IN THE MATTER OF A COMPLAINT PURSUANT TO
THE ONTARIO VOLLEYBALL ASSOCIATION
DISCIPLINE AND COMPLAINTS POLICY

BETWEEN

ONTARIO VOLLEYBALL ASSOCIATION

(the **"Complainant"**)

-and-

MATTHEW RAGOGNA

(the "**Respondent**")

(collectively, the "**Parties**")

DECISION WITH REASONS OF THE DISCIPLINE PANEL

Discipline Panel: Ann Peel
Decision Date: September 30, 2024

I Overview

1. The Ontario Volleyball Association (the "OVA" or the "Complainant") filed a complaint against Matthew Ragogna ("Ragogna" or the "Respondent") on January 24, 2024 (the "Complaint") alleging that Ragogna violated the OVA Code of Conduct and Ethics (the "Code of Conduct"), the OVA Person in Authority Code of Conduct (the "PIA Code"), the OVA Coach Eligibility Policy (the "Coach Eligibility Policy" or the "CEP"), which is integrated with the OVA Screening Policy (the "Screening Policy"), and the OVA Membership Policy (the "Membership Policy" or the "MP") (collectively, the "OVA Policies") during the 2022/2023 and 2023/2024 seasons.
2. The OVA is the governing body for volleyball in the province of Ontario. The Respondent has been a coach Member of the OVA since January 2013, and is subject to OVA

Policies. The Respondent disputed his Member status during the applicable years, admitted to Membership during the hearing, and again disputed Membership in Closing arguments. The Respondent's status as a Member in the 2023/24 season is governed by the Screening Committee Decision (discussed in paragraph 21 below). Pursuant to section 14 of the MP, the Respondent remains subject to OVA Policies, regardless of whether he pursued or withdrew his membership application for the 2023/24 season.

3. The Complaint was screened by the Discipline Chair who determined that the allegations therein constituted "[r]epeated or aggravated instances of non-compliance with Volleyball Canada or OVA by-laws, policies, rules, and regulations, including the OVA [Code of Conduct]", pursuant to section 26(c.2) of the OVA Discipline and Complaints Policy (the "DCP"), and would be considered under Process #2 of the DCP.
4. The Discipline Chair appointed a Case Manager who appointed me the Discipline Panel. I confirm that I have no conflict of interest in this matter, and the Parties expressed no objections to my appointment.
5. The Case Manager determined timelines for the exchange of submissions between the Parties. The Respondent responded to the Complaint on May 7, 2024 (the "Respondent Submissions") to which the Complainant replied on June 17, 2024 (the "Complainant Reply"). The Complainant Reply included three witness statements that were not included in the Complaint submissions of January 2024. The Respondent requested mediation following receipt of the Complainant Reply, but was declined by the OVA. The Case Manager consequently extended to the Respondent the right to respond to the Complainant Reply and to file witness statements by 12 August 2024. The Respondent responded to the Complainant Reply on 7 August 2024. That response forms part of the Respondent Submissions. On August 18, 2024 the Complainant submitted further materials that expanded upon the Respondent Submissions, which, together, constitute the Complainant Submissions.
6. A hearing was held on August 19, 2024. At the commencement of the hearing, the Respondent was given the opportunity to take any time needed to review the material submitted by the Complainant on August 18. The Respondent said that was not necessary, and he would prefer to proceed. I raised the matter of the timing of the submission of closing statements, which I first raised on 2 August 2024. The Case Manager had communicated to the Parties on June 21, 2024 that closing statements would be submitted in writing 14 days following the conclusion of the hearing (September 2, 2024). I was not party to that email or to a discussion on those deadlines. Hence, I raised the issue with the Parties because I could not be available in September to render a decision. At the conclusion of the hearing, the Parties decided to adhere to the Case Manager's deadlines, and accepted that my decision would be rendered by October 15, 2024. This does not prejudice the Parties, as the Respondent is subject to an interim suspension imposed by the OVA on November 16, 2023 until further notice, and to a Provisional Measure of the Office of the Sport Integrity Commissioner (the

"OSIC") posted to the Abuse Free Sport Registry on November 26, 2023, as discussed in paragraphs 22 and 23 below.

7. I considered the substantial written submissions of the Complainant and the Respondent, in addition to the testimony of the Respondent during cross-examination. The Respondent elected not to cross-examine any of the Complainant's three witnesses, as he did not believe he has the expertise to do so effectively. In the weeks prior to the hearing, at my request, the Case Manager informed the Respondent that expertise is not required to ask questions of witnesses. However, the Respondent chose not to conduct cross-examinations. At the hearing, the OVA was represented by counsel, the Respondent was self-represented.

