IN THE MATTER OF AN APPEAL PURSUANT TO THE SOFTBALL ONTARIO APPEAL POLICY

Between:

KYRA FUNK, NICHOLAS BRUNET, HUGH VANKOUGHNETT, BRITTANY SMITH, TAMMY VANKOUGHNETT

Appellants

-and-

SOFTBALL ONTARIO

Respondent

-and-

SANDRA SINCLAIR

Affected Party

DECISION

I INTRODUCTION

1. By their Notice of Appeal with supporting submissions dated October 30, 2023, the Appellants appeal the October 23, 2023 decision (**"Decision")** by a Discipline Panel ("**Panel**") under Softball Ontario's ("**SO**") Discipline and Complaints Policy ("**DCP**"), concerning a complaint by Sandra Sinclair ("**Sinclair**").
2. Pursuant to SO's Appeal Policy ("**Policy**"), the appointed Appeal Manager determined that the appeal was within the scope of the Policy, was timely filed, and contained sufficient grounds of appeal. I was appointed as the Appeal Panel by the Appeal Manager on December 5, 2023.
3. A virtual case conference was held on December 21, 2023 to determine the format and timelines for a hearing of the appeal. A hybrid written/oral process was adopted. Written responding submissions were provided by SO and Sinclair, to which the Appellants then replied. A virtual oral hearing was held on February 6, 2024 during which the parties addressed their positions and written submissions.

4. The Policy stipulates that a decision under the DCP cannot be appealed on its merits alone, but that sufficient grounds for appeal may include the Panel having made a decision it did not have authority to make, or that was influenced by bias, or that was grossly unreasonable; or that the Panel failed to follow required procedures, failed to consider relevant information or relied on irrelevant information.[1]

5. The Policy also prescribes an appellate standard of review; in order to succeed an Appellant must demonstrate on a balance of probabilities that the Panel made a procedural error as alleged, and that such error or errors "…had, or may reasonably have had, a material effect on the decision…" .[2]

6. The Policy also directs that I may decide to (i) dismiss the appeal and confirm the Panel's decision or (ii) uphold the appeal and either (a) refer the matter back to the Panel for a new decision, or (b) vary the Panel decision.[3]

II Softball Ontario's Safe Sport Regime

7. The DCP is one of many policies included in SO's Safe Sport Policy Manual, and applies to all Participants, as defined by SO to mean "all categories of individual members and registrants defined in [SO's] By-laws" as well as "all people…engaged in activities with [SO]". SO has four (4) Member Associations, including the Ontario Amateur Softball Association ("**OASA**") and the Provincial Women's Softball Association ("**PWSA"**).

III Summary of the Panel Decision

8. The essential facts are set out in the Decision and are not seriously in dispute. In short, Sinclair was purportedly suspended on August 11, 2022 for the entire 2023 softball season by Appellant Funk, then the President of the Greater Kingston Softball Association ("**GKSA**"), on the ground that she had engaged in illegal player recruiting in contravention of PWSA rules.

[1] Policy, Section 7.
[2] *Ibid.,* Section 8.
[3] *Ibid.,* Section 18.

9. Since the Frontenac County Minor Softball association ("**FCMSA**") and Intercommunity Softball Association ("**ICSA**") were governed by the same rules, Funk advised Sinclair that her suspension would be in effect for both of those organizations as well.[4]

10. Within 24 hours, this action was made public. On August 12, GKSA's head coach emailed various people involved in softball in the region, stating that "Sandra has been suspended from coaching in any PWSA affiliated organization for the 2023 season."

11. Having been told she had contravened PWSA rules, Sinclair sought clarification from that organization, and learned that she had *not* in fact been suspended by PWSA from coaching in any PWSA affiliated organization, or at all.

12. However, according to Funk's evidence, a majority of the GKSA executive had in any event decided (if so, the timing is unclear) that it did not want Sinclair as part of the association for 2023. It is not clear, beyond Funk's representations to Sinclair, as to what action may have been taken by ICSA in the matter.

13. This confused state of affairs was further exacerbated by Funk in a September 9, 2022 text to Sinclair stating that she was suspended from all of the GKSA, FCMSA and ICSA. At the time, I understand that Funk did not hold a position with either FCMSA or ICSA.

