing an athlete adequate recovery time and/or treatment for a sport injury; disregarding and/or not considering a person's physical or intellectual disability; not ensuring appropriate supervision of an athlete during travel, training or competition; not considering the welfare of the athlete when prescribing dieting or other weight control methods (e.g., weigh-ins, caliper tests); disregarding the use of performance-enhancing drugs by an athlete; failure to ensure safety of equipment or environment; allowing an athlete to disregard sport's rules, regulations, and standards.

5.4.2 **Neglect** is determined by the behaviour viewed objectively, not whether harm is intended or results from the behaviour.

5.5 Sexual Maltreatment

It is important to note that a particular conduct would need to have "the potential to be harmful to a person's sexual integrity" in order to constitute Sexual Maltreatment.

5.7 Boundary Transgressions

5.7.1 Identifying a Boundary Transgression is dependent on context, including the age of the persons involved and the existence of a Power Imbalance. It may be the case that a particular act or communication does not meet the threshold of any of the types of Maltreatment, but is an act or communication that is nonetheless viewed as inappropriate in the circumstances. The assessment of the behaviour should consider whether the behaviour would raise concern in the mind of a reasonable observer, what objective appears to be guiding the interaction, and whose needs are being met. Even if the act in question does not, on its own, objectively cause harm to another person, a Boundary Transgression is nonetheless an act that should be corrected in order to ensure the safety and security of all members involved in sport, recognizing that Boundary Transgressions are often part of the Grooming process.

5.8 Discrimination

5.8.1 Discrimination can include overt or subtle forms of harm that uniquely define the adverse or inequitable experiences of marginalized persons.

5.8.2 The following are examples of Discrimination if they are based on one or more of the grounds of Discrimination within the definition:

- a) Denying someone access to services, benefits, or opportunities;
- b) Treating a person unfairly;

c) Communicating hate messages or unwelcome remarks or jokes;
The perpetuation of misogynistic, racist, ableist, homophobic, or transphobic attitudes and stereotypes.

5.8.3 Discrimination does not require an intention to cause harm.

Annotation s. 5.8.2

Discrimination is a differential practice having an inappropriate impact on an individual or a class of individuals based on one or more prohibited grounds as enumerated in the definition of Discrimination found in Appendix I of the UCCMS. This includes: race, national or ethnic origin, colour, Indigeneity, religion, age, sex, sexual orientation, gender identity or expression, pregnancy, marital status, family status,

language, genetic characteristics or disability, and analogous grounds. The adverse impact ensuing from differential practices is central to determining discriminatory behaviours.

Discrimination does not include practices where the differential treatment aims to redress historical injustices and does not have a harmful effect on the impacted individuals. Moreover, a practice rationally connected to legitimate sports objectives where they are reasonably necessary is also not considered

Discrimination. (See Appendix I (f) -Discrimination).

5.9 Subjecting a Participant to the Risk of Maltreatment

5.9.1 Sport administrators or other sport decision-makers in positions of authority who place Participants in situations that they know or ought to have known make the Participant vulnerable to Maltreatment are subjecting a Participant to the risk of Maltreatment.

5.9.2 Subjecting a Participant to the risk of Maltreatment includes, without limitation: **[not applicable to the Complaints]**

5.10 Aiding and Abetting

5.10.1 Aiding and Abetting is any act or communication taken with the purpose of directly assisting, furthering, facilitating, promoting, or encouraging the commission of Maltreatment or other Prohibited Behaviour by or against a Participant.

5.12 Intentionally Reporting a False Allegation

5.12.1 It is a violation to Report a knowingly false allegation, or influence another to Report a knowingly false allegation, that a Participant engaged in Prohibited Behaviour. An allegation is false if the events Reported did not occur, and the person making the Report knows at the time of Reporting that the events did not occur.

5.12.2 A false allegation is different from an unsubstantiated allegation; an unsubstantiated allegation means there is insufficient supporting evidence to determine whether an allegation is true or false. Absent demonstrable bad faith, an unsubstantiated allegation alone is not a violation of the UCCMS.

5.13 Interference with or Manipulation of Process

5.13.1 It is a violation of the UCCMS for a Participant to directly or indirectly interfere with or manipulate an investigation or disciplinary review process by:

- a) knowingly destroying, falsifying, distorting, concealing, or misrepresenting information, with the intent to interfere with or influence the resolution process or the implementation of an outcome;
- b) attempting to discourage or prevent a person's proper participation in or use of the processes;
- c) harassing or intimidating any person involved in the processes before, during, and/or following any proceedings;
- d) failing to comply with any temporary or provisional measure or final sanction;

e) influencing or attempting to influence another person to interfere with or manipulate the process; or
f) distributing or otherwise publicizing materials a Participant gains access to during a UCCMS investigation or hearing, except as required by law or as expressly permitted.

5.13.2 All Participants are expected to act in good faith throughout any investigation or disciplinary review process, and the sole purpose of Section 5.13 is to provide a means to discipline those who do not. In recognition that a victim/survivor, of sexual abuse in particular, may conceal information out of embarrassment, shame or to protect the perpetrator, absent demonstrable bad faith, minimizing or concealing in such circumstances is not a UCCMS violation.

5.14 Retaliation

5.14.1 It is considered retaliation for a Participant to take an adverse action against any person for making a good faith Report of possible Prohibited Behaviour or for participating in any UCCMS enforcement process.

5.14.2 Retaliation includes threatening, intimidating, harassing, coercing, negatively interfering with sport participation, or any other conduct that would discourage a reasonable person from engaging or participating in an investigation or disciplinary review process related to behaviour prohibited by the UCCMS. Retaliation after the conclusion of these processes is also prohibited, even where there is a finding that no Prohibited Behaviour occurred. Retaliation does not include good-faith actions lawfully pursued in response to a Report of possible Prohibited Behaviour.