II Facts and Behaviours Leading to the Allegations

8. The Complaint alleges violations by the Respondent of the Code of Conduct, the CEP, the PIA Code, and the MP. The alleged violations arise from events that occurred in late summer 2022 that led to a finding by the Director of Sanctions and Outcomes (the "DSO") of OSIC of Boundary Transgressions committed by the Respondent against a Minor Athlete in September 2022, contrary to section 5.7 of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (the "UCCMS").
9. On September 4, 2022 the mother of a Minor Athlete advised the Niagara Rapids Volleyball Club (the "Club") that her son had reported certain allegations against Ragogna, who coached with the Club. The Club suspended the Respondent and reported the allegations to OSIC.
10. On September 30, 2022 OSIC issued an interim suspension (the "OSIC Interim Suspension") which provided that the Respondent was not allowed to coach athletes under the age of 19 and was not to be involved in any National Sport Organization activity with minor athletes under the age of 18, without disclosing the OSIC Interim Suspension to team management or other coaching staff.
11. It is alleged by the Complainant that the Respondent violated the OSIC Interim Suspension by coaching the Canada Men's U21 Team at the NORCECA U21 Men's Pan American Cup in Cuba from September 30 to October 3, 2022 without informing team management or coaching staff of the OSIC Interim Suspension. This is denied by the Respondent.
12. On June 8, 2023, in response to the completion of an investigation by OSIC in April, 2023, the DSO of OSIC determined that the Respondent had committed seven Boundary Transgressions contrary to section 5.7 of the UCCMS (the "June OSIC Report"). The DSO lifted the OSIC Interim Suspension and imposed the following sanctions on the Respondent [I paraphrase]:
    (i) A formal and written warning to be on file with the Club, the NSO [Volleyball Canada] and with OSIC.
    (ii) The Respondent was to provide a confidential written apology to the Minor Athlete.

(iii) The Respondent was to educate himself on the Rule of Two by July 15, 2023.

13. The Respondent complied with the sanctions. Consequently, from mid-July 2023 until the OVA Directive on September 1, 2023 (referred to in paragraph 15 below) the Respondent was permitted to coach without restrictions.
14. On September 1, 2023, Ragogna submitted an application for OVA membership for the 2023/24 season. In accordance with section 19 of the Screening Policy, Ragogna submitted the OVA Screening and Disclosure Form on which Ragogna answered questions 7, 9 and 10 in the affirmative; specifically, that he had been disciplined by OSIC on June 10, 2023 [sic] for a Boundary Transgression.
15. Ragogna was advised on September 1, 2023 by the OVA (the "OVA Directive") that, due to this disclosure, he was not permitted to "engage in coaching or administrative roles at OVA Member Clubs". The Respondent was asked to submit confidentially "any relevant information and documents related to 'yes' answers in your screening disclosure form, along with a copy of your police record check". Pursuant to section 7 of the Screening Policy this information would be sent to the OVA-appointed Screening Committee for review.
16. The OVA contemporaneously informed the President of the Club that Ragogna was not to engage in coaching or any administrative role with an OVA Member Club until his membership was approved, following review by the Screening Committee. The President of the Club acknowledged that the Respondent required OVA-approved membership to "attend to his assigned duties with the Club".
17. On review by the Sport Dispute Resolution Centre of Canada (the "SDRCC") on September 11, 2023, the June OSIC Report was upheld. The SDRCC decision was not published until November 26, 2023.
18. In response to the SDRCC review, the DSO amended the June OSIC Report on September 21, 2023 to provide that the Respondent was no longer permitted to coach the Minor Athlete, and would have to relinquish any coaching opportunity that might affect the Minor Athlete (the "June OSIC Report, As Amended").
19. In late September, 2023 the Club and the Respondent's representative sought confirmation that the Respondent was an OVA member in good standing to enable a return to coaching. Membership was not confirmed by the OVA or by Volleyball Canada.
20. It is alleged by the Complainant that, despite the OVA Directive, the Respondent participated in coaching at Club try-outs on September 8,9 and 10 2023 and at practices on September 25 and 27. This is denied by the Respondent.
21. On November 15, 2023 the Screening Committee (the "Screening Decision") determined that the Applicant (that being the Respondent) "…conditionally passed screening [per the authority vested in the Screening Committee under section 28 of the Screening Policy] and may participate in the desired position [coach] pending the following conditions.
    (a) The Applicant shall be suspended from all volleyball activities and administrative functions, pending the outcome of the disciplinary process regarding the incidents that were referred to the OVA Discipline Committee [those being the alleged breach of the OSIC Interim Suspension as described in paragraph 12 above, and the alleged breach of the OVA Directive, as described in paragraph 20 above].

(b) The Applicant, if reinstated, shall be prohibited from coaching, communicating with (including electronic communications), or otherwise performing any other activity with minor athletes participants without the presence of another adult."

22. On November 16, 2023 the Respondent was placed on interim suspension from the OVA ("OVA Interim Suspension") until further notice due to the following:
    (a) Breach of the Coach Eligibility Policy and Code of Conduct as a result of findings made in the [Screening Decision] per the Screening Policy;
    (b) Serious allegations were reported in November 2023 to the OSIC regarding misconduct in relation to the UCCMS, and
    (c) An ongoing police investigation.
23. On November 26, 2023 OSIC implemented "Imposed Provisional Measures" posted to the public Abuse-Free Sport Registry, instructing the Respondent that he is provisionally prohibited from (1) engaging in coaching or coaching-related activities with athletes under 25, (2) being in contact, directly or indirectly…with any youth (under 25) in the context of club or OVA activities, (3) being in contact in any capacity with current or former athletes coached by the Respondent who are under 25 as well as their parents and/or guardians.

III Legal Issues

Jurisdiction and Authority

24. Neither of the Parties raised issues of jurisdiction or authority.

Burden of Proof

25. To find a breach of OVA Policies, including the Code, 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: (i) occurred, and (ii) if it did, is in breach of any of the OVA Policies cited or the Code.