14. Notwithstanding Funk's representations, the matter of Sinclair's suspension or status only came to the attention of the FCMSA at a board meeting on September 20, 2022. Board members Hugh and Tammy Vankoughnett, Brunet and Smith attended the meeting, as did Sinclair and the Chief Umpire of the Kingston area. To say the least, their presence – given Sinclair's status was on the agenda - was contentious and after some discussion, both were asked to leave the meeting.

15. The minutes of this meeting record that "[Sinclair's] potential suspension is not an FCMSA or ICSA issue….GKSA has barred Sandra and we are affiliated with them. We are in agreement that Sandra will not coach with us in 2023."

16. Sinclair's complaint was not directed at the local associations, as such, but at the individual Appellants: Funk, who as noted was the President of the GKSA; Brunet, a member of the FCMSA board; Hugh Vankoughnett, a vice-president of the FCMSA and member of the

[4] For convenience, I may refer to GKSA, FCMSA and ICSA collectively as the "local associations."

FCMSA and ICSA boards; Tammy Vankoughnett, a member of the FCMSA board; and Smith, the President of the FCMSA and a member of the FCMSA and ICSA boards.

17. On the evidence, the Panel concluded that Funk's actions in purporting to suspend and actually suspending Sinclair, without providing any opportunity to be heard, were without merit, arbitrary and in breach of fairness. Similarly, the Panel found that the FCMSA board members – Brunet, the Vankoughnett's and Smith - wrongfully suspended Sinclair for the same reason.

18. The Panel found that the Appellants' conduct was in breach of the SO Code of Conduct and the Universal Code of Conduct to Prevent Maltreatment in Sport ("**UCCMS**").

19. Having found these infractions, the Panel considered the factors relevant to determining appropriate sanctions as set out in the DCP[5], and imposed the following sanctions on the each of the Appellants:

> (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."

IV Submissions and Analysis

20. The Appellants have made it clear that they do *not* take issue with the Panel finding that the suspension of Sinclair was not in accordance with procedural fairness; indeed, they say

[5] DCP, Sections 36-39.

that the issue on the complaint was nothing more than that – a simple procedural error that should have been addressed as such.

21. From the record however, it is apparent that on learning of Sinclair's post-COVID interest in developing a 'rep' softball team within the FCMSA,[6] key players in the local associations set out to effectively blacklist or blackball Sinclair from participating in any manner in the sport of women's softball in the region.

22. To characterize their efforts as a mere procedural error is a severe understatement. Simply put, there was no process of any sort afforded to Sinclair. The lack of good faith shown to her is palpable, and on my reading of the record and the submissions, the Appellants' behaviour was egregious.

23. The Appellants challenge three areas in which they argue that the Decision cannot stand. First, they submit that certain of the Panel's findings are inconsistent and contradictory and are either themselves grossly unreasonable or make the Decision grossly unreasonable; second, they say that the scope of the suspensions imposed on the Appellants exceeded the Panel's jurisdiction; third, they submit that in certain respects the sanctions imposed on the Appellants are disproportionate and unduly severe, and in the result, grossly unreasonable. In the result, the Appellants submit that the decision of the Panel in these respects and the sanctions imposed on them should be set aside.

24. For the reasons which follow, the appeal is in part dismissed and in part upheld, and in the latter respect, the Panel decision is varied.

A. Panel Findings

(i) Confidentiality

25. The Panel heard considerable evidence and argument on the question of whether Funk had shared certain confidential information of Sinclair, but made no findings on that question, and in respect of such evidence as it did hear about alleged breaches of

[6] Sinclair had previously been involved with Sydenham Minor Softball, a subset of the GKSA, which shut down during COVID and did not re-open after the pandemic.

confidentiality, determined that it would "not consider them as part of the Complaints." The Appellants did not address this issue during the oral hearing, but their submission is that notwithstanding that the Panel did not consider the issue, its findings as regards the Appellant's actions – as opposed to their counsel – were contrary to the evidence, and as such, grossly unreasonable.

26. While there may be an inconsistency around the Panel's comments on the allegations regarding confidentiality, the fact of the matter is that the Panel did "not consider them as part of the Complaints" and as such, it is clear that the Panel drew no conclusion regarding this issue. I see no reason to disturb the Decision on this ground.