IV ANALYSIS

Legal Issues

Jurisdiction and Authority

18. None of the Parties raised issues of jurisdiction or authority.

Burden of Proof

19. To find a breach of the Code or of the UCCMS, as alleged by the Complainant, the standard applied is that of a balance of probabilities. The question to be answered is whether the Complainant has proven that it is more likely than not that the Respondent(s) behaviour, with respect to each allegation: (i) occurred, and (ii) if it did, is in breach of the Code or the UCCMS.

Application of the Code and the UCCMS

20. The Complainant and the Respondents are coaches, officials and administrators in the sport of Softball in Ontario. They are, therefore, subject to the Safe Sport Policy, which includes the Code, the Discipline Policy and the UCCMS.

21. I do not find it necessary to apply the cited Softball Canada Policies, as the Code and the UCCMS cover the allegations sufficiently.

22. None of the Parties has questioned the authority of the Discipline Panel.

Confidentiality

Evidence of the Complainant

23. It is the position of the Complainant that the Respondent Funk shared the Complainant's emails and other communications regarding the suspension situation with others in the GKSA, FCMSA and other softball organizations. Of specific concern was one email that included sensitive information regarding the Complainant.

Evidence of the Respondent

24. The Respondent denies sharing the specific email with anyone. To support this denial Funk offered a screenshot of the email from Sinclair that shows it has not been forwarded or responded to.
25. Funk admitted sharing other communications received from the Complainant in the course of organization-wide decision-making.

Analysis

26. Significant discussion on the issue of confidentiality occurred during the hearing, during which it became apparent that at least one of the Respondents was aware of information they could have received only through knowledge of the Complainant's submissions in support of Complaint One. The Case Manager had clearly communicated to Funk that these submissions were confidential.
27. Counsel for the Respondent requested time after the conclusion of the hearing to determine how the Respondents had become aware of the Complaint One submissions.
28. On October 12, 2023 I received the following communication from Respondent's counsel:

"In the hearing yesterday, we indicated that we would review our files to address the your question about whether there had been sharing of the complaint materials between the respondents in these matters.

As you know, Mr. Katz and I were retained after the complaint and initial responses had been filed. Once we were retained, we emailed Mr. Raphael to request that all complaints filed against the respondents be provided to us. We were then provided with a series of emails from Mr. Raphael with the complaints attached. On September 22, 2023, counsel shared all complaints filed in this matter in a group email including all respondents except Ms. Smith who, at that point, had not yet retained us. We note that the complaint that has been identified as being applicable only to Ms. Funk named all respondents on the first page. Based on the manner in which we received the complaints and the content of the complaint that has now been identified as the Funk Complaint [Complaint One], we inadvertently shared that complaint in our September 22 email.

As soon as the hearing concluded yesterday, we informed our clients that our email on September 22, 2023 included the Funk Complaint. We inquired as to whether they had read the

attachments from our email. We also directed that they delete the email. We can report the following:

Mr. Hughie VanKoughnett received the email on September 22, 2023 – he has confirmed that he did not read the email attachments. He has also confirmed that he has now deleted the email from his inbox.

Ms. Tammy VanKoughnett received the email on September 22, 2023 – she cannot recall if she reviewed the email in its entirety. Ms. VanKoughnett is not aware of the details of Ms. Funk’s confidential matter with Ms. Sinclair. Ms. VanKoughnett confirms that she has now deleted the email from her inbox.

Mr. Nick Brunet received the email on September 22, 2023 - he has confirmed that he did not read the email attachments. Mr. Brunet confirms that he has now deleted the email from his inbox.

As previously noted, Ms. Smith was not cc’d on the September 22, 2023 email. Further, Ms. Kyra Funk was the intended recipient of the complaint.

In regards to Mr. Brunet’s knowledge of the text message between Ms. Sinclair and Ms. Funk, in particular the text message identified as Appendix F, Mr. Brunet’s knowledge of this text predates the filing of the complaint. Further, and as submitted at the hearing, aside from the email with sensitive information, there was no reasonable expectation of privacy over the other documents (emails and texts) and these documents are not confidential.”

Disposition of the Issue of Confidentiality

29. It is clear that breaches of confidentiality did occur. As I cannot determine whether these were due to the actions of Funk or counsel for the Respondents, I will not consider them as part of the Complaints. I hope that Counsel has learned to take greater care when sharing information, particularly in cases of multiple complaints involving multiple respondents who should not be privy to each other’s files. Whether there is a reasonable expectation of privacy is for the Discipline Panel, not counsel, to determine. Given the facts, as admitted by counsel for the Respondents, that question is moot.

The Evidence

30. The Complainant and the Respondents submitted extensive documentary evidence. I have compiled the documentary evidence in a Record of Documents which forms Appendix A to this Decision. No supporting witnesses testified at the hearing.
31. I base my ultimate findings on evidence characterized by credible observations by the Complainant and the Respondents, and on supporting hard evidence.
32. In the sections below, I refer only to the findings that are relevant to my ultimate determination.

V DISCUSSION OF THE ALLEGATIONS

33. For clarity, I will consider each Complaint in turn. In addition to determining whether the behaviour in the underlying allegations occurred, I must also determine whether the conduct complained of amounted to a Code or UCCMS violation.
34. Complaint One concerns primarily the allegation that Funk, in retaliation against Sinclair's reported concerns about coaches in the GKSA, suspended Sinclair without merit from the PWSA and GKSA for one year, and encouraged the FCMSA and the ICOSA to follow suit. In addition, Funk proceeded to harass Sinclair and to breach the confidentiality of Sinclair's communications with her (allegation resolved in paragraph 28 above).
35. Complaint Two concerns primarily the allegation that HVK, Brunet, Smith and TVK wrongfully suspended Sinclair from the FCMSA and ICOSA, and then proceeded to harass and intimidate her.
36. Complaint Three concerns primarily the allegation that the Respondents breached confidentiality, retaliated against the Complainant for filing Complaints One and Two, and provided false statements during the investigation of Complaints One and Two.
37. Complaint Four concerns primarily the allegation that HVK and Brunet harassed and intimidated the Complainant in response to Sinclair's reports to the Frontenac OPP.