Application of the Policies and the Code to Ragogna

26. Ragogna submitted initially that he was not a Member of the OVA in 2022/2023 or 2023/2024, admitted to Membership during the hearing, and again disputed Membership status in Closing arguments. The Respondent's status as a Member in the 2023/24 season is governed by the Screening Committee Decision (discussed in paragraph 21 above). Pursuant to section 14 of the Membership Policy, the Respondent remains subject to OVA Policies, regardless of whether he pursued or withdrew his membership application for the 2023/24 season. In addition, the Respondent is an Individual, as defined in the OVA Screening Policy, with the result that policy is applicable, regardless of Membership status.

IV The Evidence

Applicable Policies are set out in Appendix 2 to this Decision.

Credibility and Weight

27. Over the course of the hearing, I heard evidence from the Respondent. In addition, I received and reviewed lengthy and detailed submissions from the Parties. I carefully considered all evidence, as it related to the issues under consideration and to their context.
28. For the most part I struggled with the credibility of the Respondent. I found the Respondent extremely careful with responses to questions (to the point of evasion), not forthcoming, and, at times, disingenuous. For example, when asked whether he had coached at the Club, the Respondent asked counsel for the Complainant to "define coaching". In my opinion, informed by forty-five years in high performance sport, it is not possible that the Respondent does not understand the wide range of activities involved in coaching. I was also struck by the Respondent's failure to cross-examine the Complainant's witnesses, while not shrinking from impugning their credibility. In particular, the Respondent continued to insist that Jo-Anne Ljubisic (Executive Director of OVA) ("Ljubisic") and [redacted] (a coach at the Club and a parent) ("[redacted] were colluding to bring him down, while offering no evidence to support this claim, and refusing to cross-examine either witness. Nonetheless, I gave the Respondent latitude due to self-representation.
29. To the contrary, the Complainant's evidence was extensive and generally supported by written submissions, including records of text messages, emails, and press releases. Both the Respondent and the Complainant made submissions far beyond the matters at hand.
30. The issue before me, however, is not only whether the evidence was credible, but whether the conduct complained of amounted to a particular violation of OVA Policies or the Code.
31. The Complaint includes a wide variety of allegations about Ragogna's behaviour. This Decision considers all allegations that are supported by evidence and connected to a plausible, alleged violation of an applicable standard of conduct. In addition, Ragogna made a number of cross-allegations, which I address in paragraph 62.
32. Below, I have summarized the evidence of each of the Complainant and the Respondent with respect to each of the allegations made. Particulars of the written evidence submitted are set out in Appendix 1 to this Decision.

V Nature of the Allegations

33. The OVA makes a number of inter-connected allegations in the Complaint. For clarity, I will separate the allegations into two categories:
(1) allegations not related to the Respondent's behaviour vis-à-vis the UCCMS, and
(2) allegations concerning the Respondent's behaviour, as it relates to the UCCMS and to OVA Policies.

Allegation #1: Did the Respondent fail to comply with the Coach Eligibility Policy and/or the Membership Policy in 2023/24, thus breaching section 10(a) of the Code of Conduct?

Applicable Policies
OVA Membership Policy

34. The Membership Policy provides in section 1 that; "The purpose of this Policy is to contribute to the growth and development of volleyball for all Ontarians in a safe sporting environment by providing clubs and paying member categories with rules and requirements, including member obligations, fees and the terms/conditions of membership." Section 2 states, "Membership is required to participate and/or compete at any OVA or Volleyball Canada competitions and/or events".
35. Any applicant for membership must, [per sub-section 4(a)(iii)(6,7,8] if applicable, "…comply with the OVA Screening Policy **and complete screening requirements** (my emphasis) prior to participating and registering" and, if applicable, "….comply with the Coach Eligibility Policy prior to participating and registering" and "Agree to comply with all OVA procedures, policies and code of conduct".
36. Section 13 provides that "….a Member may be suspended or expelled from the OVA in accordance with the OVA's policies and procedures in relation to discipline of Members".
37. Section 14 provides that "Where a Member who is subject to an OVA disciplinary investigation or action resigns or attempts to resign, that Member will nonetheless be subject to any sanctions or consequences resulting from the disciplinary investigation or action".
38. Section 5 provides that "Where a candidate Member is not admitted to membership, written reasons will be provided".

OVA Coach Eligibility Policy

39. The Mandatory Eligibility Requirements for OVA Coaches section provides that "All individuals who sit on the bench at an OVA sanctioned event or ***who are involved with youth athletes in an OVA club training environment*** (my emphasis) must complete the following requirements prior to their registration as an OVA member.
    - Abide by the OBA Screening Policy

- Submit a Level 2 Criminal Record and Judicial Matters Check…
- Complete the OVA Screening Disclosure Form via MRS registration"

OVA Screening Policy

40. The Screening Policy provides in section 7 that a Screening Committee (composed of one to three individuals appointed by the administrative head of the Organization [the OVA in this case] is responsible for the implementation of this policy.
41. The Respondent falls within the jurisdiction of the Screening Policy pursuant to section 5 as a high risk individual who occupies a position of trust and/or authority. "Examples: (b) Full-time coaches and/or assistant coaches, (c) Coaches and/or contractors who travel with athletes, (d) Coaches and/or representatives who could be alone with athletes…"

OVA Code of Conduct

42. Section 10(a) of the Code provides; "All individuals have a responsibility to: a) adhere….to all Bylaws, policies, rules and regulations approved by Volleyball Canada and/or the OVA."

