

CITATION: Cricket Canada v. Alberta Cricket Council, 2020 ONSC 3776
COURT FILE NO.: CV-20-640565-00CL
DATE: 20200618

SUPERIOR COURT OF JUSTICE – ONTARIO

Commercial List

RE: CRICKET CANADA, Applicant

AND:

ALBERTA CRICKET COUNCIL and ALBERTA CRICKET ASSOCIATION,
Respondents

BEFORE: Koehnen J. .

COUNSEL: *Jordan Goldblatt*, for the Applicant

Tahir A. Chaudhary for the Respondent, ACC

HEARD: June 3 and June 9, 2020

ENDORSEMENT

[1] This is an application under section 17 (8) of the *Arbitration Act*, 1991, S. O. 1991, c. 17 to challenge the jurisdiction of the Sports Dispute Resolution Centre of Canada (the “Centre”) and an arbitrator it appointed to resolve the dispute underlying this application.

[2] The standard of review on questions of jurisdiction is correctness: *Dayco (Canada) Ltd. v. CAW-Canada*, 1993 CanLII 144 (SCC), [1993] 2 SCR 230 at para. 14.

[3] For the reasons set out below I find that the arbitrator was correct in assuming jurisdiction and dismiss the application.

Procedural History

[4] The applicant challenging jurisdiction is Cricket Canada. It is a not-for-profit corporation that acts as the governing body for the sport of cricket in Canada. Its members are provincial cricket organizations that “demonstrate effective control of organized competitive cricket” within the province.

[5] The provincial member for Alberta is the Alberta Cricket Association. The Alberta Cricket Council (the “ACC”) seeks to displace the Alberta Cricket Association as the member of Cricket Canada for Alberta or seeks to be a co-member for Alberta. The nub of the underlying dispute

arises from section 2.2 of Cricket Canada's bylaw which provides that any association that "demonstrates effective control of organized competitive cricket" in a given province "will be considered a Member." The ACC submits that it: has demonstrated effective control of cricket in Alberta, has applied for membership and that Cricket Canada rejected its application without investigating whether the ACC or the incumbent member had effective control of cricket in Alberta.

[6] In June 2019, the ACC tried to commence arbitration against Cricket Canada before the Centre. The Centre denied the request finding that it did not "currently have jurisdiction" to hear the matter because the ACC first had to use Cricket Canada's internal dispute resolution procedures. In November 2019, the ACC brought a second request to the Centre. In that request, the ACC stated that it had exhausted efforts to engage Cricket Canada and that Cricket Canada had been nonresponsive.

[7] Cricket Canada initially acted on its own behalf in the arbitration. It filed an answer to the request for arbitration which did not contest the Centre's jurisdiction, selected arbitration over med/arb and proposed a number of arbitrators, including Janice Johnston whom the Centre appointed as the arbitrator for the dispute.

[8] In early March 2020, Cricket Canada retained counsel who took issue with the arbitrator's jurisdiction. In an interim award dated April 22, 2020 the arbitrator held that she had jurisdiction. She did so by analyzing the merits of the jurisdictional challenge rather than by relying on Cricket Canada's earlier answer to the request to arbitrate or the requirement under section 17 (3) of the *Arbitration Act* that a party objecting to jurisdiction do so "no later than the beginning of the hearing."

Analysis of Jurisdiction

[9] The procedures applicable to dispute resolution by Centre are set out in the Canadian Sport Dispute Resolution Code. Cricket Canada submits that the arbitrator erred in assuming jurisdiction because she focused on the definition of Sports-Related Dispute in the Code but failed to give effect to the jurisdictional provisions of the Code.

[10] Section 2.1 (a) of the Code provides:

"The SDRCC¹ administers this Code to resolve Sports-Related Disputes."

[11] Sports-Related Dispute is defined in section 1.1 (mm) of the Code as follows:

(mm) "Sports-Related Dispute" « Différend sportif » means a dispute affecting participation of a Person in a sport program or a

¹ The Sports Dispute Resolution Centre of Canada or the Centre

sport organization. Such disputes may include (but are not limited to) those related to:

- (i) team selection;
- (ii) a decision made by a NSO² board of directors, a committee thereof or an individual delegated with authority to make a decision on behalf of a NSO or its board of directors, which affects any Member of a NSO;
- (iii) any dispute affecting participation of a Person in a sport program or a sport organization, for which an agreement to conduct an SDRCC Mediation, Arbitration or Med/Arb or use the services of the Resolution Facilitator of the SDRCC has been entered into by the Parties; and
- (iv) any dispute arising out of the application of the Anti-Doping Program;

[12] Cricket Canada submits that the arbitrator took upon herself the power to determine membership in a private corporation, Cricket Canada. This they say amounts to corporate reorganization of the most intrusive sort and is an unjustifiable removal of Cricket Canada's right to self-determine membership. According to Cricket Canada, "participation" in a sports organization cannot be interpreted so broadly as to encompass membership because membership in a nonprofit corporation is effectively ownership.

[13] I disagree with the ownership analogy. This is not a situation in which the members of the corporation have the right to choose membership based on subjective preferences like, for example, the decision to issue shares in a private corporation to a particular person. Membership in Cricket Canada is an entitlement of anyone who can demonstrate effective control of competitive organized cricket in their province.