(ii) Retaliation by Appellant Funk

27. The Panel found that the " Respondents' [the collective Appellants] disregard for Sinclair's right to be heard" lead it to conclude 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."[7]

28. The Appellants submit that there was in fact no evidence of the alleged complaints by Sinclair concerning her prior experience with the GKSA, and that her "bald assertion" was an insufficient basis upon which to conclude that Funk acted in retaliation, and that for this reason the sanctions as they relate to Funk should be quashed.

29. For several reasons, I cannot agree with this submission. First, while the Panel did consider the issue of Sinclair's alleged submission of prior complaints, it also considered Funk's evidence to the contrary. Second, the finding by the Panel concerned all of the Appellants, not just Funk. Third, the key issue for the Panel was the arbitrary nature of the Appellants' collective disregard for Sinclair's right to be heard, and their failure to act in good faith throughout. I am not persuaded that the Panel's conclusion on that key issue would have been materially affected by a different conclusion as to the motivation of the Appellants.

30. I dismiss the appeal on this ground.

[7] A reference to Funk's correspondence of August 11, 2022.

(iii) Brunet's Role

31. The Panel found that Smith, the Vankoughnetts and Brunet, "acting in their capacity as voting members of the FCSMA (*sic*), suspended [Sinclair] without merit", without asking her for an explanation regarding her interest in forming a 'rep' team, and ejected her from the September 20, 2022 meeting, amongst other matters, thus "compounding the errors of Funk and the GKSA."[8]

32. The Appellants submit that as to Brunet, this finding is contrary to his evidence and the Panel's own finding. It is submitted that Brunet "abstained from the decision [to suspend Sinclair] due to his conflict of interest" (because of his prior relationship with Sinclair), and the Panel recognized this in a finding that "Brunet distanced himself from the FCMSA Suspension", presumably based on his September 29, 2023 written evidence that he was "not involved in the decision" and "made it very clear in our meeting on September 20th 2022…I need to be removed from any opinion, and information give (*sic*) towards any matter in regards to Ms. Sinclair."

33. On this basis the Appellants submit the finding that Brunet participated in the FCMSA decision to suspend Sinclair is grossly unreasonable and accordingly, all the sanctions against Brunet should be quashed.

34. With respect, it is apparent on the face of the Decision that the Panel did *not* find that "Brunet distanced himself from the FCMSA Suspension"; that statement appears in the Panel's summary of *his* evidence. Moreover, that was not Brunet's only evidence. His earlier written response to the Complaint was somewhat different; there, he stated that he "removed myself from any dealings *since* the Sept 20th 2022 meeting, that include Ms. Sinclair because there is a conflict of interest…" [Italics mine].

35. This evidence also makes it very clear that far from being removed from the Sinclair matter, or abstaining from the issue, Brunet actively participated in the discussion at the FCMSA meeting and the ejection of Sinclair. As such, he clearly contributed to what he describes as a "consensus" to align the FCMSA with the blacklisting of Sinclair.

[8] Decision, Paragraphs 113-116.

36. I dismiss the appeal on this ground.

B. Jurisdiction – Scope of Suspensions

37. The Panel's sanctions included the following suspensions of the Appellants:

> "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."[Emphasis added]

38. The Appellants submit that as the GKSA and FCMSA are house league and select operations (which activities do *not* fall under the auspices of SO) and are not now members of SO, the purported suspension of the Appellants from participating in the activities of those local organizations was beyond the jurisdiction and authority of the Panel.

39. As to GSKA, the Appellants say that while it was once a member of or affiliated with PWSA, one of four voting Member Associations of SO,[9] it has not been since August 31, 2022. As to FCMSA, it is not a member of either SO or PWSA. According to PWSA's Rules, affiliation is by teams, and neither local organization has teams that are PWSA members.

40. SO disagrees and submits that its members include non-voting affiliates, and that so long as FCMSA and GSKA are members of or affiliated with SO or one of its voting members, then SO has authority to impose and enforce sanctions as they relate to the involvement of the Appellants in the *activities of those local organizations*. If they are neither a member or affiliate but are nevertheless engaged in activities with or programs offered by SO, then SO has authority to impose and enforce sanctions as they relate to the Appellants' involvement in those specific *SO activities*. SO notes that both local organizations were registered for certain SO programmes in 2023.