Position of the Complainant

43. The Complainant alleges the Respondent:
    (i) violated the OVA Directive prohibiting him from coaching while the screening process was ongoing;
    (ii) failed to cooperate with the Screening Committee; and
    (iii) consequently, breached the Code by failing to comply with the Membership Policy and the Coach Eligibility Policy.
44. In its Complaint the OVA alleges that when the Respondent attended Club try-outs of the U17 and U18 Boys' teams on September 8, 9 and 10, 2023, attended practice on September 25 and 27, 2023, and acted as the Club's Technical Director in September 2023, he violated the OVA Directive of September 1, 2023 made pursuant to the Screening Policy and the Coach Eligibility Policy, since the Screening Committee did not make its decision on the Respondent's membership until November 15, 2023. The Respondent's failure to comply with the Coach Eligibility Policy and the Screening Policy violates sub-section 4(a)(iii)(6,7,8) of the Membership Policy.
45. The Complainant supported the allegations that the Respondent coached at the Club with the Will Say of [redacted] an assistant coach with the Club, who stated that Ragogna coached the Boys U17 and U18 Club teams through October of 2023. Although the Respondent contested the credibility of [redacted] in written submissions and under cross-examination, the Respondent did not cross-examine [redacted] The athlete offer letter signed by Ragogna on September 18, 2023, to which [redacted] referred in the Will Say, supports [redacted] evidence.

46. The Complainant's allegation that Ragogna was coaching is also supported by a letter from the President of the Club to Volleyball Canada on September 26, 2023 requesting a letter of good standing for the Respondent, and advising that the Respondent was working at the Club as Technical Director and Head Coach of the U17 and U18 Boys teams.
47. The Respondent's alleged non-cooperation with the Steering Committee relates to the Respondent's refusal to permit the Steering Committee to contact the Complainant in the OSIC complaint or to contact OSIC. This resulted in delays and was behaviour contrary to the full inquiry expected under the Coach Eligibility Policy.

Position of the Respondent

48. The Respondent's position is that: (i) he did not coach at try-outs or practices, he was simply in attendance, (ii) he complied with the Screening Policy by submitting the Screening Disclosure Form, and provided all information to the Screening Committee that he could without being in violation of the OSIC Confidentiality Policy, and (iii) he did not breach the Code because he complied with the relevant policies.
49. In addition, the Respondent denies the authority of the OVA to control his membership once OSIC lifted the Interim Suspension in the OSIC June Report, As Amended, and asserts that this allegation is a re-litigation of the complaint decided by OSIC.
50. The Respondent stated in testimony that he "hasn't denied being in the vicinity" of the Club, and affirmed that, while he did attend practice, he did not actively coach. This was in response to the OVA's questions regarding the Respondent's responses in the Screening Committee interview during which the Respondent claimed not to have participated in any Club activities other than online in August 2023. The Respondent claimed in testimony that he felt "ambushed" in the interview, and caught off guard. When confronted with a Tryout Offer Form to a 18U athlete dated 18 September 2023, and signed by the Respondent, the Respondent claimed this was not a "coaching duty". A great deal of time was spent during the cross-examination of the Respondent on whether being a Head Coach or a Technical Director could be considered coaching.
51. The Respondent stated that the Club had told him he could coach because he had completed the Screening Disclosure form, and he relied on that direction, despite the OVA Directive that he not coach or participate in any Club activities until the Screening Committee reached its decision on his membership.
52. The Respondent asserted the confidentiality required by OSIC meant that he could not disclose to the Steering Committee the details of the allegations underlying the OSIC Interim Suspension or the OSIC June Report.

Arbitrator's Analysis

(i) Violation of OVA Directive not to coach or participate in administrative duties with an OVA Member Club

53. To coach at an OVA Member Club, a person must:

(i) be a Member of the OVA, as determined by the Membership Policy,
(ii) comply with the Screening Policy, complete screening requirements and comply with the Coach Eligibility Policy, prior to participating and registering.

54. The Respondent's assertion under cross-examination that being a Head Coach, a Technical Director, and attending try-outs and practices was not necessarily "coaching", strains credibility. The Cambridge Dictionary defines a coach as "someone whose job is to teach people to improve at a sport....or to train and organize a sports team". The Membership Policy refers to a coach as those ***who are involved with youth athletes in an OVA club training environment*** (my emphasis). There is no question that Ragogna's involvement with the Club in September 2023, after the OVA Directive was issued, met the definition of coaching, and of administrative duties, both literally and as commonly understood.