Complaint One: Sinclair v Funk

Suspension of Sinclair

Evidence of the Complainant

38. The Complainant was an Executive board member of the SMSA from 2015-19. The SMSA is a sub-unit of the FCMSA. Sinclair also coached in the GKSA and FCMSA in house league, select and rep (boys and girls) during that time.
39. Prior to the closure of the House League and Select programs in 2020 due to COVID, Sinclair began discussions to create a rep program in Sydenham (SMSA). COVID restrictions were lifted for the 2020-21 season, however, SMSA decided to stay closed.
40. Consequently, the GKSA invited the Sydenham players and coaches to join their organization for the 2020-21 season, including Sinclair, Brunet (her then partner and co-coach), Sinclair's daughter and stepdaughters, and 6 other players (the "6 Players") Sinclair had coached for several years.
41. GKSA then invited Sinclair to coach a U15 Girls Rep team for the 2021-22 season – her daughter and the 6 Players joined the team. According to Sinclair, the experience was a negative one for the team. Sinclair testified that she reported concerns with the GKSA to Funk and to the PWSA over the course of the season. None of these concerns were addressed.
42. On June 15, 2022 Sinclair sent an email (the "June Email") to the President of the FCMSA (Smith) stating that, "...I am reaching out to you seeking support from FCMSA to form a U17 girls rep team for the 2022-23 season. We [Sinclair and the 6 Players] would like to come home to play and represent our community. I have completed the necessary coaching certifications and would like to be head coach if approved. Please let me know your thoughts." Her goal, as it had been in her pre-COVID discussions, was to have a Sydenham-based rep team within the SMSA, that is a sub-unit of the FCMSA.
43. No one representing the FCMSA responded to the email. Smith testified that she forwarded the email to Funk on July 9, 2022.

44. On August 10, 2022, Funk requested an end of season debrief meeting with Sinclair. Sinclair texted in response, "I am happy to meet with you if needed, although I'm grateful the season is over so we can just leave it in the past and move on to better opportunities and experiences. Myself and the 6 players I brought to town to play are returning to FCMSA for next season to ensure nothing like this season will happen again. It was not a good experience for any of us and the team should have been shut down early in the season, or had parents/players removed for code of conduct issues, or head coach replaced with someone who has knowledge, experience, competitiveness and social skills for rep. I wish I had stepped away from the team early on, but kept telling myself it will get better. I'm sure every player and parent will tell you the same. Never again though. Thanks for everything you have done for youth sports, your efforts are truly appreciated. Best wishes, Sandra".
45. On August 11, 2022 Funk sent an email to Sinclair (the "GKSA Notice of Suspension") stating: "We are writing to make you aware of this rule that has been broken and to tell you effective immediately your [sic] are suspended for the 2023 season.

As per PWSA organizations rules and bylaw, R1.12 Evaluation and Recruiting

- (i) Club team tryouts or player evaluation in the U10 through U19 divisions cannot commence before Labour Day. Failure to abide by these results will result in the offending coach being denied Association membership for one (1) year.
- (ii) All association coaches, managers, parents and players are not able to recruit PWSA players from other teams at any time [sic] during the playing season ending August east [sic]. If a coach is found to be recruiting players during the season they will be denied membership for one (1) year.

In addition at any suspension imposed on any coach by PWSA for illegally recruiting a player, the player or players involved shall not be allowed to play for that team while coach is under suspension. The player or players are free to play for any other team.

As ICSA and FCMSA are both associations that have the same governing rules this suspension will be in effect for both organizations. Please see attached the supporting documents."

46. On August 12, 2022 Mark Hazell, Head Coach, GKSA sent an email (the "Hazell Email") to various persons involved in softball in the region, sharing the "News from GKSA" that "Sandra has been suspended from coaching in any PWSA affiliated organization for the 2023 season (1 year) for violation of PWSA by law R1.12."
47. On August 31, 2022 Debbie Malisani, President of PWSA Ontario ("Malisani") sent an email to Funk stating; "Regards to the Sandra Stewart [Sinclair] matter, please see below, the woman cannot be suspended for tampering if there is no team formed and I have verified she was not given permission to form a team".
48. Upon learning that Sinclair was not suspended from the PWSA, Funk did not submit a complaint to the PWSA regarding Sinclair's alleged breach of Rule 1.12. This would have required completion of a form, and a fee of \$250 (which is returned to the complainant if an investigation finds a complaint to be with merit).
49. Sinclair received similar confirmation from Malsani that Sinclair was not suspended from the PWSA. Malsani's email of August 31, 2023 to Sinclair stated, "We have followed up with the contact you provided and they have provided content but do confirm that you do not at this time have a team out of your home centre. As discussed there is no tampering if there is not a team formed, however if one did form for the 2023 season there would be a suspension and the

athletes per our rule below would not be allowed to play for the team. Nevertheless, Funk reiterated to Sinclair by text on September 9, 2022 that, “Unfortunately Sandra you are unable to coach any teams within the GKSA and ICSA organizations for the next season!” In response, Sinclair reminded Funk that, “PWSA said there is no suspension”.

50. Sinclair testified that the impact of the suspension on her was that she could not coach anywhere in the region. This also affected her daughter’s ability to play. Sinclair was completely shut out of a major activity in her life, and not one of the officials responsible was willing to respond to her or consider her situation.