41. In reply, the Appellants agree that SO's authority to sanction the Appellants extends to their involvement in specific SO activities (and those of its Member Associations), but

[9] I understand that at some point GKSA did provide 'rep' softball for some age groups.

reiterates their position regarding non-SO activities, such as house league practices, games and tournaments under the auspices of non-members GKSA and FCMSA.

42. In addition, the Appellants noted that SO did not provide any contractual basis to ground its assertion of authority to sanction the Appellants from all participation in FCMSA and GSKA activities.

43. That said, and perhaps in response to this submission, in the virtual hearing SO raised for the first time the fact that FCMSA and GSKA have in the past secured or are now in the process of securing insurance coverage through Member Associations of SO, submitting that this is a sufficient affiliation with SO to justify the scope of the suspensions imposed by the Panel. SO referred to documentation in support of this claim.

44. Notwithstanding Procedural Direction 1[10] and the fact that this assertion came extremely late in the process, given the significance of the jurisdictional issue I agreed to consider the material and invited both SO and the Appellants to provide post-hearing written submissions on this point.

45. The documentation establishes that GKSA purchased liability and accident coverage from the PWSA for its non-affiliated teams in 2022 and 2023 as well as third party coverage and has at least inquired about similar coverage for2024; the latter coverage is apparently only available to "affiliated" associations. Teams registering with PWSA for insurance purposes are considered Associate Members of PWSA. As such, SO asserts that these arrangements demonstrate that GKSA is member/affiliate of PWSA, and as such, the Appellants' activities in that local organization are fully subject to SO's disciplinary jurisdiction.

46. The documentation also establishes that SO submitted that FCMSA secured liability coverage for its non-affiliated teams in 2022 and 2023 (and third-party coverage in 2022) from the OASA. While OASA does not have a membership class of insurance associates like the PWSA and does not appear to require affiliation in order to secure third party coverage, SO submits that the FCMSA-OASA insurance relationship is to the same effect as GKSA.

[10] Which indicated that I would not consider any new evidence.

47. SO submitted that it would be “absurd” that the local associations can enjoy the benefits of insurance coverage through SO (or its Member Associations), but at the same time take the position that their key personnel are not subject to discipline by SO that extends to suspension from their activities under the auspices of those organizations.

48. In response, the Appellants note that the insurance arrangements in the case of both local organizations relate only to “non-affiliated teams”, that is, house league and select teams that are *not* affiliated with SO or its voting members. The Appellants say that at the insurance documents simply demonstrate a commercial relationship and in the case of FCMSA and GKSA do not clearly create a “membership” sufficient to establish SO disciplinary jurisdiction over the Appellants regarding their activities in those associations.

49. That said, as to GKSA, the Appellants concede that if it is approved for third party insurance for 2024, it will be an affiliate of PWSA and thus the Appellants would be subject to disciplinary jurisdiction by SO in respect of “all Softball Ontario activities.” This concession does not address the issue of whether “affiliation” widens the scope of SO’s disciplinary authority *beyond* SO activities.

50. As to FCMSA, the Appellants’ position remains that SO does not enjoy disciplinary jurisdiction over the Appellants in respect of their FCMSA activity.

51. On the face of it, given the fact that the GKSA AND FCMSA operations are limited to house and select softball, which do not fall under the auspices of SO, the authority of SO in disciplinary matters would not logically extend to suspensions from participation in the different activities of the local organizations.

52. If it were otherwise, one would expect to find a clear statement and rationale establishing such jurisdiction in the policies of SO and/or the local associations, particularly given the fact that house league and select softball are not the business of SO. But that is not the case. Instead, I am left to grapple with the parties’ conflicting submissions regarding membership, affiliation and what it means, registrations and what they may imply, and insurance arrangements in order to determine whether, on a balance of probabilities, the Panel erred in imposing a sanction that would suspend the Appellants from participating in the activities of GKSA and FCMSA.

53. I am satisfied that the suspensions of the Appellants 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" were within the proper scope of the authority and jurisdiction of the Panel under the DCP.

54. However, I am *not* satisfied that the authority and jurisdiction of the Panel under the DCP extended to suspending the Appellants from participation "in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of … GKSA, FCMSA and related or affiliated organizations."