(ii) Failure to cooperate with Screening Committee

55. The Respondent was not credible in the Respondent Submissions or under cross-examination when responding to the Complainant's allegations. Ragogna claimed under cross-examination to have been "alone", and, therefore, to feeling intimidated when interviewed by the Screening Committee. However, the Respondent was represented by Jennifer Johnson Kelly ("Kelly") of Blackadder Leon Marion & Fazari LLP who wrote the OVA with respect to the Respondent's Membership status and the progress of the Screening Committee. The Respondent provided copies of correspondence between Kelly and the Screening Committee in the Respondent Submissions. The Respondent's claim that he felt "attacked" by the Steering Committee seems odd, given that the Screening Committee had no personal interest in the outcome of the interview, but sought to obtain only the Respondent's perspective on suitability for membership, given the red flag of the OSIC Interim Suspension.
56. The Respondent seemed to view the Screening Committee as yet another 'hurdle' or cumbersome process. The Respondent viewed the matter as having been dealt with by OSIC and then upheld by the SDRCC. The rationale for the Screening process seemed to elude the Respondent who viewed it as simply an obstacle in his return to coaching.
57. The Coach Eligibility Policy is clear in that it is the obligation of "all individuals" to comply *prior to* their registration. Although it is correct that the Respondent did complete the Screening Disclosure Form as required, he was informed immediately that his membership application was subject to a screening process during which he was not a Member. It is illogical to assert that simply completing a form meets the requirements of the Coach Eligibility Policy, or (i) there would be no need for a Screening Committee, and (ii) this assertion usurps the authority of the Screening Committee to enforce the Screening Policy (section 31 therein).
58. As a non-member of the OVA, the Respondent was not eligible to coach at the Club. Therefore, that the Respondent coached at the Club in September 2023 violated section 2 of the Membership Policy, regardless of the Club's approval, as this was not approval the Club was authorized to give. It is clear from the Membership Policy that it is only the OVA that may determine membership in the OVA.

59. In addition, when the Respondent denied to the Screening Committee that he had coached at the Club (reference the Screening Decision), this was simply not true. The denial is clear evidence of a failure to cooperate with the Screening Committee and, thus, to meet the Respondent's obligations under both the Coach Eligibility Policy and the Membership Policy.
60. I am not concerned with the Respondent's alleged violation of the OSIC Interim Suspension, as its enforcement is properly the jurisdiction of OSIC. However, I do find that the Respondent failed to inform team management of the Men's U21 Pan American Cup team of the OSIC Interim Suspension, as required by the continuous disclosure rules set out in section 16 (c) of the Screening Policy. This failure demonstrates a pattern of deliberate omission by the Respondent, reinforced by his failure to inform the Screening Committee of his activities at the Club in September 2023. The two deliberate omissions suggest that the Respondent does not understand the gravity of his behaviour, and does not respect the authority of the OVA to regulate the Respondent's activities in the sport of volleyball.
61. The Respondent argued that the OSIC Confidentiality Policy did not permit him to disclose details of the OSIC Interim Suspension or of the OSIC June Report, As Amended, to the Screening Committee. I find that is a reasonable interpretation of the Confidentiality Policy.
62. The Respondent alleges that the OVA breached the OSIC Confidentiality Policy and its own confidentiality policy (section 52 of the DCP) when it disclosed the June OSIC Report to parents at the Club, and when it spoke with the media (TSN). I dismiss these allegations in full. The Respondent errs in assuming the OVA had received a copy of the June OSIC Report. It had not, as is clear from that document's distribution by the DSO. The OVA took extraordinary precautions with parents, disclosing only as permitted by Volleyball Canada. Similarly, OVA communication with media was limited to a decline to comment. In addition, I find no evidence that the OVA acted with malice, as the Respondent asserted.

(iii) Violation of Coach Eligibility Policy and Membership Policy

63. I find the Respondent coached at the Club in September 2023, in violation of the OVA Directive and, therefore, in violation of the Coach Eligibility Policy. These violations constitute a violation of the Membership Policy. Violation of the two policies and the OVA Directive constitutes a violation of section 10(a) of the Code of Conduct.
64. I find the Respondent violated section 10(b)(ii) of the Code of Conduct by failing to demonstrate the spirit of fair play, sport leadership, and ethical conduct in this non-compliance with OVA policies.
65. I find the Respondent violated section 11(a) of the Code of Conduct when the Respondent represented "themselves as a coach without having complied with the OVA Coach Eligibility Policy."

Is Allegation #1 the re-litigation of the complaint determined by OSIC in the June OSIC Report?

66. The Respondent's assertion of *res judicata*[1] demands serious consideration. Is the OVA using its policies to re-litigate the June OSIC Report, As Amended, which determined that the Respondent was permitted to return to coaching, other than of the Minor Athlete?
67. In inquiring about the progress of the Screening Committee in correspondence of September 29, 2023, the Respondent's representative advised the OVA that they did not believe there should be any further delay to the Respondent returning to coaching activities, since OSIC concluded that the Respondent could return to coaching.
68. It is accurate that OSIC had dealt with the complaint of the Minor Athlete, sanctioned the Respondent, and lifted the OSIC Interim Suspension, other than that dealing with the Minor Athlete.
69. In response, however, the OVA advised that OSIC does not govern the OVA, and therefore its findings do not supersede the OVA's policies and procedures that bind all members and member applicants. I concur, and would add that the screening process (the delay to which the Respondent's representative was referring) was not about a return to coaching. Rather, it was about evaluating the Respondent's suitability as a member with regard to the risk to safe sport which he might pose after disclosing that he had been sanctioned by OSIC.
70. I find that *res judicata* is not an applicable doctrine in this matter. The OVA is not attempting to relitigate the matters determined by OSIC when it asserts control over OVA membership. In asserting control over its membership, I find the OVA to be exercising its duty of care[2] to participants by conducting risk management[3] with respect to its ongoing responsibility to safeguard the sport of volleyball; particularly with respect to ensuring a safe environment for participants and making decisions fairly.
71. This finding concurs with the Ontario Sport Recognition Policy, which provides that, as a self-governing body, a provincial sport organization ("PSO"), such as the OVA, is responsible to provide assurance to the public, that the organization operates in a "safe and effective manner", and "has established risk management policies (discipline, harassment, anti-doping, screening for volunteers etc.)." PSOs are "responsible for creating a sport environment that is respectful, equitable, inclusive and free from all forms of maltreatment, including harassment, abuse and discrimination." In order to

[1] The principle of *res judicata* operates to prevent the re-litigation of issues that a competent court has already decided. One of the objectives of this doctrine is to protect parties from the burden of multiple legal procedures. In simple terms, to avoid the re-litigation of an issue or cause of action it is necessary to determine (1) whether the same question has been decided, (2) whether the previous decision is final, and (3) whether the parties to the decision were the same in both proceedings (cf., *Penner v. Niagara (Peel Regional Police Services Board)* 2013 SCC 19 at para. 92).