Evidence of the Respondent

51. Funk does not deny that she suspended Sinclair. It is Funk’s position that the GKSA Notice of Suspension to Sinclair was: (i) a miscommunication with respect to the PWSA suspension, (ii) supported by a majority of the GKSA executive, and (iii) within the authority of the GKSA. It is the position of Funk that it was, therefore, a suspension with merit from the GKSA.
52. Funk denies that the suspension was in retaliation for Sinclair’s complaints or concerns about the coaches and other incidents that occurred in the GKSA season of 2021-22. Sinclair stated that she shared over 50 complaints with the GKSA and the PWSA, and that none were acted upon. In testimony, Funk stated that there are no records of these complaints.
53. Funk testified that the June Email was evidence that Sinclair was recruiting players, in particular, the 6 Players, to form a rep team, contrary to the PWSA Rule which prohibits recruiting until Labour Day 2022. This was confirmed to Funk by Sinclair’s text of August 10 in which Sinclair stated she was taking the 6 Players out of the GKSA and returning to Sydenham.
54. Funk testified that she did not reach out to Sinclair specifically to discuss the subject matter of the June Email, and suggested that Funk’s request for a post-season debrief would have included that discussion.
55. Funk testified that when she received the June Email from Smith on July 9, 2022, she contacted Malsani by telephone to inquire about what process should be followed. There is no record of this communication.
56. On August 12, 2022 Funk emailed Malsani with a copy of the Hazell Email, and asked if there was anything in particular she needed to know about. She contacted Malsani again on August 20 to follow up because she had heard from the head coach (Hazell) that the suspension “is not happening”. On August 22, 2022 Malsani responded with, “I am just reviewing this and will discuss with my board. *I do want to note we have a process for suspensions and you cannot just send a note and place another individual under suspension only we can.*” [emphasis mine] Funk responded the same day by stating, “...we understand the process for PWSA and at this point have suspended her at the area level of GKSA base on her misconduct and ethics violations. Another question when is it the appropriate time in the coming weeks to provide all cooperation to further the suspension at the PSWA level...” Malsani responded later that evening with, “We will review and the reach out to some people then issue a letter of suspension the individual then has a right to appeal and then the suspension would be finalized.”
57. Funk’s reply submission of 29 September 2023 states, “I regretfully used the term ‘suspended’ in my email of August 11th, 2022. I should have instead stated that Ms. Sinclair WOULD be suspended if she were to attempt to form a team, as per the PWSA rules.”
58. It is Funk’s position that, regardless of whether the PWSA suspended Sinclair, a majority of the GKSA executive decided that, “GKSA does not want to be associated with anyone who conspires to form a future team (within a different organization) with players currently committed to a GKSA team. Ms. Sinclair has a history of being difficult to deal with and a poor ambassador for

the organization.” The majority of the GKSA executive comprised Funk, Chris Rayner and Dustin Hawley. There is no record of their discussion or of this decision. Funk testified that it occurred by phone.

59. The Respondent’s position is that the GKSA had the authority to suspend Sinclair pursuant to Rule 25(c) of the ICSA, which states:

“25. Ejections/Suspensions

c) A player, coach, manager, umpire or ICSA area representative may be suspended for any other reason by their own association or if there is a majority consent of the ICSA executive.

d) Suspensions will continue into the next softball season and ICSA will honor other softball association suspensions.”

The rules of the ICSA appear to govern the GKSA, as they are the only rules provided in the Rules section of the GKSA website.

Retaliation, Harassment, Abuse of Process

Evidence of the Complainant

60. It is the Complainant’s position that Funk failed to act on Sinclair’s and others’ complaints during the 2021-22 season. The Complainant views her suspension from the GKSA, the FCMSA and the ICSA as retaliation and harassment for those complaints, particularly since the suspension was upheld after Funk was informed by Malsani that Sinclair was not suspended by the PWSA.
61. The Complainant alleges that the reconfiguration of the area’s girls softball teams and associations, which involved a new rep association in Sydenham (Southeastern Rep Association), shut Sinclair out, as she was suspended from that association as well. Funk is President of the Southeastern Rep Association and was involved in its creation.
62. The reconfiguring is noted in a post on the FCMSA Facebook page by Shawn Pearce of the Inverary Minor Baseball Association, where he stated, “Seeing how a few months ago a qualified coach looking for a place to play for a U17 REP Girls team in 2023 was suspended for talking to me.....And thanks to some individuals she can’t coach this upcoming season. After all that took place BOOM there’s all of a sudden a NEW REP Girls Organization in FCMSA...”
63. The Complainant views that the ongoing impact of the suspensions that she argues were without merit, coupled with the reconfiguring of the area softball associations, in which Funk played a role, constituted harassment, psychological maltreatments, interference with a process and conflicts of interest. In addition, it is the Complainant’s position that the reconfigurations have reduced the opportunities for girls in the area to play.

Evidence of the Respondent

64. It is Funk’s position that Sinclair was suspended following a proper process, and that she has not harassed or maltreated Sinclair.
65. Funk denies receiving the complaints to which the Complainant referred.
66. It is Funk’s position that the reconfiguration of area associations and teams does not involve the Complainant.
67. In conclusion, Funk stated in her response of 29 September 2023 , “I implore you to remember that we are all volunteers who do what we do in the interests of providing a safe, fun place for children to play softball. Many of us (me included) do not even have children who play in our leagues. We are doing this because we love softball and we want to keep the sport alive and thriving in the Kingston area.”

Complaint Two: Sinclair v HVK, Brunet, Smith, TVK

Sinclair suspension from the FCMSA and ICSA

Evidence of the Complainant

68. The Complainant alleges that the Respondents to Complaint Two, in their capacities as voting members of the FCMSA in attendance at a meeting of the Board on September 20, 2022 (the "FCMSA Board Meeting") suspended her without merit from the FCMSA (the "FCMSA Suspension").
69. The Complainant stated that she attended the meeting because she learned that consideration of her suspension from the GKSA was on the agenda (the GKSA, the FCMSA and the ICSA are related organizations). She wished to speak to her suspension at the meeting. Accompanying Sinclair was Colin Mackay, Chief Umpire of the Kingston area.
70. The Complainant and Mackay were asked to leave the meeting, and were not given the opportunity to speak to the merits of the FCMSA Suspension.