55. Neither a commercial insurance relationship, nor the language used in an application for coverage, nor random registration for specific SO programs is sufficient in my opinion to extend the authority of SO to activities that do not otherwise fall under SO's auspices, and the Panel erred in suspending the Appellants from activities in the GSKA and FCMSA.

56. I allow the appeal in respect of the scope of the activities suspended.

C. Sanctions

(i) Suspensions – Overly Severe

57. The Appellants submit that the suspensions imposed on them by the Panel are severe, grossly disproportionate to the Panel's findings and are therefore grossly unreasonable and should be set aside. Given my decision concerning the scope of the suspensions, I consider this submission in relation to the length of the suspensions, not their scope.

58. The principal basis for this position seems to be the Appellants' view that the only 'sin' they committed was failing to follow "a process for a suspension". They argue that the "proper sanction" in that case was for the Panel to quash the suspension and remit the matter or have the "process redone", and the reason why this was not done by the Panel was Sinclair's "…failure to bring the complaint in a timely way….". They say the Panel ought not to have remedied Sinclair's failure by imposing an "unjust and punitive penalty" simply because the remedy "usually done" wasn't available.

59. By the time the complaint was heard by the panel the 2023 softball season was over, and Sinclair's suspension had been 'served', so as a practical matter, quashing the suspension was not an effective remedy; even if it was, if having the 'process redone' meant a process administered by the Appellants, that would be fraught with problems.

60. Moreover, nowhere in the Appellants' attempt to minimize their own behaviour is there any recognition of the impact it had on Sinclair, which the Panel specifically addressed in the Decision.[11] I have not been told why Sinclair did not take steps immediately in the wake of having been blacklisted for the 2023 softball season.

61. I can imagine there may have been many reasons, but in any event, there was nothing to be done by her at the PWSA level, and I am not informed that any of GKSA, FCMSA or ICSA had a system in place that would allow for her blacklisting to be challenged in a fair procedure, or at all.

62. If it is not otherwise apparent, I reject the suggestion that Sinclair is herself responsible for putting the Panel in this position. It was not Sinclair's failure that needed a remedy but the egregious behaviour of the Appellants.

63. The DCP does not prohibit the imposition of suspensions in cases that involve breaches of procedural fairness, and while I am well aware of the principle of proportionality, particularly in sport-related discipline matters, the suspensions imposed by the Panel in this case do not offend my sense of decency. While the Appellants characterize the suspensions as 'punitive', I am of the view that they are reasonably proportionate with the egregious nature of the Appellants' behaviour in arbitrarily punishing Sinclair by blackballing her from any involvement in softball in the Kingston region for an entire season.

64. I dismiss the appeal on this ground.

---

[11] As one example, see Paragraph 122(h) of the Decision: "Each [of the Appellants] 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"."

(ii) Suspensions - Mitigating Factors

65. The Appellants submit that the Panel's finding in Paragraph 122 (g) that "There are no mitigating circumstances with respect to any of the [Appellants] " was grossly unreasonable.

66. Having recited the relevant factors that the DCP in Section 37 requires a Panel to consider prior to determining appropriate sanctions, the Panel stated that she would "consider *each of these factors in turn*, relative to each of the [Appellants]." [Italics mine].[12]

67. The Appellants contend that the Panel's finding at paragraph 122(g) is "absurd and shocking" in light of the Panel's earlier findings in that paragraph that there *are* mitigating factors, and that this finding makes the sanctions imposed by the Panel grossly disproportionate.

68. I reject this submission. As noted by SO counsel, it is apparent on the face of the Decision that the Panel's finding at Paragraph 122(g) of the Decision is not a general , all-encompassing one, but ties directly to and concerns the Panel's consideration of the specific factor set out in paragraph 121(g), and only that factor. All that the Panel says at paragraph 122(g) is that having considered the point, there are no mitigating circumstances such as addiction, illness or disability specific to any of the Appellants.