[2] See for instance: *Forestieri v Hernandez*, 2015 BCSC 249 at paras 37-40; see also *Dunn v University of Ottawa*, [1995] OJ No 2865 (OCJ Gen Div) at paras 19-20.
[3] For a good discussion of risk management in sport, see Risk Management in Sport

maintain formal recognition by the government as the governing body of a particular amateur sport in Ontario, PSOs are required to have a code of conduct to maintain a safe sport environment. Further, the *Sport Recognition Policy* provides that PSOs are ultimately responsible for the implementation of and adherence to the required policies, including codes of conduct. Consequently, in asserting control over membership, the OVA is meeting both its common law and statutory obligations.

72. The best predictor of future behaviour is past behaviour. This is the principle underlying the OVA's Screening, Coach Eligibility and Membership policies. The Screening Policy states in section 4 that "…screening Individuals cannot be a stand-alone practice, but is a vital part of supporting a safe sporting environment for all participants". The Coach Eligibility Policy requires that all who are involved with youth athletes in an OVA club training environment comply with the Screening Policy. The Membership Policy refers in section 1 to "…the growth and development of volleyball for all Ontarians in a safe sporting environment by providing clubs and paying member categories with rules and requirements, including member obligations, fees and the terms/conditions of membership". The policies, the provision of a screening committee, and the rules and requirements of members, also support fair decision-making by a sport organization.
73. In other words, control over membership is prospective, whereas *res judicata* applies to matters already resolved. One's suitability for membership should, quite properly, be informed by one's past behaviour, but is not necessarily determined by that past behaviour. That the Screening Committee is not directed by the OVA to reject an applicant for membership who has been sanctioned by OSIC is evidence that *res judicata* does not apply.
74. It is imperative that a coach applicant for OVA membership be required to comply in an affirmative manner with section 14 of the Screening Policy: "An individual having been previously penalized for a prior offence shall not prevent the Screening Committee from considering that offence as part of the individual's screening application". I acknowledge that this affirmative obligation may conflict on its face with the strict provisions of the OSIC Confidentiality Policy. However, further to section 14, the coach applicant should be prepared to give consent to OSIC to discuss the case in question with the Screening Committee in full and in confidence pursuant to the exceptions to confidentiality found in sub-section 4(vi)(a)(iii) of the OSIC Confidentiality Policy:
    "4. vi. Exceptions to these OSIC confidentiality requirements include that:
    a. the OSIC and DSO, subject to applicable DSO policies and procedures:
    iii. may discuss the investigation and disclose the incident or Complaint-related information as necessary to administer a Complaint and/or **conduct an assessment or investigation regarding the Complaint**". (my emphasis)
    As the jurisdiction and authority of the Screening Committee is to conduct an assessment or investigation regarding the Complaint, as that relates to suitability for OVA membership, disclosure is both a reasonable exception to the OSIC Confidentiality Policy and a reasonable and narrow limit on an offender's right to privacy in favour of the public interest in safe sport.
75. In this situation the Screening Committee may then impose appropriate conditions on membership, such as a mentor; an absolute Rule of Two with no exceptions; education,

or other provisions determined to be tools with which to enable participation and to safeguard sport. Or, the Screening Committee may reject an application for membership, if an applicant is assessed to pose too great a risk to the OVA's common law and statutory obligation to ensure a safe sport environment. In addition, it is clear in OVA Policies that to be a coach requires not only technical proficiency in a sport, it requires that one promotes and develops a safe and healthy environment.

Allegation #2: Did the Respondent fail to comply with the OVA Person in Authority Policy, thus breaching sections 10(a) and 11 of the Code of Conduct?

Applicable Policies
Person in Authority Code of Conduct

Section 9 of the Person in Authority Code of Conduct provides:
9. When Individuals, especially Persons in Authority, interact with Vulnerable Individuals who are not their Children, they are required to enact certain practical approaches to these interactions including, but not limited to:
...
a.1) Not engaging in Prohibited Behaviours detailed in the UCCMS ... ...
d) Ensuring that parents/guardians are aware that some non-personal communication between Persons in Authority and Vulnerable Individuals (*e.g.* between coaches and minor athletes) may take place electronically (*e.g.* by texting, direct messaging) and that this type of communication is now considered to be commonplace, especially with older Children (*e.g.* teenagers). Such communication, in addition to being subject to the *Code of Conduct and Ethics*, shall be carried out in accordance with the Mandatory Requirements established in paragraph 9.2;

