

KEEPING CURRENT

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Canada Soccer Loses Bid to Stay Arbitration Award

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Arbitration provides parties with an accessible and effective resolution mechanism to resolve disputes outside of the justice system. While Courts maintain oversight over the private arbitration process, in general, the scope of a Court's interference in an arbitration award, subject to the terms of an arbitration agreement or provisions in arbitration legislation which permit a judicial review of an arbitration award, is narrow. Obtaining a stay of an arbitration award can also be difficult to obtain.

In *The Canada Soccer Association Incorporated v. Association de Soccer de Brossard*, [2023 ONSC 1367 \(CanLII\)](#), the Canada Soccer Association Incorporated ("**Canada Soccer**") moved for an interim stay of an arbitration award that ordered Canada Soccer to grant a National Youth Club License (the "**License**") to the Association de Soccer de Brossard ("**ASB**") for the 2023 and 2024 soccer seasons, pending a final decision in its application to challenge the arbitration award. ASB opposed the stay motion and brought a cross-motion to enforce the arbitral award. The Court granted ASB's cross-motion.

Canada Soccer is the governing body for soccer at the national level in Canada.

ASB is a youth soccer organization in the Brossard region of Quebec.

ASB had applied to Canada Soccer for a License which would have allowed ASB to attract top players and place teams in two elite youth soccer leagues in Quebec. On December 12, 2022, Canada Soccer rejected ASB's application and appealed Canada Soccer's decision to the Sport Dispute Resolution Centre of Canada ("**SDRCC**") pursuant to the Canada Sport Dispute Resolution Code (the "**Code**"). The Code is governed by Ontario law and is subject to the provisions of the [Arbitrations Act, 1991](#) (the "**Act**"). Among other things, the Code provides that parties to an arbitration conducted thereunder "expressly and irrevocably" waive their rights to request further alternative relief. An arbitrator overturned Canada Soccer's decision. Soccer Canada then commenced an application, seeking to set aside the arbitral award, under section [46\(1\)6](#) of the Act.

Section [46\(1\)6](#) of the Act grants the Court the authority to set aside an

arbitration award where the application was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration.

The Application

More specifically, Canada Soccer sought to set aside the arbitration award on the following three grounds:

- i) that the arbitrator failed to apply the criteria required by Canada Soccer for awarding a License, subjecting Canada Soccer to unequal and unfair treatment, pursuant to section [46\(1\)6](#) of the *Act*;
- ii) that the arbitrator applied the incorrect test in setting aside the decision of Canada Soccer's Club Licensing Committee, which allegedly violated the natural justice rights of Canada Soccer, pursuant to section [46\(1\)6](#) of the *Act*; and
- iii) under section [50\(5\)\(b\)](#) of the *Act*, that Canada Soccer, its Club Licensing Committee and the SDRCC needed guidance from the Court to properly assess the numerous applications the Licensing Committee had received from multiple soccer associations and had rejected. On this basis alone, Canada Soccer argued that it is necessarily equitable to stay the arbitrator's award.

The Motion

Test for an Interim Stay

In determining whether to grant a stay, Courts apply a three-part test that was established in the seminal case of *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#).

At the first stage, there must a serious question to be determined.

At the second stage, a court must consider whether the moving party will suffer irreparable harm if the stay is not granted.

Lastly, a court is obligated to assess whether the balance of convenience favours granting the stay.

Soccer Canada did not meet this test.

No Serious Issue to be Tried

At the first stage, Canada Soccer failed to establish that there was a serious issue to be tried on the application because the grounds for the application, on their face, related to the merits of the arbitrator's decision. Namely, (i) the arbitrator "failed to apply the criteria" required by Canada Soccer and therefore, Canada Soccer was not treated "equally and fairly"; and (ii) the arbitrator "applied the incorrect test" in violation of Canada Soccer's natural justice rights.

While the motion judge affirmed that "the obligation to treat parties equally and fairly in s. 46(1)6 of the *Act* incorporate[d] the requirement of natural justice and procedural fairness", Canada Soccer's allegations did not suggest that the arbitrator acted prejudicially toward it in the course of making his decision. "The duty of fairness is concerned with ensuring that adjudicators act fairly in the course of making decisions, not with the fairness of the actual decisions they make": See Vermette J. in *The Tire Pit Inc. v. Augend 6285 Yonge Village Properties Ltd.*, [2022 ONSC 6763 \(CanLII\)](#).

The motion judge also agreed that the ground of Canada Soccer's application disclosed an impermissible appeal of the merits of the arbitral decision, thinly disguised as a procedural grievance, and that this was offside the principle that section [46](#) of the *Act* "cannot be used as a broad appeal route to bootstrap substantive



arguments attacking an arbitrator’s findings” that are immune from appeal; *Tall Ships Development Inc. v. Brockville (City)*, [2022 ONCA 861 \(CanLII\)](#).

Irreparable Harm

With respect to irreparable harm, there was no evidence that Canada Soccer would suffer any harm if a stay of the arbitral award was not granted, as the impugned arbitral award was not a “precedent” intended to provide guidance to other soccer associations whose applications for licenses were rejected. The Code asserted that “[e]ach case must be determined on its facts and the Panel shall not be bound by previous awards or decisions, including those of the SDRCC”. Therefore, the arbitral award was found to be confined only to the facts surrounding ASB’s License application.

Balance of Convenience

Lastly, the balance of convenience favoured ASB.

Whereas Canada Soccer asserted that steps had been taken to deny Canada Soccer of government funding as a result of ASB having written to the Minister Sport and others regarding its dispute with Canada Soccer and correspondingly came to Court with “unclean hands”, ASB submitted that the granting of the stay would deprive it of being able to field teams in the highest level of youth soccer in Quebec for at least the upcoming season. The uncertainty regarding ASB’s ability to participate in the 2023 soccer season had “already resulted in some players transferring to other teams. Furthermore, there was “a legitimate concern that ASB would lose sponsorship opportunities in relation to those sponsors interested in sponsoring ASB’s elite level teams. Revenues in the form of player premiums would be lost”.

The Court found that Sport Canada, the body overseeing federal government funding, had

proposed no change to Canada Soccer’s funding as a result of its dispute with the ASB. Furthermore, Canada Soccer’s “unclean hands” arguments against ASB was rejected on the basis that only conduct that is immediately and necessarily related to a claim in question will bar a claim in equity. The motion judge found that on their face, the letters written by ASB were unrelated to its cross-motion to enforce the arbitral award.

Decision

The Court granted to ASB an interim order to enforce the arbitral award pending the determination of Canada Soccer’s application, which was deemed necessary to allow both the ASB and its players to benefit from the award, as Soccer Quebec had yet to confirm the enrolment of ASB’s youth teams in the elite leagues despite the arbitration award.

No date was set for a hearing of Canada Soccer’s application.

Contact us

If you have a litigation matter and are in need of legal advice, please contact **Michael Lauricella**, at 416.865.8256 or mlauricella@grllp.com.

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