Evidence of the Respondents

71. Each of the Respondents attended the FCMSA Board meeting.
72. It is the evidence of Smith, President of the FCMSA, that because the GKSA suspended the Complainant, regardless of any suspension or not from the PWSA, that the FCMSA and the ICSA would honour the GKSA suspension of the Complainant. In Smith's response of 29 September 2023, she stated, "At this meeting we did agree that she [Sinclair] would not be coaching within the FCMSA for the 2023 season as we are part of ICSA and any coach that is suspended or even looking at suspension is not something that we wanted in our organization. I apologize for jumping the gun with the wording, but as I read the emails attached from Kyra Funk and Debbie Malsani (PWSA) if she had of moved out to FCMSA and started one, then there would have been a suspension and any kids she brough with her would have gotten that as well. We all do this for the kids, and didn't want to see this happen, thus the reason we decided not to let her coach in FCMSA for the 2023 year."
73. Although the June Email was addressed to Smith in her capacity as President of the FCMSA, she did not respond to it. Instead, Smith forwarded the June Email to Funk on July 9, 2022. At no time did Smith seek to clarify the request contained in the June Email with Sinclair.
74. Brunet distanced himself from the FCMSA Suspension, stating, "I was not involved in the decision to not allow Ms Sinclair to coach for GKSA and FCMSA. When I was made aware of the discussion to decide not to have Ms Sinclair be part of the GKSA organization and FCMSA's intent to support it, I made it very clear and stressed in our meeting on September 20th 2022 and the meeting with ICSA members on April 24th, 2023, I need to be removed from any opinion, and information give towards any matter in regards to Ms. Sinclair." Brunet's non-involvement is not noted in the meeting minutes, which record only his attendance at the September 20, 2022 meeting. No dissent from the FCMSA Suspension is noted in either version of the meeting minutes.
75. TVK's response and testimony reiterated that the FCMSA Suspension was made (i) in solidarity with the GKSA, and (ii) 'due to our concerns about Ms. Sinclair's conduct, namely her attempt to form a rep team and recruit players outside of the timeline permitted under the PWSA by-

laws.” In testimony, TVK stated, “we assumed she was going to do it [form a U17 Rep team in Sydenham].” TVK confirmed that no effort was made to get more information about the Complainant’s intentions by anyone in attendance at the FCMSA Board Meeting.

76. HVK’s response affirms that the FCMSA Suspension was due to FCMSA’s affiliation with GKSA and reasonable concerns that the Complainant had, during an active season, attempted to form, and recruit players for, a rep team.

Threats and Harassment of Sinclair by the Respondents

Evidence of the Complainant

77. Sinclair alleges that at the FCMSA Board Meeting “These members [TVK, HVK and Brunet] kicked me out of a meeting held in the Sydenham Public Library when I attended the meeting to attempt an informal resolution. They swore, name called and became aggressive, I attended the meeting with Kingston Region Chief Umpire Mr. Colin Mackay. They yelled, swore at and kicked Mr. Mackay out of the meeting also. Mr. Mackay told the committee members (Brittany, Hugh, Nick and Tammy) that they were not allowed to make up their own rules and that there was no suspension. We were told that I was suspended anyway and not welcome back.”
78. Sinclair alleges further that Shawn Pearce did attempt to stand up for Sinclair and Mackay, but “...was threatened and told to shut up by Hugh, Tammy and Nick”.
79. Sinclair submitted that the librarian and library patrons were alarmed by the yelling and swearing and asked Sinclair and Mackay if they were ok. Sinclair submitted that they reported the incident to the South Frontenac Township Office.
80. An email from Tim Laprade, Recreation and Arena Manager, Township of South Frontenac, to HVK on September 23, 2022 (submitted as evidence by HVK) stated that, “The Township received a complaint by a resident using the Library during the same time as the Frontenac Minor Baseball Association meeting that took place on Tuesday, September 20th at the library community room.” Further details of the complaint were provided. Neither the Complainant nor the Respondents were named.

Evidence of the Respondents

81. TVK stated in her response that, “My personal conduct at the meeting was; Yes, with an elevated voice and profanity I did point my finger across the table in sequence at Shawn Pearce, [Sinclair, HVK and Brunet] while stating, ‘All of this is Rep Softball bullshit and has no fucking place at a FCSMA house League meeting.’”
82. In their written responses neither HVK nor Brunet addressed these allegations specifically.
83. Smith’s response is that Sinclair and Mackay were asked to leave the FCSMA Meeting because it became apparent that the meeting could not be productive in their presence.

Complaint Three: Sinclair v the Respondents

Breach of Confidentiality, Retaliation and Providing a False Statement During an Investigation

Evidence of the Complainant

84. The Complainant alleges that Funk's communications with the other Respondents and people involved with area softball associations that Sinclair was suspended by PWSA, GKSA, FCMSA and ICSA constituted Intentional Reporting of a False Allegation, contrary to sub-section 5.12.1 of the UCCMS. The Complainant's evidence to support this allegation includes the Hazell Email in which Mr. Hazell refers to having heard from the GKSA that Sinclair was suspended by the PWSA, and the minutes of the FCMSA Board meeting that refer to the GKSA suspension.
85. The Complainant alleges that Brunet interfered with the suspension process contrary to UCCMS sub-section 5.13 when he contacted one of Funk's potential witnesses, and told her that the Complainant had named that witness and her daughter (who plays on Brunet's team) as witnesses in a complaint against him.

Evidence of the Respondents

86. Funk denies the allegations.
87. Brunet stated in his response, that, "I reached out to XX's mom, Kelly Thompson to ask her is she was aware that [her daughter] was mentioned in a complaint against me and to ask if this was how [her daughter] felt. After reading the names on the complaint as witness's I was clear that Kelly's name was not on the witness list against me, but her daughter was mentioned. I have found the procedure of this complaint confusing and thought my communication with Ms. Thompson was permitted. From my review of the documents, it was my impression Miss Sinclair spoke to each child mentioned in the documents. The documents indicated that we should feel free to contact any of the witnesses and I, mistakenly believed that this was structured by Mr. Raphael. If there is a contact list given and it says to feel free to contact them, but everything is confidential, but Ms. Sinclair is able to speak to all the individuals mentioned, it seems she has a violation of 5.13.1. as well. The fact that she has implied the feelings of how these children feel and submitted children's name in the complaint other than her own without the permission is a cause of concern. As a parent I would be furious that I was not notified if I were in their position."