In addition, Section 9.2 of the Person in Authority Code of Conduct provides:
9.2. Persons in Authority must comply with the following rules when communicating with vulnerable Individuals.
a) Group messages, group emails, or team pages are to be used as the regular method of communication;
b) PIAs [Persons in Authority] may send personal texts, direct messages on social media, or emails only when necessary and only for the purpose of communicating information related to team issues and activities;
Rule of Two
87. Section 9 of the Person in Authority Code of Conduct provides:
9. When Individuals, especially Persons in Authority, interact with Vulnerable Individuals who are not their Children, they are required to enact certain practical approaches to these interactions including, but not limited to:
...
a.1) Not engaging in Prohibited Behaviours detailed in the UCCMS ...
b) Ensuring that Vulnerable Individuals are always supervised by more than adult;

b.1) Where one-on one interaction between a Person and Authority and a Vulnerable Individual is necessary, ensuring that such an interaction complies with the Rule of Two, as described in Appendix A;
88. Appendix A of the Person in Authority Code of Conduct Provides:
A1. The Rule of Two requires that a PIA never be alone or our of sight with a Vulnerable Individual.
A2. Any one-on-one interactions between the PIA and the Vulnerable Individual must take place in an earshot and view of a second PIA. If possible, one of the PIAs should be the same gender as the Vulnerable Individual.
A3. If a PIA is not available, another screened volunteer, parent or adult is to be asked to be present. (An exception is permitted for medical emergencies.)

A4. Ensure an open and observable environment for one-on-one interactions; this could include leaving the door open when having a meeting, or moving away from others in a public space but staying within visual range. Private one-on-one interactions, which should only occur when necessary, are to be open and observable by another Individual.

Position of the Complainant

76. The Complainant alleges that by having been found in violation of the UCCMS in the June OSIC Report, As Amended, the Respondent is in violation of section 9.1 (a)(a.1)(b)(b.1)(q)(r) and (x) and Appendix A of the PIA Code. In addition, the violations of the UCCMS constitute a breach of Section 10(a) of the Code of Conduct that states that all individuals have a responsibility to [a]dhere to the UCCMS.
77. To support their allegation, the Complainant cited case law[4] asserting "that it is not uncommon for the same set of facts to form the basis for separate and distinct legal proceedings where different legal rights and remedies exist." However, in the situation of alleged violations of the UCCMS, the OVA has enabled explicitly (section 5.1 of the DCP) the OSIC and the DSO to step in and take its place. This does not constitute a separate and distinct legal proceeding, but rather a substitute legal proceeding. In addition, the legal rights of the parties and the possible remedies are essentially the same between the OVA and the OSIC/DSO. In this case the actions of the Respondent found to be Maltreatment, are, by the provisions of the Code of Conduct, also transgressions against the Code of Conduct, with no separate legal proceeding needed.

Position of the Respondent

78. The Respondent alleges that any matters relating to the original complaint, as determined by OSIC further to the provisions of the UCCMS, should be dismissed as already determined and resolved.

[4] For example *York Region v Elementary Teachers' Federation of Ontario*, 2014 CanLII 77450 (ON LA) and *Ontario College of Teachers v Ross*, unreported decision dated November 18, 2016.

Arbitrator Analysis

79. It is the June OSIC Report, As Amended, finding of Maltreatment further to the UCCMS that is being relied upon by the OVA to pursue allegation #2. The OVA has not offered any further or alternative evidence of breaches of the PIA Code or the Code of Conduct by the Respondent. Section 4 of the DCP incorporated the UCCMS as a policy of Volleyball Canada (and the OVA) in June 2022. Section 5.1 of the DCP provides that the OVA has agreed to use the services of OSIC and the DSO to enforce the UCCMS.
80. I am persuaded that section 5.1 of the DCP applies to the findings and the sanction imposed by the June OSIC Report, As Amended, and that by July 15, 2023 the Respondent had satisfied the sanctions imposed.
81. To sanction the Respondent further under the PIA Code or the Code of Conduct for the same findings would offend *res judicata.* Once the OVA assigned the OSIC and the DSO the authority to enforce the UCCMS, the OVA must (i) adopt the OSIC decision, (ii) honour the OSIC sanctions, if any, and (iii) close the matter. To seek to apply the PIA Code and the Code of Conduct, and to sanction the Respondent thereunder, in addition to the sanctions imposed for the same offences as those sanctioned by OSIC, is the very definition of *res judicata.*
82. Nonetheless, I accept that the OVA may rely on decisions of other administrative tribunals (such as OSIC) to discipline their Members, and thus, in any determination of suitability for membership.[5] This is reinforced by the decision[6] in *Toronto (City) v. C.U.P.E* to uphold the termination of an employee further to a prior conviction for sexual assault. In this situation, termination is analogous to a denial of future membership, informed by the OSIC decision to sanction Ragogna for breaches of the UCCMS.

VI Decision/Ruling

83. I find the Respondent violated the Coach Eligibility Policy, the Screening Policy and the Membership Policy, thereby violating sections 10(a)(b.ii) and 11(a) of the Code of Conduct.
84. I uphold the Screening Decision, such that the Respondent shall be suspended for the 2023/2024 season from all volleyball activities and administrative functions, having been found by this Panel to have breached the OSIC Interim Suspension and the OVA Directive. The Respondent shall not be reinstated for the 2023/2024 season, shall be prohibited from coaching, communicating with (including electronic communications), or otherwise performing any other activity with minor athletes participants without the presence of another adult.