69. Counsel for the Appellants tried a different tack in oral argument, submitting that there is no evidence the Panel conducted any sort of "analysis" in order to reach its conclusion about mitigating factors, that is, something more than merely "considering". I reject that submission as well. The Decision makes it clear that the Panel is required to "consider" all of the relevant factors, and it is apparent that she did so. Moreover, in noting the mitigating factors which the Panel found to be applicable, the Appellants themselves were content to acknowledge that these factors were "considered."[13]

70. I dismiss the appeal on this ground.

[12] Decision, Paragraphs 121-122.
[13] Notice of Appeal, Paragraph 78.

(iii) Reinstatement

71. The Panel determined that reinstatement of the Appellants after their suspensions will be conditional on completing Governance Essentials at their own expense and to SO's satisfaction. Having allowed the appeal regarding the suspensions only in respect of the scope of the activities affected and given the Appellants willingness to take this, it follows that the appeal regarding that sanction is also dismissed.

(iv) Physical Distance

72. The Panel determined that the Appellants were to maintain a "physical distance from [Sinclair] for a period of one year to ensure there is no possibility of harassment." Given the Panel's finding that the Appellants do not "pose an ongoing threat to the safety of others", they submit that this sanction requirement was neither necessary nor appropriate and ought to be quashed.

73. The Panel's finding about safety was specifically in relation to the specific factor in Section 37 of the DCP. While endangering a person's safety is one type of behaviour that may constitute harassment, Section 7 of the SO Safe Sport Policy Definitions[14] identifies many other behaviours that can constitute harassment. Given that the purpose of the sanction was *not* directed to threats to safety, but rather to ensure "…no possibility of harassment" I see no reason to disturb the Panel's direction.

74. If as the Appellants say, their communications with Sinclair are by email, and if Brunet prefers not to have contact with Sinclair, compliance with this requirement should not pose any difficulty, and I suspect she will assist in seeing that is so.

75. I dismiss the appeal on this ground.

(iv) Publishing Decision

76. The Panel directed that the Decision be published by SO. In their Notice of Appeal, the Appellants acknowledge that direction; presumably, they did so because Section 36 of the

[14] Decision, Paragraph 14.

DCP stipulates that the Decision will be a matter of public record unless the Panel decides otherwise, which it did not in this case.

77. In its submission, SO takes a contrary view. SO says that as a matter of procedural fairness, the Panel did not have the authority to direct a non-party to the process, such as SO, to publish the decision, since it was not invited to make a submission as to whether it should be so directed.

78. In reply, the Appellants changed their tune, and agreed with the position of SO.

79. I have considerable difficulty understanding how a decision[15] can be a matter of public record if it is not published in some fashion. More to the point, if the *Panel* is authorized to determine whether a Decision is or is not to be a matter of public record, it seems neither unreasonable nor unfair that a Panel may determine whether to publish a decision on the strength of submissions by parties to the discipline process.

80. Had the drafters of the Policy intended that this discretion could only be exercised by SO or with input from SO (and any other non-parties who might be affected by such publication), it would have said so, but it is silent on that point.

81. It is also my view that the authority vested in the Panel in Section 39(g) of the Policy to impose "[o]ther sanctions…including other restrictions or conditions as deemed necessary or appropriate" properly extends to requiring publication of a decision, particularly where the circumstances leading to the disciplinary process were themselves a matter of some notoriety in the Kingston regional softball community. and that it was not necessary or practical to hear from SO before imposing that condition.

82. I dismiss the appeal on this ground.

(v) Distribution of Decision

83. The Panel also directed that the decision should be shared with "Softball Canada, the PWSA, GKSA, FCMSA, ICSA and the Frontenac OPP." In the Notice of Appeal, the Appellants agreed that it is reasonable for the Decision to be shared with "related

[15] DCP, Section 44 – SO is required to maintain records of all decisions.

organizations" but conceded at the hearing that Section 48 of the DCP does not limit recipients as originally suggested. There is no restriction in that provision which limits shared recipients to organizations related to SO.

84. While acknowledging that Section 48 of the DCP permits but does not require that other organizations may be advised of decisions under that policy, SO argues that the Panel direction in this case was beyond its authority, again because SO was not given an opportunity to make submissions on this issue.

85. In reply, the Appellants again changed their tune, and agreed with the position of SO.

86. I take a somewhat different view on this issue than on the question of publishing the Decision. I am of the opinion that the determination of whether a given SO disciplinary decision should be shared with third parties, e.g.: other PSO's, NSO's, local organizations, or clubs is properly for SO to make.