Complaint Four: Sinclair v Brunet and HVK

Harassment, Psychological Maltreatment, Boundary Transgression, Interference with Process and Retaliation

Evidence of the Complainant

88. The Complainant alleges that, following Complaints One through Three, Brunet and HVK sought to intimidate and harass her, to the extent that she filed reports with the Frontenac OPP.
89. It is the Complainant's position that she has a no contact order from the Frontenac OPP with respect to both Brunet and HVK, effective 27 August 2023.
90. The Complainant alleges that, in violation of that order, Brunet sent an invite through Sinclair's former husband and the father of her daughter, to try out for the U17 Napanee Tryouts. When Sinclair's daughter attended, she was distressed by the presence of Brunet and HVK at the tryouts (which is not their team), and believes their presence was designed to harass and intimidate.
91. The Complainant alleges that, also in violation of the no contact order, Brunet and HVK submitted an ATIP (FOI) request to the Township of Frontenac on September 18, 2023 to acquire all of the Complainant's correspondence with Township officials. The request was denied.

92. The Complainant alleges that HVK drove by with his camera out when Sinclair was walking her dog with a friend. Sinclair and the friend found this very threatening, and the friend made a statement to police.
93. The Complainant alleges that, “ Brunet attended the pick -up location for my children’s camp on Friday Sept 1 at 11:45am (on a small backstreet and public school in Kingston). He drove by me slowly glaring at me and circled the block slowly. He watched me get out of my truck and walk to the school. These incidences of harassment and intimidation have also been reported to the Frontenac OPP.”

Evidence of the Respondents

94. Brunet’s response regarding the allegation in paragraph 88 is: “All U17 players that SEO had emails for were made aware of the evaluations, [Sinclair’s daughter] was not excluded. I do ask, how would she feel if she was the only child in the area excluded from being invited. If she was not invited this complaint would read, we purposely excluded her from being able to tryout. I am not the coach or assistant coaching this team this years U17 team. I have a responsibility to make the evaluations available to every eligible player”
95. Brunet denies making the ATIP request.
96. HVK stated in testimony that his phone was out for his own protection when he drove by Sinclair, and that he explained this to the police.
97. Brunet stated that he had no discussion with the police, and that he had to go to his job site, and did not seek out Sinclair. To support his testimony Brunet provided a map of his location relative to that of Sinclair. Brunet stated, “Working in the area is not a form of manipulation. In school zones the speed limit is 40km /hour. Everyone has to drive slowly it’s the law. 11:06 am I was at 14 Douglas Ave, 11:36 I was on the phone with a customer hand free while driving to 222 Kingscourt Ave to pick up a cheque, at 11:42 I was at 141 Duff Street....The allegation that I devised a plan to pin point the exact time to pass Ms. Sinclair on the road that is a few hundred meters long to “glare at her” is not something I ever did or intend to do. . I will continue to keep my distance, and not respond to any form of communication from Miss Sinclair.

VI DO THE ALLEGATIONS BREACH THE CODE OR THE UCCMS?

Credibility

98. To arrive at a finding on the balance of probabilities, it is necessary to assess the credibility of a person’s account of events. This is particularly important where there is limited independent or corroborative evidence available, as none of the Parties called witnesses to support their testimony.
99. Justice Centa of the Ontario Superior Court of Justice summarized succinctly the leading case law on assessing the credibility and reliability of witnesses when assessing the evidence before the decision maker: Credibility has to do with the honesty, sincerity, or veracity of a witness. Reliability describes the other factors that can influence the accuracy of testimony, such as the witness’s ability to observe, recall, and recount events in issue.

Witnesses can sincerely believe their evidence is true, but that does not mean that what they are saying is reliable. Memory is fallible and becomes increasingly frail over time. Even an apparently convincing, confident, and credible witness may not be an accurate or reliable reporter. There is significant risk in placing too much emphasis on demeanour or the confidence

with which a witness speaks where there are contradictions and inconsistencies inherent in their evidence or where that testimony is inconsistent with contemporaneous records.

One of the leading decisions on assessing credibility is *Faryna v. Chorny*, where the court explained that:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject their story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

Taking into account my assessment of reliability and credibility, I will assess the evidence before me according to many factors including:

- a. if the evidence makes sense by being internally consistent, logical or plausible;
- b. if there are inconsistencies or weaknesses in the evidence of a Party, such as internal inconsistencies, prior inconsistent statements, or inconsistencies with the evidence of other witnesses;
- c. if there is independent evidence to confirm or contradict the Party's evidence, or a lack of such evidence;
- d. the Party's demeanour, including their sincerity and use of language, although this must be considered with caution; and
- e. if the witness, particularly one that is a party in a case, may have a motive to fabricate.⁴

100. I found the Complainant's evidence compelling. It was specific, internally consistent, logical and plausible. The Complainant had records of communications and of relevant events attached as detailed Appendices to each of her Complaints. At times, for instance with regard to Appendix F to Complaint One, information was misplaced, but the Complainant was able to locate it when asked. The Complainant's demeanour was sincere. She is genuinely bewildered by the course of events and has sought explanations everywhere and from everyone involved, even at the periphery. The Complainant has no motive to fabricate, and none was suggested by the Respondents.
101. The Respondents appeared genuine in their statements and testimony, although I find that they tended to find explanations for their behaviours after the fact. The most forthcoming was Funk. Smith and TVK were willing to respond to my questions in some detail. Brunet and HVK were more reticent, relying on their written statements.
102. For the reasons above, when in doubt of whose testimony to accept, I accepted that of the Complainant over that of the Respondents.
103. I note, however, that credibility was not a serious consideration as most of the events were well-documented.