[5] *Thames Valley District School Board and OSSTF, District 11 (Thomas), Re,* 2016 CarswellOnt 8459

[6] *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), [2003] 3 SCR 77.

VII Conclusion

85. Fundamental to the integrity of sport in Canada is the jurisdiction and authority over membership. Sport organizations are charged with safeguarding the public. While, in specific instances of alleged violations of the UCCMS, they may assign decision-making to OSIC/DSO (or CCES), sport organizations must be able to conduct risk assessment and risk management to safeguard sport and the public. As discussed above, this prospective responsibility may rely on an assessment of the past behaviour of an applicant member – that is not double jeopardy. Only the PSO, in this case the OVA, has the jurisdiction and authority to determine if a person: (i) is admitted to Membership, or, (ii) has their Membership withdrawn. In making findings on Membership, the Screening Committee may consider past behaviour to assess the likelihood of future behaviour that may jeopardize the OVA's commitment to a safe and healthy sport environment.
86. Specific to the OSIC Confidentiality Policy, the right to privacy must be balanced with the public interest in safe sport. It would be a perverse result (as argued by the OVA) if measures to protect minor athletes (such as confidentiality) result in protecting a perpetrator from an assessment of the risk to the public that person may present. With respect to the OVA, there are controls on the Screening Committee in the Screening Policy, including expertise, confidentiality (including the applications of exceptions to the OSIC Confidentiality Policy), and independence. These are appropriate and adequate safeguards to balance the right to privacy and the public interest in safe sport.
87. It is entirely logical and reasonable that one cannot be a member of an organization if one does not respect the policies of that organization, as is asserted by the OVA. The Membership Policy states that membership can be revoked at any time. Again, there is a fair process to manage the possibility of revocation, including the Screening Committee, the Discipline Committee and the independent complaint management process.

VIII Order:

88. The Respondent's breach of the Screening, Coach Eligibility, and Membership policies of the OVA constitute breaches of sections 10(a), (b)(ii) and 11 (a) of the Code. The breaches demonstrate a pattern of behaviour that is evidence of a lack of understanding of both the OVA's responsibility to safeguard safe sport and of the OVA's jurisdiction and authority to govern the sport of volleyball in Ontario.
89. Pursuant to section 45 of the DCP, I order the following:

1. Further to my findings that the Respondent breached the OSIC Interim Suspension and the OVA Directive, the Respondent is suspended from membership for the 2023/24 season. Nonetheless, OVA policies shall apply to the Respondent.
2. The Respondent shall not be eligible to apply for membership in the OVA when the OSIC Provisional Measures imposed November 26, 2023, or any resulting sanction(s), are in effect.
3. When the OSIC Provisional Measures are lifted, and any further sanction that may be imposed by OSIC or another authority is satisfied, as determined by OSIC or that authority, the Respondent may apply for membership in the OVA. At that time the Respondent must: (i) share, in full, any complaint(s) before OSIC, or any other sport organization, if any, (ii) consent to all Screening Committee interview requests, including of any complainants (unless Minors) and/or OSIC representatives, and (iii) cooperate in full with the Screening Committee's risk assessment. The Screening Committee may impose conditions on Membership, to be administered by the OVA. If found non-compliant or misleading during the application process or in fulfilling any conditions imposed, the Respondent's membership may be revoked with immediate effect.
4. Should the Respondent be reinstated to membership, I uphold the Screening Decision provision that the Respondent shall be prohibited from coaching, communicating with (including electronic communications), or otherwise performing any other activity with minor athlete participants without the presence of another adult.
5. In the interim, the Respondent is not to engage in any activities related to volleyball in Ontario that fall under the jurisdiction and authority of the OVA.

IX Administration

90. I remind the Parties of the confidentiality provisions described in Section 52 of the DCP.
91. This Decision shall be published by the OVA.
92. Pursuant to Sections 48 and 29 of the DCP, this decision may be appealed.
93. I thank the Parties for their submissions.

Respectfully,
Ann Peel**,**
Discipline Panel
September 30, 2024

Appendix A

Record of Documents

1.	Respondent Notification	March 19, 2024
2.	Case Manager Procedural Direction	march 20, 2024
3.	Final Complaint with documents (OVA v Ragogna).	January 24, 2024
4.	Response to Complaint	May 7, 2024
5.	Complainant Reply	June 17, 2024
6.	Will Say Statement of Caroline Sharp	June 17, 2024
7.	Will Say Statement of Jo-Anne Ljubisic	June 17, 2024
8.	Will Say Statement of [redacted]	June 17, 2024
9.	Procedural Direction	June 21, 2024
10.	Ragogna Response to Complainant Reply	August 7, 2024
11.	Complainant Closing Statement	September 3, 2024
12.	Respondent Closing Statement	September 5, 2024

Appendix B

OVA Policies

1. Discipline and Complaints Policy (February 2023)
2. Code of Conduct and Ethics (June 27, 2023)
3. Abuse Policy/Person in Authority Code of Conduct (February 2023) with Appendix A (Rule of Two)
4. Coach Eligibility Policy 2023/24 (June 29, 2024)
5. Membership Policy (March 2022, updated April 25, 2023)
6. Screening Policy (April 2021) with Appendix A Application Form; Appendix B Screening Disclosure Form; Appendix C Screening Renewal Form; Appendix D Vulnerable Sector Check
7. Executive Summary of Signatory Agreement between SDRCC and OVA as a Program Signatory (December 2022)