87. I say this because there will in any given case be a number of considerations that may extend beyond the case-specific focus of a Panel which may be relevant to the issue of whether a decision should be distributed to third parties, and these are best left to SO, after the fact. I take some comfort in drawing this distinction by reason of the fact that Section 48 assumes that the Panel has "rendered" a decision. Had it been otherwise, the DCP could have said so.

88. Had I been of a different view, I would have varied the Decision by excluding the Frontenac OPP from the recipients, given the Panel's finding that Sinclair's Complaint Four was beyond her authority and "properly belongs with the Frontenac OPP."

89. I allow the appeal on this ground.

(vi) Directed Letter

90. The Panel directed each of the Appellants to write a letter by November 20, 2023 to Sinclair, and to each of PWSA, GKSA FCMSA and ICSA for publication, incorporating a signed statement, much in the nature of a confessional, in effect summarizing the Panel decision and sanctions.

91. The Appellants variously characterize this as a punitive, unreasonable, exemplary, humiliating, unnecessary and unreasonable sanction in the nature of a forced apology that should be set aside.

92. SO does not agree that this sanction amounts to an apology or forced apology, and while conceding that the direction to write the letter may be an appropriate and enforceable sanction, SO submits that the Panel did not have the ability to require organizations that were not party to the process to publish such a letter, since SO does not have authority to enforce this direction.

93. I agree with SO that the directed letter is not an apology. Given the Panel's directions to publish the Decision a*nd* share it with the same organizations, the letter requirement seems rather redundant, if not overkill on the part of the Panel. My finding regarding the sharing of the Decision, above, does not answer this concern.

94. The Panel erred in imposing this sanction because it applies not only to the Appellants but also to organizations that were not party to the discipline process. Indeed, publication of the letter by those organizations is the *sine qua non* of the sanction. I agree that in this respect, neither SO nor the Appellants has the ability to enforce the "for publication" aspect of this sanction.

95. I allow the appeal on this ground.

V Summary and Conclusions

96. As it relates to the findings of the Panel as regards confidentiality, retaliation and Brunet's role, the appeal is dismissed.

97. As it relates to the scope of the activities from which the Appellants are suspended for the 2024 season, the appeal is allowed, and Paragraph 123(i) of the Decision is varied to read as follows, with the variations in bold:

> "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 **its Member Associations ("activities")**. A one year suspension is required to ensure the Respondents do not participate in the 2024 season. For clarity, the Respondents may attend **activities** in which their children are participants"

98. As it relates to the sanctions requiring the sharing of the Decision[16] and the directed letter to Sinclair *et. al.*[17], the appeal is allowed, and the Decision is set aside.

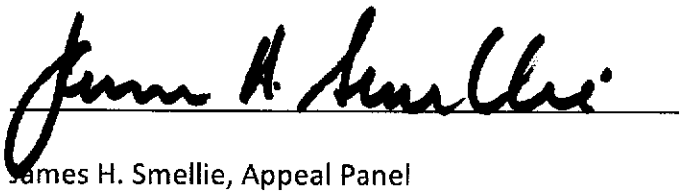
99. As it relates to all other aspects of the sanctions imposed by the Panel, i.e.: severity of the suspensions (other than their scope), mitigating factors, reinstatement, physical distance and publishing, the appeal is dismissed.

100. In conclusion, I wish to add that this is a particularly difficult case, for reasons that are readily apparent from the Decision. In reviewing evidence which the Panel considered, I took note of many references to the volunteerism that is at the heart of the Kingston softball community, and how such efforts are principally directed to the teaching and enjoyment of children and young persons. That is as it should be, and I hope the parties keep this, and their related accountabilities in mind going forward.

101. I wish to thank Ms. Sinclair and counsel for their written submissions and oral presentations, which have been of considerable assistance.

102. In accordance with Section 20 of the Policy, this decision may be appealed by any of the Parties to the Sport Dispute Resolution Centre of Canada in accordance with the Canadian Sport Dispute Resolution Code.

DATED at Calgary, Alberta this 22nd day of February, 2024.



James H. Smellie, Appeal Panel

[16] Decision, Paragraph 125.
[17] *Ibid.*, Paragraph 123(iv).