Findings

Complaint One: Sinclair v Funk

104. I find that the Respondent suspended the Complainant without merit. The wrongful suspension of the Complainant by the Respondent was in violation of sub-section 10(a)(i) and (v)

of the Code, and of UCCMS Rule 5.13 Interference with or Manipulation of Process.

105. If one interprets ICSA Rule 25(c) as giving the GKSA Executive Committee, of which Funk is President, the authority to suspend the Complainant, this authority must still be exercised fairly. Fairness is codified in Section 10 of the Code, and is incorporated into the PWSA Rules, with which Funk was clearly familiar. Fairness is not an esoteric unknown; it is fundamental to the exercise of administrative authority. At a minimum, fairness includes the duty to give persons affected by a decision a reasonable opportunity to present their case.¹ This opportunity was not accorded to Sinclair by Funk.
106. In making this finding, I will consider the question of counsel for the Respondent, “what were they supposed to do?” in response to the June Email. My answer is (i) respond and/or (ii) seek an explanation from Sinclair regarding the steps she had or had not taken to act on her request to the FCSMA to form a U17 Rep team. The June Email was characterized by counsel for the Respondent as an ‘expression of intent’. When one reads the June Email it is clearly a request for support. It is important to reiterate that Sinclair did not have a U17 Rep team in Sydenham to recruit players to (as per the PWSA findings noted in paragraph 46 herein) and so could not be in violation of Rule 1.12. For there to be a Rep team in Sydenham the FCSMA would have had to approve it, whereas the FCSMA had neither answered the June Email nor approved a team.
107. It is the Respondent’s position that she acted in good faith and within her authority, although the GKSA Notice of Suspension did not provide the Complainant with any evidence of violation of Rule 1.12, nor did it refer to Rule 25 (c) of the ICSA. The GKSA Notice of Suspension mischaracterized the June Email as fact, as evidence of action, rather than as a request.
108. When the Respondent was informed that the PWSA would not uphold the Notice of Suspension, Funk did not pause to think that perhaps she should have evidence (as required by PWSA) before suspending the Complainant from the GKSA. Funk decided not to proceed with a formal PWSA complaint pursuant to Article 8 of the PWSA Rules, even though the \$250 fee would be refunded if the complaint had merit. Instead, Funk persisted and repeated that Sinclair was suspended from all of the GKSA, FCMSA and the ICSA in her text to Sinclair of September 9, 2022. This text preceded the FCMSA Board Meeting of September 20, 2022 at which the GKSA Notice of Suspension was to be considered.
109. Indeed, the evidence leads me to conclude that the GKSA Notice of Suspension was an arbitrary decision. There were no questions asked of Sinclair, and no effort was made by Funk to talk with her. I do not consider a request to Sinclair for a post-season debrief to be an inquiry about whether Sinclair is acting on her June email. That Sinclair wanted to return to Sydenham with the 6 Players is not evidence she was recruiting them to a rep team – just that she wanted to go back to the pre-COVID situation. In addition, Sinclair did respond, “I’m happy to meet with you if needed”, upon which Funk could have insisted, if she was indeed giving Sinclair the opportunity to present her case against suspension.
110. It is notable that Funk submitted that, even if there was no PWSA rule violation by Sinclair, the GKSA would suspend her anyway, because “she was difficult and not a good ambassador”. One could read sub-section 25(c) as giving that latitude. However, I find it is an explanation after the fact for the failure to find actual evidence that Sinclair had breached PWSA Rule 1.12. In addition, it would have required the GKSA Executive to ask Sinclair for her response prior to any suspension on the basis of “being difficult”. It is also doubtful that “being difficult” is

¹ Ernewein v. Minister of Employment and Immigration, [1980] 1 S.C.R. 639 (SCC)

the type of offence contemplated in Rule 25(c), as such a general offense lends itself to capricious decision-making and abuse of power by the person(s) judging the “difficult” person.

111. I note that volunteers are not exempt from the duty to act fairly. There is no nexus between payment for services and the duty of fairness, especially with regard to the lowest bar of giving a person potentially affected by a decision the opportunity to make their case.

112. My findings related to breaches of the UCCMS by the Respondent are dealt with in paragraphs 117 to 119 below.

Complaint Two: Sinclair v Smith, HVK, Brunet and TVK

113. I find that the Respondents, acting in their capacity as voting members of the FCSMA, suspended the Complainant without merit. The wrongful suspension of the Complainant by the Respondents was in violation of sub-section 10(a)(i) and (v) of the Code.

114. The Respondents testified they did not ask the Complainant to explain her actions with respect to the June Email. In fact, the Respondents ejected the Complainant from their meeting at which the Complainant’s suspension from the FCSMA and the ICSA was being considered. At no time did any of the Respondents consider their responsibility to exercise their authority with fairness, respect and dignity (as required by section 10 of the Code and the PWSA Rules).

115. Smith did not think it her responsibility to respond to the June Email addressed to her, in her capacity as President of the FCSMA. None of the Respondents conducted their own due diligence on the GKSA Notice of Suspension, even after learning that the PWSA had not, in fact, suspended the Complainant. This led to the FCSMA compounding the errors of Funk and the GKSA. It is one thing to act in solidarity with an affiliated organization, it is another to fail to do your own homework, to fail to exercise your power fairly.

116. It is not an answer to be a volunteer. Softball Ontario relies on volunteers, and has a Code contained within its Safe Sport Policy. The same standards of behaviour apply to all participants.

Complaint Three: Sinclair v the Respondents

117. The Respondents’ disregard for Sinclair’s right to be heard leads me to find that it is more likely than not that Sinclair was suspended in retaliation for her complaints against the GKSA, and her continued efforts to challenge the GKSA Notice of Suspension. This is a violation of Rule 5.14.2 of the UCCMS (Retaliation).

