

**IN THE MATTER OF A COMPLAINT SUBMITTED TO WRESTLING CANADA LUTTE
UNDER THE TERMS OF ITS DISCIPLINE POLICY**

BETWEEN:

DON RYAN (the “Complainant”)

And

MARTY CALDER (the “Respondent”)

Collectively (the “Parties”)

Counsel: Jordan Goldblatt for the Complainant
Clive Llewellyn for the Respondent

**REASONED DECISION
COSTS – JURISDICTION**

BACKGROUND

1. On or about February 19, 2019, Don Ryan, in his capacity as President of WCL, submitted the Complaint pursuant to WCL’s 2018 Discipline Policy. The Complaint concerns Mr. Calder’s alleged:
 - i. involvement in the hazing and/or assault of an athlete in December 2015 on the occasion of the 2015 Olympic Trials; and
 - ii. attempts to undermine an investigation into WCL’s coaching culture that was commissioned in July 2018.
2. The Complaint was heard by videoconference on November 18-20 and 23, 2020.
3. On June 4, 2021, the Panel issued a Reasoned Decision dismissing the Complaint in its entirety.

4. On June 11, 2021, the Respondent advised the Panel that he wished to seek his costs of this disciplinary proceeding.
5. On June 25, 2021, the Parties and the Panel held a case conference call during which it was agreed that the Panel's jurisdiction to order adverse costs would be considered separately and before any consideration of whether the Respondent should be awarded costs and if so in what amount.
6. The Parties subsequently filed written submissions addressing whether the Panel has jurisdiction to issue a costs order against the Complainant.

POSITIONS OF THE PARTIES

7. The positions of the Parties as set out in their written submissions are summarized below. It is important to note that I considered all of the facts and arguments put forward by both Parties, even if certain facts or arguments are not mentioned in this Reasoned Decision.

Respondent's Position

8. The Respondent submits that the Panel has jurisdiction to award costs to a successful party. His submissions are centred around the principle of accountability. He submits that the conduct of the Complainant has caused him to incur significant, unwarranted, and unnecessary costs to defend the Complaint, as well as reputational damage. If no award of costs is issued against the Complainant, the Respondent says there will be no accountability to ensure that complaints are adjudicated fairly and appropriately under the Discipline Policy.
9. The Respondent cites a number of cases in which administrative tribunals ordered costs against an unsuccessful party, including on grounds of accountability, fairness, and reasonable expectations of the parties.
10. The Respondent also points to section 23 of the Discipline Policy, which provides as follows:

SANCTIONS

Sanctions for infractions, which may be applied singularly or in combination, may include the following, but are not limited to:

[...]

g) fines

[...]

i) payment of costs (eg. event related costs such as flight, room/board; property damage)

[...]

k) discipline specific to the activity, if applicable

l) any other sanction considered appropriate for the infraction

m) any other sanction determined by a third party, as applicable

11. The Respondent states that by filing the Complaint, the Complainant's conduct comes under the jurisdiction of the Panel, and the Panel has the power to issue a sanction against the Complainant in the form of a costs award under section 23 of the Discipline Policy.
12. Finally, the Respondent submits that the Complainant's conduct in prosecuting the Complaint has infringed his right to life, liberty, and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**"), and that an award of costs would be an appropriate and just remedy under section 24(1) of the Charter.

Complainant's Position

13. The Complainant submits that the Panel has no jurisdiction to order costs against it (or any unsuccessful complainant). The Complainant states that there is nothing in the Discipline Policy that permits the Panel to make such a costs order. Section 23 only applies in respect of sanctions to be issued after the determination of an infraction, and thus has no application in this case.
14. The Complainant further submits that the Panel has no inherent jurisdiction to order adverse costs. The Complainant states that a tribunal's jurisdiction to award costs must be provided for in an underlying regime created by statute or policy.
15. The Complainant notes that, as a matter of policy, the regimes governing many administrative tribunals do not provide for costs, presumably to foster an environment where individuals can bring forward complaints without fear of financial consequence.
16. In respect of the Charter, the Complainant submits that WCL is not a government actor and the Charter does not apply. The Complainant states, in any event, that

this case involves the dismissal of the Complaint, not any determination of the Respondents' Charter rights, such that no Charter remedy is available.

ANALYSIS

17. For the reasons explained below, I conclude that the Panel does not have jurisdiction to order the Complainant to pay adverse costs in favour of the Respondent.
18. In my view, the Panel has no inherent jurisdiction to issue an adverse costs order. As stated by the Divisional Court in *Franklin v. College of Physicians & Surgeons (Ontario)*, 2007 CanLII 4540 (Ont. SCJ [Div. Ct.]): "There are numerous decisions of this and other courts holding that express statutory authority is required for an administrative tribunal to order costs." Accordingly, absent express authority set out in the rules governing this procedure, namely the Discipline Policy, the Panel has no jurisdiction to order costs against an unsuccessful party.
19. The cases relied on by the Respondent all involve courts or tribunals bound by some statutory, regulatory, or policy provision expressly permitting an award of costs. Absent any such express rule, the Panel cannot endow itself with jurisdiction to award adverse costs, regardless of the conduct of the Parties or notions of fairness.
20. The Panel has considered closely the terms of the Discipline Policy and concludes that the Policy does not grant the Panel any authority to order that the Complainant pay adverse costs:
 - a. The Panel agrees with the Complainant that section 23 applies only in circumstances where a Policy violation or infraction is established from which a sanction may flow. In the present case, the Panel determined that there was no Policy violation and the Complaint was dismissed. As such, there can be no sanction ordered under section 23.
 - b. There is no other provision of the Discipline Policy that would give the Panel express authority to order costs against the Complainant.
21. The Panel is confined to applying the terms of the Discipline Policy and cannot re-write the Policy.
22. Finally, the Panel agrees with the Complainant that the Charter has no application in the present case.

ORDER

23. The Respondent's request for an order of costs is denied for lack of jurisdiction of the Panel. As such, no further submissions on costs are necessary.



Carlos Sayao

WCL Discipline Panel

July 27, 2021