[14] The definition of Sports-Related Dispute includes a dispute "affecting participation of a Person in a sport program or a sport organization." Here, the dispute affects the participation of the ACC in Canada Cricket. While participation can include membership, it can also include something short of membership including participating in a process to demonstrate to Cricket Canada that one has effective control of organized competitive cricket in a province.

[15] Cricket Canada next argues that the arbitrator failed to apply section 2.1 (b) of the Code which places an important limitation on those Sports-Related Disputes over which the Centre has jurisdiction.

² National Sport Organization

[16] Section 2.1 (b) of the Code provides:

Subject to Subsection 2.1(c) hereof, this Code applies to a Sports-Related Dispute where the SDRCC has jurisdiction to resolve the dispute. This Code will therefore apply to any Sports-Related Dispute:

(i) in relation to which a Mediation, Arbitration or Med/Arb agreement exists between the Parties to bring the dispute to the SDRCC;

(ii) that the Parties are required to resolve through the SDRCC; or

(iii) that the Parties and the SDRCC agree to have resolved using this Code.

[17] Cricket Canada reads section 2.1 (b) of the Code to mean that the Centre has jurisdiction only over the three types of disputes enumerated in section 2.1 (b) and that the ACC's dispute does not fall into any of those three categories.

[18] I disagree with that reading. The first sentence of section 2.1 (b) provides that the "Code applies to a Sports-Related Dispute where the Centre has jurisdiction." That is a general statement of principle which does not yet define the circumstances in which the Centre has jurisdiction. The second sentence of section 2.1 (b) of the Code states that the code "will therefore apply to any Sports-Related Dispute..." that falls into the three enumerated categories.

[19] The statement that the Code will apply to the three enumerated categories is not, however, an exclusive statement of jurisdiction. All the second sentence does is to state definitively that the three enumerated categories fall within the Centre's jurisdiction. It does not say that no other dispute falls within jurisdiction.

[20] The Centre and its jurisdiction are not established by the Code. Rather, they are established by the *Physical Activity and Sport Act*, SC 2003, c 2, section 10 of which provides:

10 (1) The mission of the Centre is to provide to the sport community

(a) a national alternative dispute resolution service for sport disputes; and

(b) expertise and assistance regarding alternative dispute resolution.

(2) For the purposes of subsection (1), a sport dispute includes disputes among sport organizations and disputes between a sport organization and persons affiliated with it, including its members.

[21] Cricket Canada focuses on the last words of s. 10 (2), namely “disputes between a sports organization and persons affiliated with it, including its members.” Cricket Canada underscores that the ACC is not an affiliate of Cricket Canada nor one of its members, as a result of which Cricket Canada submits the Centre continues to lack jurisdiction. That interpretation, however, ignores the first part of s. 10 (2) namely that a sports dispute includes disputes among sport organizations.

[22] The word “organization” is not defined in the *Physical Activity and Sport Act*. I therefore default to its plain meaning. The *Cambridge Online Dictionary* defines organization as “a group of people who work together in an organized way for a shared purpose.” There is no doubt that Cricket Canada is a sports organization. The ACC also falls into the plain language definition of organization. It is clearly a group of people. It is also a group that is working together in an organized way. The record before me discloses that it runs a series of cricket teams, matches and tournaments in Alberta. That requires a degree of organization. It is also a group that has a shared purpose. The shared purpose is to foster the playing of cricket and, for the purposes of this dispute, to obtain membership in Cricket Canada.

[23] The jurisdictional scope that Parliament intended to confer on the Centre can also be gleaned from the language of the *Physical Activity and Sport Act*. That language supports the Centre’s assumption of jurisdiction in this case.

[24] The *Act* describes its purpose on its face as “An act to promote physical activity and sport.” The preamble provides, among other things:

“WHEREAS the Government of Canada wishes to encourage and assist Canadians in increasing their level of physical activity and their participation in sport;

[25] Section 4 (1) of the *Act* provides:

Sport policy — principles

4 (1) The Government of Canada’s policy regarding sport is founded on the highest ethical standards and values, including doping-free sport, the treatment of all persons with fairness and respect, the full and fair participation of all persons in sport and the fair, equitable, transparent and timely resolution of disputes in sport.

[26] The *Act* creates the Centre and defines its mission in s. 10 (1) as being to “provide the sport community” with a national dispute resolution service for “sport disputes.” The dispute resolution mechanism referred to in section 10 (1) must be intended to further the goals of section 4 (1).

[27] The Centre's exercise of jurisdiction over a dispute which determines whether a particular organization should or should not be a member of Cricket Canada is consistent with the overall purpose for which the Centre was created namely to ensure "the "full and fair participation of all persons in sport and the fair, equitable, transparent and timely resolution of disputes " relating to the participation of a person in a sports organization.

[28] For the foregoing reasons I find that arbitrator Johnston made no error in jurisdiction and I uphold her Interim Award.

A handwritten signature in blue ink, appearing to be 'J. Koehnen', written above a horizontal line.

Koehnen J.

Date: June 18, 2020