118. The Respondents violated Rule 5.2.1 (Psychological Maltreatment) of the UCCMS through conduct that denied the Complainant support: (i) by Funk when she refused to consider Sinclair’s request for clarity, after Sinclair learned she was not suspended by the PWSA, and (ii) by the other Respondents when they ejected Sinclair from the September FCSMA meeting, conduct that clearly had the potential to cause harm. By refusing to consider Sinclair’s repeated efforts to make her case, each of the Respondents aggravated her isolation in the softball community which had been core to her sense of purpose.

119. The Respondents violated Rule 5.13.2 of the UCCMS by failing to act in good faith throughout what should have been the disciplinary review process of the Complainant.

Complaint Four: Sinclair v Brunet and HVK

120. I find Complaint Four more properly belongs with the Frontenac OPP. I do not have the necessary investigative authority to compel testimony or to inquire about the facts of these allegations.

VII DISPOSITION AND SANCTION

121. The Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”) (guidance which is incorporated into section 37 of the Discipline Policy) offers guidance on sanctions to assist with consistency in the management of abuse in sport. The considerations a decision maker is to take into account include:

- a) The nature and duration of the Respondent’s relationship with the Complainant, including whether there is a Power Imbalance;
- b) The Respondent’s prior history and any pattern of inappropriate behaviour or Maltreatment;
- c) The ages of the individuals involved;
- d) Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
- e) The Respondent’s voluntary admission of the offense(s), acceptance of responsibility for the Maltreatment, and/or cooperation in the UCCMS’s (Softball Ontario’s) process;
- f) Real or perceived impact of the incident on the Complainant, sport organization or the sporting community;
- g) Circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training regarding the requirements in the UCCMS; addiction; disability; illness);
- h) Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate;
- i) A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
- j) Other mitigating and aggravating circumstances.

Any single factor, if severe enough, may be sufficient to justify the sanction(s) imposed. A combination of several factors may justify elevated or combined sanctions.

122. I shall consider each of these factors in turn, relative to each of the Respondents:

(a) I find no Power Imbalance between the Complainant and any of the Respondents, other than Brunet. As there was an intimate relationship between Brunet and Sinclair, and he is in a position of authority over her, I find that to be an aggravating factor in his case.

(b) None of the Respondents have a history of Maltreatment or of UCCMS or Code violations.

(c) The individuals involved are adults.

(d) I do not find the individuals involved pose an ongoing threat to the safety of others. Where they might, as in relation to Complaint Four, I will defer to the actions of the Frontenac OPP.

(e) The Respondents have not admitted their offences. They have acknowledged that they could have done better, and are willing to make change. None have expressed remorse for the impact of their behaviour, even the acknowledged behaviour, on the Complainant.

(f) The Respondents' actions had a very negative impact on the Complainant. The wrongful suspensions took away her ability to play and coach softball, which she considers her life's work. To the Respondents, Sinclair stated, "you buried me". Sinclair stated that she suffers anxiety, depression, loneliness, self-doubt, shame, fear and loneliness. In short, this experience has been "life altering". In addition, the actions of the Respondent may have had negative impacts on girls softball opportunities in the area.

(g) There are no mitigating circumstances with respect to any of the Respondents.

(h) The continued participation of the Respondents in the softball community should be limited due to their actions. Each abused their power, showed no remorse, and acted collectively to shut down a qualified coach who they had supported until they decided she was "difficult". The impact of these behaviours are magnified in a small community (for example, Sinclair was prevented from coaching high school rugby due to the GKSA Notice of Suspension), where there are fewer choices to join another league. I note that Sinclair has mitigated the damage to her by creating a new girls softball team in Kingston that is being inducted into the Kingston Sports Hall of Fame.

(i) Each of the Respondents is in a position of trust in the softball community, as leaders and executives of various associations.

(j) I do not find other mitigating or aggravating circumstances.

123. Pursuant to section 39 of the Discipline Policy I impose the following sanctions on each of the Respondents:

(i) a one year suspension from participation, in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of Softball Ontario, including the PWSA, GKSA, FCMSA and related or affiliated organizations. A one year suspension is required to ensure the Respondents do not participate in the 2024 season. For clarity, the Respondents may attend practices and games in which their children are participants;

(ii) reinstatement shall be conditional on completing [Governance Essentials](#) at their own expense, and to the satisfaction of Softball Ontario;

(iii) the requirement to maintain a physical distance from the Complainant for a period of one year to ensure there is no possibility of harassment; and

(iv) the requirement (to be completed by November 20, 2023) to write a letter to Sandra Sinclair and to each of the PWSA, GKSA, FCMSA for publication on their websites and in ICSA communications (as ICSA does not appear to have a website), the following statement signed by each of the Respondents:

“We confirm that Sandra Sinclair was not suspended by the PWSA, and was wrongfully suspended by each of the GKSA, FCMSA and ICSA. For our roles in these suspensions without merit we, the undersigned, have been suspended from participation, in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of Softball Ontario, including the PWSA, GKSA, FCMSA and ICSA, and related or affiliated organizations.”

VIII ADMINISTRATION

124. I remind the Parties of the confidentiality provisions described in Section 46 of the Discipline Policy.

125. This Decision shall be published by Softball Ontario, and the suspensions recorded. In addition, it is to be shared with Softball Canada, the PWSA, GKSA, FCMSA, ICSA and the Frontenac OPP.

126. Pursuant to Section 44 of the Discipline Policy, this decision may be appealed.

127. I thank the Parties for their submissions.

Respectfully,

Ann Peel,
Discipline Panel
October 23, 2023

Appendix A

Record of Documents

1. [Softball Ontario Safe Sport Policy](#)
2. Complaint One with Appendices A through R
3. Complaint Two
4. Complaint Three with Appendices A through D
5. Complaint Four
6. GKSA Response (Kyra Funk) dated September 29, 2023
7. Brunet Reply dated September 29, 2023 with 7 Supporting Documents
8. Smith (Battersea Softball) Reply dated September 29, 2023 with 13 Supporting Documents
9. TVK Reply dated September 29, 2023 with 2 Supporting Documents
10. HVK Replies (2 emails) dated September 29, 2023 with 6 Supporting Documents